

July 16, 2020

The Honorable Nancy Pelosi
Speaker
United States House of Representatives
Washington, DC 20515

The Honorable Kevin McCarthy
Minority Leader
United States House of Representatives
Washington, DC 20515

Dear Speaker Pelosi and Leader McCarthy:

The undersigned organizations strongly urge you to oppose H.R. 7059, the “Coronavirus Provider Protection Act.” We understand that the stated impetus for this legislation is to support front-line health care workers. However, this bill creates the potential for extreme harm to patients, and could have lethal consequences for many.

It is important to note first that this legislation is not needed to provide any appropriate protection to front-line health care workers. Our current legal system already provides that protection, while also helping ensure that the health care system has effective incentives to place a priority on patient safety and health. Proof that the legal system is working properly is in the numbers. More than 3 million people have been infected with COVID-19 in the United States and nearly 140,000 have died. Yet fewer than 40 virus-related medical malpractice or wrongful death cases have been filed in the entire country since the pandemic began, nearly all of those cases against nursing homes.¹

The legislation is overbroad in many respects. The types of health care services and entities covered by this bill go far beyond COVID-19 patients, and even beyond those treated in hospitals or other facilities for medical problems during emergency conditions. And importantly, the bill’s definition of “health care entity” includes nursing homes.

To date, more than 50,000 residents of and workers at long-term care facilities have died from COVID-19, which is 40 percent of all deaths.² In a June 24, 2020, group letter to the Ways and Means Committee, organizations that advocate on behalf of nursing home residents expressed strong opposition to giving immunity to nursing homes that were negligent in the care they provided to nursing home residents. They noted that because normal regulatory and accountability controls have been relaxed during the pandemic, “Essentially, the only mechanism available for a nursing home resident to hold facilities responsible for substandard care is judicial recourse.” Without that, they say, “nursing homes will have little to no oversight... Congress

¹ Hunton Andrews Kurth, “COVID-19 Complaint Tracker,” <https://www.huntonak.com/en/covid-19-tracker.html> (viewed July 15, 2020).

² See, “43% of U.S. Coronavirus Deaths Are Linked to Nursing Homes,” *New York Times*, June 27, 2020, <https://www.nytimes.com/interactive/2020/us/coronavirus-nursing-homes.html>; Jon Kamp and Anna Wilde Mathews, “As U.S. Nursing-Home Deaths Reach 50,000, States Ease Lockdowns,” *Wall Street Journal*, June 16, 2020, <https://www.wsj.com/articles/coronavirus-deaths-in-u-s-nursing-long-term-care-facilities-top-50-000-11592306919>

would be placing nursing home residents in jeopardy at a time when they are the Americans suffering most from the Covid-19 outbreaks.”

Moreover, many of these nursing home facilities are owned by for-profit chains³ or by private investors,⁴ who do not give proper attention to resident health and safety. This has led to egregious safety problems, including long histories of atrocious infection-controls.⁵ The nursing home industry has long and actively fought federal pandemic preparedness requirements, even lobbying against such rules before the current administration.⁶ As the advocates put it in their June 24 letter, “As a nation, we cannot tolerate rewarding nursing homes for years of cost cutting and profit maximizing by relieving them of responsibility.”

The bill is overbroad in many other ways, as well. For example, it covers “the treatment, diagnosis, or care with respect to an individual who presents to a health care professional or related health care entity.” It is not limited to COVID-19 patients. It is not even limited to health care systems experiencing any sort of emergency. This is simply blanket immunity for negligence.

Immunity attaches so long as the health care provider or entity follows “any direction, guidance, recommendation, or other statement made by a Federal, State, or local official.” That would even include statements not based in science that could be harmful. Whether a recommendation or statement is made by the President of the United States or a local politician, the law should not encourage their adoption as medical standards based on the promise of immunity, as this language does.

The bill also would grant immunity to providers and entities that violate medical standards of care if they can point to staffing or resource limitations. Importantly, the legislation also undermines the safety and health of health care professionals and workers. Under the bill’s definition of “health care services” including “items provided by a health care entity,” hospitals or other entities that fail to protect their staff with sufficient personal protective equipment would receive immunity under this bill.⁷

³ See Laura Strickler, Stephanie Gosk, and Shelby Hanssen, “A nursing home chain grows too fast and collapses, and elderly and disabled residents pay the price,” *NBC News*, July 19, 2019, <https://www.nbcnews.com/health/aging/nursing-home-chain-grows-too-fast-collapses-elderly-disabled-residents-n1025381>

⁴ Matthew Goldstein, Jessica Silver-Greenberg, and Robert Gebeloff, “Push for Profits Left Nursing Homes Struggling to Provide Care,” *New York Times*, May 7, 2020, <https://www.nytimes.com/2020/05/07/business/coronavirus-nursing-homes.html>

⁵ Mike Stucka and Marisa Kwiatkowski, “Coronavirus a concern in nursing homes, where 75% have been cited for infection control errors,” *USA Today*, March 6, 2020, <https://www.usatoday.com/story/news/investigations/2020/03/06/coronavirus-spread-nursing-home-infections-can-go-beyond-their-walls/4964397002/>

⁶ Bryant Furlow, Carli Brosseau, and Isaac Arnsdorf, “Nursing Homes Fought Federal Emergency Plan Requirements for Years. Now, They’re Coronavirus Hot Spots,” *New Mexico in Depth/News & Observer/ProPublica*, May 29, 2020, <https://www.propublica.org/article/nursing-homes-fought-federal-emergency-plan-requirements-for-years-now-theyre-coronavirus-hot-spots>

⁷ See, Kent Babb, Brittany Shammas and Ariana Eunjung Cha, “Hundreds of Health Care Workers Lost Their Lives Battling the Coronavirus,” *Washington Post*, June 17, 2020, <https://www.washingtonpost.com/graphics/2020/health/healthcare-workers-death-coronavirus/>

Covered “health care services” and “health care entities” are defined very broadly, and would include entities that seem to have nothing to do with COVID-19 (e.g., “ambulatory surgical centers”) and potentially even health insurance companies that have influence over who receives COVID-related care and who does not.

Finally, as noted earlier, concerns about medical malpractice lawsuits against front-line health care workers are unwarranted. Such lawsuits never materialized. In the midst of a pandemic caused by a virus with no medical cure, the standard of care – that is, the conduct that the law reasonably expects of health care professionals – is very different than in non-emergency times. The proof is in the small number of cases that have been brought so far.

For these reasons, we strongly urge you to oppose H.R. 7059. For any questions or follow-up, please contact Joanne Doroshov, Center for Justice & Democracy, joanned@centerjd.org.

Very sincerely,

AFL-CIO
 Alianza Nacional de Campesinas
 Alliance for Justice
 American Association for Justice
 Americans for Financial Reform
 Autistic Self Advocacy Network
 CAARMA Consumer Advocates Against
 Reverse Mortgage Abuse
 Center for Justice & Democracy
 Center for Science in the Public Interest
 Citizen Works
 Coalition of Labor Union Women
 Coalition on Human Needs
 Consumer Action
 Consumer Federation of California
 Consumer Reports
 Consumer Watchdog
 Consumers for Auto Reliability and Safety
 Earthjustice
 Economic Policy Institute
 Essential Information
 Food & Water Action
 Georgia Watch
 Impact Fund
 Justice in Aging
 Main Street Alliance
 Maurice & Jane Sugar Law Center for
 Economic and Social Justice
 Minority Veterans of America
 National Association of Consumer
 Advocates

National Center for Law and Economic
 Justice
 National Consumer Voice for Quality Long-
 Term Care
 National Consumers League
 National Council for Occupational Safety &
 Health
 National Council on Independent Living
 National Employment Law Project
 National Employment Lawyers Association
 National Partnership for Women & Families
 National Women's Health Network
 National Women's Law Center
 NYPIRG
 PCUN
 People's Parity Project
 Protect All Children's Environment
 Public Advocacy for Kids (PAK)
 Public Citizen
 Public Justice
 Rights & Democracy (NH & VT)
 SC Appleseed Legal Justice Center
 Sciencecorps
 Shriver Center on Poverty Law
 Texas Watch
 U.S. PIRG
 United Spinal Association
 United Steelworkers
 Workers' Injury Law & Advocacy Group
 Workplace Fairness