Testimony of the New York State Department of Health

Senate Standing Committee on Health

Senate Standing Committee on Aging

Senate Standing Committee on Investigations and Government Operations

Assembly Standing Committee on Health

Assembly Standing Committee on Aging

Assembly Standing Committee on Oversight, Analysis and Investigation

Residential health care facilities and COVID-19

Monday, August 3rd, 2020

Honorable Members of the Senate and Assembly:

Thank you for the opportunity to share information with the Senate Committees on Health, Aging, and Investigations and Government Operations, and Assembly Committees on Health, Aging, and Oversight, Analysis and Investigation.

When I last spoke to you on January 29 to discuss the Executive Budget, I spoke of an evolving public health threat, a "novel coronavirus," that was yet to be named. It was one month later that our Wadsworth Laboratories confirmed New York's first case of COVID-19 – but we know now that it was already here.

Within two weeks from that moment, we had implemented a series of aggressive actions to protect our most vulnerable populations. Those practices continue today and will serve as a foundation as we prepare these facilities for a second wave and beyond.

COVID-19 has caused more deaths in New York than we could have imagined, more loss than we can bear. We feel the losses in these nursing homes as a community and grieve with those who lost loved ones during this time of disruption, fear and unrelenting stress.

For all of those touched personally by this terrible virus, my heart goes out to you.

Today is an opportunity for a thoughtful dialogue on what we've learned based on science, and how we can apply those best practices moving forward.

COVID-19 has significantly changed how we live. Not just in New York, but around the world. This pandemic has rapidly and dramatically altered our everyday lives — introducing social distancing, face mask wearing, remote learning, business closures, and restrictions on visiting nursing homes and hospitals.

Congregate settings such as the 613 nursing homes we have here in New York are particularly vulnerable to infectious diseases such as COVID-19. This has been a challenge nationwide since February 2020, when the first known case of COVID-19 was identified in a nursing home resident in Kirkland, Washington. I stress the phrase "known case," because COVID-19 had a hold on New York State and its nursing homes much sooner than anybody knew.

For context, the federal Government issued a travel ban from China on February 2nd. But the virus didn't come to New York from China, it came from Europe. Three million people flew from Europe to New York City, and the CDC has acknowledged that their European travel ban on March 13th was too late, the virus had already reached community spread here in New York State.

We may never actually have the full picture of the impact of COVID-19 in nursing homes nationally, or an accurate snapshot of how it's being reported in other states. When looking back at data from March and April, Centers for Disease Control and Prevention (CDC), Director Dr. Robert Redfield, said on June 25th that the cause of 27 percent of all deaths in the U.S., one in four, was recorded as pneumonia. He went on to say, "a lot of those pneumonias that were dying were actually COVID-19 infected individuals that were the elderly, nursing home and individuals with comorbidities." We now know that, despite our best efforts, COVID-19 continued to spread in nursing homes nationwide.

Here in New York State we restricted nursing home visitors, ordered workers to be temperature checked every day, and we implemented specific isolation and quarantine procedures for exposed and ill staff and residents. We built unprecedented systems for facilities to report real-time data to us, and to the extent practical, despite the fact that, as they say, "we were building the plane while flying it," we made that data available to the press and to the public on a daily basis.

We launched the most aggressive nursing home testing program in the country: testing residents in all 613 nursing homes and directing the testing of all nursing homes staff, which has led to more than 1 million tests and identified several thousand positive cases.

We conducted 1,300 onsite inspections – every single nursing home and adult care facility in the state at least once - to ensure infection control practices are in place. We have supported these facilities by providing 14 million pieces of PPE, connecting them to a staffing portal of more than 96,000 volunteers, and helping facilitate transfers of residents to other homes as needed.

But when we saw the rise in deaths in the nursing homes, like so many other states, I kept asking myself, what happened? The *why* matters – it matters for New York, it matters for the nation, it matters to prevent it from happening again, and it matters to bring closure for families.

We looked at admissions to nursing homes. Between March 25th and May 8th, 6,326 COVID-19 positive patients were admitted to nursing homes from hospitals during the time when COVID-19 hospitalizations were rising. We found a few key facts: the peak in nursing home fatalities was on April 8th. The peak in admissions of COVID-19 positive hospital patients occurred on April 14th, essentially a week later. Therefore, if the March 25th guidance was the major driver in deaths that some claim it to be, then the peak of admissions would precede the peak in deaths: that's just the mathematics, the statistics of it.

However, it occurred the other way around: peak in deaths occurred before peak in admissions. In fact, when you look at the curve, as the admissions of residents was increasing, the deaths were decreasing. This is important because it contradicts the false narrative circulating about the March 25th guidance document. This false narrative is that COVID-19 positive residents brought it into the nursing homes from the hospitals. But we must be objective, and the data does not support that. The facts show that 310 nursing homes admitted COVID-19 positive patients from hospitals. Of those, 304 already had COVID-19 in their facility, which means 98% already had COVID-19 in the nursing home. Those are the facts.

It causes me great pain, as a physician and as a health commissioner, to see that the total number of COVID-19 cases in Florida, Texas and California have each surpassed New York State. From May thru July, COVID-19 related deaths in nursing homes more than doubled in Florida, nearly doubled in California and more than tripled in Texas. I sympathize with my public health peers in those states who are experiencing the feelings of helplessness now that we felt in March and April.

As Governor Cuomo has said many times, healthcare workers are the heroes of this pandemic. Nursing home staff are incredibly hard-working professionals – all of them – dedicated to the residents that they care for.

Mary Mayhew, the Secretary of the Florida Agency for Health Care Administration, recently confirmed for Politico that it was the asymptomatic health workers themselves that were carrying the virus and transmitting to their own patients. It is unfortunate. It is sad. But it is true.

A Florida nursing home administrator echoed that point by saying "What we're finding is staff is coming in contact, without even knowing it. Our communities are truly a microcosm of the larger community." After all, staff are one of the links between the community and the facilities.

When we looked at the data in New York, we asked nursing home administrators to tell us the first date staff experienced symptoms typical of COVID-19 or received a positive test result. We also asked them to quantify how many staff either tested positive or experienced symptoms of COVID-19.

What does the data show? A retrospective analysis shows that the earliest recorded staff illness with symptoms similar to COVID-19 is at the end of February, February 24th.

Let's think about that for a minute – the period of time from infection to symptoms is 2 to14 days. If you count backwards, this could, in many cases, bring us back to mid-February,

when exposure likely occurred. Is that possible? Mt. Sinai recently published the results of their antibody study which showed that COVID-19 was in New York as early as February 1st.

But back then we could not test for it. The CDC was the only place a specimen could be evaluated then, and for a long period of time afterwards. In fact, our own Wadsworth Center laboratory developed the first test for COVID-19 outside of the CDC on February 29th.

Back then we were not screening for symptoms yet either. As I mentioned, the CDC recently released a report acknowledging that their European travel ban, which came on March 13, was too late, that it was already spreading in New York. Three thousand flights from Europe had already landed in New York State by mid-March. For the largest number of nursing homes, the first instance of staff reporting a COVID-19 related illness was March 16th.

One may ask – why does that matter? Because as I said earlier nursing home resident fatalities peaked on April 8th, 23 days after the peak in nursing homes' first known infections among staff.

And, why does that matter? Because multiple publications out of the Imperial College of London and other prestigious research institutions have shown that among people in the general population who died from COVID-19, the average span of time from infection to death was 8-25 days.

I want to be clear on this – this is not to place blame on the nursing home staff for resident fatalities. We need to look at this from that moment in time, not from an analysis using knowledge we have subsequently gained in the months since that time.

So, let's stand at that moment in time. What was the landscape then? Many of the COVID-19 positive nursing home staff were asymptomatic. Testing was not available.
But let's just say that there was testing, and they knew they had it, but did not have symptoms.

The extent to which asymptomatic individuals could transmit the disease was just not fully known back in March. Now more on nursing home staff, because as I mentioned, they were

hit hard by COVID-19. By mid-May, nursing homes had reported approximately 37,000 affected staff. 158,000 people work in nursing homes in New York. This means that approximately 1 in 4 workers were affected.

Interestingly, independent antibody testing done by BioReference Laboratories in May showed that 29% of 3,500 nursing home employees had COVID-19 antibodies. This is very consistent with our findings. Extrapolating the data to the whole nursing home workforce means that approximately one in three nursing home workers had COVID-19 at some point in time.

Now I'd like to spend a little time more about that March 25th guidance, which we have talked about many times, but deserves repeating. The document, mirroring Centers for Medicare and Medicaid Services (CMS) guidance released March 13th, simply said that no resident shall be denied admission solely because of COVID-19 positive status. It did not say you must admit residents with COVID-19.

"No resident shall be denied" does not equal "must accept." A nursing home could not accept a COVID-positive person unless the nursing home could provide "proper isolation and protective procedures" and "provide adequate care." Title 10 of the New York State Code of Rules and Regulations, section 415.26, clearly states a nursing home shall "accept and retain only those nursing home residents for whom it can provide adequate care." In this case, adequate care means properly cohorting patients, ensuring proper levels of PPE, screening staff, and other infection control measures that we communicated to the nursing homes at several different junctions.

The tragic truth is that COVID-19 is a new disease. It's in its name:19 for 2019. Early on, we did not know how widespread it already was within our communities. Because no one knew, the virus was able to enter the facilities that house our most frail and vulnerable citizens. Looking back the data shows that virus came in to nursing homes through staff, and presumably visitors, and was passed to the residents. And with their health already compromised by age and other conditions they died in numbers, that, again, are too high to bear.

Still, we looked at the facts and we will continue to do so. As we learn more about COVID-19, we will have more facts and be able to refine how we respond. But we will always make our decisions based on the best scientific information available at the time.

Thank you again for the opportunity to share this information.