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June 15, 2020

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

Dear Governor Cuomo:

The ongoing COVID-19 pandemic has disproportionately affected the elderly, especially those living in nursing homes and other long-term care facilities. We write seeking information, at a granular level, about the science and information used to inform your decision to mandate nursing homes and long-term care facilities admit untested and contagious COVID-19 patients from hospitals. This decision likely contributed to the thousands of elderly deaths in New York State. Thank you for your attention and prompt response to this important inquiry.

On March 13, 2020, the Center for Medicare & Medicaid Services (CMS) issued guidance "For Infection Control and Prevention of Coronavirus Disease 2019 (COVID-19) in Nursing Homes."<sup>1</sup> This guidance is a blueprint for individual states to follow when determining how to best control outbreaks of COVID-19 in nursing homes and long term care facilities. This guidance does not direct any nursing home to accept a COVID-19 positive patient, if they are unable to do so safely. In fact, it says "nursing homes should admit any individual *that they would normally admit to their facility*, including individuals from hospitals where a case of COVID-19 was/is present" *only if* the nursing home can follow Centers for Disease Control (CDC) quarantining guidance.<sup>2</sup>

CMS Administrator Seema Verma said, "[u]nder no circumstances should a hospital discharge a patient to a nursing home that is not prepared to take care of those patient's needs."<sup>3</sup> CMS did not mandate COVID-19 positive patients back to nursing homes but, instead, stated that a COVID-19 case at a hospital does not preclude the nursing home from accepting a COVID-19 negative patient.

<sup>1</sup> Memorandum from David R. Wright, Director, Quality, Safety & Oversight Group, U.S. Centers for Medicare & Medicaid Services, to State Survey Agency Directors (Mar. 13, 2020) (on file with Comm. Staff).

<sup>2</sup> *Id.* (emphasis added).

<sup>3</sup> Charles Creitz, *Medicare chief Verma blasts Cuomo for trying to deflect blame onto White House fo NY nursing home deaths*, Fox News (May 28, 2020), <https://www.foxnews.com/media/seema-verma-andrew-cuomo-nursing-home-deaths>.

On March 25, 2020, the New York Department of Health issued on their website a now deleted directive on “Hospital Discharges and Admissions to Nursing Homes.”<sup>4</sup> This directive said “[n]o resident *shall be denied* re-admission or admission to the [nursing home] solely based on a confirmed or suspected diagnosis of COVID-19” and “[nursing homes] are *prohibited* from requiring a hospitalized resident who is determined medically stable to be tested from COVID-19 prior to admission or re-admission.”<sup>5</sup> For clarity, this advisory mandated nursing homes accept known COVID-19 positive patients and, further, mandated that nursing homes not even test patients for COVID-19 prior to admission.

According to the most recent available data, New York has suffered 6,360 nursing home deaths related to COVID-19.<sup>6</sup> That is more than 25% of the State’s total COVID-19 deaths and more than 4% of the State’s entire nursing home population.<sup>7</sup>

To help us better understand what science or guidance you used to make this lethal decision, we respectfully request the following documents and information:

1. 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.
2. 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.
3. The total number of COVID-19 related nursing home positive cases, including individuals who tested positive at a nursing home and individuals who tested positive at a hospital, by day between January 1, 2020 and present.
4. The total number of confirmed or suspected COVID-19 positive patients returned to a nursing home or other long-term care facility between March 25, 2020 and present.
5. All information, documents, and communications between the Office of the Governor and the New York State Department of Health regarding COVID-19 mitigation in nursing homes and other long-term care facilities.
6. All information, documents, and communications between the New York State Department of Health and any and all of the State’s Nursing Home Administrators.

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<sup>4</sup> Memorandum from the New York State Department of Health to Nursing Home Administrators, et. al. (Mar. 25, 2020) (on file with Comm. Staff).

<sup>5</sup> *Id.*; (emphasis added).

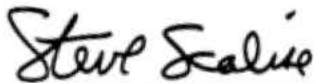
<sup>6</sup> State by state nursing home data collected via open source research by the Committee to Unleash Prosperity available at [https://docs.google.com/spreadsheets/d/e/2PACX-1vRQztYJ5rdGLdKqNi7\\_7SGGciugkgwscN3judtUw2hoimsfH-t\\_NYXKMPONJkrA4jtJNMsuR7jkQite/pubhtml#](https://docs.google.com/spreadsheets/d/e/2PACX-1vRQztYJ5rdGLdKqNi7_7SGGciugkgwscN3judtUw2hoimsfH-t_NYXKMPONJkrA4jtJNMsuR7jkQite/pubhtml#).

<sup>7</sup> *Id.*

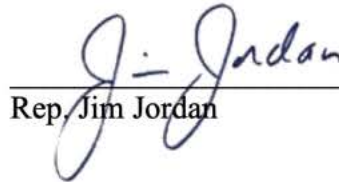
In addition to these documents, please provide a staff-level briefing no later than June 18, 2020. This briefing may be conducted remotely for convenience and safety issues. To schedule the briefing or ask any follow-up or related questions, please contact Committee on Oversight and Reform staff at (202) 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>8</sup> Thank you in advance for your cooperation with this inquiry.

Sincerely,



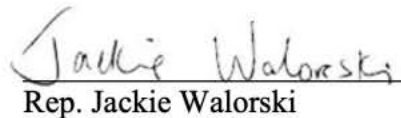
Rep. Steve Scalise  
Ranking Member



Rep. Jim Jordan



Rep. Blaine Luetkemeyer



Rep. Jackie Walorski



Rep. Mark E. Green, MD

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<sup>8</sup> H. Res. 935 § 3(a)(4) (2020).