



NEW YORK STATE SENATOR

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Senator O'Mara's weekly column 'From the Capitol' ~ for the week of August 10, 2020 ~ "Cuomo administration stonewalling on nursing homes"

THOMAS F. O'MARA August 10, 2020

| ISSUE: **COMBATING COVID-19 AND PROTECTING NEW YORKERS**



Senator O'Mara offers his weekly perspective on many of the key challenges and issues facing the Legislature, as well as on legislative actions, local initiatives, state programs and policies, and more. Stop back every Monday for Senator O'Mara's latest column...

This week, "**Cuomo administration stonewalling on nursing homes**"

To summarize where things stand in our efforts to better understand the tragedy that has unfolded in New York State's nursing homes since the onset of COVID-19 in mid-March -- and the Cuomo administration's response to it -- look no further than the exchange I had last Monday with state Department of Health (DOH) Commissioner Howard Zucker at a joint, bipartisan Senate-Assembly legislative hearing on the crisis.

Since April, when it was becoming clear that coronavirus "hot spots" in nursing homes in Hornell and other communities throughout New York State were alarming, I have called for an independent investigation. That need remains, especially now when at least 6,500 seniors have died -- although many believe the number of deaths is much higher.

That's the first indication of the stonewalling that now surrounds this tragedy. We cannot even get a straight answer from the Cuomo administration on the most straightforward questions, including: How many COVID-19 deaths in nursing homes and among those transferred from nursing homes to hospitals who died there?

Last Monday, the Senate committees on Aging, Health, and Investigations and Government Operations, convened a public hearing to try to find out. While my Republican colleagues and I called for the Democrat leaders of the Senate and Assembly to utilize their subpoena powers to compel testimony, they chose not to.

In the end, Commissioner Zucker voluntarily testified, but only for a limited time and not all legislators on the subject committees were able to ask questions due to his shortened appearance.

What did we learn? Not much!

I attempted, in my capacity as the ranking member on the Investigations Committee, to first get an answer to the most basic question: What is the exact number of nursing home deaths? The commissioner answered that he would provide that number sometime in the future.

"Were you cognizant of the fact that nursing home deaths that occurred in hospitals would be an important topic of interest for us today," I asked.

The commissioner answered, "Yes I was."

To which I responded, "Yet you come with no information to give us any idea of how many deaths there were?"

On March 25, the DOH issued a now infamous directive that stated: “No resident shall be denied re-admission or admission to the NH (nursing home) solely based on a confirmed or suspected diagnosis of COVID-19. NHs are prohibited from requiring a hospitalized resident who is determined medically stable to be tested for COVID-19 prior to admission or readmission.”

In other words, state nursing homes were largely compelled to accept even potentially COVID-positive residents back into the home after a hospital stay.

Immediately after New York issued that directive, which according to the commissioner’s testimony is still in place (however, at the time of last Monday’s hearing the Order had been removed from the DOH website), on March 26 the prominent, national medical professionals group American Medical Directors Association (AMDA)-The Society for Post-Acute Care and Long-Term Care (PALTC) Medicine warned against it. In fact they stated the order was “over-reaching, not consistent with science...and beyond all, not in the least consistent with patient safety principles.” The group’s statement went on, “Rather than bullying nursing facilities and medical providers to make unsafe decisions, the State of New York would be wise to direct its energies at ensuring adequate personal protective equipment is available to all healthcare providers...developing a long-neglected healthcare workforce, and identifying and standing up alternative care sites.”

Three days thereafter, on March 29, AMDA-PALTC was joined in another statement by the American Health Care Association (AHCA) and the National Center for Assisted Living (NCAL). The groups stated, “As organizations dedicated to preserving the safety of patients and residents in post-acute and long-term care settings including assisted living, we strongly object to this policy directive and approach...This is a short-term and short-sighted solution that will only add to the surge in COVID-19 patients...We understand the need for public health and elected officials to weigh the risks and benefits of their decisions...However, a blanket order for every nursing home in the state to accept all admissions from hospitals is not sound policy.”

When I further asked Commissioner Zucker if he had received and read these statements, he said no.

It is simply unbelievable that New York’s top health official would not have been informed on statements from leading medical professionals expressing their alarm at one of New York State’s key directives and its potential and alarming risk to the elderly and these residential facilities overall.

Unfortunately, Commissioner Zucker cut short his testimony last Monday, well before questioning could be undertaken by all committee members as well as any follow-up from members, including me.

A second hearing on nursing homes, this one focused on what has happened across Upstate New York, will take place this Monday, August 10, beginning at 10 a.m. You can view it live through the state Senate website: www.nysenate.gov/events.

Earlier this week, in my role as the Senate GOP leader on the Investigations Committee, and after Democrat committee leaders continued to fail to issue subpoenas to top Cuomo administration officials, I delivered a letter to Commissioner Zucker requesting that he return again on August 10 to complete his testimony.

“It was unfortunate,” I wrote, “that your testimony (on August 3) was inexplicably cut short before all committee members had an opportunity to ask questions of you and that numerous inquiries were met with incomplete responses or a lack of data. This left many legislators – and the New Yorkers they represent – with many questions unanswered.”

I outlined a series of these unanswered questions and lines of inquiry [you can read my letter and the statements referenced above in the document attached above].

The Cuomo administration cannot and should not attempt to stonewall its way out of answers to these admittedly tough questions.

The remarkable lack of knowledge and transparency on the human toll in nursing homes, assisted living and long-term care facilities by the Department of Health and the Cuomo administration is indefensible.

I hope that Commissioner Zucker testifies for the length of time needed, and with proper preparation and data, to provide the Senate, Assembly, and most importantly grieving families, what is needed to understand how this tragedy unfolded among our most vulnerable population – so that we can have the knowledge and understanding we need to try to ensure that it never happens again.

[UPDATE, August 10: DOH Commissioner Zucker chose not to appear at today's legislative hearing.]