

# DISABILITY RIGHTS at University Legal Services



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April 14, 2020

Mayor Muriel Bowser  
Deputy Mayor Wayne Turnage  
District of Columbia Office of the Mayor  
1350 Pennsylvania Avenue, NW  
Washington, DC 20004

Dear Mayor Bowser and Deputy Mayor Turnage:

Disability Rights DC at University Legal Services (ULS) is the designated protection and advocacy agency that represents DC residents with disabilities and advocates to promote their rights and protect them from abuse and neglect. ULS, along with AARP Foundation and Terris, Pravlik & Millian, LLP, are Plaintiffs' counsel in *Brown v. District of Columbia*, a class action lawsuit on behalf of DC citizens in nursing facilities seeking to enforce the obligation of the DC government to transition them back to the community with the Medicaid-funded long-term care services they need. **We are writing to urge the District to take action immediately to address the life-threatening incidence of COVID-19 in DC nursing facilities.**

As you know, the impact of COVID-19 has been devastating in nursing facilities around the country. As of April 13, there have been 3,600 coronavirus deaths in nursing facilities nationwide, comprising 15% of all deaths nationally due to the virus.<sup>1</sup> Over a month ago, Mark Parkinson, the president of the American

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<sup>1</sup> See "Nursing Homes Are In the Pandemic's Crosshairs. They Can't Be Neglected," Washington Post Editorial, Apr. 13, 2020, [https://www.washingtonpost.com/opinions/nursing-homes-are-in-the-pandemics-crosshairs-they-cant-be-neglected/2020/04/13/7341919a-7db0-11ea-a3ee-13e1ae0a3571\\_story.html](https://www.washingtonpost.com/opinions/nursing-homes-are-in-the-pandemics-crosshairs-they-cant-be-neglected/2020/04/13/7341919a-7db0-11ea-a3ee-13e1ae0a3571_story.html); "Nearly 40% of Coronavirus Deaths in Colorado Linked to Nursing Homes, Long-Term Care Facilities," The Denver Post, April 11, 2020, <https://www.denverpost.com/2020/04/11/coronavirus-covid-colorado-nursing-homes-deaths/> (reporting that 40% of Colorado's COVID-19 deaths were in nursing facilities); "More Than 2,200 Coronavirus Deaths in Nursing Homes, but the Federal Government Isn't Tracking Them," NBC News, Apr. 10, 2020, <https://www.nbcnews.com/news/us-news/more-2-200-coronavirus-deaths-nursing-homes-federal-government-isn-n1181026>; "Nearly 2,000 Dead as

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Health Care Association (the trade association that represents nearly 14,000 nursing facilities), called the coronavirus “an almost perfect killing machine” for the elderly.<sup>2</sup> States and cities have begun testing, closely tracking and reporting data about the incidence of the virus among nursing facility residents and staff.<sup>3</sup> Governors and mayors have issued directives mandating testing for nursing facility residents and staff and taken action in the form of “strike teams” and appointment of “czars” and task forces to respond to testing and equipment needs and outbreaks.<sup>4</sup> Yet the District has failed to track or disclose *any* data on the incidence of residents or staff who test positive for COVID-19 in DC nursing facilities, let alone issue *any* directives to guide nursing facilities in addressing the pandemic.

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Coronavirus Ravages Nursing Homes in N.Y. Region,” New York Times, Apr. 11, 2020, <https://www.nytimes.com/2020/04/11/nyregion/nursing-homes-deaths-coronavirus.html>.

<sup>2</sup> “AHCA President Mark Parkinson: For the Elderly, COVID-19 is an Almost Perfect Killing Machine,” Home Health Care News, Mar. 11, 2020, <https://homehealthcarenews.com/2020/03/ahca-president-mark-parkinson-for-the-elderly-covid-19-is-an-almost-perfect-killing-machine/>.

<sup>3</sup> See, e.g., Colorado Case Data, <https://covid19.colorado.gov/case-data> (reporting incidence data regarding COVID-19 in Colorado’s non-hospital health care facilities including nursing facilities); COVID-19 Cases in Virginia, <http://www.vdh.virginia.gov/coronavirus/> (reporting data of incidences in long-term care facilities); “With More than 500 Coronavirus Cases in Long-term Care Facilities, Northam Wants to Help Them,” The Virginia Pilot, Apr. 13, 2020, <https://www.pilotonline.com/news/health/vp-nw-coronavirus-northam-monday-20200413-pcfswlrdja6xhpdgrcvd6g6ym-story.html>.

<sup>4</sup> “Nursing Homes Are In the Pandemic’s Crosshairs. They Can’t Be Neglected,” Washington Post, Apr. 13, 2020, [https://www.washingtonpost.com/opinions/nursing-homes-are-in-the-pandemics-crosshairs-they-cant-be-neglected/2020/04/13/7341919a-7db0-11ea-a3ee-13e1ae0a3571\\_story.html](https://www.washingtonpost.com/opinions/nursing-homes-are-in-the-pandemics-crosshairs-they-cant-be-neglected/2020/04/13/7341919a-7db0-11ea-a3ee-13e1ae0a3571_story.html); “W.Va. Governor Says Biggest Announcement of the Day is Czar Despite Statewide Cases of COVID-19 Soaring Over 50 and Morgantown Nursing Home Dubbed ‘Ground Zero,’” WVVA.com, Mar. 26, 2020, <https://wvva.com/2020/03/26/w-va-governor-says-biggest-announcement-of-the-day-is-czar-despite-statewide-cases-of-covid-19-soaring-over-50-and-morgantown-nursing-home-dubbed-ground-zero/> (WV governor appointed a “czar” to monitor nursing homes with incidence of COVID-19); “Coronavirus Takes Root in D.C.-Area Elderly Care Facilities, As They Scramble for PPE and Available Workers,” Apr. 11, 2020, [https://www.washingtonpost.com/local/coronavirus-takes-root-in-dc-area-elderly-care-facilities-who-scramble-for-ppe-and-available-workers/2020/04/11/d3525280-79e2-11ea-a130-df573469f094\\_story.html](https://www.washingtonpost.com/local/coronavirus-takes-root-in-dc-area-elderly-care-facilities-who-scramble-for-ppe-and-available-workers/2020/04/11/d3525280-79e2-11ea-a130-df573469f094_story.html) (reporting Governor Northam’s appointment of a “czar” to oversee nursing facilities with COVID-19 cases).

## **Your leadership is needed now.**

On a daily basis, the DC government issues reports regarding the status of the virus in correctional facilities, hospitals (including data related to the availability of hospital beds, ICU beds, and ventilators), homeless shelters, and among law enforcement and emergency medical services agencies.<sup>5</sup> In contrast, the DC government is not providing any data on the prevalence of coronavirus in any of the 18 DC nursing facilities. The fact that the nursing facilities are privately-owned and operated does not absolve the DC government from its obligation to take action. In fact, these facilities are licensed by DC Health, their services are largely paid for by DC Medicaid,<sup>6</sup> and the DC government regulates their operations.<sup>7</sup> Far more importantly, these facilities house some of our most vulnerable residents. The District must ensure that they are protected, rather than neglected, in nursing facilities.

Apart from data gathering and reporting, the DC government must exercise its leadership by issuing urgent citywide policy directives to help the nursing facilities navigate this public health crisis. We urge the DC government to issue emergency plans that relate *specifically* to nursing facility residents with respect to COVID-19 testing, treatment, isolation modalities, hospitalization, access to ventilators at nursing facilities, and provision of personal protective equipment (PPE) for nursing facility staff. In addition, the DC government must issue emergency staffing plans for nursing facilities that experience large numbers of absent staff due to COVID-19 infection, and evacuation plans in the event that nursing facilities become contaminated with the virus to the point they are no longer safely habitable—a point that may have already been reached. Finally, any emergency plans must include meaningful transition assistance to enable people to live in their own homes. In our work representing the Plaintiff class in the *Brown* litigation, we have learned that staff and/or residents have tested positive for COVID-19 at six DC nursing facilities, which is undoubtedly an underestimate. This

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<sup>5</sup> DC COVID-19 Data, <https://coronavirus.dc.gov/page/coronavirus-data>.

<sup>6</sup> The DC Medicaid Program covers the long-term care for 80% of DC nursing facility residents. See Kaiser Family Foundation, “Medicaid’s Role in Nursing Home Care,” June 2017, <https://www.kff.org/infographic/medicaids-role-in-nursing-home-care/>.

<sup>7</sup> DC Code § 44-501 *et seq.* (governing nursing home licensing requirements); DC Mun. Regs. Title 22B, Chapter 32 (setting forth myriad regulations governing nursing facility operations and subjecting them to DC government oversight and enforcement).

information should be readily available to the public and especially to the families of the people in the facilities. In addition, directives from the DC government must ensure that nursing facility residents are protected pursuant to the Nursing Home Reform Act<sup>8</sup> and DC law<sup>9</sup> and that they are treated with the fundamental dignity that they deserve.

The 18 nursing facilities in the District are consistently over 90% occupied.<sup>10</sup> We have no doubt that the surge of COVID-19 cases in both the nursing facilities and hospitals is straining them well beyond their capacity.<sup>11</sup> This is an urgent problem that requires an urgent solution.

We ask that you inform us, as well as the community at large, by Friday, April 17, of the prevalence of COVID-19 in the District's nursing facilities and of the DC government's plan to address these issues.

We recognize that this is a difficult time and that there are enormous demands on your time, and appreciate your attention to this critically important issue.

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<sup>8</sup> 42 U.S.C. § 1395i-3 (setting forth requirements for, and assuring quality of care in, skilled nursing facilities).

<sup>9</sup> See, e.g., DC Code § 44-1003.01 *et seq.* (governing involuntary discharge or transfer of nursing facility residents).

<sup>10</sup> See Kaiser Family Foundation, Nursing Facilities, Staffing, Residents and Facility Deficiencies, 2009 Through 2016, Supplemental Tables, <http://files.kff.org/attachment/SUPPLEMENTAL-TABLES-Nursing-Facilities-Staffing-Residents-and-Facility-Deficiencies-2009-2016>, p.4.

<sup>11</sup> See "Patients From Nursing Homes Are Stuck In Hospitals After Contracting COVID-19," Apr. 9, 2020, <https://www.npr.org/local/309/2020/04/09/830860033/patients-from-nursing-homes-are-stuck-in-hospitals-after-contracting-c-o-v-i-d-19> (describing the limbo status of nursing facility residents hospitalized with COVID-19 whose nursing facilities refuse to allow them to return).

Sincerely,

/s/ Marjorie Rifkin

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