

RANKING MINORITY MEMBER  
FINANCE  
INVESTIGATIONS AND GOVERNMENT  
OPERATIONS  
  
COMMITTEES  
RULES  
CODES  
JUDICIARY  
INSURANCE  
ENERGY AND TELECOMMUNICATIONS

THE SENATE  
STATE OF NEW YORK



THOMAS F. O'MARA  
SENATOR  
58<sup>TH</sup> DISTRICT

March 25, 2022

ROOM 711B LEGISLATIVE OFFICE BUILDING  
ALBANY, NEW YORK 12247  
(518) 455-2091  
FAX: (518) 426-6976  
333 E. WATER STREET, SUITE 301  
ELMIRA, NEW YORK 14901  
(607) 735-9671  
FAX: (607) 735-9675  
E-MAIL: omara@nysenate.gov

Senator James Skoufis, Chair  
Investigations and Government Operations Committee  
New York State Senate  
Room 815, Legislative Office Building  
Albany, New York 12247

**Re: Comptroller's Audit on the Underreporting of COVID-19 Deaths in Nursing Homes and Other Findings**

Dear Senator Skoufis:

In light of last week's alarming and disturbing audit from New York State Comptroller Thomas DiNapoli surrounding the conduct of the New York State Department of Health (DOH), I once again call on you to direct the committee's full attention to this tragedy.

Comptroller DiNapoli stated, "The pandemic was devastating and deadly for New Yorkers living in nursing homes. Families have a right to know if their loved one's COVID-19 death was counted, but many still don't have answers from the state Department of Health. Our audit's findings are extremely troubling. The public was misled by those at the highest level of state government through distortion and suppression of facts when New Yorkers deserved the truth."

This committee has the power to help clarify the distortion, stop the suppression, and deliver the truth.

It is long past time for you and for this Senate Majority to stop turning your backs on your responsibilities to New Yorkers.

I will take this opportunity to highlight the key findings directly from the Comptroller's audit issued on March 15, 2022:

> DOH understated the number of nursing home deaths due to COVID-19 by at least 4,100, and at times during the pandemic by more than 50%. A timeline included in the audit details the inaccurate death counts reported by DOH. When questioned by auditors, DOH officials could not explain the discrepancies. Auditors found the Executive routinely reported incorrect data, inflating the perception of New York's performance against other states.

> DOH was slow to respond to a federal directive to conduct surveys of nursing homes for infection control problems, surveying just 20% of facilities between March 23 and May 30, 2020, compared with over 90% for some other states. DOH had to hire temporary employees to conduct nursing home surveys during the pandemic because it was understaffed. DOH issued 602 violations from these surveys; however, for 413 (69%) of them there was no indication that the deficiency was corrected.

> While DOH collects data on a range of issues including infections, DOH does not use it broadly to detect breakouts, geographic trends, and emerging infectious diseases or to shape its infection control policies. It also relies heavily on self-reported data from nursing homes. Auditors found that data from one of DOH's key informational systems was not complete nor reliable, and found that DOH was aware of this problem long before the pandemic and had committed to resolve it. However, DOH never followed through on the corrective actions, which may have limited its ability to respond to the COVID-19 nursing home crisis.

> DOH imposed impediments on the audit, including delaying requested data, limiting auditors' contact with program staff, not addressing auditors' questions during meetings, and not providing supporting documentation. These are not routine actions by state agencies undergoing an Office of the State Comptroller audit and raise serious concerns about the control environment at DOH.

Over the past two years, and as recently as last November, I have repeatedly called on you to authorize the Senate Investigations and Government Operations Committee to undertake a top-to-bottom investigation of the state's pandemic response in nursing homes. I have called for the issuance of subpoenas to take the testimony of the many upper-level DOH officials who abruptly retired in 2020 during and following the former Cuomo administration's nursing homes cover-up. You have repeatedly failed to act.

As I and other members of the Senate Republican conference have noted in the past, New York State law makes it clear that you, as Chair of this Committee, have the authority to issue subpoenas under Section 62-A of the Legislative Law.

In light of the comptroller's latest audit – and given that today marks the two-year anniversary of the fateful March 25, 2020 DOH order to nursing homes to accept COVID-positive patients -- I once again call on you to fully utilize your authority to immediately commence a full investigation. This investigation must include the issuance of subpoenas to all appropriate former and current employees of the DOH and the Executive Chamber involved in the March 25<sup>th</sup> order, the decisions to not utilize the Javits Center or the U.S.N.S. Comfort for COVID-positive hospital patients discharged from hospitals, and the underreporting of COVID nursing home deaths to testify before the Investigations Committee under oath. Additionally, subpoenas must be issued for the production of documents and other records, including but not limited to all correspondence, memos, emails, text messages and phone records, and any information that would provide transparent data on the number of COVID-19 fatalities of nursing home residents, within or outside of all long-term care facilities in New York, regarding the drafting and

implementation of the March 25<sup>th</sup> Order, and why the U.S.N.S. Comfort or Javits Center were not utilized for COVID-positive hospital patients ultimately discharged to nursing homes.

New Yorkers deserve accountability and the families who lost loved ones in nursing homes deserve justice. News reports have shown that more than 9,000 COVID-positive hospital patients were discharged from New York hospitals directly into nursing homes, more than 6,000 of whom were new nursing home admissions as opposed to readmissions.

Furthermore, we must fully understand how this tragedy unfolded among our most vulnerable population so that we can have the insight and knowledge to try to ensure that it never happens again.

The Empire Center's Bill Hammond, a key analyst and watchdog throughout this pandemic, has recently noted that Governor Hochul, in her proposed Executive Budget, "makes no mention of investigating what went wrong, learning from those mistakes or making sure New Yorkers are better protected next time."

In January, during her confirmation hearing as the next commissioner of the DOH, current DOH Commissioner Mary Bassett testified, "I decided when I took up this post that I wasn't going to try and unravel what happened in the nursing homes under the previous commissioner. But simply look forward."

The conduct of the highest levels of New York government in response to the COVID-19 tragedy that unfolded in our nursing homes has been and remains unacceptable and, worse, unconscionable.

It is important to examine the Cuomo administration's role and, now, the Hochul administration's response to it.

This committee has a fundamental duty and responsibility, as a co-equal branch of government, to examine one of the worst chapters in New York State government in response to a public health crisis.

Once again, it is long past time for you to act and to authorize this committee to utilize its authority.

Sincerely,

A handwritten signature in black ink, appearing to read "T F O'Mara". The signature is fluid and cursive, with the first letters of each name being capitalized and prominent.

Thomas F. O'Mara  
Ranking Member  
Investigations and Government Operations Committee