



ERIE COUNTY COMPTROLLER

HON. STEFAN I. MYCHAJLIW

June 1, 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 the independently elected Comptroller and Chief Fiscal Officer of Erie County government, I am asking the federal government to commence an immediate investigation into deaths at nursing homes in New York State during the Coronavirus pandemic, as well as the percentage or number of inspections taking place in nursing homes across our state long before COVID-19 took hold in our region.

It is unconscionable that seniors stricken with a deadly and dangerous disease were forced into nursing homes by the State of New York. This decision was the equivalent of a medical ticking time bomb, needlessly exposing our most vulnerable seniors to a deadly disease, killing many of them.

In my current capacity as the elected official providing checks and balances on county government, I know the critical importance of a true, independent investigation. New York State cannot investigate itself, which is why I am calling on the federal government to step in and commence an investigation of Gov. Andrew Cuomo and New York State as soon as possible.

As you are aware, New York State has been impacted by COVID-19 more than any other state in the union. While much attention has been paid to New York City, Western New York, and Erie County in particular, have been impacted particularly hard. While much public discourse focused on the missteps of Brazil, with a rate of death per confirmed cases of 6%, and Sweden's herd immunity approach causing a death rate of 43 per 100,000, little has been said about Erie County, New York, where the death rate per confirmed cases is 8.7% and the death rate is 57 per 100,000.

COVID-19 has shown a combination of virulence and lethality that is far worse than other viruses that are widely suffered by Americans. Unfortunately, fatalities are unavoidable due to this virus. However, human error could result in a higher fatality rate than if situations were handled with increased care and thoughtfulness. This may have happened at nursing homes in Erie County, because of orders from New York State to send sick seniors back into nursing homes.

According to the New York State Department of Health, of the 524 fatalities that were confirmed to have occurred as a result of COVID-19 in Erie County, New York, as of May 30, 2020, over 44% occurred at nursing homes. The 232 fatalities do not include 7 presumed deaths as a result of COVID-19. We question whether or not this data is even accurate, if the death rate in nursing homes in New York State is even higher. If we cannot trust New York State to protect then-healthy seniors in nursing homes by sending those with COVID-19 into the same building, how can we

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trust their judgment on reporting accurate death rates? I acknowledge that certain co-morbidities place many nursing home patients at a higher risk for severe consequences of COVID-19, including death. I have consulted with medical professionals and others who have confirmed my suspicions that over 44% of the fatalities occurring in nursing homes is disproportionately high. The percentage should not be this high unless grievous mistakes were made.

I believe that terrible mistakes were made that unnecessarily put seniors at risk of death. It is imperative that we know what mistakes were made by which individuals or groups. Further, the answers to these questions cannot wait for a date far in the future. Deaths continue, and they continue at nursing homes.

The pandemic is not over, and likely will not be over until a reliable vaccine is developed. Many experts anticipate at least a second wave, and possibly more, of cases. New York State cannot continue to make the same mistakes during future waves. Easily avoidable deaths should not be tolerated.

I am aware, through media reports, that the Department of Health and Human Services is currently investigating the Brighton Rehabilitation and Wellness Center in Western Pennsylvania, where at least 76 individuals have died of COVID-19. In a facility with, upon information and belief, 589 beds, that equates to 12.9 deaths/100 beds. In Erie County, New York, we have 4 nursing homes with rates above 10 deaths per 100 beds, with the highest being 38.75 deaths per 100 beds.

It has been reported that, among the possible human errors which resulted in many of these deaths, a New York State policy that encouraged placement of COVID-19 positive individuals in nursing homes may have contributed to these high rates. The March 25, 2020 guidance by New York State to nursing home administrators prohibited nursing homes from refusing patients from hospitals to their facilities based on an active COVID-19 diagnosis.

Questions have also been raised concerning the accuracy of data regarding nursing home deaths, suggesting that the problem could be worse than reported. Although regulation and monitoring nursing homes is typically left to the states, it is within the purview of the federal government to investigate these facilities. Given New York State's policy, which may have resulted in deaths, as well as questions regarding the number of deaths, it would be appropriate for the federal government to investigate nursing homes in New York State, instead of the state itself.

As such, I once again respectfully request and urge the Department of Health and Human Services to conduct an investigation into if, and what, mistakes were made that led to a high number of deaths in our Erie County nursing homes and nursing homes across New York State. A primary focus of this investigation may be the March 25, 2020 advisory statement by New York State to nursing homes.

Further, I ask that the Department uses the full force and effect of federal law to enact necessary changes to ensure that our seniors and other vulnerable citizens in nursing home do not continue to needlessly suffer and die.

Should you have any questions or require further information, please do not hesitate to contact me. I can be reached via email at comptroller@erie.gov and by telephone at (716) 858-8405.

Sincerely,



Hon. Stefan I. Mychajliw Jr.
Erie County Comptroller