

CPM Urges Gov. Newsom--Don't Give Legal Immunity to Nursing Homes Over Coronavirus

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Rampant coronavirus cases at nursing homes throughout the country have put an intense focus on the way these health care facilities do business, and people are asking if everything was done to adequately protect residents.

The answer is a resounding no.

Nursing-home operators are aware of the neglect. While the very seniors they are supposed to protect lay dying, the nursing-home industry is knocking on doors in Sacramento looking for immunity to protect itself from liability.

Nursing homes have petitioned Gov. Gavin Newsom to sign an executive order that would grant them blanket immunity from all civil and criminal prosecution for the duration of the pandemic. The proposed order would grant immunity, not only for injuries or deaths that result from treating the coronavirus, but for all claims of elder abuse.

Sweeping immunity for nursing homes is a horrific idea for our society. It allows bad actors to walk away from responsibility for their actions. For years, these facilities have been trying to circumvent the court process via arbitration, forcing patients to forgo public jury trials. The industry likes arbitration because it can control (and hide) the process from start to finish. Hearings take place in settings removed from view, and the complaints never become part of any public record — the cloak of secrecy is a powerful tool through which to neutralize patient rights and bury past misconduct.

Arbitration clauses are bad news for nursing-home residents, but offering up blanket immunity to nursing homes is far worse. The state simply should not be orchestrating escape routes for nursing homes

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when this virus is infecting and killing the elderly in disproportionate numbers. Abandoning or neglecting senior patients at their time of need should not be rewarded.

According to figures published by the Wall Street Journal last week, 10,000 people already have died from the coronavirus in American nursing-care facilities. The Bay Area has seen outbreaks at numerous nursing homes. Given these numbers, is it appropriate to issue get-out-of-jail-free cards?

Under the industry proposal, nearly anything a provider does — including the mistreatment of seniors unrelated to COVID-19 treatment — will have no legal consequences. In essence, patients will be at the mercy of an industry long known for ignoring the rules. And the message would ring clear: protect the nursing-home industry and write off the old people as collateral damage to the pandemic.

The type of immunity order now on the governor's desk — in which nursing homes can't be sued unless a patient proves that the provider demonstrated intentional misconduct — is almost impossible to prove in a civil case. Moreover, the industry bill includes far more than the treatment of coronavirus. Remove any possibility of a liability for wrongdoing and you substantially increase the risk of harm to this frail and vulnerable population.

Compounding the problem is the fact that nobody's watching. Right now, families can't visit patients in care facilities, an administrative measure taken to mitigate the spread of the virus. As a result, there are no second set of eyes watching the patients to make sure rules are being followed.

Rather than indemnifying nursing homes without restriction, Gov. Newsom should exclude elder abuse, as defined by the California Welfare and Institutions Code, from any immunity order. Doing anything else will be akin to throwing our elderly to the wolves.

The coronavirus is a ruthless pathogen that has brought untold suffering to the world. That fact should not be used to shield nursing homes from accountability. Expecting these facilities to police themselves without any oversight will certainly doom more of our seniors.

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