

Congress of the United States
Washington, DC 20510

April 29, 2020

We are writing to seek information on the extent of the novel coronavirus 2019 (COVID-19) outbreak at assisted living facilities you own and operate, and the methods you are using to prevent and mitigate outbreaks when they do occur.

The COVID-19 pandemic has had a devastating impact on public health nationwide, infecting over one million Americans and killing nearly 60,000 to date.¹ The locus of fatalities nationwide has been in nursing homes. Although there is currently no comprehensive official national data available on the extent of infections in nursing homes, reporting earlier this month from 29 states indicated that over 50,000 residents of long-term care facilities have suffered from COVID-19 infections, and reporting from 23 states indicates that over 10,000 have died.² In states that track this information, long-term care facilities account for more than one quarter of COVID-19 fatalities.³

However, we are concerned by reports that, in addition to the public health crisis in nursing homes, “a parallel crisis has been playing out with far less scrutiny in another setting housing vulnerable seniors: assisted living.”⁴ Unlike nursing homes, which typically serve seniors who require constant attention and medical care, assisted living facilities serve populations that need some help with day-to-day activities and care but who often live independently.⁵ And unlike nursing homes, assisted living facilities are essentially unregulated at the federal level. In Massachusetts, data recently released by the state indicated that 139 of the state’s 260 assisted living facilities had at least two COVID-19 cases, and that a dozen facilities had 30 or more

¹ Bloomberg, “Tracking the Spread of the Coronavirus Outbreak in the U.S.,” Cedric Sam, Nic Querolo, Demetrios Pogkas, Chloe Whiteaker, Paul Murray, Marie Patino, Sybilla Gross, Katrina Lewis, Donald Moore, Jack Pitcher, Elizabeth Rembert, Max Reyes, Olivia Rockeman and Maria Elena Vizcaino, April 28, 2020, <https://www.bloomberg.com/graphics/2020-united-states-coronavirus-outbreak>.

² Kaiser Family Foundation, “State Reporting of Cases and Deaths Due to COVID-19 in Long-Term Care Facilities,” April 23, 2020, <https://www.kff.org/medicaid/issue-brief/state-reporting-of-cases-and-deaths-due-to-covid-19-in-long-term-care-facilities>.

³ *Id.*

⁴ Boston Globe, “Assisted-living sites struggle with coronavirus in shadow of nursing home crisis,” Robert Weisman, April 26, 2020, <https://www.bostonglobe.com/2020/04/26/metro/assisted-living-sites-struggle-with-covid-19-shadow-nursing-home-crisis/>.

⁵ National Institutes of Health, “Residential Facilities, Assisted Living, and Nursing Homes,” <https://www.nia.nih.gov/health/residential-facilities-assisted-living-and-nursing-homes>.

cases.⁶ Similar reports have revealed outbreaks in assisted living facilities in California,⁷ New York,⁸ Illinois,⁹ and presumably, nationwide.

Assisted living facilities deserve particular scrutiny in this pandemic because they share several of the same characteristics that increase risks at nursing homes – a population of senior citizens, many with chronic health problems, living and interacting closely together – but they face a significantly less stringent regulatory environment. A 2018 Government Accountability Office report that was conducted at Sen. Warren’s request revealed that in just one year, there were over 22,000 “critical incidents” – physical assaults, sexual abuse, unexplained death, medical errors, and other serious problems – involving Medicaid recipients in assisted living facilities. However, most states could not even adequately report the number of these serious incidents.¹⁰

Similarly, CMS, in response to the growing pandemic, published new guidance on April 19, 2020, that announced the agency’s intention to collect and report national data on infections in nursing homes and to require nursing homes to notify residents and their families about new cases of COVID-19.¹¹ But there was not and is not a national reporting requirement for assisted living facilities with COVID-19 cases: there is only non-binding guidance from CDC on preventing and mitigating outbreaks in assisted living facilities.¹²

As a result, there is little comprehensive national information available on the extent of COVID-19 outbreaks in assisted living facilities and the actions taken by assisted living facilities and their operators to address these risks.

We must act quickly to identify and address the ongoing risks from the COVID-19 pandemic. We therefore ask that you provide us with answers to the following questions no later than May 8, 2020.

⁶ Boston Globe, “Assisted-living sites struggle with coronavirus in shadow of nursing home crisis,” Robert Weisman, April 26, 2020, <https://www.bostonglobe.com/2020/04/26/metro/assisted-living-sites-struggle-with-covid-19-shadow-nursing-home-crisis/>.

⁷The Mercury News, “Coronavirus: 10 dead at Redwood City assisted living center, while thousands test positive at facilities across the state,” Annie Sciacca and Emily Deruy, April 24, 2020, <https://www.mercurynews.com/2020/04/24/coronavirus-10-dead-at-redwood-city-assisted-living-facility-while-thousands-test-positive-at-facilities-across-the-state/>.

⁸ Democrat and Chronicle, “Nursing homes: Linked to 15% of NY coronavirus deaths, facilities brace for impact,” Sarah Taddeo and Chad Arnold, April 3, 2020, <https://www.democratandchronicle.com/story/news/2020/04/03/new-york-nursing-homes-coronavirus-deaths/5103588002/>.

⁹ NBC 5 Chicago, “111 Patients at South Shore Assisted-Living Facility Test Positive for Coronavirus,” April 21, 2020, <https://www.nbcchicago.com/news/coronavirus/111-patients-at-south-shore-assisted-living-facility-test-positive-for-coronavirus/2259783/>.

¹⁰ Government Accountability Office, “Medicaid Assisted Living Facilities: Improved Federal Oversight of Beneficiary Health and Welfare is Needed,” January 2018, https://www.warren.senate.gov/files/documents/2018_2_5_GAO%20report.pdf.

¹¹ Centers for Medicare and Medicaid Services, “Upcoming Requirements for Notification of Confirmed COVID-19 (or COVID-19 Persons under Investigation) Among Residents and Staff in Nursing Homes,” April 19, 2020, <https://www.cms.gov/files/document/qso-20-26-nh.pdf>

¹² Centers for Disease Control and Prevention, “Considerations When Preparing for COVID-19 in Assisted Living Facilities,” April 15, 2020, <https://www.cdc.gov/coronavirus/2019-ncov/hcp/assisted-living.html>.

1. How many assisted living facilities does your company own or operate, and how many total residents live at these facilities? How many total staff work at these facilities?
2. How many total COVID-19 cases have occurred among residents of these facilities?
 - a. How many have resulted in hospitalization?
 - b. How many have resulted in fatalities, including cases where residents contracted COVID-19 at the facility but then died in a hospital or other off-site facility?
3. How many total COVID-19 cases have occurred among staff of these facilities?
 - a. How many have resulted in hospitalization?
 - b. How many have resulted in fatalities?
4. How many of your facilities have had at least one resident diagnosed with COVID-19?
 - a. How many of these facilities have had two or more residents diagnosed with COVID-19?
 - b. How many of these facilities have had 10 or more residents diagnosed with COVID-19?
 - c. In how many of these facilities has at least one staff member been diagnosed with COVID-19?
5. How many of your facilities have had at least one resident who has died from COVID-19, including cases where residents contracted COVID-19 at the facility but then died in a hospital or other off-site facility?
 - a. How many of these facilities have had two or more resident fatalities associated with COVID-19, including cases where residents contracted COVID-19 at the facility but then died in a hospital or other off-site facility?
 - b. How many of these facilities have had five or more resident fatalities associated with COVID-19, including cases where residents contracted COVID-19 at the facility but then died in a hospital or other off-site facility?
 - c. How many of these facilities have had at least one staff fatality associated with COVID-19?
6. Please provide a complete list of all facilities that have had at least one resident or staff member diagnosed with COVID-19, including the name of the facility, the location, the number of residents diagnosed with COVID-19 and the number of resident fatalities from COVID-19, the number of staff diagnosed with COVID-19, and the number of staff fatalities from COVID-19.
7. How many of your facilities have implemented routine, daily or weekly COVID-19 testing of residents, staff, and visitors?
 - a. How many of these facilities conduct daily or weekly tests of residents?
 - b. How many of these facilities conduct daily or weekly tests of staff?
 - c. How many of these facilities are able to receive a test result within 24 hours of submitting a sample for testing?
 - d. How many of these facilities test, or require visitors to be tested, prior to entering the facility and interacting with staff and patients?

8. For non-routine testing of residents, what symptoms or other factors are triggers for testing?
9. What is the average time between testing and receiving the results of a test, and how are residents handled in the interim period?
10. What happens in cases where residents test positive or are known or suspected to have Covid-19? Are they quarantined in their rooms or in a specific area of the facility? Are they transferred to a facility established for COVID patients?
11. How do you report cases of COVID-19 in your facilities?
 - a. Do you inform state or local officials, and if so, how do you do so?
 - b. Do you inform federal officials, and if so, how do you do so?
 - c. Do you inform residents, and if so, how do you do so?
 - d. Do you inform any other entities or individuals, and if so, how do you do so?
12. What new policies have you put in place and what trainings have you administered for residents and staff to address the risks of a COVID-19 outbreak? Have you modified staffing policies to reduce potential transmission between facilities?
13. Please describe the extent to which your policies comply with guidance from the CDC or relevant state agencies.
14. Do you currently offer paid sick leave to your employees?
 - a. What are the terms and conditions of this leave policy? Please include:
 - i. How many days of paid sick leave are offered
 - ii. The circumstances for which employees can use this paid leave
 - iii. Eligibility for paid sick leave, and whether it is available to all employees
 - iv. How paid sick leave accrues for employees
 - v. If employees receive full pay while taking paid sick leave
 - vi. Any requirements for accessing paid sick leave, including whether it requires a confirmed COVID-19 diagnosis or any documentation
 - b. When did you begin offering this policy?
 - c. Have you made any changes to this policy during the pandemic? (For example, allowing employees to access the maximum days of paid sick leave immediately, regardless of employment tenure, if sick days accrue over time)
15. Do you currently offer paid family and medical leave to your employees?
 - a. What are the terms and conditions of this leave policy? Please include:
 - i. How many days of paid leave are offered
 - ii. The circumstances for which employees can use this paid leave, including whether it can be used to care for dependents of any age or other family members
 - iii. Eligibility for paid leave, and whether it is available to all employees
 - iv. How paid leave accrues for employees

- v. If employees receive full pay while taking paid leave
 - vi. Any requirements for accessing paid leave, including whether it requires any documentation
 - b. When did you begin offering this policy?
 - c. Have you made any changes to this policy during the pandemic?
16. Do you currently offer hazard pay to your employees?
17. Have you restricted access for visitors and non-essential personnel to your facilities?
18. Do you require staff to wear masks, gloves, or other personal protective equipment at all times, and if so, do you provide them at no charge to staff?

Sincerely,



Elizabeth Warren
United States Senator



Carolyn B. Maloney
Chairwoman
House Committee on Oversight and Reform



Edward J. Markey
United States Senator