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**THE SENATE
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May 22, 2020

Governor Andrew Cuomo
New York State Capitol Building
Albany, NY 12224

Dear Governor Cuomo:

I write to request your immediate intervention at the Newfane Rehabilitation and Health Center, a nursing home in Niagara County. Newfane's management has proven incapable or unwilling to operate in a way that adequately protects its residents and staff, and lives depend on your action.

There have been 24 confirmed or presumed COVID deaths at Newfane Rehab to date¹, meaning almost half of all Niagara County COVID deaths have occurred there.² It has been reported that there are at least 113 other positive patients within the facility,³ meaning the death toll will likely rise further. The situation requires our utmost urgency, and Newfane residents cannot afford to wait for state intervention any longer.

After two Department of Health inspections last week, DOH claims "no deficiencies were identified," noting that Newfane's "administrator assured the Department he was able to adequately care for his residents and will immediately contact us if the situation changes."⁴

However, the overwhelming outreach I have received from individuals associated with Newfane suggests otherwise. Countless Newfane employees and families have contacted my office or taken to news and social media to express concerns with poor staffing levels, PPE, and compliance with state regulations. While the disconnect between Newfane Rehab community reports and DOH inspection findings is alarming, the reality is that Newfane no longer has the ability to adequately care for its residents and staff, and Newfane's refusal to admit that fact and accept state assistance continues to put lives at risk.

I urge you to take two decisive steps to protect the health and well-being of residents and staff at Newfane:

1. Immediately revoke the operating certificate of Newfane Rehabilitation and Health Center and appoint a receiver to continue operations, as delineated in Executive Order 202.30.

¹ "Nursing Home and ACF COVID Related Deaths Statewide," *New York State Department of Health*, 20 May 2020. https://www.health.ny.gov/statistics/diseases/covid-19/fatalities_nursing_home_acf.pdf.

² "NYSDOH COVID-19 Tracker," *New York State Dept. of Health*, accessed 22 May 2020. <https://covid19tracker.health.ny.gov>.

³ Steve Brown & Joseph O'Rourke, "Inside Newfane Rehab: Resident says there are not enough workers," *WGRZ*, 21 May 2020. <https://www.wgrz.com/article/news/health/coronavirus/inside-newfane-rehab-resident-says-there-are-not-enough-workers/71-10dd34aa-be92-41ac-bc1d-c4060b5b99fa>.

⁴ Steve Brown, "EXCLUSIVE: Newfane Rehab turns down assistance from state health department," *WGRZ*, 15 May 2020. <https://www.wgrz.com/article/life/exclusive-newfane-rehab-turns-down-assistance-from-state-health-department/71-0bc59df7-b73f-47bb-8ac6-95ea91cfbdf>



2. Immediately deploy the New York Army National Guard's Medical Command to provide adequate staffing and ensure compliance with all public health regulations and guidelines. The Niagara County Legislature unanimously called for this measure in a May 13 letter,⁵ and the situation has only worsened since.

I recognize the severity of these measures, and I do not take calling for them lightly. However, given the grave circumstances and the lack of responsiveness and compliance from Newfane administration, I believe these measures are necessary to protect the vulnerable residents and dedicated staff at Newfane.

Some of these facilities have been pushed to the brink. The COVID pandemic has exposed serious staffing and oversight deficiencies. The state directive forced facilities to accept COVID-positive patients, which introduced and spread the virus to our most vulnerable citizens. Recent state measures, such as mandated – bi-weekly staff testing – do not address the glaring deficiencies that have existed and continue to exist at certain facilities. The state should re-examine this along with its inspection process and consider personnel and locations to provide for our most vulnerable, at-risk populations who still face immediate danger from this sweeping pandemic.

Thank you for your attention to this situation. I look forward to your swift response. Please contact me at 716-434-0680 if you wish to discuss this further.

Sincerely,



Senator Robert G. Ort
Senate Committee on Health

CC: Senate Minority Leader Charles Schumer
Senator Kirsten Gillibrand
Centers for Medicare and Medicaid Services Administrator Seema Verma
Department of Health Commissioner Howard Zucker
Niagara County Legislature Chairman Rebecca Wydysch

⁵ "Niagara County legislators call on state to activate National Guard to assist situation at Newfane nursing home," *WGRZ*, 13 May 2020. <https://www.wgrz.com/article/news/health/coronavirus/niagara-county-legislators-call-on-state-to-activate-national-guard-to-assist-situation-at-newfane-nursing-home/71-63117e91-dd97-41b2-b4a5-6d64a2c5fe41>.