

**LIKE FIRE THROUGH DRY GRASS:
NURSING HOME MORTALITY AND
COVID-19 POLICIES**

HEARING

BEFORE THE

**SELECT SUBCOMMITTEE ON THE
CORONAVIRUS PANDEMIC**

OF THE

**COMMITTEE ON OVERSIGHT AND
ACCOUNTABILITY**

U.S. HOUSE OF REPRESENTATIVES

ONE HUNDRED EIGHTEENTH CONGRESS

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C O N T E N T S

OPENING STATEMENTS

	Page
Hon. Brad Wenstrup, U.S. Representative, Chairman	1
Hon. Raul Ruiz, U.S. Representative, Ranking Member	3

WITNESSES

Ms. Janice Dean, Family Member of COVID-19 Nursing Home Victim, Fox News Senior Meteorologist	5
Mr. Bill Hammond, Senior Fellow for Health Policy, Empire Center Oral Statement	7
Ms. Vivian Zayas, Co-Founder, Voices for Seniors Oral Statement	9
Dr. David Grabowski, Professor of Health Care Policy, Harvard Medical School Oral Statement	10

Written opening statements and the written statements of the witnesses are available on the U.S. House of Representatives Document Repository at: docs.house.gov.

INDEX OF DOCUMENTS

Documents entered into the record during this hearing are listed below.

- * Article, *CNN*, “Nursing Homes Receive Defective Equipment As Part of Trump Administration Supply Initiative”; submitted by Rep. Raskin.
- * Article, *Daily News*, “Still Looking for Answers on COVID”; submitted by Rep. Malliotakis.

Documents are available at: docs.house.gov.

**LIKE FIRE THROUGH DRY GRASS:
NURSING HOME MORTALITY AND
COVID-19 POLICIES**

WEDNESDAY, MAY 17, 2023

HOUSE OF REPRESENTATIVES
COMMITTEE ON OVERSIGHT AND ACCOUNTABILITY
SELECT SUBCOMMITTEE ON THE CORONAVIRUS PANDEMIC
Washington, D.C.

The Select Subcommittee met, pursuant to notice, at 10 a.m., in room 2247, Rayburn House Office Building, Hon. Brad Wenstrup [Chairman of the Select Subcommittee] presiding.

Present: Wenstrup, Comer, Malliotakis, Lesko, Joyce, Jackson, McCormick, Ruiz, Raskin, Dingell, Ross, Garcia, Bera, and Tokuda.

Dr. WENSTRUP. The Select Subcommittee on the Coronavirus Pandemic will come to order. I want to welcome everyone.

Without objection, the Chair may declare a recess at any time.

I ask unanimous consent for Ms. Stefanik to participate in this hearing for the purposes of questions.

I now recognize myself for the purpose of making an opening statement.

**OPENING STATEMENT OF CHAIRMAN BRAD WENSTRUP
REPRESENTATIVE FROM OHIO**

Today the Select Subcommittee is holding a hearing to examine the disastrous must-admit orders that states, namely New York, New Jersey, and Pennsylvania, issued mandating nursing home residents admit COVID-positive patients back from the hospital. Throughout my medical career, I treated many very serious infections, usually very vulnerable patients with serious comorbidities. The very idea of placing infected, contagious patients in a facility with uninfected vulnerable patients troubles me deeply, especially when other more viable options were available. These must-admit orders led to the deaths of tens of thousands of elderly Americans. We hope this hearing is step one to providing accountability for the thousands of American families seeking answers.

It quickly became evident that COVID-19 was especially dangerous for the elderly. There was a thousandfold higher risk of poor outcomes, specifically hospitalization and death, for older people relative to younger populations. It also became clear that individuals with preexisting comorbidities were at an increased risk. Therefore, it was critically important that the public health re-

sponse prioritize these high-risk populations to reduce their risk of infection.

This was understood by the Centers for Medicaid and Medicare Services and the Centers for Disease Control and Prevention, who put forth guidance consistent with these priorities. On March 13, 2020, CMS issued guidance that specifically directed nursing homes to only accept COVID-19-positive patients if they were able to do so safely, and only if the nursing homes could properly follow CDC isolation and quarantine guidance. This science-based guidance aimed to keep COVID-19 out of nursing homes as much as possible. It intended to prevent the at-risk elderly population from exposure to a highly transmissible virus, and it was designed to avoid infections, hospitalizations, and deaths among the most vulnerable population.

While many states followed these guidelines, states such as New York, New Jersey, and Pennsylvania, imposed mandates directly contrary to this guidance. These states instead implemented must-admit orders that effectively required nursing homes and long-term care facilities to admit COVID-19-positive patients, regardless of the homes' ability to protect their patients. These orders unjustifiably exposed America's most vulnerable to COVID-19 with predictable and deadly consequences.

Prior to issuing New York's must-admit order, then Governor Andrew Cuomo said, "For nursing homes, this could be like fire through dry grass." He was seemingly quite aware of the risks. According to the most recent available data, New York suffered more than 15,000 nursing home deaths as a result of COVID-19. Pennsylvania suffered more than 12,500 nursing home deaths, and New Jersey suffered more than 9,000 nursing home deaths. Of that, more than 200 veterans at state-run veterans' homes in New Jersey died as a result of COVID-19, including 89 at a single veterans' home in Paramus, New Jersey in what has been described as a horror show.

In Andover, New Jersey, authorities discovered that a nursing home was storing 17 bodies in a makeshift morgue. These were fathers, mothers, uncles, aunts, brothers, sisters, grandpas, and grandmas. They deserved better from our public health authorities and from our politicians. They and their families were failed by these deadly must-admit orders. Unfortunately, it is clear that decision-making by politicians, not science or scientists, was responsible for these misguided decisions. Science never supported must-admit orders. Science did not support rejecting the Federal Government's help.

The Trump Administration sent the United States naval ship, *Comfort*, and transformed the Javits Center to address capacity issues at New York City hospitals. However, Governor Cuomo failed to use these facilities at the expense of overwhelmed hospital systems. Why? Why did he fail to take advantage of the resources offered? Science certainly did not lead state officials to fraudulently conceal and cover up the number of nursing home deaths in their respective states.

We learned that Governor Cuomo knew that the must-admit order was wreaking havoc on nursing homes throughout New York, and so his Administration froze the state's nursing home deaths

data. In an investigative report on COVID-19 nursing home policies, New York State Attorney General Letitia James found that the Cuomo Administration underreported the number of COVID-19 deaths by approximately 50 percent. Was this done by design but to not only avoid accountability from the Department of Justice but to escape political accountability from the American people? My father used to say to me, I do not care what you did wrong, but if you lie to me, you are in much more trouble.

Finally, science did not support threatening retaliation against one's political enemies. Governor Cuomo threatened to destroy New York State Assemblyman Ron Kim, whose uncle died in a New York nursing home, for not participating in this seemingly fraudulent scheme to conceal the true nursing home data. Unlike Governor Cuomo's COVID-19 response, this Select Subcommittee was not created to score political points nor to sell books, and we owe it to the victims' families to hold those who implemented these deadly, deadly mandates accountable. And the public officials who engaged in political cover ups and manipulated mortality rates for political expediency, they must answer to the American people.

We are not here to Monday morning quarterback or to negate the difficulty of decisionmaking during an unprecedented pandemic, but once science is clear, those who made wrong decisions must be held accountable. We are holding this hearing today to look back to help prepare for a future pandemic, to determine what went wrong, to recommend how to do it better, to ensure that future health policy decisions are based on scientific facts, not political calculations. And I suspect today we will talk about how changes have been made and suggest better ways going forward. That is appreciated. However, we must identify wrongdoing and hold people accountable. Otherwise, it will happen again, and victims and their families will never feel whole again.

I look forward to a strong on-topic discussion today. I would now like to recognize Ranking Member Ruiz for the purpose of making an opening statement.

**OPENING STATEMENT OF RANKING MEMBER RAUL RUIZ
REPRESENTATIVE FROM CALIFORNIA**

Dr. RUIZ. Thank you, Mr. Chairman. First, let me begin by thanking you, Ms. Dean and Ms. Zayas, for being here today. I am deeply sorry for your losses. Any death due to COVID-19 is a tragedy, and my heart is with you and the families of the 200,000 residents and staff of long-term care facilities across the country who perished during the pandemic.

Three years ago, a novel, deadly, highly transmissible airborne virus took hold, and while we knew little about COVID-19 and its long-term impacts on human health at the time, we did know that our Nation's seniors were amongst our most vulnerable when it comes to suffering severe illness and death. So, as COVID-19 swept the country and the Federal response to the virus faltered under President Trump, states were forced to grapple with an unfamiliar public health threat, and, yes, policy missteps were made.

On March 4, 2020, the Centers for Medicare and Medicaid Services issued guidance permitting nursing homes to admit and readmit COVID-19-positive patients, but only if the nursing home

could do so safely, following protocols to prevent transmissions among residents and staff. However, in an attempt to relieve hospital strain in a time of crisis, states like New York went beyond this guidance, requiring nursing homes to reopen their doors to COVID-positive patients with must-admit orders, regardless of safety and capacity to follow guidance and protocols. And as a physician, I disagree with that.

Now, as COVID-19 hospitalizations and deaths have decreased exponentially, thanks to the availability of vaccines and improved therapeutics, we must build better policies that will save lives and prevent harm in the event of another pandemic. As Members of this Select Subcommittee, we must develop forward-looking policies that promote transparency in data and strengthen protections in nursing homes to mitigate current and future threats.

So, we do need to take a look back at our nursing homes. Where were we when the pandemic started? Where were we during the pandemic with our nursing homes preparedness? We must also look to rehabilitate nursing home systems weakened by the previous administration's efforts to roll back regulations that established guardrails for quality of care and staffing levels, leaving those facilities under-resourced and under-prepared to combat a deadly virus.

For example, in July 2019, seven months before the pandemic took hold, the Trump Administration's proposed deregulation of on-site infection control resulted in facilities cutting corners, assigning already overworked nurses to take on responsibilities intended for infection control specialists. At the same time, the previous administration proposed loosening standards to review patient care needs, reduced consequences for nursing home regulation violators, and lifted protections for residents and families to take legal action in the event of mistreatment.

What is more, the Trump Administration's prolonged failure to secure adequate personal protective equipment (PPE) and testing kits led to increased transmission in both nursing homes and their surrounding communities. For example, a 2021 National Institutes of Health (NIH) study found that nursing homes in the same communities that experienced high rates of infection saw extreme shortages in rapid COVID-19 testing. The deregulation or removal of protections of the nursing home industry, coupled with shortages in COVID-19 tests and PPE, were also missteps and contributed to devastatingly high rates of nursing home deaths throughout the country, as high as nearly one out of every 50 residents at the peak of the pandemic, according to AARP.

So, when the next pandemic rolls around, we must ensure that our Nation's nursing homes and long-term care facilities are fully equipped to respond to and reduce transmission of a deadly novel virus. This means identifying real solutions now that will prevent harm and save lives in the future. We cannot allow overwhelmed healthcare staff to be left behind, and we must adequately equip them with the resources they need to provide quality care and services to their patients.

Under President Biden's leadership, we have taken meaningful steps toward this goal. This includes reinstating enforcement of Federal nursing home standards, improving inspection, and

strengthening our healthcare workforce, and let us not forget successfully and efficiently delivering lifesaving vaccines to our most vulnerable populations, significantly reducing the death rate among nursing home residents.

Now, there is still much more work to do, so let us make sure we are sufficiently investing in skilled nursing home staff and infection control measures, keeping in place protections, and let us hold to account those bad actors in the nursing home industry who skirted regulations and fueled the alarming death toll we experienced during the height of the pandemic. We can all agree that we can and must do better, and I am confident that if we work together, we can identify commonsense bipartisan solutions that put people over politics, save lives, and right the wrongs that caused so much suffering in this pandemic. Thank you, and I yield back.

Dr. WENSTRUP. Thank you. Our witnesses today are Ms. Janice Dean. Ms. Dean joined Fox News Channel in January 2004, where she currently serves as a senior meteorologist for the network. Both of her in-laws passed in New York nursing homes during the pandemic. We express our sympathies to you. Mr. Bill Hammond: Mr. Hammond is a senior fellow for health policy at the Empire Center in New York. Before joining the Empire Center, Mr. Hammond spent almost three decades in journalism. Ms. Vivian Zayas: Ms. Zayas is a co-founder of Voices of Seniors. She is a mom of six. She unfortunately lost her mother in a New York nursing home and has since become an advocate. Again, we express our sympathies. Dr. David Grabowski: Dr. Grabowski is a professor of health policy at Harvard Medical School, where he studies long-term care and post-acute care.

Pursuant to Committee on Oversight and Accountability Rule 9(g), the witnesses will please stand and raise their right hands.

Do you solemnly swear or affirm that the testimony that you are about to give is the truth, the whole truth, and nothing but the truth, so help you God?

[A chorus of ayes.]

Dr. WENSTRUP. You may be seated. Thank you. Let the record show that the witnesses all answered in the affirmative.

The Select Subcommittee certainly appreciates you all for being here today, and we know this is difficult, and we look forward to your testimony.

Let me remind the witnesses that we have read your written statements, and they will appear in full in the hearing record. Please limit your oral statements to 5 minutes. As a reminder, please press the button on the microphone in front of you so that it is on and the Members can hear you. When you begin to speak, the light in front of you will turn green. After 4 minutes, the light will turn yellow. When the red light comes on, your five minutes has expired, and we would ask that you please wrap up.

I now recognize Ms. Dean to give an opening statement.

**STATEMENT OF JANICE DEAN
FAMILY MEMBER OF COVID-19 NURSING HOME VICTIM
AND FOX NEWS SENIOR METEOROLOGIST**

Ms. DEAN. Good morning, Chairman Wenstrup, Ranking Member Ruiz, and the Members of the Select Subcommittee on the

Coronavirus Pandemic. Thank you for inviting me to testify today on the horrific, preventable tragedy that unfolded in elder care facilities in the spring of 2020 that took the lives of over 16,000 seniors in New York State, including my husband's parents.

Mickey and Dee Newman were married for almost 60 years. They lived in the same four-story walk-up in Brooklyn for decades where they raised three children—Donna, Michael, and Sean. Mickey was in the US Air Force and joined the fire department of the city of New York, serving for 23 years in Engine Company 323 in Brooklyn. Dee was a devoted wife, a mother, and a grandmother, and worked at the local dentist's office part time. She never missed a birthday or an anniversary, and there are still days where my husband has the urge to call her on his way home from work, which was part of his daily routine.

Before the pandemic, Mickey had a series of health issues. He was in a nursing home for rehab to get into better shape before he could join his wife, Dee, in an assisted living residence, and then came COVID-19. Sean got a call in the late morning at the end of March 2020 and was told that his dad was not doing well. He had a fever. His breathing was labored. Three hours later, he was dead. Sean had to break the news on the phone to his mom in lockdown that her husband died. It was the hardest thing he has ever had to do.

My husband saw his mom once in early April after that to bring her some flowers. He could not pass the front desk. He saw her in the lobby for only one to two minutes standing ten feet away with a mask on. He told her he loved her, and she started to cry before he left. He would never see her again. A few days later, Dee's health went downhill. She was moved to the hospital, tested immediately, and diagnosed with COVID-19. The last time Sean spoke to his mother, she told him her throat was raw. She had trouble breathing. Despite her ill health, her final words were to ask him to buy Easter presents for her grandkids and to please write her name on the card. A nurse called us the next day to tell us she was in and out of consciousness. The next day, she died.

Our grief and our confusion turned to anger in the days and weeks afterward when we learned how elder care homes were turned into death traps. Over 9,000 COVID-positive patients were piled into facilities for 46 days, and no one told the families. Three years later, we still do not know why. Our former disgraced Governor, Andrew Cuomo, said more than once that COVID inside of nursing homes would spread like fire through dry grass. He knew the elderly were the most susceptible, and yet he let it happen. He lit the match, and he set the fire.

All of us here today would like to know the origins of where the March 25th order came from and why nursing homes were prohibited to test incoming patients. It is also worth mentioning that while care homes could not have access to tests, Andrew Cuomo's friends and family were secretly able to secure tests and use state resources to quickly find out the results.

The other question we have never had answered is why were not the facilities provided by the Federal Government ever used. There were thousands of empty beds in the Jacob Javits Center, the *USS Comfort* ship, and other several ad-hoc hospitals, while nursing

homes were packed with sick people. It was recently revealed that a U.S. Navy admiral on board the *Comfort* ship “begged the Cuomo Administration” to send patients to the nearly empty hospital ship docked on the Hudson River during the height of the pandemic, but instead of helping, “His pleas were met with politics and paranoia.” Many could not see their loved ones before they died or have wakes and funerals.

Instead of doing his job to protect our families, the former disgraced Governor was busy getting his staff to write a \$5.1 million book with various awards, including an Emmy, and blaming everything and everyone else for the mistakes that he made. He likes to say our advocacy is political, but not one grieving family I have met here has told me who they vote for. All we have ever wanted was to have a fair, bipartisan investigation into why so many of our elderly died painfully and alone.

The death toll in our senior living facilities in New York alone is bigger than September 11th and Hurricane Katrina combined. There have been hearings and accountability for both those tragic events. Why is this any different? And as much as I am grateful to be invited here today, having hearings alone will not bring justice. We need to learn from this tragedy, to turn our grief into purpose, and find out what happened to our parents and our grandparents, who trusted us and our leaders to protect them. Thank you.

Dr. WENSTRUP. Thank you, Ms. Dean. I now recognize Mr. Hammond to give an opening statement.

**STATEMENT OF BILL HAMMOND
SENIOR FELLOW HEALTH POLICY, EMPIRE CENTER**

Mr. HAMMOND. Thank you. Good morning. Thanks for the opportunity to testify. We are here today to talk about a mistake—I do not know how you want to characterize it—but it came to symbolize the worst aspects of the response in New York and even nationwide. Obviously, it is about an order that compelled nursing homes to accept COVID-positive patients. Even viewed in the best light, this was an act of desperation. The state had just gone into lockdown. The hospitals were filling up. Some projections indicated they might become overwhelmed, and so state officials, in effect, were trying to avert a crisis in the hospitals by creating a crisis in nursing homes, where they knew residents were acutely vulnerable.

This episode needs to be closely investigated for a number of reasons. As you have just heard, thousands of families have a legitimate reason to wonder whether their loved one died as a result of a government action, but also, we need to understand how it occurred so that we can make sure it does not happen again, so that future officials will have better options in front of them in a similar situation, or maybe just to prevent that similar situation from happening.

During the 46 days this policy was in effect, 9,000 patients transferred from hospitals to nursing homes. Most of them were new admissions. Most of them were not going back to a nursing home where they had been before. These transfers were probably not the only source and certainly not the only source of COVID nursing

homes, but they made a bad situation worse. An analysis by my colleague, Ian Kingsbury, and I found a statistically significant correlation between the number of patients transferred and higher mortality rates in the nursing homes that accepted them. According to our analysis, the policy was associated with several hundred and possibly more than 1,000 additional resident deaths. The directive tragically also appears to have been unnecessary. Although hospitals were filling up, they never became as overwhelmed as some of the projections indicated, and the system never fully ran out of beds, and these alternative facilities, such as the Javits Center and the U.S. naval ship, remained largely empty.

This was part of a chain of policy failures that led to the situation. Like most states, New York had not adequately prepared for the pandemic. It did not have an action plan, for example, for what to do when hospitals filled up during an outbreak of infectious disease. It did not have an adequate stockpile of PPE. It did not have the tools to know when the outbreak had started, which was probably in early February. And so, all of that slow down the state's response and led to a situation in late March where the situation appeared to be out of control, and officials really had no idea how bad it was and how much worse it could get. And that is the context in which the Cuomo Administration made this decision.

They compounded things. Once the decision became known to the public, which took a few weeks, and once it became the subject of some criticism and controversy, they compounded their original mistake by engaging in a cover-up. They pulled the directive off the web so that it was not available for the public to read. They misstated how it had worked. They misstated how it related to Federal policy. They made it sound like it was completely consistent to Federal policy when it differed in key respects. In particular, their policy did not talk about the importance of infection control, and, as the Chairman mentioned, they did not talk about how important it was to, say, for example, isolate these patients in separate wings or floors.

Also, they said that this really was optional. It sounded imperative, but it was actually optional because of a regulation the state had that said nursing homes should never accept a patient that they cannot handle. It turns out that the Governor had suspended that exact regulation seven days before he issued the order. Finally, and maybe worst of all in this cover-up, they understated the number of deaths. When they finally came clean with the full data, which was in response to a lawsuit brought by my organization, the number was closer to 15,000, which is 6,000 more than they had previously acknowledged.

This pandemic, in addition to the tragic deaths in nursing homes, it cost millions of lives. It cost trillions of dollars. We need to be excavating every mistake, like this mistake, and understanding how they play together and preparing for the next virus, which we know is coming, and the time to do that is not when the next virus arrives. The time to do it is now. Thank you.

Dr. WENSTRUP. Thank you, Mr. Hammond. I now recognize Ms. Zayas to give an opening statement.

**STATEMENT OF VIVIAN ZAYAS
CO-FOUNDER, VOICE FOR SENIORS**

Ms. ZAYAS. Chairman Wenstrup, Ranking Member Ruiz, and the Members of this Committee, thank you for the invitation to testify before the Select Committee on the Coronavirus Pandemic. I wanted to first say thank God and the Members of this Committee for these 5 minutes that I have this morning to share my family story, which echoes that of thousands of others.

Three years ago or so goes by really quickly, except when you are grieving. For many, it has been over 1,141 days of seeking answers into why our mothers and fathers or other loved ones met their fate in the manner they did. We often think of nursing homes as places where people or old people go to die. However, this is not always the case. There are many patients in short-term rehabilitation, such as young people recovering from gunshot wounds, or a car accident, or other debilitating illnesses, or otherwise healthy individuals recovering from routine surgeries or minor injuries. My mother, Ana Martinez, a physically, mentally, and emotionally strong woman in her 70s, developed arthritis. It was aggressive and hampered her quality of life. Following doctor's orders, in our due diligence, she underwent knee replacement surgery. Her first surgery, she was scared but she was reassured that it was routine and she would quickly recover after some physical therapy. After the surgery, we were full of expectation that we would see our mother in her kitchen again cooking her amazing dishes.

Our mother was in the midst of recovery at home post-surgery when she developed a cyst. After treatment at a local hospital, she was sent to a nearby nursing home rehab facility to receive inpatient physical therapy. It was expected that she would gain strength and return home soon. A minor wound lead my mom down a path into a nursing home from which she would never return. Our daily visits to the nursing home came to an abrupt end in the March 2020 when the facility called to notify us that all visitation would be suspended for approximately two weeks. We never saw our beautiful mother again. She was dead shortly after.

Gasping for air alone, confused, and scared, without her daughters who were her translators and caregivers, she could not tell us anything was wrong or that she was exposed to COVID-19 because she was also kept in the dark. Like many other families, nursing homes kept them in the dark as well, never telling us that they were admitting COVID-positive patients at the insistence of Governor Cuomo. We also had no idea that the nursing home failed to have proper policies in place to deal with contagious disease.

Our initial inquiries to our local legislators requesting an investigation into the factors that contributed to the death of our loved ones were met with roadblocks, vitriol, and partisan accusations. That was extremely troubling since my mother, a Puerto Rican woman, who, along with most of our family, were lifelong Democrats. How could those recovering from surgery or the immunocompromised be locked in a facility with a deadly contagion, especially in the care homes riddled with complaints and historical violations of not adequately following infectious disease protocols?

In addition to the lockdown policies, they allowed a perfect environment for neglect and abuse to run amuck out of sight of family

and caregivers. If these were not all painful enough, out of nowhere, the Governor of New York used his powers to give nursing homes legal immunity for their negligence, allowing facilities to get away with causing needless death due to poor care. We only slowly became aware of the behind-the-scenes politics that the nursing home owners were the Governor's largest donors.

Soon after the death of our mother and in a search for answers, we found a community of families who shared their tragic stories by the hundreds. We formed Voices for Seniors to give seniors and their long-term care residents a voice. Other daughters and sons, heartbroken by the untimely deaths of their parents, such as the Alvino family, who lost her beloved father and husband Daniel, to COVID in a rehab facility after neck surgery; or John Daly, a loved husband and father and grandfather, who no one helped him eat and debilitated prior to succumbing to COVID-19; or Robert Nieves, a veteran whose last words were, "I am afraid;" or Carmela Abbondanzo, who was found dead in her bed during a routine nursing call, and countless others that my heart cannot bear to recount.

Being an advocate for the elderly and others who reside in long-term care facilities has been a feat more difficult than we could have ever imagined, especially when everything is a partisan football. We will not let our loved ones die in vain, and we will not let this be swept under the rug due to politics. When will we see the elderly community elevated to a position of dignity and respect that they most certainly deserve? Will we see a deep and thorough investigation into all the factors that led to this tragedy, both the ones who lit the match and those that allowed it to burn? We truly thank you for holding this hearing this morning, and we truly and sincerely hope that no stone will be left unturned to get down to every cause and effect that led to the pain and devastation inflicted on so many.

Now I will address the Hispanic community really briefly.

[Speaking foreign language.]

Thank you again.

Dr. WENSTRUP. Muchas gracias, Ms. Zayas.

Ms. ZAYAS. Denada.

Dr. WENSTRUP. I now recognize Dr. Grabowski to give an opening statement.

**STATEMENT OF DR. DAVID GRABOWSKI
PROFESSOR OF HEALTH CARE POLICY
HARVARD MEDICAL SCHOOL**

Dr. GRABOWSKI. Thank you. Chairman Wenstrup, Ranking Member Ruiz, and distinguished Members of the House Select Subcommittee, thank you for the opportunity to testify today on this important topic. I am here today speaking in my capacity as a professor of healthcare policy at Harvard Medical School who has studied nursing home care for 25 years. This is actually my third time testifying to this Subcommittee on the issue of nursing home and COVID. The first time was back on June 11th, 2020.

As part of my remarks that day, I said, "A key point I wish to emphasize is that much of the impact of COVID in nursing homes could have been avoided with increased Federal leadership, resources, and attention. Rather than prioritizing the safety of the

1.3 million individuals that live in nursing homes and the staff that care for them, the Federal Government has chosen to push the logistics and costs off to the states and the nursing homes. By failing to invest in testing, personal protective equipment, and the workforce, the Federal Government has allowed a problem that started in a single nursing home in Kirkland, Washington, to grow into a national crisis.” Three years later, I stand by that statement completely. I am not letting nursing home, local, or state leaders off the hook. They deserve blame, too, yet more than any other entity, our Federal Government failed our nursing home residents and their caregivers back in 2020 at the start of the pandemic.

Looking back, COVID completely devastated nursing homes in the United States. To date, there have been over 1.6 million COVID cases among residents, leading to roughly 176,000 COVID-related fatalities. Over 3,200 nursing home staff members have died from COVID, making nursing home worker the most dangerous job in America. Not surprisingly, staff employment levels are still down by seven to nine percent relative to their pre-pandemic levels.

A key question in directing policy resources is determining what factors were associated with COVID-19 outbreaks in nursing homes. In a systematic review of 36 peer-reviewed studies, our research team concluded that COVID outbreaks were largely a function of where you were located versus who you were as a facility. This does not suggest there was nothing that could have been done to prevent COVID outbreaks. Rather, it suggests that Federal policymakers needed to adopt a system-level approach to address this problem. It is not too late. There are several short-run and long-run reforms that can support nursing home residents and their caregivers.

In the short term, I am supportive of the reforms put forward by the Administration in terms of increasing ownership and financial transparency and minimum staffing standards. However, I would categorize these reforms as necessary but not sufficient. We also need to continue to ensure that more nursing home residents and staff receive their booster doses. Currently, less than one-fourth of nursing home staff are up to date with their vaccinations.

Moving forward, we need transformative system-level reforms. I recently served on a National Academies of Sciences, Engineering, and Medicine Committee, which offered a roadmap forward for these longer-term reforms. The National Academies report provides a strategy to move toward a Federal long-term care benefit that provides adequate financial coverage of comprehensive nursing home care. Medicaid currently plays a dominant role as the default player of nursing home care, but eligibility is limited by income and asset tests and is constantly subject to state budget constraints.

Too many nursing home corporations use complex ownership structures to siphon dollars away from resident care. To increase financial transparency and accountability by nursing homes, policymakers must collect, audit, and make available detailed facility-level data on the finances, operations, and ownership of all nursing homes in real time in a readily usable data base. A more effective and responsive system of quality assurance is also needed for nurs-

ing homes. The survey process often fails to identify serious care problems, fully correct and prevent recurring problems, and investigate complaints in a timely manner.

Moreover, CMS, which ultimately determines a facility's eligibility to participate in the program, does not provide sufficient oversight of or transparency in the survey process. As such, state survey agencies must be given adequate resources for increasing oversight of state survey performance and evaluating strategies to improve quality assurance activities.

In summary, we have an opportunity today to begin to address problems that we have ignored for far too long. I look forward to working with the Members of this Committee on this effort. Thank you.

Dr. WENSTRUP. Thank you. I now recognize myself for questions. Dr. Grabowski, I do want to say thank you for your making suggestions of how to improve the situation going forward. Those will be taken into consideration for our report, along with other opinions as well. I will say one thing about you made it sound like mandatory boosting when I think that getting a booster should be based on the person's personal health. Let me give you an example.

I was vaccinated, Pfizer, both doses, later got COVID. I did not know until I could not smell garlic salt, right? I was told I needed a booster to go to Germany. I could not get my T cells checked, but I got my antibodies checked. Strong number was 40. Mine was 821. We do run the risk of hyper-immune responses, so I think we have to inject personal medicine into each person as we decide whether someone should be boosted or not. That is just another medical opinion but certainly one that we can discuss further, but I just thought I would say that as I heard you say that, and I appreciate suggestions being made.

But, Dr. Grabowski, was it known that COVID-19 was particularly dangerous to the elderly by March 2020?

Dr. GRABOWSKI. Yes. The first major outbreak was in Kirkland, Washington nursing home facility, so we immediately recognized how dangerous this could be for older adults.

Dr. WENSTRUP. Well, you answered my next question with the first outbreak. Should that have informed decisions regarding protecting nursing homes?

Dr. GRABOWSKI. Absolutely.

Dr. WENSTRUP. Yes, but a few states, particularly New York, New Jersey, Pennsylvania ignored this early evidence and directed nursing homes to admit potentially COVID-positive patients, regardless of the homes' ability to treat its patients. We heard that from Mr. Hammond as well today. As a physician, this is contrary to what we are taught, and so why is it a bad idea to intentionally introduce an infectious agent into a vulnerable population?

Dr. GRABOWSKI. So, nursing homes with older adults, frail, living in close quarters, if COVID starts in a nursing home, it is going to spread, and it is very hard to contain once you have an outbreak within a facility. And we saw that in Massachusetts where I live, New York, all over the country.

Dr. WENSTRUP. As someone who treated a lot of infections, I was always grateful when we were able to do, for example, home IV therapy for infections because it kept people away from a vulner-

able population. Mr. Hammond, did Governor Cuomo say these were necessary to prevent overcrowding at hospitals?

Mr. HAMMOND. I mean, eventually he said that. It was not discussed at one of his briefings at the time. It was not announced in any way. The nursing homes did not know it was coming until they received the memo.

Dr. WENSTRUP. And was Governor Cuomo given alternatives?

Mr. HAMMOND. Well, he himself had put a lot of effort into building alternative overflow facilities. He received help from the Federal Government in building the facility at the Javits Center, and the Navy ship was also brought in.

Dr. WENSTRUP. So, in your opinion, were those facilities used to the extent that they could have been based on what you were able to investigate and see?

Mr. HAMMOND. No. I mean, those facilities were used very little at all even during the worst of the crisis. I think it turned out that it was harder than officials realized to transfer patients. Once the facility was available, you still have to figure out who should be transferred and how they should be transferred. For example, the Navy ship, when it first arrived, it said we cannot take any COVID patients. That is a huge obstacle in the situation that was presented.

So, they eventually got that changed, but even then you had logistical obstacles to moving patients. Those logistical obstacles are the kind of things we need to be thinking through now before we are in this similar situation.

Dr. WENSTRUP. Yes, I would agree. You are either taking all COVID patients or you are taking no COVID patients, allowing more room in the hospitals for non-COVID patients or for COVID patients. The *Comfort* only treated 182 patients, and the Javits only treated 1,095. Vice Admiral Mike Dumont pleaded with the Cuomo Administration to send patients. This was the *Comfort's* mission, to alleviate concerns related to overcrowding hospitals one way or another. Nonetheless, the Cuomo Administration failed to utilize this support. Ms. Dean, do you think politics was responsible for these Federal resources being wasted?

Ms. DEAN. Governor Cuomo liked to blame politics at every turn. That was the reason why people were talking about nursing homes, asking him the questions all the time. He had the resources and he failed to use them, and I think if we uncover where that March 25th order came from, who wrote it, I have my suspicions. I think it has to do with hospital lobbyists. I think there is a money trail. Why were nursing homes the only option? So, even though Governor Cuomo likes to blame politics and Fox News and the weather, and Mother Nature, he never self-reflected, and that is something that he should have done.

Dr. WENSTRUP. You have been a fierce advocate, obviously, since the beginning on this issue. How has your Governor, Governor Cuomo, treated you?

Ms. DEAN. Governor Cuomo?

Dr. WENSTRUP. Mm-hmm.

Ms. DEAN. Well, attacks, belittlement. I believe one of his aides said, well, Janice Dean, she is not a reliable source on anything except the weather, even though I had two close family members die

in separate elder care facilities. I am aware of, I have not seen them, of texts that were exchanged between Andrew Cuomo's brother and the Administration calling me interesting names that I do not want to repeat today, but there was no sympathy. There was never a gesture of a phone call, no condolence cards. I do not think he really met with any families. He just decided to write a book talking about how great a leader he was.

Dr. WENSTRUP. Ms. Zayas?

Ms. ZAYAS. Initially, we actually tried to reach out to Governor Cuomo, and in his press conferences, interestingly, he kept saying that we were being political. And I think, as Janice Dean, said, you know, there were seniors and residents who died, who were of every political affiliation, and when you are grieving, you are not thinking of politics. You are thinking of answers. You are thinking of getting down to the bottom of why this happened, one, so that we can have justice, and two, so it does not happen again. So, we were saddened when he continued to the end to make it a political issue.

And in the beginning, when we are crying and baffled at the order and wondering, like, many families did not know that while we were locked on the outside, there was COVID-positive patients they were bringing through the back door. And only after our belongings of our loved ones were handed to us, either in trash bags or in boxes with our parents' name, and our questions started to bubble. That is when we realized, sadly, that this terrible thing was happening, and it just compounded the pain. It is unbelievable how raw the pain is even today.

Dr. WENSTRUP. Dr. Grabowski, going forward to the next pandemic, as you look back, where these orders a mistake?

Dr. GRABOWSKI. Yes. I said it at the time, and I said it in my testimony. This was a mistake.

Dr. WENSTRUP. Ms. Dean?

Ms. DEAN. One of the biggest mistakes this country has ever done.

Dr. WENSTRUP. Ms. Zayas?

Ms. ZAYAS. Seniors are in vulnerable positions every single day. This is not just a one-time issue. Unfortunately, in the path that we have, both Ms. Dean and I, we have realized that there are horror stories of all sorts, not just during a pandemic, but that the pandemic actually opened up a door to really find out what is going on in these facilities. These facilities do not have proper PPEs or equipment or training every day of the year. It is just compounded when you are putting an exorbitant amount of sick people in these facilities, and then they are not being separated. Even the staff is working with COVID.

And on the eve of my mother, the last I heard her voice, which she sounded like a gargoyle, I was told she was going home. They were going to send my mother with an oxygen tank with a contagious disease without telling me, and when we found out that she was going home and she could not even answer the phone when I was calling her. She was excited to go home, and when I called her and she did not answer, I became so worried. And they were telling me, we are going to send her home with an oxygen tank, and I said how? If she cannot breathe, how?

And we had no testing. We had no idea she had COVID. We thought she had a bad cold, and they said we are just going to send her home. They kept playing games. They supposedly offered her an iPad to talk to me, and I was so frightened what I was going to see. If my mother had been sent home with an ambulance service directly to her apartment with an oxygen tank, my mother would have died alone because I had no idea what was going on.

Dr. WENSTRUP. Thank you very much. I would say that from the very beginning for this Subcommittee, and this is a new subcommittee, this is an after-action review for lessons to be learned and to have a better path forward so that we are prepared, so that maybe we can predict and protect ourselves, and maybe even prevent a pandemic. So, I appreciate all of you being here today for just that.

Now I would like to recognize the Ranking Member for questions.

Dr. RUIZ. Thank you. Let me begin by reiterating my condolences for you, Ms. Dean and Ms. Zayas, and for every family who lost a loved one to COVID-19. Every life lost to the pandemic is a tragedy, and I am deeply sorry for what you have experienced. Compassion is a human trait that we need more of in our words, our policy, and our behavior toward one another to regain our humanity.

[Speaking foreign language.]

Ms. ZAYAS. Denada.

Dr. RUIZ. In the early days of the pandemic, our knowledge of how this deadly novel virus spread and our tools to protect the vulnerable from it were extremely limited. As a Nation, we grappled with how to prevent COVID-19 from infiltrating our nursing homes, and our nursing homes and the Trump Administration were not as successful as we needed them to be at that time. But the tide of the pandemic turned for our Nation's nursing home residents with the arrival of the COVID-19 vaccine and the rollout of the most effective and efficient vaccination campaign in America's history.

According to AARP data, at the conclusion of the Trump Administration, nearly two of every 100 nursing home residents in the United States was dying of COVID-19. Six months later, in July 2021, following the Biden Administration's massive mobilization of resources to get shots in arms, the COVID-19 mortality rate for nursing home residents fell dramatically to .03 per 100 residents. Dr. Grabowski, how did America's COVID-19 vaccination campaign turn the tide of the pandemic for nursing home residents?

Dr. GRABOWSKI. It was an absolute game changer. Prior to the vaccine rollout, if you had a COVID outbreak within a nursing home, you were going to see lots of fatalities. You had the AARP statistic. I will give you a different one. For every five residents that got COVID prior to the vaccine, one of those led to a COVID-related fatality. After the vaccine, that has actually been for every 25 cases, confirmed cases, only one of those residents is dying. So, the vaccine has been an amazing success, and today, actually this calendar year, that is down to one out of every 50.

Dr. RUIZ. Mm.

Dr. GRABOWSKI. So, we have made tremendous progress. It is been a real game changer.

Dr. RUIZ. And how did vaccines reduce the threat of the broader community spread and transmission, which your research shows drove nursing home infections and fatality during the first year of the pandemic?

Dr. GRABOWSKI. You know, one of the studies that we conducted was to look at what is the impact of having kind of greater vaccination among staff. Staff live in the community. As vaccination rates went up in the community, as vaccination rates went up among staff, what impact did that have on resident fatalities? And sure enough, there is positive externalities to getting staff vaccinated. It does not just protect our staff. It actually protects our residents. We saw resident fatalities go down.

Dr. RUIZ. What about the overall community that the nursing homes existed in?

Dr. GRABOWSKI. Absolutely. That was the pathway prior to the vaccine. You know, cases came from the community, and if you bring it down in the community, you are bringing it down in the nursing home.

Dr. RUIZ. Okay. A crucial component of the Biden Administration's effort to protect nursing home residents was the implementation of commonsense requirements for healthcare workers to get the COVID-19 vaccine. You and your colleagues have conducted your own research evaluating the importance of these requirements for healthcare workers. What has your research shown about the role of vaccine requirements for healthcare workers in reducing cases and deaths among nursing home residents, and how were these policies associated with lives saved?

Dr. GRABOWSKI. Once again, the Federal rollout of the vaccine was incredibly productive, but it was productive for residents. Staff were still lagging, and so the mandates really brought vaccination rates up for staff. We found that saved lives. The higher rate of vaccination through the mandates led to fewer COVID-related fatalities for residents.

Dr. RUIZ. Okay. So, one critical aspect of this mission and a top priority of mine as Ranking Member is to ensure that this Select Subcommittee remains focused on developing these forward-looking policy solutions to prevent and prepare for future public health crises. And one critical aspect is ensuring that we are working decisively to reduce the threat that future novel viruses pose to vulnerable populations in nursing homes and other long-term care facilities. What steps should Congress and the Federal Government take to better prepare for the threat future pandemics pose to our Nation's nursing home residents?

Dr. GRABOWSKI. Right. I have called this a crisis on top of a crisis. So, we both need to develop policies to deal with the short-term crisis, the next pandemic, but we also need to get our nursing home house in order in terms of those long-term policies, such as how we pay nursing homes, how we regulate them, quality and ownership transparency, so there are kind of bigger reforms. And then there are these smaller reforms, like investing in personal protective equipment and testing and all the infection control infrastructure that is necessary to really protect our residents.

Dr. RUIZ. Under President Biden's leadership, and thanks to the investments in lifesaving vaccines funded by the Democratic Amer-

ican Rescue Plan that President Biden signed, we have made tremendous progress in protecting our Nation's seniors from the coronavirus. Going forward, we must learn from the challenges and missteps of the early pandemic response, or lack thereof, to ensure that we are making our nursing home safer, getting ahead of future public crises, make sure that we do not roll back protections, make sure that we respond quickly with urgency for testing and PPEs, make sure that we increase care standards, and that we have transparency and oversight on the care standards in nursing homes in order to save lives.

And I must say that there are a lot of hearings happening at the same time, and there is one where there are actual votes happening, so you are going to see some of us come back and forth, and we mean no disrespect especially to the witnesses, when we have to just get up and go. And so, I think that is why there are scant Members here, so please excuse our absences and running back and forth. Thank you. I yield back.

Dr. WENSTRUP. Thank you. I thank the Ranking Member for pointing out the challenges that we are facing here today with a variety of committees taking place at the same time.

Pursuant to Committee Rule 9(c), the Chair may recognize Members for extended question time. I, therefore, grant Ms. Malliotakis 7 minutes if she needs it, with equal time being granted to a Member of the Minority at the Ranking Member's discretion. Ms. Malliotakis, are now recognized.

Ms. MALLIOTAKIS. Thank you, Mr. Chairman. I want to thank the witnesses for being here today. My condolences to those who had lost loved ones wrongfully taken away from them. I am going to highlight timeline and the decisions that were made by the Cuomo-Hochul Administration in New York that ultimately led to over 15,000 of our seniors dying in nursing homes.

On March 13th, 2020, the CDC and CMS released guidance stressing that a COVID-19-positive nursing home resident must be quarantined and properly treated. The guidance directly forbids nursing homes from accepting patients they were unable to properly treat. On March 23rd, the CDC released updated guidelines detailing when and how to transfer and discharge hospitalized patients. It encouraged a requirement of two negative tests or 72 hours after the resolution of symptoms. On March 24th, and I know those of us from New York remember this very vividly, the Governor, during his daily press conference, said, "My mother is not expendable, your mother is not expendable, and we are not going to accept the premise that human life is disposable, and we are not going to put a dollar figure on human life."

Despite those nice words, the very next day, on March 25th, the Governor issued his lethal directive mandating nursing homes, regardless of ability to provide care, to accept COVID-19-positive patients discharged from hospitals. The directive prohibited the nursing homes from testing the patients prior to admittance, and the nursing homes were not even given the proper PPE to care for these individuals. This continued even after in New York City we had alternatives: U.S. Navy *Comfort*, Javits, South Beach Psychiatric Center, in my district. This was directly against the CDC and the CMS guidance and common sense.

It was not until May 10th that the Governor quietly rescinded the March 25 directive, and by the time his dangerous policy was rescinded, almost 50 days later, over 10,000 nursing home deaths occurred, including some in 323 facilities that apparently had reported no COVID-19 infections before receiving admission or readmission of hospital residents who had been diagnosed with COVID-19.

[Chart]

Ms. MALLIOTAKIS. As I mentioned, there were alternatives that Cuomo had even asked for. He ordered some of them to be set up, and then he did not use them. On April 7, Mike Dumont, the vice admiral of the U.S. Navy, emailed Melissa DeRosa, Governor Cuomo's top aide—I have the email here—pleading for help to get more patients into the Javits and the U.S. Navy ship, *Comfort*, as they only had 83 and 37 patients, respectively. DeRosa then sends an email to the executive chamber staff, which to us seems like she was just trying to cover herself. And then in a recent interview Cuomo said that, “By the time the U.S. Navy *Comfort* ship arrived in early April, they no longer needed the beds,” which is completely false. In fact, over 7,000 COVID-positive patients were transferred to nursing homes from the time the ship arrived to when the Governor's directive was rescinded on May 10—7,000.

After his March 25th directive started receiving more and more attention during his daily briefings, Cuomo and an array of high-ranking government officials, including his top aides, DeRosa and the health commissioner, Howard Zucker, who, by the way, shockingly, I think, to everyone in this room, he has been elevated to serve as President Biden's deputy director of global health at the CDC. Well, they began to participate in a coverup. Their efforts would result in the true number of nursing home fatalities being suppressed for months, and I have got another chart, which will show you the difference.

[Chart]

Ms. MALLIOTAKIS. It was not until the attorney general accused Cuomo and his cohorts of underreporting and the Empire Center, which we thank Mr. Hammond for being here today, winning a court order releasing the complete data. So, my first question, Mr. Hammond, your organization did a tremendous public service fighting to obtain this information and the complete data. How was the information manipulated based on your assessment?

Mr. HAMMOND. So, starting in April, the state was releasing counts, not just of how many people had died generally, but also a separate number for nursing homes. And then a few weeks later, they modified how they were releasing that to take out the cohort of residents who had died after transfer to a hospital. So, when they got sick, they got sick enough that they needed hospital care, they were probably put in an ambulance, taken to a hospital, and then they died in the hospital, and the state stopped including those people. It had data on how many of those people there were, but it backed them out of its daily reports.

Ms. MALLIOTAKIS. And why would they do this, in your opinion?

Mr. HAMMOND. I believe they were trying to make the situation in the nursing homes look less bad than it was because it was embarrassing to them.

Ms. MALLIOTAKIS. And because they did not comply with the CDC guidance and CMS guidance.

Mr. HAMMOND. Yes. They were probably aware, because of the order that had been issued, that they were going to be blamed for how bad things got.

Ms. MALLIOTAKIS. Now, New York State's Department of Health released its report with the manipulated data on the fatalities the same day that Governor Cuomo was meeting about his book deal. Do you find that to be a coincidence, or do you think that there were personal reasons, business reasons, ego, to the decision?

Mr. HAMMOND. I mean, I cannot get inside anyone's head. It is a remarkable coincidence. That report you are referring to came out in early July. It was ostensibly a kind of quasi-scientific analysis of the situation in nursing homes. It had been rewritten by the Governor's Office, and they had pulled out relevant data and they modified its findings, so.

Ms. MALLIOTAKIS. Okay. Thank you. Fifteen seconds. Two important questions. In 2021, Governor Hochul, right, the successor and lieutenant Governor to Cuomo, promised that she would be transparent to launch a review of what happened in the nursing homes. Did she fulfill that promise? Yes or no.

Mr. HAMMOND. Not yet.

Ms. MALLIOTAKIS. Okay. And my last question: was there a difference in reimbursement rates between nursing homes, hospitals, and the U.S. Navy *Comfort* ship?

Mr. HAMMOND. I do not know the answer to that.

Ms. MALLIOTAKIS. Okay. Well, we would like to get the answer to that question, Mr. Chairman. I think that is a very important question. I want to thank Mr. Chairman for the time, and I ask for unanimous consent to submit an op-ed, written by Mr. Peter Arbeeny, who is here today, in the *Daily News*, titled, "Still Looking for Answers on COVID as well as Testimony From My District Who Lost Loved Ones in New York's Nursing Homes."

Dr. WENSTRUP. Without objection.

Ms. MALLIOTAKIS. Thank you.

Dr. WENSTRUP. I now recognize Mrs. Dingell for 7 minutes of questions.

Mrs. DINGELL. Thank you, Mr. Chairman and Ranking Member Ruiz. Let me begin, I first will tell you I am wearing a mask because I got COVID last Thursday, the day the public health warning expired. I was fully vaccinated and boosted. My symptoms were not pleasant this time, but I was not hospitalized. I tested negative yesterday and today, but I am wearing the mask following CDC guidelines because I do not ever want another person to get COVID if we can keep it from happening.

And to all of you, your stories are horrific, but I have heard them over and over, and they are not unique to New York. They are stories that I started hearing in March, April, May at home as well, and they should not have happened, period. It is simple. We were not ready for the pandemic let alone were our Nation's nursing homes ready, and it is troubling because our Nation's seniors are important, and they deserve and entitled to live their senior years in dignity and with respect, and no life, for the record, is expendable. No life.

Unfortunately, because we were not ready, the country was not ready, and the previous administration's haphazard Federal responses, and we are pointing a lot of fingers, and we need to understand why what happened happened, so it never happens again because we did fail this Nation. We failed our seniors, and we failed their families.

Let me talk about Michigan. We were hit very hard. The Detroit News has been running a series of stories on this in the last couple of weeks, and among their observations, according to the documents released by the government, the problems largely occurred amid a shortage of personal protective equipment for staff at nursing homes, sometimes hospitals, as well as a short supply of COVID-19 tests. Melissa Samuel, the president and CEO of the Health Care Association of Michigan said facilities did all they could with the resources and knowledge available at the time to provide the best care for their residents. Healthcare workers and many others stepped up and risked their lives to care for COVID patients. As the world sheltered in place, dedicated, exhausted, frightened healthcare staff kept showing up hour after hour, day after day to care for those in need. Healthcare workers and thousands of others saved countless lives during this unprecedented, unimaginable time. But as you all just talked about, too many died.

I got an early glimpse in many of my cities. Riverview, Michigan, I heard from everybody. I heard from the mayor. I heard from the fire chief because of the number of runs he was having. I heard from the relatives of the Rivergate residents and the healthcare workers. They repeatedly lodged formal complaints against the Rivergate facility in the spring of 2020 for failing to properly identify and combat a spike in COVID-19 infections.

A self-identified registered nurse estimated that close to a hundred patients had the coronavirus at the 168 resident Rivergate Terrace, and seven workers had been sent to the hospital, according to an April 9, 2020 complaint. The nursing home did not have protection. They did not have masks. They did not have gowns or tests to keep them safe. I emptied my garage—I am a hoarder—of every garbage bag I had. I went to the schools and the businesses, and the businesses who had shut their doors and begged for garbage bags, and those nurses or those attendants wore black garbage bags as gowns.

I took a collection of gloves from every place I could procure them from, and I worked with the Governor's office and the autos, and was making calls to China begging, spending millions of dollars on PPE equipment to get it shipped but had to find somebody we knew and trust to go look and inspect it to make sure it had quality. And to make matters worse, the PPE that many states were receiving from the Strategic National Stockpile was expired with dates as far back as 2010. We need to work on that. That is one of the things this Committee must do, and in conjunction with the Energy and Commerce Committee, to make sure we are never ill prepared as we were and that this never happens again.

Now, I have a couple of questions. Dr. Grabowski, can you explain how your research found the troubling correlation between community infection rates and nursing home outbreaks, and could you try to do this quickly because I have a lot of questions?

Dr. GRABOWSKI. Absolutely. We looked at a lot of different factors, and the strongest predictor of whether or not a nursing home had COVID-19 was a COVID outbreak in that community. It is because the staff were living in that community and working in the nursing home, and that was the pathway.

Mrs. DINGELL. If nursing homes had been able to receive timely and adequate supplies of PPE and testing kits, would that have had a meaningful impact in terms of reducing unnecessary infection and death?

Dr. GRABOWSKI. Absolutely. Our work showed huge shortages. One in five facilities even during the summer of 2020, very few had access to rapid testing. A really important study a few weeks ago came out in the *New England Journal of Medicine* suggesting that more access to rapid tests led to fewer resident fatalities. The link is very strong.

Mrs. DINGELL. So, I want to build in something you talked about earlier, the crisis on top of the crisis. The previous administration oversaw years of rollbacks on Federal regulations related to the quality of care and infection prevention in nursing homes. This was severely felt in a nursing home like the one Riverview, and I will tell you another story. In Ann Arbor, I had someone call me, and they had 12 patients and nobody, nobody to care for them because the healthcare workers were sick and would not come in. Nobody. Do you know what panic is when you cannot find somebody to take care of 12 people? The Riverview facility had no personal protective equipment as of March 20, 2020. They did not have an isolated area for those with infections and were asking employees to sign do not disclose papers, one of the complaints alleged.

“I am reporting it because it is shameful and wrong to watch people die because of a lack of supplies or proper PPE, or greed, or proper cleaning techniques, or whatever the hell went wrong and continues to go wrong there, but it needs to end,” the nurse said. People are literally dying every shift.

In addition, persistent inadequate staffing levels have been a challenge in nursing homes for years, and it is worse now. We are losing caregivers as the baby boomers age, and we now know that higher levels of staffing are associated with a lower probability of experiencing an outbreak with fewer deaths. Dr. Grabowski, can you elaborate more on your crisis on top of crisis and how real it is?

Dr. GRABOWSKI. Absolutely. We have under-resourced nursing homes for a long time. We have not held them accountable in terms of the quality of care, and also who owns the building and how they are spending the money. And then as you just suggested, there was a trend toward deregulation of nursing homes under the prior administration, especially around infection control. The Ranking Member outlined some of those steps during his remarks. We were going in the wrong direction. That was the longstanding crisis. When you layered the COVID crisis on top of that, it only magnified the problem. Thanks.

Mrs. DINGELL. Thank you, Mr. Chair.

Dr. WENSTRUP. I now recognize Mrs. Lesko from Arizona for 5 minutes of questions.

Mrs. LESKO. Thank you, Mr. Chairman. I have to say I am absolutely outraged over what I heard today from the witnesses, and I am so sorry for what has gone on. And when we say it was a mistake, that is an understatement, you know. This is awful. And so, I want to thank you to the witnesses who are fighting for justice and for change.

I, quite frankly, lay the deaths of these thousands of people who died from COVID-19 in New York and other states that required nursing homes to take in COVID-19-infected people at the feet of the state officials who decided that mandate. To show the significance and the difference between what state officials' policies did, let me compare the differences between New York and Arizona where I live, and Arizona has lots, lots of senior citizens, lots of long-term care facilities.

So, according to the Atlantic's COVID Tracking Project, New York had 14,450 deaths across 698 long-term care facilities. That is 21 deaths per facility. Conversely, in Arizona, which has a very large senior population, there were 2,505 COVID deaths across 1,000 long-term care facilities. That is 2.5 deaths per facility. So, you compare pair 21 deaths per facility in New York to 2.5 COVID deaths per facility in Arizona, so that is not a Federal problem. That is a state problem, and so we have to ask why. Well, unlike New York, New Jersey, and Pennsylvania, Arizona never, never required nursing homes to admit COVID-19 patients. That is the difference. That is the problem, and somebody better be held accountable because this pisses me off.

You can tell I am impassioned, but I have a question to Mr. Hammond. Do you think outcomes would have been better in nursing homes if the focus was on those populations rather than telling healthy people not to go to gyms?

Mr. HAMMOND. I think both were necessary, frankly. I mean, a lot of people died outside of nursing homes, too, and as has been said earlier, there is a connection between the rate of spread in the community and what goes on in nursing homes. And so, if your staff and your family members are living in the community, they are going to bring it with them into the nursing home unless precautions are taken.

Mrs. LESKO. Ms. Dean, we have already discussed Governor Cuomo's disastrous and fatal policy decisions and the subsequent coverup. The Department of Justice declined to pursue an investigation into Cuomo or the other states that instituted must-admit orders. Do you believe the Department of Justice has good grounds for an investigation?

Ms. DEAN. One hundred percent.

Mrs. LESKO. Thank you. Ms. Dean, could you explain why you think the Department of Justice is not investigating?

Ms. DEAN. That is an excellent question, and I think the tentacles are deep, and they spread across states and leaders. I think we have to look at the origins of the March 25th order, where it came from, who wrote it, and I think those simple questions can lead us into a direction. But unfortunately, I believe that it involves a lot of people, a lot of money, a lot of hospitals and lobbyists, and I think these issues have been in place for a very long time. And the one thing Vivian said is that the one thing COVID

did do is kind of get under the floorboards and show us how much rot there is already. And so, do not let our loved ones die in vain, you know. Use this tragedy to do good for other families going forward.

Yes, it is very curious that there has not been any investigations or subpoenas, or a former Governor on the stand telling the whole truth and nothing but the truth.

Mrs. LESKO. Thank you very much, and I applaud our Chairman for bringing up this issue. It is so important. You know, somebody needs to be held accountable. This is outrageous, and with that, I yield back.

Dr. WENSTRUP. Thank you. I now recognize Dr. Bera from California for 5 minutes of questions.

Dr. BERA. Thank you, Mr. Chairman. You know, a couple things. As a young doctor, I did work in board and care facilities and skilled nursing facilities, and everything that you say in terms of the conditions and so forth are true. I do think we should do oversight. We should take a look at how we can protect America's seniors, protect nursing homes, raise those standards. Mr. Chairman, I also think we pushed billions of dollars through the American Rescue Plan, through the Coronavirus Aid, Relief, and Economic Security (CARES) funding. I think it is worth our doing oversight on seeing how those dollars have been utilized and spent. You know, much of the ARP dollars were to actually improve services, ventilation, et cetera. It is worth doing oversight, so would love to work with you on that.

I also, I am not going to focus on looking forward. I actually want to try to understand the decisions. I am a Californian, used to be chief medical officer in Sacramento County, also in my time in Congress have focused on global health security pandemic preparedness so early on was paying attention to this. Had the first hearing in Congress and chaired that hearing on, at that time, the novel coronavirus. It was not lost on any of us that older patients, older individuals were much more vulnerable. Older individuals that had co-morbid conditions were much more vulnerable. You saw that in, you know, early data coming out of China but also in Italy. And, you know, for those of us in California, we saw, you know, what was happening in New York.

Early on in February/March 2020, we were already making contingency plans working with our hospitals. For the life of me, I cannot understand why anyone would take a COVID-positive patient and put them in a nursing home. You know, that is medical malpractice, in my mind, and that is a decision I cannot understand. Yes, there were plenty of places. We had trailers. We looked at our college campuses with the dorms and so forth, and lots of discussion of where you could isolate patients where they can convalesce until we knew they were no longer contagious or infectious.

Mr. Hammond, maybe this is a question for you. I know the New York attorney general looked into what some of that decision-making process was. Can you share with me what the findings were?

Mr. HAMMOND. I am not necessarily sure what the attorney general found, but it has been confirmed that the Greater New York Hospital Association approached the Governor's office and rec-

ommended this policy. They were being pressured by the state to expand their capacity. I believe they were being told they needed to find 50 percent more beds, so they were supposed to convert any available space, the cafeteria, what have you. And they came back to the state and said, you know, you could help us if you would take these patients who are stable, they have recovered, they are stable, they are still positive, and if you make the nursing homes take them from us, that will clear some space. So, it was the Hospital Association that recommended it.

Dr. BERA. Okay. And, again, just recalling some of the horrific images that we were watching in California coming out of New York, it is legitimate to think about how you free up capacity if you have really acute patients that you need in the hospital, but again, there were alternatives, right? I mean, it was not rocket science to say put them in a nursing home, if it was a Javits Center, if it was a hospital ship. We were thinking about in Sacramento County getting them into, you know, college dorms and providing support. Are you telling me that nobody is actually trying to find the answer of who made those decisions and, you know, how those decisions were made, and—

Mr. HAMMOND. I am not aware of any investigation right now. There was, at one point, an investigation out of the Eastern District of New York.

Dr. BERA. Okay. Mr. Chairman, I think it is worth, you know, trying to find out, you know, if there was a Federal investigation, if the FBI looked into this or others. You know, we cannot bring back your loved ones, and I am sorry about that, or any of the loved ones. But it is important to understand how these decisions were made, who made these decisions, whether there was undue influence one way or another in those decisions. I am not a lawyer. You know, it is not necessarily about liability, et cetera, but if we do not actually know the truth, we cannot actually help you find closure, and, you know, help us move forward.

So, you know, all of us are elected officials, and we have responsibilities, and sometimes bad decisions are made. But we have got to try to understand why those decisions were made and help those inform us as we move forward. And again, I am sorry about your losses, and, Mr. Chairman, would love to work with you on trying to understand how these decisions were made and who made the decisions. Thank you, and I yield back.

Dr. WENSTRUP. I am with you on that, Dr. Bera. I now recognize Dr. Jackson from Texas for 5 minutes of questions.

Dr. JACKSON. Thank you, Mr. Chairman. Thank you to our witnesses for being here today. I really appreciate your time. I just want to start out by just making some quick observations.

At President Trump's direction, CMS and CDC worked together and in acted quickly to put out and continuously update critical guidance and recommendations to state and local governments and long-term care facilities to assist in mitigating the spread of COVID-19 virus against our most vulnerable population. However, a handful of Governors, as we have been discussing here, across the United States decided to go against the Trump Administration's guidance and made irresponsible, politically motivated decisions to knowingly introduce coronavirus to nursing home residents

and long-term care patients, resulting in thousands of people dying unnecessarily.

While thousands of these residents and patients were dying at alarming rates and family members were prevented from saying their goodbyes, these Governors were simultaneously being praised and applauded by left-wing news outlets and Democrat public officials for how they were handling the pandemic in their state and, most importantly, for their refusal to follow issued guidance that had the Trump Administration's stamp on it. It was a large part of why they did not do some of what they did, in my opinion.

As many of my colleagues have pointed out, one of the most detrimental decisions these Governors made were forcing nursing homes to accept admissions of COVID-positive individuals. Specifically on March 25th, 2020, the New York State Health Department issued a directive that stated, "No resident shall be denied readmission or admission to a nursing home solely based on a confirmed or suspected diagnosis of COVID-19," and "Nursing homes are prohibited from requiring a hospitalized resident, who is determined medically stable, to be tested for COVID-19 prior to admission or readmission."

The New York State Department of Health also issued a report titled, "Factors Associated with Nursing Home Infections and Fatalities in New York State During the COVID-19 Global Health Crisis." They issued this on July 6, 2020, and updated it on July 20, 2020, and updated it again on February 11, 2021. Even in the most recently updated version, the report still states, "Admission policies were not a significant factor in nursing home fatalities," and "The data do not show a consistent relationship between this Administration and increased mortality."

Mr. Hammond, you and your colleague, Mr. Kingsbury, analyzed the coronavirus deaths in long-term care facilities using data and information released by the New York State Department of Health. Is that correct?

Mr. HAMMOND. Yes.

Dr. JACKSON. Would it be fair to say that the New York State Department of Health's report I just mentioned contradicts the findings of your analysis?

Mr. HAMMOND. Well, I would put it the other way around, but yes.

Dr. JACKSON. Okay. Did your analysis find any correlation between the admission of new COVID-positive residents and higher death rates in the nursing homes that received them?

Mr. HAMMOND. Yes, it did.

Dr. JACKSON. Thank you. In Governor Cuomo's book, he wrote, "The Trump forces had a simple line. Thousands died in nursing homes. It was true, but they needed to add a conspiracy, which was that they died because of bad state policy and that mandated and directed the nursing homes to accept COVID-19-positive people. And these COVID-positive people were the cause of the spread of the disease in the nursing home. It was a lie." According to the Washington Post, this book is an "impressive road map to dealing with a crisis as serious as the one we have faced." To each of the witnesses, I would like to ask if after hearing all of the information today, would you agree that Cuomo's book and the official reviews

from the mainstream media that promoted Cuomo's book as factual, influential, and an example of outstanding leadership, are an example of disseminating disinformation? Ms. Dean, I will start with you.

Ms. DEAN. I think his book was one of the main reasons why he hid all of the information, and I hope someday we can use the words in that book against him in a court of law.

Dr. JACKSON. I would agree with you. Thank you. Mr. Hammond?

Mr. HAMMOND. I did not think the book was accurate or well done, and to the extent people thought it was, I think they were misled.

Dr. JACKSON. Ma'am?

Ms. ZAYAS. He was worried about his image, and promoting a book in the middle of a pandemic, not at the end where you can have more foresight, in the middle of pandemic while my mother and all these other seniors were gasping for air and died alone.

Dr. JACKSON. Dr. Grabowski?

Dr. GRABOWSKI. I did not read Governor Cuomo's book then, and I am not planning on reading it now.

Dr. JACKSON. Do you think the statement I just read, the quote from the book, was disinformation at the time?

Dr. GRABOWSKI. You know, once again, I am not here to defend him or anything about his book, but I am not planning to go back and revisit what he wrote. I want to think about nursing home policy going forward.

Dr. JACKSON. All right. Thank you. I yield back.

Dr. WENSTRUP. I now recognize Mr. Garcia from California for 5 minutes of questions.

Mr. GARCIA. I thank you, Mr. Chairman, and I first want to thank all of you for being here. I know that it is hard, particularly for witnesses and those that have lost family or friends, and I just want to say that I also lost both my mom and my stepfather during the pandemic. My mom was a healthcare worker. So, this is a very serious topic, and obviously the issue around nursing homes is really tragic, and I think it is that is a horrific experience that we went through that was going on across the country.

I want to make sure also that as we review our actions around COVID-19, that we remind ourselves how uncertain we were at the very beginning. We did not have a lot of information. We were unsure what the standards were around washing hands, simple things. We were all panicked about groceries, about shopping, about what would be available with the supply chain. There was a lot of uncertainty. We lost 1.3 million Americans. We lost 1,300-plus residents just of my own community. I was the mayor of Long Beach the entire time. We have our own health department in the city. And so, managing all of that, particularly during the time when the spread was happening in nursing homes, was horrific.

I also would agree that the Governor of New York made some very serious mistakes. I think that is pretty clear, I think to anyone, you know, whatever side of the aisle. I think we need to learn from those and recognize that there is a lot of loss of life amongst our elderly and our senior population, and that is something that is very serious, and I take it very seriously. But I also want to put

in perspective that in the early days of the pandemic, the Trump Administration, I also believe, failed in leadership.

We had overwhelmed hospitals. We did not have a lot of standards in our nursing care facilities. We did not have enough beds available in our system. So, those are things that are true. We also had shortages of PPE, and I remember as mayor having to personally go out and get PPE from other places, even outside of our own country, to get it to nursing homes and nursing facilities. It was not even always directly given to us by the state or the Federal Government. So, these are not new.

In 2019, the Trump Administration also proposed a rule to relax Federal requirements that nursing homes employ for onsite infection prevention specialists, so these are things, I think, that were huge mistakes. We also, I think, need to talk about the fact that nursing homes in general have not been well supported. Even before the pandemic, we know that low wages, poor benefits. I talked to numerous workers at our nursing homes in Long Beach that were suffering from issues around being overworked, having too many folks to take care of, and this was happening we know not just in New York, which we talked a lot about today, but nationally.

Now, Federal law requires all nursing homes to maintain 24 hours of licensed nursing coverage per day, including a registered nurse and onsite 48 hours, but does not otherwise specify additional staffing requirements. I just want to note the Centers for Medicare and Medicaid Services' data showed the average staff hours for all nursing homes nationwide failed to meet Federal recommended minimums, and certainly that also helped cost lives and the health of so many. So, staff shortages which were in place at the time meant low-quality care, folks seeing more patients, and certainly the spread of infections.

We could have absolutely been better prepared. The Federal Government absolutely, under the leadership of President Trump, could have done more to prepare us and certainly given guidance to cities and to states. And so, I think there is a lot to learn from, certainly from places like New York where horrific tragedies happened but also within the Administration at the time. I want to note that low pay and lack of employee benefits did cause us issues in the pandemic, not just in nursing homes, but also in our hospitals.

I want to just ask just quickly, Dr. Grabowski, what does your research show about the role of the cohorting orders as opposed to factors like community spread and the shortage of PPE and testing?

Dr. GRABOWSKI. Yes. So, our research really supports the idea that this was a system-wide problem. Nursing homes all over the country were impacted. I think one of the representatives said Arizona had much lower rates than New York. Well, Arizona also had much lower community spread. Look at the state where I live and work, Massachusetts, relative to New York. If it is in the community, it is in the nursing homes. We never had this mandate in Massachusetts, yet we had a lot of fatalities among our nursing home residents and a lot of cases and deaths among our staff.

Mr. GARCIA. And briefly, how did the widespread shortages of PPE actually lead to really this mishandling? We had huge national shortages. I strongly believe the Trump Administration failed in that respect. How did that lead to community spread and, as a result, impact nursing homes?

Dr. GRABOWSKI. Absolutely. So, PPE is essential. It is our armor against COVID. Far too many nursing home staff lacked adequate PPE. Once again, the data that we put together during the summer of 2020 suggested one in five nursing homes, even by the summer, was still reporting a severe PPE shortage.

Mr. GARCIA. Thank you, sir, and I just again want to remind us that supporting our care workers is really important moving forward. Thank you, and I yield back.

Dr. GRABOWSKI. Absolutely.

Dr. WENSTRUP. I now recognize Dr. Joyce from Pennsylvania for 5 minutes of questions.

Dr. JOYCE. Thank you for yielding, Mr. Chairman, and thank you, Chairman Wenstrup and Ranking Member Ruiz, for holding this hearing today. And thank you to our panel of witnesses for appearing on this critical topic.

In the early days of the coronavirus pandemic, grievous and critical errors made by public health officials in New York, New Jersey, and in Pennsylvania, my home state, had disastrous consequences for our seniors. And it is clear now that those whose duty was to protect our most vulnerable and high-risk individuals, failed and fell short of the oath to first do no harm. On March 13, 2020, CMS issued guidance for nursing homes and long-term care facilities, intending to serve as a blueprint for individual states to best prevent and control COVID-19 outbreaks in nursing homes. This was not a directive for nursing homes to unsafely accept COVID-positive patients back into the nursing home.

Furthermore, CMS administrator, Seema Verma, said that “Under no circumstances should a hospital discharge a patient to a nursing home that is not prepared to take care of those patients’ needs.” Yet only three days later, the Pennsylvania Department of Health issued guidance mandating that nursing homes accept patients even after they had tested positive for COVID-19. Must-admit nursing home orders willfully and deliberately disregarded CDC and CMS guidance.

Now, Admiral Rachel Levine, then Pennsylvania secretary of health, moved her own mother out of a personal care home as patients with COVID-19 were being moved in, a decision that ultimately led to more infections and more deaths among our state’s seniors, while shielding her own family, which was a luxury that was not afforded to many Pennsylvanians. These disastrous public health policies led to an insurmountable amount of pain and grieving for families who lost loved ones. My office received calls from constituents who were refused the chance to visit dying spouses, parents, and grandparents. Yet this Committee has been stonewalled by requests for more information regarding these must-admit orders. It is time to have accountability. It is time to have accountability for failures and coverups that led to thousands of needless deaths.

Dr. Grabowski, given the guidance issued at that time in March 2020 by CMS, was there a good rationale for the must-accept orders issued in Pennsylvania and in other states?

Dr. GRABOWSKI. As I said earlier, that policy was a mistake.

Dr. JOYCE. I agree. It was an incredibly lethal mistake that was made. Ms. Zayas, I understand your group has members from Pennsylvania as well.

Ms. ZAYAS. We do.

Dr. JOYCE. Can you please describe the end result of these orders and the impact that they had in my home state, the Commonwealth of Pennsylvania?

Ms. ZAYAS. Regardless of the state, it devastated families even until today because I know that Pennsylvania families, New Jersey families, New York families all reach out with an eerie story of how their loved ones met their last days. And those that persisted in nursing homes with a lockdown and afterwards, they were treated like zoo animals. You could not see your family except through a glass door or through some electronic device.

We have devastated our families because seniors are the center core of our families. My mom did not get to meet her grandchildren or her great-grandchildren, and we are going to continue to stand for them because they are the center of our families, and I am sure everyone feels the same, whatever state we are in.

Dr. JOYCE. I think that is such important information that you bring to us here today. One of the purposes of this Select Subcommittee is to gather information, to be proactive, to have that understanding when moving forward, and, unfortunately, we might face another pandemic, what appropriate steps need to be taken. Your information and the other panelists being present today allow us to formulate those opinions. I thank each and every one of you for participating here today. I thank you, Mr. Chairman, and I yield the remainder of my time.

Dr. WENSTRUP. Thank you. I now recognize the Ranking Member of the full Committee, Mr. Raskin, for 5 minutes of questions.

Mr. RASKIN. Thank you kindly, Mr. Chairman. I want to extend my sympathy to everyone here who lost family members in this nightmare.

In the early weeks of the pandemic, public health experts projected that nursing homes and long-term facilities would be sharply hit by COVID, and the Federal Government's lethally chaotic response exacerbated staffing shortages and deprived nursing homes of protective equipment and testing kits that they needed. President Trump pledged to "deploy every resource and power that we have to protect older Americans," and yet the last administration failed to nationalize the supply chain and fully utilize Federal Emergency Management Agency (FEMA)'s capabilities to provide adequate PPE testing and resources to nursing homes and long-term facilities.

Public reporting revealed that supplies were limited, did not arrive at all, or were unusable. I want to enter into the record a CNN article titled, "Nursing Homes Receive Defective Equipment as Part of Trump Administration Supply Initiative," Mr. Chairman.

Dr. WENSTRUP. Without objection.

Mr. RASKIN. Thank you.

As a result, nursing homes were left with scant supplies of PPE, testing, and other resources necessary to protect their residents and staff. Even more, the Trump Administration took steps to relax Federal oversight and infection control in nursing homes during the pandemic. Some nursing homes left unregulated gave hydroxychloroquine to COVID-positive patients, a treatment shown not to be useful or safe for the coronavirus, and by May 2020, residents and workers in nursing homes and long-term care facilities accounted for roughly 40 percent of total COVID deaths in United States.

Dr. Grabowski, how did the Trump Administration's failures to offer a national testing and PPE procurement strategy and corresponding deregulation of the nursing home industry undercut efforts to limit the spread of COVID-19 in the nursing homes?

Dr. GRABOWSKI. Sure. The Trump Administration pushed out the procurement to the states, which then pushed it out to the nursing homes. So, nursing homes were competing with one another for testing kits and PPE, and they were competing with hospitals. And unfortunately we put our nursing homes, with the frailest and most vulnerable individuals in our system, at the back of the line when they should have been at the front of the line to get these supplies.

As you noted, later the Trump Administration did send two weeks of supplies, but much of that was defective. I had been on TV, not as much as Ms. Dean is on TV, but occasionally during that time period, people would see me on TV talking about PPE. Staff started sending me this defective PPE just to show me, so I had this arriving to my office at Harvard. It was a complete and utter debacle.

Mr. RASKIN. So, instead of a coordinated nationwide strategy the way some countries had, we had this dog-eat-dog system at the lowest levels and a race to the bottom, basically.

Dr. GRABOWSKI. We should have nationalized, as you said, the supply chain. We used the Defense Production Act, you will remember, for ventilators. We never used that for PPE. Representative Dingell already described going to China, trying to use trash bags. That is completely unacceptable.

Mr. RASKIN. So, one of the driving factors in the nursing home infection and high death rates was the surrounding community spread of COVID. I remember when some nursing homes in my district were hit and the people there were convinced that it was the staffers who had been taking it, essentially, inadvertently, unwittingly from facility to facility. How would the unprecedented rate of COVID spread across a given community have a direct impact on the spread of COVID within the long-term facilities and nursing homes?

Dr. GRABOWSKI. It both came from the community and then, as you suggested, it was staff working across facilities. There is a really elegant study that used cellphone data was able to track staff moving across nursing homes and spreading the COVID virus across those nursing homes. So, when we lack PPE, when we lack testing, there is really good evidence to suggest COVID-19 was coming from the surrounding community. And as you suggested, the secret weapon of COVID-19 was that it was asymptomatic. You

know, this was not anything these staff did wrong. They thought they were okay. We did not have testing or PPE, and so they were bringing it in unknowingly.

Mr. RASKIN. Alright. So, we had no Federal strategy, and I remember in Congress, we were begging for a national strategy. And then there were all kinds of conflicting signals sent out about hydroxychloroquine, "this will disappear in April." "This will all go away." "China is doing a great job." "I am in constant touch with China," and so on. What should the Federal Government have done and what can we do next time in the early months of a pandemic to prevent, like, this rapid spread?

Dr. GRABOWSKI. The Federal Government next time needs to own the problem from the beginning. As you said, nationalize the supply chain, ensure that every nursing home in the country has adequate supplies, personal protective equipment, rapid testing. We also need to support the workforce. Far too many nursing homes had staff shortages. Staff were getting sick. Staff left in large numbers. We lost hundreds of thousands of staff. This was the most dangerous job in America. There were incredibly high death rates, and so staff, not surprisingly, went to work, you know, in other parts of the economy. Some have come back but not all of them, so we have a big shortage right now.

Mr. RASKIN. Thank you, Mr. Chairman. I yield back.

Dr. WENSTRUP. I think if you check the record, there were strategies in place. They may not have been perfect, but there were strategies in place, and with that, I would like to recognize Dr. McCormick for 5 minutes of questions.

Dr. MCCORMICK. Thank you, Mr. Chair. First of all, I appreciate everybody being here today. I appreciate your heartfelt testimony, the experiences that you have had that have made you who you are and why you are involved. In my experience, over 20 years in the military and finishing up as an ER doc, and matter of fact, from the beginning of the pandemic, I was serving as a night shift yard doc, full-time, working in the ER, being exposed to fevers. We did not know where it came from and trying to figure out what this novel virus would do to our patient population, and we got it wrong. I will tell you when the novel virus hit you or any novel disease, you do not know what to do. That is a fact. So, the healthcare professionals, the people with the scientific background, the people who understood how viruses work, how they propagate, how they create inflammation, got it wrong. We were going off of old technologies, old assumptions, and I remember we were intubating people that probably should not have been intubated. We did not use nonsteroidal anti-inflammatory drugs (NSAIDs). We did not use steroids. We did not take into account how this virus could be different from other viruses we knew in the past.

Let me tell what else I witnessed as an ER doctor. I watched family struggle with this. Once we were no longer able to allow families into the ER, I watched people die by themselves. I held the hands of people who were dying, and looked in their eyes, and told them I was going to do my very best but knew there was very little I could do because we did not know what to do. I watched and prayed with people, knowing that the outcome was going to be very

poor and knowing that we were doing some things very wrong over time.

And realizing as it continued, I became very aware that the government was the biggest problem of all. They did not help this pandemic. They got in the way of the conversation. They interjected themselves between the professionals and the patients. They kept families apart. They did not let people even die with dignity or any choice in their own healthcare. Let me ask you this. This is my take-home is, why do we keep on turning back to the government to solve the problems that the government created? That is what I get out of this. Every step of the way, the government has biased us and been wrong almost every step.

Let me give you some examples. Origins. When you bias people on where the origins came from because the government seems to think they know where it came from, you cannot actually determine if we funded the origins of this or how it got here because we cannot have honest conversations. This is the government getting in the way. Vaccinations. Whether they benefit you or they are a detriment to you, when you politicize something, some people that should have had it did not get it, and some people that should not have had it got it later because of government involvement.

Treatments. We already know the government was weighing in on it way before they had any clue what was good for you, and that biased medical scientists and doctors to do the wrong thing because government was involved. Patient placement. I think we have covered that here today. Travel, masks, school openings, business openings, censorship of physicians who were treating patients because the government was supposedly the expert instead of the physicians, making people think this was a political disease rather than a virus.

We have trampled all over individual rights, the ability to self-determine, the ability to think on ourselves and actually have an honest access to information to make good decisions rather than biased information coming from a government that is biased already because of what you guys already said, lobbyists, people who put money in their pocket, people who want power, people who love the fact that they can make decisions for you because they seem to think that their experts, or because they are powerful and we have to succumb to them, that we the people are subjected to a government.

When you say we need to be ready for the next one and say we need rapid testing, for what? It will not be COVID. The next one will be something else. The problem is we keep on thinking that the government is going to prepare us for the next thing. We have to have a flexible model. We have to allow scientists and doctors and hospitals to be ready on their own, to prepare them by not overburdening them with regulation and fees and non-reimbursements because of special interests not allowing us to get hospital systems healthy.

I do not have any questions for you because I know you are the solution, not me. You guys have already talked about the hurt and contamination of this conversation because of the government involved. So, I hope we have a real conversation about where the government should not be involved and how they actually hurt the

conversation. And when we politicize any disease, and I love how sometimes my colleagues from the opposite side of the aisle say we should not make this political. By the way, Trump is at fault. This is not a helpful conversation.

Let us get the government out of the way and empower the people to deal with the disease or whatever else problems they have in life. And with that, I yield, sir.

Dr. WENSTRUP. Thank you. I now recognize Ms. Ross from North Carolina for 5 minutes of questions.

Ms. ROSS. Thank you, Mr. Chairman, and, first, I would like to express my deepest sympathies to all Americans who have lost loved ones to COVID-19 and to our witnesses who have lost loved ones.

As lawmakers, we have an obligation to ensure that seniors are protected and cared for, whether they live in nursing homes, assisted living facilities, independent housing or reside with their families. The Biden Administration has been working hard to fix a desperately broken nursing home system. I was a state legislator, and we worked to try to help the nursing home system as well. And I do not know what the answer ultimately is, but it definitely has to be investing in our seniors.

Prior to the pandemic, the Government Accountability Office reported that the nursing home industry had been failing to maintain basic infection control standards, like hand washing or wearing masks, even before the pandemic. Seniors fared no better when the coronavirus flooded into their nursing homes from outside communities, likewise reeling from the same failures of the previous administration to deliver timely or even usable PPE, testing kits, and vaccines.

Dr. Grabowski, how could the Federal Government have better supported states and nursing homes early in the pandemic?

Dr. GRABOWSKI. Once again, states and, particularly, nursing homes really struggled to acquire personal protective equipment, really struggled to get rapid testing. There was a role there for the government to fill that gap. Once again, when you put nursing homes in a market where they are competing with all these other entities, they were not in the front of the line where they should have been. They were pushed to the back of the line. They ultimately ended up getting faulty PPE. There were gaps in sort of coverage across facilities. It was a complete debacle. So, this is not an area when it comes to the lives of our older adults that we should just let the market work this out. There was a role there for government to help the state and the nursing homes.

Ms. ROSS. Okay. And because of the American Rescue Plan and the most successful vaccine campaign in the history of this country, the rate of deaths among nursing home residents fell from nearly two deaths per 100 residents in January 2021 to a low of .03 in July 2021. Doctor, in that timeframe, how did you see the Federal Government apply lessons learned from earlier in the pandemic to ensure that past mistakes were not repeated?

Dr. GRABOWSKI. Absolutely. There is a role for the Federal Government here. It is not sitting on the sidelines or pushing the problem down to states and nursing homes. It is actually engaging with them, and we saw that with the mandate, for example, for booster

vaccines for our workers and nursing homes. That was an incredible success, and I think we, hopefully, will continue to see that kind of engagement and centralized role for the Administration going forward.

Ms. ROSS. Okay. And this Administration also has expanded inspection activities and targeted more aggressive enforcement measures for high-risk nursing facilities, supported good-paying nursing home jobs and training, increased industry transparency and accountability. And for the first time in nearly 40 years, the Biden Administration will soon update Federal staffing standards to ensure higher-quality care for nursing home residents. Doctor, again for you, how do these steps move the ball forward on addressing systemic problems in nursing home care that have been ignored for far too long?

Dr. GRABOWSKI. Yes. All three are incredibly important. Let me go in reverse order, the staffing. We have far too few staff in our buildings. This was true pre-pandemic.

Ms. ROSS. Right.

Dr. GRABOWSKI. It has been true during the pandemic. Staffing is central to good, quality nursing home care and good quality of life. We need more staff in this sector, so the minimum staffing standard is a great start there. Once again, in terms of transparency, we want to know who owns these buildings and what they are doing with our money. Those are great steps. And then regulation, we need to invest in oversight and enforcement. As you said, that was declining under the prior administration. That has actually been turned around here, and I actually think, you know, we need to address some of the gaps right now in funding for state survey agencies. I think that is a real area of priority going forward.

Ms. ROSS. Okay. And then just one question that affects my home state of North Carolina. Would Medicaid expansion help with funding or nursing homes?

Dr. GRABOWSKI. So, I am also from North Carolina, and so this would help for the non-elderly—

Ms. ROSS. Yes.

Dr. GRABOWSKI [continuing]. But not for the older adults. So, we have shown in our research that expanding Medicaid did lead to better long-term care for non-elderly Medicaid recipients. Thanks.

Ms. ROSS. Thank you very much, and I yield back.

Dr. WENSTRUP. I now recognize Ms. Tokuda from Hawaii for 5 minutes of questions.

Ms. TOKUDA. Thank you very much, Mr. Chair. You know, living in a nursing home during the pandemic became a death sentence for approximately 176,000 Americans, and today, nursing home staff continue to have one of the most dangerous jobs in our country. According to the CDC, there are 15,600 Medicare- and Medicaid-certified nursing homes and 1.7 million beds providing care to our constituents in every district across our country. Dr. Grabowski, we know nursing home residents and workers were a vulnerable population during the COVID-19 pandemic. Now, three years later, would you say they are more or less vulnerable if faced with evolving or new rapidly spreading viruses?

Dr. GRABOWSKI. You know, I think we are in much better shape relative to COVID, but moving forward as new pandemics occur, we need to apply the lessons that we have all been talking about here and apply good policy going forward. I do think we have staffing shortages in some of our buildings, and that is going to be an issue going forward. We really need to fortify the workforce.

Ms. TOKUDA. Thank you. Building on that, you know, and definitely staffing shortages is a severe crisis right now our public health infrastructure is facing. If there is one critical lesson we have learned from COVID-19, it is the importance of sustained and adequate investments in programs that ensure the health and safety of our Nation's nursing home and long-term care residents, from resources for adequate staffing as we just talked about, to oversight and monitoring.

Yet as we are having this hearing, House Republicans continue to hold America's full faith and credit hostage so that they can push draconian cuts to crucial Federal programs meant to protect nursing home residents from harm. For example, Republicans' Default on America Act contains a 22-percent cut to the Centers for Medicare and Medicaid Services State Survey and Certification Program. CMS's survey and certification efforts help the agency determine whether nursing homes and other providers are meeting basic quality and safety levels and whether to pursue any remedies.

As a result of the pandemic, about a third of all nursing homes are overdue for an inspection. At the start of this year, many had last-reported inspections prior to the pandemic, and now under Republican budget proposal cuts, this backlog would be compounded with CMS unable to complete 38 percent of required home and safety recertification surveys of our nursing homes and home health agencies, leaving 1.4 million seniors at greater risk of dangerous and unsanitary conditions.

Dr. Grabowski, what happens to Federal oversight over nursing home operations and quality of care if funding is cut by 22 percent? Are we able to ensure that nursing home residents are adequately protected from threats to their health?

Dr. GRABOWSKI. That would be an absolute disaster. I was part of, once again, a National Academies committee. We recommended increasing funding. This was at baseline, and now this is talking about going in the other direction. Once again, these are frail older adults, many with Alzheimer's and dementia. They are not able, in many instances, to monitor their own care. There is a real role for survey and certification to come in and ensure that all care requirements are being met.

Ms. TOKUDA. Absolutely. These vulnerable Americans need advocates. They need family members to be able to share their concerns, have their concerns addressed. You know, in addition to cutting funding for CMS, Republicans' Default on America Act would also impose a 22-percent cut on the Administration for Community Living's Long-Term Care Ombudsman Program. The long-term care ombudsman's work is to identify, investigate, and resolve complaints made by or on behalf of nursing home residents.

Dr. Grabowski, tragic things happen when people do not have an advocate, a way to raise concerns, to take actions. We have heard

those heartbreaking stories right here in this room today. What will happen if we cut ombudsman funding, reducing the resources dedicated to investigating residents' concerns about their treatment and their safety. Will these horrific cuts as proposed by House Republicans doom us to repeat these fatal mistakes of the past?

Dr. GRABOWSKI. When the Ombudsman Program is properly funded, it is incredibly successful. Once again, that National Academies committee that I served on, we recommended increasing funding and making sure that the Ombudsman Program was working well across the country. Once again, some areas it is working really well. Other areas it needs further support. We do not want to make cuts. Once again, that is going in the wrong direction.

Ms. TOKUDA. Absolutely. No cuts. Let us learn from the mistakes of the past. The reality is, again, when we were looking at the pandemic, American deaths, one in ten of all COVID-19 deaths in America was linked to a nursing home at the height of our pandemic. One in every 50 nursing home residents died of COVID-19. No more cuts. Stop these draconian threats on our people, and let us learn from those lessons past. Thank you, Dr. Grabowski. I yield back my time.

Dr. WENSTRUP. Thank you. I now recognize the Ranking Member for the purpose of a closing statement.

Dr. RUIZ. Thank you, Mr. Chairman. In all that we do as Members of this Select Subcommittee, our focus must remain on preventing harm and saving lives in the event of a future public health threat. And as we look ahead to the future and work to craft policies that prevent future loss of life, there are lessons we must learn from our COVID-19 response.

As I mentioned at the start of this hearing, we lost 200,000 residents and staff of long-term care facilities across the country to this pandemic. Two hundred thousand of our fellow Americans perished due to COVID-19. And while at the time we knew little about this deadly novel airborne virus, and while at the time we lacked access to vaccines, testing, and therapeutics, we now have the responsibility to take the resources, tools, and knowledge we have gained over the last three years to create better policies that protect our health in the future, policies that prioritize compassion and center our attention on defending our most vulnerable populations, especially the elderly, who were and are at highest risk of severe illness, hospitalizations, and death from COVID-19.

This work must include promoting transparency, strengthening protections and standards in nursing homes, and correcting course on the failed policies under the Trump Administration that left seniors more vulnerable to infection, severe illnesses, and death to COVID-19. I hope that these guiding principles can serve as a model for our work in this Subcommittee. And while in many ways with the Biden Administration, we have already taken steps toward this goal by reinstating, reinforcing Federal nursing home standards, improving inspections, and strengthening our healthcare workforce, there is much more work to be done. And now we must continue on this path, not reverse course with harmful budget cuts that harm our seniors' health.

So, I hope at the end of the day we have moved the ball forward, that together we can put people over politics, save lives, and right

the wrongs that caused so much suffering in this pandemic. Thank you.

Dr. WENSTRUP. Thank you. As I have stated many, many times, the goal of this Select Committee is to have a better path forward, to admit to our mistakes, to learn from our mistakes, to correct our mistakes, and to provide accountability for any mistakes that were made, especially if mistakes were made because of political motives or personal motives. Decisions are to be made on data, and sometimes there was no data, as everyone has pointed out, but sometimes decisions were made in spite of the data. What were the motives? Were they political? Were they personal?

With COVID, many lessons have been learned. Our eyes have been opened to too many things, shamefully for our Nation that we had so many deficiencies. We talk about PPE. We talk about medications themselves. Our supply chain is reliant on China and other countries. We are not an independent Nation when it comes to our supply chain, especially in medicine. Look at your generic medications. Look at our protective equipment.

If you had told me when I was in Iraq that my protective equipment and my pharmaceuticals as a surgeon there relied on China, an adversary, how did we get here? This is not any one administration. We have done this to ourselves over the last 50 or 60 years. You know, we have learned that not everyone was adhering to standards, even pre-COVID, but COVID opened our eyes to a lot of things. But in some places, standards were being adhered to, and it was mentioned community rates matter. They do matter. That was an important piece of data for all of us. In many communities, if the community rate was high, it was high in the nursing homes. Is that the only factor, or was it the fact that maybe some nursing homes were not adhering to guidelines?

You know, we have areas where it may have a high rate in the community but a lower rate in the nursing homes, and if so, why was that? Mrs. Lesko brought that up, the difference between Arizona and New York, where many of the vulnerable people in America happen to live in Arizona. Through this time, we have looked at community rates versus in-school rates. You were safer in school than you were at the grocery store, or, better yet, at the liquor store, which was open, yet we kept schools closed, or some did.

I look at early on, some of the things that we saw and learned that one size does not fit all. You know, we had a legitimate fear, and we said let us go to lockdowns. I get that, but when you keep them up and you tell people not to go to the doctor, that is a problem. Those were decisions that were made as well. I actually had a sheriff in one of my rural counties call me and said, I just want you to know I had a guy 71-years-old. He was scheduled to have his painful hernia repaired. They called him and canceled it, and he took his own life because he was in so much pain. There were no cases in that county at the time. One size does not fit all. One-size-fits-all can be very dangerous.

When I look at COVID, I look at it as something that should have united this Nation, and instead it divided us, and why? Because it was a Presidential political year. That is my opinion. It divided us. Politics took over. We see political organizations having influence on CDC guidelines. That should not be the case. Medicine

does not deserve that. I have seen even on this Committee gratitude for the vaccines and the vaccine delivery, and I give credit to the vaccine delivery. That was an impressive, impressive maneuver, largely provided by our military as far as actual delivery, but I do not hear anybody who is, you know, talking about that from this side giving kudos to Operation Warp Speed itself.

There were mistakes from both sides of the aisle, from every avenue here. Get the politics out of it. We see mandates coming from a politician saying you must get the vaccine. I am pro-vaccine, but I am not in a position to say that there may not be some adverse effects for some people and that some people might have questions on a mandate that says you get this or you lose your job and there is no conversation with the physician. What are we doing? I heard time and time again from patients who said when I talk to you, Dr. Wenstrup, I am more likely to get the vaccine, but when I am being told I have to get it by a politician, that is a problem. I just want to be educated, not indoctrinated. There is a huge mistake that we have made in this country. I do not know if any of you have noticed throughout your life, but Americans do not do well with “because I told you so.” It does not work in America.

Listen, I want to thank those who provided testimony for today’s hearing. I know it is very personal, and I think it hurts all of us, and I think across both sides of the aisle, that pain is felt. And I want to share with you publicly, you know, that we are going to try to relieve the pain in any way that we can going forward. It is hard to comprehend how as a society, states implemented mandates that resulted in loved ones dying alone without a single family member there able to say goodbye. It is hard.

This hearing and the testimony provided today from those directly affected by the deadly orders enacted in New York, New Jersey, and Pennsylvania is essential to have as we move forward in our investigation into the nursing home policies enacted by state officials and the coverup that ensued. These orders were more than a mistake. They were a deadly decision. They were medical malpractice by people that do not have a medical degree or a license to practice medicine.

I think that we can agree that vaccines were extremely helpful to protect our elderly in nursing homes, but this hearing and this investigation is about the decisions made prior to the development of the vaccine and what actions were taken to avoid culpability for the deaths of thousands of Americans. Today we heard important testimony that New York Governor Andrew Cuomo loved to blame politics at every opportunity, and then he turned to attacks, belittlement, and name calling when challenged. He did not meet with the victims of families or show sympathy to those who were hurting. Instead he wrote a book. Governor Cuomo had resources at his disposal to protect the vulnerable, and he failed to use them. The *Comfort* and the Javits Center sat virtually empty.

The orders from New York prohibited testing of incoming patients for COVID-19. They mandated that nursing homes and long-term care facilities accept COVID-positive patients. This was directly against the CDC guidance, the CMS guidance, and, frankly, common sense, at least common medical sense. In New York, over 10,000 nursing home deaths occurred in the 50 days before Gov-

ernor Cuomo's mandate was rescinded. Today we heard concerning testimony regarding the manipulation of data from Governor Cuomo's own office. The Biden Department of Justice chose not to investigate the state orders nor the ensuing coverup. We will.

Today we are able to have bipartisan agreement that seniors were failed and too many died. While others blame the Trump Administration, the fact is these deadly nursing home policies were not implemented nationwide. Instead, they were developed and enacted by states with, honestly, Democrat Governors—New York, New Jersey, and Pennsylvania—and against the guidance provided by the Trump Administration from CMS and CDC. And that is the key, not the Administration, but the CMS and CDC, which should be agnostic of politics.

Those who are responsible for these mandates must be held accountable. The victims and their families deserve transparency and to know who created these must-admit orders, and they deserve the opportunity to hold them accountable. We cannot simply just blame one or the other and move on when families are missing their loved ones and missing the closure that comes with accountability.

The Select Subcommittee on the Coronavirus Pandemic will continue to examine the deadly policy decisions surrounding nursing homes, and we will continue to investigate the failed leadership of state officials during the COVID-19 pandemic. And we will continue to provide, as best we can, a path forward for America that is much better for America and has accountability and science behind it.

And without objection, all Members will have five legislative days within which to submit materials and to submit additional written questions for the witnesses, which will be forwarded to the witnesses for their response.

Dr. WENSTRUP. And with that, this hearing is adjourned. Thank you, everyone.

[Whereupon, at 12:14 p.m., the Select Subcommittee was adjourned.]

