

Congress of the United States

Washington, DC 20515

June 25, 2020

The Honorable Letitia James
Attorney General of New York
Office of the Attorney General
The Capitol
Albany, NY 12224

Dear Attorney General James:

The ongoing COVID-19 pandemic has disproportionately affected the elderly, especially those living in nursing homes and other long-term care facilities. On April 23, 2020, in coordination with New York Governor Andrew Cuomo and the New York State Department of Health, you announced a statewide investigation of nursing homes during the ongoing pandemic.¹ We understand that your investigation will not cover the Governor's March 25, 2020, directive on "Hospital Discharges and Admissions to Nursing Homes," which recklessly reintroduced the disease into the most vulnerable population.² Therefore, we write requesting that you formally review the impact of this deadly policy and make your findings available to the citizens of New York and families of those who lost loved ones as a result of this deadly policy.

On March 13, 2020, the Center for Medicare and Medicaid Services (CMS) issued guidance "For Infection Control and Prevention of Coronavirus Disease 2019 (COVID-19) in Nursing Homes."³ This guidance was a blueprint for individual states to follow when determining how to best control outbreaks of COVID-19 in nursing homes and long term care facilities. This guidance does not direct any nursing home to accept a COVID-19 positive patient, if they are unable to do so safely. In fact, it says "nursing homes should admit any individual *that they would normally admit to their facility*, including individuals from hospitals where a case of COVID-19 was/is present" *only if* the nursing home can follow Centers for Disease Control (CDC) quarantining guidance.⁴

CMS Administrator Seema Verma said, "[u]nder no circumstances should a hospital discharge a patient to a nursing home that is not prepared to take care of those patient's needs."⁵

¹ Alex Spanko, *New York Attorney General to Investigate Nursing Homes Amid COVID-19, with \$10K Fines for Violations*, SKILLED NURSING NEWS (Apr. 23, 2020), <https://skillednursingnews.com/2020/04/new-york-attorney-general-to-investigate-nursing-homes-amid-covid-19-with-10k-fines-for-violations/>.

² Memorandum from the New York State Department of Health to Nursing Home Administrators, et. al. (Mar. 25, 2020) (on file with Comm. Staff).

³ Memorandum from David R. Wright, Director, Quality, Safety & Oversight Group, U.S. Centers for Medicare & Medicaid Services, to State Survey Agency Directors (Mar. 13, 2020) (on file with Comm. Staff).

⁴ *Id.*; (emphasis added).

⁵ Charles Creitz, *Medicare chief Verma blasts Cuomo for trying to deflect blame onto White House fo NY nursing home deaths*, FOX NEWS (May 28, 2020), <https://www.foxnews.com/media/seema-verma-andrew-cuomo-nursing-home-deaths>.

CMS did not mandate COVID-19 positive patients back to nursing homes but, instead, stated that a COVID-19 case at a hospital does not preclude the nursing home from accepting a COVID-19 negative patient.

Nonetheless, on March 25, 2020, the New York Department of Health issued on their website a now deleted directive on “Hospital Discharges and Admissions to Nursing Homes.”⁶ This directive said “[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 who is determined medically stable to be tested from COVID-19 prior to admission or re-admission.”⁷ For clarity, this advisory mandated nursing homes accept known COVID-19 positive patients and, further, mandated that nursing homes not even test patients for COVID-19 prior to admission.

On June 15, 2020, the Select Subcommittee on the Coronavirus Crisis wrote Governor Cuomo seeking information regarding his decision to mandate nursing homes and long-term cares facilities admit untested and contagious COVID-19 patients from hospitals.⁸ This decision likely contributed to the thousands of elderly deaths in New York State. According to the most recent available data, New York has suffered 6,423 nursing home deaths related to COVID-19.⁹ That is more than 25% of the State’s total COVID-19 deaths and more than 4% of the State’s entire nursing home population.¹⁰

In your current review of New York nursing homes actions during the coronavirus pandemic we request that you include in your investigation the following topics:

1. The deliberative process of all State-issued guidance, directives, advisories, and executive orders regarding hospital discharges to nursing homes or all other types of assisted living facilities, including the orders subsequently superseded;
2. An analysis of any State-issued guidance, directives, advisories, or executive orders regarding hospital discharges to nursing homes or any other types of assisted living facilities which adversely affected the nursing homes’ efforts to contain or respond to the pandemic; and
3. The data collection practices of the State:

⁶ Memorandum from the New York State Department of Health to Nursing Home Administrators, et. al. (Mar. 25, 2020) (on file with Comm. Staff).

⁷ *Id.*; (emphasis added).

⁸ Letter from Steve J. Scalise, et. al., to Andrew Cuomo, Governor, State of New York (June 15, 2020).

⁹ State by state nursing home data collected via open source research by the Committee to Unleash Prosperity available at [https://docs.google.com/spreadsheets/d/e/2PACX-](https://docs.google.com/spreadsheets/d/e/2PACX-1vRQztYJ5rdGLdKqNi7_7SGGciugkgwscN3judtUw2hoimsfH-t_NYXKMPONJkrA4jtJNMsuR7jkQite/pubhtml#)

[1vRQztYJ5rdGLdKqNi7_7SGGciugkgwscN3judtUw2hoimsfH-t_NYXKMPONJkrA4jtJNMsuR7jkQite/pubhtml#](https://docs.google.com/spreadsheets/d/e/2PACX-1vRQztYJ5rdGLdKqNi7_7SGGciugkgwscN3judtUw2hoimsfH-t_NYXKMPONJkrA4jtJNMsuR7jkQite/pubhtml#).

¹⁰ *Id.*

- a. including the total number of COVID-19 infected patients who were admitted or readmitted to nursing homes or other types of assisted living facilities each day between January 1, 2020 and present;
- b. the name of the facility of admittance or readmittance; and
- c. the number of nursing home or assisted living deaths that occurred in either the patient's place of residence or in a medical setting.

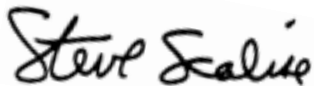
In addition to the above topics for your review, we respectfully request the following documents and information:

1. All information, documents, and communications between your office, the Office of the Governor, and the New York Department of Health regarding the investigation of nursing homes between January 1, 2020 and present.

In addition to these documents, we request that you provide a written commitment to investigate this deadly policy by July 2, 2020.

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 "preparedness for and response to the coronavirus crisis, including the planning for and implementation of testing, containment, mitigation, and surveillance activities."¹¹ Thank you in advance for your cooperation with this inquiry.

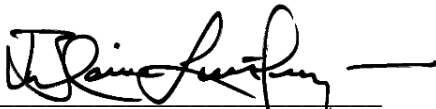
Sincerely,



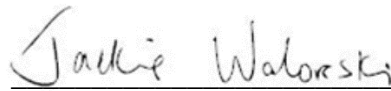
Rep. Steve Scalise
Ranking Member
Select Subcommittee on the
Coronavirus Crisis



Rep. Jim Jordan
Select Subcommittee on the
Coronavirus Crisis



Rep. Blaine Luetkemeyer
Select Subcommittee on the
Coronavirus Crisis



Rep. Jackie Walorski
Select Subcommittee on the
Coronavirus Crisis

¹¹ H. Res. 935 § 3(a)(4) (2020).

The Honorable Letitia James

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Rep. Mark E. Green, MD
Select Subcommittee on the
Coronavirus Crisis



Peter T. King
Member of Congress



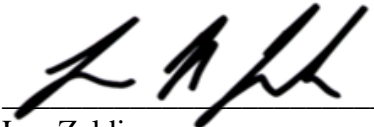
Tom Reed
Member of Congress



John Katko
Member of Congress



Elise Stefanik
Member of Congress



Lee Zeldin
Member of Congress

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

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