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June 15, 2020

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

Dear Governor Whitmer:

The ongoing COVID-19 pandemic has disproportionately affected the elderly, especially those living in nursing homes and other long-term care facilities. We write to you seeking information, at a granular level, about the science and information used to inform your decision to mandate nursing homes and long-term care facilities admit untested and contagious COVID-19 patients from hospitals. This decision likely contributed to the thousands of elderly deaths in Michigan. Thank you for your attention and prompt response to this important inquiry.

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.”<sup>1</sup> 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 does not direct any nursing home to accept a COVID-19 positive patient, if they are unable to do so safely. In fact, it says “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.<sup>2</sup>

CMS Administrator Seema Verma said, “[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.”<sup>3</sup> CMS did not mandate COVID-19 positive patients back to nursing homes but, instead, stated that a COVID-19 case at a hospital does not preclude the nursing home from accepting a COVID-19 negative patient.

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<sup>1</sup> 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).

<sup>2</sup> *Id.*; (emphasis added).

<sup>3</sup> 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>.

On April 15, 2020, you issued an Executive Order mandating nursing homes accept patients regardless of COVID-19 status.<sup>4</sup> 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...”<sup>5</sup> Michigan State Democratic Representative Leslie Love criticized your order calling it “an epic fail.”<sup>6</sup>

You have yet to rescind this controversial order. According to the most recently available data, Michigan has suffered 2,297 nursing home deaths related to COVID-19.<sup>7</sup> That is more than 41% of the State’s total COVID-19 deaths and more than 3% of the State’s entire nursing home population.<sup>8</sup> Now that it is clear the hospital system will not be overwhelmed, we call on you to protect those most vulnerable – the elderly – and rescind your mandate on nursing homes.

To help us better understand what science or guidance you used to make this lethal decision, we respectfully request the following documents and information:

1. All State issued guidance, directives, advisories, or executive orders regarding hospital discharges to nursing homes or any and all other types of assisted living facilities, including those previously superseded, in chronological order.
2. The total number of COVID-19 related nursing home deaths, including deaths that occurred at the nursing home and deaths of a registered nursing home patient at a hospital, by day between January 1, 2020 and present.
3. The total number of COVID-19 related nursing home positive cases, including individuals who tested positive at a nursing home and individuals that tested positive at a hospital, by day between January 1, 2020 and present.
4. The total number of confirmed or suspected COVID-19 positive patients returned to a nursing home or other long-term care facility between March 25, 2020 and present.
5. All information, documents, and communications between the Office of the Governor and the Michigan Department of Health and Human Services regarding COVID-19 mitigation in nursing homes and other long-term care facilities.

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<sup>4</sup> Executive Order No. 2020-50 (COVID-19) available at [https://www.michigan.gov/whitmer/0,9309,7-387-90499\\_90705-525942--,00.html](https://www.michigan.gov/whitmer/0,9309,7-387-90499_90705-525942--,00.html).

<sup>5</sup> *Id.*; (emphasis added).

<sup>6</sup> 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>.

<sup>7</sup> 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#](https://docs.google.com/spreadsheets/d/e/2PACX-1vRQztYJ5rdGLdKqNi7_7SGGciugkgwscN3judtUw2hoimsfH-t_NYXKMPONJkrA4jtJNMsuR7jkQite/pubhtml#).

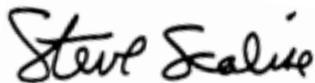
<sup>8</sup> *Id.*

6. All information, documents, and communications between the Michigan Department of Health and Human Services and any and all of the State's Nursing Home Administrators.

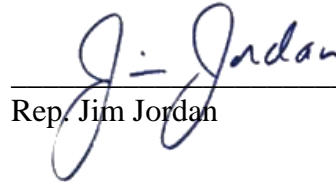
In addition to these documents, please provide a staff-level briefing no later than June 18, 2020. This briefing may be conducted remotely for convenience and safety issues. To schedule the briefing or ask any follow-up or related questions, please contact Committee on Oversight and Reform staff at (202) 225-5074.

The Committee on Oversight and Reform is the principal oversight committee of the U.S. House of Representatives and has broad authority to investigate "any matter" at "any time" under House Rule X. Further, the Select Subcommittee on the Coronavirus Crisis is empowered to investigate "preparedness for and response to the coronavirus crisis, including the planning for and implementation of testing, containment, mitigation, and surveillance activities."<sup>9</sup> Thank you in advance for your cooperation with this inquiry.

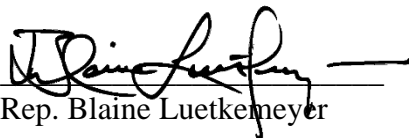
Sincerely,



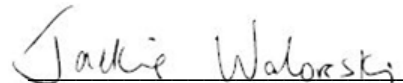
Rep. Steve Scalise  
Ranking Member



Rep. Jim Jordan



Rep. Blaine Luetkemeyer



Rep. Jackie Walorski



Rep. Mark E. Green, MD

cc: The Honorable James E. Clyburn, Chairman  
Select Subcommittee on the Coronavirus Crisis

The Honorable Carolyn B. Maloney, Chairwoman  
Committee on Oversight and Reform

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<sup>9</sup> H. Res. 935 § 3(a)(4) (2020).