

Congress of the United States

Washington, DC 20515

July 26, 2022

The Honorable Kathleen C. Hochul
Governor
State of New York
NYS State Capitol Building
Albany, NY 12224

Dear Governor Hochul:

Since June 15, 2020, Republicans on the Select Subcommittee on the Coronavirus Crisis (Select Subcommittee) have been requesting full and complete data regarding COVID-19 positive patients in New York nursing homes.¹ Unfortunately, former Governor Andrew Cuomo never responded to our requests.

On March 25, 2020, former Governor Cuomo issued guidance that stated, “[n]o resident shall be denied re-admission or admission to the [nursing home] solely based on a confirmed or suspected diagnosis of COVID-19” and “[nursing homes] are prohibited from requiring a hospitalized resident...be tested for COVID-19 prior to admission or re-admission.”² This order was in direct contradiction to Centers for Disease Control and Prevention (CDC) and Centers for Medicare & Medicaid Services’ (CMS) guidance and likely led to thousands of unnecessary deaths. During a transcribed interview last year, former White House Coronavirus Coordinator Dr. Deborah Birx testified to the following when asked about Governor Cuomo’s infamous March 25, 2020, nursing home order:

Counsel: **So, would [New York state’s] guidance have violated CMS guidance?**

Dr. Birx: **Yes.³**

Dr. Birx also spoke about the negative effects of readmitting potentially positive COVID-19 nursing home residents:

Counsel: **Do you think admitting potentially positive COVID-19 nursing home residents back into the nursing home without the ability to quarantine or isolate them is dangerous and could lead to unnecessary deaths?**

¹ Letter from Hon. Steve Scalise, Ranking Member, Select Subcomm. on Coronavirus Crisis, H. Comm. on Oversight & Reform, to Hon. Andrew Cuomo, Gov., N.Y. (July 15, 2020).

² Memorandum from the New York State Department of Health to Nursing Home Administrators, et. al., *Advisory: Hospital Discharges and Admissions to Nursing Homes* (Mar. 25, 2020) (on file with Comm. Staff).

³ Oct. 13 Birx TI at 119-121 (emphasis added).

Dr. Birx: **Yeah, I think that’s why the CDC guidance was very clear about precautions needed to protect them.** And I think that’s why [CMS Administrator] Seema [Verma] was proactively working on this infection control guidance.⁴

You promised that your administration “will be fully transparent” regarding the data surrounding COVID-19 deaths and nursing home readmissions.⁵ This investigation is even more important considering troubling reports from the New York Assembly Minority Leader that you are in “no rush” to provide answers to the families that lost loved ones in New York nursing homes.⁶ We therefore request you produce all information previously requested, as soon as possible but no later than August 9, 2022. For your ready reference the prior requests are:

1. The total number of COVID-19 related nursing home deaths, including deaths that occurred at the nursing home and deaths of a registered nursing home patient at a hospital, by day between January 1, 2020 and present.
2. All State issued guidance, directives, advisories, or executive orders regarding hospital discharges to nursing homes or any and all other types of assisted living facilities, including those previously superseded, in chronological order.
3. All underlying information, documents, and research used by the New York State Department of Health (NYSDOH) to draft the July 6, 2020, report entitled “Factors Associated with Nursing Home Infections and Fatalities in New York State During the COVID-19 Global Health Crisis.”
4. All information, documents, and communications between the Office of the Governor and the NYSDOH regarding COVID-19 mitigation in nursing homes and other long-term care facilities.
5. All information, documents, and communications between the NYSDOH and any and all of the State’s Nursing Home Administrators relating to the implementation of any state COVID-19 guidance, particularly the March 25 “must-admit” order, the NYSDOH report, or the methodology for calculating COVID-19 deaths in nursing homes.
6. All information, documents, and communications between the Office of the Governor of New York and the U.S. Department of Justice regarding COVID-19 in nursing homes and other long-term care facilities run by, or for, the State of New York from January 1, 2020 through present.

⁴ *Id.* at 123 (emphasis added).

⁵ Matt Sedensky, *Cuomo Exit Isn’t Stopping Push For Answers on Nursing Homes*, NBC (Aug. 13, 2021), <https://www.nbcnewyork.com/news/politics/cuomo-exit-isnt-stopping-push-for-answers-on-nursing-homes/3218234/>.

⁶ Michelle Del Rey, *Hochul stalling nursing home investigation, minority leader says*, TIMES UNION (July 11, 2022).

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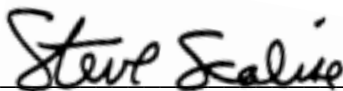
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7. All information, documents, and communications amongst the Office of the Governor of New York regarding the U.S. Department of Justice's August 26, 2020 request for data and information pursuant to the Civil Rights of Institutionalized Persons Act.

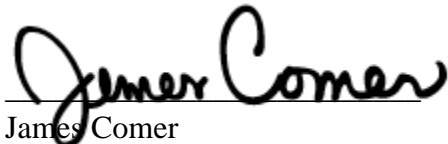
To ask any follow-up or related questions, please contact Committee on Oversight and Reform staff at (202) 225-5074. The Committee on Oversight and Reform is the principal oversight committee of the U.S. House of Representatives and has broad authority to investigate "any matter" at "any time" under House Rule X. Further, the Select Subcommittee on the Coronavirus Crisis is empowered to investigate "any disparate impacts of the coronavirus crisis on different communities and populations, including...age."⁷

Thank you in advance for your cooperation with this inquiry.

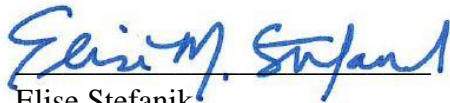
Sincerely,



Steve Scalise
Ranking Member
Select Subcommittee on the Coronavirus Crisis



James Comer
Ranking Member
Committee on Oversight & Reform



Elise Stefanik
Chairwoman
House Republican Conference

cc: The Honorable James E. Clyburn, Chairman
Select Subcommittee on the Coronavirus Crisis

The Honorable Carolyn B. Maloney, Chairwoman
Committee on Oversight & Reform

⁷ H. Res. 935 § 3(a)(6) (2020).