STATE OF NEW YORK

2608

2023-2024 Regular Sessions

IN SENATE

January 23, 2023

Introduced by Sen. GRIFFO -- read twice and ordered printed, and when printed to be committed to the Committee on Finance

AN ACT establishing the COVID-19 nursing home commission to provide a non-partisan investigation of the Cuomo administration and department of health's conduct with regard to nursing homes during the COVID-19 pandemic

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

Section 1. Legislative findings. On March 25, 2020, the department of health issued guidance that "no (nursing home) resident shall be denied re-admission or admission to the nursing home solely based on a confirmed or suspected diagnosis of COVID-19." The guidance also prohibited nursing homes from requiring a hospitalized resident who was determined to be medically stable to be tested for COVID-19 prior to admission or readmission.

Over the summer, serious questions began to surface about how the Cuomo administration and New York state's department of health was counting COVID-19 deaths of nursing home patients. This came to a head on August 26, 2020, when the department of justice stated they would initiate investigations under the civil rights of institutionalized persons act (CRIPA) regarding New York, New Jersey, Michigan and Pennsylvania's responses to COVID-19 in public nursing homes.

On January 28, 2021, the New York state office of the attorney general released a bombshell report that determined the Cuomo administration had undercounted deaths in nursing homes due to COVID-19 by as much as fifty percent.

This bombshell report was followed by a shocking revelation made by secretary to the governor, Melissa DeRosa, during a closed door meeting with members of the majority conferences of the legislature, in which the secretary admitted the Cuomo administration "froze" when the depart-

EXPLANATION--Matter in *italics* (underscored) is new; matter in brackets [-] is old law to be omitted.

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ment of justice requested information on how the Cuomo administration responded to COVID-19 in nursing homes.

This commission is established to determine whether a cover-up was occurring within the governor's administration during the months following the March 25th department of health guidance and whether any unethical or criminal behavior occurred during that time.

The commission will be comprised of four district attorneys from across the state, each appointed by a legislative leader.

The commission will publicize a report with a detailed account of their activities and findings. Due to the lack of transparency coming out of the Cuomo administration and the department of health over the past several months, it is incumbent that this report be made public to try to gain back some of the public's trust.

§ 2. Definitions. As used in this act, "nursing home" means a nursing home as defined in section 2801 of the public health law.

§ 3. COVID-19 nursing home commission. a. A temporary state commission, to be known as the COVID-19 nursing home commission, is established to investigate the response to the COVID-19 pandemic in nursing homes in this state. The commission is hereby created to investigate the Cuomo administration and the New York state department of health's response to COVID-19 in nursing homes, specifically decisions made before and after the March 25, 2020 department of health guidance outlined in section one of this act.

b. (i) The commission shall consist of four members to be appointed as follows: one member shall be appointed by the temporary president of the senate, one member shall be appointed by the speaker of the assembly, one member shall be appointed by the minority leader of the senate and one member shall be appointed by the minority leader of the assembly.

(ii) All appointees to the commission shall be a current or former district attorney of a county of this state.

(iii) All members of the commission shall be appointed within ten days of the effective date of this act.

(iv) The commission may employ and at pleasure remove personnel, as it may deem necessary for the performance of its functions and fix their compensation within the amounts made available by appropriation thereof.

(v) The members of the commission shall receive no compensation for their services but shall be allowed their actual and necessary expenses incurred in the performance of their duties hereunder. Nothing contained herein shall prohibit a member of the commission from receiving his or her salary earned due to their county or state employee position.

(vi) The commission shall be entitled to request and receive and shall utilize and be provided with such facilities, resources and data of any court, department, division, board, bureau, commission, agency or public authority of the state or any political subdivision thereof as it may reasonably request to properly carry out its powers and duties pursuant to this act.

(vii) The commission may administer oaths or affirmations, subpoena witnesses, compel their attendance, examine them under oath or affirmation and require the production of any books, records, documents or other evidence it may deem relevant or material to the investigation.

§ 4. Report. The commission shall make a report of its findings, including, but not limited to any ethical or criminal violations the commission believes were committed. The report shall provide a detailed account of the activities and findings of the commission. The report shall be submitted to the governor, the temporary president of the senate, the speaker of the assembly, the minority leader of the senate,

the minority leader of the assembly and the office of the attorney general and shall be published on the office of the attorney general's website.

§ 5. This act shall take effect immediately and shall be deemed repealed upon the commission's submission of the report to the governor, the legislature and the office of the attorney general as provided for in section four of this act; provided that the COVID-19 nursing home commission shall notify the legislative bill drafting commission upon the occurrence of the delivery of the report provided for in section four of this act in order that the commission may maintain an accurate and timely effective data base of the official text of the laws of the state of New York in furtherance of effectuating the provisions of section 44 of the legislative law and section 70-b of the public officers law.