

July 13, 2020

Bill McBride
Executive Director
National Governors Association
Hall of States
444 North Capitol Street NW, Suite 267
Washington, DC 20001

Re: Prioritizing the needs of post-acute and long-term care patients and the physicians and caregivers who serve them.

Dear Mr. McBride:

On behalf of the American Medical Association (AMA) and our physician and medical student members, I write to thank the National Governors Association (NGA) for its continued, proactive and thoughtful response to the COVID-19 pandemic. Governors have demonstrated leadership in addressing the pandemic from the beginning and managing the ongoing economic and public health threat and uncertainties posed by COVID-19. The AMA also greatly appreciates the NGA's receptiveness to recommendations that the AMA has provided to Governors in prior correspondence.

I write to encourage the NGA to continue to prioritize the health and safety of the residents of post-acute and long-term care (PALTC) facilities as those facilities struggle to respond to, and protect their residents from, the continuing COVID-19 pandemic even as many states reopen. According to a recent *New York Times* article, deaths related to COVID-19 in nursing homes and other long-term care facilities for older adults account for more than 43 percent of U.S. pandemic fatalities.¹ The AMA joins the NGA in its concern for the particularly vulnerable PALTC patient population and the physicians and others who care for PALTC patients. This is due to our belief that health care is a fundamental human good and that society has an obligation to make access to an adequate level of care available to all its members, regardless of ability to pay,² and thus the AMA is concerned about the health and safety of this nation's patients, regardless of health care setting. Further, many residents of PALTC facilities have AMA members as their attending physicians, and AMA members are medical directors of such facilities. It is imperative that our nation's Governors and the NGA remain vigilant in their efforts to safeguard not just the health and safety of PALTC patients, but that of their physicians and other health care professionals treating them as well--many of whom have been caring for residents non-stop from the pandemic's inception, constantly placing themselves at risk.

The AMA believes that the following actions are among those necessary to ensure the health and safety of PALTC residents and the physicians and health care professionals who serve them.

¹ 43% of U.S. Coronavirus Deaths Are Linked to Nursing Homes, The New York Times, June 27, 2020, accessible at <https://www.nytimes.com/interactive/2020/us/coronavirus-nursing-homes.html>

² See Code of Medical Ethics Opinion 11.1.1

Continuing to pursue appropriate liability protections

Medical decisions (e.g., COVID-19 testing, treatment, infection control, quarantine, isolation, etc.) have had to be made in an environment of uncertainty, where guidance is not only diverse among numerous state and federal agencies, but subject to change. Uncertainty may be especially problematic in the PALTC setting, where the stakes are high, given the vulnerability of older patients to COVID-19 infection and death, compounded by the relatively close quarters in PALTC facilities. Matters are further complicated because disproportionately high positive COVID-19 test results among PALTC residents may result in higher infection rates among PALTC staff, leading to staff furloughs and shortages. Efforts have also been hampered by inadequate medical supplies, acute shortages of personal protective equipment (PPE), and insufficient supplies of testing resources and inadequate testing that can lead to delayed or inaccurate diagnosis.

To ensure that everything is being done for PALTC residents in this uncertain environment in which PALTC physicians and caregivers operate, we again urge the enactment of the liability protections set out in our April 20 letter to the NGA. These protections would reduce barriers to physicians and other health care professionals serving PALTC residents, thereby encouraging existing caregivers to remain on station and making it easier for PALTC facilities to recruit and hire staff—vital considerations not only now but also with the prospect of likely COVID-19 recurrences in the fall and beyond. Further, like physicians generally, PALTC physicians and other caregivers, who have steadfastly cared for some of the most at-risk patients in the nation and at great risk to themselves, are, without liability protections, confronting the prospect of years of costly litigation notwithstanding the extraordinary challenges that the pandemic continues to present in PALTC facilities. Consequently, those caring for COVID-19 patients in PALTC facilities need liability protections in cases where services are provided or withheld in situations that may be beyond their control (e.g., following government guidelines, directives, lack of resources), and when providing care in good faith during the COVID-19 public health emergency and not in situations of gross negligence or willful misconduct.

Adequate Personal Protective Equipment (PPE) and infection control supplies

Many PALTC facilities, like so many physicians, are hampered by a shortage of PPE. Obtaining infection control supplies, including PPE, disinfectant and hand sanitizer continues to pose challenges to physicians and those caring for PALTC residents. As many states reopen, there will be an intense demand for these supplies, and the chronic stress on supply chains hamstringing the ability of non-hospital physicians reopening their practices well as PALTC facilities to obtain supplies from usual channels. Having enough PPE and other infection control supplies is vital in the PALTC setting in order to minimize the heightened risk of COVID-19 infection that residents and their physicians and caregivers face. **Accordingly, we urge that all efforts be taken to ensure that PALTC facilities, physicians, and staff have sufficient PPE and other essential infection control supplies.**

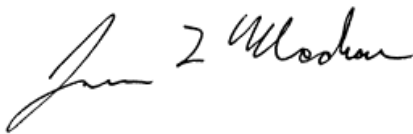
Collaboration with authorities during the reopening process

Although states have started reopening, the extent to which the pandemic has lessened remains to be seen and it may be that states will have to slow or suspend reopening, or even return to previous restrictions. Infectious disease experts also warn that the country may experience a rise in COVID-19 cases this fall. Accordingly, as part of the reopening process, and with an eye to the possibility of a COVID-19 resurgence in the very near future, the AMA urges the NGA and Governors to take a thorough and thoughtful approach as they consider whether to loosen restrictions that were put in place to protect the PALTC patient population and its caregivers. Rigorous systems initially put in place to fully protect PALTC facilities, residents, and their caregivers should only be lifted or loosened with great care and in consultation with the people most familiar with residents, staff and resources—the medical directors, attending physicians, and other clinical leaders responsible for the care PALTC patients. **We urge the NGA and its member Governors to work in close collaboration with medical directors and others responsible for the care, health, and safety of PALTC patients to determine if, and when, relaxation of vital safeguards (e.g., visitor restrictions, social distancing policies and PPE requirements) is appropriate.**

In conclusion, the AMA urges all Governors to continue taking action to ensure that patients receive the care they need, and that the health and safety of those whom the COVID-19 pandemic places at particular risk (e.g., PALTC patients) remains a priority. The AMA thanks the NGA and the nation's Governors for the leadership they have demonstrated throughout this pandemic, and for partnering with the AMA and the nation's physicians. The AMA welcomes any opportunity to work with NGA and its member Governors, not only to rise to the challenges posed by COVID-19, but to make our nation's health care system equitable for all patients.

If you have any questions or need additional information, please contact Wes Cleveland, JD, Senior Attorney, Advocacy Resource Center, at wes.cleveland@ama-assn.org.

Sincerely,

A handwritten signature in black ink, appearing to read "Jim L. Madara". The signature is written in a cursive, flowing style.

James L. Madara, MD