

THE SENATE



STATE OF NEW YORK

January 29, 2021

Re: Investigation into COVID-19 New York Nursing Homes Statistics

Dear Senators Schumer and Gillibrand and Members of the New York State Congressional Delegation:

As you know, this week, the New York State Attorney General released a scathing report entitled, '*Nursing Home Response to COVID-19 Pandemic*.' According to the report, the New York State Department of Health (DOH) may have undercounted the number of nursing home fatalities resulting from the COVID-19 pandemic by over 50%. The fact that we are more than 10 months out from the start of the Governor Andrew Cuomo's declared State of Emergency for the pandemic and we do not have a definitive answer to the question of how many residents perished from COVID-19 in these facilities is wholly unacceptable, and DOH has made it abundantly clear that it has no intention of sharing this information willingly. In light of this resistance and lack of transparency from DOH and the Executive, we respectfully request an immediate update on the inquiry by the Civil Rights Division of the United States Department of Justice into New York State's handling of the COVID-19 crisis in our nursing homes.

Despite knowing that the elderly were among the most susceptible to complications resulting from the virus and the risk of rapid transmission in congregate settings, DOH issued guidance on March 25, 2020, providing that "[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," as well as prohibiting nursing homes from requiring medically stable hospitalized residents to be tested for COVID-19 prior to their admission or re-admission. Following the outcry of public officials, nursing home staff and loved ones, DOH rescinded the guidance in May, but not before more than 6,000 patients hospitalized due to COVID-19 were admitted into a nursing home. This policy, as well as others, jeopardized vulnerable nursing home residents, but we are still without complete knowledge of the full extent of the toll the virus took on these residents.

In a letter to Governor Cuomo dated August 26, 2020, the Civil Rights Division of the Department of Justice requested information on this issue, specifically requesting statistics regarding the number of nursing home residents who contracted the virus, regardless of where it was contracted, and the number of residents who died of COVID-19 in a nursing home or any other location after being transferred from the nursing home. As we are sure you know, New York State is the only state that restricts its nursing home fatality count to individuals who died while still in the nursing home—excluding those who contracted the virus in the nursing home but passed away in another facility such as a hospital. This obfuscation of the data allowed the Governor to claim that New York State was 46<sup>th</sup> in the nation in nursing home COVID-19 deaths relative to total COVID-19 deaths in the state. The Civil Rights Division expanded their inquiry into the reported statistics from New York State in late October; given the distressing report from the New York Attorney General, an update on this matter is all the more urgent.

We commend the New York State Attorney General for putting politics aside and prioritizing the health and safety of vulnerable New Yorkers by shedding light on the crisis that took place in these facilities. We are far

past the time when New Yorkers deserved and needed answers to these tough, but simple questions. Last July, DOH issued a report on the issue, “[i]n an effort to learn for the future from the data now available from the earliest days of the first in a century pandemic.” This report effectively absolved DOH of any mishandling of the crisis, but the Department refused—and to this day, continues to refuse—to share the underlying data used to generate the report despite the Department’s own assertion that this information could be used to “learn for the future” in combating the virus. The move only further highlighted the need for an independent, non-partisan investigation into the matter.

Following the report, the Health Commissioner testified in a joint hearing by the New York State Legislature on August 3<sup>rd</sup>, where the Commissioner was repeatedly pressed for answers regarding reported statistics on nursing home fatalities and promised to release this critically important data. As a follow-up to the hearing, the Chairs of the New York State Senate Standing Committees on Health, Investigations and Government Operations, and Aging, as well as the Administrative Regulatory Review Commission, sent DOH a letter on August 20 with questions from Members of the legislature, including a request for the full breakdown of deaths in long term care residential settings. The letter requested a response within three weeks, however it has been over five months since that letter and these questions remain unanswered.

Given DOH’s lack of response to lawmakers, it is no surprise that the state has also fought and delayed turning over information on nursing home fatality statistics from outside organizations. Media outlets including the *Associated Press* and *Times Union*, and independent organizations including the Empire Center for Public Policy, have repeatedly attempted to obtain information through Freedom of Information Law (FOIL) requests, but have been stonewalled every step of the way. In times of crises, transparency is all the more essential, and state lawmakers, advocates for nursing homes residents and others are being denied the critical opportunity to provide a more active role in protecting vulnerable New Yorkers based on what should be a full and clear account of what transpired in our state. It is abundantly clear that the state will delay and block the release of this vital information for as long as it can, and each day the public is kept in the dark on this issue puts more lives at risk.

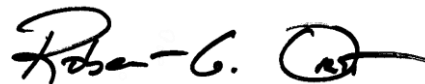
We respectfully ask that you work with the Civil Rights Division of the United States Department of Justice to ensure New Yorkers are provided with an immediate update on their investigation, and if information-sharing is still being denied by DOH, we ask that you use all the authority available to you as Members of the United States Congress to elicit this critical information.

We sincerely appreciate your attention to this urgent matter, and we look forward to working together to protect the health and safety of our most vulnerable New Yorkers and those who care for them.

Sincerely,



Senator Sue Serino  
41<sup>st</sup> District



Senator Robert G. Ort  
62<sup>nd</sup> District



Senator Fred Akshar  
52<sup>nd</sup> District



Senator Phil Boyle  
4<sup>th</sup> District



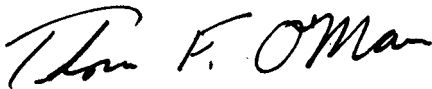
Senator Joseph A. Griffo  
47<sup>th</sup> District



Senator Daphne Jordan  
43<sup>rd</sup> District



Senator Mike Martucci  
42<sup>nd</sup> District



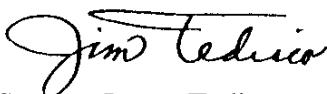
Senator Thomas F. O'Mara  
58<sup>th</sup> District



Senator Anthony H. Palumbo  
1<sup>st</sup> District



Senator Patty Ritchie  
48<sup>th</sup> District



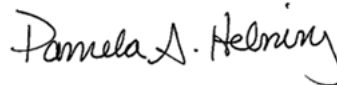
Senator James Tedisco  
49<sup>th</sup> District



Senator George M. Borrello  
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Senator Patrick M. Gallivan  
59<sup>th</sup> District



Senator Pamela Helming  
54<sup>th</sup> District



Senator Andrew J. Lanza  
24<sup>th</sup> District



Senator Mario R. Mattera  
2<sup>nd</sup> District



Senator Peter Oberacker  
51<sup>st</sup> District



Senator Edward A. Rath III  
61<sup>st</sup> District



Senator Daniel G. Stec  
45<sup>th</sup> District



Senator Alexis Weik  
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