

August 9, 2022

The Honorable Xavier Becerra
Secretary
U.S. Department of Health and Human Services
200 Independence Avenue, SW
Washington, DC 20201

Dear Secretary Becerra,

On behalf of the American Health Care Association and the National Center for Assisted Living's (AHCA/NCAL) more than 14,000 skilled nursing facilities (SNF), assisted living communities (AL), and intermediate care facilities for individuals with intellectual disabilities (ICF/IID) member providers, I want to thank you for the support you have shown the long term care community during the ongoing COVID-19 pandemic. I ask for your continued support by extending the public health emergency (PHE) beyond its current October 13, 2022 expiration, so that long term and post-acute care providers can continue to offer the most efficient and effective care possible to our nation's most vulnerable population.

COVID-19 variants continue to emerge, and the latest BA.5 variant is causing an increase of cases among the general public across the country. The prevalence of COVID-19 in the broader community has an impact on long term care residents and staff. Numerous [independent studies](#) have found that high community spread is correlated with outbreaks in nursing homes. As we head into influenza season this fall, we need to ensure our health care infrastructure can quickly adapt, especially should a future variant elude the protection of our vaccines. Extending the PHE is critical to ensure states and health care providers, including long term care providers, have the flexibilities and resources necessary to respond to this ever-evolving pandemic.

Therefore, we request that you extend the PHE declaration and maintain the related Section 1135 and Section 1812(f) waivers, enhanced Medicaid FMAP to states, and state Medicaid policy flexibilities, such as the waiver for Medicaid redeterminations. We also ask for the reinstatement of the 1135 waiver on training and certification of nurse aides in order to support retaining temporary nurse aides who have been a valuable member of the care team during this pandemic. Given that your agency has committed to a 60-day notice to states and stakeholders when the PHE will expire, we hope that HHS will indicate by August 12 that the PHE will be renewed. Now is not the time to let crucial supports and flexibilities necessary to combat and recover from the virus end.

While extending the PHE is crucial, we encourage the Administration to simultaneously evolve COVID guidance for health care settings, including long term care facilities.

This pandemic is not over, but that does not mean our nation is dealing with the same situation as in 2020 nor even in 2021. The virus continues to mutate into typically more contagious yet less severe variants. The availability of life-saving vaccines and treatments has made COVID-19 less of a threat, including among those living in long term care communities. For six months running, the rate of COVID-19 deaths among nursing home residents has been less than 1 per 1,000 residents. This is in large part due to the significant vaccine uptake we have seen among nursing home residents—nearly 85 percent have received at least one booster dose, higher than percentage of Americans over the age of 65 who have done the same (70 percent).

Despite the progress we have made, nursing homes still must follow extremely stringent COVID-19 protocols in the areas of masking and personal protective equipment (PPE), testing, reporting, visitor screening, and isolation periods—or face harsh penalties. Meanwhile, there are [concerning reports](#) that other health care settings are held to different standards with little to no consequences for failing to adhere to COVID protocols, even though the Centers for Disease Control and Prevention (CDC) guidance is applicable to all health care settings.

Long term caregivers are exhausted and burned out after fighting this virus for more than two years—to the point where many have left the profession altogether. Nursing homes have been experiencing a [historic labor crisis](#), disproportionately losing more workers than any other health care sector during this pandemic and grappling with workforce levels not seen in nearly 30 years. There are many factors contributing to this labor crisis, one of which being these COVID protocols. Nursing homes are finding it difficult to recruit and retain staff when caregivers can find work in other health care settings or businesses that have less stringent COVID protocols.

We want to be clear—nursing homes are committed to protecting their residents and staff members from COVID-19. At the same time, seniors and individuals with disabilities in our settings deserve to enjoy a high quality of life in a more home-like environment. These rigid protocols mean that nursing home residents have not seen the faces of their caregivers in more than two years, and families remark how the protocols make our facilities feel like a “sterile” environment. In September 2020, the Centers for Medicare and Medicaid Services (CMS) relaxed restrictions on visitations, group activities, and communal dining because officials recognized the need to balance protection from the virus with the overall quality of life for our residents. We are asking the agencies under HHS—CDC and CMS—to strike this balance once again.

Last month, we wrote CDC Director Dr. Walensky offering a set of evidence-based recommendations for infection prevention and control practices that recognize this current stage of the pandemic; bring consistency in policies and enforcement actions between various health care settings; adapt protocols based on local COVID metrics; and most importantly, appropriately balance safety with quality of life for our nursing home residents and staff. We ask that HHS leadership encourage CDC to consider these recommendations and fulfill our request to meet with agency officials to discuss them further.

The need to extend the PHE and modify COVID protocols for health care settings are not mutually exclusive. Both are necessary to ensure that our public health systems are able to adapt to this evolving pandemic. As we head into the fall, our health care settings must have the resources, flexibilities, and policies in place to appropriately respond to this virus and deliver high-quality care. Simultaneously, those living and working in long term care deserve to enjoy some normalcy when they've earned it and community measures dictate, much like the general public. AHCA/NCAL appreciates the support and assistance HHS has provided to-date, and we look forward to continuing to work together to ensure our nation's seniors receive the care and quality of life they deserve.

Sincerely,

//s//

Mark Parkinson
President and CEO

cc: Sean McCluskie, Chief of Staff