

Congress of the United States

Washington, DC 20515

The Honorable Robert F. Kennedy, Jr.
Secretary
U.S. Department of Health and Human Services
200 Independence Ave, SW
Washington, DC 20201

Dr. Mehmet Oz
Administrator
Centers for Medicare & Medicaid Services
7500 Security Boulevard
Baltimore, MD 21244

Mr. Jim O'Neill
Acting Director
Centers for Disease and Control Prevention
1600 Clifton Rd NE
Atlanta, GA 30333

September 29, 2025

Dear Secretary Kennedy, Dr. Oz, and Mr. O'Neill,

This letter serves as a follow up to the New York Republican delegation letter sent on March 6, 2025. Over six months later, we have yet to receive a response.

More than 15,000 New York nursing home residents died of COVID during the early part of the pandemic. We just passed the grim five-year anniversary of New York's infamous [March 25, 2020 directive](#), which forced ill-prepared nursing homes to accept 9,056 COVID-patients over a six-week period.

We are seeking a written determination from your agencies as to whether the New York State Department of Health's March 25th directive was in compliance with CMS and CDC guidance. Under the Biden Administration, CMS did [responded](#) to New York State Senator Ortt [letter](#) within 40-days but still did not give a written determination as requested. It is important to understand that the March 25th directive was solely about the transfer of COVID positive patients from hospitals into nursing homes, and we ask you to focus on parts of the guidance relevant to those transfers.

The House Select Subcommittee on the Coronavirus Pandemic released its final reports, which concluded that the March 25th directive was not following the recommended federal guidance.

The Republican majority's [report](#) states on pages 230 – 234:

“FINDING: The March 25 Directive Was Inconsistent with Applicable Federal Guidance Regarding Hospital to Nursing Home Transfers and COVID-19 Related Infection Control.”

The Democrat minority’s [report](#) states on page 35:

“Governor Cuomo was immediately criticized for the Advisory, which also arguably contradicted federal CMS guidance by requiring nursing homes to accept patients with a COVID-19 diagnosis.”

In addition, former CMS Administrator Seema Verma, in an [interview](#), and former White House Coronavirus Task Force Coordinator Dr. Deborah Birx, in [congressional testimony](#), both stated that the March 25th directive was not following CMS/CDC guidelines.

On June 11, 2024, former Governor Cuomo’s [opening statement](#) to the Select Subcommittee, said that the March 25th directive followed federal guidelines:

“Investigations found that New York’s DOH March 25th guidance was consistent with the prior guidelines issued by the federal CMS and CDC on March 4th, 9th, 13th, and 23rd.

“The March 13th CMS policy reiterated that nursing homes could keep patients they knew were COVID positive and should accept a COVID positive patient discharged from a hospital.”

While the words used in the federal guidance were permissive, the March 25th directive was prescriptive, using words such as “must comply,” “urgent need”, “prohibited from requiring” and “directive.”

Additionally, if the Cuomo administration’s March 25th directive was consistent with federal guidance, why was it [rescinded](#) on May 10, 2020? Was May 10th the day the Cuomo administration stopped following federal guidance or the day they started following them? It’s important to note, that the Cuomo administration, at its May 10th press conference, still omitted explicitly stating that nursing homes should follow CDC/CMS Transmission-Based Precautions and adhere to federal infection prevention and control recommendations.

Also on May 10th, the Cuomo administration announced the following nursing home policy changes as part of [Executive Order 202.30](#):

- Suspending the March 25th directive.
- Forbidding hospitals to discharge patients to nursing homes until they tested negative for COVID-19.
- Forbidding hospitals to discharge a patient to any nursing home unless the home certified that it could properly care for the patient.

- Declaring that nursing homes could contact the Department of Health if they needed any resident transferred.

Executive Order 202.30 also reinstated [NYCRR 415.26](#), which had been suspended on March 18, 2020, by [Executive Order 202.5](#). NYCRR 415.26 says that nursing homes “shall ... accept and retain only those nursing home residents for whom it can provide adequate care.”

Despite its suspension, the Cuomo administration has since claimed that nursing homes were bound by 415.26 at the time the March 25th directive was in effect.

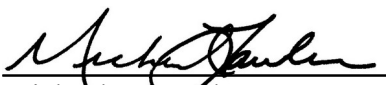
We respectfully request that your answer address the following issues:

Was the New York State March 25th directive consistent with CMS and CDC guidelines if it:

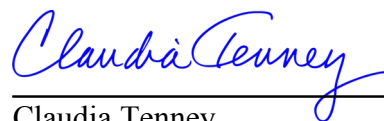
- Failed to instruct nursing homes to follow guidance from CMS and CDC?
- Omitted instructing homes to follow “CDC Published Transmission-Based Precaution (T-BP) guidance”?
- Omitted stating that nursing homes must “have the ability to adhere to infection prevention and control recommendations”?
- Omitted stating that a nursing homes “must wait until these precautions are discontinued before admitting residents with COVID-19”?
- Prohibited COVID testing prior to an admission?
- Declared that a finding by hospital physician or designee deeming a resident to be “medically stable” was the sole requirement for a nursing home to accept a patient?
- Instructed nursing homes that “standard precautions must be maintained,” a phrase not found in any of federal guidance for nursing homes?
- Omitted recommending that nursing homes take precautions such as isolating patients or cohorting staff?
- Overrode the ability for nursing homes to reject patients they couldn’t adhere to federal guidance?
- Overrode the ability of a nursing home to have its own doctor review a patient's diagnosis/discharge summary before accepting a patient?
- Removed the ability for nursing homes to request and or require a COVID negative test for a before accepting a discharge from a hospital?

We would appreciate a timely response within the next 14 days. Thank you for your attention to this important matter.

Sincerely,



Michael V. Lawler
Member of Congress



Claudia Tenney
Member of Congress



Andrew R. Garbarino
Member of Congress



Elise M. Stefanik
Member of Congress



Nick LaLota
Member of Congress