



## **Protection and Advocacy Long-Term Care Facilities Funding Proposal**

Protection and Advocacy (P&A) agencies comprise the nationwide network of congressionally created and mandated, legally based disability rights agencies. P&A agencies, based in every state and territory, have the authority to perform onsite investigations and provide legal representation and other advocacy services, under federal, state, and local laws, to **all** people with disabilities.

The COVID-19 pandemic has illuminated the long-standing and underlying challenges facing long-term care facilities and the disastrous impact lack of monitoring and enforcement to remedy systemic deficiencies in care and treatment have had on residents<sup>1</sup>. Nursing home residents have experienced a hugely disproportionate number of deaths due to the virus<sup>1</sup>. Since the beginning of the pandemic, P&As around the country have been on the frontlines as they work with persons with disabilities in facilities (like nursing homes and other long-term care facilities) and in the community to protect them from abuse and neglect and ensure access to needed services and supports. Throughout the COVID-19 emergency, P&As have developed innovative ways to monitor conditions in these facilities, despite the physical challenges and limited access to residents due to visitation restrictions.

In August/September 2020, NDRN conducted a “COVID-19 Monitoring Survey” seeking current information on how P&As are doing monitoring in the context of COVID-19 restrictions. In response to the question “Which of the following provider or facility types has your agency monitored during the COVID-19 pandemic?” 50% of all respondents indicated that they had monitored nursing homes. The COVID-19 pandemic has made it clear that the P&As have a critical role to play in protecting long-term care facility residents from abuse and neglect and Congress should provide dedicated funding to ensure the P&As can continue and expand this work.

### **Pre-COVID-19 Context**

Systemic issues within long-term care facilities certainly existed prior to COVID-19 and the pandemic has renewed focus on the severe lack of robust monitoring within these facilities. According to a 2018 Office of Inspector General report, 1 in 7 nursing homes were understaffed and according to a recent House of Representatives study, 1 in 5 nursing home residents are inappropriately given antipsychotic drugs<sup>2</sup>. Additionally, the

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1 Coronavirus Commission on Safety and Quality in Nursing Homes, *Commission Final Report (2020)*, <https://edit.cms.gov/files/document/covid-final-nh-commission-report.pdf>

2 E. (2020a). Fall 2020 LTC Journal. Retrieved from <http://nursinghome411.org/fall-2020-ltc-journal/?emci=ef541a04-ea07-eb11-96f5-00155d03affc&emdi=b82bb737-9408-eb11-96f5-00155d03affc&ceid=8958082>

Coronavirus Commission on Safety and Quality in Nursing Homes Report states that “Short-term solutions cannot be found in isolation from the pressing need for systemic improvements in the long-term care sector.” There are more than 15,600 nursing homes and 28,900 assisted living centers in the U.S.<sup>3</sup> Given these systemic issues and the acknowledgement that pressing reforms are needed in this massive system, it is critical that the P&As be given dedicated resources to conduct expanded monitoring and advocacy for residents in the long-term care sector in order to ensure residents are better protected both during this pandemic and beyond.

### **Centers for Medicare & Medicaid Services Guidance**

On September 17, 2020, the Centers for Medicare & Medicaid Services (CMS) issued guidance for visitation in nursing homes during the COVID-19 pandemic.<sup>4</sup> The guidance acknowledges the access authority of the P&As established under federal law and states, “Under its federal authorities, representatives of P&A programs are permitted access to all facility residents....” The guidance makes clear that the Federal Government views the P&As as an appropriate agency to monitor nursing homes with the backing of federal statutes. This acknowledgment further supports the position that the P&As play a critical role in protecting residents of long-term care facilities from abuse and neglect. Additionally, others have pointed out the need for greater transparency and oversight, with calls for expanded monitoring and accountability<sup>5</sup> and the P&As are well positioned to systemically address these issues. Unfortunately, P&As have not been provided the necessary resources to carry out these urgent tasks in long-term care facilities without having to stop other work the P&As perform on a daily basis. Congress needs to provide dedicated funding to ensure the P&As can expand the crucial work they are doing in long-term care facilities without having to abandon the other important work they do for people with disabilities within other types of facilities or within the community.

### **Need for Additional Funding**

There is no question that the COVID-19 pandemic has caused the most harm in congregate settings, especially nursing homes. At a systemic level, there is a need for expanded capacity to monitor, report and remedy conditions in nursing homes. P&As are in every state and territory, and have the skills and legal access to perform this work, but lack dedicated funding to expand the amount of monitoring performed. While guidance from the Federal Government recognizing the role of the P&As in monitoring the long-term care sector is certainly welcome, it is insufficient to simply recognize the role of the P&As without dedicating additional resources to address conditions in tens of thousands of facilities around the country. The P&As have performed this work to the

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3 National Center For Health Statistics, “Vital and Health Statistics,” February 2019.

[https://www.cdc.gov/nchs/data/series/sr\\_03/sr03\\_43-508.pdf](https://www.cdc.gov/nchs/data/series/sr_03/sr03_43-508.pdf).

4 Centers for Medicare & Medicaid Services Memorandum QSO-20-39-NH, Nursing Home Visitation-COVID-19 (2020), <https://www.cms.gov/files/document/qso-20-39-nh.pdf>

5 Producing a Just Culture of Safety and Quality in Nursing Homes. (2020). Retrieved November 13, 2020, from <https://sir.advancedleadership.harvard.edu/news/producing-just-culture-safety-and-quality-nursing-homes>

best of their abilities with limited resources, but need additional support in order to advocate for and protect people with disabilities both during and after the pandemic. Congress should provide dedicated funding to ensure the P&As can continue and expand their work to protect long-term care facility residents from abuse and neglect.