

Congress of the United States
House of Representatives
Washington, DC 20515

May 22, 2020

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

Dear Governor Cuomo,

Since the start of the COVID-19 outbreak, more than 5,800 residents have died in New York nursing and adult care facilities due to COVID-19-related issues. Recent reports also suggest [more than 4,300 COVID-positive patients](#) were sent to nursing homes across the state. Both numbers are likely higher.

It is clear mistakes were made. More information, however, is needed to understand the scope of the state's missteps and the extent to which state officials knew the specific actions they were taking were in direct conflict with federal best practices and would endanger the lives of thousands of residents.

Without more context into the state's decision-making process and the fact-base that justifies the state's latest testing directives, the lives of New York's nursing home residents will remain in jeopardy.

We would like to hold a virtual meeting next week to discuss the following questions and await your availability.

1. Why did the state disregard the concerns of groups like the Society For Post Acute And Long-Term Care Medicine, which were raised three months ago?

[On March 26th, the group stated](#) "Unsafe transfers will increase the risk of transmission in post-acute and long-term care facilities which will ultimately only serve to increase the return flow back to hospitals, overwhelming capacity, endangering more healthcare personnel, and escalating the death rate." Was this notice of clear and present danger received and ignored?

2. [The Governor recently suggested](#) the federal government and its guidance is to blame for the state's nursing home deaths. If the state did in fact adhere to the CDC's recommendations, why is New York the only state with fatality rates significantly higher than other states who publicly followed CDC guidance?
3. Does the state still believe the CDC's guidance was ["nursing home\[s\] cannot discriminate against a COVID patient"](#)? CMS documents over the course of March provided flexible guidance to nursing homes that they should only accept COVID positive patients as long as they could follow ["transmission-based precautions."](#) No apparent documentation from the period forced states or nursing homes to accept patients.

4. CMS' March documents also noted such residents should only go to a facility with "[adequate personal protective equipment supplies and an ability to adhere to infection prevention and control recommendations for the care of COVID-19 patients.](#)" The CDC recommended that "[preferably, the patient would be placed at a facility that has already cared for COVID-19 cases, in a specific unit designated to care for COVID-19 residents.](#)" Did the state make any attempt to certify all nursing homes who were asked to receive COVID-positive patients had such supplies or units?
5. What aspect of the guidance quoted above did the state feel legally compelled them to force nursing homes to take more than [4,300 COVID-positive patients](#)?
6. CMS guidance repeatedly noted that its recommendations "[for COVID-19 may be adapted by state and local health departments to respond to rapidly changing local circumstances.](#)" Why did the state take more than 40 days and many thousands of deaths later to adapt to the crisis?
7. The state has now reversed course and is requiring nursing homes and care facilities to test all residents and staff twice a week. Does the Governor believe the CDC's federal guidelines are wrong? The CDC has [advised](#) testing residents once a week.
8. Who will be paying for the state's twice weekly testing mandate? Has the Governor spoken with insurers to confirm nursing home caregivers or facilities would not be forced to cover the cost? Estimates suggest conducting roughly 400,000 tests a week in New York state will cost between \$24 million and \$37 million.
9. With regards to the twice weekly testing mandate, what measures is the state prepared to take to ensure financial resources are not siphoned away from the facilities that need them the most right now? What measures is the state prepared to take to prevent massive staffing shortages for nursing facilities?
10. If the state is planning to force the closure of nursing homes that are unable to comply with the Governor's mandate, how will the state ensure residents are not forced back to hospitals or left without a facility to house them? Has the state studied how forcing residents back to hospitals would devastate available bed capacity and impact hospital's ability to begin providing critical surgeries again?
11. Has the state spoken to the clinical labs? Are they willing to process tests they know to be duplicative? Can the state confirm that all individuals tested twice a week would receive the results of their first test before the second test was conducted?
12. Can the state provide additional clarification as to why subsequent FAQs conflicted with the original directive that individuals who previously tested positive do not need to be tested twice weekly?

13. Beyond testing mandates, what actions is the state taking to explicitly help facilities keep their residents safe?

We await your prompt response and are prepared to provide solutions as to how the state should proceed to address this crisis.

Sincerely,



Tom Reed
Member of Congress

Fred Akshar
State Senator

George Borrello
State Senator

Rick Funke
State Senator

Pamela Helming
State Senator

Chris Jacobs
State Senator

Tom O'Mara
State Senator

Robert Ortt
State Senator

James Seward
State Senator

Marjorie Byrnes
Member of Assembly

Christopher Friend
Member of Assembly

Andy Goodell
Member of Assembly

Joseph Giglio
Member of Assembly

Stephen Hawley
Member of Assembly

Brian Kolb
Member of Assembly

Brian Manktelow
Member of Assembly

Michael Norris
Member of Assembly

Phil Palmesano
Member of Assembly

CC: The Honorable Alex Azar, Secretary, U.S. Department of Health and Human Services
CC: The Honorable Seema Verma, Administrator, Centers for Medicare & Medicaid Services