BEFORE THE NEW YORK STATE LEGISLATURE:
SENATE STANDING COMMITTEE ON HEALTH,
SENATE STANDING COMMITTEE ON AGING,
SENATE STANDING COMMITTEE ON INVESTIGATIONS & GOVERNMENT OPERATIONS,
ASSEMBLY STANDING COMMITTEE ON HEALTH,
ASSEMBLY STANDING COMMITTEE ON AGING, and
ASSEMBLY STANDING COMMITTEE ON OVERSIGHT, ANALYSIS & INVESTIGATION

VIRTUAL JOINT PUBLIC HEARING:

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

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

PRESIDING:

Senator Gustavo Rivera
Chair, Senate Standing Committee on Health

Senator Rachel May
Chair, Senate Standing Committee on Aging

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

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

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

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

SENATE MEMBERS PRESENT:

Senator Allesandra Biaggi

Senator George M. Borrello

Senator Phil Boyle

Senator David Carlucci

Senator Patrick M. Gallivan

Senator James Gaughran

Senator Andrew Gounardes

Senator Pamela Helming

Senator Brad Hoylman

Senator Todd Kaminsky

Senator Andrew J. Lanza

Senator Betty Little

Senator John C. Liu

Senator Jen Metzger

Senator Monica R. Martinez

Senator Thomas F. O'Mara

Senator Patty Ritchie

Senator Luis R. Sepulveda

Senator Sue Serino

Senator Toby Ann Stavisky

Senator James Tedisco

Senator Kevin Thomas

ASSEMBLYMEMBERS PRESENT:

Assemblymember Thomas J. Abinanti

Assemblymember Jake Ashby

Assemblymember Edward C. Braunstein

Assemblymember Kevin M. Byrne

Assemblymember Marjorie Byrnes

Assemblymember Kevin A. Cahill

Assemblymember Steven Cymbrowitz

Assemblymember Joe DeStefano

Assemblymember Inez Dickens

Assemblymember Charles D. Fall

Assemblymember Nathalia Fernandez

Assemblymember Sandy Galef

Assemblymember Andrew R. Garbarino

Assemblymember Aileen M. Gunther

Assemblymember Ellen Jaffee

Assemblymember Mark Johns

Assemblymember Billy Jones

Assemblymember Ron Kim

Assemblymember Nicole Malliotakis

Assemblymember Brian Manktelow

Assemblymember David G. McDonough

Assemblymember Melissa Miller

Assemblymember Michael Montesano

Assemblymember Amy Paulin

ASSEMBLYMEMBERS PRESENT (continued):

Assemblymember Michael Reilly

Assemblymember Linda B. Rosenthal

Assemblymember John Salka

Assemblymember Doug Smith

Assemblymember Michaelle C. Solages

Assemblymember Al Taylor

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SENATOR RIVERA: Good morning, everyone.

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

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

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

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

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

And that is what these hearings are about.

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

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

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

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

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

SENATOR LANZA: Chairman, Andrew Lanza here as well.

SENATOR RIVERA: Oh. Thank you, Senator Lanza.

SENATOR GAUGHRAN: And Jim Gaughran here.

SENATOR RIVERA: Gaughran and Lanza.

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

ASSEMBLYMEMBER BRONSON: Thank you, [indiscernible] Gottfried.

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

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

Other members:

Assemblymember Edward Braunstein is with us; Assemblymember Marjorie Byrnes; Kevin Cahill; Steven Cymbrowitz; Joe DeStefano; Charles Fall; Assemblymember Fernandez; Assemblymember Galef; Andrew Garbarino; Aileen Gunther; Ellen Jaffee; Assemblymember Mark Johns; Assemblymember Jones, Assemblymember Ron Kim; Assemblymember Nicole Malliotakis; Assemblymember Dave McDonough; Assemblymember Missy Miller; Mike Montesano; Assemblymember Amy Paulin; Michael Reilly; Assemblymember Linda Rosenthal; Assemblymember Doug Smith; Assemblymember Solages; Assemblymember Taylor.

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

ASSEMBLYMEMBER GOTTFRIED: Okay. Thank you.

Okay, I'm just going to run through some

procedural points.

This will be a very long hearing.

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

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

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

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

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

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

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

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

That's it.

SENATOR RIVERA: Thank you, Assemblymember Gottfried.

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

Can't hear you, James.

ASSEMBLYMEMBER GOTTFRIED: Someone has to --

SENATOR SKOUFIS: That was bound to happen to someone.

SENATOR RIVERA: Yes.

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

Good morning, everyone.

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

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

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

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

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

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

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

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

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

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

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

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

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

I look forward to today's testimony.

Thank you.

SENATOR RIVERA: Thank you, Senator Skoufis.

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

SENATOR MAY: Thank you, Chair Rivera.

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

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

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

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

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

already anticipating the need for rapid and decisive action.

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

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

I see these hearings as having two main goals.

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

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

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

Thank you to all who have agreed to testify.

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

SENATOR RIVERA: Thank you, Senator May.

Now on to the Assembly.

Assemblymember Gottfried.

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

I guess we can go to Harry Bronson.

ASSEMBLYMEMBER BRONSON: Thank you, Chair Gottfried.

And thank you, all, for being here today.

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

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

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

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

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

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

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

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

Thank you.

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

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

ASSEMBLYMAN McDONALD: Very briefly.

Good morning, everybody.

Thanks to everybody for their participation today.

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

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

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

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

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

SENATOR GALLIVAN: Thank you, Mr. Chairman.

And good morning to everybody.

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

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

I believe many of my colleagues feel the same.

On May 5th I called for hearings.

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

And I thank you for it.

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

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

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

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

Why were certain orders followed?

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

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

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

Thank you.

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

SENATOR O'MARA: Thank you, Senator Rivera.

You gave me time to get my mic on.

So I -- thank you for the opportunity to have

these hearings today.

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

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

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

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

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

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

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

Hopefully, we get some good information on that today.

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

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

Thank you very much.

SENATOR RIVERA: Thank you, Senator O'Mara.

Assemblymember Bronson, anybody else in the Assembly?

ASSEMBLYMEMBER BRONSON: We have the ranker members.

Kevin Byrne.

ASSEMBLYMEMBER BYRNE: Thank you, Chairman Bronson.

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

this hearing.

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

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

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

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

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

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

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

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

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

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

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

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

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

Thank you.

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

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

SENATOR SERINO: Good morning, Mr. Chairman.

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

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

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

And New Yorkers deserve answers.

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

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

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

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

Thank you very much.

SENATOR RIVERA: Thank you, Senator Serino.

Assemblymember Bronson?

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

ASSEMBLYMEMBER ASHBY: Thank you, Mr. Chairman.

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

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

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

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

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

Thank you.

OFF-SCREEN SPEAKER: May I speak?

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

ASSEMBLYMEMBER MANKTELOW: Thank you, Mr. Chairman.

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

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

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

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

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

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

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

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

Thank you.

SENATOR RIVERA: All right. Thank you for that.

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

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

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

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

DR. HOWARD ZUCKER: Just a second.

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

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

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

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

Go ahead.

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

Let's see what we can do here.

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

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

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

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

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

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

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

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

What we now know, that it was already here.

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

protect our most vulnerable populations.

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

ASSEMBLYMEMBER GOTTFRIED: Commissioner?

DR. HOWARD ZUCKER: [Indiscernible] --

ASSEMBLYMEMBER GOTTFRIED: Commissioner?

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

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

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

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

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

DR. HOWARD ZUCKER: I affirm that, yes.

ASSEMBLYMEMBER GOTTFRIED: Thank you.

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

We feel the losses in these nursing homes as

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

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

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

First, some quick background.

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

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

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

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

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

For context:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

What happened?

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

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

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

And what did we find?

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

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

hospital patients occurred on April 14th.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

dedicated to the residents that they care for.

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

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

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

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

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

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

We're [inaudible].

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

I did not --

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

SENATOR RIVERA: Okay, because the presentation went away.

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

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

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

SENATOR RIVERA: Okay.

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

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

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

DR. HOWARD ZUCKER: Is that better?

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

But -- but, in any event --

DR. HOWARD ZUCKER: Is that better?

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

Keep going, sir.

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

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

Please continue.

DR. HOWARD ZUCKER: All right. Great.

Thank you.

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

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

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

So what does the data show?

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

Let's think about that for a moment.

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

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

The question: Is that possible?

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

But back then, we could not test for it.

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

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

Back then we were not even screening for symptoms yet.

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

So, mid-March.

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

So one may ask, why does that matter?

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

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

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

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

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

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

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

time. Right?

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

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

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

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

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

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

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

And they said: No. 37,000.

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

So that means approximately one in four workers were affected.

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

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

And this is very consistent with our findings.

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

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

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

SENATOR RIVERA: And if I may --

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

SENATOR RIVERA: -- Commissioner --

DR. HOWARD ZUCKER: -- yes.

SENATOR RIVERA: -- just an inquiry.

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

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

DR. HOWARD ZUCKER: One more --

SENATOR RIVERA: -- of questioners?

DR. HOWARD ZUCKER: One more page.

So --

SENATOR RIVERA: Go ahead, sir.

DR. HOWARD ZUCKER: -- a minute.

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

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

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

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

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

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

And, in this case, "adequate care" means

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

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

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

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

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

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

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

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

But we will always, always, make our

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

Thank you very much.

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

We are going to start it off by the Senate.

Senator James Skoufis.

SENATOR SKOUFIS: Thank you, Mr. Chairman.

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

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

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

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

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

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

answer on the number of states.

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

Some reported --

SENATOR SKOUFIS: Understood.

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

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

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

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

SENATOR SKOUFIS: Please do.

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

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

So let's try and get the full picture here

and now.

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

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

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

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

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

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

SENATOR SKOUFIS: You don't have --

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

SENATOR SKOUFIS: -- if I may, because my

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

I mean, so --

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

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

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

DR. HOWARD ZUCKER: I think --

SENATOR SKOUFIS: What are looking at?

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

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

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

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

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

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

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

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

If I may move on.

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

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

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

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

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

I think that we have looked at the report.

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

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

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

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

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

And we report -- New York State also reports

presumed cases.

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

SENATOR RIVERA: Commissioner, one second --

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

SENATOR RIVERA: -- one second.

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

SENATOR SKOUFIS: Yep, yep. Thank you.

My last question:

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

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

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

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

SENATOR SKOUFIS: Yes.

GARRETT RHODES: I think we're still in the

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

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

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

SENATOR SKOUFIS: So just to be clear --

SENATOR RIVERA: Thank you, Mr. Rhodes.

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

SENATOR RIVERA: Thank you, Senator Skoufis.

Your time is up, Senator Skoufis.

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

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

So something that everyone can see would be

preferable.

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

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

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

OFF-SCREEN SPEAKER: It should be.

SENATOR O'MARA: It is on mine.

SENATOR RIVERA: Okay.

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

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

ASSEMBLYMEMBER GOTTFRIED: Fair -- fair point.

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

GARRETT RHODES: I affirm.

ASSEMBLYMEMBER GOTTFRIED:

ASSEMBLYMEMBER KIM: Thank you.

SENATOR RIVERA: Assembly.

Go ahead, Mr. Bronson.

ASSEMBLYMEMBER BRONSON: Uh, yes.

Ron Kim is -- has his hand up.

SENATOR RIVERA: Assemblymember Kim, you're up.

ASSEMBLYMEMBER KIM: Good. Can you hear me?

SENATOR RIVERA: Yes.

ASSEMBLYMEMBER KIM: Thank you.

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

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

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

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

I hope we didn't lose you.

Can you still hear me?

ASSEMBLYMEMBER KIM: Okay. That's fine. Thank you, Commissioner.

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

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

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

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

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

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

That's part one.

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

who are leaving the hospital.

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

On May 10th we were able to test.

On March 25th we were not able to test.

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

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

ASSEMBLYMEMBER KIM: Okay.

So there's --

DR. HOWARD ZUCKER: And --

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

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

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

admitted to the hospital with coronavirus.

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

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

We had to look at this with projecting going forward.

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

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

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

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

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

Sorry.

SENATOR RIVERA: Thank you, Commissioner.

Thank you, Assemblymember Kim.

Senator May, please.

SENATOR MAY: Thank you.

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

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

It was due at the end of last year.

But when can we expect to see that report?

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

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

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

But, August 14th.

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

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

home fatalities.

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

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

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

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

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

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

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

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

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

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

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

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

So it's a whole issue of testing.

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

We're working with the nursing home staff,

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

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

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

So that's one issue.

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

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

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

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

What were our plans then?

How did we move forward then?

What could we do; how can we apply it?

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

And we have PPE regs as well.

And I can go on.

I would I like to, at some point [indiscernible cross-talking] --

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

And I want to urge you to be proactive in

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

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

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

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

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

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

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

But we can get back to that.

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

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

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

I recognize there's some discussions about outside visitation.

We are looking at all options out there.

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

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

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

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

SENATOR RIVERA: Thank you, Commissioner.

Assembly.

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

You're up, Dick.

ASSEMBLYMEMBER GOTTFRIED: Okay, thank you.

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

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

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

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

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

But here's my question:

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

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

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

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

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

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

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

ASSEMBLYMEMBER GOTTFRIED: Okay.

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

Another question:

Medicaid is the payer for about 80 percent of

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

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

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

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

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

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

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

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

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

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

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

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

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

ASSEMBLYMEMBER GOTTFRIED: Okay.

SENATOR RIVERA: Senator Biaggi.

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

[Indiscernible.]

There we go.

SENATOR RIVERA: We can hear you.

SENATOR BIAGGI: Okay, very good.

SENATOR RIVERA: There you are.

SENATOR BIAGGI: Thank you very much.

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

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

DR. HOWARD ZUCKER: Six years.

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

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

SENATOR BIAGGI: -- great, thank you.

Stick to yes or no.

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

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

SENATOR BIAGGI: Great.

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

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

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

SENATOR BIAGGI: Okay, great.

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

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

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

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

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

SENATOR BIAGGI: Okay.

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

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

Okay.

So I will then just jump to the point.

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

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

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

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

So are you now aware of these implications?

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

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

where you're going on this issue.

I lost the audio for you.

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

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

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

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

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

DR. HOWARD ZUCKER: Of course I do.

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

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

DR. HOWARD ZUCKER: The issue here about --

there are a couple things.

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

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

So that's number one.

Number two, we are in unprecedented times.

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

And we will look at everything about that.

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

So you're part of this.

You know, the legislature is part of this.

So [indiscernible cross-talking] --

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

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

Thank you very much.

SENATOR RIVERA: Thank you, Senator.

Assembly, please.

Assemblymember Bronson?

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

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

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

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

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

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

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

DR. HOWARD ZUCKER: Sure.

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

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

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

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

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

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

ASSEMBLYMEMBER BRONSON: Thank you.

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

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

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

ASSEMBLYMEMBER BRONSON: Okay, if you would, please.

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

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

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

DR. HOWARD ZUCKER: Sure, sure.

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

And this is not just about COVID-19.

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

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

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

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

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

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

I get it, believe me.

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

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

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

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

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

I [indiscernible] -- I feel for them.

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

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

ASSEMBLYMEMBER BRONSON: Okay. Thank you for that.

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

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

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

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

ill.

This is all in the works.

I have spoken to -- I [indiscernible] -- I know time is up.

I just want to share the fact that have I spoken to so many scientists.

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

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

SENATOR RIVERA: Thank you, Commissioner.

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

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

But a lot of our folks --

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

SENATOR RIVERA: -- want to talk to you.

[Indiscernible cross-talking.]

SENATOR RIVERA: Got you.

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

DR. HOWARD ZUCKER: No problem.

Next senator, Senator Jen Metzger.

SENATOR METZGER: All right.

Thank you, Mr. Chairman.

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

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

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

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

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

protected against fatalities.

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

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

DR. HOWARD ZUCKER: Sure.

We -- sure.

Thank you, Senator.

We are always looking at information and data.

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

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

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

We do know, from what the governor asked us

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

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

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

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

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

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

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

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

But, there are differences within -- I --

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

And I think that that is worth investigating.

You know, what --

DR. HOWARD ZUCKER: It is.

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

So -- so --

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

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

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

SENATOR METZGER: Okay.

SENATOR RIVERA: Thank you, Commissioner. Thank you, Senator.

Assembly.

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

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

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

Dr. Zucker, thank you.

Let's start off with a reverse question first.

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

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

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

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

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

DR. HOWARD ZUCKER: Sure.

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

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

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

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

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

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

You have to look at this from the clinical perspective.

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

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

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

Nobody asked me about that.

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

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

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

So we did move forward on that as well.

But the nursing homes are their home.

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

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

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

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

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

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

Go back: history.

Sometimes you look at history and see what it showed.

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

ASSEMBLYMAN McDONALD: Let me jump on to something else.

Let's jump forward to today.

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

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

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

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

GARRETT RHODES: And I'll quote --

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

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

ASSEMBLYMAN McDONALD: All right.

Isolation, big concern.

As you know, I'm a practitioner.

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

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

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

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

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

DR. HOWARD ZUCKER: -- right.

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

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

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

So I recognize this.

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

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

ASSEMBLYMAN McDONALD: Another question:

We are requiring nursing home staff to be tested.

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

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

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

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

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

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

Just one less thing that these long-term-care

providers have to deal with.

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

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

Some of the commercial labs are a little bit longer.

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

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

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

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

OFF-SCREEN SPEAKER: Thank you.

SENATOR RIVERA: All right.

Thank you, Assemblymember.

Senator Sue Serino, recognized for 5 minutes.

SENATOR SERINO: Hello, everyone.

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

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

department was wholly independent of the executive branch?

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

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

This is such a complex pandemic.

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

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

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

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

DR. HOWARD ZUCKER: How many left the team?

We have an enormous team.

Are you talking about within my department?

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

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

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

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

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

We did 124 guidances so far.

It's like any other department guidance.

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

SENATOR SERINO: Okay.

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

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

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

(The Senator talking under her breath.)

DR. HOWARD ZUCKER: So we --

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

DR. HOWARD ZUCKER: -- I know.

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

If a nursing home needs it, we will provide.

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

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

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

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

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

But that -- why wasn't that done?

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

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

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

So I'm unclear.

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

SENATOR SERINO: Okay.

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

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

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

Shortly after sending the letter, my

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

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

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

SENATOR SERINO: Okay.

And then one last thing:

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

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

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

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

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

GARRETT RHODES: Absolutely.

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

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

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

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

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

DR. HOWARD ZUCKER: And so --

SENATOR RIVERA: Very quickly.

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

But [indiscernible] to you.

SENATOR RIVERA: Thank you, Commissioner.

Thank you, Senator.

Assembly.

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

ASSEMBLYMEMBER BYRNE: Thank you, Mr. Chair.

Thank you, Mr. Commissioner, for being here.

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

So I do appreciate that.

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

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

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

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

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

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

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

ASSEMBLYMEMBER BYRNE: Understood.

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

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

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

So, it's good.

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

I also had a question about the number.

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

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

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

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

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

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

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

Back to the [indiscernible cross-talking] --

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

Going back to the actual March 25th order,

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

I think we believe that as policymakers and as lawmakers.

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

I know the governor has mentioned this.

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

DR. HOWARD ZUCKER: So two things.

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

But, two things.

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

So that's part number one.

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

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

necessary adequate care.

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

So I [indiscernible cross-talking] --

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

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

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

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

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

I didn't see that anywhere in the order.

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

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

"shall."

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

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

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

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

So we have to always remember where we are.

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

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

SENATOR RIVERA: Thank you, Commissioner.

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

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

I recognize myself for 5 minutes.

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

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

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

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

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

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

Is that incorrect?

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

Ultimately, as we moved forward --

SENATOR RIVERA: Sir, sir --

DR. HOWARD ZUCKER: -- yep, sorry.

SENATOR RIVERA: -- this is the question --

DR. HOWARD ZUCKER: Yeah, yeah, [indiscernible cross-talking] --

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

This is the first one:

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

Is that correct or incorrect?

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

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

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

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

SENATOR RIVERA: -- I'm sorry, I'm sorry.

I'm asking one more -- please, just answer this -- this is the question: --

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

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

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

It --

DR. HOWARD ZUCKER: No, no.

[indiscernible cross-talking] --

SENATOR RIVERA: -- let me just -- [indiscernible cross-talking] --

DR. HOWARD ZUCKER: --
[indiscernible cross-talking] --
SENATOR RIVERA: I'm going to give you 30 seconds. Go ahead.
DR. HOWARD ZUCKER: -- no, I was going to say, we had -- we reported it as someone who's died in the hospital.
[Indiscernible] the nursing home, they went to the hospital, they died in the hospital. We reported as they came from the hospital.
We then started to ask, and we tried to get information about who died in the nursing homes. And we started reporting that as getting information from the nursing homes.
And we do not want -- as I mentioned before, we don't want to double-count and say this person died here and also died there.
SENATOR RIVERA: But it's -- as my colleague James -- as my colleague Senator Skoufis pointed out, no other state keeps the numbers like this.
This is the concern that we have, sir.
I understand that we were all --
DR. HOWARD ZUCKER: No, [indiscernible cross-talking] --
SENATOR RIVERA: Hold on.

-- [indiscernible].

That this is not incorrect?

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

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

SENATOR RIVERA: This is the concern --

DR. HOWARD ZUCKER: -- yes.

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

DR. HOWARD ZUCKER: -- okay.

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

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

I get it.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

SENATOR RIVERA: The only thing -- and I only

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

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

I'm sorry.

My time is up.

Assembly.

ASSEMBLYMEMBER BRONSON: Thank you.

Ranking Member Brian Manktelow, and you have 5 minutes.

ASSEMBLYMEMBER MANKTELOW: Hi, thank you, Chair.

Commissioner, just a quick question for you.

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

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

Yes, I do remember.

ASSEMBLYMEMBER MANKTELOW: Well, thank you.

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

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

And do you remember that as well?

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

ASSEMBLYMEMBER MANKTELOW: Sure.

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

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

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

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

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

But it was March 5th.

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

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

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

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

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

This is when we were trying to figure out how the 37,000 individuals in the nursing homes -- the nursing home staff were positive.

So we went back, asking everyone, Can you please tell us when the first person in your nursing home was -- staff -- a staff person was positive?

And that's where the February 25th, because, February 25th, I want to mention a little bit about February 25th, because that's a very critical day, at least in this response.

And so I want to be respectful of your time, but, when you have a second, I would like to bring that up.

ASSEMBLYMEMBER MANKTELOW: All right, well -- yeah, okay. I've got one really quick question, then.

So at that point, knowing how compromised our nursing homes could be, having had that $40 million that we voted on to approve, why was there such a time lag getting the PPE equipment out to our nursing homes?

It seems like, at this point, if they're our most vulnerable people that we have in New York State, why would they have not been the priority at that point?

DR. HOWARD ZUCKER: We did -- so let's talk a little bit about PPE and supplies, because we did have -- we did provide to the counties, who then provided both to the hospitals and nursing homes, PPE.

We did not have enough PPE.

The governor was ask -- he was asking everyone to try to figure out how we can get more PPE.

We were looking across the country.

We were looking across the world, for that matter.

The irony here a little bit, is that the virus originated in China, right from the beginning, that's where it started. Right? Went to Europe, came to the U.S.

And the actual answer, that the protection from the virus, the PPE was being manufactured in China as well, and we were trying to get it from there.

A little bit of an ironic situation there on that.

But I -- and we did get it out.

We -- and if they didn't, we do not have, then we were quick to try to do whatever we could to help them out.

ASSEMBLYMEMBER MANKTELOW: All right. Because that was the number-one complaint -- one of the number-one complaints from our nursing homes and our senior living places, that they could not get PPE equipment to their staff members fast enough.

And it just seems like, with all the information that we had -- the data, the scientific proof -- of what was coming, it just seems like they would have been a priority, and we would have got that equipment out to them sooner.

I think that that's one of the downfalls of what had happened.

And I hope we move forward and look at something to make sure that doesn't happen again, especially moving forward.

I only have like 30 seconds left, so I'll -- go ahead.

DR. HOWARD ZUCKER: No, I just want to talk about that last week of February for a second, because I think it's an important week of what we did, and what was happening on a national level, because, on February 25th --

And I recognize the time. Give me an extra 15 seconds.

-- on February 25th I was in Washington. I was with all my other state health commissioners from around the nation, annual meeting.

We were invited to the White House, to sit down with all of them, and to listen to HHS and to listen to the leadership there and the leadership at

the White House, to tell us about this coronavirus.

And what they said was, "that we are going to leave this to the states."

New York was already leading.

The governor -- Governor Cuomo was already taking steps to address this issue. As I had mentioned, that we had a $40 million appropriation put forth, which I thank the legislature for [indiscernible cross-talking] --

SENATOR RIVERA: I gave you 20.

DR. HOWARD ZUCKER: You gave me 20.

SENATOR RIVERA: I gave you 20.

DR. HOWARD ZUCKER: Let me just finish -- let me just finish. I'll even stay one minute longer on this. Okay?

Thank you. Thanks.

All right. I promise you.

And what happened was, I told the White House after they said, we'd leave it to the states, I said to them that this needs to be a federal response. And New York will lead, but that this needs to be a federal response.

That same week --

SENATOR RIVERA: Thank you, Commissioner.

DR. HOWARD ZUCKER: That same week, Wadsworth

lab came out with a lab, and then we [indiscernible cross-talking] --

SENATOR RIVERA: We have to move on.

Senate, Ranking Member of Investigations, Senator O'Mara, you're recognized for 5 minutes.

SENATOR O'MARA: Yes, thank you, Chairman.

Thank you, Commissioner and Mr. Rhodes, for being with us today.

Were you cognizant of the fact, the numbers of nursing home deaths that occurred in hospitals would be an important topic of interest for us today?

DR. HOWARD ZUCKER: I -- I -- yes, I was.

Yes, I was.

SENATOR O'MARA: Yet you come with no information to give us any idea of how many of those deaths there were?

DR. HOWARD ZUCKER: Because, as I said earlier, that I will not provide information that I have not sort of ensured it's absolutely accurate.

This is too big an issue, and it's too serious an issue with deaths and numbers, to be able to provide.

I will get that you number, as I promised you that I would.

SENATOR O'MARA: Commissioner, when were you aware that this hearing was going to happen today?

DR. HOWARD ZUCKER: A couple of weeks ago I heard about this.

But I have to tell you that, within that period of time, these last couple of weeks --

SENATOR O'MARA: Commissioner, this is my time.

And were you further aware that the CDC guidelines with regards to [indiscernible] in the nursing homes would have been an important topic for us to be talking about today --

DR. HOWARD ZUCKER: You [indiscernible] --

SENATOR O'MARA: -- yet you didn't bring the CDC guidelines with you today?

DR. HOWARD ZUCKER: -- you broke up, Senator, on that, so I didn't hear you.

SENATOR O'MARA: Did -- did you not understand that the CDC guidelines relative to nursing home admissions would be an important topic of interest to us today; yet, you did not bring that CDC language with you?

GARRETT RHODES: I have it.

DR. HOWARD ZUCKER: We have it.

Yes, we have it.

SENATOR O'MARA: Well, earlier you said you didn't have it, and you couldn't answer a question about what specifically was in there regarding requiring nursing homes to admit COVID-positive patients.

DR. HOWARD ZUCKER: We'll get it.

GARRETT RHODES: [Indiscernible] multiple pieces of guidance.

Which one --

DR. HOWARD ZUCKER: I don't know which one you want.

SENATOR O'MARA: Well, I forget what the specific question was from a member before, but I thought it odd that you said you didn't have that language then.

DR. HOWARD ZUCKER: No, I didn't have our March 25th memo with me. That's what I said, I didn't have the memo with me.

SENATOR O'MARA: Okay.

Have -- are either of you familiar with a March 26th statement by The Society for Long-Term Care Medicine and the AMDA in response to --

DR. HOWARD ZUCKER: No, I'm not.

SENATOR O'MARA: -- to the order?

DR. HOWARD ZUCKER: I'm not.

SENATOR O'MARA: Neither of you have seen the March 26th statement from AMDA, The Society for Post-Acute and Long-Term Care Medicine?

DR. HOWARD ZUCKER: I have not, no.

SENATOR O'MARA: It was [indiscernible] to us earlier in some meetings we were having, from a representative from the AMDA, The Society for Post-Acute and Long-Term-Care Medicine, which represents health-care providers in the nursing home industry across the country, that this March 26th statement was sent directly to both the governor and you, Commissioner Zucker, on March 26th.

And that statement said, that: The AMDA finds that the New York State advisory to be overreaching, not consistent with science, unenforceable, and, beyond all, not in the least consistent with patient-safety principles.

Now, this statement has been reported in the media extensively.

Neither of you have read this statement?

DR. HOWARD ZUCKER: There's a lot of things that have come across my desk, as you can imagine.

And I'm happy to go back and look at that, and see what memos or letters that came through on

this. And we'll find -- we'll find this.

SENATOR O'MARA: Well, The Society for Long-Term Care went on, in their response to your directive: Rather than bullying nursing facilities and medical providers to make unsafe decisions, the State of New York would be [indiscernible] to direct its energies at ensuring adequate personal protective equipment is available to all health-care providers, ramping up [inaudible] capabilities, shortening test turnarounds, developing a long-neglected health-care workforce, and identifying and standing up alternative care sites.

What alternative care sites for nursing homes were set up outside of the New York metropolitan region?

DR. HOWARD ZUCKER: So we had -- so a couple things.

Number one, we have a 60-day supply for PPE.

I take issue with the statement that we did not -- we were not providing excellent care to the individuals in the nursing homes.

We always are looking out for the best interests of those individuals.

The residents in those nursing homes, if there was a concern in the nursing home

administration, I was happy to reach out to us.

They say they felt that they could not do that, that's not on true facts.

I have spoken with many of the nursing home administrators and owners about their issues, and they're -- I'm always receptive to that.

So that's that issue.

Your last point that you were asking is, what are we doing, moving forward, on this?

Is that where your concern is?

SENATOR O'MARA: No.

What did do you since March 25th to set up alternative --

DR. HOWARD ZUCKER: Oh, yes --

SENATOR O'MARA: -- [inaudible] --

DR. HOWARD ZUCKER: -- outside of New York City.

SENATOR O'MARA: -- facilities [indiscernible cross-talking], rather than sending them back into the nursing home?

DR. HOWARD ZUCKER: So -- so a couple of things.

Let's go through this.

First of all, there are other facilities that are out there, that we had set up.

But I think there's a point here [indiscernible], and this goes back to the science, that people keep believing that --

I know time's up. I'll be very fast on this.

-- people keep believing that the individual is going to the nursing home with coronavirus.

That doesn't fit the science.

When you recognize, you talk about CDC, after nine days, zero infectivity in the [indiscernible] infectivity.

I can through this, but I'm respectful of the time.

I can go through why the science doesn't add up to what people are saying.

SENATOR RIVERA: [Indiscernible], Senator.

Thank you.

Assembly.

ASSEMBLYMEMBER BRONSON: Yes, the next person to ask questions, Assemblymember Tom Abinanti.

Tom.

All right.

SENATOR RIVERA: If he's not there, I'll take it.

ASSEMBLYMEMBER ABINANTI: Well, I'm here. I'm here.

ASSEMBLYMEMBER BRONSON: Okay, Tom. You have 3 minutes.

ASSEMBLYMEMBER ABINANTI: I had to get the mechanics to work.

First of all, thank you, Commissioner, for joining us this morning.

I'd like to first go to the issue of families visiting at nursing homes.

Do you have any evidence of any family transmission at nursing homes?

DR. HOWARD ZUCKER: This goes back to the issue of visitation, in general.

And I believe, based on what we found --

ASSEMBLYMEMBER ABINANTI: No, I'm not asking visitation in general.

I'm asking -- you said the problem of transmission of COVID with nursing homes was staff.

If it's not visitors, why are you keeping visitors out and allowing staff to continue to go in?

DR. HOWARD ZUCKER: No, what I said is, that the data we have shows the 37,000 positive staff.

But that because we didn't test visitors, but the presumption is, and I would tell you the presumption is, that the visitors also brought it

in.

I don't want to -- like I said, I don't want to blame anyone.

ASSEMBLYMEMBER ABINANTI: I asked [indiscernible cross-talking] --

DR. HOWARD ZUCKER: But the reality --

ASSEMBLYMEMBER ABINANTI: -- you said you relied on the basis [indiscernible].

DR. HOWARD ZUCKER: -- because the nursing home staff --

ASSEMBLYMEMBER ABINANTI: What's your basis for that assumption?

DR. HOWARD ZUCKER: -- because the nursing home is someone that we can go ask, that we want to get tested.

And, you know, it's a little bit different to walk up to someone and just say, you know, and you came to visit your relative.

ASSEMBLYMEMBER ABINANTI: [Indiscernible cross-talking] -- Commissioner, it seems to me -- I'm directing the questions about family, not about staff.

Families are complaining that they are not able to supervise on a day-to-day basis, so there are no outside eyes to see what's going on. That

their family members are deteriorating very significantly. That they cannot use technology because they're much older people.

DR. HOWARD ZUCKER: I agree. I understand.

ASSEMBLYMEMBER ABINANTI: It's not the same thing as being face-to-face.

So what is the basis for excluding families completely from [indiscernible cross-talking]?

DR. HOWARD ZUCKER: Sure.

ASSEMBLYMEMBER ABINANTI: Why can't you set up a protocol for every nursing home where the family members are tested?

It seems to me, as somebody previously said, that the staff work in various places, they go home to their own families, they take public transit; while it's the families that are going to be the most careful, because they don't want to infect their family members who are in the nursing home.

What can we do to allow the family in the nursing homes today?

DR. HOWARD ZUCKER: I am extremely, like I said before, empathetic to those who have relatives that they don't see, and they need to see them.

I get that. I really recognize that.

The reason I say also visitors is because everyone lives in the community.

The people work in nursing homes live in the community.

People who visit live in the community, because the person's work is in that area, is also in the community.

We do know, we do know, from our testing of antibodies, that we do know that the -- there are -- that some of the visitors in that community were positive.

We do know from the ZIP Codes for the 50 percent positive.

ASSEMBLYMEMBER ABINANTI: Yes, but why can't you set up -- why --

DR. HOWARD ZUCKER: In some ZIP codes, 25 percent --

ASSEMBLYMEMBER ABINANTI: -- let me just finish my question.

Why can't you set up a protocol where you actually test the visitors?

Most of the visitors, from what I can understand, are staying home, socially distanced, unlike the nursing home staff working several jobs.

I would like to see you set up a process, as

soon as possible, to test the visitors; to give them the questionnaire, check their temperature before they come in.

SENATOR RIVERA: Thank you, Assemblymember.

[Indiscernible cross-talking by several participants.]

SENATOR RIVERA: [Indiscernible.]

Do you want to respond?

DR. HOWARD ZUCKER: 117 -- yes.

117 nursing homes already have visitation programs that we have put into place.

We have 209 that have had policies that are put forth.

We want to move forward.

I really do want to move this forward, I want to help. But I also would do not want it to spread.

The reason it goes back to the visitors' issues, they live in the community, they work in the community. Right? And I just don't want this to spread.

I recognize it. I am really, really empathetic about it.

But I am trying to tell you, I'm trying to balance two things.

We will set up -- we are working on --

SENATOR RIVERA: Thank you, Commissioner.

DR. HOWARD ZUCKER: -- all right.

SENATOR RIVERA: Thank you, Commissioner.

Senator Salazar, recognized for 3 minutes.

SENATOR SALAZAR: Thank you.

I am unable to -- oh, there we go -- to start my video.

So I actually want to follow up about the impact of the blanket legal immunity that was granted not only to nursing homes, but also to health-care facilities, like hospitals.

Nearly 70 percent of the nation's COVID-19 deaths came from states, such as New York and New Jersey, that handed out early blanket legal immunity.

And while the legislature has since narrowed the scope of that immunity, there remains a period of time longer than [indiscernible] months for which the previous blanket immunity still applies.

Senator Biaggi referenced the egregious racial disparity in maternal morbidity in New York.

During what I'll call the "blanket immunity period," from April through part of July, a Black woman named Sha-Asia Washington died at Woodhull Hospital in my district.

And just because that case received national attention, Commissioner, are you familiar with Sha-Asia Washington's case?

DR. HOWARD ZUCKER: I'm not familiar with it specifically, although I have read a lot about different cases. So it is possible that I am and I don't recognize the name.

I've read all about these [indiscernible].

SENATOR SALAZAR: Certainly.

So, just briefly, Sha-Asia wasn't treated for COVID, but she was treated at -- because of where she was treated, and because she died on July 2nd, the medical providers involved in her death, you know, her anesthesiologist, for example, who had administered the epidural before she died in childbirth, within -- in an otherwise completely healthy pregnancy, the -- her care team still has blanket legal immunity.

Is -- in your opinion, is it acceptable that her care team has blanket legal immunity in this case, and that her family, for example, can't -- doesn't have any recourse because of the previous --

DR. HOWARD ZUCKER: Right. So I --

SENATOR SALAZAR: -- [indiscernible]?

DR. HOWARD ZUCKER: -- I am here wearing my

doctor hat, public health hat. I'm not wearing my lawyer hat today. And I would not, as a -- but I will comment a little bit as a lawyer.

I will not comment on a case that I don't even know all the facts to.

So I recognize that. I feel for individuals.

But I want to go back to what you mentioned about this immunity.

Two things:

One is, this was not a Greater New York Hospital Association proposal, or whatever. And so, that, I think is an inaccurate statement.

But the second point is that, is that no one, not the department or anyone, will allow any kind of egregious behavior to happen, whether it's in a hospital or a nursing home or anywhere.

That is the premise long before coronavirus, and it will be long after coronavirus is gone.

And the bottom line is, that the objective here was to make sure that those who were working, they would be able to provide the care while we were in the upsurge of an absolutely unbelievable pandemic, which is, as I say, still going on.

I am still worried every day. I am working every day on this issue.

And the reality is, is that I don't want it coming back to New York.

And many of the questions that have been raised is, and my answers are, to make sure this doesn't come back to New York, or doesn't uptick in New York.

SENATOR SALAZAR: Sure.

I do -- I realize that I just ran out of time.

I have one more question, if I may ask it?

SENATOR RIVERA: 10 seconds, really quickly, please.

SENATOR SALAZAR: Thank you.

So we know that hired staff-to-patient ratios in nursing homes are directly related to the quality of care.

37 states have a higher average of hours of direct care than New York does.

New York is one of only 12 states that has no minimum standard for hours of care per staff in nursing homes specifically.

Do you think it's acceptable that New York, by that metric, has among the lowest standards of care in nursing homes?

DR. HOWARD ZUCKER: Well, number one, I will

get back to you about the details, because I want you -- you've provided me one piece of information and asked me to respond to it.

And I actually like to have all the facts and the data before I answer a question like that.

SENATOR SALAZAR: Thank you.

SENATOR RIVERA: All right, thank you, Senator.

Assembly.

ASSEMBLYMEMBER BRONSON: Yes, the next questioner we have is Assemblymember Billy Jones.

Assemblymember, you have 3 minutes.

ASSEMBLYMEMBER JONES: Yes.

Okay?

Thank you.

Thank you, Mr. Commissioner, for being here.

I'm going to go back to the visitations to our nursing homes.

Can you tell me the percentage of nursing homes that meet the threshold for the July 10th criteria that -- from the guidelines that you put down?

What is the percentage of nursing homes that are able to meet that threshold right now?

DR. HOWARD ZUCKER: I'd have to get back to

you.

117 have put -- that we have opened up some form of visitation to, 209.

I probably have in it my papers.

Keep asking your questions and I'll take a look. All right?

ASSEMBLYMEMBER JONES: Okay, well, the percentage that we had originally a couple of weeks ago was 12 percent; 12 percent of our nursing homes could meet that criteria.

That's not a very -- a very high number -- or, a high percentage of nursing homes that can meet this.

My issue with this is that, obviously, like many of my colleagues here on this hearing, we're hearing from the family members, over and over and over again, that they cannot get visitation to these facilities. They can't get that human interaction.

It's been mentioned by several of my colleagues.

You know, people are, literally, dying of depression, and lonesome. Their families are feeling -- you know, they're suffering through this.

I hear heartbreaking stories every single day.

We need to get a policy in place and some guidelines in place, obviously, in a safe manner, to let these family members interact with their loved ones.

We have mentioned other things, through technology, and what have you. And it's been mentioned by my colleagues, and I think you would agree, a lot of our elderly residents are not that great with the technology. So we have our hiccups there as well.

We need to do this.

I have another question.

Who provides the guidance, do you provide the guidance, for DOCCS, for their visitation, which will be going into effect this week?

DR. HOWARD ZUCKER: Excuse me.

My report says, what I have here is, 34 percent. So that's higher than what you have.

We are going to look at the issues of technology.

And we have been, and that's where that $1 million for the program to develop technology, to help those in nursing homes connect with relatives.

We will move forward.

I am a big fan of technology. And I will

figure out a way to adapt wherever is necessary to help those in the nursing homes.

And with regard to DOCCS, I have to check the answer on that.

ASSEMBLYMEMBER JONES: Do you have, does DOH provide the guidance to DOCCS?

DR. HOWARD ZUCKER: Well, I have to check whether -- whether we -- we provide assistance to DOCCS, and we've been working with them, and we've done testing in the correctional facilities as well.

And the guidance -- a lot of guidance has come out by the department of health, that goes around to other agencies as well. But then those also issue their own guidance.

ASSEMBLYMEMBER JONES: Okay.

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

ASSEMBLYMEMBER JONES: I guess my point -- my point here is, you know, long before COVID hit, and going through this, many of our family members that have loved ones in nursing homes, they feel like the forgotten ones. And they feel like the death toll that's happened in these nursing homes, and the carnage, really, that's happened, they're being punished now through these visitation processes or

policies, that they can't see their loved ones.

At the same time --

SENATOR RIVERA: Thank you, Assemblymember.

ASSEMBLYMEMBER JONES: -- where we can put out guidance for DOCCS to do this, we should able to do this for our loved ones in our nursing homes and for their family.

SENATOR RIVERA: Thank you, Assemblymember, thank you, Assemblymember.

Moving on to the Senate, Ranking Member in Health, Senator Gallivan, you're recognized for 5 minutes.

SENATOR GALLIVAN: Thank you, Chairman.

Commissioner, on June 25th there was a "New York Post" article, where you were quoted, in responding to a letter that 22 members of the Majority had sent to you regarding -- a number of their recommendations regarding nursing homes.

When did you first become aware of the letter that was sent to you?

DR. HOWARD ZUCKER: I'd have to go back on that, I really would. There's so many letters that come in.

So, June 25th, even though it's only two months ago, whatever, or six weeks ago, it feels

like a century ago to me. So I'd have to find out when it was.

SENATOR GALLIVAN: Would it be fair to say that you likely received it near that time, and your comments came about as a result of the receipt of it?

DR. HOWARD ZUCKER: Well, it depends on -- I mean, if it was sent by e-mail, you know, it comes through and then it gets processed.

And if it was sent by regular mail, there's another process to it.

But I'd have to go back. I don't want to comment, because I don't want to tell you something, that, yes, I got it the next day or so.

I just don't remember.

SENATOR GALLIVAN: Understood.

Well, back on March 20th, the governor announced Matilda's Law. And that, in particular, established rules for vulnerable populations, such as seniors. And I think at the time, that law classified "seniors" as the population over 70 years old.

And, of course, it shows a recognition of the severe impact the virus could have on a population like that.

But it doesn't seem at all that Matilda's Law applied to nursing homes, all of whom fit the definition of that "vulnerable population."

Can you explain how Matilda's Law came to be, and why it did not include provisions regarding nursing homes?

DR. HOWARD ZUCKER: I can speak.

I can tell you it came to be because Matilda's Law is named after the governor's mom. And he has recognized what many of us recognize, from the challenges of -- for those who are older, and to make sure that their needs are met.

I'd have to go back and go through the details of Matilda's Law. But I can tell you that the governor's commitment to the nursing homes, like my own, and the rest of the department, and of all of us, is paramount.

SENATOR GALLIVAN: So Matilda's Law did not deal with nursing homes?

DR. HOWARD ZUCKER: Matilda's Law, I will go back and listen, but it required -- it required that there be, you know, masks available for -- to be sure, that if you're with somebody, that you are wearing those masks, to make sure that -- if there's any face-to-face interaction, to make sure that

you're not exposing someone to this virus.

And then there are other components of it as well.

SENATOR GALLIVAN: So in early March, the focus from the executive branch was on the hospital system, and hospital system being prepared, including providing for necessary PPE and staff.

But it didn't appear that the same measures were being taken at the same time for nursing homes and assisted-living facilities.

Why not?

GARRETT RHODES: Well, I'll read from the department of health's March 13th health advisory.

COVID-19 cases in nursing homes: Suspend all visitors. Health and temperature checks required for everyone who enters the building. Face masks or masks required for working with residents. The cohorting of residents with COVID-19 to dedicated health-care professionals under the direct-care providers.

This is March 13th.

The morning of March 13th, New York State had not reported a single death yet at the time.

There were just several hundred cases when the department of health got this guidance.

So to suggest that there wasn't activity and inaction being [indiscernible], it's not true.

SENATOR GALLIVAN: All right.

After the issuance of the March 25th guidance regarding nursing homes, nursing homes were directed to contact the department of health in the event they could not provide adequate care for a patient. And they were told that the department of health would be helpful.

If I understand you correctly, you said that -- Commissioner, that nobody contacted you.

But on April 9th, Cobble Hill Health Center in Brooklyn, a nursing home there, reported that they had asked state officials if COVID-19 patients could be transferred elsewhere.

And they were denied.

How come?

DR. HOWARD ZUCKER: The people -- if someone needs to be transferred to another facility, we would make that happen.

And the reality is, is that the issues -- if someone called us and said, I would like someone to be moved to another place, or they needed PPE, or they needed other assistance, or they needed staff, we were there to provide that to them.

So, you know, everyone keeps saying that they wanted to move someone. But sometimes people think about it, but they didn't reach out to do it.

Whether they thought that they could not reach out is just a fallacy. We were available for anything that needed to come forward.

SENATOR GALLIVAN: I would just say, if I could follow up on that, not with a question, but just to that point, that it was reported in the "New York Post" --

SENATOR RIVERA: Senator Gallivan, I'm sorry. Your time is up.

Your time is up right now [indiscernible cross-talking] --

SENATOR GALLIVAN: Okay, Chairman.

Thank you.

SENATOR RIVERA: Assembly.

DR. HOWARD ZUCKER: Just the thing -- the Cobble Hill issue was about staffing, if that's what you're --

ASSEMBLYMEMBER BRONSON: All right, moving on --

DR. HOWARD ZUCKER: I mean, it's addressed -- it was addressed.

ASSEMBLYMEMBER BRONSON: -- let's move on to

Assemblymember, Ranking Member, Jake Ashby.

My apologies. I took you out of order.

But you're up now, and you have 5 minutes.

ASSEMBLYMEMBER ASHBY: Thank you, Mr. Chairman.

Thank you, Commissioner.

Considering the massive undertaking of contact tracing, and all of the efforts that have been put into this, it seems kind of strange to me that we are going about this in, really, a great way for everybody across the state.

Shouldn't that extend to our nursing home residents that went to the hospital?

I mean, if we're able to track people all over the state, and make sure that, you know, they haven't come in contact with this person, or, if they went to this party, and they tested positive, and we have a positive location on them, how is it that we don't have a real-time number in nursing home deaths for people who were -- started from a nursing home and went to a hospital?

DR. HOWARD ZUCKER: Well, there's two parts to this. Right?

One is about the contact tracing, what's the objective here?

The objective is to prevent the spread of this disease into the community.

ASSEMBLYMEMBER ASHBY: Commissioner -- Commissioner --

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

ASSEMBLYMEMBER ASHBY: -- Commissioner, with all due respect, I understand the intent of it.

But the basic principles of it is tracing people. Right? You're following people.

And the same principle can be applied to nursing home residents that were discharged from their facility and then admitted to a hospital.

And I understand that it may be difficult to track that down, whether it wasn't through the admissions department through a hospital.

But, even going through, as you mentioned, the 613 nursing homes that we have around the state, they would have a record of whether or not that person were discharged from their facility or not. Right?

DR. HOWARD ZUCKER: Well, and what I'm saying is, is that, that information, I want to be sure that we are not double-counting individuals, that someone didn't die for a different reason,

because -- so that's what we're trying to do.

If someone goes into the hospital from a nursing home, and then they die, or, they -- or -- and they're sick in the hospital, and someone says, well, they died because of COVID, well, maybe they died because of something else.

I mean, this is something which I mentioned about earlier, about pneumonia. Right?

The presumption by CDC was that, they died, the 27 percent of people dying in those two months, was because of pneumonia.

And as the director of the CDC said, "presumed to be coronavirus." Right?

But what I want to know is exactly, when someone dies in the hospital, what did they die from?

Did they --

ASSEMBLYMEMBER ASHBY: Okay, [indiscernible cross-talking] --

DR. HOWARD ZUCKER: -- were they [indiscernible cross-talking].

So I understand. [Indiscernible cross-talking] --

ASSEMBLYMEMBER ASHBY: All right, Commissioner, I understand the reluctance to say

whether or not they died from COVID or not.

Do we have a number as to how many people were discharged from nursing homes and sent to a hospital?

DR. HOWARD ZUCKER: And that's the information that has to come, you know, nursing homes-reported information.

I want to see what that is, and make sure --

ASSEMBLYMEMBER ASHBY: Well, we don't have -- we don't even have that information.

GARRETT RHODES: First of all, we have data. We put out more data than any other state. We're one of nine states that reports presumed and confirmed deaths.

Multiple states do not report anything to do with nursing homes.

There's three parts of it: there's collecting the data, validating the data, and reporting the data.

We do not release data that we're not 100 percent sure is accurate.

We've had reports of deaths come in from nursing homes that say, someone died of COVID in December.

Now, maybe COVID was spreading wildly in

December that we didn't know about. There's a lot we haven't -- we don't know [indiscernible cross-talking] --

ASSEMBLYMEMBER ASHBY: With all due respect, that wasn't my question.

My question was: Do we have a figure of how many were discharged from a nursing home and sent to the hospital, regardless of diagnosis, but during that time, if we were tracking that, or they were suspected or being treated for COVID, because we're looking at that right now as well?

GARRETT RHODES: We collected a lot of different data. But the key is, to be able to make sure that it's accurate.

And we will not give ballparks, we will not give ranges, we're not going to give estimates. We're going to give the actual data.

We need to collect it. We need to go back to the nursing homes, poll them and validate this data, and release it on a rolling basis.

ASSEMBLYMEMBER ASHBY: Okay.

All right, my second question is: If the March 25th guidance is still standing, why is it not up on the department of health's website anymore?

DR. HOWARD ZUCKER: I will check to see what's where.

It's an active guidance with a lot of guidances that are out there.

GARRETT RHODES: I printed it out this morning, so it was up [indiscernible].

ASSEMBLYMEMBER ASHBY: I mean, I don't understand.

If you're making the clarification that this is still standing guidance from the department of health, and I'm not sure why it was removed in the first place if it was still standing, why is it not back up?

DR. HOWARD ZUCKER: Well, there's an updated guidance that is online.

If Garrett said that he just printed it out this morning, then it must be there.

ASSEMBLYMEMBER ASHBY: All right.

Regarding -- regarding the transference of nursing home patients, on May 12th, the media reported a resident of the Grand Rehabilitation Nursing Center in New York, which is in my district, had been transferred to a facility in South Point without notifying the family.

Were nursing homes permitted to move

residents without notifying families?

And is the department of health notified residents who are moved?

DR. HOWARD ZUCKER: Nobody -- you know, this is an ongoing pandemic, as I've said. And people need to notify their relatives.

And if something happened where a relative was not notified, then we will look into that, that specific case, or any other case of that nature.

A relative should be contacted.

And I will find out [indiscernible].

ASSEMBLYMEMBER ASHBY: And I understand that. And I --

SENATOR RIVERA: Assemblymember, I'm sorry. Your time is done.

ASSEMBLYMEMBER ASHBY: Thank you, Chair.

We're moving on to the Senate, recognizing Senator Helming for 3 minutes.

SENATOR HELMING: Thank you, Senator Rivera.

Commissioner, thank you for your testimony today.

For about the past two-plus hours now, I've listened, Commissioner, as you have responded to various questions.

I've heard statements that you've made, such

as, "let's get through this pandemic," and, "we will make decisions as the information becomes available."

I have to say, as someone who has worked my way through college as a direct-care provider at a nursing home, and later in life I served as the director of a senior living facility, that I find these responses extremely troubling.

The issues surrounding the quality of care in our nursing homes are not only complex, as we all know, but they are longstanding. They've been around for a number of years.

It is unacceptable, it's frustrating, and it's heartbreaking for many New Yorkers, including my family, who lost a loved one living in a nursing home during this pandemic.

It's just so unbelievable that the great state of New York was not better prepared to protect our citizens.

We've all heard of all the issues, like I said, that there have been around forever, issues like infection-control lapses.

I've heard stories about:

The lack of PPE.

Nursing home care providers wearing garbage

bags or used gowns.

The lack of testing protocols and test services.

Inadequate and underpaid staffing.

Lack of collaboration; no exchange between the State and our nursing home representatives.

And, the lack of communication, that I also experienced, between nursing homes and residents and their residents' families.

Again, these are issues that have been around forever, and the pandemic is shining a light on how significant and how prevalent these shortcomings really and truly are.

So, Commissioner, you mentioned that there were 1300 nursing home inspections that were done, and yet, in spite of that, in spite of all these things you're talking about that are being done, we have lost somewhere between 6500 and 12,000 nursing home residents.

And it just -- it leads me to ask you, you know, without pointing the finger at the federal government, what resources does the DOH, what resources do you need, to do a better job of protecting our senior citizens?

More financial resources?

More staffing?

And the other question I want to ask: Are the inspection reports that have been done, are those available to the public?

For a request that's been submitted, we have gotten generic responses to.

So I'd like to know if those reports are available.

DR. HOWARD ZUCKER: All right. So I think -- I hear what you're saying.

I will tell you this state and the department of health has been incredibly aggressive on this issue.

We have provided -- and I need to reiterate this: We have provided 14 million pieces of PPE. We offered 96,000 volunteers.

SENATOR HELMING: Dr. Zucker, I'm sorry, I have to interrupt.

But I have had numerous calls to your office about the lack of PPE in our rural Upstate New York areas.

And the fact that you said earlier that that PPE was given to the counties to distribute, I can tell you, I have the timelines, the dates, and everything, that that did not happen in a timely

fashion. And, in some cases, it didn't happen until it was much too late.

DR. HOWARD ZUCKER: What I'm telling you is, that the -- when information came to us that we needed to provided, we provided it out to the community.

This is an ongoing pandemic.

Obviously, I bring you back to the PPE issue because, at the beginning of this pandemic, when this was already in the community and in the nursing homes and in our lives, to say the least, the fact was, that this was -- that this -- we were looking for more PPE. And we got [indiscernible].

Senator Rivera is signaling me.

SENATOR HELMING: And I'll just say, really quickly --

SENATOR RIVERA: Thank you -- no, thank you, Senator --

SENATOR HELMING: -- in Seneca County we had no test kits.

SENATOR RIVERA: -- your time is up, your time is up.

We've got to squeeze in a couple more.

Assembly.

ASSEMBLYMEMBER BRONSON: Uh, yes. The next

questioner will be Assemblymember Linda Rosenthal, and you have 3 minutes.

ASSEMBLYMEMBER ROSENTHAL: Okay. Thank you.

Thank you, Commissioner.

I have a facility in my district that is -- oops.

Okay.

Sorry.

I have a facility in my district that is an assisted-living center, as well as a rent-stabilized building.

So when we called up DOH to find out if there were any rules and regulations governing the assisted living, which has a very elderly population, they said, "That's not our purview."

Whose purview is that?

And you can just answer, you know, we don't have one, or, it's someone else's.

DR. HOWARD ZUCKER: I will get you the details of where this falls within -- within the agencies out there on this.

ASSEMBLYMEMBER ROSENTHAL: Okay.

Because that was very troubling.

I have another rehab and nursing facility where there were at least 44 confirmed and

17 suspected deaths.

At a certain point they lost key workers; for example, social workers. So they consolidated all of the COVID patients on one floor.

A constituent I've worked with for years was never told, he didn't know where his mother was.

And I wonder, did the DOH reach out to any of these nursing homes to tell them what the protocol was if they were lacking staff?

DR. HOWARD ZUCKER: Constantly.

We constantly reached out to the nursing homes.

And as we talk about these guidances, there are guidance documents that have gone out, 124 different guidance documents that came out of the department --

ASSEMBLYMEMBER ROSENTHAL: All right, can you give me an example, how often was each one called?

DR. HOWARD ZUCKER: -- I -- on a regular basis they were called. I can't tell you exactly.

But I do know that I personally have called one nursing home, probably a couple weeks ago, five or six times during that week, and been in contact with them constantly when there was a concern.

And that's just one, and I could tell you others.

And while managing the pandemic, when I hear something that was of concern, not only did my team address it, but I also picked up the phone and called them.

So to say that we are not aggressive on this is just not true.

ASSEMBLYMEMBER ROSENTHAL: No, I didn't say that.

I just asked how -- who called, how often did they call?

And you told me you called.

Okay, my next question --

DR. HOWARD ZUCKER: I will tell you others did as well.

If there's a specific one, I'll make sure we'll find out.

ASSEMBLYMEMBER ROSENTHAL: Okay.

-- and when I called around to facilities in my district, they said they had no idea how to get PPE. And as a result, many did not have PPE for the longest time.

When did DOH contact them to tell them that there was PPE available?

And did they -- did you ship it to them?

How did you deal with supplying the homes that did not have access to PPE, with PPE?

What did you tell them to do in the absence of their having PPE?

DR. HOWARD ZUCKER: So we work -- first, I want to add one more thing about this, because you keep saying whether the department reached out to the nursing homes.

The nursing homes are also part of an association, and we worked with the leadership within the association. And they also came to us and said, this is what we need.

So if there was something they needed, I can get you the details of the specific group of the PPE. Then I will let you know exactly what was done for that group.

We also told people about cohorting.

SENATOR RIVERA: [Indiscernible.]

DR. HOWARD ZUCKER: We talked about verified -- listen, sorry.

Thank you.

SENATOR RIVERA: Thank you, Commissioner, because I know your time is limited.

We're moving on to the Senate.

Thank you.

Assemblymember -- Senator Thomas, recognized for 3 minutes.

SENATOR THOMAS: Hi, Commissioner. How are you?

DR. HOWARD ZUCKER: I'm all right.

SENATOR THOMAS: Good.

DR. HOWARD ZUCKER: How are you?

SENATOR THOMAS: Glad that you can hear me.

All right, so my question -- I have a number of questions.

I'm going to start with Article 81: guardianship.

Hopefully, you're familiar with that.

So COVID-19 has had a significant impact on Article 81 guardianship cases.

As you probably know, or if I can refresh some of your memory here, guardianship is a legal arrangement, where a Court gives a person the legal right to make decisions for an incapacitated person.

So for the duration of COVID-19, Article 81 cases have become unable to move forward because court evaluators and attorneys have been unable to meet with their clients in nursing homes.

You know, in June, nursing homes were allowed

family members to visit.

This is a yes-or-no answer: Are non-relative visitors currently allowed in nursing homes?

DR. HOWARD ZUCKER: Among the nursing homes where I mentioned there is visitation, they are allowed in there, visitors are allowed.

Regarding the specific article that you're referring to, I'd have to find out how they can have them go in.

But there are opportunities for them to reach out to them through telehealth.

So I'm not sure why they haven't been able to be contacted with those -- those to address some of their concerns.

SENATOR THOMAS: I mean, given your responses, I'm pretty sure you're not familiar with how this works.

So, you know, are there any steps how the department of health is taking to carve out some sort of like rule for court evaluators and attorneys so that incapacitated persons in the care of nursing homes can complete the guardianship process?

Is there any [indiscernible cross-talking] --

DR. HOWARD ZUCKER: So I -- but I don't know if there are specific rules. And it may be in a

different part of one of the other agencies about this.

If it's within my department, I'll find out from the lawyers.

I will tell you that there is the opportunity, as I said before, to do FaceTime with the nursing homes.

So you're saying that that's not possible?

I'm not sure why you're saying it.

SENATOR THOMAS: It's not about it not being possible.

It takes a little bit more than a Zoom conference to get things like this done.

But I'll go away from the Article 81.

Let's talk about nursing homes and what they want [inaudible] --

DR. HOWARD ZUCKER: Doesn't this fall within the Office of the Court Administration?

I think this may be a legal thing. Right?

SENATOR THOMAS: Yes, it is a legal thing.

It is a legal thing.

DR. HOWARD ZUCKER: Right, so it may fall in the Office of the Court -- the OCA (the Office of the Court Administration).

SENATOR THOMAS: Okay.

So during the whole COVID-19 crisis, we're still going through it, with nursing homes, you talked about how, you know, masks and other equipment were sent to nursing homes.

Now, were there any ventilators that were sent to nursing homes?

DR. HOWARD ZUCKER: Well, nurse -- if someone is ill, this was -- well, this goes back to a very important point -- and I see the time [indiscernible] -- is that, when someone is ill in a nursing home, and they're going to be transferred to a hospital where they're going to provide the care, you need to provide the care, tailor the care, to where it's needed.

And I think this is a really important point because, many of those who are in nursing homes who are frail, they will sit there for a couple days because, often, when someone realizes someone is sick, they may not realize that they have coronavirus.

Ultimately, they get transferred to the hospital because they're critically ill, or ill.

SENATOR THOMAS: Has the department of health or the governor's office ever sent ventilators down to nursing homes?

DR. HOWARD ZUCKER: They don't go to nursing homes.

If you're that sick, you need to go to a hospital.

Nobody's going to be able to manage someone that sick in a nursing home.

And I would not ever want someone to be cared for, that ill, where they need to be on a ventilator in an ICU, in a nursing home.

It just wouldn't be the appropriate medical care.

SENATOR RIVERA: Thank you, Senator.

Thank you, Senator. Your time is up.

Thank you, Senator.

Assembly.

ASSEMBLYMEMBER BRONSON: Yes, we recognize Assemblymember Aileen Gunther. You have 3 minutes.

SENATOR RIVERA: And I will -- and one thing -- one announcement that I would like to make, this is the last speaker. The Commissioner has to leave after the speaker.

A lot of people will be angry.

That is the reality as we are right now.

So, Ms. Gunther, you have -- you're recognized for 3 minutes.

ASSEMBLYMEMBER BRONSON: Ms. Gunther?

SENATOR RIVERA: Assemblymember?

Going once.

Going twice.

ASSEMBLYMEMBER ASHBY: I'll speak again.

SENATOR RIVERA: Assemblymember Bronson, do you have somebody else available immediately to ask for 3 minutes?

If not, we have to stop.

ASSEMBLYMEMBER BRONSON: Yes, let's go to the next assemblymember, Ed Braunstein. You have 3 minutes.

SENATOR RIVERA: All right. Thank you.

You have 3 minutes.

ASSEMBLYMEMBER BRAUNSTEIN: Hold on one sec.

Okay.

I just snuck in. I didn't think I was going to get a question.

I think, starting right at the beginning of the hearing, Senator Skoufis brought up what a lot of people have concerns about, is the definition of "nursing home deaths."

And I think part of the [inaudible] with confusion of the report, is that we're using a definition of "nursing home deaths" that other

states aren't using.

So I guess I have two questions.

One is:

In the future we do anticipate having the data of how many people came from a nursing home and died in a hospital.

Do we anticipate amending the report to reflect that new data?

And if, in the commissioner's estimation, will that new data change your conclusions of the report, or do we believe that the conclusions of the report will remain the same if we were to enter that new data?

DR. HOWARD ZUCKER: I think the conclusion of the report will remain the same on that.

ASSEMBLYMEMBER BRAUNSTEIN: Do we anticipate getting that data and amending the report to reflect that data?

DR. HOWARD ZUCKER: The data, like I said, I know that you -- at the beginning I said I know you want a number, and I wish I could give it to you at this point.

But I will get you a number, yes, but I want to be sure that that data, that we've looked at everything, and made sure that [indiscernible] that

they weren't double-counted.

ASSEMBLYMEMBER BRAUNSTEIN: I think a lot of us may reserve judgment about the conclusions of the report until we have an accurate view of all of the data.

And we're missing a significant amount of people who contracted COVID in a nursing home and then later died in a hospital.

And I just think it would bolster the conclusions of the report if, at some point in the future, when you do have that data, maybe you can, you know, add it in the report, just to, you know, make sure that this report is accurate.

DR. HOWARD ZUCKER: I am confident about the data.

I hear what you're saying.

I will also say that in that report you will see that there is a curve that shows the deaths from the nursing homes and deaths in the community, and they line up.

And I suspect -- not suspect -- that I know that this will be the same.

GARRETT RHODES: And I will just add, we're updating this report down the road. We can include what the experience of other states has been.

Then this report came out, and I quote the Mary Mayhew, the Florida Agency for Health-Care Administration: [Indiscernible] doors to keep that virus from getting to our facilities. Our staff are human beings who have lives outside of these facilities.

Nursing home operator in Florida: The overwhelming majority of our staff members were testing positive or asymptomatic. An indigenous virus is very difficult to detect after the testing.

So it happened in other states. I think you're looking at [indiscernible] --

ASSEMBLYMEMBER BRAUNSTEIN: I believe with that new data, the conclusions in the report may, in fact, be the same.

It's just until we get that data, you know, I think we have to reserve judgment.

So thank you, Commissioner.

DR. HOWARD ZUCKER: May I add that, you know, in one of the slides I showed at the beginning, about Florida, California, and Texas, this situation about nursing homes is across the country.

We go back to some issues about different memos. But the reality is, other states may not have issued that memo, but they are seeing the exact

same thing that we saw in March about this.

And I think it's important to make a note of that.

SENATOR RIVERA: All right.

Thank you, Commissioner.

That concludes the first part, the first panel, of this hearing.

We will now be taking -- as was stated earlier by my co-chair, Dick Gottfried, we will be taking a 10-minute break for water and toiletries, and then we will be back.

Thank you, Mr. Commissioner.

We will be back in 10 minutes.

DR. HOWARD ZUCKER: Thank you.

(A recess commenced.)

(The hearing resumed.)

SENATOR RIVERA: Welcome back, everyone.

Thank you for that break.

Everything should be -- we're going to go through this -- that's the exact 10-minute timer -- right? -- going off right there.

So next panel, Panel Number 2, will be:

Neil Heyman, president of the Southern New York Association;

And, Michael Balboni, executive director,

Greater New York Health Care Facilities Association.

If you are -- witnesses are both present, I believe that they are.

ASSEMBLYMEMBER GOTTFRIED: And do you each swear or affirm that the testimony you're about to give is true?

MICHAEL BALBONI: I do.

SENATOR RIVERA: All right, we may begin.

I guess, Mr. Balboni -- or, is Mr. Heyman -- is Mr. Heyman here?

All right, Mr. Balboni, you may -- you may --

OFF-SCREEN TECHNICIAN: He is here. He is trying to un-mute.

SENATOR RIVERA: Oh, he is trying to un-mute.

All right.

ASSEMBLYMEMBER GOTTFRIED: And while he's doing that, Mr. Balboni, do you swear or affirm that the testimony you're about to give is true?

NEIL HEYMAN: Did I successfully un-mute?

MICHAEL BALBONI: I do, Mr. Chairman.

ASSEMBLYMEMBER GOTTFRIED: Okay.

NEIL HEYMAN: Did I successfully un-mute, sir?

SENATOR RIVERA: You did.

NEIL HEYMAN: Okay.

ASSEMBLYMEMBER GOTTFRIED: And do you swear or affirm that the testimony you're about to give is true?

NEIL HEYMAN: I affirm.

ASSEMBLYMEMBER GOTTFRIED: Okay.

SENATOR RIVERA: Okay.

ASSEMBLYMEMBER GOTTFRIED: Fire away.

NEIL HEYMAN: Thank you very much.

I appreciate the opportunity to give testimony today.

My name is Neil Heyman.

I am the CEO of the Southern New York Association, whose members include 60 residential health-care facilities in New York City, Long Island, and Westchester.

I know this has been said before, but I'd like to emphasize at the outset that we are in the middle of fighting a pandemic.

We are all on the same side.

Our foe is the virus.

We are facing a situation unprecedented in living memory, and the crisis is continuing.

Everyone involved faced a steep learning curve as we all figured out the hard way what worked and what didn't.

Our task now, as I see it, particularly in my role, is not to cast blame or point fingers, but to continue moving forward, using the information we've learned, and then meeting and resolving the challenges as they arise.

As we all know, and it's been said before, residential health-care facilities were uniquely vulnerable, not just in New York as has been said, and the country, but the entire world.

These folks are elderly, medically-fragile people.

In these congregate facilities they live, eat, and socialize in close communal settings.

Staff provide such close hands-on care, which includes intimate activities such as dressing, bathing, transferring, and even toileting.

Nevertheless, our homes' dedicated staff have worked, and continue to work, around the clock to provide the residents with the care they need.

Now, working closely with the governor, the state health department, local health and emergency management authorities, New York's residential health-care facilities helped begin to show that the virus can be contained.

Now, our facilities' resiliency and ability

to react to the fast-moving crisis can help the state prepare to respond for the continuing pandemic, and the looming risk of a new wave of cases for other states and regions.

Now, some of the key takeaways that we have learned thus far, which will help us going forward, are as follows:

Facilities must be able to assure that their staff, residents, and any visitors have access to reliable high-quality PPE, even as New York is increasingly in competition with other states.

Right now, actually, facilities are having some difficulty trying to get N95 masks.

Regular testing of residents and staff is valuable if the test results are available within a reasonably prompt time frame.

Proper infection-control procedures can successfully contain the virus.

Adapting and enhancing infection-control protocols from in -- for influenza helped the nursing facilities to control the spread of COVID-19.

COVID-only units within facilities, as well as dedicated COVID-only facilities, can and should be used, and put together immediately as the

caseloads require them.

It is critical that facilities have resources available to them that will make it possible to locate, recruit, and retain adequate qualified staff.

This is particularly important if there is a surge in the COVID-19 cases.

There are many facilities that have empty units, and those units can be activated immediately if there's enough staff to take care of the residents in those units.

Residential health-care facilities must be integrated into the state's overall health-care response so that their space, equipment, and staff can take part in a coordinated solution.

Sufficient funding is needed for residential health-care facilities to both continue to operate and meet the high costs of the necessary pandemic response.

Over the years, Medicaid reimbursement rates have been cut by millions of dollars, reaching significantly below the cost of providing care.

This year, even before the pandemic, New York made further across-the-board cuts to nursing homes.

The nursing homes have coped with these

reimbursement cuts and with the, to date, unreimbursed costs of mass COVID testing, PPE, and increased staffing levels needed to cover staff without [indiscernible] quarantine.

However, without federal or State financial assistance, facilities will not able to sustain the effort to combat the virus.

If you combine a low census and increased costs, it could spell disaster.

Focused statistical data is invaluable in developing an effective health-care response, but time-compiling data is time away from residents.

So the State should identify and communicate the key data sets and reporting intervals it needs in advance as much as possible.

With the experience that they have gained and the procedures and protocols they have put in place, nursing facilities are preparing to care safely for new residents admitted from the hospitals and the community up to their pre-pandemic census levels, both for COVID as well as non-COVID patients.

Residential health-care facilities have the experience, dedication, resiliency, and adaptability to play had an important role in New York's ongoing pandemic response.

We look forward to building an effective collaboration with the State and other health-care participants.

Thank you very much.

SENATOR RIVERA: Perfect timing, Mr. Heyman.

Senator, former, Balboni.

MICHAEL BALBONI: Good [indiscernible], and thank you very much, the chairmen of this very important hearing, thanks for doing this.

I can only imagine what it's like for all of you in the legislature to have to respond to your constituents in this incredible time of loss and stress, virtually, because I know many of you, and I know that you're hands-on and you like to talk to people directly.

I know that's very difficult in this time.

So let's get down to the questions here.

One of the things that I think many of you may have known, but some do not, is that not only am I the executive director of a nursing home association, but I'm also involved with the 1199 Greater New York Health Fund. It's a benefit and pension fund.

And I also do collective negotiation -- collective bargaining negotiations with the

1199 Union.

So I get a chance to do regular interface with the union, and so, the labor workforce, not only within the metropolitan area, but, frankly, throughout the state, it's a chief concern to me.

In addition to which, I do have a background that I think plays into this role, and I was a former homeland security adviser under two governors.

And that reminds me of how similar, where we are today, was in the days following 9/11.

You know, back then, we had never thought a terrorist attack would come and hit our local police forces.

Yeah, sure, we trained and designed to try to get at the root of crime and prevent that, but not counterterrorism.

Well, the same thing here.

We have a global pandemic that has come and visited at the doorsteps of our hospitals and our nursing homes.

And though, sure, decontamination -- or, contamination control is, in fact, something that we practice every single day in our health-care facilities.

We never thought we'd have to do it in this context.

And so what also followed 9/11 was this federal, state, local, dynamic of:

Well, who should provide the funding?

Where is the guidance?

What are the steps we need to take to prepare?

As a matter of fact, you know, the crisis and response for this pandemic actually started 20 years ago, when secretary of health and human services, Mike Levitt, came out and said, You know, we ought to prepare for the anthrax attacks to be doing these types of things.

And yet every administration has come out with plans, but the funding has not been there from the federal government.

Likewise, at the state, you know, you are so busy doing so many things as it relates to public health, that to be able to sit there and say, "we need to prepare at this time for this eventuality," when there are so many other things we have to do, is very -- incredibly difficult.

Now, part of my world now, is I do tabletop exercise for enterprises, such as, you know, top 100

Fortune facilities, and also for enterprises, such as municipalities.

If I had said to the people back in February, you know, we're going to imagine a scenario where every single nursing home is going to go to two, three, four times X their personal protective equipment, everyone would have said, you're an alarmist.

You know, it's one of these things, actually, Mike Levitt said this, he said, You know, when you go out early before a pandemic and you say, you ought to protect yourselves this way, you're called Chicken Little. And then after the pandemic you're called -- well, you've been, frankly, irresponsible in not preparing more.

So that's the lens through which we must see all of the response, going forward.

We have to imagine, not a COVID-free environment, but, rather, an environment that has less opportunities for the transmission of disease.

And so we must think re -- reimagine health care.

Examples, you know, telehealth; things that we could do remotely.

Even thinking beyond that, about robotics.

You know, is there a place for robotics in the health-care industry?

These are the questions that, previous to this, really didn't get much traction.

Now I think it's imperative for all of us to do it.

Now, and the other thing is to understand what the dynamic is at a nursing home.

I'll tell you this: There is no normal day in a pandemic. Absolutely none.

All the assumptions you make are wrong.

The information you receive on a daily basis could be incomplete, could be inconsistent, could be contradictory, or could be wrong.

And so an industry that is this regulated, the constant communication back and forth, that communication changes.

Look at what is happening with disease.

We are still studying this disease, and I predict that we are not going to fully understand the breadth of the impact of this disease for years to come, because it still keeps on changing.

And imagine trying to run a nursing home with that type of background of information itself.

We have a lot of things to do.

We can talk to funding.

We can talk to personal protective equipment.

You've already taken a step to do that, and passing a law this year that requires 60 days of PPE.

We're going to seek to work with the governor's office to make sure that we have the right amount of PPE at the right time.

But we also need to recognize that there's more work to be done in terms of the whole health-care continuum.

Thank you, Mr. Chairman.

SENATOR RIVERA: Thank you, Mr. Balboni.

I recognize the Assembly for a first round of questions.

ASSEMBLYMEMBER BRONSON: I would ask my co-chairs and rankers, if you want to speak, if you would raise your hand.

But not seeing anyone at this point, Chair Gottfried, would you like an opportunity at this point?

ASSEMBLYMEMBER GOTTFRIED: Uh, yes. Thank you. Yeah, I was about to go raise my hand.

A couple of questions about staffing.

You know, when we talk about the "safe

staffing" legislation over the years, we are often told that there's really no evidence that enhancing staffing is -- you know, increasing staffing levels, makes any difference, which I've never understood.

Is -- are we learning in this pandemic that staffing levels have made a difference, and that increasing staffing levels would make a difference?

NEIL HEYMAN: If I might, I think that my view of that, Assemblymember Gottfried, is that what happens, when the crisis started, is that numbers of staff people become ill.

So instead of having the number of staff that we were supposed to have had, we had fewer. And that became a problem.

We were trying to get back to normal, so to speak, back to where we were. And we played catch-up for the first six or eight weeks.

So I think that the problem wasn't that we didn't have enough staff in the first place.

The problem was, as the pandemic caused the staff to become ill, we didn't have enough staff to proceed forward. And that became a crisis.

MICHAEL BALBONI: Chairman Gottfried, as you know, the staffing levels were a problem before the COVID. And so they've become even more pronounced,

as Neil had said, because, you know, a lot of different things came into play.

Not only did staff become sick, but there was fear, a realistic fear, of getting sick.

You don't have enough PPE to go to work. And so you had families of the staff saying, Don't go to work. Don't submit yourself to this.

This -- staffing is also something that we need to really examine.

You know, one of the things that we had looked at, and we were pretty successful at, was going to colleges, nursing schools, and saying, while somebody is training and learning to be a nurse, in these types of surge capabilities, we need to be able to put them into the workplace.

The problem, is that you can say that you've got a system in place, but you actually have to be able to look at how you put people in the nursing homes.

And, by the way, just walking in off the street, even if you have some nursing information, is not enough.

You've got to be integrated into the facility.

ASSEMBLYMEMBER GOTTFRIED: Some of your

facilities -- this is a question I guess for both of you -- are -- have organized labor in the facility.

I assume some don't.

Does having organized -- an organized workforce promote better morale, better stability, in the workforce?

Is it ultimately beneficial for the facility?

MICHAEL BALBONI: Chairman, it is essential to have a motivated workforce that is trained properly and has the right protective equipment.

That is -- when it -- no doubt the most important thing that you can do.

As you know, 80 percent of a nursing home's costs is associated with the personnel.

And so there's no way you can provide care without good staff who come to work, understanding that they have a mission to do and they can do it safely.

And there's just been a huge challenge; again, unprecedented health-care crisis.

We're still learning.

Look at how the strategies have changed, Chairman.

You know, the strategy initially were, okay, try to take the patients in, you try to keep them

away from other patients.

Now, especially testing and cohorting, that's something that is a relatively new strategy given, you know, the last couple of months.

So these are the things we need to take care of our staff as well.

ASSEMBLYMEMBER GOTTFRIED: The specific question is: Is it beneficial to have a union-organized workforce?

Does that help support morale and provide stability in your workforce?

NEIL HEYMAN: Yes, I think it does.

And, by the way, virtually, all the facilities are in the union.

Most of them are 1199, but there are other unions.

So it is, the large majority.

And, yes, we work closely with the union and union staff, particularly when this crisis hit.

We had conversations with union leadership because we understood the issues as they surrounded the staff, and we wanted to keep morale up.

So, overall, yes, working with the union and cooperating with them, and them with us, does work well.

And in this particular crisis it was very useful.

ASSEMBLYMEMBER GOTTFRIED: Thank you.

SENATOR RIVERA: All right. Thank you, Assemblymember.

On our side, leading off with Senator May, recognized for 5 minutes.

SENATOR MAY: Thank you.

And thanks for your testimony.

I wanted to ask about staff, we keep talking about staff.

So I gather some Canadian provinces have actually taken the step of barring their workers from working at more than one nursing home site at a time as a means of limiting spread.

Is that an option that you could envision here?

Do you have a sense of how many workers actually work at multiple sites?

And what would be needed in the way of support to supplement their income, or whatever, so that they could -- so that we could pull something like that off?

MICHAEL BALBONI: So, Neil, let me just take a quick shot at this.

So before the DOH edict about not -- limiting visitation, a lot of the members in the downstate area decided to do that on their own.

As a part of that, they also recognized the fact that there are these journeymen staffers who are working in more than one facility, whether they're actual union employees, or they're agency employees. And we recognized kind of early on that, without testing, you don't know what someone might be bringing into a facility.

You then combine that with not enough PPE, and you really create a situation that is ripe for transmission.

So I think you're absolutely right, this is something that we should really try to stop from happening itself.

But, of course, that works within -- we have to partner with the union on that, to make sure that they understand the risks, that we understand the risks, and we can come up with a good protocol for that.

NEIL HEYMAN: I might add, by the way, if I could, that as the testing gets more -- becomes more sophisticated, and as we, you know, get more involved with the test kits that can actually

produce, virtually, instantaneous results that are accurate, and, hopefully, that will be the case sometime very soon, we could -- if we test people, we know that they're testing negative, that would prevent that spread, even if they went from home or community to the facility, or from facility to facility.

I think the key to this is knowing whether or not the person has the illness, as to whether or not they would be a danger.

And I think we can get to that point sometime in the near future and understand what the dangers are.

SENATOR MAY: Thank you.

And then I wanted to ask something that came up a lot in the previous questioning of the commissioner.

Balancing the -- the just outright saving of lives in the pandemic, and the quality of life in the nursing homes, which is often also a determinant of life expectancy and health in its own right, can you talk about how you are thinking about this balance, like, reducing isolation, advocating for more visiting or less visiting?

How do you balance that out in your own mind

and in your own practice?

NEIL HEYMAN: That's a very [indiscernible cross-talking] --

MICHAEL BALBONI: [Indiscernible cross-talking], you know, there's got to be a pandemic plan.

That was a very good bill -- very good law that you passed, and a part of that is the communication strategy.

You know, again, this is something we haven't had to do before.

So the inclusion of technology, to be able to talk to families during this period of time, is one aspect of it.

But you're absolutely right, and I really appreciate everybody so far in this hearing challenging the current etiology as it happened as it relates to visitation.

I strongly urged the department that they reconsider the opening of visitation.

This is absolutely essential, because, as you have all talked about, loneliness is a comorbidity. It is what is making people sicker.

We need to get people together. And you're -- I'm convinced that we can do it safely.

That's the other thing, you know, nursing homes have learned so much about decontamination, about contamination control.

In fact, I would argue that, in many of the nursing homes in the state of New York right now, it is one of the safest facilities in which to put somebody, because they have learned, and now they have the equipment, and now they have staff because they've come back because they're not sick anymore.

NEIL HEYMAN: I think --

SENATOR MAY: [Indiscernible cross-talking] we hear about --

Sorry.

-- just, we hear about family members who have, typically, been coming in and bathing or helping with actual care of their loved ones.

And I wonder if you can like deputize family members as staff, essentially, so that they would follow the same protocols as staff, or something like that?

NEIL HEYMAN: As we get more sophisticated in our ability to test, and more sophisticated in our ability to appropriately obtain, utilize, wear, PPE, that we will probably move in that direction.

I think what's happened now, because we still

are in the middle of a pandemic crisis, that everything is moving a little bit more slowly than we would have wanted it to.

But I agree 100 percent that loneliness and being away from families is very difficult, if not -- I have -- my mother is 94 and she's in a facility. I've been going through this myself.

But the fact of the matter is, is that we want to be careful and do this correctly because we don't want to reintroduce a problem.

So it's moving along, and the department's been very cooperative in moving along with us, but moving along slowly and carefully.

SENATOR MAY: Okay.

Gustavo, do I have any more time?

I have one more question?

SENATOR RIVERA: Your time is up.

SENATOR MAY: Okay.

Well, thank you, both.

SENATOR RIVERA: Thank you.

Assembly.

ASSEMBLYMEMBER BRONSON: Yes, thank you, Senator.

I will go next in asking questions.

And first -- the first question is to both

gentlemen.

Are your member organizations, are they made up of both for-profit and not-for-profit facilities?

NEIL HEYMAN: Yes.

Yeah, I have some not-for-profits as well as for-profit. But it's predominantly not -- it is predominantly for-profit.

ASSEMBLYMEMBER BRONSON: Okay.

And are you -- are you getting different information, or -- regarding the experience, I guess, of -- if you break it down, for-profit versus not-for-profit?

NEIL HEYMAN: I am not hearing anything different.

I don't think -- and I'm not trying to be cute, I don't think the virus knows the difference.

I mean, I think that it has taken its own route, and it's entered all auspice facilities, whether they be government-run, for-profit, or not-for-profit, with equal disaster.

So I haven't heard anything different at all.

ASSEMBLYMEMBER BRONSON: Okay.

Mr. Balboni?

MICHAEL BALBONI: I don't see a distinction.

ASSEMBLYMEMBER BRONSON: Okay.

Certainly, I agree with you, the virus doesn't know a difference. But, certainly, some of the historical information we have on the different organizational setup is different for sure.

Looking at some of the issues that you have pointed out, the regular testing of residents, you indicated, is an important aspect, Mr. Heyman.

Are you getting test results back in a timely way?

Is there any backlog, or is that working smoothly at this point?

NEIL HEYMAN: It's kind all over the map. I mean, it depends on the lab that's being used.

A lot of it, it depends.

In some instances they call me back, and it's not -- you know -- I would -- by the way, what is a "timely manner"?

"Timely" is enough so that, if a staff person, in particular, is tested on a Monday morning, that we know before Tuesday, their next shift, that they do or don't have the virus. I mean, that would be very useful.

Ideally, it would be wonderful to have it in 15 minutes so that they can go on to their shift or not on that very day.

But once you get past a 24-hour, or 23-hour, time period, it becomes problematic.

And there are still some problems in that vein, and we're not getting the results back as quickly all over as we would like.

ASSEMBLYMEMBER BRONSON: Okay.

And in connection with that, are you -- if you're testing someone that's not exhibiting any symptoms, and that's one scenario.

But if someone is exhibiting some symptoms, even if it's a cold or something, are they instructed not to come to work under that scenario?

MICHAEL BALBONI: Yes.

NEIL HEYMAN: Yes.

If they're exhibiting a fever or a cough, yes.

ASSEMBLYMEMBER BRONSON: Okay.

And let's talk now regarding the reporting.

And I know -- certainly, hearing from some facilities up in my area, in the greater Rochester area, you know, the reporting requirements are burdensome and difficult.

What's the experience that you're having with the department of health and all -- you know, the daily checks that you have to make, reporting back?

What's your experience in your areas?

NEIL HEYMAN: That's actually an excellent question because, you know, obviously, in the beginning, when everybody was trying to figure out what we needed, and how best to do that, there was a lot of requests, and there were a lot of requests that were made with a very short time frame, to get the answers in.

But as we moved through the actual crisis, it's become a bit more steady and a bit more easy to deal with.

And as I mentioned in my remarks, I think that what we want to do, going forward, is actually work with the department of health, figure out in advance of the next wave, what we need and when we need it, so that we can tell the facilities, here's what you have to be looking for as this thing morphs into the next phase, and so we can put a little bit of order to it and make it easier to do and a better result if we know exactly what we need up front.

MICHAEL BALBONI: So let me go further.

You know, the hospitals don't have to do [indiscernible] reporting every day.

Why do the nursing homes?

It is -- the information really doesn't

change, so why the constant reporting?

And this is the part of the administrative oversight burden that has to [indiscernible].

And you say, well, how can reporting be a burden?

Well, it can be.

But then, generally speaking, you know, the reporting, not only in New York, but across the nation, has to be more consistent.

You know, the numbers that we're seeing, the way it's reported, that's the only way we're really going to be able to find out how we move forward from this, and that really comes also at the federal level.

There needs to be a much better standardization of reporting across all areas.

ASSEMBLYMEMBER BRONSON: And the last questioning is in line with what some of my colleagues have already brought up, and that is the staffing levels.

In your written testimony you said that you need, you know, "critical resources, make it possible to locate, recruit, and retain adequate, qualified staff."

This has worsened because of COVID, but that

was a problem prior to COVID, at least it is here in Upstate New York.

What -- I mean, when you say "resources," certainly you think dollars and cents.

What other resources might there be?

And my time's up, but go ahead and answer as quickly as you can.

NEIL HEYMAN: Well, quickly, as to the resources, I mean, obviously, it's got to be funded.

But are there training, schools, education, encouraging people to get involved in the health-care environment early on?

This is something which is a long-term kind of project.

And making full utilization of volunteers which are out there, and full utilization of the various aspects of what New York City and New York State did, as far as opening up the various avenues that we could utilize people who weren't currently in the field, but had experience in the field.

There are ways do it in the short run and there are ways to do it in the long run.

And I guess all [indiscernible cross-talking] --

SENATOR RIVERA: Thank you, Mr. Heyman.

Thank you, Mr. Heyman.

I recognize Senator James Skoufis for 5 minutes.

SENATOR SKOUFIS: Thank you, Mr. Chairman.

And thanks to you both for your participation.

I imagine, I think we can all imagine, your jobs have become exponentially more difficult over these past five months.

I first want to ask, and I mean this with all seriousness and respect:

We're obviously asking you to attest to and to share on-the-ground problems and issues, and how you've reacted in your member nursing homes. You both represent a pretty enormous slice of New York State's nursing homes.

Can you just briefly share, that would maybe lend some additional confidence to us, how you have interacted with your member nursing homes over the past five months personally?

Have you visited; have you been physically to many of your member nursing homes?

Have you spoken to workers, in addition to administrators who I'm sure you do engage with frequently?

Can you just speak to that a little bit?

MICHAEL BALBONI: If I can?

Yeah. So we have weekly -- I'm sorry, at one point in time we had daily board calls, as things from the department, regulations, directives, were changed.

And two -- in two weekends, late March, beginning of February, actually participated, through the direction of the department, in actually getting PPE out.

So I was actually a part of a group that was working out of the Javits Center, and out of the National Coliseum, of all places, and actually taking gowns and gloves and putting them on the back of trucks, and delivering them out, to trying to assist in terms of what the network was of finding this very difficult PPE.

You know, on that point, you know, everyone was saying to me, we have to compete globally for things like masks and gloves. You know, it's really, really difficult.

And they were subject to all sorts of price gouging [indiscernible cross-talking] --

SENATOR SKOUFIS: And I'm actually -- I'm going to focus my questions on the PPE issue, but,

just to be clear:

So it sounds like you were on the ground personally, handing out equipment, visiting nursing homes, engaging with workers themselves.

Is that accurate?

MICHAEL BALBONI: That's correct.

SENATOR SKOUFIS: Okay.

MICHAEL BALBONI: Neil, you too, I assume?

NEIL HEYMAN: Yeah -- yes.

And we also, by the way, we did make tremendous use of the media, you know, being Zoom, and doing it [indiscernible], because there was an awful lot that we had to impart to our members, infection control.

As this was developing, we were imparting this, and I know Mike was as well, to our members on a regular basis, [indiscernible] the people online, [indiscernible] to bring information in, which was very effective.

SENATOR SKOUFIS: Right.

Okay, so let me jump into my questions quickly.

And like I said, I'd like to focus on PPE.

The governor made it very clear, the challenges associated with getting PPE in those

early weeks and months, especially given the federal government's lack of preparedness.

But even considering that difficulty, as you heard earlier this morning, up to one in four of your employees in nursing homes contracted COVID-19, which are significantly higher rates than transit workers, police officers, firefighters, other categories of workers, that were tested during the pandemic.

How much of that disparity with your workers do you attribute to the lack of adequate PPE in nursing homes?

And, as you briefly answer, can you also speak to whether you believe the State adequately prioritized PPE for nursing homes from our state supply?

MICHAEL BALBONI: So, you know, the challenge, of course, is, when did this virus impact us?

You know, that's the thing.

I -- I personally felt that we were -- because we didn't have the right international, national, surveillance capabilities, we didn't know that it was already in our environment.

So when you had, you know, the nature of

congregate care is that you're incredibly close to your patients. And, you know, it's not something you can do distance-wise.

And so, then, when this first began to ramp up and people began to get sick, then that is when the PPE was actually at its lowest, because the burn rate changed completely.

You know, [indiscernible cross-talking] --

SENATOR SKOUFIS: If I can just jump in, because I do have one other question: Would you say this was the primary driver of that higher infection rate among nursing home employees, or do you believe there was another primary driver?

MICHAEL BALBONI: Yeah, Senator, you know, it's really -- it's very difficult to be able to pinpoint the exact reason for transmission.

You know, you're in a nursing home in Queens, you send your patients out for dialysis. Was the -- you know, was the ambulance properly decontaminated? the dialysis center?

You know, because there's so many different reasons that a virus could get into a facility, it's very difficult to pinpoint and say, it's because of "this" only.

I think it's really a combination of a lot of

factors.

SENATOR SKOUFIS: But this is at the top of the list?

MICHAEL BALBONI: This is -- we believe this is a part of it, because, again, we didn't understand how this [indiscernible cross-talking] --

SENATOR SKOUFIS: And what about the State supply?

Do you believe that the State was adequately prioritizing nursing homes in our state supply of PPE?

And I guess this will be my last question.

MICHAEL BALBONI: The State focused on the health care and the hospitals first. And you could argue that that was exactly the right thing to do at that time, because they didn't want a collapse of the hospital network system.

But, again, we would have wish that there could have been a two-track approach and we really focused on long-term care as well.

NEIL HEYMAN: And we believe that to be the case. [Indiscernible cross-talking] --

SENATOR RIVERA: Very quickly, please. Really quickly.

NEIL HEYMAN: I said, okay, I'm done.

SENATOR RIVERA: Oh, okay.

Thank you, Senator.

Assembly.

ASSEMBLYMEMBER BRONSON: Thank you.

Next I recognize Co-Chair McDonald for 5 minutes.

Take off un-mute, John.

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

So, gentlemen, thank you for being here, and what a trial of time for all of you, particularly those on the front lines.

I have a couple of questions in regards to environment and approach.

Environment, and we have some speakers later on on our panels that talk about this.

You know, if you talk to the people in the engineering industry, and they talk about the virus, and this argument can actually be held for the typical influenza virus, you know, relative humidity plays a large role of whether that virus is going to be active or dormant.

And relative humidity between 40 and 60 percent, according to the engineers, the virus is dormant.

So this gets into the question of, in your facilities --

I know this is broad-based, and this is not a gotcha, it's just a question.

-- is humidity tested for on a regular basis?

And, at the same token, ventilation seems to be coming up as an issue.

Is this an issue that -- an area where the State should be focusing its energies on helping support the -- improving the infrastructure of the facilities that are out there?

NEIL HEYMAN: I would respond by saying that, as we move through this crisis, and as we sort out, from the scientists and from the epidemiologists, what works, what doesn't work; what makes sense and what doesn't make sense, we will be cooperative and do what makes the most sense to check.

I don't have any personal knowledge right now of whether or not humidity testing has occurred yet.

But if that is proven to be something that makes sense, and can prevent the spread of the disease, there's no question that we will be pleased to do that.

MICHAEL BALBONI: You know, something -- we're looking at all aspects of this. Right?

So, we're still seeing studies out of South Korea that talks about the HVAC being a large part of the transmission.

You know, this -- obviously, there's lots of studies around that talk about airborne transmission.

There's -- we don't really test for humidity within the ventilation systems.

But there's all sorts of things we could take a look at, including the introduction of UV light within humidity -- within the HVAC systems.

So there's a lot of things we really should talk about, going forward, as innovations in the health-care system.

ASSEMBLYMAN McDONALD: Yeah, and it's -- I don't think it's lost to any of us, we've gone through a lot of herculean efforts to get the malls open again, and filtrate. And ventilation was a key issue [indiscernible].

But, obviously, a place where people call home, and they're there 24/7, we want to make sure it's the best proper environment.

Once again, not a gotcha. It's more about, how do we help support them.

MICHAEL BALBONI: Assemblyman, the department

does require that the maintenance and vent systems are cleaned religiously.

You know, so there is -- I don't want to give anyone the impression that there's no regulations that they're cleaned.

They are.

ASSEMBLYMAN McDONALD: But they also -- are they prescriptive on the type of filters and the levels of filters?

MICHAEL BALBONI: Yeah, HEPA filtration are being looked at right now in terms of what the standard should be.

There's currently no standard that matches up to a virus transmission.

ASSEMBLYMAN McDONALD: Different related topic: infection control.

And, obviously, that's a very loose term, that's very critical in many aspects.

I'd like your response.

I have had individuals who actually work in the long-term-care community, who are just as serious as you are, say, you know, the approach in long-term care is not the same as infection control in the hospital setting.

In the hospital setting, they've got their

own department, they've got people running around doing tests and training, and things like that.

Is that something that -- is that an accurate statement? Or would you -- what would you have a comment to that?

NEIL HEYMAN: Most of them have infection-control programs in place, and they've had them in place for years.

And that's a part and parcel of how they have to operate. And they're surveyed by the State of New York on a regular basis, to make sure their infection-control programs and protocols are up to date and accurate.

And for the most part, they are. But if there are issues, they get them back up to speed.

So I think that they're there at this point in time.

MICHAEL BALBONI: So nursing homes have had to operate under stringent decontamination control, you know, infection control, for years.

And -- but that's the old normal.

You know, there's a new normal that's now emerged.

And we look forward to partnering with the department to, basically, have a regulatory standard

that, in fact, can implement these new standards.

ASSEMBLYMAN McDONALD: Thank you.

And the intent of my questions is that, we know there's going to be changes coming. And we as a state need to be partner with you to take care of our most aged and critical.

Thank you.

SENATOR RIVERA: Thank you.

So I'll recognize myself for 5 minutes.

Gentlemen, thank you for being here.

Did you have the opportunity to listen to the commissioner that spoke before you folks?

MICHAEL BALBONI: Sure did.

NEIL HEYMAN: Yes.

SENATOR RIVERA: Okay.

So there's a couple things that I wanted to kind of get your perspective on.

Number one, let's talk about the definition of "deaths."

Let's talk about the definition of that, and, in particular, there is this -- there's an insistence from the commissioner that -- that this was the right way to do it.

Would -- so -- so if you could tell us a little bit about the reporting that the nursing

homes that you represent, did, and the information that they kept available to them, as it relates to what you reported to the State when somebody was a nursing home patient, and then was admitted, and, unfortunately, passed away, how does that -- how do those numbers reported to the State?

MICHAEL BALBONI: We filed the guide -- we filed -- followed the guidelines as set forth in their HERDS survey; in other words, the HERDS survey has a number of questions, and we all answered those -- you know, all facilities answered those questions.

And so we didn't actually take a look outside and say, well, you know, if it's outside of the HERDS survey, we need to have an addendum on that.

So, you know -- but the challenge, Senator, just -- I don't want to make this any more complex than it already is -- but, it's determining, really, cause of death.

You know, and when you talk to -- remember, medical examiners are not involved in the pronouncement of death. It is the clinician at each of the facilities, and, therefore, necessarily, there's a little bit of subjectivity associated with that call.

So to be able to -- I know a lot of people take a look at the death count and say, you know, this has to be accurate.

I'm telling you now that it is not, but I can't tell you if it is undercounted or overcounted.

All I can tell you is that, there's no way on God's green earth that we can actually pinpoint and say, "this is the reason someone died."

If they had emphysema for 10 years, they're 85 years old, and now they get COVID and they pass away, you know, what was the cause of death?

Same with heart disease.

So -- because we're still studying the target audience.

SENATOR RIVERA: But let's talk about the reporting that you had to do.

There were four dates -- there was a lot of pressure on this.

There were four dates in April, and -- between 15th, 16th, 17th, and 18th of April.

And that the reason I want to focus on those because, even though you may not recall those exact dates, you probably heard about the series of emergency meetings, e-mails, calls, and things that

your -- that the nursing homes that you represent, and nursing homes all around the state, were required to present within just a few hours.

Could you tell us if you recall those times?

Because, as I understand it, there was, like, for example, on the 15th, there was an e-mail at 11:46 in the morning that said, you're going to have to get -- you are required to get on a 1:30 call with the commissioner. And then, after that, you have to give us information by the next day.

Do you recall this that I'm talking about?

NEIL HEYMAN: [Indiscernible.]

MICHAEL BALBONI: Yeah, listen, I recall it, Senator, very much.

And it's incredibly frustrating when you have a change of directive in such a short period of time.

But let me just make a statement here. I know that is a lot of controversy surrounding this.

Neil and I both know, the department of health staff worked day and night to try to get this right.

Were their responses and their regulation and oversight always perfect?

No, it wasn't. But it's in the middle of a pandemic, an unprecedented time.

And we got on calls almost daily, sometimes twice a day, to talk to the staff and try to work things through.

And so when they made these changes, we weren't always privy of, what was the motivation for their rapid change, but we knew they had everybody's best interests in mind, going forward.

So, you know, generalized, it's hard to take this perfect prism through which we see what the department did.

But I know that they worked as hard as they possibly could.

NEIL HEYMAN: Yeah, if I might also just, Senator Rivera, yes, there were short time frames, but, interestingly enough and miraculously enough, the nursing homes met the time frames.

The department was working night and day and weekends. Got the data, analyzed it, and got what they needed out of it.

So that's why I think [indiscernible cross-talking] --

SENATOR RIVERA: [Indiscernible] quickly, because my time is running out.

There are -- because I've heard differing stories about people being very frustrated, having very few resources to be able to put the information out.

They did it, but it was within a very, very crushed time frame.

Do you think that it would help to have some sort of -- there's somebody that suggested to me a committee of operators, or some way that the State would be able to have a group of operators from different nursing homes be available to them, so that when they have suggestions or regulations to put out there, that they're actually considered, even for a short period of time, as to how they're actually going to be implemented, so then they could actually be implemented to the best of the ability of particular facilities?

Quickly, because my time is running out.

NEIL HEYMAN: That's a great idea.

In fact, doing that in advance of the crisis, as I kind of suggested in my opening remarks, makes a whole lot of sense, because we've learned now what we need, we've learned now when we might need it.

So I think that putting together a script and utilizing the people who are in the field, along

with the people in the department, makes all the sense in the world.

SENATOR RIVERA: Thank you.

MICHAEL BALBONI: Yeah, Senator, the relationship has been ad hoc.

Doing something more formal, actually kind of creating like a kitchen cabinet, the department, as they move forward, would be great.

SENATOR RIVERA: Yep.

My time is up.

Thank you.

Assembly.

ASSEMBLYMEMBER BRONSON: Next will be, we'll recognize Assemblymember Ron Kim for 3 minutes.

Assemblymember?

ASSEMBLYMEMBER KIM: Hi, can you hear me?

ASSEMBLYMEMBER BRONSON: Yes.

ASSEMBLYMEMBER KIM: Thank you.

So for years before this pandemic even hit us, we've known about the understaffed and underfunded nursing homes, and legislative non-stop to fix these problems.

On February 6, 2020, the Center for Medicare and Medicaid Services issued a national memo to all health-care facilities, warning and instructing them

how to prepare for COVID-19.

The public would like to believe that the State and the facilities took this warning seriously and prepared health-care facilities.

But when I surveyed close to about a dozen or so facilities at the peak of the crisis, every nursing home director told me that the only time they heard from the department of health is when they called for fatality numbers.

One administrator even told me, it was never ending; they called every day to ask how many people died.

The State never once asked if they needed PPE, extra staffing, or resources.

Fast-forward to March 23, 2020, Governor Cuomo passed an executive order to provide legal protections for front-line medical workers and volunteers.

Within days, he pushed the new provision in the budget that brought in this protection to blanket legal immunity that covers nursing home executives, CEOs, shareholders, board members, and for non-COVID treatments as well.

April 2, 2020, the Greater New York Hospitals Association immediately sent out a press release,

asking -- release -- as soon as the governor signed the budget, claiming that they drafted and aggressively advocated for this legislation.

Despite early warnings by the CMS and the global community, we slept-walked into this pandemic and found ourselves in full panic mode.

And, consequently, it was too late to protect the patient rights, so the industry lobbied hard for legal and criminal immunity for health-care facilities.

Just a yes-or-no question for both panelists: Did you lobby for legal and criminal immunity for nursing homes?

MICHAEL BALBONI: No.

NEIL HEYMAN: No.

ASSEMBLYMEMBER KIM: Were you -- when were you aware of this immunity status, and did you communicate the legal protection status to your members?

MICHAEL BALBONI: We were aware when the budget was passed, Assemblyman, and signed by the governor.

And as you know, Article 2-B of the Executive Law kind of sets the table for doing -- changing a lot of this as it relates to state law.

And, you know, much has been made about this, and it's a very fair description.

But when you think about the different elements of the care, you know, under New York law -- right? -- reasonable standard of care is what you must show has been breached.

As you know, under a pandemic, that standard of care changes.

And the most difficult aspect of this, in case somebody is saying to you that, you know, a case against the nursing home, even without these protections, would be a slam dunk --

ASSEMBLYMEMBER KIM: Mr. Balboni, I'm sorry to cut you off, but my time is up.

I just have one more question.

MICHAEL BALBONI: Sure, no problem.

ASSEMBLYMEMBER KIM: Do you think we're better prepared to prevent the spread and arrange the care for COVID-positive nursing homes now [indiscernible cross-talking] --

MICHAEL BALBONI: Yes.

NEIL HEYMAN: Absolutely.

ASSEMBLYMEMBER KIM: -- okay.

Thank you.

SENATOR RIVERA: Thank you, sir.

Apologies. Trying to squeeze my lunch in.

Recognize Senator Sue Serino for 5 minutes.

SENATOR SERINO: Thank you very much, Chairman.

And thank you very much, gentlemen, for being here with us today.

So I just have a quick question.

If you had to prioritize one thing to change, to improve the State's response to this crisis in these facilities, to measurably improve health outcomes, what would be at the top of your list?

MICHAEL BALBONI: Senator, can I give you three things?

Surveillance, resources, and communication, those are the three things we've really got to focus on.

Now, Dr. Tom Friedman of New York City, who was talking a long time ago about something called "syndromic surveillance," the ability to take a look across the entire community and see when a disease state was impacting a community itself.

We should go back and explore this.

Back then, you know, health and human services, DHS, all looked at the model. They didn't believe you could have the sensitivity to actually

give you a -- any type of notice that would be useful, in terms of a disease state.

But we should reexplore that again.

Resources:

You know, everybody is talking about the funding, everybody is talking about PPE, yes, of course, those are all. You know, the staffing, staffing surge models, we need to look at that.

And the last thing is communications.

You know, it is so difficult to be able to -- you can talk to hospital networks, even that's hard.

But talking to individually-owned -- there are 614 nursing homes -- it's really difficult to communicate effectively, real time, with the right information.

Those are the things we really have to work on, going forward.

NEIL HEYMAN: I think if I had to put one up there, I would put the resources and the funding necessary, because most everything will flow from that.

I mean, if the facilities have enough resources, they can have enough additional staff, they can cover for staff that are out sick. They can get and pay for the PPEs, and they can afford

the testing.

So I think the number-one priority, and whether it's federal dollars, state dollars, or a combination, is I would say are funding.

And I think it's critical that the existing rates that the nursing homes have don't get cut any further because, as I mentioned earlier in my testimony, I believe that if we don't fund them appropriately, it will be a threat to the health of the people in New York, and it's certainly a threat to the facilities' ability to function.

SENATOR SERINO: Well -- and thank you both very much.

And I agree with you the resources are very important, and to cover our staffing, and everything. And I guess everything else would follow suit. Right? The surveillance and the communication, it makes everything a little bit easier.

So thank you for everything that you're doing, and thank you for being here today.

MICHAEL BALBONI: Thank you, Senator.

NEIL HEYMAN: Thank you.

SENATOR RIVERA: Thank you, Senator.

Assembly.

ASSEMBLYMEMBER BRONSON: Ah, yes. I next recognize Ranker Kevin Byrne for 5 minutes.

ASSEMBLYMEMBER BYRNE: Thank you, Mr. Chairman.

And thank you Mr. Balboni and Heyman.

Just a quick question.

I know it's -- you've talked a lot about the count of fatalities in nursing facilities, and how we're counting it, hospital setting or not.

And we spoke to that a little earlier.

There's also been reports about the increase in vacancy rates at nursing facilities across the state, a significant increase.

I don't think that reveals, totally, a total amount of fatalities, but it merits probably further consideration and review.

Can you share with us what -- how the vacancy rates have changed since the pandemic began, the outbreak at the onset, and how you view that?

Is that possibly an indicator of fatalities?

NEIL HEYMAN: Well, I think the vacancy rates grew tremendously for several reasons.

Yes, fatalities would be a part of that, I suppose.

But the fact of the matter is, the hospitals

were not performing elective surgery.

Most of the nursing homes' admissions in a normal period of time, which we may never see again, come from the hospital discharges from, you know, hip replacements, and whatever kind of elective surgical procedures go on, and they're numerous in the hospitals.

Those ceased. Those ended.

For a period of months, the hospitals were just treating only COVID patients, so the nursing homes didn't have access to their usual -- the usual kind of admissions.

And that now, by the way, can change, because the nursing homes have the capacity to take in COVID patients, and hospital and community patients, equally.

But, yeah, that was probably the biggest driver for the tremendous downturn in their occupancy rate, some of which were down 40 percent.

MICHAEL BALBONI: So, Assemblyman, you touched upon -- you touched upon the next crisis that's going to hit long-term care, and nobody's talking about this, because it involves the economics of a nursing home.

If you're below 80 percent census, it means,

for a for-profit, you're barely making payroll.

And right now, the census, because of the way this impacted long-term-care residents, residents who were there for 10 years, they're not coming back anytime soon.

Yes, the higher reimbursement rate, as you know, is tied to the acuity -- right? -- the amount of services you have to provide.

And so rehabilitation has been higher, ventilation patients have been higher.

But, right now, nursing homes are in an incredible struggle to keep their doors open.

And one of the things that we want to point to is, the State actually -- because of the reduction in the census, has actually put out less money towards the payments.

You know, that's, we -- if you combine this, because, remember, CMS does, in fact, reimburse us, our X amount of money that we're going to be getting from the federal government is actually less as well.

But nobody is taking a look at the economics of nursing homes.

And you take on top of it, the increased cost of testing; you take on top of it, the increased

cost of the PPE, these are all things that we needed to do, but is impacting the ability of a nursing home to stay open.

ASSEMBLYMEMBER BYRNE: Well, I can certainly understand how those increased costs for business and for you to provide your service.

As far as, now that we've been slowly opening up elective procedures, have you seen a change in those numbers regarding vacancy rates in the recent -- in the more recent months, now that we're past Phase 4, or we're still in Phase 4?

Has that started to trickle back, or are we still in this kind of holding pattern with the vacancy rates significantly higher than normal?

MICHAEL BALBONI: So here's once of the one of the things that's impacting: The fact that you can't visit your loved ones.

People are not willing to send their folks to nursing homes because they can't visit their loved ones.

And this was -- there's this concern that nursing homes are not safe.

So all of those things, combined, are creating an environment for nursing homes that is -- we've never seen this before. And it is really

becoming a crisis across the entire state.

ASSEMBLYMEMBER BYRNE: Now, just a question:

Since we talked about it earlier with the commissioner, regarding the March 25th order, and then I know there was a different order that came out later, I believe it was in May, are you of the understanding that -- were you still of the understanding that both orders were still fully in effect, as the commissioner stated?

Or, were you of the understanding that it was revised, and one of the orders -- the more recent order was more, I think, geared towards hospitals?

But, if you could just give me your reaction to that, if that was news to you? Or, is this something that you're just continuing to operate with?

NEIL HEYMAN: I was aware that the orders were in effect. That was no surprise.

ASSEMBLYMEMBER BYRNE: Okay.

MICHAEL BALBONI: So there's an irony here, in that, a COVID patient that has, again, a higher level of service, actually has a higher reimbursement rate.

So now that the nursing homes have the cohorting, have the personal protective equipment,

have the staffing, they want these patients; and yet now they're being told, well, you're not going to -- you know, we're going to try to restrict those patients from traveling there, so, or being [indiscernible].

ASSEMBLYMEMBER BYRNE: Thank you.

SENATOR RIVERA: Thank you.

And there's currently no Senate members that are on the list for speaking.

If there are Senate members who are on -- in this hearing and are interested in speaking, please let me know.

For the moment, I'll pass it back to the Assembly.

ASSEMBLYMEMBER BRONSON: Thank you.

Next I recognize Assemblymember Tom Abinanti for 3 minutes.

ASSEMBLYMEMBER ABINANTI: Here we go.

Thank you both for joining us.

I'd like to get back to the issue that I was raising with the health commissioner before, about getting family members back in to see their loved ones.

I [indiscernible] somebody tweeted at me and said: They're not visitors. They're actually part

of the staff, they're part of the treatment, they're part of the help.

And I agree with them on that.

How do we do this?

How do -- has your -- either of your organizations actually developed a plan that you can present to the state health department?

Have you made suggestions?

I don't know if you heard me with my conversation with the health commissioner, similar to what other members were saying, that, you know, the family members are just as concerned about the health of their family members and your residents as the staff are.

They're not -- they're going to try very hard to socially distance, they're going to try very hard to do everything necessary, so they don't bring COVID into the nursing home to their loved one.

How do we get them in, tomorrow?

You know, this -- this -- using technology just doesn't work.

What do we do?

Do you guys have a plan?

Can you come up with something and get the health department on board?

MICHAEL BALBONI: Neil?

NEIL HEYMAN: Well, actually, you know, the answer is, no, I don't have an absolute plan.

But what's been going on for the past, I would say, two months, is the department has had regular meetings with the nursing homes and with other long-term-care providers.

And the -- they have asked us on a regular basis for input, and we have told them, this is a high priority: we want to have visitation.

And what they've said is, they want to be careful, to make sure that it's done appropriately, correctly, safely, and in a way in which they won't increase the problem accidentally.

But what they've done, and they've always stuck to this, is when they start to move with us towards opening that up, or towards reducing the amount of testing, or towards whatever has to be done that we think might make sense, they do it carefully, and they do it with us, and they say, let's now wait and see what the numbers look like.

So as I understand what the department has said to me, they opened it up, and I know it's a high bar to cross to get over. But now they're looking at the numbers; they looking to see how this

worked thus far.

And although there's not a specific plan in place, my understanding of what they're doing now, is they're going to evaluate the numbers, they're going to look at the facility they've opened up, see how it works. And then probably come back [indiscernible cross-talking] --

ASSEMBLYMEMBER ABINANTI: That's not the only factor, though.

MICHAEL BALBONI: No, it isn't.

And, Assemblymember, you touched upon it.

You know, Massachusetts is doing this.

You know, the hospitals don't have the same type of thing we do.

So the families have said that they would test, socially distance outside, you know, all the different things.

I'm absolutely confident.

I understand the commissioner's concerns, but I'm absolutely confident that, individually, the homes can produce a program that will absolutely limit or eradicate transmission.

ASSEMBLYMEMBER ABINANTI: Right, because, right now, as we open up the rest of the world, nobody's restricting the staff from going out to

have dinner outside, to take public transit.

So we [inaudible].

So you don't have any numbers, do you, that show that there was transmission by family members?

NEIL HEYMAN: No.

MICHAEL BALBONI: No.

ASSEMBLYMEMBER ABINANTI: Okay.

Please come up with a plan and let's get the health department moving.

ASSEMBLYMEMBER BRONSON: Okay, thank you, Assemblymember.

I believe we will go to the next assemblymember, Inez Dickens. I recognize you for 3 minutes.

ASSEMBLYMEMBER DICKENS: Oh, can you hear me, Mr. Chair?

ASSEMBLYMEMBER BRONSON: Yes, we can. Yes, we can.

ASSEMBLYMEMBER DICKENS: All right.

Thank you for your testimony.

Some hospitals have considered implementing plans that would -- a person designated with COVID has been infected would designate one family member or friend, and that person would have to agree and understand the possibilities of visiting the

patient.

Just one.

Has the nursing homes thought about implementing something like that in their plan?

That's one.

Two: Regardless of the cause of death, why did it take so long to notify family members during the pandemic about the passing of their member -- their family member?

Three: Has your plan included the disposal of bodies during the pandemic, since hospitals, we know, have morgues, and nursing homes do not?

And that was a problem during this last pandemic.

We know staffing is short, and, as such, prior to the pandemic it was short.

How is that going to be addressed, moving forward?

If a staff member tests positive, will the entire staff be notified?

And PPEs were short in hospitals, and, seemingly, more so in nursing homes.

I understand, you know, that you're talking about the economics and the funding.

Is that the only way that that can be

addressed?

MICHAEL BALBONI: Assemblymember --

ASSEMBLYMEMBER DICKENS: The first one is about -- the first one is about having a family member or friend for one person. That would address mental health.

MICHAEL BALBONI: Sure.

Again, we're confident we can work with the department and come up with this protocol. And, you know, even having folks just not show up, but having appointments. You know, [indiscernible cross-talking] --

ASSEMBLYMEMBER DICKENS: Yes, a limit of one person that they would designate.

NEIL HEYMAN: I think it would be a good idea.

MICHAEL BALBONI: Yeah, [indiscernible cross-talking]. Right, Neil? It's absolutely doable.

NEIL HEYMAN: It's a very good idea, very good idea, very good idea.

ASSEMBLYMEMBER DICKENS: All right, good.

The second thing is about the issue of death.

Why did it take so long during the pandemic to notify family members that their family person

had died?

What was the reason for that?

And that seems to have been so with the nursing homes.

MICHAEL BALBONI: Assemblywoman, it's hard to specifically talk about the entire nursing home industry.

I know you probably have individual cases, or individual homes and individual families.

So, you know, some -- some homes did better jobs of reporting than others. And sometimes there was a -- you know, some -- I know of one case where they simply didn't have the administrative staff to make the notifications; that the folks were on the floor, you know, doing patient care.

And so even though, for us, that notification is so absolutely crucial within the concept of a pandemic, it's not an excuse, but it might be a reality for some of the homes trying to respond.

ASSEMBLYMEMBER DICKENS: Oh, what about the disposal of remains during the pandemic?

MICHAEL BALBONI: That is a huge issue.

We lack, not only in terms of the individual nursing homes, which you're right, do not [indiscernible] capacity.

But the system, the way it's been set up, is that the office of emergency management in the city and in the county health agencies, they're supposed to provide the ability to handle the disposal of remains.

And what we found was that, you know, there wasn't enough pickup, and -- but we got that done.

In other words, we needed to surge, and we got there.

ASSEMBLYMEMBER DICKENS: Because that's something that we need to address in anticipation of another pandemic.

And would staff be notified if one staff person, or two, have been tested COVID-positive?

SENATOR RIVERA: Assemblymember, thank you. Your time is up.

ASSEMBLYMEMBER DICKENS: All right.

Thank you.

ASSEMBLYMEMBER BRONSON: Thank you, Inez.

Next up we have, I recognize Assemblymember Andrew Garbarino for 3 minutes.

Andy, you there?

ASSEMBLYMEMBER GARBARINO: Yep.

ASSEMBLYMEMBER BRONSON: There you go. Okay.

ASSEMBLYMEMBER GARBARINO: Thank you.

Just some quick questions.

Thank you, gentlemen, for coming today and answering some questions.

I received a call from a local nurse at a local nursing home. She said DOH has been at her nursing home for the last three days, investigating.

Have you heard from other of your members, or any of your members, that DOH is doing in-depth investigations into nursing homes around the state?

MICHAEL BALBONI: They've been doing that for a while. Right? You know, [indiscernible] heard that.

NEIL HEYMAN: They have been -- they've been surveying -- they surveyed all the homes. And if they found anything, they would come back and resurvey, so that, you know -- in most homes, as I understand it, there weren't problems. But I suppose where they found issues, they wanted to come back and make sure everything was all right.

So that has happened, yes.

ASSEMBLYMEMBER GARBARINO: Was that -- are you -- so are you getting any information shared from, you know, the DOH about what their -- about their investigations, if there are problems, or from your members?

NEIL HEYMAN: I haven't gotten any specific information, no.

MICHAEL BALBONI: I know that the -- early on, there's been focus on the number of deaths. That was a principal focus.

And then -- of course, then it came to, right now they're doing a survey on the amount of PPE that each of the facilities have, in order to create a baseline.

And, by the way, on that, I really appreciate the way the department of health and the division of budget has been engaged in this, to try to implement the law that you guys put into place about PPE.

ASSEMBLYMEMBER GARBARINO: Another question, another question from one of my constituents:

She tried to get her mother out of a nursing home in the middle of the pandemic, but the facility, according to her, refused to let her mother leave.

Was that a policy that just some nursing homes had?

Or is that something, you know, in effect?

Or was it just, you know, you guys don't know anything about it?

NEIL HEYMAN: Right, I don't know anything.

MICHAEL BALBONI: Probably the individual.

NEIL HEYMAN: I'd have to see what the specific situation was.

I don't know anything about that.

ASSEMBLYMEMBER GARBARINO: Okay.

And, last, I know Assemblymember Byrne brought it up, about the March 25th order.

And you both said you know it's still in effect, and how you couldn't refuse a re-admission or admission of a patient based on COVID alone.

But the commissioner today made it sound like, if they -- if the person had COVID, and the nursing home said, we didn't want the person because we can't take care of them, that would be good enough.

Is this something -- or, how are you answering questions from nursing homes, as to whether or not, if they don't -- if nursing homes don't want them?

I know you said some of them do because of a higher reimbursement rate.

But how are -- are you advising members, if they don't want them, COVID patients, back, how do -- what are you telling them so they don't have to take them?

NEIL HEYMAN: That basic concept, by the way, of a nursing home not taking a patient because the facility doesn't feel they can take care of it, goes across the board.

It's not just for COVID patients. It's for any patients.

And so that, if a nursing home feels they can't take a patient, for whatever reason, we would help them to find -- or, help them, or have the department of health help them, find a different facility.

ASSEMBLYMEMBER GARBARINO: Specifically with COVID, though, what are you saying to them --

NEIL HEYMAN: [Indiscernible cross-talking] --

ASSEMBLYMEMBER GARBARINO: -- for the next -- with the next [indiscernible cross-talking] --

NEIL HEYMAN: -- [indiscernible cross-talking] --

But what's happened now, and you should know this, is that, virtually, every facility has put protocols in place, learned how to cohort, and has COVID-only units.

So although the question -- the answer to you question is, yes, I would say, do what you need to

do, I would say a vast majority, if not almost all of them now, have the capacity to take the COVID patient.

SENATOR RIVERA: Thank you, Assemblymember.

I actually have one senator.

Senator Biaggi, will be recognized for 3 minutes.

SENATOR BIAGGI: Thank you very much.

I'm just trying to undo my video.

If someone could just start it for me, please?

Thank you, very much.

Okay, great.

So, good afternoon.

Thank you very much for being here.

I just have a question about federal regulation that was put in place in 2016, that required nursing homes to create pandemic crisis plans.

I think investigations have shown, and there's a really great article, actually, talking about it, that only a fraction of nursing homes have actually done so.

So I'm wondering if either of your organizations has done an inventory of the nursing

homes, to see which ones have done the plans or complied with the plans, and which ones have not?

And then, also, what you're doing to ensure that every single facility has one, moving forward?

MICHAEL BALBONI: So, Senator, thank you for that question itself.

We had not done a survey specific to the federal plans.

That's usually done through the state department -- state department of health.

But what we are doing, going forward, because of the law you passed, is that we are hosting webinars, talking specifically about the acquisition and maintenance of the PPE and the development of the plan itself.

And that, remember, as you know, Senators, it's not just the plan itself, but you have to exercise. You've got to make sure that the people know how to use it.

And so we're urging to create not only the plans itself, but then the templates for exercising those plans.

SENATOR BIAGGI: Okay, so just to be super-clear: Then has the department of health not done outreach to any of your respective nursing

homes that you are overseeing, or in your organ -- or part of your organizations, with regard to making sure there's compliance with this federal requirement?

MICHAEL BALBONI: Yeah, Senator, I'll be honest, I -- before you brought it up, I know that there was actions at the federal level in 2016. But I was not -- we have never really referred to the pandemic planning as a part of what we need to do pre-COVID.

You know, again, it was one of these things where there were a lot of plans.

Remember, after "Sandy," you know, everyone had to have a generator, and you had to test that generator?

So there have been regulations layered on over the years.

I don't believe, in my personal opinion, that the 2016 federal pandemic plan or requirement that you're to has actually been something that we've been talking about as an industry in New York since that time.

Certainly, because of your actions, we're going to be talking about it now.

SENATOR BIAGGI: All right, okay.

No, I appreciate it.

I just want to be very clear with everybody, and just be on the record with this:

That the federal requirement to create this plan is absolutely something that the department of health has oversight and enforcement of, and also has to ensure that there is compliance with.

And so it's [inaudible] --

MICHAEL BALBONI: Senator, just to get some information for my crack staff listening to me talk:

So the plan you're referring to is the Federal Emergency Preparedness Mandate. And it is actually all hazards.

Which means, so it's not pandemic-specific, but is actually all hazards.

So they're part of the whole planning as well.

So I do believe, as a part of their planning in response to the all-hazards requirement, that the they have some -- they have plans in place.

SENATOR BIAGGI: Okay.

I know my time is up, Senator Rivera.

I just wanted to complete this -- the thought.

That makes a lot of sense.

And, also, because pandemics have already been present in the state of New York, it would have been very prudent for the department of health to have made sure that that was planned for.

So, thank you very much.

SENATOR RIVERA: Thank you, Senator.

Assembly.

ASSEMBLYMEMBER BRONSON: We recognize next, Assemblymember Michael Reilly for 3 minutes.

ASSEMBLYMEMBER REILLY: Thank you, Mr. Chair.

Thank you to the panel members.

I have a question regarding -- focusing on the downstate area, which the hearing is focusing on.

I represent Staten Island -- a portion of Staten Island.

During this, the pandemic, how often has the governor's office or the department of health held meetings with your organizations to stay on top of the status each -- each period?

Can you tell me if there's been a certain amount of meetings, and how often they occurred?

DR. HOWARD ZUCKER: During the height of it, Assemblyman?

ASSEMBLYMEMBER REILLY: Yes.

DR. HOWARD ZUCKER: Like, several times a day.

NEIL HEYMAN: And that's weekends and nights.

MICHAEL BALBONI: Right, [indiscernible] nights. Yeah.

ASSEMBLYMEMBER REILLY: So before -- before they started getting into those meetings every day, or every weekend, or the frequency of the meetings, during the time of the executive order for the immunity and for the budget discussion, was there any contact with your agencies in regards to the implementation of that legislation and that executive order?

MICHAEL BALBONI: Are you referring specifically to the "liability" executive order?

ASSEMBLYMEMBER REILLY: Yes, yes.

MICHAEL BALBONI: Okay.

No. Not that -- Neil, I don't recall.

Do you?

NEIL HEYMAN: No, I mean, there was early, as the process started, there was an explanation of what was out there and what was going on. And it was stated to us in some of the meeting that this was in place.

But it was just something they announced at a meeting and mentioned as part of what was out there.

ASSEMBLYMEMBER REILLY: So there was no consultation to the agen -- to the organizations and the facilities that it actually implemented -- or, that it impacted, I should say, from the administration?

MICHAEL BALBONI: Assemblyman, I think it was done more -- I can't tell you, you know, what the mindset was of the governor when this was put out there. But I believe it was for the whole health-care industry. That it wasn't specific to any one sector.

ASSEMBLYMEMBER REILLY: Yeah, no, I understand that, Mr. Balboni.

I was actually looking to see if there was any input from those on the ground --

MICHAEL BALBONI: I see.

ASSEMBLYMEMBER REILLY: -- before it was implemented. That's the reason --

NEIL HEYMAN: I certainly think it's a good idea.

It was told to us it was happening. And I thought it was a good idea. I mean -- you know, but there wasn't any input prior to the -- prior to

it coming out.

ASSEMBLYMEMBER REILLY: During the regional meetings, or when they had these discussions with the -- that were led by the governor's office and the department of health, did they -- did they include the executives from each county, or the commissioner from the department of health in New York City?

MICHAEL BALBONI: Not with us. Not with our meetings.

NEIL HEYMAN: Not on a regular basis.

But there was interaction between New York State and New York City at the ground level, in an attempt to try and get the appropriate staffing lined up and to coordinate activities.

There were New York City groups doing it and New York State groups doing it; they invited each other to participate. And that did take place.

ASSEMBLYMEMBER REILLY: So -- I mean, we talked a lot about --

SENATOR RIVERA: Your time is up, Assemblymember.

ASSEMBLYMEMBER REILLY: -- it would be great if we included that, moving forward, where all --

SENATOR RIVERA: Assemblymember -- thank you,

Assemblymember. Your time has expired.

Thank you.

ASSEMBLYMEMBER BRONSON: Thank you.

The -- I next recognize Assemblyman John Salka for 3 minutes.

ASSEMBLYMEMBER SALKA: Hello, can you hear me?

ASSEMBLYMEMBER BRONSON: Yes, we can.

ASSEMBLYMEMBER SALKA: Okay.

Gentlemen, thank you for being here today.

This was a -- this was probably an answer, and I would have gotten -- preferred to be gotten from the department of health, but, I'll just run this by you.

Do you get any indication from your members on how many, in particular, actually requested help from the DOH and -- when they couldn't accept a patient because of their lack of ability to care properly for the patient?

NEIL HEYMAN: I don't have any numbers on that. I'm sorry.

MICHAEL BALBONI: And same thing, I don't have any numbers.

ASSEMBLYMEMBER SALKA: So you haven't had any reflection whatsoever from any of your member

organizations, that they might have reached out to the department of health with an issue regarding the inability to provide proper care?

You didn't get any input at all from any of the members?

MICHAEL BALBONI: I've not.

But, Assemblyman, in full transparency, there, were moments during the pandemic, I remember two weekends in -- specifically, where we were very concerned that a nursing home would have to evacuate their patients, for lack of staff, lack of the ability.

I mean, they got really close in a couple of situations. That didn't have to do with a specific order or anything else. That was just due to the operation, and lack of staffing.

So, you know, again, there is no normal in a pandemic. And this really was a war.

ASSEMBLYMEMBER SALKA: And I understand that.

I just -- what I'm trying to pinpoint here is, that I know that the governor said that if -- in one of his press conferences, that if the nursing homes could not provide adequate care, to reach out to the department of health.

And we're just trying to get -- put our

finger on whether or not that did happen at all. And if it did happen, how quickly that request was expedited, so that, of course, the resident got the best care.

So I was wondering if you had heard anything at all about that, any reflection from any of your organizations?

NEIL HEYMAN: No, I had not heard. Even anecdotally, none of my members actually told me they went through that process.

ASSEMBLYMEMBER SALKA: Okay. Thank you.

Thank you, gentlemen; thank you for being here.

SENATOR RIVERA: All right, that is all from the Senate.

Do we still have some from the Assembly?

ASSEMBLYMEMBER BRONSON: That is all for the Assembly as well.

Thank you, gentlemen.

SENATOR RIVERA: All right.

Thank you, Mr. Heyman and Mr. Balboni.

NEIL HEYMAN: Thank you.

MICHAEL BALBONI: Thank you very much.

SENATOR RIVERA: And we are moving on to Panel 3, which will be:

Judy Farrell, the long-term-care ombudsman from the Tri County Ombudsman Program;

And, Richard Mollot -- and please correct me if I'm wrong in that pronunciation -- executive director for Long-Term Care Community Coalition.

Mr. Mollot, is that correct, the correct pronunciation?

RICHARD MOLLOT: Thank you.

JUDY FARRELL: Yes.

ASSEMBLYMEMBER GOTTFRIED: And just before I swear them in, I just want to observe, it's been an hour and twenty minutes since we returned from our break after the health department.

Two witnesses have testified during that time.

We have 30 more on the list.

So, do you each swear or affirm that the testimony you're about to give is true?

RICHARD MOLLOT: I do.

JUDY FARRELL: Yes, I do.

ASSEMBLYMEMBER GOTTFRIED: Okay.

JUDY FARRELL: Thank you.

RICHARD MOLLOT: Judy, do you want to go first?

JUDY FARRELL: Sure. Thank you, Richard.

Thank you to the chairs and to the Senate and Assembly for convening this important hearing today, and allowing me -- inviting me to submit a statement on the impact of COVID-19 on residential health-care facilities.

My perspective is based on the hundreds of heart-breaking conversations that I've had with families and residents during the peak of the COVID-19 pandemic.

The facilities are home to thousands of New York's most vulnerable residents. Many of these residents knew each other, shared meals together, participated in recreational activities, and enjoyed visits with families and friends.

No one was prepared for the spread of this horrific virus, the massive death toll, and the inability to spend precious last minutes of life comforted by loved ones.

From the beginning, we knew that COVID-19 would take a devastating toll on the elderly, particularly in long-term-care facilities.

Now we know over 6,000 residents died in a few short months.

As the new long-term-care ombudsman for Region 4, which covers Westchester, Rockland, and

Putnam counties, I soon became aware that we were one of the only offices having direct contact with residents and families during the COVID-19 peak.

And as a long-term-care ombudsman, I received calls from desperate families, to get any information on infections in their loved ones' facility.

I received calls from family members, seeking to arrange end-of-life compassionate-care visits.

I received calls, asking for assistance with getting bodies to be released to funeral homes.

While I was able to advocate for residents and connect some with their families via technology, or help families safely discharge their loved ones, residents, families, and facilities were overwhelmed by the pandemic and living in fear.

Today, months later, families are still not able to visit loved ones due to the continuing number of staff testing positive for COVID-19.

It is vital for all of us concerned with the lives of people living in long-term-care facilities to find a way to not only protect our elderly and people with disabilities from future outbreaks, but to solve the devastating problem of isolation and lack of human connection that may also impact the

mental health, cognitive capacity, and lives of so many residents and families.

Based on all of the fears and concerns I've heard expressed to me since COVID-19 swept through the facilities in my regions, and with over 20 years of experience in health care and public health, I offer the following recommendations for your consideration:

1. Ensure residents of long-term-care facilities are represented during New York's emergency preparedness planning, and that there is public access to emergency preparedness plans.

2. Notify families and guardians of long-term-care residents immediately of imminent threats to their health and safety.

3. Share with residents and families, information about all of the assistance available to them through times of public health crises, including the services of the office of the state long-term-care ombudsman, complaint report hotlines, and the local department of health.

4. Continue to invest in and support technology that allows residents, families, friends, and representatives to stay connected virtually.

5. Bring all stakeholders to the table,

planning the future of long-term care in New York, including the representatives of residents.

One final thought.

It has been said that we, as a society, will be measured by how we treat the most vulnerable.

While we cannot have known, and still do not know, the full -- fully, the horrific COVID-19 virus, we must all work to ensure that we are prepared for the next outbreak, and that we do everything we can to protect New York's most vulnerable elderly population and people with disabilities.

Thank you.

RICHARD MOLLOT: Thanks.

Should I just go ahead?

SENATOR RIVERA: Yes. Perfect timing.

RICHARD MOLLOT: Okay.

Thank you for inviting me to provide testimony today.

I'm truly grateful, both professionally and personally, that you're holding these hearings.

My name again is Richard Mollot. I'm the executive director of the Long-Term Care Community Coalition. We're a non-profit, non-partisan organization dedicated to improving care and quality

of life for residents in nursing homes and other residential-care settings.

It is well known, as we've discussed today, that nursing home residents would be particularly vulnerable to the coronavirus well before it hit the United States and our home state of New York, based on how it hit communities in China, Italy, and Spain.

In fact, our first knowledge of the virus's entrance into the U.S. was when we witnessed in horror the devastating impact that it had on residents and staff in a nursing home in Washington State.

Despite these warnings, far too little was done by nursing homes or state and federal leaders to mitigate the impact of the virus when it came to New York.

As a result, we lost thousands of residents to the coronavirus, and, undoubtedly, many thousands more from the persistent reports we have been hearing of abject neglect and substandard care in our facilities.

Fundamentally, and sadly, there's plenty of blame to go around at every level.

Since we are at the beginning of piecing

together what happened, and where we go from here, I would like to use the remainder of my time to discuss a few points that we believe are critical to any discussion of what happened, and how to best move forward.

First, a few nursing home basics.

Nursing homes are paid and contractually required to provide good care and humane, dignified conditions to every resident they accept.

The state department of health is paid and contractually required to ensure that these standards are met for every single resident every day of the year.

The industry complains that it does not receive enough money to provide decent care and humane conditions for our elders.

When bad things happen, under normal circumstances, or as a result of the pandemic, the industry's inevitable response is that, it is not their fault and they need more money.

In fact, the industry is increasingly run for profit with a growing number of chains. The industry, both for- and non-profit, is dominated by sophisticated operators.

As "The New York Times" reported: Nursing

home operators commonly use related-party transactions to hide profits from Medicaid and Medicare services.

Nursing homes received a 6.2 percent boost in Medicaid payment under the Family's First Coronavirus Relief Act.

They have enjoyed double-digit profits on Medicare patients for close to 20 years. And since October 2019, they have seen a boost in profits as a result of changes to the federal reimbursement system.

A few points about what happened leading up to the pandemic.

We have long known that staffing is a widespread and persistent problem in our nursing homes.

We have also known that poor infection-control protocols are longstanding and persistent problems.

What we know about what happened so far:

Residents and their families were, and continue to be, absolutely devastated, as Judy was saying, by the coronavirus and the abject neglect residents are experiencing in facilities across the state.

Our preliminary analysis of the data indicate that New York nursing homes with higher staffing levels had lower rates of deaths due to COVID.

We have also found that ownership makes a difference. For-profit owners have had higher rates of resident deaths than have non-profit and county-owned facilities.

There is growing evidence of nursing homes that avoided deaths, even in hotspots, when they took basic steps to ensure resident and staff safety.

Where do we go from here?

1. We must improve oversight and accountability for nursing home care in New York State.

Our research of federal data, New York State comptroller's audits, even a recent GA -- U.S. Government Accountability Office (GAO) report on New York, have all indicated that the department of health must do more to safeguard the safety and dignity of our residents.

The nursing home standards are strong, but they are not self-implementing. They must be enforced.

2. We need to join the majority of states

that have minimum staffing standards.

3. We must put in place a medical-loss ratio to set reasonable limits on how much money nursing homes can take out in profits or administrative costs before they allocate any funds to resident care, including decent, livable wages for nursing home staff.

Nursing homes are increasingly run for profit. Right now, they're getting paid enormous sums for COVID patients, and bonuses of billions of dollars are going to the industry through the stimulus bills.

Excuse me.

Where is that money going?

Where is the accountability?

Thank you again for this opportunity to provide testimony.

SENATOR RIVERA: Thank you, sir.

And to lead us off in the Senate will be Senator James Skoufis, recognized for 5 minutes.

SENATOR SKOUFIS: Thanks very much.

And thanks to both of you for not just your testimony, but your service.

Speaking frankly, and this is something that you did touch on, but I would love to speak at some

length about, and I'm disturbed by the State's early decision to prohibit you all, prohibit ombudsmen and -women from performing safe, in-person oversight during the pandemic.

You're -- I'm going to tell you, you're our watchdogs, you know what to look for, and your very presence itself oftentimes deters bad behavior.

So, fundamentally, I guess, maybe the most important question on this matter is: In your heart of hearts, do you believe that, if you and your peers around the state would have been able to save lives from COVID if able to carry out your duties over the past five months in nursing homes?

JUDY FARRELL: I think we were able to speak to residents and families through technology. But, of course, it would have been more effective to be there in person.

But I don't think -- I think that decision was right to not allow us to visit in person because the risk was too great, frankly.

And we not only -- you know, to the ombudsman staff, but we have volunteers. And many of them are retired seniors.

SENATOR SKOUFIS: And I appreciate that.

And I guess I -- so I have spoken with

ombudsmen with a slightly different opinion. And they felt that they would have liked very much to be able to visit in person.

Clearly, you know, there's a -- there's discrepancy and opinion within your ranks.

I wonder, Richard, as an executive director of an organization that represents many members, can you speak to, maybe, what you've heard on this?

Do more ombudsmen and -women feel this was the right call? Or do they feel differently, and wish they would have been able to continue in-person visits?

RICHARD MOLLOT: Well, I think -- well, one, this really came down from the feds.

I think that's important to know that.

It was actually in March that CMS (the Centers for Medicare & Medicaid Services) put that blockade up on visitation.

We were against that for both family -- in respect to both families and ombudsmen at the time. That was the beginning of March.

However, that was before the disaster, frankly, really unfolded. And that's when Judy came in.

As Judy knows, she's a new ombudsman.

So I think, by the time we got to late March, or mid-March, in New York, it was not an appropriate time for people to be going in.

However, and this is something that you guys discussed earlier, I think that there were ways that the visitation could have been mitigated and done appropriately earlier on, if better steps had been put in place to safeguard residents along the way.

And, certainly, this is something that we have issued, you know, guidelines on for reopening visitation right now.

I know you guys were just [indiscernible] too.

SENATOR SKOUFIS: Just to be clear, the State didn't have a choice on this issue?

RICHARD MOLLOT: Correct.

But the State does have a choice now in terms of visitation.

But it didn't then.

SENATOR SKOUFIS: Okay.

And, you know, my team and I, we received some testimony from an ombudsman out in Western New York, that reads, in part: Both prior to -- prior to, during the pandemic, and still, when I attempt phone calls to certain facilities, I am

refused access, or, too often, the phone line rings indefinitely, never to be answered.

Can you speak to the prevalence of that sort of problem, where there is just complete unresponsiveness, outright refusal, both during this pandemic --

Well, certainly the "refusal to visit" part has been addressed.

-- but even more generally than that?

RICHARD MOLLOT: Judy?

JUDY FARRELL: I was able to get through the many facilities.

But I do -- had -- did hear from families, that they had difficulty getting through the facilities, and difficulty getting calls back.

SENATOR SKOUFIS: So what do you do at that point?

JUDY FARRELL: Then I call.

If families are having difficulty, they've called me. I mean, that's how -- the ombudsman program is very resident-focused. And it's at the request of the resident or their family, you know, that we're able to call the facility directly, and connect them with that resident's family, so that their loved ones can communicate with them, and get

information on their status if they're not able to communicate.

SENATOR SKOUFIS: So it sounds like you haven't had any problems personally with unresponsiveness to you.

I'm wondering if, Richard, the -- what I shared is prevalent among other ombuds members who have, you know, maybe a longer history due to the work?

RICHARD MOLLOT: I think -- I mean, that's really what we're hearing is, unfortunately a mixed bag.

And I've been on a number of family calls as well over the past several months, and certainly spoken to a lot of ombudsmen, that it's, unfortunately, as I said at the start of my testimony, there's blame at every level.

And I think, really, the lack of direction, and leaving it up to facilities, some facilities did a great job with reaching out to families and to residents.

Some of them, frankly, a lot of them, did a really poor job, and that made it really hard to get to people.

And we heard, you know, just someone had

mentioned previously --

SENATOR RIVERA: [Indiscernible] --

RICHARD MOLLOT: -- about not hearing about [indiscernible cross-talking] --

SENATOR RIVERA: -- we're out of time, so please wrap up, please wrap up.

RICHARD MOLLOT: -- not even hearing about deaths of their families until well after the resident had died, their family members.

Excuse me.

SENATOR RIVERA: Thank you so much.

Assembly.

ASSEMBLYMEMBER BRONSON: Uh, yes. We recognize Co-Chair Dick Gottfried for 5 minutes.

ASSEMBLYMEMBER GOTTFRIED: Thank you.

Richard Mollot, in discussing the pandemic, I've been saying several things, and I'm just interested in your take on them.

Basically, that, for years, long before COVID, our nursing homes were suffering from inadequate staffing, inadequate staffing of the health department's enforcement personnel, and a fairly lax attitude among the enforcement personnel, and a chronic inadequacy of funding, particularly from the Medicaid program. And that all of that,

that long preexisted COVID, has made all of the problems of COVID much worse.

Does that square with your vision of things?

RICHARD MOLLOT: Yeah, it does.

I mean, we have longstanding problems with staffing in this state.

And, with infection control, it's a nationwide issue. It's the most cited deficiency, last year, was failure to provide appropriate infection-control protocols.

I know you guys discussed that a little bit earlier.

It's, really, you know, all this stuff is basic.

It's handwashing. It's using basic common sense of washing your hands or changing your gloves when you go from caring for one resident to another.

It's not brain surgery.

But it really comes down, as you're saying, Assemblymember Gottfried, to staffing, because if you have enough staff and the staff are trained, then they know to do that. They don't have to rush from one resident to another. They can stop and wash their hands.

So it's really basic stuff.

In terms of funding, I think, obviously, the, you know, Medicare program pays a lot more money than the Medicaid program does. And it's, frankly, due to a lack of transparency and accountability with how -- where funds go.

As I mentioned, you know, briefly in my testimony, it's really hard to say how much, you know, we need to pay, et cetera.

I think that it would make sense to have a payment system that reimbursed appropriately for good care. We all want to see that, but that requires some transparency and accountability as well.

ASSEMBLYMEMBER GOTTFRIED: You used the -- you referred to setting up a -- what you called, a "medical-loss ratio," a term borrowed from the insurance world, to, essentially, require a facility to demonstrate spending a certain percentage of their revenue, I guess, on patient care and services before they could draw profit.

And I'd like to, obviously not right now, talk at much greater length with you about that.

Is that -- is there legislation like that in place in some other states?

RICHARD MOLLOT: No, not that I'm aware of,

in terms of -- not for nursing homes.

There is for, of course, as you mentioned, for -- in the insurance world.

But it's something that we have -- we have become aware of just in the last few years.

And as I quickly noted in your testimony, something that we've seen over the last, you know, 15 or so years, is that the nursing home industry has become increasingly sophisticated.

So one way to kind of address that sophistication, you know, hiding assets in LLCs, hiding assets by selling the underlying property to yourself, and then paying yourself rent at above market rates, those kinds of things, would be to get at a way of accountability.

And so we borrowed that.

And I didn't come up with this idea. These were actually academic experts, and, you know, then we looked into it afterwards.

And it made sense to have some kind of structure so that you couldn't pull out, you know, a million and a half dollars in administrative salaries, you know, for the administrator, for one person, per year, and then turn around and say, well, I'm not making enough money to provide decent

staffing for my residents or to pay a livable wage for my staff.

ASSEMBLYMEMBER GOTTFRIED: Is this predominantly a problem on the for-profit side, or are there facilities on the not-for-profit side that are doing this sort of thing?

RICHARD MOLLOT: Yes to both.

I think it's more predominant on the for-profit side.

But I think that there are facilities in the not-for-profit side that are increasingly sophisticated in their financial structure, and that money is not going necessarily to provide resident care.

ASSEMBLYMEMBER GOTTFRIED: Okay.

SENATOR RIVERA: Your time is up, Assemblymember.

ASSEMBLYMEMBER GOTTFRIED: That's fine.

Thanks.

SENATOR RIVERA: Of course, Senator -- followed up by Senator Rachel May, recognized for 5 minutes.

SENATOR MAY: Thank you.

And thanks for this testimony.

Ms. Farrell, I can't believe this, what a

time to be new in this job. This must be amazingly difficult.

I had a number of questions about the ombudsman program.

I want you to know that I fought really hard in the budget, before the pandemic exploded, for more funding for this program. And this has been on my mind for a long time.

So, first of all, just a simple question: How well do you think residents and their families know about the ombuds program?

JUDY FARRELL: I think it could be shared more widely.

I think, you know, the nursing homes and other long-term-care facilities are provided with the information and the contact information. There are posters in every facility.

But I really think, until there's a crisis, unfortunately, this pandemic is the worst crisis you can imagine, that people, you know, then ask for the number.

But I think that it could be shared more widely with families, and with the community, frankly, so that people know, if they know someone in the nursing home that has an issue, that they can

call us.

And we're trying to do that, the ombudsman's office. But we -- you know, we have a very small budget. And I think getting the word out is really important.

SENATOR MAY: Right.

I asked repeatedly for the governor to say something about it in his press conference, just so people would know. But, I don't think it worked.

So another question was about your access to information.

So we heard about problems with infection-control plans at different facilities.

I know you're working with the residents and their families.

But are -- do you have access to that kind of information, like, facility-wide information, about something, like, do they have a plan in place, and are they following it?

JUDY FARRELL: Well, that's why, in my recommendations, I ask that that be considered; a recommendation that there be an emergency-preparedness plan in place.

What I heard from families of residents was that they could not get access to that. They didn't

know what the facilities' plans were, and they wanted to know.

And, also, representatives of residents can be on the local emergency-preparedness teams, or have some contact with them, because getting that information is critical to family decisions.

I mean, unfortunately, some families would have taken a loved one out, and the loved one passed away from COVID-19, because they didn't have information quickly enough.

[Indiscernible cross-talking] --

SENATOR MAY: But I was more asking to -- as an ombudsperson, do you have access, even --

JUDY FARRELL: No --

SENATOR MAY: -- [indiscernible cross-talking] --

JUDY FARRELL: -- no, no.

I have what the department of health has shared, that information.

The information that I received on infections in facilities, I received from resident families who were more in touch with people inside, with staff and with others.

So I sometimes got information even before the department of health, maybe, when people called.

But it was -- it was -- they were guesstimates, they didn't have exact numbers. But we knew what facilities had quite a few infections.

SENATOR MAY: Right.

And this is a big question, and I know that you're new, but, do you think the ombuds program should be independent of the State, of the executive?

Is that something you can comment on?

JUDY FARRELL: Well, it is supposed -- it is a federal -- it's a federal-state partnership. And it is an independent program.

Although [indiscernible cross-talking] --

SENATOR MAY: I know, but they try to say, "an office for the aging."

JUDY FARRELL: -- it does sit within that office, but we are supposed to be operating independently.

SENATOR MAY: Do you feel that you do?

JUDY FARRELL: I'm too new, I think, to really make a [inaudible].

SENATOR MAY: Probably.

So, okay, one more question, because you talked about the virtual visits kind of working in this period.

Do -- and I've heard a lot about, volunteers, that's it's hard to recruit new volunteers, and, often, "I'm upstate." You know, they have to travel long distances to get to facilities, and they're volunteers, so it takes a lot of time.

Do you see virtual visits as something that will be continued to be used in the future, beyond the pandemic, and could be effective? Or should the visits be in person?

JUDY FARRELL: I think virtual visits are important to, you know, maintain as a tool. But I think there's nothing that replaces in-person visits or human connections.

I think we can use technology as a tool.

And, certainly, if we can get in to do a FaceTime with a resident and with their family, it's helpful.

And, certainly, it was helpful during the pandemic. And should be a part of planning.

But I think, you know, if we can get and recruit volunteers and have more staff to get into the facilities, that's really important.

Because, the residents in the facilities -- I haven't, you know, been with the program too long -- but I know from our volunteers and other

ombudsmen, that the residents trust the ombudsmen, and will share things that they might not share with others.

So I think [indiscernible cross-talking] --

SENATOR RIVERA: Thank you, Ms. Farrell.

JUDY FARRELL: Yep.

SENATOR MAY: Thank you.

SENATOR RIVERA: Thank you, Senator.

Assembly.

ASSEMBLYMEMBER BRONSON: Thank you, Senator.

I will go next.

And my first question is for you, Ms. Farrell, and it's following up on the ombudsperson program.

We really need to change the name of that, by the way, so that it's gender-neutral at best.

But that being said, so this is a federal and a state program. Correct?

And if I understood your response to Senator Skoufis, the bar for ombudspersons from going into facilities, that was federally required in the beginning? Is that true?

JUDY FARRELL: Yes.

ASSEMBLYMEMBER BRONSON: Okay.

And that requirement no longer exists.

So are ombudspersons going in facilities today?

JUDY FARRELL: They are not yet going in.

I think the department has given -- approved to -- and giving guidance to allow Ombudsmen to go in.

There are issues around testing and PPE, and other issues, that, really, I can't -- you know, I'm not, you know, at liberty to address what stage they're at. But I know there's guidance being developed, actually, implement visits, going forward.

But that's not happening yet.

ASSEMBLYMEMBER BRONSON: Okay.

So, if you know, the -- so we currently have a visitation guideline: 28 days of no test positives and you're allowed visitations.

Is -- would not the ombudsperson fit under that guideline?

JUDY FARRELL: Yes.

ASSEMBLYMEMBER BRONSON: Okay.

So -- but as far as you know -- for instance, I just had a facility right up the street up from my home who had met that requirement. And, unfortunately, now they've had two staff people test

positive. So now they're starting the 28 days all over again.

Are there -- are you not aware of any facility that has met that requirement where an ombudsperson has gone in already?

JUDY FARRELL: No, I mean, there are requirements, as you know, for the staff to be tested. But there are also requirements.

And this is really an office of the state and long-term-care ombudsman question.

Richard, if you want to address it.

But there are requirements for tests every week for the ombudsmen. And how that's going to be implemented is not clear yet.

ASSEMBLYMEMBER BRONSON: All right, so, just so I understand it correctly: As far as you're aware, ombudspersons are not going into facilities as of this day?

JUDY FARRELL: Not in my region, no.

ASSEMBLYMEMBER BRONSON: All right.

And, Richard, I lost you on the screen -- oh, there you are.

Richard, do you -- are you aware of ombudspersons going into facilities in any locations?

RICHARD MOLLOT: Not in New York State.

ASSEMBLYMEMBER BRONSON: Okay.

RICHARD MOLLOT: But just to clarify, there's a -- very quickly, there's a difference between allowing -- a plan for allowing facilities to have visitors, and a plan to allow ombudsmen in.

So there's a distinction there.

So what DOH did, was a plan to allow visitors and open it up. And they did mention the ombudsmen.

But then that really has to come from the long-term-care ombudsman program, as Judy was saying, the state office of the ombudsman program.

ASSEMBLYMEMBER BRONSON: And do we know where those discussions are on developing that plan?

RICHARD MOLLOT: As Judy said, I believe that they're being developed. But that would really be a question for the state ombudsman.

ASSEMBLYMEMBER BRONSON: Okay. All right.

Are either of you aware, has the office for the aging reached out to you in connection with this program?

I mean, they're the agency in charge of oversight of this program.

Have they reached out, have they had conversations with either of you?

Or are you aware of conversations or communications, of any nature, from that agency, about this program, and how to fit it into the current COVID-19 in a safe and healthy way?

RICHARD MOLLOT: As -- if I just may -- if I may answer to that, as Judy said, the long-term-care ombudsman program is housed within the state office for the aging, but it's required under federal rules to be run as an independent program.

So it's -- the long-term-care ombudsman, her name is Claudette Royal, would be the beginning and the end of responsibility for how the ombudsman program is run, again, under the federal rules.

We get a significant amount of federal money to have an ombudsman program.

ASSEMBLYMEMBER BRONSON: I understand that, but the office for the aging is still responsible for the program, is that not true?

RICHARD MOLLOT: The office for the aging houses the program, but the office for the aging is not -- does not have substantive control over the program.

ASSEMBLYMEMBER BRONSON: Another reason we should move it to the department of health,

I suppose.

RICHARD MOLLOT: Hmm, I would not agree with that.

JUDY FARRELL: Hmm.

ASSEMBLYMEMBER BRONSON: No?

RICHARD MOLLOT: No.

ASSEMBLYMEMBER BRONSON: Okay.

All right. So the -- well, probably, there would be conflicts there.

I understand.

JUDY FARRELL: It has to be independent.

ASSEMBLYMEMBER BRONSON: Yeah, the idea of independence, I get it. I misspoke.

Thank you.

All right. I would love to learn more, Richard, about what you were talking about, the difference between profit and not-for-profit, and the responses, and what's happening from a profit motivation.

But my time is up, so I will yield.

SENATOR RIVERA: Unfortunately, you will have to -- that, you could always -- you could always submit it in writing, for Mr. Mollot to respond in the future.

Passing to the Senate, recognize

Senator Metzger for 3 minutes.

SENATOR METZGER: Thank you, thank you so much.

Okay, first I just -- I have a question for Richard.

Sorry, I'm trying to get my video on.

Richard, you had mentioned that those -- those for-profit nursing homes, outcomes for residents faired worse than for those that were not for-profit or state-owned. Is that correct?

RICHARD MOLLOT: Uh-huh.

SENATOR METZGER: Do you -- so one -- two questions.

One is, do you have a study? Like, is this data available for -- that can be shared?

That's one question.

And, secondly, what do you contribute, or what are the main factors?

Is it staffing? Is it understaffing?

Like, what are the main factors involved?

I'm very concerned because there is, actually, in my district, the County is considering selling its nursing home right now, which I have really major concerns about.

And this data is important.

RICHARD MOLLOT: Thank you.

Well, and those are really great questions.

So we're embarking on a larger study to assess the data.

As people before us mentioned, there's federal data that's coming out. And, of course, the state data, which only provides data on deaths.

There is now more robust federal reporting.

In any case, so we -- in anticipation of the hearing, we did some quick analyses. And those are the results of those analyses, and I can, of course, share those data.

There are not a lot of the county-based nursing homes.

But as I recall, when I looked, and I haven't looked at them the past four hours or so, but as I recall, the county-based nursing homes actually did even better than the not-for-profits/county-based, overall.

But there was a clear delineation, and that is probably true to the fact that the not-for-profit and county nursing homes tend to put more money into resident care and tend to have higher staffing levels.

So there are good nursing homes on both ends.

SENATOR METZGER: County -- the county nursing homes.

RICHARD MOLLOT: Pardon?

County nursing homes and not-for-profits both put more money into resident care and into staffing, which, as someone mentioned earlier, was about 80 percent of the resident-care costs anyway.

SENATOR METZGER: Okay. Thanks.

And do I have time to ask a question of Judy, Mr. Chair?

SENATOR RIVERA: If you keep asking until the time runs out.

SENATOR METZGER: All right, all right.

Judy, I just -- is there -- I'm very concerned about the lack of visitation. This has come up as a theme constantly.

Even for -- within the current guidance, I mean, I just don't understand the ban on outdoor visitation. It seems like, that, that would be safer.

And -- I mean, what do you think about that?

SENATOR RIVERA: You have about 50 seconds, please.

JUDY FARRELL: Some facilities are doing that already.

But I do think you're right, this issue of visitation has to be solved with -- to get our best minds together, because it is impacting the mental health of residents and their families.

SENATOR METZGER: Okay. All right.

SENATOR RIVERA: Thank you so much, Judy.

Thank you Senator.

Assembly.

ASSEMBLYMEMBER BRONSON: Yes, next I recognize Co-Chair Assemblymember McDonald for 5 minutes.

ASSEMBLYMAN McDONALD: Thank you, Harry.

And, Judy and Richard, thank you for being here.

Judy, Harry already asked my questions, so you're good, you're off the hook, I guess.

Richard, you may have heard my question earlier with Dr. Zucker.

And I understand you've got your ear to the ground.

Psychotropic use with our residents in the long-term-care facilities, what are you hearing?

I'm hearing through the pharmacy community that it's up significantly.

And I'm just curious what your reflections

are.

RICHARD MOLLOT: Thanks.

And this is one of our biggest advocacy issues, is the inappropriate overuse of antipsychotics and other psychotropic medications.

And that is what we are hearing.

So the data we have for this time period right now, it's all anecdotal.

I just want to be very careful, because we do policy research on this, using federal NBS data.

So we don't have great data, but the reports I'm hearing, over and over again, is of residents being drugged, residents appearing drugged, residents being told that they need these drugs, essentially, rather than, you know, receiving appropriate care.

And I just want to quickly mention that the -- a lot of the rules have been relaxed for nursing homes over this time period.

But the right to be free from unnecessary drugs, the right to be free from chemical restraints, and the right to be treated with dignity have not been relaxed.

So nursing homes still have the responsibility do that.

I know we're not going to get everyone together for a game of Bingo, or whatever, but there's other things that they can done be doing, which, too often, is not going on.

ASSEMBLYMAN McDONALD: I've gotten a variety of e-mails from not only constituents here in the Capital Region, but throughout the state.

And the impression I'm getting, which is -- which is -- I can understand people are feeling isolated, is that they're barely able to leave their room.

Is that true?

RICHARD MOLLOT: Yes. And it doesn't have to be that way.

Again, you know, nursing homes were never an appropriate setting to let steam off of the hospital situation. They just weren't.

And that's why we brought in the ship, that's why we set up hospitals, that's why we still have units around the state.

It's one of the most infuriating and appalling things to me, in the 18 years -- 18-plus years I've been at the coalition, is to see residents, essentially, imprisoned in their facilities for month after month after month after

month.

Nursing homes are not a MASH unit in a war zone.

This is just completely inappropriate.

As everyone has said throughout the day, it is physically, clinically, harmful for people to be out of touch, to be isolated, and to be neglected in this way.

ASSEMBLYMAN McDONALD: Thank you both.

RICHARD MOLLOT: Thank you for raising that.

SENATOR RIVERA: Thank you, Assemblymember.

Now moving on to recognizing Senator Serino for 5 minutes.

SENATOR SERINO: Sorry about that. Just took me a second to get there.

Thank you both so much for being here, and for all of the hard work that you do.

You know, at the start of the pandemic I immediately heard from my local ombudsman, who was working overtime to help keep families connected to their loved ones.

And we're great grateful for all of your services.

She brought to my attention that many of our state's volunteers are seniors themselves, which you

guys had spoken about, and would not have been able to safely enter these facilities even if they were allowed to.

So we immediately saw a dangerous gap that needed to be filled, and we can all agree upon that. So, we came up with a proposal.

I introduced legislation, to create an emergency public health transparency and accountability council.

That council would be charged with creating a direct 24/7 hotline, collecting and investigating reports of problems or COVID-19 guidelines not being followed in any facilities.

The idea, was that those who were allowed in could continue to be the confidential eyes and ears in these facilities.

The bill expressly required the long-term-care ombudsman to be a member of that commission so their experience could be leveraged to best protect these residents.

That proposal, like so many others, was completely ignored.

We also know that the State has failed to provide enough resources to bolster the ombudsman program.

And I also carry legislation to incentivize more there as well.

But I'm wondering, what do you think we can do, going forward, to ensure that there is a patient advocate on the ground advocating for patients and their loved ones?

It's for either one of you to answer.

RICHARD MOLLOT: Judy, do you want to...

JUDY FARRELL: Sure.

I do think that the advocates and the resident representatives have to be part of any local emergency-preparedness planning.

I think, after 9/11, we learned that, you know, being prepared, I mean, you never know.

The pandemic, we didn't expect it to be as horrifying as it is.

But I think if we're communicating with the emergency services and all the first responders and everyone that's going in to assist facilities, that we can communicate to the residents what's going on in their community.

I think that's -- and to their families, their loved ones, because they really want to know. They see things on the news, and they panic, and they're living in fear.

But we can reassure them or we could share information, and that's really comforting.

RICHARD MOLLOT: And I would just quickly add --

And, Senator Serino, you've been a strong supporter of this for many years, I know personally.

-- that we clearly need to be adding funding and support for the long-term-care ombudsman program.

I thank you and Senator May for, you know, that support. And, of course, others who are here as well.

But it is so clear; we've been calling -- you know, calling for this for several years.

I did research on funding, six, seven years ago now, that found that New York is one of the states that least funds the -- their long-term-care ombudsman program.

New York State Comptroller's Office did a similar study about two years ago, which found, roughly, the same thing.

And this shows we really need to have professional staff because, as you mentioned, a lot of volunteers are seniors themselves. And it may be a long time before it's safe for them to be going

into facilities.

We need to have the professional staff there to answer questions and advocate.

SENATOR SERINO: Thank you, Richard.

And I -- actually, also, I introduced legislation that would provide grant funding to these facilities, to hire staff solely dedicated to answering calls and answering questions from loved ones and ombudsmen, so that there was no logjam, and there was no staff being pulled away -- right? -- because that happens -- from taking care of the patients.

That proposal, to date, has been completely ignored as well.

But thank you so much for your time today.

RICHARD MOLLOT: Thank you.

SENATOR SERINO: Thank you.

JUDY FARRELL: Thank you.

SENATOR RIVERA: Thank you, Senator.

Assembly.

ASSEMBLYMEMBER BRONSON: Yes, I recognize Assemblymember Jake Ashby for 5 minutes.

ASSEMBLYMEMBER ASHBY: Thank you, Mr. Chairman.

Quick question for Richard.

Earlier, when were you talking with Assemblymember McDonald, you were talking about how inactive some of the population in our nursing homes have become.

And I'm wondering, have you seen this on kind of a larger scale in terms of their functional ability? And how has it impacted -- or, has it impacted their ability to be discharged?

Some of the patients aren't necessarily there for long-term care. They're there for short-term rehab, or they get to the point where they can go home, or should be able to -- or, leave the facility, maybe not go home, but go somewhere else, to an alternative level of care.

Do you feel like their functional ability has been impacted to where that's not happening?

RICHARD MOLLOT: Yes.

And, again, I want to be careful because everything I hear is either -- it's anecdotal; it's from hearing from ombudsmen and hearing from family members, et cetera, over the last five months.

So we don't have good data on this, which we are constantly calling for, and urge you all to call for as well, you know, for good data on what's going on in nursing homes, as you did earlier with the

commissioner.

But I think that -- that's the kind of thing we hear.

People that went into a facility for rehab services, and they are confined to their bed, put in a double diaper.

And so not only are they not getting the therapy services that they need and went in for, but they're losing their ability to be continent.

I mean, the nursing -- the nurses -- nursing homes, excuse me, refusing to even take them to go to the bathroom to maintain continence.

Those -- and, of course, a lot of residents who we're seeing with malnourishment and dehydration. As I mentioned before, a lot of reports of widespread drugging of residents.

And so all those things lead to a deterioration, and a lack of ability to get out of the nursing home.

ASSEMBLYMEMBER ASHBY: Yeah, I would be very curious to know, in terms of the patients or residents that went in for short-term rehab, and were expected to go home, and had a discharge plan in place, and then sedentary -- be secondary to the sedentary lifestyle, of now not being able to leave

your room. Right?

Or if you are receiving rehab, are you able to go to the -- you know, to the gym -- the rehab gym in the facility, or are you confined to your room for rehab services?

And the impact of quality of services that are -- that's happening there.

And then, you know, on top of that, what counts as a safe discharge at this point?

Can you do a home eval from a nursing home?

Or is everybody, because of the restrictions, were not able to get therapists, are not able to get into these people's homes and make sure that it's a safe discharge environment?

I mean, there's -- there could be a lot -- there could be a lot going on here that's compounding problems for not only nursing homes, but, you know, for the families and residents as well.

RICHARD MOLLOT: Absolutely.

Thank you.

ASSEMBLYMEMBER ASHBY: Thank you.

SENATOR RIVERA: All righty. Thank you, Assemblymember.

Now recognizing Senator Tom O'Mara for

5 minutes.

SENATOR O'MARA: Thank you, [indiscernible].

And thank you both for your testimony today, and much thanks for what you do as ombudsmen and helping those programs operate on such limited budgets.

I know in my region of the state that I represent, our ombudsman's program covers five counties.

I think they have one paid staff person. They rely on volunteers for the rest of it. It's just woeful.

So it's very inadequate coverage [indiscernible] providing ombudsmen. And, you know, when you can get a volunteer, it's likely related to somebody that is willing to do some extra work while they're visiting a facility where their own loved one is. And perhaps after that loved one is no longer, passes away in the nursing home, is no longer a resident, they kind of lose interest and fall off the volunteer list for continuing those efforts.

So I agree we need a lot more effort put into bolstering these programs to help with that.

What is your sense, if you have one, in the

areas that you represent, on -- you know, we've talked about, there's a 20 percent vacancy rate, or down in occupancy, [indiscernible] of our nursing homes. Probably a little less than half of that number are actual deaths that occurred in nursing homes.

But what is your sense of the breakdown of the other vacancies in the nursing homes that have been resulted?

I assume there are some that were taken out -- some residents taken out, back to their homes where that was feasible. But there was those that were transferred to hospitals with COVID, that died there of COVID, and they're not in our counts, as well as, probably, those deaths that occurred, and there just is a lack of sending a loved one to the nursing home right now because of the conditions under COVID, and people are dealing with that more at home, hopefully.

But what's your sense on the breakdown of that extra -- that extra -- those extra vacancies, as far as what you would consider were deaths that occurred in hospitals, or individuals that were checked out of the nursing facility?

RICHARD MOLLOT: I don't -- I don't -- this

is Richard.

I don't think there's really any good way to -- I mean, the department may have data, as was discussed, you know, with the commissioner earlier. But that would be the only way, I think, to speak about those issues.

They're important, but I -- you know, I think we should be careful, and really expect the department to come out with that information to the best of its ability.

We're still not getting a lot of information. We still don't know the cases among staff. We still don't know suspected cases.

As many have discussed, we still don't know who was sent to a -- you know, by ambulance to a hospital and died there, when, really, they were sick and, you know, whatever, they were led to death's door by the nursing home, and then they went on to the hospital and died there.

SENATOR O'MARA: Well, thank you for that.

I'm not trying to --

RICHARD MOLLOT: [Indiscernible cross-talking] --

SENATOR O'MARA: -- I'm trying not to put you on the spot, but, I was hoping you might have

something anecdotally on that, because of the lack of the commissioner of health [inaudible] being forthcoming in that information, despite having two weeks to prepare for this hearing, and coming in with no numbers as far as deaths and hospitals.

But let me ask you one thing: What do you see in the facilities, their ability to help with the residents make that electronic or computerized contact with loved ones, since nobody can visit?

Are you finding enough assistance, what you're hearing, in the homes, and allowing -- or, helping an individual get set up to do a Zoom teleconference, of sorts, with a family members?

RICHARD MOLLOT: It really varies across the state.

So some nursing homes are really doing a good job.

I heard of one nursing home that was actually, after the economy tanked in early April, they hired people who had worked in entertainment, and they -- to help residents, so that they could do that safely, and bring in staff that were not -- you know, not clinicians, but that could provide that kind of help.

But we also hear, over and over again, of

nursing home residents being told that they can't get help with even turning on an iPhone. That the staff just utterly refuses, doesn't have time, whatever.

That they -- of phones and things being lost.

It is the nursing home's responsibility to make sure that those things don't happen. They're the ones who control the situation.

And then in respect to the money going out, that's actually something we and other resident advocates had advocated for.

That's federal money that the commissioner had mentioned.

It's a federal -- federal civil money penalty funds that every state has, is getting, to give out to nursing homes.

So we're looking forward to that [indiscernible cross-talking] --

SENATOR O'MARA: Very quickly, and my time is just about up, but, do you have any thoughts on allowing a resident or family members to place a surveillance camera in the resident's room, with the consent of the patient, obviously?

Since there is no access from either ombudsmen or [inaudible] --

SENATOR RIVERA: If you can answer that question quickly?

RICHARD MOLLOT: Sure.

So we've -- we support that, very carefully and respectfully, for the resident; so, there's certain ways in which it has to be done.

And then, just very quickly, there are actually other equipment that we know of that allows, and, actually, I know someone who's using it in New York, who allows you to communicate, the resident to communicate, in a very easy way, you know, a two-way with their family members.

SENATOR RIVERA: Thank you very much, Mr. Mollot.

SENATOR O'MARA: Thank you very much.

SENATOR RIVERA: Thank you, Senator.

Assembly.

ASSEMBLYMEMBER BRONSON: Thank you, Senator.

I next recognize Assemblymember Tom Abinanti for 3 minutes.

ASSEMBLYMEMBER ABINANTI: Oh, I'm sorry. Well, okay.

ASSEMBLYMEMBER BRONSON: You ready, Tom?

ASSEMBLYMEMBER ABINANTI: I think I'm next.

Hold on.

Yep, I'm here.

Talk to you soon. Thank you.

Yes, hi, there.

Thank you very much.

I just want to emphasize one thing: Did you say that visitors are delayed from entering long-term-care facilities because of an increase in COVID among staff?

Am I hearing that correctly?

RICHARD MOLLOT: I didn't say that.

But with the -- what the guidelines are, first of all, there are federal guidelines. And then within those federal guidelines, the states can have a set of guidelines.

And what the department did was, they set up very, very conservative guidance within what the feds allowed.

So, essentially, because I think, you know, people are very, and you're, of course, very, interested in this, is that the whole 28 days, et cetera, et cetera, that was for internal visits under the federal rules.

What the State has done, and we urged them not to do this, was to open it up more. But they did this for external and internal visits.

So [indiscernible] facilities [indiscernible cross-talking] --

ASSEMBLYMEMBER ABINANTI: So the visitors, including you guys, visitors, including you guys, are being penalized because the staff might be out partying, or coming across people who -- who -- who have, or from other jobs, or whatever, the staff is transmitting it to each other, or whatever.

Everybody is excluded forever.

Am I understanding this correctly?

RICHARD MOLLOT: Yeah -- well, I don't want to speak about whether the staff are out partying, or something.

But I think that, you know, as I said from the start, we said, before it got to such a disastrous proportion in New York State, that it could be done safely if staff could come in, as you're saying, that family members could come in also.

Think about it: A family member only wants to visit his or her loved one.

Staff go in and out of different rooms, you know, they're providing care, et cetera.

So now that it's -- you know, we've got it under control here, we think that it should be

reopened safely. But we actually put together a blueprint for doing that.

I know [indiscernible cross-talking] --

ASSEMBLYMEMBER ABINANTI: You have? Can you send that to us?

RICHARD MOLLOT: I can.

ASSEMBLYMEMBER ABINANTI: Can you make sure that's distributed to all of us?

RICHARD MOLLOT: Yes, yeah.

ASSEMBLYMEMBER ABINANTI: Thank you.

Secondly, what's the definition of "long-term care" that you guys represent?

Do you include only the health-care facilities?

Or do you also include things like places for people with disabilities, behave -- you know, developmental disabilities, et cetera?

RICHARD MOLLOT: No.

So we principally -- originally, we were the Nursing Home Community Coalition of New York State.

And now we do both national work.

And since more people are getting care in assisted-living, adult-care facilities, we have, over the last, you know, 18 or so years, added that under our umbrella.

But my focus and my expertise [indiscernible cross-talking] --

ASSEMBLYMEMBER ABINANTI: Are the same rules applied to all of those facilities that are being applied to nursing homes?

RICHARD MOLLOT: Say that again, I'm sorry?

ASSEMBLYMEMBER ABINANTI: Are the same prohibition on visitors being applied to all of those facilities?

We've been, basically, talking about nursing homes, by and large.

But are the same -- are visitors being prohibited all over those other places [indiscernible cross-talking] --

RICHARD MOLLOT: Yeah, I believe so.

But -- yeah -- just, very quickly, the federal rules only go to nursing homes.

Everything that happens in adult-care facilities is up to you guys and the governor because there are no federal rules for adult-care facilities. It's only state rules.

So DOH has, whatever it wants to do, it can do in the health-care world.

SENATOR RIVERA: Thank you, Mr. Mollot.

Thank you.

Assemblymember.

ASSEMBLYMEMBER BRONSON: Uh, yes. We have one last questioner.

Assemblymember Missy Miller, you have 3 minutes.

ASSEMBLYMEMBER MILLER: Yes, hi.

I just -- I would like to start by thanking you both for being here, and thank you for what you do for this population.

I have two questions, very brief:

One: You spoke about, you know, the impact that -- or, the -- you know, the fact that it's having on the residents in the homes. You know, isolation. They haven't seen their family members. They're not getting out and around.

But there's also a population of children in children's facilities, long-term skilled-care facilities, who haven't been able to see their parents in months, which, you know, is unbelievably critical to somebody's, you know, rehabilitation, especially children.

Have you heard much about that from -- from families about that population?

RICHARD MOLLOT: Yes. Yes, we have.

And just the concerns that you're raising,

frankly, about those children who are at an enormous risk and very vulnerable, and who, you know, count on their family members, obviously, to visit them, to provide -- just as with, you know, adults and the elderly, to provide, often, you know, care and monitoring.

ASSEMBLYMEMBER MILLER: Right.

And I know, I've heard from one in particular, that one of these facilities, a hospital for children, who's had absolutely zero patients test positive.

None.

It's all just staff, and it's the 28-day limit that's, you know, stopping anybody from moving forward.

As far as the ombudsmen, I, as a parent of a medically-fragile child who spends lots of time in and out of hospitals, I am always a big advocate.

And I tell people, when I get -- I find that I get a lot of calls in my Assembly office, that I believe would have been helped by an ombudsman.

But families still just don't know about them.

So I think we have to do a better job of getting that word out. It somehow is missing.

And then my last question is just philosophical.

You know, we all know we're advocating; we're fighting for the people who have the quietest voices here.

Do you guys feel that you are getting heard by department of health, by the governor's office, by anybody that's making decisions?

RICHARD MOLLOT: No, to be perfectly blunt.

You know, I was kind of disturbed to hear early this morning that the provider industry, not only individual nursing homes, but the lobby associations, the lobbyists for the nursing homes, meet with DOH regularly about these things.

As I said, we have a blueprint.

We have long represented residents in this state. And I have never received a phone call or request for even information.

I think we provide some, you know, valuable data, as well as insights.

And, no, never.

ASSEMBLYMEMBER MILLER: Thank you.

SENATOR RIVERA: Thank you, Assemblymember.

Thank you, Mr. Mollot.

I believe that that is all the questioners

that we have on both sides.

You folks may go back to your normal days.

Au revoir.

And we are moving on to Panel 4. That will be:

Roxanne Tena-Nelson, who is the interim president of the Continuing Care Leadership Council;

Lisa Newcomb, who's the executive director of the Empire State Association of Assisted Living;

And, John Auerbach -- hope I'm pronouncing that correctly -- president and CEO of Trust for America's Health.

ASSEMBLYMEMBER GOTTFRIED: [Inaudible.]

SENATOR RIVERA: Monsieur Gottfried, we cannot hear you.

ASSEMBLYMEMBER GOTTFRIED: And [inaudible] if they're all here, then I will ask them each: Do you swear or affirm that the testimony you are about to give is true?

ROXANNE TENA-NELSON: I do.

LISA NEWCOMB: I do.

JOHN AUERBACH: [Inaudible.]

ASSEMBLYMEMBER GOTTFRIED: Okay. Fire away.

ROXANNE TENA-NELSON: So I guess, Lisa, I can start?

LISA NEWCOMB: [Inaudible.]

I'm Roxanne Tena-Nelson, interim president of the Continuing Care Leadership Coalition, which represents, exclusively, the not-for-profit and public long-term-care providers in the New York metropolitan area, and beyond.

Our members represent the full continuum of long-term care, including skilled nursing and post-acute care, and a variety of home- and community-based services.

We definitely appreciate the opportunity to provide testimony to the Senate and Assembly committees today.

I am here to offer three points.

1. Our mission-driven members save lives -- thousands of lives, at least 3,200 -- helping 74 percent of some the sickest patients with COVID recover.

It took dedication that started long before COVID-19 came to New York, and that resulted from tirelessly answering the call of their missions every single day.

2. Our members are essential to preparing for what comes next.

The virus disproportionately came after our

patients and the people who care for them. And we must be an essential part of any preparedness planning, with the ability to share many best practices from our experience this spring.

3. We need your support to continue our commitment to taking care of older and disabled people.

We must protect the financial and the psychosocial well-being of the long-term-care community, to stabilize our health-care system, and remain ready for the coming weeks and months.

First, how did we save lives?

We had a baseline of high performance.

Long before the global community began detecting this novel virus, CCLC members have been focused on quality improvement, with a very strong track record of high performance on federal and state quality measures, as seen in Attachment 1 of my written testimony, beginning on page 7.

Another contribution of high performance is our members' investment in their workforce.

In Attachment 2, we show an example of CCLC's disproportionate commitment to highly-qualified clinical staff.

In this case, attending physicians raising

the bar for New York, a commitment that carries forward for all the other staff categories listed in that attachment.

Additionally, CCLC has been deeply committed to emergency preparedness and response in the region, serving as a long-term care lead for a wide range of preparedness education and exercises, which also contributed to the lives saved in what went right.

Second: Why are we essential to preparing for what comes next?

We did not shy away from finding solutions to the biggest challenges.

Three examples of best practices include:

Focusing on clinical excellence and testing to quickly create safe environments focused on infection prevention and on well-trained, committed staff;

Building capacities to create safe, distinct units for those needing medically-complex rehabilitation, including the provision of specialty care uniquely tied to COVID illness, such as ventilator support;

Supporting creative solutions to engage staff in their communities, with car parades, family video

conferences, robotic solutions to check vitals, or provide pet therapy, and virtual offerings of music, caregiver support, and religious services, to name a few.

Finally, why do we need your support?

Prior to the arrival of the virus, our members were already financially fragile. And the crisis has exacerbated these financial pressures due to decreased occupancy and increased expenses.

Attachment 3 demonstrates this with regard to occupancy rates, which we talked about a little bit in this hearing already.

22 percentage point decrease, looking at $2 million for many members, up to 5.6 for one, from April through June.

Additionally, members had a similar magnitude of millions of losses for the costs that we have been talking about on PPE and personnel, and such.

And as the pandemic carries on, the losses just continue to mount.

Although the federal government has allocated some provider relief, the funds that have come to long-term care have been highly insufficient, particularly for providers largely caring for Medicaid beneficiaries.

Also, our members have had to navigate massive regulatory burdens, as seen in Attachment 4.

Last, but not least, a significant cost that has yet to be quantified is the mental-health impact of our sector.

We contend that we must meet these challenges head on in order to maintain a strong, compassionate, and high-performing long-term-care community.

We respectfully recommend:

Prioritizing older and disabled people for decisions on PPE, testing, vaccination strategies, and any related funding;

To maintain strong provider and staff liability protections;

And, to thank the long-term-care community for what they have done, and what they do every day, to care for our most vulnerable New Yorkers.

Thank you.

SENATOR RIVERA: Perfect timing.

Thank you so much.

Either Lisa or -- Ms. Newcomb or Mr. Auerbach.

LISA NEWCOMB: Good afternoon.

Thank you for the opportunity to testify on

behalf of the over 300 adult-care facilities (ACFs) who are members of the Empire State Association of Assisted Living, and the more than 30,000 senior residents that they serve.

Our members include both private-pay communities whose residents use their own funds to pay, and low-income communities in which our members rely nearly entirely on a fixed SSI subsidy which has largely been unchanged since 2007.

It's not possible to read my entire testimony in the 5-minute limit. I will summarize here, but I implore you to read the testimony in its entirety.

First, and foremost, I just want to give a shout-out to ACF providers and their staff, the truly unsung heroes in the fight to protect our residents.

They deserve acknowledgement, gratitude, and government support.

There are not enough words to sufficiently thank them.

The assisted-living model combines independence, choice, and privacy with personalized supportive care in a congregate residential setting.

Assisted-living residents generally require some assistance with activities of daily living;

usually do not require around-the-clock skilled nursing care.

ACF residents are generally healthier, more independent, active, and mobile than those in nursing homes. In normal times they move freely throughout the inner and outer communities.

COVID-19 data, as reported by the department of health, reflects that the virus has had a substantially greater impact on the nursing home population.

There are far fewer COVID cases and deaths in licensed adult-care facilities.

The public data, through July 28th, is that there have been a total of 6,403 nursing home deaths and 175 ACF resident deaths.

Unfortunately, as has frequently been the case, the unique features of the ACF population, and the reimbursement we receive, has not been fully appreciated and, in many cases, has been ignored.

In virtually every instance, the assisted-living industry is treated identical to the nursing home industry. This repeated linking of the two in written directives and general policy has caused confusion for everyone.

It is important that State guidance be

tailored specifically to ACFs, based on the unique needs of residents and the unique features of the ACF industry even if there are some parallels.

I want to talk a little bit about funding.

The lack thereof of funding support for ACFs must be rectified.

ACFs have been largely left out of all state and federal funding available to nursing homes and other health-care providers during this crisis.

Two-thirds of ACF providers have received no funding from government to help offset COVID, not even for staff technology support that -- that you were talking about.

ACFs who serve our most financially-vulnerable seniors in -- on SSI operate on a limited budget that has remained at $41 a day for a decade.

In that time, costs in every area of operation has skyrocketed, and now COVID costs threaten their very existence.

This is unconscionable.

Even providers and residents in private-pay settings can absorb only so much additional costs before they find themselves in heightened financial distress that could ultimately put some out of

business.

So we ask for your support in securing funding for all ACF providers.

A little bit about testing.

It's critically important, testing our employees. But the average cost is $100 per test, and that equates to thousands of dollars per week for even a smaller ACF, and tens of thousands per week for larger ones.

With increased national testing, there is increasing delay in receiving the results, seven to nine days sometimes, severely lessening the value of the information.

To routinely incur such significant costs when it can be too late to effectively use the results is pointless and unsustainable.

Due to the significantly lower incidents of cases and fatalities in ACFs, ESAAL will make recommendations to the administration, moving forward, about reducing the testing or frequency for ACFS, especially that have not had any recent employee cases.

With re -- one other thing about testing: ACFs should only have to test and pay for their own employees; not those of vendors or other licensed

providers who deliver services in their building.

It is unfair to shift costs to the ACF who has received the least amount of funding.

Distribution of PPE, our association struggle -- our members struggle to -- to -- to obtain the critically-needed PPE.

I know I'm running out of time.

ESAAL desperately appealed to government during that process.

Once it did become available in New York City, ESAAL actually took the responsibility of securing pickup sites, and manning [indiscernible cross-talking] --

SENATOR RIVERA: Thank you very much, Ms. Newcomb.

Your testimony is included; it will be included in the record in its entirety.

LISA NEWCOMB: Thank you.

SENATOR RIVERA: Thank you so much.

Mr. Auerbach.

You are on mute, sir.

JOHN AUERBACH: On mute?

SENATOR RIVERA: There you go. Now you're good.

JOHN AUERBACH: Great. Thank you.

Good afternoon.

My name is John Auerbach, and I'm currently the president and CEO of Trust for America's Health.

We're a 20-year-old non-profit, non-partisan, Washington, DC-based, public health and prevention organization, and we deal with issues such as emergency preparedness and response, and the health and well-being of older adults.

I'm also a former city and state health commissioner, and a former associate director of the CDC.

Part of our work has been to examine how each state is doing with response to COVID-19.

And we have been impressed by both the skill and the effectiveness of the New York State Department of Health. Its adoption of evidence-based practices and policies have contributed significantly to the decline in new cases in the state at the present time.

Sound policy was difficult, particularly in the early days and weeks of COVID's arrival, because of the uniqueness of the violent -- of the virus, and the limitations of the appropriate protective measures within most of the nation's and the states' nursing homes.

And it appears that the lack of such procedures led to the unintentional introduction of the virus into nursing homes as a result of workers and/or family members who were COVID-positive, or either asymptomatic or mild to moderate symptoms.

Contributing to this early spread was the minimization of risk by the federal government, and delays in test availability, and restrictive federal guidelines, which meant that too few were tested and transmission was missed.

I believe that the roots of this problem aren't state-specific, but, in fact, are part of a series of problems, including the cuts to federal emergency preparedness funding, the general underfunding of public health when not in the midst of a crisis, and, due as well to a general lack of attention to the health and well-being of older adults.

Nursing homes receive insufficient reimbursement, and that contributes to inadequate pay for and training of their workers.

And the current model of care makes it challenging to provide the highest quality of care when faced with a pandemic.

As COVID spread in New York State, like

others states, it was faced with rapidly increasing cases and rising hospital occupancy, and was faced to make the difficult decisions with how to best care for patients while they were ill and infectious, and, later, when they were no longer infectious and recovering.

There are times when patients get stuck in acute-care hospitals when they don't need hospital care, because step-down or other facilities are either unwilling or unable to care for them.

And this is problematic because it means hospital beds aren't available for others who need them, as well as, because it keeps patients in a setting that isn't particularly helpful or healthy for them.

It seems that the decisions to return non-infectious post-COVID patients to the skilled nursing facilities, and admit patients with suspect COVID to a nursing home -- to nursing homes that were prepared to isolate them appropriately from other residents, were reasonable ones, as long as the patients returned or admitted were cared for properly and the proper precautions were taken.

Such a policy shouldn't have off -- shouldn't offer any risk to other patients in nursing homes,

and the data I've seen seems to reinforce that.

We believe, at Trust for America's Health, that the best way to learn from the lessons of the last few months is to think critically about what we need to do in terms of improving long-term care and the health and well-being of older adults.

We think that we should be examining the reconfiguring of long-term care, and placing greater emphasis on older adults remaining at home and aging in place.

When there is impossible -- that is impossible, more attention should be paid to aligning nursing homes with acute-care facilities, perhaps functioning as extended or step-down wings of hospitals, where infection procedures may be more routine.

This configure -- reconfiguration would require a business model for nursing homes, where reimbursement is more comparable to that of a hospital, and it would require reimbursement for more intensive home- and community-based services and support for caregivers.

It also requires examining our support for public health agencies, in ensuring that they have the funds that are needed.

These changes may seem big and like pipe dreams, but there are, actually, those in Washington, DC, who are now beginning to have those discussions.

A group was set up at CMS to begin such discussions.

At the National Academy of Medicine, there also is a convening to look at these issues.

The lessons of COVID-19 involve recognizing you can't reduce illnesses, injuries, and death without taking proactive, not reactive, steps.

And they can be accomplished by providing the funding, attention, prioritizing the lives and well-being of older adults, and demonstrating the willingness to make the necessary systemic changes when the models we have no longer meet the purpose.

Thank you.

SENATOR RIVERA: Thank you, sir.

I recognize the Assembly to begin questions.

ASSEMBLYMEMBER BRONSON: Yes.

I recognize Assemblymember Kevin Byrne for 5 minutes.

ASSEMBLYMEMBER BYRNE: Yes, thank you.

I don't think I'm going to have to use the full 5 minutes, hopefully.

Famous last words.

I know you mentioned that there was limited, or, apparently, no State assistance for testing and PPE.

I just wanted to make sure that was confirmed.

I know there's more mandatory testing.

And have you received any assistance from the State, financially, to offset those costs?

LISA NEWCOMB: So one segment of our industry is Medicaid-funded, so they have the ability to apply for funding under the CARES Act.

But two-thirds of the industry has gotten no support whatsoever.

ASSEMBLYMEMBER BYRNE: Okay.

Now, I know the State manufactured and disseminated a lot of PPE, hand sanitizer, all these different things, more towards the height of the pandemic. A lot of it was distributed through our county health departments.

Was any of that made available to your facilities as well, or was that really more for an urgent or emergency situation?

LISA NEWCOMB: Well, it was emergent for us.

They -- ultimately, we did get assistance for

a period of time.

You know, I kind of ran out of time before, but, you know, one of our asks is that assisted-living, you know, residents and providers should be higher on the priority list when it comes to that distribution.

ASSEMBLYMEMBER BYRNE: No, understood.

And so long as we're asking more of you, I feel like the State, personally, needs to do its part as well.

This is a public health policy, to ensure the safety of those folks that you care for.

So, thank you.

I said I was going to be short, and, oh, my gosh, I've got 3 minutes and 10 seconds left.

Thank you.

Unless you want to say anything else?

LISA NEWCOMB: Can I have it? Can I have it?

No, that's okay.

ASSEMBLYMEMBER BYRNE: Thank you.

SENATOR RIVERA: Thank you, Assemblymember.

To lead off in the Senate, Senator Rachel May recognized for 5 minutes.

SENATOR MAY: Thank you.

And thank you all for your testimony.

I wanted to direct one question to Roxanne -- actually, two questions to you.

You mentioned virtual visitation.

How practical do you think this is in nursing homes, in terms of the availability of technology, and of staff who can support residents in using it?

ROXANNE TENA-NELSON: Our members have been extremely committed to making it work.

I think one of our members, in speaking with them the other day, they did something like 4,000 video conferences with families, just within their one organization, over the past few months.

And, you know, we are all learning about how to do the virtual visits better, and virtual communication.

So, you know, our members have been working really hard to make this kind of opportunity work.

I think, also, some residents, for example, prefer telephone calls. So it wasn't -- the video was disturbing or difficult.

So a telephone call sometimes was even more effective for certain residents.

And I think that's what's key about our members: they really focus in on the personalized way in which they communicate with their -- with

their residents.

Also, on the home-care side of things as well, working with caregivers, together, providing some resources to caregivers at home, was really important on the virtual front as well.

SENATOR MAY: Right. Okay.

Thank you.

And have you heard about an issue with the new managed long-term-care policy changes that have gone into effect, where people, if they are in rehab in a nursing home for more than 90 days, they get dropped from their home care-managed, long-term-care plans?

Have you heard about this as a problem?

ROXANNE TENA-NELSON: My understanding is, it's not dropped. It is converting back to fee-for-service.

What the State has learned in their experiment with managed long-term care for long-term care -- you know, people seeking long-term care and receiving those kinds of services, is that, the way that the managed way of caring for people -- for certain types of people was really not the best way to do it.

It turns out to be much more effective, or,

you know, because the cost is so high to care for such sick people with multiple comorbidities.

And so the State, you know, recognized, and to their credit, that managed long-term care, in certain instances, was not the way to go. In certain instances it may be.

But, in particular, for those living in nursing facilities, reverting back to the fee-for-service model made more sense.

And that's what I -- that's our take on that.

SENATOR MAY: Okay.

Thank you.

And then I have one question for -- oh, I lost her name, the assisted-living -- Lisa.

LISA NEWCOMB: Lisa.

SENATOR MAY: All right.

I've heard from assisted-living administrators that the rules for nursing homes really shouldn't apply.

Do you have any specific areas? Like, is it testing? is it PPE?

What are the most important areas where you would say there should be different criteria?

LISA NEWCOMB: No, I think -- you know -- I mean, maybe even visitation.

It gives me an opportunity to speak about visitation a little bit.

You know, just because the prevalence is much lower, based on the data that, you know, has been provided, you know, perhaps, you know, it's not -- it's not the 20-day -- 28-day rule.

I'll also point out, somebody earlier had mentioned that that rule is from CDC guidance, which it is. But, when I looked at that, that was tied to Phase 1 and Phase 2.

So I'm thinking that there are ways that the department could loosen and make visitations more flexible.

You know, the other issue is that, our staff, as long as they test negative, can return to work after having tested positive in 14 days. And in some cases, even less than that.

So, you know, those would be more reasonable.

But I think it's almost more, like, you know, they put nursing home and ACF guidance together. And they're speaking kind of different languages to two very, very differently regulated entities. And it creates a lot of confusion, and questions.

SENATOR MAY: Okay.

Thank you very much.

SENATOR RIVERA: Thank you, Senator.

Assembly.

ASSEMBLYMEMBER BRONSON: Yes, I recognize Chair Richard Gottfried for 5 minutes.

ASSEMBLYMEMBER GOTTFRIED: Thank you.

Yeah, Mr. Auerbach, I have a couple of questions, mostly about you and the Trust for America's Health.

I have to confess, I don't think I've ever heard of the Trust for America's Health.

Can you tell me: What it is? What it does? Who funds it? Who -- does it have members? Are there people with whom or for whom it works? What might it have done recently that I should have known about?

JOHN AUERBACH: Happy to do that.

We are a 20-year-old non-profit, non-partisan group, as I mentioned earlier, based in Washington, DC.

We are entirely funded by foundations. More than a dozen foundations provide us with funding.

We don't take government money and we don't take corporate money.

We were established to be an independent voice for public health and prevention.

We work to provide information about significant health issues, evidence-based policies and approaches. We develop a variety of different publications.

And we are also involved in educating policy members of the legislature at the federal level of Congress, and of the administration. And we also work closely with state public health departments and local public health departments.

In terms of some of the things that we've done recently:

We -- we published several different reports this year, including a report, evaluating each state's work on emergency preparedness, on the response to obesity.

We're about to publish a report on climate-change efforts at each state level.

And we have worked I think effectively with both the administration and with Congress to promote certain policies that have been beneficial to states, like New York, in terms of receiving the resources necessary to both support public health and to combat the COVID pandemic.

ASSEMBLYMEMBER GOTTFRIED: Are any of the foundations that support you, things that I might

have heard of?

JOHN AUERBACH: Sure.

Robert Wood Johnson Foundation.

Kellogg Foundation.

Kaiser Permanente's philanthropic arm.

Kresge Foundation.

The John A. Hartford Foundation has a particular interest in healthy aging. So you might have heard of that organization.

The CDC Foundation.

The de Beaumont Foundation.

So, I hope you've heard of some of those, so...

ASSEMBLYMEMBER GOTTFRIED: Yep.

Okay.

Well, thank you.

JOHN AUERBACH: You're welcome.

ASSEMBLYMEMBER GOTTFRIED: That's it.

SENATOR RIVERA: All right.

Thank you, Assemblymember.

Moving on to the Senate, recognizing Senator Serino for 5 minutes.

SENATOR SERINO: Thank you, Chairman.

And thank you all for being here today, and all of the great work that you do.

You care for some of the most vulnerable New Yorkers. But, unfortunately, I think the assisted-living industry, especially, has been an afterthought to the State for far too long. Right?

And that's only exacerbating the current problems you're facing now with this pandemic.

I'm glad, Lisa, that you brought up the fact that the rate for these facilities hasn't changed since 2007.

That's awful.

As you know, I've carried the bill to increase that rate for some time now.

And, in 2018, it did pass in the Senate, but it failed to advance in the Assembly.

I'd like to take this opportunity to urge my colleagues to make this initiative a top priority.

These facilities, as you've heard today, can't afford to wait, and they will close, putting these vulnerable New Yorkers in an even more vulnerable position.

Assemblyman Byrne touched on this as well.

It is my understanding that the assisted-living facilities are having tremendous difficulty covering testing costs to adhere to the State mandate.

Is that right?

And would you say being reimbursed for testing needs to be a top priority now?

ROXANNE TENA-NELSON: Yes.

LISA NEWCOMB: Yes, thank you, Senator.

Yes.

SENATOR SERINO: Thank you.

And in addition to addressing this particular need, if you had to prioritize one other change to improve the State's response for this sector in particular, what would be at the top of your list?

You all have some different idea or the same idea?

LISA NEWCOMB: I think more collaboration with the association, with providers, when they're making policies.

So, for instance, if they were -- when they were making their visitation policy, you know, we weren't aware of, you know, what the requirements, the rules, were going to be.

And, you know, so then that came out.

And we've been fighting very hard for visitation for weeks.

And finally comes out, you know, only to find that there's, like, you know, a major obstacle.

So I think the communication with us, you know, while they're making the policy decisions rather than after.

SENATOR SERINO: That's true.

Very good.

Thank you.

Anybody else have anything to add? Or --

ROXANNE TENA-NELSON: I would just support funding that is -- really prioritizes long-term care in a way that, you know, it hasn't happened in New York State, and federally, because of folks, especially the not-for-profit and public community, is really extremely financially fragile, definitely before COVID. And COVID has just such a major impact on the not-for-profit and public community.

So any way that the funding can be supportive of what we've been through, and what we will probably go through during a time where there will be flu season, coastal storms, school reopening, all the testing costs, and all of the costs that have incurred, are tremendous.

And the last thing we would want is for, you know, the destruction of the organizations that are really focused on caring for older and disabled people, especially the ones that are so

high-performing.

JOHN AUERBACH: If I could weigh in, too, I think I would also speak to the needs of older adults who are still in their home, but have challenging times staying in their home, because of social isolation, sometimes lack of food in the home, lack of other services.

So I think, in addition to the very important services that my colleagues on the panel are mentioning, paying attention to home-based services and supports, so that we keep people as independent and as healthy as possible, is critically important.

SENATOR SERINO: And that's very true, John.

You know, a lot of times that population gets left out of the equation as well.

So thank you all so much again.

A deep heartfelt thank you for all that you do.

LISA NEWCOMB: Thank you.

SENATOR RIVERA: Thank you, Senator.

Back to the Assembly.

ASSEMBLYMEMBER BRONSON: Thank you.

I now recognize Assemblymember Brian Manktelow for 5 minutes.

Brian, are you with us?

No, he just --

ASSEMBLYMEMBER MANKTELOW: I got it.

ASSEMBLYMEMBER BRONSON: -- okay.

ASSEMBLYMEMBER MANKTELOW: Thank you, Chairman.

Lisa, just a couple questions on finance.

Our assisted-living facilities, where do you see them in the scheme of things as far as financially secure?

LISA NEWCOMB: Well, as I mentioned a little in my testimony, there's -- so there's three segments of the industry when it comes to finances.

The -- you know, the ones that lack the most resources are straight SSI-only building, which there -- you know, there aren't too many of them left. You know, they're hanging by a thread. I mean, these additional unanticipated costs are just not sustainable for them. And, even before this, we've seen them closing.

You see, then we have some who also get Medicaid support on top of the SSI. That's called the "assisted living program," which is a wonderful program because it allows, really, nursing home-eligible people to be able to age in place in the adult-care facility.

So -- but, you know, it is Medicaid.

Our Medicaid rate is based on some strange formula, that it's half of the nursing home rate from many, many years ago.

And so that's, basically, kind of a rate that hasn't changed either.

So it keeps, you know, the SSI building afloat, but, you know, they have their challenges too.

And then, in the private pay, we have lots of -- you know, there -- there's -- you know, there are some for very, very wealthy people. But there are a lot, you know, I'd say most in between are for, you know, seniors who are middle -- middle-income. And, you know, they can be only absorb so much additional cost. And the provider that -- you know, that -- that serves them can only absorb, you know, so much.

So, you know, it does kind of run the gamut.

ASSEMBLYMEMBER MANKTELOW: Okay, so one -- I have a few assisted-living facilities in my district.

In meeting with one of the owners, one of the issues they have is the unemployment situation right now.

Right now, people can get unemployment pretty easy, they can apply for it. And the amount of money they're getting is more than the staff members are getting paid normally.

Can you see a fix that we need to do from the State side there, to help secure the workforce?

LISA NEWCOMB: Well, I guess it goes back to funding again. I hate to sound like a broken record.

But, you know, we had -- I had an SSI provider who ended up closing. It was a family-owned, and they closed several buildings in the North Country.

And, you know, he always said, look, I want to pay my -- I want to pay my staff what they deserve. I want to pay them more than minimum wage, or a little bit above minimum wage. But, if you're only giving me $40 a day to take care for this frail elderly senior, you know, I can't do that.

So, you know -- I mean, I think that, you know, if you have the resources, then you would be offering wages that would be beyond the $600, if you could.

ASSEMBLYMEMBER MANKTELOW: So when most facilities close, where do the seniors go then?

LISA NEWCOMB: Nursing homes.

ASSEMBLYMEMBER MANKTELOW: And are they able to take everyone at this point?

LISA NEWCOMB: Well, I -- I mean, yeah. I mean, I think we talked about, you know, vacancies in nursing homes earlier on today.

Yes.

And it's just tragic, because they don't really need to go to the nursing home.

The assisted-living is much more of an independent, you know, a setting. It's very socially-based.

But they are frail elderly as well, and, generally, they can't really live alone. They sort of need somebody around on a 24-hour basis, you know -- you know, for supervision purposes.

So the nursing home is the default.

ASSEMBLYMEMBER MANKTELOW: Okay. Thank you, Lisa.

That's all I have.

SENATOR RIVERA: Thank you, Assemblymember.

Moving on to the Senate, recognizing Senator Boyle for 3 minutes.

Thank you.

SENATOR BOYLE: Thank you.

Thank you, Mr. Chairman.

So I represent part of Long Island, and I can tell you that, when this pandemic started, I had gotten a phone call from a constituent, who told me that their father was in the nursing home down here. And that (video lost) --

OFF-SCREEN TECHNICIAN: We lost the senator.

SENATOR RIVERA: Senator Boyle?

Senator Boyle?

All right, until we get him back, I've got a couple. If you could put five on the clock. I won't take all of it, but...

Thank you all for being here.

One of the things that I wanted to ask about, because you've made reference to it a few times, but I think it's important to kind of really put it on the record:

There was -- we can talk about all the stresses that the crisis has put on all of these facilities.

But you have spoken about, and I want to give you an opportunity to kind of expand on that, on what this situation was before the crisis, that you were already put in very stressful positions.

Because if -- if there's requirements that

are -- if there's things that the State required of you as institutions during a crisis time, and you had few resources to begin with, that makes it all the more difficult to be able to manage, to hold on.

So give us a view about that, and the rest of the time I'll give to you. But give us a view on that.

And, also, to also give you an opportunity to tell us: What are the things that would make best quality facilities be able to survive?

If you could give us kind of a sense of that, I would be appreciate it.

LISA NEWCOMB: Sure.

ROXANNE TENA-NELSON: So --

LISA NEWCOMB: I'm sorry.

Is that for Roxanne?

Go ahead, Roxanne.

SENATOR RIVERA: That's for anybody who wants to take it, but you can start, and Roxanne -- Roxanne, start, you start it, and then Ms. Newcomb.

How about that?

ROXANNE TENA-NELSON: Okay.

So -- sorry.

I just wanted to respond that, we were definitely financially fragile coming into COVID.

You know, just -- so, for nursing homes in our community, there was a 62-day daily shortfall in the Medicaid program, and, also, the margins were at negative 5.2 percent; all in my written testimony.

For certified home-health agencies, for example, on the community-based side of things, 78 percent of them were operating in the red.

So it was a dire situation even before COVID hit.

Now that we endured this spring, you add the occupancy rate -- the losses due to occupancy fall, and then you add all of the expenses, and I talked a little bit about the magnitude of that, in millions of dollars per facility.

SENATOR RIVERA: Ms. Newcomb.

LISA NEWCOMB: I would just add, you know, I go back to where the most indigent, you know, are living.

Obviously, they were under strain before, especially the straight SSI. Again, $40 a day to, you know, provide a whole slew of services, you know, to -- to the residents.

So, they're going to go first.

The ones that are left, the -- you know, the ones that have the Medicaid supplement and the

private pays, you know, they're all in different situations.

Some -- they've been absorbing it, but each -- you know, as each week passes, a larger facility is going to, you know, have thousands and thousands, maybe ten thousands, you know, per week just for the testing.

And, you know, that -- that's on top of the PPE and -- and the cleaning supplies, and -- and -- and all of that.

So --

SENATOR RIVERA: You would say, to be able to have some of the best -- some these facilities that provide good service, for them to be able to survive, as you talked about the funding more than once, you would say that that's kind a -- the best kind of a baseline: they have to be better reim -- their reimbursements need to be more?

LISA NEWCOMB: Sure.

Yes, yes, yes.

For those that serve people that are indigent, yes.

SENATOR RIVERA: Okay.

Thank you so much to all of you.

Seems that we have, unfortunately, lost

Senator Boyle.

We will move on to the next panel.

We will make sure that whatever questions he had, we make available in writing to the panel.

Thank you so much, folks.

Moving on to Panel 5 -- we just got four more to go, folks -- Panel 5, we have:

Alexa Rivera, who is the co-founder of Voices for Seniors.

We have --

These are my cousins, by the way, lest you forget.

-- Vivian Rivera-Zayas, co-founder of Voices for Seniors;

Grace Colucci, also for Voices for Seniors.

Kathleen Webster, Neighbors to Save Rivington House;

And, Lenore Solowitz, who is a resident of Garnerville, New York.

Senior, Monsieur, Gottfried, are you with us?

ASSEMBLYMEMBER GOTTFRIED: Yes, I am here.

Just took a little doing to un-mute myself, and now I'm unhidden as well.

So, do each of you swear or affirm that the testimony you're about to give is true?

VIVIAN RIVERA-ZAYAS: I do.

KATHLEEN WEBSTER: I do.

ASSEMBLYMEMBER GOTTFRIED: Okay.

SENATOR RIVERA: All right. And any -- in any order that you folks would like to continue.

KATHLEEN WEBSTER: You better pick.

SENATOR RIVERA: All right, then I shall.

Let's go with Alexa Rivera.

She is in the car.

So let's go with Vivian Rivera, then.

You're on mute, my friend.

VIVIAN RIVERA-ZAYAS: Hi, good afternoon, and greetings.

Thank you for the opportunity to not only speak on behalf of my mother, but to also represent the families and the group, Voices for Seniors, which is a group consisting of grieving and frustrated loved ones impacted directly by the COVID pandemic in our nursing homes.

The seniors who reside in nursing homes are often there for long-term care, as well as short-term care resulting from sometimes just minor surgeries, like knee surgery or a neck surgery.

My mother, Anna Martinez, was there for treatment for minor wounds, and only expected to be

there for four weeks.

It is shortsighted for us to believe that, in the future, we may also not necess -- we may also necessitate a visit at one of these very facilities. But having to do so with no family or -- to visit or advocate for us is truly unconscionable, lonely and voiceless in a terrible situation and system.

Every day I recount the days I could not be with my mother to advocate for her in a nursing home that stated they had taken every precaution in place to care for her while our governor mandated they accept COVID-positive patients.

Many nursing homes are cited repeatedly for not having proper infectious-disease protocols in place, with no severe penalties.

So mandated COVID-positive patients to be accepted in light of this defies logic.

The thought process of not discriminating against a few COVID-positive patients at the expense of the COVID-free residents, as a whole, is dangerous and negligent.

My mother, and many others, contracted the virus at the nursing home. And today I am still under the belief that she was unaware and uninformed as to what was happening to her.

As someone who spoke limited English, it appears she was not informed as to her condition, and she -- as she never shared that information with us who were always her best advocates.

Since her unnecessary passing, I hear countless stories of others like me who are enduring the pain of not seeing their family and their loved ones, and the uncertainty of their well-being.

Hopeful to see them one week, and then the next week the goalpost is moved once again with no end in sight.

With the fall and winter approaching, we [indiscernible] need to ask families to be prepared to stay away from their loved ones for the foreseeable future? -- unlike, and with all due respect, Commissioner Zucker and Governor Cuomo who are more than likely able to see their own mothers and fathers.

Elderly bewildered by the new sense of abandonment in a time they need their families the most.

My mother was sad and homesick.

It was the first surgery she ever had, and her first visit to a nursing home.

What was meant to be a four-week stay ended

up being a two-and-a-half-month stay when the social worker and case manager failed to return our calls to finalize her discharge.

When the pandemic became more prevalent, and the facility did not offer us the option to discharge her before the facility closed its doors, our mother became ill.

And when I detected something was terribly wrong, our mother was too ill to speak on the phone, and the staff continued to reassure us that she was fine.

When we got a call that she was going home on Friday, March 27th, despite showing all the symptoms of COVID, except a fever, without telling us that -- without telling us, and she was -- or, telling us that she was suspected to have had COVID, they continued to reassure us and downplay her symptoms.

And when she became gravely ill, they failed to escalate her care and send her to the hospital.

COVID-19 has helped shed a light, that while immunity is given to owners, the directors, and the staff, it is the resident, our vulnerable elderly population, that is not immune from abuse, from neglect, and from dismal care, with no family or

recourse.

An unnecessary amount of death and carnage was inflicted on our seniors by the mandate to take COVID-positive patients.

To the inadequate levels of staffing and the infectious-disease protocols that many facilities, and time and time again, have failed to put in place, was a true recipe for a disaster.

If that weren't enough, families have been stripped of their rights to visit their loved ones, and are often lied to and misled by the very leaders and staff charged with the duty to keep them safe.

I'm here to ask that a true and sincere evaluation of our nursing homes take place, taking into account the input and voices of families, like my own, and that, finally, seniors will get the care that they are deserve [sic], and that no longer get the short end of the stick.

Thank you so much.

SENATOR RIVERA: Thank you.

Next -- thank you, Ms. Rivera-Zayas.

Alexa Rivera, I know that you -- I noticed that you were in a car earlier.

Not sure if it is a quiet enough car.

Ms. Rivera?

All right. So we'll move on to Grace Golucci -- Grace Colucci. I'm sorry.

Grace Colucci.

GRACE COLUCCI: Hi. How are you?

Thank you so much for giving me the opportunity to voice -- be a voice for my father, and for all the families that were affected by the COVID pandemic, with people that were in the nursing homes.

When the COVID-19 first appeared in the U.S., Governor Cuomo and Mayor de Blasio made light of the risks, and encouraged people to go about their daily lives, as all was well.

We quickly found out that all was not well.

Governor Cuomo was on TV daily, making appeals for ventilators, PPE, and hospital beds.

The President swiftly sent what was requested, converting the Javits Center, sending the "Comfort," sending millions of tests, PPE, and more ventilators than were needed.

On March 25th, under the directive of Governor Cuomo's mandate, nursing homes were not able to deny taking COVID patients even though they housed the most vulnerable.

The Javits Center and "Comfort" went,

virtually, unused.

Each day the news reports were escalate -- with escalating numbers of new COVID cases and the death count grew.

The shortage was not hospital beds, but room at the funeral homes.

Governor Cuomo stated that he wouldn't put his mother, Matilda, in a nursing home.

I'd love to tell you about my dad, but -- and I'm sure you can understand that he was a wonderful person who gave -- made many sacrifices for his family and his country, as well as everyone else that has been affected.

My dad had suffered several heart attacks, had a valve replacement, several minor strokes, that left him unable to properly cut his food or take -- dress himself properly; he needed help. He was also developing dementia.

My dad is not withstood as one of the nursing home statistics because he wasn't tested until four days after his release.

In February he was hospitalized with aspirational pneumonia.

While in the hospital, my mom was there every day to help my dad with his meal and other needs.

March 19th dad was released and immediately sent to Gurwin Jewish Nursing and Rehabilitation Center for rehab.

The COVID restrictions had just gone into place, and mom was not allowed to be there.

Shortly after, she received a phone call that there was one patient and one employee who tested positive for COVID-19. But they assured her that they were in a different part of the facility and that my dad was not at risk.

That turned out not to be the case.

My dad was discharged April 8th, 13 pounds lighter, and unable to eat after not being able to eat for so long.

Dad was unable to walk. My brothers had to carry him into the car, and then the house.

A nurse from the nursing home came to the house twice over the next four days as follow-up.

We found out afterwards that she was COVID-positive, and who knows how many people were exposed from her entering the house.

My mom and my brothers ended up a week later testing positive.

On April 12th my dad's BP plummeted, his temperature rose over 103, and his breathing was

rapid and shallow.

My brothers rushed him to the ER.

He was given a rapid COVID test, and was positive and admitted.

After a long hospital stay, my dad was no longer exhibiting symptoms, but he was still testing positive.

The doctors said, because he couldn't eat, they recommended hospice care.

We were allowed to bring him home for at-home hospice.

Dad passed a week and a half later on May 24th.

My mother is haunted by one of the things my dad said to her: "You can eat, but I can't."

If my mother was able to be with him and feed him, this may not have been a situation, and my father may not have been one of the ones that have passed.

He was a very strong fighter.

Every day I watched Governor Cuomo's press conferences.

He went on and on how he was the one that was the benchmark on how to handle and stop the pandemic.

At one press conference he was asked: Why did the nursing homes have to take the COVID patients?

And he answered, "Because that was the rule."

I think about all the families who are unable to be with their loved ones as they take their final breath, and all the families whose loved ones, not sick with COVID, but are also being deprived of seeing the people who love and sustain them.

To hear Governor Cuomo turn his command, that "this was the rule," and to blaming the nursing homes, their employees, and even the families, for the thousands of deaths, while he went on his brother's TV show, joking about COVID testing with a giant cotton swab, and, laughing a late-night TV show about his stage-zero dating life, is a knife to my heart.

We need accountability.

Instead of protecting -- instead of protections being given to the nursing homes and, worse, to those who mandated the nursing homes take the COVID patients, why did the -- did Governor Cuomo mandate that the nursing homes have to take COVID patients when the CDC advised against that?

I hope that, as a result, that we will be able to have a bill of rights for seniors, where families and seniors are given rights to be able to care for their loved ones.

Pre-COVID, families were necessary in the care of their -- their family --

SENATOR RIVERA: Ma'am, if you could wrap -- if you could wrap. Your time is --

GRACE COLUCCI: Sure.

SENATOR RIVERA: [indiscernible cross-talking] --

GRACE COLUCCI: Okay.

I just want to let you it know that, today, my family is still waiting to be able to have a funeral mass and military service that my father deserves.

We're not able to have my whole family, never mind friends, in attendance because of the restrictions that are still in place.

Thank you for taking the time to listen to this, and I urge you to withdraw the power that you have given the governor to make these mandates all on his own, and not be able to get approval from the Senate and the Assembly.

Thank you.

SENATOR RIVERA: Thank you, Ms. Colucci.

Followed up by Ms. Kathleen Webster.

KATHLEEN WEBSTER: Thank you.

First, my condolences to both Grace and Vivian.

I'm Kate Webster with Neighbors to Save Rivington House.

We fought to save the once-largest skilled nursing home dedicated solely to those who were trying to survive AIDS.

The year it opened, that mortality rate had reached an all-time high of almost 51,000 deaths.

The state's dormitory authority had financed the state-of-the-art infectious-disease site with $72 million in bonds. It was a non-profit.

Through a series of events, the Allure Group took it over in short order, but, planned long before, they sold it for condos.

Taxpayer-funded equipment was in a dumpster, staff laid off, patients transferred without the required 90-day notice or vetted plan.

Despite this, New York State licensed the Allure Group to take over more nursing homes, one in Harlem.

During the pandemic, at least 20 bodies in

black bags were secretively carted out of that home, while reporting only 5 people had died of COVID.

Media and staff reports from their other sites were no better.

The demise of Rivington House was one of many warnings of the results of profit-focused operators and toothless oversight.

The department of health's vetting arm is the public health and health planning council. It has 24 appointed members, many with expertise, and many have a very real potential conflict of interest, and there is but one consumer rep.

There is a strong correlation of nursing home for-profit ownership and reduced quality of care, conditions that existed prior to the pandemic, shown in study after study to have exacerbated COVID-19 deaths.

Over 90 percent of nursing homes in the U.S. are now run for profit.

Along with those major changes in ownership structure and management, the degree of complexity has greatly increased, with LLCs, et cetera.

There are many ways to hide funding extracted from the care it was intended for.

We need independent legal and financial

experts to serve on or advise [indiscernible] to develop competency and explain industry financials to the rest of us.

Licensing should require financial transparency and mechanisms, like medical-loss ratios, empowered paid ombudsmen, et cetera.

Private-equity buy-outs of nursing homes are linked with four patient-to-nurse ratios, lower-quality care, declines in patient-health outcomes, and weaker performances on inspections, according to new research from the Wharton School, NYU's Stern School, Chicago's Booth School of Business, and from other studies.

In Connecticut:

For sites with at least one confirmed case of COVID per resident day, every 20-minute increase in RN staffing was associated with 22 percent fewer confirmed cases of COVID.

And in sites with at least one death from COVID, every 20-minute increase in RN staffing significantly predicted 26 percent fewer deaths.

From Canada:

Government-owned facilities provided 61 more minutes of staffing per resident day than for-profit facilities.

With the same public funding, for-profit operators failed to deliver 207,000 hours of funded care, while the not-for-profit sector delivered 80,000 more care hours than they were funded for.

Facilities run on a for-profit basis had more extensive outbreaks and more COVID-related deaths than facilities run on a non-profit basis.

From California:

In sites with RN staffing below the recommended minimum standard, COVID outbreaks occurred more often.

They were twice as likely to have residents with COVID infections than adequately-staffed facilities.

Nursing homes conceal a shadowy world of concealed ownership, hedge fund operators, and private-equity firms; yet they are staffed by some of the lowest-paid workers in the country.

This is the public's money, and we shouldn't continue to put up with secrecy.

If requirements to fund adequate staffing levels hurt for-profits' profits, then it's time this care is turned over to truly non-profit providers.

Our state needs to face this reality and

intervene on behalf of our most vulnerable.

Too many seniors in nursing homes have no ability to fight for their lives. If they have them, their families have no strength left for advocacy.

They, and the best of our caregivers, were left alone to handle a crisis of biblical proportion.

Dr. Fauci said:

"There were many, many, many nursing homes that got no infections. Just because you're a nursing home doesn't mean you're going to get an outbreak.

"It's how you have your staff and the actual structure and the standard operating procedures that have made certain nursing homes highly vulnerable.

"You've got to have" --

"You've got to fix that, and you got fix it fast, or you don't get money."

And I do want to say that the nursing homes I'm referring to were mostly peopled by Black and Brown men.

And I think that hasn't been said enough here, but, in 5 minutes, that's what I've got.

But in my testimony of 13 pages, I devote

some time to that.

Thank you.

SENATOR RIVERA: Thank you, Ms. Webster.

Followed up by Ms. Lenore Solowitz.

LENORE SOLOWITZ: [Inaudible.]

SENATOR RIVERA: You're still muted, Ms. Solowitz.

There you go.

LENORE SOLOWITZ: Can you hear me?

SENATOR RIVERA: Yes, ma'am.

LENORE SOLOWITZ: I just want to thank you today for looking into this problem.

I brought my mother back to her facility on March 13th. We spoke every evening.

On Tuesday, March 17th, in the afternoon, my mother called me to tell me the facility was going to call me about something. They didn't tell her what it was about.

I called the facility to see what was going on.

They told me there was going to be a lockdown, effective immediately, due to COVID-19.

My mother was 98 years old and completely mentally competent.

She had a private room.

Everyone had to stay in their room.

She ate her meals in her room.

And to the best of my knowledge, there was no COVID in the facility at this time.

I thought she'd be safe.

Little did I know the horror show that was about to unfold.

The facility was completely unprepared to handle this situation. And once the COVID patients arrived, they really were in trouble.

COVID patients were not separated from the residents. The facility did not have enough supplies.

On a regular weekday basis, there were not enough aides to attend to the residents. Weekends were much worse. Areas were left unattended for long periods of time.

When the COVID patients arrived, a lot of the staff refused to come into work.

Some of the staff that stayed were catching COVID.

There was a young nurse that had a miscarriage a year and a half ago. She was six months pregnant. She came into work, and she asked the director for a mask. And the director

told her, "We don't have any masks. We're going to run out if we give you a mask."

This is how unprepared they were.

I visited my mother for a few times a week.

Once they knew the residents had a family member coming in, they were a lot more careful.

I was my mother's advocate, and I had to speak up on her behalf quite a few times.

When the facility went on lockdown, they had full reign, and this is where my problems began.

I called my mother to check up on her.

She told me her hip hurt and nobody was taking care of her.

Of course they couldn't take care of her because they were extremely short-handed.

I called and I got that settled.

A few days later she called and told me, "You know, I'm in my right mind and I know what I'm talking about."

And I said to her, "Of course you are. What's the problem?"

The aides didn't want to bother with her, and her pain, so they told her she didn't know what she was talking about.

This is what happens when you have no

representation in these facilities.

In addition, when I called the front desk to check on her that night, nobody, but nobody, answered the phone.

I called at 9 p.m., and I kept calling, and nobody answered till 2 a.m.

Talk about stress and frustration.

I called the next morning, and I was told they were going to do a chest X-ray, which they did that evening.

I called my mother in the afternoon to tell her about the chest X-ray.

A nurse or aide answered the phone, and I could hear my mother crying in background, "It hurts, it hurts."

These are the last words I heard my mother -- I heard from my mother.

Our family doctor called me the next morning and told me my mother had pneumonia and she was exhibiting signs of COVID.

The next morning, my doctor called to tell me my mother passed away.

And the words, her last words, "It hurts, it hurts," will stay with me forever and haunt me.

The residents trusted the facilities to keep

them safe.

Here is a partial text my mother's friend sent to her.

"This lockdown won't be over anytime soon. They have to discover a vaccine for this virus, but at least we're safe here."

Well, he got COVID.

I wonder how many families would have made different arrangements for their loved ones if they had known what the Cuomo administration was going to do.

This is my story.

Who will be held accountable?

Why wasn't I notified of COVID patients coming into the nursing home?

I could have taken my mother home.

Now the matriarch of our family is gone. We were four generations.

My mother will not be here for the next family celebration.

She will not get to meet her new great-grandchildren.

A tremendous void was left in our lives.

A bad, a very bad, decision was made.

How could you send COVID patients into a

facility that was home to the elderly with pre-existing conditions, knowing, if they got COVID, they would die?

There were other facilities to send the COVID patients. There was the "SS Comfort", there was the Javits Center, and there was a facility in Brooklyn that the mayor had.

These facilities had room for COVID patients.

Why weren't they sent there?

The Cuomo administration has yet to admit any wrongdoing.

They blamed the workers, they blamed the families of the residents, they blamed the CDC, and they blamed the federal government.

The person to blame for the COVID deaths in the nursing home is Governor Cuomo.

There was no law that said COVID patients had to be admitted to nursing homes.

The governor of Florida did not allow COVID patients in nursing homes.

Governor Cuomo did not follow sound, science-based federal guidelines, and he made a grave mistake.

In addition, he signed the bill to protect the owners of the nursing homes.

Governor Cuomo said, his father told him, if he made a mistake, he should own up to it.

Well, Governor Cuomo, own up to it.

And thank you very much for your time.

I appreciate it.

SENATOR RIVERA: Thank you, Ms. Solowitz.

We're going to -- unfortunately, we lost Ms. Alexa Rivera.

If she comes back onto the feed, we will allow her to testify.

For the moment, we will move on to questions, which will be led off by the Senate, recognizing Senator Skoufis for 5 minutes.

SENATOR SKOUFIS: Thank you very much, Mr. Chairman.

And everyone who spoke, first and foremost, please accept by deepest condolences.

You know, the grief was palpable at times, and I can't imagine what you've all personally lived through, these nightmares.

But I thank you, and I think we all thank you, for your service, your public service, in participating and sharing your stories, and, hopefully, trying to right this ship.

You know, it's been my strong opinion for

sometime that the department of health doesn't adequately scrutinize nursing home transactions when they take place, and, just as importantly, if not more importantly, doesn't adequately punish nursing homes with substantial violations.

For many facilities, and I know this in working with family members and employees in the districts I represent, which includes North Rockland, Orange, and part of Sullivan -- Ms. Solowitz, you're a constituent -- I've worked with many family members in fighting for some of these issues pre-COVID.

I know that, for many facilities, these fines are just the cost of doing business.

And so, first, Ms. Solowitz, let me -- actually before I get to my question, make a statement, and that is, I intend to follow up with you after this hearing.

What you suggested and raised about what happened in the nursing home itself, COVID patients were not separated from the rest of the population; a complete lack of staffing; effectively, taking the phone off the hook, I want to work with you to make sure that the nursing home, which I believe is The Willows in Suffern, is held accountable for the

things that you described.

But I want to ask you:

It's my understanding that, in just the past few years, that particular nursing home, The Willows, had 41 violations at their facility, including failing to have proper infection-control procedures; yet from these 41 violations, exactly zero enforcement actions by the department of health took place.

In fact, the department of health didn't issue a single action over the past 10 years against The Willows.

And so my question to you is:

What would be your message, in light of what you have now lived through this nightmare, and what's happened at the nursing home, not just to you, but over these years?

What would be your message to the department of health in dealing with -- better dealing with facilities like The Willows who have treated residents this way?

LENORE SOLOWITZ: I think there has to be a closer relationship between the State and the nursing homes.

The State comes in once a year. I've seen

them; they're working in a room, they're doing paperwork.

And I have not yet been approached by a state worker to ask me if anything was wrong.

I'm always there, and I've seen horrible things going on.

I've seen people crying, and they ignore them and they walk through.

If I wasn't there to speak for my mother, my mother would be lying in the bed, nobody would come in.

And there's so many different things.

She rings the bell, you need an aide to come in.

Okay, another aide comes and turns the bell off. They don't want to be bothered.

So you're laying there again, you try to ring your bell again.

And they have a shortage of staff during the week. It's really very bad.

On the weekends it's absolutely terrible because there's like nobody there.

They have a long hallway that's supposed to be monitored.

There is times, there is nobody there,

there's nobody outside. And you have people screaming, "Help, help, nurse, nurse," and nobody is coming. Either they're in the lunchroom or they're someplace else.

And as far as the phone goes, I cannot tell you how many times I have called, and it rings and rings and rings, and nobody answers.

And I want to find out how my mother is, I just don't know.

As I said, I started one night calling at 9 p.m. I didn't get through till 2 a.m., till somebody actually answered the phone, and I asked if I could speak to the nurse to check on her.

And it's just been a horror show the entire time that she's been in there.

She also has allergies to food.

She gets the food that has the allergies that she's allergic to.

And the staff in the kitchen cannot read English, so you just get anything, and you don't do not even get the food you ordered because they just put anything on there.

There is such a list of things that I can tell you, that I just really can't go into now, but I do intend to speak to you after.

And when I get all my thoughts together, I will tell exactly all the problems that I've had while my mother was in the nursing home.

SENATOR SKOUFIS: Okay, thank you, and I look forward to that.

I've run out of time, but I would just point out, Vivian, I know that your mother passed away in a nursing home that was cited 32 times over the past few years, and, again, zero enforcement actions by the department of health.

If at some point later in this hearing -- my time is out -- you find it appropriate to speak to that, please do.

Thank you.

SENATOR RIVERA: Thank you, Senator.

Assembly.

ASSEMBLYMEMBER BRONSON: Yes, we will recognize Assemblymember Kevin Byrne for a period of 5 minutes.

ASSEMBLYMEMBER BYRNE: Thank you.

And allow me to echo my colleague's remarks, just extending our heartfelt condolences to all of your families for what you have gone through.

I had a few other questions for our first witness that I didn't get to, because it was a

little briefer than many of us would have liked.

So I'm just going to pose some of those questions to you, to see if you have any thoughts.

I believe it was Mrs. Webster mentioned some of the issues at the facility where you lost your mother.

Have you heard from nursing staff, or any other residents, or through your loved ones, about the possibility of commingling of positive COVID patients with other residents?

KATHLEEN WEBSTER: Let me stop you there.

While I did lose my mother in a nursing home quite sometime ago, I don't think I'm the person you're trying to talk to. So...

ASSEMBLYMEMBER BYRNE: I mixed up the people that were speaking earlier.

So I can ask that in generic.

There was comments made about a nurse, with masks, not getting PPE.

Have there been any other remarks from any of -- from you speaking with residents?

No?

VIVIAN RIVERA-ZAYAS: We had a nurse say that she was using her mask for the entire week; the same mask for the entire week.

ASSEMBLYMEMBER BYRNE: Okay.

All right, then I may have misheard part of that testimony.

Another question I have:

Most of you have been able -- were able to -- well, actually, were you able to follow the testimony earlier in this hearing from the health commissioner?

OFF-SCREEN SPEAKER: Yes.

OFF-SCREEN SPEAKER: Yes.

ASSEMBLYMEMBER BYRNE: Okay.

Well, Grace, I believe, I hope you don't mind me calling you Grace, Ms. Colucci --

GRACE COLUCCI: That's fine.

ASSEMBLYMEMBER BYRNE: -- I'd like to get your feedback on what you were able to hear from the commissioner, as far as our State's involvement with the handling of the nursing homes, if you had any comments.

GRACE COLUCCI: Well, I felt that he did not give you adequate answers to your questions while having several weeks to prepare for this hearing.

I think that the nursing homes were overwrought with too many patients that they weren't expecting.

And with the lack of having family there to be able to participate in the care of their loved ones, they were even at a further disadvantage.

The nursing homes are used to having family members there to feed and take care of their loved ones.

So I think he was evasive in a lot of answers, and to not provide you with the tools that you will need to make a good investigation.

ASSEMBLYMEMBER BYRNE: Well, thank you.

My hope is that, somehow, we get him to come to the next hearing on August 10th.

But, I appreciate your remarks, Grace, and all the witnesses in this round.

And I will give the rest of my time to, I believe it's Vivian Rivera-Zayas, to speak to the point that Senator Skoufis asked.

You've got my two minutes.

He was talking about personal stories.

So you can -- if there was a -- if there was a -- I think there was something that the senator mentioned, if there was time, you could use my time, if there's a personal story that you were -- affected you and your family that you'd like to share, you can use my time.

VIVIAN RIVERA-ZAYAS: My mother was -- I'm sorry, I'm hearing -- I don't know if someone's trying to ask a question.

My mother was in a nursing home, which was only supposed to be for a very short time.

From what I understand, once she became ill, like one of the other women here said, all I heard was my mother's moans and groans of the pain and discomfort she was in.

Yet, every single time that I called, on a daily basis, she was -- I was reassured that she was okay.

I kept asking what was going on, why she couldn't talk. And they were telling me she doesn't have a fever, her vitals are okay.

So when all of this happened, we were blown away by the fact that she was -- we didn't know she had contracted COVID.

We were in a -- there's a record in her chart saying she had it.

No one told us, so we were completely off-guard.

When -- on the day she was supposed to go home, we find that she can't even speak on the phone.

They downplayed it to the point where they asked if she was a smoker.

She was having trouble breathing.

The director said he had no idea why she was having trouble breathing.

She waited for about four hours for an X-ray, when they didn't even put in it as an emergency. And several hours later, when they waited for the results, she went into respiratory distress. And she was, basically, on a ventilator by the evening.

So we were wondering why they were going to discharge her if she was well enough to go home, according to them that morning, because we were arranging for her to go home; yet she was on a ventilator by the evening.

So there's something really, really wrong here on how they were trying to discharge COVID-positive patients in order for them not to have died on their watch and increase their tally.

So it's criminal that you discharge a sick patient, with COVID no less, without telling the family.

ASSEMBLYMEMBER BYRNE: Thank you, Vivian.

I appreciate your remarks.

VIVIAN RIVERA-ZAYAS: You're welcome.

ASSEMBLYMEMBER BYRNE: And, again, my condolences.

VIVIAN RIVERA-ZAYAS: Thank you.

SENATOR RIVERA: Thank you, Assemblymember.

We will follow up by Senator May, recognized for 5 minutes.

SENATOR MAY: Thank you.

And my heart goes out to all of you who lost family members. It's just heartbreaking.

I wanted to ask if any of you had contact with an ombudsperson in that nursing home? If you were aware of that program, if that was something that was available to you, and was helpful to you?

Whoop, your mute.

LENORE SOLOWITZ: I was not aware that there was such a program. I had absolutely no idea.

I, basically, had to take care of everything myself. Whenever there was a problem, I would go in. I would talk to the nursing director, to the administrator.

I, basically, was the advocate for my mother.

SENATOR MAY: Sounds like you're kind of a de facto ombudsperson for other people too in that [indiscernible].

LENORE SOLOWITZ: I probably could be, could

be.

But, you know, there are so many things that have to be done with these nursing homes.

I mean, in the instance for my mother, there was one nurse that she was having a problem with.

So my mother, as I said, she was 98, but she was totally with it, and she would count her pills.

She knew if they gave her more or if they gave her less. And she would count them.

There were 21 pills coming in the morning, and she said to this nurse, there's a pill missing here.

She insisted there wasn't a pill missing.

So there was a problem with that.

Then she overmedicated her and gave her more pills, and she said, I'm not supposed to get this. I've already had this.

The nurse insisted that she got that.

This is like a child. Here you're taking care of somebody, and you're playing around with the pills.

So that's one thing that really bothered me.

Then there was a nurse that wrote down that she gave the medicine, and never gave the medicine.

So, to me, that's -- you should be dismissed,

you should be fired. Is all they did was, put her to the other side of the building.

Whenever there was complaint about somebody, and even if the State came in, they never fired the person. They went to the other side of the building.

So, here, there's incompetent people. Whatever they did on the other side of the building, they're just going to do over there.

So there was -- there was a lot -- there was a lot of issues, really.

And you really needed to have somebody that was there to speak for you; otherwise, you were really out luck. You just laid in the bed. You could cry, you could scream; nobody was coming in for you.

And I've stood in my mother's room and heard so many people crying for help, and there was just nothing to do, and nobody came.

SENATOR MAY: Thank you.

Anybody else?

Vivian, did you have anything [inaudible] --

VIVIAN RIVERA-ZAYAS: My mother had a call bell, but, my sister and I went every single day to see my mother.

It was -- I actually really blame the shutdowns as a contributing factor in her passing away because she was in good health. She only had a knee surgery.

Went in there because she had an abscess in her thigh. Once they drained it and kept her on antibiotics at the hospital, she was transferred to Our Lady of Consolation in West Islip, and was supposed to be there for extra therapy, and which we welcomed at the time.

Yet, when we were trying to get her out of there, I was not getting a call, they were not responding.

Multiple voice mails later, I called the social worker. She would bounce me to the case manager.

And I had to ask her, What is your role as a social worker, if I call you and you keep transferring me to other people?

Once we got -- we kept pressuring them, and they saw my mother was terribly homesick, I believe that they were trying to get her out of there before she contracted the virus, but it was too late. She got it, she was transferred out.

And when we found out, we were wondering why,

if they've called me for minor issues, they did not call me when they knew, in fact, according to her charts, that she was exposed, and that there was some kind examine, like a droplet precautions exam, done on her.

They've called me for sillier things; yet, for this, that was pretty deadly and very important, they did not call me.

SENATOR MAY: Nobody ever told you you had the right to speak to an independent ombudsperson?

VIVIAN RIVERA-ZAYAS: They never told me.

And once my mother passed away, it seems like you have -- there's no follow up from them.

They wouldn't even give me any empathy when I called to find out about my mother's belongings. They basically said, oh, you need housekeeping.

Transferred me immediately, with no sense of empathy. And I was so hurt, because I'm thinking, my mother was in your care for three months, two months more than what she was supposed to be, and you didn't even give me, "And I'm sorry," or, "I'm sorry for your loss."

It's a terrible system, and it needs to be reformed.

SENATOR MAY: Okay.

Thank you so much.

And I just want to thank Ms. Webster, too, for your written testimony.

It's very helpful to know that there are not consumer advocates on the department of health's public health council.

We will look into that as well.

KATHLEEN WEBSTER: There's one and two on the way, but out of 24.

SENATOR MAY: All right.

Thank you.

SENATOR RIVERA: Thank you, Senator.

Assembly.

ASSEMBLYMEMBER BRONSON: Yes, next we'll go to Chair Gottfried for 5 minutes, please.

ASSEMBLYMEMBER GOTTFRIED: Okay. Thank you.

Well, first of all, I want to join my colleagues in expressing our condolences to all of you who testified about the loss of your loved ones of your family.

It's horrendous to think about.

I think -- I think one thing that is clear, though, is that, certainly, based on the -- some of the research that Mr. Skoufis did, that these facilities were bad news to begin with long before

the COVID virus even evolved.

But I just want to say a couple of things to Ms. Webster.

I want to thank you for your testimony, and the ownership and dealings and for-profit are really important.

And we've got some legislation in this area, and we intend to work on a lot more of it.

I'm sure you heard Richard Mollot's testimony on that score.

We'll be working with him, and we'd love to have your assistance in that as well.

Just one more comment on, coming off the family members who talked about never having been told about the existence of the long-term-care ombudsman program, we've been calling on the department, because of the lockdown on visitation and the long-term-care ombudsmen people not being able to enter facilities, that facilities ought to be required to periodically, regularly, notify every resident and every family member about the availability of the ombudsman program; what it does, and how to reach it.

Because, even in the best of times, it appears, people have very -- many people have little

or no knowledge of it, and that's just an outrage.

Whether it would have saved the lives of your family members, we can't know, but it could have made a difference.

So, that's all I wanted to say.

SENATOR RIVERA: Thank you, Assemblymember.

Follow up with Senator O'Mara, recognized for 5 minutes.

SENATOR O'MARA: Thank you, Chairman.

Thank you, ladies, for your courage and your fortitude in telling your stories here today.

My deepest sympathies to each of you for your loss, and thank you for participating today.

I wanted to follow up:

I'm equally appalled about the lack of information regarding the ombudsman program, that that's not getting out to family members, to help and keep track of what's going on in these homes when, certainly, most family, you know, cannot be there extensively enough to monitor day-in and day-out activities of what's going on.

And the ombudsman program, even though underfunded, does do some great work.

Throughout this process -- and this is to one of you, or all of you, actually -- did you ever

receive -- you got no notice on the ombudsman.

Did you ever receive any information or see anything posted in any of the nursing homes on how to make a complaint to the department of health, while you were visiting loved ones there?

No one, I take it?

VIVIAN RIVERA-ZAYAS: No, I don't recall seeing any information. No.

OFF-SCREEN SPEAKER: Neither did I.

SENATOR O'MARA: Did any one of you ever reach out to the department of health or the governor's office to make a complaint?

VIVIAN RIVERA-ZAYAS: After my mother passed, yes.

SENATOR O'MARA: After she passed.

And did you receive a response?

VIVIAN RIVERA-ZAYAS: No.

SENATOR O'MARA: Anyone else?

GRACE COLUCCI: No, we did not reach out to the governor's office.

LENORE SOLOWITZ: No, did I not reach out to the governor's office, either.

SENATOR O'MARA: Okay.

The -- I guess from your perspectives, what would you prioritize as the most important

improvement that you would like to see in the nursing homes, from what you've witnessed visiting your loved one, up until they passed?

LENORE SOLOWITZ: If I had to tell you everything that was there, we would be here until tomorrow morning.

There are so many things that you see going on there, that shouldn't be going on.

It's with medicine. They don't order the medicine because, the last person, there's five pills, should order the medicine.

They don't. They leave it for the next person.

So what happens?

You're due to get your medicine the next day, and they don't have it. So now you go a day without your medicine.

And, luckily, if they come the next day, you get it; otherwise, you're two days without your medicine.

That's one of the things that really used to annoy me, that they just didn't have the pills. They just didn't want to be bothered.

There was a lot of things they didn't want to be bothered with.

And it -- I -- (suddenly goes out of screen).

GRACE COLUCCI: Hi.

If I could speak, I think that a bill -- like I mentioned during my statement, a seniors bill of rights would be very helpful.

It would be informative, where families and patients could be given information on what they have as rights.

The communication between the families and the nursing homes is especially important to improve.

My family was discouraged from calling and asking about my father's care because they were understaffed.

And this facility happens to be something with a very good reputation, but, it didn't help.

VIVIAN RIVERA-ZAYAS: I would say that, in the future, we just cannot have the shutdowns that we have.

I was my mother's caregiver. I knew her better than all of the nurses.

And since I saw her, as soon as I saw anything wrong with my mother, I was able to address it, and have it addressed.

When the shutdown happened, then my eyes were

removed. I was counting and relying fully on these nurses. But all they kept telling me was that my mother was fine.

So they are the professionals, they're watching my mother. I'm thinking and believing, wholeheartedly, that they know what they're talking about.

But I knew that something was really wrong.

And when a previous occasion, when she actually had a UTI, I kept telling them, listen, something's wrong with my mother. Can we test her for UTI?

And they said no.

The doctor refused an exam, a urine test, which I offered to pay for if I had to.

And they told me no.

I insisted, and two days later they performed the test. And, in fact, it was positive, and they put her on an antibiotic.

This is something that the eyes of the family members are extremely important on these loved ones. We know them best, we can advocate for them the best.

GRACE COLUCCI: And I want to add that, if we can suit up and go to the food store or a liquor

store, or anything like that, we should be able to take the same precautions to be with our loved one.

It's not like they'll be going throughout the nursing home. We will be in the room with our family member and not spreading any kind of illness.

And it's not like there's -- this has been the first time that there's been some kind of pandemic.

There was the S1N1 [sic], and the flu every year, that seniors are always the first to be the most vulnerable.

And the nursing homes were totally unprepared.

OFF-SCREEN SPEAKER: May I just say --

SENATOR O'MARA: Well, thank you all very much.

Again, I'm out of time.

I do want to credit Ranking Member Sue Serino for giving me the heads-up on those specific questions, as she had run out of time.

So, thank you, Chairman.

SENATOR RIVERA: Thank you.

Thank you, Senator.

Assembly.

ASSEMBLYMEMBER BRONSON: Yes, first let me

echo the sentiments of my colleagues in our condolences for the loss of your loved ones.

I oftentimes tell the constituents that it's so vitally important for us as policymakers to hear the real-life stories.

And as hard as it is for you to share those stories, I want you to know it's very important for to us hear the experiences that you've had, and to hear what your recommendations are, in us moving forward as we try to develop policies to prevent harm to our loved ones who are in nursing homes or other care facilities.

So, thank you very much.

And, Kathleen, thank you for your information on the issue of for-profit organizations.

I look forward to reading that in more detail.

We will now move to the next questioner who is Assemblyman Ron Kim.

We recognize Ron for 3 minutes.

ASSEMBLYMEMBER KIM: Thank you, Chairman Bronson.

So I believe this is perhaps one of the most -- perhaps the most important panel of the hearing.

I'm a firm believer that, when we design policies or solutions, we should center around -- all of it around the people who are hurting the most, who are mostly, you know, impacted and traumatized in this time.

And we haven't done that until this moment.

So I thank the Assembly and the Senate colleagues for putting this forward.

I think a previous speaker already asked this question, but want to clarify:

Has this administration or the department of health reached out to any of you to talk about solutions, policies, or how the State can do a better job at protecting and strengthening the rights of nursing home residents?

VIVIAN RIVERA-ZAYAS: No, not at all.

We have called several times, and people and the members of the Voices for Seniors group families impacted have called on multiple occasions.

We get voice mail. We get tossed around here and there.

And, at the end, some have even claimed, they'll take our number to call us back, and we have received no return -- no callbacks.

ASSEMBLYMEMBER KIM: Okay.

Instead of handing out an early blanket legal immunity, or "get out of jail free" cards, for the nursing home CEOs or shareholders or the corporations behind them, do you think we would have had a different outcome if the State gave them an early blank check for PPE and staffing, and held them legally accountable to save people's lives?

VIVIAN RIVERA-ZAYAS: Many facilities lack the adequate infectious-disease control protocols for several times.

I think Mr. Skoufis had asked me about this very issue.

My mother's facility was cited 31 times in the period of four years, 2016 to 2020.

The fact that they had been cited and, obviously, there was no punitive damages that made them change their behavior.

And this is -- this includes not just COVID; it's, you know, Zika, and the flu, and any other infectious disease, they have to have a plan in place before these things come into their facilities.

So they were inadequately prepared beforehand.

Could it have helped to have the additional

supplies? Of course.

But the reality is, that this is something that they should already show that they lack beforehand.

KATHLEEN WEBSTER: I just want -- can I just add that -- I just want to add that, you know, the studies from Connecticut showed that, if you had more registered nurses on staff, you had fewer deaths.

That was the -- that was the clear study.

So, you know, the fact that these conditions existed beforehand, I mean, I slept on a chair in my mother's room for six weeks, to get her cured of a bad bedsore.

ASSEMBLYMEMBER KIM: Thank you.

KATHLEEN WEBSTER: Just in defense of the staff, I just do want to say that, undertrained, underpaid, no sick days, no paid time off, what did we think was going to happen?

So, you know, if we could take the profits off of the CEO's salary and put them more towards the staffing, might help.

ASSEMBLYMEMBER KIM: Kathleen, my time is up, but, one quick question.

Victims compensation fund, do you think

that's a good first step of retroactive justice: yes or no?

Thumbs up?

KATHLEEN WEBSTER: Yes.

VIVIAN RIVERA-ZAYAS: Yes.

ASSEMBLYMEMBER KIM: Thank you.

LENORE SOLOWITZ: Definitely.

ASSEMBLYMEMBER KIM: Thank you, Assemblymember.

ASSEMBLYMEMBER BRONSON: Thank you.

It looks like we have next up, Assemblymember Doug Smith, for 3 minutes.

ASSEMBLYMEMBER SMITH: Thank you so much, and thank you to the chairs for holding this.

And thank you so much for the families who are coming here to testify today.

I think the families will probably join many of us in being a bit dismayed at what we heard from the health commissioner earlier today.

In my opinion, he was really dodging and deflecting to a new level.

But I'm deeply concerned that we were not all able to ask him questions that many of us had concerning this.

So I would ask at this time, and we'll start

with Grace, and then Vivian, and go to everyone, because I'm greatly hopeful that, after the fact that the commissioner left us, that he'll, hopefully, clear his schedule and join on us August 10th.

I want to know, I have questions I would have liked to have asked him on behalf of the people I represent.

But you represent families that have been directly impacted.

What question would you ask Commissioner Zucker if you had the opportunity, to the families?

GRACE COLUCCI: That's -- where do I start?

I would ask him: How come they, one, delayed --

I'm sorry.

Hello? Do you see me now?

Okay.

-- I would ask him why they delayed in using, actually -- not even delayed -- why they didn't use the "Comfort" and the Javits Center and other facilities that were assembled to handle COVID patients?

And why were the nursing homes actually, even

though they weren't made to take the COVID patients, but they, literally, they're hurting financially, and they did need to take the patients?

I would ask him that.

ASSEMBLYMEMBER SMITH: I mean, Grace, would you -- sorry to cut off -- would you agree, though, because the commissioner said that.

He said the State didn't force them to take COVID patients.

However, the order said, "no resident shall be denied."

GRACE COLUCCI: Correct. So it's just a play on words.

ASSEMBLYMEMBER SMITH: So, I mean, in a way, I would read that, the nursing homes did say that they felt obligated to take these COVID-positive patients.

GRACE COLUCCI: I agree, 100 percent.

I feel that they felt that they had no choice.

ASSEMBLYMEMBER SMITH: Thank you, Grace.

GRACE COLUCCI: You're welcome.

ASSEMBLYMEMBER SMITH: And maybe, Vivian, if we want to add that to. We only have about a minute.

VIVIAN RIVERA-ZAYAS: I would ask Mr. Zucker about how well it is to make decisions for your own mother, whom I believe he mentioned his mother is at home, and that they had made that decision; yet families were denied the right to make decisions on our own parents' behalf.

I was not given the option to discharge my mother before the shutdown.

I was not given the opportunity to make decisions for her because I was not told what was going on.

So, you know, they took my rights away; yet he continues to have his with his own mother.

ASSEMBLYMEMBER SMITH: Thank you so much.

I don't know if you want to add.

GRACE COLUCCI: Can I add one last thing?

My mother had said that, had she had known that she would not be able to take care of my father and feed him, she would never have put him in the nursing home.

She would have taken him home instead rather than have him do his rehab there.

ASSEMBLYMEMBER SMITH: Well, our thoughts and prayers are with you, and thank you for sharing your story with us.

Thank you.

OFF-SCREEN SPEAKER: Thank you.

SENATOR RIVERA: Thank you, Assemblymember.

I think we have one more.

ASSEMBLYMEMBER BRONSON: I believe we have one last questioner, Assemblymember Missy Miller, for 3 minutes.

ASSEMBLYMEMBER MILLER: Yes, thank you.

I just -- I want to thank all of you from the bottom of my heart for coming out here and sharing your stories.

I'm kind of glad it took this long to get my questions so I had a chance to compose myself after hearing all your testimonies.

I keep hearing, you know, "their rights," "the patients rights," you think that we need a senior's bill of rights.

But what we're overlooking is that we have a Patient's Bill of Rights, and they were violated, and they were violated under this pandemic, you know, the governor's executive power during a pandemic.

But he stripped you all of your rights, and isolated the residents in their rooms, to be ignored, and to be neglected, and didn't let, not

only the family members, but even the ombudsmen, if one knew to look or ask for one.

So, you know, that is -- it's just even more heartbreaking, the system of failure that went from step to step.

And my biggest regret with Dr. Zucker leaving early today, is that he does not hear these testimonies; he is not hearing what we just heard.

And [indiscernible] members, that's what makes policy change.

Mr. Gottfried can attest to that. We did that years ago with medical marijuana.

Seeing and talking to patients, and talking to families, and hearing what their lives are like, that's what makes us want to change policy.

And that's what we need to get through to the department of health and to the governor's office.

So thank you for sharing.

OFF-SCREEN SPEAKER: Well, thank you.

SENATOR RIVERA: All righty.

We -- that is the last questioner, I believe?

Okay.

So we're going to take -- we're going to take a short break so that folks can actually get some coffee, perhaps, as we've got five more to go.

I believe we can get this done.

We'll give it 10 minutes, we'll come right back.

VIVIAN RIVERA-ZAYAS: Thank you.

GRACE COLUCCI: Thank you very much.

SENATOR RIVERA: Thank you for all of your testimony.

And please be in contact with the senators, particularly Senator Skoufis and others who have said that they would like to get some more of your stories, so they can really think through what we could do legislatively to respond to this concern.

GRACE COLUCCI: Thank you.

VIVIAN RIVERA-ZAYAS: Thank you, we will.

I appreciate it.

GRACE COLUCCI: Thank you.

SENATOR RIVERA: 10 minutes.

(A recess commenced.)

(The hearing resumed.)

SENATOR RIVERA: Welcome back, folks. Hope that you had some nice -- nice coffee.

We're going to power through right to the end.

Next panel, we are joined by:

Judy Johnson, registered nurse, and a member

of the New York State Nurses Association;

Milly Silva, executive vice president of 1199 SEIU Nursing Home Division;

Eric Fogle, an 1199 member, and activities aide at the Holliswood Center;

Tyresse Byers, 1199 member -- excuse me -- certified nursing assistant at the Sarah Neumann Nursing Home;

And, Nicole Whittaker, 1199 member, certified nursing assistant at the Berkshire Nursing and Rehab Facility.

Monsieur Gottfried.

ASSEMBLYMEMBER GOTTFRIED: Do you all swear or affirm that the testimony you're about to give is true?

JUDY JOHNSON: Yes.

MILLY SILVA: Yes.

TYRESSE BYERS: Yes.

NICOLE WHITTAKER: Yes.

ASSEMBLYMEMBER GOTTFRIED: Okay, fire away.

JUDY JOHNSON: Hi.

Good evening to the joint Assembly and Senate legislative hearing.

This testimony is on behalf of the New York State Nurses Association.

My name is Judy Johnson.

I'm a registered nurse employed at Rockland Nursing home, which is part of Kingsbrook Jewish Medical Center in Brooklyn.

I am here today on behalf of the New York State Nurses Association to relay our concerns about the impact of COVID on long-term-care facilities and problems that we observed during the first surge in March and April.

Rockland Nursing Home has about 466 beds, and includes an acute vent unit with 30 beds, an acute [indiscernible] unit with 34 beds, a pediatric unit, a rehab short-term unit, and several regular long-term-care nursing units.

During the March and April surge, our nursing home was hit particularly hard, and many residents and patients were sickened or died.

In addition, many of the direct-care staff, including nurses, were also exposed and sickened.

In our experience, several longstanding issues in the long-term-care sector made the impact of the COVID-19 pandemic much worse than they should have been.

First, nursing homes have, for many years, been understaffed.

We simply did not have enough RNs or LPNs and aides to provide high levels of care in addressing infection-control problems that became acute during the surge period.

I work on the most acute unit, caring for very sick people who are on chronic life-support vents, with 30 beds.

Our unit used to be staffed with five RNs at all times. But the ratio was recently worsened, with the RN staff [indiscernible] now including 40 percent LPNs.

A similar thing happened on the [indiscernible] units, which used to have four RNs for 34 beds, but also reduced the RNs by adding up to 40 percent LPNs.

On the regular units the situation was even worse, and there were no RNs assigned to direct patient care. The only RNs assigned to those units are the managers who don't do direct patient care.

RNs and our LPN and aide colleagues all work hard, but reducing staff is not helpful for maintaining the quality of patient care.

During the surge, this chronic understaffing caused atrocious situations in the nursing home.

The short-staffing became even worse when a large percentage of the staff themselves became ill and could not report to work.

At Rockland we finally got some help in the form of temporary nurses, but they did not arrive until May, long after the worst of the surge in April.

A big problem in the spread of the virus among staff and patients was the shortage of PPE.

We did not have enough N95 respirators and masks for the staff, and were forced to reuse the equipment for days and days.

We also did not have enough PPE for the residents and patients to use.

I think this contributed to the spread of the virus throughout the facility.

Another problem that made things worse was the constantly changing guidances and protocols for infection control and the use of PPE.

The CDC kept on changing its recommendation and the State just followed suit.

A lot of the changes were related to the shortage of PPE rather than best practices to protect patients and staff.

The lack of staff in the bad situation with

PPE and the constantly changing protocols are, in many ways, the legacy of the constant pressure to cut costs because of reduced reimbursements from governments and private insurers.

The nursing home industry is constantly being squeezed by these budget cuts.

Pay is too low and that causes a lot of staff turnover.

If staffing has already had -- has already -- was already bad and funding was short, it should be no surprise to anybody that the pandemic had a devastating impact on our nursing homes around the state.

To prepare for the resurgence of the virus in the fall, and for future pandemics, we need to properly fund our health-care system, including our nursing homes.

We need to pay people more so that we don't have constant turnover of new staff who have to be trained to provide patient care.

As part of addressing the staff [indiscernible] shortage, the State should implement minimum staffing requirements in all nursing homes. This would allow more stability and give us [indiscernible] improvement that will better allow

us to respond to future surges.

Finally, the State needs to implement more stringent and uniform infection-control standards and protocols that all long-term-care facilities have to comply with.

This will protect both the staff and the patients.

Thank you for the opportunity to present our concerns, and our written testimony will be admitted for the record.

Thank you.

SENATOR RIVERA: Thank you, ma'am.

I guess, Ms. Milly Silva.

MILLY SILVA: Good afternoon.

My name is Milly Silva. I'm an executive vice president of 1199 SEIU, United Healthcare Workers East, directing our nursing home division, which represents over 50,000 nursing home workers downstate.

Our union also represents an additional 15,000 nursing home workers in the Hudson Valley and upstate.

I understand that you will hear from these members next Monday.

Our members in nursing homes provide

essential care to residents: helping them get in and out of bed, feeding, dressing, and bathing them.

They do this work because they're committed to providing quality care for the residents who they get to know and love. They do it despite many challenges, including high rates of injury, frequent understaffing, and, often, inadequate pay and benefits.

Our members in nursing homes continue to love and care for the residents, and they did it that much more so during this pandemic under extraordinarily difficult conditions.

Many of us saw it on television, we read of it in the newspapers, but nursing home staff faced it up close and personal.

They saw large numbers of residents' deaths, overwhelmed morgues, and up to a third of the workers becoming ill, with resulting severe staffing shortages.

As we know, workers died.

And on behalf of 1199, we express our condolences to the family members who also lost loved ones during the pandemic at the nursing home.

We want to thank the legislature for holding these hearings, to examine what happens in nursing

homes during this pandemic, and, most importantly, to learn its lessons, so that this tragedy is never repeated.

The decisions that individuals made, and the systems in place, or lacking, during the pandemic made a real difference in the safety of residents and staff.

In a moment I will discuss those decisions, both positive and negative, and you will have my testimony -- written testimony as well for the record.

I want to make one key point:

The nursing home industry is not going to be the same after this pandemic.

Resident census is lower, and it is unclear how quickly it will recover.

Returning to the status quo pre-pandemic is impossible. More than that, it is morally unacceptable.

New York ranked 31st in the nation for nursing home quality, according to CMS surveys, and in the bottom 10 nationally for persistent pressure ulcers.

Residents are only getting 2.38 hours of hands-on care per day, earning our state a "D" on

the national scorecard.

Nursing home caregivers are forced to work multiple jobs to make ends meet, leading to staff turnover and burnout.

We can, and we must, do much, much better.

We urge the administration and the legislature not to waste this moment, when there is more tension faced on the experience of vulnerable residents in the nursing homes than anytime in the recent memory.

You must listen to the voices of those who are on the front lines.

You are going to hear from some of them as soon as I am done.

And we're asking you to commit to a comprehensive plan to dramatically improve the quality of long-term-care services in our state.

1199 SEIU members stand ready and willing to do the work with you.

As such a plan is developed, we're going to ask you to take a look at testing and cohorting.

Our members saw the difference between what happens when you cohorted residents, and when you actually had workers moving from room to room, COVID and non-COVID residents.

On personal protection equipment, it was real.

We saw members who had to wear garbage bags, we saw members who were asked to put on raincoats, as part of their PPE instead of given full gear with masks, eye goggles, face shields, and gloves.

We also want to make sure that you take a look at what happens with sick-pay policies, where, in some cases, let's be clear, one in four workers were infected by COVID-19, according to the state department of health.

Some of those workers were workers who also had to make the choice of staying at home and recovering, or, being asked by their employers to come back to work.

That's an unconscionable question that shouldn't have been asked of workers, yet some workers were put in that untenable position.

And on staffing, the pandemic revealed and exacerbated what already was, which is insufficient staffing in nursing homes.

So we're going to ask you to take a look, and to hear from the experience, and to imagine what would it look like:

To make sure that nursing homes are ones

where, as we prepare for this pandemic, we know that there is adequate full PPE gear for all of the workers;

That there is adequate testing;

That resources are prioritized for testing in the nursing homes;

That we make sure that workers have access to the sick pay;

And that we also know that there is going to be appropriate staffing, as we prepare for what could be the next surge, and, certainly, as we move into the flu season.

And with that I yield to our 1199 member leaders.

SENATOR RIVERA: Perfect timing, Ms. Silva.

Thank you.

And let's start with Eric Fogle.

ERIC FOGLE: Good afternoon. How are you all doing?

First of all, I want to appreciate -- I would like to appreciate you giving me the opportunity to speak today on the COVID epidemic -- pandemic.

My name is Eric Fogle. I work at Holliswood Care Center. I worked at Holliswood Care Center for, actually, 25 years.

The first thing I thought when this actually took place, that it was unreal. It was so surreal when you actually see the situation that was at hand.

My job is actually activities aide, so I do what you call "therapeutic recreation."

When you do therapeutic recreation, it is more that, you have such a closeness to the patients, to the residents; they're very close to you.

I normally run a group, and the group will be of 15 to 20 individuals. But, because of social distancing, and because of face masks, and I was limited to actually 8 -- 8 in a group.

And what happened with that, you could actually see the effect that it actually had on the residents on a daily basis, because they were so used to being with each other in a group, and doing group program, group activities, such as arts and crafts, Bingo; [indiscernible] things of that nature.

So what it was, when you actually, after you go from -- to a point where you have a group of 15 to 20, and a lot of times you have to choose the ones that actually understand and respect what was

going on that particular time, because, a lot of times, when you deal with patients that suffer from Alzheimer's or they suffer from dementia, or an illness like that, they really don't understand the severity of what's going on.

So they would constantly remove their masks. If not remove the masks, they want to keep the mask, they wouldn't respect the social distancing.

And so I had to be due diligent in choosing residents that could understand and would actually follow those.

It was -- it was -- it was very difficult, like, me talking about it now is very difficult, at times, that you actually known a resident where residents are like family to you.

It's not like this resident don't know you. This resident think you their family because they see you all the time.

And you see them on a Monday. And then when you come back on a Tuesday or a Wednesday, they're gone.

Or, when you get a new resident that just came in that you had a connection with, and they came in on a Monday, and then before you know it, they have passed away, and it was actually -- passed

away the next day, and they was actually gone.

That right there was very troubling.

And you got to realize that, mental, it was more of a mental thing than so much physical because, mentally, had you to deal with this each and every day.

So you're dealing with a virus each and every day, that you see the toll it actually takes. And then you have to go home to your own family, which is a scary moment, when you actually have an area that's nothing but COVID patients.

And I used to do what you call "video chats," because, the situation there is, you couldn't have family members visit. So it was important for them to do video chat.

Here I am, I'm dressing in a hazmat suit, going to do a video chat with a resident.

So their family member, a lot of times, are basically in tears, you could hear the quivering in their throat, because of the mere fact they scared of you. You could actually see me as it was a sci-fi movie, or something like that.

I'm going in there to visit their family members so they can check on their family members to see how their family members is doing, and I'm in a

full hazmat suit.

It got to the point whereas I made the decision where I had to have some type of normalcy.

So what I would actually do, I would actually put my face mask on, and everything, but I would try not to actually go in with the hazmat suit.

And a lot of times, too, because of lack of supply.

One thing about the nursing home owners, it just seems like it was a lack of supplies. They was more concerned about the second wave than dealing with what was going on right then and there.

So a lot of times, when you go past the administrator's office, they would have supplies stacked on top of each other. But then you would see CNAs with garbage bags on, LPNs with garbage bags on; people with hazmat suits with holes on it; they wouldn't have no face mask, so there will be no N95 -- there won't be no N95 masks, and things of that nature, right then and there.

So it was always a constant thing that you actually seen and you had to deal with, and you had to keep the moral [sic]. You had to actually keep people's morality more because they were so nervous at times about dealing with this particular

situation.

We was one of the hardest-hit nursing homes. We had close to 60 deaths.

We actually had the freezer outside, where, actually, I was helping put the bodies in the freezer.

Now, could you imagine that you don't have the opportunity to say a farewell.

You don't have the opportunity to have a viewing, you don't have a opportunity where they actually would be able to bury the person [indiscernible].

So here it is, we would carry them into a truck -- a freezer truck, a meat truck, or whatever you want to call it -- and you actually placing these residents inside a truck like that.

That was like devastating.

Every time you come home, you're traumatized just by the idea of that.

We had over 20 to 30 workers that was actually infected. Some was infected more than one time, they was actually infected.

It was intense for three to four months because, what happened, the nursing homes got a lack of staffing anyway. And they did that.

So the thing is, with the lack of staffing they already had, the ones that they did have, they was pushing them.

So what happened, you had a lot of times where you have LPNs that was working six or seven days out the week. You have CNAs working six or seven days out the week.

You couldn't take a day off. You couldn't call out. Things like that.

So it was always a situation where that you was always trying to comfort someone.

We actually had a union member in the building that actually passed away from COVID. And that was really devastating to the department itself, because the department itself was the type of department that really didn't have much contact with --

SENATOR RIVERA: Mr. Fogle?

ERIC FOGLE: -- with the residents --

Yes?

SENATOR RIVERA: If you could wrap up, since your time has expired.

ERIC FOGLE: Okay.

So my thing is, what I would just like to say, that, when it comes down to this, we need to be

more proactive than reactionary.

Hopefully, from this particular situation, we will actually learn how to be able to deal with this, and put leadership and put guidelines in place for us to be able to deal with this, deal with this situation if it happens again.

Thank you very much.

SENATOR RIVERA: Thank you for your testimony, Mr. Fogle.

ERIC FOGLE: Thank you.

SENATOR RIVERA: We will continue with Tyresse Byers.

I hope that I pronounced your name correctly.

TYRESSE BYERS: Yes, you pronounced it correctly.

Good evening, everyone.

My name is Tyresse Byers.

I've been a member at Sarah Neumann Nursing Home for the past 12 years.

I'm seven months pregnant, so I worked through the whole COVID situation, pregnant.

What I had wanted to say is, when I think about the situation that we was in, for me it was very scary.

I was in fear at times, not just me, but also

my co-workers.

It was just the fact that, when we had got a bunch of COVID residents sent there to us, we was lacking PPE.

On top of lacking PPE, we was lacking staff members, and even nurses.

And instead of them getting people from outside or getting help from outside, if we was missing -- if we was lacking PPE and lacking residents and -- not residents, lacking in co-workers, they would take the co-workers that they set aside for us, that they told us before we got the COVID residents, they're going to clear one unit out. And when they clear one unit out, they gonna just make that unit the COVID unit. And we gonna have a certain amount of co-workers that's gonna work on that unit.

That's how it was going to be set so we can not spread the COVID to other units or other floors.

So we all thinking this is the plan when they came in. They already have a staff ready for who's going work in that unit.

But when the COVID residents came in, that wasn't the case.

We had lack of -- short on residents --

I mean, not residents. I'm so sorry. -- short of staff members. And we had short numbers of nurses.

When they didn't have enough nurses to cover the floor, they would pull the nurse off the COVID unit and have her come and work in the non-COVID unit, to pass out meds.

And we didn't understand that.

And that's the part that got scary for myself and my co-workers.

Like, if we come in and working here at a unit, and it's non-COVID, why would you want to bring somebody over that's been working the morning shift, all day, with COVID residents, and move them over to the side with residents that's not COVID?

And then they didn't have the proper PPE on, and then you're working with other residents that's not sick, which contaminated and spread it throughout the facility.

And they sit there and they say, oh, the contamination came from the staff members.

The staff members wasn't coming in there sick.

The staff members got sick after working different shifts, different floors, to cover the short staffing that we had.

And it's just, it was -- it hurts, it just hurts.

I'm just expressing my feelings, how it hurts, how upsetting it was.

And, I just felt like, our government, our health care and our government, just let us down.

It let us down.

We stay here, we taking care of our residents that we love, we've grown to love. We've been taking care of them for years.

Residents, we had there for years, we treat them like our own family.

Birthdays, holidays, occasions that came around, we did things with them. We would have parties with them, just to lose them, because of the way how things went about with the COVID.

And it hurts us, but it hurts our residents as well, because I'm looking at it, like, we felt like we didn't have no support.

No support, not even from our own administration, or DOH that worked there. They stayed in their own little cubby. They wasn't worrying about if we had enough PPE.

Oh, you work on the floor that don't have COVID, so you don't need the PPE, you don't need to

wear masks, you don't need to wear that.

How do you figure?

It spread like wildfire.

We wanted to have coverage for ourselves and for our residents.

It took for the State to come in.

The State had to come into our facility for them to tell us, well, set the residents apart, make them wear their masks. Also have the staff wear their masks.

But when we was suggesting this before it got as bad as it did at our nursing home, what we was telling them, they wasn't taking it at face value. It would just go in one ear and out the other.

And that hurts, that hurts, because I've been working at this job for years.

I know I had wanted to be a nurse since I was in junior high school.

And I will never think, in my wildest life, as grown-up and as an adult, and as a pandemic that come along at a facility that I work at, that they wouldn't show the same level of respect and care to work together with us.

Everything that we did there, we had to do on our own.

Just like the last gentleman that made a statement, we had to wear plastic bags. Come in there, buying our own gloves, buying our own masks.

We came in there with our own supply, not being able to count on our facility to give us what we needed.

And then when they did get the stuff, it came late.

When we finally did get PPE, it was later on --

SENATOR RIVERA: Ms. Byers?

TYRESSE BYERS: -- after we had lost a whole lot of people.

SENATOR RIVERA: Ms. Byers, if you could conclude, since your time has expired.

TYRESSE BYERS: I'm sorry.

SENATOR RIVERA: No, no. No need to apologize.

I just, you know, want to make sure that we can hear from your -- from other members as well.

But if you want to do one last statement, you certainly can.

TYRESSE BYERS: I just want to say, from this forward on, as a mother; as a family member; as a friend; as a person that loved my elderlies, as

I would take care of them through my time, that y'all find a better way and a better solution, and come up with a better strategy than what was -- that came up, because it was horrible.

It was horrible.

SENATOR RIVERA: Thank you, Ms. Byers.

We will continue with Miss Nicole Whittaker.

NICOLE WHITTAKER: Good evening.

Can everyone hear me?

SENATOR RIVERA: Yes, ma'am.

NICOLE WHITTAKER: Hi, good evening.

My name is Nicole Whittaker. I am a certified nurse assistant at Berkshire Nursing and Rehab on Long Island.

I have been working at Berkshire Nursing for five years. I work the 7 a.m. till 3 p.m. shift.

My shift begins with serving and feeding breakfast, and then I move on to a.m. care.

A.m. care includes bathing and dressing the residents, and also assisting in all activities of daily living.

We as CNAs provide love and support daily through many activities.

We also serve and feed lunch, and assist residents to the bathroom throughout the day.

In the beginning of March there was an outbreak of pneumonia in my facility. Several residents had incredibly high fevers, shortness in breath, and some weren't eating.

They were all seen by doctors, and given chest X-rays, but COVID testing was not widely available, especially for their population.

We as staff were watching the news daily and hearing about this novel coronavirus, and began calling for proper PPE.

But, for weeks, we resorted to wearing garbage bags.

N95 masks were finally issued to us, but were being worn for entirely too long.

The staff was also getting sick, and testing was still scarce.

We were also being told that we did not qualify for a 14-day quarantine. That we were to return to work once 48-hours fever-free.

Unfortunately, many of us were asymptomatic and never had a fever or any symptoms of this virus at all.

So, we just continued to work daily, many of us pulling double shifts regularly.

When it first came apparent that our

residents were suffering COVID-19, they should have been isolated immediately.

Instead, it took almost a month to institute proper infection controls.

We lost a significant number of residents, and many of these deaths could have been prevented.

All of the staff and residents should have been required to wear appropriate PPE at an earlier date.

I personally have a seven- and nine-year-old, and I live with two people over the age of 60.

I would come home after many 13-hour shifts, and immediately disrobe and shower before being able to hug my children after being away from them for plus-13 hours.

I would have to come home living in fear that I could potentially bring home this virus, and, in turn, put my children and our family's lives at risk.

We need to do better, as a whole, to protect ourselves and our residents against another viral outbreak of this capacity.

Thank you.

My name is Nicole Whittaker.

SENATOR RIVERA: Thank you very much, Ms. Whittaker.

And we will start off questions with the Assembly.

ASSEMBLYMEMBER BRONSON: Thank you, Senator.

First we'll recognize Chair Gottfried for 5 minutes.

Okay?

Not hearing from --

SENATOR RIVERA: Are you with us?

OFF-SCREEN TECHNICIAN: I think we lost him.

We will track him down.

ASSEMBLYMEMBER BRONSON: Okay.

Then I'll go first, then, in asking a few questions, but first let me make a comment.

I said this to the family members who were testifying earlier about the importance of hearing their stories.

And I say the same thing to all of you who are on the front line: You truly are the heroes that are out there, putting yourselves and your family at risk, quite frankly, while you're caring for our loved ones.

And so our heartfelt thank you, but, also, a recognition that, hearing what you went through is

vitally important for us as we try to develop policies that will make our systems better, and provide more protection equipment, as well as guidelines and protocols, that will keep you safe and keep those who you care for safe.

With that, let me ask first to, 1199, Miss Milly Silva:

I looked at your written testimony, and at the end it has several recommendations.

One of them is: Adopt the Massachusetts model of an infection-control audit, along with the availability of technical aid and other resources.

Could you -- just for the record, could you explain what the Massachusetts model is?

I'm not that familiar with it.

MILLY SILVA: Certainly.

So one of the things that occurred in Massachusetts as a result of really figuring out, how do we start to put a plan in place to address, and to really fortify the nursing homes during the pandemic? is that they instituted something called an "infection-control competency checklist."

And it is a system where nursing homes are using the checklist in order to make sure that they are implementing best practices on infection control

as a way to really mitigate what's happening with the spread of COVID-19.

And so as a result of it, each nursing home was provided with this checklist. It includes, under the topic of "Infection Control," for example, pointing out that residents who are confirmed by testing to be infected with COVID-19, or who are recovering from COVID-19, would be separated from residents who are not infected and have an unknown status.

"Cohorting," as a point.

It also speaks to facilities implementing a staffing plan, where there is dedicated, consistent staffing teams who can interact directly with the residents who are positive or symptomatic for COVID, and limiting the movement between that staff and other staff who are caring for non-COVID patients.

It also speaks to PPE, making sure that full PPE is going to be provided for staff, but also adding an additional piece, which I wasn't able to address in my comments, which are, that staff, in addition to being provided personal protective equipment and the full complements of it, they actually also need to be trained on donning and offing the PPE so they're able to protect

themselves.

On the issue of staffing, it speaks to the facilities being able to demonstrate that they have an advanced plan in place for -- certainly for COVID, and, also, just as part of a general emergency-preparedness plan.

And that it will include what their plan is, to either make access to staffing that might be available through volunteers, through a staffing portal that might be created.

The checklist also speaks to clinical care --

All of this we can certainly provide to the committee members following the hearings.

-- that, again, requires the facilities to implement infection-control policies.

And also on communication.

And it points out the importance of there being designated staff at the care facility, whose role it is to make sure that there is constant communication across the care teams, the management teams, so that everything is in place in terms of implementing and executing the plan.

With this infection-control list, then the State is actually inspecting the nursing homes to see whether or not they have their competency plan

in place, what it looks like, and if they are, in fact, implementing it.

And then the State is providing additional technical aid to the facilities.

And there is also some additional funding that's provided to those nursing homes.

And nursing homes who fail to meet the requirements of the checklist are then held accountable by the State.

ASSEMBLYMEMBER BRONSON: Thank you.

And if you wouldn't mind providing that, that would be great.

And if you could possibly get it to us so I can review it before our August 10th hearing, that would be very important to me.

MILLY SILVA: Will do.

ASSEMBLYMEMBER BRONSON: Thank you.

And I just -- I don't have much time. I only have 20 seconds left.

So, Ms. Judy Johnson, thank you so very much for your testimony, especially on the staffing.

Many of us who are on this hearing are very supportive of that.

And I just wanted to recognize that I think that we really need to look into the mandatory

staffing.

So thank you for your testimony.

And with that, I will shift it --

JUDY JOHNSON: Thank you.

ASSEMBLYMEMBER BRONSON: -- [indiscernible cross-talking].

JUDY JOHNSON: Thanks.

SENATOR RIVERA: Thank you, Assemblymember.

And to lead off the Senate questioning, Senator Rachel May is recognized for 5 minutes.

SENATOR MAY: Thank you.

And thank you for your testimony.

I can tell it was hard to tell these stories for some of you, so I really appreciate you sharing with us.

I have a few questions, kind of general questions, about working in a nursing home.

So, can any of you speak to how many of your colleagues are working multiple jobs?

And what do you need in order to be able to work a single job?

Is the most important [indiscernible]?

Is it regular hours?

Is it child care?

Like, what -- what would be the most

important thing to help people work just one job?

TYRESSE BYERS: A lot of people in my facility work at least 16 hours.

Like, they'll do an 8-hour shift at my facility. Then they'll go to another facility and do another 8-hour shift.

So a lot of times they're doing it, is because they don't make enough money at the facility to cover their bills, so that's why they pick up extra shifts and extra time.

SENATOR MAY: [Indiscernible.]

Okay.

And is there a limit to, like, 8 hours is the most you can work at one facility?

TYRESSE BYERS: In my facility it's a 40-hour shift throughout the week.

Sometimes they offer overtime if they have it.

SENATOR MAY: Okay. Thank you.

TYRESSE BYERS: But a lot of times they try not to give overtime because they don't want to pay that extra money of overtime.

SENATOR MAY: Yeah, sure.

And then I had another question, which was -- and I don't know if any of you can speak to this --

but, what are the special challenges of working with someone with dementia, or with residents who have memory issues, in the pandemic?

Has that been a special challenge?

TYRESSE BYERS: A lot of times they just don't keep their mask on when we told them. But -- and they like to wander.

Like, you can't keep a person who has dementia in one spot, or tell them they got to stay isolated to one spot, because they not used to that. They're used to just wandering and going.

And it's hard to just tell somebody who is not fully there, to be, like, you know, that have dementia, well, I'm sorry, you have to stay here, it's for your own protection, because they not really understanding what we trying to say.

SENATOR MAY: And I'd open it up to other people, too: Do you need more staff? Or --

NICOLE WHITTAKER: Absolutely.

OFF-SCREEN SPEAKER: [Indiscernible.]

SENATOR MAY: And then, just going through a bunch of questions I have:

We've been talking a lot about the ban on visitation in nursing homes.

And from the families' viewpoint, it's been

really, really hard.

But I'm wondering, from the staff viewpoint, what --

NICOLE WHITTAKER: As a staff member representing my residents, there has been some significant cognitive decline in our residents due to the loss of not being able to see their family members. A lot of their dementia has progressed.

Even though, with dementia, some of them don't know their family members, they have a slight idea of who they are. And they're really, really suffering because of their family members not being able to come and visit them.

TYRESSE BYERS: And it's not the same, even when we do [indiscernible] communication because, even myself, by having an iPhone, and I keep in touch with a lot of my residents' family members, I will call them, just to show them how they doing.

We have conversations, but, a lot of times, they get it; and then, a lot of times, they just don't understand the device.

They be happy to see their family members' faces, and to talk to them. But they still don't understand why they're not there, or when they will be able to come see them, because they miss them.

And they look through pictures more often.

Like, if they have a family album, and stuff, they look through it more frequently, just telling us that they miss their loved ones.

JUDY JOHNSON: That was definitely one of the hardest things that we had to go through with not having the family members here.

We did a really amazing job here, like, assembling the recreation department to do FaceTime calls on a weekly basis.

So we had, like, at least twice a week we would reach out to family members. And that was helpful, but it's not the same, because, you know, we have family members who provide hands-on care when they're here.

And that was really one of the hardest things that we had to go through, you know, family members not being able to be with their loved ones, and passing. That was so hard. Very emotional; an emotional rollercoaster, for the most part.

SENATOR MAY: And one last question:

I've been told by some nursing homes that they're not offering the opportunity for outdoor visits because they just don't have the staff to supervise that.

Is that something you've experienced, or you -- does that ring true to --

TYRESSE BYERS: Well, at my facility they started curbside visits, where, at the front entrance, they blocked it off. Where we used to have cars and stuff, they took the cars and stuff away. We're not allowed to park in that area. And they set up appointments so they could have curbside visits.

And some of our volunteers, or some of our recreation members, would come get some of our residents, or we would take them out ourselves. And they had like, maybe, an hour or two visit, curbside.

SENATOR RIVERA: Thank you so much, Ms. Byers --

TYRESSE BYERS: But it's only by appointment.

SENATOR RIVERA: Thank you so much, Ms. Byers.

And thank you so much, Senator May.

SENATOR MAY: Thank you.

SENATOR RIVERA: Assembly.

ASSEMBLYMEMBER BRONSON: Uh, yes, Assemblymember Dick Gottfried, your hand was raised.

Do you still want to go?

ASSEMBLYMEMBER GOTTFRIED: Yes.

ASSEMBLYMEMBER BRONSON: Okay. Very good.

5 minutes, please.

ASSEMBLYMEMBER GOTTFRIED: Okay. Thank you.

First of all, I just wanted to say, you know, hearing from -- previously from family members, and now from workers, is just horrific. I mean, not easy to listen to, but really important to hear from the people on the front lines.

I have a couple of questions, I guess, either maybe for Judy or Milly.

Mitch Katz, the head of the New York City Health + Hospitals Corporation, the other day we were on a program together. And he said that, for nursing homes -- well, at least for the city's nursing homes, the fact that their workforce is unionized made for -- in this crisis, made for better morale; better, you know, a stronger workforce; worker retention; just all sorts of benefits, having a unionized workforce.

This is sort of a softball question: Do you agree?

MILLY SILVA: (Indicating two thumbs up.)

JUDY JOHNSON: That is a softball question.

ASSEMBLYMEMBER GOTTFRIED: Why don't we --

it's too easy a question. Let's move.

We've been -- I've been hearing some pretty shocking stories of nursing homes that, you know, like reported, at one point, having 13 deaths in the facility. And it turns out it was only 8.

I won't mention the facility by name. You probably know the name.

Does that happen a lot?

And how does that go on?

JUDY JOHNSON: During the pandemic it was really bad.

It's not on a daily basis. This was just during the pandemic. And, again, because it was so -- you know, this was unprecedented, uncharted waters we were in. You know, and it was just nothing we had seen before.

And, again, with staffing, it was -- you know, a lot of our staff were out.

So it was just really, really, it was bad. As again I say, an emotional roller coaster throughout.

MILLY SILVA: One [indiscernible] that I would say is that, in our experience, look, we were on our calls and conversations with our leaders every day. And they were probably, in particular,

March and April, some of the most difficult conversations that we've ever had to have with anybody, just for -- because members were describing co-workers who were sick, and in some cases, dying.

And Eric actually shared a story about what that looks like and felt like in his facility, as well as also recognizing that, as Tyresse described, we had members who were taking care of someone. And they would come into the facility the next day, and that person wouldn't be there anymore because they had transitions on throughout the night.

One of the things that we were able to do in conversations with our members, is to try to have as much of a sense of how many people were actually passing away at the facilities.

And as Ms. Judy described, those numbers seemed to grow fairly quickly, and, in particular, during that moment of time. And that there was a discrepancy, we found, between what the numbers were that had been reported to the State, versus what our own members saw and knew was happening inside the facilities.

So I think, looking forward, just really having -- you know, having some expectations for nursing homes with regards to what the communication

and transparency will be, both, with the staff at the facility, as well as with the State, about what is actually happening in real time.

I think that that communication is a must.

And in institutions where we saw that that was occurring, there was much more of a teamwork that was required in order for people to be able to focus on how to give care and stay safe.

At the places where there was a sense that there was PPE being locked in offices, and that they didn't know what the counts were in terms of people who were sick, or there wasn't an adequate reporting about who was symptomatic for COVID, all that did was fed distrust, and that fed the fear that members then had to also work through. And it just made it that much more difficult.

ASSEMBLYMEMBER GOTTFRIED: Earlier, some of the consumer advocates who were testifying said that they were struck by the fact that the nursing home trade associations that had testified, talked about how the department was -- health department was frequently consulting them, and bringing them in to talk about what they should be doing and what they were experiencing, and what the health department should do, et cetera.

And consumer/the family representatives said, you know, "The department never invites us in to talk."

To what extent does the union get consulted by the health department, and compared to the level of consultation that the trade associations of the owners were talking about?

SENATOR RIVERA: And if you could answer that fairly quickly, since your time is expired -- has expired.

Ms. Silva?

MILLY SILVA: [Inaudible] -- sure.

Certainly, on behalf of our members, we were advocating and in contact with the department of health, to alert them when we were aware of situations.

Also, we were doing the work, coordinating both at the city level as well as the county level, helping to make -- sort of raise the flag when there were issues regarding a lack of PPE at institutions.

During the period of time, we received requests from over 100 employers who, at a certain time, had less than seven days of PPE available.

And so once we were alerted to that, we then also used our voices to call attention to those

institutions, and to look to have supplies sent their way.

SENATOR RIVERA: Thank you Ms. Silva.

Next we have Senator Jim Skoufis, recognized for 5 minutes.

SENATOR SKOUFIS: Thanks very much, Mr. Chairman.

And I want to share my gratitude that some of my other colleagues have already shared.

You know, pre-COVID, the word "hero" was thrown around a lot for a lot of reasons, and was diluted in some ways as a word.

But I think we're all in agreement that you all on the front lines were heroes for what you've lived through; for taking care of others; for sacrificing your health, your family's health.

And I think I can speak for everyone on this Zoom that, you know, we are indebted to you, and our constituents are indebted to you.

Thank you.

So I really have just one question I'd like to ask of each of the witnesses.

So I have personally heard from some 1199 members that a number of local nursing home administrators in my area were, literally, hoarding

PPE under lock and key, leaving desperate, dangerously-exposed staff to reuse masks and other equipment, all while fresh supplies existed "literally" on-site.

One of those facilities was Sapphire here in Orange County where I represent. They were alleged to have done this.

Clearly, securing PPE was an enormously difficult task in the early weeks and months, and that ought to be considered as part of this conversation.

But, in your estimation, 1199, NYSNA, how much of the PPE crisis in nursing homes was driven by a genuine shortage versus driven by improper distribution by administrators?

JUDY JOHNSON: On behalf of NYSNA, here in Rockland Nursing Home, I would say it was the supply, because I was privy to, like, you know, the supplies coming in and what was being distributed. And it definitely was a supply issue.

SENATOR SKOUFIS: Okay.

JUDY JOHNSON: We did PAUSE -- you know, every day we would do PAUSE, and you know, we would have to, like, do a calculation as to how much, which floor, we had [inaudible] floors which were

high priority for the supply chain.

But it was [inaudible] it was definitely.

[Indiscernible] here. We distributed according to the need for sure, but it was definitely a shortage on the supply chain.

SENATOR SKOUFIS: Okay. Thank you.

ERIC FOGLE: I'm only speaking for [inaudible] -- excuse me, me speaking Holliswood Care Center, I would not say it was a supply issue.

It was an issue where they was worried about the second wave.

If you went to the administrator office, the administrator office had so many supplies in the office. When you would walk past, it was actually a fire hazard, he had that many supplies in the office.

And when you would ask -- have people that would look for the N95 mask, or whatever the case may be, they would often tell them to wear the other mask, and they could wear the other masks, and they could wear more than one day.

And the masks, that blue mask, you know, that you cannot wear more than -- it's only good for maybe about an hour. Maybe less than that.

Or, they're upstairs, they were using garbage

cans -- I mean, garbage bags.

Or, they need face guards or face shield, and there's a situation where face guard and face shields.

There was this incidents where I had to step in among union members and deal with them a certain way, because they was actually grabbing supplies.

Because they were so worried about they wouldn't get supplies the next day, that they would actually grab supplies and hide supplies from one another, because they was worried about the mere fact that, every time they come in to ask for supplies, there was always a song and dance or an excuse.

So I used to see the trucks come in with supplies on top of supplies. And there should never be a reason why that you come to work and you don't have enough supplies.

If you're a police officer, they're not going to give you only six bullets for your gun if you're a police officer.

If you have a job to do and you need those supplies, you should have those supplies. They shouldn't worry about the next day.

Let's get through the day, and then we worry

about tomorrow, tomorrow.

And from what I seen, they actually hoarded a lot of stuff.

SENATOR SKOUFIS: Okay. Thank you.

MILLY SILVA: [Indiscernible] -- if I could, our assessment is that it's a little bit of both. Right?

No question, let's go back to where we were in February and March.

It was a global pandemic.

There was a crisis in terms of both the production of PPE, as well as the distribution.

That is real.

At the same time, we also know, as Eric described, that there were some employers who, in fact, based on our members' reports, were stockpiling PPE and not distributing it to their staff.

On the other hand, there were some institutions who actually did do the right thing.

I want to give you [indiscernible cross-talking] --

SENATOR SKOUFIS: May I ask --

Sorry, because my time is running out.

MILLY SILVA: Sure.

SENATOR SKOUFIS: -- in those cases where there was hoarding, were there any repercussions from that, Ms. Silva, by the department of health, or were they simply allowed to do that?

MILLY SILVA: When I -- I'm aware that when members understood that there were PPE supplies available, they then organized and went to management, and demanded that management release the PPE supplies to the staff. And they were able, for the most part, to resolve the issue at that level.

SENATOR SKOUFIS: Got it.

Thank you.

SENATOR RIVERA: Thank you.

Assembly.

ASSEMBLYMEMBER BRONSON: Yes, next we'll go to Chair John McDonald, recognized for 5 minutes.

ASSEMBLYMAN McDONALD: Thank you, Harry.

And to everybody, thank you for joining us.

To Tyresse, and Eric, Nicole, thank you for your real-time testimony.

You know, we've heard this, we've seen it on the news. But to hear what you said, and Judy as well, and to hear exactly, not only your frustration, but your concern for your patients,

it's a constant reminder to us that -- why we're doing these hearings.

We want to understand where things came up short.

Obviously, with PPE, we need to continue to find ways to make it here in New York, to make sure we've got enough to provide for everybody in the state.

And I'm sure you've heard this throughout the course of the day, and you'll hear it again next Monday, we're committed to doing that, among other things.

Harry touched on this a little bit, and, Milly, I'll probably push to you a little bit on this, or Judy:

You know, I asked earlier in a couple other panels about infection control, and the committees. And I was assured that there are systems in place.

But it sounds like, Milly, we have room for improvement.

Would you -- would you agree with that?

MILLY SILVA: Yes, sir.

ASSEMBLYMAN McDONALD: What's interesting -- and I'm looking at my other computer over here while I'm doing this -- you know, the Massachusetts model,

I hope that you do share that with Harry because I think there is some important aspects.

And, Milly, because SEIU, and NYSNA too, plays in both the for-profit and not-for-profit world, do you -- I'm going to be very blunt, do you see a difference in approach in the for-profit and non-profit world in regards to long-term care?

But, also, because I know you also are in the hospitals, do you see a different approach between hospitals and nursing homes in regards to the approach for infection control?

MILLY SILVA: I will speak directly to the nursing homes, in that, in our experience, when it came to the issue of workers who were exposed to COVID, and who needed, or -- and were confirmed, in some cases, to be positive for COVID and needed care, we had a very difficult time, and it was actually quite outrageous, dealing with for-profit owners of nursing homes, who made it incredibly difficult for workers to be able to access the emergency paid sick leave benefits that those workers were entitled to.

So that was something that really got our attention in that moment.

Certainly, I think that, as the pandemic was

occurring, it is something we saw across the board, for-profit, not-for-profit, there was transmission.

I do want to point out that there was one institution that I think is a story of doing it exactly right.

An institution in Long Island, San Simeon by the Sound, one of the things they did is, from day one, they gave all of their staff full PPE gear.

They quarantined any staff who reported that they had been exposed. For two weeks pay (inaudible) institutions, to make sure that there was no possibility of that person then bringing COVID into the nursing home.

There was constant communication between the caregivers, the management team at all levels.

And the reality is, that the director of nursing and the 1199 members at that institution, through those measures, were actually able to maintain the facility COVID-free.

I think that we should look to places that were able to do that, but also acknowledge that there are other institutions, some of which were mentioned earlier, that did the wrong thing, and didn't provide PPE, were distrustful of the staff, didn't invite them to be part of resolving the

situation. And, in some cases, those did happen to be for-profits.

[Indiscernible cross-talking] --

ASSEMBLYMAN McDONALD: I have a question -- no, go ahead.

MILLY SILVA: No.

ASSEMBLYMAN McDONALD: Okay.

Last question on one of the bullets, it talks about setting up the system to recruit employee emergency staff for nursing homes.

You know, during this pandemic, well, the governor was basically begging retired nurses, retired doctors, to come back to practice.

We were taking graduates of colleges and putting them into practice.

Is that what that references?

Or is that -- is that -- what's the meaning behind that?

MILLY SILVA: Things certainly looking at all avenues, are -- that would create an opportunity to bring more direct-care staff, is going to be essential to be prepared for either another stage of COVID or whatever the next pandemic might be.

Another piece that we would offer is, that the 1199 SEIU Training and Employment Fund actually

also offered and assisted nursing homes with being able to provide staff who were available and willing to work at their facilities.

And so I think really looking at all stakeholders who have an opportunity to either provide fast-tracking on learning and licensing, to then also offering placement support to nursing homes, is critical.

ASSEMBLYMAN McDONALD: Thanks to all of you for your meaningful testimony.

Chair.

SENATOR RIVERA: Thank you.

Thank you, Assemblymember.

We will now move on to -- oh, and Ms. Whittaker, if you could actually mute yourself while you're not speaking. We can hear the birds all over the place. So just so you know.

Thank you.

We are now moving to Senator Serino, recognized for 5 minutes.

SENATOR SERINO: Okay. Thank you very much, Mr. Chairman.

And I have to say, Eric, your 25 years, Tyresse, both of you, your passion is just amazing.

ERIC FOGLE: Thank you.

SENATOR SERINO: Thank you so much for everything you do.

Nicole, your story is so relatable, too, having children and loved ones at home, and being terrified of bringing this COVID, it's a story that's so familiar to us.

Thank you.

Milly, I would love to talk to you about the PPE training. You probably won't get to it because I have five questions, and, as you can tell, I'm going to rip through them really quick so I can get them all in. But I'd like to follow up with you later.

My first question is for Judy, because you mentioned the major staffing shortage that we all know that we have.

And you mentioned that you were able to get some temporary nurses, but they didn't arrive until May.

So can you tell me the process that you used to access the temporary nurses?

Was it the volunteer staff portal, or another avenue?

JUDY JOHNSON: It was [indiscernible]. It was actually an agency. I think it's a city agency;

I think it's a city agency that brought in these nurses, like, from out of state, and CNAs, and stuff like that.

So they supplemented the staff during that [indiscernible].

SENATOR SERINO: Okay, thank you.

Because I've heard horror stories about that portal. It did not work, contrary to what we're hearing.

JUDY JOHNSON: Yes.

SENATOR SERINO: Right.

So as you know, I've been a co-sponsor of the state staffing bill for years. And I believe the State needs to do all it can to increase staffing in these facilities.

JUDY JOHNSON: Absolutely.

SENATOR SERINO: Yeah.

I put forward a number of proposals that the would fund the hiring and training for additional staff.

One proposal, that would utilize unused federal funding the State has to foster staffing.

Do you believe the State should provide direct assistance to the facilities to help bolster staffing exclusively?

JUDY JOHNSON: Absolutely. No question about it. Absolutely.

SENATOR SERINO: Thank you.

And as for the PPE shortage, this is a story we've heard over and over again, and this should never have happened.

These staffers are true heroes, continuing to power through and do their jobs.

Has the nurses association or SEIU put together any data on how many units of PPE we would need in the event of a second wave, to ensure that all of your members have access to the PPE they would need to stay safe at work?

JUDY JOHNSON: Yeah, they actually sent out surveys for us to do/for nurses to do, so they can collect that data.

So I'm sure they are, you know, doing -- putting that data together, so that we be able, if there's a second wave, or when there's a seconds wave, to safely -- you know, for our nurses, and -- and -- and aides, and everyone, to safely do our duty, which is what we revel in doing.

We want to save lives. We want to be alive to save lives.

SENATOR SERINO: Oh, absolutely.

JUDY JOHNSON: Yeah.

SENATOR SERINO: We want to protect you.

So we want to make sure that there is that data available, and that we're working on it.

And, also, I noticed from your testimony, some workers were given hazmat suits. Others were wearing garbage bags and raincoats.

Can any of you speak to that discrepancy?

And do you know how the PPE was issued by the State?

And do you have suggestions to ensure that the PPE gets to where it's needed most and is distributed equitably?

Sorry, I'm trying to speed it up.

Does anybody have [indiscernible]?

TYRESSE BYERS: Well, I just wanted to say, as far as the PPE is concerned, I felt like it shouldn't just be on just the worstest [sic] unit when this COVID gets around pretty fast.

I figured everybody should have had it, non-COVID floors and COVID floors.

And even our residents should have been able to wear masks to protect themselves.

We do it now, but it took a while for it to happen, for them to do it both ways, for us and for

the residents, when we were saying this from the very beginning, before it got as bad as it did at our facility.

And I just feel, like, when you give care to a resident, we go in a room, we give care, we're in there for at least 20 minutes, giving care, or longer.

By the time you wash, clean, and do everything you have to do, and then you got to take everything off and move it to the next room, they need to provide enough PPE because you don't want to take what you already have on. You just finished giving care to one resident, to move into another room, and still have to wear the same thing to give care to another resident.

SENATOR SERINO: Right, and that was probably part of the problem.

TYRESSE BYERS: Right.

MILLY SILVA: That is why one of our recommendations is that nursing homes be required to have a 90-day supply of PPE, calculated at the peak burn rate from this past year.

It's what's required of the hospitals, and we believe that the same should happen in the nursing homes.

JUDY JOHNSON: Absolutely, yes.

SENATOR SERINO: Agreed. Thank you.

And I really want to follow up with you, Milly, about that PPE training, because you brought up an excellent point. I think a lot of us would like to hear that too.

Thank you.

I got all five questions.

Thanks, guys.

SENATOR RIVERA: Right on time, Senator Serino. Excellent work.

We will now continue with the Assembly.

ASSEMBLYMEMBER BRONSON: Thank you.

Nice job, Senator Serino.

We will next go to Assemblymember Kevin Byrne, and we will give you 5 minutes, please.

ASSEMBLYMEMBER BYRNE: Thank you, Mr. Chairman.

I want to thank all the speakers in this group.

It's been said, and it's like beating a dead horse a little bit here, but, you truly are all front-line heroes, and we need more of you.

We need more nurses.

I think that's part of the much larger issue,

before COVID, after COVID, we need more of you.

And I did want to ask before I got into my questions, one of the speakers, was it Tyresse, Sarah Neumann, is that the Sarah Neumann Nursing facility in Mamaroneck?

TYRESSE BYERS: Yes.

ASSEMBLYMEMBER BYRNE: Right.

In another life, where I used to work as an EMT right out of college, I used to take plenty of patients to nursing facilities.

That was one of them. And I think Walters is right outside.

So --

TYRESSE BYERS: Yes.

ASSEMBLYMEMBER BYRNE: I'm very familiar that place.

And I want to thank you all again, but you do a tremendous job.

And one of the things that was shocking to me, reading the department of health's report that we were discussing earlier with the commissioner, and I think it's been referenced a little bit again since then, is about the number of exposure with staff at our nursing facilities.

And it's about almost a quarter of our

workforce in nursing facilities were tested positive through the antibody testing, to show that there was some sort of exposure.

I was very surprised by that.

Maybe I shouldn't have been, because I remember during the governor's press conferences earlier in the year, there was antibody testing. And it was -- I think it was more geared towards the hospital setting, and it was much lower.

Now, I have to think, maybe that's because of the hospital setting having more PPE. And I think there's probably multiple factors involved.

Your testimony shared a lot about the need for personal protective equipment.

I think it was mentioned that a lot of the staff at these facilities may work multiple jobs at multiple facilities. I wonder if that's part of it.

If it's part of it's a delayed access to testing at the facilities.

And I wanted to see if that was -- if you had any comments to speak what -- you know, why the disparity between, you know, having these positive cases in staff at nursing facilities versus maybe another traditional hospital setting, if you had any comments or thoughts, for any of you?

NICOLE WHITTAKER: I work at Berkshire Nursing Rehab on Long Island.

And from my perspective, it was that the hospitals were more important to get PPE, as opposed to the nursing facilities, even though it was to be known that our population was the most at risk.

ASSEMBLYMEMBER BYRNE: So the largest portion of that is PPE, and it's not really a surprise.

But I wanted to ask that question still.

Another question that I had was, sometimes we hear anecdotal information, and it's not necessarily verified. So I'm very careful when I share this.

But I just wanted to ask if you had any issues, or heard any issues from your members, about having trouble accessing information about patients, if they were positive-COVID?

You know, there's always -- once in a while you hear a story about, a nurse was caring for a patient, and then they didn't know the -- you know, they may not have known because the person wasn't tested. But they may not have known because it was in their patient record, and the staff just didn't know. And then they may have inadvertently just spread it.

Have there been challenges with some of your

members getting the correct access to information about patients?

TYRESSE BYERS: Well, we had times when we was taking care of residents, and we would let our supervisor know or nurse in charge: Well, we've been giving care to Mrs. Davidson. For the past couple of days she haven't had no fever, but she been having a cold, she haven't been able to eat.

And stuff like that.

And some of the supervisors say, well, she's not running a fever.

It's not -- a fever ain't always the symptom. There's always other symptoms.

And we bringing it to your attention so you can test the resident.

And a day or two will go by before they do the testing, because now Mrs. Davison got worse in the last two days.

And it took Mrs. Davison to get worse in the last two days before you did the testing. And then when her test came back positive, we done been around Mrs. Davison all this time.

We've been asking, can she get tested?

Because we look after her, we see her daily, we know her routines and her behavior, and we tell

you something is wrong.

ASSEMBLYMEMBER BYRNE: Yeah, and I can understand you always want to wear the PPE.

But the reality is, when you know a patient is going to have an infectious disease, you're going to treat that patient differently, whether it's isolation, or what have you.

One other question I had:

It was talked about PPE and supplies, and this is a generic question. I'm not sure if the answer will be no.

Early, early on in the pandemic, when people were hoarding, not just in hospitals and health-care facilities, but in the private sector as well.

SENATOR RIVERA: If you can ask the question in the next 15 --

ASSEMBLYMEMBER BYRNE: 15 seconds?

SENATOR RIVERA: -- ask your question -- yeah.

ASSEMBLYMEMBER BYRNE: Have you heard anything about people actually stealing PPE? Not your members, but just people in general?

TYRESSE BYERS: No.

As soon as -- as soon as we found out that this outbreak was happening, in my facility, we used

to stay stacked with gloves. We'd have our cart with our gowns, and everything.

And they -- when they made this known, one day I came into work, the supply closet was empty.

That same stack, it was empty.

And now they was distributing it manually. Like, you had to go through a supervisor to get the gloves.

And she'd give you one pack of gloves.

And we had, but Mr. Franco have gloves in his room. But we need more than one.

We should keep gloves in every room.

SENATOR RIVERA: I feel terrible, Ms. Byers, because it seems that I'm always interrupting you, and I apologize.

TYRESSE BYERS: It's okay, it's okay.

SENATOR RIVERA: But I want to make sure that we can get everybody to ask -- who needs to ask questions.

Thank you, Assemblymember.

Next we have Senator Tom O'Mara recognized for 5 minutes.

SENATOR O'MARA: Thank you, Chair.

And I want to thank you each and every one of you for your service, for your being on the front

lines, and not just yourselves, but all of your colleagues across New York that have done outstanding work throughout this pandemic that we've had, putting yourself at grave risks, the families members you return to home to in the evening at risk at well.

So thank you for (inaudible) that you have persevered throughout this.

You know, we were hoping to get some information today from our health commissioner, Howard Zucker, on how many nursing home residents that were sent to the hospital with COVID ultimately succumbed to COVID in the hospital, and, therefore, are not counted in the nursing home data that the department of health reports.

I would like to ask each of you, if you have any thoughts or any comments, an estimate of, from your facilities where you work, did you see residents sent to hospitals, never to return?

JUDY JOHNSON: Yes.

Absolutely, yes.

OFF-SCREEN SPEAKER: Yes.

JUDY JOHNSON: And one of the things again is, testing.

Testing was not being done. These residents

were being sent over, never to return.

And the other thing that we have to also remember, during this time, the funeral homes were allowed to come in and claim the bodies. And a lot of the residents were cremated so we would never know.

Tests weren't done on them, they died. And then the bodies were gone, they were cremated. A lot of people got cremated during this time.

So, again, the data would never be reflected correctly because the tests weren't available.

And that was one of the biggest problems: tests weren't available.

So even though residents, or patients, or whoever, were displaying symptoms -- signs and symptoms, no tests were available to be done.

They transferred over, or died right there, and the tests were never done.

SENATOR O'MARA: Thank you, Judy.

Others want to comment on that issue?

TYRESSE BYERS: Yes, I seen a lot of loved ones leave, and some of them didn't come back, or a lot of loved ones died there at the nursing home, that been there with us for years. For years.

SENATOR O'MARA: Anyone else care to comment

on that?

With regards to -- I'll move on.

With regards to the PPE shortage, and, you know, aside from the hoarding at some facilities, but mainly the lack of PPEs at a lot of the facilities, at what point do you feel that your facility got caught up with appropriate PPEs, if they have even to date, or what shortages still exists in your facilities, or what type of PPE you need?

TYRESSE BYERS: Right now at our facilities we get masks.

And the way that they're doing it now is, they give us an N95 mask. We sign for it.

At the end of the day we supposed to turn in our N95 masks, so they can stick it in a brown paper bag. And when you come in tomorrow, you get the same N95 mask, right back, to give to you to work [indiscernible cross-talking] --

SENATOR O'MARA: Still today?

TYRESSE BYERS: To today.

And we do this for three days.

And I had to let them know I'm not returning in my N95 mask.

I'd rather take it home, spray it, clean it,

let it air dry, and then wear it the next day.

It makes no sense for me to wear my N95 mask that I use to take care of my 13 residents, to come back here to give you my N95 mask, to stick in a brown paper bag, to give right back to me tomorrow, and it wasn't even cleaned or sanitized.

SENATOR O'MARA: Thank you.

Anyone else?

ERIC FOGLE: She's actually fortunate enough -- like I say, I work for Holliswood Care Center.

She's actually fortunate enough to get an N95 mask because, in the facility I'm in, they're rare. Like, N95 masks are basically like dinosaurs; they're just that difficult to actually get.

The masks that you always have, even when you come at the front desk, they have the new masks that you actually tie in the back. They have those masks.

And I have a mask here sitting on the table with me right now. It's, basically, the blue mask. So that's the mask that they always seem to have in abundance.

When it come to N95 masks themselves, like I said, they're like a dinosaur, or, an eclipse,

some every four years, or whatever the case may be.

I don't know what the situation is of what happened before. They used to have the N95 masks out.

But I guess, because they feel like, even though it's still social distancing, still mask-wearing, I don't know if they feel that they're out of the woods as of yet. So maybe that's the reason why they're not supplying them.

But even when we was at the height of it, when it was -- when we was really overwhelmed, N95 masks was still difficult to come by, and they still are now.

SENATOR O'MARA: Are gowns available today for each of you?

ERIC FOGLE: Gowns are actually available when you actually -- when you're doing direct care, or whatever the case may be. They will be able actually have gowns.

But what you do notice a lot of times, nurses will actually put gowns on the floors and try to hold onto the gowns on the floors for when the gowns are actually really needed.

SENATOR RIVERA: Thank you very much, Mr. Fogle.

SENATOR O'MARA: Thank you, all.

SENATOR RIVERA: Thank you, Senator O'Mara.

Back to the Assembly.

ASSEMBLYMEMBER BRONSON: Thank you.

Next we'll go to Assemblymember Jake Ashby, recognized at 5 minutes.

ASSEMBLYMEMBER ASHBY: Thank you, Mr. Chairman.

Earlier, I think it was Mrs. Whittaker who spoke kind of this collective cognitive decline that she noticed in her residents, secondary to [indiscernible] that they've been experiencing.

And I'm wondering if you've also seen kind of a physical decline along with that, because [inaudible] as well?

NICOLE WHITTAKER: Absolutely.

I mean, at the height of the pandemic we were very short-staffed.

It was to the point where we had three aides on a [indiscernible] unit. And our charge nurse was our med nurse and our supervisor. So it was very difficult for us to give these people/our residents the attention that they needed to help them, you know, get up and out of bed. And a lot of them are on nursing-floor ambulation. And we did not have

the time to be able to get that done.

ASSEMBLYMEMBER ASHBY: And do you feel like the people that have declined, are some of them starting to bounce back, or have they plateaued, or are they continuing to decline as we speak?

NICOLE WHITTAKER: With the increase of our staffing, I believe that it has wholeheartedly made a difference.

But these people are really missing their families. And, you know, seeing their faces over a teleconference, or having someone banging at their window, is not helping.

They need to have their families back in their lives.

ASSEMBLYMEMBER ASHBY: I don't imagine this is just exclusive to Ms. Whittaker, but I'm sure, Ms. Byers and Mr. Fogle and Ms. Johnson, this is all going on at your facilities as well. Correct?

JUDY JOHNSON: Yes.

TYRESSE BYERS: Uh, yes.

ERIC FOGLE: Yes, it is.

ASSEMBLYMEMBER ASHBY: So if you were able to, what could you -- if you wanted to improve the functional ability of your residents, you know, because I don't imagine that it's going to get

easier over the next couple of months to really see a collective improvement throughout all of these facilities, what would you do to improve the functionality?

Because I don't know if many people can understand, like, it's one thing if someone needs a little bit more help eating, you know, now and then, cutting their food.

But when someone goes from, you know, a [indiscernible] assist, to a two-person assist, to get on and off the toilet --

TYRESSE BYERS: Right.

ASSEMBLYMEMBER ASHBY: -- [inaudible] that they probably need more help actually (inaudible).

TYRESSE BYERS: Right, I would say that.

I would say [indiscernible cross-talking] --

ASSEMBLYMEMBER ASHBY: And as one person -- you know, if that's happening with one person, that's happening to 60 people [inaudible] with staffing and what you need.

So if you could -- if you had the ability to change things and improve -- have your residents improve collectively, what would it be?

JUDY JOHNSON: More staffing.

TYRESSE BYERS: More staffing, yeah, more

staffing [indiscernible cross-talking] --

JUDY JOHNSON: And their family members in their life.

TYRESSE BYERS: -- so you can give more time to your residents. You can give more acute to your resident if you add more staffing. You would be able to give them that extra 20 or 30 minutes that they want from you, instead of saying, Can you give a few minutes?

You can only do the essentials, and then you got to come back, because you still got 10 or 12 other residents of your own. Not within the facility, of your own, that you still have to give care to. And they all want the same attention.

And it's hard; it's hard when they all want the same attention.

NICOLE WHITTAKER: I would like to also add that, during the height of the pandemic, we lost therapeutic recreation. So there was no more Bingo, there was no more coffee hour, there was no more movie [inaudible]; things that these residents look for every day.

I have specific residents that, every single day that Bingo was offered, they're there.

10:00 coffee hour, they're the first waiting

at the door to be opened.

And they lost all of that as well.

JUDY JOHNSON: Uh-huh.

ASSEMBLYMEMBER ASHBY: Mr. Fogle, anything to add?

ERIC FOGLE: Yes.

Well, she's absolutely right, because I do the therapeutic recreation.

And what you try to do is have normalcy.

You know things are not normal, but what you try to do is make it as normal as possible, close to normal as possible, that you possibly can.

But because you have the social distancing and you do have the mask, you have to limit the size of the program.

But what I normally do, and what we continue to do, we continue to provide programs for them.

So we try to make it seem, like, okay, this is what a normal day would be like.

They just don't see a large group as they would normally see. But they enjoy Bingo, they enjoy coffee chat, they enjoy arts and crafts, they enjoy Trivia; they enjoy these types of things that you provide for them on a daily basis. And they look forward to it.

And the whole thing with the socialization, which is also what's in a group, which is kind of difficult at times because you're so limited.

So what you try to do is, put them six feet apart, but have them where they can actually have a conversation, or, can they sit there with each other, and just read a magazine or look through a book, or whatever it can be.

But normalcy is what I try to always provide every day.

ASSEMBLYMEMBER ASHBY: Thank you.

Thank you, Mr. Chairman.

SENATOR RIVERA: All right. Thank you.

We don't have currently any questions from the Senate.

Going back to the Assembly.

ASSEMBLYMEMBER BRONSON: Okay.

We will next go to Assemblymember Ron Kim, recognized for 3 minutes.

ASSEMBLYMEMBER KIM: Thank you.

First, I want to just join my colleagues in thanking the workers for enduring so much trauma and challenge in some of the worst situations one could imagine.

Just, I want to share one bit of good news.

The governor signed our legislation to narrow the scope of a corporate immunity that was handed out early.

The administration framed this issue as a pro-worker thing. But, because of how it was so broad, it actually limited workers' rights to file lawsuits if they found that their employers weren't providing a safe workplace.

So I think this is a step toward restoring the rights for the workers, to make sure that we can hold these facilities accountable from preventing the spread of COVID-19, and also for making sure they're arranging the care properly and moving forward.

But I want to redirect my question to how Governor Cuomo and his administration, starting in early May, began to put blame and shifted the responsibility -- shifted the spreading of the infection toward workers.

On May 18th, in one of his briefings, he explicitly started to blame the workers in nursing home facilities for spreading COVID-19; yet we all know that more than 6,000 COVID-positive patients were transferred back to nursing homes in the last three months.

And I know that the commissioner has submitted testimony that, despite that massive number of people coming back in, it didn't have an impact. It was mostly the family and the workers that were responsible for spreading COVID-19.

Can you get -- as -- as the workers on the ground, can you let us know if -- well, first of all, are nursing homes hospitals? Are they even equipped, you know, to take in these, you know, patients?

And what kind of an impact did that have on this facility in the last several months?

SENATOR RIVERA: And before you answer that question, Mr. Kim, we'd feel a lot better if you pulled over.

Driving while the Zoom is happening doesn't make us feel too safe for you.

ASSEMBLYMEMBER KIM: I'm not looking --

SENATOR RIVERA: But I'm sorry --

ASSEMBLYMEMBER KIM: I'm not looking at my phone.

SENATOR RIVERA: Yes, you were. Yes, you were.

The workers, go ahead and answer.

I'm just concerned about you.

ASSEMBLYMEMBER KIM: Okay.

SENATOR RIVERA: Please answer.

I'm sorry.

And I'll give you 30 seconds extra.

I just would prefer that you be safe.

ASSEMBLYMEMBER KIM: Okay. Thank you, chairman.

ERIC FOGLE: We personally, I, agree with you 100 percent.

As you notice with the hospitals, the hospitals are more equipped to actually handle the COVID virus. Nursing homes are not.

And sometime when you would actually watch them bring new residents in that was COVID-positive, you could almost look at that resident yourself, and you would sit there and say, if that resident made it through the week, it was a miracle that they made through it the week.

So I could never understand why we took -- or, we was getting so much of the blame, when you actually had hospitals that couldn't even handle it themselves.

Hospitals are way more equipped to actually deal with a situation like that. And from what you understand, they was having peoples pass away in the

hospital.

But for some strange reason, there was, the blame was shifted on the hos -- it was shifted on the nursing home workers, which I could never really understand or wrap my head around because a nursing home is not a hospital. We're not equipped to deal with a pandemic like a hospital is actually equipped to deal with a pandemic.

Even when it come on to isolation with a nurse [indiscernible], sometimes they would take a COVID-positive resident and would put a COVID-positive resident in a room with a patient that wasn't COVID-positive at all, or had no symptoms of being COVID, just because of the placement, and because they had not enough area or enough space for it.

So how we got the blame is beyond me.

How they actually narrowed it down and say we was a lot -- had a lot to do with it, is beyond me too, because I say, I used to see them bring patients in. And when they was bringing patients within the building, you could see that patient, was not -- just physically looking at that patient, that patient was not in any good shape at all.

SENATOR RIVERA: Thank you, Mr. Fogle.

Thank you, Mr. Fogle. That was a good 35 seconds extra.

I hope that you continue to drive safely, Assemblymember Kim.

Back to the Assembly.

ASSEMBLYMEMBER BRONSON: Yes, for our last questioner, we will go to Assemblymember Tom Abinanti, recognized for 3 minutes.

ASSEMBLYMEMBER ABINANTI: Okay, thank you very much.

As the last speaker, I guess I'll be the last one to say thank you to all of you.

We really appreciate the efforts that you and your colleagues have put in over these very, very trying times.

And I really mean that.

I got a text from somebody over at SEIU, a comment I made earlier today seemed to have offended some people. And I really did not intend to offend anyone [indiscernible].

I really do appreciate all of the work that you all do.

You truly are our heros.

I also appreciate your standing up for the family.

You who are on the job understand the importance of having others come in and work with or visit with their family members.

I was just wondering, I have two questions basically:

One: Are there any plans that you could help devise to get family members in safely?

Has anybody worked with any of you yet?

Have they asked for the nurses's input, or the union's input, as to how we could get family members back in [indiscernible]?

It seems that the health department is stymied by that.

And the second thing is: We've talked about safe staffing. We even passed a bill dealing with safe nursing staffing.

I was wondering, what are the staffing levels necessary or mandated now for nursing homes?

And is there a way that we can have a similar type of legislation if the health department can't do something, to make sure that you have enough staff at each location, so that you all feel comfortable in doing the jobs that you have to do?

Whoever wants to go.

JUDY JOHNSON: First I want to say --

MILLY SILVA: I'll take a shot.

JUDY JOHNSON: -- oh. Okay.

MILLY SILVA: May I?

JUDY JOHNSON: Okay. Go ahead, go ahead.

Yes.

MILLY SILVA: So on the staffing piece, I would want to point out that, right now in New York, what we have is 2.3 hours of -- hours of -- a day for direct care for nursing home residents.

What has actually been recommended by health advocacy and policy experts is something that is closer to 4.0 hours.

That's one.

The second is, that we think that the conversation regarding staffing really warrants a careful conversation around what it looks like in terms of direct care staff, as well as the professional caregivers who work at the facilities.

And then I think on the question -- but New York also has -- does not have a state minimum-hours requirement. And I think that it is, you know, one of 12 or one of 15 states that remain in that category.

The other, with regards to the question

around family members, you know, we would encourage that home operators actually invite the caregiving staff, along with the family members, to come together and have a discussion around, what are the things that we can currently put in place to be able to have the residents get access to their families as quickly as possible?

It's that kind of communication, bringing all the stakeholders to the table, that's necessary, because the reality is, that the men and women who are on this call, who provide the [inaudible] heard on the earlier panel.

SENATOR RIVERA: Okay.

ASSEMBLYMEMBER ABINANTI: Thank you.

SENATOR RIVERA: Ms. Silva, thank you so much.

So that brings this panel to an end.

And I will -- and I know -- I know that Assemblymember Abinanti said that he was going to be the last one, but I will be the last one to say:

Thank you for all the work that you have done, to make sure that you keep people healthy.

And we look forward to working along with all of you as we consider what policies we might need to change, going forward, to better protect our

residents in nursing homes all across the state.

So thank you so much for all your service.

JUDY JOHNSON: You're welcome.

Thank you.

ERIC FOGLE: Thank you.

SENATOR RIVERA: You may go back to your normal day.

While we soldier on to Panel 7, and that will be:

Pat Tursi, chief executive officer for the Elizabeth Seton Children's Center;

Rachel Amar, parent of patient at the Elizabeth Seton Children's Center;

Dr. Edwin Simpser -- I'm hoping that I've pronounced your name correctly -- president and CEO at St. Mary's Healthcare System for Children.

Monsieur Gottfried, if you are with us still?

ASSEMBLYMEMBER GOTTFRIED: Am I un-muted?

SENATOR RIVERA: You are now.

ASSEMBLYMEMBER GOTTFRIED: Okay.

Do you all swear or affirm that the testimony you're about to give is true?

PAT TURSI: Yes.

RACHEL AMAR: Yes.

EDWIN SIMPSER, M.D.: Yes, I affirm.

ASSEMBLYMEMBER GOTTFRIED: Okay.

SENATOR RIVERA: All righty.

Let's start with Pat Tursi, please.

PAT TURSI: Thank you.

Thank you, Chairperson Gottfried, Chairperson Rivera, members of the Assembly and Senate, for organizing this important hearing.

I'm Pat Tursi, CEO of Elizabeth Seton Children's Center and School in Yonkers.

COVID-19 has had a profound and unanticipated impact on our cherished children and young adults with complex medical needs who have not hugged or kissed their parents in over four months.

I'd like to focus my testimony today on the trauma that this has caused by the current nursing home visitation restrictions.

This trauma can, quite literary, take years off our children's already life-limited life.

Elizabeth Seton Children's is the largest licensed pediatric nursing home in the country.

It was built in 2011.

Their hospital standards with HEPA filters and UV lights to safely care for 169 residents, of which 67 are dependent on ventilators, oxygen, and medical technology to live.

This requires a highly-qualified staff of pediatricians, RNs, palliative specialists, rehabilitation and respiratory therapists, and educators, and more, to provide a quality of life that's second to none.

And, of course, their families.

Starting in late February, our leadership recognized the distinct and deadly threat this virus would pose our compromised children.

SENATOR RIVERA: Ms. Tursi, I'm sorry to interrupt you.

Could you start your video, please?

PAT TURSI: Oh.

SENATOR RIVERA: Yes, we want to make sure that you are -- there you go.

We want to make sure that you are for posterity, since it is being recorded.

Please continue.

PAT TURSI: Sorry.

I lost where I was.

Oh, oh, my God.

Okay.

-- so, distinct and deadly threat this virus posed our compromised children.

We began implementing strict

infection-prevention protocols that led to our success.

I'm overjoyed to share that no child has tested positive for coronavirus throughout this pandemic.

In fact, there have been zero viral infections since March 17th.

The 28-day ban of visitation of a staff member tested positive for COVID-19 will indefinitely prevent visitation by our parents.

Additionally, it's costing approximately $200,000 a month to test for over 600 staff members weekly.

Our staff positivity measure is 0.64 percent, representing all asymptomatic cases, and which is far below the state average.

If you took a look into the faces of our beloved children every day, wiping away their tears because they're missing their parents, unable to communicate through technology, and, further, can't understand why their families can't come see them, you would do anything to change this policy.

The simple solution is to treat pediatric nursing homes the same way you treat pediatric hospitals for visitation.

On May 20th, DOH issued guidance that permits two support persons at bedside at children's hospitals.

We ask that you offer our children and families the same rights.

We understand the need to protect public health, and we are doing our part to protect the most vulnerable amongst us.

I ask that you do everything within your power to reunite our families.

Let's not let another day go by where a child cannot receive the love they need from their parents.

Now I would like to give the rest of my time to Rachel Amar, who will share the toll this separation has taken on her and her son, Max.

RACHEL AMAR: Hi. My name is Rachel Amar, and I want to thank you for hearing my story about how difficult my life has been the past --

SENATOR RIVERA: I'm going to stop you for one second, Ms. Amar.

Please give Ms. Amar the whole 5 minutes.

Thank you.

Please continue.

RACHEL AMAR: Oh, thank you.

Okay. I'm going to start again.

Hi. My name is Rachel Amar, and I want to thank you for hearing my story about how difficult my life has been the past 4 1/2 months, not being able to visit my son, Max.

My hope is for all of you to understand how detrimental this is, and how it has affected the well-being of my son and my family.

Max is 18 years of age and has been a resident at the center for 14 years.

Max was born with a small brain stem and, therefore, he cannot breathe, move, swallow, or speak.

However, he is fully cognizant of his surroundings, caretakers, and most of all, my presence.

As an active parent in my son's daily life and delivery of care, it had been an atrocity to not be able to be there and provide the love and support that he depends on from me every day.

Never in his lifetime has he gone without seeing me.

Consequently, this has negatively impacted his emotional behavior.

As a result, he has regressed with a deep

decline in his behavior towards the staff.

He prevents the ventilator from giving him breaths, turning blue and coding.

This is Max's way of acting out when he is angry or upset.

Knowing what Max is going through emotionally, I tried FaceTiming with him, but all he would do is cry and it made the situation worse for him.

The nurses advised me that he rarely smiles, which is very unlike his character.

Max's birthday was July 12th, and I was hopeful in seeing him based on the governor's ordinance and lifting the ban on visitation, to celebrate with him, and commend the staff for their amazing job in keeping Max and the other residents safe and virus-free.

Unfortunately, I was informed of the restrictions and stipulations that again prevented me from seeing Max.

The only other alternative was to visit him through a tall dark fence.

I tried calling out his name, but he wouldn't even look at me.

I can't imagine what he was feeling: the

feeling of being heartbroken and abandoned by his mother.

This cannot continue any longer.

I'm pleading with all of you as a parent, which I hope you can personally understand: Max needs me to be there with him physically, to read, kiss, hug, laugh, and sing together so that his emotional well-being thrives.

I can't imagine how the other families and children are coping with this unbearable separation which is a detriment to the livelihood and overall well-being of our children.

I trust that you understand the severity of the situation that requires your immediate actions in resolving this crisis.

Your attention to this matter is greatly appreciated.

And I just wanted to show you a couple of pictures of Max and I so you will understand how much enjoyment he gets from my daily visits.

So this is just, every day, we come -- I come into bed with him, and we kiss and hug, and all he does is smile like this.

He laughs.

We read all day after school, and he just is

so happy, sitting and laughing together.

And here's a picture last year of his birthday, celebrating with all the staff.

Everybody's involved in his care, as well as me.

I come every day, and visit him every day, and spend from 11:00 in the morning, approximately, I meet him in school, and I stay till about 6 p.m.

And I haven't been able to be there, it's been almost 4 1/2 months. And this is really devastating to me.

So I really please hope that you reconsider the visitation policy.

Thank you.

SENATOR RIVERA: Thank you so much, Ms. Amar.

Next we will hear from Dr. Edwin Simpser.

EDWIN SIMPSER, M.D.: Thank you.

Good evening.

I'm Dr. Eddie Simpser, a pediatrician, and president and CEO of St. Mary's Healthcare System for Children.

Thank you for giving me the opportunity to speak on behalf of New York's most vulnerable children and families.

St. Mary's Healthcare System for Children a

is national leader in providing specialized care to critically-ill children and young adults.

We are dedicated to providing inpatient care, day health care, home care, and education services to children and young adults following acute-care hospitalization due to premature birth, illness, injury, or other critical health conditions.

We're the largest post-acute provider of our kind in New York State, with a continuum of care that supports a sick child throughout their lifetime.

From our inpatient facility, to home and community settings, with a highly-trained and dedicated pediatric workforce, St. Mary's is committed to improving the health and quality of life for children and young adults with special needs and their families.

I'm here today to talk about our experiences with the pandemic, and in particular, a pressing issue on visitation in our pediatric skilled nursing facility.

First, some background.

For many years prior to the pandemic, we've been a leader in infection-control measures, establishing an exemplary track record of protecting

our very vulnerable children from the spread of infectious disease, including regular viral testing of all symptomatic and at-risk children.

Any encounter with an infectious disease, from a simple respiratory infection, to the novel coronavirus, can be devastating for a medically-complex child.

Since the outbreak of COVID-19, we have expanded these measures, and our efforts have been extremely successful.

Just like at Elizabeth Seton, to date, zero children in our facility have tested positive, positive for COVID-19, and, we've had no outbreaks of any other respiratory infections.

This success has taken place against a backdrop full of extraordinary challenges.

Precautionary regulations have forced us to close a number of critical programs that serve children in the community, depriving the children and their families of much-needed support, while compounding the extreme financial pressure our system is currently under.

When you add the burden of COVID to the recent Medicaid cuts, we're under great duress.

Since the DOH prohibited visitation to

nursing homes, we have parents who, just like Pat mentioned, have not hugged their children for months.

The parents of a child in a pediatric skilled nursing facility are never visitors. They're critical partners in the care and well-being of their children.

Hear the plea from one our parents who cries to our staff in pain and frustration, "I'm not a visitor. I'm his mother."

Many of our parents are newborn -- many of our patients are newborn babies transitioning from a neonatal intensive care unit right into our facility.

Under the current visitation restrictions, parents would be forced to separate from their newborn upon arrival at St. Mary's, leaving many to refuse admission, and forcing many children to languish in acute-care settings while they await resolution.

We have facilitated virtual visits for our parents, but these fall far short of the necessary connection between a parent and a child.

Testing our staff for COVID-19 has proven itself a flawed mechanism for preventing the spread

of COVID in our facility, and as a criterion for staff quarantine or visitation, as I'll outline.

As of now, we can't envision a scenario where any large pediatric facility meets the current department of health criteria for having 28 consecutive days without a positive case of COVID amongst our dedicated staff.

At our campus, we're testing over 600 clinical and support team members once a week.

If 1 percent of the population is positive for COVID, we're going to have 5 or 6 positive cases a week.

And it takes up to two weeks sometimes to get results.

We can easily imagine a staff member who is positive, but asymptomatic, and working, until we receive the results of their test at a time where their infection and their infectivity has already passed.

The important point is the continued success of our infection-control practices to prevent the spread of the virus even before we were testing all of our staff.

Our parents are at the end of their rope.

They're devastated, and need to us act

immediately.

In a time of extraordinary hardship, we can imagine few greater hardships than the pain of a parent separated from their child in need.

We believe that our proven expertise in infection control and our exemplary track record warrants due consideration.

Children's nursing homes are unique within the broader nursing home industry.

Our children need their parents to be with them, and we would welcome a dialogue with state leadership to help unite parents with their children today.

Thank you very much.

SENATOR RIVERA: Thank you so much for being with us today. It's a very important conversation to be having.

We'll get -- we'll start off with Senator Skoufis, recognized for 5 minutes.

SENATOR SKOUFIS: Thank you.

And I don't expect to need 5 minutes.

And I want to begin by really just expressing my gratitude for the work that you and your staffs have done over these months. Both Elizabeth Seton and St. Mary's sound like some really exceptional

places. And, again, it sounds like you have a lot to be proud of.

I do want to ask:

So, obviously, visitation policy now, on August 3rd, is very different than visitation restrictions in March or April or May when the virus was at its peak or, otherwise, ravaging our state. Right?

So I want to ask, were you supportive of visitation restrictions then, and you have since change your mind now that the virus numbers have decreased?

And if that's the case, you know, with an eye towards the next public health crisis, I think it's important to hear from you as to what you think that threshold ought to be by which we ease restrictions, if you did support it then when the virus was more rampant than now on August 3rd.

I don't know who would like to speak first to that.

PAT TURSI: Want to go, Eddie?

EDWIN SIMPSER, M.D.: Sure.

So, thank you for that question.

So we have a practice during outbreaks within the community, such as flu or other viral outbreaks,

to begin limiting visitation well before this coronavirus pandemic.

So, in fact, this year in January when the flu was pandemic, or epidemic, we actually limited visitation, but not to zero.

We just limited the number of people that came in. We made them wear PPEs and we protected our children.

We certainly agreed during the height of this pandemic that we needed to restrict visitation altogether.

But as you pointed out, August is not March.

1 percent of the community is positive, not 10 and 15 percent of community. And, we've learned a lot about how to utilize PPEs to protect our kids.

And we believe that we can safely protect our kids, limiting visitation to single individuals, doing as much outdoors as possible; a lot of what's already been proposed by the department of health.

The problem we have is that we can't get 28 days of negative staff with this many staff being tested every week.

And we just feel that that criterion doesn't work for us, and that our track record -- Seton's track record of not having any children positive,

despite the fact that staff are positive, speaks to the fact that we should be allowed to have visitation without those restrictions.

PAT TURSI: And I would just like to add that, during the pandemic, Eddie and I talk lot about this back and forth always.

So, we also want to look to the CMS guideline that DOH didn't recognize for comfort care, because even during the pandemic it was only, you know, 24 to 48 hours of an eminent death.

All of our kids have life-limiting conditions. Sometimes we don't even know when that's going to happen.

And parents, you know, understand all our infection protocols. They live by them, like Eddie said.

We do have outbreaks other times.

So, you know, to me, I think the definition of "comfort care," that would be greater even in the pandemic, should be allowed, because we had many parents that were sleeping in the building when we got the restriction, and four parents decided to stay.

I know Eddie had many more than we had.

And they stayed for a very long time, till

they couldn't take it any longer.

And one actually would have lost her job, and is, you know, in a situation where that couldn't be.

So I just -- you know, the pain and anguish that we've dealt with our parents is indescribable. I can't even begin to tell you how awful.

SENATOR SKOUFIS: Thank you both.

SENATOR RIVERA: Thank you, Senator.

Assembly.

ASSEMBLYMEMBER BRONSON: Yes, recognize Chair Gottfried for 5 minutes.

ASSEMBLYMEMBER GOTTFRIED: Yeah, on the question of visitation, well, one is, I think it would be useful if you had written down for us what you think the visitation policy should be.

And maybe that's in your testimony, but, rather than just saying what the department does is too restrictive, if you could recommend something, that would be useful.

EDWIN SIMPSER, M.D.: Well, Assemblyman Gottfried, we actually submitted a pilot visitation plan to the department of health, and had a meeting with members of the department of health to discuss that pilot plan weeks ago.

And we'll be happy to share it with you.

PAT TURSI: Yes.

ASSEMBLYMEMBER GOTTFRIED: And they have not responded, I assume?

EDWIN SIMPSER, M.D.: Correct.

ASSEMBLYMEMBER GOTTFRIED: And the other question I have is, what's the likelihood, that if we adopt your proposal, that three months from now we'll be at a hearing, and instead of family members like the ones we heard earlier talking about how terrible it was that the health department led to the death of their grandparents by letting in all those COVID-19 patients into the nursing home that the department thought were no longer contagious, but, oh, my God, look what happened, will we instead have parents coming in saying, that terrible health department relaxed these visiting restrictions, and a couple of people were visiting at St. Mary's, and, before you knew it, you know, six of our children were dead.

EDWIN SIMPSER, M.D.: So we partner with our parents all the time. And we have a family advisory council. I've had Zoom meetings with the family advisory council.

They're ready to partner with us, wear full PPEs, get tested before they come in; whatever

restrictions we want to put in place.

Also, both us and Seton have a lot of experience, as I mentioned before, in controlling outbreaks. And we're confident, that even if we were to get a child with COVID-19, that we would be able to contain an outbreak and not have the kind of outcomes that you've seen in geriatric nursing homes.

We have a long track record of protecting our children from flu and many other infections, and we are confident that we'll do well.

We're not cocky, but we are confident that we'll do well.

And we believe in partnering with our families.

When we showed our families a graph of the decrease of infections within our facility, they all said, that speaks volumes of how we have to act post COVID, not just during COVID.

So we really believe that a partnership with families will protect our kids.

ASSEMBLYMEMBER GOTTFRIED: Okay. Thank you.

And if you could un-mute for a second, you know, I've -- as you probably know, I've worked with St. Mary's and Blythedale and Elizabeth Seton off

and on for years, on a variety of issues, and sometimes with success, sometimes not.

But everything all my colleagues said about how amazing you folks are, is certainly true.

PAT TURSI: Thank you.

EDWIN SIMPSER, M.D.: Thank you.

SENATOR RIVERA: Ditto; ditto on that.

Now to the Senate, recognizing Senator O'Mara for 5 minutes.

SENATOR O'MARA: Thank you, Chairman.

And thank you, Pat, Rachel, and Eddie, if I may be informal with you, for your testimony, and for the great work that you do at your facilities for our children with disabilities. And it just truly is God's work, and I want to thank you for that.

And, Rachel, to you, God bless you and your family. I can't imagine going that length of time without being able to see my children.

RACHEL AMAR: It's hard.

SENATOR O'MARA: Just, it's heart-wrenching to even think about.

But to Eddie and Pat, if you could just briefly again, I may have missed it, run through what the protocols are right now for your staff to

be able to come to work?

EDWIN SIMPSER, M.D.: Go ahead, Pat.

PAT TURSI: You gonna go [indiscernible], or you want me to? It's the same.

EDWIN SIMPSER, M.D.: Go ahead.

PAT TURSI: So they -- you know, when they come in, they have to, you know, fill out their survey. They have to have -- you know, they have to attest that they have no signs and symptoms of any kind of illness.

Also, we're being very strict about where staff are traveling, so we're monitoring that as well. So if anybody travels, we're -- we go above the CDC requirements, and we're making everyone stay home for 14 days.

We are paying staff for all of their unlimited sick time so that people don't have to worry about not having it.

But in that case, we said, we're not going to pay if you decide to go travel someplace. That's -- you know, you're going to have to just stay home.

They have to wash their hands, and we have plenty of Purell, and then they mask.

And then they, also, during the pandemic, we just restricted it a few weeks ago, we were having

our staff come in their street clothes, and then change into their uniforms. But now that we're not in the peak of the pandemic, we've let that go.

SENATOR O'MARA: Are there testing requirements for your staff?

PAT TURSI: Once a week.

SENATOR O'MARA: Once a week?

PAT TURSI: We're doing the same thing, over 600. I think this week we did 646. So we're, like, in the mid-600s every week.

SENATOR O'MARA: Okay. And how many patients do you have at your facility?

PAT TURSI: 169.

SENATOR O'MARA: 169 patients and over 600 employees?

PAT TURSI: Yes.

EDWIN SIMPSER, M.D.: We have 124 patients.

SENATOR O'MARA: And how many employees?

EDWIN SIMPSER, M.D.: Also over 600.

SENATOR O'MARA: Okay.

Now, Rachel, if I can ask you, would those requirements that were just laid out for staff be acceptable to you to be able to see your son?

RACHEL AMAR: 100 percent, I would feel comfortable if the parents, you know, put on masks.

And we also get our temperature taken, and get the tests taken, I would be 100 percent fine with that.

SENATOR O'MARA: I would think so.

And it's just unconscionable to me that you're allowing over 600 employees into a facility, yet 150 parents can't come in and see their children.

That is unconscionable, and that needs to change.

Thank you all very much.

PAT TURSI: Thank you.

RACHEL AMAR: Thank you.

EDWIN SIMPSER, M.D.: Thank you.

SENATOR RIVERA: Thank you, Senator.

Now back to the Assembly.

ASSEMBLYMEMBER BRONSON: Yes, I will go next.

First of all, Ms. Amar, thank you so much for sharing your personal story.

And, I can't even imagine what you and your family, and certainly your son, are going through.

The -- first, I'm just going to request:

Mr. Simpser, I believe you said that you submitted a pilot plan --

EDWIN SIMPSER, M.D.: Yes.

ASSEMBLYMEMBER BRONSON: -- to the department

of health.

When was that submitted?

EDWIN SIMPSER, M.D.: Three weeks ago.

ASSEMBLYMEMBER BRONSON: Okay.

Would you be willing to share that with us so that we could take a look at it as we develop policy?

EDWIN SIMPSER, M.D.: Absolutely.

ASSEMBLYMEMBER BRONSON: All right.

And then the other thing, and I apologize, you know, this may be naive, but, listening to your family's story, and listening to some of the other families we heard earlier, you know, we use the word "visitation." But I'm not sure that fits.

Sure, you're a mom visiting your child, but you're also a mom that is 100 percent engaged in caregiving for your child.

And I'm just throwing it out there, whether or not there's a distinction we can make between, you know, visitation versus being a necessary component of the care of your child, or, when we're talking about a nursing home, a necessary component of the care of a parent or a grandparent.

That being said, you know, we've recognized, and you brought it up, the feeling of isolation, or

you actually referred it to as "abandonment of your mom."

So, I don't know where we can make that demarcation, but I'm throwing it out to you, if you have an answer today; but if not, help us work around that.

Because I think there -- that's a balancing that we need to do with care that's given by the professionals in the facility, that is supplemented and augmented by family care.

So if you have a response to that, that's fine.

If you don't, I'd like you to think about that a little bit.

RACHEL AMAR: Well, I just -- what I would like to say is that, you know, I do come every day, and I know all his care.

So I also give his medical care. I help and I assist the nurses. So when they're busy and they can't change him or suction him or any type of care that he needs, I'm able to give it to him.

Unfortunately, I can't, like, take him home and take care him myself because he is very challenged medically. He's 100 percent dependent on a ventilator, so he's very fragile.

But, I'm able to assist in his medical care, and, I occupy him all day. When I go to school with him, I assist in his schooling. We do arts and crafts projects. There's music. There's gym.

I go with him all day. I'm all -- with him in school.

And then when we come up, we get into bed, cuddle, kiss. And, I mean, he's the happiest kid, ever.

I show you pictures smiling, happy.

And when I don't come, he's really -- he's devastated.

You know, I call in the morning, I call the two different shifts, and they tell me he's upset, he's angry. He gets -- he really feels the lack of my presence there.

And, I mean, I could definitely say that, in his medical care, I'm part of his medicine: he needs me.

ASSEMBLYMEMBER BRONSON: Thank you.

EDWIN SIMPSER, M.D.: You know, there's a provision in the visitation restrictions on medical necessity, and allowing visitation for medical necessity.

And I guess that's open to interpretation.

We have had parents visit for medical necessity when we're transitioning children home.

We discharged 35 children over the course of this pandemic to their homes. And those parents, obviously, had to come in so they could learn how to care for their children.

I would think there's an opportunity to interpret "medical necessity" for pediatric nursing homes the same way, as Pat pointed out, medical necessity has been interpreted for pediatric hospitals, and allowing parents to be there for pediatric hospitals way back in May.

PAT TURSI: They also have, the DOH guidance talks about the support person.

And the support person they have for both, you know, persons of intellectual disabilities as well as the medical-complex.

And that already is in the DOH guidance, and, it's already spelled out.

Now, you know, Eddie and I both agree that there needs to be, you know, maybe other things that we would want to do and add into that visitation policy for hospitals. But it was very strict during COVID.

So, you know, the strictness doesn't bother

us. It's, we have to get the parents connected to their children again.

ASSEMBLYMEMBER BRONSON: Okay. Thank you.

I think that gives us some stuff to work with.

Thank you.

SENATOR RIVERA: Thank you, Assemblymember.

We don't have any further questions from the Senate at this time.

ASSEMBLYMEMBER BRONSON: Okay, then next we will go to Chair McDonald for 5 minutes.

ASSEMBLYMAN McDONALD: Thank you.

And to Pat and to Eddie, thank you for your testimony.

To Rachel, you know, the expression, "a picture is worth a thousand words," this was worth about 100,000 words.

I don't think there wasn't anybody here who wasn't moved.

We've been moved all daylong in many aspects; heart-wrenching stories, and mostly have been focused in the gerontology part of people's lives.

But, this hits home too.

We know the great work that both Elizabeth Seton and St. Mary's has done for probably

longer than Dick Gottfried's been around. That's been a long damn time.

[Laughter.]

ASSEMBLYMAN McDONALD: So we know what great work you do.

You know, Eddie, in your letter -- or, your testimony, you mentioned about how, you know, you've had, zero, zero positives, of any of the children during this whole time, which is remarkable when you really think about it.

And you mentioned that you've been -- your organization has been nationally recognized.

Is that through some kind of accrediting body, or, what is it?

EDWIN SIMPSER, M.D.: So, the [indiscernible] Association of Childrens Nursing Homes throughout the country. And, we did a number of studies, working with epidemiologists at Columbia. Actually, Seton was involved in some of those studies as well.

And we then presented those studies nationally, and, actually, brought our infection-control practices that we have here in New York, to facilities around the country.

And that's why we use the term "nationally recognized."

ASSEMBLYMAN McDONALD: Well, it's -- you know, it's interesting, you know, Member Godfried raised a good point.

You know, if the pendulum swings in another direction in three months, is everyone going to be, you know, pointing a finger at the legislature and the State and say, Why did you let this happen?

But I think it's very clear, and I think, Rachel, you would agree with me, because I work very closely with the intellectual development [sic] disability community.

Max, and many other children, they don't have a way to understand what's going on. They just don't know. Their daily lives are interrupted, and they don't understand it. They think that you've -- this is the part that really bothers me -- they almost feel like you've abandoned them.

And we know that's not the case.

So, you know, we appreciate this testimony.

I know, if you were around when we started about 9 or 10 hours ago, whenever it was, many of these -- many of these members brought this up to the commissioner. I know that many members of department of health are monitoring this right now.

Your visit was not for naught.

And I want to thank you for your testimony.

RACHEL AMAR: Thank you so much.

SENATOR RIVERA: And I assure you, it was longer than five hours, Assemblyman, so much so, that I missed one of my colleagues who at once was online to ask questions.

So my apologies.

Next will be 5 minutes for Senator Sue Serino.

SENATOR SERINO: Thank you, Mr. Chairman. I appreciate that.

And, Rachel, Eddie, Pat, thank you so much for being here today.

Oh, my God, you've touched all of our hearts, as you've heard everybody say.

But I just have a couple of questions.

Throughout this time, have any of you reached out to the governor's office or DOH directly, and did you receive a response?

I know, Eddie, you had said about your plan.

But...

EDWIN SIMPSER, M.D.: So we have had two meetings with senior members of the department of health: one that we had individually, and one that our representatives have had with senior members of

the department of health.

We've asked for a meeting with the commissioner.

We've had numb -- our representatives have had numbers of conversations with members of the second floor.

I think everybody is compassionate and aware, but I think everybody is afraid.

As Chairman Gottfried pointed out, I think the commissioner and the department of health are very anxious.

And the problem is, that we're regulated and considered a nursing home; whereas, our kids are not like the residents in geriatric nursing homes, and our staffing and our approach to care is just different. And we ought to be treated differently, and that's the argument we're trying to make.

I understand that they're frightened. But -- and we were anxious, frankly, coming forward and being so public, and making these statements. But, our parents are at a wits' end and we're at our wits' end because of that.

PAT TURSI: Well, we had six surveyors shows up today and did a second infection-control survey that we just flew through.

So, you know, I know that, you know, everyone is concerned. But we're doing a great job, and they commended us today for it.

And I also think that parents coming in with admissions, like Eddie said, we've had, you know, they come from Blythedale. That's one of our major referrals here. We're very close to Blythedale.

And they're able to visit there, and then they had to leave a two-year-old at the door, with complete strangers.

And we admitted a child like four weeks ago, and another one two weeks ago. And parents aren't able to come in with their child.

I just don't know, it just doesn't seem -- it's not right.

SENATOR SERINO: I can't -- I can't even imagine, like Rachel, watching you with your son, it's just absolutely beautiful, and just touched my heart.

So to not get any response is absolutely horrific.

You know, and I can understand people are nervous. Absolutely. But at least respond. You know, talk it through. That's all anybody is asking about, through this pandemic, no matter what area

we're speaking about.

And, Rachel, did you yourself reach out, or -- to the governor [indiscernible]?

RACHEL AMAR: I reached out twice to the governor's office. One time I was able to speak to somebody, who connected me to somebody else, who gave me another number, who connected me to somebody else.

And at the end, they called me back. And I filled out like this application -- or, this form in regards to filing a complaint. And they said that it wasn't in their jurisdiction.

And then I called the department of health who said that there was nothing that they could do.

So...

SENATOR SERINO: Yes, so who are you supposed to go to. Right?

RACHEL AMAR: Right.

SENATOR SERINO: That is absolutely horrible.

RACHEL AMAR: Always a fight, it really is.

SENATOR SERINO: Yeah.

And in the event of a second wave, what would be at the top of your priority list -- I understand visiting -- that you would want to -- for the State to do differently?

RACHEL AMAR: I mean, I think that, if the parents are tested just like the employees, and we limit the amount of parents that come in, I think it's the same thing.

What's the difference of a parent coming in or an employee coming in?

We don't know what the employees are doing during the day.

If everybody's getting tested, wearing the same PPE, take the same safety precautions, it's the same thing.

SENATOR SERINO: And I can tell you that I've had countless parents that have called me about this very subject, so I'm asking questions on their behalf as well.

My heart goes out to all of you, and thank you for all of the hard work that you do.

And God bless you, Rachel.

RACHEL AMAR: Thank you, thank you.

SENATOR RIVERA: Thank you, Senator.

And, again, apologies for not seeing your name earlier.

Back to the Assembly.

ASSEMBLYMEMBER BRONSON: Next we're going to go to Assemblymember Missy Miller for 3 minutes.

ASSEMBLYMEMBER MILLER: Thank you.

I also want to thank the three of you.

Rachel, I'm a mom of a medically-fragile child. I have him at home with me.

I cannot even imagine what you're going through. I can't -- I won't get through a sentence if I try to imagine it.

So, just know that I am thinking of you.

In full disclosure, I've known Eddie for far too many years. I won't age us both.

But, a very important point has been brought up, that I think department of health and the governor's office really, really needs to hear here, is that, the parents who keep saying they're not visitors, they are a very, very important part of the care team. They are part of this child's team.

And by keeping them out, they're keeping a part of that child's care team away from them.

And it's -- it's one of the most important parts of that care team.

You know, years and years I've been doing this. I trained pediatric residents on how to deliver chronic care.

And I fully believe that the department of health has missed this entirely. They just aren't

equipped to understand this.

And so this really needs to bring a light to this, that -- and the points of, you know, a staff member, 600 staff members, can go in and out every day, and go home, and ride public transportation.

I can guarantee you that parents are taking more precautions. They are not -- you know, they're going to make sure that they are not the ones bringing in any kind of virus, and would happily submit to testing every day if necessary.

I think, also, there was a point that was brought up earlier, even on other segments, that the testing that's required, what good is that testing if you -- if it takes five, six, seven days to get a result, and then throws you back all the way back to the beginning of your 28 days all over again?

It's really just unacceptable.

So, thank you for being here. Thank you for voicing these concerns.

I think it's disgusting that the department of health has waited three-plus weeks now, even with their anxieties, about what would happen if, you know, somebody were to get sick.

I think a zero percent positive of patients is a pretty significant, impressive, you know, note

to pay attention to. It should earn -- it should earn their respect, and it should get their attention at the very least.

I myself have been doing my part by badgering them to answer this, and I will continue to do so.

So, thank you.

RACHEL AMAR: Thank you.

SENATOR RIVERA: Thank you so much.

We don't have any other further questions from the Senate at this time.

ASSEMBLYMEMBER BRONSON: We will then go next to Assemblymember Brian Manktelow, and Brian will have 5 minutes.

ASSEMBLYMEMBER MANKTELOW: Thank you, Chairman. I'll keep it short.

Doctor, just a quick question for you.

Earlier on, you had said something about, there's a lot of room for -- or, some room for interpretation on the [indiscernible].

Can you expound on that just a little bit for me?

EDWIN SIMPSER, M.D.: Well, the terminology is "medical necessity." There are two words in the "visitation restrictions."

One is -- that would allow people to come in.

One is "compassionate care," and the other is "medical necessity."

"Compassionate care," the DOH seems to interpret as end-of-life care.

And as Pat pointed out, sometimes that's very challenging for us to know when a child is going to go down.

We actually had a baby whose parents didn't see him for three months, who got sick, and in 24 hours died.

We got them in before he died, and they got to hold him, but they missed three months of his life.

Because it's hard to know, and we're nervous about breaking the rules at the same time.

The same with medical necessity, what's "medical necessity"?

How do you interpret "medical necessity"?

And, I'm ready to argue, and I'm happy to have the argument with the commissioner, frankly, that parents are medically necessary to be at the child's bedside.

But that's not how we've interpreted it up until now, except for children who we're planning on discharging.

ASSEMBLYMEMBER MANKTELOW: You said you're afraid to break the rules, or [indiscernible] something.

What would happen if you broke the rules; what are you talking about?

EDWIN SIMPSER, M.D.: Well, we are certifying every week/our administrator is certifying every week that we are following all of the governor's executive orders and all of the DOH directives.

We are subject to fines. Our administrator could be subject to losing her license.

So, you know, we're anxious about not following the rules, and interpreting things differently than how they've been interpreted throughout the industry.

ASSEMBLYMEMBER MANKTELOW: All right. Thank you the, Doctor.

Rachel, could I ask you a question really quickly, please?

RACHEL AMAR: Sure.

ASSEMBLYMEMBER MANKTELOW: And thank you for your words about your son. I don't want talk a lot because I'll start crying.

So, in your eyes right now, what's the hardest thing going -- what's the hardest thing

right now, at this point in your son's life, that's going on today, that you feel is the hardest thing for him?

RACHEL AMAR: I mean, the -- well, the hardest thing is that, he doesn't see me. I mean, he's used to seeing me. I come, like, seven days a week, every single day.

And, for him, that's all he knows. He doesn't like change. He likes me to be there. Like I said, I sit in bed with him.

He doesn't even like when people come, because, you know, obviously, people come over to the bedside, they want to talk with me. He gets so angry, that he starts turning blue. And they already know, Okay, Max, sorry. We won't talk to mommy.

He -- you know, 24 hours a day, 7 days a week, he's living in this facility. And when I'm there, he wants my time, and he wants me.

And it's understandable, and he deserves it.

ASSEMBLYMEMBER MANKTELOW: So, as a parent, you're willing to take the risk of opening up the doors and allowing you as a mother, into his room?

RACHEL AMAR: I mean, obviously, I'm very scared.

But, I have been sitting home the past 4 1/2 months. I don't -- I go out maybe once a week to go to the supermarket. I don't go anywhere. I don't have anybody in my house. I'm, like, sitting, waiting, like, on-call for -- to get the call, that I'm going to be able to go and visit him.

So I haven't been doing anything.

And, I mean, obviously, if I will be allowed in, I will take even stricter precautions, because -- I mean, you know, this -- but the fact that employees are coming in, I mean, I don't think they're going to be doing anything different than I'm going to be doing.

So I think that things should be okay, and I know he really needs me.

So -- especially when I FaceTime him, and he's so sad and he's crying, and, I mean, just breaks my heart.

ASSEMBLYMEMBER MANKTELOW: Absolutely.

I -- I can't imagine not speaking to my kids.

RACHEL AMAR: Yeah.

ASSEMBLYMEMBER MANKTELOW: So thank you all for your testimony.

And I think our job as legislators is to make sure we take your testimony, and let's not wait

two weeks, three week, four week, let's make sure something happens sooner.

We need to get you back to see your children. We need to open these things up.

And I feel the safety part is there from you and the staff members, and I will be pushing for that from the Assembly side for sure.

So thank you all for your testimony.

PAT TURSI: Thank you.

RACHEL AMAR: Thank you.

SENATOR RIVERA: Thank you, Assemblymember.

You've got one last questioner, I believe?

ASSEMBLYMEMBER BRONSON: I do.

Assemblymember Tom Abinanti, 3 minutes.

ASSEMBLYMEMBER ABINANTI: There we go.

Thank you.

I guess, again, maybe I'll be the last -- except for the Chair, I'll be the last one.

But, Eddie and Pat, I want to thank you for coming in, and possibly risking the wrath of the health department.

And, Rachel, thank you for having the courage to come forward and talk.

Like Missy Miller, I have a child with a disability. My child, fortunately, is running

around. He's got autism.

And I can see, if I'm just away at Albany for a few days, he very much misses me, because we've changed the style.

I can't imagine what your son is going through.

I agree with your comments, Eddie and Pat, that you should be able to have the same rules as Blythedale, which is in my district.

You know, I've been hearing from a lot of people about all types of congregate care, where parents have been the deprived of being able to see their children; their children have been deprived of being able to see their parents.

We're struggling with, what is this concept?

Is it a visiting, whatever?

From my point of view, it's parenting.

As you said, you're part of the care team.

I think this is a discrimination against people with disabilities, because people with disabilities are being deprived of the right to have part of their care team there because they're related to the care team.

And I find it ironic.

I tried to get, for one of the parents,

additional Medicaid payment, because she was a nurse, and she was taking care of her son, when she couldn't get other nurses who were -- and she had approval under Medicaid for this service.

But the response was: Well, she's a parent. Why should she get paid to take care of her son? This is just parenting.

And now, on the other side, you're trying to go parent your child, and you're being told you can't because you're a parent, because -- because he's in this institution and you can't go there.

So -- it's just -- it makes no sense.

And, I'm very, very disappointed that the health department doesn't understand people with disabilities.

And the governor today, oh, the governor was really paying attention to what we were doing.

I was checking the news.

What did the governor do today?

Well, he announced that he was signing the New York Child Victims Act. Very, very important.

But, this hearing is as important also.

He could have waited till tomorrow to sign that.

And he spoke about openings.

He wasn't opening your institutions. He was opening schools that's going to happen in September.

And then he legalized frozen desserts which are infused with liquor.

He did everything possible to divert attention from this hearing today, because he knows that his administration is not doing the right thing.

So I appreciate all of you coming forward.

We're all together on this.

I join my colleagues, we're going to push real hard, because this is insane, this is inhuman.

This is a mistake by this administration, and it's got to change.

Thank you for coming forward.

RACHEL AMAR: Thank you.

SENATOR RIVERA: Thank you, Assemblymember.

And on behalf of all of us, we again thank you for your testimony here today.

And I assure you that this is not falling on deaf ears.

It's -- there are things that are already moving. I've already gotten a couple of messages about plans that are moving around, and what have you.

So thank you so much for being here, and, have a great, wonderful evening.

EDWIN SIMPSER, M.D.: Thank you very much.

PAT TURSI: Thank you so much.

RACHEL AMAR: Thank you.

SENATOR RIVERA: Moving on to Panel Number 8 --

I see the glimmer at the end of the tunnel. Let's keep powering through.

-- we have:

Beth Finkel, the New York State Director of AARP;

And, Judith Grimaldi, a member of the New York State Bar Association's Elder Law Section Task Force.

ASSEMBLYMEMBER GOTTFRIED: And do you both swear or affirm that the testimony that you're about to give is true?

OFF-SCREEN TECHNICIAN: One second, Assemblymember. I'm going to transfer them over with their cameras.

SENATOR RIVERA: Yes.

Make sure you turn on your cameras, both of you folks.

BETH FINKEL: Hi.

SENATOR RIVERA: Yep, there's both people.

ASSEMBLYMEMBER GOTTFRIED: Okay.

Do you both swear or affirm that the testimony that you're about to give is true?

BETH FINKEL: Yes.

JUDITH GRIMALDI: I swear, yes, I do.

ASSEMBLYMEMBER GOTTFRIED: Okay.

SENATOR RIVERA: Ms. Finkel.

BETH FINKEL: Okay.

Thank you very much.

I want to thank you all for all the work that you have all done during this pandemic to help New Yorkers push forward in these unprecedented times.

I know that we're all concerned about a possible second wave on the horizon.

We can never let this tragedy happen again.

6300 deaths occurring in adult long-term-care facilities, clearly, the State's focus on the onset of the pandemic was really focused on hospitals, not on the adult residential, facilities, communities.

And even though the virus's first strike was a nursing home in Washington State, so it's not like we didn't know that this was going to be coming.

Building hospital-bed capacity and securing

ventilators was critical, but our focus and planning should have included nursing homes and long-term-care facilities, which has some of society's most vulnerable, many of whom have preexisting conditions.

And I know that all of you know this so well, and I know that you've all been working in the Assembly and in the Senate so hard to try to help people in long-term care.

AARP joined with the Urban League, Asian-American Federation, NAACP, and the Hispanic Federation, and 1199 SEIU, to ask Governor Cuomo to create a long-term-care COVID task force, working with consumers, long-term-care providers, home-care agencies, and unions.

It would be modeled on the successful approach the governor took to coordinate New York's public and private hospital systems.

We need real planning and real coordination.

We also asked the governor to ensure that the long-term-care system received adequate supplies of PPE.

The governor did not establish such a task force or release a coordinated plan for the long-term-care system, to thwart future pandemics,

or, a second wave of the COVID pandemic.

That's why we're supporting Senator May's and Assemblywoman Cruz's bill to establish a long-term-care task force to examine the state of long-term care, both home-based and facility-based, and to consider potential models for improvement.

We believe this task force should certainly look at current staffing levels, as we heard so much today in all the testimony that came before me, and any possible supply-chain issues for PPE in the future.

This bill passed the Senate two weeks ago, and awaits action in the Assembly.

AARP strongly believes that family caregivers should be a part of this task force since they play such an integral role in our long-term-care system.

While AARP fully recognizes the necessity of shutting down nursing homes to visitation by families, we also understand the devastating impact that this has had, both on the families and their loved ones in nursing homes, since family members often carefully monitor their loved one's health status, and are often the first line of defense in identifying key areas of concern to the facility staff.

Not being able to visit a loved one in person, and then, not being able to communicate with them during this time, has been one of the most frequent complaints that we have heard from our AARP membership.

And I know you all know this, but, we have over 2-1/2 million members in New York State, so we've been hearing from a lot of them, and they're really upset.

Many facilities failed to provide regular and effective opportunities for virtual visitation.

We even heard stories that the only communication that a family received was that their loved one had died of COVID.

We are grateful that the legislature passed and Governor signed into law legislation requiring communication protocols for nursing homes, including virtual visitation in the future.

But while the governor dedicated $1 million for technology necessary to implement the virtual-visitation program, media reports indicate that very few nursing homes are actually opening up for visits.

And this issue certainly needs more attention by the legislature, and the State, to make sure

families can see their loved ones as soon as possible.

AARP strongly recommends that the long-term-care ombudsman program be improved, by hiring more professional staff to be trained and sent to more nursing homes throughout the state.

We certainly heard a lot about the ombudsman program. Currently the program relies on volunteers.

I want to thank you all for the steps forward by repealing certain legal immunity for nursing homes, but repealing nursing home and long-term-care facility immunity must be full and retroactive.

AARP is very concerned that the 6300 families who lost loved ones do not have access to courts; and, therefore, do not hold nursing homes accountable.

SENATOR RIVERA: Thank you, Ms. Finkel.

Now Ms. Judith Grimaldi.

JUDITH GRIMALDI: I'm looking at my notes, and I noticed I started it off with, Good morning.

So I have to change it to, Good evening, or maybe even Good night.

I was optimistic.

SENATOR RIVERA: You were such a positive

beam of light.

JUDITH GRIMALDI: I'm not going to go -- I could just say "ditto" to everything that Beth just said. And I -- so I'm going to skip quite a bit, but I want to tell you one graphic story.

I'm an elder-law attorney, and I work in Brooklyn. I'm actually on my local community's age-friendly, but I wear many hats, having been a past chair of the elder-law section of the state bar, and the past chair of the city bar, and the past chair -- past chairs of many things.

But I'm going to get right down to the story of the Ling family.

You would enjoy meeting the Ling family. They're warm, they're kind, and they're capable, and they lost their mother.

There are three professional children whose mother, Linda Ling, who lived independently, completely fine, on her own, in her Lower Manhattan apartment. And she fell, broke her pelvis -- wow! -- and ended up in -- right in your district, Chairman Gottfried -- she ended up in Gouverneur Hospital, Health And Hospital Corporation's 295-bed facility. And -- right down in -- on 227 Madison Street. She lived in Lower Manhattan as well.

Right at the start of the outbreak, she entered the facility on March 16th. She died on April 23rd.

She was admitted to the home with a broken pelvis. She was fine, she was optimistic: I'm going to get through rehab and I'm going home.

Unfortunately, it was downhill from day one.

Mrs. Ling used to speak to her daughter every day. It was their touchstone, it was how they kept in touch, and how she stayed alert and happy and connected.

During this period, she talked to her daughter 12 times.

During these weeks, the family had attempted to contact her, with the social workers, with the nursing staff, with the administration. It all fell for nothing.

They kept saying, I need to speak to her, I need to see her. What's going on?

They said, Oh, she's fine, she's fine.

Yet, when she did speak to her mother, all her mother would say is, They don't care here. They don't care. They are don't care if I have pain. They don't care, anything.

This proved to be true.

The daughter asked for psychological evaluation for her mother, an assessment of why her mother was failing to thrive, failing to eat, and the treatment of her mother's overall depression.

They said, We'll do that.

But on April 3rd, three weeks after her mother's admission to the home, the family learned that her mother wasn't participating in any physical therapy. That she had lost her ability to walk and transfer.

This is a shock to the family.

In addition, she was losing weight, and she needed two persons to assist her with all forms of transfer.

This is a woman that was fine, until she fell.

Their mother was wasting away and they could do nothing to stop it.

They would have been willing, as we heard from other people, to move heaven and earth to help their mother; but the system blocked.

They asked, Could we hire someone, to bring someone in, to make sure that she is connected, because she can't use the FaceTime, she couldn't get to us?

The family said -- were refused.

And then on April 7th, they learned that she was going to go home. They had got a discharge notice. They were thrilled.

And when the -- when she -- when the daughter called on April 8th to say, "Well, what's going on? I'm ready, I'll take my mother home," they learned, no.

There was no social worker on staff. She was out sick.

There was a substitute social worker who didn't know her mother.

There was a substitute nurse that didn't know her mother.

The psychological evaluation never happened because there was no longer a psychologist on staff.

The physical therapy was discontinued.

And, all they were going to concentrate now on was her mother's failure to eat and worsening bedsores.

There was no rehabilitation. There was just maintenance.

And she was -- they were just completely frustrated.

And then they got a call, finally, on

April 21st, that their mother was being rushed to the hospital. Her condition was worsening.

She was admitted to New York Presbyterian in Lower Manhattan for blood work, testing, and suspected COVID.

And on April 24th, she died, not of COVID, but an untreated urinary tract infection.

The reason for Mrs. Ling's death gives evidence to something we've known all along.

As an elder-law attorney, people would ask me, What nursing home would you recommend, Judy?

And, sadly, my answer was always: None.

None.

Because I couldn't feel confident that anyone was really going to give the kind of care that I would have wanted for my mother.

So this story tells you the story of the home's failure to give, not COVID treatment, but, primary care, the core reason that they were there.

It was the isolation, poor care, lack of health monitoring, overstressed and inadequate systems, and a staff at a nursing home that was overworked, that's what killed Mrs. Ling.

And there's just one --

SENATOR RIVERA: If you could wrap up, since

your time has expired.

JUDITH GRIMALDI: Yes.

-- the one thing that hurt the family more than anything, when they collected her belongings, they found, they were shaken and angered to find, that the small album they had left her, and all the mail they had sent her, had never been delivered to Mrs. Ling. She never saw any of those things, the things that would have given her the ability to hope.

So we as an elder-law community are ready to roll up our sleeves and work with you.

SENATOR RIVERA: Thank you so much --

JUDITH GRIMALDI: We want --

SENATOR RIVERA: Thank you so much, Ms. Grimaldi.

JUDITH GRIMALDI: Thank you.

SENATOR RIVERA: Assembly leads off questioning this time.

ASSEMBLYMEMBER BRONSON: Yes, I recognize Chair Gottfried for 5 minutes.

ASSEMBLYMEMBER GOTTFRIED: Yeah, at the risk of jumping the gun on what I assume would be Assemblymember Ron Kim's question, if Mrs. Ling's family felt that she was given substandard care, and

that somebody ought to be liable for giving her substandard care, below the standard of care of the community, thanks to Article 30-d of the Public Health Law that was enacted as part of this year's budget, unless they could prove gross negligence or intentional misconduct, they'd be locked out of court.

JUDITH GRIMALDI: Right.

ASSEMBLYMEMBER GOTTFRIED: And even if they wanted to allege that the nursing home had violated departmental regulations, the nursing home would be off the hook unless the department could prove intent misconduct or gross negligence.

Do I have that right?

And is there something that should be done about that?

JUDITH GRIMALDI: I -- if it's being directed to me, yes, you have that right.

And, that's one of the efforts that our -- of the New York State Bar's Funded Task Force.

And we're going to be working on -- and maybe with you, Assemblymember -- legislation to undo some of that budgetary, I think, mis-oversight of what was done -- I don't know why it was done.

The nursing home representatives who spoke

this morning said, they didn't ask for, they didn't lobby for it.

So who is lobbying for it; who made that happen? And can it be undone?

So, we're -- as the state bar we're looking to work with you and see if we can undo that legislation -- or, that budgetary regulation.

ASSEMBLYMEMBER GOTTFRIED: Yeah.

Thank you.

That's it for me.

SENATOR RIVERA: Thank you so much, Assemblymember.

Questions leading off in Senate by Senator May, recognized for 5 minutes.

SENATOR MAY: Thank you.

And it's great to see you both, hi.

Thank you for the shout-out for my bill about the long-term task force. I hope that Harry Bronson was listening, and can bring that up in his committee in the Assembly.

I also wanted to mention, I have a nursing home virtual visitation bill that you might take a look at.

But I wanted to use that to jump off as a question about, family caregivers.

You who probably heard the discussion earlier about the issues about family members, and, visiting, and some potential designation of a family caregiver.

Do you have thoughts about that, what -- what we could and should do?

BETH FINKEL: I think the whole visitation thing is very troubling.

We now have -- have -- what a health risk isolation is, and we're already talking about the most vulnerable. And so isolation for them is absolutely even more staggering.

I think, you know, one of the things, and you've asked for the long-term-care task force, and, we're very anxious to get that. But we need a real in-depth analysis of the whole visitation-isolation piece.

And at the same time, you know, I think we need an overarching examination of what happened with the nursing homes this time out. We need experts from a broad base of disciplines to come forward and really do some good digging here to figure out what happened and have a full formal report on it.

SENATOR MAY: Okay.

And, for Judith, I actually have a different question for you.

So on the department of health website there is a list of rights of nursing home residents, you're probably familiar with.

And the ombudsman handbook says, "State and federal regulations require nursing homes to have written policies covering the rights of residents."

I feel that we've been hearing a lot of cases where, at least the family members feel the rights haven't been observed.

What more do we need?

JUDITH GRIMALDI: I think community education. And that's one to the efforts that we'll be working on.

If you -- if you go into most nursing homes, posted, probably by an elevator, in a frame, indiscreet, is a listing of patient rights.

I've seen it, because I look for it every time I go into a nursing home, and it's there. But it's not well-publicized or well-demonstrated, and you have to kind of know about it.

The Nursing Home Reform Act goes back to 1987. And it was revised again in the 2000s. But, it's not talked about.

It's not -- and I think you heard from Richard Mollot this morning. If you just -- he's got it all worked out. We don't have to reinvent the wheel. That the long-term-care task force is really -- that organization has laid things out very, very well. I mean, we can take a page from that and maybe build on it.

But, there's a lot of groundwork that's been done, both there and nationally.

I'm a member of the National Academy of the Elder Law Attorneys, and across the nation it's happening. The groups, Elder Justice and Empire Justice in New York State has worked on it.

There's a lot of resources that are there, and we can pull on it, and we're prepared to work on that.

We're working on a white paper for review as well.

SENATOR MAY: Thank you so much.

SENATOR RIVERA: Great, thank you, Senator.

Now to the Assembly.

ASSEMBLYMEMBER BRONSON: Thank you.

And I'll go next, and I'll be brief.

And, yes, Senator May, I heard you loud and clear. I will help Assemblymember Cruz with her

bill, and, hopefully, we can move that forward.

But in line with that, Beth, you --

Nice seeing you, by the way.

BETH FINKEL: You, too.

ASSEMBLYMEMBER BRONSON: -- you talked about reaching out to the governor, and requesting the task force, one that would be made up of all the stakeholders -- consumers, long-term-care providers, home-care agencies, and unions -- and really coordinate a statewide effort.

Did you get a response from the governor's office at all on that request?

BETH FINKEL: We've had conversations, but we haven't heard anything moving forward.

ASSEMBLYMEMBER BRONSON: Okay. Are those conversations still ongoing?

BETH FINKEL: Uhm...

Not as of very recent; but, yes.

ASSEMBLYMEMBER BRONSON: Okay.

So -- I mean, it certainly sounds like, I mean, that's the whole idea of these hearings, is to hear from all stakeholders.

And that's all you were asking from an administrative process: let's get the stakeholders together and develop a good plan.

And, yeah, I'll just end with this, Judith, you ended your last response to Senator May.

I know you're all ready, willing, and you're able, and you have the expertise, you have the knowledge.

We really need to try to encourage the governor to involve all of the stakeholders in this, so that, you know, the difficult things that we were just talking about with the family on the panel right before you, with caregivers --

BETH FINKEL: Yes.

ASSEMBLYMEMBER BRONSON: -- of young children.

I mean, how do we work this out? Because it's not working right now.

So I just -- I just wanted to thank each of you for coming in, and look forward to working with you as we move forward.

BETH FINKEL: Thanks, Assemblymember.

JUDITH GRIMALDI: Thank you.

SENATOR RIVERA: Thank you.

I'll take the next round. It will be quick, I just have one question.

So if a family member -- because we heard a lot of stories today about family members who were

concerned, because they had lack of information, they didn't know state of health of their family member.

So if they want to actually have somebody discharged, it is my understanding the home could actually prevent that from happening -- correct? -- if they want to have their family member discharged?

JUDITH GRIMALDI: Even working on discharges, it has to be a safe discharge.

And the difficulty has been that, with the lockdown, the agent -- so you have to have a home-care setting that's safe, and assessments of.

So the discharge has been slow because assessments have to be done by Zoom or phone, have doctors prepare medical treatment plans, and then the hiring of home-care workers to -- the families often can't do the care at home.

So it's been slow because the pieces, the coordination pieces, have been slow. Everybody is in the same lockdown.

So I have not seen homes say, no, you can't take them home.

What they say is: Do you have a safe discharge?

And if the family is not as coordinated or

savvy enough to pull a discharge together, then it doesn't happen, and they're frustrated because they don't have the tools to do so.

SENATOR RIVERA: All right.

Thank you both.

I think that that is the extent of our questions for this panel?

And, yes, it is.

Thank you so much, both of you, for coming.

BETH FINKEL: Thank you.

JUDITH GRIMALDI: Thank you.

SENATOR RIVERA: We've got just a couple more folks who are hanging around.

Panel Number 9 will be:

Susan Dooha -- I hope that I'm pronouncing that name correctly -- executive director, Center for Independence of the Disabled;

Bryan O'Malley, executive director of CDPAANYS. Whoa, a lot of acronym there;

Faigie Horowitz -- again, I hope that I pronounced that correctly -- director of marketing and communication for the Caring Professionals, Inc.;

And, Claire Altman, president of Altman Strategies, LLC.

And, Monsieur Gottfried.

I can't hear you.

ASSEMBLYMEMBER GOTTFRIED: Hello?

SENATOR RIVERA: There you go, now you're good.

ASSEMBLYMEMBER GOTTFRIED: Do all of you swear or affirm that the testimony you're about to give is true?

SUSAN DOOHA: I affirm.

BRYAN O'MALLEY: I affirm.

FAIGIE HOROWITZ: I affirm.

CLAIRE ALTMAN: I affirm.

ASSEMBLYMEMBER GOTTFRIED: Okay.

SENATOR RIVERA: All right. Let's start with Susan Dooha, please.

SUSAN DOOHA: First, thank you so much for allowing us to appear before you.

I want to thank the nursing facility staff who appeared before.

I want to thank the family members of residents of nursing facilities.

And, of course, Richard Mollot and Beth Finkel, what can I say?

Terrific work.

I want to speak to you about our work.

About half of our 70-plus center staff assist individuals who want to secure care at home and in the community, or, another more integrated setting, so that they can avoid nursing-facility placement.

I would agree with Judith, the only safe nursing facility, actually, is the one that you can be at all the time.

These staff also help people leave nursing facilities for their homes in the community, and our staff protect the rights of nursing-facility residents and their families.

Our help lines have been open throughout the pandemic, and have fielded many desperate calls from nursing home residents and their families, from staff of nursing facilities. And we've been managing complaints, appeals, desperate cries, to exit facilities.

Residents have called CIDNY, desperate to get out.

Often our staff calls to facilities about them are not returned for days at a time.

Our open-doors program helps individuals who want to leave facilities.

And we've been able to get 27 individuals out of nursing facilities in New York City, the

epicenter of the pandemic in New York State, and one of the epicenters across the nation.

However, 136 people that my staff were working with, died before they could exit the facility, and they were in the process of transition. And we mourn them, and our staff are grieving for them, and their families.

I could speak with you about any number of issues that have been covered today, and I think add important issues to what you've already heard.

I would be remiss if I didn't mention and speak briefly to the issue of racial and ethnic disparities because nursing facilities are especially dangerous for people who are Black or Brown.

"The New York Times" observed that facilities primarily serving Blacks and -- Black and Latinx residents had cases of COVID at twice the rate of facilities serving White incidents.

We've also observed this.

And we want to know:

Where is the focus on resources -- of resources on eradicating disparities and treatment and care in nursing facilities?

Where is the public awareness of what's

happening in these facilities?

Where's the racial ethnic demographic data?

Where is the disability -- where's the disparities prevention and eradication task force for people in congregate facilities?

And, does emergency planning being done by nursing facilities include a focus on how they will address populations at much higher risk?

I could address all kinds of other issues.

I want to touch briefly on involuntary discharges, because no one has mentioned that.

It is important that you know that individuals are being discharged from nursing facilities to very unsafe places; to homeless shelters in New York City, which are not even equipped as nursing facilities, to do infection control, to provide PPE, and to have other prerequisites of safety.

We believe there should be a moratorium on such discharges at this time.

You've already heard enough about many of the other issues, but it's imperative that I speak with you about the egregious and chronic underfunding of the long-term-care ombudsman program.

The governor called the long-term-care

ombudsman program "a watchdog." And I want you to hear about the condition of "the watchdog."

We've worked daily to provide assistance, and to be the eyes and ears of family members, and the eyes and ears of the state of the department of health, and provide a resource for families.

During the recent period, we have participated in hearings, and appeals. We've addressed 350 complaints and requests for information. And, much more.

We have a staff of five certified ombudsmen who are able to go into facilities, and they are serving more than 50,000 residents of nursing facilities, as well as residents of other facilities.

And --

SENATOR RIVERA: Ms. Dooha, if you could actually -- if you could wrap up, since your time has expired.

SUSAN DOOHA: They are in no way adequately able -- there's one ombuds for every 8,650 nursing home residents.

The standard is one for 2,000.

We'd ask for --

SENATOR RIVERA: Thank you so much, Ms. --

SUSAN DOOHA: -- $3 million for the LICUP program, and we hope you hear our plea.

SENATOR RIVERA: -- thank you so much, Ms. Dooha.

SUSAN DOOHA: Thank you.

SENATOR RIVERA: Mr. Bryan O'Malley.

BRYAN O'MALLEY: Good evening.

Thank you for having me.

These hearings are critical to victims of this crisis, and their families deserve justice.

But I want to be clear:

The problems that we're talking about aren't new, and they can't be fixed.

To make sure this never happens again, we have to use this tragedy as an opportunity to reimagine our long-term-care system, and focus on improving services like home care and consumer-directed personal-assistance that exists in our communities.

These services not only prevent the rapid spread of pandemics, they provide better care and address health disparities that plague our health-care system.

What I'm going say isn't without precedent.

In 1972, when the country learned of the

horrors at Willowbrook, it led to New York becoming synonymous with the word "deinstitutionalization."

And as an epileptic, even I have benefited from this movement.

Much of the last century would have seen me at a county for epileptics in Sonyea, New York, instead of before you here today.

This is important because, if we're lucky enough to reach old age, we will need assistance.

And while the ability to age in place is a civil right, it's contingent on being able to receive the services you need. But nobody wants to go to a nursing home.

And I guarantee you, folks like Michael Bloomberg never will.

The research is clear: Nursing homes are for those without resources, and primarily those on Medicaid, even though a nursing home costs over four times as much as the average person in consumer-directed.

Thus, it should also not be a surprise that nursing homes with the higher numbers of Black and Brown residents were disproportionately impacted by this virus.

The wealth and resource gap, that means Black

and Brown folks disproportionately live in poverty, also makes them more likely to go to a nursing home. It means they're more likely to be in worse health, have less resources when they get to one, meaning, they're more likely to die.

Meanwhile, CDPA addresses many of the health disparities that much of the health-care system struggles with.

When the person receiving services is hiring, they can guarantee their staff will speak their language. They don't have to worry about whether or not the staff will understand or respect their cultural needs. And concerns about institutional racism in the health-care systems, such as that which stems from Tuskegee, Henrietta Lacks, eugenics, and countless others, are mitigated when people actually control their own services.

As I've said, the problems are -- of COVID aren't new.

Nursing homes, like all congregate settings, inherently pose a safety issue for residents. And this isn't the first instance of a contagious disease disproportionately impacting these institutions.

The flu, Legionnaires' disease, and even the

common cold, ravage nursing homes every year.

Natural disasters, like "Superstorm Sandy," also always come with stories of horror about their impact on these populations.

But an examination of policies shows a bias towards institutional care despite community-based care's multiple advantages.

This year, the State enacted a look-back period for home care and CDPA before they can even receive services, a process that often takes six months or more, and which in a nursing home is provided while the look-back is taking place.

And I'll acknowledge Senator Rivera and Assemblymember Gottfried's legislation that would fix this bill.

We do not know the impact of COVID on those in CDPA or home care because the State didn't collect the data. But we know several realities, not the least of which is that, while one nursing homeworker can infect hundreds in an institution, in CDPA, that person typically only works with one, maybe two consumers, and immediately limiting any potential spread.

In a survey CDPA conducted, every region of the state saw between 70 and 90 percent of

respondents acknowledge they were more likely to die if they caught COVID, and between 50 and 90 percent worry that they would become infected.

But what most feared, even more than the virus itself, was institutionalization.

On top of this, consumers who have historically received gloves, rubbing alcohol, and other critical PPE and medical supplies from Medicaid, were suddenly unable to do so.

When they could, they were forced to buy them themselves at dramatically marked-up prices.

Despite these problems, it's clear that home care, and in particular, CDPA, was substantially less dangerous than an institution.

But that didn't stop the governor from saying to Chuck Todd on June 29th's "Meet the Press," in the face of all evidence to the contrary, that: You can argue that a senior citizen in a nursing home are safer than a senior citizen in a home.

COVID-19 provides us with a unique moment to analyze our policies, the impact they have, and what we can do to improve them into the future.

I'm reminded of an altruism about smoking.

Public health experts noted, that while the health-care costs for smokers are substantially

higher for a brief period of time, they actually saved the system money because they died decades before their non-smoking counterparts.

If we don't use COVID-19 as an opportunity to change our policies around nursing homes and long-term care, we're, in essence, saying that, unlike smoking, we're going to continue to promote institutionalization [indiscernible cross-talking] --

SENATOR RIVERA: Thank you so much Mr. O'Malley. If you could wrap up, please.

BRYAN O'MALLEY: -- people die sooner.

SENATOR RIVERA: Okay. Thank you so much, Mr. O'Malley.

Next -- next, Faigie Horowitz.

I hope that I pronounced your name correctly. I'm sorry if I did not.

FAIGIE HOROWITZ: You did fine, Chairman.

My name is Faigie Horowitz. I work for Caring Professionals, a licensed home-care agency and fiscal intermediary for CDPA, based in New York City, which serves over 5,000 individuals.

I come out of a management career in social services.

I'm an executive board member of an OPWDD

agency for over 20 years, and I'm a founder of a shelter for runaway and homeless youth in Brooklyn.

I serve on the parks committee in the Long Island village where I reside.

Today I am testifying out of a sense of moral obligation.

My 89-year-old father died of COVID-19 on April 7th. He succumbed peacefully in his own bed, without requiring outside caregiving, and was active until his last day. It was a dignified passing.

In my work, we provide caregivers to those much less healthy, less active, and much more vulnerable than my late-father.

During the early months of the pandemic, our coordinators heard from frightened, frail patients and consumers who realized they were at high risk, and must stay quarantined to avoid life-threatening exposure.

It is a job of our coordinators to reassure patients and family members that our home-health aides would use PPE to protect them, and would continue their caregiving jobs.

And continue they did, leaving family members at home, and traveling on public transportation, to care for their charges, despite the fact that their

jobs paid just above minimum wage, and could be life-threatening. They worked, nonetheless, often doing overtime without pay.

In Spanish, Russian, Cantonese, Creolian, Mandarin, our staff heard fear of removal to a nursing home if there would be no available caregivers.

"I will die there," a woman in Sheepshead Bay told Marina Kay. "And if I am destined to die now, I would rather die in my own apartment."

The fear is also true of people using CDPA, as documented by Bryan's organization, the Consumer Directed Personal Assistance Association of New York State, in a survey conducted during COVID.

It is abundantly clear, from numerous studies, that aging in place is safer and healthier than institutionalization, and is the preferred choice of seniors.

However, the history of long-term care for people with disabilities and seniors in this state has gone from pioneering choice and expansion of access, to restriction of choice and barriers to enrollment in Medicaid during the past few months.

Additionally, a 25 percent cut to wages and benefits for home-care workers was put in place, as

recommended by the Medicaid Redesign Team II earlier this year.

This was done despite a study showing that low wages were one of the cheap obstacles to both recruitment and retention of New York home-care workers.

Currently, I am seeing advertisements warning people to be aware of the looming changes in Medicaid rules beginning October 1st.

I'm hearing from families in the communities who are afraid their seniors might become seriously debilitated very quickly from COVID, and will need assistance that their current moderate income cannot cover.

I can urge them to hurry up and put their affairs in order, and apply to Medicaid at any time. And I do.

However, I must warn them, that when they will need long-term care, the current contradictory and vague regulations will seek to keep them from accessing it.

Furthermore, I will tell them that the MLTCs are instructed to promote congregate care, and take away home care, under the new regulations if the hours become too numerous.

Frankly, I'm in the position of substantiating their fears of institutionalization.

The rest of the country and the federal government have learned the importance of home care during corona, and are implementing policies to support this healthy, safe choice more broadly.

In New York State, however, the situation is the reverse. The ethically-responsible approach is continuing to be undermined, despite the current lessons of corona deaths in congregate care.

Beyond the moral obligations to the vulnerable will be good for New York State's economic recovery to invest now in home care and its thousands of jobs.

It's up to our lawmakers to push back against current policies, wage cutbacks, and restrictions, and do the right thing to reform home care here.

We already have the solution to the problem of unsafe congregate care facilities: CDPA, which has family members take care of family members at home at a lower cost than traditional home care.

It's the safer and socially-responsible option already in place.

So, let's expand it.

SENATOR RIVERA: Ms. Horowitz, did you -- was

that the end?

FAIGIE HOROWITZ: The end.

That was my call to action.

SENATOR RIVERA: Thank you so much, Ms. Horowitz. Perfect timing.

Next, Claire Altman, please.

CLAIRE ALTMAN: Thank you, Mr. Chairman, Chairlady, and Chairmen, and members of the Senate and the Assembly.

Thank you for this opportunity to share some ideas myself and my colleagues have with regard to improving policies and practices in long-term care.

As the president of Altman Strategies, I do a lot of consulting around health care, low-income housing, and community development.

The ideas here today have been developed by myself; Dr. David Katz, who is a well-known physician and public-health advocate, president of True Health Initiative, and the founding director of prevention research center at Yale University-Griffin Hospital; and, Jack Gold, a real estate colleague who has done a lot of work in developing long-term-care facilities.

As a lawyer by training, I've spent the last 35 years developing housing for low-income

individuals and families, and for persons with special needs, primarily in New York City.

In my portfolio of over 3500 units are two skilled nursing facilities for individuals and families with HIV and AIDS, which I developed in the 1990s, and for one of which I served as the chairman of the board for 17 years.

We learned a great deal about infection control back then, with some of the lessons learned applicable to the current pandemic, particularly, the high risk of spreading infectious diseases through central air-handling systems.

We believed from the very beginning that the only way to really protect residents in nursing homes from this pandemic is what we have termed a "closed-loop isolation system."

Now, six months into this epidemic, our experience has borne out this belief.

For example, one 40-bed skilled nursing facility in Upper Manhattan has had no COVID-19 deaths.

What differentiates this facility from many others are several key factors.

Almost all of the rooms are individual rooms;

There is no central air-conditioning system.

They use room air conditioners;

Many staff only work at this facility;

Food is prepared on-site;

And given the size, there are a limited number of outside vendors and therapists coming into the facility.

In a closed-loop isolation system, as we are proposing, residential health-care facility management would set up an isolation arrangement, creating what we call a "clean facility."

This would begin with what is done now, at least weekly testing of staff and residents, hopefully, with immediate results.

That would be the first step in ensuring that COVID-19-free residents are protected by closing off all sources of virus to them.

Other features to this approach would include:

Residents only going to clean medical facilities for services such as dialysis and cancer care;

Only traveling in vehicles that are clean vehicles;

Receiving hospital care only in clean hospitals;

Having fewer/no visitors, at least for a time.

In addition, jurisdictions could create one or more temporary nursing or assisted-living facilities so that people who are about to enter a nursing home would be entering there, and be there for 14 to 30 days, to ensure that they are COVID-free.

We recognize that there are advocates for an approach referred to, and it's been talked about, called "cohorting."

That is the approach supported in the Senate and House bills in Congress, with -- that includes a $20 billion appropriation for nursing home relief measures.

The danger is, that COVID-19 would still be present in the building when you just set aside one wing for COVID people and one not.

Simply put, COVID-19 has proven from the beginning that it is extremely cunning, and has outsmarted every attempt to eliminate it once it's in the building.

We believe the only way to prevent COVID-19 from spreading is to keep it out of the facility altogether.

Now that scientific results are emerging, suggesting that COVID-19 can be spread through airborne transmission, there is another compelling reason to create closed-loop isolation systems, with separate facilities for non-COVID-positive residents and for COVID-positive residents.

As long as COVID-negative and COVID-positive residents share the same air-handling system, the virus is likely to spread.

We recognize that this closed-loop isolation system would create additional costs in the short run, but we believe the longer-term benefits more than outweigh these short-term costs.

Lives would be saved.

You all know the desperate statistics on saving lives.

Major reduction in hospital costs would be achieved as health-care providers would spend less time treating COVID patients.

This would permit safer opening of the rest of our health-care system, and, we would, importantly, protect health-care workers.

I realize that my time is up.

SENATOR RIVERA: Actually, just wrap up, please.

CLAIRE ALTMAN: Sure.

I just want to close with saying:

That we should also pay attention to home care, as the speaker before me talked about, because the next wave is going to be dealing with that.

And a similar situation could be dealt with home-care residents.

Thank you for your time and the opportunity to testify.

SENATOR RIVERA: Thank you so much.

Leading off the questions will be the Senate, Senator May, recognized for 5 minutes.

SENATOR MAY: Thank you.

And thank you all for your testimony.

I wanted to give Susan a chance, although Faigie also talked about this, about the -- I know you wrote a letter about the managed long-term-care changes, and how that was stranding people in nursing homes who no longer had access to home care.

Can you talk a little bit about that problem, and what you see as the solutions, what we should be doing about it?

SUSAN DOOHA: There are a number of things that have resulted in people being stranded in nursing facilities.

One, some of them I've already described to you.

But it's some of the limitations on care in the community, and the barriers to care in the community, that also have us very worried.

We would want to see resources restored for the consumer-directed personal-assistance program.

Managed long-term-care changes have resulted in a lot of cuts of hours of home care for individuals.

And this month, over 20,000 individual residents of nursing facilities are being dis-enrolled from their managed long-term-care plans due to a determination that they are now permanently placed.

Their -- this has reduced their ability to get out. It has resulted in problems that will make it much more difficult to change their coding, to get their income re-established.

All kinds of things are about to be much more difficult for many.

And we would call for a moratorium on the rollout of this, at least until the pandemic is over.

We think that it's imperative that additional

changes that can lock people into nursing facilities not be made at this time.

SENATOR MAY: Okay.

Thank you.

And my other question is for anyone who wants to field it, but it's about just the home-care field.

So I have spent a huge amount of time advocating for better pay and various ways to attract people into doing home care as the workforce shortage is growing more and more acute.

But it seems like now there is additional demands for PPE and other protections and, no doubt, difficulties with people who were maybe going into two different homes, and they can't do that anymore.

What are the biggest barriers to the actual logistics of home care right now?

SUSAN DOOHA: Lack of PPE is a tremendous problem.

We are seeing individuals living in the community who are terrified to let in their home-care workers because they are at higher risk.

Like our staff, like residents of facilities, they're at much higher risk. And they can't control the environment that home-care workers are working

in; or how many people that they're seeing; or how much PPE do they have, and whether they have enough PPE to use unique sets of PPE for every setting.

I have yet to see that home-care workers or long-term-care ombudsmen workers have been designated as "essential workers" in the health system, and have had testing allocated, the adequacy of PPE assessed, all of the things that we believe need to happen.

So these are really terrible problems that have yet to be tackled.

Nonetheless, people would prefer to take their chances with care at home in the community than they would be to be locked into nursing facilities right now.

SENATOR MAY: Okay.

I'm going to break in and let somebody else take a shot at this while we have --

BRYAN O'MALLEY: I would just agree with everything Susan said, and our survey bore out a lot of that, particularly with access to PPE.

But I would also highlight that the staffing shortages you talked about, Senator, have just been exacerbated, in many instances, by COVID.

Many people have gotten infected with the

disease.

Many workers have had to quit, to take care of children who are out of school.

Many workers just are themselves compromised, and scared to go out in public, and are quarantining themselves.

So, realistically, staffing has gotten shorter. And plans, in many instances, are using, you know, the higher unemployment rates to say, oh, we'll cut your hours because, while your brother is now home, and he can just provide the services uncompensated.

So, you know, we're seeing a range of issues around staffing and informal supports -- or, informal [indiscernible].

SENATOR MAY: Thank you.

FAIGIE HOROWITZ: I'd like to jump in with --

SENATOR RIVERA: Actually, we have to move on to the next person.

Assembly, please.

ASSEMBLYMEMBER BRONSON: Next up we have Chair McDonald for 5 minutes.

ASSEMBLYMAN McDONALD: Thank you, Harry.

And thanks to all those who provided

testimony this evening.

I'm going to be brief.

Claire, you know, when I read your report, it reminded us that it's the environment that we need to be focused.

And the closed-loop system does sound like a stretch in some aspects. But, on the other hand, you know what? With everything else that's been failing, we've got to look for solutions.

I have to ask this naive question, you know, because I think almost every nursing home I know of relies on the central-air system.

The cost would have to be kind of expensive to retrofit, I would think.

And then the other question is: What are the ongoing costs compared to the central-air system, with just having room air conditioners?

CLAIRE ALTMAN: Well, I think we helped build that nursing home 25 years ago.

But, today, there's more sophisticated technology.

And I'm not a builder, but I oversee a lot of buildings and developments, PTAC systems, which is a unit you see often in motels, which is a combined heating and air-conditioning system controlled

individually. And it doesn't circulate the air throughout the building. The air circulates in that room, and with an outside source.

So those systems are not actually that expensive, and -- to buy. And they're, frankly, not that expensive to operate either. We've made a lot of strides.

Now, it would mean not using a central system if it's there.

And, you know, it depends on -- I'm not saying it could be done overnight, but I'm saying we need to look forward to something.

I think we ought to have in place a plan, as many people have said today, so that if we do have a second wave, or there's another pandemic, that we have a more serious system, if you would, that we could put in place, like they're trying to do with floods.

So it's on the shelf; it's a policy, we could implement it right away.

So, it's expensive. But, on the other hand, we've lost at least 6400 lives, maybe more, as you all have talked about today, and untold grief for families and loved ones.

So that I think, you know, it's -- and in

most buildings, after 20 years, they do a lot of updating anyway.

So --

ASSEMBLYMAN McDONALD: What about energy consumption, or utilization?

CLAIRE ALTMAN: It's not that -- I actually know, in the residential setting, that people were worried, when they moved into a building with PTAC systems, that their energy costs would go up, their Con Ed bill would go through the roof.

And that hasn't been the case.

But you would need engineers to do an assessment.

I'm not an engineer, so I can't give you a full answer.

But I think it's something that is worth looking at. We need to do some planning.

ASSEMBLYMAN McDONALD: Okay. Thank you.

That's it.

Thank you, Harry.

SENATOR RIVERA: Thank you so much.

We are now -- will move to Senator Skoufis, recognized for 5 minutes.

SENATOR SKOUFIS: Thank you, Mr. Chairman.

My question is actually for Bryan O'Malley,

if I can direct one to you.

You mentioned that the State is not tracking infection rates among the consumer-directed program.

But can you give a sense of, even if it's anecdotally, what -- you know, have infections been pervasive?

Obviously, you know, you noted, and it stands to reason, you know, these are primarily one-on-one interactions versus, you know, hundreds of people potentially being in a facility, in a nursing home, and so the environment is very different.

But can you speak to what has been happening these past 5 months vis-a-vis COVID in the consumer-directed program?

And, similarly, have you all had sufficient PPE?

Speak to some of these, you know, major themes and issues that we've heard a lot about today in the hearing, please.

BRYAN O'MALLEY: Definitely.

Thank you.

You know, from what we can gather, certainly, you know, people have been impacted by COVID.

The workers oftentimes, you know, in the city, riding the subway, taking taxies, using public

transportation, to get to and from their cases.

We hear stories of workers changing, two, three, four times a day, to, you know, the same stories that you hear from nurses in hospitals, and the like.

But, by and large, you know, a lot of the worst cases seemed to come at the beginning.

Many consumers actually moved in with -- or, many PAs actually moved in with the consumers.

And, you know, overall, anecdotally, we have begun to hear some information from some plans that, in fact, their members with CDPA have faired, by far, the best throughout this COVID pandemic, as a group.

You know, that said, we are experiencing problems with PPE, just as everyone is.

But, consumers, FIs, the agencies, don't get reimbursement. They have never had to provide any of the PPE. They don't have channels to actually [indiscernible] the supplies, in many instances.

And consumers relied on Medicaid, and Medicaid stopped sending it; they stopped making it available.

So, you know, that was really something that

became very problematic for people, was just access to things like gloves, rubbing alcohol, and other materials; PPE and materials that just protect general safety in the home.

You know, we're dealing with people that are getting shots, getting catheters, and the like, and these supplies are critical.

SENATOR SKOUFIS: What about cleaning homes?

Did folks have the proper supplies to make sure that, you know, whether it's spray, or whatever it is, that's available in nursing home facilities, hospitals, to cleanse, you know, where they're working?

Did they have that sort of equipment?

BRYAN O'MALLEY: Right, and we asked that as well in our survey, and, you know, access to any kind of cleaning materials: disinfectants, bleach, hand sanitizer.

People were buying it at grocery stores, just like you and me. And there was none to be had, and there was no way for them to get it.

So, you know, realistically, people were doing the best they could.

SENATOR SKOUFIS: Got it.

So we have to do a lot better, is the long

story short.

Got it.

Thank you.

BRYAN O'MALLEY: Thank you.

SENATOR RIVERA: All right.

Thank you, Senator, and thank you, Bryan.

Back to the Assembly.

ASSEMBLYMEMBER BRONSON: Next we have Chair Gottfried for 5 minutes.

ASSEMBLYMEMBER GOTTFRIED: Yes, thank you.

For Bryan O'Malley:

You just said -- I think you just said that Medicaid stopped making it available, and I think you were referring to things like gloves?

Could you clarify that?

BRYAN O'MALLEY: What we heard was that, people who had traditionally purchased gloves, and Medicaid would allot one box of gloves per month, could no longer get gloves.

And, you know, I think part of the problem was, there was dramatically increased use.

But part of the problem was, there was a shortage of gloves, and people could not find gloves to purchase.

So while Medicaid used to allot that, there

were no gloves to be had.

You know, gloves were -- all PPE was being diverted to hospitals.

At one point I tried to go on and just do a bulk order for our member [indiscernible], so they could send things out to consumers.

And, if you weren't a hospital, you could not buy PPE. You could not buy gloves, masks, any type of protective equipment.

ASSEMBLYMEMBER GOTTFRIED: But apart from that, and -- or, before that, if you were a Medicaid recipient and needed to buy gloves, et cetera, Medicaid would pay for that?

BRYAN O'MALLEY: Medicaid would provide one box of gloves per month was always my understanding.

ASSEMBLYMEMBER GOTTFRIED: Uh-huh.

Okay.

Just, in general, I want to thank those of you who talked about the CDPA program.

I think you've helped all of us have a better understanding of that program, and of a lot of its value, perhaps, beyond some of what we've thought about it.

I mean, frankly, I think the whole CDPA program has, and I'm happy to say this, really

blossomed into a lot more than we thought it might be back in the late '90s when it was created.

BRYAN O'MALLEY: Well, thank you for creating it.

ASSEMBLYMEMBER GOTTFRIED: Okay.

Thanks.

SENATOR RIVERA: Thank you, Assemblymember.

Now we're going to go back to the Senate.

Recognize Senator O'Mara for 5 minutes.

SENATOR O'MARA: Thank you, Chairman.

And thank you to all of our speakers this evening.

Now, I can smell my dinner coming from the kitchen, so I think we're near the end here.

I thank everybody for hanging in there.

I have one question for Claire Altman.

In your remarks, you mentioned the usefulness of -- when we have, I guess what we call, "rapid tests," or, tests with a quick response.

Do you have a sense of where we are in that prog -- in progress on that now?

CLAIRE ALTMAN: I don't have any better information than our -- my fellow witnesses today.

I'm in touch with some nursing homes.

I think it is challenging to get the results

back quickly.

I think it's very -- it goes up and down.

I also think that, the last I understood, and I hope that I'm wrong about this, is that nursing home staff are to bill their health insurance for the -- this -- the COVID test.

And many nursing -- and many health insurers are saying these are not medically necessary.

And so there's a conundrum there, that's the cost.

So I think, in addition to the cost and budgetary problems that a lot of nursing home operators have testified about today, the cost of doing regular testing is mounting up, and I'm not sure they're going to be reimbursed.

SENATOR O'MARA: Yes, it is. Yeah.

Well, thank you.

I want to thank you all again.

Just a couple closing remarks since this is the last panel.

SENATOR RIVERA: No, sir, it is not.

SENATOR O'MARA: It's not the last panel?

We have one more?

SENATOR RIVERA: We have one more panel, sir, so your dinner is going to have to wait.

SENATOR O'MARA: Then I'll have to -- then I'll have to wait.

SENATOR RIVERA: Bring it beside you, bro. Bring it beside you.

SENATOR O'MARA: Thank you, Chairman. Yeah.

SENATOR RIVERA: You done, though?

SENATOR O'MARA: Yes, I am. Thank you.

SENATOR RIVERA: All righty? Assembly.

ASSEMBLYMEMBER BRONSON: I do not see any other speakers from the Assembly.

SENATOR RIVERA: Okay. Then we've got Senator Serino to -- recognized for 5 minutes.

SENATOR SERINO: Thank you again, Mr. Chairman. And thank you everybody for your testimony today. I've heard the same stories about the gloves and alcohol pads, shortages. And it's clear that this particular program was really an afterthought throughout this, and we have to do better, going forward.

But have you -- Bryan, with regard to you, have you ever reached out to the governor or the department of health to ask why they weren't collecting data on how many individuals receiving CDPA became infected with COVID-19?

Did you ever reach out to the governor's office or department of health?

BRYAN O'MALLEY: We did not reach out on that, largely because, you know, when factoring [indiscernible] you can capture, you can acquire COVID any number of ways; from family, from, you know, a worker, from any number of people.

So I don't -- you know, the value, and the difficulty in just obtaining that would have been extremely hard.

SENATOR SERINO: I was just thinking that, if you had a number, it might have been a little easier to be able to have the PPE, the amount that you might need. Right?

And then I also want to say, thank you for bringing up the testing-reimbursement issue.

So, thank you.

I'm good.

Thank you, Chairman.

SENATOR RIVERA: Thank you, Senator.

I'm just going to ask a quick question.

Ms. Dooha, at the beginning, you -- during your testimony you talked about some of the racial disparities in nursing homes that you're concerned about, as well as inappropriate discharges.

And these were areas I would have liked to bring up with the commissioner, but I had a limited time.

Could you tell us a little bit about the concern that you have about these two areas so they can be on the record, please?

SUSAN DOOHA: Absolutely.

We are seeing, within our staff, our board members of our community, a much higher rate of infection among the people who are Black and Latino. We're -- we're -- we've got this replicated in facilities.

And although it isn't -- we don't have the ability to look across all of the facilities, many of which don't have an ombudsman assigned to them.

We do anecdotally think that there is really a lack of planning and thought about this issue, and it really needs to be a focus.

It needs to be a focus of planning for any pandemic.

It needs to be a focus of planning for nursing facilities.

I don't know -- we haven't been able to see what kinds of emergency plans are in place at facilities, but I would wager that they don't include particular planning for their residents who are Black or Latino.

And that, the department of health, I haven't heard anything about them inquiring about facilities where the death rates are highest among those who are Black and Latinx.

And, yet, this is a story that's been in "The New York Times," it's been in other media, and it's one that really requires an investigation and further attention.

And I really commend it to you, Mr. Chairman, if you could please encourage a focus on this issue.

It's just unconscionable that this is going on in this day and age.

And we -- there's no prevention plan for the eradication of disparities in nursing facilities, for example.

So these are really serious issues.

We've also been seeing a lot of people ending up in -- discharged to homeless shelters. And we

don't believe this is a safe discharge under any circumstance.

SENATOR RIVERA: Yep.

SUSAN DOOHA: However, during the pandemic, it's especially alarming.

We work with people who are homeless.

We have members of our board, of our staff, who have been homeless.

We have a lot of clients, people we serve, who are homeless.

And the reports that we get from them about homeless shelters suggests that there's nothing like safety.

Beds are ganged up together in congregate facilities.

Staff don't have PPE.

There's nothing like infection control.

Congregate bathrooms and shower areas.

Nothing like cleanliness.

This is a really serious issue.

There are a lot of congregate environments that are not being looked at, and that really must be looked at, because these also are places where I would expect that there are a lot of deaths occurring, but they're under the radar screen.

And I strongly encourage a focus on these discharges that are occurring, that are unsafe discharges, in my view.

SENATOR RIVERA: Okay.

Thank you, Ms. Dooha.

We have no further questions from the Assembly or Senate.

So I thank you all for your patience and for being with us.

And now, Senator O'Mara, we are moving to our last panel, which is the following:

We are joined by Daniel Ross, staff attorney at Mobilization for Justice Legal;

Dr. Tara Cortes, a clinical professor at NYU, and executive director of the Hartford Institute for Geriatric Nursing;

And, Geoff Lieberman, executive director, Coalition of Institutionalized Aged and Disabled.

I believe that these folks are here.

Okay. There is at least one of them.

Okay, there's Dr. Cortes.

Okay. Monsieur Gottfried, for the last time today.

ASSEMBLYMEMBER GOTTFRIED: Who all do we have?

SENATOR RIVERA: We have Daniel Ross, Tara Cortes -- Dr. Tara Cortes, and -- Tara Cortes, and Geoff Lieberman.

ASSEMBLYMEMBER GOTTFRIED: Ah, everybody.

Okay, last, but not least, by far:

Do you all swear or affirm that the testimony you're about to give is true?

DR. TARA CORTES: I do.

DANIEL ROSS: I do.

GEOFF LIEBERMAN: I affirm.

ASSEMBLYMEMBER GOTTFRIED: Okay.

SENATOR RIVERA: Start off with Daniel Ross, please.

ASSEMBLYMEMBER GOTTFRIED: Let me note, I obviously pitched a perfect game. Everybody said "yes."

DANIEL ROSS: Well, good evening.

My name is Daniel A. Ross.

I'm senior staff attorney at Mobilization for Justice.

For more than 25 years, Mobilization for Justice has advised and represented adult-home residents in individual matters and impact litigation.

And for almost 10 years, we've provided

similar services to residents of nursing homes in New York City.

Although the situation in the state's nursing homes is dire, as we've heard all day, I'm going to focus my testimony on the less-known situation in adult-care facilities, which have, roughly, 50,000 seniors and people with disabilities across New York State.

Adult-care facilities vary in the accommodations and services they provide.

Most ACFs are either adult homes or an enriched-housing program, which generally provide room and board and case management in either more private apartment-style housing in EHPs, or dorm-like accommodations in adult homes.

Some facilities house low-income residents who pay the facility with their income from SSI and the state supplement program, while other facilities charge over $100,000 a year for luxury accommodation. Many also provide assisted-living services, such as personal care and nursing services.

MFJ concentrates our work advocating for and advising residents of transitional adult homes. These are homes in which 25 percent, or sometimes

almost all residents, have mental-health disabilities.

For decades, these institution, which are mostly run for-profit, have warehoused people being de-institutionalized from state psychiatric hospitals.

The poor conditions have been the subject of numerous government reports and media accounts, including "The New York Times'" Pulitzer-winning "Broken Home" series in 2001.

The pandemic response has followed a familiar pattern in these homes.

The DOH-issued COVID-related guidance to adult-care facilities beginning in the second week of March. But then, consistent with its history of promulgating useful regulations, and failing to adequately enforce basic standards, the DOH suspended in-person oversight, including complaint investigations.

Residents at some ACFs told us how their facilities quickly complied with DOH guidance.

But we also heard from residents of other facilities, particularly transitional adult homes, about the lack of social distancing, staff cohorting, or resident quarantining that DOH

guidance prescribed.

We began reporting these concerns to the DOH in late March, as deaths were mounting.

For several more weeks:

Some facilities continued serving meals in large dining rooms with no social distancing precautions;

Some facilities continued disbursing medications centrally, forcing residents to come down in crowded elevators and stand on line next to people from other parts of the building;

And, sick residents were not quarantined, and masks and PPE were minimal or absent.

Weeks after the April 4 guidance on communicating with residents and families about COVID, and even after that guidance became mandatory two weeks later, many residents told us that their facility hadn't told them about COVID cases or deaths, although they knew some residents had died, and others were sick.

Eventually, in late April, the department started unannounced visits, forced facilities to end congregate meals and end centralized medication disbursement, and provided testing of residents in these facilities.

But there's an indication -- but there's no indication that the department has planned adequately for the expected second wave.

Even knowing the scope of the problem is purposely obscured, as we talked about earlier today, by DOH policy that excludes from public recording deaths in ACFs and nursing home -- of ACF and nursing home residents if they were first transferred to a hospital, DOH has not adopted for ACFs the same COVID transparency requirements that DMS demands of nursing homes.

This leaves residents and their families in the dark about the risks to their health, and prevents policymakers from assessing appropriate resource allocation.

Low-income residents are often cash-strapped, finding it difficult to buy adequate clothing, food, and toiletries, let alone recreational expenses.

As they face unprecedented social isolation without group activities or visits from families and friends, economic-impact payments from the federal government could have helped them buy technology to help [indiscernible] -- sorry -- to keep them connected to loved ones, or simply find entertainment to pass the time, during the pandemic

stay-at-home order.

In April we warned the DOH that some facilities would try to keep residents' stimulus checks for themselves.

And in May and June, that's exactly what happened.

Operators at some facilities informed residents of new-found rent arrears, or told residents that they weren't eligible for payment.

DOH has still failed to adequately combat facilities misappropriating of residents' economic-impact payments.

Stronger enforcement and stronger enforcement tools are needed to finally fix the problems residents have endured for decades.

The State has awarded many chronically underperforming facilities with lucrative Medicaid assisted-living program certification, but taken no steps to ensure transparency and accountability for the quality of services provided to vulnerable residents.

We urge the legislature to enact A4416C and S3460A, which would empower the department of health to fine facilities for purposeful violations of residents' rights, financial abuse as described

above, or repeated violations of the same regulatory provision within a 12-month period.

SENATOR RIVERA: Mr. Ross, if you could actually wrap it up, since your time has expired.

DANIEL ROSS: Sure.

Yeah, it's commonsense legislation that I think many people would be surprised to learn is not actually existing law.

Thank you.

SENATOR RIVERA: Thank you so much, Mr. Ross.

How about Dr. Tara Cortes.

DR. TARA CORTES: Thank you very much.

Good evening, committee chairs and all members of the legislature present, and thank you for your stamina for listening and being so attentive all day.

My name is Dr. Tara Cortes, and I'm executive director of the Hartford Institute for Geriatric Nursing, the geriatric arm of NYU Rory Myers College of Nursing.

Other residential long-term care is usually thought of as being simply custodial. The care needed in these settings is actually some of the most complex care delivered across the health-care continuum.

Most residents have multiple chronic diseases and, very often, have dementia as well.

With the increase in the number of people living to 85 and beyond, and the increase in complexity of those living in residential long-term care, the need for quality nursing homes, nursing homes that provide the right care at the right time by the right staff, is more acute than ever.

But there has been --

I'm sorry.

But there has been -- there is historical neglect of long-term care, and nursing homes have been marginalized, even siloed, and denied a seat at the health-care table for policy reimbursement issues.

The increasing complexity of caring for people in long-term care has never been recognized, resulting in chronic understaffing, low pay, and inadequate resources.

The current state of nursing homes, coupled with the virulence of COVID-19, has created the perfect storm that has led to so many deaths.

While the vast majority of nursing staff have strived to provide the best possible care, we're now witness to the impact of the shocking lack of

resources and reporting that severely hampered the ability to pivot from everyday care to effective infection prevention and crisis management.

It is disheartening to see the virus ravage even the most excellent nursing homes, and see blame cast upon them, when they have exhausted all the efforts to procure personal protective equipment and adequately manage COVID patients transferred from the hospitals.

The -- many of the issues contributing to the perfect storm are longstanding, and it will necessitate both immediate response and a long-term strategy.

One of the first issues that needs to be addressed is to ensure that providers of long-term-care services are at the table as full partners with hospitals when setting policy and reimbursement rates.

There should be a partnership formed between these two entities as equal partners, and not one bigger than the other, to ensure collaboration and coordination of care, as well as equitable distribution of dollars.

Our society has long been hospital-centric with community-based care a second thought.

Throughout the months of March, April, and even May, hospitals received the lion's share of personal protective equipment, while nursing home administrators went to parking lots in New Jersey, or anywhere, to find whatever medical supplies they could in order to protect their staff.

In the meantime, staff often had to use garbage bags as gowns and handkerchiefs as masks.

When the CARES Act was passed in July, it allocated $175 billion for hospitals, less than 5 billion for nursing homes, affected by COVID-19.

Nursing homes are now experiencing a dwindling census, as people are afraid to put their loved ones into nursing homes, and fewer elective surgeries are resulting in fewer admissions for rehabilitation at the Medicare rate.

With nursing homes relying on mostly Medicaid-only payments because of the long-term care payments-structured system we have, nursing homes are in financial distress.

Layoffs and decreased capacity could be in their immediate future unless health-care dollars are distributed in a way that recognizes the value and need for quality care with older people for whom home is no longer a viable option.

The second issue that needs to be addressed immediately is the workforce in long-term care.

Ensuring quality and cost-effective care at any time, but especially at a time of crisis, requires a professional staff that bases decisions and practice on evidence as a critical solution to increased quality, while decreasing cost to the overall system.

A study done by CMS, done at nursing homes with greater RN staff numbers, has significantly fewer hospital admissions.

Another study, mentioned earlier, done in Connecticut on the 215 nursing homes, found those with higher RN staffing and quality ratings had better control of the coronavirus.

None of this evidence, however, has ever been considered in setting policy.

In fact, CMS requires only one RN for 8 hours a day in the nursing home.

In addition, a lower pay scale in long-term care as compared to hospitals means it's harder to recruit, not just RNs, but also direct caregivers.

Direct caregivers are the eyes and ears of the residents, yet turnover is very high because the pay and the -- and the pay is low and the difficult

workload they have.

There must be a staff with an appropriate number of professionals and direct caregivers to navigate through crises.

Many of us have had a loved one in long-term care. And if you have not, you will.

We need our nursing homes to have the resources and ability to not just be regulated and meet regulations, but also to provide the best care to keep people functioning at their own best level, address what matters to them, and allow each one a peaceful and dignified death.

Thank you so much.

SENATOR RIVERA: Thank you so much, Dr. Cortes.

Last, but certainly not least, Mr. Lieberman.

GEOFF LIEBERMAN: Well, thank you very much.

Thank you all for waiting for me. I really appreciate it.

SENATOR RIVERA: We were all holding [indiscernible] Lieberman. [Indiscernible] Lieberman's got to be in it.

Go ahead.

GEOFF LIEBERMAN: Well, good evening.

I am Geoff Lieberman, executive director of

the Coalition of Institutionalized Aged and Disabled, an advocacy organization serving [indiscernible] residents in New York City.

New York State's response to the COVID-19 pandemic in adult homes was to issue guidance that the State expected facilities to follow, in the [indiscernible] -- in the absence, for far too long, of testing, adequate PPE for residents and staff, and on-site monitoring and inspections by the New York State Department of Health.

Since mid-March, CIAD has fielded and made phone calls to residents, and stayed in constant touch with resident counsel officers and other residents.

They have provided us with a significant amount of information about conditions in the homes during the crisis.

This is contrasted with the health department's reliance on communications with adult-home administrators to monitor what was happening.

The information we collected includes the numbers of resident deaths in the homes, and how well facilities were carrying out the New York State Department of Health's guidance on social distancing

and cohorting to prevent the spread of infection.

Based upon information we have received from residents, we have tallied, approximately, 250 resident deaths from 28 homes in New York City.

To confirm those numbers as best we could, we were able to identify about 156 of those residents by name.

There are 8 homes where reports indicate at least 20 resident deaths from COVID-19.

These numbers contrast with the significantly lower numbers publicly reported on the health department's website.

As of July 28, 2020, DOH reports 53 confirmed or presumed deaths from 18 homes in the 5 boroughs of New York City.

Only five homes on our compiled list have reported fatalities to the health department.

The misleading and inadequate data collected by the DOH is based upon self-reported numbers from the adult home, and the practice of only counting deaths if they occurred in the adult home, rather than counting residents who died in the hospital.

To this day, we do not know the full extent of the terrible impact the pandemic has had on adult-home residents.

We also found some adult homes slow to initiate appropriate social-distancing measures.

It took weeks for homes to end congregate meal service in their dining rooms.

It took even longer for most to deliver medications to residents' rooms. Before this practice was instituted, residents were crowding on elevators and waiting on long lines to receive their medications.

Residents were not supervised to keep 6 feet apart on these lines.

Residents also told us of the inadequate measures facilities took to cohort and quarantine residents who were suspected or confirmed to have COVID-19.

Residents who were showing symptoms, or were known to be infected, freely wandered the building and facility grounds in the absence of adult-home resident staff supervision.

Working in close collaboration with Mobilization for Justice, we informed the governor and the health department of these increasingly alarming conditions, and numbers of deaths res -- numbers of deaths residents were reporting to us as early as March 27th.

In mid-April, we, along MFJ, [indiscernible], [indiscernible], SCAA, made four demands New York State had to meet to ensure the health and safety of residents.

These demands are as important and relevant now as they were then.

They are:

Testing for all residents and staff, to identify hot spots, and inform staffing and cohorting measures to reduce the spread of infection.

Ensure compliance by unannounced in-person inspections by the department of health.

Number 3: Relocating residents to hotels or motels to reduce density in the adult homes.

And, Number 4: Deploy additional staff and medical personnel, where needed, to ensure social distancing, cohorting, and services and care, especially for infected residents.

We made several other additional recommendations.

Along with MFJ and ADAN, we urged the state legislature to pass A4416 and Senate Bill 3460A, legislation that will protect residents by strengthening the enforcement of the state's

adult-home regulations.

As Dan has mentioned, we also would ask DOH to revise its guidance of adult homes regarding economic-impact payments to residents.

Finally, we would recommend that the State consider funding the purchase of tablets and laptops for adult-home resident use.

Not enough attention has been focused on the increased isolation adult-home residents have suffered because of COVID-19, contributed -- contributing to increased loneliness, stress, and severe reduction in the access of residents -- that residents have to family, friends, and community.

Thanks very much.

SENATOR RIVERA: Thank you so much, Mr. Lieberman.

And, for this last round, we will be leading off with the Assembly.

ASSEMBLYMEMBER BRONSON: And I do not see any assemblymembers who have raised their hand.

Mr. Gottfried?

ASSEMBLYMEMBER GOTTFRIED: And I guess it's not so much a question, but just to say that, this group of witnesses, and many that we have heard all day today, are just extraordinary assets and --

and -- and heroes for New York.

And as I've listened to a lot of their testimony, and I say to myself: Why does all this still need to be said? Why isn't it being done?

And I keep thinking of what the author Upton Sinclair said a long time ago, which is, "That it is difficult to persuade a man of something when his salary depends on him not being persuaded of it."

That's it.

SENATOR RIVERA: It is -- it's what happens when 9:00 -- see, I've been with this gentleman with enough hearings that went long, to know that, by 9 p.m., he gets mad poetic.

So expect a couple more couplets before we're done.

But, for now, we have, on the Senate side, Senator May, recognized for 5 minutes.

SENATOR MAY: Thank you, thank you.

And I also just want to compliment you, and everybody we heard from today, with so much expertise and so much passion. It's been really inspiring.

I have an actual question, though, for Dr. Cortes.

I feel like in the course of the day, we've heard two really different stories about nursing-home finances.

And I would appreciate it if you would help me make sense of that.

Now, I used to teach Russian literature, so I can handle paradox. But I still -- this one is -- is bothering me.

So, on the one hand, the nursing homes are in all this financial trouble, as you detailed.

On the other hand, we're hearing that it's a boondoggle for hedge funds, and things like that, in the for-profit ones.

And both arguments have been persuasive.

So I'd like to hear from you, sort of, how do you balance those?

DR. TARA CORTES: I'm speaking more on behalf of the not-for-profit nursing homes.

And we have -- where -- the dependence on Medicare funding for rehabilitation of patients has been very, very high.

Now that elective surgeries have gone down, and continue to be down, people are not going to hospitals now to get elective surgeries, so they have continued to be down.

And the fact that, yes, we have lost patients through death, but patients are not being admitted.

People are afraid to put their loved ones into nursing homes because of all of the terrible media that's been going on.

So the -- they're running at, 60, 70 percent capacity. And medicaid payments coming for 60 to 70 percent of the capacity just don't do it.

And it's why they can't have adequate staffing. They can't have -- they can't have an adequate number of professional nurses on board. You just don't have enough money, and salaries do run lower. They run around $10,000 less for a starting nurse in a nursing home than in a hospital.

So nurses won't go to nursing homes. So I'll go to the hospital, and I get pay raise faster, and I get reimbursement on my tuition.

Without making some adjustments in the structure of payment for long-term care, our long-term-care industry I think, in the long run, is in trouble.

To really get quality staff, it's far more complex today in nursing homes than it was 5 years, 10 years ago. Even last year, it's becoming more complex.

And when you take dementia and you superimpose it on top of patients with multiple chronic conditions, you've got complex patients.

So we just need to find, I think, a payment structure that allows nursing homes to have the right kind of staff, so they can give the right kind of care, and our patients -- our residents can live in a dignified manner and die a dignified death.

SENATOR MAY: And should we be worried about the other side of the story?

And money [indiscernible cross-talking] --

DR. TARA CORTES: For profit?

SENATOR MAY: Yeah.

DR. TARA CORTES: I think we should be.

I think -- I think you're -- I think we should be.

I think we should be looking very carefully at how they are allocating their resources, and what they're -- not what they're meeting -- whether or not they're meeting the regulations, but, what are the quality outcomes?

What are the outcomes that their residents actually have that reflect person-centered care and good values?

I think that we're not looking at the right

things if we're just looking at, well, what are the regulations, and do they meet those?

SENATOR MAY: Okay.

DR. TARA CORTES: I think we need to be more specific on, what are resident outcomes that reflect quality care?

SENATOR MAY: Thank you.

Yeah, I have been wondering about the way nursing homes are rated. There's a rating system.

And I read that, even in highly-rated nursing homes, the racial disparities are very stark, even worse in some of the more highly-rated nursing homes.

And it made me start wondering, what are these ratings based on?

And -- and it seems like it's inputs-based and not outcomes-based.

DR. TARA CORTES: I think --

SENATOR MAY: And so --

DR. TARA CORTES: I think you're right. Absolutely.

SENATOR MAY: That's, I gather, at a federal level. But, if there's a way we can rethink that, that might be a great move.

DR. TARA CORTES: Yes.

SENATOR MAY: Okay.

Thank you very much.

DR. TARA CORTES: Thank you.

SENATOR RIVERA: Do you have a poem for us, Dick?

If you don't -- oh, you do?

ASSEMBLYMEMBER GOTTFRIED: Well, I'm muted.

Oh, okay.

SENATOR RIVERA: No, you're not muted.

ASSEMBLYMEMBER GOTTFRIED: I can just correct the Upton Sinclair quote.

"It is difficult to get a man to understand something when his salary depends upon his not understanding it."

SENATOR RIVERA: I told you; I told you he gets like that.

ASSEMBLYMEMBER GOTTFRIED: Great words to live by.

SENATOR RIVERA: Back to the Assembly.

ASSEMBLYMEMBER BRONSON: Yes, we have up next, Assemblymember Tom Abinanti for 3 minutes.

ASSEMBLYMEMBER ABINANTI: Yes, I would like to join everyone else, and thank all of you for staying with us so long.

And adding a different perspective, we heard

a lot about nursing homes.

Somewhere during the day I mentioned that there were other long-term care, congregate-care facilities. And I wanted to hear about them.

So I appreciate your highlighting those.

I'm not going to ask too much other than, what do we do differently in the future?

Are there plans out there?

Is there conversation going on with the health department?

And, finally, is the health department overwhelmed, and should control of the facilities you're talking about be somewhere else?

Is the health department trying to do too much at this time?

DANIEL ROSS: I think so.

Adult-care facilities used to be under the auspices of the -- or, the oversight of the department of social services. And when that department was dismantled, it got moved to health.

And I think that probably makes sense as more and more adult-care facilities become assisted-living programs and receive Medicaid funding, or become assisted-living residences and have licensed home-care services agencies,

personnel, or child personnel on-site.

And so I think that's probably fine.

You're probably right that they're overwhelmed to some degree.

There have probably been slashed budgets, so there are fewer people to enforce the regulations, which leads to a problem.

And I indicated one action item that the legislature can take up, and I know the bill passed recently out of the Assembly Health Committee.

But something else that's concerning, to address, a question that came up earlier I think from Senator May, is: Right now, the department of health doesn't collect demographic data, racial data, about residents of nursing homes or adult-care facilities.

That information is available from the federal government through the MDS (the minimum dataset), which all nursing homes have to report to the federal government.

But DOH doesn't have racial data, you know, demographic data, that would be really helpful to kind of analyzing what's going on.

What are those disparities? What are the causes of those disparities?

And digging down, and trying to correct those.

GEOFF LIEBERMAN: I would quickly add, you asked if the health department, if we were engaged in any discussions with them regarding the future.

And, unfortunately, we're not quite sure that there are any specific plans that the New York State Health Department has to ameliorate the impact of a second wave that would strike adult-home residents and assisted-living residents.

And we're quite concerned about it.

As I mentioned in my testimony, we think that the demands that we've made over the last couple of months are still incredibly important.

And, although the terrible instances of death, and what happened to nursing home residents, you know, rightfully, took center stage.

SENATOR RIVERA: If you could actually wrap up, Mr. Lieberman, please.

GEOFF LIEBERMAN: I'm just afraid that adult-home residents are in the shadows in this regard.

SENATOR RIVERA: Thank you.

Hey, Dick, I've got one for you.

"Roses are red, violets are blue, oh, how

I wish Cuomo would actually listen to you."

Next, we've got Senator Tom O'Mara, recognize him for 5 minutes, please.

SENATOR O'MARA: Uh, yes, we all do get a little bit giddy at this time of night.

Thank you for that one, Chairman Rivera.

I wish that Commissioner Zucker would listen to you all as well.

I want to echo Senator May's comments, that we've heard a lot of great expert testimony with some great ideas here today.

And thank you for all of that.

I think we came up short with the executive branch of government today on this hearing, with the testimony from the health commissioner, Howard Zucker, that consisted of little more than his own self-serving CYA PowerPoint presentation.

Coming in with an implausible response that they don't have any figures on how many nursing home patients that were transferred to hospitals, died there, which has been probably the biggest topic of concern that has been in the media, in the public arena, surrounding the governor's March 24th order, that nursing homes accept COVID-positive patients.

I find it further implausible that the commissioner of health was not aware of the opinion and statement from the American Medical Directors Association, Society for Long-Term Care Medicine, that was issued the day after the governor and Commissioner Zucker came out with their mandate, saying how flawed it was, and what a wrong-headed policy it was.

In fact, two days, or three days, after that initial statement, the American Medical Directors Association and The Society for Long-Term Care Medicine was joined, in a follow-up statement, with the American Health Care Association and the National Center for Assisted Living, again, with concerns over the wrong-headed policy that had been directed.

The fact that Commissioner Zucker claims he's unaware of those positions from the leading associations in the country, is totally implausible.

I request of the chairs of this hearing, since we in the minority have no subpoena power; we have no ability to call witnesses ourselves, other than to make requests; and I would note that the witness list for today, we received about this time last night, not much fairness there, and we deserve

better.

I ask that you recall Zucker to be a witness at the next round of this hearing on August 10th.

And, further, that you call the executive director of the American Medical Directors Association, Society for Long-Term Care Medicine, Chris Laxton, to come and testify about their opinion and concerns over this, and how that was directly transmitted to Commissioner Zucker and the governor's office.

We deserve answers in the legislature from this administration.

We clearly did not get them today.

I hope we make some progress next Monday, August 10th, or continue these hearings thereafter.

Thank you, Chairman.

SENATOR RIVERA: Thank you, Senator O'Mara.

Back to the Assembly.

ASSEMBLYMEMBER BRONSON: And I believe it's coming right back to you, Mr. Chair.

SENATOR RIVERA: All right.

Last, but not least, cleaning up, Senator Sue Serino, recognize the lady for 5 minutes, please.

SENATOR SERINO: Thank you, Mr. Chairman.

And, Dr. Cortes, I'd like to say I really appreciate your comments about the facilities need to be considered equal partners, the hospitals and the nursing homes.

And that's something that I believe that we need to create more partnerships, and I really take to heart.

So thank you very much for that.

And I think it's very fitting that we're ending the day with this panel because you all really drove the main points home.

The reporting is clearly flawed.

These facilities are not getting the resources they need to really ensure real quality care.

And we need to do better to ensure these vulnerable New Yorkers are protected, and those who care for them are absolutely supported.

And I want to echo with Senator O'Mara's point, too: I really wish DOH (the department of health) came prepared with more than the governor's establishment talking points.

But I really hope that at next week's hearing we can dive even deeper, because New Yorkers deserve

answers.

And I think, today, we should be doing all we can to send a message to residents, and that there's a bipartisan commitment to get them.

So thank you very much, everybody.

This was a great panel today.

Thank you.

SENATOR RIVERA: Thank you, Senator Serino.

Assemblymember Gottfried, do you have any closing words that you'd like to share with us, maybe a poem or two?

ASSEMBLYMEMBER GOTTFRIED: No, I think I'm all poemed-out for tonight.

I'll see if I can come up with a couple of choice lines for next week.

SENATOR RIVERA: Gotcha.

Thank you all on the panel.

What was that?

ASSEMBLYMEMBER GOTTFRIED: I think this has been a really terrific hearing, both in terms of the witnesses who have testified, and the real elements of social-justice understanding that a lot of them have injected into the discussion, and the questions from our colleagues as well.

SENATOR RIVERA: I agree.

I think it was a very -- it was the beginning of the process.

I think, in that, I certainly agree with you, Senator O'Mara, we have much more digging to do.

But I thank each and every single one of the people who testified today.

We have much more information to go on, but certainly deeper to dig.

Thank you, everyone, for continuing to tuning in.

Thank you for the staff that is in the background doing all the work to make sure this functions; I applaud all of you.

I know Stanley, certainly. But, everybody else who's back there, whose name I might not know or remember, thank you for it.

And, we will see you again.

Probably, they're working tomorrow.

We might not be -- we're going to be here next week for the next hearing on this.

But thank you, everybody, for tuning in.

And, with that, I am signing off.

Have a good night, folks.

(Whereupon, the virtual joint committee public hearing concluded, and adjourned.)