



## NEW YORK STATE ASSEMBLY

January 19, 2021

Honorable Joseph R. Biden  
President-Elect of the United States of America

Dear President-Elect Biden:

Congratulations on assuming our nation's highest elected office. Your success is our nation's success and we are rooting for you.

We write to you humbly seeking your assistance to obtain the long sought-after COVID-19 data New York families have been seeking for months. To date, the New York State Department of Health (DOH) has not answered requests from lawmakers, families and good government groups to release this crucial information, as required by the Freedom of Information Law. It is our strong belief you have the executive power as president to have the Center for Disease Control (CDC) mandate the necessary retrospective reporting which would make this information public without further delay.

Similar requests to the NYS DOH, CDC, and outgoing President Trump were made by our colleagues, but to date have been ignored.<sup>1</sup>

As you are well aware, New York State has been deeply hurt by COVID-19. Our state still suffers immensely, especially in our state-regulated elder care facilities. Shockingly, more than six months after the first wave, the full measure of the destruction in nursing homes is still unknown. Unlike many other states, New York does not provide the requested information about COVID-19 nursing home deaths for residents who died in a hospital or simply outside of the nursing facility. The CDC does now mandate this information be reported directly from these facilities. However, that only began in mid-May after the many nursing homes already bore the full impact of the first wave; and the mandate was never made to apply retrospectively. New York saw some of the worst spikes during this pandemic prior to mid-May. Without this information, our policy makers and public health professionals cannot correctly measure our state's performance and better plan for the future to protect all our residents.

Members of the New York State Legislature have already held multiple forums and hearings on this matter.<sup>234</sup> Months have passed and cases are rising again, yet we have not been given the opportunity to

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<sup>1</sup>Hogan, B., & Hicks, N. (2020, December 16). NY GOP asks Trump to force Cuomo to reveal number of COVID nursing home deaths. Retrieved January 10, 2021, from <https://nypost.com/2020/12/16/ny-gop-asks-trump-to-force-cuomo-to-reveal-nursing-home-covid-deaths/>

<sup>2</sup>Assembly and Senate GOP. (2020, August 17). Republican Senate and Assembly Roundtable of COVID-19 & Nursing Homes, Assisted Living and Long Term Facilities. Retrieved January 10, 2021, from <https://www.facebook.com/nysenaterepubs/videos-/615223712716579>

<sup>3</sup>8-3-20 Joint Virtual Public Hearing on Residential Health Care Facilities and COVID-19- New York City, Long Island and Westchester- Part. (2020, August 3). Retrieved December 15, 2020, from [https://nystateassembly.granicus.com/GeneratedAgendaViewer.-php?view\\_id=8&clip\\_id=5632](https://nystateassembly.granicus.com/GeneratedAgendaViewer.-php?view_id=8&clip_id=5632)

review this information to better prepare for what lies ahead. Some groups have even resorted to litigation to try and obtain the information, but as of yet to no avail.<sup>5</sup>

Earlier this fall, a group of state legislators wrote to the Director of the CDC, requesting they update their reporting rules to require nursing homes to employ retrospective reporting of resident deaths. Many are still concerned that a mandate from the NYS DOH on March 25th, which prohibited nursing homes from denying COVID-19 patients and prohibited them from requiring a test, created a deadly environment that further spread this virus to our most vulnerable residents. To know for sure, and to better prepare for the future, we need to know what the real numbers are.

The response our colleagues received back from the CDC was unsatisfactory. It merely echoed the existing rules which were already outlined in the letter sent to them. It did not answer our request to update the CDC rules with a mandate requiring retrospective reporting.

For your convenience, enclosed are copies of the correspondence with the CDC.

It is our hope that through your office, you can help us obtain this information. As policy makers, we must have the real numbers so we can support better policies moving forward. Family members who lost loved ones have had their pleas for this information ignored.

Mr. President-Elect, you have rightfully spoken passionately about the need for healing. New York families have been seeking this information to get answers, so they can heal from the destruction this virus has caused. We ask for your administration's support of this bipartisan request and to ensure this important information is made publicly available as soon as possible.

Thank you for your detailed attention to this pressing matter.

Respectfully,



Ron T. Kim  
Member of Assembly  
Chair of the Committee on Aging  
New York's 40<sup>th</sup> Assembly District



Kevin M. Byrne  
Member of Assembly  
Ranking Member on Health Committee  
New York's 94<sup>th</sup> Assembly District

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<sup>4</sup>8-10-20 Part 1 Joint Virtual Public Hearing on Residential Health Care Facilities and COVID-19 – Upstate New York (2020, August 10). Retrieved December 15, 2020, from [https://nystateassembly.granicus.com/GeneratedAgendaViewer.php?view\\_id=8&clip\\_id=5638](https://nystateassembly.granicus.com/GeneratedAgendaViewer.php?view_id=8&clip_id=5638)

<sup>5</sup>Gilligan, C. (2020, September 18). Empire Center Sues Cuomo Administration for Withholding Nursing Home COVID Data. Empire Center for Public Policy. <https://www.empirecenter.org/publications/empire-center-sues-cuomo-administration/>

Enclosure: Sept 24<sup>th</sup> correspondence to CDC  
Oct 28<sup>th</sup> correspondence from CDC

Cc: U.S. Senate Majority Leader Charles Schumer  
U.S. House of Representatives Speaker Nancy Pelosi  
Members of New York's Congressional Delegation