

# United States Senate

WASHINGTON, DC 20510

March 4, 2019

The Honorable Seema Verma  
Administrator  
Centers for Medicare and Medicaid Services  
200 Independence Avenue, S.W.  
Washington, DC 20201

Dear Administrator Verma:

We are writing on behalf of the 80,000 Pennsylvanians who call a nursing facility home. Recently, select nursing homes in the Commonwealth were the subject of an in-depth investigation into patient neglect and understaffing.<sup>1</sup> Given this report, we are writing to request additional information on the Special Focus Facility (SFF) Initiative, a statutorily required Centers for Medicare & Medicaid Services (CMS) program<sup>2</sup> intended to enhance care quality and foster improvement among nursing facilities that persistently underperform.

We are proud of our state's high-quality nursing facilities, which benefit from dedicated leadership and staff members devoted to their residents' health, flourishing and overall well-being. Recent reporting suggests, however, that there are facilities that fall short of the care standards that we should expect of every one of our nation's nursing homes. As detailed in these reports, despite recent changes in ownership and prior investigations,<sup>3</sup> some of our older constituents and people with disabilities residing in these homes experienced significant harm, including insect infestations, improper wound care, unsanitary conditions, supply shortages, and more.

Neglect and abuse of this nature is altogether unacceptable and through a robust system of competition, monitoring, oversight, technical assistance and enforcement, it should be entirely avoidable. Among the many vital elements of this system, we understand that CMS works alongside the Pennsylvania Department of Health (DoH) to administer the SFF program. Indeed, three of the nursing facilities featured in the aforementioned investigation are current participants in the program.

We are interested in learning more about the program's operations, scope and overall effectiveness. In continuation of our engagement on these issues, we ask that CMS provide answers to the following questions about the SFF program and the facilities eligible for and/or participating in this initiative:

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<sup>1</sup> Daniel Simmons-Ritchie, "Still Failing the Frail," PennLive, November 2018, <http://stillfailingthefrail.pennlive.com/>.

<sup>2</sup> 42 U.S.C. 1395i-3; 42 U.S.C. 1396r

<sup>3</sup> Daniel Simmons-Ritchie and David Wenner, "Failing the Frail," PennLive, August 2016, [https://www.pennlive.com/news/page/failing\\_the\\_frail\\_part\\_1.html](https://www.pennlive.com/news/page/failing_the_frail_part_1.html).

1. There are more than 15,570 nursing homes in the U.S.<sup>4</sup> Less than one percent (0.6%) participate in the SFF program and less than three percent (2.8%) are eligible for the candidate list. What methodology did CMS use to determine the fixed size of the following:
  - a. Total SFF participants nationally (88 facilities);
  - b. Total candidates nationally (435 facilities);
  - c. Total required participants per state (ranging from 1 – 6); and
  - d. Total candidates per state (ranging from 5 – 30);<sup>5</sup>
2. CMS guidance<sup>6</sup> indicates the number of candidates and required SFF participants have not been updated since May 2014. Please provide the agency’s reasoning for maintaining the program’s current size (both candidates and participants), as well as the total number of SFF participants and candidates nationally for each year since 2010;
3. How frequently does CMS update the SFF candidate list? In addition, please provide information on how long a facility typically remains on the candidate list before selection in the SFF program;
4. What process does CMS engage in with state Survey Agencies (SA) to determine which candidates to select for the SFF program? Does CMS require or encourage the SA to take into consideration the scope and severity of deficiencies cited in prior surveys? Does CMS require or encourage the SA take into account any state action that has been taken against a facility?
5. Are there any circumstances where a facility is prioritized for SFF participation or selected for the program outside of the rolling selection window (e.g., before a slot becomes available upon a participating facility’s graduation or termination)?
6. Please indicate what, if any, surveying and oversight actions are taken with respect to candidates *not* selected by SAs for participation in the SFF program;
7. Please provide information on the frequency with which facilities cycle on and off the candidate list and what, if any, surveying, oversight and enforcement actions are taken if those repeat candidates are not selected for the SFF program. Please provide the average length of time a facility remains in the SFF program until graduation and/or termination of federal participation, as well as details on outliers (least amount of time, most amount of time, etc.). Please also provide information on facilities that exit the program without graduating or being terminated from federal participation;

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<sup>4</sup> CMS, “Provider Info,” Data.Medicare.Gov, Accessed on February 12, 2019, <https://data.medicare.gov/Nursing-Home-Compare/Provider-Info/4pq5-n9py>

<sup>5</sup> CMS, Center for Clinical Standards and Quality/Survey & Certification Group, “Fiscal Year (FY) 2017 Special Focus Facility Program Update,” March 2, 2017, <https://www.cms.gov/Medicare/Provider-Enrollment-and-Certification/SurveyCertificationGenInfo/Downloads/Survey-and-Cert-Letter-17-20.pdf>.

<sup>6</sup> Ibid.

8. CMS makes the list of selected SFF facilities publicly available on a monthly basis; however, the list of potential candidates is provided only to the candidates themselves. Please provide the most recent candidate list and the agency's reasoning for not previously releasing this list to the public; and
9. Pennsylvania's SFF participation includes a minimum of 20 candidates and 4 participants. Please provide the name, address, and length of candidacy for each of the Pennsylvania facilities on the SFF candidate list.

Please provide answers to these questions by March 27, 2019 as well as a briefing for our staff members. If you have any questions, please contact Gillian Mueller of Senator Casey's staff at [Gillian\\_Mueller@casey.senate.gov](mailto:Gillian_Mueller@casey.senate.gov) and Theodore Merkel of Senator Toomey's staff at [Theodore\\_Merkel@toomey.senate.gov](mailto:Theodore_Merkel@toomey.senate.gov). Thank you for your consideration and we look forward to your response.

Sincerely,



Robert P. Casey, Jr.  
U.S. Senator



Patrick J. Toomey  
U.S. Senator