



Congress of the United States
House of Representatives
Washington, DC 20515

June 25, 2020

The Honorable Gretchen Whitmer
Governor of Michigan
P.O. Box 300013
Lansing, MI 48909

Dear Governor Whitmer,

The policy set by your office mandating nursing homes accept potentially untested and contagious COVID-19 residents from hospitals is gravely concerning.¹ This dangerous policy exacerbates the devastation this crisis poses to our already vulnerable elderly constituents. Resolving this harm is vital, and that is why you must reverse your order and fully comply with the ongoing inquiry into this policy by the Select Subcommittee on the Coronavirus Crisis (Select Subcommittee).²

On March 13, 2020, the Center for Medicare & Medicaid Services (CMS) issued guidance “For Infection Control and Prevention of Coronavirus Disease 2019 (COVID-19) in Nursing Homes.”³ This guidance is a blueprint for individual states to follow when determining how to best control outbreaks of COVID-19 in nursing homes and long term care facilities. This guidance clearly states that “nursing homes should admit any individual that they would normally admit to their facility, including individuals from hospitals where a case of COVID-19 was/is present” *only if* the nursing home can follow Centers for Disease Control (CDC) quarantining guidance.⁴ CMS Administrator Seema Verma underscored this point when she said

¹ Originally Executive Order No. 2020-50 (COVID-19) available at https://www.michigan.gov/whitmer/0,9309,7-387-90499_90705-525942--,00.html, and most recently modified and continued by Executive Order 2020-123 available at https://www.michigan.gov/whitmer/0,9309,7-387-90499_90705-531929--,00.html.

² Letter from Steve J. Scalise, et. al., Ranking Member, Select Subcommittee on the Coronavirus Crisis, H. Comm. on Oversight & Reform, to Gretchen Whitmer, Governor, State of M.I. (June 15, 2020).

³ Memorandum from David R. Wright, Director, Quality, Safety & Oversight Group, U.S. Centers for Medicare & Medicaid Services, to State Survey Agency Directors (Mar. 13, 2020) (on file with Comm. Staff).

⁴ *Id.*; (emphasis added).

“[u]nder no circumstances should a hospital discharge a patient to a nursing home that is not prepared to take care of those patient’s needs.”⁵

Contravening this guidance, on April 15, 2020, you issued an Executive Order mandating nursing homes accept patients regardless of COVID-19 status.⁶ The Order said that nursing homes must accept COVID-19 positive patients stating, “[a] long-term care facility *must not prohibit* admission or readmission of a resident based on COVID-19 testing requirements or results...”⁷

Unfortunately, this misguided and dangerous policy is ongoing. While many of the other Governors who issued similar polices have ended these directives that we know to be harmful, you have not. Throughout your responses to COVID-19, you have publicly and repeatedly claimed that all your decisions would be driven by data and science. You have also stated that all your decisions will be guided by the best health information and statistics. For nursing homes and long-term care facilities, the data is clear: Michigan has suffered 2,022 reported nursing homes deaths related to COVID-19.⁸ That means one in three of the State’s total reported COVID-19 deaths have occurred in nursing homes, representing 3% of the State’s entire nursing home population.⁹ And yet you insist on maintaining your Order without providing any rationale or justification. This is especially troubling when the tragic outcomes of the Order are abundantly clear. These numbers do not include assisted living facilities, which there is no information about.

We are not the only people calling for this policy to change – on June 18, 2020, a bipartisan majority of the Michigan State House and Senate formally rebuked this order and demanded it end.¹⁰ Michigan State Democratic Representative Leslie Love criticized your order calling it “an epic fail.”¹¹ It is time for you to listen to your constituents and the state legislature and completely reverse your ill-conceived order.

Your resistance to oversight on this matter is also troubling. On June 15, 2020 the Select Subcommittee wrote to you requesting information, documents, and communications regarding your decision to mandate nursing homes accept COVID-19 positive patients from hospitals.¹² Unfortunately, your response, which that committee shared with us, was incomplete.

⁵ Charles Creitz, *Medicare chief Verma blasts Cuomo for trying to deflect blame onto White House for NY nursing home deaths*, Fox News (May 28, 2020), <https://www.foxnews.com/media/seema-verma-andrew-cuomo-nursing-home-deaths>.

⁶ Executive Order *supra* note 1.

⁷ *Id.*; (*emphasis added*).

⁸ State by state nursing home data collected via open source research by the Committee to Unleash Prosperity available at https://docs.google.com/spreadsheets/d/e/2PACX-1vRQztYJ5rdGLdKqNi7_7SGGciugkgwscN3judtUw2hoimsfH-t_NYXKMPONJkrA4jtJNMsuR7jkQite/pubhtml#.

⁹ *Id.*

¹⁰ Rod Meloni & Derick Hutchinson, *Michigan lawmakers pass resolutions against Gov. Whitmer’s nursing home policy*, CLICK ON DETROIT (June 18, 2020), <https://www.clickondetroit.com/news/local/2020/06/18/michigan-lawmakers-pass-resolutions-against-gov-whitmers-nursing-home-policy/>.

¹¹ Jonathan Oosting, et. al., *Michigan nursing homes linked to 1 in 4 coronavirus deaths. Tally will grow.*, Bridge (May 27, 2020), <https://www.bridgemi.com/michigan-health-watch/michigan-nursing-homes-linked-1-4-coronavirus-deaths-tally-will-grow>.

¹² Executive Order *supra* note 1.

Moreover, you claim that Congress and the Select Subcommittee are not authorized to investigate state responses to the public health crisis.¹³ Contrary to your claim, the Select Subcommittee has explicit authority under their mandate to investigate “the efficiency [and] effectiveness...of the use of taxpayer funds,” including those sent to nursing homes, and “any disparate impacts of the coronavirus crisis...including with respect to...age.” This language is unambiguous. For the reasons and under the authority outlined above, it is imperative that you cooperate with the Select Subcommittee’s investigation and produce all the requested documents and information. The people of Michigan deserve this information from your office.

Thank you for your attention to this important matter. We look forward to your prompt and full response.

Sincerely,



Paul Mitchell
Member of Congress



Bill Huizenga
Member of Congress



John Moolenaar
Member of Congress



Fred Upton
Member of Congress



Jack Bergman
Member of Congress



Tim Walberg
Member of Congress

¹³ Letter from Gretchen Whitmer, Governor, State of M.I., to Steve J. Scalise, et. al., Ranking Member, Select Subcommittee on the Coronavirus Crisis, H. Comm. on Oversight & Reform (June 19, 2020).