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January 28, 2021

Senator James Skoufis, Chair  
Investigations and Government Operations Committee  
815 Legislative Office Building  
Albany, NY 12247

Re: Accurate Statistics on COVID-19 Impact on Nursing Homes

Dear Senator Skoufis:

This week, your comments regarding the issuing of a subpoena if the New York State Department of Health (DOH) does not release the exact number of nursing home residents who died from COVID-19 have been widely reported on. While we appreciate that you are taking up this effort, we were confused by your comment about the need for a “wider discussion” and the need for the Senate Majority to agree in whole before you decide to issue such subpoena. New York State law makes it clear that you, as the Chairman of the State Senate Investigations and Government Operations Committee, have all the authority you need to issue such a subpoena immediately. In fact, any Majority member who chairs or vice chairs a committee has the ability to issue a subpoena under Section 62-A of the Legislative Law. It is abundantly clear that the DOH has no desire to share this critical information and has delayed its release far beyond what could conceivably be necessary or appropriate—and will continue to do so for as long as the State Legislature, a coequal branch of State Government, allows it to do so. We respectfully request that you utilize your authority as the Chair of the New York State Senate Investigations and Government Operations Committee to immediately issue a subpoena to the DOH to provide complete, fully transparent data on the number of COVID-19 fatalities in nursing homes, as well as other pertinent statistics.

As early as July 2020—over 6 months ago—you indicated that you were willing to issue subpoenas, as we called for, to elicit answers to questions that the DOH has been disregarding. Following testimony from the Commissioner of Health during a joint hearing on August 3, 2020, during which the Commissioner would not provide the information, you joined Senators Rivera, May and Felder in sending a letter to the Commissioner asking 17 questions regarding nursing home deaths on August 20. In your letter, you gave the DOH three weeks to respond. On September 23, almost two weeks after the deadline your letter provided for the DOH, we wrote to you to request that you use your subpoena authority to get these answers. That was the appropriate time for a “wider discussion” to consider utilizing the Senate’s subpoena powers. Now, months later, we have lost even more nursing home residents in this latest COVID surge, as well as valuable time that could have been spent making meaningful changes to better protect these vulnerable residents.

For months, we along, with many of our colleagues from both sides of the political aisle, have been pointing out the need to have a complete picture of what happened in our State’s nursing homes during the pandemic

so that the State Legislature can be fully informed of the facts and operate as the coequal branch of government it is intended to be and take on the task of better protecting these residents. We warned that even as cases were declining last year, getting this information could guide the Legislature to make sure the State took appropriate action to be prepared for a potential “second wave.” Cases have again surged, and we are still without the information we have known we have needed for months, due in part to the inaction of the Legislature.

Transparency is key not only to better guiding our decisions, it is essential for gaining and maintaining public trust. New Yorkers have sacrificed so much in the effort to mitigate the spread of coronavirus, and yet they are being denied answers to questions that should be readily available. We still do not know the total number of fatalities of COVID-19 patients that originated in nursing homes—as New York State, unlike any other State, did not count cases where the patient contracted the virus in the nursing home but passed away in a hospital—nor do we know the total number of COVID-19 cases in nursing homes overall. Appropriate Health Emergency Response Data System (HERDS) data also should have been made available long ago, but for as much as this pandemic appears to be dragging on, it would seem the DOH plans to drag out withholding this vital information even longer.

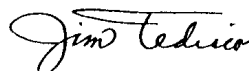
We understand and appreciate that issuing subpoenas is a serious step that should not be taken lightly and warrants serious consideration. However, we are months past hearings, letters, press conferences, petitions, and previous suggestions of subpoenas, and none of these actions have resulted in getting the information we need. The time for consideration and discussion has long ended, and we respectfully urge you to use your authority as the Chair of the Senate Investigations and Government Operations Committee and subpoena the DOH to provide the answers we need to do the job we were elected to do.

We sincerely appreciate your attention to this urgent matter, and look forward to working together to protect these most vulnerable residents and get New Yorkers the answers they deserve.

Sincerely,



Senator Sue Serino  
41<sup>st</sup> Senate District



Senator James N. Tedisco  
49<sup>th</sup> Senate District

Cc:

Senator Gustavo Rivera, Senate Health Committee, Chair  
Senator Rachel May, Senate Aging Committee, Chair