



**Officers**

**Chair**

Judith L. Lichtman  
National Partnership for  
Women & Families

**Vice Chairs**

Thomas A. Saenz  
Mexican American Legal  
Defense and Educational Fund  
Hilary Shelton  
NAACP

**Secretary/Treasurer**

Lee A. Saunders  
American Federation of State,  
County & Municipal Employees

**Board of Directors**

Kevin Allis  
National Congress of American Indians  
Kimberly Churches  
AAUW

Kristen Clarke  
Lawyers' Committee for  
Civil Rights Under Law

Alphonso B. David  
Human Rights Campaign

Rory Gamble  
International Union, UAW

Lily Eskelsen Garcia  
National Education Association

Fatima Goss Graves  
National Women's Law Center

Mary Kay Henry  
Service Employees International Union

Sherrilyn Ifill  
NAACP Legal Defense and  
Educational Fund, Inc.

David H. Inoue  
Japanese American Citizens League

Derrick Johnson  
NAACP

Virginia Kase  
League of Women Voters of the  
United States

Michael B. Keegan  
People for the American Way

Samer E. Khalaf  
American-Arab  
Anti-Discrimination Committee

Marc Morial  
National Urban League

Janet Murgula  
UnidosUS

Debra L. Ness  
National Partnership for  
Women & Families

Rabbi Jonah Pesner  
Religious Action Center  
Of Reform Judaism

Lisa Rice  
National Fair Housing Alliance

Anthony Romero  
American Civil Liberties Union

Maria Town  
American Association of  
People with Disabilities

Richard L. Trumka  
AFL-CIO

Toni Van Pelt  
National Organization for Women

Randi Weingarten  
American Federation of Teachers

John C. Yang  
Asian Americans Advancing Justice |  
AAJC

August 10, 2020

Secretary Alex M. Azar II  
Department of  
Health and Human Services  
Hubert H. Humphrey Building  
200 Independence Avenue, SW  
Washington, DC 20201

Director Dr. Robert R. Redfield  
Centers for Disease Control and  
Prevention  
1600 Clifton Road, NE  
Atlanta, GA 30333

Administrator Seema Verma  
Centers for Medicare and Medicaid Services  
Hubert H. Humphrey Building  
200 Independence Avenue, SW  
Washington, D.C. 20201

Director David R. Wright  
Center for Clinical Standards and Quality  
7500 Security Boulevard  
Room C2-21-16  
Baltimore, MD 21244

**Re: COVID-19 Response in Nursing Homes and Other Congregate Settings for  
People with Disabilities**

Dear Secretary Azar, Director Redfield, Administrator Verma, and Director Wright:

On behalf of The Leadership Conference on Civil and Human Rights, a coalition of more than 220 national organizations committed to promoting and protecting the civil and human rights of all persons in the United States, we write to urge the Department of Health and Human Services (HHS) and its agencies, the Centers for Medicare and Medicaid Services (CMS), Center for Clinical Standards and Quality (CCSQ), and the Centers for Disease Control and Prevention (CDC), to take immediate action in response to the coronavirus pandemic to ensure the health and safety of residents and staff in nursing homes and other congregate care facilities for people with disabilities.

On June 23, 2020, the American Civil Liberties Union, the Service Employees International Union, American Association of People with Disabilities, the Autistic Self-Advocacy Network, the Disability Rights Education and Defense Fund, National Council on Independent Living, Partnership for Inclusive Disaster Strategies, and World Institute on Disability filed a petition with HHS, CMS, CCSQ, and CDC ("June 23 Petition") outlining the failures of HHS and its agencies to protect the health and lives of residents and staff in

our nation's congregate care facilities.<sup>1</sup> With the number of deaths in nursing homes continuing to rise and with continued reports of COVID outbreaks in other congregate care facilities, the Leadership Conference now petitions the agency to take the steps outlined in the June 23 Petition, attached to this letter.

COVID-19 has been particularly lethal for residents and staff of nursing homes, assisted living, and other congregate care facilities. As of July 30, there were nearly 63,000 reported COVID-19 deaths in long-term care facilities, a shocking 44 percent of total COVID-19 deaths in the United States,<sup>2</sup> yet even this is an undercount due to a lack of reporting and transparency from these facilities.<sup>3</sup> The highest priority of our government during this pandemic is to keep all communities safe and healthy, particularly those most at risk of serious illness and death, including the elderly and people with disabilities. The devastation faced by residents and staff in our nation's nursing homes and other congregate care facilities was not inevitable, but instead represents the consequences of longstanding problems—including living spaces that make distancing impossible, understaffing, poor infection control procedures, inadequate planning, and substandard care—coupled with a flawed response to the COVID-19 emergency.

Moreover, as in other areas where we have seen disproportionate impacts of COVID-19 on Black and Brown communities and women, the public health crisis in nursing homes and congregate care facilities is falling disproportionately on these vulnerable groups. More than 80 percent of working people in long-term care facilities are women, nearly one third are Black, 16 percent are Latino, and 23 percent are immigrants.<sup>4</sup> Many of these jobs are low-paid and do not offer support like paid sick leave for employees, putting these workers and residents at greater risk of exposure to the virus.<sup>5</sup> In addition, data has consistently shown that nursing homes—residents of which are nearly 70 percent women<sup>6</sup>—are highly

---

<sup>1</sup> Petition from American Civil Liberties Union, et al., to U.S. Dep't of Health and Human Serv., et al. (June 23, 2020), <https://www.aclu.org/petition-covid-19-response-nursing-homes-and-other-congregate-settings-where-people-disabilities>.

<sup>2</sup> Kaiser Family Foundation, State Data and Policy Actions to Address Coronavirus (Aug. 3, 2020), <https://www.kff.org/health-costs/issue-brief/state-data-and-policy-actions-to-address-coronavirus/> (last visited Aug. 4, 2020).

<sup>3</sup> See Laura Strickler, *Trump Administration Won't Require Nursing Homes to Count COVID-19 Deaths that Occurred Before May 6*, NBC News (May 22, 2020), <https://www.nbcnews.com/health/health-care/trump-admin-won-t-require-nursing-homes-count-covid-19-n1213141>. See also, Mary Murphy, *NY Health Commissioner Confronted about 'Undercounting' of Nursing Home Deaths*, Pix 11 News (Aug. 3, 2020), <https://www.pix11.com/news/coronavirus/ny-health-commissioner-confronted-about-undercounting-of-nursing-home-deaths>; Emily Hopkins, *New Data Suggests Indiana Has Been Drastically Undercounting Coronavirus Deaths in Nursing Homes*, Indy Star (July 28, 2020), <https://www.indystar.com/story/news/health/2020/07/28/indiana-coronavirus-new-nursing-home-data-suggests-indiana-has-been-undercounting-coronavirus-deaths/5519453002/>.

<sup>4</sup> Sarah True, et al., *COVID-19 and Workers at Risk: Examining the Long-Term Care Workforce*, Kaiser Family Foundation (Apr. 23, 2020), <https://www.kff.org/medicaid/issue-brief/covid-19-and-workers-at-risk-examining-the-long-term-care-workforce/>; Leah Zallman et al., *Care for America's Elderly and Disabled People Relies on Immigrant Labor*, 38 Health Affairs 919, 923 (2019), <https://www.healthaffairs.org/doi/10.1377/hlthaff.2018.05514>.

<sup>5</sup> Benjamin Elgin, *Some Nursing Homes Get Virus Aid But Don't Pay Infected Workers*, Bloomberg News (June 2, 2020), <https://news.bloomberglaw.com/coronavirus/some-nursing-homes-get-virus-aid-but-dont-pay-infected-workers>.

<sup>6</sup> Nat'l Ctr. for Health Statistics, HHS, *Long-Term Care Providers and Services Users in the United States, 2015-2016* (Feb. 2019), [https://www.cdc.gov/nchs/data/series/sr\\_03/sr03\\_43-508.pdf](https://www.cdc.gov/nchs/data/series/sr_03/sr03_43-508.pdf).

segregated by race and ethnicity with widespread disparities in quality of care, reflecting larger structural inequality and institutional racism.<sup>7</sup> Unsurprisingly, infection rates are higher at facilities with significant Black and Latino populations, which are twice as likely to have positive COVID-19 cases than nursing homes where the population is overwhelmingly White.<sup>8</sup> The race and ethnicity of nursing home residents is a larger predictor of whether a nursing home has been hit by COVID-19 than a facility's size, location, or government rating.

As described in the June 23 Petition, the serious shortcomings of HHS's response to the COVID-19 pandemic in nursing homes and other congregate care facilities for people with disabilities has endangered the lives of residents and staff, particularly women and people of color. HHS failed to require the reporting of COVID-related deaths or infections at the outset of the pandemic and still does not require reporting of COVID-cases in other congregate settings for people with disabilities, such as group homes, psychiatric facilities, and intermediate care facilities for people with developmental disabilities. Nor does HHS require reporting of demographic data from these facilities. HHS also eased inspections, waived training requirements, and initially failed to prioritize providing personal protective equipment for staff in nursing homes. It also failed to reduce overcrowding in nursing homes and other congregate care settings to better allow for social distancing and has failed to issue clear, robust COVID-19 specific guidance for these facilities to follow.<sup>9</sup>

HHS has an obligation to ensure that people with disabilities can be served in the most integrated setting appropriate under *Olmstead v. L.C.*, the Americans with Disabilities Act, and the Rehabilitation Act.<sup>10</sup> The Department must now act swiftly to rescind or modify prior agency actions to help decrease the disproportionately high death rates in these residential communities and work to ensure a safe environment for residents and staff.

Given the urgency of this public health emergency, every passing day without adequate action from HHS is another day that HHS has failed residents and staff of nursing homes, assisted living, and other congregate care facilities. We urge the Department and its agencies to immediately take the steps outlined in the June 23 Petition: (1) require true transparency and accountability through comprehensive reporting and inspection protocols on COVID; (2) reduce the number of residents in facilities by supporting appropriate housing options other than of congregate care facilities and transitioning people to community living; and (3) protect the residents and staff who remain in these long-term care facilities.

Protecting the health and lives of residents and staff in nursing homes and other congregate care facilities will require HHS and its agencies to respond quickly with specificity and care. We respectfully request your immediate attention to this growing tragedy which has struck people with disabilities, the elderly,

---

<sup>7</sup> See Lauren J. Campbell et al., *Racial/Ethnic Disparities in Nursing Home Quality of Life Deficiencies, 2001 to 2011*, *Gerontology and Geriatric Medicine* Vol. 2 (2016), <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC5066711/>.

<sup>8</sup> Robert Gebeloff, et al., *The Striking Racial Divide in How Covid-19 Has Hit Nursing Homes*, N.Y. Times (May 21, 2020), <https://www.nytimes.com/article/coronavirus-nursing-homes-racial-disparity.html>.

<sup>9</sup> Petition from American Civil Liberties Union, et al., *supra* note 1 at 5-7.

<sup>10</sup> See *id.* at 8-9.

August 10, 2020  
Page 4 of 4



women, and people of color with particular force. Please contact Gaylynn Burroughs, Senior Policy Counsel at The Leadership Conference, at [burroughs@civilrights.org](mailto:burroughs@civilrights.org) with any questions.

Sincerely,

A handwritten signature in black ink, appearing to read "Vanita Gupta". The signature is fluid and cursive, with a large initial "V" and a long, sweeping underline.

Vanita Gupta  
President and CEO

A handwritten signature in black ink, appearing to read "LaShawn J. Warren". The signature is written in a cursive style, with the first name "LaShawn" being more prominent and the last name "Warren" following in a similar script.

LaShawn Warren  
Executive Vice President for Government  
Affairs