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Secretary Dr. Rachel Levine
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Secretary Teresa Miller
Department of Human Services
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Secretary Robert Torres
Department of Aging
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Re: Urgent Lifesaving Targeted Response Needed to COVID-19 in
Pennsylvania's Long-Term Care Facilities

Dear Secretary Levine, Secretary Miller and Secretary Torres:

We join CARIE, Community Legal Services, Disability Rights Pennsylvania and the other advocates for people with disabilities and older Pennsylvanians who wrote to you last Friday to emphasize the need for swift and comprehensive action to protect residents and staff of nursing homes, assisted living and personal care homes. The decision to contract with ECRI to support facilities in their infection control efforts is a good first step, but it will not be enough to stem the wave of acute illness and death in these facilities, which house the most vulnerable members of our communities.

The commonwealth has both a moral and legal imperative to act now. Nursing homes and skilled nursing facilities “*must*” be “designed, constructed, equipped, and maintained in a manner to protect the health and safety of residents, personnel, and the general public.” 42 U.S.C. § 1396r(d)(3) (Medicaid); *id.* § 1395i-3(d)(3). Every state participating in Medicaid or Medicare “shall maintain procedures and adequate staff to: (A) investigate complaints of violations of requirements by nursing facilities, and (B) monitor, on-site, on a regular, as needed basis, a nursing facility’s compliance.” 42 U.S.C. § 1396r(g)(4); *id.* § 1395i-3(g)(4). If “a State finds” that a nursing facility “no longer meets a requirement” and “that the facility’s deficiencies immediately jeopardize the health or safety of its residents, the State *shall* take immediate action to remove the jeopardy and correct the deficiencies,” *id.* § 1396r(h)(1) (emphasis added); *see id.* § 1395i-3(h)(1) (in the case of skilled nursing facilities a State shall make a recommendation that the Secretary take action). The State has the power to “appoint[] . . . temporary management to oversee the operation of the facility and to assure the health and safety of the facility’s residents

and “in the case of an emergency, to close the facility, to transfer residents in that facility to other facilities.” *id.* § 1396r(h)(1) *see id.* § 1395i–3(h)(2).

Courts across the country have begun to acknowledge the responsibility of state agencies to those in their care—including the staff charged with care-taking. *See, e.g., Banks v. Booth*, No. 20-cv-849 (CKK), Mem. Op. (D.D.C. April 20, 2020) (granting TRO against detention facility and requiring immediate implementation of safety practices).

To meet these standards, the commonwealth must promulgate COVID-19 specific requirements for long-term care facilities and institute monitoring for compliance with those standards; implement comprehensive testing for COVID-19 and public reporting of infections and deaths, including demographic data that includes race, gender, and underlying condition; provide both PPE and additional staffing to bring facilities in line with best practices to reduce the spread of infection; humanely create segregated units or facilities -- with separate staff -- for those known to have COVID-19; and protect staff and those they care for by treating direct caregivers like the front line workers they are, with hazard pay, paid sick leave, and alternative housing for those who want it, to protect their families.

The need for meaningful supervision and oversight by the commonwealth is urgent, and the harm caused by inaction will be immediate, severe, and irreparable. Failure to act may also result in wholly avoidable litigation, including suits brought by the estates of those who died because the commonwealth refused to take appropriate steps once it was on notice of the need to do so.

We live in a time of difficult decisions, but the protection of the commonwealth’s seniors and people with disabilities is not a choice; it is a mandate. We urge you to act now.

Respectfully,



Reggie Shuford

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