

April 23, 2020

Re: Nursing Home Transparency and Virtual Visitation

Dear Governor Cooper:

AARP North Carolina, on behalf of our 1.1 million members and all older North Carolinians, appreciates the significant amount of work the state has undertaken to address the COVID-19 pandemic and the unprecedented public health and economic crisis that we face as a state and a nation. Thank you again for participating in the successful Teletown Hall on March 31 that reached over 18,500 AARP members and 3,500 Facebook views.

The gravity of the present challenge will require both new policies and additional resources and investments to address the growing needs of North Carolinians. In particular, we strongly urge you to take action on needed policies to protect the wellbeing of individuals residing in nursing homes and other long-term services and supports (LTSS) settings. While severe health impacts of COVID-19 can occur across ages, as of April 13, nursing facility residents comprised 15% of all deaths nationally due to the virus and residents in nursing homes in our state are increasingly being impacted.

We greatly appreciate the important actions your administration has already taken in this area, and as you work with the state legislature to further address the impact of COVID-19 on the LTSS population, we ask that you seriously consider the following policy recommendations and funding needed to support these policies:

Virtual Visitation

When we reached out to your staff (March 21) to offer COVID response policy development assistance, we relayed our concern for the need to require virtual visitation and communication with families and their loved ones in long-term care facilities. For residents and their families, remaining connected is essential to their safety and health, including protecting against social isolation. As in-person visitations in nursing homes and other residential care facilities are largely halted, virtual visitation between residents and their loved ones is critical. Accordingly, we urge that facilities be required to provide and support virtual visitation for their residents. Specifically, we urge the state to require nursing homes, temporary facilities for residents during the coronavirus public health emergency, assisted living facilities, and other residential care facilities where visitors are

restricted to make available and facilitate virtual visitation via video-conference or other technologies for residents and their loved ones.

The state should also ensure adequate support is provided to residents to facilitate virtual visitation. Some individuals may be able to conduct virtual visitation independently but need assistance with the technology. Where possible, we recommend that the state prioritize the use of civil money penalties to purchase necessary virtual visitation equipment. Other individuals may or may not need the technology but need human assistance to use the technology and communicate with their loved ones. Additional funding requests to support use of virtual visitation in facilities should be considered to allow for the purchase of necessary technology and devices to facilitate these communications. This additional technology could also be used for telehealth and communication with Adult Protective Services and Ombudsmen investigating complaints including elder abuse.

Transparency of Information on COVID-19 Cases

We urge the state to publicly release the names of nursing homes, assisted living communities, and other residential care facilities with confirmed COVID-19 cases among residents or staff. This transparency is critical for public health and the health and well-being of the residents and staff of these facilities. Moreover, residents and family members deserve to have this information for their own health decisions and as they consider possible next steps and interventions for their loved ones.

To be clear, we are not advocating for the disclosure of any private patient information. The Health Insurance Portability and Accountability Act (HIPAA) rightfully protects the privacy of an individual. It does not, however, preclude a state health agency from releasing the names of facilities, because those facilities are not a covered entity as defined by the law.

Elder Abuse

Isolation could have unfortunate consequences for elders who are or may be victims of abuse. As the COVID-19 pandemic continues, our state needs to step up our efforts to prevent, identify, and address cases of elder abuse. Adult protective services (APS) should continue to investigate or follow up on pending cases, whether they are in the community or in a long-term care setting. Access to virtual or remote visitation as discussed above will be an important tool to assist with investigations. Already, counties are struggling to fund APS (federal funds require matching funds) although these services are required by law. State funding for APS has not kept up with the growing aging population, the growing number of abuse cases, and knowing that cases are significantly under-reported (The National Academies study estimates only 1 in 14 cases are reported).

Involuntary Transfer and Discharge of Residents

People living in nursing homes, assisted living facilities, and other residential care facilities may need assistance with activities of daily living due to physical and/or cognitive limitations. Moving these residents from their homes can be unsafe and traumatic for them and their families, particularly when a move is involuntary and sudden. Moreover, transfer

without offering appropriate and effective counseling and planning can lead to isolation and despair and the lack of predictability maximizes fear and anxiety.

We are especially concerned about reports of individuals being discharged or transferred from hospitals and unable to get back into their nursing home or other residential care. We recognize that transfer within a facility or discharge from a facility may be necessary in certain circumstances, such as complying with the Centers for Medicare & Medicaid Services (CMS) guidance to designate facilities or units within a facility to separate residents by COVID-19 infection status. However, we ask that the state put guidelines in place that would limit such discharges and transfers to rare circumstances, and that facilities work to properly mitigate any negative impacts and adequately notify, plan with and counsel impacted residents and their families.

Furthermore, facilities should be required to report and disclose data on discharges and transfers, and give timely notice to residents and loved ones. This notice should include clear and comprehensive information on the individual's rights around discharge and transfer, information on continued virtual visitation rights, the resident's rights to appeal a discharge or transfer and written notice of the state Long-Term Care Ombudsman's name and contact information prior to discharge.

We understand that plans are underway in the legislature for policy and funding to address access to personal protective equipment, testing and proper staffing and offer the following comments on these issues:

Access to Personal Protective Equipment and Testing

Personal protective equipment (PPE) is essential to efforts to reduce the spread of the virus. CMS issued guidance on April 2 that nursing home staff should use full PPE when they have direct contact with known or suspected COVID-positive residents and masks when while they are in the facility. At least one Governor, Larry Hogan of Maryland, is now requiring nursing facility staff to wear full PPE at all times while providing care to residents in the facility regardless of COVID status and to follow CDC guidance at other times. We recognize, however, that certain facilities may still have difficulty acquiring sufficient PPE for their needs and the CMS guidance includes a caveat that its PPE standards apply "to the extent PPE is available and per CDC guidance on conservation of PPE." In response to this guidance, AARP believes the state must take immediate steps to ensure that staff caring for individuals in nursing homes, assisted living communities, and home and community-based settings are provided with proper PPE and that staff are using them.

Testing

Testing is the only method of being certain whether or not someone is COVID-positive. To the extent possible, we believe it is important for both the staff and residents of North Carolina's LTSS facilities to have ready access to testing. This testing will help control the spread of the virus among the resident population and the community at large, as staff, emergency health care providers, on-site maintenance contractors and others come and go from the facilities. AARP believes the state must take immediate steps to ensure full access to testing for staff and residents of LTSS facilities. If supply shortages prevent wide-spread testing, the state should prioritize testing for individuals with known contact with COVID-

positive individuals, and for staff that have direct contact with residents, regardless of whether or not they are experiencing symptoms.

Ensuring Proper Staffing

There is an urgent need to ensure that people receiving care in a residential facility are getting the care they need during this crisis, which means that staffing issues must be addressed. According to [NC Health News](#), over 75% of the nursing homes that have had COVID outbreaks in North Carolina have staffing shortages. We urge you to work with the legislature to take immediate action to ensure adequate staffing, which may include financial and other incentives, such as hazard pay, to better support direct care workers during this time of emergency. North Carolina may also wish to consider allowing nurse aides in training who have completed a specified minimum level of training to work in facilities during this emergency with proper supervision. Like the individuals they serve, care workers are also at high risk of infection. We believe the state must also develop contingency plans to respond to situations where staffing levels are insufficient to meet the needs of residents, and plan for ways to inform residents and their families of staffing shortages.

AARP North Carolina greatly appreciates the state's efforts to ensure the health and safety of North Carolinians during this challenging time. Thank you for your prompt attention to this issue. We stand ready to help in any way that we can. If you have questions, please contact me or Lisa Riegel at lriegel@aarp.org (919-670-8896).

Sincerely,



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