

1 BEFORE THE NEW YORK STATE LEGISLATURE:  
2 SENATE STANDING COMMITTEE ON HEALTH,  
3 SENATE STANDING COMMITTEE ON AGING,  
4 SENATE STANDING COMMITTEE ON INVESTIGATIONS &  
5 GOVERNMENT OPERATIONS,  
6 ASSEMBLY STANDING COMMITTEE ON HEALTH,  
7 ASSEMBLY STANDING COMMITTEE ON AGING, and  
8 ASSEMBLY STANDING COMMITTEE ON OVERSIGHT, ANALYSIS &  
9 INVESTIGATION

---

10 VIRTUAL JOINT PUBLIC HEARING:

11 RESIDENTIAL HEALTH CARE FACILITIES AND COVID-19  
12 NEW YORK CITY, LONG ISLAND, AND WESTCHESTER

---

13 Date: August 3, 2020  
14 Time: 10:00 a.m.

15 PRESIDING:

16 Senator Gustavo Rivera  
17 Chair, Senate Standing Committee on Health

18 Senator Rachel May  
19 Chair, Senate Standing Committee on Aging

20 Senator James Skoufis  
21 Chair, Senate Standing Committee on Investigations &  
22 Government Operations

23 Assemblymember Richard N. Gottfried  
24 Chair, Assembly Standing Committee on Health

25 Assemblymember Harry B. Bronson  
Chair, Assembly Standing Committee on Aging

Assemblymember John T. McDonald III  
Chair, Assembly Standing Committee on Oversight,  
Analysis & Investigation

1       SENATE MEMBERS PRESENT:  
2       Senator Allesandra Biaggi  
3       Senator George M. Borrello  
4       Senator Phil Boyle  
5       Senator David Carlucci  
6       Senator Patrick M. Gallivan  
7       Senator James Gaughran  
8       Senator Andrew Gounardes  
9       Senator Pamela Helming  
10      Senator Brad Hoylman  
11      Senator Todd Kaminsky  
12      Senator Andrew J. Lanza  
13      Senator Betty Little  
14      Senator John C. Liu  
15      Senator Jen Metzger  
16      Senator Monica R. Martinez  
17      Senator Thomas F. O'Mara  
18      Senator Patty Ritchie  
19      Senator Luis R. Sepulveda  
20      Senator Sue Serino  
21      Senator Toby Ann Stavisky  
22      Senator James Tedisco  
23      Senator Kevin Thomas  
24  
25

1 ASSEMBLYMEMBERS PRESENT:  
2 Assemblymember Thomas J. Abinanti  
3 Assemblymember Jake Ashby  
4 Assemblymember Edward C. Braunstein  
5 Assemblymember Kevin M. Byrne  
6 Assemblymember Marjorie Byrnes  
7 Assemblymember Kevin A. Cahill  
8 Assemblymember Steven Cymbrowitz  
9 Assemblymember Joe DeStefano  
10 Assemblymember Inez Dickens  
11 Assemblymember Charles D. Fall  
12 Assemblymember Nathalia Fernandez  
13 Assemblymember Sandy Galef  
14 Assemblymember Andrew R. Garbarino  
15 Assemblymember Aileen M. Gunther  
16 Assemblymember Ellen Jaffee  
17 Assemblymember Mark Johns  
18 Assemblymember Billy Jones  
19 Assemblymember Ron Kim  
20 Assemblymember Nicole Malliotakis  
21 Assemblymember Brian Manktelow  
22 Assemblymember David G. McDonough  
23 Assemblymember Melissa Miller  
24 Assemblymember Michael Montesano  
25 Assemblymember Amy Paulin

1 ASSEMBLYMEMBERS PRESENT (continued):

2 Assemblymember Michael Reilly

3 Assemblymember Linda B. Rosenthal

4 Assemblymember John Salka

5 Assemblymember Doug Smith

6 Assemblymember Michaelle C. Solages

7 Assemblymember Al Taylor

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

1	SPEAKERS:	PAGE	QUESTIONS
2	Howard Zucker	27	45
3	Commissioner		
4	NYS Department of Health		
5	Garrett Rhodes	27	45
6	Deputy Superintendent and Special Counsel		
7	NYS Department of Financial Services		
8	Neil Heyman	167	179
9	CEO		
10	Southern New York Association		
11	Michael Balboni	167	179
12	Executive Director		
13	Greater New York Health Care Facilities Association		
14	Judy Farrell	248	258
15	Director, Long-Term-Care Ombudsman		
16	Tri County Long-Term Ombudsman Program		
17	Richard Mollot	248	258
18	Executive Director		
19	Long Term Care Community Coalition		
20	Roxanne Tena-Nelson	307	322
21	Interim President		
22	Continuing Care Leadership Council		
23	Lisa Newcomb	307	322
24	Executive Director		
25	Empire State Association of Assisted Living		
26	John Auerbach	307	322
27	President and CEO		
28	Trust for America's Health		
29	Alexa Rivera	344	367
30	Co-Founder		
31	Vivian Rivera-Zayas	344	367
32	Co-Founder		
33	Grace Colucci	344	367
34	Member		
35	Voices for Seniors		

1	SPEAKERS (continued):	PAGE	QUESTIONS
2	Kathleen Webster	344	367
3	Member		
4	Neighbors to Save Rivington House		
5	Lenore Solowitz	344	367
6	Resident		
7	Garnerville, NY		
8	Judy Johnson	401	428
9	Registered Nurse, Rockland Nursing Home		
10	Member of the NYS Nurses Association		
11	Milly Silva	401	428
12	Executive Vice President,		
13	1199 SEIU Nursing Home Division		
14	United Healthcare Workers East		
15	Eric Fogle	401	428
16	1199 SEIU Member		
17	Activities Aide at Holliswood Center		
18	Tyresse Byers	401	428
19	1199 SEIU Member		
20	Certified Nursing Assistant at		
21	Sarah Neumann Nursing Home		
22	Nicole Whittaker	401	428
23	1199 SEIU Member		
24	Certified Nursing Assistant at		
25	Berkshire Nursing and Rehab Facility		
	Pat Tursi	486	499
	Chief Executive Officer		
	Elizabeth Seton Children's Center		
	Rachel Amar	486	499
	Parent of a Patient at		
	Elizabeth Seton Children's Center		
	Edwin Simpser, M.D.	486	499
	President and CEO		
	St. Mary's Healthcare System for Children		

1	SPEAKERS (continued):	PAGE	QUESTIONS
2	Beth Finkel	533	544
3	New York State Director		
4	AARP		
5	Judith Grimaldi	533	544
6	Member of Elder Law Section		
7	Task Force		
8	NYS Bar Association		
9	Susan Dooha	553	574
10	Executive Director		
11	Center for Independence of the Disabled		
12	Brian O'Malley	553	574
13	Executive Director		
14	CDPAANYS		
15	Faigie Horowitz	553	574
16	Director of Marketing & Communications		
17	Caring Professionals, Inc.		
18	Claire Altman	553	574
19	President		
20	Altman Strategies, LLC		
21	Daniel Ross	594	611
22	Staff Attorney		
23	Mobilization for Justice Legal		
24	Dr. Tara Cortes	594	611
25	Clinical Professor at NYU, and		
	Executive Director of		
	The Hartford Institute for		
	Geriatric Nursing		
	Geoff Lieberman	594	611
	Executive Director		
	Coalition of Institutionalized Aged		
	and Disabled		

1           SENATOR RIVERA: Good morning, everyone.

2           This is State Senator Gustavo Rivera, from  
3           33rd District in The Bronx, Chair of the Health  
4           Committee in the New York State Senate.

5           And I want to welcome all of you to these  
6           hearings, which will be -- begin a series of  
7           hearings this week and next week on the impact of  
8           COVID-19 in different aspects of our state.

9           And today we are talking about nursing homes  
10          and home-care settings.

11          And I will be very brief in my introductory  
12          remarks, and just say that this hearing is both  
13          about accountability, as well as determining what  
14          happened, so that we can make sure that, going  
15          forward, it does not happen again.

16          Want to make sure that we save lives, and by  
17          changing policy might be able to do that.

18          And that is what these hearings are about.

19          We are joined by many of my colleagues, and  
20          I will recognize all of the Senate members now, and  
21          then pass it to the Assembly.

22          We are joined by my Co-Chairs: Rachel May,  
23          from -- who is the Chair of Aging, as well as  
24          Senator James Skoufis, who is the Chair of  
25          Investigations.



1           We are also joined by Majority Members  
2       David Carlucci, John Liu, Andrew Gounardes,  
3       Kevin Thomas, Allesandra Biaggi, Toby Stavisky,  
4       Monica Martinez, Brad Hoylman, Jen Metzger,  
5       Luis Sepulveda, and Todd Kaminsky.

6           And we are joined by Minority Health Ranker,  
7       Patrick Gallivan; Aging Ranker, Senator Sue Serino;  
8       Investigations Ranker, Senator Tom O'Mara; as well  
9       as Senators Pat -- Pam Helming, Jim Tedisco,  
10      Patty Ritchie, Betty Little, and George Morrello,  
11      from the Minority.

12           And my -- now to my Co-Chair in the Assembly,  
13      Assemblymember Richard Gottfried.

14           SENATOR LANZA:   Chairman, Andrew Lanza here  
15      as well.

16           SENATOR RIVERA:   Oh.   Thank you,  
17      Senator Lanza.

18           SENATOR GAUGHRAN:   And Jim Gaughran here.

19           SENATOR RIVERA:   Gaughran and Lanza.

20           ASSEMBLYMEMBER GOTTFRIED:   Okay, before I do  
21      go through some procedures, Harry Bronson, Chair of  
22      our Aging Committee, will announce all the  
23      Assemblymembers who are here, on both sides.

24           ASSEMBLYMEMBER BRONSON:   Thank you,  
25      [indiscernible] Gottfried.

1           I will announce assemblymembers from both  
2       sides. The order is, basically, what I'm seeing on  
3       the participant screen, so bear with me.

4           But first we have Ranker of Health,  
5       Kevin Byrne; the Ranker of Aging, Jake Ashby; and  
6       the Ranker of Oversight, Brian Manktelow.

7           Other members:

8           Assemblymember Edward Braunstein is with us;  
9       Assemblymember Marjorie Byrnes; Kevin Cahill;  
10      Steven Cymbrowitz; Joe DeStefano; Charles Fall;  
11      Assemblymember Fernandez; Assemblymember Galef;  
12      Andrew Garbarino; Aileen Gunther; Ellen Jaffee;  
13      Assemblymember Mark Johns; Assemblymember Jones,  
14      Assemblymember Ron Kim;  
15      Assemblymember Nicole Malliotakis;  
16      Assemblymember Dave McDonough;  
17      Assemblymember Missy Miller; Mike Montesano;  
18      Assemblymember Amy Paulin; Michael Reilly;  
19      Assemblymember Linda Rosenthal;  
20      Assemblymember Doug Smith; Assemblymember Solages;  
21      Assemblymember Taylor.

22           And I believe I've caught all assemblymembers  
23      who are with us today.

24           ASSEMBLYMEMBER GOTTFRIED: Okay. Thank you.

25           Okay, I'm just going to run through some

1 procedural points.

2 This will be a very long hearing.

3 And so, every 3 hours or so, we will take a  
4 10-minute break for what the Health Committee calls  
5 "ambulation and toileting."

6 Opening remarks will be limited to our  
7 committee chairs and ranking members, and limited to  
8 two minutes, each. People should feel free to take  
9 a pass on opening remarks.

10 Witness testimony will be limited to  
11 5 minutes, each; a limit that will not apply to the  
12 Health Commissioner.

13 Question-and-answer time will be limited to  
14 5 minutes per panel for committee chairs and  
15 rankers, and 3 minutes for other committee members.

16 Committee members may also submit written  
17 questions to -- to us, which will be forwarded to  
18 the appropriate witness, asking that the witness  
19 respond within three weeks.

20 Each witness will be asked to swear or affirm  
21 that the testimony he or she is about to give is  
22 true.

23 But since the notice for the swearing in was  
24 not included in the hearing notice for this hearing,  
25 if a witness declines to swear or affirm, the

1 witness may testify anyway, and we will note that  
2 for the record.

3 That's it.

4 SENATOR RIVERA: Thank you,  
5 Assemblymember Gottfried.

6 And now for some brief introductory remarks,  
7 Senator James Skoufis, Chair of Investigations.

8 Can't hear you, James.

9 ASSEMBLYMEMBER GOTTFRIED: Someone has to --

10 SENATOR SKOUFIS: That was bound to happen to  
11 someone.

12 SENATOR RIVERA: Yes.

13 SENATOR SKOUFIS: But, thank you,  
14 Mr. Chairman.

15 Good morning, everyone.

16 And as you noted, welcome, everyone, to the  
17 first of two legislative hearings on the State's  
18 response to the COVID-19 public health crisis in  
19 residential care facilities.

20 Partnering with the Health and Aging  
21 committees, the Senate Investigations and Government  
22 Operations Committee looks forward to engaging with  
23 today's witnesses.

24 The past four months have tested the very  
25 fiber of our state's being.

1           In so many regards, New York and New Yorkers  
2       rose to the occasion, sacrificing our livelihoods to  
3       save our and our neighbors' lives.

4           Families didn't leave their homes for months  
5       on end. The entire economy shut down. And spending  
6       time with loved ones was replaced with painful  
7       physical separation.

8           As we all know too well, however, death was  
9       prevalent and harrowing, and no place more so than  
10      in our state's nursing homes.

11          Over 6,000 residents have perished so far  
12      from COVID-19, a previously unimaginable figure, and  
13      a number that we know is an undercount.

14          Governor Cuomo has rightfully described the  
15      virus ripping through nursing homes as a, quote,  
16      fire through dry grass, unquote.

17          It's now up to the legislature to determine  
18      who lit the match, and understand how and why the  
19      fire fanned out.

20          To that end, let me make something  
21      crystal-clear to all of our participants here at the  
22      onset: Check your politics at the door.

23          Over 6,000 of our most vulnerable neighbors  
24      died in nursing homes. Tens of thousands of  
25      additional New Yorkers were taken from us.

1           Attempts to score cheap political points  
2       disgraces those lives lost and distracts from our  
3       genuine effort to understand what happened.

4           Our loyalty today must be to the truth, and  
5       nothing but the truth.

6           I look forward to today's testimony.

7           Thank you.

8           SENATOR RIVERA: Thank you, Senator Skoufis.

9           Now for our Senate Chair on Aging,  
10       Senator Rachel May.

11          SENATOR MAY: Thank you, Chair Rivera.

12          And greetings from the 53rd Senate District  
13       in Syracuse and Central New York.

14          I am grateful to my colleagues in the Senate  
15       and Assembly leadership, and staff, for making these  
16       hearings possible.

17          As Chair of the Committee on Aging, I began  
18       pushing for hearings back in May, as did the  
19       Majority Leader, and I'm very glad they are  
20       happening.

21          On March 2, the legislature voted to give  
22       extraordinary powers to the Executive to respond to  
23       the pandemic.

24          Like nearly all my Democratic and Republican  
25       colleagues, I voted for that, because we were

1 already anticipating the need for rapid and decisive  
2 action.

3 And I believe the Executive has used those  
4 powers appropriately in most cases.

5 But it's also necessary that we maintain an  
6 oversight role and hold the administration  
7 accountable for its actions.

8 I see these hearings as having two main  
9 goals.

10 First, to get answers for those who have lost  
11 loved ones, about the decision-making process, and  
12 the precautions that were or were not taken to  
13 prevent the loss of life.

14 This, I believe, will be the focus of my  
15 colleagues in the Investigations Committee in  
16 particular.

17 The second goal, and the one that I will  
18 focus on, is to make sure that we have the right  
19 policies and protocols in place now to protect the  
20 lives and well-being of residents and staff at  
21 nursing homes, moving forward.

22 Thank you to all who have agreed to testify.

23 I look forward to learning from what you have  
24 to say.

25 SENATOR RIVERA: Thank you, Senator May.

1           Now on to the Assembly.

2           Assemblymember Gottfried.

3           ASSEMBLYMEMBER GOTTFRIED: Well, I've already  
4 done my opening remarks.

5           I guess we can go to Harry Bronson.

6           ASSEMBLYMEMBER BRONSON: Thank you,  
7 Chair Gottfried.

8           And thank you, all, for being here today.

9           The impact of COVID-19 has been unprecedented  
10 for our families.

11           It's affected every aspect of their lives,  
12 especially in the area of health, and in their  
13 ability to provide for their families because of the  
14 downturn in the economy.

15           These are difficult times, but I'm confident  
16 we will get through this together; supporting and  
17 caring for each other.

18           That said, we must rely on the science and  
19 the medical understanding as we develop policy to  
20 keep our loved ones safe, including the residents  
21 and employees in our nursing homes.

22           Today I look forward to hearing from  
23 stakeholders about, what has happened to date, and  
24 what measures we might take as we prepare for the  
25 possible onslaught of a second wave of COVID.



1           Thank you again for participating today, and  
2           thank you all for moving us forward together.

3           We will get through this if we care and  
4           support each other. But we have to do that by  
5           developing policies that are based in science and  
6           based in medicine.

7           Today's hearing is about getting that  
8           information, and I look forward to hearing from each  
9           and every one of the witnesses.

10          Thank you.

11          SENATOR RIVERA: Any [indiscernible] in the  
12          Assembly, Senator -- uh, Assemblymember Gottfried?

13          ASSEMBLYMEMBER GOTTFRIED: John, do you want  
14          to make opening remarks, John --

15          ASSEMBLYMAN McDONALD: Very briefly.

16          Good morning, everybody.

17          Thanks to everybody for their participation  
18          today.

19          We know that COVID-19 is a, hopefully,  
20          once-in-a-lifetime experience.

21          Although much preparation has always been in  
22          place over the years, it's when you actually take  
23          those plans and put them into action that we have an  
24          opportunity to see where we were successful, and  
25          where we can build upon.

1 I look forward today to having a constructive  
2 conversation on what's worked, and where we can do  
3 better.

4 And I thank my colleagues and the panelists  
5 today for their participation.

6 SENATOR RIVERA: On the Senate side, briefly,  
7 our Senate Ranker on Health, Patrick Gallivan.

8 SENATOR GALLIVAN: Thank you, Mr. Chairman.  
9 And good morning to everybody.

10 We know that COVID-19 has had a devastating  
11 impact on the health and safety of New Yorkers.

12 And one of the hardest-hit communities has  
13 been nursing homes across the state, and it just  
14 shouldn't have been that way.

15 I believe many of my colleagues feel the  
16 same.

17 On May 5th I called for hearings.

18 I'm grateful that the Chair of the Health  
19 Committee in the Senate, Senator Rivera, and the  
20 other Chairs, have put this together.

21 And I thank you for it.

22 On May 6th the Senate Republicans called for  
23 independent hearings.

24 And to Senator Skoufis's points, about the  
25 checking the politics at the door, I think we need

1 to get to the bottom of what took place in nursing  
2 homes, it's inexcusable, to make sure that it  
3 doesn't happen again.

4 And I am certainly hoping that the  
5 administration is cooperative in respecting the  
6 legislature in its role as an independent body, and  
7 really cares -- really works to care about what goes  
8 on in nursing homes, and fix this, because it is  
9 problematic.

10 Why were certain orders followed?

11 Why is there still, seemingly, a lack of  
12 transparency?

13 And why hasn't the State provided sufficient  
14 help in ensuring that nursing homes were prepared  
15 for this?

16 Once we find those things out, of course, we  
17 turn to the future to make sure that it doesn't  
18 happen, so that we can be fully prepared.

19 Thank you.

20 SENATOR RIVERA: All right, last on the  
21 Senate side, Aging Ranker, Senator Tom O'Mara -- I'm  
22 sorry, Investigations Ranker, Senator Tom O'Mara.

23 SENATOR O'MARA: Thank you, Senator Rivera.

24 You gave me time to get my mic on.

25 So I -- thank you for the opportunity to have

1       these hearings today.

2               You know, since the first cases in the  
3       United States, in the state of Washington, appeared  
4       in nursing homes, we knew how sensitive nursing  
5       homes were.

6               As was stated earlier, Governor Cuomo said,  
7       nursing homes -- in getting COVID in a nursing home  
8       would be like throwing a match on dry grass.

9               And that's exactly what we experienced, not  
10      just here in New York, but across the country, in  
11      our nursing homes, and what we saw even before cases  
12      came to the United States, from elder-care  
13      facilities across the world.

14              I do want to note at the outset, while I look  
15      forward to getting as much information as we can out  
16      of these hearings today, the Minority Conferences on  
17      both sides of the aisle, both Conferences were not  
18      allowed the opportunity to call witnesses today. We  
19      were not afforded the opportunity to subpoena any  
20      witnesses today.

21              We will be following up on that for our next  
22      hearing on August 10th.

23              We, hopefully, will get some accurate and  
24      real information today on what went on with these  
25      decision-making processes, from when visitors were

1 first stopped from going into nursing homes, when  
2 nursing homes were required to take COVID-positive  
3 patients, and why nursing homes' staff was allowed  
4 to continue to work, while testing positive, in  
5 these matters.

6 Hopefully, we get some good information on  
7 that today.

8 But I would note that every witness  
9 testifying here today, to my understanding, is here  
10 voluntarily. One has been subpoenaed to be here.

11 And I think, if we're truly going have an  
12 investigation into this, that authority to subpoena  
13 witnesses and request witnesses should come from the  
14 Minority as well as the Majority.

15 Thank you very much.

16 SENATOR RIVERA: Thank you, Senator O'Mara.

17 Assemblymember Bronson, anybody else in the  
18 Assembly?

19 ASSEMBLYMEMBER BRONSON: We have the ranker  
20 members.

21 Kevin Byrne.

22 ASSEMBLYMEMBER BYRNE: Thank you,  
23 Chairman Bronson.

24 I want to first thank all the Chairs on the  
25 Assembly side, specifically, for agreeing to host

1       this hearing.

2               Like my Senate ranking colleagues mentioned,  
3       many of us across the global spectrum have been  
4       calling for hearings as early as late April and May.  
5       And many of the Chairs made public comments,  
6       supporting the sentiment for having public hearings.

7               And I firmly believe in this because this is  
8       part of our job as state legislators.

9               Certainly, we debate policy, we debate all  
10       sorts of things.

11              But as it was note earlier, the governor and  
12       the administration has an incredible amount of power  
13       during declared disasters.

14              And if we want oversight, it is not fair to  
15       simply rely on the department of health and the  
16       attorney general's office to do an investigation  
17       into this matter.

18              The legislature has an obligation to also  
19       chime in, and to be a proper check for our system of  
20       government, and I think this is extremely important.

21              So I want to thank them for agreeing to have  
22       this hearing.

23              I will note that, I was pleased to see that  
24       the health commissioner was on this list. Even  
25       though the subpoena power wasn't used, the fact that

1 he is going to participate is something that I do  
2 appreciate.

3 And I know we have lots of questions to ask,  
4 and we're going to, hopefully, dig deep into some of  
5 the details here, but that's because, you want to  
6 get to the truth, that's because you want to learn  
7 from any mistakes that were made.

8 [Inaudible] losing over 30,000 lives in this  
9 state, more than any other state, is not something  
10 that we want to be known for.

11 And we want to make sure that we're just  
12 prepared.

13 So, again, I want to thank the Chairs and my  
14 colleagues for having this hearing, and I look  
15 forward just to getting down to business.

16 Thank you.

17 SENATOR RIVERA: On the Senate side, my -- it  
18 was my mistake.

19 I believe that Senator Sue Serino is now on  
20 the line, as the Ranking Member in Aging, for a  
21 brief statement.

22 SENATOR SERINO: Good morning,  
23 Mr. Chairman.

24 And, I'm sorry, I had not hit the button to  
25 raise my hand. I had lost connection.

1           But I'm very happy that we are doing this  
2           today.

3           I was one of the first legislators to call  
4           for this hearing.

5           And New Yorkers deserve answers.

6           I want to make it perfectly clear, that this  
7           is not about placing blame.

8           It's about getting to the bottom of this  
9           highly gross death toll, and ensuring that the State  
10          does a much better job of -- going forward, if any  
11          of this were to happen again, of protecting our very  
12          vulnerable New Yorkers, and the people that have  
13          been taking care of them too.

14          Facilities have kind of been an afterthought  
15          since day one, and it's time for them to be a  
16          priority.

17          So I thank you, Mr. Chairman, for holding  
18          this hearing today, and I look forward to the  
19          questions and answers.

20          Thank you very much.

21          SENATOR RIVERA: Thank you, Senator Serino.  
22          Assemblymember Bronson?

23          ASSEMBLYMEMBER BRONSON: Yes, I believe we  
24          have Ranker of Aging, Jake Ashby, for -- to say a  
25          few words.



1 ASSEMBLYMEMBER ASHBY: Thank you,  
2 Mr. Chairman.

3 I want to express my gratitude to all of my  
4 colleagues on both sides of the aisle, and in --  
5 both in the Assembly and the Senate, for holding  
6 these hearings.

7 I think it's imperative that we as  
8 legislators get out there and get these questions  
9 answered; but more so, you know, for us and our  
10 ability to shape policy, and also for the families  
11 out there that have been affected by this.

12 I think there are many, many of my  
13 constituents in particular, and I know many across  
14 the state, that are searching for answers.

15 So I'm grateful for the opportunity to  
16 participate in this hearing today, and get some  
17 answers for these people.

18 And I'm hopeful that we can continue this  
19 process.

20 Thank you.

21 OFF-SCREEN SPEAKER: May I speak?

22 ASSEMBLYMEMBER BRONSON: And, lastly, we have  
23 Ranker of Oversight, Brian Manktelow.

24 ASSEMBLYMEMBER MANKTELOW: Thank you,  
25 Mr. Chairman.

1           And thank you, everyone, for allowing us to  
2       have this meeting today.

3           It's great to be here, and great to,  
4       hopefully, get an understanding of, really, what  
5       happened.

6           As leaders, we need to make decisions, moving  
7       forward.

8           We can look at the past. We can't change the  
9       past, but we can look at it.

10          And I think it's imperative that we do look  
11       at the past, making sure, as we move forward as a  
12       state, as legislators, as the governor's office,  
13       that we do things the right way, or possibly  
14       changing things that didn't work quite so well.

15          We do all this to those families and those  
16       loved ones that lost family members in those nursing  
17       homes.

18          And I'm just looking forward to the  
19       testimony, and asking a few questions; helping us to  
20       better understand what went wrong, and where we look  
21       to go here in the future, if we do have a second  
22       wave, for sure.

23          I thank you for allowing me to be here, and  
24       let's get on with this.

25          Thank you.

1           SENATOR RIVERA: All right. Thank you for  
2           that.

3           We're going to move on to our first panel.

4           We are joined by the commissioner for  
5           New York State Department of Health, Howard Zucker,  
6           and, the deputy superintendent and special counsel  
7           for the department of financial services,  
8           Garrett Rhodes.

9           And I believe that there will be a  
10          presentation that they will be doing.

11          If so, you can share your screen, and we can  
12          begin that.

13          DR. HOWARD ZUCKER: Just a second.

14          SENATOR RIVERA: Okay, we can see the Zoom  
15          screen, but we can't see your -- there you go.

16          DR. HOWARD ZUCKER: Good morning, members of  
17          the New York State Senate and Assembly committees.

18          SENATOR RIVERA: And if you could get -- I'm  
19          sorry -- oh, okay. You're in a setting.

20          Please make sure that you get close to your  
21          mic, because we couldn't hear you too well when you  
22          spoke there.

23          Go ahead.

24          DR. HOWARD ZUCKER: Can you hear it now? Is  
25          that good?

1           Let's see what we can do here.

2           We're working on that. Give us a second.

3           SENATOR RIVERA: But keep it rolling, so that  
4 we can -- while we fix the mic situation, keep it  
5 rolling.

6           DR. HOWARD ZUCKER: Good morning, members of  
7 the New York State Senate and Assembly committees on  
8 Health; Aging; Senate Investigation and Government  
9 Operations; and the Assembly Oversight, Analysis,  
10 and Investigations.

11           I'm Dr. Howard Zucker, New York State's  
12 Health Commissioner.

13           And thank you for the opportunity to speak  
14 before you today.

15           When I last spoke to you on January 29th, to  
16 discuss the executive budget, I spoke on the  
17 evolving public health threat called the "novel  
18 coronavirus."

19           It was a name that hadn't been named yet.

20           It was one month later that our Wadsworth  
21 laboratory confirmed New York's first case of  
22 COVID-19.

23           What we now know, that it was already here.

24           In the two weeks from that moment, we had  
25 implemented a series of aggressive actions to

1 protect our most vulnerable populations.

2 And those practices continue today, and will  
3 serve as a foundation, as we prepare these  
4 facilities for a second wave, and beyond.

5 ASSEMBLYMEMBER GOTTFRIED: Commissioner?

6 DR. HOWARD ZUCKER: [Indiscernible] --

7 ASSEMBLYMEMBER GOTTFRIED: Commissioner?

8 DR. HOWARD ZUCKER: -- more deaths in  
9 New York than we could have imagined --

10 ASSEMBLYMEMBER GOTTFRIED: Commissioner, may  
11 I interrupt you for a second?

12 DR. HOWARD ZUCKER: -- [indiscernible  
13 cross-talking] than we can bear.

14 ASSEMBLYMEMBER GOTTFRIED: Commissioner,  
15 I don't know if you can hear me. Can I interrupt  
16 you for a second?

17 I neglected to ask, whether you swear or  
18 affirm that the testimony you're about to give is  
19 true?

20 DR. HOWARD ZUCKER: I affirm that, yes.

21 ASSEMBLYMEMBER GOTTFRIED: Thank you.

22 DR. HOWARD ZUCKER: COVID-19 has caused more  
23 deaths in New York than we could have imagined and  
24 more loss of life than we can bear.

25 We feel the losses in these nursing homes as

1 a community, and we grieve with those who have lost  
2 loved ones during this pandemic, and during this  
3 time of disruption and fear and unrelenting stress.

4 For all of those who have been touched  
5 personally by this terrible loss and this terrible  
6 virus, my heart goes out to you.

7 Today is an opportunity for thoughtful  
8 dialogue of what we've learned, based on the  
9 science, and how we can apply those best practices,  
10 moving forward.

11 First, some quick background.

12 COVID has significantly changed how we live,  
13 not just in New York, but around the world.

14 This pandemic has rapidly and dramatically  
15 altered our everyday lives: introducing social  
16 distancing, face mask-wearing, remote learning,  
17 business closures, and restrictions on visiting  
18 nursing homes and hospitals.

19 Congregate settings, such as the 613 nursing  
20 homes we have here in New York, are particularly  
21 vulnerable to infectious diseases such as COVID.

22 This has been a challenge nationwide since  
23 February 2020, when the first known case of COVID  
24 was identified in a nursing home resident in  
25 Kirkland, Washington.

1           Now, I stress the phrase "known case"  
2       because, as we'll discuss this morning, COVID had a  
3       hold on New York State and its nursing homes much  
4       sooner than anybody knew.

5           For context:

6           The federal government issued a travel ban  
7       from China on February 2nd.

8           But the virus didn't come to New York from  
9       China. It came from Europe, and three million  
10      people flew from Europe to New York City.

11          The CDC has acknowledged that the European  
12      travel ban, which was on March 13th, was too late.  
13      The virus had already reached community spread here  
14      in New York State.

15          Now, we may never actually have the full  
16      picture of the impact of COVID in nursing homes  
17      nationally, or an accurate snapshot of how it's been  
18      reported in other states.

19          When looking back at data from March and  
20      April, the CDC director, Dr. Robert Redfield, said,  
21      on June 25th, that the cause of 27 percent of all  
22      deaths in the United States, one in four, was  
23      recorded as pneumonia.

24          And he went on to say, and I quote, and it's  
25      up there: A lot of those pneumonias that were dying

1 were actually COVID-infected individuals that were  
2 the elderly, nursing homes, and individuals with  
3 comorbidities.

4 So we now know that, despite our best  
5 efforts, COVID continued to spread in nursing homes  
6 nationwide.

7 And here in New York State, we restricted  
8 nursing home visitors, we ordered workers to be  
9 temperature-checked every day. We implemented  
10 specific isolation and quarantine procedures for  
11 exposed and ill staff and residents.

12 We built unprecedented systems for facilities  
13 to report real-time data to us.

14 And to the extent practical, despite the fact  
15 that, as they say, "we were building the plane as we  
16 were flying it," we made that data available to the  
17 press and to the public on a daily basis.

18 We launched the most aggressive nursing home  
19 testing program in the country, testing residents in  
20 613 nursing homes, and, directing the testing of all  
21 nursing home staff, which has led to more than  
22 one million tests and identified several thousand  
23 positive cases.

24 We conducted 1300 on-site inspections --  
25 every single nursing home and adult-care facility in



1 the state was inspected at least once -- to ensure  
2 that the infection-control practices were in place.  
3 And we supported these facilities by providing  
4 14 million pieces of PPE, connecting them to a  
5 staffing portal of more than 96,000 volunteers, and  
6 helping facilities transfer residents to other homes  
7 as needed.

8 But when we saw the rise in nursing home  
9 deaths, like so many other states, I kept asking  
10 myself, what happened?

11 What happened?

12 And the "why" matters -- the "why" matters  
13 for New Yorkers, it matters for the nation, it  
14 matters to prevent it from happening again, and it  
15 matters to bring closure to all those families who  
16 lost somebody.

17 So we looked at the admissions to nursing  
18 homes between March 25th and May 8th.

19 There were 6326 COVID-positive patients that  
20 were admitted to nursing homes from hospitals during  
21 the time when COVID hospitalizations were rising.

22 And what did we find?

23 So, a few key facts I want to show you.

24 The peak in nursing home fatalities was on  
25 April 8th. The peak in admissions of COVID-positive

1 hospital patients occurred on April 14th.

2 So the question would be, which was,  
3 essentially, a week later: Why does that matter?

4 Well, if the March 25th guidance was the  
5 major driver in deaths, which some claim it to be,  
6 then the peak of admissions would precede the peak  
7 in deaths.

8 That's just the mathematics, the statistics  
9 of it all.

10 However, it occurred the other way around;  
11 the peak in deaths occurred before the peak in  
12 admissions.

13 In fact, when you look at the curve, as the  
14 admissions of residents was increasing, the deaths  
15 were decreasing.

16 So some would want to say, why is this so  
17 important?

18 Well, it contradicts this false narrative  
19 that's circulating about regarding the March 25th  
20 guidance document.

21 The false narrative is, that COVID-positive  
22 residents brought into the nursing homes from the  
23 hospitals.

24 But we have to be objective here, and the  
25 data does not support that.

1           The facts show, that 310 nursing homes  
2       admitted COVID-positive patients from hospitals, and  
3       of those 310, 304 already had COVID in their  
4       facility.

5           It is unfortunate, it is sad, but it is true,  
6       that 98 percent of the nursing homes already had  
7       COVID in their nursing homes. And those are the  
8       facts.

9           Now, it causes me great pain, as a physician,  
10      and as the health commissioner in the state, to see  
11      the total number of COVID cases in Florida, in  
12      Texas, in California, as they have each surpassed  
13      New York.

14          From May through July, COVID-related deaths  
15      in nursing homes more than doubled in Florida, they  
16      nearly doubled in California, and they tripled in  
17      Texas.

18          Now, I sympathize with my public-health  
19      colleagues and my peers in those states who are  
20      experiencing the feelings of helplessness that we  
21      felt in March and April.

22          As Governor Cuomo has said many times,  
23      health-care workers are the heroes of this pandemic.

24          Nursing home staff are incredibly  
25      hard-working professionals; all of them, they are

1 dedicated to the residents that they care for.

2 Mary Mayhew, the secretary of the Florida  
3 Agency for Health-Care Administration, recently  
4 confirmed for Politico that it was asymptomatic  
5 health workers themselves that were carrying the  
6 virus and transmitting it to their own patients.

7 And a Florida nursing home administrator  
8 echoed that point by saying, and I'm quoting: What  
9 we're finding is staff is coming in contact without  
10 even knowing it. Our communities are truly a  
11 microcosm of the larger community.

12 SENATOR RIVERA: Commissioner, if I may,  
13 the -- is there any way -- because I've gotten a  
14 couple of texts from some of my colleagues that are  
15 finding it really difficult to hear you.

16 Is there any way that you can get closer to  
17 the microphone, please?

18 DR. HOWARD ZUCKER: Let's see what we can do  
19 here.

20 All right, let me see what we can do here.  
21 And I'm sorry. And I'll speak louder.

22 We're [inaudible].

23 SENATOR RIVERA: Okay, I did not --  
24 Commissioner, are you still there?

25 I did not --

1 DR. HOWARD ZUCKER: I'm right here, I'm right  
2 here.

3 SENATOR RIVERA: Okay, because the  
4 presentation went away.

5 DR. HOWARD ZUCKER: I know. They're  
6 working -- they're working on trying to get the  
7 microphone [inaudible].

8 SENATOR RIVERA: I mean, it -- it -- and now  
9 the audio has gone away.

10 OFF-SCREEN TECHNICIAN: Stand by. They're  
11 troubleshooting.

12 SENATOR RIVERA: Okay.

13 Hoping this doesn't count against our time,  
14 sir.

15 OFF-SCREEN SPEAKER: At your discretion,  
16 Mr. Chairman.

17 SENATOR RIVERA: No, no, I'm talking to the  
18 commissioner, because he's the one that -- you know,  
19 want to make sure that we get some time to ask some  
20 questions.

21 DR. HOWARD ZUCKER: Is that better?

22 SENATOR RIVERA: Say a couple more words so  
23 that we can determine.

24 But -- but, in any event --

25 DR. HOWARD ZUCKER: Is that better?

1           SENATOR RIVERA:  -- we're just going  
2           [indiscernible] audio, because we don't want to --  
3           we don't want to kill more time.

4           Keep going, sir.

5           DR. HOWARD ZUCKER:  All right.  Let's see if  
6           the PowerPoint comes back up.

7           SENATOR RIVERA:  That's a little bit better,  
8           actually, in the audio.

9           Please continue.

10          DR. HOWARD ZUCKER:  All right.  Great.

11          Thank you.

12          After all, staff are one of the links between  
13          the community and the facilities.

14          And when we looked at the data in New York,  
15          we asked nursing home administrators to tell us the  
16          first date staff experienced symptoms typical of  
17          COVID or received a positive test result.

18          We also asked them to quantify how many staff  
19          either tested positive or experienced symptoms of  
20          COVID.

21          So what does the data show?

22          A retrospective analysis shows that the  
23          earliest recorded staff illness with symptoms  
24          similar to COVID was actually at the end of  
25          February; February 24th to be exact.

1           Let's think about that for a moment.

2           The period of time from infection, when the  
3 virus is in the body, to symptoms is 2 to 14 days.

4           And if you count backwards, this could, in  
5 many cases, bring us back to mid-February when the  
6 exposure likely occurred.

7           The question: Is that possible?

8           Well, Mount Sinai recently published the  
9 results of their antibody study, which showed that  
10 COVID was in New York as early as February 1st.

11          But back then, we could not test for it.

12          CDC was the only place a specimen could be  
13 evaluated then, and for a long time afterwards.

14          In fact, our own Wadsworth laboratory  
15 developed the first test for COVID outside the CDC,  
16 and that was on February 29th.

17          Back then we were not even screening for  
18 symptoms yet.

19          And as I mentioned, the CDC itself recently  
20 released a report, acknowledging that the European  
21 travel ban, which came on March 13th -- right? --  
22 was too late, and it was already spreading in  
23 New York. 3,000 flights from Europe had already  
24 landed in New York State by mid-March.

25          So, mid-March.

1           With the largest number of nursing homes, the  
2       first instance of staff reporting a COVID-related  
3       illness was on March 16th, as one sees on this  
4       image, which is the blue peak there.

5           So one may ask, why does that matter?

6           So let me explain, because, as I said  
7       earlier, nursing home resident fatalities peaked on  
8       April 8th, as one can see here with the yellow --  
9       the yellow peak.

10          So April 8th is 23 days after the peak in  
11       nursing homes' first known infections among staff.

12          And one may say, well, why does that matter;  
13       what's so important about 23 days?

14          Because multiple publications out of the  
15       Imperial College of London, and many other  
16       prestigious research institutions, have shown that,  
17       among people in the general population who died from  
18       COVID, the average span of time from infection to  
19       death is 18 to 25 days.

20          So I -- I want to be clear on this.

21          This is not the place blame on the nursing  
22       home staff for resident fatalities. Not at all.

23          But we need to look at this from that moment  
24       in time, not from an analysis using knowledge that  
25       we have subsequently gained in the months since that



1 time. Right?

2 So let's stand at that moment in time. What  
3 was the landscape then?

4 Many of the COVID-positive nursing home staff  
5 were actually asymptomatic. Treating -- testing was  
6 not available then.

7 But let's just, for argument's sake, say that  
8 there was testing, and that they knew that they had  
9 it, but they did not have symptoms.

10 The extent to which asymptomatic individuals  
11 could transmit disease was just not fully known back  
12 in March.

13 Now, more on the nursing home staff, because,  
14 as I mentioned, they were hit hard by COVID.

15 By mid-May, nursing homes had reported  
16 approximately 37,000 infected staff.

17 In fact, when I learned about this point,  
18 I actually said to them, "You mean 3700."

19 And they said: No. 37,000.

20 I was shocked by that number, because we have  
21 158,000 people work in nursing homes.

22 So that means approximately one in four  
23 workers were affected.

24 And, interestingly, independent antibody  
25 testing done by the -- by a reference lab show -- in

1 May, show that 29 percent of the 3500 nursing home  
2 employees that they looked at had COVID antibodies.

3 And this is very consistent with our  
4 findings.

5 So extrapolating that data to the whole  
6 nursing home workforce means that approximately one  
7 in three nursing home workers had COVID at some  
8 point in time.

9 So let's -- let's clarify this a little,  
10 about the guidance.

11 I'd like to spend a little more time about  
12 the March 25th guidance, which we have talked about  
13 many times, but it deserves repeating.

14 SENATOR RIVERA: And if I may --

15 DR. HOWARD ZUCKER: [Indiscernible  
16 cross-talking] --

17 SENATOR RIVERA: -- Commissioner --

18 DR. HOWARD ZUCKER: -- yes.

19 SENATOR RIVERA: -- just an inquiry.

20 We do want to spend some time on that, and we  
21 want to give you the time to do that.

22 But how much longer in your presentation,  
23 only because we have quite a list --

24 DR. HOWARD ZUCKER: One more --

25 SENATOR RIVERA: -- of questioners?

1 DR. HOWARD ZUCKER: One more page.

2 So --

3 SENATOR RIVERA: Go ahead, sir.

4 DR. HOWARD ZUCKER: -- a minute.

5 The document, mirroring CMS guidance,  
6 released March 13th, simply said: That no resident  
7 shall be denied admission solely based on  
8 COVID-positive status.

9 It did not say, you must admit residents with  
10 COVID.

11 Now, I know this seems like semantics and  
12 just words, but words matter, and it's not  
13 semantics.

14 "No resident shall be denied" does not equal  
15 "must accept."

16 A nursing home could not accept a  
17 COVID-positive person unless the nursing home could  
18 provide, and I quote, proper isolation, protective  
19 procedures, and provide adequate care.

20 And Title 10 of the New York State Code of  
21 Rules and Regulations, Section 415-26 [sic], clearly  
22 states: That a nursing home shall accept and retain  
23 only those nursing home residents for whom it can  
24 provide adequate care.

25 And, in this case, "adequate care" means

1 properly cohorting patients, ensuring proper levels  
2 of PPE, screening staff, and other infection-control  
3 measures that we communicated to the nursing homes  
4 at several different junctions.

5 So, in conclusion: What caused nursing home  
6 residents to get COVID?

7 The tragic truth is, that COVID-19 is a new  
8 disease.

9 It's in it's name, "19," referring to 2019.

10 Early on, we did not know how widespread it  
11 already was within our communities, and because no  
12 one knew the virus was able to enter the facilities  
13 that housed our most frail and vulnerable citizens.

14 And looking back, the data shows that the  
15 virus came into nursing homes through staff, and,  
16 presumably, through visitors, and was passed on to  
17 the residents.

18 And with their health already compromised by  
19 age and other conditions, they died in numbers that,  
20 again, are just too high to bear.

21 Still, we looked at the facts, and we will  
22 continue to do so. And as we learn more about  
23 COVID-19, we will have more facts, and we will be  
24 able to refine how we respond.

25 But we will always, always, make our

1 decisions based on the best scientific data  
2 available at that time.

3 Thank you very much.

4 SENATOR RIVERA: All right, thank you so much  
5 to the commissioner.

6 We are going to start it off by the Senate.

7 Senator James Skoufis.

8 SENATOR SKOUFIS: Thank you, Mr. Chairman.

9 And thank you for your participation today,  
10 Commissioner, and Mr. Rhodes.

11 As we in the legislature make judgments on  
12 the past five months, I think you both agree it's  
13 critical that we first have the full unadulterated  
14 facts.

15 And so, to that end, I'd like to ask you  
16 about your administration's definition of a  
17 "nursing home death."

18 As it stands, someone who's in a nursing home  
19 as a resident, gets infected in their nursing home,  
20 but loses their life in a hospital or elsewhere, is  
21 not counted as a COVID nursing home death.

22 So, first, how many other states similarly do  
23 not count the aforementioned as a nursing home  
24 death?

25 DR. HOWARD ZUCKER: I can't give you the

1       answer on the number of states.

2               I know that the data that's coming in to the  
3       CDC, and I've spoken to the CDC many times, is quite  
4       fragmented regarding different states.

5               Some reported --

6               SENATOR SKOUFIS: Understood.

7               So if I can ask, then, are you aware of any  
8       other states that count these deaths as we do?

9               DR. HOWARD ZUCKER: I know that there are  
10      other states.

11              I can't give you other states that  
12      specifically say that it's coming from nursing homes  
13      versus hospitals.

14              But can I get back to you about which states  
15      are doing what.

16              SENATOR SKOUFIS: Please do.

17              You know, my investigative team wasn't able  
18      to identify a single other state that counts nursing  
19      home deaths as we do.

20              I -- and -- you know, regardless, and  
21      respectfully, you know, it's my opinion that your  
22      administration's definition truly misrepresents the  
23      true scale of this crisis in a nursing home as a  
24      result.

25              So let's try and get the full picture here

1 and now.

2 How many of New York's nursing home residents  
3 died in hospitals?

4 DR. HOWARD ZUCKER: So I know that -- that  
5 you want that number, and I wish I could give you  
6 the number today. But I -- I need to be sure it's  
7 absolutely accurate, and let me explain a little bit  
8 as to why I'm saying that.

9 Because, numbers, when we ask the nursing  
10 homes' information, they provide information,  
11 sometimes it dates all the way back to  
12 December 2019, obviously, before coronavirus was  
13 here as we understand it.

14 They also sometimes provide nursing home data  
15 that was on a day, but it wasn't accurate to that  
16 specific day.

17 And I'm not placing any blame on the nursing  
18 homes.

19 The nursing homes provide data, but  
20 I personally need to also be sure that that  
21 information is accurate and correct.

22 SENATOR SKOUFIS: You don't have --

23 DR. HOWARD ZUCKER: And we [indiscernible  
24 cross-talking] --

25 SENATOR SKOUFIS: -- if I may, because my

1 time is limited, you don't have a ballpark that you  
2 can give?

3 I mean, so --

4 DR. HOWARD ZUCKER: I [indiscernible  
5 cross-talking] --

6 SENATOR SKOUFIS: -- the total official  
7 number is about 6500.

8 Are we talking, with the hospital deaths,  
9 8,000? 10,000? 15,000?

10 DR. HOWARD ZUCKER: I think --

11 SENATOR SKOUFIS: What are looking at?

12 DR. HOWARD ZUCKER: I think this is a serious  
13 issue of making sure, when it comes to the deaths of  
14 individuals in nursing homes, and I'm not prepared  
15 to give you a specific number.

16 We are in the middle of the -- a pandemic,  
17 obviously. We always forget about that sometimes.

18 We are looking at all the numbers, we are  
19 looking at data.

20 When the data comes in, and I have an  
21 opportunity to piece through that, then I will be  
22 happy to provide that data to you and to the other  
23 members of the Committee.

24 SENATOR SKOUFIS: So I just -- I --  
25 respectfully, I don't understand why many other



1 states, including very large states, like  
2 California, both large in population and large in  
3 terms of the scale of this crisis, are able to  
4 collect this information, and we are not.

5 I -- it -- it perplexes me that an  
6 administration that has prided itself, and  
7 rightfully so, over these past five months, for  
8 making data-driven decisions, that you don't have  
9 this fundamental information.

10 You do have, based on your report that came  
11 out last month, data that speaks to nursing home  
12 residents that were recovered from hospital stays  
13 and discharged back to hospitals. But you're not  
14 able to, it seems, track how many nursing home  
15 residents didn't recover.

16 If I may move on.

17 Your definition of a "nursing home death" is  
18 fundamental to that report I just referenced.

19 Our Committee's investigative team elicited  
20 testimony from a Dr. Dennis Nash, an  
21 epidemiologist at CUNY, who wrote, the department's  
22 report, quote, didn't set up the design well from an  
23 epidemiological standpoint. And goes on to write  
24 that, "Hospital-based deaths of nursing home  
25 residents are central to understanding whether there

1 is any causal link between State and nursing home  
2 policy and increased COVID transmission.

3 Do you agree or disagree with Dr. Nash,  
4 that a full accounting of hospital-based deaths is  
5 central to understanding the effect of the State's  
6 policies on nursing home infections?

7 DR. HOWARD ZUCKER: I don't agree with him.

8 I think that we have looked at the report.

9 Obviously, I issued the report, and anything  
10 that I'm going to issue, I obviously stand behind.

11 We've looked at that data, and it does -- as  
12 I just showed you in the -- this PowerPoint slide,  
13 it does shows you the relationship regarding  
14 residents and -- well, I should say, staff who got  
15 ill, and deaths. And we can talk a little bit more  
16 about that.

17 We had an incredible team of epidemiologists  
18 who also worked on this information, and looked at  
19 the data as we put information out.

20 And regarding -- you know, I was just  
21 thinking about this also, that 11 states don't even  
22 report anything.

23 I remember that number [indiscernible] back  
24 of my head.

25 And we report -- New York State also reports

1       presumed cases.

2               Now, granted, we are at a place now where we  
3       have the ability to test. We're testing, obviously,  
4       80,000 a day.

5               SENATOR RIVERA: Commissioner, one second --

6               DR. HOWARD ZUCKER: But  
7       [indiscernible cross-talking] --

8               SENATOR RIVERA: -- one second.

9               The clock is not up, but you have 30 seconds  
10       left.

11              SENATOR SKOUFIS: Yep, yep. Thank you.

12              My last question:

13              I think we can all agree that it's of utmost  
14       importance that we learn from the past five months,  
15       so we're best prepared for the next public health  
16       crisis.

17              In hindsight, do you have any specific  
18       nursing home regrets that you would like to share  
19       with our committees?

20              And, Mr. Rhodes, I'd like you to answer  
21       this question, please.

22              GARRETT RHODES: The -- your question is, do  
23       we have any specific nursing home regrets?

24              SENATOR SKOUFIS: Yes.

25              GARRETT RHODES: I think we're still in the

1 middle of a -- of a -- a global pandemic. And, like  
2 everything, there's always to be lessons learned.

3 And I know that's what today's hearing is  
4 about as well.

5 And I think, once there is the amount of data  
6 and amount of fact, once there is a full picture on  
7 the table, hopefully, once this crisis is over,  
8 I think there will be many lessons learned, that we  
9 can look back on and learn from.

10 SENATOR SKOUFIS: So just to be clear --

11 SENATOR RIVERA: Thank you, Mr. Rhodes.

12 SENATOR SKOUFIS: -- you can't share one  
13 specific regret [indiscernible cross-talking] --

14 SENATOR RIVERA: Thank you, Senator Skoufis.

15 Your time is up, Senator Skoufis.

16 I'm going to ask for the technical team to  
17 please make sure that the -- I'm going to stop  
18 everything for a second -- make sure that the clock  
19 is up on the screen so that every person after us  
20 can do it.

21 So, if anybody who is out there in the  
22 technical team could take a second to put that clock  
23 up. I'm doing some rough timekeeping over here, but  
24 I don't want to be accused of doing it unfairly.

25 So something that everyone can see would be

1       preferable.

2               OFF-SCREEN TECHNICIAN: We recommend that  
3 everyone uses the gallery view.

4               The clock should stay there in the gallery  
5 view of Zoom.

6               SENATOR RIVERA: It's still -- is it on  
7 there?

8               OFF-SCREEN SPEAKER: It should be.

9               SENATOR O'MARA: It is on mine.

10              SENATOR RIVERA: Okay.

11              SENATOR O'MARA: Chairman, can I just remind  
12 that Mr. Rhodes was not sworn in as Mr. Zucker  
13 was.

14              SENATOR RIVERA: Okay. I pass it to --  
15 passing it to the Assembly.

16              ASSEMBLYMEMBER GOTTFRIED: Fair -- fair  
17 point.

18              Mr. Rhodes, if you are asked further  
19 questions, do you swear or affirm that the testimony  
20 you are about to give is true?

21              GARRETT RHODES: I affirm.

22              ASSEMBLYMEMBER GOTTFRIED:

23              ASSEMBLYMEMBER KIM: Thank you.

24              SENATOR RIVERA: Assembly.

25              Go ahead, Mr. Bronson.

1 ASSEMBLYMEMBER BRONSON: Uh, yes.

2 Ron Kim is -- has his hand up.

3 SENATOR RIVERA: Assemblymember Kim, you're  
4 up.

5 ASSEMBLYMEMBER KIM: Good. Can you hear me?

6 SENATOR RIVERA: Yes.

7 ASSEMBLYMEMBER KIM: Thank you.

8 Commissioner Zucker, was there any thought to  
9 have an independent third-party agency or  
10 organization evaluate the policy of the  
11 New York City Department of Health that sent  
12 hospital patients, irrespective of their  
13 COVID-positive status, so that any concerns of  
14 conflict of interest may be addressed?

15 DR. HOWARD ZUCKER: So I -- I think I will  
16 echo what Garrett just mentioned, is this pandemic  
17 is not over yet. And New York has made an  
18 aggressive response regarding the pandemic.

19 And, you know, I -- I think that we need to  
20 work through the pandemic first, and, hopefully, we  
21 get through this without, you know, other deaths,  
22 and we can tackle that at another point in time.

23 But I want to say that, that the efforts that  
24 we have made in the state --

25 I hope we didn't lose you.

1           Can you still hear me?

2           ASSEMBLYMEMBER KIM:   Okay.   That's fine.

3           Thank you, Commissioner.

4           So for argument's sake, then let us assume  
5           that the conclusions of the report are correct;  
6           namely, that the admission of COVID-positive  
7           patients to nursing homes had a negligible effect on  
8           the spread of the coronavirus disease there.

9           If this is true, then what -- what explains  
10          the impetus on a reversal of the March 25th  
11          directive in early May, to prohibit nursing homes  
12          from accepting COVID-positive patients?

13          DR. HOWARD ZUCKER:   So this goes back to that  
14          statement I made earlier in my opening remarks  
15          about, there's a false narrative out there.

16          And that -- and this is where I -- I have to  
17          correct these statements that are being made.

18          There was no reversal.   The March 25th memo  
19          is still in place.

20          We still say, based on the guidance of CMS  
21          and the CDC, that a nursing home cannot accept a  
22          patient without being able to care for it.

23          That's part one.

24          The March -- the May 10th guidance that you  
25          just referenced was about the ability to test people

1       who are leaving the hospital.

2               And, again, as I also mentioned in my opening  
3       remarks, we have to look at this in each moment in  
4       time.

5               On May 10th we were able to test.

6               On March 25th we were not able to test.

7               And what we were asking back at that point,  
8       is to make sure that no one is discriminated  
9       against.

10              And we still feel that way: No one should be  
11       discriminated against based on their COVID status.

12              ASSEMBLYMEMBER KIM: Okay.

13              So there's --

14              DR. HOWARD ZUCKER: And --

15              ASSEMBLYMEMBER KIM: -- if there's -- if  
16       there's no statistical correlation between the  
17       unconditional admission of COVID-positive residents  
18       in nursing homes and the rate of infection in them,  
19       then why would there have been a need to establish  
20       specialized facilities for the isolation and care of  
21       COVID-positive residents?

22              DR. HOWARD ZUCKER: Because -- so let's also  
23       think about this at that moment of time:

24              We were sitting with projections of  
25       suggesting that 140,000 people were going to be



1 admitted to the hospital with coronavirus.

2 We have 53,000 beds, and that's across the  
3 state; 26,00 downstate, which is where most of these  
4 cases were, initially, obviously.

5 And, we were planning what -- what we would  
6 need to do in case there was a surge of even more  
7 cases.

8 We had to look at this with projecting going  
9 forward.

10 We could sit here now, six months later, four  
11 months later, three months later, and be able to  
12 sort of say, well, these are the facts that we have.

13 But as I said in the presentation,  
14 [indiscernible] more is to stand there at that  
15 moment in time, and say, What should we be doing?

16 Governor Cuomo, I remember the meetings, and  
17 there were many meetings, saying: We need to  
18 project. If there's a surge of 140,00 potential  
19 cases, we need to plan for that.

20 And that's what we were doing; planning for  
21 what could happen.

22 And that's what one of things was, to -- to  
23 move forward on that.

24 Sorry.

25 SENATOR RIVERA: Thank you, Commissioner.

1           Thank you, Assemblymember Kim.

2           Senator May, please.

3           SENATOR MAY: Thank you.

4           So I want to go back to the issue of  
5 staffing, because you talked about staff a lot.

6           Last year we passed a bill, requiring the  
7 department of health to submit a report, detailing  
8 safe staffing levels, in part, to improve safe --  
9 patient safety in nursing homes.

10          It was due at the end of last year.

11          But when can we expect to see that report?

12          DR. HOWARD ZUCKER: I'm -- I -- I promise  
13 you, I can give you an answer to that. On  
14 August 14th I will have the report.

15          I wanted to be sure that we also looked at  
16 this in the context of what has been happening.

17          Remember, December to now, the world has  
18 changed, and we are now in the middle of, obviously,  
19 a public health crisis.

20          But, August 14th.

21          SENATOR MAY: We wanted that report before,  
22 in December, so I don't think you can use that  
23 excuse.

24          So in your report you stated that employee  
25 transmission was the largest correlation to nursing

1       home fatalities.

2               We know that many long-term-care workers work  
3       multiple jobs; they lack benefits, like sick leave,  
4       that might make them less likely to get sick or to  
5       be unwitting vectors of disease.

6               I also wrote to you back in May about the  
7       need for more PPE for nursing home staff.

8               What are you doing now to assure that the  
9       State invests in these heroic workers, so they have  
10      the support they need to protect themselves and  
11      their patients, moving forward?

12              DR. HOWARD ZUCKER:   So as -- I mean, this --  
13      I think this goes to the bigger question of, what  
14      have are we doing to protect, not just the nursing  
15      home staff, because they are part of a community.  
16      Right?

17              And -- and I think it's the -- the issues of  
18      how to protect those who work in the nursing homes  
19      is really protecting the community.

20              So maybe I can talk a little bit about that,  
21      of what we're doing, looking forward, and how to  
22      prevent the spread of this disease that -- and that  
23      I think will answer the question about how we're  
24      protecting the staff as well.

25              But -- so -- so let's look at this from two

1 parts; let's look at this from the standpoint of  
2 prevention, and treatment, because I think this is a  
3 really important issue.

4 With regards to prevention, we are making  
5 sure that there is equipment available for those in  
6 the nursing homes, and for elsewhere. But we have  
7 put out 14 million pieces of PPE.

8 We are aggressive to make sure that, if any  
9 nursing home needs more supplies, we provide that to  
10 them as the State.

11 We have also worked to make sure that there's  
12 testing available.

13 We had one million tests -- or, more than one  
14 million tests done on nursing home staff. We  
15 provided the test kits to those individuals as well.  
16 We've tested, obviously, the residents in the  
17 613 nursing homes.

18 So it's a whole issue of testing.

19 We have moved forward to make sure there's  
20 testing available for the nursing home staff. If  
21 they weren't to get it [indiscernible], but let's  
22 say, if they wanted to get it elsewhere in the  
23 state, we have 776 different places they can get  
24 testing on that.

25 We're working with the nursing home staff,

1 again, about the community, regarding contact  
2 tracing. So if one of them gets sick, we want to be  
3 sure that we can look at that individual nursing  
4 home, and to be able to track, not just those who  
5 they're exposed to in the nursing home, but to their  
6 relatives as well, because, as I said, this is part  
7 of a community.

8 So we have contact tracing set up, which has  
9 been an aggressive effort on our part, with  
10 Bloomberg Philanthropies and with -- and with  
11 Vital Strategies.

12 And I can tell you, there are tens of  
13 thousands of tests done. And I hear about those;  
14 I get reports about every time there's a positive.  
15 And what we have done is, every hotspot there is,  
16 and we go after that.

17 So that's one issue.

18 Then there's, obviously, all the education.  
19 We can go into that at another point, that we're  
20 doing.

21 But also the issue of vaccines, and I think  
22 this is something worth mentioning as well, because  
23 we're looking down the road; the department is  
24 looking down the road. The entire State of New York  
25 has always been very progressive on this issue.

1           But, looking down the road, what happens when  
2           a vaccine becomes available; how to we decide how to  
3           get this out?

4           And we've already dusted off the plan for the  
5           H1N1, which was a 2009, you know, infection --  
6           [indiscernible].

7           What were our plans then?

8           How did we move forward then?

9           What could we do; how can we apply it?

10          I've been speaking with -- with the  
11          pharmacies -- the CEOs, about pharmacies, about  
12          this. I've been speaking to hospital leadership  
13          about this, the nursing home leadership -- everyone  
14          about this -- like, what's the plan, to make sure  
15          that people get vaccinated on this -- on this issue?

16          And we have PPE regs as well.

17          And I can go on.

18          I would I like to, at some point

19          [indiscernible cross-talking] --

20          SENATOR MAY: I've got to -- I've got to  
21          interrupt you, though, because I also want to talk  
22          about the issue of, nursing home staff and home-care  
23          staff are so underpaid, that we have -- we don't  
24          have enough people working in the nursing homes.

25          And I want to urge you to be proactive in

1 supporting this whole sector so that we can avoid  
2 the dire outcomes we've been seeing.

3 I have one other question, which is about  
4 social isolation, which is a huge problem that's  
5 reducing the quality of life, and even the life  
6 expectancy for some seniors, in nursing homes.

7 New York's prisons are set to resume  
8 visitation, but nursing homes have an incredibly  
9 high bar of 28 days without a positive test before  
10 people are allowed to visit.

11 Have you considered models like  
12 Massachusetts, allowing outdoor visitation and  
13 encouraging outdoor visitation?

14 The latest estimate I've seen is about  
15 10 percent of New York nursing homes are doing this.

16 DR. HOWARD ZUCKER: So the -- couple things  
17 on that.

18 First, one other thing: We have  
19 60-day-supply requirements on PPE in the nursing  
20 homes, 90 days in the hospitals.

21 But we can get back to that.

22 Visitation, yes, we -- we recognize this is a  
23 challenge.

24 We have the 28 days, based on the CMS  
25 guidelines. There's a reason for that.

1           This is based on guidance of two incubation  
2       periods. We really wanted to have two incubation  
3       periods. It's not, "we want." This is the science  
4       behind it.

5           I recognize there's some discussions about  
6       outside visitation.

7           We are looking at all options out there.

8           But the last thing I want to do is create a  
9       situation where we have a surge in the number of  
10      cases here.

11          And I also recognize, I really am very  
12      sympathetic to the situation of the facts that  
13      people are lonely.

14          And what we're doing is, we have actually  
15      tried to figure out how we have more connections  
16      using technology. And we put one million dollars  
17      into a program to be sure that that can move  
18      forward.

19          And I know your time is up, and I'm trying to  
20      be respectful of that.

21          SENATOR RIVERA: Thank you, Commissioner.  
22      Assembly.

23          ASSEMBLYMEMBER BRONSON: Yes, my apologies,  
24      I went out of order. I should have called  
25      Chairperson Dick Gottfried.



1           You're up, Dick.

2           ASSEMBLYMEMBER GOTTFRIED:   Okay, thank you.

3           Commissioner, [inaudible] how many people  
4           contracted COVID-19 in a nursing home, and then went  
5           to a hospital and died?

6           If -- if a handful of salmonella cases showed  
7           up, I think we would know pretty quickly that they  
8           came from a nursing home, and which one, and we  
9           would be on that case.

10          I don't know why we can't do that with --  
11          with COVID-19.

12          But it seems -- I have always -- I would have  
13          assumed that the data on what nursing home a patient  
14          in a hospital came from would be in that patient's  
15          SPARCS record, and the hospital [inaudible] since  
16          [indiscernible]. And, that if you needed that  
17          information on a real-time basis, the system could  
18          be jiggered so that that information would be  
19          available to you on a real-time basis.

20          From our conversations, it sounds like what  
21          I thought it could be able to do, maybe it currently  
22          can't do.

23          But here's my question:

24          I'd like to talk to the top people that run  
25          the SPARCS system, and get from them a fairly

1 detailed picture of, what's in the SPARCS system,  
2 what isn't; how quickly it can spit out the  
3 information we needed; and what we would need to do  
4 to approve that.

5 So my question is: Right after this hearing,  
6 would you e-mail me, the name and a mobile phone  
7 number and e-mail address of two or three people  
8 that run the SPARCS system, and tell them it's fine  
9 for them to talk to me at length?

10 DR. HOWARD ZUCKER: I will do that, I wrote  
11 it down.

12 And just so you know, the SPARCS system data  
13 is for hospitals, not for nursing homes.

14 There are other ways, there are other systems  
15 in place, for the reporting of [indiscernible]  
16 infections, or other infections.

17 But we can talk about that, and my team will  
18 happily discuss that.

19 ASSEMBLYMEMBER GOTTFRIED: Okay.

20 And, yes, I know SPARCS doesn't cover nursing  
21 homes, but the data ought to say where the patient  
22 came from. And, did they come from a nursing home;  
23 and if so, which one?

24 Another question:

25 Medicaid is the payer for about 80 percent of

1 nursing home residents. At the moment, it might  
2 even be higher than that.

3 [Inaudible] that a COVID patient in a nursing  
4 home, or caring for patients in a time of COVID, is  
5 a whole lot more expensive; a whole lot more staff  
6 time; a lot more staff who are -- who are absent,  
7 and need (inaudible) replacements; patients need  
8 more care; patients need -- it's labor-intensive  
9 [indiscernible] patients and treat them separately.

10 [Indiscernible] I think if we look at home  
11 care, there are probably very similar issues.

12 As far as I know, the amount that Medicaid  
13 pays to nursing homes, and -- and for home care,  
14 those terms and those amounts have not changed.

15 And my question is: Are we going to do  
16 something about that?

17 How can we expect providers to provide  
18 quality care when their costs are skyrocketing and  
19 their payment rates from the State are not?

20 DR. HOWARD ZUCKER: Well, we're going to look  
21 at everything on this issue, obviously.

22 But I will turn back to the issues of the  
23 federal government when it comes to Medicaid,  
24 because this is one of these big challenges. And we  
25 would hope that our federal partners help provide

1       some of the support to this, financial support, to  
2       the states on this issue. And, obviously, then it  
3       will go to the people in the state of New York who  
4       are recipients of such programs.

5               ASSEMBLYMEMBER GOTTFRIED: Well,  
6       [indiscernible cross-talking] --

7               DR. HOWARD ZUCKER: So I recognize your  
8       question, and we will look at all of these issues.

9               ASSEMBLYMEMBER GOTTFRIED: When the federal  
10       government was in the mood to be passing  
11       multi-billion-dollar, or trillion-dollar, pieces of  
12       legislation, maybe we could have put this on their  
13       agenda back then, meaning, a couple of months ago.

14               SENATOR RIVERA: Thank you, Assemblymember.  
15       Your time is actually up.

16               ASSEMBLYMEMBER GOTTFRIED: Okay.

17               SENATOR RIVERA: Senator Biaggi.

18               SENATOR BIAGGI: I can't, for some reason,  
19       [indiscernible] show my video.

20               [Indiscernible.]

21               There we go.

22               SENATOR RIVERA: We can hear you.

23               SENATOR BIAGGI: Okay, very good.

24               SENATOR RIVERA: There you are.

25               SENATOR BIAGGI: Thank you very much.

1           Commissioner, I'm going to ask that you  
2           answer yes or no because of my time.

3           How long have you served as New York State  
4           Health Commissioner?

5           DR. HOWARD ZUCKER: Six years.

6           SENATOR BIAGGI: Okay. [Indiscernible  
7           cross-talking] --

8           DR. HOWARD ZUCKER: One year as acting,  
9           five years as the firm.

10          SENATOR BIAGGI: -- great, thank you.  
11          Stick to yes or no.

12          As health commissioner for six years, how  
13          many budgets have you worked on?

14          DR. HOWARD ZUCKER: [Indiscernible] since the  
15          beginning.

16          SENATOR BIAGGI: Great.

17          In accordance with your responsibility to  
18          uphold the health and safety of all New Yorkers, as  
19          department of health commissioner, do you read the  
20          health section of each year's budget?

21          DR. HOWARD ZUCKER: I do read the budget when  
22          it's done.

23          But I will tell you, too: Do I remember  
24          every detail? No, I don't remember every detail.

25          SENATOR BIAGGI: Okay, great.

1           Did you read this year's health-budget  
2           language?

3           DR. HOWARD ZUCKER: It depends on what you're  
4           asking me specifically about that.

5           SENATOR BIAGGI: Did you read  
6           [indiscernible], Part GGG, which is the provision of  
7           the budget that gives immunity to health-care  
8           professionals, health-care facilities, and any other  
9           treatments that are given to individuals who are  
10          seeking treatment from those doctors or  
11          professionals?

12          DR. HOWARD ZUCKER: No, I will not say that  
13          I can remember those details on that.

14          But I have a team of an unbelievable number  
15          of lawyers who usually provide me with information,  
16          along with my legislative team, on that.

17          SENATOR BIAGGI: Okay.

18          DR. HOWARD ZUCKER: If there is something  
19          specific that is in there --

20          SENATOR BIAGGI: Just to be clear, the most  
21          important provision of the health budget this  
22          year -- one of the most important and provocative  
23          and, frankly, controversial, was you did not read  
24          that provision.

25          Okay.

1           So I will then just jump to the point.

2           So, that provision was written by the  
3 Greater New York Hospital Association.

4           I can confirm that from the press release  
5 that was issued on April 2nd, which they later  
6 deleted, unfortunately, that basically said, quote:  
7 They drafted and aggressively advocated for the  
8 immunity provision.

9           So since you are not aware of that provision,  
10 I'm going to tell you that the broad implication for  
11 that provision were that, immunity was not only  
12 granted to COVID-related treatments and diagnoses,  
13 et cetera, but it also was granted to  
14 non-COVID-related treatment, diagnosis of care, for  
15 any single New Yorker, which means that, if you were  
16 a New Yorker that went to the doctor from March 7th  
17 to April 3rd, [indiscernible] April 3rd when the  
18 budget was passed, your rights were retroactively  
19 taken away from you.

20           And, today, people who are visiting their  
21 doctors do not have those rights.

22           So are you now aware of these implications?

23           DR. HOWARD ZUCKER: The Greater New York did  
24 not draft that, as I understand that.

25           I know what you're talking about, and I know

1 where you're going on this issue.

2 I lost the audio for you.

3 SENATOR BIAGGI: I actually have that  
4 language, and I have the press release that they  
5 sent out, on my computer right now.

6 I'm happy to send it to you [indiscernible].

7 DR. HOWARD ZUCKER: I think the issue here  
8 you're going to is about immunity.

9 SENATOR BIAGGI: [Indiscernible] so now that  
10 you're aware of this provision, in the state of  
11 New York, Black women are still two to three times  
12 more likely to die in childbirth than White women.

13 After the findings of the New York State Task  
14 Force on Maternal Mortality and Disparate Racial  
15 Outcomes, which I'm hoping that you remember, since  
16 you co-chaired it --

17 DR. HOWARD ZUCKER: Of course I do.

18 SENATOR BIAGGI: -- that childbirth should be  
19 a joyous time for families, unblemished by fear and  
20 implicit racial bias.

21 So for women of color who are already  
22 receiving a lower standard of care during childbirth  
23 in the state of New York, how does immunity for  
24 their doctors protect them?

25 DR. HOWARD ZUCKER: The issue here about --



1       there are a couple things.

2               One is, the issues here about immunity, no  
3       one is saying that we are -- we are allowing bad  
4       actors to act on -- in the community, doctors or  
5       anyone else.

6               And believe me, as a physician, I'm well  
7       aware of that.

8               So that's number one.

9               Number two, we are in unprecedented times.

10              We wanted to be sure -- and we still are --  
11       wanted to be sure that there could be care provided.

12              And we will look at everything about that.

13              Regarding the -- the budget, I will just  
14       throw back to you, the fact that this is actually a  
15       negotiated budget.

16              So you're part of this.

17              You know, the legislature is part of this.

18              So [indiscernible cross-talking] --

19              SENATOR RIVERA: Thank you, Senator, and  
20       thank you, Commissioner.

21              SENATOR BIAGGI: [Indiscernible] you actually  
22       know better, since you have been involved in  
23       six budgets in the past.

24              Thank you very much.

25              SENATOR RIVERA: Thank you, Senator.

1           Assembly, please.

2           Assemblymember Bronson?

3           ASSEMBLYMEMBER BRONSON:   Yep.   I had some  
4           problems with my mute button.

5           So I'll be next in asking question to the  
6           commissioner.

7           Commissioner, thank you for being here today;  
8           I do appreciate it.

9           First off, questioning has to do with what  
10          many have reached out to my office and voiced the  
11          concern of, a lack of transparency of what's  
12          happening in the nursing homes; a lack of  
13          communication, or poor communication, the family  
14          members, certainly in the early days, that didn't  
15          know that their loved ones had tested positive, and,  
16          indeed, some who had passed away, with delayed  
17          notice of that.

18          Most importantly, is the fact that, you know,  
19          the ombudsman program had been halted, which is a  
20          direct liaison system between the nursing homes and  
21          the family and the loved ones, as well as helping  
22          residents to marshal their way through changes that  
23          were impacting them.

24          And I guess my first question relates to, how  
25          many inspections are you doing, and were you doing

1 in the early days of this, to assure that nursing  
2 homes, in particular, were providing staff  
3 instruction, following protocols, and making sure  
4 that staff had the appropriate PPE?

5 DR. HOWARD ZUCKER: Sure.

6 So we did 1300 inspections. We continue to  
7 do them.

8 We've been in every nursing homes across the  
9 state multiple times, sometimes in the middle of the  
10 night, unannounced.

11 We are -- if there's anything that is not  
12 being done appropriately, and if there's any danger  
13 to any resident in that nursing home, we will go in  
14 there and be aggressive, and make sure it's changed.

15 Separately from what the department and,  
16 obviously, the -- the -- our, you know, branch of  
17 government, the attorney general also has their own  
18 investigations that are being done.

19 And I won't speak to that, but I just raise  
20 that as well [indiscernible].

21 So we have been in there, and we will  
22 continue to be in there.

23 ASSEMBLYMEMBER BRONSON: Thank you.

24 Of the 1300 inspections that your agency  
25 conducted, do you have a breakdown of the number of

1       nursing homes that had to take, and I'll use the  
2       word "substantial," I'm not sure if that's a good  
3       qualifier, but, had to take substantial measures to  
4       correct their procedures, or other aspects of,  
5       whether it's staffing, PPE, and things of that  
6       nature?

7               DR. HOWARD ZUCKER: I'd have to get back to  
8       you about a specific number on that, and which ones.

9               ASSEMBLYMEMBER BRONSON: Okay, if you would,  
10      please.

11              And in getting back to us on that, if you  
12      would outline the violations that were found, and  
13      what corrective steps were taken, and things of that  
14      nature.

15              I just heard from a local nursing home who's  
16      concerned about the 28-day rule in connection with  
17      no test positives.

18              Can you tell me the scientific [inaudible] of  
19      coming up with that 28-day?

20              DR. HOWARD ZUCKER: Sure, sure.

21              It's two -- it's about two incubation  
22      periods.

23              And this is not just about COVID-19.

24              If you remember last year -- seems like a  
25      century ago -- but, last year, when we had the

1 measles outbreak, and everyone was saying, well,  
2 when will New York State be considered clear?

3 And I kept saying that we need two incubation  
4 periods, because someone could -- in that first  
5 incubation period, someone could actually end up  
6 positive.

7 So you want to be sure you have coverage, two  
8 incubation periods, before you can say there's no  
9 risk.

10 This is just so dangerous and it's so deadly  
11 that we need to be really cautious about this.

12 And I am extremely empathetic to the issue of  
13 these individuals who are residents in the nursing  
14 homes and their relatives who want to see them.

15 I get it, believe me.

16 I have a mom who is home -- not in a nursing  
17 home -- but home alone. I have seen her four times;  
18 once through a glass window in the lobby of the  
19 building.

20 And is so upsetting, because people don't  
21 have many friends when you get to that age that are  
22 left. A lot of people have died, which is very sad.

23 And I can [indiscernible] exactly that  
24 situation with someone in a nursing home, and the  
25 fact that their relative or their best friend can't

1       see them, and it's psychologically challenging to  
2       them as well.

3               We've tried to move this forward with regards  
4       to using technology.

5               I [indiscernible] -- I feel for them.

6               But I don't want to do something which is not  
7       in the best interest of public health.

8               GARRETT RHODES: And that is consistent with  
9       the CMS guidance, which says 28 days as well.

10              ASSEMBLYMEMBER BRONSON: Okay. Thank you for  
11       that.

12              One follow-up question in that regard, and  
13       it's similar to what Senator May asked, and that's,  
14       we're very sensitive to, also, isolation, which  
15       really impacts the elderly.

16              Are there plans to develop creative ways to  
17       get around that isolation issue?

18              DR. HOWARD ZUCKER: Right. And so that goes  
19       to the use of technology in trying to move forward.

20              The best thing, I hope, is that we get  
21       through this and the pandemic is over, and that we  
22       are able to have vaccines, with some kind of  
23       antiviral therapy, [indiscernible] antibodies...  
24       something out there that can help people, to make  
25       sure that it decreases the period of when they're

1 ill.

2 This is all in the works.

3 I have spoken to -- I [indiscernible] --

4 I know time is up.

5 I just want to share the fact that have

6 I spoken to so many scientists.

7 I have spoken to, obviously, Tony Fauci on a  
8 regular basis, and been in contact since the  
9 beginning of this; two former FDA commissioners;  
10 three former assistant secretaries for public health  
11 [indiscernible]; two former CDC directors.

12 I've also spoken, on a weekly basis, to the  
13 person who runs -- used to run the National  
14 [indiscernible cross-talking].

15 SENATOR RIVERA: Thank you, Commissioner.

16 DR. HOWARD ZUCKER: [Indiscernible] a lot of  
17 people and scientists on this issue.

18 SENATOR RIVERA: You talked to a lot of  
19 folks. A lot of folks.

20 But a lot of our folks --

21 DR. HOWARD ZUCKER: [Indiscernible] all the  
22 time.

23 SENATOR RIVERA: -- want to talk to you.

24 [Indiscernible cross-talking.]

25 SENATOR RIVERA: Got you.

1                   But a lot [indiscernible] want to talk to  
2                   you.

3                   DR. HOWARD ZUCKER: No problem.

4                   Next senator, Senator Jen Metzger.

5                   SENATOR METZGER: All right.

6                   Thank you, Mr. Chairman.

7                   And, thank you, Commissioner, for joining us  
8                   today.

9                   I represent Hudson Valley communities in  
10                  Orange, Ulster, and Sullivan counties, with nursing  
11                  homes that were hit very hard and saw a tragic loss  
12                  of life.

13                  Our state has an obligation to these  
14                  families, and to nursing home residents and their  
15                  families and staff, to analyze and assess the  
16                  policies, procedures, and conditions that may have  
17                  contributed to those deaths.

18                  This is important, not just for reasons of  
19                  transparency and accountability, but to make sure we  
20                  don't repeat past mistakes, to make sure that we are  
21                  putting in place the best possible policies and  
22                  protocols, in case we face another surge.

23                  I felt that the department of health report  
24                  did not do this; it did not examine the practices,  
25                  procedures, and conditions that contributed to or



1       protected against fatalities.

2               For example, I think it would be very  
3       valuable to undertake a comparative study of nursing  
4       homes that faired well in highly-impacted regions,  
5       compared to those that did not, so that we can  
6       understand what was effective and what wasn't.

7               Do you have any plans to really examine --  
8       examine what happens, so that we can learn from the  
9       experience and be prepare for a future surge?

10              DR. HOWARD ZUCKER:   Sure.

11              We -- sure.

12              Thank you, Senator.

13              We are always looking at information and  
14       data.

15              So let's go back to the data and the facts of  
16       this, because this is really important because of  
17       different areas of the state.

18              This virus came into New York, and  
19       particularly in the downstate region, in the  
20       beginning of the year, probably in February of this  
21       year.

22              We know from the data, from the antibody  
23       data, that it was probably in the community early on  
24       in February.

25              We do know, from what the governor asked us

1 to go out there and to the test the essential  
2 workers, we found out that there are some parts,  
3 some ZIP codes, in the downstate area with  
4 50 percent antibodies.

5 So what this says is that, within the  
6 community this virus was spreading. We did not know  
7 about it. And it affected a lot of people.

8 And so those people in the community, who  
9 also work in these nursing homes, it spread that  
10 way: it went into the nursing homes.

11 There are other regions where the antibody  
12 levels were much lower. It was -- and the testing,  
13 the levels of the positive rates were much lower.

14 So the community probably had lower amounts  
15 of coronavirus. And since the community and the  
16 nursing homes, obviously, are linked together so  
17 closely, it's probably less likely to spread.

18 And I can tell you that, in some areas, look  
19 at Florida, look what's happening in Florida, these  
20 numbers are skyrocketing now.

21 The disease has goes gone up in the  
22 community, it's gone up in the nursing homes.

23 SENATOR METZGER: I'm going to run out of  
24 time.

25 But, there are differences within -- I --

1 within my district, I have a facility that had no  
2 patient -- no COVID-positive patients, and others  
3 where we had many deaths.

4 And I think that that is worth investigating.

5 You know, what --

6 DR. HOWARD ZUCKER: It is.

7 SENATOR METZGER: -- why is there such  
8 disparity in outcomes?

9 So -- so --

10 DR. HOWARD ZUCKER: I agree; I agree with  
11 you. I agree it's important to investigate this.

12 And I will tell you, we are doing this. But  
13 we're still in the middle of this pandemic.

14 And the more information we get, the better  
15 it is, and we will respond to it appropriately.

16 SENATOR METZGER: Okay.

17 SENATOR RIVERA: Thank you, Commissioner.

18 Thank you, Senator.

19 Assembly.

20 ASSEMBLYMEMBER BRONSON: Uh, yes. Next we  
21 will have Chair McDonald.

22 SENATOR RIVERA: Can't hear you, bro'. Can't  
23 hear you.

24 ASSEMBLYMAN McDONALD: There you go, that's  
25 better.

1 Dr. Zucker, thank you.

2 Let's start off with a reverse question  
3 first.

4 The March 25th policy, and you've done a good  
5 job of explaining that element, but, you know, the  
6 average Joe on the street asks the same question,  
7 time and time again, so I'm going to ask you this:

8 You know, why were nursing home residents not  
9 actually discharged to a step-down facility?

10 Or, why were they not -- and the same would  
11 apply for those in the developmentally-disabled  
12 population as well.

13 Why were they not discharged to the  
14 Javits Center or the U.S.S. Comfort?

15 That's -- that's something I think people  
16 want to know the answer to, and I would like your  
17 thoughts.

18 DR. HOWARD ZUCKER: Sure.

19 So I think that, again, two parts of this.

20 One is that, the issue of, what was the  
21 purpose of Javits and the "Comfort"?

22 And I know this has come up a lot, and I've  
23 heard it from many people.

24 The fact is, that we have to look at this in  
25 the context of the clinical picture.

1           The Javits was not designed for the physical  
2 ailments of people in nursing homes or -- or -- or  
3 the cognitive issues.

4           Let's think about this in the perspective of,  
5 somebody who, unfortunately, has dementia. And you  
6 have somebody in a facility where they're not in  
7 their room. They have to get out of -- the next  
8 thing you know, they're getting out of the bed in  
9 their cubicle, they're starting to walk,  
10 [indiscernible] the bathroom is not right there.

11           You have to look at this from the clinical  
12 perspective.

13           Also, just moving someone from the nursing  
14 home to another facility, there's something called  
15 "transfer trauma," where you actually disrupt them.

16           So if you can keep them in the facility, you  
17 can provide the care that's needed in the facility,  
18 we will do that.

19           If there was a reason to move them, if there  
20 was a need to move them, we would have moved them if  
21 they came to me and they asked.

22           Nobody asked me about that.

23           Back to the "Comfort" and the Javits for a  
24 second, originally, they were not designed even for  
25 COVID patients.

1           And I know what you're saying about the  
2 non-COVID patients.

3           It was Governor Cuomo who actually asked the  
4 President, and to move -- to change these to a  
5 COVID-positive facility.

6           So we did move forward on that as well.

7           But the nursing homes are their home.

8           I think people forget that this is their  
9 home, this is their environment.

10          If they can be provided care there, we should  
11 do that.

12          Back to the March 25th, for one second, I do  
13 want to, because people keep bringing this memo up.

14          It was to make sure that we did not  
15 discriminate against COVID-positive patients.

16          And I will mention to you that, years ago,  
17 when I was in training, this issue came up with  
18 HIV/AIDS.

19          And exactly what happened with people, if you  
20 go back in the literature, both the medical  
21 literature and the lay/public literature, you will  
22 find that there was a big concern that people were  
23 not allowing individuals that had HIV/AIDS into  
24 nursing homes.

25          Go back: history.

1           Sometimes you look at history and see what it  
2       showed.

3           This is really important, but I'm respectful  
4       of your time [indiscernible].

5           ASSEMBLYMAN McDONALD: Let me jump on to  
6       something else.

7           Let's jump forward to today.

8           We have many residents throughout the state  
9       wanting to visit their family members in the  
10      facilities.

11          You mentioned earlier that the visitation  
12      period, the 28-day period, is based on CDC  
13      recommendations.

14          Is that recommendations in regards to, no  
15      positives with residents, or no positives with  
16      staff, or both?

17          DR. HOWARD ZUCKER: No, it's CMS guidance,  
18      and it says both.

19          GARRETT RHODES: And I'll quote --

20          DR. HOWARD ZUCKER: [Indiscernible  
21      cross-talking] --

22          GARRETT RHODES: -- quote: There have been  
23      no new nursing home onset COVID-19 cases in the  
24      nursing home during that period.

25          ASSEMBLYMAN McDONALD: All right.

1           Isolation, big concern.

2           As you know, I'm a practitioner.

3           I hear it from my colleagues. I hear it from  
4 family members.

5           Are we measuring the psychotropic use of  
6 medications? Are we seeing an uptick?

7           Because I -- you know, many people are  
8 saying, they're not dying of their illness. They're  
9 dying of depression and isolation.

10          DR. HOWARD ZUCKER: And I look at this --

11          ASSEMBLYMAN McDONALD: I understand that it's  
12 also medication [indiscernible].

13          DR. HOWARD ZUCKER: -- right.

14          And as one who is in the pharmacy world, and  
15 as an anesthesiologist, when it comes to  
16 medications, I was very sensitive to the issue of,  
17 what are we giving and what has been happening?

18          Yes, we have seen an uptick on this, but it's  
19 not just in nursing homes.

20          We've heard a little bit about what you're  
21 suggesting, about nursing homes. But it's across  
22 the board in society. There's a 27 percent increase  
23 in the use of Zoloft and some of the other agents  
24 for managing depression in the community.

25          So I recognize this.



1           And we are looking at the effect -- the  
2       psychological effects of this on the entire  
3       community, not just the aging population.

4           Although I recognize they are a vulnerable  
5       population, but all across the board.

6           ASSEMBLYMAN McDONALD: Another question:

7           We are requiring nursing home staff to be  
8       tested.

9           I'm hearing, from throughout the state, that  
10      the results are coming back, eight, nine days after  
11      they've been tested. Their tests are weekly.

12          I think that needs to be reviewed in one way  
13      or the other.

14          We need to review how they're going to  
15      continue to be able to afford this if we keep this  
16      type of process.

17          And the other thing that I'm hearing from the  
18      nursing home community, which I would really would  
19      like to have reconsidered: the daily reporting of  
20      PPE.

21          We -- it's important to have PPE, and I know  
22      we're making provisions.

23          But, can we move that to weekly reporting  
24      versus daily?

25          Just one less thing that these long-term-care

1 providers have to deal with.

2 DR. HOWARD ZUCKER: We'll look into that.

3 And with regard to testing, in the state, you  
4 know, our numbers are two to three days' turnover.

5 Some of the commercial labs are a little bit  
6 longer.

7 But Garrett probably can answer the specific  
8 [indiscernible cross-talking] --

9 SENATOR RIVERA: Very quickly, Mr. Rhodes.  
10 The time is up, so very quickly, please.

11 GARRETT RHODES: I think the issue is the  
12 [indiscernible] commercial labs.

13 To the extent we can move testing from those  
14 labs [indiscernible] in the state, [indiscernible]  
15 turnaround, we're actively working on that.

16 OFF-SCREEN SPEAKER: Thank you.

17 SENATOR RIVERA: All right.

18 Thank you, Assemblymember.

19 Senator Sue Serino, recognized for 5 minutes.

20 SENATOR SERINO: Hello, everyone.

21 And hello, Chairman. Thank you for being  
22 here today, and I'll be quick.

23 Throughout the pandemic, when it came to  
24 making decisions for nursing homes and  
25 assisted-living facilities, do you feel that your

1 department was wholly independent of the executive  
2 branch?

3 And this is really just a yes or a no for my  
4 first question.

5 DR. HOWARD ZUCKER: So -- well, the -- you  
6 know, the department is part of the entire, you  
7 know, executive branch -- right? -- and so we work  
8 together.

9 This is such a complex pandemic.

10 Sorry it's not a yes-or-no answer, because  
11 the issue is, that we are all working together.

12 There's so many parts to this, that we must  
13 do this as a collaborative effort; otherwise, we  
14 wouldn't have the success that we have today in  
15 New York State versus the rest of the nation.

16 SENATOR SERINO: And -- that's good, because  
17 it was a team.

18 So of the team that you had that were making  
19 the decisions, how many people left?

20 DR. HOWARD ZUCKER: How many left the team?

21 We have an enormous team.

22 Are you talking about within my department?

23 Or -- I have over 1500 people working on this  
24 issue. And so I have, you know, so many individuals  
25 that I couldn't even name them.

1           The other day I was on a phone call with my  
2           entire department, thanking them for all their  
3           efforts.

4           SENATOR SERINO:   Okay.   I'll go to the next  
5           one, Commissioner.

6           So who made the final call when it came to  
7           the wording of the March 25th order; the wording,  
8           and who made the final call on that?

9           DR. HOWARD ZUCKER:   This is a department --  
10          what happens with any guidance:

11          We did 124 guidances so far.

12          It's like any other department guidance.

13          It goes through the process.   It goes over to  
14          chamber, like any other guidance goes forward.

15          SENATOR SERINO:   Okay.

16          And then I know you touched on staffing  
17          before, but the State recruited thousands of  
18          health-care volunteers.

19          Can you tell me how the practice worked to  
20          get them where they were needed?

21          Because, from what I heard from  
22          administrators, they were not able to access them,  
23          and, worse, many of their own qualified employees  
24          were getting incentivized to go to New York City.

25          (The Senator talking under her breath.)

1 DR. HOWARD ZUCKER: So we --

2 SENATOR SERINO: And -- sorry. You can  
3 answer [indiscernible cross-talking] --

4 DR. HOWARD ZUCKER: -- I know.

5 I said, we had -- so we had  
6 96,000 volunteers, we still have, in the system.

7 If a nursing home needs it, we will provide.

8 They can go into a portal. And if there's  
9 any challenge, they can call us.

10 We had an entire operation set up right here  
11 in this room where I am right now, to address any of  
12 the challenges that anyone needed when it came to  
13 support.

14 And, to this day, if someone needs something,  
15 just call. And, go into the portal. And if they  
16 don't get the answers in the portal, let us know,  
17 and we will make sure it happens.

18 SENATOR SERINO: Because that was an extreme  
19 area of frustration for people.

20 And I had put forward a proposal to recruit  
21 and train staff, and to recruit volunteers with  
22 experience in this field.

23 But that -- why wasn't that done?

24 And will you make that a top priority, going  
25 forward?

1 DR. HOWARD ZUCKER: Well, I'm not sure what  
2 you're asking, that it wasn't done.

3 It was, we -- we had that information, and we  
4 provided it to everybody.

5 So I'm unclear.

6 If there's a problem, we're happy to fix any  
7 glitches that are in the system.

8 SENATOR SERINO: Okay.

9 And then on -- real quick: On April 23rd  
10 I sent a letter to both you and the governor  
11 regarding specialty-care centers.

12 And in the letter I make it clear that many  
13 nursing home administrators explained to me that,  
14 even though the governor claimed any facility that  
15 didn't have the ability to care for these patients  
16 could deny them admission, because of the wording of  
17 the March 25th order, they felt that was really not  
18 an option.

19 I suggested that the State look into creating  
20 regionalized specialty-care centers, where you could  
21 designate certain facilities across the state as  
22 COVID nursing homes. But provide those facilities  
23 with direct support and resources needed to ensure  
24 they could provide quality care.

25 Shortly after sending the letter, my

1 conference had a call with the governor's team, and  
2 I asked for a response to this idea.

3 But, to date, I have yet to receive one.

4 DR. HOWARD ZUCKER: Well, we'll look into  
5 that and get back to you on that.

6 SENATOR SERINO: Okay.

7 And then one last thing:

8 On the testing for the nursing home and  
9 assisted-care facility staff, it's taken too long  
10 for the test results to come back.

11 Is there any work being done on that, that we  
12 could have a quicker turnaround?

13 DR. HOWARD ZUCKER: So we will move --  
14 Garrett mentioned that -- let me just mention, that  
15 there are other facilities that are out there, that  
16 we have in place right now, for -- for individuals  
17 who can go there, including -- you know, I can go  
18 through the specific areas on that.

19 And let me see if I have it on my paper.

20 But while Garrett answers, I'll look for that  
21 for you.

22 GARRETT RHODES: Absolutely.

23 So [indiscernible] in May, we required  
24 nursing homes to do testing -- weekly testing of  
25 their staff.

1           We tested every nursing home that asked in  
2           the state, with a laboratory who could do the tests.

3           Over that, now in the weeks and months since,  
4           we've had some of the larger national laboratories,  
5           the overwhelming demand from Arizona, from Florida,  
6           from Texas, which has led to much longer lag times  
7           we were seeing there.

8           We've been actively working to move that  
9           volume from the national labs to more local labs in  
10          New York State. Built an entire network of local  
11          labs.

12          You heard the governor's op-ed in the  
13          "New York Times" a couple days ago, setting specific  
14          requests of the federal government, and what other  
15          states can do, to help reduce the -- what the demand  
16          of these big national labs.

17          DR. HOWARD ZUCKER: And so --

18          SENATOR RIVERA: Very quickly.

19          DR. HOWARD ZUCKER: -- and the answer,  
20          there's Buffalo Avenue, there's one in  
21          Staten Island, there's one in upstate in  
22          SUNY New York. And one other one that I have also.

23          But [indiscernible] to you.

24          SENATOR RIVERA: Thank you, Commissioner.

25          Thank you, Senator.



1 Assembly.

2 ASSEMBLYMEMBER BRONSON: Yes, next up we have  
3 Ranker Assemblymember Kevin Byrne.

4 ASSEMBLYMEMBER BYRNE: Thank you,  
5 Mr. Chair.

6 Thank you, Mr. Commissioner, for being  
7 here.

8 Before I get really started, I do want to  
9 thank you from earlier on, at the onset of the  
10 outbreak, the commissioner met with conferences,  
11 both Republican and Democrat, to brief us on the  
12 virus earlier in the year.

13 So I do appreciate that.

14 So I want to say something nice before  
15 I really got into the weeds here.

16 And I'm glad you came prepared to discuss the  
17 March 25th order, as well as the DOH report.

18 So let me start out by asking: Who actually  
19 developed this report from the department of health  
20 that seems to defend the March 25th order?

21 DR. HOWARD ZUCKER: The reports -- the  
22 nursing home report was developed by the team within  
23 the department.

24 As I mentioned, I have a lot of  
25 epidemiologists, I have physicians, and others, and

1       who have been working on this since day one. And  
2       they worked through the report, looked at the  
3       numbers.

4               And as I mentioned earlier, that I -- you  
5       know, I stand by all the data in that report,  
6       because I know there's expert individuals who do it.

7               ASSEMBLYMEMBER BYRNE: Understood.

8               And I do think there is some opinions from my  
9       colleagues, speaking for myself, that it is  
10      incomplete in certain instances. The counting of  
11      fatalities from nursing homes is an issue.

12              If the department felt it could do a report,  
13      I'm actually glad you did.

14              We put forth an amendment in the Assembly at  
15      one point, to ask the department do a report.

16              So, it's good.

17              I just feel it's missing information;  
18      specifically, the -- a total complete count.

19              I also had a question about the number.

20              It seems that it seems to be heavily reliant  
21      on the timeline.

22              And I understand that, the two different  
23      peaks, but the number "23," the 23 days, basically,  
24      from infection to fatality.

25              My question is: When we have -- when we're

1 dealing with the elderly, and those with the most  
2 severe underlying conditions, is it not reasonable  
3 to believe that that period would be sped up? That  
4 they are not going to have the same time period from  
5 rate of infection to fatality as the general public?

6 DR. HOWARD ZUCKER: I've asked the -- I've  
7 asked some scientists about that. And it doesn't --  
8 so far it has not panned out on that.

9 If the individuals are severely  
10 immunocompromised, somebody who has had -- is on  
11 chemotherapy, their white count's 3, and their  
12 platelet count is 20,000, all these other medical  
13 problems I could go through, then the virus may hang  
14 around a little longer.

15 That's [indiscernible], but it's a very small  
16 percentage of the population.

17 Back to the [indiscernible cross-talking] --

18 ASSEMBLYMEMBER BYRNE: Mr. Commissioner,  
19 I want to ask -- because we have a limited amount of  
20 time, so I'm sorry to interrupt, but, I just want to  
21 point that out, that's a concern. And I know  
22 there's anecdotal evidence, people that have  
23 succumbed to this virus fairly quickly. So there's,  
24 obviously, highs and lows to this.

25 Going back to the actual March 25th order,

1 I'm glad you said that words have meaning, and  
2 that's important.

3 I think we believe that as policymakers and  
4 as lawmakers.

5 And you cited the New York State Codes of  
6 Rules and Regulations, 415.26.

7 I know the governor has mentioned this.

8 Can you -- I'm not sure if you have the  
9 March 25th order, but can you point to where in the  
10 order it actually cites CDC guidance or the  
11 New York State Codes of Rules and Regulations in the  
12 order?

13 DR. HOWARD ZUCKER: So two things.

14 One is -- I don't have it sitting right in  
15 front of me.

16 But, two things.

17 One is, on the report, just so you know, it  
18 has been -- it had been reviewed by outside experts  
19 as well. So it's sort of peer-reviewed as well.

20 So that's part number one.

21 On number two: These codes and these  
22 statutes, 415-26 [sic], that has been around since  
23 1992.

24 They know, you know, these nursing homes,  
25 everyone knows that you have to provide the

1       necessary adequate care.

2               So this is just a -- it's a basic underlying  
3       understanding of the nursing homes, and, for that  
4       matter, you know, all other facilities  
5       [indiscernible].

6               So I [indiscernible cross-talking] --

7               ASSEMBLYMEMBER BYRNE:   Commissioner, I'm  
8       sorry, we're just running low on time.

9               But I understand that, and I thank you for  
10      your answer.

11              But, as we craft policies in the state  
12      legislature, and other orders and directives are  
13      disseminated, I mean, we are dealing with this  
14      pandemic, where the governor has had to, in many  
15      cases, rightfully suspend certain state laws.

16              So I think this is a very, you know,  
17      high-pressure time.

18              We pass laws and policies where we always say  
19      things, like -- not always, but oftentimes, not to  
20      conflict with state or federal law.

21              I didn't see that anywhere in the order.

22              I also saw, you know, we use the term  
23      "advisory" or "guidance."

24              And I know the report mentioned some of the  
25      CDC guidance, but this uses words like "must" and

1 "shall."

2 Do you think that, if you had do this over  
3 again, it's still a standing order, although  
4 I can't -- or, standing document, although I can't  
5 find it on the department of health website, would  
6 you consider revising it or rewording it if you had  
7 to do this over again?

8 DR. HOWARD ZUCKER: The guidance was put out  
9 there in the effort to make sure we did not  
10 discriminate against those who are COVID-positive.

11 That was the purposes of the guidance, and at  
12 a time when our numbers were going up dramatically,  
13 and we could not predict what was going to  
14 ultimately happen with projections at 140,000 cases.

15 That's where we were at a time when,  
16 remember, we didn't have the testing capacity of  
17 80,000 individuals.

18 So we have to always remember where we are.

19 The guidance is still in place, and it's  
20 still there.

21 We have other things that we now can do,  
22 including testing at the capacity as I mentioned.  
23 And so we can provide [indiscernible  
24 cross-talking] --

25 SENATOR RIVERA: Thank you, Commissioner.

1 ASSEMBLYMEMBER BYRNE: I know, but why isn't  
2 it on the website [indiscernible cross-talking] --

3 SENATOR RIVERA: Thank you, Senator -- thank  
4 you, Assembly -- Assemblymember, thank you. You're  
5 time is up.

6 I recognize myself for 5 minutes.

7 Mr. Commissioner, I want to go back to the  
8 beginning.

9 Let's talk about the definition of  
10 "nursing home deaths."

11 It is -- I've been trying to -- you know,  
12 I've obviously read the report. I've heard the  
13 conversation that you had with my colleague  
14 Senator Skoufis. Other folks have asked you about  
15 it.

16 I have to admit to you, it does not -- I'm  
17 confused.

18 And I'll just pose the question, and the rest  
19 will be for you to kind of convince me that this is  
20 the right way to do it.

21 If I'm not mistaken, and please correct me if  
22 I'm wrong, at the beginning of the pandemic, the  
23 reports that were being put out included data  
24 related to people who were nursing home patients,  
25 who then were admitted to hospitals and died there.

1           Is that incorrect?

2           DR. HOWARD ZUCKER: At the beginning of the  
3 pandemic, when somebody died, we assumed that what  
4 was going to happen was, people who got sick, ended  
5 up going to the hospital, and we were reporting the  
6 data from the hospital as someone who unfortunately  
7 died.

8           Ultimately, as we moved forward --

9           SENATOR RIVERA: Sir, sir --

10          DR. HOWARD ZUCKER: -- yep, sorry.

11          SENATOR RIVERA: -- this is the question --

12          DR. HOWARD ZUCKER: Yeah, yeah,

13 [indiscernible cross-talking] --

14          SENATOR RIVERA: -- this is this question,  
15 because I have a few very specific questions.

16          This is the first one:

17          Is it correct or incorrect, that at the  
18 beginning of the pandemic, before, I believe, the  
19 7/31 -- I'm -- the -- I'm trying to look for the  
20 exact report -- but that there was, at a point at  
21 the beginning of the pandemic, patients who were  
22 nursing home patients, who were admitted to  
23 hospitals, who died, were counted towards the deaths  
24 of that nursing home? And then, at one point, you  
25 stopped doing that?



1           Is that correct or incorrect?

2           DR. HOWARD ZUCKER: The issue here is, that  
3 someone comes in, and the worry is that will you end  
4 up counting them twice. You'll count them as  
5 nursing home, you'll count them at a hospital.

6           So you have to -- this is the issue --

7           SENATOR RIVERA: I will ask you one more  
8 time --

9           DR. HOWARD ZUCKER: -- of not having the  
10 data --

11          SENATOR RIVERA: -- I'm sorry, I'm sorry.  
12 I'm asking one more -- please, just answer  
13 this -- this is the question: --

14          DR. HOWARD ZUCKER: -- well, you know  
15 [indiscernible cross-talking] --

16          SENATOR RIVERA: -- Is it correct or  
17 incorrect, that you, at one time, reported it one  
18 way, and now are choosing to report it another?

19          Because this is the -- this is the crux to  
20 me.

21          It --

22          DR. HOWARD ZUCKER: No, no.

23          [indiscernible cross-talking] --

24          SENATOR RIVERA: -- let me just --

25          [indiscernible cross-talking] --

1 DR. HOWARD ZUCKER: --

2 [indiscernible cross-talking] --

3 SENATOR RIVERA: I'm going to give you  
4 30 seconds. Go ahead.

5 DR. HOWARD ZUCKER: -- no, I was going to  
6 say, we had -- we reported it as someone who's died  
7 in the hospital.

8 [Indiscernible] the nursing home, they went  
9 to the hospital, they died in the hospital. We  
10 reported as they came from the hospital.

11 We then started to ask, and we tried to get  
12 information about who died in the nursing homes.  
13 And we started reporting that as getting information  
14 from the nursing homes.

15 And we do not want -- as I mentioned before,  
16 we don't want to double-count and say this person  
17 died here and also died there.

18 SENATOR RIVERA: But it's -- as my colleague  
19 James -- as my colleague Senator Skoufis pointed  
20 out, no other state keeps the numbers like this.

21 This is the concern that we have, sir.

22 I understand that we were all --

23 DR. HOWARD ZUCKER: No,  
24 [indiscernible cross-talking] --

25 SENATOR RIVERA: Hold on.

1           -- [indiscernible].

2           That this is not incorrect?

3           DR. HOWARD ZUCKER: The issue here is, there  
4 was a lot of confusion up front because this was an  
5 evolving process.

6           This is what -- what I was sort of trying to  
7 say in my presentation, that you have to go back to  
8 that point in time, when we had information coming  
9 in and we assumed one thing. And then we found out  
10 that there was another problem there, or that the  
11 numbers were going up, or the numbers we were going  
12 to predict, you know, were astronomical  
13 [indiscernible cross-talking] --

14          SENATOR RIVERA: This is the concern --

15          DR. HOWARD ZUCKER: -- yes.

16          SENATOR RIVERA: -- I'm going to tell you the  
17 concern is --

18          DR. HOWARD ZUCKER: -- okay.

19          SENATOR RIVERA: -- I'm going to tell you  
20 what the concern is.

21           There is -- because I know that you went like  
22 this (indicating) when I said there was no other  
23 state that's doing it like this. And then you kind  
24 of, you know, went back and said, we have to look at  
25 that time.

1 I get it.

2 And none of us is trying to castigate y'all  
3 here for the very difficult work that had to be  
4 done.

5 But it seems to me that patting ourselves on  
6 the back for victories is a little bit far-fetched,  
7 considering that we have still more deaths than  
8 anybody else in the country, both in nursing homes  
9 and in overall deaths.

10 And the concern here, sir, is that it seems  
11 that that definition, you have to admit, that -- or  
12 maybe you never will -- but, the definition, the  
13 fact that the definition was changed, that the  
14 report before a certain date included those numbers,  
15 and then afterwards did not, it seems that what  
16 y'all are doing is just trying to minimize.

17 And nobody says that you went into these  
18 nursing homes and threw people off a flight of  
19 stairs.

20 But we are saying that, to be able to --  
21 moving forward, if we want to get clear  
22 information -- we need to get clear information so  
23 we can make better policy.

24 And it seems to me, that if the definition  
25 that you're insisting on keeping on the books is one

1       that no other state utilizes, and that it makes you  
2       look better than what y'all did, when y'all actually  
3       did, that's a problem, bro'.

4               DR. HOWARD ZUCKER:  Yes, but, you know what,  
5       Senator?  There are 14 states in the United States  
6       that don't even report -- nursing homes don't even  
7       report their data.

8               SENATOR RIVERA:  I'm not talking about  
9       those 14.

10              But -- okay, but then what about the  
11       other 36, or what have you?

12              DR. HOWARD ZUCKER:  And some of them don't  
13       report [indiscernible].

14              We are trans -- all I'm saying, Senator, is  
15       that we have been incredibly transparent on  
16       information.

17              But the one thing that we are also, is that  
18       we have been [indiscernible], and we have -- also,  
19       the one thing we know -- and you know me -- I will  
20       not provide information unless I'm sure it's  
21       absolutely accurate and out there.

22              And I've done that on so many other things  
23       that you and I have worked on over the  
24       [indiscernible cross-talking] --

25              SENATOR RIVERA:  The only thing -- and I only

1 have -- I want to respect the time, as I'm  
2 respecting it for everybody else, I would do it for  
3 myself as well.

4 And I will cut myself off, but not before  
5 saying: It seems, sir, that, in this case, you are  
6 choosing to define it differently so that you can  
7 look better. And that is a problem.

8 I'm sorry.

9 My time is up.

10 Assembly.

11 ASSEMBLYMEMBER BRONSON: Thank you.

12 Ranking Member Brian Manktelow, and you have  
13 5 minutes.

14 ASSEMBLYMEMBER MANKTELOW: Hi, thank you,  
15 Chair.

16 Commissioner, just a quick question for you.

17 Do you remember meeting with us on March 2nd,  
18 with the minorities for the Senate and the Assembly?

19 DR. HOWARD ZUCKER: Yeah, I do remember  
20 meeting because this was when we were discussing the  
21 \$40 million appropriation that was being put forth.

22 Yes, I do remember.

23 ASSEMBLYMEMBER MANKTELOW: Well, thank you.

24 And that evening, I think it was around  
25 7:00 or 7:30 that evening, and I know one of the

1 things that you said was, you really need to be very  
2 conscious of the 60-, 70-, and 80-year-old people as  
3 this pandemic moves into New York State.

4 And do you remember that as well?

5 DR. HOWARD ZUCKER: I -- well, I am very  
6 concerned about the elderly people, so I'm sure that  
7 I mentioned. I do actually sort of remember that.

8 ASSEMBLYMEMBER MANKTELOW: Sure.

9 DR. HOWARD ZUCKER: And I mentioned that, and  
10 I also mentioned those who were young. Yes.

11 And at that point we didn't realize that --  
12 that young -- you know, we just assumed young people  
13 would get sick, and then look what happened. They  
14 haven't been [indiscernible], except for that  
15 Kawasaki-like symptom.

16 ASSEMBLYMEMBER MANKTELOW: So -- so knowing  
17 at that point in time that our seniors, especially  
18 if they have something preexisting and would be  
19 compromised quite quickly, on February 25th, on one  
20 of your earlier graphs that you showed, you said  
21 that the first staff reported in the nursing home of  
22 COVID symptoms at that point.

23 DR. HOWARD ZUCKER: The first staff -- we had  
24 a staff that was reported with COVID on March -- a  
25 nursing home staff on March 5th. And then on

1 March 11th, in another nursing home, there was staff  
2 that were reported positive. And subsequent to  
3 that, obviously.

4 But it was March 5th.

5 ASSEMBLYMEMBER MANKTELOW: Let me rephrase  
6 that. I apologize. Maybe I said it wrong.

7 On February 25th, you said one of the nursing  
8 home staff members reported the first symptom-like  
9 COVID symptoms of a patient at that point?

10 DR. HOWARD ZUCKER: Yes, but you know what?  
11 That was -- right, so you're asking me, at that  
12 point. But I didn't know it at that point.

13 This is when we did the retrospective  
14 analysis, looking back at this data. When we went  
15 back, this is how the March 5th and March 11th  
16 I know, because that was prospectively at that  
17 moment in time.

18 Then we went back, looking to try to find  
19 out.

20 This is when we were trying to figure out how  
21 the 37,000 individuals in the nursing homes -- the  
22 nursing home staff were positive.

23 So we went back, asking everyone, Can you  
24 please tell us when the first person in your nursing  
25 home was -- staff -- a staff person was positive?



1           And that's where the February 25th, because,  
2       February 25th, I want to mention a little bit about  
3       February 25th, because that's a very critical day,  
4       at least in this response.

5           And so I want to be respectful of your time,  
6       but, when you have a second, I would like to bring  
7       that up.

8           ASSEMBLYMEMBER MANKTELOW: All right, well --  
9       yeah, okay. I've got one really quick question,  
10      then.

11          So at that point, knowing how compromised our  
12      nursing homes could be, having had that \$40 million  
13      that we voted on to approve, why was there such a  
14      time lag getting the PPE equipment out to our  
15      nursing homes?

16          It seems like, at this point, if they're our  
17      most vulnerable people that we have in New York  
18      State, why would they have not been the priority at  
19      that point?

20          DR. HOWARD ZUCKER: We did -- so let's talk a  
21      little bit about PPE and supplies, because we did  
22      have -- we did provide to the counties, who then  
23      provided both to the hospitals and nursing homes,  
24      PPE.

25          We did not have enough PPE.

1           The governor was ask -- he was asking  
2       everyone to try to figure out how we can get more  
3       PPE.

4           We were looking across the country.

5           We were looking across the world, for that  
6       matter.

7           The irony here a little bit, is that the  
8       virus originated in China, right from the beginning,  
9       that's where it started. Right? Went to Europe,  
10      came to the U.S.

11          And the actual answer, that the protection  
12      from the virus, the PPE was being manufactured in  
13      China as well, and we were trying to get it from  
14      there.

15          A little bit of an ironic situation there on  
16      that.

17          But I -- and we did get it out.

18          We -- and if they didn't, we do not have,  
19      then we were quick to try to do whatever we could to  
20      help them out.

21          ASSEMBLYMEMBER MANKTELOW: All right.  
22      Because that was the number-one complaint -- one of  
23      the number-one complaints from our nursing homes and  
24      our senior living places, that they could not get  
25      PPE equipment to their staff members fast enough.

1           And it just seems like, with all the  
2           information that we had -- the data, the scientific  
3           proof -- of what was coming, it just seems like they  
4           would have been a priority, and we would have got  
5           that equipment out to them sooner.

6           I think that that's one of the downfalls of  
7           what had happened.

8           And I hope we move forward and look at  
9           something to make sure that doesn't happen again,  
10          especially moving forward.

11          I only have like 30 seconds left, so I'll --  
12          go ahead.

13          DR. HOWARD ZUCKER: No, I just want to talk  
14          about that last week of February for a second,  
15          because I think it's an important week of what we  
16          did, and what was happening on a national level,  
17          because, on February 25th --

18          And I recognize the time. Give me an extra  
19          15 seconds.

20          -- on February 25th I was in Washington.  
21          I was with all my other state health commissioners  
22          from around the nation, annual meeting.

23          We were invited to the White House, to sit  
24          down with all of them, and to listen to HHS and to  
25          listen to the leadership there and the leadership at

1 the White House, to tell us about this coronavirus.

2 And what they said was, "that we are going to  
3 leave this to the states."

4 New York was already leading.

5 The governor -- Governor Cuomo was already  
6 taking steps to address this issue. As I had  
7 mentioned, that we had a \$40 million appropriation  
8 put forth, which I thank the legislature for  
9 [indiscernible cross-talking] --

10 SENATOR RIVERA: I gave you 20.

11 DR. HOWARD ZUCKER: You gave me 20.

12 SENATOR RIVERA: I gave you 20.

13 DR. HOWARD ZUCKER: Let me just finish -- let  
14 me just finish. I'll even stay one minute longer on  
15 this. Okay?

16 Thank you. Thanks.

17 All right. I promise you.

18 And what happened was, I told the White House  
19 after they said, we'd leave it to the states, I said  
20 to them that this needs to be a federal response.  
21 And New York will lead, but that this needs to be a  
22 federal response.

23 That same week --

24 SENATOR RIVERA: Thank you, Commissioner.

25 DR. HOWARD ZUCKER: That same week, Wadsworth

1 lab came out with a lab, and then we [indiscernible  
2 cross-talking] --

3 SENATOR RIVERA: We have to move on.

4 Senate, Ranking Member of Investigations,  
5 Senator O'Mara, you're recognized for 5 minutes.

6 SENATOR O'MARA: Yes, thank you, Chairman.

7 Thank you, Commissioner and Mr. Rhodes, for  
8 being with us today.

9 Were you cognizant of the fact, the numbers  
10 of nursing home deaths that occurred in hospitals  
11 would be an important topic of interest for us  
12 today?

13 DR. HOWARD ZUCKER: I -- I -- yes, I was.

14 Yes, I was.

15 SENATOR O'MARA: Yet you come with no  
16 information to give us any idea of how many of those  
17 deaths there were?

18 DR. HOWARD ZUCKER: Because, as I said  
19 earlier, that I will not provide information that  
20 I have not sort of ensured it's absolutely accurate.

21 This is too big an issue, and it's too  
22 serious an issue with deaths and numbers, to be able  
23 to provide.

24 I will get that you number, as I promised you  
25 that I would.

1           SENATOR O'MARA: Commissioner, when were you  
2 aware that this hearing was going to happen today?

3           DR. HOWARD ZUCKER: A couple of weeks ago  
4 I heard about this.

5           But I have to tell you that, within that  
6 period of time, these last couple of weeks --

7           SENATOR O'MARA: Commissioner, this is my  
8 time.

9           And were you further aware that the  
10 CDC guidelines with regards to [indiscernible] in  
11 the nursing homes would have been an important topic  
12 for us to be talking about today --

13          DR. HOWARD ZUCKER: You [indiscernible] --

14          SENATOR O'MARA: -- yet you didn't bring the  
15 CDC guidelines with you today?

16          DR. HOWARD ZUCKER: -- you broke up, Senator,  
17 on that, so I didn't hear you.

18          SENATOR O'MARA: Did -- did you not  
19 understand that the CDC guidelines relative to  
20 nursing home admissions would be an important topic  
21 of interest to us today; yet, you did not bring that  
22 CDC language with you?

23          GARRETT RHODES: I have it.

24          DR. HOWARD ZUCKER: We have it.

25          Yes, we have it.

1           SENATOR O'MARA: Well, earlier you said you  
2       didn't have it, and you couldn't answer a question  
3       about what specifically was in there regarding  
4       requiring nursing homes to admit COVID-positive  
5       patients.

6           DR. HOWARD ZUCKER: We'll get it.

7           GARRETT RHODES: [Indiscernible] multiple  
8       pieces of guidance.

9           Which one --

10          DR. HOWARD ZUCKER: I don't know which one  
11       you want.

12          SENATOR O'MARA: Well, I forget what the  
13       specific question was from a member before, but  
14       I thought it odd that you said you didn't have that  
15       language then.

16          DR. HOWARD ZUCKER: No, I didn't have our  
17       March 25th memo with me. That's what I said,  
18       I didn't have the memo with me.

19          SENATOR O'MARA: Okay.

20          Have -- are either of you familiar with a  
21       March 26th statement by The Society for  
22       Long-Term Care Medicine and the AMDA in response  
23       to --

24          DR. HOWARD ZUCKER: No, I'm not.

25          SENATOR O'MARA: -- to the order?

1 DR. HOWARD ZUCKER: I'm not.

2 SENATOR O'MARA: Neither of you have seen the  
3 March 26th statement from AMDA, The Society for  
4 Post-Acute and Long-Term Care Medicine?

5 DR. HOWARD ZUCKER: I have not, no.

6 SENATOR O'MARA: It was [indiscernible] to us  
7 earlier in some meetings we were having, from a  
8 representative from the AMDA, The Society for  
9 Post-Acute and Long-Term-Care Medicine, which  
10 represents health-care providers in the nursing home  
11 industry across the country, that this March 26th  
12 statement was sent directly to both the governor and  
13 you, Commissioner Zucker, on March 26th.

14 And that statement said, that: The AMDA  
15 finds that the New York State advisory to be  
16 overreaching, not consistent with science,  
17 unenforceable, and, beyond all, not in the least  
18 consistent with patient-safety principles.

19 Now, this statement has been reported in the  
20 media extensively.

21 Neither of you have read this statement?

22 DR. HOWARD ZUCKER: There's a lot of things  
23 that have come across my desk, as you can imagine.

24 And I'm happy to go back and look at that,  
25 and see what memos or letters that came through on



1       this. And we'll find -- we'll find this.

2               SENATOR O'MARA: Well, The Society for  
3 Long-Term Care went on, in their response to your  
4 directive: Rather than bullying nursing facilities  
5 and medical providers to make unsafe decisions, the  
6 State of New York would be [indiscernible] to direct  
7 its energies at ensuring adequate personal  
8 protective equipment is available to all health-care  
9 providers, ramping up [inaudible] capabilities,  
10 shortening test turnarounds, developing a  
11 long-neglected health-care workforce, and  
12 identifying and standing up alternative care sites.

13              What alternative care sites for nursing homes  
14 were set up outside of the New York metropolitan  
15 region?

16              DR. HOWARD ZUCKER: So we had -- so a couple  
17 things.

18              Number one, we have a 60-day supply for PPE.

19              I take issue with the statement that we did  
20 not -- we were not providing excellent care to the  
21 individuals in the nursing homes.

22              We always are looking out for the best  
23 interests of those individuals.

24              The residents in those nursing homes, if  
25 there was a concern in the nursing home

1 administration, I was happy to reach out to us.

2 They say they felt that they could not do  
3 that, that's not on true facts.

4 I have spoken with many of the nursing home  
5 administrators and owners about their issues, and  
6 they're -- I'm always receptive to that.

7 So that's that issue.

8 Your last point that you were asking is, what  
9 are we doing, moving forward, on this?

10 Is that where your concern is?

11 SENATOR O'MARA: No.

12 What did do you since March 25th to set up  
13 alternative --

14 DR. HOWARD ZUCKER: Oh, yes --

15 SENATOR O'MARA: -- [inaudible] --

16 DR. HOWARD ZUCKER: -- outside of New York  
17 City.

18 SENATOR O'MARA: -- facilities  
19 [indiscernible cross-talking], rather than sending  
20 them back into the nursing home?

21 DR. HOWARD ZUCKER: So -- so a couple of  
22 things.

23 Let's go through this.

24 First of all, there are other facilities that  
25 are out there, that we had set up.

1           But I think there's a point here  
2           [indiscernible], and this goes back to the science,  
3           that people keep believing that --  
4           I know time's up. I'll be very fast on this.  
5           -- people keep believing that the individual  
6           is going to the nursing home with coronavirus.  
7           That doesn't fit the science.  
8           When you recognize, you talk about CDC, after  
9           nine days, zero infectivity in the [indiscernible]  
10          infectivity.  
11          I can through this, but I'm respectful of the  
12          time.  
13          I can go through why the science doesn't add  
14          up to what people are saying.  
15          SENATOR RIVERA: [Indiscernible], Senator.  
16          Thank you.  
17          Assembly.  
18          ASSEMBLYMEMBER BRONSON: Yes, the next person  
19          to ask questions, Assemblymember Tom Abinanti.  
20          Tom.  
21          All right.  
22          SENATOR RIVERA: If he's not there, I'll take  
23          it.  
24          ASSEMBLYMEMBER ABINANTI: Well, I'm here.  
25          I'm here.

1 ASSEMBLYMEMBER BRONSON: Okay, Tom. You have  
2 3 minutes.

3 ASSEMBLYMEMBER ABINANTI: I had to get the  
4 mechanics to work.

5 First of all, thank you, Commissioner, for  
6 joining us this morning.

7 I'd like to first go to the issue of families  
8 visiting at nursing homes.

9 Do you have any evidence of any family  
10 transmission at nursing homes?

11 DR. HOWARD ZUCKER: This goes back to the  
12 issue of visitation, in general.

13 And I believe, based on what we found --

14 ASSEMBLYMEMBER ABINANTI: No, I'm not asking  
15 visitation in general.

16 I'm asking -- you said the problem of  
17 transmission of COVID with nursing homes was staff.

18 If it's not visitors, why are you keeping  
19 visitors out and allowing staff to continue to go  
20 in?

21 DR. HOWARD ZUCKER: No, what I said is, that  
22 the data we have shows the 37,000 positive staff.

23 But that because we didn't test visitors, but  
24 the presumption is, and I would tell you the  
25 presumption is, that the visitors also brought it

1 in.

2 I don't want to -- like I said, I don't want  
3 to blame anyone.

4 ASSEMBLYMEMBER ABINANTI: I asked  
5 [indiscernible cross-talking] --

6 DR. HOWARD ZUCKER: But the reality --

7 ASSEMBLYMEMBER ABINANTI: -- you said you  
8 relied on the basis [indiscernible].

9 DR. HOWARD ZUCKER: -- because the nursing  
10 home staff --

11 ASSEMBLYMEMBER ABINANTI: What's your basis  
12 for that assumption?

13 DR. HOWARD ZUCKER: -- because the nursing  
14 home is someone that we can go ask, that we want to  
15 get tested.

16 And, you know, it's a little bit different to  
17 walk up to someone and just say, you know, and you  
18 came to visit your relative.

19 ASSEMBLYMEMBER ABINANTI: [Indiscernible  
20 cross-talking] -- Commissioner, it seems to me --  
21 I'm directing the questions about family, not about  
22 staff.

23 Families are complaining that they are not  
24 able to supervise on a day-to-day basis, so there  
25 are no outside eyes to see what's going on. That

1       their family members are deteriorating very  
2       significantly. That they cannot use technology  
3       because they're much older people.

4               DR. HOWARD ZUCKER: I agree. I understand.

5               ASSEMBLYMEMBER ABINANTI: It's not the same  
6       thing as being face-to-face.

7               So what is the basis for excluding families  
8       completely from [indiscernible cross-talking]?

9               DR. HOWARD ZUCKER: Sure.

10              ASSEMBLYMEMBER ABINANTI: Why can't you set  
11       up a protocol for every nursing home where the  
12       family members are tested?

13              It seems to me, as somebody previously said,  
14       that the staff work in various places, they go home  
15       to their own families, they take public transit;  
16       while it's the families that are going to be the  
17       most careful, because they don't want to infect  
18       their family members who are in the nursing home.

19              What can we do to allow the family in the  
20       nursing homes today?

21              DR. HOWARD ZUCKER: I am extremely, like  
22       I said before, empathetic to those who have  
23       relatives that they don't see, and they need to see  
24       them.

25              I get that. I really recognize that.

1           The reason I say also visitors is because  
2 everyone lives in the community.

3           The people work in nursing homes live in the  
4 community.

5           People who visit live in the community,  
6 because the person's work is in that area, is also  
7 in the community.

8           We do know, we do know, from our testing of  
9 antibodies, that we do know that the -- there are --  
10 that some of the visitors in that community were  
11 positive.

12           We do know from the ZIP Codes for the  
13 50 percent positive.

14           ASSEMBLYMEMBER ABINANTI: Yes, but why can't  
15 you set up -- why --

16           DR. HOWARD ZUCKER: In some ZIP codes,  
17 25 percent --

18           ASSEMBLYMEMBER ABINANTI: -- let me just  
19 finish my question.

20           Why can't you set up a protocol where you  
21 actually test the visitors?

22           Most of the visitors, from what I can  
23 understand, are staying home, socially distanced,  
24 unlike the nursing home staff working several jobs.

25           I would like to see you set up a process, as

1 soon as possible, to test the visitors; to give them  
2 the questionnaire, check their temperature before  
3 they come in.

4 SENATOR RIVERA: Thank you, Assemblymember.

5 [Indiscernible cross-talking by several  
6 participants.]

7 SENATOR RIVERA: [Indiscernible.]

8 Do you want to respond?

9 DR. HOWARD ZUCKER: 117 -- yes.

10 117 nursing homes already have visitation  
11 programs that we have put into place.

12 We have 209 that have had policies that are  
13 put forth.

14 We want to move forward.

15 I really do want to move this forward, I want  
16 to help. But I also would do not want it to spread.

17 The reason it goes back to the visitors'  
18 issues, they live in the community, they work in the  
19 community. Right? And I just don't want this to  
20 spread.

21 I recognize it. I am really, really  
22 empathetic about it.

23 But I am trying to tell you, I'm trying to  
24 balance two things.

25 We will set up -- we are working on --



1           SENATOR RIVERA: Thank you, Commissioner.

2           DR. HOWARD ZUCKER: -- all right.

3           SENATOR RIVERA: Thank you, Commissioner.

4           Senator Salazar, recognized for 3 minutes.

5           SENATOR SALAZAR: Thank you.

6           I am unable to -- oh, there we go -- to start  
7 my video.

8           So I actually want to follow up about the  
9 impact of the blanket legal immunity that was  
10 granted not only to nursing homes, but also to  
11 health-care facilities, like hospitals.

12           Nearly 70 percent of the nation's COVID-19  
13 deaths came from states, such as New York and  
14 New Jersey, that handed out early blanket legal  
15 immunity.

16           And while the legislature has since narrowed  
17 the scope of that immunity, there remains a period  
18 of time longer than [indiscernible] months for which  
19 the previous blanket immunity still applies.

20           Senator Biaggi referenced the egregious  
21 racial disparity in maternal morbidity in New York.

22           During what I'll call the "blanket immunity  
23 period," from April through part of July, a Black  
24 woman named Sha-Asia Washington died at  
25 Woodhull Hospital in my district.

1           And just because that case received national  
2           attention, Commissioner, are you familiar with  
3           Sha-Asia Washington's case?

4           DR. HOWARD ZUCKER: I'm not familiar with it  
5           specifically, although I have read a lot about  
6           different cases. So it is possible that I am and  
7           I don't recognize the name.

8           I've read all about these [indiscernible].

9           SENATOR SALAZAR: Certainly.

10          So, just briefly, Sha-Asia wasn't treated for  
11          COVID, but she was treated at -- because of where  
12          she was treated, and because she died on July 2nd,  
13          the medical providers involved in her death, you  
14          know, her anesthesiologist, for example, who had  
15          administered the epidural before she died in  
16          childbirth, within -- in an otherwise completely  
17          healthy pregnancy, the -- her care team still has  
18          blanket legal immunity.

19          Is -- in your opinion, is it acceptable that  
20          her care team has blanket legal immunity in this  
21          case, and that her family, for example, can't --  
22          doesn't have any recourse because of the previous --

23          DR. HOWARD ZUCKER: Right. So I --

24          SENATOR SALAZAR: -- [indiscernible]?

25          DR. HOWARD ZUCKER: -- I am here wearing my

1 doctor hat, public health hat. I'm not wearing my  
2 lawyer hat today. And I would not, as a -- but  
3 I will comment a little bit as a lawyer.

4 I will not comment on a case that I don't  
5 even know all the facts to.

6 So I recognize that. I feel for individuals.

7 But I want to go back to what you mentioned  
8 about this immunity.

9 Two things:

10 One is, this was not a Greater New York  
11 Hospital Association proposal, or whatever. And so,  
12 that, I think is an inaccurate statement.

13 But the second point is that, is that no one,  
14 not the department or anyone, will allow any kind of  
15 egregious behavior to happen, whether it's in a  
16 hospital or a nursing home or anywhere.

17 That is the premise long before coronavirus,  
18 and it will be long after coronavirus is gone.

19 And the bottom line is, that the objective  
20 here was to make sure that those who were working,  
21 they would be able to provide the care while we were  
22 in the upsurge of an absolutely unbelievable  
23 pandemic, which is, as I say, still going on.

24 I am still worried every day. I am working  
25 every day on this issue.

1           And the reality is, is that I don't want it  
2       coming back to New York.

3           And many of the questions that have been  
4       raised is, and my answers are, to make sure this  
5       doesn't come back to New York, or doesn't uptick in  
6       New York.

7           SENATOR SALAZAR:   Sure.

8           I do -- I realize that I just ran out of  
9       time.

10          I have one more question, if I may ask it?

11          SENATOR RIVERA:   10 seconds, really quickly,  
12       please.

13          SENATOR SALAZAR:   Thank you.

14          So we know that hired staff-to-patient ratios  
15       in nursing homes are directly related to the quality  
16       of care.

17          37 states have a higher average of hours of  
18       direct care than New York does.

19          New York is one of only 12 states that has no  
20       minimum standard for hours of care per staff in  
21       nursing homes specifically.

22          Do you think it's acceptable that New York,  
23       by that metric, has among the lowest standards of  
24       care in nursing homes?

25          DR. HOWARD ZUCKER:   Well, number one, I will

1 get back to you about the details, because I want  
2 you -- you've provided me one piece of information  
3 and asked me to respond to it.

4 And I actually like to have all the facts and  
5 the data before I answer a question like that.

6 SENATOR SALAZAR: Thank you.

7 SENATOR RIVERA: All right, thank you,  
8 Senator.

9 Assembly.

10 ASSEMBLYMEMBER BRONSON: Yes, the next  
11 questioner we have is Assemblymember Billy Jones.

12 Assemblymember, you have 3 minutes.

13 ASSEMBLYMEMBER JONES: Yes.

14 Okay?

15 Thank you.

16 Thank you, Mr. Commissioner, for being here.

17 I'm going to go back to the visitations to  
18 our nursing homes.

19 Can you tell me the percentage of nursing  
20 homes that meet the threshold for the July 10th  
21 criteria that -- from the guidelines that you put  
22 down?

23 What is the percentage of nursing homes that  
24 are able to meet that threshold right now?

25 DR. HOWARD ZUCKER: I'd have to get back to

1       you.

2               117 have put -- that we have opened up some  
3 form of visitation to, 209.

4               I probably have in it my papers.

5               Keep asking your questions and I'll take a  
6 look. All right?

7               ASSEMBLYMEMBER JONES: Okay, well, the  
8 percentage that we had originally a couple of weeks  
9 ago was 12 percent; 12 percent of our nursing homes  
10 could meet that criteria.

11              That's not a very -- a very high number --  
12 or, a high percentage of nursing homes that can meet  
13 this.

14              My issue with this is that, obviously, like  
15 many of my colleagues here on this hearing, we're  
16 hearing from the family members, over and over and  
17 over again, that they cannot get visitation to these  
18 facilities. They can't get that human interaction.

19              It's been mentioned by several of my  
20 colleagues.

21              You know, people are, literally, dying of  
22 depression, and lonesome. Their families are  
23 feeling -- you know, they're suffering through this.

24              I hear heartbreaking stories every single  
25 day.

1           We need to get a policy in place and some  
2       guidelines in place, obviously, in a safe manner, to  
3       let these family members interact with their loved  
4       ones.

5           We have mentioned other things, through  
6       technology, and what have you. And it's been  
7       mentioned by my colleagues, and I think you would  
8       agree, a lot of our elderly residents are not that  
9       great with the technology. So we have our hiccups  
10      there as well.

11          We need to do this.

12          I have another question.

13          Who provides the guidance, do you provide the  
14      guidance, for DOCCS, for their visitation, which  
15      will be going into effect this week?

16          DR. HOWARD ZUCKER: Excuse me.

17          My report says, what I have here is,  
18      34 percent. So that's higher than what you have.

19          We are going to look at the issues of  
20      technology.

21          And we have been, and that's where that  
22      \$1 million for the program to develop technology, to  
23      help those in nursing homes connect with relatives.

24          We will move forward.

25          I am a big fan of technology. And I will

1 figure out a way to adapt wherever is necessary to  
2 help those in the nursing homes.

3 And with regard to DOCCS, I have to check the  
4 answer on that.

5 ASSEMBLYMEMBER JONES: Do you have, does DOH  
6 provide the guidance to DOCCS?

7 DR. HOWARD ZUCKER: Well, I have to check  
8 whether -- whether we -- we provide assistance to  
9 DOCCS, and we've been working with them, and we've  
10 done testing in the correctional facilities as well.

11 And the guidance -- a lot of guidance has  
12 come out by the department of health, that goes  
13 around to other agencies as well. But then those  
14 also issue their own guidance.

15 ASSEMBLYMEMBER JONES: Okay.

16 DR. HOWARD ZUCKER: [Indiscernible  
17 cross-talking] --

18 ASSEMBLYMEMBER JONES: I guess my point -- my  
19 point here is, you know, long before COVID hit, and  
20 going through this, many of our family members that  
21 have loved ones in nursing homes, they feel like the  
22 forgotten ones. And they feel like the death toll  
23 that's happened in these nursing homes, and the  
24 carnage, really, that's happened, they're being  
25 punished now through these visitation processes or



1 policies, that they can't see their loved ones.

2 At the same time --

3 SENATOR RIVERA: Thank you, Assemblymember.

4 ASSEMBLYMEMBER JONES: -- where we can put  
5 out guidance for DOCCS to do this, we should be able to  
6 do this for our loved ones in our nursing homes and  
7 for their family.

8 SENATOR RIVERA: Thank you, Assemblymember,  
9 thank you, Assemblymember.

10 Moving on to the Senate, Ranking Member in  
11 Health, Senator Gallivan, you're recognized for  
12 5 minutes.

13 SENATOR GALLIVAN: Thank you, Chairman.

14 Commissioner, on June 25th there was a  
15 "New York Post" article, where you were quoted, in  
16 responding to a letter that 22 members of the  
17 Majority had sent to you regarding -- a number of  
18 their recommendations regarding nursing homes.

19 When did you first become aware of the letter  
20 that was sent to you?

21 DR. HOWARD ZUCKER: I'd have to go back on  
22 that, I really would. There's so many letters that  
23 come in.

24 So, June 25th, even though it's only  
25 two months ago, whatever, or six weeks ago, it feels

1       like a century ago to me. So I'd have to find out  
2       when it was.

3               SENATOR GALLIVAN: Would it be fair to say  
4       that you likely received it near that time, and your  
5       comments came about as a result of the receipt of  
6       it?

7               DR. HOWARD ZUCKER: Well, it depends on --  
8       I mean, if it was sent by e-mail, you know, it  
9       comes through and then it gets processed.

10              And if it was sent by regular mail, there's  
11      another process to it.

12              But I'd have to go back. I don't want to  
13      comment, because I don't want to tell you something,  
14      that, yes, I got it the next day or so.

15              I just don't remember.

16              SENATOR GALLIVAN: Understood.

17              Well, back on March 20th, the governor  
18      announced Matilda's Law. And that, in particular,  
19      established rules for vulnerable populations, such  
20      as seniors. And I think at the time, that law  
21      classified "seniors" as the population over 70 years  
22      old.

23              And, of course, it shows a recognition of the  
24      severe impact the virus could have on a population  
25      like that.

1           But it doesn't seem at all that Matilda's Law  
2       applied to nursing homes, all of whom fit the  
3       definition of that "vulnerable population."

4           Can you explain how Matilda's Law came to be,  
5       and why it did not include provisions regarding  
6       nursing homes?

7           DR. HOWARD ZUCKER: I can speak.

8           I can tell you it came to be because  
9       Matilda's Law is named after the governor's mom.  
10      And he has recognized what many of us recognize,  
11      from the challenges of -- for those who are older,  
12      and to make sure that their needs are met.

13          I'd have to go back and go through the  
14      details of Matilda's Law. But I can tell you that  
15      the governor's commitment to the nursing homes, like  
16      my own, and the rest of the department, and of all  
17      of us, is paramount.

18          SENATOR GALLIVAN: So Matilda's Law did not  
19      deal with nursing homes?

20          DR. HOWARD ZUCKER: Matilda's Law, I will go  
21      back and listen, but it required -- it required that  
22      there be, you know, masks available for -- to be  
23      sure, that if you're with somebody, that you are  
24      wearing those masks, to make sure that -- if there's  
25      any face-to-face interaction, to make sure that

1       you're not exposing someone to this virus.

2               And then there are other components of it as  
3       well.

4               SENATOR GALLIVAN: So in early March, the  
5       focus from the executive branch was on the hospital  
6       system, and hospital system being prepared,  
7       including providing for necessary PPE and staff.

8               But it didn't appear that the same measures  
9       were being taken at the same time for nursing homes  
10      and assisted-living facilities.

11              Why not?

12              GARRETT RHODES: Well, I'll read from the  
13      department of health's March 13th health advisory.

14              COVID-19 cases in nursing homes: Suspend all  
15      visitors. Health and temperature checks required  
16      for everyone who enters the building. Face masks or  
17      masks required for working with residents. The  
18      cohorting of residents with COVID-19 to dedicated  
19      health-care professionals under the direct-care  
20      providers.

21              This is March 13th.

22              The morning of March 13th, New York State  
23      had not reported a single death yet at the time.

24              There were just several hundred cases when  
25      the department of health got this guidance.

1           So to suggest that there wasn't activity and  
2           inaction being [indiscernible], it's not true.

3           SENATOR GALLIVAN: All right.

4           After the issuance of the March 25th guidance  
5           regarding nursing homes, nursing homes were directed  
6           to contact the department of health in the event  
7           they could not provide adequate care for a patient.  
8           And they were told that the department of health  
9           would be helpful.

10          If I understand you correctly, you said  
11          that -- Commissioner, that nobody contacted you.

12          But on April 9th, Cobble Hill Health Center  
13          in Brooklyn, a nursing home there, reported that  
14          they had asked state officials if COVID-19 patients  
15          could be transferred elsewhere.

16          And they were denied.

17          How come?

18          DR. HOWARD ZUCKER: The people -- if someone  
19          needs to be transferred to another facility, we  
20          would make that happen.

21          And the reality is, is that the issues -- if  
22          someone called us and said, I would like someone to  
23          be moved to another place, or they needed PPE, or  
24          they needed other assistance, or they needed staff,  
25          we were there to provide that to them.

1           So, you know, everyone keeps saying that they  
2           wanted to move someone. But sometimes people think  
3           about it, but they didn't reach out to do it.

4           Whether they thought that they could not  
5           reach out is just a fallacy. We were available for  
6           anything that needed to come forward.

7           SENATOR GALLIVAN: I would just say, if  
8           I could follow up on that, not with a question, but  
9           just to that point, that it was reported in the  
10          "New York Post" --

11          SENATOR RIVERA: Senator Gallivan, I'm sorry.  
12          Your time is up.

13          Your time is up right now [indiscernible  
14          cross-talking] --

15          SENATOR GALLIVAN: Okay, Chairman.  
16          Thank you.

17          SENATOR RIVERA: Assembly.

18          DR. HOWARD ZUCKER: Just the thing -- the  
19          Cobble Hill issue was about staffing, if that's what  
20          you're --

21          ASSEMBLYMEMBER BRONSON: All right, moving  
22          on --

23          DR. HOWARD ZUCKER: I mean, it's addressed --  
24          it was addressed.

25          ASSEMBLYMEMBER BRONSON: -- let's move on to

1       Assemblymember, Ranking Member, Jake Ashby.

2               My apologies. I took you out of order.

3               But you're up now, and you have 5 minutes.

4               ASSEMBLYMEMBER ASHBY: Thank you,  
5       Mr. Chairman.

6               Thank you, Commissioner.

7               Considering the massive undertaking of  
8       contact tracing, and all of the efforts that have  
9       been put into this, it seems kind of strange to me  
10      that we are going about this in, really, a great way  
11      for everybody across the state.

12              Shouldn't that extend to our nursing home  
13      residents that went to the hospital?

14              I mean, if we're able to track people all  
15      over the state, and make sure that, you know, they  
16      haven't come in contact with this person, or, if  
17      they went to this party, and they tested positive,  
18      and we have a positive location on them, how is it  
19      that we don't have a real-time number in nursing  
20      home deaths for people who were -- started from a  
21      nursing home and went to a hospital?

22              DR. HOWARD ZUCKER: Well, there's two parts  
23      to this. Right?

24              One is about the contact tracing, what's the  
25      objective here?

1           The objective is to prevent the spread of  
2       this disease into the community.

3           ASSEMBLYMEMBER ASHBY:   Commissioner --  
4       Commissioner --

5           DR. HOWARD ZUCKER:   [Indiscernible  
6       cross-talking] --

7           ASSEMBLYMEMBER ASHBY:   -- Commissioner, with  
8       all due respect, I understand the intent of it.

9           But the basic principles of it is tracing  
10      people.   Right?   You're following people.

11          And the same principle can be applied to  
12      nursing home residents that were discharged from  
13      their facility and then admitted to a hospital.

14          And I understand that it may be difficult to  
15      track that down, whether it wasn't through the  
16      admissions department through a hospital.

17          But, even going through, as you mentioned,  
18      the 613 nursing homes that we have around the state,  
19      they would have a record of whether or not that  
20      person were discharged from their facility or not.  
21      Right?

22          DR. HOWARD ZUCKER:   Well, and what I'm saying  
23      is, is that, that information, I want to be sure  
24      that we are not double-counting individuals, that  
25      someone didn't die for a different reason,



1       because -- so that's what we're trying to do.

2               If someone goes into the hospital from a  
3       nursing home, and then they die, or, they -- or --  
4       and they're sick in the hospital, and someone says,  
5       well, they died because of COVID, well, maybe they  
6       died because of something else.

7               I mean, this is something which I mentioned  
8       about earlier, about pneumonia. Right?

9               The presumption by CDC was that, they died,  
10       the 27 percent of people dying in those two months,  
11       was because of pneumonia.

12              And as the director of the CDC said,  
13       "presumed to be coronavirus." Right?

14              But what I want to know is exactly, when  
15       someone dies in the hospital, what did they die  
16       from?

17              Did they --

18              ASSEMBLYMEMBER ASHBY: Okay, [indiscernible  
19       cross-talking] --

20              DR. HOWARD ZUCKER: -- were they  
21       [indiscernible cross-talking].

22              So I understand. [Indiscernible  
23       cross-talking] --

24              ASSEMBLYMEMBER ASHBY: All right,  
25       Commissioner, I understand the reluctance to say

1       whether or not they died from COVID or not.

2               Do we have a number as to how many people  
3       were discharged from nursing homes and sent to a  
4       hospital?

5               DR. HOWARD ZUCKER:   And that's the  
6       information that has to come, you know, nursing  
7       homes-reported information.

8               I want to see what that is, and make sure --

9               ASSEMBLYMEMBER ASHBY:   Well, we don't have --  
10       we don't even have that information.

11              GARRETT RHODES:   First of all, we have data.  
12       We put out more data than any other state.   We're  
13       one of nine states that reports presumed and  
14       confirmed deaths.

15              Multiple states do not report anything to do  
16       with nursing homes.

17              There's three parts of it: there's collecting  
18       the data, validating the data, and reporting the  
19       data.

20              We do not release data that we're not  
21       100 percent sure is accurate.

22              We've had reports of deaths come in from  
23       nursing homes that say, someone died of COVID in  
24       December.

25              Now, maybe COVID was spreading wildly in

1 December that we didn't know about. There's a lot  
2 we haven't -- we don't know [indiscernible  
3 cross-talking] --

4 ASSEMBLYMEMBER ASHBY: With all due respect,  
5 that wasn't my question.

6 My question was: Do we have a figure of how  
7 many were discharged from a nursing home and sent to  
8 the hospital, regardless of diagnosis, but during  
9 that time, if we were tracking that, or they were  
10 suspected or being treated for COVID, because we're  
11 looking at that right now as well?

12 GARRETT RHODES: We collected a lot of  
13 different data. But the key is, to be able to make  
14 sure that it's accurate.

15 And we will not give ballparks, we will not  
16 give ranges, we're not going to give estimates.  
17 We're going to give the actual data.

18 We need to collect it. We need to go back to  
19 the nursing homes, poll them and validate this data,  
20 and release it on a rolling basis.

21 ASSEMBLYMEMBER ASHBY: Okay.

22 All right, my second question is: If the  
23 March 25th guidance is still standing, why is it  
24 not up on the department of health's website  
25 anymore?

1 DR. HOWARD ZUCKER: I will check to see  
2 what's where.

3 It's an active guidance with a lot of  
4 guidances that are out there.

5 GARRETT RHODES: I printed it out this  
6 morning, so it was up [indiscernible].

7 ASSEMBLYMEMBER ASHBY: I mean, I don't  
8 understand.

9 If you're making the clarification that this  
10 is still standing guidance from the department of  
11 health, and I'm not sure why it was removed in the  
12 first place if it was still standing, why is it not  
13 back up?

14 DR. HOWARD ZUCKER: Well, there's an updated  
15 guidance that is online.

16 If Garrett said that he just printed it out  
17 this morning, then it must be there.

18 ASSEMBLYMEMBER ASHBY: All right.

19 Regarding -- regarding the transference of  
20 nursing home patients, on May 12th, the media  
21 reported a resident of the Grand Rehabilitation  
22 Nursing Center in New York, which is in my district,  
23 had been transferred to a facility in South Point  
24 without notifying the family.

25 Were nursing homes permitted to move

1 residents without notifying families?

2 And is the department of health notified  
3 residents who are moved?

4 DR. HOWARD ZUCKER: Nobody -- you know, this  
5 is an ongoing pandemic, as I've said. And people  
6 need to notify their relatives.

7 And if something happened where a relative  
8 was not notified, then we will look into that, that  
9 specific case, or any other case of that nature.

10 A relative should be contacted.

11 And I will find out [indiscernible].

12 ASSEMBLYMEMBER ASHBY: And I understand that.  
13 And I --

14 SENATOR RIVERA: Assemblymember, I'm sorry.  
15 Your time is done.

16 ASSEMBLYMEMBER ASHBY: Thank you, Chair.

17 We're moving on to the Senate, recognizing  
18 Senator Helming for 3 minutes.

19 SENATOR HELMING: Thank you, Senator Rivera.  
20 Commissioner, thank you for your testimony  
21 today.

22 For about the past two-plus hours now, I've  
23 listened, Commissioner, as you have responded to  
24 various questions.

25 I've heard statements that you've made, such

1 as, "let's get through this pandemic," and, "we will  
2 make decisions as the information becomes  
3 available."

4 I have to say, as someone who has worked my  
5 way through college as a direct-care provider at a  
6 nursing home, and later in life I served as the  
7 director of a senior living facility, that I find  
8 these responses extremely troubling.

9 The issues surrounding the quality of care in  
10 our nursing homes are not only complex, as we all  
11 know, but they are longstanding. They've been  
12 around for a number of years.

13 It is unacceptable, it's frustrating, and  
14 it's heartbreaking for many New Yorkers, including  
15 my family, who lost a loved one living in a nursing  
16 home during this pandemic.

17 It's just so unbelievable that the great  
18 state of New York was not better prepared to protect  
19 our citizens.

20 We've all heard of all the issues, like  
21 I said, that there have been around forever, issues  
22 like infection-control lapses.

23 I've heard stories about:

24 The lack of PPE.

25 Nursing home care providers wearing garbage

1       bags or used gowns.

2               The lack of testing protocols and test  
3       services.

4               Inadequate and underpaid staffing.

5               Lack of collaboration; no exchange between  
6       the State and our nursing home representatives.

7               And, the lack of communication, that I also  
8       experienced, between nursing homes and residents and  
9       their residents' families.

10              Again, these are issues that have been around  
11       forever, and the pandemic is shining a light on how  
12       significant and how prevalent these shortcomings  
13       really and truly are.

14              So, Commissioner, you mentioned that there  
15       were 1300 nursing home inspections that were done,  
16       and yet, in spite of that, in spite of all these  
17       things you're talking about that are being done, we  
18       have lost somewhere between 6500 and 12,000 nursing  
19       home residents.

20              And it just -- it leads me to ask you, you  
21       know, without pointing the finger at the federal  
22       government, what resources does the DOH, what  
23       resources do you need, to do a better job of  
24       protecting our senior citizens?

25              More financial resources?

1 More staffing?

2 And the other question I want to ask: Are  
3 the inspection reports that have been done, are  
4 those available to the public?

5 For a request that's been submitted, we have  
6 gotten generic responses to.

7 So I'd like to know if those reports are  
8 available.

9 DR. HOWARD ZUCKER: All right. So I think --  
10 I hear what you're saying.

11 I will tell you this state and the department  
12 of health has been incredibly aggressive on this  
13 issue.

14 We have provided -- and I need to reiterate  
15 this: We have provided 14 million pieces of PPE.  
16 We offered 96,000 volunteers.

17 SENATOR HELMING: Dr. Zucker, I'm sorry,  
18 I have to interrupt.

19 But I have had numerous calls to your office  
20 about the lack of PPE in our rural Upstate New York  
21 areas.

22 And the fact that you said earlier that that  
23 PPE was given to the counties to distribute, I can  
24 tell you, I have the timelines, the dates, and  
25 everything, that that did not happen in a timely



1 fashion. And, in some cases, it didn't happen until  
2 it was much too late.

3 DR. HOWARD ZUCKER: What I'm telling you is,  
4 that the -- when information came to us that we  
5 needed to provided, we provided it out to the  
6 community.

7 This is an ongoing pandemic.

8 Obviously, I bring you back to the PPE issue  
9 because, at the beginning of this pandemic, when  
10 this was already in the community and in the nursing  
11 homes and in our lives, to say the least, the fact  
12 was, that this was -- that this -- we were looking  
13 for more PPE. And we got [indiscernible].

14 Senator Rivera is signaling me.

15 SENATOR HELMING: And I'll just say, really  
16 quickly --

17 SENATOR RIVERA: Thank you -- no, thank you,  
18 Senator --

19 SENATOR HELMING: -- in Seneca County we had  
20 no test kits.

21 SENATOR RIVERA: -- your time is up, your  
22 time is up.

23 We've got to squeeze in a couple more.  
24 Assembly.

25 ASSEMBLYMEMBER BRONSON: Uh, yes. The next

1       questioner will be Assemblymember Linda Rosenthal,  
2       and you have 3 minutes.

3               ASSEMBLYMEMBER ROSENTHAL:   Okay.   Thank you.

4               Thank you, Commissioner.

5               I have a facility in my district that is --  
6       oops.

7               Okay.

8               Sorry.

9               I have a facility in my district that is an  
10       assisted-living center, as well as a rent-stabilized  
11       building.

12               So when we called up DOH to find out if there  
13       were any rules and regulations governing the  
14       assisted living, which has a very elderly  
15       population, they said, "That's not our purview."

16               Whose purview is that?

17               And you can just answer, you know, we don't  
18       have one, or, it's someone else's.

19               DR. HOWARD ZUCKER:   I will get you the  
20       details of where this falls within -- within the  
21       agencies out there on this.

22               ASSEMBLYMEMBER ROSENTHAL:   Okay.

23               Because that was very troubling.

24               I have another rehab and nursing facility  
25       where there were at least 44 confirmed and

1 17 suspected deaths.

2 At a certain point they lost key workers; for  
3 example, social workers. So they consolidated all  
4 of the COVID patients on one floor.

5 A constituent I've worked with for years was  
6 never told, he didn't know where his mother was.

7 And I wonder, did the DOH reach out to any of  
8 these nursing homes to tell them what the protocol  
9 was if they were lacking staff?

10 DR. HOWARD ZUCKER: Constantly.

11 We constantly reached out to the nursing  
12 homes.

13 And as we talk about these guidances, there  
14 are guidance documents that have gone out,  
15 124 different guidance documents that came out of  
16 the department --

17 ASSEMBLYMEMBER ROSENTHAL: All right, can you  
18 give me an example, how often was each one called?

19 DR. HOWARD ZUCKER: -- I -- on a regular  
20 basis they were called. I can't tell you exactly.

21 But I do know that I personally have called  
22 one nursing home, probably a couple weeks ago,  
23 five or six times during that week, and been in  
24 contact with them constantly when there was a  
25 concern.

1           And that's just one, and I could tell you  
2       others.

3           And while managing the pandemic, when I hear  
4       something that was of concern, not only did my team  
5       address it, but I also picked up the phone and  
6       called them.

7           So to say that we are not aggressive on this  
8       is just not true.

9           ASSEMBLYMEMBER ROSENTHAL: No, I didn't say  
10      that.

11          I just asked how -- who called, how often did  
12      they call?

13          And you told me you called.

14          Okay, my next question --

15          DR. HOWARD ZUCKER: I will tell you others  
16      did as well.

17          If there's a specific one, I'll make sure  
18      we'll find out.

19          ASSEMBLYMEMBER ROSENTHAL: Okay.

20          -- and when I called around to facilities in  
21      my district, they said they had no idea how to get  
22      PPE. And as a result, many did not have PPE for the  
23      longest time.

24          When did DOH contact them to tell them that  
25      there was PPE available?

1           And did they -- did you ship it to them?

2           How did you deal with supplying the homes  
3           that did not have access to PPE, with PPE?

4           What did you tell them to do in the absence  
5           of their having PPE?

6           DR. HOWARD ZUCKER: So we work -- first,  
7           I want to add one more thing about this, because you  
8           keep saying whether the department reached out to  
9           the nursing homes.

10          The nursing homes are also part of an  
11          association, and we worked with the leadership  
12          within the association. And they also came to us  
13          and said, this is what we need.

14          So if there was something they needed, I can  
15          get you the details of the specific group of the  
16          PPE. Then I will let you know exactly what was done  
17          for that group.

18          We also told people about cohorting.

19          SENATOR RIVERA: [Indiscernible.]

20          DR. HOWARD ZUCKER: We talked about  
21          verified -- listen, sorry.

22          Thank you.

23          SENATOR RIVERA: Thank you, Commissioner,  
24          because I know your time is limited.

25          We're moving on to the Senate.

1 Thank you.

2 Assemblymember -- Senator Thomas, recognized  
3 for 3 minutes.

4 SENATOR THOMAS: Hi, Commissioner. How are  
5 you?

6 DR. HOWARD ZUCKER: I'm all right.

7 SENATOR THOMAS: Good.

8 DR. HOWARD ZUCKER: How are you?

9 SENATOR THOMAS: Glad that you can hear me.  
10 All right, so my question -- I have a number  
11 of questions.

12 I'm going to start with Article 81:  
13 guardianship.

14 Hopefully, you're familiar with that.

15 So COVID-19 has had a significant impact on  
16 Article 81 guardianship cases.

17 As you probably know, or if I can refresh  
18 some of your memory here, guardianship is a legal  
19 arrangement, where a Court gives a person the legal  
20 right to make decisions for an incapacitated person.

21 So for the duration of COVID-19, Article 81  
22 cases have become unable to move forward because  
23 court evaluators and attorneys have been unable to  
24 meet with their clients in nursing homes.

25 You know, in June, nursing homes were allowed

1 family members to visit.

2 This is a yes-or-no answer: Are non-relative  
3 visitors currently allowed in nursing homes?

4 DR. HOWARD ZUCKER: Among the nursing homes  
5 where I mentioned there is visitation, they are  
6 allowed in there, visitors are allowed.

7 Regarding the specific article that you're  
8 referring to, I'd have to find out how they can have  
9 them go in.

10 But there are opportunities for them to reach  
11 out to them through telehealth.

12 So I'm not sure why they haven't been able to  
13 be contacted with those -- those to address some of  
14 their concerns.

15 SENATOR THOMAS: I mean, given your  
16 responses, I'm pretty sure you're not familiar with  
17 how this works.

18 So, you know, are there any steps how the  
19 department of health is taking to carve out some  
20 sort of like rule for court evaluators and attorneys  
21 so that incapacitated persons in the care of nursing  
22 homes can complete the guardianship process?

23 Is there any [indiscernible cross-talking] --

24 DR. HOWARD ZUCKER: So I -- but I don't know  
25 if there are specific rules. And it may be in a

1 different part of one of the other agencies about  
2 this.

3 If it's within my department, I'll find out  
4 from the lawyers.

5 I will tell you that there is the  
6 opportunity, as I said before, to do FaceTime with  
7 the nursing homes.

8 So you're saying that that's not possible?

9 I'm not sure why you're saying it.

10 SENATOR THOMAS: It's not about it not being  
11 possible.

12 It takes a little bit more than a Zoom  
13 conference to get things like this done.

14 But I'll go away from the Article 81.

15 Let's talk about nursing homes and what they  
16 want [inaudible] --

17 DR. HOWARD ZUCKER: Doesn't this fall within  
18 the Office of the Court Administration?

19 I think this may be a legal thing. Right?

20 SENATOR THOMAS: Yes, it is a legal thing.

21 It is a legal thing.

22 DR. HOWARD ZUCKER: Right, so it may fall in  
23 the Office of the Court -- the OCA (the Office of  
24 the Court Administration).

25 SENATOR THOMAS: Okay.



1           So during the whole COVID-19 crisis, we're  
2           still going through it, with nursing homes, you  
3           talked about how, you know, masks and other  
4           equipment were sent to nursing homes.

5           Now, were there any ventilators that were  
6           sent to nursing homes?

7           DR. HOWARD ZUCKER: Well, nurse -- if someone  
8           is ill, this was -- well, this goes back to a very  
9           important point -- and I see the time  
10          [indiscernible] -- is that, when someone is ill in a  
11          nursing home, and they're going to be transferred to  
12          a hospital where they're going to provide the care,  
13          you need to provide the care, tailor the care, to  
14          where it's needed.

15          And I think this is a really important point  
16          because, many of those who are in nursing homes who  
17          are frail, they will sit there for a couple days  
18          because, often, when someone realizes someone is  
19          sick, they may not realize that they have  
20          coronavirus.

21          Ultimately, they get transferred to the  
22          hospital because they're critically ill, or ill.

23          SENATOR THOMAS: Has the department of health  
24          or the governor's office ever sent ventilators down  
25          to nursing homes?

1 DR. HOWARD ZUCKER: They don't go to nursing  
2 homes.

3 If you're that sick, you need to go to a  
4 hospital.

5 Nobody's going to be able to manage someone  
6 that sick in a nursing home.

7 And I would not ever want someone to be cared  
8 for, that ill, where they need to be on a ventilator  
9 in an ICU, in a nursing home.

10 It just wouldn't be the appropriate medical  
11 care.

12 SENATOR RIVERA: Thank you, Senator.

13 Thank you, Senator. Your time is up.

14 Thank you, Senator.

15 Assembly.

16 ASSEMBLYMEMBER BRONSON: Yes, we recognize  
17 Assemblymember Aileen Gunther. You have 3 minutes.

18 SENATOR RIVERA: And I will -- and one  
19 thing -- one announcement that I would like to make,  
20 this is the last speaker. The Commissioner has to  
21 leave after the speaker.

22 A lot of people will be angry.

23 That is the reality as we are right now.

24 So, Ms. Gunther, you have -- you're  
25 recognized for 3 minutes.

1 ASSEMBLYMEMBER BRONSON: Ms. Gunther?

2 SENATOR RIVERA: Assemblymember?

3 Going once.

4 Going twice.

5 ASSEMBLYMEMBER ASHBY: I'll speak again.

6 SENATOR RIVERA: Assemblymember Bronson, do  
7 you have somebody else available immediately to ask  
8 for 3 minutes?

9 If not, we have to stop.

10 ASSEMBLYMEMBER BRONSON: Yes, let's go to  
11 the next assemblymember, Ed Braunstein. You have  
12 3 minutes.

13 SENATOR RIVERA: All right. Thank you.

14 You have 3 minutes.

15 ASSEMBLYMEMBER BRAUNSTEIN: Hold on one sec.

16 Okay.

17 I just snuck in. I didn't think I was going  
18 to get a question.

19 I think, starting right at the beginning of  
20 the hearing, Senator Skoufis brought up what a lot  
21 of people have concerns about, is the definition of  
22 "nursing home deaths."

23 And I think part of the [inaudible] with  
24 confusion of the report, is that we're using a  
25 definition of "nursing home deaths" that other

1 states aren't using.

2 So I guess I have two questions.

3 One is:

4 In the future we do anticipate having the  
5 data of how many people came from a nursing home and  
6 died in a hospital.

7 Do we anticipate amending the report to  
8 reflect that new data?

9 And if, in the commissioner's estimation,  
10 will that new data change your conclusions of the  
11 report, or do we believe that the conclusions of the  
12 report will remain the same if we were to enter that  
13 new data?

14 DR. HOWARD ZUCKER: I think the conclusion of  
15 the report will remain the same on that.

16 ASSEMBLYMEMBER BRAUNSTEIN: Do we anticipate  
17 getting that data and amending the report to reflect  
18 that data?

19 DR. HOWARD ZUCKER: The data, like I said,  
20 I know that you -- at the beginning I said I know  
21 you want a number, and I wish I could give it to you  
22 at this point.

23 But I will get you a number, yes, but I want  
24 to be sure that that data, that we've looked at  
25 everything, and made sure that [indiscernible] that

1       they weren't double-counted.

2               ASSEMBLYMEMBER BRAUNSTEIN: I think a lot of  
3       us may reserve judgment about the conclusions of the  
4       report until we have an accurate view of all of the  
5       data.

6               And we're missing a significant amount of  
7       people who contracted COVID in a nursing home and  
8       then later died in a hospital.

9               And I just think it would bolster the  
10       conclusions of the report if, at some point in the  
11       future, when you do have that data, maybe you can,  
12       you know, add it in the report, just to, you know,  
13       make sure that this report is accurate.

14              DR. HOWARD ZUCKER: I am confident about the  
15       data.

16              I hear what you're saying.

17              I will also say that in that report you will  
18       see that there is a curve that shows the deaths from  
19       the nursing homes and deaths in the community, and  
20       they line up.

21              And I suspect -- not suspect -- that I know  
22       that this will be the same.

23              GARRETT RHODES: And I will just add, we're  
24       updating this report down the road. We can include  
25       what the experience of other states has been.

1           Then this report came out, and I quote the  
2       Mary Mayhew, the Florida Agency for Health-Care  
3       Administration: [Indiscernible] doors to keep that  
4       virus from getting to our facilities. Our staff are  
5       human beings who have lives outside of these  
6       facilities.

7           Nursing home operator in Florida: The  
8       overwhelming majority of our staff members were  
9       testing positive or asymptomatic. An indigenous  
10      virus is very difficult to detect after the testing.

11           So it happened in other states. I think  
12      you're looking at [indiscernible] --

13           ASSEMBLYMEMBER BRAUNSTEIN: I believe with  
14      that new data, the conclusions in the report may, in  
15      fact, be the same.

16           It's just until we get that data, you know,  
17      I think we have to reserve judgment.

18           So thank you, Commissioner.

19           DR. HOWARD ZUCKER: May I add that, you know,  
20      in one of the slides I showed at the beginning,  
21      about Florida, California, and Texas, this situation  
22      about nursing homes is across the country.

23           We go back to some issues about different  
24      memos. But the reality is, other states may not  
25      have issued that memo, but they are seeing the exact

1 same thing that we saw in March about this.

2 And I think it's important to make a note of  
3 that.

4 SENATOR RIVERA: All right.

5 Thank you, Commissioner.

6 That concludes the first part, the first  
7 panel, of this hearing.

8 We will now be taking -- as was stated  
9 earlier by my co-chair, Dick Gottfried, we will be  
10 taking a 10-minute break for water and toiletries,  
11 and then we will be back.

12 Thank you, Mr. Commissioner.

13 We will be back in 10 minutes.

14 DR. HOWARD ZUCKER: Thank you.

15 (A recess commenced.)

16 (The hearing resumed.)

17 SENATOR RIVERA: Welcome back, everyone.

18 Thank you for that break.

19 Everything should be -- we're going to go  
20 through this -- that's the exact 10-minute timer --  
21 right? -- going off right there.

22 So next panel, Panel Number 2, will be:

23 Neil Heyman, president of the Southern  
24 New York Association;

25 And, Michael Balboni, executive director,

1 Greater New York Health Care Facilities Association.

2 If you are -- witnesses are both present,  
3 I believe that they are.

4 ASSEMBLYMEMBER GOTTFRIED: And do you each  
5 swear or affirm that the testimony you're about to  
6 give is true?

7 MICHAEL BALBONI: I do.

8 SENATOR RIVERA: All right, we may begin.

9 I guess, Mr. Balboni -- or, is Mr. Heyman --  
10 is Mr. Heyman here?

11 All right, Mr. Balboni, you may -- you may --

12 OFF-SCREEN TECHNICIAN: He is here. He is  
13 trying to un-mute.

14 SENATOR RIVERA: Oh, he is trying to un-mute.  
15 All right.

16 ASSEMBLYMEMBER GOTTFRIED: And while he's  
17 doing that, Mr. Balboni, do you swear or affirm that  
18 the testimony you're about to give is true?

19 NEIL HEYMAN: Did I successfully un-mute?

20 MICHAEL BALBONI: I do, Mr. Chairman.

21 ASSEMBLYMEMBER GOTTFRIED: Okay.

22 NEIL HEYMAN: Did I successfully un-mute,  
23 sir?

24 SENATOR RIVERA: You did.

25 NEIL HEYMAN: Okay.



1 ASSEMBLYMEMBER GOTTFRIED: And do you swear  
2 or affirm that the testimony you're about to give is  
3 true?

4 NEIL HEYMAN: I affirm.

5 ASSEMBLYMEMBER GOTTFRIED: Okay.

6 SENATOR RIVERA: Okay.

7 ASSEMBLYMEMBER GOTTFRIED: Fire away.

8 NEIL HEYMAN: Thank you very much.

9 I appreciate the opportunity to give  
10 testimony today.

11 My name is Neil Heyman.

12 I am the CEO of the Southern New York  
13 Association, whose members include 60 residential  
14 health-care facilities in New York City,  
15 Long Island, and Westchester.

16 I know this has been said before, but I'd  
17 like to emphasize at the outset that we are in the  
18 middle of fighting a pandemic.

19 We are all on the same side.

20 Our foe is the virus.

21 We are facing a situation unprecedented in  
22 living memory, and the crisis is continuing.

23 Everyone involved faced a steep learning  
24 curve as we all figured out the hard way what worked  
25 and what didn't.

1           Our task now, as I see it, particularly in my  
2           role, is not to cast blame or point fingers, but to  
3           continue moving forward, using the information we've  
4           learned, and then meeting and resolving the  
5           challenges as they arise.

6           As we all know, and it's been said before,  
7           residential health-care facilities were uniquely  
8           vulnerable, not just in New York as has been said,  
9           and the country, but the entire world.

10          These folks are elderly, medically-fragile  
11          people.

12          In these congregate facilities they live,  
13          eat, and socialize in close communal settings.

14          Staff provide such close hands-on care, which  
15          includes intimate activities such as dressing,  
16          bathing, transferring, and even toileting.

17          Nevertheless, our homes' dedicated staff have  
18          worked, and continue to work, around the clock to  
19          provide the residents with the care they need.

20          Now, working closely with the governor, the  
21          state health department, local health and emergency  
22          management authorities, New York's residential  
23          health-care facilities helped begin to show that the  
24          virus can be contained.

25          Now, our facilities' resiliency and ability

1 to react to the fast-moving crisis can help the  
2 state prepare to respond for the continuing  
3 pandemic, and the looming risk of a new wave of  
4 cases for other states and regions.

5 Now, some of the key takeaways that we have  
6 learned thus far, which will help us going forward,  
7 are as follows:

8 Facilities must be able to assure that their  
9 staff, residents, and any visitors have access to  
10 reliable high-quality PPE, even as New York is  
11 increasingly in competition with other states.

12 Right now, actually, facilities are having  
13 some difficulty trying to get N95 masks.

14 Regular testing of residents and staff is  
15 valuable if the test results are available within a  
16 reasonably prompt time frame.

17 Proper infection-control procedures can  
18 successfully contain the virus.

19 Adapting and enhancing infection-control  
20 protocols from in -- for influenza helped the  
21 nursing facilities to control the spread of  
22 COVID-19.

23 COVID-only units within facilities, as well  
24 as dedicated COVID-only facilities, can and should  
25 be used, and put together immediately as the

1 caseloads require them.

2 It is critical that facilities have resources  
3 available to them that will make it possible to  
4 locate, recruit, and retain adequate qualified  
5 staff.

6 This is particularly important if there is a  
7 surge in the COVID-19 cases.

8 There are many facilities that have empty  
9 units, and those units can be activated immediately  
10 if there's enough staff to take care of the  
11 residents in those units.

12 Residential health-care facilities must be  
13 integrated into the state's overall health-care  
14 response so that their space, equipment, and staff  
15 can take part in a coordinated solution.

16 Sufficient funding is needed for residential  
17 health-care facilities to both continue to operate  
18 and meet the high costs of the necessary pandemic  
19 response.

20 Over the years, Medicaid reimbursement rates  
21 have been cut by millions of dollars, reaching  
22 significantly below the cost of providing care.

23 This year, even before the pandemic, New York  
24 made further across-the-board cuts to nursing homes.

25 The nursing homes have coped with these

1 reimbursement cuts and with the, to date,  
2 unreimbursed costs of mass COVID testing, PPE, and  
3 increased staffing levels needed to cover staff  
4 without [indiscernible] quarantine.

5           However, without federal or State financial  
6 assistance, facilities will not able to sustain the  
7 effort to combat the virus.

8           If you combine a low census and increased  
9 costs, it could spell disaster.

10           Focused statistical data is invaluable in  
11 developing an effective health-care response, but  
12 time-compiling data is time away from residents.

13           So the State should identify and communicate  
14 the key data sets and reporting intervals it needs  
15 in advance as much as possible.

16           With the experience that they have gained and  
17 the procedures and protocols they have put in place,  
18 nursing facilities are preparing to care safely for  
19 new residents admitted from the hospitals and the  
20 community up to their pre-pandemic census levels,  
21 both for COVID as well as non-COVID patients.

22           Residential health-care facilities have the  
23 experience, dedication, resiliency, and adaptability  
24 to play had an important role in New York's ongoing  
25 pandemic response.

1           We look forward to building an effective  
2           collaboration with the State and other health-care  
3           participants.

4           Thank you very much.

5           SENATOR RIVERA: Perfect timing, Mr. Heyman.  
6           Senator, former, Balboni.

7           MICHAEL BALBONI: Good [indiscernible], and  
8           thank you very much, the chairmen of this very  
9           important hearing, thanks for doing this.

10           I can only imagine what it's like for all of  
11           you in the legislature to have to respond to your  
12           constituents in this incredible time of loss and  
13           stress, virtually, because I know many of you, and  
14           I know that you're hands-on and you like to talk to  
15           people directly.

16           I know that's very difficult in this time.

17           So let's get down to the questions here.

18           One of the things that I think many of you  
19           may have known, but some do not, is that not only am  
20           I the executive director of a nursing home  
21           association, but I'm also involved with the  
22           1199 Greater New York Health Fund. It's a benefit  
23           and pension fund.

24           And I also do collective negotiation --  
25           collective bargaining negotiations with the

1 1199 Union.

2 So I get a chance to do regular interface  
3 with the union, and so, the labor workforce, not  
4 only within the metropolitan area, but, frankly,  
5 throughout the state, it's a chief concern to me.

6 In addition to which, I do have a background  
7 that I think plays into this role, and I was a  
8 former homeland security adviser under two  
9 governors.

10 And that reminds me of how similar, where we  
11 are today, was in the days following 9/11.

12 You know, back then, we had never thought a  
13 terrorist attack would come and hit our local police  
14 forces.

15 Yeah, sure, we trained and designed to try to  
16 get at the root of crime and prevent that, but not  
17 counterterrorism.

18 Well, the same thing here.

19 We have a global pandemic that has come and  
20 visited at the doorsteps of our hospitals and our  
21 nursing homes.

22 And though, sure, decontamination -- or,  
23 contamination control is, in fact, something that we  
24 practice every single day in our health-care  
25 facilities.

1           We never thought we'd have to do it in this  
2 context.

3           And so what also followed 9/11 was this  
4 federal, state, local, dynamic of:

5           Well, who should provide the funding?

6           Where is the guidance?

7           What are the steps we need to take to  
8 prepare?

9           As a matter of fact, you know, the crisis and  
10 response for this pandemic actually started 20 years  
11 ago, when secretary of health and human services,  
12 Mike Levitt, came out and said, You know, we ought  
13 to prepare for the anthrax attacks to be doing these  
14 types of things.

15           And yet every administration has come out  
16 with plans, but the funding has not been there from  
17 the federal government.

18           Likewise, at the state, you know, you are so  
19 busy doing so many things as it relates to public  
20 health, that to be able to sit there and say, "we  
21 need to prepare at this time for this eventuality,"  
22 when there are so many other things we have to do,  
23 is very -- incredibly difficult.

24           Now, part of my world now, is I do tabletop  
25 exercise for enterprises, such as, you know, top 100



1 Fortune facilities, and also for enterprises, such  
2 as municipalities.

3 If I had said to the people back in February,  
4 you know, we're going to imagine a scenario where  
5 every single nursing home is going to go to two,  
6 three, four times X their personal protective  
7 equipment, everyone would have said, you're an  
8 alarmist.

9 You know, it's one of these things, actually,  
10 Mike Levitt said this, he said, You know, when you  
11 go out early before a pandemic and you say, you  
12 ought to protect yourselves this way, you're called  
13 Chicken Little. And then after the pandemic you're  
14 called -- well, you've been, frankly, irresponsible  
15 in not preparing more.

16 So that's the lens through which we must see  
17 all of the response, going forward.

18 We have to imagine, not a COVID-free  
19 environment, but, rather, an environment that has  
20 less opportunities for the transmission of disease.

21 And so we must think re -- reimagine health  
22 care.

23 Examples, you know, telehealth; things that  
24 we could do remotely.

25 Even thinking beyond that, about robotics.

1           You know, is there a place for robotics in  
2           the health-care industry?

3           These are the questions that, previous to  
4           this, really didn't get much traction.

5           Now I think it's imperative for all of us to  
6           do it.

7           Now, and the other thing is to understand  
8           what the dynamic is at a nursing home.

9           I'll tell you this: There is no normal day  
10          in a pandemic. Absolutely none.

11          All the assumptions you make are wrong.

12          The information you receive on a daily basis  
13          could be incomplete, could be inconsistent, could be  
14          contradictory, or could be wrong.

15          And so an industry that is this regulated,  
16          the constant communication back and forth, that  
17          communication changes.

18          Look at what is happening with disease.

19          We are still studying this disease, and  
20          I predict that we are not going to fully understand  
21          the breadth of the impact of this disease for years  
22          to come, because it still keeps on changing.

23          And imagine trying to run a nursing home with  
24          that type of background of information itself.

25          We have a lot of things to do.

1           We can talk to funding.

2           We can talk to personal protective equipment.

3           You've already taken a step to do that, and  
4       passing a law this year that requires 60 days of  
5       PPE.

6           We're going to seek to work with the  
7       governor's office to make sure that we have the  
8       right amount of PPE at the right time.

9           But we also need to recognize that there's  
10      more work to be done in terms of the whole  
11      health-care continuum.

12          Thank you, Mr. Chairman.

13          SENATOR RIVERA: Thank you, Mr. Balboni.

14          I recognize the Assembly for a first round of  
15      questions.

16          ASSEMBLYMEMBER BRONSON: I would ask my  
17      co-chairs and rankers, if you want to speak, if you  
18      would raise your hand.

19          But not seeing anyone at this point,  
20      Chair Gottfried, would you like an opportunity at  
21      this point?

22          ASSEMBLYMEMBER GOTTFRIED: Uh, yes. Thank  
23      you. Yeah, I was about to go raise my hand.

24          A couple of questions about staffing.

25          You know, when we talk about the "safe

1 staffing" legislation over the years, we are often  
2 told that there's really no evidence that enhancing  
3 staffing is -- you know, increasing staffing levels,  
4 makes any difference, which I've never understood.

5 Is -- are we learning in this pandemic that  
6 staffing levels have made a difference, and that  
7 increasing staffing levels would make a difference?

8 NEIL HEYMAN: If I might, I think that my  
9 view of that, Assemblymember Gottfried, is that what  
10 happens, when the crisis started, is that numbers of  
11 staff people become ill.

12 So instead of having the number of staff that  
13 we were supposed to have had, we had fewer. And  
14 that became a problem.

15 We were trying to get back to normal, so to  
16 speak, back to where we were. And we played  
17 catch-up for the first six or eight weeks.

18 So I think that the problem wasn't that we  
19 didn't have enough staff in the first place.

20 The problem was, as the pandemic caused the  
21 staff to become ill, we didn't have enough staff to  
22 proceed forward. And that became a crisis.

23 MICHAEL BALBONI: Chairman Gottfried, as you  
24 know, the staffing levels were a problem before the  
25 COVID. And so they've become even more pronounced,

1 as Neil had said, because, you know, a lot of  
2 different things came into play.

3 Not only did staff become sick, but there was  
4 fear, a realistic fear, of getting sick.

5 You don't have enough PPE to go to work. And  
6 so you had families of the staff saying, Don't go to  
7 work. Don't submit yourself to this.

8 This -- staffing is also something that we  
9 need to really examine.

10 You know, one of the things that we had  
11 looked at, and we were pretty successful at, was  
12 going to colleges, nursing schools, and saying,  
13 while somebody is training and learning to be a  
14 nurse, in these types of surge capabilities, we need  
15 to be able to put them into the workplace.

16 The problem, is that you can say that you've  
17 got a system in place, but you actually have to be  
18 able to look at how you put people in the nursing  
19 homes.

20 And, by the way, just walking in off the  
21 street, even if you have some nursing information,  
22 is not enough.

23 You've got to be integrated into the  
24 facility.

25 ASSEMBLYMEMBER GOTTFRIED: Some of your

1 facilities -- this is a question I guess for both of  
2 you -- are -- have organized labor in the facility.

3 I assume some don't.

4 Does having organized -- an organized  
5 workforce promote better morale, better stability,  
6 in the workforce?

7 Is it ultimately beneficial for the facility?

8 MICHAEL BALBONI: Chairman, it is essential  
9 to have a motivated workforce that is trained  
10 properly and has the right protective equipment.

11 That is -- when it -- no doubt the most  
12 important thing that you can do.

13 As you know, 80 percent of a nursing home's  
14 costs is associated with the personnel.

15 And so there's no way you can provide care  
16 without good staff who come to work, understanding  
17 that they have a mission to do and they can do it  
18 safely.

19 And there's just been a huge challenge;  
20 again, unprecedented health-care crisis.

21 We're still learning.

22 Look at how the strategies have changed,  
23 Chairman.

24 You know, the strategy initially were, okay,  
25 try to take the patients in, you try to keep them

1 away from other patients.

2 Now, especially testing and cohorting, that's  
3 something that is a relatively new strategy given,  
4 you know, the last couple of months.

5 So these are the things we need to take care  
6 of our staff as well.

7 ASSEMBLYMEMBER GOTTFRIED: The specific  
8 question is: Is it beneficial to have a  
9 union-organized workforce?

10 Does that help support morale and provide  
11 stability in your workforce?

12 NEIL HEYMAN: Yes, I think it does.

13 And, by the way, virtually, all the  
14 facilities are in the union.

15 Most of them are 1199, but there are other  
16 unions.

17 So it is, the large majority.

18 And, yes, we work closely with the union and  
19 union staff, particularly when this crisis hit.

20 We had conversations with union leadership  
21 because we understood the issues as they surrounded  
22 the staff, and we wanted to keep morale up.

23 So, overall, yes, working with the union and  
24 cooperating with them, and them with us, does work  
25 well.

1           And in this particular crisis it was very  
2    useful.

3           ASSEMBLYMEMBER GOTTFRIED:   Thank you.

4           SENATOR RIVERA:   All right.   Thank you,  
5    Assemblymember.

6           On our side, leading off with Senator May,  
7    recognized for 5 minutes.

8           SENATOR MAY:   Thank you.

9           And thanks for your testimony.

10          I wanted to ask about staff, we keep talking  
11    about staff.

12          So I gather some Canadian provinces have  
13    actually taken the step of barring their workers  
14    from working at more than one nursing home site at a  
15    time as a means of limiting spread.

16          Is that an option that you could envision  
17    here?

18          Do you have a sense of how many workers  
19    actually work at multiple sites?

20          And what would be needed in the way of  
21    support to supplement their income, or whatever, so  
22    that they could -- so that we could pull something  
23    like that off?

24          MICHAEL BALBONI:   So, Neil, let me just take  
25    a quick shot at this.



1           So before the DOH edict about not -- limiting  
2       visitation, a lot of the members in the downstate  
3       area decided to do that on their own.

4           As a part of that, they also recognized the  
5       fact that there are these journeymen staffers who  
6       are working in more than one facility, whether  
7       they're actual union employees, or they're agency  
8       employees. And we recognized kind of early on that,  
9       without testing, you don't know what someone might  
10      be bringing into a facility.

11          You then combine that with not enough PPE,  
12      and you really create a situation that is ripe for  
13      transmission.

14          So I think you're absolutely right, this is  
15      something that we should really try to stop from  
16      happening itself.

17          But, of course, that works within -- we have  
18      to partner with the union on that, to make sure that  
19      they understand the risks, that we understand the  
20      risks, and we can come up with a good protocol for  
21      that.

22          NEIL HEYMAN: I might add, by the way, if  
23      I could, that as the testing gets more -- becomes  
24      more sophisticated, and as we, you know, get more  
25      involved with the test kits that can actually

1 produce, virtually, instantaneous results that are  
2 accurate, and, hopefully, that will be the case  
3 sometime very soon, we could -- if we test people,  
4 we know that they're testing negative, that would  
5 prevent that spread, even if they went from home or  
6 community to the facility, or from facility to  
7 facility.

8 I think the key to this is knowing whether or  
9 not the person has the illness, as to whether or not  
10 they would be a danger.

11 And I think we can get to that point sometime  
12 in the near future and understand what the dangers  
13 are.

14 SENATOR MAY: Thank you.

15 And then I wanted to ask something that came  
16 up a lot in the previous questioning of the  
17 commissioner.

18 Balancing the -- the just outright saving of  
19 lives in the pandemic, and the quality of life in  
20 the nursing homes, which is often also a determinant  
21 of life expectancy and health in its own right, can  
22 you talk about how you are thinking about this  
23 balance, like, reducing isolation, advocating for  
24 more visiting or less visiting?

25 How do you balance that out in your own mind

1 and in your own practice?

2 NEIL HEYMAN: That's a very [indiscernible  
3 cross-talking] --

4 MICHAEL BALBONI: [Indiscernible  
5 cross-talking], you know, there's got to be a  
6 pandemic plan.

7 That was a very good bill -- very good law  
8 that you passed, and a part of that is the  
9 communication strategy.

10 You know, again, this is something we haven't  
11 had to do before.

12 So the inclusion of technology, to be able to  
13 talk to families during this period of time, is one  
14 aspect of it.

15 But you're absolutely right, and I really  
16 appreciate everybody so far in this hearing  
17 challenging the current etiology as it happened as  
18 it relates to visitation.

19 I strongly urged the department that they  
20 reconsider the opening of visitation.

21 This is absolutely essential, because, as you  
22 have all talked about, loneliness is a comorbidity.  
23 It is what is making people sicker.

24 We need to get people together. And  
25 you're -- I'm convinced that we can do it safely.

1           That's the other thing, you know, nursing  
2       homes have learned so much about decontamination,  
3       about contamination control.

4           In fact, I would argue that, in many of the  
5       nursing homes in the state of New York right now, it  
6       is one of the safest facilities in which to put  
7       somebody, because they have learned, and now they  
8       have the equipment, and now they have staff because  
9       they've come back because they're not sick anymore.

10           NEIL HEYMAN: I think --

11           SENATOR MAY: [Indiscernible cross-talking]  
12       we hear about --

13           Sorry.

14           -- just, we hear about family members who  
15       have, typically, been coming in and bathing or  
16       helping with actual care of their loved ones.

17           And I wonder if you can like deputize family  
18       members as staff, essentially, so that they would  
19       follow the same protocols as staff, or something  
20       like that?

21           NEIL HEYMAN: As we get more sophisticated in  
22       our ability to test, and more sophisticated in our  
23       ability to appropriately obtain, utilize, wear, PPE,  
24       that we will probably move in that direction.

25           I think what's happened now, because we still

1 are in the middle of a pandemic crisis, that  
2 everything is moving a little bit more slowly than  
3 we would have wanted it to.

4 But I agree 100 percent that loneliness and  
5 being away from families is very difficult, if  
6 not -- I have -- my mother is 94 and she's in a  
7 facility. I've been going through this myself.

8 But the fact of the matter is, is that we  
9 want to be careful and do this correctly because we  
10 don't want to reintroduce a problem.

11 So it's moving along, and the department's  
12 been very cooperative in moving along with us, but  
13 moving along slowly and carefully.

14 SENATOR MAY: Okay.

15 Gustavo, do I have any more time?

16 I have one more question?

17 SENATOR RIVERA: Your time is up.

18 SENATOR MAY: Okay.

19 Well, thank you, both.

20 SENATOR RIVERA: Thank you.

21 Assembly.

22 ASSEMBLYMEMBER BRONSON: Yes, thank you,  
23 Senator.

24 I will go next in asking questions.

25 And first -- the first question is to both

1 gentlemen.

2 Are your member organizations, are they made  
3 up of both for-profit and not-for-profit facilities?

4 NEIL HEYMAN: Yes.

5 Yeah, I have some not-for-profits as well as  
6 for-profit. But it's predominantly not -- it is  
7 predominantly for-profit.

8 ASSEMBLYMEMBER BRONSON: Okay.

9 And are you -- are you getting different  
10 information, or -- regarding the experience,  
11 I guess, of -- if you break it down, for-profit  
12 versus not-for-profit?

13 NEIL HEYMAN: I am not hearing anything  
14 different.

15 I don't think -- and I'm not trying to be  
16 cute, I don't think the virus knows the difference.

17 I mean, I think that it has taken its own  
18 route, and it's entered all auspice facilities,  
19 whether they be government-run, for-profit, or  
20 not-for-profit, with equal disaster.

21 So I haven't heard anything different at all.

22 ASSEMBLYMEMBER BRONSON: Okay.

23 Mr. Balboni?

24 MICHAEL BALBONI: I don't see a distinction.

25 ASSEMBLYMEMBER BRONSON: Okay.

1           Certainly, I agree with you, the virus  
2           doesn't know a difference. But, certainly, some of  
3           the historical information we have on the different  
4           organizational setup is different for sure.

5           Looking at some of the issues that you have  
6           pointed out, the regular testing of residents, you  
7           indicated, is an important aspect, Mr. Heyman.

8           Are you getting test results back in a timely  
9           way?

10          Is there any backlog, or is that working  
11          smoothly at this point?

12          NEIL HEYMAN: It's kind all over the map.  
13          I mean, it depends on the lab that's being used.

14          A lot of it, it depends.

15          In some instances they call me back, and it's  
16          not -- you know -- I would -- by the way, what is a  
17          "timely manner"?

18          "Timely" is enough so that, if a staff  
19          person, in particular, is tested on a Monday  
20          morning, that we know before Tuesday, their next  
21          shift, that they do or don't have the virus.  
22          I mean, that would be very useful.

23          Ideally, it would be wonderful to have it in  
24          15 minutes so that they can go on to their shift or  
25          not on that very day.

1           But once you get past a 24-hour, or 23-hour,  
2           time period, it becomes problematic.

3           And there are still some problems in that  
4           vein, and we're not getting the results back as  
5           quickly all over as we would like.

6           ASSEMBLYMEMBER BRONSON:   Okay.

7           And in connection with that, are you -- if  
8           you're testing someone that's not exhibiting any  
9           symptoms, and that's one scenario.

10          But if someone is exhibiting some symptoms,  
11          even if it's a cold or something, are they  
12          instructed not to come to work under that scenario?

13          MICHAEL BALBONI:   Yes.

14          NEIL HEYMAN:   Yes.

15          If they're exhibiting a fever or a cough,  
16          yes.

17          ASSEMBLYMEMBER BRONSON:   Okay.

18          And let's talk now regarding the reporting.

19          And I know -- certainly, hearing from some  
20          facilities up in my area, in the greater Rochester  
21          area, you know, the reporting requirements are  
22          burdensome and difficult.

23          What's the experience that you're having with  
24          the department of health and all -- you know, the  
25          daily checks that you have to make, reporting back?



1           What's your experience in your areas?

2           NEIL HEYMAN: That's actually an excellent  
3 question because, you know, obviously, in the  
4 beginning, when everybody was trying to figure out  
5 what we needed, and how best to do that, there was a  
6 lot of requests, and there were a lot of requests  
7 that were made with a very short time frame, to get  
8 the answers in.

9           But as we moved through the actual crisis,  
10 it's become a bit more steady and a bit more easy to  
11 deal with.

12           And as I mentioned in my remarks, I think  
13 that what we want to do, going forward, is actually  
14 work with the department of health, figure out in  
15 advance of the next wave, what we need and when we  
16 need it, so that we can tell the facilities, here's  
17 what you have to be looking for as this thing morphs  
18 into the next phase, and so we can put a little bit  
19 of order to it and make it easier to do and a better  
20 result if we know exactly what we need up front.

21           MICHAEL BALBONI: So let me go further.

22           You know, the hospitals don't have to do  
23 [indiscernible] reporting every day.

24           Why do the nursing homes?

25           It is -- the information really doesn't

1 change, so why the constant reporting?

2 And this is the part of the administrative  
3 oversight burden that has to [indiscernible].

4 And you say, well, how can reporting be a  
5 burden?

6 Well, it can be.

7 But then, generally speaking, you know, the  
8 reporting, not only in New York, but across the  
9 nation, has to be more consistent.

10 You know, the numbers that we're seeing, the  
11 way it's reported, that's the only way we're really  
12 going to be able to find out how we move forward  
13 from this, and that really comes also at the federal  
14 level.

15 There needs to be a much better  
16 standardization of reporting across all areas.

17 ASSEMBLYMEMBER BRONSON: And the last  
18 questioning is in line with what some of my  
19 colleagues have already brought up, and that is the  
20 staffing levels.

21 In your written testimony you said that you  
22 need, you know, "critical resources, make it  
23 possible to locate, recruit, and retain adequate,  
24 qualified staff."

25 This has worsened because of COVID, but that

1 was a problem prior to COVID, at least it is here in  
2 Upstate New York.

3 What -- I mean, when you say "resources,"  
4 certainly you think dollars and cents.

5 What other resources might there be?

6 And my time's up, but go ahead and answer as  
7 quickly as you can.

8 NEIL HEYMAN: Well, quickly, as to the  
9 resources, I mean, obviously, it's got to be funded.

10 But are there training, schools, education,  
11 encouraging people to get involved in the  
12 health-care environment early on?

13 This is something which is a long-term kind  
14 of project.

15 And making full utilization of volunteers  
16 which are out there, and full utilization of the  
17 various aspects of what New York City and New York  
18 State did, as far as opening up the various avenues  
19 that we could utilize people who weren't currently  
20 in the field, but had experience in the field.

21 There are ways do it in the short run and  
22 there are ways to do it in the long run.

23 And I guess all [indiscernible  
24 cross-talking] --

25 SENATOR RIVERA: Thank you, Mr. Heyman.

1           Thank you, Mr. Heyman.

2           I recognize Senator James Skoufis for  
3       5 minutes.

4           SENATOR SKOUFIS: Thank you, Mr. Chairman.  
5           And thanks to you both for your  
6       participation.

7           I imagine, I think we can all imagine, your  
8       jobs have become exponentially more difficult over  
9       these past five months.

10          I first want to ask, and I mean this with all  
11       seriousness and respect:

12          We're obviously asking you to attest to and  
13       to share on-the-ground problems and issues, and how  
14       you've reacted in your member nursing homes. You  
15       both represent a pretty enormous slice of  
16       New York State's nursing homes.

17          Can you just briefly share, that would maybe  
18       lend some additional confidence to us, how you have  
19       interacted with your member nursing homes over the  
20       past five months personally?

21          Have you visited; have you been physically to  
22       many of your member nursing homes?

23          Have you spoken to workers, in addition to  
24       administrators who I'm sure you do engage with  
25       frequently?

1           Can you just speak to that a little bit?

2           MICHAEL BALBONI:   If I can?

3           Yeah.   So we have weekly -- I'm sorry, at one  
4 point in time we had daily board calls, as things  
5 from the department, regulations, directives, were  
6 changed.

7           And two -- in two weekends, late March,  
8 beginning of February, actually participated,  
9 through the direction of the department, in actually  
10 getting PPE out.

11           So I was actually a part of a group that was  
12 working out of the Javits Center, and out of the  
13 National Coliseum, of all places, and actually  
14 taking gowns and gloves and putting them on the back  
15 of trucks, and delivering them out, to trying to  
16 assist in terms of what the network was of finding  
17 this very difficult PPE.

18           You know, on that point, you know, everyone  
19 was saying to me, we have to compete globally for  
20 things like masks and gloves.   You know, it's  
21 really, really difficult.

22           And they were subject to all sorts of price  
23 gouging [indiscernible cross-talking] --

24           SENATOR SKOUFIS:   And I'm actually -- I'm  
25 going to focus my questions on the PPE issue, but,

1 just to be clear:

2 So it sounds like you were on the ground  
3 personally, handing out equipment, visiting nursing  
4 homes, engaging with workers themselves.

5 Is that accurate?

6 MICHAEL BALBONI: That's correct.

7 SENATOR SKOUFIS: Okay.

8 MICHAEL BALBONI: Neil, you too, I assume?

9 NEIL HEYMAN: Yeah -- yes.

10 And we also, by the way, we did make  
11 tremendous use of the media, you know, being Zoom,  
12 and doing it [indiscernible], because there was an  
13 awful lot that we had to impart to our members,  
14 infection control.

15 As this was developing, we were imparting  
16 this, and I know Mike was as well, to our members on  
17 a regular basis, [indiscernible] the people online,  
18 [indiscernible] to bring information in, which was  
19 very effective.

20 SENATOR SKOUFIS: Right.

21 Okay, so let me jump into my questions  
22 quickly.

23 And like I said, I'd like to focus on PPE.

24 The governor made it very clear, the  
25 challenges associated with getting PPE in those

1 early weeks and months, especially given the federal  
2 government's lack of preparedness.

3 But even considering that difficulty, as you  
4 heard earlier this morning, up to one in four of  
5 your employees in nursing homes contracted COVID-19,  
6 which are significantly higher rates than transit  
7 workers, police officers, firefighters, other  
8 categories of workers, that were tested during the  
9 pandemic.

10 How much of that disparity with your workers  
11 do you attribute to the lack of adequate PPE in  
12 nursing homes?

13 And, as you briefly answer, can you also  
14 speak to whether you believe the State adequately  
15 prioritized PPE for nursing homes from our state  
16 supply?

17 MICHAEL BALBONI: So, you know, the  
18 challenge, of course, is, when did this virus impact  
19 us?

20 You know, that's the thing.

21 I -- I personally felt that we were --  
22 because we didn't have the right international,  
23 national, surveillance capabilities, we didn't know  
24 that it was already in our environment.

25 So when you had, you know, the nature of

1       congregate care is that you're incredibly close to  
2       your patients. And, you know, it's not something  
3       you can do distance-wise.

4               And so, then, when this first began to ramp  
5       up and people began to get sick, then that is when  
6       the PPE was actually at its lowest, because the burn  
7       rate changed completely.

8               You know, [indiscernible cross-talking] --

9               SENATOR SKOUFIS: If I can just jump in,  
10       because I do have one other question: Would you say  
11       this was the primary driver of that higher infection  
12       rate among nursing home employees, or do you believe  
13       there was another primary driver?

14              MICHAEL BALBONI: Yeah, Senator, you know,  
15       it's really -- it's very difficult to be able to  
16       pinpoint the exact reason for transmission.

17              You know, you're in a nursing home in Queens,  
18       you send your patients out for dialysis. Was the --  
19       you know, was the ambulance properly decontaminated?  
20       the dialysis center?

21              You know, because there's so many different  
22       reasons that a virus could get into a facility, it's  
23       very difficult to pinpoint and say, it's because of  
24       "this" only.

25              I think it's really a combination of a lot of



1 factors.

2 SENATOR SKOUFIS: But this is at the top of  
3 the list?

4 MICHAEL BALBONI: This is -- we believe this  
5 is a part of it, because, again, we didn't  
6 understand how this [indiscernible cross-talking] --

7 SENATOR SKOUFIS: And what about the State  
8 supply?

9 Do you believe that the State was adequately  
10 prioritizing nursing homes in our state supply of  
11 PPE?

12 And I guess this will be my last question.

13 MICHAEL BALBONI: The State focused on the  
14 health care and the hospitals first. And you could  
15 argue that that was exactly the right thing to do at  
16 that time, because they didn't want a collapse of  
17 the hospital network system.

18 But, again, we would have wish that there  
19 could have been a two-track approach and we really  
20 focused on long-term care as well.

21 NEIL HEYMAN: And we believe that to be the  
22 case. [Indiscernible cross-talking] --

23 SENATOR RIVERA: Very quickly, please.  
24 Really quickly.

25 NEIL HEYMAN: I said, okay, I'm done.

1           SENATOR RIVERA: Oh, okay.

2           Thank you, Senator.

3           Assembly.

4           ASSEMBLYMEMBER BRONSON: Thank you.

5           Next I recognize Co-Chair McDonald for  
6           5 minutes.

7           Take off un-mute, John.

8           ASSEMBLYMAN McDONALD: There you go, that's  
9           better. Thank you.

10          So, gentlemen, thank you for being here, and  
11          what a trial of time for all of you, particularly  
12          those on the front lines.

13          I have a couple of questions in regards to  
14          environment and approach.

15          Environment, and we have some speakers later  
16          on on our panels that talk about this.

17          You know, if you talk to the people in the  
18          engineering industry, and they talk about the virus,  
19          and this argument can actually be held for the  
20          typical influenza virus, you know, relative humidity  
21          plays a large role of whether that virus is going to  
22          be active or dormant.

23          And relative humidity between 40 and  
24          60 percent, according to the engineers, the virus is  
25          dormant.

1           So this gets into the question of, in your  
2 facilities --

3           I know this is broad-based, and this is not a  
4 gotcha, it's just a question.

5           -- is humidity tested for on a regular basis?

6           And, at the same token, ventilation seems to  
7 be coming up as an issue.

8           Is this an issue that -- an area where the  
9 State should be focusing its energies on helping  
10 support the -- improving the infrastructure of the  
11 facilities that are out there?

12           NEIL HEYMAN: I would respond by saying that,  
13 as we move through this crisis, and as we sort out,  
14 from the scientists and from the epidemiologists,  
15 what works, what doesn't work; what makes sense and  
16 what doesn't make sense, we will be cooperative and  
17 do what makes the most sense to check.

18           I don't have any personal knowledge right now  
19 of whether or not humidity testing has occurred yet.

20           But if that is proven to be something that  
21 makes sense, and can prevent the spread of the  
22 disease, there's no question that we will be pleased  
23 to do that.

24           MICHAEL BALBONI: You know, something --  
25 we're looking at all aspects of this. Right?

1           So, we're still seeing studies out of  
2       South Korea that talks about the HVAC being a large  
3       part of the transmission.

4           You know, this -- obviously, there's lots of  
5       studies around that talk about airborne  
6       transmission.

7           There's -- we don't really test for humidity  
8       within the ventilation systems.

9           But there's all sorts of things we could take  
10      a look at, including the introduction of UV light  
11      within humidity -- within the HVAC systems.

12          So there's a lot of things we really should  
13      talk about, going forward, as innovations in the  
14      health-care system.

15          ASSEMBLYMAN McDONALD: Yeah, and it's --  
16      I don't think it's lost to any of us, we've gone  
17      through a lot of herculean efforts to get the malls  
18      open again, and filtrate. And ventilation was a key  
19      issue [indiscernible].

20          But, obviously, a place where people call  
21      home, and they're there 24/7, we want to make sure  
22      it's the best proper environment.

23          Once again, not a gotcha. It's more about,  
24      how do we help support them.

25          MICHAEL BALBONI: Assemblyman, the department

1 does require that the maintenance and vent systems  
2 are cleaned religiously.

3           You know, so there is -- I don't want to give  
4 anyone the impression that there's no regulations  
5 that they're cleaned.

6           They are.

7           ASSEMBLYMAN McDONALD: But they also -- are  
8 they prescriptive on the type of filters and the  
9 levels of filters?

10          MICHAEL BALBONI: Yeah, HEPA filtration are  
11 being looked at right now in terms of what the  
12 standard should be.

13          There's currently no standard that matches up  
14 to a virus transmission.

15          ASSEMBLYMAN McDONALD: Different related  
16 topic: infection control.

17          And, obviously, that's a very loose term,  
18 that's very critical in many aspects.

19          I'd like your response.

20          I have had individuals who actually work in  
21 the long-term-care community, who are just as  
22 serious as you are, say, you know, the approach in  
23 long-term care is not the same as infection control  
24 in the hospital setting.

25          In the hospital setting, they've got their

1 own department, they've got people running around  
2 doing tests and training, and things like that.

3 Is that something that -- is that an accurate  
4 statement? Or would you -- what would you have a  
5 comment to that?

6 NEIL HEYMAN: Most of them have  
7 infection-control programs in place, and they've had  
8 them in place for years.

9 And that's a part and parcel of how they have  
10 to operate. And they're surveyed by the State of  
11 New York on a regular basis, to make sure their  
12 infection-control programs and protocols are up to  
13 date and accurate.

14 And for the most part, they are. But if  
15 there are issues, they get them back up to speed.

16 So I think that they're there at this point  
17 in time.

18 MICHAEL BALBONI: So nursing homes have had  
19 to operate under stringent decontamination control,  
20 you know, infection control, for years.

21 And -- but that's the old normal.

22 You know, there's a new normal that's now  
23 emerged.

24 And we look forward to partnering with the  
25 department to, basically, have a regulatory standard

1       that, in fact, can implement these new standards.

2               ASSEMBLYMAN McDONALD:   Thank you.

3               And the intent of my questions is that, we  
4       know there's going to be changes coming.   And we as  
5       a state need to be partner with you to take care of  
6       our most aged and critical.

7               Thank you.

8               SENATOR RIVERA:   Thank you.

9               So I'll recognize myself for 5 minutes.

10              Gentlemen, thank you for being here.

11              Did you have the opportunity to listen to the  
12     commissioner that spoke before you folks?

13              MICHAEL BALBONI:   Sure did.

14              NEIL HEYMAN:   Yes.

15              SENATOR RIVERA:   Okay.

16              So there's a couple things that I wanted to  
17     kind of get your perspective on.

18              Number one, let's talk about the definition  
19     of "deaths."

20              Let's talk about the definition of that, and,  
21     in particular, there is this -- there's an  
22     insistence from the commissioner that -- that this  
23     was the right way to do it.

24              Would -- so -- so if you could tell us a  
25     little bit about the reporting that the nursing

1 homes that you represent, did, and the information  
2 that they kept available to them, as it relates to  
3 what you reported to the State when somebody was a  
4 nursing home patient, and then was admitted, and,  
5 unfortunately, passed away, how does that -- how do  
6 those numbers reported to the State?

7 MICHAEL BALBONI: We filed the guide -- we  
8 filed -- followed the guidelines as set forth in  
9 their HERDS survey; in other words, the HERDS survey  
10 has a number of questions, and we all answered  
11 those -- you know, all facilities answered those  
12 questions.

13 And so we didn't actually take a look outside  
14 and say, well, you know, if it's outside of the  
15 HERDS survey, we need to have an addendum on that.

16 So, you know -- but the challenge, Senator,  
17 just -- I don't want to make this any more complex  
18 than it already is -- but, it's determining, really,  
19 cause of death.

20 You know, and when you talk to -- remember,  
21 medical examiners are not involved in the  
22 pronouncement of death. It is the clinician at each  
23 of the facilities, and, therefore, necessarily,  
24 there's a little bit of subjectivity associated with  
25 that call.



1           So to be able to -- I know a lot of people  
2       take a look at the death count and say, you know,  
3       this has to be accurate.

4           I'm telling you now that it is not, but  
5       I can't tell you if it is undercounted or  
6       overcounted.

7           All I can tell you is that, there's no way on  
8       God's green earth that we can actually pinpoint and  
9       say, "this is the reason someone died."

10          If they had emphysema for 10 years, they're  
11       85 years old, and now they get COVID and they pass  
12       away, you know, what was the cause of death?

13          Same with heart disease.

14          So -- because we're still studying the target  
15       audience.

16          SENATOR RIVERA: But let's talk about the  
17       reporting that you had to do.

18          There were four dates -- there was a lot of  
19       pressure on this.

20          There were four dates in April, and --  
21       between 15th, 16th, 17th, and 18th of April.

22          And that the reason I want to focus on those  
23       because, even though you may not recall those exact  
24       dates, you probably heard about the series of  
25       emergency meetings, e-mails, calls, and things that

1 your -- that the nursing homes that you represent,  
2 and nursing homes all around the state, were  
3 required to present within just a few hours.

4 Could you tell us if you recall those times?

5 Because, as I understand it, there was, like,  
6 for example, on the 15th, there was an e-mail at  
7 11:46 in the morning that said, you're going to have  
8 to get -- you are required to get on a 1:30 call  
9 with the commissioner. And then, after that, you  
10 have to give us information by the next day.

11 Do you recall this that I'm talking about?

12 NEIL HEYMAN: [Indiscernible.]

13 MICHAEL BALBONI: Yeah, listen, I recall it,  
14 Senator, very much.

15 And it's incredibly frustrating when you have  
16 a change of directive in such a short period of  
17 time.

18 But let me just make a statement here.  
19 I know that is a lot of controversy surrounding  
20 this.

21 Neil and I both know, the department of  
22 health staff worked day and night to try to get this  
23 right.

24 Were their responses and their regulation and  
25 oversight always perfect?

1           No, it wasn't. But it's in the middle of a  
2 pandemic, an unprecedented time.

3           And we got on calls almost daily, sometimes  
4 twice a day, to talk to the staff and try to work  
5 things through.

6           And so when they made these changes, we  
7 weren't always privy of, what was the motivation for  
8 their rapid change, but we knew they had everybody's  
9 best interests in mind, going forward.

10          So, you know, generalized, it's hard to take  
11 this perfect prism through which we see what the  
12 department did.

13          But I know that they worked as hard as they  
14 possibly could.

15          NEIL HEYMAN: Yeah, if I might also just,  
16 Senator Rivera, yes, there were short time frames,  
17 but, interestingly enough and miraculously enough,  
18 the nursing homes met the time frames.

19          The department was working night and day and  
20 weekends. Got the data, analyzed it, and got what  
21 they needed out of it.

22          So that's why I think [indiscernible  
23 cross-talking] --

24          SENATOR RIVERA: [Indiscernible] quickly,  
25 because my time is running out.

1           There are -- because I've heard differing  
2       stories about people being very frustrated, having  
3       very few resources to be able to put the information  
4       out.

5           They did it, but it was within a very, very  
6       crushed time frame.

7           Do you think that it would help to have some  
8       sort of -- there's somebody that suggested to me a  
9       committee of operators, or some way that the State  
10      would be able to have a group of operators from  
11      different nursing homes be available to them, so  
12      that when they have suggestions or regulations to  
13      put out there, that they're actually considered,  
14      even for a short period of time, as to how they're  
15      actually going to be implemented, so then they could  
16      actually be implemented to the best of the ability  
17      of particular facilities?

18          Quickly, because my time is running out.

19          NEIL HEYMAN: That's a great idea.

20          In fact, doing that in advance of the crisis,  
21      as I kind of suggested in my opening remarks, makes  
22      a whole lot of sense, because we've learned now what  
23      we need, we've learned now when we might need it.

24          So I think that putting together a script and  
25      utilizing the people who are in the field, along

1 with the people in the department, makes all the  
2 sense in the world.

3 SENATOR RIVERA: Thank you.

4 MICHAEL BALBONI: Yeah, Senator, the  
5 relationship has been ad hoc.

6 Doing something more formal, actually kind of  
7 creating like a kitchen cabinet, the department, as  
8 they move forward, would be great.

9 SENATOR RIVERA: Yep.

10 My time is up.

11 Thank you.

12 Assembly.

13 ASSEMBLYMEMBER BRONSON: Next will be, we'll  
14 recognize Assemblymember Ron Kim for 3 minutes.

15 Assemblymember?

16 ASSEMBLYMEMBER KIM: Hi, can you hear me?

17 ASSEMBLYMEMBER BRONSON: Yes.

18 ASSEMBLYMEMBER KIM: Thank you.

19 So for years before this pandemic even hit  
20 us, we've known about the understaffed and  
21 underfunded nursing homes, and legislative non-stop  
22 to fix these problems.

23 On February 6, 2020, the Center for Medicare  
24 and Medicaid Services issued a national memo to all  
25 health-care facilities, warning and instructing them

1       how to prepare for COVID-19.

2               The public would like to believe that the  
3       State and the facilities took this warning seriously  
4       and prepared health-care facilities.

5               But when I surveyed close to about a dozen or  
6       so facilities at the peak of the crisis, every  
7       nursing home director told me that the only time  
8       they heard from the department of health is when  
9       they called for fatality numbers.

10              One administrator even told me, it was never  
11       ending; they called every day to ask how many people  
12       died.

13              The State never once asked if they needed  
14       PPE, extra staffing, or resources.

15              Fast-forward to March 23, 2020,  
16       Governor Cuomo passed an executive order to provide  
17       legal protections for front-line medical workers and  
18       volunteers.

19              Within days, he pushed the new provision in  
20       the budget that brought in this protection to  
21       blanket legal immunity that covers nursing home  
22       executives, CEOs, shareholders, board members, and  
23       for non-COVID treatments as well.

24              April 2, 2020, the Greater New York Hospitals  
25       Association immediately sent out a press release,

1 asking -- release -- as soon as the governor signed  
2 the budget, claiming that they drafted and  
3 aggressively advocated for this legislation.

4 Despite early warnings by the CMS and the  
5 global community, we slept-walked into this pandemic  
6 and found ourselves in full panic mode.

7 And, consequently, it was too late to protect  
8 the patient rights, so the industry lobbied hard for  
9 legal and criminal immunity for health-care  
10 facilities.

11 Just a yes-or-no question for both panelists:  
12 Did you lobby for legal and criminal immunity for  
13 nursing homes?

14 MICHAEL BALBONI: No.

15 NEIL HEYMAN: No.

16 ASSEMBLYMEMBER KIM: Were you -- when were  
17 you aware of this immunity status, and did you  
18 communicate the legal protection status to your  
19 members?

20 MICHAEL BALBONI: We were aware when the  
21 budget was passed, Assemblyman, and signed by the  
22 governor.

23 And as you know, Article 2-B of the  
24 Executive Law kind of sets the table for doing --  
25 changing a lot of this as it relates to state law.

1           And, you know, much has been made about this,  
2           and it's a very fair description.

3           But when you think about the different  
4           elements of the care, you know, under New York  
5           law -- right? -- reasonable standard of care is what  
6           you must show has been breached.

7           As you know, under a pandemic, that standard  
8           of care changes.

9           And the most difficult aspect of this, in  
10          case somebody is saying to you that, you know, a  
11          case against the nursing home, even without these  
12          protections, would be a slam dunk --

13          ASSEMBLYMEMBER KIM: Mr. Balboni, I'm sorry  
14          to cut you off, but my time is up.

15          I just have one more question.

16          MICHAEL BALBONI: Sure, no problem.

17          ASSEMBLYMEMBER KIM: Do you think we're  
18          better prepared to prevent the spread and arrange  
19          the care for COVID-positive nursing homes now  
20          [indiscernible cross-talking] --

21          MICHAEL BALBONI: Yes.

22          NEIL HEYMAN: Absolutely.

23          ASSEMBLYMEMBER KIM: -- okay.

24          Thank you.

25          SENATOR RIVERA: Thank you, sir.



1           Apologies. Trying to squeeze my lunch in.  
2           Recognize Senator Sue Serino for 5 minutes.

3           SENATOR SERINO: Thank you very much,  
4           Chairman.

5           And thank you very much, gentlemen, for being  
6           here with us today.

7           So I just have a quick question.

8           If you had to prioritize one thing to change,  
9           to improve the State's response to this crisis in  
10          these facilities, to measurably improve health  
11          outcomes, what would be at the top of your list?

12          MICHAEL BALBONI: Senator, can I give you  
13          three things?

14          Surveillance, resources, and communication,  
15          those are the three things we've really got to focus  
16          on.

17          Now, Dr. Tom Friedman of New York City, who  
18          was talking a long time ago about something called  
19          "syndromic surveillance," the ability to take a look  
20          across the entire community and see when a disease  
21          state was impacting a community itself.

22          We should go back and explore this.

23          Back then, you know, health and human  
24          services, DHS, all looked at the model. They didn't  
25          believe you could have the sensitivity to actually

1 give you a -- any type of notice that would be  
2 useful, in terms of a disease state.

3 But we should reexplore that again.

4 Resources:

5 You know, everybody is talking about the  
6 funding, everybody is talking about PPE, yes, of  
7 course, those are all. You know, the staffing,  
8 staffing surge models, we need to look at that.

9 And the last thing is communications.

10 You know, it is so difficult to be able to --  
11 you can talk to hospital networks, even that's hard.

12 But talking to individually-owned -- there  
13 are 614 nursing homes -- it's really difficult to  
14 communicate effectively, real time, with the right  
15 information.

16 Those are the things we really have to work  
17 on, going forward.

18 NEIL HEYMAN: I think if I had to put one up  
19 there, I would put the resources and the funding  
20 necessary, because most everything will flow from  
21 that.

22 I mean, if the facilities have enough  
23 resources, they can have enough additional staff,  
24 they can cover for staff that are out sick. They  
25 can get and pay for the PPEs, and they can afford

1 the testing.

2 So I think the number-one priority, and  
3 whether it's federal dollars, state dollars, or a  
4 combination, is I would say are funding.

5 And I think it's critical that the existing  
6 rates that the nursing homes have don't get cut any  
7 further because, as I mentioned earlier in my  
8 testimony, I believe that if we don't fund them  
9 appropriately, it will be a threat to the health of  
10 the people in New York, and it's certainly a threat  
11 to the facilities' ability to function.

12 SENATOR SERINO: Well -- and thank you both  
13 very much.

14 And I agree with you the resources are very  
15 important, and to cover our staffing, and  
16 everything. And I guess everything else would  
17 follow suit. Right? The surveillance and the  
18 communication, it makes everything a little bit  
19 easier.

20 So thank you for everything that you're  
21 doing, and thank you for being here today.

22 MICHAEL BALBONI: Thank you, Senator.

23 NEIL HEYMAN: Thank you.

24 SENATOR RIVERA: Thank you, Senator.

25 Assembly.

1 ASSEMBLYMEMBER BRONSON: Ah, yes. I next  
2 recognize Ranker Kevin Byrne for 5 minutes.

3 ASSEMBLYMEMBER BYRNE: Thank you,  
4 Mr. Chairman.

5 And thank you Mr. Balboni and Heyman.

6 Just a quick question.

7 I know it's -- you've talked a lot about the  
8 count of fatalities in nursing facilities, and how  
9 we're counting it, hospital setting or not.

10 And we spoke to that a little earlier.

11 There's also been reports about the increase  
12 in vacancy rates at nursing facilities across the  
13 state, a significant increase.

14 I don't think that reveals, totally, a total  
15 amount of fatalities, but it merits probably further  
16 consideration and review.

17 Can you share with us what -- how the vacancy  
18 rates have changed since the pandemic began, the  
19 outbreak at the onset, and how you view that?

20 Is that possibly an indicator of fatalities?

21 NEIL HEYMAN: Well, I think the vacancy rates  
22 grew tremendously for several reasons.

23 Yes, fatalities would be a part of that,  
24 I suppose.

25 But the fact of the matter is, the hospitals

1       were not performing elective surgery.

2               Most of the nursing homes' admissions in a  
3       normal period of time, which we may never see again,  
4       come from the hospital discharges from, you know,  
5       hip replacements, and whatever kind of elective  
6       surgical procedures go on, and they're numerous in  
7       the hospitals.

8               Those ceased. Those ended.

9               For a period of months, the hospitals were  
10       just treating only COVID patients, so the nursing  
11       homes didn't have access to their usual -- the usual  
12       kind of admissions.

13              And that now, by the way, can change, because  
14       the nursing homes have the capacity to take in COVID  
15       patients, and hospital and community patients,  
16       equally.

17              But, yeah, that was probably the biggest  
18       driver for the tremendous downturn in their  
19       occupancy rate, some of which were down 40 percent.

20              MICHAEL BALBONI: So, Assemblyman, you  
21       touched upon -- you touched upon the next crisis  
22       that's going to hit long-term care, and nobody's  
23       talking about this, because it involves the  
24       economics of a nursing home.

25              If you're below 80 percent census, it means,

1       for a for-profit, you're barely making payroll.

2               And right now, the census, because of the way  
3       this impacted long-term-care residents, residents  
4       who were there for 10 years, they're not coming back  
5       anytime soon.

6               Yes, the higher reimbursement rate, as you  
7       know, is tied to the acuity -- right? -- the amount  
8       of services you have to provide.

9               And so rehabilitation has been higher,  
10       ventilation patients have been higher.

11              But, right now, nursing homes are in an  
12       incredible struggle to keep their doors open.

13              And one of the things that we want to point  
14       to is, the State actually -- because of the  
15       reduction in the census, has actually put out less  
16       money towards the payments.

17              You know, that's, we -- if you combine this,  
18       because, remember, CMS does, in fact, reimburse us,  
19       our X amount of money that we're going to be getting  
20       from the federal government is actually less as  
21       well.

22              But nobody is taking a look at the economics  
23       of nursing homes.

24              And you take on top of it, the increased cost  
25       of testing; you take on top of it, the increased

1 cost of the PPE, these are all things that we needed  
2 to do, but is impacting the ability of a nursing  
3 home to stay open.

4 ASSEMBLYMEMBER BYRNE: Well, I can certainly  
5 understand how those increased costs for business  
6 and for you to provide your service.

7 As far as, now that we've been slowly opening  
8 up elective procedures, have you seen a change in  
9 those numbers regarding vacancy rates in the  
10 recent -- in the more recent months, now that we're  
11 past Phase 4, or we're still in Phase 4?

12 Has that started to trickle back, or are we  
13 still in this kind of holding pattern with the  
14 vacancy rates significantly higher than normal?

15 MICHAEL BALBONI: So here's once of the one  
16 of the things that's impacting: The fact that you  
17 can't visit your loved ones.

18 People are not willing to send their folks to  
19 nursing homes because they can't visit their loved  
20 ones.

21 And this was -- there's this concern that  
22 nursing homes are not safe.

23 So all of those things, combined, are  
24 creating an environment for nursing homes that is --  
25 we've never seen this before. And it is really

1       becoming a crisis across the entire state.

2               ASSEMBLYMEMBER BYRNE:   Now, just a question:

3               Since we talked about it earlier with the  
4       commissioner, regarding the March 25th order, and  
5       then I know there was a different order that came  
6       out later, I believe it was in May, are you of the  
7       understanding that -- were you still of the  
8       understanding that both orders were still fully in  
9       effect, as the commissioner stated?

10              Or, were you of the understanding that it was  
11      revised, and one of the orders -- the more recent  
12      order was more, I think, geared towards hospitals?

13              But, if you could just give me your reaction  
14      to that, if that was news to you? Or, is this  
15      something that you're just continuing to operate  
16      with?

17              NEIL HEYMAN:   I was aware that the orders  
18      were in effect. That was no surprise.

19              ASSEMBLYMEMBER BYRNE:   Okay.

20              MICHAEL BALBONI:   So there's an irony here,  
21      in that, a COVID patient that has, again, a higher  
22      level of service, actually has a higher  
23      reimbursement rate.

24              So now that the nursing homes have the  
25      cohorting, have the personal protective equipment,



1 have the staffing, they want these patients; and yet  
2 now they're being told, well, you're not going to --  
3 you know, we're going to try to restrict those  
4 patients from traveling there, so, or being  
5 [indiscernible].

6 ASSEMBLYMEMBER BYRNE: Thank you.

7 SENATOR RIVERA: Thank you.

8 And there's currently no Senate members that  
9 are on the list for speaking.

10 If there are Senate members who are on -- in  
11 this hearing and are interested in speaking, please  
12 let me know.

13 For the moment, I'll pass it back to the  
14 Assembly.

15 ASSEMBLYMEMBER BRONSON: Thank you.

16 Next I recognize Assemblymember Tom Abinanti  
17 for 3 minutes.

18 ASSEMBLYMEMBER ABINANTI: Here we go.

19 Thank you both for joining us.

20 I'd like to get back to the issue that I was  
21 raising with the health commissioner before, about  
22 getting family members back in to see their loved  
23 ones.

24 I [indiscernible] somebody tweeted at me and  
25 said: They're not visitors. They're actually part

1 of the staff, they're part of the treatment, they're  
2 part of the help.

3 And I agree with them on that.

4 How do we do this?

5 How do -- has your -- either of your  
6 organizations actually developed a plan that you can  
7 present to the state health department?

8 Have you made suggestions?

9 I don't know if you heard me with my  
10 conversation with the health commissioner, similar  
11 to what other members were saying, that, you know,  
12 the family members are just as concerned about the  
13 health of their family members and your residents as  
14 the staff are.

15 They're not -- they're going to try very hard  
16 to socially distance, they're going to try very hard  
17 to do everything necessary, so they don't bring  
18 COVID into the nursing home to their loved one.

19 How do we get them in, tomorrow?

20 You know, this -- this -- using technology  
21 just doesn't work.

22 What do we do?

23 Do you guys have a plan?

24 Can you come up with something and get the  
25 health department on board?

1           MICHAEL BALBONI: Neil?

2           NEIL HEYMAN: Well, actually, you know, the  
3 answer is, no, I don't have an absolute plan.

4           But what's been going on for the past,  
5 I would say, two months, is the department has had  
6 regular meetings with the nursing homes and with  
7 other long-term-care providers.

8           And the -- they have asked us on a regular  
9 basis for input, and we have told them, this is a  
10 high priority: we want to have visitation.

11          And what they've said is, they want to be  
12 careful, to make sure that it's done appropriately,  
13 correctly, safely, and in a way in which they won't  
14 increase the problem accidentally.

15          But what they've done, and they've always  
16 stuck to this, is when they start to move with us  
17 towards opening that up, or towards reducing the  
18 amount of testing, or towards whatever has to be  
19 done that we think might make sense, they do it  
20 carefully, and they do it with us, and they say,  
21 let's now wait and see what the numbers look like.

22          So as I understand what the department has  
23 said to me, they opened it up, and I know it's a  
24 high bar to cross to get over. But now they're  
25 looking at the numbers; they looking to see how this

1 worked thus far.

2 And although there's not a specific plan in  
3 place, my understanding of what they're doing now,  
4 is they're going to evaluate the numbers, they're  
5 going to look at the facility they've opened up, see  
6 how it works. And then probably come back  
7 [indiscernible cross-talking] --

8 ASSEMBLYMEMBER ABINANTI: That's not the only  
9 factor, though.

10 MICHAEL BALBONI: No, it isn't.

11 And, Assemblymember, you touched upon it.

12 You know, Massachusetts is doing this.

13 You know, the hospitals don't have the same  
14 type of thing we do.

15 So the families have said that they would  
16 test, socially distance outside, you know, all the  
17 different things.

18 I'm absolutely confident.

19 I understand the commissioner's concerns, but  
20 I'm absolutely confident that, individually, the  
21 homes can produce a program that will absolutely  
22 limit or eradicate transmission.

23 ASSEMBLYMEMBER ABINANTI: Right, because,  
24 right now, as we open up the rest of the world,  
25 nobody's restricting the staff from going out to

1 have dinner outside, to take public transit.

2 So we [inaudible].

3 So you don't have any numbers, do you, that  
4 show that there was transmission by family members?

5 NEIL HEYMAN: No.

6 MICHAEL BALBONI: No.

7 ASSEMBLYMEMBER ABINANTI: Okay.

8 Please come up with a plan and let's get the  
9 health department moving.

10 ASSEMBLYMEMBER BRONSON: Okay, thank you,  
11 Assemblymember.

12 I believe we will go to the next  
13 assemblymember, Inez Dickens. I recognize you for  
14 3 minutes.

15 ASSEMBLYMEMBER DICKENS: Oh, can you hear me,  
16 Mr. Chair?

17 ASSEMBLYMEMBER BRONSON: Yes, we can. Yes,  
18 we can.

19 ASSEMBLYMEMBER DICKENS: All right.

20 Thank you for your testimony.

21 Some hospitals have considered implementing  
22 plans that would -- a person designated with COVID  
23 has been infected would designate one family member  
24 or friend, and that person would have to agree and  
25 understand the possibilities of visiting the

1 patient.

2 Just one.

3 Has the nursing homes thought about  
4 implementing something like that in their plan?

5 That's one.

6 Two: Regardless of the cause of death, why  
7 did it take so long to notify family members during  
8 the pandemic about the passing of their member --  
9 their family member?

10 Three: Has your plan included the disposal  
11 of bodies during the pandemic, since hospitals, we  
12 know, have morgues, and nursing homes do not?

13 And that was a problem during this last  
14 pandemic.

15 We know staffing is short, and, as such,  
16 prior to the pandemic it was short.

17 How is that going to be addressed, moving  
18 forward?

19 If a staff member tests positive, will the  
20 entire staff be notified?

21 And PPEs were short in hospitals, and,  
22 seemingly, more so in nursing homes.

23 I understand, you know, that you're talking  
24 about the economics and the funding.

25 Is that the only way that that can be

1 addressed?

2 MICHAEL BALBONI: Assemblymember --

3 ASSEMBLYMEMBER DICKENS: The first one is  
4 about -- the first one is about having a family  
5 member or friend for one person. That would address  
6 mental health.

7 MICHAEL BALBONI: Sure.

8 Again, we're confident we can work with the  
9 department and come up with this protocol. And, you  
10 know, even having folks just not show up, but having  
11 appointments. You know, [indiscernible  
12 cross-talking] --

13 ASSEMBLYMEMBER DICKENS: Yes, a limit of one  
14 person that they would designate.

15 NEIL HEYMAN: I think it would be a good  
16 idea.

17 MICHAEL BALBONI: Yeah, [indiscernible  
18 cross-talking]. Right, Neil? It's absolutely  
19 doable.

20 NEIL HEYMAN: It's a very good idea, very  
21 good idea, very good idea.

22 ASSEMBLYMEMBER DICKENS: All right, good.  
23 The second thing is about the issue of death.  
24 Why did it take so long during the pandemic  
25 to notify family members that their family person

1 had died?

2 What was the reason for that?

3 And that seems to have been so with the  
4 nursing homes.

5 MICHAEL BALBONI: Assemblywoman, it's hard to  
6 specifically talk about the entire nursing home  
7 industry.

8 I know you probably have individual cases, or  
9 individual homes and individual families.

10 So, you know, some -- some homes did better  
11 jobs of reporting than others. And sometimes there  
12 was a -- you know, some -- I know of one case where  
13 they simply didn't have the administrative staff to  
14 make the notifications; that the folks were on the  
15 floor, you know, doing patient care.

16 And so even though, for us, that notification  
17 is so absolutely crucial within the concept of a  
18 pandemic, it's not an excuse, but it might be a  
19 reality for some of the homes trying to respond.

20 ASSEMBLYMEMBER DICKENS: Oh, what about the  
21 disposal of remains during the pandemic?

22 MICHAEL BALBONI: That is a huge issue.

23 We lack, not only in terms of the individual  
24 nursing homes, which you're right, do not  
25 [indiscernible] capacity.



1           But the system, the way it's been set up, is  
2           that the office of emergency management in the city  
3           and in the county health agencies, they're supposed  
4           to provide the ability to handle the disposal of  
5           remains.

6           And what we found was that, you know, there  
7           wasn't enough pickup, and -- but we got that done.

8           In other words, we needed to surge, and we  
9           got there.

10          ASSEMBLYMEMBER DICKENS: Because that's  
11          something that we need to address in anticipation of  
12          another pandemic.

13          And would staff be notified if one staff  
14          person, or two, have been tested COVID-positive?

15          SENATOR RIVERA: Assemblymember, thank you.  
16          Your time is up.

17          ASSEMBLYMEMBER DICKENS: All right.

18          Thank you.

19          ASSEMBLYMEMBER BRONSON: Thank you, Inez.

20          Next up we have, I recognize  
21          Assemblymember Andrew Garbarino for 3 minutes.

22          Andy, you there?

23          ASSEMBLYMEMBER GARBARINO: Yep.

24          ASSEMBLYMEMBER BRONSON: There you go. Okay.

25          ASSEMBLYMEMBER GARBARINO: Thank you.

1           Just some quick questions.

2           Thank you, gentlemen, for coming today and  
3           answering some questions.

4           I received a call from a local nurse at a  
5           local nursing home. She said DOH has been at her  
6           nursing home for the last three days, investigating.

7           Have you heard from other of your members, or  
8           any of your members, that DOH is doing in-depth  
9           investigations into nursing homes around the state?

10          MICHAEL BALBONI: They've been doing that for  
11          a while. Right? You know, [indiscernible] heard  
12          that.

13          NEIL HEYMAN: They have been -- they've been  
14          surveying -- they surveyed all the homes. And if  
15          they found anything, they would come back and  
16          resurvey, so that, you know -- in most homes, as  
17          I understand it, there weren't problems. But  
18          I suppose where they found issues, they wanted to  
19          come back and make sure everything was all right.

20          So that has happened, yes.

21          ASSEMBLYMEMBER GARBARINO: Was that -- are  
22          you -- so are you getting any information shared  
23          from, you know, the DOH about what their -- about  
24          their investigations, if there are problems, or from  
25          your members?

1 NEIL HEYMAN: I haven't gotten any specific  
2 information, no.

3 MICHAEL BALBONI: I know that the -- early  
4 on, there's been focus on the number of deaths.  
5 That was a principal focus.

6 And then -- of course, then it came to, right  
7 now they're doing a survey on the amount of PPE that  
8 each of the facilities have, in order to create a  
9 baseline.

10 And, by the way, on that, I really appreciate  
11 the way the department of health and the division of  
12 budget has been engaged in this, to try to implement  
13 the law that you guys put into place about PPE.

14 ASSEMBLYMEMBER GARBARINO: Another question,  
15 another question from one of my constituents:

16 She tried to get her mother out of a nursing  
17 home in the middle of the pandemic, but the  
18 facility, according to her, refused to let her  
19 mother leave.

20 Was that a policy that just some nursing  
21 homes had?

22 Or is that something, you know, in effect?

23 Or was it just, you know, you guys don't know  
24 anything about it?

25 NEIL HEYMAN: Right, I don't know anything.

1           MICHAEL BALBONI: Probably the individual.

2           NEIL HEYMAN: I'd have to see what the  
3 specific situation was.

4           I don't know anything about that.

5           ASSEMBLYMEMBER GARBARINO: Okay.

6           And, last, I know Assemblymember Byrne  
7 brought it up, about the March 25th order.

8           And you both said you know it's still in  
9 effect, and how you couldn't refuse a re-admission  
10 or admission of a patient based on COVID alone.

11           But the commissioner today made it sound  
12 like, if they -- if the person had COVID, and the  
13 nursing home said, we didn't want the person because  
14 we can't take care of them, that would be good  
15 enough.

16           Is this something -- or, how are you  
17 answering questions from nursing homes, as to  
18 whether or not, if they don't -- if nursing homes  
19 don't want them?

20           I know you said some of them do because of a  
21 higher reimbursement rate.

22           But how are -- are you advising members, if  
23 they don't want them, COVID patients, back, how  
24 do -- what are you telling them so they don't have  
25 to take them?

1           NEIL HEYMAN: That basic concept, by the way,  
2           of a nursing home not taking a patient because the  
3           facility doesn't feel they can take care of it, goes  
4           across the board.

5           It's not just for COVID patients. It's for  
6           any patients.

7           And so that, if a nursing home feels they  
8           can't take a patient, for whatever reason, we would  
9           help them to find -- or, help them, or have the  
10          department of health help them, find a different  
11          facility.

12          ASSEMBLYMEMBER GARBARINO: Specifically with  
13          COVID, though, what are you saying to them --

14          NEIL HEYMAN: [Indiscernible  
15          cross-talking] --

16          ASSEMBLYMEMBER GARBARINO: -- for the next --  
17          with the next [indiscernible cross-talking] --

18          NEIL HEYMAN: -- [indiscernible  
19          cross-talking] --

20          But what's happened now, and you should know  
21          this, is that, virtually, every facility has put  
22          protocols in place, learned how to cohort, and has  
23          COVID-only units.

24          So although the question -- the answer to you  
25          question is, yes, I would say, do what you need to

1 do, I would say a vast majority, if not almost all  
2 of them now, have the capacity to take the COVID  
3 patient.

4 SENATOR RIVERA: Thank you, Assemblymember.

5 I actually have one senator.

6 Senator Biaggi, will be recognized for  
7 3 minutes.

8 SENATOR BIAGGI: Thank you very much.

9 I'm just trying to undo my video.

10 If someone could just start it for me,  
11 please?

12 Thank you, very much.

13 Okay, great.

14 So, good afternoon.

15 Thank you very much for being here.

16 I just have a question about federal  
17 regulation that was put in place in 2016, that  
18 required nursing homes to create pandemic crisis  
19 plans.

20 I think investigations have shown, and  
21 there's a really great article, actually, talking  
22 about it, that only a fraction of nursing homes have  
23 actually done so.

24 So I'm wondering if either of your  
25 organizations has done an inventory of the nursing

1 homes, to see which ones have done the plans or  
2 complied with the plans, and which ones have not?

3 And then, also, what you're doing to ensure  
4 that every single facility has one, moving forward?

5 MICHAEL BALBONI: So, Senator, thank you for  
6 that question itself.

7 We had not done a survey specific to the  
8 federal plans.

9 That's usually done through the state  
10 department -- state department of health.

11 But what we are doing, going forward, because  
12 of the law you passed, is that we are hosting  
13 webinars, talking specifically about the acquisition  
14 and maintenance of the PPE and the development of  
15 the plan itself.

16 And that, remember, as you know, Senators,  
17 it's not just the plan itself, but you have to  
18 exercise. You've got to make sure that the people  
19 know how to use it.

20 And so we're urging to create not only the  
21 plans itself, but then the templates for exercising  
22 those plans.

23 SENATOR BIAGGI: Okay, so just to be  
24 super-clear: Then has the department of health not  
25 done outreach to any of your respective nursing

1 homes that you are overseeing, or in your organ --  
2 or part of your organizations, with regard to making  
3 sure there's compliance with this federal  
4 requirement?

5 MICHAEL BALBONI: Yeah, Senator, I'll be  
6 honest, I -- before you brought it up, I know that  
7 there was actions at the federal level in 2016. But  
8 I was not -- we have never really referred to the  
9 pandemic planning as a part of what we need to do  
10 pre-COVID.

11 You know, again, it was one of these things  
12 where there were a lot of plans.

13 Remember, after "Sandy," you know, everyone  
14 had to have a generator, and you had to test that  
15 generator?

16 So there have been regulations layered on  
17 over the years.

18 I don't believe, in my personal opinion, that  
19 the 2016 federal pandemic plan or requirement that  
20 you're to has actually been something that we've  
21 been talking about as an industry in New York since  
22 that time.

23 Certainly, because of your actions, we're  
24 going to be talking about it now.

25 SENATOR BIAGGI: All right, okay.



1           No, I appreciate it.

2           I just want to be very clear with everybody,  
3       and just be on the record with this:

4           That the federal requirement to create this  
5       plan is absolutely something that the department of  
6       health has oversight and enforcement of, and also  
7       has to ensure that there is compliance with.

8           And so it's [inaudible] --

9           MICHAEL BALBONI: Senator, just to get some  
10       information for my crack staff listening to me talk:

11           So the plan you're referring to is the  
12       Federal Emergency Preparedness Mandate. And it is  
13       actually all hazards.

14           Which means, so it's not pandemic-specific,  
15       but is actually all hazards.

16           So they're part of the whole planning as  
17       well.

18           So I do believe, as a part of their planning  
19       in response to the all-hazards requirement, that the  
20       they have some -- they have plans in place.

21           SENATOR BIAGGI: Okay.

22           I know my time is up, Senator Rivera.

23           I just wanted to complete this -- the  
24       thought.

25           That makes a lot of sense.

1           And, also, because pandemics have already  
2       been present in the state of New York, it would have  
3       been very prudent for the department of health to  
4       have made sure that that was planned for.

5           So, thank you very much.

6           SENATOR RIVERA: Thank you, Senator.

7           Assembly.

8           ASSEMBLYMEMBER BRONSON: We recognize next,  
9       Assemblymember Michael Reilly for 3 minutes.

10          ASSEMBLYMEMBER REILLY: Thank you,  
11       Mr. Chair.

12          Thank you to the panel members.

13          I have a question regarding -- focusing on  
14       the downstate area, which the hearing is focusing  
15       on.

16          I represent Staten Island -- a portion of  
17       Staten Island.

18          During this, the pandemic, how often has the  
19       governor's office or the department of health held  
20       meetings with your organizations to stay on top of  
21       the status each -- each period?

22          Can you tell me if there's been a certain  
23       amount of meetings, and how often they occurred?

24          DR. HOWARD ZUCKER: During the height of it,  
25       Assemblyman?

1 ASSEMBLYMEMBER REILLY: Yes.

2 DR. HOWARD ZUCKER: Like, several times a  
3 day.

4 NEIL HEYMAN: And that's weekends and nights.

5 MICHAEL BALBONI: Right, [indiscernible]  
6 nights. Yeah.

7 ASSEMBLYMEMBER REILLY: So before -- before  
8 they started getting into those meetings every day,  
9 or every weekend, or the frequency of the meetings,  
10 during the time of the executive order for the  
11 immunity and for the budget discussion, was there  
12 any contact with your agencies in regards to the  
13 implementation of that legislation and that  
14 executive order?

15 MICHAEL BALBONI: Are you referring  
16 specifically to the "liability" executive order?

17 ASSEMBLYMEMBER REILLY: Yes, yes.

18 MICHAEL BALBONI: Okay.

19 No. Not that -- Neil, I don't recall.

20 Do you?

21 NEIL HEYMAN: No, I mean, there was early, as  
22 the process started, there was an explanation of  
23 what was out there and what was going on. And it  
24 was stated to us in some of the meeting that this  
25 was in place.

1 But it was just something they announced at a  
2 meeting and mentioned as part of what was out there.

3 ASSEMBLYMEMBER REILLY: So there was no  
4 consultation to the agen -- to the organizations and  
5 the facilities that it actually implemented -- or,  
6 that it impacted, I should say, from the  
7 administration?

8 MICHAEL BALBONI: Assemblyman, I think it was  
9 done more -- I can't tell you, you know, what the  
10 mindset was of the governor when this was put out  
11 there. But I believe it was for the whole  
12 health-care industry. That it wasn't specific to  
13 any one sector.

14 ASSEMBLYMEMBER REILLY: Yeah, no,  
15 I understand that, Mr. Balboni.

16 I was actually looking to see if there was  
17 any input from those on the ground --

18 MICHAEL BALBONI: I see.

19 ASSEMBLYMEMBER REILLY: -- before it was  
20 implemented. That's the reason --

21 NEIL HEYMAN: I certainly think it's a good  
22 idea.

23 It was told to us it was happening. And  
24 I thought it was a good idea. I mean -- you know,  
25 but there wasn't any input prior to the -- prior to

1 it coming out.

2 ASSEMBLYMEMBER REILLY: During the regional  
3 meetings, or when they had these discussions with  
4 the -- that were led by the governor's office and  
5 the department of health, did they -- did they  
6 include the executives from each county, or the  
7 commissioner from the department of health in  
8 New York City?

9 MICHAEL BALBONI: Not with us. Not with our  
10 meetings.

11 NEIL HEYMAN: Not on a regular basis.

12 But there was interaction between  
13 New York State and New York City at the ground  
14 level, in an attempt to try and get the appropriate  
15 staffing lined up and to coordinate activities.

16 There were New York City groups doing it and  
17 New York State groups doing it; they invited each  
18 other to participate. And that did take place.

19 ASSEMBLYMEMBER REILLY: So -- I mean, we  
20 talked a lot about --

21 SENATOR RIVERA: Your time is up,  
22 Assemblymember.

23 ASSEMBLYMEMBER REILLY: -- it would be great  
24 if we included that, moving forward, where all --

25 SENATOR RIVERA: Assemblymember -- thank you,

1       Assemblymember. Your time has expired.

2               Thank you.

3               ASSEMBLYMEMBER BRONSON: Thank you.

4               The -- I next recognize Assemblyman  
5 John Salka for 3 minutes.

6               ASSEMBLYMEMBER SALKA: Hello, can you hear  
7 me?

8               ASSEMBLYMEMBER BRONSON: Yes, we can.

9               ASSEMBLYMEMBER SALKA: Okay.

10              Gentlemen, thank you for being here today.

11              This was a -- this was probably an answer,  
12 and I would have gotten -- preferred to be gotten  
13 from the department of health, but, I'll just run  
14 this by you.

15              Do you get any indication from your members  
16 on how many, in particular, actually requested help  
17 from the DOH and -- when they couldn't accept a  
18 patient because of their lack of ability to care  
19 properly for the patient?

20              NEIL HEYMAN: I don't have any numbers on  
21 that. I'm sorry.

22              MICHAEL BALBONI: And same thing, I don't  
23 have any numbers.

24              ASSEMBLYMEMBER SALKA: So you haven't had any  
25 reflection whatsoever from any of your member

1 organizations, that they might have reached out to  
2 the department of health with an issue regarding the  
3 inability to provide proper care?

4 You didn't get any input at all from any of  
5 the members?

6 MICHAEL BALBONI: I've not.

7 But, Assemblyman, in full transparency,  
8 there, were moments during the pandemic, I remember  
9 two weekends in -- specifically, where we were very  
10 concerned that a nursing home would have to evacuate  
11 their patients, for lack of staff, lack of the  
12 ability.

13 I mean, they got really close in a couple of  
14 situations. That didn't have to do with a specific  
15 order or anything else. That was just due to the  
16 operation, and lack of staffing.

17 So, you know, again, there is no normal in a  
18 pandemic. And this really was a war.

19 ASSEMBLYMEMBER SALKA: And I understand that.

20 I just -- what I'm trying to pinpoint here  
21 is, that I know that the governor said that if -- in  
22 one of his press conferences, that if the nursing  
23 homes could not provide adequate care, to reach out  
24 to the department of health.

25 And we're just trying to get -- put our

1 finger on whether or not that did happen at all.  
2 And if it did happen, how quickly that request was  
3 expedited, so that, of course, the resident got the  
4 best care.

5 So I was wondering if you had heard anything  
6 at all about that, any reflection from any of your  
7 organizations?

8 NEIL HEYMAN: No, I had not heard. Even  
9 anecdotally, none of my members actually told me  
10 they went through that process.

11 ASSEMBLYMEMBER SALKA: Okay. Thank you.

12 Thank you, gentlemen; thank you for being  
13 here.

14 SENATOR RIVERA: All right, that is all from  
15 the Senate.

16 Do we still have some from the Assembly?

17 ASSEMBLYMEMBER BRONSON: That is all for the  
18 Assembly as well.

19 Thank you, gentlemen.

20 SENATOR RIVERA: All right.

21 Thank you, Mr. Heyman and Mr. Balboni.

22 NEIL HEYMAN: Thank you.

23 MICHAEL BALBONI: Thank you very much.

24 SENATOR RIVERA: And we are moving on to  
25 Panel 3, which will be:



1           Judy Farrell, the long-term-care ombudsman  
2           from the Tri County Ombudsman Program;

3           And, Richard Molloy -- and please correct me  
4           if I'm wrong in that pronunciation -- executive  
5           director for Long-Term Care Community Coalition.

6           Mr. Molloy, is that correct, the correct  
7           pronunciation?

8           RICHARD MOLLOY: Thank you.

9           JUDY FARRELL: Yes.

10          ASSEMBLYMEMBER GOTTFRIED: And just before  
11          I swear them in, I just want to observe, it's been  
12          an hour and twenty minutes since we returned from  
13          our break after the health department.

14          Two witnesses have testified during that  
15          time.

16          We have 30 more on the list.

17          So, do you each swear or affirm that the  
18          testimony you're about to give is true?

19          RICHARD MOLLOY: I do.

20          JUDY FARRELL: Yes, I do.

21          ASSEMBLYMEMBER GOTTFRIED: Okay.

22          JUDY FARRELL: Thank you.

23          RICHARD MOLLOY: Judy, do you want to go  
24          first?

25          JUDY FARRELL: Sure. Thank you, Richard.

1           Thank you to the chairs and to the Senate and  
2           Assembly for convening this important hearing today,  
3           and allowing me -- inviting me to submit a statement  
4           on the impact of COVID-19 on residential health-care  
5           facilities.

6           My perspective is based on the hundreds of  
7           heart-breaking conversations that I've had with  
8           families and residents during the peak of the  
9           COVID-19 pandemic.

10          The facilities are home to thousands of  
11          New York's most vulnerable residents. Many of these  
12          residents knew each other, shared meals together,  
13          participated in recreational activities, and enjoyed  
14          visits with families and friends.

15          No one was prepared for the spread of this  
16          horrific virus, the massive death toll, and the  
17          inability to spend precious last minutes of life  
18          comforted by loved ones.

19          From the beginning, we knew that COVID-19  
20          would take a devastating toll on the elderly,  
21          particularly in long-term-care facilities.

22          Now we know over 6,000 residents died in a  
23          few short months.

24          As the new long-term-care ombudsman for  
25          Region 4, which covers Westchester, Rockland, and

1 Putnam counties, I soon became aware that we were  
2 one of the only offices having direct contact with  
3 residents and families during the COVID-19 peak.

4 And as a long-term-care ombudsman, I received  
5 calls from desperate families, to get any  
6 information on infections in their loved ones'  
7 facility.

8 I received calls from family members, seeking  
9 to arrange end-of-life compassionate-care visits.

10 I received calls, asking for assistance with  
11 getting bodies to be released to funeral homes.

12 While I was able to advocate for residents  
13 and connect some with their families via technology,  
14 or help families safely discharge their loved ones,  
15 residents, families, and facilities were overwhelmed  
16 by the pandemic and living in fear.

17 Today, months later, families are still not  
18 able to visit loved ones due to the continuing  
19 number of staff testing positive for COVID-19.

20 It is vital for all of us concerned with the  
21 lives of people living in long-term-care facilities  
22 to find a way to not only protect our elderly and  
23 people with disabilities from future outbreaks, but  
24 to solve the devastating problem of isolation and  
25 lack of human connection that may also impact the

1        mental health, cognitive capacity, and lives of so  
2        many residents and families.

3                Based on all of the fears and concerns I've  
4        heard expressed to me since COVID-19 swept through  
5        the facilities in my regions, and with over 20 years  
6        of experience in health care and public health,  
7        I offer the following recommendations for your  
8        consideration:

9                1.    Ensure residents of long-term-care  
10       facilities are represented during New York's  
11       emergency preparedness planning, and that there is  
12       public access to emergency preparedness plans.

13               2.    Notify families and guardians of  
14       long-term-care residents immediately of imminent  
15       threats to their health and safety.

16               3.    Share with residents and families,  
17       information about all of the assistance available to  
18       them through times of public health crises,  
19       including the services of the office of the state  
20       long-term-care ombudsman, complaint report hotlines,  
21       and the local department of health.

22               4.    Continue to invest in and support  
23       technology that allows residents, families, friends,  
24       and representatives to stay connected virtually.

25               5.    Bring all stakeholders to the table,

1 planning the future of long-term care in New York,  
2 including the representatives of residents.

3 One final thought.

4 It has been said that we, as a society, will  
5 be measured by how we treat the most vulnerable.

6 While we cannot have known, and still do not  
7 know, the full -- fully, the horrific COVID-19  
8 virus, we must all work to ensure that we are  
9 prepared for the next outbreak, and that we do  
10 everything we can to protect New York's most  
11 vulnerable elderly population and people with  
12 disabilities.

13 Thank you.

14 RICHARD MOLLOT: Thanks.

15 Should I just go ahead?

16 SENATOR RIVERA: Yes. Perfect timing.

17 RICHARD MOLLOT: Okay.

18 Thank you for inviting me to provide  
19 testimony today.

20 I'm truly grateful, both professionally and  
21 personally, that you're holding these hearings.

22 My name again is Richard Mollot. I'm the  
23 executive director of the Long-Term Care Community  
24 Coalition. We're a non-profit, non-partisan  
25 organization dedicated to improving care and quality

1 of life for residents in nursing homes and other  
2 residential-care settings.

3 It is well known, as we've discussed today,  
4 that nursing home residents would be particularly  
5 vulnerable to the coronavirus well before it hit the  
6 United States and our home state of New York, based  
7 on how it hit communities in China, Italy, and  
8 Spain.

9 In fact, our first knowledge of the virus's  
10 entrance into the U.S. was when we witnessed in  
11 horror the devastating impact that it had on  
12 residents and staff in a nursing home in  
13 Washington State.

14 Despite these warnings, far too little was  
15 done by nursing homes or state and federal leaders  
16 to mitigate the impact of the virus when it came to  
17 New York.

18 As a result, we lost thousands of residents  
19 to the coronavirus, and, undoubtedly, many thousands  
20 more from the persistent reports we have been  
21 hearing of abject neglect and substandard care in  
22 our facilities.

23 Fundamentally, and sadly, there's plenty of  
24 blame to go around at every level.

25 Since we are at the beginning of piecing

1 together what happened, and where we go from here,  
2 I would like to use the remainder of my time to  
3 discuss a few points that we believe are critical to  
4 any discussion of what happened, and how to best  
5 move forward.

6 First, a few nursing home basics.

7 Nursing homes are paid and contractually  
8 required to provide good care and humane, dignified  
9 conditions to every resident they accept.

10 The state department of health is paid and  
11 contractually required to ensure that these  
12 standards are met for every single resident every  
13 day of the year.

14 The industry complains that it does not  
15 receive enough money to provide decent care and  
16 humane conditions for our elders.

17 When bad things happen, under normal  
18 circumstances, or as a result of the pandemic, the  
19 industry's inevitable response is that, it is not  
20 their fault and they need more money.

21 In fact, the industry is increasingly run for  
22 profit with a growing number of chains. The  
23 industry, both for- and non-profit, is dominated by  
24 sophisticated operators.

25 As "The New York Times" reported: Nursing

1 home operators commonly use related-party  
2 transactions to hide profits from Medicaid and  
3 Medicare services.

4 Nursing homes received a 6.2 percent boost in  
5 Medicaid payment under the Family's First  
6 Coronavirus Relief Act.

7 They have enjoyed double-digit profits on  
8 Medicare patients for close to 20 years. And since  
9 October 2019, they have seen a boost in profits as a  
10 result of changes to the federal reimbursement  
11 system.

12 A few points about what happened leading up  
13 to the pandemic.

14 We have long known that staffing is a  
15 widespread and persistent problem in our nursing  
16 homes.

17 We have also known that poor  
18 infection-control protocols are longstanding and  
19 persistent problems.

20 What we know about what happened so far:

21 Residents and their families were, and  
22 continue to be, absolutely devastated, as Judy was  
23 saying, by the coronavirus and the abject neglect  
24 residents are experiencing in facilities across the  
25 state.



1           Our preliminary analysis of the data indicate  
2           that New York nursing homes with higher staffing  
3           levels had lower rates of deaths due to COVID.

4           We have also found that ownership makes a  
5           difference. For-profit owners have had higher rates  
6           of resident deaths than have non-profit and  
7           county-owned facilities.

8           There is growing evidence of nursing homes  
9           that avoided deaths, even in hotspots, when they  
10          took basic steps to ensure resident and staff  
11          safety.

12          Where do we go from here?

13          1. We must improve oversight and  
14          accountability for nursing home care in  
15          New York State.

16          Our research of federal data, New York State  
17          comptroller's audits, even a recent GA --  
18          U.S. Government Accountability Office (GAO) report  
19          on New York, have all indicated that the department  
20          of health must do more to safeguard the safety and  
21          dignity of our residents.

22          The nursing home standards are strong, but  
23          they are not self-implementing. They must be  
24          enforced.

25          2. We need to join the majority of states

1       that have minimum staffing standards.

2               3. We must put in place a medical-loss ratio  
3       to set reasonable limits on how much money nursing  
4       homes can take out in profits or administrative  
5       costs before they allocate any funds to resident  
6       care, including decent, livable wages for nursing  
7       home staff.

8               Nursing homes are increasingly run for  
9       profit. Right now, they're getting paid enormous  
10      sums for COVID patients, and bonuses of billions of  
11      dollars are going to the industry through the  
12      stimulus bills.

13              Excuse me.

14              Where is that money going?

15              Where is the accountability?

16              Thank you again for this opportunity to  
17      provide testimony.

18              SENATOR RIVERA: Thank you, sir.

19              And to lead us off in the Senate will be  
20      Senator James Skoufis, recognized for 5 minutes.

21              SENATOR SKOUFIS: Thanks very much.

22              And thanks to both of you for not just your  
23      testimony, but your service.

24              Speaking frankly, and this is something that  
25      you did touch on, but I would love to speak at some

1 length about, and I'm disturbed by the State's early  
2 decision to prohibit you all, prohibit ombudsmen and  
3 -women from performing safe, in-person oversight  
4 during the pandemic.

5 You're -- I'm going to tell you, you're our  
6 watchdogs, you know what to look for, and your very  
7 presence itself oftentimes deters bad behavior.

8 So, fundamentally, I guess, maybe the most  
9 important question on this matter is: In your heart  
10 of hearts, do you believe that, if you and your  
11 peers around the state would have been able to save  
12 lives from COVID if able to carry out your duties  
13 over the past five months in nursing homes?

14 JUDY FARRELL: I think we were able to speak  
15 to residents and families through technology. But,  
16 of course, it would have been more effective to be  
17 there in person.

18 But I don't think -- I think that decision  
19 was right to not allow us to visit in person because  
20 the risk was too great, frankly.

21 And we not only -- you know, to the ombudsman  
22 staff, but we have volunteers. And many of them are  
23 retired seniors.

24 SENATOR SKOUFIS: And I appreciate that.

25 And I guess I -- so I have spoken with

1       ombudsmen with a slightly different opinion. And  
2       they felt that they would have liked very much to be  
3       able to visit in person.

4               Clearly, you know, there's a -- there's  
5       discrepancy and opinion within your ranks.

6               I wonder, Richard, as an executive director  
7       of an organization that represents many members, can  
8       you speak to, maybe, what you've heard on this?

9               Do more ombudsmen and -women feel this was  
10      the right call? Or do they feel differently, and  
11      wish they would have been able to continue in-person  
12      visits?

13              RICHARD MOLLOT: Well, I think -- well, one,  
14      this really came down from the feds.

15              I think that's important to know that.

16              It was actually in March that CMS (the  
17      Centers for Medicare & Medicaid Services) put that  
18      blockade up on visitation.

19              We were against that for both family -- in  
20      respect to both families and ombudsmen at the time.  
21      That was the beginning of March.

22              However, that was before the disaster,  
23      frankly, really unfolded. And that's when Judy came  
24      in.

25              As Judy knows, she's a new ombudsman.

1           So I think, by the time we got to late March,  
2           or mid-March, in New York, it was not an appropriate  
3           time for people to be going in.

4           However, and this is something that you guys  
5           discussed earlier, I think that there were ways that  
6           the visitation could have been mitigated and done  
7           appropriately earlier on, if better steps had been  
8           put in place to safeguard residents along the way.

9           And, certainly, this is something that we  
10          have issued, you know, guidelines on for reopening  
11          visitation right now.

12          I know you guys were just [indiscernible]  
13          too.

14          SENATOR SKOUFIS: Just to be clear, the State  
15          didn't have a choice on this issue?

16          RICHARD MOLLOT: Correct.

17          But the State does have a choice now in terms  
18          of visitation.

19          But it didn't then.

20          SENATOR SKOUFIS: Okay.

21          And, you know, my team and I, we  
22          received some testimony from an ombudsman out in  
23          Western New York, that reads, in part: Both prior  
24          to -- prior to, during the pandemic, and still, when  
25          I attempt phone calls to certain facilities, I am

1 refused access, or, too often, the phone line rings  
2 indefinitely, never to be answered.

3 Can you speak to the prevalence of that sort  
4 of problem, where there is just complete  
5 unresponsiveness, outright refusal, both during this  
6 pandemic --

7 Well, certainly the "refusal to visit" part  
8 has been addressed.

9 -- but even more generally than that?

10 RICHARD MOLLOT: Judy?

11 JUDY FARRELL: I was able to get through the  
12 many facilities.

13 But I do -- had -- did hear from families,  
14 that they had difficulty getting through the  
15 facilities, and difficulty getting calls back.

16 SENATOR SKOUFIS: So what do you do at that  
17 point?

18 JUDY FARRELL: Then I call.

19 If families are having difficulty, they've  
20 called me. I mean, that's how -- the ombudsman  
21 program is very resident-focused. And it's at the  
22 request of the resident or their family, you know,  
23 that we're able to call the facility directly, and  
24 connect them with that resident's family, so that  
25 their loved ones can communicate with them, and get

1 information on their status if they're not able to  
2 communicate.

3 SENATOR SKOUFIS: So it sounds like you  
4 haven't had any problems personally with  
5 unresponsiveness to you.

6 I'm wondering if, Richard, the -- what  
7 I shared is prevalent among other ombuds members who  
8 have, you know, maybe a longer history due to the  
9 work?

10 RICHARD MOLLOT: I think -- I mean, that's  
11 really what we're hearing is, unfortunately a mixed  
12 bag.

13 And I've been on a number of family calls as  
14 well over the past several months, and certainly  
15 spoken to a lot of ombudsmen, that it's,  
16 unfortunately, as I said at the start of my  
17 testimony, there's blame at every level.

18 And I think, really, the lack of direction,  
19 and leaving it up to facilities, some facilities did  
20 a great job with reaching out to families and to  
21 residents.

22 Some of them, frankly, a lot of them, did a  
23 really poor job, and that made it really hard to get  
24 to people.

25 And we heard, you know, just someone had

1 mentioned previously --

2 SENATOR RIVERA: [Indiscernible] --

3 RICHARD MOLLOT: -- about not hearing about  
4 [indiscernible cross-talking] --

5 SENATOR RIVERA: -- we're out of time, so  
6 please wrap up, please wrap up.

7 RICHARD MOLLOT: -- not even hearing about  
8 deaths of their families until well after the  
9 resident had died, their family members.

10 Excuse me.

11 SENATOR RIVERA: Thank you so much.  
12 Assembly.

13 ASSEMBLYMEMBER BRONSON: Uh, yes. We  
14 recognize Co-Chair Dick Gottfried for 5 minutes.

15 ASSEMBLYMEMBER GOTTFRIED: Thank you.

16 Richard Mollot, in discussing the pandemic,  
17 I've been saying several things, and I'm just  
18 interested in your take on them.

19 Basically, that, for years, long before  
20 COVID, our nursing homes were suffering from  
21 inadequate staffing, inadequate staffing of the  
22 health department's enforcement personnel, and a  
23 fairly lax attitude among the enforcement personnel,  
24 and a chronic inadequacy of funding, particularly  
25 from the Medicaid program. And that all of that,



1       that long preexisted COVID, has made all of the  
2       problems of COVID much worse.

3               Does that square with your vision of things?

4               RICHARD MOLLOT: Yeah, it does.

5               I mean, we have longstanding problems with  
6       staffing in this state.

7               And, with infection control, it's a  
8       nationwide issue. It's the most cited deficiency,  
9       last year, was failure to provide appropriate  
10      infection-control protocols.

11              I know you guys discussed that a little bit  
12      earlier.

13              It's, really, you know, all this stuff is  
14      basic.

15              It's handwashing. It's using basic common  
16      sense of washing your hands or changing your gloves  
17      when you go from caring for one resident to another.

18              It's not brain surgery.

19              But it really comes down, as you're saying,  
20      Assemblymember Gottfried, to staffing, because if  
21      you have enough staff and the staff are trained,  
22      then they know to do that. They don't have to rush  
23      from one resident to another. They can stop and  
24      wash their hands.

25              So it's really basic stuff.

1           In terms of funding, I think, obviously, the,  
2           you know, Medicare program pays a lot more money  
3           than the Medicaid program does. And it's, frankly,  
4           due to a lack of transparency and accountability  
5           with how -- where funds go.

6           As I mentioned, you know, briefly in my  
7           testimony, it's really hard to say how much, you  
8           know, we need to pay, et cetera.

9           I think that it would make sense to have a  
10          payment system that reimbursed appropriately for  
11          good care. We all want to see that, but that  
12          requires some transparency and accountability as  
13          well.

14          ASSEMBLYMEMBER GOTTFRIED: You used the --  
15          you referred to setting up a -- what you called, a  
16          "medical-loss ratio," a term borrowed from the  
17          insurance world, to, essentially, require a facility  
18          to demonstrate spending a certain percentage of  
19          their revenue, I guess, on patient care and services  
20          before they could draw profit.

21          And I'd like to, obviously not right now,  
22          talk at much greater length with you about that.

23          Is that -- is there legislation like that in  
24          place in some other states?

25          RICHARD MOLLOT: No, not that I'm aware of,

1 in terms of -- not for nursing homes.

2 There is for, of course, as you mentioned,  
3 for -- in the insurance world.

4 But it's something that we have -- we have  
5 become aware of just in the last few years.

6 And as I quickly noted in your testimony,  
7 something that we've seen over the last, you know,  
8 15 or so years, is that the nursing home industry  
9 has become increasingly sophisticated.

10 So one way to kind of address that  
11 sophistication, you know, hiding assets in LLCs,  
12 hiding assets by selling the underlying property to  
13 yourself, and then paying yourself rent at above  
14 market rates, those kinds of things, would be to get  
15 at a way of accountability.

16 And so we borrowed that.

17 And I didn't come up with this idea. These  
18 were actually academic experts, and, you know, then  
19 we looked into it afterwards.

20 And it made sense to have some kind of  
21 structure so that you couldn't pull out, you know,  
22 a million and a half dollars in administrative  
23 salaries, you know, for the administrator, for one  
24 person, per year, and then turn around and say,  
25 well, I'm not making enough money to provide decent

1 staffing for my residents or to pay a livable wage  
2 for my staff.

3 ASSEMBLYMEMBER GOTTFRIED: Is this  
4 predominantly a problem on the for-profit side, or  
5 are there facilities on the not-for-profit side that  
6 are doing this sort of thing?

7 RICHARD MOLLOT: Yes to both.

8 I think it's more predominant on the  
9 for-profit side.

10 But I think that there are facilities in the  
11 not-for-profit side that are increasingly  
12 sophisticated in their financial structure, and that  
13 money is not going necessarily to provide resident  
14 care.

15 ASSEMBLYMEMBER GOTTFRIED: Okay.

16 SENATOR RIVERA: Your time is up,  
17 Assemblymember.

18 ASSEMBLYMEMBER GOTTFRIED: That's fine.  
19 Thanks.

20 SENATOR RIVERA: Of course, Senator --  
21 followed up by Senator Rachel May, recognized for  
22 5 minutes.

23 SENATOR MAY: Thank you.

24 And thanks for this testimony.

25 Ms. Farrell, I can't believe this, what a

1 time to be new in this job. This must be amazingly  
2 difficult.

3 I had a number of questions about the  
4 ombudsman program.

5 I want you to know that I fought really hard  
6 in the budget, before the pandemic exploded, for  
7 more funding for this program. And this has been on  
8 my mind for a long time.

9 So, first of all, just a simple question:  
10 How well do you think residents and their families  
11 know about the ombuds program?

12 JUDY FARRELL: I think it could be shared  
13 more widely.

14 I think, you know, the nursing homes and  
15 other long-term-care facilities are provided with  
16 the information and the contact information. There  
17 are posters in every facility.

18 But I really think, until there's a crisis,  
19 unfortunately, this pandemic is the worst crisis you  
20 can imagine, that people, you know, then ask for the  
21 number.

22 But I think that it could be shared more  
23 widely with families, and with the community,  
24 frankly, so that people know, if they know someone  
25 in the nursing home that has an issue, that they can

1 call us.

2 And we're trying to do that, the ombudsman's  
3 office. But we -- you know, we have a very small  
4 budget. And I think getting the word out is really  
5 important.

6 SENATOR MAY: Right.

7 I asked repeatedly for the governor to say  
8 something about it in his press conference, just so  
9 people would know. But, I don't think it worked.

10 So another question was about your access to  
11 information.

12 So we heard about problems with  
13 infection-control plans at different facilities.

14 I know you're working with the residents and  
15 their families.

16 But are -- do you have access to that kind of  
17 information, like, facility-wide information, about  
18 something, like, do they have a plan in place, and  
19 are they following it?

20 JUDY FARRELL: Well, that's why, in my  
21 recommendations, I ask that that be considered; a  
22 recommendation that there be an  
23 emergency-preparedness plan in place.

24 What I heard from families of residents was  
25 that they could not get access to that. They didn't

1 know what the facilities' plans were, and they  
2 wanted to know.

3 And, also, representatives of residents can  
4 be on the local emergency-preparedness teams, or  
5 have some contact with them, because getting that  
6 information is critical to family decisions.

7 I mean, unfortunately, some families would  
8 have taken a loved one out, and the loved one passed  
9 away from COVID-19, because they didn't have  
10 information quickly enough.

11 [Indiscernible cross-talking] --

12 SENATOR MAY: But I was more asking to -- as  
13 an ombudsperson, do you have access, even --

14 JUDY FARRELL: No --

15 SENATOR MAY: -- [indiscernible  
16 cross-talking] --

17 JUDY FARRELL: -- no, no.

18 I have what the department of health has  
19 shared, that information.

20 The information that I received on infections  
21 in facilities, I received from resident families who  
22 were more in touch with people inside, with staff  
23 and with others.

24 So I sometimes got information even before  
25 the department of health, maybe, when people called.

1 But it was -- it was -- they were guesstimates, they  
2 didn't have exact numbers. But we knew what  
3 facilities had quite a few infections.

4 SENATOR MAY: Right.

5 And this is a big question, and I know that  
6 you're new, but, do you think the ombuds program  
7 should be independent of the State, of the  
8 executive?

9 Is that something you can comment on?

10 JUDY FARRELL: Well, it is supposed -- it is  
11 a federal -- it's a federal-state partnership. And  
12 it is an independent program.

13 Although [indiscernible cross-talking] --

14 SENATOR MAY: I know, but they try to say,  
15 "an office for the aging."

16 JUDY FARRELL: -- it does sit within that  
17 office, but we are supposed to be operating  
18 independently.

19 SENATOR MAY: Do you feel that you do?

20 JUDY FARRELL: I'm too new, I think, to  
21 really make a [inaudible].

22 SENATOR MAY: Probably.

23 So, okay, one more question, because you  
24 talked about the virtual visits kind of working in  
25 this period.



1           Do -- and I've heard a lot about, volunteers,  
2       that's it's hard to recruit new volunteers, and,  
3       often, "I'm upstate." You know, they have to travel  
4       long distances to get to facilities, and they're  
5       volunteers, so it takes a lot of time.

6           Do you see virtual visits as something that  
7       will be continued to be used in the future, beyond  
8       the pandemic, and could be effective? Or should the  
9       visits be in person?

10          JUDY FARRELL: I think virtual visits are  
11       important to, you know, maintain as a tool. But  
12       I think there's nothing that replaces in-person  
13       visits or human connections.

14               I think we can use technology as a tool.

15           And, certainly, if we can get in to do a  
16       FaceTime with a resident and with their family, it's  
17       helpful.

18           And, certainly, it was helpful during the  
19       pandemic. And should be a part of planning.

20           But I think, you know, if we can get and  
21       recruit volunteers and have more staff to get into  
22       the facilities, that's really important.

23           Because, the residents in the facilities --  
24       I haven't, you know, been with the program too  
25       long -- but I know from our volunteers and other

1       ombudsmen, that the residents trust the ombudsmen,  
2       and will share things that they might not share with  
3       others.

4               So I think [indiscernible cross-talking] --

5               SENATOR RIVERA: Thank you, Ms. Farrell.

6               JUDY FARRELL: Yep.

7               SENATOR MAY: Thank you.

8               SENATOR RIVERA: Thank you, Senator.  
9       Assembly.

10              ASSEMBLYMEMBER BRONSON: Thank you, Senator.

11              I will go next.

12              And my first question is for you,  
13       Ms. Farrell, and it's following up on the  
14       ombudsperson program.

15              We really need to change the name of that, by  
16       the way, so that it's gender-neutral at best.

17              But that being said, so this is a federal and  
18       a state program. Correct?

19              And if I understood your response to  
20       Senator Skoufis, the bar for ombudspersons from  
21       going into facilities, that was federally required  
22       in the beginning? Is that true?

23              JUDY FARRELL: Yes.

24              ASSEMBLYMEMBER BRONSON: Okay.

25              And that requirement no longer exists.

1           So are ombudspersons going in facilities  
2           today?

3           JUDY FARRELL: They are not yet going in.

4           I think the department has given -- approved  
5           to -- and giving guidance to allow Ombudsmen to go  
6           in.

7           There are issues around testing and PPE, and  
8           other issues, that, really, I can't -- you know, I'm  
9           not, you know, at liberty to address what stage  
10          they're at. But I know there's guidance being  
11          developed, actually, implement visits, going  
12          forward.

13          But that's not happening yet.

14          ASSEMBLYMEMBER BRONSON: Okay.

15          So, if you know, the -- so we currently have  
16          a visitation guideline: 28 days of no test  
17          positives and you're allowed visitations.

18          Is -- would not the ombudsperson fit under  
19          that guideline?

20          JUDY FARRELL: Yes.

21          ASSEMBLYMEMBER BRONSON: Okay.

22          So -- but as far as you know -- for instance,  
23          I just had a facility right up the street up from my  
24          home who had met that requirement. And,  
25          unfortunately, now they've had two staff people test

1 positive. So now they're starting the 28 days all  
2 over again.

3 Are there -- are you not aware of any  
4 facility that has met that requirement where an  
5 ombudsperson has gone in already?

6 JUDY FARRELL: No, I mean, there are  
7 requirements, as you know, for the staff to be  
8 tested. But there are also requirements.

9 And this is really an office of the state and  
10 long-term-care ombudsman question.

11 Richard, if you want to address it.

12 But there are requirements for tests every  
13 week for the ombudsmen. And how that's going to be  
14 implemented is not clear yet.

15 ASSEMBLYMEMBER BRONSON: All right, so, just  
16 so I understand it correctly: As far as you're  
17 aware, ombudspersons are not going into facilities  
18 as of this day?

19 JUDY FARRELL: Not in my region, no.

20 ASSEMBLYMEMBER BRONSON: All right.

21 And, Richard, I lost you on the screen -- oh,  
22 there you are.

23 Richard, do you -- are you aware of  
24 ombudspersons going into facilities in any  
25 locations?

1           RICHARD MOLLOT: Not in New York State.

2           ASSEMBLYMEMBER BRONSON: Okay.

3           RICHARD MOLLOT: But just to clarify, there's  
4 a -- very quickly, there's a difference between  
5 allowing -- a plan for allowing facilities to have  
6 visitors, and a plan to allow ombudsmen in.

7           So there's a distinction there.

8           So what DOH did, was a plan to allow visitors  
9 and open it up. And they did mention the ombudsmen.

10          But then that really has to come from the  
11 long-term-care ombudsman program, as Judy was  
12 saying, the state office of the ombudsman program.

13          ASSEMBLYMEMBER BRONSON: And do we know where  
14 those discussions are on developing that plan?

15          RICHARD MOLLOT: As Judy said, I believe that  
16 they're being developed. But that would really be a  
17 question for the state ombudsman.

18          ASSEMBLYMEMBER BRONSON: Okay. All right.

19          Are either of you aware, has the office for  
20 the aging reached out to you in connection with this  
21 program?

22          I mean, they're the agency in charge of  
23 oversight of this program.

24          Have they reached out, have they had  
25 conversations with either of you?

1           Or are you aware of conversations or  
2       communications, of any nature, from that agency,  
3       about this program, and how to fit it into the  
4       current COVID-19 in a safe and healthy way?

5           RICHARD MOLLOT:  As -- if I just may -- if  
6       I may answer to that, as Judy said, the  
7       long-term-care ombudsman program is housed within  
8       the state office for the aging, but it's required  
9       under federal rules to be run as an independent  
10      program.

11           So it's -- the long-term-care ombudsman, her  
12      name is Claudette Royal, would be the beginning and  
13      the end of responsibility for how the ombudsman  
14      program is run, again, under the federal rules.

15           We get a significant amount of federal money  
16      to have an ombudsman program.

17           ASSEMBLYMEMBER BRONSON:  I understand that,  
18      but the office for the aging is still responsible  
19      for the program, is that not true?

20           RICHARD MOLLOT:  The office for the aging  
21      houses the program, but the office for the aging is  
22      not -- does not have substantive control over the  
23      program.

24           ASSEMBLYMEMBER BRONSON:  Another reason we  
25      should move it to the department of health,

1 I suppose.

2 RICHARD MOLLOT: Hmm, I would not agree with  
3 that.

4 JUDY FARRELL: Hmm.

5 ASSEMBLYMEMBER BRONSON: No?

6 RICHARD MOLLOT: No.

7 ASSEMBLYMEMBER BRONSON: Okay.

8 All right. So the -- well, probably, there  
9 would be conflicts there.

10 I understand.

11 JUDY FARRELL: It has to be independent.

12 ASSEMBLYMEMBER BRONSON: Yeah, the idea of  
13 independence, I get it. I misspoke.

14 Thank you.

15 All right. I would love to learn more,  
16 Richard, about what you were talking about, the  
17 difference between profit and not-for-profit, and  
18 the responses, and what's happening from a profit  
19 motivation.

20 But my time is up, so I will yield.

21 SENATOR RIVERA: Unfortunately, you will have  
22 to -- that, you could always -- you could always  
23 submit it in writing, for Mr. Mollot to respond in  
24 the future.

25 Passing to the Senate, recognize

1 Senator Metzger for 3 minutes.

2 SENATOR METZGER: Thank you, thank you so  
3 much.

4 Okay, first I just -- I have a question for  
5 Richard.

6 Sorry, I'm trying to get my video on.

7 Richard, you had mentioned that those --  
8 those for-profit nursing homes, outcomes for  
9 residents faired worse than for those that were not  
10 for-profit or state-owned. Is that correct?

11 RICHARD MOLLOT: Uh-huh.

12 SENATOR METZGER: Do you -- so one -- two  
13 questions.

14 One is, do you have a study? Like, is this  
15 data available for -- that can be shared?

16 That's one question.

17 And, secondly, what do you contribute, or  
18 what are the main factors?

19 Is it staffing? Is it understaffing?

20 Like, what are the main factors involved?

21 I'm very concerned because there is,  
22 actually, in my district, the County is considering  
23 selling its nursing home right now, which I have  
24 really major concerns about.

25 And this data is important.



1           RICHARD MOLLOT: Thank you.

2           Well, and those are really great questions.

3           So we're embarking on a larger study to  
4           assess the data.

5           As people before us mentioned, there's  
6           federal data that's coming out. And, of course, the  
7           state data, which only provides data on deaths.

8           There is now more robust federal reporting.

9           In any case, so we -- in anticipation of the  
10          hearing, we did some quick analyses. And those are  
11          the results of those analyses, and I can, of course,  
12          share those data.

13          There are not a lot of the county-based  
14          nursing homes.

15          But as I recall, when I looked, and I haven't  
16          looked at them the past four hours or so, but as  
17          I recall, the county-based nursing homes actually  
18          did even better than the  
19          not-for-profits/county-based, overall.

20          But there was a clear delineation, and that  
21          is probably true to the fact that the not-for-profit  
22          and county nursing homes tend to put more money into  
23          resident care and tend to have higher staffing  
24          levels.

25          So there are good nursing homes on both ends.

1           SENATOR METZGER: County -- the county  
2       nursing homes.

3           RICHARD MOLLOT: Pardon?

4           County nursing homes and not-for-profits both  
5       put more money into resident care and into staffing,  
6       which, as someone mentioned earlier, was about  
7       80 percent of the resident-care costs anyway.

8           SENATOR METZGER: Okay. Thanks.

9           And do I have time to ask a question of Judy,  
10      Mr. Chair?

11          SENATOR RIVERA: If you keep asking until the  
12      time runs out.

13          SENATOR METZGER: All right, all right.

14          Judy, I just -- is there -- I'm very  
15      concerned about the lack of visitation. This has  
16      come up as a theme constantly.

17          Even for -- within the current guidance,  
18      I mean, I just don't understand the ban on outdoor  
19      visitation. It seems like, that, that would be  
20      safer.

21          And -- I mean, what do you think about that?

22          SENATOR RIVERA: You have about 50 seconds,  
23      please.

24          JUDY FARRELL: Some facilities are doing that  
25      already.

1           But I do think you're right, this issue of  
2       visitation has to be solved with -- to get our best  
3       minds together, because it is impacting the mental  
4       health of residents and their families.

5           SENATOR METZGER:   Okay.   All right.

6           SENATOR RIVERA:   Thank you so much, Judy.

7           Thank you Senator.

8           Assembly.

9           ASSEMBLYMEMBER BRONSON:   Yes, next

10          I recognize Co-Chair Assemblymember McDonald for  
11          5 minutes.

12          ASSEMBLYMAN McDONALD:   Thank you, Harry.

13          And, Judy and Richard, thank you for being  
14          here.

15          Judy, Harry already asked my questions, so  
16          you're good, you're off the hook, I guess.

17          Richard, you may have heard my question  
18          earlier with Dr. Zucker.

19          And I understand you've got your ear to the  
20          ground.

21          Psychotropic use with our residents in the  
22          long-term-care facilities, what are you hearing?

23          I'm hearing through the pharmacy community  
24          that it's up significantly.

25          And I'm just curious what your reflections

1 are.

2 RICHARD MOLLOT: Thanks.

3 And this is one of our biggest advocacy  
4 issues, is the inappropriate overuse of  
5 antipsychotics and other psychotropic medications.

6 And that is what we are hearing.

7 So the data we have for this time period  
8 right now, it's all anecdotal.

9 I just want to be very careful, because we do  
10 policy research on this, using federal NBS data.

11 So we don't have great data, but the reports  
12 I'm hearing, over and over again, is of residents  
13 being drugged, residents appearing drugged,  
14 residents being told that they need these drugs,  
15 essentially, rather than, you know, receiving  
16 appropriate care.

17 And I just want to quickly mention that  
18 the -- a lot of the rules have been relaxed for  
19 nursing homes over this time period.

20 But the right to be free from unnecessary  
21 drugs, the right to be free from chemical  
22 restraints, and the right to be treated with dignity  
23 have not been relaxed.

24 So nursing homes still have the  
25 responsibility do that.

1           I know we're not going to get everyone  
2           together for a game of Bingo, or whatever, but  
3           there's other things that they can done be doing,  
4           which, too often, is not going on.

5           ASSEMBLYMAN McDONALD: I've gotten a variety  
6           of e-mails from not only constituents here in the  
7           Capital Region, but throughout the state.

8           And the impression I'm getting, which is --  
9           which is -- I can understand people are feeling  
10          isolated, is that they're barely able to leave their  
11          room.

12          Is that true?

13          RICHARD MOLLOT: Yes. And it doesn't have to  
14          be that way.

15          Again, you know, nursing homes were never an  
16          appropriate setting to let steam off of the hospital  
17          situation. They just weren't.

18          And that's why we brought in the ship, that's  
19          why we set up hospitals, that's why we still have  
20          units around the state.

21          It's one of the most infuriating and  
22          appalling things to me, in the 18 years --  
23          18-plus years I've been at the coalition, is to see  
24          residents, essentially, imprisoned in their  
25          facilities for month after month after month after

1 month.

2 Nursing homes are not a MASH unit in a war  
3 zone.

4 This is just completely inappropriate.

5 As everyone has said throughout the day, it  
6 is physically, clinically, harmful for people to be  
7 out of touch, to be isolated, and to be neglected in  
8 this way.

9 ASSEMBLYMAN McDONALD: Thank you both.

10 RICHARD MOLLOT: Thank you for raising that.

11 SENATOR RIVERA: Thank you, Assemblymember.

12 Now moving on to recognizing Senator Serino  
13 for 5 minutes.

14 SENATOR SERINO: Sorry about that. Just took  
15 me a second to get there.

16 Thank you both so much for being here, and  
17 for all of the hard work that you do.

18 You know, at the start of the pandemic  
19 I immediately heard from my local ombudsman, who was  
20 working overtime to help keep families connected to  
21 their loved ones.

22 And we're great grateful for all of your  
23 services.

24 She brought to my attention that many of our  
25 state's volunteers are seniors themselves, which you

1 guys had spoken about, and would not have been able  
2 to safely enter these facilities even if they were  
3 allowed to.

4 So we immediately saw a dangerous gap that  
5 needed to be filled, and we can all agree upon that.  
6 So, we came up with a proposal.

7 I introduced legislation, to create an  
8 emergency public health transparency and  
9 accountability council.

10 That council would be charged with creating a  
11 direct 24/7 hotline, collecting and investigating  
12 reports of problems or COVID-19 guidelines not being  
13 followed in any facilities.

14 The idea, was that those who were allowed in  
15 could continue to be the confidential eyes and ears  
16 in these facilities.

17 The bill expressly required the  
18 long-term-care ombudsman to be a member of that  
19 commission so their experience could be leveraged to  
20 best protect these residents.

21 That proposal, like so many others, was  
22 completely ignored.

23 We also know that the State has failed to  
24 provide enough resources to bolster the ombudsman  
25 program.

1           And I also carry legislation to incentivize  
2       more there as well.

3           But I'm wondering, what do you think we can  
4       do, going forward, to ensure that there is a patient  
5       advocate on the ground advocating for patients and  
6       their loved ones?

7           It's for either one of you to answer.

8           RICHARD MOLLOT: Judy, do you want to...

9           JUDY FARRELL: Sure.

10          I do think that the advocates and the  
11       resident representatives have to be part of any  
12       local emergency-preparedness planning.

13          I think, after 9/11, we learned that, you  
14       know, being prepared, I mean, you never know.

15          The pandemic, we didn't expect it to be as  
16       horrifying as it is.

17          But I think if we're communicating with the  
18       emergency services and all the first responders and  
19       everyone that's going in to assist facilities, that  
20       we can communicate to the residents what's going on  
21       in their community.

22          I think that's -- and to their families,  
23       their loved ones, because they really want to know.  
24       They see things on the news, and they panic, and  
25       they're living in fear.



1           But we can reassure them or we could share  
2           information, and that's really comforting.

3           RICHARD MOLLOT: And I would just quickly  
4           add --

5           And, Senator Serino, you've been a strong  
6           supporter of this for many years, I know personally.

7           -- that we clearly need to be adding funding  
8           and support for the long-term-care ombudsman  
9           program.

10          I thank you and Senator May for, you know,  
11          that support. And, of course, others who are here  
12          as well.

13          But it is so clear; we've been calling -- you  
14          know, calling for this for several years.

15          I did research on funding, six, seven years  
16          ago now, that found that New York is one of the  
17          states that least funds the -- their long-term-care  
18          ombudsman program.

19          New York State Comptroller's Office did a  
20          similar study about two years ago, which found,  
21          roughly, the same thing.

22          And this shows we really need to have  
23          professional staff because, as you mentioned, a lot  
24          of volunteers are seniors themselves. And it may be  
25          a long time before it's safe for them to be going

1       into facilities.

2               We need to have the professional staff there  
3       to answer questions and advocate.

4               SENATOR SERINO: Thank you, Richard.

5               And I -- actually, also, I introduced  
6       legislation that would provide grant funding to  
7       these facilities, to hire staff solely dedicated to  
8       answering calls and answering questions from loved  
9       ones and ombudsmen, so that there was no logjam, and  
10      there was no staff being pulled away -- right? --  
11      because that happens -- from taking care of the  
12      patients.

13              That proposal, to date, has been completely  
14      ignored as well.

15              But thank you so much for your time today.

16              RICHARD MOLLOT: Thank you.

17              SENATOR SERINO: Thank you.

18              JUDY FARRELL: Thank you.

19              SENATOR RIVERA: Thank you, Senator.

20              Assembly.

21              ASSEMBLYMEMBER BRONSON: Yes, I recognize  
22      Assemblymember Jake Ashby for 5 minutes.

23              ASSEMBLYMEMBER ASHBY: Thank you,  
24      Mr. Chairman.

25              Quick question for Richard.

1           Earlier, when were you talking with  
2           Assemblymember McDonald, you were talking about  
3           how inactive some of the population in our nursing  
4           homes have become.

5           And I'm wondering, have you seen this on kind  
6           of a larger scale in terms of their functional  
7           ability? And how has it impacted -- or, has it  
8           impacted their ability to be discharged?

9           Some of the patients aren't necessarily there  
10          for long-term care. They're there for short-term  
11          rehab, or they get to the point where they can go  
12          home, or should be able to -- or, leave the  
13          facility, maybe not go home, but go somewhere else,  
14          to an alternative level of care.

15          Do you feel like their functional ability has  
16          been impacted to where that's not happening?

17          RICHARD MOLLOT: Yes.

18          And, again, I want to be careful because  
19          everything I hear is either -- it's anecdotal; it's  
20          from hearing from ombudsmen and hearing from family  
21          members, et cetera, over the last five months.

22          So we don't have good data on this, which we  
23          are constantly calling for, and urge you all to call  
24          for as well, you know, for good data on what's going  
25          on in nursing homes, as you did earlier with the

1 commissioner.

2 But I think that -- that's the kind of thing  
3 we hear.

4 People that went into a facility for rehab  
5 services, and they are confined to their bed, put in  
6 a double diaper.

7 And so not only are they not getting the  
8 therapy services that they need and went in for, but  
9 they're losing their ability to be continent.

10 I mean, the nursing -- the nurses -- nursing  
11 homes, excuse me, refusing to even take them to go  
12 to the bathroom to maintain continence.

13 Those -- and, of course, a lot of residents  
14 who we're seeing with malnourishment and  
15 dehydration. As I mentioned before, a lot of  
16 reports of widespread drugging of residents.

17 And so all those things lead to a  
18 deterioration, and a lack of ability to get out of  
19 the nursing home.

20 ASSEMBLYMEMBER ASHBY: Yeah, I would be very  
21 curious to know, in terms of the patients or  
22 residents that went in for short-term rehab, and  
23 were expected to go home, and had a discharge plan  
24 in place, and then sedentary -- be secondary to the  
25 sedentary lifestyle, of now not being able to leave

1 your room. Right?

2 Or if you are receiving rehab, are you able  
3 to go to the -- you know, to the gym -- the rehab  
4 gym in the facility, or are you confined to your  
5 room for rehab services?

6 And the impact of quality of services that  
7 are -- that's happening there.

8 And then, you know, on top of that, what  
9 counts as a safe discharge at this point?

10 Can you do a home eval from a nursing home?

11 Or is everybody, because of the restrictions,  
12 were not able to get therapists, are not able to get  
13 into these people's homes and make sure that it's a  
14 safe discharge environment?

15 I mean, there's -- there could be a lot --  
16 there could be a lot going on here that's  
17 compounding problems for not only nursing homes,  
18 but, you know, for the families and residents as  
19 well.

20 RICHARD MOLLOT: Absolutely.

21 Thank you.

22 ASSEMBLYMEMBER ASHBY: Thank you.

23 SENATOR RIVERA: All righty. Thank you,  
24 Assemblymember.

25 Now recognizing Senator Tom O'Mara for

1       5 minutes.

2               SENATOR O'MARA: Thank you, [indiscernible].

3               And thank you both for your testimony today,  
4       and much thanks for what you do as ombudsmen and  
5       helping those programs operate on such limited  
6       budgets.

7               I know in my region of the state that  
8       I represent, our ombudsman's program covers  
9       five counties.

10              I think they have one paid staff person.  
11       They rely on volunteers for the rest of it. It's  
12       just woeful.

13              So it's very inadequate coverage  
14       [indiscernible] providing ombudsmen. And, you know,  
15       when you can get a volunteer, it's likely related to  
16       somebody that is willing to do some extra work while  
17       they're visiting a facility where their own loved  
18       one is. And perhaps after that loved one is no  
19       longer, passes away in the nursing home, is no  
20       longer a resident, they kind of lose interest and  
21       fall off the volunteer list for continuing those  
22       efforts.

23              So I agree we need a lot more effort put into  
24       bolstering these programs to help with that.

25              What is your sense, if you have one, in the

1 areas that you represent, on -- you know, we've  
2 talked about, there's a 20 percent vacancy rate, or  
3 down in occupancy, [indiscernible] of our nursing  
4 homes. Probably a little less than half of that  
5 number are actual deaths that occurred in nursing  
6 homes.

7 But what is your sense of the breakdown of  
8 the other vacancies in the nursing homes that have  
9 been resulted?

10 I assume there are some that were taken  
11 out -- some residents taken out, back to their homes  
12 where that was feasible. But there was those that  
13 were transferred to hospitals with COVID, that died  
14 there of COVID, and they're not in our counts, as  
15 well as, probably, those deaths that occurred, and  
16 there just is a lack of sending a loved one to the  
17 nursing home right now because of the conditions  
18 under COVID, and people are dealing with that more  
19 at home, hopefully.

20 But what's your sense on the breakdown of  
21 that extra -- that extra -- those extra vacancies,  
22 as far as what you would consider were deaths that  
23 occurred in hospitals, or individuals that were  
24 checked out of the nursing facility?

25 RICHARD MOLLOT: I don't -- I don't -- this

1 is Richard.

2 I don't think there's really any good way  
3 to -- I mean, the department may have data, as was  
4 discussed, you know, with the commissioner earlier.  
5 But that would be the only way, I think, to speak  
6 about those issues.

7 They're important, but I -- you know, I think  
8 we should be careful, and really expect the  
9 department to come out with that information to the  
10 best of its ability.

11 We're still not getting a lot of information.  
12 We still don't know the cases among staff. We still  
13 don't know suspected cases.

14 As many have discussed, we still don't know  
15 who was sent to a -- you know, by ambulance to a  
16 hospital and died there, when, really, they were  
17 sick and, you know, whatever, they were led to  
18 death's door by the nursing home, and then they went  
19 on to the hospital and died there.

20 SENATOR O'MARA: Well, thank you for that.

21 I'm not trying to --

22 RICHARD MOLLOT: [Indiscernible  
23 cross-talking] --

24 SENATOR O'MARA: -- I'm trying not to put you  
25 on the spot, but, I was hoping you might have



1 something anecdotally on that, because of the lack  
2 of the commissioner of health [inaudible] being  
3 forthcoming in that information, despite having  
4 two weeks to prepare for this hearing, and coming in  
5 with no numbers as far as deaths and hospitals.

6 But let me ask you one thing: What do you  
7 see in the facilities, their ability to help with  
8 the residents make that electronic or computerized  
9 contact with loved ones, since nobody can visit?

10 Are you finding enough assistance, what  
11 you're hearing, in the homes, and allowing -- or,  
12 helping an individual get set up to do a Zoom  
13 teleconference, of sorts, with a family members?

14 RICHARD MOLLOT: It really varies across the  
15 state.

16 So some nursing homes are really doing a good  
17 job.

18 I heard of one nursing home that was  
19 actually, after the economy tanked in early April,  
20 they hired people who had worked in entertainment,  
21 and they -- to help residents, so that they could do  
22 that safely, and bring in staff that were not -- you  
23 know, not clinicians, but that could provide that  
24 kind of help.

25 But we also hear, over and over again, of

1 nursing home residents being told that they can't  
2 get help with even turning on an iPhone. That the  
3 staff just utterly refuses, doesn't have time,  
4 whatever.

5 That they -- of phones and things being lost.

6 It is the nursing home's responsibility to  
7 make sure that those things don't happen. They're  
8 the ones who control the situation.

9 And then in respect to the money going out,  
10 that's actually something we and other resident  
11 advocates had advocated for.

12 That's federal money that the commissioner  
13 had mentioned.

14 It's a federal -- federal civil money penalty  
15 funds that every state has, is getting, to give out  
16 to nursing homes.

17 So we're looking forward to that  
18 [indiscernible cross-talking] --

19 SENATOR O'MARA: Very quickly, and my time is  
20 just about up, but, do you have any thoughts on  
21 allowing a resident or family members to place a  
22 surveillance camera in the resident's room, with the  
23 consent of the patient, obviously?

24 Since there is no access from either  
25 ombudsmen or [inaudible] --

1           SENATOR RIVERA: If you can answer that  
2 question quickly?

3           RICHARD MOLLOT: Sure.

4           So we've -- we support that, very carefully  
5 and respectfully, for the resident; so, there's  
6 certain ways in which it has to be done.

7           And then, just very quickly, there are  
8 actually other equipment that we know of that  
9 allows, and, actually, I know someone who's using it  
10 in New York, who allows you to communicate, the  
11 resident to communicate, in a very easy way, you  
12 know, a two-way with their family members.

13          SENATOR RIVERA: Thank you very much,  
14 Mr. Mollot.

15          SENATOR O'MARA: Thank you very much.

16          SENATOR RIVERA: Thank you, Senator.  
17 Assembly.

18          ASSEMBLYMEMBER BRONSON: Thank you, Senator.

19          I next recognize Assemblymember Tom Abinanti  
20 for 3 minutes.

21          ASSEMBLYMEMBER ABINANTI: Oh, I'm sorry.  
22 Well, okay.

23          ASSEMBLYMEMBER BRONSON: You ready, Tom?

24          ASSEMBLYMEMBER ABINANTI: I think I'm next.  
25 Hold on.

1           Yep, I'm here.

2           Talk to you soon. Thank you.

3           Yes, hi, there.

4           Thank you very much.

5           I just want to emphasize one thing: Did you  
6 say that visitors are delayed from entering  
7 long-term-care facilities because of an increase in  
8 COVID among staff?

9           Am I hearing that correctly?

10          RICHARD MOLLOT: I didn't say that.

11          But with the -- what the guidelines are,  
12 first of all, there are federal guidelines. And  
13 then within those federal guidelines, the states can  
14 have a set of guidelines.

15          And what the department did was, they set up  
16 very, very conservative guidance within what the  
17 feds allowed.

18          So, essentially, because I think, you know,  
19 people are very, and you're, of course, very,  
20 interested in this, is that the whole 28 days,  
21 et cetera, et cetera, that was for internal visits  
22 under the federal rules.

23          What the State has done, and we urged them  
24 not to do this, was to open it up more. But they  
25 did this for external and internal visits.

1           So [indiscernible] facilities

2           [indiscernible cross-talking] --

3           ASSEMBLYMEMBER ABINANTI: So the visitors,  
4           including you guys, visitors, including you guys,  
5           are being penalized because the staff might be out  
6           partying, or coming across people who -- who -- who  
7           have, or from other jobs, or whatever, the staff is  
8           transmitting it to each other, or whatever.

9           Everybody is excluded forever.

10          Am I understanding this correctly?

11          RICHARD MOLLOT: Yeah -- well, I don't want  
12          to speak about whether the staff are out partying,  
13          or something.

14          But I think that, you know, as I said from  
15          the start, we said, before it got to such a  
16          disastrous proportion in New York State, that it  
17          could be done safely if staff could come in, as  
18          you're saying, that family members could come in  
19          also.

20          Think about it: A family member only wants  
21          to visit his or her loved one.

22          Staff go in and out of different rooms, you  
23          know, they're providing care, et cetera.

24          So now that it's -- you know, we've got it  
25          under control here, we think that it should be

1 reopened safely. But we actually put together a  
2 blueprint for doing that.

3 I know [indiscernible cross-talking] --

4 ASSEMBLYMEMBER ABINANTI: You have? Can you  
5 send that to us?

6 RICHARD MOLLOT: I can.

7 ASSEMBLYMEMBER ABINANTI: Can you make sure  
8 that's distributed to all of us?

9 RICHARD MOLLOT: Yes, yeah.

10 ASSEMBLYMEMBER ABINANTI: Thank you.

11 Secondly, what's the definition of "long-term  
12 care" that you guys represent?

13 Do you include only the health-care  
14 facilities?

15 Or do you also include things like places for  
16 people with disabilities, behave -- you know,  
17 developmental disabilities, et cetera?

18 RICHARD MOLLOT: No.

19 So we principally -- originally, we were the  
20 Nursing Home Community Coalition of New York State.

21 And now we do both national work.

22 And since more people are getting care in  
23 assisted-living, adult-care facilities, we have,  
24 over the last, you know, 18 or so years, added that  
25 under our umbrella.

1           But my focus and my expertise [indiscernible  
2 cross-talking] --

3           ASSEMBLYMEMBER ABINANTI: Are the same rules  
4 applied to all of those facilities that are being  
5 applied to nursing homes?

6           RICHARD MOLLOT: Say that again, I'm sorry?

7           ASSEMBLYMEMBER ABINANTI: Are the same  
8 prohibition on visitors being applied to all of  
9 those facilities?

10          We've been, basically, talking about nursing  
11 homes, by and large.

12          But are the same -- are visitors being  
13 prohibited all over those other places  
14 [indiscernible cross-talking] --

15          RICHARD MOLLOT: Yeah, I believe so.

16          But -- yeah -- just, very quickly, the  
17 federal rules only go to nursing homes.

18          Everything that happens in adult-care  
19 facilities is up to you guys and the governor  
20 because there are no federal rules for adult-care  
21 facilities. It's only state rules.

22          So DOH has, whatever it wants to do, it can  
23 do in the health-care world.

24          SENATOR RIVERA: Thank you, Mr. Mollot.

25          Thank you.

1           Assemblymember.

2           ASSEMBLYMEMBER BRONSON: Uh, yes. We have  
3 one last questioner.

4           Assemblymember Missy Miller, you have  
5 3 minutes.

6           ASSEMBLYMEMBER MILLER: Yes, hi.

7           I just -- I would like to start by thanking  
8 you both for being here, and thank you for what you  
9 do for this population.

10          I have two questions, very brief:

11          One: You spoke about, you know, the impact  
12 that -- or, the -- you know, the fact that it's  
13 having on the residents in the homes. You know,  
14 isolation. They haven't seen their family members.  
15 They're not getting out and around.

16          But there's also a population of children in  
17 children's facilities, long-term skilled-care  
18 facilities, who haven't been able to see their  
19 parents in months, which, you know, is unbelievably  
20 critical to somebody's, you know, rehabilitation,  
21 especially children.

22          Have you heard much about that from -- from  
23 families about that population?

24          RICHARD MOLLOT: Yes. Yes, we have.

25          And just the concerns that you're raising,



1       frankly, about those children who are at an enormous  
2       risk and very vulnerable, and who, you know, count  
3       on their family members, obviously, to visit them,  
4       to provide -- just as with, you know, adults and the  
5       elderly, to provide, often, you know, care and  
6       monitoring.

7                ASSEMBLYMEMBER MILLER:   Right.

8                And I know, I've heard from one in  
9       particular, that one of these facilities, a hospital  
10      for children, who's had absolutely zero patients  
11      test positive.

12               None.

13               It's all just staff, and it's the 28-day  
14      limit that's, you know, stopping anybody from moving  
15      forward.

16               As far as the ombudsmen, I, as a parent of a  
17      medically-fragile child who spends lots of time in  
18      and out of hospitals, I am always a big advocate.

19               And I tell people, when I get -- I find that  
20      I get a lot of calls in my Assembly office, that  
21      I believe would have been helped by an ombudsman.

22               But families still just don't know about  
23      them.

24               So I think we have to do a better job of  
25      getting that word out.   It somehow is missing.

1           And then my last question is just  
2           philosophical.

3           You know, we all know we're advocating; we're  
4           fighting for the people who have the quietest voices  
5           here.

6           Do you guys feel that you are getting heard  
7           by department of health, by the governor's office,  
8           by anybody that's making decisions?

9           RICHARD MOLLOT: No, to be perfectly blunt.

10          You know, I was kind of disturbed to hear  
11          early this morning that the provider industry, not  
12          only individual nursing homes, but the lobby  
13          associations, the lobbyists for the nursing homes,  
14          meet with DOH regularly about these things.

15          As I said, we have a blueprint.

16          We have long represented residents in this  
17          state. And I have never received a phone call or  
18          request for even information.

19          I think we provide some, you know, valuable  
20          data, as well as insights.

21          And, no, never.

22          ASSEMBLYMEMBER MILLER: Thank you.

23          SENATOR RIVERA: Thank you, Assemblymember.

24          Thank you, Mr. Mollot.

25          I believe that that is all the questioners

1       that we have on both sides.

2             You folks may go back to your normal days.

3             Au revoir.

4             And we are moving on to Panel 4. That will  
5       be:

6             Roxanne Tena-Nelson, who is the interim  
7       president of the Continuing Care Leadership Council;

8             Lisa Newcomb, who's the executive director of  
9       the Empire State Association of Assisted Living;

10            And, John Auerbach -- hope I'm pronouncing  
11       that correctly -- president and CEO of Trust for  
12       America's Health.

13            ASSEMBLYMEMBER GOTTFRIED: [Inaudible.]

14            SENATOR RIVERA: Monsieur Gottfried, we  
15       cannot hear you.

16            ASSEMBLYMEMBER GOTTFRIED: And [inaudible] if  
17       they're all here, then I will ask them each: Do you  
18       swear or affirm that the testimony you are about to  
19       give is true?

20            ROXANNE TENA-NELSON: I do.

21            LISA NEWCOMB: I do.

22            JOHN AUERBACH: [Inaudible.]

23            ASSEMBLYMEMBER GOTTFRIED: Okay. Fire away.

24            ROXANNE TENA-NELSON: So I guess, Lisa, I can  
25       start?

1 LISA NEWCOMB: [Inaudible.]

2 I'm Roxanne Tena-Nelson, interim president of  
3 the Continuing Care Leadership Coalition, which  
4 represents, exclusively, the not-for-profit and  
5 public long-term-care providers in the New York  
6 metropolitan area, and beyond.

7 Our members represent the full continuum of  
8 long-term care, including skilled nursing and  
9 post-acute care, and a variety of home- and  
10 community-based services.

11 We definitely appreciate the opportunity to  
12 provide testimony to the Senate and Assembly  
13 committees today.

14 I am here to offer three points.

15 1. Our mission-driven members save lives --  
16 thousands of lives, at least 3,200 -- helping  
17 74 percent of some the sickest patients with COVID  
18 recover.

19 It took dedication that started long before  
20 COVID-19 came to New York, and that resulted from  
21 tirelessly answering the call of their missions  
22 every single day.

23 2. Our members are essential to preparing  
24 for what comes next.

25 The virus disproportionately came after our

1 patients and the people who care for them. And we  
2 must be an essential part of any preparedness  
3 planning, with the ability to share many best  
4 practices from our experience this spring.

5 3. We need your support to continue our  
6 commitment to taking care of older and disabled  
7 people.

8 We must protect the financial and the  
9 psychosocial well-being of the long-term-care  
10 community, to stabilize our health-care system, and  
11 remain ready for the coming weeks and months.

12 First, how did we save lives?

13 We had a baseline of high performance.

14 Long before the global community began  
15 detecting this novel virus, CCLC members have been  
16 focused on quality improvement, with a very strong  
17 track record of high performance on federal and  
18 state quality measures, as seen in Attachment 1 of  
19 my written testimony, beginning on page 7.

20 Another contribution of high performance is  
21 our members' investment in their workforce.

22 In Attachment 2, we show an example of CCLC's  
23 disproportionate commitment to highly-qualified  
24 clinical staff.

25 In this case, attending physicians raising

1 the bar for New York, a commitment that carries  
2 forward for all the other staff categories listed in  
3 that attachment.

4 Additionally, CCLC has been deeply committed  
5 to emergency preparedness and response in the  
6 region, serving as a long-term care lead for a wide  
7 range of preparedness education and exercises, which  
8 also contributed to the lives saved in what went  
9 right.

10 Second: Why are we essential to preparing  
11 for what comes next?

12 We did not shy away from finding solutions to  
13 the biggest challenges.

14 Three examples of best practices include:

15 Focusing on clinical excellence and testing  
16 to quickly create safe environments focused on  
17 infection prevention and on well-trained, committed  
18 staff;

19 Building capacities to create safe, distinct  
20 units for those needing medically-complex  
21 rehabilitation, including the provision of specialty  
22 care uniquely tied to COVID illness, such as  
23 ventilator support;

24 Supporting creative solutions to engage staff  
25 in their communities, with car parades, family video

1 conferences, robotic solutions to check vitals, or  
2 provide pet therapy, and virtual offerings of music,  
3 caregiver support, and religious services, to name a  
4 few.

5 Finally, why do we need your support?

6 Prior to the arrival of the virus, our  
7 members were already financially fragile. And the  
8 crisis has exacerbated these financial pressures due  
9 to decreased occupancy and increased expenses.

10 Attachment 3 demonstrates this with regard to  
11 occupancy rates, which we talked about a little bit  
12 in this hearing already.

13 22 percentage point decrease, looking at  
14 \$2 million for many members, up to 5.6 for one, from  
15 April through June.

16 Additionally, members had a similar magnitude  
17 of millions of losses for the costs that we have  
18 been talking about on PPE and personnel, and such.

19 And as the pandemic carries on, the losses  
20 just continue to mount.

21 Although the federal government has allocated  
22 some provider relief, the funds that have come to  
23 long-term care have been highly insufficient,  
24 particularly for providers largely caring for  
25 Medicaid beneficiaries.

1           Also, our members have had to navigate  
2           massive regulatory burdens, as seen in Attachment 4.

3           Last, but not least, a significant cost that  
4           has yet to be quantified is the mental-health impact  
5           of our sector.

6           We contend that we must meet these challenges  
7           head on in order to maintain a strong,  
8           compassionate, and high-performing long-term-care  
9           community.

10          We respectfully recommend:

11          Prioritizing older and disabled people for  
12          decisions on PPE, testing, vaccination strategies,  
13          and any related funding;

14          To maintain strong provider and staff  
15          liability protections;

16          And, to thank the long-term-care community  
17          for what they have done, and what they do every day,  
18          to care for our most vulnerable New Yorkers.

19          Thank you.

20          SENATOR RIVERA: Perfect timing.

21          Thank you so much.

22          Either Lisa or -- Ms. Newcomb or  
23          Mr. Auerbach.

24          LISA NEWCOMB: Good afternoon.

25          Thank you for the opportunity to testify on



1       behalf of the over 300 adult-care facilities (ACFs)  
2       who are members of the Empire State Association of  
3       Assisted Living, and the more than 30,000 senior  
4       residents that they serve.

5               Our members include both private-pay  
6       communities whose residents use their own funds to  
7       pay, and low-income communities in which our members  
8       rely nearly entirely on a fixed SSI subsidy which  
9       has largely been unchanged since 2007.

10              It's not possible to read my entire testimony  
11       in the 5-minute limit. I will summarize here, but  
12       I implore you to read the testimony in its entirety.

13              First, and foremost, I just want to give a  
14       shout-out to ACF providers and their staff, the  
15       truly unsung heroes in the fight to protect our  
16       residents.

17              They deserve acknowledgement, gratitude, and  
18       government support.

19              There are not enough words to sufficiently  
20       thank them.

21              The assisted-living model combines  
22       independence, choice, and privacy with personalized  
23       supportive care in a congregate residential setting.

24              Assisted-living residents generally require  
25       some assistance with activities of daily living;

1 usually do not require around-the-clock skilled  
2 nursing care.

3 ACF residents are generally healthier, more  
4 independent, active, and mobile than those in  
5 nursing homes. In normal times they move freely  
6 throughout the inner and outer communities.

7 COVID-19 data, as reported by the department  
8 of health, reflects that the virus has had a  
9 substantially greater impact on the nursing home  
10 population.

11 There are far fewer COVID cases and deaths in  
12 licensed adult-care facilities.

13 The public data, through July 28th, is that  
14 there have been a total of 6,403 nursing home deaths  
15 and 175 ACF resident deaths.

16 Unfortunately, as has frequently been the  
17 case, the unique features of the ACF population, and  
18 the reimbursement we receive, has not been fully  
19 appreciated and, in many cases, has been ignored.

20 In virtually every instance, the  
21 assisted-living industry is treated identical to the  
22 nursing home industry. This repeated linking of the  
23 two in written directives and general policy has  
24 caused confusion for everyone.

25 It is important that State guidance be

1 tailored specifically to ACFs, based on the unique  
2 needs of residents and the unique features of the  
3 ACF industry even if there are some parallels.

4 I want to talk a little bit about funding.

5 The lack thereof of funding support for ACFs  
6 must be rectified.

7 ACFs have been largely left out of all state  
8 and federal funding available to nursing homes and  
9 other health-care providers during this crisis.

10 Two-thirds of ACF providers have received no  
11 funding from government to help offset COVID, not  
12 even for staff technology support that -- that you  
13 were talking about.

14 ACFs who serve our most  
15 financially-vulnerable seniors in -- on SSI operate  
16 on a limited budget that has remained at \$41 a day  
17 for a decade.

18 In that time, costs in every area of  
19 operation has skyrocketed, and now COVID costs  
20 threaten their very existence.

21 This is unconscionable.

22 Even providers and residents in private-pay  
23 settings can absorb only so much additional costs  
24 before they find themselves in heightened financial  
25 distress that could ultimately put some out of

1 business.

2 So we ask for your support in securing  
3 funding for all ACF providers.

4 A little bit about testing.

5 It's critically important, testing our  
6 employees. But the average cost is \$100 per test,  
7 and that equates to thousands of dollars per week  
8 for even a smaller ACF, and tens of thousands per  
9 week for larger ones.

10 With increased national testing, there is  
11 increasing delay in receiving the results, seven to  
12 nine days sometimes, severely lessening the value of  
13 the information.

14 To routinely incur such significant costs  
15 when it can be too late to effectively use the  
16 results is pointless and unsustainable.

17 Due to the significantly lower incidents of  
18 cases and fatalities in ACFs, ESAAL will make  
19 recommendations to the administration, moving  
20 forward, about reducing the testing or frequency for  
21 ACFs, especially that have not had any recent  
22 employee cases.

23 With re -- one other thing about testing:  
24 ACFs should only have to test and pay for their own  
25 employees; not those of vendors or other licensed

1 providers who deliver services in their building.

2 It is unfair to shift costs to the ACF who  
3 has received the least amount of funding.

4 Distribution of PPE, our association  
5 struggle -- our members struggle to -- to -- to  
6 obtain the critically-needed PPE.

7 I know I'm running out of time.

8 ESAAL desperately appealed to government  
9 during that process.

10 Once it did become available in  
11 New York City, ESAAL actually took the  
12 responsibility of securing pickup sites, and manning  
13 [indiscernible cross-talking] --

14 SENATOR RIVERA: Thank you very much,  
15 Ms. Newcomb.

16 Your testimony is included; it will be  
17 included in the record in its entirety.

18 LISA NEWCOMB: Thank you.

19 SENATOR RIVERA: Thank you so much.

20 Mr. Auerbach.

21 You are on mute, sir.

22 JOHN AUERBACH: On mute?

23 SENATOR RIVERA: There you go. Now you're  
24 good.

25 JOHN AUERBACH: Great. Thank you.

1           Good afternoon.

2           My name is John Auerbach, and I'm currently  
3           the president and CEO of Trust for America's Health.

4           We're a 20-year-old non-profit, non-partisan,  
5           Washington, DC-based, public health and prevention  
6           organization, and we deal with issues such as  
7           emergency preparedness and response, and the health  
8           and well-being of older adults.

9           I'm also a former city and state health  
10          commissioner, and a former associate director of the  
11          CDC.

12          Part of our work has been to examine how each  
13          state is doing with response to COVID-19.

14          And we have been impressed by both the skill  
15          and the effectiveness of the New York State  
16          Department of Health. Its adoption of  
17          evidence-based practices and policies have  
18          contributed significantly to the decline in new  
19          cases in the state at the present time.

20          Sound policy was difficult, particularly in  
21          the early days and weeks of COVID's arrival, because  
22          of the uniqueness of the violent -- of the virus,  
23          and the limitations of the appropriate protective  
24          measures within most of the nation's and the states'  
25          nursing homes.

1           And it appears that the lack of such  
2           procedures led to the unintentional introduction of  
3           the virus into nursing homes as a result of workers  
4           and/or family members who were COVID-positive, or  
5           either asymptomatic or mild to moderate symptoms.

6           Contributing to this early spread was the  
7           minimization of risk by the federal government, and  
8           delays in test availability, and restrictive federal  
9           guidelines, which meant that too few were tested and  
10          transmission was missed.

11          I believe that the roots of this problem  
12          aren't state-specific, but, in fact, are part of a  
13          series of problems, including the cuts to federal  
14          emergency preparedness funding, the general  
15          underfunding of public health when not in the midst  
16          of a crisis, and, due as well to a general lack of  
17          attention to the health and well-being of older  
18          adults.

19          Nursing homes receive insufficient  
20          reimbursement, and that contributes to inadequate  
21          pay for and training of their workers.

22          And the current model of care makes it  
23          challenging to provide the highest quality of care  
24          when faced with a pandemic.

25          As COVID spread in New York State, like

1 others states, it was faced with rapidly increasing  
2 cases and rising hospital occupancy, and was faced  
3 to make the difficult decisions with how to best  
4 care for patients while they were ill and  
5 infectious, and, later, when they were no longer  
6 infectious and recovering.

7           There are times when patients get stuck in  
8 acute-care hospitals when they don't need hospital  
9 care, because step-down or other facilities are  
10 either unwilling or unable to care for them.

11           And this is problematic because it means  
12 hospital beds aren't available for others who need  
13 them, as well as, because it keeps patients in a  
14 setting that isn't particularly helpful or healthy  
15 for them.

16           It seems that the decisions to return  
17 non-infectious post-COVID patients to the skilled  
18 nursing facilities, and admit patients with suspect  
19 COVID to a nursing home -- to nursing homes that  
20 were prepared to isolate them appropriately from  
21 other residents, were reasonable ones, as long as  
22 the patients returned or admitted were cared for  
23 properly and the proper precautions were taken.

24           Such a policy shouldn't have off -- shouldn't  
25 offer any risk to other patients in nursing homes,



1 and the data I've seen seems to reinforce that.

2 We believe, at Trust for America's Health,  
3 that the best way to learn from the lessons of the  
4 last few months is to think critically about what we  
5 need to do in terms of improving long-term care and  
6 the health and well-being of older adults.

7 We think that we should be examining the  
8 reconfiguring of long-term care, and placing greater  
9 emphasis on older adults remaining at home and aging  
10 in place.

11 When there is impossible -- that is  
12 impossible, more attention should be paid to  
13 aligning nursing homes with acute-care facilities,  
14 perhaps functioning as extended or step-down wings  
15 of hospitals, where infection procedures may be more  
16 routine.

17 This configure -- reconfiguration would  
18 require a business model for nursing homes, where  
19 reimbursement is more comparable to that of a  
20 hospital, and it would require reimbursement for  
21 more intensive home- and community-based services  
22 and support for caregivers.

23 It also requires examining our support for  
24 public health agencies, in ensuring that they have  
25 the funds that are needed.

1           These changes may seem big and like pipe  
2           dreams, but there are, actually, those in  
3           Washington, DC, who are now beginning to have those  
4           discussions.

5           A group was set up at CMS to begin such  
6           discussions.

7           At the National Academy of Medicine, there  
8           also is a convening to look at these issues.

9           The lessons of COVID-19 involve recognizing  
10          you can't reduce illnesses, injuries, and death  
11          without taking proactive, not reactive, steps.

12          And they can be accomplished by providing the  
13          funding, attention, prioritizing the lives and  
14          well-being of older adults, and demonstrating the  
15          willingness to make the necessary systemic changes  
16          when the models we have no longer meet the purpose.

17          Thank you.

18          SENATOR RIVERA: Thank you, sir.

19          I recognize the Assembly to begin questions.

20          ASSEMBLYMEMBER BRONSON: Yes.

21          I recognize Assemblymember Kevin Byrne for 5  
22          minutes.

23          ASSEMBLYMEMBER BYRNE: Yes, thank you.

24          I don't think I'm going to have to use the  
25          full 5 minutes, hopefully.

1 Famous last words.

2 I know you mentioned that there was limited,  
3 or, apparently, no State assistance for testing and  
4 PPE.

5 I just wanted to make sure that was  
6 confirmed.

7 I know there's more mandatory testing.

8 And have you received any assistance from the  
9 State, financially, to offset those costs?

10 LISA NEWCOMB: So one segment of our industry  
11 is Medicaid-funded, so they have the ability to  
12 apply for funding under the CARES Act.

13 But two-thirds of the industry has gotten no  
14 support whatsoever.

15 ASSEMBLYMEMBER BYRNE: Okay.

16 Now, I know the State manufactured and  
17 disseminated a lot of PPE, hand sanitizer, all these  
18 different things, more towards the height of the  
19 pandemic. A lot of it was distributed through our  
20 county health departments.

21 Was any of that made available to your  
22 facilities as well, or was that really more for an  
23 urgent or emergency situation?

24 LISA NEWCOMB: Well, it was emergent for us.

25 They -- ultimately, we did get assistance for

1 a period of time.

2 You know, I kind of ran out of time before,  
3 but, you know, one of our asks is that  
4 assisted-living, you know, residents and providers  
5 should be higher on the priority list when it comes  
6 to that distribution.

7 ASSEMBLYMEMBER BYRNE: No, understood.

8 And so long as we're asking more of you,  
9 I feel like the State, personally, needs to do its  
10 part as well.

11 This is a public health policy, to ensure the  
12 safety of those folks that you care for.

13 So, thank you.

14 I said I was going to be short, and, oh, my  
15 gosh, I've got 3 minutes and 10 seconds left.

16 Thank you.

17 Unless you want to say anything else?

18 LISA NEWCOMB: Can I have it? Can I have it?

19 No, that's okay.

20 ASSEMBLYMEMBER BYRNE: Thank you.

21 SENATOR RIVERA: Thank you, Assemblymember.

22 To lead off in the Senate, Senator Rachel May  
23 recognized for 5 minutes.

24 SENATOR MAY: Thank you.

25 And thank you all for your testimony.

1           I wanted to direct one question to Roxanne --  
2 actually, two questions to you.

3           You mentioned virtual visitation.

4           How practical do you think this is in nursing  
5 homes, in terms of the availability of technology,  
6 and of staff who can support residents in using it?

7           ROXANNE TENA-NELSON: Our members have been  
8 extremely committed to making it work.

9           I think one of our members, in speaking with  
10 them the other day, they did something like  
11 4,000 video conferences with families, just within  
12 their one organization, over the past few months.

13           And, you know, we are all learning about how  
14 to do the virtual visits better, and virtual  
15 communication.

16           So, you know, our members have been working  
17 really hard to make this kind of opportunity work.

18           I think, also, some residents, for example,  
19 prefer telephone calls. So it wasn't -- the video  
20 was disturbing or difficult.

21           So a telephone call sometimes was even more  
22 effective for certain residents.

23           And I think that's what's key about our  
24 members: they really focus in on the personalized  
25 way in which they communicate with their -- with

1       their residents.

2               Also, on the home-care side of things as  
3       well, working with caregivers, together, providing  
4       some resources to caregivers at home, was really  
5       important on the virtual front as well.

6               SENATOR MAY:   Right.   Okay.

7               Thank you.

8               And have you heard about an issue with the  
9       new managed long-term-care policy changes that have  
10      gone into effect, where people, if they are in rehab  
11      in a nursing home for more than 90 days, they get  
12      dropped from their home care-managed, long-term-care  
13      plans?

14              Have you heard about this as a problem?

15              ROXANNE TENA-NELSON:   My understanding is,  
16      it's not dropped.   It is converting back to  
17      fee-for-service.

18              What the State has learned in their  
19      experiment with managed long-term care for long-term  
20      care -- you know, people seeking long-term care and  
21      receiving those kinds of services, is that, the way  
22      that the managed way of caring for people -- for  
23      certain types of people was really not the best way  
24      to do it.

25              It turns out to be much more effective, or,

1       you know, because the cost is so high to care for  
2       such sick people with multiple comorbidities.

3               And so the State, you know, recognized, and  
4       to their credit, that managed long-term care, in  
5       certain instances, was not the way to go. In  
6       certain instances it may be.

7               But, in particular, for those living in  
8       nursing facilities, reverting back to the  
9       fee-for-service model made more sense.

10              And that's what I -- that's our take on that.

11              SENATOR MAY: Okay.

12              Thank you.

13              And then I have one question for -- oh,  
14       I lost her name, the assisted-living -- Lisa.

15              LISA NEWCOMB: Lisa.

16              SENATOR MAY: All right.

17              I've heard from assisted-living  
18       administrators that the rules for nursing homes  
19       really shouldn't apply.

20              Do you have any specific areas? Like, is it  
21       testing? is it PPE?

22              What are the most important areas where you  
23       would say there should be different criteria?

24              LISA NEWCOMB: No, I think -- you know --  
25       I mean, maybe even visitation.

1           It gives me an opportunity to speak about  
2           visitation a little bit.

3           You know, just because the prevalence is much  
4           lower, based on the data that, you know, has been  
5           provided, you know, perhaps, you know, it's not --  
6           it's not the 20-day -- 28-day rule.

7           I'll also point out, somebody earlier had  
8           mentioned that that rule is from CDC guidance, which  
9           it is. But, when I looked at that, that was tied to  
10          Phase 1 and Phase 2.

11          So I'm thinking that there are ways that the  
12          department could loosen and make visitations more  
13          flexible.

14          You know, the other issue is that, our staff,  
15          as long as they test negative, can return to work  
16          after having tested positive in 14 days. And in  
17          some cases, even less than that.

18          So, you know, those would be more reasonable.

19          But I think it's almost more, like, you know,  
20          they put nursing home and ACF guidance together.  
21          And they're speaking kind of different languages to  
22          two very, very differently regulated entities. And  
23          it creates a lot of confusion, and questions.

24                 SENATOR MAY: Okay.

25                 Thank you very much.



1           SENATOR RIVERA: Thank you, Senator.  
2           Assembly.

3           ASSEMBLYMEMBER BRONSON: Yes, I recognize  
4           Chair Richard Gottfried for 5 minutes.

5           ASSEMBLYMEMBER GOTTFRIED: Thank you.

6           Yeah, Mr. Auerbach, I have a couple of  
7           questions, mostly about you and the Trust for  
8           America's Health.

9           I have to confess, I don't think I've ever  
10          heard of the Trust for America's Health.

11          Can you tell me: What it is? What it does?  
12          Who funds it? Who -- does it have members? Are  
13          there people with whom or for whom it works? What  
14          might it have done recently that I should have known  
15          about?

16          JOHN AUERBACH: Happy to do that.

17          We are a 20-year-old non-profit,  
18          non-partisan group, as I mentioned earlier,  
19          based in Washington, DC.

20          We are entirely funded by foundations. More  
21          than a dozen foundations provide us with funding.

22          We don't take government money and we don't  
23          take corporate money.

24          We were established to be an independent  
25          voice for public health and prevention.

1           We work to provide information about  
2       significant health issues, evidence-based policies  
3       and approaches. We develop a variety of different  
4       publications.

5           And we are also involved in educating policy  
6       members of the legislature at the federal level of  
7       Congress, and of the administration. And we also  
8       work closely with state public health departments  
9       and local public health departments.

10          In terms of some of the things that we've  
11       done recently:

12          We -- we published several different reports  
13       this year, including a report, evaluating each  
14       state's work on emergency preparedness, on the  
15       response to obesity.

16          We're about to publish a report on  
17       climate-change efforts at each state level.

18          And we have worked I think effectively with  
19       both the administration and with Congress to promote  
20       certain policies that have been beneficial to  
21       states, like New York, in terms of receiving the  
22       resources necessary to both support public health  
23       and to combat the COVID pandemic.

24          ASSEMBLYMEMBER GOTTFRIED: Are any of the  
25       foundations that support you, things that I might

1 have heard of?

2 JOHN AUERBACH: Sure.

3 Robert Wood Johnson Foundation.

4 Kellogg Foundation.

5 Kaiser Permanente's philanthropic arm.

6 Kresge Foundation.

7 The John A. Hartford Foundation has a  
8 particular interest in healthy aging. So you might  
9 have heard of that organization.

10 The CDC Foundation.

11 The de Beaumont Foundation.

12 So, I hope you've heard of some of those,

13 so...

14 ASSEMBLYMEMBER GOTTFRIED: Yep.

15 Okay.

16 Well, thank you.

17 JOHN AUERBACH: You're welcome.

18 ASSEMBLYMEMBER GOTTFRIED: That's it.

19 SENATOR RIVERA: All right.

20 Thank you, Assemblymember.

21 Moving on to the Senate, recognizing  
22 Senator Serino for 5 minutes.

23 SENATOR SERINO: Thank you, Chairman.

24 And thank you all for being here today, and  
25 all of the great work that you do.

1           You care for some of the most vulnerable  
2       New Yorkers. But, unfortunately, I think the  
3       assisted-living industry, especially, has been an  
4       afterthought to the State for far too long. Right?

5           And that's only exacerbating the current  
6       problems you're facing now with this pandemic.

7           I'm glad, Lisa, that you brought up the fact  
8       that the rate for these facilities hasn't changed  
9       since 2007.

10          That's awful.

11          As you know, I've carried the bill to  
12       increase that rate for some time now.

13          And, in 2018, it did pass in the Senate, but  
14       it failed to advance in the Assembly.

15          I'd like to take this opportunity to urge my  
16       colleagues to make this initiative a top priority.

17          These facilities, as you've heard today,  
18       can't afford to wait, and they will close, putting  
19       these vulnerable New Yorkers in an even more  
20       vulnerable position.

21          Assemblyman Byrne touched on this as well.

22          It is my understanding that the  
23       assisted-living facilities are having tremendous  
24       difficulty covering testing costs to adhere to the  
25       State mandate.

1           Is that right?

2           And would you say being reimbursed for  
3       testing needs to be a top priority now?

4           ROXANNE TENA-NELSON:   Yes.

5           LISA NEWCOMB:   Yes, thank you, Senator.  
6       Yes.

7           SENATOR SERINO:   Thank you.

8           And in addition to addressing this particular  
9       need, if you had to prioritize one other change to  
10      improve the State's response for this sector in  
11      particular, what would be at the top of your list?

12           You all have some different idea or the same  
13      idea?

14           LISA NEWCOMB:   I think more collaboration  
15      with the association, with providers, when they're  
16      making policies.

17           So, for instance, if they were -- when they  
18      were making their visitation policy, you know, we  
19      weren't aware of, you know, what the requirements,  
20      the rules, were going to be.

21           And, you know, so then that came out.

22           And we've been fighting very hard for  
23      visitation for weeks.

24           And finally comes out, you know, only to find  
25      that there's, like, you know, a major obstacle.

1           So I think the communication with us, you  
2       know, while they're making the policy decisions  
3       rather than after.

4           SENATOR SERINO:   That's true.

5           Very good.

6           Thank you.

7           Anybody else have anything to add?  Or --

8           ROXANNE TENA-NELSON:  I would just support  
9       funding that is -- really prioritizes long-term care  
10      in a way that, you know, it hasn't happened in  
11      New York State, and federally, because of folks,  
12      especially the not-for-profit and public community,  
13      is really extremely financially fragile, definitely  
14      before COVID.  And COVID has just such a major  
15      impact on the not-for-profit and public community.

16           So any way that the funding can be supportive  
17      of what we've been through, and what we will  
18      probably go through during a time where there will  
19      be flu season, coastal storms, school reopening, all  
20      the testing costs, and all of the costs that have  
21      incurred, are tremendous.

22           And the last thing we would want is for, you  
23      know, the destruction of the organizations that are  
24      really focused on caring for older and disabled  
25      people, especially the ones that are so

1 high-performing.

2 JOHN AUERBACH: If I could weigh in, too,  
3 I think I would also speak to the needs of older  
4 adults who are still in their home, but have  
5 challenging times staying in their home, because of  
6 social isolation, sometimes lack of food in the  
7 home, lack of other services.

8 So I think, in addition to the very important  
9 services that my colleagues on the panel are  
10 mentioning, paying attention to home-based services  
11 and supports, so that we keep people as independent  
12 and as healthy as possible, is critically important.

13 SENATOR SERINO: And that's very true, John.

14 You know, a lot of times that population gets  
15 left out of the equation as well.

16 So thank you all so much again.

17 A deep heartfelt thank you for all that you  
18 do.

19 LISA NEWCOMB: Thank you.

20 SENATOR RIVERA: Thank you, Senator.

21 Back to the Assembly.

22 ASSEMBLYMEMBER BRONSON: Thank you.

23 I now recognize Assemblymember  
24 Brian Manktelow for 5 minutes.

25 Brian, are you with us?

1           No, he just --

2           ASSEMBLYMEMBER MANKTELOW: I got it.

3           ASSEMBLYMEMBER BRONSON: -- okay.

4           ASSEMBLYMEMBER MANKTELOW: Thank you,  
5           Chairman.

6           Lisa, just a couple questions on finance.

7           Our assisted-living facilities, where do you  
8           see them in the scheme of things as far as  
9           financially secure?

10          LISA NEWCOMB: Well, as I mentioned a little  
11          in my testimony, there's -- so there's three  
12          segments of the industry when it comes to finances.

13          The -- you know, the ones that lack the most  
14          resources are straight SSI-only building, which  
15          there -- you know, there aren't too many of them  
16          left. You know, they're hanging by a thread.  
17          I mean, these additional unanticipated costs are  
18          just not sustainable for them. And, even before  
19          this, we've seen them closing.

20          You see, then we have some who also get  
21          Medicaid support on top of the SSI. That's called  
22          the "assisted living program," which is a wonderful  
23          program because it allows, really, nursing  
24          home-eligible people to be able to age in place in  
25          the adult-care facility.



1           So -- but, you know, it is Medicaid.

2           Our Medicaid rate is based on some strange  
3 formula, that it's half of the nursing home rate  
4 from many, many years ago.

5           And so that's, basically, kind of a rate that  
6 hasn't changed either.

7           So it keeps, you know, the SSI building  
8 afloat, but, you know, they have their challenges  
9 too.

10          And then, in the private pay, we have lots  
11 of -- you know, there -- there's -- you know, there  
12 are some for very, very wealthy people. But there  
13 are a lot, you know, I'd say most in between are  
14 for, you know, seniors who are middle --  
15 middle-income. And, you know, they can be only  
16 absorb so much additional cost. And the provider  
17 that -- you know, that -- that serves them can only  
18 absorb, you know, so much.

19          So, you know, it does kind of run the gamut.

20          ASSEMBLYMEMBER MANKTELOW: Okay, so one --  
21 I have a few assisted-living facilities in my  
22 district.

23          In meeting with one of the owners, one of the  
24 issues they have is the unemployment situation right  
25 now.

1           Right now, people can get unemployment pretty  
2           easy, they can apply for it. And the amount of  
3           money they're getting is more than the staff members  
4           are getting paid normally.

5           Can you see a fix that we need to do from the  
6           State side there, to help secure the workforce?

7           LISA NEWCOMB: Well, I guess it goes back to  
8           funding again. I hate to sound like a broken  
9           record.

10          But, you know, we had -- I had an SSI  
11          provider who ended up closing. It was a  
12          family-owned, and they closed several buildings in  
13          the North Country.

14          And, you know, he always said, look, I want  
15          to pay my -- I want to pay my staff what they  
16          deserve. I want to pay them more than minimum wage,  
17          or a little bit above minimum wage. But, if you're  
18          only giving me \$40 a day to take care for this frail  
19          elderly senior, you know, I can't do that.

20          So, you know -- I mean, I think that, you  
21          know, if you have the resources, then you would be  
22          offering wages that would be beyond the \$600, if you  
23          could.

24          ASSEMBLYMEMBER MANKTELOW: So when most  
25          facilities close, where do the seniors go then?

1 LISA NEWCOMB: Nursing homes.

2 ASSEMBLYMEMBER MANKTELOW: And are they able  
3 to take everyone at this point?

4 LISA NEWCOMB: Well, I -- I mean, yeah.  
5 I mean, I think we talked about, you know, vacancies  
6 in nursing homes earlier on today.

7 Yes.

8 And it's just tragic, because they don't  
9 really need to go to the nursing home.

10 The assisted-living is much more of an  
11 independent, you know, a setting. It's very  
12 socially-based.

13 But they are frail elderly as well, and,  
14 generally, they can't really live alone. They sort  
15 of need somebody around on a 24-hour basis, you  
16 know -- you know, for supervision purposes.

17 So the nursing home is the default.

18 ASSEMBLYMEMBER MANKTELOW: Okay. Thank you,  
19 Lisa.

20 That's all I have.

21 SENATOR RIVERA: Thank you, Assemblymember.

22 Moving on to the Senate, recognizing  
23 Senator Boyle for 3 minutes.

24 Thank you.

25 SENATOR BOYLE: Thank you.

1           Thank you, Mr. Chairman.

2           So I represent part of Long Island, and I can  
3       tell you that, when this pandemic started, I had  
4       gotten a phone call from a constituent, who told me  
5       that their father was in the nursing home down here.  
6       And that (video lost) --

7           OFF-SCREEN TECHNICIAN: We lost the senator.

8           SENATOR RIVERA: Senator Boyle?

9           Senator Boyle?

10          All right, until we get him back, I've got a  
11       couple. If you could put five on the clock.  
12       I won't take all of it, but...

13          Thank you all for being here.

14          One of the things that I wanted to ask about,  
15       because you've made reference to it a few times, but  
16       I think it's important to kind of really put it on  
17       the record:

18          There was -- we can talk about all the  
19       stresses that the crisis has put on all of these  
20       facilities.

21          But you have spoken about, and I want to give  
22       you an opportunity to kind of expand on that, on  
23       what this situation was before the crisis, that you  
24       were already put in very stressful positions.

25          Because if -- if there's requirements that

1 are -- if there's things that the State required of  
2 you as institutions during a crisis time, and you  
3 had few resources to begin with, that makes it all  
4 the more difficult to be able to manage, to hold on.

5 So give us a view about that, and the rest of  
6 the time I'll give to you. But give us a view on  
7 that.

8 And, also, to also give you an opportunity to  
9 tell us: What are the things that would make best  
10 quality facilities be able to survive?

11 If you could give us kind of a sense of that,  
12 I would be appreciate it.

13 LISA NEWCOMB: Sure.

14 ROXANNE TENA-NELSON: So --

15 LISA NEWCOMB: I'm sorry.

16 Is that for Roxanne?

17 Go ahead, Roxanne.

18 SENATOR RIVERA: That's for anybody who wants  
19 to take it, but you can start, and Roxanne --  
20 Roxanne, start, you start it, and then Ms. Newcomb.

21 How about that?

22 ROXANNE TENA-NELSON: Okay.

23 So -- sorry.

24 I just wanted to respond that, we were  
25 definitely financially fragile coming into COVID.

1           You know, just -- so, for nursing homes in  
2           our community, there was a 62-day daily shortfall in  
3           the Medicaid program, and, also, the margins were at  
4           negative 5.2 percent; all in my written testimony.

5           For certified home-health agencies, for  
6           example, on the community-based side of things,  
7           78 percent of them were operating in the red.

8           So it was a dire situation even before COVID  
9           hit.

10          Now that we endured this spring, you add the  
11          occupancy rate -- the losses due to occupancy fall,  
12          and then you add all of the expenses, and I talked a  
13          little bit about the magnitude of that, in millions  
14          of dollars per facility.

15          SENATOR RIVERA: Ms. Newcomb.

16          LISA NEWCOMB: I would just add, you know,  
17          I go back to where the most indigent, you know, are  
18          living.

19          Obviously, they were under strain before,  
20          especially the straight SSI. Again, \$40 a day to,  
21          you know, provide a whole slew of services, you  
22          know, to -- to the residents.

23          So, they're going to go first.

24          The ones that are left, the -- you know, the  
25          ones that have the Medicaid supplement and the

1 private pays, you know, they're all in different  
2 situations.

3 Some -- they've been absorbing it, but  
4 each -- you know, as each week passes, a larger  
5 facility is going to, you know, have thousands and  
6 thousands, maybe ten thousands, you know, per week  
7 just for the testing.

8 And, you know, that -- that's on top of the  
9 PPE and -- and the cleaning supplies, and -- and --  
10 and all of that.

11 So --

12 SENATOR RIVERA: You would say, to be able to  
13 have some of the best -- some these facilities that  
14 provide good service, for them to be able to  
15 survive, as you talked about the funding more than  
16 once, you would say that that's kind a -- the best  
17 kind of a baseline: they have to be better reim --  
18 their reimbursements need to be more?

19 LISA NEWCOMB: Sure.

20 Yes, yes, yes.

21 For those that serve people that are  
22 indigent, yes.

23 SENATOR RIVERA: Okay.

24 Thank you so much to all of you.

25 Seems that we have, unfortunately, lost

1 Senator Boyle.

2 We will move on to the next panel.

3 We will make sure that whatever questions he  
4 had, we make available in writing to the panel.

5 Thank you so much, folks.

6 Moving on to Panel 5 -- we just got four more  
7 to go, folks -- Panel 5, we have:

8 Alexa Rivera, who is the co-founder of  
9 Voices for Seniors.

10 We have --

11 These are my cousins, by the way, lest you  
12 forget.

13 -- Vivian Rivera-Zayas, co-founder of  
14 Voices for Seniors;

15 Grace Colucci, also for Voices for Seniors.

16 Kathleen Webster, Neighbors to Save  
17 Rivington House;

18 And, Lenore Solowitz, who is a resident of  
19 Garnerville, New York.

20 Senior, Monsieur, Gottfried, are you with us?

21 ASSEMBLYMEMBER GOTTFRIED: Yes, I am here.

22 Just took a little doing to un-mute myself,  
23 and now I'm unhidden as well.

24 So, do each of you swear or affirm that the  
25 testimony you're about to give is true?



1 VIVIAN RIVERA-ZAYAS: I do.

2 KATHLEEN WEBSTER: I do.

3 ASSEMBLYMEMBER GOTTFRIED: Okay.

4 SENATOR RIVERA: All right. And any -- in  
5 any order that you folks would like to continue.

6 KATHLEEN WEBSTER: You better pick.

7 SENATOR RIVERA: All right, then I shall.

8 Let's go with Alexa Rivera.

9 She is in the car.

10 So let's go with Vivian Rivera, then.

11 You're on mute, my friend.

12 VIVIAN RIVERA-ZAYAS: Hi, good afternoon, and  
13 greetings.

14 Thank you for the opportunity to not only  
15 speak on behalf of my mother, but to also represent  
16 the families and the group, Voices for Seniors,  
17 which is a group consisting of grieving and  
18 frustrated loved ones impacted directly by the COVID  
19 pandemic in our nursing homes.

20 The seniors who reside in nursing homes are  
21 often there for long-term care, as well as  
22 short-term care resulting from sometimes just minor  
23 surgeries, like knee surgery or a neck surgery.

24 My mother, Anna Martinez, was there for  
25 treatment for minor wounds, and only expected to be

1       there for four weeks.

2               It is shortsighted for us to believe that, in  
3       the future, we may also not necess -- we may also  
4       necessitate a visit at one of these very facilities.  
5       But having to do so with no family or -- to visit or  
6       advocate for us is truly unconscionable, lonely and  
7       voiceless in a terrible situation and system.

8               Every day I recount the days I could not be  
9       with my mother to advocate for her in a nursing home  
10      that stated they had taken every precaution in place  
11      to care for her while our governor mandated they  
12      accept COVID-positive patients.

13              Many nursing homes are cited repeatedly for  
14      not having proper infectious-disease protocols in  
15      place, with no severe penalties.

16              So mandated COVID-positive patients to be  
17      accepted in light of this defies logic.

18              The thought process of not discriminating  
19      against a few COVID-positive patients at the expense  
20      of the COVID-free residents, as a whole, is  
21      dangerous and negligent.

22              My mother, and many others, contracted the  
23      virus at the nursing home. And today I am still  
24      under the belief that she was unaware and uninformed  
25      as to what was happening to her.

1           As someone who spoke limited English, it  
2       appears she was not informed as to her condition,  
3       and she -- as she never shared that information with  
4       us who were always her best advocates.

5           Since her unnecessary passing, I hear  
6       countless stories of others like me who are enduring  
7       the pain of not seeing their family and their loved  
8       ones, and the uncertainty of their well-being.

9           Hopeful to see them one week, and then the  
10      next week the goalpost is moved once again with no  
11      end in sight.

12          With the fall and winter approaching, we  
13      [indiscernible] need to ask families to be prepared  
14      to stay away from their loved ones for the  
15      foreseeable future? -- unlike, and with all due  
16      respect, Commissioner Zucker and Governor Cuomo who  
17      are more than likely able to see their own mothers  
18      and fathers.

19          Elderly bewildered by the new sense of  
20      abandonment in a time they need their families the  
21      most.

22          My mother was sad and homesick.

23          It was the first surgery she ever had, and  
24      her first visit to a nursing home.

25          What was meant to be a four-week stay ended

1 up being a two-and-a-half-month stay when the social  
2 worker and case manager failed to return our calls  
3 to finalize her discharge.

4 When the pandemic became more prevalent, and  
5 the facility did not offer us the option to  
6 discharge her before the facility closed its doors,  
7 our mother became ill.

8 And when I detected something was terribly  
9 wrong, our mother was too ill to speak on the phone,  
10 and the staff continued to reassure us that she was  
11 fine.

12 When we got a call that she was going home on  
13 Friday, March 27th, despite showing all the  
14 symptoms of COVID, except a fever, without telling  
15 us that -- without telling us, and she was -- or,  
16 telling us that she was suspected to have had COVID,  
17 they continued to reassure us and downplay her  
18 symptoms.

19 And when she became gravely ill, they failed  
20 to escalate her care and send her to the hospital.

21 COVID-19 has helped shed a light, that while  
22 immunity is given to owners, the directors, and the  
23 staff, it is the resident, our vulnerable elderly  
24 population, that is not immune from abuse, from  
25 neglect, and from dismal care, with no family or

1 recourse.

2 An unnecessary amount of death and carnage  
3 was inflicted on our seniors by the mandate to take  
4 COVID-positive patients.

5 To the inadequate levels of staffing and the  
6 infectious-disease protocols that many facilities,  
7 and time and time again, have failed to put in  
8 place, was a true recipe for a disaster.

9 If that weren't enough, families have been  
10 stripped of their rights to visit their loved ones,  
11 and are often lied to and misled by the very leaders  
12 and staff charged with the duty to keep them safe.

13 I'm here to ask that a true and sincere  
14 evaluation of our nursing homes take place, taking  
15 into account the input and voices of families, like  
16 my own, and that, finally, seniors will get the care  
17 that they are deserve [sic], and that no longer get  
18 the short end of the stick.

19 Thank you so much.

20 SENATOR RIVERA: Thank you.

21 Next -- thank you, Ms. Rivera-Zayas.

22 Alexa Rivera, I know that you -- I noticed  
23 that you were in a car earlier.

24 Not sure if it is a quiet enough car.

25 Ms. Rivera?

1 All right. So we'll move on to  
2 Grace Golucci -- Grace Colucci. I'm sorry.

3 Grace Colucci.

4 GRACE COLUCCI: Hi. How are you?

5 Thank you so much for giving me the  
6 opportunity to voice -- be a voice for my father,  
7 and for all the families that were affected by the  
8 COVID pandemic, with people that were in the nursing  
9 homes.

10 When the COVID-19 first appeared in the U.S.,  
11 Governor Cuomo and Mayor de Blasio made light of  
12 the risks, and encouraged people to go about their  
13 daily lives, as all was well.

14 We quickly found out that all was not well.

15 Governor Cuomo was on TV daily, making  
16 appeals for ventilators, PPE, and hospital beds.

17 The President swiftly sent what was  
18 requested, converting the Javits Center, sending the  
19 "Comfort," sending millions of tests, PPE, and more  
20 ventilators than were needed.

21 On March 25th, under the directive of  
22 Governor Cuomo's mandate, nursing homes were not  
23 able to deny taking COVID patients even though they  
24 housed the most vulnerable.

25 The Javits Center and "Comfort" went,

1       virtually, unused.

2               Each day the news reports were escalate --  
3       with escalating numbers of new COVID cases and the  
4       death count grew.

5               The shortage was not hospital beds, but room  
6       at the funeral homes.

7               Governor Cuomo stated that he wouldn't put  
8       his mother, Matilda, in a nursing home.

9               I'd love to tell you about my dad, but -- and  
10       I'm sure you can understand that he was a wonderful  
11       person who gave -- made many sacrifices for his  
12       family and his country, as well as everyone else  
13       that has been affected.

14               My dad had suffered several heart attacks,  
15       had a valve replacement, several minor strokes, that  
16       left him unable to properly cut his food or take --  
17       dress himself properly; he needed help. He was also  
18       developing dementia.

19               My dad is not withstood as one of the nursing  
20       home statistics because he wasn't tested until  
21       four days after his release.

22               In February he was hospitalized with  
23       aspirational pneumonia.

24               While in the hospital, my mom was there every  
25       day to help my dad with his meal and other needs.

1           March 19th dad was released and immediately  
2           sent to Gurwin Jewish Nursing and Rehabilitation  
3           Center for rehab.

4           The COVID restrictions had just gone into  
5           place, and mom was not allowed to be there.

6           Shortly after, she received a phone call that  
7           there was one patient and one employee who tested  
8           positive for COVID-19. But they assured her that  
9           they were in a different part of the facility and  
10          that my dad was not at risk.

11          That turned out not to be the case.

12          My dad was discharged April 8th, 13 pounds  
13          lighter, and unable to eat after not being able to  
14          eat for so long.

15          Dad was unable to walk. My brothers had to  
16          carry him into the car, and then the house.

17          A nurse from the nursing home came to the  
18          house twice over the next four days as follow-up.

19          We found out afterwards that she was  
20          COVID-positive, and who knows how many people were  
21          exposed from her entering the house.

22          My mom and my brothers ended up a week later  
23          testing positive.

24          On April 12th my dad's BP plummeted, his  
25          temperature rose over 103, and his breathing was



1 rapid and shallow.

2 My brothers rushed him to the ER.

3 He was given a rapid COVID test, and was  
4 positive and admitted.

5 After a long hospital stay, my dad was no  
6 longer exhibiting symptoms, but he was still testing  
7 positive.

8 The doctors said, because he couldn't eat,  
9 they recommended hospice care.

10 We were allowed to bring him home for at-home  
11 hospice.

12 Dad passed a week and a half later on  
13 May 24th.

14 My mother is haunted by one of the things my  
15 dad said to her: "You can eat, but I can't."

16 If my mother was able to be with him and feed  
17 him, this may not have been a situation, and my  
18 father may not have been one of the ones that have  
19 passed.

20 He was a very strong fighter.

21 Every day I watched Governor Cuomo's press  
22 conferences.

23 He went on and on how he was the one that was  
24 the benchmark on how to handle and stop the  
25 pandemic.

1           At one press conference he was asked: Why  
2       did the nursing homes have to take the COVID  
3       patients?

4           And he answered, "Because that was the rule."

5           I think about all the families who are unable  
6       to be with their loved ones as they take their final  
7       breath, and all the families whose loved ones, not  
8       sick with COVID, but are also being deprived of  
9       seeing the people who love and sustain them.

10          To hear Governor Cuomo turn his command, that  
11       "this was the rule," and to blaming the nursing  
12       homes, their employees, and even the families, for  
13       the thousands of deaths, while he went on his  
14       brother's TV show, joking about COVID testing with a  
15       giant cotton swab, and, laughing a late-night TV  
16       show about his stage-zero dating life, is a knife to  
17       my heart.

18          We need accountability.

19          Instead of protecting -- instead of  
20       protections being given to the nursing homes and,  
21       worse, to those who mandated the nursing homes take  
22       the COVID patients, why did the -- did  
23       Governor Cuomo mandate that the nursing homes have  
24       to take COVID patients when the CDC advised against  
25       that?

1           I hope that, as a result, that we will be  
2           able to have a bill of rights for seniors, where  
3           families and seniors are given rights to be able to  
4           care for their loved ones.

5           Pre-COVID, families were necessary in the  
6           care of their -- their family --

7           SENATOR RIVERA: Ma'am, if you could wrap --  
8           if you could wrap. Your time is --

9           GRACE COLUCCI: Sure.

10          SENATOR RIVERA: [indiscernible  
11          cross-talking] --

12          GRACE COLUCCI: Okay.

13          I just want to let you it know that, today,  
14          my family is still waiting to be able to have a  
15          funeral mass and military service that my father  
16          deserves.

17          We're not able to have my whole family, never  
18          mind friends, in attendance because of the  
19          restrictions that are still in place.

20          Thank you for taking the time to listen to  
21          this, and I urge you to withdraw the power that you  
22          have given the governor to make these mandates all  
23          on his own, and not be able to get approval from the  
24          Senate and the Assembly.

25          Thank you.

1           SENATOR RIVERA: Thank you, Ms. Colucci.

2           Followed up by Ms. Kathleen Webster.

3           KATHLEEN WEBSTER: Thank you.

4           First, my condolences to both Grace and  
5 Vivian.

6           I'm Kate Webster with Neighbors to Save  
7 Rivington House.

8           We fought to save the once-largest skilled  
9 nursing home dedicated solely to those who were  
10 trying to survive AIDS.

11          The year it opened, that mortality rate had  
12 reached an all-time high of almost 51,000 deaths.

13          The state's dormitory authority had financed  
14 the state-of-the-art infectious-disease site with  
15 \$72 million in bonds. It was a non-profit.

16          Through a series of events, the Allure Group  
17 took it over in short order, but, planned long  
18 before, they sold it for condos.

19          Taxpayer-funded equipment was in a dumpster,  
20 staff laid off, patients transferred without the  
21 required 90-day notice or vetted plan.

22          Despite this, New York State licensed the  
23 Allure Group to take over more nursing homes, one in  
24 Harlem.

25          During the pandemic, at least 20 bodies in

1 black bags were secretively carted out of that home,  
2 while reporting only 5 people had died of COVID.

3 Media and staff reports from their other  
4 sites were no better.

5 The demise of Rivington House was one of many  
6 warnings of the results of profit-focused operators  
7 and toothless oversight.

8 The department of health's vetting arm is the  
9 public health and health planning council. It has  
10 24 appointed members, many with expertise, and many  
11 have a very real potential conflict of interest, and  
12 there is but one consumer rep.

13 There is a strong correlation of nursing home  
14 for-profit ownership and reduced quality of care,  
15 conditions that existed prior to the pandemic, shown  
16 in study after study to have exacerbated COVID-19  
17 deaths.

18 Over 90 percent of nursing homes in the U.S.  
19 are now run for profit.

20 Along with those major changes in ownership  
21 structure and management, the degree of complexity  
22 has greatly increased, with LLCs, et cetera.

23 There are many ways to hide funding extracted  
24 from the care it was intended for.

25 We need independent legal and financial

1 experts to serve on or advise [indiscernible] to  
2 develop competency and explain industry financials  
3 to the rest of us.

4           Licensing should require financial  
5 transparency and mechanisms, like medical-loss  
6 ratios, empowered paid ombudsmen, et cetera.

7           Private-equity buy-outs of nursing homes are  
8 linked with four patient-to-nurse ratios,  
9 lower-quality care, declines in patient-health  
10 outcomes, and weaker performances on inspections,  
11 according to new research from the Wharton School,  
12 NYU's Stern School, Chicago's Booth School of  
13 Business, and from other studies.

14           In Connecticut:

15           For sites with at least one confirmed case of  
16 COVID per resident day, every 20-minute increase in  
17 RN staffing was associated with 22 percent fewer  
18 confirmed cases of COVID.

19           And in sites with at least one death from  
20 COVID, every 20-minute increase in RN staffing  
21 significantly predicted 26 percent fewer deaths.

22           From Canada:

23           Government-owned facilities provided 61 more  
24 minutes of staffing per resident day than for-profit  
25 facilities.

1           With the same public funding, for-profit  
2 operators failed to deliver 207,000 hours of funded  
3 care, while the not-for-profit sector delivered  
4 80,000 more care hours than they were funded for.

5           Facilities run on a for-profit basis had more  
6 extensive outbreaks and more COVID-related deaths  
7 than facilities run on a non-profit basis.

8           From California:

9           In sites with RN staffing below the  
10 recommended minimum standard, COVID outbreaks  
11 occurred more often.

12           They were twice as likely to have residents  
13 with COVID infections than adequately-staffed  
14 facilities.

15           Nursing homes conceal a shadowy world of  
16 concealed ownership, hedge fund operators, and  
17 private-equity firms; yet they are staffed by some  
18 of the lowest-paid workers in the country.

19           This is the public's money, and we shouldn't  
20 continue to put up with secrecy.

21           If requirements to fund adequate staffing  
22 levels hurt for-profits' profits, then it's time  
23 this care is turned over to truly non-profit  
24 providers.

25           Our state needs to face this reality and

1 intervene on behalf of our most vulnerable.

2 Too many seniors in nursing homes have no  
3 ability to fight for their lives. If they have  
4 them, their families have no strength left for  
5 advocacy.

6 They, and the best of our caregivers, were  
7 left alone to handle a crisis of biblical  
8 proportion.

9 Dr. Fauci said:

10 "There were many, many, many nursing homes  
11 that got no infections. Just because you're a  
12 nursing home doesn't mean you're going to get an  
13 outbreak.

14 "It's how you have your staff and the actual  
15 structure and the standard operating procedures that  
16 have made certain nursing homes highly vulnerable.

17 "You've got to have" --

18 "You've got to fix that, and you got fix it  
19 fast, or you don't get money."

20 And I do want to say that the nursing homes  
21 I'm referring to were mostly peopled by Black and  
22 Brown men.

23 And I think that hasn't been said enough  
24 here, but, in 5 minutes, that's what I've got.

25 But in my testimony of 13 pages, I devote



1       some time to that.

2               Thank you.

3               SENATOR RIVERA: Thank you, Ms. Webster.

4               Followed up by Ms. Lenore Solowitz.

5               LENORE SOLOWITZ: [Inaudible.]

6               SENATOR RIVERA: You're still muted,

7       Ms. Solowitz.

8               There you go.

9               LENORE SOLOWITZ: Can you hear me?

10              SENATOR RIVERA: Yes, ma'am.

11              LENORE SOLOWITZ: I just want to thank you  
12       today for looking into this problem.

13              I brought my mother back to her facility on  
14       March 13th. We spoke every evening.

15              On Tuesday, March 17th, in the afternoon,  
16       my mother called me to tell me the facility was  
17       going to call me about something. They didn't tell  
18       her what it was about.

19              I called the facility to see what was going  
20       on.

21              They told me there was going to be a  
22       lockdown, effective immediately, due to COVID-19.

23              My mother was 98 years old and completely  
24       mentally competent.

25              She had a private room.

1           Everyone had to stay in their room.

2           She ate her meals in her room.

3           And to the best of my knowledge, there was no  
4 COVID in the facility at this time.

5           I thought she'd be safe.

6           Little did I know the horror show that was  
7 about to unfold.

8           The facility was completely unprepared to  
9 handle this situation. And once the COVID patients  
10 arrived, they really were in trouble.

11           COVID patients were not separated from the  
12 residents. The facility did not have enough  
13 supplies.

14           On a regular weekday basis, there were not  
15 enough aides to attend to the residents. Weekends  
16 were much worse. Areas were left unattended for  
17 long periods of time.

18           When the COVID patients arrived, a lot of the  
19 staff refused to come into work.

20           Some of the staff that stayed were catching  
21 COVID.

22           There was a young nurse that had a  
23 miscarriage a year and a half ago. She was  
24 six months pregnant. She came into work, and she  
25 asked the director for a mask. And the director

1 told her, "We don't have any masks. We're going to  
2 run out if we give you a mask."

3 This is how unprepared they were.

4 I visited my mother for a few times a week.

5 Once they knew the residents had a family  
6 member coming in, they were a lot more careful.

7 I was my mother's advocate, and I had to  
8 speak up on her behalf quite a few times.

9 When the facility went on lockdown, they had  
10 full reign, and this is where my problems began.

11 I called my mother to check up on her.

12 She told me her hip hurt and nobody was  
13 taking care of her.

14 Of course they couldn't take care of her  
15 because they were extremely short-handed.

16 I called and I got that settled.

17 A few days later she called and told me, "You  
18 know, I'm in my right mind and I know what I'm  
19 talking about."

20 And I said to her, "Of course you are.  
21 What's the problem?"

22 The aides didn't want to bother with her, and  
23 her pain, so they told her she didn't know what she  
24 was talking about.

25 This is what happens when you have no

1 representation in these facilities.

2 In addition, when I called the front desk to  
3 check on her that night, nobody, but nobody,  
4 answered the phone.

5 I called at 9 p.m., and I kept calling, and  
6 nobody answered till 2 a.m.

7 Talk about stress and frustration.

8 I called the next morning, and I was told  
9 they were going to do a chest X-ray, which they did  
10 that evening.

11 I called my mother in the afternoon to tell  
12 her about the chest X-ray.

13 A nurse or aide answered the phone, and  
14 I could hear my mother crying in background, "It  
15 hurts, it hurts."

16 These are the last words I heard my mother --  
17 I heard from my mother.

18 Our family doctor called me the next morning  
19 and told me my mother had pneumonia and she was  
20 exhibiting signs of COVID.

21 The next morning, my doctor called to tell me  
22 my mother passed away.

23 And the words, her last words, "It hurts, it  
24 hurts," will stay with me forever and haunt me.

25 The residents trusted the facilities to keep

1       them safe.

2               Here is a partial text my mother's friend  
3       sent to her.

4               "This lockdown won't be over anytime soon.  
5       They have to discover a vaccine for this virus, but  
6       at least we're safe here."

7               Well, he got COVID.

8               I wonder how many families would have made  
9       different arrangements for their loved ones if they  
10      had known what the Cuomo administration was going to  
11      do.

12              This is my story.

13              Who will be held accountable?

14              Why wasn't I notified of COVID patients  
15      coming into the nursing home?

16              I could have taken my mother home.

17              Now the matriarch of our family is gone. We  
18      were four generations.

19              My mother will not be here for the next  
20      family celebration.

21              She will not get to meet her new  
22      great-grandchildren.

23              A tremendous void was left in our lives.

24              A bad, a very bad, decision was made.

25              How could you send COVID patients into a

1 facility that was home to the elderly with  
2 pre-existing conditions, knowing, if they got COVID,  
3 they would die?

4 There were other facilities to send the COVID  
5 patients. There was the "SS Comfort", there was the  
6 Javits Center, and there was a facility in Brooklyn  
7 that the mayor had.

8 These facilities had room for COVID patients.

9 Why weren't they sent there?

10 The Cuomo administration has yet to admit any  
11 wrongdoing.

12 They blamed the workers, they blamed the  
13 families of the residents, they blamed the CDC, and  
14 they blamed the federal government.

15 The person to blame for the COVID deaths in  
16 the nursing home is Governor Cuomo.

17 There was no law that said COVID patients had  
18 to be admitted to nursing homes.

19 The governor of Florida did not allow COVID  
20 patients in nursing homes.

21 Governor Cuomo did not follow sound,  
22 science-based federal guidelines, and he made a  
23 grave mistake.

24 In addition, he signed the bill to protect  
25 the owners of the nursing homes.

1 Governor Cuomo said, his father told him, if  
2 he made a mistake, he should own up to it.

3 Well, Governor Cuomo, own up to it.

4 And thank you very much for your time.

5 I appreciate it.

6 SENATOR RIVERA: Thank you, Ms. Solowitz.

7 We're going to -- unfortunately, we lost  
8 Ms. Alexa Rivera.

9 If she comes back onto the feed, we will  
10 allow her to testify.

11 For the moment, we will move on to questions,  
12 which will be led off by the Senate, recognizing  
13 Senator Skoufis for 5 minutes.

14 SENATOR SKOUFIS: Thank you very much,  
15 Mr. Chairman.

16 And everyone who spoke, first and foremost,  
17 please accept my deepest condolences.

18 You know, the grief was palpable at times,  
19 and I can't imagine what you've all personally lived  
20 through, these nightmares.

21 But I thank you, and I think we all thank  
22 you, for your service, your public service, in  
23 participating and sharing your stories, and,  
24 hopefully, trying to right this ship.

25 You know, it's been my strong opinion for

1       sometime that the department of health doesn't  
2       adequately scrutinize nursing home transactions when  
3       they take place, and, just as importantly, if not  
4       more importantly, doesn't adequately punish nursing  
5       homes with substantial violations.

6               For many facilities, and I know this in  
7       working with family members and employees in  
8       the districts I represent, which includes  
9       North Rockland, Orange, and part of Sullivan --  
10      Ms. Solowitz, you're a constituent -- I've worked  
11      with many family members in fighting for some of  
12      these issues pre-COVID.

13              I know that, for many facilities, these fines  
14      are just the cost of doing business.

15              And so, first, Ms. Solowitz, let me --  
16      actually before I get to my question, make a  
17      statement, and that is, I intend to follow up with  
18      you after this hearing.

19              What you suggested and raised about what  
20      happened in the nursing home itself, COVID patients  
21      were not separated from the rest of the population;  
22      a complete lack of staffing; effectively, taking the  
23      phone off the hook, I want to work with you to make  
24      sure that the nursing home, which I believe is  
25      The Willows in Suffern, is held accountable for the



1 things that you described.

2 But I want to ask you:

3 It's my understanding that, in just the past  
4 few years, that particular nursing home,  
5 The Willows, had 41 violations at their facility,  
6 including failing to have proper infection-control  
7 procedures; yet from these 41 violations, exactly  
8 zero enforcement actions by the department of health  
9 took place.

10 In fact, the department of health didn't  
11 issue a single action over the past 10 years against  
12 The Willows.

13 And so my question to you is:

14 What would be your message, in light of what  
15 you have now lived through this nightmare, and  
16 what's happened at the nursing home, not just to  
17 you, but over these years?

18 What would be your message to the department  
19 of health in dealing with -- better dealing with  
20 facilities like The Willows who have treated  
21 residents this way?

22 LENORE SOLOWITZ: I think there has to be a  
23 closer relationship between the State and the  
24 nursing homes.

25 The State comes in once a year. I've seen

1       them; they're working in a room, they're doing  
2       paperwork.

3               And I have not yet been approached by a state  
4       worker to ask me if anything was wrong.

5               I'm always there, and I've seen horrible  
6       things going on.

7               I've seen people crying, and they ignore them  
8       and they walk through.

9               If I wasn't there to speak for my mother, my  
10      mother would be lying in the bed, nobody would come  
11      in.

12              And there's so many different things.

13              She rings the bell, you need an aide to come  
14      in.

15              Okay, another aide comes and turns the bell  
16      off. They don't want to be bothered.

17              So you're laying there again, you try to ring  
18      your bell again.

19              And they have a shortage of staff during the  
20      week. It's really very bad.

21              On the weekends it's absolutely terrible  
22      because there's like nobody there.

23              They have a long hallway that's supposed to  
24      be monitored.

25              There is times, there is nobody there,

1       there's nobody outside. And you have people  
2       screaming, "Help, help, nurse, nurse," and nobody is  
3       coming. Either they're in the lunchroom or they're  
4       someplace else.

5               And as far as the phone goes, I cannot tell  
6       you how many times I have called, and it rings and  
7       rings and rings, and nobody answers.

8               And I want to find out how my mother is,  
9       I just don't know.

10              As I said, I started one night calling at  
11       9 p.m. I didn't get through till 2 a.m., till  
12       somebody actually answered the phone, and I asked if  
13       I could speak to the nurse to check on her.

14              And it's just been a horror show the entire  
15       time that she's been in there.

16              She also has allergies to food.

17              She gets the food that has the allergies that  
18       she's allergic to.

19              And the staff in the kitchen cannot read  
20       English, so you just get anything, and you don't do  
21       not even get the food you ordered because they just  
22       put anything on there.

23              There is such a list of things that I can  
24       tell you, that I just really can't go into now, but  
25       I do intend to speak to you after.

1           And when I get all my thoughts together,  
2           I will tell exactly all the problems that I've had  
3           while my mother was in the nursing home.

4           SENATOR SKOUFIS:   Okay, thank you, and I look  
5           forward to that.

6           I've run out of time, but I would just point  
7           out, Vivian, I know that your mother passed away in  
8           a nursing home that was cited 32 times over the past  
9           few years, and, again, zero enforcement actions by  
10          the department of health.

11          If at some point later in this hearing -- my  
12          time is out -- you find it appropriate to speak to  
13          that, please do.

14          Thank you.

15          SENATOR RIVERA:   Thank you, Senator.  
16          Assembly.

17          ASSEMBLYMEMBER BRONSON:   Yes, we will  
18          recognize Assemblymember Kevin Byrne for a period of  
19          5 minutes.

20          ASSEMBLYMEMBER BYRNE:   Thank you.

21          And allow me to echo my colleague's remarks,  
22          just extending our heartfelt condolences to all of  
23          your families for what you have gone through.

24          I had a few other questions for our first  
25          witness that I didn't get to, because it was a

1       little briefer than many of us would have liked.

2               So I'm just going to pose some of those  
3       questions to you, to see if you have any thoughts.

4               I believe it was Mrs. Webster mentioned some  
5       of the issues at the facility where you lost your  
6       mother.

7               Have you heard from nursing staff, or any  
8       other residents, or through your loved ones, about  
9       the possibility of commingling of positive COVID  
10      patients with other residents?

11              KATHLEEN WEBSTER: Let me stop you there.

12              While I did lose my mother in a nursing home  
13      quite sometime ago, I don't think I'm the person  
14      you're trying to talk to. So...

15              ASSEMBLYMEMBER BYRNE: I mixed up the people  
16      that were speaking earlier.

17              So I can ask that in generic.

18              There was comments made about a nurse, with  
19      masks, not getting PPE.

20              Have there been any other remarks from any  
21      of -- from you speaking with residents?

22              No?

23              VIVIAN RIVERA-ZAYAS: We had a nurse say that  
24      she was using her mask for the entire week; the same  
25      mask for the entire week.

1 ASSEMBLYMEMBER BYRNE: Okay.

2 All right, then I may have misheard part of  
3 that testimony.

4 Another question I have:

5 Most of you have been able -- were able to --  
6 well, actually, were you able to follow the  
7 testimony earlier in this hearing from the health  
8 commissioner?

9 OFF-SCREEN SPEAKER: Yes.

10 OFF-SCREEN SPEAKER: Yes.

11 ASSEMBLYMEMBER BYRNE: Okay.

12 Well, Grace, I believe, I hope you don't mind  
13 me calling you Grace, Ms. Colucci --

14 GRACE COLUCCI: That's fine.

15 ASSEMBLYMEMBER BYRNE: -- I'd like to get  
16 your feedback on what you were able to hear from the  
17 commissioner, as far as our State's involvement with  
18 the handling of the nursing homes, if you had any  
19 comments.

20 GRACE COLUCCI: Well, I felt that he did not  
21 give you adequate answers to your questions while  
22 having several weeks to prepare for this hearing.

23 I think that the nursing homes were  
24 overwrought with too many patients that they weren't  
25 expecting.

1           And with the lack of having family there to  
2     be able to participate in the care of their loved  
3     ones, they were even at a further disadvantage.

4           The nursing homes are used to having family  
5     members there to feed and take care of their loved  
6     ones.

7           So I think he was evasive in a lot of  
8     answers, and to not provide you with the tools that  
9     you will need to make a good investigation.

10          ASSEMBLYMEMBER BYRNE: Well, thank you.

11          My hope is that, somehow, we get him to come  
12     to the next hearing on August 10th.

13          But, I appreciate your remarks, Grace, and  
14     all the witnesses in this round.

15          And I will give the rest of my time to,  
16     I believe it's Vivian Rivera-Zayas, to speak to the  
17     point that Senator Skoufis asked.

18          You've got my two minutes.

19          He was talking about personal stories.

20          So you can -- if there was a -- if there was  
21     a -- I think there was something that the senator  
22     mentioned, if there was time, you could use my time,  
23     if there's a personal story that you were --  
24     affected you and your family that you'd like to  
25     share, you can use my time.

1           VIVIAN RIVERA-ZAYAS: My mother was -- I'm  
2       sorry, I'm hearing -- I don't know if someone's  
3       trying to ask a question.

4           My mother was in a nursing home, which was  
5       only supposed to be for a very short time.

6           From what I understand, once she became ill,  
7       like one of the other women here said, all I heard  
8       was my mother's moans and groans of the pain and  
9       discomfort she was in.

10          Yet, every single time that I called, on a  
11       daily basis, she was -- I was reassured that she was  
12       okay.

13          I kept asking what was going on, why she  
14       couldn't talk. And they were telling me she doesn't  
15       have a fever, her vitals are okay.

16          So when all of this happened, we were blown  
17       away by the fact that she was -- we didn't know she  
18       had contracted COVID.

19          We were in a -- there's a record in her chart  
20       saying she had it.

21          No one told us, so we were completely  
22       off-guard.

23          When -- on the day she was supposed to go  
24       home, we find that she can't even speak on the  
25       phone.



1           They downplayed it to the point where they  
2       asked if she was a smoker.

3           She was having trouble breathing.

4           The director said he had no idea why she was  
5       having trouble breathing.

6           She waited for about four hours for an X-ray,  
7       when they didn't even put in it as an emergency.  
8       And several hours later, when they waited for the  
9       results, she went into respiratory distress. And  
10      she was, basically, on a ventilator by the evening.

11          So we were wondering why they were going to  
12      discharge her if she was well enough to go home,  
13      according to them that morning, because we were  
14      arranging for her to go home; yet she was on a  
15      ventilator by the evening.

16          So there's something really, really wrong  
17      here on how they were trying to discharge  
18      COVID-positive patients in order for them not to  
19      have died on their watch and increase their tally.

20          So it's criminal that you discharge a sick  
21      patient, with COVID no less, without telling the  
22      family.

23          ASSEMBLYMEMBER BYRNE: Thank you, Vivian.

24          I appreciate your remarks.

25          VIVIAN RIVERA-ZAYAS: You're welcome.

1 ASSEMBLYMEMBER BYRNE: And, again, my  
2 condolences.

3 VIVIAN RIVERA-ZAYAS: Thank you.

4 SENATOR RIVERA: Thank you, Assemblymember.

5 We will follow up by Senator May, recognized  
6 for 5 minutes.

7 SENATOR MAY: Thank you.

8 And my heart goes out to all of you who lost  
9 family members. It's just heartbreaking.

10 I wanted to ask if any of you had contact  
11 with an ombudsperson in that nursing home? If you  
12 were aware of that program, if that was something  
13 that was available to you, and was helpful to you?

14 Whoop, your mute.

15 LENORE SOLOWITZ: I was not aware that there  
16 was such a program. I had absolutely no idea.

17 I, basically, had to take care of everything  
18 myself. Whenever there was a problem, I would go  
19 in. I would talk to the nursing director, to the  
20 administrator.

21 I, basically, was the advocate for my mother.

22 SENATOR MAY: Sounds like you're kind of a  
23 de facto ombudsperson for other people too in that  
24 [indiscernible].

25 LENORE SOLOWITZ: I probably could be, could

1 be.

2 But, you know, there are so many things that  
3 have to be done with these nursing homes.

4 I mean, in the instance for my mother, there  
5 was one nurse that she was having a problem with.

6 So my mother, as I said, she was 98, but she  
7 was totally with it, and she would count her pills.

8 She knew if they gave her more or if they  
9 gave her less. And she would count them.

10 There were 21 pills coming in the morning,  
11 and she said to this nurse, there's a pill missing  
12 here.

13 She insisted there wasn't a pill missing.

14 So there was a problem with that.

15 Then she overmedicated her and gave her more  
16 pills, and she said, I'm not supposed to get this.  
17 I've already had this.

18 The nurse insisted that she got that.

19 This is like a child. Here you're taking  
20 care of somebody, and you're playing around with the  
21 pills.

22 So that's one thing that really bothered me.

23 Then there was a nurse that wrote down that  
24 she gave the medicine, and never gave the medicine.

25 So, to me, that's -- you should be dismissed,

1       you should be fired. Is all they did was, put her  
2       to the other side of the building.

3               Whenever there was complaint about somebody,  
4       and even if the State came in, they never fired the  
5       person. They went to the other side of the  
6       building.

7               So, here, there's incompetent people.  
8       Whatever they did on the other side of the building,  
9       they're just going to do over there.

10              So there was -- there was a lot -- there was  
11      a lot of issues, really.

12              And you really needed to have somebody that  
13      was there to speak for you; otherwise, you were  
14      really out luck. You just laid in the bed. You  
15      could cry, you could scream; nobody was coming in  
16      for you.

17              And I've stood in my mother's room and heard  
18      so many people crying for help, and there was just  
19      nothing to do, and nobody came.

20              SENATOR MAY: Thank you.

21              Anybody else?

22              Vivian, did you have anything [inaudible] --

23              VIVIAN RIVERA-ZAYAS: My mother had a call  
24      bell, but, my sister and I went every single day to  
25      see my mother.

1           It was -- I actually really blame the  
2       shutdowns as a contributing factor in her passing  
3       away because she was in good health. She only had a  
4       knee surgery.

5           Went in there because she had an abscess in  
6       her thigh. Once they drained it and kept her on  
7       antibiotics at the hospital, she was transferred to  
8       Our Lady of Consolation in West Islip, and was  
9       supposed to be there for extra therapy, and which we  
10      welcomed at the time.

11          Yet, when we were trying to get her out of  
12      there, I was not getting a call, they were not  
13      responding.

14          Multiple voice mails later, I called the  
15      social worker. She would bounce me to the case  
16      manager.

17          And I had to ask her, What is your role as a  
18      social worker, if I call you and you keep  
19      transferring me to other people?

20          Once we got -- we kept pressuring them, and  
21      they saw my mother was terribly homesick, I believe  
22      that they were trying to get her out of there before  
23      she contracted the virus, but it was too late. She  
24      got it, she was transferred out.

25          And when we found out, we were wondering why,

1       if they've called me for minor issues, they did not  
2       call me when they knew, in fact, according to her  
3       charts, that she was exposed, and that there was  
4       some kind examine, like a droplet precautions exam,  
5       done on her.

6               They've called me for sillier things; yet,  
7       for this, that was pretty deadly and very important,  
8       they did not call me.

9               SENATOR MAY: Nobody ever told you you had  
10      the right to speak to an independent ombudsperson?

11              VIVIAN RIVERA-ZAYAS: They never told me.

12              And once my mother passed away, it seems like  
13      you have -- there's no follow up from them.

14              They wouldn't even give me any empathy when  
15      I called to find out about my mother's belongings.  
16      They basically said, oh, you need housekeeping.

17              Transferred me immediately, with no sense of  
18      empathy. And I was so hurt, because I'm thinking,  
19      my mother was in your care for three months, two  
20      months more than what she was supposed to be, and  
21      you didn't even give me, "And I'm sorry," or, "I'm  
22      sorry for your loss."

23              It's a terrible system, and it needs to be  
24      reformed.

25              SENATOR MAY: Okay.

1           Thank you so much.

2           And I just want to thank Ms. Webster, too,  
3           for your written testimony.

4           It's very helpful to know that there are not  
5           consumer advocates on the department of health's  
6           public health council.

7           We will look into that as well.

8           KATHLEEN WEBSTER: There's one and two on the  
9           way, but out of 24.

10          SENATOR MAY: All right.

11          Thank you.

12          SENATOR RIVERA: Thank you, Senator.  
13          Assembly.

14          ASSEMBLYMEMBER BRONSON: Yes, next we'll go  
15          to Chair Gottfried for 5 minutes, please.

16          ASSEMBLYMEMBER GOTTFRIED: Okay. Thank you.

17          Well, first of all, I want to join my  
18          colleagues in expressing our condolences to all of  
19          you who testified about the loss of your loved ones  
20          of your family.

21          It's horrendous to think about.

22          I think -- I think one thing that is clear,  
23          though, is that, certainly, based on the -- some of  
24          the research that Mr. Skoufis did, that these  
25          facilities were bad news to begin with long before

1 the COVID virus even evolved.

2 But I just want to say a couple of things to  
3 Ms. Webster.

4 I want to thank you for your testimony, and  
5 the ownership and dealings and for-profit are really  
6 important.

7 And we've got some legislation in this area,  
8 and we intend to work on a lot more of it.

9 I'm sure you heard Richard Mollot's testimony  
10 on that score.

11 We'll be working with him, and we'd love to  
12 have your assistance in that as well.

13 Just one more comment on, coming off the  
14 family members who talked about never having been  
15 told about the existence of the long-term-care  
16 ombudsman program, we've been calling on the  
17 department, because of the lockdown on visitation  
18 and the long-term-care ombudsmen people not being  
19 able to enter facilities, that facilities ought to  
20 be required to periodically, regularly, notify every  
21 resident and every family member about the  
22 availability of the ombudsman program; what it does,  
23 and how to reach it.

24 Because, even in the best of times, it  
25 appears, people have very -- many people have little



1 or no knowledge of it, and that's just an outrage.

2 Whether it would have saved the lives of your  
3 family members, we can't know, but it could have  
4 made a difference.

5 So, that's all I wanted to say.

6 SENATOR RIVERA: Thank you, Assemblymember.

7 Follow up with Senator O'Mara, recognized for  
8 5 minutes.

9 SENATOR O'MARA: Thank you, Chairman.

10 Thank you, ladies, for your courage and your  
11 fortitude in telling your stories here today.

12 My deepest sympathies to each of you for your  
13 loss, and thank you for participating today.

14 I wanted to follow up:

15 I'm equally appalled about the lack of  
16 information regarding the ombudsman program, that  
17 that's not getting out to family members, to help  
18 and keep track of what's going on in these homes  
19 when, certainly, most family, you know, cannot be  
20 there extensively enough to monitor day-in and  
21 day-out activities of what's going on.

22 And the ombudsman program, even though  
23 underfunded, does do some great work.

24 Throughout this process -- and this is to one  
25 of you, or all of you, actually -- did you ever

1 receive -- you got no notice on the ombudsman.

2 Did you ever receive any information or see  
3 anything posted in any of the nursing homes on how  
4 to make a complaint to the department of health,  
5 while you were visiting loved ones there?

6 No one, I take it?

7 VIVIAN RIVERA-ZAYAS: No, I don't recall  
8 seeing any information. No.

9 OFF-SCREEN SPEAKER: Neither did I.

10 SENATOR O'MARA: Did any one of you ever  
11 reach out to the department of health or the  
12 governor's office to make a complaint?

13 VIVIAN RIVERA-ZAYAS: After my mother passed,  
14 yes.

15 SENATOR O'MARA: After she passed.  
16 And did you receive a response?

17 VIVIAN RIVERA-ZAYAS: No.

18 SENATOR O'MARA: Anyone else?

19 GRACE COLUCCI: No, we did not reach out to  
20 the governor's office.

21 LENORE SOLOWITZ: No, did I not reach out to  
22 the governor's office, either.

23 SENATOR O'MARA: Okay.

24 The -- I guess from your perspectives, what  
25 would you prioritize as the most important

1 improvement that you would like to see in the  
2 nursing homes, from what you've witnessed visiting  
3 your loved one, up until they passed?

4 LENORE SOLOWITZ: If I had to tell you  
5 everything that was there, we would be here until  
6 tomorrow morning.

7 There are so many things that you see going  
8 on there, that shouldn't be going on.

9 It's with medicine. They don't order the  
10 medicine because, the last person, there's five  
11 pills, should order the medicine.

12 They don't. They leave it for the next  
13 person.

14 So what happens?

15 You're due to get your medicine the next day,  
16 and they don't have it. So now you go a day without  
17 your medicine.

18 And, luckily, if they come the next day, you  
19 get it; otherwise, you're two days without your  
20 medicine.

21 That's one of the things that really used to  
22 annoy me, that they just didn't have the pills.  
23 They just didn't want to be bothered.

24 There was a lot of things they didn't want to  
25 be bothered with.

1                   And it -- I -- (suddenly goes out of screen).

2                   GRACE COLUCCI: Hi.

3                   If I could speak, I think that a bill -- like  
4 I mentioned during my statement, a seniors bill of  
5 rights would be very helpful.

6                   It would be informative, where families and  
7 patients could be given information on what they  
8 have as rights.

9                   The communication between the families and  
10 the nursing homes is especially important to  
11 improve.

12                  My family was discouraged from calling and  
13 asking about my father's care because they were  
14 understaffed.

15                  And this facility happens to be something  
16 with a very good reputation, but, it didn't help.

17                  VIVIAN RIVERA-ZAYAS: I would say that, in  
18 the future, we just cannot have the shutdowns that  
19 we have.

20                  I was my mother's caregiver. I knew her  
21 better than all of the nurses.

22                  And since I saw her, as soon as I saw  
23 anything wrong with my mother, I was able to address  
24 it, and have it addressed.

25                  When the shutdown happened, then my eyes were

1 removed. I was counting and relying fully on these  
2 nurses. But all they kept telling me was that my  
3 mother was fine.

4 So they are the professionals, they're  
5 watching my mother. I'm thinking and believing,  
6 wholeheartedly, that they know what they're talking  
7 about.

8 But I knew that something was really wrong.

9 And when a previous occasion, when she  
10 actually had a UTI, I kept telling them, listen,  
11 something's wrong with my mother. Can we test her  
12 for UTI?

13 And they said no.

14 The doctor refused an exam, a urine test,  
15 which I offered to pay for if I had to.

16 And they told me no.

17 I insisted, and two days later they performed  
18 the test. And, in fact, it was positive, and they  
19 put her on an antibiotic.

20 This is something that the eyes of the family  
21 members are extremely important on these loved ones.  
22 We know them best, we can advocate for them the  
23 best.

24 GRACE COLUCCI: And I want to add that, if we  
25 can suit up and go to the food store or a liquor

1 store, or anything like that, we should be able to  
2 take the same precautions to be with our loved one.

3 It's not like they'll be going throughout the  
4 nursing home. We will be in the room with our  
5 family member and not spreading any kind of illness.

6 And it's not like there's -- this has been  
7 the first time that there's been some kind of  
8 pandemic.

9 There was the S1N1 [sic], and the flu every  
10 year, that seniors are always the first to be the  
11 most vulnerable.

12 And the nursing homes were totally  
13 unprepared.

14 OFF-SCREEN SPEAKER: May I just say --

15 SENATOR O'MARA: Well, thank you all very  
16 much.

17 Again, I'm out of time.

18 I do want to credit Ranking Member Sue Serino  
19 for giving me the heads-up on those specific  
20 questions, as she had run out of time.

21 So, thank you, Chairman.

22 SENATOR RIVERA: Thank you.

23 Thank you, Senator.

24 Assembly.

25 ASSEMBLYMEMBER BRONSON: Yes, first let me

1 echo the sentiments of my colleagues in our  
2 condolences for the loss of your loved ones.

3 I oftentimes tell the constituents that it's  
4 so vitally important for us as policymakers to hear  
5 the real-life stories.

6 And as hard as it is for you to share those  
7 stories, I want you to know it's very important for  
8 to us hear the experiences that you've had, and to  
9 hear what your recommendations are, in us moving  
10 forward as we try to develop policies to prevent  
11 harm to our loved ones who are in nursing homes or  
12 other care facilities.

13 So, thank you very much.

14 And, Kathleen, thank you for your information  
15 on the issue of for-profit organizations.

16 I look forward to reading that in more  
17 detail.

18 We will now move to the next questioner who  
19 is Assemblyman Ron Kim.

20 We recognize Ron for 3 minutes.

21 ASSEMBLYMEMBER KIM: Thank you,  
22 Chairman Bronson.

23 So I believe this is perhaps one of the  
24 most -- perhaps the most important panel of the  
25 hearing.

1 I'm a firm believer that, when we design  
2 policies or solutions, we should center around --  
3 all of it around the people who are hurting the  
4 most, who are mostly, you know, impacted and  
5 traumatized in this time.

6 And we haven't done that until this moment.

7 So I thank the Assembly and the Senate  
8 colleagues for putting this forward.

9 I think a previous speaker already asked this  
10 question, but want to clarify:

11 Has this administration or the department of  
12 health reached out to any of you to talk about  
13 solutions, policies, or how the State can do a  
14 better job at protecting and strengthening the  
15 rights of nursing home residents?

16 VIVIAN RIVERA-ZAYAS: No, not at all.

17 We have called several times, and people and  
18 the members of the Voices for Seniors group families  
19 impacted have called on multiple occasions.

20 We get voice mail. We get tossed around here  
21 and there.

22 And, at the end, some have even claimed,  
23 they'll take our number to call us back, and we have  
24 received no return -- no callbacks.

25 ASSEMBLYMEMBER KIM: Okay.



1           Instead of handing out an early blanket legal  
2           immunity, or "get out of jail free" cards, for the  
3           nursing home CEOs or shareholders or the  
4           corporations behind them, do you think we would have  
5           had a different outcome if the State gave them an  
6           early blank check for PPE and staffing, and held  
7           them legally accountable to save people's lives?

8           VIVIAN RIVERA-ZAYAS: Many facilities lack  
9           the adequate infectious-disease control protocols  
10          for several times.

11          I think Mr. Skoufis had asked me about this  
12          very issue.

13          My mother's facility was cited 31 times in  
14          the period of four years, 2016 to 2020.

15          The fact that they had been cited and,  
16          obviously, there was no punitive damages that made  
17          them change their behavior.

18          And this is -- this includes not just COVID;  
19          it's, you know, Zika, and the flu, and any other  
20          infectious disease, they have to have a plan in  
21          place before these things come into their  
22          facilities.

23          So they were inadequately prepared  
24          beforehand.

25          Could it have helped to have the additional

1 supplies? Of course.

2 But the reality is, that this is something  
3 that they should already show that they lack  
4 beforehand.

5 KATHLEEN WEBSTER: I just want -- can I just  
6 add that -- I just want to add that, you know, the  
7 studies from Connecticut showed that, if you had  
8 more registered nurses on staff, you had fewer  
9 deaths.

10 That was the -- that was the clear study.

11 So, you know, the fact that these conditions  
12 existed beforehand, I mean, I slept on a chair in my  
13 mother's room for six weeks, to get her cured of a  
14 bad bedsore.

15 ASSEMBLYMEMBER KIM: Thank you.

16 KATHLEEN WEBSTER: Just in defense of the  
17 staff, I just do want to say that, undertrained,  
18 underpaid, no sick days, no paid time off, what did  
19 we think was going to happen?

20 So, you know, if we could take the profits  
21 off of the CEO's salary and put them more towards  
22 the staffing, might help.

23 ASSEMBLYMEMBER KIM: Kathleen, my time is up,  
24 but, one quick question.

25 Victims compensation fund, do you think

1       that's a good first step of retroactive justice: yes  
2       or no?

3               Thumbs up?

4               KATHLEEN WEBSTER:   Yes.

5               VIVIAN RIVERA-ZAYAS:   Yes.

6               ASSEMBLYMEMBER KIM:   Thank you.

7               LENORE SOLOWITZ:   Definitely.

8               ASSEMBLYMEMBER KIM:   Thank you,  
9       Assemblymember.

10              ASSEMBLYMEMBER BRONSON:   Thank you.

11              It looks like we have next up,  
12       Assemblymember Doug Smith, for 3 minutes.

13              ASSEMBLYMEMBER SMITH:   Thank you so much, and  
14       thank you to the chairs for holding this.

15              And thank you so much for the families who  
16       are coming here to testify today.

17              I think the families will probably join many  
18       of us in being a bit dismayed at what we heard from  
19       the health commissioner earlier today.

20              In my opinion, he was really dodging and  
21       deflecting to a new level.

22              But I'm deeply concerned that we were not all  
23       able to ask him questions that many of us had  
24       concerning this.

25              So I would ask at this time, and we'll start

1 with Grace, and then Vivian, and go to everyone,  
2 because I'm greatly hopeful that, after the fact  
3 that the commissioner left us, that he'll,  
4 hopefully, clear his schedule and join on us  
5 August 10th.

6 I want to know, I have questions I would have  
7 liked to have asked him on behalf of the people  
8 I represent.

9 But you represent families that have been  
10 directly impacted.

11 What question would you ask  
12 Commissioner Zucker if you had the opportunity, to  
13 the families?

14 GRACE COLUCCI: That's -- where do I start?

15 I would ask him: How come they, one,  
16 delayed --

17 I'm sorry.

18 Hello? Do you see me now?

19 Okay.

20 -- I would ask him why they delayed in using,  
21 actually -- not even delayed -- why they didn't use  
22 the "Comfort" and the Javits Center and other  
23 facilities that were assembled to handle COVID  
24 patients?

25 And why were the nursing homes actually, even

1       though they weren't made to take the COVID patients,  
2       but they, literally, they're hurting financially,  
3       and they did need to take the patients?

4               I would ask him that.

5               ASSEMBLYMEMBER SMITH: I mean, Grace, would  
6       you -- sorry to cut off -- would you agree, though,  
7       because the commissioner said that.

8               He said the State didn't force them to take  
9       COVID patients.

10              However, the order said, "no resident shall  
11       be denied."

12              GRACE COLUCCI: Correct. So it's just a play  
13       on words.

14              ASSEMBLYMEMBER SMITH: So, I mean, in a way,  
15       I would read that, the nursing homes did say that  
16       they felt obligated to take these COVID-positive  
17       patients.

18              GRACE COLUCCI: I agree, 100 percent.

19              I feel that they felt that they had no  
20       choice.

21              ASSEMBLYMEMBER SMITH: Thank you, Grace.

22              GRACE COLUCCI: You're welcome.

23              ASSEMBLYMEMBER SMITH: And maybe, Vivian, if  
24       we want to add that to. We only have about a  
25       minute.

1           VIVIAN RIVERA-ZAYAS: I would ask Mr. Zucker  
2           about how well it is to make decisions for your own  
3           mother, whom I believe he mentioned his mother is at  
4           home, and that they had made that decision; yet  
5           families were denied the right to make decisions on  
6           our own parents' behalf.

7           I was not given the option to discharge my  
8           mother before the shutdown.

9           I was not given the opportunity to make  
10          decisions for her because I was not told what was  
11          going on.

12          So, you know, they took my rights away; yet  
13          he continues to have his with his own mother.

14          ASSEMBLYMEMBER SMITH: Thank you so much.

15          I don't know if you want to add.

16          GRACE COLUCCI: Can I add one last thing?

17          My mother had said that, had she had known  
18          that she would not be able to take care of my father  
19          and feed him, she would never have put him in the  
20          nursing home.

21          She would have taken him home instead rather  
22          than have him do his rehab there.

23          ASSEMBLYMEMBER SMITH: Well, our thoughts and  
24          prayers are with you, and thank you for sharing your  
25          story with us.

1           Thank you.

2           OFF-SCREEN SPEAKER: Thank you.

3           SENATOR RIVERA: Thank you, Assemblymember.

4           I think we have one more.

5           ASSEMBLYMEMBER BRONSON: I believe we have  
6 one last questioner, Assemblymember Missy Miller,  
7 for 3 minutes.

8           ASSEMBLYMEMBER MILLER: Yes, thank you.

9           I just -- I want to thank all of you from the  
10 bottom of my heart for coming out here and sharing  
11 your stories.

12           I'm kind of glad it took this long to get my  
13 questions so I had a chance to compose myself after  
14 hearing all your testimonies.

15           I keep hearing, you know, "their rights,"  
16 "the patients rights," you think that we need a  
17 senior's bill of rights.

18           But what we're overlooking is that we have a  
19 Patient's Bill of Rights, and they were violated,  
20 and they were violated under this pandemic, you  
21 know, the governor's executive power during a  
22 pandemic.

23           But he stripped you all of your rights, and  
24 isolated the residents in their rooms, to be  
25 ignored, and to be neglected, and didn't let, not

1       only the family members, but even the ombudsmen, if  
2       one knew to look or ask for one.

3               So, you know, that is -- it's just even more  
4       heartbreaking, the system of failure that went from  
5       step to step.

6               And my biggest regret with Dr. Zucker leaving  
7       early today, is that he does not hear these  
8       testimonies; he is not hearing what we just heard.

9               And [indiscernible] members, that's what  
10      makes policy change.

11              Mr. Gottfried can attest to that. We did  
12      that years ago with medical marijuana.

13              Seeing and talking to patients, and talking  
14      to families, and hearing what their lives are like,  
15      that's what makes us want to change policy.

16              And that's what we need to get through to the  
17      department of health and to the governor's office.

18              So thank you for sharing.

19              OFF-SCREEN SPEAKER: Well, thank you.

20              SENATOR RIVERA: All righty.

21              We -- that is the last questioner, I believe?

22              Okay.

23              So we're going to take -- we're going to take  
24      a short break so that folks can actually get some  
25      coffee, perhaps, as we've got five more to go.



1 I believe we can get this done.

2 We'll give it 10 minutes, we'll come right  
3 back.

4 VIVIAN RIVERA-ZAYAS: Thank you.

5 GRACE COLUCCI: Thank you very much.

6 SENATOR RIVERA: Thank you for all of your  
7 testimony.

8 And please be in contact with the senators,  
9 particularly Senator Skoufis and others who have  
10 said that they would like to get some more of your  
11 stories, so they can really think through what we  
12 could do legislatively to respond to this concern.

13 GRACE COLUCCI: Thank you.

14 VIVIAN RIVERA-ZAYAS: Thank you, we will.

15 I appreciate it.

16 GRACE COLUCCI: Thank you.

17 SENATOR RIVERA: 10 minutes.

18 (A recess commenced.)

19 (The hearing resumed.)

20 SENATOR RIVERA: Welcome back, folks. Hope  
21 that you had some nice -- nice coffee.

22 We're going to power through right to the  
23 end.

24 Next panel, we are joined by:

25 Judy Johnson, registered nurse, and a member

1 of the New York State Nurses Association;

2 Milly Silva, executive vice president of  
3 1199 SEIU Nursing Home Division;

4 Eric Fogle, an 1199 member, and activities  
5 aide at the Holliswood Center;

6 Tyresse Byers, 1199 member -- excuse me --  
7 certified nursing assistant at the Sarah Neumann  
8 Nursing Home;

9 And, Nicole Whittaker, 1199 member, certified  
10 nursing assistant at the Berkshire Nursing and Rehab  
11 Facility.

12 Monsieur Gottfried.

13 ASSEMBLYMEMBER GOTTFRIED: Do you all swear  
14 or affirm that the testimony you're about to give is  
15 true?

16 JUDY JOHNSON: Yes.

17 MILLY SILVA: Yes.

18 TYRESSE BYERS: Yes.

19 NICOLE WHITTAKER: Yes.

20 ASSEMBLYMEMBER GOTTFRIED: Okay, fire away.

21 JUDY JOHNSON: Hi.

22 Good evening to the joint Assembly and Senate  
23 legislative hearing.

24 This testimony is on behalf of the New York  
25 State Nurses Association.

1           My name is Judy Johnson.

2           I'm a registered nurse employed at Rockland  
3       Nursing home, which is part of Kingsbrook Jewish  
4       Medical Center in Brooklyn.

5           I am here today on behalf of the New York  
6       State Nurses Association to relay our concerns about  
7       the impact of COVID on long-term-care facilities and  
8       problems that we observed during the first surge in  
9       March and April.

10          Rockland Nursing Home has about 466 beds, and  
11       includes an acute vent unit with 30 beds, an acute  
12       [indiscernible] unit with 34 beds, a pediatric unit,  
13       a rehab short-term unit, and several regular  
14       long-term-care nursing units.

15          During the March and April surge, our nursing  
16       home was hit particularly hard, and many residents  
17       and patients were sickened or died.

18          In addition, many of the direct-care staff,  
19       including nurses, were also exposed and sickened.

20          In our experience, several longstanding  
21       issues in the long-term-care sector made the impact  
22       of the COVID-19 pandemic much worse than they should  
23       have been.

24          First, nursing homes have, for many years,  
25       been understaffed.

1           We simply did not have enough RNs or LPNs and  
2 aides to provide high levels of care in addressing  
3 infection-control problems that became acute during  
4 the surge period.

5           I work on the most acute unit, caring for  
6 very sick people who are on chronic life-support  
7 vents, with 30 beds.

8           Our unit used to be staffed with five RNs  
9 at all times. But the ratio was recently worsened,  
10 with the RN staff [indiscernible] now including  
11 40 percent LPNs.

12           A similar thing happened on the  
13 [indiscernible] units, which used to have four RNs  
14 for 34 beds, but also reduced the RNs by adding up  
15 to 40 percent LPNs.

16           On the regular units the situation was even  
17 worse, and there were no RNs assigned to direct  
18 patient care. The only RNs assigned to those  
19 units are the managers who don't do direct patient  
20 care.

21           RNs and our LPN and aide colleagues all  
22 work hard, but reducing staff is not helpful for  
23 maintaining the quality of patient care.

24           During the surge, this chronic understaffing  
25 caused atrocious situations in the nursing home.

1           The short-staffing became even worse when a  
2           large percentage of the staff themselves became ill  
3           and could not report to work.

4           At Rockland we finally got some help in the  
5           form of temporary nurses, but they did not arrive  
6           until May, long after the worst of the surge in  
7           April.

8           A big problem in the spread of the virus  
9           among staff and patients was the shortage of PPE.

10          We did not have enough N95 respirators and  
11          masks for the staff, and were forced to reuse the  
12          equipment for days and days.

13          We also did not have enough PPE for the  
14          residents and patients to use.

15          I think this contributed to the spread of the  
16          virus throughout the facility.

17          Another problem that made things worse was  
18          the constantly changing guidances and protocols for  
19          infection control and the use of PPE.

20          The CDC kept on changing its recommendation  
21          and the State just followed suit.

22          A lot of the changes were related to the  
23          shortage of PPE rather than best practices to  
24          protect patients and staff.

25          The lack of staff in the bad situation with

1 PPE and the constantly changing protocols are, in  
2 many ways, the legacy of the constant pressure to  
3 cut costs because of reduced reimbursements from  
4 governments and private insurers.

5 The nursing home industry is constantly being  
6 squeezed by these budget cuts.

7 Pay is too low and that causes a lot of staff  
8 turnover.

9 If staffing has already had -- has already --  
10 was already bad and funding was short, it should be  
11 no surprise to anybody that the pandemic had a  
12 devastating impact on our nursing homes around the  
13 state.

14 To prepare for the resurgence of the virus in  
15 the fall, and for future pandemics, we need to  
16 properly fund our health-care system, including our  
17 nursing homes.

18 We need to pay people more so that we don't  
19 have constant turnover of new staff who have to be  
20 trained to provide patient care.

21 As part of addressing the staff  
22 [indiscernible] shortage, the State should implement  
23 minimum staffing requirements in all nursing homes.  
24 This would allow more stability and give us  
25 [indiscernible] improvement that will better allow

1 us to respond to future surges.

2 Finally, the State needs to implement more  
3 stringent and uniform infection-control standards  
4 and protocols that all long-term-care facilities  
5 have to comply with.

6 This will protect both the staff and the  
7 patients.

8 Thank you for the opportunity to present our  
9 concerns, and our written testimony will be admitted  
10 for the record.

11 Thank you.

12 SENATOR RIVERA: Thank you, ma'am.

13 I guess, Ms. Milly Silva.

14 MILLY SILVA: Good afternoon.

15 My name is Milly Silva. I'm an executive  
16 vice president of 1199 SEIU, United Healthcare  
17 Workers East, directing our nursing home division,  
18 which represents over 50,000 nursing home workers  
19 downstate.

20 Our union also represents an additional  
21 15,000 nursing home workers in the Hudson Valley and  
22 upstate.

23 I understand that you will hear from these  
24 members next Monday.

25 Our members in nursing homes provide

1 essential care to residents: helping them get in and  
2 out of bed, feeding, dressing, and bathing them.

3 They do this work because they're committed  
4 to providing quality care for the residents who they  
5 get to know and love. They do it despite many  
6 challenges, including high rates of injury, frequent  
7 understaffing, and, often, inadequate pay and  
8 benefits.

9 Our members in nursing homes continue to love  
10 and care for the residents, and they did it that  
11 much more so during this pandemic under  
12 extraordinarily difficult conditions.

13 Many of us saw it on television, we read of  
14 it in the newspapers, but nursing home staff faced  
15 it up close and personal.

16 They saw large numbers of residents' deaths,  
17 overwhelmed morgues, and up to a third of the  
18 workers becoming ill, with resulting severe staffing  
19 shortages.

20 As we know, workers died.

21 And on behalf of 1199, we express our  
22 condolences to the family members who also lost  
23 loved ones during the pandemic at the nursing home.

24 We want to thank the legislature for holding  
25 these hearings, to examine what happens in nursing



1 homes during this pandemic, and, most importantly,  
2 to learn its lessons, so that this tragedy is never  
3 repeated.

4 The decisions that individuals made, and the  
5 systems in place, or lacking, during the pandemic  
6 made a real difference in the safety of residents  
7 and staff.

8 In a moment I will discuss those decisions,  
9 both positive and negative, and you will have my  
10 testimony -- written testimony as well for the  
11 record.

12 I want to make one key point:

13 The nursing home industry is not going to be  
14 the same after this pandemic.

15 Resident census is lower, and it is unclear  
16 how quickly it will recover.

17 Returning to the status quo pre-pandemic is  
18 impossible. More than that, it is morally  
19 unacceptable.

20 New York ranked 31st in the nation for  
21 nursing home quality, according to CMS surveys, and  
22 in the bottom 10 nationally for persistent pressure  
23 ulcers.

24 Residents are only getting 2.38 hours of  
25 hands-on care per day, earning our state a "D" on

1 the national scorecard.

2 Nursing home caregivers are forced to work  
3 multiple jobs to make ends meet, leading to staff  
4 turnover and burnout.

5 We can, and we must, do much, much better.

6 We urge the administration and the  
7 legislature not to waste this moment, when there is  
8 more tension faced on the experience of vulnerable  
9 residents in the nursing homes than anytime in the  
10 recent memory.

11 You must listen to the voices of those who  
12 are on the front lines.

13 You are going to hear from some of them as  
14 soon as I am done.

15 And we're asking you to commit to a  
16 comprehensive plan to dramatically improve the  
17 quality of long-term-care services in our state.

18 1199 SEIU members stand ready and willing to  
19 do the work with you.

20 As such a plan is developed, we're going to  
21 ask you to take a look at testing and cohorting.

22 Our members saw the difference between what  
23 happens when you cohorted residents, and when you  
24 actually had workers moving from room to room,  
25 COVID and non-COVID residents.

1           On personal protection equipment, it was  
2       real.

3           We saw members who had to wear garbage bags,  
4       we saw members who were asked to put on raincoats,  
5       as part of their PPE instead of given full gear with  
6       masks, eye goggles, face shields, and gloves.

7           We also want to make sure that you take a  
8       look at what happens with sick-pay policies, where,  
9       in some cases, let's be clear, one in four workers  
10      were infected by COVID-19, according to the state  
11      department of health.

12          Some of those workers were workers who also  
13      had to make the choice of staying at home and  
14      recovering, or, being asked by their employers to  
15      come back to work.

16          That's an unconscionable question that  
17      shouldn't have been asked of workers, yet some  
18      workers were put in that untenable position.

19          And on staffing, the pandemic revealed and  
20      exacerbated what already was, which is insufficient  
21      staffing in nursing homes.

22          So we're going to ask you to take a look, and  
23      to hear from the experience, and to imagine what  
24      would it look like:

25          To make sure that nursing homes are ones

1 where, as we prepare for this pandemic, we know that  
2 there is adequate full PPE gear for all of the  
3 workers;

4 That there is adequate testing;

5 That resources are prioritized for testing in  
6 the nursing homes;

7 That we make sure that workers have access to  
8 the sick pay;

9 And that we also know that there is going to  
10 be appropriate staffing, as we prepare for what  
11 could be the next surge, and, certainly, as we move  
12 into the flu season.

13 And with that I yield to our 1199 member  
14 leaders.

15 SENATOR RIVERA: Perfect timing, Ms. Silva.

16 Thank you.

17 And let's start with Eric Fogle.

18 ERIC FOGLE: Good afternoon. How are you all  
19 doing?

20 First of all, I want to appreciate -- I would  
21 like to appreciate you giving me the opportunity to  
22 speak today on the COVID epidemic -- pandemic.

23 My name is Eric Fogle. I work at Holliswood  
24 Care Center. I worked at Holliswood Care Center  
25 for, actually, 25 years.

1           The first thing I thought when this actually  
2       took place, that it was unreal. It was so surreal  
3       when you actually see the situation that was at  
4       hand.

5           My job is actually activities aide, so I do  
6       what you call "therapeutic recreation."

7           When you do therapeutic recreation, it is  
8       more that, you have such a closeness to the  
9       patients, to the residents; they're very close to  
10      you.

11          I normally run a group, and the group will be  
12      of 15 to 20 individuals. But, because of social  
13      distancing, and because of face masks, and I was  
14      limited to actually 8 -- 8 in a group.

15          And what happened with that, you could  
16      actually see the effect that it actually had on the  
17      residents on a daily basis, because they were so  
18      used to being with each other in a group, and doing  
19      group program, group activities, such as arts and  
20      crafts, Bingo; [indiscernible] things of that  
21      nature.

22          So what it was, when you actually, after you  
23      go from -- to a point where you have a group of  
24      15 to 20, and a lot of times you have to choose the  
25      ones that actually understand and respect what was

1 going on that particular time, because, a lot of  
2 times, when you deal with patients that suffer from  
3 Alzheimer's or they suffer from dementia, or an  
4 illness like that, they really don't understand the  
5 severity of what's going on.

6 So they would constantly remove their masks.  
7 If not remove the masks, they want to keep the mask,  
8 they wouldn't respect the social distancing.

9 And so I had to be due diligent in choosing  
10 residents that could understand and would actually  
11 follow those.

12 It was -- it was -- it was very difficult,  
13 like, me talking about it now is very difficult, at  
14 times, that you actually known a resident where  
15 residents are like family to you.

16 It's not like this resident don't know you.  
17 This resident think you their family because they  
18 see you all the time.

19 And you see them on a Monday. And then when  
20 you come back on a Tuesday or a Wednesday, they're  
21 gone.

22 Or, when you get a new resident that just  
23 came in that you had a connection with, and they  
24 came in on a Monday, and then before you know it,  
25 they have passed away, and it was actually -- passed

1 away the next day, and they was actually gone.

2 That right there was very troubling.

3 And you got to realize that, mental, it was  
4 more of a mental thing than so much physical  
5 because, mentally, had you to deal with this each  
6 and every day.

7 So you're dealing with a virus each and every  
8 day, that you see the toll it actually takes. And  
9 then you have to go home to your own family, which  
10 is a scary moment, when you actually have an area  
11 that's nothing but COVID patients.

12 And I used to do what you call "video chats,"  
13 because, the situation there is, you couldn't have  
14 family members visit. So it was important for them  
15 to do video chat.

16 Here I am, I'm dressing in a hazmat suit,  
17 going to do a video chat with a resident.

18 So their family member, a lot of times, are  
19 basically in tears, you could hear the quivering in  
20 their throat, because of the mere fact they scared  
21 of you. You could actually see me as it was a  
22 sci-fi movie, or something like that.

23 I'm going in there to visit their family  
24 members so they can check on their family members to  
25 see how their family members is doing, and I'm in a

1 full hazmat suit.

2 It got to the point whereas I made the  
3 decision where I had to have some type of normalcy.

4 So what I would actually do, I would actually  
5 put my face mask on, and everything, but I would try  
6 not to actually go in with the hazmat suit.

7 And a lot of times, too, because of lack of  
8 supply.

9 One thing about the nursing home owners, it  
10 just seems like it was a lack of supplies. They was  
11 more concerned about the second wave than dealing  
12 with what was going on right then and there.

13 So a lot of times, when you go past the  
14 administrator's office, they would have supplies  
15 stacked on top of each other. But then you would  
16 see CNAs with garbage bags on, LPNs with garbage  
17 bags on; people with hazmat suits with holes on it;  
18 they wouldn't have no face mask, so there will be no  
19 N95 -- there won't be no N95 masks, and things of  
20 that nature, right then and there.

21 So it was always a constant thing that you  
22 actually seen and you had to deal with, and you had  
23 to keep the moral [sic]. You had to actually keep  
24 people's morality more because they were so nervous  
25 at times about dealing with this particular



1 situation.

2 We was one of the hardest-hit nursing homes.  
3 We had close to 60 deaths.

4 We actually had the freezer outside, where,  
5 actually, I was helping put the bodies in the  
6 freezer.

7 Now, could you imagine that you don't have  
8 the opportunity to say a farewell.

9 You don't have the opportunity to have a  
10 viewing, you don't have a opportunity where they  
11 actually would be able to bury the person  
12 [indiscernible].

13 So here it is, we would carry them into a  
14 truck -- a freezer truck, a meat truck, or whatever  
15 you want to call it -- and you actually placing  
16 these residents inside a truck like that.

17 That was like devastating.

18 Every time you come home, you're traumatized  
19 just by the idea of that.

20 We had over 20 to 30 workers that was  
21 actually infected. Some was infected more than one  
22 time, they was actually infected.

23 It was intense for three to four months  
24 because, what happened, the nursing homes got a lack  
25 of staffing anyway. And they did that.

1           So the thing is, with the lack of staffing  
2           they already had, the ones that they did have, they  
3           was pushing them.

4           So what happened, you had a lot of times  
5           where you have LPNs that was working six or seven  
6           days out the week. You have CNAs working six or  
7           seven days out the week.

8           You couldn't take a day off. You couldn't  
9           call out. Things like that.

10          So it was always a situation where that you  
11          was always trying to comfort someone.

12          We actually had a union member in the  
13          building that actually passed away from COVID. And  
14          that was really devastating to the department  
15          itself, because the department itself was the type  
16          of department that really didn't have much contact  
17          with --

18          SENATOR RIVERA: Mr. Fogle?

19          ERIC FOGLE: -- with the residents --

20          Yes?

21          SENATOR RIVERA: If you could wrap up, since  
22          your time has expired.

23          ERIC FOGLE: Okay.

24          So my thing is, what I would just like to  
25          say, that, when it comes down to this, we need to be

1 more proactive than reactionary.

2 Hopefully, from this particular situation, we  
3 will actually learn how to be able to deal with  
4 this, and put leadership and put guidelines in place  
5 for us to be able to deal with this, deal with this  
6 situation if it happens again.

7 Thank you very much.

8 SENATOR RIVERA: Thank you for your  
9 testimony, Mr. Fogle.

10 ERIC FOGLE: Thank you.

11 SENATOR RIVERA: We will continue with  
12 Tyresse Byers.

13 I hope that I pronounced your name correctly.

14 TYRESSE BYERS: Yes, you pronounced it  
15 correctly.

16 Good evening, everyone.

17 My name is Tyresse Byers.

18 I've been a member at Sarah Neumann Nursing  
19 Home for the past 12 years.

20 I'm seven months pregnant, so I worked  
21 through the whole COVID situation, pregnant.

22 What I had wanted to say is, when I think  
23 about the situation that we was in, for me it was  
24 very scary.

25 I was in fear at times, not just me, but also

1 my co-workers.

2 It was just the fact that, when we had got a  
3 bunch of COVID residents sent there to us, we was  
4 lacking PPE.

5 On top of lacking PPE, we was lacking staff  
6 members, and even nurses.

7 And instead of them getting people from  
8 outside or getting help from outside, if we was  
9 missing -- if we was lacking PPE and lacking  
10 residents and -- not residents, lacking in  
11 co-workers, they would take the co-workers that they  
12 set aside for us, that they told us before we got  
13 the COVID residents, they're going to clear one unit  
14 out. And when they clear one unit out, they gonna  
15 just make that unit the COVID unit. And we gonna  
16 have a certain amount of co-workers that's gonna  
17 work on that unit.

18 That's how it was going to be set so we can  
19 not spread the COVID to other units or other floors.

20 So we all thinking this is the plan when they  
21 came in. They already have a staff ready for who's  
22 going work in that unit.

23 But when the COVID residents came in, that  
24 wasn't the case.

25 We had lack of -- short on residents --

1 I mean, not residents. I'm so sorry. -- short of  
2 staff members. And we had short numbers of nurses.

3 When they didn't have enough nurses to cover  
4 the floor, they would pull the nurse off the COVID  
5 unit and have her come and work in the non-COVID  
6 unit, to pass out meds.

7 And we didn't understand that.

8 And that's the part that got scary for myself  
9 and my co-workers.

10 Like, if we come in and working here at a  
11 unit, and it's non-COVID, why would you want to  
12 bring somebody over that's been working the morning  
13 shift, all day, with COVID residents, and move them  
14 over to the side with residents that's not COVID?

15 And then they didn't have the proper PPE on,  
16 and then you're working with other residents that's  
17 not sick, which contaminated and spread it  
18 throughout the facility.

19 And they sit there and they say, oh, the  
20 contamination came from the staff members.

21 The staff members wasn't coming in there  
22 sick.

23 The staff members got sick after working  
24 different shifts, different floors, to cover the  
25 short staffing that we had.

1           And it's just, it was -- it hurts, it just  
2           hurts.

3           I'm just expressing my feelings, how it  
4           hurts, how upsetting it was.

5           And, I just felt like, our government, our  
6           health care and our government, just let us down.

7           It let us down.

8           We stay here, we taking care of our residents  
9           that we love, we've grown to love. We've been  
10          taking care of them for years.

11          Residents, we had there for years, we treat  
12          them like our own family.

13          Birthdays, holidays, occasions that came  
14          around, we did things with them. We would have  
15          parties with them, just to lose them, because of the  
16          way how things went about with the COVID.

17          And it hurts us, but it hurts our residents  
18          as well, because I'm looking at it, like, we felt  
19          like we didn't have no support.

20          No support, not even from our own  
21          administration, or DOH that worked there. They  
22          stayed in their own little cubby. They wasn't  
23          worrying about if we had enough PPE.

24          Oh, you work on the floor that don't have  
25          COVID, so you don't need the PPE, you don't need to

1 wear masks, you don't need to wear that.

2 How do you figure?

3 It spread like wildfire.

4 We wanted to have coverage for ourselves and  
5 for our residents.

6 It took for the State to come in.

7 The State had to come into our facility for  
8 them to tell us, well, set the residents apart, make  
9 them wear their masks. Also have the staff wear  
10 their masks.

11 But when we was suggesting this before it got  
12 as bad as it did at our nursing home, what we was  
13 telling them, they wasn't taking it at face value.  
14 It would just go in one ear and out the other.

15 And that hurts, that hurts, because I've been  
16 working at this job for years.

17 I know I had wanted to be a nurse since I was  
18 in junior high school.

19 And I will never think, in my wildest life,  
20 as grown-up and as an adult, and as a pandemic that  
21 come along at a facility that I work at, that they  
22 wouldn't show the same level of respect and care to  
23 work together with us.

24 Everything that we did there, we had to do on  
25 our own.

1           Just like the last gentleman that made a  
2           statement, we had to wear plastic bags. Come in  
3           there, buying our own gloves, buying our own masks.

4           We came in there with our own supply, not  
5           being able to count on our facility to give us what  
6           we needed.

7           And then when they did get the stuff, it came  
8           late.

9           When we finally did get PPE, it was later  
10          on --

11          SENATOR RIVERA: Ms. Byers?

12          TYRESSE BYERS: -- after we had lost a whole  
13          lot of people.

14          SENATOR RIVERA: Ms. Byers, if you could  
15          conclude, since your time has expired.

16          TYRESSE BYERS: I'm sorry.

17          SENATOR RIVERA: No, no. No need to  
18          apologize.

19          I just, you know, want to make sure that we  
20          can hear from your -- from other members as well.

21          But if you want to do one last statement, you  
22          certainly can.

23          TYRESSE BYERS: I just want to say, from this  
24          forward on, as a mother; as a family member; as a  
25          friend; as a person that loved my elderlies, as



1 I would take care of them through my time, that  
2 y'all find a better way and a better solution, and  
3 come up with a better strategy than what was -- that  
4 came up, because it was horrible.

5 It was horrible.

6 SENATOR RIVERA: Thank you, Ms. Byers.

7 We will continue with Miss Nicole Whittaker.

8 NICOLE WHITTAKER: Good evening.

9 Can everyone hear me?

10 SENATOR RIVERA: Yes, ma'am.

11 NICOLE WHITTAKER: Hi, good evening.

12 My name is Nicole Whittaker. I am a  
13 certified nurse assistant at Berkshire Nursing and  
14 Rehab on Long Island.

15 I have been working at Berkshire Nursing for  
16 five years. I work the 7 a.m. till 3 p.m. shift.

17 My shift begins with serving and feeding  
18 breakfast, and then I move on to a.m. care.

19 A.m. care includes bathing and dressing the  
20 residents, and also assisting in all activities of  
21 daily living.

22 We as CNAs provide love and support daily  
23 through many activities.

24 We also serve and feed lunch, and assist  
25 residents to the bathroom throughout the day.

1           In the beginning of March there was an  
2       outbreak of pneumonia in my facility. Several  
3       residents had incredibly high fevers, shortness in  
4       breath, and some weren't eating.

5           They were all seen by doctors, and given  
6       chest X-rays, but COVID testing was not widely  
7       available, especially for their population.

8           We as staff were watching the news daily and  
9       hearing about this novel coronavirus, and began  
10      calling for proper PPE.

11          But, for weeks, we resorted to wearing  
12      garbage bags.

13          N95 masks were finally issued to us, but were  
14      being worn for entirely too long.

15          The staff was also getting sick, and testing  
16      was still scarce.

17          We were also being told that we did not  
18      qualify for a 14-day quarantine. That we were to  
19      return to work once 48-hours fever-free.

20          Unfortunately, many of us were asymptomatic  
21      and never had a fever or any symptoms of this virus  
22      at all.

23          So, we just continued to work daily, many of  
24      us pulling double shifts regularly.

25          When it first came apparent that our

1 residents were suffering COVID-19, they should have  
2 been isolated immediately.

3 Instead, it took almost a month to institute  
4 proper infection controls.

5 We lost a significant number of residents,  
6 and many of these deaths could have been prevented.

7 All of the staff and residents should have  
8 been required to wear appropriate PPE at an earlier  
9 date.

10 I personally have a seven- and nine-year-old,  
11 and I live with two people over the age of 60.

12 I would come home after many 13-hour shifts,  
13 and immediately disrobe and shower before being able  
14 to hug my children after being away from them for  
15 plus-13 hours.

16 I would have to come home living in fear that  
17 I could potentially bring home this virus, and, in  
18 turn, put my children and our family's lives at  
19 risk.

20 We need to do better, as a whole, to protect  
21 ourselves and our residents against another viral  
22 outbreak of this capacity.

23 Thank you.

24 My name is Nicole Whittaker.  
25

1           SENATOR RIVERA: Thank you very much,  
2           Ms. Whittaker.

3           And we will start off questions with the  
4           Assembly.

5           ASSEMBLYMEMBER BRONSON: Thank you, Senator.

6           First we'll recognize Chair Gottfried for  
7           5 minutes.

8           Okay?

9           Not hearing from --

10          SENATOR RIVERA: Are you with us?

11          OFF-SCREEN TECHNICIAN: I think we lost him.  
12          We will track him down.

13          ASSEMBLYMEMBER BRONSON: Okay.

14          Then I'll go first, then, in asking a few  
15          questions, but first let me make a comment.

16          I said this to the family members who were  
17          testifying earlier about the importance of hearing  
18          their stories.

19          And I say the same thing to all of you who  
20          are on the front line: You truly are the heroes  
21          that are out there, putting yourselves and your  
22          family at risk, quite frankly, while you're caring  
23          for our loved ones.

24          And so our heartfelt thank you, but, also, a  
25          recognition that, hearing what you went through is

1 vitally important for us as we try to develop  
2 policies that will make our systems better, and  
3 provide more protection equipment, as well as  
4 guidelines and protocols, that will keep you safe  
5 and keep those who you care for safe.

6 With that, let me ask first to, 1199,  
7 Miss Milly Silva:

8 I looked at your written testimony, and at  
9 the end it has several recommendations.

10 One of them is: Adopt the Massachusetts  
11 model of an infection-control audit, along with the  
12 availability of technical aid and other resources.

13 Could you -- just for the record, could you  
14 explain what the Massachusetts model is?

15 I'm not that familiar with it.

16 MILLY SILVA: Certainly.

17 So one of the things that occurred in  
18 Massachusetts as a result of really figuring out,  
19 how do we start to put a plan in place to address,  
20 and to really fortify the nursing homes during the  
21 pandemic? is that they instituted something called  
22 an "infection-control competency checklist."

23 And it is a system where nursing homes are  
24 using the checklist in order to make sure that they  
25 are implementing best practices on infection control

1 as a way to really mitigate what's happening with  
2 the spread of COVID-19.

3 And so as a result of it, each nursing home  
4 was provided with this checklist. It includes,  
5 under the topic of "Infection Control," for example,  
6 pointing out that residents who are confirmed by  
7 testing to be infected with COVID-19, or who are  
8 recovering from COVID-19, would be separated from  
9 residents who are not infected and have an unknown  
10 status.

11 "Cohorting," as a point.

12 It also speaks to facilities implementing a  
13 staffing plan, where there is dedicated, consistent  
14 staffing teams who can interact directly with the  
15 residents who are positive or symptomatic for COVID,  
16 and limiting the movement between that staff and  
17 other staff who are caring for non-COVID patients.

18 It also speaks to PPE, making sure that full  
19 PPE is going to be provided for staff, but also  
20 adding an additional piece, which I wasn't able to  
21 address in my comments, which are, that staff, in  
22 addition to being provided personal protective  
23 equipment and the full complements of it, they  
24 actually also need to be trained on donning and  
25 offing the PPE so they're able to protect

1 themselves.

2 On the issue of staffing, it speaks to the  
3 facilities being able to demonstrate that they have  
4 an advanced plan in place for -- certainly for  
5 COVID, and, also, just as part of a general  
6 emergency-preparedness plan.

7 And that it will include what their plan is,  
8 to either make access to staffing that might be  
9 available through volunteers, through a staffing  
10 portal that might be created.

11 The checklist also speaks to clinical care --

12 All of this we can certainly provide to the  
13 committee members following the hearings.

14 -- that, again, requires the facilities to  
15 implement infection-control policies.

16 And also on communication.

17 And it points out the importance of there  
18 being designated staff at the care facility, whose  
19 role it is to make sure that there is constant  
20 communication across the care teams, the management  
21 teams, so that everything is in place in terms of  
22 implementing and executing the plan.

23 With this infection-control list, then the  
24 State is actually inspecting the nursing homes to  
25 see whether or not they have their competency plan

1 in place, what it looks like, and if they are, in  
2 fact, implementing it.

3 And then the State is providing additional  
4 technical aid to the facilities.

5 And there is also some additional funding  
6 that's provided to those nursing homes.

7 And nursing homes who fail to meet the  
8 requirements of the checklist are then held  
9 accountable by the State.

10 ASSEMBLYMEMBER BRONSON: Thank you.

11 And if you wouldn't mind providing that, that  
12 would be great.

13 And if you could possibly get it to us so  
14 I can review it before our August 10th hearing, that  
15 would be very important to me.

16 MILLY SILVA: Will do.

17 ASSEMBLYMEMBER BRONSON: Thank you.

18 And I just -- I don't have much time. I only  
19 have 20 seconds left.

20 So, Ms. Judy Johnson, thank you so very much  
21 for your testimony, especially on the staffing.

22 Many of us who are on this hearing are very  
23 supportive of that.

24 And I just wanted to recognize that I think  
25 that we really need to look into the mandatory



1 staffing.

2 So thank you for your testimony.

3 And with that, I will shift it --

4 JUDY JOHNSON: Thank you.

5 ASSEMBLYMEMBER BRONSON: -- [indiscernible  
6 cross-talking].

7 JUDY JOHNSON: Thanks.

8 SENATOR RIVERA: Thank you, Assemblymember.

9 And to lead off the Senate questioning,  
10 Senator Rachel May is recognized for 5 minutes.

11 SENATOR MAY: Thank you.

12 And thank you for your testimony.

13 I can tell it was hard to tell these stories  
14 for some of you, so I really appreciate you sharing  
15 with us.

16 I have a few questions, kind of general  
17 questions, about working in a nursing home.

18 So, can any of you speak to how many of your  
19 colleagues are working multiple jobs?

20 And what do you need in order to be able to  
21 work a single job?

22 Is the most important [indiscernible]?

23 Is it regular hours?

24 Is it child care?

25 Like, what -- what would be the most

1 important thing to help people work just one job?

2 TYRESSE BYERS: A lot of people in my  
3 facility work at least 16 hours.

4 Like, they'll do an 8-hour shift at my  
5 facility. Then they'll go to another facility and  
6 do another 8-hour shift.

7 So a lot of times they're doing it, is  
8 because they don't make enough money at the facility  
9 to cover their bills, so that's why they pick up  
10 extra shifts and extra time.

11 SENATOR MAY: [Indiscernible.]

12 Okay.

13 And is there a limit to, like, 8 hours is the  
14 most you can work at one facility?

15 TYRESSE BYERS: In my facility it's a 40-hour  
16 shift throughout the week.

17 Sometimes they offer overtime if they have  
18 it.

19 SENATOR MAY: Okay. Thank you.

20 TYRESSE BYERS: But a lot of times they try  
21 not to give overtime because they don't want to pay  
22 that extra money of overtime.

23 SENATOR MAY: Yeah, sure.

24 And then I had another question, which was --  
25 and I don't know if any of you can speak to this --

1 but, what are the special challenges of working with  
2 someone with dementia, or with residents who have  
3 memory issues, in the pandemic?

4 Has that been a special challenge?

5 TYRESSE BYERS: A lot of times they just  
6 don't keep their mask on when we told them. But --  
7 and they like to wander.

8 Like, you can't keep a person who has  
9 dementia in one spot, or tell them they got to stay  
10 isolated to one spot, because they not used to that.  
11 They're used to just wandering and going.

12 And it's hard to just tell somebody who is  
13 not fully there, to be, like, you know, that have  
14 dementia, well, I'm sorry, you have to stay here,  
15 it's for your own protection, because they not  
16 really understanding what we trying to say.

17 SENATOR MAY: And I'd open it up to other  
18 people, too: Do you need more staff? Or --

19 NICOLE WHITTAKER: Absolutely.

20 OFF-SCREEN SPEAKER: [Indiscernible.]

21 SENATOR MAY: And then, just going through a  
22 bunch of questions I have:

23 We've been talking a lot about the ban on  
24 visitation in nursing homes.

25 And from the families' viewpoint, it's been

1 really, really hard.

2 But I'm wondering, from the staff viewpoint,  
3 what --

4 NICOLE WHITTAKER: As a staff member  
5 representing my residents, there has been some  
6 significant cognitive decline in our residents due  
7 to the loss of not being able to see their family  
8 members. A lot of their dementia has progressed.

9 Even though, with dementia, some of them  
10 don't know their family members, they have a slight  
11 idea of who they are. And they're really, really  
12 suffering because of their family members not being  
13 able to come and visit them.

14 TYRESSE BYERS: And it's not the same, even  
15 when we do [indiscernible] communication because,  
16 even myself, by having an iPhone, and I keep in  
17 touch with a lot of my residents' family members,  
18 I will call them, just to show them how they doing.

19 We have conversations, but, a lot of times,  
20 they get it; and then, a lot of times, they just  
21 don't understand the device.

22 They be happy to see their family members'  
23 faces, and to talk to them. But they still don't  
24 understand why they're not there, or when they will  
25 be able to come see them, because they miss them.

1           And they look through pictures more often.

2           Like, if they have a family album, and stuff,  
3           they look through it more frequently, just telling  
4           us that they miss their loved ones.

5           JUDY JOHNSON: That was definitely one of the  
6           hardest things that we had to go through with not  
7           having the family members here.

8           We did a really amazing job here, like,  
9           assembling the recreation department to do FaceTime  
10          calls on a weekly basis.

11          So we had, like, at least twice a week we  
12          would reach out to family members. And that was  
13          helpful, but it's not the same, because, you know,  
14          we have family members who provide hands-on care  
15          when they're here.

16          And that was really one of the hardest things  
17          that we had to go through, you know, family members  
18          not being able to be with their loved ones, and  
19          passing. That was so hard. Very emotional; an  
20          emotional rollercoaster, for the most part.

21          SENATOR MAY: And one last question:

22          I've been told by some nursing homes that  
23          they're not offering the opportunity for outdoor  
24          visits because they just don't have the staff to  
25          supervise that.

1           Is that something you've experienced, or  
2           you -- does that ring true to --

3           TYRESSE BYERS: Well, at my facility they  
4           started curbside visits, where, at the front  
5           entrance, they blocked it off. Where we used to  
6           have cars and stuff, they took the cars and stuff  
7           away. We're not allowed to park in that area. And  
8           they set up appointments so they could have curbside  
9           visits.

10          And some of our volunteers, or some of our  
11          recreation members, would come get some of our  
12          residents, or we would take them out ourselves. And  
13          they had like, maybe, an hour or two visit,  
14          curbside.

15          SENATOR RIVERA: Thank you so much,  
16          Ms. Byers --

17          TYRESSE BYERS: But it's only by appointment.

18          SENATOR RIVERA: Thank you so much,  
19          Ms. Byers.

20          And thank you so much, Senator May.

21          SENATOR MAY: Thank you.

22          SENATOR RIVERA: Assembly.

23          ASSEMBLYMEMBER BRONSON: Uh, yes,  
24          Assemblymember Dick Gottfried, your hand was raised.  
25          Do you still want to go?

1 ASSEMBLYMEMBER GOTTFRIED: Yes.

2 ASSEMBLYMEMBER BRONSON: Okay. Very good.

3 5 minutes, please.

4 ASSEMBLYMEMBER GOTTFRIED: Okay. Thank you.

5 First of all, I just wanted to say, you know,  
6 hearing from -- previously from family members, and  
7 now from workers, is just horrific. I mean, not  
8 easy to listen to, but really important to hear from  
9 the people on the front lines.

10 I have a couple of questions, I guess, either  
11 maybe for Judy or Milly.

12 Mitch Katz, the head of the New York City  
13 Health + Hospitals Corporation, the other day we  
14 were on a program together. And he said that, for  
15 nursing homes -- well, at least for the city's  
16 nursing homes, the fact that their workforce is  
17 unionized made for -- in this crisis, made for  
18 better morale; better, you know, a stronger  
19 workforce; worker retention; just all sorts of  
20 benefits, having a unionized workforce.

21 This is sort of a softball question: Do you  
22 agree?

23 MILLY SILVA: (Indicating two thumbs up.)

24 JUDY JOHNSON: That is a softball question.

25 ASSEMBLYMEMBER GOTTFRIED: Why don't we --

1       it's too easy a question. Let's move.

2               We've been -- I've been hearing some pretty  
3 shocking stories of nursing homes that, you know,  
4 like reported, at one point, having 13 deaths in the  
5 facility. And it turns out it was only 8.

6               I won't mention the facility by name. You  
7 probably know the name.

8               Does that happen a lot?

9               And how does that go on?

10              JUDY JOHNSON: During the pandemic it was  
11 really bad.

12              It's not on a daily basis. This was just  
13 during the pandemic. And, again, because it was  
14 so -- you know, this was unprecedented, uncharted  
15 waters we were in. You know, and it was just  
16 nothing we had seen before.

17              And, again, with staffing, it was -- you  
18 know, a lot of our staff were out.

19              So it was just really, really, it was bad.  
20 As again I say, an emotional roller coaster  
21 throughout.

22              MILLY SILVA: One [indiscernible] that I  
23 would say is that, in our experience, look, we were  
24 on our calls and conversations with our leaders  
25 every day. And they were probably, in particular,



1 March and April, some of the most difficult  
2 conversations that we've ever had to have with  
3 anybody, just for -- because members were describing  
4 co-workers who were sick, and in some cases, dying.

5 And Eric actually shared a story about what  
6 that looks like and felt like in his facility, as  
7 well as also recognizing that, as Tyresse described,  
8 we had members who were taking care of someone. And  
9 they would come into the facility the next day, and  
10 that person wouldn't be there anymore because they  
11 had transitions on throughout the night.

12 One of the things that we were able to do in  
13 conversations with our members, is to try to have as  
14 much of a sense of how many people were actually  
15 passing away at the facilities.

16 And as Ms. Judy described, those numbers  
17 seemed to grow fairly quickly, and, in particular,  
18 during that moment of time. And that there was a  
19 discrepancy, we found, between what the numbers were  
20 that had been reported to the State, versus what our  
21 own members saw and knew was happening inside the  
22 facilities.

23 So I think, looking forward, just really  
24 having -- you know, having some expectations for  
25 nursing homes with regards to what the communication

1 and transparency will be, both, with the staff at  
2 the facility, as well as with the State, about what  
3 is actually happening in real time.

4 I think that that communication is a must.

5 And in institutions where we saw that that  
6 was occurring, there was much more of a teamwork  
7 that was required in order for people to be able to  
8 focus on how to give care and stay safe.

9 At the places where there was a sense that  
10 there was PPE being locked in offices, and that they  
11 didn't know what the counts were in terms of people  
12 who were sick, or there wasn't an adequate reporting  
13 about who was symptomatic for COVID, all that did  
14 was feed distrust, and that fed the fear that members  
15 then had to also work through. And it just made it  
16 that much more difficult.

17 ASSEMBLYMEMBER GOTTFRIED: Earlier, some of  
18 the consumer advocates who were testifying said that  
19 they were struck by the fact that the nursing home  
20 trade associations that had testified, talked about  
21 how the department was -- health department was  
22 frequently consulting them, and bringing them in to  
23 talk about what they should be doing and what they  
24 were experiencing, and what the health department  
25 should do, et cetera.

1           And consumer/the family representatives said,  
2           you know, "The department never invites us in to  
3           talk."

4           To what extent does the union get consulted  
5           by the health department, and compared to the level  
6           of consultation that the trade associations of the  
7           owners were talking about?

8           SENATOR RIVERA: And if you could answer that  
9           fairly quickly, since your time is expired -- has  
10          expired.

11          Ms. Silva?

12          MILLY SILVA: [Inaudible] -- sure.

13          Certainly, on behalf of our members, we were  
14          advocating and in contact with the department of  
15          health, to alert them when we were aware of  
16          situations.

17          Also, we were doing the work, coordinating  
18          both at the city level as well as the county level,  
19          helping to make -- sort of raise the flag when there  
20          were issues regarding a lack of PPE at institutions.

21          During the period of time, we received  
22          requests from over 100 employers who, at a certain  
23          time, had less than seven days of PPE available.

24          And so once we were alerted to that, we then  
25          also used our voices to call attention to those

1 institutions, and to look to have supplies sent  
2 their way.

3 SENATOR RIVERA: Thank you Ms. Silva.

4 Next we have Senator Jim Skoufis, recognized  
5 for 5 minutes.

6 SENATOR SKOUFIS: Thanks very much,  
7 Mr. Chairman.

8 And I want to share my gratitude that some of  
9 my other colleagues have already shared.

10 You know, pre-COVID, the word "hero" was  
11 thrown around a lot for a lot of reasons, and was  
12 diluted in some ways as a word.

13 But I think we're all in agreement that you  
14 all on the front lines were heroes for what you've  
15 lived through; for taking care of others; for  
16 sacrificing your health, your family's health.

17 And I think I can speak for everyone on this  
18 Zoom that, you know, we are indebted to you, and our  
19 constituents are indebted to you.

20 Thank you.

21 So I really have just one question I'd like  
22 to ask of each of the witnesses.

23 So I have personally heard from some  
24 1199 members that a number of local nursing home  
25 administrators in my area were, literally, hoarding

1 PPE under lock and key, leaving desperate,  
2 dangerously-exposed staff to reuse masks and other  
3 equipment, all while fresh supplies existed  
4 "literally" on-site.

5 One of those facilities was Sapphire here in  
6 Orange County where I represent. They were alleged  
7 to have done this.

8 Clearly, securing PPE was an enormously  
9 difficult task in the early weeks and months, and  
10 that ought to be considered as part of this  
11 conversation.

12 But, in your estimation, 1199, NYSNA, how  
13 much of the PPE crisis in nursing homes was driven  
14 by a genuine shortage versus driven by improper  
15 distribution by administrators?

16 JUDY JOHNSON: On behalf of NYSNA, here in  
17 Rockland Nursing Home, I would say it was the  
18 supply, because I was privy to, like, you know, the  
19 supplies coming in and what was being distributed.  
20 And it definitely was a supply issue.

21 SENATOR SKOUFIS: Okay.

22 JUDY JOHNSON: We did PAUSE -- you know,  
23 every day we would do PAUSE, and you know, we would  
24 have to, like, do a calculation as to how much,  
25 which floor, we had [inaudible] floors which were

1 high priority for the supply chain.

2 But it was [inaudible] it was definitely.

3 [Indiscernible] here. We distributed  
4 according to the need for sure, but it was  
5 definitely a shortage on the supply chain.

6 SENATOR SKOUFIS: Okay. Thank you.

7 ERIC FOGLE: I'm only speaking for  
8 [inaudible] -- excuse me, me speaking Holliswood  
9 Care Center, I would not say it was a supply issue.

10 It was an issue where they was worried about  
11 the second wave.

12 If you went to the administrator office, the  
13 administrator office had so many supplies in the  
14 office. When you would walk past, it was actually a  
15 fire hazard, he had that many supplies in the  
16 office.

17 And when you would ask -- have people that  
18 would look for the N95 mask, or whatever the case  
19 may be, they would often tell them to wear the other  
20 mask, and they could wear the other masks, and they  
21 could wear more than one day.

22 And the masks, that blue mask, you know, that  
23 you cannot wear more than -- it's only good for  
24 maybe about an hour. Maybe less than that.

25 Or, they're upstairs, they were using garbage

1       cans -- I mean, garbage bags.

2               Or, they need face guards or face shield, and  
3       there's a situation where face guard and face  
4       shields.

5               There was this incidents where I had to step  
6       in among union members and deal with them a certain  
7       way, because they was actually grabbing supplies.

8               Because they were so worried about they  
9       wouldn't get supplies the next day, that they would  
10      actually grab supplies and hide supplies from one  
11      another, because they was worried about the mere  
12      fact that, every time they come in to ask for  
13      supplies, there was always a song and dance or an  
14      excuse.

15              So I used to see the trucks come in with  
16      supplies on top of supplies. And there should never  
17      be a reason why that you come to work and you don't  
18      have enough supplies.

19              If you're a police officer, they're not going  
20      to give you only six bullets for your gun if you're  
21      a police officer.

22              If you have a job to do and you need those  
23      supplies, you should have those supplies. They  
24      shouldn't worry about the next day.

25              Let's get through the day, and then we worry

1       about tomorrow, tomorrow.

2               And from what I seen, they actually hoarded a  
3       lot of stuff.

4               SENATOR SKOUFIS:   Okay.   Thank you.

5               MILLY SILVA:   [Indiscernible] -- if I could,  
6       our assessment is that it's a little bit of both.  
7       Right?

8               No question, let's go back to where we were  
9       in February and March.

10              It was a global pandemic.

11              There was a crisis in terms of both the  
12       production of PPE, as well as the distribution.

13              That is real.

14              At the same time, we also know, as Eric  
15       described, that there were some employers who, in  
16       fact, based on our members' reports, were  
17       stockpiling PPE and not distributing it to their  
18       staff.

19              On the other hand, there were some  
20       institutions who actually did do the right thing.

21              I want to give you [indiscernible  
22       cross-talking] --

23              SENATOR SKOUFIS:   May I ask --

24              Sorry, because my time is running out.

25              MILLY SILVA:   Sure.



1           SENATOR SKOUFIS: -- in those cases where  
2           there was hoarding, were there any repercussions  
3           from that, Ms. Silva, by the department of health,  
4           or were they simply allowed to do that?

5           MILLY SILVA: When I -- I'm aware that when  
6           members understood that there were PPE supplies  
7           available, they then organized and went to  
8           management, and demanded that management release the  
9           PPE supplies to the staff. And they were able, for  
10          the most part, to resolve the issue at that level.

11          SENATOR SKOUFIS: Got it.

12          Thank you.

13          SENATOR RIVERA: Thank you.

14          Assembly.

15          ASSEMBLYMEMBER BRONSON: Yes, next we'll  
16          go to Chair John McDonald, recognized for 5  
17          minutes.

18          ASSEMBLYMAN McDONALD: Thank you, Harry.

19          And to everybody, thank you for joining us.

20          To Tyresse, and Eric, Nicole, thank you for  
21          your real-time testimony.

22          You know, we've heard this, we've seen it on  
23          the news. But to hear what you said, and Judy as  
24          well, and to hear exactly, not only your  
25          frustration, but your concern for your patients,

1       it's a constant reminder to us that -- why we're  
2       doing these hearings.

3               We want to understand where things came up  
4       short.

5               Obviously, with PPE, we need to continue to  
6       find ways to make it here in New York, to make sure  
7       we've got enough to provide for everybody in the  
8       state.

9               And I'm sure you've heard this throughout the  
10       course of the day, and you'll hear it again next  
11       Monday, we're committed to doing that, among other  
12       things.

13               Harry touched on this a little bit, and,  
14       Milly, I'll probably push to you a little bit on  
15       this, or Judy:

16               You know, I asked earlier in a couple other  
17       panels about infection control, and the committees.  
18       And I was assured that there are systems in place.

19               But it sounds like, Milly, we have room for  
20       improvement.

21               Would you -- would you agree with that?

22               MILLY SILVA: Yes, sir.

23               ASSEMBLYMAN McDONALD: What's interesting --  
24       and I'm looking at my other computer over here while  
25       I'm doing this -- you know, the Massachusetts model,

1 I hope that you do share that with Harry because  
2 I think there is some important aspects.

3 And, Milly, because SEIU, and NYSNA too,  
4 plays in both the for-profit and not-for-profit  
5 world, do you -- I'm going to be very blunt, do you  
6 see a difference in approach in the for-profit and  
7 non-profit world in regards to long-term care?

8 But, also, because I know you also are in the  
9 hospitals, do you see a different approach between  
10 hospitals and nursing homes in regards to the  
11 approach for infection control?

12 MILLY SILVA: I will speak directly to the  
13 nursing homes, in that, in our experience, when it  
14 came to the issue of workers who were exposed to  
15 COVID, and who needed, or -- and were confirmed, in  
16 some cases, to be positive for COVID and needed  
17 care, we had a very difficult time, and it was  
18 actually quite outrageous, dealing with for-profit  
19 owners of nursing homes, who made it incredibly  
20 difficult for workers to be able to access the  
21 emergency paid sick leave benefits that those  
22 workers were entitled to.

23 So that was something that really got our  
24 attention in that moment.

25 Certainly, I think that, as the pandemic was

1 occurring, it is something we saw across the board,  
2 for-profit, not-for-profit, there was transmission.

3 I do want to point out that there was one  
4 institution that I think is a story of doing it  
5 exactly right.

6 An institution in Long Island, San Simeon by  
7 the Sound, one of the things they did is, from day  
8 one, they gave all of their staff full PPE gear.

9 They quarantined any staff who reported that  
10 they had been exposed. For two weeks pay  
11 (inaudible) institutions, to make sure that there  
12 was no possibility of that person then bringing  
13 COVID into the nursing home.

14 There was constant communication between the  
15 caregivers, the management team at all levels.

16 And the reality is, that the director of  
17 nursing and the 1199 members at that institution,  
18 through those measures, were actually able to  
19 maintain the facility COVID-free.

20 I think that we should look to places that  
21 were able to do that, but also acknowledge that  
22 there are other institutions, some of which were  
23 mentioned earlier, that did the wrong thing, and  
24 didn't provide PPE, were distrustful of the staff,  
25 didn't invite them to be part of resolving the

1 situation. And, in some cases, those did happen to  
2 be for-profits.

3 [Indiscernible cross-talking] --

4 ASSEMBLYMAN McDONALD: I have a question --  
5 no, go ahead.

6 MILLY SILVA: No.

7 ASSEMBLYMAN McDONALD: Okay.

8 Last question on one of the bullets, it talks  
9 about setting up the system to recruit employee  
10 emergency staff for nursing homes.

11 You know, during this pandemic, well, the  
12 governor was basically begging retired nurses,  
13 retired doctors, to come back to practice.

14 We were taking graduates of colleges and  
15 putting them into practice.

16 Is that what that references?

17 Or is that -- is that -- what's the meaning  
18 behind that?

19 MILLY SILVA: Things certainly looking at all  
20 avenues, are -- that would create an opportunity to  
21 bring more direct-care staff, is going to be  
22 essential to be prepared for either another stage of  
23 COVID or whatever the next pandemic might be.

24 Another piece that we would offer is, that  
25 the 1199 SEIU Training and Employment Fund actually

1       also offered and assisted nursing homes with being  
2       able to provide staff who were available and willing  
3       to work at their facilities.

4               And so I think really looking at all  
5       stakeholders who have an opportunity to either  
6       provide fast-tracking on learning and licensing, to  
7       then also offering placement support to nursing  
8       homes, is critical.

9               ASSEMBLYMAN McDONALD: Thanks to all of you  
10      for your meaningful testimony.

11              Chair.

12              SENATOR RIVERA: Thank you.

13              Thank you, Assemblymember.

14              We will now move on to -- oh, and  
15      Ms. Whittaker, if you could actually mute yourself  
16      while you're not speaking. We can hear the birds  
17      all over the place. So just so you know.

18              Thank you.

19              We are now moving to Senator Serino,  
20      recognized for 5 minutes.

21              SENATOR SERINO: Okay. Thank you very much,  
22      Mr. Chairman.

23              And I have to say, Eric, your 25 years,  
24      Tyresse, both of you, your passion is just amazing.

25              ERIC FOGLE: Thank you.

1           SENATOR SERINO: Thank you so much for  
2 everything you do.

3           Nicole, your story is so relatable, too,  
4 having children and loved ones at home, and being  
5 terrified of bringing this COVID, it's a story  
6 that's so familiar to us.

7           Thank you.

8           Milly, I would love to talk to you about the  
9 PPE training. You probably won't get to it because  
10 I have five questions, and, as you can tell, I'm  
11 going to rip through them really quick so I can get  
12 them all in. But I'd like to follow up with you  
13 later.

14           My first question is for Judy, because you  
15 mentioned the major staffing shortage that we all  
16 know that we have.

17           And you mentioned that you were able to get  
18 some temporary nurses, but they didn't arrive until  
19 May.

20           So can you tell me the process that you used  
21 to access the temporary nurses?

22           Was it the volunteer staff portal, or another  
23 avenue?

24           JUDY JOHNSON: It was [indiscernible]. It  
25 was actually an agency. I think it's a city agency;

1 I think it's a city agency that brought in these  
2 nurses, like, from out of state, and CNAs, and stuff  
3 like that.

4 So they supplemented the staff during that  
5 [indiscernible].

6 SENATOR SERINO: Okay, thank you.

7 Because I've heard horror stories about that  
8 portal. It did not work, contrary to what we're  
9 hearing.

10 JUDY JOHNSON: Yes.

11 SENATOR SERINO: Right.

12 So as you know, I've been a co-sponsor of the  
13 state staffing bill for years. And I believe the  
14 State needs to do all it can to increase staffing in  
15 these facilities.

16 JUDY JOHNSON: Absolutely.

17 SENATOR SERINO: Yeah.

18 I put forward a number of proposals that the  
19 would fund the hiring and training for additional  
20 staff.

21 One proposal, that would utilize unused  
22 federal funding the State has to foster staffing.

23 Do you believe the State should provide  
24 direct assistance to the facilities to help bolster  
25 staffing exclusively?



1 JUDY JOHNSON: Absolutely. No question about  
2 it. Absolutely.

3 SENATOR SERINO: Thank you.

4 And as for the PPE shortage, this is a story  
5 we've heard over and over again, and this should  
6 never have happened.

7 These staffers are true heroes, continuing to  
8 power through and do their jobs.

9 Has the nurses association or SEIU put  
10 together any data on how many units of PPE we would  
11 need in the event of a second wave, to ensure that  
12 all of your members have access to the PPE they  
13 would need to stay safe at work?

14 JUDY JOHNSON: Yeah, they actually sent out  
15 surveys for us to do/for nurses to do, so they can  
16 collect that data.

17 So I'm sure they are, you know, doing --  
18 putting that data together, so that we be able, if  
19 there's a second wave, or when there's a seconds  
20 wave, to safely -- you know, for our nurses, and --  
21 and -- and aides, and everyone, to safely do our  
22 duty, which is what we revel in doing.

23 We want to save lives. We want to be alive  
24 to save lives.

25 SENATOR SERINO: Oh, absolutely.

1 JUDY JOHNSON: Yeah.

2 SENATOR SERINO: We want to protect you.

3 So we want to make sure that there is that  
4 data available, and that we're working on it.

5 And, also, I noticed from your testimony,  
6 some workers were given hazmat suits. Others were  
7 wearing garbage bags and raincoats.

8 Can any of you speak to that discrepancy?

9 And do you know how the PPE was issued by the  
10 State?

11 And do you have suggestions to ensure that  
12 the PPE gets to where it's needed most and is  
13 distributed equitably?

14 Sorry, I'm trying to speed it up.

15 Does anybody have [indiscernible]?

16 TYRESSE BYERS: Well, I just wanted to say,  
17 as far as the PPE is concerned, I felt like it  
18 shouldn't just be on just the worstest [sic] unit  
19 when this COVID gets around pretty fast.

20 I figured everybody should have had it,  
21 non-COVID floors and COVID floors.

22 And even our residents should have been able  
23 to wear masks to protect themselves.

24 We do it now, but it took a while for it to  
25 happen, for them to do it both ways, for us and for

1 the residents, when we were saying this from the  
2 very beginning, before it got as bad as it did at  
3 our facility.

4 And I just feel, like, when you give care to  
5 a resident, we go in a room, we give care, we're in  
6 there for at least 20 minutes, giving care, or  
7 longer.

8 By the time you wash, clean, and do  
9 everything you have to do, and then you got to take  
10 everything off and move it to the next room, they  
11 need to provide enough PPE because you don't want to  
12 take what you already have on. You just finished  
13 giving care to one resident, to move into another  
14 room, and still have to wear the same thing to give  
15 care to another resident.

16 SENATOR SERINO: Right, and that was probably  
17 part of the problem.

18 TYRESSE BYERS: Right.

19 MILLY SILVA: That is why one of our  
20 recommendations is that nursing homes be required to  
21 have a 90-day supply of PPE, calculated at the peak  
22 burn rate from this past year.

23 It's what's required of the hospitals, and we  
24 believe that the same should happen in the nursing  
25 homes.

1 JUDY JOHNSON: Absolutely, yes.

2 SENATOR SERINO: Agreed. Thank you.

3 And I really want to follow up with you,  
4 Milly, about that PPE training, because you brought  
5 up an excellent point. I think a lot of us would  
6 like to hear that too.

7 Thank you.

8 I got all five questions.

9 Thanks, guys.

10 SENATOR RIVERA: Right on time,  
11 Senator Serino. Excellent work.

12 We will now continue with the Assembly.

13 ASSEMBLYMEMBER BRONSON: Thank you.

14 Nice job, Senator Serino.

15 We will next go to Assemblymember  
16 Kevin Byrne, and we will give you 5 minutes, please.

17 ASSEMBLYMEMBER BYRNE: Thank you,  
18 Mr. Chairman.

19 I want to thank all the speakers in this  
20 group.

21 It's been said, and it's like beating a dead  
22 horse a little bit here, but, you truly are all  
23 front-line heroes, and we need more of you.

24 We need more nurses.

25 I think that's part of the much larger issue,

1 before COVID, after COVID, we need more of you.

2 And I did want to ask before I got into my  
3 questions, one of the speakers, was it Tyresse,  
4 Sarah Neumann, is that the Sarah Neumann Nursing  
5 facility in Mamaroneck?

6 TYRESSE BYERS: Yes.

7 ASSEMBLYMEMBER BYRNE: Right.

8 In another life, where I used to work as an  
9 EMT right out of college, I used to take plenty of  
10 patients to nursing facilities.

11 That was one of them. And I think Walters is  
12 right outside.

13 So --

14 TYRESSE BYERS: Yes.

15 ASSEMBLYMEMBER BYRNE: I'm very familiar that  
16 place.

17 And I want to thank you all again, but you do  
18 a tremendous job.

19 And one of the things that was shocking to  
20 me, reading the department of health's report that  
21 we were discussing earlier with the commissioner,  
22 and I think it's been referenced a little bit again  
23 since then, is about the number of exposure with  
24 staff at our nursing facilities.

25 And it's about almost a quarter of our

1 workforce in nursing facilities were tested positive  
2 through the antibody testing, to show that there was  
3 some sort of exposure.

4 I was very surprised by that.

5 Maybe I shouldn't have been, because  
6 I remember during the governor's press conferences  
7 earlier in the year, there was antibody testing.  
8 And it was -- I think it was more geared towards the  
9 hospital setting, and it was much lower.

10 Now, I have to think, maybe that's because of  
11 the hospital setting having more PPE. And I think  
12 there's probably multiple factors involved.

13 Your testimony shared a lot about the need  
14 for personal protective equipment.

15 I think it was mentioned that a lot of the  
16 staff at these facilities may work multiple jobs at  
17 multiple facilities. I wonder if that's part of it.

18 If it's part of it's a delayed access to  
19 testing at the facilities.

20 And I wanted to see if that was -- if you had  
21 any comments to speak what -- you know, why the  
22 disparity between, you know, having these positive  
23 cases in staff at nursing facilities versus maybe  
24 another traditional hospital setting, if you had any  
25 comments or thoughts, for any of you?

1           NICOLE WHITTAKER: I work at  
2           Berkshire Nursing Rehab on Long Island.

3           And from my perspective, it was that the  
4           hospitals were more important to get PPE, as opposed  
5           to the nursing facilities, even though it was to be  
6           known that our population was the most at risk.

7           ASSEMBLYMEMBER BYRNE: So the largest portion  
8           of that is PPE, and it's not really a surprise.

9           But I wanted to ask that question still.

10          Another question that I had was, sometimes we  
11          hear anecdotal information, and it's not necessarily  
12          verified. So I'm very careful when I share this.

13          But I just wanted to ask if you had any  
14          issues, or heard any issues from your members, about  
15          having trouble accessing information about patients,  
16          if they were positive-COVID?

17          You know, there's always -- once in a while  
18          you hear a story about, a nurse was caring for a  
19          patient, and then they didn't know the -- you know,  
20          they may not have known because the person wasn't  
21          tested. But they may not have known because it was  
22          in their patient record, and the staff just didn't  
23          know. And then they may have inadvertently just  
24          spread it.

25          Have there been challenges with some of your

1 members getting the correct access to information  
2 about patients?

3 TYRESSE BYERS: Well, we had times when we  
4 was taking care of residents, and we would let our  
5 supervisor know or nurse in charge: Well, we've  
6 been giving care to Mrs. Davidson. For the past  
7 couple of days she haven't had no fever, but she  
8 been having a cold, she haven't been able to eat.

9 And stuff like that.

10 And some of the supervisors say, well, she's  
11 not running a fever.

12 It's not -- a fever ain't always the symptom.  
13 There's always other symptoms.

14 And we bringing it to your attention so you  
15 can test the resident.

16 And a day or two will go by before they do  
17 the testing, because now Mrs. Davison got worse in  
18 the last two days.

19 And it took Mrs. Davison to get worse in  
20 the last two days before you did the testing. And  
21 then when her test came back positive, we done been  
22 around Mrs. Davison all this time.

23 We've been asking, can she get tested?

24 Because we look after her, we see her daily,  
25 we know her routines and her behavior, and we tell



1       you something is wrong.

2               ASSEMBLYMEMBER BYRNE:   Yeah, and I can  
3       understand you always want to wear the PPE.

4               But the reality is, when you know a patient  
5       is going to have an infectious disease, you're going  
6       to treat that patient differently, whether it's  
7       isolation, or what have you.

8               One other question I had:

9               It was talked about PPE and supplies, and  
10       this is a generic question.   I'm not sure if the  
11       answer will be no.

12              Early, early on in the pandemic, when people  
13       were hoarding, not just in hospitals and health-care  
14       facilities, but in the private sector as well.

15              SENATOR RIVERA:   If you can ask the question  
16       in the next 15 --

17              ASSEMBLYMEMBER BYRNE:   15 seconds?

18              SENATOR RIVERA:   -- ask your question --  
19       yeah.

20              ASSEMBLYMEMBER BYRNE:   Have you heard  
21       anything about people actually stealing PPE?   Not  
22       your members, but just people in general?

23              TYRESSE BYERS:   No.

24              As soon as -- as soon as we found out that  
25       this outbreak was happening, in my facility, we used

1 to stay stacked with gloves. We'd have our cart  
2 with our gowns, and everything.

3 And they -- when they made this known, one  
4 day I came into work, the supply closet was empty.

5 That same stack, it was empty.

6 And now they was distributing it manually.  
7 Like, you had to go through a supervisor to get the  
8 gloves.

9 And she'd give you one pack of gloves.

10 And we had, but Mr. Franco have gloves in his  
11 room. But we need more than one.

12 We should keep gloves in every room.

13 SENATOR RIVERA: I feel terrible, Ms. Byers,  
14 because it seems that I'm always interrupting you,  
15 and I apologize.

16 TYRESSE BYERS: It's okay, it's okay.

17 SENATOR RIVERA: But I want to make sure that  
18 we can get everybody to ask -- who needs to ask  
19 questions.

20 Thank you, Assemblymember.

21 Next we have Senator Tom O'Mara recognized  
22 for 5 minutes.

23 SENATOR O'MARA: Thank you, Chair.

24 And I want to thank you each and every one of  
25 you for your service, for your being on the front

1 lines, and not just yourselves, but all of your  
2 colleagues across New York that have done  
3 outstanding work throughout this pandemic that we've  
4 had, putting yourself at grave risks, the families  
5 members you return to home to in the evening at risk  
6 at well.

7 So thank you for (inaudible) that you have  
8 persevered throughout this.

9 You know, we were hoping to get some  
10 information today from our health commissioner,  
11 Howard Zucker, on how many nursing home residents  
12 that were sent to the hospital with COVID ultimately  
13 succumbed to COVID in the hospital, and, therefore,  
14 are not counted in the nursing home data that the  
15 department of health reports.

16 I would like to ask each of you, if you have  
17 any thoughts or any comments, an estimate of, from  
18 your facilities where you work, did you see  
19 residents sent to hospitals, never to return?

20 JUDY JOHNSON: Yes.

21 Absolutely, yes.

22 OFF-SCREEN SPEAKER: Yes.

23 JUDY JOHNSON: And one of the things again  
24 is, testing.

25 Testing was not being done. These residents

1       were being sent over, never to return.

2               And the other thing that we have to also  
3       remember, during this time, the funeral homes were  
4       allowed to come in and claim the bodies. And a lot  
5       of the residents were cremated so we would never  
6       know.

7               Tests weren't done on them, they died. And  
8       then the bodies were gone, they were cremated.  
9       A lot of people got cremated during this time.

10              So, again, the data would never be reflected  
11       correctly because the tests weren't available.

12              And that was one of the biggest problems:  
13       tests weren't available.

14              So even though residents, or patients, or  
15       whoever, were displaying symptoms -- signs and  
16       symptoms, no tests were available to be done.

17              They transferred over, or died right there,  
18       and the tests were never done.

19              SENATOR O'MARA: Thank you, Judy.

20              Others want to comment on that issue?

21              TYRESSE BYERS: Yes, I seen a lot of loved  
22       ones leave, and some of them didn't come back, or a  
23       lot of loved ones died there at the nursing home,  
24       that been there with us for years. For years.

25              SENATOR O'MARA: Anyone else care to comment

1 on that?

2 With regards to -- I'll move on.

3 With regards to the PPE shortage, and, you  
4 know, aside from the hoarding at some facilities,  
5 but mainly the lack of PPEs at a lot of the  
6 facilities, at what point do you feel that your  
7 facility got caught up with appropriate PPEs, if  
8 they have even to date, or what shortages still  
9 exists in your facilities, or what type of PPE you  
10 need?

11 TYRESSE BYERS: Right now at our facilities  
12 we get masks.

13 And the way that they're doing it now is,  
14 they give us an N95 mask. We sign for it.

15 At the end of the day we supposed to turn in  
16 our N95 masks, so they can stick it in a brown paper  
17 bag. And when you come in tomorrow, you get the  
18 same N95 mask, right back, to give to you to work  
19 [indiscernible cross-talking] --

20 SENATOR O'MARA: Still today?

21 TYRESSE BYERS: To today.

22 And we do this for three days.

23 And I had to let them know I'm not returning  
24 in my N95 mask.

25 I'd rather take it home, spray it, clean it,

1 let it air dry, and then wear it the next day.

2 It makes no sense for me to wear my N95 mask  
3 that I use to take care of my 13 residents, to come  
4 back here to give you my N95 mask, to stick in a  
5 brown paper bag, to give right back to me tomorrow,  
6 and it wasn't even cleaned or sanitized.

7 SENATOR O'MARA: Thank you.

8 Anyone else?

9 ERIC FOGLE: She's actually fortunate  
10 enough -- like I say, I work for Holliswood Care  
11 Center.

12 She's actually fortunate enough to get an  
13 N95 mask because, in the facility I'm in, they're  
14 rare. Like, N95 masks are basically like dinosaurs;  
15 they're just that difficult to actually get.

16 The masks that you always have, even when you  
17 come at the front desk, they have the new masks that  
18 you actually tie in the back. They have those  
19 masks.

20 And I have a mask here sitting on the table  
21 with me right now. It's, basically, the blue mask.  
22 So that's the mask that they always seem to have in  
23 abundance.

24 When it come to N95 masks themselves, like  
25 I said, they're like a dinosaur, or, an eclipse,

1       some every four years, or whatever the case may be.

2               I don't know what the situation is of what  
3       happened before. They used to have the N95 masks  
4       out.

5               But I guess, because they feel like, even  
6       though it's still social distancing, still  
7       mask-wearing, I don't know if they feel that they're  
8       out of the woods as of yet. So maybe that's the  
9       reason why they're not supplying them.

10              But even when we was at the height of it,  
11       when it was -- when we was really overwhelmed,  
12       N95 masks was still difficult to come by, and they  
13       still are now.

14              SENATOR O'MARA: Are gowns available today  
15       for each of you?

16              ERIC FOGLE: Gowns are actually available  
17       when you actually -- when you're doing direct care,  
18       or whatever the case may be. They will be able  
19       actually have gowns.

20              But what you do notice a lot of times, nurses  
21       will actually put gowns on the floors and try to  
22       hold onto the gowns on the floors for when the gowns  
23       are actually really needed.

24              SENATOR RIVERA: Thank you very much,  
25       Mr. Fogle.

1           SENATOR O'MARA: Thank you, all.

2           SENATOR RIVERA: Thank you, Senator O'Mara.

3           Back to the Assembly.

4           ASSEMBLYMEMBER BRONSON: Thank you.

5           Next we'll go to Assemblymember Jake Ashby,  
6       recognized at 5 minutes.

7           ASSEMBLYMEMBER ASHBY: Thank you,  
8       Mr. Chairman.

9           Earlier, I think it was Mrs. Whittaker who  
10       spoke kind of this collective cognitive decline that  
11       she noticed in her residents, secondary to  
12       [indiscernible] that they've been experiencing.

13          And I'm wondering if you've also seen kind of  
14       a physical decline along with that, because  
15       [inaudible] as well?

16          NICOLE WHITTAKER: Absolutely.

17          I mean, at the height of the pandemic we were  
18       very short-staffed.

19          It was to the point where we had three aides  
20       on a [indiscernible] unit. And our charge nurse was  
21       our med nurse and our supervisor. So it was very  
22       difficult for us to give these people/our residents  
23       the attention that they needed to help them, you  
24       know, get up and out of bed. And a lot of them are  
25       on nursing-floor ambulation. And we did not have



1 the time to be able to get that done.

2 ASSEMBLYMEMBER ASHBY: And do you feel like  
3 the people that have declined, are some of them  
4 starting to bounce back, or have they plateaued, or  
5 are they continuing to decline as we speak?

6 NICOLE WHITTAKER: With the increase of our  
7 staffing, I believe that it has wholeheartedly made  
8 a difference.

9 But these people are really missing their  
10 families. And, you know, seeing their faces over a  
11 teleconference, or having someone banging at their  
12 window, is not helping.

13 They need to have their families back in  
14 their lives.

15 ASSEMBLYMEMBER ASHBY: I don't imagine this  
16 is just exclusive to Ms. Whittaker, but I'm sure,  
17 Ms. Byers and Mr. Fogle and Ms. Johnson, this is all  
18 going on at your facilities as well. Correct?

19 JUDY JOHNSON: Yes.

20 TYRESSE BYERS: Uh, yes.

21 ERIC FOGLE: Yes, it is.

22 ASSEMBLYMEMBER ASHBY: So if you were able  
23 to, what could you -- if you wanted to improve the  
24 functional ability of your residents, you know,  
25 because I don't imagine that it's going to get

1 easier over the next couple of months to really see  
2 a collective improvement throughout all of these  
3 facilities, what would you do to improve the  
4 functionality?

5 Because I don't know if many people can  
6 understand, like, it's one thing if someone needs a  
7 little bit more help eating, you know, now and then,  
8 cutting their food.

9 But when someone goes from, you know, a  
10 [indiscernible] assist, to a two-person assist, to  
11 get on and off the toilet --

12 TYRESSE BYERS: Right.

13 ASSEMBLYMEMBER ASHBY: -- [inaudible] that  
14 they probably need more help actually (inaudible).

15 TYRESSE BYERS: Right, I would say that.

16 I would say [indiscernible cross-talking] --

17 ASSEMBLYMEMBER ASHBY: And as one person --  
18 you know, if that's happening with one person,  
19 that's happening to 60 people [inaudible] with  
20 staffing and what you need.

21 So if you could -- if you had the ability to  
22 change things and improve -- have your residents  
23 improve collectively, what would it be?

24 JUDY JOHNSON: More staffing.

25 TYRESSE BYERS: More staffing, yeah, more

1 staffing [indiscernible cross-talking] --

2 JUDY JOHNSON: And their family members in  
3 their life.

4 TYRESSE BYERS: -- so you can give more time  
5 to your residents. You can give more acute to your  
6 resident if you add more staffing. You would be  
7 able to give them that extra 20 or 30 minutes that  
8 they want from you, instead of saying, Can you give  
9 a few minutes?

10 You can only do the essentials, and then you  
11 got to come back, because you still got 10 or  
12 12 other residents of your own. Not within the  
13 facility, of your own, that you still have to give  
14 care to. And they all want the same attention.

15 And it's hard; it's hard when they all want  
16 the same attention.

17 NICOLE WHITTAKER: I would like to also add  
18 that, during the height of the pandemic, we lost  
19 therapeutic recreation. So there was no more Bingo,  
20 there was no more coffee hour, there was no more  
21 movie [inaudible]; things that these residents look  
22 for every day.

23 I have specific residents that, every single  
24 day that Bingo was offered, they're there.

25 10:00 coffee hour, they're the first waiting

1 at the door to be opened.

2 And they lost all of that as well.

3 JUDY JOHNSON: Uh-huh.

4 ASSEMBLYMEMBER ASHBY: Mr. Fogle, anything  
5 to add?

6 ERIC FOGLE: Yes.

7 Well, she's absolutely right, because I do  
8 the therapeutic recreation.

9 And what you try to do is have normalcy.

10 You know things are not normal, but what you  
11 try to do is make it as normal as possible, close to  
12 normal as possible, that you possibly can.

13 But because you have the social distancing  
14 and you do have the mask, you have to limit the size  
15 of the program.

16 But what I normally do, and what we continue  
17 to do, we continue to provide programs for them.

18 So we try to make it seem, like, okay, this  
19 is what a normal day would be like.

20 They just don't see a large group as they  
21 would normally see. But they enjoy Bingo, they  
22 enjoy coffee chat, they enjoy arts and crafts, they  
23 enjoy Trivia; they enjoy these types of things that  
24 you provide for them on a daily basis. And they  
25 look forward to it.

1           And the whole thing with the socialization,  
2       which is also what's in a group, which is kind of  
3       difficult at times because you're so limited.

4           So what you try to do is, put them six feet  
5       apart, but have them where they can actually have a  
6       conversation, or, can they sit there with each  
7       other, and just read a magazine or look through a  
8       book, or whatever it can be.

9           But normalcy is what I try to always provide  
10      every day.

11           ASSEMBLYMEMBER ASHBY: Thank you.

12           Thank you, Mr. Chairman.

13           SENATOR RIVERA: All right. Thank you.

14           We don't have currently any questions from  
15      the Senate.

16           Going back to the Assembly.

17           ASSEMBLYMEMBER BRONSON: Okay.

18           We will next go to Assemblymember Ron Kim,  
19      recognized for 3 minutes.

20           ASSEMBLYMEMBER KIM: Thank you.

21           First, I want to just join my colleagues in  
22      thanking the workers for enduring so much trauma and  
23      challenge in some of the worst situations one could  
24      imagine.

25           Just, I want to share one bit of good news.

1           The governor signed our legislation to narrow  
2       the scope of a corporate immunity that was handed  
3       out early.

4           The administration framed this issue as a  
5       pro-worker thing. But, because of how it was so  
6       broad, it actually limited workers' rights to file  
7       lawsuits if they found that their employers weren't  
8       providing a safe workplace.

9           So I think this is a step toward restoring  
10      the rights for the workers, to make sure that we can  
11      hold these facilities accountable from preventing  
12      the spread of COVID-19, and also for making sure  
13      they're arranging the care properly and moving  
14      forward.

15          But I want to redirect my question to how  
16      Governor Cuomo and his administration, starting in  
17      early May, began to put blame and shifted the  
18      responsibility -- shifted the spreading of the  
19      infection toward workers.

20          On May 18th, in one of his briefings, he  
21      explicitly started to blame the workers in nursing  
22      home facilities for spreading COVID-19; yet we all  
23      know that more than 6,000 COVID-positive patients  
24      were transferred back to nursing homes in the last  
25      three months.

1           And I know that the commissioner has  
2       submitted testimony that, despite that massive  
3       number of people coming back in, it didn't have an  
4       impact. It was mostly the family and the workers  
5       that were responsible for spreading COVID-19.

6           Can you get -- as -- as the workers on the  
7       ground, can you let us know if -- well, first of  
8       all, are nursing homes hospitals? Are they even  
9       equipped, you know, to take in these, you know,  
10      patients?

11           And what kind of an impact did that have on  
12      this facility in the last several months?

13           SENATOR RIVERA: And before you answer that  
14      question, Mr. Kim, we'd feel a lot better if you  
15      pulled over.

16           Driving while the Zoom is happening doesn't  
17      make us feel too safe for you.

18           ASSEMBLYMEMBER KIM: I'm not looking --

19           SENATOR RIVERA: But I'm sorry --

20           ASSEMBLYMEMBER KIM: I'm not looking at my  
21      phone.

22           SENATOR RIVERA: Yes, you were. Yes, you  
23      were.

24           The workers, go ahead and answer.

25           I'm just concerned about you.

1 ASSEMBLYMEMBER KIM: Okay.

2 SENATOR RIVERA: Please answer.

3 I'm sorry.

4 And I'll give you 30 seconds extra.

5 I just would prefer that you be safe.

6 ASSEMBLYMEMBER KIM: Okay. Thank you,  
7 chairman.

8 ERIC FOGLE: We personally, I, agree with you  
9 100 percent.

10 As you notice with the hospitals, the  
11 hospitals are more equipped to actually handle the  
12 COVID virus. Nursing homes are not.

13 And sometime when you would actually watch  
14 them bring new residents in that was COVID-positive,  
15 you could almost look at that resident yourself, and  
16 you would sit there and say, if that resident made  
17 it through the week, it was a miracle that they made  
18 through it the week.

19 So I could never understand why we took --  
20 or, we was getting so much of the blame, when you  
21 actually had hospitals that couldn't even handle it  
22 themselves.

23 Hospitals are way more equipped to actually  
24 deal with a situation like that. And from what you  
25 understand, they was having peoples pass away in the



1 hospital.

2 But for some strange reason, there was, the  
3 blame was shifted on the hos -- it was shifted on  
4 the nursing home workers, which I could never really  
5 understand or wrap my head around because a nursing  
6 home is not a hospital. We're not equipped to deal  
7 with a pandemic like a hospital is actually equipped  
8 to deal with a pandemic.

9 Even when it come on to isolation with a  
10 nurse [indiscernible], sometimes they would take a  
11 COVID-positive resident and would put a  
12 COVID-positive resident in a room with a patient  
13 that wasn't COVID-positive at all, or had no  
14 symptoms of being COVID, just because of the  
15 placement, and because they had not enough area or  
16 enough space for it.

17 So how we got the blame is beyond me.

18 How they actually narrowed it down and say we  
19 was a lot -- had a lot to do with it, is beyond me  
20 too, because I say, I used to see them bring  
21 patients in. And when they was bringing patients  
22 within the building, you could see that patient, was  
23 not -- just physically looking at that patient, that  
24 patient was not in any good shape at all.

25 SENATOR RIVERA: Thank you, Mr. Fogle.

1           Thank you, Mr. Fogle. That was a good  
2           35 seconds extra.

3           I hope that you continue to drive safely,  
4           Assemblymember Kim.

5           Back to the Assembly.

6           ASSEMBLYMEMBER BRONSON: Yes, for our last  
7           questioner, we will go to Assemblymember  
8           Tom Abinanti, recognized for 3 minutes.

9           ASSEMBLYMEMBER ABINANTI: Okay, thank you  
10          very much.

11          As the last speaker, I guess I'll be the last  
12          one to say thank you to all of you.

13          We really appreciate the efforts that you and  
14          your colleagues have put in over these very, very  
15          trying times.

16          And I really mean that.

17          I got a text from somebody over at SEIU, a  
18          comment I made earlier today seemed to have offended  
19          some people. And I really did not intend to offend  
20          anyone [indiscernible].

21          I really do appreciate all of the work that  
22          you all do.

23          You truly are our heros.

24          I also appreciate your standing up for the  
25          family.

1           You who are on the job understand the  
2           importance of having others come in and work with or  
3           visit with their family members.

4           I was just wondering, I have two questions  
5           basically:

6           One: Are there any plans that you could help  
7           devise to get family members in safely?

8           Has anybody worked with any of you yet?

9           Have they asked for the nurses's input, or  
10          the union's input, as to how we could get family  
11          members back in [indiscernible]?

12          It seems that the health department is  
13          stymied by that.

14          And the second thing is: We've talked about  
15          safe staffing. We even passed a bill dealing with  
16          safe nursing staffing.

17          I was wondering, what are the staffing levels  
18          necessary or mandated now for nursing homes?

19          And is there a way that we can have a similar  
20          type of legislation if the health department can't  
21          do something, to make sure that you have enough  
22          staff at each location, so that you all feel  
23          comfortable in doing the jobs that you have to do?

24          Whoever wants to go.

25          JUDY JOHNSON: First I want to say --

1 MILLY SILVA: I'll take a shot.

2 JUDY JOHNSON: -- oh. Okay.

3 MILLY SILVA: May I?

4 JUDY JOHNSON: Okay. Go ahead, go ahead.

5 Yes.

6 MILLY SILVA: So on the staffing piece,  
7 I would want to point out that, right now in  
8 New York, what we have is 2.3 hours of -- hours  
9 of -- a day for direct care for nursing home  
10 residents.

11 What has actually been recommended by health  
12 advocacy and policy experts is something that is  
13 closer to 4.0 hours.

14 That's one.

15 The second is, that we think that the  
16 conversation regarding staffing really warrants a  
17 careful conversation around what it looks like in  
18 terms of direct care staff, as well as the  
19 professional caregivers who work at the facilities.

20 And then I think on the question -- but  
21 New York also has -- does not have a state  
22 minimum-hours requirement. And I think that it is,  
23 you know, one of 12 or one of 15 states that remain  
24 in that category.

25 The other, with regards to the question

1 around family members, you know, we would encourage  
2 that home operators actually invite the caregiving  
3 staff, along with the family members, to come  
4 together and have a discussion around, what are the  
5 things that we can currently put in place to be able  
6 to have the residents get access to their families  
7 as quickly as possible?

8 It's that kind of communication, bringing all  
9 the stakeholders to the table, that's necessary,  
10 because the reality is, that the men and women who  
11 are on this call, who provide the [inaudible] heard  
12 on the earlier panel.

13 SENATOR RIVERA: Okay.

14 ASSEMBLYMEMBER ABINANTI: Thank you.

15 SENATOR RIVERA: Ms. Silva, thank you so  
16 much.

17 So that brings this panel to an end.

18 And I will -- and I know -- I know that  
19 Assemblymember Abinanti said that he was going to be  
20 the last one, but I will be the last one to say:

21 Thank you for all the work that you have  
22 done, to make sure that you keep people healthy.

23 And we look forward to working along with all  
24 of you as we consider what policies we might need to  
25 change, going forward, to better protect our

1 residents in nursing homes all across the state.

2 So thank you so much for all your service.

3 JUDY JOHNSON: You're welcome.

4 Thank you.

5 ERIC FOGLE: Thank you.

6 SENATOR RIVERA: You may go back to your  
7 normal day.

8 While we soldier on to Panel 7, and that will  
9 be:

10 Pat Tursi, chief executive officer for the  
11 Elizabeth Seton Children's Center;

12 Rachel Amar, parent of patient at the  
13 Elizabeth Seton Children's Center;

14 Dr. Edwin Simpser -- I'm hoping that I've  
15 pronounced your name correctly -- president and CEO  
16 at St. Mary's Healthcare System for Children.

17 Monsieur Gottfried, if you are with us still?

18 ASSEMBLYMEMBER GOTTFRIED: Am I un-muted?

19 SENATOR RIVERA: You are now.

20 ASSEMBLYMEMBER GOTTFRIED: Okay.

21 Do you all swear or affirm that the testimony  
22 you're about to give is true?

23 PAT TURSI: Yes.

24 RACHEL AMAR: Yes.

25 EDWIN SIMPSEY, M.D.: Yes, I affirm.

1 ASSEMBLYMEMBER GOTTFRIED: Okay.

2 SENATOR RIVERA: All righty.

3 Let's start with Pat Tursi, please.

4 PAT TURSI: Thank you.

5 Thank you, Chairperson Gottfried,  
6 Chairperson Rivera, members of the Assembly and  
7 Senate, for organizing this important hearing.

8 I'm Pat Tursi, CEO of Elizabeth Seton  
9 Children's Center and School in Yonkers.

10 COVID-19 has had a profound and unanticipated  
11 impact on our cherished children and young adults  
12 with complex medical needs who have not hugged or  
13 kissed their parents in over four months.

14 I'd like to focus my testimony today on the  
15 trauma that this has caused by the current nursing  
16 home visitation restrictions.

17 This trauma can, quite literally, take years  
18 off our children's already life-limited life.

19 Elizabeth Seton Children's is the largest  
20 licensed pediatric nursing home in the country.

21 It was built in 2011.

22 Their hospital standards with HEPA filters  
23 and UV lights to safely care for 169 residents, of  
24 which 67 are dependent on ventilators, oxygen, and  
25 medical technology to live.

1           This requires a highly-qualified staff of  
2       pediatricians, RNs, palliative specialists,  
3       rehabilitation and respiratory therapists, and  
4       educators, and more, to provide a quality of life  
5       that's second to none.

6           And, of course, their families.

7           Starting in late February, our leadership  
8       recognized the distinct and deadly threat this virus  
9       would pose our compromised children.

10          SENATOR RIVERA: Ms. Tursi, I'm sorry to  
11       interrupt you.

12          Could you start your video, please?

13          PAT TURSI: Oh.

14          SENATOR RIVERA: Yes, we want to make sure  
15       that you are -- there you go.

16          We want to make sure that you are for  
17       posterity, since it is being recorded.

18          Please continue.

19          PAT TURSI: Sorry.

20          I lost where I was.

21          Oh, oh, my God.

22          Okay.

23          -- so, distinct and deadly threat this virus  
24       posed our compromised children.

25          We began implementing strict



1 infection-prevention protocols that led to our  
2 success.

3 I'm overjoyed to share that no child has  
4 tested positive for coronavirus throughout this  
5 pandemic.

6 In fact, there have been zero viral  
7 infections since March 17th.

8 The 28-day ban of visitation of a staff  
9 member tested positive for COVID-19 will  
10 indefinitely prevent visitation by our parents.

11 Additionally, it's costing approximately  
12 \$200,000 a month to test for over 600 staff members  
13 weekly.

14 Our staff positivity measure is 0.64 percent,  
15 representing all asymptomatic cases, and which is  
16 far below the state average.

17 If you took a look into the faces of our  
18 beloved children every day, wiping away their tears  
19 because they're missing their parents, unable to  
20 communicate through technology, and, further, can't  
21 understand why their families can't come see them,  
22 you would do anything to change this policy.

23 The simple solution is to treat pediatric  
24 nursing homes the same way you treat pediatric  
25 hospitals for visitation.

1           On May 20th, DOH issued guidance that  
2           permits two support persons at bedside at children's  
3           hospitals.

4           We ask that you offer our children and  
5           families the same rights.

6           We understand the need to protect public  
7           health, and we are doing our part to protect the  
8           most vulnerable amongst us.

9           I ask that you do everything within your  
10          power to reunite our families.

11          Let's not let another day go by where a child  
12          cannot receive the love they need from their  
13          parents.

14          Now I would like to give the rest of my time  
15          to Rachel Amar, who will share the toll this  
16          separation has taken on her and her son, Max.

17          RACHEL AMAR: Hi. My name is Rachel Amar,  
18          and I want to thank you for hearing my story about  
19          how difficult my life has been the past --

20          SENATOR RIVERA: I'm going to stop you for  
21          one second, Ms. Amar.

22          Please give Ms. Amar the whole 5 minutes.

23          Thank you.

24          Please continue.

25          RACHEL AMAR: Oh, thank you.

1           Okay. I'm going to start again.

2           Hi. My name is Rachel Amar, and I want to  
3           thank you for hearing my story about how difficult  
4           my life has been the past 4 1/2 months, not being  
5           able to visit my son, Max.

6           My hope is for all of you to understand how  
7           detrimental this is, and how it has affected the  
8           well-being of my son and my family.

9           Max is 18 years of age and has been a  
10          resident at the center for 14 years.

11          Max was born with a small brain stem and,  
12          therefore, he cannot breathe, move, swallow, or  
13          speak.

14          However, he is fully cognizant of his  
15          surroundings, caretakers, and most of all, my  
16          presence.

17          As an active parent in my son's daily life  
18          and delivery of care, it had been an atrocity to not  
19          be able to be there and provide the love and support  
20          that he depends on from me every day.

21          Never in his lifetime has he gone without  
22          seeing me.

23          Consequently, this has negatively impacted  
24          his emotional behavior.

25          As a result, he has regressed with a deep

1       decline in his behavior towards the staff.

2               He prevents the ventilator from giving him  
3       breaths, turning blue and coding.

4               This is Max's way of acting out when he is  
5       angry or upset.

6               Knowing what Max is going through  
7       emotionally, I tried FaceTiming with him, but all he  
8       would do is cry and it made the situation worse for  
9       him.

10              The nurses advised me that he rarely smiles,  
11       which is very unlike his character.

12              Max's birthday was July 12th, and I was  
13       hopeful in seeing him based on the governor's  
14       ordinance and lifting the ban on visitation, to  
15       celebrate with him, and commend the staff for their  
16       amazing job in keeping Max and the other residents  
17       safe and virus-free.

18              Unfortunately, I was informed of the  
19       restrictions and stipulations that again prevented  
20       me from seeing Max.

21              The only other alternative was to visit him  
22       through a tall dark fence.

23              I tried calling out his name, but he wouldn't  
24       even look at me.

25              I can't imagine what he was feeling: the

1 feeling of being heartbroken and abandoned by his  
2 mother.

3 This cannot continue any longer.

4 I'm pleading with all of you as a parent,  
5 which I hope you can personally understand: Max  
6 needs me to be there with him physically, to read,  
7 kiss, hug, laugh, and sing together so that his  
8 emotional well-being thrives.

9 I can't imagine how the other families and  
10 children are coping with this unbearable separation  
11 which is a detriment to the livelihood and overall  
12 well-being of our children.

13 I trust that you understand the severity of  
14 the situation that requires your immediate actions  
15 in resolving this crisis.

16 Your attention to this matter is greatly  
17 appreciated.

18 And I just wanted to show you a couple of  
19 pictures of Max and I so you will understand how  
20 much enjoyment he gets from my daily visits.

21 So this is just, every day, we come -- I come  
22 into bed with him, and we kiss and hug, and all he  
23 does is smile like this.

24 He laughs.

25 We read all day after school, and he just is

1       so happy, sitting and laughing together.

2               And here's a picture last year of his  
3       birthday, celebrating with all the staff.

4               Everybody's involved in his care, as well as  
5       me.

6               I come every day, and visit him every day,  
7       and spend from 11:00 in the morning, approximately,  
8       I meet him in school, and I stay till about 6 p.m.

9               And I haven't been able to be there, it's  
10       been almost 4 1/2 months. And this is really  
11       devastating to me.

12               So I really please hope that you reconsider  
13       the visitation policy.

14               Thank you.

15               SENATOR RIVERA: Thank you so much, Ms. Amar.  
16       Next we will hear from Dr. Edwin Simpser.

17               EDWIN SIMPSER, M.D.: Thank you.

18               Good evening.

19               I'm Dr. Eddie Simpser, a pediatrician, and  
20       president and CEO of St. Mary's Healthcare System  
21       for Children.

22               Thank you for giving me the opportunity to  
23       speak on behalf of New York's most vulnerable  
24       children and families.

25               St. Mary's Healthcare System for Children a

1 is national leader in providing specialized care to  
2 critically-ill children and young adults.

3 We are dedicated to providing inpatient care,  
4 day health care, home care, and education services  
5 to children and young adults following acute-care  
6 hospitalization due to premature birth, illness,  
7 injury, or other critical health conditions.

8 We're the largest post-acute provider of our  
9 kind in New York State, with a continuum of care  
10 that supports a sick child throughout their  
11 lifetime.

12 From our inpatient facility, to home and  
13 community settings, with a highly-trained and  
14 dedicated pediatric workforce, St. Mary's is  
15 committed to improving the health and quality of  
16 life for children and young adults with special  
17 needs and their families.

18 I'm here today to talk about our experiences  
19 with the pandemic, and in particular, a pressing  
20 issue on visitation in our pediatric skilled nursing  
21 facility.

22 First, some background.

23 For many years prior to the pandemic, we've  
24 been a leader in infection-control measures,  
25 establishing an exemplary track record of protecting

1       our very vulnerable children from the spread of  
2       infectious disease, including regular viral testing  
3       of all symptomatic and at-risk children.

4               Any encounter with an infectious disease,  
5       from a simple respiratory infection, to the novel  
6       coronavirus, can be devastating for a  
7       medically-complex child.

8               Since the outbreak of COVID-19, we have  
9       expanded these measures, and our efforts have been  
10      extremely successful.

11              Just like at Elizabeth Seton, to date, zero  
12      children in our facility have tested positive,  
13      positive for COVID-19, and, we've had no outbreaks  
14      of any other respiratory infections.

15              This success has taken place against a  
16      backdrop full of extraordinary challenges.

17              Precautionary regulations have forced us to  
18      close a number of critical programs that serve  
19      children in the community, depriving the children  
20      and their families of much-needed support, while  
21      compounding the extreme financial pressure our  
22      system is currently under.

23              When you add the burden of COVID to the  
24      recent Medicaid cuts, we're under great duress.

25              Since the DOH prohibited visitation to



1 nursing homes, we have parents who, just like Pat  
2 mentioned, have not hugged their children for  
3 months.

4 The parents of a child in a pediatric skilled  
5 nursing facility are never visitors. They're  
6 critical partners in the care and well-being of  
7 their children.

8 Hear the plea from one our parents who cries  
9 to our staff in pain and frustration, "I'm not a  
10 visitor. I'm his mother."

11 Many of our parents are newborn -- many of  
12 our patients are newborn babies transitioning from a  
13 neonatal intensive care unit right into our  
14 facility.

15 Under the current visitation restrictions,  
16 parents would be forced to separate from their  
17 newborn upon arrival at St. Mary's, leaving many to  
18 refuse admission, and forcing many children to  
19 languish in acute-care settings while they await  
20 resolution.

21 We have facilitated virtual visits for our  
22 parents, but these fall far short of the necessary  
23 connection between a parent and a child.

24 Testing our staff for COVID-19 has proven  
25 itself a flawed mechanism for preventing the spread

1 of COVID in our facility, and as a criterion for  
2 staff quarantine or visitation, as I'll outline.

3 As of now, we can't envision a scenario where  
4 any large pediatric facility meets the current  
5 department of health criteria for having  
6 28 consecutive days without a positive case of COVID  
7 amongst our dedicated staff.

8 At our campus, we're testing over  
9 600 clinical and support team members once a week.

10 If 1 percent of the population is positive  
11 for COVID, we're going to have 5 or 6 positive cases  
12 a week.

13 And it takes up to two weeks sometimes to get  
14 results.

15 We can easily imagine a staff member who is  
16 positive, but asymptomatic, and working, until we  
17 receive the results of their test at a time where  
18 their infection and their infectivity has already  
19 passed.

20 The important point is the continued success  
21 of our infection-control practices to prevent the  
22 spread of the virus even before we were testing all  
23 of our staff.

24 Our parents are at the end of their rope.

25 They're devastated, and need to us act

1 immediately.

2 In a time of extraordinary hardship, we can  
3 imagine few greater hardships than the pain of a  
4 parent separated from their child in need.

5 We believe that our proven expertise in  
6 infection control and our exemplary track record  
7 warrants due consideration.

8 Children's nursing homes are unique within  
9 the broader nursing home industry.

10 Our children need their parents to be with  
11 them, and we would welcome a dialogue with state  
12 leadership to help unite parents with their children  
13 today.

14 Thank you very much.

15 SENATOR RIVERA: Thank you so much for being  
16 with us today. It's a very important conversation  
17 to be having.

18 We'll get -- we'll start off with  
19 Senator Skoufis, recognized for 5 minutes.

20 SENATOR SKOUFIS: Thank you.

21 And I don't expect to need 5 minutes.

22 And I want to begin by really just expressing  
23 my gratitude for the work that you and your staffs  
24 have done over these months. Both Elizabeth Seton  
25 and St. Mary's sound like some really exceptional

1 places. And, again, it sounds like you have a lot  
2 to be proud of.

3 I do want to ask:

4 So, obviously, visitation policy now, on  
5 August 3rd, is very different than visitation  
6 restrictions in March or April or May when the virus  
7 was at its peak or, otherwise, ravaging our state.  
8 Right?

9 So I want to ask, were you supportive of  
10 visitation restrictions then, and you have since  
11 change your mind now that the virus numbers have  
12 decreased?

13 And if that's the case, you know, with an eye  
14 towards the next public health crisis, I think it's  
15 important to hear from you as to what you think that  
16 threshold ought to be by which we ease restrictions,  
17 if you did support it then when the virus was more  
18 rampant than now on August 3rd.

19 I don't know who would like to speak first to  
20 that.

21 PAT TURSI: Want to go, Eddie?

22 EDWIN SIMPSON, M.D.: Sure.

23 So, thank you for that question.

24 So we have a practice during outbreaks within  
25 the community, such as flu or other viral outbreaks,

1 to begin limiting visitation well before this  
2 coronavirus pandemic.

3 So, in fact, this year in January when the  
4 flu was pandemic, or epidemic, we actually limited  
5 visitation, but not to zero.

6 We just limited the number of people that  
7 came in. We made them wear PPEs and we protected  
8 our children.

9 We certainly agreed during the height of this  
10 pandemic that we needed to restrict visitation  
11 altogether.

12 But as you pointed out, August is not March.

13 1 percent of the community is positive, not  
14 10 and 15 percent of community. And, we've learned  
15 a lot about how to utilize PPEs to protect our kids.

16 And we believe that we can safely protect our  
17 kids, limiting visitation to single individuals,  
18 doing as much outdoors as possible; a lot of what's  
19 already been proposed by the department of health.

20 The problem we have is that we can't get  
21 28 days of negative staff with this many staff being  
22 tested every week.

23 And we just feel that that criterion doesn't  
24 work for us, and that our track record -- Seton's  
25 track record of not having any children positive,

1 despite the fact that staff are positive, speaks to  
2 the fact that we should be allowed to have  
3 visitation without those restrictions.

4 PAT TURSI: And I would just like to add  
5 that, during the pandemic, Eddie and I talk lot  
6 about this back and forth always.

7 So, we also want to look to the CMS guideline  
8 that DOH didn't recognize for comfort care, because  
9 even during the pandemic it was only, you know,  
10 24 to 48 hours of an eminent death.

11 All of our kids have life-limiting  
12 conditions. Sometimes we don't even know when  
13 that's going to happen.

14 And parents, you know, understand all our  
15 infection protocols. They live by them, like Eddie  
16 said.

17 We do have outbreaks other times.

18 So, you know, to me, I think the definition  
19 of "comfort care," that would be greater even in the  
20 pandemic, should be allowed, because we had many  
21 parents that were sleeping in the building when we  
22 got the restriction, and four parents decided to  
23 stay.

24 I know Eddie had many more than we had.

25 And they stayed for a very long time, till

1       they couldn't take it any longer.

2               And one actually would have lost her job, and  
3       is, you know, in a situation where that couldn't be.

4               So I just -- you know, the pain and anguish  
5       that we've dealt with our parents is indescribable.  
6       I can't even begin to tell you how awful.

7               SENATOR SKOUFIS:   Thank you both.

8               SENATOR RIVERA:   Thank you, Senator.  
9       Assembly.

10              ASSEMBLYMEMBER BRONSON:   Yes, recognize  
11      Chair Gottfried for 5 minutes.

12              ASSEMBLYMEMBER GOTTFRIED:   Yeah, on the  
13      question of visitation, well, one is, I think it  
14      would be useful if you had written down for us what  
15      you think the visitation policy should be.

16              And maybe that's in your testimony, but,  
17      rather than just saying what the department does is  
18      too restrictive, if you could recommend something,  
19      that would be useful.

20              EDWIN SIMPSER, M.D.:   Well,  
21      Assemblyman Gottfried, we actually submitted a pilot  
22      visitation plan to the department of health, and had  
23      a meeting with members of the department of health  
24      to discuss that pilot plan weeks ago.

25              And we'll be happy to share it with you.

1 PAT TURSI: Yes.

2 ASSEMBLYMEMBER GOTTFRIED: And they have not  
3 responded, I assume?

4 EDWIN SIMPSEY, M.D.: Correct.

5 ASSEMBLYMEMBER GOTTFRIED: And the other  
6 question I have is, what's the likelihood, that if  
7 we adopt your proposal, that three months from now  
8 we'll be at a hearing, and instead of family members  
9 like the ones we heard earlier talking about how  
10 terrible it was that the health department led to  
11 the death of their grandparents by letting in all  
12 those COVID-19 patients into the nursing home that  
13 the department thought were no longer contagious,  
14 but, oh, my God, look what happened, will we instead  
15 have parents coming in saying, that terrible health  
16 department relaxed these visiting restrictions, and  
17 a couple of people were visiting at St. Mary's, and,  
18 before you knew it, you know, six of our children  
19 were dead.

20 EDWIN SIMPSEY, M.D.: So we partner with our  
21 parents all the time. And we have a family advisory  
22 council. I've had Zoom meetings with the family  
23 advisory council.

24 They're ready to partner with us, wear full  
25 PPEs, get tested before they come in; whatever



1 restrictions we want to put in place.

2 Also, both us and Seton have a lot of  
3 experience, as I mentioned before, in controlling  
4 outbreaks. And we're confident, that even if we  
5 were to get a child with COVID-19, that we would be  
6 able to contain an outbreak and not have the kind of  
7 outcomes that you've seen in geriatric nursing  
8 homes.

9 We have a long track record of protecting our  
10 children from flu and many other infections, and we  
11 are confident that we'll do well.

12 We're not cocky, but we are confident that  
13 we'll do well.

14 And we believe in partnering with our  
15 families.

16 When we showed our families a graph of the  
17 decrease of infections within our facility, they all  
18 said, that speaks volumes of how we have to act post  
19 COVID, not just during COVID.

20 So we really believe that a partnership with  
21 families will protect our kids.

22 ASSEMBLYMEMBER GOTTFRIED: Okay. Thank you.

23 And if you could un-mute for a second, you  
24 know, I've -- as you probably know, I've worked with  
25 St. Mary's and Blythedale and Elizabeth Seton off

1 and on for years, on a variety of issues, and  
2 sometimes with success, sometimes not.

3 But everything all my colleagues said about  
4 how amazing you folks are, is certainly true.

5 PAT TURSI: Thank you.

6 EDWIN SIMPSON, M.D.: Thank you.

7 SENATOR RIVERA: Ditto; ditto on that.

8 Now to the Senate, recognizing Senator O'Mara  
9 for 5 minutes.

10 SENATOR O'MARA: Thank you, Chairman.

11 And thank you, Pat, Rachel, and Eddie, if  
12 I may be informal with you, for your testimony, and  
13 for the great work that you do at your facilities  
14 for our children with disabilities. And it just  
15 truly is God's work, and I want to thank you for  
16 that.

17 And, Rachel, to you, God bless you and your  
18 family. I can't imagine going that length of time  
19 without being able to see my children.

20 RACHEL AMAR: It's hard.

21 SENATOR O'MARA: Just, it's heart-wrenching  
22 to even think about.

23 But to Eddie and Pat, if you could just  
24 briefly again, I may have missed it, run through  
25 what the protocols are right now for your staff to

1       be able to come to work?

2               EDWIN SIMPSEY, M.D.: Go ahead, Pat.

3               PAT TURSI: You gonna go [indiscernible], or  
4       you want me to? It's the same.

5               EDWIN SIMPSEY, M.D.: Go ahead.

6               PAT TURSI: So they -- you know, when they  
7       come in, they have to, you know, fill out their  
8       survey. They have to have -- you know, they have to  
9       attest that they have no signs and symptoms of any  
10      kind of illness.

11              Also, we're being very strict about where  
12      staff are traveling, so we're monitoring that as  
13      well. So if anybody travels, we're -- we go above  
14      the CDC requirements, and we're making everyone stay  
15      home for 14 days.

16              We are paying staff for all of their  
17      unlimited sick time so that people don't have to  
18      worry about not having it.

19              But in that case, we said, we're not going to  
20      pay if you decide to go travel someplace. That's --  
21      you know, you're going to have to just stay home.

22              They have to wash their hands, and we have  
23      plenty of Purell, and then they mask.

24              And then they, also, during the pandemic, we  
25      just restricted it a few weeks ago, we were having

1       our staff come in their street clothes, and then  
2       change into their uniforms. But now that we're not  
3       in the peak of the pandemic, we've let that go.

4                SENATOR O'MARA: Are there testing  
5       requirements for your staff?

6                PAT TURSI: Once a week.

7                SENATOR O'MARA: Once a week?

8                PAT TURSI: We're doing the same thing,  
9       over 600. I think this week we did 646. So we're,  
10      like, in the mid-600s every week.

11               SENATOR O'MARA: Okay. And how many patients  
12      do you have at your facility?

13               PAT TURSI: 169.

14               SENATOR O'MARA: 169 patients and over  
15      600 employees?

16               PAT TURSI: Yes.

17               EDWIN SIMPSON, M.D.: We have 124 patients.

18               SENATOR O'MARA: And how many employees?

19               EDWIN SIMPSON, M.D.: Also over 600.

20               SENATOR O'MARA: Okay.

21               Now, Rachel, if I can ask you, would those  
22      requirements that were just laid out for staff be  
23      acceptable to you to be able to see your son?

24               RACHEL AMAR: 100 percent, I would feel  
25      comfortable if the parents, you know, put on masks.

1 And we also get our temperature taken, and get the  
2 tests taken, I would be 100 percent fine with that.

3 SENATOR O'MARA: I would think so.

4 And it's just unconscionable to me that  
5 you're allowing over 600 employees into a facility,  
6 yet 150 parents can't come in and see their  
7 children.

8 That is unconscionable, and that needs to  
9 change.

10 Thank you all very much.

11 PAT TURSI: Thank you.

12 RACHEL AMAR: Thank you.

13 EDWIN SIMPSEY, M.D.: Thank you.

14 SENATOR RIVERA: Thank you, Senator.

15 Now back to the Assembly.

16 ASSEMBLYMEMBER BRONSON: Yes, I will go next.

17 First of all, Ms. Amar, thank you so much  
18 for sharing your personal story.

19 And, I can't even imagine what you and your  
20 family, and certainly your son, are going through.

21 The -- first, I'm just going to request:

22 Mr. Simpser, I believe you said that you  
23 submitted a pilot plan --

24 EDWIN SIMPSEY, M.D.: Yes.

25 ASSEMBLYMEMBER BRONSON: -- to the department

1 of health.

2 When was that submitted?

3 EDWIN SIMPSEY, M.D.: Three weeks ago.

4 ASSEMBLYMEMBER BRONSON: Okay.

5 Would you be willing to share that with us so  
6 that we could take a look at it as we develop  
7 policy?

8 EDWIN SIMPSEY, M.D.: Absolutely.

9 ASSEMBLYMEMBER BRONSON: All right.

10 And then the other thing, and I apologize,  
11 you know, this may be naive, but, listening to your  
12 family's story, and listening to some of the other  
13 families we heard earlier, you know, we use the word  
14 "visitation." But I'm not sure that fits.

15 Sure, you're a mom visiting your child, but  
16 you're also a mom that is 100 percent engaged in  
17 caregiving for your child.

18 And I'm just throwing it out there, whether  
19 or not there's a distinction we can make between,  
20 you know, visitation versus being a necessary  
21 component of the care of your child, or, when we're  
22 talking about a nursing home, a necessary component  
23 of the care of a parent or a grandparent.

24 That being said, you know, we've recognized,  
25 and you brought it up, the feeling of isolation, or

1       you actually referred it to as "abandonment of your  
2       mom."

3               So, I don't know where we can make that  
4       demarcation, but I'm throwing it out to you, if you  
5       have an answer today; but if not, help us work  
6       around that.

7               Because I think there -- that's a balancing  
8       that we need to do with care that's given by the  
9       professionals in the facility, that is supplemented  
10      and augmented by family care.

11              So if you have a response to that, that's  
12      fine.

13              If you don't, I'd like you to think about  
14      that a little bit.

15              RACHEL AMAR: Well, I just -- what I would  
16      like to say is that, you know, I do come every day,  
17      and I know all his care.

18              So I also give his medical care. I help and  
19      I assist the nurses. So when they're busy and they  
20      can't change him or suction him or any type of care  
21      that he needs, I'm able to give it to him.

22              Unfortunately, I can't, like, take him home  
23      and take care him myself because he is very  
24      challenged medically. He's 100 percent dependent on  
25      a ventilator, so he's very fragile.

1           But, I'm able to assist in his medical care,  
2           and, I occupy him all day. When I go to school with  
3           him, I assist in his schooling. We do arts and  
4           crafts projects. There's music. There's gym.

5           I go with him all day. I'm all -- with him  
6           in school.

7           And then when we come up, we get into bed,  
8           cuddle, kiss. And, I mean, he's the happiest kid,  
9           ever.

10          I show you pictures smiling, happy.

11          And when I don't come, he's really -- he's  
12          devastated.

13          You know, I call in the morning, I call the  
14          two different shifts, and they tell me he's upset,  
15          he's angry. He gets -- he really feels the lack of  
16          my presence there.

17          And, I mean, I could definitely say that, in  
18          his medical care, I'm part of his medicine: he needs  
19          me.

20          ASSEMBLYMEMBER BRONSON: Thank you.

21          EDWIN SIMPSON, M.D.: You know, there's a  
22          provision in the visitation restrictions on medical  
23          necessity, and allowing visitation for medical  
24          necessity.

25          And I guess that's open to interpretation.



1           We have had parents visit for medical  
2           necessity when we're transitioning children home.

3           We discharged 35 children over the course of  
4           this pandemic to their homes. And those parents,  
5           obviously, had to come in so they could learn how to  
6           care for their children.

7           I would think there's an opportunity to  
8           interpret "medical necessity" for pediatric nursing  
9           homes the same way, as Pat pointed out, medical  
10          necessity has been interpreted for pediatric  
11          hospitals, and allowing parents to be there for  
12          pediatric hospitals way back in May.

13          PAT TURSI: They also have, the DOH guidance  
14          talks about the support person.

15          And the support person they have for both,  
16          you know, persons of intellectual disabilities as  
17          well as the medical-complex.

18          And that already is in the DOH guidance, and,  
19          it's already spelled out.

20          Now, you know, Eddie and I both agree that  
21          there needs to be, you know, maybe other things that  
22          we would want to do and add into that visitation  
23          policy for hospitals. But it was very strict during  
24          COVID.

25          So, you know, the strictness doesn't bother

1 us. It's, we have to get the parents connected to  
2 their children again.

3 ASSEMBLYMEMBER BRONSON: Okay. Thank you.

4 I think that gives us some stuff to work  
5 with.

6 Thank you.

7 SENATOR RIVERA: Thank you, Assemblymember.

8 We don't have any further questions from the  
9 Senate at this time.

10 ASSEMBLYMEMBER BRONSON: Okay, then next we  
11 will go to Chair McDonald for 5 minutes.

12 ASSEMBLYMAN McDONALD: Thank you.

13 And to Pat and to Eddie, thank you for your  
14 testimony.

15 To Rachel, you know, the expression, "a  
16 picture is worth a thousand words," this was worth  
17 about 100,000 words.

18 I don't think there wasn't anybody here who  
19 wasn't moved.

20 We've been moved all daylong in many aspects;  
21 heart-wrenching stories, and mostly have been  
22 focused in the gerontology part of people's lives.

23 But, this hits home too.

24 We know the great work that both  
25 Elizabeth Seton and St. Mary's has done for probably

1 longer than Dick Gottfried's been around. That's  
2 been a long damn time.

3 [Laughter.]

4 ASSEMBLYMAN McDONALD: So we know what great  
5 work you do.

6 You know, Eddie, in your letter -- or, your  
7 testimony, you mentioned about how, you know, you've  
8 had, zero, zero positives, of any of the children  
9 during this whole time, which is remarkable when you  
10 really think about it.

11 And you mentioned that you've been -- your  
12 organization has been nationally recognized.

13 Is that through some kind of accrediting  
14 body, or, what is it?

15 EDWIN SIMPSON, M.D.: So, the [indiscernible]  
16 Association of Childrens Nursing Homes throughout  
17 the country. And, we did a number of studies,  
18 working with epidemiologists at Columbia. Actually,  
19 Seton was involved in some of those studies as well.

20 And we then presented those studies  
21 nationally, and, actually, brought our  
22 infection-control practices that we have here in  
23 New York, to facilities around the country.

24 And that's why we use the term "nationally  
25 recognized."

1           ASSEMBLYMAN McDONALD: Well, it's -- you  
2 know, it's interesting, you know, Member Godfried  
3 raised a good point.

4           You know, if the pendulum swings in another  
5 direction in three months, is everyone going to be,  
6 you know, pointing a finger at the legislature and  
7 the State and say, Why did you let this happen?

8           But I think it's very clear, and I think,  
9 Rachel, you would agree with me, because I work very  
10 closely with the intellectual development [sic]  
11 disability community.

12           Max, and many other children, they don't have  
13 a way to understand what's going on. They just  
14 don't know. Their daily lives are interrupted, and  
15 they don't understand it. They think that you've --  
16 this is the part that really bothers me -- they  
17 almost feel like you've abandoned them.

18           And we know that's not the case.

19           So, you know, we appreciate this testimony.

20           I know, if you were around when we started  
21 about 9 or 10 hours ago, whenever it was, many of  
22 these -- many of these members brought this up to  
23 the commissioner. I know that many members of  
24 department of health are monitoring this right now.

25           Your visit was not for naught.

1                   And I want to thank you for your testimony.

2                   RACHEL AMAR: Thank you so much.

3                   SENATOR RIVERA: And I assure you, it was  
4 longer than five hours, Assemblyman, so much so,  
5 that I missed one of my colleagues who at once was  
6 online to ask questions.

7                   So my apologies.

8                   Next will be 5 minutes for  
9 Senator Sue Serino.

10                  SENATOR SERINO: Thank you, Mr. Chairman.  
11 I appreciate that.

12                  And, Rachel, Eddie, Pat, thank you so much  
13 for being here today.

14                  Oh, my God, you've touched all of our hearts,  
15 as you've heard everybody say.

16                  But I just have a couple of questions.

17                  Throughout this time, have any of you reached  
18 out to the governor's office or DOH directly, and  
19 did you receive a response?

20                  I know, Eddie, you had said about your plan.

21                  But...

22                  EDWIN SIMPSER, M.D.: So we have had two  
23 meetings with senior members of the department of  
24 health: one that we had individually, and one that  
25 our representatives have had with senior members of

1 the department of health.

2 We've asked for a meeting with the  
3 commissioner.

4 We've had numb -- our representatives have  
5 had numbers of conversations with members of the  
6 second floor.

7 I think everybody is compassionate and  
8 aware, but I think everybody is afraid.

9 As Chairman Gottfried pointed out, I think  
10 the commissioner and the department of health are  
11 very anxious.

12 And the problem is, that we're regulated and  
13 considered a nursing home; whereas, our kids are not  
14 like the residents in geriatric nursing homes, and  
15 our staffing and our approach to care is just  
16 different. And we ought to be treated differently,  
17 and that's the argument we're trying to make.

18 I understand that they're frightened. But --  
19 and we were anxious, frankly, coming forward and  
20 being so public, and making these statements. But,  
21 our parents are at a wits' end and we're at our  
22 wits' end because of that.

23 PAT TURSI: Well, we had six surveyors shows  
24 up today and did a second infection-control survey  
25 that we just flew through.

1           So, you know, I know that, you know, everyone  
2           is concerned. But we're doing a great job, and they  
3           commended us today for it.

4           And I also think that parents coming in with  
5           admissions, like Eddie said, we've had, you know,  
6           they come from Blythedale. That's one of our major  
7           referrals here. We're very close to Blythedale.

8           And they're able to visit there, and then  
9           they had to leave a two-year-old at the door, with  
10          complete strangers.

11          And we admitted a child like four weeks ago,  
12          and another one two weeks ago. And parents aren't  
13          able to come in with their child.

14          I just don't know, it just doesn't seem --  
15          it's not right.

16          SENATOR SERINO: I can't -- I can't even  
17          imagine, like Rachel, watching you with your son,  
18          it's just absolutely beautiful, and just touched my  
19          heart.

20          So to not get any response is absolutely  
21          horrific.

22          You know, and I can understand people are  
23          nervous. Absolutely. But at least respond. You  
24          know, talk it through. That's all anybody is asking  
25          about, through this pandemic, no matter what area

1 we're speaking about.

2 And, Rachel, did you yourself reach out,  
3 or -- to the governor [indiscernible]?

4 RACHEL AMAR: I reached out twice to the  
5 governor's office. One time I was able to speak to  
6 somebody, who connected me to somebody else, who  
7 gave me another number, who connected me to somebody  
8 else.

9 And at the end, they called me back. And  
10 I filled out like this application -- or, this form  
11 in regards to filing a complaint. And they said  
12 that it wasn't in their jurisdiction.

13 And then I called the department of health  
14 who said that there was nothing that they could do.

15 So...

16 SENATOR SERINO: Yes, so who are you supposed  
17 to go to. Right?

18 RACHEL AMAR: Right.

19 SENATOR SERINO: That is absolutely horrible.

20 RACHEL AMAR: Always a fight, it really is.

21 SENATOR SERINO: Yeah.

22 And in the event of a second wave, what would  
23 be at the top of your priority list -- I understand  
24 visiting -- that you would want to -- for the State  
25 to do differently?



1           RACHEL AMAR: I mean, I think that, if the  
2           parents are tested just like the employees, and we  
3           limit the amount of parents that come in, I think  
4           it's the same thing.

5           What's the difference of a parent coming in  
6           or an employee coming in?

7           We don't know what the employees are doing  
8           during the day.

9           If everybody's getting tested, wearing the  
10          same PPE, take the same safety precautions, it's the  
11          same thing.

12          SENATOR SERINO: And I can tell you that I've  
13          had countless parents that have called me about this  
14          very subject, so I'm asking questions on their  
15          behalf as well.

16          My heart goes out to all of you, and thank  
17          you for all of the hard work that you do.

18          And God bless you, Rachel.

19          RACHEL AMAR: Thank you, thank you.

20          SENATOR RIVERA: Thank you, Senator.

21          And, again, apologies for not seeing your  
22          name earlier.

23          Back to the Assembly.

24          ASSEMBLYMEMBER BRONSON: Next we're going to  
25          go to Assemblymember Missy Miller for 3 minutes.

1 ASSEMBLYMEMBER MILLER: Thank you.

2 I also want to thank the three of you.

3 Rachel, I'm a mom of a medically-fragile  
4 child. I have him at home with me.

5 I cannot even imagine what you're going  
6 through. I can't -- I won't get through a sentence  
7 if I try to imagine it.

8 So, just know that I am thinking of you.

9 In full disclosure, I've known Eddie for far  
10 too many years. I won't age us both.

11 But, a very important point has been brought  
12 up, that I think department of health and the  
13 governor's office really, really needs to hear here,  
14 is that, the parents who keep saying they're not  
15 visitors, they are a very, very important part of  
16 the care team. They are part of this child's team.

17 And by keeping them out, they're keeping a  
18 part of that child's care team away from them.

19 And it's -- it's one of the most important  
20 parts of that care team.

21 You know, years and years I've been doing  
22 this. I trained pediatric residents on how to  
23 deliver chronic care.

24 And I fully believe that the department of  
25 health has missed this entirely. They just aren't

1 equipped to understand this.

2 And so this really needs to bring a light to  
3 this, that -- and the points of, you know, a staff  
4 member, 600 staff members, can go in and out every  
5 day, and go home, and ride public transportation.

6 I can guarantee you that parents are taking  
7 more precautions. They are not -- you know, they're  
8 going to make sure that they are not the ones  
9 bringing in any kind of virus, and would happily  
10 submit to testing every day if necessary.

11 I think, also, there was a point that was  
12 brought up earlier, even on other segments, that the  
13 testing that's required, what good is that testing  
14 if you -- if it takes five, six, seven days to get a  
15 result, and then throws you back all the way back to  
16 the beginning of your 28 days all over again?

17 It's really just unacceptable.

18 So, thank you for being here. Thank you for  
19 voicing these concerns.

20 I think it's disgusting that the department  
21 of health has waited three-plus weeks now, even with  
22 their anxieties, about what would happen if, you  
23 know, somebody were to get sick.

24 I think a zero percent positive of patients  
25 is a pretty significant, impressive, you know, note

1 to pay attention to. It should earn -- it should  
2 earn their respect, and it should get their  
3 attention at the very least.

4 I myself have been doing my part by badgering  
5 them to answer this, and I will continue to do so.

6 So, thank you.

7 RACHEL AMAR: Thank you.

8 SENATOR RIVERA: Thank you so much.

9 We don't have any other further questions  
10 from the Senate at this time.

11 ASSEMBLYMEMBER BRONSON: We will then go next  
12 to Assemblymember Brian Manktelow, and Brian will  
13 have 5 minutes.

14 ASSEMBLYMEMBER MANKTELOW: Thank you,  
15 Chairman. I'll keep it short.

16 Doctor, just a quick question for you.

17 Earlier on, you had said something about,  
18 there's a lot of room for -- or, some room for  
19 interpretation on the [indiscernible].

20 Can you expound on that just a little bit for  
21 me?

22 EDWIN SIMPSON, M.D.: Well, the terminology  
23 is "medical necessity." There are two words in the  
24 "visitation restrictions."

25 One is -- that would allow people to come in.

1           One is "compassionate care," and the other is  
2           "medical necessity."

3           "Compassionate care," the DOH seems to  
4           interpret as end-of-life care.

5           And as Pat pointed out, sometimes that's very  
6           challenging for us to know when a child is going to  
7           go down.

8           We actually had a baby whose parents didn't  
9           see him for three months, who got sick, and in  
10          24 hours died.

11          We got them in before he died, and they got  
12          to hold him, but they missed three months of his  
13          life.

14          Because it's hard to know, and we're nervous  
15          about breaking the rules at the same time.

16          The same with medical necessity, what's  
17          "medical necessity"?

18          How do you interpret "medical necessity"?

19          And, I'm ready to argue, and I'm happy to  
20          have the argument with the commissioner, frankly,  
21          that parents are medically necessary to be at the  
22          child's bedside.

23          But that's not how we've interpreted it up  
24          until now, except for children who we're planning on  
25          discharging.

1           ASSEMBLYMEMBER MANKTELOW: You said you're  
2       afraid to break the rules, or [indiscernible]  
3       something.

4           What would happen if you broke the rules;  
5       what are you talking about?

6           EDWIN SIMPSON, M.D.: Well, we are certifying  
7       every week/our administrator is certifying every  
8       week that we are following all of the governor's  
9       executive orders and all of the DOH directives.

10          We are subject to fines. Our administrator  
11       could be subject to losing her license.

12          So, you know, we're anxious about not  
13       following the rules, and interpreting things  
14       differently than how they've been interpreted  
15       throughout the industry.

16          ASSEMBLYMEMBER MANKTELOW: All right. Thank  
17       you the, Doctor.

18          Rachel, could I ask you a question really  
19       quickly, please?

20          RACHEL AMAR: Sure.

21          ASSEMBLYMEMBER MANKTELOW: And thank you for  
22       your words about your son. I don't want talk a lot  
23       because I'll start crying.

24          So, in your eyes right now, what's the  
25       hardest thing going -- what's the hardest thing

1 right now, at this point in your son's life, that's  
2 going on today, that you feel is the hardest thing  
3 for him?

4 RACHEL AMAR: I mean, the -- well, the  
5 hardest thing is that, he doesn't see me. I mean,  
6 he's used to seeing me. I come, like, seven days a  
7 week, every single day.

8 And, for him, that's all he knows. He  
9 doesn't like change. He likes me to be there. Like  
10 I said, I sit in bed with him.

11 He doesn't even like when people come,  
12 because, you know, obviously, people come over to  
13 the bedside, they want to talk with me. He gets so  
14 angry, that he starts turning blue. And they  
15 already know, Okay, Max, sorry. We won't talk to  
16 mommy.

17 He -- you know, 24 hours a day, 7 days a  
18 week, he's living in this facility. And when I'm  
19 there, he wants my time, and he wants me.

20 And it's understandable, and he deserves it.

21 ASSEMBLYMEMBER MANKTELOW: So, as a parent,  
22 you're willing to take the risk of opening up the  
23 doors and allowing you as a mother, into his room?

24 RACHEL AMAR: I mean, obviously, I'm very  
25 scared.

1           But, I have been sitting home the past  
2       4 1/2 months. I don't -- I go out maybe once a week  
3       to go to the supermarket. I don't go anywhere.  
4       I don't have anybody in my house. I'm, like,  
5       sitting, waiting, like, on-call for -- to get the  
6       call, that I'm going to be able to go and visit him.

7           So I haven't been doing anything.

8           And, I mean, obviously, if I will be allowed  
9       in, I will take even stricter precautions,  
10      because -- I mean, you know, this -- but the fact  
11      that employees are coming in, I mean, I don't think  
12      they're going to be doing anything different than  
13      I'm going to be doing.

14           So I think that things should be okay, and  
15      I know he really needs me.

16           So -- especially when I FaceTime him, and  
17      he's so sad and he's crying, and, I mean, just  
18      breaks my heart.

19           ASSEMBLYMEMBER MANKTELOW: Absolutely.

20           I -- I can't imagine not speaking to my kids.

21           RACHEL AMAR: Yeah.

22           ASSEMBLYMEMBER MANKTELOW: So thank you all  
23      for your testimony.

24           And I think our job as legislators is to make  
25      sure we take your testimony, and let's not wait



1 two weeks, three week, four week, let's make sure  
2 something happens sooner.

3 We need to get you back to see your children.  
4 We need to open these things up.

5 And I feel the safety part is there from you  
6 and the staff members, and I will be pushing for  
7 that from the Assembly side for sure.

8 So thank you all for your testimony.

9 PAT TURSI: Thank you.

10 RACHEL AMAR: Thank you.

11 SENATOR RIVERA: Thank you, Assemblymember.

12 You've got one last questioner, I believe?

13 ASSEMBLYMEMBER BRONSON: I do.

14 Assemblymember Tom Abinanti, 3 minutes.

15 ASSEMBLYMEMBER ABINANTI: There we go.

16 Thank you.

17 I guess, again, maybe I'll be the last --  
18 except for the Chair, I'll be the last one.

19 But, Eddie and Pat, I want to thank you for  
20 coming in, and possibly risking the wrath of the  
21 health department.

22 And, Rachel, thank you for having the courage  
23 to come forward and talk.

24 Like Missy Miller, I have a child with a  
25 disability. My child, fortunately, is running

1 around. He's got autism.

2 And I can see, if I'm just away at Albany for  
3 a few days, he very much misses me, because we've  
4 changed the style.

5 I can't imagine what your son is going  
6 through.

7 I agree with your comments, Eddie and Pat,  
8 that you should be able to have the same rules as  
9 Blythedale, which is in my district.

10 You know, I've been hearing from a lot of  
11 people about all types of congregate care, where  
12 parents have been the deprived of being able to see  
13 their children; their children have been deprived of  
14 being able to see their parents.

15 We're struggling with, what is this concept?

16 Is it a visiting, whatever?

17 From my point of view, it's parenting.

18 As you said, you're part of the care team.

19 I think this is a discrimination against  
20 people with disabilities, because people with  
21 disabilities are being deprived of the right to have  
22 part of their care team there because they're  
23 related to the care team.

24 And I find it ironic.

25 I tried to get, for one of the parents,

1 additional Medicaid payment, because she was a  
2 nurse, and she was taking care of her son, when she  
3 couldn't get other nurses who were -- and she had  
4 approval under Medicaid for this service.

5 But the response was: Well, she's a parent.  
6 Why should she get paid to take care of her son?  
7 This is just parenting.

8 And now, on the other side, you're trying to  
9 go parent your child, and you're being told you  
10 can't because you're a parent, because -- because  
11 he's in this institution and you can't go there.

12 So -- it's just -- it makes no sense.

13 And, I'm very, very disappointed that the  
14 health department doesn't understand people with  
15 disabilities.

16 And the governor today, oh, the governor was  
17 really paying attention to what we were doing.

18 I was checking the news.

19 What did the governor do today?

20 Well, he announced that he was signing the  
21 New York Child Victims Act. Very, very important.

22 But, this hearing is as important also.

23 He could have waited till tomorrow to sign  
24 that.

25 And he spoke about openings.

1           He wasn't opening your institutions. He was  
2           opening schools that's going to happen in September.

3           And then he legalized frozen desserts which  
4           are infused with liquor.

5           He did everything possible to divert  
6           attention from this hearing today, because he knows  
7           that his administration is not doing the right  
8           thing.

9           So I appreciate all of you coming forward.

10          We're all together on this.

11          I join my colleagues, we're going to push  
12          real hard, because this is insane, this is inhuman.

13          This is a mistake by this administration, and  
14          it's got to change.

15          Thank you for coming forward.

16          RACHEL AMAR: Thank you.

17          SENATOR RIVERA: Thank you, Assemblymember.

18          And on behalf of all of us, we again thank  
19          you for your testimony here today.

20          And I assure you that this is not falling on  
21          deaf ears.

22          It's -- there are things that are already  
23          moving. I've already gotten a couple of messages  
24          about plans that are moving around, and what have  
25          you.

1           So thank you so much for being here, and,  
2       have a great, wonderful evening.

3           EDWIN SIMPSON, M.D.: Thank you very much.

4           PAT TURSI: Thank you so much.

5           RACHEL AMAR: Thank you.

6           SENATOR RIVERA: Moving on to  
7       Panel Number 8 --

8           I see the glimmer at the end of the tunnel.  
9       Let's keep powering through.

10          -- we have:

11          Beth Finkel, the New York State Director of  
12       AARP;

13          And, Judith Grimaldi, a member of the  
14       New York State Bar Association's Elder Law Section  
15       Task Force.

16          ASSEMBLYMEMBER GOTTFRIED: And do you both  
17       swear or affirm that the testimony that you're about  
18       to give is true?

19          OFF-SCREEN TECHNICIAN: One second,  
20       Assemblymember. I'm going to transfer them over  
21       with their cameras.

22          SENATOR RIVERA: Yes.

23          Make sure you turn on your cameras, both of  
24       you folks.

25          BETH FINKEL: Hi.

1           SENATOR RIVERA:  Yep, there's both people.

2           ASSEMBLYMEMBER GOTTFRIED:  Okay.

3           Do you both swear or affirm that the  
4       testimony that you're about to give is true?

5           BETH FINKEL:  Yes.

6           JUDITH GRIMALDI:  I swear, yes, I do.

7           ASSEMBLYMEMBER GOTTFRIED:  Okay.

8           SENATOR RIVERA:  Ms. Finkel.

9           BETH FINKEL:  Okay.

10          Thank you very much.

11          I want to thank you all for all the work that  
12       you have all done during this pandemic to help  
13       New Yorkers push forward in these unprecedented  
14       times.

15          I know that we're all concerned about a  
16       possible second wave on the horizon.

17          We can never let this tragedy happen again.

18          6300 deaths occurring in adult long-term-care  
19       facilities, clearly, the State's focus on the onset  
20       of the pandemic was really focused on hospitals, not  
21       on the adult residential, facilities, communities.

22          And even though the virus's first strike was  
23       a nursing home in Washington State, so it's not like  
24       we didn't know that this was going to be coming.

25          Building hospital-bed capacity and securing

1 ventilators was critical, but our focus and planning  
2 should have included nursing homes and  
3 long-term-care facilities, which has some of  
4 society's most vulnerable, many of whom have  
5 preexisting conditions.

6 And I know that all of you know this so well,  
7 and I know that you've all been working in the  
8 Assembly and in the Senate so hard to try to help  
9 people in long-term care.

10 AARP joined with the Urban League,  
11 Asian-American Federation, NAACP, and the Hispanic  
12 Federation, and 1199 SEIU, to ask Governor Cuomo to  
13 create a long-term-care COVID task force, working  
14 with consumers, long-term-care providers, home-care  
15 agencies, and unions.

16 It would be modeled on the successful  
17 approach the governor took to coordinate New York's  
18 public and private hospital systems.

19 We need real planning and real coordination.

20 We also asked the governor to ensure that the  
21 long-term-care system received adequate supplies of  
22 PPE.

23 The governor did not establish such a task  
24 force or release a coordinated plan for the  
25 long-term-care system, to thwart future pandemics,

1 or, a second wave of the COVID pandemic.

2 That's why we're supporting Senator May's and  
3 Assemblywoman Cruz's bill to establish a  
4 long-term-care task force to examine the state of  
5 long-term care, both home-based and facility-based,  
6 and to consider potential models for improvement.

7 We believe this task force should certainly  
8 look at current staffing levels, as we heard so much  
9 today in all the testimony that came before me, and  
10 any possible supply-chain issues for PPE in the  
11 future.

12 This bill passed the Senate two weeks ago,  
13 and awaits action in the Assembly.

14 AARP strongly believes that family caregivers  
15 should be a part of this task force since they play  
16 such an integral role in our long-term-care system.

17 While AARP fully recognizes the necessity of  
18 shutting down nursing homes to visitation by  
19 families, we also understand the devastating impact  
20 that this has had, both on the families and their  
21 loved ones in nursing homes, since family members  
22 often carefully monitor their loved one's health  
23 status, and are often the first line of defense in  
24 identifying key areas of concern to the facility  
25 staff.



1           Not being able to visit a loved one in  
2           person, and then, not being able to communicate with  
3           them during this time, has been one of the most  
4           frequent complaints that we have heard from our AARP  
5           membership.

6           And I know you all know this, but, we have  
7           over 2-1/2 million members in New York State, so  
8           we've been hearing from a lot of them, and they're  
9           really upset.

10          Many facilities failed to provide regular and  
11          effective opportunities for virtual visitation.

12          We even heard stories that the only  
13          communication that a family received was that their  
14          loved one had died of COVID.

15          We are grateful that the legislature passed  
16          and Governor signed into law legislation requiring  
17          communication protocols for nursing homes, including  
18          virtual visitation in the future.

19          But while the governor dedicated \$1 million  
20          for technology necessary to implement the  
21          virtual-visitation program, media reports indicate  
22          that very few nursing homes are actually opening up  
23          for visits.

24          And this issue certainly needs more attention  
25          by the legislature, and the State, to make sure

1 families can see their loved ones as soon as  
2 possible.

3 AARP strongly recommends that the  
4 long-term-care ombudsman program be improved, by  
5 hiring more professional staff to be trained and  
6 sent to more nursing homes throughout the state.

7 We certainly heard a lot about the ombudsman  
8 program. Currently the program relies on  
9 volunteers.

10 I want to thank you all for the steps forward  
11 by repealing certain legal immunity for nursing  
12 homes, but repealing nursing home and long-term-care  
13 facility immunity must be full and retroactive.

14 AARP is very concerned that the 6300 families  
15 who lost loved ones do not have access to courts;  
16 and, therefore, do not hold nursing homes  
17 accountable.

18 SENATOR RIVERA: Thank you, Ms. Finkel.

19 Now Ms. Judith Grimaldi.

20 JUDITH GRIMALDI: I'm looking at my notes,  
21 and I noticed I started it off with, Good morning.

22 So I have to change it to, Good evening, or  
23 maybe even Good night.

24 I was optimistic.

25 SENATOR RIVERA: You were such a positive

1 beam of light.

2 JUDITH GRIMALDI: I'm not going to go --  
3 I could just say "ditto" to everything that Beth  
4 just said. And I -- so I'm going to skip quite a  
5 bit, but I want to tell you one graphic story.

6 I'm an elder-law attorney, and I work in  
7 Brooklyn. I'm actually on my local community's  
8 age-friendly, but I wear many hats, having been a  
9 past chair of the elder-law section of the state  
10 bar, and the past chair of the city bar, and the  
11 past chair -- past chairs of many things.

12 But I'm going to get right down to the story  
13 of the Ling family.

14 You would enjoy meeting the Ling family.  
15 They're warm, they're kind, and they're capable, and  
16 they lost their mother.

17 There are three professional children whose  
18 mother, Linda Ling, who lived independently,  
19 completely fine, on her own, in her Lower Manhattan  
20 apartment. And she fell, broke her pelvis --  
21 wow! -- and ended up in -- right in your district,  
22 Chairman Gottfried -- she ended up in Gouverneur  
23 Hospital, Health And Hospital Corporation's 295-bed  
24 facility. And -- right down in -- on 227 Madison  
25 Street. She lived in Lower Manhattan as well.

1           Right at the start of the outbreak, she  
2           entered the facility on March 16th. She died on  
3           April 23rd.

4           She was admitted to the home with a broken  
5           pelvis. She was fine, she was optimistic: I'm  
6           going to get through rehab and I'm going home.

7           Unfortunately, it was downhill from day one.

8           Mrs. Ling used to speak to her daughter every  
9           day. It was their touchstone, it was how they kept  
10          in touch, and how she stayed alert and happy and  
11          connected.

12          During this period, she talked to her  
13          daughter 12 times.

14          During these weeks, the family had attempted  
15          to contact her, with the social workers, with the  
16          nursing staff, with the administration. It all fell  
17          for nothing.

18          They kept saying, I need to speak to her,  
19          I need to see her. What's going on?

20          They said, Oh, she's fine, she's fine.

21          Yet, when she did speak to her mother, all  
22          her mother would say is, They don't care here. They  
23          don't care. They are don't care if I have pain.  
24          They don't care, anything.

25          This proved to be true.

1           The daughter asked for psychological  
2           evaluation for her mother, an assessment of why her  
3           mother was failing to thrive, failing to eat, and  
4           the treatment of her mother's overall depression.

5           They said, We'll do that.

6           But on April 3rd, three weeks after her  
7           mother's admission to the home, the family learned  
8           that her mother wasn't participating in any physical  
9           therapy. That she had lost her ability to walk and  
10          transfer.

11          This is a shock to the family.

12          In addition, she was losing weight, and she  
13          needed two persons to assist her with all forms of  
14          transfer.

15          This is a woman that was fine, until she  
16          fell.

17          Their mother was wasting away and they could  
18          do nothing to stop it.

19          They would have been willing, as we heard  
20          from other people, to move heaven and earth to help  
21          their mother; but the system blocked.

22          They asked, Could we hire someone, to bring  
23          someone in, to make sure that she is connected,  
24          because she can't use the FaceTime, she couldn't get  
25          to us?

1           The family said -- were refused.

2           And then on April 7th, they learned that she  
3 was going to go home. They had got a discharge  
4 notice. They were thrilled.

5           And when the -- when she -- when the daughter  
6 called on April 8th to say, "Well, what's going on?  
7 I'm ready, I'll take my mother home," they learned,  
8 no.

9           There was no social worker on staff. She was  
10 out sick.

11           There was a substitute social worker who  
12 didn't know her mother.

13           There was a substitute nurse that didn't know  
14 her mother.

15           The psychological evaluation never happened  
16 because there was no longer a psychologist on staff.

17           The physical therapy was discontinued.

18           And, all they were going to concentrate now  
19 on was her mother's failure to eat and worsening  
20 bedsores.

21           There was no rehabilitation. There was just  
22 maintenance.

23           And she was -- they were just completely  
24 frustrated.

25           And then they got a call, finally, on

1 April 21st, that their mother was being rushed to  
2 the hospital. Her condition was worsening.

3 She was admitted to New York Presbyterian in  
4 Lower Manhattan for blood work, testing, and  
5 suspected COVID.

6 And on April 24th, she died, not of COVID,  
7 but an untreated urinary tract infection.

8 The reason for Mrs. Ling's death gives  
9 evidence to something we've known all along.

10 As an elder-law attorney, people would ask  
11 me, What nursing home would you recommend, Judy?

12 And, sadly, my answer was always: None.  
13 None.

14 Because I couldn't feel confident that anyone  
15 was really going to give the kind of care that  
16 I would have wanted for my mother.

17 So this story tells you the story of the  
18 home's failure to give, not COVID treatment, but,  
19 primary care, the core reason that they were there.

20 It was the isolation, poor care, lack of  
21 health monitoring, overstressed and inadequate  
22 systems, and a staff at a nursing home that was  
23 overworked, that's what killed Mrs. Ling.

24 And there's just one --

25 SENATOR RIVERA: If you could wrap up, since

1 your time has expired.

2 JUDITH GRIMALDI: Yes.

3 -- the one thing that hurt the family more  
4 than anything, when they collected her belongings,  
5 they found, they were shaken and angered to find,  
6 that the small album they had left her, and all the  
7 mail they had sent her, had never been delivered to  
8 Mrs. Ling. She never saw any of those things, the  
9 things that would have given her the ability to  
10 hope.

11 So we as an elder-law community are ready to  
12 roll up our sleeves and work with you.

13 SENATOR RIVERA: Thank you so much --

14 JUDITH GRIMALDI: We want --

15 SENATOR RIVERA: Thank you so much,  
16 Ms. Grimaldi.

17 JUDITH GRIMALDI: Thank you.

18 SENATOR RIVERA: Assembly leads off  
19 questioning this time.

20 ASSEMBLYMEMBER BRONSON: Yes, I recognize  
21 Chair Gottfried for 5 minutes.

22 ASSEMBLYMEMBER GOTTFRIED: Yeah, at the risk  
23 of jumping the gun on what I assume would be  
24 Assemblymember Ron Kim's question, if Mrs. Ling's  
25 family felt that she was given substandard care, and



1       that somebody ought to be liable for giving her  
2       substandard care, below the standard of care of the  
3       community, thanks to Article 30-d of the Public  
4       Health Law that was enacted as part of this year's  
5       budget, unless they could prove gross negligence or  
6       intentional misconduct, they'd be locked out of  
7       court.

8               JUDITH GRIMALDI:   Right.

9               ASSEMBLYMEMBER GOTTFRIED:   And even if they  
10       wanted to allege that the nursing home had violated  
11       departmental regulations, the nursing home would be  
12       off the hook unless the department could prove  
13       intent misconduct or gross negligence.

14              Do I have that right?

15              And is there something that should be done  
16       about that?

17              JUDITH GRIMALDI:   I -- if it's being directed  
18       to me, yes, you have that right.

19              And, that's one of the efforts that our -- of  
20       the New York State Bar's Funded Task Force.

21              And we're going to be working on -- and maybe  
22       with you, Assemblymember -- legislation to undo some  
23       of that budgetary, I think, mis-oversight of what  
24       was done -- I don't know why it was done.

25              The nursing home representatives who spoke

1       this morning said, they didn't ask for, they didn't  
2       lobby for it.

3               So who is lobbying for it; who made that  
4       happen? And can it be undone?

5               So, we're -- as the state bar we're looking  
6       to work with you and see if we can undo that  
7       legislation -- or, that budgetary regulation.

8               ASSEMBLYMEMBER GOTTFRIED: Yeah.

9               Thank you.

10              That's it for me.

11              SENATOR RIVERA: Thank you so much,  
12       Assemblymember.

13              Questions leading off in Senate by  
14       Senator May, recognized for 5 minutes.

15              SENATOR MAY: Thank you.

16              And it's great to see you both, hi.

17              Thank you for the shout-out for my bill about  
18       the long-term task force. I hope that Harry Bronson  
19       was listening, and can bring that up in his  
20       committee in the Assembly.

21              I also wanted to mention, I have a nursing  
22       home virtual visitation bill that you might take a  
23       look at.

24              But I wanted to use that to jump off as a  
25       question about, family caregivers.

1           You who probably heard the discussion earlier  
2           about the issues about family members, and,  
3           visiting, and some potential designation of a family  
4           caregiver.

5           Do you have thoughts about that, what -- what  
6           we could and should do?

7           BETH FINKEL: I think the whole visitation  
8           thing is very troubling.

9           We now have -- have -- what a health risk  
10          isolation is, and we're already talking about the  
11          most vulnerable. And so isolation for them is  
12          absolutely even more staggering.

13          I think, you know, one of the things, and  
14          you've asked for the long-term-care task force, and,  
15          we're very anxious to get that. But we need a real  
16          in-depth analysis of the whole visitation-isolation  
17          piece.

18          And at the same time, you know, I think we  
19          need an overarching examination of what happened  
20          with the nursing homes this time out. We need  
21          experts from a broad base of disciplines to come  
22          forward and really do some good digging here to  
23          figure out what happened and have a full formal  
24          report on it.

25          SENATOR MAY: Okay.

1           And, for Judith, I actually have a different  
2           question for you.

3           So on the department of health website there  
4           is a list of rights of nursing home residents,  
5           you're probably familiar with.

6           And the ombudsman handbook says, "State and  
7           federal regulations require nursing homes to have  
8           written policies covering the rights of residents."

9           I feel that we've been hearing a lot of cases  
10          where, at least the family members feel the rights  
11          haven't been observed.

12          What more do we need?

13          JUDITH GRIMALDI: I think community  
14          education. And that's one to the efforts that we'll  
15          be working on.

16          If you -- if you go into most nursing homes,  
17          posted, probably by an elevator, in a frame,  
18          indiscreet, is a listing of patient rights.

19          I've seen it, because I look for it every  
20          time I go into a nursing home, and it's there. But  
21          it's not well-publicized or well-demonstrated, and  
22          you have to kind of know about it.

23          The Nursing Home Reform Act goes back to  
24          1987. And it was revised again in the 2000s. But,  
25          it's not talked about.

1           It's not -- and I think you heard from  
2       Richard Mollot this morning. If you just -- he's  
3       got it all worked out. We don't have to reinvent  
4       the wheel. That the long-term-care task force is  
5       really -- that organization has laid things out  
6       very, very well. I mean, we can take a page from  
7       that and maybe build on it.

8           But, there's a lot of groundwork that's been  
9       done, both there and nationally.

10          I'm a member of the National Academy of the  
11       Elder Law Attorneys, and across the nation it's  
12       happening. The groups, Elder Justice and  
13       Empire Justice in New York State has worked on it.

14          There's a lot of resources that are there,  
15       and we can pull on it, and we're prepared to work on  
16       that.

17          We're working on a white paper for review as  
18       well.

19                SENATOR MAY: Thank you so much.

20                SENATOR RIVERA: Great, thank you, Senator.

21                Now to the Assembly.

22                ASSEMBLYMEMBER BRONSON: Thank you.

23                And I'll go next, and I'll be brief.

24                And, yes, Senator May, I heard you loud and  
25       clear. I will help Assemblymember Cruz with her

1 bill, and, hopefully, we can move that forward.

2 But in line with that, Beth, you --

3 Nice seeing you, by the way.

4 BETH FINKEL: You, too.

5 ASSEMBLYMEMBER BRONSON: -- you talked about  
6 reaching out to the governor, and requesting the  
7 task force, one that would be made up of all the  
8 stakeholders -- consumers, long-term-care providers,  
9 home-care agencies, and unions -- and really  
10 coordinate a statewide effort.

11 Did you get a response from the governor's  
12 office at all on that request?

13 BETH FINKEL: We've had conversations, but we  
14 haven't heard anything moving forward.

15 ASSEMBLYMEMBER BRONSON: Okay. Are those  
16 conversations still ongoing?

17 BETH FINKEL: Uhm...

18 Not as of very recent; but, yes.

19 ASSEMBLYMEMBER BRONSON: Okay.

20 So -- I mean, it certainly sounds like,  
21 I mean, that's the whole idea of these hearings, is  
22 to hear from all stakeholders.

23 And that's all you were asking from an  
24 administrative process: let's get the stakeholders  
25 together and develop a good plan.

1           And, yeah, I'll just end with this, Judith,  
2           you ended your last response to Senator May.

3           I know you're all ready, willing, and you're  
4           able, and you have the expertise, you have the  
5           knowledge.

6           We really need to try to encourage the  
7           governor to involve all of the stakeholders in this,  
8           so that, you know, the difficult things that we were  
9           just talking about with the family on the panel  
10          right before you, with caregivers --

11          BETH FINKEL:   Yes.

12          ASSEMBLYMEMBER BRONSON:  -- of young  
13          children.

14          I mean, how do we work this out?  Because  
15          it's not working right now.

16          So I just -- I just wanted to thank each of  
17          you for coming in, and look forward to working with  
18          you as we move forward.

19          BETH FINKEL:  Thanks, Assemblymember.

20          JUDITH GRIMALDI:  Thank you.

21          SENATOR RIVERA:  Thank you.

22          I'll take the next round.  It will be quick,  
23          I just have one question.

24          So if a family member -- because we heard a  
25          lot of stories today about family members who were

1 concerned, because they had lack of information,  
2 they didn't know state of health of their family  
3 member.

4 So if they want to actually have somebody  
5 discharged, it is my understanding the home could  
6 actually prevent that from happening -- correct? --  
7 if they want to have their family member discharged?

8 JUDITH GRIMALDI: Even working on discharges,  
9 it has to be a safe discharge.

10 And the difficulty has been that, with the  
11 lockdown, the agent -- so you have to have a  
12 home-care setting that's safe, and assessments of.

13 So the discharge has been slow because  
14 assessments have to be done by Zoom or phone, have  
15 doctors prepare medical treatment plans, and then  
16 the hiring of home-care workers to -- the families  
17 often can't do the care at home.

18 So it's been slow because the pieces, the  
19 coordination pieces, have been slow. Everybody is  
20 in the same lockdown.

21 So I have not seen homes say, no, you can't  
22 take them home.

23 What they say is: Do you have a safe  
24 discharge?

25 And if the family is not as coordinated or



1       savvy enough to pull a discharge together, then it  
2       doesn't happen, and they're frustrated because they  
3       don't have the tools to do so.

4               SENATOR RIVERA: All right.

5               Thank you both.

6               I think that that is the extent of our  
7       questions for this panel?

8               And, yes, it is.

9               Thank you so much, both of you, for coming.

10              BETH FINKEL: Thank you.

11              JUDITH GRIMALDI: Thank you.

12              SENATOR RIVERA: We've got just a couple more  
13       folks who are hanging around.

14              Panel Number 9 will be:

15              Susan Dooha -- I hope that I'm pronouncing  
16       that name correctly -- executive director,  
17       Center for Independence of the Disabled;

18              Bryan O'Malley, executive director of  
19       CDPAANYS. Whoa, a lot of acronym there;

20              Faigie Horowitz -- again, I hope that  
21       I pronounced that correctly -- director of  
22       marketing and communication for the Caring  
23       Professionals, Inc.;

24              And, Claire Altman, president of  
25       Altman Strategies, LLC.

1                   And, Monsieur Gottfried.

2                   I can't hear you.

3                   ASSEMBLYMEMBER GOTTFRIED: Hello?

4                   SENATOR RIVERA: There you go, now you're  
5                   good.

6                   ASSEMBLYMEMBER GOTTFRIED: Do all of you  
7                   swear or affirm that the testimony you're about to  
8                   give is true?

9                   SUSAN DOOHA: I affirm.

10                  BRYAN O'MALLEY: I affirm.

11                  FAIGIE HOROWITZ: I affirm.

12                  CLAIRE ALTMAN: I affirm.

13                  ASSEMBLYMEMBER GOTTFRIED: Okay.

14                  SENATOR RIVERA: All right. Let's start with  
15                  Susan Dooha, please.

16                  SUSAN DOOHA: First, thank you so much for  
17                  allowing us to appear before you.

18                  I want to thank the nursing facility staff  
19                  who appeared before.

20                  I want to thank the family members of  
21                  residents of nursing facilities.

22                  And, of course, Richard Mollot and  
23                  Beth Finkel, what can I say?

24                  Terrific work.

25                  I want to speak to you about our work.

1           About half of our 70-plus center staff assist  
2 individuals who want to secure care at home and in  
3 the community, or, another more integrated setting,  
4 so that they can avoid nursing-facility placement.

5           I would agree with Judith, the only safe  
6 nursing facility, actually, is the one that you can  
7 be at all the time.

8           These staff also help people leave nursing  
9 facilities for their homes in the community, and our  
10 staff protect the rights of nursing-facility  
11 residents and their families.

12           Our help lines have been open throughout the  
13 pandemic, and have fielded many desperate calls from  
14 nursing home residents and their families, from  
15 staff of nursing facilities. And we've been  
16 managing complaints, appeals, desperate cries, to  
17 exit facilities.

18           Residents have called CIDNY, desperate to get  
19 out.

20           Often our staff calls to facilities about  
21 them are not returned for days at a time.

22           Our open-doors program helps individuals who  
23 want to leave facilities.

24           And we've been able to get 27 individuals out  
25 of nursing facilities in New York City, the

1 epicenter of the pandemic in New York State, and one  
2 of the epicenters across the nation.

3           However, 136 people that my staff were  
4 working with, died before they could exit the  
5 facility, and they were in the process of  
6 transition. And we mourn them, and our staff are  
7 grieving for them, and their families.

8           I could speak with you about any number of  
9 issues that have been covered today, and I think add  
10 important issues to what you've already heard.

11           I would be remiss if I didn't mention and  
12 speak briefly to the issue of racial and ethnic  
13 disparities because nursing facilities are  
14 especially dangerous for people who are Black or  
15 Brown.

16           "The New York Times" observed that facilities  
17 primarily serving Blacks and -- Black and Latinx  
18 residents had cases of COVID at twice the rate of  
19 facilities serving White incidents.

20           We've also observed this.

21           And we want to know:

22           Where is the focus on resources -- of  
23 resources on eradicating disparities and treatment  
24 and care in nursing facilities?

25           Where is the public awareness of what's

1       happening in these facilities?

2               Where's the racial ethnic demographic data?

3               Where is the disability -- where's the  
4       disparities prevention and eradication task force  
5       for people in congregate facilities?

6               And, does emergency planning being done by  
7       nursing facilities include a focus on how they will  
8       address populations at much higher risk?

9               I could address all kinds of other issues.

10              I want to touch briefly on involuntary  
11      discharges, because no one has mentioned that.

12              It is important that you know that  
13      individuals are being discharged from nursing  
14      facilities to very unsafe places; to homeless  
15      shelters in New York City, which are not even  
16      equipped as nursing facilities, to do infection  
17      control, to provide PPE, and to have other  
18      prerequisites of safety.

19              We believe there should be a moratorium on  
20      such discharges at this time.

21              You've already heard enough about many of the  
22      other issues, but it's imperative that I speak with  
23      you about the egregious and chronic underfunding of  
24      the long-term-care ombudsman program.

25              The governor called the long-term-care

1       ombudsman program "a watchdog." And I want you to  
2       hear about the condition of "the watchdog."

3               We've worked daily to provide assistance, and  
4       to be the eyes and ears of family members, and the  
5       eyes and ears of the state of the department of  
6       health, and provide a resource for families.

7               During the recent period, we have  
8       participated in hearings, and appeals. We've  
9       addressed 350 complaints and requests for  
10      information. And, much more.

11              We have a staff of five certified ombudsmen  
12      who are able to go into facilities, and they are  
13      serving more than 50,000 residents of nursing  
14      facilities, as well as residents of other  
15      facilities.

16              And --

17              SENATOR RIVERA: Ms. Dooha, if you could  
18      actually -- if you could wrap up, since your time  
19      has expired.

20              SUSAN DOOHA: They are in no way adequately  
21      able -- there's one ombuds for every 8,650 nursing  
22      home residents.

23              The standard is one for 2,000.

24              We'd ask for --

25              SENATOR RIVERA: Thank you so much, Ms. --

1           SUSAN DOOHA: -- \$3 million for the LICUP  
2           program, and we hope you hear our plea.

3           SENATOR RIVERA: -- thank you so much,  
4           Ms. Dooha.

5           SUSAN DOOHA: Thank you.

6           SENATOR RIVERA: Mr. Bryan O'Malley.

7           BRYAN O'MALLEY: Good evening.

8           Thank you for having me.

9           These hearings are critical to victims of  
10          this crisis, and their families deserve justice.

11          But I want to be clear:

12          The problems that we're talking about aren't  
13          new, and they can't be fixed.

14          To make sure this never happens again, we  
15          have to use this tragedy as an opportunity to  
16          reimagine our long-term-care system, and focus on  
17          improving services like home care and  
18          consumer-directed personal-assistance that exists in  
19          our communities.

20          These services not only prevent the rapid  
21          spread of pandemics, they provide better care and  
22          address health disparities that plague our  
23          health-care system.

24          What I'm going say isn't without precedent.

25          In 1972, when the country learned of the

1 horrors at Willowbrook, it led to New York becoming  
2 synonymous with the word "deinstitutionalization."

3 And as an epileptic, even I have benefited  
4 from this movement.

5 Much of the last century would have seen me  
6 at a county for epileptics in Sonyea, New York,  
7 instead of before you here today.

8 This is important because, if we're lucky  
9 enough to reach old age, we will need assistance.

10 And while the ability to age in place is a  
11 civil right, it's contingent on being able to  
12 receive the services you need. But nobody wants to  
13 go to a nursing home.

14 And I guarantee you, folks like  
15 Michael Bloomberg never will.

16 The research is clear: Nursing homes are for  
17 those without resources, and primarily those on  
18 Medicaid, even though a nursing home costs over  
19 four times as much as the average person in  
20 consumer-directed.

21 Thus, it should also not be a surprise that  
22 nursing homes with the higher numbers of Black and  
23 Brown residents were disproportionately impacted by  
24 this virus.

25 The wealth and resource gap, that means Black



1 and Brown folks disproportionately live in poverty,  
2 also makes them more likely to go to a nursing home.  
3 It means they're more likely to be in worse health,  
4 have less resources when they get to one, meaning,  
5 they're more likely to die.

6 Meanwhile, CDPA addresses many of the health  
7 disparities that much of the health-care system  
8 struggles with.

9 When the person receiving services is hiring,  
10 they can guarantee their staff will speak their  
11 language. They don't have to worry about whether or  
12 not the staff will understand or respect their  
13 cultural needs. And concerns about institutional  
14 racism in the health-care systems, such as that  
15 which stems from Tuskegee, Henrietta Lacks,  
16 eugenics, and countless others, are mitigated when  
17 people actually control their own services.

18 As I've said, the problems are -- of COVID  
19 aren't new.

20 Nursing homes, like all congregate settings,  
21 inherently pose a safety issue for residents. And  
22 this isn't the first instance of a contagious  
23 disease disproportionately impacting these  
24 institutions.

25 The flu, Legionnaires' disease, and even the

1 common cold, ravage nursing homes every year.

2 Natural disasters, like "Superstorm Sandy,"  
3 also always come with stories of horror about their  
4 impact on these populations.

5 But an examination of policies shows a bias  
6 towards institutional care despite community-based  
7 care's multiple advantages.

8 This year, the State enacted a look-back  
9 period for home care and CDPA before they can even  
10 receive services, a process that often takes  
11 six months or more, and which in a nursing home is  
12 provided while the look-back is taking place.

13 And I'll acknowledge Senator Rivera and  
14 Assemblymember Gottfried's legislation that would  
15 fix this bill.

16 We do not know the impact of COVID on those  
17 in CDPA or home care because the State didn't  
18 collect the data. But we know several realities,  
19 not the least of which is that, while one nursing  
20 homeworker can infect hundreds in an institution, in  
21 CDPA, that person typically only works with one,  
22 maybe two consumers, and immediately limiting any  
23 potential spread.

24 In a survey CDPA conducted, every region of  
25 the state saw between 70 and 90 percent of

1 respondents acknowledge they were more likely to die  
2 if they caught COVID, and between 50 and 90 percent  
3 worry that they would become infected.

4 But what most feared, even more than the  
5 virus itself, was institutionalization.

6 On top of this, consumers who have  
7 historically received gloves, rubbing alcohol, and  
8 other critical PPE and medical supplies from  
9 Medicaid, were suddenly unable to do so.

10 When they could, they were forced to buy them  
11 themselves at dramatically marked-up prices.

12 Despite these problems, it's clear that home  
13 care, and in particular, CDPA, was substantially  
14 less dangerous than an institution.

15 But that didn't stop the governor from saying  
16 to Chuck Todd on June 29th's "Meet the Press," in  
17 the face of all evidence to the contrary, that: You  
18 can argue that a senior citizen in a nursing home  
19 are safer than a senior citizen in a home.

20 COVID-19 provides us with a unique moment to  
21 analyze our policies, the impact they have, and what  
22 we can do to improve them into the future.

23 I'm reminded of an altruism about smoking.

24 Public health experts noted, that while the  
25 health-care costs for smokers are substantially

1 higher for a brief period of time, they actually  
2 saved the system money because they died decades  
3 before their non-smoking counterparts.

4 If we don't use COVID-19 as an opportunity to  
5 change our policies around nursing homes and  
6 long-term care, we're, in essence, saying that,  
7 unlike smoking, we're going to continue to promote  
8 institutionalization [indiscernible  
9 cross-talking] --

10 SENATOR RIVERA: Thank you so much  
11 Mr. O'Malley. If you could wrap up, please.

12 BRYAN O'MALLEY: -- people die sooner.

13 SENATOR RIVERA: Okay. Thank you so much,  
14 Mr. O'Malley.

15 Next -- next, Faigie Horowitz.

16 I hope that I pronounced your name correctly.  
17 I'm sorry if I did not.

18 FAIGIE HOROWITZ: You did fine, Chairman.

19 My name is Faigie Horowitz. I work for  
20 Caring Professionals, a licensed home-care agency  
21 and fiscal intermediary for CDPA, based in New York  
22 City, which serves over 5,000 individuals.

23 I come out of a management career in social  
24 services.

25 I'm an executive board member of an OPWDD

1 agency for over 20 years, and I'm a founder of a  
2 shelter for runaway and homeless youth in Brooklyn.

3 I serve on the parks committee in the  
4 Long Island village where I reside.

5 Today I am testifying out of a sense of moral  
6 obligation.

7 My 89-year-old father died of COVID-19 on  
8 April 7th. He succumbed peacefully in his own bed,  
9 without requiring outside caregiving, and was active  
10 until his last day. It was a dignified passing.

11 In my work, we provide caregivers to those  
12 much less healthy, less active, and much more  
13 vulnerable than my late-father.

14 During the early months of the pandemic, our  
15 coordinators heard from frightened, frail patients  
16 and consumers who realized they were at high risk,  
17 and must stay quarantined to avoid life-threatening  
18 exposure.

19 It is a job of our coordinators to reassure  
20 patients and family members that our home-health  
21 aides would use PPE to protect them, and would  
22 continue their caregiving jobs.

23 And continue they did, leaving family members  
24 at home, and traveling on public transportation, to  
25 care for their charges, despite the fact that their

1 jobs paid just above minimum wage, and could be  
2 life-threatening. They worked, nonetheless, often  
3 doing overtime without pay.

4 In Spanish, Russian, Cantonese, Creolian,  
5 Mandarin, our staff heard fear of removal to a  
6 nursing home if there would be no available  
7 caregivers.

8 "I will die there," a woman in Sheepshead Bay  
9 told Marina Kay. "And if I am destined to die now,  
10 I would rather die in my own apartment."

11 The fear is also true of people using CDPA,  
12 as documented by Bryan's organization, the Consumer  
13 Directed Personal Assistance Association of New York  
14 State, in a survey conducted during COVID.

15 It is abundantly clear, from numerous  
16 studies, that aging in place is safer and healthier  
17 than institutionalization, and is the preferred  
18 choice of seniors.

19 However, the history of long-term care for  
20 people with disabilities and seniors in this state  
21 has gone from pioneering choice and expansion of  
22 access, to restriction of choice and barriers to  
23 enrollment in Medicaid during the past few months.

24 Additionally, a 25 percent cut to wages and  
25 benefits for home-care workers was put in place, as

1 recommended by the Medicaid Redesign Team II earlier  
2 this year.

3 This was done despite a study showing that  
4 low wages were one of the cheap obstacles to both  
5 recruitment and retention of New York home-care  
6 workers.

7 Currently, I am seeing advertisements warning  
8 people to be aware of the looming changes in  
9 Medicaid rules beginning October 1st.

10 I'm hearing from families in the communities  
11 who are afraid their seniors might become seriously  
12 debilitated very quickly from COVID, and will need  
13 assistance that their current moderate income cannot  
14 cover.

15 I can urge them to hurry up and put their  
16 affairs in order, and apply to Medicaid at any time.  
17 And I do.

18 However, I must warn them, that when they  
19 will need long-term care, the current contradictory  
20 and vague regulations will seek to keep them from  
21 accessing it.

22 Furthermore, I will tell them that the MLTCs  
23 are instructed to promote congregate care, and take  
24 away home care, under the new regulations if the  
25 hours become too numerous.

1           Frankly, I'm in the position of  
2           substantiating their fears of institutionalization.

3           The rest of the country and the federal  
4           government have learned the importance of home care  
5           during corona, and are implementing policies to  
6           support this healthy, safe choice more broadly.

7           In New York State, however, the situation is  
8           the reverse. The ethically-responsible approach is  
9           continuing to be undermined, despite the current  
10          lessons of corona deaths in congregate care.

11          Beyond the moral obligations to the  
12          vulnerable will be good for New York State's  
13          economic recovery to invest now in home care and its  
14          thousands of jobs.

15          It's up to our lawmakers to push back against  
16          current policies, wage cutbacks, and restrictions,  
17          and do the right thing to reform home care here.

18          We already have the solution to the problem  
19          of unsafe congregate care facilities: CDPA, which  
20          has family members take care of family members at  
21          home at a lower cost than traditional home care.

22          It's the safer and socially-responsible  
23          option already in place.

24          So, let's expand it.

25          SENATOR RIVERA: Ms. Horowitz, did you -- was



1       that the end?

2               FAIGIE HOROWITZ:   The end.

3               That was my call to action.

4               SENATOR RIVERA:   Thank you so much,  
5       Ms. Horowitz.   Perfect timing.

6               Next, Claire Altman, please.

7               CLAIRE ALTMAN:   Thank you, Mr. Chairman,  
8       Chairlady, and Chairmen, and members of the Senate  
9       and the Assembly.

10              Thank you for this opportunity to share some  
11       ideas myself and my colleagues have with regard to  
12       improving policies and practices in long-term care.

13              As the president of Altman Strategies, I do a  
14       lot of consulting around health care, low-income  
15       housing, and community development.

16              The ideas here today have been developed by  
17       myself; Dr. David Katz, who is a well-known  
18       physician and public-health advocate, president  
19       of True Health Initiative, and the founding  
20       director of prevention research center at  
21       Yale University-Griffin Hospital; and, Jack Gold, a  
22       real estate colleague who has done a lot of work in  
23       developing long-term-care facilities.

24              As a lawyer by training, I've spent the last  
25       35 years developing housing for low-income

1 individuals and families, and for persons with  
2 special needs, primarily in New York City.

3 In my portfolio of over 3500 units are  
4 two skilled nursing facilities for individuals and  
5 families with HIV and AIDS, which I developed in the  
6 1990s, and for one of which I served as the  
7 chairman of the board for 17 years.

8 We learned a great deal about infection  
9 control back then, with some of the lessons learned  
10 applicable to the current pandemic, particularly,  
11 the high risk of spreading infectious diseases  
12 through central air-handling systems.

13 We believed from the very beginning that the  
14 only way to really protect residents in nursing  
15 homes from this pandemic is what we have termed a  
16 "closed-loop isolation system."

17 Now, six months into this epidemic, our  
18 experience has borne out this belief.

19 For example, one 40-bed skilled nursing  
20 facility in Upper Manhattan has had no COVID-19  
21 deaths.

22 What differentiates this facility from many  
23 others are several key factors.

24 Almost all of the rooms are individual rooms;  
25 There is no central air-conditioning system.

1       They use room air conditioners;

2               Many staff only work at this facility;

3               Food is prepared on-site;

4               And given the size, there are a limited  
5       number of outside vendors and therapists coming into  
6       the facility.

7               In a closed-loop isolation system, as we are  
8       proposing, residential health-care facility  
9       management would set up an isolation arrangement,  
10       creating what we call a "clean facility."

11               This would begin with what is done now, at  
12       least weekly testing of staff and residents,  
13       hopefully, with immediate results.

14               That would be the first step in ensuring that  
15       COVID-19-free residents are protected by closing off  
16       all sources of virus to them.

17               Other features to this approach would  
18       include:

19               Residents only going to clean medical  
20       facilities for services such as dialysis and cancer  
21       care;

22               Only traveling in vehicles that are clean  
23       vehicles;

24               Receiving hospital care only in clean  
25       hospitals;

1           Having fewer/no visitors, at least for a  
2           time.

3           In addition, jurisdictions could create one  
4           or more temporary nursing or assisted-living  
5           facilities so that people who are about to enter a  
6           nursing home would be entering there, and be there  
7           for 14 to 30 days, to ensure that they are  
8           COVID-free.

9           We recognize that there are advocates for an  
10          approach referred to, and it's been talked about,  
11          called "cohorting."

12          That is the approach supported in the Senate  
13          and House bills in Congress, with -- that includes a  
14          \$20 billion appropriation for nursing home relief  
15          measures.

16          The danger is, that COVID-19 would still be  
17          present in the building when you just set aside one  
18          wing for COVID people and one not.

19          Simply put, COVID-19 has proven from the  
20          beginning that it is extremely cunning, and has  
21          outsmarted every attempt to eliminate it once it's  
22          in the building.

23          We believe the only way to prevent COVID-19  
24          from spreading is to keep it out of the facility  
25          altogether.

1           Now that scientific results are emerging,  
2           suggesting that COVID-19 can be spread through  
3           airborne transmission, there is another compelling  
4           reason to create closed-loop isolation systems, with  
5           separate facilities for non-COVID-positive residents  
6           and for COVID-positive residents.

7           As long as COVID-negative and COVID-positive  
8           residents share the same air-handling system, the  
9           virus is likely to spread.

10          We recognize that this closed-loop isolation  
11          system would create additional costs in the short  
12          run, but we believe the longer-term benefits more  
13          than outweigh these short-term costs.

14          Lives would be saved.

15          You all know the desperate statistics on  
16          saving lives.

17          Major reduction in hospital costs would be  
18          achieved as health-care providers would spend less  
19          time treating COVID patients.

20          This would permit safer opening of the  
21          rest of our health-care system, and, we would,  
22          importantly, protect health-care workers.

23          I realize that my time is up.

24          SENATOR RIVERA: Actually, just wrap up,  
25          please.

1           CLAIRE ALTMAN: Sure.

2           I just want to close with saying:

3           That we should also pay attention to home  
4           care, as the speaker before me talked about, because  
5           the next wave is going to be dealing with that.

6           And a similar situation could be dealt with  
7           home-care residents.

8           Thank you for your time and the opportunity  
9           to testify.

10          SENATOR RIVERA: Thank you so much.

11          Leading off the questions will be the Senate,  
12          Senator May, recognized for 5 minutes.

13          SENATOR MAY: Thank you.

14          And thank you all for your testimony.

15          I wanted to give Susan a chance, although  
16          Faigie also talked about this, about the -- I know  
17          you wrote a letter about the managed long-term-care  
18          changes, and how that was stranding people in  
19          nursing homes who no longer had access to home care.

20          Can you talk a little bit about that problem,  
21          and what you see as the solutions, what we should be  
22          doing about it?

23          SUSAN DOOHA: There are a number of things  
24          that have resulted in people being stranded in  
25          nursing facilities.

1           One, some of them I've already described to  
2       you.

3           But it's some of the limitations on care in  
4       the community, and the barriers to care in the  
5       community, that also have us very worried.

6           We would want to see resources restored for  
7       the consumer-directed personal-assistance program.

8           Managed long-term-care changes have resulted  
9       in a lot of cuts of hours of home care for  
10      individuals.

11          And this month, over 20,000 individual  
12      residents of nursing facilities are being  
13      dis-enrolled from their managed long-term-care plans  
14      due to a determination that they are now permanently  
15      placed.

16          Their -- this has reduced their ability to  
17      get out. It has resulted in problems that will make  
18      it much more difficult to change their coding, to  
19      get their income re-established.

20          All kinds of things are about to be much more  
21      difficult for many.

22          And we would call for a moratorium on the  
23      rollout of this, at least until the pandemic is  
24      over.

25          We think that it's imperative that additional

1 changes that can lock people into nursing facilities  
2 not be made at this time.

3 SENATOR MAY: Okay.

4 Thank you.

5 And my other question is for anyone who wants  
6 to field it, but it's about just the home-care  
7 field.

8 So I have spent a huge amount of time  
9 advocating for better pay and various ways to  
10 attract people into doing home care as the workforce  
11 shortage is growing more and more acute.

12 But it seems like now there is additional  
13 demands for PPE and other protections and, no doubt,  
14 difficulties with people who were maybe going into  
15 two different homes, and they can't do that anymore.

16 What are the biggest barriers to the actual  
17 logistics of home care right now?

18 SUSAN DOOHA: Lack of PPE is a tremendous  
19 problem.

20 We are seeing individuals living in the  
21 community who are terrified to let in their  
22 home-care workers because they are at higher risk.

23 Like our staff, like residents of facilities,  
24 they're at much higher risk. And they can't control  
25 the environment that home-care workers are working



1 in; or how many people that they're seeing; or how  
2 much PPE do they have, and whether they have enough  
3 PPE to use unique sets of PPE for every setting.

4 I have yet to see that home-care workers or  
5 long-term-care ombudsmen workers have been  
6 designated as "essential workers" in the health  
7 system, and have had testing allocated, the adequacy  
8 of PPE assessed, all of the things that we believe  
9 need to happen.

10 So these are really terrible problems that  
11 have yet to be tackled.

12 Nonetheless, people would prefer to take  
13 their chances with care at home in the community  
14 than they would be to be locked into nursing  
15 facilities right now.

16 SENATOR MAY: Okay.

17 I'm going to break in and let somebody else  
18 take a shot at this while we have --

19 BRYAN O'MALLEY: I would just agree with  
20 everything Susan said, and our survey bore out a lot  
21 of that, particularly with access to PPE.

22 But I would also highlight that the staffing  
23 shortages you talked about, Senator, have just been  
24 exacerbated, in many instances, by COVID.

25 Many people have gotten infected with the

1 disease.

2 Many workers have had to quit, to take care  
3 of children who are out of school.

4 Many workers just are themselves compromised,  
5 and scared to go out in public, and are quarantining  
6 themselves.

7 So, realistically, staffing has gotten  
8 shorter. And plans, in many instances, are using,  
9 you know, the higher unemployment rates to say, oh,  
10 we'll cut your hours because, while your brother is  
11 now home, and he can just provide the services  
12 uncompensated.

13 So, you know, we're seeing a range of issues  
14 around staffing and informal supports -- or,  
15 informal [indiscernible].

16 SENATOR MAY: Thank you.

17 FAIGIE HOROWITZ: I'd like to jump in with --

18

19 SENATOR RIVERA: Actually, we have to move on  
20 to the next person.

21 Assembly, please.

22 ASSEMBLYMEMBER BRONSON: Next up we have  
23 Chair McDonald for 5 minutes.

24 ASSEMBLYMAN McDONALD: Thank you, Harry.

25 And thanks to all those who provided

1 testimony this evening.

2 I'm going to be brief.

3 Claire, you know, when I read your report, it  
4 reminded us that it's the environment that we need  
5 to be focused.

6 And the closed-loop system does sound like a  
7 stretch in some aspects. But, on the other hand,  
8 you know what? With everything else that's been  
9 failing, we've got to look for solutions.

10 I have to ask this naive question, you know,  
11 because I think almost every nursing home I know of  
12 relies on the central-air system.

13 The cost would have to be kind of expensive  
14 to retrofit, I would think.

15 And then the other question is: What are the  
16 ongoing costs compared to the central-air system,  
17 with just having room air conditioners?

18 CLAIR ALTMAN: Well, I think we helped build  
19 that nursing home 25 years ago.

20 But, today, there's more sophisticated  
21 technology.

22 And I'm not a builder, but I oversee a lot of  
23 buildings and developments, PTAC systems, which is a  
24 unit you see often in motels, which is a combined  
25 heating and air-conditioning system controlled

1 individually. And it doesn't circulate the air  
2 throughout the building. The air circulates in that  
3 room, and with an outside source.

4 So those systems are not actually that  
5 expensive, and -- to buy. And they're, frankly, not  
6 that expensive to operate either. We've made a lot  
7 of strides.

8 Now, it would mean not using a central system  
9 if it's there.

10 And, you know, it depends on -- I'm not  
11 saying it could be done overnight, but I'm saying we  
12 need to look forward to something.

13 I think we ought to have in place a plan, as  
14 many people have said today, so that if we do have a  
15 second wave, or there's another pandemic, that we  
16 have a more serious system, if you would, that we  
17 could put in place, like they're trying to do with  
18 floods.

19 So it's on the shelf; it's a policy, we could  
20 implement it right away.

21 So, it's expensive. But, on the other hand,  
22 we've lost at least 6400 lives, maybe more, as you  
23 all have talked about today, and untold grief for  
24 families and loved ones.

25 So that I think, you know, it's -- and in

1 most buildings, after 20 years, they do a lot of  
2 updating anyway.

3 So --

4 ASSEMBLYMAN McDONALD: What about energy  
5 consumption, or utilization?

6 CLAIRE ALTMAN: It's not that -- I actually  
7 know, in the residential setting, that people were  
8 worried, when they moved into a building with PTAC  
9 systems, that their energy costs would go up, their  
10 Con Ed bill would go through the roof.

11 And that hasn't been the case.

12 But you would need engineers to do an  
13 assessment.

14 I'm not an engineer, so I can't give you a  
15 full answer.

16 But I think it's something that is worth  
17 looking at. We need to do some planning.

18 ASSEMBLYMAN McDONALD: Okay. Thank you.

19 That's it.

20 Thank you, Harry.

21 SENATOR RIVERA: Thank you so much.

22 We are now -- will move to Senator Skoufis,  
23 recognized for 5 minutes.

24 SENATOR SKOUFIS: Thank you, Mr. Chairman.

25 My question is actually for Bryan O'Malley,

1 if I can direct one to you.

2 You mentioned that the State is not tracking  
3 infection rates among the consumer-directed program.

4 But can you give a sense of, even if it's  
5 anecdotally, what -- you know, have infections been  
6 pervasive?

7 Obviously, you know, you noted, and it stands  
8 to reason, you know, these are primarily one-on-one  
9 interactions versus, you know, hundreds of people  
10 potentially being in a facility, in a nursing home,  
11 and so the environment is very different.

12 But can you speak to what has been happening  
13 these past 5 months vis-a-vis COVID in the  
14 consumer-directed program?

15 And, similarly, have you all had sufficient  
16 PPE?

17 Speak to some of these, you know, major  
18 themes and issues that we've heard a lot about today  
19 in the hearing, please.

20 BRYAN O'MALLEY: Definitely.

21 Thank you.

22 You know, from what we can gather, certainly,  
23 you know, people have been impacted by COVID.

24 The workers oftentimes, you know, in the  
25 city, riding the subway, taking taxies, using public

1 transportation, to get to and from their cases.

2 We hear stories of workers changing, two,  
3 three, four times a day, to, you know, the same  
4 stories that you hear from nurses in hospitals, and  
5 the like.

6 But, by and large, you know, a lot of the  
7 worst cases seemed to come at the beginning.

8 Many consumers actually moved in with -- or,  
9 many PAs actually moved in with the consumers.

10 And, you know, overall, anecdotally, we have  
11 begun to hear some information from some plans that,  
12 in fact, their members with CDPA have faired, by  
13 far, the best throughout this COVID pandemic, as a  
14 group.

15 You know, that said, we are experiencing  
16 problems with PPE, just as everyone is.

17 But, consumers, FIs, the agencies, don't  
18 get reimbursement. They have never had to provide  
19 any of the PPE. They don't have channels to  
20 actually [indiscernible] the supplies, in many  
21 instances.

22 And consumers relied on Medicaid, and  
23 Medicaid stopped sending it; they stopped making it  
24 available.

25 So, you know, that was really something that

1 became very problematic for people, was just access  
2 to things like gloves, rubbing alcohol, and other  
3 materials; PPE and materials that just protect  
4 general safety in the home.

5           You know, we're dealing with people that are  
6 getting shots, getting catheters, and the like, and  
7 these supplies are critical.

8           SENATOR SKOUFIS: What about cleaning homes?

9           Did folks have the proper supplies to make  
10 sure that, you know, whether it's spray, or whatever  
11 it is, that's available in nursing home facilities,  
12 hospitals, to cleanse, you know, where they're  
13 working?

14           Did they have that sort of equipment?

15           BRYAN O'MALLEY: Right, and we asked that as  
16 well in our survey, and, you know, access to any  
17 kind of cleaning materials: disinfectants, bleach,  
18 hand sanitizer.

19           People were buying it at grocery stores, just  
20 like you and me. And there was none to be had, and  
21 there was no way for them to get it.

22           So, you know, realistically, people were  
23 doing the best they could.

24           SENATOR SKOUFIS: Got it.

25           So we have to do a lot better, is the long



1 story short.

2 Got it.

3 Thank you.

4 BRYAN O'MALLEY: Thank you.

5 SENATOR RIVERA: All right.

6 Thank you, Senator, and thank you, Bryan.

7 Back to the Assembly.

8 ASSEMBLYMEMBER BRONSON: Next we have

9 Chair Gottfried for 5 minutes.

10 ASSEMBLYMEMBER GOTTFRIED: Yes, thank you.

11 For Bryan O'Malley:

12 You just said -- I think you just said that  
13 Medicaid stopped making it available, and I think  
14 you were referring to things like gloves?

15 Could you clarify that?

16 BRYAN O'MALLEY: What we heard was that,  
17 people who had traditionally purchased gloves, and  
18 Medicaid would allot one box of gloves per month,  
19 could no longer get gloves.

20 And, you know, I think part of the problem  
21 was, there was dramatically increased use.

22 But part of the problem was, there was a  
23 shortage of gloves, and people could not find gloves  
24 to purchase.

25 So while Medicaid used to allot that, there

1       were no gloves to be had.

2               You know, gloves were -- all PPE was being  
3       diverted to hospitals.

4               At one point I tried to go on and just do a  
5       bulk order for our member [indiscernible], so they  
6       could send things out to consumers.

7               And, if you weren't a hospital, you could not  
8       buy PPE. You could not buy gloves, masks, any type  
9       of protective equipment.

10              ASSEMBLYMEMBER GOTTFRIED: But apart from  
11       that, and -- or, before that, if you were a Medicaid  
12       recipient and needed to buy gloves, et cetera,  
13       Medicaid would pay for that?

14              BRYAN O'MALLEY: Medicaid would provide one  
15       box of gloves per month was always my understanding.

16              ASSEMBLYMEMBER GOTTFRIED: Uh-huh.

17              Okay.

18              Just, in general, I want to thank those of  
19       you who talked about the CDPA program.

20              I think you've helped all of us have a better  
21       understanding of that program, and of a lot of its  
22       value, perhaps, beyond some of what we've thought  
23       about it.

24              I mean, frankly, I think the whole CDPA  
25       program has, and I'm happy to say this, really

1 blossomed into a lot more than we thought it might  
2 be back in the late '90s when it was created.

3 BRYAN O'MALLEY: Well, thank you for creating  
4 it.

5 ASSEMBLYMEMBER GOTTFRIED: Okay.  
6 Thanks.

7 SENATOR RIVERA: Thank you, Assemblymember.  
8 Now we're going to go back to the Senate.  
9 Recognize Senator O'Mara for 5 minutes.

10 SENATOR O'MARA: Thank you, Chairman.  
11 And thank you to all of our speakers this  
12 evening.

13 Now, I can smell my dinner coming from the  
14 kitchen, so I think we're near the end here.

15 I thank everybody for hanging in there.

16 I have one question for Claire Altman.

17 In your remarks, you mentioned the usefulness  
18 of -- when we have, I guess what we call, "rapid  
19 tests," or, tests with a quick response.

20 Do you have a sense of where we are in that  
21 prog -- in progress on that now?

22 CLAIRE ALTMAN: I don't have any better  
23 information than our -- my fellow witnesses today.

24 I'm in touch with some nursing homes.

25 I think it is challenging to get the results

1 back quickly.

2 I think it's very -- it goes up and down.

3 I also think that, the last I understood, and  
4 I hope that I'm wrong about this, is that nursing  
5 home staff are to bill their health insurance for  
6 the -- this -- the COVID test.

7 And many nursing -- and many health insurers  
8 are saying these are not medically necessary.

9 And so there's a conundrum there, that's the  
10 cost.

11 So I think, in addition to the cost and  
12 budgetary problems that a lot of nursing home  
13 operators have testified about today, the cost of  
14 doing regular testing is mounting up, and I'm not  
15 sure they're going to be reimbursed.

16 SENATOR O'MARA: Yes, it is. Yeah.

17 Well, thank you.

18 I want to thank you all again.

19 Just a couple closing remarks since this is  
20 the last panel.

21 SENATOR RIVERA: No, sir, it is not.

22 SENATOR O'MARA: It's not the last panel?

23 We have one more?

24 SENATOR RIVERA: We have one more panel, sir,  
25 so your dinner is going to have to wait.

1           SENATOR O'MARA: Then I'll have to -- then  
2 I'll have to wait.

3           SENATOR RIVERA: Bring it beside you, bro.  
4 Bring it beside you.

5           SENATOR O'MARA: Thank you, Chairman.  
6 Yeah.

7           SENATOR RIVERA: You done, though?

8           SENATOR O'MARA: Yes, I am.  
9 Thank you.

10          SENATOR RIVERA: All righty?  
11 Assembly.

12          ASSEMBLYMEMBER BRONSON: I do not see any  
13 other speakers from the Assembly.

14          SENATOR RIVERA: Okay.

15                Then we've got Senator Serino to --  
16 recognized for 5 minutes.

17          SENATOR SERINO: Thank you again,  
18 Mr. Chairman.

19                And thank you everybody for your testimony  
20 today.

21                I've heard the same stories about the gloves  
22 and alcohol pads, shortages.

23                And it's clear that this particular program  
24 was really an afterthought throughout this, and we  
25 have to do better, going forward.

1           But have you -- Bryan, with regard to you,  
2           have you ever reached out to the governor or the  
3           department of health to ask why they weren't  
4           collecting data on how many individuals receiving  
5           CDPA became infected with COVID-19?

6           Did you ever reach out to the governor's  
7           office or department of health?

8           BRYAN O'MALLEY: We did not reach out on  
9           that, largely because, you know, when factoring  
10          [indiscernible] you can capture, you can acquire  
11          COVID any number of ways; from family, from, you  
12          know, a worker, from any number of people.

13          So I don't -- you know, the value, and the  
14          difficulty in just obtaining that would have been  
15          extremely hard.

16          SENATOR SERINO: I was just thinking that, if  
17          you had a number, it might have been a little easier  
18          to be able to have the PPE, the amount that you  
19          might need. Right?

20          And then I also want to say, thank you for  
21          bringing up the testing-reimbursement issue.

22          So, thank you.

23          I'm good.

24          Thank you, Chairman.

25          SENATOR RIVERA: Thank you, Senator.

1 I'm just going to ask a quick question.

2 Ms. Dooha, at the beginning, you -- during  
3 your testimony you talked about some of the racial  
4 disparities in nursing homes that you're concerned  
5 about, as well as inappropriate discharges.

6 And these were areas I would have liked to  
7 bring up with the commissioner, but I had a limited  
8 time.

9 Could you tell us a little bit about the  
10 concern that you have about these two areas so they  
11 can be on the record, please?

12 SUSAN DOOHA: Absolutely.

13 We are seeing, within our staff, our board  
14 members of our community, a much higher rate of  
15 infection among the people who are Black and Latino.  
16 We're -- we're -- we've got this replicated in  
17 facilities.

18 And although it isn't -- we don't have the  
19 ability to look across all of the facilities, many  
20 of which don't have an ombudsman assigned to them.

21 We do anecdotally think that there is really  
22 a lack of planning and thought about this issue, and  
23 it really needs to be a focus.

24 It needs to be a focus of planning for any  
25 pandemic.

1           It needs to be a focus of planning for  
2       nursing facilities.

3           I don't know -- we haven't been able to see  
4       what kinds of emergency plans are in place at  
5       facilities, but I would wager that they don't  
6       include particular planning for their residents who  
7       are Black or Latino.

8           And that, the department of health, I haven't  
9       heard anything about them inquiring about facilities  
10      where the death rates are highest among those who  
11      are Black and Latinx.

12          And, yet, this is a story that's been in  
13      "The New York Times," it's been in other media, and  
14      it's one that really requires an investigation and  
15      further attention.

16          And I really commend it to you, Mr. Chairman,  
17      if you could please encourage a focus on this issue.

18          It's just unconscionable that this is going  
19      on in this day and age.

20          And we -- there's no prevention plan for the  
21      eradication of disparities in nursing facilities,  
22      for example.

23          So these are really serious issues.

24          We've also been seeing a lot of people ending  
25      up in -- discharged to homeless shelters. And we



1 don't believe this is a safe discharge under any  
2 circumstance.

3 SENATOR RIVERA: Yep.

4 SUSAN DOOHA: However, during the pandemic,  
5 it's especially alarming.

6 We work with people who are homeless.

7 We have members of our board, of our staff,  
8 who have been homeless.

9 We have a lot of clients, people we serve,  
10 who are homeless.

11 And the reports that we get from them about  
12 homeless shelters suggests that there's nothing like  
13 safety.

14 Beds are ganged up together in congregate  
15 facilities.

16 Staff don't have PPE.

17 There's nothing like infection control.

18 Congregate bathrooms and shower areas.

19 Nothing like cleanliness.

20 This is a really serious issue.

21 There are a lot of congregate environments  
22 that are not being looked at, and that really must  
23 be looked at, because these also are places where  
24 I would expect that there are a lot of deaths  
25 occurring, but they're under the radar screen.

1           And I strongly encourage a focus on these  
2       discharges that are occurring, that are unsafe  
3       discharges, in my view.

4           SENATOR RIVERA:   Okay.

5           Thank you, Ms. Dooha.

6           We have no further questions from the  
7       Assembly or Senate.

8           So I thank you all for your patience and for  
9       being with us.

10          And now, Senator O'Mara, we are moving to our  
11       last panel, which is the following:

12          We are joined by Daniel Ross, staff attorney  
13       at Mobilization for Justice Legal;

14          Dr. Tara Cortes, a clinical professor at NYU,  
15       and executive director of the Hartford Institute for  
16       Geriatric Nursing;

17          And, Geoff Lieberman, executive director,  
18       Coalition of Institutionalized Aged and Disabled.

19          I believe that these folks are here.

20          Okay.   There is at least one of them.

21          Okay, there's Dr. Cortes.

22          Okay.   Monsieur Gottfried, for the last time  
23       today.

24          ASSEMBLYMEMBER GOTTFRIED:   Who all do we  
25       have?

1           SENATOR RIVERA: We have Daniel Ross,  
2           Tara Cortes -- Dr. Tara Cortes, and -- Tara Cortes,  
3           and Geoff Lieberman.

4           ASSEMBLYMEMBER GOTTFRIED: Ah, everybody.

5           Okay, last, but not least, by far:

6           Do you all swear or affirm that the testimony  
7           you're about to give is true?

8           DR. TARA CORTES: I do.

9           DANIEL ROSS: I do.

10          GEOFF LIEBERMAN: I affirm.

11          ASSEMBLYMEMBER GOTTFRIED: Okay.

12          SENATOR RIVERA: Start off with Daniel Ross,  
13          please.

14          ASSEMBLYMEMBER GOTTFRIED: Let me note,  
15          I obviously pitched a perfect game. Everybody said  
16          "yes."

17          DANIEL ROSS: Well, good evening.

18          My name is Daniel A. Ross.

19          I'm senior staff attorney at Mobilization for  
20          Justice.

21          For more than 25 years, Mobilization for  
22          Justice has advised and represented adult-home  
23          residents in individual matters and impact  
24          litigation.

25          And for almost 10 years, we've provided

1 similar services to residents of nursing homes in  
2 New York City.

3 Although the situation in the state's nursing  
4 homes is dire, as we've heard all day, I'm going to  
5 focus my testimony on the less-known situation in  
6 adult-care facilities, which have, roughly,  
7 50,000 seniors and people with disabilities across  
8 New York State.

9 Adult-care facilities vary in the  
10 accommodations and services they provide.

11 Most ACFs are either adult homes or an  
12 enriched-housing program, which generally provide  
13 room and board and case management in either more  
14 private apartment-style housing in EHPs, or  
15 dorm-like accommodations in adult homes.

16 Some facilities house low-income residents  
17 who pay the facility with their income from SSI and  
18 the state supplement program, while other facilities  
19 charge over \$100,000 a year for luxury  
20 accommodation. Many also provide assisted-living  
21 services, such as personal care and nursing  
22 services.

23 MFJ concentrates our work advocating for and  
24 advising residents of transitional adult homes.  
25 These are homes in which 25 percent, or sometimes

1 almost all residents, have mental-health  
2 disabilities.

3 For decades, these institution, which are  
4 mostly run for-profit, have warehoused people being  
5 de-institutionalized from state psychiatric  
6 hospitals.

7 The poor conditions have been the subject of  
8 numerous government reports and media accounts,  
9 including "The New York Times'" Pulitzer-winning  
10 "Broken Home" series in 2001.

11 The pandemic response has followed a familiar  
12 pattern in these homes.

13 The DOH-issued COVID-related guidance to  
14 adult-care facilities beginning in the second week  
15 of March. But then, consistent with its history of  
16 promulgating useful regulations, and failing to  
17 adequately enforce basic standards, the DOH  
18 suspended in-person oversight, including complaint  
19 investigations.

20 Residents at some ACFs told us how their  
21 facilities quickly complied with DOH guidance.

22 But we also heard from residents of other  
23 facilities, particularly transitional adult homes,  
24 about the lack of social distancing, staff  
25 cohorting, or resident quarantining that DOH

1 guidance prescribed.

2 We began reporting these concerns to the DOH  
3 in late March, as deaths were mounting.

4 For several more weeks:

5 Some facilities continued serving meals in  
6 large dining rooms with no social distancing  
7 precautions;

8 Some facilities continued disbursing  
9 medications centrally, forcing residents to come  
10 down in crowded elevators and stand on line next to  
11 people from other parts of the building;

12 And, sick residents were not quarantined, and  
13 masks and PPE were minimal or absent.

14 Weeks after the April 4 guidance on  
15 communicating with residents and families about  
16 COVID, and even after that guidance became mandatory  
17 two weeks later, many residents told us that their  
18 facility hadn't told them about COVID cases or  
19 deaths, although they knew some residents had died,  
20 and others were sick.

21 Eventually, in late April, the department  
22 started unannounced visits, forced facilities to end  
23 congregate meals and end centralized medication  
24 disbursement, and provided testing of residents in  
25 these facilities.

1           But there's an indication -- but there's no  
2           indication that the department has planned  
3           adequately for the expected second wave.

4           Even knowing the scope of the problem is  
5           purposely obscured, as we talked about earlier  
6           today, by DOH policy that excludes from public  
7           recording deaths in ACFs and nursing home -- of ACF  
8           and nursing home residents if they were first  
9           transferred to a hospital, DOH has not adopted for  
10          ACFs the same COVID transparency requirements that  
11          DMS demands of nursing homes.

12          This leaves residents and their families in  
13          the dark about the risks to their health, and  
14          prevents policymakers from assessing appropriate  
15          resource allocation.

16          Low-income residents are often cash-strapped,  
17          finding it difficult to buy adequate clothing, food,  
18          and toiletries, let alone recreational expenses.

19          As they face unprecedented social isolation  
20          without group activities or visits from families and  
21          friends, economic-impact payments from the federal  
22          government could have helped them buy technology to  
23          help [indiscernible] -- sorry -- to keep them  
24          connected to loved ones, or simply find  
25          entertainment to pass the time, during the pandemic

1 stay-at-home order.

2 In April we warned the DOH that some  
3 facilities would try to keep residents' stimulus  
4 checks for themselves.

5 And in May and June, that's exactly what  
6 happened.

7 Operators at some facilities informed  
8 residents of new-found rent arrears, or told  
9 residents that they weren't eligible for payment.

10 DOH has still failed to adequately combat  
11 facilities misappropriating of residents'  
12 economic-impact payments.

13 Stronger enforcement and stronger enforcement  
14 tools are needed to finally fix the problems  
15 residents have endured for decades.

16 The State has awarded many chronically  
17 underperforming facilities with lucrative Medicaid  
18 assisted-living program certification, but taken no  
19 steps to ensure transparency and accountability for  
20 the quality of services provided to vulnerable  
21 residents.

22 We urge the legislature to enact A4416C and  
23 S3460A, which would empower the department of health  
24 to fine facilities for purposeful violations of  
25 residents' rights, financial abuse as described



1       above, or repeated violations of the same regulatory  
2       provision within a 12-month period.

3               SENATOR RIVERA: Mr. Ross, if you could  
4       actually wrap it up, since your time has expired.

5               DANIEL ROSS: Sure.

6               Yeah, it's commonsense legislation that  
7       I think many people would be surprised to learn is  
8       not actually existing law.

9               Thank you.

10              SENATOR RIVERA: Thank you so much, Mr. Ross.  
11       How about Dr. Tara Cortes.

12              DR. TARA CORTES: Thank you very much.

13              Good evening, committee chairs and all  
14       members of the legislature present, and thank you  
15       for your stamina for listening and being so  
16       attentive all day.

17              My name is Dr. Tara Cortes, and I'm executive  
18       director of the Hartford Institute for Geriatric  
19       Nursing, the geriatric arm of NYU Rory Myers College  
20       of Nursing.

21              Other residential long-term care is usually  
22       thought of as being simply custodial. The care  
23       needed in these settings is actually some of the  
24       most complex care delivered across the health-care  
25       continuum.

1           Most residents have multiple chronic diseases  
2           and, very often, have dementia as well.

3           With the increase in the number of people  
4           living to 85 and beyond, and the increase in  
5           complexity of those living in residential long-term  
6           care, the need for quality nursing homes, nursing  
7           homes that provide the right care at the right time  
8           by the right staff, is more acute than ever.

9           But there has been --

10          I'm sorry.

11          But there has been -- there is historical  
12          neglect of long-term care, and nursing homes have  
13          been marginalized, even siloed, and denied a seat at  
14          the health-care table for policy reimbursement  
15          issues.

16          The increasing complexity of caring for  
17          people in long-term care has never been recognized,  
18          resulting in chronic understaffing, low pay, and  
19          inadequate resources.

20          The current state of nursing homes, coupled  
21          with the virulence of COVID-19, has created the  
22          perfect storm that has led to so many deaths.

23          While the vast majority of nursing staff have  
24          strived to provide the best possible care, we're now  
25          witness to the impact of the shocking lack of

1 resources and reporting that severely hampered the  
2 ability to pivot from everyday care to effective  
3 infection prevention and crisis management.

4 It is disheartening to see the virus ravage  
5 even the most excellent nursing homes, and see blame  
6 cast upon them, when they have exhausted all the  
7 efforts to procure personal protective equipment and  
8 adequately manage COVID patients transferred from  
9 the hospitals.

10 The -- many of the issues contributing to the  
11 perfect storm are longstanding, and it will  
12 necessitate both immediate response and a long-term  
13 strategy.

14 One of the first issues that needs to be  
15 addressed is to ensure that providers of  
16 long-term-care services are at the table as full  
17 partners with hospitals when setting policy and  
18 reimbursement rates.

19 There should be a partnership formed between  
20 these two entities as equal partners, and not one  
21 bigger than the other, to ensure collaboration and  
22 coordination of care, as well as equitable  
23 distribution of dollars.

24 Our society has long been hospital-centric  
25 with community-based care a second thought.

1           Throughout the months of March, April, and  
2           even May, hospitals received the lion's share of  
3           personal protective equipment, while nursing home  
4           administrators went to parking lots in New Jersey,  
5           or anywhere, to find whatever medical supplies they  
6           could in order to protect their staff.

7           In the meantime, staff often had to use  
8           garbage bags as gowns and handkerchiefs as masks.

9           When the CARES Act was passed in July, it  
10          allocated \$175 billion for hospitals, less than  
11          5 billion for nursing homes, affected by COVID-19.

12          Nursing homes are now experiencing a  
13          dwindling census, as people are afraid to put their  
14          loved ones into nursing homes, and fewer elective  
15          surgeries are resulting in fewer admissions for  
16          rehabilitation at the Medicare rate.

17          With nursing homes relying on mostly  
18          Medicaid-only payments because of the long-term care  
19          payments-structured system we have, nursing homes  
20          are in financial distress.

21          Layoffs and decreased capacity could be in  
22          their immediate future unless health-care dollars  
23          are distributed in a way that recognizes the value  
24          and need for quality care with older people for whom  
25          home is no longer a viable option.

1           The second issue that needs to be addressed  
2 immediately is the workforce in long-term care.

3           Ensuring quality and cost-effective care at  
4 any time, but especially at a time of crisis,  
5 requires a professional staff that bases decisions  
6 and practice on evidence as a critical solution to  
7 increased quality, while decreasing cost to the  
8 overall system.

9           A study done by CMS, done at nursing homes  
10 with greater RN staff numbers, has significantly  
11 fewer hospital admissions.

12           Another study, mentioned earlier, done in  
13 Connecticut on the 215 nursing homes, found those  
14 with higher RN staffing and quality ratings had  
15 better control of the coronavirus.

16           None of this evidence, however, has ever been  
17 considered in setting policy.

18           In fact, CMS requires only one RN for 8 hours  
19 a day in the nursing home.

20           In addition, a lower pay scale in long-term  
21 care as compared to hospitals means it's harder to  
22 recruit, not just RNs, but also direct caregivers.

23           Direct caregivers are the eyes and ears of  
24 the residents, yet turnover is very high because the  
25 pay and the -- and the pay is low and the difficult

1 workload they have.

2 There must be a staff with an appropriate  
3 number of professionals and direct caregivers to  
4 navigate through crises.

5 Many of us have had a loved one in long-term  
6 care. And if you have not, you will.

7 We need our nursing homes to have the  
8 resources and ability to not just be regulated and  
9 meet regulations, but also to provide the best care  
10 to keep people functioning at their own best level,  
11 address what matters to them, and allow each one a  
12 peaceful and dignified death.

13 Thank you so much.

14 SENATOR RIVERA: Thank you so much,  
15 Dr. Cortes.

16 Last, but certainly not least, Mr. Lieberman.

17 GEOFF LIEBERMAN: Well, thank you very much.

18 Thank you all for waiting for me. I really  
19 appreciate it.

20 SENATOR RIVERA: We were all holding  
21 [indiscernible] Lieberman. [Indiscernible]  
22 Lieberman's got to be in it.

23 Go ahead.

24 GEOFF LIEBERMAN: Well, good evening.

25 I am Geoff Lieberman, executive director of

1 the Coalition of Institutionalized Aged and  
2 Disabled, an advocacy organization serving  
3 [indiscernible] residents in New York City.

4 New York State's response to the COVID-19  
5 pandemic in adult homes was to issue guidance that  
6 the State expected facilities to follow, in the  
7 [indiscernible] -- in the absence, for far too long,  
8 of testing, adequate PPE for residents and staff,  
9 and on-site monitoring and inspections by the  
10 New York State Department of Health.

11 Since mid-March, CIAD has fielded and made  
12 phone calls to residents, and stayed in constant  
13 touch with resident counsel officers and other  
14 residents.

15 They have provided us with a significant  
16 amount of information about conditions in the homes  
17 during the crisis.

18 This is contrasted with the health  
19 department's reliance on communications with  
20 adult-home administrators to monitor what was  
21 happening.

22 The information we collected includes the  
23 numbers of resident deaths in the homes, and how  
24 well facilities were carrying out the New York State  
25 Department of Health's guidance on social distancing

1 and cohorting to prevent the spread of infection.

2 Based upon information we have received from  
3 residents, we have tallied, approximately,  
4 250 resident deaths from 28 homes in New York City.

5 To confirm those numbers as best we could, we  
6 were able to identify about 156 of those residents  
7 by name.

8 There are 8 homes where reports indicate at  
9 least 20 resident deaths from COVID-19.

10 These numbers contrast with the significantly  
11 lower numbers publicly reported on the health  
12 department's website.

13 As of July 28, 2020, DOH reports 53 confirmed  
14 or presumed deaths from 18 homes in the 5 boroughs  
15 of New York City.

16 Only five homes on our compiled list have  
17 reported fatalities to the health department.

18 The misleading and inadequate data collected  
19 by the DOH is based upon self-reported numbers from  
20 the adult home, and the practice of only counting  
21 deaths if they occurred in the adult home, rather  
22 than counting residents who died in the hospital.

23 To this day, we do not know the full extent  
24 of the terrible impact the pandemic has had on  
25 adult-home residents.



1           We also found some adult homes slow to  
2           initiate appropriate social-distancing measures.

3           It took weeks for homes to end congregate  
4           meal service in their dining rooms.

5           It took even longer for most to deliver  
6           medications to residents' rooms. Before this  
7           practice was instituted, residents were crowding on  
8           elevators and waiting on long lines to receive their  
9           medications.

10          Residents were not supervised to keep 6 feet  
11          apart on these lines.

12          Residents also told us of the inadequate  
13          measures facilities took to cohort and quarantine  
14          residents who were suspected or confirmed to have  
15          COVID-19.

16          Residents who were showing symptoms, or were  
17          known to be infected, freely wandered the building  
18          and facility grounds in the absence of adult-home  
19          resident staff supervision.

20          Working in close collaboration with  
21          Mobilization for Justice, we informed the governor  
22          and the health department of these increasingly  
23          alarming conditions, and numbers of deaths res --  
24          numbers of deaths residents were reporting to us as  
25          early as March 27th.

1           In mid-April, we, along MFJ, [indiscernible],  
2           [indiscernible], SCAA, made four demands New York  
3           State had to meet to ensure the health and safety of  
4           residents.

5           These demands are as important and relevant  
6           now as they were then.

7           They are:

8           Testing for all residents and staff, to  
9           identify hot spots, and inform staffing and  
10          cohorting measures to reduce the spread of  
11          infection.

12          Ensure compliance by unannounced in-person  
13          inspections by the department of health.

14          Number 3: Relocating residents to hotels or  
15          motels to reduce density in the adult homes.

16          And, Number 4: Deploy additional staff and  
17          medical personnel, where needed, to ensure social  
18          distancing, cohorting, and services and care,  
19          especially for infected residents.

20          We made several other additional  
21          recommendations.

22          Along with MFJ and ADAN, we urged the state  
23          legislature to pass A4416 and Senate Bill 3460A,  
24          legislation that will protect residents by  
25          strengthening the enforcement of the state's

1 adult-home regulations.

2 As Dan has mentioned, we also would ask DOH  
3 to revise its guidance of adult homes regarding  
4 economic-impact payments to residents.

5 Finally, we would recommend that the State  
6 consider funding the purchase of tablets and laptops  
7 for adult-home resident use.

8 Not enough attention has been focused on the  
9 increased isolation adult-home residents have  
10 suffered because of COVID-19, contributed --  
11 contributing to increased loneliness, stress, and  
12 severe reduction in the access of residents -- that  
13 residents have to family, friends, and community.

14 Thanks very much.

15 SENATOR RIVERA: Thank you so much,  
16 Mr. Lieberman.

17 And, for this last round, we will be leading  
18 off with the Assembly.

19 ASSEMBLYMEMBER BRONSON: And I do not see any  
20 assemblymembers who have raised their hand.

21 Mr. Gottfried?

22 ASSEMBLYMEMBER GOTTFRIED: And I guess it's  
23 not so much a question, but just to say that, this  
24 group of witnesses, and many that we have heard all  
25 day today, are just extraordinary assets and --

1 and -- and heroes for New York.

2 And as I've listened to a lot of their  
3 testimony, and I say to myself: Why does all this  
4 still need to be said? Why isn't it being done?

5 And I keep thinking of what the author  
6 Upton Sinclair said a long time ago, which is, "That  
7 it is difficult to persuade a man of something when  
8 his salary depends on him not being persuaded of  
9 it."

10 That's it.

11 SENATOR RIVERA: It is -- it's what happens  
12 when 9:00 -- see, I've been with this gentleman with  
13 enough hearings that went long, to know that, by  
14 9 p.m., he gets mad poetic.

15 So expect a couple more couplets before we're  
16 done.

17 But, for now, we have, on the Senate side,  
18 Senator May, recognized for 5 minutes.

19 SENATOR MAY: Thank you, thank you.

20 And I also just want to compliment you, and  
21 everybody we heard from today, with so much  
22 expertise and so much passion. It's been really  
23 inspiring.

24 I have an actual question, though, for  
25 Dr. Cortes.

1           I feel like in the course of the day, we've  
2       heard two really different stories about  
3       nursing-home finances.

4           And I would appreciate it if you would help  
5       me make sense of that.

6           Now, I used to teach Russian literature, so  
7       I can handle paradox. But I still -- this one is --  
8       is bothering me.

9           So, on the one hand, the nursing homes are in  
10      all this financial trouble, as you detailed.

11          On the other hand, we're hearing that it's a  
12      boondoggle for hedge funds, and things like that, in  
13      the for-profit ones.

14          And both arguments have been persuasive.

15          So I'd like to hear from you, sort of, how do  
16      you balance those?

17          DR. TARA CORTES: I'm speaking more on behalf  
18      of the not-for-profit nursing homes.

19          And we have -- where -- the dependence on  
20      Medicare funding for rehabilitation of patients has  
21      been very, very high.

22          Now that elective surgeries have gone down,  
23      and continue to be down, people are not going to  
24      hospitals now to get elective surgeries, so they  
25      have continued to be down.

1           And the fact that, yes, we have lost patients  
2           through death, but patients are not being admitted.

3           People are afraid to put their loved ones  
4           into nursing homes because of all of the terrible  
5           media that's been going on.

6           So the -- they're running at, 60, 70 percent  
7           capacity. And medicaid payments coming for 60 to  
8           70 percent of the capacity just don't do it.

9           And it's why they can't have adequate  
10          staffing. They can't have -- they can't have an  
11          adequate number of professional nurses on board.  
12          You just don't have enough money, and salaries do  
13          run lower. They run around \$10,000 less for a  
14          starting nurse in a nursing home than in a hospital.

15          So nurses won't go to nursing homes. So I'll  
16          go to the hospital, and I get pay raise faster, and  
17          I get reimbursement on my tuition.

18          Without making some adjustments in the  
19          structure of payment for long-term care, our  
20          long-term-care industry I think, in the long run, is  
21          in trouble.

22          To really get quality staff, it's far more  
23          complex today in nursing homes than it was 5 years,  
24          10 years ago. Even last year, it's becoming more  
25          complex.

1           And when you take dementia and you  
2       superimpose it on top of patients with multiple  
3       chronic conditions, you've got complex patients.

4           So we just need to find, I think, a payment  
5       structure that allows nursing homes to have the  
6       right kind of staff, so they can give the right kind  
7       of care, and our patients -- our residents can live  
8       in a dignified manner and die a dignified death.

9           SENATOR MAY: And should we be worried about  
10      the other side of the story?

11           And money [indiscernible cross-talking] --

12           DR. TARA CORTES: For profit?

13           SENATOR MAY: Yeah.

14           DR. TARA CORTES: I think we should be.

15           I think -- I think you're -- I think we  
16      should be.

17           I think we should be looking very carefully  
18      at how they are allocating their resources, and what  
19      they're -- not what they're meeting -- whether or  
20      not they're meeting the regulations, but, what are  
21      the quality outcomes?

22           What are the outcomes that their residents  
23      actually have that reflect person-centered care and  
24      good values?

25           I think that we're not looking at the right

1 things if we're just looking at, well, what are the  
2 regulations, and do they meet those?

3 SENATOR MAY: Okay.

4 DR. TARA CORTES: I think we need to be more  
5 specific on, what are resident outcomes that reflect  
6 quality care?

7 SENATOR MAY: Thank you.

8 Yeah, I have been wondering about the way  
9 nursing homes are rated. There's a rating system.

10 And I read that, even in highly-rated nursing  
11 homes, the racial disparities are very stark, even  
12 worse in some of the more highly-rated nursing  
13 homes.

14 And it made me start wondering, what are  
15 these ratings based on?

16 And -- and it seems like it's inputs-based  
17 and not outcomes-based.

18 DR. TARA CORTES: I think --

19 SENATOR MAY: And so --

20 DR. TARA CORTES: I think you're right.  
21 Absolutely.

22 SENATOR MAY: That's, I gather, at a federal  
23 level. But, if there's a way we can rethink that,  
24 that might be a great move.

25 DR. TARA CORTES: Yes.



1           SENATOR MAY:   Okay.

2           Thank you very much.

3           DR. TARA CORTES:   Thank you.

4           SENATOR RIVERA:   Do you have a poem for us,  
5   Dick?

6           If you don't -- oh, you do?

7           ASSEMBLYMEMBER GOTTFRIED:   Well, I'm muted.

8           Oh, okay.

9           SENATOR RIVERA:   No, you're not muted.

10          ASSEMBLYMEMBER GOTTFRIED:   I can just correct  
11   the Upton Sinclair quote.

12                 "It is difficult to get a man to understand  
13   something when his salary depends upon his not  
14   understanding it."

15          SENATOR RIVERA:   I told you; I told you he  
16   gets like that.

17          ASSEMBLYMEMBER GOTTFRIED:   Great words to  
18   live by.

19          SENATOR RIVERA:   Back to the Assembly.

20          ASSEMBLYMEMBER BRONSON:   Yes, we have up  
21   next, Assemblymember Tom Abinanti for 3 minutes.

22          ASSEMBLYMEMBER ABINANTI:   Yes, I would like  
23   to join everyone else, and thank all of you for  
24   staying with us so long.

25                 And adding a different perspective, we heard

1 a lot about nursing homes.

2 Somewhere during the day I mentioned that  
3 there were other long-term care, congregate-care  
4 facilities. And I wanted to hear about them.

5 So I appreciate your highlighting those.

6 I'm not going to ask too much other than,  
7 what do we do differently in the future?

8 Are there plans out there?

9 Is there conversation going on with the  
10 health department?

11 And, finally, is the health department  
12 overwhelmed, and should control of the facilities  
13 you're talking about be somewhere else?

14 Is the health department trying to do too  
15 much at this time?

16 DANIEL ROSS: I think so.

17 Adult-care facilities used to be under the  
18 auspices of the -- or, the oversight of the  
19 department of social services. And when that  
20 department was dismantled, it got moved to health.

21 And I think that probably makes sense as more  
22 and more adult-care facilities become  
23 assisted-living programs and receive Medicaid  
24 funding, or become assisted-living residences and  
25 have licensed home-care services agencies,

1       personnel, or child personnel on-site.

2               And so I think that's probably fine.

3               You're probably right that they're  
4       overwhelmed to some degree.

5               There have probably been slashed budgets, so  
6       there are fewer people to enforce the regulations,  
7       which leads to a problem.

8               And I indicated one action item that the  
9       legislature can take up, and I know the bill passed  
10      recently out of the Assembly Health Committee.

11              But something else that's concerning, to  
12      address, a question that came up earlier I think  
13      from Senator May, is: Right now, the department of  
14      health doesn't collect demographic data, racial  
15      data, about residents of nursing homes or adult-care  
16      facilities.

17              That information is available from the  
18      federal government through the MDS (the minimum  
19      dataset), which all nursing homes have to report to  
20      the federal government.

21              But DOH doesn't have racial data, you know,  
22      demographic data, that would be really helpful to  
23      kind of analyzing what's going on.

24              What are those disparities? What are the  
25      causes of those disparities?

1                   And digging down, and trying to correct  
2                   those.

3                   GEOFF LIEBERMAN: I would quickly add, you  
4                   asked if the health department, if we were engaged  
5                   in any discussions with them regarding the future.

6                   And, unfortunately, we're not quite sure that  
7                   there are any specific plans that the New York State  
8                   Health Department has to ameliorate the impact of a  
9                   second wave that would strike adult-home residents  
10                  and assisted-living residents.

11                  And we're quite concerned about it.

12                  As I mentioned in my testimony, we think that  
13                  the demands that we've made over the last couple of  
14                  months are still incredibly important.

15                  And, although the terrible instances of  
16                  death, and what happened to nursing home residents,  
17                  you know, rightfully, took center stage.

18                  SENATOR RIVERA: If you could actually wrap  
19                  up, Mr. Lieberman, please.

20                  GEOFF LIEBERMAN: I'm just afraid that  
21                  adult-home residents are in the shadows in this  
22                  regard.

23                  SENATOR RIVERA: Thank you.

24                  Hey, Dick, I've got one for you.

25                  "Roses are red, violets are blue, oh, how

1 I wish Cuomo would actually listen to you."

2 Next, we've got Senator Tom O'Mara, recognize  
3 him for 5 minutes, please.

4 SENATOR O'MARA: Uh, yes, we all do get a  
5 little bit giddy at this time of night.

6 Thank you for that one, Chairman Rivera.

7 I wish that Commissioner Zucker would listen  
8 to you all as well.

9 I want to echo Senator May's comments, that  
10 we've heard a lot of great expert testimony with  
11 some great ideas here today.

12 And thank you for all of that.

13 I think we came up short with the executive  
14 branch of government today on this hearing, with the  
15 testimony from the health commissioner,  
16 Howard Zucker, that consisted of little more than  
17 his own self-serving CYA PowerPoint presentation.

18 Coming in with an implausible response that  
19 they don't have any figures on how many nursing home  
20 patients that were transferred to hospitals, died  
21 there, which has been probably the biggest topic of  
22 concern that has been in the media, in the public  
23 arena, surrounding the governor's March 24th  
24 order, that nursing homes accept COVID-positive  
25 patients.

1           I find it further implausible that the  
2       commissioner of health was not aware of the opinion  
3       and statement from the American Medical Directors  
4       Association, Society for Long-Term Care Medicine,  
5       that was issued the day after the governor and  
6       Commissioner Zucker came out with their mandate,  
7       saying how flawed it was, and what a wrong-headed  
8       policy it was.

9           In fact, two days, or three days, after that  
10      initial statement, the American Medical Directors  
11      Association and The Society for Long-Term Care  
12      Medicine was joined, in a follow-up statement, with  
13      the American Health Care Association and the  
14      National Center for Assisted Living, again, with  
15      concerns over the wrong-headed policy that had been  
16      directed.

17          The fact that Commissioner Zucker claims he's  
18      unaware of those positions from the leading  
19      associations in the country, is totally implausible.

20          I request of the chairs of this hearing,  
21      since we in the minority have no subpoena power; we  
22      have no ability to call witnesses ourselves, other  
23      than to make requests; and I would note that the  
24      witness list for today, we received about this time  
25      last night, not much fairness there, and we deserve

1 better.

2 I ask that you recall Zucker to be a witness  
3 at the next round of this hearing on August 10th.

4 And, further, that you call the executive  
5 director of the American Medical Directors  
6 Association, Society for Long-Term Care Medicine,  
7 Chris Laxton, to come and testify about their  
8 opinion and concerns over this, and how that was  
9 directly transmitted to Commissioner Zucker and the  
10 governor's office.

11 We deserve answers in the legislature from  
12 this administration.

13 We clearly did not get them today.

14 I hope we make some progress next Monday,  
15 August 10th, or continue these hearings  
16 thereafter.

17 Thank you, Chairman.

18 SENATOR RIVERA: Thank you, Senator O'Mara.  
19 Back to the Assembly.

20 ASSEMBLYMEMBER BRONSON: And I believe it's  
21 coming right back to you, Mr. Chair.

22 SENATOR RIVERA: All right.

23 Last, but not least, cleaning up,  
24 Senator Sue Serino, recognize the lady for  
25 5 minutes, please.

1           SENATOR SERINO: Thank you, Mr. Chairman.

2           And, Dr. Cortes, I'd like to say I really  
3 appreciate your comments about the facilities need  
4 to be considered equal partners, the hospitals and  
5 the nursing homes.

6           And that's something that I believe that we  
7 need to create more partnerships, and I really take  
8 to heart.

9           So thank you very much for that.

10          And I think it's very fitting that we're  
11 ending the day with this panel because you all  
12 really drove the main points home.

13          The reporting is clearly flawed.

14          These facilities are not getting the  
15 resources they need to really ensure real quality  
16 care.

17          And we need to do better to ensure these  
18 vulnerable New Yorkers are protected, and those who  
19 care for them are absolutely supported.

20          And I want to echo with Senator O'Mara's  
21 point, too: I really wish DOH (the department of  
22 health) came prepared with more than the governor's  
23 establishment talking points.

24          But I really hope that at next week's hearing  
25 we can dive even deeper, because New Yorkers deserve



1       answers.

2               And I think, today, we should be doing all we  
3       can to send a message to residents, and that there's  
4       a bipartisan commitment to get them.

5               So thank you very much, everybody.

6               This was a great panel today.

7               Thank you.

8               SENATOR RIVERA: Thank you, Senator Serino.

9               Assemblymember Gottfried, do you have any  
10       closing words that you'd like to share with us,  
11       maybe a poem or two?

12              ASSEMBLYMEMBER GOTTFRIED: No, I think I'm  
13       all poemed-out for tonight.

14              I'll see if I can come up with a couple of  
15       choice lines for next week.

16              SENATOR RIVERA: Gotcha.

17              Thank you all on the panel.

18              What was that?

19              ASSEMBLYMEMBER GOTTFRIED: I think this has  
20       been a really terrific hearing, both in terms of the  
21       witnesses who have testified, and the real elements  
22       of social-justice understanding that a lot of them  
23       have injected into the discussion, and the questions  
24       from our colleagues as well.

25              SENATOR RIVERA: I agree.

1           I think it was a very -- it was the beginning  
2       of the process.

3           I think, in that, I certainly agree with you,  
4       Senator O'Mara, we have much more digging to do.

5           But I thank each and every single one of the  
6       people who testified today.

7           We have much more information to go on, but  
8       certainly deeper to dig.

9           Thank you, everyone, for continuing to tuning  
10      in.

11          Thank you for the staff that is in the  
12      background doing all the work to make sure this  
13      functions; I applaud all of you.

14          I know Stanley, certainly. But, everybody  
15      else who's back there, whose name I might not know  
16      or remember, thank you for it.

17          And, we will see you again.

18          Probably, they're working tomorrow.

19          We might not be -- we're going to be here  
20      next week for the next hearing on this.

21          But thank you, everybody, for tuning in.

22          And, with that, I am signing off.

23          Have a good night, folks.

24                 (Whereupon, the virtual joint committee  
25      public hearing concluded, and adjourned.)