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

UPSTATE NEW YORK

Date: August 10, 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 George Borrello

Senator Pat Gallivan

Senator Pam Helming

Senator Betty Little

Senator Sue Serino

Senator Jen Metzger

Senator Brad Hoylman

ASSEMBLYMEMBERS PRESENT:

Assemblymember Jake Ashby

Assemblymember Thomas Abinanti

Assemblymember Charles Barron

Assemblymember Carl Brabenec

Assemblymember Edward Braunstein

Assemblymember Kevin Byrne

Assemblymember Marjorie Byrnes

Assemblymember Kevin Cahill

Assemblymember Joseph DeStefano

Assemblymember Natalia Fernandez

Assemblymember Sandy Galef

Assemblywoman Aileen Gunther

Assemblymember Ellen Jaffee

Assemblymember Mark Johns

Assemblymember Ron Kim

ASSEMBLYMEMBERS PRESENT (continued):

Assemblymember Brian Manktelow

Assemblymember Missy Miller

Assemblymember Michael Reilly

Assemblymember Doug Smith

Assemblymember John Salka

Assemblymember Al Taylor

Assemblymember Monica Wallace

Assemblymember Brian Williams

SPEAKERS:	PAGE	QUESTIONS
Stephen Hanse President & CEO Lisa Volk Director of Clinical and Quality Services NYS Health Facilities Association	13	23
James Clyne President Leading Age New York	13	23
Mary Jo Botindari Resident Syracuse, New York	122	145 156
Jerry Maldonado Resident Newburgh, New York	122	145 156
Mikko Cook Daughter of NYS Nursing Home Resident Ventura, California	122	145 156
Virginia Wilson-Butler Ombudsman, and Resident Brooklyn, New York	122	145 156
Vincent Pierce Resident of Coler Hospital Spokesperson for Voices of Coler	153	156
Steve Lampa Partner with Kensington Senior Living Chair of Argentum NY Advisory Board	199	220
Stephen Knight CEO United Helpers	199	220
Kimberly Townsend President and CEO Loretto	199	220

SPEAKERS (continued):	PAGE	QUESTIONS
Jason Santiago Chief Operating Officer The Manor & Springside at Seneca Hill	199	220
Rachel Dombrowsky Owner/Operator Harbor House Assisted Living and Oyster Bay Manor Assisted Living	199	220
Ruth Heller Executive Vice President, 1199 SEIU United Healthcare Workers East	265	277
Brenda Anderson LPN, and 1199 SEIU Member St. Catherine Laboure Healthcare Center	265	277
Iris Purks Certified Nursing Assistant, and 1199 Member Safire Rehabilitation of Northtowns	265	277
Vanessa Brooks Home Health Aide and Healthcare Workers Rising Member MedTemps and Venture Forthe agencies	265	277
Kathy Febraio President and CEO NYS Association of Healthcare Providers	310	320
Al Cardillo President and CEO Home Care Association of NY	310	320
Sorrelle Leslie Braugh Spokesperson Teresian Home Family Council	348	366
Lynn Goliber Member Teresian Home Family Council	348	366
Bonnie Webster Resident Caledonia, New York	348	366

SPEAKERS (continued):	PAGE	QUESTIONS
Donna Morgans Family Council Chair Van Duyn Center for Rehabilitation and Nursing	348	366
David Hoffman Chief Compliance Officer Carthage Area Hospital	389	414
Mary D'Ercole Pritchard Former Ombudsman	389	414
Bobbie Sackman Member Leader New York Caring Majority	389	414
Cynthia Rudder Founder and Former Director LTCCC	389	414
Mary Somoza Patient Advocate Self-Direction Families of New York	389	414
Tania Anderson Chief Executive Officer ARISE Independent Living Center	442	464
Meghan Parker Director of Advocacy NYS Association on Independent Living	442	464
Douglas Hovey President and CEO Independent Living, Inc.	442	464
Keith Gurgui Systems Advocate Resource Center for Accessible Living, Inc.	442	464
Gail Myers Deputy Director Statewide Senior Action Council	483	506

SPEAKERS (continued):	PAGE	QUESTIONS
Lindsey Heckler Supervising Attorney Center for Elder Law & Justice	483	506
Marydel Wypych Co-Chair Elder Justice Committee of Metro Justice	483	506
Sandy Reiburn President Save Our Seniors	483	506
Alexia Mickles Staff Attorney Empire Justice Center	544	561
Timothy Clune Executive Director Disability Rights New York	544	561
Ann Marie Cook President and CEO Lifespan of Greater Rochester	544	561
John Holt Director of Legal Services & Policy Vera Institute of Justice - The Guardianship Project	596	608
Beth Haroules Senior Staff Attorney NYCLU	596	608
Thomas Mahoney Chief Medical Officer Common Ground Health	615	630
Bill Hammond Senior Fellow for Health Policy Empire Center	615	630
Nina Kohn Professor Syracuse University College of Law	615	630

SENATOR RIVERA: Good morning, everyone.

This is State Senator Gustavo Rivera from the 33rd District in The Bronx, Chair of the Health Committee, and Chair of this, our second hearing related to the impact of COVID-19 on nursing homes and other home-care settings around the state.

Today we will be mostly focusing on Upstate.

We have a long hearing ahead of us, so we'll get to some procedural matters, and we'll kick it right off.

I will just, very quickly, recognize that I am joined by my co-chairs:

Senator Rachel May, the Senate Chair of Aging;

As well as Senator Jim Skoufis. He's the Chair of Investigations;

Also joined by my Majority Member Senator Metzger, and Senator Hoylman.

And we are joined, in the Minority, by Health Ranker, Senator Pat Gallivan;

Health -- I'm sorry, Aging Ranker, Senator Sue Serino;

As well as by Minority Member Senator Pam Helming, and Betty Little.

Mr. Gottfried.

ASSEMBLYMEMBER GOTTFRIED: Good morning, everyone.

So in a moment, Harry Bronson, Chair of our Aging Committee, will be announcing all the Assemblymembers who are on the hearing.

I'm just going to do some very quick procedural remarks.

This is going to be a very long hearing.

And so every three hours or so we will take a 10-minute break for what the health committee calls "ambulation and toileting."

We are reminding everyone, do not talk --

OFF-SCREEN SPEAKER: Has resolved itself.

And -- just hold on a second.

SENATOR RIVERA: That is a perfect example of why you should be muted when not -- when not being called upon.

ASSEMBLYMEMBER GOTTFRIED: Yes.

SENATOR RIVERA: Assemblymember Gottfried, we lost you there for a second.

ASSEMBLYMEMBER GOTTFRIED: Yeah, a little sign showed up on my screen saying that the host has dropped my video.

SENATOR RIVERA: But I can still hear you.

Your video will come back in a second.

Continue with your procedural --

ASSEMBLYMEMBER GOTTFRIED: Okay.

So don't talk while driving.

We will not be having opening remarks for this hearing, basically, because we did that a week ago.

The witness testimony will be limited to 5 minutes for each witness.

Questions and an -- question-and-answer time will be limited to 5 minutes per panel for our co-chairs and their rankers, and 3 minutes for other members of the committees holding the hearing.

Committee members may submit written questions to us, which we will forward to the appropriate witness, asking them -- asking the witness to respond within three weeks.

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

That's it.

SENATOR RIVERA: All right.

ASSEMBLYMEMBER BYRNE: Mr. Chair, I just wanted to speak up.

I know the first hearing we had opening remarks by chairs and rankers. And I understand

this is the second hearing, but deviating from that tradition.

I know not every chair or ranker elected to give opening remarks, which shrank down the time.

But some of our colleagues did hope to provide opening remarks to this hearing, and would object to preventing them from doing so.

SENATOR RIVERA: Objection is so noted.

We will proceed, actually, with just recognition of the members that are in the Assembly, recognition of the ones that are in the Senate, and then we will begin the hearing.

Any member is -- can certainly share what they want to share when they are asked -- when they are called upon to ask questions.

Assemblymember Bronson.

ASSEMBLYMEMBER BRONSON: Thank you, Mr. Chair.

So we're joined, as you just heard from, Chair of our Assembly Health Committee, Richard Gottfried.

We're also joined by Chair of Oversight, John McDonald.

We are joined by the Rankers in the Assembly:

Ranker Kevin Byrne for health;

Ranker Jake Ashby for Aging;

And, Brian Manktelow for Oversight.

I am going through the rest of the assemblymembers in no order, except for as they appear on my screen that lists the participants.

We have Assemblymember Al Taylor;

Assemblymember Brian Williams;

Assemblymember Doug Smith;

Assemblywoman Aileen Gunther;

Assemblymember Joe DeStefano;

Assemblymember John Salka.

We also have Member Carl Brabenec with us;

Assemblymember Kevin Cahill;

Assemblymember Mark Johns;

Assemblymember Natalia Fernandez;

Assemblymember Ron Kim;

Assemblymember Sandy Galef;

Assemblymember Missy Miller.

And I believe that includes all of the assemblymembers present at this time.

ASSEMBLYMEMBER JAFFEE: Assemblymember Ellen Jaffee.

ASSEMBLYMEMBER BRONSON: My apologies, Ellen.

I did not see your name on the list, but I do see you on the screen.

SENATOR RIVERA: And we have been joined in the Senate side by Senators Patty Ritchie, Senator George Borrello, and Senator Tom O'Mara.

And give me one last second to make sure that I've covered every senator who is here.

Yes.

Okay, with that, we will kick this hearing off with our first panel, will be:

Steve Hanse, New York State -- the director of New York State Health Facilities Association, accompanied by Lisa Volk, who's director of clinical and quality services at the New York State Health Facilities Association;

And, Mr. Jim Clyne, president of Leading Age New York.

STEPHAN HANSE: Good morning.

SENATOR RIVERA: One second, sir.

Mr. Gottfried.

ASSEMBLYMEMBER GOTTFRIED: Yes.

Do you swear or affirm that the testimony you are about to give is true?

STEPHAN HANSE: I do.

ASSEMBLYMEMBER GOTTFRIED: Okay.

STEPHAN HANSE: Thank you.

As Senator Rivera stated, my name is

Stephen Hanse. I have the privilege of serving as president and CEO of the New York State Health Facilities Association and the New York State Center for Assisted Living.

Together, we represent every 400 skilled nursing and assisted-living facilities, both, for-profit, not-for-profit, and government-run facilities.

I would like to thank all the chairs, the members, and the ranking members of the Health Committee, the Aging Committee, the Investigations Committee, and the Oversight Committee.

But most of all, I would like to take this opportunity to thank the women and men working on the front lines of the COVID-19 pandemic in New York's nursing homes and assisted-living facilities.

It's been said that you make a living by what you get, but you make a life by what you give.

And the women and men providing essential care in New York's skilled nursing and assisted-living facilities gave their hearts and souls, and in some cases, their lives, on behalf of the residents we care for.

Prior to the pandemic, New York's

long-term-care industry was facing several significant issues.

We were facing significant staffing shortages with CNAs, LPNs, and RNs.

And we worked with many of you in the legislature in discussions about these issues.

In addition, we worked directly with the department of health and the commissioner's office to address these shortfalls.

We were also facing significant financial constraints.

For instance, for over 12 years we had no trend factor or cost-of-living increase to provide for the needed care in our nursing homes and assisted-living facilities.

And throughout the years, right up unto this year's budget, we faced additional cuts in Medicaid.

New York's nursing homes, approximately 78 percent are served by Medicaid.

At the onset of the pandemic there were a confluence of circumstances that came over nursing homes and assisted-living facilities, in the whole state, for that matter.

First and foremost, we serve the most vulnerable population.

The average age, both in the nursing home and in assisted-living facility, is 83 years old, and our residents have multiple chronic conditions.

We were also dealing with a highly-contagious virus that know -- knew no boundaries.

And as I mentioned, we were dealing with staff shortages prior to the pandemic.

And then, in a case of first impression, we were dealing with school closures, and our staff had family obligations, and in many cases had to choose, to care for their children or go to work.

Then we had staff becoming infected with COVID-19.

And then we had the onset of significant anxiety and fear in nursing homes and assisted-living facilities with our staff, because our residents in nursing homes and assisted-living facilities cannot practice social distancing at the bedside.

We faced significant shortages of PPE (personal protective equipment): masks, gowns, face shields.

We faced significant shortages in testing.

Tests were limited.

Lab testing was in scarce capacity.

Testing supplies were in short order: swabs, test cartridges.

The CDC guidelines did not prioritize long-term care.

The CDC guidelines set forth three levels of priority:

Level 1 was front-line staff with symptoms;

Level 2 was long-term-care residents with symptoms;

And the lowest level, Level 3, for our long-term-care staff without symptoms.

In most all instances, in March, April, May, only Tier 1 individuals had access to tests, and that was not uniform across the board. There were significant shortages, and those continued into June, and into the current time period.

Throughout the pandemic we were dealing with massive costs.

On top of the cuts we were already facing, we were facing additional significant costs; costs for staff, costs for hazard pay, costs for PPE, costs for testing wherever we could go, we were scrambling.

There were significant supply-chain issues.

We were calling all throughout the world, for

that matter, and we were competing with other states and other providers to secure that necessary PPE.

Going forward, I just have some observations and some recommendations.

It was clear that the --

SENATOR RIVERA: Very quickly, Mr. Hanse, since your time has expired.

STEPHAN HANSE: Sure.

-- the location of the facility determined the level of the outbreak in the nursing home.

The asymptomatic spread and the lack of testing were the most significant key factors in our facilities.

It was clear that quality rating of the facility was not a factor in these outbreaks.

And going forward, it is essential that long-term-care providers receive equal priority as hospitals.

We saw a significant focus on ramping up hospital capacity and resources.

That same focus needs to be directed for long-term-care facilities.

SENATOR RIVERA: Thank you, Mr. Hanse.

STEPHAN HANSE: Thank you, Chairman.

SENATOR RIVERA: Thank you, Mr. Hanse.

JAMES CLYNE: Hi. I'm Jim Clyne. I'm the CEO of Leading Age New York.

With our affiliates we represent over 500 --

SENATOR RIVERA: Mr. Clyne?

JAMES CLYNE: Yes?

ASSEMBLYMEMBER GOTTFRIED: Do you swear or affirm that the testimony you are about to give is true?

JAMES CLYNE: I do.

ASSEMBLYMEMBER GOTTFRIED: Okay.

SENATOR RIVERA: Please continue, sir.

STEPHAN HANSE: We represent over 500 long-term-care providers: nursing homes, assisted-living, market-rate housing, HUD housing, and adult-day health, and home care.

As Steve said, these members went through a horrible time in dealing with a pandemic.

And I thought I could be most helpful in giving you some context about the residents we're serving, the financial shape of the -- of providers that I represent, and talk about a couple of the problems that we saw.

First off, the nursing home residents that we care for every day, 24 hours a day, 97 percent are over 65, and 38 percent are over 85.

40 percent of them needed two-person assist to sit up.

Half have dementia.

And the entire population has co-morbidities: diabetes, respiratory disease.

So it is a very extremely fragile population.

There's been a lot of discussion about how to count the deaths in nursing homes.

I think that's way more complicated than where somebody was when they passed away.

We think that having some context around whatever the State decides or whatever the federal government decides to report is what's important.

We had members that were taking COVID-positive, or presumed COVID-positive, people from hospitals, and they would die maybe after three or four days in the nursing home. And that got counted as a nursing home death.

We had nursing homes that, obviously, were sending people to hospitals, and sometimes they passed away there. Sometimes they got sent back to the nursing home.

You've got to take into account what residents wanted.

There were plenty of residents who decided

they would like to stay home, and "their home" being the nursing home, and not go to a hospital.

And, finally, with the changes in care that developed over the past three or four months, any look at the death rate from March to now, for example, if you want to compare state to state, is going to be very different. And you really need to take into account what clinicians have learned over the last three months.

On testing and PPE, as Stephen said, it simply wasn't available. And the amount that was available simply did not cover what was needed.

What members did then, was they followed the CDC guidelines for preservation of PPE.

That's not ideal, but it's what they had do and what they were faced with.

Just to give you an idea of the burn rate of PPE is:

Nursing homes in April, in one of the busier weeks, were going through 12 million pieces of PPE per week.

That's a lot of gloves, gowns, masks, shields.

That will give you an idea of the size of the need that we are facing.

One issue I wanted to bring up was the emergency-management system that was being used to collect the PPE data, that was then going somewhere up the chain of command.

Many of the smaller counties had a very difficult time in playing a role in that office -- or, emergency-management system.

And I don't want to cast blame on them because I have no idea what they were facing at the time.

But when members were told, if they needed PPE, to call their local emergency-management office, many times you couldn't get through.

You might go days without being able to get in touch with your office of emergency management.

And if you didn't get through, then you didn't get any PPE.

So that's something I think the State needs to look at, to bolster that system, if that's going to be the system that's used.

I also just wanted to touch on finance and give you real-world numbers.

Right now, New York State's Medicaid rate is $64 a day short in covering the cost of care; one of the worst in the nation.

And just to give you some context:

Medicaid days, the number of days that Medicaid covers, is 71 percent.

Medicare covers 15 percent.

Yet, when you look at the reimbursement, Medicaid is only covering 53 percent of the cost as opposed to Medicare's 26 percent.

So the shortfall in Medicaid is serious.

23 other states invested in their nursing homes.

And, in New York State, we had a 1.5 percent cut in our Medicaid rate.

There are some things [indiscernible cross-talking] --

SENATOR RIVERA: If you can wrap up, please. Your time [indiscernible cross-talking] --

JAMES CLYNE: -- we could do, it's included in my testimony.

I'm not going to go through them.

But I just wanted to let you know that the back of my testimony has six different areas that the State should look at for improving the pandemic response.

SENATOR RIVERA: Thank you, Mr. Clyne.

We will have -- Senate will lead off

questions.

Recognized for 5 minutes, Senator Rachel May.

SENATOR MAY: Thank you.

And thank you both for testifying.

I have a few questions, sort of differentiating what's going on within your whole systems.

Can you -- either one of you comment on different concerns that might have faced rural facilities as opposed to urban facilities?

STEPHAN HANSE: I think, Senator, first and foremost, PPE, as Jim mentioned, was significant shortages in rural communities.

The process the State put in play for securing PPE was to first contact the local county OEM.

If the county OEM was unable to provide the necessary PPE to the nursing home or the assisted-living facility, that provider was then directed to call their respective county executive.

If the county executive wasn't able to do that, then it would -- they would have to go to the department of health.

Secondly, staffing shortages.

We have, in rural counties, significant,

tremendous staffing shortages, the CNAs and LPNs.

What we have seen, and we saw this prior to the pandemic, were that LPNs who traditionally had worked in nursing homes were beginning to work more and more in hospitals, because hospitals, given their reimbursement rate, can always financially pay more.

So I would say the two critical issues in rural counties are staffing and PPE in long-term-care centers.

SENATOR MAY: And would -- when we talk about the shortfall in Medicaid reimbursement, what are the corners that have to be cut in your facilities in order to make up for those shortfalls?

JAMES CLYNE: Well, over 70 percent -- 75 percent of the revenue goes towards staff.

So as facilities have to look to make cuts, there's only so many things you can do on the "other than the staff" side.

You've got to pay your electric bill. You have to pay your mortgage. You need some administration.

So you can only go so far as you get squeezed, and, inevitably, it will trick trickle

down to staffing.

SENATOR MAY: Okay. Thank you.

So I also wanted to ask about racial disparities.

We've heard a lot about disparities and the outcomes.

And can you speak at all to what you see as to what might be the [indiscernible] of those disparities within your facilities?

JAMES CLYNE: As far as outcomes? Or...?

SENATOR MAY: Racial disparities and outcomes.

So, worse outcomes for people of color.

JAMES CLYNE: Well, certainly, the downstate area was hit much harder with COVID. And the -- both the staff and residents downstate tend to have more minority members, both in the staff and the residents.

So some of it is skewed just by geography.

STEPHAN HANSE: I would agree with that in the downstate region.

We have, our CNAs and our LPNs, many people of color.

And they -- as we found out, the asymptomatic nature of this virus really struck those facilities

in a significant manner.

The community had a high level of COVID. It was directly proportionate to the respective facility in that community.

SENATOR MAY: Okay.

And then I guess my last question is about the long-term-care ombudsman program.

So we had testimony last Monday from a number of families who didn't appear to even know that the program exists.

And I -- it feels like, to me, a very important program for families and residents to be aware of, and to be able to use especially in times of crisis.

Can you make recommendations about the best way to get the word out to your residents?

Is there anything you do in particular, to make sure that your residents know about this program?

STEPHAN HANSE: Sure.

We postered -- every nursing home in New York State is required to have postings about the ombudsman program.

And it's actually part of the department of health survey. Each nursing home is surveyed,

roughly, every 15 months, and that is one of the items that is required to be checked on on the nursing home survey.

SENATOR MAY: What would you think about having something in every room? Or, making it more obvious, rather than just one posting by an elevator, or something like that?

STEPHAN HANSE: I think knowledge -- from my perspective, knowledge is power.

It could be part of, we could look at, you know, admission agreements, things of that nature.

Our providers work closely with the ombudsman program.

It was unfortunate, during the pandemic with the visitation, ombudsmen were not able to come in.

We also have resident counsels in nursing homes, and they play an important role in terms of representing the interests of all the residents.

So that may be an area to look to as well.

SENATOR RIVERA: Thank you, Mr. Hanse.

Thank you, Senator.

Assembly.

ASSEMBLYMEMBER BRONSON: Yes, I want to recognize that Ed Braunstein has joined us.

And, I will recognize Chair Gottfried for

5 minutes.

ASSEMBLYMEMBER GOTTFRIED: Yeah, I have a question for either Steve or Jim about the ombudsman program.

For months I've been recommending to the department that it require every nursing home to periodically notify every resident and family member of the existence of the ombudsman program, and how to contact it, what it's for, et cetera.

So far the department has not responded to that request.

I wonder what your associations would think of such a policy?

JAMES CLYNE: We would be fine with it.

We have a good, ongoing working relationship with the ombuds program.

STEPHAN HANSE: I would agree with Jim.

And I think, going back to my earlier comments with regard to the resident council, to really inform the resident council, and ensure, because they have direct communication from those residents to the residents of a facility.

That, I think could be a very positive vehicle to provide that information as well.

ASSEMBLYMEMBER GOTTFRIED: Thank you.

And could you just quickly run through again the numbers on -- because I was trying to type them down -- the percentage of revenue in nursing homes that is Medicaid, the percentage that is Medicare, and what share of costs each of those programs covers?

JAMES CLYNE: Right.

So Medicaid covers 53 percent of the cost; Medicare, 26; private pay is 15; And, "Other," which tends to be other insurance, is 4.5 percent.

But in reality, Medicaid days are 71.6 percent of the days in a nursing home, and Medicare is 15 percent, and private pay is 7.6.

STEPHAN HANSE: And one addition to that, on the Medicare side of the equation, what we saw with the suspension in elective surgeries, that, essentially, shut down the post-acute care, the Medicare reimbursement to nursing homes during this pandemic.

Hospital patients having, for example, hip surgeries and needing further rehabilitation, they were not ready to return to the community, they will go to a skilled nursing facility.

During this pandemic, all those elective surgeries were suspended, essentially, shutting down

the subacute care units in nursing homes throughout the state.

Upstate, this had a significant impact on the financial resources of nursing homes, and downstate as well.

ASSEMBLYMEMBER GOTTFRIED: And, again, on Medicare, it covers 15 percent of the days, and what percent of costs? Or what percent --

JAMES CLYNE: Well, no, it's the other -- it's -- it's -- they are 15 percent of the days, but 26 percent of the revenue.

ASSEMBLYMEMBER GOTTFRIED: 26?

JAMES CLYNE: Yeah.

ASSEMBLYMEMBER GOTTFRIED: And is that -- are those percentages, like, what they would have been last year, or what they are, roughly, today?

JAMES CLYNE: It's from a cost report that is two years old, because it's the -- well, cost reports always lag behind.

ASSEMBLYMEMBER GOTTFRIED: Okay, thanks.

That's it for me.

Thank you, Assemblymember.

We will follow up by Senator Skoufis, recognized for 5 minutes.

SENATOR SKOUFIS: Thanks very much.

And thanks to both of you gentlemen for your testimony and participation.

I want to jump into discussing Executive Order 202.23 that was issued on April 24th.

It authorized the department of health to suspend any nursing home licenses for those facilities that failed to adhere to directives coming out of the department of health.

Can either of you attest to any of your members, any of your facilities, having their licenses suspended?

STEPHAN HANSE: None of our members had their license suspended as a consequence of 202.23.

JAMES CLYNE: Neither have we.

SENATOR SKOUFIS: Are you aware of any nursing homes outside -- even outside of your organizations that had their licenses suspended?

STEPHAN HANSE: I am not.

JAMES CLYNE: No.

SENATOR SKOUFIS: Okay. I'm not aware of any either.

And so I wonder, as to the efficacy of that executive order, and whether it was, you know, by some miracle, that there were no violations --

serious violations on behalf of nursing homes anywhere in the state, which I find hard to believe; or if there was just simply lack of adequate enforcement of that executive order.

Do either of you want to opine on that for a brief moment?

JAMES CLYNE: Well, it's a pretty substantial disruption of residents' lives if you are going to suspend a license, and then transport hundreds of frail elderly people out of their home to somewhere else.

So, I think it's something that should only be done, you know, in a very, very egregious situation.

I mean, there are other remedies the department has. For example, putting a receiver into a facility if they feel like it was inadequate.

Because I think the number-one thing we always have to look out for is what is best for the residents.

STEPHAN HANSE: And I would add, from the data standpoint, the State, by the -- conducted 688 infection-control surveys, every nursing home in the state of New York, and many were surveyed twice.

Out of all those infection-control surveys,

only four instances of what's referred to as an "immediate-jeopardy citation" were raised.

SENATOR SKOUFIS: Okay. Thank you for that.

STEPHAN HANSE: Those surveys are conducted by the department of health.

SENATOR SKOUFIS: Right. Of course.

I know that we have a number of panels later today with family members, I think upwards of 10 family members of New Yorkers, who died in nursing homes by COVID.

We heard from some at the last hearing.

We had an avalanche of people who wanted to testify.

We couldn't accommodate everybody, but we're hearing from many.

But one of the common themes from the last hearing, from these family members, is that many of these nursing homes had significant, many, many, many violations in the couple of years leading up to their family members's death, including, to your point, some with violations having to do with infection control.

And that's to be expected in some cases.

I mean, you have inspectors regularly coming down, and they look for every single item, check for

every single detail.

But what was astounding, at least in those facilities that I and my team looked into with the reporting online that's available, is that, in very few, if any, of these cases, of family members we heard from, were those facilities on the receiving end of enforcement actions after all of these violations were found.

I would like you to please speak to whether you feel that there is enough enforcement, enough teeth, when it comes to department of health inspections.

Yes, they identify the problems.

But, you know, is there enough on the other end of those violations that compels better behavior on the part of your members who have these violations, or, you know, if there are no penalties, if the fines are small, if they're slaps on the wrist?

What is to keep them from paying better attention to making sure that these violations don't happen again?

JAMES CLYNE: We certainly don't feel like the department is lax.

If anything, we feel sometimes they go too

far with some smaller violations that really, you know, don't have a fact on quality of care.

Our biggest complaint about the system is that it's inconsistent.

The people -- facilities in the Capital District get three times the violations of facilities downstate.

Does anybody really think that the downstate facilities are three times better than the Capital District?

So I think there could be improvement in the survey process, but it should be focused on serious issues and trained surveyors so they really bring some uniformity to the system.

SENATOR RIVERA: Thank you, Mr. Clyne.

Thank you, Senator.

Assembly.

ASSEMBLYMEMBER BRONSON: Uh, yes, the Assembly recognizes Chair John McDonald for 5 minutes.

ASSEMBLYMEMBER MCDONALD: Good morning, Steve, and good morning, Jim.

Thank you for being with us today.

You know, Jim, in your opening comments, you mentioned -- you gave us, actually, a good idea of

the nursing home patient, and what's going on.

I'm kind of curious, when you look at today versus maybe, five, seven years ago, the average patient who's there now, is their length of stay the same as it used to be, five, six years ago?

It sounds like they're a more fragile bunch, which would indicate to me that they maybe not have this longer stay because they're really there more for end-of-life.

Is that -- is that a fair assumption, or not?

JAMES CLYNE: That is exactly.

When I came to this job nine years ago, the average length of stay for a long-stay resident was two years.

The average length of stay for a long-stay resident is now under a year.

So, again, there's two populations.

As Stephen said, there's a population that gets discharged from hospital, comes for rehab, and then leaves.

And then there's the long-stay population in which, comes to the facility, it becomes their home, and they are there, essentially, for the rest of their life.

ASSEMBLYMEMBER MCDONALD: I imagine --

STEPHAN HANSE: Yeah, [indiscernible cross-talking] --

ASSEMBLYMEMBER MCDONALD: -- go ahead, Steve.

STEPHAN HANSE: -- Assemblymember, with the real focus on really providing care, to the extent that they're able to provide care in the community, that focus has really driven down the amount of time that residents stay in nursing homes; and which -- which -- what happens there is, you have a significantly higher vulnerable population in nursing homes now, as we talked about earlier, with multiple co-morbidities.

They are unable is to live in the community, and then they receive their care in a skilled nursing facility.

ASSEMBLYMEMBER MCDONALD: You're referencing, more and more people, whether it's MLTC programs, whether it's consumer-directed care, they're living at home, but you're getting the ones with the most challenging.

Okay, very good.

Let's talk about your staff, and, actually, the residents.

There's been, you know, today's "Times Union" boasts about the fact, thank God, that our infection

rate is down below 1 percent statewide, which is good.

We watch these numbers daily.

I'm curious, in the facilities that your organizations represent, where are the infection rates these days?

STEPHAN HANSE: Anecdotally, in surveying our members of residents, almost throughout the state are negative. And our staff have been below 1 percent positive.

And that really ties into the issue of visitation, which we can talk about later.

But, right now, if one staff member tests positive for COVID, every resident of that nursing home is unable to receive a visitation from family or a loved one.

That's significant.

JAMES CLYNE: Yeah, the infection rate is very low now.

There's some debate about staff and whether there are false positives. And we've had some debate with the department about that.

But, you know, staff do trigger positive, and the question then is: Are they really positive, or is it a false positive?

ASSEMBLYMEMBER MCDONALD: And when they do trigger positive, are they out of work for the next two weeks, are they quarantined? Is that what happens?

JAMES CLYNE: Yes.

STEPHAN HANSE: Yes.

ASSEMBLYMEMBER MCDONALD: Doesn't really help your staffing issue, does it?

JAMES CLYNE: It does not.

ASSEMBLYMEMBER MCDONALD: No. Okay. All right, all right.

Jim, I think you mentioned early on about the burn rate on the PPE, and, particularly, in the beginning of the pandemic.

Would it be fair to say that if PPE was more prevalent in the beginning, would that have had a significant impact on the outcome, overall?

JAMES CLYNE: I think it would have some impact on the outcome.

But, also, if you go back and look at the directives coming from the CDC, they simply didn't understand, and so our members didn't understand, the fact that there were so many asymptomatic and presymptomatic people walking around.

And some of the recommendations for the use

of PPE early in March, it might not have made a difference.

It was only when there was a greater awareness of that, that the PPE became really essential.

ASSEMBLYMEMBER MCDONALD: Right.

A lot more -- real quickly at the end, I'm just throwing this out there probably for further conversation:

A lot of attention the last week or two is starting to focus on the environment; it's focusing on air exchanging, it's focusing on humidity.

Do your industries have any comments at this stage about that, or are you guys very much in tune with this, or is it something you're following?

JAMES CLYNE: We're following the science.

If there are recommendations for something that we could do better, then we'll do that.

STEPHAN HANSE: Yeah, no, we closely follow.

One concern we do have is, in this year's budget, most -- many nursing homes in New York State were built in the 1960s.

And after a nursing home reaches 40 years of age, the State would provide a residual reimbursement in their Medicaid rate to upgrade the

buildings for the HVAC systems, things of that nature.

This year's budget eliminated that reimbursement to keep nursing homes [indiscernible cross-talking] --

SENATOR RIVERA: Thank you so much, Assemblymember.

Thank you, Mr. Hanse.

I'll recognize myself for 5 minutes.

Actually, to continue down that road, Mr. Hanse, you -- and I did cut you off because your time ran out at the end of your testimony.

But I did want you to quickly, since I have a couple of questions I want to go over, you were talking about recommendations for the future.

So if you could actually, just quickly, name them, since that's definitely something that we want to make sure we get on the record.

STEPHAN HANSE: Sure.

Thank you, Senator.

I really look at going back to the onset of this pandemic, and the focus on increasing hospital capacity, both, increasing hospital resources.

That same laser-light focus needs to be equal for nursing homes and assisted-living facilities.

We saw the canary in the coal mine, if you will, in Kirkland, Washington State, where a nursing home, really, in the lower 48 had the infection, it spread through there. Well over 40 residents passed away.

So we truly serve the most vulnerable population, that we [indiscernible cross-talking] --

SENATOR RIVERA: Remember, I only have 5 minutes, so I want to make sure that -- very little commentary, just give me top-line recommendations.

STEPHAN HANSE: Yep.

The state budget must look at long-term care as an investment and not as an expense.

SENATOR RIVERA: Thank you.

STEPHAN HANSE: And that will fund PPE, that will help fund testing. And that will help, in working with the State, to bring staff back to nursing homes.

What we're seeing as a consequence of this pandemic is, really, many people do not want to work in the long-term care now.

They have families. There is anxiety, there is fear with this, and they're looking elsewhere for career options.

SENATOR RIVERA: Got you.

STEPHAN HANSE: And we need to bring those minutemen and -women back to long-term care.

SENATOR RIVERA: Got you.

Okay, so, laser focus, like they did for hospitals; make sure that the state budget looks at long-term care as an investment and not as an expenditure; and then invest in the workforce, to make sure that we have -- that we have the workforce that we're going need for the home-care population -- for the nursing home population that we're going have.

Right?

STEPHAN HANSE: Senator, those are the top three.

Thank you.

SENATOR RIVERA: Thank you. All right.

Now, a couple more ones -- a couple more.

To follow up on a question that Senator Skoufis asked earlier, about the powers of DOH to put a facility in receivership:

Was there any -- are you aware that the department of health used this power at all to --

And this is for Mr. Clyne as well.

-- that it used this power to put any

facility in receivership?

STEPHAN HANSE: Not during the pandemic, no.

JAMES CLYNE: Correct.

SENATOR RIVERA: Mr. Clyne -- okay.

Also, do you have any, on the -- we've heard a lot about the visitation.

28 days is the current -- is the current, you know, standard by the State.

Could you tell us what your -- what the official position is, since we've heard from many family members how problematic this is?

Tell us about the 28 days.

STEPHAN HANSE: Sure.

We have recommended to the State that we narrow the quarantine requirements of our staff for 14 days.

There's many facilities throughout the state, Senator, in your district, in upstate, in Buffalo, Rochester, Syracuse, that have -- you know, you could have 250 residents.

If you have one staff member test positive -- and as Jim mentioned earlier, that very well could be a false positive -- but as soon as that individual tests positive, no resident in that facility is able to receive a visitor from family,

friend, or loved one for 28 days.

And what we're seeing with the asymptomatic nature of this virus, if you have a large facility with a large staff, individuals living in the community, inevitably, will test positive.

And if we go into the fall with an uptick in COVID, we have residents who have not had in-person visitation with their loved ones since late February, early March. And that's really unacceptable.

So we really need to have a flexible system that provides visitation, not a one-size-fits-all system.

SENATOR RIVERA: Got you.

Mr. Clyne, I figure you'd agree?

JAMES CLYNE: Yeah.

The other thing the State could do is, they actually are taking the interpretation a little tighter than the federal government.

They are taking, any positive test shuts down visitation.

The language actually talks about "facility onset," meaning, that there would be -- that the infection came at the facility, as opposed to a worker getting infected in the community and then

testing positive.

If they haven't been in the facility, there's no reason to start the 28-day clock.

SENATOR RIVERA: Since I only --

JAMES CLYNE: And I would think --

SENATOR RIVERA: -- got you.

Sorry.

Since I only have 40 seconds --

JAMES CLYNE: Yeah, that's it.

So, just, if they change that definition, that would also help.

SENATOR RIVERA: A couple of folks -- a couple of operators have actually said -- referred -- said to me that they would like -- that one of the recommendations is to create sort of a committee of operators, or just a group of people, who are -- who actually operate nursing homes on a day-to-day basis, so that the recommendations that -- when the State issues guidance, that it is not issued just as a "you're just going to have implement this"; but, as opposed to that, that kind of go at least through a filter, so there's a consideration about how it's going to actually impact the operation of the actual facilities.

Just say "yes" or "no" if that's -- if that's

at least sounds [indiscernible] --

JAMES CLYNE: Yes, [indiscernible cross-talking] --

SENATOR RIVERA: -- very quickly, since my time ran out.

STEPHAN HANSE: -- yes, this is a partnership. Medicaid is a partnership.

We would support that.

JAMES CLYNE: Yes, we will participate in whatever the State wants to do.

Thank you.

Assembly.

ASSEMBLYMEMBER BRONSON: Yes, I will recognize myself for 5 minutes.

Thank you, Steve and Jim for being here, first of all.

So some of my colleagues have already asked the question about department of health inspections.

I believe the testimony was:

As a result of those inspections, no certificates of operations have been discontinued or suspended;

And then, second, whether or not a receivership has been put in place on any of the facilities, as far as you are aware; and that answer

is no as well.

Could -- we've asked the department of health to give us information about their inspections.

I believe their testimony last Monday was that they had conducted some 1300 inspections.

We don't have the details of that.

But knowing that there's been no licenses suspended, knowing that a receiver has not been placed in any facilities, are you aware of any corrective steps that were required of any of your facilities or any other facilities that you are aware of?

Were there corrective steps taken after a violation was identified?

And, if so, if you, in a general way, can share with us what those kinds of steps were?

JAMES CLYNE: The process is, that once the department has findings, then a facility would have to do a plan of correction.

So if it was something on infection control, because that's what they were surveying on, but they were actually going much beyond that, then the facility would have to come up with a plan of correction that met the department's requirements; whether it was, you know, training staff, or

improving some particular facility.

So, yes, there have been any number of plans of corrections that have been done.

STEPHAN HANSE: Yeah, well, and as I -- the example I mentioned earlier, the 688 infection-control surveys conducted by the department of health, those four immediate jeopardies, they would have to be addressed immediately, and the department would remain in the facility.

ASSEMBLYMEMBER BRONSON: Okay.

And are you aware on whether or not those corrective plans were put in place, and whether or not facilities followed them?

STEPHAN HANSE: I'm not specifically aware, but they would have to follow them, or, the department could pursue inaction against the license.

ASSEMBLYMEMBER BRONSON: Okay.

All right, but, as -- but you're not aware of any actions pursued against a facility's license. Is that correct?

JAMES CLYNE: No, there were substantial fines that the department was putting on some members, that we thought were unreasonable.

You know, serving people in a pandemic is difficult.

And they came in with some very, very onerous fines on a number of facilities.

ASSEMBLYMEMBER BRONSON: Okay.

Turning to a different line of questioning, we heard a lot of testimony last Monday regarding the isolation of patients and residents in the facilities, and not having their loved ones be able to come in, either because -- or, not come in at all. And sometimes it's a social and emotional visit, but sometimes it's also to partake in the caregiving.

Do either of you have recommendations on what steps could we possibly take at this point to alleviate that isolation?

STEPHAN HANSE: Again, I go back to the visitation restrictions we're facing now. Especially during warm months, they can be relaxed.

I think we can safely go to a 14-day period, given that the below 1 percent infection rate, the access to PPE, the visitors would have to utilize PPE, they'd have to utilize social distancing.

So I think, right now, given the numbers in New York State, that we can have a flexible

visitation program to ensure that loved ones are able to see and provide that care to their loved ones.

JAMES CLYNE: We agree.

It's very important, and we think that we should take some additional steps to -- again, safety has to be first. But we believe we could safely do more visits that are happening now.

ASSEMBLYMEMBER BRONSON: Okay.

STEPHAN HANSE: And one thing I would add there, and it may seem trivial, but I think it's very, very important:

Right now, residents in skilled nursing facilities are unable to have hair care.

Our beauty salons, our barbers, are full-time employees. They're not individuals who work in the community and work part-time in the facility. They're full-time employees.

But they have not been permitted by the State to come into facilities.

And I think we would all admit, no disrespect, Senator Rivera, but when our hair looks good, we feel a little better.

And, unfortunately, I've talked to a lot of families who are very frustrated that their loved

ones aren't able to get their hair done.

And I think that's another significant issue.

That's a personal, very personal, issue that I think needs to be addressed as well.

SENATOR RIVERA: And on that "hairy" comment, we want to say, thank you, Mr. Hanse.

Thank you, Assemblymember.

Followed up, Senator Serino, recognized for 3 minutes.

OFF-SCREEN SPEAKER: Five minutes.

SENATOR RIVERA: Five.

Apologies.

Senator Serino recognized for 5 minutes.

SENATOR SERINO: Thank you.

And I'd like to thank you both for being here today.

And a huge thank you to your members and staff for being on the front lines during this pandemic.

I just want to add for the record, that I'm really disappointed to see that the department of health and the governor's office showed such a blatant disregard to Upstate New Yorkers by failing to appear up here today.

And I can only hope that they're at least

tuning in to hear what everyone has to say.

So for my first question, and it's a three-part:

After the March 25th guidance came out that mandated your facilities to accept COVID-19 patients, and expressly prohibited testing of these patients, I heard from a number of facilities who felt tremendous pressure to accept these patients from the hospitals.

So, three parts:

Did you hear from any of your members on this issue, and what was their experience?

And can you make suggestions for going forward?

And should the State be making more investments in step-down units or separate facilities?

JAMES CLYNE: The reaction that I got from my members was twofold.

Most of my downstate members at that point were already taking COVID- or presumed COVID-positive residents.

They're not-for-profit and government providers. They felt that it was their mission to take care of that population.

And the reaction I got from the membership was, we're doing it anyways.

Upstate, there was a little bit of a difference, in that many felt that we should have had greater discussions with the department about doing specialty units because the time and the pressure was not the same as it was downstate.

Not that they were any less committed, but it was just a totally different environment; the hospitals were not backed up.

And they thought a discussion about doing specialty units would have been something that would have been helpful.

And some were set up, but not the number that were probably needed.

STEPHAN HANSE: Yes, I would agree with everything Jim said.

The March 25th memo was directed at exigent circumstances, where hospitals were reaching peak capacity, and individual hospital patients were not ready to return to the community. So the next logical location would be a nursing home.

I heard concern from members who did not have COVID in their facilities, that now they might potentially have to take an individual.

I think, going forward, I would look at that policy, and go back to my earlier comments with regard to being treated on an equal basis with hospitals, and really looking at policies.

And as policies are being implemented, you know, have a conversation:

Is this in the best interest, globally, of nursing home staff, patients, residents, and the health-care continuum?

Is this the best we could do?

Should it be implemented on a case-by-case basis and not a uniform statewide policy?

SENATOR SERINO: Okay.

And I also made a recommendation for specialty-care units through the course of this.

For the record, never received an answer from the department of health or the governor's office.

So, another question I have, another three-part:

At last week's hearing we heard a good amount of testimony about staffing shortages in these facilities.

This is not just a pandemic problem, but it has been a problem that has plagued the industry for some time now, and is undoubtedly going to be

exasperated by the budget cuts the majority's enacted this year.

Throughout the pandemic, the State implemented a volunteer staffing portal they claimed would help this problem.

But I heard from a number of facilities in my district who could not find qualified available staff through that portal.

So, it's three-part:

Have you heard from those you represent about their experience with this portal?

Was it use useful for them?

And how can it be improved to better meet the needs of your facilities in particular?

STEPHAN HANSE: We were aware of the portal. All our members were made aware of the portal.

On balance, a very limited number of men and women went to work in nursing homes and assisted-living facilities, through the portal.

And I think as we go forward in the future, I think the portal was an exigent-circumstance approach.

I think we really need to reinvest in attracting men and women to long-term care, to work in nursing.

The average age of a nurse educator in New York is 68 years old now.

We really need to return that focus and incentivize a career ladder for individuals, that long-term care is a career.

They can rise through the ranks.

I am fortunate to work with a colleague who started out as a CNA, and went right to a nursing home administrator.

It is a very fulfilling and successful career.

And I think the State of New York needs to support that and encourage people to come into long-term care.

JAMES CLYNE: The problem with the portal was, that they -- the State had looked to recruit people to work in hospitals, and then tried to flip it to also be useful for long-term care.

And a lot of the people who signed up expected to work in hospitals, so, it was difficult to get them to come to nursing homes.

SENATOR SERINO: Thank you.

SENATOR RIVERA: Thank you, Mr. Clyne.

Thank you, Senator.

Assembly.

ASSEMBLYMEMBER BRONSON: My apologies.

Next we will go to Ranking Health Chair Kevin Byrne.

ASSEMBLYMEMBER BYRNE: Thank you.

I kind of got promoted there, in a way.

But I wanted to first apologize to Mr. Hanse, and Mr. Clyne, because I'm going to read a bit of an opening statement. And then I will do my best to get to questions.

But I want to make this clear, because, when it was first announced we would be conducting these legislative hearings, I was very encouraged, not because I want to be here doing this.

I don't think any of us want to be at a hearing, reviewing a pandemic that caused the deaths of thousands of fellow New Yorkers.

I was encouraged because I saw an act of true bipartisanship, working together to listen to the witnesses, the victims, hear their stories, learn from their experiences, and examine policies and procedures, so we can all better prepare for the future.

Like many of my colleagues, and as Senator Serino just noted, I was deeply discouraged, though perhaps not surprised, to learn that the

department of health commissioner was not on today's witness list to answer questions.

After leaving last week's hearing, before refusing to take at least one question from each committee member, I had hoped he, or at least a representative from the department, would participate and answer questions from our colleagues today.

Both Democrat and Republican conferences last week were underserved by his abbreviated participation in the hearing.

We are a co-equal branch of government and should be treated as such.

While I am grateful to the participants on the witness list today for agreeing to share their own experiences, as well as the witnesses right now, I do look forward to hearing more from them.

I am troubled that there are those who sought to participate in today's hearing, only to be soundly denied.

We have fellow New Yorkers who have stood up for victims, and have asked to share their stories with us, only to be ignored.

Those that reached out to me directly, I shared with our Assembly chairs.

I thank Chairperson Gottfried specifically for entertaining those requests, and sharing them with his counterparts for this hearing.

However, the end result leaves much to be desired.

Those stories will not be told in this forum today.

Why?

I can only surmise that outside pressures prevented it from happening.

Again, we are a co-equal branch of government.

I say this not to diminish the importance of the testimony we are about to hear.

I thank all the witnesses for agreeing to participate in today's proceedings.

I say this to make one thing crystal-clear:

When this hearing does conclude, likely very late into the evening, we, members of the Assembly Minority Conference, are not done listening.

Now, to Mr. Clyne and Mr. Hanse, I wanted to drill down again into the March 25th department of health order.

It's been largely revealed that it's something that forced nursing facilities to take

COVID-positive patients.

I know department of health has repeatedly said it does not. It basically restricted who they could deny, but many see that as a distinction without much of a difference.

Mr. Hanse, you reported in the press earlier during this pandemic, I think in the "Spectrum News" and "lohud," citing that, earlier on, "This was an order that should be revoked now. When it was put in place, it should be done on a case-by-case basis."

I tend to agree with that statement.

And, Mr. Clyne --

I know I'm trying to go through this, because I wanted to give you some time to answer these questions.

-- the peer-review that's been repeatedly referenced by the department of health, backing up its study that largely defended the March 25th order, included testimonials. But it also included -- I found this, I saw this morning -- it included an interview, just a transcript, actually, from a "Capitol Tonight" interview with you and Mr. Nick Reisman.

And in that, I understand you made your

positions known about the order.

But you also, at one point, said, "I don't think you can say that not a single person who was taken from a hospital contributed to the infection rate," based, largely, referencing the March 25th order.

So my question is:

First, did the department of health consult either of your organizations before issuing that March 25th department of health order?

Do you still believe those statements to be accurate?

And, should it have been revised?

And, you know, we've been hearing about this timeline in last week's testimony about the peaks.

And on April 8th was the peak of deaths in nursing facilities, but we also know we've lost thousands of lives after that.

Is it possible that that order also contributed to those deaths?

JAMES CLYNE: I think it's impossible to know.

Just like it's been reported, it was impossible to know whether visitors brought in, because you didn't have the data.

But I do think the report reflects what was being told to me by my membership while it was going on, which was, asymptomatic and presymptomatic staff were the issue that was driving the infection rate, and not discharges from hospitals.

Many of our members were already [indiscernible cross-talking] --

ASSEMBLYMEMBER BYRNE: I don't think a lot of people -- I'm sorry to interrupt, I'm sorry, sir.

JAMES CLYNE: Sure.

ASSEMBLYMEMBER BYRNE: It's limited time.

I don't think a lot of folks disagree with that.

I just think there's probably multiple drivers, multiple sources, for spread.

And if this is one of them, it should be looked at.

There's missing information that could have really drilled down into that.

So I believe I'm out of time.

I'm hoping my colleagues will follow up.

Thank you, sir.

SENATOR RIVERA: Thank you, Assemblymember.

On the Senate side, recognize ranking member on health, Senator Patrick Gallivan, for 5 minutes.

SENATOR GALLIVAN: Thank you, Chairman.

Good morning, everybody.

I would like to start, too, by expressing disappointment in the absence of the health commissioner today.

Many of us were part of last week's hearing. And the health commissioner, after several hours, left us, I think, with many more questions than answers.

And that's for a different day.

But I would be remiss if I didn't mention that.

And, also, like Assemblymember Byrne, we have submitted several witnesses. And I'm disappointed that their stories are not going to be told today.

And that is something that we'll pursue separately as well.

But they do have the opportunity, like other New Yorkers, to be heard by their elected representatives.

And with that, we have two great representatives of the long-term-care industry in New York State with us today.

So, Steve and Jim, thanks for being here, and thanks for your testimony.

I've got a couple different questions in different areas.

But speaking of the department of health, are you able to comment, in general, about the assistance about -- the assistance that your facilities received, or didn't receive, [indiscernible] the relationship with the department of health, during this crisis?

STEPHAN HANSE: Sure.

And during the crisis, there were numerous conference calls, Jim and I were on them, with DOH.

They would deal with issues, in particular, for example, with PPE.

When the county OEMs were unable to secure PPE, we would have calls with the department of health, that the State would try to secure PPE.

In those instances we worked with them.

They would ship in the PPE.

We would work with them to find a location for the PPE to be dropped off.

They would provide us a list of those facilities most in need of PPE.

So, for example, there was a situation where a load of PPE was shipped from Jersey to White Plains, to a facility.

We had the list of facilities, what they needed to receive. And we worked in partnership to get that PPE directly to those facilities.

SENATOR GALLIVAN: Thanks.

If I could just jump in, and I know you commented on that before, but, just, in very simple terms: Were your agencies generally satisfied or unsatisfied with the interaction over the past several months with the department of health?

JAMES CLYNE: Think the members were frustrated to a certain extent.

But --

STEPHAN HANSE: That's the word I'd use.

JAMES CLYNE: -- I think the question is -- you know, the lack of testing and the lack of PPE, though, I don't know if it was beyond the department's control or not.

But it was certainly frustrating for the membership, particularly when there was then, it seemed like, a fair amount of beating up on people who were, literally, risking their lives to keep these elderly residents alive.

That did not feel like it was helpful.

SENATOR GALLIVAN: [Indiscernible cross-talking] --

STEPHAN HANSE: [Indiscernible cross-talking] --

SENATOR GALLIVAN: Steve, I'm sorry, just because of the sake of time; but, thank you.

Governors noted that Medicaid reimbursements could be cut by an additional 20 percent if there isn't additional assistance from federal government.

What will that do to your members?

STEPHAN HANSE: That would close facilities.

JAMES CLYNE: There's already a facility, a not-for-profit, five-star facility, in Westchester who had a plan in with the State to redo their nursing home and expand their assisted-living.

They are now going out of business.

That's with no additional cuts.

STEPHAN HANSE: Yeah, bankruptcies in Buffalo.

I think, roughly, about 47 percent, it's probably higher now, of nursing homes throughout New York are in the red right now.

SENATOR GALLIVAN: Okay. Thanks.

Senator Joe Griffo, who is not a member of the committee, has proposed legislation that would permit your patients to have the right, at their own expense, to install and maintain an electronic

monitoring device in his or room.

And, of course, part of the purpose is to alleviate families' concern about the type of care that people are getting.

What is your reaction to that?

Do you have any thoughts about this proposed legislation?

STEPHAN HANSE: That can be done now under law.

JAMES CLYNE: Yeah, I mean, obviously, there are privacy concerns, because not everyone has a private room.

So, facilities, you know, really need to work with families on these types of issues.

SENATOR GALLIVAN: Okay.

STEPHAN HANSE: What we've seen in those instances as well, is, for example, if I wanted to, to put a camera in my mother's room, my mother probably doesn't want me watching her 24 hours a day.

SENATOR GALLIVAN: Thanks for the work you do, and your testimony.

STEPHAN HANSE: Thank you.

SENATOR RIVERA: Thank you, Senator.

Assembly.

ASSEMBLYMEMBER BRONSON: Yes, the Assembly recognizes for 5 minutes, Ranking Member Jake Ashby of the Aging Committee.

ASSEMBLYMEMBER ASHBY: Thank you, Mr. Chairman.

Thank you both for being here today.

I too want to express my disappointment that there is no one here from the department of health.

I think upstate deserves better, and the families and people who have been affected by this, and the people testifying here today, also deserve a representative from the department of health, especially after last week.

Getting into that, gentlemen, were either of your organizations contacted by the department of health prior to the March 25th order being published?

STEPHAN HANSE: No.

JAMES CLYNE: Were not.

ASSEMBLYMEMBER ASHBY: Do you think the March 25th order revealed that skilled nursing facilities were not high enough priority?

STEPHAN HANSE: I think it recognized, among other things, the -- the -- how technical nursing homes are in terms of the care they can provide.

So if you have an individual in a hospital -- a patient in a hospital who cannot return to the community, and needs almost, really, acute care still, that a nursing home can provide that care.

ASSEMBLYMEMBER ASHBY: But if it's more complex, like you're indicating, don't you think that that would be a higher priority and that they would reach out to you?

STEPHAN HANSE: I think a one-size-fits-all approach is not the methodology that should be used.

If you are in a community where there was a hospital that reached capacity and they needed to discharge patients, I think this approach would be appropriate so long as that nursing home had sufficient PPE and had the ability to provide that care.

ASSEMBLYMEMBER ASHBY: Mr. Clyne, anything?

JAMES CLYNE: Again, my members were in the position that they felt like they were taking these residents anyways. So, the impact downstate was limited.

As I said before, my upstate members thought there should have been more discussion about looking at facilities that would specialize in COVID care because it appeared that there were some operators

or providers who were open to doing that.

ASSEMBLYMEMBER ASHBY: Do you think that it should have ever been placed?

JAMES CLYNE: I'm sorry, I didn't catch that.

ASSEMBLYMEMBER ASHBY: Do you think that the order should have ever been placed, or should it have been reworded, revoked, or revised earlier?

JAMES CLYNE: I'm not clear what problem, again, that they were trying to address because, from my membership -- again, I only represent not-for-profit and government facilities -- the feedback was, we are taking COVID people.

So there's no need for the reg for us.

ASSEMBLYMEMBER ASHBY: Mr. Hanse?

STEPHAN HANSE: I think, really, what we've seen, once we learned about the asymptomatic nature and the need for PPE, I think, moving forward, to have -- there are many providers who are providing excellent care for COVID-positive residents who are symptomatic.

They isolate those patients and the staff is focused on their care.

So I think really what we've seen throughout this pandemic is, each day, epidemiologists, doctors, providers, are learning more and more about

this virus and how to work deal it, and what the focus needs to be in terms of the health-care continuum.

ASSEMBLYMEMBER ASHBY: Have either of you been able to find the March 25th order on the department of health website?

STEPHAN HANSE: I have not looked recently.

JAMES CLYNE: I have not looked recently either.

ASSEMBLYMEMBER ASHBY: Last week's testimony given by the commissioner indicated that it was up.

But, to my knowledge, and, you know, to the frustration of the many people that I've spoken with, we're still unable to find it.

So, because it's a current and standing reg, I'm wondering if anybody, you gentlemen in particular, are able to find it?

JAMES CLYNE: Again, we have not -- we haven't looked for it.

STEPHAN HANSE: Yeah.

ASSEMBLYMEMBER ASHBY: Getting back to my colleague and Chair Bronson's question regarding investigations, and to some of the facilities, you talked about the severity of some of those investigations.

How many of them resulted in immediate jeopardy?

STEPHAN HANSE: The best of my knowledge, on out of the 688 infection-control surveys, 4 facilities.

ASSEMBLYMEMBER ASHBY: 4 out of 640-plus investigations?

STEPHAN HANSE: "688" is the number I have.

ASSEMBLYMEMBER ASHBY: 688.

And is that -- does that line up, typically, with the amount of investigations -- is that percentage congruent with that amount of investigations that currently goes on?

So, typically, if you did, you know, 600-plus investigations, would you typically only have that many immediate jeopardies?

STEPHAN HANSE: It's difficult to say because this -- these infection-control surveys were somewhat unprecedented as a consequence of the pandemic. And it really came from CMS, that every state has to do -- has to conduct an infection-control survey of every nursing home.

And the specificity of the requirements of the investigation were very narrow in terms of infection-prevention control.

So I'm not -- I don't have an apples to apples.

SENATOR RIVERA: Thank you, Mr. Hanse.

ASSEMBLYMEMBER ASHBY: Thank you both for your time.

SENATOR RIVERA: Thank you, Assemblymember.

Recognize Senator -- Ranking Member on Investigation, Senator O'Mara, for 5 minutes.

SENATOR O'MARA: Thank you, Chairman.

Good morning, everyone.

Good morning, Steve, and Jim.

Thank you for being here and giving this testimony.

I will join my colleagues in my disappointment that Commissioner Zucker has not been recalled to complete his testimony that he was woefully unprepared for last Monday, particularly in regards to the number of nursing home patients that were transferred to hospitals with COVID complications, that ultimately died in hospitals.

Gentlemen, are you familiar with the March 26th statement of the American Medical Directors Association, Society for Long-Term Care's, statement in response to the governor's order issued the day before?

JAMES CLYNE: I am.

STEPHAN HANSE: I am.

SENATOR O'MARA: When did you become aware of that statement?

JAMES CLYNE: The day it came out.

STEPHAN HANSE: I as well.

SENATOR O'MARA: That statement said that, "The American Medical Directors Association found this order to be overreaching, not consistent with science, unenforceable, and, beyond all, not in the least consistent with patient-safety principles."

Do you agree or disagree with that statement?

JAMES CLYNE: I disagree with it.

SENATOR O'MARA: Okay, and why so?

JAMES CLYNE: Because I think that they went way too far.

And we were -- as I said, we were already taking care of COVID people. Nursing homes can care for COVID people safely.

They were being discharged. They were being sent into cohorted areas for 14 days.

It can be done.

I just felt that that statement was way, way too broad, and does not reflect what not-for-profit nursing homes are all about.

We serve the people who are the most difficult to serve. And we are not about to abandon COVID residents, certainly residents who had been in our facility and went to a hospital, and tell them they couldn't come home?

It's just completely inappropriate.

STEPHAN HANSE: Yeah, and I would echo that, and say that nursing homes throughout New York are experts in infection-prevention control.

And with all the proper equipment, they can excel in providing care to those COVID-positive patients, and preventing the spread of COVID to those non-infected residents.

SENATOR O'MARA: Well, you had stated before that there was a distinction between downstate nursing homes taking these patients and upstate nursing homes that were not taking them.

Should there have been a distinction between upstate nursing homes and those that were in the hotbed of the metropolitan New York City area?

JAMES CLYNE: I think if we had gotten heads-up, that, upstate, we could have come up with a plan, working together with Stephen's organization, to find some specialty facilities that would have volunteered to take COVID.

That's what my members were interested in.

Some were opened, but not enough. There's just [indiscernible cross-talking] --

STEPHAN HANSE: I also had members who were very interested, and had the skill set to provide the necessary care to COVID-positive residents. [Indiscernible cross-talking] --

JAMES CLYNE: And without the press of needing to discharge, I think we could have come up with a plan in a relatively short period of time, that would have dealt with upstate and made a lot of the members more comfortable.

STEPHAN HANSE: I agree.

SENATOR O'MARA: That statement further went on to say, that, "Rather than bullying nursing facilities and [indiscernible] providers to make unsafe decisions, the State would be wise to direct its energies at ensuring adequate PPE and setting up alternative care sites."

Should this decision to have taken into account the lack of PPEs in certain facilities, and the appropriateness of setting up alternative sites for those nursing homes that weren't comfortable taking these COVID patients back in?

JAMES CLYNE: Well, certainly, I testified to

that already. Upstate, that was the case.

PPE is one of the things that's very difficult because we don't know -- "we" meaning myself and my members, have no idea what the State was able to secure or not secure.

But, ourselves, as nursing homes and assisted-living, the availability of PPE was spotty and expensive.

STEPHAN HANSE: Exactly.

SENATOR O'MARA: Okay.

Do either of you have any statistics, through your surveys, or anecdotally, of how many nursing home patients were transferred to hospitals with COVID, and how many of those ultimately died of COVID in a hospital?

STEPHAN HANSE: I do not.

JAMES CLYNE: The only data I've seen is the data that was in the report that the department did. But I don't have access to that HERDS data on my own.

SENATOR O'MARA: Can you tell me what the average salaries are for CNAs and LPNs in nursing homes across the New York State industry?

STEPHAN HANSE: It differs throughout regions.

Many CNAs are in unions, represented by union. They have different collective bargaining agreements in Buffalo and Syracuse and downstate, so it does range.

Downstate tends to pay more, given the cost of living, and things of that nature.

SENATOR RIVERA: Thank you Mr. Hanse, and thank you, Senator.

SENATOR O'MARA: Well, I would like to get an answer at least to what the average salary is across Upstate New York for CNAs and LPNs [indiscernible].

JAMES CLYNE: I believe we can actually pull that data for you.

STEPHAN HANSE: Yeah, [indiscernible cross-talking] --

SENATOR RIVERA: And we'll make sure that we get that -- we'll make sure that we get that question to both gentlemen so we can get that written answer for you.

Thank you.

Assembly.

ASSEMBLYMEMBER BRONSON: Thank you, Senator.

We next go to the Ranking Member of Oversight Committee, Brian Manktelow.

ASSEMBLYMEMBER MANKTELOW: Good morning.

Thank you, Mr. Chairman.

Thank you, gentlemen.

Again, about how many facilities do you guys oversee?

STEPHAN HANSE: Over 400 skilled nursing and assisted-living.

JAMES CLYNE: I represent approximately 200 nursing homes. But, all sites of care, over 500.

ASSEMBLYMEMBER MANKTELOW: Okay. So on May 10, 2020, there was a mandate that all staff testing would take place for COVID testing.

Were your facilities able to do that and make it -- and fit into the time constraints for that?

And if so, were you -- what was the turnaround time for those tests?

STEPHAN HANSE: When the issue was first ordered, it was difficult, in terms of -- because when the issue -- the order was first issued, it was twice-a-week testing. And there was turnaround times in terms of the lab processing the tests.

The State then provided a list of labs that would be available in different regions to process the tests.

One of the most significant issues really became the cost.

What we saw is, the cost of one test was $100.

JAMES CLYNE: Yeah, it was a tough timeline.

It was announced on a Monday. And by the following -- by that Wednesday, plans had to be in to State. And by the following week, testing had to begin.

ASSEMBLYMEMBER MANKTELOW: Yeah, I think you had up to May 20th to actually implement that testing, if my memory serves me correctly.

So were they able to do good, or not?

Were there some -- some of your facilities not able to make it happen by the 20th?

STEPHAN HANSE: To the best of my knowledge, we were able to do it.

Initially, the concern was the turnaround time.

During twice-a-week testing, you wanted the result back from the first test prior to the second test being conducted.

JAMES CLYNE: Yeah, we were able to comply.

ASSEMBLYMEMBER MANKTELOW: Okay. Thank you.

And I know we've talked about PPE equipment

and gear quite a bit already this morning.

You know, many of the facilities had to sign a compliance certificate, that they would comply with these mandates as long as they were able to secure a lab and could financially afford to pay for these tests.

Did you guys do those same compliances as well?

JAMES CLYNE: The members have to do the compliance.

STEPHAN HANSE: Yeah, they're required to do [indiscernible].

JAMES CLYNE: Yeah -- yes.

ASSEMBLYMEMBER MANKTELOW: So of the many facilities that you represent, were any of the facilities given PPE or -- that was expired or unlabeled test kits?

STEPHAN HANSE: Not that I'm aware of directly.

JAMES CLYNE: We had -- were sent some defective PPE, but I believe it was from the federal government.

ASSEMBLYMEMBER MANKTELOW: All right, because some of our facilities that I represent here in Upstate New York, they actually received a shipment

from the New York State Department of Health on the 25th of May. And the PPE equipment was expired at that point. And, at the same time, a lot of the test kits that were given were unlabeled.

And -- but, again, at the same time, they were required to make sure this happened.

And so none of your facilities, of the almost four to six hundred facilities, none of them received any expired PPE or unlabeled test kits?

JAMES CLYNE: No, I think there's two different things.

The federal government did a shipment of PPE. Some of that was clearly defective.

The test-kit issue, there was some confusion in test kits that were sent out.

In some cases, the test kit that a facility receive could not be used by the lab that was doing the processing. But I did not hear about defective.

It was just test kits that did not work for that member. And then there was a process for returning that and trying to get the correct test kits.

ASSEMBLYMEMBER MANKTELOW: All right.

Well, these PPE equipment and these test kits were definitely delivered by the New York State

Department of Health.

And if this had happened in one of your facilities, what would have been your recommendations to your facility?

STEPHAN HANSE: Really, to circle back with the department of health and indicate the issue with the PPE.

What we saw early on, when members were really scrambling, given the supply-chain constraints on PPE, there were companies who were looking to sell expired PPE.

And our advice to them was not to secure that PPE.

ASSEMBLYMEMBER MANKTELOW: Because you think it would be very ineffective?

STEPHAN HANSE: There were really no assurances at the time.

But, you know, really, we would not want to recommend going forward with expired PPE.

ASSEMBLYMEMBER MANKTELOW: All right.

All right, thank you.

To piggyback on some of the other comments already that was said earlier, you know, it's really a crime that we have nobody on this call, this hearing today, from the department of health.

We're able to go out and inspect nursing homes, but yet, at the same time, we have a lot of people that are really interested on what the New York State Department of Health is doing.

And, again, I will also piggyback and say, yes, I am disappointed that they're not on this call, this hearing today. And I think it's a disservice --

SENATOR RIVERA: Thank you Assemblymember.

Thank you, Assemblymember, your time has expired.

I will recognize Senator Jen Metzger for 3 minutes.

SENATOR METZGER: Thank you, Mr. Chairman.

I am very concerned about planning and preparation in the event of another surge.

I have facilities in my district who did feel that the incidents of COVID cases in their facilities were related to admissions from hospitals, including one that was admitting people from hospitals before the executive order.

Shouldn't we be planning now for specialty units in the event of a surge?

What kind of planning is your organization undertaking?

Should we be taking regional approaches?

It seems to me that we should be.

And I also want to ask about PPE.

How are your members doing in terms of acquiring the necessary stockpiles in the event of a surge?

Have there been problems in obtaining the necessary stockpiles?

If you could just speak to both of those questions?

STEPHAN HANSE: Sure.

To start at the end, we have, as you know, the requirement to have 30-day supply by the end of August, 60-day supply by the end of September.

I've heard some supply-chain issues, but, on balance, providers seem to be able to be doing that.

There were some issues in terms of storage.

If you have a large facility, nursing homes really don't have excess storage room; so, in terms of storing them, and the flexibility to store them off-site, but have ready access to those.

I think, moving forward, it is important to have the ability to have COVID-only facilities.

I think nursing homes are highly skilled in caring for COVID.

I think it will provide a level of peace of mind to other folks who have their loved ones in nursing homes as well.

SENATOR METZGER: Okay.

And is there any planning under way? And who should be doing that planning?

STEPHAN HANSE: Really, that planning is a partnership; I think a partnership with providers in the state of New York.

After nuclear power, quite frankly, no other industry is as highly regulated as nursing homes.

So we can't go off and do something on our own. We have to work through our regulatory agency with the department of health.

SENATOR METZGER: And would you agree that that planning needs to be happening now?

STEPHAN HANSE: And that planning is happening now.

SENATOR METZGER: Okay. Thank you.

SENATOR RIVERA: Thank you, Senator.

Assembly.

ASSEMBLYMEMBER BRONSON: Yes, next we have Assemblymember Ron Kim recognized for 3 minutes.

SENATOR RIVERA: As long as he's not driving.

ASSEMBLYMEMBER BRONSON: Very good point.

ASSEMBLYMEMBER KIM: Thank you, Chairman.

Were you and your members aware that nursing homes had received legal immunity for following the March 25th executive order, you know, arranging COVID care, or transferring 6300 COVID patients from hospitals to nursing homes, or admitting new COVID patients?

Just a yes or no.

STEPHAN HANSE: Yes.

JAMES CLYNE: I don't understand the question.

ASSEMBLYMEMBER KIM: Okay.

Are your members aware that the new May 10th executive order that the governor put in, and our new law that the governor signed into law last week, now narrows the scope of the immunity in the nursing homes --

JAMES CLYNE: Yes.

ASSEMBLYMEMBER KIM: -- nursing homes, and they no longer have blanket immunity for arranging for COVID-positives?

JAMES CLYNE: Yes.

ASSEMBLYMEMBER KIM: Okay.

STEPHAN HANSE: Yes.

ASSEMBLYMEMBER KIM: Do you think without

such legal blanket immunity, nursing homes will continue to arrange care for COVID patients?

JAMES CLYNE: Yes.

STEPHAN HANSE: Yes.

ASSEMBLYMEMBER KIM: Okay.

You would think -- so do you think [indiscernible] continue to care and admit new positive patients, with or without such legal protection?

STEPHAN HANSE: As I understand Article 30-d of the Public Health Law, that really is only in place for such time as to declare a state of emergency by the governor.

ASSEMBLYMEMBER KIM: Okay.

So the May 10th executive order states that any Article 28 general hospital shall not discharge a patient to a nursing home unless the nursing home operator/administrator has first certified that it's able to properly care for such patient.

That's a direct reversal from the March 25th executive order, in my opinion.

Do you agree with that?

JAMES CLYNE: No.

It's not a reversal.

The March 25th said you couldn't discriminate

against somebody who hadn't had a COVID test or was COVID-positive.

ASSEMBLYMEMBER KIM: The March 25th said you have to admit, regardless of whether -- and you have to admit any new patients regardless of whether they have COVID or COVID-positive background.

But the new --

JAMES CLYNE: Nursing homes always have to make sure that they can take care of somebody properly.

For example, if you don't have ventilators, you don't admit vent patients.

So it has to be something that you are capable of actually serving the person.

ASSEMBLYMEMBER KIM: Okay.

So were you aware of the specialized facilities that were set up for the isolation and care for COVID-positive patients during this pandemic?

STEPHAN HANSE: I was aware of providers who wanted to set them up.

And as we battled through the pandemic, providers that set up dedicated units within the facility.

ASSEMBLYMEMBER KIM: Out of curiosity, and

I'm running out of time, but, if somebody is sent there, who gets the reimbursement for those patients who are admitted to these facilities?

Do you know?

STEPHAN HANSE: The provider/the respective facility would be paid for the care of that resident.

ASSEMBLYMEMBER KIM: Okay.

I'm out of time.

Thank you.

SENATOR RIVERA: Thank you, Assemblymember.

There are currently no other Senate members seeking to ask questions.

Back to Assembly.

ASSEMBLYMEMBER BRONSON: I will now recognize in the Assembly, Assemblymember Tom Abinanti for 3 minutes.

ASSEMBLYMEMBER ABINANTI: Thank you very much, Mr. Chairman.

And thank you, gentlemen.

I'm sorry, I have been bouncing back and forth, I'm on a Con Edison call.

There's still large parts of my community are out of service, and they just happen to have the same time frame as you do.

I'd like to ask a few questions to both of these gentlemen, very quickly.

Essential-care visitation -- and I apologize if you've discussed some of this before -- is there any way to reclassify those people as employees so that they don't get excluded as visitors?

STEPHAN HANSE: Assemblymember, is your question, for family members to be deemed that?

ASSEMBLYMEMBER ABINANTI: Yes, yes.

I mean, they -- they are providing -- I mean, one -- we've gotten testimony from one who is not able to testify today. And she indicated that she was visiting with her husband, if you want to call it visiting, four to five hours a day, and providing care up, until the time she was excluded.

Is there any way for us to have a special category for visitors who are really part of the care team?

STEPHAN HANSE: I would really -- I'd really like to take a look at that.

I think visitation, on the whole, really needs to be addressed because, right now, given the numbers in New York and the availability of PPE, I think we can have a much less strict policy [indiscernible cross-talking] --

ASSEMBLYMEMBER ABINANTI: Well, we agree on that, but I'm trying to solve one individual type of problem.

We've heard over and over again about some of the people who actually provide care. They're not just visiting.

So I'd like to ask your agency to take a look at that.

If the health department is going to continue to be stubborn on this issue, maybe we can carve out individual pieces with certain types of protection for them.

The second issue is: Is there any -- are you aware of any nursing home in the state that is able to consistently meet the 28-day rule?

STEPHAN HANSE: Yes.

JAMES CLYNE: There are some.

ASSEMBLYMEMBER ABINANTI: There are some?

JAMES CLYNE: Yes.

ASSEMBLYMEMBER ABINANTI: Out of -- how many out of the total? Do you know?

JAMES CLYNE: Our first look at the data said just over 100.

STEPHAN HANSE: Yep, [indiscernible cross-talking] --

ASSEMBLYMEMBER ABINANTI: Out of how many?

JAMES CLYNE: Out of 615.

ASSEMBLYMEMBER ABINANTI: So one-sixth of the nursing homes have actually been able to set up some kind of visitation?

JAMES CLYNE: Well, additional ones might have rolled on, and some of them might have rolled off.

That's the problem with it.

ASSEMBLYMEMBER ABINANTI: Is there any documentation out there of transmission to nursing home residents by visitors?

JAMES CLYNE: We know of one case.

ASSEMBLYMEMBER ABINANTI: So we don't know --

JAMES CLYNE: There was one case in early March.

ASSEMBLYMEMBER ABINANTI: And that's about it?

JAMES CLYNE: That's the only one I know of.

ASSEMBLYMEMBER ABINANTI: Is there any indication -- I have some indication that ombudsmen, by federal law, are required to be allowed in.

And yet we heard testimony at the previous hearing that the ombudsmen were not able to get into the facilities.

Could you comment on that quickly?

STEPHAN HANSE: The ombudsmen are allowed to come in so long as they have tested negative for COVID.

ASSEMBLYMEMBER ABINANTI: All right, so they cannot [indiscernible cross-talking] --

SENATOR RIVERA: Thank you, Assemblymember. Your time has expired.

ASSEMBLYMEMBER ABINANTI: Okay. Thank you.

ASSEMBLYMEMBER BRONSON: We will next go to Assemblymember Aileen Gunther, recognized for 3 minutes.

Aileen, are you there?

ASSEMBLYMEMBER GUNTHER: I'm here. Can you hear me?

ASSEMBLYMEMBER BRONSON: Yes, we can.

ASSEMBLYMEMBER GUNTHER: Okay.

So basically what I'm asking about is, you know, I'm hearing about the infection control, and the lack thereof.

And, you know, we have infection-control nurses all over the state of New York, and we talk about transmission.

And I guess I want to ask Stephen: What do you feel about the patient-to-staff ratio in a

nursing home?

STEPHAN HANSE: Really, it's unique, Assemblywoman, to each facility, and the level of care that needs to be provided.

I don't think there is a one-size-fits-all ratio for -- for patient-to-staff.

ASSEMBLYMEMBER GUNTHER: Well, I know that mostly in the hospital they are minimal.

And I know, with the long-term care, that, like, the patient ratio could be 12:1, depending on how many nurses' aides you have in the building.

And I think that we would have more because of the salary that we're paying these women.

STEPHAN HANSE: Yeah, I think, on balance, all providers, I go back to my earlier points in terms of moving forward, investments in long-term care are investments. They shouldn't be viewed as expenses.

And as Jim pointed out earlier, it's almost 80 percent of our costs go to salaries.

So the more reimbursement we have, we can hire more people.

But the issue becomes, are those men and women out there; are they willing?

And what we've throughout the state, and

especially upstate and the Adirondacks, and elsewhere, even Western New York, Central New York, individuals are not seeking long-term care as a career option, unfortunately.

ASSEMBLYMEMBER GUNTHER: Just an FYI, tuberculosis is airborne transmission.

This is droplet-spread.

It's not spread through the air, so you don't need negative pressure.

I think one of the issues in nursing homes is, there can be two people in a room. And there aren't that many rooms.

Like, in a hospital, you have rooms set aside for isolation; whereas, in long-term care, because of low reimbursement, there aren't any set-aside rooms.

They need to be filled in order for that long-term care to keep afloat.

JAMES CLYNE: Well, there are some private rooms. It just depends on the [indiscernible cross-talking] --

ASSEMBLYMEMBER GUNTHER: I'm not talking about private.

I'm talking about dedicated isolation rooms.

JAMES CLYNE: No, they don't -- nursing homes

generally do not. They -- it's just somebody's home.

ASSEMBLYMEMBER GUNTHER: And the reason being is, because they need to utilize every room for a patient because of low-rate reimbursement.

Am I correct?

JAMES CLYNE: You're correct that reimbursement's low.

STEPHAN HANSE: Yes, and, again, I go back, Assemblywoman, to the point I made earlier in this year's budget, the residual reimbursement that providers are receiving after 40 years for proprietary for -- for-profit, that was cut in the budget.

And those are types of things that facilities can invest in.

SENATOR RIVERA: Thank you, Assemblymember. Your time has --

ASSEMBLYMEMBER GUNTHER: And that -- am I -- I was going to ask you about asymptomatic or presymptomatic, when they -- with --

Oh, time's up.

Sorry.

SENATOR RIVERA: Assemblymember, your time has expired.

I'm sorry.

ASSEMBLYMEMBER BRONSON: Thank you.

Next we will go to Assemblymember Charles Barron, recognized for 3 minutes.

ASSEMBLYMEMBER BARRON: Thank you very much.

My concern was the governor's approach to this problem, and how we sometimes, pathetically, tried to excuse him, particularly on his mandate that these COVID patients be taken by the nursing homes.

That was the most egregious act.

And while we try to scapegoat it into, maybe the -- maybe the staff member infected them.

We have no way of detecting that, really.

That was an egregious act that we should have definitely, definitely, pushed back on; and we did, eventually.

Also, the state legislature has some responsibility in this.

How could anybody pass a budget that cuts 2.5 billion from Medicaid, pass a budget that cuts 400 million from the hospital budget, and some of the other areas, during a pandemic, and then this governor parades across the nation like he is some great successor, and caused all of this death and

destruction in our neighborhood.

How dare us sit here and act like that didn't happen.

I'm concerned about that because they said there might be a stronger wave coming in November, in the fall.

And if this is how we dealt with this wave of this pandemic, if this is how we became the epicenter of it, and we were not the most populated state in the nation --

California and Texas were, particularly California.

-- what are we going to do, particularly in Black and Brown communities?

But all life is precious in all of the communities where anybody was affected.

But, particularly, in our communities, where we had a governor that put a ship in the White community that had 1,000 beds on it, and they only used 200, and did the Javits Center in a White community, and Central Park in a White community.

And then when it came to our community, in our nursing homes in particular, the most vulnerable population, we, the state legislature, passes a budget that cuts Medicaid during a pandemic.

You know, this is incredibly -- so I don't have a whole lot of questions. A lot of them were answered.

You know, I really wanted to know the numbers that the people who died.

And that is -- that's one -- another issue: When people do die in these facilities, it was disgraceful how their bodies were dealt with. Some of them were stacked in areas. They had to wait for trucks to come. And it was just horrific.

So maybe you can address that.

But I think, the state Assembly, we have to be stronger against this governor, and not pass budgets during this pandemic that does what happened in this budget.

And, by the way, no revenue package.

We're still waiting on some federal revenue package that may or may not come.

We got to be stronger for the people, particularly our elderly.

STEPHAN HANSE: Thank you, Assemblymember.

When we look at other states, and this was raised earlier, it seems --

SENATOR RIVERA: Very quickly, since his time expired.

STEPHAN HANSE: All right.

-- New York is an outlier in terms of states that provided a temporary Medicaid increase to nursing homes and assisted-living facilities to help provide the care that was needed.

SENATOR RIVERA: Thank you, Mr. Hanse.

Move on to the next Assemblymember?

ASSEMBLYMEMBER BRONSON: Thank you.

We next will go to Assemblymember Michael Reilly, recognized for 3 minutes.

ASSEMBLYMEMBER REILLY: Thank you, Mr. Chair.

Thank you to the panel for providing their testimony.

I have a question as it relates to the attorney general-department of health investigation in regards to facilities that may be in your organizations.

Did your organizations offer any representation to the facilities during the investigation?

And have you or senior members of your organizations had any contact with the attorney general's office or the governor's administration in regards to the investigation?

STEPHAN HANSE: We do not provide -- our association does not directly provide legal services to our members.

JAMES CLYNE: Neither do we.

It would be handled individually by the facility.

ASSEMBLYMEMBER REILLY: Okay.

So when it comes to the March 25th order, did -- before it was issued, did they consult?

And I know this may have been asked prior, but, I just wanted to get confirmation for myself, and for the constituents I represent here in Staten Island.

For the March 25th order, was there any consultation with your organizations before it was issued?

STEPHAN HANSE: Not with us.

JAMES CLYNE: Not with us.

ASSEMBLYMEMBER REILLY: So you're saying the administration didn't talk to or converse with organizations that represent a large number of facilities that this order would impact. Is that correct?

JAMES CLYNE: No, they did not talk to us.

STEPHAN HANSE: Yeah, they did not consult on

this order.

ASSEMBLYMEMBER REILLY: So the -- basically, what I'm getting at is, that the experts in the field were not consulted, which I often raise when we're discussing legislation in the Assembly chamber, that we often push forward legislation and policies, that we don't actually talk to the people that are doing the grunt work on the front lines.

So I guess that's very disappointing.

It's disappointing that we don't have the health commissioner here again, or anybody from the department of health, to discuss it, because I would like to have a chance to ask them those questions too.

But I thank you for your time in answering my questions, and I think it's very -- I think it's -- it was a missed opportunity that the administration didn't discuss a specific policy that was going to impact your organizations.

And I think if he would have consulted with you, maybe we would have been able to be out in front of this.

So, thank you again for giving us the opportunity.

JAMES CLYNE: I just want to be clear, we

talked to the department a lot throughout the pandemic; just not on this order.

ASSEMBLYMEMBER REILLY: Well, I think that's -- that's, really, you know, something that's very troubling; that this order actually impacted the facilities you represent, and that's something that was a missed opportunity.

SENATOR RIVERA: Thank you, Assemblymember.

Moving on?

ASSEMBLYMEMBER BRONSON: Next we have Assemblymember Marjorie Byrnes, for 3 minutes.

Marjorie, are you with us?

ASSEMBLYMEMBER BYRNES: Just trying to get myself on board here.

Thank you very much, sir.

I appreciate the opportunity, and -- to ask a question.

I appreciate all of the witnesses being here today.

I want to go back a little bit to the peer-review story -- to the peer-review study.

It seems to me that a lot of the peer-review really was based off of interviews, "Capital Tonight," or from other State-regulated, you know, medical representatives, from different

hospitals who may not necessarily be unbiased and -- in their approach.

I was wondering what your opinion was of whether or not this really was a true peer-review.

JAMES CLYNE: I'm not an expert on whether papers should be peer-reviewed, but, often state agencies put out material that's not peer-reviewed.

What I looked at was: Did the findings match what my members were telling me through the pandemic?

And it seems that it does. That it was not the fault of the nursing homes through some sort of, you know, failure in operations.

It was something that was not foreseen.

And if you go back and look at the directives from the CDC in late February and March, there just is not a focus on the asymptomatic/presymptomatic nature of the disease.

STEPHAN HANSE: Yeah, and throughout the pandemic, we -- to Jim's point, two things really came through out of that report: The asymptomatic nature of the virus, and, in those communities that had a high prevalence of COVID-19 infections in the community, inevitably, the nursing homes and assisted-living facilities in those communities had

a high rate of infection as well.

ASSEMBLYMEMBER BYRNES: But -- yeah, going back to the "Capital Tonight," though, I mean, is it -- is it appropriate to take a television interview and twist it to be used to validate a -- what purports to be an authentic peer-review?

It seems to me that you're using it as a self-fulfilling prophecy in order to take information that fits the narrative, and to be able to use that in a way that I cannot believe it was necessarily intended.

And it just -- it baffles me that that type of information would be included as a valid reporting mechanism.

JAMES CLYNE: Look, I did an interview based on what I thought was the truth of the report and what my members were saying.

I wasn't working with the administration, or -- during that interview, or have any preconceived view of the report, or anything else.

I would love to see the data.

SENATOR RIVERA: Thank you, Assemblymember.

ASSEMBLYMEMBER BYRNES: Well, did Mr. Clyne know --

SENATOR RIVERA: Member, your time has

expired.

ASSEMBLYMEMBER BYRNES: -- did he know the interview was going to be used for that purpose?

JAMES CLYNE: No, I did the interview because the reporter called me up.

SENATOR RIVERA: We need to move on. Your time has expired.

Go ahead.

ASSEMBLYMEMBER BRONSON: Thank you, Assemblymember Byrnes.

Next we have Assemblymember John Salka for a period of 3 minutes.

ASSEMBLYMEMBER SALKA: Thank you, Mr. Chairman.

And thank you to the gentlemen who are testifying.

Let's just get this straightened out here.

Yeah, I've got -- I've got a question a little bit about the future.

God forbid we do have another wave of the coronavirus.

Can you say in all confidence that your members are prepared, as the best they could be right now, in anticipation of a second wave of this virus coming?

JAMES CLYNE: We've learned a lot, and I think they would be prepared.

I think the wild card in this is the availability of PPE.

And that's something that I think, my own [indiscernible] -- this is my personal opinion, needs to be dealt with nationally.

I mean, there's a problem in getting gloves now because there's a labor dispute in Malaysia at a glove manufacturing plant.

That's not going to be solved by a nursing home in Herkimer County or a nursing home in Queens. They can't solve, you know, a glove-factory problem.

That's needs, really, something that I wish the federal government would take on the availability of PPE.

ASSEMBLYMEMBER SALKA: No, I [indiscernible cross-talking] --

STEPHAN HANSE: In terms of --

ASSEMBLYMEMBER SALKA: -- no, go ahead.

STEPHAN HANSE: -- infection-prevention control, that's exactly right: as long as we have sufficient PPE.

Again, I go back to the earlier issue, the other element here is sufficient staffing.

There needs to be a population of men and women who want to come into long-term care.

And what we've seen is people leaving long-term care in the middle of this pandemic and seeking work elsewhere.

ASSEMBLYMEMBER SALKA: And that's something -- and that was my concern also, was that: Do you have any idea what the attrition rate has been because of the results of this pandemic?

And I know -- I have spent many years in the medical profession. And I know that it takes quite some time to properly train staff to address such a specialized aspect of care as geriatrics and seniors.

Do you feel with any confidence that you will you have the staff, that you're going to be able to hire, to properly train, and to make sure that we can adequately care for these people in case there's a second wave?

STEPHAN HANSE: In terms of staffing and employment, that really ends up being a regional issue in many cases, depending on different regions.

Some have access to labor pools; others do not.

So, really, the two factors really become, to

Jim's point, you know, adequate supply of PPE, and then the necessary staff that is available.

ASSEMBLYMEMBER SALKA: Are your organ --

STEPHAN HANSE: Yeah, we would look at staffing, some of the things that we talked about, that were implemented on a temporary basis, like the nurse-aide training program.

We really triage situations, both working with the federal government and the state government, to bring in individuals quicker to be on the front line to provide care.

As we leave -- those waivers, those federal waivers, will be expiring soon. And, really, we need to continue them.

And the state and the education department, and others, really need to, you know, open up opportunities for different job titles in long-term care, to really provide services to our residents.

ASSEMBLYMEMBER SALKA: And I imagine a big factor of that is adequate pay for these people, because it's awful hard work?

JAMES CLYNE: Absolutely.

And that goes back to the -- you know, as was pointed out earlier: At $64 per patient per day, New York leads the nation in the Medicaid shortfall,

in the terms of what it costs to care for a nursing home resident and what that nursing home is reimbursed.

ASSEMBLYMEMBER SALKA: Thank you, gentlemen.

SENATOR RIVERA: Thank you, Assemblymember.

I believe we have one more Assemblymember?

ASSEMBLYMEMBER BRONSON: Thank you.

And for the last questioner from the Assembly, we have Assemblymember Kevin Cahill, for 3 minutes.

ASSEMBLYMEMBER CAHILL: Thank you, Mr. Chairman.

I'd like to begin by joining my colleagues in registering both disappointment and disapproval over the failure of the department of health to participate in this, which is the first hearing on COVID nursing home issues in New York State outside of New York City and Long Island.

The issues we face in this community, and the communities across upstate, are different than those that were being dealt with in the metropolitan area.

And while Dr. Zucker did not specifically limit his testimony and responses to that of New York City, I, for one, withheld extending the hearing, because I reasonably anticipated an

opportunity to engage on the care facilities in the communities that I represent.

I reasonably anticipated that opportunity would be presented today.

I thank the chairs and the rankers for holding these hearings.

But I also urge the leadership of both of our houses to revisit the hesitancy to issue subpoenas when witnesses refuse or fail to appear voluntarily, particularly when those witnesses are public servants for whom we, in the legislature, have oversight responsibilities.

So I thank you for the opportunity to make that brief statement.

And would I like to ask a few questions of the two witnesses who are here today.

Both Jim and Steve, I've had a lot of experience with you in many roles:

Jim, starting with you in the state legislature, and then in the executive branch, and onward;

And, Steve, for your advocacy on behalf of the organizations you represent over the many years.

You both have vast experience in dealing, both, with the day-to-day interactions with the

department of health, and also how the department of health and the executive branch handled things during the early phases of the COVID issue.

I ask this, and mean it in the most constructive way, as my colleague prior to me did:

What would you ask the department of health to do differently should there be a resurgence of COVID in New York State?

And, in particular, what would you ask the department of health to do to help you make sure that we don't have, quite frankly, the carnage that we saw in nursing homes over the first wave of COVID?

One in four people who died of this disease in New York were in nursing homes.

We believe that, probably, there's a significant number more than that who had been discharged to hospitals.

How are we going to prevent that from happening again when there's a resurgence, and what would you have DOH do?

STEPHAN HANSE: Really, I would -- it really would be working together, working in partnership, and receiving equal emphasis as acute care.

We're all together in the continuum. We

should not be segmented.

I would argue we need to -- it is a partnership. Medicaid is a partnership. We're highly regulated.

Instead of after the fact.

Really -- and it's happening now.

We're working, we're preparing, with the department for a possible uptick in COVID come the fall.

But, really, the resources need to be equal for nursing homes and assisted-living that they are for hospitals.

And then [indiscernible cross-talking] --

SENATOR RIVERA: Thank you, Mr. Hanse.

And that's -- the time has expired.

Thank you, Assemblymember.

Before -- that is the last question on the Assembly side.

Before we move on, there are two procedural things that I just wanted to make sure that we're on the record --

ASSEMBLYMEMBER BRONSON: I don't mean to interrupt.

It looks like we have another assemblymember who raised his hand during the last questioning

period.

SENATOR RIVERA: Apologies.

ASSEMBLYMEMBER BRONSON: No problem.

Assemblymember Joe DeStefano, for 3 minutes.

ASSEMBLYMEMBER DESTEFANO: Thank you.

Thank you, Chairman Bronson.

I have a question.

It seems clear that one would think the biggest issues was, obviously, the lack of the PPE and accessing to testing.

The State was focused on hospitals to the exclusion of nursing homes in the beginning.

There was a major shortage of PPE.

Commissioner Zucker had stated that DOH provided 4 million pieces of PPE, but without context.

This doesn't paint the real clear picture. It seems it was not nearly enough.

Can you share with us how much you received from the State on that amount?

JAMES CLYNE: I don't know the exact amount.

But, again, early in my testimony I pointed out that the burn rate for PPE in the height of the pandemic was 12 million pieces of PPE per week.

So while we appreciated the State's effort to get PPE out to the membership, it's simply not enough.

And individual providers have a very difficult time negotiating with distributors to get that PPE. They just don't have the purchasing power.

ASSEMBLYMEMBER DESTEFANO: All right.

You stated that 12 million wasn't enough.

In the future --

JAMES CLYNE: 12 million is what we burned in a week in April.

ASSEMBLYMEMBER DESTEFANO: -- right.

But going forward, if, God forbid, we do come into the next phase, what do you think is going to be the proper amount to get the -- you know, to keep this thing down?

JAMES CLYNE: Well, if the membership can meet the mandate that the legislature put up, to have 60 days of PPE.

I have to admit there some spot shortages, though, of N95 masks and gloves.

So we hope that that can be resolved, and we'll have it before the fall.

STEPHAN HANSE: And what we're seeing is

supply-chain issues. Many national vendors are telling our members they can't supply us, because New York providers are competing with 49 other states.

ASSEMBLYMEMBER DESTEFANO: Understood.

But as we -- what we've learned over the past several months is that upstate and downstate had a significant difference in the amount of PPE that was needed in certain areas.

What would have been the issue not to reallocate those needs in other areas where the virus was more prevalent than in other parts?

JAMES CLYNE: Well, I think all facilities were trying to prepare for it, and you never know when it was going to show up at your facility.

I had many members who were concerned about, you know, taking a COVID-positive discharge from a hospital, only to have an infection flare up in their facility somewhere else.

STEPHAN HANSE: We do have members who shared.

ASSEMBLYMEMBER DESTEFANO: I understand that.

But, obviously, upstate was hit less than it was downstate.

What was the issue on trying to relocate

assets to the more needier areas than the ones that had the equipment or the PPE?

What would the problem have been to relocate the equipment?

ASSEMBLYMEMBER BYRNES: There were allocations based on needs throughout the state.

I know the State was doing that in terms of the HERDS survey data in terms of PPE.

And we had members who did shift their -- some of their supplies of PPE to other providers who were facing more significant situations.

ASSEMBLYMEMBER SALKA: The PPE deliveries that I worked on were heavily weighed downstate.

ASSEMBLYMEMBER DESTEFANO: Thank you, gentlemen; thank you, both.

SENATOR RIVERA: Thank you, Assemblymember.

Let's check, Assemblymember Bronson, is that the --

ASSEMBLYMEMBER BRONSON: That was the last questioner for the Assembly.

Thank you, Chair.

SENATOR RIVERA: All righty.

So before we move on to the next panel, thank you both, gentlemen, for your testimony.

Two quick procedural things.

Number one: Regarding questions to these panelists or the department of health, or any other, there is a letter that we will issue after the hearings are done.

We want to make sure that all the hearings happen and that all the questions are asked.

If there are questions that are not -- that have not been answered, we will be sending -- we will be sending a set of questions to the department of health and to any other questioner that the members deem necessary.

And, as said in beginning, we will request that there be a three-week period for them to come back to us, which includes, obviously, members of the minority. If they have questions they believe have not been answered, we will make sure that they are included in this correspondence.

And, number two: The next panel that we have is the first of a few panels related -- that would have family stories included in them.

Now, we received an incredible number of -- amount of requests for family members. And we are trying to -- we tried to accommodate as many as we could.

We do apologize that we have not -- that

we're not able to accommodate every single person who requested a spot for us.

There is no conspiracy, folks.

There were just too many requests.

As you will see, these families will share with us their stories, and we will have various panels during the day. And it will be a long one.

But I just wanted to make sure that we made that clear.

Lastly, any family member, or anyone else, who believes that they have testimony which would help us in our deliberations, please make sure that you get us that testimony.

It will be included on the record even if you are not physically here on a panel.

Thank you both, gentlemen.

With that we will move to the second panel.

As I said, this is the first family-member panel.

We are joined by Mary Jo Botindari --

I will apologize ahead of time if I am mispronouncing these.

-- Mary Jo Botindari, a resident from Syracuse, New York;

Jerry Maldonado, a resident of Newburgh,

New York;

Vincent Pierce, resident spokesperson for Voices of Coler;

Mikko Cook from Ventura, California;

And, Virginia Wilson-Butler, a resident of Brooklyn, New York.

ASSEMBLYMEMBER GOTTFRIED: And before I swear in the panel, I just want to reiterate what Senator Rivera said about follow-up questions, and also about our effort to try to have a cross-section of family members, so that we do get a sense of the impact here.

So, having said that: Do each of you swear or affirm that the testimony you are about to give is true?

JERRY MALDONADO: I do.

MARY JO BOTINDARI: I do.

MIKKO COOK: I do.

VIRGINIA WILSON-BUTLER: I do.

ASSEMBLYMEMBER GOTTFRIED: Okay.

Fire away.

SENATOR RIVERA: Let's start off with Mary Jo Botindari.

And, again, I apologize if I mispronounced your name, ma'am.

MARY JO BOTINDARI: Nope, it's correct.

It had been several weeks since the nursing home stopped family visits.

I had spoken with the social worker on occasion during those weeks. Without being able to see my dad, I relied on her to reassure me all was well.

My dad was living with advanced dementia and he was taking the implemented challenges well.

On April 9th I was notified by the nursing home that two of the nursing staff and one resident had tested positive for COVID; to not worry, they were following CDC guideline.

They thought perhaps the resident tested positive could have been exposed because they received dialysis outside of the nursing home. He had a heart attack at the dialysis center and was able to be tested at the hospital.

Two hours later I received a call from my dad's nurse practitioner, and she said, "Your dad isn't doing too good."

At his bed check at 4:00 a.m., his color was bad, running a fever of 102. They were giving him Tylenol, with IV fluids. They were going to treat him with antibiotics, and ordered a chest X-ray.

I asked about testing him for COVID.

I was told, no, it's not necessary. It doesn't change his course of treatment -- even though he was symptomatic.

She said I could be bedside if I wished, that she didn't think that he would live.

I told her I couldn't do it.

I take care of my mother, and he hadn't been tested. I could not run that risk.

The next day, April 10th, I was updated that he was unresponsive unless they did a hard sternum rub.

Also, he was unable to swallow, his temperature was normal, and his X-ray now showed double pneumonia.

They asked me if I wanted to continue antibiotic treatment.

I agreed, and I asked again, "Will he be tested for COVID?" That I wanted him tested.

I was told "no" again. They felt it unnecessary.

I asked if they had at least separated my dad from his roommate, and I was told, no, he was still in the same room.

After this call, I reached out to the county

executive, Ryan McMahon.

I explained my feelings, my concerns about public health and exposing his roommate.

Mr. McMahon got back to me and said he will be tested.

Hours later I got a conference call from two social workers from the nursing home.

They had been contacted by the health department because of my complaint, and wanted to know what was wrong. And they thought they were okay with the decisions of not testing him.

I said, Well, I'm not okay.

I have no issues with my father's care. All the aides were wonderful.

That my issue was not getting him tested.

Again, I heard it didn't make a difference with his care.

And then I also heard them say, "We wouldn't even know how to go about it." So they thought they'd have to get the health department involved.

I never heard back from the social workers.

The county executive office request was not honored, nor was the request by Dr. Gupta, who was the commissioner of the health department in Onondaga County.

The nursing home denied all requests.

My father died two days later, with no test.

SENATOR RIVERA: Ma'am, is that the end of your testimony?

MARY JO BOTINDARI: Yes, sir.

SENATOR RIVERA: Thank you so much for joining us today.

We will -- next, let's hear from Jerry Maldonado, resident of Newburgh, New York.

JERRY MALDONADO: My name is Jerry Maldonado, and I'm here today to bear witness on behalf of my mother, Luce [indiscernible] Maldonado, who would have celebrated her 82nd birthday today, but whose life was cut short due to a series of reckless public-policy decisions that unnecessarily exposed her to COVID-19, and ultimately claimed her life.

My mother was a resident of Northern Metropolitan Nursing Home in Rockland County, where she lived for 5 1/2 years.

It's my belief that her death, and the death of countless others, could have been prevented.

To that end, I'd like to make three points to you all today.

First: The COVID crisis in New York's nursing homes was a preventable crisis.

It was fueled by poor public-policy decisions, like the department of health's March 25th directive.

In a cruel twist of fate, while healthy families like mine were locked out of nursing homes and forced to stay away from our loved ones, my mom was locked into a facility with COVID-positive patients released from a hospital, ignoring all the lessons learned from the Washington State's COVID outbreak just a few weeks earlier.

Worse yet, despite the governor's daily press briefings, families like mine were kept in the dark about this important policy change and actively misled by nursing home officials.

For over two weeks, beginning in late March, I reached out to the facility's management, asking if they could inform us of any positive patients -- COVID patients so that we could reassess her care situation.

And for nearly two weeks we got no response.

It was only after my mom developed her first COVID symptoms that I confronted the director of nursing, and he finally admitted to me that, in quote, his words, he had been forced to admit COVID patients into the facility by the State, and that he

could not guarantee that my mom had not been exposed to COVID.

I was apoplectic.

For nearly two weeks my family had been intentionally kept in the dark about this policy change, stripping us of the ability to make informed decisions that could have saved her life.

Secondly, many nursing homes, like Northern Metropolitan, were in no way prepared to safely care for COVID-positive patients released into the facilities as I witnessed firsthand.

Despite assurances, the facilities did not have dedicated isolation capacity to quarantine COVID patients.

Instead, they simply treated them in their own rooms in the same wings with the general population, with no additional precautions or dedicated staffing, putting all nursing home staff and residents at risk of exposure.

Both the State and nursing home executives and Northern Metropolitan were complicit in this manmade disaster.

The State did not provide nursing homes with the sufficient testing capacity to trace or prevent the potential spread of COVID among patients.

They also did not proactively verify that nursing homes had the ability to safely care for COVID patients before releasing them into these facilities, knowing full well that many of them are understaffed and overcrowded even on their best day.

Nursing home executives were also responsible for failing to proactively notify families of suspected COVID cases in their facilities.

They didn't provide their staff with sufficient PPE, and they failed to put in place protective measures, to ensure the health and safety of they are staff and residents.

And, finally, accountability and justice demands that we have a more accurate count of COVID-related fatalities in the state's nursing homes.

Case in point:

On April 11th my mom passed away from COVID-related symptoms.

To our dismay, on April 14th we received a draft copy of my mother's death certificate from the nursing home that misrepresented her cause of death as heart failure, dementia, and hypertension.

For days I contested her death certificate, and was even urged by some of the nursing home staff

to simply bury her with an inaccurate death certificate.

But we refused to let the memory of her suffering be erased, and we advocated for accountability, until they reluctantly modified her death certificate just hours before her burial.

However, since she was never officially tested for COVID at the facility, her death, and the death of countless others like her during the height of pandemic, are still not included as part of the state's official COVID-related death count, rendering her suffering and her death invisible.

We need to ask ourselves: How many people like my mom are missing from the official death count, and why?

And so in closing:

While we can't change the past, we have to ensure that these deaths have not been in vain.

Moving forward, we must make sure that families are provided with timely information on important policy changes that impact their safety.

Families have a right to know in real time if nursing home residents have been potentially exposed to deadly infectious outbreaks so that we can make informed decisions about their care.

Secondly: Nursing homes must be equipped with sufficient PPE and testing supplies to test all staff and residents on a regular basis.

And, finally, we need a more thorough and comprehensive count of all nursing home-related deaths since the onset of the pandemic, to assess the true impact of the crisis.

We owe to it families like mine, and countless others, who have suffered the pain of losing a loved one, to have their lives and their deaths fully accounted for and memorialized as part of our collective vow to never let this happen again.

Thank you.

SENATOR RIVERA: Thank you, Mr. Maldonado.

Next is Mr. Vincent Pierce on the -- on the Zoom right now.

We will move on to Mikko Cook from Ventura, California.

And apologies if I mispronounced your name.

MIKKO COOK: [Inaudible.]

SENATOR RIVERA: Please unmute, Ms. Cook.

There you go.

MIKKO COOK: Thank you.

Dear honorable senators and assemblymembers,

thank you for this opportunity.

My name is Mikko Cook, and I'm representing not only my father, a person with Alzheimer's and a patient at Hudson Park Rehabilitation and Nursing Center, but also my mother, his wife, my brother, two sisters, and their families.

You might wonder why a daughter in California is testifying about the care of her father in New York.

Because, at this point, my family in Albany have the same access to my dad as I do, and that's the problem.

This is my dad.

Ron Von Ronne [ph.].

He isn't a big man; only 5-foot 4 inches tall. But when you meet him, the first thing you notice isn't his size, it's his smile.

My dad smiled a lot, and he loved making other people smile.

That's why he dedicated the end of his working life to teach people with disabilities how to ski at the adaptive sports program, and ran the winter ski program for [indiscernible], a [indiscernible] foundation camp.

The best was when dad took a kid who had no

hope of walking again, down a ski run for the very first time.

He would smile for a week afterwards.

This is my dad a month ago.

This picture was taken from my video call with him at Hudson Park.

On this call we learned all of his clothing had gone missing. No shirts, no shoes, not even a pair of pants.

The closet which my mother kept stocked with freshly cleaned outfits was empty.

Dad was living in a hospital gown.

COVID and its fallout has scrubbed away my family's ability to not only manage my father's care, but to keep him safe.

Before the virus, my family worked together with the staff at Hudson Park to stay on top of dad's well-being, even locating his missing items.

Frequent visits to see him and weekly outings to bring dad to their houses helped my family see whether or not he was eating well, getting decent sleep, and still smiling.

More importantly, it gave dad time in a world quickly disappearing to him, surrounded by people he loved, holding his hand, and making him laugh.

For dad, in those fleeting moments, he was safe, and his life made sense.

And then one day, we just never returned.

A week and a half ago my father was a assaulted by another resident.

According to Hudson Park, dad was going through the man's things, when the man punched my father and knocked him to the ground, leaving him with a large bump on his temple and a tear in his arm.

Of course, you too might find yourself rummaging through someone else's things when everything you own is gone.

Communication between Hudson Park and our family are lifelines and context around how dad is faring, and the quality of his well-being is limited and unreliable.

Mom made numerous calls to the facility, requesting he be sent to the hospital for evaluation, and asking for a video call to see his injuries.

Five days after the incident, she got her video call.

The hospital trip, over a week later.

We had to beg for contact with dad.

Over 100 days passed before our family had seen my father, digitally or in person, despite complaints registered to the facility, the ombudsman, the nursing home complaint hotline, various politicians, media outlets, and Governor Cuomo.

Dad's recent assault left me frantically dialing an ombudsman's office whose phone had been taken off the hook.

We are scared, furious, and heartbroken.

We need solutions, and time is running out.

In two short months, weather and flu season will decimate any chance of outside visitation.

We need context, understanding, and a chance to make in-person contact with dad as his personal supports.

Reliable and consistent communication between families and both the facility and oversight agencies, with clear directives on issue resolution, is a good start.

And we need to see dad, and not through a glass with a telephone.

My father has not breathed fresh air or felt the sun on his face since March 9th, a former ski instructor.

Why not designate one family member who is tested as staff is, adheres to all the PPE rules, and is limited to a loved one's room for visitation?

My family would gladly sacrifice visits from many of us so that hope for my dad's well-being could be guaranteed by one of us.

Please do what you can to help my dad, Ron Von Ronne, and so many New Yorkers like him.

Once upon a time he was a champion of our most vulnerable population, and now you can be too.

Thank you.

SENATOR RIVERA: Thank you, Ms. Cook.

Next we will hear from Virginia Wilson-Butler, a resident of Brooklyn.

VIRGINIA WILSON-BUTLER: Good afternoon to all the chairs.

My name is Virginia Wilson-Butler. I'm an ombudsman in Brooklyn, thanking God, that through him all things are possible.

My story is about my aunt Eva Johnson and the nursing home she lived in since 2016.

It tells the story of the negligent care she received, and her final days at Buena Vida Nursing Care in Bushwick.

My aunt was total care: confined to a bed,

could not speak, and completely dependent on Buena Vida to care for her.

She did not enter the facility this way.

She was diagnosed with dementia. The dementia progressed rapidly, and I have to believe that the care of the facility added to the quick progression.

I also believe that nursing homes needed beds at this time, 2020, and were getting paid for COVID cases.

A resident like my aunt who needed total care was a good candidate for an empty bed.

The following are my personal on-hand observations at the nursing home, which can speak to what could possibly and probably happen when I was not there.

Sitting in her wheelchair in the dining room right after lunch, in her urine and diarrhea for 45 minutes before staff responded to my need to help her.

Her meals being placed in front of her, to get cold, and her waiting until someone was free to feed her. Sometimes I did it myself.

Falling out of her wheelchair, feet entangled in the legs of the chair, and her sister/my mother

watching her lay on the floor, waiting for a CNA to help.

My aunt confused, and my mother in tears.

The one day a week they bathed her, I saw them wheel her from the bathroom, dripping wet. Hair soaked, no towel on it. Her body covered only with a facility nightgown in front of her, and her feet soaking wet.

And when CNA was questioned, she replied, "I was going to finish in the room."

In bed, the diaper was soaked with urine and diarrhea. Of course, she had bedsores.

Once again I asked the CNA about that, and she replies:

I'm off on duty. The next shift will take care of her;

Or, I don't have her today. I'll find out who.

Mrs. Johnson was not always total care. And there was a number of incidents where she fell out of the bed, trying to go to the bathroom or just getting up.

Another bathing incident, CNA asked if I could watch her for a minute. She needed to go the nursing station.

I found that rather odd, but took the opportunity to look in and check on my aunt.

I found her seated in a chair, pointing to her vaginal area, asking me: What is that? I don't know what that is.

She was asking me to explain to her what that purple area, with pimples -- the infected purple area, with pimples and itching, was due to.

Well, I found out it was due to a bad fungus rash she had developed.

This time when I questioned the CNA, she stated she had no idea. This was the first time she had my aunt.

I then requested that every head of every department get down to that floor immediately.

No one could explain, but they tried hard to convince me this happened overnight because no one reported this in her chart.

No, I didn't believe that.

I sent a complaint to DOH, and heard back from them one and a half years later, stating they found no fault with the facility. They were up to code on everything.

Finally, from March 2020 to May 4, 2020, the day she died, Ms. Johnson lost 15 pounds.

Received oxygen on April 21st and an IV fluid with antibiotics.

She was diagnosed, presumed COVID.

X-rays showed pneumonia.

She never had a fever. She never had a cough.

In this time frame, they stated, at first, everything with her was normal -- her weight, her eating, her therapy, hand device, her bedsore -- until, all of a sudden, she's not eating, the bedsore got bigger. It doesn't look good.

Communication with the facility was very difficult in the beginning, until I requested e-mails from all caring for my aunt.

And then I started sending e-mails, as well as phone calls, almost on a daily basis, either a follow-up incident, another issue, medication, bedsores, social engaging, eating.

Most of the replies were, "We will take care of it and get back to you."

Some of the conversations were, they weren't aware of the issue or incident.

Some of the calls were aggressive, disrespectful, and downright unacceptable.

I know you're probably saying, Why didn't you

move to her to another facility?

Well, we contemplated that, but after careful research, there was none any better.

As an ombudsman, I had a little inside info, and most of the facilities had the same neglect, or even worse.

Some of my recommendations are:

Revising camera -- revisiting camera ideas in the residents' rooms;

Rolling beds for total-care patients so that they don't have to wait on CNAs to be repositioned or to receive bedsores;

Clear masks, so that when staff goes into the residents' rooms, they're not confused, and they're not -- they don't understand who's coming in to visit with them;

And, more staffing, more training, more compassion, more patience.

These people, and these stories, are not all about a paycheck.

DOH -- I have DOH letters, documents, e-mails, pictures, for over four years of negligent care for a woman.

I ask that all of these things be revisited.

I appreciate everyone on this call today, and

everything that they said, and all of the plans.

But, how are these residents really going to be taken care of?

I can't help my aunt anymore; rest in peace.

But I can help someone else.

And I say: God is good all the time, and all the time God is good.

Thank you.

SENATOR RIVERA: Thank you, Ms. Wilson-Butler.

And last, but certainly not least, Mr. Vincent Pierce, resident spokesperson for Voices of Coler.

VINCENT PIERCE: [Inaudible.]

SENATOR RIVERA: Mr. Pierce, we can't hear you.

Even though you're not in mute, I do not know if your mic is working. We can't hear you.

Take yourself off of mute, sir, and see if it works.

We still can't hear you, sir.

Let's do this:

Since there's a technical issue, I know that there are a few assemblymembers that are already signed up to have questions, as well as a Senator.

We'll try to -- let's figure out the -- let's get a question or two in, and let's see if we can get [inaudible] situation fixed so we can hear his testimony.

OFF-SCREEN TECHNICIAN: Yes, we'll send Mr. Pierce to the green room, to troubleshoot the mic issue.

SENATOR RIVERA: Okay.

So Mr. Pierce should go back to the green room, the place where you were before, sir.

So go to the last link you were sent, the original one, and they will figure out the technical aspects over there, and then put you over here once it's fixed.

And thank you for your patience, Mr. Coler [sic].

For the moment, going to the Assembly to lead us off in questioning.

Oh, and before, actually, just before, the -- I want to thank all of you for being here, thank you for sharing the stories with us.

I know they were difficult to share, but it is very important to hear from you.

Thank you so much.

And my condolences to all of you who have

lost loved ones.

Assemblymember.

ASSEMBLYMEMBER BRONSON: Yes.

We'll go to Chair John McDonald for 5 minutes.

ASSEMBLYMEMBER MCDONALD: Thank you to all for your appearance today, and sorry to hear your stories.

Unfortunately, these stories are becoming more and more real, and we're hearing them far too often.

Mikko, it's good to see you. I know we've exchanged some e-mails.

And I just want to follow up with you directly. I just want to make sure I read it correctly and I'm hearing correctly.

So were you calling the ombudsman, and it was just -- was it a fast busy, or just the phone was busy all the time, or just no answer?

[Assemblymember motions to witness.]

MIKKO COOK: Okay.

Sorry about that.

And, hi, and thank you so much for addressing my issues.

When I was calling, I was -- it was after

I had just learned from my mother that my dad was told -- or, that my mother was told that my dad didn't need to go to the hospital.

And so I immediately called the ombudsman's office. And because I'm in California, I was trying to make sure that I was calling before the office closed at 5:00.

So I started calling around 2:00 my time.

And I just kept calling and just kept calling, and it was just a busy signal. Like a good old-fashioned busy signal.

And so I was curious, and so I decided to call after 5:00 Eastern time. It was still busy.

And at 6:00 Eastern time, it was still busy.

And at that point I stopped calling because I figured the office was probably closed for the day.

I still -- it was my assumption that the phone was off the hook, because I can't -- I assumed that it was off the hook because it was busy after-hours.

ASSEMBLYMEMBER MCDONALD: And pursuant to our conversation, I immediately sent your concern to the department of health, and they were to follow up.

Did your father eventually get to the

hospital to be examined?

MIKKO COOK: He did, eight days later after the incident, get sent to the hospital.

And this, I believe, in large part, had to do with my sister, completely fed up with not getting any responses, threatened the nursing home and the social worker, and said, "I will call adult protective services unless he can go to the hospital."

And was told, "Okay, we'll send him."

And so he did go, and he did get a brain scan.

ASSEMBLYMEMBER MCDONALD: And I trust all is okay, or no?

MIKKO COOK: Oh, yeah. Everything is.

ASSEMBLYMEMBER MCDONALD: Thank you.

Thank you, Chair.

SENATOR RIVERA: All right, we'll follow up. Let's check -- let's do a quick check.

Do we have Mr. Pierce, or we're still trying to resolve the technical issue?

OFF-SCREEN TECHNICIAN: Still working on it.

SENATOR RIVERA: Thank you.

We'll go to the Senate, Senator Rachel May, recognized for 5 minutes.

SENATOR MAY: Thank you.

And thank you to all of you for telling these very difficult stories.

It does mean a lot to us, to be able to really understand what's going on.

But I know it's hard, and I feel for all of you.

I wanted to ask Mary Jo a question about something you said, when you said that the nursing home told you they wouldn't know how to go about testing your father.

What do you think they meant by that?

Did they mean they just didn't know how to do the tests, or they didn't have the tests?

Oh, can't hear you.

Can you unmute yourself?

SENATOR RIVERA: You're unmuted, ma'am.

Go ahead.

MARY JO BOTINDARI: I thought exactly how they said it: They didn't know how to get a resident tested.

They told me that the two nursing staff got tested outside of the facility, and the other resident that tested positive, only got tested because he was taken to the hospital, where he was

tested at the hospital.

SENATOR MAY: I see.

MARY JO BOTINDARI: Yeah, they didn't know what to do.

SENATOR MAY: How to get a test inside the facility.

And do you have any reason to believe -- I think what I heard from Mr. Maldonado was a real reluctance to test.

Do you think there was, in any way, an effort to maybe minimize the numbers of identified COVID cases by not testing?

I can -- either one of you can answer that.

MARY JO BOTINDARI: I absolutely feel that.

I felt like it was a bad PR if they started testing patients, because there were many.

After the article went in the newspaper, many families reached out to me with the same story: pneumonia, no COVID test, refusal.

They tamped the numbers. And I don't -- if we're trying to fix the problem, you have to own the problem.

And nobody was doing that.

JERRY MALDONADO: And in my case, I think it was a combination.

I think, one, the nursing home had a complete inability to test.

They told me that they could not perform any tests in-house, and that my mom would have to be sent to a hospital.

My mom was Spanish-speaking, speaks no English, and we would lose her in the hospital system. So we said we can't send her out.

That's number one.

Two: They said, that, whatever it was had spreading like wildfire.

Right?

They hadn't really had any cases until after this directive on March 25th.

A number of cases happened after that. And they were told -- the frontline nursing staff were told by management to simply treat anyone who had COVID-like symptoms with the assumption that they had COVID.

And so they were treating patients with hydroxychloroquine, without having any positive confirmation because they couldn't test in-house, whatsoever.

SENATOR MAY: Okay. Thank you.

On a different topic:

So I want to say I have introduced bills for video monitoring and communication, to improve that. And, also, another one for stricter testing.

But I would welcome your specific ideas about what would make it easier to -- to -- for the family members to understand what is going on.

I guess -- and we did hear from Virginia about the ombuds program. And I guess Mikko reached out to the ombuds program too.

But I'm curious about, Mary Jo and Jerry, did you have communication with an ombudsperson?

Did you know that that program existed?

MARY JO BOTINDARI: I did not.

SENATOR MAY: Okay.

And then -- this is a tough question.

I asked the previous witnesses about racial disparities in outcomes. And they simply said it was because the geography of the state was such, that the nursing homes that were having the most mortality were also the nursing homes that had the most people of color as residents.

Anybody on this panel have an alternative view of what was going on?

Do you think especially -- Ms. Wilson-Butler and Mr. Maldonado, do you think there was -- or,

were racial motivations or disparities in the way that your loved ones were being treated?

JERRY MALDONADO: In my case, I think that there was not linguistically-appropriate care available, to be quite frank with you.

Right?

And that that obviously did have a disparate impact on Latinos, and on my mom in particular, in the Hudson Valley.

Right?

It had been something that we had been struggling with for a very long time. And so it became incredibly difficult when they kept families out, because then my mother couldn't communicate with anyone.

Right?

She was one of few Spanish-speaking.

Some of the staff spoke Spanish sometimes, but rarely.

And so we being locked out of the facility, unable to be kind of mediators for her, made her care really, really complicated, and it slowed down, kind of, the quality of her care, basically.

I mean, she had been developing a cough for days, and was untreated, until we finally got their

attention over the phone.

And so I do think that there are disparities that need to be kind of further examined.

SENATOR RIVERA: Thank you, Senator.

SENATOR MAY: Thank you.

We now have Mr. -- let's cross our fingers and hope that his sound works.

If you can unmute yourself, sir.

Okay?

We still can't hear you.

Could you maybe bring the microphone closer.

Maybe that's what it is.

VINCENT PIERCE: Uhm --

SENATOR RIVERA: There you go.

VINCENT PIERCE: -- all right.

How is everybody doing?

I want to thank you for having me.

My name is Vincent Pierce. I'm a resident -- I'm actually from Newburgh, New York. But I'm a resident at Coler Hospital on Roosevelt [indiscernible] in New York.

I've been here since 2012.

And ever since this pandemic, it's been crazy, because I feel like, at the beginning, they was -- they actually brought coronavirus patients

from hospitals to here. And I feel like they was so into that, that they wasn't putting a plan in place if it was to spread in the nursing home.

And once they did, like, they told everybody to treat everybody as if they was positive with the coronavirus.

Which I feel like that wasn't right, because that, right there, caused a lot of people that didn't have to get sick with it, that didn't have to die. And they wasn't separating people from the sick, until, like, we would complain, complain, complain, about being in rooms with people with the virus, being on the same unit with people with the virus.

And we were complaining to people that's put in place to take our grievances, and to do something about it.

And nothing was being done, until the travel nurse went to "The Post," and put in a report with "The Post."

Then that's when they started separating people, but by then it was too late. We was already 2 1/2 months into the pandemic, and a lot of people died that didn't have to die.

And I feel like our voices are not being

heard.

And we complained, complained, complained, as residents, to the people that's put in place to protect us, and nothing is getting done.

We're being called liars by the administration, basically saying, "we're getting the wrong information," when this is what we're living; we're seeing this. We're seeing plenty of people that we live with pass away from the virus.

They're lying about how many people passed away. They're not giving correct numbers when they're asked.

And it's just -- it's sad.

You know, we can't -- we don't have no type of movement, no type of quality of life anymore. And we can't even go sit in front of the building without being threatened that we'll be quarantined on a unit for two weeks, for just going outside to sit in front of the building.

And I feel like that's wrong.

And they say, it's the State, the health department.

When you call the health department, they say, by them not letting us out, that's them.

So I feel like we're being lied to.

We don't get any information on what's going on.

And I feel like they put everybody in the same category, as if everybody can't think for their self or make the right decisions for their self.

And I feel like that's wrong.

And I keep seeing like a lot of people, a lot of people, they didn't have to die from this virus in here if they would have did the right thing from the beginning.

And I have Voices of Coler, where I have a petition to remove the CEO of the hospital, because he just totally denies everything. He doesn't take our complaints seriously.

And, like, I've been here for -- since 2012. And the people that's around us, like, we see each other more than we see our families. So we consider each other family.

So I feel like I lost a lot of family members that I didn't have to lose.

And, once again, I thank ya'll for having me.

SENATOR RIVERA: Thank you for your testimony, Mr. Pierce.

We now hand it back to the Assembly.

ASSEMBLYMEMBER BRONSON: Thank you.

I will now recognize myself for a period of 5 minutes.

And first let me just say to all of the family members, and to you, Vincent, thank you for sharing your stories with us.

It's vitally important, as policymakers, that we hear the real-life stories of you and your families, and we know what you went through.

This is going to help us to make better policy decisions, help us to put things into place, that will provide for the safety of your loved ones, both their safety and their good health.

I'd like to ask Virginia:

As an ombudsperson, you know, we've talked a lot to folks about the sense of being isolated. And, in large part, we've talked about that from an emotional caregiving support role.

But what we haven't talked about is the value of family members going into nursing homes and being the eyes and ears for their residents and for their families.

How has your role as an ombudsperson -- you talked a little bit about the difficulty.

Well, first of all, are you going back into nursing homes now?

VIRGINIA WILSON-BUTLER: As far as I know, the last, you know, meeting that we had, they said no. So I'm still just waiting for the green light.

ASSEMBLYMEMBER BRONSON: Okay.

And share with us, explain to us, and put it on the record, what was the difference in fulfilling your role during COVID-19 as compared to what it was pre-COVID-19.

VIRGINIA WILSON-BUTLER: So I didn't have any contact with any of the residents in my nursing facility because most of the patients were dementia patients who, total care, really couldn't talk.

And I received most of my information from the director of social work, who kind of gave me an overview and an update on the patients, stating that, if there were any incidents or problems or complaints, that she did turn it over to the ombudsman.

And I just never got any messages about that.

So, you know, they stated that, you know, everything was fine in the facility.

But because I couldn't really go in there and I really couldn't get to speak to the residents, because the resident council president had passed away. And the vice president had a stroke. And

then the next person that they put in charge was just not able to communicate.

So the communication was really bad after the COVID.

I mean, it was pretty bad before the COVID because the residents were just afraid of retaliation, and they did not want to speak against anything that was happening to them in the facility.

So, it was really tough; it's a really tough volunteer position.

ASSEMBLYMEMBER BRONSON: Okay.

And for all of the family members, I believe some of you talked about possibly being on the phone with your loved one inside the facility.

We've heard about some folks who -- here locally, folks have talked about Facetiming with their loved ones.

Did all of you experience that ability, at the very least, to see your loved one during the height of COVID-19, from the standpoint of Facetiming or phone calling?

MIKKO COOK: I'll talk to that.

We -- when the lockdown first happened, we would call the nurse's desk to try to access my dad.

And it was a rare opportunity, if he was

walking past the nurse's desk, then we could talk to him.

But then when COVID -- infected COVID patients came into the facility, we didn't want him wandering around the hall because we knew there was COVID on his floor. So, we stopped calling him.

And it took from March 13th, I think is when they locked down, to the beginning of May, before they ever said anything about video calls.

And then when we tried to get video calls, it took my sister something like six weeks before they would actually schedule a video call.

And it wasn't until I went on Facebook and threw a fit, that we actually were assigned a new social worker, who was then told -- who told us she was using her personal phone to connect us with my dad.

And when -- after -- we only had her for like a few weeks, and then she was gone; she was let go from the facility and told not to return.

And this might have something to do with the fact that I mentioned that in a news story.

And then we called to get more video conferences, and were told, "We've never done video conferences, and I'm not sure why you're even asking

that. We don't have the equipment."

Sorry I took everyone's time up.

JERRY MALDONADO: If I could add, very quickly, it was completely ad hoc.

I thank God for the social worker who actually took out of her own time and her personal phone, to go see my mom, and we'd try to communicate.

But there wasn't a structured way to it, actually, systematically. And so we were kind of at the mercy of staff.

SENATOR RIVERA: Thank you, Mr. Maldonado.

I will now recognize Senator Skoufis for 5 minutes.

SENATOR SKOUFIS: Thanks very much.

And just to echo what my colleagues had said at the onset, I want to thank each of you for participating and sharing your really powerful stories.

Quite frankly, you know, the testimony that you share, it's my opinion that you all shared the most important testimony of any of the stakeholders that we hear from, and give us the most guidance forward in terms of, you know, how we can legislate and how we can do better for next time.

So with that in mind, and I'll start with Jerry, who, you know, it's great to see you. I know we've briefly spoken about what happened to your mother. And I'm glad you're here, but I'll start with you, if I could.

You had mentioned that you made it very clear to nursing home administration that you wanted a phone call if COVID was introduced into the nursing home.

It sounds like you never got that phone call. You found out separately on your own.

I assume you confronted the nursing home at some point about that.

What did they offer to you as an explanation as to why they couldn't pick up the phone?

Obviously, there's a lot of chaos happening in nursing homes; that is understandable.

But to not have the decency to -- to -- especially after asking, after requesting, that they give you a phone call, what was their explanation?

JERRY MALDONADO: Thank you, Senator Skoufis, just for your leadership in these hearings, and for the rest of the committee.

I, quite frankly, was in communication with them frequently, and they would ignore that piece of

my question, actually.

Every time I spoke with them through e-mails, they would not answer that one particular piece of question.

Right?

Again, it was only until after my mom developed a cough -- right? -- that it was kind of undeniable, and a fever, that the director of nursing -- the staff would tell me, they passed it to the director of nursing, and then he finally admitted it, again, in his own words, that they "had been forced to accept COVID patients, and they couldn't guarantee my mom's safety."

From my perspective, they were afraid of liability purposes -- right? -- and were not sharing that information.

I actually believe that it was an unintent -- it was an intentional decision not to inform families.

And I felt like that robbed families of our ability to care for our loved ones.

I would have pulled my mom out of that facility.

She would be alive today, actually, had we had actually again been informed about this policy

change proactively.

SENATOR SKOUFIS: Thank you.

Just, yes or no, briefly:

Did the rest of you all on the panel make sort of a similar request?

And did you ever get that call from your respective nursing homes that your family members were in, that COVID was in that facility?

VIRGINIA WILSON-BUTLER: For a long time calling, the Buena Vida in Bushwick stated there were no cases. But they had to, you know, say that my aunt was presumed COVID because of a cough.

No fever, no other signs and symptoms, but because of her cough.

And then, eventually, they took the X-ray. They stated she had pneumonia.

But her death certificate said that she died of natural causes.

So...

SENATOR SKOUFIS: Okay.

Anyone else on that, very briefly? Because I have one other question.

MIKKO COOK: Can you repeat your question?

SENATOR SKOUFIS: Just, did you request that the nursing home give you that same heads-up that

Jerry Maldonado described, a phone call, if and when COVID was introduced to your father's nursing home?

MIKKO COOK: Yes, yes.

SENATOR SKOUFIS: And did you ever get that call?

MIKKO COOK: My mother called and asked.

My mother was the one who reached in every time to find out.

SENATOR SKOUFIS: But did they ever then call back when the virus was in the nursing home to let you all know?

VIRGINIA WILSON-BUTLER: No, no.

MIKKO COOK: I think she ended up asking when it was, and they told her, yeah.

And then there were frequent automated calls that then announced how many people had it after that.

SENATOR SKOUFIS: Got it. Right.

Okay. If I can just move on, again, Jerry, you mentioned that there was no separate unit for COVID-positive residents in nursing home.

CDC guidelines are very clear that separate units were urged.

I don't understand why it wasn't made explicitly clear in New York State directives or

mandates.

But, can you speak to that a little bit, as to what the actual logistics of the nursing home was during the past five months?

Were there any changes in where residents were, or was it exactly the same as it was pre-COVID?

JERRY MALDONADO: From what I could see, it looked exactly the same, except, you know, the nursing had maybe light masks.

Basically, you know, again, nursing homes are usually overcrowded, understaffed. Right?

And so they didn't have the space, actually, to segregate folks, and so COVID-positive patients were intermixed.

My mom was in a dementia unit, where folks kind of wander.

She was in her room. Other folks with kept in their own room with other kind of patients. And there was no special staff kind of attached to these folks.

So while nurses and CNAs would come and see my mom, then they'd go to another room with a patient that was not positive, actually -- right? -- without changing equipment.

This is how it spread like wildfire.

SENATOR RIVERA: Thank you, Senator.

SENATOR SKOUFIS: Thank you.

SENATOR RIVERA: Now we'll go to the Assembly.

ASSEMBLYMEMBER BRONSON: We'll next recognize Chair Richard Gottfried for 5 minutes.

ASSEMBLYMEMBER GOTTFRIED: Thank you.

First -- okay.

First a question for Mr. Pierce.

"The New York Post" story about Coler that you mentioned described some pretty horrendous conditions at Coler.

On the other hand, we've heard people say, oh, that's not true. Everything is fine at Coler.

What would you say about that, about the general conditions at Coler both today and in the recent past?

VINCENT PIERCE: Okay, I would say, when I first read that "Post," or seen that "Post," I was happy that somebody really stepped in, and somebody that they would pay attention to, so people can see that when it was coming from us that it was true.

And like I said, like Coler is -- I don't know if anybody knows, but Coler is big. So they

had this space to separate people.

They just wasn't doing it, until then.

Like, that's the advantage that we do have, is that we have this space, but they just wasn't using it.

[Indiscernible cross-talking] --

ASSEMBLYMEMBER GOTTFRIED: But the -- I'm sorry. Go ahead.

VINCENT PIERCE: -- no, go ahead, go ahead.

ASSEMBLYMEMBER GOTTFRIED: The story talked about general conditions of lack of sanitation and other major problems at Coler.

Was that your experience?

VINCENT PIERCE: Yes.

Just like Jerry just said, they had a lack of PPE.

I would get -- a nurse could would come from a COVID patient to take care of me, with the same equipment on. And it's just amazing how this wasn't the only place that that was going on.

But that right there is like a commonsense thing. Like, why would you take care of a COVID patient, then come to a non-COVID patient?

Like, that's how it spread, that's one of the big reasons how it spread, was cross-contamination.

And, yeah, it was lack of PPE, lack of sanitation wipes... lack of everything.

ASSEMBLYMEMBER GOTTFRIED: Okay.

Thank you.

And I have a quick question for Ms. Wilson-Butler, because you're both a family member and part of the ombudsman program, I assume, as one the volunteers.

VIRGINIA WILSON-BUTLER: Yes.

ASSEMBLYMEMBER GOTTFRIED: You know, we've been urge -- I've been urging the department to require nursing homes to periodically notify family members and residents about the ombudsman program.

And the answer the department has given, and industry people this morning said, well, we have a poster up in every nursing home, talking about the ombudsman program.

Do those posters do any good?

And do families -- should families really be periodically, and residents, notified about the ombudsman program, and how to contact it, and what it can do for them?

VIRGINIA WILSON-BUTLER: When my aunt was admitted into the nursing home in 2016, I had no idea what an ombudsman was.

Okay?

There was no posters up; there was nothing.

In her incidents and, you know, care, I did a research for myself and found the program, and I became an ombudsman.

Now, when I received my own facility, New York Congregational, there are posters up on every floor, stating the telephone number.

Now, do these dementia patients and other residents with, you know, just different health issues, really, are they -- do they really know to call these numbers?

No, they don't.

Do the family members even care?

I personally would stand outside and hand them the flyers, talk about the ombudsman program.

But, yes, none of the residents' families, none of the residents, are really aware.

And if they are aware, once again, they are scared of retaliation and they will not report incidents.

So, therefore, the ombudsman, we do the best that we can, and we try to help the ones that will. But most of them will not because of retaliation from the facility.

ASSEMBLYMEMBER GOTTFRIED: Okay. Thank you.

I think we're really, all of us, very frustrated about what we can do to make the ombudsman program more effective.

I would assume more adequate funding would help.

Thank you.

VIRGINIA WILSON-BUTLER: Thank you.

SENATOR RIVERA: Thank you, Assemblymember.

I'll actually recognize myself for 5 minutes, and just follow up exactly on that point right there, as far as the ombudsman program.

What you're describing, Ms. Wilson-Butler, is this is pre-COVID, you're saying that there were concerns.

So kind of -- this is incredibly concerning to me because, outside of the issue of whether they should have been under, certain circumstances, allowed within facilities during the pandemic, if you're saying that we have a program whose purpose is supposed to be, residents and their family members being able to discuss issues with particular facilities, so that you can have -- I mean, you can be a spokesperson for them, as the name implies, it is incredibly concerning to me that you're saying

that there is a -- that there is an underlying threat, that most family members that know about the ombudsman program, or residents.

So tell us a little bit more about the retaliation part of it.

Obviously, I don't want to -- you know, I figure that the fact that you're being public about it, and I appreciate it, because it means that you're, you know, obviously, tough enough to take it.

VIRGINIA WILSON-BUTLER: Absolutely.

SENATOR RIVERA: So tell us a little bit about that, because it is incredibly concerning to me that there is this idea that there would be retaliation, and that that is just a regular expected thing.

VIRGINIA WILSON-BUTLER: Well, in my own facility where I am the ombudsman, a lot of times, speaking to my residents, they would give me an issue.

And once I said to them, okay, well, I need you to sign the paper, or just give me permission, to go forward, and to question the social worker, question, you know, whoever I needed to question, and then they would say, no, no, no, no, I don't

want that, because, you know, they may do something to me tonight. You know, they may, you know, tie me up.

I heard "tie me up."

They would -- you know, there were just different things that they would do. You know, come in and just be nasty and aggressive. And, you know, sometimes if they asked for something, they would say, no, because, you know, you spoke to the ombudsman today.

SENATOR RIVERA: I'm sorry to interrupt, Ms. Wilson-Butler.

Am I correct in what I heard, that there were residents who said that, in prior instances of them sharing issues that they had with the facility, that that facility then tied them up?

VIRGINIA WILSON-BUTLER: They -- they -- that's what they would say to me.

So I'm not -- I can't say that they did because I never saw it.

And I could also say that these patients are dementia patients, so, are they believable?

You know, there were cases where it could have been considered abuse, but, to go further, they didn't want to.

So I really cannot give you, you know, this is really what happened because I was a witness to it, or, that we went so far as to get the true confessions from the resident or the family members.

It was -- there were -- there were, you know, bruises, there were marks, there were everything, but, we couldn't go any further because the family members and the residents just didn't want to do it.

SENATOR RIVERA: Okay.

Any of the other family members want to comment on this issue of ombudspeople, and how -- it's -- I don't think it could be an effective program if there's this risk of that -- that the facilities are going to respond.

I don't know if anybody wants to chime in on that.

All right.

JERRY MALDONADO: I would just say that it was not a very effective program.

In my mother's facility there was very little advertising of it.

Anytime I had an issue, I would have to go straight to the staff. And it wasn't really clear how to navigate that system.

So I would say it's not an effective system.

VINCENT PIERCE: Yeah, and me --

VIRGINIA WILSON-BUTLER: I would say it's not effective because we don't have the funding.

Sorry.

SENATOR RIVERA: Got you.

Mr. Pierce, go ahead.

VINCENT PIERCE: Yeah, and me living in a nursing home, I never heard of the program, until now. Like, they just started putting up flyers about the ombudsman. Like, I never heard of it until now.

And like I say, I've been in here since 2012. And all I knew is, send my complaints to was the State, which that doesn't help. Even when they -- the State comes, they don't talk to the residents at all, to ask them what's going on.

Like, they go straight only to the staff.

And then it's, like, they know when the State is coming. So they get everything together before they even come and make everything look good.

SENATOR RIVERA: All right.

Thanks to all of you.

VIRGINIA WILSON-BUTLER: Can I just say one thing?

SENATOR RIVERA: Yep, please, go ahead,

ma'am.

VIRGINIA WILSON-BUTLER: So in my facility, I don't know about them only going to the staff.

But I went to each of the individuals, most of the individuals who could speak to me, in that facility.

So the staff was never really included in the conversations, unless I had an issue that could be taken care of without me opening a case.

SENATOR RIVERA: Got you.

Thank you; thank you all.

My time has expired.

Assembly.

ASSEMBLYMEMBER BRONSON: Thank you.

We'll next go to Assemblymember Aileen Gunther, recognized for a period of 3 minutes.

Aileen?

SENATOR RIVERA: Assemblymember?

Do you have another Assemblymember on deck?

ASSEMBLYMEMBER BRONSON: Yes.

Let's move then to Assemblymember Ron Kim, 3 minutes.

ASSEMBLYMEMBER KIM: Thank you.

Thank you.

They don't look at my mother and other nursing home residents like they are human beings.

All they see is data and numbers.

After meeting up with hundreds of families, hosting endless Zoom and town halls, and personally experiencing the trauma of losing a loved one in a nursing home, that statement by a woman named Carmen, who couldn't testify with you all today, stood out the most for me.

You know, we have a system that normalizes the dehumanization of a so-called "less productive members of our society," especially our vulnerable and elderly population.

We have a chance now to work on real solutions around your guidance and feedbacks, and not just put Band-Aids on a broken system.

So, Jerry, you know, you said you would have pulled your mother out of the nursing home if you had known all the facts.

Do you know other families who feel the same way, or anyone else on this panel feel the same way?

JERRY MALDONADO: I do.

I know lots of folks who felt like they weren't informed in a timely basis, and, subsequent, family members got ill throughout his process.

I feel, again, that we were deprived of the basic right to know -- right? -- of informed consent.

And for that, quite frankly, I will never forgive the department of health for taking away that right from our family.

ASSEMBLYMEMBER KIM: Would it have been -- would you have had a financial burden to you and your family for taking on your mother back home?

JERRY MALDONADO: At the beginning of the COVID crisis I started working remotely, so I actually had the capacity to bring her in.

I would have taken on the burden that we would have needed to take it on, and cared for her in our house.

But, again, we were never given that opportunity.

Right?

By the time we found out, she had already been sick.

ASSEMBLYMEMBER KIM: Well, and I guess for others as well, like, do you think we should do more, especially during a pandemic, an emergency, in arranging and paying for home care?

Like, our benefit system is so ridged, that

we know how much people are getting in nursing homes a day.

Why can't we make it a little bit more fluid and more portable, so the same amount of money they get in nursing homes could be transferred to home care where families clearly want to take them out?

JERRY MALDONADO: A quick response, Assemblymember Kim, because I think you're absolutely right: The system is fundamentally broken.

It is much more inexpensive to treat for a family member at home than it is to treat them in an institutional facility.

And we actually sought that option in many, many years, but, always, were never able to give that.

My mom was institutionalized because we couldn't care for her 24 hours a day.

Had we had the right nursing support at the home, it would have been cheaper, more effective, and she would probably still be with us today.

VIRGINIA WILSON-BUTLER: I totally agree.

ASSEMBLYMEMBER KIM: Thank you all.

SENATOR RIVERA: Thank you, Assemblymember.

Now I'll recognized Senator Sue Serino for

5 minutes.

SENATOR SERINO: I think -- sorry.

Am I [indiscernible] -- oh, I'm good.

SENATOR RIVERA: [Indiscernible] hear you.

SENATOR SERINO: Okay. Sorry, Mr. Chairman.

Thank you so much.

And to Mikko and Mary Jo, so sorry to hear about your dads. Thank you for telling us the story.

Jerry, your mom, and today would have been her birthday, my heart goes out to all of you.

Virginia, thank you for -- you know, I always say our personal stories propel us forward.

Yours is a true story of that, becoming an ombudsman. Thank you.

And, Vincent, thank you for sharing your voice here too.

And we do have to do a better job to let people know about the ombudsman because it's such a great program.

I'm sorry that you all didn't know about it.

But I have a question.

Did any of you reach out directly the governor's office or the department health to share your story?

And if so, have you received a response?

I know, Mikko, you said that you did.

I just didn't know if you received a response.

MIKKO COOK: I never received any responses to the times that I have reached out to the governor's office, nor did anyone in my family, or anyone on our path, receive anything back.

I think it was just like a form.

And when we -- I did the nursing home complaint hotline, and Assemblymember McDonald helped, and made a call, I did get a call the next day, saying that they contacted the regional office, and that I should follow up with my dad's bump on his head.

And I said, How long before I do that?

And they said, Well, you should give them probably a week before you call them, because they're so backed up.

SENATOR SERINO: Shame on them.

VIRGINIA WILSON-BUTLER: So, yes --

SENATOR SERINO: Anyone else?

VIRGINIA WILSON-BUTLER: -- yes, I did reach out to DOH, and heard back from them like a year and a half later, stating that there was nothing found

in the facility and they were up to code.

So one other thing I just wanted to let you know, that being a family member, and also an ombudsman, is kind of a thin line.

Yes, the ombudsman program is very important to the patients who cannot, cannot, speak for themselves.

And just because they are a little afraid, that doesn't mean that we still are not needed, because there are quite a few of them who will, who will, allow to us continue with the case and have it open.

SENATOR SERINO: I forgot to mention, Assemblymember Kim, thank you so much for sharing your story, and I'm sorry for your loss about your mom.

So -- and this is a question for all of you:

If you could prioritize one or two changes that the State can make to take better of care of those like your loved ones, what would be at the top of your list?

VINCENT PIERCE: I would say, communication.

MIKKO COOK: Vincent, you go first. You're more in there.

VINCENT PIERCE: I would say -- I would say

better communication, to really reach out to the patients that can speak for their self and tell you what's really going on.

They definitely don't do that.

They come, they go straight to the nurses, straight to administration. And they hand-pick who they want to speak for the hospital, people that they know is going to not tell them what's the bad things.

SENATOR SERINO: Anyone else?

MIKKO COOK: I would like to add, there was, I think an Assemblymember, who mentioned creating a program where an essential family caregiver is like staff.

Get us in there before the weather changes and flu season and another surge hits, because we do so much to help with the care of our loved ones while they're in the facility or taking them out of the facility.

And as staff starts to drop in terms of numbers and the ability to keep eyes on, who's going to do better than like adding in a family member, one designated one, who can help do that?

JERRY MALDONADO: And moving forward, building on that, three recommendations:

I think, as Senator Metzger said, the state should be preparing right now to send COVID-positive patients into specialty-care facilities.

We've got to be preparing now.

We know that these facilities are already overcrowded, understaffed.

And so, that's number one.

Number two: Nursing homes really have to be prepared with sufficient PPE and testing capacity on-site. And they should be testing both staff and residents on a regular basis.

And then to three, as I said, the communication piece.

Right?

Really, families have the right to know of any confirmed or suspected COVID patients.

The nursing home got away with a loophole.

Right?

Because they couldn't test on-site, they said that there were no positive cases they could confirm, though they were treating the patients with hydroxychloroquine.

Many folks died. Those deaths are not counted.

And so there needs to be kind of some

right-to-know passage -- right? -- so that families can be informed.

SENATOR SERINO: And, Jerry --

VIRGINIA WILSON-BUTLER: I'm going stick with the camera.

Oh, I'm sorry.

SENATOR SERINO: No, you're good.

VIRGINIA WILSON-BUTLER: I'm going stick with the camera in resident's room.

SENATOR SERINO: And, Jerry, you had mentioned, because of -- they weren't isolated, I actually had a plan for specialty-care centers.

And the governor and the department of health totally ignored it.

So -- and this is something that, talking to family members, we know that is something that needs to be done.

So thank you so much for all sharing your stories today, and I'm so, so sorry.

Thank you.

SENATOR RIVERA: Thank you, Senator.

Assembly.

ASSEMBLYMEMBER BRONSON: Yes.

Next we will recognize Monica Wallace for a period of 3 minutes.

ASSEMBLYMEMBER WALLACE: Thank you so much.

I want to first thank you all for sharing your stories with us today.

Your stories are so important because they help provide context and insight into how the policies that we've heard about played out in the individual nursing homes.

So I really appreciate that you're taking the time out of your day to come and share those stories with us.

[The video and audio freezes.]

SENATOR RIVERA: Is Assemblymember Wallace frozen?

We're going to give her a couple more seconds to see if she comes back in.

All right.

Do you have another Assemblymember who is on deck?

And then we'll go back, see if --

ASSEMBLYMEMBER WALLACE: Family members often access -- act as the conduit to communicate with --

SENATOR RIVERA: Assemblymember Wallace, just so you know, I'm sorry to interrupt, you were frozen for a good, 10, 15 seconds.

So if you want to start again?

ASSEMBLYMEMBER WALLACE: Oh, okay.

Okay, sure.

I'll try again.

SENATOR RIVERA: Go ahead.

ASSEMBLYMEMBER WALLACE: So I just was saying, thank you so much for sharing your stories.

Your stories are important.

They help provide insight into how many of these policies played out on the ground in the individual nursing homes.

So while it's very heartbreaking to hear these stories, it's also really critical that we do hear these stories so that we can help make positive changes.

I especially appreciate the comments that were made about how important it is to allow family members access to their loved ones in the nursing homes, not only because they provide that emotional support and help with the well-being -- the emotional well-being of their loved ones, but, also, because it's critical to the care and treatment of their loved ones.

They are the individuals who can communicate back and forth with the doctors and the staff on their --

[The video and audio freezes.]

SENATOR RIVERA: The connection seems to be a little off. We'll give her another 10 seconds to come back.

ASSEMBLYMEMBER WALLACE: -- is understaffed.

SENATOR RIVERA: Your connection froze again.

ASSEMBLYMEMBER WALLACE: I'm still cutting in and out in?

SENATOR RIVERA: I'm sorry.

But please --

ASSEMBLYMEMBER WALLACE: That's okay.

I'm actually in my Assembly office. Apparently, the Internet connection is not that great here.

Can you hear me?

SENATOR RIVERA: Yes, ma'am.

ASSEMBLYMEMBER WALLACE: Okay.

Terrific.

I just want to say that I recognize that the ombudsman office is understaffed, and we need to direct more resources into that program.

I think it was last year, or the year before, the comptroller did an assessment, and noted that New York State funds this program at half of what other states of similar size in residents and

facilities fund the program at.

So we definitely need to beef up that program.

We're recognizing here how critical that program is.

I want to thank to Ms. Wilson-Butler for her work in volunteering in that program. You're truly doing God's work in advocating on behalf of the residents.

And I guess the question that I wanted to ask was: You know, to help us to get a better sense of how the program works, do you just go to the one nursing home, or do you go to different nursing homes, volunteering?

And have you been given any explanation as to why you're not allowed to resume those visits?

VIRGINIA WILSON-BUTLER: So right now I'm just assigned to one nursing home.

You know, we are looking for volunteers all the time to, you know, join us on the program.

There aren't that many of us to really spread out among all of the nursing home facilities.

No, we haven't been given an explanation on why we can't go back yet.

Like I said, the meeting that we had last

week stated that, you know, we're still not allowed to go back in, yet.

So, there's no explanation, why?

ASSEMBLYMEMBER WALLACE: Okay.

SENATOR RIVERA: Assemblymember, [indiscernible --]

ASSEMBLYMEMBER WALLACE: Yeah, it cut out a little bit, but I did hear what you said, and I echo that you -- I know that there has been a reduction in volunteers over the years.

So we do need to do a better job at making the program known to the residents, but also to individuals who might want to volunteer to that program.

It's incredibly critical, so we need to direct resources to advertising it more, and making sure everybody knows, and helping to recruit additional volunteers.

VIRGINIA WILSON-BUTLER: Yes.

ASSEMBLYMEMBER WALLACE: Thank you so much.

SENATOR RIVERA: Thank you, Assemblymember.

There is currently no other senators signed up to ask questions.

Back to the Assembly.

ASSEMBLYMEMBER BRONSON: Okay. We will then

go to Assemblymember Missy Miller, recognized for a period of 3 minutes.

ASSEMBLYMEMBER MILLER: Hi.

Thank you so much.

And thank you to the families for being here and sharing this testimony.

As Monica Wallace just said, it's heartbreaking for us to hear, but it is so critical for us to hear -- for everybody to hear what's going on.

And, Mikko, you had brought up a point that family is repeatedly -- and we touched on this last week as well -- family is repeatedly treated as visitor, not as part of the care plan; part of, you know, helping to take care of their loved ones.

And that's a devastating oversight on behalf of New York State, that the family can only help.

So thank you for bringing up that very important part.

The other thing is, I think what we're learning from you guys is, we have this ombudsman program that people either don't know about it, or, what's worse, and is tragic, is that they're afraid to be on record.

You know, and we hear this in the senior

population, the nursing home population, but we hear this even in community care through OPWDD.

I get tons and tons of calls of people, of families, calling to, you know, ask about a situation or for help with a situation.

When I ask for their name and their number, and I'll look into it, they're afraid to give it to me, because they're afraid that their loved one is going to get bad treatment, or, you know, left out of certain things.

So I think that these testimonies are going to help us tremendously moving that forward as well.

So I just -- I don't really have any questions.

I just want to thank you for bringing these things to light.

Thank you.

VIRGINIA WILSON-BUTLER: Thank you.

ASSEMBLYMEMBER BRONSON: Thank you.

SENATOR RIVERA: Thank you, Assemblymember.

Go ahead.

ASSEMBLYMEMBER BRONSON: We'll next go to ranking member of health, Kevin Byrne, for 5 minutes.

[Dog barking.]

ASSEMBLYMEMBER MURPHY: That's not mine.

[Laughter.]

ASSEMBLYMEMBER MILLER: First, let me just thank the witnesses again on the panel right now for sharing your very personal stories and your experiences.

The more we hear from people like you, the better we can do our jobs, to learn from our experiences and craft better state policies.

So [video and audio freezes].

I wanted to make sure I thanked you, again, echoing the comments from my colleagues previously.

I did have a couple of questions.

It seems like some of the witnesses are from various areas in the state.

Obviously, Albany County and upstate, and I think we have someone from the New York City area as well.

One of the things that's been talked about a little bit, in reviewing, whether it's a study from the DOH, or just some of this data, and this testimony, is the -- looking at these numbers holistically for the entire state, sometimes it can paint a different picture than looking at data and specific examples, experiences, in individual

facilities.

An example is, there are certain counties, for example, that have much higher fatalities than other counties did. And sometimes it tells a different story.

And I'm just curious if you would feel a more -- a more pointed analysis, or a breakdown review, of what's going on in nursing facilities, particularly throughout this pandemic, would make sense, or do you think it makes sense to keep looking at this statewide?

Obviously, we care about all of the residents in New York State regardless where they live.

But does that make sense to you, to look at this maybe a little bit more specifically at the various facilities?

Any of you can speak up and answer if you feel comfortable answering that.

JERRY MALDONADO: I'll start.

Yes, I actually think that we need a much more thorough and deeper kind of accounting for the crisis.

I think we need to look at it both kind of regionally and statewide, but we also look at it, kind of, how nursing homes account for deaths.

Right?

I don't feel like we're tracking them accurately. I don't think we have tracked them historically accurately.

Again, as I said, in my case, there were a number, including my mom, who were suspected COVID, but because they didn't have testing equipment, they didn't count her.

Right?

And there were at least, that night when I was there when my mother passed away, there were three or four other patients who were similarly in critical condition.

When I checked on the website to see the nursing home's death count, they didn't count those. They were very severely undercounting.

So I do think we need a more in-depth accounting across the state, looking at regional peculiarities.

ASSEMBLYMEMBER MURPHY: Thank you, Jerry.

And to that point, you know, the governor announced earlier on during the pandemic that the attorney general's office and the department of health was going to be leading an investigation into some of the issues surrounding nursing homes.

Obviously, the importance of having this hearing, as legislators, is crucial, so we can be -- provide that oversight too, as a legislative body.

But I would ask any of the witnesses if they have heard from the department health or the attorney general's office regarding this investigation?

I think that your comments would be help, or could be helpful.

Have there been any outreach from the AG's office or have you reached out to them since this pandemic began?

JERRY MALDONADO: I have reached out to the AG's office, and have not heard back.

ASSEMBLYMEMBER MURPHY: Anybody else?

MIKKO COOK: We have left voice messages on the AG's hotline. And somebody would call and ask questions, but then you had no idea what happened after that.

And as I stated before, we have left all sorts of messages for the governor's office, with no reply.

VINCENT PIERCE: Yeah, [indiscernible cross-talking] --

ASSEMBLYMEMBER MURPHY: Please, go ahead,

sir.

VINCENT PIERCE: -- when you say investigation, I'm in a nursing home, so I don't -- even after the article in "The Post" came out, they said there would be an investigation.

I haven't seen it.

Like, I don't see it.

Like I said, they don't come in and talk to the residents or the patients at all.

So I don't see it.

ASSEMBLYMEMBER MURPHY: Thank you, Vincent.

I think it's important that we have a multi-pronged approach to this.

I know the legislature, we passed, I believe there was a study bill, into looking into racial disparities from the coronavirus.

Have anyone reached -- been contacted about that?

Has there been any outreach from the department of health into a study, into racial disparities caused by this virus?

JERRY MALDONADO: There has not.

ASSEMBLYMEMBER MURPHY: There has not.

Okay.

Thank you.

SENATOR RIVERA: Thank you, Assemblymember.

ASSEMBLYMEMBER BRONSON: We have no further witness -- or, questioners on this.

Thank you.

SENATOR RIVERA: All right.

Lastly, just -- let me just put in again:

I thank all of you for taking the time to share this incredibly personal story with us.

Please know that all the information that you've given us, we're already thinking about how to implement it, and, we will continue in conversations with you.

And, lastly, for any -- and there are a couple of other family panels that we will have today, but thank you for being the first on that.

With that, we will be taking a 10-minute break.

So let's put 10 minutes on the clock, get that sandwich ready, you can have your lunch.

And we will be back here in 10 minutes.

MIKKO COOK: Thank you.

[A recess commenced.]

[The hearing resumed.]

SENATOR RIVERA: Welcome back, folks.

Before we call the next panel, a very timely

announcement on time from Chairman Gottfried.

ASSEMBLYMEMBER GOTTFRIED: Well, thank you.

So, we've been making great time here.

In 3 1/2 hours we have had seven witnesses, so that's two witnesses per hour.

On the witness list we have 36 more witnesses listed.

So that will come out to 18 hours of further testimony, which I think puts us at 9:00 in the morning, give or take.

Senator Rivera and I are committed to staying all 18 hours.

We would just ask every member, when you start doing your Q&A, if you would just let everyone know whether you are also committed to stay the full course.

SENATOR RIVERA: And with that, we rock on.

Next panel will be led off by Steve Lampa from the New York Board -- he's the New York board chair and partner at Argentum;

Stephen Knight, CEO of United Helpers;

Kimberly Townsend, president and CEO of Loretto;

Jason Santiago, chief operating officer of The Manor at Springside at Seneca Hill;

And, Rachel Dombrowsky, owner/operator of Harbor House Assisted-Living and Oyster Bay Manor Assisted-Living.

ASSEMBLYMEMBER GOTTFRIED: And before you testify, do each of you swear or affirm that the testimony you are about to give is true?

OFF-SCREEN SPEAKER: I do.

OFF-SCREEN SPEAKER: I do.

SENATOR RIVERA: Is Mr. Lampa already on the screen?

No. We're waiting for Mr. Lampa.

Is Mr. Lampa on the screen?

Yes, he is.

STEVE LAMPA: I am, and, yes, I do.

SENATOR RIVERA: Thank you.

You may start, Mr. Lampa.

STEVE LAMPA: Okay. Thank you.

Honorable members of the Senate and the Assembly, thank you for the opportunity to testify at this critical hearing.

I'm Steve Lampa, partner with Kensington Senior Living, and the chair of Argentum New York Advisory Board.

It's my pleasure to speak with you today on behalf of the New York chapter of Argentum.

Argentum is the nation's largest trade association, serving companies that own, operate, and support senior living communities in the U.S.

Our association fully supports the Senate recommendation and legislation to establish a task force to examine the impact of coronavirus pandemic on long-term care in New York.

Argentum New York also welcomes the opportunity to participate with this task force as a long-term-care stakeholder.

All the Argentum New York members are licensed as adult-care facilities and assisted-living residence.

These are long-term-care settings that are distinct from nursing homes, as they serve different populations for different purposes, and they are authorized and regulated differently.

Our communities are our residents' homes.

To give you a picture of our residents, more than half of them are over the age of 85, another 30 percent are between the ages of 75 and 84.

They require assistance with activities of daily living, and often cope with multiple chronic conditions. As such, they're amongst some of the most vulnerable to the virus.

Assisted-living residents [sic] have been on the front line of this crisis from day one; dedicated staff members work around the clock to provide high-quality care, support, and services to their residents, while protecting them and themselves from COVID-19.

Diligence in infection control for our staff members continues when they go home to their own communities.

At the outset, communities had to close the doors to visitation by family members and to non-essential personnel.

Group activities and dining, which are essential to the day-to-day life enrichment within assisted-living communities, were significantly altered and limited.

To combat the sense of isolation and loneliness, and to head off negative clinical outcomes, staff members had to get creative in engaging residents in alternative social interactions and activities, and to promote their mental and physical well-being.

They developed alternative means for residents to stay connected to family members and loved ones through the use of technology and various

other methods of communication.

Based on our members' shared experiences, and the most critical lessons we've learned, we would ask to you consider recommendations in the following five areas:

First is testing.

We need support with funding and access to broad-based accurate and rapid testing for staff and residents. We need to consider sampling approaches that will provide strong surveillance while requiring less laboratory resources.

Secondly, in terms of PPE, to provide access to PPE on a priority basis for assisted-living, as needed, and to support the transition from the crisis PPE conservation strategies that we had to employ early on, to more conventional use of PPE in infection control.

Thirdly, examine and establish carefully-managed visitation policies to ensure residents remain safely connected to their families, friends, and community.

Number 4: Ensure that priority access to a vaccine, once developed, is available to ACF residents and employees.

And, finally, in the area of learning,

maintain a balanced and reasonable DOH reporting system, and share the results of the data collection and analysis from those reported systems.

So, once again, on behalf of our members, thank you for the opportunity to provide testimony at this hearing.

SENATOR RIVERA: And thank you, Mr. Lampa.

Followed up by Mr. Stephen Knight, CEO of United Helpers.

STEPHEN KNIGHT: [Inaudible.]

SENATOR RIVERA: Can't hear -- there you go, Mr. Knight.

STEPHEN KNIGHT: Is that better?

SENATOR RIVERA: Yep, there you go.

STEPHEN KNIGHT: Good afternoon.

I too want to thank everyone for the opportunity, and taking the time to listen to everyone.

I also want to thank the family members and Mr. Pierce for sharing their experiences. You are the key to systemic change.

Those folks are the key.

United Helpers was founded in 1898, and provides a complete continuum of post-acute services.

We serve over 2400 people daily at 52 locations in St. Lawrence and Jefferson county.

St. Lawrence County is the largest county in New York State and home to only 110,000 residents.

While many nursing homes and assisted-living facilities struggle financially and experience similar challenges, I will also speak to the unique challenges that rural providers face.

No Medicaid trend factor since 2008. Imagine 82 percent of your revenue frozen for 12 years;

Very high Medicaid population;

Managed Medicaid has increased costs and reduced cash flow;

Historic suburban and urban rate additions are not provided to rural providers;

Reimbursement rates significantly below hospitals, counties, and New York State operations, making recruitment and retention nearly impossible;

Many unfunded mandates without reimbursement, like mandatory minimum wage;

Critical-access hospitals take needed Medicare business;

Too many rural acute hospital beds, resulting in hospitals taking needed nursing home business;

Severe nursing shortage even compared to

suburban and urban areas.

In summary:

Skilled nursing and assisted-living operators have seen their customer's acuity increase dramatically;

New York State demands and mandates increase;

New York State oversight become more punitive;

And payer systems become more complex for all, while reimbursement has stayed flat for decades.

Skilled nursing facilities and assisted-living facilities play a key part in New York State's continuum of care, and they will continue to do so in the future.

In many cases, they are the best and most cost-effective choice.

COVID-19 has laid bare many of the challenges, bottlenecks, and funding inequities that have been festering for years.

It's time for operators, New York State Department of Health, and legislators to all take responsibility; come together and fix these longstanding problems instead of blaming operators for systemic issues.

For example, the nursing shortage presents challenges for every health-care provider in New York State.

While over 30 states utilize medication aides in nursing homes, New York State does not.

If every nursing home utilized 10 medication aides in New York State, 6,000 nurses who pass medications would be available to fill many necessary positions.

In addition, the newly-created medication aide position would provide career opportunities for our most qualified certified nursing assistants.

Let us start innovating and focus on outcomes instead of process.

Thank you again for convening these very important meetings.

SENATOR RIVERA: Thank you, Mr. Knight.

You caught me mid-bite.

Apologies.

Next we will have Kimberly Townsend, president and CEO of Loretto.

KIMBERLY TOWNSEND: Good afternoon.

Honorable members of Senate and Assembly, thank you for the opportunity to testify at this very important joint hearing today.

My condolences to the families in the last panel who recently lost their loved ones due to coronavirus.

I'm Kimberly Townsend, and I'm the president and CEO of Loretto.

Loretto is a 19-site long-term-care system that serves 10,000 individuals each year, and 65 percent of those individuals are Medicaid-eligible.

We are a safety-net provider, offering a full range of long-term-care services, including skilled nursing, short-term rehabilitation, adult medical day services, senior housing, and PACE.

So just to set the context of this conversation, there are 100,000 New York State residents in nursing homes today, and 63 percent of those individuals are Medicaid-eligible, meaning, that Medicaid pays for their long-term-care services.

As you've heard previously, the Medicaid rate for skilled nursing facilities in New York State has not had a cost-of-living increase or a trend-factor increase since 2008.

Pre-COVID, on the average, Medicaid paid $64 per person per day below the cost of care.

And so, consequently, in 2018, the average margin for long-term-care facilities was, negative, negative .2 percent.

So far in 2020, long-term-care providers in New York State have sustained a 1.5 percent cut to the Medicaid rate, and the impact to Loretto, the negative financial impact, was $1.6 million.

And then COVID struck.

And I fear that COVID may be an extinction event for many long-term-care facilities in New York State.

In the last six months, Loretto has spent $2 million for PPE in the informal markets because the supply chain still has not normalized.

We've paid $6.99 for an N95 mask that cost 88 cents last fall.

We've also conducted 15,000 mandated employee tests, with no insurance coverage, because they're not medically necessary, and, potentially, no reimbursement from any source, including FEMA.

The Provider Relief Funds under the CARES Act have been helpful to skilled nursing, but insufficient, and there's been no relief funds for PACE programs, adult-care facilities, or adult medical day.

So, going forward, Loretto respectfully requests that the legislature prioritize the following items:

Funding to stabilize the long-term-care system, particularly the safety-net system in New York State, and particularly recognizing the heroic efforts of New York State essential health-care workers.

Two: Priority access to PPE.

We still have challenges getting critical PPE, such as gloves and disinfectants.

We'd also like to see priority access to rapid testing.

And then we would be looking for protection from liability for the good-faith efforts to deliver quality care in an unprecedented public-health crisis.

And, finally, Loretto would like to partner with New York State, to seek state and local government relief from our federal government.

We realize that New York State cannot help us until they, likewise, receive help from our federal government.

Thank you for the opportunity to testify today, and thank you for the important work that you

do every day.

SENATOR RIVERA: And thank you for your testimony, Ms. Townsend.

Next, Jason Santiago, chief operating officer of The Manor and Springside at Seneca Hill.

JASON SANTIAGO: Thank you for the opportunity to testify today.

My name is Jason Santiago, and I serve as the chief operating officer for Seneca Hill Manor, a 120-bed skilled nursing facility in Oswego County.

Seneca Hill is an affiliate of Oswego Health, an independent community health system that employs approximately 1200 people.

Currently, Seneca Hill employs 197 staff members and cares for 120 residents.

I think it's fair to say that COVID-19 has challenged and impacted everyone.

Thankfully, so far, Seneca Hill has had zero COVID-19-positive resident cases, and only two positive employee cases.

The hypervigilance of out staff in following the guidance of the CDC and the department of health has contributed to our very low infection rate.

Despite having that low infection rate, however, COVID-19 has still forced us to account for

several complex changes that have had a domino effect in managing our nursing home.

One of these changes came in the form of Executive Order 202.30, regarding staff testing.

I agree with Governor Cuomo and Commissioner Zucker on the importance of staff testing to help protect our residents, our most vulnerable; however, we were then faced with the immediate challenge of how we were going to accomplish the required testing process, and certify compliance to the department of health and Commissioner Zucker.

We did not take this executive order lightly.

Fortunately, other nursing homes and assisted-living community administrators in Oswego County banded together rather quickly, along with our local hospital, Oswego Hospital, to help get access to tests via Oswego Hospital's drive-thru testing site.

Since May 18th, Seneca Hill Manor has conducted 2,213 tests of our staff.

[The video and audio freezes.]

SENATOR RIVERA: I think that we -- that Mr. Santiago has frozen.

We will wait for a couple more seconds.

JASON SANTIAGO: [Indiscernible] the number of tests needed, based on our weekly HERDS survey, [indiscernible cross-talking] --

SENATOR RIVERA: Mr. Santiago, just so you know -- just so you know, you were frozen for about 10 seconds there.

But keep going.

JASON SANTIAGO: Okay.

I'll just go back to the last sentence.

Thankfully, the department of health stepped up and has sent us the number of tests needed, based on our weekly HERDS survey and the New York State health commerce system.

However, there was definitely a lack of communication from the DOH side regarding how and -- when and how many test kits would be arriving.

Second: The turnaround time for test results has fluctuated anywhere between 7 to 10 days.

Currently, we're waiting eight days for results.

Staff are continuing to be tested prior to receiving the results from the previous tests.

Yes, all of our staff are wearing PPE; however, we could have an asymptomatic employee providing close hands-on-care to our residents while

awaiting those test results.

Another impact that was related to COVID-19 has been to pull nurses away from resident care to provide the staff testing.

Nursing homes have historically been challenged to provide adequate staffing even pre-COVID-19.

It has been difficult for our nurses trying to complete their day-to-day tasks, also while simultaneously conducting staff testing.

And one last thing I want to highlight is the cost associated with COVID-19 testing.

With 2,213 tests conducted, originally at $100 per test, now recently increased to $150 per test, the direct cost impact to our organization is approximately $276,000.

While we recognize the importance of proper testing, that is a significant financial burden for any organization to have to take on.

At Seneca Hill Manor, we're committed to providing the best, safest care possible for our residents, and support the decision-making based on scientific data.

I simply share this real-world cost associated with COVID-19 testing so you can see the

significant financial constraint it adds, especially considering how tight budgets are becoming.

I'd like to close my testimony by emphasizing that we've all been challenged by this virus.

Seneca Hill Manor, along with many of my upstate and downstate colleagues, respectfully request funding to help mitigate the costs associated with COVID-19 testing.

All nursing homes need to be on the highest priority list for access to testing and PPE to continue to protect our residents.

We need continuous, timely communication and planned guidance from the department of health to help all nursing homes manage our facilities safely during this pandemic.

Thank you for your time and attention, and the opportunity to testify today.

SENATOR RIVERA: Thank you for being with us today, Mr. Santiago.

Next we will hear from Rachel Dombrowsky, owner and operator of Harbor House Assisted-Living and Oyster Bay Manor Assisted-Living.

Apologies if I got your name wrong.

RACHEL DOMBROSKY: You did not, sir.

Thank you.

Good afternoon, everybody.

Thank you for inviting me to participate.

So far it seems that I'm the only -- I am from Nassau -- we are from Nassau County.

We are only a two-facility campus.

One building is specifically for dementia care, and the entire building is dementia-related. Every floor is separate, and every -- we place our residents according to their cognition.

So, basically, we are running three assisted-living facilities under one roof.

And the other building, Oyster Bay Manor, is an assisted-living, with a very strong medical model within the guidelines of the department of health.

Originally I had a very long -- I had sent in testimony. And, originally, I was going to stick to that testimony.

And I'd like to say that, State Senator Skoufis had invited me last week to join.

I was going to speak -- I was going to stick to the testimony, but there's been so much said up until now, that I really feel that I just need to speak to what has been -- what has been addressed so far.

I have to tell you that the most help that we

have gotten in our facility were from our associations.

Argentum, Steve Lampa, watch every day, getting e-mails from the organization.

AESA (the American Empire State Association) has been extremely helpful.

Steve Hanse, who spoke on the last panel for NYSHFA [indiscernible], for keeping us updated constantly.

I would like to tell you what we've done here, and it still didn't help enough.

And when I was asked by the senator's office to speak, I felt that it was -- it wasn't proper to speak because it was -- even though we put so many things into place here to -- for -- to manage the illness, it still didn't help us enough.

We had PPE.

We had -- we started to test our residents as soon as we could, which was with Northwell Health.

We had wonderful policies and procedures.

And the reason for that, I believe, because I'm in congregate care for 29 years, I felt that, when you are in congregate care, all of you that are, we know that infectious diseases are so dangerous for us. And it's not just -- it's not

just the pandemic now, and it's not just COVID.

It's flu. It is -- it is C. difficile that can come into a building. It's MRSA. It's candida auris.

All these things are dangerous for our population.

And so I became very involved years ago by -- with infectious diseases, to protect my residents in the facility.

So that was very helpful. And the relationships that I established were helpful because of that.

So, let's say, the tips, the infection prevention strategy, the United States of America was telling me, Michael Diamond called me and told me, "Close your building." And that was in January.

So we closed our building in Jan -- the end of January, the beginning of February, to all -- to all visitors.

Now, that is horrific for families, and horrific for ombudsmen, but I wanted to keep our residents safe.

We had a wonderful -- as far as the department of health, a wonderful sanitation system set up.

And as an owner and a -- as an owner and operator, and being responsible for 150 residents, plus 150 staff members, one-to-one, and seeing the staff members come up to that one point of entrance in the building, and knowing, possibly, that not only were some of my residents positive, we didn't know at that point, but that I was perhaps going to infect those staff members who were heroes and were coming into the buildings.

And that's a horrible feeling for anybody to have.

I know my time is short, and I would like to say that, my ask would be, that we --

Time is up, I see.

-- that we have --

SENATOR RIVERA: Finish your thought, ma'am.

RACHEL DOMBROSKY: May I go on?

SENATOR RIVERA: Finish your thought, ma'am. Go ahead.

RACHEL DOMBROSKY: Okay yeah.

-- so my ask would be, that we consider, as Senator Serino had mentioned last week, that we consider a specialty facility for infectious disease, which I put in an application four years ago to the department of health, and so far have not

heard.

So when other people that testified mentioned that they had not heard from the department of health, was two years, three years, I'm one of them.

And that would have been an infectious-disease facility specifically, not -- I was not a visionary -- I was a visionary, perhaps, I was not a prophet [indiscernible cross-talking] --

SENATOR RIVERA: Thank you, Ms. Dombrowsky.

Thank you, Ms. Dombrowsky.

RACHEL DOMBROSKY: Thank you.

SENATOR RIVERA: Leading off for the Senate, recognizes Senator Rachel May for 5 minutes.

SENATOR MAY: Thank you.

And thanks to you all of you for testifying.

I want to particularly talk to Kimberly Townsend from my hometown --

Good to see you here.

-- and actually playing off against that last comment, you had a special COVID unit in one of your facilities.

Do you want to say just a little bit about that?

What did it cost to put that together?

Did it have dedicated staff?

And did that have repercussions for the rest of your facilities?

How did that work?

KIMBERLY TOWNSEND: Well, before there was a prohibition against discharging COVID-positive patients to skilled nursing, we set up a COVID unit, a dedicated COVID unit, negative pressure unit.

The cost of the unit, all in, was about a half million dollars.

It was in one of our rehab floors, RN-staffed. And we had just really begun to get going with the unit, with hospital discharges. And then the positive hospital discharges were stopped.

And so, eventually, the unit trickled down to very few people, and we closed it down, which is unfortunate if we all anticipate seeing a resurgence of coronavirus in the fall.

Thank you, Senator May.

SENATOR MAY: And let me also ask you, because my father-in-law was in an assisted-living facility under Loretto's auspices.

And I'm just wondering, you didn't mention this, but since you've' got the whole range of types of facilities, do you think that the rules that are in place are inappropriately broad over all of

those, and should there be different rules for assisted-living than for skilled nursing?

KIMBERLY TOWNSEND: Well, I think our system is different from other systems, in that we have a high level of acuity across our systems.

Both with skilled nursing and our adult-care facility has people who are high acuity.

I would say there are distinctions between adult-care facilities and skilled nursing facilities that would call for different treatment.

And the recent differences in terms of return to work of positive -- COVID-positive employees is an example, I think, of New York State becoming a little bit more precise in their policymaking and regulation-making around adult-care facilities versus skilled nursing.

SENATOR MAY: Okay, thank you.

And then for all of you, the issue of family members being allowed to visit, this has come up over and over and over, and it's really important.

And I wonder if any of you sees a path to, say, designating one or two family members as compassionate caregivers, or something of that sort, so that we can -- the way that they do in Massachusetts or Minnesota, that we could get some

of the family members into the facilities to be giving the care, and, as well as the -- just raising the spirits of people in the facilities?

STEPHEN KNIGHT: I guess I would chime in and say --

This is Steve Knight from United Helpers.

-- we're open to anything where we can keep folks that are living with us connected to their family, their loved ones, and their friends.

And we've done a lot of things, you know, through Facebook, through a program called "Smile of the Day," so that you could send a smile to your loved one through Facebook.

We've done car parades, and brought residents outside safely distanced under the trees, and let the families drive by with signs and holler out the sunroof.

And those kinds of things.

So we're certainly open to any ideas in where we can bring people closer together.

It's important.

SENATOR MAY: Okay, great.

And then my last one is just following up:

I'm sure you heard some of the previous testimony, especially about retaliation, if

people -- if residents brought forward a complaint that they -- or they might be afraid to complain because they were afraid of retaliation.

Have you ever heard of anything like that in your facilities? And what have you done about it?

STEPHEN KNIGHT: I've had a couple of families say that before, or send me an e-mail. And I have gone directly to them, into the facility, to talk it out.

I mean, I've heard that before.

But we have a "comment" card throughout our skilled nursing facilities, in many of our programs.

And that "comment" card, all of those "comment" cards go directly to me, in this case, and are tracked.

But I respond to each and every single one of them.

SENATOR RIVERA: Thank you --

STEPHEN KNIGHT: I've even had family members say that, you're not -- I call and tell them who I am. And then they say, No, you're not.

[Laughter.]

SENATOR RIVERA: Thank you so much.

Thank you so much, Mr. Knight.

SENATOR MAY: Okay. Thank you very much.

SENATOR RIVERA: Thank you, Senator.

Assembly.

ASSEMBLYMEMBER BRONSON: We'll go to Health Chair Richard Gottfried, recognized for 5 minutes.

ASSEMBLYMEMBER GOTTFRIED: Thank you.

First of all, Ms. Townsend referred to protection from liability.

And I would just ask her, or anyone else who can hear me: If you have a legal memo, or something, that would explain why New York law on liability does not accommodate the burdens upon you of being in the middle of an epidemic, and why that isn't accounted for in the legal doctrine of being held to provide reasonable -- a reasonable standard of care, I'd be interested in seeing that.

I don't want to talk about it right now. That would take an hour or two.

But if you've got a document, I'd appreciate it if you'd e-mail it to me.

My question, that anybody could comment on, is about for-profit facilities.

I assume they make a profit, because their numbers have been skyrocketing for recent years. And I assume people aren't investing like crazy in losing businesses.

So if funding is inadequate, where does the money for the profit margin come from?

STEPHEN KNIGHT: Well, I would just give you a very quick example.

Most of our expenses are in labor.

And the five-star reports just came out, and one of the items in that five-star is, how many hours of care you have per resident per day.

Just to give you a very -- I did a very quick calculation on direct care, and it's state -- with statewide and nationally. I believe it has both.

If I were to cut my care to the statewide or national average, I would save at least a half a million dollars in my operating expense.

It comes down to labor.

You can't save money and make profit on washcloths.

KIMBERLY TOWNSEND: I would agree with Steve.

Loretto is a non-profit, so I can't speak with expertise to the for-profit industry.

But our costs are in labor.

And, in general, non-profits, at least according to national studies, do tend to have a richer staffing model than for-profits. And that's where the cost lies.

And it's important to [inaudible].

ASSEMBLYMEMBER GOTTFRIED: We've lost you.

SENATOR RIVERA: You muted yourself, Ms. Townsend, on that last comment.

KIMBERLY TOWNSEND: I'm sorry.

I said, it is very important to have appropriate staffing levels.

RACHEL DOMBROSKY: Can I say something?

I don't know if I'm on.

SENATOR RIVERA: Yes, you're on.

Go ahead.

RACHEL DOMBROSKY: Okay.

I think I agree with Stephen, that there -- and Kim, that they're -- when I said 100 residents and 100 staff members, there you go, it's a one-to-one.

If you want to run a fine facility, you need the staff there, and that is the biggest cost.

And a lot of us, a lot of the assisted-living facilities --

ASSEMBLYMEMBER GOTTFRIED: If I could interrupt, my question was not, what do for-profit facilities spend their money on?

My question is: If facilities don't have enough revenue to provide quality care, and that's

what everybody has been telling us, where does the money that goes to the investors come from?

Because, during all these years, when Medicaid hasn't provided increases, and minimum wage has gone up, et cetera, et cetera, people are still buying for-profit facilities, and converting not-for-profits into for-profit.

So I'm assuming there is money somewhere for the profit.

Where does it come from?

RACHEL DOMBROSKY: I think there's a tremendous range of, for-profits, and for-profits, a tremendous range in the industry, because they're --

STEVE LAMPA: For private pay, it comes from --

RACHEL DOMBROSKY: -- for private pay, exactly.

STEVE LAMPA: -- yeah, private pay, it comes from the residents that stay in the communities that pay rent and care costs.

And what's happened with this virus, is that the costs for testing and for PPE have grown significantly.

For example, in a community that I'm aware of in White Plains, with 200 employees, that's $20,000

a week in testing. That's a lot of money.

SENATOR RIVERA: Thank you, Assemblymember. Your time has expired.

ASSEMBLYMEMBER GOTTFRIED: Okay.

SENATOR RIVERA: We will now go to Senator Serino, recognized for 5 minutes.

SENATOR SERINO: [Inaudible.]

SENATOR RIVERA: Can't hear you, Sue.

SENATOR SERINO: Thank you, Mr. Chair.

SENATOR RIVERA: There you go.

SENATOR SERINO: And thank you, everybody, for being here today.

I'm going to talk quick because have I five questions.

So, throughout this pandemic, it seems to me that assisted-living facilities have been grouped in with nursing homes when it came to guidance and executive orders. And, as a result, those orders didn't exactly take into account the differences in the populations you serve.

Would you agree with that?

That's basically a yes or a no, for everybody.

And, for example, you've been impacted by the same ban on visitors as the nursing homes, but that

policy fails to take into account that your residents can come and go from the facility.

I see in some of the testimony here, notably from Argentum, you're advocating for some changes to the visitation policy.

So can you speak to that?

Whoever wants to answer?

Steve, maybe?

STEVE LAMPA: Yeah, there are differences.

But, you know, with the pandemic, people have not been able to come and go as readily as they had.

You know, when somebody goes outside of the community, they're now in an environment where they could potentially be exposed to the coronavirus.

And, so, we very much discourage people going out, and coming back into the community, if they're not going to do -- be willing to do some quarantining when they're doing that.

So, it's tricky.

They're not as free to come and goes as they were, and that's creating a lot of problems with people's spirits.

SENATOR SERINO: Oh, yeah, I can imagine.

So, thank you.

I also share your concerns with the cost of

testing.

A local assisted-living facility in my district, at the start of the mandate, estimated it could cost them over 400,000 per building to adhere to the mandate. And they also struggled to find a lab that would guarantee turnaround results.

Which I know has been a big problem, all of you have mentioned that.

I'm also hearing from others now that, due to the backlog, some labs are no longer honoring prior commitments. And this is putting an even greater strain on the staffing.

So it's clear you need the resources to fund the testing.

But in addition to that, do any of you have a proposal on how the mandate could be amended to be more effective?

STEVE LAMPA: Well, rapid testing is really important.

You know, waiting 7 to 10 days for results not only makes it a logistic lead up to administer a program, but you could have somebody working for a week and not know that they're positive. And that's really dangerous.

So the rapid testing, and maybe some changes

to sampling.

Maybe pool testing, that could drop some of the costs and be a little bit more -- and still provide rapid results.

Maybe these are things that could be looked at.

SENATOR SERINO: Thank you, Steve.

And then, Ms. Dombrowsky, you have an application pending in front of the department of health to create a step-down facility for infectious diseases.

Had that application not been stuck in bureaucratic backlog for years, maybe we would have had a facility on Long Island that could have safely taken COVID patients without jeopardizing the health of others.

Do you think creating more step-down or specialty-care facilities or units should be a top priority as we move forward?

RACHEL DOMBROSKY: Absolutely.

Had that facility been approved in a timely fashion, there would have been several facilities.

Others would have joined, perhaps, and started that program, because everything was done for the program: policies, procedures, job

descriptions, architecturals, a building was identified. There was a major health-care system in the area; Northwell was interested.

And it was -- it cost hundreds of thousands of dollars, just like one of my colleagues said, to -- for testing.

And this concept was put into the department's hands four years ago, and they encouraged me to continue.

And there were doctors and epidemiologists and experts and infection-control experts in the field.

I'm the layperson. I was the one that just brought -- as an operator, I brought that to the department of health with a passion, but more importantly, knowing that, in congregate care, we need infection control. And you need to take those people that are infected, no matter COVID, or with anything else, to leave the facility, go someplace else, get better, a step-down, a rehab, in this environment, take care of them.

Let's say somebody with C. difficile, that takes two pills a day, and they could be there for two weeks.

And, yet, it was not approved.

It wasn't not approved. It's, just, there was no answer.

SENATOR SERINO: There was no answer.

RACHEL DOMBROSKY: It was never approved. No answer.

SENATOR SERINO: Thank you very much.

I got the same thing, no answer, when I talked about a specialty-care facility --

[Indiscernible cross-talking.]

SENATOR SERINO: Thank you.

SENATOR RIVERA: Thank you, Senator.

SENATOR SERINO: Thank you, everybody.

SENATOR RIVERA: Thank you, Senator.

Assembly.

ASSEMBLYMEMBER BRONSON: Yes, next up is Chair John McDonald, recognized for 5 minutes.

ASSEMBLYMEMBER MCDONALD: Good morning -- or, good afternoon, everybody.

Thank you for your testimony.

I'm going to just try to bump into a couple quick things, and I lost my notes, so bear with me for a second.

Steve, I wanted to kind of pick up where Senator Serino was, delving into a couple of things.

Just to be clear:

I'm assuming, even though, you know, your facilities are kind of in a funny situation -- right? -- you can be treated like a nursing home in some instances, and sometimes you can't --

Although it doesn't seem to be working to your benefit, at least that's the impression I'm getting.

-- but residents aren't just coming and going as they're pleasing.

I'm assuming there is, pretty much, a clamp-down at this stage, and, basically, it's out for medical visits, and that's about it.

Am I correct in that assumption?

STEVE LAMPA: That's pretty much it. Yeah.

ASSEMBLYMEMBER MCDONALD: Yeah.

I mean, the frustrating part with the population is, you know, they are physically, mentally, and emotionally, probably in a little better shape than those who are in skilled nursing facilities. They're more mobile, so I imagine their frustration level; whereas, the frustration level in the nursing home community is probably more coming from the outside in.

I think there is a shared frustration. It's, basically, family members, but also the actual

residents, who might have a greater wherewithal, saying, I want to get out, I want to do things.

So this gets to the 28-day policy.

And I'm assuming your position is, because I read your testimony, that 14 days is adequate.

Do you guys feel comfortable with that?

I mention this because, I think it was Chairman Gottfried threw this at the New York City group last week, saying, you know, we continue to want to put pressure on the department to review this policy. But there's also a fear that things could swing in the other direction.

And how do you guys feel about that?

STEVE LAMPA: Yeah, certainly don't want them swinging in the other direction, that's for sure.

The problem is, if residents and families can't see each other, that strangles the human spirit, just plain and simple. And it leads to a lot of negative outcomes health-wise.

So reducing it to 14 helps, or, there may be other solutions to allowing safe visitation.

Visitation is tricky.

You know, where we've been able to do some outdoor visitation, it has to be very carefully managed, or it can -- you know, people are so happy

to see each other after these, you know, many months, that they -- they -- you know, they get too close.

And -- you know, so it has to be carefully managed.

So I don't know if it's just a relaxation of the 28 days. Certainly that would help.

But there may be other -- other ways in which we can manage visitation safely without creating additional risks.

ASSEMBLYMEMBER MCDONALD: I want to commend Rachel on your comments about the step-down facility.

This is something we've been talking about, not only in regards to nursing homes, but also those in any kind of congregate housing.

Whether it's developmentally disabled, OMH, the whole nine yards, I think that's something that always bears worth repeating because, there is a concern, coming this fall, that we may be revisiting much that we experienced this past winter.

I guess my final question, for anybody who is willing to accept it: You know, more and more, in the last week or two, we're starting to see more and more articles, information, about the overall

physical environment, and that simple things like open windows to get fresh air, air exchanges, humidity control.

These may be items that come with a very simple solution; they may come with a complex solution.

I guess, how well are you positioned to be able to handle some of these requirements that might be coming forward, or at least recommendations?

RACHEL DOMBROSKY: I'll speak to that first, if my colleagues don't mind.

I've called on several companies to get estimates for the MRV, anything MRV, more than a MRV aid; and, also, to have UVC lighting, UVC technology with the filters, because I'm -- we're -- I'm so -- we're all so concerned about the air.

Of course, the best practices for surface control have been used here, and in my colleagues' facilities as well.

I think that, here --

And I would like to share that if it helps anybody.

-- a lot of our residents, especially in nursing homes, and I'm not a nursing home, but my residents are not like they were 20 years ago when

I started here at 29 years ago. They're in nursing homes. And I walk on the floor and I say, I'm running a nursing home.

So what we did is, we created a -- a sink that goes -- sinks that go around the buildings, and they go to the residents to wash their hands.

It's a simple thing.

You take a sink, you put it on castors, you push it, and it goes to the residents themselves.

[Inaudible.]

SENATOR RIVERA: Thank you, Ms. Dombrowsky.

Thank you, Ms. Dombrowsky. The time has expired.

Going now to -- recognize Senator Metzger for 3 minutes.

SENATOR METZGER: Thank you, Mr. Chairman.

Two questions.

One: Following up on the discussion about specialty facilities, step-down facilities, I had asked this question of our first panel, whether planning was underway.

I think that it has to be done regionally.

We have to make sure these facilities are available in all of the regions throughout the state.

I was told that planning is underway.

I was curious.

We have members of this panel that had a step-down facility, or wanted to have one.

Have you heard, have you been -- have you heard anything about this planning process?

So, clearly, you need to be reached out to.

My second question is: Did you have a policy in place at your facilities to enable your residents to have virtual visits with family members during this time?

How accessible was it for family members?

Because I've definitely -- we've heard testimony that it wasn't -- actually, in the last panel, that it was not accessible universally.

I've certainly heard that elsewhere, outside of this hearing.

So this is something of great concern because, obviously, that isolation is incredibly damaging, psychologically, emotionally, and physically.

And -- so if you could talk about what policies you have in place, that would be great.

KIMBERLY TOWNSEND: So this is Kim Townsend.

So to answer your first question, we

repurposed our step-down unit to become a COVID unit. And now we've repurposed it back to being just a step-down unit.

We have not had additional conversations with DOH regarding the repurposing of that step-down unit for the fall, specifically to address infectious diseases.

In terms of your second question, we've done over 50,000 virtual visits between residents and their families.

And so we've made a real effort to keep residents connected to their families, insofar as some residents are able to do virtual visits. And some families are able do virtual visits, and some aren't.

But there is certainly no substitute for a person-to-person contact between a resident and their loved ones.

SENATOR METZGER: And I'm a big fan of outdoor visits, by the way.

I understand they have to be managed, but I think that, in this weather, this should be happening, you know.

Thank you.

STEPHEN KNIGHT: A large portion of one of

our -- our activities department is doing, is helping residents connect with family and friends, and organizing outdoor parades, and things like that.

Anything to keep them connected.

SENATOR RIVERA: Thank you, Senator.

Thank you, Mr. Knight.

Assembly.

ASSEMBLYMEMBER BRONSON: Next we'll go to Ranking Member Assemblymember Kevin Byrne.

ASSEMBLYMEMBER BYRNE: Thank you, colleagues.

And thank you to the panel for sharing your testimony again.

I know we've had some reports early in the year about some significant bottlenecks in receiving COVID-19 test results.

I know we're talking, this hearing is more for the upstate area. But that was specific to the New York City metro area.

Some individuals reportedly waited over a week to receive results.

And I'm just wondering if you have experienced any similar delays in receiving results in your facilities?

That could be for either of you.

How about we start with Mr. Lampa?

I guess I could expand on, if there's been any -- do you have suggestions on how we can improve testing policies?

And I'll throw in visitation policies as well.

STEVE LAMPA: Yeah, okay. [Indiscernible.]

Yeah, the testing policies, we've got to have broad-based in testing. I mean, there's no doubt about it: faster.

Could there be some sampling schemes that would allow, you know, excellent surveillance without having to go to every single employee every week?

Or, could some pooling strategies allow us to do that quickly and efficiently?

And pooling, if, when done well, can drop the number of tests required by 40 to 60 percent.

That would help the laboratories.

It would help us in particular, if we could get good results fast.

ASSEMBLYMEMBER BYRNE: Thank you.

Now expanding on that, have you received, or expect to receive, any State financial support to assist with those testing policies, including those

that are mandated?

STEVE LAMPA: Well, [laughing].

ASSEMBLYMEMBER BYRNE: You want to say yes. Right?

STEVE LAMPA: Sure, it would help.

But, you know, if we can reduce the number of tests, you know, that could bring the cost down pretty significantly.

So, yeah, it would be great if the money is available, but, you know.

ASSEMBLYMEMBER BYRNE: Yeah, that's always a challenge.

STEVE LAMPA: I'm not thinking there's a big giant pot of money sitting around waiting for us to grab. You know?

ASSEMBLYMEMBER BYRNE: No, I see that challenge too, on multiple levels.

How about, visitation policies, is there anything you can expand?

I know some discussions have been said from my colleagues about visitation policies.

Is there anything you can expand on that, on how we can improve visitation policies at some of your facilities?

STEVE LAMPA: Okay.

Well, the weather is going to turn. And so, outdoor visitation, while it's probably the safest route to go, isn't going to be possible here in some -- a few short months.

So we have to come up with safe internal visitation, face-to-face visitation, because, as Kim mentioned, while we're doing thousands of Zoom calls and Facetime calls, it doesn't take the place of personal visitation.

So we've got to be able to submit plans that are -- that strongly manage the risks of face-to-face gatherings.

ASSEMBLYMEMBER BYRNE: Thank you, sir.

Appreciate your time and your testimony this afternoon.

And I would just expand that out to -- those questions to any other members of the panel, if they would like to chime in.

But, that's all I have for this panel.

KIMBERLY TOWNSEND: So we are a large-volume tester, and we do about 1700 tests a week.

And, initially, we had trouble finding a lab that had capacity to process.

So we were connected to a national lab. And then when their turnaround time became 12 days, we

were dropped by that lab, and had to go out about two -- three weeks ago now, and find another lab to do testing.

But just to give you a sense:

So we did 1700 tests last week.

We had one positive employee case out of those 1700 tests --

ASSEMBLYMEMBER BYRNE: Wow.

RACHEL DOMBROSKY: -- at a cost of $100 apiece.

So I agree with Steve, perhaps we are at a point now where we could look at pooled testing.

ASSEMBLYMEMBER BYRNE: Thank you.

KIMBERLY TOWNSEND: For now.

SENATOR RIVERA: Thank you.

Thank you.

We don't have members in the Senate asking questions at this time.

Back to the Assembly.

ASSEMBLYMEMBER BRONSON: We now have Ranking Member Brian Manktelow, for 5 minutes.

ASSEMBLYMEMBER MANKTELOW: Thank you, Mr. Chairman.

Jason, if I could ask you a couple of quick questions?

JASON SANTIAGO: Sure.

ASSEMBLYMEMBER MANKTELOW: I was reading in your testimony here that, recently, the cost for testing has gone from 100 to 150.

Why is that?

JASON SANTIAGO: That was the increase that the lab that we are using has increased rather suddenly.

Originally, it was $100. And then we got notification that it was going up to $150.

Didn't get adequate notice on that.

ASSEMBLYMEMBER MANKTELOW: So just doing quick numbers:

You've got about 197 staff members, so say, 200.

At that increased cost, that's $20,000 a week, at twice a week.

JASON SANTIAGO: Well, it was twice a week for the first 30 days. And then the executive order changed to once a week, depending on if the staff were actually working that week. If staff were on vacation, they didn't have to get tested that week.

So that does alter the number of tests you have to do.

ASSEMBLYMEMBER MANKTELOW: So it's going to

be around eight to ten thousand dollars a week now, instead of the twenty thousand?

JASON SANTIAGO: Yeah, it will fluctuate; but, yes.

ASSEMBLYMEMBER MANKTELOW: How do you recoup that?

JASON SANTIAGO: That's a good question.

I mean, I think that's why we're here; we're asking, is we probably need funding to help us support the testing that we need.

ASSEMBLYMEMBER MANKTELOW: And with the testing, what's the turnaround time for you as far as getting the test results?

JASON SANTIAGO: So it was 10 days. It has dropped to 8 days.

ASSEMBLYMEMBER MANKTELOW: Okay. Thank you, Jason.

One other question.

Being in my district, we've talked a lot about not having enough staff members.

Do you guys have that situation where you are as well, not having enough staff people?

JASON SANTIAGO: I'd be hard-pressed -- I think you'd be hard-pressed to find any nursing home that says that they're adequately staffed.

I think that's a challenge for us.

You know, we do the best that we can to provide the care for our residents. That's -- you know, we're a mission-based organization.

But when you add COVID-19, which no one could have predicted, it's definitely thrown a curve for all of us, with providing, you know, additional resources from our staff to help with testing, and pulling them away [video and audio freezes] --

ASSEMBLYMEMBER MANKTELOW: Yeah, I know visiting --

Is he still on?

Jason?

OFF-SCREEN TECHNICIAN: He's having some connectivity issues.

SENATOR RIVERA: We might have lost him.

Go ahead, Assemblymember.

You still have some other folks.

ASSEMBLYMEMBER MANKTELOW: Well, I kind of wanted to direct this next question to Jason.

I guess I'll just hold off for the moment, until he comes back on, if that's okay?

SENATOR RIVERA: We'll do this: We'll go to the Senate, since we have a senator on this side.

Hold two minutes for the assemblymember,

please. And when he comes back, he'll get it.

ASSEMBLYMEMBER MANKTELOW: Thank you.

SENATOR RIVERA: We'll move now, recognizing 5 minutes for Senator James Skoufis.

SENATOR SKOUFIS: Thanks very much.

And thanks to each of you for participating today, coming on.

I think your insight is valuable to us.

And, you know, one of the -- one of the recurring themes that we've heard from some of the family members who have testified today, and last week, is a concern --

And now, granted, this is predominantly on the nursing home side, but I do think it's relevant to hear from people on this.

-- one of the recurring themes that we've heard is this concern surrounding communication, or lack thereof, from the facility to the families.

Today, for example, we heard from an individual constituent of mine, actually, who explained that he explicitly requested that his mother's nursing home reach out to him when -- if and when COVID was introduced into his mother's nursing home.

He never got the call. He found out after

the fact.

He might have been able to respond, get his mother out of the facility, if he had gotten that call that he never did get.

Can you speak to how your facilities handled that type of a communication?

Did you hear from family members, hey, please call us if the virus is introduced into your facility?

Did you make it clear to your staff, on the administration side, that these calls needed to be made? Were they made?

Can you speak to that, briefly, please?

STEPHEN KNIGHT: In our case, we have a "one-call system," we call it. And all of the family members, and, whomever, who wants to, is part of that. And there's immediate notification if there's a COVID-positive patient/resident.

And, we actually do it with staff too.

And I've taken to actually notifying our media too, because I think the more quickly you get that information out, the more vigilant our staff are and the rest of us.

So we make it a priority to make sure everyone is notified.

SENATOR SKOUFIS: And was that system set up at the onset, from the beginning, or was that incorporated a little bit into the pandemic?

STEPHEN KNIGHT: A little bit of both.

It wasn't as widely used earlier, but it's very widely used now with COVID.

SENATOR SKOUFIS: Okay.

And I see some shaking of heads; similar?

KIMBERLY TOWNSEND: Yeah, likewise, we were under a mandate.

I mean, according to HHS, as of May 8th, you had to inform family members if there were any COVID-positive cases within your facilities, skilled nursing or adult-care facilities.

[Indiscernible cross-talking] --

SENATOR SKOUFIS: I think if I may interrupt, I think the concern was, with the family members, pre that order. Right?

So the apex of the situation here in New York was certainly before May, or the middle of May, even.

And there were family members who wanted to know, okay, the first case, let me know because then I want to do something with my parent, with my grandparent. Not something that's incorporated when

you've already had, you know, 10 cases, 50 cases, et cetera.

Do you get what I'm saying?

KIMBERLY TOWNSEND: Yeah, sure, absolutely.

We didn't have our first case until after that mandate.

So we were informing people within 24 hours, by phone, by letter, on a family Facebook page -- a closed family Facebook page.

So upstate was a little bit different. I think we lagged a little bit in timing, or at least that was our experience at Loretto.

But --

SENATOR SKOUFIS: Forgive me, I want to get the last question in. Sorry to interrupt.

So, you know, I think there's going to be a robust legislative response following these hearings. And you're going to see new bills introduced, new laws incorporated, here in New York.

I suspect there will probably be some regs that are looked at and reviewed from these past five months.

I hope, I'd like to think, that the department of health will, you know, take the opportunity to view some things in hindsight and

maybe do things differently.

What have you all learned from these past five months, things that were not put in place prior to March, where, now, you look at the past five months, okay, that's a good idea to keep around even after the pandemic is over?

This is a good practice, a best practice, let's keep it around.

I think I only have time for one of you to respond to that, please.

STEPHEN KNIGHT: I guess I'll chime in.

SENATOR SKOUFIS: Okay.

STEPHEN KNIGHT: You know, we always work, and you can always do a better job, on communication.

But we put a lot of different channels of communication in place, and, training, spot training, retraining, that weren't in place before, you know, specialized teams, et cetera, to do some things more quickly than we had done them before.

SENATOR SKOUFIS: Okay. Thank you.

KIMBERLY TOWNSEND: I would say screening, widespread screening, in PPE management.

SENATOR RIVERA: Thank you, Ms. Townsend.

Now, Mr., Santiago can you hear us and can

we hear you?

JASON SANTIAGO: I can hear you fine.

SENATOR RIVERA: Okay.

Put two minutes on for Assemblymember Manktelow -- I'm going to mispronounce your name, sir.

ASSEMBLYMEMBER MANKTELOW: Very good.

Manktelow.

SENATOR RIVERA: Manktelow, Manktelow.

ASSEMBLYMEMBER MANKTELOW: Thank you, Senator.

Please, another question I was talking about, staff members, and not having enough staff.

When the minimum wage went into effect a few years ago, did that have an effect on staff members at our nursing homes, our senior living facilities? Do you think it did?

SENATOR RIVERA: Mr. Santiago seems to have been frozen, or is really pondering the question for a long time. One of the two.

I believe he is past pondering.

All right. We're going try this one more time after a Senate round.

Senator Tom O'Mara, I'm hoping that you are not going to ask Mr. Santiago questions, because

he's still pondering the last one.

Recognize Senator O'Mara for 5 minutes, please.

SENATOR O'MARA: Thank you, Chairman.

No, I don't have a question specifically for Mr. Santiago. Although, if he comes back online, he's certainly welcome to add in.

Since I think it was our second round of individuals testifying today, that had, James Clyne from Leading Age testified, and I had asked about average wages.

They have provided from Leading Age, that the median upstate LPN wages are $20.90 a week, and CNAs are $14.48 -- I'm sorry, an hour. That was an hour.

So $21 an hour, and 14.50 an hour, making the salary ranges, from CNA, to an LPN, 30,000 to 43,000 dollars.

Now, we have a nursing shortage in this state overall, and, in particular, in nursing homes.

Is the wage that's being paid, in your opinions, the reason that we have the nursing shortage that we have in the nursing homes?

Or are you more competing with these positions with hospitals and other health-care

providers?

If someone wants to jump in on that.

STEPHEN KNIGHT: I think I spoke earlier about just the inequity in reimbursement between the hospitals, between the state operations.

Just to give you an example, very quickly:

New York State operations in my area are pretty heavy.

They couldn't get nurses, so they implemented a $12,000 geographic bonus on top of your wage. A $5,000 add-on for evenings, and a $7,000 add-on for nights.

So that's $19,000 if you want to work nights, over and above a salary and benefits that we couldn't compete with in the first place.

So that's really the issue.

People, literally, call our facilities and try to recruit them, from the hospitals, from state operations, and some other places.

Does that answer your question?

SENATOR O'MARA: It helps.

Any of the others?

So --

RACHEL DOMBROSKY: [Indiscernible] -- I'm sorry.

SENATOR O'MARA: -- okay, go ahead.

RACHEL DOMBROSKY: -- on Long Island, we're paying $26 to $28 an hour for LPNs. And we're paying at least 15, if not more, and we do have med techs on the floor as well, which was mentioned the other day -- or, which was mentioned a few minutes ago.

So we are paying.

I think what's happening is that, I think people are being frightened to come back, even though we had a very small amount of staff members getting sick.

But I think because of the summer and a lack of child care, I think that really has made an impact on getting people to come to work.

At this point, I'm hoping that if schools open up, it will change.

At this point, it's a summer day. People are home with their families. They're getting unemployment. And it's best to stay home, and to be safe.

And then you have the warriors that are coming in every day and doing their shifts. And they are the devoted staff that we count on, and they come in.

SENATOR O'MARA: Thank you.

And I would think that the minimum-wage increases that went in over the last few years, particularly with the $15-an-hour minimum wage at fast-food restaurants, would actually lure away, certainly, certified nursing assistants, to make $15 an hour at a much simpler and easier job.

But as you mentioned, there are those that are dedicated to this, and this is their calling, and this is what they want to do.

But at $14.50 an hour, you know, 50 cents lower than fast food, I would think it would make recruiting extremely difficult at that level.

RACHEL DOMBROSKY: We agree.

And assisted-living facilities use HHAs instead of CNAs. We're not allowed to use CNAs in an environment, even though they have more of an education.

So that's [indiscernible].

SENATOR O'MARA: Thank you all very much for testifying today. Appreciate it.

RACHEL DOMBROSKY: Thank you.

SENATOR RIVERA: All right, thank you.

We're going give one last try. I believe he might be on the phone.

Is he on the phone yet, Mr. De La Cruz?

OFF-SCREEN TECHNICIAN: He is not.

SENATOR RIVERA: Okay.

Then go to the next assemblymember.

We're going to try for round three, if we get past the assemblymember.

Go ahead.

ASSEMBLYMEMBER BRONSON: We will recognize Ron Kim for 3 minutes.

ASSEMBLYMEMBER KIM: Thank you.

So on page 23 of the New York State Department of Health Nursing Home Report in July, it touches on the claims that a profit motive was involved in both the eviction of low-income residents and the admittance of COVID-19 patients, the later -- the later of which would have yielded greater reimbursement for treatment than Medicaid patients, due to a favorable reimbursement formula that had been implemented by The Center for Medicaid and Medicare Services.

Additionally, a "New York Times" article titled "They Just Dumped Him Like Trash: Nursing Homes Evict Vulnerable Residents," established that it is, indeed, profitable for nursing homes to accept COVID-positive patients, bringing in an

additional $600 a day per resident, than it is to keep Medicaid patients who have milder conditions.

Given that 63.3 percent of nursing homes in New York State are driven by for-profit nursing homes, and, as of late May, with for-profit nursing homes constituting 60 percent of confirmed and 74 percent of presumed nursing home fatalities, do you think the State should investigate the potential profit motives of nursing homes during this pandemic?

STEPHEN KNIGHT: I'm only going to respond and say that I think each facility has to be looked at individually. And, it's a very complicated issue, that all comes down to quality, and the systems you have in place.

And I think it should focus on that.

ASSEMBLYMEMBER KIM: So you think each nursing home should be looked at, but not whether the for-profit motives had any impact in the outcome?

STEPHEN KNIGHT: I guess that would be facility by facility, on whatever their motives were.

I do know where I am in my area.

There are only two home-care agencies, just

to give another example. And ours is the not-for-profit.

And we were the only facilities taking COVID patients because it was so expensive.

ASSEMBLYMEMBER KIM: Thank you; thank you for that.

Rachel Dombrowsky, if you're still on, just a quick question.

You said back in January, February, you started implementing policies, based on advice, to keep people -- visitors out, and implement better practices.

Did you -- did you have any fatalities in your nursing home?

And was that policy an effective way to prevent the infection -- infectious spread?

RACHEL DOMBROSKY: We had fatalities. I traced -- we traced it back to one individual that was sent out.

Whenever somebody is sent to a hospital, we send an aide with them.

So the aide and the individual, who was not COVID-positive, was sent to a hospital, and lingered there in the emergency room for several -- for three days, I believe, and contracted COVID then.

They were sent back without a test. It was the end of January.

Both of them subsequently got COVID, but they are both alive and well.

SENATOR RIVERA: Thank you, Ms. Dombrowsky.

Thank you, Assemblymember.

All right, so last -- the last attempt here.

Do we have the gentleman on the phone?

OFF-SCREEN TECHNICIAN: Yes.

SENATOR RIVERA: All right.

So put him on the phone. Give Assemblymember Manktelow 1 minute 37 seconds.

Go ahead, sir.

ASSEMBLYMEMBER MANKTELOW: Jason, can you hear me?

JASON SANTIAGO: I can.

I apologize for the issues.

ASSEMBLYMEMBER MANKTELOW: Oh, no problem.

Yeah, just really quick:

In our rural upstate area, where I was going with this was, with the minimum wage, and Senator O'Mara has already kind of asked the same question, but I'll ask you: Has the minimum wage really affected the capabilities of getting other people to work in a nursing home or a senior living

facility?

JASON SANTIAGO: It definitely has presented a challenge for us, more so than I've seen in years past.

It was tough enough to have people want to enter into the long-term-care industry. It takes really special people that really want to develop and start a career in long-term care.

But the minimum-wage impact has been -- we definitely have been feeling that. And it's hard to compete with those larger, you know, whether it's retail or the fast-food industry, when they're offering, you know, let's say, $15 an hour. It's just very difficult to be able to recruit those folks.

So, yes, it definitely has been an impact to our organization, and I'm sure many of my peers as well.

ASSEMBLYMEMBER MANKTELOW: That's what I'm hearing around the area.

So, Jason, thank you for getting back to me. I very much appreciate it.

And thank you, Mr. Chair.

SENATOR RIVERA: All righty.

There's no further questions from the Senate.

Assembly?

ASSEMBLYMEMBER BRONSON: No further questions from the Assembly.

SENATOR RIVERA: All right.

Thank you so much, all of you, for being part of the panel today.

Have a great rest of your afternoon.

Next panel, we'll move forward with:

Ruth Heller, executive vice president for 1199 SEIU, United Healthcare Workers East;

Brendan [sic] Anderson, NLPN [sic], an 1199 member, from St. Catherine Labourne [sic] Healthcare Center.

Iris Purks, certified nursing assistant, 1199 member, from Safire Rehabilitation of Northtowns;

And, Vanessa Brooks, Home Health Aide and Healthcare Workers Rising member, from MedTemps and Venture Forthe agencies.

All right.

ASSEMBLYMEMBER GOTTFRIED: Okay.

And do each and every one of you swear or affirm that the testimony you're about to give is true?

RUTH HELLER: Yes.

BRENDA ANDERSON: Yes.

IRIS PURKS: Yes.

VANESSA BROOKS: Yes.

SENATOR RIVERA: Okay.

ASSEMBLYMEMBER GOTTFRIED: Okay.

SENATOR RIVERA: All right, Ms. Heller, go ahead.

RUTH HELLER: Good afternoon.

My name is Ruth Heller, executive vice president of 1199 SEIU, United Healthcare Workers East. We're Upstate and Western New York, where we represent workers in nursing homes, hospitals, and home care.

We want to thank you for holding a second day of hearings to examine what happened in nursing homes during this pandemic, to learn the lessons that we need for the future, and consider changes to the nursing home industry.

We appreciate the opportunity to share some of the union's perspective of the nursing home response to COVID-19 in upstate, and two of our member leaders will discuss their very different experiences.

You will also hear from a home-care worker who is a member of Healthcare Workers Rising, a

non-profit organization that brings together non-union health-care workers to advocate for better jobs and better care.

I will try not to repeat the details that you already heard last week from my downstate colleagues regarding testing and cohorting, lack of PPEs, inadequate sick-pay policies, and staffing shortages.

But I want to note that the background challenges and experiences apply equally to upstate.

You also have my longer written statement.

Last week Chairman Gottfried asked if unionization made a difference, while noting that maybe that was a softball question.

Frankly, I think that was a very fair question.

Not only were unionized workers in a better position to organize when they needed to fight a problem employer for PPEs, they also have the structures in place to have a seat at the table as an advocate for their residents, and hands-on expert for the employers who welcome their input through labor management, infection control, and health and safety committees.

Communication was and is key.

Members told us over and over about not knowing what was happening, not knowing if a resident or co-worker was infected, not knowing why there was a PPE shortage, and not being trained on how to properly use PPE.

This created stress, anxiety, [indiscernible], and fear.

The lack of communication was particularly frustrating for those of us in upstate.

Facilities saw what was happening downstate and should have immediately swung into action by bringing workers and managers together.

Facilities that were affected set up weekly, and sometimes daily, COVID-19 updates for all staff.

They held regular in-service trainings on CDC guidance. They explained the situation with PPE.

When worker leaders were included, and they educated their co-workers, information flowed through the building better.

The other important practice was real collaboration around problem-solving.

We have facilities where workers and management identified a problem, and workers came up with solutions and implemented changes.

This happened with PPE distribution and

work-flow issues.

In some nursing homes, this also happened around hazard pay and staffing challenges.

Some agreements provided extra pay to all workers in appreciation of the stress they were experiencing;

Others provided additional pay for workers who volunteered to work on a COVID-specific floor;

And some offered extra pay for working extra hours.

Where these types of collaboration happened, workers felt valued, were able to contribute their front-line knowledge and experience, and facilities were either able to slow the spread or keep infections to a minimum, while nearby facilities had higher levels of infection.

Last week a question was asked, as to whether we saw a difference in the response of for-profit nursing homes and not-for-profits.

While I don't want to say that all for-profits behave badly, or all non-profits had better responses, we did see a general difference.

More of the non-profit nursing homes worked with us in the two areas I just addressed: communication and collaboration.

Some of the for-profits did too.

But our biggest challenges came from some of the for-profits with out-of-town owners who took a go-it-alone approach and left the workers in the dark.

We also noticed that nursing homes connected with hospital systems were more successful in limiting the spread of COVID in their facilities.

We attribute that to earlier and more completeness of PPE, and better infection-control training and oversight.

After listening to the stories of residents, families, and workers on the front lines, we hope that you will commit to a plan to dramatically improve the quality of long-term-care services in our state.

The New Jersey Legislature recently introduced a comprehensive package of reforms, and our state should not be far behind.

1199 members stand ready and willing to work with you.

Thank you for taking the time to listen to us today.

SENATOR RIVERA: Thank you, Ms. Heller.

Next we'll hear from Brendan [sic] Anderson,

LPN, and 1199 member, from St. Catherine Lebourne [sic] Healthcare Center.

BRENDA ANDERSON: Good afternoon.

My name is [indiscernible].

[Indiscernible.]

I appreciate the opportunity to speak to you today.

[Indiscernible.]

SENATOR RIVERA: Ms. Anderson? Ms. Anderson?

Ms. Anderson, I'm sorry to interrupt you.

It's very, very difficult to hear you.

Is it possible that you could move to another place that maybe has a slightly better signal?

I figure you're on your phone.

BRENDA ANDERSON: Can you hear me now?

SENATOR RIVERA: Keep speaking, because it's just very difficult [indiscernible cross-talking] --

BRENDA ANDERSON: Can you hear me now?

SENATOR RIVERA: Keep going.

BRENDA ANDERSON: Can you hear me now?

[Indiscernible]?

Okay.

I'm [indiscernible] to say our facility did a great job during the pandemic.

We felt prepared, and got through it with

only two residents passing, and a handful of my co-workers getting sick.

Unfortunately, that is not true for the other facilities around us.

The key I think was a [indiscernible] between management and the union.

We stand up for our rights, but we try and fight [indiscernible].

The other key was, management was very involved from the beginning.

We had enough PPE.

We learned the correct way to [indiscernible] the equipment.

Corporate stayed in the building.

We prayed together.

They made sure we were healthy so we could keep the residents healthy.

We had regular updates on what was going on and [indiscernible] that came down from the CDC, which kept our [indiscernible] levels down.

Honestly, sometimes we [indiscernible].

When I hear the stories of nursing homes [indiscernible].

They took us [indiscernible] serious.

We got ready, and worked with management, we

got through it.

Thank you.

SENATOR RIVERA: Thank you so much, Ms. Anderson.

And next we will hear from Iris Purks, certified nursing assistant, and 1199 member, from Safire Rehabilitation of Northtowns.

IRIS PURKS: Yes, good afternoon.

My name is Iris Purks. I'm a certified nursing home assistant at Safire Rehab. I worked there for 26 years.

At the time of the pandemic I was working as a unit clerk and a CNA.

As I watched on the news about COVID-19 residents dying, chaos, lack of PPE, workers getting sick, I felt this in my life.

I was one of many employees to be affected by the virus in my building.

Even though I was feeling sick, and was exposed by a co-worker and a resident, I couldn't get a test because I didn't have the three main symptoms.

About a week later, after losing my sense of smell, I was able to get tested at a pop-up shop.

I tested positive four days later, and I went

back to -- I tested positive four days later, stayed out work for the required 14 days, and went back without being retested. It wasn't required.

Only when Cuomo gave the order that nursing home workers must be tested, I was tested.

At this point, I had been back to work for at least two weeks, and was told I had to leave work because I still was positive.

I was sad because I felt better.

One of my co-workers tested positive, and took it home to her husband who she cared for. And he died days later due to the COVID. She still feels the guilt.

When the surge hit us, it was chaos.

We didn't have enough staff;

Staff was going between floors;

Rooms wasn't properly cleaned;

We lacked PPE and guidance on how to use it;

And very poor communication, from owners to managers, to immediate staff that was caring for these residents.

At one point we arranged a short protest -- a silent protest with the union, using signs, demanding proper PPE.

The union helped us get our first N95s, and

workers felt pressure to go back to work, sick, or didn't want to get tested, because they couldn't afford to lose pay.

I tried to do everything by the book, and even I lost a week's work without being paid.

So I understand why workers was reluctant to miss work.

If we are going to prepare for the next surge of COVID, I feel workers need a few things.

We need PPE and training on how to use it;

We need assurance that we won't lose pay;

Cooperation, communication, and honesty.

Without these things, we will be right back where we started: more chaos and loss of lives.

Thank you.

SENATOR RIVERA: Thank you, Ms. Purks.

Last, but certainly not least, we will hear from Vanessa Brooks, Home Health Aide and Healthcare Workers Rising member, who works at MedTemps and Venture Forthe agencies.

VANESSA BROOKS: Good afternoon.

My name is Vanessa Brooks, and I am a home-care attendant in Rochester.

I've been at home -- I've been a home-care attendant for two years.

I like taking care of my little old ladies, and I miss them because, right now, I'm unemployed.

I had COVID-19, and I -- wait, excuse me.

I had COVID-19, and I am too scared to go back to work without proper PPE, because I can't risk getting them sick or my family sick, because the disease is no joke.

I started feeling sick on April 30th, and I got tested on May 2nd, and found out I was positive.

I cried because I seen all the people on the news was dying from this. So I feared for my family and for my little old ladies.

I started off with a cough, aches, I had fever. Then I got cramps in my feet. I lost sense of taste and smell. The pain was so great, all I could do was just rock back and forth.

When I first tested positive, the department of health told me to quarantine for two weeks, and I got paid for those two weeks.

After that, there was no pay.

Once I felt better, so I called my two jobs, told them I tested negative.

But when I told them in the midst of that that I was being -- I was negative, and I asked

them, before I come back, would they give me the proper PPE, which is the N95, once I told them that, they told me that I was on my own. If my doctor wanted me to have it, it was his job to get it.

But my doctor told me, no, that I didn't work for him. I worked for the two agencies.

So with that being said, me and the doctor and -- me and my doctor talked.

I felt better staying home, because I don't have the proper PPE, and I didn't want to affect my two old ladies, and, basically, my family, because I have an asthmatic son here, and I definitely don't want to give, you know, the virus to him.

So I said to my employees [sic], if you guys can't get me the proper PPE, I'll just sit home.

And my two old ladies, they call me every now and then to see how I'm doing, see if I'm coming back. But I told them that I refuse to come back without the proper PPE.

Thank you.

SENATOR RIVERA: Thank you so much, Ms. Brooks.

And now Assembly will lead off questioning of this round.

ASSEMBLYMEMBER BRONSON: Okay.

I will recognize myself, having not seen a hand risen from the co-chairs, for 5 minutes.

So we've been hearing from some of the folks in the industry about labor costs, and, you know, some distinction in not-for-profit organizations versus non-profit facilities.

And, you know, this is kind of like the union softball question that Chair Gottfried asked last Monday.

And you all know, I'm a labor guy, and, you know, I have a philosophy, and you actually talked about this philosophy, and that is, when management and labor come together at the table, they can be true problem-solvers, because they have different perspectives, but they're all in it for the same objective: providing the best service possible.

But the cost of labor is important in that.

And we raised the minimum wage for the very purpose of recognizing and respecting our workers.

So, you all are heros, you're on the front lines, you're taking care of the most vulnerable among us.

And, you know, to the statements about raising the minimum wage, or the hourly cost of staff people being too high, and trying to do

something about that, you know, I'll send it to you, Ruth:

You know, what's the impact if we don't pay our workers a wage sufficient that they can take care of their own families and take care of themselves?

RUTH HELLER: All right, well, let me answer this in a couple of different ways.

I mean, your last question is, obviously, if you don't pay folks a living wage, then they're not going to be interested in this work, and they can't support their families.

I think the question that was raised about the for-profits versus the not-for-profits, and "how do they make their money?" part of it is, yes, the for-profits may understaff or underpay. But the other piece of it that needs to be talked about, I think is a little bit about the nursing home financing.

And I know we did submit a brief about the financing.

So what the for-profits often do, if you look at when they submit a certificate of need, you will see that they're buying the nursing home, and then they're buying the property. And they also have a

management contract.

So even though the nursing home per se may look like it's losing money on the books, they're actually making money because of the amount they have to pay to the real estate company, and then the amount that they paid to the management company, and then all the other affiliations with that owner.

And that's, you know, why one of the things we hope to see in the future is more transparency in the ownership and a change in the finances.

I know it was spoken about from Richard Mollot last week, about requiring a certain percentage of the funding go to front-line care and front-line providers and direct care, and that we pay attention to that.

The challenge with the minimum wage, as you know, being in upstate, the minimum wage in upstate is not even going to $15 at this point.

So we have a lot of work to do to continue to increase that to $15.

At this point, you may make less in a nursing home than you do in a fast-food place.

So it's imperative that we increase the wages of the people who work in the nursing homes.

If we really believe that they're essential,

and we really believe that you're heros, we need to pay them and recognize them and value them accordingly.

ASSEMBLYMEMBER BRONSON: Yeah.

And so -- and that does recognize, and some of my colleagues have brought this up, the competition to bring people into a very difficult industry, taking care of our elderly and people with disabilities, and others, in our nursing homes, compared to whether or not you're flipping burgers.

So, I certainly recognize that.

But I also want to make sure that we recognize, you know, that we call folks "heros" in these industries, and I think our ability to pay them, and making sure that we have reimbursement rates so that they can get paid, are essential.

The -- and then your second part, in connection with the profit, so, just so I'm clear:

So what you're saying is:

There are folks who own several different companies. And then they're -- or, relatives, or something of that nature.

And so the money that's going into the nursing home is going to a management company, or going as rental into a lease agreement, or things of

that nature.

So that's a mechanism, you know, in essence, really, to shift from using those reimbursement funds and other revenues for patient care, and shifting it so it's for-profit in those other related companies.

Is that correct?

RUTH HELLER: Yes.

And we're hoping to get that changed in the future.

[Indiscernible.]

We need more funding to the nursing homes, but we need there to be strings attached.

ASSEMBLYMEMBER BRONSON: Thank you.

And thank you all for coming in and testifying today.

SENATOR RIVERA: Thank you, Assemblymember.

I recognize Senator Rachel May for 5 minutes.

SENATOR MAY: [Indiscernible] and Ruth, it's great to see you.

I wanted to ask something I asked last week, essentially, but, the department of health, basically, pointed the finger at staff in terms of why there was spread of the virus in nursing homes.

Not I'm not blaming the staff, but just

saying that the data show that staff were probably bringing it into the nursing homes.

So, assuming that they're right about that, what do you see as the main drivers of that?

Was it people working multiple jobs?

Was it inadequate PPE?

Was it not -- no time to really use the PPE properly?

Do any of you have a sense of what that would -- what would have been the main thing?

IRIS PURKS: I do.

They didn't take us seriously in the beginning. It's just like the flu, and it's going to go away.

But it wasn't like the flu and it didn't go away.

If we had PPE, they didn't give it to us. It was locked up.

I could personally say, when we had the shutdown and we couldn't go anywhere, I was going home to work, home to work.

Well, residents caught it, an employee caught it.

When an employee caught it, she was one of our friends.

She let us know that she had it.

But the nursing home wasn't trying to let us know that she had it, because they didn't want to get us upset or scared, or whatever.

And then when a resident got it, I was taking care of residents without N95s; no proper equipment, no proper precaution.

And I felt that I got it in the nursing home at my workplace.

My family didn't have it. None of my children had it.

And I was very sad for them, but think that it was all being brought in by the employees, because I felt that I got it at work, and so did my co-worker that took care of her sickly husband, that took it home to him, where they both ended up in the hospital, and, he passed away. And he just came back six months later.

So, they put the blame on the employees, and it was just unfair.

SENATOR MAY: Right.

So --

IRIS PURKS: PPE was a big part in, how to take it off, how to use it.

We was not told.

SENATOR MAY: -- right.

Does any of you have a sense -- this might be to you, Ruth -- of what percentage of employees work more than one job, work between different facilities?

RUTH HELLER: Yeah, I actually don't know what the percentage is.

I would echo about the PPE issue, that -- because, in the same county, you could have two nursing homes, one that had an explosion, like the Safire, explosion of COVID cases, and then another one in the same county that didn't.

And so, as far as coming in and out of the community, if you had good PPE within the nursing home, you were able to stem the flow.

SENATOR MAY: Okay. Thanks.

And this is to all of you: How would you characterize morale among workers in the industry at this time?

IRIS PURKS: Well, in my facility the morale is very low because the employees and the owners and management do not see eye to eye.

The more we tried to get the owners involved, even with the union help, they didn't want -- they wanted to go their own separate way.

They thought the union didn't have no place in their nursing home business, which they did.

And I felt like they blamed us.

And when it came down to it, like, we were told, we eating in the lunchroom, we couldn't social distance, go stand outside.

I mean, I think it was very bad, and always putting it all on us, it was all our fault, that, you know, this happened in their facility.

So the morale is very low.

They have no -- they do not believe nothing that [inaudible].

SENATOR MAY: Thank you.

And then my last question is about bringing family members back into the facilities.

And I assume you all agree that that's a valuable thing to do.

Does any of you have good ideas about the best way to do that, safely?

RUTH HELLER: Well, I think what's really important is that, whatever plan gets put together, there is input from the family and the staff, and not just, you know, an administration decision that comes down from on high.

I think this is really good that you're

hearing from residents and you're hear -- well, not residents, but, you're hearing from families and you're hearing from staff.

Obviously, the more you can meet outside, the better.

SENATOR MAY: Okay.

Thank you all.

SENATOR RIVERA: And we did hear from one resident in the last panel.

Now to the Assembly.

ASSEMBLYMEMBER BRONSON: Now we'll recognize Chair Dick Gottfried for 5 minutes.

ASSEMBLYMEMBER GOTTFRIED: Thank you.

I have a question for Ruth Heller.

You talked about -- as others have, about the question of for-profit facilities using a network of, this one owns the building, it's related to that one, et cetera, as a way of, essentially, siphoning money out that doesn't get labeled directly as profit, and the need for legislation to try to clamp down on that, which I certainly agree with.

Are -- is there legislation, either enacted or proposed, in other states on this topic that we might, to use one of my favorite words, plagiarize?

RUTH HELLER: Yeah, I would recommend taking

a look at what was recently introduced in New Jersey, because that includes what they call -- you know, what's called "direct-care loss ratio," so that you have to report the total revenue, and how the revenue gets spent on direct care versus administrative costs and outside expenses.

And they're proposing that there be a maximum amount of revenue that can go to profit and administrative costs.

So I know that one, in particular. There may be other states as well.

And we can certainly get you that information.

ASSEMBLYMEMBER GOTTFRIED: Okay.

And do you know who in New Jersey we might contact on that legislation?

Like, do you know who the sponsor is?

Or, is there an 1199 person in New Jersey we could reach out to?

RUTH HELLER: Yeah, we can get you that information.

The sponsors were Vitale and Danieri [ph.].

And, also, for your research purposes, they had a report done by Minot Consulting, which we can get you that report too.

I don't think the results there would be dramatically different than what we saw in New York State.

ASSEMBLYMEMBER GOTTFRIED: Okay.

Yeah, if you can connect us with that, that would be super.

Thank you.

I'm done.

SENATOR RIVERA: All right, thank you.

Thank you, Assemblymember.

Moving on, I recognize Senator Skoufis for 5 minutes.

SENATOR SKOUFIS: Thanks very much.

And thanks to each of you for your testimony, and, more importantly, as others have rightfully noted, your work these past many months, which has been more important than ever.

So I'd like to focus on, and I guess this is for Iris, and if, Ruth, you want to partner in an answer:

I have a bit of a history myself with a Saphire nursing home down here in my district in Orange County, except this one is spelled, S-a-p-h-i-r-e, as opposed to, S-a-f, as it's spelled up by you.

And they share common ownership. I guess, if they just change a couple of letters, they can, you know, just, basically, call it the same name.

But they're all owned by the same collection of folks.

And the tussle I had down here a couple of years ago was with 1199 and its membership, over how workers were being treated after a not-for-profit sold to this for-profit, Saphire.

It's clear, based on reporting that I've read up by you in the Buffalo area, that there are a number of Safire nursing homes that have quite a history of problems: mistreatment of both residents and workers.

It's happened here where I am in Orange County.

I count six Safire-owned nursing homes throughout New York with a history of severe problems.

And so my question to you is:

What do you think we ought to do when there is this repeated, repeated, over years and years and years, history by ownership at various nursing homes throughout the state of mistreating workers and its residents?

Should we stop allowing them to open up or purchase new nursing homes?

OFF-SCREEN SPEAKER: Absolutely.

SENATOR SKOUFIS: Should we do more than just slapping them on the wrist with fines?

Should we be pulling licenses?

I have grown very frustrated, and now maybe my feelings are boiling over, given what I'm hearing from you, and what's happened in these facilities vis-a-vis COVID.

I have grown enormously frustrated that, these operators, these owners, continue opening up facilities, continue going on, you know, collecting fines here and there as if nothing has otherwise happened.

Meanwhile, their residents and employees are being treated like second-class citizens, and that's putting it very kindly.

So I want to turn it to you.

What do you think we ought to do with owners like those at Safire who can't get it right or refuse to get it right?

What do we do?

IRIS PURKS: Get rid of them.

Yes.

I've been there for 26 years.

And the last, six, seven years, they took over:

Cut staff by half;

The working wage is probably 12.88 bringing in a CNA;

You can't talk to them;

They hire big-time lawyers.

I mean, it's hard -- we've been fighting them, but it's hard to fight them. They don't want to work with us.

So I'm trying to better the place, because they not trying to involve us in any of the activities.

You know, they'll blame us for the activities, but not involve us.

And it's continuing on in a couple of nursing homes here; you hear the same stories.

And then the State come in and tap them on the shoulder, and they continue on doing what they do, because they get away with it.

RUTH HELLER: I think --

IRIS PURKS: Go ahead.

RUTH HELLER: -- the issue that you're raising, Senator, about limiting the number of

nursing homes that they can go out and purchase, I think is certainly worth investigating.

So, tightening the certificate-of-need process, so that if someone owns nursing homes with a star rating, or, has a history of problems, that they're not able to go purchase additional nursing homes.

SENATOR SKOUFIS: Thank you.

SENATOR RIVERA: Thank you, Senator.

Assembly.

ASSEMBLYMEMBER BRONSON: Yes, next we will go to Assemblymember Tom Abinanti for 3 minutes.

ASSEMBLYMEMBER ABINANTI: Okay, am I there?

There we go.

ASSEMBLYMEMBER BRONSON: Yes, you are.

ASSEMBLYMEMBER ABINANTI: Thank you.

To the speakers, thank you very much for telling us your experiences. It's very, very helpful.

I wanted to ask you about visitation.

I know you touched on it a little bit.

Has your nursing home at all allowed visitors?

BRENDA ANDERSON: Well, we have [indiscernible].

IRIS PURKS: We haven't at Safire because we just had another resident test positive. So we're on another 28 days.

And I'm kind of worried because we have residents that don't -- can't -- don't apply by -- they won't wear a mask. I mean, you know, they have behaviorals.

We worried about, if the visitors come in, them hugging and, you know, because they haven't seen them in a long time.

ASSEMBLYMEMBER ABINANTI: Right.

IRIS PURKS: I think [indiscernible cross-talking] --

ASSEMBLYMEMBER ABINANTI: Have they come up with any type of equipment that you can use other than a mask?

I mean, for example, one of the things I've seen that's been helpful, are kids with disabilities are wearing hats with visors, and they've been wearing those.

And there are other types of masks that have been -- so the nursing home has, in no way, tried to solve this problem; they just exclude visitors?

IRIS PURKS: They just walk around.

You know, certain residents just walk around

because they will not put it on. They're just not going to wear it.

ASSEMBLYMEMBER ABINANTI: What about doctors; are doctor allowed in?

I mean, I've had a report that, at one nursing home, the doctors weren't even allowed to come in. A patient's outside doctor was told that he couldn't come in.

IRIS PURKS: Well, we have a doctor, and he wears the whole full gear. And he does come in and see his patients.

ASSEMBLYMEMBER ABINANTI: Right.

But do doc -- are patients allowed to have their own doctors, other than the nursing home doctor?

IRIS PURKS: No.

BRENDA ANDERSON: Oh, no.

IRIS PURKS: No, not at our nursing home.

BRENDA ANDERSON: Not at ours, either.

ASSEMBLYMEMBER ABINANTI: Okay.

Is that common? Or do some nursing home allow --

BRENDA ANDERSON: Yes, yes.

Yes, once you become a resident in a nursing home, they primarily use their staff physician.

[Indiscernible.]

ASSEMBLYMEMBER ABINANTI: [Indiscernible cross-talking] the nursing home -- the people at a nursing home should at least have the right to have their own doctor come in and check them out if they wanted to.

IRIS PURKS: No, they do not.

BRENDA ANDERSON: No.

ASSEMBLYMEMBER ABINANTI: They don't allow them to do that?

BRENDA ANDERSON: No.

IRIS PURKS: They might, for a period of time, can go see their doctor. But not recently.

BRENDA ANDERSON: Right, right.

ASSEMBLYMEMBER ABINANTI: People [indiscernible cross-talking] --

BRENDA ANDERSON: They can go out the facility. They can go [indiscernible]. But not [indiscernible] --

ASSEMBLYMEMBER ABINANTI: But what about dental care, and things like that, how do get they get that?

IRIS PURKS: They've been going out, and they have dental come in to see them.

They have their own dental team that comes in

to see them.

ASSEMBLYMEMBER ABINANTI: Are they still allowed to do that now in?

IRIS PURKS: Yes, they have been.

ASSEMBLYMEMBER ABINANTI: Okay.

Thank you very much for your service.

By the way, just one comment.

One of you did comment that you felt that you were being blamed for the spread of the virus.

I don't think any -- none of us are blaming you.

I know it did come down from the administration that they thought that the transfer came as a result of staff going in and out.

But nobody's intending to blame you for that.

I think as we've had this conversation, it's up to the nursing home to find a way to protect you so that that doesn't happen.

So -- but thank you very much for your service, and for your testimony.

SENATOR RIVERA: Thank you, Assemblymember.

Now for the Senate, I recognize Senator Serino for 5 minutes.

SENATOR SERINO: Thank you, Mr. Chairman.

And thank you, ladies, for being here today,

and for all of your hard, dedicated work.

I greatly appreciate it.

With regard to PPE training, it was brought up at the last hearing, and additional information was shared with me afterwards, but can you speak a little bit about the PPE training that you yourself received?

And, can you speak to whether your colleagues received that same training, or is there a disparity in who is getting what training?

VANESSA BROOKS: Well, for me, I'm a home-care worker, and we didn't get no training.

We was just told to put the mask on, put the gloves on, and check your fever.

And -- which was kind of scary because we're, like, okay, should there be a nurse there with us?

You know, because I'm going from house to house.

And they didn't come out and teach us nothing.

We just, basically, had to do what they told us to do -- sorry, told us to do: Put the mask on, put the gloves on, and check your fever before you go in.

And that was it.

IRIS PURKS: And in mine -- I work in a nursing home. We wasn't trained.

They was, like -- kind of, like, it was common sense that we dealt with, you know, precautions.

But we never dealt with a pandemic precaution with this type virus.

So we didn't know how -- we didn't know how to [indiscernible], or, you know, we didn't know how to do that.

I really learned, and I put up a stink, that they teach. And then, weeks later, we had in-services about how to use it, or whatever.

But I learned from the union. They did a class on it, I watched a video, and that's how I learned.

And I explained it to some of my co-workers.

But after weeks, they did try to give us an in-service on it.

But in the beginning, oh, it's common sense. You do it like any other contagious disease.

So, that wasn't appreciated with the employees, because they were scared. This was something they had never dealt with.

SENATOR SERINO: Yes, absolutely.

IRIS PURKS: Yes.

SENATOR SERINO: From what we've been hearing from everybody, of course, PPE needs to be our top priority.

But can you guys speak to any other practices that are happening in the facilities during this time that you would want to see improved?

I know [indiscernible cross-talking] --

[Indiscernible cross-talking by everyone.]

SENATOR SERINO: -- oh, go ahead.

IRIS PURKS: Okay, like, knowing, like, the State just came in with new admits, coming in from the hospital, or whatever. They needed to be quarantined, I don't know, in their room for 14 days.

There was kind of confusion, because ours was coming in and was being, you know, let to go to therapy, or wherever they needed to go, without the precautions. I mean, just a mask.

But on their door it says, you need to gear up and put all these precautions on.

So I didn't understand, why would you bring a resident out with just a regular mask if we've got to wear the whole stuff, the whole uniform, to go into their rooms?

So it's still confusion, and I'm still confused about, what do we do?

Do they stay in their room for 14 days, or are they allowed to come out to smoke, or do their regular activities?

SENATOR SERINO: All right.

That's a good question.

And, also, do you feel that there was enough isolation taking place between the COVID and the non-COVID patients, and with staffing who were working with the COVID-positive patients, only working with those residents?

Or was there a crossover because of staff shortages or other reasons?

IRIS PURKS: It was a crossover, crossover at our place. And short of staff.

So, we went from COVID room to a patient without COVID.

Sometimes we was told that we can wear the same gown or the N95. You can't lose, you only get one of them.

So, yeah, we wore the same equipment, from one patient to the next, COVID and not. And they were on all floors.

They started off with trying to make one

unit, but it didn't work.

So...

BRENDA ANDERSON: And we did have [indiscernible] one unit. And I was a nurse on that COVID unit.

And there was one way -- you came in one way, and you went straight down the hall to the end. And that's the way you went out.

There was no mixing of floors. There was no mixing of staff.

IRIS PURKS: Good.

BRENDA ANDERSON: You worked the COVID unit, that's the unit that you stayed on.

RUTH HELLER: So as you're hearing, there was quite a range of responses.

It was, really, I mean, facilities were so different, from doing the absolute COVID right way, cohorting thing to do, with separate entrances and exits, and no floating between the floors.

And then there were other nursing homes that just threw their hands up, and people were floating all over the place and not changing their PPEs.

SENATOR RIVERA: Thank you so much, Ms. Heller.

Assembly.

SENATOR SERINO: Thank you.

ASSEMBLYMEMBER BRONSON: Next we'll go to Chair John McDonald for 5 minutes.

ASSEMBLYMEMBER MCDONALD: Thank you.

And to Ruth and our whole panel here, thank you for your testimony today.

Ruth, I just wanted to follow up a little bit on what my colleague Mr. Gottfried was speaking to.

If I didn't know any better, it sounds like it's almost, with some of these entities, they have multiple management entities that are doing a variety of different things.

Is it -- what is it in particular?

Because it sounds like it's a pyramid scheme in some aspects, and I just want to understand it better.

RUTH HELLER: Well, my understanding is it would be, one management company, several nursing homes.

So the nursing home would contract with the management company to provide the services, and so that they pay out money from their nursing home to this management company.

ASSEMBLYMEMBER MCDONALD: Okay.

RUTH HELLER: Or -- yeah, I mean, that's

generally how the management services work.

ASSEMBLYMEMBER MCDONALD: And so that's the only --

RUTH HELLER: And you --

ASSEMBLYMEMBER MCDONALD: -- I'm sorry.

Go ahead.

RUTH HELLER: -- you can see that in their certificate-of-need application. So you can see who owns the real estate, someone else owns the real estate, how much they're going to have to pay in rent, how much they're going to have to pay in the management contract, each time they're changing their ownership status.

ASSEMBLYMEMBER MCDONALD: And beg my ignorance on this, but, in regards to the management company, is there any disclosure requirements that the State requires in a certificate of need in regards to who the principals are? Or are they LLCs? Or what are they?

RUTH HELLER: There are some, but we think there needs to be a lot more transparency in terms of [indiscernible cross-talking] --

ASSEMBLYMEMBER MCDONALD: I'm not trying to catch you off guard.

I'm a big proponent, at the end of the day,

unlike 34 years ago, the public is all in in regards to funding with public money; and, therefore, if you want to accept public money, you also have a responsibility to subject yourself to greater disclosure, in that perspective.

And I think that's along the lines of what you're talking about.

And -- well, you're talking about the fact that the management company is profiting, whereas the operations, which impacts our workers and our residents, is struggling.

And I get it, I understand it, and I appreciate your comments.

And I look forward, too, to the information you're going to share with Dick in regards to a solution in New Jersey.

But I think we will also be focusing on greater transparency of the principals of the management company when the certificate of need is provided.

Thank you.

I'm good.

RUTH HELLER: And, again, we did submit various issue briefs that would address this, whether it's the financing or the nursing home

industry overview.

And I actually did find, as I was looking through one of the briefs, there was a question about workers working in more than one facility. And there has been a study that shows that about 7 percent of the nursing home workers are working in more than one facility.

And that's in the issue brief on the industry overview.

ASSEMBLYMEMBER MCDONALD: Thank you.

SENATOR RIVERA: Thank you, Assemblymember.

Senator O'Mara, at some point you had your hand up. I'm not sure if you stepped away.

I believe that he did, therefore, back to the Assembly.

ASSEMBLYMEMBER BRONSON: Thank you.

And I join my colleagues Chair McDonald, Chair Gottfried, in wanting to get more information about the industry, and, in particular, for-profit.

And with that we now will go to Assemblymember Ron Kim, recognized for 3 minutes.

ASSEMBLYMEMBER KIM: Thank you, Mr. Chairman.

Yeah, I just want to continue my -- the conversation that we've been having with Chairman Gottfried, and Mr. McDonald as well.

Ruth, I'm sorry if you have already covered this, but I had to step out for a minute.

To recover the impact of private-equity investors and hedge fund investments in the nursing home sector?

RUTH HELLER: We didn't talk about that specifically. We talked about financing in general.

And I said the nursing homes need more funding, but they should have funding with strings attached, so that a certain percentage must be designated towards direct-care providers and not be taken out of the system for profit.

ASSEMBLYMEMBER KIM: Right.

So -- I mean, speaking of transparency, do we have any access to information, who -- what firms or what private-equity investors are in this space, and what -- and how much money they have poured in -- into this space?

RUTH HELLER: I don't think we have enough transparency to actually untangle the web of financing behind the nursing homes.

I know we tried to do that from time to time, and we get somewhat deep into it, but we need a lot more transparency to see the various owners and where the money is coming and going.

ASSEMBLYMEMBER KIM: And is it -- is it also true that there's a lot of real estate in this space as well, that some of these facilities own their own property, and also have taken investments from private-equity firms?

RUTH HELLER: It's common in the for-profit area for there to be an owner of the nursing home and a related owner of the real estate. And then the nursing home pays the rent to the real estate company, which is often related to the same owner of the nursing home.

ASSEMBLYMEMBER KIM: Right, so in other words, they're -- they're integrated in multiple different ways in this business, from real estate, to leasing, to a management.

It's almost like they created a monopolistic ecosystem, where they have vertically integrated themselves. And, no matter what the situation, they're winning, because even if the nursing homes are failing as a business, it's almost, they have access to the property. They can probably flip that property for a profit and convert it into luxury condos, or whatever.

Is that an accurate assessment of what we're dealing with?

RUTH HELLER: I guess I'm with you as far as you went until the flipping for luxury condos.

That -- you know, that really is location-specific.

But I think everything else that you said certainly supports the recommendation that has been made, that we look at, you know, a medical-loss ratio-type approach to the funding like they have for health insurance, to make sure that most of the money is being spent on direct care and not being taken out of the system.

ASSEMBLYMEMBER KIM: All right. Thank you.

SENATOR RIVERA: Thank you, Assemblymember.

I believe that is the last person questioning.

All right, Panel 4, thank you so much for being with us.

I remind everyone, we've still got seven to go.

All right?

Panel Number 5, and I'm just saying, [indiscernible] now, and they're not going to be here six hours from now.

I'm watching ya'll.

Panel Number 5, we're joined by:

Kathy Febraio -- I hope I pronounced your name correctly -- president and CEO of the New York State Association of Healthcare Providers;

And, Al Cardillo, or Cardillo (different pronunciation), president and CEO of the Home Care Association of New York.

ASSEMBLYMEMBER GOTTFRIED: Okay. And do each of you swear or affirm that the testimony you're about to give is true?

I think they need to be unmuted.

SENATOR RIVERA: They need to be unmuted and they need to be on the...

Okay, there you go.

ASSEMBLYMEMBER GOTTFRIED: Okay. Do you each wear swear or affirm that the testimony you're about to give is true?

AL CARDILLO: I do.

KATHY FEBRAIO: I do.

ASSEMBLYMEMBER GOTTFRIED: Okay.

SENATOR RIVERA: All right, Ms. Febraio, or Febraio (different pronunciation)?

KATHY FEBRAIO: Febraio.

SENATOR RIVERA: Febraio.

Please.

KATHY FEBRAIO: All right.

Thank you for the opportunity to share the experiences of the home-care industry as we continue to face this unprecedented public-health crisis.

I'm Kathy Febraio, president and CEO of the New York State Association of Healthcare Providers.

We represent LHCSAs, CHHAs, and FIs in the CDPAP program, all of which employ essential workers during this COVID emergency declaration.

Home-care providers' needs are among those essential workers on the front lines in the battle against COVID.

Home care is there, caring for the sick, the elderly [inaudible] New Yorkers.

Home care is keeping these New Yorkers from being admitted to hospitals or congregate-care settings, and caring for them after being discharged.

Being out in the community, and with training in infection control, home care is a valuable resource that should not be overlooked.

Now, more than ever, home care is the health care provider that can provide essential relief to the overburdened health-care system, but it needs to be recognized and treated as such.

As COVID took root across the state, home-care agencies experienced an almost immediate downturn in service hours, by as much as 20 percent, as patients and their families canceled services out of fear or because families in lockdown were available to provide care.

At the same time, home-care agencies who were already reporting outstanding accounts receivables from managed long-term-care plans, many in excess of $1 million, began to experience a 10 to 20 percent slowdown in payments, adding financial challenges at a time when expenses were increasing dramatically.

PPE costs jumped as much as 20 times.

Overtime costs skyrocketed as aides became unavailable due to quarantine, fear, illness, or child-care issues, and, at the same time, agencies were experiencing decreases in reimbursement.

Workforce challenges that were already impacting the industry became more apparent and more strained.

Child-care options evaporated at a time when essential workers needed them the most.

Recruitment and initial training of aides came to a halt, and aides were recruited away from home care to work in other care settings.

Regardless, HCP and its members sprang into action to protect patients, workers, and the community.

Home-care providers focused their time and energy on helping their patients, their workers, and their families.

They made hand sanitizer.

They even hired tailors to make masks because they could not access PPE through regular commercial means, and there were difficulties in obtaining them through the State's mechanisms.

Providers were distributing a two-week supply of PPE to their aides in order to minimize exposure and repeated trips on public transportation.

Home-care providers continually provided training on infection control, stopping the spread, and appropriate donning, doffing, and cleaning and storage of PPE.

Providers communicated with their aides through multiple channels and in multiple languages, with information, and access to state and federal resources, and child-care resources and safety videos.

HCP has members who arranged nurses' calls to patients as often as three times a week, to

constantly assess and reassess how patients were doing and what resources were needed to keep them safely at home.

Still, others supported their aides and patients by having a nurse on-site outside the home of a COVID-positive patient on the first visit, to answer questions and concerns, and ensure extra support for the safety, health, and comfort of the patient and the aide.

We also have members who used their Paycheck Protection Program funds to provide aides with additional pay during the peak of the pandemic.

HCP, faced with members who were not able to access PPE, started PPE group-buying opportunity, obtained donations, distributed hundreds of thousands of pieces of PPE, and worked with other associations and the City of New York, to ensure the industry received PPE in the most vulnerable region of the state.

All this while oftentimes being told home care was not a priority.

We ask for your support in the delay of the following policies and programs that are inappropriate to implement during a pandemic:

The CDPAP RFO decision;

The LCHSA RFA release in the fall;

A new cost report;

Electronic visit verification and aide unique identifiers;

And, implementation of the department of health's per-member, per-month, reimbursement for CDPAP.

At the end of our written testimony you will find a list of deadlines that are coming due for the home-care industry.

October and November are going to be a tough time.

Thank you.

SENATOR RIVERA: Thank you, Ms. Febraio.

Mr. Cardillo.

AL CARDILLO: Thank you very much, Mr. Chairman.

I'm Al Cardillo. I'm the president and CEO of the Home Care Association of New York State.

Our organizational members include federal- and state-certified home health agencies, licensed agencies, hospice agencies, managed long-term-care plans, and an array of home- and community-based programs, and allied services and support for people at home.

We thank you for this public hearing, and it's so very necessary.

And we salute all of our home-care and hospice front-line personnel who have been incredible heros throughout, in navigating the extraordinary complexities of service in this pandemic, and, most importantly, maintaining patient care and safety at home.

I'll focus concisely on several key points ahead, and the details will be in my written testimony.

I think it's first important to point -- important to underscore the pivotal and systemic role that home care and hospice have played in the pandemic, as in, every single day in this health system, caring for over 800,000 extremely frail, medically-complex, and vulnerable patients across the state.

And this includes the provision of the direct-care coordination of services, prevention of facility admissions, transition of facility patients home, and more.

This also includes the care of thousands of COVID and COVID-suspected individuals.

Support for home care means the support of

these patients, but it also is a consequence for the entire operation of the delivery system which can't function without home care and hospice.

Second: I commend to your attention the concept of a "home care first" policy for New York, or, the opportunity to have the option of care at home optimized for patients, and presented as the first option for them when medically appropriate and possible, whether for rehab, post acute, long-term, or other forms of care.

Listening to all the testifiers today, I think of what this might have meant to countless individuals and families, as well as the system overall, if this were in place.

But what you need to know is, is that New York has had a "home care first" policy since the late '70s. It's in various parts of the statute.

But time and reforms and a sprinkling of other changes have ebbed the enforcement of this.

I think it's time to revisit this policy and make it a robust signature policy of the state of New York.

The need for PPE to protect patients and workers is self-evident, and you've heard about this

throughout the entire set of presentations.

It's critical for home care and hospice, but we struggled throughout this process, particularly at the outset, and particularly in New York City.

I might add that there was a period of weeks and weeks where home care and hospice were not even given eligibility for PPE from New York City emergency stockpiles.

And as Kathy mentioned, we all had to work to reverse that.

And I appreciate the more recent efforts of the City to work with the industry.

We urge you to adopt policies ensuring home care and hospice priority status for PPE, adequacy of supply, and structural PPE funding for providers and managed-care plans.

Related to this, "emergent essential personnel" designation is vital for providers, personnel, and patients in emergency response for all of them.

In 2017 we worked with the legislature and governor to enact a statute that required procedures for home care and hospice essential status in local emergency-management plans; yet, over the entire course of COVID, the experiences of home care and

hospice have been incredibly irregular and uneven in this entire regard.

It's urgent that the State and local managers and management procedures diligently [indiscernible] home care and hospice essential status.

Workers and workforce have been impacted in innumerable ways: professionally, personally, and in overall workforce supply and accessibility in COVID care.

And you've heard this throughout the testimonies today.

We urge the provision of policy and budget support for workforce professional- and personal-related needs, including recruitment, training, retention of an adequate workforce supply, enhanced funding for front-line worker compensation during COVID.

We also ask your specific help in securing prompt department of health approval of our proposed online and hybrid training program for home health and personal-care aides.

Training has been pretty much sidelined during this because of social isolation. And this gives us an opportunity to go forward.

Virtually, all aspects of operations have

been impacted by COVID.

In support, state and federal officials provided procedural flexibility, waivers and opportunities to be innovative.

We ask that the State permanentize these new capabilities for in-home and hospice care, particularly in telehealth and related areas where flexibility was reasonably added, leading to new and innovative mechanisms.

One final point, please, on this.

SENATOR RIVERA: Quickly, yep.

AL CARDILLO: We would ask your help in -- right away, in securing notice by the state health department of the federal government's permissibility to utilize nurse practitioners, physician assistants, and clinical nurse specialists to order home care.

That notice is months overdue, and could be incredibly helpful.

And I will address other areas I couldn't get to here, in my questions.

Thank you so much.

SENATOR RIVERA: Thank you so much, Mr. Cardillo.

We're leading off by our ranking chair,

Rachel May, recognized for 5 minutes.

SENATOR MAY: Thank you, Mr. Chair.

And thank you both for your testimony.

Mr. Cardillo, I wanted to follow up on a few things with you.

First of all, I would love to know more about your online training that you've put together. That would be really helpful to know, so that we can extend it across the state.

AL CARDILLO: Thank you.

SENATOR MAY: But I also wanted to ask about rural areas versus cities, and how you compare the home-care workforce shortages in those two types of geographical areas.

AL CARDILLO: Well, you know, the shortages across the state manifest in different ways.

There are shortages in the professionals; so, for example, in nurses, that seem to be, in effect, everywhere in the state that are having an overall impact on the system.

With respect to home-care aides and personal-care workers, the shortages also are around the state, but they manifest in different ways.

In some circumstances it's a matter of retention.

So you might have the supply to bring into recruitment, but the importance is then being able to retain that workforce with the proper supports that the workforce needs for the retention.

In other cases, it's a matter of both retention, but that the supply of the individuals is not in the pipeline.

We have actually, you know, submitted legislation on ways in which we could improve attraction to the occupation and support within the field.

I think either one house or the other has passed that legislation of recent, but it's not really gone into a finalization between the houses, and certainly with the governor.

But we would love to work with you on addressing that problem.

SENATOR MAY: Wonderful.

Yeah, that's my legislation, and I would very much like to work with you on it, so that we -- I mean, both recruiting and retaining the workers is so important --

AL CARDILLO: Yes.

SENATOR MAY: -- and figuring out how the pandemic is going to affect that, I think.

AL CARDILLO: And I think relating to the personal needs of individuals.

I mean, between lives lost, the fear of working, you know, the fear of not having access, all that has been so critical within COVID, but also on an ongoing basis.

Kathy mentioned child care, transportation, these are basic things that people need in order to deliver services and to feel supported and to be supported on the job.

SENATOR MAY: So let me drill down on one specific thing.

I met with somebody who is a caregiver for a family member, and let go of his other home-care job so that he could just be caring for that family member during the pandemic, and not, potentially, be spreading virus, you know, going from house to house.

Have you seen that very much?

How many home-care workers are in it partly because they're caring for somebody they have a personal relationship with?

AL CARDILLO: Well, I think there's more of that experience in the consumer-directed model. I mean, that's, I would say, very prevalent in that

model.

In the other models, I mean, what I would certainly say is, is that the delivery of the service really encourages the kind of relationship and personal closeness that the caregiver has with the patient, and it often very much becomes a family-like, you know, feeling.

We have tremendous stories that we could share with you about the heroic things that people have done, the aides have done, for individuals that are way outside the normal bounds of what anybody would do in their work. But it's a reflection of that devotion in the field.

I think it's very often felt that this is a fly-by-night, and people come in and they'd leave.

We've had people who are home health aides for 40 years. We just honored one last year.

And it's truly amazing their level of dedication.

In Central New York I met somebody who had been a home health aide for over 25 years, who was overjoyed with the ability to do the work that she did with her patients.

SENATOR MAY: That's great.

Let me just ask one additional question.

How many different cases is one person typically taking?

I'm just concerned about the traveling, or the, you know, communicating [sic] between --

AL CARDILLO: Well, you know, in home care it's a varied situation, and scheduling is an incredible art, and I think it's a high-level thing in home care, because some individuals need several hours of care; others need extensive care, 8 hours a day, 16 hours a day, or even a live-in.

So the assignment of a person for patients really is going to vary based on that patient's need and the kind of people that they're supporting.

One thing I would say is, in this current budget, one of the MRT proposals is going to a task-based orientation and care.

So task-based is something that, while may lead to certain efficiencies, breaks care into certain duties and functions, and I think has the prospect of really interfering with what is the hands-on, compassionate aspects of what care is all about.

SENATOR MAY: Okay. Thank you.

SENATOR RIVERA: Thank you, Senator.

Assembly.

ASSEMBLYMEMBER BRONSON: Yes, next we will have Chair Gottfried for 5 minutes.

ASSEMBLYMEMBER GOTTFRIED: Yeah, thank you.

A couple of questions for either of you.

A basic question is: Has Medicaid taken any action since the epidemic, anything favorable, in relation to home care?

Any letting up on the effort to, in my view, destroy the consumer-directed program?

Any indication of a willingness to relax or postpone the new budget legislation that restricts access to home care by raising the number of activities of daily living you have to need assistance with?

Or, just basically defunding of home care, and regulations to make sure that, when the State puts money into the supply chain of home care, it ends up getting to the providers and the workers?

Has Medicaid done anything positive for home care since early March?

AL CARDILLO: I think I'll let Kathy go first.

KATHY FEBRAIO: Thanks, Al.

Well, as you'll see the -- in our written testimony, we did provide an outline of deadlines of

policies that are going to be going into effect over the next couple of months.

You know, things were distracted during the peak of the pandemic. And we all repeatedly asked for delays in implementation of some of these massive changes to the system.

And, you know, initially, we weren't hearing anything because we were in the midst of the pandemic.

But in the last couple of weeks things have just revived themselves.

I mean, as recently as two weeks ago, we found out about a private-pay portal that the department of health is introducing, that hadn't been mentioned since the MRT brought it up months ago. And now it's going to be in place by November 1.

And agencies, literally, had about a week's time to indicate their interest in this pilot.

So, you know, we've submitted questions, want to know more information about it.

We've not heard anything back.

The CDPAP program, we have been hearing, it was supposed to be announced July 1, the new contracts. And week after week after week it gets

delayed, but only one week at a time.

And this is life-altering for these fiscal intermediaries, along with their consumers and caregivers. It's going to be a massive transition, and it's going to be 75,000 people.

And right now, if they do it this Friday, as we're now supposed to hear, you're going to be having this happening at the end of September when all of these other policies are changing, that are going to be huge impacts on the industry as well.

It's -- we feel like they're creating a perfect storm of their own making.

And it's all avoidable if we would just take a step back and take a breath, and delay some of these decisions, and see what effect the pandemic has on the industry before we continue with massive changes.

ASSEMBLYMEMBER GOTTFRIED: But in terms of, for example, anything to recognize that your revenue is down and your costs are up, anything in the Medicaid program to indicate an awareness of that and a response to it?

AL CARDILLO: I would say, Assemblymember, a couple of things to that.

One is, is that the methodologies that the

department uses for either episodic rates or for MLTC, because they're historically-based, they don't allow for revisiting of the actual payment levels to reset them to address current costs.

I mean, that's always been a -- that lag has always been a problem. And in a pandemic, it really wipes out the -- I think the ability to properly respond.

There's been no other affirmative action, like, you know, distributing financial relief or funding.

One action that I think -- one set of actions that has been helpful are things like the flexibility in the regulations and procedures, particularly telehealth.

There was an expanded set of capability for home care in Medicaid telehealth that has been a godsend, I think. And I hope that that's permanentized.

But there hasn't really been an affirmative addressing of the fiscal status of the industry in this.

We projected close to $200 million of losses that we think will be attributable to COVID for home care in this fiscal year -- state year, I'm sorry.

ASSEMBLYMEMBER GOTTFRIED: Thank you.

AL CARDILLO: Thank you.

SENATOR RIVERA: Thank you, Mr. Chairman.

I'll recognize myself for 5 minutes.

A couple of quick things.

First of all, Mr. Cardillo, I did cut you off at the end of your presentation. I apologize for that, but still got seven panels to go.

If you could top line.

And I'll -- and Ms. Febraio, I'll give you the same opportunity if you'd like it.

-- to give me some top-line recommendations. Don't go too deeply into them because there's another question I want ask to both of you.

But, top-line recommendations of what the State needs do.

AL CARDILLO: Absolutely. I'm happy to go right through.

So one is the -- one is, ensuring that there are state-adopts policies that give priority status, or at least adequacy, for home care and hospice with PPE.

Enforce the "essential personnel" designation for home care and hospice so that we don't have to fight to argue, whether it's with law enforcement or

anybody else, that home care and hospice workers are essential in that case.

We really need support for workforce and personnel. Again, whether it's the personal kinds of needs that you've heard about in this hearing.

Also, the workforce shortage has really been exacerbated in this.

And so things like support for the online program that Kathy and our organization have done together, that would be of tremendous [indiscernible cross-talking] --

SENATOR RIVERA: I'm very interested -- I'm very interested in that.

You're saying that -- by the way, just to switch to Ms. Febraio for a second, you said that you have not heard a response from the State for months?

AL CARDILLO: Well, no, that was on -- that was our nurse practitioner; allowing nurse practitioners and PAs to order home care.

The federal government allowed that, like, four months ago, and that's still not been implemented.

And there are already some state laws on the books, that, actually, Mr. Gottfried sponsored in

1991 or '2, that recognize nurse practitioners to order home care if the feds ever came around.

So they've come around, and the State still hasn't released it.

But the online training was something, within the last two weeks, that our two organizations, and, actually, Leading Age and another organization, submitted together to the State.

SENATOR RIVERA: Got you.

Anything you want to add, Ms. Febraio?

KATHY FEBRAIO: I'd like to say thank you for passing Senate Bill 8361, which would have provided some additional PPE funding for home care. And hope that the Assembly might be able to take that up.

It was going to ask for the MLTCs to help support home care in supplying PPE. They are as responsible for the patient as we are.

I agree with the other comments Al made as well.

SENATOR RIVERA: Got you.

Last comment -- last question:

There is, as I understand it, the industry requested something called "HERDS" (health emergency respond data systems).

Can you tell me a little bit about what that

is, and what the response has been from the State.

AL CARDILLO: Thank you, Senator.

That was going to be one of the items I covered.

So the HERDS system is, basically, a survey system that's activated in emergencies.

The -- starting, I would say, late March, perhaps -- or maybe early March, the health department requested, every day, hospices, home health agencies, licensed agencies, to submit data on their PPE access, the number of COVID cases; all information on all of their rosters.

We were also trying to jointly survey agencies to figure out what their needs were. But they were -- because they being surveyed every day by the department and by other sources, we had to pull back.

So we requested the results of those surveys, as an association, to be able to utilize that for our situation awareness and work with the providers.

It was never granted to us.

We repeatedly requested, I appealed to the governor's office, I appealed to the department repeatedly.

And I have to say, this is the first time

I ever remember, and I've been around these jobs for many years, that never, in an emergency, was this critical data not shared with the industry, because that's setting up your game plan. And we were in a position to try to help the department and help the providers.

So if you asked me today, exactly how many were reported on the last survey of COVID-positive home-care patients? I couldn't tell you because it's not shared with us.

And, you know, I'm animated in this because I think it's a very wrong position to not share this data.

SENATOR RIVERA: Thank you --

KATHY FEBRAIO: And I'd like to [indiscernible cross-talking] --

SENATOR RIVERA: -- oh, yes.

Please, please, go ahead.

KATHY FEBRAIO: I would like to add to that, the initial thought was to not have the licensed LHCSAs do surveys.

We were able, through our connections, to be able to bring a major technology firm to the table, who worked pro bono, created a survey system for the licensed services agencies, and allowed us to

participate in that data collection.

But, again, we did not have access to it.

We asked for it especially to be shared with New York City, who was beginning to distribute PPE. But it was not -- it was not made available to them either.

SENATOR RIVERA: Okay. Thank you both.

Assembly.

ASSEMBLYMEMBER BRONSON: Next we'll have Ranking Member Jake Ashby, 5 minutes.

ASSEMBLYMEMBER ASHBY: Thank you, Mr. Chairman.

And thank you both for being here this afternoon.

It sounds like the level of communication that you've had with the State has been kind of fractured, at best.

What would you say has been the worst impact you've experienced since March because of this?

AL CARDILLO: Well, this is what I would raise as a concern, is that, because home care, you know, is impacted by regulation of different bureaus -- the Medicaid bureau, the programmatic bureau, the epidemiological -- many things were not coordinated among those bureaus.

And I think that -- not only was that difficult, but there was a lack of knowledge about some things that are fundamental to home care and to hospice.

So the department would put out policies, and they wouldn't even address a home-care or hospice issue, when it was clear that it should have been, or would not have distributed to our industry.

Or the other thing would be, there was -- there were clearly -- there was a lack of understanding as to how things worked.

So we had to go back to the department and say, You just put this out. You need to work with us to correct it.

And so, at first it would cause confusion in the field, and then you'd have to claw it back to correct it, and then put that out.

One quick example: When the department put out its initial telehealth guidance for expanded reimbursement, home care was not even mentioned in it.

Home care is the first and broadest form of telehealth in the entire state. It was omitted from the entire document.

So I know Kathy can give many examples, so

I'll stop there.

ASSEMBLYMEMBER ASHBY: And was there any rationale for their exclusion?

AL CARDILLO: I think just lack of information, lack of awareness, of that, you know.

And we -- and then it really sort of continues today.

We've created a statewide program to train home-care and hospice clinicians to do COVID testing at home. So that way, we keep people from being in hospital or being dislocated to congregate sites.

I've been asking for several months for the procedures that the agency should abide to bill our claim when, you know, their doctor orders the service.

I still can't quite get an answer to it.

I know they're trying, but it would be great.

We have over 2,000 clinicians that have enrolled in this program to do this.

ASSEMBLYMEMBER ASHBY: Thank you.

KATHY FEBRAIO: And we've also -- you know, certainly, hospitals were the top priority when everything hit, you know, back in March and April.

And we had to fight to be, you know, brought to their attention.

We were always reminding them of who we are, what we do, how we help. And it just -- we just weren't on the radar for a very long time.

And since then, you know, we've had key retirements in the key positions in the department of health, but no one understands long-term care, and no one understands home care.

So now we are going to have to start over with some other folks, and explain to them where we are in this pandemic, where we're going, and what we need.

ASSEMBLYMEMBER ASHBY: Thank you.

In terms of the nursing home transition and diversion program that's been up and running, has that -- have there been any changes or suggested changes recently that you would see as being positive towards your associations?

If you had to make any that would be, what would they be?

AL CARDILLO: Well, we certainly -- we certainly would echo the need for flexibility in the program, and how it's able to work, you know, within the pandemic.

You know, like I said, I think that the department was pretty good with respect to finding

areas, and trying to be responsive to areas of flex, even though some of them have not come through.

But I think that that would be important.

Also, support for training dollars, you know, because I think -- right now, I think training, and taking the learning that's been done, that we didn't have when this started, and translating it into where we are in the future I think would be good for that program.

KATHY FEBRAIO: And as Al mentioned earlier, programmatically, we report to different portions of the department of health. And sometimes, you know, policies would come out, but, oh, no, that doesn't apply to the NHTD program and the TBI program; they're different.

So we were all, you know, needing to connect dots, and that just made everything take longer.

ASSEMBLYMEMBER ASHBY: So streamlining [inaudible]?

AL CARDILLO: Those are --

KATHY FEBRAIO: [Indiscernible cross-talking] communications, I guess, would be the --

ASSEMBLYMEMBER ASHBY: Okay.

AL CARDILLO: There's a bill, too, before the legislature that would add the TBI program, I think

the transition program, several programs, to the list of -- or, conditions to the list of more flexible eligibility to receive services that were constrained in the budget, where you have to have more than two ADLs.

And so, again, one of the bills basically says that -- puts -- puts if you have -- if you have -- the original law says, if you have a mental issue, that -- a mental-health-related need, like dementia, that the threshold is only one activity of daily living.

But this bill that the legislature has in would add TBI, it would add mental-health-related [indiscernible cross-talking] --

SENATOR RIVERA: Thank you.

Thank you, Mr. Cardillo.

Time has expired.

ASSEMBLYMEMBER ASHBY: Thank you, both.

AL CARDILLO: Of course.

SENATOR RIVERA: I'll recognize Senator Serino for 5 minutes.

There you go.

SENATOR SERINO: Thank you very much, Mr. Chairman.

Thank you.

And thank you, everybody, for being here today.

Home care is so important. It plays such an important role in allowing our seniors to age in place.

And that's why I carried a few bills to incentivize home care and addressing staffing shortages, especially in a pandemic setting, as you know, where we really are trying to get folks to stay at home, home care is even more important.

And, Al, I'd also like to learn more about the online training proposal you have, that you could send to me afterwards, if that's okay?

AL CARDILLO: [Indiscernible.]

SENATOR SERINO: When it came to staffing issues, did the State do anything during this time to help you, first of all, hire or retain staff?

And did you have access to the volunteer staffing portal that was run by the department of health?

AL CARDILLO: Kathy, do you want to answer, or would you like me to go first?

KATHY FEBRAIO: Well, I'll take the staffing portal.

I would say we didn't have access to it, but

it really was being utilized by other entities earlier, more quickly, with higher needs.

And what we actually found was, some of our workers were moving into the assisted-living facilities, or into the SNFs, and we experienced that as a shortage rather than as an assist.

AL CARDILLO: Yeah, and I don't think that there was any, that I can think of, overall action to try to affirmatively support recruitment and retention in all of this.

So the -- I mean, the online program is an exact example of something that could be very, very helpful.

But, also, you know, you can't -- if the idea is to provide these important personal and professional supports at a time when you're already in a fiscally-precarious situation, there's new budget cuts coming and you're losing funds under COVID, you can't make that happen out of nothing.

So I think we really need some recognized support in that.

SENATOR SERINO: Thank you [indiscernible].

Oh, sorry, Kathy. Go ahead.

KATHY FEBRAIO: One program I'd like to point out, that we've been working on, we've received

grant funding from the Iroquois Health Care Association, one of the statewide WIOs. And we are putting getting a mentorship pilot program for some upstate and downstate agencies where new hires are being connected with a more seasoned professional, to help them on board, to get them comfortable, to answer questions, and to give them a better connection as they're out in a home on their own for the first time.

And we'll be doing a significant amount of research on retention rates, as well as satisfaction of these workers.

So we're hoping in the coming months to be able to report back to, our findings, what we're seeing, what worked, what we could improve, and what the legislature might able to do to help in the future, if this were to become more widespread.

SENATOR SERINO: Thank you.

That information is so critical for us.

And, Al, I have to tell you, I love how animated you were about the HERDS survey.

It's just been crazy, and not being able to access this survey is huge right now.

So it's incredibly helpful information.

And I would argue that everybody in this

hearing should make it a top priority to do what we can to get that information to these organizations, because when we talk about what we can do better, moving forward, this could play a critical and immediate role in improving response.

So, thank you; thank you so much.

Thank you.

I'm done, Mr. Chairman.

SENATOR RIVERA: Thank you so much.

Assembly.

ASSEMBLYMEMBER BRONSON: Yes, we will recognize Tom Abinanti for 3 minutes.

ASSEMBLYMEMBER ABINANTI: [Inaudible] today.

I just have some general questions.

Has the federal government done anything to be of assistance in your area, that we should be aware of?

AL CARDILLO: Well, thus far -- I mean, thus far, most of the stimulus packages have really been aimed, and have assisted, I think, on the hospital side.

Very, very little.

There was some initial Medicare money, but that was -- the providers had to turn around so fast with that, that a lot of -- again, a lot of it

really was never able to flow.

Both Kathy and I have been doing a lot of work advocating right now in this final stimulus package -- well, this next stimulus package, for having home care recognized for essential financial relief for providers and for support for workers.

Also, Senator Gillibrand has been working on correspondence to CMS on telehealth, in support of telehealth.

So, that's, you know, yes.

ASSEMBLYMEMBER ABINANTI: Okay.

And the other question, if I can, is: Are there any numbers showing, the number of cases of COVID? The number of deaths for workers, clients, et cetera?

Is there any way of fitting you into the big picture?

I haven't heard any discussion about that. Maybe I missed it.

But I was wondering if there was any way of fitting your industry into the big picture.

KATHY FEBRAIO: I think the HERDS data that we've been referring to, that the department of health has collected, is going to be the best resource for that.

And, you know, Al and I gather what we know about in our own associations, but that's not the full complete picture.

So I would suggest that you request some of that data, to see [indiscernible] what's happening in the bigger picture.

ASSEMBLYMEMBER ABINANTI: But there's nothing out there yet?

AL CARDILLO: I could tell you that, that the Visiting Nurse Service of New York, for example, has served nearly 3,000 COVID-related individuals.

And in home care, the numbers that we have, that we have access to, is in the thousands.

You know, again, it's partial data.

So -- and I think if we have the information from the department, it would be helpful.

I would make one point:

When you consider vulnerable population, virtually, all of the home-care population are high-risk for COVID morbidity and severity.

And that is something, so that every patient in home care in COVID is a critical patient.

It's not just the numbers that have the positive diagnosis, and that's overlooked a lot.

Thank you, Assemblymember.

ASSEMBLYMEMBER ABINANTI: Okay, lastly, the question is: What happens if the changes that you referred to in response to the previous questions actually take place?

Where do people go?

And what's the future; what happens?

KATHY FEBRAIO: It's going to be a challenge in the future, where people are going to be finding it more and more difficult to get home-care services, and they're going to have to go to other institutions or other settings to get their care.

SENATOR RIVERA: Thank you so much, Mr. Assemblymember -- Ms. Febraio and Assemblymember and Mr. Cardillo.

Don't think that there are any other questioners from the Assembly.

That's correct?

ASSEMBLYMEMBER BRONSON: That is correct.

SENATOR RIVERA: All righty.

So we will now take our second, and maybe our last, break of the day.

We still have, I'll remind everyone, six more panels to go, so let's make it a good one.

Go get that coffee, come back in 10 minutes, let's get this done.

Thank you, folks.

[A recess commenced.]

[The hearing resumed.]

SENATOR RIVERA: All right.

Welcome back, everyone.

We're going right on to Panel 6, where we will be joined by:

Sorrelle Leslie Braugh, spokesperson for Teresian House Family Council. I hope I pronounced that correctly;

Also, by Lynn Goliber, member of Teresian House Family Council;

Bonny Webster, a resident of Caledonia, New York;

And, Donna Morgans, Family Council Chair for the Van Duyn Center for Rehabilitation and Nursing.

ASSEMBLYMEMBER GOTTFRIED: And do each of the four of you swear or affirm that the testimony you are about to give is true?

LYNN GOLIBER: Yes.

SORRELLE LESLIE BRAUGH: I do.

DONNA MORGANS: Yes.

BONNIE WEBSTER: Yes.

SENATOR RIVERA: Alrighty, how about Sorrelle Leslie Braugh.

I hope I pronounced your name correctly.

SORRELLE LESLIE BRAUGH: You did perfectly.

And I think I want to start out and just thank all of you in the Assembly and Senate today for this wonderful hearing, and an opportunity, and I consider it an honor, to be able to speak in front of you today.

It gives me much hope and faith.

And I thank you for all your time and work and advocacy in doing this.

I live in Albany, New York, and have lived in our Capital District for the past 50 years.

Professionally, I've retired recently from, what I always felt grateful for, a long and challenging, rewarding career in New York State government, primarily in the State's public service department, and the New York State Division of the Budget.

Today, though, I'm hoping to do my best as family council spokesperson to help represent the families and their loved ones at Teresian House Center for the Elderly, a 300-bed nursing home located in Albany, as well as personally for my own parents, who also live there, Donald and Beatrice Cohen, who, incredibly, are 94 and 95 years

young, they would say, but can no longer advocate for themselves.

The decision to place my parents in a nursing home last year, even after multiple hospitalizations and a definitive medical evaluation by their primary-care physician, was still not an easy one to make.

After all, there are probably few seniors who, when faced with the decision to move to a full-time skilled-care facility, jump up and down for joy and exclaim, Yes, a nursing home, that's exactly where I want to live.

Well, my parents were no different.

And when I shared that Teresian House would be their new home, I can firmly report to all of you that I never heard dad and mom exclaim, Yes, Sorrelle, we totally agree, and can't wait to live out our remaining years on Washington Avenue Extension.

While no one could have predicted the cataclysmic events that would befall our state, and the deadly impacts of coronavirus this past spring, it is of little surprise that nursing homes would not be able to be successfully handle, certainly in the first instance, the exacting and myriad

precautions and consequences of COVID.

If hospitals did not have sufficient nursing staff, personal protective equipment, or testing, certainly nursing homes were grossly ill-equipped to be able to both safeguard and comprehensively care for its residents and staff.

Worse, it became clear to all of the residents' families that chronic problems for years before of insufficient staffing at nursing homes throughout New York State, although perhaps seemingly sufficient to meet what appears to be department of health standard, that COVID presented an unsurmountable crisis this past spring.

Since March of this year, Teresian House sadly saw the passing of 17 of its residents, and at the peak, 60 of its staff.

But I haven't done my job here today if you and I are only going to address the need to investigate and evaluate what would be better responses for this state's nursing home, going forward, and for the future, because there is something that absolutely needs to be addressed immediately, and that is the need for family members to be able to visit with their loved ones.

We all recognized and supported that family

members were prohibited from visiting loved ones in nursing homes at the start of the pandemic, and we supported it.

But there have been some dire consequences these five months, and it can no longer go unaddressed.

The one constant concern and anguish that I hear over and over again from families is that their loved one's dementia has progressed exponentially during these past five months.

Worse, the overwhelming depression and isolation of not being able to see one's family, and for the most part, not understanding why we are not coming to visit them as we had before, usually on a daily, if not weekly basis, has caused a pervasive hopelessness and despair not previously experienced.

I also want to raise, if I could, that there are a multitude of family members who come to visit their loved ones at Teresian House and nursing homes across the state every single day.

And besides bringing happiness to their confined loved ones, these family members reflect a dedicated and volunteer workforce of staff at every single nursing home in New York State.

Family members fundamentally support nursing

home care.

We often come at meal times to help --

SENATOR RIVERA: Ma'am, if could you actually -- wrap up, please, because your time has expired.

So if you could wrap up.

SORRELLE LESLIE BRAUGH: Yes, I will.

SENATOR RIVERA: Thank you.

SORRELLE LESLIE BRAUGH: We provide those essential daily services, like, food cutting, feeding our parents, toileting, dressing them, helping to organize their rooms, and most of all important, is that we are sometimes their best eyes and ears to look after them, and to notice changes in sores, in perhaps bruising, that we can quickly call attention to it.

SENATOR RIVERA: Thank you, ma'am.

SORRELLE LESLIE BRAUGH: If I had all the data --

SENATOR RIVERA: Thank you, ma'am.

SORRELLE LESLIE BRAUGH: Oh. Okay.

SENATOR RIVERA: That we go -- that we go to the other folks.

Miss Goliber, please.

Is that how you pronounce your last name?

LYNN GOLIBER: Yes. Thank you.

SENATOR RIVERA: Go ahead, ma'am.

LYNN GOLIBER: I'm also -- my mom is 96, and she also is at Teresian.

I loved that the last gal showed a picture.

So, I'll show you mom.

She's a little bit happy. She's doing a Facetime call with my brother here.

The problem is, she can't hear him.

So, although Facetiming, with window visits, are better than nothing, they absolutely don't substitute for in-person.

I had written down testimony, but I've been listening since 10:00 this morning, I've been hanging in there with ya, and a few things have crossed my mind with other thoughts.

I have to say I'm grateful that DOH is not on the call.

I heard over and over and over again that you really wanted to hear from real people, and, you know, how this impacted boots on the ground and family lives.

And I truly believe, if DOH was on this call, it would be a finger-pointing and blaming, and all of this time would have been eaten up with a lot of

conversation you all can have later, and I'm sure you're going to have later.

So I appreciate that, people like Vincent Pierce, the resident spokesman.

I'm wish there were more. I'm sure there's more residents.

Let's not underestimate how brave he was to actually testify on being living in a home.

Teresian has 300-plus beds, 350-plus workers.

I know at one point we had 55 staff positive. We had 17 deaths.

I don't believe anyone was transferred from a hospital that didn't live there previously, and we had 20 residents positive, or more.

In hindsight, I wonder, and during this time, I wondered, it's been five months.

So Teresian actually did set aside a COVID unit, an entire floor.

It was never used.

Teresian has all private rooms.

So all the residents who became positive stayed in their own room on their own floor.

And, staff, whether it was CNA, LPNs, cleaning, meal -- people who work with the meals, all provided services to those residents who were

both positive and negative.

I wonder, if all of the positive residents were designated to the COVID unit and we had designated staff to attend to them, if our outcomes would have been different.

I won't dwell on the staff shortages. You're fully aware of that.

But I wonder if DOH audited payroll records to determine if staffing was, in fact, adequate.

I don't find adequate staffing, nurses or LPNs, who are -- or CNAs, doing double shifts, and one shift on one floor and another shift on another floor.

And, again, positive and negative residents are being attended to by the same staff.

I also made a call to DOH on my own to this -- the call center, because we heard that a staff member was told to come to work. We know you're positive, but you're asymptomatic and you can come to work.

Couldn't believe it.

I called. The call center person told me the exact same thing: Nursing home staff, as long as they're asymptomatic, can go to work. They just need to isolate at home.

I immediately called the governor's office.

I didn't get a call back, but I got a call back within the hour from someone in DOH, who apologized. Said that their call centers were corrected with information. That all their epidemiologists were in the field. That they had untrained people on the phones.

But I wonder how much damage that may have caused with giving out that type of incorrect information.

Next steps:

I can't advocate enough for in-person visits.

Outside visits, we are running out of good weather.

Consider this:

Staff are allowed to go to graduation parties, staff can go to restaurants, staff can sit at a bar; yet families are not allowed to be with their loved ones.

That is illogical, and that is cruel.

There has to be a way to get people outside, and, eventually, we need to be inside.

Thank you.

SENATOR RIVERA: Thank you, ma'am.

Next we'll hear from Bonny Webster, resident

of Caledonia, New York.

BONNIE WEBSTER: Hi. Thanks for having me.

I'm the daughter of a COVID-19 victim.

My mother, June Brown, passed on May 6th from the effects of COVID at the Hurlbut Nursing Home in Avon, New York.

I was first notified by the nursing home on March 24th that the facility had a positive patient.

That was the last communication I was able to obtain.

That was the one and only COVID communication I would receive.

They would kindly give me updates on my mom's health.

I still, to this day, do not know how COVID got into that facility.

It was a 40-bed facility, and when my mom passed away, they had 19 positive cases.

I had tried calling her room many times, without any answer, or it just rang busy, for days.

My mother was blind and unable to hang up the phone.

We finally thought we had devised a system to be able to talk to my mom.

We would call the nursing home, schedule a

time for them to go in, get dressed in PPE. We would call her room, they would pick up the phone and hand her the phone.

After the phone call, mom would just set the phone down; thus, why it would ring.

But why it would ring for days at a time is beyond me. I have no explanation for that.

We were able to do this for a few times, and then we were kindly told that they needed to use new PPE each time we wanted to talk to her, dwindling the short supply.

I only spoke to my mother three times from March 18th to April 28th.

I'm not sure how to explain how I felt about being told that.

We tried several times to visit her window. Her curtains were always closed during many different times of the day that we would try to go visit.

We were able to visit twice and be able to see her.

While a staff member stood there in fresh PPE, they would open her window, and we could watch her sleep for a few minutes, and then [inaudible] were closed again.

We could just see her drifting away.

April 18th we were told that she tested positive.

She died May 6th.

We were given daily updates on her fever and overall condition.

I last spoke to her on April 28th.

She went non-verbal on May 1st. Struggled to eat. Stopped eating May 2nd. And due to increased pain and discomfort, they started the all-popular morphine drip.

I sat next to her window for 7 hours as she drifted away and left this world on May 6th.

On June 5th, my 87-year-old father, a retired state trooper, removed me from his will and deeded the house to my brothers because he was holding me responsible for putting her in the nursing home and contracting COVID.

On June 13th, my father committed suicide from the devastation of her loss and his own mental destruction from not seeing her.

My father gave up his will to live.

His depression skyrocketed, and mental problems just exploded upon lockdown and not being able to see her.

They died 68 days apart.

I'm not sure why I couldn't think about a two-way baby monitor to communicate with mom without interfering with the nurses, but that's a little too late now.

Not sure why the curtains had to be closed all the time.

Not sure why there wasn't enough PPE.

Not sure why the nursing home wouldn't answer, or couldn't answer, any of my questions about residents testing positive.

Our nurses and staff didn't have the tools or the staff to properly attend to our family members.

It's just horrific what has taken place.

Unfortunately, our family has been dealt a huge blow from this pandemic.

Thank you.

SENATOR RIVERA: Thank you so much, Mrs. Webster.

Next, we will hear from Donna Morgans, family council chair for the Van Duyn Center for Rehabilitation and Nursing.

DONNA MORGANS: Good afternoon.

My name is Donna Morgans, and I am here as the chairperson of the family council at Van Duyn

Center for Rehabilitation and Nursing in Syracuse.

Van Duyn is a 513-bed facility located in Onondaga County.

Our loved ones are parents and grandparents, sisters and brothers, aunts and uncles, and children.

At the start of the shutdown, there was significant confusion.

Directives were coming from federal, state, and county officials. They were changing daily, and sometimes multiple times a day.

Residents and families were concerned confused, and afraid.

Residents were abruptly moved to create a COVID wing, and then a COVID floor. Our loved ones were restricted to their rooms with the doors closed.

This created significant concern for families.

Resident falls and the possibility of injury would go unnoticed.

Meals were delivered to the rooms. What if a loved one choked?

Residents lives have been turned upside down.

The continuity of care was disrupted. Many

residents are now being cared for people they do not -- cared for by people they don't know.

The negative mental, emotional, physical, and social impact this has created continues.

We're all experiencing fear, anxiety, depression, discouragement, disappointment, and loneliness.

We're living with daily uncertainty.

The physical deterioration of our loved ones is inevitable.

They have no opportunity to move around.

The doors to resident rooms were opened on June 20th, yet they're still in their rooms.

The recreation department is doing their best to supply residents with things to keep them entertained, as well as visit with them.

Residents are able to consistently communicate with families via telephone or a variety of online platforms, once a week, and sometimes more, but that is not enough.

We must be allowed to physically interact with our loved ones, and, to advocate for them.

It wasn't until May 10th that twice-a-week testing was required for staff.

At Van Duyn, there have been no new resident

cases since the reporting for the week ending May 24th. And prior to that, tragically, there were 20th deaths.

While the staff, and we don't even know if they're direct-care staff or ancillary staff, are continuing to test positive.

Van Duyn staff, under the leadership of Administrator Amy Mahoney, has done an exceptional job in keeping so many of our loved ones COVID-19-negative.

But while our loved ones remain isolated in their rooms, the employees are free to do as they wish when they're not working.

The claim that this isolation is to protect our vulnerable needs to be looked at.

The conditions which we and our loved ones are currently experiencing feels more like punishment than protection.

Is there anything more precious than spending time in the presence of a loved one?

Who, more than family members, would take every precaution possible to see our loved ones safely?

This pandemic has put a spotlight on nursing home care.

The time for surveys, studies, hearings, and investigations needs to be set aside for action that will ensure better care for our loved ones.

Ombudsmens are allowed to enter the facilities; however, because of the lengthy wait times for test results, they have not been able to meet the 7-day requirement.

There are several things that we need to happen at both the federal and state levels to help repair this crisis.

Nursing home employees are essential workers, they need to be treated as such: provide PPE, testing for staff and residents with faster results, paid sick leave, overtime pay, and hero pay.

Improve staffing: staff training and education, infection control, and resident care.

Ensure transparency and consistent communication between government officials, facilities, residents, and family members in regard to all policies relating to care, restrictions, visitation, testing, and end-of-life procedures.

Pursue all possible solutions to minimize the social isolation of our loved ones, including taking a closer look at the extreme criteria in the phases to open nursing homes to family visits.

And I can't stress enough, we need to get in there. The isolation of our loved ones needs to end.

Thank you.

SENATOR RIVERA: Thank you, ma'am.

This round will be led off by the Assembly.

Assemblymember Bronson?

ASSEMBLYMEMBER BRONSON: Okay.

Yes.

Unfortunately, my computer is telling me that my Internet connection is unstable, so if I'm not coming through, I apologize.

That being said, first of all, I want to thank all of you for sharing your family stories.

But we will recognize Assemblymember Ron Kim for 3 minutes.

SENATOR RIVERA: Assemblymember Kim?

Going twice, Assemblymember Kim?

I have a senator on deck.

We'll go to the Senate --

ASSEMBLYMEMBER BRONSON: [Indiscernible] --

SENATOR RIVERA: -- yep, we'll go to the Senate first.

Recognize Senator Rachel May for 5 minutes.

SENATOR MAY: Thank you.

I was trying to not be the first one to lead off, but, I guess no luck.

Anyway, thank you so much for your testimony, and especially to Bonnie for opening that heart-breaking story to all of us, to share that with -- I mean, the courage it took to step forward is incredible.

So I -- hats off to you.

I just wanted to ask a couple of questions about the family councils.

We've been hearing all day about issues with communication, and the stress that it's put on family members and on staff, that communication just keeps breaking down at nursing facilities.

And I just would like to hear from you about the role of the family councils between the administration and the ombudsman program.

Where do you see your role, and where do you see the potential for better communication to happen?

SORRELLE LESLIE BRAUGH: I thank you for the question, if I could.

One of the things early on that we asked of the CEO and the executive management team of the nursing home was to provide us with daily updates on

COVID-positive -- COVID-positive patients, COVID-positive staff, as well as which residents were transferred to hospitals with COVID, and, looking, quite honestly, at the data.

And we wanted it daily, similar to what the governor was receiving and reporting out to the citizens of this state.

I'm fortunate to report, that after a lot of give-and-take and back-and-forth, we actually do have it, and they continue to report out daily to us, except not on weekends.

In addition, we asked for weekly conference-calls meeting with the CEO and the executive team, to provide a give-and-take on real-time questions about our loved ones since we weren't able to see them.

For the most part, this has gone off fairly well; however, it's not necessarily continuing, and it's at the behest, obviously, of the management.

And this is some of the frustration.

SENATOR MAY: And do you have the capability to communicate with everybody, with all of the residents and family members in the nursing home, or do they have to somehow come to you?

SORRELLE LESLIE BRAUGH: They have to somehow

come to us.

And we have requested of the -- it's a really good question.

We have requested of the administration, because we now see that they are taking in new residents, to please provide that information to the family council so that we could reach out for support.

This past Sunday we did a socially-distanced outside meeting, interestingly, right at the Teresian House, and underneath the windows of our beloved parents, to provide support to one another.

It's that dire of an issue, it's that anguished.

I too was going to share a picture of my parents, but this is the picture. My parents are in the third window down from the top. You can see them as clearly as I can.

That's how difficult it is.

SENATOR MAY: Yeah.

And the ombudsman program, what -- tell me what your relationship is to that, because I'm finding it a little hard to figure out, what are the [indiscernible cross-talking] --

[Indiscernible cross-talking by everyone.]

LYNN GOLIBER: I think early on we didn't have a representative.

We struggled to get callbacks or get information.

And then, from my recollection, the person had already resigned or stepped down. There wasn't a replacement.

And we were under the impression that they weren't allowed in anyway. So...

DONNA MORGANS: And at Van Duyn, we -- the ombudsman, I'm holding family council meetings twice a month on Zoom. And so members, twice a month, we meet, and the questions we have go directly to the administration.

And the ombudsmen have been participating in our family council meetings.

So, unfortunately, the director in our area tried to go in, and he got tested, and couldn't meet the 7-day requirement to actually go in.

So that was in the paper last week.

So I don't know that he's been able to get in because he'd have to be retested.

SENATOR MAY: Okay.

Thank you so much.

And once again, thank you for your courage to

step forward and talk to us.

SENATOR RIVERA: Thank you, Senator.

Assembly.

We've got Ron on deck?

ASSEMBLYMEMBER BRONSON: Assemblymember Ron Kim for 3 minutes.

SENATOR RIVERA: There he is.

ASSEMBLYMEMBER KIM: Thank you.

Thank you, Chairman.

And thank you everyone for testifying today.

Just a show of hands, how many people are familiar on this panel, the nursing home bill of rights for residents?

Everyone's familiar.

And are you all familiar that we passed a law in 1986 at the federal level, that was strengthened at the New York State level, that have, in my opinion, one of the strongest protections for nursing home residents in the country?

So this was --

SORRELLE LESLIE BRAUGH: No, but I'm so glad you're saying all this, because I do think that their civil rights have been trampled.

I do.

They just can't advocate for themselves.

ASSEMBLYMEMBER KIM: Right, so that was -- that was the reason why we created these bill of rights in the first place -- right? -- because these are members who can't fight for themselves; they're vulnerable, they don't have a voice in the political process.

So when we send off our loved ones, at least we knew, when we signed all these documents, that we're sending them to a place where their -- they have rights, and their level of care was at a -- was a higher standard than sending them off to a hospital, even.

I mean, that's -- so during this pandemic, I just don't understand how we treated nursing homes like hospitals, when we clearly had a different standard of care that we instituted into law at the state level for these residents.

Do you -- I mean, these rights, you know, these bill of rights, clearly says that they have a right to communication, they have a right to be taken care for.

It's very crystal-clear, you know, what their rights are on this list.

Do you think -- the visitation, I mean, do you think, based on those bill of rights, are we

violating those bill -- those fundamental rights of residents by denying them, denying the daily essential caregivers that we know that these family members are, by denying them the right to visit and communicating properly with [indiscernible]?

LYNN GOLIBER: So I think that, considering we had a pandemic, it's unprecedented.

You know, we're balancing protection, and you're -- you could be looking at semantics.

Are they visiting? Yes.

Do we have Facetime? Yes.

Is it the same? Absolutely not.

When we also send them off, I prefer to think that I had to have my mother cared for in a way that I couldn't meet her medical needs or her health needs at home.

There may be people who say you have a choice. Maybe this is not the place for you.

I don't have a choice.

ASSEMBLYMEMBER KIM: Ma'am, I have 10 seconds left.

I mean, it's my understanding, about 10 percent of the people who are visiting are considered daily essential caregivers.

Do you think, at the least, those people

should be allowed in and given exception to [indiscernible cross-talking] --

SORRELLE LESLIE BRAUGH: Yes.

LYNN GOLIBER: Yes.

SORRELLE LESLIE BRAUGH: And I would say further, Assemblymember Kim, is that if we have now figured out an opportunity and ways to do safe visits for our state's correctional facilities, for rehabilitation programs, for group homes, certainly we are all smart enough and humane enough to figure out visitation for our vulnerable senior citizens.

SENATOR RIVERA: Thank you so much.

Thank you so much.

I now recognize Senator Serino for 5 minutes.

SENATOR SERINO: Thank you very much, Mr. Chairman.

And I just want to say thank you to all of you. I commend you, all of you, for telling your stories. And we should all be so fortunate to have such fierce advocates as all of you.

Thank you.

I know how painful, I'm sorry, what you had to go through, but I appreciate you being here and telling your story.

I wanted to know if you guys, if any of you,

found it easy to get through to the homes to get updates on your loved ones?

I know some of the folks have said that they are getting daily updates on statistics.

But if you called the home for specific information on your parent, were you able to get it?

LYNN GOLIBER: I have been fortunate enough to get a callback.

But we know that we get lots of calls and e-mails from other family members who say they don't get a callback, and the phone rings and rings and rings.

And we also know that the staffing can be horrific, and you are always trying to balance, do I really need to make that phone call, or do I allow the staff to attend to my parent?

Because I imagine, without this visitation, that phone is ringing off the hook.

SENATOR SERINO: [Indiscernible cross-talking] --

DONNA MORGANS: And at Van Duyn --

SENATOR SERINO: -- I'm sorry. Go ahead, Donna. I'm sorry.

DONNA MORGANS: -- they have done a nice job.

And I actually, as part of the family

council, we requested updated phone lists, so if we couldn't get them to answer at the floor, who can we call next?

And they did provide, literally, overnight, we got updated lists, because, in my personal case, my aunt got moved to a different floor. So I had no idea who to contact. And the facility was so big that, she didn't know who her care providers were. And, you know, she was on the floor that they created a COVID wing.

So, in an effort to make sure she was being cared for properly, brought it to the family council, and we all did the same thing.

And they have been responsive.

SENATOR SERINO: That's good.

Anybody else?

SORRELLE LESLIE BRAUGH: I think the biggest issue is that most of us were there just about every day in the facility, and we had a firsthand knowledge of what was going on and what wasn't.

So, at times, calls are easy to get through.

Oftentimes, though, just like the pandemic created havoc with staffing for resident care, they weren't prepared to be able to handle all of the phone calls coming in.

And, oftentimes, phones weren't answered, and, just, staff was just way too overworked to be able to handle this.

And I think we're all empathetic to staff because we know many, many of them are dedicated and went above and beyond.

But everyone would say that communication can be better. Everyone would say that.

LYNN GOLIBER: And let's also remember, because of staff shortages, even when you did get through, you're talking to somebody who doesn't know your parent.

So to say, "oh, she's fine," when the reality is, she's having an incredibly difficult day, that person may think that's her baseline.

So it's not necessarily effective communication anyway.

SENATOR SERINO: And, Bonnie [indiscernible cross-talking] --

BONNIE WEBSTER: I was able to get regular daily updates.

Three of the nurses that worked at the nursing home are nurses because of my mother.

My mother was a head nurse at a nursing home for 35 years.

SENATOR SERINO: Wow.

BONNIE WEBSTER: And the head nurse there worked under my mom years and years ago.

So they were very good about keeping me updated on her, you know, fever/no fever, what she's eating, what she's not.

As far as that goes, it was good.

It was more the trying to communicate with my mom and not having the staff.

And, of course, we didn't want to jeopardize the health of another patient so that we could talk to mom.

But it would have been nice.

I only talked to her three times before she died.

I mean, it's just... (shrugs shoulders).

SENATOR SERINO: Yep.

BONNIE WEBSTER: [Inaudible.]

SENATOR SERINO: I am so, so sorry.

You know, I have a proposal for grants that would actually be for hiring staff just specifically to answer those calls, so we weren't taking away from the staff that are caring for your loved ones, because we've heard this time and time again, that we could have just a dedicated person to answer your

phone calls.

So, thank you once again for all of your testimony today.

I'm so sorry.

Thank you.

Thank you, Chairman.

SENATOR RIVERA: Thank you for that, Senator Serino.

Assembly.

ASSEMBLYMEMBER BRONSON: We will now recognize Assemblymember Tom Abinanti for 3 minutes.

ASSEMBLYMEMBER ABINANTI: Video?

There we go.

To all of you, I want to say thank you for coming forward.

Just because there's not a lot of questions doesn't mean we're not paying attention, we don't hear you.

I understand how difficult it is to have gone through what you went through, and how even more difficult it is for you to come forward and tell us, and relive, what you've gone through.

So thank you very much for coming forward.

And what you're doing today is really, really very important; it is so important that the real

impacts of these unconscionable and misguided policies that have come from the health department.

And it's most important that the health department hear from real people what they've refused to hear all along: That their policies in the guise of trying to make things better are really making things worse.

They just don't seem to get it.

They're worried about numbers.

They're worried about image.

They don't want to be accused of doing something wrong.

Well, they're hurting people.

They're really hurting people.

So I very much appreciate your coming forward.

I'm not going to ask you any questions.

I just want to thank you over and over again.

I have a child with a disability who is living with me. But I've spoken to so many other parents who are going through exactly the same thing that you're going through.

The kids are away at schools, the kids are at group homes, and they haven't seen them in months, because these vulnerable people are locked down just

like your relatives have been.

And this is a terrible policy, and you're part of the solution.

So thank you for speaking out, and keep doing it: keep speaking out.

Let's get the public to understand the hurt from these misguided policies.

Thank you very much.

SENATOR RIVERA: Thank you, Assemblymember.

There are currently no Senate members asking questions.

Back to the Assembly.

ASSEMBLYMEMBER BRONSON: Thank you, Senator.

We have one more assemblymember to ask questions, and I will recognize for 3 minutes, Assemblymember Marjorie Byrnes.

ASSEMBLYMEMBER BYRNES: Thank you.

I appreciate your courtesy, to the Chair.

And, again, the testimony that's been provided in this panel, as well as the other panels all day today, has been exceedingly powerful; very emotional, frightening, what you've been through.

And, hopefully, we, as an entire state, will grow tremendously from it.

Bonnie, you are my constituent, and you

actually stopped me along the road, and -- one day when I was walking my dog, to ask me what you needed to do to be able to tell what happened.

I just have a couple of questions for you.

Your mom was at a for-profit nursing home.

How much, if you know, did your family pay per month to be at this care facility?

BONNIE WEBSTER: 13,575 a month.

I wrote the checks out each month.

ASSEMBLYMEMBER BYRNES: Okay.

And, again, I know that you felt you were treated well by the staff, but, ultimately, even with that type of serious expense, they couldn't keep her safe, or, for whatever reason, didn't.

Dr. Zucker had testified a week ago for a couple of hours, and then left before all the questions that were going to be posed to him were answered.

And nobody was here today from the department of health.

What would you like to say, if you had the chance, to Dr. Zucker, or to the owner of the facility that your mom was at?

BONNIE WEBSTER: I don't think I can say that here.

I'm very displeased with how that mandate from March 25th went down.

My mom worked under Hurlbut when she was at the Conesus Lake Nursing Home, and I know that he was -- he's always been a very cheap person.

I'm sure that staff was very short, as it has always been short.

They -- this pandemic just blew everybody away.

It's the entry-level staff that they needed significantly more of. We needed people to assist the families and the residents, to be able to see them, to be able to answer the phones.

My mom's phone went busy for days at a time.

Why was it not put up on the phone?

Or it would ring for days on end. Why?

Why is there -- I don't have those answers.

I don't -- I couldn't open -- I couldn't see through the window.

I don't know if she was soiled.

I don't know if she was able to eat. Somebody helped her eat, she was blind.

She needed significant help.

I just -- I would love to have them sit down and just listen to me.

ASSEMBLYMEMBER BYRNES: I wish they were here and did listen to you.

BONNIE WEBSTER: Yeah, me, too.

SENATOR RIVERA: Thank you, Assemblymember.

Again, no Senate members.

To the Assembly.

ASSEMBLYMEMBER BRONSON: [Indiscernible] I had mentioned that was going to be the last Assemblymember, but, Chair McDonald has now raised his hand.

SENATOR RIVERA: You all [indiscernible], you all [indiscernible] getting in the last minute, last minute.

Go ahead, [indiscernible].

ASSEMBLYMEMBER MCDONALD: Last minute.

And to all, thank you for participating, particularly our Albany crew here, Lynn and Sorrelle from Teresian House.

I have to tell you, as much as Teresian House is outside my district, my colleague Pat Fahy and I worked very closely together, and I'm very familiar with some of the concerns that you've raised.

I myself had constituents in my district calling to complain about some of the issues at

Teresian House, particularly -- which I don't know if you know this or not -- but, well into a month into the pandemic, they were still allowing and encouraging residents to sit together and have dinner in congregate dining.

Which I found that -- when I first heard that I was surprised.

I contacted the health department and said, we need to clarify this quickly.

But my question to you is this:

You know, today's panel, last week's panel, everyone is bringing real-life experience and real issues, and we appreciate the time.

Listening to some of your testimony, I think the challenge boils down to a simple thing: it's communication.

It's giving you the opportunity to back-and-forth hear what's going on.

And I've heard in a couple of other panels, and I've got questions about this, but I'll throw it out to you guys: If the management at Teresian House came to you and said, "Hey, listen, we're short-staffed," as has been mentioned by many people, "we need some volunteer help here," is there an army there that would help them in regards to the

simple things, like answering the phone?

Trust me, we've all been through the frustration our constituents dealt with with unemployment. We know what it's like to be frustrated by the phone now ringing or not being answered.

Is that something an army could come together and we would have a team behind us?

LYNN GOLIBER: There is no doubt.

We offered that multiple times. Probably every single weekly phone call met with resistance. And maybe we understand the logistics of it all.

But no doubt that we had offered it every single time for volunteers.

ASSEMBLYMEMBER MCDONALD: I imagine there's a concern about, you know, need to do background checks, just like anything else, which you would want if someone's going to be in there, in that facility.

But I think this is something that, in a preparedness effort, doing a recruitment, and doing the background checks early on, God forbid, something bad does happen, this is an opportunity to better address the crisis, I would think.

LYNN GOLIBER: One suggestion that I continue

to make is:

I assume, don't know, that there are multiple committees within a nursing home.

And I would propose and advocate for a family representative on every committee as they're developing policy and procedures.

ASSEMBLYMEMBER MCDONALD: Good point.

Sorrelle?

SORRELLE LESLIE BRAUGH: I would just say we stand ready and willing to help. And there's a phenomenal array of resources and professionals, both in the health-care field who make up the family council, as well as other professions, that might be very helpful to Teresian House.

We want to support them. We want to do the best by our loved ones.

And I think that, you know, we would just stress to all of you, that I think we can come up in New York State with a policy that provides safe visitation with our loved ones.

There's just no reason not to have it.

It just, coincidently, my father is a retired professor of social work at SUNY Albany, who was, ironically, an expert in his field in gerontology.

And he often would extol the virtues of

societies and cultures who took care of all of their citizens, but particularly their elderly and their most vulnerable.

And he would be testifying right here beside me, saying that we're smart enough, and we're sensitive and humane enough, that we can work this out.

We have to work it out, and it cannot wait.

ASSEMBLYMEMBER MCDONALD: Thank you, and your father should be proud.

Thank you, Mr. Chair.

SENATOR RIVERA: Thank you, sir.

And that brings this panel to an end.

Thank you so much for your participation today.

And I know how difficult it was to share some of these stories.

Please know that we not only recognize your bravery, but we take everything that you say into account as we move forward in making policy, to make sure that we can avert unnecessary deaths in the future.

So thank you so much for being part of this panel.

LYNN GOLIBER: Thank you for having us.

SORRELLE LESLIE BRAUGH: Thank you.

BONNIE WEBSTER: Thank you.

DONNA MORGANS: Thank you.

SENATOR RIVERA: Moving on, we have -- we'll be joined by:

David Hoffman, chief compliance officer for Carthage Area Hospital;

Mary D'Ercole Pritchard -- I hope I pronounced that correctly -- former ombudsman;

And Bobbie Sackman, member leader for the New York Caring Majority.

Actually, two more people on that panel:

Cynthia Rudder, founder and former director of LTCCC;

And last, but certainly not least, Mary Somoza, patient advocate, Self-Direction Families of New York.

ASSEMBLYMEMBER GOTTFRIED: Okay. And before I swear everyone in, I just want to join everyone in our appreciation and admiration for the family members and the one resident who have testified to us today and last week.

It's not easy; it takes a lot of courage and strength. And I think it's helping to move this issue forward.

Having said that, do each of the five of you swear or affirm that the testimony you're about to give is true?

DAVID HOFFMAN: I do.

BOBBIE SACKMAN: Yes.

CYNTHIA RUDDER: I do.

ASSEMBLYMEMBER GOTTFRIED: Okay, fire away.

SENATOR RIVERA: We'll be led off by David Hoffman.

Go ahead, Mr. Hoffman.

DAVID HOFFMAN: Thank you.

As I appear before you today to offer my personal opinions on the state of our health-care delivery system, I wear many hats.

I am, in turn, the chief compliance officer for three hospitals in the North Country and the long-term-care facilities that two of them operate.

I'm also a health-care attorney and litigator who has spent many years defending clinicians and institutions in medical malpractice cases.

And, I'm a clinical bioethicist, practicing at a variety of institutions, and teaching bioethics at Columbia University and the Albert Einstein College of Medicine.

But, I am also here as one of thousands of

New Yorkers who is still mourning the death of two beloved victims of COVID-19; one who passed away in an assisted-living facility and the other in an acute-care hospital.

From most perspectives, what I want you to understand most clearly, is that the immunity granted by the Emergency or Disaster Treatment Protection Act (the EDTPA) did not cause the thousands of COVID deaths and other harms in New York, and its recent partial repeal will not prevent the same problems from occurring in the future.

What is missing in both cases, the indispensable other half of the formula, is a crisis standard of care that will help clinicians understand how they should act when circumstances prevent them from providing all the care and respect they would normally be expected to provide.

We are simply not permitted, legally, to substitute a public-health ethic of care for the, quote, normal standard of care we owe the individuals.

Only you, the legislature, can fix that.

Neither the EDTPA or its partial repeal will prevent the next wave of COVID deaths. Only a

legally enforceable crisis standard of care can.

Public-health ethics, as an exception to the usual duty of clinicians to respect patient autonomy, can only operate when that ethical standard is explicitly authorized by law.

There are numerous examples:

Reporting of shootings, stabbings, sexually-transmissible diseases, direct observation, therapy for tuberculosis, and even the gun SAFE law that you passed.

It is absurd that my colleagues at Columbia University had to devise a means of connecting two or more patients to a single ventilator.

But rest assured, that step could not have been even attempted, other than in reliance upon a public-health ethic and legal immunity.

Likewise, it's ineffective to mandate that facilities purchase a 90-day supply of PPE on the open market when there is no available supply, or, that we have to shut down visitation in long-term-care facilities when a single resident tests positive, but with no legal authority to stop "outside visits" at the same institution.

Immunity, without an alternative standard of

care, is, as we have seen, a recipe for disaster.

There is, for example, no good reason that my father-in-law was taken to a hospital for a COVID test over the strenuous objection of his daughter, my wife, who is his health-care agent.

But the facility staff simply didn't know better. It was not a teachable moment.

Currently, and without clinically-supported basis, we must send health-care providers home for two weeks, even after a false-positive COVID test, when replacement workers are either unavailable or unaffordable.

Frankly, we can't even afford those tests, and the results are taking far too long for them to be of any value.

During the AIDS crisis, we settled on the practice of universal precautions because then a test was not available.

We should adopt that same approach now. That would address our visitation problem.

Likewise, holding a long-term-care facility patient in the hospital, waiting for a negative COVID test result, is a violation of that resident's freedom, and, at present, with no legal defense.

What are we to do if that patient signs out

against medical advice (AMA) and then returns to their home, which happens to be a long-term-care facility?

Do we lock the doors, or call the police?

And what if a family member refuses to wear a mask when a hospice worker arrives at a patient's home to provide care?

Who is more important: that patient, or the next 100 patients, or that hospice worker themselves?

SENATOR RIVERA: If could you finish your thought, since your time has expired.

DAVID HOFFMAN: Yep.

And what is our legal obligation?

Blanket grants of immunity and discharge planning by executive orders, these are crude tools that are ill-suited to the delicate task at hand.

I'll save the rest of my comments if there are any questions.

SENATOR RIVERA: Thank you, Mr. Hoffman.

Next, I believe that we've been joined over the phone by Mary D'Ercole Pritchard.

Is that the correct pronunciation of your name, ma'am?

MARY D'ERCOLE PRITCHARD: Are you talking to

me?

SENATOR RIVERA: Mary Pritchard?

Do we have Mary Pritchard on the phone?

OFF-SCREEN TECHNICIAN: One second.

SENATOR RIVERA: Okay.

If we do not...

Okay.

MARY D'ERCOLE PRITCHARD: Hello?

SENATOR RIVERA: Yes.

MARY D'ERCOLE PRITCHARD: My name is Mary D'Ercole Pritchard, and I was a New York State ombudsman from 2002 until 2016.

And, currently, I serve on the board of the Statewide Senior Action Council.

I live in Schenectady County in the city of Schenectady.

Thank you for the opportunity to testify today.

I am here because the crisis in long-term care that has been exacerbated by the [indiscernible] -- the pandemic has impacted my friend.

There has been a growing crisis in the quality of care and the oversight by the State in residential long-term care.

This includes inadequate staff-to-resident ratios, and less than optimal visitation facility by the long-term-care ombudsman program.

My friend has a 95-year-old mother whom she used to visit twice a day to feed lunch and dinner.

She was unable to do such since the pandemic began.

Her mother then fell out of her wheelchair, and was found later on the floor by a therapist who was walking by her room.

She broke her nose, and she was taken to the hospital.

When she was released, the family hired a private aide to come to the nursing home twice a day to feed her.

My friend found out that her mother had developed a bed sore because she had been left in her bed from dinner until lunch the next day.

That bed sore has since turned into a wound, and she is now receiving wound-care treatment.

She has declined so much, that the nursing home suggested that she be put on comfort care.

The family agreed to this, but asked that morphine only be given after they were notified.

But this request was disregarded, and she

received morphine without consent or knowledge of her family.

An update to some of this, because this is some information that I just received from her, you need to know that, before the epidemic started, my friend had a camera in the room. And she was told that she needed to remove that camera because it broke HIPPA regulations.

She suggested that anybody who came in, that didn't want her to see what was going in, take a washcloth and put it over the camera so she could have the comfort, after they left and they took the washcloth off, to see her mother in bed sleeping.

It didn't happen.

They made her take the camera out.

Now, that she has had this issue with the administration of the drug. They have -- I'm glad to say, decided to take all their information to the department of health.

She talked with her sister in Rochester and her brother in Connecticut, and they decided they needed to report the details to department of health.

They were assigned a case number, and they're awaiting action.

They are now allowed to go into the nursing home only because her mother is currently placed on hospice, and it is end of death.

That's why they are going into the nursing home.

Safe staffing, or an ombudsman like myself, could have helped in a situation like this one.

The ombudsman program needs to be a separate entity in a place to help the residents of the nursing homes.

An example that I can provide was when I was an ombudsman under the umbrella of the Capital District Red Cross.

It took me three years, and various nursing home directors, to finally convince the nursing home to have a family council, with monthly meetings.

We brought in speakers to address the needs and concerns of the family.

It is the responsibility of the State to ensure that there is quality care accessible to those who need it, and that those receiving care are able to age with dignity.

SENATOR RIVERA: Ms. Pritchard?

MARY D'ERCOLE PRITCHARD: I urge you to include solutions to the long-term-care crisis in

your budget negotiations through the legislative session.

SENATOR RIVERA: Ms. Pritchard?

MARY D'ERCOLE PRITCHARD: Thank you for the opportunity to speak, and I'd be pleased to answer any questions you have.

SENATOR RIVERA: Thank you, Ms. Pritchard.

Following up, we'll hear next from Bobbie Sackman, member leader for New York Caring Majority.

BOBBIE SACKMAN: Thank you.

My name is Bobbie Sackman. I'm a member leader with the New York Caring Majority.

The New York Caring Majority is comprised of older adults, people with disabilities, home-care workers, and family caregivers.

And I just want to say, I've been sitting here also since 10:00 or 10:30 this morning, listening. And I'm angry, and I'm going to cry, I'm just heartbroken.

The first two speakers, the industry associations, sounded like la-la land to me once the families came on. And I know we're all getting that message.

So what do we do about it?

I think there's a myth out there -- this is not in my testimony.

I think there's a myth out there that, somehow, people in nursing homes don't have families, that nobody cares about them, that they've been abandoned.

Well, obviously, that couldn't be further from the truth.

And in our state -- and every time we say "department of health," can we please say "Governor Cuomo"?

He's been the governor for 9 1/2 years.

Please, "New York Tough," with all the people that testified today, and the ones we haven't heard from.

So one of the solutions I'm here to talk about is home care.

I know we've heard about home care, and yet we see all these cuts to the home-care budget, to Medicaid.

We see that most of the workers are women of color and immigrants. And this is part of the systemic racism in the New York health-care system. And I think we need to call it out, both the nursing homes and how we treat home-care workers.

Four out of five of the nursing homes in New York State, where at least a quarter of the residents were Black or Latino, had COVID-19 cases, but those nursing homes, where only one out of three, where the population was less than 5 percent Black and Latino, had -- there was less than 5 percent had COVID cases.

There was a clear disparity in what -- in the number of cases.

And so it seems like our nursing homes are about as segregated as our society, and it's time to address this.

So home-care jobs are actually a solution, and we're also desperate for solutions these days.

And I know you know this, but it's all about salary and wages and dignity.

It's about a tax-revenue package, so that the 119 billionaires in New York State, and the multiple millionaires of New York State, can pay their fair share, and pay up. That would be "New York Tough."

Enough of this "New York Tough."

The "New York Tough" is everyone that we've listened to today.

These are green jobs.

Please, when you're thinking about the

environment, you passed great climate, environmental package of laws recently. These are green jobs, they're sustainable jobs.

They can -- we need thousands of home-care workers around the state. These jobs can be filled immediately when people are desperate for employment.

This is an answer.

And I know I wasn't quite going to be this angry when I spoke, but I have to say that, six hours, or whatever it is, later, I am so angry.

The irony is, I got into this field, literally, 50 years ago, because my grandmother died in a nursing home, and I think had similar treatment, which is why, as a very young person at that point, I said something needed to be done.

So I know I'm conflating nursing homes and home-care, but it's all part of the long-term-care system.

So, please, let us not leave all of these great hearings you've done, and kudos to all of you for sitting through this and holding it, and being thoughtful who gets to testify and all, but please don't let this be the end.

We're not done with the pandemic, but we're

also just not done with people growing old.

And we're certainly not done with people with disabilities.

And so, please.

I don't know that I have much else to say.

I also want to say -- well, I do have one more thing.

The family caregivers you heard from today, I don't know if this was their case, but many women feel forced to leave their jobs to keep their loved ones home.

And there have been studies that have shown they lose $300,000 over their career, in wage compensation, in pension, in the time lost in the Social Security system.

They can't get back into the workforce, you know, when they seek to do that.

So this is a women's issue.

I know you're all men -- many of you are men.

But so many of this -- so much of this.

So how are we going to have a caring economy in this state?

And this is the future.

Instead of giving tax breaks to our economic-development programs, to all the

corporations that develop about 2 1/2 jobs, this is where we should be putting our money: into home care, into nursing homes, and building the caring economy I know we all want.

So thank you.

I know I've have been a little bit all over the place, but I just -- it is a reaction to everything I've heard today.

Thank you so much.

SENATOR RIVERA: Thank you, Bobbie.

And I would have expected nothing else from you, by the way.

Thank you for that.

Next we will hear from Cynthia Rudder, founder and former director of LTCCC.

CYNTHIA RUDDER: Thank you.

My name is Cynthia Rudder, and I was the founder and director of LTCCC from 1982 to 2012.

Today I'm a consultant, working on research projects with national and state advocacy groups.

I started my research and advocacy into nursing homes in 1979.

You have heard conflicting information today and last week.

Providers think their care is fine.

The department of health's surveillance and enforcement is too punitive.

Families and residents describe terrible conditions, both before and during the pandemic, and little enforcement from the State.

My studies give credence to families and residents.

You have heard from providers, they don't get enough money, and I've heard this for 40 years, yet there's little focus on how the money they get is spent, and whether it's spent on care.

I could talk on reimbursement issues, but I only have 5 minutes today.

I urge you to read my many studies on the State's ability to monitor [indiscernible], and the care issues related to reimbursement.

Why did COVID-19 have such a disastrous effect on our state's nursing home residents?

When I told some colleagues that I had only 5 minutes to testify, they said, Why don't you just refer the legislators to the numerous testimonies that you gave over the years?

Makes sense.

But since I do have 5 minutes, and, unfortunately, I have new data, I'll go on.

I believe that the long history of poor care in our nursing homes, and the failure of our surveillance and enforcement system, have led to a perfect storm.

Surveyors are not identifying the deficiencies that families and residents see.

You heard from them today.

And when these surveyors find these deficiencies, they're rated as "no harm," and, therefore, the enforcement is non-existent [indiscernible].

I conducted a study in 2005, comparing the number of deficiencies identified by federal surveyors to the number found by state surveyors at the same facility at the same time.

And I found, over a three-year period, federal surveyors identified over four times the number of violations than did the State.

When surveyors do identify violations, they rarely classify it as causing harm.

Although a study conducted by HHS, over the inspector general in 2011, found an estimated 22 percent of Medicare residents experienced harm.

New York cited only 5 percent of all the deficiencies for Medicare and Medicaid residents.

And for the year 2019, right before the pandemic, they cited only 2 percent as causing harm.

98 percent of all the deficiencies they found, they said caused no harm. Maybe a potential for harm.

But once a deficiency is listed as "no harm," even if it has a potential for harm, the sanction that is issued is often the cost of doing business, and is not a real incentive to improve care.

Infection prevention and control is longstanding, and it's been a serious problem in nursing facilities.

Between 2013 and 2017, 82 percent of nursing facilities nationwide were cited.

Most infection-control deficiencies are cited as a low level, so that financial penalties are not imposed.

In 2016, new regulations required nursing facilities to develop a plan to deal with the pandemic, just like COVID-19.

The industry lobbied heavily against this regulation, and 43 percent of nursing homes across the country violated it. They had no plan.

I believe the lack of a plan is why we were caught unprepared.

In New York State, there were 544 citations for infection between 2017 and 2019. Not one of them were labeled as "harm."

And what was interesting on the targeted [indiscernible] that the Feds required, almost none of them were rated as "no harm."

And that's just not feasible, given the deaths and -- there had to be some violations that caused harm.

Recommendations:

We -- I once again am calling for a change in our state surveillance and enforcement system.

We need to hold [indiscernible] accountable.

New procedures must be in place to make sure non-compliance is identified; each deficiency is followed up, not just by saying you have a plan, but reviewing the plan to see if it has an impact on residents.

The legislature must be more careful to monitor what's happening in the surveillance and enforcement program, to see if there is an impact on residents.

Surveyors must be given the time they need to identify deficiencies.

Right now, they don't have the time to

accurately do it.

They must make sure that surveyors are trained to understand how to ask the appropriate follow-up questions, and to make sure there really was no harm.

But potential for harm is serious, people.

SENATOR RIVERA: Ma'am, if you could --

CYNTHIA RUDDER: [Indiscernible] --

Yes, last sentence.

SENATOR RIVERA: Sure.

CYNTHIA RUDDER: Last sentence.

SENATOR RIVERA: Yes, ma'am.

CYNTHIA RUDDER: Potential for harm is serious.

State fines should be given for potential for harm.

It's not given now.

And it should be high enough to be meaningful.

SENATOR RIVERA: Thank you, Ms. Rudder.

Last, but, again, certainly not least, Mary Somoza, patient advocate, Self-Direction Families of New York.

You're unmuted, Ms. Somoza. Go ahead.

Ms. Somoza, can you hear me?

MARY SOMOZA: Oh, oh, yes, yes.

SENATOR RIVERA: Good.

MARY SOMOZA: Sorry.

SENATOR RIVERA: Go ahead.

MARY SOMOZA: Can you hear me?

SENATOR RIVERA: Yes, ma'am.

Go ahead.

MARY SOMOZA: You can hear me. Okay.

I want to address the issue of home care, which a lot of the parents that we work with, that we have a big -- very large parent group, where recipients are of two types of home care:

Self-direction, which we receive through the office of people with developmental disabilities of New York;

And I am a governor-appointee to the advisory council of the office of people with developmental disabilities since 1991; appointed by our present governor's father.

And then we have the other -- the other part of our parents receive services through consumer-directed personal-care services.

And both of these entities are -- and some parents receive services from both.

These entities are fiscal intermediaries, and

so we are responsible, we, the family member, are responsible, for recruiting, training, hiring, firing... everything related -- work-related to the people who come to help us in our home.

Since it was -- has always been difficult for the last few years to recruit aides to work with our young adults and children, because of the very, very low wages of these -- that the agencies are paid.

But with COVID, our families have faced a huge phenomena.

And I think it's one of the issues that you were interested in hearing about, because you don't have data on COVID infections by people who are being served in home-care situations, and you don't have data of people who have died in those situations.

And neither do any of us.

We don't know because we're all isolated.

We are only joined together as through listservs, where we share information with each other.

But the underlying factor is that all of us lost help.

Some families did not want people in their homes, and decided not to have people coming from

the outside into their homes to help.

And many of them, like myself, I just physically cannot -- I have two quadraplegic daughters who are now 36 years of age. And just the physical work of taking care of them is, it's around the clock, it's 24/7. And I cannot manage on my own.

And, oftentimes, families like myself, in something like this pandemic, we are the resource of last resort when all our aides quit, because they don't want to travel on the subway to come to our homes, they're getting minimum wage, they are not getting PPE, or hazard pay, or any of the things that would maybe incentivize these people to come -- these aides to come and work for us.

And another element which is surprising, and as a total liberal and advocate for assistance for people in need, we have found that the unemployment benefits given to people who are unemployed have caused us to face a big shortage in people wanting to come and work with us, because many of the people who did work for us are -- were getting more in unemployment than they would be to work in our homes.

And I believe that's just a small niche,

because I do believe that unemployment benefit was a vital necessity to so many of the people in this country, that just saved us from total disaster.

But [indiscernible] several months [indiscernible].

I had one -- I had seven girls doing different shifts. And some of the families -- I mean, I have two girls.

But some of the families who have one adult, they had maybe help from four or five different caregivers, different shifts, and they end up just themselves.

And in my case, one aide, and one aide who would come for one week, and then the next week take off.

So we were -- families were getting completely overwhelmed with this situation.

And we can't -- these girls cannot get COVID testing for free. The agencies -- the CDPAP agencies do not provide free COVID testing.

[Indiscernible cross-talking] --

SENATOR RIVERA: Ms. Somoza, if you could finish your thoughts --

MARY SOMOZA: You don't get PPE.

SENATOR RIVERA: -- as your time is expired.

MARY SOMOZA: You don't get any of the advantages, and we're [indiscernible], the safest place for our families, for our family members.

SENATOR RIVERA: Ms. Somoza?

MARY SOMOZA: [Indiscernible cross-talking] --

SENATOR RIVERA: Ms. Somoza?

MARY SOMOZA: -- if you just see what happens in the nursing homes --

SENATOR RIVERA: Hello, Ms. Somoza?

Hello? Ms. Somoza?

MARY SOMOZA: Yes, [indiscernible].

SENATOR RIVERA: Your time has expired.

I just wanted to make sure to let you know that. I'm sorry.

MARY SOMOZA: Pardon?

SENATOR RIVERA: Your time has expired.

We're now going to move on to the questions.

MARY SOMOZA: Okay.

SENATOR RIVERA: But thank you for your testimony, ma'am.

We will lead off with the Senate, Senator Rachel May, recognized for 5 minutes.

SENATOR MAY: Thank you, and I'll be quicker than that.

I want to thank all of you, and I especially want to thank Bobbie and Cynthia for your anger, because I think it's so appropriate, and we need to hear it.

I just -- I mean, I -- you know, I have been a very strong advocate for more resources for home care, for figuring out the home-care workforce shortage, or trying to find answers to these problems.

But I guess I would like to hear from you:

What would make home care the most practical option for people, or a more practical option than it is right now?

OFF-SCREEN SPEAKER: You mean home care?

SENATOR MAY: Home care, I mean, it's what people want, and it is the most cost-effective to the State.

How do we make it so that people have access to -- more people have access to it?

BOBBIE SACKMAN: Well, if could I take a moment, we know we have a home-care crisis in this state, as I think we have nationally.

People come into the field, they don't stay, because of salary, because of working conditions.

The New York Caring Majority is fighting to

make these jobs dignified.

They don't -- they leave -- there was just a report released by Hand In Hand in the Hudson Valley, and they show that, something, I think, it was like 70 percent of people leave because there's no career ladder.

So we, in essence, have jobs that treat people really poorly. And if they have any choice, they leave.

And so what I was trying to say, and I'll be done in a moment, is that we need what we call a "caring economy."

And a caring economy invests state dollars and tax dollars in good-paying jobs, to bring people into the field, and to provide them with the training.

And we've watched our state, led by the governor, go in a very opposite direction.

SENATOR MAY: Thank you.

I know there was a report that came out just a week or two ago in the Hudson Valley, about how the people want these jobs, they like the jobs. It's not that these are bad jobs; they're just poorly recompensed and valued.

And we've got to figure that piece out.

[Indiscernible cross-talking by multiple people.]

SENATOR MAY: I have another question --

DAVID HOFFMAN: I think training is an important part of the equation.

In the North Country, we simply can't get trained home health aides.

And bear in mind, that the same people who provide home-based home health services are promoting home-health-aide services in assisted-living facilities.

So we've been working with our community colleges to try to develop more training programs. They're short of instructors.

So, it's a whole ecosystem.

But, absolutely, there needs to be a career path for people who enter the health-care professions as home health aides, just as there needs to be for people who start out as EMTs, as I did.

SENATOR MAY: Right.

Clear path and advancement possibilities to make it feel like a career.

I had a question for Mary Pritchard.

Is she still on?

Can you hear me, Mary?

OFF-SCREEN TECHNICIAN: She is not.

SENATOR RIVERA: Unfortunately, we lost her.

SENATOR MAY: Oh, we lost her?

Okay.

Well, one of the others of you might want to take it, I don't know. It was about the ombudsman program.

And she said something that suggested that it ought to be independent of the State.

I don't know if other people have --

CYNTHIA RUDDER: I'd like to talk to that.

This is Cynthia Rudder.

I truly think that -- I know that, last week, you had an ombudsman who said that she was independent.

That really isn't true.

The ombuds program is housed in the office of aging, which is under the governor -- within the governor administration.

That means it's not independent.

And it should be independent.

And there are a number of states where the ombudsman is outside the government of the state.

And I think it's very important.

When I was active in LTCC [sic], over many years, I had many ombudsmen calling me up, saying, Can you talk to the press? Can you call the health commissioner? Can you do, this, because I have so many problems, and I'm not permitted to really advocate.

They don't -- they're not permitted, really, to follow the Older Americans Act, which requires them to do things, like, help in legislation, talk to media, if necessary.

The State does not permit them to.

So they must be independent.

And I think that's what Mary meant.

SENATOR MAY: Okay. Thank you.

DAVID HOFFMAN: But there's one ombudsman function that applies during normal circumstances, and the need for a very different ombudsman function during a pandemic or other crisis.

And that, again, is a standard-of-care question that relates to the incident command system for emergencies.

SENATOR MAY: Okay. Thank you so much for that.

SENATOR RIVERA: [Indiscernible.]

Assembly.

ASSEMBLYMEMBER BRONSON: Thank you.

First, I just want to check with Chair Gottfried. Your hand was raised, but then went back down.

I'm not sure if you wanted to ask questions?

ASSEMBLYMEMBER GOTTFRIED: Yes.

ASSEMBLYMEMBER BRONSON: Okay.

Then I will recognize Chair Gottfried for 5 minutes.

ASSEMBLYMEMBER GOTTFRIED: Okay. Thank you.

This is just such a terrific panel, people I've worked with forever.

And I just have to give special mention to Cynthia Rudder for being, not only, for decades, one of the leading long-term-care advocates in New York, nursing home advocates, but for decades the only -- practically the only nursing home advocate in New York.

But I have a question for Bobbie Sackman.

All day during the hearing, everybody, virtually, talked about the need for more funding.

And I kept thinking to myself, who am I going to ask the question of, don't -- doesn't that mean we need revenue?

And I thought to myself, I'll ask

Bobbie Sackman that question.

But, you went and said the "R" word.

So maybe you can elaborate on it.

We've got a state where our governor insists that we have a cap on Medicaid spending, we have a cap on overall spending.

How do we -- how can we possibly provide appropriate long-term care, whether it's nursing home or home care, or anything else, unless we raise the necessary revenue from New Yorkers with high wealth, and then spend it?

I guess I've answered my own question.

OFF-SCREEN SPEAKER: I think you answered your own question.

BOBBIE SACKMAN: I was going say the same thing.

Yeah, I mean, in truth, I honestly don't know, you know, how much to add to that.

I think it's an attitude, I think it's a political philosophy, and I think Governor Cuomo has shown in the 9 1/2 years he's been governor, sometimes he talks like you thought he took office a week ago.

He's been overseeing this state for almost 10 years.

He can't have it both ways.

He can't be brilliant, and then pretend he doesn't know.

We need more money.

We are blessed, if you want to call it blessed, I don't know.

We have billionaires in this state.

We happen to be the financial capital of the world.

And, yet, we have a governor and an administration, and I'm sure there are those in the state legislature who agree with him, that says, no, no, no, they're going to leave the state.

They don't leave the state.

They get around the tax rules, but they don't leave the state.

So I absolutely, and I have a feeling there's many other folks throughout this whole day, this is -- we can't be in an austerity budget.

This is cruel.

We have just listened to heart-wrenching stories of death. And we can't blame the staff, whether it's home-care workers, people in nursing homes.

We have gone on a path of Medicaid cuts for

years now, and yet the governor and his administration won't own up to it, and they won't go for more revenues, because he's playing some kind of game with the federal government right now.

And so I think -- that I know it's hard.

Cuomo got a lot of kudos for his press conferences.

But, I think we have to -- yeah, I agree with you, thumbs down.

Remember when they used to say that Giuliani was America's mayor?

I keep just saying that because people have an image of New York.

So we have to keep calling it out, and not just to be nasty or anything like that.

People's lives are at stake.

Whether it's nursing home residents, the staff, and families, we have to try to get our voice out.

And I don't know how much to keep adding to that, and it's not easy now. The governor has built himself a big platform.

But we need to figure out how to keep fighting that, because we all need more money in this state.

The pandemic shows we need more money.

ASSEMBLYMEMBER GOTTFRIED: Thank you.

MARY SOMOZA: Listen to us.

The governor doesn't listen.

We get families writing and calling, and we answer every advocacy call out there, to stop the desperate cuts that they're doing.

Nothing.

At one point he used to answer my letters because I was an appointee.

Nothing.

Persona non grata.

It's very demoralizing for our families who are struggling with so little right now, and yet we're being asked to advocate for every single thing that we have fought for, our families have fought for, for the last 45, 50 years.

And the system will disintegrate, because programs will close because of lack of funding.

They will have to let people go, and they won't be able to afford to get those people back.

So everything that we built up to keep our family members in the community, earning money, going to jobs, it's all going to fall apart.

Because, my daughters can't get out of bed in

the morning. They need somebody to get them out of bed, and I can't do it.

I'm, more or less, your age, Dick.

And -- a little -- one year younger, I think.

But it takes a toll on families after a while when we have to do that physical caretaking.

And even with families who don't have to do the physical, some of their family members require around-the-clock care --

SENATOR RIVERA: Thank you, Ms. Somoza.

Ms. Somoza.

MARY SOMOZA: -- and assistance --

SENATOR RIVERA: Thank you, Ms. Somoza.

MARY SOMOZA: -- because of --

SENATOR RIVERA: Ma'am, your time --

MARY SOMOZA: -- [indiscernible] problems.

SENATOR RIVERA: -- the Assemblymember's --

MARY SOMOZA: And it is extremely hard.

SENATOR RIVERA: Ma'am -- Ms. Somoza, Ms. Somoza, the Assemblymember's time has expired.

Now I recognize Senator Sue Serino for 5 minutes.

SENATOR SERINO: Thanks again, Mr. Chairman.

And, you know, Bobbie, you've always been such a dynamo.

And I saw the report [indiscernible] you did in the press conference that you mentioned, that talked about astronomical rate in which people leave the home-care field because they feel very under-valued.

How horrible and sad is that?

I also liked what David had to say about needing to establish a career path and more effective training.

And I don't know if you were watching earlier, Al Cardillo talked about online training that could be very effective right now.

So that's the question I had:

Do you think that's a good step to take now, as we work towards a more long-term progress on this front as well?

Whoever would like to [indiscernible] the question.

DAVID HOFFMAN: Absolutely.

Online training has really come into its own during the pandemic.

I've been teaching bioethics online for years.

I've been teaching advanced first-aid and emergency medical technology for years.

It can be done.

We in the North Country, especially, because of our geography, and because of the distances that have to be traveled, especially in the winter, have a hard time connecting people who want to become home health aides to a training program.

So anything done online with a practicum as a separate component would be a huge benefit for long-term-care facilities in the rural parts of New York State.

BOBBIE SACKMAN: And I would only add to that, to make sure that those who want to take the online training, that there's a way they can make sure they have the technology to do it.

You know, we're seeing that with students.

We can't make assumptions about people.

CYNTHIA RUDDER: Since we're talking about staffing, if I can just bring up one other issue:

In most of the discussion about staff in nursing homes, and why nursing homes can't get staff, they talked about the money.

And I just want to say, I did a study, where I went into six or seven nursing homes, on all shifts. And [indiscernible] focus was with all levels of staff, asking them, what makes, for them,

a satisfying job?

And in the top 10, you would expect number one to be money.

It was not.

It was being treated with dignity.

And a lot of the reasons that the staff do not want to work in nursing homes -- and I don't care what the providers say -- is they're not respected.

And I can speak forever on this.

And look at my study.

Please, don't just say "give money, money."

Yes, they have to have a living wage, but believe me, it goes way beyond that.

Nursing homes, generally, are not nice places to live or work, and we have to change that, at least before I have to go, I hope.

DAVID HOFFMAN: Again, let me just reiterate that, need to distinguish between different kinds of long-term-care facilities, because what we think of as nursing homes, need one level of licensure and experience, and what is required at a assisted-living facilities is a different level of experience and training.

And we need to accommodate all of them.

SENATOR SERINO: Right.

And I'd also like to commend Cynthia for pointing out that we need a more independent enforcement in advocacy.

And I'd like to follow up with you more about this later on, if we could.

CYNTHIA RUDDER: Yes, I would love to.

SENATOR SERINO: Thank you, everybody.

Thank you. I'm done, Mr. Chairman.

SENATOR RIVERA: Thank you, Senator.

Assembly?

ASSEMBLYMEMBER BRONSON: Yes, next we'll recognize Assemblymember Ron Kim for 3 minutes.

ASSEMBLYMEMBER KIM: Thank you, Chairman.

Bobbie, you know -- so, instead of a caring economy that pays people to take care of each other in our community, it seems like we've actually normalized the devaluation of care work for the last few years.

Do you think there's a correlation between the devaluing of home-care workers and privatization of [indiscernible] facilities?

BOBBIE SACKMAN: Sorry, privatization of, what?

ASSEMBLYMEMBER KIM: Of care facilities, or,

you know, nursing homes.

BOBBIE SACKMAN: I do think that, from what we've heard, that more money is put into the profit side than into the direct-care work.

And I also think about this in the home-care side.

You need -- it is rocket science to even figure out who operates nursing homes, and that's very much done on purpose.

We have what I would consider a failure of a business model for nursing home care.

I would throw that into the home-care side as well.

When the profit comes in, you know the motives change.

And it doesn't even mean the non-profits are perfect either, but at least they're mission-driven.

And so we have -- what I've -- and Cynthia Rudder, I know, I think we used to see each other many, many, many years ago.

So this is all kudos to you, because this is what you spent your career on.

And -- but I think that, when the profit motive comes in, I've been basically talking to folks -- and this is why, Cynthia, you probably know

much more -- I'm beginning to hear words, like, oh, those operators, those owners, it's a cabal, it's like the mob.

There's so much fear, and we've heard about that today, the trepidation, to report anything.

There's something wrong.

That's not a caring environment; that's fear.

So we have something very poisoned or toxic at this point.

And I think that -- I don't know how we change that system, but I think we've gone way off base, and it's not mission-driven.

And so everybody pays for that.

CYNTHIA RUDDER: I'd like to just say that our whole nursing home reimbursement system does not have a lot of incentives to find quality care.

There is a lot of incentives for profit in the system for both not-for-profit and for profit.

So at some point we can talk about that and look at it.

That's, of course, Bobbie, you're right, I spent a lot of time on reimbursement.

Look at the incentives in the system of giving billions of dollars into the nursing home industry.

Are we getting anything for that money?

You could talk about -- I'd love to talk to some people [indiscernible] think about that, as he says, for decades. And we've tried to change the system together. And in little ways we have, but not enough. Not enough.

DAVID HOFFMAN: And it bears mentioning that we have no for-profit hospitals left in New York, not because there's anything inherently wrong about profit, but because we don't have the regulatory mechanisms that recognize the difference between non-profit, mission-driven organizations and for-profit business organizations.

SENATOR RIVERA: Thank you.

Thank you, Assemblymember.

So I'll recognize myself for 5 minutes.

Two things:

I certainly could not possibly -- it is impossible for me to agree more with Bobbie, regarding both the fact that we -- as well as everyone who's mentioned it so far, that we need more revenue.

And that it is beyond insane and unconscionable that we have not -- that we actually fear billionaires and millionaires "supposedly"

moving out more than attacking poor working-class people and vulnerable people who are going to get cuts in services, and they're the ones who are going to get screwed.

And, apparently, this governor does not -- simply does not care.

So, simple, we definitely need more revenue.

And the fact that he's been there for 9 years means that this is something that he has been doing for all of that time.

So, certainly, there's many of us who would not ever give him a pass on that.

But what I wanted to spend the rest of the time, I want to start with Ms. Rudder, and anybody else who wants to jump in, I want to talk about the ombuds pro -- the ombudsman -- ombudsperson program.

It is -- tell us a little bit about states in which the program is truly independent?

Because, I, like Senator May, and probably many others, are concerned, like we have heard from ombudspeople people today, who told us how sometimes the program is ineffective because people fear, that if they bring it up, that the -- that they will get -- you know, that they will not really be held to account, as far as the agency -- the entities are

concerned -- the care entities.

So could you tell us a little bit about how such a program works in other states, and maybe the bill that we could consider?

Go ahead.

CYNTHIA RUDDER: Yeah, I know, I worked with about six or seven states across the country on an issue about nursing home closures with the ombudsman program.

Michigan, for instance, is independent, the state of Michigan, and it works -- it works well.

There are issues.

When the ombudsman program is independent, there are issues always between the regulatory arm of the state and the ombudsman.

And I spent a lot of time in Michigan, trying to help them to work together.

And I found that a problem, you know, because, often, the reg -- and particularly in Michigan, the regulatory people were focused on just regulation.

The ombudsman was trying to raise the spirit of what's going on.

And there were fights between, the State saying, we have to the rules, and the ombudsman

saying, yes, but these are the rules.

But it works well.

There's nothing wrong with having an independent office -- it's not an office, but an independent part that's not under the state government.

They're more advocacy-minded.

They feel they can go to the press.

They feel they can go in on nursing homes.

They can do things; they don't have to ask permission to do things.

And they feel they can follow the rules and the Older Americans Act much more easily than worrying if they're going to insult or offend higher-ups.

SENATOR RIVERA: Yeah, and that -- and I certainly would love to look at further, because having that program be an independent one, certainly, the idea of it definitely appeals to me.

I don't know if anybody else wants to jump in --

CYNTHIA RUDDER: I could try to get -- do some research and get you some states that are independent. There are a lot of them.

SENATOR RIVERA: We should caucus. We'll

caucus.

CYNTHIA RUDDER: Another issue, by the way, is use of volunteers. I just want you to consider that.

SENATOR RIVERA: Okay.

CYNTHIA RUDDER: Having volunteers the way we do in New York is problematic.

That's another issue that has been raised about ombudsmen: not having enough paid staff that are professional.

You know, ombudsmen do a wonderful job, but they often, in my opinion, get co-opted by the nursing home, to be honest with you --

SENATOR RIVERA: Okay.

CYNTHIA RUDDER: -- because they're there, and they have to work through the nursing home.

They have the state office telling them, you got to work through the nursing home.

So they sometimes feel there are certain things they cannot do, or they have to be -- or -- and they're really -- they're not professional advocates.

They do wonderful jobs on some things, but when it comes to systemic issues, I think that's a problem.

You need really professional high staff.

So that's another way of a state sometimes do it differently.

And I would be glad to talk about that.

SENATOR RIVERA: You want to jump in on that, Bobbie?

MARY D'ERCOLE PRITCHARD: This is Mary Pritchard. I would like to speak.

SENATOR RIVERA: Go ahead, Mary.

MARY D'ERCOLE PRITCHARD: Mary Pritchard.

SENATOR RIVERA: Go ahead.

MARY D'ERCOLE PRITCHARD: Yes.

I was in the ombudsman program when it was purely volunteer, and it was run under the umbrella of the Red Cross.

And we were driven by one thing, and one thing only, and that was the resident; not the family, not the nursing home, no place else but the resident.

And that was so good because that's what you needed to hear.

Sometimes I had to be between even the family and the resident.

Many times between the nursing home and the resident.

But I was driven by the resident.

I left the nurse -- the ombudsman program because I stayed home with my husband.

And so I know the home-care situation very well too.

SENATOR RIVERA: Thank you.

MARY D'ERCOLE PRITCHARD: And that was in 2016.

SENATOR RIVERA: Thank you, Ms. Pritchard.

MARY D'ERCOLE PRITCHARD: But, that's when the change came about.

SENATOR RIVERA: Ms. Pritchard --

MARY D'ERCOLE PRITCHARD: And I really think it needs to be independent.

SENATOR RIVERA: Ms. Pritchard, thank you.

My time has expired.

Assembly.

ASSEMBLYMEMBER BRONSON: We'll now recognize Assemblymember Tom Abinanti for 3 minutes.

ASSEMBLYMEMBER ABINANTI: Thank you, again, Mr. Chairman.

First of all, to Mary Somoza, thank you for raising the issue of people with disabilities.

We have a very short window of time left this evening. I'm not going to get into that. I've

tried to raise it myself.

All I would ask is that the health chairs consider joining with maybe the mental-health committee, and holding a separate hearing of the impact on COVID on people with disabilities.

The department of -- I mean, OPWDD has reduced monies available, cut services, and totally ignored the fact that COVID requires greater services.

So, Mary, thank you for raising the issue.

I'm just going to stop right there.

And now I'd like to turn to Bobbie Sackman.

Thank you for your efforts and the comments you made.

Again, I'm going to be very brief.

I thought it was interesting that the governor proposed a piece of legislation called "New York Cares Act," which we passed in the legislature, but it was restricted to providing unemployment compensation to workers.

Everybody else had to deal with "New York Tough."

So the response for people who needed unemployment compensation got the New York Cares Act.

Everybody else, the policies that were causing harm to New York, instituted by the governor, his answer was: New York, tough.

Thank you, Bobbie.

BOBBIE SACKMAN: Uhm, do you just want me to comment on that? Or --

ASSEMBLYMEMBER ABINANTI: It's up to you.

BOBBIE SACKMAN: -- oh, okay.

I think where Cuomo is missing the boat, if you want to put it politely, is that he hasn't brought us together as a state.

I think people are naturally together.

We hear a lot about mutual aid because that's who we are as human beings.

But when you start splitting -- you know, whether it's workers or family members, or residents of nursing homes, or people who live in the community, he hasn't brought us together.

He's been playing this by the numbers, he's been playing to a national audience.

We have to give him some credit, the numbers did come down.

I don't want to say he didn't do anything, especially when you look at other governors around this country that are insane.

And so I want to give him credit.

But I think the only way I can respond is, we need a leadership that really brings us together.

And I'm seeing it's still too political.

And what we haven't talked about today, is where do the political donations go? And what role are they playing in decisions that get made along the way?

ASSEMBLYMEMBER ABINANTI: All right, Bobbie, thank you.

I think we agree.

But back on the topic today, just, what -- in the 30 seconds left, what should we take away from your testimony?

SENATOR RIVERA: There's 30 seconds left.

ASSEMBLYMEMBER ABINANTI: What should we do?

BOBBIE SACKMAN: What should we do?

ASSEMBLYMEMBER ABINANTI: Yeah, 25 words or less.

BOBBIE SACKMAN: All right.

You need -- you definitely need a legislative package that you can force the governor to pass.

You've got to figure out how the legislature has more power in the budget.

I'm sorry to say that.

We know that he has a lot of control.

And we need to make the families and people of New York know that you have a different view than the governor of New York in what's happening.

SENATOR RIVERA: Thank you for that.

Thank you, Assemblymember.

And thank you all members of this panel.

Enjoy the rest of your evening.

We are here for four more.

Okay?

Don't forget, folks, there's four more.

Here we go:

Panel Number 8, we are to be joined by:

Tania Anderson, chief executive officer of ARISE Independent Center [sic];

Meghan Parker, director of advocacy, New York State Association of [sic] Independent Living;

Douglas Hovey, president and CEO of Independent Living, Incorporated;

And, Keith Gurgui, or Gurgui (different pronunciation) -- I apologize if I mispronounced the name -- systems advocate, Resource Center for Access -- hold on, let me get the whole name correctly, and that is the -- systems advocate for

the Resource Center for Accessible Living, Incorporated.

ASSEMBLYMEMBER GOTTFRIED: [Inaudible.]

SENATOR RIVERA: Mr. Gottfried, can't hear you.

ASSEMBLYMEMBER GOTTFRIED: [Inaudible.]

SENATOR RIVERA: There you go.

ASSEMBLYMEMBER GOTTFRIED: There we are.

Okay.

So we have 4 more panels, but 16 individual witnesses.

So, do the four of you swear or affirm that the testimony you're about to give is true?

DOUGLAS HOVEY: Yes.

KEITH GURGUI: I do.

TANIA ANDERSON: I do.

ASSEMBLYMEMBER GOTTFRIED: Okay, fire away.

SENATOR RIVERA: And to lead us off will be Tania Anderson.

TANIA ANDERSON: Thank you.

Good afternoon, senators and assemblymembers.

Thank you for conducting these critical hearings, and thank you for considering my testimony.

I'm Tania Anderson, CEO of ARISE Child and

Family Service.

ARISE is the independent living center for the Central New York counties Onondaga, Oswego, Madison, Cayuga, and Seneca.

Since 1979 we have served people of any age with any disability, connecting with more than 7,000 people annually.

I feel a tremendous sense of urgency speaking to you today.

We are experiencing a once-in-a-lifetime crisis through the COVID-19 pandemic, yet this crisis has laid bare something we have known all along: that people in nursing homes are disproportionately poor, disproportionately people of color, and people facing a median life expectancy of just five months.

As Brian O'Malley of CDPAANYS testified on Monday, nursing homes are where we send the poor to die, and nobody wants to go to a nursing home.

However, collectively, as our elected officials, you have the power to fortify existing tools and programs to give New Yorkers the ability to live in the community with chronic health conditions or disabilities.

You have the tools to allow New Yorkers to

successfully age in place.

At ARISE, we administer the Open Doors Transition Center as one of the programs [indiscernible] people out of nursing homes and into the community.

Even during the pandemic, we have successfully transitioned 38 people since last October.

Our manager in this program told me a story about a 78-year-old man she was able to move from a Rome, New York, nursing home to an apartment in Camillus after working with him for nine months on the logistics.

On his moving day, she packed her car with his belongings, and helped him buy groceries for the first time in 18 months.

He was transformed and changed from a man waiting to die to a vibrant member of our community.

That it took 9 months pre-COVID to plan this move is both a testament to our staff's tenacity and the massive problems in our systems of care.

ARISE actively promotes changes in state policies to enable more people with disabilities to live independently in the community.

The U.S. Supreme Court's ruling in LC versus

Olmstead mandates that people with disabilities receive services in the most integrated setting possible.

At a time when nearly 40 percent of the state's fatalities from COVID-19 occurred in nursing homes, it is imperative that policymakers prioritize independent living for senior citizens and people with disabilities as the humane and responsible alternative to nursing homes.

ARISE is committed to helping people avoid nursing homes and live in the community of their choice.

ARISE administers programs such as the nursing home transition and diversion, and the traumatic brain injury waiver, programs, which leverage federal funding to set up service coordinators and personal-care aides.

The consumer-directed personal-assistance program is a critical piece to allowing people to remain in their homes by training and hiring their own aides.

The program is significantly less expensive than nursing home care.

The program has recently been under attack; the proposals to reduce the number of fiscal

intermediaries administering it, cut rates to levels that do not cover costs, and tightening eligibility.

It's ironic that the heroic personal-care assistants who risked so much are some of the lowest-paid workers in our system of care.

Rates proposed by managed-care companies presume that these workers will receive the minimum wage.

Our rapid transition housing and health-care advocacy programs help locate suitable housing that is affordable and accessible for people in danger of being placed in nursing home care.

As noted previously, our Open Doors program works with families and residents, helping set up discharge plans from the nursing homes, arranging for all the needed services for success in the community.

Staff in the program continue to monitor individuals for one year after discharge to ensure their success.

ARISE is committed to helping people still in nursing homes.

We administer the long-term-care ombudsman program that's been the topic of many questions this afternoon.

The ombudsman program, as you know, is the subject of an October 2019 report by New York State Comptroller Tom DiNapoli.

The report outlines serious deficiencies, and I encourage you to look at it closely.

Chronic underfunding has led to severe understaffing and other problems.

During normal times, staff and highly-trained volunteers are present to advocate for residents for their improved safety and quality of life.

Throughout the pandemic, ARISE's 2.5 paid staff, responsible for 6,895 beds in 64 facilities in our region, have been the critical link between families and their loved ones in nursing homes.

Since the facilities closed, our staff handled 93 cases and more than 900 consultations to residents, visitors, and staff.

Our programs manager is living this nightmare firsthand. He had not seen his mother since March 13th, and was able to hug her through layers of PPE only last week.

In conclusion:

I urge you to credit the programs that New York already has in place, and support them with adequate funding.

As the COVID-19 pandemic continues its grim instruction, we can learn to support all New Yorkers in dignity and safety.

Thank you very much.

SENATOR RIVERA: Thank you, Ms. Anderson.

Next we'll hear from Ms. Meghan Parker, director of advocacy of the New York State Association of Independent Living.

MEGHAN PARKER: Hi, and thank you so much for having me.

Again, my name Meghan Parker from the New York Association on Independent Living; or, NYAIL.

NYAIL and the independent living centers across the state provide a wide array of services [indiscernible] that help people stay out of institutions and live in the community with appropriate supports and services.

If COVID-19 did anything, it's only highlighted underlying issues that have long existed in nursing facilities and other congregate care settings.

Understaffing, poor infection control, and lack of oversight and enforcement all undermine the health and safety of residents in these facilities.

COVID-19 only exacerbated these, and there should be little doubt that these issues directly contributed to the crisis we saw in these facilities over the past several months due to COVID-19.

Further, the State also has oversight for other congregate-care settings, including adult homes and group homes.

And we saw similar crisis in those settings as well, yet the solutions to those problems are likely far different in an OPWDD group home, for example, than in a nursing facility.

And so I was happy to hear Assemblymember Abinanti's comments earlier, and join him, in calling for the State to investigate what happened in those facilities, to make sure it doesn't happen again.

Despite the setting, one of the most important things the State needs to do, though, is to have a plan in place so that people can rapidly transition out of these facilities in the middle of a crisis, like COVID-19.

NYAIL and many, many other statewide organizations did a sign-on letter back in April, that we sent to the governor, outlining quite a number of recommendations.

They're in my written testimony. I'll only touch on a couple.

But it's very important that services be provided -- that services be approved within a day; that assessments for home-care and consumer-directed personal assistants, which has proven to be very effective for infection containment, you know, during this time, that that -- those approvals be expedited, that people are quickly given a place to go.

So we saw that dormitories and hotels are completely vacant, or, mostly, used as places that people can quarantine and get out of the institution.

For people who rely on agency-managed home care, the State should quickly assess plans for capacity, and just send people there, based on capacity and [indiscernible], and shouldn't be able to turn people down in the middle of a crisis.

And just skip a few.

But nobody should be discharged from these institutions against their will, or transitioned or transferred to another institution.

But what I really want to spend a couple minutes talking about, and we've already heard quite

a bit about it, is the State's need to better invest in home- and community-based services.

This is where people want to live, and this is where people would be much safer.

Yet, the State has taken steps in the opposite direction, unfortunately, in recent years.

We've seen, as other sectors, wages increase and home care stays stagnant.

That people aren't able to recruit and retain aides to -- so that they can live in the community.

I don't blame them.

You know, these are mostly -- these home-care aides are mostly women of color who are providing these services.

It's physically- and often emotionally-taxing work; it's hard work.

And so if you can make more working at a fast-food restaurant, why would you stay, you know, in this field, unless it's a real calling?

But, it doesn't pay nearly enough, and we've seen that.

We heard about Hand In Hand, you know, released their study just last week, showing a crisis in the Hudson Valley.

We know there's been a crisis in parts of

upstate for a long time, and nobody should be sent to an institution because they can't get home-care workers.

The State's policies from the Medicaid redesign team, you know, in this past budget, a number of policies were put in place that will only make it harder for many people to access home- and community-based services.

And, right now, the State is in the middle of implementing the nursing home carve-out for managed care.

So this was passed a couple years ago, but, essentially, originally, the State had carved nursing homes into managed care so that, as part of their Olmstead plans, that people could more easily transition out of institutions.

But then the decision was made that the State needed to save money, and is doing this as a cost-savings measure in the middle of a pandemic.

It should be halted.

We heard a lot about long-term-care ombudsman program.

And NYAIL has long-called for additional funding so that people have that protection who are stuck in institutions.

And I will just wrap up by saying: That if we have learned anything from this crisis, it should be that institutionalizing people in an antiquated system of care, where their lives are put at risk, is morally and ethically wrong.

If the State acts now --

SENATOR RIVERA: Thank you, Ms. Parker.

MEGHAN PARKER: Okay.

Thank you.

Next, we'll hear from Douglas Hovey, president and CEO of Independent Living, Incorporated.

DOUGLAS HOVEY: Great, thank you.

Good afternoon.

My name is Doug Hovey, and I'm president and CEO of Independent Living, Incorporated, and Independent Home Care, Incorporated, two organizations that operate out of the mid-Hudson region.

I also serve as a member of The Most Integrated Setting Coordinating Council.

And I'll just mention quickly that we are failing miserably at meeting the most integrated-setting mandates in New York.

And we've got to do more work to try to turn

that around.

Let me begin by saying, thank you to the leadership, and thank you for the opportunity to speak with you today on behalf of all New Yorkers who find themselves caught up in the whirlwind of facts and fantasies that undoubtedly occur when family members become disabled and require long-term care.

Although there are a number of long-term-care solutions, the option that clearly dominates decision-making continues to be placement in a nursing home, based upon beliefs that is congregate-care facilities are the safest choice.

These assumptions have been deeply challenged as thousands of nursing home residents needlessly lost their lives to COVID-19.

The impact of these deaths has been immeasurable to friends and family members continuing to grieve while the first wave recedes.

Clearly, we have been traveling down the wrong path.

In the twenty-first century, institution-based services neither are our only option, nor are they the best option, for ensuring the safety and well-being of our most vulnerable

citizens.

Despite efforts to improve the institutional model, conditions in nursing homes today are very much the same as they were when my agency was first founded over 30 years ago.

It's time to adopt a new vision, one that embraces the right of individuals to actively participate in decisions that affect the care that they receive, and to live with dignity in the least restrictive setting.

And it's time to systematically phase out the last vestiges of a broken system, the costs for which can be measured in both dollars and spent lives, a system that necessitates government grant immunity as protection against its intrinsic flaws.

I'm firmly convinced that New York State can lead the transformation of long-term-care practices from a twentieth-century model, shaped by historical biases, misguided assumptions, and special interests, into a new age of community care that places the individual at the center of the service paradigm.

As much as people have a fundamental right to enjoy the first two phases of their lives, they also have a right to enjoy the third phase as senior

citizens.

And we have an obligation to improve the community level of supports needed to ensure that barrier-free living is more than just a theoretical construct.

We need to energize a process at the local level that's supported by the State, much like the Single Point of Access implemented by the New York State Office of Mental Health, which meets weekly to address the housing and service-support needs of people diagnosed with a mental illness.

The simple fact is, we need a similar model for people with physical and age-related disabilities that focuses on keeping people in their own homes as a priority, or help them find other homes if they are -- for some reason, can't stay in their home.

Subacute nursing facilities should not be seen as -- they should only be seen as a short-term remedy, and never as permanent housing.

In our hearts, we all know that warehousing large numbers of individuals in hospital-like buildings and --

SENATOR RIVERA: Sir, I'm sorry, I'm sorry to interrupt.

Could you turn your camera back on, please?

Just want to make sure that we keep it for posterity.

DOUGLAS HOVEY: I apologize.

SENATOR RIVERA: Go ahead.

DOUGLAS HOVEY: Yeah.

The simple fact is, we need a similar approach for people with physical and age-related disabilities that focuses on keeping people in their own homes.

Subacute nursing facilities should only be seen as short-term remedies, never permanent housing.

In our hearts, we all know that warehousing large numbers of frail elderly in hospital-like buildings, in double or triple occupancies and sharing bathrooms, inescapably creates a high risk for resident safety, and compromises quality of care.

Even before the pandemic, 82 percent of all nursing homes were cited for infection prevention and control deficiencies, according to the U.S. Government Accountability Office.

We can blame the 6500 nursing home deaths on the virus, but the real fault is not with the virus,

but, rather, with the institutional model of care.

In response to thousands of deaths here in New York State, multiple recommendations for change have been made, and they may all sound good on paper, but the reality is, they don't work.

It's just not possible to keep people safe in institutional settings.

The COVID-19 pandemic is a tragic wake-up call for all of us, and a test of our ability to reimagine long-term care in ways that replaces facilities with communities, nursing homes with real homes, and segregated approaches to care, with assistance that is fully integrated into community life.

There are several best-practice models out there that we can learn from.

The dam has burst.

Segregated institutional solutions have failed us time and time again.

Let's stop trying to plug the leaks and rebuild a new, smart, more compassionate system that honors and respects and values and protects our most vulnerable citizens.

SENATOR RIVERA: Thank you, Mr. Hovey.

DOUGLAS HOVEY: We can do this.

SENATOR RIVERA: Thank you, Mr. Hovey.

DOUGLAS HOVEY: We can do this together.

Thank you.

SENATOR RIVERA: Thank you, Mr. Hovey.

Next, we'll hear from Mr. Keith Gurgui -- I hope I pronounced your name correctly, sir -- systems advocate for the Resource Center for Accessible Living, Incorporated.

KEITH GURGUI: Can you hear me?

SENATOR RIVERA: Yes, sir.

KEITH GURGUI: Okay.

Thank you, chairs, and members of the committees.

My name is Keith Gurgui. I'm the systems advocate at The Resource Center for Accessible Living, or, RCAL, in Kingston, New York.

We have been the independent living centers serving Ulster County since our founding in 1983.

I also testify today as a member of The Carrying Majority, a resident of New York, an individual with a disability, a son of two registered nurses, and a recipient of long-term care, specifically, split-shift, 24-hour personal care.

In fact, it has been 11 years to this very

day that I became introduced to living life with a disability after suffering a spinal cord injury while on summer vacation in 2009.

My disability, as well as my experience working at RCAL, has given me a unique familiarity with the complexities of both receiving and providing home- and community-based services.

I am acutely aware that if it were not for being able to live home and work at home, my health and quality of life would be in severe jeopardy.

And that's true regardless of the current state of affairs.

But, now, after the outbreak of COVID-19, the idea of ever having to be admitted into a nursing home is truly terrifying.

And thanks to the great care I get, I have never been admitted to the hospital or gotten any bedsores for 11 years now.

So, knock on wood.

We know nursing homes are not the safest places for seniors, those who are immunocompromised, or those with disabilities, to be. And, for years, nursing home executives have put profit over people.

So it's no surprise that these institutions were not equipped to protect the residents they're

responsible for when the pandemic hit.

In contrast, home care is safer, and I think I'm a testament to that, and costs less, on average, than institutional care.

And New York's aging population is growing rapidly while our nursing homes are overwhelmed.

Now, I obviously have a clear bias in preferring to live at home, but I also acknowledge that there are those New Yorkers that, for one reason or another, have no alternative but to live in a nursing home.

That being said, it's unfortunate that there aren't stronger home- and community-based supports in our state.

I do recognize that many of you are in the middle of working hard to help home-care workers earn a dignified wage.

I thank Senator May for supporting the initiatives that she spearheaded, which was outlined on the July 29th release of The Carrying Majority's report on home care, including sponsoring legislation for home-care jobs and the innovations fund that would create pilot programs across the state to help boost home-care jobs.

I also want to thank Assemblymember Ron Kim

and his colleagues in the Assembly and Senate for their work on ending the legal immunity for nursing homes.

However, we can and we must do more.

Let's not forget, that even before the pandemic, advocates were fighting against the Medicaid redesign team's proposed cuts to Medicaid spending and the reimbursement-rate reductions, the fiscal intermediaries running the consumer-direct personal-assistance program.

Now, with an even more dire economic future looming, we should be protecting and strengthening our personal-care systems and discussing raising reimbursement rates, not slashing them, and have to raise the necessary revenue to do so.

If there is one message I would like to send today, is that New York is one of the key financial hubs of the entire world.

There are solutions to properly funding our essential workers.

But nothing worth doing is ever easy, nor is it always popular with the public.

This state, and this nation, is at a crossroads, and we can choose to either devolve into further depression and chaos, or we can muster our

collective courage and forge an equitable future for all.

I pray you choose the latter.

Thank you.

SENATOR RIVERA: Thank you for that, sir.

And we will -- let me make sure that I got everybody on the panel.

Yep.

The Assembly leads off in the questioning on this panel.

ASSEMBLYMEMBER BRONSON: Thank you.

We will begin by recognizing Assemblymember Kevin Cahill for 3 minutes.

ASSEMBLYMEMBER CAHILL: Thank you.

And I apologize in advance if I get cut off here in the middle, as Keith knows, of the very serious thunderstorm, because we're just about a mile apart in real life.

I wanted to just take a few moments to speak to the issues that are being raised by this particular panel.

They raise issues that are challenging in the best of times.

And, in these times, when we are hearing about budget cuts, when we are hearing about the

need for our general populations to monopolize our health-care system, these folks in the community for advocacy for disabled people, people with accessibility limitations, are oftentimes not the first people on our minds.

So I would like to give this opportunity for this panel to emphasize those things that they think are most important about what we ought to be thinking about with the accessibilities community.

And I would also urge each and every one of you to take some time after this hearing and visit, R-C-A-L, dot, O-R-G.

R-C-A-L, dot, O-R-G.

That's RCAL.org, and read Keith's newsletter that he publishes on a regular basis, and get a more detailed presentation about what his concerns are.

So with that, I would like to use my remaining minute and forty seconds and allow the panel to address what they think is most important.

KEITH GURGUI: Well, I'll just chime in to say that, I think hazard pay would have been nice for health-care workers running around and being called "essential."

They didn't have to do it.

They're here saving me and helping me live my

life.

That's the one thing that, really, I thought was kind of a slap in the face to them.

Hazard pay, the State and the feds didn't do anything in that respect.

But, that's my two cents.

TANIA ANDERSON: I would point out that, in your question, there's a fundamental philosophical issue, that there's a division by people who supposedly do not have a disability and those that do.

Accessibility benefits everyone in our community, whether it is someone with a physical disability, someone who wants to age in place, someone who has a temporary disability for whatever the circumstance might be.

We have found through this pandemic that many accessibility features that were put in place under the ADA now benefit us all, with touchless sinks in bathrooms and toilets in bathrooms, and doors that have a push button that we don't need to hold the handle.

So accessibility benefits everyone in our state.

And the more we can understand that, that

it's an investment in every New Yorker, not just a segment of New Yorkers, I think that's important.

The other piece is that, as a return on investment for any -- the dollars that are spent on home- and community-based services go further and faster than institutional care, and it provides a higher quality of life and fundamental power for the folks that are directing their own lives.

And that's what independent living is about.

SENATOR RIVERA: Thank you, Assemblymember.

Now recognizing Senator Jane [sic] Metzger for 3 minutes.

SENATOR METZGER: Thank you, Mr. Chairman.

I don't have a question specifically, but I just want to really thank you all for participating.

Your perspectives are so important.

It's so great to see you both again, Doug and Keith.

I participated in the Hand In Hand press conference that you mentioned, Doug, and in full agreement with you that New York needs to focus on how best to keep people in their homes.

It's the right thing to do for people's quality of life, for their dignity, and it's good

fiscal policy.

And I agree as well that this pandemic has really brought an important focus on the public-health value of home care as well.

So, I just wanted to, again, just thank you, and let you all know that, you know, I will do whatever I can to make that happen and support that.

Thank you very much.

DOUGLAS HOVEY: Thank you, Senator Metzger.

SENATOR RIVERA: It was Senator Jen Metzger, not Jane Metzger.

SENATOR METZGER: I wondered about that, but...

SENATOR RIVERA: My apologies on that.

Back to the Assembly.

ASSEMBLYMEMBER BRONSON: We recognize Chair Gottfried for 5 minutes.

ASSEMBLYMEMBER GOTTFRIED: Thank you.

I'm wondering, is there a segment of the population that can receive home care, but for whom being in a nursing home might be better?

And I'm thinking of people who have no other -- no one else in their home, no family in their home, no family living nearby, who could or would see them on a regular basis; no relationships

with neighbors who would stop in regularly and see them.

And would those -- would that population have more of an opportunity for socializing, whatever their socializing ability might be, in a nursing home?

And is that population a real number? Is it infinitesimal?

Are there ways to provide them socialization in their home?

And are we using those means today at all?

What is the real world on that question?

DOUGLAS HOVEY: Well, I think that there's a big opportunity to reimagine the long-term-care system as we know it.

We're still working with a system that's, you know, 50, 60 years old, large congregate-care facilities.

We closed most of the large developmental centers, most of the large psychiatric centers.

It's unfortunate that the nursing homes are the last on the list.

It will come. I don't know if we're quite ready for it, but I think it's time to reimagine and redirect and reinvest in smaller, more

community-like support-centers facilities.

There's great examples of this across the nation.

There are 300 models called the "greenhouse project," that's administered by a gentleman by the name of Bill Thomas.

They're smaller support facilities that accommodate about 12 to 15 individuals.

They each have their own individual bedroom, and they have their own bathrooms, and they have a lot more dignity. And they do share some common areas within the facility. And they have support teams that are utilized just in that particular facility, around the clock, for individuals who you identify, Assemblymember Gottfried, that we might think are not capable of living in the community with home-care support.

So I don't think it's either home care or nursing homes as we know them today here in New York State.

I think there's an entirely different model that needs to evolve, that provides a greater level of independence and support, and helps people to really be a part of the local community and not separate.

We have meetings all the time, routinely, weekly meetings, of our provider systems around the state, every single week.

And not once are we ever talking about the population of people in nursing homes. And that's a problem.

You know, during this whole COVID epidemic, we talked about people with mental illness living in the community, and we talked about people with developmental disabilities. But never once did we talk about people in nursing homes, because they're presumed to be separate, large, segregated institutions.

They're the forgotten people. There's an ageism around transferring people -- older to nursing facilities.

When we were negotiating different pieces of legislation several years ago with the department of health, for the nursing home transition and diversion waiver, the department of health said that they were willing to support passage of the law for the waiver, but, it would only apply to people under the age of 65.

That was the most insulting thing I ever heard.

I don't care if you're 115, you deserve to live in the community with supports.

And I think 100 percent of everyone can live in the community with supports. It's, just, you have to think differently and reimagine a different model.

TANIA ANDERSON: We're doing that work every day at ARISE with our Open Doors and other programs.

We're working one-on-one with folks that you would think don't have a community of support, don't have any way to being successful, and we figure it out.

Sometimes it takes 9 months, sometimes it takes 18 months, sometimes it's quicker. But we figure it out, one by one, with that intention because we're problem-solvers.

ASSEMBLYMEMBER GOTTFRIED: Thank you.

SENATOR RIVERA: Thank you, Assemblymember.

And now recognizing Senator Rachel May for 5 minutes.

SENATOR MAY: Thank you.

And I think I'll be quicker than that.

I wanted to start just by thanking Tania for what you just said, and for what you do.

I was -- I had the honor of giving ARISE an

award for 30 years of service in our community. And the service they have done is unbelievable.

And so thank you for the work that you do.

TANIA ANDERSON: Thank you.

SENATOR MAY: I just had one question for any and all of you, which is: What states should we be looking to for models of doing this right, either in the pandemic itself or more generally?

TANIA ANDERSON: I actually would look within New York because, as I mentioned in my testimony, we have a lot of tools in our toolbox.

We have a lot of things in place that, if they are adequately funded and given the profile and the acknowledgment that they deserve, we can use those existing tools to transition people successfully out of nursing homes, to keep people safe in the community.

We don't really need to reinvent the wheel. That always takes more time anyways.

We've got dedicated networks of advocates with independent living, with the CDPAP program, Open Doors, ombudsmen, et cetera, that are experts and know the work, and want to do the work.

SENATOR MAY: Thank you.

Anyone else?

DOUGLAS HOVEY: I think it takes redirecting the long-term-care dollars.

It's not something where we flip a switch and it happens overnight. It's a process, and it takes time.

But to Tania's point, there are other alternatives that make perfect sense.

There are lots of solutions, they're just not appropriately supported and funded.

So we really have to look at redirecting those funds and embracing other models.

I mentioned the greenhouse project.

I can't speak to other states necessarily. I'm not that familiar with other states so much.

But, that particular model is one to look at, if we do need to have small facilities for 12 or 15 people, that are part of a local community effort, that get services from the local community-based organizations.

Right now, there's no coordination between the state and the localities and the community-based organizations that are responsive to the needs of the long-term-care community. There's absolutely no support.

It's all targeted to other disability groups.

So we need a system like, I mentioned earlier, the Single Point of Access meets weekly, to talk about the service needs and the housing needs of people that have a mental-health diagnosis.

And that's administered by the office of mental health.

But if we present somebody, a quadraplegic who needs housing, who is homeless, to that group, they'll tell us, oh, we're not allowed to serve them.

So there's no mechanism in place at the local level to provide the supports that Tania is talking about.

It's very limited. I mean, it's done in pockets around the state, but it's not universal or consistent like the office of mental health's Single Point of Access, as an example.

SENATOR MAY: Okay. Thank you very much.

I'm done.

Thank you, Senator.

Assembly.

Assemblymember Bronson?

ASSEMBLYMEMBER BRONSON: Uh, yes.

We no further questioners on the Assembly.

SENATOR RIVERA: All right.

Senator Skoufis, I recognize for 5 minutes.

SENATOR SKOUFIS: Thanks very much.

And thanks to everyone who shared testimony, and especially good to see you, Doug.

Hope you're all well.

So I thank you, if for no other reason, than I think it's valuable for us, as legislators, to be challenged to think a little bit differently on these issues.

And over the coming weeks and months, we need to do that.

Now we've heard a lot today and last week about how vulnerable residents of nursing homes have been exposed to very dangerous situations the past five months.

We haven't heard as much -- hopefully, you all can shed light -- on how much more safe it is in the consumer-directed program with home care in general.

Certainly, it stands to reason that, you know, in a more one-on-one, or far more limited setting, you know, there's not going to be as much transmission of the disease.

But can you all speak to whether you had some data, or even some anecdotal evidence, as to how

many of your employees, your home health aides, have been infected?

How many of -- how many of -- how many New Yorkers who are enrolled in the consumer-directed program have become infected?

And if so, by who?

Can you speak a little bit about how the virus has existed or not existed in the home setting compared to nursing homes?

TANIA ANDERSON: So if I may, I can say that ARISE operates the consumer-directed personal-assistance program in Onondaga and Oswego counties.

We have 325 consumers enrolled in that program, with about 400 personal-care assistants.

We have had positive cases among staff and a couple of the consumers. It's fewer than 10, total. There have been no serious illnesses, certainly no deaths.

And because we're in the community, and because we are taking the same precautions as everyone on this call, in terms of self-isolating and PPE and handwashing, et cetera, the folks in that program are able to keep themselves safe just as you and I are.

And that's just one of the real strengths of the community-based services, is that a person receiving the services has the power.

We also have programs for people with developmental disabilities, and they are also all in the community.

So we do not have the issues that we've in some of the group homes because those very basic safety measures and precautions can be taken much more simply.

SENATOR SKOUFIS: And the rest of you, similar, very low numbers in your experience?

DOUGLAS HOVEY: We also have consumer-directed personal-assistance programs.

Since the mid-90s, the legislation was passed in '95, ratifying the program.

But we have 400 people in the mid-Hudson region.

We've had one death due to COVID; sadly, one death. And we've had about five or six of the workers who tested positive, that we're aware of.

Now, I did speak with two senior VPs from two of the largest managed long-term-care companies, the insurance companies, who shared that preliminary review of their data for the second quarter of the

year, tells them that the consumer-directed home-care model was exponentially lower in the number of COVID cases than was licensed home health care. And then, of course, nursing home was exponentially higher than the two home-care services models that [indiscernible].

SENATOR SKOUFIS: But when you get that, if you wouldn't mind sharing it, Doug, if you're able to.

DOUGLAS HOVEY: And I don't know if anything's been universally, uh -- uh, a database has been, you know, developed.

This was all sort of preliminary analysis of their data, but speaking volumes of the home-care models in supporting people in the community, keeping that infection rate down.

SENATOR SKOUFIS: Yeah.

And just, lastly, I know my time is running out.

I'm a fan of comparative politics.

I think we shouldn't reinvent the wheel if we don't need to.

Can any of you speak to what you view as maybe sort of the model states, or the model couple of states, that got it right over the past

five months, that have a better system, program, for home care in place than we do here in New York?

MEGHAN PARKER: I think we might have to get back to you on that.

You know, I'm not sure if we have heard, unless one of you can correct me if I'm wrong, of another state.

Of course, other states are just being hit hard now, and so, I guess, you know, they're kind of dealing with what we dealt with several months ago.

But I think we might have to follow up with all of you, if there is a model or a state that really got it right, because I'm not sure that we have that answer for you today. But we can definitely follow up, yeah.

SENATOR RIVERA: Thank you, Ms. Parker.

And last, but certainly not least, recognize Senator Sue Serino for 5 minutes.

SENATOR SERINO: Thank you, Mr. Chairman.

And, Keith, it's so nice to see you again.

I just want to say a big thank you to all of you.

I really want to drive Tania's point home, that making investments in accessibility benefits us all.

And here in Dutchess County where I'm from, we think differently, and have made accessibility a top priority.

In this pandemic, I think we've learned a lot about how we can do that even better, and how we can take innovative ideas we've gotten from complying with the ADA, and incorporating them into our communities now.

And I've been asking the same question of everybody today, so I'm going to ask of you guys too: If you had to set your priorities to improve the State's response to long-term care, going forward, what would be at the top of your list?

DOUGLAS HOVEY: Just quickly, I would say supporting a couple of pilot projects, maybe one downstate and one upstate, similar to the greenhouse project; smaller, more personalized, not-for-profit facilities that can support people in a more human -- humane and dignified way.

That's just one example.

TANIA ANDERSON: I would say, putting a halt to the assault on the CDPAP program in New York.

It's something that is -- has grown quite a lot, has been very successful, and it's less more expensive than folks originally thought.

It's far less expensive than nursing homes, far safer, and it's a good model, and it's something that independent living created, and it can be brought back to its core of independent living.

And please look at that issue.

SENATOR SERINO: Thank you very much, Tania.

DOUGLAS HOVEY: I would echo that as well.

The consumer-directed model started out in 1995, and now there's ninety -- almost 90,000 people who use that service every day.

It's critically important to their survival.

SENATOR SERINO: Yes.

Well, thank you, and thank you for everything that you do, for being advocates.

And I really appreciate you all being here today.

DOUGLAS HOVEY: Thank you.

TANIA ANDERSON: Thank you.

SENATOR RIVERA: Thank you, Senator, and thank you, all of you.

Doing one last check on the Assembly side, no questions over there?

ASSEMBLYMEMBER BRONSON: We are all set on the Assembly side. Thank you.

SENATOR RIVERA: All right.

Thank you so much.

You're all excused for your evening, but we will soldier on.

And with the next panel:

Gail Myers, deputy director of Statewide Senior Action Council;

Lindsey Heckler, supervising attorney, Center for Elder Law & Justice;

Marydel Wypych -- I hope I got that correctly -- co-chair of the Elder Justice Committee of Metro Justice;

And, Sandy Reiburn, president of Save Our Seniors.

Once the folks are on.

Okay.

ASSEMBLYMEMBER GOTTFRIED: [Inaudible.]

SENATOR RIVERA: Can't hear you [indiscernible] -- can't hear you, Dick.

One more time to unmute it, dude.

Now.

ASSEMBLYMEMBER GOTTFRIED: Okay. I was unmuted.

Can't trust everything you read.

So, notwithstanding that, do you each swear or affirm that the testimony you're about to give is

true?

MARYDEL WYPYCH: I do.

SANDY REIBURN: I do.

LINDSEY HECKLER: Yes, I do.

GAIL MYERS: I sadly do.

ASSEMBLYMEMBER GOTTFRIED: Okay.

SENATOR RIVERA: All right, we will start, actually, with Gail Myers.

GAIL MYERS: Okay.

I have been very sad all day, since listening to all this since 10:00 this morning, and since listening to it last week.

We are just in such a state of crisis.

And I very carefully scripted my 5 minutes so that could I get everything in, which, of course, I can't.

But I've been working in health-care policy and advocacy for a very long time, and I am so sick and tired of playing whack-a-mole with our health-care system.

You know, something happens, and it pops out, and we treat it as a crisis, and then something else pops out.

So, you know, nursing homes are popping out. We've been talking about the conditions in nursing

homes for dozens of years.

And, you know, and now home care is underfunded, and that pops out.

We really need something comprehensive, and I would be very remiss if I didn't start with saying:

We need to reimagine long-term care;

We need to fund it;

And we need to have New York health to include long-term-care benefits for everyone, from cradle to grave;

Redeploy those workers that are now very busy denying health-care costs into delivering service, and being at the bedside no matter where they're needed.

We have the population in the state.

What we don't have is the will to make significant change happen.

Today I'm testifying on behalf of the many callers to statewide patients' rights helpline, who asked us to share the challenges those needing care and their families have experienced during the pandemic.

You've heard from many people today, some of whom are our callers.

Most complained that residents were declining. Family members attributed this to social isolation, inadequate staffing, and lack of visitors who often supplement care.

You've heard that at both hearings.

You know, I want to make the point that there are people who are suffering because they have this horrible disease. They have COVID, they're alone, they're in the nursing homes.

But there are people who are suffering and declining who don't have COVID, who are in the nursing homes. And they were suffering before, and they're suffering more now because the staff has been called away to the higher-need cases.

Residents have been confined to their rooms, they are totally isolated.

Some were not receiving assistance in getting out of bed or toileting.

They have resulting bedsores and mobility issues.

You've heard that today.

And it is just totally demoralizing to say there is a better solution.

That solution, of course, is staffing. And I'm sure you'll hear more about that from some of my

colleagues on the panel.

But we did a quick look, and as the December reports on staffing that the facilities have to file, which have just been suspended for a while, less than 85 percent of the nursing homes in our state met the minimum recommended qualifications of 4.1 hours per resident per day.

Only about 15 percent met the minimum standards.

Now, there are two new studies that came out about the pandemic and staffing.

I refer to them in my written testimony.

But studying of California nursing homes, the finding was: Low RN and total staffing -- low total staff was associated with more infection-control deficiencies and with facilities that had COVID-19-positive residents.

A Connecticut nursing home study done by someone at the University of Rochester, found that higher RN staffing helped reduce virus transmission and deaths.

We've really got to get our hands around this now that the information is out there.

We've got recommendations on visitation.

We want compassionate-care exemption to be

expanded to people who have declining psychosocial health.

We believe there should be an essential support person assigned from every family that can, someone who has recently, frequently, visited who supports the person in a nursing home.

Open visitation for every facility.

Do not go with the reported -- with the 28 days required when no infection of staff or residents. We just think that's excessive caution.

And there needs to be clear communication plans about when things open, and when they go in and out of opening, as the stages go through.

We're particularly distressed today about the state of the long-term-care ombudsman program.

We're surprised and distressed to see that the ombudsman is not testifying before you.

We have not seen any indication that the extra federal CARES money, $1.2 million, has been distributed in New York State.

And we just need to remind you, of course, that new methods of volunteer recruitment have to take place for the ombudsman program.

It may be calling in the National Guard to help at this point, but those who are most likely to

be at risk of the disease are often the people who are volunteers in the ombudsman program. And they're not going back into these facilities until there is a viral treatment and a vaccine.

That's it.

[Indiscernible.]

SENATOR RIVERA: Perfectly on time, Ms. Myers. Thank you so much.

Next, we will hear from Lindsey Heckler, supervising attorney, Center for Elder Law & Justice.

LINDSEY HECKLER: I thank you for the opportunity to testify today.

I am a supervising attorney at the Center for Elder Law & Justice located in Western New York, where we provide free civil, legal, and advocacy services to older adults and people with disabilities.

We are partnered with the local regional long-term-care ombudsman program. And as that program's legal liaison, we advocate for the rights of people living in nursing homes and adult-care facilities.

The growing crisis of substandard care in nursing homes and other settings is not new.

The pandemic has exacerbated these issues and brought long overdue public scrutiny.

To keep things short, please see our detailed written testimony that discusses the longstanding issues with long-term care, and our recommendations.

While the department of health is not without fault for its handling of its oversight responsibilities before and during the pandemic, nursing homes have always had the legal responsibility to only admit residents they can provide the care and services to meet that individual resident's need.

However, we know they do not, and this is not a problem that's limited to COVID.

For example, a nursing home was cited in February when a resident in his bariatric shower chair could not fit through the doorway, was injured, and needed 18 sutures at a hospital.

The nursing home admitted a person without ensuring the basic hygiene practice of a shower could safely occur.

I use this example for this point:

Yes, that March 25th advisory issued to nursing homes did state that "no resident shall be denied admission solely based on COVID status."

However, the advisory did not negate the requirement that nursing homes only admit a resident if they can provide care and services to that person's needs.

DOH and CMS issued multiple guidance to nursing homes prior to March 25th, that, in part, discussed the importance of cohorting, having staff dedicated to COVID residents, and furloughing staff with potential exposure.

If a nursing home was short on staff or other resources needed to meet the needs of current residents, that nursing home should not have accepted new residents from hospitals.

A denial of admission due to not having sufficient resources is not the same as denying a patient admission based on a confirmed or suspected diagnosis of COVID.

The department of health also played a part in the thousands of resident deaths by failing to timely and fully enforce necessary nursing home regulations.

Infection-control practice in nursing homes have been a longstanding issue that have plagued facilities for years, including, for example, when COVID was silently spreading in our facilities.

On February 27th, a facility was cited when staff failed to wear appropriate PPE when entering a resident room or droplet precautions were in place.

This facility was again cited May 11th for infection-control violations.

March 20th, CMS stopped all state inspections, except for the focused infection control survey and complaints triaged at immediate jeopardy.

June 1st, CMS began allowing states to expand beyond those restrictions, at the state's discretion, including full surveys and complaints.

To our knowledge, DOH has not resumed full surveys, and seems to only be investigating complaints that are likely triaged at the IJ level.

So, serious quality-of-life issues continue every day unchecked in these facilities.

For example, a Western New York nursing home was cited for failure to maintain resident call-bell systems in working order.

This affected all of the resident units.

Staff stated, the system had not worked for months, and residents were on 15-minute checks and given a cat bell to ring.

Interviewed residents stated, they were not

given a bell to ring, did not know how to call for help, and had to scream for help.

One resident stated, he had lived there for about six months, and the call bell at his bedside had problems for the first three months, and completely broken for the last three.

DOH determined this deficiency was a pattern, and there was only the potential for more than minimal harm, but no harm occurred.

This issue was happening for months, and residents were left to scream for help.

I highly doubt no harm occurred.

Think of it:

You're sick, in pain, waiting for assistance to the bathroom, and you do not get it.

You have to cry out for help, and you do not know whether that help will come.

No harm?

Really?

Were medical records reviewed to make sure patients got their medications on time?

No harm.

This facility had 117 citations over the past 3 years, compared to the statewide average of 27, including being cited 3 times for infection-control

violations.

How long is this facility going to be allowed to continue to operate before effective action is taken?

Is the State going to allow another Emerald South where residents died before it was closed?

DOH must resume its full certification surveys, and properly tackle its backlog of over 5,000 complaints, and actually call the complainants.

It is time that New York, DOH, and society stop being complicit in substandard care that occurs in our nursing homes.

The business as usual is not working.

We are willing and able to work with the legislature, DOH, and others to improve the quality of care, not only in our long-term-care settings, but also in the community.

Thank you for your time.

SENATOR RIVERA: Thank you. Perfect timing, Ms. Heckler.

Next we'll hear from Marydel Wypych.

I hope I pronounced your name correctly, ma'am.

MARYDEL WYPYCH: Hi. It's Marydel Wypych, but that's okay.

SENATOR RIVERA: Marydel Wypych. Thank you.

MARYDEL WYPYCH: I'm with the Elder Justice Committee of Metro Justice, which is a Rochester-based volunteer advocacy organization.

I also want to say that, my mother, who passed away in February, lived for over 13 years in a nursing home.

So that's how I came to advocacy.

Governor Cuomo compared COVID-19 in a nursing home to fire in dry grass.

While the residents have many health problems and require intimate care, we assert that "the dry grass" is actually the systemic, long-time neglect and inaction by New York State and federal governments to nursing home problems which have been documented for decades.

Please consider two major contributors to over 6400 COVID nursing home deaths:

Inadequate direct-care staffing levels, and lax department of health enforcement of nursing home regulations, which Lindsay just talked about wonderfully.

Although today's residents require many hours

of direct care each day, between 10 and 15 percent of New York State nursing homes meet the federal guidelines of 4.1 direct hours -- care hours per day, which is a ratio of about 1:6 residents.

Some homes have ratios of 1:20.

During this pandemic, many nursing homes have experienced even lower staffing levels due to illness and attrition.

Direct-care ratios have been reported as 1:20, and even 1:30.

Overtaxed, tired staff make unintentional mistakes, take shortcuts, which may lead to resident illness, accidents, and deaths.

These are unacceptable at any time, but especially so in a pandemic.

Over 20 years of research has found that higher staffing levels positively -- are positively related to residents' health, safety, and well-being, and lower staffing levels are associated with decreased functional outcomes, such as moving on their own and taking care of themselves.

An increase in medical issues, such as bedsore, urinary tract infections, weight loss, falls, and serious injuries occur, and, then, they require even more staff attention.

Lower staffing levels are associated with increased use of drugs and restraints to control residents.

Additionally, lower staffing levels are related to more health-code violations.

The department of health's July report concluded that overall rating of nursing homes were not associated with the number of COVID fatalities reported.

We question those findings.

We compared the number of COVID deaths in the 33 Monroe County nursing homes to their star ratings, with "1" being well below average, and "5" being well above average.

Our results indicated that, of the 125 deaths in Monroe County, 16 percent occurred in nursing homes with 3- to 5-star ratings, and 84 percent occurred in nursing homes with 1- to 2-star ratings.

Facilities with the lowest ratings had lower staffing levels.

It is clear that an industry that puts profit above health and safety and quality of life will not meet federally-recommended staffing standards without legislation.

According to the CDC, one to three million

serious infections occur in U.S. facilities, and 380,000 residents die of those infections every year.

According to the government accounting office (the GAO), reported May 2020: Infection-control deficiencies were widespread and persistent in U.S. nursing homes prior to COVID-19.

40 percent received infection and prevention deficiencies in 2018 and '19, and '19 had deficiencies of multiple consecutive years, 19 percent.

Nursing homes with 5-star ratings had 9.7 percent, and nursing homes with 1- to 2-star ratings had 35.7 percent, of serious deficiencies across multiple years.

The report also found that 24 percent of New York State nursing homes have infection-prevention deficiencies, such as not using proper hand hygiene or use of procedures to mitigate spread of illness across multiple years.

The GAO report appears at odds with the DOH report, it seems.

Using data from the LTCCC website, U.S. nursing home citations, 2016 to '19, New York State inspectors reported deficiencies as

harm to residents fewer than 2.2 percent of the time. Fines are rarely leveled even for severe violations.

And I think this was mentioned earlier as well.

And when those fines are levied, they're often small and meaningless.

So with a history of deficiencies and no accountability, it's no wonder that COVID-19 spread through nursing homes and caused 6400 deaths.

Please use this tragedy -- the tragedy of this pandemic as an opportunity for change.

To end the systemic long-term neglect and inaction, we urge you to recommend to the New York State Legislature, this year --

SENATOR RIVERA: Very quickly, if you could wrap up, please.

MARYDEL WYPYCH: Yes, I'm almost done.

-- pass the Safe Staffing for Quality Care Act based on CMS staffing guidelines.

Take actions to assure that the department of health strongly asserts its regulatory powers over nursing homes, through unannounced inspections, [indiscernible cross-talking] --

SENATOR RIVERA: Actually, I'm going to have

to -- I'm going to have to [indiscernible] we have to move on to the next person.

Thank you, Ms. Wypych.

I believe that we have been joined again by Ms. Sandy Reiburn, president of Save Our Seniors.

SANDY REIBURN: Okay.

SENATOR RIVERA: Yes.

SANDY REIBURN: Can you hear me?

SENATOR RIVERA: Yes, we can.

Go ahead.

SANDY REIBURN: Okay. Thank you.

Thank you for having me, and thank you for your yeoman's work, how wonderful you all have been last Monday, and then again today.

I'm the daughter of a 99-year-old woman who died earlier this year.

And my testimony has to do with the problems that were inherent in long-term-care facilities and nursing homes well before we ever knew what COVID-19 was.

And I sent in a testimony, which I call "Truth with a Cudgel."

And so what I'm going to do is read you some of the facts that I put together, that I think, in some cases, duplicate much of what is said, but, in

other cases, reinforce items that I think should have been more focused on.

So, Fact 1:

The department of health, the public health and health planning council, Dr. Zucker, are de facto enablers of harm to the elderly, demonstrated by years of malfeasance, and confirmed by the commissioner's evasive testimony on 8/3.

Fact:

The malfeasance and mismanagement of the department of health, in its failure and responsibility and oversight to ensure safety for those --

Are you still hearing me?

Yes. Okay.

I don't see me up there, which is just as good.

-- the malfeasance and mismanagement of the department of health, in its failure of responsibility and oversight, to ensure safety for those New Yorkers relying on this agency to protect them, has gone on for years.

There has been a systemic failure, which has allowed the coronavirus to find its perfect victims: Those who were never attended to sufficiently long

before, as I said, we ever heard of COVID-19.

Fact:

If New York State Title 10 CRR requires and subjects long-term-care facilities to inspection and the enforcement of conditions, operations, and quality of care, unquote, why would Governor Cuomo erode liability options which would normally hold accountable those who flouted their New York State licensed-facility oversight obligations?

Any pretext often avowed for the New York State Attorney General; i.e., the executive branch's attorney, like Barr is to Trump, to investigate its own sister agency, the department of health, will be a de facto conflict of interest and the final blow to any pretext of credibility of New York State government's stewardship of New York -- of nursing home accountability and purported honest oversight.

Fact:

Any pretext often avowed by the New York State Department of Health; i.e., the appointees of Governor Cuomo, to investigate itself; namely, to remedy itself, in view of the well-known and widely-publicized failures of that department's oversight, enforcement, and moral

imperative, must not be permitted.

Fact:

Any impaneling of oversight committees generated by a new bill to fund its realization must be thoroughly vetted prior to their appointments.

A prerequisite of a clean record, showing no campaign financing, nor political donations, must be required.

The usual suspects must not be certified as independent judges.

Fact:

Ombudsmen could and should play an important role, but irrespective of how much funding to increase their numbers, they will never fulfill their promise to be the interlocutors protecting the nursing home patient, unless the following is also addressed:

Ombudsmen have no enforcement powers.

Ombudsmen may be interviewing fearful patients while operators or their staff hover close by.

People have addressed that.

Ombudsmen are confronted by limitations inherent in Alzheimer's patients, as well as a majority of elders with hearing loss, and an ability

to fully understand and sufficiently exchange problems and issues succinctly, like my mother.

The department of health is a house of cards.

I won't go into those facts, but please do read my testimony.

The public health and health planning commission is a -- council is a failed agency.

It fails due diligence prior to licensing an applicant.

It fails to prevent bad owner-operators from certification.

It has council members with conflicts of interests. Recusal is inadequate.

Whoops.

Start my -- you're asking me to restart?

SENATOR RIVERA: No, no, no.

We could hear you [indiscernible cross-talking] --

MARYDEL WYPYCH: Oh, I got a message up here.

Sorry.

The PA -- the public health and health planning council has only one consumer rep.

A restructure is imperative.

The public health and health planning council ignores chronic histories of violations when

licensing ongoing operators.

Fact:

If you go to the Chris Glorioso's report on March 29th, NBC, it will tell you that the governor has quietly signed off on giving $850 million, to be split among more than 600 nursing homes.

And Leading Age, James Clyne, thought it was a great idea.

Come on folks, let's get real.

Fact:

Until and unless there's coordination with New York City's guidance on property ownership of facilities, there will be an unsustainable deficit of facilities.

The left hand doesn't know what the right hand is doing.

Evasion by New York State enables evermore real estate churns, like in my mother's case, and the dismantling of assisted-living and nursing home facilities in New York City.

And, then, I don't have really any time, but have I to say one thing:

The MLTC 24-hour home-attendant shifts allow slave-labor wages of only 13 hours paid for 24 hours.

Remarkable and disgusting.

How can you let this continue?

And if I had more time, I'd tell you some more stuff.

SENATOR RIVERA: I'm sure --

SANDY REIBURN: But please do read --

SENATOR RIVERA: I'm sure, Ms. Reiburn, not only is your testimony all on the record, but, number two, I know that a couple of my colleagues want to follow up with you, so I'm sure you will have an opportunity.

And to start us off --

SANDY REIBURN: May I say one last thing?

I have done a Nancy Drew-like investigation of collusion between nursing home owner-operators.

I have paper trails --

SENATOR RIVERA: Well, I'll say this, Ms. Reiburn -- I will say this, Ms. Reiburn, because we have to get to the questions, but I am sure that the word "investigation" peaked a colleague's ear.

That would be Senator James Skoufis.

SANDY REIBURN: I'm available, the price is right.

SENATOR RIVERA: We'll start off with Senator -- with Senator Rachel May, recognized for

5 minutes.

SANDY REIBURN: Thank you.

Thank you for your attention.

SENATOR RIVERA: Yep.

SENATOR MAY: Thank you.

And thank you, Sandy, for bringing up that issue that we've been hearing about today, of people being afraid to report.

And I would like you or Gail to comment, or Lindsey to comment, on, to what extent do we think that there is rampant underreporting of problems that are -- have been occurring in nursing homes and long-term-care?

SANDY REIBURN: I think there's total underreporting.

And I've been told by one of the very wonderful ombudsman, "What can I really do?"

Come on.

This is a -- really a sham.

All the rules, regulations, codes, and checklists in the world will never mitigate this unless you go to the source, which is the licensing of bad operators.

LINDSEY HECKLER: Can I jump in?

[Indiscernible cross-talking by multiple

people.]

LINDSEY HECKLER: Okay.

We have clients, and then in my work as the legal liaison with the Regional 15 -- Region 15 ombudsman program, we counsel them on what their options are, and their next steps.

However, when they tell us, No, I do not want you to file -- help me file a complaint with the department of health; No, I don't want you to help me file a complaint with the attorney general's office, we're bound to that confidentiality.

We also represent a lot of residents in nursing home involuntary discharges.

Even though we start the appeal process, and that goes through, we have clients who don't want us to push on DOH to actually do a complaint investigation because they're afraid of retaliation.

It is a legitimate fear.

GAIL MYERS: We have people that we refer to the department of health hotlines, because they're calling us, and we say, this is something that should be investigated, in our opinion.

And it's a pretty good opinion.

The phone is not answered.

So someone will finally get the gumption up

to make the phone call, and nobody answers at the DOH. Or, they answer, and they say, well, we'll look at this, but it doesn't seem like it's imminent harm. So we'll put it on file. And when we go to do our survey, you know, maybe in 18 months, we will check on it.

People are getting no sense of recourse when they do have the courage to make a complaint.

And it is just demoralizing for people in the facilities.

They also don't want to blame the staff, but they do find that they fear that they may be retaliated against.

I was an ombudsman in an assisted-living facility in the Capital District.

People would say, I can't talk to you because they'll see me talking to you.

That is an amount of fear that we have to overcome.

I, instead, would go to play bingo with them, and sit next to them, and they can talk to me during bingo. And that's how I found out a lot of stuff, but I never won.

SENATOR MAY: Okay.

That's all I had.

Thank you.

SENATOR RIVERA: Thank you, Senator.

Assembly?

ASSEMBLYMEMBER BRONSON: We will start with Chair Richard Gottfried, 5 minutes.

ASSEMBLYMEMBER GOTTFRIED: Thank you.

Ms. Heckler, you were talking about the whole issue of, quote/unquote, no harm being found in violations, and you were talking particularly about nursing homes.

This hearing is also about adult homes.

And we've had a very difficult time over the years dealing with enforcement legislation about adult homes.

Is this issue of serious violations being written up as, quote/unquote, no harm, is that a phenomenon in adult homes as well as nursing homes?

LINDSEY HECKLER: Yes.

And one of the challenge with adult homes and adult-care facilities, in general, is, unlike nursing homes, department of health does not publicly post on its profiles' website copies of the actual surveys or statements of deficiencies.

All they do is put the regulatory -- regulation that was violated.

So, it's really hard, unless you FOIL-request every single report from the department of health, to actually point examples.

And you have the same issues in adult homes as nursing homes, where residents are afraid of retaliation.

And to further complicate matters is, many residents, if they do complain, they're threatened with illegal evictions.

And unlike nursing homes which have the right to appeal to the department of health, adult-care facilities don't have that right.

Instead, if the resident says, no, I'm not leaving, it's up to that adult home to initiate the special-court proceeding in local courts.

And that's a problem.

And as a result, we see a lot of harms being swept under the rug.

ASSEMBLYMEMBER GOTTFRIED: Thank you.

And I just want to say to Ms. Reiburn, Jo Anne Simon [ph.] let me know to expect really terrific testimony from you, and you did not disappointment.

SANDY REIBURN: Well, I hope I didn't shame myself, but, you know something?

I am willing to sound like an idiot on behalf of all those people who don't have a voice.

This is their 8 minutes and 46 seconds being taken away from them.

We need the strength of the Assembly and the Senate to step up and push back on this emperor, and get this done.

ASSEMBLYMEMBER GOTTFRIED: Thank you.

SENATOR RIVERA: Ditto.

And since -- remember I told you, Ms. Reiburn, that that was somebody piqued by the word "investigation"?

That would be Senator Skoufis, recognized for the next 5 minutes.

SANDY REIBURN: I know. I've fallen in love with Senator Skoufis.

You like old ladies?

SENATOR RIVERA: He is dreaming, he is dreaming.

SANDY REIBURN: No, really.

SENATOR RIVERA: [Indiscernible] 5 minutes.

SENATOR SKOUFIS: You're making me blush.

I don't even know what to say to that, other than, I'm taken.

I'm sorry.

But I really don't have a question.

I just want to thank all of you for your testimony.

And, Ms. Reiburn, I would love to follow up with you. You mentioned you've done a lot of research.

SANDY REIBURN: I've got a lot of stuff on Safire, for example.

SENATOR SKOUFIS: Terrific.

So I'd love to connect afterward.

And I just ask that you look forward to my office reaching out.

SANDY REIBURN: Thank you. I will.

SENATOR RIVERA: Thank you, Senator Skoufis.

Assembly?

ASSEMBLYMEMBER BRONSON: Yes, thank you, Mr. Chair.

I will recognize myself for 5 minutes.

Thank you to all the panelists for your testimony today. It's been really helpful.

And I look forward, Gail, to reading your full document.

I always get more information and learn a lot when I do that.

So -- but I want to ask a couple of other

people questions, though.

First of all, Ms. Heckler, you just responded to Chair Gottfried's question, and you stated what the DOH has to post -- or, I guess, what they do post in connection with inspections, and the regulations that were violated that they found in a nursing home.

Could you just expand on that a little bit?

Because I'm not familiar with it:

What do they have to post?

And, don't we know what the corrective actions are, or what the fines are, in those postings?

LINDSEY HECKLER: Yeah.

Sorry, you're cutting out.

But, for nursing homes, the department of health, on their profiles' website, the nursing home profiles, they post, unfortunately, redacted -- [indiscernible] redacted, copies of their inspection reports, also known as the "Statement of Deficiencies."

Along with that, they include the directed plan of correction.

That's also a part of a federal requirement.

For the adult-care facilities, adult-care

facilities, or, "assisted-living," as it's commonly called, is primarily State-regulated, not federal regulated.

So as a result, it's up to the States to pass law to really protect the residents and provide oversight.

In the adult-care facility profiles' website, only shows the violation or the regulation that was violated, not the actual deficiency or the statement of deficiency.

So when the department of health goes into a facility, finds a violation of a regulation and issues a deficiency, they have what's called the "statement of deficiency."

That does not currently exist on that department of health profiles' website.

And I've been doing this since, roughly, 2016. And every year they say, we're working on it.

Why should people have to call up and ask?

They should be able to just click on a button and see it.

And, also, I really encourage the legislature to pass a law that requires nursing homes and adult-care facilities to post their statements of deficiencies on their public website.

That will go a long way to at least pushing for change, and also educating the consumers.

ASSEMBLYMEMBER BRONSON: Yeah.

So, you know, in the area that I'm more familiar with, and that's labor law, we require postings all the time, if a company has been found in violation, and so that all the employees know.

And, certainly, I think we should consider legislation in the same arena here, where we would post that for the family members and for the employees at that [inaudible].

LINDSEY HECKLER: And I think you could do that also with the staffing levels.

At -- nursing homes are required to [indiscernible] staffing on Skype.

Why not also require them to post that on their public website.

ASSEMBLYMEMBER BRONSON: Thank you.

And I apologize. My Internet connection is continuing to tell me it's unstable, so I'm not sure how much I'm coming through.

But, Marydel, I wanted to give you the opportunity.

You and I have met a couple of times, we talked on the phone.

You were going to begin your list of recommendations of, what can we do -- to be done, to deal with the systemic failure, and the failure of oversight and the staffing issues?

I'm going to yield my minute twenty seconds to you, if you want to finish, and let us know what your recommendations would be to take corrective action.

MARYDEL WYPYCH: Okay.

Well, I almost got through.

Well, we want the department of health to assert its regulatory powers over the nursing homes, by doing unannounced in-person inspections.

Have true and meaningful findings of harm.

This was discussed earlier.

Meaningful fines, and, revoking licenses for chronically poor-performing homes.

So those were the recommendations.

And, also, please pass Safe Staffing.

Because we talked -- or, it's been discussed over and over again about the staffing in nursing homes being a problem.

So those recommendations.

ASSEMBLYMEMBER BRONSON: And -- okay.

Thank you, Marydel.

And I just want to point out, and your point here is, this isn't just COVID-related.

These problems existed long before COVID, and COVID [indiscernible] happened, and take those corrective steps.

Is that correct?

MARYDEL WYPYCH: Right, exactly.

Exactly. It didn't just happen starting in March. This has been going on a long time.

ASSEMBLYMEMBER BRONSON: Great. Thank you.

My time's up.

SENATOR RIVERA: Thank you, Assemblymember.

Who is next on the list over there?

We don't have any current senators asking questions.

ASSEMBLYMEMBER BRONSON: Okay. Thank you.

We next will have the ranking member of health, Kevin Byrne.

ASSEMBLYMEMBER BYRNE: Thank you, ladies.

I also want to thank the witnesses that have been speaking before you. I've taken a little bit of a break, asking questions, and I've just have been listening.

But, just because I don't ask questions doesn't mean we're not listening.

I'm very appreciative of everyone that's giving their testimony today, and sharing their stories and their experiences.

But, particularly, I want to ask a couple questions to, I believe it's Ms. Heckler, and Marydel. I'm sorry, I don't want to mispronounce your last name.

But it seems to me that, of significant concern is, the quality in the nursing facilities that it's, obviously, not universal.

I believe, Ms. Heckler, you highlighted some specific examples in nursing facilities that have been problem areas for residents.

And I believe one of you cited the DOH report, which concluded, it's on page 25, in the "Conclusions," that "data suggests nursing home quality is not a factor in mortality from COVID."

Is it safe to say that you two would disagree with that conclusion?

LINDSEY HECKLER: Yes.

ASSEMBLYMEMBER BYRNE: Okay.

You -- would you both suspect that, if we had a complete comprehensive number of nursing home deaths, that could tell a different story, potentially?

LINDSEY HECKLER: I think, yes.

MARYDEL WYPYCH: I do, too.

I think the problem with the DOH report was that, it only looked at a short window of time, just a certain number of weeks.

So the data that they looked at was very incomplete, in our opinion.

So I think that was a problem with it.

And I think if we looked at -- if we ever found out how many total deaths occurred of people who were living in nursing homes, including the ones that died in hospitals, we would have a better picture.

ASSEMBLYMEMBER BYRNE: Including the number of deaths that continue to occur after the peak of nursing home deaths in the report.

I believe it was after April 8th, we've continued to lose lives.

It's not like after the peak, all of sudden, it just went away. We continued to lose lives, tragically.

That was my first question.

I also wanted to bring this up, I was going to mention this later with some other witnesses, but, it seems that it might apply here too:

When we're looking at the quality of nursing facilities, we're looking at more of a regionalized basis, or, localized, very specific; not statewide numbers.

And one of the things that has troubled me is, we hear the department and the administration talk about how the state is -- has done so well because we have a lower percentage of deaths in nursing homes, partially because, quite frankly, [indiscernible] had so many total deaths.

But if you look at specific counties, and you don't look at the entire state, it starts to tell a very different story.

And I bring this up because, my colleague, who is not on any of these committees, Mr. Hawley, represents Orleans County. And I believe that county, close to 54 or 55 deaths were in nursing facilities, or adult-care facilities.

So that tells you a very different story than looking at the total statewide number.

Do you believe that the State would benefit from having a separate or a different or additional study that would drill down into specific nursing facilities, and would look more at the quality of care?

LINDSEY HECKLER: I think it would.

And I would also like to point out that, in Western New York, we have had three specific infection-control surveys, that DOH found immediate jeopardy.

There was a nursing home in Orleans County that was cited at immediate jeopardy for infection-control violation.

So your colleague is correct, that he should be concerned about what's going on there.

ASSEMBLYMEMBER BYRNE: Okay. Thank you.

And I kind of want to go to Sandy, and just tell me, you know, say something like, tell me how you really feel, and unload.

But I just -- I appreciate your testimony.

And I'll leave it up to my colleagues to ask additional questions.

Thank you so much for our time.

SANDY REIBURN: Can I respond to that?

May I respond to that?

ASSEMBLYMEMBER BYRNE: You've 30 seconds of my time. If you want to use it, go for it.

SANDY REIBURN: Look, everybody wants to play nice, go along to get along.

And when does the rubber meet the road?

So forgive for being so outraged, but, somebody has to do it. And I'm willing to be the sucker who does it.

ASSEMBLYMEMBER BYRNE: No, no apology necessary.

I'm grateful that you are here.

I think I can speak for everybody, we're all very grateful for your time.

Thank you.

SENATOR RIVERA: Indeed.

And I would actually just reiterate that Mr. Byrne and myself rarely agree on things.

We both have a bipartisan agreement that outrage is necessary at this moment.

So, there is that.

Currently there -- I just have -- I recognize myself for 5 minutes. Probably won't take that long, but I have one question.

We heard this morning from the providers associations. They talked about the inspections that are done upstate, that are done regionally, and are inconsistent.

There was some testimony that said the capital region inspects three more -- three times more than downstate.

And I just wanted to know if you folks think that this is true, if you can comment on it?

Should it be more consistent, and why it isn't?

If you have anything to add to that.

LINDSEY HECKLER: It should be more consistent, especially with the new federal inspection process that's all computer-based, which I have certain issues with. But now is not the time.

In our written testimony, if you go to page 26, we outlined the discrepancies between the metro regional offices and the rest of the state.

We find it very hard to believe, when the nursing -- that the nursing homes in the metropolitan region, that have less staffing, are doing better on their nursing home inspections, as one example, when staffing is directly correlated with the quality of care.

SENATOR RIVERA: Any other comments from the other folks?

If not, I give up my time.

Back to the Assembly.

Thank you.

ASSEMBLYMEMBER BRONSON: And the Assembly

will now recognize Ranking Member Jake Ashby.

ASSEMBLYMEMBER ASHBY: Thank you, Mr. Chairman.

Lindsey, earlier we heard testimony from Leading Age, that, out of, I think it was 600-plus investigations that they did, there were only four that resulted in immediate jeopardy findings.

Do you find that odd, to have the volume of investigations, and only four results in immediate jeopardy, given the circumstances that we've been in since [indiscernible]?

LINDSEY HECKLER: I find that extremely odd, and I would question the, you know, speed by which department of health inspectors went through these facilities.

I believe it was -- excuse me -- Marydel that was provided the specific infection numbers.

I would be curious to see the data from the department of health about the numbers of infection-control surveys, and the amount of time the surveyors spent inside the facilities.

ASSEMBLYMEMBER ASHBY: Do you think, given that there were only four IJs issued, that that should be cause for an independent investigation?

LINDSEY HECKLER: Yes.

ASSEMBLYMEMBER ASHBY: Thank you.

SENATOR RIVERA: All right.

Nobody else from the Senate at this moment.

Oh, actually, I'm sorry, I'm sorry, I'm sorry.

Senator Serino, recognized for 5 minutes.

SENATOR SERINO: Thank you, Mr. Chairman, and I'll be brief.

You know, I'm really disturbed today by how often that we're hearing about residents who genuinely fear retaliation if they report their concerns.

So what can we do about that; how do we get to the bottom of that issue?

In other industries, we have a confidential hotline, and all these other things, but they wouldn't really work in these settings.

So, do any of you have any proposals to address this, that we should look into? Any ideas?

SANDY REIBURN: Yes, may I?

You have to give enforcement ability.

There has to be a way that an ombudsman can take that problem and do something with it; otherwise, they have no teeth.

Secondly, as long as the public health and

health planning council continues to license people who have paid to play, they will continue to have a trap door, the foxes are in the hen house.

And that is real.

So those are two ways to mitigate some of the problem.

GAIL MYERS: And I want to add that we really need consumer and resident and family education.

Some of it starts with the ombudsman, but it is the State's responsibility.

There's a document that the State has produced, advocates called for an establishment of the Nursing Home Residents' Bill of Rights.

It is in the law.

Sometimes you get it upon admission in the big stack of paper that you get.

The document is printed off the DOH website, only in English and Spanish.

We look at the number of people who have been suffering, who speak other languages, who are from other ethnicities.

You can't call the department of health and say, could you please mail me that?

No, we don't mail publications anymore.

Well, I'm a resident in a nursing home, and

I don't have access to go on the web and print it out.

People call my office, I'm sure they call everybody else, and say, can you send that to me?

We really think that there needs to be a public-awareness campaign.

And above all else, you know, I hear these things about not immediate jeopardy.

But one of the biggest, hugest concerns that I always feel, is about people who are denied their dignity.

You heard earlier about someone who was brought out in the hallway from a bath, just with a sheet thrown over her, dripping wet.

I mean, people do not believe that they have the right to dignity, and it is right there in the Nursing Home Residents' Bill of Rights.

So if we just really ramped up, letting people know that they deserve better, and that they can get better.

Give them the tools they need to assert their rights.

Get the ombudsman into facilities.

They are rarely in facilities because there are enough of them.

That was all documented by the comptroller.

That needs to be improved.

There should be family councils that's not a mandate.

And I don't know that you should make it a mandate, residents' councils are mandated.

But family members throughout these hearings have been telling you, they didn't know, they didn't know who to call.

We just need to do public education and reassert.

They have the right to be treated with respect, with dignity, with quality.

And you can't disregard the studies that show that there's a disproportionate impact on people of color, and, that there is a disproportionate problem for nursing homes with underreporting.

If you talk about, you know, four immediate jeopardies, we're telling you that there's complete underreporting.

Those are surveillance teams that are coming in, just, you know, on an emergency basis right now.

The California study found a complete connection between infection control and the emerging pandemic.

Looking at all the citations in New York State that were not immediate jeopardy, but they found infection control lacking, should have known that this was going to be a hotbed for this pandemic to spread, because infection control is the first and last thing you need to pay attention to in order to make sure that quality care is going to be delivered, with staffing.

MARYDEL WYPYCH: I just want to say, that I think we need to get the survey agencies -- the surveyors in there as soon as possible.

They've been out for months, and, we need to know what's happening in nursing homes.

LINDSEY HECKLER: I agree with Marydel.

I would like to reiterate:

CMS, since June 1st, allows, at the State's discretion, surveyors to go in on routine complaint investigations and certification surveys.

SENATOR SERINO: Yeah, and I know we talked earlier about the ombudsman, because they do post that there are ombudsmen. But a lot of people are not aware of it.

And I think we have to do a better job of educating people, and better job on taking care of our ombudsmen, so we can encourage them to want to

be able to work in the facilities.

So, I want to say thank you, everybody, for everything that you do for our facilities.

Thank you.

SENATOR RIVERA: Thank you, Senator.

Assembly?

ASSEMBLYMEMBER BRONSON: Next up, we'll have Assemblymember Doug Smith, for 3 minutes.

ASSEMBLYMEMBER SMITH: Thank you very much.

And I just want to thank everybody again for having this as day two.

I have been listening all day, but I've kind of decided to limit my comments so that we can take as much testimony as possible.

My question for Ms. Reiburn, because you really have piqued my interest here:

Unfortunately, last week, when we held the first hearing, we only had the department of health commissioner and an aide from the governor for a very short period of time, who dodged and deflected for about two hours, and then bolted.

And they're not back today.

So, Ms. Reiburn, I would really be interested, because I know there's a number of questions that I would have for the department of

health under oath.

What are some of the questions that you might have?

SANDY REIBURN: Well, I mean, what I would -- I have more questions, frankly, for the public health and health planning commission, because these are the people who give the acknowledgement of character and competence, when, if anybody cares to look at the paper trail of the same LLC-covered, disguised owner-operators, will find in their other facilities, outrageous, terrible, actions against their residents, to say nothing of the fact that many of these so-called owner-operators are, in fact, real estate churners. That is their main business.

And these -- as was discussed earlier, this kind layering of LLCs and health-care agencies and ownership and the incestuous relationships, this is really, to me, as I said, where the rubber meets the road.

And when you have people, such as this Balboni, I mean, he's like -- you know, he's -- he's umbilically attached to Governor Cuomo.

I mean, there's so many things that these people, who purport to be the arbiters of what a

nursing home should be, and how wonderful they are, they're busy shtupping --

Anybody know that word?

-- shtupping Governor Cuomo.

Come on.

ASSEMBLYMEMBER SMITH: Well, if I could -- if I could redirect you a little bit, because, maybe along the lines of what you're saying:

I did find it very interesting -- and I'm an educator. My background is in education, so, I'm really taking this in.

But I did find it very interesting this morning, when I was listening to some individuals who represent nursing homes, I was a bit shocked when they really didn't find a problem with the March 25th order that required nursing homes take in COVID patients.

In fact, what I heard, what I understood, was, they said, well, we've been taking them anyway, so it really wasn't that a big deal.

Did you find anything odd about that?

SANDY REIBURN: Well, what I know is just a matter of monetizing.

The fact is, is they were incentivized to take. Medicare paid for additional $600, I think it

was, as opposed to the 200 that they would normally get from Medicaid, which is, what, 60-something percent of a lot of these facilities' residents, patients.

And so the incentive situation was such, that they were delighted to take these COVID people, especially when, subsequently, Cuomo said, you have a shield. We're not going to blame you. Nobody can sue you.

[Indiscernible cross-talking] --

ASSEMBLYMEMBER BYRNE: Well, thank you very much.

And maybe if you have a podcast, a few of us will listen on our ride up to Albany.

So, thank you.

SANDY REIBURN: I don't want to be sued for libel, let's put it that way.

SENATOR RIVERA: I do believe that, even though this is -- all of this is for posterity, and I believe that, Yiddish, you get a pass on Yiddish.

So, shtupping is very, very [indiscernible cross-talking] --

SANDY REIBURN: It's Brooklyn, baby. It's Brooklyn-ese.

SENATOR RIVERA: -- very allowed.

No further questions from the Senate.

Back to the Assembly.

ASSEMBLYMEMBER BRONSON: Thank you.

And a couple more questioners on the Assembly side.

We'll go next, for the 3 minutes, to Assemblymember Tom Abinanti.

ASSEMBLYMEMBER ABINANTI: [Inaudible] particularly for your candor.

Whoops.

I'm still -- you've got to unmute me?

Okay, there we go.

So thank you all for your candor.

I'm from Brooklyn, so I understood every word you said, Sandy.

Thank you very much.

Originally from Brooklyn.

One of the things that I heard one of you say was, we really need to withdraw licenses.

Yet, one of the other witnesses today said, that just leaves everybody in limbo. We would be better off replacing the operators with a temporary operator.

But what troubled me was, I don't know that there's a system in place to do either.

Do we need some kind of a system out there so that there's a real threat to these owners of these facilities, that if you don't shape up, we will, in fact, push you out, because we've got some people ready to go?

And, secondly, do we need to strengthen the retaliation statutes, to protect people, to report what's going on in these facilities?

Anybody who would like to respond.

LINDSEY HECKLER: I think there is a system in place; however, it happens behind closed doors with the department of health.

So, for example, the nursing home that I used for the call-bell system just a few minutes ago, when they bought that nursing home from a non-profit, they bought it as a package deal with two adult homes.

They voluntarily closed one of the adult homes, and then voluntarily gave up receivership because, allegedly, DOH putting pressure on them.

For nursing homes, this happens behind closed doors.

And I think you could put more pressure on operators who are not doing their job, to de-certify certain beds. And make sure every single resident,

before a closure, has meaningful opportunity to return to the community or a better facility of their choosing.

That does not happen.

ASSEMBLYMEMBER ABINANTI: Well, how do we do that?

What do we need to change?

What do we change?

How do we fix this?

I think [indiscernible] would like to hear from you on how do you suggest we change these laws?

What do we do, better, to solve the problems you just talked about?

We're not going to hear that answer tonight.

But if you would give us in the future, some guidance on that.

So, anybody else?

GAIL MYERS: Well, Mr. Abinanti, I will answer a different question.

Earlier in the day that you raised, was about how to get families, both for those who have children in facilities and those family members that are caring, back into the facilities?

And there are states that have already taken steps to create the "essential visitor." And they

have the right to go in for a couple hours, a couple times a week, or a couple times a day.

In my testimony, I've given some innovative practices during the pandemic that include those.

A few of them have been mentioned before.

In terms of the whistleblower protections, I wouldn't choose to speak for the labor unions, who can tell you whether they need a stronger law than the piece that you just passed.

But for the family members, and for the residents --

SENATOR RIVERA: Very quickly, please.

GAIL MYERS: Sorry.

-- for the family members and the residents, getting those essential visitors back in there will make the biggest difference about speaking up and complaining about problems.

SENATOR RIVERA: Thank you so much, Ms. Myers.

[Indiscernible cross-talking by multiple people.]

SENATOR RIVERA: Actually, we have to go to the next questioner.

We still have three panels, ma'am.

Assembly.

ASSEMBLYMEMBER BRONSON: Yes, the next questioner will be Ranking Member Brian Manktelow.

ASSEMBLYMEMBER MANKTELOW: Yes, thank you, Mr. Chairman.

Sandy, just a question for you.

I have a couple nursing homes in my district.

And as we've talked about --

Or anyone can answer this.

-- and Assemblymember Abinanti just made reference to this:

In a situation where we have these seniors in our homes, and when the owners of the homes aren't doing their job, what do we do in a situation like this where something needs to be done?

The money, the fines, doesn't seem to do anything. The department of health comes in constantly to check these nursing homes.

And, you know, where do we go from there?

Because, if we take the license away, that means we've got another bunch of seniors that need to go someplace, and our nursing homes are chock-full now.

SANDY REIBURN: What I was --

ASSEMBLYMEMBER MANKTELOW: [Indiscernible cross-talking] --

SANDY REIBURN: Sorry. Excuse me.

What I was about to answer, the previous question, was, "what do we do?" I think that there's a model that could be adapted and translated that hospice coverage takes care of.

I mean, hospice coverage takes special care of those who are at life's end, and there's a model there that I think could be adopted and should be implemented.

Groups like, Calvary, for example, that do such remarkable work under the auspices of hospice caregiving.

Visiting nurses that have the hospice adjunct do tremendous work.

And there is a moral and ethical template that they use.

And I think, in some way, that should be parlayed on to just the model in general for nursing homes; but, in particular, those who flout any kind of decency and regulations.

You don't allow the victims that are such, to remain as victims of these very people because you don't know what to do with them.

I'm sorry.

ASSEMBLYMEMBER MANKTELOW: Well, Sandy, one

of the problems that I see right now is, between our nursing homes and our senior living facilities, they'll come in and do an inspection on a senior living facility and have the fine superhigh, and just for, really, things that really don't need to be that way.

But at the same time, they will go into a nursing home and nothing seems to happen.

You know, they keep adding another issue, another issue, and nothing really seems to come to terms with it.

I mean, what do we do?

I mean, what can we do as legislators to change that?

SANDY REIBURN: Criminal action.

I mean, misdemeanors and civil action is toothless.

If somebody kills somebody, they go to jail.

And, I'm sorry, but this is what is happening.

These people, these vulnerable old people, are subject -- voiceless people, are being tormented and done away with.

This is criminal action, and that should be considered.

ASSEMBLYMEMBER MANKTELOW: Okay, so when we have DOH, who we're trusting to look into this, do we hold them accountable as well?

SANDY REIBURN: You bet.

They need to be cleaned up, there's no question.

From Zucker, all the way down to the public health and health planning council, they need to be cleaned up.

ASSEMBLYMEMBER MANKTELOW: From the bottom up, and from the top down. Correct?

SANDY REIBURN: Well, the point is, is that if there were really stakeholders who were actual family members, who were a part of these evaluations, you would get at least a balance.

You don't have that.

You have self-dealing, self-interest, in some cases developers, in some cases adjuncts to equity-stakes investors -- this is who's running the DOH.

This is an outrage.

So, I'm sorry, because I know it's a terrible thing to say, well, what are you going to do with them?

But you have to do more than just say, well,

we're stuck, we're trapped, we gotta take what we get.

No, no.

ASSEMBLYMEMBER MANKTELOW: All right.

Well, thank you for your -- all of you, thank you for your testimony today.

And, God bless you, and we'll definitely be in touch.

Thank you.

SANDY REIBURN: God bless you back.

SENATOR RIVERA: All right.

Any there other questions from the Assembly?

ASSEMBLYMEMBER BRONSON: That was our last questioner.

SENATOR RIVERA: All right, folks.

This is the last break, last break before we go and power through to the last three panels.

Let's take 10 minutes.

Thank you, everyone, for coming in and testifying.

10 minutes.

[A recess commenced.]

[The hearing resumed.]

SENATOR RIVERA: All right, folks, welcome back, the last break.

We're going to power through to the end.

And I want to thank each and every single one of my -- of the members, both of the Assembly and the Senate, both majority and minority, we're still here.

They continue to care about this, and I thank each and every single one of them.

And I thank our panelists for waiting.

And we are now joined by Panel 10; that is:

Alexia Mickles, staff attorney at Empire Justice Center;

Timothy Clune, executive director for Disability Rights New York;

And Ann Marie Cook, president and CEO of Lifespan of Greater Rochester.

ASSEMBLYMEMBER GOTTFRIED: Okay.

So we have a total of eight more witnesses to go.

And, do the three of you swear or affirm that the testimony you're about to give is true?

ALEXIA MICKLES: I do.

ANN MARIE COOK: I do.

ASSEMBLYMEMBER GOTTFRIED: Okay. Fire away.

SENATOR RIVERA: Thank you so much.

And to lead us off, Alexia Mickles, please.

ALEXIA MICKLES: Hi. My name is Alexia Mickles. I am a staff attorney with Empire Justice Center's health-law unit. My -- a non-profit, multi-issue, public-interest law firm, focused on changing the systems within which low-income families live.

I work out of our Rochester office, primarily serving clients who reside in Upstate and Western New York.

An important aspect of my job is helping people access and keep the services they need in order to remain in their homes and avoid nursing homes in the first place.

I want to share two clients' stories with you today.

At the beginning of the year, we represented two similarly-situated clients, both elderly, living with various ailments, including advancing dementia, and had family members willing to work as caregivers in order to keep them at home through the consumer-directed program.

They faced a reduction in their services by their managed long-term care (or MLTC) plan that would render it impossible for them to remain safely in their homes, and both appealed.

Despite rigorous advocacy, these families endured entirely different outcomes.

While one client had her case heard before an administrative law judge, and received a favorable fair-hearing decision, keeping her in the community immediately before the start of the pandemic, the other client's case was never heard on its merits.

The appeal process itself, that final level of protection, failed her.

Instead of remaining safely at home, she languishes in a nursing home during the pandemic, and still has yet to have her case heard six months later.

Two similarly-situated clients enrolled in the exact same plan, both fiercely represented by the same attorneys, and yet living completely different lives during these unprecedented times.

This is not the system that our elderly population deserves.

Today I want to highlight three issues and offer a few recommendations.

First: Seniors are being forced into institutions.

Despite the benefits of staying in one's home rather than entering a facility, state policy still

favors nursing homes over home care.

We believe everybody, not just the wealthy, should be able to receive the care they require in order to live safely in the community if that is their choice.

We need to avoid stereotypes about who is safe only in an institution, and make sure that the system supports and respects the basic rights of aging and disabled New Yorkers who cannot afford to pay privately for home care.

Not only is that the most dignified way for our clients to live, but it is also most cost-effective.

As has been highlighted by CDPAANYS in their written and oral testimony last week, the state costs of nursing homes is significantly higher than the consumer-directed program.

Second: We need to address systemic unfairness in maintaining home care.

The process by which New Yorkers obtain and maintain their Medicaid services is neither simple nor intuitive.

Even before the pandemic, this was a grueling task for our clients.

The vast majority of people who require

long-term care must enroll in an MLTC in order to access the services they need.

MLTCs are private insurance companies that determine the scope of services their enrollees receive.

DOH pays each plan a capitated rate per enrollee; in other words, they receive the same dollar amount for each enrollee regardless of the services received.

This creates a dangerous incentive.

The MLTC profits on enrollees with relatively low needs, but loses money on those with relatively high needs.

In the months leading up to pandemic, we saw an uptick in MLTC plans seeking to reduce home-care hours, particularly for those who received 24-hour continuous care.

Medicaid appeals are complex, with confusing notices, and critical deadlines.

Only after properly navigating the system can someone have an opportunity to argue against a proposed reduction at a fair hearing.

It can easily take more than six months between starting the appeal and receiving a final decision.

Often families are forced to make the choice: Move their loved one prematurely to a nursing home, or, face mounting bills as they attempt to pay out-of-pocket for aide services, or lose wages while they struggle to provide the care themselves.

When the time comes for the hearing, it's David versus Goliath for those without legal representation.

We have repeatedly heard from our clients that it would be almost impossible for them to navigate this system, let alone succeed on their own.

Third: The barriers to timely legal representation is unacceptable.

We've heard at length about the issues of maintaining direct contact between residents and families during the peak of COVID-19.

Just as the notices and timelines are important for those trying to maintain their home care, nursing home residents are also receiving critically important legal communications by mail; for example, notices relating to their Medicare or Medicaid coverage, or even more pressing, notices relating to potential discharge from the facility.

Let me be clear: Receiving those notices in

a timely manner can result in life-changing consequences for seniors and their familiars.

COVID has forced us to look hard at nursing homes. The pandemic has worsened, and underlined existing inequities for low-income seniors.

We are at a unique moment, and New York has an opportunity to meaningfully improve its policies surrounding long-term care.

I would like to leave you with our three most pressing recommendations.

One: Invest more, not less, in home-care services for Medicaid beneficiaries, including the consumer-directed program;

Two: Continue to fund organizations who can help New Yorkers obtain and maintain their Medicaid services. This includes a wide range of agencies, from ombudsman and community-based organizations, to legal-service providers;

And, three: Impose a duty of care on facilities to provide information to residents and their families regarding ombudsman and legal services.

Empire Justice is ready and willing to work with you on this.

Thank you for this opportunity.

SENATOR RIVERA: Thank you, Ms. Mickles.

And apologies for mispronouncing your name earlier.

ALEXIA MICKLES: No problem.

SENATOR RIVERA: Next up will be -- we'll listen to Timothy Clune, executive director, Disability Rights New York.

TIMOTHY CLUNE: Good evening.

Thank you for having me here today.

I'm the executive director of DRNY, and we are the designated protection and advocacy system for New York State.

The P&A system was created in the 1970s as a result of Geraldo Rivera's exposé of the horrific abuse and neglect of children and adults with disabilities at the Willowbrook State School on Staten Island.

Each state and territory has a P&A system.

As the P&A, we provide free legal and advocacy services to people with disabilities, but we also monitor congregate-care facilities to ensure that those living there are not subjected to abuse and neglect.

There's been significant testimony today about nursing homes.

I have listened to all of it, and it has been very enlightening. It's also very deja vu.

I've been in this job for 30 years, and the things I'm hearing today are just repetitive.

I would say, with respect to DOH, that we know that the State's decision to require nursing homes to readmit patients with COVID-19 without the proper resources was ill-advised and had deadly consequences.

But what I would like to do is to focus on friends and family members with intellectual and developmental disabilities living within the OPWD [sic] system, both private- and state-run.

The State's response to COVID was largely ignored, the health and safety of people with disabilities living in these congregate facilities.

Our research found that 437 COVID-related deaths in OPWDD residences.

DOH has been command central for all COVID-19 policy guidance.

OPWDD deferred to, and largely adopted, the DOH guidance, even though that guidance did not always take the needs of this population into account.

For example, DOH failed to prioritize these

congregate-care settings for access to PPE.

This failure put both residents and staff at high risk of contracting, spreading, and dying from COVID-19.

Direct-service professionals (DSPs) provide intimate care for residents throughout the day, including physical assistance with washing, toileting, dressing, and eating.

It's impossible to maintain 6 feet of separation.

You live in close proximity to one another and often cannot adhere to prevention protocols, which included wearing a mask, thoroughly and frequently washing hands, avoiding touching their faces, and touching others.

OPWDD advised their providers in March that, if they were unable to obtain PPE, they should contact their local OEM.

Since these settings were not a priority with OEM, obtaining PPE was almost impossible.

In late March, OPWD [sic] issued guidance, advising, in sum and substance, that PPE must be used when any resident is suspected of having COVID-19.

Despite this clear acknowledgement, the State

still refused to put these facilities on equal setting.

DOH's mandated testing in nursing and adult-care facilities, but they failed to mandate testing at OPWDD facilities.

Testing DSPs and residents were not made a priority of the general population.

Despite the risk associated with these working conditions, staff and residents were not required to be regularly tested.

This places them all at a greater risk of exposure.

DOH suspended all hospital visitation, including DSPs. This left individuals with complex needs and limited communication skills alone at a time when the hospitals were overwhelmed with COVID patients, and they were ill-equipped to bridge very critical communication barriers.

It was not until late -- in middle April that DOH finally allowed DSPs into the hospital.

CMS made it easier for states to modify their policies under the home- and community-based waiver through Appendix K.

This would have allowed states to use HCBS funds for DSPs to accompany and support individuals

during a hospital stay.

And even DOH recognized that the presence of a support person for these patients in hospitals is critical to avoid negative health outcomes.

However, DOH -- I'm sorry, OPWD [sic] determined that it was not necessary.

The State must do everything in its power to support the funding of DSPs for our clients in hospital settings.

In sum:

It's been over 30 years since the passage of the ADA, and over 21 years since the Olmstead decision.

New York must take a hard look at its current congregate-care model for people with disabilities.

And as we have seen over the last six months, this model has been a death sentence for many.

Priorities must change, and resources must be redirected, to allow more people to live at home; otherwise, we're going to be having this conversation, five, ten years from now.

New York must ensure that the goals of the ADA and Olmstead are finally realized.

And, finally, the State's emergency-preparedness protocols failed to

prioritize, and often even take into account, the needs of people with disabilities.

The pandemic has confirmed what we already knew: People with disabilities are the first to be impacted and the last to be considered.

Thank you, Mr. Clune.

And next we will hear from Ann Marie Cook, president and CEO, Lifespan of Greater Rochester.

ANN MARIE COOK: Thank you so much, Senator.

As you said, my name is Ann Marie Cook. I'm president and CEO of Lifespan. And I'm also a certified ombudsman, and I have been for the last 20 years.

I want to thank all of you, not only for holding this important hearing, but also for your perseverance.

I've been watching most of it all day, and you've just been incredible, listening to the speakers.

Just to give you a brief background:

Lifespan is a non-profit organization, and we're dedicated to helping older adults and family caregivers.

We serve about 43,000 people a year, we did last year, through 30 different services. And we

serve as the regional ombudsman in the Finger Lakes Region, a 9-county area.

As you have heard from so many people, COVID-19 has presented many challenges for residents and their families.

And I'd like to speak to you today, and focus my remarks on the importance of the long-term care ombudsman program, and how imperative it is to strengthen this program.

Throughout the pandemic, I want to assure you, the ombudsman staff and volunteers have remained engaged with residents, families, and facilities, to provide information and support.

And, in fact, in our program, our numbers spiked in April, as families called us, and I have to tell you, they were distraught, they were frightened, and they were desperate for information.

I have supplied you with my written comments, so I am going to keep this short, and just highlight a few, I think critical, points, to ensure that we strengthen the ombudsman program, and really how it was highlighted, the need to do this during this pandemic crisis.

First of all: Request that the department of health establish safe protocols, and you've heard

this a lot, for families to visit.

We are still getting calls from families all the time, questioning this 28-day rule.

We've had several facilities in our area almost make it, and then go back -- the clock goes back.

They're desperate.

And they tell us all the time: We're in the facilities, and we know they're short-staffed before COVID. How is my loved one getting care now?

We have very little information we can give back.

Second thing is, and I know you have supplied funding in resources to nursing homes, to receive the right technology to do, sort of, Zoom and Facetime calls. But I'm telling you, it's not enough for families.

And we really, especially before a second wave hits, we need to make sure that they have the right technology in place, so that families can receive the daily, or at least weekly, communication.

And many families didn't between their loved ones and themselves.

Third thing is, I think we need to publicize

the ombudsman program more.

First of all, no one in the field even knows what an "ombudsman" is, so it's very difficult to explain, you're an advocate. They don't know what it is and what it does.

Under normal circumstances, posters are hung, of course, in nursing homes, about the phone number and a short description about what it is.

But, really, families had to scramble of who they could find to advocate for them during this time.

It just needs to be publicized better.

The fourth point, I think my most critical point is, it is bizarre to me that the ombudsman operates without any partnership at all with the department of health.

I'll give you just a few short examples.

It is not a requirement for the department of health to update the ombudsman when we make a complaint.

We make a complaint, really, into a black hole. There's no partnership at all to explain to us the resolution of that complaint.

In fact, we have to call just the general 1-800 number to do that complaint.

And, finally, I also think it's bizarre, as DOH is doing surveys in homes, they are not required to contact the ombudsman.

We're in these homes every single week, and you would think it would be natural for the surveying team to contact the ombudsman about staffing, care issues, or quality-of-life issues.

But it's really haphazard, at best, if we receive a call.

And I think there needs to be -- if they haven't done it so far, an informal partnership, there needs to be a partnership so that we can make sure residents are cared for.

The fifth one: We need to provide additional resources for involuntary discharges in nursing homes.

It was so prevalent in our area, that Lifespan created an involuntary discharge task force.

We started this group because long-term residents were not provided legal council, information, or help when they received an eviction notice.

The ombudsman was their only advocate.

You and I would receive more information if

we were being evicted.

I see my time is up.

I have submitted written comments, and I want to thank you very much.

I had other points you will see in my written comments.

But thank you very much for listening.

SENATOR RIVERA: Thank you, Ms. Cook, for your testimony, and everybody else.

The Assembly will lead off in this questioning.

ASSEMBLYMEMBER BRONSON: Thank you.

We will start with Chair John McDonald, for 5 minutes.

ASSEMBLYMEMBER MCDONALD: Good evening, everybody.

Thank you for your testimony.

Tim, why don't I start off with you.

First of all, thank you.

Probably rightfully so, there's been a lot of discussion about nursing homes the last two Mondays.

But I've always said from the beginning, that there is another -- this is about congregate housing in general.

It's about all vulnerable populations.

And as one who actually works with the disability community on a regular basis, you're spot-on in regards to the fact that this was an under-the-radar group that just was not really paid attention to.

You know, I guess my question to you is, and I brought this up with the nursing homes, and I think it's applicable here:

A lot of people are rightfully focusing on the March 25th discharge order.

But my contention all along is, is that many of these individuals, you know, say somebody wants to go back to their home.

I get that, I understand that.

On the other hand, I know, particularly the [indiscernible] population, particularly when you look at the traditional two-story home, people in these small bedrooms, they're just not going to comply.

They're not going to wear a mask.

They have behavioral issues, and, in some situations, very severe.

But the thought of having a step-down facility, if this was to come back and rear its ugly head again, would be, to me, a logical conclusion.

And I think OPWD [sic] had some -- one or two of those set up in certain parts of the state.

They weren't here in the capital region.

I think there was one down in Broome County, I believe. I think there was one outside of the city.

Do you have any comments on that, if they were successful or not?

Or do you think the idea is a good idea or a bad idea?

TIMOTHY CLUNE: [Inaudible.]

ASSEMBLYMEMBER MCDONALD: (Assemblymember motions to witness.)

ANN MARIE COOK: Shocking, I unmuted myself.

I think we have an opportunity to make change. Right?

When my -- my comments about what happened at Willowbrook in the 1970s, and here we are in 2020, still talking about horrific conditions in congregate care.

So I think the better approach would be looking at the resources that we are already expending on the institutions that we already have, and how we can reallocate them.

This is not going to be easy, but if we don't

start addressing it now, we're just going to have to deal with another pandemic at another time.

We talk about people living in congregate-care facilities like it was a choice.

Right?

The individuals never chose to go to an OPWD [sic] facility.

In terms of the step-down, Assemblymember, I'm not dodging your question.

I mean, I've heard about it.

I look at the conclusion.

You know, when I deal with my staff in my office, I know that the answer should be "A."

Now, let's figure out how to get there, and not rely on things that may be a little bit easier.

So it would be easier to have a step-down facility because it might not be as disruptive.

But I think the larger conversation is, how do we do better?

Right?

And I'm not going to sit here and tell you that I have all the answers.

But I will sit here and tell you that my staff is willing to work with you, and we've met with you, to try to address some of these issues.

But, I mean, I remember doing litigation against adult homes in the 1990s because the conditions were horrific, because the insider trading or just the Ponzi schemes that were going on between the operator and owner of the building, and so forth.

We're still talking about it today.

I've listened to the testimony all day, and it was just deja vu.

Rip off the book-report cover, and you can see the same exact problems.

ASSEMBLYMEMBER MCDONALD: We will follow up with your office, and I appreciate your comments.

I guess, Ann Marie, just one other question. You may want to unmute yourself while I'm throwing it at you.

We've been listening about the ombudsperson, as Senator Rivera says all day long.

And, you know, is it just that it's better off to have your head down in a pumpkin patch and ignore them, or do we need to require a response?

I find it insulting, that if a person who is, basically, volunteering their time, or giving of their time, is, basically, trying to care for somebody, that they can't get a response, if they're

legitimate.

In this situation, they're legitimate.

ANN MARIE COOK: I think, like you said, you have to require it, because it hasn't happened in voluntary ways before.

So it's a requirement, and it needs to be.

ASSEMBLYMEMBER MCDONALD: Thank you.

SENATOR RIVERA: Thank you, Assemblymember.

And now from the Senate, recognize Senator May for 5 minutes.

SENATOR MAY: Thank you.

I want to follow up a little bit more about that, Ann Marie.

And, first of all, just let me say what amazing work you do, and how lucky we are to have you advocating for seniors here upstate.

So, I'm just trying to understand how the ombuds -- I thought I understood, but now I feel like I understand less all the time.

So the ombudsperson reports -- is housed under the office for the aging, but reports to the department of health? Is that what you're saying?

ANN MARIE COOK: Well, I'm saying, when we're in a nursing home and we see a quality-of-care issue that we feel it's appropriate for the department of

health to know about and investigate, we do the -- call the 1-800 number. And we're not looped back in to hear about the resolution of that complaint.

Now, we're in the home, so oftentimes you, you know, pick up on what happened. But, there's no partnership in which they say, thank you for making the complaint. And, by the way, this is what we found.

We oftentimes never hear.

SENATOR MAY: So what -- can -- do you have a vision of what that partnership would look like?

Would it be one designated person in DOH who would be the contact, or would it be some other kind of system?

ANN MARIE COOK: Well, it could be, or a team of people, in which, once we make a complaint, and that DOH, hopefully, investigates that complaint, in which we're simply given a call back, to say, this is the resolution to that complaint.

I also think, vice-versa, as I said before, I think DOH could glean a lot from those of us who are in the nursing homes every single week, about what we see, before they go in and do their survey process.

SENATOR MAY: Right.

Thank you.

And then, Alexia, I had a question for you about the managed long-term-care system.

You talked about people failing to get notice.

And one thing we've heard is that people can now time out after -- if they're 90 days in a nursing home, they can suddenly lose their managed long-term-care plan for home care.

And that's a problem.

But, also, the fact that some of them don't even know that that's happening is also a problem, and it may be a bigger problem.

So can you talk about that?

Have you heard about these kind of cases?

And, what is the solution that you see?

ALEXIA MICKLES: Sure.

I mean, this has been going on even before this new rule, you know, this disenrollment after 90 days.

Even before that was even proposed, we've had clients who, we've been try -- you know, they lived independently in the community with just a little bit of help. And then after an accident or a fall or something, they end up in a nursing home. And it

just gets infinitely more complicated to get them back home once they're in that nursing home.

And, now, when you add into that, that they're now being disenrolled from the managed long-term-care plan.

And a little bit about what goes into that process is, you have no say in it.

Even before this new 90-day rule, it was, basically, one person's decision at a nursing home, to check a box on a form that says, you're permanently placed. You're not going to go home again.

And you have no say in that, unless you timely request a fair hearing, argue it on the merits, get some help, probably, arguing it on the merits, because it can be complicated, disputing the facility's doctor's opinion versus your own, you know, family, or whoever's, opinion that you want to go home.

The process is complicated enough.

And now when you're adding into that, that you only have 90 days to be in that nursing home, basically, it just makes it that much harder, and you're making it impossible for people to get back home.

I mean, we have letter -- we've signed on to letters with other agencies that do similar work to us, to the department of health.

We've been advocating for a halt on these disenrollment, you know, notices for the last couple months, I want to say. And those have been, you know, unanswered.

So I think you're exacerbating an already existing problem, which is that, when you're in that nursing home, it's already hard to get out.

Now let's disenroll you from your MLTC plan, have fun reenrolling again.

It's a very difficult process.

SENATOR MAY: Right.

And, just very quickly, can you comment:

We've heard that, not only do people not know about the ombudsman program, they also don't know about the residents' bill of rights.

Is there do you have ideas how to make that more visible, more known, to people, in 10 seconds?

ANN MARIE COOK: Sure, yeah.

I mean, I know people have talked about posting information about ombudsman programs in the nursing home.

That's one step, that's great.

But notices need to have information about ombudsman and legal-service providers.

The staff themselves at the nursing home needs to know about the ombudsman program. A lot of times they don't.

And then that means the residents and their families don't learn about it either.

So, education.

SENATOR RIVERA: Thank you.

SENATOR MAY: Thank you.

SENATOR RIVERA: Thank you.

Thank you, Senator.

Assembly?

ASSEMBLYMEMBER BRONSON: Yes.

Next, I'll recognize Chair. Gottfried for 5 minutes.

ASSEMBLYMEMBER GOTTFRIED: Thank you.

I have a couple of questions for Alexia.

The issue of people who need a lot of hours of care not qualifying for it, and ending up in a nursing home, is there also now going to be an issue of people who really do need home care, and may need many hours of home care, but who don't meet the "three activities of daily living" test that we just enacted?

And then I've got a couple of other questions.

ALEXIA MICKLES: Right.

So you're talking about a high-needs nursing home resident who doesn't meet the "three activities of daily living" requirement?

ASSEMBLYMEMBER GOTTFRIED: Or somebody who's, at the moment, at home, and needs home care, but doesn't meet the three ADL test --

ALEXIA MICKLES: Right.

ASSEMBLYMEMBER GOTTFRIED: -- and, therefore, gets shipped off to a nursing home.

ALEXIA MICKLES: That's going to happen. It's just going to happen.

And it's going to be terrible, because you're talking about people who could easily live at home with just a little bit of help.

And the three activities of daily living, let's clarify what that -- what goes into that determination, is:

Someone comes to your home from Maximus and gives you an assessment, and tells you exactly --

And Maximus is a DOH contractor.

-- they tell you exactly what you need, and how many tasks you need help with.

They, basically, refer that to the MLTC plan, who then says the exact same thing; they come there, they do an assessment.

And everyone but you has a say in what kind of care you need, even though, now, your doctor, even their opinion doesn't matter, because now they want to have an independent physician review, and not even have your own treating physician.

So you're going to create so many more people that are now going to be forced into institutions.

And it's -- these assessments are basically going to say, you require supervision and monitoring, and Medicaid doesn't cover that.

And the problem is, a lot of activities of daily living require active help, active assistance, but it's going to be labeled as "supervision" or "monitoring" just because that's what the assessor decides.

So a lot of these things are happening outside of this person's control.

ASSEMBLYMEMBER GOTTFRIED: Okay.

And another question:

In your listing the three things you would want us to do, the last was to impose a duty of care, and then I didn't get what it was a duty of

care of.

ALEXIA MICKLES: Okay.

ASSEMBLYMEMBER GOTTFRIED: If you could just finish that sentence.

ALEXIA MICKLES: Yes, and I know you've talked about this a lot today.

The third recommendation was: Impose a duty of care on facilities to provide information to residents and their families regarding ombudsman and legal services.

ASSEMBLYMEMBER GOTTFRIED: Ah.

ALEXIA MICKLES: And then I added, that we were ready and willing to work with you on that.

ASSEMBLYMEMBER GOTTFRIED: Oh, okay.

And just my last comment is:

We're going to want to get back to you, and to Ms. Heckler from the center, and others who have testified today, about drafting legislation on some of the things you've testified about.

So don't be surprised when you get an e-mail from us.

ALEXIA MICKLES: I look forward to that.

ASSEMBLYMEMBER GOTTFRIED: That's it.

SENATOR RIVERA: Thank you.

Thank you, Assemblymember.

Now recognize Senator Serino for 5 minutes.

SENATOR SERINO: Thank you, Mr. Chairman.

And thank you all so much.

You know, I worked with Ann Marie for some time now, and when I think of state money well spent, I think of Lifespan.

You know, you get your most bang for your buck with all the hard work that you guys do.

And, Ann Marie, you also gave some great suggestions that we haven't heard yet today.

And I know, I, for one, will be moving forward to do what we can to implement them, and we should absolutely be moving to make these requirements.

Earlier today we heard a few folks testify that the ombudsman program should be a bit more independent as well.

And does anyone here want to weigh in on that today, too?

ANN MARIE COOK: The only thing I can say, Senator -- and thank you very much for your comments -- is I do feel like we operate at a boots-on-the-ground level very independently.

You know, I think we need more resources.

One of the things I didn't get to say is,

while it's very difficult to ask you all for more resources now, I just go back to another person, hours ago, that talked about the New York State Comptroller's report, that said most facilities in this state don't have an ombudsman.

They have -- all those residents have no advocate, and, it's really painful.

And the only way to prevent the retaliation that was also brought up is, when you're there every single week and you know the residents, and you're talking to them all the time, and they begin to open up to you about their concerns, that's the only way we're going to do it.

So -- I mean, the ombudsman program needs additional resources, so it's not on the backs of all volunteers, but we have a strong paid staff underneath them.

But, you know, we operate very independently, and I'm happy with the support we receive.

SENATOR SERINO: And, Ann Marie, too, I know that you're talking about the ombudsman [indiscernible].

But Lifespan does amazing work, through the E-MDTs, to help seniors who have been victims of financial scams retrieve their finances.

You guys have been so successful.

So I'm wondering, one thing that we haven't really talked about today, at either -- or, actually, at either of the hearings: Are you guys worried about a rise in senior scams?

And residents in nursing homes, assisted-living, and other long-term-care facilities we know are certainly not immune to scams in the best of times.

Is this something that we need to be paying more attention to now, to better protect our seniors from being victimized?

ANN MARIE COOK: Well, thank you, Senator.

We have seen a huge increase in scams during the COVID crisis, COVID scams. And we have seen people lose hundreds of thousands of dollars in the last few months.

Now, I believe, I will check on this, most of the cases that we have, have been older adults in the community who have suffered further isolation because of COVID, and, all of a sudden, have been victimized.

So I will get back to you if there has been an increase in facility-based scams.

But, certainly, community-based scams.

SENATOR SERINO: And, you know, another thing, we keep talking about raising awareness about the ombudsman program, but that name might be a little outdated.

I'm just throwing something out there:

Should we be thinking about renaming it, like, patient advocate, or, official resident advocate, something to that effect?

It's just something to think of, because people don't immediately connect what an "ombudsman" is.

So -- but thank you very much [indiscernible cross-talking].

ANN MARIE COOK: I agree completely, because no one knows what an "ombudsman" is except all of you right now on this Zoom call.

SENATOR SERINO: Yep.

Well, thanks again.

SENATOR RIVERA: Thank you, Senator.

Assembly?

ASSEMBLYMEMBER BRONSON: Yes, thank you.

I will recognize myself for 5 minutes.

Ditto what Senator Serino just said about Lifespan.

I can say that because you're my neighbor,

you're my constituent.

So, all that being said, you do great work, as well as the other panelists.

I'm going to start with you, Ann Marie, and you had mentioned, a lot of people have already asked about the ombudsman program.

And I too think, if nothing else, it should become gender-neutral, somehow.

But the -- so I'm not going to go over that because they asked my questions already.

What I do want to talk to you about are the first two recommendations, and I think they go hand-in-hand.

The first was: To come up with safe protocol for families to visit.

And the second was: To do more with the technology so that, if we are doing social distancing of some sort, that we're providing those services.

We've heard a lot of testimony about this, and a lot of testimony about how having those visitations, in part, allows the family member to continue to be part of the caregiving team.

The family member is there for emotional support, and the family member is also there as the

eyes and ears for the patient or the resident.

Can you give us some -- what -- what safe protocols have you thought of, or you, in conversations with other organizations, on how we can get family members into these nursing homes so that they can visit their loved ones?

ANN MARIE COOK: Well, and thank you so much, Assemblymember, and thank you for all that you do.

In some cases, especially now, with the weather the way it is, I think it would be perfectly appropriate to have these visits outside, you know, and much safer for the resident, it's safer for the family and other residents.

And I think we have to be creative here.

I also think that there's a lot of homes that have the ability to have a room for just safe visiting, and move the resident to that room with their family members so they're not interacting with other residents of the home.

I think it's imperative.

And you said, the families are part of the care team.

And so, this absence has been awful for families, and we have to do more.

And then the other thing I will say about the

technology, there's a huge, wide gap between what different homes are doing.

Some are doing incredible.

But, honestly, and I heard some of the speakers today, months have gone by and they have only been able to connect through technology a couple of times with their family members, and it's just unacceptable.

ASSEMBLYMEMBER BRONSON: And then -- thank you.

So the other part of this, and I'd like you, Ann Marie, to answer it, but I also would like Ms. Mickles to answer this, because she had talked about investing more in home-care services.

But, Ann Marie, you and I have talked a lot about home care. We've done some increased investment.

But how could that help us in the midst of COVID-19, and thereafter?

And then if Ms. Mickles (different pronunciation) will -- or, Mickles, rather would also answer that question.

ANN MARIE COOK: Yeah, I mean, home care is critical.

We have one social worker, her full-time job

is helping residents who want to leave a nursing home/get out of a nursing home, and make sure the proper supports are in place.

And the key proper support is, obviously, the availability of home care.

In our region, as you know, Assemblymember, I mean, part of the problem too with that is that, you know, we don't have enough home care either.

I mean, this is such -- long-term care, in general, is such a mammoth issue that we have to tackle.

But we also have to increase the availability of home care so that people have options of how they receive their care.

ASSEMBLYMEMBER BRONSON: And, Ms. Mickles, if you could answer to that in connection your point of investing more in home-care services.

Unmute yourself.

ALEXIA MICKLES: Sorry.

Basically, I talked a lot about the obstacles and challenges that Medicaid beneficiaries face, trying to either obtain or maintain home-care services.

An increase in funding, especially to CDPA, which a lot of people have talked today, about cuts

that are happening, or going to happen.

Investing more in that, remove some of those obstacles, just naturally. It makes it readily -- a little more available.

Investing in knowledge and communication and education in these programs so more people even know about it.

Investing in resources, like information about legal-service providers who can help with these kinds of obstacles.

I think all of that is a way that you can help get more people to either stay in their home or go back home.

ASSEMBLYMEMBER BRONSON: Thank you.

SENATOR RIVERA: All right.

We do not have senators at this moment asking questions.

Back to the Assembly.

ASSEMBLYMEMBER BRONSON: Okay.

We'll then recognize Ranking Member Jake Ashby.

ASSEMBLYMEMBER ASHBY: Thank you, Mr. Chairman.

Thank you all for your testimony, and sticking with us into the evening.

Just a quick question for Ms. Mickles.

Earlier, when you were talking about individuals scoring low on an evaluation, in terms of number of ADLs, and then facing going to an institution, at that point, if they scored low on a certain number of ADLs, is there any triggering mechanism that would involve home care -- or, home-based therapy, either restorative or maintenance therapy, that may help bridge that gap, that may be able to help them stay at home, and see if they would be able to do it?

ALEXIA MICKLES: I think I understand your question.

So if someone's already at home, can they maybe stay home even if they don't meet the criteria for the three ADLs, maybe by obtaining therapy, like, for example, someone who got injured, or something like, maybe they could stay home that way?

ASSEMBLYMEMBER ASHBY: Well, when you were talking about having, you know, someone who maybe has a cognitive deficit, in needing a certain level of cuing.

Right?

Whether it's [inaudible] cue or oratory cue, kind of developing a strategy that would enable them

to maintain their independence, utilizing those types of cues, utilizing -- doing something like that so they can stay home.

ALEXIA MICKLES: Yeah.

ASSEMBLYMEMBER ASHBY: Are any -- is there any mechanism written into this policy that would have that happen?

ALEXIA MICKLES: Not that I'm aware of.

I know -- the way that we work with our clients in order to try and maybe bridge that gap you're talking about, of trying to meet a requirement for home care, is that, yes, other services can be used in combination with what you're asking for.

But, also, we have a lot of people who, especially in the consumer-directed program, their relatives would like to work with them on a daily basis with, things like music therapy, things like speech, things that can help them with swallowing, with things like that, that might necessarily not show up on or reflect on a score on a test -- or, a task-based assessment.

So I definitely think there's ways you can try to work to get it.

I don't know if there's anything written,

like a policy, that says, that, here's how you can stay at home.

But I think --

ASSEMBLYMEMBER ASHBY: What about --

ALEXIA MICKLES: -- [indiscernible cross-talking] advocate for it.

ASSEMBLYMEMBER ASHBY: What about simple home modifications, widening doorways?

ALEXIA MICKLES: Oh, that exists. It definitely exists.

ASSEMBLYMEMBER ASHBY: [Indiscernible cross-talking] --

ALEXIA MICKLES: Yeah, I mean, clients have difficulty getting that kind of thing done by themselves. And even with an attorney, not only can take a long time, but can be very difficult to get.

I mean, it's just a difficult process. And navigating that process, even with representation, can take a long time, and it can be very, very, very challenging.

ASSEMBLYMEMBER ASHBY: Yeah, I am acutely aware.

But the reason that I was asking about it is because I know that we all encounter people who need a lot more care [inaudible].

So the people that you were kind of, you know, mentioning, that are on that fringe element, if we were able to keep them at home, and, at that point, help get family in there like you're talking about, and we're able to really help stabilize at that point before they need an abundance of care, you know, it just may be something, you know, we could look into writing into policy.

ALEXIA MICKLES: Yeah, I think that sounds great.

I think anything you can do to avoid getting into the institution in the first place, staying in your home in the first instance, is a great way to maintain dignity and to keep people healthier.

ASSEMBLYMEMBER ASHBY: All right.

Appreciate your time. Thank you.

ALEXIA MICKLES: Thank you.

SENATOR RIVERA: Thank you for that.

I'll actually recognize myself for 5 minutes, although it probably will take less.

I just wanted to quickly ask about discharges.

We've heard about different instances during the day, about what -- what is a safe discharge?

I think we can all agree, that if there's a

patient -- somebody who is a nursing home resident, and, for some reason, the family wants to be able to have that person leave to go with them back home, that there needs to be some standards of safety.

However, we have seen how, currently --

I mean, I want to get your sense on this.

-- it has been my understanding that some folks feel that the current standard is way too difficult to be able to meet by families who might still be able to provide a safe space for their family members, and yet want to be able to extricate them from the situation, that they might get COVID-19 if they think that they're over -- over -- you know, that they're at risk.

So do you have any comment on that, any folks, any of you?

ANN MARIE COOK: I think it's very difficult to get somebody discharged, especially now from a nursing home.

Under normal circumstances, it takes months for us to set up what's appropriate, where they will consider it a safe discharge, honestly.

And during COVID, we have not been able to successfully transition anybody out of a nursing home in our area.

SENATOR RIVERA: Do you feel -- and this is for either Ms. Mickles or Mr. Clune.

Do you feel that there is something that we could do to help families be able to achieve this discharge while still meeting safety requirements that would be necessary for them to be safe to go back home?

Go ahead, Ms. Mickles.

I can't hear -- oh, there you go.

ALEXIA MICKLES: I think that it's interesting that there's such difficulty.

I know there's a difficulty in getting people voluntarily to be able to discharge.

I'd like to know why there's such -- why it's so easy for them to be involuntarily discharged, why all the power resides with the nursing home.

I mean, it's a safe discharge if they go to a homeless shelter, if they go to a hospital.

I mean --

SENATOR RIVERA: I was actually going to follow up about that.

Sorry to interrupt.

Please continue.

ALEXIA MICKLES: No, no, that's okay.

I mean, I just want to know, where's the

balance of power?

Why does the family who wants to, like Ann Marie mentioned, try to take someone home, you know, especially during the pandemic, why do they have such a difficult time?

Why can't we do something to help them?

We should be able to help the families who want to take someone out, while, at the same time, taking a little bit of power away from the facility to just say, oh, this is a safe discharge. You know, you're being involuntarily discharged for reasons A, B, or C. Goodbye and good luck.

I just don't -- yeah.

SENATOR RIVERA: I would certainly want to work with you folks on kind of balancing that out in a better way.

Mr. Clune, I interrupted you.

Please go ahead.

TIMOTHY CLUNE: That's perfectly fine.

I agree with everything you said.

I think looking behind, you know, why the obstruction to the discharges would be a good first step, as well as, it comes down to funding; funding community supports so that people can actually go back to the home.

And I think facilities play that card, and say, well, there aren't enough community supports, so, therefore, we can't let you go. It doesn't matter that maybe your family wants to take you.

But it does come down to funding right now.

SENATOR RIVERA: Okay.

ALEXIA MICKLES: Can I also add, too, it's related, on March 21st -- Empire Justice Center, along with other agencies, including Lindsay Heckler, CELJ, and others, on March 21st we requested that DOH impose a moratorium on all involuntarily discharges, and that has been unanswered to this day.

And like someone else mentioned before, Ann Marie, there are evictions. I mean -- and we heard from the ALJ, anecdotally, who handles these cases -- these discharge cases, that they are happening during the pandemic at a steady pace.

So why are these evictions still going on?

Why was our letter unanswered?

I mean, these are all things that we just would like to know the answers to.

SENATOR RIVERA: To paraphrase my colleague, Dick Gottfried, you should expect a call from us about how to actually, potentially, resolve this

legislatively.

TIMOTHY CLUNE: You may want to -- if I may, just in the last couple seconds, you may want to also consider all of the people who are transferred out of state; New Yorkers who are transferred to out-of-state nursing homes.

We have visited several.

In years past, people were shipped to New Jersey nursing homes. And our investigation showed that they did not have skilled nursing needs.

The truth is, when someone is in a psychiatric center, or another State-based facility, the State is paying 100 percent of the bill.

When you go to a nursing home, the feds pick up half.

Do the math.

SENATOR RIVERA: And, actually, I'll be honest, that's not something that we talked about enough, of people transferred out of the state of New York.

But my time has expired.

Thank you so much.

Back to the Assembly.

ASSEMBLYMEMBER BRONSON: We'll next recognize Assemblymember Tom Abinanti for 3 minutes.

ASSEMBLYMEMBER ABINANTI: Okay, there we go.

Thank you all.

I'd like to talk a little bit to Tim Clune.

Tim, we've discussed some issues before, and I'd like to work with you on some of the stuff that you spoke about today.

I'm pleased that you highlighted for everyone, the number of deaths, the lack of PPE, the testing, et cetera.

These were issues that I raised, daily, on the telephone calls that assemblymembers had with the governor's staff, and they just kind of dismissed them, and said, we're dealing with them, we're dealing with them, we're dealing with them.

Well, obviously, they didn't.

And, secondly, there was a newspaper article August 5th, about how some of the agencies that had residential group homes, basically, ignored the orders of DOH and OPWDD. And those group homes had a death rate of half of what the other residential group homes had.

And it seems that the OPWDD regulations and approval process just got in the way of doing what was right for the residents.

So it seems to me that maybe your agency

wants to take a look at a lawsuit under the ADA, and see if there's a basis here for some punishment for the people in the state government who have neglected people with developmental disabilities that they're charged with taking care of.

But I'd like to ask you, number one: Is there a bill of rights for people who are in OPWDD facilities?

I have a bill I've been trying to pass for several years, and OPWDD keeps blocking it.

I don't know why our staff and our leadership is more interested in hearing OPWDD than parents.

But we're hearing there's a bill of rights for people in nursing homes.

I don't think there's one for people in OPWDD facilities.

Secondly: Is there a way of designating parents or relatives as "essential visitors," so that people don't get lost in group homes and can't get to see any family members, just like we were talking about with -- earlier with nursing homes.

And, lastly: Do we have retaliation protection for people who work at the group homes?

TIMOTHY CLUNE: So to your first -- to your first point, bill of rights, there are a lot of laws

that protect people in institutions.

The problem is, if a particular facility is unwilling to follow those -- the bill of rights, it -- it's not really worth a lot. Unless there's enforcement, it's really difficult to deal with that.

We have no problem suing and holding people accountable.

We had to file DOJ complaints against the State regarding the PPE issue.

We had to file a complaint regarding the potential for ventilator allocation issues, discriminating against people with disabilities.

So we are --

SENATOR RIVERA: Actually, wrap up, sir, since his time has expired.

TIMOTHY CLUNE: All right.

So we've been keenly aware of that.

And, yes, the appointment of "essential people," it seems to be a no-brainer.

SENATOR RIVERA: Thank you.

Assembly.

ASSEMBLYMEMBER BRONSON: We have no more questioners on the Assembly side.

Thank you.

SENATOR RIVERA: Ho-ho.

Thank you, folks, for your time this evening.

And we are two down, folks, two panels down.

Next panel, we will have:

John Holt, director of the legal services and policy, Vera Institute of Justice - The Guardianship Project;

And, Beth Haroules, senior staff attorney for NYCLU.

I might have mispronounced your name.

I apologize if I did.

Wait until these folks come on.

Monsieur Gottfried, are you with us?

There he is.

ASSEMBLYMEMBER GOTTFRIED: Here I am.

SENATOR RIVERA: They're not here yet.

Okay. They're -- are there --

JOHN HOLT: Good evening.

ASSEMBLYMEMBER GOTTFRIED: And do you both swear or affirm that the testimony you're about to give is true?

JOHN HOLT: Yes, I do.

BETH HAROULES: Yes, I do, too.

SENATOR RIVERA: All righty.

Mr. Holt, go ahead.

JOHN HOLT: Hi.

I'm John Holt. I'm the director of legal services and policy for the Vera Institute of Justice - Guardianship Project.

We are a non-profit agency which serves as court-appointed guardian, pursuant to Article 81 of the Mental Hygiene Law.

In our 15 years in operation, we have served over 500 individuals in New York City who a judge has determined have some functional limitations and require the assistance of a guardian to prevent them from coming to harm.

The pandemic and actions taken to stem the spread of COVID-19 have had a profound impact on the guardianship system.

Tragically, this impact includes the widespread contraction, and too often death, from the virus.

Due to the underlying medical conditions that are often the clinic basis of the functional limitations that led to guardianship, it may be expected that we would see disproportionate outcomes in the rates of death among this population.

However, the disparities experienced between those in nursing facilities and those in their own

homes should not be seen as inevitable.

While we do not have any data at this point that would conclusively prove this hypothesis, our experience may, unfortunately, prove representative of that of many guardians across the state.

Out of the 173 living clients under our care on April 1st, only 153 were still alive on May 1st, a loss of approximately 11.5 percent of our clients in a single month.

While the 80 nursing home residents under our care made up 46 percent of our client base, they accounted for 95 percent of the deaths.

These outcomes are even more concerning, considering that many nursing home residents can and should be receiving long-term care in their homes or less-restrictive settings, but are prevented from doing so by a number of factors.

While the issue of overinstitutionalization is incredibly relevant in assessing the response to the current crisis, and planning for future contingencies, I wish to focus on three recommendations specific to nursing facilities.

One: Permit access to facilities for participants in hearings for the appointment of a guardian;

Two: Allow guardians charged with overseeing the care of residents to visit;

And, three: Take action to prevent data and communication system breakdown that impede medical decision-making by guardians.

From the outset of the pandemic, there's been a class of nursing home residents who have been identified as needing a guardian, in part, due to their compromised ability to understand their health status and make decisions regarding medical care.

Guardianship is meant to be an expedited legal proceeding in the interests of mitigating the potential harm to those alleged to be incapacitated, yet despite the heightened importance of timely access to guardianship in a public-health crisis, we've seen a virtual freeze into new appointments for nursing home residents.

The visitation restrictions in facilities have prevented Court-appointed counsel, evaluators, and the court personnel needed to conduct a hearing from interacting with the alleged incapacitated person to the extent needed to assert their right to meaningfully participate in the proceedings and challenge the allegations of incapacity.

We need policies that allow access to alleged

incapacitated persons sufficient to permit hearings to proceed, so that those who require the appointment of a guardian get the protection to which they are entitled.

We have heard from many of the witnesses over the last two hearings of the adverse effects that nursing home visitation restrictions have had on residents.

But there's an even greater impact when the restricted party is a guardian, charged with ensuring that there's adequate and appropriate care.

It's very difficult to holistically monitor the condition of our clients, and to advocate for adjustments to their care, when we are unable to see them in person.

Due to their functional limitations, many of our clients are unable to use technology to connect with us, and the nature of the communications with those who can do not lend themselves towards monitoring changes in their physical and mental condition.

Without being able to enter the facility, we are unable to observe the environment in which care is being provided, and be watchful for indicators of substandard treatment.

Personal-needs guardians are not simply outside decision-makers. They are an integral part of the care team for an incapacitated person, and must act as their eyes and ears.

We must enact policies that allow safe access to nursing facilities for guardians so that they can perform the critical functions of overseeing care for those unable to understand their medical situation and advocate on their own behalves.

Without the pandemic, we have been called upon again and again to make medical decisions, a role that is reliant on two critical factors to choose treatments that are in accordance with our clients' known wishes or best interests: Timely notice of changes in medical status that necessitate the guardian's input, and access to the care team, to discuss the information needed to actually make those decisions.

During the pandemic we experienced breakdowns in both of these systems.

Notification of the development of symptoms was often delayed. In some circumstances, the facilities failed to even provide notice that a client had been hospitalized.

When we identified the possible need for

medical decision-making, getting in touch with staff to have conversations about care was difficult, and reaching the primary-care physician is almost impossible.

The information systems and staff in nursing facilities must able to consistently and accurately identify the guardian as a surrogate decision-maker, provide them timely notice for the need for decision-making, and have open and accessible lines of communication with the guardian to discuss changes in the plan of care.

In conclusion:

While we understand the complexity and unprecedented nature of the present public-health emergency, in the future, the protection of nursing home residents must be a priority.

But we need to make sure that even the most proactive and aggressive responses of any New Yorker who is in need of a guardian has meaningful access to the court resources and processes necessary to protect them and their rights, and that the thousands of New Yorkers who rely on the assistance of a guardian to oversee their care, make medical decisions, can be assured that the effectiveness of their guardian will not be curtailed precisely when

they need it most.

Thank you.

SENATOR RIVERA: Thank you, Mr. Holt.

And now we'll hear from Beth Haroules --

I'm not sure if I've pronounced your name correctly. Apologies.

-- senior staff attorney for NYCLU.

BETH HAROULES: Yes, good evening.

My name is Beth Haroules. I'm not only a senior staff attorney at the NYCLU, I am plaintiff's counsel in [indiscernible] litigation.

The NYCLU has long taken the position that segregated institutions are dangerous and unhealthy for residents and staff, and the pandemic's impact on residential health-care facilities reaffirms the wisdom of this stance.

The view applies with equal force to other congregate-care settings: IRAs, ICFs, operated for people with developmental disabilities by OPWDD; psychiatric hospitals; psychiatric institutions; community-based residential treatment facilities; and other supported group homes certified by the New York State Office of Mental Health (or OASAS).

These are settings where workers' and residents' risk of infection and death are just as

high as those in residential health-care facilities, but where we have institution data and other public reporting.

We join with others today who have spoken to urge that these committees conduct similar oversight hearings with respect to the impact of COVID-19 in all congregate-care residential settings in New York State.

Back in March, the renowned infectious disease scientist Dr. Peter Hotez testified to Congress that COVID-19 was the angel of death for elderly living in Italian and in Washington State residential health-care facilities.

Dr. Hotez's remarks were widely reported.

We had warning here in New York State about how COVID-19 would ravage people living in congregate-care settings, and we failed to act.

We have heard that the COVID-19 pandemic has pulled back the curtain on longstanding deficiencies present in most of New York's residential health-care facilities.

Living spaces make distancing impossible; understaffing for infection-control protocols; inadequate planning; substandard care; along with more recent problems, such as the lack of PPE, and

failures to test residents and their direct-support professionals, have all contributed to the damage we are witnessing now.

I'm terribly sorry that Dr. Zucker and his staff were not present to hear the wrenching testimony of the families and residents today.

Yet again, DOH is absent; absent from doing its job to provide oversight, and absent from hearing about the substandard conditions DOH permits our elderly and medically-frail people to live in.

You have our written testimony.

We have offered you a series of recommendations.

I would like to focus quickly on six [sic] points:

Data testing;

The need for an independent analysis of why COVID ravaged the health-care facilities;

Staffing levels;

Support to CNAs;

And Article 30-d, immunizing residential health-care facility.

I know we don't have a lot of time.

I really urge you to ensure that the lack of data transparency across all New York State agencies

providing certified services in congregate care settings are provided to you.

We need data about all deaths and all reasons, from the start of the calendar year, relating to COVID-19 infections and deaths.

Without that information, we will not be able to fight this pandemic, we will not be able to make appropriate decisions around the nature of care and services, overcrowding, and the like, that occurs in institutional settings.

New York State must establish an ongoing COVID-19 viral testing program, and, as well, a testing program that identifies antibodies in individuals who may have been exposed or suffered from COVID, in order to engage in cohorting and other infection disease-control protocols.

We really need you to ensure that there's independent analysis of how COVID ravaged residential health-care facilities.

DOH, McKenzie, have come up with a self-serving report.

There needs to be an independent commission established to investigate exactly what happened here.

We know that Governor Cuomo stopped the

concept of an independent commission in his daily pandemic briefing today.

There should be a commission composed of academic leaders, community advocates, members of the public, representing a cross-section of New York State, to investigate the conditions under which the coronavirus arrived, spread, infected, disabled, and killed residents and staff in congregate-care settings.

You've heard about the inadequate staffing levels. I won't repeat that.

We ask you to do all in our power to support the needs of essential workers.

90 percent of nursing, psychiatric, and home-care aides are women.

Black women are overrepresented in the congregate-care workforce. And, overall, the majority of women working as home health and personal care aides are women of color, whose economic security is already precarious, due in large part to the systemic racism that has devalued caregiving [indiscernible] poverty-level wages.

We urge you to take this moment to reconsider, in its entirety, the way the nursing home industry and congregate-care settings are set

up in New York State.

The institutional model of care, like all the other institutional models of care, are broken and failed.

We have fought for almost 50 years for our [indiscernible] class members, people with intellectual and developmental disabilities, to live in the least restrictive settings most appropriate to their needs.

If we cannot support our elderly and medically-frail at home in their communities, at the very least, we owe it to them to move the system of care to a system that permits them to live in smaller, more personalized settings that will ensure meaningful quality of life, integration into the community, protection from harm, and high-quality medical services.

Thank you for holding these hearings, and taking our testimony.

SENATOR RIVERA: Thank you, Ms. Haroules.

Currently, no Senate members asking questions.

Assembly?

ASSEMBLYMEMBER BRONSON: We have one member who would like to ask questions.

I recognize, for 3 minutes, Assemblymember Tom Abinanti.

ASSEMBLYMEMBER ABINANTI: Thank you very much, both of you.

First of all, John, you said that you were unable to make the medical decisions for your wards.

Who made those decisions?

Somebody was deciding medical care.

And, is that not illegal, or at least unlawful?

And did those people not violate the law by making decisions for an incompetent who could not consent to the care?

JOHN HOLT: There were a few specific situations where people were sent to hospital settings, where we were not able to be involved in the care decision-making.

And in some of those instances, the care decisions were being made by other surrogates, under the Family Health Care Decision Act, who were family members, without the hospital being aware that there was guardian in place, which is problematic.

In the nursing facilities themselves, I think the problem was less about being able to eventually being involved, but only being brought into the

process when a person was really approaching end of life, where the decision-making was really, frankly, around COVID, about ventilator or no ventilator.

And, at that point, you know, we haven't been able to intake the information on an ongoing basis to understand how people are declining, and responding to the treatment they're receiving, because we're not getting notification.

[Indiscernible cross-talking] --

ASSEMBLYMEMBER ABINANTI: Yeah, but how is family member -- I thought the family members were being kept out.

So how -- they weren't making the decisions either.

JOHN HOLT: With the family members, that was in a hospital setting.

So, someone went to the hospital. The nursing facility didn't notify the hospital that there was a guardian in place.

A family member was somehow notified, or they were misidentified as the surrogate decision-maker, and that family member was contacted.

And, in fact, in that particular case, we -- the person actually passed away in a hospital setting, and we didn't find out for, basically, a

week, until after the person had passed away, that they had even been hospitalized, let alone passed from COVID.

ASSEMBLYMEMBER ABINANTI: All right. Thank you.

JOHN HOLT: In the nursing facilities, you know, really, it was just -- we had a very difficult time proactively trying to reach out and understand what's going on with the care.

I heard other testimony before that echoed our experience, where you call, someone, if you can get them to answer the phone, who has not been involved in the care --

ASSEMBLYMEMBER ABINANTI: [Indiscernible].

All right. Thank you.

JOHN HOLT: -- and says, you know, "they're fine."

ASSEMBLYMEMBER ABINANTI: I'd like to go to Beth quickly.

"The least restrictive environment."

Even to this day, all of the day hab programs are not open, and many of the people who live in group homes have been, basically, locked in, because there's nowhere for them to go and they can't get out.

Is that not a violation of the law?

And can you not bring a lawsuit, maybe a habeas corpus proceeding, or sue them, because now these people can't see their families, can't get out of the facilities, and they can't go to the day hab programs they're supposed to go to because they're not open.

It seems to me that there's a violation of the "least restrictive environment" requirement.

BETH HAROULES: Yeah, there's definitely that. There is an absolute lack leadership by OPWDD.

They have deferred completely to the agencies and to the providers to determine when, and under what circumstances, they should comply with some guidance.

The guidance is perfectly fine, both for the reopening of the day programs, and for opening up visitation within the group homes.

OPW [sic] has deferred completely to the providers to make those determinations, and that's why we're seeing massive shut-ins.

We've also seen a reopening of day programs without sufficient safety plans because the state has lost its funding to provide in-home day

services.

So day programs --

SENATOR RIVERA: Thank you, Ms. Haroules.

BETH HAROULES: -- are just opening up.

SENATOR RIVERA: Yep, thank you, Ms. Haroules.

Thank you.

Assembly.

ASSEMBLYMEMBER BRONSON: Uh, yes, we'll next recognize Chair Gottfried for 5 minutes.

ASSEMBLYMEMBER GOTTFRIED: Yes, question for Beth Haroules.

You mentioned the need for an independent commission to look at all of what's happening here, and suggested involving academics and advocates and others.

As you may know, one of our next witnesses may be discussing something very much like that idea, Bill Hammond.

My question for you is:

That would probably involve considerable cost.

Lots of the people who could do terrific work may or may not be able to work entirely as volunteers.

Do you have any thoughts about -- and if you don't have them off the top you of your head, give it some thought -- as to where we might turn for funding?

Because I think, inherent in the idea, is that the funding not be government.

BETH HAROULES: Yeah, I mean, I think, you know, there's some serious issues. Right?

We don't want a government-funded commission.

But, you know, I think the World Health Organization might be a, you know, source of resources here to bring to bear sufficient academics, epidemiological folks, community members, staff who are working in these facilities, and researchers.

I think the concept of a sort of civic commission that would be assessing, from soup to nuts, what happened, how it happened.

I mean, to state, as DOH and McKenzie have done, based on data that no one has seen, that the staff and family members were the sole source of transmission of COVID into these facilities, is just -- it defies belief.

I mean, there are a lot of other things going on in terms of infectious disease-control protocols,

and what everyone else has been talking about during these hearings.

ASSEMBLYMEMBER GOTTFRIED: Okay.

Well, if you could give some thought to what foundations or other sources might be interested in chipping in for such a thing, that would be useful.

That's the only question I have.

SENATOR RIVERA: All righty.

I don't think we have any further questions from the Assembly.

Is that correct?

ASSEMBLYMEMBER BRONSON: That is correct.

SENATOR RIVERA: All right.

Thank you both so much for being with us this evening.

And now, without further ado, the final panel --

And now I know that we're trying really hard to get to midnight, and we probably won't, but we will definitely get to 12 hours, won't we?

Let's see.

-- Panel 12 would be:

Thomas Mahoney, chief medical officer for Common Ground Health;

Bill Hammond, who waited this long, senior

fellow for health policy for the Empire Center;

And, Nina Kohn, who also waited this long, Dr. Nina Kohn, professor for Syracuse University College of Law.

ASSEMBLYMEMBER GOTTFRIED: And do each and every one of you swear or affirm that the testimony you're about to give is true?

DR. THOMAS MAHONEY: I do.

BILL HAMMOND: I do.

DR. NINA KOHN: I do.

ASSEMBLYMEMBER GOTTFRIED: Okay.

SENATOR RIVERA: Okay.

Thomas Mahoney, kick off the last panel, sir.

DR. THOMAS MAHONEY: Thank you.

I am Dr. Tom Mahoney. I'm the chief medical officer of Common Ground Health.

For those not familiar, the agency's mission is through collaboration and partnerships, to bring greater focus to community health issues, data analysis, resident engagement, and solution implementation.

I thank you for the opportunity to present to this meeting.

The COVID pandemic, in many ways, has laid bare the shortcomings of the current health and

health-care infrastructure.

For this hearing, my goal will be to focus on observations, addressing structural issues, things that we need to do to be prepared for a second surge or future pandemic.

We need to address the systemic problems.

We can't regulate or inspect our way out around these failings.

My comments are based on the experience of a community collaboration to address increasing morbidity related to COVID in the regions' nursing homes.

We convened the first week of April, at the request of Dr. Michael Mendoza, the commissioner of health for Monroe County.

Facilitated by Common Ground Health and the Finger Lakes PPS, the group was convened with the realization that the community was facing a crisis that was new to all of us, with many yet unanswered questions and challenges.

It was acknowledged that health care is an ecosystem, where we're all interdependent -- hospitals, post-acute-care settings, long-term care, home care, medical providers -- and that there would need to be a coordination of all players who often

work in separation and isolation or in competition to improve the community outcomes.

So the conclusion is, collaboration was needed to address systemic issues in a unique way. We can't be effective without all players working together.

For example, the collaboration that we did, brought together leaders from the county; two large hospital systems; representatives from the nursing homes, large, small, for-profit, not-for-profit, county-run, and they were part of the whole group, including representatives from Finger Lakes Medical Directors Association as providers, home-care agencies, and, Lifespan, who talked to you in a previous presentation.

We found that shared data was necessary.

Community data was reported by the Center for Community Health and Prevention Infectious Disease specialist.

This data has collected and summarized by the Monroe County Health Department, with the assistance of the CDC and the New York Department of Health Emerging Infections Program, so we were actually able to give the group a picture of the actual occurrences in nursing homes of both staff and

residents.

This data was extremely helpful in getting the group, and allowing them, the participants, to understand their place in the community, and share in solutions.

This is -- the clear thing that popped as our very largest issue was the need to ensure adequate workforce.

Top on the list is that long-term care system, with -- where its workforce, for many years now, reimbursement has been long -- has been -- in Medicaid has been stagnant and the cost of providing care had risen.

The result was the increasing burden on front-line CNAs and nursing staff, with CNAs often with wages below a living wage.

We've talked before about other issues: PPE.

It was very important, but also instruction is essential.

You heard that from several prior presentations, but this is an issue that the committee heard extensively on.

The equipment acquisition actually, in our region, using OEM, was fairly smooth; however, what we found is that there was a clear lack of ability

to instruct all those to be using that.

And we had to create our own poster presentations that went to the community, developed by this group and Emory University.

The -- all senior citizens also need to be considered in the community control of illness.

Our data reviews found that addressing nursing home, but not assisted-living and congregate senior centers of housing, created some public-health issues that were really a problem.

SENATOR RIVERA: Make sure you wrap up, sir, since your time has just expired.

DR. THOMAS MAHONEY: Yes.

That issue, what we're looking for is, that ALFs move into a position where they have to have some medical direction in case of emergencies.

Other issues [indiscernible cross-talking] --

SENATOR RIVERA: Thank you for that, sir.

Yep.

Bill Hammond!

BILL HAMMOND: Mr. Rivera, thank you for the opportunity to testify.

Thank you for your stamina.

It's good to be here this evening.

The past five months have made clear that

New York was uniquely vulnerable to a pandemic, and also dangerously unprepared to fight it.

It's that lack of preparedness, I think, is the most fundamental reason that so many people died, including way too many residents of nursing homes.

I don't think it was about bad luck or the subways or European tourists.

It was, if we had been better prepared the way, say, for example, South Korea was, we wouldn't be talking about European travelers, we wouldn't be talking about a March 25th order from the health department, and we probably wouldn't be having this hearing.

So our main focus should be making sure nothing like this happens again, bolstering our public-health defenses, and that starts with an honest assessment of what happened and why.

And, unfortunately, we can't do that on an assessment at this point, especially with respect to nursing homes, because the State is withholding the data we need to do that.

Unlike, virtually, every other state, New York is not counting nursing home deaths that occur outside of the facility, and most often in

hospitals.

So the official toll of about 6500, as high as that is, and as horrifying as it is, it's an understatement of the real loss of life.

And not knowing the true number, and the more detailed information about which facilities had how many deaths, it makes it really impossible to continue with the process of learning from mistakes.

The CDC has put out its own incomplete data. It only started in mid-May, so it kind of missed most of the pandemic.

But the numbers they gave us for more recent weeks, if you line them up against the health department, they show that it looks like about 40 percent of the people that the CDC counted died outside of nursing homes, and, therefore, didn't show up in the DOH count.

If you extrapolate from that, that suggests that the true toll of coronavirus in New York's nursing homes is several thousand higher than we have been told so far, maybe in the neighborhood of 10,000 or more.

Another concerning indicator is that the vacancy rate in New York homes has really skyrocketed.

It's usually around 8 percent. And more recently it's up to 21 percent.

That translates to 13,000 patients who normally would be, that aren't there.

I think that's consistent with a high death toll, but also with a sharp drop in new admissions.

The DOH report of July 6th, it undermined its own credibility because it used that same incomplete data that they've been giving to the public. And, also, it went beyond what the evidence said in reaching conclusions, and contrary to how it's been described, it was not peer-reviewed.

That said, I think it did present evidence that the March 21st order certainly was not the sole source of coronavirus in nursing homes.

The coronavirus rampaged through the state much earlier than we realized, and, as a result, it got into nursing homes and it was spreading rampantly there before the March 25th order was issued.

On the other hand, I would not say it was not a significant factor, which was one of the conclusions the DOH reached.

I don't think that's consistent with the data either.

I think what happened was, it made a bad situation worse, and it's really hard to say how many deaths you would attribute to one cause or another.

I've heard a lot today about -- oh, and as Mr. Gottfried mentioned, I think the solution, when the DOH is demonstrating that it's not approaching this with a fair mind, that it's in a defensive mode, and it's not sharing data, I think that bolsters the case for bringing -- for establishing some kind of completely independent commission that would do an investigation of what happened.

I've heard a lot of talk today about how nursing homes don't have enough staff, and the staff aren't paid well, and the quality of care delivered is poor.

Where -- and I absolutely believe all of that. It's consistent with my own research on this topic.

Where I do balk, though, is at the idea that the root of all these problems is that the State isn't spending enough money.

By almost any measure, New York spends a great deal of money on Medicaid.

It has one of the most generous such programs

in the country on a per capita basis.

SENATOR RIVERA: Can you finish up?

BILL HAMMOND: Oh, I'm sorry.

Okay, I'm finished.

SENATOR RIVERA: All right, so you finished in the middle of a sentence, which I'm sure that we will get back to you.

Last, but certainly not least, the cleanup hitter, and with the same energy that I gave the first person that spoke in the damned day, I will give you Dr. Nina Kohn.

Please, bring us home!

DR. NINA KOHN: Thank you.

My name is Nina Kohn. I'm a professor at Syracuse University College of Law, and the Solomon Center Distinguished Elder Law Scholar at Yale Law School.

And my research focuses on the civil rights of older adults and those in congregate-care settings.

So I'm going to focus on policies and practices that have made residents vulnerable to COVID and its impacts, and concrete policies that can improve well-being, going forward.

So one source of vulnerability has been

facilities' overreliance on part-time staff and staff who work in multiple facilities.

Adopting a one-site rule that limits staff to working in one facility, which we've seen many Canadian provinces do, could reduce spread between facilities, and, indeed, a new study suggests that eliminating staff linkages between homes could reduce infections by 44 percent.

A one-sided policy, however, must be paired with policies incentivizing hiring full-time direct-care workers, or it does create a risk that we'll have a worker shortage or financial distress to workers.

Another factor that increases vulnerability is a lack of accountability for facilities, including around infection control.

This gap is well documented in nursing homes.

Even when state inspectors find that a home violated regulations designed to protect residents, the home is often merely directed to correct the situation with no follow-up that corrections are made.

The rare fines that are typically levied are so small, they're toothless.

That's a problem everywhere in this country,

but especially so in New York where average fines are well below the national average.

Going forward, the State needs to impose consequences for regulatory violations that put residents at risk, consequences that actually deter bad behavior.

And that will include rolling back, fully, Section 3082 of the budget bill, which rewards neglect and dangerous behavior by granting facilities, owners, and administrators astonishingly broad immunity for unreasonably causing foreseeable harm to residents.

Another factor increasing vulnerability is insufficient direct-care staff.

Most homes, especially for-profit facilities, were dangerously understaffed even before COVID.

Now, research is linking nursing-staff levels, and staff levels more broadly, to facilities' ability to control outbreaks.

Minimum staffing requirements, like those in the Safe Staffing Quality Act that have been proposed, are really essential to ensure that facilities have the staff needed to avoid systemic neglect.

Any increased funding for facilities amid

this pandemic must be conditioned on adequate direct-care staffing.

Isolation is also endangering residents. It's itself a harm, causing great psychological suffering and poor health outcomes, as you've heard today. But it's also a risk factor for abuse and neglect.

Research shows that the presence of non-staff in facilities protects residents.

The ombudsman program could be a powerful tool to counter isolization [ph.] -- isolation, I should say, and to strengthen oversight, but current policies are undermining it.

For example, rather than helping ensure that ombudsman can safely go into facilities, DOH has encouraged "remote advocacy."

That's a farce for residents who most need ombudsmen.

It enables facilities and staff to be de facto gatekeepers to the very people who might report their bad behavior.

Going forward, we need ombudsmen prioritized for PPE, and encouraged, perhaps required, to regularly visit all residential care facilities even amid the pandemic.

To further this, the State should promulgate protocols, unlike the current ones, that do not allow facilities to act as gatekeepers for ombudsmen.

And we need to invest in a professional ombudsmen workforce, and not rely just on the wonderful volunteers.

This pandemic has shown the folly of that.

Combating isolation is also going to require recognizing residents' rights to associate with family and friends.

The State must unambiguously require facilities to facilitate virtual visits by phone or video conference when in-person visits are unfeasible, and rescind guidance that gives facilities discretion to deny residents in-person visits.

That discretion allows our worst facilities to avoid scrutiny by further depriving residents of their civil and human rights.

Instead, this State should require facilities to allow in-person visitation in accordance with state protocols.

And you could look to the protocols promulgated at Ryerson University in Canada, in

collaboration with provider and advocacy groups, to guide that.

So, finally, I'll just say:

That this pandemic really --

SENATOR RIVERA: Very quickly, please.

DR. NINA KOHN: Yep.

-- exposes the danger of underfunding home and community services to begin with, and the problems we're seeing in congregate care more broadly.

Thank you.

SENATOR RIVERA: Thank you.

You know, there's an incredibly cheesy, but incredibly entertaining movie, in the '80s called "The Last Dragon." And it has a very cheesy song attached to it.

(Singing) You are the last panel. Uh nah nah nah nah.

Assembly, lead us off!

ASSEMBLYMEMBER BYRNE: Holy shit. [Indiscernible.]

[Laughter.]

ASSEMBLYMEMBER BRONSON: With that, we will begin with --

[Laughter.]

ASSEMBLYMEMBER BRONSON: -- Chair Gottfried for 5 minutes.

ASSEMBLYMEMBER GOTTFRIED: Well, if I was going to do a song-and-dance routine, I'd need more than 5 minutes.

So, I'll pass on that.

But I will --

SENATOR RIVERA: Your video, Dick. We can't see you.

ASSEMBLYMEMBER GOTTFRIED: Oh, hold on.

SENATOR RIVERA: (Singing) You are the last panel.

There you go.

ASSEMBLYMEMBER GOTTFRIED: Okay.

Still not going to do the song-and-dance routine.

However, I will take the bait and ask Bill Hammond:

You were about to comment on what about New York's Medicaid program does or doesn't have anything to do with nursing home -- with the nursing home situation, et cetera.

Are we underfunded, or not?

What do you think?

BILL HAMMOND: Thank you for letting me

finish that point.

What I was trying to say is that, if Medicaid spending -- if high Medicaid spending was going to deliver better care and protect us from a pandemic, we would have been golden, because we -- our per capita Medicaid spending in New York is not only double the national average, it's about 29 percent higher than the second-highest state.

We're -- we're off the charts when it comes to -- and that's -- that's a combination of having broad eligibility, generous benefits, and then high per-recipient spending.

And, in particular, our spending in long-term care is high, and our spending on nursing home care is high, and our spending on home care, at least the part of it that's known as "personal assistance," I believe, at this point, New York alone spends more on -- spends more on Medicaid personal assistance than all of the other 49 states combined.

It's so we're -- the idea that we -- that the answer to any of our problems is just pumping more money into that, I just think it fails on the logic test.

I think we have to look at how we spend the money. And, also, we have to look at targeting it

more carefully to the people who need it the most.

So that's the point I'm making.

I actually don't question the idea that we have serious quality problems all over the place in our health-care system, and in nursing homes in particular.

ASSEMBLYMEMBER GOTTFRIED: Okay.

And as a treat for those of you who stayed till this ungodly hour, I don't know if I've announced this earlier, but, the health department tells us that the December health department report on the question of safe staffing will actually be made public on August 14th, this Friday.

So that's -- I guess I would only add that, Bill, we would be interested in continuing a discussion as to how New York's home-care spend -- or, long-term-care spending might be better targeted and better spent.

BILL HAMMOND: Well, here's the other point that I managed to not make:

I think the top priority, to the extent you have any money to spend, which doesn't seem likely under these circumstances, but to the extent you do have some money to spend, I think the top priority should be public health.

It should be bolstering the surveillance capabilities, the testing capabilities, the contact tracing, to try to build up something that looks like what they have in South Korea, which ended up being the most powerful protection for the health and lives of the South Korean citizens, than anything that would happen in a nursing home, than anything that would happen in a home-care setting or in a hospital.

Those -- the goal of a public-health protection is to keep -- to keep people out of hospitals and to keep the virus out of nursing homes.

And that is where things really broke down, I feel, in New York.

And, by the way, the federal government blew this very badly, you know, especially with respect to testing. The leadership in the White House was either non-existent or awful.

The -- but, more importantly, the lessons of that, is that New York shouldn't count on the federal government to protect it from the next pandemic.

It needs to have its own -- its own capabilities in that area.

And, actually, public health is traditionally, primarily, a State function.

So that would be my pitch, is that you put some resources and effort into public health.

SENATOR RIVERA: And your time --

ASSEMBLYMEMBER GOTTFRIED: And, of course --

SENATOR RIVERA: -- expired, but, go ahead.

I think I know what you're going to say.

If not, I'm going to say it, because I'm going to take 5 minutes now.

ASSEMBLYMEMBER GOTTFRIED: We have to say that South Korea, like Taiwan, has a well-established single-payer health-care system.

SENATOR RIVERA: There's that.

I'll take my 5 minutes now.

BILL HAMMOND: [Indiscernible cross-talking] --

SENATOR RIVERA: Hold on, Bill. Hold on, Bill.

BILL HAMMOND: -- [indiscernible cross-talking] --

SENATOR RIVERA: Hold on, Bill.

I will recognize myself for 5 minutes, and I will continue the point that our colleague was making.

It's, like, you are correct, public health -- the public-health measures actually are the best way to avert a crisis getting out of hand, like it did in the United States.

But that is much easier when you have a single-payer system.

But that is not my question.

I have two for you.

One, related to --

And I do appreciate you -- you all hanging out this late, because, even though we disagree on a lot, I respect the work that you do.

You are thorough, you are serious, and you come at it from a different angle, which sometimes -- but we'll get you on board.

Number one: Have you filed FOIL requests for the administration?

If so, for what; what information did you request?

How long ago?

Have you gotten any answers from them?

BILL HAMMOND: Well, I did recently request the full count of nursing home deaths, because it seemed like -- I had expected them to put it out.

I thought the DOH report would be their

opportunity to do it.

They didn't do it.

So --

SENATOR RIVERA: That's actually my second question, because I was going to lead to that, and it's, like: Do you agree that -- I mean, if you -- if you -- we talk a lot about the rates of death.

We talked about it with the commissioner of health last week.

Have you looked at it?

I know that you've spoken about it -- you've spoken about it in some of the stuff that you've written, but I want give you a second to kind of talk about that.

And do you agree that, in addition to not including hospital deaths of nursing home residents, facilities may have underplayed deaths by COVID?

Would you agree?

BILL HAMMOND: Oh, yeah.

The CDC, actually, if you look very closely at it, there is a sign of excess deaths beyond what they reported as COVID deaths.

And it's -- in other words, their overall death rate was unusually high, at least compared to, say, the last few weeks.

And -- and the -- the coronavirus toll by itself doesn't explain why their death rate was so high.

So it -- certainly, it bears investigation.

SENATOR RIVERA: Got you.

And even though I'm not -- I am certainly looking forward to the report on Friday, I'm not holding my breath for the report on Friday, regardless of what they told us they're going to do.

Now, I want to give Dr. Kohn and Dr. Mahoney:

Dr. Kohn, any -- any comments on the -- on the issue of maybe having a single-payer system would help us deal with public-health matters?

Anything?

DR. NINA KOHN: Well, what I will say is that, if you want to prevent illness getting into residential care facilities, then you need to protect the health and welfare of the workers.

Right?

So when you're not protecting your workers' health and safety, you're not protecting your residents' health and safety.

And I think one thing that this epidemic has shown us, is that the interests of workers and the interests of residents are perhaps much more aligned

than we're typically led to believe.

So when you deny workers health benefits, when you deny workers sick leave, that creates a tremendous risk for residents.

SENATOR RIVERA: Got you.

Dr. Mahoney, any comments?

DR. THOMAS MAHONEY: Certainly.

I think that that observation is correct, that the big issue of the workers in nursing homes, in terms of both their health, the morbidity that they -- morbidity and mortality that they suffered, and the impact that it had within the nursing homes, can't be ignored.

And health care is certainly one of the biggest issues that comes up if you look at questioning of those workers.

SENATOR RIVERA: Got you.

All right. Thank you.

BILL HAMMOND: Can I say something here?

SENATOR RIVERA: Really quickly, bro.

BILL HAMMOND: I would point out that before New York --

SENATOR RIVERA: [Indiscernible cross-talking] --

BILL HAMMOND: -- before New York had it bad,

Italy had it bad, and Spain had it bad, and the UK had it bad, and Belgium had it bad.

Those are all countries with single-payer.

So, single-payer, maybe it has some advantage, but, in and of itself, it's not protective against the pandemic.

A pandemic [indiscernible cross-talking] --

SENATOR RIVERA: [Indiscernible cross-talking] --

BILL HAMMOND: -- is medical care, not [indiscernible] --

SENATOR RIVERA: [Indiscernible] in agreement, sir.

But if you don't have to worry about paying for tests, if you don't to have worry about whether you're going to access to treatment or not, if you don't have to worry about whether you're going to be -- whether it's -- contact tracing is going to be built into the system -- well, I'm sure that we'll have many more conversations about this.

My colleagues are waiting.

That is my time.

Assembly.

ASSEMBLYMEMBER BRONSON: Thank you, Senator.

And I will recognize myself for 5 minutes.

And thank you, panel, for being here, and we're not going to resolve the New York Health Act discussion this evening, but it's always fun to watch you go back and forth on that.

And I'm on the side with Mr. Gottfried and Senator Rivera.

With all that, Tom, first of all, thank you for what you do at Common Health -- Common Ground Health, and all the research that you all do over there to help make sure that we provide good health care in our wonderful Greater Rochester region.

You talked about looking at data, sharing data, bringing in the various stakeholders to have discussion.

And what -- out of those conversations that you had up in Monroe County, did you walk away with concrete ideas of what we could have done better, and what we need to do, as we face a second surge or some other pandemic?

Are there a handful of recommendations you can give to us as state policymakers?

DR. THOMAS MAHONEY: I think that the one thing that came out is, that there were some -- the nursing homes already have a mutual aide agreement, and that allowed, to some degree, shifting within

the nursing home community, that was -- that was -- at least lessened the burden, somewhat.

We're now actually having discussions with the hospitals to join that because, as you look at the outbreaks within the nursing homes, they weren't simultaneous.

And if we can create the ability to shift resources, and the biggest resource that came in short supply was staffing in these homes, if the mutual aide agreement actually allows for among the nursing homes has that potential, and if you add hospital systems to that, which has a much deeper workforce, it may be an opportunity -- and we're still discussing it in the group -- it may be the opportunity to be able to shift staff to where the greatest need is.

When one nursing home was out over 50 front-line employees, it was really difficult to maintain care there.

The need for staffing, we tried -- we tried a public-relationships campaign to increase work.

We figured that people were -- had lost their jobs in other areas and could come in and fill in.

Unfortunately, that was very disappointing.

So I think we have to consider some of these

other opportunities.

ASSEMBLYMEMBER BRONSON: And I know that we've had discussions regarding home health care, and the inability to really attract and retain those workers.

And you had talk about, if we're going to address this, we have to address the entire senior citizen population.

So that's not only the folks who are in nursing homes; it's the folks who are in adult facilities, folks who are receiving home care.

DR. THOMAS MAHONEY: Correct.

ASSEMBLYMEMBER BRONSON: Did you have more detailed conversations about how can you shift that workforce, and make sure that you have adequate staffing at all areas that we're going to need it in?

DR. THOMAS MAHONEY: The experience of home care during this was, actually, that there was a decrease in need because much of their work had been postoperative care for short periods.

So the issue is an ongoing one within home care, but it boils down to the inability to pay at a level that they can retain staff.

The ability to shift seems less likely there.

ASSEMBLYMEMBER BRONSON: Okay.

Thank you very much.

Back to the Senate.

SENATOR RIVERA: Thank you, sir.

Followed up by Senator Skoufis, recognized for 5 minutes.

SENATOR SKOUFIS: Thanks very much.

And thanks to all the witnesses on this panel for waiting so long.

And, thank you, Chair Gottfried, for pointing out that we're finally getting this report on Friday.

The second sort of piece of that statement, however, is that the department of health has, literally, broken the law for the past eight-plus months.

This report was statutorily due to us on December 31st of last year.

And I would just point out, and maybe suggest, that it is commonplace for agencies to disregard statutory directives from the legislature.

It has happened for many years.

It happened when Republicans were in control of the Senate.

It's happened while Democrats are in control

of the Senate.

And, you know, I would just suggest that perhaps we ought to maybe seek a legal remedy as this continues to happen.

It would have been extremely helpful to have this report by January 1st, ahead of the pandemic.

Nevertheless, I'd like to talk to Mr. Hammond.

I've read much, if not all, of your work over the past five months throughout the pandemic.

And I want to focus on something that's in your written testimony, and I think you've mentioned it.

You cite the State's lack of preparedness as, really, the primary driver of the high death toll here in New York.

You also made reference to the federal government sort of dropping the ball.

And, you know, I think you mentioned testing, which is certainly something we've been looking for testing, a national testing regimen, for the past five months.

PPE. It's very difficult for the State, as we've realized, to go out and source on our own, PPE, or manufacture PPE.

That needs to be done nationally.

The Trump administration cut, they eliminated, a national security council office that was strictly focused on pandemic work.

So in your written testimony, you suggest, well, we can't rely on the federal government.

Look what the NYPD did following 9/11.

They set up, I don't know if it's offices, but efforts of some kind, around the world to monitor terrorist activity.

Are you suggesting that we do something similar, where we have a state CDC with offices around the world?

You know, I would respectfully suggest that a pandemic by its very nature is a global issue.

It's not an epidemic.

This is a pandemic we're living through, and it is the responsibility of the national government to provide for the national defense.

You know, the State doesn't engage in foreign affairs, doesn't engage in national defense.

So I'm just curious, what specifically you suggest that the State move in and fill a national void of?

You know, we can't count on the federal

government.

What should the State be doing to fill that void that the national government should be doing?

BILL HAMMOND: Yeah, I brought up the NYPD to give a sense of a kind of outside-the-box thinking that's needed here.

I don't necessarily think the State should have public-health experts stationed in Beijing or London.

But what I do -- so one reason that the testing was so inadequate is that there were so many people to test.

So the earlier you can catch an outbreak, the easier it is to manage. Everything else flows from that.

It now turns out, it's pretty clear, that we had thousands of cases in New York in February.

We didn't know -- we didn't test anybody positive until March.

By that time we probably had, you know, like I say, tens of thousands of cases.

It appears that the pandemic actually peaked around the time that the March 25th shutdown was ordered.

So we needed to have -- we needed to put

emergency rooms and doctors' offices on high alert for any sign of flu-like symptoms that weren't the flu, or any sign of unusual viruses.

If -- and then we also needed to have that army of contact tracers kind of standing by, like the National Guard, or something.

I mean, I'm spitballing here.

I'm not an epidemiologist, but it does seem to me that that is where everything went south for us, at that very early stage.

And by the time we woke up to what was going on, it was too late for us to prevent a major catastrophe.

SENATOR SKOUFIS: Thank you.

SENATOR RIVERA: Thank you, Senator.

Assembly.

ASSEMBLYMEMBER BRONSON: Next we'll recognize Chair John McDonald for 5 minutes.

ASSEMBLYMEMBER MCDONALD: Thank you to everybody on the last team this evening.

Bill, I appreciated your comments this evening. Found them interesting.

You know, a lot of people are focusing on the March 25th, and your comments were kind of right down the middle on that; not really pointing

fingers, not really pointing blame.

Just, basically, I think -- I don't want to characterize your comments, but, basically, you know, the challenges we face are a combination of many miscues, both at the State and federal level. But also the fact that we've been dealing with a virus that has, basically, tricked and evaded every epidemiologist in the world. And we were kind of building the plane while we were flying it.

That being said, what I wanted to ask, actually, I surprised Dick Gottfried didn't ask this, because I think he asked it of an earlier panel, is, you know, there's obviously a lot of calls for an investigation of this, and an independent investigation.

And one of the challenges, and maybe it's just me, because I've only been doing this for 20 years, is truly finding what is "independent."

How do we find independent entities that are not going to be in this ultra-biased world so favoring one end or the other?

I'm just curious if you have any thoughts or comments?

And I open it up to the other panelists as well.

BILL HAMMOND: I mean, my concept of it is to keep -- anybody who is dependent on government for the majority of their funding should stay away.

People directly involved in the health-care system at the top level should stay away.

We should focus kind of on academic-type researchers.

And you should also try to get a balance.

You know, so if you do have people who are going to be perceived as being more on the left, you want to also have people who are perceived as being more on the right, so that if they can speak with one voice, it feels like a consensus that cuts across party lines.

It was mentioned earlier that this is going to be expensive.

I have no idea how much it would cost.

I actually think the money would be there. I think there would be foundations who would be more than happy to support this kind of work.

And, also, I was kind of hoping that this group would bootstrap what people like myself are doing anyway.

I fully intend to be doing all the research I can on what happened.

And so my thought was, to take all of that work that's happening already, and combine it, you know, to coordinate between it, to share findings, et cetera.

DR. NINA KOHN: I would second the recommendation of academia.

Obviously, I'm in it.

I will say, though, that there's a time for investigation and there's a time for action.

And right now, I would hate to see all this energy that's been put into thinking about what could be done to save lives going forward, to be, instead, focused purely on a retrospective, because we have lives on the line now.

And I think we have some very good evidence about what could be done to save lives of workers and residents, going forward.

And I will note that there was some really quite remarkable testimony in the very first session -- I did listen to all of them -- from the industry, saying, basically, look, even without this order, we would have taken these people.

That should concern you all, because what you're hearing is that the profit motive was such, that homes would have accepted these people.

So that tells me -- right? -- that we absolutely need to be making sure that we're thinking prospectively, because there's some very dangerous behavior that facilities are willing to engage in.

ASSEMBLYMEMBER MCDONALD: Thank you.

That's it.

SENATOR RIVERA: All right.

Thank you.

We'll follow up by Senator Rachel May, recognized for 5 minutes.

SENATOR MAY: Thank you very much.

And I want to turn and talk with Professor Kohn, and I'm pleased that Syracuse University is so ably represented here.

I wanted to follow up on a few things you said.

You talked about restricting staff from working multiple jobs.

We had some testimony last week about the reason they do that, is because they can't make ends meet otherwise, and they're not allowed to do overtime. So they have to then work two 8-hour shifts instead of one longer shift at one facility.

So that isn't really a question, just a

comment about that, but more on the minimum staffing levels you talked about.

We're going to have this report, supposedly, coming out on Friday.

How will we be able to judge if the department of health's assessment of what are safe staffing levels really are, you know, something we can rely on?

DR. NINA KOHN: Well, I mean, I think the good news there, is that there are decades of research on what experts believe to be safe staffing levels based on all the data that has come out of nursing homes for decades.

And there really does seem to be consensus among experts as to what those minimum safe staffing levels are.

You know, certainly, more staff is better in an ideal world.

But we're looking at, roughly, 4.1 hours of direct staff time per resident per day to avoid systemic neglect.

So I think you can compare that to the established research, and I'd be happy to share more of that with you.

SENATOR MAY: Right. Thank you.

And then the commissioner kept saying that one of the reasons for their -- that March 25th order was, that they didn't want to discriminate against people with COVID-19.

And that has bugged me.

Like he said, it's like you couldn't discriminate against people with AIDS.

And it feels like a completely different situation to me.

And I'm just wondering, if you heard that, if it sent up any flags for you as a legal scholar?

DR. NINA KOHN: Frankly, I don't think that holds water.

SENATOR MAY: Thanks.

I don't, either.

And then, finally, I wanted to talk to you about the ombudsman program because we've heard a lot about it today.

I gather you have an understanding of a lot of different models that are out there, and especially when we're talking about independence.

Can you weigh in on what you think is a model we should be looking at in New York State?

DR. NINA KOHN: Absolutely.

And I will say that, before I became an

academic, I was a legal-aid attorney, representing nursing home residents and frail elders in five counties in Upstate New York, and had the opportunity to work with many ombudsman programs.

And I will say, I think the State should be very sensitive, not only to independence vis-a-vis the State, but independence vis-a-vis the counties.

And when I was working in counties, I saw very different behavior based on how individual ombudsman offices were paid for.

Our most aggressive ombudsmen at that time were actually county officials. They were not afraid of angering or annoying facilities because they were county officials, and no one was going to pull their grant if they pissed people off.

Excuse me.

Whereas, ombudsmen offices that were continually going to the county for grant money or re-upping their grants had to be much more concerned about being politically astute, and we tended to see less aggressive efforts on that part.

So I do think you should be thinking about how things are doled out at the county level, not just at the state level.

And it is critical to have the professionals

in there, because they build up expertise, and they also build up relationships with other community organizations who can be critical to advocate and support residents and their families.

SENATOR MAY: Thank you.

And then my last question was about, you said remote advocacy doesn't work with the ombudspeople because the facilities are acting as gatekeepers.

Did you mention that there are models where -- usable protocols, let's say, for how to prevent the facilities from being gatekeepers?

DR. NINA KOHN: Well, one is, you need in-person visits.

But, two, if you don't, then you need to have technology that residents can access without substantial faculty -- facility assistance to do that.

And when you have facilities serving as the gatekeepers to video conferencing or phones, then it just doesn't work.

So if you're not going to have in-person, then you need to be putting as much technology as you can in the hands of residents or, you know, resident councils.

SENATOR MAY: Okay, great.

Thank you very much.

SENATOR RIVERA: Thank you, Senator.

For those people track, we are past 12 hours.

Assembly!

ASSEMBLYMEMBER BRONSON: And we have a lot more to do.

SENATOR RIVERA: Oh, yeah.

ASSEMBLYMEMBER BRONSON: Next we will recognize Assemblymember Kevin Byrne for 5 minutes.

ASSEMBLYMEMBER BYRNE: Thank you.

And it is late in the evening.

We had a feeling it was going to go late.

I want to thank all of the people providing their testimony.

And, Mr. Hammond, you've written extensively on a lot of this subject matter, and I want to thank you for that, and your testimony today and answering these questions.

I did want to drill down on a few other things. And we'll see how much I can get through with the time allotted.

I think it's fair to say that, while the DOH maintains its findings, conclude that the March 25th order wasn't the predominant source of COVID-19 in nursing homes, is it still not fair --

is it not still fair to conclude that it remains dangerous to reintroduce the virus, potentially, to patients in nursing facilities filled with other elderly patients, many of whom have underlying health issues or other comorbidities?

Do you think that reintroducing it, still -- I think you said this in your testimony, I just want to make sure I get this right -- that while it might not have been the driver, and it seems that you accept some of the findings from the DOH report, that it still could have made a bad situation worse?

BILL HAMMOND: Oh, yes.

I mean, in the initial reports they said that, something like, 20 percent of homes hadn't had any coronavirus at all until one of these discharged patients arrived.

They later revised that.

But, I mean, that's the point: There were probably some homes that had managed to stay completely coronavirus-free, against all the odds. And then, you know, by order of the State, they were required to accept a patient who was positive.

I mean, this gets back to the preparedness issue.

A good solution to this problem of taking

stable patients out of hospitals, is to have a coronavirus-only nursing home available. But you would need to have that available before the crisis hits, and you would need to have a plan in place, you know, to manage that process, and to alert all the people involved that this was going on.

And none of that happened until we're flying the plane.

ASSEMBLYMEMBER BYRNE: Now, just to go back a little bit, I understand that it existed in a large percentage of the nursing facilities in the state.

That doesn't mean that, you know, reintroducing it again is likely not helpful.

And this is another question.

I haven't really got an answer.

I wanted to ask this of the commissioner, and we didn't have time.

You know, the timeline has been referenced a lot.

On April 8th, do you happen to know how many fatalities we had in nursing facilities, even with the count as it is, that doesn't include fatalities in hospitals, and what the total is today?

BILL HAMMOND: I don't remember what the number was, but that's about when it peaked. It's

about when it peaked statewide, in fact. It wasn't just nursing homes.

It was around that three- or four-day period.

ASSEMBLYMEMBER BYRNE: But is it fair to say that we continue to lose, I believe it was several thousand, after that?

BILL HAMMOND: We did.

ASSEMBLYMEMBER BYRNE: Okay.

And that's another point that I feel like sometimes is missed, that the grand scheme of things, is that we still lost more lives than any other state in the nation.

And I brought this up earlier with one of the panels, and this is kind of from my colleague Mr. Hawley who represents Orleans County:

The administration likes to point out that we're, I think, 45 out of the 50 states when you look at proportion, to nursing home deaths to total deaths.

And it's a little misleading to me because our total death count is so high.

But then, in Orleans County where Mr. Hawley resides, it was 54 to 55 deaths were from a nursing facility.

Now, that paints a very different picture.

And I get this sense that sometimes looking at the statewide number, it kind of dilutes and changes the narrative from what's happening locally.

I have some concerns knowing that it's not complete. And that it almost seems like this is -- it goes out of its way to paint a different story.

Would you have any other comments on that?

Would you agree with that concern?

BILL HAMMOND: I think the picture painted in that report made me wonder if nursing homes themselves weren't becoming kind of vectors of the pandemic, because they described that the infection rate among staff, according to their data, peaked in mid-March. And that, ultimately, somewhere between a quarter and a third of all staff in nursing homes showed signs of infection.

I mean, that's an extraordinarily high rate of infection by any standard.

And so -- so -- and that was something that the report just kind of, it said, yeah, it was really bad among the staff. And it didn't go the next step, which is, well, what do we need to do to prevent that from happening when something like this arises again?

SENATOR RIVERA: Thank you, Mr. Hammond.

Thank you, Assemblymember.

The Assembly [sic] recognizes Senator Tom O'Mara for 5 minutes.

SENATOR O'MARA: Thank you, Chairman.

Thank you, Nina, Tom, and Bill for hanging in there with us throughout this day, and sticking so late.

You know, I think throughout the testimony that we've seen today, and last Monday, I think we've gotten a lot of candor from witnesses that are family members; witnesses that are workers, employees, in the facilities; and even from the ombudsmen that are there.

And it seems to me a little bit maybe less candor on the situation from the facility administrators themselves, and even the couple of associations that testified today.

And I'm just wondering what your thoughts are on whether you -- because we talked about the funding for these facilities is so important, whether these administrators hold back a little bit on what their true feelings are with the situation, and particularly in reference to the March 25th order, that it may not be as it seems, from their testimony.

Any thoughts on that?

DR. THOMAS MAHONEY: Is there directed to me?

SENATOR O'MARA: Any one of you three.

Nina?

DR. NINA KOHN: I'll say I think the facilities got a tremendous, unwarranted, and incredibly dangerous gift in the budget bill, preceded by the executive order, around immunity, giving not only direct-care workers, but, executives, administrators, the whole ownership chain, immunity from liability, even from criminal.

And there was some suggestion it might be necessary to address these issues.

And with that type of gift, it's really hard to look the gift horse in the mouth.

SENATOR O'MARA: Thank you.

DR. THOMAS MAHONEY: Also, I can give you a perspective from the data in Rochester.

And the peak in the nursing homes came well after the order.

There was not a temporal relationship.

Our peak was much later.

It wasn't until, really, we shifted to double protection with PPE, so both masks and face guard, and then universal testing, that we were able to see

the rate come down.

But there wasn't a spike within a couple weeks of the administrative order.

SENATOR O'MARA: Bill, any thoughts on that?

BILL HAMMOND: I mean, I -- I start from an assumption that everyone involved in the situation was dealing with extremely difficult circumstances, and trying to make good-faith decisions under pressure.

I mean, everybody in the health-care system, in fact, everybody in life, has financial motivations for what they do.

And, certainly, when you get to the level of an association president, they're a couple steps removed from what's happening on the ground. They're speaking for a group of people who control their lives.

I mean, I -- and as you mentioned, they have a vested interest in staying in the good graces of the health department and the Cuomo administration.

You know, that's just the way the system works.

It's one of the reasons why I think the investigation has to be as independent from that process as possible.

SENATOR O'MARA: Thank you.

And I certainly agree with that.

Bill, one thing you mentioned in your initial testimony was, that this department of health report about the March 25th order, that Dr. Zucker presented with his, what I would call, a "self-serving" slide show, PowerPoint presentation, on his interpretation of their own data, you said it wasn't peer-reviewed, in essence, even though the administration is calling it "peer-reviewed."

Can you elaborate on that a little bit?

BILL HAMMOND: Well, I mean, "peer-review" in the academic world is where the author doesn't pick the peer-reviewers. The journal that's publishing the paper does. And they try to find people who -- they may be acquainted with the author, but they work at a separate institution, and so they're in a position to comment, you know, and to put in criticism.

In this case, they went to chief executives of hospitals who receive boatloads of State funding.

In one case, Michael Dowling is very close to the Cuomo family.

It was not an arm's-length situation.

SENATOR RIVERA: Thank you, Senator.

SENATOR O'MARA: Thank you.

SENATOR RIVERA: Assembly.

ASSEMBLYMEMBER BRONSON: Thank you.

Next we will have Assemblymember Jake Ashby for 5 minutes.

ASSEMBLYMEMBER ASHBY: Thank you.

Thank you, Mr. Chairman.

Thank you to the panel for sticking with us.

Mr. Hammond, earlier in your testimony you alluded to vacancy rates among the nursing homes.

And I'm wondering if you could just elaborate a little bit more on your findings, in terms of vacancy rates, and maybe discrepancies, or a lack of discrepancies, of nursing home death.

BILL HAMMOND: I mean, it's more of raising a question than answering it.

The states routinely ask nursing homes: How many beds do you have, and how many of them are empty?

Which is kind of -- it's an odd way of doing it, if you ask me.

I don't know why they don't just ask, how many patients do you have? which would get to, more or less, the same answer.

And for 10 years -- I mean, the data that the

State posts online goes back 10 years. And for 10 years, the vacancy rate has held almost rock-steady between, say, 6 and 9 percent.

And, you know, in the past couple of years it's been rock-steady at 7 or 8 percent.

And then, all of a sudden, in late March, it goes straight up and levels off at around 20, 21, or 22 percent.

I mean, that's completely unprecedented, at least as far as the data goes back.

And it's consistent with, you know, what everybody knows now is just a horrific situation in the nursing homes.

People -- I heard somebody testify earlier that it's very hard to do a voluntary discharge.

So I think we have to kind of rule out the idea that it was, you know, family spontaneously pulling their loved ones out because of the coronavirus.

What I think did happen was a sharp drop in admissions, especially in parts of the state because of the lack of elective procedures, and because of just even more heightened concern about going into a nursing home.

And so you're left with sort of

13,000 missing patients, and that's double the official death count.

And the question is, where -- you know, how much of that extra half of -- you know, the other 6500, how much of that is people who died from coronavirus? How much of it is people who died from other causes that were indirectly related to the stresses of the pandemic? And then how much of it is a drop in admissions?

And I don't have those answers.

ASSEMBLYMEMBER ASHBY: Thank you.

I know states like California had issued an advisory to long-term-care centers in their state, asking if families could take their loved ones out of the nursing homes.

And that may have caused a decline in their census.

Do you think New York could have benefited from something like that.

BILL HAMMOND: Yeah, potentially.

I mean, as was discussed earlier, this is not an easy thing to do under any circumstances.

You have to provide substantial, you know, support and care for the resident in the home.

If that could have been done, there's, you

know, a likelihood they wouldn't be in a nursing home in the first place.

ASSEMBLYMEMBER ASHBY: Correct.

BILL HAMMOND: So it's not easy to do under normal circumstances.

It's even that much harder to do when visitors aren't allowed in the home, when the staff and administration of the home are necessarily preoccupied with, you know, other issues.

So, I mean, again this is a matter of preparedness.

If we had had more time to think some of this stuff through in advance, by the time these questions were coming up, in retrospect, the state's pandemic had already peaked.

ASSEMBLYMEMBER ASHBY: Right.

I can appreciate the banter between you and Senator Skoufis earlier about an agency that could be dually tasked at the federal and state level to prepare for such things.

And, in fact, one exists. Right?

It's our National Guard, it's our Air National Guard, which, in a rare, you know, display of public cooperation at the federal and state level, we saw the USS Comfort come in, and,

unfortunately, not be utilized to its fullest extent.

But perhaps that's something to look to expand upon later on down the road, the role of public-health officers in both of those departments.

It has both federal oversight and state oversight, with the authority of the Governor.

BILL HAMMOND: Yeah, I mean, I didn't actually envision it as being a joint agency.

I thought the State should have its own independent -- maybe in conjunction with New York City, its own independent public-health capability that it doesn't seem to have now.

I mean, I would have thought we had it; I would have thought that we had a pretty sophisticated health department in New York State, actually.

ASSEMBLYMEMBER ASHBY: So sophisticated.

SENATOR RIVERA: Thank you, Mr. Hammond.

Thank you, Assemblymember.

Last, but not least, for the Senate, recognize Senator Serino for 5 minutes.

SENATOR SERINO: Thank you, Mr. Chairman.

And I want to thank all of you.

We are truly ending with a very powerful

panel tonight.

And this question is for Bill, or anyone else on the panel, or if you know of anyone, that might have inquired with the department of health, or filed a FOIL request, to access the raw HERDS survey data.

Any of you guys know an answer to that?

BILL HAMMOND: I haven't asked for it at that level.

SENATOR SERINO: No?

BILL HAMMOND: I mean, I wouldn't be surprised if journalists have done that, though.

SENATOR SERINO: Oh, good point.

Because we heard earlier today that professional organizations weren't doing their own surveys because it was overwhelming facilities, and HERDS was supposed to be collecting this data.

However, they have not been given access to that data, so they haven't been able to use it to inform decisions or improve responses.

So I'm just wondering if any other outside entities or research institutions are actively seeking that data specifically.

And like you said, Bill, maybe it's the journalists that are doing that work, if you guys

don't know of anybody else.

BILL HAMMOND: When I heard that testimony, I made a mental note that I should put in that FOIL.

I mean, I wouldn't expect to get it for a period of months, but, I'm interested to see it.

SENATOR SERINO: Absolutely.

And just one more.

The State had a volunteer staff portal that we've heard was wholly inadequate to meet the need of long-term-care providers during this time.

We also heard a lot about health professionals being recruited away from long-term-care facilities with different incentives and significant monetary raises.

We heard one panelist talking about how a nurse could make thousands more by leaving their nursing home and going to New York City.

Are any of you looking into how the State is tracking how public dollars were spent during this pandemic?

And do we know, or are we trying to find out, who is footing the bill for these health-care workers, many of whom came from out of state, and many who were pulled directly out of high-need areas?

BILL HAMMOND: I don't feel like I -- this doesn't -- I mean, one thing I did observe earlier on was, upstate hospitals suddenly had a lot of excess staff, and it turned out that they could find temporary work.

They were furloughed by their normal employers, whether -- primarily hospitals. And there was this huge demand for them downstate, and so they had to make a decision: Do I want to expose myself to the virus and the stresses of that situation?

So I think there was some of that going on, but I don't have much more beyond that.

SENATOR SERINO: Anyone else?

DR. THOMAS MAHONEY: No.

DR. NINA KOHN: No?

SENATOR SERINO: All right.

Well, okay.

That's all that I have, Senator Rivera.

SENATOR RIVERA: Thank you, Senator.

Assembly.

ASSEMBLYMEMBER BRONSON: We will next go to Assemblymember Brian Manktelow, for 5 minutes.

ASSEMBLYMEMBER MANKTELOW: Thank you, Mr. Chairman, and thank you, panel, for being here

at this late hour.

Mr. Hammond, earlier in your testimony, I believe you said that you believe that the DOH is in a defensive mode.

If so, why do you feel they're in a defensive mode?

BILL HAMMOND: Well, the structure of that report on July 6th, although it didn't explicitly say this, it was pretty clear reading between the lines that it was primarily about pushing back against criticism of the March 25th order, and stretched the point quite a bit.

You know, I kept looking at some of the language, and they said it was not a significant factor, the March 25th order.

I'm not sure exactly what that means.

Does that mean it wasn't a factor at all?

Or, you know, are they trying to imply that there's some statistical barrier above which it would be significant or below which it wouldn't be significant?

I thought that was not language that would have survived peer-review, actually.

I think an epidemiologist would have called them out on that.

ASSEMBLYMEMBER MANKTELOW: Thank you.

You know, we've been on these hearings for two days now, almost 20 -- now we're going on 12, and 9, for 21 hours.

To this point we've only had DOH on these testimonies for two hours.

We talked about doing an independent investigation of what's happened.

If we did that, how would we get the DOH to answer any of their questions?

Anybody?

BILL HAMMOND: That's one of the drawbacks of doing it through private independent groups, is that they wouldn't have subpoena power.

All they'd have is, potentially, a sense of, you know, they kind of have the public behind them, or at least a sense of moral authority.

But they could only -- they would have to rely upon the cooperation of official sources.

ASSEMBLYMEMBER MANKTELOW: As legislators, do you feel that we should subpoena DOH?

BILL HAMMOND: If necessary, yeah.

ASSEMBLYMEMBER MANKTELOW: Well, they seem to be the common denominator here on all the testimonies, and they seem to be one that's

continually lacking to be at the table.

And I just don't see how we're ever going to get any answers.

If we're going to be looking at the past, and we want to look at the future on what we're going to do to make sure this doesn't happen in New York State again, how are we ever going to do that without having the true numbers, the true testimony, from the DOH, so, as legislators, we can act accordingly to do what's best for our people and moving forward.

I really want to do it, and I think we owe it to every individual in New York State that we represent.

And -- you know, I again ask, I hope, that we do get a chance to subpoena DOH and get them back to the table so we can ask some of these questions, not only from the members here this evening or today, but many of the members that are not on these calls, I know they want to ask questions.

So I'm hoping that we will do that in the near future because, still, we haven't answered every question.

And I think that the people that we represent have a right to know what's really going on.

And for us to do our job to the best of our abilities, we need to do that.

So, panel, thank you for staying on for such a late hour, and I'll turn it over.

Thank you.

SENATOR RIVERA: Thank you.

Assemblymember.

Currently, we have no more senators asking questions.

[Indiscernible cross-talking.]

ASSEMBLYMEMBER BRONSON: Very good.

Next we will go to Assemblymember Tom Abinanti for 3 minutes.

ASSEMBLYMEMBER ABINANTI: And here I thought everybody was in a hurry to get home, and the list of people just keeps adding.

Thank you all for being so informative.

I will say that, at the end of the evening, the panels were just as good and as strong as the ones that started us off.

So, thank you very much.

I just would comment on this conversation about an independent panel, independent investigation.

I think the administration has to be careful

that there isn't some civil lawsuit brought, and that some judge doesn't decide that the judge is going to issue subpoenas, and allow documents to be brought to court, or, that some U.S. attorney doesn't decide to take a look at what's going on here, given the gravity of it.

I think the administration would be better off to consent to an independent investigation by people that we can all agree to.

But I want to talk to the professor just for a moment.

I am troubled, very much so, by one conversation that we've been having over and over again, and that is the right of a resident to leave a facility.

I don't understand how a nursing home, which is not the appointed guardian of someone, can say "you can't leave."

I don't get that.

And to say that you have to stay here because there's not a safe place for you to go, when it's documented that the nursing home actually has COVID, and where you want to go is a place that doesn't, to me that outweighs everything.

So can you, as a law professor, talk a little

bit about the right of a person to determine where they live, or the guardian of that person to determine where they live, and what kind of care they get?

DR. NINA KOHN: Great question.

ASSEMBLYMEMBER ABINANTI: [Indiscernible] talk to me about this, please.

DR. NINA KOHN: So it's a common misunderstanding, where facilities think they can limit a person's ability to leave a home.

Unless a person is subject to guardianship, the guardian has the power to make the decision, and the guardian is refusing to let the person go, or, you have a 72-hour hold, and all of the procedures for a 72-hour hold, the facility cannot prevent that person from leaving.

What the facility can do, and this is quite problematic, is have the person discharged against medical advice.

And the problem there is that other providers may be unwilling to pick up that person and provide, for example, the in-home services they need if that person is discharged AMA.

But a common misunderstanding, and I think it's not uncommon for facilities to tell people they

can't leave, when, in fact, that is plainly false.

ASSEMBLYMEMBER ABINANTI: Well, it sounds to me like a basis for a lawsuit.

If somebody died because they were kept, I mean, there were stories about people who were about to be discharged, and then it was delayed, for some technical reason, and then they died of COVID.

SENATOR RIVERA: Thank you, Assemblymember.

ASSEMBLYMEMBER ABINANTI: It sounds like the basis for a lawsuit.

SENATOR RIVERA: Thank you, Assemblymember.

ASSEMBLYMEMBER ABINANTI: Okay.

Despite a law that says they can't [indiscernible cross-talking] --

SENATOR RIVERA: Thank you, Assemblymember.

Next --

We're just a couple away. We're coming on 13 hours. That's why I'm cutting you off.

Go ahead.

ASSEMBLYMEMBER BRONSON: We'll recognize Assemblymember Missy Miller for 3 minutes.

ASSEMBLYMEMBER MILLER: Hi.

Thank you so much for being here and testifying.

I have a question for Mr. Hammond, and,

actually, anybody can jump in.

You know, I think it's fair to say we have all learned -- whether we've wanted to or not, we've all learned quite a lot about this virus.

From the department of health, the Governor, all of the electeds, the families, the doctors, researchers, you know, everybody's gotten quite an education.

Governor Cuomo had made a comment about how the federal government was wrong from day one and New York has been right from day one.

But when you take into account the number -- the massive number of deaths overall in New York, but, also, the nursing home deaths, what do we tell families who have lost loved ones in that way, that we've been right since day one?

Like, how do we, you know, even present it that way?

And what have we learned as far as, what do you do differently for the second wave?

Do you think that the department of health and the homes have learned anything or enough to protect people?

BILL HAMMOND: I mean, we've had a lot of discussion about trying to pry, you know, mortality

statistics out of the health department.

I feel like there's a deeper issue, which is, the health department is supposed to be the department that protects the public health, and that means they have to be -- they have to be kind of a fair and impartial arbiter of what's actually going on.

And they can't allow themselves to be distracted by political considerations, such as, protecting the commissioner's reputation or the governor's reputation.

And so when you see evidence of a self-justification tendency, it makes me -- it kind of makes me despair for the kind of thought process you're talking about, which is, to take to heart what happened, to acknowledge that mistakes were made, especially very early, and then correct them.

DR. NINA KOHN: And I fear we're learning exactly the wrong lessons -- right? -- that we're seeing too many facilities cry poverty at the same time, when we know that private equity is busy investing in facilities.

And we're seeing facilities that neglect residents getting rewarded with protections against responsibility for that neglect.

So I fear that if something isn't done to really look at the systemic issue, the message we'll send to families is: We learned nothing and this will happen again.

SENATOR RIVERA: Thank you, Professor.

Thank you, Assemblymember.

And I believe that we have one more person on deck.

ASSEMBLYMEMBER BRONSON: We do indeed.

One last person, Assemblymember Kevin Cahill will bring it home for us.

SENATOR RIVERA: No pressure, Cahill!

None at all.

ASSEMBLYMEMBER CAHILL: You know, if you want me to stay, I will, in just a minute, give me a couple minutes.

Bill, I'd like to build off a comment that you offered before when a discussion was being had of an independent panel.

I believe you suggested some sort of numerical balance between people from the left and the right.

Wouldn't it be a better idea to choose people based upon their expertise, their integrity, their skill, and their reputation, than to give one wit

about what their politics are?

BILL HAMMOND: I, of course, would expect them to be super-qualified in various fields, although I would say I wouldn't want it to be every last member of this to be a professor.

I think you need -- you need a breadth of perspectives and experience, is what I was trying to say.

And I thought in the interests of kind of trying to bridge the partisan divide, if you could get people with a range of perspectives, and then get them to agree on what happened, and agree on a set of recommendations, that would be more powerful, if it -- like I say, if it had some kind of cross-partisan pedigree.

ASSEMBLYMEMBER CAHILL: I take your point, but I would also point out that, the very idea of the pandemic having any sort of partisan patina to it has been one of the problems from the beginning.

We have never experienced approaching a national crisis as a Republican and a Democrat, a liberal and a conservative, a left and a right, issue, as we have this time, when, you know, I go back to pretty far back, the Cuban missile crisis, the World Trade Center, the Challenger disaster,

those weren't left and right.

Those were understood to be something of national significance, of significance to all of us, without regard to our party.

So I do thank you for your point.

And, Mr. Chair, Madame Chair, all you chairs, I'd like to thank you for enduring over 20 hours, over 100 witnesses, including Dr. Zucker who was kind of enough to appear to testify voluntarily.

I would repeat what I offered this morning, that perhaps we should consider using our subpoena power.

But I would also support an independent investigation, using the subpoena power of the state legislature, to compel that which cannot be obtained voluntarily, and not to assess blame.

This is to make sure that we can protect our citizenry in the future.

6400 deaths are a tremendous number, but each one of those deaths is associated, as we heard today, with an entire family of people who experienced the tragic loss.

And I think we should all be cognizant of the human cost here.

But, with that, I would like to say thank

you, one and all, and thank you for the opportunity to close out here.

SENATOR RIVERA: Thank you so much, Assemblymember.

And on that note, I will remind everyone, not only thank everyone for, yes, getting right to the end --

I'm not sure if anybody outside of us is tuned in.

If you are, God bless you.

-- but remind everyone that we're going to do this again on Wednesday.

On Wednesday we have the -- there will be a hearing tomorrow on elections and COVID-19.

But on Wednesday we have one related to hospitals and the effect of COVID-19 on hospitals.

So expect for us to have another late night.

And we are creeping in on 13 hours, as I give the last word to my colleague Assemblymember Dick Gottfried.

ASSEMBLYMEMBER GOTTFRIED: And Commissioner Zucker says he will be with us on Wednesday morning, so -- on the topic of COVID-19 and hospitals, along with a wide variety -- people with a wide variety of viewpoints.

It should be a very interesting hearing.

SENATOR RIVERA: And likely just as long as this one.

And with that, have a very good night, one and all.

I will see you all on Wednesday.

Take care, folks.

ASSEMBLYMEMBER BRONSON: Good night.

ASSEMBLYMEMBER GOTTFRIED: Thank you, all.

(Whereupon, the virtual joint committee public hearing concluded, and adjourned.)

--oOo--