BEFORE THE NEW YORK STATE SENATE FINANCE
AND ASSEMBLY WAYS AND MEANS COMMITTEES

JOINT LEGISLATIVE HEARING

In the Matter of the
2021-2022 EXECUTIVE BUDGET
ON HEALTH

Virtual Hearing
Conducted via Zoom

February 25, 2021
9:42 a.m.

PRESIDING:

Senator Liz Krueger
Chair, Senate Finance Committee

Assemblywoman Helene E. Weinstein
Chair, Assembly Ways & Means Committee

PRESENT:

Senator Thomas F. O'Mara
Senate Finance Committee (RM)

Assemblyman Edward P. Ra
Assembly Ways & Means Committee (RM)

Senator Gustavo Rivera
Chair, Senate Committee on Health

Assemblyman Richard N. Gottfried
Chair, Assembly Health Committee

Senator Neil Breslin
Chair, Senate Insurance Committee

Assemblyman Kevin A. Cahill
Chair, Assembly Committee on Insurance

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PRESENT: (Continued)

Senator Patrick M. Gallivan

Assemblyman Kevin M. Byrne

Senator Pamela Helming

Assemblyman Ken Blankenbush

Senator Kevin Thomas

Assemblyman Khaleel M. Anderson

Senator James Skoufis

Assemblywoman Rodneyse Bichotte Hermelyn

Assemblyman Harry B. Bronson

Senator Brad Hoylman

Assemblyman Edward C. Braunstein

Assemblywoman Vivian E. Cook

Senator Todd Kaminsky

Assemblyman Nader J. Sayegh

Senator Rachel May

Assemblyman Phil Steck

Assemblywoman Marjorie Byrnes

Assemblyman Jonathan G. Jacobson

Assemblyman John McDonald

Senator Alessandra Biaggi

Assemblywoman Linda B. Rosenthal

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PRESENT: (Continued)

Assemblyman Steven Cymbrowitz

Assemblywoman Pamela J. Hunter

Senator Pete Harckham

Assemblyman Jake Ashby

Assemblywoman Alicia Hyndman

Senator Samra G. Brouk

Assemblyman Erik M. Dilan

Assemblywoman Amy Paulin

Assemblyman Demond Meeks

Assemblywoman Yuh-Line Niou

Senator Patricia A. Ritchie

Assemblywoman Michaelle Solages

Assemblyman John Salka

Senator Susan Serino

Assemblyman Thomas J. Abinanti

Assemblywoman Aileen M. Gunther

Assemblywoman Melissa Miller

Assemblyman Charles Barron

Assemblywoman Rebecca A. Seawright

Senator Daniel G. Stec

Assemblyman Philip A. Palmesano

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Senator Robert G. Ortt

Assemblyman Kenneth Zebrowski

Senator Edward A. Rath III

Assemblyman Jarett Gandolfo

Assemblywoman Deborah J. Glick

Senator James Tedisco

Assemblyman Josh Jensen

Senator Joseph A. Griffo

Assemblywoman Nily Rozic

Assemblyman Michael J. Norris

Senator Peter Oberacker

Assemblyman Daniel Rosenthal

Senator Julia Salazar

Assemblyman J. Gary Pretlow

Assemblywoman Karines Reyes

Senator Phil Boyle

Assemblywoman Phara Souffrant Forrest

Assemblyman Colin Schmitt

Senator George M. Borrello

Assemblyman Andrew Hevesi

Senator Mike Martucci

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Senator Jeremy A. Cooney

Assemblyman N. Nick Perry

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CHAIRWOMAN KRUEGER: Good morning.

I'm Senator Liz Krueger, chair of the Senate Finance Committee. I'm joined in partnership with my colleague from the Assembly, Helene Weinstein, chair of the Ways and Means Committee.

Today is our last budget hearing for '21-'22, a hearing on the Governor's Health Executive Budget.

It is February 25th. It's a little past 9:42 in the morning; we're a little late.

I want to welcome you all to our virtual budget hearings, a new model for us because of the pandemic. It's actually been going quite well. More people have been participating than ever before, both legislators and public who wishes to testify.

Today is the final of the 13 hearings conducted by the joint fiscal committees of the Legislature regarding the Governor's proposed budget for state fiscal year '21-'22. These hearings are conducted pursuant to the New York State Constitution

and our Legislative Law.

Today the Senate Finance Committee and Assembly Ways and Means Committee will hear testimony concerning the Governor's proposed budget for the Department of Health, the Office of Medicaid Inspector General, and the Department of Financial Services -- which has many functions, but today will be in relationship to health insurance issues.

Representing each of the agencies, I would like to reference that we will be joined by Linda Lacewell, Superintendent of the Department of Financial Services first, then Erin Ives, acting Medicaid Inspector General, and then Dr. Howard Zucker, Commissioner of Health, along with Donna Frescatore, the Medicaid Director, Department of Health.

Because of a scheduling conflict, Dr. Zucker and his people cannot be here till, at earliest, 11:00 a.m. So if they have gotten here and we are on a panel, they will wait till we complete that panel and then we will shift to the Health

Commissioner.

Following each testimony there will be some time for questions from the chairs of the fiscal committees and the legislators from the other lead committees for today, which would be the Health Committee -- Gustavo Rivera, from the Senate; Dick Gottfried, from the Assembly -- and the Insurance Committee -- Kevin Cahill, chair from the Assembly, Neil Breslin, chair from the Senate.

After other chairs and rankers ask their questions, there will be an opportunity for members from all three of these committees to ask questions.

And then finally, after we complete the government representatives, there will be a time to members of the public who have signed up to briefly give us an overview of their testimony and take some questions.

Anyone is welcome to have submitted testimony, and it will be put up online for everyone to see, all legislators and everyone from the public. But it is impossible to

allow everyone to read their full testimony, so many people who are interested in testifying have not been able to get a slot to speak at today's hearing. Because if you choose to stay with us all day and night, you'll know why.

I will now introduce members from the Senate, and Assemblymember Helene Weinstein, chair of the Assembly Ways and Means Committee, will introduce members from the Assembly.

In addition, I want to mention that Tom O'Mara is the ranker on Finance, and he will be introducing the members of his conference, as will Assemblyman Ra, the ranking member of Ways and Means. And then we will shift to Superintendent Linda Lacewell from the Department of Financial Services.

And so just going through, to make sure I get everyone who's here so far -- and over the course of the day more Senators and Assemblymembers will show up, and they will be announced when they're here. But so just

starting with our Insurance chair, Neil Breslin; Brad Hoylman, Senator Brad Hoylman; Senator Rachel May; Senator Gustavo Rivera, the Health chair; Senator Kevin Thomas, the Consumer Affairs chair. Just continuing down my master list -- sorry -- Senator James Skoufis; Senator Pete Harckham; Senator Samra Brouk; Senator Julia Salazar; Senator Alessandra Biaggi. I told you these were big committees. Everyone is going to be here today.

I think that's it for the Democratic Senators.

I'm sorry, Tom O'Mara, ranker, do you think you can take a stab at the Republican Senators? I'm seeing many of them here as well.

SENATOR O'MARA: There's a lot on our list as well, Chairwoman. Thank you.

We are joined on the Republican side of the aisle with our Health Committee ranker, Senator Pat Gallivan; our Insurance Committee ranking Republican member, Pam Helming. We're also joined by Senators

Dan Stec, Ed Rath, Jim Tedisco, Joe Griffo, Patty Ritchie, Peter Oberacker, Phil Boyle, Sue Serino, and George Borrello, who has his hand up for questions already.

(Laughter.)

CHAIRWOMAN KRUEGER: Very good. I'm going to pass it over to Helene Weinstein.

CHAIRWOMAN WEINSTEIN: Thank you, Senator.

We too have a lot of colleagues with us. We have Assemblyman Gottfried, chair of our Health Committee; Assemblyman Cahill, chair of the Assembly's Insurance Committee; and Assemblymembers Anderson, Barron, Bichotte Hermelyn, Braunstein, Bronson, Cook, Cymbrowitz, Dilan, Gunther, Hunter, Meeks, Niou, Paulin, Sayegh, Seawright and Zebrowski. I'm sure we will have some other members joining us shortly.

Assemblyman Ra, would you like to introduce members of your conference?

ASSEMBLYMAN RA: Yes, thank you, Chairwoman.

Good morning, everybody. We are

joined by Assemblyman Kevin Byrne, who is the ranking member on the Health Committee; Assemblyman Ken Blankenbush, who is our ranking member on the Insurance Committee; and Assemblymembers Missy Miller, Jarett Gandolfo, Salka, Byrnes, Ashby and Jensen.

CHAIRWOMAN WEINSTEIN: Okay. So back to the Senate to begin our first witness.

CHAIRWOMAN KRUEGER: Thank you.

And good morning and welcome, and thank you for coming earlier than usual.

Do you have a mute on that can be taken off?

DFS SUPERINTENDENT LACEWELL: Thank you, Chair. I have unmuted.

CHAIRWOMAN KRUEGER: Great. Welcome.

DFS SUPERINTENDENT LACEWELL: Shall I proceed?

CHAIRWOMAN KRUEGER: Oh yes, please.

DFS SUPERINTENDENT LACEWELL: Thank you so much.

Good morning to Chairs Weinstein, Krueger, Breslin, Cahill, Rivera and Gottfried, to the ranking members, and to all

distinguished members of the State Senate and Assembly.

Thank you for inviting me to testify here today. I'm Linda Lacewell. I'm the Superintendent of Financial Services at the New York State Department of Financial Services.

We do have many responsibilities, as the chair indicated. As pertinent here, we regulate commercial health insurance for the State of New York and New Yorkers. I am privileged to work for Governor Cuomo and to serve all New Yorkers in this important role and to work with all of you in that regard.

Our mission is multiple. We protect New York consumers, we strengthen the financial service industries in our state, we safeguard markets from fraud and other illegality. Our operating expenses, as you know, are assessed to industry under Section 206 of the Financial Services Law. We regulate nearly 1800 insurers with assets of more than $4.7 trillion, and approximately 1500 banking and other financial institutions

with assets of more than 2.6 trillion.

We have in New York and across the nation, as you know, the people of our state have been enduring at least three multiple overlapping crises: The global pandemic, which has tested all of us and remains a significant challenge even as the numbers come down after the holiday spike.

The health crisis, of course, which led to the economic and jobs crisis which has adversely and disproportionately affected communities of color and women in the job market. Because to fight the pandemic, work and social life and education of course had to become remote, and many people were unable to work or simply lost their jobs, leaving them unable to pay their rent, their mortgage, other household bills -- or even to feed their family, given the loss of income.

Added to these two crises, of course, is the cry for racial justice across the country, aggravated by the disparate impact of both the pandemic and the jobs crisis. That crisis, of course, long predates the

first two. The legacy of discrimination unfortunately, even in the great State of New York, continues to impact communities of color struggling with the first two crises.

I am proud of the role of DFS during these three crises. DFS did its job proactively, affirmatively and with speed. We issued five emergency regulations, 11 circular or guidance letters, numerous FAQs, both for industry and for consumers, on health insurance, COVID-19 as pertinent, and answered many hundreds of inquiries from consumers, insurers, providers and other stakeholders.

We issued an emergency regulation waiving cost-sharing for COVID-19 testing at in-network providers and facilities and issued guidance on coverage of COVID-19 testing at pharmacies. We expanded telehealth to help New Yorkers, especially in underserved and rural communities. We prioritized the mental health of our hero essential workers by prohibiting insurers from imposing cost-sharing for in-network

outpatient mental health services.

We also worked with insurers and directed them to extend the grace period for payments of health premiums for those affected by the pandemic. And we then opened up the exchange with the Department of Health multiple times to ensure coverage could be obtained.

We also worked with health and dental insurers to return over $200 million from surplus premiums, given the fact that services were really not being as extensively used.

In anticipation of the vaccine phase, we proactively reviewed all the laws and regulations in this regard under our purview and immediately issued an emergency regulation requiring immediate coverage of the vaccine, without cost-sharing, including protections from balance billing and excessive provider charges.

And our consumer assistance unit performed admirably as well. Notably, providers or doctors even within network

began to charge consumers for PPE equipment that they needed to operate, and we took action there as well with the health insurance industry to return funds to consumers for that as well.

Even during the pandemic our work continued, ensuring mental health and substance use disorder treatment parity through regulations, in conjunction with DOH. We appreciate the work that we did together on this, especially partnering with the chair, Senator Krueger, and Assemblymember Rozic to make sure consumers are aware of this initiative.

We also continued our work benefiting New York families in the LGBTQ community, including the lift of the ban of gestational surrogacy and ensuring that surrogates have access to comprehensive health insurance and independent legal counsel of their choice.

We also closed the loophole allowing out-of-network hospitals and doctors to bill consumers in excess of their in-network cost-sharing for emergency services and

inpatient admissions following emergency room visits. And this protects New York consumers from surprise medical bills, a matter we have worked on together with the Legislature for years.

We are fully engaging with our shareholders, and the Administrative Simplification Workgroup has been meeting and their work is going on apace with all the stakeholders in this matter. We also established, following legislation last year, the Drug Accountability Board, a panel of experts that will guide us as we carry out our new statutory power over drug price spikes. And we have announced our first set of investigations on drugs that are COVID-related.

As you know, the two primary matters in the budget that reflect -- with respect to our purview are PBMs and telehealth.

Pharmaceutical drug costs, as you know, are one of the biggest drivers of health insurance premium increases. Pharmacy benefit managers, or PBMs, have an outsize

role in the sale and pricing of these drugs, as they're on both sides of the table, and they keep a percentage of the spread in that regard. They negotiate rebates from drug manufacturers and decide how much if any to pay on them. There are many potential conflicts of interest, and we must address this issue to help bring health prices under control.

This would require PBMs to immediately register with DFS and, by 2023, to be licensed by us, with a code of conduct and detailed prescriptive rules to govern the behavior and cabin the conflicts and generate transparency of what is essentially a black box industry.

On telehealth, I identified for you the work we've already done. We need to make some of this permanent. The law needs to be changed to allow telephonic devices for telehealth services, not just computers with WiFi. This will help expand the service to otherwise underserved communities, including remote rural areas and in urban areas as

well. And we will work together with the Department of Health on their proposals as well.

We will continue to put the consumer at the center of all we do. And all the work that we do, including with respect to these crises, is difficult, complex, new and emerging. It requires us all to work together, government with industry, the agency with the Legislature, our federal counterparts, other states, experts and, most importantly, consumers.

I look forward to continuing that work with you. I will be happy to take your questions and to follow up as needed to provide additional information.

Thank you.

CHAIRWOMAN KRUEGER: Thank you very much.

And our first questioner will be the chair of Insurance, Neil Breslin.

SENATOR BRESLIN: There, unmuted. Thank you, Madam Chairman. And I'll be rather brief.

Good to see you, Madam Superintendent.

DFS SUPERINTENDENT LACEWELL: Thank you.

SENATOR BRESLIN: I just have -- I think most of the people who will be asking you questions have certain opinions on PBMs. As the sponsor of the PBM bill in the Senate that was vetoed by the Governor, I have a difficult time explaining that when you have just said that the pharmacy benefit managers face difficult problems and conflicts of interest. And I don't think that getting their name and address is sufficient to counteract that kind of behavior.

And I would like, first of all, if you could discuss your feelings about the bill that we have introduced now for several years, which has been vetoed by the Governor, in comparison to the bill that you have presented.

DFS SUPERINTENDENT LACEWELL: Thank you. Thank you, Chair. And it's a pleasure to see you and it's a pleasure to develop a working relationship with you and your staff.

What we agree on, of course, is the policy and the need to address the cost driver of pharmaceutical drugs, and to bring about oversight and regulation of this important actor who is currently unregulated, the pharmacy benefit managers. So we agree that we've got to deal with the conflict of interest issues and bring about transparency, which can be its own force multiplier for good.

The registration, as I believe you know, is an initial step, of course. For one thing, we need to identify the full field of the PBMs. Many of them are unknown. Nobody seems to have a complete list. We know who the big ones are, but not the rest. And then over that period of time, over the next year, DFS would work with industry and consumers and the legislature and the Department of Health and others to craft a set of best practices, a code of conduct, rules of the road that then would go into effect as each of these were licensed.

Importantly, that would also enable us

to go in and look behind -- look under the hood, so to speak, of these PBMs and see what's happening to help inform our oversight.

So you are absolutely correct that merely registering and getting a name and address and how do I find you is not remotely enough. And we plan to have the most robust and balanced and fair set of best practices and rules of the road for the PBMs in the country. And I look forward to incorporating both the received wisdom and what we learn along the way.

As far as the prior bills, I fully understand and we have discussed that this is a point of concern. And I understand that. To my understanding, there were issues with respect to preemption and legal standards being applied, and the concern of counsel's office was that collectively working together we achieve a law that can survive legal challenge and that actually goes into effect and is not subject to some court challenge that will knock it out of the box and then we

have to come back again.

I realize there's a difference of opinion, to put it mildly, between some members and chairs in the Legislature and the counsel. But I am hopeful that the Executive and the Legislature will reach agreement on this important matter during the negotiations so that we can do the work for the people that we are all here to do and help deal with the economic crisis, now more than ever, to help try to bring down these prices and to get this unregulated black-box sector under regulation.

SENATOR BRESLIN: All right. Madam Superintendent, I -- again, taking the time to move on pharmacy benefit managers, given the fact that there are three major players in the pharmacy industry who have a relationship with pharmacy benefit managers, leaving independents out. And while we dilly-dally on legislation, pharmacies that are independent in nature, including the one where I live, have closed their doors. They've closed their doors because of the

practices of pharmacy benefit managers who have a different allegiance.

And unless and until we direct our attention to those allegiances and find out where they're getting their money, how they're using it and who they're responsible to, this market will continue to be an embarrassment in the State of New York.

I know that's more of a statement, but it's also in the nature of a question.

DFS SUPERINTENDENT LACEWELL: Yes. And I am familiar with this problem, thanks in part to you and certain other members highlighting that for us.

We recognize the importance of the independent pharmacy industry. It's important for the economy, it's important for small business, it's important to protect smaller businesses against these giants. And that is an area of singular focus with respect to what we intend to learn and how we intend to protect an open and fair and robust and competitive industry for all.

SENATOR BRESLIN: Well, I'll move on

because my time is relatively limited, and I know there will be other questions in this area by my successive questioners.

And we've read a lot about business interruption during this past summer. Can you -- does the department have a position on what happened vis-a-vis business interruption? And do you have an opinion upon any pending legislation on it?

DFS SUPERINTENDENT LACEWELL: So thank you. Business interruption I know is a very large issue. We haven't taken a position per se, including with respect to any pending legislation.

I will say, as you're aware, with respect to the circumstances, many people are upset that businesses closed down and they did not have resort to insurance when they -- many of them believed that they were covered against eventualities outside of their control.

The difficulty is that business interruption is a matter of contract. And the way these contracts have been written

historically is many of them -- and I'm not going to opine on legal issues, but many of them overtly or explicitly exclude pandemics or require physical damage, which are matters for court interpretation.

DFS unfortunately cannot unilaterally override that agreed-upon and executed contract language because of the need to protect contracting -- existing contracts, which is a constitutional provision, as all are aware. So we can't go back and change all of that.

Second, we've been in these kind of situations before where there is a widespread, diffuse, high-dollar impact on industry. And typically what happens then -- it's not a single-state issue, and typically the federal government would get involved and say, We have this problem, our existing system doesn't work, the insurance industry doesn't know how to manage pandemic risk through policies, even if you force them to cover it. How do they determine the dollar impact? How do they operate? What are the

premiums going to look like? Typically there you would have some type of backstop or pool.

And that is where, from time to time, the federal government has gotten involved and tried to come up with a solution for everyone. I think terrorism is an issue where this has been addressed after 9/11, and there are other matters of the kind. So I'm not aware of any current efforts in that regard. Obviously we have a new administration in Washington.

I will say, when I say the consumer is at the center of what we do, it's the consumer, the family, the small business, which is frequently a couple of people at a time. And we want to protect small business. And we're open to any dialogue, working through any idea. We're agnostic as to the source of the idea to address this for the future because we can't guarantee, right, that this never happens again.

SENATOR BRESLIN: What -- my time -- one last question on that. Has the department put forth any of its

recommendations relative to a prospective TRIA arrangement on business interruption to the federal government?

DFS SUPERINTENDENT LACEWELL: I think that we would be happy to engage with the federal government once they're sort of firmly in place; the transition really is still happening. And obviously there are many priorities in Washington. But we ought to be engaged on this issue, to your point.

SENATOR BRESLIN: No further questions. I defer to my dear friend and chairman of the Insurance Committee in the Assembly.

CHAIRWOMAN KRUEGER: Thank you.

Assembly.

CHAIRWOMAN WEINSTEIN: Yeah, I just -- before we go to our Insurance chair, I just want to acknowledge we've been joined by Assemblymember Norris, Assemblymember Steck, and Assemblymember Hyndman.

And we go to Kevin Cahill, chair of the Assembly's Insurance Committee, for 10 minutes.

CHAIRWOMAN KRUEGER: While Kevin gets ready, I'm sorry, we've been joined by Senator Martucci, Senator -- I've already lost them. We've been joined by other Senators. I'll remember their names in a little bit (laughing).

ASSEMBLYMAN CAHILL: Well, thank you, Chair. And thank you, Neil, for teeing off and getting some good questions in already.

Superintendent, thank you for your testimony. It's -- I'll be reading through it again, and I hope to have some follow-up testimony from you in writing to questions you don't get to answering today. I know we had a problem with that at our last hearing with the Commissioner of Health. It took us six or seven months to get some answers and a subpoena from the Attorney General. I hope we don't have that same experience with you.

I'd like to start by talking about something that you did not mention in your prepared remarks, and that is the fact that the Department of Financial Services is going into the family planning business. The

Governor has proposed to move family planning from the Department of Health to the Department of Financial Services. I assume that is a fiscal matter, that the intention here is to take it off of the General Fund and make it a suballocation for fees that are assessed against insurance companies.

Is that a fair assessment of what's going on here?

DFS SUPERINTENDENT LACEWELL: I think that's likely correct, although frankly I would defer to the Department of Health in this area.

And I'm also happy, as you indicated, to follow up in writing.

ASSEMBLYMAN CAHILL: Thank you very much.

So it's just a fiscal move, in other words. You're not going to be taking over the administration of family planning services in New York State, is that correct?

DFS SUPERINTENDENT LACEWELL: That seems highly unlikely.

ASSEMBLYMAN CAHILL: Okay. because it

appears that way in the budget right now. When you move a responsibility to an agency, usually that agency gets the regulatory responsibility.

Just out of curiosity, do you have any doctors or nurses on your staff at DFS?

DFS SUPERINTENDENT LACEWELL: We may. But obviously DOH has far more in that regard.

ASSEMBLYMAN CAHILL: All right, fine. Thank you very much.

Do you happen to know how much we suballocate from the fees that are assessed against insurance companies in the entire budget?

DFS SUPERINTENDENT LACEWELL: I had that number at one time. It is certainly true that the insurance industry supports industry-related matters that are executed by other agencies. And we can get you that number.

ASSEMBLYMAN CAHILL: And it's your estimation that family planning services is part of health insurance or part of

insurance?

DFS SUPERINTENDENT LACEWELL: I would tend to think so.

ASSEMBLYMAN CAHILL: Oh, okay. That's interesting. I think most people would think it was a medical issue largely covered, interestingly enough, by Medicaid, not the agencies regulated by you. But okay, that's fine.

I'd like to shift to something where it might make some sense for DFS to have a suballocation or a fee, and that's early childhood intervention services. Right now insurers, health insurers pay about $12 million or about 2 percent, the same number they've been paying for 10 years after Governor Cuomo entered into a sweetheart contract with a fiscal agent who has now received in excess of $50 million to increase that number -- but in fact the number has been stagnant or even dropped a little bit.

Do you think it's time to change the way we require insurers to participate in the Early Childhood Intervention Program?

DFS SUPERINTENDENT LACEWELL: I really have no information about your reference to some sweetheart contract and --

ASSEMBLYMAN CAHILL: Well, I'll be happy to share the information with you about that contract, Superintendent, because I do believe that you have some supervisory role with it. I know it's resident in the Department of Health, but it is intended to go against insurance companies that you specifically regulate, and they've had no success whatsoever.

They came to New York promising incredible great success in doing so and then have basically opined that because our regulatory structure and our legal structure didn't change to accommodate their needs, they couldn't do what they promised to do $60 million ago.

That being said, insurance companies continue to provide about 2 percent of the cost of Early Childhood Intervention, and those costs are extracted from insurance companies only after protracted battles to

secure that money through a series of denials and resubmissions by the providers themselves.

If the providers are unsuccessful in getting the money from the insurers, then guess who pays? New York State. So it looks like we are asking people who are getting $25 a visit to do the collection work for New York State.

Do you now believe it's appropriate to change the way insurers participate in the Early Childhood Intervention Program?

DFS SUPERINTENDENT LACEWELL: I'm more than happy to confer with the Department of Health and discuss this issue, and also with industry, to talk through what is currently happening, if anything, and how to move forward in a way that is effective.

ASSEMBLYMAN CAHILL: Okay. So I was very surprised that the Superintendent of Insurance is hearing about this issue for the first time today. It has been a proposal by Assemblywoman Paulin for about a dozen years, something that has been discussed at every

budget hearing since you've been superintendent and before that time. But we'll move on.

Just on the subject of pharmacy benefit managers, you indicated a difference of opinion before you and certain members of the Legislature. Would you have to acknowledge that given the Rutledge vs. PCMA case that your difference of opinion is also with the unanimous Supreme Court in a decision written by New York resident Sotomayor?

DFS SUPERINTENDENT LACEWELL: That decision is actually not on point.

ASSEMBLYMAN CAHILL: Oh, I get it, it's not on point. So what is on point is some Arizona Supreme Court case that has no relevance in New York that says maybe there's an ERISA issue -- but the United States Supreme Court case doesn't matter? Thank you, Superintendent. It's interesting to see your assessment of the law. Let's move on to excess medical malpractice.

Excess medical malpractice. The

Governor has proposed slashing in half, ultimately, the government participation in the Excess Medical Malpractice Program. This is a program that provides insurance benefits for doctors who are serving underserved areas, at-risk areas.

And is there anything, in your estimation, that has changed the fiscal situation or the financial situation of doctors that would now allow them to be in a better position to pay for their malpractice insurance than they were before COVID-19?

DFS SUPERINTENDENT LACEWELL: Well, the medical malpractice sector, which was in considerable distress, has improved markedly, thanks in part to the work that we've done together with industry, and of course --

ASSEMBLYMAN CAHILL: If I may interrupt you on that point. It's all well and good that there are doctors who are securing medical malpractice. But when you ask the remaining doctors to participate at 50 percent, you're not talking to the doctors who are no longer in the pool. We are

talking about doctors that are in the pool. And if there's enough doctors that have left the pool, isn't that enough of a place to find savings rather than having to penalize those doctors who are serving the most communities in need in New York State?

DFS SUPERINTENDENT LACEWELL: I'm sorry, I'm just not following your question.

ASSEMBLYMAN CAHILL: Oh, okay. You indicated that the reason we could do this is that many people have migrated out of the excess medical malpractice pool, correct?

DFS SUPERINTENDENT LACEWELL: That's actually not what I said.

ASSEMBLYMAN CAHILL: Go ahead, then, please.

DFS SUPERINTENDENT LACEWELL: I was simply trying to say that the state in part has been subsidizing because the industry was in distress.

ASSEMBLYMAN CAHILL: And the industry --

DFS SUPERINTENDENT LACEWELL: The industry has recovered, there are additional

entrants, the surplus deficits have gone down dramatically. The layer that the state provides is in addition to ordinary malpractice insurance. Doctors can elect whether or not to participate in that, and there are all kinds of doctors who may have decided the level of coverage they have without that is sufficient and therefore they don't need to participate.

The question is whether the state needs to be the hundred percent backstop anymore. And the assessment based on the numbers was that the support could be reduced.

ASSEMBLYMAN CAHILL: Superintendent, just again for your information -- because I see a great disconnect between your testimony and reality, so let's just have another conversation about this later on.

But the people who participate in the excess medical malpractice pool are the people who would be paying that 50 percent, not the people who have left the pool. There is no new resources for people serving

underserved communities. If anything, those resources have dried up.

But let's move on to one more item. I was under the impression that the Governor was going to remove his no-fault language in his 30-day bill. Do you know if that happened?

DFS SUPERINTENDENT LACEWELL: I don't believe so. I think it's still in there.

ASSEMBLYMAN CAHILL: Okay, that's terrific. Let's talk about it.

There's two parts to it. Part 1 is where the Department of Financial Services would exercise regulatory authority over providers by extracting from them commitments not to participate in the no-fault program. Do you or anyone in your agency feel qualified to determine who should and should not practice medicine in any area?

DFS SUPERINTENDENT LACEWELL: No. To my understanding, what the provision would do is if the Workers' Comp Board made a determination that a particular provider had engaged in fraud or criminality or other

misconduct in connection with workers' comp, that DFS would be empowered to take that finding and, through a notice of hearing and opportunity to be heard, remove for a period of time those bad actors who are abusing the Workers' Comp Program --

ASSEMBLYMAN CAHILL: The second half of the Governor's proposal creates the ultimate kicking-the-can-down-the-road, a study panel, to look at no-fault insurance -- no-fault insurance that has utterly failed New Yorkers with high premiums, low coverage, complicated diagnostics that don't even recognize anything that's been added to the medical community since the early 1970s, and a no-fault bar that is huge.

I see I'm running out of time; I want to give you a chance to answer: Would you consider ending no-fault in New York State?

DFS SUPERINTENDENT LACEWELL: I don't believe in replacing something with nothing.

ASSEMBLYMAN CAHILL: Thank you, Superintendent. I'll come back to you later when I can get a second chance. Thanks so

much.

DFS SUPERINTENDENT LACEWELL: Thank you.

CHAIRWOMAN KRUEGER: Thank you.

Next is Senator Helming, the ranker on Insurance.

SENATOR HELMING: Thank you, Senator Krueger.

Thank you, Superintendent, for your testimony. As the new ranker on the Senate Insurance Committee, I look forward to working with you and Senator Breslin to address the many, many issues that are impacting consumers and the insurance industry all across our state.

I wanted to shift the discussion for a moment and talk about it's my understanding in the TED budget bill that the Governor has proposed a motor vehicle insurance task force, of which you will be the chair, and all eight committee members will be appointed by the Governor.

Superintendent, are you open to adding appointees appointed by the majority and

minority conferences of both houses?

DFS SUPERINTENDENT LACEWELL: Well, certainly our approach at DFS is to consult across the board to all those with an interest, stakeholders and those connected to communities, including the Legislature.

And so if through the negotiations it should ensue that the parties agree to that, then we would be pleased to proceed in that regard.

If for some reason that doesn't happen, I am happy to work with you and other interested members on this and all other issues.

SENATOR HELMING: To me there's a dramatic difference between like reaching out and consulting with someone, versus them having an official position on a committee that's established.

It's so important -- and we're seeing this of late, especially -- that we have coequal branches of government and coequal representation, especially on these task force committees, et cetera, that are going

to be making important recommendations off which decisions are made, right, whether it's financial, whether it's policy, whatever it is. So I hope you would help us press for representation on this task force by the majority and minority conferences.

Also on this task force, do you know how many appointments would be from the insurance industry?

DFS SUPERINTENDENT LACEWELL: I do not.

SENATOR HELMING: I think it's critical that we have representation from the insurance industry on this task force as well.

Turning to another subject, I'm curious how you see the legalization of marijuana impacting the insurance industry, specifically auto insurance. Do you believe we'll see a rate increase? Or what are your thoughts?

DFS SUPERINTENDENT LACEWELL: Well, it's a very interesting question. We have been looking across the board since last

year, actually -- you know, ever since the bill has been proposed through the budget process -- both on the banking side and the insurance side: How can we help industry feel comfortable with offering insurance around the issue of cannabis, whether it's property, casualty or whatever else it may be.

Certainly we need to look at the experience of other states, who we're starting to confer with. I mean, I think driving a car, whether it's alcohol or drugs, including cannabis, is problematic. And I would imagine that the auto insurance industry is very focused on that. And one is not permitted to be under the influence, even though alcohol is legal, and the same ought to pertain, presumably, for cannabis.

So it's something that we've got to look at closely, and thank you for raising that. And going into any new ventures, right, there are many unknowns, so we have to learn from those who have been there before us and we've got to talk with industry and

experts and you and see what we can do to cabin the risks around all of this.

SENATOR HELMING: So any thoughts on how we ensure that employers are protected from liability of employees that may show up to work under the influence of marijuana?

DFS SUPERINTENDENT LACEWELL: I would think, again, that would be the same as being under the influence of alcohol. And the case law that gets developed on the employer/employee relationship and agency and was in this course of employment and was it employer vehicles and is testing permitted -- a whole complex area of law that should certainly be looked at and understood as we proceed.

SENATOR HELMING: Is DFS certainly engaged in discussions and discovery?

DFS SUPERINTENDENT LACEWELL: We're having conversations with industry in small groups. Our insurance division is doing that, and our banking division on the banking side.

Because assuming that this becomes

law, we want to help to cabin the risks around all of this, including by having some mechanism for banks to be able to handle the money in a way that they can do it responsibly and ensuring -- obviously, insurance is about protecting people and businesses against risk, so how can we facilitate that as well.

We've done this previously on hemp and other matters, and we would continue that work as well.

SENATOR HELMING: Thank you.

CHAIRWOMAN KRUEGER: Thank you.

Assembly.

CHAIRWOMAN WEINSTEIN: Assemblyman Gottfried.

ASSEMBLYMAN GOTTFRIED: Hi. So --

CHAIRWOMAN WEINSTEIN: Yeah, okay. Just wanted to get the clock right for you, Dick. Okay.

ASSEMBLYMAN GOTTFRIED: Okay.

Superintendent, the Affordable Care Act says that the Essential Plan Trust Fund may, quote, only be used to reduce the

premiums and cost-sharing of or provide additional benefits for eligible individuals, unquote.

The budget would take 420 million from the Essential Plan Trust Fund and use it for, quote, rate enhancements under the Essential Plan.

My question is, how is that an allowable use under federal law?

DFS SUPERINTENDENT LACEWELL: I really would defer to the Department of Health in this area. I'm also happy to follow up to you in writing or with your staff with respect to that matter.

ASSEMBLYMAN GOTTFRIED: Okay. That's something you're not familiar with?

DFS SUPERINTENDENT LACEWELL: I'm really not permittable -- I'm really not versed in the question that you raise, that's right.

ASSEMBLYMAN GOTTFRIED: Okay. That's not encouraging.

DFS SUPERINTENDENT LACEWELL: I do the best I can, sir.

ASSEMBLYMAN GOTTFRIED: Okay.

On the question of PBMs, some of the things that the Governor objected to in the bill are the language imposing on PBMs a duty to act in the best interests of their insurance company clients and patients -- a duty that we impose on lawyers, real estate brokers, et cetera. The Governor objected to that.

And the Governor objected to the fact that these prohibitions on stealing from your client, et cetera, would apply to self-insured plans.

Now, under New York law if a self-insured plan is trying to sell real estate in their portfolio, the real estate broker who handles that for them is required by state law to act in their best interests. Nobody thinks that violates ERISA. The lawyer that represents them in that transaction is not allowed to defraud them. Lawyers are not allowed to defraud a union welfare fund that they happen to represent; nobody argues that that violates

ERISA.

The Penal Law, the section that says that if you're filing a claim you can't steal from an insurance company -- a good law -- explicitly mentions self-insured plans among the people New York does not let you steal from. I haven't heard anyone say that it violates ERISA to say that we can't -- you know, to say that we -- you know, because we try to stop people from stealing from self-insured plans.

So why can't we tell PBMs not to steal from self-insured plans? And by the way, if there is a real issue about that, the bill has a severability clause that would just carve that right out.

So I don't understand that theory. And it seems to me the Rutledge decision makes that even clearer. And I guess on the matter of the Rutledge decision, I don't know anyone outside the Cuomo administration who shares your interpretation of that decision. Well, I guess there are probably people who work for self-insured funds who don't agree

with me.

But does the administration have a legal analysis of why Rutledge does not apply here, and could that be shared with us?

DFS SUPERINTENDENT LACEWELL: Well, all right, let me begin where you started, Mr. Chair.

Fiduciary duty, as you are aware, is a very old concept. And you're correct, it applies to lawyers and fiduciaries or agents. But a fiduciary duty means an obligation to act solely and exclusively in the best interest of the other party.

Once you say you have a fiduciary duty to multiple actors of different sorts, you're now raising the specter of a conflict of interest between those two. So how do you select?

ASSEMBLYMAN GOTTFRIED: Well, the bill -- the bill answers -- excuse me, the bill answers that question in black and white. The bill says if the duty to the patient conflicts with the duty to the insurance -- to the client, the duty to the patient has

priority. Problem solved.

DFS SUPERINTENDENT LACEWELL: I think one of the fundamental differences that we have in this regard is that I believe that if you provide oversight to an experienced regulator, which DFS is, then you can, through regulation, get at all of the ills that are of concern -- and, by the way, obviously with examination, investigation and enforcement powers -- rather than try to shoehorn it into the bill in the first instance if it may invite legal attack.

And I realize, as I said at the beginning when I was speaking with Chair Cahill -- or actually, no, it was with Senator Breslin -- that there are differences of opinion. The Rutledge decision is not directly on point. It's in the area, and it provides some help but it's not -- it doesn't say yes, you can do this.

The problem is, as you know far better than I, the law of ERISA and of preemption is highly specialized and complex, and it's not always totally clear. So why invite the

legal attack when what you are trying to --

ASSEMBLYMAN GOTTFRIED: The answer to that is the Rutledge decision is actually quite clear as to what it says. And while the Arkansas statute is not word for word, the New York statute -- the holdings, the principles in Rutledge, which is what we look at, apply equally, number one.

Number two, I don't know any lawyer who doesn't work for the Cuomo administration or the PBM industry who agrees with you.

And number three, a severability clause, which is in the bill, solves the problem. If some court someday says, Tsk, tsk, tsk, New York, you tried to stop people from stealing from self-insured plans, not allowed -- well, good, then the law won't apply to stealing from self-insured plans. Problem solved.

DFS SUPERINTENDENT LACEWELL: Rutledge said just because there was an impact on actors in the federal area did not invalidate the bill.

ASSEMBLYMAN GOTTFRIED: Right.

DFS SUPERINTENDENT LACEWELL: Obviously if somebody who works for a self-insured plan commits homicide, they can still be prosecuted. That's not really the point.

The point of the bill is to register and license and oversee the players in this industry. That can be done through the regulations, the examination, the investigation, the oversight.

I would like to --

ASSEMBLYMAN GOTTFRIED: Excuse me. So you think you can stop PBMs from stealing from their clients but the -- but the law can't?

DFS SUPERINTENDENT LACEWELL: What I'm saying is --

ASSEMBLYMAN GOTTFRIED: How is it different? How is it different if a regulation says "don't steal" or if a statute says "don't steal and, DFS, go make regs"?

DFS SUPERINTENDENT LACEWELL: What I'm saying is the statute, by virtue of having certain wording in it, could bring it under

legal attack and therefore we achieve nothing. Whereas through regulations that are carefully written and crafted with the benefit of input from all can help reduce the ills and the harms that we are all concerned about, and let's get something done.

ASSEMBLYMAN GOTTFRIED: So you're saying my bill language, passed unanimously by both houses and that's been around for several years and been looked at by a lot of people, is not, quote, carefully written because it says you have to act in somebody's best interests? Even though it gives you rule-making authority.

And you haven't addressed the question of the severability clause. That solves your problem. But you haven't talked about that.

And let me remind you, I've asked for a copy of whatever legal analysis you have. Will you send that to me?

DFS SUPERINTENDENT LACEWELL: Well, that obviously would be attorney-client privilege, so I don't know that we can waive --

ASSEMBLYMAN GOTTFRIED: It's only attorney-client privilege if you assert it.

DFS SUPERINTENDENT LACEWELL: That's right. That's right.

ASSEMBLYMAN GOTTFRIED: If you choose to share it, then you can share it.

DFS SUPERINTENDENT LACEWELL: Yeah, we're not --

ASSEMBLYMAN GOTTFRIED: It's a legal analysis. You're sharing your legal analysis with me right now.

DFS SUPERINTENDENT LACEWELL: No, I'm not.

ASSEMBLYMAN GOTTFRIED: Except you're doing it in very general terms.

DFS SUPERINTENDENT LACEWELL: No, I'm not. I'm not. And we're not in the business of waiving attorney-client privilege. It's not smart for us to do.

ASSEMBLYMAN GOTTFRIED: You're not in the business of explaining to the Legislature why you think something is illegal?

DFS SUPERINTENDENT LACEWELL: I think --

ASSEMBLYMAN GOTTFRIED: Shame -- how can you say that?

DFS SUPERINTENDENT LACEWELL: We are explaining it. You don't have to waive privilege to do that.

I'd be happy to talk about you further, Mr. Chair, and to engage on this issue and to confer with counsel's office to do the same.

ASSEMBLYMAN GOTTFRIED: Yeah, but you're -- but that conversation is not going to give me a detailed analysis.

DFS SUPERINTENDENT LACEWELL: I'm just trying to be respectful of the time which --

ASSEMBLYMAN GOTTFRIED: Because if you can give me a detailed analysis orally, that's no more or less a waiver of your privilege on that material as if you give it to me in writing. You know that.

DFS SUPERINTENDENT LACEWELL: Respectfully, I disagree. I'm an attorney and I teach legal ethics at NYU Law School, which I have done for years, including on the issue of privilege and its waiver. So we

disagree. But I am happy to engage further --

ASSEMBLYMAN GOTTFRIED: And you -- you think --

DFS SUPERINTENDENT LACEWELL: And time expired about a minute ago.

ASSEMBLYMAN GOTTFRIED: (Laughing.)

CHAIRWOMAN WEINSTEIN: Assemblyman Gottfried will have five minutes for seconds later, so you'll have an opportunity to be able to respond to his question, or engage further on this issue.

We'll go to the Senate now.

SENATOR RIVERA: And Liz is muted, but I believe it is me, is that --

CHAIRWOMAN KRUEGER: I apologize, I'm so sorry, I couldn't get off mute.

And it is Senator Rivera's turn. Thank you.

SENATOR RIVERA: The one-two punch continues.

Good morning, Superintendent. Actually, let's pick up right where my colleague in the Assembly left off. Now, I

am not an attorney nor do I play one on TV, unlike both of you. But I will say that as the Assemblymember said, you're asserting your right to not waive privilege, but what you're doing there -- now you're doing that, you're choosing to do that, and then you can obviously go down the road and talk about ethics and everything. But you're choosing not to tell us, not to explain to us how it is that our bill -- which again, as the Assemblymember mentioned, passed unanimously -- actually fails to do the thing -- you just say, Well, it's not written correctly, it should have something -- it should have something written differently.

Maybe you can explain to us what that is more specifically, and maybe we would change the bill. But we're not going to go down that road.

Just for the record, I absolutely -- I not only voted for that bill, support that bill and believe that we should do it legislatively, not through regulations -- because you could probably put those

regulations in effect -- if you could put the regulations in effect, you would have done it already. You're trying to put it into the budget so that it can become legislation. How about we just pass the bill that we all, as a legislature, agree on?

Also, earlier, was it a slip of the tongue when you said that you were not permitted to share some of this thing, as opposed to not versed in it? I guess that was a slip of the tongue?

DFS SUPERINTENDENT LACEWELL: On which issue was that? I didn't say "permitted," I don't think.

(Overtalk.)

SENATOR RIVERA: It was a Freudian slip, of course. That's fine.

Okay. So as far as the -- when you're talking about the trust fund in particular, so the -- and on that issue, on the trust fund, when you were asked specifically about it and you said you were not permitted and then you corrected yourself, you're not versed in that, and you said ask the

Department of Health. Is that what you said? Related to the issue of whether it was permitted to use the trust fund for the purposes that -- one of the purposes that is in the budget proposal?

DFS SUPERINTENDENT LACEWELL: I think I -- yes, I was saying that I would refer that respectfully to the Department of Health. I'm also happy to come back with a written answer or to speak with your staff.

SENATOR RIVERA: Gotcha. Gotcha. All right. And then I got two more things.

One of them, first, I think we can all agree that this -- this pandemic has made things strange for everybody. But one of the things is that there have been massive profits for insurance companies. It has -- the pandemic has decreased healthcare utilization and there's been a huge uptick in telehealth.

So I want to specifically ask, there is -- like during the pandemic you have directed the insurance companies to charge no copays for telehealth. Why hasn't the

administration proposed to continue this requirement in its telehealth agenda? A lot of which I agree with, by the way, that's in the -- that is in the proposal. But -- or at least require the carriers to charge lower copays for telehealth when -- utilization by members?

DFS SUPERINTENDENT LACEWELL: Okay. So on your first point about the profits. As you know, DFS has oversight of premium increases for health insurers. That's a very careful process that looks at the experience of the prior year. And we do that with great detail and attention to what the experience actually was.

Second, and perhaps more importantly, once a year HHS looks to determine whether the medical loss ratio of at least 80 percent has occurred or, instead, are there outside profits, in which case HHS will direct the insurers to return that -- those excess premiums.

So one of the difficulties is the unknown, so that's why this is looked at

periodically. We can see -- well, once the economy starts to reopen, within the same time frame is there a rush to obtain these services, which generates costs, which balances in any way or reduces what the profits may be. I should state generally --

SENATOR RIVERA: Okay, okay, let's not keep going down the road of profits; you can explain that to me for hours. Let's talk about the telehealth part, because I only have five and a half minutes left.

So tell me about that. Tell me about -- I'm just wondering, since you are proposing a whole agenda around telehealth -- which, again, much of which I think is good and I would agree with -- why hasn't the Cuomo administration proposed to continue that requirement that relates to no copays for telehealth? Or at least require carriers to charge lower copays for telehealth when utilized by members?

DFS SUPERINTENDENT LACEWELL: So the requirement of waiving the copays was and is meant to address the circumstances of the

pandemic. And what has not yet been done is an assessment of the sort of cost, quality, premium impact, et cetera, of all of these items. And we will be looking closely at that.

For telehealth, as you know, our proposal is that we need to change the law to include telephonic services, which is not currently permitted in the statute.

SENATOR RIVERA: Right.

DFS SUPERINTENDENT LACEWELL: And we will also be requiring insurers to make sure that they have a robust network that includes telehealth services. Otherwise, the right is sort of illusory, because you've got to make sure there's something there to actually take advantage of.

As far as reimbursement rates and the like for telehealth, as I indicated, we need to examine the data flowing through the current period and then also look at what the incentives are and what the cost/quality issues are for the particular services to sort of see how we might adjust in that

regard. And I'm happy to work with you and your staff on that matter.

SENATOR RIVERA: All right, I got one last one. This one relates to external appeals. So in particular, what seems to be a very big parity problem between medical and surgical cases and mental health cases.

According to some of the stuff that -- some information that is on your website, that's the Financial Services External Appeals website, it says that denials are upheld about 64 percent of the time in medical-surgical cases, and they are -- however, they're denied -- in the mental health and substance use treatment, denials are -- the carriers lose nearly 70 percent of the time. So it's completely flipped around.

So it seems that there's a vast practice of restricting access to mental health and substance use services by the insurance industry.

So particularly considering the moment that we're in, where there are many deaths of despair, when we are seeing lack of resources

to places that provide substance abuse services, et cetera, what is the department doing to actually regulate the carriers in this area as it relates to mental health and substance use disorder treatment?

DFS SUPERINTENDENT LACEWELL: So excellent question. Obviously this is a big priority for DFS as well as the Legislature and for consumers.

The Mental Health and Substance Abuse Disorder Parity Law was very important, and we have issued our regulations and we have told the industry our expectations, particularly with respect to the robustness of the network.

One of the reasons for the appeals is if there's nobody in the network to provide the service, then you end up going out of network. And that can generate a denial and an appeal. If we expand the networks and make sure we have qualified available providers to give these services, then hopefully that will reduce the appeals.

But to your point, we ought to take a

look at the external appeals and see what the various reasons are and draw from that data what other improvements we can make, not just, you know, informing the industry or doing enforcement with the industry, but how do we get more granular as to what the expectations are.

But it's an area of immense focus for us right now, and --

SENATOR RIVERA: I'd like to follow up -- yeah, I'd like to follow up with your office on this.

DFS SUPERINTENDENT LACEWELL: Yes.

SENATOR RIVERA: We -- this -- there's going to be a long tail to this pandemic, and particularly as it relates to either mental health services or substance abuse, there will be many issues to deal with. And the fact that this is kind of baked in, apparently that there's just -- there's just -- the rate of denials is so flipped sincerely concerns me. So I'd want to be able to dig deeper into it.

And maybe some of my colleagues will

follow up with you about it while you're here today, but we certainly will follow up with you offline.

DFS SUPERINTENDENT LACEWELL: (Inaudible.)

SENATOR RIVERA: Thank you, Madam Superintendent.

I am good for the moment, Madam Chairwoman. Thank you.

CHAIRWOMAN WEINSTEIN: So we will go, then, to Assemblyman Ra, the ranker on Ways and Means for five minutes.

CHAIRWOMAN KRUEGER: Thank you, Helene.

ASSEMBLYMAN RA: Thank you, Chair. Hopefully I don't have any issues. I know a lot of my colleagues and myself keep getting knocked off the internet feed here.

But good morning, Superintendent.

I just wanted to go back to something that you discussed a little bit with our chair of Insurance related to the Excess Medical Malpractice Program. And really just the concern that how are we making sure that

that, you know, money isn't just shifting onto the physicians who are paying for the costs? Are there any other proposals that would reduce the actual cost of medical malpractice insurance? And if there are, could you highlight them and answer the concerns that by pushing this cost onto the employees that we'd be reducing participation?

DFS SUPERINTENDENT LACEWELL: So thank you for that question.

One of the things that we've been very focused on is increasing the competitiveness of the industry so that there can be more competitive rates. And the difficulty previously was at least one of the major carriers, now in liquidation, had been undercutting the other providers in a distorted market.

But now that we are helping each of the carriers who have been distressed to improve their finances, the market has stabilized somewhat. And as I mentioned, we've helped admit a number of new players in

the industry, and that should help.

But as you know, medical malpractice is a big problem across the country in terms of its cost. And given our trial system, the costs are very high. And this is doubtless sort of a piece of the puzzle that smarter and more comprehensive policy experts than myself may have insight into.

But with respect to our piece, our property division is very invested in this and spends a great deal of time on it. And I'm happy, again, to talk with you, your staff, any other member who would like to explore additional ideas, provider associations who have ideas. Because it is part of our job to ensure that we do what we can to improve competitiveness for all players in our health system.

ASSEMBLYMAN RA: And thank you for that. You know, as you mentioned, it is a concern nationwide. It certainly has been a particular concern in New York State. And it's an important issue for -- you know, when we talk about things like access to doctors

and everything, having, you know, this not be kind of a cost-prohibitive state for people to practice in is obviously an important issue.

So I just would again, you know, state my concern about potentially shifting this cost onto those physicians that are paying for their insurance.

Just one other issue. You did mention telehealth earlier. And I'm glad you talked about the, you know, audio-only services, because I think it is important that -- you know, we're seeing this in so many ways right now. I'm certainly hearing from constituents, you know, when they're trying to register for vaccines and everything, that they're not always all that computer savvy. So having access to things that they can just use a telephone, for many individuals, both in terms of people's familiarity with using these, you know, web-based platforms and also just, you know, the access to broadband and things like that, make it an equity issue to make sure that we're providing, you know,

support, when or if, for audio-only services as well.

DFS SUPERINTENDENT LACEWELL: Absolutely.

ASSEMBLYMAN RA: Thank you.

DFS SUPERINTENDENT LACEWELL: Thank you, sir.

CHAIRWOMAN KRUEGER: Thank you.

Back to Senate, I believe, correct?

Senator Borrello for three minutes.

SENATOR BORRELLO: Thank you, Madam Chair. Appreciate it.

Good morning, Superintendent. Can you all hear me?

DFS SUPERINTENDENT LACEWELL: Yes.

SENATOR BORRELLO: Okay, thank you.

I want to speak to you a little bit about the -- I think the rather disturbing trend of New York State contracts being awarded to out-of-state vendors, and specifically as it deals with healthcare.

Right now I'm, you know, fighting a battle with OPWDD on contracts for pharmaceuticals. You know, Senator Breslin

brought up the -- how our local pharmacies have been under pressure, and this is doing the same thing.

The state recently awarded a contract through OPWDD for pharmaceuticals to -- that are serving, you know, homes that deal with people with disabilities, and to a company, Omnicare, out of Ohio -- and can't even show that this is actually a savings, in fact. And we have a history, unfortunately, in New York State of trying to save money and spending more money. And in fact it's harming local pharmacies.

Previously other companies would subcontract with local pharmacies, and currently through companies like HealthDirect. And now Omnicare, based out of Ohio, has cut that off entirely and will not be using any locally owned pharmacies. We have one here in my district that's an MWBE that has been serving the community for years, serving the homes through the OPWDD contract; it is now basically being cut off.

And my question to you is, you know,

why are we allowing this? Why are we -- why is there not an investigation as to why out-of-state companies that are not even the low bidder are receiving contracts that are ultimately taking business away from MWBE small businesses and pharmacies? It's a very big concern, not just for me but for people across largely upstate, but it's -- I'm sure it's throughout the entire state that this is occurring.

DFS SUPERINTENDENT LACEWELL: So obviously MWBE contracting is a major priority of the Governor, and he's made tremendous progress in that regard.

And small business is the backbone of our economy and very important in our upstate communities. And I agree, where possible, and consistent with the rules and the law and all the other restrictions, we ought to try to use the businesses in the state to do the work of the government for the people.

SENATOR BORRELLO: I agree.

DFS SUPERINTENDENT LACEWELL: Beyond that, I'm not familiar with the circumstances

at OPWDD, but I'm more than happy to facilitate somebody becoming familiar with the facts and getting back to you.

SENATOR BORRELLO: I would appreciate that very much. I'm not getting answers. There's a lot of hidden costs because of using an out-of-state company. Instead of using local delivery, for example, you're going to have to use, you know, FedEx, things like that.

There's a -- and this is affecting a lot of people, but this is an MWBE and other MWBEs, small businesses that are being impacted by the fact that we are awarding contracts to people out of state.

I realize it's cheaper to do business out of state, but the state government should not be exploiting that fact. So I would appreciate if you could make a connection so we can get to the answer and get to the bottom of this.

Thank you.

DFS SUPERINTENDENT LACEWELL: Okay. Happy to do so.

SENATOR BORRELLO: Thank you.

CHAIRWOMAN KRUEGER: Okay. Thank you. Assembly?

CHAIRWOMAN WEINSTEIN: Yes, we go to Assemblyman Byrne, the ranker on the Health Committee in the Assembly, five minutes.

ASSEMBLYMAN BYRNE: Thank you, Chair.

And Superintendent, I apologize if I'm a little redundant in my questions because, like my colleagues, I've been knocked off at least five times already from the Zoom and relogging in.

For starters, I want to just talk a little bit about telehealth. And I have been a strong supporter of telehealth. The Legislature expanded access to telehealth by including audio-only as well. I know that was mentioned in your testimony as part of the administration's response to the pandemic, which I think is a good thing.

I also just want to make sure that when putting in telehealth that we do have some guardrails in place. It's a good thing,

increases access, gives people options and choices. But for example, home care is one such provider that I -- you know, I think there are some concerns that it would be helpful to make sure that they're not pushed out and that they benefit from telehealth too.

I wanted to ask first if you had some questions -- if you had any sort of response to some of those concerns that have been raised.

DFS SUPERINTENDENT LACEWELL: So yes, it's important -- look, this is going to be one of the difficult things, right? We need to build back better, we've got to innovate to deal with the new world that we're in. But with anything new, you've got to have a balance of concerns and identifying and capping the risks that are being generated, and that includes expanding what has traditionally been an in-person service to something that is remote.

We need to go forward because that's what the pandemic showed us, is that we

frankly should have moved a lot faster, collectively. But we've got to make sure, as you say, that we have guardrails in place. And I'm happy to confer with the Department of Health and with you and your staff, the Legislature, to make sure that all of us have appropriately identified and cabined what those risks are, how we reduce incentives for either unnecessary or inappropriate behavior that comes along with anything. You know, putting the patient, the consumer at the center of the exercise and making sure at the same time that the healthcare system is not being abused or we're not adversely affecting other professionals in the system unnecessarily.

I don't have specific ideas today, but as indicated, I'm happy to work with others and with you or your staff, sir.

(Pause.)

THE MODERATOR: I think the Assemblyman has a connection issue.

CHAIRWOMAN KRUEGER: So shall we wait a few seconds?

Assemblymember, are you still with us?

UNIDENTIFIED MEMBER: I'm sure Cahill wouldn't mind taking his --

(Overtalk.)

ASSEMBLYMAN RA: He got knocked off. He's coming back on now.

CHAIRWOMAN KRUEGER: Okay, thank you.

THE MODERATOR: Yeah, we just -- he's back in now.

CHAIRWOMAN KRUEGER: Okay.

CHAIRWOMAN WEINSTEIN: Okay.

ASSEMBLYMAN BYRNE: I'm back. I'm back. I apologize. This has been a -- such a frustration, I can sense, with a lot of my colleagues.

Superintendent, I heard part of your answer. I'm starting my video now. Okay, we're back.

About home care, I just want to make sure that we think about all these providers and ensure that there's some sort of space for them too.

I wanted to also just expand -- there's a couple of other points I want to

raise. We talked about the excess medical malpractice insurance. And while the state is slashing the funding for this program -- and I know their -- it sounds like their justification is reduced enrollment and participation in the program -- I fear that that could further reduce participation.

And I want to point out that according to the Westchester & Fairfield County Business Journal, they're citing WalletHub -- this is from earlier last year -- New York was burdened with the highest medical malpractice award payout --

(Zoom drop.)

CHAIRWOMAN KRUEGER: Oh, lost you again. On behalf of the Senate, this is not a plot against the Assembly, just --

CHAIRWOMAN WEINSTEIN: Apparently a number of the Assemblymembers are having issues with being kicked out. Our tech staff is trying to work and figure out what's going on and see if we can --

(Cross-talk about the timeclock.)

CHAIRWOMAN WEINSTEIN: We'll, you

know, reset it for him if we can get Assemblyman Byrne back in, or we can --

CHAIRWOMAN KRUEGER: What would you like, Helene? Should we go on and come back to him? Oh, wait, looks like he's coming back.

CHAIRWOMAN WEINSTEIN: Maybe we should go to the Senate and we'll come back to Assemblyman Byrne when he has better connections so that -- yeah, I think you ought to do that.

CHAIRWOMAN KRUEGER: All right.

I want to announce that we've been joined by Senator Ortt, somewhere on this Hollywood Squares. But I believe he's here for the next guest.

Hello, Minority Leader.

And I'm going to jump to Senator May for three minutes while the Assembly is trying to fix their connections.

SENATOR MAY: Okay, great. I don't -- I can't start my video, but thank you anyway. Oh, here we go.

So I had two questions. I wanted to

follow up some of the questions about telehealth, the issue of modality authority.

So I understand that some of the barriers to telehealth in general that were facilitated, made -- sort of taken away by an executive order in March, but it included just having the state maybe contract with business associate agreements so that all providers could use the same one instead of having to make their own agreements with telehealth services. Is this something -- or with the tech providers.

Is this something that the state is considering doing?

DFS SUPERINTENDENT LACEWELL: Well, certainly I know that the Department of Health thinks it's important to help providers either to be educated, trained or get the support they need to participate. And that is for the benefit of all.

I don't know about that precise proposal, but I think that the Department of Health would certainly be aware. I'm happy to follow up with you in that regard.

SENATOR MAY: Okay.

DFS SUPERINTENDENT LACEWELL: But I know our DFS narrower proposals, you know, fit in as part of the greater whole that DOH is pursuing.

SENATOR MAY: Okay. Yeah, my understanding is it's a contracting issue that is prohibitive for individual providers. But if it could be done at a state level, it would be great.

My other question was about the administrative simplification workgroup that you talked about. Does that include workers' compensation?

Because I've been hearing about just enormous barriers where providers aren't offering, for example, mental health services to people who have workplace trauma, which is going to be a lot of people these days. And apparently just the paperwork is so prohibitive and the time lag of getting paid is so long that workers' compensation just isn't working there.

DFS SUPERINTENDENT LACEWELL: Well, I

can certainly check.

And if they're not in there, I don't have any problem with adding them. It's meant to be as expansive as possible to -- there's so much overlap between issues that impact on other parties.

SENATOR MAY: Okay. And then, finally, do you have a a position on pay parity for providers with telehealth and in-person health?

DFS SUPERINTENDENT LACEWELL: So I think we talked about that a little bit before. We're generally, obviously -- I mean, right? -- in favor of parity, like for like.

The question is, what is the like, right? What is happening on telehealth versus what is happening if that service is in the office? We need to look at the experience generated during the pandemic and other information, including from other states. It's -- it's complicated to achieve an equivalence, is what I'm really trying to say. This is sort of one of the new areas,

based on the changes and innovations, that all of us are trying to make.

I don't have the answer, but it's something that we are exploring and others are exploring, and we can do that together. I don't know that anybody has the answer right now, because we need to look at the data.

SENATOR MAY: Okay. Thank you.

DFS SUPERINTENDENT LACEWELL: Certainly.

CHAIRWOMAN KRUEGER: Let's get back to the Assembly.

CHAIRWOMAN WEINSTEIN: So since we began, we've been joined by quite a few Assemblymembers. And then we're going to try Mr. Byrne again.

We've been joined by Assemblyman Dan Rosenthal, Assemblywoman Linda Rosenthal, Assemblywoman Glick, Assemblymembers Pretlow, Jacobson, Reyes, Rozic and Forrest.

And we are going to -- Mr. Byrne has indicated that he may be live again, so we're going to try to go to Mr. Byrne and see if

Assemblymember Byrne -- if his video and internet can work.

CHAIRWOMAN KRUEGER: And for anyone who's having trouble, our tech people have recommended turning off your video and then supposedly the audio might work more clearly for you. Just a suggestion.

Thank you, Helene.

CHAIRWOMAN WEINSTEIN: Okay, sure. And you can use the chat function if you get kicked off and -- but I have the -- as does Senator Krueger, we both have the lists of orders of members when you raised your hand originally. So not to worry if you get kicked off and come back; we still have you on the list.

Assemblyman Byrne, let's try it again.

ASSEMBLYMAN BYRNE: Thank you, Chairs. And thank you again, Superintendent.

I apologize if anyone heard the expletives that I shouted when I was frozen. I wasn't sure if that audio went through.

I asked about home care and telehealth, asking about, again, the Excess

Medical Malpractice Insurance Program that has been reduced. And I just wanted to highlight the fact again, in the Westchester & Fairfield County Business Journal, New York was quoted as the highest malpractice award payout per capita and the most expensive annual malpractice liability insurance rate.

And I bring that up because we're reducing this program; I'm concerned it's going to reduce enrollment even further.

But -- and this may not necessarily be in your wheelhouse, Superintendent, but we're doing this and we're not doing anything to actually reduce the cost of medical malpractice insurance. So I do have a very serious objection to further reducing the funding for this program.

And I also wanted to ask you one other question; hopefully I don't freeze. There's been a lot of discussion about the PBM proposed regulation and registration. And I just wanted to just follow up, because there does seem to be a lot of players in the drug chain -- wholesalers, pharmacists. And is

there any consideration or thought we would be registering or requiring transparency for all these other players as some other states may be doing as well?

You know, I would just like to see if that was something that's being considered for not just the PBMs but for other players.

DFS SUPERINTENDENT LACEWELL: Well, the budget proposal, as you know, is for PBMs. Many other players in the system -- obviously, doctors, providers, insurers -- are already regulated. So I'm very much hoping and looking forward to having the ability to have government make a difference with respect to prescription pricing by bringing transparency and oversight to the PBMs.

ASSEMBLYMAN BYRNE: Okay. Thank you. And again, I would just voice my opposition to the cut in the Excess Medical Malpractice Insurance Program, with many of my colleagues. And my colleague the Insurance chairman mentioned that as well, so I'd like to echo that support for the program.

Thank you.

CHAIRWOMAN WEINSTEIN: Thank you, Mr. Byrne.

Now we go to the Senate.

CHAIRWOMAN KRUEGER: Thank you very much. And oops, if I can find my list again -- it's somewhere up here -- we're at Sue Serino, Senator Sue Serino.

Are you there, Sue? There she is.

SENATOR SERINO: There we go. Thank you, Madam Chair.

And good morning, Superintendent. And actually this morning just before this hearing I had a call from a constituent who's been living with MS for 13 years. She takes a daily injection to keep her condition under control. And with the help of a copay assistance card, she has never had to pay for the injection. But without the card, the monthly cost would be $2500.

This month when she went to get the prescription she was charged $705 with the copay assistance card. Despite active help from her doctors and her pharmacist, there's

been no explanation for the price spike. And her pharmacist told her it might even be due to a penalty she's being charged for being unable to use a generic version of the drug, a version that has been proven to be effective for her. And I'm sure you agree this is truly outrageous to see such a spike with no justification, especially in the midst of a pandemic.

In November of last year you established a new office to investigate skyrocketing prescription drug prices, and you announced the appointment of a new Drug Accountability Board. Awesome. So I'm wondering if you could provide an update on the work of that office, what you're finding and actually what recourse is available through the office for New Yorkers who experience these kind of spikes.

And is there something that we can do in the budget to actually bolster the work of that office?

DFS SUPERINTENDENT LACEWELL: Well, thank you, Senator.

First, with respect to your constituent, that's very upsetting. And one of the worst aspects of our healthcare system is when individuals are kind of caught in between all the other players that have so much power.

We have a very vibrant Consumer Assistance Unit, which our staff would be delighted to work with your constituent to find out what happened and what can be done for her individually.

The Office of Pharmacy Benefits has been stood up. We have a full board of advisors, including Assemblyman John McDonald, who has experience in the pharmacy industry, and we're getting all kinds of good advice there. We've launched a series of investigations with respect to COVID-19-related drug price spiking.

But anyone can report a drug to be reviewed for inappropriate price spiking, and that's available on our website. I'll also have my staff follow up with your staff. My legislative affairs person, Tanusha {ph}, can

follow up and make sure that this is fully explained to you and that we can reach out, with your help, to your constituent.

SENATOR SERINO: Oh, that's awesome.

And I just want to say also, too -- I'm glad to see the emphasis on increasing the access to telehealth. But I just want for the record that the telehealth is only as good as your access to broadband, right, the internet.

DFS SUPERINTENDENT LACEWELL: Absolutely.

SENATOR SERINO: So we need to focus on truly getting universal access to affordable, fast broadband. And I hope that you'll join us in that push.

Thank you, Superintendent.

DFS SUPERINTENDENT LACEWELL: Thank you.

CHAIRWOMAN KRUEGER: Thank you. And back to the Assembly.

CHAIRWOMAN WEINSTEIN: Now we go to Assemblywoman Hunter for three minutes.

I know she's been getting kicked off a

number of times also, so hopefully --

ASSEMBLYWOMAN HUNTER: I'm here. It's been challenging, the internet.

CHAIRWOMAN WEINSTEIN: I have you in the order -- I take members in the order they raise their hand --

(Unintelligible cross-talk.)

ASSEMBLYWOMAN HUNTER: -- Chairwoman, thank you. And thank you, Superintendent.

A couple of other members have made mention, so I kind of wanted to continue the conversation about the telehealth. And, you know, this COVID pandemic has really shown us glaring gaps and disparities relative to access to healthcare and, specifically, the unreliability of broadband.

And you mentioned several times that consumers are the center of what your department does. So can you explain, I guess specifically, what is DFS's plan to expand telehealth services without the coinciding necessary broadband upgrade requirements?

DFS SUPERINTENDENT LACEWELL: Well, certainly making telephonic services qualify

under the statute, which is one of the Governor's proposals, so that an individual can use their phone even if they don't have broadband access.

Second, we are going to work with the industry to make sure they have enough providers, doctors in their network that provide telehealth services. Because if that person is not available, then there's nothing for you to utilize because you can't do it.

The Department of Health has a number of proposals in that regard too.

ASSEMBLYWOMAN HUNTER: And I can appreciate that. And obviously I'm using my phone right now, and I have the data and the capacity to be able to do that, because my computer obviously was not working.

But we have several instances, and especially in communities of color where, you know, people may have a Medicaid phone or the Obamaphones, people call them, where they don't have data and they don't have the video capacity to do these calls.

My office did a survey, you know,

trying to figure out who has been utilizing telehealth during this. It's all been suburban areas and it's all been folks who are 65-plus. So we are not capturing the communities who in this pandemic have not had the capacity to have equitable access to healthcare.

And another question, quickly, before my time runs out. If you could please explain in the department's plan to assist in-state local healthcare practitioners who are concerned about losing their business to out-of-state web doctors to ensure that, again, the consumer-centered approach we talked about, that in-person quality of care continues.

That there has been a lot of concern with local doctors that this push to certify and license out-of-state doctors will impact the ability for local healthcare practitioners to keep their businesses.

DFS SUPERINTENDENT LACEWELL: So great question. I know the Department of Health is working to help educate all providers to make

sure they have the tools they need.

But putting that aside, look, we've already had, as you know, right, a disparate impact on communities of color from the pandemic and from the economic jobs crisis. The solution, as we build forward, can't also have disparate negative impacts on those communities. We need all, in all of our communities, to move forward together.

And so I would actually be very happy to work with you and your staff and others on sort of more, you know, local ground-up initiatives where we can do this.

I'd also put in a plug for our new soon-to-be-opened statewide Office of Financial Inclusion, which is meant to address exactly this problem: How do we make sure all communities are participating in our financial system -- and to your point, in the innovations as well that are meant to address the harms that these crises have caused?

So I'm excited to work with you on this.

ASSEMBLYWOMAN HUNTER: Thank you,

Superintendent.

DFS SUPERINTENDENT LACEWELL: Thank you.

CHAIRWOMAN KRUEGER: Thank you.

Next up is Senator Kevin Thomas, if he is --

SENATOR THOMAS: I'm here. I'm here. Thank you so much. Good morning, Chair Krueger.

Good morning to the superintendent. Thanks for joining us today.

I've got a couple of questions here about artificial intelligence. As you know, technology is rapidly transforming every industry, specifically in the healthcare sphere.

Artificial intelligence and algorithms are taking over healthcare decisions. I've heard from many constituents and hospital administrators who have had medical-procedure preauthorizations denied or claims denied based off of algorithms that insurance companies are using.

The infuriating part here is that the

consumer does not even know that a human being is reviewing it. Do you think this is fair?

DFS SUPERINTENDENT LACEWELL: Well, you've raised a very important area -- innovation, artificial intelligence, algorithms, all of that.

Again, this area, which is emerging and mushrooming, really, can be beneficial but, if not done correctly, can be harmful, and both in fact and in appearance.

So I think it's very important that there are disclosures to consumers about what is actually happening so that they understand what kind of technologies are being used. That's point one.

Point two, yes, they have to operate fairly. And we have already been telling our licensed entities that they have to make sure if they use an algorithm or artificial intelligence, they have to make sure that doesn't have a disparate impact, just as if they did it themselves, for example.

And there's a lot of work to do here,

and thank you for raising the topic. And I'm sure that we can work together on this.

SENATOR THOMAS: Would you support, you know, having insurance companies, when they send a denial letter or whatever it is, that it clearly states in their letter that an algorithm determined this health decision?

DFS SUPERINTENDENT LACEWELL: You know, it's a great question. I remember back in the old Ingenix days where that happened -- everybody got denied on their out-of-network reimbursement or they got like a small amount of money back, and they didn't know it was some database. And it was one of the things that we complained about.

So I do think there should be more transparency. If that's not already occurring, I'm sure we can look at it within DFS, under our regulatory authority, and it's something we ought to explore.

SENATOR THOMAS: Thank you so much, Superintendent.

DFS SUPERINTENDENT LACEWELL: Thank you, sir.

CHAIRWOMAN KRUEGER: Thank you.

Assembly.

CHAIRWOMAN WEINSTEIN: Yes, we're going to go to Assemblywoman Bichotte Hermely.

But before, I just wanted to say that the problem, I think, with the -- that members are having with the internet has to do with the -- at least on the Assembly side, with their main firewall systems. So that if there are members in the -- in Albany who are -- or other places who are trying to log in through the Assembly VPN, you should -- and have access to a private network, you should do that, and I think that would clear up any issues you're having.

But meanwhile, our folks are working on resolving this systemwide problem.

So now we go to Assemblywoman Bichotte Hermelyn for three minutes.

ASSEMBLYWOMAN BICHOTTE HERMELYN: Hello. Thank you so much, Chair. Thank you, Superintendent, for being here.

I was in and out as well, and I just

wanted to kind of get some feedback on the Excess Medical Malpractice Insurance Program, which I know you spoke a little bit about. As you know, that I'm concerned and my community is concerned that this burden will be on these community-based physicians.

The Excess Medical Malpractice Insurance Program provides an additional layer of $1 million of coverage to physicians with hospital privileges who maintain primary coverage at $1.3 million out of a $3.9 million level. And New York is consistently having the highest cumulative medical liability payouts out of any state. With so much pressure, our doctors right now have been justified in opposing these new excessive costs.

We know that the federal government is giving over $50 billion of supplement. Can't that kind of offset these costs? As you know, we are in a crisis. Many of our community-based doctors service the minority communities which were hit the hardest, and they've been the frontline workers. They are

healthcare workers, they are heroes, they are -- they have been experiencing an economic loss of 10 percent of their staff, a 32 percent drop in revenue -- and in other cases, 50 percent.

So we're asking you not to do this. Okay? We're asking you not to put that 50 percent burden. There's other ways of looking at this, potentially decreasing the total medical -- the program so that they don't have the higher burden. But can you please explain a little bit more why we're doing this? And given the federal stimulus package, can we -- just don't do it?

DFS SUPERINTENDENT LACEWELL: All right, thank you for that question and your comments.

I do hear what you're saying. And we've already covered a number of these points. But, you know, as you indicated, the excess insurance is on top of existing malpractice insurance that the provider would already have obtained. Not all physicians -- you know, if you're a dermatologist, for

example, you may or may not need that if you've got other insurance.

The state has been 100 percent backstopping this, and the assessment of the data and the numbers was that the market has stabilized and we don't need 100 percent backstopping by the state any longer and the professional should be able to add that.

With that being said, I do understand what you're saying and I'm sure that the Budget Division and the Department of Health, et cetera, are also watching. And I'm sure, as a matter of negotiation between the branches of government, that this will be a matter of discussion. And what I will tell you is that I will personally convey what you said, both to the Department of Health and to counsel's office and the Budget Division so that, you know, at a bare minimum we can explore how do we ensure that there is not a disparate impact on providers who serve disadvantaged communities who have experienced and continue to experience disparities in healthcare.

So I do -- I understand your point.

ASSEMBLYWOMAN BICHOTTE HERMELYN: Thank you very much.

CHAIRWOMAN WEINSTEIN: Senate?

CHAIRWOMAN KRUEGER: I'm sorry, I was muted again.

Senator Griffo.

SENATOR GRIFFO: Thank you, Senator Krueger. Thank you, Commissioner.

I just have a real quick question. Essentially when you talk about the vaccine program right now and assurances that this is really not costing anybody anywhere -- anyone anything -- why then are we obtaining this insurance information from everybody when they go to various sites?

DFS SUPERINTENDENT LACEWELL: Well, thank you for the question, Senator.

Insurers are required to provide insurance coverage. If you're paying for insurance coverage, they need to be covering it. And we did send them guidance before the vaccine was launched reminding them that vaccines are covered and they need to do

their part. They are collecting premiums from consumers, and they need to be using those dollars as required under the Insurance Law and the regulations and our oversight.

So that helps, by the way, the state or the federal government. And as you know far better than I, there are limited dollars to cover everything that the state and the federal and local governments are handling at the moment, and insurance companies are doing their part. I've heard no complaints from industry in that regard.

It's actually to the benefit of the insurance company for individuals to be vaccinated to help reduce infection and the extent of harm to the individual, which would engender vast, vast costs if the person is hospitalized in the ICU and on a ventilator. So I actually think this is something that insurers ought to be championing and making easy.

SENATOR GRIFFO: So basically what you're saying, then -- I understand that, Commissioner.

But what I'm asking you is that based on obtaining that information at the state facilities that are conducting vaccines right now, all that insurance information that's being gathered and being sent to the insurance company, the money is coming back to the state, then. So that part of that money is being -- the insurance companies are covering this, but when there was copays, things like that, are you billing, is the State of New York then getting money from these insurance companies or these other distribution sites?

DFS SUPERINTENDENT LACEWELL: No. No. The federal government is paying for the vaccine, as I'm sure you're aware. This is simply processing it through insurance companies. The federal government is committed, the state is committed that no individual, with or without insurance, would be paying for a vaccine.

So I understand your question. But certainly the state is not profiting or receiving funds from insurance companies in

connection with the vaccine. I'm happy to follow up on that and get you a written answer that's more detailed.

SENATOR GRIFFO: Thank you for your time.

CHAIRWOMAN KRUEGER: Thank you.

Assembly.

CHAIRWOMAN WEINSTEIN: We go to Assemblywoman Seawright.

(Pause.)

ASSEMBLYWOMAN SEAWRIGHT: Can you hear me? Am I unmuted?

CHAIRWOMAN KRUEGER: Yup, you're good.

ASSEMBLYWOMAN SEAWRIGHT: Thank you.

Thank you, Superintendent Lacewell.

I have Roosevelt Island in my district, and last year it lost its only bank. My office, along with other elected officials that represent the island, have been working with DSS to get a replacement chain to take over on the island. Many residents or seniors --

CHAIRWOMAN WEINSTEIN: Assemblywoman, I hate to interrupt, but this is the -- DFS

is here to address health issues, not other issues under their jurisdiction. So if your question is not health-related, I think we have to take care of it offline.

DFS SUPERINTENDENT LACEWELL: And I'm happy to do that, Assemblywoman. We have a number of programs, as I'm sure you know.

ASSEMBLYWOMAN SEAWRIGHT: Sure.

CHAIRWOMAN KRUEGER: Do you have any health-specific questions, Rebecca?

ASSEMBLYWOMAN SEAWRIGHT: Well, I think not having a bank on Roosevelt Island impacts --

(Laughter.)

ASSEMBLYWOMAN SEAWRIGHT: -- it being an island of a large --

CHAIRWOMAN WEINSTEIN: That's a little sneaky. Okay, we're going to --

(Laughter.)

CHAIRWOMAN KRUEGER: Oops. I'm not really trying to help, I was just trying to be polite.

CHAIRWOMAN WEINSTEIN: I know.

CHAIRWOMAN KRUEGER: Assemblywoman,

why don't we take another Assemblymember who has more of a --

CHAIRWOMAN WEINSTEIN: Yes. Assemblywoman Linda Rosenthal.

ASSEMBLYWOMAN ROSENTHAL: Hi. Hi, good to see you. I have a couple of questions.

My first question is about testing. And as many in the city saw, the lines for testing at certain times and days were wrapped around the block and people had to wait four or five hours just to get a test.

At some of those urgent cares, people were actually not just tested but brought into rooms, had a, quote, visit where their vitals were taken and other information, and that was billed, as far as I understand, as a visit. As opposed to, let's say, an H+H facility, where you went in, got a swab stuck up your nose, and you left.

So can you explain the difference in -- what kind of billing differences were there for that, and were these urgent cares authorized to actually conduct visits so they

could -- you know, the result of which is they got probably extra money?

DFS SUPERINTENDENT LACEWELL: So thank you for the question. Happy to look into the specific facts.

The only thing that can occur to me is that if somebody came and they were experiencing symptoms and they needed a medical consult, that might have occurred alongside, before they're given the test.

But certainly if it's anything other than that, it would be of concern, and I'm happy to speak with your staff alongside and get the facts and circumstances and figure out what that was.

ASSEMBLYWOMAN ROSENTHAL: No, I think it was everybody had to go into a room with a healthcare professional and, you know, they had different questions to answer and vitals taken. Seemingly unnecessary for everyone who simply wanted a COVID test to go through.

And I understand it was billed as a visit. So if you could enlighten me, you know, about how that comes about and if that

was the -- I don't know if that was the intended purpose of these urgent cares, to conduct visits.

DFS SUPERINTENDENT LACEWELL: Right. I mean, obviously there's a temperature screening and things of that like, but nothing of the description that you provided.

Again, I'm happy either to speak with you after the hearing or have our staffs connect and if you can get us the specific information where this was occurring, we can certainly look into it and we will.

ASSEMBLYWOMAN ROSENTHAL: All right. Thank you.

DFS SUPERINTENDENT LACEWELL: Sure.

CHAIRWOMAN KRUEGER: Thank you.

Senator Biaggi.

SENATOR BIAGGI: Thank you, Madam Chair. I'm also having unstable internet, so I apologize if I drop off. Just please go on to the next person so I don't stop anybody.

Okay, I'm ready to begin. Thank you so much.

Hi, Madam Superintendent. I only have a few questions, and they're actually very narrow in nature, so hopefully we can get some answers here.

So I'm just wondering if DFS is aware of the situation that's surrounding UnitedHealthcare. Essentially what has happened is that they have, in the middle of this pandemic, decided to go out of network to many, many, many different individuals who have UnitedHealthcare as their, you know, main insurance company. And predominantly where this is actually impacting are communities of color and low-income communities.

So I'm just wondering, first and foremost, if DFS is aware of this.

DFS SUPERINTENDENT LACEWELL: Thank you. Yes, I read the news reports and the comments from members, I believe including yourself. And although we don't have jurisdiction over these contracts, I similarly was concerned that folks were not at the table negotiating this.

And I personally called the head of UnitedHealth Group -- not the New York company, the national company -- and I called the head of Montefiore, and I said this is unacceptable, I'm not getting involved in the substance, but you've got to get to the table on behalf of the people that you are serving, and without an excuse. And they did, they returned.

We're monitoring those negotiations. I would continue to ask both sides to do the right thing and try to come to a resolution -- especially, as you indicate, during a pandemic. We've got to get this done.

SENATOR BIAGGI: Okay, I appreciate that. I am grateful that you are involved in that.

I just want to note one thing to you. This particular insurance company, UnitedHealthcare, has made like, I mean, significant, significant profits during this pandemic. And it just -- it seems like it is nefarious action being taken. And the reason

why I can say that in good faith is because they're not actually just doing this in New York, they're also doing this in Georgia.

So I would really appreciate perhaps if, you know -- I mean, I hear you that DFS doesn't have official jurisdiction. But since you have already reached out and had those conversations, I would really appreciate just a follow-up, an official follow-up from your office to mine, mainly because this affects a significant portion of people who live in the Bronx who already are on the verge of, frankly, just like mass destitution, I mean in every single way.

And so to go to the doctor in a place where, you know, usually you can go to the doctor but also to be in a situation where you might be unemployed or on the verge of becoming homeless and then your health insurance is not even taken and then people are getting a lot of surprise bills -- it's highly problematic.

So I really will look forward to us connecting and following up and then also

hopefully having some kind of resolution to this. Because I'm deeply, deeply concerned that a large portion of Bronxites would be left with large surprise bills in this moment.

DFS SUPERINTENDENT LACEWELL: Happy to do so.

SENATOR BIAGGI: Okay, thank you.

CHAIRWOMAN KRUEGER: Okay. Thank you. I actually think I'm the last one up for first round, then our chairs may choose to have second rounds.

So, Commissioner, midwives have come to me with the fact that they don't have the option to purchase malpractice insurance that covers prenatal care but not delivery services, even though the vast majority of them are not providing delivery services -- maybe they should be, but they don't have access to locations to do so.

So can you help me understand what could be done to allow midwives to purchase the coverage for the services they provide, which would be far less expensive than

including coverage for births. As you and I both know, births end up in a very high risk category for health insurance, and even in a different program.

So is there a way to help those midwives who are performing all kinds of important services, but not actually delivery, to have insurance?

And I think directly correlated, and maybe explaining this, is do the midwives no longer have access to malpractice insurance like at all? Is there some rule that's gone through that doesn't allow them to have malpractice insurance? And why was it discontinued if it disappeared?

DFS SUPERINTENDENT LACEWELL: Well, I will look into that last question. I'm not aware of any changes.

But with respect to the larger question, I will confer with our property division, which speaks regularly with all kinds of providers of insurance in this regard, and find out is this service -- is this product not available, why is it not

available, are there players in the market who are interested in providing it, how do we encourage that, what are the obstacles -- and get that back with you, Chair, about what is happening in regard for midwives who are trying to obtain this kind of protection, that they play a very important role. And we'll get to the bottom of it.

CHAIRWOMAN KRUEGER: Great.

And actually so when I'm thanking you for getting back to me with that, I'm also saying, on behalf of Helene and I, many members asked you questions today where you said you would need to get back to them. We're asking that you, yes, get back to them but also send the answers to Helene and myself, and we will make sure they go up on the websites that share information from these hearings so that everyone can take advantage of the information you're offering.

DFS SUPERINTENDENT LACEWELL: Happy to.

CHAIRWOMAN KRUEGER: Thank you.

So a follow-up question -- and there

seemed to be a number of questions sort of around it today, and I'm not sure if they're exactly the same question.

There's a belief at least that regulating risk retention groups who enter New York State is something that we have not gotten our arms around, so that several of them have recently failed and they are leaving doctors without coverage. And the Governor in his budget wants to cut the funding for the excess liability pool.

But if the actual insurance options for the medical community are disappearing on us, what are we doing? So we would lose these companies who came in and promised to offer us -- I guess they're called risk retention groups -- these higher-cost insurance policies for doctors, they're leaving and we're reducing the excess liability pool. Are both of those true?

DFS SUPERINTENDENT LACEWELL: Well, I don't know if we're talking about exactly the same thing.

But DFS has worked directly with the

providers of medical malpractice insurance to help make them more robust financially and to expand competition in the market by bringing in new entrants. Because the market has been stabilizing in that regard, this additional level of excess coverage that has been backstopped by the state, the assessment has been, based on the data and the dollars, that the state could reduce that participation by 50 percent and doctors can elect as to whether or not they want this additional coverage, pay part of the cost themselves, which gives them some skin in the game too -- otherwise you're just taking a free policy, potentially. And so that is what the proposal is in the Executive Budget.

That's sort of my understanding as to what's happening in that area. I don't know if that fully answers your question. I'm happy, again, to come back with more details to you.

CHAIRWOMAN KRUEGER: I think the overall question is concerns that there are specific healthcare providers who are having

more and more trouble getting insurance coverage through whatever ways, and in theory the state makes it available. And so the concern is are we looking at these questions right.

So, you know, one was specific to midwives, which is a healthcare provider who's not an M.D., the other relates to I think insurance through various sources that primarily go to physicians, as opposed to others in the healthcare field.

DFS SUPERINTENDENT LACEWELL: All right. Well, let me go back and get into the details further, and I'll follow up with a written response for yourself.

CHAIRWOMAN KRUEGER: And then there was earlier questions about the impact of insurance that people thought were going to cover them during the pandemic, business interruption insurance for people in healthcare.

Can you get us a list of who actually ever paid out on this? I'm convinced -- I mean, you were explaining why it's very

difficult to change the rules of the road for insurance coverage. But I'm just wondering, is the whole world paying for a specific kind of insurance that never pays out, period, so we shouldn't even allow that kind of insurance to be in New York State?

DFS SUPERINTENDENT LACEWELL: Well, I think -- yes, we'll come back to you with details on this.

But obviously business interruption insurance, as it's known, covers a wide range of things that may cause a business to close down. The problem is they either exclude pandemics or they require, typically, property damage.

And that's probably a way for them to help determine what the financial risk is for them. We've got to make sure we don't drive our insurance companies, property and casualty insurers, out of business also.

But there have been a number of questions on this, so I do think it would be appropriate for me to work with the team to put together something in writing that I can

get to you and that can be shared with the other members as well, as you suggest, through the website or otherwise.

CHAIRWOMAN KRUEGER: Appreciate it. Thank you.

I'm now going to move, for second round, to the Insurance chair from the Assembly, Kevin Cahill, for five minutes.

Oh, and Helene got back just as I said that. Okay.

CHAIRWOMAN WEINSTEIN: Yes. Kevin?

ASSEMBLYMAN CAHILL: Thank you, Chairs. I really do appreciate it.

Thank you, Superintendent, for enduring our questions. And I apologize to you if you think I was a little bit rough in the first round, but there was a lot of ground to cover and only 10 minutes to cover those topics.

So I'd like to spend the next few minutes just talking about a few of the things we already mentioned and making sure I understand what you promised us.

You are going to send complete details

on the suballocations that are included in the Department of Financial Services's budget that are derived from insurance company and bank assessments?

DFS SUPERINTENDENT LACEWELL: Yes.

ASSEMBLYMAN CAHILL: Okay. The next thing, will you work with the Legislature -- and I'll be clear, not me, Amy Paulin and Dick Gottfried in our house and a significant group of people in the Senate -- to help reach a conclusion on early childhood intervention services between now and the budget that will actually make it so that we don't have our overburdened providers doing the collection work for New York State?

DFS SUPERINTENDENT LACEWELL: Happy to work with the group on that.

ASSEMBLYMAN CAHILL: Thank you very much. We'll follow up with that as well.

Will you also revisit the excess medical malpractice issue from the perspective of those providers who are providing care in at-risk and difficult communities who cannot afford medical

malpractice, as opposed to the perspective that you indicated in your testimony of those who have already left that realm?

We still have a problem for people who can't afford it. Will you agree to send us some information as to how you intend to make excess medical malpractice insurance more affordable for those who are working in at-risk hospitals and other settings?

DFS SUPERINTENDENT LACEWELL: So I don't want to promise that I'm going to have the answers, right?

What I promise to do is to confer with the right entities -- DOH, Department of Budget, counsel's office, members of the Legislature -- and to get back with you with a response.

What I don't want is anybody to think I'm going to solve all these complicated issues between now and the budget. I wish I could.

ASSEMBLYMAN CAHILL: Fortunately for you, we've offered significant workable legislative solutions to each one of the

things that I've mentioned. And all you have to do is say yes. It's that easy. Take a look at our proposals. If you say yes, then it gets done.

So I understand your position. All I'm asking is a good-faith effort, as opposed to what we've confronted in the past, which is something I'll get to in my conclusion.

Just going back to the no-fault panel, what was the thinking behind having only members of the executive branch of government serve as members of the panel that were going to review no fault? And if that was a conscious decision -- as opposed to bringing people in from the industry, bringing agents and brokers in, bringing consumer representatives in, bringing members of the Legislature into that mix -- why do you need legislation to accomplish that?

DFS SUPERINTENDENT LACEWELL: I don't think there's any deliberate intent to exclude members. We know there are different models for these kinds of enterprises, and sometimes what you're doing is bringing

together all the executive actors in that regard, and then they engage with experts and stakeholders across the board.

Sometimes you put them all on a panel together and have them hash it out.

They're simply different models. I don't think there was any particular intent.

ASSEMBLYMAN CAHILL: Understood. Is there any reason that you need legislation to do that? Can't the Governor pick up the phone and say, Superintendent, have a conversation with the commissioner and let's work this out?

DFS SUPERINTENDENT LACEWELL: Certainly you don't require legislation to have a number of state agencies get together on an ongoing basis.

ASSEMBLYMAN CAHILL: I'm going to --

DFS SUPERINTENDENT LACEWELL: And you also don't need legislation to do studies, and we do many of these things all the time through legislation as an expressed commitment toward the priority that is in --

ASSEMBLYMAN CAHILL: When the

Legislature thinks that something should be done by the Executive and it's not being done by the Executive, we are forced to resort to legislation to get it done. It's not necessary for the Executive to force themselves to do something that they have the power to do. So we'll move on with that.

Can I also ask you to review the amicus brief that was filed on behalf of you and all the people of New York State by the Attorney General and the attorneys general of 45 states of this country, and also the opinions and the model legislation drafted by your organization, the National Association of Insurance Commissioners, and also to review the decision written by Supreme Court Justice Sotomayor to determine whether you are prepared to conclude that regulation of a -- state regulation of an intermediary is the direct regulation of health benefits and therefore conflicts with ERISA?

Which, by the way, is exactly the opposite of Justice Sotomayor's holding. I am here to tell you that it is my view that

the State of New York and in particular the Executive, who has taken time to veto our legislation, is specifically standing in the way of comprehensive regulation of PBMs. And for the life of me, from the view of a consumer, I don't know why.

Thank you very much, Superintendent. My time has run out.

CHAIRWOMAN KRUEGER: And I think there's one more Assembly chair who wanted a second round?

CHAIRWOMAN WEINSTEIN: No, I think we are finished on the Assembly side. If you don't have someone on the Senate, I know that the technical staff I believe needs a minute to repost the witness list, so that we need to pause the live -- pause our next -- the live feed till they reload that so we --

CHAIRWOMAN KRUEGER: Very good. We'll thank the superintendent, because I don't believe we have any more questions for you.

So thank you for being with us. We look forward to quite a bit of data coming out of your shop in response to the many

questions.

DFS SUPERINTENDENT LACEWELL: Understood.

CHAIRWOMAN KRUEGER: And we will -- thank you. We will do whatever for a minute, come back, and Commissioner Zucker is here with us when we come back.

(Brief recess taken from 11:46 to 11:51 a.m.)

CHAIRWOMAN KRUEGER: Thank you. Good afternoon. I'm Senator Liz Krueger, chair of Senate Finance Committee, joined by Assemblywoman Helene Weinstein, chair of the Ways and Means Committee, having our 13th hearing on the Executive Budget proposed by Governor Cuomo. It is the Health Hearing.

We started off this morning with the superintendent of the Department of Financial Services in relationship to health insurance, and we are now moving on to Dr. Howard Zucker, the commissioner of the New York State Department of Health, who will have 10 minutes to testify and introduce whoever he has with him, and then we will open it up

to questions.

And these hearings are being held online, live, with the two largest committees of the Senate and Assembly. And based on the number of requests already, pretty much every member has questions.

So Dr. Zucker, I hand it to you.

COMMISSIONER ZUCKER: Thank you very much. And good morning, Chairpersons --

SENATOR O'MARA: Chairwoman, Chairwoman Krueger, I have a request that this witness be sworn in.

CHAIRWOMAN KRUEGER: You know, Senator, I don't know that we have a format for swearing in at budget hearings, and so it would be a little unusual to try to come out with one that we all respected at this moment.

Commissioner Zucker, do you intend to tell us the truth?

COMMISSIONER ZUCKER: Of course I'll tell you the truth. Yes.

SENATOR O'MARA: Note my objection.

CHAIRWOMAN KRUEGER: Thank you.

Please continue, Senator -- excuse me, Commissioner.

COMMISSIONER ZUCKER: Thank you.

And good morning, Chairpersons Krueger and Rivera, Weinstein and Gottfried, and members of the New York State Senate and Assembly.

I thank you for the opportunity to present Governor Cuomo's fiscal year 2022 Executive Budget as it relates to the health of all New Yorkers.

I am joined by Donna Frescatore, the State Medicaid Director and the Director of the New York State of Health.

And I also will just mention, given that there's a lot of technical aspects of Zoom, I have my audiovisual person in the room, in case you see some movement. In case we drop out of the Zoom, I want to be sure we get right back on.

One year ago I sat before you, in person, for the same reason. In my testimony I commented on a new virus identified in Wuhan, China, that warranted close

monitoring. We sit here today, virtually, because of the course that virus took during these past 12 months.

In my medical and public health career I have borne witness to and worked on resolving many health challenges, but few have had as far-reaching impact as this pandemic. The virus we call SARS-CoV-2 has put society on hold, but it has tapped into the ingenuity of researchers, the intestinal fortitude of health workers, and the resilience of us all during the past year.

COVID-19 has caused unprecedented pain and grief for many New Yorkers who are still struggling to find meaning and closure in these uncertain times.

The Department of Health, under Governor Cuomo's leadership, has tackled this pandemic with all of its heart and soul. The staff has given -- and continues to give -- every ounce of energy to stopping this pandemic, from Wadsworth Lab developing the nation's first COVID-19 test outside of the CDC in February of last year, to launching

more than a dozen state testing sites that we still operate today, to building an army of contact tracers and a comprehensive vaccination program that has already put nearly 4 million shots in the arms of New Yorkers in the first two and a half months.

Today marks my 414th straight day of tackling this virus on behalf of New Yorkers. I wish I could say that I had all the answers back then. I didn't. We didn't. Not the scientists, the public health experts, the journalists, the policymakers, those on the front lines -- none of us. Ironically, the year was 2020, and with 20/20 foresight we would have built stockpiles, implemented more precautionary measures, and revved up manufacturing. Instead, we have all learned together.

New scientific findings shaped new policy. Recommended behaviors designed to save lives -- like social distancing, masks, shutdowns, testing -- have become tiresome. The urgency of the situation, the deadly

nature of COVID-19, meant decisions had to be made more quickly than the science was evolving.

I cannot speak of COVID-19 without turning to the nursing homes. Yes, there were deaths -- too many. Yes, nursing home residents were and remain among the most vulnerable. And yes, there have been questions.

In July I presented a comprehensive assessment of what likely happened in nursing homes, here in New York and all over the globe. What we said in July remains true today. The virus, despite all of our collective best efforts to prevent it, was inadvertently brought into the nursing homes by dedicated staff at a time when we did not know enough about the science. It was tragic, it was troubling, but it's true.

I was asked to provide the numbers of deaths by facility, by location of death, by whether confirmed or presumed. To the best of the department's ability, I have done so. If some wish to find fault with the process,

I ask them to remember that we continue to battle this pandemic. As a resident of New York, I believe in transparency. As a doctor, I believe in accuracy. And we did our best to achieve both.

There is much more we can achieve if we apply the lessons of 2020 as we turn to 2021. As we now focus on the budget, the reason we are here today, we need to keep this in mind. So let's start with the nursing homes.

Last week the Governor announced a comprehensive plan to bring real reform to the nursing home industry. Reform means prioritizing patient care over profit, focusing on services that directly impact residents, and staffing programs accordingly. Reform means disclosing payer rates and what goods and services Medicare and Medicaid funding is spent on. Reform means increasing public health violation penalties to $25,000 and removing grace periods for fixing violations. Reform means operators with repeat infection control violations must work

with an independent quality improvement monitor on their own dime. And finally, it means if an operator cannot protect the health and safety of their residents, we will move quickly to appoint somebody who can.

We are living in a different world than we were a year ago. We all learned to live remotely this year -- remote work, remote school, remote shopping, remote family time, and remote healthcare. We can now build on this positive transformation through reforms that will lower costs, enhance care for vulnerable populations, and increase access to telehealth services from primary care to early intervention.

These reforms will also expand access to mental health and substance use services, which is a critical need in the wake of a pandemic that has exacerbated these challenges.

As you have heard from my fellow commissioners, this budget will propose legislation to establish a single integrated license for outpatient mental health,

substance use, and physical health services, meaning New Yorkers can receive all of the services they need in one location.

And that care needs to be affordable, which is why the department will continue to work with its sister agencies to implement a strong regulatory framework to enforce insurers' compliance with parity for reimbursement for all three service types.

Furthermore, the New York State of Health has provided low-income families quality health insurance through the Essential Plan, but monthly premiums can be a barrier. This budget will eliminate monthly premiums for over 400,000 New Yorkers, saving families nearly $100 million in annual premiums and enrolling 100,000 currently uninsured New Yorkers.

In addition, this budget will provide $420 million to promote access to vital healthcare services for Essential Plan enrollees. It will also commit $200 million to support an Essential Plan Quality Pool to promote high-quality care.

All of these efforts continue to move us toward our goal of making New York the healthiest state in the nation. The Nourish NY initiative will continue to encourage the purchase of goods from New York State farmers and producers and help ensure access to local nutritious foods. We'll continue our commitment to make it easier for transgender, gender nonconforming and nonbinary New Yorkers to have identity documents that reflect who they are. And we'll continue our fight to reduce maternal mortality and racial disparities.

And the budget will, of course, allow us to continue our fight against COVID-19, with increased testing capacity and expansion of the statewide COVID-19 vaccination program that will emphasize health equity and reduce vaccine hesitancy. Our viral adversary is continually mutating, and we need to stay vigilant.

And finally, we'll need public health emergency response capacity that lasts beyond COVID-19 to the next pandemic or other threat

to the health and safety of New Yorkers. The past year has shown us what public health does. The state will create a New York Public Health Corps, including public health professionals, nurses, medical and pharmaceutical students from undergrad to doctoral levels, as well as retired medical professionals and volunteer first responders. They will come from every region and background in the state, and they will be given opportunities to work in their own communities.

As Governor Cuomo has stated, New York State is stronger because of the way we have united to fight COVID-19. I am confident that we will prevail against COVID-19 and the future of public health will flourish in New York State.

Thank you.

CHAIRWOMAN KRUEGER: Thank you very much.

Our first questioner will be Senator Gustavo Rivera, 10 minutes, please.

SENATOR RIVERA: Madam Chair, I will

actually not ask questions at this time but will reserve my 10 minutes for later on in the program. Thank you.

CHAIRWOMAN KRUEGER: You're welcome.

Well, then I'm going to invite our special guest, Minority Leader Robert Ortt, to be the next questioner.

SENATOR ORTT: Thank you, Madam Chair. Thank you, Chair Weinstein.

I also want to recognize Senator O'Mara for his leadership during these hearings as well.

Commissioner, thank you for joining us. I do appreciate it, as I know all of my colleagues, both Democrat and Republican, both Assembly and Senate, appreciate you being here today, not only to discuss the budget but obviously to discuss the nursing home issue and the department's response to that over the last several weeks and over the last several months, to be very honest with you.

So, Commissioner, I have to ask you -- I know you said what you said back in July

still is true today, but there have been a lot of reports that could seem to contradict that statement alone. And I was going to ask you about your July report on factors contributing, obviously, to COVID nursing home deaths, which was updated in February to include the real extent of nursing home deaths. And it continues, though, in both versions, and as you continue here today, to assert that the March 25th directive did not contribute to the spread or to fatalities.

Yet -- yet -- the Attorney General issued a report several weeks ago and the Empire Center, once they were actually -- once a judge gave them the information that they FOILed, both the Empire Center and the Attorney General of the State of New York issued reports that concluded that the March 25th directive did contribute to the spread and, by extension, contributed to fatalities in nursing homes.

We also know that you had the information that the Legislature requested at the hearing over the summer and requested

several times through media outlets and others, but we now know -- not directly from you, but from others in the administration -- that that data was deliberately withheld for reasons that I would term are shameful.

So having said all that, I have three questions for you -- because I don't have a ton of time, so I'm going to ask you three questions and I would like you to respond.

What changed in the updated report, the July to February report?

And secondly and thirdly, you still -- is it your assertion -- you did not mention the March 25th order in your testimony. Is it still your assertion that the March 25th order, which the Attorney General and the Empire Center both concluded played a role in the spread and in the fatalities, is it your continued assertion that that directive did not have any effect -- you mentioned -- you blamed the staff, but there was no mention of the March 25th order. Do you still contend that that played no role?

And lastly, if that is true, then why

was that order, the directive, rescinded almost two months after the fact on May 10th? It would seem to me -- the fact that that was rescinded on May 10th would indicate that it either wasn't working or that in fact it was contributing to the spread in these nursing home facilities.

So again, is it your contention that the order did not play a role? And if so, why was it rescinded and what changed in the report from July to February?

COMMISSIONER ZUCKER: So let me -- thank you for your question. Let me answer them as -- in the parts that you raised.

Well, first, there are some statements which are not accurate, and we'll get to those. But the first question you had was what changed in the -- I'm looking at my notes -- what changed in the updated report? The fact is that I support the July assessment, and I continue to support it to this day.

From July to the present point, we had more data, we put the data -- and it

confirmed exactly what we found back on March 25th. It is troubling to me that we keep going back to an issue where all the data has shown -- not just New York, but across the country -- that this is not what brought the infection into the nursing homes. The -- and we can get more into the data about -- or the guidances from both CMS and CDC --

SENATOR ORTT: Commissioner, if I may.

COMMISSIONER ZUCKER: Can you not hear me?

SENATOR ORTT: Is the Attorney General's report wrong? Is the Empire Center's analysis --

COMMISSIONER ZUCKER: The Attorney General did not -- the Attorney General did not say that the March 25th memo brought this into the nursing homes.

And the Empire Center, Bill Hammond, I -- I don't know Bill Hammond. I have not had a chance to review his assessment. I know he's a journalist now, he's working in a think tank.

But I know my team. And I know how my team works. And I know the commitment that my team made to evaluating this report and looking at the data. And so I can speak to my team. And what we found was -- and I will reiterate it -- that there was 37,000 staff who ended up having COVID, and they brought it in, inadvertently, at a time when we did not know about asymptomatic spread.

Remember, back then the -- we asked the international -- or the national experts, we asked Fauci himself, Dr. Fauci. He said, you know, asymptomatic spread is not a driver of the pandemic.

So, I mean, they brought it in, they brought it in inadvertently. And that is how it spread. Ninety-eight percent of all the nursing homes had COVID in it even before anyone's even sent back to a nursing home. They went from the nursing home to the hospital because they had COVID, the vast majority, and so it was already in the nursing homes. So that's the first part of the issue.

And let's just keep going down that whole path a little bit on the reasoning here. So they brought it into -- you have it in the nursing home. There's a memo, there's a guidance that's put out that says that nobody should go back to the nursing homes who are COVID-positive in May -- this is what you were referring to -- and the order was not rescinded, there was a -- so I think that's the wrong word. That is not the correct issue. That was a different guidance that was put out.

But let's just use the issue of May 10th, which is what you're referring to. So there was no one who was coming back into the nursing homes with COVID-positive tests -- that doesn't mean they were contagious, but we'll just stay with that for a second.

There was no one going into the nursing homes who were visitors, because there was no visitors allowed. And we were now able to test people twice a week, staff twice a week in the nursing homes. And yet the disease was still going to the nursing

homes because it was in the community. When it's in the community, it's in the nursing homes. They tie together.

So this ties back to your first question was July to February. So what was the difference? What we found was when we looked at the numbers and the data, once again, when you put all the numbers in there, increased spread in the community, increased cases in the nursing homes.

And if you put New York aside for a minute and you just say, Okay, let's just put our state --

CHAIRWOMAN KRUEGER: Doctor, Dr. Zucker --

COMMISSIONER ZUCKER: Yeah. Oh, did I run out of time?

CHAIRWOMAN KRUEGER: Because unfortunately you all have gone way beyond time.

COMMISSIONER ZUCKER: Okay, sorry.

CHAIRWOMAN KRUEGER: And I suspect we have 40 more people who have questions, I think, so I suspect you will be asked

variations on Mr. Ortt's question and you can start with, you know, and after May 10th. So we'll all remember up till May 10th and then after May 10th.

COMMISSIONER ZUCKER: Okay.

CHAIRWOMAN KRUEGER: And so I'm now going to hand it over to the Assembly.

CHAIRWOMAN WEINSTEIN: And I think there will be continued questions on this subject.

We go to our chair of the Health Committee, Assemblyman Gottfried. Ten minutes, please.

ASSEMBLYMAN GOTTFRIED: Yes.

Good morning, Commissioner.

COMMISSIONER ZUCKER: Good morning.

ASSEMBLYMAN GOTTFRIED: Good to see you. A few questions -- not surprisingly, starting on nursing homes.

We've all -- lots of people have been discovering that there are enormous problems in our nursing homes. COVID may have brought them to light and made them worse, but a lot of us know those problems have been there for

many, many, many years.

Considering all the attention on this issue, considering all the problems in our nursing homes that everyone is now aware of, you know, the Governor's budget wipes out funding for a small organization called the Long Term Care Community Coalition, which I always say is New York's leading watchdog and advocate on behalf of nursing home residents and their families, although unfortunately to a large extent they are practically our only advocate and watchdog.

Why in this environment would the Governor propose to zero out the state's funding for that program?

COMMISSIONER ZUCKER: As I mentioned -- thank you for the question. As I mentioned in my opening remarks, the Governor has said that the issue of nursing home reform is one of the critical factors and he won't sign a budget unless three areas are addressed, and one of those is the issue of making sure we hold bad actors accountable. Another one is the issue of

making sure that patient care over profit --

(Overtalk.)

ASSEMBLYMAN GOTTFRIED: We've got very limited time. Could you answer the question?

COMMISSIONER ZUCKER: Well, the issue is that we will address these issues of nursing home reform. And there are many advocates who work on behalf of nursing homes, and I have spoken with many of them regarding the budget.

The answer is that if the needs of making sure nursing homes are going to be met -- that is a primary focus of the Governor's on those three areas, the two I mentioned plus increased transparency. So I can't speak to one specific group, but I do know --

ASSEMBLYMAN GOTTFRIED: I'll bet that -- I'll bet that if all the advocates that you've talked to -- I'll bet not a single one of them likes the idea or expressed any support to you for zeroing out the Long Term Care Community Coalition.

But let's move on. I was interested

in what you said about wanting to prioritize care over profit, and I certainly agree with that. What would be your reaction -- and if you can't say so right now, maybe think about it and send me an email in a couple of days -- to capping the number of for-profit nursing homes in New York, granting no new licenses for for-profit nursing homes, and no increase in the number of beds for our existing for-profit nursing homes? They've gone from being about one-third of the number of beds to now being about two-thirds.

COMMISSIONER ZUCKER: Well, Assemblyman, I hear you and I think that we need to address that. I'm happy to send you an email about it.

But I do want to say that -- and I have -- long before this pandemic, I have worked extremely hard at the issue of dealing with the geriatric population, and nursing homes obviously usually are those who are primarily -- the residents are of that age. And this was one of the issues to address, the for-profit versus the not-for-profit

nursing homes.

So I'd be happy to have that conversation and discuss it further with you, to make sure that the care is provided to all those residents. Thank you.

ASSEMBLYMAN GOTTFRIED: Okay. I'd like to talk about the recently issued results of your -- of the department's request for -- the RFP for fiscal intermediaries in the consumer-directed program. And I would just suggest to people, if you're not familiar with Big Julie's Dice, after I'm done speaking you can Google that.

Because a lot of long-experienced, extraordinarily highly regarded fiscal intermediaries have been just shut out of the program as a result of this RFP process. They've been given no explanation as to in what way they were deficient, they've just been told, Oh, you didn't score high enough, and No, we can't tell you or we won't tell you in what way you were deficient.

You know, the last time I think the department did something like this, it was

with the medical marijuana program where you gave out five licenses and Applicants 6 through 10 complained that no one would tell them why they didn't get a license and they sued. And rather than respond to the lawsuit, the department said, Oh, okay, we'll give licenses to Nos. 6 through 10.

What can we do about getting some justice here, finding out was there a basis for justifying denying fiscal intermediary licenses to some of these really very important, longstanding, high-quality programs?

MEDICAID DIRECTOR FRESCATORE: So, Dr. Zucker, this is Donna. I'm happy to answer that question.

Hello, Assemblyman Gottfried. Thank you for that question.

So as you know, in February the department, as a result of a competitive process, selected 68 contractors. And following a very successful model that we used, for example, with our navigators -- which I think, Assemblyman, you're very

familiar with and supportive of -- we gave organizations the option to have collaborating partners.

And so many of these 68 organizations came in with community organizations, local organizations that had experience as well. And they partnered with them. It's efficient because you don't have every organization contracting with someone to do payroll, but at the same time you have a local presence of organizations with experience.

We're committed to having an open process. For those weren't awarded, we've extended debriefing rights in the initial letters. Our first step -- and perhaps we need to make this more clear that there's a number of steps here that we don't want to be barriers, it's just, quite honestly, because of the volume of applications.

So we first told nonsuccessful offerers what their score was, how they ranked. Many have come back to us, asked for a more detailed debriefing where we will talk to them, probably virtually or, if they

prefer, perhaps in writing with a detail of where their offer was either particularly strong or not as strong, and the weaknesses in their proposal. And that's consistent with what we do in competitive procurements under the State Finance Law.

ASSEMBLYMAN GOTTFRIED: So you'll disclose all that information?

MEDICAID DIRECTOR FRESCATORE: We will disclose where an offerer's proposal scored well and where it -- where we believed there were weaknesses in the proposal. That is our intent. Of course, this process has actually just started and there's --

ASSEMBLYMAN GOTTFRIED: Yeah, okay. Can you -- can you send that information to me?

MEDICAID DIRECTOR FRESCATORE: Yes, we will do that. We will send you a description of the process that will be followed, as well as any, you know, documents.

ASSEMBLYMAN GOTTFRIED: No. No, I want the data.

MEDICAID DIRECTOR FRESCATORE: Well, I

will go back and talk to folks about the detailed data. I can't make that commitment right now; it is a competitive process. But I will certainly ask those questions of our experts.

ASSEMBLYMAN GOTTFRIED: Okay.

Another question, the 1 percent across-the-board Medicaid cut. You know, it's kind of like the -- I forget the French author who said "The law in its infinite majesty prohibits the rich and poor alike from sleeping under the bridge." If you cut 1 percent of Mount Sinai's Medicaid allotment and 1 percent of, say, Elmhurst's Medicaid allotment, that might sound fair to somebody who doesn't know anything about our hospitals, but it obviously is not.

What is the justification for that kind of basis of cut? And how will that cut affect safety net providers?

MEDICAID DIRECTOR FRESCATORE: So the -- as you know, in the past there have been across-the-board cuts of providers -- with some exclusions, like the behavioral

health providers licensed under Article 31 or providers licensed under Article 32, which we would follow as well -- that are a standard percentage. So that has been done in the past.

You know, those are difficult choices and decisions made in the context of the state's revenue picture.

I would point out, though, at the same time that there are 1 percent across-the-board cuts, there's also a substantial investment in the fiscal year '22 budget, over $900 million for financially distressed hospitals through a series of programs that I know you're familiar with that we know as VAP and VAPAP and VBP QIP that remain funded in the '22 budget.

ASSEMBLYMAN GOTTFRIED: And many that are wiped out in the budget.

MEDICAID DIRECTOR FRESCATORE: Well, I think the -- the only -- I think there's one action in the closeout of the fiscal year '21 budget that is a reduction in the VAPAP program as we know it for funding that is not

needed, based on the regular meetings and discussions that my counterparts at the department have with financially distressed hospitals.

Other than that, I believe all the funding is in place for those programs -- again, over $900 million in fiscal year '22.

CHAIRWOMAN WEINSTEIN: Thank --

ASSEMBLYMAN GOTTFRIED: And eliminating the Indigent Care Pool for --

CHAIRWOMAN WEINSTEIN: Thank you.

ASSEMBLYMAN GOTTFRIED: -- publics.

MEDICAID DIRECTOR FRESCATORE: Yeah, the Indigent Care Pool proposal in the Executive Budget, as you know, doesn't -- still would permit the handful of hospitals that receive the public distribution to fund the nonfederal share with local money. So those DSH dollars would still be available, but it would be federal and local funding.

CHAIRWOMAN WEINSTEIN: Thank you. We'll move on to the Senate.

I just remind the director and the commissioner just that if there are

follow-ups in writing sent to a particular questioner, if they could also be sent to Senator Krueger and myself so that we can distribute to all of the members on the call.

MEDICAID DIRECTOR FRESCATORE: Certainly.

CHAIRWOMAN WEINSTEIN: Now to the Senate.

CHAIRWOMAN KRUEGER: I'm afraid we're going to find ourselves going over on every one. Although I have to say the questions that are being asked are taking me off the list because they're covering my questions.

But let's now go to our Health ranker, Senator Gallivan, five minutes.

Are you there, Senator Gallivan?

SENATOR GALLIVAN: Thank you, Madam Chair. And good -- am I unmuted now?

CHAIRWOMAN KRUEGER: You are. You're having a little rush. If you take your picture off, your voice might sound better.

SENATOR GALLIVAN: All right, I'll try to do that.

CHAIRWOMAN KRUEGER: And let's start

his five again. Good.

SENATOR GALLIVAN: You're able to hear me?

CHAIRWOMAN KRUEGER: Yes.

SENATOR GALLIVAN: Okay. Thank you, Madam Chair, and I apologize for the technical difficulties in the coverage on my end. I know it's been said before, I can't help but note the concern about ensuring that we have broadband coverage everywhere, including many of the rural areas participating here today.

Because of time, I will try to be very efficient with my questions. I'd be remiss if I didn't say, Commissioner, I share the concern of many of my colleagues and many of the citizens of the state when it comes to the public trust and the concern about the proper or improper reporting of nursing home deaths, however that came about. Again, as noted before -- not by you, but troubling nonetheless -- that we in the Legislature multiple times had --

(Audio dropped.)

CHAIRWOMAN KRUEGER: We lost you.

COMMISSIONER ZUCKER: We lost you, yeah.

CHAIRWOMAN KRUEGER: We've lost you, Senator Gallivan. Hmm. I'm sorry, we're going to let it go on to the Assembly.

But when you are back and think you are back, we will put you right back on.

Assembly.

CHAIRWOMAN WEINSTEIN: Yes, so we go to Assemblyman Cahill.

ASSEMBLYMAN CAHILL: Thank you, Chairs. And thank you, Dr. Zucker.

CHAIRWOMAN WEINSTEIN: Excuse me. He's a chair in terms of the clock, please. Thank you.

ASSEMBLYMAN CAHILL: Thank you so much. Believe it or not, I'll try not to use that time, Madam Chair.

Dr. Zucker, I have a couple of questions for you just generally about your testimony. And just reflecting on our last experience together last August and the answers you gave and the follow-up to that

that, quite honestly -- we got a very extensive response a few weeks ago, but we were waiting for a long time.

So please forgive me for this, and accept it in the spirit in which the question is being asked. To what specific level is your testimony today directed by, prepared by, influenced by, limited or otherwise reflecting direction from the Office of the Governor, as opposed to that which you were prepared to give us here today on your own?

COMMISSIONER ZUCKER: This is all my testimony and prepared by me.

There's a little bit of an echo --

ASSEMBLYMAN CAHILL: I apologize for that. We have a lot of technical issues today.

So my next question is, there was a lag of time between our last round of questions to you in our August hearing and your response. But were you directed by the Office of the Governor not to prepare that response, or was that a decision that you also made in your own office?

COMMISSIONER ZUCKER: Well, as the Governor said last week, right, he said that there was a void that was created, right, and that the information should have been -- should have been released sooner. And he regrets that, and I share that feeling.

And so at this point, you know, I feel that we should be able to move forward and continue the conversation forward on that. I mean, at that point in time when you asked me in the autumn what was happening, I can tell you that what was happening from our perspective and my perspective was that there was a pandemic which we continue to fight today, and there were many issues that were on my desk to move forward, including the issues of the school openings and, you know -- and we know the list. School openings, the issues of getting a vaccine plan in place, the increased testing on the holidays. And also the other issue was the fact that our numbers were starting to tick back up in the autumn, and I was a little concerned about that because of what they

always say, there's a second wave. And we have seen increasing cases as well.

ASSEMBLYMAN CAHILL: Doctor, the nature of my question is because of my experience with you personally, my experience with your office -- both with you and your predecessors -- is that of state agencies, the Department of Health has often been one of the more responsive agencies to inquiries by the State Legislature. And I found it unusual that we had to wait as long as we did to get answers to what were essentially basic and oftentimes statistical questions. But I thank you for your response.

I also -- I know you're going to be facing a lot of grilling today. I want to thank you for being the head doctor in New York State. This is a monumental task. I would not wish it on my worst enemy. And I know you didn't sign up for this when you agreed to be health commissioner, but in the back of your mind you knew you might have to deal with it. And whether we want to second-guess you or not, I want to thank you

for your service in that regard.

If you don't mind -- go ahead.

COMMISSIONER ZUCKER: I appreciate those words very much, I really do. Thank you.

ASSEMBLYMAN CAHILL: I'd like to pivot to a matter that is of equal concern to me. I know it sounds difficult to have something of equal concern to COVID, but this is a crisis in New York State, and that is the crisis of mental health. The crisis of addiction, the crisis of overdose, the crisis of the loss of the infrastructure of a mental health service system in this state, and in particular in the communities I represent here in the Ulster County area.

I'm making that point because Dutchess County isn't as bad as Ulster County. We got a double hit in the last 10 years when the State of New York and Rockland Psych pulled out of our county, and then our previous county executive, now a state administrator in a different agency, made a decision to dismantle our local mental health system and

contract it out to an adjoining county.

Then we had another blow -- and you're aware of this, Dr. Zucker -- when the Behavioral Health Unit of Benedictine Hospital, now Health Alliance of the Hudson Valley, was shut down in part by your direction and your request and the request to the State of New York to address the potential for a COVID overflow. That overflow never occurred. Those services have been removed from this county. People have been placed in extremely difficult positions with regard to their mental health and stability. This pivotal, important part of our community -- and I'm sure it reflects communities across the State of New York -- is gone.

The Health Alliance of the Hudson Valley and Westchester Medical Center, their managing partner, have indicated: Oh, no, the services are available elsewhere. But I can assure you, Doctor, those services are not the same. They are not of the same quality, they do not meet the same needs.

You were very kind in your response, your very detailed response. You dedicated about a page and a half to this question, and I appreciate that. In there you discussed the Certificate of Need process. And my question to you is when, in the middle of this pandemic emergency, will the Department of Health once again enforce existing Certificates of Need?

And I'm not talking now about changing that process, but addressing the fact that there is an entity in our community, and probably communities across the state, that are not adhering to their Certificate of Need, not adhering to their licensure, and it appears to me that there is no enforcement.

So with that, Doctor, if you can reflect on that for a few minutes. And maybe if we have a couple of minutes I'll raise a couple of other issues.

COMMISSIONER ZUCKER: Sure. These are excellent points of concern to me. Let me start with the Certificate of Need and then I'll go back to the issues of the mental

health issues, because they tie together.

One of the biggest challenges of this pandemic is the ability to not only tackle all the issues of the pandemic but the vast array of things that the department does. And part of that is the issue of Certificate of Need. And I agree with you, it's not so much about new changing ownerships or anything of that nature, but just the overall certificate, we need to make sure that we're meeting that.

We are trying to get back into the groove of making sure that some of those things that we were doing can be expedited. The truth is that many -- the vast majority of the department has been -- their energies have been directed towards this, and many people in the department have actually been doing double, triple jobs just in order to make sure that we move forward on this pandemic, working literally day and night every single day of the week. And we can -- that's a longer conversation.

However, I do agree with you about the

issues of mental health, and we need to tackle this. Long before the pandemic, Commissioner Sullivan and I had this conversation about the issues of mental health.

And when I first came into this role, someone said to me, You should pick two things that are really important -- this was seven years ago -- that you want to focus on. You can't focus on everything. And the two that I actually picked was -- one was the aging population in New York, and the other one was the issue of mental health. Because I believe those are two of the biggest challenges.

And the reason people haven't tackled them the way we should tackle them is because they are so complex, so we wanted to move forward on that. And now we sit here with a pandemic where these issues are paramount. And not only are they paramount in separate buckets, but they also overlap.

I sit there and I think about all the individuals who are lonely, elderly, lonely,

by themselves and all the mental health issues at that age, and the kids who are out of school and the impact of those kids being home because of the pandemic. And just our -- us as a social fabric has been compromised, because we are a society that works together, and when you isolate people it becomes very difficult.

So we are tackling that. I will continue to work with the Office of Mental Health on that issue.

And on the issue of the Certificate of Need, we have the Public Health and Health Planning Council, which goes through the process of Certificates of Need. And I usually look at each one of those, and I felt like my energies need to directed elsewhere -- but we will move forward on that.

With regards to the overall situation with making sure hospital care can be there, we do have the surge-and-flex system which the Governor put into place to help for care. But this is the complexities of dealing with

the pandemic. But I assure you I wrote it down, I assure you I will continue to push forward on this.

ASSEMBLYMAN CAHILL: Thanks, Doctor.

I want to catch up, with my last minute here, about two things. And let's -- surprising, surprising, I want to talk about something in the budget. The federal government has provided some enhanced -- you don't have to worry about notes. The federal government has provided some enhanced reimbursement for behavioral health and mental health services that results in a significant increase in the Medicaid and possibly the Medicare payments for those services.

Will you be recommending that after the federal money goes away that the State of New York pick up that enhanced funding level so that we can begin, once again, to rebuild mental health services?

COMMISSIONER ZUCKER: Donna, do you want to touch that?

ASSEMBLYMAN CAHILL: I do need --

MEDICAID DIRECTOR FRESCATORE: Hi, Assemblyman Cahill. I hope you can hear me.

You know, I'd be happy to get back to you on that question at this point, rather than to speculate on that. So I'm happy to talk directly to your office or to talk directly to your staff about that and your thoughts and concerns.

ASSEMBLYMAN CAHILL: I appreciate that. Thank you very much.

And panelists, let me just close by saying this, that what we have witnessed over the past several weeks, particularly between the Executive and the legislative branch of government unfortunately is merely an example of what the attitude is of most executive branch fellows -- people toward the Legislature.

And I hope that today we can begin to signal a change in that. And once again, on behalf of the many people who have recovered, thank you for your service on behalf of the many people who are still being cared for in New York State. I very much appreciate it,

and I do hope that you take the questions and comments of my colleagues in the spirit that they are intended, for the best of all people in New York.

Thank you very much.

COMMISSIONER ZUCKER: Thank you.

CHAIRWOMAN WEINSTEIN: Thank you.

Back to the Senate now.

CHAIRWOMAN KRUEGER: Thank you.

Do we have Senator Gallivan back? Let's see.

SENATOR GALLIVAN: I am here. Are you able to hear me okay?

CHAIRWOMAN KRUEGER: Yes, you seem much clearer. So please just --

(Overtalk.)

SENATOR GALLIVAN: And I will -- I will take your advice and refrain from my photo -- or I'll leave my photo up, but there's a real voice behind that.

CHAIRWOMAN KRUEGER: Yes, there is.

SENATOR GALLIVAN: Yes. So thanks for -- thanks for putting up with my technical difficulties. My apologies,

Commissioner and Director. Thank you for being here.

I know that many of my colleagues are going to discuss the nursing home situation in great detail. I'd be remiss if I didn't say that I too share the concern about the way that nursing home deaths were reported or not reported, shall I say, despite the many questions of the public and many questions of the Legislature since last year.

I do recognize, though, that all of that was -- was not you, but I share the concern. And I would certainly hope as we move forward that the executive branch can work and communicate much better than they have through this pandemic on the pandemic-related issues with the Legislature.

Having said that, though, I want to point in the Governor's budget where the Governor has proposed a number of changes to nursing homes. And we know the administration has been pointing their fingers, to a certain extent, at nursing homes and their staff for the lives lost and

other problems. Included in these proposals are increased penalties and heightened enforcement mechanisms.

The concern that I would have and the question that I have is given the state of nursing homes now, is the Department of Health equipped to provide proper oversight of nursing homes?

COMMISSIONER ZUCKER: So that is a great question. I actually go back to the issue of our inspections and our on-site surveys during the pandemic.

So we had over 2400 nursing home on-site surveys, and we did over a thousand enforcements and issued about $1.3 million in fines.

I can tell you from my experience during this pandemic of the conversations that I've had with nursing home administrators and with my team and the immediate visits that our team did whenever there was a question that occurred regarding a nursing home and the ability to deliver care.

Obviously, as the Governor's budget has put forth -- and it mentions about these different areas that we need to address -- we will end up revving up and having more individuals working on these areas. But we have been able to address the concerns that have been raised over the course of the past year.

But like any other challenge when you have a pandemic or anything else, it uncovered all of the things that need to improve. And I believe that this will show that there are things that we need to improve both internally and externally to give better care to those who are residents of nursing homes or any other adult-care facilities.

SENATOR GALLIVAN: So the financial penalties --

COMMISSIONER ZUCKER: And the money -- yeah, sorry, go ahead.

SENATOR GALLIVAN: The financial penalties can be -- are very steep. And the nursing homes, given the challenges they face and the rate cuts over the years, are really

financially challenged.

I'm concerned that -- I'm concerned that this will financially devastate some of these nursing homes, especially for some minor violations. And the concern is --

COMMISSIONER ZUCKER: Right.

SENATOR GALLIVAN: -- under all these changes, how can we be assured that this is actually going to improve the quality of care for our seniors?

COMMISSIONER ZUCKER: So that's a great question. And the issue here is you don't want to have a violation of something which is minor end up compromising the nursing home facility and what we're doing to help the residents there.

But if you have someone who's a bad actor who really does not operate a nursing home in the appropriate way, then we need to change it. It's in the best interests of the nursing home residents, it's in the best interests of healthcare in general and our society in general.

So that's what we need to move

towards. And the Governor has mentioned that there should be, you know, 70 percent for patient-facing services and 40 percent for staffing -- I mean, all the numbers are out there in his budget proposal. But we will address this, and we will tackle it and we will make sure that we don't put a situation in place that will only create a problem for those who are residents or for us as a society to be sure that those who need this care will get it. So I'm -- I'm {inaudible} for it.

SENATOR GALLIVAN: If I may -- if I may, Commissioner, thank you.

COMMISSIONER ZUCKER: Yeah, sure.

SENATOR GALLIVAN: I look forward to discussing many, many more details, because of the time.

To switch gears very quickly, I still think it is pandemic-related. We have a pandemic now that attacks the body's respiratory system. How on earth can we be talking about legally smoking marijuana while we've got this pandemic here? And there's no

science out there that says that smoking marijuana is okay for a person's respiratory system. How can we ensure the safety of the public?

COMMISSIONER ZUCKER: So I -- there are studies out there that we have mentioned when we were talking about the issue of regulated marijuana, about not having this given to those who are young and to avoid the use of marijuana for those who are youth.

The issue also -- and I will turn more towards the medical side of this, because we have run and I've run the Medical Marijuana Program which has helped, you know, tens of thousands of people in the state, and I've received letters from those who actually have been able to function and maintain their jobs and work and have stores because of the marijuana -- the Medical Marijuana Program. We looked at it, so I am a strong supporter of the Medical Marijuana Program.

And I understand the issues of the respiratory system and to make sure that inhaling -- inhaling substances are not

detrimental to them.

So -- but I do turn that back towards the team, who are the Office of Cannabis Management, which are looking at a lot of those issues. And I am sure they will sit and speak to the medical experts as well about this.

SENATOR GALLIVAN: Thank you, Commissioner. My time is up, but thank you.

CHAIRWOMAN WEINSTEIN: We go to, in the Assembly, Assemblyman Ra now for five minutes, as ranker.

ASSEMBLYMAN RA: Thank you, Chair.

Commissioner, thank you for being here.

I just want to start quickly by saying I hope that any answers that are outstanding after this hearing that need to be provided are done so in a far more timely manner than was done after last August's hearing, particularly with regard to nursing homes. If we are to be asked to consider nursing home reforms in this budget, we need all the information.

So I do want to go back, though, to some of your conversation with Leader Ortt. And I know you said you don't know Mr. Hammond from the Empire Center, but I would assume you're familiar with him or familiar with his work, are you not?

COMMISSIONER ZUCKER: Actually, I will tell you that I glanced at the paper he put out because it was -- and I responded to that, and it was during the preparation for this budget hearing.

I know that he was a journalist and now he's working in a think tank. And so that's the extent of what I can say about Bill Hammond.

ASSEMBLYMAN RA: Well, and obviously we all know he was the person who made the FOIL request that ultimately caused the data to be released pursuant to a court order a couple of weeks ago.

COMMISSIONER ZUCKER: Well, the data, as I said, was going to be provided before the hearing, and the numbers are out.

ASSEMBLYMAN RA: But it was, I mean,

provided the day that -- by the end of the day it had to be, pursuant to a court order. I think it's important that we make that clear.

So just going back to -- you know, we're obviously going to agree to disagree on some of the pieces of the March 25th order. But I think when we have this conversation, one of the things that I think gets lost in translation is really what I think the question is. You know, there's -- the report you have about 98 percent of the nursing homes having COVID prior to the order. But the question really, to me, is whether the order made the situation worse by reintroducing these patients and whether the piece of it that prohibited the nursing homes from testing these patients before they came in made the matter worse.

Mr. Hammond's report, which you said you glanced at, but I would encourage you to look at more in depth, seems to show a fairly solid evidence that there was statistically significant correlation between the order and

an increase in mortality within nursing homes. And I have always found his work, this one included, to be based on data and well-cited.

COMMISSIONER ZUCKER: Well, I believe that if he had looked at what we showed in July, on the July 6th presentation that I did of the fact that the nursing home deaths were going down when the admissions were going up, which -- and we look at the epidemiology of it, of the period of time, of the incubation period, he would realize that that is not the case.

You know, we keep going back to this issue about the nursing home March 25th document. And it is -- honestly, it's very troubling because, you know, as a scientist, as somebody who looks at things, people forget about the actual way this disease ends up spreading and what happens and how long one is contagious and what the risk they are putting to others.

And the fact of the matter is that -- and I want to be respectful of your time, but

the fact of the matter is that there is a window of time before anyone actually showing symptoms when you're already contagious, and that is for 48 hours.

Then you have a window of time -- and think about the nursing home residents, and I've mentioned this before. When someone is elderly and they end up in -- get sick and they're in the nursing home, you don't -- the first day when they wake up and are not feeling well, you don't take that 93-year-old out in the snow and say, I'm going to rush him to the hospital. A couple of days go by.

So now you're four days into it. They're in the hospital for -- they don't get into the hospital one day and then they go out the next day. We know from the report, from the data we showed, and I stand by this report -- I stood by it in July, I stand by it now -- that we know that it's in the community, that it is going to end up in the facility. And we know what ended up happening, and that was what we had in the report.

I mentioned in my opening remarks this was tragic, but it is true. And just the facts are -- I'm sorry?

ASSEMBLYMAN RA: I'm going to run out of time. I do want to quickly -- just to the budget presentation. If you can elaborate on either now or provide further information, there's this proposal for the independent quality monitors. And if you can provide further information as to what the department saw within nursing homes during this pandemic that, you know, basically that proposal spurs from, I'd appreciate it.

COMMISSIONER ZUCKER: That goes back to the on-site surveys and the enforcements. But we'll get that to you.

ASSEMBLYMAN RA: Thank you.

CHAIRWOMAN KRUEGER: Thank you.

I believe we have Senator May next.

SENATOR MAY: Great. Thank you so much.

And hi, Commissioner.

SENATOR RIVERA: I'm sorry, I would point out that Senator May is a chair. She

only got three minutes.

CHAIRWOMAN KRUEGER: She's not a chair of today's hearing.

SENATOR RIVERA: Oh, apologies.

CHAIRWOMAN KRUEGER: She is a chair. She's an excellent chair of the Aging Committee, and she got her 10 minutes at the Aging Hearing. Sorry, Senator Rivera.

SENATOR MAY: All right, I have my three minutes now.

So, Commissioner, I share my colleagues' concerns about obviously the reporting of nursing home deaths. But just jumping off of your comments about how the virus was brought into nursing facilities by the staff, we heard in our hearing the same staffers, working multiple jobs to make ends meet -- many of them live near the poverty level and haven't been able to protect themselves from the virus. Some nursing homes are understaffed, were terribly understaffed in the spring and so they didn't have time to change their PPE properly.

And so a lot of this comes down to how

we pay for healthcare in this state. And I'm just wondering what in your budget, because I can't find it, actually raises wages for our healthcare workers so they don't have to moonlight and so we can attract more people into this field.

COMMISSIONER ZUCKER: Well, I hear you on that, and I think that is a critical point just in general, how do you get more people in the field when there is a way for them to work in a different area and with a similar amount of a salary, which is not as hard as working for those -- in a nursing home for residents who require a lot of attention.

But the issue of staffing is part of the overall goal when the Governor mentions patient care over profit. And that money would have gone to profit will go to patient care. And part of patient care is providing the appropriate staffing, and part of that is figuring out how to develop a system where a person doesn't end up having to hold down three jobs in an effort to make ends meet. And whether that involves also increasing the

salary for those who work in these facilities so that you can get more people there and also have those who are there feel compensated appropriately. So this is all part of the whole process of --

SENATOR MAY: Let me jump in and say in the budget HMA Part E cuts $22.5 million from worker recruitment and retention funding, including personal care, home health aides -- who are critical to keeping people out of nursing homes if they don't want to be in nursing homes -- and other long-term-care workers.

And I'm wondering how this conceivably helps keep older New Yorkers healthy and safe.

COMMISSIONER ZUCKER: So let me -- yes.

MEDICAID DIRECTOR FRESCATORE: So Dr. Zucker, I'm --

COMMISSIONER ZUCKER: Donna.

MEDICAID DIRECTOR FRESCATORE: Hello, Senator. Let me see if I can address your question. Thank you.

The worker recruitment and retention funding is in fact eliminated in the Executive Budget or reduced in the Executive Budget. I think it's important to keep in mind that those funding -- those programs go back, you know, several years ago now. I think it's important to keep in mind that in the interim the investment from Medicaid in minimum wage has been -- it's projected in '22 to be $3.9 billion.

So I think there's a number of moving factors here yet appreciate, you know, hearing your concern. And as Dr. Zucker already said, that the Executive proposal around requiring a certain percentage of nursing home revenues to be directed to paying staff, for staff costs, is an important factor here as well.

SENATOR MAY: Okay. I'm out of time, but I'll follow up with some other questions. Thank you.

CHAIRWOMAN KRUEGER: Thank you.

Assembly.

CHAIRWOMAN WEINSTEIN: We go to

Assemblyman Schmitt for three minutes.

ASSEMBLYMAN SCHMITT: Thank you.

Commissioner, we need to get our kids back to school. Will you be issuing updated guidance so that the six-foot rule can be modified for our local school districts who are having difficulty with that?

COMMISSIONER ZUCKER: Right. We are working -- I hear you, and we are working on that to make sure that we can get all our children back into the classrooms.

And regarding the six feet, one of the federal guidelines was the CDC guidelines; I know there's some discussion about three feet, if there are barriers. And we are working on that. And the team is working on that actually this past week, but I've been distracted by the budget hearings, but I promise you we will get that done.

ASSEMBLYMAN SCHMITT: What's the timeline that you would expect us to have an answer?

COMMISSIONER ZUCKER: Well, hopefully we'll -- let's -- I mean, schools -- you

know, we want to get these children back into schools, so I hope we can get this done. Today's Thursday; let's hope we can figure out something next week. I can't commit to a day, I hate to do that, but I want to focus on that within the coming week.

ASSEMBLYMAN SCHMITT: Okay. So within a week, then, our -- it will be public for a school district to be able to --

COMMISSIONER ZUCKER: I don't -- I hate putting a date down because, you know, you never know, when you start working these things through and then you find out, well, CDC says this, but there's this other issue that you hadn't considered.

But it is a high priority on my agenda. So maybe after the hearing, you know, I can regroup with you and then find out what's the latest from my team and then get back to you on a specific date. Does that work?

ASSEMBLYMAN SCHMITT: I appreciate you focusing on it. And certainly the quicker we can get our students back safely, the better.

COMMISSIONER ZUCKER: I absolutely agree. I absolutely agree.

ASSEMBLYMAN SCHMITT: My next question is on vaccine distribution equity. And the county executives I represent in Orange County and Rockland County, the Hudson Valley, have had concerns with their role that they usually would play but how that's changed.

In particular, Orange County and some Hudson Valley counties have not had a fair and equitable distribution when compared to other counties in the statewide vaccine number. Whether you count it by population, infection rate, it doesn't seem to add up.

Can you explain how those decisions are made and how we can either get more distribution or how we can get a state facility into Orange County or the Hudson Valley where there is not a close one right now?

COMMISSIONER ZUCKER: Sure. Sure. So let me go through sort of the big picture and then I'll get a little more granular on this.

So the big picture here is that it all comes down to the supply. Right? So the federal government tells us how much we get, and then we get it out there. And we've allocated now 4.5 million. We probably, by the end of today or so, will be at 4 million that have been administered, 89 percent of first doses have been administered so far. So that's the overarching picture.

Then we have our teams. We have a lot of different places where they can get vaccines. We have our state-run sites that are out there.

ASSEMBLYMAN SCHMITT: Can we get one in Orange County or closer?

COMMISSIONER ZUCKER: I will check and see where there are, and we'll see -- we keep increasing those sites in numbers.

But you've got to remember, if there's no supply, then what do you do? Now, I believe that what's going to happen with the J&J -- well, today's Thursday. Tomorrow, on Friday, is the EUA, the meeting within the FDA about the Johnson & Johnson vaccine.

Once that gets approved, now you have another influx into the pipeline of vaccine, and that will move this forward and then there's more supply and there's more delivery to places, and I will address the issues of your constituency as well.

ASSEMBLYMAN SCHMITT: Thank you, Commissioner.

CHAIRWOMAN WEINSTEIN: We go to the Senate.

CHAIRWOMAN KRUEGER: Thank you very much. Our next Senator is Brad Hoylman.

SENATOR HOYLMAN: Thank you, Madam Chair. Thank you, Commissioner.

I wanted to ask you about the B.1.526 variant that, as reported this morning, is circulating widely throughout the city, including my district in Lower Manhattan -- and specifically what steps we're taking. Are you testing for it? This was a report that came from Caltech.

And then finally I wanted to make a quick pitch for hotel workers -- who come in contact with travelers, of course, but unlike

flight attendants and airline workers and other frontline staff such as grocery store workers, are not eligible for the vaccine. Are you looking at reexamining that?

And then finally I would ask, Commissioner, in Manhattan I'm working with your office on trying to get a Manhattan-only site. We desperately need one. Other boroughs have them. Javits is a wonderful facility. I know it's partly about supply, but it's also about getting a site online that is dedicated to Manhattan residents so when Johnson & Johnson and other vaccines are available, we can be up and running quickly.

Thank you. If you can answer the question.

COMMISSIONER ZUCKER: Sure, three parts. I'm going to go to number two first, because we are looking at the hotel workers, and I can get you more information on that offline to find out where we are on that.

Regarding part three, the Manhattan-only site, I assume you're referring back to the fact that we have a

Bronx site and what else we can do. And Javits does have the ability to get more people through if we had more supply.

I was down in Javits several times now, and it is amazing how fast and how much you can move the system and how many people you can move through that system. So if we had more supply, we could double, triple, quadruple the number of people, if not more, who can go through the system there.

SENATOR HOYLMAN: I think you know that Manhattan residents are competing with non-New York City residents for vaccine slots there, and that's a problem for a lot of us who are trying to manage seniors and others who are having technology issues trying to get an appointment.

COMMISSIONER ZUCKER: Right. So let me look at that.

SENATOR HOYLMAN: Thank you.

COMMISSIONER ZUCKER: But I would hope, like I said, if we could get that site more supplies, we could get more through and the competition won't be as much of a

concern.

Back to your B.1.526 variant. So that one actually has a mutation in the S477N spot, and that is the area which identifies how easily the virus can get into a cell. That's the same challenge that we have seen with the South African variant and the Brazilian variant.

So I heard about this as I was getting ready for this hearing, and obviously we'll look into it. And that came through the GISAID data system, which is an international system looking at variants that are out there.

Now, we at Wadsworth are tracking and monitoring the genome of samples that come in, so we have now looked at, I mean, 6,000, 7,000 samples over the course of the pandemic, and thousands, maybe 4,000 or so, since late December when I asked them to rev up the amount of testing.

So we are looking, we -- that's how we've identified the U.K. variant as a -- two South African variants, one that we

identified, one that was identified in Connecticut but was in New York, and also this other variant. So I will get back to you. But we -- the state is on top of this issue to make sure if we see anything that changes, we're always concerned about it.

And this goes back to the issue of just vaccines in general. The more people that are vaccinated -- this is why I push and I make my pitch for more supply from the federal government. The more you have people vaccinated, the more likely we will get to enough immunity and the likelihood of developing a mutation that will then take hold in the society will drop.

So there's two reasons for increased vaccinations, and I push hard and I push for everyone to get vaccinated. But the main thing is to get the supply, which goes back to the first issue I raised. Thanks.

CHAIRWOMAN KRUEGER: Thank you.

Back to the Assembly.

Assembly? Oops, let's see. I can see the next person on the Assembly side --

CHAIRWOMAN WEINSTEIN: Yes, I'm sorry. Assemblyman Ed Braunstein.

CHAIRWOMAN KRUEGER: Take yourself off mute, Ed.

ASSEMBLYMAN BRAUNSTEIN: Sorry about that. Thank you. Thank you, Commissioner.

First of all, back in August I had asked that when we finally received the updated nursing home data that you amend the July report. And I haven't had a chance to look at it, but I'm happy to hear that you did amend the report. And I'm interested in looking at it and seeing if the conclusions of the report hold true.

One of the things I wanted to ask you about was I recently had a conversation with a CEO of a pediatric nursing home, and they told me that of their staff only 50 percent of eligible staff have opted to get the vaccine. And that number was somewhat concerning to me. And I just want to know if those numbers are typical across the {Zoom glitch} -- if they're concerning to you and if it suggests a broader problem of trust in

the vaccine amongst the public that could cause us potential problems getting to herd immunity.

COMMISSIONER ZUCKER: So thank you for that question.

First, I actually do remember when you asked me that, and I actually made a note to actually reach out to you after we amended it, we got tied up. But I do remember.

So it has been amended and it shows you the same results that we found before. So as I say, I stand by the report from July. I stood by it then, I stand by it now.

Regarding the issue you raised, this is important. Because the healthcare community, we push very hard to get the healthcare community immunized. The trust -- this all comes down to trust, it really does. It comes down to the trust that you have in the healthcare system. And if your doctors and your nurses and your health professionals are getting vaccinated, then the public will do that as well.

And it also comes down to the trust

within the community. People trust those who they know. So doctors and health professionals are a lot of -- you know, there's a lot of confidence in them. So if they feel they're doing this, then it is fine. So when you say that 50 percent are not getting the vaccine -- and then the public is going to perceive, well, there must be a reason.

The vaccines are safe and effective. I've said that all along. Tomorrow I will be on a call with my clinical advisory committee. After the FDA looks at the Johnson & Johnson, we will go through all the data. I promise you that I will make sure that it is safe and effective. And if the FDA says it is, which -- and our team will also look at it, I have confidence in the FDA as well, and so --

ASSEMBLYMAN BRAUNSTEIN: Just quickly -- sorry. I mean, but are we seeing skepticism among the public and is that potentially a problem --

COMMISSIONER ZUCKER: Initially --

(Overtalk.)

ASSEMBLYMAN BRAUNSTEIN: -- herd immunity when we talk about it. But if only 50 percent of healthcare workers are getting the vaccine, it's going to be a long time before we get to that herd immunity.

COMMISSIONER ZUCKER: Right. But that may be a pocket, you know, because we have a lot more that are vaccinated in the hospitals and the staff in the hospitals. So that is something to look at.

But you are correct, if you have less people vaccinated, then you will not develop herd immunity. But it will take time for herd immunity to be achieved on a grand scale. But the more people are vaccinated, the better.

So it comes back to messaging, it comes back to making sure people get out there. And it also comes back to, obviously, supply. And that's why I brought up the J&J and tomorrow's EUA so that once we get that done, we'll get more vaccine in the pipeline.

And I think as time goes by, more

people realize, Well, my neighbor who was vaccinated is fine, you know, and my friends or my cousins, my uncle. And then it develops that sort of tipping point concept -- borrowing from, you know, Malcolm Gladwell -- which is the concept that others feel like, you know what, if they're vaccinated and they're fine, I'll get vaccinated too, it's safe and effective.

But I hear your point.

CHAIRWOMAN WEINSTEIN: Back to the Senate.

CHAIRWOMAN KRUEGER: Thank you very much.

And our next Senator is Senator Tedisco. Are you there, Jim?

SENATOR TEDISCO: Yup.

CHAIRWOMAN KRUEGER: Okay.

SENATOR TEDISCO: Let me get the video up. Am I up? We're all set?

CHAIRWOMAN KRUEGER: We can hear you, and now we can see you. So keep going.

SENATOR TEDISCO: Okay, we're all set? The clock starts now.

CHAIRWOMAN KRUEGER: Okay.

SENATOR TEDISCO: Commissioner, on March 25th of 2020 the Governor put forth an executive order expediting the placement of COVID-positive individuals into nursing homes. Many New Yorkers, and most of us as legislators, want to know its true impact. At some point in the ensuing weeks leading up to a new directive on May 10th, in which the administration took a 180-degree turn, saying all persons would be tested and, if positive, would not be allowed to enter a nursing home, a new process to count nursing home deaths was implemented to only define residents who got COVID in a nursing home and died as a nursing home death. And those who got COVID in a nursing home and got so sick they had to be hospitalized would now be defined as a hospital death.

Commissioner, we were the only state in the nation which counted nursing home deaths in that convoluted way. This is and was problematic, for obvious reasons. Fifteen thousand nursing home residents

didn't die because many of them got the virus in a nursing home and became so sick that they were later taken to a hospital and lost their lives -- they died because they got the virus in a nursing home. Let me repeat that. They died because they got the virus in a nursing home.

When you withheld those numbers and took those who got the virus that went to a hospital and died and combined those with all those who died from COVID, this information made it impossible -- not getting it made it impossible to further come to conclusions about what caused one of the worst disasters in New York State history.

Those death numbers took close to 10 months to receive and were only made public a few weeks ago, on the same day as the Attorney General pulled back the veil of secrecy from this administration and released a report that said there was a 50 percent undercount of the total number of those who got the contagion in a nursing home and died and those who got COVID and died in a

hospital.

That's the number we were seeking, that total that got the contagion in a nursing home and went to a hospital -- not combined with all the other hospital deaths.

With these facts, along with Judge Kimberly O'Connor making a judgment on a lawsuit the Empire Center and myself brought forth to get the real numbers as related to lost lives, she deemed the administration violated the Open Government Law. Let me repeat that. She deemed -- separate branch of government, a judge -- that you, the Governor, the administration violated the Open Government Law.

And remember, in light of the fact that 15,000 of our most vulnerable population got this virus in a nursing home and died, and in light of that research by Bill Hammond from the Empire Center, we recently showed the Governor's March 25th executive order took upward of 100,000 or more nursing home residents' lives because COVID-contagious persons were placed from hospitals into

nursing homes.

For close to a year, Commissioner, you and the administration have denied the March 25th executive order had any impact as to what --

THE MODERATOR: Time has expired.

SENATOR TEDISCO: -- the Governor defined as a wildfire through dry grass. I ask you this. At long last, will you and the Cuomo administration admit to your culpability in these deaths and finally issue apologies --

CHAIRWOMAN WEINSTEIN: Excuse me, the time ex --

SENATOR TEDISCO: -- to the thousands of families impacted?

CHAIRWOMAN WEINSTEIN: Excuse me, Senator, your time has expired.

SENATOR TEDISCO: Isn't it time that you and the Governor finally --

THE MODERATOR: Senator --

CHAIRWOMAN KRUEGER: Jim, your time has expired.

SENATOR TEDISCO: -- and the families

that lost their lives?

CHAIRWOMAN WEINSTEIN: Thank you --

CHAIRWOMAN KRUEGER: Commissioner, we're not going to allow you to answer that today.

SENATOR TEDISCO: I wouldn't want to answer it myself either, Senator, if I were him.

CHAIRWOMAN KRUEGER: Well, I'm doing it based on time.

So the commissioner is welcome to put it in writing to you or to all of us afterwards.

COMMISSIONER ZUCKER: I will. I will respond, because there's a lot of fiction there and I need to provide the facts. So I will respond in writing.

And there was no undercount. But we can provide that in writing.

CHAIRWOMAN KRUEGER: That would be very -- it's probably more helpful to Senator Tedisco to have it in writing anyway, and all of us to see it.

COMMISSIONER ZUCKER: Thank you.

CHAIRWOMAN KRUEGER: So thank you.

And I'm sorry, but you went over.

Assembly.

CHAIRWOMAN WEINSTEIN: We're going to go to Assemblywoman Rosenthal.

We're just making a slight adjustment in the list of Assembly orders.

ASSEMBLYWOMAN ROSENTHAL: Thank you very much.

Hello, Commissioner. I have a couple of questions.

I'm the former chair of the Committee on Alcoholism and Drug Abuse, and I've being asking the Department of Health to report the number of overdose deaths for months, since last summer. And I've asked you for those in prior hearings. I was not provided with the legally mandated report on the DOH website until an article appeared online. It shouldn't take an article to abide by the law mandating reporting.

So despite the fact that neighboring states like New Jersey and Connecticut have released almost all of their 2020 data,

New York has only released provisional up to June 2020 just the other day.

In addition, the data show a decrease in Quarter 2 of 2020, which would cover the period of April through June, the peak of the COVID surge in New York. We know from providers and activists that that number actually rose, and when they were crippled under the weight of increasing overdoses -- yet the data does not reflect that.

How does New York explain the substantial decrease in overdose deaths at the height of COVID when providers have told us that that was the time of greatest need? And how do you make a budget for the next year when the facts and data about 2020 are wrong?

That's my first question.

COMMISSIONER ZUCKER: So the first part of that, there is data from October to January that was recently posted, so I believe you --

ASSEMBLYWOMAN ROSENTHAL: Yes, I mentioned that.

COMMISSIONER ZUCKER: Yeah, right, and so you've seen that.

I understand there's been a little bit of a delay --

ASSEMBLYWOMAN ROSENTHAL: {Inaudible.}

COMMISSIONER ZUCKER: -- and I will get back to you about some of the other numbers. What was that?

ASSEMBLYWOMAN ROSENTHAL: A whole year's delay. They were supposed to be up --

COMMISSIONER ZUCKER: Oh, it's --

ASSEMBLYWOMAN ROSENTHAL: Anyway --

COMMISSIONER ZUCKER: I understand.

ASSEMBLYWOMAN ROSENTHAL: -- go on.

COMMISSIONER ZUCKER: I understand. We've been pretty busy on this, and I understand.

But it's not to -- not to decrease the impact and the concerns of opioids, because I believe they tie very closely to the issue of the pandemic. And as I said earlier, working with the other agencies has been really important in order to address the --

ASSEMBLYWOMAN ROSENTHAL: Okay, what

about the low number in the second quarter?

COMMISSIONER ZUCKER: So I will try to get you the answers to the low numbers, why those numbers are bad. It may be a lack of reporting or -- but I will find out for you --

ASSEMBLYWOMAN ROSENTHAL: Okay, it's important --

COMMISSIONER ZUCKER: -- and I'll get back to you.

ASSEMBLYWOMAN ROSENTHAL: Okay. My next question is OMIG has been auditing OTPs around the state and they uncovered some minor administrative and paperwork errors, and in one case they were fined $7 million because of administrative errors -- no deceit or lying -- and they had to close. This is happening in other facilities across the state.

I did write a letter; in October I finally got an answer. However, this -- I believe OMIG and you and the department have a legal and moral duty to consider the impact that its audits have on accessibility of

services.

COMMISSIONER ZUCKER: Donna, do you --

ASSEMBLYWOMAN ROSENTHAL: You can -- we can have a further discussion on that.

MEDICAID DIRECTOR FRESCATORE: Yes, I'm happy to do that, Assemblywoman. I'm not familiar with the details, but I'm happy to talk to OMIG directly.

And I think we, you know, do share your thinking around being certain -- you know, of course given the seriousness of what might have been found as deficient -- that access is important as well. So I'm happy to have those discussions with the Medicaid inspector general.

ASSEMBLYWOMAN ROSENTHAL: Thank you.

CHAIRWOMAN WEINSTEIN: We go to the Senate now.

CHAIRWOMAN KRUEGER: Thank you.

Senator Kevin Thomas.

Are you with us, Kevin?

THE MODERATOR: We're having trouble hearing you, Senator. You're unmuted, but we don't have any sound from you.

SENATOR THOMAS: Sorry. The other unmute button. Can you hear me now?

CHAIRWOMAN KRUEGER: Yes.

SENATOR THOMAS: All right, awesome.

Thank you, Commissioner, for being here, and thank you to Chairwoman Krueger for doing this as well.

Commissioner, the decisions regarding the handling of COVID-19 in nursing homes and long-term-care facilities have negatively impacted the residents and their families, and by that losing loved ones. We could debate and point fingers about who is at fault all day, but I want to see things improve for the betterment of all New Yorkers. This virus is not going away anytime soon. And even today there's reporting on another mutant strain that's going around.

We need to focus our efforts on how we can do better for residents of this state, all right? And the residents of this state are scared for their loved ones residing in nursing homes.

Do you believe that expanding funding and access to the Consumer-Directed Personal Assistance Program is a viable alternative for elderly New Yorkers? And what additional resources can we allocate to the program to allow people access to quality care in the safety of their own homes?

COMMISSIONER ZUCKER: So I -- I agree that we need to address the care of the seniors not just in the nursing homes, but seniors in general.

And I am aware of the issues of the Personal Assistance Program. I know that Donna also can speak a little bit about this.

But I will tell you that regarding the looking forward -- this is part of not only what the Governor has said in the budget about the three areas that I mentioned earlier -- to save time, I won't reiterate them -- but also just overall the department's efforts to look at how to provide care to those who are elderly. And it's why New York is the first Age-Friendly State. We've worked very hard on this for a

considerable period of time and have worked with foundations, groups, advocates and all the long-term-care community.

Donna, do you want to address any of the Personal Assistance Program?

MEDICAID DIRECTOR FRESCATORE: Sure, Dr. Zucker. And thank you, Senator.

I think that I would just quickly add, being respectful of your time, that Medicaid and the department remain committed to the Personal Care Program and Personal Assistance Program through the Consumer-Directed Program.

You know, last year we -- together with the Legislature, we enacted into law a series of reforms. Those reforms made changes to the program intended to strengthen them, intended to -- we've heard consumers about things like assessments and how frequent they are, and we want to continue to work with you to look for opportunities to ensure that when it's appropriate, individuals can get care at home.

SENATOR THOMAS: But do you believe

that expanding funding for this program would be an alternative?

MEDICAID DIRECTOR FRESCATORE: So we've got -- you know, we see right now, through the Medicaid program, we anticipate for this upcoming fiscal year that the Personal Care Program alone will grow to over a billion dollars, about $1.2 billion.

We make it known those programs exist and those options exist, and we'll continue to do that. I mean, certainly. And you know, so again, we're committed to working with you and working with providers to ensure that people, when it's appropriate, are able to receive either personal care services or personal assistance services at home.

SENATOR THOMAS: Thank you.

CHAIRWOMAN KRUEGER: Thank you.

Assembly?

CHAIRWOMAN WEINSTEIN: We go to Assemblyman Ashby now.

ASSEMBLYMAN ASHBY: Thank you, Madam Chair.

Commissioner Zucker, I remember

speaking with you back in August about the March 25th order and residents being discharged from nursing homes and being able to track them. And I appreciate the follow-up, much later than we would have liked, to get those numbers.

But I'm still -- I'm still having a hard time understanding the rationale and the explanation, I guess, of your understanding with correlation of the providers coming into the nursing homes and that being the chief cause of the spread of COVID, versus the residents that were forced to go back to the nursing home.

If our providers are taking the necessary steps to ensure good hygiene and all of the requirements in there, and our patients being in there as well, I mean, can't you see this as a potential for disease spread? I don't understand the -- you being so adamant that this is not a contributing factor. Can you elaborate on that?

COMMISSIONER ZUCKER: Sure.

So let me take you back in time a

little bit. So I think -- this keeps coming up, and I want it to be clear, and I want everyone to understand this. So number one, let's just look at where we were at that point in time.

We had predictions and models on March 23rd, because I remember when it came through, of 140,000 people going to the hospital, 37,000 into the ICU. We had 50,000 hospital beds in the state, 30,000 hospital beds downstate, and only, let's say, 5,000 in the ICU. As an ICU doctor, I can tell you this was a horrific feeling. I'm telling you I sat there when I heard these numbers, when the model was shown to me, and I actually said to myself, how are we going to do this -- with other words in my head, but how are we going to do this? And the thought of the National Guard standing there with the bags, squeezing them, and then all the issues of ventilators. So the --

ASSEMBLYMAN ASHBY: Dr. Zucker, I understand -- I understand there was a lot of pressure and I understand that there were a

lot of -- there were a lot of numbers there, but that doesn't change -- that doesn't change the -- necessarily the fact of the numbers coming in of the people who were --

COMMISSIONER ZUCKER: But the --

ASSEMBLYMAN ASHBY: -- those positive with the disease.

COMMISSIONER ZUCKER: I'm trying to say this, but I'm trying to explain this to you --

ASSEMBLYMAN ASHBY: -- and the disease -- and the disease prevalence. So I --

COMMISSIONER ZUCKER: Right, but this is what's happened, is that I'm --

ASSEMBLYMAN ASHBY: So if you could try and get to the point, because I have less than 30 seconds left, please, Dr. Zucker.

COMMISSIONER ZUCKER: I understand. I understand. I'm happy to explain it.

But this is what's happened, is that people are not listening to what the science is. The fact of the matter is that the -- first of all, it was in the facilities,

98 percent of the people had it in the facilities. It came in from the community and was already there, it was there long before we even knew it was spreading among --

ASSEMBLYMAN ASHBY: And then they were forced to continue to take these patients, thus increasing the numbers, right?

COMMISSIONER ZUCKER: -- let me explain. But you were not following on the science on this. I'm sorry to be so direct about this, but the science is what we need to look at.

And I was trying to explain it before about how long somebody was contagious and then what period of time, and then the median amount of time that they were in the hospital. And that by the time they came back, the science is the virus is no longer --

ASSEMBLYMAN ASHBY: The science is is that there were more people admitted with the disease, and that contributed to the --

COMMISSIONER ZUCKER: So then I'm going to ask you --

ASSEMBLYMAN ASHBY: -- spread. That's the science.

COMMISSIONER ZUCKER: Right, so let me throw a question out to you.

THE MODERATOR: Time has expired.

COMMISSIONER ZUCKER: No, I would like to ask this question, just throw it out.

How do you explain to me that without anyone coming back to the nursing homes that are positive from COVID -- even though we could talk about the science aside -- no one coming in as visitors, we still have cases in the nursing homes? Not just here in New York, where we're doing an aggressive job with testing, but across the nation and around the world. It comes in through the community.

I mean, I am happy to sit down at some point and go through this in depth and show you the charts and show you the --

ASSEMBLYMAN ASHBY: I'd be happy to acknowledge that that's a factor, but you --

THE MODERATOR: Time has expired.

ASSEMBLYMAN ASHBY: -- same token

acknowledge that the residents going into the nursing homes are also causing the spread.

COMMISSIONER ZUCKER: I disagree --

(Overtalk, multiple voices.)

ASSEMBLYMAN ASHBY: That's the crux of my question and the issue at hand.

CHAIRWOMAN WEINSTEIN: We're going to go back to the Senate now.

CHAIRWOMAN KRUEGER: All right, thank you.

Let's see, we are on Senator Griffo.

SENATOR GRIFFO: Can you hear me, Liz?

CHAIRWOMAN KRUEGER: Yes, we can hear you.

SENATOR GRIFFO: Okay.

CHAIRWOMAN KRUEGER: And now we can see you.

SENATOR GRIFFO: Thank you.

Commissioner, as you can see, in budget hearings the time constraints, while understandable, are really not conducive or beneficial to the necessary interaction to properly perform yours and our responsibilities. When you appeared for

confirmation, you agreed to make yourself available despite time demands.

So are you ready here today to commit to us and to the members and publicly that you will appear before committees of the Legislature when you're invited to afford a more thorough opportunity to examine and discuss and answer questions on these health policies and procedures that affect New Yorkers?

COMMISSIONER ZUCKER: I have always done so. I -- when I've been asked --

SENATOR GRIFFO: Commissioner -- Commissioner, you have not thoroughly done this. I just want you to say today you will and you're ready to do it. Because when we've had meetings with you, it's been limited -- 30 minutes, two questions.

Will you commit to just being available to do that? You can see this frustration. Will you be willing and ready to do that?

COMMISSIONER ZUCKER: I'm always willing to speak with the Legislature. And

if there was a commitment on time, there was discussion -- I remember what you're referring to about the two hours, whatever period of time that we discussed back in the summer -- I assume that's what you're referring to. And that was the time --

SENATOR GRIFFO: So this is just a yes or no. Are you willing to do it, Commissioner?

COMMISSIONER ZUCKER: I said I am willing to work with the Legislature to answer the questions.

SENATOR GRIFFO: Because if you're evasive on this, then you're not prepared to do it. Are you going -- will you accept the invitation to appear?

COMMISSIONER ZUCKER: I will appear and speak with the Legislature if asked about issues.

SENATOR GRIFFO: Thank you. Thank you. I appreciate it.

Commissioner, the question is on providing funding to long-term-care facilities throughout the pandemic. Has that

come predominantly from the federal government or have we allocated resources from the state also?

COMMISSIONER ZUCKER: Could you -- I'm trying to understand what your question is.

There's money that comes from federal, and there's money that comes from the state for --

SENATOR GRIFFO: Pandemic-related money like CARES, things of that nature, has all of that been applied? How has it been applied, and where applied?

COMMISSIONER ZUCKER: I will -- I need to get back to you about the specifics of what proportion of the CARES Act has gone to where. But I will get that to you.

SENATOR GRIFFO: Okay. And then specific to the variant, the new variant that's been identified, I know you're starting to study this. Do you know how it will affect the efficacy or the existing therapeutic treatments?

COMMISSIONER ZUCKER: So this is -- that's a great question.

And the fact is that we do know that this new variant and how it impacts patients is that the virus needs to get into a cell. The way all those little spike proteins around there -- things hook onto the cells, your body's cells, and it gets into it. And some of these variants are able to make it more sticky so they can get into the cell.

Once that happens, you end up with a risk of a more potent infection in the individual. And so we don't know yet about this particular new variant, the B.1.526 that we were talking about before, because we're learning about it.

The virus always mutates, it continues to mutate. We've seen many mutations. It's just that every once in a while, the mutation falls within the area that actually affects how it can get into the cell, which is a critical issue. The vaccine is designed against the spike protein, because that's what we're concerned about -- all the vaccines are, whether they're the messenger RNA vaccines, the adenovirus vaccines, all of

them are designed that way.

So we're going to have more information about it. So once I can have more information, I'm happy to share it with you.

SENATOR GRIFFO: Thank you. We look forward to you appearing with us very soon so we can have a more thorough conversation.

CHAIRWOMAN KRUEGER: Okay, next we have the Assembly.

CHAIRWOMAN WEINSTEIN: We go to Assemblyman Hevesi.

ASSEMBLYMAN HEVESI: I think I'm there. Commissioner, can you hear me?

COMMISSIONER ZUCKER: I hear you.

ASSEMBLYMAN HEVESI: Good. Good afternoon, sir.

First I want to thank you and the Health Department for all the positive things that you've done during the pandemic under a very difficult time.

My question will be solely about adult homes, and I would respectfully ask that when you answer this question, if possible, please

don't talk to me about budget-related issues like revenue. I respectfully believe that the Division of Budget has been responsible for a lot of bad decisions over the last couple of years that have hurt people and actually cost taxpayers more money.

So here's my question from a health perspective. Two programs, small amounts of money, relatively, in the budget. The first is $230,000 to the Justice Center, and the second is the EQUAL program -- and I want to get this precise -- the Enhancing Quality of Adult Living Program, for $6.5 million. And this is for people with psychiatric disabilities in adult homes.

My understanding is that the adult home industry for the last 40 years has been systemically -- maybe not systematically, I want to be fair -- mistreating residents, unscrupulous financial practices, deplorable conditions. And they're frequently ignoring these people with psychiatric disabilities.

So my question is the Executive Budget proposes to cut the 6.5 million for the

EQUAL Program, plus the small amount of money, the 230,000 to the Justice Center. And those cuts are for the advocates for these people with psychiatric disabilities. What is going to happen to those patients now that we're stripping them of the people who organized them, acted as counsel, advised them of their rights? What is going to be the impact for those patients if the Executive Budget comes through?

COMMISSIONER ZUCKER: Well, we want to be sure that obviously they have the right counsel and they are represented both from the standpoint of their legal issues but also from their health issues as well.

So I will look -- I am sure that as we move forward we'll make sure that if the programs that were initially in place to provide that service are no longer in service, that there is a way that the services can be provided through another program, whether it's within the state or other support from other sources of revenue -- sources of support.

Now, the -- so that's the 230,000. The advanced -- the EQUAL Program, that program also I will look into and get you some answers about. But nobody wants to have a situation where any New Yorker is not able to be -- have the care that they need and representation that they need. So I will get you an answer about that.

ASSEMBLYMAN HEVESI: I appreciate that. Let me just end with saying that I think it's important and I agree with your assessment that we cannot leave this most vulnerable population, the people with psychiatric disabilities, to fend for themselves, particularly at this time when a lot of them have been traumatized or even died during the pandemic.

So this is a priority for us; I hope to make it a priority for you. Thank you.

CHAIRWOMAN WEINSTEIN: Back to the Senate.

THE MODERATOR: You're muted, Senator.

CHAIRWOMAN KRUEGER: Let's try me without a mute.

Senator Biaggi.

SENATOR BIAGGI: Thank you very much, Madam Chair.

Thank you for coming here to testify here today, Commissioner Zucker. I have two questions, and I just ask that you -- actually, three questions. I just ask you that you answer them as quickly as possible.

So I want to just return to a provision of last year's budget that we discussed during the summer, which is with regard to Article 30-d of the Public Health Law, which is also known as the Emergency Disaster Treatment Prevention Act. Are you familiar with this section of the law?

COMMISSIONER ZUCKER: I'd have to check about it. Tell me a little bit about it and I'll tell you exactly -- what's your question regarding it?

SENATOR BIAGGI: It's with regard to the blanket immunity that was given to healthcare --

COMMISSIONER ZUCKER: Yes, I assume that's what you're referring to, yeah.

SENATOR BIAGGI: Okay. So Attorney General Letitia James, her report discussed the state's handling of nursing homes, and when she discussed that she included this as one of her recommendations or one of her findings.

And so her report found that the state's blanket immunity policy for nursing homes may have incentivized them to prioritize profit over patient and safety. Do you still support Article 30-d of the Public Health Law?

COMMISSIONER ZUCKER: You want to do one question at a time? You want me to answer that question first?

I will say that I find this concern that -- the belief that immunity would make healthcare workers not provide the appropriate care actually pretty offensive to all those who are working so hard on this pandemic. And I do not believe that immunity that was put in there was going to end up causing someone to sort of say, Well, we'll just push for profit, we're not going to

worry about the people that we're caring for.

And I just find that sort of completely false, so -- and I recognize that --

THE MODERATOR: One second, Commissioner.

COMMISSIONER ZUCKER: Sorry.

SENATOR BIAGGI: You're not answering the question that I asked you. The question I asked you was with regard to complete immunity for stakeholders, shareholders -- it has nothing to do with healthcare professionals.

COMMISSIONER ZUCKER: I'm saying to you that the issue is that there are a lot of people involved with taking care of people and addressing the care during this pandemic.

And your -- your concern is that there is -- that the immunity that was put in place caused people to provide -- make a profit over providing care. And I'm telling you that people who care for individuals, whether it's the frontline health worker or others, are not going to do that, because I believe

they're in the best interests of trying to take care of those who are sick.

And I think that -- I recognize the challenge, I recognize there have been changes. I ask you to remember the situation that we were in at that point in time.

SENATOR BIAGGI: -- the public that we all represent. Do you support the corporate immunity provision in the budget from last year, yes or no?

COMMISSIONER ZUCKER: I support what when we did with the immunity at that point in time, yes.

SENATOR BIAGGI: You support it right now at this time, on February 25, 2021?

COMMISSIONER ZUCKER: You're breaking up.

SENATOR BIAGGI: Do you support the provision today?

COMMISSIONER ZUCKER: Of the immunity, we are looking at it at this point in time. I go back to the issue of where we were then and our numbers where they are today. The numbers are now coming back down; necessary

changes can be made. At the point where we were sitting with 140,000 potential hospitalizations, yes, we needed to do things to make sure that happened.

CHAIRWOMAN KRUEGER: Thank you.

Assembly.

CHAIRWOMAN WEINSTEIN: We go to Assemblyman Zebrowski, three minutes.

ASSEMBLYMAN ZEBROWSKI: -- Chair Weinstein. And good afternoon, Commissioner.

Many of my colleagues are asking questions about nursing homes, which are incredibly important. We have limited time, so I'm going to attempt to ask a few questions about the vaccine rollout and distribution.

As you said earlier -- I think one other person talked about vaccines, or maybe two -- but there's no doubt that the biggest issue is the lack of supply. But that being said, I have found, and I believe I speak for many of my constituents, that the rollout has sort of been disjointed. And my question is really, can you explain to me why the state

chose this type of dispersed system?

Now, you mentioned it earlier -- like I understand we have state sites. I understand we have the county health departments at times getting it. And I understand we have some pop-up clinics and pharmacies. But the fact remains that all these providers, in my experience and my constituents' in Rockland County, the appointments pop up and then they're gone. I mean, it's immediate, whether it's the county health department or the pharmacies or things like that. The state sites, many times you sign on, there's no appointments.

So in general, folks sort of have no idea when vaccines are coming, how many are coming, where they're coming in, and there's generalized frustration. Like to get a vaccine, you literally have to get lucky in some ways. You have to have the ability to sort of call many different providers, navigate through many different sites. You have to anticipate when websites are going to go live and the appointments are going to

come up.

And so, you know, knowing that we knew there was going to be limited supply, I don't understand why we didn't set up a system where there was like preregistration, especially for our seniors that are 75 and above, or preregistration for essential workers so that appointment slots could be allocated. What am I missing? Like what -- why did, logistically, the state choose this sort of dispersed system? I could understand if we had a huge allotment -- you know, let everybody go down to their pharmacy and go to different parts in their community.

But when we knew we were going to have this limited supply, why did we not try for a more centralized process that could be understandable and organized for folks?

COMMISSIONER ZUCKER: So let me start by saying two things. One is that this is -- as the Governor has said, this is one of the most complex things that the nation has ever done.

{Zoom interruption.}

COMMISSIONER ZUCKER: What was that? I hear some background noise.

So that's number one. And number two, New York State is doing a phenomenal job. Based on my conversations with people from around the nation, they are very impressed.

Regarding the issue that you raise, we have 13, you know, state-run sites and we've had over a million appointments that are registered in the state. And we've given close to 4 million doses already in New York State. But the issue is that you need to work with communities, and you also need to make sure that -- each community is a little bit different.

And when we moved this forward, we were also looking at different vaccines. Initially the issue was, well, we need to get this -- and everyone had a reason why they needed to get a vaccine. We initially said we want to get this into the nursing homes, we wanted to get it to the most vulnerable individuals. We worked with the federal government on that, with a plan that they had

to get it into the nursing homes. And then as we opened up further, we were able to get it into -- provide more individuals.

We've made an incredible effort to make sure we get this vaccine to all those who need it as quickly as possible. The challenge here is truly the supply. It really is. I guarantee you, once J&J comes out, and if it gets approved, all of a sudden the numbers tick up. When Pfizer has more vaccine in the supply and Moderna has more in the supply line for New York, you're going to see a lot more.

The Governor's view on this is like get these sites out there, get them open, and then when there's more vaccine, you can jump and people can get in there and receive their vaccine, versus having it, Okay, here's your supply and you have no plan in place of where you're going to put it. That's why we were trying to make sure it worked.

But then the issue here is you have to allocate. You give some to a hospital, you give some to the pharmacies, you give some to

the sites that we had. The other issue on this vaccine, and it's worth bringing this up, is initially the Pfizer vaccine, which was the first one that was approved, required a cold storage issue, which limited where it could go. Then when Moderna came along with regular refrigeration, that made it a lot simpler. And as we move forward, they'll be a little bit easier.

The issue early on, everyone said, Well, what happened in December, why did it take so long to move forward? You have to remember it was the end of the calendar year, holidays were then, the hospitals -- some people said, Well, the hospitals should have given more out. You know, at the end of a calendar year, I'm telling you, as one who's practiced in hospitals for many years, everything sort of -- it's not that it slows down, it's just that people get short-staffed a little bit.

And the healthcare workers needed to be the first ones, so we wanted to get it to them, because they're the ones who are

protecting the people who get sick. So we wanted to be sure that they got it. So that's why we drove it to the hospitals right at first. And the nursing homes. That's how the priority came there. And then as we opened it up and we opened it up to other individuals, and more supply came in, we've been able to provide it to more people. And now those with preexisting conditions will have it, and then now we're thinking about what do we do when J&J comes out.

And we're thinking about that. That's a one-shot vaccine. How do we address that? You know, are there certain populations within society that you may have a harder time getting a second shot to? So maybe we drive it to those individuals. Maybe we address those who are homebound. Maybe we address those who are homeless. You know, and so we're thinking this out.

And there's an incredible team working on this, and really dedicated. But New York is doing a great job on this. I just -- I just really want to, you know, say that as we

look at the rest of the country. Thank you.

CHAIRWOMAN WEINSTEIN: Thank you.

We're going to go back to the Senate now.

CHAIRWOMAN KRUEGER: Thank you. We're going to Senator Serino.

Are you there, Sue? Not quite sure --

SENATOR SERINO: Yup, yup, here we are. Sorry, my video wasn't starting. I'm so sorry.

CHAIRWOMAN KRUEGER: That's okay.

SENATOR SERINO: Hello, Commissioner.

I've asked you at just about every budget hearing why the state continues to leave funding out for Lyme and tick-borne diseases. I want it stated for the record that not only is there no new funding for Lyme this year, but this proposal even cuts the minimal $69,000 that typically goes to your department for it, and that's just not right.

Now to nursing homes. Obviously the questions I have require a thorough response -- which you can't give in the three

minutes allotted -- so I'm going to put them all out there and will request a response in writing.

On April 23, 2020, I sent a letter to you and the Governor asking you to move to create regionalized specialty care centers or step-down facilities where you would designate certain facilities across the state as COVID-only nursing homes. I never received a response.

I also asked you about it again at the August 3rd hearing and was told you'll look into it.

I asked again in another letter on December 1st, when no mention of these facilities was made in your announced winter plan. Again, no response.

I had to get my answer from a report released as part of the February 10th secret meeting where you say there are 19 of these facilities across the state, and where you said, quote: Starting in November, the department launched an effort to establish COVID-only nursing homes. November. That's

over six months after I first proposed the idea.

So why did it take so long to take this commonsense step? How many people have been treated at these facilities, in what municipalities are they located, and how was it determined where the facilities would be located and who would be admitted to them?

Now on to vaccines. The federal vaccination program for nursing homes has ended, and there continues to be new admissions to nursing homes every day. I've heard about residents who are being told they can't receive the vaccine now in these facilities. What is the state's plan to vaccinate residents and staff who missed out on the federal program?

And most importantly, we now have a situation where some residents and staff are vaccinated and others are not. What updated infection control procedures are in place to protect those who have not yet been vaccinated?

And while we're on vaccines, I just

have to say, for the record, the rollout on the state level has been truly horrendous. We have no state site in the Mid-Hudson Valley, and the fact that New York, one of the tech capitals of the world, hasn't established a centralized system for appointments defies logic. And that needs to be a top priority.

Now the questions that I'd actually want you to answer -- and I just want a simple yes or no -- are you confident in the facts you've presented thus far today?

COMMISSIONER ZUCKER: Yes.

SENATOR SERINO: Then I see no reason why you shouldn't support an independent investigation to verify them. Your testimony focused on reforms, but how can we talk about reform when there hasn't been a comprehensive review of where the state or others really went wrong?

So will you support an independent investigation or review into the state's handling of the COVID crisis in our nursing homes and residential healthcare facilities?

COMMISSIONER ZUCKER: There is an ongoing investigation on this issue, and that's -- I'll leave it at that.

SENATOR SERINO: And you'll support it.

And do you know, did every Health Department employee who did on-site inspections in these facilities, or entered for any other reason, get tested first?

COMMISSIONER ZUCKER: Yes.

SENATOR SERINO: Yes.

CHAIRWOMAN KRUEGER: Sue, you can do follow-up with the doctor with asking in writing, asking him to forward it to us all in writing, but your time is up. Thank you.

SENATOR SERINO: Thank you, Chairwoman.

CHAIRWOMAN KRUEGER: Thank you.

Assembly?

CHAIRWOMAN WEINSTEIN: So we go to the Assembly ranker on Health, Assemblyman Byrne, for five minutes.

ASSEMBLYMAN BYRNE: Thank you.

Mr. Commissioner and Director, I'm

going to try to just pose some comments and questions, and then allow you to unpack and address as many as you can because of my limited time.

I do want to express my disappointment, frustration and, quite frankly, anger with the department in its withholding of information from this elected body for so many months this past year. And the various comments from some members of the Governor's administration from that private meeting -- not you, Mr. Commissioner -- but I find them very deeply disturbing.

I was listening to some of the comments before, Commissioner Zucker, and I just want to follow up. Your comment about the justification of the March 25th directive as far as the time and place that we were in and the projection models, I think a lot of us can relate and understand the pressure that you must have been under, that we were all under. But I also recall you justifying that order by telling us it would -- it was to protect COVID-19 patients from being

discriminated against, as one of your justifications.

And again, your point about 98 percent of the nursing homes having COVID already in it from staff or from other avenues doesn't really address the concerns that reintroducing it could have caused more harm.

I also want to point out that the word "undercount" or "underreporting," that's directly taken from the AG's report that was released too. So this isn't stuff that we're just making up. They're very real concerns.

I want to ask you, Mr. Commissioner, if in complying with the DOJ inquiry, if your office would be willing to share the communications and the information that was shared with them. Could they share them with the Legislature? We haven't really seen a real timeline on that.

Senator Sue Serino mentioned, you know, the need for step-down facilities. We have a bill, I have a same-as in the Assembly, and I was refreshed to see that the department announced that there were

apparently 19 COVID-only nursing homes. But it also raised the question if that's the process we're going through now, why didn't we use the Army Corps of Engineers, the Westchester County Center, the Javits Center more, if we're using COVID-19-only nursing homes?

Now more towards the budget, because this is a budget hearing, sir. You know, the scheduled Medicaid drug carve-out has many advocates and providers for the 430-b program very concerned. There's a call from many of us to delay or possibly reverse the decision. I understand that some savings may be obtained from greater collective bargaining power, but again, there's concerns how this could negatively affect providers.

I also have concerns that if this is going to happen, and it is eventually, whether it's delayed or not, is this really the right time to be talking about repealing "prescriber prevails" when the department has such a monumental task ahead?

I looked at some of the 30-day

amendments. It was mentioned earlier about some of the drastic increases in penalties in nursing homes. And I understand, a lot of us are embracing the discussion for nursing home reform particularly because of what we've all witnessed through this past pandemic. But removing that rectification clause has a lot of us concerned because I think when nursing home operators and facilities want to correct a situation, make it better, we should embrace that.

And we do -- I have concerns about the increase, not only for the nursing homes, but there seems to be a targeted increase in fines for adult-care facilities, and that's really where that rectification piece comes in.

Again, I have other concerns about the budget. Part Q again talks about allowing you, commissioner, to release alleged complaints of professional misconduct for doctors. There's concerns about how that could negatively affect providers' careers if things go on the internet.

And the Indigent Care Pool, that was brought up earlier by some of my colleagues. It disproportionately affects the safety-net hospitals and county governments. I also represent Westchester County; it affects the Westchester Medical Center even more so, because I don't believe the county government contributes.

And the Adult Cystic Fibrosis Assistance Program -- I don't think it's been mentioned -- we need to bring that back and we need to fund that program again.

With whatever time I have, I would appreciate whatever answers you could provide.

COMMISSIONER ZUCKER: Sure. I will answer a few of them, and Donna will address the 340-b program and some of the other issues about providers.

On the first issue, I'm going to be pretty quick. Regarding what you mentioned about the AG, this is one of the challenges I see. People read the headline, but they don't read the report. And the headline says

yeah, there's an undercount, but if you read the report, she clarifies that we provided this information there. So -- and how the numbers were provided.

On the issue about the legal issues, about sharing information, I direct that back to my legal team as to what information can and cannot be shared. It's not that I'm trying to be evasive on it, it's the process that we go through in the department, and I'm sure you would respect that.

Regarding the issue of those who have come into the nursing homes, I would be happy to explain that even further. I started to do that before, regarding how this came back into the nursing homes. And I still throw out that question as to why is it still in all these nursing homes across the country, and it goes back to community spread.

And also I could talk more about the science of this, why they were no longer contagious and -- but that's for a longer discussion.

Donna, do you want to touch on a few

things --

CHAIRWOMAN WEINSTEIN: I'm sorry, Commissioner --

COMMISSIONER ZUCKER: Sorry.

CHAIRWOMAN WEINSTEIN: -- we're going to move on.

I just want to remind members that if you want an answer to your question, you need to leave some time for that answer to happen.

But Donna can certainly put in writing a response.

And we'll go to the Senate.

CHAIRWOMAN KRUEGER: Thank you --

MEDICAID DIRECTOR FRESCATORE: Be happy to do that.

CHAIRWOMAN KRUEGER: Thank you.

So Commissioner, we have 31 more people who have signed up to ask you questions, and many of us have been sitting in our chairs since 9:30 this morning. So I'm going to recommend a five-minute break for everyone.

SENATOR RIVERA: Before or after me, Liz?

CHAIRWOMAN KRUEGER: No, no, we need to prepare for you. We need the five-minute break before you, Gustavo.

Yes, and we will return --

COMMISSIONER ZUCKER: That would be very good for our health.

CHAIRWOMAN KRUEGER: -- to the Health chair to ask his 10 minutes of questioning.

So everyone, you can go off of Zoom or just turn off your picture, that's probably the best, go do whatever you can do in life in five minutes, and then come back.

Thank you.

(Brief recess taken from 1:48 to 1:54 p.m.)

CHAIRWOMAN KRUEGER: Thank you. Hi, I'm Liz Krueger, chair of the Senate Finance Committee, joined by Helene Weinstein, chair of the Assembly Ways and Means Committee.

We are partway through the Health Budget Hearing, and we are continuing our questioning of Dr. Howard Zucker, commissioner of the Department of Health.

And the next legislator up on deck is

Gustavo Rivera, chair of the Health Committee, with a clock for 10 minutes of questions.

Thank you, Senator Rivera.

SENATOR RIVERA: Thank you, Madam Chair. Thank you, Commissioner. And thank you, Medicaid Director.

I will try to get through as many of these as I can, and then I will probably come back for a second round after everybody else has finished.

Now, I skipped the first time when I was called upon because I wanted to make sure that I saw what some of the questions were going to be related to nursing homes. And I heard many of my colleagues ask very similar questions, and I will just say a couple of things.

First of all, it is very clear that this administration, whether it's you, sir, or anybody else, the Governor or anybody else speaking on his behalf, will apparently never acknowledge that you have done anything wrong. I will not ask you many of these

questions that folks have asked you already because you will just repeat what you have said before, which is that you did the best that you could, that you've made no mistakes. And it's as though the administration continues every day to just be perfect and do nothing wrong.

So since you cannot acknowledge responsibility and are perfect at bobbing and weaving on that issue, I will not visit it any further; I'm sure that my colleagues will actually do that.

Number two, because we are talking about health and this is a budget hearing, so I will definitely get into budget matters -- but because this is a budget hearing I wanted to make sure that I state for the record that particularly related to the cuts that you're doing on Medicaid, these are not savings, sir, these are cuts.

If we were to tax the wealthy, perhaps by Investing in Our New York, we will absolutely not only be able to close the budget gap as a whole, be able to not do the

Medicaid cuts that we are doing, but also be able to invest, whether it's in our health system, education system, transportation, et cetera. So we need to tax the wealthy to be able to not have these cuts happening.

And as far as nursing homes, as I said before, thank you for stealing our ideas, because we have a couple of bills that we passed out of the Senate -- and these are good ideas, I'm glad that you've borrowed some of them, stole some of them. And we have more coming, and we would rather pass our bills and have the Governor sign them than have it done in the budget, since they are watered-down versions of it.

Now to the budget. Number -- the first thing is let's talk about Medicaid cuts. I will read from a presentation that you folks did to our staff yesterday evening -- I will repeat, yesterday evening -- in which one of the presentations says: "Also solving for the global cap deficits, the remaining balance of $1.2 billion in fiscal year '21 and $455 million

in fiscal year '22 will be used to provide General Fund relief."

Please explain to me this insane idea, sir, that you will save -- that the Medicaid savings, that instead of actually closing the cuts you will actually provide General Fund relief. Please explain this to me.

COMMISSIONER ZUCKER: Donna? I think Donna's going to handle that.

MEDICAID DIRECTOR FRESCATORE: I am. Hi, Senator. And I'm --

SENATOR RIVERA: Hello.

MEDICAID DIRECTOR FRESCATORE: Hi. I'm familiar with the PowerPoint that you're describing and in fact had the opportunity to talk to your staff and other legislative staff as part of that meeting.

So let me, if I could, just take a minute, I want to be mindful of your time --

SENATOR RIVERA: Take 30 seconds.

MEDICAID DIRECTOR FRESCATORE: Okay. And I understand your question.

So, look, the -- there's -- we've had extraordinary enrollment in Medicaid. Thank

goodness, right? It was a safety net for so many.

SENATOR RIVERA: Yes. Still is.

MEDICAID DIRECTOR FRESCATORE: We expect that by March 31st -- yes, by March 31st of this year we'll have 7.1 million people. It will start to go down a little bit, hopefully, right, as the Maintenance of Effort goes away. Which would mean the pandemic and the emergency period was going away. So that was --

SENATOR RIVERA: You're great at filibustering, Donna. You're very excellent at that --

MEDICAID DIRECTOR FRESCATORE: No, let me tell you the -- let me --

SENATOR RIVERA: Please.

MEDICAID DIRECTOR FRESCATORE: -- tell you the numbers, right? So the state will -- through June 2021, the state will receive $4.5 billion in Enhanced FMAP. Right? We call it eFMAP.

SENATOR RIVERA: Right.

MEDICAID DIRECTOR FRESCATORE: That's

after we share with the local governments. And 3.2 billion of it will be used to offset this extraordinary increase in enrollment. So the state financial plan will pay for that increase in enrollment.

What we talked about yesterday is that there is in fact a second part of this, that the Medicaid Global Cap provides funding to the State General Fund by, in the end --

SENATOR RIVERA: Wait, wait, wait. Wait, wait, wait. You're choosing to use your savings to provide General Fund relief. That's what the presentation says.

And my question to you is --

MEDICAID DIRECTOR FRESCATORE: Yeah, and in the end --

SENATOR RIVERA: And my question -- hold on, hold on, hold on. Hold. The question I will ask you, not unlike -- for example, Senator Serino spoke about one program about ticks, I forget -- Lyme disease, right? That's $69,000 for --

MEDICAID DIRECTOR FRESCATORE: Yeah, she did.

SENATOR RIVERA: You would rather cut that program and a whole bunch of other public health programs that deal with controlling disease, that deal with community issues, as opposed to -- you will cut that rather than use some of this to actually avert some of those cuts?

MEDICAID DIRECTOR FRESCATORE: Well, I was talking about the Medicaid Global Cap, and that program that the Senator was talking about is not funded.

But what I was going to say here is that when it's all said and done here, that there is a benefit to the global cap of about $1.2 billion, after all of these different transactions happen.

I understand your question also. I would also, you know, ask you to -- I guess I would just submit that in the context of the revenue loss that the state has had and the calls you've heard for federal funding for the state, and we step back and look at the budget -- not only the closing of the Medicaid Global Cap for the current fiscal

year '21, but the actions in '22, that the budget doesn't -- and I'm talking about on the Medicaid side -- the budget doesn't make -- it doesn't in any way diminish eligibility for benefits or benefits.

SENATOR RIVERA: Hold on. We will certainly have a deeper conversation about this when I'm not time-limited.

MEDICAID DIRECTOR FRESCATORE: Fair enough. Fair enough.

SENATOR RIVERA: The reality is, as you will recognize, that this global cap is an invention, we can get rid of it. And if we're talking about the institutions that are ill-served by your consistent cuts and your consistent austerity during the entire administration of the Governor -- during the entire 11 years there's been nothing but frigging austerity -- and then you're saying that you have a savings that you're instead going to use to give to the General Fund as opposed to deal with some of the institutions that actually offer Medicaid services to people around the state. Which is bananas

and frigging crazy. If it was another setting, maybe my words would be different.

Moving on, pharmacy carve-out. Some of my colleagues asked about this already. Now, first of all, I will again implore you to do not, to not continue with this, particularly as it refers to 340-b providers. Whether it be to FQHCs or Ryan White providers or safety-net hospitals, the use this money for wraparound services for the most vulnerable in our state. And it is unconscionable that you all are considering a savings -- and I use that word again in quotation marks, because they be cuts -- to actually make sure that these institutions cannot provide those services further.

And the $102 million, because I know you're going to say that -- the $102 million is not a permanent anything, because the Governor can remove it next year and it does not correspond to the $200 million that these providers say are going to be cut from them.

Could you give me like a minute of why this makes sense?

MEDICAID DIRECTOR FRESCATORE: Yeah, I think we've long worked with you and your colleagues on issues of transparency on the pharmacy benefit, and the carve-out achieves transparency. And we believe that the Executive's proposal funds 340-b providers directly, eliminating really --

SENATOR RIVERA: To the tune of --

MEDICAID DIRECTOR FRESCATORE: -- administrative costs.

SENATOR RIVERA: To the tune of half of what they --

MEDICAID DIRECTOR FRESCATORE: I think we should -- I think we -- yeah, let us come back and explain some of those numbers, if you will, rather than me using your time here, because I think that --

SENATOR RIVERA: That would be great. That would be great, particularly because --

MEDICAID DIRECTOR FRESCATORE: Because I think -- I think -- right.

SENATOR RIVERA: Whoa, whoa, whoa. Since you're on the record saying you would provide the numbers -- because you folks are

also famous for never providing the math, telling us about the numbers and never telling us how you got to them.

I want to move to -- there's three more issues --

MEDICAID DIRECTOR FRESCATORE: We've shared those numbers, Senator. Senator, those calculations have been shared many times over.

SENATOR RIVERA: Great. I am looking forward to seeing them.

There's a couple more issues. I will definitely use my second round. But for the moment I will take advantage of the CDPAP. We talked about this already, right? There's the process that was into the budget last year with the MRT 2, right? Many of us voted against it because we thought it was a bad idea then, we thought it was a bad idea.

But the idea of getting -- of actually scaling down on FIs is a good one. However, there needs to be a little bit more transparency on that process, and we need to make -- and as far as process of appeal,

because although certainly we do not need 400 FIs, there are questions about the {inaudible} that were ultimately picked.

I only have one more minute. On the vaccine thing -- and I will come back, because we need to talk about the Essential Plan, but I will do that in my second round. For now I'll just say quickly, on the vaccine -- and this is a further example of what I started with. You all continue to say, Mr. Commissioner, that you are doing the best. We are 42nd in the country. There's 50 states, we're 42nd as far as getting it to people.

And the rollout has been consistently evading working with local entities like the City of New York or localities around the state. And you might have eventually gotten to it, but when you started to roll it out, it was about the administration creating a parallel system where you all could claim credit for it and not working along with localities. Now, you all can say you didn't do that, but you did. As in you didn't work

with localities across the state. And that ultimately does not solve the problem of getting more people vaccinated.

So please, the last 20 seconds, just take this, just sit with this a second, just breathe and say, you don't get everything right. Every now and then it is okay to say that you didn't get everything right. And perhaps working along with your colleagues, like us and localities, you would do a little bit better.

I will come back for a second round, Madam Chair. Thank you.

CHAIRWOMAN WEINSTEIN: So we will go to --

CHAIRWOMAN KRUEGER: Any response at all or -- I'm sorry. Did the doctor want to say anything in response to that last question of Gustavo's?

COMMISSIONER ZUCKER: No, I -- one second. I hear his concerns. I say what I said before about the vaccines, that this is a complex process. But we are working with the communities.

And I said that, you know, at the beginning of this it was a -- it was a little bit of a challenge. We were focused on certain areas, we were trying to get into the hospitals, and then we were moving to the other areas.

As -- and I would just reiterate, this is one of the most difficult challenges the country has ever faced, to immunize an entire population of, you know, 250 million-plus people, so -- 300 million people.

CHAIRWOMAN KRUEGER: Thank you.

Assembly.

CHAIRWOMAN WEINSTEIN: Yes, we go to Assemblywoman Reyes, three minutes.

There you go.

ASSEMBLYWOMAN REYES: Okay. So I -- my colleagues have asked a lot of questions, so I am going to be brief and make the best use of my three minutes.

So the Governor's Executive Budget cuts the state's Article 6 public health matching fund rates for New York City from 20 percent to 10 percent, while other

localities have a rate of 36 percent. And until two years ago, New York City was also at the 36 percent rate.

So this further cuts the New York City public health matching funds. It will take around 38 million in state public health matching funding away from New York City -- in the middle of a historic pandemic.

Did the New York State Department of Health advise the Governor's office to cut public health matching funds from New York City? And did the New York State Department of Health evaluate what negative impact this cut to public health funding would have on the ability of neighborhoods in the Bronx, Brooklyn, Queens, Manhattan and Staten Island to fight COVID-19 and the racial health disparities?

COMMISSIONER ZUCKER: So a couple of parts to that question.

Number one, we -- we -- I understand we cut it in New York City, that's what the budget is proposing. You have to remember that New York City does get resources from

many other places, particularly from the CDC and elsewhere. And many other counties in the state do not.

And as a department that is focused on the entire state, and to make sure that everyone gets what they need, I am concerned with every area. You have the North Country, you have out west, you have the Southern Tier. There are many areas where there are a lot of challenges as well, just like New York City has its challenges. We wanted to be sure that we could provide the funds to those counties.

Regarding health equity, I hear you. I hear you not just in the interests of New York City, but across this entire state. This is something that we have fought prior to the pandemic and we continue to fight. And we saw this, we saw this particularly during the first part of this pandemic in March and April downstate -- because that's where it was concentrated -- where those who were from communities of color were more affected by this.

And the Governor has made a commitment to make sure that the vaccines and any other care -- testing, anything else when it comes to this pandemic -- have been focused on that.

ASSEMBLYWOMAN REYES: I'm running out of time, and I have another question.

COMMISSIONER ZUCKER: All right. Sorry.

ASSEMBLYWOMAN REYES: We can argue that we can make better decisions to address the racial and health disparities.

So it's also widely expected that students will require additional physical and mental health, behavioral health support from their schools during and after COVID-19. Many other states have expanded their school-based Medicaid programs to fund these types of district services with federal dollars. What steps has New York taken to modernize our program?

And in the same vein, the global cap aims to control state spending on the Medicaid program. Why does this fixed

percentage apply to the school-based programs, which represent less than half of 1 percent of the overall budget, even though expansion could net schools tens of millions of dollars when they need it most from those federal dollars?

COMMISSIONER ZUCKER: Donna, do you want to touch on the global cap?

MEDICAID DIRECTOR FRESCATORE: Sure, I'm happy to address that.

And I think you know that we have in New York a school-based health program. Medicaid covers those services, actually outside of our Medicaid managed care rates, but -- and Medicaid pays those school-based health centers directly.

We've had some discussion with folks about whether or not the services in schools could be expanded and whether there's other ways to claim federal Medicaid matching dollars for those services. And we look forward to continuing to have those discussions and to learning from other states. And they've graciously offered to

collect that information, and we'll convene with them again.

On your issue of the global cap, all state -- generally all state spending on Medicaid is counted within the global spending cap under statute as it was enacted, you know, several years ago.

CHAIRWOMAN WEINSTEIN: Thank you.

We'll go to the Senate now.

CHAIRWOMAN KRUEGER: Thank you.

Our next Senator is Senator Pete Harckham from Westchester County. And other counties also, sorry.

SENATOR HARCKHAM: Thank you.

Commissioner, good to see you. Thank you for being here.

I want to follow up on the overdose line of questioning a little bit more. You know, the data that we compile is essential to responding in realtime, both geographically and fiscally. So the fact that, you know, we're behind New Jersey and Connecticut to me does not bode well. To me, you know, someone who passes from overdose is

just as important as someone who dies from COVID. And we have prioritized the ability to get daily numbers for COVID, and yet we are still months behind when it comes to overdose deaths.

So one of the things that epidemiologists are recommending is using emergency room syndromic surveillance as a new way to predict overdose death, to get at much more timely numbers so we can use that information in the field.

Is this something that your department has looked at? And how are you committed to expediting the recording of overdose numbers?

(Pause.)

THE MODERATOR: We're not hearing you, Commissioner. The microphone.

COMMISSIONER ZUCKER: The -- we have looked at this issue and the use of emergency rooms for not only tracking numbers but also for care.

And prior to the pandemic we actually were working significantly with both the hospital systems around the area -- and I

remember actually being at one of the meetings downstate about this to figure out how we can come up with some system that is universal that could work across the entire state to address care of those who arrive in the emergency rooms, but also to track it.

So I would welcome the opportunity to sit down with you and to go through this, along with my team, so that we can actually tackle this a little bit more. Because this issue of opioids that you raised as well as your colleague raised is an important issue.

And we have not forgotten that this was and continues to be one of the major issues that the country is facing at this point in time. It just happens to be that the pandemic seems to have eclipsed many of these other health issues, but we are focused on them as well.

SENATOR HARCKHAM: Can I interrupt for a sec? I just have time for one other question. But thank you. I'd be happy to sit down with you and your team to work on this. A great step forward.

I want to follow up on what Assemblyman Cahill was asking about -- in his district, because of the need for surge, the shutdown of behavioral health facilities. In his case, it was moved out of that county. In other instances, we're hearing they have just not reopened.

Are you prepared to issue specific directives to the hospital systems that when the COVID emergency is over, they have X period of time to reopen their behavioral health beds or face certain sanction?

COMMISSIONER ZUCKER: Let's -- I would like to -- I would like to look at that. I'd like to get through the surge and flex situation, or the pandemic and the surge and flex approach that we're using.

But I think what we're going to find is after we get through this, we're going to be able to figure out a system that works more efficiently and effectively for the state, and also to address the behavioral health issues.

It is -- I have noticed, and I've

spoken with the mental health professionals both in the state and outside of state government, about the need to make sure these facilities are available for the residents within the state. So I recognize the concern that you have as well as Senator {sic} Cahill and many other people have had about this. So we will work on that, promise.

SENATOR HARCKHAM: And my time is up. I would just suggest that the time to figure this out is now, not after the pandemic.

COMMISSIONER ZUCKER: I hear you. I hear you.

SENATOR HARCKHAM: Thank you.

CHAIRWOMAN KRUEGER: Thank you.

Assembly.

CHAIRWOMAN WEINSTEIN: Yes, we go to Assemblyman Bronson.

ASSEMBLYMAN BRONSON: Thank you, Madam Chair.

And Commissioner, thank you for being here. I'm going to ask two questions. The first one I hope we can take care of very quickly so we can get to the second.

And the first one relates to the Medicaid carve-out. And it's been brought to my attention that health plans have been instructed to send letters out to their beneficiaries stating that the fee-for-service carve-out for the Medicaid drug program will be implemented starting May 1st, and that they should send out notices to the beneficiaries on March 1st.

You know, what's the reasoning for doing this now when we know that we're in negotiations in the middle of the budget to address this issue, and hopefully come to a resolution? Wouldn't it be better to wait for those notices to go out until after we finalize the budget around April 1st?

COMMISSIONER ZUCKER: Donna, do you want to --

MEDICAID DIRECTOR FRESCATORE: So again, quickly, I'll jump in and just, I guess, explain the timing.

And that is that last year's budget enacted a pharmacy carve-out from Medicaid managed care that could occur on or after

April 1st. The notices that you were mentioning are a federal requirement whereby consumers need to be noticed under federal regulations 30 days in advance of a change in benefits. So that's the explanation of the timing.

You know, I hear your question, but I just wanted to explain the timing.

ASSEMBLYMAN BRONSON: Okay. Well, we need to get this negotiated.

In connection with nursing homes and in particular family visitations, I have been in communication with a number of people at DOH on a quite regular basis since last fall trying to get guidelines for visitation. I was very hopeful on Friday when the notice came out, and then on Monday very, very disappointed.

Why, why cannot our family members visit nursing homes under the same health and safety protocols as staff members? They're doing the same thing out in the community, and they come in. Why can't they get in on the same protocols?

COMMISSIONER ZUCKER: So I hear you on this. And I am very empathetic to the situation of those who are in nursing homes and their families.

The challenge here is not the state alone. I open up the guidelines there and I put them out, do as much as I can, but there are CMS guidelines that we need to adhere to. So we are -- our hands are sort of in some ways tied, that they say that if you've had a case in the nursing home within 14 days, you can't go in. So we end up with 185, 188 this week, of nursing homes that had visitation.

The challenge is that -- the concern is it is still ending up in the nursing homes. Right? The cases are still there. We're testing people twice a week, the staff we're testing twice a week, right? And so that is -- but even testing twice a week, even with 50 percent of the nursing home staff now immunized, even with 72 percent, 75 percent of the residents immunized, we are still seeing cases.

Now, they've dropped dramatically.

The number of cases have dropped in the thousand -- I mean, I think it's like a thousand less one week than it was the week before in the nursing homes, which is great, because of the vaccinations that have been administered.

That is the problem. I opened this up as best as I can, but I still am confined by the rules of the federal government as to what can be done. I wish as much as you if you could open up. There are people who have not seen their relatives in a year. There are people who -- I understand the mental health effects of this. I had a grandmother in a nursing home years ago, and I remember leaving her and I felt like she was so lonely left there alone.

So I get it, I really get it. And I wish I could do more. It's just that I'm doing as much as I can to help them have visitors there.

CHAIRWOMAN KRUEGER: Thank you.

CHAIRWOMAN WEINSTEIN: Thank you. To the Senate.

CHAIRWOMAN KRUEGER: Thank you very much.

Senator Rath next.

SENATOR RATH: Thank you, Madam Chair.

And thank you, Commissioner Zucker.

I want to expand on the vaccine distribution and allocation issue, which has been talked about and several questions have been asked earlier today. Specifically, I have two areas of concern that tie right in with my district.

First, currently there are about 1500 pharmacies across New York State which are approved to vaccinate, yet over the several weeks of the pharmacy rollout, many of these independent pharmacies have not received any vaccines at all, and some of these independent pharmacies have contacted me. They have hired staff, they have modified their facilities, they have collaborated with pharmacy schools and medical schools to roll out and to be capable, but they're not getting any vaccines whatsoever.

And so I'm wondering how the state will address this inequitable distribution amongst our independent pharmacies. And what is the reasoning or justification that countless pharmacies across New York State have been left without allocation despite being approved as sites to vaccinate?

COMMISSIONER ZUCKER: So -- and this goes back to that old -- I guess it's an economics principle, which is supply and demand. Right? There's an incredible demand for the vaccines, and there's just not enough supply.

And so we're sitting there and I -- and we get it out to the pharmacies. We also have to get it out to all these other sites, the hospitals, to the nursing homes. Right? We have six FEMA sites right now, there's 105,000 appointments. We've enrolled, you know, a number of appointments in New York State; there's over a million that we have.

But I hear your question about the pharmacies and particularly the independent pharmacies. I will work on getting an answer

as to why they have not received it, versus others. And I will go back to my vaccine team that are working on this to get a specific answer for you about it.

SENATOR RATH: Thank you, Commissioner --

COMMISSIONER ZUCKER: But it goes back to that basic principle of supply and demand.

SENATOR RATH: -- it will definitely be appreciated. A written response will definitely be appreciated, because there are many of these pharmacies who are like, why are some pharmacies continuously, month over month and week over week, continuing to get vaccines and some have gotten none? And they're very frustrated and have invested a lot of money.

But I want to go to my second question because I know my time is ticking here. So far the state's primary focus for Phase 1B vaccination has been on utilizing mass vaccination sites. However, this leaves seniors and those in travel as well as broadband deserts with significant barriers

to vaccine access.

Is there a plan to aid those counties with these access barriers, specifically rural and agricultural counties across New York State? Do you have a plan for that?

COMMISSIONER ZUCKER: So there's two parts to the answer to that. We do -- we are looking at that issue in the bigger picture of getting into the rural areas of the state.

But you bring up the issue of seniors, and I will bring up the fact that there's also the issue of how do you get those who need to be vaccinated who are at home and alone and somewhat homebound. So we are working with an organization starting in certain areas of the state right now, and we'll see how it goes, to be able to get vaccines to those who are basically homebound, because they need to be vaccinated as well.

And someone will say, well, they're not going out --

SENATOR RATH: Thank you, Commissioner.

COMMISSIONER ZUCKER: -- but people are coming in to see them --

SENATOR RATH: I just want to add, Commissioner, very quickly, Genesee, Orleans and Wyoming counties have a plan at Genesee Community College. If I could have a written response to a plan for that specific idea for 100,000 residents, I'd sure appreciate it.

Thank you, Commissioner.

COMMISSIONER ZUCKER: Okay, got it.

CHAIRWOMAN KRUEGER: Thank you.

Assembly.

CHAIRWOMAN WEINSTEIN: We go to Assemblyman McDonald.

(Pause.)

THE MODERATOR: We are asking him to unmute and start his video, and he has not done so at this time, Madam Chair.

CHAIRWOMAN KRUEGER: I guess he's not there.

CHAIRWOMAN WEINSTEIN: Okay, then we will go to Assemblymember Gandolfo.

ASSEMBLYMAN GANDOLFO: Thank you, Chair.

And thank you for being here with us today, Commissioner.

I just want to loop back to something one of my colleagues was talking about before. I thought I heard you close out and say that you did not believe that the March 25th order had any impact at all on the spread of COVID in nursing homes or deaths in nursing homes.

Can you expand on that a little bit?

COMMISSIONER ZUCKER: Sure. And happy to do so. As I've mentioned before to other members of the Legislature, that I can explain this in a couple of ways. Let me just start with the science on this.

Well, first let me start with what brought this into the nursing homes. This goes back to the nursing home report, it goes back to the July 6th presentation. It came in through inadvertent spread by the staff, asymptomatic spread, at a time when we were unaware of how this virus spread. That's the first part.

It was in the nursing homes, it was in

98 percent of the nursing homes, 98-plus percent of the nursing homes prior to any person being readmitted from a hospital to a nursing home. That's number two.

Number three is the issue of how the disease actually is spread and the incubation periods and at what point is someone contagious from the disease. And I went through this before, that there's a window of time prior to when your symptoms occur when you are contagious, and then when your symptoms are there, early on you're the most contagious. This is all about viral load, how much --

ASSEMBLYMAN GANDOLFO: Okay, thank you, Commissioner.

COMMISSIONER ZUCKER: -- how sick you are.

ASSEMBLYMAN GANDOLFO: I recall you said that before.

COMMISSIONER ZUCKER: Right.

ASSEMBLYMAN GANDOLFO: But so what you're saying is that this order could have had zero impact, based on the scientific --

COMMISSIONER ZUCKER: Yes, that is correct.

ASSEMBLYMAN GANDOLFO: Zero impact.

COMMISSIONER ZUCKER: That is correct. Could there be that random one person that came in? You know, I can't say for -- you know, I never like to say something is like 100 percent or zero percent.

But what I'm saying is that there could have been that random person that may have come into one nursing home. But that is not the case, it was not in the -- this memo was not the driver of nursing home fatalities. It's just not the driver. And all the data from there going forward supports it, in New York State as well as around the country and, for that matter, around the world when you look at the literature.

ASSEMBLYMAN GANDOLFO: Okay, thank you, Commissioner. I just want to clear up whether or not it could have at least had one case that might have come in.

COMMISSIONER ZUCKER: (Inaudible.)

ASSEMBLYMAN GANDOLFO: And I also want to -- I know the Governor had a recent press briefing, he mentioned that he would be fine with making public the data that was turned over to the DOJ. Is -- has there been any movement on that? Do we have a status on whether or not that is being made public, regarding the --

COMMISSIONER ZUCKER: I am aware of a letter that -- my legal team deals with the DOJ issue. My data team, as we know, deals with my data analytics issue. These things are occurring in parallel and while I manage deals with the pandemic and all the issues that we have been dealing with on that, so.

ASSEMBLYMAN GANDOLFO: Okay, so there's no timeline there yet. Got it, thank you.

And a final question. Given the fact that we're able to convene the Legislature almost immediately via Zoom, is there any public health reason to allow the Governor to retain his expanded emergency powers?

COMMISSIONER ZUCKER: That's -- that's

a question that is outside of my scope, I will say. It's above my pay grade. And so I leave that to others to answer.

ASSEMBLYMAN GANDOLFO: Okay. Thank you, Commissioner.

CHAIRWOMAN KRUEGER: Thank you very much.

CHAIRWOMAN WEINSTEIN: Yes. Senate?

CHAIRWOMAN KRUEGER: Senator Oberacker.

Are you there with us, Senator?

SENATOR OBERACKER: Yes, I am.

CHAIRWOMAN KRUEGER: Oh, good. Hello.

SENATOR OBERACKER: Hello there. And thank you so much, Madam Chair.

And Commissioner, thank you too for taking the time.

You know, we're one state -- I've heard this throughout the pandemic from the Governor. The rural region I represent was forced to shut down even when most of my counties had extremely low numbers of cases, if any.

Now, with the vaccine being

distributed, my district is completely forgotten. State-run sites are nowhere to be found. No longer one state, I guess.

Here's a letter I received today from a constituent in Bovina Center in Delaware County that speaks very eloquently to the situation.

"Dear Senator Oberacker: As of today, there is no place for people over 65 to get the vaccine anywhere in or near Delaware County. Pharmacies are apparently no longer getting the vaccine.

"The Delaware County Board of Health, through the Department of Aging, was promised 100 vaccines, just to have the delivery canceled. Bassett Hospital to date has held two clinics with 100 shots available for each, which was booked up in minutes.

"The only state sites that currently have availability are restricted to zip codes none of which -- none of which -- includes Delaware County.

"I understand that the limited supply and the weather are contributing to the

delay, but I do not understand why our rural area is basically being ignored. We have a very large population of elderly people who were supposed to have priority and have been virtually cut out of the vaccination program.

"Can you let me know what you are doing to secure vaccines for the vulnerable populations in our district, or at least let us know when the vaccines might become more readily available?"

Commissioner, what am I supposed to tell my constituents?

COMMISSIONER ZUCKER: So with regards to what to tell those who are elderly in your district, I will say that the focus has been on those over the age of 65. I understand your concern that there's not a state-run site there, and we can look into and see what's the closest site.

Some of the challenges that one comes up against when it comes to rural areas is there's a distance to travel, and I recognize that. That's one of the challenges in upstate New York that we see.

And then it comes back to, as you said and I've said, a supply issue. And so once we have more supply, we can get it out there. Bassett Hospital, I'm happy speak with the CEO of Bassett and see what else is transpiring there or have our team that's working on vaccines work on that and see what things we can do working with Bassett's outreach. Because I know that they have a significant outreach into the community.

So let me get back to you on some of that.

SENATOR OBERACKER: Commissioner, as -- thank you. Thank you.

And as well as a businessman who deals with materials management in my company, I would make this recommendation. Could the state just be worrying about procuring vaccines? Could we have a plan in place where we distribute those to the counties? All right, we have our counties' health departments and emergency services. From there, they can be distributed to each and every one of those fire departments in these

towns. And I'm telling you, it would be a great way to get shots in the arms.

Thank you.

COMMISSIONER ZUCKER: And I know --

CHAIRWOMAN WEINSTEIN: Thank you --

COMMISSIONER ZUCKER: Just quickly, I just -- I do know that we're working with the communities on this. And let's see where we are after the end of this weekend when more vaccine's out there, assuming J&J is approved and we get to that next step there. So hopefully that will help increase supply.

SENATOR OBERACKER: Thank you.

CHAIRWOMAN KRUEGER: Thank you.

Assembly.

CHAIRWOMAN WEINSTEIN: We go back to Assemblyman McDonald, who had an issue with his video, I believe.

(Pause.)

COMMISSIONER ZUCKER: Audio now.

ASSEMBLYMAN McDONALD: There we go. Now we're there.

COMMISSIONER ZUCKER: There we go.

ASSEMBLYMAN McDONALD: Sorry about

that.

Dr. Zucker, it's good to see you.

For the first question, right off the rope here, you mention in your written statements about the great work done at Wadsworth. And both Member Fahy and myself and Senator Breslin are concerned that the funding for Wadsworth was not included in the proposed budget.

I don't know, do you have anything you can add to that? We've gotten limited information on what's happening. But obviously, you know, Wadsworth is very important not only to New York State but to the country and it's a major impact here to the Capital Region.

COMMISSIONER ZUCKER: Sure. So I just had a conversation with our Budget Director about this exact issue the other day. The commitment is still there, the commitment on the Governor's part and the commitment on the administration's part, to build a new Wadsworth Lab.

What we have seen with this pandemic

is that there is a new way of looking at how we operate a lab, both the research aspect and the clinical delivery aspect and all of the partnerships that we have developed over time. You know, Wadsworth has had many partnerships with companies.

So we are moving forward on this. The lab has been such a critical component of managing this pandemic. As I mentioned, literally a year ago this week the test that came out for COVID-19, the first one outside of CDC, was done at Wadsworth. I will tell you it was Friday a year ago tomorrow that that happened. And it changed the pace of how testing was done. And then they also work with all the other testing sites in the nation.

And when -- we were talking earlier about this genome sequencing and saying, well, how do we know? That's because of Wadsworth. That's how I heard this morning about exactly what's going on. There have been some labs out there who have said, All we have is variant. I remember the first UK

variant that they thought they had, they called Wadsworth. It wasn't.

So I am so thrilled with our lab that we have. But it is still on the plan, we just need to work it through the right way.

ASSEMBLYMAN McDONALD: Is it still committed to the City of Albany?

COMMISSIONER ZUCKER: Yes.

ASSEMBLYMAN McDONALD: Okay, that's important.

Another quick question, this goes back to a meeting that you and I and a couple of other people were in a couple of weeks ago. We talked about HERDS data and the way it's reported, we talked about SPARCS data and the way it's reported. One's done by initials and date of birth, one's done by full name and date of birth, and that added to part of the challenges of getting accurate information.

One question I didn't think to ask at the time, but since I've got you here, is the department looking to rectify that so that we have the same information being reported

going forward, so that way we can accurately pull information when we need it?

COMMISSIONER ZUCKER: Sure. So as I mentioned before, one of the things that will come out of this pandemic, the silver lining, is how do we deliver public health -- how do we deliver care to patients, and also how does the public health system work. And there will be major changes as a result of it.

One of it is to streamline how data comes in, how we process data, how data integrates with other data sets and data pools. So we will address it. We have to be sure that when we do this that we maintain the patient's privacy. That's what we had -- and not to reiterate this, but when we started this whole thing, we were getting the data from the HERDS information and we just wanted initials and age and what other comorbidities because we were trying to figure out how to manage it and figure out what was this disease, who was getting it and how do we manage it. We weren't as

interested in like what's their name and other things, we just wanted to figure out how to deal with it.

But going forward, this will be one of the things that will come out of this. And some of it -- you know, the MDS system is a federal system. SPARCS is state, HERDS is state, the ECLRS system is our lab system. So we will work on this and figure out how to do this.

ASSEMBLYMAN McDONALD: Thank you.

Thank you, Madam Chair.

CHAIRWOMAN KRUEGER: Thank you. And it goes back to Senate.

Senator Todd Kaminsky.

I know you were with us a minute ago, Todd.

SENATOR KAMINSKY: Can -- can you hear me?

CHAIRWOMAN KRUEGER: Yes.

SENATOR KAMINSKY: Thank you.

Good afternoon, Doctor.

There have been numerous troubling reports in the press and other places about

procurement fraud that was committed upon the state when trying to get essential supplies last year. And I'm wondering if it's possible that we can get a full accounting of what we think was -- of how New York was defrauded, to what amount, and to what extent New York is trying to recoup that, and what steps we can take to make sure that doesn't happen going forward.

COMMISSIONER ZUCKER: We can do this -- we -- two parts to this one, all right? One is we can -- we have been looking at this, we have been looking at how to recoup losses. Obviously that's in the interest of the state and the citizens, the residents of New York, obviously.

The issue is also that we were in a situation early on where we were focused on how do we provide the care that we needed, and we searched everywhere to try to get the necessary equipment -- the ventilators, the PPE, the testing -- well, the testing we started doing in the state, but even some other tests that were out there, new rapid

tests or other ways to do testing. It was an unbelievable time early on when we did not have the information, we did not have the public knowledge.

But I understand the issue about resources that are spent, taxpayer dollars that are spent, and to be sure we can recoup that, and we are working on that. And a list we can get together. I know people have been working on it, and I'll find out from my teams and others within the administration how we can get that to you.

SENATOR KAMINSKY: Okay, thank you.

And with respect to the nursing home question, moving forward to where we are today, there have also recently been reports that some of the latest updated findings are troubling to some families about very low numbers at nursing homes where a number of people in the community, you know, may all -- (background noise) -- something, you know, more than what may have been reported to take place. For example, there was a February 20th New York Post story about a nursing home

in my district that says maybe three -- only three people -- deaths are attributed to that nursing home, when there are far more families that know that's the case.

So as we stand here today, can you give us some type of assurance or tell us what families should want to know about how the new updated numbers should be viewed, how accurate they are, and what you and your agency can do to make sure that whatever numbers are out there are important and accurate. As you know, a lot of these families -- all of these families are grieving, want to know that the information is accurate and that they're obviously being treated with transparency and honesty, and some of these numbers appear to give them concern.

COMMISSIONER ZUCKER: So the aspect of what we do do at this point is obviously we do the inspections and we take a look and see if there's any -- if someone said, well, there was only three deaths in that nursing home but relatives say there were many more,

we have these on-site inspections.

And that's why we've done, as I mentioned earlier, over 2400, with enforcements of -- over a thousand enforcements.

But going to your question about going forward, which is where I think we should be looking -- how do we move forward, what do we need to do on this -- so we have put forth some of the issues as the Governor has mentioned in the budget and I've spoken about before. But also it ties into your question or Senator McDonald's question about the data a little bit, I think, about these different data pools where we get information. And we are going to try to make sure that moves smoother.

The issue -- this brings up this issue of data and how you look at data and how you verify data. And it is a complex process. What you raised is the issue of how to make sure that the data is precise. So when we move forward, we will get that done.

SENATOR KAMINSKY: Thank you, Doctor.

And just a final question on the hydroxychloroquine issue, on veterans and veterans' homes. Can you give a definitive statement about consent within those cases, please?

COMMISSIONER ZUCKER: Sure. Sure.

So I -- and I've heard a lot about this. Here's the situation with that. The doctor-patient relationship is paramount. And any therapy that's given to a patient has to get approval by the patient or the healthcare proxy of that patient.

The issue with the hydroxychloroquine is at the point that it was given, the hydroxychloroquine was considered a potential therapy. That, along with azithromycin as a combination, could be a therapy to improve outcome. It turned out not to be the case.

There was a concern -- I know people have thrown this out -- that there are individuals who may have had, you know, heart problems. Yes, the combination of those two may, with somebody with a certain type of abnormality on their EKG, in very rare

instances, very rare instances -- and I went back and I looked at the literature a couple of days ago, looking at this. There's something called a QT interval, it's part of that little squiggle on your EKG -- we don't have to go into the details on that.

But the combination of those two could have been a problem. But it's extremely rare.

It was the doctor-patient relationship, the decision was made by the patient. And then when we realized that hydroxychloroquine was not helpful, we stopped giving it -- long, actually, before the federal government, the FDA said not to give it. And we also looked at this issue to be sure that there were no individuals harmed.

So I know this has come up, but this is one of the those things that I say there are facts out there, but the people are just hearing something and they believe that, and not the facts.

CHAIRWOMAN KRUEGER: I let you go over

because that was a public health question.

Thank you very much. Assembly?

CHAIRWOMAN WEINSTEIN: We go to Assemblywoman Glick.

ASSEMBLYWOMAN GLICK: Okay. They won't let me start my video. Which is fine because -- oh, there we go -- because I may have to cut it off if I can't be heard.

Dr. Zucker, two things. But before I start, let me say that I agree with Senator Hoylman that Manhattanites need at least a set-aside -- I don't think we need a whole new site. Javits is large. But something needs to be on the website that allows for people to click off a Manhattan zip code so that a set-aside, whether it is 10 percent or 20 percent of the vaccines, could go to Manhattanites at that center.

I don't think we have to reinvent the wheel and create a new physical site. I don't think that's worth the time, money and effort.

There is an Article VII that would allow for out-of-state practitioners to

participate in telehealth. It's sort of a license -- a licensure, an interstate licensure agreement. Which I think is concerning, since people may not know whether or not -- you know, New York has very rigorous licensure, which makes us a place where people come. And it is concerning to think that we would be having folks doing telehealth whose qualifications might not be the same as our New York State practitioners.

That's number one. And number two, there is an e-prescribed exemption change which I think requires veterinarians to become e-prescribers. That might not be a problem in my district, but in a lot of the state we have a lot of trouble with broadband. So on that basis, that could be a serious problem, particularly in rural communities.

But in addition, a lot of folks -- like myself and other pet owners -- don't go to the local pharmacy, which is more expensive, but use something like PetMeds. So you're asking consumers to pay more for

medications for their animals at a time when people are already stressed.

And then the last thing is the elimination of the Empire Clinical Research Investigator Program. I don't know how much you're saving, but it does seem to be a small amount for what could be a very important thing, especially since we're trying to support biomedical research.

Could you address the interstate licensure and e-prescribe?

COMMISSIONER ZUCKER: Let me see if I can do this quickly.

So on the issue of telehealth, yes, I recognize this is a critically important issue overall. And we do want to make sure there is -- that the physicians who prescribe or use telehealth are clearly meeting the standards of the state.

The Governor and all of us have been looking at ways to strengthen the Office of Professional Medical Conduct, which runs through my department.

E-prescribing and the thing regarding

the exemption, I'm going to get back to you, I have to look into that.

Regarding the elimination of the investigator program, I -- over the years I have tried, you know, to keep that in the budget, and we've worked on that. But we are in a very tight budget year. And I looked at where some of that -- those investigations can -- is there other ways for them to receive the funding they need.

This is a tough one. I went through this the other day thinking about this {unintelligible} -- well, what else can we do? So I recognize that's a challenge.

And the last one, the broadband issue -- just as an aside, this is not the Department of Health, but I know the Governor has a strong commitment to making sure that the state has excellent broadband and that we can get to every area of the state. That's obviously a different department. But I know I heard him speak about that at one point.

ASSEMBLYWOMAN GLICK: Well, I know.

And the Governor says that it's 98 percent coverage. And I can tell you personally that when I am upstate, I have to shut off the video, I can't get connected.

And if you're going to ask e-prescribers who are vets who are out at farms dealing with large animals to get online to prescribe for their animal patients, it's not going to happen.

And there are going to be consequences that are -- it's a small -- I think it's a ridiculously small amount of money, but there has been some money associated as a savings. And I think that that will cost pet owners much more than the state will save. If they save anything.

CHAIRWOMAN WEINSTEIN: Thank you. We'll go to the Senate.

CHAIRWOMAN KRUEGER: Thank you very much. Oops, sorry, lost me for a second.

And our next Senator is Senator Helming.

SENATOR HELMING: Thank you, Senator Krueger.

Dr. Zucker, thank you for your testimony today.

There have been a tremendous number of questions that have touched on topics that are very important to me -- getting kids back to school, reuniting loved ones who are in nursing homes, strengthening mental health services, and doing a better job of providing access to the vaccines to people living in rural communities.

But I wanted to go back for a moment and talk about the nursing homes and the spread of COVID-19 in nursing homes. It seems to me that the administration continually points the fingers back to the nursing homes themselves, and even sometimes to the staff. You talked about it in nicer language today, using nicer language, calling it inadvertent spread. But Dr. Zucker, we all know that there was a lack of access to PPE, to tests and so much more prior to the -- at the start of the pandemic and throughout the pandemic.

But it just -- it makes me wonder what

the heck was DOH inspecting and evaluating? You talked about the many inspections that DOH was conducting. Well, were you looking to make sure that the facilities had adequate infectious control plans and that protective equipment was in place? Because it doesn't feel like it to me.

Also you mentioned, you know, about going -- where do we go from here, how do we do a better job, and you keep talking about this policy language that is going to be included in the budget. You're talking about proposing increased penalties and heightened enforcement mechanisms that will really penalize these nursing homes and long-term-care facilities.

And we all know there are bad actors, and I certainly want those bad actors to be held accountable. But it's just frustrating to me, because it's my understanding that not a single facility was under receivership. And I don't understand that. It suggests to me that maybe the department is not using -- or could better utilize the tools currently

available.

And it makes me wonder, do we need these additional penalties, or does the department really need to step up and do a better job.

COMMISSIONER ZUCKER: So we -- I'm sorry --

SENATOR HELMING: I want to continue, because staffing is a concern. Right? We hear about it all the time. Dr. Zucker, again, when that subject came up earlier, you pointed back to the budget and you talked about how there's patient over profits, paying nurses more. I think that's great, don't disagree with it.

But in a report that you issued back in August 2020 you identified -- or you had Cornell and others identify there are many more issues outside of increasing pay. We have a workforce development issue. I want to know what you're doing about it, where is that outlined, how do we get more people in the pipeline? We don't have enough trainers, right, for some of these RN higher-degree

programs. There's just so much more that I think needs to be done.

I'm going to keep talking because on the issue of communication and transparency throughout this pandemic, as a person who represents more than 300,000 people, I have heard from you twice. You've done two presentations to the Minority Conference. Each time you started with a long PowerPoint and you had limited availability to us. We couldn't ask you questions.

It's a shame that this type of conversation has to happen during a public hearing on the budget. As a leader, I don't understand why you can't hold informational sessions with Democrats and Republicans alike, why we have to be segregated into these different groups. It's wrong. You're a leader, you need to get this public health information out to us so we can share it with our constituents. It will calm a lot of people down, right, if we're more transparent and we communicate better.

I do want to just -- I don't see the

clock, but in my Senate district and throughout New York State we have an issue with local fire departments that offer EMS services where the private service is not available. They're under a great deal of strain both financially and from a recruitment perspective -- again, going back to workforce issues.

Are you aware of this issue? And I want to know if the department is taking any actions to quantify this problem and to develop some long-term solutions. Because when people are getting sick or -- they don't have ambulance service available to them.

COMMISSIONER ZUCKER: So on some of those issues, I'll quickly try to address them. I'm going to start with the last one, the EMS issue.

We are working with the EMS community. Several years ago they raised some of the issues you've raised just now from your district, but also for across the state, to make sure we improve the workforce. And I know that's been a challenge. I can get you

more information in writing afterwards.

Regarding communicating, yes, we have -- I have personally communicated on many of these issues through webinars and I'm happy to continue to do so. From the standpoint of this pandemic, I don't know how many times I've been out there speaking on webinars on many of the different issues that we have spoken about this morning and afternoon.

On the issue of staffing, yes, the Governor has put forth -- and this is one of the key parts of nursing home reform, to make sure that there is patient care over profit. And as I said earlier, patient care comes to the issue -- goes directly to the issue of staffing. And there's percentages of how much is going to go to staffing. I can go through that. It's a 40 and -- 70 percent for patient care and 40 percent to staffing.

But I want to be respectful of time.

SENATOR HELMING: But our nursing homes don't have people they could hire. Our hospitals don't have --

COMMISSIONER ZUCKER: We're working on that.

And with regards to the PPE, there's 23, 24 million PPE that went out there. And we monitor this on a regular basis every single day. But you have to remember, early on --

SENATOR HELMING: You and I talked about this back in August during the hearing --

CHAIRWOMAN KRUEGER: And you're going to continue the conversation, but not right now because the time has been on zero for you.

COMMISSIONER ZUCKER: Okay. Thank you.

SENATOR HELMING: Thank you.

CHAIRWOMAN KRUEGER: Thank you.

Assembly.

CHAIRWOMAN WEINSTEIN: We go to Assemblyman Jensen, three minutes.

ASSEMBLYMAN JENSEN: Thank you very much, Madam Chair.

Thank you, Dr. Zucker.

As I'm sure you're aware, there's currently efforts underway to put into statute mandatory resident care hours in nursing homes and staffing ratios in hospitals. DOH's own report from this past August stated that this is going to cost upwards of $4 billion in increased staffing costs for hospital systems and nursing homes.

First of all, my first question is: Do you support these sort of mandates in facilities?

Secondarily, is there in this year's budget a strategy from the state to help these entities with those increased costs, especially when our not-for-profit nursing homes are operating on margins of less than 1 percent?

So those are -- those are my questions to start with.

COMMISSIONER ZUCKER: So I -- I support the need that we have to have more staff. I think that a specific ratio -- I don't think that that's the way to go. But we need to get more staffing.

And as I just mentioned, this was one of the issues that the Governor has put forth in the bigger picture of nursing home reforms. I support that.

Regarding the costs, I'll take a look at the budget and see what else -- how else to address it. But as you know, this is a negotiation, right? And so when the budget negotiations happen, I would turn to all of you to discuss that with our team when this is at the table and on the table. I'm not given the opportunity to actually sit there, as you know, in the process of how the budget takes place. But I certainly support that.

ASSEMBLYMAN JENSEN: With respect, Commissioner, you've certainly stated over the past year -- you have a very large voice with the Governor. So certainly if you believe that that is a priority, I would assume, as you've done with other issues, you would bring that up as something that he should take attention to.

Secondarily, you talked about staffing, that we need more staffing. I one

hundred percent agree. So as the leader of the Department of Health, what is your plan to help hospitals and nursing homes attract more staff, specifically RNs, LPNs and CNAs?

COMMISSIONER ZUCKER: So there's two parts to that. One is the nursing home part and one's the hospital part. They interact, but I will tell you that the Governor has made a commitment, as I said before, saying he won't sign the budget unless there's certain issues of reform in the nursing homes, and staffing is part of it. So that's the one part.

The hospital issue -- well, actually the hospital issue and the nursing home issue in one way tie together, which is the professional -- the need to increase the amount of people going into this field and the professional growth and development that needs to take place. It's not just the nurses, the RNs, but it's of course the entire healthcare delivery system and all of those who are the healthcare workforce.

And we need to do that. And we need

to do that -- sorry. Yes, go ahead.

ASSEMBLYMAN JENSEN: So as a medical professional, as a leader in the health field, how would you -- how would you attract more CNAs specifically to facilities?

COMMISSIONER ZUCKER: I think what you need to do is you need to develop a system that gives you professional growth and not have someone feel that they go into this job -- and particularly I could use the example of someone who's a home health aide. Right? They go into that job, and then when a different job becomes available and it's giving you more of an increased salary, you say, well, I'm not going to do the home health aide, I'm going to jump to that job.

And so you need to develop a system where they have more -- a little bit more independence. And I've spoken to the home healthcare agencies about this specific thing. And I'm going to tell you on a personal level I'm very familiar with this, because my father was at home with many home aides who were helping him -- in the dozens,

over the years. And I said, How do you give them a little more independence to make decisions, the healthcare decisions or clinical decisions? And I said we need to develop a system that's more efficient and more effective and keep people there. And some were better than others, and we need to make sure to take those who are better and put them into a leadership role to bring others in and show that this is a professional development aspect, not just a, quote, job that they will then move to somewhere else to -- where there's more money.

ASSEMBLYMAN JENSEN: Thank you, Commissioner.

COMMISSIONER ZUCKER: I mean, I guess the one thing I will add is, you know, I'm -- we're talking about this situation, but the fact is that these healthcare workers on the front lines were the ones who were out there who were managing the pandemic and out there taking care of people on the front line. And I applaud them all for what they did.

And they put their own lives at risk and their family's lives at risk because, you know, if they got sick and they brought it home, early on when we didn't even know how to protect people, they may have cost the lives of others. And perhaps that happened. Because I know of my colleagues who died from COVID who worked in a hospital. So I hear you.

CHAIRWOMAN WEINSTEIN: Thank you, Commissioner.

We're going to go to the Senate now.

CHAIRWOMAN KRUEGER: Thank you very much. And the next Senator is Senator Phil Boyle, from Long Island, if he's still with us.

Are you here, Phil? Ah, there you are.

SENATOR BOYLE: Thank you, Madam Chair. Thank you.

And thank you, Commissioner.

Commissioner, two quick questions. One is regarding the March 25th directive. I was hearing from constituents in the days

immediately after that, very concerned, they had parents in nursing homes and COVID-positive patients were brought back. They told me that the nursing home officials had said that they were directed not to discriminate against COVID-positive patients, and two of them mentioned the Ryan White Act.

And most people would not know what the Ryan White Act is. I just happen to know because I worked on Capitol Hill when it was passed. Obviously HIV and COVID are contracted very differently.

And so the idea of discriminating against COVID-positive patients, did that come from your office? Because it doesn't seem like that's a medical decision. Did that come from the Governor's office or some other entity?

COMMISSIONER ZUCKER: Let's just talk about this for one second. The guidance said that you cannot deny admission, and that does not equal you must accept. And if they felt that the hospitals -- you know, if the nursing homes felt that -- they could have

just said, I cannot accept that patient. So that just -- we'll put that, you know, just on the table there so you understand that issue.

The issue of the HIV -- you know, and I -- I -- I know the whole history of HIV because, you know, when I was a medical student, we didn't even know about this. It was the beginning of HIV. And I watched how there was issues of discrimination that was out there over the course of the early days of HIV and the early years of HIV.

So that is sort of the issue about not discriminating. I'm not sure what you've heard about sort of saying, well, this is exactly why you want to do this with COVID. The issue was you can't discriminate against somebody because you can't sort of say, Well, I don't want the person with COVID. Because prior to this pandemic, there were patients with C. auris, which is a fungal infection, and a lot of nursing homes may have said -- or people said -- I don't want the patient with C. auris, I don't want something

spreading in my facility. And you can't discriminate against people, particularly when you need to take care of them.

And the law says, and CMS says it, that, you know, there's -- you -- and the CDC says it. And this happened long before the pandemic. These were the rules that were in place long before the pandemic. When we put forth that guidance, we were using the -- we were using our -- the knowledge we had from our federal partners. And I've said that before. And I know people sometimes say, Well, you're just saying, well, the federal government said that --

SENATOR BOYLE: Okay, Doctor, thank you. I appreciate your answer very much. I just want to get another quick question, very quickly.

The CDPAP program is very popular among my constituents. Your department just denied a large number of very qualified agencies, and my constituents are concerned about it. Why did you decide to deny and close the majority, I believe, of the large

CDPAP agency providers?

COMMISSIONER ZUCKER: Donna, do you want to take that?

MEDICAID DIRECTOR FRESCATORE: Yeah, I'm happy to do that quickly.

So not in last year's budget but the budget before, the department was given the authority to selectively contract with fiscal intermediaries. There were some 400 or so in operation. We issued a competitive process. The applicants were scored against criteria consistent with state law about their experience, their geographic accessibility, their ability to -- their cultural and linguistic competency, their ability and their demonstrated record of following rules and requirements, including labor laws.

We did that competitive process. We announced the awards on February 11th. I was asked a question earlier -- there was a debriefing process for organizations that were not selected to -- so that we can -- they can learn more about where their proposal was viewed as strong and where it

was viewed as not as strong.

Look, there's 139,000 people in the Consumer-Directed Program. This selection gives every consumer choice -- in fact, the choice of over 50 FIs in New York City and in no upstate county will a consumer have a choice of less than 24, I believe. So this selection achieves the objectives and the requirements of the state law.

CHAIRWOMAN WEINSTEIN: Thank you. We'll go back to the Assembly now, to Assemblyman Anderson.

ASSEMBLYMAN ANDERSON: Thank you, Chairwoman Weinstein, and thank you, Chairwoman Krueger.

I have several questions, but I want to make a comment first. As a new member, we, you know, wanted to question you, Dr. Zucker, a couple of months back, I think it was December or January, to ask you some critically important questions around the issues of nursing homes, around the issues of transparency overall during the COVID-19 response.

Unfortunately, you were very evasive and you did not answer a lot of our questions, and we were left off that call with many questions unanswered. But I'm going to try my best to get as many questions in in my little two minutes that I have left, in making up for that meeting we missed.

There's a lot of -- there was a lack of coordination, lack of transparency with the nursing home response. And I do want to ask, going forward, do you support a safe staffing ratio for many of our nursing homes and hospitals that were overloaded during the height of the COVID-19 pandemic last year? That's my first question.

The second question is in the Executive Budget proposal there are significant hospital reductions that are being proposed by the Executive. I'm sure that you and the Executive had a discussion about some of these proposals. But one that's going to be particularly hurtful and hurtful obviously in the context of COVID-19 and the response that we've had to do around

COVID-19, is the VAPAP reduction, $99 million in reductions to VAPAP, which provides critical, critical financial support to our safety-net hospitals in Black and brown communities, like the one I have in my district, St. John's Hospital, which now I believe your department is requiring them to reduce their bed size, even though they've received thousands of patients during the height of COVID-19.

In fact, we received the first COVID-19-positive patient in all of Queens at St. John's Hospital. Now we're proposing additional cuts on that infrastructure, which I think is incredible.

But it also speaks to my third question, which is the root of why COVID-19 was so pervasive in Black and brown communities, is because your agency lacked the ability to address health inequities. Your zip code should not determine your quality of life or health outcomes. But the reality is if you live in Far Rockaway, if you live in Jamaica, if you live in the

South Bronx and you have those zip codes -- and some part of Brooklyn as well -- if you have those zip codes, it determines your health outcomes.

So I want to know, in my third question, what is your agency going to do to --

CHAIRWOMAN WEINSTEIN: Better leave some time, sir.

ASSEMBLYMAN ANDERSON: I've got 30 seconds. I have 30 seconds.

(Laughter; overtalk.)

ASSEMBLYMAN ANDERSON: And my third question --

CHAIRWOMAN WEINSTEIN: Okay, he's not going to have time to answer --

ASSEMBLYMAN ANDERSON: Right. And my third question, really quickly, what do you plan to do to address health inequity in {inaudible}.

COMMISSIONER ZUCKER: So I'll answer that. First, I would take issue on the issue that the department has not focused on health inequities. This has been one of the high

priorities of the department all along.

The issue of COVID being increased in the Black and brown communities, I concur with what you say. And we've looked at that. I've said all along that these health inequities will be addressed, because they've been -- you know, they have been uncovered even further.

It's not just the Department of Health. This is an issue of a societal issue that needs to address it. So we will tackle it from our front, from the Department of Health and from government, at least state government. And that's one issue.

So I -- you can -- you have my word on that. And we've been working on this for a long time, on health inequities in many different areas.

On safe staffing, I've already answered that question regarding what the Governor's going to -- how to address that with regards to the nursing homes.

With regard to the 99 million on VAPAP, Donna, do you want to tackle that one?

MEDICAID DIRECTOR FRESCATORE: Yeah, I think I would just quickly say, being respectful of time, that, you know, as I said before, we worked -- the department and our colleagues worked, you know, with all of the hospitals and facilities that are essential and in need of immediate cash assistance.

And the reduction in the budget actually is a funding that was available but is not needed, for a number of different reasons. So that's what it is. There's a commitment for VAPAP in the federal fiscal year '22 budget.

CHAIRWOMAN WEINSTEIN: Thank you.

So we're going to move on to the Senate now.

CHAIRWOMAN KRUEGER: Okay. Thank you very much.

And our next Senator is Senator -- oh, excuse me. I believe it is Senator Brouk. Yes, it is Senator Brouk.

Are you with us, Samra?

SENATOR BROUK: I'm here.

CHAIRWOMAN KRUEGER: Hi.

SENATOR BROUK: Can you hear me, all? Okay, we did it. Thank you so much, Chairwomen.

I'm happy to be asking these questions today. I want to start quickly by just having it on the record, in addition to how many other people have said it today -- I think it's illogical and unconscionable that we are sitting in a global health pandemic and that there is even a question of cutting much-needed funding for healthcare. But that's not what we're going to go into today, because I could fill a book with my thoughts about making cuts when there are dire needs.

I want to talk about something that is really affecting the community here in Rochester, and that is the changes to the 340B program. I want to tell you what that means for the Rochester area. That's going to affect nine Federally Qualified Health Centers. They serve 140,000 patients. In a relatively small city, that is a lot. They will lose a minimum of $11.5 million in much-needed funding necessary to function.

These are clinics like Jordan Health, Trillium Health -- which is a Ryan White clinic -- and our safety-net hospitals through University of Rochester and Rochester Regional Health.

I'm receiving emails, I'm receiving calls. Just now I received an email begging -- from the CEO of one of these organizations literally begging me to help stop this, because these are the folks who are feeding, housing, giving transportation to low-income families, communities of color, and people living with HIV -- all of whom are the folks who have had disproportionately negative effects because of COVID-19. And at this time we are going to make their lives harder and make it harder to get the care they need.

So my question is how is this the right time to move forward with cuts like this that will so negatively affect our communities?

COMMISSIONER ZUCKER: Donna, do you want to address the 340B?

MEDICAID DIRECTOR FRESCATORE: Yeah, certainly. So, you know, we touched on this just slightly before.

So we -- I think we understand and we appreciate -- I've talked to many FQHCs, many 340B providers over the course of the last 12 months, since the pharmacy carve-out was enacted, and we understand and we appreciate the very valuable services.

The question is under the current way that 340B is funded -- it's by excess reimbursement from the managed care plans over and above the cost of prescription drugs, from which some report that 50 percent of that excess is taken by third-party administrators. It's not because the FQHC is doing anything wrong; they need to get the prescription to one of their patients.

So the Executive's approach is different. It says let's be transparent about how much Medicaid pays for drugs, and let's set up direct funding to go to the Federally Qualified Health Centers, the Ryan White 340B providers, and others that are

providing these services. As opposed to having it in these very opaque kind of pharmacy reimbursement structures that --

SENATOR BROUK: Donna --

MEDICAID DIRECTOR FRESCATORE: -- quite honestly, the federal government's looking at as well.

SENATOR BROUK: Let me finish really quickly. Sorry, I didn't mean to interrupt you, but time is running out.

But I just -- the answer I'm looking for here is how it's helpful to these providers to not have it. Like before, they had a more direct payment -- now those savings are going through the state. And so that is I think -- that does not make logical sense when folks are saying that they need that money and that not having that money and that the reimbursement fund that's set up in this proposal will not fully make -- fill that hole.

And I know I'm out of time. So if you wanted to follow up on written, that's fine. Thank you.

MEDICAID DIRECTOR FRESCATORE: We'll do that.

CHAIRWOMAN KRUEGER: You have many people asking about that program, Donna. So anything in writing that helps us see the argument that I don't think we're seeing is fine. Thank you.

Assembly.

CHAIRWOMAN WEINSTEIN: Assemblywoman Miller.

ASSEMBLYWOMAN MILLER: Hi. Can you hear me?

CHAIRWOMAN WEINSTEIN: Yes, Missy.

ASSEMBLYWOMAN MILLER: Okay. Thank you very much, Chairs.

And hello, Dr. Zucker.

You know, I'm just going to ask my questions up front, and in case there's not enough time I'm going to ask you up front to please reply to any of my questions afterwards, either by email or if we can actually ever have a conversation, I would appreciate that.

First, I hear you say repeatedly that

you're very happy to continue the conversation, to have a conversation, but I don't know if you realize how hard it is to actually have a conversation with you. I've tried very hard several times and sent you emails and I don't even get a response. If I really need a direct response, I'll contact Erin or -- but it is very difficult to reach you.

That being said, I'm just going to ask my questions. We've talked a little bit about CDPAP and a lot of my colleagues have asked some of the questions, but I'm curious -- the process of awarding the remaining 68 FIs, as Chairman Gottfried had alluded to, it seemed a little similar to the medical marijuana selection process of ROs. It just doesn't seem that the ones -- the companies that have a history of wage and hour violations or Medicaid fraud, some don't have the financial means to carry payroll, those were awarded the contracts, but not some of the FIs that have been, you know, serving the CDPAP population for so many

years successfully.

So I'm curious, you know, what that actual process was. It doesn't seem to be very transparent.

I'm also asking the intended goal of the fiscal intermediary authorization process was to ensure the department has a record of overseeing those qualified FI providers. But the Legislature never authorized or directed the Department of Health to reduce the number of FIs so significantly. And I have a lot of concerns that that drastic reduction will cause some kind of a bottleneck as everybody's trying to streamline their -- you know, the closed FIs into the remaining FIs.

And the people who would suffer would be those not getting their services because their aides aren't registered yet or the paperwork isn't complete.

So those are two concerns I have. Then last -- well, two more. On COVID, as far as reopening schools, reopening businesses, can you define what is an acceptable risk of transmission for schools

and businesses, and what mitigation strategies will accomplish that? Because we really do need to get our kids back in school five days a week, all of them.

And then lastly, we've talked about -- everybody's asked about the turnover rate. It's extremely high, especially in home care agencies. Why are we cutting by 50 percent the home care worker recruitment and retention funds? This more than ever is now when we need to recruit more help.

So those are my questions. I see I've used up my time, so I would appreciate a response directly by email or phone. Thank you.

COMMISSIONER ZUCKER: Okay, we will do that.

CHAIRWOMAN WEINSTEIN: Yes. And Dr. Zucker, if you could share that with Senator Krueger and myself, we'll make sure the other members have access to that.

Senator Krueger.

CHAIRWOMAN KRUEGER: Thank you.

You may need a few speechwriters to

help you get all of this done in a reasonable time period.

Next up is -- oh, he's been very patient all day -- George Borrello, Senator George Borrello.

SENATOR BORRELLO: Thank you so much, Chair Krueger. Thank you so much. I appreciate it.

Dr. Zucker, thank you for being here. I want to follow-up on the small business situation. The hospitality industry has been devastated by this pandemic and the lockdowns have been unfortunately far worse. By your own data -- which I'm questioning to begin with -- your own data, only 1.4 percent of infections are coming from restaurants, and yet these lockdowns and restrictions continue.

Just as we thought we were kind of getting out of the woods, you released information on guidance on special events, things like weddings. And at a wedding you cannot have people that are unrelated sitting at the same table, according to the

Department of Health guidance that we received. However, at a restaurant, you can have 10 unrelated people sitting at the same table.

What science are you relying on to determine that people at a wedding have to be related but not at a restaurant? That's my first question.

COMMISSIONER ZUCKER: So part of this -- you have to look at the guidance -- let me see if I can explain some of this to you on the restaurants and the way things are set up.

The environmental issues come into play as to why we -- the speed at which we're opening different facilities and restaurants particularly, particularly downstate. I'm just going to bring up some points which I've heard that you basically have put a light on --

SENATOR BORRELLO: Well, and I have a real basic question. How are 10 people sitting at a table in a restaurant different than 10 people sitting at a wedding? Which,

by the way, could be the same restaurant.

COMMISSIONER ZUCKER: Well, at a wedding of 500 people, let's say, or 300 people that are interacting, you have a lot more interactions among a lot of different people there. Right? And so you run the risk of a significant problem.

I will just personally tell you a year ago in January, up in New Rochelle before this all began, I was at a wedding with 500, 600 people and I saw the amount of interaction that people had at that point in time, and I said to myself, Imagine if this COVID issue was just one month later -- or the wedding was just one month later, the amount of interaction you would have had with all those different people.

So that's the difference, right?

SENATOR BORRELLO: Right, but I'm just saying it's not -- they're limited to 150 people, first of all, so it doesn't make any difference. And I apologize, I don't mean to cut you off, but I have a short period of time.

Here's my other question. My wife and I both had COVID. And luckily we recovered, but we spoke with contact tracers. The contact tracers said -- asked us, you know, do you know where you contracted COVID, and we said no. And then they said, Well, have you been at restaurants? Yes. Have you been in stores? Yes.

My question is, how can your contact tracer data be accurate when you don't have a category for "unknown"? I have to believe that most people cannot pinpoint the point at which they actually contracted COVID, yet your data -- and there is no option for contact tracers to hit "unknown." How do you justify this data, which you're using to determine the life and death of businesses right now, when you don't have an actual category for "unknown?"

COMMISSIONER ZUCKER: Well, we've reached 85 to 90 percent of people. We've done about 840,000 contacts, so somewhere in that range. We have about 8,000 or so contact tracers.

This is the hard part of contact tracing; you have to sort of try to get as much information as you can as quickly as you can, and you have to try to track the individuals who are positive or individuals -- better to say individuals who have been exposed, to be sure that they're not positive.

SENATOR BORRELLO: So data -- the contact tracers are just guessing, is really what you're saying, that they don't --

COMMISSIONER ZUCKER: No, they're not guessing.

THE MODERATOR: Time.

(Overtalk.)

COMMISSIONER ZUCKER: No, they're doing --

SENATOR BORRELLO: But there is no "unknown." What about -- I did -- I don't know where I got my -- where I contracted that, and that wasn't an option for the contact tracers. I know my time is up, but that's a serious consideration.

COMMISSIONER ZUCKER: Right, but the

contact -- right, but I will say that that contact tracing and what we have done is what has helped prevent the spread of this disease.

I mean, it is just -- these are just straightforward public health measures that are put into place. The masks, the hand washing, right, the distance -- the social distancing, the contact tracing, the vaccinations, these are just the standard things we do to make sure we prevent this pandemic from spreading in New York and elsewhere, for that matter. So --

SENATOR BORRELLO: With all due respect, sir, we have more people in the hospital with COVID right now than Florida, with none of those restrictions. So I have to question the science on this.

COMMISSIONER ZUCKER: I'm going to take issue with that. But okay.

CHAIRWOMAN WEINSTEIN: We go to Assemblyman Abinanti.

ASSEMBLYMAN ABINANTI: I'm unmuted, I guess? There we go.

Thank you very much, Commissioner, for joining us today.

COMMISSIONER ZUCKER: Thank you.

ASSEMBLYMAN ABINANTI: Unfortunately there's been no mention of one very vulnerable group of people, people with disabilities. As of this week, the numbers I've seen, of the 34,500 people who lived in OPWDD residential settings, 6,716 tested positive and 538 died from COVID-19. That's and 19.4 percent infection rate, and a 1.6 fatality rate -- double the state's transmission and six times the fatality rate of the state.

Number one, on April 10, 2020, a state directive to OPWDD providers -- almost identical to the March nursing home directive -- requires return of COVID-19 patients from the hospital to OPWDD residential settings and prohibits their being tested before return.

How do you defend that this directive is still effective and has not been modified?

Number two, on November 10, 2020,

there was a state directive to OPWDD providers, unique to OPWDD, that allows direct support staff exposed to a confirmed COVID-19 case to go to work so long as they quarantine when they're not at work.

In light of the fact that over 11,600 staff in OPWDD direct-care programs have contracted COVID-19, how do you defend that this directive is still effective and has not been modified?

And number three, the numbers that I was given come from the state. This is about those who got COVID-19 in certified residences. Do these numbers include those who died in hospitals, or just those who died in residences?

So my three questions are why are we still requiring direct return of COVID patients to OPWDD residences? Why are we allowing exposed staff to go into those residences? And lastly, are these numbers actually accurate or do we have the same problem we had with nursing homes?

COMMISSIONER ZUCKER: A couple of

things.

The first thing is that I didn't catch all the percentages, and I will go back and look at them. But this is a congregate setting. This is one of the challenges we've had with congregate settings and disease spread, whether it's the nursing homes, college --

ASSEMBLYMAN ABINANTI: Yes, but you yourself, Commissioner, said that the congregate settings are getting it from staff.

COMMISSIONER ZUCKER: Yes, so let me finish. Right.

ASSEMBLYMAN ABINANTI: So why are you allowing staff that has been exposed to go into the congregate settings?

COMMISSIONER ZUCKER: Let me -- let me finish. Part of this is OPWDD. You need to direct it to the commissioner of OPWDD --

ASSEMBLYMAN ABINANTI: I did, and they said talk to the health commissioner. They said all of this comes from the Department of Health.

COMMISSIONER ZUCKER: Number two, the issue with OPWDD, all those settings, they have become a priority for vaccinations so that we can make sure that the residents there are protected and no longer at risk.

The issue of testing, I'd be happy to follow up on that, but the testing that we have provided for nursing homes we provide for other facilities, and that will hopefully decrease the spread. But as --

ASSEMBLYMAN ABINANTI: The directive still in effect specifically says that they cannot test.

COMMISSIONER ZUCKER: Well, I will get back to you on the details after I look at the directive. I want to go through that first.

But as I said, from the -- the key points that I have is yes, a congregate setting, and yes, vaccine is a priority in that setting to make sure that doesn't become a problem.

CHAIRWOMAN WEINSTEIN: We'll go now to the Senate.

CHAIRWOMAN KRUEGER: Thank you.

Our next speaker will be Senator Julia Salazar.

SENATOR SALAZAR: Thank you. Thank you, Commissioner and Deputy Commissioner, for joining us today.

I want to ask about the -- really what the Executive Budget is doing to keep safety-net hospitals operational during a time when we need them the most. The Medicaid spending cap, lowered reimbursement rates, the Executive Budget's threats of additional Medicaid cuts across the board means that hospitals who treat mostly low-income patients and like hospitals in my own district are under financial strain.

And I just want to know what exactly is the Executive Budget doing to keep these safety-net hospitals operational right now?

COMMISSIONER ZUCKER: This is an enormous issue. The safety-net hospitals across the state were challenged prior to the pandemic. Since the pandemic, obviously -- particularly upstate when we cut back on

elective surgery and they didn't have cases, so they were stressed even further. So we recognize that.

We're working with our team, the Office of Primary Care and Health Systems Management, to figure out how we can make sure they have the resources to continue to provide the care to their communities. This is a challenge.

Regarding the cap, the global cap -- because that ties into this as well, I think that Donna will address some of that. But we are looking at these issues of how hospitals across the state that were challenged over the course of the last year can meet their needs.

Donna, do you want to address the --

MEDICAID DIRECTOR FRESCATORE: Sure. Thank you, Dr. Zucker.

And speaking for the Medicaid program, I can tell you this is, you know, a concern that we share as well and we work very closely with our colleagues and Dr. Zucker here in the department because we understand

that Medicaid plays an important role in the financial viability of those very needed hospitals, and other providers as well.

So we talked a little bit earlier about a series of programs, including the Vital Access Safety Net Provider Program, which supports projects for facilities that are selected due to their financial condition and the role they play in serving New Yorkers. We talked about VAPAP a bit, including that commitment as well as the Value Based Payment Quality Incentive Program.

The budget in '22 includes about $900 million in funding to support those hospitals. Right? That's over and above reimbursement for Medicaid.

There's also, you know, a proposal that we haven't quite touched on and that is for our Essential Plan here in New York. About 880,000 people as of this morning receive coverage through that program. We've recognized that, you know, those provider reimbursement assumptions have not been

changed since the program was first implemented in 2016.

And so we anticipate, as far as part of the state plan here, that an additional $420 million will be invested in provider reimbursement for both inpatient and outpatient services. Also helping those hospitals that are serving those -- you know, that's a huge program by anybody's standard, you know, 880,000 people.

Those are just a few of the initiatives, and we're happy, you know, to have further conversation about any of those programs in more detail.

SENATOR SALAZAR: All right. Unfortunately I'm out of time. Thank you.

CHAIRWOMAN KRUEGER: Thank you very much.

Assembly.

CHAIRWOMAN WEINSTEIN: Assemblywoman Hunter, please.

You need to pull her; she needs to leave for conference. Thank you.

ASSEMBLYWOMAN HUNTER: Very good,

thank you. Thank you, Chair Weinstein. I appreciate it.

This is relative to the consumer directed. And I don't know who wants to answer. I know there was a couple of questions about this.

But let me just lay out specifically in Onondaga County, there's over 350,000 residents, and not one FI was awarded in our entire county. So many of the organizations, the not-for-profits that have provided this crucial service to many of our most vulnerable -- some of our largest organizations, some of our organizations who deal with refugees and new Americans who speak the language of those who have come here, were not awarded.

And so I heard what you said about, you know, the award process, and apparently there's supposed to be some sort of review after this. But I literally have FIs in Rockland County who are supposed to be now the FIs who are supposed to provide services in Onondaga County.

So I can't imagine -- I have not-for-profits, you know, calling my office trying to figure out what happened, longstanding organizations who have been providing this service for years and years and years. And we're in a situation now where not one single provider was given an award to provide Consumer Directed FI services in one of the Big 5 counties.

MEDICAID DIRECTOR FRESCATORE: So I don't know the specifics of Onondaga, but I will certainly look into it.

What the RFO allowed was actually collaborating partners that might be local. The idea there was that rather than have every organization use funding, for example, to process payroll or to check workers' comp, that there would be one lead organization that would perform those administrative services, and they would have collaborating partners on the ground locally.

So I will be happy to look into your concerns about Onondaga.

ASSEMBLYWOMAN HUNTER: Please.

I can understand the collaboration. And there has been an abuse with FIs. I admit that there are organizations that should not be delivering this consumer, you know, programming. But these longstanding organizations should be the leads and should have other organizations subbing to them.

So I am critical, you know, asking if you could please take a look at this. It makes no sense and it makes no sense to not have a lead organization to sub even to the rest in a county as large as mine.

MEDICAID DIRECTOR FRESCATORE: I'll look into that.

ASSEMBLYWOMAN HUNTER: Thank you.

CHAIRWOMAN WEINSTEIN: Thanks.

Back to the Senate.

CHAIRWOMAN KRUEGER: Thanks.

Do we have Senator Stec with us still?

SENATOR STEC: Yes.

CHAIRWOMAN KRUEGER: Hello, Senator Stec.

SENATOR STEC: Hello, how are you?

CHAIRWOMAN KRUEGER: All right.

Welcome.

SENATOR STEC: All right, thank you very much.

Commissioner, Doctor, thank you very much for your testimony today. I understand it's been a long day.

And I've been paying attention and listening to the questions, so if I could just briefly start with a statement. I just -- in listening to my colleagues and my own personal observation, I want to say that your department's unresponsiveness to the Legislature in our communications has been unacceptable and frankly troubling.

And I'm also personally troubled, as I know a lot of my colleagues are, about what apparently has been a partisan kind of communication as far as having meetings with one side of the aisle and not with the other. We're all in this together. And certainly my constituents want to be involved in the discussions as to what's going on as well.

So with that said, I do have one question that I've got to ask, and frankly

I'm surprised that no one's asked it yet. Early on, to previous questions about sending COVID-positive patients back into nursing homes, you stated that COVID was already largely present in these homes from other sources, like in your example with staff.

So I just want to understand, in layman's terms, if there's one room with 50 people in it and one of those 50 people has COVID, and then there's another room of 50 people and 20 of those people have COVID, are you saying that you would expect the two rooms to have the same infection rates?

COMMISSIONER ZUCKER: I think that, you know, you're asking a question without my knowing more of the details of those -- of the scenarios. So if you have --

SENATOR STEC: All other things being equal, Doctor. All other things being equal, one in 50 and 20 in 50, they would have the same infection rate?

COMMISSIONER ZUCKER: But how are you defining infection rate? If the -- if you're saying --

SENATOR STEC: Well, let me rephrase it. Would you --

COMMISSIONER ZUCKER: One out of 50, 2 percent have it. Twenty out of 50, 40 percent have. Right? Right, I get what you're saying. That's how many people have it.

SENATOR STEC: Now, which room would you rather be in? Let me ask it that way. What room would you rather be in? Would you rather have your parent or grandparent in the room with one out of 50 or 20 out of 50?

COMMISSIONER ZUCKER: It's a hypothetical question.

SENATOR STEC: It's a very real question, Doctor.

COMMISSIONER ZUCKER: Well, no, I see where your reasoning is going here. You're going to say, well, if there's only one person who has it in the whole facility.

But the bottom line is that it's in the facility. And it's in the facility with one person or more. And it's not a fair question to ask whether, you know, the room

had 20 people in there versus one person in there, because the disease is there. The disease is already in the facility.

And so if I were in that room and one person -- I walk into a room with one person with COVID, I'd be as concerned as if I walked into a room with 20 people with COVID. Because it's already there.

I mean, I understand what your -- what your point is.

SENATOR STEC: Right? I mean one -- well, all right.

Well, with that said, do you have a list of nursing homes that followed the directive from March 25th that accepted nursing -- COVID-positive patients? Do you have a list of those?

COMMISSIONER ZUCKER: I don't have it off the top of my head, but I do have a list.

SENATOR STEC: I'd like to see that list, please.

COMMISSIONER ZUCKER: Sure.

SENATOR STEC: And also, do you know how many COVID-positive patients were

accepted at each of these facilities? If you don't have that off the top of your head, I would like that as well.

COMMISSIONER ZUCKER: I can get that. I can get that.

SENATOR STEC: All right. I see my time is up. I have more, but I'll continue to listen. Thank you.

CHAIRWOMAN KRUEGER: Thank you.

Assembly?

CHAIRWOMAN WEINSTEIN: Thank you. Now we go to Assemblywoman Niou.

ASSEMBLYWOMAN NIOU: Hello. Thank you for being here. Thank you for putting me up, Helene. I just -- I don't know if I can see what was happening. But I just wanted to say, you know, I'm seeing in our budget cut after cut after cut after cut of our healthcare budget and our healthcare safety net, and it's very, very concerning. This is one of the things that I just wanted to echo a lot of my colleagues on. What Samra said is really, really true, our Senator Brouk from upstate New York.

You know, the answer was the Essential Plan, which is one of the only things that was proposed for funding -- and that was really concerning because we don't even know if it's even an allowable use under federal law. And this payment goes directly to the healthcare plans rather than to providers, and then we don't even know what guarantees there are that providers will ever see this money. So I just wanted to put that out there.

Also, many of my colleagues actually submitted memos and requests for FOIL requests, and not one has gotten a response. Do you commit to cover -- to actually hand over all the communications that happened with hospitals' and nursing homes' lobbyists regarding the corporate legal immunity?

COMMISSIONER ZUCKER: So regarding FOIL requests, we respond to the FOIL requests. We get an unbelievable amount of requests every day. I don't have the exact number; I had it last year, and that was prior to the pandemic.

There is -- so if there's information that we can release, we do release it. Sometimes you have FOIL requests that have thousands and thousands of pages to them, I'm not exaggerating here, and we have a team that has to address it. And so we do move forward.

ASSEMBLYWOMAN NIOU: Yeah, I mean, just like -- you understand like we've been waiting for a really, really long time, I mean including our Healthcare chair has been waiting for a very, very long time on some information that is really necessary for the Legislature to be able to conduct its work.

MEDICAID DIRECTOR FRESCATORE: If I could add as well to your first questions --

ASSEMBLYWOMAN NIOU: I actually wanted to continue to ask a couple of other questions. So do we -- because I have limited time. Do we know how many COVID-positive patients were actually admitted to nursing homes during that March 25th order period.

COMMISSIONER ZUCKER: Like I said, we

can get you that information. That was asked before.

ASSEMBLYWOMAN NIOU: Yeah, okay --

COMMISSIONER ZUCKER: But I -- can I clarify this? You were saying how many COVID-positive patients were admitted to nursing homes. Now -- and this is a very important point -- whether someone is COVID-positive does not mean they are contagious.

ASSEMBLYWOMAN NIOU: Okay.

COMMISSIONER ZUCKER: And I will reiterate this, you know, over and over.

ASSEMBLYWOMAN NIOU: I understand.

COMMISSIONER ZUCKER: No, I really want to make sure of this point because it's important. The test that measures COVID measures dead virus. You can walk around for weeks with a COVID-positive test. It does not mean that you are contagious.

So saying that someone went back to a nursing home and they had a COVID-positive test does not mean that they are contagious. And in fact when we looked at this

information and when I was trying to go through this before about how long someone was in the hospital and the incubation period and their initial symptoms, you will find that people were already past their infectious period, and the viral load is much higher earlier on. And I think that's an important point.

And this is where the issues of fact get lost when there's a narrative out there which is just not true. And I don't mean to be so harsh about this, but it is important, when it comes to science, to make sure it's correct.

ASSEMBLYWOMAN NIOU: Okay, so I'm really glad that I was able to allocate some of my time to that important PSA. But I just wanted to also ask the chairwoman if I could -- I apologize to my colleagues, because I really did want to get to my next question and I wasn't able to.

CHAIRWOMAN WEINSTEIN: Ask your question.

ASSEMBLYWOMAN NIOU: Okay, great,

thank you.

How much does each COVID patient actually get reimbursed in Medicare in a nursing home, and how much higher is that compared to a regular nursing home resident who is reimbursed via Medicaid? Because I want to just -- you know, I feel like we need to have that answer very clearly because, you know, I'm starting to feel, with all of these answers, that there's a clear financial motive behind every single decision that this administration has made.

COMMISSIONER ZUCKER: With regards to reimbursement, maybe Donna can answer that.

MEDICAID DIRECTOR FRESCATORE: Yeah, I'd like to suggest may we circle back to your question, because the Medicare reimbursement, as you know, is not for custodial care, it's for skilled care in a nursing facility. So it is a different level of care.

But we're happy to talk more or hear more about your question.

ASSEMBLYWOMAN NIOU: Yeah, I would

really like to get that information. And if you could just get that for me, that would be great, because otherwise --

MEDICAID DIRECTOR FRESCATORE: There's very different criteria, is my point, about when Medicare pays for a nursing care stay. It's not custodial care, it's care that's generally rehabilitative, it includes therapies, and Medicare pays more than Medicaid for that reason alone.

ASSEMBLYWOMAN NIOU: Okay. I just feel like there are some differences also in just the financial incentives that folks are getting different kinds of care with different kinds of financial motives behind them, and we probably need a full oversight hearing ASAP.

CHAIRWOMAN WEINSTEIN: Thank you. So now we'll go back and go to the Senate.

CHAIRWOMAN KRUEGER: Thank you.

Senator O'Mara. Oh, excuse me. Senator Ritchie was supposed to go before Senator O'Mara.

So hello, Senator Ritchie.

SENATOR RITCHIE: Hi, Senator Krueger. Thank you.

Commissioner, my questions are pretty much the same two questions I have asked year after year during the budget hearings. And you know that I represent a very rural area. We have some economic challenges. A lot of the patients that are in our hospitals and our nursing homes are Medicaid. And I look at the Governor's comprehensive plan on the nursing homes, and we all would agree we want to do whatever we can to improve patient care. But if there's no funds behind it, I don't know how this is going to happen.

As it is, we've had several nursing homes in my district that have closed. Our biggest nursing home, as your staff well knows -- we've called multiple times -- is on the brink of closing its doors. So without an increase in the Medicaid reimbursement rate, I don't know how they can stay open, let alone implement any changes as far as staffing and new patient care.

And along with that, the other

question I ask every year is we are so short-staffed on medical professionals, especially nurses. We have two SUNY schools that I plead every year is there any way we can try to find some way to boost the enrollment and help the situation, and it's gotten worse in the pandemic.

So I guess my question is how do we accomplish this goal of better care, keep our nursing homes and hospitals open, if we're not going to look at upping the Medicaid reimbursement? And what can DOH and the state really do this time to help with the short-staffing issue with regards to doctors and nurses?

COMMISSIONER ZUCKER: (Muted.) On the second question, we are addressing this issue of staffing. This goes back to what I was saying earlier, that we need to look at how we address the professional development for health professionals, both in urban but particularly in rural areas.

This is a conversation I've had also with our SUNY system leadership as well,

particularly the nursing schools that they have, as well as their medical schools, on how do you get people out there.

So we will continue to do this. I think the pandemic has given all of us -- has reenergized us to make sure that the healthcare professionals across the state are there and available, and I don't even need to go through all the different specialties.

Regarding the reimbursement, Donna, did you want to address the Medicaid number for the hospital challenges?

MEDICAID DIRECTOR FRESCATORE: Yeah, I think on the Medicaid nursing home -- I mean, I cannot speak to any one nursing home or facility's, you know, rates in particular, you know, today. Happy to talk about that separately.

But, you know, I think that as respects the nursing home initiatives and the accountability and the patients over profit in the 30-day amendments to the Executive Budget, we -- you know, we believe that based, you know, on past reporting that

there are many nursing homes that already are at the levels that are required, the 40 percent on resident-facing care and the 70 percent on patient care.

And we'll know more about that as time goes on. That has an implementation -- an effective date of January 1, 2022, as you know, and it anticipates regulations.

SENATOR RITCHIE: Thank you.

CHAIRWOMAN KRUEGER: Okay. Assembly?

CHAIRWOMAN WEINSTEIN: Yes, we have Assemblyman Perry next.

ASSEMBLYMAN PERRY: Thank you, my colleague. And good evening to the team from the Department of Health.

CHAIRWOMAN KRUEGER: Not evening yet.

ASSEMBLYMAN PERRY: Some of my colleagues raised questions about the CDPAP program and the whole new implementation of this program that is supposed to be reducing costs.

So Dr. Zucker, I'd just like to ask you that I think it's -- that the program was implemented as a cost-saving mechanism, and

it became much more used than anticipated or expected, and the costs soared. So you want to reduce the cost of this program that so many individual families depend on.

Many of the providers who participated over the last couple of years have complained that the process under this new program is being implemented and the screening and reviewing of these applications was very ad hoc, so a lot of -- there's a claim of arbitrary and capricious action and behavior on the part of the company that was picked to do this review. There are companies that were provided -- that were selected who submitted almost exactly the same submission -- of companies who got compared to those who didn't get.

I think there's a need for a real, real clear, transparent review of all of those applications. I was alarmed to learn from my colleague just now that there are counties where not even a single provider within the county was selected. That is outrageous.

It seems something is definitely wrong with the whole process and that it was rushed or it was not done by people who had the ability and the knowledge and the system in place to do this review and make it fair and transparent, and so that people who are eligible and qualified to do the job are selected.

So I would like to hear from you if you will review this program before you implement it. Because the complaints and the problem are outrageously large and it's not going to reduce the cost of this program if so much money is going to a contracted company just to administer it, money that could be used to provide the program.

MEDICAID DIRECTOR FRESCATORE: Just -- if I could address that.

First, I want to be clear that for the Consumer Directed Program the department has and continues to support consumer-directed care. There is no cut to the level of service here, so consumers don't lose hours.

I also want to clarify that there was

no contractor that reviewed these applications. These applications to become a fiscal intermediary were reviewed by DOH staff. I just want that to be clear on the record.

The process is in its first stage. We've made conditional awards. The next step is to do any debriefings asked for, and many parties already asked for them. We talked about that earlier.

CHAIRWOMAN WEINSTEIN: Thank you.

You know, this question has been asked a number of times and you've given the same answers. So I'm going to ask my colleagues to pay more attention when you speak so that they don't reask the same questions.

So we're going to go on to the Senate.

CHAIRWOMAN KRUEGER: Fair enough. Fair enough. Good point, Helene.

Now it's Senator O'Mara, ranker on Finance.

SENATOR O'MARA: Thank you, Senator.

Thank you for being with us today, Commissioner, the many hours you're spending

with us. I do appreciate your time.

I do have some questions for you, but also some concerns about many of your comments today about being -- wanting to be open and transparent and have a dialogue with the Legislature when all of your actions speak to anything but that.

Your department waited until last evening to brief our staffs on $1.6 billion in Medicaid cuts. We've had no time to review and respond to this proposal and what's out there. You tell us that after -- stonewalling the Legislature for over six months on information requests, that finally when you're ordered to turn it over -- and that the Empire Center, that was requesting those records, issued a report a week ago, yet you haven't taken the time to really look at that except you know enough to deny that whatever he's reporting is not accurate.

You stonewalled the Legislature on records, you stonewalled the Empire Center on records. And -- but in every one of -- and then you've used the DOJ investigation as an

excuse for not providing records. Yet in every one of your deferrals of responding to the FOIL request, and in any court arguments over the lawsuit on that, you never raised the Department of Justice investigation as a reason for that delay. So nothing's really ringing true here.

But I have a question for you. Who on the second floor -- and you know what I mean by the second floor, the Governor's office and his top aides -- who did you have discussions with over that six-or-seven-month period about delaying the release of the records to either the Legislature or to the Empire Center?

COMMISSIONER ZUCKER: Well, as the Governor has said, you know, last week, that a void was created and that the information should have been released sooner. And he regrets that, and I share his feeling on -- feelings about that.

SENATOR O'MARA: Commissioner, whose decision was it not to release the records?

COMMISSIONER ZUCKER: I -- I -- I said

to you -- well, as I've said, that the information should have been released sooner, which is what the Governor said. But the --

SENATOR O'MARA: Commissioner, whose decision was it to not release the records?

COMMISSIONER ZUCKER: The details and the specifics of how this came to pass are the subject of an ongoing investigation. And when a full determination has been made and -- it will be released to the public about this process.

However, at the present time --

SENATOR O'MARA: Commissioner -- commissioner, have you received any subpoenas from the New York State Assembly or the New York State Senate in regards to the nursing home investigation?

COMMISSIONER ZUCKER: The department -- the legal issues that are dealt with the legal department. And if we get a letter or a request --

SENATOR O'MARA: Have -- you would know if you received subpoenas from the State Legislature requesting records related to

this. Have you or have you not?

COMMISSIONER ZUCKER: The -- at this point in time, like I said, any of these issues that deal with the legislation of -- or from the Legislature, that deals with the legal department. And I leave it for them to process that.

SENATOR O'MARA: Has the Department of Health or the Governor's office, the State of New York, responded to the DOJ federal request for information from August or October of last year?

COMMISSIONER ZUCKER: So this goes back to the issue about the DOJ letter, right? And as I said, that my -- I'm aware of the letter and I have said that the -- just like my data team deals with the data analytics, my legal team deals with these issues of any of the letters that -- that come in. So I --

SENATOR O'MARA: So you don't know whether your legal team has responded to the federal requests?

COMMISSIONER ZUCKER: There is a

letter that went back, right, for -- from -- to DOJ and --

SENATOR O'MARA: When will we be provided with that letter?

COMMISSIONER ZUCKER: There is a process here. There is a process. And I am sure that you respect the process that an investigation is ongoing, and that I am not going to be disrespectful of a process that involves any kind of federal inquiry, any inquiry. So --

SENATOR O'MARA: Have you -- have you received a subpoena to testify before any grand jury?

COMMISSIONER ZUCKER: I'm going back to the same issue, that I'm saying there's a federal inquiry process that's going on and -- that I hope that you, as well, will respect as much as I will. And that if that -- when that process goes forward, then I will comment. But right now this is an investigation that our legal team will address.

SENATOR O'MARA: My time is up. But I

find virtually everything you've said here today to be totally without credibility.

COMMISSIONER ZUCKER: I'm sorry to hear that.

CHAIRWOMAN KRUEGER: All right. Thank you. Assembly.

CHAIRWOMAN WEINSTEIN: We're going to go -- yes -- to Assemblyman Jacobson.

ASSEMBLYMAN JACOBSON: All right. Do you hear me now?

CHAIRWOMAN WEINSTEIN: Yes.

COMMISSIONER ZUCKER: I hear you.

ASSEMBLYMAN JACOBSON: Thank you. Thank you, Madam Chair. And thank you, Dr. Zucker, for your public service and testimony today.

I wish to address the disastrous vaccination process in the state with moving vaccination sites and an inconsistent, confusing and difficult appointment process.

First, I'm advocating for the state to establish permanent vaccination sites in the two cities I represent, Newburgh and Poughkeepsie.

Second, I'm calling on the state to simplify the existing sign-up process, which can at best be described as haphazard and frustrating.

Last month I called for this permanent site. Shortly after that, the state established a pop-up site at the Newburgh Armory and another at Beulah Baptist Church in the City of Poughkeepsie. Pop-up sites are well and good, but residents need reliability and consistency. We did it for early voting; we can do it for vaccines.

The cities of Newburgh and Poughkeepsie are two of the hardest-hit areas in the Hudson Valley, if not the state. Newburgh's infection rate is 8.4 percent, while the state is at 3.34 percent positivity rate. Establishing permanent vaccination sites in these cities would go a long way to addressing the Newburgh microcluster and help the many Black and Latino residents of both cities who have been disproportionately impacted by COVID-19.

Now to address the issue of vaccine

sign-ups. Currently eligible New Yorkers in search of an appointment face a hodgepodge of constantly changing rules and guidelines. People sign on the state site, and they think that will be enough. Then they're told they may sign up on the state website, their home county's website, and on the website of every nearby pharmacy that might be fortunate enough to receive a small allotment of the vaccine.

Of course I recognize the most fundamental problem had been the nationwide shortage of the vaccines. However, now we have a new administration in Washington and the Biden administration is doing its job by accelerating vaccine production. We must get ready and reform the sign-up process now.

Currently appointments to get a vaccine are filled within minutes of being announced, and eligible residents find themselves unable to make an appointment, while additional categories continue to be added to the list of those eligible. While we are waiting for the vaccine availability

to catch up with need, which will be soon, we need to set up a user-friendly system where eligible residents can sign up either by phone, without endless wait times, or online and receive an alert when an appointment is available within a reasonable geographic radius. We need one-stop shopping -- sign up once, and you will be assigned once a vaccination appointment becomes available. It's just common sense to do it that way.

Also, assisted living facilities and senior housing should be treated like nursing homes and have pharmacies or healthcare providers go to these residences and administer the vaccines. These residents are generally not mobile, nor computer-savvy, and need the vaccines to come to them.

Thank you for your prompt attention to these pressing matters.

COMMISSIONER ZUCKER: Thank you. Thank you. We do have, just as an aside, we have a hundred community pop-up sites, we have 33 sites in NYCHA housing, we have six FEMA sites --

ASSEMBLYMAN JACOBSON: We need permanent sites.

COMMISSIONER ZUCKER: -- like Yankee Stadium -- what?

ASSEMBLYMAN JACOBSON: We need permanent sites so that people know where to go. And if you have a pop-up site, if you don't get it in the first 30 seconds, you can't get an appointment.

COMMISSIONER ZUCKER: We're working on that. We'll address it with our team. But I just want you to know, we have over four -- probably by the end of today or tomorrow, 4 million people who have been vaccinated who have been allocated for -- or administered, I should say. And we are moving forward on this. I hear your concerns. I recognize them. We will continue to work to achieve the goals that you and all of us --

ASSEMBLYMAN JACOBSON: We need a simple process.

CHAIRWOMAN WEINSTEIN: Assemblyman, we have to move on to the Senate.

CHAIRWOMAN KRUEGER: Thank you.

Oh, I think we're up to me. Hi. So, so many questions have been asked, and I don't want to repeat anything. But I just want to phrase something maybe slightly different to clarify.

So we have this global cap many people have been talking about, and we've been talking about it for a year. And when it went into effect -- was it 2011, 2012? Do you remember, Donna? What was the number of people on Medicaid when we put the global cap into effect?

MEDICAID DIRECTOR FRESCATORE: Far fewer. I don't have an exact number, Senator.

CHAIRWOMAN KRUEGER: Well, I think it was about 4 million. I could be wrong. And you said we're now going -- we're going to hit 7 million.

So a global cap, if it was a limitation on how much money per person in the program, would actually conceivably be justified because you're trying to limit growth in the program per person.

But we've almost doubled the Medicaid program, I think, since we started the global cap. And so to make the argument that you're not doing harm to people's healthcare when you keep trying to reduce, reduce, reduce the overall cost of the program that is now healthcare for 7 million people instead of 4 million people, it's just an impossible scenario. It doesn't matter how many times we go back and look at the numbers and ask you for the data -- you just can't provide health insurance for 7 million people on a lower cost from what you started off on for 4 million people, and you shouldn't be trying.

So it's not a question, it's a statement that we really just need to go back and establish the rational definition for what a global cap is, and then ask whether we should be having one at this point in time.

Particularly because not only do we know we're in the middle of a world pandemic, but we've also got more federal Medicaid funds coming in than likely we will ever see

again, and we should be using them not just to help the people who need it now, but to do all those other things you've talked about today that we all want you to do, which is to rebuild the public health system in all 62 counties of the state.

We used to pride ourselves on having an amazing public health system, and I've watched it be taken apart. And we hear from counties -- and smaller counties in upstate New York and other counties throughout the state have things they used to be able to do they no longer have staff to do. And so why would it surprise us if our nursing homes were actually in terrible shape long before the pandemic hit them? We had statistics showing that we had a huge problem with nursing homes being understaffed and a higher rate of illness than most national nursing homes, and a correlation between allowing for-profits to have taken over the markets versus the traditional model of community-based nursing homes.

And we knew all this was happening,

and yet it just -- we couldn't get our arms around it. And you want to get your arms around it, and I believe both of you do. But we're not giving you a system that's going to let you unless we actually are funding it appropriately.

And so I'm not even going to ask you a question, I've just already said what I want to say, that we really have to be honest about what we've done to our public health system, what price we're paying for it. Because one of the prices we've paid for it -- whoever wants to point fingers at anyone, that's not really my style -- is we had a much higher death rate in our state from the pandemic than other states did.

Now, granted, we got it earlier before everybody learned their lessons. But if we had had a better public health system in place, the personnel in place, functioning nursing homes, distribution of healthcare beyond giant hospitals -- somewhere along the line today people talked about CONs. It's a huge issue, from my perspective, that we

continue, despite endless conversations about hospital healthcare is the most expensive healthcare, we should be careful and focused about making sure we have fair distribution of hospitals statewide, not some places with one hospital for five counties and other places with too many hospitals.

And I personally come from the one area of the state that has the largest number of hospital beds per patient of anywhere in the state, and I don't understand why. I don't think it's good for healthcare. I don't think it's good for fair and equitable distribution of healthcare. And I think we need a CON system where we get to tell big private hospitals: We don't need another one of you over here. We could use three of you down the road, three of you up there, but we don't really need another one in the East 60s or the East 70s on Manhattan Island.

So I just hope that because of all of the nightmares we're living through -- and we all are, you more than anyone, people who work in your agency and come in every day and

know what they're facing. And thank you to all the people who aren't here at DOH who are trying to get things done every day with a lot of angry people at them and a lot of angry legislators at them -- who are angry at them.

I hope we learn from this the lessons of what we could have done right to avoid some of it, what we can do better because we have survived or will ultimately survive this. And be -- you know, just be the State of New York we always knew we could be. And I have to say on health policy we used to have a much stronger system. We just did. Our public health system was better. My friendly Insurance chair here, when he was pleading with you about the issues for mental health services and substance abuse services at the county levels all over the state -- yes, of course we have to do that. That's what we should be investing our healthcare money in, and in preventive services.

So with that, I do -- I usually don't even talk that much at these hearings, I just

direct. But I've done my rant, and thank you for your service.

And back to you, Helene.

CHAIRWOMAN WEINSTEIN: Assemblywoman Solages.

ASSEMBLYWOMAN SOLAGES: And thank you to -- I appreciate the endurance of the chairs. And thank you, Commissioner, for this opportunity.

I just agree with my colleagues on transparency and communication and also the importance of a permanent vaccine site in suburban and rural communities. I think that would be a great effort, especially to target, you know, underserved communities.

However, I want to discuss the crisis of maternal mortality and morbidity, because we know that women are twice as likely to die from complications of pregnancy and birth than their mothers were a generation ago.

So I'm still waiting on communication about the Doula Pilot Program in New York State. I am a sponsor of the legislation that expands Medicaid coverage for the Doula

Pilot Program. I was excited in June of 2019 when your administration announced that they were going to do a pilot program. However, I've seen that there's been very little effort made. Last year I asked you the same question; it was said "I'm going to get back to you," and I haven't received a response.

So what is the status of that program?

COMMISSIONER ZUCKER: We will -- I am sorry I didn't get back to you about that. I do remember the question last year, and then it was shortly -- well, it was when this all began, so -- and we haven't --

ASSEMBLYWOMAN SOLAGES: Yeah. So I won't hold it against you, but -- but today's a new year, so.

COMMISSIONER ZUCKER: All right. Well, it's a new year, and I will get back to you on it.

ASSEMBLYWOMAN SOLAGES: Mm. Um --

COMMISSIONER ZUCKER: I don't -- I have to get the data on that. But I don't have it right at the top of my head.

ASSEMBLYWOMAN SOLAGES: I hear from

the doulas, it's not going well.

You know -- you know, we say that we care about maternal mortality and morbidity, but in this budget we make a 20 percent cut to Nurse-Family Partnerships, and there's deeper cuts to that program as well.

So, you know, what is the goal? Are we trying to improve -- sorry, are we trying to improve maternal and child health and reduce maternal births? Because by cutting Nurse-family Partnerships, we're not sending that signal.

COMMISSIONER ZUCKER: No, it's -- as you know, it's a major commitment of ours to address the maternal mortality issue. It was years ago, when we did the tour around the state. And we have identified programs to address this and have had -- our Maternal Mortality Advisory council was looking at this, and we do have the doula program that we have been addressing in the past.

I know that this was something which I was supposed to get back to you about.

ASSEMBLYWOMAN SOLAGES: Yeah, so it's

two for two.

So I'm going to move on to the public health workforce outside of New York City. We know that public health -- our departments of health have been reduced about one-third between 2011 and 2018.

So, you know, is the Department of Health looking to strengthen the public health infrastructure in New York State by increasing funding through Article VI? Is that something that you guys are interested in doing?

COMMISSIONER ZUCKER: Well, we are trying to strengthen the public health force.

If you're asking whether by not giving funds to the local communities -- is that what you're implying? I'm not sure --

ASSEMBLYWOMAN SOLAGES: Yes, yes, that's why I'm implying.

COMMISSIONER ZUCKER: Well, we are trying -- right, and we are looking at the budget and there are a lot of challenges.

There was a question previously regarding New York City and what to do, and I

mentioned the reasons for the cuts there. And we are trying to figure out other ways to provide the public health services that are needed in the community. We work closely with all of the communities, and we have been working with them through this pandemic as well.

It is a tight budget. We'll see what we can do and continue to work with them.

ASSEMBLYWOMAN SOLAGES: Because our departments of health have been doing a great job locally throughout COVID and, you know, they really need to be supported.

COMMISSIONER ZUCKER: And we recognize that.

CHAIRWOMAN WEINSTEIN: Back to the Senate.

CHAIRWOMAN KRUEGER: We have the second round for Senator Rivera.

SENATOR RIVERA: I'm back.

Three things. First, Essential Plan. In your testimony you said that the -- and I'll actually read the quote: "The budget will eliminate monthly payments for over

400,000 New Yorkers," which I'm very -- that's a good thing. So how do you plan to cover that elimination of premiums, by the way?

COMMISSIONER ZUCKER: Donna, do you know that?

MEDICAID DIRECTOR FRESCATORE: Yeah, the federal rules around the Benefit Trust Fund, where the state receives 95 percent of the tax credits, allows for two things: Services and reduction in consumer costs. This is reduction in consumer costs. We will increase --

SENATOR RIVERA: Okay. Gotcha. So the trust fund -- so it's the trust fund. How big is it right now? How big is --

MEDICAID DIRECTOR FRESCATORE: The balance in the trust fund that we expect at the end of this fiscal year is 4.5 billion.

SENATOR RIVERA: Four-point-five billion.

MEDICAID DIRECTOR FRESCATORE: Yeah.

SENATOR RIVERA: I asked the question because I want to make sure that we move

through these. So why -- so that's -- but I believe, by the way, that that's a good thing. However, why are you only eliminating medical premiums and not the $30 vision and dental premium for patients? Is there a particular reason why you chose not to do that one?

MEDICAID DIRECTOR FRESCATORE: Well, I think what we saw was that -- during COVID was that the $20 premium for the medical care was causing some people not to be able to continue it, or not want to continue it.

And we also, in addition to this premium helping existing consumers, the 400,000, we also believe it drives about 100,000 new enrollees.

SENATOR RIVERA: I would certainly -- I would certainly hope that we use that -- that we use that money more expansively, more expansively and extensively, because it's there and we should certainly use it.

But I want to move on to safety nets, and actually Liz Krueger -- if Liz Krueger was a basketball player, like basically she

would be like that was the biggest of slam dunks, it's like she flew over a car, because it's like -- it was absolutely on point.

Now, the Governor, it is true, has been consistent in the message, at least, that there are important safety-net hospitals. You folks certainly did that here. But so if you are -- so if you are indeed, if the administration is so committed to safety-net hospitals, then how do you rationalize the proposed cuts to the ICP for public hospitals?

MEDICAID DIRECTOR FRESCATORE: I think the -- for the four or so hospitals that would be affected, the state funding would not be available. But under the DSH caps, the funding could still be received with local dollars, if there was an --

(Overtalk.)

SENATOR RIVERA: So basically you're putting the onus on counties. Right?

MEDICAID DIRECTOR FRESCATORE: It was -- it's the state share savings, yes.

SENATOR RIVERA: So --

MEDICAID DIRECTOR FRESCATORE: And, you know, those -- as I understand it --

SENATOR RIVERA: -- hold on --

MEDICAID DIRECTOR FRESCATORE: Sorry.

SENATOR RIVERA: Go ahead, go ahead. I'm going to let you finish that one. Go ahead.

MEDICAID DIRECTOR FRESCATORE: I'm just getting a little feedback, I'm sorry, Senator.

So -- go ahead. I think I've answered the question, yes.

SENATOR RIVERA: Okay. So because -- the thing is that I'm concerned about you putting this on counties. Because given the ongoing fiscal strains in counties, I mean, should it be on the counties to make up the difference to protect these hospitals? I'm concerned about that.

So instead of cutting safety nets that have been essential -- and they're called essential for a reason, right -- why don't we protect them? I mean, this is actually something I'd like to ask both of you,

particularly the commissioner. So do you believe that we should be raising revenue to be able to avoid deep cuts to safety-net hospitals -- (ongoing audio feedback) -- during this -- don't tell me that the feedback's coming now when I'm asking about revenue.

CHAIRWOMAN KRUEGER: Senator Gallivan, go on mute.

(Laughter.)

SENATOR RIVERA: Commissioner?

CHAIRWOMAN KRUEGER: Are you still there, Commissioner?

COMMISSIONER ZUCKER: Yeah, but the question I lost because of the feedback. Can you --

SENATOR RIVERA: Yeah, I figured. Let me just --

CHAIRWOMAN KRUEGER: Repeat the question.

SENATOR RIVERA: I'm going to need those 15 seconds back.

The question is would you, to avoid deep cuts to safety nets that you say that

you want to protect so much, would you -- would you say that we need to raise revenues?

COMMISSIONER ZUCKER: That would be one -- that would be one option, I guess, we could tackle that. I'm trying to figure out how --

SENATOR RIVERA: Well, I'm going to -- if you were a legislator, I would sign you on to the entire package of Invest in Our New York.

But this is the last point I want to make, because I only five minutes. And I have a couple of other colleagues that were giving me questions, I just couldn't get to them.

But listen, the -- as far as the global cap, I just want to underline this. I mean, the purpose of it, which -- it's arbitrary, and we all recognize that -- is to regulate spending on Medicaid. In the last fiscal year, the program faced $2.2 billion in cuts. And this budget proposal today cuts well beyond what is deemed necessary for the global cap measure. I mean, you told us

yourself that you had savings here.

So if public health is the priority, as you stated, Commissioner -- and Donna as well -- and given that 5.4 is made available through the Enhanced FMAP, a portion of which is also -- and as I said, it's just bananas to me that it's being used for General Fund relief -- why should Medicaid providers take a deeper cut so this administration can use Medicaid funds for whatever purpose they see fit?

And I'm going to leave that question hanging because that's going to be an underlying thing in this whole conversation about the budget. Just still kind of crazy to me.

Madam Chair, that's my time in a second round.

CHAIRWOMAN KRUEGER: Thank you, Senator.

I believe the Senate is done, Helene. And so just take us home, the Assembly.

CHAIRWOMAN WEINSTEIN: Okay. Well, I know Assemblyman Gottfried needs to go to

conference, so why don't we have him do his second now. I'm not sure if he's going to wait till this portion of the hearing ends. And then we'll go back, we still have about six members.

Assemblyman Gottfried.

ASSEMBLYMAN GOTTFRIED: Okay, thank you. So I have a few things. I'm not sure I'm phrasing them as questions, but just maybe you can send me responses.

Earlier in the day I asked the superintendent of Insurance, you're using 420 million from the Essential Plan Trust Fund for something called rate enhancements. I'm not quite sure what they are. But, I said, federal law says that the trust fund can only be used to reduce the premiums and cost-sharing of or provide eligible individuals. And I said, how does rate enhancements come in under that?

If you have a legal opinion handy that explains that, do not send it to me -- because oh, my goodness, that would be attorney-client privilege. So instead, why

don't you just write me a memo. Because attorney-client privilege doesn't stop you from writing me a memo explaining in some detail legally how that's kosher.

MEDICAID DIRECTOR FRESCATORE: May I answer that as a non-attorney?

ASSEMBLYMAN GOTTFRIED: Maybe let me finish just because of the clock.

MEDICAID DIRECTOR FRESCATORE: Okay.

ASSEMBLYMAN GOTTFRIED: The commissioner I think said that "We support the Consumer Directed Program" -- and, Donna, it may have been you who said "No one will lose services."

Well, first of all, for years the department has been trying everything it can imagine to eliminate the Consumer Directed Program. So don't tell people you support it, number one.

And number two, the reason you're trying to get rid of a whole lot of highly qualified fiscal intermediaries is so that you can more tightly control the program so that people do lose services, because the

fiscal intermediaries will know that if they don't run a ship that denies people services, they'll lose out on the next round of RFP.

The commissioner I think early on said in relation to hydrochloroquil {sic} that the doctor-patient relationship is paramount. We may remind the executive chamber of that when we're in budget negotiations about your proposal to eliminate prescriber prevails.

The last thing to note is many times today you've said -- and I'm sure you'll say it many more times -- "We'll get back to you." This is my 34th budget hearing as chair of the Health Committee. I've heard that statement any number of times. I don't know if anybody has ever gotten back to us, certainly virtually never before we were -- had to be done doing the budget.

So it kind of feels, and I'm doing a lot of literary references today, it kind of feels like Lucy and Charlie Brown and the football.

MEDICAID DIRECTOR FRESCATORE: Can we respond in the time that remains,

Assemblyman?

ASSEMBLYMAN GOTTFRIED: Sure. Sure.

MEDICAID DIRECTOR FRESCATORE: So on the provider reimbursement, I just -- I want to be clear about what it is. So when the Essential Plan was set up, we needed to make some assumptions about how much a health plan would pay providers to be able to retain a network. Right?

The assumption for the population that we're talking about here was Medicaid plus 20 percent. What this investment does is it brings that reimbursement rate closer to commercial insurance rates, so as to make certain we preserve access.

We believe -- and we can send you your memo, but we believe that that is an appropriate use of the trust fund money because it is services. It's paying more than, you know, a hundred -- instead of $100, paying a hundred and -- you know, or $120, paying $130 for service. Our thinking is it would apply to both inpatient and outpatient.

And you know, as we've talked I think

over the years, that the assumption about provider reimbursement is really important to the access issue.

On CDPAPs, we're not trying to eliminate the program. We had a lot of discussion about the fiscal intermediary. I take away from this --

THE MODERATOR: We're getting feedback from the commissioner.

MEDICAID DIRECTOR FRESCATORE: I take away, you know, from this conversation today that there are concerns about the process that was used to select the fiscal intermediaries.

We are in step one of that process. It now will go through any debriefings. If there's protests with the Comptroller's office, then each and every offerer is subject to a vendor responsibility, which is part of the state contracting process. And we -- you know, I hear your concerns today about geography, hear your concerns about, you know, your perceptions of who the good FIs are and who the bad FIs are.

One of the benefits of this process, when it's all said and done, is we will have quality measures and metrics going forward so we can see and judge the kinds of service -- the quality of the service these consumers are receiving.

So thank you for letting me answer.

ASSEMBLYMAN GOTTFRIED: So just to be clear, doctors and hospitals who treat moderate-income patients on the Essential Plan, they get a rate increase. Doctors and hospitals who treat poor people on Medicaid get a Medicaid cut.

MEDICAID DIRECTOR FRESCATORE: So -- so --

ASSEMBLYMAN GOTTFRIED: Just to be -- make sure I heard you right.

MEDICAID DIRECTOR FRESCATORE: Well, how the reimbursement has been structured is those individuals who would otherwise have been in the Medicaid program are reimbursed at the Medicaid -- reimbursement is at the Medicaid rate.

For those who would have been in

qualified health plans had we not adopted the Basic Health Program and we would have had commercial rates, was where that increment was.

ASSEMBLYMAN GOTTFRIED: So there's a rationale, you say, but the bottom line is moderate-income people, their doctors get paid -- will be paid better tomorrow than they are today. Doctors who treat poor people will be paid worse tomorrow than they are today.

MEDICAID DIRECTOR FRESCATORE: No, there's -- not worse. That reimbursement --

ASSEMBLYMAN GOTTFRIED: Well, 1 percent worse. They're going to have a 1 percent cut.

MEDICAID DIRECTOR FRESCATORE: I'm sorry, the 1 percent does not apply to the Essential Plan.

ASSEMBLYMAN GOTTFRIED: I know that. It applies to Medicaid. Doctors treating Medicaid patients will be paid 1 percent less. Doctors treating moderate-income people on the Essential Plan will be paid

some percentage more.

MEDICAID DIRECTOR FRESCATORE: So I -- we will send you the Essential Plan explanation so that you have it, but I wanted to be able to at least explain what that reimbursement was and -- as background today.

ASSEMBLYMAN GOTTFRIED: And when do you think you might have that ready to send to me?

MEDICAID DIRECTOR FRESCATORE: You know, our folks start working on it tomorrow. And --

CHAIRWOMAN WEINSTEIN: Okay, and -- I mean, that needs to be sent to Senator Krueger and myself also.

MEDICAID DIRECTOR FRESCATORE: Yes, absolutely. Absolutely. Thank you.

CHAIRWOMAN WEINSTEIN: Okay. We're going to move on. Thank you.

We're going to go to Assemblywoman Bichotte Hermelyn.

ASSEMBLYWOMAN BICHOTTE HERMELYN: Thank you, Chair. Thank you, Commissioner and everyone for being here.

I just have -- I have a list of things, so I'll just talk about my concerns and you can answer. So first, I do want to thank my colleague for mentioning and addressing the maternal mortality issues and the doula. So certainly I would like to be one who would like to know the update on that issue.

And for the record, I do join my colleagues around transparency, accountability and reporting of the nursing home deaths and everything that's happening there.

The budget proposed to limit Medicaid reimbursement to include only staffing costs related to contractual arrangements that comply with regulatory requirements. Our state's seniors have been disproportionately affected by this pandemic, and we've seen firsthand, through a loved one, how hard the virus can hit elders. And I'm just wondering how can we be considering any cuts to Medicaid during a global pandemic, especially low-income and marginal communities that were

hit the hardest.

The second question is the budget proposes to require PPEs through state contracts of over 50,000 be produced in -- you know, to be produced made in the U.S. The head of the agency making the purchase can waive this requirement under circumstances related to cost, public interest, availability and timing.

During case increases, we saw doctors suffering from PPE shortages. How can we ensure that our supplies always meet our demand? Also, I know there were some issues around MWBEs being left out of the procurement process. I'm very interested in knowing that because, again, MWBEs, their communities are the ones that were hit the hardest.

Telehealth is very important. I want to thank you for expanding that. But I haven't seen anything about language access. My mother is elderly; I know everything about a lot of managed long-term care and Medicaid and Medicare. And she uses a flip phone, so

I have to be on three-way to speak to the doctor and her because there's a language access issue.

So I definitely want to see if there's anybody who's translating, you know, in her language and other people's languages -- Haitian Creole, Spanish, Russian, Polish.

I just want to say that I am supportive of repealing the Medicaid Global Spending Cap. I'm in support of a safe staffing ratio to increase -- we need to address that for nursing homes and hospitals. Access to coverage for immigrants, who are currently ineligible. And I also agree with my Senator in terms of raising revenue, Invest in Our New York to ensure that our safety-net hospitals are covered.

Lastly, under managed long-term care, I am concerned about the home care workforce recruitment and retention. And I think more than ever we need to make sure that we invest, because home care workers are needed drastically. Thank you -- desperately.

Thank you.

CHAIRWOMAN WEINSTEIN: Thank you.

To the extent that there are some questions there, we appreciate the responses sent to Senator Krueger and myself.

Next we go to Assemblywoman Byrnes.

ASSEMBLYWOMAN BYRNES: Are we there? Hang on. Hang on. Are we up?

CHAIRWOMAN WEINSTEIN: There you are. Go ahead.

ASSEMBLYWOMAN BYRNES: All right, thank you very much. I want to thank you, Madam Chair, and Dr. Zucker for being here today.

And I want to note, first of all, that earlier, Dr. Zucker, there were some statements you made when chatting with other Assemblymembers, and I just want to put something into the record. "This preliminary data for the 62 facilities, in time periods noted above, suggest that COVID-19 resident deaths associated with nursing homes in New York State appeared to be undercounted by DOH by approximately 50 percent."

With deepest regard, sir, that was not

the headline, that was the conclusion of the Attorney General report. What I really would like to go and chat about right now, however, is going back to what Mr. Gottfried talked about many hours ago, and that is the CDPAP program and the fact that it's being reduced to 68 agencies.

The reason I want to talk about it is because it does appear to be eliminating a really important program in the City of Rochester community, All-American Home Care, a fantastic business.

When they received the application recently they were told that after it was filled out there would be a debriefing, they would be given strengths, weaknesses, a score, and an opportunity to protest should they disagree with the finding. After the application was filled out, then they received a score but no strengths, no weaknesses. They had five days to protest, but nothing to protest from, because no information.

So, Dr. Zucker, what I would really

like to know, sir, is when you have a company, good company, that is given a report with no strengths and weaknesses to even attempt to protest from, are you going to be extending the deadline, that five day deadline to protest, so that they have a fair and reasonable opportunity and due process right to be heard on their business? Obviously you can't protest a score without knowing how the score was even developed.

Dr. Zucker?

COMMISSIONER ZUCKER: So I think that everyone should have due process. So I'd like to look at this -- the information further. I don't want to make a comment on something which I don't have all the facts. I have your facts of what you've presented, but I'd like to take a look at all the information. But I am a big supporter of making sure that everyone has an opportunity to be heard.

ASSEMBLYWOMAN BYRNES: Would you -- if this is -- what I'm saying is true, would you extend the deadline to protest?

COMMISSIONER ZUCKER: I need to --

MEDICAID DIRECTOR FRESCATORE: So let me -- let me, if I can, Dr. Zucker, jump in, because I think I've touched on this before. And that is that hearing concerns, you're right, any offer that was told that their proposal was not accepted first got a letter offering a debriefing and some basic information with an invitation for them to come back and learn now. We are now getting those requests, we are handling and processing those requests.

As to the five days, I don't know when that clock starts counting, but I will go back and take a look at it. I would agree that until there's an opportunity for an offerer to hear about what their strengths and weaknesses were, in the judgment of the department, they should not have to file a protest.

That protest, by the way, is with the Comptroller's office. I will go back and look at the timing of that. I appreciate you raising that point, which was not raised

earlier, about the five days.

ASSEMBLYWOMAN BYRNES: I can provide you the information on the name of the company.

MEDICAID DIRECTOR FRESCATORE: Yeah. I mean, it would apply, the requirement is across all of the offerers. So I appreciate you telling me the company, but it's not needed for us to look at that.

ASSEMBLYWOMAN BYRNES: Thank you, ma'am.

CHAIRWOMAN WEINSTEIN: Thank you.

Assemblyman Norris.

ASSEMBLYMAN NORRIS: Thank you, Madam Chair. And thank you, Commissioner, for the opportunity to speak.

I first want to just thank you and your team. I live in Lockport, New York. I represent Lockport and eastern Niagara County. And your team has been very, very helpful with our local hospital, and certainly during these trying times. And they will be going to a modified facility in time, and I would just hope that you will

continue to provide the assistance, and your team, because we are very grateful for that.

The rural areas all throughout New York State, but particularly here, it's very, very important for a hospital system in this new hub, it's going to be very important. So I thank the department for that.

Regarding the trust that you've talked about, and the openness, I just want to remind you that it's very, very important as we move forward, when we're dealing certainly with the public, that the trust and the openness from you in particular is done. Because as we're dealing with the vaccinations, which quite frankly has been a disaster in terms of the rollout -- and I understand the supply issue that you've raised, but also we need to get our schools open and we need to get our businesses fully operational as we deal with this pandemic.

So I just encourage you to please come back. I've sat through all of your testimony today, and I appreciate the testimony, but

there are many more issues that need to be addressed.

And I would like to just ask, for clarification purposes -- in terms of COVID deaths, one COVID death is too many. My heart breaks for everyone who lost someone because of COVID. But could you provide clarification to me and my constituents? Because I've asked in three letters to you how a COVID-19 death is classified and how is it exactly determined. Is it the death certificate that is used? And is it the consequences or the major cause used under those criteria?

And secondly, in terms of the vaccination rollout, I would like to just implore you to please simplify the process. My office and my constituents are extremely frustrated. Obviously it's difficult for them to get appointments. They're spending hours and hours, and I implore you and the administration to make this process streamlined as we move forward, to provide that credibility to ensure that our residents

are vaccinated in due time when the supply comes and we have a plan to do that.

And particularly using our businesses as mobile sites, go right to the businesses, if you can, to make sure -- many people employed, hundreds of people -- and also into our doctor's offices. When can we expect the vaccinations into our doctor's offices?

Thank you very much for your time, Dr. Zucker.

COMMISSIONER ZUCKER: Thank you.

And we are working to get it into doctor's offices, and we're working to roll out the vaccination plan across the -- more aggressively. I mean, we're pretty darn aggressive right now. The issue comes back to what I said originally, which is this is a supply-and-demand issue. And hopefully when we have more vaccine, we will be able to get it out. I hear you on that.

I agree with you that any death from COVID or, for that matter, from anything is always tragic and affects a lot of families. I know that your time is out, and I'm not

sure whether the chair wants me to respond. I can give you some --

CHAIRWOMAN WEINSTEIN: Why don't you respond in writing. We've kept you here so long, and we still have --

COMMISSIONER ZUCKER: Okay. Okay, fine.

CHAIRWOMAN WEINSTEIN: -- four-plus members to ask questions.

ASSEMBLYMAN NORRIS: I would like a written response to that. I would really appreciate a written response to the question.

CHAIRWOMAN WEINSTEIN: We'll get written responses for all of these questions. We're giving the commissioner a lot of homework.

Assemblywoman Hyndman.

ASSEMBLYWOMAN HYNDMAN: Thank you, Chair Weinstein.

I'm going to give the commissioner some more homework. Sorry about that.

My -- I have a couple of questions on a different tack. See, I'm an advocate for

sickle cell, as it greatly affects African-American communities. And a lot of the CBOs have told me that there's a delay in accessing funds for sickle cell. And my question, what could be causing that delay and what can we do to streamline it, as sickle cell patients during this pandemic are obviously greatly affected because their immune system is severely compromised. That's my first question.

My second question is I'm an advocate for wastewater testing, which has shown surprising results of detecting pandemic spikes in tests that have been done by Syracuse University. Is there any move by the Department of Health to put this on a statewide level so with pandemics in the future we could test wastewater?

And the last part I have is St. Alban's Veterans Nursing Home is in my district. And as you know, Blacks and Latinos are very hesitant to take the vaccine. We have mass testing next door in a fellow Assemblymember's district, but there's

really some problems in messaging. And what's happened, a lot of people are looking at that story from the city and saying, Why would I get testing if people are experimenting again on African-Americans? Even though St. Alban's Veterans Nursing Home isn't predominantly African-Americans, it's veterans. But still a very vulnerable population.

So if anything, we are trying to do mass marketing to get people to get the vaccinations, but it's -- definitely people are very hesitant. So anything you could provide in a way that -- I'd appreciate it. And those are my questions. I'd appreciate if I could get a response -- not now, but definitely through the chairs. Thank you.

COMMISSIONER ZUCKER: You're welcome.

I can answer those quickly right now. First issue on the access to funds, yes, sickle cell disease is something we have been very focused on. And you are absolutely correct, there is a risk of those who have sickle cell disease that they're at risk of

clot and sickle cell crises. And with this disease, I can see how it's easily exacerbated. And it is one of the reasons that we need to make sure that all those who have sickle cell are vaccinated.

On the wastewater issue, we actually are looking at this and we have looked at this across the state. It is a very good point that you raise; that is a way to pick this up earlier. It's also a way to pick up a lot of things earlier. And so we have been doing that, and I have my environmental team working on that.

On the issue of the veterans homes, no one is experimenting on anyone. Please, if you can -- I carry that message out there, and if you can please carry that message out for me as well, that would be great.

The -- we -- it goes back to what we said before, and I know we've spoken about this already, about trust. And I really would ask that everyone carry the message the vaccine is safe, it's effective, the more people vaccinated, the sooner we'll get

through this whole pandemic.

But no one is experimenting on anyone. I know this is something which has surfaced and there's this hesitancy and worry, but I please wish that you would bring that message back to your community as well.

ASSEMBLYWOMAN HYNDMAN: Thank you.

CHAIRWOMAN WEINSTEIN: Thank you.

We're going to go to Assemblywoman Seawright.

ASSEMBLYWOMAN SEAWRIGHT: Thank you, Chairwoman. I know it's been a long day, and thank you, Commissioner. I just have three really, really quick questions.

I'm getting reports from residents at Coler Hospital, a long-term-care facility on Roosevelt Island in my district, that staff are refusing to be vaccinated. Is there or are there any guidelines from the state that we can mandate an education program for staff in nursing homes to help dispel the myths about the vaccine? That's number one.

Number two, should New York State terminate its flagship extramural medical

research program during this most challenging pandemic when medical research is arguably more important now than in generations?

And then third, Asphalt Green. I just want to echo what Senator Hoylman said earlier about a dedicated site in Manhattan for Manhattan residents. Asphalt Green, a large nonprofit facility in Manhattan, has offered to be a vaccine site, and my staff spent many hours frustrated but helping elderly senior citizens in my district sign up for vaccination appointments. Just today I received feedback that on 135th Street people waited over four hours in line to get the second shot and over two hours in line to get the first dose. Many of these were senior citizens with walkers and canes, ready to give up and just leave. And so more has to be done.

And so those are my three questions.

COMMISSIONER ZUCKER: So on the first one, thank you. On the first one, about better education material, we do a lot of webinars. I can do more, I can address that,

I can get my staff to do that as well. I understand that staff not getting vaccinated is a big issue.

And we can't sort of mandate things the way we did with flu because this is still an experimental -- it's still a, you know -- I wouldn't say experimental. It's still not been formally approved. It's an emergency-use authorization. So it's EUA, so you can't get -- put something in place from the government for something that's in an emergency-use authorization. Let me make sure that I'm clear on that. That's number one.

Number two, on the extramural research funding, there are other sources of where one can get funding. And we are just, as I said, in a tight budget. And we look at all of these things -- and believe me, my heart goes out to this, as a scientist doctor, one who's done research, you know, I looked at them and I said, This is a little tough. And you take that pause, and you say, well, what else can we do? And those are some of the tough

decisions you have to make. And I understand -- believe me, I understand the benefit of scientific research.

And then number three, I hear you about the Manhattan issue. I heard some of your colleagues mention about maybe using the Javits Center when we have more vaccines primarily for the Manhattan residents. Let me see what we can do. I heard Senator Hoylman's point as well. That's something I can bring back to the team.

And actually one more point which ties to this, which is the issue of the elderly. We have a program that we have developed and we're working on to get those who are sort of more homebound to be able to get their vaccine at home. Because we don't want -- it's still winter, it's going to be winter for a couple more weeks -- the sooner the better for it to end. But we really don't want people going out. And other people, even it it's summer or spring, it doesn't matter, they can't really get out.

So we're trying to figure out a way to

get them vaccinated as well. So we're working on all of this, and we'll move forward for you.

ASSEMBLYWOMAN SEAWRIGHT: Thank you, Doctor.

CHAIRWOMAN WEINSTEIN: Assemblyman Palmesano. Phil?

ASSEMBLYMAN PALMESANO: Yes. Thank you, Commissioner. Just a couple of quick questions, hopefully.

And there's a lot of talk about communication and partnership, and along those lines my first question is, why are our counties not being notified and getting the information on how many vaccines are actually being shipped into their counties, whether at a hospital, nursing home, pharmacy, et cetera?

Why not share those details with the counties to let them know where they are, which locations, how many total? Because wouldn't that help them be better able to communicate and effectively take care of the residents in their communities?

COMMISSIONER ZUCKER: I think the information is getting there, but let me find out for you what the catch is. I know we're working very closely with the local -- the counties and we're in constant contact with the county leadership as well as the local health departments. So there should be that communication.

If there's some daylight between there, let me see what we could do.

ASSEMBLYMAN PALMESANO: That would be helpful.

Relative to state distribution sites, you know, being from the Southern Tier, you know, we have -- you know, in the rural areas where some of our residents are an hour-plus away from Binghamton or Rochester, you know, there's some concerns in rural areas, I know some of the other people mentioned that, about getting limited access.

I know it's just a supply and demand issue, but why -- what are you working to do to try to help ensure fairness in that? Why not allow our counties to be more

participating in that process as far as the state distribution sites?

COMMISSIONER ZUCKER: And that's what I was saying, we're working with the local health departments. And I'll find out, particularly in your area that you represent, as to which counties specifically and what has transpired.

ASSEMBLYMAN PALMESANO: That would be great. Because even if it would be like mobile units or have set up different transportation units, things like that, to provide that access.

COMMISSIONER ZUCKER: We actually spoke about that, at one point, about the mobile unit issue. So these are things that have been in the mix.

ASSEMBLYMAN PALMESANO: Great.

One other question is relative to residency limitations, why are residency limitations in place at New York City sites but no such residency or regional-type residency requirements at like the upstate points of distribution?

Because, you know, I've heard stories where -- and I can understand why -- residents from New York City coming and traveling upstate and taking up slots that are at some of these upstate facilities. I understand why. If you have vaccine availability, you're going to take that.

But if there's restrictions on access to the New York City sites, why not have similar regional restrictions on the upstate sites, which have limited access?

COMMISSIONER ZUCKER: So we have been tracking that issue. And I'll have to sort out what the -- and I understand what you're saying as to sort of make sure it's focused on the region where somebody is presently -- or is a resident. Let me look into that.

But we do track that. We do track these numbers, actually, as to where someone is getting the vaccine and which county, whether they're traveling also. So generally it's the percentage that are in each region is very high. So if there's something in a particular region where it's dropped down,

then we should figure out specifically what's happening in that specific part of the state.

ASSEMBLYMAN PALMESANO: Thank you, Commissioner.

CHAIRWOMAN WEINSTEIN: Thank you.

I think we're going to go back to the Senate. We have a new Senate entry.

CHAIRWOMAN KRUEGER: We do, thank you very much. We have Senator Jeremy Cooney from Rochester.

Although just to answer as a New York City resident, we go looking for vaccines everywhere. The only place we've ever found them are Plattsburgh, which is a really, really long trip from New York City, just saying. Unless you represent Plattsburgh. But I think that might be the only place you'll run into city people in search of vaccines upstate.

Jeremy Cooney.

SENATOR COONEY: Thank you, Madam Chair. You're welcome to come up to Potsdam and Syracuse. There's other places too.

CHAIRWOMAN KRUEGER: Oh, Potsdam, right. Potsdam sometimes.

(Laughter.)

SENATOR COONEY: Well, Commissioner, thank you for hanging in there with us today.

I represent the 56th Senate District, which is in Monroe County, the greater Rochester area. I want to thank you for helping us get this FEMA site in my district, the former Kodak Hawkeye Plant. This is obviously targeting a number of zip codes specifically within our Black and brown communities, which are represented in my district.

And it's been a challenge to try to get people ready to go in and get an appointment before March 3rd. I know that your team is working very hard. Certainly my office and the other state legislators are working very hard. My question to you, and my ask for your consideration, is that we possibly extend the exclusive period for individuals who are qualified to meet these -- to receive these vaccinations in

these zip codes by an additional week so that we can get more of this underserved population vaccinated.

In my district I represent the Town of Brighton. Over 22 percent of Brighton has received the vaccine that's eligible. It's under 10 percent, sometimes under 5 percent in the urban portions of my district. So we're trying to make sure that there's equity and fairness. I understand that you get that. So hopefully you'll be able to consider this request.

COMMISSIONER ZUCKER: I hear you. Thank you.

CHAIRWOMAN WEINSTEIN: So now we go back to Assemblyman Salka.

ASSEMBLYMAN SALKA: Got to get my video going here. Okay.

Commissioner, thank you very much for your time today. It's been a long day, I'm sure. But being a physician, you know what long days are all about.

I would like to discuss the cut, the 20 percent cut in the CPH, the Committee for

Physician Health. We know that our providers now, from physicians, nurses, therapists and lab staff -- it runs the gamut of people that are providing services that are in our health institutions, but the physician has always been the team leader, if you will. And we notice that there was a 20 percent cut in a program or -- that in fact provides support services for physicians.

And I just would like to know what the justification is for that. And I would urge you to reconsider that, only because we understand that as important as physicians are now, more important than ever in providing the healthcare needs for our community with the pandemic, this is something that I would find that would be damaging to the quality of care that we can give.

Physicians are -- especially in upstate New York -- are very hard to come by. Recruiting physicians, especially specialists in rural hospitals, where I was on staff for a number of years, is extremely difficult.

So I would urge you to reconsider that cut. And as a matter of fact, it would be great if that program could even be propped up a bit in such challenging times.

The other issue that I did want to bring up, and I want to concur and do some additional lobbying, is the vaccine rollout. Back in January I did send a letter to your office and the Governor's office suggesting that maybe a hotline could be set up for our seniors. Because as we know, a lot of them aren't really computer literate. And for them to be able to use their landlines, or maybe if they do have a cellphone, it becomes a little bit easier.

So I would urge you to at least look at the possibility of setting up some kind of better line of communication so that our seniors can make the appointments.

And I voice a lot of frustration, too, of my constituents that have attempted to reach out to whatever respective lines are out there, only to be placed on hold for 15, 20 minutes, and then the line goes dead.

So we've got some work to do on our vaccine rollout and our setting up of appointments.

COMMISSIONER ZUCKER: So two things.

One is some of those 20 percent cuts may likely be restored, we could talk about that. So that's a positive.

And there is a hotline. We do have a hotline, I just don't have the number off the top of my head. But there is a hotline.

ASSEMBLYMAN SALKA: For seniors exclusively.

COMMISSIONER ZUCKER: Oh, you're interested exclusively -- I think that's our overall hotline. But --

ASSEMBLYMAN SALKA: They're having a tough time with it.

COMMISSIONER ZUCKER: I know they are. I know they are.

ASSEMBLYMAN SALKA: They are. And they need the vaccine more than ever. And some of them are in near panic when they call our office.

COMMISSIONER ZUCKER: That's why we're

trying to figure out what are other ways to get them vaccinated and to work with the community to get those who are eligible to be vaccinated, particularly those, you're right, who don't use a smartphone or the internet.

ASSEMBLYMAN SALKA: Thank you, Commissioner.

CHAIRWOMAN WEINSTEIN: Thank you.

So actually it's hard to believe that I have a question that nobody asked. I assumed somebody would have.

So actually you had had a conversation with Assemblywoman Seawright, I think it was mentioned a few other times, about trying to come up with a plan for how we can vaccinate homebound -- primarily homebound elderly. And my question relates to one that I've raised previously with the Governor's office, particularly because I have a district that has a lot of elderly residents.

A lot of -- a number of the folks who are homebound are qualified -- are eligible because of their age. Or now because of comorbidities, but they were age-eligible.

But they don't have paid aides who are eligible to get vaccines even if they are not age-eligible, but they have family members who are below the age of 65 and don't have other health issues that allow them to qualify.

And there is a lot of concern amongst these -- the family members that not only are their -- the person they're taking care of who's homebound not having a vaccine, but they themselves can't get a vaccine and are fearful of what happens if they become ill.

So, you know, I would hope that there's some plan to look to expand to caregivers. I believe that Massachusetts was doing that, that someone who was living with someone who was homebound.

And then the other issue I just want to raise since there's been so much talk about vaccines -- and clearly the supply is limited, and that's recognized. I happen to represent three -- parts of three zip codes in southern Brooklyn that according to the city's seven-day rolling zip code average are

number 2 with 12.95 percent positivity as of today, the fifth one, and then the seventh one, with 12.37 percent positivity. Again, these are mostly elderly individuals that are constantly calling my office.

We're a transit desert, and there isn't a site that's available. I actually have two zip codes that are eligible -- a portion of two zip codes that are now eligible at Medgar Evers, and people have been calling there. But I would just urge that when -- as vaccines become more available, or even before that, to try and focus on a site in southern Brooklyn.

And I just wonder if you could address the question, Commissioner, about the family caregivers and when they might be eligible.

COMMISSIONER ZUCKER: Sure. So that -- we actually were speaking about this for a period of time. And I hear you. I hear you.

One of the things is that when we open this up to preexisting conditions, we feel this opens up a very large population of

individuals, including many people who are caregivers to those who are elderly. But there is still going to be that pool of individuals who -- maybe the grandchild, perfectly healthy, caring for the grandparent and doesn't fall into that mix. And so we were having some conversations about that, and I will bring it back to the team to see what we can do.

But this is not something that hasn't crossed our plate from just our discussions internally about this issue of how do you make sure that person doesn't bring it in and expose someone who's elderly. And that is also part of the reason we do want to get those who are homebound vaccinated as quickly as possible, to give them protection so that they're not at risk.

CHAIRWOMAN WEINSTEIN: Thank you.

So there are no more questions from the Assembly. So before -- well, I guess it probably is close to dinnertime. We're going to send it back to Senator Krueger. Thank you, Commissioner, for being here and for the

work you and your team have been doing all along.

So Senator Krueger?

THE MODERATOR: You're muted, Senator.

CHAIRWOMAN KRUEGER: I did get texted one more question, so just for you to either respond to quickly or to put in your written responses.

So we're all operating under a declaration of a statewide emergency from COVID. Who decides when the emergency is over? Is that you or someone else? And is there an anticipated date?

COMMISSIONER ZUCKER: I think that's a discussion that I will have with the chamber. My ability to provide the public health information to the Governor's team is going to be put into that mix.

Right now I would say that we need to see what happens with these variants. Our numbers are coming down, everything is looking really in a positive direction. We went up, as we know, in the spring and we went through that. In the summer we were

down, then we picked back up. And now we're coming back down. The numbers look good.

The more vaccination we get out, the less likely we're going to have a variant. If we don't have a variant that causes a problem or an increased risk of disease spread and/or an increase in the case fatality rate, or just overall illness, severity of illness, then I think we're in the right direction. I hate making any predictions, and so I don't want to predict when that will be, but we will continue to do what we need to do.

I will say that we need to maintain the good public health practices that we have, which is obviously the social distancing, the masks, and to wash your hands. I started this whole pandemic discussing that early on when we realized the benefits of masks, and that's where we are right now.

And do I -- I would just want to say that we're going to get through this. We'll get through this pandemic, we'll get to the

other side. I do feel that in many ways this is like other things in other times in history, that things define a generation. So that World War II, the Depression, the civil rights movement, they all just define a generation. This will define a generation.

But I really feel what the most important thing for us to do is to stay together and to recognize the whole humanity factor involved here and that we all need to not -- to trust each other and to recognize that compassion, integrity and courage and just being together as a society is helpful.

And I think this virus has really just caused significant problems for all of us. We're not used to being separate from each other, and the human condition has been affected. And the virus doesn't care about wealth or prestige or power or fame or fortune anything, it just hits everyone.

But the best way, I feel, is to improve -- to get through this is to realize we touch tomorrow the best by helping each other today. And we'll get there. And

whatever I can do as the head of the department, I will do. I've heard all your concerns. I will address them. And we will keep pushing forward. And this is not easy. It's not easy for any of us. And I wish everyone their health and safety and the best to their families.

And I say to all those who lost their relatives, I feel for them. I feel for them. I feel for the loss to them, to their families. It's very hard. And I wish you -- I wish you well and I wish you strength in getting through the difficult time.

So thank you.

CHAIRWOMAN KRUEGER: Thank you both for being with us today.

And since we have 48 more people signed up to testify before us, we are going to stay together except for perhaps the two of you. But if you want to keep someone listening, everyone's issues will also be issues for the department. So with that, thank you both very much for all of your time with us today.

And I'm going to call up our last government testifier, Erin Ives, acting inspector general, New York State Office of the Medicaid Inspector General.

And I'm seeing whether he has popped up in a box anywhere. Are you with us? So you thought we'd never be done. Oh, okay.

Oh, hello. I keep referring to you by the wrong gender. I apologize.

ACTING MEDICAID INSPECTOR IVES: That's okay. There was a little typo, so I'll use it as my alias for testimony today.

CHAIRWOMAN KRUEGER: Now you've outed yourself, you're here with us, welcome.

ACTING MEDICAID INSPECTOR IVES: Thank you.

CHAIRWOMAN KRUEGER: We're going to set the clock at 10 minutes and let everybody listen or review your testimony, which is available to all of us on the computer screen. Okay.

ACTING MEDICAID INSPECTOR IVES: Thank you. Good afternoon, Chairwoman Krueger, Chairwoman Weinstein, distinguished members

of the Senate Finance and Assembly Ways and Means committees, and Health Committee chairs Senator Rivera and Assemblyman Gottfried. I appreciate this opportunity to share with you the activities and initiatives of the Office of the Medicaid Inspector General.

The ongoing COVID-19 pandemic has impacted every facet of the healthcare delivery system, business and economic sectors, and the daily lives of each and every American. Without question, New York's health providers continue to face unprecedented challenges during this public health emergency.

Like all health providers and state and local agencies, OMIG quickly adapted its processes to ensure continuation of the agency's critical work. At the same time, OMIG recognized the unrelenting stressors COVID imposed upon the provider community. To that end, throughout the pandemic OMIG has worked closely with individual providers, associations and other stakeholders to share information, establish mutually agreed upon

time frames and practices related to audit processes, and address issues and concerns resulting from this new health care delivery system landscape.

Specifically, to protect the health and safety of OMIG staff and the provider community, our audits have been conducted remotely; information and documentation are communicated and shared electronically. Further, in addition to these audit activity modifications, OMIG has equipped staff with the resources needed to remotely perform agency functions.

I am also proud of the many OMIG staff who stepped up to the challenge and volunteered their time to support various critical initiatives to battle the pandemic and help New Yorkers during these unprecedented times. These efforts, while critical to protecting health and safety during the current crisis, will serve the agency and the state well going forward and reflect the Governor's commitment that New York build back better.

Throughout the pandemic, these efforts resulted in OMIG achieving two key objectives: First, protect the integrity of the Medicaid program; and second, maintain open communications and understanding with program stakeholders to avoid imposing unnecessary burdens on a health care delivery system under siege by the COVID virus and ensure that, most importantly, New Yorkers' access to health care services is sustained to the best extent possible.

These collaborative efforts have enabled OMIG to both deliver on its mission to protect the integrity of the Medicaid program while supporting the provider community's unwavering commitment to deliver health care services under the most dire circumstances.

For example, preliminary 2020 calendar-year figures for the agency's cost savings and Medicaid recoveries are estimated at more than $2.9 billion. Breaking that down, OMIG's proactive cost-avoidance measures alone delivered estimated savings of

more than $2.4 billion. OMIG recoveries -- including audits, third-party liability, and investigations -- total more than $558 million.

Throughout 2020, OMIG also continued to focus on managed-care-related program integrity initiatives. For example, OMIG's various match-based audits and data analyses efforts resulted in 419 finalized audits with more than $159 million in recoveries.

As part of its collaborative effort to protect the Medicaid program, OMIG continues to work closely with managed care organizations and their special investigation units to address network provider fraud, waste, and abuse.

Also, through legislation enacted in 2019 designed to hold MCOs accountable for the program integrity obligations outlined in their contract with the state, OMIG in 2020 continued reviews of each of New York's 15 mainstream MCOs to assess their compliance with contractual standards that prevent fraud, waste or abuse.

In addition to the mainstream plans, OMIG will review managed long-term-care plans' compliance with contractual standards. These managed-care reviews constitute an essential component of OMIG's program integrity efforts in the managed-care arena.

Also OMIG, in collaboration with its sister agencies and numerous stakeholders, continues to play a critical role in implementing MRT II initiatives designed to enhance accountability and oversight while improving access to high-quality healthcare services.

Rooting out fraud, waste and abuse in the Medicaid program is central to OMIG's work. To that end, the agency maintains strong partnerships with law enforcement and agencies at the local, state and federal levels. OMIG investigators, auditors, data analysts, and other licensed healthcare professionals work closely with agency partners to help identify and hold accountable those who seek to exploit the Medicaid program for personal gain.

For example, in 2020 OMIG worked closely with the New York City Special Narcotics Prosecutor and other law enforcement partners in a joint investigative effort that led to the arrests of a Manhattan-based psychiatrist and a medical assistant for their alleged roles in selling prescriptions for addictive controlled substances drugs -- with no legitimate medical purpose -- for cash. The investigation revealed a blatant disregard of both the healthcare professionals' oaths to do no harm as well as the rule of law.

OMIG will continue to work with its law enforcement and government partners to hold fully accountable those who jeopardize the health and safety of the most vulnerable New Yorkers by attempting to defraud the Medicaid program.

Now more than ever, OMIG's comprehensive Medicaid program integrity efforts serve to help sustain New York’s healthcare delivery system. Our office looks forward to continuing our work with

providers, stakeholders, and our partners at every level to overcome the challenges before us and to seize renewed opportunities to enhance Medicaid program integrity today and tomorrow.

Thank you, and I'm pleased to address any questions you may have.

CHAIRWOMAN KRUEGER: Thank you very much.

And let's see -- we have hands up, but I want to make sure I double-check with our chairs. Senator Rivera, do you have any questions for --

SENATOR RIVERA: Good for the moment, Madam.

CHAIRWOMAN KRUEGER: Fine. Then I'm going to move to Senator Harckham, who I know had his hand up first.

Are you there, Pete?

SENATOR HARCKHAM: Yeah, I'm just trying to unmute and start my video. There we go. Thank you very much, Madam Chair.

Inspector, thank you so much. Good to see you, even though my screen is blocked,

but -- there we go. Thank you very much. Thank you for your testimony.

I want to talk about -- you spoke about wanting to avoid unnecessary burdens in your investigations and their outcome. And I think we can all agree that we want to weed out fraud and abuse. But I want to talk about audits of opioid treatment providers. There was one in New York City that found $400 in administrative fraud, ended up with over a $7 million penalty. They ended up closing their doors. Fifteen-hundred medication-assisted-treatment patients lost those slots.

Another ongoing investigation in Western New York, similar thing -- $800 in administrative issues that led to about a $4 million price tag. And that is going to be closing, another 1500 medication-assisted-treatment slots.

We're in the midst of an opioid death crisis. Do you think that's good public policy that when there's no blatant fraud or abuse or theft from New York State, to be

ending 3,000 medication-assisted-treatment slots when it's nearly impossible to start new slots?

ACTING MEDICAID INSPECTOR IVES: Senator, thank you for the question.

To start, we do recognize the vital services these programs provide. And we do recognize, particularly right now, with the health crisis and the opioid crisis, how important those services are.

I do want to clarify. OMIG is not responsible for closing programs. We do perform these audits. We think they perform a critical function in terms of just reviewing and making sure that the programs are meeting the necessary requirements as outlined by the federal government. And part of why we do these audits, and a very important reason, is if we don't test to make sure that the programs are meeting the federal requirements, the federal government can come in themselves and perform these audits, which jeopardizes the funding right at its base for providing these services.

So we do recognize this. We have heard the concerns that were raised. We also work on a case-by-case basis with each of the auditees. I am familiar with the audit you're speaking of in Western New York, and we are in communication with that provider group at this point.

But I do want to stress how important we see these programs to be, and working with these providers on a case-by-case basis on each of these audits.

SENATOR HARCKHAM: Well, I would just say -- and thank you for that. But is there no discussion internally that if we fine these people $7 million, they're going to close their door? I mean, aren't there ways to have administrative sanctions and policies put in place -- probation, something to keep the doors open so that we're not risking 1500 people's lives?

ACTING MEDICAID INSPECTOR IVES: Yes. And obviously that is a big concern. We would never want to risk anyone's safety. That would be contrary to our mission right

at its heart.

We do work hand in hand, like I said, with our partner agencies to look at that and are constantly reviewing policies to see where we may need to make improvements. But I would like to stress we work with each auditee individually on their audits. We do have opportunities available for -- if providers are having financial hardship, they can go through a process with our agency. But also throughout the audit process we stress communication and getting as much documentation as we can to support the services that they're providing to make sure that it is in line with program requirements.

SENATOR HARCKHAM: Well, that's my time. I'd like to follow up offline. Thank you, Investigator.

ACTING MEDICAID INSPECTOR IVES: Thank you.

CHAIRWOMAN KRUEGER: Assembly?

CHAIRWOMAN WEINSTEIN: Yes, we have Assemblyman Byrne, the ranker on Health, five minutes.

ASSEMBLYMAN BYRNE: Yes, thank you. And I don't think I'll have to use the whole five minutes, which I'm sure my colleagues will appreciate.

And I just want to say, you know, thank you for your work. Again, as you said earlier, obviously we do want to eliminate as much fraud, waste and abuse as we possibly can. And I understand your efforts to ensure Medicaid integrity. And that doesn't stop, obviously, throughout the course of this pandemic, and in many ways your audit work is even more important now than ever.

Yet I have heard from various home care providers that some of the OMIG audits are being approached as if we're not living in this crazy COVID world. And when auditors can sometimes show up unannounced, some providers aren't always prepared to accommodate a new influx of people arriving on-site, given all the various social distancing policies and pandemic restrictions. And in some cases it's been shared with me that audit teams have

expectations for in-person interviews with provider managers who are justifiably working remotely.

So what is OMIG doing to try to make this audit process more flexible, considering the situation that we're all living in? And considering the discussions that you may have heard earlier about expanding telehealth, I would ask if that's, you know, possibly one technology and resource that we could use to try to address some of these concerns.

ACTING MEDICAID INSPECTOR IVES: Thank you. We -- {audio glitch}. When the pandemic started, we went to remote and equipped our staff with resources to work remotely. We have been performing our audit activities remotely. We have not been going on sites. So, Assemblyman, if there are specific examples, let's please connect so that I can talk to you about that.

But we have done this remotely specifically to make sure that we maintain health and safety of the providers, of the individuals that they're serving, and of our

staff. So we have communications either through Webex, we accept documentation electronically.

And also understanding that, you know, the focus needs to be on the care of the beneficiaries. We have been working to make sure if there needs to be flexibility in terms of time frames for responses, if we need to do things kind of piecemeal and work with them to get responses. We have been trying to be as flexible as we can to make sure that we come to some mutually agreeable time frames and how we're conducting our audits.

ASSEMBLYMAN BYRNE: Thank you, ma'am.

And as far as the specifics, I will follow up with your office. So if there is any sort of miscommunication, we can have that addressed. And I do thank you for your time and your testimony here this late afternoon, early evening.

ACTING MEDICAID INSPECTOR IVES: Thank you.

CHAIRWOMAN WEINSTEIN: Thank you. We

go to the Senate.

CHAIRWOMAN KRUEGER: I see Senator Rachel May with her hand up.

SENATOR MAY: Right. Hi. Thank you for testifying here. Okay, I got my video going.

Just one quick question. When we did our hearings last summer about nursing homes, one thing we heard over and over was that the fine structure was such that the operators just built it into their operating budgets and it didn't actually change their behavior.

And I'm wondering, what input do you have into the levels of fines? And do you think they are at the level where they do discourage the kinds of behavior that we want to be discouraging?

ACTING MEDICAID INSPECTOR IVES: Thank you.

To clarify, OMIG performs program integrity oversight in the nursing homes. However, we are limited to looking at the reimbursement rates, the cost reports, and the Medicaid funds that are going into the

nursing homes. So our audits really do focus on the cost-base funds that are going into the nursing homes. So I would feel out of place responding to the fines.

SENATOR MAY: All right. Thank you.

ACTING MEDICAID INSPECTOR IVES: Thank you.

CHAIRWOMAN KRUEGER: Assembly?

CHAIRWOMAN WEINSTEIN: We have no one else. I think they used up all their energy with Dr. Zucker.

CHAIRWOMAN KRUEGER: I think they did too. Although I do have one question for Erin, to follow up from Senator Harckham's questions.

So if -- you really got me on $400 in fines for administrative errors. Is $8 million actually the increased fines that you put on top of that from the State of New York? How could that be the math? Even though you don't know what the provider is and I don't know what that provider is. How could a $400 penalty translate to an $8 million fine?

ACTING MEDICAID INSPECTOR IVES: So to clarify, because I do think it's important terminology. We do audit against overpayments, identified overpayments. So payments that were already made to a provider that show up in the claims.

For these audits we review the claims. And I think you've heard us talk before, we use extrapolation -- sampling and extrapolation. So what we do is take a sample of claims and apply, especially at this late hour, very complicated mathematical procedures.

But it does -- it's statistically valid. It takes the claims and it reviews across. So the $400 that they're referring to may be for one claim, but that one error may show up across multiple claims in our audit, which is how it gets raised up to the amounts that you're hearing.

We have been using this methodology for years across multiple categories of services. It's also used at the federal government for the OIG audits that are

conducted. And part of our reasoning for doing the audits this way -- I know when you see the end dollar amount, it may have a shock value. But understand that by looking at that and using that statistically valid sample, we're also trying to reduce the administrative burden on providers.

We take 100 claims, look at them. Where we identify an error, we do project it out. So that is how you do get to the mathematical totals.

CHAIRWOMAN KRUEGER: And so in this storyline you are offering, would that presumably mean the error you found was people who were not eligible for Medicaid coverage of whatever the service was, so when you extrapolate out you're basically clawing back every dollar that went into the program for that patient or that universal patient you think were wrongly evaluated as Medicaid-eligible?

ACTING MEDICAID INSPECTOR IVES: Correct, that can be one example that could go across multiple claims for different

beneficiaries. So it could be a mistake, as you point out, across multiple claims.

CHAIRWOMAN KRUEGER: And so there were two examples that Senator Harckham gave you. I mean, are these everywhere in the state? How many per year of this kind of storyline are you seeing?

ACTING MEDICAID INSPECTOR IVES: In terms of specifically for the opioid treatment?

CHAIRWOMAN KRUEGER: Yeah, we'll stick with that.

ACTING MEDICAID INSPECTOR IVES: Okay. We've conducted fewer than 15 audits.

And I will tell you that actually, of the audits we've conducted, we finalized five and they're posted on our website. The majority of them have had little to no findings.

So what we are seeing is that there are providers who are doing it correctly. There are providers who are meeting all the program requirements. We're pleased to see that and want to see that. But we do have to

focus on those who may have issues in their programs that we do make sure we protect the funding.

I think it's been a theme throughout the day -- I've been listening throughout the day -- to make sure that the resources we do have in the program are protected. So that's where our audits come into play.

CHAIRWOMAN KRUEGER: And is it your experience that with this kind of audit where you're finding errors that may total quite a bit of money, that there's fraud involved or just somebody didn't know how to run their program correctly and was making approvals that didn't fit the category of eligibility for the Medicaid program?

ACTING MEDICAID INSPECTOR IVES: I'll speak to the audits we've conducted. We have not seen fraud. It does look like there were some program issues, which was why it remained as an audit and ended up with the findings.

I think, as you're aware when we've expressed over the years our mission, if we

do identify fraud, we do make appropriate referrals to law enforcement or to the MFCU.

CHAIRWOMAN KRUEGER: And when OMIG was started years ago, I started asking this question every year, so I'm going to ask it now. There are some people who believe when you say Medicaid fraud you're talking about poor people intentionally fraudulently ripping off the Medicaid program.

But is that still true that that is not the universe of people that OMIG is finding against, that it's very hard to commit individual Medicaid fraud to your own advantage?

ACTING MEDICAID INSPECTOR IVES: We do find that providers -- unfortunately, there are many out there who do take advantage of the Medicaid population. They will use many different schemes to benefit from what is supposed to be these funds going to and services provided to the Medicaid population.

So yes, Senator, you're correct.

CHAIRWOMAN KRUEGER: All right, that you can't really pull off Medicaid fraud

without provider participation leading the way. Did I say that correctly?

ACTING MEDICAID INSPECTOR IVES: Yes.

CHAIRWOMAN KRUEGER: All right, thank you. Thank you for your time today.

ACTING MEDICAID INSPECTOR IVES: Thank you.

CHAIRWOMAN KRUEGER: Anyone else jump in while we were having that dialogue and need us?

CHAIRWOMAN WEINSTEIN: No. No.

CHAIRWOMAN KRUEGER: Nope? Then we are going to let you go to continue your day or your work. Thank you very much for your work for the State of New York.

ACTING MEDICAID INSPECTOR IVES: Thank you for your time.

CHAIRWOMAN KRUEGER: All right. For those of you who have been hanging out hoping we would someday get to the nongovernmental representatives, we are at that point.

So you are set up in panels. So I will read out the full panel of people. Then you will each get three minutes to testify.

Then anyone who wishes to ask questions -- again, hand up, the best way to get Helene or my attention, and you have three minutes to ask the entire panel your questions.

So not unlike the earlier part of the day, if you really want a more detailed answer, you might be saying, Don't answer me now, I would like your follow-up with me. And I suggest that all of our panelists will be willing to do follow-up with you.

Also we have all of your testimony, panelists, and can read that. So please don't feel a need or even try to read us your testimony, because if you're fast enough to read your entire testimony in 3 minutes, you are a very good speed reader, but we won't know what you're saying anyway. So it would be preferable if you each bullet-point your key issues from your testimony. Count on us as legislators to have learned to read. And again, we can follow up with you afterwards, because this all becomes like speed-dating, and we're starting this portion at 5:15 in the afternoon on the last day of hearings.

So thank you for putting up with us.

And the first panel: The Healthcare Association of New York State, Bea Grause; the American College of Ob-Gyns -- excuse me, obstretians -- I can't even do this. I always say ob-gyn because it's easier -- Dr. Camille Clare; the New York Society of Physician Assistants, Maureen Regan; the director of the Greater New York Hospital Association, David Rich; and the Visiting Nurse Service of New York, Hany Abdelaal.

And we'll just start with Healthcare Association of New York.

MS. GRAUSE: Thank you, Chairman Krueger -- Chairwoman Krueger. Good afternoon -- or good evening, almost --

CHAIRWOMAN KRUEGER: Almost.

MS. GRAUSE: -- Chairs Krueger, Weinstein, Rivera and Gottfried and committee members. My name is Bea Grause, president of HANYS, representing not-for-profit hospitals, health systems, and post-acute-care providers across New York State.

We thank you for your continued

support. HANYS and our members appreciate the difficult state fiscal situation. However, COVID-19 also created unparalleled fiscal challenges for our members. Our members showed up, they worked tirelessly together to coordinate response efforts and ensure the highest level of public and patient safety. We spent billions of dollars to increase capacity, buy supplies and equipment at higher-than-usual prices, and bring in additional staff as needed. And all this was done while, for much of that time, elective surgeries were canceled.

A Kaufman, Hall analysis that we conducted for HANYS estimated that over the period of this year, a little more than one year, hospitals across the state will have suffered a 20-to-25-billion-dollar loss in revenue. That's about 30 percent of their revenue. On top of that, that doesn't count the $2 billion in recurring reductions from last year's budget.

So in review of this year's budget, we urge you to consider our five principles for

recommendations. First, do no harm. I think that's obvious. Second, reject cuts, any cuts to Medicaid. Medicaid currently, we estimate, pays about 67 cents on the dollar. Third, strengthen healthcare. And particularly, as was discussed earlier today, the telemedicine and managed-care changes. Fourth, fix harmful policies such as 340B and the indigent care pool, as has been discussed. And finally, support new investments. We urge the Legislature to support the investments that are included in the Executive Budget.

Just a couple of quick things. Again, reject the budget's 1 percent across-the-board cut to the Medicaid program. Adopt our proposal, HANYS' proposal, to create a short-term glide path to the newly adopted indigent care pool funding model, and reject this year's proposal to eliminate state support of the public indigent care pool.

Delay implementation of the damaging proposal for the 340B drug pricing program.

We support the increased premiums for the Essential Health Plan. Enact sensible managed-care reforms, including classification of pay-and-pursue policies.

We support the enactment of telehealth payment parity. Encourage -- make sure that for-profit health insurers achieve the state budget's Medicaid spending goals while securing justified community reinvestments.

And finally improve reimbursement for New York's struggling not-for-profit nursing homes, to ensure that resident care and staff are not shortchanged.

This pandemic has proven time and again that our nonprofit hospitals, health systems, post-acute-care providers and their frontline and support staff, are there for all New Yorkers 24/7. And in that context, I want to support Dr. Zucker's March 25th directive.

As he has stated, the first reason is because the science is absolutely there, and it's supported by the science. And the second reason is because of the context. Our

hospitals were in urgent life-and-death situations, and we believe that the directive saved lives at the hospital level.

In closing, HANYS is committed to working with you to ensure that the highest-quality care is accessible and affordable to New Yorkers. And we thank you again for your support.

This concludes my testimony.

CHAIRWOMAN KRUEGER: Thank you.

Dr. Clare?

DR. CLARE: Good evening, or afternoon. My name is Dr. Camille Clare, and I'm an obstetrician and gynecologist, and I serve as the chair of the American College of Obstetricians and Gynecologists -- yes, it is a mouthful -- ACOG, District II.

Thank you for this opportunity to provide testimony on the proposed Executive Budget. We really greatly appreciate the Legislature's work over the past several years to support a variety of maternal mortality prevention initiatives and for enacting legislation to improve New York's

maternal mortality review process through the creation of the Maternal Mortality Review Board.

This review board is critical to identifying the causes and contributing factors in maternal deaths, to address the disparities -- as we know, Black women are three to four times more likely to die of a pregnancy-related death than white women -- and importantly, to develop and implement actionable strategies for prevention.

The review board is active in its work, and we urge the Legislature to ensure that this work is supported and continues.

Secondly, we ask that the Legislature include $250,000 in general operating funds for the Safe Motherhood Initiative. Funding for this program is typically added by the Legislature during the budget process. ACOG's Safe Motherhood Initiative works with obstetrical teams across the state to develop and implement clinical bundles that outline standardized approaches for managing obstetrical emergencies associated with

maternal mortality and morbidity.

Funding is necessary to be responsive to recommendations from the Maternal Mortality Review Board and ensure providers across the state can learn from the reviews, implement actionable strategies for prevention, allow SMI to continue hospital implementation support, enhance safety bundles with a specific focus on health equity and respectful care, and develop a cardiac bundle.

We ask you to ensure changes to telehealth that prioritize health equity and access. As a practicing OB-GYN, telehealth is an extremely important and useful tool to me to contact patients during the pandemic.

We next ask you to reject physician disciplinary process changes which would disregard essential due process protections when a complaint is filed against a physician to the Office of Professional Medical Conduct. The commissioner already has authority to take summary action prior to the conclusion of disciplinary hearings.

Finally, we ask you to reject the proposed Excess Medical Liability Program changes which would require physicians who are already experiencing losses due to the pandemic to pay 50 percent of the cost of excess medical malpractice insurance, which is a critical program for high-risk specialties.

We appreciate the Legislature standing with the physician community, particularly during this extremely difficult time. Please consider us a continued resource on women's healthcare in the future. I really appreciate the opportunity to meet with you all, and am happy to answer any questions that you may have. Thank you very much.

CHAIRWOMAN KRUEGER: Thank you.

Maureen.

MS. REGAN: Good evening. Thank you very much for the opportunity to present before this committee.

The pandemic that we are currently working our way through has shed light on the PA profession and our ability to treat

patients of every age in every clinical discipline and in every healthcare setting, including home care, school health, mental health, and occupational medicine. We care for those who are critically ill and those seeking primary and preventative care via brick-and-mortar facilities or telemedicine.

Health system CEOs, COOs and CMOs across the state turn to PAs to help manage a significant surge volume of patients in the clinical and the administrative space. One CMO stated he didn't really appreciate the impact of PAs, colleagues he has worked with for many years, and that PAs are an invaluable solution based on their education in medicine, their clinical and procedural training, and their flexibility. He stated: "You are the cross between a stem cell and a 3D printer."

Our ability to be able to respond at this level was primarily due to the action of the executive order setting aside the need for a PA to have a supervising physician.

I'd like to speak to the impact of PAs

across the state over the past year. Speaking with the CEO and CMIO at Urban Health Center, an entity that sponsors multiple federally qualified health centers in the Bronx and Queens, taking care of some of our most vulnerable populations, they must rely on PAs to staff their primary and specialty care clinics. They cannot hire physicians, and when they do, the turnover is significant.

The leadership of this federally qualified health center is extremely frustrated that PAs are not recognized by New York State Medicaid managed care as practitioners.

Executives who support Medicaid managed care plans are also frustrated that this barrier exists, as their enrollees experience significant delays in getting healthcare appointments.

PAs need to be recognized by New York State Medicaid managed care and be able to have their own panels. PAs are doing the work and are addressing the inequity.

Patients need to be able to find PAs to reduce delays in care, which are forcing increased costs and other detrimental effects.

Stakeholders cannot objectively see the impact of the work PAs are doing. There needs to be objective validation when employers look for workforce and care model solutions. All insurance entities in New York State need to enroll PAs as practitioners in their plans.

Transparency in who is providing care to our patients is imperative. Our policymakers and our healthcare delivery systems rely on it. The federal government supports direct billing for PAs. I encourage New York State to do the same.

Northwell Health has used a PA to guide their employee health, their entire healthcare delivery system. At Noyes Hospital in Finger Lakes, a cardiology PA with emergency management experience was able to transition to run a COVID testing center. In Western New York, the general physician PC

developed a telehealth model run by their physician leadership along with a PA. PAs in Central New York have been able to do the same for patients who would not have access to care.

This pandemic has laid bare many barriers and opportunities to healthcare in New York State. With the support of the Legislature, we look forward to addressing and setting aside administrative barriers. This is not a scope-of-practice issue, nor is it a training issue. It's an imperative to establish equitable care.

With all due respect to our valuable physician, pharmacy and nursing colleagues, the PA profession has not been mentioned once in any discussion today, despite being named the number-one profession by U.S. News & World Report in 2021. We need to change that.

PAs are often not included in healthcare language and/or bill language, leaving true intent up to interpretation -- and more often, misinterpretation -- creating

confusion and delays. We cannot leave this up to random interpretation of HR departments, recruiters, EMR vendors or practice managers.

I ask our legislative colleagues to please reach out to us, as we are a huge resource for the interpretation of the training and scope of PA practice. We welcome the engagement. Please be sure to transparently include PAs in guidance and bill language pertaining to the delivery of healthcare that fall within our education, training and scope. Our public's health and our fiscal health depend on it.

Thank you.

CHAIRWOMAN KRUEGER: Thank you.

Next, David Rich.

MR. RICH: Thank you.

Last year was like no other. Our hospitals mounted the largest mobilization of healthcare resources in the nation's history. We mourn every patient that died. But we are also proud of the brave women and men in our institutions who cared for and safely

discharged 145,000 patients since February. They pioneered innovations that have been replicated around the world. They used resources no hospitals had ever been asked to use before. They saved thousands of lives, and we owe them a huge debt of gratitude.

But all of this came at great emotional and financial cost. Hospital financials tanked in 2020, from the double whammy of reduced use and increased costs. Without the dollars secured by Senator Schumer, our hospitals would have fallen off a financial cliff. But we're not out of the woods. New Yorkers are not using hospital services as they did before. Inpatient use is down 16 percent and ER use is down 34 percent.

There's not going to be any more hospital relief from Congress, so we need you to do three things, respectfully.

One, provide new funding for hospitals. For 13 years, hospitals have effectively not received an increase in their Medicaid rates. That's why we have dozens of

hospitals on a closure watch list. State funding from the new COVID relief bill should be used to wipe out cuts and increase Medicaid rates.

Two, rein in the abusive practices of for-profit insurance companies, who made huge profits during the pandemic, collecting premiums while most hospital services were shut down. We urge you to revisit one of the reforms that wasn't enacted last year, known as "pay and pursue," which would require insurance companies to actually pay for care delivered to their enrollees.

And three, don't impose costly mandates that would put hospitals in an even worse financial position. This includes staffing-ratio legislation that we all know would cost hospitals and nursing homes $4 billion.

With regard to nursing homes, let me be clear: We support reasonable and funded reforms. We represent not-for-profit nursing homes, which are the gold standard for long-term care, but that gold standard is

rapidly disappearing. We're losing 5 percent of our not-for-profit homes per year. This is a matter of great concern, and we urge you to conduct a thorough examination of this phenomenon.

For nursing homes, we need you to increase Medicaid rates. And we are also interested in a proposal that would require homes to dedicate 70 percent of their revenue to direct resident care. We want to be sure, though, that the missions of not-for-profit and public nursing homes are protected in the process.

Finally, I would draw your attention to an essay published yesterday by the five CEOs of the largest voluntary hospital systems in the state. They point to scientific studies from across the globe that have found that COVID patients are most infectious early in their illness and are very unlikely to still be infectious or contagious when they are discharged from the hospital. It would greatly benefit the discussion about hospital discharges if we

all become acquainted with the science of the infectiousness of COVID-19.

Thank you so much for your support, and thank you for your consideration. And I'm happy to take any questions.

CHAIRWOMAN KRUEGER: Thank you.

And last on this panel, from the Visiting Nurse Service of New York, Hany -- I'm sorry, I'm going to just --

DR. ABDELAAL: That's okay, don't worry about it.

CHAIRWOMAN KRUEGER: Say it for me once so I can try and get it right.

DR. ABDELAAL: Sure. Thank you for the opportunity to testify. I am Dr. Hany Abdelaal, and not from the HANYS association. I'm president of VNSNY CHOICE Health Plans, which includes the largest non-for-profit managed long term care plan as well as a plan that integrates Medicaid and Medicare services for dually eligibles.

I'm also the chair of New York's Nonprofit Managed Long Term Care Coalition, and that is the capacity in which I am

speaking to you today.

Our plans help over 130,000 frail and elderly New Yorkers stay in their homes instead of having to go into nursing homes. This includes helping our members with their basic needs. And I want everyone to focus on this; this is moving from place to place, bathing, toileting, eating, socializing, and going to the doctor. Without us, these basic functions would not happen.

CHOICE Long Term Care Plan serves over 24,000 members, and I want you to hear about the demographics: 73 percent are female, 75 percent are a race other than white. The average age is 75. The average income is under $900. And most of our members have more than five chronic conditions. And most of them speak one of 20 primary languages other than English. So this is the most vulnerable residents in our community.

During the public health emergency, CHOICE, like other MLTC plans, was there for our members. We made sure our most vulnerable members had support despite the

aide shortage. We made sure that members who were food-insecure had enough to eat. We provided counseling and supported isolated members, and we sent over a million masks to our members during the PPE shortage.

So today I'm going to focus our comments on the quality incentive funding that the Executive Budget eliminates. This has been an incredibly valuable tool to align MLTCs and our providers to improve quality of care for the managed long-term-care population. These funds really fund incentive payments, create predictive models, provide realtime patient level performance data to our providers, and they educate and train care managers.

And the result of that is it works. Over the last four years the Quality Incentive Program has helped us improve outcomes for our members on virtually every measure -- that's reducing ER visits, hospitalizations, serious falls, and including vaccination.

So the Executive Budget eliminates

this quality incentive pool, and this is essentially a quality disincentive. Not only does this fly in the face of over two decades of health policy, it seriously undermines the quality infrastructure that MLTC plans have built and hurts the home care agencies that are using value-based payments to enhance their operations while paying home health aides who put themselves out there every day during this crisis to serve our most vulnerable members.

Since well before the pandemic, quality plans and providers were partners with New York State to address these health disparities and ensure the population remains home. We urge the Legislature to restore the quality funding pool and make the pool permanent in statute to support long-term-care services for tens of thousands of disabled and frail New Yorkers.

Thank you for your time, and thank you for supporting us.

CHAIRWOMAN KRUEGER: Thank you all very much.

I know that Gustavo Rivera had a question or two.

SENATOR RIVERA: I do, and it will be brief.

Hello, everyone. Okay, so I have a few -- obviously, hopefully you folks were tuned in during the marathon session that we just had, and so I wanted to ask a couple of questions. Certainly you all expressed in different ways the concerns that you have about the Medicaid cuts. So I wanted to ask -- and I've asked some of you when you've come and met with me, and some other organizations as well, but I want to do so publicly as well, related to the raising of more revenue in the State of New York and how essential it is, particularly as it relates to making sure that when it comes to education, to healthcare and to other basic services, that we do not make those cuts, that we actually get more revenue.

Does anyone want to take this opportunity on behalf of their organization to actually say how essential more revenue by

taxing the wealthy would be? This is your opportunity.

MS. REGAN: Senator Rivera, if I may.

SENATOR RIVERA: Please.

MS. REGAN: There are 25 PA programs in New York State, including in urban, rural and suburban areas, many hosted by SUNY and CUNY institutions. A very young, qualified workforce. Many of your constituents are struggling with workforce solutions --

SENATOR RIVERA: Yes, ma'am.

MS. REGAN: -- the problem across the state. And the ability to re-channel some of those funds into those educational opportunities to solve workforce issues is significant.

SENATOR RIVERA: So you would say that having more revenue to be able to provide, in this particular sense, in the programs you're talking about, to be able to train more folks that could be new to the workforce, the healthcare workforce, you would be supportive of that.

MS. REGAN: Yes. There are over

18,000 licensed PAs currently in New York State. State Ed is handling about 1500 licenses a year. And that represents about a 30 percent increase in the past five years.

SENATOR RIVERA: So more revenue would help that happen.

MS. REGAN: That's right. There's a huge demand for people to go into the PA profession.

SENATOR RIVERA: Gotcha.

I'm guessing the other folks are not going to take the bait.

MS. GRAUSE: Senator?

SENATOR RIVERA: Yes, ma'am.

MS. GRAUSE: We don't have a position on how you raise revenue, but certainly more revenue for healthcare is something that we would support. But we don't have a position on how you raise that. That's --

SENATOR RIVERA: I would ask you, as I have privately, to please go back to your membership and develop a position, particularly during the budget negotiations. Greater New York, same thing. Get your

members to get on board to please, let's tax the wealthy, because the folks who you serve, the Medicaid patients that you serve all across the state are the ones that are suffering because of these cuts. And we need to actually assuage some of those cuts.

Also, I just wanted to get people's opinion on the global cap. There is a bill that I have to actually get rid of it. I have made the argument many times that it is an -- it was an invention, there's no question about that. And whether it's a useful invention -- the administration continues to insist that it is, I continue to insist that it is not.

Does anybody want to take a public position on the global cap during this moment?

MR. RICH: Yes, Senator, I will.

We have a lot of concerns about the fact that the global cap has really not changed since it went into effect in 2011. Last year, as part of the MRT 2 process, a lot of the MRT members talked about it.

The administration also talked about at least making adjustments. Because as Senator Krueger pointed out before, when you have so much enrollment growth, that crowds out everything else. It crowds out the ability to do important investments elsewhere. It's why providers have not had an inflation increase in 13 years -- well, in nine years, but they haven't had since longer than that.

So we would very much support, at the very least, reforming it. We haven't taken a position on actually getting rid of it altogether.

SENATOR RIVERA: So this is another one where I would ask you to go back to your memberships and consider that amongst your board.

Anybody else want to take a position on this?

MS. GRAUSE: We will. We'll consider it, Senator. There definitely are challenges with it. But it's complicated, as you know.

SENATOR RIVERA: Oh, certainly it is

complicated. But certainly I believe it's necessary to at the very least reform it, and at the most get rid of it, which is why I have a bill.

Anybody else? We've just got 50 seconds. If not, it's okay.

Doctor, Dr. Clare, thank you for bringing up all the concerns that you have about maternal mortality. It is incredibly -- I'll give you the last 40 seconds to just tell us a little bit more about how important it is to make sure we get it right in this budget.

DR. CLARE: Yeah, I think in particular funding the Safe Motherhood Initiative would really be key, because we want to implement some of those clinical bundle strategies that we've developed, and the recommendations that have come from the Maternal Mortality Review Board.

So I think that's really one of the most important things I can really advocate for. That would include $250,000 to really fund this initiative. We know the good work

it has done. New York State was ranked 46th in the country, now we're ranked 23rd. We have more work to do.

Definitely we know that hospitals have reported that SMI has really directed their impact, their ability to improve patient care. So thanks for your time.

SENATOR RIVERA: My time is done. That $250,000, we would be able to have it if we taxed the wealthy.

Thank you, Madam Chair. Back to you.

CHAIRWOMAN KRUEGER: Thank you, Senator Gustavo Rivera.

Helene, Assembly?

CHAIRWOMAN WEINSTEIN: Yes, we have a number of members. We'll start with Assemblyman Ra.

ASSEMBLYMAN RA: Thank you, Chair.

Thank you all for your testimony --

CHAIRWOMAN WEINSTEIN: It's just three minutes -- excuse me, it's just three minutes for the panel. Yeah.

ASSEMBLYMAN RA: Thank you all.

And a special thank you to all of your

members, both institutionally and personally, for their work over the last almost year now. It's certainly been a challenging time for everybody in the healthcare field and, you know, really answering the call in unprecedented circumstances.

I just wanted to -- and I think this would be particularly for HANYS and Greater New York Hospitals to talk a little bit more about some of the nursing home reforms? And in particular it was mentioned regarding the revenue restrictions that are proposed.

We've seen these types of things in the past, you know, with not-for-profits and things like that, and one of the things we've seen is that perhaps costs that are considered to be one thing or another by a particular sector versus what they're considered by the state may not always match up, and it causes some issues.

So -- and I know you mentioned, you know, it not -- it being something that could particularly clash with making sure that not-for-profit and public entities can comply

with their missions. So if you could elaborate with regard to that a little bit about things we need to keep in mind when crafting that proposal.

MR. RICH: Sure, absolutely. Thank you, Assemblyman.

We represent only not-for-profit and public nursing homes. And for the most part, they do spend more on direct resident care and staffing than their for-profit counterparts do. And so we prefer this kind of proposal much more than staffing ratios, for instance, mandatory staffing ratios.

What we would like to make sure, though, is we've seen there are some nursing homes that do not -- who have very different cost structures, like specialty nursing homes, pediatric nursing homes, those who serve HIV and AIDS, continuing care retirement communities and others who may need to be exempted altogether from it.

We'd want to make sure that when you're looking at what cost centers you're including from a cost report, they really are

what we would view as things that enhance resident care and patient care. And that's sort of where some of the details come in.

But for the most part, for the not-for-profit and public community, it's a better proposal than the ratio bill, for instance.

MS. GRAUSE: Yeah, I think David's got that right. The devil is in the details. And for not-for-profit nursing homes, the vast majority of their budget goes to direct patient care in the form of salaries for caregivers.

So I think just making sure that there's clarity around the expenses and what would be counted in is critically important. But we think, again, making sure that the dollars go to patient care is really the most important part of that.

ASSEMBLYMAN RA: Thank you.

CHAIRWOMAN KRUEGER: Thank you.

I think -- well, for me for the Senate, just following up on those questions, do you think we can put the genie back in the

bottle and reverse ourselves and no longer allow for-profit nursing homes in New York State? Do you think if we get the formulas right that not-for-profit providers will come back into this universe?

MR. RICH: You know, I think -- oh, go ahead, I'm sorry.

MS. GRAUSE: I guess I would have to say if you want to -- I think it's a money question. I think if you want to have services in the state, you have to cover the cost of those services.

So I think it boils down to making sure that you can have not-for-profit nursing homes that can actually have a margin, because without the margin, no mission.

MR. RICH: Yeah. And I think as we mentioned before, given the fact that nursing homes are often 90 percent Medicaid, and the Medicaid program has really underfunded them, I think that's why we're seeing the not-for-profits who do have higher cost structures because they do spend more on residents' care and on, you know, other

things that cost more.

We see them bought up by the for-profits, and that's because the for-profits, once they buy them up, really cut back on a lot of the things that the not-for-profits were spending on in order to fulfill their mission.

So it's really a function, as Bea said, of the Medicaid rates. And they've got to be improved if we're going to turn this around.

CHAIRWOMAN KRUEGER: And I think that's a lesson for us also when we're walking into the new world of telemedicine.

I think that we've all seen during COVID how valuable expanded telemedicine options can be, particularly in areas that are geographically distant from large numbers of doctors and medical centers.

But there also seems to be a push for for-profit telemedicine, and my gut is to be very hesitant of that. Has anybody looked at the differences between for-profit telemedicine and remaining in our

not-for-profit model here in New York?

MR. RICH: I have not, but we will certainly look at that, absolutely.

DR. CLARE: I would just like to add that, you know, really payment parity is really key for telemedicine services for all payers. And also coverage for audio-only options.

You know, I take care of patients that are in a safety-net hospital system and so therefore really allowing for those options. It really was invaluable for me as an OB-GYN in the height of the pandemic almost a year ago to really have access to my patients. So really payment parity is super-key, and coverage for audio-only would really help these services.

MR. RICH: We absolutely agree with the payment parity comment. Thank you, Doctor.

CHAIRWOMAN KRUEGER: Thank you. Although we're not going to tell women, We're not coming to help you deliver your baby anymore, you just -- we'll walk you through

on the computer, right?

DR. CLARE: Well, that's for the outpatient services. We know for inpatient services they always have to come in. But for outpatient services, prenatal care, we know that's super important to ensure those good outcomes and reduce maternal mortality, so, you know --

CHAIRWOMAN KRUEGER: That's just my bad sense of humor.

(Laughter, overtalk.)

DR. CLARE: I got it, I got it. No worries.

CHAIRWOMAN KRUEGER: I'd better stop before I do more damage.

Assembly.

CHAIRWOMAN WEINSTEIN: Assemblyman Cahill.

ASSEMBLYMAN CAHILL: Thank you so much.

And if I had my pots and pans here, I'd be banging them for the people that work for you to thank you for everything that you've done over the past year.

I just sent a message to one of the people in the Department of Health that while Dr. Zucker was testifying, the one and only COVID patient at the Health Alliance of the Hudson Valley was released, and it was my brother-in-law. So this is a good sign, not only that my brother-in-law got out, but that there was only one patient there today. That's terrific news.

Now, Ms. Grause and I had had an opportunity on Monday to talk at length about a variety of different issues. One of the things I said to her, and I think our group kind of misinterpreted my reporting for advocacy -- although I will say I am a supporter of the idea -- I do believe that this Legislature is of a mind to consider seriously staffing ratio bills.

And I would just urge you, as people who represent a very important industry, to start to think in terms of how you want to contribute to that dialogue instead of thinking about how you can resist it. Because if it happens, it happens. I'd

rather have you be part of the solution than have it be something that was imposed upon you.

MR. RICH: We would agree with you.

ASSEMBLYMAN CAHILL: Greater New York has mentioned the finances of COVID for the hospital systems and the nursing home systems in our state. You had lower admissions at the emergency room, you had fewer surgical procedures -- two of the last remaining profit centers for our hospitals. And profit is the wrong word. Two of the last areas of hospital services that make more money than they cost.

MR. RICH: Mm-hmm.

ASSEMBLYMAN CAHILL: And then you also mentioned that there were increased costs associated with COVID as a result of all this.

Do you feel that you can recover from this with one-shot extraordinary help? And can we get back on track to where we were -- let's change that. Can we get back on track to finally reaching a point of a path toward

permanent solvency for our healthcare institutions?

MS. GRAUSE: It's going to take a while. It's certainly going to take a while. There are a lot of moving parts.

Frankly, many hospitals have not seen the cases come back in terms of their outpatient surgery. I think the prices are still high for PPE. The requirements to warehouse PPE still exist. So it's going to take a while.

And I think telemedicine will help in some areas, but I think it will still be a challenge revenue-wise for other providers.

MR. RICH: Yeah, and it's a very big concern from a public health standpoint too.

I mean, having only 64 percent of the people in the ER that you used to have -- we've always wanted to have fewer people in the ER, but if it's just because they're not coming and getting healthcare, then that's really a problem.

But I think especially for our safety-net institutions, those Medicaid

rates -- some increase in Medicaid rates is so important. We keep having like bailouts and Band-Aids for them year after year after year. We really just need to take care of the revenue structure in one fell swoop.

ASSEMBLYMAN CAHILL: So my clock was set for three minutes instead of five, but let me just be very brief and --

CHAIRWOMAN WEINSTEIN: It's three minutes.

CHAIRWOMAN KRUEGER: It's supposed to be.

ASSEMBLYMAN CAHILL: Okay. So very, very quickly, thank you for your comments on medical malpractice, excess medical malpractice. Very important.

I would urge you all to start thinking about trying to formulate a group to reconsider how we deliver healthcare in New York. We have to get off the triage and get on a real plan.

So thank you very much. We'll be looking at everything, and hopefully we'll be doing the right thing by you through this

budget.

MR. RICH: Thank you.

MS. GRAUSE: Always happy to do that.

DR. ABDELAAL: Thank you.

CHAIRWOMAN KRUEGER: Helene, you have another hand.

CHAIRWOMAN WEINSTEIN: Another two.

Assemblyman Byrne.

ASSEMBLYMAN BYRNE: Thank you. And I want to thank you again for all your testimony and just sticking through the entire hearing. It's much appreciated.

A couple of questions and comments. One, Maureen, you're right, we should be talking about physician assistants more. And my wife would agree.

You mentioned in your testimony about many New York State websites incorrectly list PAs as registered rather than listed. I would be curious as to what specific websites. I don't expect you to get that to me now, but perhaps that's something that our committee and we can do, whether it's writing directly to the state agency or through

legislation. But I would be interested in that.

I also wanted to just say thank you again for your comments, all of you for the most part, on the opposition to the elimination of the Indigent Care Pool for public hospitals. I tried to mention it earlier, but Westchester Medical Center is just outside my district, but it's in one of the counties I represent, and I believe that they're even more disproportionately more impacted from that elimination because the county does not contribute like some of the other public hospitals.

Also heard some of your concerns about the shift from the 340B retail pharmacy benefit, from Medicaid managed care to fee for service. I appreciate that.

And I wanted to just -- you know, after my comments if there's anything you want to elaborate on, I would appreciate that and give you that opportunity.

The same thing with, again, just like the Insurance chair, about the Excess Medical

Malpractice Insurance Program. I appreciate your comments.

As far as the nursing homes, the 30-day amendments, that was more of a specific question I had. Some of these penalties are substantial increases from what is current. And I know there's been proposals in the past from some members in the Health Committee -- I think the chair. And I tend to think that these types of policies and discussions should be separate from the budget, not in the budget.

They seem to be pretty significant in a jump. And I'd like to ask if you had any comments or questions on that. And if there's anything else you wanted to add, by all means please do.

MR. RICH: Assemblyman, on the financial penalties, they're very big increases. And they're not just for nursing homes, those are for all providers, so hospitals and other providers as well.

So we are very concerned about that. I mean, you know, we already feel like the

fines are sufficient. And we don't want to see them increased.

MS. GRAUSE: Yeah, I don't think fines are helpful in terms of operation or, most importantly, in terms of an improvement.

I think you raised a lot of issues, Assemblyman, and we are always happy to come in and talk to you in more detail. There's a lot of detail there. There's also a lot of relationship between many of the Medicaid issues and some of the proposals in the budget. We're happy to talk to you about that.

ASSEMBLYMAN BYRNE: Thank you. And I guess my point on the fines is if we're going to have those discussions, I don't think it should be in the budget. I think it's too easy for things to get packed in. And if we want to debate that, we should do it separately and include all the stakeholders, including you folks.

So thank you.

MS. GRAUSE: We would agree with that.

CHAIRWOMAN WEINSTEIN: Assemblyman

Jensen.

ASSEMBLYMAN JENSEN: Thank you very much, Madam Chair.

Just want to get back into the staffing conversation again. So really for our hospitals and our nursing homes, what do you guys see as really the nursing needs that you're seeing from your members on a daily basis, whether it's RNs, LPNs, CNAs? Where do you see the biggest need?

And when you're looking at those staffing needs, do you think that flexible, evidence-based, data-driven models will really be preferable to adapt to what patient resident needs are on a day-to-day basis, rather than something that's mandated across the board for every facility across the state?

MS. GRAUSE: Assemblyman, I couldn't agree with you more. I think the pandemic has demonstrated the need for flexibility.

And I think if you have seen one staffing model in a hospital, you've seen one staffing model. There are big differences

between large academic medical centers and how they are able to staff, and a small critical-access hospital.

And so I think having that flexibility to make decisions locally -- and also, staffing needs vary according to the acuteness of the patient. I'm a registered nurse myself, and a hospital -- a patient's needs may change minute by minute. In a nursing home, the patient's needs are much more stable. And so there are vast differences.

So I think that allowing those -- the decision-making to happen within the facility is really the most appropriate. And the pandemic showed that.

ASSEMBLYMAN JENSEN: I apologize for the background noise on my end. I'm at the dinner table with my 2-year-old, so I apologize.

MS. GRAUSE: Lucky you.

DR. CLARE: We love coworkers. So we love coworkers.

(Laughter.)

ASSEMBLYMAN JENSEN: Does anybody else want -- David, did you have any thoughts on --

MR. RICH: Sure, no. Thank you, and thank you for your comments on this issue earlier today.

Totally agree with Bea. And I think, you know, as I mentioned on the nursing home side, we would prefer the kind of approach that the 70 percent -- the requirement to spend 70 percent on direct resident care, we much prefer that to inflexible ratios that are in the bill.

You know, to Chair Cahill's comment before, we would definitely want to be part of a solution. In the past, unfortunately, the only option out there has been the bill that, you know, DOH and Cornell told us all last August would cost $4 billion for hospitals and nursing homes and require us to hire 70,000 new people. So we clearly can't pass that.

But we definitely would want -- we are very willing to have conversations, and I

believe some are actually happening even as we speak. So we would like to be part of a solution.

ASSEMBLYMAN JENSEN: In the 10 seconds I have, just a yes -- so do you really see the need not just for RNs, but the LPNs and CNA positions across the board are really what are needed for our health system right now?

MR. RICH: Oh, absolutely. We need all of them.

ASSEMBLYMAN JENSEN: Thank you very much.

Thank you, Madam Chair.

MR. RICH: And PAs.

CHAIRWOMAN WEINSTEIN: We go to Assemblyman Palmesano.

ASSEMBLYMAN PALMESANO: Thank you.

Appreciate you being here and what you do.

This is more directed towards HANYS and the Greater New York Hospital Association. Particularly I know the comments were brought up during your initial

comments about the Indigent Care Pool. And I just wondered if you could elaborate a little bit more on that from the perspective -- are you concerned about counties having to have an increased burden with the removal of the state's share of the Indigent Care Pool and the overall impact this could have on county property taxpayers, on your healthcare facilities, and the delivery of healthcare in general? Just anything you could elaborate on that.

Because I know that's something that has a lot of concern, especially I always worry about cost shifts to counties and property taxpayers and how that might impact -- any thoughts you might have on that proposal?

MS. GRAUSE: Sure. Certainly. I think there are a couple of moving parts.

We agree with you on the removal of the state support for the public Indigent Care Pool. And I think we also have a proposal that would smooth out the changes year to year for the providers who receive

those Indigent Care Pool funds, so that the burden of loss is evened out over time.

So we agree with you on that part, but we also have the concern about the providers.

MR. RICH: Yeah. And I would totally agree. And, you know, as I believe it was Assemblyman Byrne mentioned before, different counties have been supporting their public hospitals in different ways. In Westchester, the county doesn't really put in the local share. The hospital itself is financing that. Erie County deals with it differently, and Nassau County deals with it differently. The SUNYs, they don't have a taxing ability to put up the state share that would be taken away from them.

So we really, really would urge you to reject that cut, both because of the impact on counties -- who, by the way, need relief also and not new costs shifted to them. And it's not clear they'd even be able to pick up the slack even if they were able to -- or that they would be willing to. They've got other priorities as well.

So we think it's a -- we think it's an ill-advised cut.

ASSEMBLYMAN PALMESANO: Thank you very much.

CHAIRWOMAN KRUEGER: Anyone else, Assembly?

CHAIRWOMAN WEINSTEIN: We're done.

But I think you have someone now, Senator Serino.

CHAIRWOMAN KRUEGER: Oh, hello, Sue Serino popped up.

Senator Sue Serino.

(Pause.)

CHAIRWOMAN KRUEGER: Turn on your speaker.

SENATOR SERINO: Sorry. Darn buttons.

Thank you, Madam Chair.

And thank you so much for being here.

You know, a big part of our conversation today was we were talking about bolstering staffing. So how do we improve the workforce pipeline, whether it's CNAs, RNs, PAs, doctors, what have you? Do you have recommendations for bolstering the

healthcare workforce so the staffing shortages aren't as common as they are today?

MS. GRAUSE: Thank you, Senator.

There are a lot of things that are already in place, and I think it certainly takes time. I think the legislation for a Bachelor of Science in Nursing in 10 is one.

I think career ladders starting early in schools. It's actually quite a complex area. But, you know, kids -- when I was in high school, you know, you could be a teacher or a nurse. I'm dating myself, but that -- you know, those were the choices, and I chose nursing. But kids, young boys and girls have lots and lots of different career choices. And I think starting early and making sure that kids understand the wonderful rewards and career paths for people who choose healthcare is something that we have to do a lot more of.

But there's many more ideas. But yes, we would love to talk to you about a lot of our ideas around that.

SENATOR SERINO: I would love to do

that. I love going into the schools, and I think we really have to start in middle school, right? By the time high school rolls around --

MS. GRAUSE: It's too late.

SENATOR SERINO: -- it's too late.

Yeah, so I'd love to continue this conversation. And thanks again for being here today.

MS. GRAUSE: Of course.

MS. REGAN: I think the challenge as it relates to PAs, as I mentioned, is to ensure that PAs are included in regulations, guidance, statutes, bills. We're often left out, and if people don't see us, they assume that PAs cannot provide the function.

A perfect example is when the DOH set out the vaccination guidance, PAs were not mentioned in it. Doctors, nurses were. Clearly, by our license, we can. I spent many a day in Nassau County with the commissioner of health in Nassau County, volunteering time to give out the vaccines. But we had to get clarification from the

Department of Health because if we were not specifically listed, they assumed that we're not providing the care.

It's very, very difficult to get that redirected once that initial guidance has been rolled out. So it's imperative, again, on bill language, any kind of DOH guidance, that PAs are explicitly included. We have licenses to practice just like our physician colleagues, we report to the Board of Medicine, we get disciplined by the OPMC. But we're often -- we're often left out of that language.

MS. GRAUSE: That's a good point.

SENATOR SERINO: It's helpful. Thank you.

CHAIRWOMAN WEINSTEIN: All right.

Anyone else here tonight? Nope. We're going to thank the panel for staying with us. Well, you didn't really have to stay with us. We used to make you come to Albany; now you just turn on Hollywood Squares at the right time.

But indeed, thank you very much for

being with us and for sharing your opinion with us.

DR. CLARE: Thank you very much.

CHAIRWOMAN KRUEGER: Thank you.

And our next panel --

MS. REGAN: Thank you, Chairwoman Krueger and Chairwoman Weinstein.

CHAIRWOMAN KRUEGER: Thank you.

Our next panel is 1199SEIU, Molly Silva (sic); the Consumer Directed Personal Assistance Association of New York State, Bryan O'Malley; the Home Care Association of New York State, Alyssa Lovelace; and the New York State Council for Community Behavior and Healthcare, Lauri Cole.

And again, you've all submitted testimony. You're not going to try to read it, because you only have three minutes. And then we will ask the panel any questions we wish to ask. And know that we all have your full testimony and people can definitely follow up with you after this hearing this evening.

So our first speaker is Molly Silva.

MS. SILVA: Good afternoon. My name is actually Milly Silva.

CHAIRWOMAN KRUEGER: Excuse me.

MS. SILVA: I serve as an executive vice president of 1199SEIU United Healthcare Workers East. And we are submitting written testimony on behalf of the 300,000 healthcare workers that we represent in the State of New York.

And so I want to focus my remarks specifically on the need for nursing home reform. At 1199SEIU we represent over 65,000 nursing home workers in 343 nursing homes across the state, providing the hands-on care that residents need to thrive.

There are a few points that I want to be able to bring to the group today. Number one is that even before this pandemic, our members were increasingly concerned about the conditions that they were experiencing at the nursing homes, where we saw owners who have chosen to increase their profits rather than invest in the staff needed to provide the hours of residents' care that our seniors

need at the facilities.

During the pandemic, the crisis became exponentially worse. It looked like the failure to provide personal protective equipment, it looked like workers who were being pressured to return to work despite being ill and also, at times, having the challenge of being in a situation where they weren't receiving the sick-leave time that they needed in order to be able to recover during their quarantine leave. And it also included a failure to guarantee that nursing homes were using appropriate infection control measures.

Our members' experiences and a comparison with other states make it abundantly clear that serious reform of the industry is needed. A few key points.

New York ranks worse than 38 others in the number of hours per day of hands-on care that residents receive -- and, not coincidentally, is one of only 12 states without any minimum state standards for hours of care. Directly related to that, we have

one of the worst rates of pressure ulcers in high-risk, long-stay residents.

Even as care suffers, too many nursing home owners are extracting profit from these homes. The average spend on resident care is just 65 percent of overall revenue, with 35 percent being spent on staffing. And because these are averages, let's be mindful that there are large groups of nursing homes who are spending even less.

Raising the floor and requiring that homes spend a minimum of 40 percent on staffing and a total of 70 percent on resident care -- again, as a minimum -- will shift approximately $500 million that can go towards resident care. And these are dollars that are already in the system.

And this kind of a minimum standard will also target the bad actors. Over 70 percent of New York's nonprofit nursing homes already meet these standards, but only 20 percent of for-profits do. Taxpayer dollars should be spent where they matter, on resident care.

I'm closing with we want to thank the Senate for passing S4336A, which would achieve that goal. Urgent reform must be addressed in the budget, especially as it concerns how Medicaid dollars are spent. We want to thank Governor Cuomo for including it in his 30-day budget amendments, and we believe that the additional proposals made by Governor Cuomo regarding limits on profits, the issue of related party transactions, increased transparency and reporting, and the appointment of temporary receivers are the kinds of reforms that we need.

So we urge you as legislators to seize this moment and change the nursing home system so that it is one where we are putting patient care first over profits.

Thank you for the opportunity to address you.

CHAIRWOMAN WEINSTEIN: Thank you.

Now Bryan O'Malley.

MR. O'MALLEY: Hi. Good evening. I'm Bryan O'Malley, executive director of the Consumer Directed Personal Assistance

Association of New York State, or CDPAANYS. And on behalf of the 139,000 people who use CDPA and the fiscal intermediaries that serve them, thank you for the opportunity to testify and thank you for everyone's strong support of CDPA, both today and over the last several years.

The mounting death toll from nursing homes is receiving a lot of attention, but the shocking statistics are obscuring a more basic fact. This pandemic didn't create these conditions, it merely placed a spotlight on them and made them worse.

We have to take steps to protect those in nursing homes, but we can't stop there. We have to shift the focus of care to the community, because it doesn't take an expert to know that the best way to avoid dying in a nursing home is not to enter one to begin with.

To do this, we have to address New York's worst-in-the-nation home care workforce crisis. We must pass the Fair Pay for Home Care, which will require that the

state and plans fully fund a home care wage equal to at least $22.50 an hour. According to the PHI home care workers, who are primarily women of color, earn an average annual salary of just $22,000 a year. That's $8,000 less than the full-time fast food employees upstate. The wage is so bad that over half of workers must rely on Medicaid and other benefits to survive.

And according to a new report from the CUNY School of Labor and Urban Studies, Fair Pay for Home Care would be the most successful economic development initiative in decades. They estimate that investing in Fair Pay for Home Care would generate increased revenue and savings of $7.6 billion. They further estimate that it would create 20,000 new home care jobs a year for over a decade. And because these folks will spend their money on food, housing and other necessities, there will be significant economic spillover supporting local businesses ravaged by the economic collapse and generating yet another 17,500 jobs per

year.

There's no better way to "build back better" from COVID. Passing Fair Pay for Home Care, we can simultaneously address the failures of the long-term-care system, institutional bias, a home care workforce shortage, longstanding racial and gender-based inequity, and struggling local businesses and economies.

We also have to address the reason for the cuts over the past decade and repeal the Medicaid Global Cap that rations healthcare and disproportionately impacts seniors and the disabled. The global cap is why the state made the choice to cut $2.2 billion from our Medicaid program at the same time that we were starting a once-in-a-century pandemic. No policy over the past decade has been more responsible for furthering the state's institutional bias.

And we don't just have to repeal the cap, we have to repeal the home care and CDPA eligibility cuts that resulted from it, particularly the discriminatory activity of

daily living requirements and the overly bureaucratic enablist {?} assessment provisions passed last year, both of which disqualify those in need from receiving home care or CDPA while still allowing them to go to a nursing home and jeopardize hundreds of millions in federal funding.

In closing, and finally, we urge you to pass the Invest in Our New York project package. Budget cuts, regardless of where they are located in the budget, impact the same people. We cannot ask disabled folks or anyone to choose between their Medicaid, education, housing or food.

Thank you for granting me the opportunity to testify.

CHAIRWOMAN WEINSTEIN: Thank you.

I appreciate people staying, but I just really encourage people to look at the clock. We're approaching the ninth hour of the hearing, and we have more than -- probably 35 witnesses left. So -- don't get so excited, Gustavo.

SENATOR RIVERA: I gotta keep -- I

gotta stay, I gotta stay here, I gotta stay here.

(Laughter.)

CHAIRWOMAN WEINSTEIN: So Home Care Association of New York State -- oh, Senator Krueger is back. Home Care Association of New York State.

CHAIRWOMAN KRUEGER: Great. Thank you.

MS. LOVELACE: Hi. I'm Alyssa Lovelace. I'm the director for public policy and advocacy with the Home Care Association. Thank you so much for having me here today.

HCA, we represent home care agencies, hospice providers, managed long-term-care plans, waiver programs, allied health, HMOs and other provider types located across the state.

First and foremost, we ask the Legislature to reject the Executive's budget proposals that would reduce any Medicaid for home- and community-based care. Specifically, the 1 percent across-the-board cut to Medicaid providers. That includes

home care and hospice funding, which is actually a 2 percent cut for us given the cuts we're already seeing. Cuts to managed long-term care plan premiums and the elimination of the $150 million quality funding, which was previously mentioned by the VNSNY.

The Governor also called for a 50 percent reduction for home care and hospice workforce recruitment and retention wage benefit funds. These funds actually help employ our workforce. Earlier today it was stated that perhaps we can do without these funds by our Medicaid director. They seem like pennies, but to these providers they're not. They help with payment.

We need to make it less hard for our agencies to retain their workforce, especially now, considering home health aide employment increased by 79 percent statewide between 2014 and 2020.

What would also help the state workforce is the expansion of telehealth. We request that the Executive's telehealth

provision is amended to include healthcare flexibility within telehealth, and include guardrails for coordination, quality and prevention of loopholes.

We'd like to see the Legislature provide financial stability for home care, hospice and plans, and make some investments in the industry by ensuring the Department of Health carries out its obligation to update and raise the episodic, fee for service, and minimum wage Medicaid rates for home care, directing a fair share of federal and state COVID-19 relief to home care and hospice providers, and making the cost of PPE and related safety protocols ongoing components of the state's healthcare reimbursement system. In 2020 home care agencies alone saw a 136 percent increase in PPE expenses.

And finally, we ask that the Legislature consider HCA's "New York Home Care First" model. This would provide COVID-19 relief measures for community-based care and stable Medicaid financing, and a supportive regulatory structure that provides

critical flexibilities for operations, care delivery, and efficiency while protecting quality and the integrity of care and support for workforce retention, preparedness and sufficient capacity to meet patient care and demand.

We need to ensure that our home care agencies and hospice providers are taken care of at the end of the day. They are really doing God's work in the field. They are helping the most vulnerable populations at home, and there are hundreds of examples within how we collaborate along with different hospital systems and community partners. And I'm happy to talk offline and share more of these stories and solutions with you.

CHAIRWOMAN KRUEGER: Thank you.

Next, Lauri Cole.

MS. COLE: Good afternoon -- actually, good evening. I'm Lauri Cole. I'm the executive director of the New York State Council for Community Behavioral Healthcare. We are a statewide membership association

representing mental health and substance abuse providers across New York.

I'm here today to ask your assistance. The behavioral health system is really hanging by a thread. We've been ravaged by three concurrent public health disasters with the opioid epidemic, increasing rates of suicide, and COVID-19. New York families and communities are devastated. The system of care designed to provide prevention, treatment and rehabilitative options is sorely underfunded and in crisis. The demand for our services far outpaces our ability to respond. And every data point indicates it's going to get worse.

There should be no cuts to mental health and substance use disorder addiction systems of care. Instead, we're proposing smart investments. This year we have requests that would return resources that belong to our system of care to include a set-aside of funds from the state's healthcare transformation fund account, consistent with Assemblyman Gottfried and

Senator Rivera's bills A264 and S2531; a request that all state aid funding withholds be restored; and that the state honor its commitments to reinvest savings from our system back into it.

Behavioral health services were transitioned to managed care in 2015. The law and policy of the state is clear: Managed care savings from our system go back to the system of care.

Before we transitioned, stakeholders were very concerned about money being siphoned out of the system by plans for their profits. We spent countless hours working in collaboration with the state on language to ensure state guidance and documents to include -- to ensure transparency in the process and for managed care savings to accrue to the system of care from which it came.

At that time there was ample evidence in literature and historical context for us to have concerns about the siphoning off of funds once we transitioned to Medicaid

managed care. We saw it coming, we put in safeguards, but the state has again left the chicken coop open for the foxes.

To date we haven't received a single document of substance in response to four FOIL requests we filed in the early fall, through counsel seeking information that should be readily available if the state was holding the health plans accountable for meeting behavioral health expenditure targets and medical loss ratios established as part of the transition. Our written testimony goes into great detail about this.

However, the questions we have remain. What is the state hiding? Could it be that the state allowed the plans to retain funds that were supposed to be returned back to the system of care? We are calling for a full accounting of the managed care savings from our system of care, as well as the shortfalls in behavioral health expenditures by the Medicaid health plans. And we are asking for your help to ensure that these funds are properly invested back for essential

behavioral health services needed now more than ever.

Thank you.

CHAIRWOMAN KRUEGER: Thank you.

Anyone, questions? Then -- oh, Assembly, I see a hand up on your side.

CHAIRWOMAN WEINSTEIN: Yes, we now have Kevin Byrne for three minutes.

ASSEMBLYMAN BYRNE: Yup, sorry about that. Just trying to jump to it.

Thanks again for your testimony. The questions are more directed towards Alyssa from the Home Care Association. I'm not sure if you were following along with our questions earlier. I asked something of our inspector general, OMIG, regarding audits during the pandemic and how it's affected some of the on-site assessments.

And I was curious if you had -- if you were following along, if you had any comments to share, if there's any specific knowledge that you may have or insights from some of your members.

MS. LOVELACE: Yes, certainly. Thank

you, Assemblymember.

When I heard that response it seemed very vague to me, because as an association representative we hear from the providers on a daily basis. And I can tell you right now I heard from one just yesterday or the day before, and they said that they're on their tenth survey of the year. And we're in a pandemic. So, I mean, that seems a little ridiculous to me.

Do I understand why we're having surveys? Of course I do. Can they be perhaps a little bit more streamlined given our circumstances? Absolutely. We need to make it easier for these providers, again, not harder.

ASSEMBLYMAN BYRNE: I understand that. I was a little surprised because it made it sound like everyone was remote and they weren't doing in-person surveys, which was not my understanding. So I thank you for your additional clarification, and we'll have to follow up with the inspector general.

Thank you.

MS. LOVELACE: Certainly. Thank you so much.

CHAIRWOMAN KRUEGER: Thank you. Thank you, everyone, for being with us this afternoon/evening.

We will move on to our next panel. We have Beth Finkel, state director of AARP New York; Talya Schwartz, president, Metro Plus Health Plan; James Clyne, LeadingAge New York; Heidi Siegfried, director of health policy for CIDNY, Center for Independence of the Disabled, New York; and Douglas Hovey, CEO of Independent Living, Inc.

We'll start with Beth Finkel.

MS. FINKEL: Hi. Thank you so much. Good evening, everyone. Thank you so much to Senator Krueger and Assemblymember Weinstein and members of the committee.

I just want to start off centering us on the numbers, which I think you're well aware of. But in New York State, according to the CDC, 95 percent of the COVID-19 deaths were people 50 and older -- 95 percent of the

deaths, 50 and older. Which is why what we're talking about today is so important.

This year's budget really has to prioritize struggling older New Yorkers. There's been some really fatal, literally fatal flaws that have been highlighted in our long-term-care system, putting vulnerable nursing home residents' health, safety and staff really in a terrible position. The loss of life of over 15,000 New Yorkers from nursing homes has just been terrible. And it just shows you what has come before but, if we don't do something now, what is going to continue to happen in generations going forward.

AARP has a five-point plan. I'm going to hit the highlights of it for you.

One is quality of care. We recommend that all nursing homes be required to spend more resources on direct care, along with increasing nursing home staff levels and working to ensure strict compliance with infectious disease controls, including increasing staffing for the Long Term Care

Ombudsman Program.

AARP strongly recommends that the state add $5 million to the Long Term Care Ombudsman Program, which currently has a funding level of 1.19 million. We need to hire and train more professional staff. We know that during this pandemic, because long term ombudsmen for the most parts were volunteers and older people who could not go into the system, that whole level of oversight was missing.

Retroactive repeal of legal immunity. I know that's come up with a lot of other testimonies before mine. We just need to stop shielding long-term-care facilities for any negligent care. Families have to have recourse.

Transparency. AARP recommends codifying the requirement of daily reporting of data on fatalities and infectious rates among both residents but also staff.

Home- and community-based services. We need $27 million more in home- and community-based services so we can keep

people out of nursing homes and institutions, which cost more money every way you think about it, and it's not what older people nor their families want for them.

Visitation; this has been hit before. We need to ensure long-term-care facilities are providing safe in-home facilitative virtual visitation.

We need to expand telehealth.

And I just want to thank you -- oh, my God, I did it, 3 seconds to go. I thank you all. More details in my testimony. But nine hours and counting, cheers to all of you for doing this. Can't thank you enough for the wonderful advocates that you all are.

CHAIRWOMAN KRUEGER: Thank you.

Okay, next is Talya Schwartz.

DR. SCHWARTZ: Good evening, and thank you for the opportunity to testify today on behalf of the Coalition of New York State Public Health Plans.

I'm Dr. Talya Schwartz, president and CEO of Metro Plus Health Plan, a wholly owned subsidiary of Health + Hospitals. We serve

over 120,000 Medicaid beneficiaries in New York City, with most of our beneficiaries identifying themselves as minorities.

I'd like to talk to you today about the elimination of the Medicaid quality incentive bonus in the Executive Budget. This step is in direct opposition of New York State's goal to reduce inequity and disparities in healthcare, which is the very mission of our plan.

For many years Metro Plus Health and other plans have been committed to closing gaps in the care of the underserved population, and we have been successful in doing so. This was possible due to the investments we made in people who specialize in quality improvement methods so that the improvements actually stick, in methodology, in data, and ongoing collaboration, including financial incentives, with our provider partners.

The majority of the quality incentive funds we receive from the state are distributed to top-performing providers to

sustain and continue incentivizing good quality of care for our members. And we have good evidence that this foundation, that was built over many years, has paid off. In the past four years our quality work has led to over 10,000 more breast cancer and colorectal cancer screenings. Over 6,000 more members improved control of their diabetes. And over 1700 additional new moms received post-partum care.

These are just a few examples as to why this funding matters. We applied the quality incentive funds in a variety of effective ways. Since the population we serve often cannot find time to take care of themselves, we bring the care to them. Our members can get health screenings, dental care, immunizations and more in their communities.

We hold between 50 and 70 community events a year. We incentivize our members to take care of their health through a member rewards program which doesn't just push people to get a checkup and track their steps

and get flu vaccines, but this program was critical to support our most vulnerable members when we sent 10,000 boxes of food and PPE at the height of the pandemic.

We launched a diabetic peer program matching people with controlled diabetes to people with uncontrolled diabetes. This program resulted in a 30 percent increase of better control. To make the program really work, we needed to also address food and housing insecurities, transportation for almost 19 percent of the participants, and problems with taking medications for over one-third of the participants, in which case we assisted with home delivered medications, pill packs, and calling doctors to order refills.

Getting meaningful improvements takes investment of resources.

In closing, we cannot afford to ignore that the populations served by this quality funding are at the highest risk. And as we have come to learn through the recent pandemic, the entire healthcare system will

suffer if their healthcare needs are not addressed. I urge you to restore the quality funding pool and protect it by including statutory language to make the quality pool permanent in the budget bills.

Thank you.

CHAIRWOMAN KRUEGER: Thank you.

And next we have James Clyne, LeadingAge New York.

Turn your speaker on.

MR. CLYNE: Yup, thank you.

I represent over 400 long-term-care providers across New York State, the full continuum of care -- nursing homes, assisted living, home care, managed long-term-care plans, and housing for the elderly.

Over the next 10 years, the over-65 and over-85 population of New York State is going to grow by 40 percent, yet the state has completely failed to invest in services for seniors. Over 65 percent of the not-for-profit and county homes, heading into the pandemic, were already losing money, and 67 percent of the CHHAs in New York State

were losing money heading into COVID.

The Medicaid reimbursement rate for nursing homes is the worst in the country when you compare expenses to reimbursement. There's a loss of $64 a day for serving Medicaid recipients in nursing homes. That's because the state has not provided a cost-of-living increase in 12 years, and at the same time has done a billion dollars worth of budget cuts in long-term care over the last three budgets, twice the amount of any other area in Medicaid.

At the same time, the state has failed to invest in long-term-care services, either through the Transition Grant Program or the Medicaid DSRIP program, the federal waiver. In the case of the transition program, only 10 percent of the funds have gone to long-term care. And as far as the DSRIP program, only 2 percent of the funds have gone to long-term care -- even though long-term care makes up 42 percent of the state's Medicaid budget cap.

Since 2014, 50 county and

not-for-profit nursing homes have been sold, 13 have closed, and 30 assisted living programs have also closed.

The system was fragile going into COVID. The state made the matter worse by doing a half-percent Medicaid cut in April. So in the middle of a pandemic, the state did a cut to the largest funder of services in nursing homes and one of the largest funders in home care.

The providers faced enormous costs, whether it was PPE, testing, or staffing. These costs have not been reimbursed. The federal government did provide some aid, and we thank them for that, but the federal aid for nursing homes covered roughly one-third of the increased costs as a result of COVID.

So we had a fragile system hit by a pandemic that both the federal government, CDC and the state were unprepared for, and the long-term-care system has faced the consequences of that.

Thank you for the opportunity, and I'd be happy to answer any questions.

CHAIRWOMAN KRUEGER: Thank you very much.

And our next is Heidi Siegfried, CIDNY.

MS. SIEGFRIED: Hi. I'm the health policy director at Center for Independence of the Disabled in New York. And we were founded in 1978. Our mission is to serve people with all types of disabilities, so that would be mobility impairments but also people who are deaf and hard of hearing, blind and low vision.

And the idea is that we want to make sure that people have the services and supports necessary to remain independent in the community, and also the policies to help people remain independent in the community and not be going into institutions like nursing homes, like psychiatric centers, like prisons.

So we have always supported the New York Health Act. I haven't heard anyone mention that yet today. But that would be the gold standard for us in terms of having

health coverage.

But the second thing that's at the top of our list is the Medicaid Global Cap. We've been traveling up to Albany to oppose this for many years now because we really did see that, you know, it operated to really cut down on the services that are necessary for us to remain independent in the community.

So these cuts were not carried out by the Governor or the Legislature, they were carried out by managed long-term-care companies. Which was that we simultaneously required people who were dual-eligibles to get their care through managed long-term-care companies, and hours of home care that was necessary to avoid going into institutions were cut.

The only way to keep those hours was to use the due process system to request a fair hearing, and of course it's very important to have consumer assistance funding to help people with these fair hearings because they wouldn't be able to exercise their rights without it.

The other consumer assistance that's very important to us that -- it does come through the Aging Committee, but the Long Term Care Ombuds Program. We operate the Long Term Care Ombuds Program for New York City, and we've been requesting an increase in our funding for many years. And now that I hear that Beth is requesting 5 million, I think we will too. We had mostly been asking for 3 million all these years.

But, you know, the state and the city comptroller have both come out with reports explaining how underfunded it is: New York's at the bottom of the heap in terms of putting in its own funds for the program. And we would actually need 23 more full-time staff -- this is what the comptroller found in New York City -- just to be fully staffed at what has been recommended long ago by what used to be the Institute on Medicine.

I do want to say that we do support the Fair Pay for Home Care campaign that Bryan mentioned, and also the innovation fund

to try to help have a workforce for when we get those hours restored. We have to have people to staff them. Sometimes we just find that there isn't people to staff them.

And we do support the revenue, yes --

CHAIRWOMAN KRUEGER: Thank you. You ran out of time, so I'm just going to cut you off there, okay?

MS. SIEGFRIED: Sure.

CHAIRWOMAN KRUEGER: Thank you very much.

And our last testifier on this panel is Douglas Hovey, Independent Living, Inc.

MR. HOVEY: Well, good evening. And it's great to see my colleague from New York City, Heidi Siegfried. Nice to see you, Heidi.

My name is Doug Hovey. I'm the president and CEO of Independent Living, Incorporated.

We're also, like CIDNY, a consumer-run cross-disability service organization. We're a member of the New York Association on Independent Living, which consists of

41 Independent Living Centers throughout New York State. Much of our work is dedicated to advocating for the long-term-care needs of older adults and people with disabilities. I also serve as a member on CDPAANYS -- you heard from Bryan earlier -- and also the Most Integrated Setting Coordinating Council.

We know there are a number of long-term-care options. However, the one that seems to dominate most thinking and planning processes continues to be placement in nursing homes, based on the institutionally biased belief that congregate care facilities are the safest choice. These assumptions have been deeply challenged as thousands of our nursing home residents needlessly lost their lives to COVID-19. The impacts of these deaths are immeasurable.

I'm going to get right to the point and tell you, it's time to plan for the phased elimination or systemic closure of nursing homes -- in a planned fashion, one that protects the interests of nursing home

residents, but also ultimately protects people who are faced with nursing home placement.

Most of you know even the best-operated nursing home is not a good place to be. I don't think any one of us signs up to be in a nursing home. We have the capacity to support people in the community. We need to build up our community infrastructure so that we can continue to help people to age in place with dignity and respect, like they deserve.

Several legislators asked Commissioner Zucker today if the DOH can ensure improvements in the quality of care for nursing home residents. Let's be clear. Government does not have the power to control nursing homes. They never have. They never will. It would take an act of God or some miracle to change the outcomes for nursing home patients and to stop the high incidence of infection, including urinary tract infections, respiratory infections, skin breakdown into decubitus ulcers, influenza,

gastroenteritis, sepsis, and now COVID-19 and its evolving strains, right, all endemic to institutional congregate care settings.

By design, congregate care institutions are a recipe for depression, mental and physical illness, and premature death. We're in the 21st year of the 21st century. It's time to call for the phased elimination and create a better collaboration between state and local governments and a better coordination of care at the local level.

We can do this. We can support people to remain in the community, to age in place. There are great programs that are available that can help do this. We just have to give more attention to them.

And my time is up.

CHAIRWOMAN KRUEGER: Your time is up. Thank you very much.

MR. HOVEY: Thank you.

CHAIRWOMAN KRUEGER: I see the hand of Rachel May.

SENATOR MAY: Yes, thank you.

And Mr. Hovey, I hope you will end up being on the Reimagining Long Term Care Task Force if the bill gets passed and signed into law.

MR. HOVEY: I'd be honored to. Thank you.

SENATOR MAY: I have two questions for several of you. One of them is about getting people off the waiting list for home care services.

Two years ago the Office for the Aging put $15 million in the budget to do that, and they also claimed it would save $34 million in Medicaid costs by keeping people out of nursing homes. This year you're telling me and I'm advocating for that 27 million to get people off the new waiting list, but I don't have a number and I'm wondering if anybody can estimate what it will save in actual Medicaid costs to the state, how many people might be likely to stay out of nursing homes and, you know, save money for the state that way.

MS. FINKEL: Senator, I will just say

I know I owe you that number. You asked me for it, and I'm working on it.

SENATOR MAY: Okay.

MS. FINKEL: -- you put me on the spot and I'll give it to you -- great. But if not --

(Unintelligible cross-talk.)

SENATOR MAY: I don't mean to put you on the spot. I want to go on record, I want to go on record that we are talking about savings. This is an investment that pays off.

MS. FINKEL: Absolutely. Thank you.

SENATOR MAY: And my other question was about the fiscal intermediary process.

So I represent Syracuse. Central New York has some great organizations that have been acting as fiscal intermediaries for quite a while. They fill really important niches in our continuum of care in our region, and none of them was selected to be a fiscal intermediary in the latest competition. And I'm wondering if any of you has concerns about that process, if you feel

like the results are going to be okay and we should just move on, or if it is worth fighting about those results.

MR. HOVEY: I think there are a lot of people who are concerned about the process, the RFO selection process. But I think also we're concerned about the radical change, that 80 percent of the providers have been eliminated. Which, you know, if you do the math, about 60,000 people or more, 60,000 to 70,000 people are going to be looking for a new fiscal intermediary. So there's going to be this massive attempt to try to ramp up these existing 68 programs and ratchet down close to 300 programs.

That's a massive undertaking. And if you talk to any of the experts, consultants in this type of transformation, they'll tell you it takes 36 months minimum to do this effectively without massive disruption to the population.

SENATOR MAY: Thank you very much.

And thanks for sticking it out so long.

CHAIRWOMAN KRUEGER: Helene?

CHAIRWOMAN WEINSTEIN: Yes.

Assemblywoman Miller.

CHAIRWOMAN KRUEGER: Melissa, are you there?

ASSEMBLYWOMAN MILLER: Yup, I'm here.

CHAIRWOMAN WEINSTEIN: There she is.

ASSEMBLYWOMAN MILLER: I'm just waiting for the video to go on.

You know, what Senator May was just asking, I have significant concerns over the same issue. They did somewhat of a similar move with the managed care -- you know, the Medicaid service coordination agencies into CCOs. And every -- you know, all the consumers were promised the sun and the moon and the stars, and the transition was so chaotic, there were just way too many providers -- way too many consumers for the agencies that were now CCOs. You know, they went from, I don't even know, thousands to I think seven CCOs. So I have significant concerns.

Are you concerned that you're going to

have consumers that will be without care?

MR. HOVEY: I think we should be very concerned about the transition in such a short period of time, there's no question about that. It's a big, big restructure, a massive restructuring of a large system that serves -- Bryan said 139,000 people receive services. That's a lot of people.

ASSEMBLYWOMAN MILLER: So successfully.

MR. HOVEY: Right. So if you take 80 percent of the providers, you know, you can theoretically say 80 percent of that 130,000 are going to be looking for a new provider to get connected so that they don't have a disruption in their services. And these are services that obviously you know that help people get out of bed in the morning to get bathed and get showered and get their meals made.

ASSEMBLYWOMAN MILLER: And the alternative is when they can't get that care, the state can't seem to grasp that inadvertently it becomes way more expensive

for them when these consumers now wind up in skilled care facilities or nursing homes because they cannot get the care in the community that this provides.

So -- well, thank you very much for all that you're doing. And I hope and pray that we can help with this and dissuade some of those changes from being made.

MR. HOVEY: Thank you.

CHAIRWOMAN KRUEGER: Thank you.

And I see Senator Sue Serino's hand up.

SENATOR SERINO: Thank you, Madam Chair.

And I would just like to start off by saying thank you to all of you for all of your great work and your great advocacy.

And I know it's late, but I have a quick question for Jim. Jim, in your testimony you mentioned that the medical model adult day healthcare programs have not been permitted to reopen since March of last year. And I think it's an important service for countless New Yorkers -- not just for the

program attendees, but also for the caregivers who get important respite using the programs. But it's often overlooked.

So can you speak of it, Jim, or anyone else who would like to weigh in, to the impact of that policy and those closures?

MR. CLYNE: It has been a burden on the families who have had to take care of their loved ones at home. Often these are people with advanced medical conditions, which is why they are in the adult day health program. So you're completely on target.

It's positive for the beneficiaries to be able to come somewhere, to be able to see other people. And it's important for the families to be able to take a break of providing 24-hour care.

And we believe that we can open the programs, be safe, be effective, especially now with vaccine that's available. As a matter of fact, if they had included the adult day people into the vaccination program with their parent nursing homes, they would all be vaccinated now. Which is something we

had advocated for but were not taken up on that.

SENATOR SERINO: That's a really good point too, Jim, because I was just going to mention that. That would have been great, right, to have these medically fragile people vaccinated there. So yeah, thank you. And hopefully we can all keep on -- we've been advocating, and we can all keep on advocating for them to reopen again.

Thank you.

CHAIRWOMAN KRUEGER: Helene, I think you have a few Assemblymembers.

CHAIRWOMAN WEINSTEIN: Assemblyman Jensen.

ASSEMBLYMAN JENSEN: Thank you, Madam Chair.

This question is for Jim. We certainly a lot of times today talked about needed increased staffing. So you could just tell us a little bit about some of the struggles that your members face -- whether they're nursing homes, assisted living, independent living, whatever it may be --

some of the struggles that your members are seeing in hiring staff, recruiting staff.

And not just nursing staff, but really activities staffing, housekeepers, kitchen staff, things of that nature. Where are you really seeing the need, and what do they have to struggle with to get those people in the building and working?

MR. CLYNE: Well, the staffing problem for my members is across the board, as you just pointed out, every job title you mentioned.

Obviously it's particularly tough recruiting RNs because we're competing with hospitals, in many cases, which pay better. And you have to remember that the financial situation for my members was fragile to begin with, and then add the increased costs of PPE and testing on top of that. It's just been a struggle to recruit and retain staff. Particularly, again, for the -- I think the undeserved bad press about nursing homes, the workers who worked in the nursing homes through this pandemic are heroes, and they

should be applauded just like the hospital workers were. And instead, you know, they're being made the scapegoat, which is really completely unfair.

ASSEMBLYMAN JENSEN: Are you seeing, of your members more nursing home-related that have specialty units, whether they're pediatric units, respiratory units -- are you seeing less of those being open or being retained because it's harder to get respiratory therapists or practitioners that can actually -- are well-versed in that practice area wanting to work in a long-term-care setting as opposed to a hospital setting?

MR. CLYNE: No. What happens is members struggle along and they have to, they end up in many cases having to go to contracting out for services, which are more expensive. They'd like to hire, in many cases, hire their own staff, but sometimes you have to go and contract out. We always staff to be able to provide the services.

The one place where there's a huge

problem is in home care, where people upstate, they simply can't get -- they're authorized for hours, and they can't get caregivers to come in. And that's a huge problem upstate.

ASSEMBLYMAN JENSEN: So is there a drop-off that if you go to hiring from an agency or you're bringing in outside care staff, is there a drop-off in the level of care because they don't have an association with that specific facility?

MR. CLYNE: I don't want to say there's a drop-off in the level of care, but certainly there are some academic studies that show that the retention of staff in nursing homes is better for the long-term care because they simply know the residents better, they know what their conditions are.

It's the same in home care too. If you can keep a consistent staff person in the home, it's better, regardless of the service.

ASSEMBLYMAN JENSEN: Thank you, Jim. Thank you, Madam Chair.

CHAIRWOMAN KRUEGER: Thank you.

Any -- I see one more. Two more.

SENATOR RIVERA: I'm here, actually.

CHAIRWOMAN KRUEGER: Oh, I'm sorry.

Gustavo Rivera, Senator Healthcare.

SENATOR RIVERA: Thank you.

I don't know how many folks are still tuned in, but I want to make sure that I give an opportunity to all of you, considering the folks you serve, everything that you point -- and I don't need the 10 minutes. I will --

CHAIRWOMAN WEINSTEIN: You only get three. It's only three minutes anyway. Three minutes to talk about the Health budget.

(Laughter.)

SENATOR RIVERA: Yes, I know. I know.

So I want to give you all an opportunity, particularly considering the folks that you serve, all the issues that you mentioned around the populations that you care so much about.

The question is an open question, and it is to all of you who would like to answer it. What difference would it make, for the

populations that you serve and the issues that you describe, for the New York Health Act to become law? Anybody can take that.

MS. SIEGFRIED: Well, I mean, I said that we supported the New York Health Act, and especially now that it has long-term care.

But the reason is not -- you know, most other health advocates will tell you about the remaining uninsured or the premiums and copays. And for us, it's really just that it would be so wonderful to have the same health insurance for your whole life not to constantly be proving disability and recertifying and falling out of your coverage.

And it would be great if it was accountable to a democratic process once we're successful in restoring the balance of power in New York.

SENATOR RIVERA: Anybody else want to chime in?

MR. CLYNE: We support universal coverage. Our concern is the state right now

is the worst payer in the country for long-term care. So putting them in charge of paying for long-term care for everybody raises some concerns.

So unless there's some protections to guarantee reimbursement -- again, New York is the single worst payer in the country for expenses to reimbursement.

SENATOR RIVERA: And really -- enough, Mr. Clyne, there is -- thank you for bringing it up. There is actually language in the bill that specifically says that the rates to be established by the board of the New York Health Act, the New York Health Act Board, would actually -- would have to correspond to the cost of care. Which is actually something that does not exist anywhere in law anywhere else.

So it would be in statute that the rates to be established would have to correspond to the cost of care. So there you go.

CHAIRWOMAN KRUEGER: There you go.

SENATOR RIVERA: Anybody else? I just

want to make sure I give people the opportunity.

Thank you, Madam Chair.

CHAIRWOMAN KRUEGER: Thank you. See, Helene, it was healthcare, it just wasn't the Governor's --

CHAIRWOMAN WEINSTEIN: That's great. That's great.

We have two Assemblymembers. Who will also be brief, I'm sure.

Assemblyman Kevin Byrne first.

ASSEMBLYMAN BYRNE: Thank you.

First, allow me to just agree with Heidi as far as asserting equal balance of power and having the Legislature -- I'm assuming that you're intending -- as a coequal branch of government. I like that, even though I do have a slightly different take on the New York Health Act.

I do want to make at least a statement for Jim, LeadingAge and your members, as well as a lot of the other folks we're probably going to hear from later that represent adult care facilities, nursing homes. We've heard

a lot about this is a hot topic, and it really is sad that it's become this political issue. I know a lot of us have been talking about this because we care deeply about the policies that we put forth as a state and we want to make sure that we have sound policy that protects our residents, our fellow neighbors and New Yorkers. And we have, at least speaking for myself, a lot of frustration with the Department of Health and the Governor's administration.

But I don't want that to be turned to making certain, you know, industries and good people into scapegoats. We do have front-line workers in these adult care facilities. And I want to thank you for what your members have done. They should get a parade, like every other healthcare worker. And I just wanted to make that statement, if nothing else.

And far as the question, Jim, to you, these 30-day amendments, I'm sure you can elaborate a little bit on some of your concerns. I think anytime we have these

kinds of conversations about increased penalties -- these are really, really significant penalties -- this discussion should be separate from the budget. I don't think it's appropriate to include.

And on adult care facilities, this removal of the rectification clause that's been brought forth, I have a lot of concerns about that.

So, Jim, I wanted to ask you if you had any other comments that you would like to elaborate with the rest of my time.

MR. CLYNE: I just want to -- that's a good point. The penalties are really over the top.

And if you talk to anybody, nobody thinks that the Health Department is slack in their regulation. I just had a member call me today, they had their ninth infection control survey. No problems have been found, but their ninth survey since the start of the pandemic. I mean, it begins to get a little ridiculous.

And on the adult care facility side,

you have to look at those penalties. Those are per day penalties that they've enacted. So the penalties on nursing homes are different than the penalties on assisted living and adult care facilities. These are actually even more draconian than they look like at first blush.

So the problem is not a problem of regulation, the problem is a problem of supporting providers in what they need with resources, with PPE, and with good advice on how to care for people.

ASSEMBLYMAN BYRNE: Thank you, Jim. I appreciate your comments and your testimony. And thank you to everybody else as well.

CHAIRWOMAN KRUEGER: Thank you. Okay.

CHAIRWOMAN WEINSTEIN: Thank you. Assemblyman Palmesano -- right, you don't have -- I don't see another Senator.

CHAIRWOMAN KRUEGER: No, I'm just looking for an Assembly -- oh, there he is.

CHAIRWOMAN WEINSTEIN: Yes. Assemblymember Palmesano.

MR. HOVEY: You're on mute.

ASSEMBLYMAN PALMESANO: Sorry about that. Hi, my question is for Mr. Clyne this evening.

Mr. Clyne, I want to talk about the transition from long-term Medicaid managed care to the fee-for-service model, particularly for our nursing homes. It's my understanding from conversations that I've had that the fee-for-service model works better for some, while the Medicaid managed care model works better for others.

And I'll give you an example in my district. I had a facility that negotiated fair rates with the managed care company which they thought were fair and proper, but now they were required to transition to a fee-for-service model. And what that did is it's cost them a half a million dollars a year in reimbursements.

And you couple that with the 1 percent reduction and other cuts, plus other pending actions that are being talked about with the Legislature and the costs they've had during the pandemic, it's really kind of a recipe

for a devastating impact on a small rural facility -- and concerns relative to other facilities and their long-term solvency.

So my first question for you is do you have any data showing how this has impacted your different facilities, your members -- good, bad or indifferent, the overall impact that's going to have on them?

MR. CLYNE: The overall impact was positive to go away from managed care because of delays in payment.

But there are rural facilities that are key providers in their area who were able to negotiate additional funds from managed care programs. We would hope that the state would take that into account as they look at the rate-setting system.

If they want to keep -- if the state wants to keep not-for-profit and county providers in the system, they need to do something about the rates. If they don't, you're going to end up with a system that's going to be predominantly or almost exclusively for-profit. I mean, it already

is predominantly, but that's the way it's going.

ASSEMBLYMAN PALMESANO: That's what I was going to get at.

Wouldn't it have been better, if we're going to move to that fee-for-service model, which if it works well for some -- wouldn't it have been better and more -- {Zoom interruption} -- to include a hold-harmless provision in that process so those facilities that were able to negotiate better, fairer rates were not being penalized for being able to do that?

And so do you see any opportunity for that to be revisited? Have you had conversations with the State Department of Health or Budget along those lines, looking at that as we move forward?

Because I just think that would be a wiser thing to do, instead of having those institutions out there, like the one in my district, that again lost half a million dollars because of this change that they were required to go along with, when they worked

the process and had a fairer reimbursement?

MR. CLYNE: Yeah, we have a couple of members who are talking with the department right now, looking at the Vital Access Program as a way to supplement their rate and maybe move to a transition.

In rural areas, a lot of times it's the nursing home which is in many cases a vertically integrated provider providing home care and housing, they're the only ones available to really do care management with boots on the ground.

ASSEMBLYMAN PALMESANO: All right, thanks. I'd love to have a future discussion with you on that issue. Thanks for what you're doing and your --

MR. CLYNE: Love to do it.

ASSEMBLYMAN PALMESANO: -- service to our communities. Thank you.

MS. FINKEL: Is it okay if I just answer the question that Senator May asked about the savings? Can I just real quick answer that?

CHAIRWOMAN KRUEGER: Okay.

MS. FINKEL: So she asked what the savings would be on the $27 million increase to home- and community-based services. It would be $60 million would be saved by an investment of $27 million.

CHAIRWOMAN KRUEGER: Thank you.

Did you get that, Rachel? Were you listening?

SENATOR RIVERA: Rachel had to leave.

CHAIRWOMAN KRUEGER: She had to leave.

Okay, we'll make sure she gets that information. Thank you, Beth.

SENATOR RIVERA: Marriage maintenance, apparently.

CHAIRWOMAN KRUEGER: Ah.

Thank you all very much for being with us this evening. Appreciate it.

And we're going to move on to the next panel, which will be New York Association of County Health Officials, Sarah Ravenhall; New York Health Plan Association, Eric Linzer; Medical Society of the State of New York, Bonnie Litvack; and New York State Association of Health Care Providers,

Kathy Febraio.

Hello, everyone. Who's up first? Sarah is up first. Are you here?

MS. RAVENHALL: Hello. I'm here.

CHAIRWOMAN KRUEGER: Great. Welcome.

MS. RAVENHALL: Thank you.

Senator Rivera, Assemblymember Gottfried, Senator Krueger, Assemblymember Weinstein and esteemed committee members, thank you for this opportunity to present the state budget priorities of New York's 58 local health departments. I know you share my pride in the thousands of public health professionals who have continuously put themselves in harm's way to respond to the pandemic. They have met this challenge with profound courage, inexhaustible commitment, and unrivaled expertise.

They are now fully engaged in vaccine administration, even as they fulfill innumerable other public health responsibilities. I've never been more proud, humbled and honored to represent them.

This year we respectfully request the

following in response to the Executive's proposed budget:

Restoration of proposed cuts to Article 6, state aid in New York City, and restoration of categorical public health funding.

Incorporation of health positive revenue producing proposals with revenue earmarked for public health. These proposals are detailed in our full testimony document.

An invitation to provide input into the regulated adult-use cannabis policy being proposed by the state and Legislature. If enacted, local health departments will be tasked with provision of community education and dedicated funding will be needed.

New York State continues to confront a growing number of monumental public health challenges. In 2018, vaping-related lung illness; 2019, a massive measles outbreak; and in 2020, the first global pandemic in recent history. All these events coincide with ongoing public health issues such as increased rates of sexually transmitted

infection, hepatitis A outbreaks, opioid overdose and deaths; suicide fatalities; children with elevated blood lead levels, and others.

Year after year we see decreasing appropriations proposed within the Article 6 funding line for our local health departments due to administrative actions, the local property tax cap, and in some cases cuts in reimbursement, such as the one proposed in New York City.

Local health departments have not received an increase in core public health aid in more than six years. Instead, state budget appropriations for public health spending have been either flat-funded or reduced. We're experiencing the greatest public health disaster in a century. If we fail now to recognize that public health support must be increased, then we're already surrendering to the next public health threat.

We ask you, New York's respected lawmakers, to reinvest resources into the

public health infrastructure in New York State.

These facts leave me with two important questions. Why has the Executive proposed profound cuts to public health in the midst of a public health crisis? My second question, which I direct to all New York State policymakers, is what do you need from us to help you effectively and appropriately resource our local public health infrastructure?

Thank you for your leadership and the opportunity to present today.

CHAIRWOMAN KRUEGER: Thank you.

Next, Eric Linzer.

MR. LINZER: Thank you.

On behalf of our 28 member health plans and the 8 million individuals who they provide coverage for, appreciate the opportunity to offer testimony this evening.

Throughout the current pandemic, the health and well-being of New Yorkers has been the number-one priority of our member health plans. We're proud of the work that they've

done to protect patients, support the delivery system, and assist employers.

This has included eliminating cost-sharing for COVID-19 testing and treatment, as well as for telehealth services, providing financial support to the delivery system, extending premium grace periods for consumers and small businesses, and working with the state and local public health authorities and the delivery system to provide information to residents about the COVID-19 vaccine and that they'll receive the vaccine at no cost.

Given the current public health crisis, we are concerned about the significant cuts to the Medicaid program, particularly the cuts to the health plans that the Governor's budget has proposed, totaling more than $1.5 billion. This includes a reduction that the state has described as reflecting the reduction in utilization that took place in the second quarter of last year. However, what this fails to acknowledge is that that was for

just one quarter and merely delayed the delivery of care until the latter half of 2020 and into 2021, as plans have experienced a return to normal and increased utilization beginning in the third quarter of last year.

Further, we're concerned about the cuts that Dr. Schwartz had mentioned on the last panel, having to do with the managed-care Quality Incentive Program. And really this begs the question of, you know, are these cuts necessary, as well as the size and scope of these cuts.

It's an open question, considering that the federal government has recently announced it's extending the Enhanced FMAP funding through June of next year, but the Governor's proposal has only counted on the enhanced funding through June of this year.

When you consider that, coupled with the additional increases in Enhanced FMAP that's being considered in Washington, D.C., and other additional federal aid to the states that New York is expected to receive, we think that these cuts are unwarranted and

unnecessary, and we would urge the Legislature to ensure that as part of the budget process any Enhanced FMAP goes to where it belongs, which is back to Medicaid to offset these proposed cuts.

In addition, we remain concerned and opposed to the administration's plan to transition the Medicaid pharmacy benefit from managed care to fee-for-service. We don't think that it's going to generate the savings and will actually cost the state money. More importantly, it's going to adversely affect the quality of care for millions of Medicaid enrollees, particularly those with chronic health conditions and who rely on their care to be integrated and coordinated across the continuum.

We do support the Governor's proposal to eliminate the $20 monthly premium for the Essential Plan. We also support the Governor's budget proposal to allow for multi-state licensure for telehealth services, and creating an interstate licensure program.

So with that, I appreciate the opportunity to testify and look forward to answering any questions.

CHAIRWOMAN KRUEGER: Thank you very much.

And our next speaker -- oops, I lost my little chart, sorry. Excuse me. After Eric Linzer is Bonnie Litvack, Medical Society of the State of New York.

DR. LITVACK: Thank you very much for the opportunity to testify. I am Dr. Bonnie Litvack, and I am president of the Medical Society of the State of New York, which reports over 20,000 physicians across every specialty and in every region of the state.

Our members have been serving on the front lines through the pandemic, putting their health and their families' health at risk because of their dedication to serving their patients. We are enthused by the steady progress New York is making in increasing the number of those vaccinated and the steady decrease in new COVID cases. We continue to work with the administration to

promote the importance to our patients of receiving the vaccine, as well as advocating for community physicians to receive doses to immunize their patients.

We, though, have many concerns with the proposed state budget. There are some positive aspects, such as state licensing of pharmacy benefit managers and a proposal to increase the supply of personal protective equipment, but on balance, the adverse proposals outweigh the positives.

We're certainly hopeful that the federal COVID percentage will eliminate the need for significant cuts, but we share the concerns expressed earlier by Assemblyman Cahill, Assemblyman Byrne and others, about the impact of the proposal that would require 17,000 physicians in the Excess Liability Insurance Program to bear 50 percent of the cost of these policies.

The program has always served as a critical compromise to address the significant healthcare system implications of New York's excessive liability costs that far

exceed any other state. Yet this one budget proposal would foist thousands of dollars of new costs on physicians, and even tens of thousands of dollars when their patient visits and their revenues are down. Many physicians will simply be unable to afford this, will forgo the coverage and/or leave the state.

We're also concerned, as Assemblyman Salka mentioned, about the $200,000 cut to MSSNY's Committee for Physician Health. It's a critically important program that's funded through physician registration. It assists physicians suffering from mental illness and substance abuse, and it's a highly successful program that's more important than ever in this time of COVID.

We also strongly urge you to reject Article VII proposals that we believe are very counterproductive and would -- such as proposals that would grant the Commissioner of Health wide discretion to disclose complaints about physicians to the public without adequate due process. That has the

potential to unfairly destroy physician reputations in the communities they served.

We're also concerned with the proposals to significantly expand the scope of big box pharmacy chains to provide healthcare services without physician coordination.

We have identified several other concerns in our written testimony, and I'm happy to answer any questions for you. Thank you again for the opportunity to testify.

CHAIRWOMAN KRUEGER: Thank you.

And our last testifier for this panel, New York State Association of Health Care Providers, Kathy Febraio.

MS. FEBRAIO: Thank you. I am Kathy Febraio, president of the New York State Association of Health Care Providers, representing home care across the State of New York.

I thank you for the opportunity to testify and to update you on the state of the home care industry as it continues to provide safe and economical care during the pandemic

while we are simultaneously responding to significant policy changes.

The experience of the last year has clearly shown it is essential to invest in and to protect the economic viability of the home care industry in order to ensure individuals with disabilities, those with chronic illness, and elderly populations continue to have access to services that allow them to remain in the comfort and safety of their homes. Patients do better at home.

It is not the time to add more upheaval and uncertainty to the industry, as the state has charted its course to do -- which the recently announced CDPAP contract awards has highlighted. Extensive state regulations and policy changes crushed the industry by creating completely avoidable turmoil, chaos, gaps in care, and barriers to service.

Home care needs your support. We are asking you to eliminate the language enacted in last year's budget that created the coming

LHCSA RFO. This is going to play out just like the CDPAP RFO.

We ask you to reimburse providers for the increased cost of personal protective equipment and COVID-related expenses. We thank you for your support of Bill S2543 and A179. However, MLTC plans are receiving COVID-related rate reductions for decreased utilization, and they are passing that reduction to home care providers beginning March 1, to defray the impact to the plans -- this while home care has experienced drastically increased costs for services.

MLTCs will immediately share the burden of reduction and fail to reimburse actual expenses. Unfortunately, this is the norm.

We ask you to reject the 1 percent across-the-board Medicaid cut, to eliminate the Medicaid Global Spending Cap, and reject the Governor's cut in recruitment and retention funding.

We ask that you allocate at least 25 percent of the Healthcare Transformation

Fund to home- and community-based services, and to require managed-care organizations to directly pass through minimum wage funding to their providers.

We ask for the elimination of the requirement for an unnecessary independently audited financial statement for wage parity reporting. We ask to make permanent the nursing home transition and diversion and TBI waiver programs from managed care. And we ask, if there is any federal funding to be had, that you ensure that New York State passes it on to the front-line providers.

Thank you.

CHAIRWOMAN KRUEGER: Thank you.

Any questions from any of my colleagues?

CHAIRWOMAN WEINSTEIN: We have Assemblyman Ra who would like to ask a question.

CHAIRWOMAN KRUEGER: Certainly.

ASSEMBLYMAN RA: Thank you, Chairs.

Good evening, everybody. I just wanted to follow up with Dr. Litvack

regarding -- she went into this a little bit with the excess medical malpractice proposal. And, you know, we had a little conversation about this with the insurance superintendent earlier today, who basically provided, you know, little detail other than to say that she felt that the medical malpractice market had stabilized and, you know, that she didn't think this was going to be that disruptive of a proposal.

I would tend to disagree, and I see you certainly do. And you seem to have pretty detailed numbers in your testimony. So I'm just wondering if you can elaborate more on your methodology in those numbers and really the impact that it would have on costs of something that is already, you know, a big problem in New York State.

DR. LITVACK: Yes. So thank you for asking those questions.

Yes, this is a huge problem if it goes through as proposed. This really would affect our community physicians, those in independent practice, those that are not in

self-funded employer plans. And these practices are running on very thin margins as we speak right now. They have had to deal with the increased cost of the personal protective equipment. They've had to deal with the decreased number of patients, decreased numbers of procedures, and in addition to having had their offices closed for periods of time.

This, as I said, would add thousands and sometimes tens of thousands, depending on which part of the state you're in and, you know, which specialty you're in.

ASSEMBLYMAN RA: Well, thank you -- sorry, go ahead.

DR. LITVACK: That's okay. And premiums right now are still way too high. We have the numbers; we can share those with you from MLMIC and others. But our costs, you know, far exceed any other state in the country.

ASSEMBLYMAN RA: And as you point out, if last year was a bad time to adopt this proposal, then this year is a really bad time

to adopt this proposal. So thank you.

CHAIRWOMAN KRUEGER: Thank you.

Any other members wanting to ask questions?

CHAIRWOMAN WEINSTEIN: Yes, we actually have Assemblyman Byrne also, and then Assemblyman Palmesano.

Assemblyman Byrne.

ASSEMBLYMAN BYRNE: Yes, thank you, Chair.

And ditto to the comments made by my colleague Mr. Ra. I completely agree that if it was bad last year, it's even worse now. And we're hopefully getting a lot of federal relief, which will make a lot of these decisions a little bit easier for us.

My follow-up question was -- I tried to mention it with the commissioner, but quite frankly we don't have enough time when we're trying to go through these budget hearings. And it's about Part Q in I believe the Health and Mental Hygiene Budget. And this is directed more for Bonnie, Dr. Litvack.

It's the section that would allow the commissioner to report professional misconduct, allegations of misconduct, and without due process. Now, we've already passed legislation I think in recent years about people have to -- physicians have to post a notice now, which some people didn't like, about the Office of Professional Misconduct {sic}. But now we're -- this is really a step much further where they're looking to have the commissioner release this information. My understanding is if there's an imminent danger, if there's something like that, they already have that option. But if you start distributing information about a physician -- like I have a real concern that this could ruin someone's career when it's an allegation and they haven't had their due process yet.

Can you elaborate on this a little bit? It seems to be a perennial issue. At least I think it was brought up last year, and we're going at it again this year. And hopefully we can get it taken out. But I was

just hoping you could elaborate on that again.

DR. LITVACK: Sure, I'm happy to.

So this issue is exactly as you've described. The Medical Society is absolutely committed to the safety of the public. And the commissioner already does have the authority to remove somebody -- their ability to practice right now. This goes beyond that and allows them to remove somebody before they've had any due process.

And when you look at our system, our OPMC, the Office of Professional Medical Conduct, system for adjudicating these issues, of the claims, 97 to 98 percent of them are dismissed without any charges being filed and without any action being taken. And with that being the case, this would do a tremendous amount of harm if these were made public before the physician actually had an ability to defend themselves against this.

And so this would be a very harmful thing that would eliminate due process for physicians.

ASSEMBLYMAN BYRNE: Thank you, Doctor.

And I think we all know that once something's on the internet, it's on the internet forever, so it's very hard to repair the damage once it's been done.

And again, I would say in a similar vein to what we said before, if it was a bad idea last year, I think it's a bad idea this year. We're asking our physicians and healthcare workers to do so much. I don't think this would be an appropriate change.

But thank you.

DR. LITVACK: And thank you for rejecting it last year, and hopefully you'll reject it again this year.

CHAIRWOMAN WEINSTEIN: Assemblyman Palmesano.

ASSEMBLYMAN PALMESANO: Yes, thank you very much.

My question is for Sarah.

Sarah, there's been much discussion during these hearings around the state's proposal in the budget to eliminate the $139 million of the state's share for the

Indigent Care Pool. You know, myself and a number of my colleagues always worry about, when we see things like that, about cost shifts, possible mandates or unfunded mandates to our county governments.

I know it was discussed, I think with some of the comments that were made, that Westchester doesn't participate. Do you know what counties are contributing or not contributing, and if so, how much? I mean, right now obviously counties are forced to contribute to the distressed fund, I think it -- I can't remember the amount of it, of $250 million.

You know, do we know how much our counties are participating right now, or not participating, and to what amount? I mean, obviously our counties are struggling financially right now. You know, this mandate, if they had to pick up more or do contribute more, it would be certainly difficult for them to handle. And certainly that would have an overall impact on our delivery of our healthcare system and quality

care.

So do you have any thoughts on that or comments on that proposal and how to -- what you know?

MS. RAVENHALL: Thank you for that question. I don't have those numbers off the top of my head. I can circle back and work on getting those for you, and perhaps work with the Association of Counties to find some of that data for you.

But you're bringing up a really good point. We're seeing continual shifts from state funding to, you know, locality funding, picking up the share of certain services.

One of the services that we're looking at is rabies funding, which was completely eliminated from the proposed Executive Budget. This is a public health issue, and it's essentially being eliminated from the budget. Anybody who is exposed to rabies needs -- there needs to be a public health intervention. And so we're really concerned about seeing some of these cost shifts to localities when they are struggling so much.

So I appreciate that thought, and I can get back with you.

ASSEMBLYMAN PALMESANO: I note that in last year's budget, and I think this year's budget again has -- I think it's $250 million. I think it's 200 million for the city and $50 million for the other counties for distressed hospitals.

And that's an assessment that's coming off the county's books already right now.

MS. RAVENHALL: Right.

ASSEMBLYMAN PALMESANO: That's another thing that we're all worried about.

So thank you very much. And thanks for what you do.

MS. RAVENHALL: Thank you. You too.

CHAIRWOMAN KRUEGER: So, Helene, I just have more a recommendation to Dr. Litvack, who's the doctor from the Medical Society of New York, that I'm going to ask you to please read the City and State article that came out yesterday, "New York Doctors Get Away With Sexual Misconduct."

And it's a fairly scathing report on

the Office of Professional -- whatever the office stands for within the Department of Education, and how they don't ever find anyone guilty of anything. And it's an exposé with a bunch of previous workers coming forward to say that.

Now, I actually have a bill on making it more restrictive --

(Zoom interruption.)

CHAIRWOMAN KRUEGER: I'm sorry? Someone else is talking.

-- that you really need to look into making sure that this office is functioning correctly. Because I know it's a very small number of doctors who are both unqualified to be performing medicine or otherwise very bad people. But when we don't have a system in place that people have confidence in that they will actually penalize the people who should be prevented from continuing to provide medicine or who should be stopped from doing bad behaviors, it makes us all look terrible.

And so that is why I have the bill,

because it turns out tracking doctors with -- who are being found guilty in court of sexual assault and still letting them continue their work in their private offices or even in hospitals in New York State, and then years later, Oh, look, we caught them again. Oh, look, we've caught them again. That's not okay.

So I don't know that I agree with what the Governor is proposing in his budget this year, but I'm telling you -- I'm urging you, as the medical community, get behind reasonable standards for investigations and make sure they're taken seriously, because these hurt -- when these stories come out, they hurt you. And 99 percent of you would never be involved in these things, but if you're supposedly part of a peer review system and you never catch any of your peers except the behaviors are going on, it's a serious problem.

So that's my recommendation to you.

With that, anyone else? Okay. Then we're going to move on to the next panel.

Thank you all very much for being here with us tonight and testifying.

And our next panel is Health People, Chris Norwood; Community Healthcare Association of New York State, Rose Duhan; and Callen-Lorde Community Health Center, Wendy Stark.

Good evening, everyone or anyone. And let's start with Chris Norwood, if you're here. Is Chris here? I don't think so.

Okay, how about Rose. Rose, are you here?

MS. DUHAN: I am here, thank you.

CHAIRWOMAN KRUEGER: Let's start with you, thank you.

MS. DUHAN: Thank you to the chairs and the members who have persevered for hanging through this late night session. I appreciate all of your dedication.

I'm Rose Duhan, CEO of the Community Healthcare Association of New York State. On behalf of New York State's 70 community health centers, caring for 2.3 million New Yorkers, I'm here to express our grave

concerns about the pharmacy benefit carve-out from Medicaid managed care to fee-for-service, which will eliminate access to the 340B program.

The 340B program allows covered safety-net healthcare providers, including community health centers, to purchase pharmaceutical drugs at reduced costs. Community health centers reinvest the savings into initiatives that expand access to care, particularly for the uninsured and underinsured.

New York's community health centers provide care to about one-third of all uninsured individuals in New York State. 340B enables patients to receive free or low-cost drugs and support services such as intensive outreach to those who have been isolated during the pandemic, including follow-up needed for chronic disease management and ensuring children do not fall behind in immunizations.

340B savings have made it possible for health centers to quickly pivot to

vaccination activities, outreach and patient education, making sure people come back for second doses, and standing up vaccination events for communities of color and in rural parts of the state.

Health centers are grateful to have received vaccine allocations, and 340B makes it possible to vaccinate communities most at risk from COVID-19.

The proposed change will result in enormous financial losses, programmatic reductions, and staff cuts for impacted providers. Perhaps what is most devastating is that the carve-out will have the biggest negative impact on the health outcomes of the state's sickest and poorest communities, the very patients hit hardest by COVID-19.

Community health centers are testing and vaccinating patients in their communities and are able to do so because of 340B. This carve-out will have devastating and lasting effects on the healthcare safety net at a time when Black, brown and poor community members and their providers can least afford

it.

In the recent economic crisis we have seen growth in Medicaid enrollment and in uninsured populations that benefit from the services made possible by this program. The Executive has proposed creating a funding pool of $102 million. This proposed funding is woefully inadequate given the massive losses the carve-out would cause, and unreliable as a long-term solution for sustainability, as any pool created by the state is subject to future budget cuts and delayed distributions for purposes of state cash management.

We have learned today that DOH is moving forward with notifying Medicaid participants that the carve-out will take effect May 1st, undermining your ability to negotiate a solution. It is unacceptable that New York would move forward with this carve-out during the most significant public health crisis in modern history. We urge the Legislature to reverse this policy.

Thank you. I'm happy to take any

questions and give you back 25 seconds.

CHAIRWOMAN KRUEGER: Thank you very much.

And do we have Wendy Stark, from Callen-Lorde?

MS. STARK: Yes, I'm here. Thank you so much.

Thank you so much to the chairs and the members of the committee and for doing this all-day marathon. We really appreciate it.

So Callen-Lorde Community Health Center is one of the 70 community health centers Rose just spoke about. We are in Manhattan, the Bronx, and Brooklyn. But I can almost guarantee you that we serve somebody in your district, because we have patients coming to us from all over the state because we are what's called a magnet health center. We have a particular mission, to serve LGBTQ communities and people living with HIV, and so we draw people that are much more geographically diverse than some of our colleagues.

I don't know how else to say this, other than I am begging you -- Senator Brouk said earlier today in the hearing that she got a message from a CEO of an organization in her district who would be impacted also by the Medicaid pharmacy carve-out in ways that are existentially threatening. And I'm here tonight to tell you this is not being hyperbolic, this is going to destroy the safety net at the worst possible time in history, right at this moment.

We serve people who are -- one-third of our patients are uninsured. One-quarter of our patients are people living with HIV. One-third of our patients are people of transgender or nonbinary experience. Over half of our patients are people of color. Many of our patients live at or below the poverty line. This is not the time to hurt our state's safety net.

We have been providing primary care throughout. We provided medical staffing in a hotel for folks who would otherwise be living in the New York City shelter system

who had COVID, near the beginning of the pandemic. Our staff are exhausted. Many of those staff's salaries, our nurses, our front-line folks, our lab techs, our doctors, our PAs, our nurse practitioners, they have been at this with little to no time off since March. Their salaries, many of them, are paid through the revenues that come out of this program. This was an intentional way to support the safety net.

And there is a 340B reinvestment fund that's been proposed, as Rose mentioned, which is meant to help offset the revenue losses that this would cause. I would argue that this is a micro version of the global cap. And we ask you to reject it, as well as the carve-out overall, and of course reject the global cap. It is foundationally the wrong approach to our state's Medicaid program.

There is a delay bill on the table from Assemblymember Gottfried and Senator Rivera -- it is A1671A and S2520 -- to have the community health centers and HIV

special needs plans, have the carve-out piece delayed until April of 2024.

There are other solutions to this. We can find a solution to the PBM transparency issue. We are on the same side about this. This is not the way to do it.

Thank you so much for your time and attention.

(Pause.)

SENATOR RIVERA: You're on mute, Liz. You're on mute.

CHAIRWOMAN KRUEGER: I'm sorry. I was saying, except no one could hear me, that I believe Chris Norwood has now joined us.

MS. NORWOOD: Yes. Oops --

CHAIRWOMAN KRUEGER: You ready?

MS. NORWOOD: Thank you very much. I am Chris Norwood, executive director of Health People, which is entirely a peer-led health education and disease prevention organization in the South Bronx.

There's a major reason New York State had the most COVID deaths in the nation. It is because the New York State Department of

Health absolutely refuses to have any coherent plan to either prevent chronic disease or help people who have chronic disease achieve the good self-management that still protects their health and does not leave them this vulnerable to any virus or variant that comes along.

I will start with diabetes. In the first surge of COVID in the spring of 2020, diabetes deaths in New York City increased by a staggering 356 percent, the most in the nation, and state diabetes deaths outside New York City increased the most of any state.

International studies, however, soon made clear that these deaths, along with serious complications like heart, lung and kidney injury, were mainly occurring in people with diabetes whose blood sugar was in poor control.

At the time, my organization, Health People, was providing the only community diabetes self-management program in the South Bronx, teaching thousands of people

with diabetes how to lower their blood sugar and achieve good control. The state completely destroyed and defunded this vital community self-care initiative just as it become clear that blood sugar control was vital to survival during COVID.

New York has 2 million people with diabetes, some 600,000 on Medicaid. To this day, despite what should be the lesson of unprecedented diabetes deaths, the State Department of Health still refuses to support a single self-care community-based initiative for diabetes or, for that matter, for any other chronic disease anywhere in New York State.

The Diabetes Self-management Program we were providing, which I believe other people try and work with, is well-proven to reduce blood sugar, weight, depression and multiple diabetes complications. It slashes new cases of kidney disease by 90 percent the first year after people participate, which means it also slashes the number of New Yorkers who will be chained to dialysis.

Most important, communities themselves can take the lead in this kind of life-saving education. We entirely trained people from the South Bronx with diabetes and pre-diabetes to deliver this.

I really urge the Legislature -- you've heard over and over how things that prevent and save money are the first to go. It is so senseless. And hopefully you will look at these life-saving programs and assure, with any money that comes from Washington, it will be used to truly build health, and that at least 250 million will be devoted to community-led chronic disease prevention and self-care programs across the state.

CHAIRWOMAN KRUEGER: Thank you.

MS. NORWOOD: Thank you very much.

CHAIRWOMAN KRUEGER: Thank you all very much.

All right, do I see any hands up?

Gustavo Rivera, Health chair.

SENATOR RIVERA: It will be brief. Thank you. Thank you, Madam Chair.

Thank you all for being here. Thank you for remaining here, particularly because it is so important what you're bringing to the table. You represent folks all across the state that -- I want to talk particularly about the 340B program. We talked about the delay bill that I encourage my colleagues to get on. And we certainly need to push back on the Governor in a real way about this.

I want you to specifically make the connection about how the flexibility of this program has allowed different -- whether it's you, Wendy, at Callen-Lorde, or any of your members at CHCANYS -- talk about the flexibility of this program and the fact that the savings that are utilized to actually invest in care for the people that you serve, and how the proposal from the Governor -- compare the two, whether you think that one would be -- that this program that -- the proposed, you know, 100 million, 102 million from the Governor would compare to what you get now from the federal program, as far as flexibility.

MS. STARK: It's hard to say the math. Callen-Lorde alone stands to lose $12 million a year from this change, and I don't --

SENATOR RIVERA: So what's your total -- what's your total --

MS. STARK: Ninety-five million.

SENATOR RIVERA: So it's a chunk, a chunk.

MS. STARK: Yeah, it's a big chunk.

So right now I use this money to pay for nurses, for example, who provide nursing triage to patients who are calling and saying "Should I go to the emergency room? I'm having this symptom." We are keeping people literally out of the emergency rooms by paying for these nurses, as one example. Right?

We have case managers who are helping people with housing support, all kinds of things.

And so, again, I do the analogy to the global cap. If we have a certain amount of money every year that stays stagnant and that we have to fight for it every year, we cannot

be as flexible or do planning around it. How can you hire staff based on a pool of funding that changes year over year and that shrinks year over year, and how --

SENATOR RIVERA: Or that might not exist. Or that might not exist next year.

MS. STARK: Exactly. Exactly.

HIV. We have done so well in this state around getting the number of new infections down and getting people virally suppressed. So many of our patients are people living with HIV. We put all kinds of support services around that with this money. These are why these numbers are good. The whole HIV services system in this state is going to have a really drastic change to our revenues if this happens.

SENATOR RIVERA: CHCANYS?

MS. DUHAN: Yeah, and I would say that this pandemic has really demonstrated the necessity for the flexibility of these funds.

We -- you know, health centers were told on the Thursday before Christmas that they would be receiving hundreds of doses of

the vaccine on Monday, and health centers were able to get staff ready, they were able to schedule vaccine, they were able to put extra people on the phones because they were all of a sudden flooded with calls from the community: "Can I get the vaccine?"

They have to do scheduling, they have to have people who can be there to be there at the vaccination events. So this is really something where health centers -- there was no extra funding that was coming in to make it possible to turn around and stand up these events where -- in the communities where we know people have been most adversely impacted by the pandemic.

So it's really --

SENATOR RIVERA: Senate and Assemblymembers that are still on, get on our bill, get on Dick's bill, get on my bill so we can make sure that we stop this, please.

Thank you, Madam Chair.

CHAIRWOMAN KRUEGER: Thank you.

Any Assemblymembers, Helene?

CHAIRWOMAN WEINSTEIN: No, we are

ready to move on.

Thank you for being here.

CHAIRWOMAN KRUEGER: All right, thank you all very much for coming. We're covered very broadly during the earlier parts of the hearing. So thank you very much.

Next up, Panel F. And I've learned some people were working off an older version of the testimony list, so sorry, but now we're on Panel F for the correct version. Empire Center for Public Policy, Bill Hammond; Consumer Reports, Chuck Bell; New York State Area Health Education System, Leishia Smallwood; and Center for Health Outcomes and Policy Research at the University of Pennsylvania, Linda Aiken.

Are you with us, Bill? Okay. Good evening. You get to start.

I can't hear you; turn your mic on.

MR. HAMMOND: All right.

Good evening. Thanks for the opportunity to testify.

This year has taught us a painful lesson about the importance of public health

infrastructure. The places in the world that had the strongest infrastructure were able to respond quickly and effectively to the pandemic, and they kept their loss of life and economic disruption to a minimum. Unfortunately, the United States and New York were not among those places.

Public health is one part of New York's health system that has suffered reductions in funding unlike any other. I will give you an example. The Wadsworth Center, our world-renowned public health laboratory, over the past 10 years it has lost 40 percent of its publicly reported funding and about two-thirds of its staff.

Now -- and other functions in the Health Department have seen similar dramatic reductions. There's a caveat, is that we have something called the Health Research, Incorporated. It's a kind of off-the-books part of the Health Department, and there are often jobs and money that's kind of stashed there. I would argue that the Health Department, if it wants a really full

view of the public health system, it needs transparency into HRI.

With respect to Medicaid, the picture actually is quite different. This is a program that's been growing rapidly. This year alone, its overall funding is projected to be up $4 billion, or 5 percent. That's about twice the rate of inflation.

The structural imbalance in that program that existed before the pandemic is still there, it hasn't really been fully addressed, and we are sustaining this unsustainable funding with temporary federal aid. And when that temporary federal aid goes away, as it inevitably will, we're going to have a hole that's that much bigger to fill and that much more painful to deal with.

With respect to nursing homes, until just a couple of weeks ago, on February 10th, when the court ordered the Health Department to turn over the data, it was really impossible for people outside the Health Department to do any kind of in-depth analysis of policies around nursing homes,

including the March 25th guidance.

Using the data that the Empire Center obtained, we were able to find a statistically significant correlation between the admissions of coronavirus-positive patients into nursing homes and higher death rates in those nursing homes. It's on the order of several hundred additional deaths. So it doesn't explain the entire situation in nursing homes, but it was a contributing factor.

And this is one small part of what should be a larger in-depth investigation into the pandemic, so that we can figure out what went wrong and prepare ourselves so that it never happens again.

Thank you for listening.

CHAIRWOMAN KRUEGER: Thank you very much.

And next is Charles Bell, program director, Consumer Reports.

MR. BELL: Madam Chairs Krueger and Weinstein, Chairs Gottfried and Rivera, Breslin and Cahill, members of the committee,

thank you for your stamina and perseverance and indefatigable commitment to healthcare democracy.

So Consumer Reports enthusiastically joins with Health Care for All New York, who's coming behind me on Panel G, to urge the Assembly and Senate to please adopt the language in the Patient Medical Debt Protection Act in both one-house bills.

This act would provide common-sense protections to protect patients against medical debt and unfair billing practices, to lessen the interest rate for medical debts, and to avoid surprise billing. So we urge that adoption.

Number two, the COVID-19 pandemic has brought home to all of us how a previously unknown disease can wreak havoc, not just on our lives in New York but worldwide. And so a key lesson of that is that we need to prioritize public measures for emerging threats and exercise strategic foresight.

So in New York State we believe -- and many of our coalition partners, such as

NYPIRG and Center for Food Safety -- that we should work together to protect the continued effectiveness of medically important antibiotics like tetracycline and ampicillin by clamping down on their routine overuse and inappropriate use in both healthcare settings and farming.

And it's an astonishing fact that two-thirds of the medically important antibiotics that we rely on in the United States are given not to people, but administered to food animals -- not because the food animals are sick, but to prevent them from becoming sick because they're living in overcrowded and unsanitary conditions.

So in 2018 the New York State Department of Health worked on this report (showing), the Stop Antibiotic Resistance Roadmap plan, which was a great first step. And from that report we have learned that 58 percent of 175 hospitals said they had an antibiotic stewardship program, which is very important, and we commend them. But that

also means that 73 hospitals did not, and so that needs follow-up.

And the plan also acknowledged that agricultural overuse is a significant issue in New York State, but they did not put into place restrictive measures, a binding plan or a timetable to get it under control.

So for that reason, we urge you to incorporate into the state budget language the Combating Antimicrobial Resistance Act, sponsored by Assemblymember Linda Rosenthal and Senator Kavanagh, which would prohibit the use of medically important antibiotics in food-producing animals for the routine purposes of disease prevention.

We need New York State, as part of its budgetary activities and its operating practices, to implement a Stop Antibiotic Roadmap that actually solves the problem for both healthcare settings and for farming, and prevents the next pandemic. Fully 24 percent of our infections comes from the food that we eat and our farm animals. So we have to treat both sides of the equation.

Antibiotics are life-saving drugs. It's our civic and public health obligation to protect them. Thank you very much.

CHAIRWOMAN KRUEGER: Thank you very much.

Next we have Leishia Smallwood, New York State Area Health Education System.

MS. SMALLWOOD: Thank you, Madam Chairs Krueger and Weinstein, Senator Rivera, and the joint committee for hearing my testimony tonight.

Founded in 1998, New York State AHEC System is a health workforce training initiative federally funded to provide education, training, and community services to each and every county throughout New York State. Our network aims to address the health disparities in medically underserved areas and increase diversity in the healthcare workforce throughout New York State.

We know the importance of having healthcare professionals be representative of the population they serve, especially in

medically disadvantaged areas. We support this objective by recruiting health professions students from diverse backgrounds, with emphasis on minorities, to expand their formalized training through exposure to the health issues in the underserved communities, to attract their interest in working in these communities after graduation.

We believe in the "grow our own" model and providing health career exposure pipeline services for youth, putting them in hospital and clinical settings to cultivate their interest in the various health professions.

We provide clinical rotations and internships for future providers in both urban and rural settings to better understand those patient populations.

We connect health professions graduate students to medically underserved vacancies in the communities and promote debt reduction incentive programs for MUC practice.

We provide continuing education workshops and trainings for our current

healthcare providers on critical topics in the healthcare industry.

We facilitate opioid prevention and education programs for high schools, colleges, and the community. We coordinate MAT trainings, facilitate Narcan trainings for both high school and college students.

We support maternal health through our Doula Project to provide education and support services to women, especially minorities, to help reduce and prevent childhood births and deaths.

We support mental health as a partner with Project TEACH, funded through the Office of Mental Health to promote education, services and trainings provided to PCPs across the state in the rapid mental health diagnosis and treatment for children and adolescents.

During this pandemic we provide COVID workshop series to current health professions students entering the workforce, to educate them on topics like trauma-informed care and the effects of COVID-19, and proper PPE

utilization.

We do community education, going door to door in neighborhoods with high infection rates, handing out CDC guidelines for COVID safety.

We have a focus on working with organizations to track members to fill open positions. As we know, it's going to be exacerbated through this COVID, post-COVID. We know there's going to be service gaps and shortages. And we are looking to help be on the frontline to replenish and be a crucial provider to working with those organizations to identify workers that we've lost in the pandemic through sickness and fear.

This pandemic has provided many challenges to our network which limit our ability to work in an in-person environment with our students and community partners. AHEC adapted to this challenge and developed a robust virtual platform to continue our programming and services.

With our previous 20-year funding history with the state, we are seeking a

restoration of $2.2 million in funding to continue to support the work and services that AHEC provides, but which many of our educational partners and students come to rely on greatly.

Thank you.

CHAIRWOMAN KRUEGER: Thank you very much. And our last speaker is Linda Aiken, professor and director, Center for Health Outcomes and Policy Research, University of Pennsylvania.

PROFESSOR AIKEN: Thank you so much.

I am Professor Linda Aiken from the University of Pennsylvania Center for Health Outcomes and Policy Research and the Leonard Davis Institute of Health Economics.

My remarks today are a brief summary of findings from our independent study related to pending legislation, the Safe Staffing for Quality Care Act, with regard to hospital staffing. More details are available in three peer-reviewed scientific publications in prominent medical journals.

In January and February of 2020, right before COVID, we conducted original research on nurse staffing, surveying nurses from 116 acute-care general hospitals in New York State. We linked these findings on staffing levels to the clinical outcomes of 418,000 Medicare patients treated in these same hospitals.

Is hospital nurse staffing in the state a problem that should be addressed? And we conclude yes. We found that patient-to-nurse staffing ratios in adult medical and surgical units varied widely and unjustifiably across hospitals, from hospitals where nurses took care of four patients each to hospitals where nurses took care of almost 11 patients each. Remember, this was before COVID and not counting ICU staffing.

These greatly varying ratios have preventable negative consequences for New York State residents. Our findings show that every one patient increase in patient-to-nurse ratios is associated with a

13 percent increase in risk-adjusted hospital death rates, and similarly in significant increases in length of stay and readmissions.

So is the proposed legislation likely to improve patient outcomes and resource efficiency in New York State hospitals? And we conclude yes. We estimated that were all New York State hospitals staffed at the 4:1 ratio proposed in the pending legislation, more than 4,370 deaths would have been avoided just among elderly Medicare patients. Many more deaths would have been avoided if all patients were counted.

Savings of a minimum of $720 million would have been achieved because of avoided days of hospital care, and those savings could be reinvested in employing more nurses.

So in summary, the immense variation in patient-to-nurse ratios across hospitals in New York State results in significant numbers of avoidable deaths and unnecessary expenditures. Our study shows that setting reasonable minimum standards for safe hospital nurse staffing statewide is feasible

and in the public's interest.

Thank you.

CHAIRWOMAN KRUEGER: Thank you very much.

Any questions from my colleagues?

CHAIRWOMAN WEINSTEIN: Assemblyman Ra has a question.

CHAIRWOMAN KRUEGER: Certainly.

SENATOR RIVERA: Ra first, that's fine. Ra can go first, I can go second.

CHAIRWOMAN WEINSTEIN: Oh. Okay.

ASSEMBLYMAN RA: Thank you, Chair.

Good evening. I just had a quick question for Mr. Hammond.

You're a popular guy today. There was a question to the extent people knew you and everything else, but I'm sure you heard earlier, either directly or indirectly, that Commissioner Zucker spoke about -- basically, I mean, he stated in almost certain terms that he believed there was zero additional deaths as a result of the March 25th order. He left open the possibility that maybe there could be one, because he didn't want to say,

you know, never. But he said there wasn't any.

So I was just wondering if you had any thoughts on those statements.

MR. HAMMOND: I mean, I guess I would wonder what his basis is for saying that.

His department published a report in July which made the case that it wasn't responsible for all of the deaths and it wasn't responsible for the peak of deaths, but it didn't actually address the question of whether it was a contributing factor.

I mean, the kind of analysis that my colleague Ian Kingsbury and I did was kind of an obvious way of getting at that question. And it didn't appear like the Health Department had done that kind of analysis. They have much better data than we do, and so if they did, it would probably be a more accurate assessment.

And so either they did the analysis and didn't like the results or they didn't do it at all. And so I don't think you can -- I don't know what the basis is for his

statement about that.

ASSEMBLYMAN RA: And, I mean, I would agree. And certainly, as you've said, you know, not having the underlying data to utilize until recently made it hard for anybody to do any independent look at this.

So I do -- I'd be remiss if I didn't thank you and the Empire Center for your persistence in obtaining that data, because despite the commissioner's representations that it would have been provided for this budget hearing, I don't believe for a second we would have seen the information if they weren't forced to do so by a court.

So thank you for that and for your good work on the issue.

CHAIRWOMAN KRUEGER: Gustavo Rivera.

You're muted.

SENATOR RIVERA: Here we go. Yup, I gotcha. Thank you so much, Madam Chair.

Mr. Bell, first of all, good evening. And good evening to everybody else, obviously. But I wanted for you to talk a little bit more -- I'm very thankful of your

plug for the Patient Medical Debt Protection Act. And the -- the -- if you could talk a little bit more about the concerns that you have, based on your experience, your deep knowledge about consumers and how consumers are affected by medical debt.

And I will -- so if you could tell us a little bit more about why you think it's so important to pass it in the State of New York. Because I know you mentioned it in passing in the middle of all the other things.

Go ahead.

MR. BELL: Oh, sure, sure.

So Community Service Society has done an excellent job documenting some of the actions, legal actions that have been carried out against patients in New York State. But essentially there have been over 50,000 lawsuits against patients for hospital-based medical debts in the last five years in New York State.

And we are just like super-concerned that during a pandemic where it's hard for

people to keep well, people absolutely may need medical care. And it's their right, it's their absolute right to get it. We want people to be able to get medical care in the U.S. with full dignity and respect.

And so while we want to eliminate the financial barriers on the front end, we don't want the surprise financial gotchas on the back end. And too often, you know, consumers are basically running a maze.

And so within this bill, which we worked on with your employee and our dear friend in the Senate, Kristin Sinclair --

SENATOR RIVERA: Yes, you did.

MR. BELL: Yeah, who did a fantastic job -- we put together several measures that we think that really would improve the patient experience of care and simplify medical billing, which would also be probably a boon for both our providers and our health payers.

We don't want people to be leaving the hospital with financial stress and other psychological complications that come with

that. And these -- one of the measures is to say to hospitals, Could you please create a simplified medical billing system so we can get one bill for a hospital visit instead of 30 bills and 30 different explanation of benefit forms.

There has to be a way in the United States that we could simplify the administration of billing. New York Health absolutely is one way that we could do that. I personally am like a huge --

SENATOR RIVERA: I look forward to working with you on this. I only have 30 seconds --

(Overtalk.)

MR. BELL: We need to make it simpler for the patients. And then also standardizing the charity assistance is very important --

SENATOR RIVERA: -- work with you to pass it --

MR. BELL: There are other things in there we need to get done.

SENATOR RIVERA: I need my last

15 seconds to say, Bill --

MR. HAMMOND: Yes, sir?

SENATOR RIVERA: I don't know if this is worth anything, sir, but I sure know who you are.

(Laughter.)

SENATOR RIVERA: And I also -- I also -- I will say this for the record, I respect your work immensely. And just like you were thanked before by Assemblymember Ra, thank you so much for continuing to do the work relentlessly on this to make sure that we got to the truth. So --

MR. HAMMOND: Thank you, Senator.

CHAIRWOMAN KRUEGER: Thank you.

Any other Assemblymember?

CHAIRWOMAN WEINSTEIN: No, but I believe you have another Senator.

CHAIRWOMAN KRUEGER: Well, we have me. Who else do we have?

CHAIRWOMAN WEINSTEIN: I see Sue Serino's hand raised.

CHAIRWOMAN KRUEGER: Oh, hello. I didn't see you in the darkness, excuse me.

Sue Serino, please go first.

SENATOR SERINO: Thank you, Madam Chair.

And Bill and everybody, thank you so many for all of your hard work. Greatly appreciate it.

And Bill, you've been very clear about -- over the last four months about the need to use everything that we've learned during this time to ensure the state is better prepared to act in the future. You've pointed out that that's actually the reason that data is so important when we're talking about these health issues, because that data is what actually informs policies and makes all the difference between sort of spinning our wheels versus making effective changes.

So with that in mind, my question is for everyone on this panel. Based on what you know today, what can the state do today -- starting with this budget, I guess -- to be better prepared to act with this current pandemic still raging, and in the face of any future pandemic, maybe to be

better prepared for the current pandemic too? We know the numbers are still concerning and we're seeing the changing strands as well.

So that's open to everybody.

MR. HAMMOND: I would -- my first recommendation would be to conduct an investigation, make it as independent as possible, make it as in-depth as possible. And that way it would kind of start with a lot more transparency about what happened.

I mean, we had to engage in a months-long court battle to get one data set out of what would probably be hundreds if not thousands of data sets. So we would need the cooperation from the Cuomo administration to get to the bottom of things.

But you can't really -- I mean, my testimony was about -- implied that we need to invest in our public health infrastructure. But we don't really know what part of that infrastructure to invest in until we have a better understanding of what happened. It's very easy to get caught up in narratives and theories about, you know, was

it Italian tourists or was it the subway or -- you know, there are different theories about why New York was hit so hard.

I think we really ought to try and understand more definitively what the bottom line was.

SENATOR SERINO: Thank you, Bill.

PROFESSOR AIKEN: I'll add there, if I could, on the nurse staffing issue.

The title of one of our papers is "Chronic Hospital Nurse Understaffing Meets COVID-19." And this is exactly the situation in New York State. And New York City has the worst staffing in the state. And New York City of course is a gateway city for all kinds of communicable diseases coming in through the three airports.

So it's already well known that New York City and New York State has substandard nurse staffing in their hospitals compared to other states. This is an example. Patients and hospitals in New York get three hours fewer RN hours per day than patients in California. This is a lot of

nursing care.

So, you know, the evidence is clear. If we want to be better prepared for a surge in the future, we need to fix what's going on in normal circumstances.

SENATOR SERINO: Yup, thank you. I agree.

CHAIRWOMAN KRUEGER: Professor, I have a follow-up for you.

First off, thank you for being here tonight, because I think it does highlight the value of actually doing research and finding out what's happening.

So you just said California offers three hours more of nursing per day than New York City. Do they spend that much more on healthcare than we do per person? My understanding was they didn't.

PROFESSOR AIKEN: No, they don't. And they have a mandate -- of course, everybody probably knows California has a similar mandate to what's being proposed in New York.

It was an unfunded mandate. The hospitals were able to meet the mandate

without any closures, and the safety-net hospitals in particular improved their staffing dramatically. So it touched on all of the things -- very positive results from California.

CHAIRWOMAN KRUEGER: Thank you very much for that.

CHAIRWOMAN WEINSTEIN: We have -- oh, I'm sorry.

CHAIRWOMAN KRUEGER: Sorry. I was just going to say: Bill, yes, thank you for your work.

Sometime you're going to explain to me why you agree with me completely on the importance of expanding our public health system but you basically have a problem with Medicaid, which is ensuring that we have funding for almost every New Yorker to actually now have health insurance. So -- but not tonight, because we only have three minutes. But we'll sit and we'll talk about that.

And Chuck Bell, I swear, we kept fixing the surprise bills. Didn't we get

that bill done last year? Why does it keep -- it's like a whack-a-mole, it keeps coming back.

MR. BELL: Well, we have an extremely --

CHAIRWOMAN KRUEGER: -- the Cahill guy, yeah.

MR. BELL: Yeah. We have an extremely complex system.

But the particular thing that the fix that the Patient Medical Debt Protection Act would make would be to clarify the issue that when you get incorrect provider directory information, that you relied on the provider's assurance that he or she participates in your healthcare network, or you relied on the insurance company directory and it turned out to be incorrect, that the patient would be fully protected from surprise billing in that circumstance.

And that is eminently fair. We're asking consumers to do a lot of work to consult those directories and go to in-network providers, and then when they

follow all the rules, they should not be penalized for doing that.

So it's very straightforward. I don't think anyone really disagrees --

CHAIRWOMAN KRUEGER: Right.

MR. BELL: -- that the fix should be made, except it becomes a clash between different interest groups.

CHAIRWOMAN KRUEGER: Just like last year's story. Okay, thank you very much.

Sorry, Helene, I kept cutting you off.

CHAIRWOMAN WEINSTEIN: I was just going to say we have a number of Assemblymembers, so we'll start first with Kevin Cahill.

ASSEMBLYMAN CAHILL: I will be very brief, thank you very much.

Senator Krueger, yes, there are still a few little things we have to do to tinker with the surprise billing law. But also there's a significant amount that we have to do with medical debt. And we're going to both work on both of those things.

I will just take a few moments, not to

ask any questions but to thank each and every one of you panelists, and remind you that this is the just the beginning of the part where we need you most. You are people who analyze problems and then give us good, substantive analysis that allows us to plan for the future.

And we can't really always do that in the middle of the crisis, but I honestly feel that we are on the way out of this crisis, and this is exactly the time where we have to examine every aspect of it and try to make sure we do it better so that the next time things are not as bad as this time.

So I thank each and every one of you for not only your testimony, but for your good work along the way. And Bill Hammond, you're my favorite guy to always disagree with except for those occasional times when we agree, so -- and this happens to be one of them. Thank you.

CHAIRWOMAN WEINSTEIN: Thank you.

So Kevin Byrne?

ASSEMBLYMAN BYRNE: Chair, just a

quick question before we start. Everyone gets what, one round, on these panelists, right?

CHAIRWOMAN WEINSTEIN: Yes. Yes.

ASSEMBLYMAN BYRNE: Okay, thank you.

CHAIRWOMAN WEINSTEIN: Three minutes.

ASSEMBLYMAN BYRNE: Three minutes, thank you.

So I'm going to just go to Bill Hammond. And I have three questions, so I'll try to be efficient with my time.

One, our state's Medicaid budget, $82.9 billion -- that's the federal, state, local share. It's going to extend the Medicaid Global Cap. Is that still effective, do you think, in controlling any sort of costs in our state budget?

MR. HAMMOND: It's a lot less effective, because it's been -- it's been riddled with loopholes and exceptions. And it's been kind of disregarded. The monthly reports have stopped. The Governor's never actually enforced it.

I think it would have been useful a

couple of years ago to contain the deficit that was developing before it got too large.

ASSEMBLYMAN BYRNE: Understood.

I also want to thank you and the Empire Center, Bill, for all your work this past year on many issues. But I think it's shocking that I could find more information about nursing home data on the Empire Center's website than the Department of Health's website.

And it's alarming to me that the Department of Health continues to conflate total state numbers with nursing home resident numbers. And to my knowledge, the July report that's commonly referenced by the Department of Health defending the March 25th directive, in many cases they didn't use statewide numbers. They used nursing home resident numbers, just not those that died in a hospital.

Would that be correct?

MR. HAMMOND: That's correct.

ASSEMBLYMAN BYRNE: So I think they understand the difference and they just seem

to be spinning the story now.

A last question, since I think everyone just gets one question, I get the last word here. The New York so-called Health Act was brought up a couple of times and I have concerns about the lower reimbursement rates; you know, when the public sector costs the state increased taxes, you know, the effects on quality care.

Do you have any -- you can use the rest of my time to maybe, you know, offer your opinions on what that would do and why perhaps this is not the time to take on such a costly program in New York.

MR. HAMMOND: Well, it would be enormously expensive. It would require tax increases beyond anything that's been proposed even in the current Legislature.

But also I think it's kind of missing the point. I mean, I know that there are certain ways in which a single-payer system might have helped during the crisis. But the public health system is the part that would have prevented the crisis, or would have

minimized the crisis.

The -- the public health system is the one that would have made it unnecessary for people to go to the hospital in the first place, and would have made it unnecessary for us to shut down visitation in nursing homes.

It's --

ASSEMBLYMAN BYRNE: A unified vaccine distribution would probably make sense, but not -- I don't think you need a single payer for that. But I just wanted to chime in on that point. I think that would have been helpful too, to your point.

Thank you. That was -- I know Mr. -- that Chairman Rivera has had some very nice words about you, and I just figured I'd drop that in since he already asked his question.

Thank you.

(Laughter.)

CHAIRWOMAN WEINSTEIN: Okay. We go to Assemblyman Jensen, who maybe has some nice things to say about Bill Hammond.

ASSEMBLYMAN JENSEN: You know what? I have nice -- I do have something to say,

Bill. Not a question. But I do notice that you're the only panelist today, only witness who has a bookcase without Bill Clinton's My Life on it. So that is something I did notice.

But my question is actually for Professor Aiken. And forgive me, I haven't read your -- UPenn's research on the safe staffing bill, but I just want to ask you a couple of quick questions about your research.

So looking at -- reviewing your data, so you mentioned that New York City sees the most troublesome staffing levels. Is there any merit, based on the numbers between upstate and downstate, to maybe doing a phased-in approach starting with New York City and then moving towards the rest of the state on that sort of model?

Secondarily, the question is did your research look at -- to increase the staffing numbers and the ratios, about the availability of nurses, RNs, the rest of the nursing care teams, and the availability of

those staff members to reach those mandated ratios in the hospitals in New York?

PROFESSOR AIKEN: Yes. Well, let me -- thank you for those questions. Let me take the last one first, on the issue of whether New York has enough nurses.

And this is a common reason why states consider staffing ratios but don't adopt them. And there's a lot of misinformation about the supply of nurses.

So New York State has substantially more nurses per population than, for example, California that has already passed such legislation. So for example, in New York State there are almost 19 nurses per 1,000 population. And in California, they only have 11 nurses per 1,000 population. So there are sufficient nurses in New York State.

Moreover, there are 34 other states that have adopted the nursing licensure compact, which allows for multi-state licensure. Now, New York State hasn't adopted that and so the Governor had to, in

his emergency powers, waive that requirement during the pandemic. That wouldn't be necessary if New York State went along with the other 34 states and passed that legislation.

We are graduating now 170,000 new nurses coming into the workforce every year in our country. I know earlier today there was some discussion about increasing the supply. We really have quite a robust supply of nurses in the U.S.

On the issue of the phase-in, I think certainly New York City is of concern because of the communicable disease threat posed by the airports in New York City. But I don't know that I think necessarily phasing it in by region would be the way to go. I think giving hospitals a period of time to get ready for it and not pass it immediately on them would be a better thing, but to pass it statewide.

ASSEMBLYMAN JENSEN: Okay. I think I -- I have more questions, but I've run out of time. So thank you.

CHAIRWOMAN WEINSTEIN: Thank you.

Senator Krueger, I think we're finished with this panel.

CHAIRWOMAN KRUEGER: We are finished with this panel. Thank you very much. I was just looking at a memo that came in.

Thank you all for being with us and for reminding us of the value of doing research and real-life experience impacting where we go next in New York State.

And the next panel will be made up of Amanda Dunker, Health Care for All New York; Elisabeth Benjamin, vice president of health initiatives, Community Service Society of New York; Lara Kassel, coalition coordinator, Medicaid Matters New York; Louise Cohen, CEO, Primary Care Development Corporation; and Anthony Feliciano, Commission on the Public's Health System.

Hello, everyone. And I hope you're all there. We'll just call out your name and see if you pop up to talk.

Amanda Dunker.

MS. DUNKER: Hi. Thank you for the

opportunity to testify tonight. I'm testifying on behalf of the Health Care for All New York Coalition, which represents over 170 member organizations statewide, and we work on ensuring that New Yorkers have health coverage and have access to affordable, quality healthcare.

I am going to leave medical debt for the next speaker and highlight four other budget issues related to healthy equity in my testimony.

New York's health policies systematically underfund care for low-income and even moderate-income New Yorkers. Years of this means that surviving COVID-19 comes down to your wealth or your race for many New Yorkers. So first is that New York has failed to ensure that everyone has health insurance. There are no coverage expansions proposed in this budget.

One solution would be to enact the New York Health Act. That would cover everyone. It would eliminate differences in providers' financial stability based on the

wealth of their patients.

At a minimum, the budget should expand Essential Plan coverage to immigrants who are income-eligible and have had COVID-19 but are excluded because of their immigration status. Immigration status is still one of the biggest barriers to coverage in New York. It's -- 20 percent of people who are without U.S. citizenship in New York are uninsured, compared to 5 percent of the general population.

Expanding coverage for them through the Essential Plan would make an enormous difference for some of the hardest-hit communities in New York State, and it would ensure that the hospitals who care for people in those communities receive revenue for that care.

Second, public hospitals should not be excluded from receiving Indigent Care Pool funds. The purpose of the Indigent Care Pool is to support hospitals that care for people who are enrolled in Medicaid or are uninsured. Public hospitals serve far more

of those patients than New York's private hospitals, and they should not lose access to Indigent Care Pool funds.

New York has to ultimately change how indigent care pool funding is distributed. If New York had chosen to use those funds exclusively for safety-net hospitals over the past 20 years, they would have received over $13 billion more in funding.

Third, safety-net providers should be protected from across-the-board Medicaid rate cuts. New York State law categorizes hospitals who serve the most uninsured or Medicaid-covered patients as enhanced safety-net providers. Those hospitals should be protected from rate cuts.

There are big differences in payer mix at hospitals across New York, so Medicaid hospitals -- hospitals that serve more Medicaid patients -- obviously are hurt much more by these across-the-board Medicaid cuts. Some hospitals only have 2 percent of their patients covered by Medicaid. There's others where it's up to 80 percent.

The Medicaid Global Cap that triggered those cuts should be repealed. The fact that New York is cutting rates for hospitals in the midst of a health and economic crisis of this scale, and is specifically targeting hospitals that serve the most affected communities with those cuts, is a perfect illustration of what is wrong with the Medicaid Global Cap.

Finally, I would like to point out that the majority of people hospitalized for COVID-19 are still hospitalized in New York City, and reductions in state funding for public health programs that only apply to New York City are inconsistent with what public health data is telling us to do.

Thank you.

CHAIRWOMAN KRUEGER: Thank you.

Next we have Elisabeth Benjamin, Community Service Society of New York.

MS. BENJAMIN: Thank you.

First of all, you know, big shout-out to you, Chairwoman Krueger, Chairwoman Weinstein, Chairman Gustavo Rivera,

Chairman Cahill. You all are lions, you know, as Chuck Bell said -- I mean, just hanging in there and hearing true democracy happen. And thank you for your service and for your service to the public of New York State.

I really want to speak about three things. First of all, of course, we support everything at the Community Service Society that Amanda Dunker just spoke about on behalf of Health Care for All New York. But I'd like to focus on the Essential Plan, the Patient Medical Debt Protection Act, and consumer assistance programs.

In terms of the Essential Plan, the Affordable Care Act gives us the money to fund the Essential Plan. And it's called the Basic Health Plan in the Affordable Care Act; we renamed it the Essential Plan. And we have a $4.5 billion surplus, thanks to the federal government, in our Essential Plan trust fund, as Donna Frescatore testified today.

Now, great news that the Cuomo

administration is trying to get rid of the $20 premium for medical benefits. But the Affordable Care Act is extremely clear: The surplus of the trust fund should only be spent on improving benefits or reducing premiums for the beneficiaries.

Instead, the Cuomo administration is suggesting to spend $650 million on a -- what do they call it? -- some kind of program for the insurance carriers, and a $450 million rate hike for the providers. Now, at the same time they're saying we should still require beneficiaries to spend $30 to cover their vision and dental.

The first and foremost thing we should do, under the Affordable Care Act, is get rid of that $30 premium for vision and dental for Essential Plan beneficiaries. These people are below 200 percent of poverty; they don't have an extra $30 a month to pay for vision and dental. That's $150 million.

What you do with the remaining surplus after that is another question that I'll leave for another day. But number one, we

should be getting rid of that stupid vision and dental premium, $30 per member per month -- $150 million. And then -- you know, and we have plenty of money, we have $4.5 billion.

Second, we really think that it's time to level the playing field between the patients and the industry. Medical billing is a nightmare in New York State. You know, we have one gentleman that went in for a kidney stone; he came out with 28 different bills. That's not okay. One visit, one bill. You go into the hospital, you should come out with one consolidated bill that explains what's going on.

Number two, our -- people are being sued -- oh, my gosh, I'm already out of time. Fifty thousand people have been sued, over 5,000 people during the pandemic. We have to get rid of this 9 percent interest rate for people in judgments.

And last but not least, thank you for your support for the consumer assistance programs. I'll take questions. I'm sorry, I

ran out of time.

CHAIRWOMAN KRUEGER: Okay. That's all right. We're going to continue on before we take questions.

Lara Kassel, Medicaid Matters New York.

MS. KASSEL: Good evening. Thanks very much.

I am Lara Kassel, I'm the coordinator of Medicaid Matters New York. We are the statewide coalition representing consumer interests in Medicaid.

Thank you so much for being here at this late hour. Thank you so much to your staff. I would be remiss if I did not thank them as well. We can't see them, but thank you so much, staff.

And I would also be remiss, I feel, if I would not make the suggestion that perhaps a hearing this long be broken up into more than one day, that perhaps you do the government officials in one day and the rest of us on the next day. Just a suggestion for next year.

I'm going to move through as quickly as possible, in particular because some of my other colleagues on this very panel have touched on, or will -- are about to touch on, I believe, some of the same issues.

You know, we are very pleased, for instance, about the elimination of the Essential Plan premiums, but let's go further than that and use some of the trust fund money to eliminate the dental and vision premiums.

We are very pleased that this budget does not include direct cuts to eligibility for programs, like previous years. Last year's budget restricted eligibility for home-based care through the Managed Long-Term Care Program. We would be much happier if this budget went even further. It doesn't do any cuts; let's make it go further by repealing last year's eligibility program changes.

With those things said, this budget really fails to help New York get closer to where we need to be as it relates to health

equity and promoting a system that emphasizes community-based services. We need this budget to invest in the home care workforce. Medicaid Matters supports the Fair Pay for Home Care Campaign and the restoration of the Home Care Recruitment and Retention Fund.

We also need this budget to protect safety-net providers -- community health centers that rely on the 340B program, essential safety-net hospitals. We need hospitals that meet the definition of essential safety net not to be cut by across-the-board cuts. And we need public hospitals to receive Indigent Care Pool, hospital charity care funding. They are the ones that provide much more services to people who are low-income, uninsured, people on Medicaid; they should be the ones to get the allocation from the charity care funding.

What this brings me to in my 15 seconds is that we must repeal the Medicaid Global Cap. None of these investments will be possible with the cap in place.

And with the last few seconds, I really want to urge folks to consider restoring funding for adult home residents. The funding for advocacy that supports them and the funding for services outside of their daily -- what do you call it, per diem or whatever, has been cut, and we need that funding to be restored.

Thanks.

CHAIRWOMAN KRUEGER: Thank you.

Our next speaker is from the Primary Care Development Corporation, Louise Cohen.

MS. COHEN: Great. Thank you for letting me testify here today, and I appreciate all of your work and the work of your staff. I echo what my colleagues have said.

For those of you who don't know us, the Primary Care Development Corporation is a not-for-profit community development financial institution dedicated to building excellence and equity in primary care.

So I have a couple of points I'd like to make here today. The first one is I

continue to suggest and to urge you to reject the harmful cuts to Medicaid that have been proposed in the Governor's budget. These will certainly jeopardize primary care in a very significant way.

And that we think that any additional dollars in Medicaid should be going towards building the primary care system. We know that primary care is about prevention, it's about early diagnosis and treatment, and those are the things that reduce cost at the other end of the healthcare scale.

You've heard a lot about 340B, and I'm also here to urge you to oppose the 340B carve-out. But I want to give a little bit of a different perspective.

As a community lender -- for example, we have lent millions of dollars to Callen-Lorde, who you heard from earlier, in order to create -- help them create their facilities and build out facilities in both Manhattan and in Brooklyn. And we know that originally when we lent to them, no bank was going to lend to them, so it really required

a community development financial institution.

Well, this 340B situation is going to ensure that a number of FQHCs and certainly aid service organizations are potentially going to default. And that means that no bank, no commercial lender will ever lend to them again. And so what you're actually doing is not only destabilizing them from an operational point of view, you're actually destabilizing them from the long-term-capital point of view. And I think that's a perspective that perhaps has not been brought out as much in the 340B conversation.

I also want to tell you a little bit about some research that we've done at the Primary Care Development Corporation with funding from the Legislature from last year. We looked at FQHC penetration into New York State and its relationship to COVID-19 sickness and death, and here's what we found.

In New York State we found, unsurprisingly, where people delayed healthcare due to cost and where there are

large numbers of people without health insurance, there was more COVID sickness and death.

But we also found that neighborhood-level COVID-19 mortality rates are lower in communities with a greater number of federally qualified health centers, particularly in counties with high rates of uninsurance. And while we know that communities that had fewer primary care providers before COVID-19 had worse outcomes during COVID-19, what we also know is that going forward, unless we flip that and we increase the amount of primary care, that we're going to continue to have these devastating impacts, particularly on low-income communities of color.

And so this reinforces the idea that in the safety net, the safety net is essential, that Medicaid should provide more access to primary care, and that the 340B carve-out will have significant negative impacts on communities that you all serve.

Thank you.

CHAIRWOMAN KRUEGER: Thank you.

And our last, but certainly not our least -- although we did let a man sneak onto this panel. How did that happen?

Anthony Feliciano, Commission on the Public's Health System. How are you doing?

MR. FELICIANO: Good evening, everyone. As stated before, I'm Anthony Feliciano. I'm the director of the Commission on the Public's Health System. I also serve on the board of APICHA Community Health Center. I also serve on the board of the Campaign for New York Health.

As advocates we often talk about austerity hits the poorest the hardest, we talk about consequences of cutting money for public health and Medicaid for far higher costs in the future and long-term impacts to marginalized communities. But I want to say, as a person who's a Latino, we're hurting now. We've been hurting for years when it comes to care and access. And it's not just us -- people with disabilities, women, children, a range of marginalized

communities, including indigenous people.

So it's clearly, to me, an attack by the Governor, and to me it's a racist attack in many ways when we cut public health funding in certain ways. So, you know, we ask that, one, we restore funding for Article VI programs to New York City and ensure full state reimbursement back to 36 percent. We want to strengthen our city's public health system.

And you have seen in my testimony the amount of services that are impacted, which means the types of communities that are being impacted, communities of color and other communities.

But I want to talk of the notion that New York City can access federal dollars, and it was mentioned even the CDC. Those sources of federal funding sometimes are not fungible, right? And it's misguided to think that New York City is not looking for every dollar that they can on the federal level. But it is really misguided to think this way. And it's really discriminatory to New York.

The other thing is obviously what our colleagues have said, is limiting any proposal, reject it, to eliminate the state's share of the Indigent Care Pool to our public hospitals, to add language that protects our enhanced safety net providers from the 1 percent across-the-board cuts, to repeal the global spending cap. And it was mentioned before, but the global spending cap has similar effects to what conservative states are doing when they have block grants, and what's happening there.

So the other thing, as someone who's on the board of a community health center, is to reject the Governor's 340B cuts. I really think we should penalize wasteful executive pay and non-patient-care spending, support various proposals from Invest in Our New York on the tax breaks that the super-rich are getting, pass the New York Health Act, ensure safe staffing.

But really, if we really want to be anti-racist, then we need to invest in our communities and in the services that they

rely on and not undercut it while we're in a pandemic. And to be honest, it's not like racism is going to go away after the pandemic. But we're not prepared as a city to deal with any new pandemics, and we can see COVID-19 as a disease being endemic as part of the registry {sic} that we're going to have to deal with for a very long time.

Thank you.

CHAIRWOMAN KRUEGER: Thank you.

Questions from my colleagues?

Gustavo Rivera.

SENATOR RIVERA: I got a few, very quick.

Thank you so much for hanging out with us this late in the evening. You covered a lot of things that are important.

I'll start by saying that as far as Anthony's point about the continuing impact of health inequities in communities of color and poor communities, that's something that's kind of built into the system for a very long time, and therefore we have to act proactively to push it back, which is where

the medical debt protection act -- which I'm going to go to you in a second, Elisabeth Benjamin -- as well as the New York Health Act, which we've talked about a little bit today but we certainly can talk about it a little bit more.

But Elisabeth, if you wanted to kind of talk a little bit -- I mean, I know that Chuck talked about it before, but as far as the Medical Debt Protection Act and how it has impacted exactly what Anthony was talking about, whether we're talking about communities of color that have had historic inequities in healthcare -- are they impacted worse by medical debt? And would this bill actually help those communities out?

MS. BENJAMIN: Thank you so much for asking that, Senator Rivera. You are so right.

Buffalo, people of color four times more likely to be in medical debt than white people. Rochester, three times. Syracuse, twice. Westchester County, also twice as bad. Queens -- you know, I mean the profound

racial disparities in medical debt are so upsetting, it sort of shocks the conscience.

Moreover, the hospitals, New York State hospitals, every single one is a 501(c)(3) charity. Why are they suing people for 9 percent interest?

I'm really glad that Helene Weinstein has a bill with Senator Thomas to cut interest for judgments from 9 percent to the U.S. Treasury rate. A first step would be to say just for medical debt. We can all agree that charitable hospitals should probably not be charging 9 percent interest and they should be charging the U.S. Treasury rate, as Chairwoman Weinstein suggests, for all consumer debt.

I don't care if we take the Governor's proposal to get rid of all -- you know, use the Treasury rate for all judgments, or Assemblywoman Weinstein's for all consumer debt, that covers medical debt, or yours, Senator Rivera, just to make it start with baby steps for medical debt. But there's just so much that needs to be done on medical

debt, from cleaning up the surprise bill; from one visit, one bill; from standardizing patient financial liability bills; from getting rid of facility fees, or at least the patient obligation for them; to making hospitals required to cooperate with the All Payer Claims database.

I mean, we just need to make it better. It's just mind-boggling what patients have to navigate through in terms of medical billing, and we must step up now, especially for communities of color, but really for everybody.

SENATOR RIVERA: Thank you so much. Thank you for coming out this evening, and thank you for the --

MS. BENJAMIN: Thank you. Thank you for having us.

CHAIRWOMAN KRUEGER: Thank you. Others?

Well, I also just want to thank you all for being here and for always -- really, the whole group of you always focusing on what we can't forget in trying to make sure

that we're providing quality healthcare for everyone.

And, I mean, I get calls every day -- I supposedly represent the wealthiest district in New York, but I get calls every day from people terrified about these bills that they're getting, that they don't understand them, they just know they couldn't possibly pay them. And they don't even understand why they're getting them; they were originally told "Oh, no, you won't have any bills."

And these are elderly people, and so you can see them thinking: I'm going to end up back in the hospital with another heart attack just by opening the envelopes that come from my hospital. So we've got to take care of this.

Thank you all. We're going to continue to the next panel.

PANELIST: Thank you.

CHAIRWOMAN KRUEGER: Thank you.

And our next panel will include the Pharmaceutical Care Management Association,

Lauren Rowley; the Community Pharmacy Association of New York State, Mike Duteau; and the Pharmacists Society of the State of New York, Thomas D'Angelo.

Welcome. All right, is Lauren here? Can we start with her?

MS. ROWLEY: I'm here.

Thank you, Madam Chair. And thank you all for -- I appreciate the opportunity to once again be invited to participate in this hearing, regardless of how late it is tonight.

My name is Lauren Rowley. I'm the senior vice president of state government affairs at the Pharmaceutical Care Management Association, the national trade association representing PBMs, or pharmacy benefit managers.

PBMs administer prescription drug benefits for more than 266 million insured Americans. In New York we administer prescription drugs not just on behalf of health plans, but for hundreds of self-funded unions, school boards, and municipalities and

employers across the state. These are entities in your communities with limited budgets who depend on PBMs to manage their drug benefits and their drug spend.

Our members' ability to perform PBM services and utilize PBM tools effectively have real-life implications for them, their members and their families.

PBMs are on the front lines, working to maintain access and affordability of prescription drugs. We help reduce the cost of drugs by encouraging the use of generics and affordable brand medications; by also reducing waste and increasing medicine adherence; by doing claims processing; creating pharmacy networks; offering mail-service pharmacy, which was very critical during the pandemic; offering specialty pharmacy drug utilization review, which is responsible for identifying adverse events at the point of sale, and disease management and adherence initiatives, as well as formulary management.

PBM tools like formulary management

and policies that promote lower-cost therapies over more expensive ones are relied upon by employers and millions of New Yorkers to mitigate the high cost of prescription drugs.

The Governor, as you know, has re-introduced his licensure proposal that we have opposed in previous years. While we continue to have serious concerns with this proposal, as a general matter PCMA and our members do not oppose licensure, state regulation or transparency.

We do believe that there should be transparency of all actors in a drug supply chain, however -- pharmaceutical manufacturers, wholesalers, pharmacy services administrative organizations, or PSAOs, and PBMs. But I think it's important to also recognize that we are not the reason drugs are so expensive. That starts and stops with the drug manufacturers. They set the price, they raise the price.

We believe that much of the Legislature's rightful focus on consumers and

drug prices has unfortunately been misdirected. The prevailing narrative being told is that PBMs are putting independent pharmacists out of business in New York, when the objective evidence shows that is simply not true. Independent pharmacies make up nearly 58 percent of the total number of pharmacies in New York State, so must be in our pharmacy networks.

We look forward to working with you as these issues continue to go, and I am happy to answer any questions.

CHAIRWOMAN WEINSTEIN: Thank you.

Now, Community Pharmacy Association.

MR. DUTEAU: Hi. Can you hear me?

CHAIRWOMAN WEINSTEIN: Yes, we can.

MR. DUTEAU: Good evening. My name is -- oh, I have an echo.

CHAIRWOMAN WEINSTEIN: We can hear you. Just go ahead.

MR. DUTEAU: Can you hear me now?

CHAIRWOMAN WEINSTEIN: Yes.

MR. DUTEAU: Okay, great. Thank you.

Good evening, members of the panel.

My name is Mike Duteau and I'm a licensed pharmacist in New York and also president of the Chain Pharmacy Association of New York State.

Thank you again for the opportunity to present this evening and also thank you, as always, for your strong past support of community pharmacy.

As you are aware, the state pharmacists and pharmacy have played essential and expanded roles in the state's response to the COVID-19 pandemic. Pharmacies have remained open and have served as a trusted access point for COVID-19 testing as well as vaccinations, and we've also ensured that patients have maintained access to their medications and other incredibly important pharmacy care.

We look forward to continuing to serve our communities as we work to improve public health and access to care overall.

This evening we'd like to comment briefly on multiple Executive Budget proposals.

First and foremost, we are asking that the transition from Medicaid managed care to fee-for-service be implemented without significant changes or delays. This change would positively impact nearly 7 million New York patients who have been subjected to benefit and network restrictions or other limits that have harmed patient access and care. It also benefits the state, saving at least $100 million annually by improving transparency and removing cost from the system.

I will pause there. We certainly acknowledge and understand the hardship that would be created with certain provisions for 340B entities. But that is not created by the transition to fee-for-service. That actually is created by the requirement that New York State pick up the savings, rather than allowing the entities to reinvest that back into their practices and ultimately the communities.

So we feel that the best option is to transition to fee-for-service but delay

affecting 340B providers for at least three years as the state and all stakeholders are able to work through this to ensure that patients, pharmacies, providers and everybody can provide and receive the care that they all deserve.

Additionally, we also oppose the 1 percent across-the-board cut for all providers. Given the significantly increased need for access to healthcare for Medicaid patients, especially during the pandemic, we think that this is the last place we should be looking to save money in the budget.

We also support the budget proposal to authorize licensed pharmacists to administer recommended CDC-approved vaccines for adults. Since 2008, pharmacists in New York have routinely administered certain adult vaccinations, including those with implement doses and scheduling requirements -- initially for shingles, and now the COVID-19 vaccines. Moving forward would allow New York to join the 48 other states that already authorize pharmacists to administer

all CDC-approved and recommended vaccines for adults.

We also support making permanent the ability for pharmacists to order and administer CLIA-waived tests, as authorized for COVID-19 and flu tests during the pandemic. Pharmacists are extremely well prepared to order and administer these tests, given their training and expertise. And in fact, we've been providing other CLIA-waived tests for communities for many years.

Convenient locations, accessible hours -- these have allowed pharmacies to effectively provide these tests to their communities. And just like vaccines, New Yorkers have responded very positively to having access to the test at their local pharmacies.

Importantly, we support and believe that clear communication and collaboration between a physician and the pharmacist or other healthcare providers is essential to be included in this language.

CHAIRWOMAN WEINSTEIN: Can you wrap

up --

MR. DUTEAU: Finally, and importantly, we support pharmacy benefit manager regulation and ask for urgent action, including registration, licensure and oversight of PBMs in New York State. Patients and providers --

CHAIRWOMAN WEINSTEIN: Thank --

MR. DUTEAU: -- need these protections to end unfair practices.

CHAIRWOMAN KRUEGER: Thank you. Thank you. Sorry, we had to cut you off for time.

And our last speaker, Pharmacists Society of the State of New York.

MR. D'ANGELO: Hi. Good evening, everybody. Can you hear me okay?

CHAIRWOMAN KRUEGER: Yes.

MR. D'ANGELO: Very good.

Honorable Finance Chair Senator Krueger, Honorable Ways and Means Chair Assemblymember Weinstein, Senator Rivera, Assemblyman Gottfried, and distinguished members, my name is Thomas D'Angelo. I am a licensed pharmacist in Long Island, and I own

two independent pharmacies. I'm currently the president of PSSNY, the Pharmacists Society of the State of New York.

On behalf of PSSNY and the pharmacists we represent, thank you to both the Senate and Assembly for all of the support in the past. We really do appreciate it.

It has taken a global pandemic for pharmacists to officially be recognized as critical healthcare providers. While doctors' offices closed, hospitals became overwhelmed and couldn't handle normal patients that were ill with other than COVID, pharmacies remained open. We took great personal risk, we became front-line COVID testing locations. Many of my colleagues did succumb to the disease, unfortunately.

When the COVID-19 vaccine became available, pharmacists once again rose to the challenge. Today we have vaccinated thousands of patients across New York. We stepped up when the state and the communities needed us most.

As legislators debate the merits of

COVID-19 executive orders, we must point out that certain orders were only necessary because the legislators had not acted to expand our scopes of practice in the past. And we have proven during this pandemic that we are ready and capable of handling these challenges.

We are calling on the Legislature to enact PBM reform in the budget now, immediately. For the last several years there have been various PBM reform measures in the proposed budget and in the Legislature. All have been rejected for various reasons, or vetoed. The PBM reform in the proposed budget is very good for pharmacy and patients. While it does not contain the stringent public health law and patient protections which PSSNY strongly supports, the proposed reforms are very strong.

PSSNY supports providing the Department of Financial Services broad regulatory authority over the PBMs. If you enact the proposed reform measure in the

budget, PSSNY strongly supports subsequent legislation to further strengthen patient protections.

But we need this now. The parasitic PBMs have their hands around our throats and our backs against the wall. Let's not let the perfect become the enemy of the good.

PSSNY's positions on the budget proposal at this time. PSSNY supports the language in the proposed budget for pharmacy benefit managers. PSSNY suggests the Legislature incorporate person protections into the final enacted budget. That said, PSSNY supports passage of language as is if the sides cannot agree on the scope of additional patient protections.

As far as the expansions of scope of practice for pharmacists, PSSNY is in favor of the language regarding vaccinations and CLIA-waived testing. There's absolutely no policy-based justification at this time for limiting the types of adult vaccines a pharmacist can perform in the State of New York.

The budget proposal also contains a provision regarding collaborative drug therapy management, CDTM. While PSSNY does recognize the value of CDTM, it does not reflect the needs of patients in the community. PSSNY is of the opinion that collaborative medical management, or CMM, is more in line with community needs. Time and again it has been demonstrated that patients are more successful with their drug therapy when a pharmacist is directly involved.

Regarding fee-for-service, there has been a lot of discussion today and for several weeks around the fee-for-service carve-out. PSSNY is calling on the Legislature to allow the implementation to go forward without delay, immediately. Every state that has moved their pharmacy benefit to fee-for-service has realized millions of dollars in savings, and New York will be one of them as well.

In conclusion, lessons from this past year have taught us that pharmacy is a critical part of New York's healthcare

system. PSSNY is asking the Legislature to support pharmacy by passing PBM reform in the budget, as well as expanded immunization authority and other critical scope-of-practice issues that will continue to enhance New Yorkers' lives.

CHAIRWOMAN KRUEGER: Thank you.

Any members -- oh, look, I'm seeing multiple members.

CHAIRWOMAN WEINSTEIN: We have a number of Assemblymembers.

Assemblyman Cahill.

CHAIRWOMAN KRUEGER: Okay, I'll check with Gustavo. Are you -- Gustavo, are you in --

SENATOR RIVERA: I'm going to let some of the Assemblymembers go first.

CHAIRWOMAN KRUEGER: Okay.

Assembly.

SENATOR RIVERA: You know I'm a cleanup hitter. I'm a cleanup hitter.

(Laughter.)

CHAIRWOMAN WEINSTEIN: Assemblyman Cahill.

ASSEMBLYMAN CAHILL: Everybody wants to get home even. Even though we're home, we still want to get homer home.

Thank you, everybody. And I always appreciate it when we put the independent pharmacists on the same panel with PCMA. It's like having the fourth of July right in front of us.

So thank you all for coming here today, and thank you also for your perspectives. Mr. D'Angelo, I'd like to address some of the things that -- in particular, about not letting the perfect get in the way of the good.

I want to just go over a few differences in the Governor's fake proposal for PBM management and the official proposal by the Legislature. The definitional section almost doesn't exist. The bill lacks a form of accountability for PBMs. There is no transparency in the bill. There absolutely is no duty of care to the patients. And if you were here earlier today, you heard that the administration opposes that concept.

There is no prohibition against PBM substitution. There is no drug price appeal process. So perhaps after I'm done with this tirade you can explain to me how that is the good that the perfect is in the way of, because to me it doesn't sound like it's very good.

So with that, let me explain to you what happened last year. Last year we knew the Rutledge decision was pending. We knew it was not here yet. Now the Rutledge decision has clearly said that regulation of PBMs is not regulation of health plans. That's what Justice Sotomayor said.

We also -- although I wasn't concerned about this, given the fact that it was passed either unanimously or nearly unanimously -- did not have what we call veto-proof majorities in both houses. We do now, and I'm pretty sure the sponsors are anxious to move forward with their bill to have it considered.

So I would urge you to go back to your association and ask them to stand for the

really, really good over the really, really bad.

So with that, I'd like to just ask Ms. Rowley, in your comments you indicated that you generally oppose the Governor's bill but that you support some levels of registration and licensure.

Can you please tell me in the next 52 seconds what it is about the Governor's proposal for PBM regulation that you don't like?

MS. ROWLEY: We think it gives really broad regulatory authority to the superintendent on a lot of different issues that, you know, are of concern to us, obviously. I mean, I think that, you know, in contrast, we really have serious objections to I think the Assembly and the Senate bills. We think that there's a lot of constitutional problems with them. We do believe that they run afoul of ERISA, frankly, on the fiduciary issue alone.

So, I mean, we're -- I guess our hope is that after the third year of kind of going

through this that maybe all parties can come to the table and negotiate something that makes sense for everybody.

ASSEMBLYMAN CAHILL: Thanks so much.

By the way, I was reading the PCMA memo on Rutledge, and it doesn't exactly say that you've concluded that PBM regulation runs afoul of it. You said, be careful because states are going to start regulating you. That's what your own internal memo says.

But that's okay. I'm out of time. I do want to thank you. And if I run into Superintendent Lacewell, I will tell her that she has a kindred spirit on her understanding of the Rutledge decision. Thanks so much.

MS. ROWLEY: I'll be happy to address that issue of, you know, our memo, if I may.

You know, we believe that --

CHAIRWOMAN WEINSTEIN: Excuse me.

MS. ROWLEY: Okay, sorry. Sorry, Senator.

CHAIRWOMAN WEINSTEIN: Is Senator Rivera up, or does he want us to go

forward with another Assemblymember?

CHAIRWOMAN KRUEGER: He's fine. Go ahead with another Assemblymember.

CHAIRWOMAN WEINSTEIN: Assemblyman Ra, then.

ASSEMBLYMAN RA: Thank you, Chair.

We're going to try to put some runners on base for Senator Rivera to clean up so he can hit a grand slam.

Thank you, Chairs. Tough to follow Chairman Cahill on that one, but I also always enjoy seeing this panel together with that issue outstanding from the last couple of -- couple of budget cycles.

But I did want to get into a different issue. Tom, you know, you're aware of my support on the PBM issue, but I did want to ask about the immunization and the scope of practice issue. Because one of the things that I've learned over the years -- you know, from yourself, from Howard Jacobson -- is that when you create uncertainty with, you know, what you're able to vaccinate for, it just -- it muddies the waters.

And I remember when -- a few years ago when we were in the midst of a bad flu season and the Governor came out and said, "Hey, pharmacists can immunize children." And I was talking to Howard about the issue and he said, "Yeah, that's great that came out, but I don't have the vaccine in stock because I couldn't give it, so why would I have stocked it?"

So I was wondering if you can elaborate more on the importance of creating certainty both with this proposal and perhaps, you know, getting rid of some of the sunsets that are there that cause you to have to, you know, every couple of years ask for extensions and expansions of those authorities.

MR. D'ANGELO: Right. So -- that's exactly right. You know, we -- if we were allowed to do all CDC-recommended vaccines or any vaccine that was then emergency-approved by the CDC, when this COVID vaccine came out we would have already had a process in place to jump right in and get going.

It didn't turn out that way because we had to get special approval to administer the vaccine, then we had to go through all the training -- because not every pharmacist was trained to do the whole NYSIIS system because we don't vaccinate children. So -- and that's basically -- it was a child platform.

And exactly right, a couple of years ago when things got hard, it was okay for us to vaccinate at that time.

New York is still almost dead last as far as what they're allowed to vaccinate. The rest of the country is way ahead of the pharmacists in New York as far as what they're allowed to vaccinate. And that's really not necessary. Nothing says that we should be held back.

ASSEMBLYMAN RA: Well, and thank you, because I know you're busy, you know, vaccinating people. Because, you know, your Garden City South location's right around the corner from my house, and I see the lines out there every morning. So keep up the good work. Good to see you.

MR. D'ANGELO: Thank you very much.

CHAIRWOMAN WEINSTEIN: Rebecca Seawright, then.

ASSEMBLYWOMAN SEAWRIGHT: Thank you, Chairs.

Good evening, pharmacists. Thank you for your testimony this evening. I grew up in a pharmacy. My father was a pharmacist, and my older sister, so I grew up as a child working in retail pharmacy.

We heard testimony tonight about your interest in expanding the scope of practice. How would you take into account the needs of senior citizens? Which is very important in my district here on the Upper East Side and on Roosevelt Island. And I want to also encourage early hours be reserved for senior citizens in order to reduce their waiting time, especially in this pandemic.

MR. D'ANGELO: So who's that question to?

ASSEMBLYWOMAN SEAWRIGHT: Any member that would like to answer it.

MR. DUTEAU: Maybe I can start, and

you can finish up?

MR. D'ANGELO: Sure, Mike.

MR. DUTEAU: Great.

So thank you very much for the question. You know, I think there's a lot that we've learned just recently with this pandemic, from finding new ways to schedule the COVID vaccine.

Also a lot of these scope of practice expansion proposals really are focused on the elderly population -- for example, CDTM -- and allowing us to better collaborate with physicians on medication adherence and really chronic disease that affect the elderly -- diabetes, hypertension. I think this helps us be much better positioned to treat and care for those patients in that age group.

And then when you combine that with a lot of the operational programs that we continue to develop and evolve, I think pharmacy has never been better positioned now to help care for all of our patients, but especially the elderly.

MR. D'ANGELO: Yeah, and I'll pick up

where Mike left there.

So far during the vaccination program I've noticed that the elderly have had a much easier time dealing with their local community pharmacies -- getting an appointment, getting there, making sure the vaccine was done. It's convenient for them, they're comfortable with those pharmacists, they're comfortable with their local pharmacist, they're like family to them.

You know, in my pharmacy in particular, we have -- we're only allowed to vaccinate people 65 and older. So all of those elderly people at this point are coming to our pharmacies and being taken care of.

And independent pharmacies, pharmacies -- community pharmacies, they usually offer free delivery so the patients do not have to leave their home for their medications. The collaborative management between doctors and pharmacists to treat patients or to monitor their drug therapy to make sure it's being effective. You know, these are all things that the elderly would

benefit from more than anybody.

ASSEMBLYWOMAN SEAWRIGHT: Thank you. Thank you all. And thank you, Chairwomen.

CHAIRWOMAN KRUEGER: Thank you.

Rebecca Seawright and I happen to overlap in our districts, so I'll just point out I really do find, Rebecca, that the pharmacies where the person can just talk to someone on the phone or go in and talk to the pharmacist, it's working so much better during a pandemic than trying to go through the computer systems that some of the larger chains have been able to set up but our seniors can't figure them out.

So I do agree that there's a real difference in the direct care someone can get at times like this from knowing their pharmacist and their local pharmacy.

Thank you, Helene. Do you have any other members?

CHAIRWOMAN WEINSTEIN: Yes, we do have one more before Senator Rivera. So we have Assemblyman Byrne.

ASSEMBLYMAN BYRNE: Thank you. I

actually had to relocate. I was listening, I wasn't going to ask questions, I had to head back home.

But my question was for Ms. Rowley. You wanted to finish your comment about an internal memo, and I just wanted to give you the time to -- that I have to address that comment.

And I do want to thank everybody else for their testimony as well.

MS. ROWLEY: Yeah, I just wanted to -- thank you so much for the question.

We believe, and I believe actually NCPA actually put out something that also said that we think this is a very narrow decision by the court. It basically viewed the law's procedural requirements -- map lists, appeal procedures, reverse and rebill, and decline to dispense -- as simply enforcement mechanisms to accomplish the rate regulation.

So from that premise, the court concluded that the Travelers decision, which was a 25-year-old Supreme Court decision,

decides the case. So -- which is, again, about rate regulation and the state's authority to regulate rates on ERISA plans.

It did not do away with all the other court decisions and precedent that has been set on ERISA preemption. The court also didn't say it was a good idea, they didn't say it was good public policy, they didn't say it wasn't going to cost money. In fact, in the Sotomayor opinion, they did say it was going to cost money on ERISA plans and that folks in Arkansas may pay more.

So I just think that's an important distinction to have here with regard to ERISA, since it's such a complicated issue. And we do believe there's still a lot of ERISA preemption issues out there. Just regulation now has been solidly decided by first Travelers and now Rutledge.

Thank you so much for the question.

CHAIRWOMAN KRUEGER: Thank you. So now Senator Gustavo Rivera.

SENATOR RIVERA: I'll be very brief. I'll just -- I'll certainly thank Ms. Rowley

for correctly pronouncing the name "Sotomayor," Justice Sotomayor, and also to say that we have a very strong disagreement.

I actually have been working with my community -- I've been talking to community pharmacies, certainly the Pharmacists Society, as well as other folks that have come to tell us about the issues that they have.

We passed it last year, the Governor vetoed -- or is it two years ago? The 'rona makes everything very, very complicated. But I know we passed it, it was vetoed by the Governor. We certainly -- I'm supportive of some of what's in the Governor's budget, but I'm looking forward to passing legislation that is stand-alone.

So with that, thank you, Madam Chair. I am good.

CHAIRWOMAN KRUEGER: Thank you.

Well, thank you all very much for being with us tonight, appreciate it.

And we're going to move on to our next panel, which is --

MR. DUTEAU: Thank you.

MR. D'ANGELO: Thank you.

CHAIRWOMAN KRUEGER: Thank you.

-- the American Cancer Society, Julie Hart, senior director, New York government relations; and Housing Works, Charles King, CEO.

Good evening.

MS. HART: Good evening. Thank you. Do you want me to go ahead and start?

CHAIRWOMAN KRUEGER: Yes, please.

MS. HART: Hi, everybody, I'm Julie Hart. I'm the Government relations director for the American Cancer Society Cancer Action Network. Thank you so much for sticking with us tonight. A huge thank you to your staff and also to all the staff members that helped put this together so that we can still advocate virtually and safely. It is greatly appreciated.

So you do have a copy of my written testimony that has significant details in there, so I just want to highlight a couple of items. As you can see on the first page,

the toll that cancer takes on New Yorkers is significant. About 120,000 New Yorkers will be diagnosed with cancer this year, and nearly 34,000 people are expected to lose their battle to cancer. So there's still very grim statistics.

I've also listed -- you can see on the bottom of the first page -- the main types of cancer and also cancer deaths. We anticipate about 6800 people will lose their battle to lung cancer this year. And I know in New York we've done a lot on tobacco control in recent years, so thank you for all that you are doing. We certainly still need to do more when it comes to tobacco control so that we can reduce those lung cancer numbers.

In addition, if you look on page 3, there are some numbers related to smoking rates in New York. So currently in New York about 12.8 percent of adults are still smoking, but there are significant pockets where that smoking rate is much higher -- if you look at those that report poor mental health, young cancer patients, Medicaid

recipients. So there are still significant pockets where the smoking rate is very high.

Now, one of the most effective tools that we have to reduce smoking rates is our tobacco tax. And our tobacco tax in New York has not been raised in over a decade. We're currently at $4.35 per pack. If we increase our cigarette tax by just one dollar, that would encourage about 54,000 New York adults to quit and about 22,000 kids would be prevented from becoming addicted smokers.

So that cigarette tax has real public health benefits. And in addition, that money should be used for programs like the Tobacco Control Program and keep that program whole so that adults have the tools that they need to quit and that we can keep encouraging kids to not smoke, period.

So on the last page, you'll see my recommendations, because I know I'm almost out of time. But we encourage you to adopt a tobacco tax, a cigarette tax of one dollar per pack and then a parallel tax on other tobacco products, and then to use that money

for the Tobacco Control Program and also to maintain funding for the Cancer Services Program so that people can still get safe cancer screenings.

So thank you. I appreciate your time.

CHAIRWOMAN KRUEGER: Thank you.

Charles?

MR. KING: Good evening. And thank you for holding this important hearing.

Historically I've testified at this hearing about steps we need to take to end the AIDS epidemic. Tonight, however, I come before you to urge the Legislature to protect New York's safety-net providers at a time when we have never been more important yet face dangerous attacks by Governor Cuomo, even as the state's mismanagement of the COVID-19 crisis becomes more evident.

The Executive Budget not only fails to rise to the historic moment we are facing, but its healthcare provisions include proposals that will undermine both individual health of vulnerable New Yorkers as well as our health system.

Last April we threw Housing Works into the COVID response, operating a hotel for homeless people with COVID, expanding to provide medical and behavioral health services to six quarantine and MOCJ hotels, delivering COVID tests to our consumers, our neighbors, and all of HRA-funded supportive housing staff and residents. We've fought for vaccines, though initially shut out of the distribution system, and we're not vaccinating our staff and qualifying consumers.

To do all this COVID work we've had to secure all of our own PPE, invested thousands of dollars to cover unfunded costs -- even while the Governor decided to withhold 20 percent of our contract reimbursement, though we were expected to continue to perform at a hundred percent.

How does it make sense in the middle of a massive public health emergency to withhold funds from safety net providers caring for the poorest and most marginalized residents of this state?

Now we face a pharmacy carve-out for managed care that will cut millions of dollars of funding through the federal 340B program. We estimate the impact on Housing Works to be as much as $8 million a year, with substitute funding which we estimate will be a maximum of 40 cents on the dollar.

Let me explain why this is so important. We have always used our 340B funding to pay for services and care that is unreimbursed. With COVID we've used 340B funding to buy smartphones for our low-income consumers so that they can participate in telehealth, helping consumers download the telehealth and training them in its use.

It has also paid a large share of our COVID testing and vaccination program. To adequately staff a vaccination program just to deliver 100 vaccinations a day, with patient education, documentation submission, preparation and post-vaccination observation, costs us $100,000 a month. Our reimbursement per injection is $12 -- in other words, less than a quarter of the expense.

Neither New York City nor New York State has provided us with any additional funding for this work. We are using our 340B funds to do this. So if the Legislature allows this proposed carve-out to go through, it is likely that Housing Works and other community health centers will have to pull back from vaccinating people for COVID except in the course of a regular primary care visit.

Please don't allow this to happen. We should eliminate the global cap and raise new revenue from those who profited during the pandemic, not cut the safety net.

Thank you for your time.

CHAIRWOMAN KRUEGER: Thank you.

Are there any members who would need to ask questions?

SENATOR RIVERA: I'll say something very quickly.

CHAIRWOMAN KRUEGER: Gustavo Rivera.

SENATOR RIVERA: You're usually right up until the -- Charles, we don't have you right at the end. You should be at least

thankful about that, shouldn't you?

MR. KING: So I didn't want to take any of my time to thank you all. For three years in a row, I have been the last --

SENATOR RIVERA: Very last.

MR. KING: -- person to testify.

SENATOR RIVERA: So I'm very thankful to both of you for being with us.

And I certainly agree with you, Ms. Hart, about some of what we need to do to continue to push down smoking rates in the State of New York.

And Charles, you've made the point, as was made earlier by other folks about the flexibility of 340B, of what you're able to do with the 340B savings, the flexibility that it allows you to be able to react in a situation when you need to, and considering that you serve folks who are so vulnerable to begin with. I thank you for doing that, thank you for speaking out. And we continue to -- hopefully we will be able to push back on this, because it's a bad idea, it's silly, we shouldn't do it.

So that's it from me, Madam Chair. I don't know if they -- anyway, I'm done, Madam Chair.

CHAIRWOMAN KRUEGER: I have a question for Julie.

So for forever we've believed that New York had the highest taxes on cigarettes. Is that still true, or have we fallen behind over the last couple of years?

MS. HART: Right now DC has the highest tax, at $4.50 per pack. But if you look at state and local taxes combined, there are some -- like Chicago's is over $7 per pack. So there's certainly precedent for going much higher. And that dollar increase would bring in about $38 million in new revenue.

CHAIRWOMAN KRUEGER: Well, we've also always made the argument that cigarette taxes discourage people from starting to smoke at all. So it doesn't necessarily increase revenue, it saves lives because it's --

MS. HART: Right. First and foremost, it prevents kids -- kids are more

price-sensitive than adults are, as well.

CHAIRWOMAN KRUEGER: And that's -- the research still shows that that's true?

MS. HART: Yes.

CHAIRWOMAN KRUEGER: So the targeted audience of perhaps who would be more discouraged than ever from smoking would be younger people?

MS. HART: Yes, absolutely. Kids are much more price-sensitive.

CHAIRWOMAN KRUEGER: And we had done some changes in the laws around the flavored tobaccos and other things. Is there also research findings that those are discouraging -- or encouraging kids not to get into smoking or vaping because they can no longer buy the candy-flavored product?

MS. HART: Yeah. Well, we certainly know that kids are enticed by flavors. And we know also that tobacco companies have a history of targeting minority communities, particularly with menthol. So we don't have yet research on New York's law just because it is so new. But I imagine that we will

have that at some point.

CHAIRWOMAN KRUEGER: Got it. Thank you very much.

MS. HART: Thank you.

CHAIRWOMAN KRUEGER: Thank you as always, Charles, for your work.

We're going to move along to the New York Caring Majority, Bobbie Sackman; the Empire State Association of Assisted Living, Lisa Newcomb; and the New York State Health Facilities Association, Stephen Hanse.

Is everybody here? Do I see people? Let's see. Bobbie, are you with us?

MS. SACKMAN: Yes.

CHAIRWOMAN KRUEGER: Oh, hi there. Yes. Welcome. Why don't we start with you.

MS. SACKMAN: Thank you. Good evening, everybody. Thank you for the chance to testify.

My name is Bobbie Sackman. I'm with the New York Caring Majority and Jews for Racial and Economic Justice. And the Caring Majority is comprised of older adults, people with disabilities, home care workers and

family caregivers who are working to address the injustices in our long-term-care system. Our central focus is the Fair Pay for Home Care Act, which Assemblyman Gottfried and Senator May have kindly and generously taken on the prime sponsorship for.

Well, it certainly has been a long day. And I thought just for a moment, if you could all think about a care story that you might have -- and I think we all have a care story, somebody that's been in our lives that needed care and maybe even needed home care. This is -- it's not about them, this is very much about us.

And so the workforce caring for older adults, the home care workforce, are predominantly women with children and immigrants. The state pays them poverty wages. They're averaging about 18,600 a year. This has led to a dramatic home care shortage statewide. In parts of the state, especially upstate, you can't even find a home care worker. You just can't. And so the Fair Pay for Home Care Act is good for

New York's economy, it's good for New York's care.

Testifying with me today are millions of older New Yorkers, people with disabilities, home care workers and family caregivers. We are indeed a caring majority. We all urge you to support the Fair Pay for Home Care Act.

We support the New York Health Act -- thank you, Senator Rivera. When it's passed, we need to pay home care workers enough so we have home care workers. That's the other piece of the pie here.

The Fair Pay for Home Care Act would raise home care wages to 150 percent of minimum wage, about $22,000 a year to $35,000 a year. The CUNY School for Labor and Urban Studies just released a report -- released the executive summary so far -- and they found out that this act would generate $7.6 million -- $7.6 billion for the state economy through new income and sales tax revenue, economic spillover, and reductions in Medicaid and social assistance.

Medicaid is the best investment the state can make to generate jobs and increase revenue for the coming years.

As New York faces widespread unemployment over the next decade, the act would bring in 20,000 jobs a year. So 200,000 jobs over the decade. It would additionally create 18,000 jobs a year, or 180,000 jobs over a decade, in industries via increased spending and economic activity. Doing the math, that's 38,000 jobs a year.

Investing in Medicaid and putting economic development funds in home care is smart. They're shovel-ready. They keep people safe -- I see my time is up. So we're just asking you to pass the Fair Pay for Home Care Act and also the Home Care Jobs Innovation Fund, which did get into the Senate one-house bill last year, and then the pandemic hit.

Thank you very much.

CHAIRWOMAN KRUEGER: Thank you.

Next we have Lisa Newcomb, Empire State Association of Assisted Living.

MS. NEWCOMB: Thank you, and good evening.

A few of you already know about the state's chronic underfunding of the adult care facility/assisted living industry, with only one SSI increase in 30 years. I'll refer you to my testimony for details. But suffice to say it's virtually impossible to take care of 80- and 90-year-old seniors, meeting all their needs for $42 a day.

So with the Governor's proposed budget and 30-day amendments, we get more injury upon injury. Today the department already has broad fining authority. The Public Health Law authorizes specific fining authority over ACFs. And if you look at the history of their fines, they have exercised that authority with zeal, both before and during the pandemic.

The 30-day amendments not only dramatically increase the per-day violation -- and somebody mentioned it, it is per day -- it multiplies our maximum per-day fine tenfold, from $1,000 a day to $10,000 a

day. It also eliminates our ability to rectify minor, less serious infractions without a concurrent fine. So one minute late per survey -- you know, we've been doing those daily surveys for 300-and-some-odd days. One minute late, you're subject to a fine.

So why -- you know, we feel as if we are under attack. And, you know, there haven't been big allegations of wrongdoing during the pandemic. In fact, despite virtually all the mandates being imposed on us as have been imposed on nursing homes, with no funding assistance, the ACFs have fought valiantly to protect both their residents and staff. So why then attack this industry, many of whom are family-owned businesses that struggled to make ends meet even before COVID?

While the numbers of positive cases and deaths are not as high as those in nursing homes -- but one is too many, as somebody said earlier -- we have not escaped unscathed. ACF residents are still frail

seniors in a congregate living arrangement, and that is where we know COVID preys.

ESAAL's more than 300 licensed members and their staff have worked tirelessly throughout this nightmare to keep our residents safe -- this with almost no state government support other than some PPE for a short period of time when there was no other place to get it, and even that support was much delayed.

ACF providers and staff should be praised and honored, not punished, which is what this budget does. It punishes us -- and for what, we really don't know. We can only surmise that, to use the Governor's own words, it's just politics. Moreover, the Governor's budget wipes out funding for the one and only program that the state dedicates to ACFs that serve the indigent on SSI -- that program is EQUAL -- a modest $6.3 million. We ask that you restore that.

Just quickly back to the fines -- I see I'm out of time -- and removal of the ability to rectify minor violations. We've

heard comments that it's simply an attempt to adjust for inflation, our per-day fines. Well, that would be fair if the same could be said in terms of the SSI rating, adjusting that for inflation.

And it's also important to note that our violations are per day, unlike nursing homes and hospitals, so potentially we could be paying more for the same infraction than a nursing home or a hospital.

And if you give the department the ability -- more broadly, power -- without giving ACFs the chance to fix these minor issues, the department will abuse it.

CHAIRWOMAN WEINSTEIN: Thank you.

CHAIRWOMAN KRUEGER: Thank you.

And our next testifier is Stephen Hanse, New York State Health Facilities Association.

MR. HANSE: Good evening, and thank you.

My name is Stephen Hanse, and I have the privilege of serving as president and CEO of the New York State Health Facilities

Association and the New York State Association for Assisted Living, a statewide organization representing over 425 skilled nursing and assisted living providers who are not-for-profits, for-profits, and government-sponsored facilities.

When it comes to the COVID-19 pandemic and its impact on nursing homes and assisted living providers, the focus must be placed where it truly belongs: First, with the virus itself; second, with the state's hospital-centric approach to combating the virus; third, to the state's over 12 years of continuous nursing home Medicaid cuts; and fourth, to New York's long-term-care workforce crisis.

At the onset of the pandemic the state failed to immediately focus fully on the needs of nursing homes and assisted living providers, and instead implemented a hospital-centric approach that led to severely limited access to testing and extensive staffing and PPE shortages in nursing homes.

The COVID-19 virus first appeared in the United States at a nursing home in Washington State, with devastating consequences. New York disregarded this fact and implemented its hospital-centric approach to combating the virus, instead of focusing on the people who are vulnerable to the COVID-19 virus -- namely, nursing homes residents.

Upwards of 90 percent of New York's nursing home resident care is paid for by Medicaid. However, the state has cut Medicaid reimbursement to nursing homes for over 12 years. And even in the middle of the pandemic, the state cut Medicaid to nursing homes, creating a $2 billion reimbursement void that was only exacerbated by the state's primary focus on hospitals throughout the pandemic.

The statewide average cost of providing around-the-clock nursing home care is $266. However, the statewide average Medicaid reimbursement for 24-hour care is $211, resulting in nursing homes being

reimbursed $8.79 an hour to care for our most vulnerable. This reimbursement is for not-for-profit, for-profit and government-sponsored facilities.

Prior to the COVID-19 pandemic, NYSHFA was working with the Department of Health to address the state's long-term-care workforce crisis. The workforce shortage is well documented. Nevertheless, New York has failed to implement efforts to truly address this crisis and recruit and retain women and men into fulfilling careers in long-term care.

And as we address the 2021-'22 state budget, it is critical that the Legislature and the Executive work in partnership with nursing home providers and treat long-term care as an investment, not an expense. In looking at the 70/40 revenue proposal advanced in the Legislature and by the Governor, several issues must be addressed, including specifying Medicaid revenue and increasing the reimbursement rate to nursing homes in order to make this proposal both

legal and feasible.

If the state is sincere about putting residents first, the Legislature must implement genuine reform that truly safeguards nursing home residents and staff; namely, increasing Medicaid reimbursement to nursing homes and resolving the workforce shortage crisis. Addressing these two issues in the 2021-'22 enacted state budget will truly benefit the men and women receiving essential care in New York's nursing homes.

Thank you.

CHAIRWOMAN KRUEGER: Thank you.

Any questions?

CHAIRWOMAN WEINSTEIN: Assemblyman Dilan.

CHAIRWOMAN KRUEGER: Okay.

Are you there, Erik? Ah.

ASSEMBLYMAN DILAN: Yeah, I'm here.

Just very quickly, to Bobbie Sackman, you mentioned some items in your testimony that are more legislative in nature. I'm just asking if maybe, to spare the committee time, if you'd reach out to me tomorrow so we

can discuss them.

And I just want to say, you know, I loved working with you in a previous life. We should reconnect and work together again. Please reach out.

Thank you, Madam Chair.

MS. SACKMAN: Can I -- could I just respond?

CHAIRWOMAN WEINSTEIN: Sure.

MS. SACKMAN: Thank you, Assemblyman. It's really nice to see you as well. We are seeking to include the pay -- pay -- oh, my God, I'm so tired.

CHAIRWOMAN WEINSTEIN: Home care.

MS. SACKMAN: -- Fair Wages for Home Care in the budget. So that's why I'm here testifying.

ASSEMBLYMAN DILAN: Yeah, and that's why I brought it up. Because the first thing we worked on together in my previous life, my first chairmanship as the senior center subcommittee chairman in the Council, was COLAs for senior center workers. And now I see that all the social service workers who

take care of seniors automatically get COLAs, and a lot of that happened because of the work that you did.

So reach out tomorrow, we'll talk more in-depth. And I'll give the chairs back their time.

MS. SACKMAN: Will do. Thank you very much.

ASSEMBLYMAN DILAN: And for the chairs, just to let you know I'm always here and always paying attention. And I'm very quiet.

CHAIRWOMAN WEINSTEIN: Good. We almost did a roll call before to see if everybody was really here who's still logged in.

(Laughter.)

CHAIRWOMAN KRUEGER: Yeah.

CHAIRWOMAN WEINSTEIN: We do have Assemblyman Byrne for a question.

CHAIRWOMAN KRUEGER: Certainly.

ASSEMBLYMAN BYRNE: Yes, thank you, Chairs.

And this is more directed to

Mr. Hanse, Steve. I asked this question when some of the hospitals were giving their testimony as well. The 30-day amendments provide some significant changes that affect adult care facilities, hospitals, nursing homes, basically a lot of folks in the healthcare industry -- some very significant proposed fines and other changes.

I tend to think that this type of discussion should be separate from the budget, and I think it's a very steep proposal. But I would like to just get your comments and your thoughts.

MR. HANSE: Sure. Thank you, Assemblyman.

Yes, many of the fines are increased over 500 percent. Really when you look at that approach, really, fines don't work in terms of ensuring quality care.

And really when you look at all the proposals, quite frankly, included in the 30-day amendments, they really don't speak to quality care. They don't speak to the issues that really face long-term care throughout

the pandemic. They're proposals that are framed as resolutions, but they're really not. You really need to look at the historic underfunding of Medicaid and, quite frankly, New York's long-term-care workforce crisis.

ASSEMBLYMAN BYRNE: Thank you, Steve.

And I would just echo the comments I made earlier to Jim Clyne from LeadingAge, I would share that with you too. I know there's been a lot of conversation and discussion about nursing homes, adult care in general this year, and I think there's been this stigma attached to it because of all the conversations that we've had and some of the things in the press.

And it certainly was not, you know, my intention. And I do want to make sure I thank, you know, all the workers, the frontline workers that you do represent. It is a very difficult job. It takes patience, it takes a lot of dedication. And particularly when you're going into an atmosphere where, you know, this virus is being spread everywhere, I just want to be

sure I made those comments as well.

So thank you.

MR. HANSE: Thank you, Assemblyman.

CHAIRWOMAN KRUEGER: Okay, thank you all for being with us tonight. Appreciate it. Take care, get home safe. Well, you're probably home already, let's be --

(Overtalk.)

PANELISTS: Good night. Thank you.

CHAIRWOMAN KRUEGER: Good night, thank you.

Our next panel is the national office for the Nurse-Family Partnership, Emily Frankel; the Association of Perinatal Networks, LuAnne Brown; the Citizens' Committee for Children, Alice Bufkin; and certainly last but not least, Steve Sanders, Agencies for Children's Therapy Services.

Okay. Everybody here? Emily, are you here?

MS. FRANKEL: Yes.

CHAIRWOMAN KRUEGER: Why don't you start us off.

MS. FRANKEL: Sure. Hi, everyone.

I'm Emily Frankel, the government affairs manager for Nurse-Family Partnership. Thank you so much for the opportunity to present testimony today.

Nurse-Family Partnership is an evidence-based home visiting program that partners low-income, first-time-pregnant women with a registered nurse from early in pregnancy through the child's second birthday. A portion of NFP's funding comes from the state, thanks to the long-standing support of the Legislature. We cannot thank you enough for your partnership.

I come before you today, on behalf of the 162 NFP nurses and the nearly 4,000 New York families they serve, to urge you to reject the multitude of cuts facing NFP in the Executive Budget.

First, there is a 20 percent cut to NFP's DOH appropriation which reduces our funding from $3 million to $2.4 million and would reduce the number of families we currently serve. We respectfully ask the State Legislature to reject this cut.

The NFP programs in New York City and Monroe County are facing an additional cut through the Governor's 20 percent reduction to the Community Optional Preventive Services Program. COPS funding supports programs that prevent at-risk children and youth from entering the child welfare system.

The Governor's combined cuts to NFP's line item and to COPS would lead to workforce reductions of at least six nurse home visitors for New York City's NFP program, as well as at least 150 low-income families would no longer receive NFP.

The Governor's third cut to NFP occurs through a reduction to Article VI funding from 20 to 10 percent. This would lead to further workforce and service reductions for NFP. Additionally, the 1 percent across-the-board Medicaid cut would also impact our programs who are authorized to bill targeted case management.

NFP's capacity has already been impacted by the 20 percent withholds on state government contracts. To absorb this

reduction in funding, many programs instituted hiring freezes for nurse positions. Now is not the time to reduce funding for vital programs like Nurse-Family Partnership. NFP nurses support the very populations that have been hit hardest by the pandemic.

At the height of the pandemic, many of our moms were unable to receive prenatal and postpartum care due to the closure of medical practices and clinics. Our nurses played a critical role in filling these gaps in care. Through regular telehealth visits, NFP nurses were able to conduct clinical screenings and assessments, identify and monitor medical complications, and help their clients get the healthcare that they needed.

If enacted, these Executive Budget cuts will undermine the essential services that NFP provides to low-income families. I ask that you stand up for Nurse-Family Partnership, our nurses, and the low-income mothers and children we serve, and restore our funding in the state budget.

Thank you very much.

CHAIRWOMAN KRUEGER: Thank you very much.

Next, LuAnne Brown, from the Association of Perinatal Networks.

MS. BROWN: Good evening. I'm LuAnne Brown, CEO of Buffalo Perinatal Network and chair of the Association of Perinatal Networks, or APN. I also spent 30 years at Women and Children's Hospital in Buffalo as a nursing administrator, and my background is in OB. So I have the experience of working both in the healthcare system and the community-based organizations.

Thank you for allowing me to present on this panel as it relates to legislation needed regarding child and maternal health as well as addressing high maternal morbidity and mortality.

APN is an umbrella organization of 16 perinatal networks and has focused on maternal health for over 25 years. It includes the Maternal-Infant Community Health Collaborative, or MICHC, which works with

community health workers, or CHWs, and it's funded by the Department of Health.

The perinatal networks and other MICHC programs are organizations embedded in communities across the state who interact with the most vulnerable women and families every day and advance perinatal health.

The focus of CHW maternal programs is to ensure that women reach full-term pregnancy through prenatal care attendance, and it also assures enormous savings in reduction in intensive-care nursery stays. CHWs tend to be from the community that they serve, and they share lived experiences as clients, in addition to having an established relationship with the community.

The Affordable Care Act has also promoted the use of community health workers within home visiting programs.

One recommendation from Governor Cuomo's Women's Agenda to reduce maternal mortality was to expand and enhance CHW services. Due to this recommendation, cuts from the previous two years were restored so

programs could return to their baseline staffing.

Interestingly, in the rest of the world 20 percent of resources are dedicated to medical services, and 80 percent to social supports, while in the United States this is reversed. We are of the belief that we can realign our priorities and prevent medical complications, which is much more cost-effective.

Listening sessions coordinated by the Department of Health in 2018 gathered women from around the state to gather their thoughts on their birth experience, and one woman stated: "I wouldn't have made it without my CHW." We feel the CHW model should be a universal option for all women.

So based on this information, many of these programs are subject to the state 20 percent withhold, which began last April, even though our programs are not involved with Medicaid. These were for services we had already provided, and we're hitting our one-year mark. We're requesting that the

COVID-19 funds being clawed back from managed care and MLTC be earmarked for our agencies rather than swept away from the budget.

We would like to introduce legislation that allows reimbursement of CHW services, as other states have done. High-risk zip codes could be targeted if global funding was not available. And we also recommend that CHWs be integrated into health homes and Medicaid managed care plans, care models and care teams.

Thank you very much.

CHAIRWOMAN KRUEGER: Thank you very much.

Our next speaker is with the Citizens' Committee for Children, Alice Bufkin, director of policy for child and adolescent health.

MS. BUFKIN: Good evening. Thank you to the chairs and the committee members and all of your staff for the opportunity to testify today, especially for sticking around so late in the evening.

My name is Alice Bufkin, and I am the

director of policy for child and adolescent health at Citizens' Committee for Children, a multi-issue children's advocacy organization dedicated to ensuring every New York child is healthy, housed, educated and safe.

I want to focus my testimony on a handful of issues we find critically important as children and families approach a year of surviving this pandemic.

First, I echo many before me in opposing the many cuts and cost shifts in the Executive Budget that will severely harm the state's public health infrastructure and its ability to recover. We oppose cuts to the safety-net hospitals, including the proposed elimination of the state's share of the Indigent Care Pool, as well as proposed cuts to enhanced safety-net facilities.

Moreover, we oppose the reduction to the state's share of New York City's Article VI program. Of the more than 4,000 children who have lost a parent or a guardian to the virus, 57 percent have been in the Bronx, Brooklyn or Queens. Cuts to

New York City's Article VI services impact programs providing immunizations, lead testing, tuberculosis services, maternal and child health, mental health, chronic diseases and many other areas.

There are no federal resources sitting untapped that can simply replace the collective damage of those cuts. We must fully restore state reimbursement to 36 percent. And, more broadly, we cannot cut public health funding in the middle of a public health crisis.

Additionally, we urge the state to reject cuts to the Nurse-Family Partnership, as you just heard about, and to take urgent steps to address children's behavioral health challenges that have been exacerbated by COVID-19. Children have faced a year of loss of loved ones, of illness, economic insecurity, disrupted learning, isolation, anxiety. Mental health needs are rising, access to care has declined, and the result has been a surge in children in psychiatric distress, hospitalizations, and families left

on wait lists desperate for care.

To begin to address this, New York must start by rejecting the proposal to remove $22 million from Community Mental Health reinvestment. Those are funds that are desperately needed now more than ever. The state must also reject cuts to local assistance, which will harm the behavioral health sector, among other sectors.

We also urge passage of legislation sponsored by Senator Rivera and Assemblymember Gottfried that will enable coverage of children and family treatment and support services in the CHP program, moving us closer to parity between Medicaid and CHP.

More generally, we believe the state must invest in a full continuum of behavioral health supports for children, putting them in early care and education settings, in schools and in communities to combat the effects of existing and exacerbated trauma.

Lastly, I want to address the serious challenges facing children in the Early Intervention Program. After years of

inadequate rates, we are now seeing the compounded impact of COVID-19. In June 2020 the number of EI providers was down 15 percent compared to 2019. The number of children enrolled in EI is at its lowest point since 2013, and the number of EI claims has dropped 29 percent.

We strongly oppose the $13.7 million reduction to EI in the Executive Budget. We also urge, instead, the state to enact a covered lives proposal which would assess $40 million from commercial insurers and reinvest those funds back into the EI system.

I want to thank Chair Cahill for bringing this up, because commercial insurers overwhelmingly deny claims for services children need, putting the burden and costs on providers and the state. It's time they pay their fair share and time we prioritize the needs of children, young children with developmental delays and disabilities.

And I just want to address the question Senator Rivera raised earlier. We do support the elimination of the global cap,

and we do support identifying revenue options to prevent cuts.

Again, I want to thank you all so much for your time and truly thank you for your championing of issues that impact children and families. Thank you.

CHAIRWOMAN KRUEGER: Thank you. And then Agencies for Children's Therapy Services, Assemblymember Steve Sanders.

MR. SANDERS: Thank you very much, Chair Krueger, good friend Chairwoman Weinstein, good friend, colleague Chairman Kevin Cahill, the great Kevin Cahill, Chairman Rivera, all the ranking members who are still here, and all the members who have sat through now, what, is 12 hours of this budget hearing. You are all heroes. Heroines and heroes.

(Laughter.)

MR. SANDERS: I did that for a number of years, but not to the extent that you all are doing it this year. So I really appreciate all the work you've put in, and your staff.

And whoever decided that Alice should speak before me was prescient. Thank you for those comments, Alice, about Early Intervention. And so here's the perfect segue. I represent the agencies that provide Early Intervention services to 70,000 learning disabled or developmentally disabled children every year.

The Governor has made three proposals this year that impact Early Intervention. None of them are good. They either reduce services to children or they reduce rates for teletherapy. At the same time that we're trying to promote teletherapy as the new medium to reach many more people around the state, the Governor proposes to cut the rates for teletherapy. It's a bad idea.

There's a better idea, and Alice touched on it, and I want to amplify on her remarks. Covered lives. This was a proposal that the Assembly and the Senate included in its one-house bills last year.

The fact of the matter is that for the entire entirety of the Early Intervention

Program, commercial insurance has failed to pay its fair share. As Kevin Cahill mentioned earlier today, they pay 2 percent of the program. Two percent. They paid 2 percent 10 years ago, they paid 2 percent 20 years ago, and they'll continue to pay 2 percent no matter what reforms we try to initiate. They continue to evade their responsibility to pay their fair share.

What does that mean? That means the state and counties subsidize all of the claims that commercial insurance rejects. They reject 85 percent of the claims that they receive each year. The way to generate more money, save money for the counties, save money for the state, have commercial insurance finally pay its proportionate fair share, is to cover the Early Intervention Program under the covered lives program.

It will save money for the state and counties, and finally commercial insurance will be paying their fair share and we won't have to reduce rates and we won't have to effect cuts.

So I thank you for your time. I thank you for all of your efforts this year, a very tough year, and all the years that you've been working to improve the Early Intervention Program. Thank you all.

CHAIRWOMAN KRUEGER: Thank you.

Anyone want to ask a question?

CHAIRWOMAN WEINSTEIN: Yes, Assemblyman Abinanti has raised his hand, so let's go to him.

CHAIRWOMAN KRUEGER: Okay. You're on, Tom.

CHAIRWOMAN WEINSTEIN: Tom? Go ahead.

CHAIRWOMAN KRUEGER: Get off of mute.

ASSEMBLYMAN ABINANTI: I'm trying. There we go. I clicked that button several times, but okay.

I just want to thank Alice and -- where's Assemblyman -- there he is, there's Steve over there. I want to thank both of you for staying around so long and highlighting an issue that really needs to be highlighted, the whole issue of Early Intervention.

The Governor has tried to use an attempt to get commercial insurance to pay for part of Early Intervention as an excuse to do all kinds of, quote, reforms. And they really are just excuses to cut state support for Early Intervention. Which is really foolish, as we all know, because Early Intervention is a program that gets kids when they can be most helped.

When I was a county legislator, we were -- the county was subsidizing it and the counties tried to get out of the responsibility for running the programs or administering them, and the Governor then substituted this other thing that we have out there now, some kind of fiscal agent or something like that. None of this has worked. Your proposal for covered lives is the way to go, and I thank you for raising it, for both of you.

I just want to ask, what is the status of the field these days? And I mean we haven't had a report on how the fiscal intermediary is working. Or is it working?

Can either of you comment on that and tell us what's happening there?

MR. SANDERS: Well, I can give you a little bit of comment.

When the state fiscal agent was contracted for, I think back in 2013, one of the stated goals was to improve the recovery of money from commercial insurance. They were paying 2 percent of the grand total, about a $700 million Early Intervention Program. And if you use that as a metric for whether they've been successful or not, and you fast forward now eight years, commercial insurance is still paying 2 percent.

ASSEMBLYMAN ABINANTI: And now we're paying this fiscal intermediary -- this fiscal agent to do paperwork?

MR. SANDERS: Well, the fiscal agent is paid for a lot of purposes, administrative purposes, but it doesn't appear that they've been successful in being able to retrieve more money from commercial insurance.

Now, I would just add this. Aside from the fact that we -- I think we should

all be insulted a little bit by the fact that commercial insurance every year rejects 85 percent of the claims that are submitted to commercial insurance. If that wasn't bad enough, they leave the counties and the state to subsidize the expenses. Because whatever commercial insurance rejects, the state and counties have to pay 50 percent each.

So we're paying for what commercial insurance has refused to pay all these years.

ASSEMBLYMAN ABINANTI: Madam Chair, can I follow up with one question, very brief?

Has the problem that we saw over the years, that the fiscal agent wasn't paying the Early Intervention providers timely, has that problem been solved?

MR. SANDERS: It's better than it was seven or eight years ago. But when a provider submits a claim that would go to commercial insurance, it goes through a whole rigmarole, which is so unnecessary. It has to be adjudicated by commercial insurance. That costs them time and money.

Ultimately, with all of that effort, sometimes a lot of back-and-forth between insurance companies and early intervention agencies, at the end of the day insurance is going to reject 85 percent of the claims. They do that now, they did that last year, they'll do that next year, no matter what kinds of other reforms we try to put into place. So --

ASSEMBLYMAN ABINANTI: Thank you.

CHAIRWOMAN WEINSTEIN: Let's move on. You have a number of members who have raised their hand. Tom, you got people interested.

Assemblyman Cahill.

ASSEMBLYMAN CAHILL: Thanks so much.

And I just want to tell you when I listened to your testimony, this entire panel but especially my dear and long-time friend Steve Sanders, I really get a lump in my throat because you're talking about taking care of children from the womb right on up to the time when they can start to maybe take care of themselves.

And you're talking about needs that

have existed for a very long time, but also the one area that we know that if we invest, if we invest, we will create productive tax-paying adults who will contribute back to society. We will invest in creating independence. We will invest in creating great students and, who knows, maybe the next Einstein. We don't know what's out there. And thank you all for the good work that you do.

Steve, I have a slightly different take on what New York State is doing with our providers. I don't want anybody to walk away thinking that the providers are just dealing with the big bad insurance companies. A lot of the claims that are denied are denied because they're not covered by health insurance. And health insurance only covers what health insurance covers.

That doesn't stop the State of New York from forcing providers to pursue health insurance. It doesn't stop them from forcing them to pursue claims that cannot ever be paid. But what it does force them to

do also is to take that meager little payment that they get for the service, for early childhood intervention services, and divide it between actually taking care of a child and bill collecting.

And all for what? At the end of the day, it's not that the provider is going to get more for that, it's that the state is going to get less -- have less of a responsibility for it. It is immoral. We need to fix it.

I want to thank you all again for your tenacity in sticking around for this long time. I did -- I was able to extract from the superintendent this morning a commitment to take a serious look at this issue. I am surprised, but she acted as if she didn't know much about it, but she expressed a willingness to learn. And I'm certainly sure that you are entirely capable of teaching her.

So with that, I would welcome you using my last 40 seconds for any comments you want to make. But I know the chairs would

rather I just say thank you and drop the mic.

Thanks, everybody.

MR. SANDERS: I think it's we who thank you.

CHAIRWOMAN WEINSTEIN: Thank you. So we're going to go to Assemblywoman Solages.

SENATOR RIVERA: I think she might have left.

ASSEMBLYMAN ABINANTI: Oh, no, she's here.

ASSEMBLYWOMAN SOLAGES: I'm back.

(Laughter; cross-talk.)

ASSEMBLYWOMAN SOLAGES: Abinanti woke me up.

So I just want to thank all the panelists. You know, the saying goes that it's easier to build strong children than to repair broken men. And so I thank you for what you're doing.

And we know that pandemic life may have lasting effect on our babies, but it's even taking a greater toll on our parents. So these programs that you have provided that holistic approach of, you know, ensuring that

families are, you know, protected. And so as a state we should commit to protecting these essential health and behavioral services and supports and make targeted investments. So, you know, I thank you all.

And especially to NFP, I've seen firsthand that this program really has supported those who have been hardest hit. There was a panel -- a roundtable in which I heard many of the nurses talk about how they had to be furloughed or there were many cuts and their colleagues were laid off.

And so I know that the budget basically, essentially is going to dismantle NFP in two major locations. But will it destabilize I guess the whole network that we took so long -- you know, NFP took so long to build?

MS. FRANKEL: Thank you so much, Assemblywoman Solages, for your support.

That's my concern. I mean, we're seeing -- we've already had one closure in Cayuga County. We don't know where the -- when the cuts are going to stop. You know,

on top of the withholds, if there are going to be more in the future. There's a lot of uncertainty.

And I am concerned, especially where we have county health departments, especially in upstate New York, that they're also responding to the pandemic. So we have NFP nurses that are working three days a week on NFP and two days a week they're working to provide vaccines. The same thing in our New York City implementation.

So I don't know. I can't answer that. But it doesn't look good right now.

ASSEMBLYWOMAN SOLAGES: How about for any of the other panelists, is this going to destabilize programs that took so long to implement?

MS. BUFKIN: I will say on the -- oh, I'm sorry, go ahead, LuAnne.

MS. BROWN: Yeah, I mean we've been -- Buffalo Prenatal's been in existence for 25 years and, you know, we had -- we also have a Healthy Families Program, which is another important program. And that program

has taken a huge hit. I had to lay off seven people in September. So that's 200 families that are impacted.

And, you know, most of these programs, whether it's Nurse-Family Partnership or Healthy Families or community health workers, we're the only support some of these families have. I mean, they're estranged from their families, they don't get any support except from us.

So despite COVID going on -- and as usual, nonprofits were the ones to step up in these type of programs, and we were out there -- we did a food pantry, we were delivering food and diapers to our clients. And these are the programs they decided they want to withhold.

So it's very frustrating, I guess, because I see my staff working really hard and my clients being impacted. And I just think, you know, as someone mentioned, this is the beginning of life here. This is where you're starting to build a healthy adult. And when you impact those programs, you

impact these adults that can be valuable to communities.

CHAIRWOMAN KRUEGER: Well, I also just want to thank you all for your work. And many of you and your organizations have been educators of mine for years.

And there's no doubt about it, if we invest in the earliest time from pregnancy through a child's really fifth year of life, you can pretty much be assured things are going to go okay. And if you screw it up in the first five years, you can pretty much be assured from a government perspective you're going to have to spend a whole lot more money for, as the Assemblymember just said, the broken adults that you end up with.

So we know what the answers are, and they're very inexpensive. And so it's infuriating when we see ourselves going backwards this way.

And I just also want to give a shout out to Citizens' Committee for Children, who we know very well down in New York City, but the rest of the state may not know them. But

this year I think is the first year they put out a statistical book that covers every county in New York State for poverty data and other indicators. And when you're a legislator and you're trying to see what's going on in your area or how you're doing in comparison to other areas, that kind of data that's statewide but broken down in ways you can use it can be very, very valuable.

So I'm sure that the Citizens' Committee for Children would be happy to get you those copies of those books. Am I right?

MS. BUFKIN: Absolutely.

CHAIRWOMAN KRUEGER: Oh, good, okay. I was telling them you wanted to give them the books.

MS. BUFKIN: I would be very happy to get that to anyone.

CHAIRWOMAN KRUEGER: That would be great.

MS. BUFKIN: Thank you so much for bringing that up.

CHAIRWOMAN KRUEGER: Thank you.

All right --

CHAIRWOMAN WEINSTEIN: We still have another Assemblymember.

CHAIRWOMAN KRUEGER: Oh, you do?

CHAIRWOMAN WEINSTEIN: Yes, Assemblyman Jensen.

ASSEMBLYMAN JENSEN: Thank you very much. I'll be much briefer than I have in the past.

I just wanted to echo Misters Abinanti and Cahill and just thank our Early Intervention advocates. Certainly I know firsthand how critically important those services are. I didn't speak until I was five, I had speech impediments, speech delay. And I know for sure that I wouldn't be doing this if it wasn't for the Early Intervention services that I had. And I certainly wouldn't be able to use my voice to speak on behalf of those I serve in my community.

So just thank you to our advocates, not just in Early Intervention but, like what Member Solages said, and Chair Krueger, thank you for everybody who's advocating right from birth through -- right into older ages. So

thank you.

CHAIRWOMAN KRUEGER: Thank you.

All right. We covered everybody now? Oh, wait, I see -- wait, are you raising your hand, Gustavo? No. But Josh Jensen might have been raising his hand, I wasn't sure.

CHAIRWOMAN WEINSTEIN: No, he's done. We're done.

CHAIRWOMAN KRUEGER: Fine. Okay. Thank you, panel. Greatly appreciate your hard work and being with us this evening.

And we're moving on to -- I know you can't believe this, but the last panel of the last hearing.

SENATOR RIVERA: Sign me up for two rounds, please. Sign me up for two rounds of questions.

(Laughter.)

CHAIRWOMAN KRUEGER: Sit down, relax, Gustavo Rivera.

All right. So certainly not the least, but appreciate everybody waiting this long with us. Clerical-Administrative Employees Local 1549, Ralph Palladino,

2nd vice president; New York State Nurses Association, Judith Cutchin, president, New York City; and Feeding New York State, Dan Egan, executive director.

Health and food, what a better way to chose out the evening.

Good evening. Hi. Let's see, shall we start with you, Ralph? You have to turn on your voice.

MR. PALLADINO: Oh, yes. Hi.

CHAIRWOMAN KRUEGER: Hi.

MR. PALLADINO: Good evening. Good evening.

Yes, Local -- thank you, by the way. Local 1549 has 14,000 members working for the City of New York, 5,000 of whom work in the New York City Health + Hospitals and Metro Plus HMO.

So we think that the principles that the state should be following in budgeting for safety-net hospitals is the following. One, Medicaid dollars should follow where the Medicaid patients are. Two, Medicaid reimbursement rates should be based on true

cost of care. Three, fairness in distribution of funds to care for the indigent patients is a must. Sadly, this Executive Budget fails on all three.

Specifically, what we need to do in terms of what we're asking for is that we have no Medicaid cuts for safety-net hospitals as defined by Public Law 2807-c(34). Funding should be increased.

And with that, we should also end the global cap, which in practice means less services and less staff -- and also, I might add, leads to the overuse, as it does in hospitals where we are, of the exploitative temp agencies for contracting out. That is very bad.

Two, reject the proposed shift in the share from state to localities for the indigent care pools. New York City has already stepped up with billions of dollars in support over the last number of years, after 16 years of cuts by former mayors. The city itself is facing a huge deficit already, and we are short-staffed in every agency,

including the police department. And I say clericals in the police department, 911.

The city itself is facing a huge deficit, so how could we possibly take up the ICP payments? This amounts to a cut. It's not going to happen.

Now, New York City Health + Hospitals and Metro Plus are public and proud. Health + Hospitals had a $100 million cut from its budget and lost $1.2 billion from the COVID war. How could we distribute the cuts we -- I'm sorry. How could we absorb the cuts? How could we serve the poorest communities with the greatest disparities in care? Who will do that but us?

People should not pay lip service to this severe, long-standing problem. They should pay with proper funding to end it. And we should be -- Medicaid is an economic engine for communities, it raises revenues. Investing in care for high disparities means healthier and less future costs for sicker patients. And we need to tax the rich, as the New York coalition says.

CHAIRWOMAN KRUEGER: Thank you. Your time just ended. Well done.

Thank you. Our next speaker is Judith Cutchin, the president of the New York Nurses Association. Good evening, Judith.

MS. CUTCHIN: Hi, good evening. Thank you for allowing me the time to testify. My name is Judith Cutchin, and I am testifying on behalf of the New York Nurses Association. I am director at large of the New York State Nurses Association board of directors and the president of the Health + Hospitals Mayoral Executive Council, the largest NYSNA unit, representing almost 10,000 of our total membership of 44,000 nurses.

We have submitted our full testimony on the proposed budget items related to healthcare, but I want to focus on three critical issues in my testimony today.

First, we think it is outrageous that the budget is considering hundreds of millions in cuts to hospitals and other health services in the middle of an ongoing pandemic. We should not be cutting. We

should be increasing funding to build up our public health infrastructure to be able to deal with COVID and future health emergencies.

In addition, we should be expanding funding for our hospitals and other providers in the front-line fight against the pandemic. We should also be providing more funding for Medicaid to cover uninsured people, including undocumented workers.

Second, we should be implementing minimum staffing standards for all hospitals and nursing homes. In my hospital we saw firsthand that we did not have enough staff to provide care that patients needed, and that contributed to higher death tolls in all of our hospitals and, as it was noted by the Attorney General's report, in our nursing homes.

Establishing minimum staffing standards is also vital to addressing racial and economic disparities in care. Richly funded private hospitals with more staffing had more PPE and other equipment than the

public and other private-sector hospitals. Those disparities have a devastating impact on the communities of color and low-income patients that safety-net hospitals serve.

Minimum staffing standards are a first step towards addressing inequalities and inequities in healthcare.

Finally, where we have to provide increased funding for enhanced safety-net hospitals and other safety-net hospitals. We should be increasing ICP and DSH funding for these hospitals, increasing their Medicaid reimbursement rates to reflect their disproportionate share of these patients.

Now is not the time for business as usual in addressing our healthcare budget gaps. We need to take bold action to increase spending, mandate minimum staffing standards, and target extra funding to our safety net. Instead of cutting costs, the budget must be balanced and vital social service spending must be increased by raising taxes on the wealthiest New Yorkers, Wall Street investors and corporations that

have gotten richer during this crisis.

The Legislature needs to rise to the occasion. We are in a serious crisis, and we need to act like it.

Thank you very much for allowing me to speak. Thank you.

CHAIRWOMAN KRUEGER: Thank you very much.

And our last speaker, Dan Egan from Feeding New York State.

MR. EGAN: Thank you all, Senators and Assemblymembers, for staying with us to work so late into the evening. We really appreciate your hard work and the care you've shown for the health of the people of our state. I applaud your endurance, and I will try to talk fast.

Last year when I was here I said that every county in New York is home to people who cannot afford adequate food, and it's about to get worse. I wish I had been wrong. Last year over 2.2 million New Yorkers were food-insecure. This year, right now, over 3 million New Yorkers are food-insecure.

That's a 46 percent increase in need. Please remember that number. In some communities it's a lot higher. You've all seen the lines of people waiting.

I want to talk to you about a different line, the line of wasted food. Even as we have millions of New Yorkers going hungry, we are wasting perfectly good food -- 1.2 billion pounds of produce are being wasted every year, never even leaving the farm because it has no market. The farmers did their jobs; the market failed.

You might ask, what does 1.2 billion pounds of foods look like? That amount of food would fill 30,000 tractor trailers. If you park those tractor trailers end to end, bumper to bumper, one behind the other, that line of trucks would stretch from Montauk to Buffalo, 450 miles of food being thrown out.

You didn't see that line in the media, but you need to be aware of that. In a normal year, the year before COVID, the 10 food banks of Feeding New York State distributed over 250 million pounds of food.

So far, in the first 10 months of the pandemic, we've distributed 397 million pounds, a 62 percent increase.

We are prepared to do more. We expect and need to do more over the next few years. I'm asking you for three things to help us out.

First, HPNAP. It's a great program. It funds critical operational costs for us. It's been funded flat for quite a few years. The Executive Budget proposes $34.5 million. In recent years the Legislature has restored 500,000 to fund that program at 35 million annually. We're thankful for that support. We ask you to restore that again.

But beyond that, recall that the need for food is up 46 percent. A proportionate increase in HPNAP would add 16 million for a total funding level of $51 million.

Second, I think you all know what a fantastic program Nourish New York has been. We've supported over 4,000 New York farms while providing over 17 million pounds of food. We applaud Senator Hinchey and

Senator Borrello for introducing Senate bill S4892, which establishes Nourish New York as a state program.

It is essential that Nourish New York continue, and we request 100 million be allocated to Nourish New York this year and the program be put on a permanent basis.

Third, the Department of Environmental Conservation is responsible for the Food Scraps Law, and we ask that they be funded adequately so that we can help them administer the execution of that law.

I just want to conclude I hope everyone understands from all this we have all the resources we need to solve the problem of hunger. All I ask is that you let us use them.

CHAIRWOMAN WEINSTEIN: Thank you.

CHAIRWOMAN KRUEGER: Thank you.

Any Senators? Assemblymembers?

CHAIRWOMAN WEINSTEIN: Yes. We have Assemblyman Abinanti and then Assemblyman Jensen to follow.

CHAIRWOMAN KRUEGER: Okay.

ASSEMBLYMAN ABINANTI: Okay, thank you to the three of you.

I'd like to address the last gentleman who just spoke. I thank you for raising the issue of food insecurity or, put in common language, hunger. When a kid goes to school without having had breakfast, he's not thinking food insecurity, he's just hungry.

So we appreciate very much your raising that issue with us. That's really a health issue.

You discussed the Food Scraps Law. I would just like to note that there was just an amendment to that, a bill that I sponsored and Peter Harckham sponsored in the Senate. The Governor just signed the bill. It's going into effect immediately. What it does is set up a mechanism for the largest supermarkets to provide food to our food banks.

It's only going to be a small piece of the entire puzzle of trying to resolve this issue, but it is something that's there. And your asking for more money to make sure that

this program works is a very good request. So thank you for raising that.

And thank you to all of you, and thank you to the entire -- to the chairs, who spent the entire day doing this. I admit I've jumped off several times to do several other Zooms, attended some other meetings. But you guys have -- you know, you've been there all day, so thank you for carrying the ball for us, for the chairs and the ranking members. You guys sat here and heard it all, so thank you very much for doing this on all of our behalfs.

MR. PALLADINO: Assemblyman, can I just say to you -- thank you for bringing up food. I just want to remind you, the SNAP program -- the importance of the SNAP program. It's also there, and it's also an economic engine for the state. So let's not forget that too.

But thank you for saying that.

CHAIRWOMAN KRUEGER: And there was one more Assembly person?

CHAIRWOMAN WEINSTEIN: Yes,

Assemblyman Jensen to close, I believe.

ASSEMBLYMAN JENSEN: Thank you very much.

Just very quickly to Mr. Egan, I know another food initiative that you didn't mention was the Ugly Food Initiative. I know it's a pilot program in the Mid-Hudson region.

Do you think that's going to be a viable program to go statewide to get some of those more -- less desirable pieces of produce to folks who are food-insecure?

MR. EGAN: Thank you. It may be. I think it remains to be seen.

I would just add to that that there's top-quality produce that's not even being harvested. So what we need is the tools to get that to the people who need it.

ASSEMBLYMAN JENSEN: Thank you, Mr. Egan.

And just to echo my colleague, it's been an honor to spend the day with the chairs and the rankers and my colleagues in the Assembly and the Senate. So thank you,

everybody.

CHAIRWOMAN KRUEGER: Thank you.

MR. EGAN: Thank you.

CHAIRWOMAN KRUEGER: So I think in closing I also want to thank all three of you. I mean, obviously the inequities of Medicaid funding and the importance of the safety-net hospitals, Ralph, were the theme of, you know, almost the whole day, for obvious reasons.

For the Nurses Association, I hope you heard the testimony of the researcher from the University of Pennsylvania. We have the right nurse match, and we save people's lives. It's as simple as that. You can actually look at the numbers and see it.

So personally I can't thank both of your members enough for the work that they are doing during this pandemic every day. And I don't even know how you can communicate to them how much we really are aware of what they are doing and the critical role they play, and can't imagine that we would be getting through this pandemic without them

there every day.

So thank you, thank you.

MR. PALLADINO: Thank you.

MS. CUTCHIN: Thank you.

MR. PALLADINO: Can I say one thing to you, Madam Chair?

CHAIRWOMAN KRUEGER: Certainly.

MR. PALLADINO: I just remember being many years ago someplace on the east side of Manhattan on Election Day with all these young people, and there was like a revolution going on. And, you know, whatever happened that night on Election Night, it was a damn good choice. Thank you.

(Laughter.)

CHAIRWOMAN KRUEGER: Thank you for being there.

(Laughter.)

SENATOR RIVERA: Closing time (singing).

(Laughter; overtalk.)

SENATOR RIVERA: (Singing.) So finish your whiskey or beer.

CHAIRWOMAN WEINSTEIN: Okay, I think

it's time to go.

SENATOR RIVERA: (Continuing to sing.)

CHAIRWOMAN KRUEGER: -- I've been out doing anti-hunger work from before I jumped into politics, and so I couldn't be happier that you were there and being able to build systems when we need them. The Nourish New York system, it's a win/win/win, just like SNAP is. Right? It's money to make sure that farmers can hire workers to pick the crops, so more people get jobs and the crops get delivered then to food banks for distribution to hungry people in need.

And we see a federal government that's taking these issues more seriously also. Thank goodness.

And yes, I am not going to take up any more time. This is now the official end of the last budget hearing for this year on the Governor's Executive Budget. I want to thank all the staff people behind the scenes from the Senate and the Assembly for all the work you did to make this all look like it was smooth and easy.

I want to thank so much my chairs and my rankers on every hearing, but particularly Helene Weinstein, who -- you know, with a smile on our faces, we got up every day and said, I don't know how this one's going to work out, but we'll get through it. And we did, with pride. And we let the public see more and more of how government tries to do things.

And hopefully we will end up with a better budget this year because of all this hard work. Because we have a lot of assignments in front of us, don't kid yourselves. But we also are the State of New York, and we can do the things other people can't do.

So I just really want to thank you all. Get home safely --

(Interruption.)

CHAIRWOMAN KRUEGER: Pardon? Get home safely. Get some sleep. No, I have a meeting with Health + Hospitals at like 9 in the morning, so I have to get to sleep fast.

SENATOR RIVERA: Closing time

(singing).

CHAIRWOMAN WEINSTEIN: Okay, I think it's time. I just wanted a moment to -- let's mute that man.

I wanted to take a moment also to just thank both my cochair, Liz Krueger, the rankers Senator O'Mara and Assemblyman Ra, and all of the staff behind the scenes that have really made this look like we knew what we were doing.

And thank you all for your testimony, those -- this last panel, but all of the people not only today, but all of the weeks leading up to today.

CHAIRWOMAN KRUEGER: Thank you. Thank you, Tom. Thank you, Ed. Bye.

SENATOR O'MARA: Thank you. Well done.

(Whereupon, at 10:17 p.m., the budget hearing concluded.)