

**Congress of the United States**  
**Washington, DC 20515**

September 23, 2020

The Honorable Eric Dreiband  
Assistant Attorney General  
Civil Rights Division  
United States Department of Justice  
950 Pennsylvania Ave. NW  
Washington, DC 20530

Dear Assistant Attorney General Dreiband,

We write regarding the Department of Justice’s (DOJ) request for data from public nursing homes in New Jersey, New York, Michigan, and Pennsylvania. While there is no question that every state and the federal government must protect residents of long-term care facilities (LTCs), we believe the DOJ’s investigation may be politically driven and ultimately does not protect any LTC residents.

Our country requires a thorough examination of every state LTC and the policies that each state utilizes to protect LTC residents. However, the DOJ has very little jurisdiction over LTCs through the Civil Rights of Institutionalized Persons Act (CRIPA). CRIPA limits the DOJ’s investigation to institutions “providing skilled nursing, intermediate or long-term care, or custodial or residential care” that are “owned, operated, or managed by, or provide services on behalf of” a state “or a political subdivision of” a state.<sup>1</sup> Public nursing homes make up fewer than three percent of LTCs in New Jersey, fewer than five percent in New York, fewer than four percent in Pennsylvania, and approximately seven percent in Michigan.<sup>2</sup> The vast majority of LTC residents in these states and elsewhere live in privately-owned facilities, which makes us question why the administration is targeting public nursing homes, let alone those public nursing homes in these four states.

Under the pretense of protecting LTC residents, DOJ has requested information from these four states as they seek to “determine if the state orders requiring admission of COVID-19 patients to nursing homes is responsible for the deaths of nursing home residents.” However, New Jersey, New York, Michigan, and Pennsylvania were not the only states to implement orders on admission policies, nor should this be the sole factor examined to determine what policies were responsible for the tragic loss of life experienced within LTCs. At least 14 states — including Kentucky, Utah, and Arizona — have issued similar nursing home guidance all based on federal guidelines – and yet the four states listed in the DOJ’s request have a Democratic governor. We question DOJ’s targeting of these four states instead of all the states that modeled guidance on Centers for Medicare and Medicaid Services (CMS) and the Centers for Disease Control and Prevention (CDC).

While LTC residents are particularly vulnerable to COVID-19 and other infectious diseases, the Trump administration was actively rolling back many of the protections and rights of LTC residents, further exacerbating existing gaps and deficiencies that went unaddressed in LTCs. Since 2017, CMS has worked to reduce standards in LTCs including infection control, facility assessments, and transfers and discharges through rulemaking. Under the pretense of “reducing burden” on LTCs, CMS has made changes that disregard the health and safety of residents in favor of reducing accountability and enforcement.<sup>3</sup>

Even amid the pandemic, the Trump administration has continued to push these rollbacks forward, including the egregious proposal to no longer require LTCs to employ infection prevention specialists at least part-time. More than 80 percent of LTCs were cited with infection control deficiencies, the most commonly cited deficiency, in one or more years between 2013 and 2017.<sup>4</sup> While the Trump administration's defense of proposals that have the potential to cause serious harm to residents of LTCs during a global pandemic is abhorrent, investigating LTCs under the guise of enforcing CRIPA is clearly a double standard.


Additionally, the majority of the data that DOJ is requesting is not only public and updated daily on each state's COVID-19 webpages, it is also public and updated weekly by CMS through its COVID-19 Nursing Home Dataset.<sup>5</sup> Furthermore, all state-issued guidance regarding LTCs and admission to public nursing homes is available on each state's webpage.<sup>6</sup> It appears that the DOJ is solely issuing these letters to states to make a political point. In fact, during the entire Trump administration up until 2020, DOJ has only opened eleven CRIPA investigations in total, none of which were for public nursing homes.


In light of this history, please answer the following questions:

1. Has DOJ sent similar letters to any other states, not including its investigation into the Massachusetts State Veterans Home, regarding a COVID-19 related investigation into public nursing homes?
2. Does DOJ plan to send similar letters to states that are still experiencing an increase in COVID-19 cases and deaths in public nursing homes?
3. Has DOJ opened any other COVID-19 related CRIPA investigations into any jails or prisons, juvenile correctional facilities, public nursing homes, or mental health facilities and institutions for individuals with intellectual disabilities?
4. DOJ has the authority under CRIPA to investigate all jails and prisons, which have more than 100,000 positive COVID-19 cases and at least 900 deaths.<sup>7</sup> Why hasn't DOJ opened a CRIPA investigation into jails and prisons with COVID-19 cases and deaths?
5. Has DOJ worked with CMS, the agency with jurisdiction over LTCs that participate in Medicare, to understand the broader policy failures on both the state and federal level that contributed to the vast loss of life in LTCs due to COVID-19?
6. Will the administration pursue an independent investigation into federal and state policies that contributed to COVID-19 cases and deaths in LTCs?

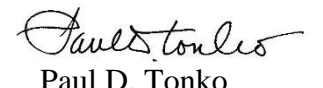
While we do not deny that the federal government must protect residents of LTCs and any institutionalized individual, this action by DOJ does not actually protect those individuals. Instead, it appears DOJ is abusing its power by taking aim at states that have criticized President Trump's actions during the COVID-19 pandemic, continuing a pattern of unprecedented politicization of the DOJ's activities since 2017. Therefore, we call on the DOJ to chart a different course of action and pursue a comprehensive independent investigation into failed policies that left so many Americans in LTCs vulnerable to COVID-19.

Sincerely,

  
Bill Pascrell, Jr.  
Member of Congress

  
Brendan F. Boyle  
Member of Congress

  
Daniel T. Kildee  
Member of Congress

  
Paul D. Tonko  
Member of Congress

/s/  
Nydia M. Velázquez  
Member of Congress

/s/  
Tom Malinowski  
Member of Congress

/s/  
Dwight Evans  
Member of Congress

/s/  
Yvette D. Clarke  
Member of Congress

/s/  
Debbie Dingell  
Member of Congress

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Adriano Espaillat  
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Albio Sires  
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Madeleine Dean  
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Donald M. Payne, Jr.  
Member of Congress

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Jerrold Nadler  
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Brenda L. Lawrence  
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Andy Levin  
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Bonnie Watson Coleman  
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Donald Norcross  
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Matthew Cartwright  
Member of Congress

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Eliot L. Engel  
Member of Congress

/s/  
Mary Gay Scanlon  
Member of Congress

/s/  
Grace Meng  
Member of Congress

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<sup>1</sup> Department of Justice. (2015). Civil Rights of Institutionalized Persons Act. Retrieved from <https://www.justice.gov/crt/civil-rights-institutionalized-persons>

<sup>2</sup> New Jersey Department of Health. (c). New Jersey Long Term Care Facilities Search. Retrieved from <https://healthapps.state.nj.us/facilities/fsOwnerList.aspx>; New York State Department of Health. NYS Nursing Home Profiles. Retrieved from [https://profiles.health.ny.gov/nursing\\_home/#5.79/42.868/-76.809](https://profiles.health.ny.gov/nursing_home/#5.79/42.868/-76.809); Pennsylvania Department of Health. (b). Pennsylvania Nursing Care Facility Locator. Retrieved from <https://sais.health.pa.gov/commonpoc/nhLocator.asp>; Centers for Medicare and Medicaid Services. (b). Nursing Home Ownership. Retrieved from <https://data.medicare.gov/Nursing-Home-Compare/Ownership/y2hd-n93e/data>

<sup>3</sup> Centers for Medicare and Medicaid Services. (2019). Medicare and Medicaid Programs; regulatory provisions to promote program efficiency, transparency, and burden reduction; fire safety requirements for certain dialysis facilities; hospital and critical access hospital (CAH) changes to promote innovation, flexibility, and improvement in patient care. Retrieved from <https://www.federalregister.gov/documents/2019/09/30/2019-20736/medicare-and-medicaid-programs-regulatory-provisions-to-promote-program-efficiency-transparency-and>

<sup>4</sup> U. S. Government Accountability Office. (2020). Infection control deficiencies were widespread and persistent in nursing homes prior to COVID-19 pandemic. (GAO-20-576R) Retrieved from <https://www.gao.gov/products/GAO-20-576R>

<sup>5</sup> Centers for Medicare and Medicaid Services. (a). COVID-19 Nursing Home Dataset. Retrieved from <https://data.cms.gov/Special-Programs-Initiatives-COVID-19-Nursing-Home/COVID-19-Nursing-Home-Dataset/s2uc-8wzp/data>

<sup>6</sup> New Jersey Department of Health. (a). COVID-19: Information for Health Professionals. Retrieved from [https://www.nj.gov/health/cd/topics/covid2019\\_healthcare.shtml#2](https://www.nj.gov/health/cd/topics/covid2019_healthcare.shtml#2); New York State Health Department. Protecting the public health of all New Yorkers. Retrieved from <https://coronavirus.health.ny.gov/protecting-public-health-all-new-yorkers>; Pennsylvania Department of Health. (a). COVID-19 Information for Nursing Homes. Retrieved from <https://www.health.pa.gov:443/topics/disease/coronavirus/Pages/Nursing-Homes.aspx>; State of Michigan. Coronavirus for Health Professionals. Retrieved from [https://www.michigan.gov/coronavirus/0,9753,7-406-98178\\_98156---,00.html](https://www.michigan.gov/coronavirus/0,9753,7-406-98178_98156---,00.html)

<sup>7</sup> The Marshall Project. (2020). A state-by-state look at coronavirus in prisons. Retrieved from <https://www.themarshallproject.org/2020/05/01/a-state-by-state-look-at-coronavirus-in-prisons>