



NEW YORK STATE SENATOR

Thomas F. O'Mara

Senator O'Mara's weekly column 'From the Capitol' ~ for the week of January 31, 2022 ~ 'Does the stonewalling continue on nursing homes?'

THOMAS F. O'MARA January 31, 2022

| ISSUE: **COMBATING COVID-19 AND PROTECTING NEW YORKERS; PROTECTING NURSING HOME RESIDENTS**



We need 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.

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, "Does the stonewalling continue on nursing homes?"

Approaching nearly two full years since the onset of COVID-19, it remains important, in my view and the view of many others, to summarize where things stand in our efforts to better understand the tragedy that unfolded in New York State's nursing homes.

We are also now one year past the Senate Democrat Majority muting my debate demanding subpoenas be issued to investigate the fateful March 25th Order and ensuing Cuomo administration cover-up of the extent of nursing homes deaths.

It's important to examine the Cuomo administration's role and, now, the Hochul administration's response to it.

As the ranking member on the Senate Investigations Committee since 2020, I can't help but look back to August of that year and recall an exchange I had with then-state Department of Health (DOH) Commissioner Howard Zucker at a joint, bipartisan Senate-Assembly legislative hearing.

Beginning in April 2020, it was becoming clear that coronavirus "hot spots" in nursing homes in Hornell and other communities throughout New York State were alarming and I had already called for an independent investigation.

The August 2020 hearing would serve to further unveil the stonewalling surrounding this tragedy at the highest levels of New York government. We could not get a straight answer from the Cuomo administration on the most basic questions. Consequently, the Senate committees on Aging, Health, and Investigations and Government Operations, convened this public hearing. 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 refused.

As a result, then-Health Commissioner Zucker voluntarily testified, but only for a limited time and not all legislators on the committees were able to ask questions due to his shortened appearance. Consequently, we didn't learn anything. I attempted, in my capacity as the ranking member on the Investigations Committee, to get an answer to the most straightforward question: What is the exact number of nursing home deaths? The commissioner answered that he would provide that number sometime in the future.

On March 25, 2020, the DOH had issued the now infamous and clearly deadly 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 former residents back and new individuals into the home after a hospital stay.

On March, 26, 2020, the day after DOH issued that directive (a directive the state wouldn’t rescind until May 2020), 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.”

Three days later, 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, “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...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.

I said at that time, going on two years ago now, that it was 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.

It would continue to be a sad and fundamentally egregious chapter in New York State’s COVID-19 response. My Senate Republican colleagues and I would repeatedly call on the Senate’s Democrat leaders to undertake investigations, utilizing subpoena power, to get answers. These requests were continually ignored including, at a meeting of the Senate Investigations Committee on February 1, 2021, when my microphone was muted as I attempted to once again call on committee Chair James Skoufis to undertake an investigation. At the committee’s very next meeting, while renewing our call for subpoenas, Senator Skoufis referred to our motion as “political theater.”

We now know, of course, how former, disgraced Governor Cuomo and his inner circle purposely withheld information and accurate data on the number of COVID-19 deaths in state nursing homes

in order to, in part, portray the administration's response efforts in a more favorable light in the pandemic memoir that Cuomo would write and be paid millions for. In other words, for personal and political gain, Cuomo and top aides willingly created and pushed a false narrative about his handling of COVID-19 in nursing homes and other areas. It was a false account built on cover-ups, deceptions, stonewalling, whitewashing, and possible criminal conduct.

State and federal investigations remain underway.

But what of the March 25th order? The number of COVID-19 deaths in nursing homes was certainly exacerbated by that fateful state action. Why was that order issued? What high-level discussions surrounded it? In other words, the who, what, when, where, and why of the order remains shrouded in unanswered questions.

One of the most impactful government watchdogs throughout the pandemic has been Bill Hammond of the Empire Center, an Albany-based think tank. His investigative work has been significant. Last August, Hammond wrote, "The exact impact of the (Cuomo administration's) original policy on nursing home residents remains uncertain, in large part because the Cuomo administration succeeded in clouding the picture."

The ex-governor and most of his top aides have fled the Capitol, of course, but they can never outrun these facts – and, more importantly, they never should be able to get away with having clouded the picture on nursing homes.

Fast forward, then, to January 20, 2022, at a virtual hearing of the Senate Finance Committee to consider Governor Kathy Hochul's nomination of Mary Bassett, who formerly headed New York City's health department, as the new state Health Commissioner.

At her confirmation hearing, Commissioner Bassett was questioned about the March 25th order, what the Hochul administration thought about it and, more importantly, how it might help inform the new administration's approach to nursing homes.

Unbelievably, Commissioner Bassett stated that she had never read the March 25th order!

She further testified, "I decided when I took up this post that I wasn't going to try and unravel what happened in the nursing homes under the previous commissioner. But simply look forward."

To put it mildly, that was an unacceptable – not to mention incredibly alarming and troubling – response to one of the most important questions still going unanswered about the most devastating public health crisis this state has ever confronted.

Her non-reply was eerily reminiscent of the testimony I recalled above from former Commissioner Zucker and, in fact, it was enough to make me and my Senate Republican colleagues vote against her confirmation.

Her non-answer smacked of continued stonewalling at the top of New York government. Why?

Bill Hammond recently wrote that Governor Hochul, in her proposed state budget, “makes no mention of investigating what went wrong, learning from those mistakes or making sure New Yorkers are better protected next time.”

It’s the old saying about being condemned to repeat history if you don’t learn from it.

No administration should ever be allowed to keep stonewalling its way out of answers to admittedly difficult and tough questions.

The remarkable disregard being shown by the Hochul administration for seeking knowledge and delivering transparency on the human toll in nursing homes, assisted living and long-term care facilities is indefensible.

We need 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.

I have been a strong and frequent critic of New York’s pandemic response over the past two years, especially in nursing homes. The Senate Republican Conference intends to keep a spotlight on the wrongdoings.

Among New York State’s highest priorities, there remains a glaring need to undertake a full and transparent accounting of the COVID-19 response – its costs, its failings, and its shortcomings.

It’s one of the keys to ensuring better responses in the future.

Furthermore, we intend to keep pushing, in any way we can, to assist in fully examining the abuses of power that came to define the highest levels of state government at a critical moment of crisis and put so many New Yorkers at great peril.

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