

JUSTICE IN AGING

FIGHTING SENIOR POVERTY THROUGH LAW

June 9, 2020

The Honorable Jim Wood
Assembly Health, Chair
State Capitol
Room 6005
Sacramento, California 95814

The Honorable Adrin Nazarian
Assembly Aging & Long-Term Care, Chair
State Capitol
Room 4146
Sacramento, California 95814

Submitted via email: AHEA.Committee@assembly.ca.gov

RE: Oversight Hearing: The COVID-19 Outbreak in Skilled Nursing Facilities and the State's Response

Dear Assembly Members Wood and Nazarian,

We appreciate your convening of this important hearing on the COVID-19 outbreak in skilled nursing facilities and for the opportunity to provide written comment. It is imperative that California immediately prioritize the residents and staff of nursing facilities and all congregate settings serving older adults and people with disabilities. Residents in facilities were needlessly dying prior to this pandemic because of the state's failure to adequately provide oversight of nursing facilities. Despite knowing from the outset that congregate settings were most at risk, our state and country's failure to prioritize them has continued. This inaction and delay has led to thousands of preventable deaths. Today, 43 percent of all COVID-19 deaths in California have been in nursing facilities. In just the five intervening days between when the report for this hearing was created and today's hearing, deaths increased by eight percent. This cannot be what we accept over the next week, months, or years as this virus rages on.

Specifically, Justice in Aging recommends the following:

Center Response in Racial Equity

Because people of color are contracting and dying from COVID-19 at disproportionate rates, experience severe economic and health disparities due to historic and present-day racial

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discrimination, and are on the front lines fighting this epidemic, California must set racial equity as an affirmative goal in its response to COVID-19. This is particularly needed in addressing COVID-19 in nursing facilities in which California facilities with 25% Black and Latino residents are more than twice as likely to have at least one COVID-19 case as nursing homes with less than 5% Black and Latino residents.

Collect and Report Racial Data. The California Department of Public Health (CDPH) must require that nursing facilities and other residential congregate settings report racial and ethnicity data when reporting on COVID-19 positive cases and deaths for both residents and staff. That data must also be made publicly available on the CDPH online dashboard. Currently, the only data available regarding nursing facilities and disparities based on race/ethnicity has been made available through investigative reporting by news outlets. Having accurate and specific facility-level data will allow the state to better target resources and devise strategies to address disparities in facilities.

Target Resources to Communities Impacted. CDPH must center racial equity in its next steps to address the COVID-19 outbreaks including in its development of a targeted testing plan, efforts to increase workforce, education and training, and all other planning efforts. This will ensure that adequate resources are being allocated and invested in the communities most impacted by the pandemic.

Provide Improved Guidance, Oversight, and Transparency

Issue Improved Guidance. Nursing facilities need clearer guidance and standards with regard to COVID-19 cohorting, visitation, and testing. Furthermore, guidance is needed for *all* congregate residential settings including nursing facilities, residential care facilities, adult residential facilities, and intermediate care facilities for the developmentally disabled. As California reopens, expecting facility residents to isolate and segregate is inhumane and devaluing and also largely ineffective as staff who work in facilities live in the communities reopening.

Monitor Mitigation Plans. In addition to requiring facilities to submit mitigation plans, it is equally important that CDPH evaluate these plans, ensure their implementation, and regularly inspect whether the facilities are in compliance. The findings from oversight should be made publicly available. Mitigation plan requirements must also be put in place for all other congregate residential settings.

Ensure Staff are Adequately Paid. Any state funding directed at nursing facilities must require that dollars are allocated to ensuring staff are adequately compensated. Staff in facilities are grossly underpaid, which has led to high turnover and, in this pandemic, increased spread of the virus. Staff are placing themselves and their families at risk. Not only should they receive hazard pay, but must receive a living wage.

Reject Immunity. Any requests to grant immunity to nursing facilities must be rejected. As longtime advocates for nursing home residents, it is evident that this crisis in nursing homes was foreseeable. For years, nursing home owners and operators have cut corners and understaffed facilities to maximize profits. It would be perverse to ask facility residents to pay with their lives for the woefully insufficient emergency preparedness and substandard care of nursing homes, while allowing nursing homes themselves to face no repercussions for their egregious behavior. Legal liability has always functioned as a safeguard for nursing home residents by incentivizing nursing homes to provide quality care and comply with laws and regulations and that should continue to be the case.

Invest in Home and Community Based Services

The legislature must continue to reject the cuts to programs on which seniors and people with disabilities rely in the final 2020-21 budget. Cutting and reducing access to Community Based Adult Services, the Multi-Purpose Senior Services Program, and IHSS during a pandemic that has ravaged this population is irresponsible and dangerous. The people using these programs either already qualify for nursing facility coverage or will without these services. This means that those currently in need of these services are at higher risk for having to seek care in a nursing facility, now and in the months to come. These program cuts, therefore, will inflict maximum harm on older adults without affording savings to the state given that nursing home care is far more expensive. Instead, the state must maintain these programs and make increased investments in a system that provides adequate care in the home and community.

The state's response to this health care crisis must prioritize those who are at the most risk and who are dying as a result of this disease. The state's delay and inadequate response in residential congregate settings has led to thousands of deaths and is both perpetuating and deepening extreme disparities based on race, age, and disability. This devaluing of the lives of older adults, people with disabilities, and their caregivers is hurting our communities, our families, and our future. We must do more now.

If we can be of further assistance, please contact Eric Carlson at ecarlson@justiceinaging.org.

Sincerely,



Kevin Prindiville
Executive Director

CC: The Honorable Gavin Newsom, Governor of the State of California
Dr. Mark Ghaly, Secretary, California Health and Human Services Agency
Kim McCoy Wade, Director, California Department of Aging
The Honorable Phillip Ting, Chair, Assembly Budget Committee