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MARK E. GREEN, M.D.

SELECT SUBCOMMITTEE ON THE CORONAVIRUS CRISIS  
2157 RAYBURN HOUSE OFFICE BUILDING  
WASHINGTON, DC 20515-6143  
PHONE (202) 225-4400  
<https://coronavirus.house.gov>

January 28, 2021

The Honorable Andrew M. Cuomo  
Governor of New York  
NYS State Capitol Building  
Albany, NY 12224

Dear Governor Cuomo:

Considering the shocking new report revealing you and your administration drastically undercounted nursing home deaths in New York state, we write to request your full and immediate response to our previous questions. To date, you and New York State Attorney General Letitia James have failed to respond to requests posed in three separate letters. The report released today establishes that you ordered COVID-19 positive patients back into nursing homes, this order caused infections and fatalities, and you took concerted efforts to cover it up.

Today, Attorney General James issued a report entitled “Nursing Home Response to the COVID-19 Pandemic.”<sup>1</sup> Among other things, this report concluded that the Cuomo Administration undercounted the total number of “resident deaths associated with nursing homes in New York...by approximately 50 percent.”<sup>2</sup> This report requires your immediate attention and a full and immediate response to the numerous inquiries made by the Republicans on the Select Subcommittee on the Coronavirus Crisis (Select Subcommittee).

Republicans on the Select Subcommittee and many others have been concerned about the impact COVID-19 is having in nursing homes, particularly in the five states—including New York—that defied Centers for Medicare and Medicaid Services (CMS) guidelines and instead issued unfounded “must-admit” orders directing COVID-19 positive patients back into nursing homes. You have obstructed our efforts to gather facts. Specifically, the Select Subcommittee has taken the following steps to uncover the truth, which you, in contrast, have sought to obfuscate:

- On June 11, 2020, the Select Subcommittee held a briefing entitled “The Devastating Impact Of The Coronavirus Crisis In America’s Nursing Homes.”<sup>3</sup> During the briefing,

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<sup>1</sup> See generally NEW YORK STATE OFFICE OF THE ATTORNEY GENERAL LETITIA JAMES, NURSING HOME RESPONSE TO THE COVID-19 PANDEMIC, (Jan. 28, 2021), <https://ag.ny.gov/sites/default/files/2021-nursinghomesreport-final.pdf> [hereinafter James Report].

<sup>2</sup> *Id.* at 12.

<sup>3</sup> *The Devastating Impact Of The Coronavirus Crisis In America’s Nursing Homes: Briefing Before Select Subcomm. on the Coronavirus Crisis, H. Comm. on Oversight & Reform*, 116<sup>th</sup> Cong. (2020).

Select Subcommittee Republicans examined the impacts of five governors’—New Jersey Governor Phil Murphy, Michigan Governor Gretchen Whitmer, California Governor Gavin Newsom, Pennsylvania Governor Tom Wolf, and yourself—orders directing COVID-19 patients into nursing homes, regardless of the home’s ability to properly quarantine and treat them.

- On June 15, 2020, Select Subcommittee Republicans sent a letter to you requesting information on your deadly nursing home order.<sup>4</sup> To date, we have not received a direct response from you or your administration, though you are clearly aware of our investigation, as evidenced by your decision to hurl political slurs at us rather than simply answer our questions.
- On June 25, 2020, after receiving no response from your administration, Select Subcommittee Republicans—along with members of the New York Congressional Delegation—called on Attorney General James to investigate your Administration’s nursing home orders and provide us with information.<sup>5</sup> Even though we never received a response, it now appears Attorney General James acted on our request and is investigating your dangerous policies.
- On July 9, 2020, after still no response from you or your administration, Select Subcommittee Republicans wrote again seeking the data and science behind the New York State Department of Health (NYSDOH) report shielding yourself from wrongdoing and blaming the hard-working front-line heroes of bringing COVID-19 into New York’s nursing homes.<sup>6</sup> Likewise, we have received no direct response from your office.

Data and transparency drive an intelligent response to any pandemic but considering the novel nature of COVID-19, complete and accurate data is more important now than ever before. An *Associated Press* report confirmed what the Select Subcommittee said since June, you and your administration are actively covering up the total number of COVID-19 nursing home deaths in your state by not reporting nursing home residents that died in hospitals.<sup>7</sup> Your ongoing lack of transparency with Congress, the people of New York, and the country necessitates your immediate and thorough response to this and all previous letters.

The report issued today by Attorney General James is distressing. Some shocking revelations include:

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<sup>4</sup> Letter from Steve Scalise, et.al., Ranking Member, Select Subcomm. on the Coronavirus Crisis, H. Comm. on Oversight & Reform, to Andrew Cuomo, Governor, State of N.Y. (June 15, 2020).

<sup>5</sup> Letter from Steve Scalise, et. al., Ranking Member, Select Subcomm. on the Coronavirus Crisis, H. Comm. on Oversight & Reform, to Letitia James, Attorney General, State of N.Y. (June 25, 2020).

<sup>6</sup> Letter from Steve Scalise, Ranking Member, Select Subcomm. on the Coronavirus Crisis, H. Comm. on Oversight & Reform, to Andrew Cuomo, Governor, State of N.Y. (July 9, 2020).

<sup>7</sup> Bernard Condon, et. al., *New York’s true nursing home death toll cloaked in secrecy*, ASSOCIATED PRESS (Aug. 11, 2020), <https://apnews.com/212ccd87924b6906053703a00514647f>.

- “COVID-19 resident deaths associated with nursing homes in New York State appear to be undercounted by [NYSDOH] by approximately 50 percent.”<sup>8</sup>
- “From March 25 [the date of your ‘must-admit’ order] to May 8 [the date the ‘must-admit’ order was rescinded], 6,326 hospital patients were admitted [into] 310 nursing homes.”<sup>9</sup>
- “Data linking the number of nursing home deaths to the admissions policy contained in the March 25 guidance is obscured by that same guidance, which also prohibited nursing homes from requiring COVID-19 testing as a criterion for admission.”<sup>10</sup>
- “4,000 nursing home deaths occurred after the issuance of the March 25 guidance, including some in 323 facilities that apparently had no reported COVID-19 infections before receiving admission or re-admission of hospital resident who had been diagnosed with COVID-19.”<sup>11</sup>
- “[T]hese admissions may have contributed to increased risk of nursing home resident infection, and subsequent fatalities...”<sup>12</sup>

Worst of all, during the recent New York State Assembly and Senate hearings on this very topic, New York Commissioner of Health, Dr. Howard Zucker, admitted that New York keeps a count of nursing home resident deaths at hospitals but declined to provide that number under oath. You know the number of nursing home residents who unfortunately passed away from COVID-19 but continue to refuse to provide it. This raises serious concerns and insinuates complicity in thousands of preventable deaths.

Today it is clear, you ordered COVID-19 positive patients back into nursing homes, this order caused infections and fatalities, and you took concerted efforts to cover it up.

For us to bring transparency and facts to the forefront and provide some semblance of closure to the thousands of families hurt by your recklessness, it is necessary you answer the questions Select Subcommittee Republicans have posed numerous times. As such, we request the following documents and information immediately but no later than February 4, 2021:

1. 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.

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<sup>8</sup> James Report, at 12.

<sup>9</sup> *Id.* at 36.

<sup>10</sup> *Id.* at 37.

<sup>11</sup> *Id.*

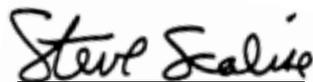
<sup>12</sup> *Id.*

2. 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.
3. All underlying information, documents, and research used by the NYSDOH to draft the July 6, 2020, report entitled “Factors Associated with Nursing Home Infections and Fatalities in New York State During the COVID-19 Global Health Crisis.”
4. All information, documents, and communications between the Office of the Governor and the NYSDOH regarding COVID-19 mitigation in nursing homes and other long-term care facilities.
5. All information, documents, and communications between the NYSDOH and any and all of the State’s Nursing Home Administrators relating to the implementation of any state COVID-19 guidance, particularly the March 25 “must-admit” order, the NYSDOH report, or the methodology for calculating COVID-19 deaths in nursing homes.

In addition to these documents, please provide a staff-level briefing no later than February 4, 2021. This briefing may be conducted remotely for convenience and safety issues. To schedule the briefing or ask any follow-up or related questions, please contact Committee on Oversight and Reform staff at (202) 225-5074.

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.”<sup>13</sup> Thank you in advance for your cooperation with this inquiry.

Sincerely,



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

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

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<sup>13</sup> H. Res. 935 § 3(a)(4) (2020).