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United States Senate

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February 1, 2019

The Honorable Seema Verma
Administrator
Centers for Medicare & Medicaid Services
7500 Security Boulevard
Baltimore, MD 21244

Dear Administrator Verma:

Last November, I released *Sheltering in Danger*, an investigation that showed how nursing homes are inadequately prepared to protect vulnerable residents during natural disasters.¹ The report focused on nursing homes impacted by hurricanes, but the polar vortex now gripping the central United States—and recent nursing home evacuations—demonstrates it's not just hurricanes that pose a threat to elderly residents.

Senior citizens are uniquely vulnerable to extreme heat and extreme cold, which makes evacuations and sheltering in place all the more dangerous task during the peak of summer and depths of winter. Nursing homes and other facilities that care for elderly patients must be prepared for all types of extreme weather events.

The current onslaught of cold temperatures has put tremendous strain on infrastructure, leading to lapses in electricity, natural gas and transportation services.² In Michigan, the failure of a key natural gas compressor station led the state to call on residents to lower thermostats to 65 degrees Fahrenheit.³ This temperature is outside of the 71–81 degree range that CMS requires nursing homes to maintain.

A central Illinois nursing home was forced to evacuate this week in bitter cold after an on-site service compressor malfunctioned due to sub-zero temperatures.⁴ Last week, residents of a Newport, Rhode Island, nursing home were evacuated after a lengthy natural gas outage,⁵ on a day when temperatures ranged from 6 to 26 degrees.⁶ In both instances, it appears that residents

¹ Press Release, "Wyden Finds Nursing Homes Unprepared for Natural Disasters," U.S. Senate Committee on Finance (Nov. 2, 2018), available at <https://www.finance.senate.gov/ranking-members-news/wyden-finds-nursing-homes-unprepared-for-natural-disasters>.

² Douglas Belkin and Erin Ailworth, Polar Vortex Strains Systems; General Motors Halts Factories, *Wall Street Journal* (Jan. 31, 2019), available at <https://www.wsj.com/articles/polar-vortex-strains-systems-general-motors-halts-factories-11548946411>.

³ Jason Hanna, "It's 9 below in Detroit. Michigan wants folks to lower their heat after a utility station caught fire," *CNN* (Jan. 31, 2019), available at <https://www.cnn.com/2019/01/31/us/michigan-extreme-weather-lower-thermostats-trnd/index.html>.

⁴ Paul Swiech, "Power outage due to cold affects Hopedale Medical Complex," *The Pantagraph* (Jan. 30, 2019), available at https://www.pantagraph.com/news/local/power-outage-due-to-cold-affects-hopedale-medical-complex/article_9ac4c015-11e9-59f3-9f5e-60d851cd4d1f.html.

⁵ Sean Flynn, "St. Clare-Newport nursing home residents evacuated," *The Newport Daily News* (Jan. 22, 2019), available at <https://www.newportri.com/news/20190122/st-clare-newport-nursing-home-residents-evacuated>.

⁶ According to National Centers for Environmental Information data collected at Newport State Airport for January 22, 2019.

escaped unharmed, but as the administrator of the Newport facility observed, “this could have been a nightmare.”⁷

Since the report’s release, the Centers for Medicare & Medicaid Services (CMS) has proposed rolling back emergency preparedness standards for nursing homes and other facilities by:

- Eliminating requirements for nursing homes and other medical facilities to document their collaborative planning efforts with government emergency preparedness officials.⁸
- Reducing the frequency of internal emergency plan reviews that nursing homes and other medical facilities must complete from once a year to once every two years.
- Scaling back emergency training requirements for employees at nursing homes and other medical facilities from once a year to once every two years.
- Lowering standards for the types of emergency drills that nursing homes and others medical facilities must conduct, and the frequency with which such emergency drills must be completed.

On November 20, 2018, I wrote to you raising concerns about the CMS regulatory rollback and have yet to receive a response.⁹ CMS also has failed to act on its commitment to my staff to update its Emergency Preparedness guidance—also known as Appendix Z—to ensure that nursing home residents are kept within the 71–81 range during emergencies. *Sheltering in Danger* also specifically recommended ensuring that nursing homes must have sufficient capacity to ensure that safe temperatures are maintained during emergencies. These were just two of the 18 recommendations in the report, which is attached. Given the current situation:

1. What actions is CMS taking to ensure that nursing homes know that they are required to maintain the required temperatures during emergencies?
2. What actions is CMS taking to fulfill its obligation to formally update its guidance on the maintenance of safe temperatures and emergency energy, as discussed more fully in *Sheltering in Danger*?
3. What actions is CMS taking to respond to the other recommendations made in the report?
4. Does CMS intend to proceed with the regulatory rollbacks to the emergency planning standards that it announced last year?

Sincerely,



Ron Wyden
Ranking Member

⁷ Steph Machado, “Evacuation plan was key for nursing home during gas disaster,” WPRI (Jan. 24, 2019), available at <https://www.wpri.com/news/local-news/east-bay/evacuation-plan-was-key-for-nursing-home-during-gas-disaster/1724668171>.

⁸ Medicare and Medicaid Programs: Regulatory Provisions to Promote Program Efficiency, Transparency, and Burden Reduction, 83 Fed. Reg. 183 (Sept. 20, 2018), 47725-47728, available at <https://www.gpo.gov/fdsys/pkg/FR-2018-09-20/pdf/2018-19599.pdf>.

⁹ Press Release, “Wyden decries proposed weakening of nursing homes safety protections by the Trump Administration,” U.S. Senate Committee on Finance (Nov. 20, 2018), available at <https://www.finance.senate.gov/ranking-members-news/wyden-decries-proposed-weakening-of-nursing-homes-safety-protections-by-trump-administration>