

# New York governor exempts nursing home operators from criminal liability after taking millions from the industry

**Philip Guelpa**  
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As the COVID-19 pandemic has spread around the world, among the most dangerous venues for its propagation have been nursing homes and elder care facilities. Numerous examples have come to light in which the response to the initial appearance of the disease at these facilities has been grossly inadequate, if not criminally negligent.

It should have been obvious from the beginning to any objective observer that the prevailing conditions at even well run facilities—an elderly population, many with pre-existing health concerns, close quarters, repeated interactions between residents and staff—constitute ideal conditions for the virus to spread rapidly and to claim many lives.

However, in case after case, it has been revealed that the necessary measures to protect both residents and staff from infection—such as frequent testing, isolation of infected individuals, the provision of proper personal protective equipment (PPE) for staff—were not implemented. Indeed, as the inevitable consequences of this inaction unfolded, corporate operators as well as responsible government officials took steps that actually worsened the situation.

Furthermore, numerous examples have been revealed in which the developing crisis at such institutions was intentionally covered up, further delaying the implementation of corrective measures. In effect, nursing homes and elder care facilities became concentrated nodes of infection—disease vectors—from which the virus was propagated into the surrounding community.

Driving this pathological situation is the reality that nursing homes and elder care facilities are either privately run for profit or government institutions

operating on shoe-string budgets. In either case, the institutions' administrators and responsible politicians were opposed to taking the steps needed to reduce the dangerous conditions that promoted the rapid spread of the disease.

In this context, the action of Andrew Cuomo, Democratic governor of the state of New York, regarding nursing homes in particular, where thousands of residents have died, exemplifies the duplicitous nature of the ruling establishment, which places the interests of businesses as an absolute priority over the lives and safety of the working class. In a little-remarked provision of the recently adopted 2020-21 state budget, hospitals and nursing homes were shielded from liability for actions taken during the pandemic.

It specifically states that top officials at hospital and nursing home companies “shall have immunity from any liability, civil or criminal, for any harm or damages alleged to have been sustained as a result of an act or omission in the course of arranging for or providing healthcare services” regarding COVID-19. The reckless and criminal behavior of responsible individuals, which have been a major factor in accelerating the pandemic, are thus held blameless.

Cuomo himself bears part of the responsibility for the disastrous situation at nursing homes. In March, early in the spread of the disease, he issued an executive order prohibiting nursing homes from refusing the transfer of patients from hospitals even after they tested positive for the coronavirus. This was supposedly done to free up hospital beds. Cuomo now defends himself by stating that he was following federal guidelines at the time.

According to Cuomo, “New York followed the president’s agency’s guidance, so that de-politicizes it. What New York did was follow what the Republican administration said to do.” In other words, “the devil made me do it.” The consequences were inevitable and predictable. The Associated Press reports that more than 4,500 patients infected with coronavirus were transferred to nursing homes that were not adequately prepared to receive them. At least 5,700 New York nursing home residents have died from COVID-19, roughly a quarter of the state’s total, making them a center of the outbreak in the state.

Cuomo also resisted efforts to require state regulators to more accurately record and report nursing home death rates.

Cuomo’s decision to shield hospital and nursing home operators from liability over the coronavirus not only serves to deflect attention from his own culpability, but provides a window into the true nature of his own administration and of the corruption and venal servitude of the Democratic Party to the financial and corporate elite.

The *Guardian* reports that during his 2018 bid to win reelection, Cuomo received a \$1.25 million contribution from the Greater New York Hospital Association, a powerful health care lobbying group, which was a significant increase from previous years. This was in addition to donations of more than \$150,000 from top industry executives between 2015 and 2018. The *Guardian* further reports that during his second term, Cuomo and the Democratic Party have received a total of \$2.3 million from hospital and nursing home industry donors and their lobbying firms, based on data from the National Institute on Money in Politics.

Thus, it is no coincidence that the protective provision in this year’s state budget is one of the most explicit in the country.

However, this is not solely a New York phenomenon. An analysis of data collected by the *New York Times* indicates that residents of states that have enacted liability shields for health care facilities during the pandemic are 7.5 times more likely to die from COVID-19 than in those that have not. It should be strongly emphasized that these laws are primarily aimed at protecting corporations and top executives, not rank-and-file doctors, nurses, and other health care

workers. Indeed, immunity for executives constitutes a disincentive for workers to report unsafe conditions.

Cuomo’s policies have been touted by some as a shining example of a rational approach to the pandemic, with a supposedly scientifically based approach to “reopening” the state, in contrast to those of President Donald Trump, despite the fact that New York state is among the hardest hit in the US and will inevitably experience a resurgence of the disease as protective measures are loosened.

The governor made the cover of *Rolling Stone*, with the title “Andrew Cuomo Takes Charge,” and has even been rumored as an alternative to Joe Biden as Democratic presidential candidate. In fact, New York’s exemption of nursing home operators echoes, in microcosm, the national political establishment’s drive to protect all business from liability for the deadly consequences of the “back to work” drive.

Cuomo’s actions are of a piece with his consistently anti-working class policies throughout his governorship. This was evident in his attacks on education and other government programs following the 2008/2009 recession and his adamant refusal to raise taxes on the wealthy, even as the state faces at least a \$13 billion deficit in the current fiscal year. The 2020-21 state budget, which contains the hospital and nursing home operator protection, also allows the governor to slash expenditures nominally allocated in the budget. This portends major attacks on education and social services.

As the economic consequences of the ruling class’s criminal response to the pandemic worsen, the working class will be made to suffer even more devastation and death. Workers can place absolutely no hope that any section of the ruling class will do other than use the pandemic to enact policies that benefit it at the expense of the working class. Workers must take matters into their own hands by forming rank-and-file workplace safety committees to fight for socialist policies that defend their health and well-being.



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