



February 3, 2021

Ambassador Susan Rice, Director
Christen Linke Young, Deputy Director
Domestic Policy Council
1600 Pennsylvania Ave., NW
Washington, DC20500

Dear Director Rice and Deputy Director Linke Young:

Nursing homes are on the front line of the nation's battle against COVID. LeadingAge's mission-driven nursing home members thank you for recognizing this and including an initiative to protect vulnerable populations in congregate settings in the Biden Administration's \$1.9 trillion coronavirus rescue plan.

In addition, we are pleased that the new team has continued federal efforts to provide nursing homes with resources for testing, PPE, vaccines, and relief funds. More is needed. It is time for all stakeholders to work together to build a nursing home system that any of us would want to rely on; one that provides safe, quality care in a home-like setting that will be there when any American needs it.

Now that the new team is in place at the Domestic Policy Council, we request a meeting with you to discuss using the hard-earned lessons of the past year to improve services for people using nursing home services, their family members, and the staff who provide care, as well as the additional assistance and federal coordination and funding needed to continue to fight COVID.

The bottom line is that the Biden Administration is poised to learn from the mistakes of the past that were so clearly exposed by the pandemic and to take bold steps to lead the nation's nursing homes and long-term care systems into the 21st century.

LeadingAge represents more than 5,000 nonprofit aging services providers and other mission-minded organizations that touch millions of lives every day. Our membership encompasses the continuum of services for people as they age, including those with disabilities. We bring together the most inventive minds in aging services to make America a better place to grow old.

We would like to work with you to critically examine the assumptions that underlie the survey process, starting with:

- **Using evidence to control infection spread and improve quality.** Building an evidence-based enforcement process that consistently improves infection control and quality of care by building on our hard-learned COVID lessons about isolation, testing, PPE, and other issues.
- **Choosing enforcement systems that punish truly harmful practices, but also use collaborative approaches to improve care.** We do not make excuses for poor care. But to ignore the realities facing this sector will lead to the wrong solutions and fail to prevent the next crisis. Quality

won't improve with "blame and shame" and imposing fines that remove funds from an already strapped organization. We observe that there is much to learn from widescale implementation of learning collaboratives, such as the approach used by Project ECHO in its new Nursing Home Initiative; we encourage the Biden Administration to study the outcomes of this work closely.

- **Taking immediate lessons from changes made during the pandemic.** During the Public Health Emergency, HHS used Section 1135 of the Social Security Act to waive provisions of Medicare and Medicaid, including some that pertain to nursing home survey requirements, to ensure continuous, safe care. We urge the Biden team to review the experience and lessons learned from these waivers. For example, what was lost and gained by allowing more telehealth, eliminating the three day stay requirement, and suspending certain paperwork and reporting rules? We no longer have to guess or estimate the impact of these changes; we can learn from the "natural experiment" that we undertook during the Public Health Emergency.
- **Issuing long-overdue interpretive guidance for the revised nursing home regulations.** CMS has not issued interpretive guidance for new regulations issued in 2019 under Phase 3 of the 2017 Requirements of Participation. Guidance is mandatory to ensure both nursing homes and surveyors understand how CMS wishes regulations to be implemented. In addition, portions of the regulations were in the process of being revised. Many of these regulations were suspended but before they are reinstated, it is essential that the agency issue guidance. In the absence of guidance, nursing homes are left on their own to interpret the rules.

The basic framework and approach to nursing home regulation and enforcement was set out in 1986 in an Institute of Medicine's study, "Improving the Quality of Care in Nursing Homes," and encapsulated in law and regulation in the Omnibus Budget Reconciliation Act of 1987. Providers, researchers, family members, residents, and other stakeholders have learned a great deal over the past 35 years.

The National Academies of Science, Engineering and Medicine recognized the need to review and update the framework and, earlier this year, began an 18-month study that will examine how the nation finances, regulates, and measures the quality of nursing home care. One key emphasis of the study is to probe the impact of current oversight and regulatory structures on care quality and outcomes.

We urge the Biden team to include consideration of the National Academies' evidence-based work in developing proposed reforms.

Nursing homes, or some type of similar residential services, are a crucial part of the long-term care continuum. There will always be a need to provide 24-hour care for a relatively small number of individuals who cannot care for themselves and are not able to get the help they need from family members and friends. In the last year, nursing homes became a focus of the pandemic, as the virus took many lives and changed how these providers operate. We have witnessed nursing homes step up and protect their residents and staff; they have been in the fight, but all the tools and resources have not been available to them. Let's seize this long-overdue opportunity to ensure the best and safest care

environments today. Let's join forces to fortify our long-term care system to keep it better protected from the next pandemic.

LeadingAge stands ready to inform and join your work in this important area, offering real-life experience from the front line in nursing homes. We can work together on solutions to improve the quality of care and services provided by nursing homes now and in the future. Please contact Ruth Katz (rkatz@leadingage.org), senior vice president for policy and advocacy, to begin this important conversation.

Sincerely,

A handwritten signature in black ink that reads "Katie Smith Sloan". The signature is written in a cursive, flowing style.

Katie Smith Sloan
President and CEO
LeadingAge