



REPORT

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INFECTED AND NEGLECTED: *The Harrowing Coronavirus Crisis in Nursing Homes*



BY HEBAH KASSEM

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Justice in Aging

Health in Aging

Latinos for a Secure Retirement

National Employment Law Project

Public Citizen

Service Employees International Union

Nursing home residents make up more than a quarter of COVID-19 deaths — yet, this issue has received scant attention from policy makers.

On April 17, 2020, Alison Lolley was notified that an employee caring for her mother at a nursing home, The Oaks Nursing & Rehabilitation, in Monroe, Louisiana tested positive for COVID-19. Alison's mother, Cheryl Fink Lolley, an 81-year-old woman, passed away just one week later.

Alison lived around the corner from her mother and would visit often. The COVID-19 outbreak forced Alison to alter her visits and stand outside her mother's window. During long weeks of quarantine, Alison listened to her mother recount how she was not being taken care of properly, including not being fed consistently. On one visit, Alison noticed her mother looked disorderly. She was unclothed, unkempt, and confused. It was clear something was off. Later, Alison learned that the nursing home had failed to quarantine all of the COVID-19 patients who had grown ill and failed to communicate what was really happening inside to the families of the residents. She recently testified before Congress about her growing unease as she realized how ill-equipped her mother's nursing home was to deal with COVID-19.

Alison's mother is not the only one. Nursing home residents make up more than a quarter of COVID-19 deaths — yet, this issue has received scant attention from policy makers.



Background

As of late June, 43 percent of the reported COVID-19 deaths in the United States are linked to nursing homes. The first known coronavirus outbreak in a U.S. nursing home occurred in late February 2020, in Kirkland, Washington. These cases were among the first reported in the United States. According to the Centers for Disease Control and Prevention (CDC), 27 of the 108 residents and 25 of the 180 staff reported symptoms of the novel coronavirus and 37 people linked to that facility eventually died.

Since then, nursing homes have continued to have some of the highest rates of infection, hospitalization, and death in the nation. Of the 1.3 million Americans currently living in nursing facilities, the majority are older adults with underlying chronic health conditions, a population among the most vulnerable to COVID-19. Health workers serving these residents are also at increased risk of COVID-19 due to their proximity to nursing home residents. Previous coronavirus relief legislation signed into law addressed some of these challenges, but further action to protect nursing home residents and staff is urgently needed.

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Nursing Home Residents and Staff Face Tremendous Risk

Longstanding problems.

The coronavirus pandemic has exacerbated longstanding problems of underfunding, poor quality patient care, lax standards and weak oversight, and terrible working conditions for staff. Long before the pandemic, the U.S. faced a crisis in the way it cared for its seniors and its treatment of those providing this vital care. Most nursing homes were already losing money and their conditions were often squalid prior to the pandemic.

The private equity industry invested heavily in the nursing home industry in recent years, cutting corners on patient care and staff salaries in the process to maximize their profits. About 70 percent of the country's nursing homes are for-profit facilities, and they are typically owned by private investors. A recent report shows that private equity buyouts of nursing homes resulted in a decline in nursing staff hours per patient and staff quality as private equity investors put their profit incentives before patient care. In contrast, nursing facilities operated by non-profit entities are far more likely to have higher quality ratings than privately owned nursing homes on the federal government's rating system.

Nursing home residents.

Almost half of all people who reside in nursing homes are 85 years or older. About half of these residents live in nursing homes for at least one year while about 21 percent stay for nearly five years. Nursing home residents are more likely to have disabilities than people living at home. Over 80 percent of residents need assistance with three or more activities of daily living such as dressing and bathing. Approximately 90 percent of the nursing home residents who still have the ability to walk need assistance or supervision by a nursing home worker. Dementia, memory problems, problematic behaviors, and depression are also common among nursing home residents.

Nursing home workers.

The people working in nursing homes are predominantly female and Black or Latinx. They face low wages, long hours, and dangerous conditions – and in this pandemic, nursing home workers are putting their lives at risk to provide care. A national survey by SEIU, the nation’s largest union of nursing home workers, found that 80 percent of nursing home workers fear for their lives and believe the government isn’t doing enough to protect them. Frontline workers generally report that they are exposed to COVID-19 on the job but lack regular COVID-19 testing, PPE, paid sick leave, hazard pay, and other critical protections.

CRISIS OF CARE: NORWOOD’S STORY

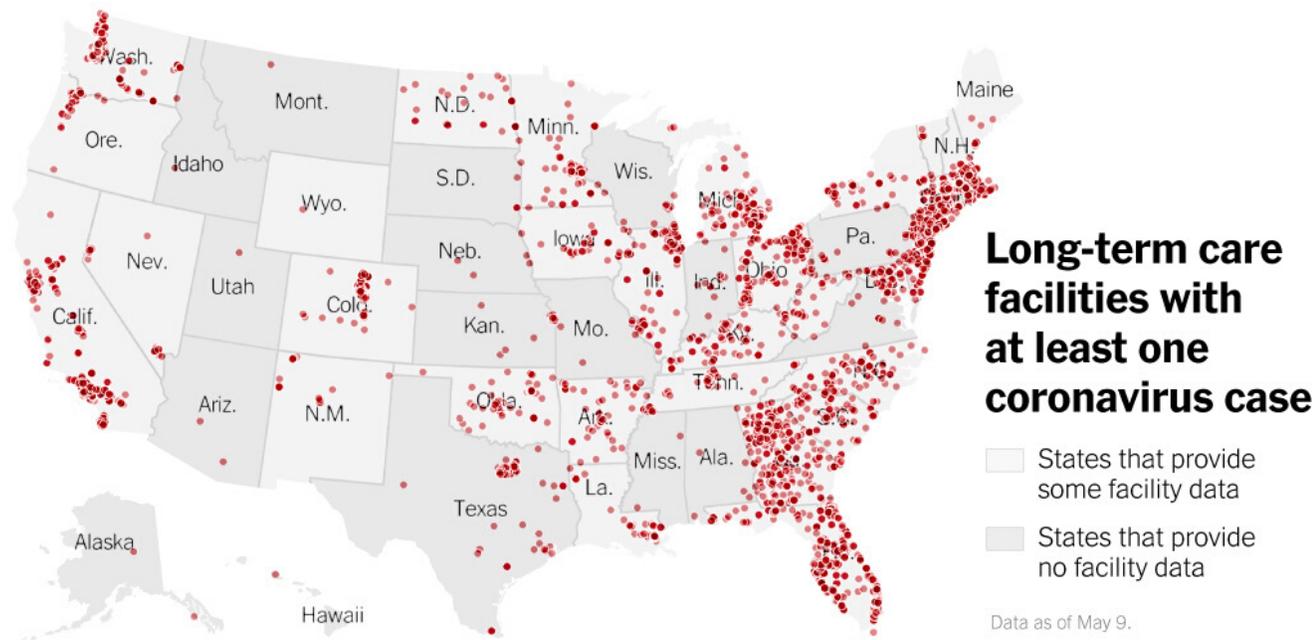
Two brothers, Reagan, 36, and Norwood “Woody” Henry, 39, both worked as certified nursing assistants at Deerfield Episcopal Retirement Community in Asheville, North Carolina. Both Reagan and Norwood “were diagnosed with COVID-19 within days of each other in May, both entered the Mission ICU a few days later, both went into comas and had to be put on ventilators.” Woody recovered and was released from the hospital in early June but, sadly, Reagan did not make it. He died on June 23. According to the state Department of Health and Human Services, Reagan is the first healthcare worker to die of COVID-19 at a nursing home facility in Western North Carolina. Until June 30, nursing homes were not required to test residents and staff although there are more than 400 nursing homes with about 36,000 residents and more than 30,000 staff in the state. As of the end of May, more than 50 percent of North Carolina’s COVID-19 cases and deaths were linked to nursing homes and other congregate living facilities.

The Occupational Safety & Health Administration (OSHA) has yet to issue a binding COVID-19 worker safety standard – leaving workers with little recourse when nursing homes gamble with workers’ and residents’ lives. Instead, OSHA has asked workplaces to follow voluntary, general guidelines from the CDC – without issuing any additional guidance for high-risk, high-exposure workplaces like nursing homes or grocery stores, and without any enforcement. Months into the pandemic, OSHA has issued just one citation for COVID-19-related complaints.

Cases and deaths.

Deaths in nursing homes have dramatically increased since the start of this pandemic. As states ease lockdown restrictions and visitations in nursing homes resume, COVID-19 related deaths continue to rise. Nursing homes account for 11 percent of COVID-19 cases but make up more than 43 percent of the deaths. As of June 16, 2020, COVID-19 deaths in nursing homes surpassed 50,000 with more than 250,000 reported cases. It is important to note that the number of COVID-19 cases and deaths in long-term care facilities reported by the Centers for Medicare and Medicaid Services (CMS) still falls behind the actual reporting because, until recently, these facilities were not required to report their cases and deaths.

Just like the overall epidemic, there is a racial divide in COVID-19 cases and deaths in nursing homes. Nursing homes with predominantly Black and Latinx residents are twice as likely to have suffered a COVID-19 outbreak compared to nursing homes with white populations regardless of location, size, and government rating of that nursing home.



SOURCE: <https://www.nytimes.com/interactive/2020/05/09/us/coronavirus-cases-nursing-homes-us.html>

Removing residents for profits.

Greedy, for-profit nursing home owners, including private equity firms, continue to find ways to maximize profits during the pandemic. One such example is the eviction of nursing home residents from their homes as facilities try to make room for COVID-19 patients in an attempt to make more money.

The Centers for Medicare and Medicaid Services (CMS) reimburses nursing homes for short-term and long-term stays. In addition to elderly residents, many nursing homes also care for patients who are recovering from surgery or acute illnesses. These nursing homes receive higher reimbursement rates for taking care of sicker patients over shorter periods of time. They can make at least \$600 more per day in Medicare dollars for COVID-19 patients compared to residents with more mild health problems.

To make an extra dime, some nursing homes are involuntarily discharging residents in ways that violate federal rules and put residents in danger. They are required to give residents at least 30 days' notice before eviction and displace them to safe locations. Instead, some nursing facilities are moving residents into homeless shelters, motels, and other unlicensed facilities without notice during the pandemic.

Additionally, other nursing facilities are taking in more COVID-19 patients to help alleviate the strain on hospitals, but this practice puts vulnerable residents in close proximity to infected people, risking the lives of elderly and frail residents.

EVICION WITHOUT EXPLANATION: MR. KENDRICK'S STORY

Mr. Kendrick, an 89-year-old man with dementia, is currently sitting in the Los Angeles County jail. Back in April, he was found wandering the streets alone after the nursing home he was living in, Lakeview Terrace, sent him to an unregulated boardinghouse without notifying his family. This nursing home located in Los Angeles, California is known for illegally displacing residents and most recently started discharging residents to make room for coronavirus patients to make some extra money. A day after Mr. Kendrick was dumped in the boardinghouse, police contacted his nephew, Mr. Kennedy, notifying him that his uncle was found wandering the streets 20 miles away from Lakeview Terrace. Mr. Kennedy took in his uncle although he knew he was not able to provide proper supervision and care. A month later, Mr. Kennedy woke up to his uncle standing over him with a steak knife. Mr. Kendrick stabbed his nephew in the back and the head requiring him to get 30 stitches. Today, Mr. Kendrick is in jail instead of a long-term care facility where he belongs.

No accountability.

While the pandemic spreads through nursing homes like wildfire, private nursing homes are lobbying for legal immunity from lawsuits related to the COVID-19 pandemic. Corporate immunity would make it nearly impossible for residents, family members, or workers to hold nursing homes accountable if they fail to take reasonable safety precautions and negligently expose people to COVID-19. That's one reason that 64 percent of voters oppose corporate immunity in general, including a majority of Democrats, Republicans, and Independents.

Residents and their families already face enormous barriers to holding nursing homes accountable. Many nursing homes require residents to sign forced arbitration agreements hidden in the fine-print of nursing home contracts. These clauses legally prohibit residents from suing over misconduct, like malpractice, discrimination, or even wrongful death. Instead of going to court, residents and their families have their cases heard in a secretive arbitration process run by a private arbitrator, who is usually selected and paid by the defending company. Consumers of all types are less likely to win in arbitration than in court. Arbitration awards are also closed to the public, making it harder to expose corporate wrongdoers.

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Other countries.

The coronavirus outbreak in U.S. nursing homes is consistent with other countries around the world, including in Europe. A study by the International Long Term Care Policy Network found that about 40.8 percent of COVID-19 deaths around the world occurred in nursing homes. According to the World Health Organization (WHO), up to half of COVID-19 deaths in European countries are linked to nursing homes. However, countries that responded quickly to the pandemic by ramping up testing and implementing safety precautions early on were more successful in controlling the virus overall and did better in nursing homes compared to the U.S. For instance, as of May 20, 2020, Germany reported only 3,029 deaths in congregate facilities, including nursing homes, homeless shelters, refugee centers, and prisons. The low death toll in Germany is likely because of the strong response to the pandemic including widespread testing, hazard pay, and guidance for care workers. It is challenging to compare COVID-19 cases and deaths in nursing homes from country to country, but generally countries that took aggressive action to control the coronavirus outbreak from the start had fewer cases and deaths in their nursing facilities.

Other facilities.

In addition to nursing homes, other long-term care facilities are disproportionately affected by COVID-19. There are about 800,000 people in assisted living facilities and 75,000 in intermediate care facilities. As of late April, among the 36 states reporting data, there were cases known in over 4,000 facilities with nearly 51,000 cases and over 10,000 deaths. Of those states, New York and New Jersey reported the highest number of deaths, accounting for more than half of the total reported long-term care facility COVID-19 deaths.

In Buffalo, New York, COVID-19 has exacerbated many of the problems patients and workers already experience at the Buffalo Psychiatric Center. Such inpatient centers serve patients diagnosed with serious, persistent mental health problems who require structure and struggle when their daily routines are disrupted. Visitations from family and friends have come to a halt, and patients have been forced to adjust their routines. They are often restricted from engaging in community outings or going outdoors. COVID-19 turned things upside down for both patients and workers at these facilities, yet the necessary changes in patients' daily routines and schedules were insufficient to stop the spread.

As of late April, the State Office for People With Developmental Disabilities reported 1,268 residents tested positive for COVID-19 and 188 died in group homes and other community residencies in New York. This data only reflects the infection rates and deaths of the patients and residents of these group homes and does not include workers.



Congressional State of Play

Despite the devastating impact COVID-19 has had on nursing homes across the country, the federal government has not acted to stop the spread by providing states or nursing homes themselves with adequate support. The CARES Act, which was signed into law on March 27, 2020, provided approximately \$200 million to the CMS to mitigate the spread of coronavirus in nursing homes but did not include any strong provisions mandating protections for residents and care workers in these facilities. Furthermore, CMS has yet to allocate the entirety of this funding.

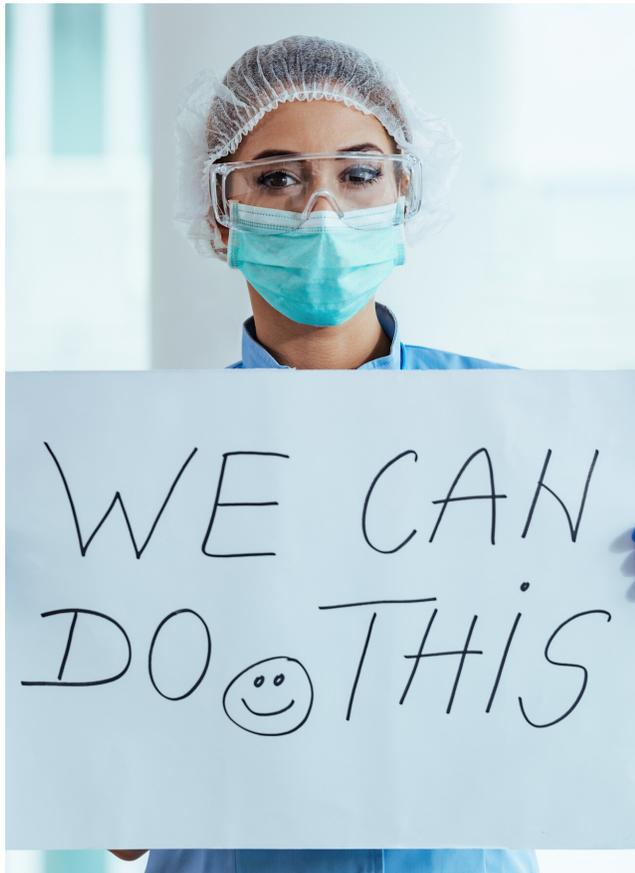
On May 12, 2020, House Democratic leaders introduced the Heroes Act – a \$3 trillion coronavirus relief package that passed in the House on May 15, 2020. If the Heroes Act becomes law, it would allocate \$150 million for states to establish and implement strike teams to deploy to skilled nursing facilities or nursing facilities within 72 hours of three residents or employees being diagnosed with or suspected of having COVID-19. This legislation would require public reporting of COVID-19 cases in nursing homes, and the U.S. Department of Health and Human Services (HHS) would be required to provide additional assistance to facilities struggling with infection control.

The Heroes Act would also require OSHA to issue an emergency, binding workplace safety standard for the COVID-19 pandemic. It would make workplace safety best practices mandatory, rather than trusting employers to voluntarily follow general CDC guidelines – which nursing homes have already failed to do.

Moreover, mass testing, contact tracing, isolation and mask-wearing are evidence-based public health responses that the U.S. has yet to implement at the scale of the problem. The U.S. must take immediate action to put these measures in place.



Efforts to End the Nursing Home Crisis



Actions taken.

Several organizations have come together to address the coronavirus threat facing nursing home residents and staff. A bipartisan project of Social Security Works, Nursing Home Crisis, is dedicated to ending the nursing home crisis in America. Additionally, unions, such as SEIU, are fighting to protect their healthcare workers serving nursing home residents. In Illinois, over 6,000 nursing home workers from 64 facilities voted overwhelmingly to ratify their new two-year SEIU union contract with the Illinois Association of Health Care Facilities (IAHCF). The contract will help protect workers and residents in nursing homes by increasing worker wages as well as providing workers with hazard pay and additional paid sick leave.

Legislative efforts.

On April 28, 2020 Congresswoman Lori Trahan, together with Senators Elizabeth Warren and Edward J. Markey, wrote a letter to CMS requesting additional oversight measures to protect residents and staff from COVID-19 at the Life Care Centers of America (LCCA), a national network of nursing homes, and other nursing homes across the country.

Congresswoman Jan Schakowsky, together with Senators Cory Booker and Richard Blumenthal, introduced the Quality Care for Nursing Home Residents and Workers During COVID-19 Act of 2020 (H.R. 6698/S. 3644) on May 5, 2020. This legislation would immediately address many of the issues nursing home residents and workers face during this pandemic. Many of the positive provisions from this bill were included in the Heroes Act and would guarantee better quality of care, worker safety, increased COVID-19 testing, strike teams, infection control, resident rights, and overall improved congregate living conditions in nursing homes if it is signed into law.

The House Democratic Caucus Task Force on Aging and Families wrote a [letter](#) to Administrator Seema Verma and Secretary Alex Azar [demanding](#) nursing home facilities be held accountable for wrongfully evicting residents during this pandemic.

Conclusion

At least [54,000](#) nursing home residents and workers have died due to COVID-19, more than 43 percent of the overall COVID-19 deaths in the country as of June 29, 2020. Private companies operating nursing homes are putting their profits over the lives and health of both vulnerable residents and their staff. To date, Congress has not adequately addressed the nursing home crisis. If enacted into law, the provisions of the Quality Care for Nursing Home Residents and Workers During COVID-19 Act of 2020 and the Heroes Act would help protect nursing home residents and staff during this pandemic and beyond. The Senate has yet to act on the Heroes Act package.

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