

On behalf of our 38 million members and all older Americans nationwide, AARP appreciates the opportunity to provide feedback to the Coronavirus Commission on Safety and Quality in Nursing Homes. The situation in our nation's long-term care facilities is dire. We have called on Congress and the Administration to take immediate action to stem the continued loss of life and improve conditions in these facilities.

Nursing homes and other long-term care facilities are ground zero in the fight against the coronavirus, representing a shockingly high share of deaths. More than 56,000 Americans (residents and staff) have died from COVID-19 in nursing homes or other long-term care facilities in just the past few months. While people living in nursing homes represent less than one percent of the U.S. population, nursing home and other long-term care facility residents and staff account for more than 40 percent of the COVID-19 deaths. In some states, resident and staff deaths represent more than 80 percent.

These horrifying numbers are a national disgrace. AARP has heard from thousands of people all across the country whose loved ones – their mothers, fathers, grandparents, aunts, uncles, and dear friends – lost their lives in nursing homes and other facilities. We are deeply alarmed by the rising death toll and the continued lack of urgent action. Much more is needed now to protect residents, staff, their loved ones, and the surrounding communities from this disease. AARP urges action on a five-point plan to slow the spread and save lives:

1. Ensure regular and prioritized testing of staff and residents, in accordance with CDC guidelines, and provide personal protective equipment (PPE) to staff and residents and ensure their proper use;
2. Require transparency around COVID-19 data (cases and deaths) in nursing homes and other long-term care facilities, transfer and discharge rights, how provider relief funds are used, and establish guardrails to ensure funds are used for testing, PPE, staffing, virtual visitation, and other items that directly relate to resident care, well-being, prevention, and treatment;
3. Require facilities to provide and facilitate virtual visitation;
4. Ensure adequate staffing levels and ensure that Long-term Care Ombudsmen have in-person access to do their jobs to advocate for residents and families; and
5. Reject blanket immunity for nursing homes and other long-term care facilities related to COVID-19.

### **Ensure Access to Personal Protective Equipment and Testing**

We urge *immediate* steps to provide proper PPE and to ensure the proper use of PPE for all staff caring for individuals in nursing homes, assisted living communities, other residential care communities, home and community-based and other settings. It has been over four months since the first cases of COVID-19 emerged in nursing homes. It is long past overdue to get needed protective gear into every facility. Hundreds of people are dying *every single day* in nursing homes and other long-term care facilities.

The only way to truly protect the health and safety of residents and staff is for all facilities to have ready access to testing and require that residents and staff are regularly tested. Testing varies widely, and nursing homes and other long-term care facilities are often not prioritized for testing despite the death rates, so they often have to wait far too long for results. Providing the testing supplies and laboratory capacity to provide timely results is important. Testing will help control the spread of the virus among the residents, staff, and the community at large, as staff and others come and go from these facilities. AARP urges immediate steps to require regular testing for staff and residents of long-term care facilities.

### **Ensure Transparency of Information on COVID-19 Cases and Data, Transfer and Discharge Rights, and Use of Provider Relief Funds**

AARP has been calling for increased transparency of COVID-19 cases in long-term care facilities, and we appreciate the guidance and interim final rule with comment from the Centers for Medicare & Medicaid Services (CMS) that take steps towards achieving greater transparency and ensuring nursing homes are better prepared to respond to the public health emergency. The rule requires nursing homes to report confirmed cases of COVID-19 and deaths among residents and staff, as well as other important information to the Centers for Disease Control and Prevention (CDC), at least on a weekly basis. That information is provided to CMS and is being made public by the agency. In addition, facilities are now required to alert residents, their representatives, and families when there is a single positive infection of COVID-19 or three or more residents or staff with new-onset or respiratory symptoms that occur within 72 hours of each other.

While these new reporting requirements are a necessary step, we believe care facilities must also report publicly on a daily basis whether they have confirmed COVID-19 cases and deaths, and that reporting should include demographic data. AARP [commented](#) on the CMS May 8 interim final rule to suggest additional improvements to these reporting requirements.

The COVID-19 pandemic has shed light on the stark racial disparities affecting health outcomes for communities of color across the country. There is a growing body of data that shows African Americans/Blacks and Hispanics are disproportionately impacted by the pandemic with higher rates of infection and death, and they are more likely to experience serious illness from COVID-19, but as outlined below, more data is needed. Furthermore, more data is needed to assess the impact of COVID-19 on the Asian American and Pacific Islander (AAPI) communities, as well as on American Indians and Alaska Natives. While racial and ethnic disparities long existed before this crisis, the ongoing pandemic has sent a clear message—perhaps louder than ever—that now is the time to work collectively to address the systemic inequities, discrimination, and harmful social determinants of health that have led to these disparities.

In order to address health disparities across the country, including those occurring within nursing homes and other long-term care facilities, it is important that the federal government gather data and publicly report on COVID-19 cases, deaths, co-morbidities, and testing rates broken down into multiple demographic categories—while protecting patient privacy—including race, ethnicity, age, socioeconomic status, sexual orientation, gender identity, spoken/written language and disability. Data should also include venues such as hospitals, nursing homes, assisted living

facilities, residential homes, and other locations. The information, disaggregated for all groups, should also be contrasted with 2019 numbers in order to truly understand the impact of COVID-19 on all communities. Collection, analysis, and regular public reporting of the detailed disaggregated information will help us effectively understand and respond to the crisis in a timely and focused way so that we can improve outcomes and minimize the spread of the virus.

We support the language included in H.R. 6800, the HEROES Act, which requires long-term care facilities to report demographic information relating to COVID-19 cases and deaths, including race and ethnicity. AARP has also endorsed the Emergency Support for Nursing Homes and Elder Justice Reform Act of 2020 (S. 4182) and the Nursing Home COVID-19 Protection and Prevention Act (S. 3768/H.R. 6972) that include data reporting and collection provisions, including important demographic data. This data will provide a clearer picture to help effectively minimize the spread of the virus and fight the high share of deaths in nursing homes and among communities of color.

During the pandemic, residents sometimes are moving between hospitals and care facilities, transferring within a facility, or being discharged to another facility – any of these situations are likely to be a stressful event. Facilities should be required to provide timely notice and comprehensive information to residents and loved ones in the case of a transfer or discharge, including a summary of the resident’s rights, information on visitation rights, the right to appeal a discharge or transfer, and written notice of the long-term care Ombudsman’s name and contact information prior to discharge. We note S. 3768/H.R. 6972 includes important provisions on notification for residents and families about discharges and transfers and prohibiting facilities from discharging residents due to failure to pay for services during this pandemic.

As nursing homes are receiving billions of dollars in taxpayer money from the Provider Relief Fund, we need guardrails to ensure that such funds are used for testing, PPE, staffing, virtual visitation, and other items that directly relate to resident care and well-being, prevention, and treatment. Funds should directly benefit residents. We also urge that there are sufficient reporting requirements and transparency for nursing homes receiving these provider relief funds, so that American taxpayers can understand how facilities are using this money. Facilities receiving reimbursement to care for individuals with COVID-19 should also have to meet appropriate criteria to ensure that they can provide quality care.

### **Require Facilities to Provide and Facilitate Virtual Visitation**

For many Americans living in nursing homes and other facilities, their friends and family provide not only a source of comfort, but also an important safety check. They are another set of hands to help their loved ones with nursing and other care needs and another set of eyes and ears to help identify when there is a problem, or if their loved one is in danger. In-person visits have largely been halted and facilities face staffing challenges, but even as some facilities begin allowing in-person visits, maintaining communication between residents and loved ones virtually is critical for their health and safety.

The stories of people unable to say goodbye to their parents, grandparents, or other loved ones is not only heartbreaking, it is outrageous. In America, when the technology to facilitate virtual

visits is not only abundant, but increasingly affordable, it is nothing short of a scandal that these visits are still not available on a regular basis to many Americans in these facilities. We must require residential care facilities to make available and facilitate virtual visitation via video-conference or other technologies for residents and their loved ones.

We also urge funding for the provision of technology and equipment, including videoconference, two-way audio/video options, acquisition or expansion of broadband internet access services, and services and items necessary to carry out virtual visits and telehealth appointments. AARP supports the Advancing Connectivity during the Coronavirus to Ensure Support for Seniors Act, S. 3517/H.R. 6487, that would provide such funding, specifically grants to nursing homes to support virtual visits.

### **Ensure Adequate Staff and Access for Long-Term Care Ombudsmen**

We are also deeply concerned about staffing shortages at residential care facilities. It is essential that, at a minimum, staff/resident levels be maintained despite a potential reduction in workforce due to COVID-19 related circumstances. Many facilities had inadequate staff prior to the pandemic, and it is essential that staff be adequate to meet residents' many COVID-related care needs, including infection control. In addition, research shows that nursing homes with a registered nurse on staff help improve the quality of care. AARP urges immediate action to ensure that staffing levels in these facilities are adequate. Factors such as recruitment, training, retention, and compensation, as well as the creation of career ladders should be addressed during this crisis and beyond, including in home care. In addition, facilities should inform state regulators, residents, and family members when staffing shortfalls do occur as well as the steps they are taking to correct the problem.

Long-term care Ombudsmen play an important role in advocating for residents and their families. Since March, as in-person visitation in facilities has largely been halted, ombudsmen have been unable to enter facilities. We urge that this restriction be immediately lifted. Recent reporting from the [New York Times](#) further demonstrates the essential need to have these advocates in facilities to protect residents and communicate with families.

### **Reject Proposals to Grant Immunity Related to COVID-19 to Nursing Homes and Other Long-Term Care Facilities**

The pandemic has put residents' health, safety, and quality of care at unprecedented risk, as reflected by the horrific death tolls. We know that staff in many long-term care facilities are doing heroic work, putting their own health on the line to care for people in nursing homes. But sadly, AARP has also been contacted by thousands of families across the country, in all 50 states, whose loved ones were not treated with the compassion or dignity that every American deserves.

Even before the current pandemic, many nursing homes across the country were already falling short when it comes to basic infection control practices. According to a May 20, 2020, study from the Government Accountability Office (GAO), 82 percent of surveyed nursing homes had one or more citations for lax infection control practices between 2013 and 2017. As the GAO

report states, “infection prevention and control deficiencies cited by surveyors can include situations where nursing home staff did not regularly use proper hand hygiene or failed to implement preventive measures during an infectious disease outbreak, such as isolating sick residents and using masks and other personal protective equipment to control the spread of infection. Many of these practices can be critical to preventing the spread of infectious diseases, including COVID-19.”

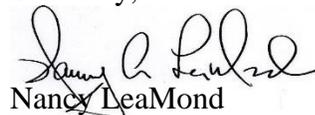
AARP strongly that we protect the safety of residents, including by maintaining the rights of residents and their families to seek legal redress to hold facilities accountable when residents are harmed, neglected, or abused. Litigation is an option of last resort, and no family member who has lost a loved one due to neglect or abuse pursues this course of action lightly. While some circumstances may be beyond the facilities’ control, it is essential that long-term care providers, as well as health care providers more broadly, remain responsible for any negligent actions that fail to protect the health and lives of residents. Residents of nursing homes and other facilities, who are often unable to advocate for themselves, now have limited access to people who can advocate on their behalf. As a result, there is less oversight and attention to what is happening in facilities. This lack of oversight is alarming and requires, more than ever, that residents and their families still have access to the courts to seek redress. At this time of limited oversight and accountability, and horrific death tolls, we should not strip away the rights and protections of residents.

### **Eliminate Barriers to Care in Homes and Communities**

The devastating impacts of COVID-19 on long-term care facility residents further demonstrates the need for greater investments in Home and Community-Based Services (HCBS). These investments will allow more older adults to age in their homes and communities where they want to be, while also helping to alleviate some of the challenges we are facing in our nation’s nursing homes. Furthermore, on average, for every one person residing in a nursing home, Medicaid can fund three individuals receiving community-based long-term care. Accordingly, AARP is urging we make sufficient resources available to enhance access to HCBS. We should support the workforce that provides these important services, as well as needed funding to pay for back-up services when regularly scheduled home care workers or family caregivers are not available. There may also be greater demand for HCBS since more individuals may be trying to avoid or leave congregate settings. In addition, AARP has urged HCBS parity with institutional care for those who are determined to meet an institutional level of care. This will allow more people to live in their homes and communities.

Families all across the country are looking for swift action to protect the health and safety of their loved ones living in long-term care facilities. We cannot wait any longer. Thank you for your work to address this urgent challenge.

Sincerely,



Nancy LeaMond

Executive Vice President and Chief Advocacy and Engagement Officer