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May 21, 2020

Dear General Assembly member,

AARP Illinois, on behalf of our 1.7 million and all older Illinoisans, is sharing our strong opposition to Illinois' current Executive Orders granting immunity from civil liability for any injury or death alleged to have been caused by an act or omission related to COVID-19 for nursing homes, assisted living facilities, and other long-term care (LTC) facilities.

We urge the State to immediately rescind the grant of civil immunity for nursing homes and other long term care facilities created in Executive Order 2020-19. Further, we adamantly oppose any additional efforts to expand immunity should those be introduced in this pandemic.

AARP has long fought for the rights of residents in nursing homes and other residential care facilities and to ensure their health, safety, quality of care, and quality of life. This includes the right of residents and their families to seek legal redress through the courts to hold facilities accountable when residents are harmed, neglected, or abused.

Nursing homes and other LTC facilities play an important role in America's long-term services and supports (LTSS) system. There are over 1,200 long-term care facilities in the State. During this time of pandemic, nursing homes and other residential care facilities face unprecedented challenges, and tragically, over 1,500 residents and staff have lost their lives. Given the lack of accurate public reporting of cases and deaths, as well as testing, we assume this number is a significant undercount. Without increased protective equipment, testing, and treatment protocols, millions more will contract the coronavirus and thousands more people could die. While there may be some circumstances beyond facilities' control for which they should not be held responsible, it is essential that long-term care providers, as well as health care providers more broadly, remain responsible for any negligent actions to ensure long-term care residents have some protection and opportunity for redress.

Given that most inspections of nursing homes have been suspended, family in-person visits are effectively prohibited except in limited circumstances, and in-person long-term care Ombudsman visits are similarly restricted, there are fewer eyes observing what is happening in facilities. Residents of nursing homes and other LTC facilities may be unable

Real Possibilities

to advocate for themselves and now have limited access to people who can advocate on their behalf. This lack of oversight is alarming, and requires us to ensure that, when all else fails, residents and their families will still have access to the courts to seek redress.

Pursuing a nursing home neglect or abuse case in court is not easy to do. No family member who has lost a loved one due to neglect or abuse pursues this course of action lightly. It is always an option of last resort, but it must remain an option.

Illinois should not strip away the rights and protections of residents. Nursing homes and other LTC facilities should know they will continue to be held responsible for providing the level of quality care that is required of them, and for which they are being compensated. This also incentivizes facilities to self-correct by addressing problems to improve care.

In order to more appropriately respond to this unprecedented crisis in the state's nursing homes, assisted living facilities and other LTC facilities, AARP Illinois recommends there be a Governor-led coordinated response to enhance our State's guidance and assistance to the long-term care system starting with an Executive Order that addresses the following issues:

1. Requiring all nursing homes to report to Illinois Department of Public Health daily staffing levels, and whether staffing levels fall below the state minimum staffing law. Such data must be made available on the State's COVID-19 website alongside current transparency information.
2. Deploying the National Guard if a nursing home is unable to achieve the State's nursing home minimum staffing law requirements.
3. Ensuring that all nursing homes, assisted living facilities and other long-term care facilities, home care providers and seniors in the Community Care Program have priority access to testing resources, and require immediate and complete testing of all staff, residents and CCP clients when outbreaks occur, as well contact tracing procedures when a positive result is discovered.
4. Providing daily public updates of the number of confirmed cases of COVID-19 of residents and staff with the percentage of infection in each category, deaths in the facility, and death of residents transferred to hospitals by facility, and by county.
5. Requiring facilities to report the above information through electronic means or otherwise to family members and legal guardians in a way best suited to reach them, as well to the Illinois State Ombudsman and the regional Ombudsman with responsibility for the facility.
6. Ensuring availability of personal protective equipment (PPE) at all nursing homes, long-term care facilities, home care in the Community Care Program, similar to the 90-day requirement for hospitals.
7. Requiring nursing homes to assign staff to facilitate and coordinate virtual visitation between residents and their families. This staff should not be individuals who are needed to perform nursing services. NOTE: FYI CMS, through their Civil Monetary Penalty (CMP) Reinvestment program, is allowing the use of CMPs for the purchase of technology by nursing homes to help address this isolation.

8. Requiring the Illinois Department of Public Health, Illinois State Ombudsman, Illinois Attorney General's Office, and the Illinois Department on Aging, in consultation with experts in long-term care representing facilities, labor, consumers, residents and family caregivers, to create a reimagining plan for the future of nursing homes and resident care.

AARP Illinois appreciates your consideration of these views. In sum, we urge you to rescind civil liability immunity for nursing homes, reject further immunity for LTC facilities, and move forward with a coordinated response that addresses the issues we have identified above. Families all across Illinois are looking to you to protect the health and safety of their loved ones living in nursing homes and other residential care facilities. If you have questions, please feel free to contact Lori Hendren, cell: 217-553-9156, and email: lhendren@arp.org

Respectfully,

A handwritten signature in black ink, appearing to read "Ryan Gruenenfelder". The signature is fluid and cursive, with the first name "Ryan" being the most prominent part.

Ryan Gruenenfelder
Director of Advocacy
AARP Illinois