

**Congress of the United States**  
**House of Representatives**

SELECT SUBCOMMITTEE ON THE CORONAVIRUS PANDEMIC  
2157 RAYBURN HOUSE OFFICE BUILDING  
WASHINGTON, DC 20515-6143

Majority (202) 225-5074  
Minority (202) 225-5051

May 19, 2023

The Honorable Kathy Hochul  
Governor of New York  
NYS State Capitol Building  
Albany, NY 12224

Dear Governor Hochul:

The Select Subcommittee on the Coronavirus Pandemic is investigating how the State of New York implemented federal guidance from both the U.S. Centers for Medicare and Medicaid Services (CMS) and U.S. Centers for Disease Control and Prevention (CDC) regarding protecting residents in nursing homes and other long term care facilities. Since June 15, 2020, Select Subcommittee Republicans have sent six letters to you, former-New York Governor Andrew Cuomo, or his Administration. To date, no one has responded to any of our requests. Accordingly, this investigation will be a priority for the Select Subcommittee to ensure accountability and transparency and inform future public health decisions.

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.”<sup>1</sup> This order was in direct contradiction to CDC and 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:

Q:	<b>So, would [New York state’s] guidance have violated CMS guidance?</b>
A:	<b>Yes.</b> <sup>2</sup>

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

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<sup>1</sup> 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).

<sup>2</sup> Oct. 13 Birx TI at 119-121 (emphasis added).

**Q: 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?**

**A: 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.<sup>3</sup>

You promised that your administration “will be fully transparent” regarding the data surrounding COVID-19 deaths and nursing home readmissions.<sup>4</sup> To assist the Select Subcommittee with its investigation, we request the following documents and information as soon as possible but no later than June 2, 2023:

1. 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.
2. 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.
3. The total number of COVID-19 related nursing home positive cases, including individuals who tested positive at a nursing home and individuals who tested positive at a hospital, by day between January 1, 2020 and present.
4. The total number of confirmed or suspected COVID-19 positive patients returned or admitted to a nursing home or other long-term care facility between March 25, 2020 and present.
5. All documents and communications regarding the advisory issued by the New York State Department of Health on March 25, 2020, titled, “Advisory: Hospital Discharges and Admission to Nursing Homes.”
6. All documents and communications regarding the report issued by the New York State Department of Health on July 6, 2020, titled, “Factors Associated with Nursing Home Infections and Fatalities in New York State During the COVID-19 Global Health Crisis,” including but not limited to:

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<sup>3</sup> *Id.* at 123 (emphasis added).

<sup>4</sup> 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/>.

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- a. All underlying information, documents, and research used by the New York State Department of Health to draft the July 7, 2020, report.
7. All documents and communications regarding the report issued by the New York Attorney General on January 28, 2021, titled, "Nursing Home Response to COVID-19 Pandemic."
8. All documents and communications regarding the request for information by the U.S. Department of Justice on August 26, 2020, regarding the Civil Rights of Institutionalized Persons Act.
9. All documents and communications between the Office of the Governor and the New York State Department of Health regarding COVID-19 mitigation in nursing homes and other long-term care facilities.
10. All documents and communications between the New York State Department of Health and any and all of the state's Nursing Home Administrators relating to the implementation of the March 25 order, the New York State Department of Health report, or the methodology for calculating COVID-19 deaths in nursing homes.

The Select Subcommittee on the Coronavirus Pandemic is authorized to investigate "the implementation or effectiveness of any Federal law or regulation applied, enacted, or under consideration to address the coronavirus pandemic and prepare for future pandemics" and "executive branch policies, deliberations, decisions, activities, and internal and external communications related to the coronavirus pandemic" under H. Res. 5. To ask any follow-up or related questions, please contact Select Subcommittee on the Coronavirus Pandemic staff at (202) 225-5074.

Thank you for your attention to this very important matter.

Sincerely,



Brad R. Wenstrup, D.P.M.

Chairman

Select Subcommittee on the Coronavirus Pandemic



Nicole Malliotakis

Member of Congress

cc: The Honorable Raul Ruiz, Ranking Member  
Select Subcommittee on the Coronavirus Pandemic