

CENTERING ON CORONAVIRUS

COVID-19 IN NURSING HOMES: HOW COULD WE LET THIS HAPPEN?

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COVID-19 in Nursing Homes: How Could We Let This Happen?

Although there is so much we still do not know about COVID-19, public health officials and doctors were sharing the same urgent message from the beginning of the outbreak in early 2020.

The older you are, the more likely you are to die if you contract the disease.

In one of the first press briefings held by the Centers for Disease Control (CDC) on COVID-19 on January 21, 2020, Dr. Nancy Messonnier, Director of the National Center for Immunization and Respiratory Diseases at the CDC, stated that “preliminary information suggests that older adults with underlying health conditions may be at increased risk for severe disease.” This was reiterated in the official Report of the World Health Organization-China Joint Mission on Coronavirus Disease 2019 (COVID-19) implemented between February 16-24, 2020. Amongst its many findings, the Joint Mission found that “individuals at highest risk for severe disease and death include people aged over 60 years and those with underlying conditions such as hypertension, diabetes, cardiovascular disease, chronic respiratory disease and cancer.” And yet, somehow, America allowed its nursing homes to become the epicenter of the worst COVID-19 outbreak in the world.

Over 40% of all those who have died in the U.S. from COVID-19 have been residents or workers in nursing homes or long-term care facilities. Even this number may understate the problem. Ten U.S. states are still not releasing any data on nursing home cases and deaths to the public; some that are providing data only include partial sets. But in certain states reporting full or partial data, nursing home COVID-19 deaths make up more than 50% of the total share of state deaths.

In this paper, The New Center explains how and why America allowed its most vulnerable people to be exposed to this deadly virus and proposes ideas for how we can ensure a tragedy like this never happens again.

Where the Crisis Began

On February 28, 2020, the Life Care Center of Kirkland in Washington State confirmed its first official COVID-19 case. Two days later, Life Care Center announced one of its residents had died from the disease, although later testing would confirm other deaths at the facility in late February had also stemmed from the novel coronavirus. As cases and deaths spiked at the long-term care facility, Life Care grabbed national attention as the epicenter of Washington State’s, and the country’s, first major COVID-19 outbreak.

How could this have happened? According to an investigation conducted into Life Care Center of Kirkland by the Centers for Disease Control and Prevention, “limitations in effective infection control and prevention and staff members working in multiple facilities contributed to intra- and interfacility spread.”

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Subsequently, in April 2020, inspectors for the Centers for Medicare and Medicaid Services (CMS) levied a \$611,000 fine against the facility, citing lapses in care and reporting, and required the nursing home to remedy identified “deficiencies,” otherwise it would no longer receive Medicare and Medicaid funding after September 16, 2020. Life Care Center’s problems also stretch far beyond Washington State. According to the Washington Post, out of the 26 inspection reports it obtained of Life Care Center’s facilities across the country, at least ten suffered from deficient practices. As it would soon become tragically clear, the problems at the Life Care Centers were not isolated. They were endemic to nursing homes across America.

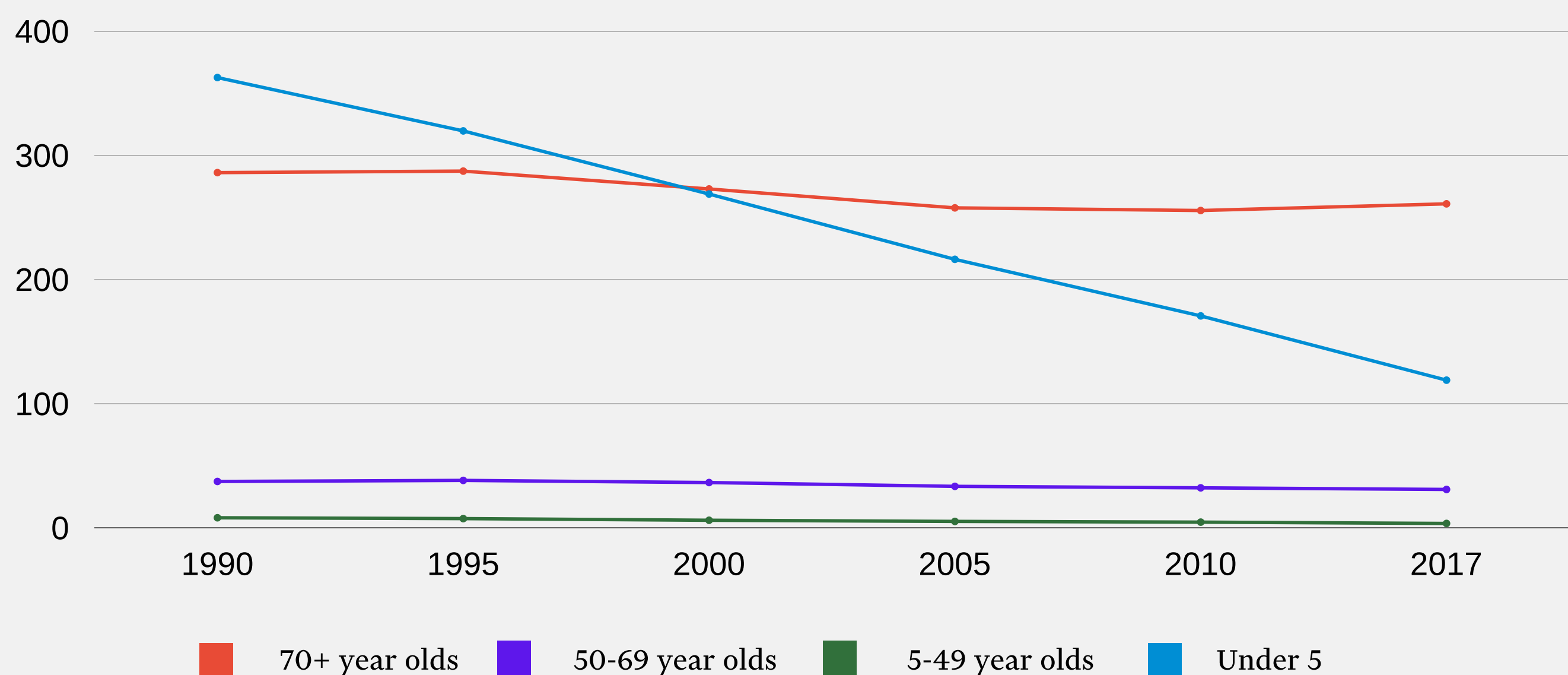
The Threat to Nursing Homes: Was it Foreseeable?

There were many uncertainties in the early months of the COVID-19 outbreak. Scientists did not have a clear picture as to where the virus originated, how it spread, or what high-risk populations were. But we knew the elderly were vulnerable. And public officials knew—or should have known—that people who lived in nursing homes were especially at risk.

According to a Department of Health and Human Services report on long-term care providers and service users in the United States between 2015 and 2019, 83.5% of nursing home residents were aged 64 or over. Nursing home patients also have high rates of the underlying conditions that make people especially vulnerable to COVID-19, including 32% with diabetes, 38.1% with heart disease, and 71.5% with hypertension. Identifying evidence-based high-risk populations is important during any outbreak and public health crisis. But did federal, state, and local officials need to wait for this information to protect the elderly and infirm? Long-standing statistics on pneumonia death rates—one of the most serious complications of any coronavirus, not just COVID-19—show that for people 70 years or older, the death rate has remained high and stable for over 30 years.

GLOBAL DEATH RATE FROM PNEUMONIA, BY AGE, 1990 TO 2017

The annual number of deaths from pneumonia per 100,000 people in an age group.



Source: Our World in Data and the Global Burden of Disease Study, IHME (2018)

Federal and State Responses

The Centers for Medicare and Medicaid Services regulate the nursing home industry in conjunction with state survey agencies that ensure nursing homes comply with federal regulations.

On February 6, 2020, CMS issued its first response to the growing threat of COVID-19 spreading in the United States. It urged health care facilities to review newly-released CDC information on COVID-19, as well as their own infection prevention and control policies, to ensure they were taking all necessary steps to address the potential threat. CMS did not issue another response until March 4, 2020, a month later. The memorandum recommended that state survey agencies conduct general facility inspections instead of focused infection control inspections, and provided more detailed recommendations for nursing homes and hospitals on how to address COVID-19 cases and take appropriate precautionary measures. It was not until April 19, 2020, almost two months after the Life Care outbreak in Kirkland, that CMS mandated that nursing homes report COVID-19 cases directly to the Centers for Disease Control and Prevention as well as to nursing home residents, families, and representatives.

In the succeeding months, CMS would release more guidance and highlight new initiatives specifically designed to combat COVID-19 in nursing homes. By that point, however, additional CMS guidance was coming too late; the agency had moved too slowly in clarifying the urgent steps that needed to be taken at the local level.

CMS Responses to COVID-19 in Nursing Homes

- March 4, 2020: New guidance recommends state survey agencies conduct general facility inspections instead of control inspections, and provides more detailed recommendations for nursing homes and hospitals on COVID-19 response.
- March 9, 2020: New guidance for COVID-19 in nursing homes includes recommendations for general hygiene practices, staff restrictions, patient transfers, and visitations.
- March 23, 2020: Federal nursing home inspection processes augmented to focus on complaint inspections and targeted infection control inspections. CMS also announces that a new self-inspection tool developed in coordination with the CDC is available to nursing home facilities.
- April 19, 2020: New regulatory requirements require nursing homes to report COVID-19 cases and deaths directly to the CDC as well as nursing home residents, families, and representatives.
- April 30, 2020: The Coronavirus Commission for Safety and Quality in Nursing Homes is created. The independent Commission, part of the Trump Administration's Opening Up America Again plan, is tasked with identifying measures to bolster the health and safety of nursing home residents, both in the context of a COVID-19 response and beyond.

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Out of all actions taken by CMS and CDC on nursing homes, only the new regulatory requirements for reporting nursing home cases to the CDC issued on April 19, 2020, were enforceable. All other guidance issued was not legally binding on states or nursing homes.

As a result, how states interpreted and implemented recommended nursing home policies varied greatly. For example, according to the Kaiser Family Foundation, 17 states offered no guidance (as opposed to mandated regulations) to nursing homes on personal protective equipment (PPE) for employees, nine states offered no guidance on staff screenings, and one state (South Dakota) offered no guidance on visitations.

In no case was the disparate interpretation and implementation of CMS guidance more clear and potentially deadly than the now-controversial move by some states to require nursing homes to take in discharged COVID-19 patients from hospitals. Some states, including New York, California, and New Jersey, issued early orders mandating that nursing homes take in discharged COVID-19 hospital patients, only to reverse the orders following widespread criticism from residents and their families.

Other states, such as Massachusetts and Connecticut, decided to separate regular nursing home residents from COVID-19 patients and survivors by designating “COVID-19 only” wards.

What was the original guidance from the CDC and CMS on discharging COVID-19 patients to nursing homes?

On May 24, 2020, in response to criticism of New York State’s policy on forcing nursing homes to accept discharged hospital patients, Governor Andrew Cuomo responded by saying that “the policy that the [New York] Department of Health put out was in line directly with the March 13 directive put out by (Centers for Disease Control and Prevention) and (Centers for Medicare and Medicaid Services).”

The original CMS and CDC guidance, issued on March 13, 2020, stated that “a nursing home can accept a resident diagnosed with COVID-19 and still under Transmission-Based Precautions for COVID-19 as long as the facility can follow CDC guidance for Transmission-Based Precautions. If a nursing home cannot, it must wait until these precautions are discontinued. CDC has released Interim Guidance for Discontinuing Transmission-Based Precautions or In-Home Isolation for Persons with Laboratory-confirmed COVID-19.”

The guidance included a note that said, “nursing homes should admit any individuals that they would normally admit to their facility, including individuals from hospitals where a case of COVID-19 was/is present. Also, if possible, dedicate a unit/wing exclusively for any residents coming or returning from the hospital.”

In short, the CDC did not offer clear and timely guidance to the states. However, it was only guidance. States had the authority and the ability to decide against sending COVID-19 patients back to nursing homes if they did not think the nursing homes were equipped to handle them. And given the evidence, many certainly were not.

This Crisis Was a Long Time Coming

Unclear and unenforceable CDC and CMS guidance early in this epidemic played a role in COVID-19 spreading in nursing homes. But state and local officials have for years ignored deficiencies in nursing home inspections, as identified by state auditors. This in turn meant that long-standing and well-known problems that existed in their nursing homes were left unresolved.

For example, in a [2018 report](#) on the California Department of Health, the state auditor found that the Department had “not performed all of the state inspections of nursing facilities that it is required to perform and has not issued citations in a timely manner.” In an [article](#) for the Los Angeles Times from May 2020, a spokesperson for the California Department of Health revealed that it has 17,000 nursing home-related complaints sitting in the backlog waiting to be addressed. Some states also failed to follow up on complaints to ensure deficiencies were corrected. In a [2017 report](#) from the Office of the Inspector General, the New York State Department of Health was accused of not having evidence of deficiency corrections for a majority of sampled nursing homes. In response to continuous lapses in inspection protocols, on [October 17, 2019](#), CMS announced that it would be revising its processes for monitoring and improving the performance of State Survey Agencies (SA). CMS expects to begin implementing these new revisions in FY 2020, and the Office of the Inspector General expects to [release a report](#) evaluating CMS’ oversight of state survey agencies by FY 2021.

Problems in nursing homes stretch beyond inspection protocols. One of the major issues affecting nursing homes is inadequate staff levels. In 2018, after analyzing federal data on nursing home staffing, [Kaiser Health News](#) reported that the records “reveal frequent and significant fluctuations in day-to-day staffing, with particularly large shortfalls on weekends. On the worst staffed days at an average facility, new data show, on-duty personnel cared for nearly twice as many residents as they did when the staffing roster was fullest.” The reasons for fluctuations and inadequate staffing levels vary by state. In California, for example, a waiver provided by the state legislature allowed [40% of skilled nursing facilities](#) to avoid minimum staffing requirements introduced in 2018. And in New York, there are [no minimum staffing requirements](#) for nursing homes at all.

Moving Forward: New Center Solutions

In the midst of a global pandemic that is disproportionately targeting the elderly and infirm, quick and decisive action is essential to protect residents during the COVID-19 pandemic. This could include the following:

- Make all nursing home policies released by CMS that specifically pertain to COVID-19 codified regulations, rather than just guidance, so that they become legally binding.
- Require states to make all nursing home data on cases and deaths available to the public.
- As in the case of Life Care Centers of America, CMS should expand fines to all nursing homes found to be deficient during the COVID-19 crisis and require them to fix deficiencies by a certain date (e.g., December 31, 2020), after which they lose Medicare and Medicaid funding.

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Beyond short-term fixes, a long-term commitment to nursing home residents across the country is necessary to improve their health, safety, and quality of life.

Addressing issues with general nursing home protocols, staffing levels, and even staff training will require structural changes that increase transparency and accountability. For nursing homes with a track record of deficiencies, one place to start is the CMS's Special Focus Facility (SFF) program.

The Special Focus Facility Initiative was designed for nursing homes with a repeated history of deficiencies caused by underlying structural issues. According to CMS, facilities in the program are inspected twice as frequently as regular homes. Given that most homes are inspected once a year, this means SFF homes are on average inspected twice a year. Within a time frame of about 18-24 months, facilities in the program either graduate (having corrected deficiencies), incur monetary fines and/or are terminated from the Medicare and Medicaid program, or are given more time to correct deficiencies if “promising progress” is made. All SFF candidates have a designation to identify their participation in the program on the Nursing Home Compare website, which allows the public to view information and ratings on Medicare and Medicaid-certified nursing homes.

The SFF program is itself not without problems, as revealed in a bipartisan report on nursing homes by Senator Bob Casey (D-PA) and Senator Pat Toomey (R-PA). Only 88 facilities can participate in the SFF Initiative, which accounts for approximately 0.6% of nursing homes nationwide. There are about 400 other facilities, an additional 2.5%, that “qualify for the program because they are identified as having a ‘persistent record of poor care’ but are not selected for participation as a result of limited resources at the Centers for Medicare and Medicaid Services.” Originally, facilities on the candidate lists were not disclosed to the general public, nor were they surveyed twice as regularly as regular homes. Since the publication of Senator Casey and Senator Toomey’s report, CMS has begun providing a list of SFF candidates to the public. However, the Nursing Home Compare website does not designate SFF candidates, only participants, resulting in the public being unaware of the structural issues at a nursing home that actually qualify it to be in the SFF program.

For the SFF program to be successful, it needs to bolster transparency for nursing home residents and their families while incentivizing nursing home facilities to fix deficiencies and provide high standards of care to their residents. Here are some places to start:

- Increasing funding to the SFF Initiative so that all nursing homes that qualify for the program are able to be selected for participation
- Inspecting SFF Candidates at the same rate as SFF participants
- Including an “SFF Candidate” designation on the Nursing Home Compare website
- Including information on the Nursing Home Compare website about how long a facility has been a participant in the SFF initiative
- Shortening the time frame for nursing homes to correct deficiencies before they are fined or terminated from the Medicare and Medicaid program

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ABOUT CENTERING ON CORONAVIRUS

Centering on Coronavirus is a new policy series from The New Center that provides insights and analyses of how coronavirus is progressing, how it is impacting our health system, economy and workers, and the extraordinary human, policy, and technological resources that are being mobilized to fight it.

ABOUT THE NEW CENTER

American politics is broken, with the far left and far right making it increasingly impossible to govern. This will not change until a vibrant center emerges with an agenda that appeals to the vast majority of the American people. This is the mission of The New Center, which aims to establish the ideas and the community to create a powerful political center in today's America.

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