



Testimony of Bill Hammond

Senior Fellow for Health Policy, Empire Center for Public Policy

Before the Joint Hearing on Residential Healthcare Facilities and COVID-19
August 10, 2020

As the harrowing past few months have made clear, New York was both unusually vulnerable to the coronavirus and dangerously underprepared to fight it.

By the time the state gained control of the outbreak, tens of thousands of New Yorkers had died, a disproportionate share of whom lived in nursing homes. The state's mortality rate – especially in New York City and its surrounding region – ranks among the very highest in the world.

On the whole, then, New York's pandemic has been a cautionary tale, not a success story.

Acknowledging that reality is a crucial step toward bolstering the state's defenses against the next pandemic. We need to thoroughly analyze the shortcomings of our response in order not to repeat the many mistakes that clearly were made. This is not about shaming officials and providers for good-faith actions taken under difficult circumstances. It's about developing the best possible public health policy for the future.

With respect to nursing homes, however, a full analysis is not yet possible. This is largely because the state Department of Health is sharing only partial data and showing a counterproductive tendency to minimize the scale of the state's pandemic.

As of now, DOH is reporting only deaths that occurred within the nursing facilities, which number approximately 6,500. This leaves out the substantial share of cases in which residents were transferred to hospitals in their final days.

This policy understates the painful losses suffered by nursing home residents and their loved ones, distorts comparisons with other states, obfuscates which homes protected residents most or least effectively and inhibits proper analysis of the state's response.

For example, the Cuomo administration frequently cites a particular statistic – nursing home deaths as a percentage of all coronavirus deaths – to argue that New York fared better than most other states. This is doubly misleading: first because the state's count of nursing home deaths is artificially low, and second because its total death count is unusually high.

By other measures, New York's nursing home toll ranks among the highest in the country. Based on the understated official number, its total death count is the second highest of any state; the percentage of residents who died, at 6.3 percent, is seventh highest, and the rate of nursing

home deaths per 100,000 total population, at 33, is sixth highest. If DOH were not omitting hospital deaths, those rankings would all get worse.¹

Nursing home data from the U.S. Centers for Disease Control and Prevention are also incomplete. The CDC did not start gathering its information until mid-May, after the worst of New York's outbreak had passed, and made it optional for homes to report coronavirus cases and deaths retrospectively. However, the CDC does count all coronavirus deaths among nursing home residents, including those who die in hospitals, which allows a useful if limited comparison with DOH data.

From May 24 to June 14, the CDC tallied 656 deaths attributed to coronavirus in New York nursing homes. The state's count of COVID fatalities during those same weeks was only 383. This implies that 42 percent of the patients counted by the CDC had been transferred to hospitals before they died.²

If that same ratio has held throughout the crisis, the true toll of coronavirus in New York's nursing homes would be in the neighborhood of 10,000.

Another concerning indicator is a spike in nursing home vacancies. State census data reveals that the share of empty beds increased from an average of eight percent through February to 21 percent in late May. That change means that nursing homes have about 13,000 fewer patients than usual. Excess deaths from COVID-19 are clearly a contributing factor to that drop, along with lower than usual admissions and, possibly, higher than usual discharges.³

The DOH report on coronavirus in nursing homes, published July 6, was a flawed document.⁴ It brought new information to light but undermined its own credibility by relying on the department's incomplete count of deaths, using questionable methodology and reaching conclusions that went beyond the evidence. Contrary to statements from the Cuomo administration, it was not peer-reviewed in the way that term is normally used.

The report focused on defending specific DOH policies while leaving other important questions unaddressed. For example, it linked the bulk of nursing home deaths to infections introduced by staff and possibly visitors, but failed to explore why infection rates among staff were so extraordinarily high – or what should be done to control that risk in the future.

In spite of those shortcomings, the report offered convincing evidence that coronavirus was widespread in many facilities well before the issuance of DOH's much-debated March 25 directive, which compelled homes to accept admission of coronavirus-positive patients being

¹ These figures are drawn from an Empire Center analysis using data from the New York State Department of Health, the New York Times, the U.S. Census Bureau and the Kaiser Family Foundation.

² See "Nursing Home Vacancy Rate Soars, Hinting at a Higher Coronavirus Toll," EmpireCenter.org, June 30, 2020. <https://www.empirecenter.org/publications/nursing-home-vacancy-rate-soars-hinting-at-a-higher-coronavirus-toll/>

³ Ibid.

⁴ See "Cuomo Administration Ducks Important Questions on Nursing Homes," EmpireCenter.org, July 8, 2020. <https://www.empirecenter.org/publications/cuomo-admin-ducks-important-questions-on-nursing-homes/>

discharged by hospitals. Thus, to blame that single decision for every nursing home death, as some critics have done, is clearly an exaggeration.

Yet the report's conclusion that the order was "not a significant factor" overstates the evidence. A more reasonable interpretation is that discharging positive patients into nursing homes made a difficult situation worse and likely contributed to some excess deaths – although estimating how many would be difficult if not impossible given the information currently available.

The report also left unresolved the question of whether the policy embodied in the March 25 directive was the right call – and when or if it should be revived in the future.

At the time it was issued, projections indicated that the state's hospitals might soon be overwhelmed by a wave of critically ill patients. Discharging infected but stable nursing home residents was a strategy to free up hospital beds for sicker patients. Ultimately, though, the peak demand for hospital beds proved much smaller than feared – meaning, in hindsight, that the March 25 order turned out not to be necessary.

In May, after initially defending the order, the administration issued a second directive barring hospitals from discharging positive patients to nursing homes. However, the original order technically remains in effect, and the governor and the DOH have denied that it had any negative consequences and declined to disavow their initial policy.

These mixed signals confuse the debate the state should be having – which is how officials should handle infected nursing home patients in future pandemics. One possible strategy would be to establish separate coronavirus-only nursing facilities that could house otherwise stable residents until the risk that they would infect others has passed. The state did this to some extent, but evidently not enough to handle all coronavirus-positive nursing home residents being discharged from hospitals.

The state should also work to improve infection control in nursing homes. That would include assuring an adequate supply of face masks, gowns and other critical equipment when emergencies strike, through stockpiling or other means.

It has been argued, in these hearings and elsewhere, that nursing homes were ill-prepared for the coronavirus because of chronic "under funding." This is difficult to square with the reality that New York's Medicaid program spends more per capita on nursing home care than any other state.⁵

To the extent the state has money to invest, its first priority should be developing more robust public health defenses – so that New York will never again be so badly surprised by a virus.

One lesson of the past five months is that New York cannot necessarily depend on the federal government to defend it against diseases that originate overseas. In the aftermath of the September 11 attacks, the New York Police Department stationed intelligence personnel around

⁵ "Medicaid Expenditures for Long-Term Services and Supports in FY 2016," IBM Watson Health on behalf of the U.S. Centers for Medicare and Medicaid Services, May 2018.
<https://www.medicaid.gov/sites/default/files/2019-12/ltssexpenditures2016.pdf>

the world to monitor terrorist activity. The city and state should consider taking a similarly independent and proactive stance with their public health defenses.

Ultimately, the best way to protect nursing home residents from pandemics is to make sure they don't happen in the first place – or at least to minimize their spread when they do occur.