

# Learning From COVID-19 Enforcement Against Nursing Homes

By **Kenneth Levine** (April 18, 2025, 6:43 PM EDT)

Five years ago, the U.S. epicenter of the initial COVID-19 outbreak was in nursing homes, where an estimated 60,000 residents died in the first months alone.[1] New York-New Jersey was the hardest-hit region,[2] and the news at the time was filled with stories of residents dying in isolation as overwhelmed staff with insufficient supplies of personal protective equipment struggled to attend to the sick.[3]

Many of these facilities also had long histories of regulatory violations for understaffing, poor infection control procedures and substandard care. Both New York and New Jersey pledged to investigate and pursue appropriate civil enforcement action against facilities that failed to take reasonable steps to protect their residents.



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Over the past five years, New York has filed a series of comprehensive and impactful court actions. To date, New Jersey has not. Given the applicable statute of limitations, any forthcoming civil enforcement actions in New Jersey is unlikely but still possible.[4]

Examination of the New York cases, as well as similar cases brought elsewhere in the country, against nursing homes brought since the start of the COVID-19 outbreak highlights many of the benefits and obstacles in bringing cases of this type, and ways to overcome them.

## National Focus on New Jersey and Pledge to Investigate

To date, more than 200,000 nursing home residents and staff have died from COVID-19 across the country.[5] In New Jersey, 10,500 nursing home residents died during the first four months of the pandemic alone,[6] accounting for nearly half of all COVID-related deaths during that period, where residents comprised less than 1% of the state's population.[7]

On April 15, 2020, the national spotlight turned to one particular New Jersey nursing home, Andover Subacute and Rehabilitation Center II, where an anonymous tip to the media led to reports that 17 bodies were found stacked inside one room and an additional body was found in an outside shed.[8] The news reports also highlighted the facility's long history of regulatory violations and other troubles.[9]

The next day, New Jersey Gov. Phil Murphy, outraged by the reports of the makeshift morgue at the facility,[10] released a COVID-19 briefing directing "the [New Jersey] Attorney General to look into this matter as well as to do a review of all long-term care facilities that have experienced a disproportionate number of deaths during the COVID outbreak," and then "take any and all appropriate action." [11]

The New Jersey Attorney General's Office issued a press release that same day, confirming the investigation.[12] One week after the announcement of the New Jersey investigation, then-New York Gov. Andrew Cuomo, reacting to similar news accounts about failures of care and deaths at New York nursing homes, directed the New York Attorney General's Office to conduct a similar investigation in that state.[13]

## New York Takes Action

Enforcement actions, when warranted, play a critical role in a government's response to a crisis,

including by:

- Holding individuals and institutions accountable for specific wrongdoing;
- Assuring the public that the government is responsive to their suffering and interests;
- Discouraging similar misconduct in the future;
- Providing restitution for victims and their families;
- Creating a detailed accounting of what specifically occurred in order to identify and correct systemic weaknesses;
- Restoring public trust by showing that the government has systems in place to protect the health and safety of its residents;
- Identifying ways to strengthen regulation, drive reform, improve oversight, close legal loopholes and enhance protections; and
- Reassuring the public that laws that apply to individuals also apply to institutions.

Starting on Nov. 29, 2022, the New York Attorney General's Office proceeded to file or settle five major civil enforcement actions against the owners or operators of nursing homes in the state for substandard care and financial fraud before and during the COVID-19 outbreak.

Those actions included settlements for \$45 million,[14] \$8.6 million,[15] and \$7.8 million;[16] another case with more limited results[17] that contributed to a bankruptcy filing and planned closure of the facility;[18] and one other case[19] still pending after a mixed court ruling in December 2024.[20]

### **The New Jersey Response**

Despite the successful track record in New York, no similar civil enforcement claims were filed against any New Jersey owners or operators of nursing home facilities.

This contrast was especially notable because several of the owners and operators of the facilities who were sued in New York also ran troubled facilities in New Jersey — including, most prominently, Chaim "Mutt" Scheinbaum, the owner and operator of the Andover facility that made the national news, who was one of the settling parties in one of the New York cases mentioned above.[21]

In the absence of any civil enforcement actions, some New Jersey agencies stepped up and pursued administrative actions within their authority.

Most significantly, the New Jersey Office of State Comptroller's Medicaid Fraud Division, among other actions, revoked the Medicaid eligibility for the Andover[22] facility and its sister facility across the street,[23] filed court actions to place two other facilities under receivership and suspend the owners from New Jersey Medicaid,[24] and issued reports about fraud, waste and abuse in the state's lowest-rated nursing homes.[25]

The New Jersey Department of Health also increased its fines on facilities for staffing shortages and

other violations.[26] In addition, after the Andover facility saw another significant COVID-19 outbreak in 2021, and then failed an inspection in February 2022 with findings of severe regulatory violations, [27] the New Jersey Department of Health filed suit against the Andover owners and operators to place the facility under a monitor,[28] leading to the eventual closure of the facility in July 2022.[29]

In addition, the New Jersey governor's office commissioned two sweeping, independent reports, examining the state's response overall to the COVID-19 outbreak and making recommendations, including for improvements in care for nursing home residents across the state.[30] The first of these reports led to a number of significant regulatory changes.[31]

But New Jersey also took other steps in response to the pandemic that served to highlight the need to take any warranted civil enforcement actions in the state, making the failure to do so more pronounced.

Most notably, New Jersey agreed to pay \$52.9 million to families of victims of COVID-19 at its state-run veterans homes in Paramus and Menlo Park,[32] for an average recovery of \$445,000 per family. [33]

Yet families of victims at privately run facilities in the state who experienced similar losses based on similar failures of care saw no equivalent action by the state to attempt to hold the private owners and operators similarly responsible.

In addition, like many states, New Jersey passed a statute to protect nursing homes and other healthcare institutions from most private civil actions for wrongful death or negligence connected to the COVID-19 pandemic.[34] Therefore, many common alternative litigation avenues for recovery and redress were not available to New Jersey victims and their families here, absent a government enforcement action.

### **Enforcement Actions in Other Jurisdictions**

New York is not the only jurisdiction to take significant civil enforcement actions against nursing homes since the start of the COVID-19 outbreak.

The U.S. Department of Justice joined in several of the New York Attorney General's Office actions discussed above, settled a COVID-related billing fraud scheme against a California nursing home chain based on misuse of a Medicare waiver code,[35] and settled a fraud case against another California nursing home chain when securing funds under the Paycheck Protection Program.[36]

In June 2022, the DOJ brought a case against a nursing home chain based in Ohio operated by American Health Foundation Inc.[37] "for providing grossly substandard skilled nursing services,"[38] for conduct between 2016 and 2018.

The California Attorney General's Office has brought a number of cases against nursing home chains since the beginning of the outbreak, including one that resulted in a settlement in 2022 for \$3.5 million against the Contra Costa County Skilled Nursing Facility to resolve "allegations of understaffing and patient abuse and neglect,"[39] and another action, in 2023, against the Mariner Health chain of nursing facilities for "understaffing its facilities and subjecting its patients to negligent care," according to press releases at the time.[40]

### **Obstacles to Enforcement Actions**

Examination of the New York and other enforcement cases brought since the start of the COVID-19 outbreak shows how any government authority faces significant but surmountable challenges to bring civil enforcement actions of this type.

First, the cases are typically factually complex to investigate, requiring a significant dedication of resources.

The pleadings in the New York cases were more than 150 pages, filled with lengthy details about patient medical treatment, financial arrangements and data analysis. Each was also accompanied by lengthy expert affidavits analyzing patient records, staffing and financial data.

The New York press release for one of the New York actions referenced above — Cold Spring — acknowledged a team of 35 people, including attorneys, medical analysts, detectives and auditor-investigators, reflecting a commitment of significant resources.[41] The DOJ's complaint in *U.S. v. American Health Foundation Inc.*, in the U.S. District Court for the Eastern District of Pennsylvania in 2022, was similarly 140 pages long, filled with complex technical details, also the clear result of a deep bench committed to the case.[42]

Second, enforcement actions involving nursing homes come with legal risks. The go-to statute for cases in this area is the False Claims Act,[43] a law that provides financial incentives for whistleblowers to come forward with information about government fraud, but which government entities also use on their own for civil enforcement actions.

The primary theory of liability for a False Claims Act case of this type is that Medicaid or Medicare reimbursement claims submitted to the government were false or misleading because the facility provided grossly substandard services.

This worthless-services theory[44] has a high evidentiary threshold, with some courts requiring evidence that the services be "so deficient that for all practical purposes it is the equivalent of no performance at all," to quote the U.S. District Court for the Eastern District of Pennsylvania in *Mikes v. Straus* in 2001.[45]

Notably, in the New York actions discussed above, while New York relied in part on the False Claims Act, it primarily focused on another legal authority: New York Executive Law Section 63(12), "a muscular law that provides [the New York Attorney General's Office] with an upper hand when investigating and punishing corporate wrongdoing," according to a New York Times article.[46]

The closest New Jersey equivalent to that authority is the New Jersey Consumer Fraud Act, which is not as broad, and may be unenforceable on nursing homes under the learned professional doctrine.[47] And even with access to its robust law, New York was not wholly successful, losing some important claims in court rulings.[48]

Still, the federal government and private counsel who represent whistleblowers in False Claims Act cases have a track record of successfully using the False Claims Act over the years to pursue nursing home owners and operators under the worthless-services theory.[49]

The DOJ's AHF case, noted above, is also based in part on a worthless-services theory. New Jersey has a state version of the False Claims Act statute[50] available for claims of this type.

Third, civil enforcement actions in this area would raise politically sensitive issues, including a directive by the New Jersey Department of Health that nursing homes could not deny admission "solely based on a confirmed diagnosis of COVID-19." [51]

New York and other states instituted similar policies to help hospitals maintain capacity to treat incoming patients, but the nursing home industry has claimed this directive greatly contributed to the high death rates.

The defendants in one of the cases the New York Attorney General's Office brought, *Centers/Abraham Operations*, for example, raised in motion papers that New York's action against them had omitted several inconvenient facts, including "government directives mandating the admission of patients regardless of COVID infection," citing an AP News article that said "more than 9,000 recovering coronavirus patients were released into New York nursing homes," in accordance with this directive. [52]

## **Conclusion**

The COVID-19 outbreak was a tragedy for nursing home residents on a truly massive scale. Many of the deaths were preventable, and the tragedy called for a comprehensive response, including holding bad actors civilly responsible where warranted.

The New York Attorney General's Office fulfilled this role with comprehensive civil enforcement actions against nursing homes in response to the COVID-19 outbreak. These actions reflected a strong commitment of resources, and an impressive willingness to take legal and political risks.

New Yorkers greatly benefited from these actions, both in terms of financial recovery, and by seeing that their government had responded to the tragedy by seeking to hold institutions responsible while also acting to protect the most vulnerable residents in the state. New Jersey residents did not have the benefit of similar actions.

Government entities can follow New York's model when a future crisis calls for similar warranted enforcement. Private counsel representing whistleblowers in False Claims Act cases can also serve an important role by identifying whistleblowers with knowledge about misdeeds to help the government gather information to pursue warranted actions.

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[1] <https://www.nytimes.com/2023/08/19/health/nursing-homes-covid.html> ("The first terrifying wave of Covid-19 caused 60,000 deaths among residents of nursing homes and other long-term care facilities within five months."); see also <https://jamanetwork.com/journals/jamanetworkopen/fullarticle/2784031> (Estimates of COVID-19 Cases and Deaths Among Nursing Home Residents Not Reported in Federal Data).

[2] Independent Review of New Jersey's Response to the COVID-19 Pandemic, Montgomery McCracken Walker & Rhoads LLP, March 7, 2024, [https://www.mmwr.com/wp-content/uploads/2024/03/Independent\\_Review\\_of\\_New\\_Jersey\\_Response\\_to\\_the\\_COVID-19\\_Pandemic.pdf](https://www.mmwr.com/wp-content/uploads/2024/03/Independent_Review_of_New_Jersey_Response_to_the_COVID-19_Pandemic.pdf), at 64.

[3] <https://apnews.com/article/nursing-homes-neglect-death-surge-3b74a2202140c5a6b5cf05cdf0ea4f32>.

[4] N.J.S.A. § 2A:32C-11 (New Jersey False Claims Act) (statute of limitations of six years after the date on which the violation of the act is committed, or three years after the date when facts material to the right of action are known or reasonably known, with a maximum period of ten years); 31 U.S.C. § 3731(b) (federal False Claims Act with same limitations period).

[5] <https://www.kff.org/policy-watch/over-200000-residents-and-staff-in-long-term-care-facilities-have-died-from-covid-19/>; <https://www.nytimes.com/interactive/2020/us/coronavirus-nursing-homes.html> ; <https://www.nbcnews.com/health/health-news/nursing-homes-represent-more-1-4-covid-19-deaths-u-n1231547>.

[6] <https://www.njspotlightnews.org/2024/03/independent-report-nj-covid-19-response-health-department-directive-confused-nursing-home-operators/>; <https://coronavirus.jhu.edu/region/us/new-jersey>.

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[8] <https://www.nytimes.com/2020/04/15/nyregion/coronavirus-nj-andover-nursing-home-deaths.html>.

[9] <https://www.nbcnews.com/nightly-news/video/police-find-17-bodies-in-new-jersey-nursing-home-hit-by-coronavirus-82178117680>; <https://www.cnn.com/2020/09/08/us/new-jersey-nursing-home-covid-death-suit/index.html> ; <https://www.justice.gov/usao-nj/pr/skilled-nursing-facility-pay-888000-resolve-alleged-false-claims-related-materially>.

- [10] <https://www.nj.gov/governor/news/news/562020/20200416b.shtml>;  
<https://www.cbsnews.com/news/new-jersey-governor-phil-murphy-outraged-bodies-allowed-to-pile-up-makeshift-morgue-nursing-home-andover/>; <https://www.njspotlightnews.org/video/governor-calls-for-investigation-into-andover-nursing-home/>.
- [11] <https://www.nj.gov/governor/news/news/562020/20200416b.shtml>;  
<https://www.cbsnews.com/news/new-jersey-governor-phil-murphy-outraged-bodies-allowed-to-pile-up-makeshift-morgue-nursing-home-andover/>; <https://www.njspotlightnews.org/video/governor-calls-for-investigation-into-andover-nursing-home/>.
- [12] <https://www.nj.gov/oag/newsreleases20/pr20200416c.html>;  
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- [13] <https://www.governor.ny.gov/news/video-audio-photos-rush-transcript-amid-ongoing-covid-19-pandemic-governor-cuomo-announces-12> ; <https://www.nydailynews.com/2020/04/23/ny-to-investigate-nursing-homes-amid-soaring-coronavirus-death-toll/>;  
<https://www.nytimes.com/2020/05/13/nyregion/nursing-homes-coronavirus-new-york.html>.
- [14] People v. Abraham Operations Assocs. LLC, Index No. 451549/2023, Supreme Court, New York County; <https://ag.ny.gov/press-release/2024/attorney-general-james-secures-45-million-and-delivers-major-reforms-four>.
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[25] <https://www.nj.gov/comptroller/reports/2024/20241212.shtml>.

[26] <https://www.njspotlightnews.org/2024/09/nj-fines-nursing-homes-violating-short-staffing-requirements-nursing-home-operators-sue/#:~:text=Early%20on%2C%20fines%20were%20rare,day%20it%20is%20short%2Dstaffed.>

[27] <https://www.nj.com/news/2022/02/resident-in-cardiac-arrest-left-for-dead-at-nursing-home-nj-alleges-in-scathing-report-citing-widespread-abuse.html>.

[28] State of New Jersey, Department of Health, Department of Human Services v. Woodland Behavioral and Nursing Center, et al., SSX-C-0030-22, Superior Court, Sussex County, Chancery Division; see also <https://www.njspotlightnews.org/2022/05/nj-court-order-outside-monitor-woodland-behavioral-and-nursing-center-sussex-co-covid-19-deaths-lax-infection-control-serious-risks-care-finances/>.

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[31] <https://www.nj.gov/governor/news/news/562020/20201023a.shtml>.

[32] <https://www.nj.com/news/2021/12/nj-agrees-to-pay-529m-to-families-over-covid-deaths-in-states-hard-hit-veterans-homes.html>.

[33] New Jersey also settled with the U.S. Department of Justice with a consent decree and promised reforms for claims that the state had "violate[d] the Constitution by failing to keep the residents of its Veterans Homes safe from harm and an unreasonable risk of harm."  
<https://www.justice.gov/archives/opa/pr/justice-department-secures-agreement-new-jersey-resolve-claims-unconstitutional-conditions>.

[34] The New Jersey COVID-19 Immunity Statute, L. 2020, c. 18;  
<https://www.njcourts.gov/system/files/court-opinions/2024/a3177-22a3178-22.pdf>.

[35] United States and State of California ex rel. Bay Area Whistleblower Partners v. ReNew Health Group LLC et al., No. 2:20-cv-09472 (C.D. Cal.); <https://www.justice.gov/archives/opa/pr/california-based-nursing-home-chain-and-two-executives-pay-7m-settle-alleged-false-claims>.

[36] United States ex rel. Ashwani Chawla v. Unified Care Services et al., CV 21-5935-GW (CDCA); <https://www.justice.gov/usao-cdca/pr/south-bay-based-nursing-facilities-chain-and-owner-agree-pay-18-million-resolve-0>.

[37] United States v. American Health Foundation Inc., No. 22-cv-2344 (E.D. Pa.).

[38] <https://www.justice.gov/archives/opa/pr/justice-department-sues-american-health-foundation-and-its-affiliates-providing-grossly>.

[39] <https://oag.ca.gov/news/press-releases/california-attorney-general-rob-bonta-secures-settlement-against-contra-costa>.

[40] People of the State of California v. Mariner Health Care Inc., Case No. RG21095881, Superior court, Alameda county (filed Jan. 6, 2023); <https://oag.ca.gov/news/press-releases/attorney-general-bonta-secures-preliminary-injunction-against-chain-skilled>.

[41] <https://ag.ny.gov/press-release/2022/attorney-general-james-sues-long-island-nursing-home-years-fraud-and-resident>.

[42] <https://www.justice.gov/archives/opa/press-release/file/1513291/dl>.

[43] 31 U.S.C. § 3729 et seq.

[44] See, e.g., *In re Genesis Health Ventures, Inc.*, 112 F. App'x 140, 143 (3d Cir. 2004); *United States ex rel. Acad. Health Ctr., Inc. v. Hyperion Found., Inc.*, No. 3:10-cv-552, 2014 WL 3385189 at \*43 (S.D. Miss. July 9, 2014), report and recommendation adopted, 2017 WL 3260134 (S.D. Miss. July 31, 2017).

[45] *Mikes v. Straus*, 274 F.3d 687, 703 (2d Cir. 2001); *United States v. Am. Health Found. Inc.*, No. 22-cv-02344, 2023 WL 2743563, at \*11 (E.D. Pa. Mar. 31, 2023). Just this month, in *United States v. Fillmore Capital Partners, LLC*, No. 24-1606, 2025 U.S. App. LEXIS 7502 (3d Cir. Apr. 1, 2025), the Third Circuit affirmed the district court's decision to grant a motion to dismiss, finding, inter alia, that the complaint's allegations involving understaffing and mistreatment of patients were not specific enough to plead a "worthless services" or "falsity" theories of liability sufficiently.

[46] <https://www.nytimes.com/2022/09/23/nyregion/donald-trump-letitia-james-lawsuit.html>.

[47] N.J.S.A. 56:8-2. In 2012, the Appellate Division applied the learned professional exception to exclude New Jersey Consumer Fraud Act claims against the billing practices of a nursing home, reasoning that nursing homes were already strictly regulated under other existing laws. *Manahawkin Convalescent v. O'Neill*, 426 N.J. Super. 143, 155 (App. Div. 2012).

[48] [https://www.thedailynewsonline.com/news/attorney-general-letitia-james-clears-hurdle-in-case-against-troubled-orleans-county-nursing-home/article\\_633d5da4-c79a-11ef-a936-5b860ad083ea.html](https://www.thedailynewsonline.com/news/attorney-general-letitia-james-clears-hurdle-in-case-against-troubled-orleans-county-nursing-home/article_633d5da4-c79a-11ef-a936-5b860ad083ea.html).

[49] <https://www.justice.gov/opa/pr/savaseniorcare-llc-agrees-pay-112-million-resolve-false-claims-act-allegations> (SavaSenior, \$11.2 million settlement for "for grossly and materially substandard and/or worthless skilled nursing services"); <https://www.justice.gov/opa/pr/vanguard-healthcare-agrees-resolve-federal-and-state-false-claims-act-liability> (Vanguard, \$18 million settlement for "grossly substandard or worthless" conditions); <https://www.justice.gov/opa/pr/mississippi-skilled-nursing-facility-related-companies-and-executives-agree-pay-125-million> (Hyperion, \$1.25 million settlement "for providing effectively worthless services to residents"); <https://www.justice.gov/opa/pr/extendicare-health-services-inc-agrees-pay-38-million-settle-false-claims-act-allegations> (Extendicare, \$38 million settlement "for materially substandard nursing services that were so deficient that they were effectively worthless").

[50] N.J.S.A. § 2A:32C-1 to -18.

[51] <https://www.nj.gov/health/legal/covid19/3-31-2020%20Hospital%20Discharges%20and%20Admissions%20to%20Post-Acute%20Care%20Settings.pdf>.

[52] Doc. No 718, Index No. 451549/2023 (Defendants' Opposition to Attorney General's Motion for Preliminary Injunction, pages 4, 9).