



ERIE COUNTY COMPTROLLER

HON. STEFAN I. MYCHAJLIW

June 3, 2020

Mr. Alex M. Azar II
Secretary
HHS Office of the Secretary
200 Independence Avenue, S.W.
Washington, D.C. 20201

Dear Secretary Azar,

As an independently elected official in New York State and the Chief Fiscal Officer for Erie County government, I am asking for a federal investigation into the decision by Governor Andrew M. Cuomo to continue to prevent some hospitals in Erie County from allowing elective surgeries.

I firmly believe Governor Cuomo's refusal to allow elective surgeries at some Erie County hospitals is punitive retribution against them for respectfully objecting to the Governor's threat to confiscate ventilators from our region and ship them to New York City during the height of the Coronavirus crisis.

Governor Cuomo was adamant that the New York National Guard would confiscate ventilators from hospitals and health care providers here to be sent downstate where he claimed the need was greater.

"I'm not going to let people die because we didn't redistribute ventilators. If they want to sue me for borrowing their excess ventilators to save lives, let them sue me,"

Source: NYS Governor Andrew Cuomo, www.wben.com, "Governor to take ventilators for NYC as hospitals buckle," April 3rd, 2020

The pushback on the Governor's order to utilize the National Guard to "redistribute" ventilators from Erie County was swift, respectful and mindful of the need to care for patients in our region. Opposition to the confiscation of ventilators ranged from hospital officials to local leaders.

"There's not going to be any movement of ventilators from Erie County. There is not a single person who is going to have a ventilator taken away."

Source: Erie County Executive Mark C. Poloncarz, www.buffalonews.com, "Unacceptable': Poloncarz, local lawmakers push back on Cuomo ventilator mandate," April 3rd, 2020

"I cannot jeopardize our workforce and the very patients that we are responsible to care for. As I have said and will continue to say, we are always willing to help our neighbors, but not at the expense of the community that we are accountable for."

Source: Kaleida Health Chief Executive Officer Jody Lomeo, www.news.wbfo.org, Governor's ventilator order not sitting well with WNY lawmakers, hospital leaders," April 3rd, 2020

"I as a county legislator have a duty and a responsibility to represent residents in Erie County. Allowing our medical equipment to go somewhere else and leaving us completely exposed would be irresponsible."

Source: Erie County Legislature Minority Leader Joseph Lorigo, www.spectrumlocalnews.com, "Cuomo Orders National Guard To Take Some Upstate Ventilators for Downstate Patients," April 3rd, 2020

Just like the rest of the country, New York State is slowly opening back up. As cases fall across the state, restrictions have been eased on elective surgeries everywhere except the five boroughs of New York City, and selective hospital systems in Erie County.

Here in Erie County we have seen consistent declines in hospitalizations due to COVID-19, and our patients on airway assist have remained fairly stable. In fact Erie County hospitals have hit every benchmark to resume elective surgeries as laid out by the state.

The situation in Erie County has stabilized enough that we have entered the state's designated "Phase 2" for reopening. This means that hair salons, barber shops, office-based businesses, real estate, commercial building management, vehicle sales, retail repair, and in-store retail shopping have all been approved to open at a limited level. If it is safe enough for these businesses to open back up, it is clearly safe enough for elective surgical procedures to be performed in hospitals and doctor's offices which are designed to be safe and sanitary spaces.

Governor Cuomo has also approved sports teams to resume practices and training camps across the state. Here in Western New York there is an NFL team, an NHL Team, and numerous minor league teams in every sport. How is it these sports teams can get together in large groups and practice safely, but doctors cannot perform mammograms or colonoscopies?

At this time there is no factual, scientific or data driven reason for New York State to continue blocking some Erie County hospitals from performing elective surgeries.

Why is it that violent protestors can gather in confined spaces, but patients cannot receive desperately needed surgeries to improve their quality of life? The need for that is great here. I will leave you with a letter my office received from an Erie County taxpayer, describing in great detail the pain they are in, all because they cannot utilize a local hospital for an elective surgery.

"I am writing to you as a concerned citizen of Erie County. I saw your letter to the governor and lieutenant governor about elective surgeries. I was scheduled to have hand surgery March 13th. A couple days before I got put on an antibiotic due (to) a sinus infection. The next week everything (shut) down. My affected hand is my right hand, my writing hand. My job requires me to type and now I am out of work on short term (disability) until I have surgery. I work for (REDACTED) and they are giving me a hard time, since my doctor (can't) give them a surgery date. I am starting to have pain in my left hand due to issues in my right hand. I don't want permanent damage. I am a single mom and can't afford to lose my job or be completely disabled. I have been reaching out to doctors in other counties but they are so far booked out just for the consultation. Erie County is in phase 2 and if we can open hair salons why can't elective surgeries? My Dr. works out of (REDACTED) and not a hospital. I know I am not the only one in this situation and so I hope you can be the voice for others like me."

Please help be the voice that we all need in New York State, and find answers to this very serious issue.

Sincerely,



Hon. Stefan I. Mychajliw Jr.
Erie County Comptroller