

New York's COVID-19 nursing home deaths severely undercounted while Cuomo forced out public health officials

Josh Varlin**3 February 2021**

A recent report from New York Attorney General Letitia James followed by new data from the state Department of Health (DOH) confirm that nursing home deaths due to the pandemic have been drastically undercounted by nearly 50 percent. The new information, revealing more than 4,000 additional deaths of nursing home residents due to COVID-19, combined with a *New York Times* report about nine senior public health officials resigning over the past year paints a portrait of the criminality of the ruling elite's response to the pandemic in New York.

Prior to the report's January 28 release, the state's count of deaths at nursing homes was 8,711. Within hours of James' report being released, the DOH updated its website to show 12,743 deaths. The state had been excluding people who died in a hospital from the nursing homes' death tally. Health Commissioner Dr. Howard Zucker said that day that the DOH website had indicated that the tally did "not include deaths outside of a facility."

Democratic New York Governor Andrew Cuomo responded by dismissing the focus on nursing home deaths as originating in "a political attack." He also pointed to the fact that nursing home resident deaths make up a slightly smaller proportion of overall deaths in New York than nationally. Given that New York is still the hardest-hit US state due to the traumatic impact of the "first wave" in the spring of 2020, with over 42,000 deaths, this is a product less of policies that protected nursing home residents and more of policies that led to millions of people outside of homes getting infected and tens of thousands dying.

In a particularly callous response, Cuomo said: "Who cares [if they] died in the hospital, died in a nursing

home? They died."

Above all, the new DOH data make clear that the pandemic has been a disaster for elderly and disabled New Yorkers. The report from Attorney General James also sheds light on other aspects of the failure of the state and nursing homes to protect residents, including a "[l]ack of compliance with infection control protocols," "[i]nsufficient personal protective equipment (PPE) for nursing home staff" and "[i]nsufficient COVID-19 testing for residents and staff in the early stages of the pandemic."

The report also includes among its preliminary findings that "[l]ack of nursing home compliance with the executive order requirement communication with family members caused avoidable pain and distress" and that "[g]overnment guidance requiring the admission of COVID-19 patients into nursing homes may have put residents at increased risk of harm in some facilities and may have obscured the data available to assess that risk."

The latter point—that state guidance declared that "[n]o resident shall be denied re-admission or admission to the nursing home solely based on a confirmed or suspected diagnosis of COVID-19," in the words of the DOH—has been much-discussed in relation to Cuomo's culpability in the high death toll. This guidance was in place from March 25 until May 10 last year, during which time over 6,000 people were admitted into nursing homes.

Because of the very nature of the guidance, which did not require testing for COVID-19 before admission, it is difficult to determine what role this played in the nursing home deaths. Both Cuomo and James note that the state's guidance was consistent with contemporary

guidance from the federal Centers for Medicare and Medicaid Services (CMS) and the Centers for Disease Control and Prevention (CDC).

Significantly, the report indicates that Cuomo's executive order granting immunity for nursing homes likely contributed to the high death toll and general worsening of conditions inside the homes, including by admitting residents without sufficient healthy staff to care for them.

Cuomo's actions during the pandemic—including providing immunity for nursing homes, keeping schools and businesses open, and reopening the state early—combined with his actions disparaging of scientific expertise to create an environment which public health officials have found impossible. According to the *New York Times*, nine top public health officials have resigned in recent months, with many citing Cuomo as a particular cause.

Analogous to former President Donald Trump's attacks on scientists such as Dr. Anthony Fauci and scientific evidence, as well as New York City Mayor Bill de Blasio forcing out city Health Commissioner Dr. Oxiris Barbot, Cuomo declared the day after the attorney general's report was issued: "When I say 'experts' in air quotes, it sounds like I'm saying I don't really trust the experts. Because I don't. Because I don't."

Cuomo's Trumpian disdain for scientific expertise extended to his decision to rely on hospital systems for the state's vaccination program rather than using preexisting vaccination plans involving the state DOH cooperating with city and county health departments. A task force with independent vaccination experts was largely for show, whereas a lobbyist for Northwell Health was given an office inside the DOH from which to work. Changes in regulations were announced at news conferences, leaving health officials to scramble to implement them. Cuomo's much touted "microcluster" strategy, which is wholly inadequate for controlling the pandemic, was also evidently designed with the DOH playing a secondary role, according to the *Times*.

One former health official told the *Times*, "Morale certainly was and continues to be at an all-time low." Whereas past public health emergencies made DOH personnel feel valued and necessary, this time, "the opposite happened," according to that official.

As a result, the deputy commissioner for public health, director of the communicable disease bureau, medical director for epidemiology, and state epidemiologist have all left the DOH since the summer. Dr. Jill Taylor, head of the Wadsworth Center laboratory, which has been testing for virus variants, has also left recently.

That so many public health officials have felt compelled to leave just as the state embarks on an unprecedented—and so far substandard—vaccination effort bodes poorly for the next stage of the pandemic, which will also see a further reopening, with indoor dining resuming in New York City on February 14.

Cuomo's own political health is uncertain. On February 3, the state Supreme Court ordered that the DOH release additional information on nursing home deaths within five days in response to a lawsuit from a right-wing think tank. Meanwhile, White House Press Secretary Jen Psaki said that the federal Department of Justice (DOJ) may decide to pursue charges in relation to nursing home deaths, implying that President Joe Biden would let the DOJ make its decision independently. The DOJ was already investigating the nursing home situation in New York under the Trump administration.



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