



**SHUTTLESWORTH LAW FIRM**

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**VIA FIRST CLASS MAIL**

Governor Kay Ivey  
600 Dexter Ave  
Montgomery, AL 36130

**RE: Jefferson County Health Department Letter to Long-Term Care Facilities**

Dear Governor Ivey:

I am writing with respect to the letter disseminated by the Jefferson County Department of Health to all long-term care facilities in Jefferson County on March 31, 2020 regarding certain guidelines and protocols endorsed by the County with respect to discharge and readmission of COVID-19 positive residents to long-term care facilities. Because this is a matter of great urgency and impacts the health and welfare of thousands of elderly residents of Jefferson County, I am writing directly to you rather than to Dr. Mark Wilson of the Jefferson County Health Department who is copied on this letter.

More specifically, Dr. Wilson, MD, Jefferson County Health Officer with the Jefferson County Department of Health, states in his letter to Jefferson County nursing homes that the County endorses the “non-test-based strategy for discontinuation of transmission-based precautions”. What this action by Jefferson County essentially accomplishes is the readmission of COVID-19 positive patients back into long-term care facilities without obtaining a COVID-19 test confirming that they are no longer virus positive and subject to transmission of the virus. Based upon on any authoritative medical guidelines concerning the appropriate transmission precautions to take with COVID-19 positive persons, and particularly those who may come into contact with persons at the highest risk of complications (e.g. elderly nursing home residents), including recommendations made by the Centers for Disease Control which Dr. Wilson cites in his letter, such action will almost certainly result in large scale transmission of the COVID-19 virus to elderly nursing home residents as well as the nurses, nursing assistants, therapists and other nursing staff and personnel caring for these persons. This is an extremely irresponsible and reckless action taken with disregard to the health and welfare of elderly nursing home residents in Jefferson County, and this pronouncement must be retracted and rescinded by the Governor’s office.

In his letter, Dr. Wilson states that the Jefferson County Department of Health “endorses” the Centers for Disease Control policies outlined in its “Discontinuation of Transmission-based

Precautions and Disposition of Patient with COVID-19 in Healthcare Setting”. Dr. Wilson goes on to state that the Jefferson County Department of Health “endorses the non-test-based strategy for continuation of transmission-based precautions”. Contrary to Dr. Wilson’s assertions and “endorsements”, the position taken by Jefferson County is in direct contradiction to both the spirit and the letter of the recommendations of the Center for Disease Control.

The CDC recommendations referenced by Dr. Wilson give very specific guidelines as to when a testing-based strategy should be employed rather than the “non-test-based strategy” endorsed by Dr. Wilson. On this point, the CDC states the following:

“Hospitalized patients may have longer periods of SARS-CoV-2 RNA detection compared to patients with mild or moderate disease. Severely immunocompromised patients (e.g., medical treatment with immunosuppressive drugs, bone marrow or solid organ transplant recipients, inherited immunodeficiency, poorly controlled HIV) may have longer periods of SARS-CoV-2 RNA detection and prolonged shedding of infectious recovery. These groups may be contagious for longer than others. **IN ADDITION, PLACING A PATIENT IN A SETTING WHERE THEY WILL HAVE CLOSE CONTACT WITH INDIVIDUALS AT RISK FOR SEVERE DISEASE WARRANTS A CONSERVATIVE APPROACH. HENCE, A TEST-BASED STRATEGY IS PREFERRED FOR DISCONTINUATION OF TRANSMISSION BASED PRECAUTIONS FOR PATIENTS WHO ARE HOSPITALIZED OR SEVERELY IMMUNOCOMPROMISED OR BEING TRANSFERRED TO A LONG-TERM CARE OR ASSISTED LIVING FACILITY.”**

Based upon the clear language of the CDC recommendation, Dr. Wilson’s plan to release COVID-19 positive nursing home residents back into facilities without first obtaining negative testing results is contradicted by the plain language of the recommendation itself.

Dr. Wilson’s letter goes even further in eliminating appropriate protections for elderly residents of long-term care facilities in Jefferson County by stating that “patients who have tested positive for COVID-19 may return to a long-term care facility prior to the [non-test-based] criteria being met as long as the facility uses contact precautions as outlined in the “Interim Infection Prevention and Control Recommendations for Patients with Suspected or Confirmed Coronavirus Disease 2019 in Healthcare Setting”, which is another CDC recommendation guideline. In essence, Dr. Wilson is stating here that COVID-19 positive residents may be sent back to nursing homes without obtaining negative test results, without a minimal three (3) day symptom-free period post-recovery and seven (7) day period following first symptoms, so long as the long-term care facility uses “contact precautions”. First, the CDC recommendation guideline referred to by Dr. Wilson has extensive contact precautions to be exercised in healthcare facilities, primarily applicable to acute care facilities, and basically consists of measures of patient isolation and the extensive use of personal protective equipment by staff, and by the patient during the administration of care. Of course, anyone with any knowledge of the nursing home industry in Jefferson County, Alabama understands that virtually none of these facilities are equipped on any level to administer the type of precautions referred to by the CDC in this recommendation guideline, nor do any of these

facilities have the protective gear required for this purpose. Long-term care facilities bear little resemblance to acute care hospitals. They have neither the level of staffing, level of staff training, equipment, physical facilities, or any other resources needed to properly achieve the isolation of persons who are COVID-19 positive to prevent the rapid spread of this deadly disease, nor the protective equipment to protect nursing home staff. At best, Dr. Wilson's statements reveal a deep failure of understanding of the realities of long-term care facilities, and at worst a complete disregard for the health and safety of elderly nursing home residents in Jefferson County.

To quote the CDC recommendation for "Interim Infection Prevention and Control" referred to by Dr. Wilson,

**"IT IS PARTICULARLY IMPORTANT TO PROTECT INDIVIDUALS AT INCREASED RISK FOR ADVERSE OUTCOMES FROM COVID-19 (e.g. OLDER INDIVIDUALS WITH CO-MORBID CONDITIONS)".**

Again, the very recommendation guideline referenced by Dr. Wilson completely contradicts his position that COVID-19 positive nursing home residents should be returned and readmitted to long-term care facilities without negative testing or other adequate assurances that they will not transmit the virus to vulnerable residents and nursing home staff.

My particular work as a lawyer involves representing the interests of nursing home residents and their families in cases involving neglect or abuse. I have been engaged in this practice for nearly thirty years and I have a great affinity and respect for our community elders who reside in these nursing facilities. The idea that we would subject our elders to a very likely, if not certain, wide-spread transmission of COVID-19 based upon a reckless decision by the Jefferson County Department of Health is unconscionable. Presently, based upon CMS guidelines handed down on March 9, 2020, the families of elderly residents are not even able to visit their loved ones. The obvious and stated reason for this is for the avoidance of transmission of the COVID-19 virus to these vulnerable residents. The idea that these persons are not even able to see their loved ones at the facility but will be subject to a COVID-19 positive resident being readmitted without proper negative testing is nonsensical and frankly dangerous.

I have had a number of opportunities over the last day to discuss the issue with my colleagues who represent the nursing homes and with whom I normally find myself in direct opposition on issues involving nursing home care. However, I can tell you that without a single exception, defense counsel representing nursing homes in Jefferson County agree completely with my assessment and position on this issue, as do their clients (e.g. the nursing home owners themselves) who are most aware of all that they are completely unequipped to deal with this scenario unfolding as a result of Dr. Wilson's letter.

While we understand the concerns regarding acute care hospitals being pushed beyond capacity to care for COVID-19 positive patients, the solution does not lie in the readmission of nursing home residents back into these facilities without properly ensuring that they can no longer transmit the virus. In fact, this action will likely result in further overburdening acute care facilities with increasing numbers of nursing home residents and staff who fall ill. Rather, we request that the County and State commit all available resources to converting the large number of vacant

facilities available to house these residents until they can be cleared properly for readmission.

In closing, I implore you to summon all the power of the Governor's office and issue a decree rescinding Dr. Wilson's letter and mandating statewide the test-based strategy foreseen by the CDC with respect to readmission to COVID-19 positive nursing home residents back into the nursing facilities. It is only by a statewide action of this type that we will be able to properly protect and care for the elderly in our community. They deserve both our respect and our protection during this difficult time. Thank you for your consideration,

*Perry G. Shuttlesworth, Jr.*

Perry G. Shuttlesworth, Jr.

PGSjr/ahb

cc:

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