

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

---

3 JOINT LEGISLATIVE HEARING

4 In the Matter of the  
5 2021-2022 EXECUTIVE BUDGET  
6 ON HEALTH

---

7 Virtual Hearing  
8 Conducted via Zoom

9 February 25, 2021  
10 9:42 a.m.

11 PRESIDING:

12 Senator Liz Krueger  
13 Chair, Senate Finance Committee

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

16 PRESENT:

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

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

21 Senator Gustavo Rivera  
22 Chair, Senate Committee on Health

23 Assemblyman Richard N. Gottfried  
24 Chair, Assembly Health Committee

Senator Neil Breslin  
Chair, Senate Insurance Committee

Assemblyman Kevin A. Cahill  
Chair, Assembly Committee on Insurance

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3 PRESENT: (Continued)

4 Senator Patrick M. Gallivan

5 Assemblyman Kevin M. Byrne

6 Senator Pamela Helming

7 Assemblyman Ken Blankenbush

8 Senator Kevin Thomas

9 Assemblyman Khaleel M. Anderson

10 Senator James Skoufis

11 Assemblywoman Rodneyse Bichotte Hermelyn

12 Assemblyman Harry B. Bronson

13 Senator Brad Hoylman

14 Assemblyman Edward C. Braunstein

15 Assemblywoman Vivian E. Cook

16 Senator Todd Kaminsky

17 Assemblyman Nader J. Sayegh

18 Senator Rachel May

19 Assemblyman Phil Steck

20 Assemblywoman Marjorie Byrnes

21 Assemblyman Jonathan G. Jacobson

22 Assemblyman John McDonald

23 Senator Alessandra Biaggi

24 Assemblywoman Linda B. Rosenthal

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3 PRESENT: (Continued)

4 Assemblyman Steven Cymbrowitz

5 Assemblywoman Pamela J. Hunter

6 Senator Pete Harckham

7 Assemblyman Jake Ashby

8 Assemblywoman Alicia Hyndman

9 Senator Samra G. Brouk

10 Assemblyman Erik M. Dilan

11 Assemblywoman Amy Paulin

12 Assemblyman Demond Meeks

13 Assemblywoman Yuh-Line Niou

14 Senator Patricia A. Ritchie

15 Assemblywoman Michaelle Solages

16 Assemblyman John Salka

17 Senator Susan Serino

18 Assemblyman Thomas J. Abinanti

19 Assemblywoman Aileen M. Gunther

20 Assemblywoman Melissa Miller

21 Assemblyman Charles Barron

22 Assemblywoman Rebecca A. Seawright

23 Senator Daniel G. Stec

24 Assemblyman Philip A. Palmesano

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3 PRESENT: (Continued)

4 Senator Robert G. Ortt

5 Assemblyman Kenneth Zebrowski

6 Senator Edward A. Rath III

7 Assemblyman Jarett Gandolfo

8 Assemblywoman Deborah J. Glick

9 Senator James Tedisco

10 Assemblyman Josh Jensen

11 Senator Joseph A. Griffo

12 Assemblywoman Nily Rozic

13 Assemblyman Michael J. Norris

14 Senator Peter Oberacker

15 Assemblyman Daniel Rosenthal

16 Senator Julia Salazar

17 Assemblyman J. Gary Pretlow

18 Assemblywoman Karines Reyes

19 Senator Phil Boyle

20 Assemblywoman Phara Souffrant Forrest

21 Assemblyman Colin Schmitt

22 Senator George M. Borrello

23 Assemblyman Andrew Hevesi

24 Senator Mike Martucci

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3 PRESENT: (Continued)

4 Senator Jeremy A. Cooney

5 Assemblyman N. Nick Perry

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LIST OF SPEAKERS

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STATEMENT QUESTIONS

11

Linda Lacewell  
 Superintendent  
 12 NYS Department of Financial  
 Services

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Howard Zucker, M.D., J.D.  
 14 Commissioner  
 NYS Department of Health

15

-and-

Donna Frescatore  
 16 NYS Medicaid Director

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Erin E. Ives  
 Acting Medicaid Inspector General  
 18 NYS Office of the Medicaid  
 Inspector General

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5	Bea Grause		
	President		
6	Healthcare Association of NYS		
	(HANYS)		
7	-and-		
	Dr. Camille Clare		
8	FACOG Board Chair		
	American College of Obstetricians		
9	and Gynecologists, District II		
	-and-		
10	Maureen Regan		
	President		
11	New York State Society of		
	Physician Assistants		
12	-and-		
	David Rich		
13	Executive Vice President,		
	Government Affairs, Communications		
14	and Public Policy		
	Greater New York Hospital		
15	Association		
	-and-		
16	Dr. Hany Abdelaal		
	President		
17	VNSNY CHOICE Health Plans		
	-on behalf of-		
18	New York State Coalition of		
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4 STATEMENT QUESTIONS

5 Milly Silva  
Executive Vice President  
6 1199SEIU United Healthcare  
Workers East

7 -and-

8 Bryan O'Malley  
Executive Director  
Consumer Directed Personal  
9 Assistance Association of NYS

-and-

10 Alyssa Lovelace  
Director of Policy  
11 and Advocacy  
Home Care Association of  
12 New York State

-and-

13 Lauri Cole  
Executive Director  
14 NYS Council for Community  
Behavioral Healthcare

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5	Beth Finkel		
	State Director		
6	AARP New York		
	-and-		
7	Dr. Talya Schwartz		
	President and CEO		
8	Metro Plus Health Plan		
	-on behalf of-		
9	Coalition of New York State		
	Public Health Plans		
10	-and-		
	James W. Clyne Jr.		
11	President/CEO		
	LeadingAge New York		
12	-and-		
	Heidi Siegfried		
13	Director of Health Policy		
	Center for Independence of		
14	the Disabled, NY		
	-and-		
15	Douglas Hovey		
	President and CEO		
16	Independent Living, Inc. and		
	Independent Home Care, Inc.	553	569

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	Executive Director		
6	NYS Association of County		
	Health Officials		
7	-and-		
	Eric Linzer		
8	President and CEO		
	New York Health Plan Association		
9	-and-		
	Dr. Bonnie Litvack		
10	President		
	Medical Society of the		
11	State of New York		
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12	Kathy Febraio		
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13	New York State Association		
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	Rose Duhan		
15	President and CEO		
	Community Health Care		
16	Association of NYS		
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17	Wendy Stark		
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18	Callen-Lorde Community		
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5 Bill Hammond  
 Director of Health Policy  
 6 Empire Center for Public Policy  
 -and-

7 Charles Bell  
 Program Director, Advocacy  
 8 Consumer Reports  
 -and-

9 Leishia B. Smallwood  
 Director  
 10 NYS Area Health Education  
 Center System (AHEC)  
 11 -and-

Linda H. Aiken  
 12 Professor and Director  
 Center for Health Outcomes  
 13 and Policy Research  
 University of Pennsylvania

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14 Amanda Dunker  
 15 Policy Associate  
 Health Care for All New York  
 16 -and-

Elisabeth Benjamin  
 17 VP of Health Initiatives  
 Community Service Society of NY  
 18 -and-

Lara Kassel  
 19 Coalition Coordinator  
 Medicaid Matters New York  
 20 -and-

Louise Cohen  
 21 CEO  
 Primary Care Development Corp.  
 22 -and-

Anthony Feliciano  
 23 Director  
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 24 Health System

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5 Lauren Rowley 6 Senior VP of State Affairs 7 Pharmaceutical Care 8 Management Association (PCMA) 9 of New York 10 -and- 11 Mike Duteau 12 President 13 Chain Pharmacy Association of NYS 14 -on behalf of- 15 Community Pharmacy Association of 16 New York State 17 -and- 18 Thomas D'Angelo 19 President 20 Pharmacists Society of 21 the State of New York	692	705
22 Julie Hart 23 Sr. Director, NY Govt. Relations 24 American Cancer Society Cancer Action Network -and- Charles King CEO Housing Works	720	726
25 Bobbie Sackman 26 Member Leader 27 New York Caring Majority 28 -and- 29 Lisa Newcomb 30 Executive Director 31 Empire State Association of 32 Assisted Living 33 -and- 34 Stephen Hanse 35 President and CEO 36 NYS Health Facilities Association 37 NYS Center for Assisted Living	730	741

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5 Emily Frankel  
Government Affairs Manager  
6 Nurse-Family Partnership  
-and-

7 LuAnne Brown  
CEO, Buffalo Prenatal Perinatal Network  
8 Chair  
Association of Perinatal Networks  
9 -and-

Alice Bufkin  
10 Director of Policy for Child  
and Adolescent Health  
11 Citizens' Committee for Children  
-and-

12 Steven Sanders  
Executive Director  
13 Agencies for Children's  
Therapy Services 746 761  
14

Ralph Palladino  
15 2nd Vice President  
Clerical-Administrative  
16 Employees Local 1549  
-and-

17 Judith Cutchin  
President, NYSNA NYCHH/Mayoral  
18 Executive Council  
NYS Nurses Association  
19 -and-

Dan Egan  
20 Executive Director  
Feeding New York State 776 785  
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1 CHAIRWOMAN KRUEGER: Good morning.

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

7 Today is our last budget hearing for  
8 '21-'22, a hearing on the Governor's Health  
9 Executive Budget.

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

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

19 Today is the final of the 13 hearings  
20 conducted by the joint fiscal committees of  
21 the Legislature regarding the Governor's  
22 proposed budget for state fiscal year  
23 '21-'22. These hearings are conducted  
24 pursuant to the New York State Constitution

1 and our Legislative Law.

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

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

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

1 Commissioner.

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

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

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

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

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

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

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

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

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

12 I think that's it for the Democratic  
13 Senators.

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

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

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

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

5 (Laughter.)

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

8 CHAIRWOMAN WEINSTEIN: Thank you,  
9 Senator.

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

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

22 ASSEMBLYMAN RA: Yes, thank you,  
23 Chairwoman.

24 Good morning, everybody. We are

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

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

9                   CHAIRWOMAN KRUEGER: Thank you.

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

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

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

16                   CHAIRWOMAN KRUEGER: Great. Welcome.

17                   DFS SUPERINTENDENT LACEWELL: Shall I  
18           proceed?

19                   CHAIRWOMAN KRUEGER: Oh yes, please.

20                   DFS SUPERINTENDENT LACEWELL: Thank  
21           you so much.

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

1 distinguished members of the State Senate and  
2 Assembly.

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

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

15 Our mission is multiple. We protect  
16 New York consumers, we strengthen the  
17 financial service industries in our state, we  
18 safeguard markets from fraud and other  
19 illegality. Our operating expenses, as you  
20 know, are assessed to industry under Section  
21 206 of the Financial Services Law. We  
22 regulate nearly 1800 insurers with assets of  
23 more than \$4.7 trillion, and approximately  
24 1500 banking and other financial institutions

1 with assets of more than 2.6 trillion.

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

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

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

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

5 I am proud of the role of DFS during  
6 these three crises. DFS did its job  
7 proactively, affirmatively and with speed.  
8 We issued five emergency regulations,  
9 11 circular or guidance letters, numerous  
10 FAQs, both for industry and for consumers, on  
11 health insurance, COVID-19 as pertinent, and  
12 answered many hundreds of inquiries from  
13 consumers, insurers, providers and other  
14 stakeholders.

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

1 outpatient mental health services.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

17 Thank you.

18 CHAIRWOMAN KRUEGER: Thank you very  
19 much.

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

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

1                   Good to see you, Madam Superintendent.

2                   DFS SUPERINTENDENT LACEWELL: Thank  
3                   you.

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

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

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

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

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

24                  Importantly, that would also enable us

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

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

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

1 have to come back again.

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

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

1 practices of pharmacy benefit managers who  
2 have a different allegiance.

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

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

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

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

24 SENATOR BRESLIN: Well, I'll move on

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

15 CHAIRWOMAN KRUEGER: Thank you.  
16 Assembly.

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

22 And we go to Kevin Cahill, chair of  
23 the Assembly's Insurance Committee, for  
24 10 minutes.

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

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

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

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

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

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

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

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

16 ASSEMBLYMAN CAHILL: Thank you very  
17 much.

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

22 DFS SUPERINTENDENT LACEWELL: That  
23 seems highly unlikely.

24 ASSEMBLYMAN CAHILL: Okay. because it

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

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

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

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

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

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

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

1 insurance?

2 DFS SUPERINTENDENT LACEWELL: I would  
3 tend to think so.

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

10 I'd like to shift to something where  
11 it might make some sense for DFS to have a  
12 suballocation or a fee, and that's early  
13 childhood intervention services. Right now  
14 insurers, health insurers pay about  
15 \$12 million or about 2 percent, the same  
16 number they've been paying for 10 years after  
17 Governor Cuomo entered into a sweetheart  
18 contract with a fiscal agent who has now  
19 received in excess of \$50 million to increase  
20 that number -- but in fact the number has  
21 been stagnant or even dropped a little bit.

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

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

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

13                  They came to New York promising  
14                  incredible great success in doing so and then  
15                  have basically opined that because our  
16                  regulatory structure and our legal structure  
17                  didn't change to accommodate their needs,  
18                  they couldn't do what they promised to do  
19                  \$60 million ago.

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

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

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

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

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

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

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

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

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

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

24 Excess medical malpractice. The

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

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

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

18 ASSEMBLYMAN CAHILL: If I may  
19 interrupt you on that point. It's all well  
20 and good that there are doctors who are  
21 securing medical malpractice. But when you  
22 ask the remaining doctors to participate at  
23 50 percent, you're not talking to the doctors  
24 who are no longer in the pool. We are

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

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

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

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

15 ASSEMBLYMAN CAHILL: Go ahead, then,  
16 please.

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

21 ASSEMBLYMAN CAHILL: And the  
22 industry --

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1 much.

2 DFS SUPERINTENDENT LACEWELL: Thank  
3 you.

4 CHAIRWOMAN KRUEGER: Thank you.

5 Next is Senator Helming, the ranker on  
6 Insurance.

7 SENATOR HELMING: Thank you,  
8 Senator Krueger.

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

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

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

1 minority conferences of both houses?

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

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

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

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

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

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

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

10 DFS SUPERINTENDENT LACEWELL: I do  
11 not.

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

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

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

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

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

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

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

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

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

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

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

24 Because assuming that this becomes

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

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

12 SENATOR HELMING: Thank you.

13 CHAIRWOMAN KRUEGER: Thank you.  
14 Assembly.

15 CHAIRWOMAN WEINSTEIN: Assemblyman  
16 Gottfried.

17 ASSEMBLYMAN GOTTFRIED: Hi. So --

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

21 ASSEMBLYMAN GOTTFRIED: Okay.

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

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

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

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

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

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

17 DFS SUPERINTENDENT LACEWELL: I'm  
18 really not permissible -- I'm really not  
19 versed in the question that you raise, that's  
20 right.

21 ASSEMBLYMAN GOTTFRIED: Okay. That's  
22 not encouraging.

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

1 ASSEMBLYMAN GOTTFRIED: Okay.

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

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

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

1 ERISA.

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

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

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

1 with me.

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

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

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

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

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

1 priority. Problem solved.

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

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

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

1 legal attack when what you are trying to --

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

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

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

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

24 ASSEMBLYMAN GOTTFRIED: Right.

1 DFS SUPERINTENDENT LACEWELL:

2 Obviously if somebody who works for a  
3 self-insured plan commits homicide, they can  
4 still be prosecuted. That's not really the  
5 point.

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

11 I would like to --

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

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

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

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

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

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

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

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

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

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

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

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

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

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

12 DFS SUPERINTENDENT LACEWELL: No, I'm  
13 not.

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

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

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

23 DFS SUPERINTENDENT LACEWELL: I think  
24 --

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

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

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

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

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

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

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

1 disagree. But I am happy to engage further

2 --

3 ASSEMBLYMAN GOTTFRIED: And you -- you  
4 think --

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

7 ASSEMBLYMAN GOTTFRIED: (Laughing.)

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

13 We'll go to the Senate now.

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

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

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

20 SENATOR RIVERA: The one-two punch  
21 continues.

22 Good morning, Superintendent.

23 Actually, let's pick up right where my  
24 colleague in the Assembly left off. Now, I

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

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

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

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

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

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

15 (Overtalk.)

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

10 SENATOR RIVERA: Right.

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

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

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

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

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

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

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

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

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

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

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

24 But to your point, we ought to take a

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

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

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

13 DFS SUPERINTENDENT LACEWELL: Yes.

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

24 And maybe some of my colleagues will

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

4 DFS SUPERINTENDENT LACEWELL:  
5 (Inaudible.)

6 SENATOR RIVERA: Thank you, Madam  
7 Superintendent.

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

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

13 CHAIRWOMAN KRUEGER: Thank you,  
14 Helene.

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

19 But good morning, Superintendent.

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

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

10                       DFS SUPERINTENDENT LACEWELL: So thank  
11           you for that question.

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

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

1 the industry, and that should help.

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

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

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

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

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

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

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

3 DFS SUPERINTENDENT LACEWELL:  
4 Absolutely.

5 ASSEMBLYMAN RA: Thank you.

6 DFS SUPERINTENDENT LACEWELL: Thank  
7 you, sir.

8 CHAIRWOMAN KRUEGER: Thank you.

9 Back to Senate, I believe, correct?  
10 Senator Borrello for three minutes.

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

13 Good morning, Superintendent. Can you  
14 all hear me?

15 DFS SUPERINTENDENT LACEWELL: Yes.

16 SENATOR BORRELLO: Okay, thank you.

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

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

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

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

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

24 And my question to you is, you know,

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

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

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

22                       SENATOR BORRELLO: I agree.

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

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

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

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

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

22 Thank you.

23 DFS SUPERINTENDENT LACEWELL: Okay.

24 Happy to do so.

1                   SENATOR BORRELLO: Thank you.

2                   CHAIRWOMAN KRUEGER: Okay. Thank you.

3                   Assembly?

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

8                   ASSEMBLYMAN BYRNE: Thank you, Chair.

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

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

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

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

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

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

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

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

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

20                         (Pause.)

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

23                 CHAIRWOMAN KRUEGER: So shall we wait  
24                 a few seconds?

1 Assemblymember, are you still with us?

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

4 (Overtalk.)

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

7 CHAIRWOMAN KRUEGER: Okay, thank you.

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

10 CHAIRWOMAN KRUEGER: Okay.

11 CHAIRWOMAN WEINSTEIN: Okay.

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

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

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

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

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

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

14 (Zoom drop.)

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

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

23 (Cross-talk about the timeclock.)

24 CHAIRWOMAN WEINSTEIN: We'll, you

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

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

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

12 CHAIRWOMAN KRUEGER: All right.

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

17 Hello, Minority Leader.

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

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

24 So I had two questions. I wanted to

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

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

13 Is this something that the state is  
14 considering doing?

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

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

1 SENATOR MAY: Okay.

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

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

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

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

24 DFS SUPERINTENDENT LACEWELL: Well, I

1 can certainly check.

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

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

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

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

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

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

9 SENATOR MAY: Okay. Thank you.

10 DFS SUPERINTENDENT LACEWELL:

11 Certainly.

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

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

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

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

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

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

8 Thank you, Helene.

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

17 Assemblyman Byrne, let's try it again.

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

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

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

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

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

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

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

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

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

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

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

1 Thank you.

2 CHAIRWOMAN WEINSTEIN: Thank you,  
3 Mr. Byrne.

4 Now we go to the Senate.

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

9 Are you there, Sue? There she is.

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

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

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

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

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

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

23                    DFS SUPERINTENDENT LACEWELL: Well,  
24           thank you, Senator.

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

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

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

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

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

4 SENATOR SERINO: Oh, that's awesome.

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

11 DFS SUPERINTENDENT LACEWELL:

12 Absolutely.

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

17 Thank you, Superintendent.

18 DFS SUPERINTENDENT LACEWELL: Thank  
19 you.

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

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

24 I know she's been getting kicked off a

1 number of times also, so hopefully --

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

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

7 (Unintelligible cross-talk.)

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

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

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

23 DFS SUPERINTENDENT LACEWELL: Well,  
24 certainly making telephonic services qualify

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

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

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

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

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

24 My office did a survey, you know,

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

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

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

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

1           sure they have the tools they need.

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

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

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

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

24                      ASSEMBLYWOMAN HUNTER: Thank you,

1 Superintendent.

2 DFS SUPERINTENDENT LACEWELL: Thank  
3 you.

4 CHAIRWOMAN KRUEGER: Thank you.

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

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

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

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

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

24 The infuriating part here is that the

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

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

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

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

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

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

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

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

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

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

21 SENATOR THOMAS: Thank you so much,  
22 Superintendent.

23 DFS SUPERINTENDENT LACEWELL: Thank  
24 you, sir.

1 CHAIRWOMAN KRUEGER: Thank you.  
2 Assembly.

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

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

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

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

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

24 I was in and out as well, and I just

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

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

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

1 healthcare workers, they are heroes, they  
2 are -- they have been experiencing an  
3 economic loss of 10 percent of their staff, a  
4 32 percent drop in revenue -- and in other  
5 cases, 50 percent.

6 So we're asking you not to do this.  
7 Okay? We're asking you not to put that  
8 50 percent burden. There's other ways of  
9 looking at this, potentially decreasing the  
10 total medical -- the program so that they  
11 don't have the higher burden. But can you  
12 please explain a little bit more why we're  
13 doing this? And given the federal stimulus  
14 package, can we -- just don't do it?

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

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

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

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

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



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

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

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

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

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

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

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

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

4 SENATOR GRIFFO: Thank you for your  
5 time.

6 CHAIRWOMAN KRUEGER: Thank you.  
7 Assembly.

8 CHAIRWOMAN WEINSTEIN: We go to  
9 Assemblywoman Seawright.

10 (Pause.)

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

13 CHAIRWOMAN KRUEGER: Yup, you're good.

14 ASSEMBLYWOMAN SEAWRIGHT: Thank you.  
15 Thank you, Superintendent Lacewell.

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

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

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

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

8 ASSEMBLYWOMAN SEAWRIGHT: Sure.

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

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

14 (Laughter.)

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

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

19 (Laughter.)

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

23 CHAIRWOMAN WEINSTEIN: I know.

24 CHAIRWOMAN KRUEGER: Assemblywoman,

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

3                         CHAIRWOMAN WEINSTEIN:  Yes.  
4           Assemblywoman Linda Rosenthal.

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

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

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

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

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

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

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

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

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

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

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

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

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

13 ASSEMBLYWOMAN ROSENTHAL: All right.  
14 Thank you.

15 DFS SUPERINTENDENT LACEWELL: Sure.

16 CHAIRWOMAN KRUEGER: Thank you.

17 Senator Biaggi.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

6                            DFS SUPERINTENDENT LACEWELL:  Happy to  
7            do so.

8                            SENATOR BIAGGI:  Okay, thank you.

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

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

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

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

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

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

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

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

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

9 CHAIRWOMAN KRUEGER: Great.

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

21 DFS SUPERINTENDENT LACEWELL: Happy  
22 to.

23 CHAIRWOMAN KRUEGER: Thank you.

24 So a follow-up question -- and there



1 providers of medical malpractice insurance to  
2 help make them more robust financially and to  
3 expand competition in the market by bringing  
4 in new entrants. Because the market has been  
5 stabilizing in that regard, this additional  
6 level of excess coverage that has been  
7 backstopped by the state, the assessment has  
8 been, based on the data and the dollars, that  
9 the state could reduce that participation by  
10 50 percent and doctors can elect as to  
11 whether or not they want this additional  
12 coverage, pay part of the cost themselves,  
13 which gives them some skin in the game too --  
14 otherwise you're just taking a free policy,  
15 potentially. And so that is what the  
16 proposal is in the Executive Budget.

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

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

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

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

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

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

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

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

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

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

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

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

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

4 CHAIRWOMAN KRUEGER: Appreciate it.  
5 Thank you.

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

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

11 CHAIRWOMAN WEINSTEIN: Yes. Kevin?

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

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

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

24 You are going to send complete details

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

5 DFS SUPERINTENDENT LACEWELL: Yes.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

18 ASSEMBLYMAN CAHILL: I'm going to --

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

24 ASSEMBLYMAN CAHILL: When the

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

8                         Can I also ask you to review the  
9           amicus brief that was filed on behalf of you  
10          and all the people of New York State by the  
11          Attorney General and the attorneys general of  
12          45 states of this country, and also the  
13          opinions and the model legislation drafted by  
14          your organization, the National Association  
15          of Insurance Commissioners, and also to  
16          review the decision written by Supreme Court  
17          Justice Sotomayor to determine whether you  
18          are prepared to conclude that regulation of  
19          a -- state regulation of an intermediary is  
20          the direct regulation of health benefits and  
21          therefore conflicts with ERISA?

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

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

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

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

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

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

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

1 questions.

2 DFS SUPERINTENDENT LACEWELL:

3 Understood.

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

8 (Brief recess taken from 11:46 to  
9 11:51 a.m.)

10 CHAIRWOMAN KRUEGER: Thank you. Good  
11 afternoon. I'm Senator Liz Krueger, chair of  
12 Senate Finance Committee, joined by  
13 Assemblywoman Helene Weinstein, chair of the  
14 Ways and Means Committee, having our  
15 13th hearing on the Executive Budget proposed  
16 by Governor Cuomo. It is the Health Hearing.

17 We started off this morning with the  
18 superintendent of the Department of Financial  
19 Services in relationship to health insurance,  
20 and we are now moving on to Dr. Howard  
21 Zucker, the commissioner of the New York  
22 State Department of Health, who will have  
23 10 minutes to testify and introduce whoever  
24 he has with him, and then we will open it up

1 to questions.

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

7 So Dr. Zucker, I hand it to you.

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

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

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

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

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

23 SENATOR O'MARA: Note my objection.

24 CHAIRWOMAN KRUEGER: Thank you.

1                   Please continue, Senator -- excuse me,  
2 Commissioner.

3                   COMMISSIONER ZUCKER: Thank you.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

6 There is much more we can achieve if  
7 we apply the lessons of 2020 as we turn to  
8 2021. As we now focus on the budget, the  
9 reason we are here today, we need to keep  
10 this in mind. So let's start with the  
11 nursing homes.

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

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

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

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

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

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

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

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

19 In addition, this budget will provide  
20 \$420 million to promote access to vital  
21 healthcare services for Essential Plan  
22 enrollees. It will also commit \$200 million  
23 to support an Essential Plan Quality Pool to  
24 promote high-quality care.

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

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

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

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

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

19 Thank you.

20 CHAIRWOMAN KRUEGER: Thank you very  
21 much.

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

24 SENATOR RIVERA: Madam Chair, I will

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

4                       CHAIRWOMAN KRUEGER: You're welcome.

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

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

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

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

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

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

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

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

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

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

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

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

24 And lastly, if that is true, then why

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

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

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

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

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

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

10 SENATOR ORTT: Commissioner, if I may.

11 COMMISSIONER ZUCKER: Can you not hear  
12 me?

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

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

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

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

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

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

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

13                   But let's just use the issue of May  
14 10th, which is what you're referring to. So  
15 there was no one who was coming back into the  
16 nursing homes with COVID-positive tests --  
17 that doesn't mean they were contagious, but  
18 we'll just stay with that for a second.

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

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

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

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

14 CHAIRWOMAN KRUEGER: Doctor,  
15 Dr. Zucker --

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

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

21 COMMISSIONER ZUCKER: Okay, sorry.

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

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

5 COMMISSIONER ZUCKER: Okay.

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

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

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

14 ASSEMBLYMAN GOTTFRIED: Yes.

15 Good morning, Commissioner.

16 COMMISSIONER ZUCKER: Good morning.

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

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

1 many, many, many years.

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

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

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

1 making sure that patient care over profit --

2 (Overtalk.)

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

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

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

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

24 But let's move on. I was interested

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

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

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

1 nursing homes.

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

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

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

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

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

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

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

17 Hello, Assemblyman Gottfried. Thank  
18 you for that question.

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

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

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

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

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

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

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

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

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

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

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

24 MEDICAID DIRECTOR FRESCATORE: Well, I

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

6 ASSEMBLYMAN GOTTFRIED: Okay.

7 Another question, the 1 percent  
8 across-the-board Medicaid cut. You know,  
9 it's kind of like the -- I forget the French  
10 author who said "The law in its infinite  
11 majesty prohibits the rich and poor alike  
12 from sleeping under the bridge." If you cut  
13 1 percent of Mount Sinai's Medicaid allotment  
14 and 1 percent of, say, Elmhurst's Medicaid  
15 allotment, that might sound fair to somebody  
16 who doesn't know anything about our  
17 hospitals, but it obviously is not.

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

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

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

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

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

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

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

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

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

8 CHAIRWOMAN WEINSTEIN: Thank --

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

11 CHAIRWOMAN WEINSTEIN: Thank you.

12 ASSEMBLYMAN GOTTFRIED: -- publics.

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

21 CHAIRWOMAN WEINSTEIN: Thank you.

22 We'll move on to the Senate.

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

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

5 MEDICAID DIRECTOR FRESCATORE:

6 Certainly.

7 CHAIRWOMAN WEINSTEIN: Now to the  
8 Senate.

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

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

16 Are you there, Senator Gallivan?

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

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

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

24 CHAIRWOMAN KRUEGER: And let's start

1 his five again. Good.

2 SENATOR GALLIVAN: You're able to hear  
3 me?

4 CHAIRWOMAN KRUEGER: Yes.

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

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

24 (Audio dropped.)

1 CHAIRWOMAN KRUEGER: We lost you.

2 COMMISSIONER ZUCKER: We lost you,  
3 yeah.

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

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

9 Assembly.

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

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

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

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

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

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

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

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

14                        There's a little bit of an echo --

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

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

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

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

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

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

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

1 for your service in that regard.

2 If you don't mind -- go ahead.

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

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

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

1 contract it out to an adjoining county.

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

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

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

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

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

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

1 health issues, because they tie together.

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

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

24 However, I do agree with you about the

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

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

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

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

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

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

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

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

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

4 ASSEMBLYMAN CAHILL: Thanks, Doctor.

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

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

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

24 ASSEMBLYMAN CAHILL: I do need --

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

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

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

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

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

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

5 Thank you very much.

6 COMMISSIONER ZUCKER: Thank you.

7 CHAIRWOMAN WEINSTEIN: Thank you.

8 Back to the Senate now.

9 CHAIRWOMAN KRUEGER: Thank you.

10 Do we have Senator Gallivan back?

11 Let's see.

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

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

16 (Overtalk.)

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

21 CHAIRWOMAN KRUEGER: Yes, there is.

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

1 Commissioner and Director. Thank you for  
2 being here.

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

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

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

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

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

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

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

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

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

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

17                 SENATOR GALLIVAN: So the financial  
18                 penalties --

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

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

1 financially challenged.

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

6 COMMISSIONER ZUCKER: Right.

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

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

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

24 So that's what we need to move

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

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

15                    COMMISSIONER ZUCKER: Yeah, sure.

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

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

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

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

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

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

1           detrimental to them.

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

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

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

13                      ASSEMBLYMAN RA: Thank you, Chair.  
14           Commissioner, thank you for being  
15           here.

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

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

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

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

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

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

24                  ASSEMBLYMAN RA: But it was, I mean,

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

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

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

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

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

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

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

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

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

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

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

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

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

17          ASSEMBLYMAN RA: Thank you.

18          CHAIRWOMAN KRUEGER: Thank you.

19          I believe we have Senator May next.

20          SENATOR MAY: Great. Thank you so  
21          much.

22          And hi, Commissioner.

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

1           only got three minutes.

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

4                   SENATOR RIVERA: Oh, apologies.

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

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

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

24                   And so a lot of this comes down to how

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

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

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

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

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

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

17 COMMISSIONER ZUCKER: So let me --  
18 yes.

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

21 COMMISSIONER ZUCKER: Donna.

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

1           The worker recruitment and retention  
2           funding is in fact eliminated in the  
3           Executive Budget or reduced in the Executive  
4           Budget. I think it's important to keep in  
5           mind that those funding -- those programs go  
6           back, you know, several years ago now. I  
7           think it's important to keep in mind that in  
8           the interim the investment from Medicaid in  
9           minimum wage has been -- it's projected in  
10          '22 to be \$3.9 billion.

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

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

22           CHAIRWOMAN KRUEGER: Thank you.  
23          Assembly.

24           CHAIRWOMAN WEINSTEIN: We go to

1 Assemblyman Schmitt for three minutes.

2 ASSEMBLYMAN SCHMITT: Thank you.

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

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

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

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

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

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

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

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

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

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

1                   COMMISSIONER ZUCKER: I absolutely  
2                   agree. I absolutely agree.

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

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

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

22                   COMMISSIONER ZUCKER: Sure. Sure. So  
23                   let me go through sort of the big picture and  
24                   then I'll get a little more granular on this.

1                   So the big picture here is that it all  
2 comes down to the supply. Right? So the  
3 federal government tells us how much we get,  
4 and then we get it out there. And we've  
5 allocated now 4.5 million. We probably, by  
6 the end of today or so, will be at 4 million  
7 that have been administered, 89 percent of  
8 first doses have been administered so far.  
9 So that's the overarching picture.

10                   Then we have our teams. We have a lot  
11 of different places where they can get  
12 vaccines. We have our state-run sites that  
13 are out there.

14                   ASSEMBLYMAN SCHMITT: Can we get one  
15 in Orange County or closer?

16                   COMMISSIONER ZUCKER: I will check and  
17 see where there are, and we'll see -- we keep  
18 increasing those sites in numbers.

19                   But you've got to remember, if there's  
20 no supply, then what do you do? Now, I  
21 believe that what's going to happen with the  
22 J&J -- well, today's Thursday. Tomorrow, on  
23 Friday, is the EUA, the meeting within the  
24 FDA about the Johnson & Johnson vaccine.

1           Once that gets approved, now you have another  
2           influx into the pipeline of vaccine, and that  
3           will move this forward and then there's more  
4           supply and there's more delivery to places,  
5           and I will address the issues of your  
6           constituency as well.

7                         ASSEMBLYMAN SCHMITT: Thank you,  
8           Commissioner.

9                         CHAIRWOMAN WEINSTEIN: We go to the  
10          Senate.

11                        CHAIRWOMAN KRUEGER: Thank you very  
12          much. Our next Senator is Brad Hoylman.

13                        SENATOR HOYLMAN: Thank you,  
14          Madam Chair. Thank you, Commissioner.

15                        I wanted to ask you about the B.1.526  
16          variant that, as reported this morning, is  
17          circulating widely throughout the city,  
18          including my district in Lower Manhattan --  
19          and specifically what steps we're taking.  
20          Are you testing for it? This was a report  
21          that came from Caltech.

22                        And then finally I wanted to make a  
23          quick pitch for hotel workers -- who come in  
24          contact with travelers, of course, but unlike

1 flight attendants and airline workers and  
2 other frontline staff such as grocery store  
3 workers, are not eligible for the vaccine.  
4 Are you looking at reexamining that?

5 And then finally I would ask,  
6 Commissioner, in Manhattan I'm working with  
7 your office on trying to get a Manhattan-only  
8 site. We desperately need one. Other  
9 boroughs have them. Javits is a wonderful  
10 facility. I know it's partly about supply,  
11 but it's also about getting a site online  
12 that is dedicated to Manhattan residents so  
13 when Johnson & Johnson and other vaccines are  
14 available, we can be up and running quickly.

15 Thank you. If you can answer the  
16 question.

17 COMMISSIONER ZUCKER: Sure, three  
18 parts. I'm going to go to number two first,  
19 because we are looking at the hotel workers,  
20 and I can get you more information on that  
21 offline to find out where we are on that.

22 Regarding part three, the  
23 Manhattan-only site, I assume you're  
24 referring back to the fact that we have a

1 Bronx site and what else we can do. And  
2 Javits does have the ability to get more  
3 people through if we had more supply.

4 I was down in Javits several times  
5 now, and it is amazing how fast and how much  
6 you can move the system and how many people  
7 you can move through that system. So if we  
8 had more supply, we could double, triple,  
9 quadruple the number of people, if not more,  
10 who can go through the system there.

11 SENATOR HOYLMAN: I think you know  
12 that Manhattan residents are competing with  
13 non-New York City residents for vaccine slots  
14 there, and that's a problem for a lot of us  
15 who are trying to manage seniors and others  
16 who are having technology issues trying to  
17 get an appointment.

18 COMMISSIONER ZUCKER: Right. So let  
19 me look at that.

20 SENATOR HOYLMAN: Thank you.

21 COMMISSIONER ZUCKER: But I would  
22 hope, like I said, if we could get that site  
23 more supplies, we could get more through and  
24 the competition won't be as much of a

1 concern.

2 Back to your B.1.526 variant. So that  
3 one actually has a mutation in the S477N  
4 spot, and that is the area which identifies  
5 how easily the virus can get into a cell.  
6 That's the same challenge that we have seen  
7 with the South African variant and the  
8 Brazilian variant.

9 So I heard about this as I was getting  
10 ready for this hearing, and obviously we'll  
11 look into it. And that came through the  
12 GISAID data system, which is an international  
13 system looking at variants that are out  
14 there.

15 Now, we at Wadsworth are tracking and  
16 monitoring the genome of samples that come  
17 in, so we have now looked at, I mean, 6,000,  
18 7,000 samples over the course of the  
19 pandemic, and thousands, maybe 4,000 or so,  
20 since late December when I asked them to rev  
21 up the amount of testing.

22 So we are looking, we -- that's how  
23 we've identified the U.K. variant as a -- two  
24 South African variants, one that we

1 identified, one that was identified in  
2 Connecticut but was in New York, and also  
3 this other variant. So I will get back to  
4 you. But we -- the state is on top of this  
5 issue to make sure if we see anything that  
6 changes, we're always concerned about it.

7 And this goes back to the issue of  
8 just vaccines in general. The more people  
9 that are vaccinated -- this is why I push and  
10 I make my pitch for more supply from the  
11 federal government. The more you have people  
12 vaccinated, the more likely we will get to  
13 enough immunity and the likelihood of  
14 developing a mutation that will then take  
15 hold in the society will drop.

16 So there's two reasons for increased  
17 vaccinations, and I push hard and I push for  
18 everyone to get vaccinated. But the main  
19 thing is to get the supply, which goes back  
20 to the first issue I raised. Thanks.

21 CHAIRWOMAN KRUEGER: Thank you.

22 Back to the Assembly.

23 Assembly? Oops, let's see. I can see  
24 the next person on the Assembly side --

1 CHAIRWOMAN WEINSTEIN: Yes, I'm sorry.  
2 Assemblyman Ed Braunstein.

3 CHAIRWOMAN KRUEGER: Take yourself off  
4 mute, Ed.

5 ASSEMBLYMAN BRAUNSTEIN: Sorry about  
6 that. Thank you. Thank you, Commissioner.

7 First of all, back in August I had  
8 asked that when we finally received the  
9 updated nursing home data that you amend the  
10 July report. And I haven't had a chance to  
11 look at it, but I'm happy to hear that you  
12 did amend the report. And I'm interested in  
13 looking at it and seeing if the conclusions  
14 of the report hold true.

15 One of the things I wanted to ask you  
16 about was I recently had a conversation with  
17 a CEO of a pediatric nursing home, and they  
18 told me that of their staff only 50 percent  
19 of eligible staff have opted to get the  
20 vaccine. And that number was somewhat  
21 concerning to me. And I just want to know if  
22 those numbers are typical across the {Zoom  
23 glitch} -- if they're concerning to you and  
24 if it suggests a broader problem of trust in

1 the vaccine amongst the public that could  
2 cause us potential problems getting to herd  
3 immunity.

4 COMMISSIONER ZUCKER: So thank you for  
5 that question.

6 First, I actually do remember when you  
7 asked me that, and I actually made a note to  
8 actually reach out to you after we amended  
9 it, we got tied up. But I do remember.

10 So it has been amended and it shows  
11 you the same results that we found before.  
12 So as I say, I stand by the report from July.  
13 I stood by it then, I stand by it now.

14 Regarding the issue you raised, this  
15 is important. Because the healthcare  
16 community, we push very hard to get the  
17 healthcare community immunized. The trust --  
18 this all comes down to trust, it really does.  
19 It comes down to the trust that you have in  
20 the healthcare system. And if your doctors  
21 and your nurses and your health professionals  
22 are getting vaccinated, then the public will  
23 do that as well.

24 And it also comes down to the trust

1           within the community.  People trust those who  
2           they know.  So doctors and health  
3           professionals are a lot of -- you know,  
4           there's a lot of confidence in them.  So if  
5           they feel they're doing this, then it is  
6           fine.  So when you say that 50 percent are  
7           not getting the vaccine -- and then the  
8           public is going to perceive, well, there must  
9           be a reason.

10                    The vaccines are safe and effective.  
11           I've said that all along.  Tomorrow I will be  
12           on a call with my clinical advisory  
13           committee.  After the FDA looks at the  
14           Johnson & Johnson, we will go through all the  
15           data.  I promise you that I will make sure  
16           that it is safe and effective.  And if the  
17           FDA says it is, which -- and our team will  
18           also look at it, I have confidence in the FDA  
19           as well, and so --

20                    ASSEMBLYMAN BRAUNSTEIN:  Just  
21           quickly -- sorry.  I mean, but are we seeing  
22           skepticism among the public and is that  
23           potentially a problem --

24                    COMMISSIONER ZUCKER:  Initially --

1 (Overtalk.)

2 ASSEMBLYMAN BRAUNSTEIN: -- herd  
3 immunity when we talk about it. But if only  
4 50 percent of healthcare workers are getting  
5 the vaccine, it's going to be a long time  
6 before we get to that herd immunity.

7 COMMISSIONER ZUCKER: Right. But that  
8 may be a pocket, you know, because we have a  
9 lot more that are vaccinated in the hospitals  
10 and the staff in the hospitals. So that is  
11 something to look at.

12 But you are correct, if you have less  
13 people vaccinated, then you will not develop  
14 herd immunity. But it will take time for  
15 herd immunity to be achieved on a grand  
16 scale. But the more people are vaccinated,  
17 the better.

18 So it comes back to messaging, it  
19 comes back to making sure people get out  
20 there. And it also comes back to, obviously,  
21 supply. And that's why I brought up the J&J  
22 and tomorrow's EUA so that once we get that  
23 done, we'll get more vaccine in the pipeline.

24 And I think as time goes by, more

1 people realize, Well, my neighbor who was  
2 vaccinated is fine, you know, and my friends  
3 or my cousins, my uncle. And then it  
4 develops that sort of tipping point  
5 concept -- borrowing from, you know,  
6 Malcolm Gladwell -- which is the concept that  
7 others feel like, you know what, if they're  
8 vaccinated and they're fine, I'll get  
9 vaccinated too, it's safe and effective.

10 But I hear your point.

11 CHAIRWOMAN WEINSTEIN: Back to the  
12 Senate.

13 CHAIRWOMAN KRUEGER: Thank you very  
14 much.

15 And our next Senator is Senator  
16 Tedisco. Are you there, Jim?

17 SENATOR TEDISCO: Yup.

18 CHAIRWOMAN KRUEGER: Okay.

19 SENATOR TEDISCO: Let me get the video  
20 up. Am I up? We're all set?

21 CHAIRWOMAN KRUEGER: We can hear you,  
22 and now we can see you. So keep going.

23 SENATOR TEDISCO: Okay, we're all set?  
24 The clock starts now.

1 CHAIRWOMAN KRUEGER: Okay.

2 SENATOR TEDISCO: Commissioner, on  
3 March 25th of 2020 the Governor put forth an  
4 executive order expediting the placement of  
5 COVID-positive individuals into nursing  
6 homes. Many New Yorkers, and most of us as  
7 legislators, want to know its true impact.  
8 At some point in the ensuing weeks leading up  
9 to a new directive on May 10th, in which the  
10 administration took a 180-degree turn, saying  
11 all persons would be tested and, if positive,  
12 would not be allowed to enter a nursing home,  
13 a new process to count nursing home deaths  
14 was implemented to only define residents who  
15 got COVID in a nursing home and died as a  
16 nursing home death. And those who got COVID  
17 in a nursing home and got so sick they had to  
18 be hospitalized would now be defined as a  
19 hospital death.

20 Commissioner, we were the only state  
21 in the nation which counted nursing home  
22 deaths in that convoluted way. This is and  
23 was problematic, for obvious reasons.  
24 Fifteen thousand nursing home residents

1           didn't die because many of them got the virus  
2           in a nursing home and became so sick that  
3           they were later taken to a hospital and lost  
4           their lives -- they died because they got the  
5           virus in a nursing home. Let me repeat that.  
6           They died because they got the virus in a  
7           nursing home.

8                        When you withheld those numbers and  
9           took those who got the virus that went to a  
10          hospital and died and combined those with all  
11          those who died from COVID, this information  
12          made it impossible -- not getting it made it  
13          impossible to further come to conclusions  
14          about what caused one of the worst disasters  
15          in New York State history.

16                       Those death numbers took close to  
17          10 months to receive and were only made  
18          public a few weeks ago, on the same day as  
19          the Attorney General pulled back the veil of  
20          secrecy from this administration and released  
21          a report that said there was a 50 percent  
22          undercount of the total number of those who  
23          got the contagion in a nursing home and died  
24          and those who got COVID and died in a

1 hospital.

2 That's the number we were seeking,  
3 that total that got the contagion in a  
4 nursing home and went to a hospital -- not  
5 combined with all the other hospital deaths.

6 With these facts, along with  
7 Judge Kimberly O'Connor making a judgment on  
8 a lawsuit the Empire Center and myself  
9 brought forth to get the real numbers as  
10 related to lost lives, she deemed the  
11 administration violated the Open Government  
12 Law. Let me repeat that. She deemed --  
13 separate branch of government, a judge --  
14 that you, the Governor, the administration  
15 violated the Open Government Law.

16 And remember, in light of the fact  
17 that 15,000 of our most vulnerable population  
18 got this virus in a nursing home and died,  
19 and in light of that research by Bill Hammond  
20 from the Empire Center, we recently showed  
21 the Governor's March 25th executive order  
22 took upward of 100,000 or more nursing home  
23 residents' lives because COVID-contagious  
24 persons were placed from hospitals into

1 nursing homes.

2 For close to a year, Commissioner, you  
3 and the administration have denied the  
4 March 25th executive order had any impact as  
5 to what --

6 THE MODERATOR: Time has expired.

7 SENATOR TEDISCO: -- the Governor  
8 defined as a wildfire through dry grass. I  
9 ask you this. At long last, will you and the  
10 Cuomo administration admit to your  
11 culpability in these deaths and finally issue  
12 apologies --

13 CHAIRWOMAN WEINSTEIN: Excuse me, the  
14 time ex --

15 SENATOR TEDISCO: -- to the thousands  
16 of families impacted?

17 CHAIRWOMAN WEINSTEIN: Excuse me,  
18 Senator, your time has expired.

19 SENATOR TEDISCO: Isn't it time that  
20 you and the Governor finally --

21 THE MODERATOR: Senator --

22 CHAIRWOMAN KRUEGER: Jim, your time  
23 has expired.

24 SENATOR TEDISCO: -- and the families

1           that lost their lives?

2                   CHAIRWOMAN WEINSTEIN: Thank you --

3                   CHAIRWOMAN KRUEGER: Commissioner,  
4 we're not going to allow you to answer that  
5 today.

6                   SENATOR TEDISCO: I wouldn't want to  
7 answer it myself either, Senator, if I were  
8 him.

9                   CHAIRWOMAN KRUEGER: Well, I'm doing  
10 it based on time.

11                   So the commissioner is welcome to put  
12 it in writing to you or to all of us  
13 afterwards.

14                   COMMISSIONER ZUCKER: I will. I will  
15 respond, because there's a lot of fiction  
16 there and I need to provide the facts. So I  
17 will respond in writing.

18                   And there was no undercount. But we  
19 can provide that in writing.

20                   CHAIRWOMAN KRUEGER: That would be  
21 very -- it's probably more helpful to  
22 Senator Tedisco to have it in writing anyway,  
23 and all of us to see it.

24                   COMMISSIONER ZUCKER: Thank you.

1 CHAIRWOMAN KRUEGER: So thank you.

2 And I'm sorry, but you went over.

3 Assembly.

4 CHAIRWOMAN WEINSTEIN: We're going to  
5 go to Assemblywoman Rosenthal.

6 We're just making a slight adjustment  
7 in the list of Assembly orders.

8 ASSEMBLYWOMAN ROSENTHAL: Thank you  
9 very much.

10 Hello, Commissioner. I have a couple  
11 of questions.

12 I'm the former chair of the Committee  
13 on Alcoholism and Drug Abuse, and I've been  
14 asking the Department of Health to report the  
15 number of overdose deaths for months, since  
16 last summer. And I've asked you for those in  
17 prior hearings. I was not provided with the  
18 legally mandated report on the DOH website  
19 until an article appeared online. It  
20 shouldn't take an article to abide by the law  
21 mandating reporting.

22 So despite the fact that neighboring  
23 states like New Jersey and Connecticut have  
24 released almost all of their 2020 data,

1 New York has only released provisional up to  
2 June 2020 just the other day.

3 In addition, the data show a decrease  
4 in Quarter 2 of 2020, which would cover the  
5 period of April through June, the peak of the  
6 COVID surge in New York. We know from  
7 providers and activists that that number  
8 actually rose, and when they were crippled  
9 under the weight of increasing overdoses --  
10 yet the data does not reflect that.

11 How does New York explain the  
12 substantial decrease in overdose deaths at  
13 the height of COVID when providers have told  
14 us that that was the time of greatest need?  
15 And how do you make a budget for the next  
16 year when the facts and data about 2020 are  
17 wrong?

18 That's my first question.

19 COMMISSIONER ZUCKER: So the first  
20 part of that, there is data from October to  
21 January that was recently posted, so I  
22 believe you --

23 ASSEMBLYWOMAN ROSENTHAL: Yes, I  
24 mentioned that.

1                   COMMISSIONER ZUCKER: Yeah, right, and  
2                   so you've seen that.

3                   I understand there's been a little bit  
4                   of a delay --

5                   ASSEMBLYWOMAN ROSENTHAL: {Inaudible.}

6                   COMMISSIONER ZUCKER: -- and I will  
7                   get back to you about some of the other  
8                   numbers. What was that?

9                   ASSEMBLYWOMAN ROSENTHAL: A whole  
10                  year's delay. They were supposed to be up --

11                  COMMISSIONER ZUCKER: Oh, it's --

12                  ASSEMBLYWOMAN ROSENTHAL: Anyway --

13                  COMMISSIONER ZUCKER: I understand.

14                  ASSEMBLYWOMAN ROSENTHAL: -- go on.

15                  COMMISSIONER ZUCKER: I understand.

16                  We've been pretty busy on this, and I  
17                  understand.

18                  But it's not to -- not to decrease the  
19                  impact and the concerns of opioids, because I  
20                  believe they tie very closely to the issue of  
21                  the pandemic. And as I said earlier, working  
22                  with the other agencies has been really  
23                  important in order to address the --

24                  ASSEMBLYWOMAN ROSENTHAL: Okay, what

1 about the low number in the second quarter?

2 COMMISSIONER ZUCKER: So I will try to  
3 get you the answers to the low numbers, why  
4 those numbers are bad. It may be a lack of  
5 reporting or -- but I will find out for  
6 you --

7 ASSEMBLYWOMAN ROSENTHAL: Okay, it's  
8 important --

9 COMMISSIONER ZUCKER: -- and I'll get  
10 back to you.

11 ASSEMBLYWOMAN ROSENTHAL: Okay. My  
12 next question is OMIG has been auditing OTPs  
13 around the state and they uncovered some  
14 minor administrative and paperwork errors,  
15 and in one case they were fined \$7 million  
16 because of administrative errors -- no deceit  
17 or lying -- and they had to close. This is  
18 happening in other facilities across the  
19 state.

20 I did write a letter; in October I  
21 finally got an answer. However, this -- I  
22 believe OMIG and you and the department have  
23 a legal and moral duty to consider the impact  
24 that its audits have on accessibility of

1 services.

2 COMMISSIONER ZUCKER: Donna, do you --

3 ASSEMBLYWOMAN ROSENTHAL: You can --  
4 we can have a further discussion on that.

5 MEDICAID DIRECTOR FRESCATORE: Yes,  
6 I'm happy to do that, Assemblywoman. I'm not  
7 familiar with the details, but I'm happy to  
8 talk to OMIG directly.

9 And I think we, you know, do share  
10 your thinking around being certain -- you  
11 know, of course given the seriousness of what  
12 might have been found as deficient -- that  
13 access is important as well. So I'm happy to  
14 have those discussions with the Medicaid  
15 inspector general.

16 ASSEMBLYWOMAN ROSENTHAL: Thank you.

17 CHAIRWOMAN WEINSTEIN: We go to the  
18 Senate now.

19 CHAIRWOMAN KRUEGER: Thank you.

20 Senator Kevin Thomas.

21 Are you with us, Kevin?

22 THE MODERATOR: We're having trouble  
23 hearing you, Senator. You're unmuted, but we  
24 don't have any sound from you.

1                   SENATOR THOMAS: Sorry. The other  
2 unmute button. Can you hear me now?

3                   CHAIRWOMAN KRUEGER: Yes.

4                   SENATOR THOMAS: All right, awesome.

5                   Thank you, Commissioner, for being  
6 here, and thank you to Chairwoman Krueger for  
7 doing this as well.

8                   Commissioner, the decisions regarding  
9 the handling of COVID-19 in nursing homes and  
10 long-term-care facilities have negatively  
11 impacted the residents and their families,  
12 and by that losing loved ones. We could  
13 debate and point fingers about who is at  
14 fault all day, but I want to see things  
15 improve for the betterment of all  
16 New Yorkers. This virus is not going away  
17 anytime soon. And even today there's  
18 reporting on another mutant strain that's  
19 going around.

20                   We need to focus our efforts on how we  
21 can do better for residents of this state,  
22 all right? And the residents of this state  
23 are scared for their loved ones residing in  
24 nursing homes.

1                   Do you believe that expanding funding  
2                   and access to the Consumer-Directed Personal  
3                   Assistance Program is a viable alternative  
4                   for elderly New Yorkers? And what additional  
5                   resources can we allocate to the program to  
6                   allow people access to quality care in the  
7                   safety of their own homes?

8                   COMMISSIONER ZUCKER: So I -- I agree  
9                   that we need to address the care of the  
10                  seniors not just in the nursing homes, but  
11                  seniors in general.

12                  And I am aware of the issues of the  
13                  Personal Assistance Program. I know that  
14                  Donna also can speak a little bit about this.

15                  But I will tell you that regarding the  
16                  looking forward -- this is part of not only  
17                  what the Governor has said in the budget  
18                  about the three areas that I mentioned  
19                  earlier -- to save time, I won't reiterate  
20                  them -- but also just overall the  
21                  department's efforts to look at how to  
22                  provide care to those who are elderly. And  
23                  it's why New York is the first Age-Friendly  
24                  State. We've worked very hard on this for a



1           that expanding funding for this program would  
2           be an alternative?

3                   MEDICAID DIRECTOR FRESCATORE:  So  
4           we've got -- you know, we see right now,  
5           through the Medicaid program, we anticipate  
6           for this upcoming fiscal year that the  
7           Personal Care Program alone will grow to over  
8           a billion dollars, about \$1.2 billion.

9                   We make it known those programs exist  
10          and those options exist, and we'll continue  
11          to do that.  I mean, certainly.  And you  
12          know, so again, we're committed to working  
13          with you and working with providers to ensure  
14          that people, when it's appropriate, are able  
15          to receive either personal care services or  
16          personal assistance services at home.

17                   SENATOR THOMAS:  Thank you.

18                   CHAIRWOMAN KRUEGER:  Thank you.  
19           Assembly?

20                   CHAIRWOMAN WEINSTEIN:  We go to  
21          Assemblyman Ashby now.

22                   ASSEMBLYMAN ASHBY:  Thank you,  
23          Madam Chair.

24                   Commissioner Zucker, I remember

1 speaking with you back in August about the  
2 March 25th order and residents being  
3 discharged from nursing homes and being able  
4 to track them. And I appreciate the  
5 follow-up, much later than we would have  
6 liked, to get those numbers.

7 But I'm still -- I'm still having a  
8 hard time understanding the rationale and the  
9 explanation, I guess, of your understanding  
10 with correlation of the providers coming into  
11 the nursing homes and that being the chief  
12 cause of the spread of COVID, versus the  
13 residents that were forced to go back to the  
14 nursing home.

15 If our providers are taking the  
16 necessary steps to ensure good hygiene and  
17 all of the requirements in there, and our  
18 patients being in there as well, I mean,  
19 can't you see this as a potential for disease  
20 spread? I don't understand the -- you being  
21 so adamant that this is not a contributing  
22 factor. Can you elaborate on that?

23 COMMISSIONER ZUCKER: Sure.

24 So let me take you back in time a

1           little bit. So I think -- this keeps coming  
2           up, and I want it to be clear, and I want  
3           everyone to understand this. So number one,  
4           let's just look at where we were at that  
5           point in time.

6                         We had predictions and models on  
7           March 23rd, because I remember when it came  
8           through, of 140,000 people going to the  
9           hospital, 37,000 into the ICU. We had  
10          50,000 hospital beds in the state,  
11          30,000 hospital beds downstate, and only,  
12          let's say, 5,000 in the ICU. As an ICU  
13          doctor, I can tell you this was a horrific  
14          feeling. I'm telling you I sat there when I  
15          heard these numbers, when the model was shown  
16          to me, and I actually said to myself, how are  
17          we going to do this -- with other words in my  
18          head, but how are we going to do this? And  
19          the thought of the National Guard standing  
20          there with the bags, squeezing them, and then  
21          all the issues of ventilators. So the --

22                         ASSEMBLYMAN ASHBY: Dr. Zucker, I  
23          understand -- I understand there was a lot of  
24          pressure and I understand that there were a

1 lot of -- there were a lot of numbers there,  
2 but that doesn't change -- that doesn't  
3 change the -- necessarily the fact of the  
4 numbers coming in of the people who were --

5 COMMISSIONER ZUCKER: But the --

6 ASSEMBLYMAN ASHBY: -- those positive  
7 with the disease.

8 COMMISSIONER ZUCKER: I'm trying to  
9 say this, but I'm trying to explain this to  
10 you --

11 ASSEMBLYMAN ASHBY: -- and the  
12 disease -- and the disease prevalence. So  
13 I --

14 COMMISSIONER ZUCKER: Right, but this  
15 is what's happened, is that I'm --

16 ASSEMBLYMAN ASHBY: So if you could  
17 try and get to the point, because I have less  
18 than 30 seconds left, please, Dr. Zucker.

19 COMMISSIONER ZUCKER: I understand. I  
20 understand. I'm happy to explain it.

21 But this is what's happened, is that  
22 people are not listening to what the science  
23 is. The fact of the matter is that the --  
24 first of all, it was in the facilities,

1           98 percent of the people had it in the  
2           facilities. It came in from the community  
3           and was already there, it was there long  
4           before we even knew it was spreading among --

5                     ASSEMBLYMAN ASHBY: And then they were  
6           forced to continue to take these patients,  
7           thus increasing the numbers, right?

8                     COMMISSIONER ZUCKER: -- let me  
9           explain. But you were not following on the  
10          science on this. I'm sorry to be so direct  
11          about this, but the science is what we need  
12          to look at.

13                    And I was trying to explain it before  
14          about how long somebody was contagious and  
15          then what period of time, and then the median  
16          amount of time that they were in the  
17          hospital. And that by the time they came  
18          back, the science is the virus is no  
19          longer --

20                    ASSEMBLYMAN ASHBY: The science is is  
21          that there were more people admitted with the  
22          disease, and that contributed to the --

23                    COMMISSIONER ZUCKER: So then I'm  
24          going to ask you --

1 ASSEMBLYMAN ASHBY: -- spread. That's  
2 the science.

3 COMMISSIONER ZUCKER: Right, so let me  
4 throw a question out to you.

5 THE MODERATOR: Time has expired.

6 COMMISSIONER ZUCKER: No, I would like  
7 to ask this question, just throw it out.

8 How do you explain to me that without  
9 anyone coming back to the nursing homes that  
10 are positive from COVID -- even though we  
11 could talk about the science aside -- no one  
12 coming in as visitors, we still have cases in  
13 the nursing homes? Not just here in  
14 New York, where we're doing an aggressive job  
15 with testing, but across the nation and  
16 around the world. It comes in through the  
17 community.

18 I mean, I am happy to sit down at some  
19 point and go through this in depth and show  
20 you the charts and show you the --

21 ASSEMBLYMAN ASHBY: I'd be happy to  
22 acknowledge that that's a factor, but you --

23 THE MODERATOR: Time has expired.

24 ASSEMBLYMAN ASHBY: -- same token

1 acknowledge that the residents going into the  
2 nursing homes are also causing the spread.

3 COMMISSIONER ZUCKER: I disagree --  
4 (Overtalk, multiple voices.)

5 ASSEMBLYMAN ASHBY: That's the crux of  
6 my question and the issue at hand.

7 CHAIRWOMAN WEINSTEIN: We're going to  
8 go back to the Senate now.

9 CHAIRWOMAN KRUEGER: All right, thank  
10 you.

11 Let's see, we are on Senator Griffo.

12 SENATOR GRIFFO: Can you hear me, Liz?

13 CHAIRWOMAN KRUEGER: Yes, we can hear  
14 you.

15 SENATOR GRIFFO: Okay.

16 CHAIRWOMAN KRUEGER: And now we can  
17 see you.

18 SENATOR GRIFFO: Thank you.

19 Commissioner, as you can see, in  
20 budget hearings the time constraints, while  
21 understandable, are really not conducive or  
22 beneficial to the necessary interaction to  
23 properly perform yours and our  
24 responsibilities. When you appeared for

1 confirmation, you agreed to make yourself  
2 available despite time demands.

3 So are you ready here today to commit  
4 to us and to the members and publicly that  
5 you will appear before committees of the  
6 Legislature when you're invited to afford a  
7 more thorough opportunity to examine and  
8 discuss and answer questions on these health  
9 policies and procedures that affect  
10 New Yorkers?

11 COMMISSIONER ZUCKER: I have always  
12 done so. I -- when I've been asked --

13 SENATOR GRIFFO: Commissioner --  
14 Commissioner, you have not thoroughly done  
15 this. I just want you to say today you will  
16 and you're ready to do it. Because when  
17 we've had meetings with you, it's been  
18 limited -- 30 minutes, two questions.

19 Will you commit to just being  
20 available to do that? You can see this  
21 frustration. Will you be willing and ready  
22 to do that?

23 COMMISSIONER ZUCKER: I'm always  
24 willing to speak with the Legislature. And

1           if there was a commitment on time, there was  
2           discussion -- I remember what you're  
3           referring to about the two hours, whatever  
4           period of time that we discussed back in the  
5           summer -- I assume that's what you're  
6           referring to. And that was the time --

7                         SENATOR GRIFFO: So this is just a yes  
8           or no. Are you willing to do it,  
9           Commissioner?

10                        COMMISSIONER ZUCKER: I said I am  
11           willing to work with the Legislature to  
12           answer the questions.

13                        SENATOR GRIFFO: Because if you're  
14           evasive on this, then you're not prepared to  
15           do it. Are you going -- will you accept the  
16           invitation to appear?

17                        COMMISSIONER ZUCKER: I will appear  
18           and speak with the Legislature if asked about  
19           issues.

20                        SENATOR GRIFFO: Thank you. Thank  
21           you. I appreciate it.

22                        Commissioner, the question is on  
23           providing funding to long-term-care  
24           facilities throughout the pandemic. Has that

1           come predominantly from the federal  
2           government or have we allocated resources  
3           from the state also?

4                        COMMISSIONER ZUCKER:  Could you -- I'm  
5           trying to understand what your question is.

6                        There's money that comes from federal,  
7           and there's money that comes from the state  
8           for --

9                        SENATOR GRIFFO:  Pandemic-related  
10          money like CARES, things of that nature, has  
11          all of that been applied?  How has it been  
12          applied, and where applied?

13                       COMMISSIONER ZUCKER:  I will -- I need  
14          to get back to you about the specifics of  
15          what proportion of the CARES Act has gone to  
16          where.  But I will get that to you.

17                       SENATOR GRIFFO:  Okay.  And then  
18          specific to the variant, the new variant  
19          that's been identified, I know you're  
20          starting to study this.  Do you know how it  
21          will affect the efficacy or the existing  
22          therapeutic treatments?

23                       COMMISSIONER ZUCKER:  So this is --  
24          that's a great question.

1                   And the fact is that we do know that  
2                   this new variant and how it impacts patients  
3                   is that the virus needs to get into a cell.  
4                   The way all those little spike proteins  
5                   around there -- things hook onto the cells,  
6                   your body's cells, and it gets into it. And  
7                   some of these variants are able to make it  
8                   more sticky so they can get into the cell.

9                   Once that happens, you end up with a  
10                  risk of a more potent infection in the  
11                  individual. And so we don't know yet about  
12                  this particular new variant, the B.1.526 that  
13                  we were talking about before, because we're  
14                  learning about it.

15                 The virus always mutates, it continues  
16                 to mutate. We've seen many mutations. It's  
17                 just that every once in a while, the mutation  
18                 falls within the area that actually affects  
19                 how it can get into the cell, which is a  
20                 critical issue. The vaccine is designed  
21                 against the spike protein, because that's  
22                 what we're concerned about -- all the  
23                 vaccines are, whether they're the messenger  
24                 RNA vaccines, the adenovirus vaccines, all of

1           them are designed that way.

2                       So we're going to have more  
3           information about it. So once I can have  
4           more information, I'm happy to share it with  
5           you.

6                       SENATOR GRIFFO: Thank you. We look  
7           forward to you appearing with us very soon so  
8           we can have a more thorough conversation.

9                       CHAIRWOMAN KRUEGER: Okay, next we  
10          have the Assembly.

11                      CHAIRWOMAN WEINSTEIN: We go to  
12          Assemblyman Hevesi.

13                      ASSEMBLYMAN HEVESI: I think I'm  
14          there. Commissioner, can you hear me?

15                      COMMISSIONER ZUCKER: I hear you.

16                      ASSEMBLYMAN HEVESI: Good. Good  
17          afternoon, sir.

18                      First I want to thank you and the  
19          Health Department for all the positive things  
20          that you've done during the pandemic under a  
21          very difficult time.

22                      My question will be solely about adult  
23          homes, and I would respectfully ask that when  
24          you answer this question, if possible, please

1 don't talk to me about budget-related issues  
2 like revenue. I respectfully believe that  
3 the Division of Budget has been responsible  
4 for a lot of bad decisions over the last  
5 couple of years that have hurt people and  
6 actually cost taxpayers more money.

7 So here's my question from a health  
8 perspective. Two programs, small amounts of  
9 money, relatively, in the budget. The first  
10 is \$230,000 to the Justice Center, and the  
11 second is the EQUAL program -- and I want to  
12 get this precise -- the Enhancing Quality of  
13 Adult Living Program, for \$6.5 million. And  
14 this is for people with psychiatric  
15 disabilities in adult homes.

16 My understanding is that the adult  
17 home industry for the last 40 years has been  
18 systemically -- maybe not systematically, I  
19 want to be fair -- mistreating residents,  
20 unscrupulous financial practices, deplorable  
21 conditions. And they're frequently ignoring  
22 these people with psychiatric disabilities.

23 So my question is the Executive Budget  
24 proposes to cut the 6.5 million for the

1           EQUAL Program, plus the small amount of  
2           money, the 230,000 to the Justice Center.  
3           And those cuts are for the advocates for  
4           these people with psychiatric disabilities.  
5           What is going to happen to those patients now  
6           that we're stripping them of the people who  
7           organized them, acted as counsel, advised  
8           them of their rights? What is going to be  
9           the impact for those patients if the  
10          Executive Budget comes through?

11                    COMMISSIONER ZUCKER: Well, we want to  
12           be sure that obviously they have the right  
13           counsel and they are represented both from  
14           the standpoint of their legal issues but also  
15           from their health issues as well.

16                    So I will look -- I am sure that as we  
17           move forward we'll make sure that if the  
18           programs that were initially in place to  
19           provide that service are no longer in  
20           service, that there is a way that the  
21           services can be provided through another  
22           program, whether it's within the state or  
23           other support from other sources of  
24           revenue -- sources of support.

1                   Now, the -- so that's the 230,000.  
2                   The advanced -- the EQUAL Program, that  
3                   program also I will look into and get you  
4                   some answers about. But nobody wants to have  
5                   a situation where any New Yorker is not able  
6                   to be -- have the care that they need and  
7                   representation that they need. So I will get  
8                   you an answer about that.

9                   ASSEMBLYMAN HEVESI: I appreciate  
10                  that. Let me just end with saying that I  
11                  think it's important and I agree with your  
12                  assessment that we cannot leave this most  
13                  vulnerable population, the people with  
14                  psychiatric disabilities, to fend for  
15                  themselves, particularly at this time when a  
16                  lot of them have been traumatized or even  
17                  died during the pandemic.

18                  So this is a priority for us; I hope  
19                  to make it a priority for you. Thank you.

20                  CHAIRWOMAN WEINSTEIN: Back to the  
21                  Senate.

22                  THE MODERATOR: You're muted, Senator.

23                  CHAIRWOMAN KRUEGER: Let's try me  
24                  without a mute.

1                   Senator Biaggi.

2                   SENATOR BIAGGI: Thank you very much,  
3                   Madam Chair.

4                   Thank you for coming here to testify  
5                   here today, Commissioner Zucker. I have two  
6                   questions, and I just ask that you --  
7                   actually, three questions. I just ask you  
8                   that you answer them as quickly as possible.

9                   So I want to just return to a  
10                  provision of last year's budget that we  
11                  discussed during the summer, which is with  
12                  regard to Article 30-d of the Public Health  
13                  Law, which is also known as the Emergency  
14                  Disaster Treatment Prevention Act. Are you  
15                  familiar with this section of the law?

16                  COMMISSIONER ZUCKER: I'd have to  
17                  check about it. Tell me a little bit about  
18                  it and I'll tell you exactly -- what's your  
19                  question regarding it?

20                  SENATOR BIAGGI: It's with regard to  
21                  the blanket immunity that was given  
22                  to healthcare --

23                  COMMISSIONER ZUCKER: Yes, I assume  
24                  that's what you're referring to, yeah.



1 worry about the people that we're caring for.

2 And I just find that sort of  
3 completely false, so -- and I recognize  
4 that --

5 THE MODERATOR: One second,  
6 Commissioner.

7 COMMISSIONER ZUCKER: Sorry.

8 SENATOR BIAGGI: You're not answering  
9 the question that I asked you. The question  
10 I asked you was with regard to complete  
11 immunity for stakeholders, shareholders -- it  
12 has nothing to do with healthcare  
13 professionals.

14 COMMISSIONER ZUCKER: I'm saying to  
15 you that the issue is that there are a lot of  
16 people involved with taking care of people  
17 and addressing the care during this pandemic.

18 And your -- your concern is that there  
19 is -- that the immunity that was put in place  
20 caused people to provide -- make a profit  
21 over providing care. And I'm telling you  
22 that people who care for individuals, whether  
23 it's the frontline health worker or others,  
24 are not going to do that, because I believe

1 they're in the best interests of trying to  
2 take care of those who are sick.

3 And I think that -- I recognize the  
4 challenge, I recognize there have been  
5 changes. I ask you to remember the situation  
6 that we were in at that point in time.

7 SENATOR BIAGGI: -- the public that we  
8 all represent. Do you support the corporate  
9 immunity provision in the budget from last  
10 year, yes or no?

11 COMMISSIONER ZUCKER: I support what  
12 when we did with the immunity at that point  
13 in time, yes.

14 SENATOR BIAGGI: You support it right  
15 now at this time, on February 25, 2021?

16 COMMISSIONER ZUCKER: You're breaking  
17 up.

18 SENATOR BIAGGI: Do you support the  
19 provision today?

20 COMMISSIONER ZUCKER: Of the immunity,  
21 we are looking at it at this point in time.  
22 I go back to the issue of where we were then  
23 and our numbers where they are today. The  
24 numbers are now coming back down; necessary

1 changes can be made. At the point where we  
2 were sitting with 140,000 potential  
3 hospitalizations, yes, we needed to do things  
4 to make sure that happened.

5 CHAIRWOMAN KRUEGER: Thank you.  
6 Assembly.

7 CHAIRWOMAN WEINSTEIN: We go to  
8 Assemblyman Zebrowski, three minutes.

9 ASSEMBLYMAN ZEBROWSKI: -- Chair  
10 Weinstein. And good afternoon, Commissioner.

11 Many of my colleagues are asking  
12 questions about nursing homes, which are  
13 incredibly important. We have limited time,  
14 so I'm going to attempt to ask a few  
15 questions about the vaccine rollout and  
16 distribution.

17 As you said earlier -- I think one  
18 other person talked about vaccines, or maybe  
19 two -- but there's no doubt that the biggest  
20 issue is the lack of supply. But that being  
21 said, I have found, and I believe I speak for  
22 many of my constituents, that the rollout has  
23 sort of been disjointed. And my question is  
24 really, can you explain to me why the state

1 chose this type of dispersed system?

2 Now, you mentioned it earlier -- like  
3 I understand we have state sites. I  
4 understand we have the county health  
5 departments at times getting it. And I  
6 understand we have some pop-up clinics and  
7 pharmacies. But the fact remains that all  
8 these providers, in my experience and my  
9 constituents' in Rockland County, the  
10 appointments pop up and then they're gone. I  
11 mean, it's immediate, whether it's the county  
12 health department or the pharmacies or things  
13 like that. The state sites, many times you  
14 sign on, there's no appointments.

15 So in general, folks sort of have no  
16 idea when vaccines are coming, how many are  
17 coming, where they're coming in, and there's  
18 generalized frustration. Like to get a  
19 vaccine, you literally have to get lucky in  
20 some ways. You have to have the ability to  
21 sort of call many different providers,  
22 navigate through many different sites. You  
23 have to anticipate when websites are going to  
24 go live and the appointments are going to

1           come up.

2                       And so, you know, knowing that we knew  
3           there was going to be limited supply, I don't  
4           understand why we didn't set up a system  
5           where there was like preregistration,  
6           especially for our seniors that are 75 and  
7           above, or preregistration for essential  
8           workers so that appointment slots could be  
9           allocated. What am I missing? Like what --  
10          why did, logistically, the state choose this  
11          sort of dispersed system? I could understand  
12          if we had a huge allotment -- you know, let  
13          everybody go down to their pharmacy and go to  
14          different parts in their community.

15                      But when we knew we were going to have  
16          this limited supply, why did we not try for a  
17          more centralized process that could be  
18          understandable and organized for folks?

19                      COMMISSIONER ZUCKER: So let me start  
20          by saying two things. One is that this is --  
21          as the Governor has said, this is one of the  
22          most complex things that the nation has ever  
23          done.

24                      {Zoom interruption.}

1                   COMMISSIONER ZUCKER:  What was that?

2                   I hear some background noise.

3                   So that's number one.  And number two,  
4                   New York State is doing a phenomenal job.  
5                   Based on my conversations with people from  
6                   around the nation, they are very impressed.

7                   Regarding the issue that you raise, we  
8                   have 13, you know, state-run sites and we've  
9                   had over a million appointments that are  
10                  registered in the state.  And we've given  
11                  close to 4 million doses already in New York  
12                  State.  But the issue is that you need to  
13                  work with communities, and you also need to  
14                  make sure that -- each community is a little  
15                  bit different.

16                  And when we moved this forward, we  
17                  were also looking at different vaccines.  
18                  Initially the issue was, well, we need to get  
19                  this -- and everyone had a reason why they  
20                  needed to get a vaccine.  We initially said  
21                  we want to get this into the nursing homes,  
22                  we wanted to get it to the most vulnerable  
23                  individuals.  We worked with the federal  
24                  government on that, with a plan that they had

1 to get it into the nursing homes. And then  
2 as we opened up further, we were able to get  
3 it into -- provide more individuals.

4 We've made an incredible effort to  
5 make sure we get this vaccine to all those  
6 who need it as quickly as possible. The  
7 challenge here is truly the supply. It  
8 really is. I guarantee you, once J&J comes  
9 out, and if it gets approved, all of a sudden  
10 the numbers tick up. When Pfizer has more  
11 vaccine in the supply and Moderna has more in  
12 the supply line for New York, you're going to  
13 see a lot more.

14 The Governor's view on this is like  
15 get these sites out there, get them open, and  
16 then when there's more vaccine, you can jump  
17 and people can get in there and receive their  
18 vaccine, versus having it, Okay, here's your  
19 supply and you have no plan in place of where  
20 you're going to put it. That's why we were  
21 trying to make sure it worked.

22 But then the issue here is you have to  
23 allocate. You give some to a hospital, you  
24 give some to the pharmacies, you give some to

1           the sites that we had. The other issue on  
2           this vaccine, and it's worth bringing this  
3           up, is initially the Pfizer vaccine, which  
4           was the first one that was approved, required  
5           a cold storage issue, which limited where it  
6           could go. Then when Moderna came along with  
7           regular refrigeration, that made it a lot  
8           simpler. And as we move forward, they'll be  
9           a little bit easier.

10                   The issue early on, everyone said,  
11           Well, what happened in December, why did it  
12           take so long to move forward? You have to  
13           remember it was the end of the calendar year,  
14           holidays were then, the hospitals -- some  
15           people said, Well, the hospitals should have  
16           given more out. You know, at the end of a  
17           calendar year, I'm telling you, as one who's  
18           practiced in hospitals for many years,  
19           everything sort of -- it's not that it slows  
20           down, it's just that people get short-staffed  
21           a little bit.

22                   And the healthcare workers needed to  
23           be the first ones, so we wanted to get it to  
24           them, because they're the ones who are

1 protecting the people who get sick. So we  
2 wanted to be sure that they got it. So  
3 that's why we drove it to the hospitals right  
4 at first. And the nursing homes. That's how  
5 the priority came there. And then as we  
6 opened it up and we opened it up to other  
7 individuals, and more supply came in, we've  
8 been able to provide it to more people. And  
9 now those with preexisting conditions will  
10 have it, and then now we're thinking about  
11 what do we do when J&J comes out.

12 And we're thinking about that. That's  
13 a one-shot vaccine. How do we address that?  
14 You know, are there certain populations  
15 within society that you may have a harder  
16 time getting a second shot to? So maybe we  
17 drive it to those individuals. Maybe we  
18 address those who are homebound. Maybe we  
19 address those who are homeless. You know,  
20 and so we're thinking this out.

21 And there's an incredible team working  
22 on this, and really dedicated. But New York  
23 is doing a great job on this. I just -- I  
24 just really want to, you know, say that as we

1 look at the rest of the country. Thank you.

2 CHAIRWOMAN WEINSTEIN: Thank you.

3 We're going to go back to the Senate  
4 now.

5 CHAIRWOMAN KRUEGER: Thank you. We're  
6 going to Senator Serino.

7 Are you there, Sue? Not quite sure --

8 SENATOR SERINO: Yup, yup, here we  
9 are. Sorry, my video wasn't starting. I'm  
10 so sorry.

11 CHAIRWOMAN KRUEGER: That's okay.

12 SENATOR SERINO: Hello, Commissioner.

13 I've asked you at just about every  
14 budget hearing why the state continues to  
15 leave funding out for Lyme and tick-borne  
16 diseases. I want it stated for the record  
17 that not only is there no new funding for  
18 Lyme this year, but this proposal even cuts  
19 the minimal \$69,000 that typically goes to  
20 your department for it, and that's just not  
21 right.

22 Now to nursing homes. Obviously the  
23 questions I have require a thorough  
24 response -- which you can't give in the three

1 minutes allotted -- so I'm going to put them  
2 all out there and will request a response in  
3 writing.

4 On April 23, 2020, I sent a letter to  
5 you and the Governor asking you to move to  
6 create regionalized specialty care centers or  
7 step-down facilities where you would  
8 designate certain facilities across the state  
9 as COVID-only nursing homes. I never  
10 received a response.

11 I also asked you about it again at the  
12 August 3rd hearing and was told you'll look  
13 into it.

14 I asked again in another letter on  
15 December 1st, when no mention of these  
16 facilities was made in your announced winter  
17 plan. Again, no response.

18 I had to get my answer from a report  
19 released as part of the February 10th secret  
20 meeting where you say there are 19 of these  
21 facilities across the state, and where you  
22 said, quote: Starting in November, the  
23 department launched an effort to establish  
24 COVID-only nursing homes. November. That's

1 over six months after I first proposed the  
2 idea.

3 So why did it take so long to take  
4 this commonsense step? How many people have  
5 been treated at these facilities, in what  
6 municipalities are they located, and how was  
7 it determined where the facilities would be  
8 located and who would be admitted to them?

9 Now on to vaccines. The federal  
10 vaccination program for nursing homes has  
11 ended, and there continues to be new  
12 admissions to nursing homes every day. I've  
13 heard about residents who are being told they  
14 can't receive the vaccine now in these  
15 facilities. What is the state's plan to  
16 vaccinate residents and staff who missed out  
17 on the federal program?

18 And most importantly, we now have a  
19 situation where some residents and staff are  
20 vaccinated and others are not. What updated  
21 infection control procedures are in place to  
22 protect those who have not yet been  
23 vaccinated?

24 And while we're on vaccines, I just

1           have to say, for the record, the rollout on  
2           the state level has been truly horrendous.  
3           We have no state site in the Mid-Hudson  
4           Valley, and the fact that New York, one of  
5           the tech capitals of the world, hasn't  
6           established a centralized system for  
7           appointments defies logic. And that needs to  
8           be a top priority.

9                        Now the questions that I'd actually  
10           want you to answer -- and I just want a  
11           simple yes or no -- are you confident in the  
12           facts you've presented thus far today?

13                        COMMISSIONER ZUCKER: Yes.

14                        SENATOR SERINO: Then I see no reason  
15           why you shouldn't support an independent  
16           investigation to verify them. Your testimony  
17           focused on reforms, but how can we talk about  
18           reform when there hasn't been a comprehensive  
19           review of where the state or others really  
20           went wrong?

21                        So will you support an independent  
22           investigation or review into the state's  
23           handling of the COVID crisis in our nursing  
24           homes and residential healthcare facilities?

1                   COMMISSIONER ZUCKER: There is an  
2                   ongoing investigation on this issue, and  
3                   that's -- I'll leave it at that.

4                   SENATOR SERINO: And you'll support  
5                   it.

6                   And do you know, did every Health  
7                   Department employee who did on-site  
8                   inspections in these facilities, or entered  
9                   for any other reason, get tested first?

10                  COMMISSIONER ZUCKER: Yes.

11                  SENATOR SERINO: Yes.

12                  CHAIRWOMAN KRUEGER: Sue, you can do  
13                  follow-up with the doctor with asking in  
14                  writing, asking him to forward it to us all  
15                  in writing, but your time is up. Thank you.

16                  SENATOR SERINO: Thank you,  
17                  Chairwoman.

18                  CHAIRWOMAN KRUEGER: Thank you.  
19                  Assembly?

20                  CHAIRWOMAN WEINSTEIN: So we go to the  
21                  Assembly ranker on Health, Assemblyman Byrne,  
22                  for five minutes.

23                  ASSEMBLYMAN BYRNE: Thank you.

24                  Mr. Commissioner and Director, I'm

1 going to try to just pose some comments and  
2 questions, and then allow you to unpack and  
3 address as many as you can because of my  
4 limited time.

5 I do want to express my  
6 disappointment, frustration and, quite  
7 frankly, anger with the department in its  
8 withholding of information from this elected  
9 body for so many months this past year. And  
10 the various comments from some members of the  
11 Governor's administration from that private  
12 meeting -- not you, Mr. Commissioner -- but I  
13 find them very deeply disturbing.

14 I was listening to some of the  
15 comments before, Commissioner Zucker, and I  
16 just want to follow up. Your comment about  
17 the justification of the March 25th directive  
18 as far as the time and place that we were in  
19 and the projection models, I think a lot of  
20 us can relate and understand the pressure  
21 that you must have been under, that we were  
22 all under. But I also recall you justifying  
23 that order by telling us it would -- it was  
24 to protect COVID-19 patients from being

1 discriminated against, as one of your  
2 justifications.

3 And again, your point about 98 percent  
4 of the nursing homes having COVID already in  
5 it from staff or from other avenues doesn't  
6 really address the concerns that  
7 reintroducing it could have caused more harm.

8 I also want to point out that the word  
9 "undercount" or "underreporting," that's  
10 directly taken from the AG's report that was  
11 released too. So this isn't stuff that we're  
12 just making up. They're very real concerns.

13 I want to ask you, Mr. Commissioner,  
14 if in complying with the DOJ inquiry, if your  
15 office would be willing to share the  
16 communications and the information that was  
17 shared with them. Could they share them with  
18 the Legislature? We haven't really seen a  
19 real timeline on that.

20 Senator Sue Serino mentioned, you  
21 know, the need for step-down facilities. We  
22 have a bill, I have a same-as in the  
23 Assembly, and I was refreshed to see that the  
24 department announced that there were

1           apparently 19 COVID-only nursing homes. But  
2           it also raised the question if that's the  
3           process we're going through now, why didn't  
4           we use the Army Corps of Engineers, the  
5           Westchester County Center, the Javits Center  
6           more, if we're using COVID-19-only nursing  
7           homes?

8                         Now more towards the budget, because  
9           this is a budget hearing, sir. You know, the  
10          scheduled Medicaid drug carve-out has many  
11          advocates and providers for the 430-b program  
12          very concerned. There's a call from many of  
13          us to delay or possibly reverse the decision.  
14          I understand that some savings may be  
15          obtained from greater collective bargaining  
16          power, but again, there's concerns how this  
17          could negatively affect providers.

18                        I also have concerns that if this is  
19          going to happen, and it is eventually,  
20          whether it's delayed or not, is this really  
21          the right time to be talking about repealing  
22          "prescriber prevails" when the department has  
23          such a monumental task ahead?

24                        I looked at some of the 30-day

1 amendments. It was mentioned earlier about  
2 some of the drastic increases in penalties in  
3 nursing homes. And I understand, a lot of us  
4 are embracing the discussion for nursing home  
5 reform particularly because of what we've all  
6 witnessed through this past pandemic. But  
7 removing that rectification clause has a lot  
8 of us concerned because I think when nursing  
9 home operators and facilities want to correct  
10 a situation, make it better, we should  
11 embrace that.

12 And we do -- I have concerns about the  
13 increase, not only for the nursing homes, but  
14 there seems to be a targeted increase in  
15 fines for adult-care facilities, and that's  
16 really where that rectification piece comes  
17 in.

18 Again, I have other concerns about the  
19 budget. Part Q again talks about allowing  
20 you, commissioner, to release alleged  
21 complaints of professional misconduct for  
22 doctors. There's concerns about how that  
23 could negatively affect providers' careers if  
24 things go on the internet.

1                   And the Indigent Care Pool, that was  
2                   brought up earlier by some of my colleagues.  
3                   It disproportionately affects the safety-net  
4                   hospitals and county governments. I also  
5                   represent Westchester County; it affects the  
6                   Westchester Medical Center even more so,  
7                   because I don't believe the county government  
8                   contributes.

9                   And the Adult Cystic Fibrosis  
10                  Assistance Program -- I don't think it's been  
11                  mentioned -- we need to bring that back and  
12                  we need to fund that program again.

13                  With whatever time I have, I would  
14                  appreciate whatever answers you could  
15                  provide.

16                  COMMISSIONER ZUCKER: Sure. I will  
17                  answer a few of them, and Donna will address  
18                  the 340-b program and some of the other  
19                  issues about providers.

20                  On the first issue, I'm going to be  
21                  pretty quick. Regarding what you mentioned  
22                  about the AG, this is one of the challenges I  
23                  see. People read the headline, but they  
24                  don't read the report. And the headline says



1 things --

2 CHAIRWOMAN WEINSTEIN: I'm sorry,

3 Commissioner --

4 COMMISSIONER ZUCKER: Sorry.

5 CHAIRWOMAN WEINSTEIN: -- we're going  
6 to move on.

7 I just want to remind members that if  
8 you want an answer to your question, you need  
9 to leave some time for that answer to happen.

10 But Donna can certainly put in writing  
11 a response.

12 And we'll go to the Senate.

13 CHAIRWOMAN KRUEGER: Thank you --

14 MEDICAID DIRECTOR FRESCATORE: Be  
15 happy to do that.

16 CHAIRWOMAN KRUEGER: Thank you.

17 So Commissioner, we have 31 more  
18 people who have signed up to ask you  
19 questions, and many of us have been sitting  
20 in our chairs since 9:30 this morning. So  
21 I'm going to recommend a five-minute break  
22 for everyone.

23 SENATOR RIVERA: Before or after me,

24 Liz?

1 CHAIRWOMAN KRUEGER: No, no, we need  
2 to prepare for you. We need the five-minute  
3 break before you, Gustavo.

4 Yes, and we will return --

5 COMMISSIONER ZUCKER: That would be  
6 very good for our health.

7 CHAIRWOMAN KRUEGER: -- to the Health  
8 chair to ask his 10 minutes of questioning.

9 So everyone, you can go off of Zoom or  
10 just turn off your picture, that's probably  
11 the best, go do whatever you can do in life  
12 in five minutes, and then come back.

13 Thank you.

14 (Brief recess taken from 1:48 to  
15 1:54 p.m.)

16 CHAIRWOMAN KRUEGER: Thank you. Hi,  
17 I'm Liz Krueger, chair of the Senate Finance  
18 Committee, joined by Helene Weinstein, chair  
19 of the Assembly Ways and Means Committee.

20 We are partway through the Health  
21 Budget Hearing, and we are continuing our  
22 questioning of Dr. Howard Zucker,  
23 commissioner of the Department of Health.

24 And the next legislator up on deck is

1           Gustavo Rivera, chair of the Health  
2           Committee, with a clock for 10 minutes of  
3           questions.

4                     Thank you, Senator Rivera.

5                     SENATOR RIVERA: Thank you,  
6           Madam Chair. Thank you, Commissioner. And  
7           thank you, Medicaid Director.

8                     I will try to get through as many of  
9           these as I can, and then I will probably come  
10          back for a second round after everybody else  
11          has finished.

12                    Now, I skipped the first time when I  
13          was called upon because I wanted to make sure  
14          that I saw what some of the questions were  
15          going to be related to nursing homes. And I  
16          heard many of my colleagues ask very similar  
17          questions, and I will just say a couple of  
18          things.

19                    First of all, it is very clear that  
20          this administration, whether it's you, sir,  
21          or anybody else, the Governor or anybody else  
22          speaking on his behalf, will apparently never  
23          acknowledge that you have done anything  
24          wrong. I will not ask you many of these

1 questions that folks have asked you already  
2 because you will just repeat what you have  
3 said before, which is that you did the best  
4 that you could, that you've made no mistakes.  
5 And it's as though the administration  
6 continues every day to just be perfect and do  
7 nothing wrong.

8 So since you cannot acknowledge  
9 responsibility and are perfect at bobbing and  
10 weaving on that issue, I will not visit it  
11 any further; I'm sure that my colleagues will  
12 actually do that.

13 Number two, because we are talking  
14 about health and this is a budget hearing, so  
15 I will definitely get into budget matters --  
16 but because this is a budget hearing I wanted  
17 to make sure that I state for the record that  
18 particularly related to the cuts that you're  
19 doing on Medicaid, these are not savings,  
20 sir, these are cuts.

21 If we were to tax the wealthy, perhaps  
22 by Investing in Our New York, we will  
23 absolutely not only be able to close the  
24 budget gap as a whole, be able to not do the

1 Medicaid cuts that we are doing, but also be  
2 able to invest, whether it's in our health  
3 system, education system, transportation, et  
4 cetera. So we need to tax the wealthy to be  
5 able to not have these cuts happening.

6 And as far as nursing homes, as I said  
7 before, thank you for stealing our ideas,  
8 because we have a couple of bills that we  
9 passed out of the Senate -- and these are  
10 good ideas, I'm glad that you've borrowed  
11 some of them, stole some of them. And we  
12 have more coming, and we would rather pass  
13 our bills and have the Governor sign them  
14 than have it done in the budget, since they  
15 are watered-down versions of it.

16 Now to the budget. Number -- the  
17 first thing is let's talk about Medicaid  
18 cuts. I will read from a presentation that  
19 you folks did to our staff yesterday  
20 evening -- I will repeat, yesterday  
21 evening -- in which one of the presentations  
22 says: "Also solving for the global cap  
23 deficits, the remaining balance of \$1.2  
24 billion in fiscal year '21 and \$455 million

1 in fiscal year '22 will be used to provide  
2 General Fund relief."

3 Please explain to me this insane idea,  
4 sir, that you will save -- that the Medicaid  
5 savings, that instead of actually closing the  
6 cuts you will actually provide General Fund  
7 relief. Please explain this to me.

8 COMMISSIONER ZUCKER: Donna? I think  
9 Donna's going to handle that.

10 MEDICAID DIRECTOR FRESCATORE: I am.  
11 Hi, Senator. And I'm --

12 SENATOR RIVERA: Hello.

13 MEDICAID DIRECTOR FRESCATORE: Hi.  
14 I'm familiar with the PowerPoint that you're  
15 describing and in fact had the opportunity to  
16 talk to your staff and other legislative  
17 staff as part of that meeting.

18 So let me, if I could, just take a  
19 minute, I want to be mindful of your time --

20 SENATOR RIVERA: Take 30 seconds.

21 MEDICAID DIRECTOR FRESCATORE: Okay.  
22 And I understand your question.

23 So, look, the -- there's -- we've had  
24 extraordinary enrollment in Medicaid. Thank

1           goodness, right? It was a safety net for so  
2           many.

3                    SENATOR RIVERA: Yes. Still is.

4                    MEDICAID DIRECTOR FRESCATORE: We  
5           expect that by March 31st -- yes, by March  
6           31st of this year we'll have 7.1 million  
7           people. It will start to go down a little  
8           bit, hopefully, right, as the Maintenance of  
9           Effort goes away. Which would mean the  
10          pandemic and the emergency period was going  
11          away. So that was --

12                   SENATOR RIVERA: You're great at  
13          filibustering, Donna. You're very excellent  
14          at that --

15                   MEDICAID DIRECTOR FRESCATORE: No, let  
16          me tell you the -- let me --

17                   SENATOR RIVERA: Please.

18                   MEDICAID DIRECTOR FRESCATORE: -- tell  
19          you the numbers, right? So the state will --  
20          through June 2021, the state will receive  
21          \$4.5 billion in Enhanced FMAP. Right? We  
22          call it eFMAP.

23                   SENATOR RIVERA: Right.

24                   MEDICAID DIRECTOR FRESCATORE: That's

1 after we share with the local governments.  
2 And 3.2 billion of it will be used to offset  
3 this extraordinary increase in enrollment.  
4 So the state financial plan will pay for that  
5 increase in enrollment.

6 What we talked about yesterday is that  
7 there is in fact a second part of this, that  
8 the Medicaid Global Cap provides funding to  
9 the State General Fund by, in the end --

10 SENATOR RIVERA: Wait, wait, wait.  
11 Wait, wait, wait. You're choosing to use  
12 your savings to provide General Fund relief.  
13 That's what the presentation says.

14 And my question to you is --

15 MEDICAID DIRECTOR FRESCATORE: Yeah,  
16 and in the end --

17 SENATOR RIVERA: And my question --  
18 hold on, hold on, hold on. Hold. The  
19 question I will ask you, not unlike -- for  
20 example, Senator Serino spoke about one  
21 program about ticks, I forget -- Lyme  
22 disease, right? That's \$69,000 for --

23 MEDICAID DIRECTOR FRESCATORE: Yeah,  
24 she did.

1                   SENATOR RIVERA: You would rather cut  
2                   that program and a whole bunch of other  
3                   public health programs that deal with  
4                   controlling disease, that deal with community  
5                   issues, as opposed to -- you will cut that  
6                   rather than use some of this to actually  
7                   avert some of those cuts?

8                   MEDICAID DIRECTOR FRESCATORE: Well, I  
9                   was talking about the Medicaid Global Cap,  
10                  and that program that the Senator was talking  
11                  about is not funded.

12                  But what I was going to say here is  
13                  that when it's all said and done here, that  
14                  there is a benefit to the global cap of about  
15                  \$1.2 billion, after all of these different  
16                  transactions happen.

17                  I understand your question also. I  
18                  would also, you know, ask you to -- I guess I  
19                  would just submit that in the context of the  
20                  revenue loss that the state has had and the  
21                  calls you've heard for federal funding for  
22                  the state, and we step back and look at the  
23                  budget -- not only the closing of the  
24                  Medicaid Global Cap for the current fiscal

1           year '21, but the actions in '22, that the  
2           budget doesn't -- and I'm talking about on  
3           the Medicaid side -- the budget doesn't  
4           make -- it doesn't in any way diminish  
5           eligibility for benefits or benefits.

6                         SENATOR RIVERA: Hold on. We will  
7           certainly have a deeper conversation about  
8           this when I'm not time-limited.

9                         MEDICAID DIRECTOR FRESCATORE: Fair  
10          enough. Fair enough.

11                        SENATOR RIVERA: The reality is, as  
12          you will recognize, that this global cap is  
13          an invention, we can get rid of it. And if  
14          we're talking about the institutions that are  
15          ill-served by your consistent cuts and your  
16          consistent austerity during the entire  
17          administration of the Governor -- during the  
18          entire 11 years there's been nothing but  
19          frigging austerity -- and then you're saying  
20          that you have a savings that you're instead  
21          going to use to give to the General Fund as  
22          opposed to deal with some of the institutions  
23          that actually offer Medicaid services to  
24          people around the state. Which is bananas

1 and frigging crazy. If it was another  
2 setting, maybe my words would be different.

3 Moving on, pharmacy carve-out. Some  
4 of my colleagues asked about this already.  
5 Now, first of all, I will again implore you  
6 to do not, to not continue with this,  
7 particularly as it refers to 340-b providers.  
8 Whether it be to FQHCs or Ryan White  
9 providers or safety-net hospitals, the use  
10 this money for wraparound services for the  
11 most vulnerable in our state. And it is  
12 unconscionable that you all are considering a  
13 savings -- and I use that word again in  
14 quotation marks, because they be cuts -- to  
15 actually make sure that these institutions  
16 cannot provide those services further.

17 And the \$102 million, because I know  
18 you're going to say that -- the \$102 million  
19 is not a permanent anything, because the  
20 Governor can remove it next year and it does  
21 not correspond to the \$200 million that these  
22 providers say are going to be cut from them.

23 Could you give me like a minute of why  
24 this makes sense?

1                   MEDICAID DIRECTOR FRESCATORE: Yeah, I  
2                   think we've long worked with you and your  
3                   colleagues on issues of transparency on the  
4                   pharmacy benefit, and the carve-out achieves  
5                   transparency. And we believe that the  
6                   Executive's proposal funds 340-b providers  
7                   directly, eliminating really --

8                   SENATOR RIVERA: To the tune of --

9                   MEDICAID DIRECTOR FRESCATORE: --  
10                  administrative costs.

11                  SENATOR RIVERA: To the tune of half  
12                  of what they --

13                  MEDICAID DIRECTOR FRESCATORE: I think  
14                  we should -- I think we -- yeah, let us come  
15                  back and explain some of those numbers, if  
16                  you will, rather than me using your time  
17                  here, because I think that --

18                  SENATOR RIVERA: That would be great.  
19                  That would be great, particularly because --

20                  MEDICAID DIRECTOR FRESCATORE: Because  
21                  I think -- I think -- right.

22                  SENATOR RIVERA: Whoa, whoa, whoa.  
23                  Since you're on the record saying you would  
24                  provide the numbers -- because you folks are

1           also famous for never providing the math,  
2           telling us about the numbers and never  
3           telling us how you got to them.

4                        I want to move to -- there's three  
5           more issues --

6                        MEDICAID DIRECTOR FRESCATORE: We've  
7           shared those numbers, Senator. Senator,  
8           those calculations have been shared many  
9           times over.

10                      SENATOR RIVERA: Great. I am looking  
11           forward to seeing them.

12                      There's a couple more issues. I will  
13           definitely use my second round. But for the  
14           moment I will take advantage of the CDPAP.  
15           We talked about this already, right? There's  
16           the process that was into the budget last  
17           year with the MRT 2, right? Many of us voted  
18           against it because we thought it was a bad  
19           idea then, we thought it was a bad idea.

20                      But the idea of getting -- of actually  
21           scaling down on FIs is a good one. However,  
22           there needs to be a little bit more  
23           transparency on that process, and we need to  
24           make -- and as far as process of appeal,

1           because although certainly we do not need  
2           400 FIs, there are questions about the  
3           {inaudible} that were ultimately picked.

4                       I only have one more minute. On the  
5           vaccine thing -- and I will come back,  
6           because we need to talk about the  
7           Essential Plan, but I will do that in my  
8           second round. For now I'll just say quickly,  
9           on the vaccine -- and this is a further  
10          example of what I started with. You all  
11          continue to say, Mr. Commissioner, that you  
12          are doing the best. We are 42nd in the  
13          country. There's 50 states, we're 42nd as  
14          far as getting it to people.

15                      And the rollout has been consistently  
16          evading working with local entities like the  
17          City of New York or localities around the  
18          state. And you might have eventually gotten  
19          to it, but when you started to roll it out,  
20          it was about the administration creating a  
21          parallel system where you all could claim  
22          credit for it and not working along with  
23          localities. Now, you all can say you didn't  
24          do that, but you did. As in you didn't work

1 with localities across the state. And that  
2 ultimately does not solve the problem of  
3 getting more people vaccinated.

4 So please, the last 20 seconds, just  
5 take this, just sit with this a second, just  
6 breathe and say, you don't get everything  
7 right. Every now and then it is okay to say  
8 that you didn't get everything right. And  
9 perhaps working along with your colleagues,  
10 like us and localities, you would do a little  
11 bit better.

12 I will come back for a second round,  
13 Madam Chair. Thank you.

14 CHAIRWOMAN WEINSTEIN: So we will go  
15 to --

16 CHAIRWOMAN KRUEGER: Any response at  
17 all or -- I'm sorry. Did the doctor want to  
18 say anything in response to that last  
19 question of Gustavo's?

20 COMMISSIONER ZUCKER: No, I -- one  
21 second. I hear his concerns. I say what I  
22 said before about the vaccines, that this is  
23 a complex process. But we are working with  
24 the communities.

1                   And I said that, you know, at the  
2                   beginning of this it was a -- it was a little  
3                   bit of a challenge. We were focused on  
4                   certain areas, we were trying to get into the  
5                   hospitals, and then we were moving to the  
6                   other areas.

7                   As -- and I would just reiterate, this  
8                   is one of the most difficult challenges the  
9                   country has ever faced, to immunize an entire  
10                  population of, you know, 250 million-plus  
11                  people, so -- 300 million people.

12                  CHAIRWOMAN KRUEGER: Thank you.  
13                  Assembly.

14                  CHAIRWOMAN WEINSTEIN: Yes, we go to  
15                  Assemblywoman Reyes, three minutes.

16                  There you go.

17                  ASSEMBLYWOMAN REYES: Okay. So I --  
18                  my colleagues have asked a lot of questions,  
19                  so I am going to be brief and make the best  
20                  use of my three minutes.

21                  So the Governor's Executive Budget  
22                  cuts the state's Article 6 public health  
23                  matching fund rates for New York City from  
24                  20 percent to 10 percent, while other

1           localities have a rate of 36 percent. And  
2           until two years ago, New York City was also  
3           at the 36 percent rate.

4                        So this further cuts the New York City  
5           public health matching funds. It will take  
6           around 38 million in state public health  
7           matching funding away from New York City --  
8           in the middle of a historic pandemic.

9                        Did the New York State Department of  
10          Health advise the Governor's office to cut  
11          public health matching funds from New York  
12          City? And did the New York State Department  
13          of Health evaluate what negative impact this  
14          cut to public health funding would have on  
15          the ability of neighborhoods in the Bronx,  
16          Brooklyn, Queens, Manhattan and Staten Island  
17          to fight COVID-19 and the racial health  
18          disparities?

19                        COMMISSIONER ZUCKER: So a couple of  
20          parts to that question.

21                        Number one, we -- we -- I understand  
22          we cut it in New York City, that's what the  
23          budget is proposing. You have to remember  
24          that New York City does get resources from

1 many other places, particularly from the CDC  
2 and elsewhere. And many other counties in  
3 the state do not.

4 And as a department that is focused on  
5 the entire state, and to make sure that  
6 everyone gets what they need, I am concerned  
7 with every area. You have the North Country,  
8 you have out west, you have the Southern  
9 Tier. There are many areas where there are a  
10 lot of challenges as well, just like New York  
11 City has its challenges. We wanted to be  
12 sure that we could provide the funds to those  
13 counties.

14 Regarding health equity, I hear you.  
15 I hear you not just in the interests of  
16 New York City, but across this entire state.  
17 This is something that we have fought prior  
18 to the pandemic and we continue to fight.  
19 And we saw this, we saw this particularly  
20 during the first part of this pandemic in  
21 March and April downstate -- because that's  
22 where it was concentrated -- where those who  
23 were from communities of color were more  
24 affected by this.

1                   And the Governor has made a commitment  
2                   to make sure that the vaccines and any other  
3                   care -- testing, anything else when it comes  
4                   to this pandemic -- have been focused on  
5                   that.

6                   ASSEMBLYWOMAN REYES: I'm running out  
7                   of time, and I have another question.

8                   COMMISSIONER ZUCKER: All right.  
9                   Sorry.

10                  ASSEMBLYWOMAN REYES: We can argue  
11                  that we can make better decisions to address  
12                  the racial and health disparities.

13                  So it's also widely expected that  
14                  students will require additional physical and  
15                  mental health, behavioral health support from  
16                  their schools during and after COVID-19.  
17                  Many other states have expanded their  
18                  school-based Medicaid programs to fund these  
19                  types of district services with federal  
20                  dollars. What steps has New York taken to  
21                  modernize our program?

22                  And in the same vein, the global cap  
23                  aims to control state spending on the  
24                  Medicaid program. Why does this fixed

1 percentage apply to the school-based  
2 programs, which represent less than half of  
3 1 percent of the overall budget, even though  
4 expansion could net schools tens of millions  
5 of dollars when they need it most from those  
6 federal dollars?

7 COMMISSIONER ZUCKER: Donna, do you  
8 want to touch on the global cap?

9 MEDICAID DIRECTOR FRESCATORE: Sure,  
10 I'm happy to address that.

11 And I think you know that we have in  
12 New York a school-based health program.  
13 Medicaid covers those services, actually  
14 outside of our Medicaid managed care rates,  
15 but -- and Medicaid pays those school-based  
16 health centers directly.

17 We've had some discussion with folks  
18 about whether or not the services in schools  
19 could be expanded and whether there's other  
20 ways to claim federal Medicaid matching  
21 dollars for those services. And we look  
22 forward to continuing to have those  
23 discussions and to learning from other  
24 states. And they've graciously offered to

1 collect that information, and we'll convene  
2 with them again.

3 On your issue of the global cap, all  
4 state -- generally all state spending on  
5 Medicaid is counted within the global  
6 spending cap under statute as it was enacted,  
7 you know, several years ago.

8 CHAIRWOMAN WEINSTEIN: Thank you.

9 We'll go to the Senate now.

10 CHAIRWOMAN KRUEGER: Thank you.

11 Our next Senator is Senator Pete  
12 Harckham from Westchester County. And other  
13 counties also, sorry.

14 SENATOR HARCKHAM: Thank you.

15 Commissioner, good to see you. Thank  
16 you for being here.

17 I want to follow up on the overdose  
18 line of questioning a little bit more. You  
19 know, the data that we compile is essential  
20 to responding in realtime, both  
21 geographically and fiscally. So the fact  
22 that, you know, we're behind New Jersey and  
23 Connecticut to me does not bode well. To me,  
24 you know, someone who passes from overdose is

1 just as important as someone who dies from  
2 COVID. And we have prioritized the ability  
3 to get daily numbers for COVID, and yet we  
4 are still months behind when it comes to  
5 overdose deaths.

6 So one of the things that  
7 epidemiologists are recommending is using  
8 emergency room syndromic surveillance as a  
9 new way to predict overdose death, to get at  
10 much more timely numbers so we can use that  
11 information in the field.

12 Is this something that your department  
13 has looked at? And how are you committed to  
14 expediting the recording of overdose numbers?

15 (Pause.)

16 THE MODERATOR: We're not hearing you,  
17 Commissioner. The microphone.

18 COMMISSIONER ZUCKER: The -- we have  
19 looked at this issue and the use of emergency  
20 rooms for not only tracking numbers but also  
21 for care.

22 And prior to the pandemic we actually  
23 were working significantly with both the  
24 hospital systems around the area -- and I

1 remember actually being at one of the  
2 meetings downstate about this to figure out  
3 how we can come up with some system that is  
4 universal that could work across the entire  
5 state to address care of those who arrive in  
6 the emergency rooms, but also to track it.

7 So I would welcome the opportunity to  
8 sit down with you and to go through this,  
9 along with my team, so that we can actually  
10 tackle this a little bit more. Because this  
11 issue of opioids that you raised as well as  
12 your colleague raised is an important issue.

13 And we have not forgotten that this  
14 was and continues to be one of the major  
15 issues that the country is facing at this  
16 point in time. It just happens to be that  
17 the pandemic seems to have eclipsed many of  
18 these other health issues, but we are focused  
19 on them as well.

20 SENATOR HARCKHAM: Can I interrupt for  
21 a sec? I just have time for one other  
22 question. But thank you. I'd be happy to  
23 sit down with you and your team to work on  
24 this. A great step forward.

1                   I want to follow up on what  
2                   Assemblyman Cahill was asking about -- in his  
3                   district, because of the need for surge, the  
4                   shutdown of behavioral health facilities. In  
5                   his case, it was moved out of that county.  
6                   In other instances, we're hearing they have  
7                   just not reopened.

8                   Are you prepared to issue specific  
9                   directives to the hospital systems that when  
10                  the COVID emergency is over, they have X  
11                  period of time to reopen their behavioral  
12                  health beds or face certain sanction?

13                 COMMISSIONER ZUCKER: Let's -- I would  
14                 like to -- I would like to look at that. I'd  
15                 like to get through the surge and flex  
16                 situation, or the pandemic and the surge and  
17                 flex approach that we're using.

18                 But I think what we're going to find  
19                 is after we get through this, we're going to  
20                 be able to figure out a system that works  
21                 more efficiently and effectively for the  
22                 state, and also to address the behavioral  
23                 health issues.

24                 It is -- I have noticed, and I've

1 spoken with the mental health professionals  
2 both in the state and outside of state  
3 government, about the need to make sure these  
4 facilities are available for the residents  
5 within the state. So I recognize the concern  
6 that you have as well as Senator {sic} Cahill  
7 and many other people have had about this.  
8 So we will work on that, promise.

9 SENATOR HARCKHAM: And my time is up.  
10 I would just suggest that the time to figure  
11 this out is now, not after the pandemic.

12 COMMISSIONER ZUCKER: I hear you. I  
13 hear you.

14 SENATOR HARCKHAM: Thank you.

15 CHAIRWOMAN KRUEGER: Thank you.  
16 Assembly.

17 CHAIRWOMAN WEINSTEIN: Yes, we go to  
18 Assemblyman Bronson.

19 ASSEMBLYMAN BRONSON: Thank you,  
20 Madam Chair.

21 And Commissioner, thank you for being  
22 here. I'm going to ask two questions. The  
23 first one I hope we can take care of very  
24 quickly so we can get to the second.

1                   And the first one relates to the  
2                   Medicaid carve-out. And it's been brought to  
3                   my attention that health plans have been  
4                   instructed to send letters out to their  
5                   beneficiaries stating that the  
6                   fee-for-service carve-out for the Medicaid  
7                   drug program will be implemented starting  
8                   May 1st, and that they should send out  
9                   notices to the beneficiaries on March 1st.

10                   You know, what's the reasoning for  
11                   doing this now when we know that we're in  
12                   negotiations in the middle of the budget to  
13                   address this issue, and hopefully come to a  
14                   resolution? Wouldn't it be better to wait  
15                   for those notices to go out until after we  
16                   finalize the budget around April 1st?

17                   COMMISSIONER ZUCKER: Donna, do you  
18                   want to --

19                   MEDICAID DIRECTOR FRESCATORE: So  
20                   again, quickly, I'll jump in and just, I  
21                   guess, explain the timing.

22                   And that is that last year's budget  
23                   enacted a pharmacy carve-out from Medicaid  
24                   managed care that could occur on or after

1 April 1st. The notices that you were  
2 mentioning are a federal requirement whereby  
3 consumers need to be noticed under federal  
4 regulations 30 days in advance of a change in  
5 benefits. So that's the explanation of the  
6 timing.

7 You know, I hear your question, but I  
8 just wanted to explain the timing.

9 ASSEMBLYMAN BRONSON: Okay. Well, we  
10 need to get this negotiated.

11 In connection with nursing homes and  
12 in particular family visitations, I have been  
13 in communication with a number of people at  
14 DOH on a quite regular basis since last fall  
15 trying to get guidelines for visitation. I  
16 was very hopeful on Friday when the notice  
17 came out, and then on Monday very, very  
18 disappointed.

19 Why, why cannot our family members  
20 visit nursing homes under the same health and  
21 safety protocols as staff members? They're  
22 doing the same thing out in the community,  
23 and they come in. Why can't they get in on  
24 the same protocols?

1                   COMMISSIONER ZUCKER:  So I hear you on  
2                   this.  And I am very empathetic to the  
3                   situation of those who are in nursing homes  
4                   and their families.

5                   The challenge here is not the state  
6                   alone.  I open up the guidelines there and I  
7                   put them out, do as much as I can, but there  
8                   are CMS guidelines that we need to adhere to.  
9                   So we are -- our hands are sort of in some  
10                  ways tied, that they say that if you've had a  
11                  case in the nursing home within 14 days, you  
12                  can't go in.  So we end up with 185, 188 this  
13                  week, of nursing homes that had visitation.

14                  The challenge is that -- the concern  
15                  is it is still ending up in the nursing  
16                  homes.  Right?  The cases are still there.  
17                  We're testing people twice a week, the staff  
18                  we're testing twice a week, right?  And so  
19                  that is -- but even testing twice a week,  
20                  even with 50 percent of the nursing home  
21                  staff now immunized, even with 72 percent,  
22                  75 percent of the residents immunized, we are  
23                  still seeing cases.

24                  Now, they've dropped dramatically.

1           The number of cases have dropped in the  
2           thousand -- I mean, I think it's like a  
3           thousand less one week than it was the week  
4           before in the nursing homes, which is great,  
5           because of the vaccinations that have been  
6           administered.

7                         That is the problem. I opened this up  
8           as best as I can, but I still am confined by  
9           the rules of the federal government as to  
10          what can be done. I wish as much as you if  
11          you could open up. There are people who have  
12          not seen their relatives in a year. There  
13          are people who -- I understand the mental  
14          health effects of this. I had a grandmother  
15          in a nursing home years ago, and I remember  
16          leaving her and I felt like she was so lonely  
17          left there alone.

18                        So I get it, I really get it. And I  
19          wish I could do more. It's just that I'm  
20          doing as much as I can to help them have  
21          visitors there.

22                        CHAIRWOMAN KRUEGER: Thank you.

23                        CHAIRWOMAN WEINSTEIN: Thank you. To  
24          the Senate.

1                   CHAIRWOMAN KRUEGER: Thank you very  
2                   much.

3                   Senator Rath next.

4                   SENATOR RATH: Thank you, Madam Chair.  
5                   And thank you, Commissioner Zucker.

6                   I want to expand on the vaccine  
7                   distribution and allocation issue, which has  
8                   been talked about and several questions have  
9                   been asked earlier today. Specifically, I  
10                  have two areas of concern that tie right in  
11                  with my district.

12                 First, currently there are about  
13                 1500 pharmacies across New York State which  
14                 are approved to vaccinate, yet over the  
15                 several weeks of the pharmacy rollout, many  
16                 of these independent pharmacies have not  
17                 received any vaccines at all, and some of  
18                 these independent pharmacies have contacted  
19                 me. They have hired staff, they have  
20                 modified their facilities, they have  
21                 collaborated with pharmacy schools and  
22                 medical schools to roll out and to be  
23                 capable, but they're not getting any vaccines  
24                 whatsoever.

1                   And so I'm wondering how the state  
2                   will address this inequitable distribution  
3                   amongst our independent pharmacies. And what  
4                   is the reasoning or justification that  
5                   countless pharmacies across New York State  
6                   have been left without allocation despite  
7                   being approved as sites to vaccinate?

8                   COMMISSIONER ZUCKER: So -- and this  
9                   goes back to that old -- I guess it's an  
10                  economics principle, which is supply and  
11                  demand. Right? There's an incredible demand  
12                  for the vaccines, and there's just not enough  
13                  supply.

14                  And so we're sitting there and I --  
15                  and we get it out to the pharmacies. We also  
16                  have to get it out to all these other sites,  
17                  the hospitals, to the nursing homes. Right?  
18                  We have six FEMA sites right now, there's  
19                  105,000 appointments. We've enrolled, you  
20                  know, a number of appointments in New York  
21                  State; there's over a million that we have.

22                  But I hear your question about the  
23                  pharmacies and particularly the independent  
24                  pharmacies. I will work on getting an answer

1 as to why they have not received it, versus  
2 others. And I will go back to my vaccine  
3 team that are working on this to get a  
4 specific answer for you about it.

5 SENATOR RATH: Thank you,  
6 Commissioner --

7 COMMISSIONER ZUCKER: But it goes back  
8 to that basic principle of supply and demand.

9 SENATOR RATH: -- it will definitely  
10 be appreciated. A written response will  
11 definitely be appreciated, because there are  
12 many of these pharmacies who are like, why  
13 are some pharmacies continuously, month over  
14 month and week over week, continuing to get  
15 vaccines and some have gotten none? And  
16 they're very frustrated and have invested a  
17 lot of money.

18 But I want to go to my second question  
19 because I know my time is ticking here. So  
20 far the state's primary focus for Phase 1B  
21 vaccination has been on utilizing mass  
22 vaccination sites. However, this leaves  
23 seniors and those in travel as well as  
24 broadband deserts with significant barriers

1 to vaccine access.

2 Is there a plan to aid those counties  
3 with these access barriers, specifically  
4 rural and agricultural counties across  
5 New York State? Do you have a plan for that?

6 COMMISSIONER ZUCKER: So there's two  
7 parts to the answer to that. We do -- we are  
8 looking at that issue in the bigger picture  
9 of getting into the rural areas of the state.

10 But you bring up the issue of seniors,  
11 and I will bring up the fact that there's  
12 also the issue of how do you get those who  
13 need to be vaccinated who are at home and  
14 alone and somewhat homebound. So we are  
15 working with an organization starting in  
16 certain areas of the state right now, and  
17 we'll see how it goes, to be able to get  
18 vaccines to those who are basically  
19 homebound, because they need to be vaccinated  
20 as well.

21 And someone will say, well, they're  
22 not going out --

23 SENATOR RATH: Thank you,  
24 Commissioner.

1                   COMMISSIONER ZUCKER:  -- but people  
2                   are coming in to see them --

3                   SENATOR RATH:  I just want to add,  
4                   Commissioner, very quickly, Genesee, Orleans  
5                   and Wyoming counties have a plan at Genesee  
6                   Community College.  If I could have a written  
7                   response to a plan for that specific idea for  
8                   100,000 residents, I'd sure appreciate it.

9                   Thank you, Commissioner.

10                  COMMISSIONER ZUCKER:  Okay, got it.

11                  CHAIRWOMAN KRUEGER:  Thank you.

12                  Assembly.

13                  CHAIRWOMAN WEINSTEIN:  We go to  
14                  Assemblyman McDonald.

15                  (Pause.)

16                  THE MODERATOR:  We are asking him to  
17                  unmute and start his video, and he has not  
18                  done so at this time, Madam Chair.

19                  CHAIRWOMAN KRUEGER:  I guess he's not  
20                  there.

21                  CHAIRWOMAN WEINSTEIN:  Okay, then we  
22                  will go to Assemblymember Gandolfo.

23                  ASSEMBLYMAN GANDOLFO:  Thank you,  
24                  Chair.

1                   And thank you for being here with us  
2                   today, Commissioner.

3                   I just want to loop back to something  
4                   one of my colleagues was talking about  
5                   before. I thought I heard you close out and  
6                   say that you did not believe that the March  
7                   25th order had any impact at all on the  
8                   spread of COVID in nursing homes or deaths in  
9                   nursing homes.

10                  Can you expand on that a little bit?

11                  COMMISSIONER ZUCKER: Sure. And happy  
12                  to do so. As I've mentioned before to other  
13                  members of the Legislature, that I can  
14                  explain this in a couple of ways. Let me  
15                  just start with the science on this.

16                  Well, first let me start with what  
17                  brought this into the nursing homes. This  
18                  goes back to the nursing home report, it goes  
19                  back to the July 6th presentation. It came  
20                  in through inadvertent spread by the staff,  
21                  asymptomatic spread, at a time when we were  
22                  unaware of how this virus spread. That's the  
23                  first part.

24                  It was in the nursing homes, it was in

1           98 percent of the nursing homes, 98-plus  
2           percent of the nursing homes prior to any  
3           person being readmitted from a hospital to a  
4           nursing home. That's number two.

5                       Number three is the issue of how the  
6           disease actually is spread and the incubation  
7           periods and at what point is someone  
8           contagious from the disease. And I went  
9           through this before, that there's a window of  
10          time prior to when your symptoms occur when  
11          you are contagious, and then when your  
12          symptoms are there, early on you're the most  
13          contagious. This is all about viral load,  
14          how much --

15                      ASSEMBLYMAN GANDOLFO: Okay, thank  
16          you, Commissioner.

17                      COMMISSIONER ZUCKER: -- how sick you  
18          are.

19                      ASSEMBLYMAN GANDOLFO: I recall you  
20          said that before.

21                      COMMISSIONER ZUCKER: Right.

22                      ASSEMBLYMAN GANDOLFO: But so what  
23          you're saying is that this order could have  
24          had zero impact, based on the scientific --

1                   COMMISSIONER ZUCKER: Yes, that is  
2 correct.

3                   ASSEMBLYMAN GANDOLFO: Zero impact.

4                   COMMISSIONER ZUCKER: That is correct.  
5 Could there be that random one person that  
6 came in? You know, I can't say for -- you  
7 know, I never like to say something is like  
8 100 percent or zero percent.

9                   But what I'm saying is that there  
10 could have been that random person that may  
11 have come into one nursing home. But that is  
12 not the case, it was not in the -- this memo  
13 was not the driver of nursing home  
14 fatalities. It's just not the driver. And  
15 all the data from there going forward  
16 supports it, in New York State as well as  
17 around the country and, for that matter,  
18 around the world when you look at the  
19 literature.

20                   ASSEMBLYMAN GANDOLFO: Okay, thank  
21 you, Commissioner. I just want to clear up  
22 whether or not it could have at least had one  
23 case that might have come in.

24                   COMMISSIONER ZUCKER: (Inaudible.)

1 ASSEMBLYMAN GANDOLFO: And I also want  
2 to -- I know the Governor had a recent press  
3 briefing, he mentioned that he would be fine  
4 with making public the data that was turned  
5 over to the DOJ. Is -- has there been any  
6 movement on that? Do we have a status on  
7 whether or not that is being made public,  
8 regarding the --

9 COMMISSIONER ZUCKER: I am aware of a  
10 letter that -- my legal team deals with the  
11 DOJ issue. My data team, as we know, deals  
12 with my data analytics issue. These things  
13 are occurring in parallel and while I manage  
14 deals with the pandemic and all the issues  
15 that we have been dealing with on that, so.

16 ASSEMBLYMAN GANDOLFO: Okay, so  
17 there's no timeline there yet. Got it, thank  
18 you.

19 And a final question. Given the fact  
20 that we're able to convene the Legislature  
21 almost immediately via Zoom, is there any  
22 public health reason to allow the Governor to  
23 retain his expanded emergency powers?

24 COMMISSIONER ZUCKER: That's -- that's

1 a question that is outside of my scope, I  
2 will say. It's above my pay grade. And so I  
3 leave that to others to answer.

4 ASSEMBLYMAN GANDOLFO: Okay. Thank  
5 you, Commissioner.

6 CHAIRWOMAN KRUEGER: Thank you very  
7 much.

8 CHAIRWOMAN WEINSTEIN: Yes. Senate?

9 CHAIRWOMAN KRUEGER: Senator  
10 Oberacker.

11 Are you there with us, Senator?

12 SENATOR OBERACKER: Yes, I am.

13 CHAIRWOMAN KRUEGER: Oh, good. Hello.

14 SENATOR OBERACKER: Hello there. And  
15 thank you so much, Madam Chair.

16 And Commissioner, thank you too for  
17 taking the time.

18 You know, we're one state -- I've  
19 heard this throughout the pandemic from the  
20 Governor. The rural region I represent was  
21 forced to shut down even when most of my  
22 counties had extremely low numbers of cases,  
23 if any.

24 Now, with the vaccine being

1 distributed, my district is completely  
2 forgotten. State-run sites are nowhere to be  
3 found. No longer one state, I guess.

4 Here's a letter I received today from  
5 a constituent in Bovina Center in Delaware  
6 County that speaks very eloquently to the  
7 situation.

8 "Dear Senator Oberacker: As of today,  
9 there is no place for people over 65 to get  
10 the vaccine anywhere in or near Delaware  
11 County. Pharmacies are apparently no longer  
12 getting the vaccine.

13 "The Delaware County Board of Health,  
14 through the Department of Aging, was promised  
15 100 vaccines, just to have the delivery  
16 canceled. Bassett Hospital to date has held  
17 two clinics with 100 shots available for  
18 each, which was booked up in minutes.

19 "The only state sites that currently  
20 have availability are restricted to zip codes  
21 none of which -- none of which -- includes  
22 Delaware County.

23 "I understand that the limited supply  
24 and the weather are contributing to the

1 delay, but I do not understand why our rural  
2 area is basically being ignored. We have a  
3 very large population of elderly people who  
4 were supposed to have priority and have been  
5 virtually cut out of the vaccination program.

6 "Can you let me know what you are  
7 doing to secure vaccines for the vulnerable  
8 populations in our district, or at least let  
9 us know when the vaccines might become more  
10 readily available?"

11 Commissioner, what am I supposed to  
12 tell my constituents?

13 COMMISSIONER ZUCKER: So with regards  
14 to what to tell those who are elderly in your  
15 district, I will say that the focus has been  
16 on those over the age of 65. I understand  
17 your concern that there's not a state-run  
18 site there, and we can look into and see  
19 what's the closest site.

20 Some of the challenges that one comes  
21 up against when it comes to rural areas is  
22 there's a distance to travel, and I recognize  
23 that. That's one of the challenges in  
24 upstate New York that we see.

1                   And then it comes back to, as you said  
2                   and I've said, a supply issue. And so once  
3                   we have more supply, we can get it out there.  
4                   Bassett Hospital, I'm happy speak with the  
5                   CEO of Bassett and see what else is  
6                   transpiring there or have our team that's  
7                   working on vaccines work on that and see what  
8                   things we can do working with Bassett's  
9                   outreach. Because I know that they have a  
10                  significant outreach into the community.

11                  So let me get back to you on some of  
12                  that.

13                  SENATOR OBERACKER: Commissioner,  
14                  as -- thank you. Thank you.

15                  And as well as a businessman who deals  
16                  with materials management in my company, I  
17                  would make this recommendation. Could the  
18                  state just be worrying about procuring  
19                  vaccines? Could we have a plan in place  
20                  where we distribute those to the counties?  
21                  All right, we have our counties' health  
22                  departments and emergency services. From  
23                  there, they can be distributed to each and  
24                  every one of those fire departments in these

1 towns. And I'm telling you, it would be a  
2 great way to get shots in the arms.

3 Thank you.

4 COMMISSIONER ZUCKER: And I know --

5 CHAIRWOMAN WEINSTEIN: Thank you --

6 COMMISSIONER ZUCKER: Just quickly, I  
7 just -- I do know that we're working with the  
8 communities on this. And let's see where we  
9 are after the end of this weekend when more  
10 vaccine's out there, assuming J&J is approved  
11 and we get to that next step there. So  
12 hopefully that will help increase supply.

13 SENATOR OBERACKER: Thank you.

14 CHAIRWOMAN KRUEGER: Thank you.

15 Assembly.

16 CHAIRWOMAN WEINSTEIN: We go back to  
17 Assemblyman McDonald, who had an issue with  
18 his video, I believe.

19 (Pause.)

20 COMMISSIONER ZUCKER: Audio now.

21 ASSEMBLYMAN McDONALD: There we go.

22 Now we're there.

23 COMMISSIONER ZUCKER: There we go.

24 ASSEMBLYMAN McDONALD: Sorry about

1           that.

2                     Dr. Zucker, it's good to see you.

3                     For the first question, right off the  
4           rope here, you mention in your written  
5           statements about the great work done at  
6           Wadsworth. And both Member Fahy and myself  
7           and Senator Breslin are concerned that the  
8           funding for Wadsworth was not included in the  
9           proposed budget.

10                    I don't know, do you have anything you  
11           can add to that? We've gotten limited  
12           information on what's happening. But  
13           obviously, you know, Wadsworth is very  
14           important not only to New York State but to  
15           the country and it's a major impact here to  
16           the Capital Region.

17                    COMMISSIONER ZUCKER: Sure. So I just  
18           had a conversation with our Budget Director  
19           about this exact issue the other day. The  
20           commitment is still there, the commitment on  
21           the Governor's part and the commitment on the  
22           administration's part, to build a new  
23           Wadsworth Lab.

24                    What we have seen with this pandemic

1 is that there is a new way of looking at how  
2 we operate a lab, both the research aspect  
3 and the clinical delivery aspect and all of  
4 the partnerships that we have developed over  
5 time. You know, Wadsworth has had many  
6 partnerships with companies.

7 So we are moving forward on this. The  
8 lab has been such a critical component of  
9 managing this pandemic. As I mentioned,  
10 literally a year ago this week the test that  
11 came out for COVID-19, the first one outside  
12 of CDC, was done at Wadsworth. I will tell  
13 you it was Friday a year ago tomorrow that  
14 that happened. And it changed the pace of  
15 how testing was done. And then they also  
16 work with all the other testing sites in the  
17 nation.

18 And when -- we were talking earlier  
19 about this genome sequencing and saying,  
20 well, how do we know? That's because of  
21 Wadsworth. That's how I heard this morning  
22 about exactly what's going on. There have  
23 been some labs out there who have said, All  
24 we have is variant. I remember the first UK

1 variant that they thought they had, they  
2 called Wadsworth. It wasn't.

3 So I am so thrilled with our lab that  
4 we have. But it is still on the plan, we  
5 just need to work it through the right way.

6 ASSEMBLYMAN McDONALD: Is it still  
7 committed to the City of Albany?

8 COMMISSIONER ZUCKER: Yes.

9 ASSEMBLYMAN McDONALD: Okay, that's  
10 important.

11 Another quick question, this goes back  
12 to a meeting that you and I and a couple of  
13 other people were in a couple of weeks ago.  
14 We talked about HERDS data and the way it's  
15 reported, we talked about SPARCS data and the  
16 way it's reported. One's done by initials  
17 and date of birth, one's done by full name  
18 and date of birth, and that added to part of  
19 the challenges of getting accurate  
20 information.

21 One question I didn't think to ask at  
22 the time, but since I've got you here, is the  
23 department looking to rectify that so that we  
24 have the same information being reported

1 going forward, so that way we can accurately  
2 pull information when we need it?

3 COMMISSIONER ZUCKER: Sure. So as I  
4 mentioned before, one of the things that will  
5 come out of this pandemic, the silver lining,  
6 is how do we deliver public health -- how do  
7 we deliver care to patients, and also how  
8 does the public health system work. And  
9 there will be major changes as a result of  
10 it.

11 One of it is to streamline how data  
12 comes in, how we process data, how data  
13 integrates with other data sets and data  
14 pools. So we will address it. We have to be  
15 sure that when we do this that we maintain  
16 the patient's privacy. That's what we had --  
17 and not to reiterate this, but when we  
18 started this whole thing, we were getting the  
19 data from the HERDS information and we just  
20 wanted initials and age and what other  
21 comorbidities because we were trying to  
22 figure out how to manage it and figure out  
23 what was this disease, who was getting it and  
24 how do we manage it. We weren't as

1 interested in like what's their name and  
2 other things, we just wanted to figure out  
3 how to deal with it.

4 But going forward, this will be one of  
5 the things that will come out of this. And  
6 some of it -- you know, the MDS system is a  
7 federal system. SPARCS is state, HERDS is  
8 state, the ECLRS system is our lab system.  
9 So we will work on this and figure out how to  
10 do this.

11 ASSEMBLYMAN McDONALD: Thank you.

12 Thank you, Madam Chair.

13 CHAIRWOMAN KRUEGER: Thank you. And  
14 it goes back to Senate.

15 Senator Todd Kaminsky.

16 I know you were with us a minute ago,  
17 Todd.

18 SENATOR KAMINSKY: Can -- can you hear  
19 me?

20 CHAIRWOMAN KRUEGER: Yes.

21 SENATOR KAMINSKY: Thank you.

22 Good afternoon, Doctor.

23 There have been numerous troubling  
24 reports in the press and other places about

1 procurement fraud that was committed upon the  
2 state when trying to get essential supplies  
3 last year. And I'm wondering if it's  
4 possible that we can get a full accounting of  
5 what we think was -- of how New York was  
6 defrauded, to what amount, and to what extent  
7 New York is trying to recoup that, and what  
8 steps we can take to make sure that doesn't  
9 happen going forward.

10 COMMISSIONER ZUCKER: We can do  
11 this -- we -- two parts to this one, all  
12 right? One is we can -- we have been looking  
13 at this, we have been looking at how to  
14 recoup losses. Obviously that's in the  
15 interest of the state and the citizens, the  
16 residents of New York, obviously.

17 The issue is also that we were in a  
18 situation early on where we were focused on  
19 how do we provide the care that we needed,  
20 and we searched everywhere to try to get the  
21 necessary equipment -- the ventilators, the  
22 PPE, the testing -- well, the testing we  
23 started doing in the state, but even some  
24 other tests that were out there, new rapid

1 tests or other ways to do testing. It was an  
2 unbelievable time early on when we did not  
3 have the information, we did not have the  
4 public knowledge.

5 But I understand the issue about  
6 resources that are spent, taxpayer dollars  
7 that are spent, and to be sure we can recoup  
8 that, and we are working on that. And a list  
9 we can get together. I know people have been  
10 working on it, and I'll find out from my  
11 teams and others within the administration  
12 how we can get that to you.

13 SENATOR KAMINSKY: Okay, thank you.

14 And with respect to the nursing home  
15 question, moving forward to where we are  
16 today, there have also recently been reports  
17 that some of the latest updated findings are  
18 troubling to some families about very low  
19 numbers at nursing homes where a number of  
20 people in the community, you know, may all --  
21 (background noise) -- something, you know,  
22 more than what may have been reported to take  
23 place. For example, there was a February  
24 20th New York Post story about a nursing home

1 in my district that says maybe three -- only  
2 three people -- deaths are attributed to that  
3 nursing home, when there are far more  
4 families that know that's the case.

5 So as we stand here today, can you  
6 give us some type of assurance or tell us  
7 what families should want to know about how  
8 the new updated numbers should be viewed, how  
9 accurate they are, and what you and your  
10 agency can do to make sure that whatever  
11 numbers are out there are important and  
12 accurate. As you know, a lot of these  
13 families -- all of these families are  
14 grieving, want to know that the information  
15 is accurate and that they're obviously being  
16 treated with transparency and honesty, and  
17 some of these numbers appear to give them  
18 concern.

19 COMMISSIONER ZUCKER: So the aspect of  
20 what we do do at this point is obviously we  
21 do the inspections and we take a look and see  
22 if there's any -- if someone said, well,  
23 there was only three deaths in that nursing  
24 home but relatives say there were many more,

1 we have these on-site inspections.

2 And that's why we've done, as I  
3 mentioned earlier, over 2400, with  
4 enforcements of -- over a thousand  
5 enforcements.

6 But going to your question about going  
7 forward, which is where I think we should be  
8 looking -- how do we move forward, what do we  
9 need to do on this -- so we have put forth  
10 some of the issues as the Governor has  
11 mentioned in the budget and I've spoken about  
12 before. But also it ties into your question  
13 or Senator McDonald's question about the data  
14 a little bit, I think, about these different  
15 data pools where we get information. And we  
16 are going to try to make sure that moves  
17 smoother.

18 The issue -- this brings up this issue  
19 of data and how you look at data and how you  
20 verify data. And it is a complex process.  
21 What you raised is the issue of how to make  
22 sure that the data is precise. So when we  
23 move forward, we will get that done.

24 SENATOR KAMINSKY: Thank you, Doctor.



1 instances, very rare instances -- and I went  
2 back and I looked at the literature a couple  
3 of days ago, looking at this. There's  
4 something called a QT interval, it's part of  
5 that little squiggle on your EKG -- we don't  
6 have to go into the details on that.

7 But the combination of those two could  
8 have been a problem. But it's extremely  
9 rare.

10 It was the doctor-patient  
11 relationship, the decision was made by the  
12 patient. And then when we realized that  
13 hydroxychloroquine was not helpful, we  
14 stopped giving it -- long, actually, before  
15 the federal government, the FDA said not to  
16 give it. And we also looked at this issue to  
17 be sure that there were no individuals  
18 harmed.

19 So I know this has come up, but this  
20 is one of the those things that I say there  
21 are facts out there, but the people are just  
22 hearing something and they believe that, and  
23 not the facts.

24 CHAIRWOMAN KRUEGER: I let you go over

1           because that was a public health question.

2                     Thank you very much. Assembly?

3                     CHAIRWOMAN WEINSTEIN: We go to  
4           Assemblywoman Glick.

5                     ASSEMBLYWOMAN GLICK: Okay. They  
6           won't let me start my video. Which is fine  
7           because -- oh, there we go -- because I may  
8           have to cut it off if I can't be heard.

9                     Dr. Zucker, two things. But before I  
10          start, let me say that I agree with  
11          Senator Hoylman that Manhattanites need at  
12          least a set-aside -- I don't think we need a  
13          whole new site. Javits is large. But  
14          something needs to be on the website that  
15          allows for people to click off a Manhattan  
16          zip code so that a set-aside, whether it is  
17          10 percent or 20 percent of the vaccines,  
18          could go to Manhattanites at that center.

19                     I don't think we have to reinvent the  
20          wheel and create a new physical site. I  
21          don't think that's worth the time, money and  
22          effort.

23                     There is an Article VII that would  
24          allow for out-of-state practitioners to

1 participate in telehealth. It's sort of a  
2 license -- a licensure, an interstate  
3 licensure agreement. Which I think is  
4 concerning, since people may not know whether  
5 or not -- you know, New York has very  
6 rigorous licensure, which makes us a place  
7 where people come. And it is concerning to  
8 think that we would be having folks doing  
9 telehealth whose qualifications might not be  
10 the same as our New York State practitioners.

11 That's number one. And number two,  
12 there is an e-prescribed exemption change  
13 which I think requires veterinarians to  
14 become e-prescribers. That might not be a  
15 problem in my district, but in a lot of the  
16 state we have a lot of trouble with  
17 broadband. So on that basis, that could be a  
18 serious problem, particularly in rural  
19 communities.

20 But in addition, a lot of folks --  
21 like myself and other pet owners -- don't go  
22 to the local pharmacy, which is more  
23 expensive, but use something like PetMeds.  
24 So you're asking consumers to pay more for

1 medications for their animals at a time when  
2 people are already stressed.

3 And then the last thing is the  
4 elimination of the Empire Clinical Research  
5 Investigator Program. I don't know how much  
6 you're saving, but it does seem to be a small  
7 amount for what could be a very important  
8 thing, especially since we're trying to  
9 support biomedical research.

10 Could you address the interstate  
11 licensure and e-prescribe?

12 COMMISSIONER ZUCKER: Let me see if I  
13 can do this quickly.

14 So on the issue of telehealth, yes, I  
15 recognize this is a critically important  
16 issue overall. And we do want to make sure  
17 there is -- that the physicians who prescribe  
18 or use telehealth are clearly meeting the  
19 standards of the state.

20 The Governor and all of us have been  
21 looking at ways to strengthen the Office of  
22 Professional Medical Conduct, which runs  
23 through my department.

24 E-prescribing and the thing regarding

1 the exemption, I'm going to get back to you,  
2 I have to look into that.

3           Regarding the elimination of the  
4 investigator program, I -- over the years I  
5 have tried, you know, to keep that in the  
6 budget, and we've worked on that. But we are  
7 in a very tight budget year. And I looked at  
8 where some of that -- those investigations  
9 can -- is there other ways for them to  
10 receive the funding they need.

11           This is a tough one. I went through  
12 this the other day thinking about this  
13 {unintelligible} -- well, what else can we  
14 do? So I recognize that's a challenge.

15           And the last one, the broadband  
16 issue -- just as an aside, this is not the  
17 Department of Health, but I know the Governor  
18 has a strong commitment to making sure that  
19 the state has excellent broadband and that we  
20 can get to every area of the state. That's  
21 obviously a different department. But I  
22 know I heard him speak about that at one  
23 point.

24           ASSEMBLYWOMAN GLICK: Well, I know.

1           And the Governor says that it's 98 percent  
2           coverage. And I can tell you personally that  
3           when I am upstate, I have to shut off the  
4           video, I can't get connected.

5                     And if you're going to ask  
6           e-prescribers who are vets who are out at  
7           farms dealing with large animals to get  
8           online to prescribe for their animal  
9           patients, it's not going to happen.

10                    And there are going to be consequences  
11           that are -- it's a small -- I think it's a  
12           ridiculously small amount of money, but there  
13           has been some money associated as a savings.  
14           And I think that that will cost pet owners  
15           much more than the state will save. If they  
16           save anything.

17                    CHAIRWOMAN WEINSTEIN: Thank you.  
18           We'll go to the Senate.

19                    CHAIRWOMAN KRUEGER: Thank you very  
20           much. Oops, sorry, lost me for a second.

21                    And our next Senator is  
22           Senator Helming.

23                    SENATOR HELMING: Thank you,  
24           Senator Krueger.

1                   Dr. Zucker, thank you for your  
2                   testimony today.

3                   There have been a tremendous number of  
4                   questions that have touched on topics that  
5                   are very important to me -- getting kids back  
6                   to school, reuniting loved ones who are in  
7                   nursing homes, strengthening mental health  
8                   services, and doing a better job of providing  
9                   access to the vaccines to people living in  
10                  rural communities.

11                  But I wanted to go back for a moment  
12                  and talk about the nursing homes and the  
13                  spread of COVID-19 in nursing homes. It  
14                  seems to me that the administration  
15                  continually points the fingers back to the  
16                  nursing homes themselves, and even sometimes  
17                  to the staff. You talked about it in nicer  
18                  language today, using nicer language, calling  
19                  it inadvertent spread. But Dr. Zucker, we  
20                  all know that there was a lack of access to  
21                  PPE, to tests and so much more prior to  
22                  the -- at the start of the pandemic and  
23                  throughout the pandemic.

24                  But it just -- it makes me wonder what

1 the heck was DOH inspecting and evaluating?  
2 You talked about the many inspections that  
3 DOH was conducting. Well, were you looking  
4 to make sure that the facilities had adequate  
5 infectious control plans and that protective  
6 equipment was in place? Because it doesn't  
7 feel like it to me.

8 Also you mentioned, you know, about  
9 going -- where do we go from here, how do we  
10 do a better job, and you keep talking about  
11 this policy language that is going to be  
12 included in the budget. You're talking about  
13 proposing increased penalties and heightened  
14 enforcement mechanisms that will really  
15 penalize these nursing homes and  
16 long-term-care facilities.

17 And we all know there are bad actors,  
18 and I certainly want those bad actors to be  
19 held accountable. But it's just frustrating  
20 to me, because it's my understanding that not  
21 a single facility was under receivership.  
22 And I don't understand that. It suggests to  
23 me that maybe the department is not using --  
24 or could better utilize the tools currently

1 available.

2 And it makes me wonder, do we need  
3 these additional penalties, or does the  
4 department really need to step up and do a  
5 better job.

6 COMMISSIONER ZUCKER: So we -- I'm  
7 sorry --

8 SENATOR HELMING: I want to continue,  
9 because staffing is a concern. Right? We  
10 hear about it all the time. Dr. Zucker,  
11 again, when that subject came up earlier, you  
12 pointed back to the budget and you talked  
13 about how there's patient over profits,  
14 paying nurses more. I think that's great,  
15 don't disagree with it.

16 But in a report that you issued back  
17 in August 2020 you identified -- or you had  
18 Cornell and others identify there are many  
19 more issues outside of increasing pay. We  
20 have a workforce development issue. I want  
21 to know what you're doing about it, where is  
22 that outlined, how do we get more people in  
23 the pipeline? We don't have enough trainers,  
24 right, for some of these RN higher-degree

1 programs. There's just so much more that I  
2 think needs to be done.

3 I'm going to keep talking because on  
4 the issue of communication and transparency  
5 throughout this pandemic, as a person who  
6 represents more than 300,000 people, I have  
7 heard from you twice. You've done two  
8 presentations to the Minority Conference.  
9 Each time you started with a long PowerPoint  
10 and you had limited availability to us. We  
11 couldn't ask you questions.

12 It's a shame that this type of  
13 conversation has to happen during a public  
14 hearing on the budget. As a leader, I don't  
15 understand why you can't hold informational  
16 sessions with Democrats and Republicans  
17 alike, why we have to be segregated into  
18 these different groups. It's wrong. You're  
19 a leader, you need to get this public health  
20 information out to us so we can share it with  
21 our constituents. It will calm a lot of  
22 people down, right, if we're more transparent  
23 and we communicate better.

24 I do want to just -- I don't see the

1 clock, but in my Senate district and  
2 throughout New York State we have an issue  
3 with local fire departments that offer EMS  
4 services where the private service is not  
5 available. They're under a great deal of  
6 strain both financially and from a  
7 recruitment perspective -- again, going back  
8 to workforce issues.

9 Are you aware of this issue? And I  
10 want to know if the department is taking any  
11 actions to quantify this problem and to  
12 develop some long-term solutions. Because  
13 when people are getting sick or -- they don't  
14 have ambulance service available to them.

15 COMMISSIONER ZUCKER: So on some of  
16 those issues, I'll quickly try to address  
17 them. I'm going to start with the last one,  
18 the EMS issue.

19 We are working with the EMS community.  
20 Several years ago they raised some of the  
21 issues you've raised just now from your  
22 district, but also for across the state, to  
23 make sure we improve the workforce. And I  
24 know that's been a challenge. I can get you

1 more information in writing afterwards.

2           Regarding communicating, yes, we  
3 have -- I have personally communicated on  
4 many of these issues through webinars and I'm  
5 happy to continue to do so. From the  
6 standpoint of this pandemic, I don't know how  
7 many times I've been out there speaking on  
8 webinars on many of the different issues that  
9 we have spoken about this morning and  
10 afternoon.

11           On the issue of staffing, yes, the  
12 Governor has put forth -- and this is one of  
13 the key parts of nursing home reform, to make  
14 sure that there is patient care over profit.  
15 And as I said earlier, patient care comes to  
16 the issue -- goes directly to the issue of  
17 staffing. And there's percentages of how  
18 much is going to go to staffing. I can go  
19 through that. It's a 40 and -- 70 percent  
20 for patient care and 40 percent to staffing.

21           But I want to be respectful of time.

22           SENATOR HELMING: But our nursing  
23 homes don't have people they could hire. Our  
24 hospitals don't have --

1                   COMMISSIONER ZUCKER: We're working on  
2                   that.

3                   And with regards to the PPE, there's  
4                   23, 24 million PPE that went out there. And  
5                   we monitor this on a regular basis every  
6                   single day. But you have to remember, early  
7                   on --

8                   SENATOR HELMING: You and I talked  
9                   about this back in August during  
10                  the hearing --

11                  CHAIRWOMAN KRUEGER: And you're going  
12                  to continue the conversation, but not right  
13                  now because the time has been on zero for  
14                  you.

15                  COMMISSIONER ZUCKER: Okay. Thank  
16                  you.

17                  SENATOR HELMING: Thank you.

18                  CHAIRWOMAN KRUEGER: Thank you.  
19                  Assembly.

20                  CHAIRWOMAN WEINSTEIN: We go to  
21                  Assemblyman Jensen, three minutes.

22                  ASSEMBLYMAN JENSEN: Thank you very  
23                  much, Madam Chair.

24                  Thank you, Dr. Zucker.

1                   As I'm sure you're aware, there's  
2                   currently efforts underway to put into  
3                   statute mandatory resident care hours in  
4                   nursing homes and staffing ratios in  
5                   hospitals. DOH's own report from this past  
6                   August stated that this is going to cost  
7                   upwards of \$4 billion in increased staffing  
8                   costs for hospital systems and nursing homes.

9                   First of all, my first question is:  
10                  Do you support these sort of mandates in  
11                  facilities?

12                  Secondarily, is there in this year's  
13                  budget a strategy from the state to help  
14                  these entities with those increased costs,  
15                  especially when our not-for-profit nursing  
16                  homes are operating on margins of less than 1  
17                  percent?

18                  So those are -- those are my questions  
19                  to start with.

20                  COMMISSIONER ZUCKER: So I -- I  
21                  support the need that we have to have more  
22                  staff. I think that a specific ratio -- I  
23                  don't think that that's the way to go. But  
24                  we need to get more staffing.

1                   And as I just mentioned, this was one  
2                   of the issues that the Governor has put forth  
3                   in the bigger picture of nursing home  
4                   reforms. I support that.

5                   Regarding the costs, I'll take a look  
6                   at the budget and see what else -- how else  
7                   to address it. But as you know, this is a  
8                   negotiation, right? And so when the budget  
9                   negotiations happen, I would turn to all of  
10                  you to discuss that with our team when this  
11                  is at the table and on the table. I'm not  
12                  given the opportunity to actually sit there,  
13                  as you know, in the process of how the budget  
14                  takes place. But I certainly support that.

15                  ASSEMBLYMAN JENSEN: With respect,  
16                  Commissioner, you've certainly stated over  
17                  the past year -- you have a very large voice  
18                  with the Governor. So certainly if you  
19                  believe that that is a priority, I would  
20                  assume, as you've done with other issues, you  
21                  would bring that up as something that he  
22                  should take attention to.

23                  Secondarily, you talked about  
24                  staffing, that we need more staffing. I one

1           hundred percent agree. So as the leader of  
2           the Department of Health, what is your plan  
3           to help hospitals and nursing homes attract  
4           more staff, specifically RNs, LPNs and CNAs?

5                    COMMISSIONER ZUCKER: So there's two  
6           parts to that. One is the nursing home part  
7           and one's the hospital part. They interact,  
8           but I will tell you that the Governor has  
9           made a commitment, as I said before, saying  
10          he won't sign the budget unless there's  
11          certain issues of reform in the nursing  
12          homes, and staffing is part of it. So that's  
13          the one part.

14                   The hospital issue -- well, actually  
15          the hospital issue and the nursing home issue  
16          in one way tie together, which is the  
17          professional -- the need to increase the  
18          amount of people going into this field and  
19          the professional growth and development that  
20          needs to take place. It's not just the  
21          nurses, the RNs, but it's of course the  
22          entire healthcare delivery system and all of  
23          those who are the healthcare workforce.

24                   And we need to do that. And we need

1 to do that -- sorry. Yes, go ahead.

2 ASSEMBLYMAN JENSEN: So as a medical  
3 professional, as a leader in the health  
4 field, how would you -- how would you attract  
5 more CNAs specifically to facilities?

6 COMMISSIONER ZUCKER: I think what you  
7 need to do is you need to develop a system  
8 that gives you professional growth and not  
9 have someone feel that they go into this  
10 job -- and particularly I could use the  
11 example of someone who's a home health aide.  
12 Right? They go into that job, and then when  
13 a different job becomes available and it's  
14 giving you more of an increased salary, you  
15 say, well, I'm not going to do the home  
16 health aide, I'm going to jump to that job.

17 And so you need to develop a system  
18 where they have more -- a little bit more  
19 independence. And I've spoken to the home  
20 healthcare agencies about this specific  
21 thing. And I'm going to tell you on a  
22 personal level I'm very familiar with this,  
23 because my father was at home with many home  
24 aides who were helping him -- in the dozens,

1 over the years. And I said, How do you give  
2 them a little more independence to make  
3 decisions, the healthcare decisions or  
4 clinical decisions? And I said we need to  
5 develop a system that's more efficient and  
6 more effective and keep people there. And  
7 some were better than others, and we need to  
8 make sure to take those who are better and  
9 put them into a leadership role to bring  
10 others in and show that this is a  
11 professional development aspect, not just a,  
12 quote, job that they will then move to  
13 somewhere else to -- where there's more  
14 money.

15 ASSEMBLYMAN JENSEN: Thank you,  
16 Commissioner.

17 COMMISSIONER ZUCKER: I mean, I guess  
18 the one thing I will add is, you know, I'm --  
19 we're talking about this situation, but the  
20 fact is that these healthcare workers on the  
21 front lines were the ones who were out there  
22 who were managing the pandemic and out there  
23 taking care of people on the front line. And  
24 I applaud them all for what they did.

1                   And they put their own lives at risk  
2                   and their family's lives at risk because, you  
3                   know, if they got sick and they brought it  
4                   home, early on when we didn't even know how  
5                   to protect people, they may have cost the  
6                   lives of others. And perhaps that happened.  
7                   Because I know of my colleagues who died from  
8                   COVID who worked in a hospital. So I hear  
9                   you.

10                   CHAIRWOMAN WEINSTEIN: Thank you,  
11                   Commissioner.

12                   We're going to go to the Senate now.

13                   CHAIRWOMAN KRUEGER: Thank you very  
14                   much. And the next Senator is Senator Phil  
15                   Boyle, from Long Island, if he's still with  
16                   us.

17                   Are you here, Phil? Ah, there you  
18                   are.

19                   SENATOR BOYLE: Thank you,  
20                   Madam Chair. Thank you.

21                   And thank you, Commissioner.

22                   Commissioner, two quick questions.  
23                   One is regarding the March 25th directive. I  
24                   was hearing from constituents in the days

1 immediately after that, very concerned, they  
2 had parents in nursing homes and  
3 COVID-positive patients were brought back.  
4 They told me that the nursing home officials  
5 had said that they were directed not to  
6 discriminate against COVID-positive patients,  
7 and two of them mentioned the Ryan White Act.

8 And most people would not know what  
9 the Ryan White Act is. I just happen to know  
10 because I worked on Capitol Hill when it was  
11 passed. Obviously HIV and COVID are  
12 contracted very differently.

13 And so the idea of discriminating  
14 against COVID-positive patients, did that  
15 come from your office? Because it doesn't  
16 seem like that's a medical decision. Did  
17 that come from the Governor's office or some  
18 other entity?

19 COMMISSIONER ZUCKER: Let's just talk  
20 about this for one second. The guidance said  
21 that you cannot deny admission, and that does  
22 not equal you must accept. And if they felt  
23 that the hospitals -- you know, if the  
24 nursing homes felt that -- they could have

1           just said, I cannot accept that patient. So  
2           that just -- we'll put that, you know, just  
3           on the table there so you understand that  
4           issue.

5                        The issue of the HIV -- you know, and  
6           I -- I -- I know the whole history of HIV  
7           because, you know, when I was a medical  
8           student, we didn't even know about this. It  
9           was the beginning of HIV. And I watched how  
10          there was issues of discrimination that was  
11          out there over the course of the early days  
12          of HIV and the early years of HIV.

13                      So that is sort of the issue about not  
14          discriminating. I'm not sure what you've  
15          heard about sort of saying, well, this is  
16          exactly why you want to do this with COVID.  
17          The issue was you can't discriminate against  
18          somebody because you can't sort of say, Well,  
19          I don't want the person with COVID. Because  
20          prior to this pandemic, there were patients  
21          with C. auris, which is a fungal infection,  
22          and a lot of nursing homes may have said --  
23          or people said -- I don't want the patient  
24          with C. auris, I don't want something

1 spreading in my facility. And you can't  
2 discriminate against people, particularly  
3 when you need to take care of them.

4 And the law says, and CMS says it,  
5 that, you know, there's -- you -- and the CDC  
6 says it. And this happened long before the  
7 pandemic. These were the rules that were in  
8 place long before the pandemic. When we put  
9 forth that guidance, we were using the -- we  
10 were using our -- the knowledge we had from  
11 our federal partners. And I've said that  
12 before. And I know people sometimes say,  
13 Well, you're just saying, well, the federal  
14 government said that --

15 SENATOR BOYLE: Okay, Doctor, thank  
16 you. I appreciate your answer very much. I  
17 just want to get another quick question, very  
18 quickly.

19 The CDPAP program is very popular  
20 among my constituents. Your department just  
21 denied a large number of very qualified  
22 agencies, and my constituents are concerned  
23 about it. Why did you decide to deny and  
24 close the majority, I believe, of the large

1 CDPAP agency providers?

2 COMMISSIONER ZUCKER: Donna, do you  
3 want to take that?

4 MEDICAID DIRECTOR FRESCATORE: Yeah,  
5 I'm happy to do that quickly.

6 So not in last year's budget but the  
7 budget before, the department was given the  
8 authority to selectively contract with fiscal  
9 intermediaries. There were some 400 or so in  
10 operation. We issued a competitive process.  
11 The applicants were scored against criteria  
12 consistent with state law about their  
13 experience, their geographic accessibility,  
14 their ability to -- their cultural and  
15 linguistic competency, their ability and  
16 their demonstrated record of following rules  
17 and requirements, including labor laws.

18 We did that competitive process. We  
19 announced the awards on February 11th. I was  
20 asked a question earlier -- there was a  
21 debriefing process for organizations that  
22 were not selected to -- so that we can --  
23 they can learn more about where their  
24 proposal was viewed as strong and where it

1 was viewed as not as strong.

2 Look, there's 139,000 people in the  
3 Consumer-Directed Program. This selection  
4 gives every consumer choice -- in fact, the  
5 choice of over 50 FIs in New York City and in  
6 no upstate county will a consumer have a  
7 choice of less than 24, I believe. So this  
8 selection achieves the objectives and the  
9 requirements of the state law.

10 CHAIRWOMAN WEINSTEIN: Thank you.  
11 We'll go back to the Assembly now, to  
12 Assemblyman Anderson.

13 ASSEMBLYMAN ANDERSON: Thank you,  
14 Chairwoman Weinstein, and thank you,  
15 Chairwoman Krueger.

16 I have several questions, but I want  
17 to make a comment first. As a new member,  
18 we, you know, wanted to question you,  
19 Dr. Zucker, a couple of months back, I think  
20 it was December or January, to ask you some  
21 critically important questions around the  
22 issues of nursing homes, around the issues of  
23 transparency overall during the COVID-19  
24 response.

1                   Unfortunately, you were very evasive  
2                   and you did not answer a lot of our  
3                   questions, and we were left off that call  
4                   with many questions unanswered. But I'm  
5                   going to try my best to get as many questions  
6                   in in my little two minutes that I have left,  
7                   in making up for that meeting we missed.

8                   There's a lot of -- there was a lack  
9                   of coordination, lack of transparency with  
10                  the nursing home response. And I do want to  
11                  ask, going forward, do you support a safe  
12                  staffing ratio for many of our nursing homes  
13                  and hospitals that were overloaded during the  
14                  height of the COVID-19 pandemic last year?  
15                  That's my first question.

16                  The second question is in the  
17                  Executive Budget proposal there are  
18                  significant hospital reductions that are  
19                  being proposed by the Executive. I'm sure  
20                  that you and the Executive had a discussion  
21                  about some of these proposals. But one  
22                  that's going to be particularly hurtful and  
23                  hurtful obviously in the context of COVID-19  
24                  and the response that we've had to do around

1 COVID-19, is the VAPAP reduction, \$99 million  
2 in reductions to VAPAP, which provides  
3 critical, critical financial support to our  
4 safety-net hospitals in Black and brown  
5 communities, like the one I have in my  
6 district, St. John's Hospital, which now I  
7 believe your department is requiring them to  
8 reduce their bed size, even though they've  
9 received thousands of patients during the  
10 height of COVID-19.

11 In fact, we received the first  
12 COVID-19-positive patient in all of Queens at  
13 St. John's Hospital. Now we're proposing  
14 additional cuts on that infrastructure, which  
15 I think is incredible.

16 But it also speaks to my third  
17 question, which is the root of why COVID-19  
18 was so pervasive in Black and brown  
19 communities, is because your agency lacked  
20 the ability to address health inequities.  
21 Your zip code should not determine your  
22 quality of life or health outcomes. But the  
23 reality is if you live in Far Rockaway, if  
24 you live in Jamaica, if you live in the

1 South Bronx and you have those zip codes --  
2 and some part of Brooklyn as well -- if you  
3 have those zip codes, it determines your  
4 health outcomes.

5 So I want to know, in my third  
6 question, what is your agency going to do  
7 to --

8 CHAIRWOMAN WEINSTEIN: Better leave  
9 some time, sir.

10 ASSEMBLYMAN ANDERSON: I've got  
11 30 seconds. I have 30 seconds.

12 (Laughter; overtalk.)

13 ASSEMBLYMAN ANDERSON: And my third  
14 question --

15 CHAIRWOMAN WEINSTEIN: Okay, he's not  
16 going to have time to answer --

17 ASSEMBLYMAN ANDERSON: Right. And my  
18 third question, really quickly, what do you  
19 plan to do to address health inequity in  
20 {inaudible}.

21 COMMISSIONER ZUCKER: So I'll answer  
22 that. First, I would take issue on the issue  
23 that the department has not focused on health  
24 inequities. This has been one of the high

1 priorities of the department all along.

2 The issue of COVID being increased in  
3 the Black and brown communities, I concur  
4 with what you say. And we've looked at that.  
5 I've said all along that these health  
6 inequities will be addressed, because they've  
7 been -- you know, they have been uncovered  
8 even further.

9 It's not just the Department of  
10 Health. This is an issue of a societal issue  
11 that needs to address it. So we will tackle  
12 it from our front, from the Department of  
13 Health and from government, at least state  
14 government. And that's one issue.

15 So I -- you can -- you have my word on  
16 that. And we've been working on this for a  
17 long time, on health inequities in many  
18 different areas.

19 On safe staffing, I've already  
20 answered that question regarding what the  
21 Governor's going to -- how to address that  
22 with regards to the nursing homes.

23 With regard to the 99 million on  
24 VAPAP, Donna, do you want to tackle that one?

1                   MEDICAID DIRECTOR FRESCATORE: Yeah, I  
2                   think I would just quickly say, being  
3                   respectful of time, that, you know, as I said  
4                   before, we worked -- the department and our  
5                   colleagues worked, you know, with all of the  
6                   hospitals and facilities that are essential  
7                   and in need of immediate cash assistance.

8                   And the reduction in the budget  
9                   actually is a funding that was available but  
10                  is not needed, for a number of different  
11                  reasons. So that's what it is. There's a  
12                  commitment for VAPAP in the federal fiscal  
13                  year '22 budget.

14                 CHAIRWOMAN WEINSTEIN: Thank you.

15                 So we're going to move on to the  
16                 Senate now.

17                 CHAIRWOMAN KRUEGER: Okay. Thank you  
18                 very much.

19                 And our next Senator is Senator -- oh,  
20                 excuse me. I believe it is Senator Brouk.  
21                 Yes, it is Senator Brouk.

22                 Are you with us, Samra?

23                 SENATOR BROUK: I'm here.

24                 CHAIRWOMAN KRUEGER: Hi.

1                   SENATOR BROUK: Can you hear me, all?  
2                   Okay, we did it. Thank you so much,  
3                   Chairwomen.

4                   I'm happy to be asking these questions  
5                   today. I want to start quickly by just  
6                   having it on the record, in addition to how  
7                   many other people have said it today -- I  
8                   think it's illogical and unconscionable that  
9                   we are sitting in a global health pandemic  
10                  and that there is even a question of cutting  
11                  much-needed funding for healthcare. But  
12                  that's not what we're going to go into today,  
13                  because I could fill a book with my thoughts  
14                  about making cuts when there are dire needs.

15                  I want to talk about something that is  
16                  really affecting the community here in  
17                  Rochester, and that is the changes to the  
18                  340B program. I want to tell you what that  
19                  means for the Rochester area. That's going  
20                  to affect nine Federally Qualified Health  
21                  Centers. They serve 140,000 patients. In a  
22                  relatively small city, that is a lot. They  
23                  will lose a minimum of \$11.5 million in  
24                  much-needed funding necessary to function.

1           These are clinics like Jordan Health,  
2           Trillium Health -- which is a Ryan White  
3           clinic -- and our safety-net hospitals  
4           through University of Rochester and  
5           Rochester Regional Health.

6                        I'm receiving emails, I'm receiving  
7           calls. Just now I received an email  
8           begging -- from the CEO of one of these  
9           organizations literally begging me to help  
10          stop this, because these are the folks who  
11          are feeding, housing, giving transportation  
12          to low-income families, communities of color,  
13          and people living with HIV -- all of whom are  
14          the folks who have had disproportionately  
15          negative effects because of COVID-19. And at  
16          this time we are going to make their lives  
17          harder and make it harder to get the care  
18          they need.

19                        So my question is how is this the  
20          right time to move forward with cuts like  
21          this that will so negatively affect our  
22          communities?

23                        COMMISSIONER ZUCKER: Donna, do you  
24          want to address the 340B?

1                   MEDICAID DIRECTOR FRESCATORE: Yeah,  
2                   certainly. So, you know, we touched on this  
3                   just slightly before.

4                   So we -- I think we understand and we  
5                   appreciate -- I've talked to many FQHCs, many  
6                   340B providers over the course of the last  
7                   12 months, since the pharmacy carve-out was  
8                   enacted, and we understand and we appreciate  
9                   the very valuable services.

10                  The question is under the current way  
11                  that 340B is funded -- it's by excess  
12                  reimbursement from the managed care plans  
13                  over and above the cost of prescription  
14                  drugs, from which some report that 50 percent  
15                  of that excess is taken by third-party  
16                  administrators. It's not because the FQHC is  
17                  doing anything wrong; they need to get the  
18                  prescription to one of their patients.

19                  So the Executive's approach is  
20                  different. It says let's be transparent  
21                  about how much Medicaid pays for drugs, and  
22                  let's set up direct funding to go to the  
23                  Federally Qualified Health Centers, the Ryan  
24                  White 340B providers, and others that are

1 providing these services. As opposed to  
2 having it in these very opaque kind of  
3 pharmacy reimbursement structures that --

4 SENATOR BROUK: Donna --

5 MEDICAID DIRECTOR FRESCATORE: --  
6 quite honestly, the federal government's  
7 looking at as well.

8 SENATOR BROUK: Let me finish really  
9 quickly. Sorry, I didn't mean to interrupt  
10 you, but time is running out.

11 But I just -- the answer I'm looking  
12 for here is how it's helpful to these  
13 providers to not have it. Like before, they  
14 had a more direct payment -- now those  
15 savings are going through the state. And so  
16 that is I think -- that does not make logical  
17 sense when folks are saying that they need  
18 that money and that not having that money and  
19 that the reimbursement fund that's set up in  
20 this proposal will not fully make -- fill  
21 that hole.

22 And I know I'm out of time. So if you  
23 wanted to follow up on written, that's fine.  
24 Thank you.

1                   MEDICAID DIRECTOR FRESCATORE: We'll  
2 do that.

3                   CHAIRWOMAN KRUEGER: You have many  
4 people asking about that program, Donna. So  
5 anything in writing that helps us see the  
6 argument that I don't think we're seeing is  
7 fine. Thank you.

8                   Assembly.

9                   CHAIRWOMAN WEINSTEIN: Assemblywoman  
10 Miller.

11                  ASSEMBLYWOMAN MILLER: Hi. Can you  
12 hear me?

13                  CHAIRWOMAN WEINSTEIN: Yes, Missy.

14                  ASSEMBLYWOMAN MILLER: Okay. Thank  
15 you very much, Chairs.

16                  And hello, Dr. Zucker.

17                  You know, I'm just going to ask my  
18 questions up front, and in case there's not  
19 enough time I'm going to ask you up front to  
20 please reply to any of my questions  
21 afterwards, either by email or if we can  
22 actually ever have a conversation, I would  
23 appreciate that.

24                  First, I hear you say repeatedly that

1           you're very happy to continue the  
2           conversation, to have a conversation, but I  
3           don't know if you realize how hard it is to  
4           actually have a conversation with you. I've  
5           tried very hard several times and sent you  
6           emails and I don't even get a response. If I  
7           really need a direct response, I'll contact  
8           Erin or -- but it is very difficult to reach  
9           you.

10                         That being said, I'm just going to ask  
11           my questions. We've talked a little bit  
12           about CDPAP and a lot of my colleagues have  
13           asked some of the questions, but I'm  
14           curious -- the process of awarding the  
15           remaining 68 FIs, as Chairman Gottfried had  
16           alluded to, it seemed a little similar to the  
17           medical marijuana selection process of ROs.  
18           It just doesn't seem that the ones -- the  
19           companies that have a history of wage and  
20           hour violations or Medicaid fraud, some don't  
21           have the financial means to carry payroll,  
22           those were awarded the contracts, but not  
23           some of the FIs that have been, you know,  
24           serving the CDPAP population for so many

1 years successfully.

2 So I'm curious, you know, what that  
3 actual process was. It doesn't seem to be  
4 very transparent.

5 I'm also asking the intended goal of  
6 the fiscal intermediary authorization process  
7 was to ensure the department has a record of  
8 overseeing those qualified FI providers. But  
9 the Legislature never authorized or directed  
10 the Department of Health to reduce the number  
11 of FIs so significantly. And I have a lot of  
12 concerns that that drastic reduction will  
13 cause some kind of a bottleneck as  
14 everybody's trying to streamline their -- you  
15 know, the closed FIs into the remaining FIs.

16 And the people who would suffer would  
17 be those not getting their services because  
18 their aides aren't registered yet or the  
19 paperwork isn't complete.

20 So those are two concerns I have.  
21 Then last -- well, two more. On COVID, as  
22 far as reopening schools, reopening  
23 businesses, can you define what is an  
24 acceptable risk of transmission for schools

1 and businesses, and what mitigation  
2 strategies will accomplish that? Because we  
3 really do need to get our kids back in school  
4 five days a week, all of them.

5 And then lastly, we've talked about --  
6 everybody's asked about the turnover rate.  
7 It's extremely high, especially in home care  
8 agencies. Why are we cutting by 50 percent  
9 the home care worker recruitment and  
10 retention funds? This more than ever is now  
11 when we need to recruit more help.

12 So those are my questions. I see I've  
13 used up my time, so I would appreciate a  
14 response directly by email or phone. Thank  
15 you.

16 COMMISSIONER ZUCKER: Okay, we will do  
17 that.

18 CHAIRWOMAN WEINSTEIN: Yes. And  
19 Dr. Zucker, if you could share that with  
20 Senator Krueger and myself, we'll make sure  
21 the other members have access to that.

22 Senator Krueger.

23 CHAIRWOMAN KRUEGER: Thank you.

24 You may need a few speechwriters to

1 help you get all of this done in a reasonable  
2 time period.

3 Next up is -- oh, he's been very  
4 patient all day -- George Borrello, Senator  
5 George Borrello.

6 SENATOR BORRELLO: Thank you so much,  
7 Chair Krueger. Thank you so much. I  
8 appreciate it.

9 Dr. Zucker, thank you for being here.  
10 I want to follow-up on the small business  
11 situation. The hospitality industry has been  
12 devastated by this pandemic and the lockdowns  
13 have been unfortunately far worse. By your  
14 own data -- which I'm questioning to begin  
15 with -- your own data, only 1.4 percent of  
16 infections are coming from restaurants, and  
17 yet these lockdowns and restrictions  
18 continue.

19 Just as we thought we were kind of  
20 getting out of the woods, you released  
21 information on guidance on special events,  
22 things like weddings. And at a wedding you  
23 cannot have people that are unrelated sitting  
24 at the same table, according to the

1 Department of Health guidance that we  
2 received. However, at a restaurant, you can  
3 have 10 unrelated people sitting at the same  
4 table.

5 What science are you relying on to  
6 determine that people at a wedding have to be  
7 related but not at a restaurant? That's my  
8 first question.

9 COMMISSIONER ZUCKER: So part of  
10 this -- you have to look at the guidance --  
11 let me see if I can explain some of this to  
12 you on the restaurants and the way things are  
13 set up.

14 The environmental issues come into  
15 play as to why we -- the speed at which we're  
16 opening different facilities and restaurants  
17 particularly, particularly downstate. I'm  
18 just going to bring up some points which I've  
19 heard that you basically have put a light  
20 on --

21 SENATOR BORRELLO: Well, and I have a  
22 real basic question. How are 10 people  
23 sitting at a table in a restaurant different  
24 than 10 people sitting at a wedding? Which,

1 by the way, could be the same restaurant.

2 COMMISSIONER ZUCKER: Well, at a  
3 wedding of 500 people, let's say, or 300  
4 people that are interacting, you have a lot  
5 more interactions among a lot of different  
6 people there. Right? And so you run the  
7 risk of a significant problem.

8 I will just personally tell you a year  
9 ago in January, up in New Rochelle before  
10 this all began, I was at a wedding with 500,  
11 600 people and I saw the amount of  
12 interaction that people had at that point in  
13 time, and I said to myself, Imagine if this  
14 COVID issue was just one month later -- or  
15 the wedding was just one month later, the  
16 amount of interaction you would have had with  
17 all those different people.

18 So that's the difference, right?

19 SENATOR BORRELLO: Right, but I'm just  
20 saying it's not -- they're limited to  
21 150 people, first of all, so it doesn't make  
22 any difference. And I apologize, I don't  
23 mean to cut you off, but I have a short  
24 period of time.

1                   Here's my other question. My wife and  
2                   I both had COVID. And luckily we recovered,  
3                   but we spoke with contact tracers. The  
4                   contact tracers said -- asked us, you know,  
5                   do you know where you contracted COVID, and  
6                   we said no. And then they said, Well, have  
7                   you been at restaurants? Yes. Have you been  
8                   in stores? Yes.

9                   My question is, how can your contact  
10                  tracer data be accurate when you don't have a  
11                  category for "unknown"? I have to believe  
12                  that most people cannot pinpoint the point at  
13                  which they actually contracted COVID, yet  
14                  your data -- and there is no option for  
15                  contact tracers to hit "unknown." How do you  
16                  justify this data, which you're using to  
17                  determine the life and death of businesses  
18                  right now, when you don't have an actual  
19                  category for "unknown?"

20                  COMMISSIONER ZUCKER: Well, we've  
21                  reached 85 to 90 percent of people. We've  
22                  done about 840,000 contacts, so somewhere in  
23                  that range. We have about 8,000 or so  
24                  contact tracers.

1                   This is the hard part of contact  
2                   tracing; you have to sort of try to get as  
3                   much information as you can as quickly as you  
4                   can, and you have to try to track the  
5                   individuals who are positive or  
6                   individuals -- better to say individuals who  
7                   have been exposed, to be sure that they're  
8                   not positive.

9                   SENATOR BORRELLO: So data -- the  
10                  contact tracers are just guessing, is really  
11                  what you're saying, that they don't --

12                 COMMISSIONER ZUCKER: No, they're not  
13                 guessing.

14                 THE MODERATOR: Time.

15                 (Overtalk.)

16                 COMMISSIONER ZUCKER: No, they're  
17                 doing --

18                 SENATOR BORRELLO: But there is no  
19                 "unknown." What about -- I did -- I don't  
20                 know where I got my -- where I contracted  
21                 that, and that wasn't an option for the  
22                 contact tracers. I know my time is up, but  
23                 that's a serious consideration.

24                 COMMISSIONER ZUCKER: Right, but the

1 contact -- right, but I will say that that  
2 contact tracing and what we have done is what  
3 has helped prevent the spread of this  
4 disease.

5 I mean, it is just -- these are just  
6 straightforward public health measures that  
7 are put into place. The masks, the hand  
8 washing, right, the distance -- the social  
9 distancing, the contact tracing, the  
10 vaccinations, these are just the standard  
11 things we do to make sure we prevent this  
12 pandemic from spreading in New York and  
13 elsewhere, for that matter. So --

14 SENATOR BORRELLO: With all due  
15 respect, sir, we have more people in the  
16 hospital with COVID right now than Florida,  
17 with none of those restrictions. So I have  
18 to question the science on this.

19 COMMISSIONER ZUCKER: I'm going to  
20 take issue with that. But okay.

21 CHAIRWOMAN WEINSTEIN: We go to  
22 Assemblyman Abinanti.

23 ASSEMBLYMAN ABINANTI: I'm unmuted, I  
24 guess? There we go.

1                   Thank you very much, Commissioner, for  
2                   joining us today.

3                   COMMISSIONER ZUCKER: Thank you.

4                   ASSEMBLYMAN ABINANTI: Unfortunately  
5                   there's been no mention of one very  
6                   vulnerable group of people, people with  
7                   disabilities. As of this week, the numbers  
8                   I've seen, of the 34,500 people who lived in  
9                   OPWDD residential settings, 6,716 tested  
10                  positive and 538 died from COVID-19. That's  
11                  and 19.4 percent infection rate, and a 1.6  
12                  fatality rate -- double the state's  
13                  transmission and six times the fatality rate  
14                  of the state.

15                  Number one, on April 10, 2020, a state  
16                  directive to OPWDD providers -- almost  
17                  identical to the March nursing home  
18                  directive -- requires return of COVID-19  
19                  patients from the hospital to OPWDD  
20                  residential settings and prohibits their  
21                  being tested before return.

22                  How do you defend that this directive  
23                  is still effective and has not been modified?

24                  Number two, on November 10, 2020,

1           there was a state directive to OPWDD  
2           providers, unique to OPWDD, that allows  
3           direct support staff exposed to a confirmed  
4           COVID-19 case to go to work so long as they  
5           quarantine when they're not at work.

6                         In light of the fact that over 11,600  
7           staff in OPWDD direct-care programs have  
8           contracted COVID-19, how do you defend that  
9           this directive is still effective and has not  
10          been modified?

11                        And number three, the numbers that I  
12          was given come from the state. This is about  
13          those who got COVID-19 in certified  
14          residences. Do these numbers include those  
15          who died in hospitals, or just those who died  
16          in residences?

17                        So my three questions are why are we  
18          still requiring direct return of COVID  
19          patients to OPWDD residences? Why are we  
20          allowing exposed staff to go into those  
21          residences? And lastly, are these numbers  
22          actually accurate or do we have the same  
23          problem we had with nursing homes?

24                        COMMISSIONER ZUCKER: A couple of

1 things.

2 The first thing is that I didn't catch  
3 all the percentages, and I will go back and  
4 look at them. But this is a congregate  
5 setting. This is one of the challenges we've  
6 had with congregate settings and disease  
7 spread, whether it's the nursing homes,  
8 college --

9 ASSEMBLYMAN ABINANTI: Yes, but you  
10 yourself, Commissioner, said that the  
11 congregate settings are getting it from  
12 staff.

13 COMMISSIONER ZUCKER: Yes, so let me  
14 finish. Right.

15 ASSEMBLYMAN ABINANTI: So why are you  
16 allowing staff that has been exposed to go  
17 into the congregate settings?

18 COMMISSIONER ZUCKER: Let me -- let me  
19 finish. Part of this is OPWDD. You need to  
20 direct it to the commissioner of OPWDD --

21 ASSEMBLYMAN ABINANTI: I did, and they  
22 said talk to the health commissioner. They  
23 said all of this comes from the Department of  
24 Health.

1                   COMMISSIONER ZUCKER: Number two, the  
2                   issue with OPWDD, all those settings, they  
3                   have become a priority for vaccinations so  
4                   that we can make sure that the residents  
5                   there are protected and no longer at risk.

6                   The issue of testing, I'd be happy to  
7                   follow up on that, but the testing that we  
8                   have provided for nursing homes we provide  
9                   for other facilities, and that will hopefully  
10                  decrease the spread. But as --

11                  ASSEMBLYMAN ABINANTI: The directive  
12                  still in effect specifically says that they  
13                  cannot test.

14                  COMMISSIONER ZUCKER: Well, I will get  
15                  back to you on the details after I look at  
16                  the directive. I want to go through that  
17                  first.

18                  But as I said, from the -- the key  
19                  points that I have is yes, a congregate  
20                  setting, and yes, vaccine is a priority in  
21                  that setting to make sure that doesn't become  
22                  a problem.

23                  CHAIRWOMAN WEINSTEIN: We'll go now to  
24                  the Senate.

1 CHAIRWOMAN KRUEGER: Thank you.

2 Our next speaker will be Senator Julia  
3 Salazar.

4 SENATOR SALAZAR: Thank you. Thank  
5 you, Commissioner and Deputy Commissioner,  
6 for joining us today.

7 I want to ask about the -- really what  
8 the Executive Budget is doing to keep  
9 safety-net hospitals operational during a  
10 time when we need them the most. The  
11 Medicaid spending cap, lowered reimbursement  
12 rates, the Executive Budget's threats of  
13 additional Medicaid cuts across the board  
14 means that hospitals who treat mostly  
15 low-income patients and like hospitals in my  
16 own district are under financial strain.

17 And I just want to know what exactly  
18 is the Executive Budget doing to keep these  
19 safety-net hospitals operational right now?

20 COMMISSIONER ZUCKER: This is an  
21 enormous issue. The safety-net hospitals  
22 across the state were challenged prior to the  
23 pandemic. Since the pandemic, obviously --  
24 particularly upstate when we cut back on

1 elective surgery and they didn't have cases,  
2 so they were stressed even further. So we  
3 recognize that.

4 We're working with our team, the  
5 Office of Primary Care and Health Systems  
6 Management, to figure out how we can make  
7 sure they have the resources to continue to  
8 provide the care to their communities. This  
9 is a challenge.

10 Regarding the cap, the global cap --  
11 because that ties into this as well, I think  
12 that Donna will address some of that. But we  
13 are looking at these issues of how  
14 hospitals across the state that were  
15 challenged over the course of the last year  
16 can meet their needs.

17 Donna, do you want to address the --  
18 MEDICAID DIRECTOR FRESCATORE: Sure.  
19 Thank you, Dr. Zucker.

20 And speaking for the Medicaid program,  
21 I can tell you this is, you know, a concern  
22 that we share as well and we work very  
23 closely with our colleagues and Dr. Zucker  
24 here in the department because we understand

1           that Medicaid plays an important role in the  
2           financial viability of those very needed  
3           hospitals, and other providers as well.

4                        So we talked a little bit earlier  
5           about a series of programs, including the  
6           Vital Access Safety Net Provider Program,  
7           which supports projects for facilities that  
8           are selected due to their financial condition  
9           and the role they play in serving  
10          New Yorkers. We talked about VAPAP a bit,  
11          including that commitment as well as the  
12          Value Based Payment Quality Incentive  
13          Program.

14                       The budget in '22 includes about  
15          \$900 million in funding to support those  
16          hospitals. Right? That's over and above  
17          reimbursement for Medicaid.

18                       There's also, you know, a proposal  
19          that we haven't quite touched on and that is  
20          for our Essential Plan here in New York.  
21          About 880,000 people as of this morning  
22          receive coverage through that program. We've  
23          recognized that, you know, those provider  
24          reimbursement assumptions have not been

1 changed since the program was first  
2 implemented in 2016.

3 And so we anticipate, as far as part  
4 of the state plan here, that an additional  
5 \$420 million will be invested in provider  
6 reimbursement for both inpatient and  
7 outpatient services. Also helping those  
8 hospitals that are serving those -- you know,  
9 that's a huge program by anybody's standard,  
10 you know, 880,000 people.

11 Those are just a few of the  
12 initiatives, and we're happy, you know, to  
13 have further conversation about any of those  
14 programs in more detail.

15 SENATOR SALAZAR: All right.  
16 Unfortunately I'm out of time. Thank you.

17 CHAIRWOMAN KRUEGER: Thank you very  
18 much.

19 Assembly.

20 CHAIRWOMAN WEINSTEIN: Assemblywoman  
21 Hunter, please.

22 You need to pull her; she needs to  
23 leave for conference. Thank you.

24 ASSEMBLYWOMAN HUNTER: Very good,

1           thank you. Thank you, Chair Weinstein. I  
2           appreciate it.

3                       This is relative to the consumer  
4           directed. And I don't know who wants to  
5           answer. I know there was a couple of  
6           questions about this.

7                       But let me just lay out specifically  
8           in Onondaga County, there's over 350,000  
9           residents, and not one FI was awarded in our  
10          entire county. So many of the organizations,  
11          the not-for-profits that have provided this  
12          crucial service to many of our most  
13          vulnerable -- some of our largest  
14          organizations, some of our organizations who  
15          deal with refugees and new Americans who  
16          speak the language of those who have come  
17          here, were not awarded.

18                      And so I heard what you said about,  
19          you know, the award process, and apparently  
20          there's supposed to be some sort of review  
21          after this. But I literally have FIs in  
22          Rockland County who are supposed to be now  
23          the FIs who are supposed to provide services  
24          in Onondaga County.

1                   So I can't imagine -- I have  
2                   not-for-profits, you know, calling my office  
3                   trying to figure out what happened,  
4                   longstanding organizations who have been  
5                   providing this service for years and years  
6                   and years. And we're in a situation now  
7                   where not one single provider was given an  
8                   award to provide Consumer Directed FI  
9                   services in one of the Big 5 counties.

10                   MEDICAID DIRECTOR FRESCATORE: So I  
11                   don't know the specifics of Onondaga, but I  
12                   will certainly look into it.

13                   What the RFO allowed was actually  
14                   collaborating partners that might be local.  
15                   The idea there was that rather than have  
16                   every organization use funding, for example,  
17                   to process payroll or to check workers' comp,  
18                   that there would be one lead organization  
19                   that would perform those administrative  
20                   services, and they would have collaborating  
21                   partners on the ground locally.

22                   So I will be happy to look into your  
23                   concerns about Onondaga.

24                   ASSEMBLYWOMAN HUNTER: Please.

1 I can understand the collaboration.  
2 And there has been an abuse with FIs. I  
3 admit that there are organizations that  
4 should not be delivering this consumer, you  
5 know, programming. But these longstanding  
6 organizations should be the leads and should  
7 have other organizations subbing to them.

8 So I am critical, you know, asking if  
9 you could please take a look at this. It  
10 makes no sense and it makes no sense to not  
11 have a lead organization to sub even to the  
12 rest in a county as large as mine.

13 MEDICAID DIRECTOR FRESCATORE: I'll  
14 look into that.

15 ASSEMBLYWOMAN HUNTER: Thank you.

16 CHAIRWOMAN WEINSTEIN: Thanks.

17 Back to the Senate.

18 CHAIRWOMAN KRUEGER: Thanks.

19 Do we have Senator Stec with us still?

20 SENATOR STEC: Yes.

21 CHAIRWOMAN KRUEGER: Hello,  
22 Senator Stec.

23 SENATOR STEC: Hello, how are you?

24 CHAIRWOMAN KRUEGER: All right.

1 Welcome.

2 SENATOR STEC: All right, thank you  
3 very much.

4 Commissioner, Doctor, thank you very  
5 much for your testimony today. I understand  
6 it's been a long day.

7 And I've been paying attention and  
8 listening to the questions, so if I could  
9 just briefly start with a statement. I  
10 just -- in listening to my colleagues and my  
11 own personal observation, I want to say that  
12 your department's unresponsiveness to the  
13 Legislature in our communications has been  
14 unacceptable and frankly troubling.

15 And I'm also personally troubled, as I  
16 know a lot of my colleagues are, about what  
17 apparently has been a partisan kind of  
18 communication as far as having meetings with  
19 one side of the aisle and not with the other.  
20 We're all in this together. And certainly my  
21 constituents want to be involved in the  
22 discussions as to what's going on as well.

23 So with that said, I do have one  
24 question that I've got to ask, and frankly

1 I'm surprised that no one's asked it yet.  
2 Early on, to previous questions about sending  
3 COVID-positive patients back into nursing  
4 homes, you stated that COVID was already  
5 largely present in these homes from other  
6 sources, like in your example with staff.

7 So I just want to understand, in  
8 layman's terms, if there's one room with  
9 50 people in it and one of those 50 people  
10 has COVID, and then there's another room of  
11 50 people and 20 of those people have COVID,  
12 are you saying that you would expect the two  
13 rooms to have the same infection rates?

14 COMMISSIONER ZUCKER: I think that,  
15 you know, you're asking a question without my  
16 knowing more of the details of those -- of  
17 the scenarios. So if you have --

18 SENATOR STEC: All other things being  
19 equal, Doctor. All other things being equal,  
20 one in 50 and 20 in 50, they would have the  
21 same infection rate?

22 COMMISSIONER ZUCKER: But how are you  
23 defining infection rate? If the -- if you're  
24 saying --

1                   SENATOR STEC: Well, let me rephrase  
2                   it. Would you --

3                   COMMISSIONER ZUCKER: One out of 50,  
4                   2 percent have it. Twenty out of 50,  
5                   40 percent have. Right? Right, I get what  
6                   you're saying. That's how many people have  
7                   it.

8                   SENATOR STEC: Now, which room would  
9                   you rather be in? Let me ask it that way.  
10                  What room would you rather be in? Would you  
11                  rather have your parent or grandparent in the  
12                  room with one out of 50 or 20 out of 50?

13                  COMMISSIONER ZUCKER: It's a  
14                  hypothetical question.

15                  SENATOR STEC: It's a very real  
16                  question, Doctor.

17                  COMMISSIONER ZUCKER: Well, no, I see  
18                  where your reasoning is going here. You're  
19                  going to say, well, if there's only one  
20                  person who has it in the whole facility.

21                  But the bottom line is that it's in  
22                  the facility. And it's in the facility with  
23                  one person or more. And it's not a fair  
24                  question to ask whether, you know, the room

1 had 20 people in there versus one person in  
2 there, because the disease is there. The  
3 disease is already in the facility.

4 And so if I were in that room and one  
5 person -- I walk into a room with one person  
6 with COVID, I'd be as concerned as if I  
7 walked into a room with 20 people with COVID.  
8 Because it's already there.

9 I mean, I understand what your -- what  
10 your point is.

11 SENATOR STEC: Right? I mean one --  
12 well, all right.

13 Well, with that said, do you have a  
14 list of nursing homes that followed the  
15 directive from March 25th that accepted  
16 nursing -- COVID-positive patients? Do you  
17 have a list of those?

18 COMMISSIONER ZUCKER: I don't have it  
19 off the top of my head, but I do have a list.

20 SENATOR STEC: I'd like to see that  
21 list, please.

22 COMMISSIONER ZUCKER: Sure.

23 SENATOR STEC: And also, do you know  
24 how many COVID-positive patients were

1           accepted at each of these facilities? If you  
2           don't have that off the top of your head, I  
3           would like that as well.

4                    COMMISSIONER ZUCKER: I can get that.  
5           I can get that.

6                    SENATOR STEC: All right. I see my  
7           time is up. I have more, but I'll continue  
8           to listen. Thank you.

9                    CHAIRWOMAN KRUEGER: Thank you.  
10          Assembly?

11                   CHAIRWOMAN WEINSTEIN: Thank you. Now  
12          we go to Assemblywoman Niou.

13                   ASSEMBLYWOMAN NIOU: Hello. Thank you  
14          for being here. Thank you for putting me up,  
15          Helene. I just -- I don't know if I can see  
16          what was happening. But I just wanted to  
17          say, you know, I'm seeing in our budget cut  
18          after cut after cut after cut of our  
19          healthcare budget and our healthcare safety  
20          net, and it's very, very concerning. This is  
21          one of the things that I just wanted to echo  
22          a lot of my colleagues on. What Samra said  
23          is really, really true, our Senator Brouk  
24          from upstate New York.

1                   You know, the answer was the  
2                   Essential Plan, which is one of the only  
3                   things that was proposed for funding -- and  
4                   that was really concerning because we don't  
5                   even know if it's even an allowable use under  
6                   federal law. And this payment goes directly  
7                   to the healthcare plans rather than to  
8                   providers, and then we don't even know what  
9                   guarantees there are that providers will ever  
10                  see this money. So I just wanted to put that  
11                  out there.

12                  Also, many of my colleagues actually  
13                  submitted memos and requests for FOIL  
14                  requests, and not one has gotten a response.  
15                  Do you commit to cover -- to actually hand  
16                  over all the communications that happened  
17                  with hospitals' and nursing homes' lobbyists  
18                  regarding the corporate legal immunity?

19                  COMMISSIONER ZUCKER: So regarding  
20                  FOIL requests, we respond to the FOIL  
21                  requests. We get an unbelievable amount of  
22                  requests every day. I don't have the exact  
23                  number; I had it last year, and that was  
24                  prior to the pandemic.

1                   There is -- so if there's information  
2                   that we can release, we do release it.  
3                   Sometimes you have FOIL requests that have  
4                   thousands and thousands of pages to them, I'm  
5                   not exaggerating here, and we have a team  
6                   that has to address it. And so we do move  
7                   forward.

8                   ASSEMBLYWOMAN NIOU: Yeah, I mean,  
9                   just like -- you understand like we've been  
10                  waiting for a really, really long time, I  
11                  mean including our Healthcare chair has been  
12                  waiting for a very, very long time on some  
13                  information that is really necessary for the  
14                  Legislature to be able to conduct its work.

15                  MEDICAID DIRECTOR FRESCATORE: If I  
16                  could add as well to your first questions --

17                  ASSEMBLYWOMAN NIOU: I actually wanted  
18                  to continue to ask a couple of other  
19                  questions. So do we -- because I have  
20                  limited time. Do we know how many  
21                  COVID-positive patients were actually  
22                  admitted to nursing homes during that  
23                  March 25th order period.

24                  COMMISSIONER ZUCKER: Like I said, we

1 can get you that information. That was asked  
2 before.

3 ASSEMBLYWOMAN NIOU: Yeah, okay --

4 COMMISSIONER ZUCKER: But I -- can I  
5 clarify this? You were saying how many  
6 COVID-positive patients were admitted to  
7 nursing homes. Now -- and this is a very  
8 important point -- whether someone is  
9 COVID-positive does not mean they are  
10 contagious.

11 ASSEMBLYWOMAN NIOU: Okay.

12 COMMISSIONER ZUCKER: And I will  
13 reiterate this, you know, over and over.

14 ASSEMBLYWOMAN NIOU: I understand.

15 COMMISSIONER ZUCKER: No, I really  
16 want to make sure of this point because it's  
17 important. The test that measures COVID  
18 measures dead virus. You can walk around for  
19 weeks with a COVID-positive test. It does  
20 not mean that you are contagious.

21 So saying that someone went back to a  
22 nursing home and they had a COVID-positive  
23 test does not mean that they are contagious.  
24 And in fact when we looked at this

1 information and when I was trying to go  
2 through this before about how long someone  
3 was in the hospital and the incubation period  
4 and their initial symptoms, you will find  
5 that people were already past their  
6 infectious period, and the viral load is much  
7 higher earlier on. And I think that's an  
8 important point.

9 And this is where the issues of fact  
10 get lost when there's a narrative out there  
11 which is just not true. And I don't mean to  
12 be so harsh about this, but it is important,  
13 when it comes to science, to make sure it's  
14 correct.

15 ASSEMBLYWOMAN NIOU: Okay, so I'm  
16 really glad that I was able to allocate some  
17 of my time to that important PSA. But I just  
18 wanted to also ask the chairwoman if I  
19 could -- I apologize to my colleagues,  
20 because I really did want to get to my next  
21 question and I wasn't able to.

22 CHAIRWOMAN WEINSTEIN: Ask your  
23 question.

24 ASSEMBLYWOMAN NIOU: Okay, great,

1           thank you.

2                       How much does each COVID patient  
3           actually get reimbursed in Medicare in a  
4           nursing home, and how much higher is that  
5           compared to a regular nursing home resident  
6           who is reimbursed via Medicaid? Because I  
7           want to just -- you know, I feel like we need  
8           to have that answer very clearly because, you  
9           know, I'm starting to feel, with all of these  
10          answers, that there's a clear financial  
11          motive behind every single decision that this  
12          administration has made.

13                      COMMISSIONER ZUCKER: With regards to  
14          reimbursement, maybe Donna can answer that.

15                      MEDICAID DIRECTOR FRESCATORE: Yeah,  
16          I'd like to suggest may we circle back to  
17          your question, because the Medicare  
18          reimbursement, as you know, is not for  
19          custodial care, it's for skilled care in a  
20          nursing facility. So it is a different level  
21          of care.

22                      But we're happy to talk more or hear  
23          more about your question.

24                      ASSEMBLYWOMAN NIOU: Yeah, I would

1 really like to get that information. And if  
2 you could just get that for me, that would be  
3 great, because otherwise --

4 MEDICAID DIRECTOR FRESCATORE: There's  
5 very different criteria, is my point, about  
6 when Medicare pays for a nursing care stay.  
7 It's not custodial care, it's care that's  
8 generally rehabilitative, it includes  
9 therapies, and Medicare pays more than  
10 Medicaid for that reason alone.

11 ASSEMBLYWOMAN NIOU: Okay. I just  
12 feel like there are some differences also in  
13 just the financial incentives that folks are  
14 getting different kinds of care with  
15 different kinds of financial motives behind  
16 them, and we probably need a full oversight  
17 hearing ASAP.

18 CHAIRWOMAN WEINSTEIN: Thank you. So  
19 now we'll go back and go to the Senate.

20 CHAIRWOMAN KRUEGER: Thank you.

21 Senator O'Mara. Oh, excuse me.  
22 Senator Ritchie was supposed to go before  
23 Senator O'Mara.

24 So hello, Senator Ritchie.

1                   SENATOR RITCHIE: Hi, Senator Krueger.  
2                   Thank you.

3                   Commissioner, my questions are pretty  
4                   much the same two questions I have asked year  
5                   after year during the budget hearings. And  
6                   you know that I represent a very rural area.  
7                   We have some economic challenges. A lot of  
8                   the patients that are in our hospitals and  
9                   our nursing homes are Medicaid. And I look  
10                  at the Governor's comprehensive plan on the  
11                  nursing homes, and we all would agree we want  
12                  to do whatever we can to improve patient  
13                  care. But if there's no funds behind it, I  
14                  don't know how this is going to happen.

15                  As it is, we've had several nursing  
16                  homes in my district that have closed. Our  
17                  biggest nursing home, as your staff well  
18                  knows -- we've called multiple times -- is on  
19                  the brink of closing its doors. So without  
20                  an increase in the Medicaid reimbursement  
21                  rate, I don't know how they can stay open,  
22                  let alone implement any changes as far as  
23                  staffing and new patient care.

24                  And along with that, the other

1 question I ask every year is we are so  
2 short-staffed on medical professionals,  
3 especially nurses. We have two SUNY schools  
4 that I plead every year is there any way we  
5 can try to find some way to boost the  
6 enrollment and help the situation, and it's  
7 gotten worse in the pandemic.

8 So I guess my question is how do we  
9 accomplish this goal of better care, keep our  
10 nursing homes and hospitals open, if we're  
11 not going to look at upping the Medicaid  
12 reimbursement? And what can DOH and the  
13 state really do this time to help with the  
14 short-staffing issue with regards to doctors  
15 and nurses?

16 COMMISSIONER ZUCKER: (Muted.) On the  
17 second question, we are addressing this issue  
18 of staffing. This goes back to what I was  
19 saying earlier, that we need to look at how  
20 we address the professional development for  
21 health professionals, both in urban but  
22 particularly in rural areas.

23 This is a conversation I've had also  
24 with our SUNY system leadership as well,

1 particularly the nursing schools that they  
2 have, as well as their medical schools, on  
3 how do you get people out there.

4 So we will continue to do this. I  
5 think the pandemic has given all of us -- has  
6 reenergized us to make sure that the  
7 healthcare professionals across the state are  
8 there and available, and I don't even need to  
9 go through all the different specialties.

10 Regarding the reimbursement, Donna,  
11 did you want to address the Medicaid number  
12 for the hospital challenges?

13 MEDICAID DIRECTOR FRESCATORE: Yeah, I  
14 think on the Medicaid nursing home -- I mean,  
15 I cannot speak to any one nursing home or  
16 facility's, you know, rates in particular,  
17 you know, today. Happy to talk about that  
18 separately.

19 But, you know, I think that as  
20 respects the nursing home initiatives and the  
21 accountability and the patients over profit  
22 in the 30-day amendments to the  
23 Executive Budget, we -- you know, we believe  
24 that based, you know, on past reporting that

1           there are many nursing homes that already are  
2           at the levels that are required, the  
3           40 percent on resident-facing care and the  
4           70 percent on patient care.

5                     And we'll know more about that as time  
6           goes on. That has an implementation -- an  
7           effective date of January 1, 2022, as you  
8           know, and it anticipates regulations.

9                     SENATOR RITCHIE: Thank you.

10                    CHAIRWOMAN KRUEGER: Okay. Assembly?

11                    CHAIRWOMAN WEINSTEIN: Yes, we have  
12           Assemblyman Perry next.

13                    ASSEMBLYMAN PERRY: Thank you, my  
14           colleague. And good evening to the team from  
15           the Department of Health.

16                    CHAIRWOMAN KRUEGER: Not evening yet.

17                    ASSEMBLYMAN PERRY: Some of my  
18           colleagues raised questions about the CDPAP  
19           program and the whole new implementation of  
20           this program that is supposed to be reducing  
21           costs.

22                    So Dr. Zucker, I'd just like to ask  
23           you that I think it's -- that the program was  
24           implemented as a cost-saving mechanism, and

1           it became much more used than anticipated or  
2           expected, and the costs soared. So you want  
3           to reduce the cost of this program that so  
4           many individual families depend on.

5                        Many of the providers who participated  
6           over the last couple of years have complained  
7           that the process under this new program is  
8           being implemented and the screening and  
9           reviewing of these applications was very  
10          ad hoc, so a lot of -- there's a claim of  
11          arbitrary and capricious action and behavior  
12          on the part of the company that was picked to  
13          do this review. There are companies that  
14          were provided -- that were selected who  
15          submitted almost exactly the same  
16          submission -- of companies who got compared  
17          to those who didn't get.

18                       I think there's a need for a real,  
19          real clear, transparent review of all of  
20          those applications. I was alarmed to learn  
21          from my colleague just now that there are  
22          counties where not even a single provider  
23          within the county was selected. That is  
24          outrageous.

1                   It seems something is definitely wrong  
2                   with the whole process and that it was rushed  
3                   or it was not done by people who had the  
4                   ability and the knowledge and the system in  
5                   place to do this review and make it fair and  
6                   transparent, and so that people who are  
7                   eligible and qualified to do the job are  
8                   selected.

9                   So I would like to hear from you if  
10                  you will review this program before you  
11                  implement it. Because the complaints and the  
12                  problem are outrageously large and it's not  
13                  going to reduce the cost of this program if  
14                  so much money is going to a contracted  
15                  company just to administer it, money that  
16                  could be used to provide the program.

17                  MEDICAID DIRECTOR FRESCATORE: Just --  
18                  if I could address that.

19                  First, I want to be clear that for the  
20                  Consumer Directed Program the department has  
21                  and continues to support consumer-directed  
22                  care. There is no cut to the level of  
23                  service here, so consumers don't lose hours.

24                  I also want to clarify that there was

1 no contractor that reviewed these  
2 applications. These applications to become a  
3 fiscal intermediary were reviewed by DOH  
4 staff. I just want that to be clear on the  
5 record.

6 The process is in its first stage.  
7 We've made conditional awards. The next step  
8 is to do any debriefings asked for, and many  
9 parties already asked for them. We talked  
10 about that earlier.

11 CHAIRWOMAN WEINSTEIN: Thank you.

12 You know, this question has been asked  
13 a number of times and you've given the same  
14 answers. So I'm going to ask my colleagues  
15 to pay more attention when you speak so that  
16 they don't reask the same questions.

17 So we're going to go on to the Senate.

18 CHAIRWOMAN KRUEGER: Fair enough.

19 Fair enough. Good point, Helene.

20 Now it's Senator O'Mara, ranker on  
21 Finance.

22 SENATOR O'MARA: Thank you, Senator.

23 Thank you for being with us today,  
24 Commissioner, the many hours you're spending

1 with us. I do appreciate your time.

2 I do have some questions for you, but  
3 also some concerns about many of your  
4 comments today about being -- wanting to be  
5 open and transparent and have a dialogue with  
6 the Legislature when all of your actions  
7 speak to anything but that.

8 Your department waited until last  
9 evening to brief our staffs on \$1.6 billion  
10 in Medicaid cuts. We've had no time to  
11 review and respond to this proposal and  
12 what's out there. You tell us that after --  
13 stonewalling the Legislature for over six  
14 months on information requests, that finally  
15 when you're ordered to turn it over -- and  
16 that the Empire Center, that was requesting  
17 those records, issued a report a week ago,  
18 yet you haven't taken the time to really look  
19 at that except you know enough to deny that  
20 whatever he's reporting is not accurate.

21 You stonewalled the Legislature on  
22 records, you stonewalled the Empire Center on  
23 records. And -- but in every one of -- and  
24 then you've used the DOJ investigation as an



1 to you -- well, as I've said, that the  
2 information should have been released sooner,  
3 which is what the Governor said. But the --

4 SENATOR O'MARA: Commissioner, whose  
5 decision was it to not release the records?

6 COMMISSIONER ZUCKER: The details and  
7 the specifics of how this came to pass are  
8 the subject of an ongoing investigation. And  
9 when a full determination has been made  
10 and -- it will be released to the public  
11 about this process.

12 However, at the present time --

13 SENATOR O'MARA: Commissioner --  
14 commissioner, have you received any subpoenas  
15 from the New York State Assembly or the New  
16 York State Senate in regards to the nursing  
17 home investigation?

18 COMMISSIONER ZUCKER: The  
19 department -- the legal issues that are dealt  
20 with the legal department. And if we get a  
21 letter or a request --

22 SENATOR O'MARA: Have -- you would  
23 know if you received subpoenas from the State  
24 Legislature requesting records related to

1 this. Have you or have you not?

2 COMMISSIONER ZUCKER: The -- at this  
3 point in time, like I said, any of these  
4 issues that deal with the legislation of --  
5 or from the Legislature, that deals with the  
6 legal department. And I leave it for them to  
7 process that.

8 SENATOR O'MARA: Has the Department of  
9 Health or the Governor's office, the State of  
10 New York, responded to the DOJ federal  
11 request for information from August or  
12 October of last year?

13 COMMISSIONER ZUCKER: So this goes  
14 back to the issue about the DOJ letter,  
15 right? And as I said, that my -- I'm aware  
16 of the letter and I have said that the --  
17 just like my data team deals with the data  
18 analytics, my legal team deals with these  
19 issues of any of the letters that -- that  
20 come in. So I --

21 SENATOR O'MARA: So you don't know  
22 whether your legal team has responded to the  
23 federal requests?

24 COMMISSIONER ZUCKER: There is a

1 letter that went back, right, for -- from --  
2 to DOJ and --

3 SENATOR O'MARA: When will we be  
4 provided with that letter?

5 COMMISSIONER ZUCKER: There is a  
6 process here. There is a process. And I am  
7 sure that you respect the process that an  
8 investigation is ongoing, and that I am not  
9 going to be disrespectful of a process that  
10 involves any kind of federal inquiry, any  
11 inquiry. So --

12 SENATOR O'MARA: Have you -- have you  
13 received a subpoena to testify before any  
14 grand jury?

15 COMMISSIONER ZUCKER: I'm going back  
16 to the same issue, that I'm saying there's a  
17 federal inquiry process that's going on  
18 and -- that I hope that you, as well, will  
19 respect as much as I will. And that if  
20 that -- when that process goes forward, then  
21 I will comment. But right now this is an  
22 investigation that our legal team will  
23 address.

24 SENATOR O'MARA: My time is up. But I

1 find virtually everything you've said here  
2 today to be totally without credibility.

3 COMMISSIONER ZUCKER: I'm sorry to  
4 hear that.

5 CHAIRWOMAN KRUEGER: All right. Thank  
6 you. Assembly.

7 CHAIRWOMAN WEINSTEIN: We're going to  
8 go -- yes -- to Assemblyman Jacobson.

9 ASSEMBLYMAN JACOBSON: All right. Do  
10 you hear me now?

11 CHAIRWOMAN WEINSTEIN: Yes.

12 COMMISSIONER ZUCKER: I hear you.

13 ASSEMBLYMAN JACOBSON: Thank you.  
14 Thank you, Madam Chair. And thank you,  
15 Dr. Zucker, for your public service and  
16 testimony today.

17 I wish to address the disastrous  
18 vaccination process in the state with moving  
19 vaccination sites and an inconsistent,  
20 confusing and difficult appointment process.

21 First, I'm advocating for the state to  
22 establish permanent vaccination sites in the  
23 two cities I represent, Newburgh and  
24 Poughkeepsie.

1                   Second, I'm calling on the state to  
2                   simplify the existing sign-up process, which  
3                   can at best be described as haphazard and  
4                   frustrating.

5                   Last month I called for this permanent  
6                   site. Shortly after that, the state  
7                   established a pop-up site at the  
8                   Newburgh Armory and another at Beulah Baptist  
9                   Church in the City of Poughkeepsie. Pop-up  
10                  sites are well and good, but residents need  
11                  reliability and consistency. We did it for  
12                  early voting; we can do it for vaccines.

13                  The cities of Newburgh and  
14                  Poughkeepsie are two of the hardest-hit areas  
15                  in the Hudson Valley, if not the state.  
16                  Newburgh's infection rate is 8.4 percent,  
17                  while the state is at 3.34 percent positivity  
18                  rate. Establishing permanent vaccination  
19                  sites in these cities would go a long way to  
20                  addressing the Newburgh microcluster and help  
21                  the many Black and Latino residents of both  
22                  cities who have been disproportionately  
23                  impacted by COVID-19.

24                  Now to address the issue of vaccine

1 sign-ups. Currently eligible New Yorkers in  
2 search of an appointment face a hodgepodge of  
3 constantly changing rules and guidelines.  
4 People sign on the state site, and they think  
5 that will be enough. Then they're told they  
6 may sign up on the state website, their home  
7 county's website, and on the website of every  
8 nearby pharmacy that might be fortunate  
9 enough to receive a small allotment of the  
10 vaccine.

11 Of course I recognize the most  
12 fundamental problem had been the nationwide  
13 shortage of the vaccines. However, now we  
14 have a new administration in Washington and  
15 the Biden administration is doing its job by  
16 accelerating vaccine production. We must get  
17 ready and reform the sign-up process now.

18 Currently appointments to get a  
19 vaccine are filled within minutes of being  
20 announced, and eligible residents find  
21 themselves unable to make an appointment,  
22 while additional categories continue to be  
23 added to the list of those eligible. While  
24 we are waiting for the vaccine availability

1 to catch up with need, which will be soon, we  
2 need to set up a user-friendly system where  
3 eligible residents can sign up either by  
4 phone, without endless wait times, or online  
5 and receive an alert when an appointment is  
6 available within a reasonable geographic  
7 radius. We need one-stop shopping -- sign up  
8 once, and you will be assigned once a  
9 vaccination appointment becomes available.  
10 It's just common sense to do it that way.

11 Also, assisted living facilities and  
12 senior housing should be treated like nursing  
13 homes and have pharmacies or healthcare  
14 providers go to these residences and  
15 administer the vaccines. These residents are  
16 generally not mobile, nor computer-savvy, and  
17 need the vaccines to come to them.

18 Thank you for your prompt attention to  
19 these pressing matters.

20 COMMISSIONER ZUCKER: Thank you.  
21 Thank you. We do have, just as an aside, we  
22 have a hundred community pop-up sites, we  
23 have 33 sites in NYCHA housing, we have six  
24 FEMA sites --

1 ASSEMBLYMAN JACOBSON: We need  
2 permanent sites.

3 COMMISSIONER ZUCKER: -- like Yankee  
4 Stadium -- what?

5 ASSEMBLYMAN JACOBSON: We need  
6 permanent sites so that people know where to  
7 go. And if you have a pop-up site, if you  
8 don't get it in the first 30 seconds, you  
9 can't get an appointment.

10 COMMISSIONER ZUCKER: We're working on  
11 that. We'll address it with our team. But I  
12 just want you to know, we have over four --  
13 probably by the end of today or tomorrow,  
14 4 million people who have been vaccinated who  
15 have been allocated for -- or administered, I  
16 should say. And we are moving forward on  
17 this. I hear your concerns. I recognize  
18 them. We will continue to work to achieve  
19 the goals that you and all of us --

20 ASSEMBLYMAN JACOBSON: We need a  
21 simple process.

22 CHAIRWOMAN WEINSTEIN: Assemblyman, we  
23 have to move on to the Senate.

24 CHAIRWOMAN KRUEGER: Thank you.

1                   Oh, I think we're up to me. Hi. So,  
2                   so many questions have been asked, and I  
3                   don't want to repeat anything. But I just  
4                   want to phrase something maybe slightly  
5                   different to clarify.

6                   So we have this global cap many people  
7                   have been talking about, and we've been  
8                   talking about it for a year. And when it  
9                   went into effect -- was it 2011, 2012? Do  
10                  you remember, Donna? What was the number of  
11                  people on Medicaid when we put the global cap  
12                  into effect?

13                 MEDICAID DIRECTOR FRESCATORE: Far  
14                 fewer. I don't have an exact number,  
15                 Senator.

16                 CHAIRWOMAN KRUEGER: Well, I think it  
17                 was about 4 million. I could be wrong. And  
18                 you said we're now going -- we're going to  
19                 hit 7 million.

20                 So a global cap, if it was a  
21                 limitation on how much money per person in  
22                 the program, would actually conceivably be  
23                 justified because you're trying to limit  
24                 growth in the program per person.

1                   But we've almost doubled the Medicaid  
2                   program, I think, since we started the global  
3                   cap. And so to make the argument that you're  
4                   not doing harm to people's healthcare when  
5                   you keep trying to reduce, reduce, reduce the  
6                   overall cost of the program that is now  
7                   healthcare for 7 million people instead of  
8                   4 million people, it's just an impossible  
9                   scenario. It doesn't matter how many times  
10                  we go back and look at the numbers and ask  
11                  you for the data -- you just can't provide  
12                  health insurance for 7 million people on a  
13                  lower cost from what you started off on for  
14                  4 million people, and you shouldn't be  
15                  trying.

16                  So it's not a question, it's a  
17                  statement that we really just need to go back  
18                  and establish the rational definition for  
19                  what a global cap is, and then ask whether we  
20                  should be having one at this point in time.

21                  Particularly because not only do we  
22                  know we're in the middle of a world pandemic,  
23                  but we've also got more federal Medicaid  
24                  funds coming in than likely we will ever see



1           and yet it just -- we couldn't get our arms  
2           around it. And you want to get your arms  
3           around it, and I believe both of you do. But  
4           we're not giving you a system that's going to  
5           let you unless we actually are funding it  
6           appropriately.

7                       And so I'm not even going to ask you a  
8           question, I've just already said what I want  
9           to say, that we really have to be honest  
10          about what we've done to our public health  
11          system, what price we're paying for it.  
12          Because one of the prices we've paid for  
13          it -- whoever wants to point fingers at  
14          anyone, that's not really my style -- is we  
15          had a much higher death rate in our state  
16          from the pandemic than other states did.

17                      Now, granted, we got it earlier before  
18          everybody learned their lessons. But if we  
19          had had a better public health system in  
20          place, the personnel in place, functioning  
21          nursing homes, distribution of healthcare  
22          beyond giant hospitals -- somewhere along the  
23          line today people talked about CONS. It's a  
24          huge issue, from my perspective, that we

1           continue, despite endless conversations about  
2           hospital healthcare is the most expensive  
3           healthcare, we should be careful and focused  
4           about making sure we have fair distribution  
5           of hospitals statewide, not some places with  
6           one hospital for five counties and other  
7           places with too many hospitals.

8                         And I personally come from the one  
9           area of the state that has the largest number  
10          of hospital beds per patient of anywhere in  
11          the state, and I don't understand why. I  
12          don't think it's good for healthcare. I  
13          don't think it's good for fair and equitable  
14          distribution of healthcare. And I think we  
15          need a CON system where we get to tell big  
16          private hospitals: We don't need another one  
17          of you over here. We could use three of you  
18          down the road, three of you up there, but we  
19          don't really need another one in the East 60s  
20          or the East 70s on Manhattan Island.

21                        So I just hope that because of all of  
22          the nightmares we're living through -- and we  
23          all are, you more than anyone, people who  
24          work in your agency and come in every day and

1 know what they're facing. And thank you to  
2 all the people who aren't here at DOH who are  
3 trying to get things done every day with a  
4 lot of angry people at them and a lot of  
5 angry legislators at them -- who are angry at  
6 them.

7 I hope we learn from this the lessons  
8 of what we could have done right to avoid  
9 some of it, what we can do better because we  
10 have survived or will ultimately survive  
11 this. And be -- you know, just be the State  
12 of New York we always knew we could be. And  
13 I have to say on health policy we used to  
14 have a much stronger system. We just did.  
15 Our public health system was better. My  
16 friendly Insurance chair here, when he was  
17 pleading with you about the issues for mental  
18 health services and substance abuse services  
19 at the county levels all over the state --  
20 yes, of course we have to do that. That's  
21 what we should be investing our healthcare  
22 money in, and in preventive services.

23 So with that, I do -- I usually don't  
24 even talk that much at these hearings, I just

1 direct. But I've done my rant, and thank you  
2 for your service.

3 And back to you, Helene.

4 CHAIRWOMAN WEINSTEIN: Assemblywoman  
5 Solages.

6 ASSEMBLYWOMAN SOLAGES: And thank you  
7 to -- I appreciate the endurance of the  
8 chairs. And thank you, Commissioner, for  
9 this opportunity.

10 I just agree with my colleagues on  
11 transparency and communication and also the  
12 importance of a permanent vaccine site in  
13 suburban and rural communities. I think that  
14 would be a great effort, especially to  
15 target, you know, underserved communities.

16 However, I want to discuss the crisis  
17 of maternal mortality and morbidity, because  
18 we know that women are twice as likely to die  
19 from complications of pregnancy and birth  
20 than their mothers were a generation ago.

21 So I'm still waiting on communication  
22 about the Doula Pilot Program in New York  
23 State. I am a sponsor of the legislation  
24 that expands Medicaid coverage for the Doula

1 Pilot Program. I was excited in June of 2019  
2 when your administration announced that they  
3 were going to do a pilot program. However,  
4 I've seen that there's been very little  
5 effort made. Last year I asked you the same  
6 question; it was said "I'm going to get back  
7 to you," and I haven't received a response.

8 So what is the status of that program?

9 COMMISSIONER ZUCKER: We will -- I am  
10 sorry I didn't get back to you about that. I  
11 do remember the question last year, and then  
12 it was shortly -- well, it was when this all  
13 began, so -- and we haven't --

14 ASSEMBLYWOMAN SOLAGES: Yeah. So I  
15 won't hold it against you, but -- but today's  
16 a new year, so.

17 COMMISSIONER ZUCKER: All right.  
18 Well, it's a new year, and I will get back to  
19 you on it.

20 ASSEMBLYWOMAN SOLAGES: Mm. Um --

21 COMMISSIONER ZUCKER: I don't -- I  
22 have to get the data on that. But I don't  
23 have it right at the top of my head.

24 ASSEMBLYWOMAN SOLAGES: I hear from

1 the doulas, it's not going well.

2 You know -- you know, we say that we  
3 care about maternal mortality and morbidity,  
4 but in this budget we make a 20 percent cut  
5 to Nurse-Family Partnerships, and there's  
6 deeper cuts to that program as well.

7 So, you know, what is the goal? Are  
8 we trying to improve -- sorry, are we trying  
9 to improve maternal and child health and  
10 reduce maternal births? Because by cutting  
11 Nurse-family Partnerships, we're not sending  
12 that signal.

13 COMMISSIONER ZUCKER: No, it's -- as  
14 you know, it's a major commitment of ours to  
15 address the maternal mortality issue. It was  
16 years ago, when we did the tour around the  
17 state. And we have identified programs to  
18 address this and have had -- our Maternal  
19 Mortality Advisory council was looking at  
20 this, and we do have the doula program that  
21 we have been addressing in the past.

22 I know that this was something which I  
23 was supposed to get back to you about.

24 ASSEMBLYWOMAN SOLAGES: Yeah, so it's

1 two for two.

2 So I'm going to move on to the public  
3 health workforce outside of New York City.  
4 We know that public health -- our departments  
5 of health have been reduced about one-third  
6 between 2011 and 2018.

7 So, you know, is the Department of  
8 Health looking to strengthen the public  
9 health infrastructure in New York State by  
10 increasing funding through Article VI? Is  
11 that something that you guys are interested  
12 in doing?

13 COMMISSIONER ZUCKER: Well, we are  
14 trying to strengthen the public health force.

15 If you're asking whether by not giving  
16 funds to the local communities -- is that  
17 what you're implying? I'm not sure --

18 ASSEMBLYWOMAN SOLAGES: Yes, yes,  
19 that's why I'm implying.

20 COMMISSIONER ZUCKER: Well, we are  
21 trying -- right, and we are looking at the  
22 budget and there are a lot of challenges.

23 There was a question previously  
24 regarding New York City and what to do, and I

1 mentioned the reasons for the cuts there.  
2 And we are trying to figure out other ways to  
3 provide the public health services that are  
4 needed in the community. We work closely  
5 with all of the communities, and we have been  
6 working with them through this pandemic as  
7 well.

8 It is a tight budget. We'll see what  
9 we can do and continue to work with them.

10 ASSEMBLYWOMAN SOLAGES: Because our  
11 departments of health have been doing a great  
12 job locally throughout COVID and, you know,  
13 they really need to be supported.

14 COMMISSIONER ZUCKER: And we recognize  
15 that.

16 CHAIRWOMAN WEINSTEIN: Back to the  
17 Senate.

18 CHAIRWOMAN KRUEGER: We have the  
19 second round for Senator Rivera.

20 SENATOR RIVERA: I'm back.

21 Three things. First, Essential Plan.  
22 In your testimony you said that the -- and  
23 I'll actually read the quote: "The budget  
24 will eliminate monthly payments for over

1           400,000 New Yorkers," which I'm very --  
2           that's a good thing. So how do you plan to  
3           cover that elimination of premiums, by the  
4           way?

5                       COMMISSIONER ZUCKER: Donna, do you  
6           know that?

7                       MEDICAID DIRECTOR FRESCATORE: Yeah,  
8           the federal rules around the Benefit Trust  
9           Fund, where the state receives 95 percent of  
10          the tax credits, allows for two things:  
11          Services and reduction in consumer costs.  
12          This is reduction in consumer costs. We will  
13          increase --

14                      SENATOR RIVERA: Okay. Gotcha. So  
15          the trust fund -- so it's the trust fund.  
16          How big is it right now? How big is --

17                      MEDICAID DIRECTOR FRESCATORE: The  
18          balance in the trust fund that we expect at  
19          the end of this fiscal year is 4.5 billion.

20                      SENATOR RIVERA: Four-point-five  
21          billion.

22                      MEDICAID DIRECTOR FRESCATORE: Yeah.

23                      SENATOR RIVERA: I asked the question  
24          because I want to make sure that we move

1 through these. So why -- so that's -- but I  
2 believe, by the way, that that's a good  
3 thing. However, why are you only eliminating  
4 medical premiums and not the \$30 vision and  
5 dental premium for patients? Is there a  
6 particular reason why you chose not to do  
7 that one?

8 MEDICAID DIRECTOR FRESCATORE: Well, I  
9 think what we saw was that -- during COVID  
10 was that the \$20 premium for the medical care  
11 was causing some people not to be able to  
12 continue it, or not want to continue it.

13 And we also, in addition to this  
14 premium helping existing consumers, the  
15 400,000, we also believe it drives about  
16 100,000 new enrollees.

17 SENATOR RIVERA: I would certainly --  
18 I would certainly hope that we use that --  
19 that we use that money more expansively, more  
20 expansively and extensively, because it's  
21 there and we should certainly use it.

22 But I want to move on to safety nets,  
23 and actually Liz Krueger -- if Liz Krueger  
24 was a basketball player, like basically she

1           would be like that was the biggest of slam  
2           dunks, it's like she flew over a car, because  
3           it's like -- it was absolutely on point.

4                         Now, the Governor, it is true, has  
5           been consistent in the message, at least,  
6           that there are important safety-net  
7           hospitals. You folks certainly did that  
8           here. But so if you are -- so if you are  
9           indeed, if the administration is so committed  
10          to safety-net hospitals, then how do you  
11          rationalize the proposed cuts to the ICP for  
12          public hospitals?

13                        MEDICAID DIRECTOR FRESCATORE: I think  
14          the -- for the four or so hospitals that  
15          would be affected, the state funding would  
16          not be available. But under the DSH caps,  
17          the funding could still be received with  
18          local dollars, if there was an --

19                        (Overtalk.)

20                        SENATOR RIVERA: So basically you're  
21          putting the onus on counties. Right?

22                        MEDICAID DIRECTOR FRESCATORE: It  
23          was -- it's the state share savings, yes.

24                        SENATOR RIVERA: So --

1                   MEDICAID DIRECTOR FRESCATORE:  And,  
2                   you know, those -- as I understand it --

3                   SENATOR RIVERA:  -- hold on --

4                   MEDICAID DIRECTOR FRESCATORE:  Sorry.

5                   SENATOR RIVERA:  Go ahead, go ahead.

6                   I'm going to let you finish that one.  Go  
7                   ahead.

8                   MEDICAID DIRECTOR FRESCATORE:  I'm  
9                   just getting a little feedback, I'm sorry,  
10                  Senator.

11                  So -- go ahead.  I think I've answered  
12                  the question, yes.

13                  SENATOR RIVERA:  Okay.  So because --  
14                  the thing is that I'm concerned about you  
15                  putting this on counties.  Because given the  
16                  ongoing fiscal strains in counties, I mean,  
17                  should it be on the counties to make up the  
18                  difference to protect these hospitals?  I'm  
19                  concerned about that.

20                  So instead of cutting safety nets that  
21                  have been essential -- and they're called  
22                  essential for a reason, right -- why don't we  
23                  protect them?  I mean, this is actually  
24                  something I'd like to ask both of you,

1 particularly the commissioner. So do you  
2 believe that we should be raising revenue to  
3 be able to avoid deep cuts to safety-net  
4 hospitals -- (ongoing audio feedback) --  
5 during this -- don't tell me that the  
6 feedback's coming now when I'm asking about  
7 revenue.

8 CHAIRWOMAN KRUEGER: Senator Gallivan,  
9 go on mute.

10 (Laughter.)

11 SENATOR RIVERA: Commissioner?

12 CHAIRWOMAN KRUEGER: Are you still  
13 there, Commissioner?

14 COMMISSIONER ZUCKER: Yeah, but the  
15 question I lost because of the feedback. Can  
16 you --

17 SENATOR RIVERA: Yeah, I figured. Let  
18 me just --

19 CHAIRWOMAN KRUEGER: Repeat the  
20 question.

21 SENATOR RIVERA: I'm going to need  
22 those 15 seconds back.

23 The question is would you, to avoid  
24 deep cuts to safety nets that you say that

1           you want to protect so much, would you --  
2           would you say that we need to raise revenues?

3                   COMMISSIONER ZUCKER: That would be  
4           one -- that would be one option, I guess, we  
5           could tackle that. I'm trying to figure out  
6           how --

7                   SENATOR RIVERA: Well, I'm going to --  
8           if you were a legislator, I would sign you on  
9           to the entire package of Invest in Our  
10          New York.

11                   But this is the last point I want to  
12          make, because I only five minutes. And I  
13          have a couple of other colleagues that were  
14          giving me questions, I just couldn't get to  
15          them.

16                   But listen, the -- as far as the  
17          global cap, I just want to underline this. I  
18          mean, the purpose of it, which -- it's  
19          arbitrary, and we all recognize that -- is to  
20          regulate spending on Medicaid. In the last  
21          fiscal year, the program faced \$2.2 billion  
22          in cuts. And this budget proposal today cuts  
23          well beyond what is deemed necessary for the  
24          global cap measure. I mean, you told us

1           yourself that you had savings here.

2                       So if public health is the priority,  
3           as you stated, Commissioner -- and Donna as  
4           well -- and given that 5.4 is made available  
5           through the Enhanced FMAP, a portion of which  
6           is also -- and as I said, it's just bananas  
7           to me that it's being used for General Fund  
8           relief -- why should Medicaid providers take  
9           a deeper cut so this administration can use  
10          Medicaid funds for whatever purpose they see  
11          fit?

12                      And I'm going to leave that question  
13          hanging because that's going to be an  
14          underlying thing in this whole conversation  
15          about the budget. Just still kind of crazy  
16          to me.

17                      Madam Chair, that's my time in a  
18          second round.

19                      CHAIRWOMAN KRUEGER: Thank you,  
20          Senator.

21                      I believe the Senate is done, Helene.  
22          And so just take us home, the Assembly.

23                      CHAIRWOMAN WEINSTEIN: Okay. Well, I  
24          know Assemblyman Gottfried needs to go to

1 conference, so why don't we have him do his  
2 second now. I'm not sure if he's going to  
3 wait till this portion of the hearing ends.  
4 And then we'll go back, we still have about  
5 six members.

6 Assemblyman Gottfried.

7 ASSEMBLYMAN GOTTFRIED: Okay, thank  
8 you. So I have a few things. I'm not sure  
9 I'm phrasing them as questions, but just  
10 maybe you can send me responses.

11 Earlier in the day I asked the  
12 superintendent of Insurance, you're using  
13 420 million from the Essential Plan Trust  
14 Fund for something called rate enhancements.  
15 I'm not quite sure what they are. But, I  
16 said, federal law says that the trust fund  
17 can only be used to reduce the premiums and  
18 cost-sharing of or provide eligible  
19 individuals. And I said, how does rate  
20 enhancements come in under that?

21 If you have a legal opinion handy that  
22 explains that, do not send it to me --  
23 because oh, my goodness, that would be  
24 attorney-client privilege. So instead, why

1 don't you just write me a memo. Because  
2 attorney-client privilege doesn't stop you  
3 from writing me a memo explaining in some  
4 detail legally how that's kosher.

5 MEDICAID DIRECTOR FRESCATORE: May I  
6 answer that as a non-attorney?

7 ASSEMBLYMAN GOTTFRIED: Maybe let me  
8 finish just because of the clock.

9 MEDICAID DIRECTOR FRESCATORE: Okay.

10 ASSEMBLYMAN GOTTFRIED: The  
11 commissioner I think said that "We support  
12 the Consumer Directed Program" -- and, Donna,  
13 it may have been you who said "No one will  
14 lose services."

15 Well, first of all, for years the  
16 department has been trying everything it can  
17 imagine to eliminate the Consumer Directed  
18 Program. So don't tell people you support  
19 it, number one.

20 And number two, the reason you're  
21 trying to get rid of a whole lot of highly  
22 qualified fiscal intermediaries is so that  
23 you can more tightly control the program so  
24 that people do lose services, because the

1           fiscal intermediaries will know that if they  
2           don't run a ship that denies people services,  
3           they'll lose out on the next round of RFP.

4                     The commissioner I think early on said  
5           in relation to hydrochloroquil {sic} that the  
6           doctor-patient relationship is paramount. We  
7           may remind the executive chamber of that when  
8           we're in budget negotiations about your  
9           proposal to eliminate prescriber prevails.

10                    The last thing to note is many times  
11           today you've said -- and I'm sure you'll say  
12           it many more times -- "We'll get back to  
13           you." This is my 34th budget hearing as  
14           chair of the Health Committee. I've heard  
15           that statement any number of times. I don't  
16           know if anybody has ever gotten back to us,  
17           certainly virtually never before we were --  
18           had to be done doing the budget.

19                    So it kind of feels, and I'm doing a  
20           lot of literary references today, it kind of  
21           feels like Lucy and Charlie Brown and the  
22           football.

23                    MEDICAID DIRECTOR FRESCATORE: Can we  
24           respond in the time that remains,

1 Assemblyman?

2 ASSEMBLYMAN GOTTFRIED: Sure. Sure.

3 MEDICAID DIRECTOR FRESCATORE: So on  
4 the provider reimbursement, I just -- I want  
5 to be clear about what it is. So when the  
6 Essential Plan was set up, we needed to make  
7 some assumptions about how much a health plan  
8 would pay providers to be able to retain a  
9 network. Right?

10 The assumption for the population that  
11 we're talking about here was Medicaid plus  
12 20 percent. What this investment does is it  
13 brings that reimbursement rate closer to  
14 commercial insurance rates, so as to make  
15 certain we preserve access.

16 We believe -- and we can send you your  
17 memo, but we believe that that is an  
18 appropriate use of the trust fund money  
19 because it is services. It's paying more  
20 than, you know, a hundred -- instead of \$100,  
21 paying a hundred and -- you know, or \$120,  
22 paying \$130 for service. Our thinking is it  
23 would apply to both inpatient and outpatient.

24 And you know, as we've talked I think

1 over the years, that the assumption about  
2 provider reimbursement is really important to  
3 the access issue.

4 On CDPAPs, we're not trying to  
5 eliminate the program. We had a lot of  
6 discussion about the fiscal intermediary. I  
7 take away from this --

8 THE MODERATOR: We're getting feedback  
9 from the commissioner.

10 MEDICAID DIRECTOR FRESCATORE: I take  
11 away, you know, from this conversation today  
12 that there are concerns about the process  
13 that was used to select the fiscal  
14 intermediaries.

15 We are in step one of that process.  
16 It now will go through any debriefings. If  
17 there's protests with the Comptroller's  
18 office, then each and every offerer is  
19 subject to a vendor responsibility, which is  
20 part of the state contracting process. And  
21 we -- you know, I hear your concerns today  
22 about geography, hear your concerns about,  
23 you know, your perceptions of who the good  
24 FIs are and who the bad FIs are.

1                   One of the benefits of this process,  
2                   when it's all said and done, is we will have  
3                   quality measures and metrics going forward so  
4                   we can see and judge the kinds of service --  
5                   the quality of the service these consumers  
6                   are receiving.

7                   So thank you for letting me answer.

8                   ASSEMBLYMAN GOTTFRIED: So just to be  
9                   clear, doctors and hospitals who treat  
10                  moderate-income patients on the Essential  
11                  Plan, they get a rate increase. Doctors and  
12                  hospitals who treat poor people on Medicaid  
13                  get a Medicaid cut.

14                  MEDICAID DIRECTOR FRESCATORE: So --  
15                  so --

16                  ASSEMBLYMAN GOTTFRIED: Just to be --  
17                  make sure I heard you right.

18                  MEDICAID DIRECTOR FRESCATORE: Well,  
19                  how the reimbursement has been structured is  
20                  those individuals who would otherwise have  
21                  been in the Medicaid program are reimbursed  
22                  at the Medicaid -- reimbursement is at the  
23                  Medicaid rate.

24                  For those who would have been in

1 qualified health plans had we not adopted the  
2 Basic Health Program and we would have had  
3 commercial rates, was where that increment  
4 was.

5 ASSEMBLYMAN GOTTFRIED: So there's a  
6 rationale, you say, but the bottom line is  
7 moderate-income people, their doctors get  
8 paid -- will be paid better tomorrow than  
9 they are today. Doctors who treat poor  
10 people will be paid worse tomorrow than they  
11 are today.

12 MEDICAID DIRECTOR FRESCATORE: No,  
13 there's -- not worse. That reimbursement --

14 ASSEMBLYMAN GOTTFRIED: Well, 1  
15 percent worse. They're going to have a  
16 1 percent cut.

17 MEDICAID DIRECTOR FRESCATORE: I'm  
18 sorry, the 1 percent does not apply to the  
19 Essential Plan.

20 ASSEMBLYMAN GOTTFRIED: I know that.  
21 It applies to Medicaid. Doctors treating  
22 Medicaid patients will be paid 1 percent  
23 less. Doctors treating moderate-income  
24 people on the Essential Plan will be paid

1 some percentage more.

2 MEDICAID DIRECTOR FRESCATORE: So I --  
3 we will send you the Essential Plan  
4 explanation so that you have it, but I wanted  
5 to be able to at least explain what that  
6 reimbursement was and -- as background today.

7 ASSEMBLYMAN GOTTFRIED: And when do  
8 you think you might have that ready to send  
9 to me?

10 MEDICAID DIRECTOR FRESCATORE: You  
11 know, our folks start working on it tomorrow.  
12 And --

13 CHAIRWOMAN WEINSTEIN: Okay, and -- I  
14 mean, that needs to be sent to  
15 Senator Krueger and myself also.

16 MEDICAID DIRECTOR FRESCATORE: Yes,  
17 absolutely. Absolutely. Thank you.

18 CHAIRWOMAN WEINSTEIN: Okay. We're  
19 going to move on. Thank you.

20 We're going to go to Assemblywoman  
21 Bichotte Hermelyn.

22 ASSEMBLYWOMAN BICHOTTE HERMELYN:  
23 Thank you, Chair. Thank you, Commissioner  
24 and everyone for being here.

1           I just have -- I have a list of  
2           things, so I'll just talk about my concerns  
3           and you can answer. So first, I do want to  
4           thank my colleague for mentioning and  
5           addressing the maternal mortality issues and  
6           the doula. So certainly I would like to be  
7           one who would like to know the update on that  
8           issue.

9           And for the record, I do join my  
10          colleagues around transparency,  
11          accountability and reporting of the nursing  
12          home deaths and everything that's happening  
13          there.

14          The budget proposed to limit Medicaid  
15          reimbursement to include only staffing costs  
16          related to contractual arrangements that  
17          comply with regulatory requirements. Our  
18          state's seniors have been disproportionately  
19          affected by this pandemic, and we've seen  
20          firsthand, through a loved one, how hard the  
21          virus can hit elders. And I'm just wondering  
22          how can we be considering any cuts to  
23          Medicaid during a global pandemic, especially  
24          low-income and marginal communities that were

1 hit the hardest.

2 The second question is the budget  
3 proposes to require PPEs through state  
4 contracts of over 50,000 be produced in --  
5 you know, to be produced made in the U.S.  
6 The head of the agency making the purchase  
7 can waive this requirement under  
8 circumstances related to cost, public  
9 interest, availability and timing.

10 During case increases, we saw doctors  
11 suffering from PPE shortages. How can we  
12 ensure that our supplies always meet our  
13 demand? Also, I know there were some issues  
14 around MWBEs being left out of the  
15 procurement process. I'm very interested in  
16 knowing that because, again, MWBEs, their  
17 communities are the ones that were hit the  
18 hardest.

19 Telehealth is very important. I want  
20 to thank you for expanding that. But I  
21 haven't seen anything about language access.  
22 My mother is elderly; I know everything about  
23 a lot of managed long-term care and Medicaid  
24 and Medicare. And she uses a flip phone, so

1 I have to be on three-way to speak to the  
2 doctor and her because there's a language  
3 access issue.

4 So I definitely want to see if there's  
5 anybody who's translating, you know, in her  
6 language and other people's languages --  
7 Haitian Creole, Spanish, Russian, Polish.

8 I just want to say that I am  
9 supportive of repealing the Medicaid Global  
10 Spending Cap. I'm in support of a safe  
11 staffing ratio to increase -- we need to  
12 address that for nursing homes and hospitals.  
13 Access to coverage for immigrants, who are  
14 currently ineligible. And I also agree with  
15 my Senator in terms of raising revenue,  
16 Invest in Our New York to ensure that our  
17 safety-net hospitals are covered.

18 Lastly, under managed long-term care,  
19 I am concerned about the home care workforce  
20 recruitment and retention. And I think more  
21 than ever we need to make sure that we  
22 invest, because home care workers are needed  
23 drastically. Thank you -- desperately.

24 Thank you.

1 CHAIRWOMAN WEINSTEIN: Thank you.

2 To the extent that there are some  
3 questions there, we appreciate the responses  
4 sent to Senator Krueger and myself.

5 Next we go to Assemblywoman Byrnes.

6 ASSEMBLYWOMAN BYRNES: Are we there?  
7 Hang on. Hang on. Are we up?

8 CHAIRWOMAN WEINSTEIN: There you are.  
9 Go ahead.

10 ASSEMBLYWOMAN BYRNES: All right,  
11 thank you very much. I want to thank you,  
12 Madam Chair, and Dr. Zucker for being here  
13 today.

14 And I want to note, first of all, that  
15 earlier, Dr. Zucker, there were some  
16 statements you made when chatting with other  
17 Assemblymembers, and I just want to put  
18 something into the record. "This preliminary  
19 data for the 62 facilities, in time periods  
20 noted above, suggest that COVID-19 resident  
21 deaths associated with nursing homes in  
22 New York State appeared to be undercounted by  
23 DOH by approximately 50 percent."

24 With deepest regard, sir, that was not

1 the headline, that was the conclusion of the  
2 Attorney General report. What I really would  
3 like to go and chat about right now, however,  
4 is going back to what Mr. Gottfried talked  
5 about many hours ago, and that is the CDPAP  
6 program and the fact that it's being reduced  
7 to 68 agencies.

8 The reason I want to talk about it is  
9 because it does appear to be eliminating a  
10 really important program in the City of  
11 Rochester community, All-American Home Care,  
12 a fantastic business.

13 When they received the application  
14 recently they were told that after it was  
15 filled out there would be a debriefing, they  
16 would be given strengths, weaknesses, a  
17 score, and an opportunity to protest should  
18 they disagree with the finding. After the  
19 application was filled out, then they  
20 received a score but no strengths, no  
21 weaknesses. They had five days to protest,  
22 but nothing to protest from, because no  
23 information.

24 So, Dr. Zucker, what I would really

1           like to know, sir, is when you have a  
2           company, good company, that is given a report  
3           with no strengths and weaknesses to even  
4           attempt to protest from, are you going to be  
5           extending the deadline, that five day  
6           deadline to protest, so that they have a fair  
7           and reasonable opportunity and due process  
8           right to be heard on their business?  
9           Obviously you can't protest a score without  
10          knowing how the score was even developed.

11                        Dr. Zucker?

12                        COMMISSIONER ZUCKER:  So I think that  
13           everyone should have due process.  So I'd  
14           like to look at this -- the information  
15           further.  I don't want to make a comment on  
16           something which I don't have all the facts.  
17           I have your facts of what you've presented,  
18           but I'd like to take a look at all the  
19           information.  But I am a big supporter of  
20           making sure that everyone has an opportunity  
21           to be heard.

22                        ASSEMBLYWOMAN BYRNES:  Would you -- if  
23           this is -- what I'm saying is true, would you  
24           extend the deadline to protest?



1 earlier, about the five days.

2 ASSEMBLYWOMAN BYRNES: I can provide  
3 you the information on the name of the  
4 company.

5 MEDICAID DIRECTOR FRESCATORE: Yeah.  
6 I mean, it would apply, the requirement is  
7 across all of the offerers. So I appreciate  
8 you telling me the company, but it's not  
9 needed for us to look at that.

10 ASSEMBLYWOMAN BYRNES: Thank you,  
11 ma'am.

12 CHAIRWOMAN WEINSTEIN: Thank you.  
13 Assemblyman Norris.

14 ASSEMBLYMAN NORRIS: Thank you,  
15 Madam Chair. And thank you, Commissioner,  
16 for the opportunity to speak.

17 I first want to just thank you and  
18 your team. I live in Lockport, New York. I  
19 represent Lockport and eastern Niagara  
20 County. And your team has been very, very  
21 helpful with our local hospital, and  
22 certainly during these trying times. And  
23 they will be going to a modified facility in  
24 time, and I would just hope that you will

1 continue to provide the assistance, and your  
2 team, because we are very grateful for that.

3 The rural areas all throughout  
4 New York State, but particularly here, it's  
5 very, very important for a hospital system in  
6 this new hub, it's going to be very  
7 important. So I thank the department for  
8 that.

9 Regarding the trust that you've talked  
10 about, and the openness, I just want to  
11 remind you that it's very, very important as  
12 we move forward, when we're dealing certainly  
13 with the public, that the trust and the  
14 openness from you in particular is done.  
15 Because as we're dealing with the  
16 vaccinations, which quite frankly has been a  
17 disaster in terms of the rollout -- and I  
18 understand the supply issue that you've  
19 raised, but also we need to get our schools  
20 open and we need to get our businesses fully  
21 operational as we deal with this pandemic.

22 So I just encourage you to please come  
23 back. I've sat through all of your testimony  
24 today, and I appreciate the testimony, but

1           there are many more issues that need to be  
2           addressed.

3                         And I would like to just ask, for  
4           clarification purposes -- in terms of COVID  
5           deaths, one COVID death is too many. My  
6           heart breaks for everyone who lost someone  
7           because of COVID. But could you provide  
8           clarification to me and my constituents?  
9           Because I've asked in three letters to you  
10          how a COVID-19 death is classified and how is  
11          it exactly determined. Is it the death  
12          certificate that is used? And is it the  
13          consequences or the major cause used under  
14          those criteria?

15                        And secondly, in terms of the  
16          vaccination rollout, I would like to just  
17          implore you to please simplify the process.  
18          My office and my constituents are extremely  
19          frustrated. Obviously it's difficult for  
20          them to get appointments. They're spending  
21          hours and hours, and I implore you and the  
22          administration to make this process  
23          streamlined as we move forward, to provide  
24          that credibility to ensure that our residents

1 are vaccinated in due time when the supply  
2 comes and we have a plan to do that.

3 And particularly using our businesses  
4 as mobile sites, go right to the businesses,  
5 if you can, to make sure -- many people  
6 employed, hundreds of people -- and also into  
7 our doctor's offices. When can we expect the  
8 vaccinations into our doctor's offices?

9 Thank you very much for your time,  
10 Dr. Zucker.

11 COMMISSIONER ZUCKER: Thank you.

12 And we are working to get it into  
13 doctor's offices, and we're working to roll  
14 out the vaccination plan across the -- more  
15 aggressively. I mean, we're pretty darn  
16 aggressive right now. The issue comes back  
17 to what I said originally, which is this is a  
18 supply-and-demand issue. And hopefully when  
19 we have more vaccine, we will be able to get  
20 it out. I hear you on that.

21 I agree with you that any death from  
22 COVID or, for that matter, from anything is  
23 always tragic and affects a lot of families.  
24 I know that your time is out, and I'm not

1           sure whether the chair wants me to respond.

2           I can give you some --

3                   CHAIRWOMAN WEINSTEIN: Why don't you  
4           respond in writing. We've kept you here so  
5           long, and we still have --

6                   COMMISSIONER ZUCKER: Okay. Okay,  
7           fine.

8                   CHAIRWOMAN WEINSTEIN: -- four-plus  
9           members to ask questions.

10                  ASSEMBLYMAN NORRIS: I would like a  
11           written response to that. I would really  
12           appreciate a written response to the  
13           question.

14                  CHAIRWOMAN WEINSTEIN: We'll get  
15           written responses for all of these questions.  
16           We're giving the commissioner a lot of  
17           homework.

18                  Assemblywoman Hyndman.

19                  ASSEMBLYWOMAN HYNDMAN: Thank you,  
20           Chair Weinstein.

21                  I'm going to give the commissioner  
22           some more homework. Sorry about that.

23                  My -- I have a couple of questions on  
24           a different tack. See, I'm an advocate for

1 sickle cell, as it greatly affects  
2 African-American communities. And a lot of  
3 the CBOs have told me that there's a delay in  
4 accessing funds for sickle cell. And my  
5 question, what could be causing that delay  
6 and what can we do to streamline it, as  
7 sickle cell patients during this pandemic are  
8 obviously greatly affected because their  
9 immune system is severely compromised.  
10 That's my first question.

11 My second question is I'm an advocate  
12 for wastewater testing, which has shown  
13 surprising results of detecting pandemic  
14 spikes in tests that have been done by  
15 Syracuse University. Is there any move by  
16 the Department of Health to put this on a  
17 statewide level so with pandemics in the  
18 future we could test wastewater?

19 And the last part I have is  
20 St. Alban's Veterans Nursing Home is in my  
21 district. And as you know, Blacks and  
22 Latinos are very hesitant to take the  
23 vaccine. We have mass testing next door in a  
24 fellow Assemblymember's district, but there's

1 really some problems in messaging. And  
2 what's happened, a lot of people are looking  
3 at that story from the city and saying, Why  
4 would I get testing if people are  
5 experimenting again on African-Americans?  
6 Even though St. Alban's Veterans Nursing Home  
7 isn't predominantly African-Americans, it's  
8 veterans. But still a very vulnerable  
9 population.

10 So if anything, we are trying to do  
11 mass marketing to get people to get the  
12 vaccinations, but it's -- definitely people  
13 are very hesitant. So anything you could  
14 provide in a way that -- I'd appreciate it.  
15 And those are my questions. I'd appreciate  
16 if I could get a response -- not now, but  
17 definitely through the chairs. Thank you.

18 COMMISSIONER ZUCKER: You're welcome.

19 I can answer those quickly right now.  
20 First issue on the access to funds, yes,  
21 sickle cell disease is something we have been  
22 very focused on. And you are absolutely  
23 correct, there is a risk of those who have  
24 sickle cell disease that they're at risk of

1           clot and sickle cell crises. And with this  
2           disease, I can see how it's easily  
3           exacerbated. And it is one of the reasons  
4           that we need to make sure that all those who  
5           have sickle cell are vaccinated.

6                     On the wastewater issue, we actually  
7           are looking at this and we have looked at  
8           this across the state. It is a very good  
9           point that you raise; that is a way to pick  
10          this up earlier. It's also a way to pick up  
11          a lot of things earlier. And so we have been  
12          doing that, and I have my environmental team  
13          working on that.

14                    On the issue of the veterans homes, no  
15          one is experimenting on anyone. Please, if  
16          you can -- I carry that message out there,  
17          and if you can please carry that message out  
18          for me as well, that would be great.

19                    The -- we -- it goes back to what we  
20          said before, and I know we've spoken about  
21          this already, about trust. And I really  
22          would ask that everyone carry the message the  
23          vaccine is safe, it's effective, the more  
24          people vaccinated, the sooner we'll get

1 through this whole pandemic.

2 But no one is experimenting on anyone.  
3 I know this is something which has surfaced  
4 and there's this hesitancy and worry, but I  
5 please wish that you would bring that message  
6 back to your community as well.

7 ASSEMBLYWOMAN HYNDMAN: Thank you.

8 CHAIRWOMAN WEINSTEIN: Thank you.

9 We're going to go to Assemblywoman  
10 Seawright.

11 ASSEMBLYWOMAN SEAWRIGHT: Thank you,  
12 Chairwoman. I know it's been a long day, and  
13 thank you, Commissioner. I just have three  
14 really, really quick questions.

15 I'm getting reports from residents at  
16 Coler Hospital, a long-term-care facility on  
17 Roosevelt Island in my district, that staff  
18 are refusing to be vaccinated. Is there or  
19 are there any guidelines from the state that  
20 we can mandate an education program for staff  
21 in nursing homes to help dispel the myths  
22 about the vaccine? That's number one.

23 Number two, should New York State  
24 terminate its flagship extramural medical

1 research program during this most challenging  
2 pandemic when medical research is arguably  
3 more important now than in generations?

4 And then third, Asphalt Green. I just  
5 want to echo what Senator Hoylman said  
6 earlier about a dedicated site in Manhattan  
7 for Manhattan residents. Asphalt Green, a  
8 large nonprofit facility in Manhattan, has  
9 offered to be a vaccine site, and my staff  
10 spent many hours frustrated but helping  
11 elderly senior citizens in my district sign  
12 up for vaccination appointments. Just today  
13 I received feedback that on 135th Street  
14 people waited over four hours in line to get  
15 the second shot and over two hours in line to  
16 get the first dose. Many of these were  
17 senior citizens with walkers and canes, ready  
18 to give up and just leave. And so more has  
19 to be done.

20 And so those are my three questions.

21 COMMISSIONER ZUCKER: So on the first  
22 one, thank you. On the first one, about  
23 better education material, we do a lot of  
24 webinars. I can do more, I can address that,

1 I can get my staff to do that as well. I  
2 understand that staff not getting vaccinated  
3 is a big issue.

4 And we can't sort of mandate things  
5 the way we did with flu because this is still  
6 an experimental -- it's still a, you know --  
7 I wouldn't say experimental. It's still not  
8 been formally approved. It's an emergency-  
9 use authorization. So it's EUA, so you can't  
10 get -- put something in place from the  
11 government for something that's in an  
12 emergency-use authorization. Let me make  
13 sure that I'm clear on that. That's number  
14 one.

15 Number two, on the extramural research  
16 funding, there are other sources of where one  
17 can get funding. And we are just, as I said,  
18 in a tight budget. And we look at all of  
19 these things -- and believe me, my heart goes  
20 out to this, as a scientist doctor, one who's  
21 done research, you know, I looked at them and  
22 I said, This is a little tough. And you take  
23 that pause, and you say, well, what else can  
24 we do? And those are some of the tough

1 decisions you have to make. And I  
2 understand -- believe me, I understand the  
3 benefit of scientific research.

4 And then number three, I hear you  
5 about the Manhattan issue. I heard some of  
6 your colleagues mention about maybe using the  
7 Javits Center when we have more vaccines  
8 primarily for the Manhattan residents. Let  
9 me see what we can do. I heard Senator  
10 Hoylman's point as well. That's something I  
11 can bring back to the team.

12 And actually one more point which ties  
13 to this, which is the issue of the elderly.  
14 We have a program that we have developed and  
15 we're working on to get those who are sort of  
16 more homebound to be able to get their  
17 vaccine at home. Because we don't want --  
18 it's still winter, it's going to be winter  
19 for a couple more weeks -- the sooner the  
20 better for it to end. But we really don't  
21 want people going out. And other people,  
22 even if it's summer or spring, it doesn't  
23 matter, they can't really get out.

24 So we're trying to figure out a way to

1 get them vaccinated as well. So we're  
2 working on all of this, and we'll move  
3 forward for you.

4 ASSEMBLYWOMAN SEAWRIGHT: Thank you,  
5 Doctor.

6 CHAIRWOMAN WEINSTEIN: Assemblyman  
7 Palmesano. Phil?

8 ASSEMBLYMAN PALMESANO: Yes. Thank  
9 you, Commissioner. Just a couple of quick  
10 questions, hopefully.

11 And there's a lot of talk about  
12 communication and partnership, and along  
13 those lines my first question is, why are our  
14 counties not being notified and getting the  
15 information on how many vaccines are actually  
16 being shipped into their counties, whether at  
17 a hospital, nursing home, pharmacy,  
18 et cetera?

19 Why not share those details with the  
20 counties to let them know where they are,  
21 which locations, how many total? Because  
22 wouldn't that help them be better able to  
23 communicate and effectively take care of the  
24 residents in their communities?

1                   COMMISSIONER ZUCKER: I think the  
2 information is getting there, but let me find  
3 out for you what the catch is. I know we're  
4 working very closely with the local -- the  
5 counties and we're in constant contact with  
6 the county leadership as well as the local  
7 health departments. So there should be that  
8 communication.

9                   If there's some daylight between  
10 there, let me see what we could do.

11                  ASSEMBLYMAN PALMESANO: That would be  
12 helpful.

13                  Relative to state distribution sites,  
14 you know, being from the Southern Tier, you  
15 know, we have -- you know, in the rural areas  
16 where some of our residents are an hour-plus  
17 away from Binghamton or Rochester, you know,  
18 there's some concerns in rural areas, I know  
19 some of the other people mentioned that,  
20 about getting limited access.

21                  I know it's just a supply and demand  
22 issue, but why -- what are you working to do  
23 to try to help ensure fairness in that? Why  
24 not allow our counties to be more

1 participating in that process as far as the  
2 state distribution sites?

3 COMMISSIONER ZUCKER: And that's what  
4 I was saying, we're working with the local  
5 health departments. And I'll find out,  
6 particularly in your area that you represent,  
7 as to which counties specifically and what  
8 has transpired.

9 ASSEMBLYMAN PALMESANO: That would be  
10 great. Because even if it would be like  
11 mobile units or have set up different  
12 transportation units, things like that, to  
13 provide that access.

14 COMMISSIONER ZUCKER: We actually  
15 spoke about that, at one point, about the  
16 mobile unit issue. So these are things that  
17 have been in the mix.

18 ASSEMBLYMAN PALMESANO: Great.

19 One other question is relative to  
20 residency limitations, why are residency  
21 limitations in place at New York City sites  
22 but no such residency or regional-type  
23 residency requirements at like the upstate  
24 points of distribution?

1           Because, you know, I've heard stories  
2           where -- and I can understand why --  
3           residents from New York City coming and  
4           traveling upstate and taking up slots that  
5           are at some of these upstate facilities. I  
6           understand why. If you have vaccine  
7           availability, you're going to take that.

8           But if there's restrictions on access  
9           to the New York City sites, why not have  
10          similar regional restrictions on the upstate  
11          sites, which have limited access?

12          COMMISSIONER ZUCKER: So we have been  
13          tracking that issue. And I'll have to sort  
14          out what the -- and I understand what you're  
15          saying as to sort of make sure it's focused  
16          on the region where somebody is presently --  
17          or is a resident. Let me look into that.

18          But we do track that. We do track  
19          these numbers, actually, as to where someone  
20          is getting the vaccine and which county,  
21          whether they're traveling also. So generally  
22          it's the percentage that are in each region  
23          is very high. So if there's something in a  
24          particular region where it's dropped down,

1           then we should figure out specifically what's  
2           happening in that specific part of the state.

3                     ASSEMBLYMAN PALMESANO: Thank you,  
4           Commissioner.

5                     CHAIRWOMAN WEINSTEIN: Thank you.

6                     I think we're going to go back to the  
7           Senate. We have a new Senate entry.

8                     CHAIRWOMAN KRUEGER: We do, thank you  
9           very much. We have Senator Jeremy Cooney  
10          from Rochester.

11                    Although just to answer as a New York  
12          City resident, we go looking for vaccines  
13          everywhere. The only place we've ever found  
14          them are Plattsburgh, which is a really,  
15          really long trip from New York City, just  
16          saying. Unless you represent Plattsburgh.  
17          But I think that might be the only place  
18          you'll run into city people in search of  
19          vaccines upstate.

20                    Jeremy Cooney.

21                    SENATOR COONEY: Thank you,  
22          Madam Chair. You're welcome to come up to  
23          Potsdam and Syracuse. There's other places  
24          too.

1                   CHAIRWOMAN KRUEGER: Oh, Potsdam,  
2                   right. Potsdam sometimes.

3                   (Laughter.)

4                   SENATOR COONEY: Well, Commissioner,  
5                   thank you for hanging in there with us today.

6                   I represent the 56th Senate District,  
7                   which is in Monroe County, the greater  
8                   Rochester area. I want to thank you for  
9                   helping us get this FEMA site in my district,  
10                  the former Kodak Hawkeye Plant. This is  
11                  obviously targeting a number of zip codes  
12                  specifically within our Black and brown  
13                  communities, which are represented in my  
14                  district.

15                  And it's been a challenge to try to  
16                  get people ready to go in and get an  
17                  appointment before March 3rd. I know that  
18                  your team is working very hard. Certainly my  
19                  office and the other state legislators are  
20                  working very hard. My question to you, and  
21                  my ask for your consideration, is that we  
22                  possibly extend the exclusive period for  
23                  individuals who are qualified to meet  
24                  these -- to receive these vaccinations in

1           these zip codes by an additional week so that  
2           we can get more of this underserved  
3           population vaccinated.

4                       In my district I represent the Town of  
5           Brighton. Over 22 percent of Brighton has  
6           received the vaccine that's eligible. It's  
7           under 10 percent, sometimes under 5 percent  
8           in the urban portions of my district. So  
9           we're trying to make sure that there's equity  
10          and fairness. I understand that you get  
11          that. So hopefully you'll be able to  
12          consider this request.

13                      COMMISSIONER ZUCKER: I hear you.  
14          Thank you.

15                      CHAIRWOMAN WEINSTEIN: So now we go  
16          back to Assemblyman Salka.

17                      ASSEMBLYMAN SALKA: Got to get my  
18          video going here. Okay.

19                      Commissioner, thank you very much for  
20          your time today. It's been a long day, I'm  
21          sure. But being a physician, you know what  
22          long days are all about.

23                      I would like to discuss the cut, the  
24          20 percent cut in the CPH, the Committee for

1 Physician Health. We know that our providers  
2 now, from physicians, nurses, therapists and  
3 lab staff -- it runs the gamut of people that  
4 are providing services that are in our health  
5 institutions, but the physician has always  
6 been the team leader, if you will. And we  
7 notice that there was a 20 percent cut in a  
8 program or -- that in fact provides support  
9 services for physicians.

10 And I just would like to know what the  
11 justification is for that. And I would urge  
12 you to reconsider that, only because we  
13 understand that as important as physicians  
14 are now, more important than ever in  
15 providing the healthcare needs for our  
16 community with the pandemic, this is  
17 something that I would find that would be  
18 damaging to the quality of care that we can  
19 give.

20 Physicians are -- especially in  
21 upstate New York -- are very hard to come by.  
22 Recruiting physicians, especially specialists  
23 in rural hospitals, where I was on staff for  
24 a number of years, is extremely difficult.

1           So I would urge you to reconsider that cut.  
2           And as a matter of fact, it would be great if  
3           that program could even be propped up a bit  
4           in such challenging times.

5                     The other issue that I did want to  
6           bring up, and I want to concur and do some  
7           additional lobbying, is the vaccine rollout.  
8           Back in January I did send a letter to your  
9           office and the Governor's office suggesting  
10          that maybe a hotline could be set up for our  
11          seniors. Because as we know, a lot of them  
12          aren't really computer literate. And for  
13          them to be able to use their landlines, or  
14          maybe if they do have a cellphone, it becomes  
15          a little bit easier.

16                    So I would urge you to at least look  
17          at the possibility of setting up some kind of  
18          better line of communication so that our  
19          seniors can make the appointments.

20                    And I voice a lot of frustration, too,  
21          of my constituents that have attempted to  
22          reach out to whatever respective lines are  
23          out there, only to be placed on hold for 15,  
24          20 minutes, and then the line goes dead.

1                   So we've got some work to do on our  
2 vaccine rollout and our setting up of  
3 appointments.

4                   COMMISSIONER ZUCKER: So two things.

5                   One is some of those 20 percent cuts  
6 may likely be restored, we could talk about  
7 that. So that's a positive.

8                   And there is a hotline. We do have a  
9 hotline, I just don't have the number off the  
10 top of my head. But there is a hotline.

11                  ASSEMBLYMAN SALKA: For seniors  
12 exclusively.

13                  COMMISSIONER ZUCKER: Oh, you're  
14 interested exclusively -- I think that's our  
15 overall hotline. But --

16                  ASSEMBLYMAN SALKA: They're having a  
17 tough time with it.

18                  COMMISSIONER ZUCKER: I know they are.  
19 I know they are.

20                  ASSEMBLYMAN SALKA: They are. And  
21 they need the vaccine more than ever. And  
22 some of them are in near panic when they call  
23 our office.

24                  COMMISSIONER ZUCKER: That's why we're

1           trying to figure out what are other ways to  
2           get them vaccinated and to work with the  
3           community to get those who are eligible to be  
4           vaccinated, particularly those, you're right,  
5           who don't use a smartphone or the internet.

6                        ASSEMBLYMAN SALKA: Thank you,  
7           Commissioner.

8                        CHAIRWOMAN WEINSTEIN: Thank you.

9                        So actually it's hard to believe that  
10          I have a question that nobody asked. I  
11          assumed somebody would have.

12                       So actually you had had a conversation  
13          with Assemblywoman Seawright, I think it was  
14          mentioned a few other times, about trying to  
15          come up with a plan for how we can vaccinate  
16          homebound -- primarily homebound elderly.  
17          And my question relates to one that I've  
18          raised previously with the Governor's office,  
19          particularly because I have a district that  
20          has a lot of elderly residents.

21                        A lot of -- a number of the folks who  
22          are homebound are qualified -- are eligible  
23          because of their age. Or now because of  
24          comorbidities, but they were age-eligible.

1 But they don't have paid aides who are  
2 eligible to get vaccines even if they are not  
3 age-eligible, but they have family members  
4 who are below the age of 65 and don't have  
5 other health issues that allow them to  
6 qualify.

7 And there is a lot of concern amongst  
8 these -- the family members that not only are  
9 their -- the person they're taking care of  
10 who's homebound not having a vaccine, but  
11 they themselves can't get a vaccine and are  
12 fearful of what happens if they become ill.

13 So, you know, I would hope that  
14 there's some plan to look to expand to  
15 caregivers. I believe that Massachusetts was  
16 doing that, that someone who was living with  
17 someone who was homebound.

18 And then the other issue I just want  
19 to raise since there's been so much talk  
20 about vaccines -- and clearly the supply is  
21 limited, and that's recognized. I happen to  
22 represent three -- parts of three zip codes  
23 in southern Brooklyn that according to the  
24 city's seven-day rolling zip code average are

1           number 2 with 12.95 percent positivity as of  
2           today, the fifth one, and then the seventh  
3           one, with 12.37 percent positivity. Again,  
4           these are mostly elderly individuals that are  
5           constantly calling my office.

6                         We're a transit desert, and there  
7           isn't a site that's available. I actually  
8           have two zip codes that are eligible -- a  
9           portion of two zip codes that are now  
10          eligible at Medgar Evers, and people have  
11          been calling there. But I would just urge  
12          that when -- as vaccines become more  
13          available, or even before that, to try and  
14          focus on a site in southern Brooklyn.

15                        And I just wonder if you could address  
16          the question, Commissioner, about the family  
17          caregivers and when they might be eligible.

18                        COMMISSIONER ZUCKER: Sure. So  
19          that -- we actually were speaking about this  
20          for a period of time. And I hear you. I  
21          hear you.

22                        One of the things is that when we open  
23          this up to preexisting conditions, we feel  
24          this opens up a very large population of

1 individuals, including many people who are  
2 caregivers to those who are elderly. But  
3 there is still going to be that pool of  
4 individuals who -- maybe the grandchild,  
5 perfectly healthy, caring for the grandparent  
6 and doesn't fall into that mix. And so we  
7 were having some conversations about that,  
8 and I will bring it back to the team to see  
9 what we can do.

10 But this is not something that hasn't  
11 crossed our plate from just our discussions  
12 internally about this issue of how do you  
13 make sure that person doesn't bring it in and  
14 expose someone who's elderly. And that is  
15 also part of the reason we do want to get  
16 those who are homebound vaccinated as quickly  
17 as possible, to give them protection so that  
18 they're not at risk.

19 CHAIRWOMAN WEINSTEIN: Thank you.

20 So there are no more questions from  
21 the Assembly. So before -- well, I guess it  
22 probably is close to dinnertime. We're going  
23 to send it back to Senator Krueger. Thank  
24 you, Commissioner, for being here and for the

1 work you and your team have been doing all  
2 along.

3 So Senator Krueger?

4 THE MODERATOR: You're muted, Senator.

5 CHAIRWOMAN KRUEGER: I did get texted  
6 one more question, so just for you to either  
7 respond to quickly or to put in your written  
8 responses.

9 So we're all operating under a  
10 declaration of a statewide emergency from  
11 COVID. Who decides when the emergency is  
12 over? Is that you or someone else? And is  
13 there an anticipated date?

14 COMMISSIONER ZUCKER: I think that's a  
15 discussion that I will have with the chamber.  
16 My ability to provide the public health  
17 information to the Governor's team is going  
18 to be put into that mix.

19 Right now I would say that we need to  
20 see what happens with these variants. Our  
21 numbers are coming down, everything is  
22 looking really in a positive direction. We  
23 went up, as we know, in the spring and we  
24 went through that. In the summer we were

1 down, then we picked back up. And now we're  
2 coming back down. The numbers look good.

3 The more vaccination we get out, the  
4 less likely we're going to have a variant.  
5 If we don't have a variant that causes a  
6 problem or an increased risk of disease  
7 spread and/or an increase in the case  
8 fatality rate, or just overall illness,  
9 severity of illness, then I think we're in  
10 the right direction. I hate making any  
11 predictions, and so I don't want to predict  
12 when that will be, but we will continue to do  
13 what we need to do.

14 I will say that we need to maintain  
15 the good public health practices that we  
16 have, which is obviously the social  
17 distancing, the masks, and to wash your  
18 hands. I started this whole pandemic  
19 discussing that early on when we realized the  
20 benefits of masks, and that's where we are  
21 right now.

22 And do I -- I would just want to say  
23 that we're going to get through this. We'll  
24 get through this pandemic, we'll get to the

1 other side. I do feel that in many ways this  
2 is like other things in other times in  
3 history, that things define a generation. So  
4 that World War II, the Depression, the civil  
5 rights movement, they all just define a  
6 generation. This will define a generation.

7 But I really feel what the most  
8 important thing for us to do is to stay  
9 together and to recognize the whole humanity  
10 factor involved here and that we all need to  
11 not -- to trust each other and to recognize  
12 that compassion, integrity and courage and  
13 just being together as a society is helpful.

14 And I think this virus has really just  
15 caused significant problems for all of us.  
16 We're not used to being separate from each  
17 other, and the human condition has been  
18 affected. And the virus doesn't care about  
19 wealth or prestige or power or fame or  
20 fortune anything, it just hits everyone.

21 But the best way, I feel, is to  
22 improve -- to get through this is to realize  
23 we touch tomorrow the best by helping each  
24 other today. And we'll get there. And

1           whatever I can do as the head of the  
2           department, I will do. I've heard all your  
3           concerns. I will address them. And we will  
4           keep pushing forward. And this is not easy.  
5           It's not easy for any of us. And I wish  
6           everyone their health and safety and the best  
7           to their families.

8                         And I say to all those who lost their  
9           relatives, I feel for them. I feel for them.  
10          I feel for the loss to them, to their  
11          families. It's very hard. And I wish you --  
12          I wish you well and I wish you strength in  
13          getting through the difficult time.

14                        So thank you.

15                        CHAIRWOMAN KRUEGER: Thank you both  
16          for being with us today.

17                        And since we have 48 more people  
18          signed up to testify before us, we are going  
19          to stay together except for perhaps the two  
20          of you. But if you want to keep someone  
21          listening, everyone's issues will also be  
22          issues for the department. So with that,  
23          thank you both very much for all of your time  
24          with us today.

1                   And I'm going to call up our last  
2 government testifier, Erin Ives, acting  
3 inspector general, New York State Office of  
4 the Medicaid Inspector General.

5                   And I'm seeing whether he has popped  
6 up in a box anywhere. Are you with us? So  
7 you thought we'd never be done. Oh, okay.

8                   Oh, hello. I keep referring to you by  
9 the wrong gender. I apologize.

10                  ACTING MEDICAID INSPECTOR IVES:  
11 That's okay. There was a little typo, so  
12 I'll use it as my alias for testimony today.

13                  CHAIRWOMAN KRUEGER: Now you've outed  
14 yourself, you're here with us, welcome.

15                  ACTING MEDICAID INSPECTOR IVES: Thank  
16 you.

17                  CHAIRWOMAN KRUEGER: We're going to  
18 set the clock at 10 minutes and let everybody  
19 listen or review your testimony, which is  
20 available to all of us on the computer  
21 screen. Okay.

22                  ACTING MEDICAID INSPECTOR IVES: Thank  
23 you. Good afternoon, Chairwoman Krueger,  
24 Chairwoman Weinstein, distinguished members

1 of the Senate Finance and Assembly Ways and  
2 Means committees, and Health Committee chairs  
3 Senator Rivera and Assemblyman Gottfried. I  
4 appreciate this opportunity to share with you  
5 the activities and initiatives of the Office  
6 of the Medicaid Inspector General.

7 The ongoing COVID-19 pandemic has  
8 impacted every facet of the healthcare  
9 delivery system, business and economic  
10 sectors, and the daily lives of each and  
11 every American. Without question, New York's  
12 health providers continue to face  
13 unprecedented challenges during this public  
14 health emergency.

15 Like all health providers and state  
16 and local agencies, OMIG quickly adapted its  
17 processes to ensure continuation of the  
18 agency's critical work. At the same time,  
19 OMIG recognized the unrelenting stressors  
20 COVID imposed upon the provider community.  
21 To that end, throughout the pandemic OMIG has  
22 worked closely with individual providers,  
23 associations and other stakeholders to share  
24 information, establish mutually agreed upon

1 time frames and practices related to audit  
2 processes, and address issues and concerns  
3 resulting from this new health care delivery  
4 system landscape.

5 Specifically, to protect the health  
6 and safety of OMIG staff and the provider  
7 community, our audits have been conducted  
8 remotely; information and documentation are  
9 communicated and shared electronically.  
10 Further, in addition to these audit activity  
11 modifications, OMIG has equipped staff with  
12 the resources needed to remotely perform  
13 agency functions.

14 I am also proud of the many OMIG staff  
15 who stepped up to the challenge and  
16 volunteered their time to support various  
17 critical initiatives to battle the pandemic  
18 and help New Yorkers during these  
19 unprecedented times. These efforts, while  
20 critical to protecting health and safety  
21 during the current crisis, will serve the  
22 agency and the state well going forward and  
23 reflect the Governor's commitment that  
24 New York build back better.

1                   Throughout the pandemic, these efforts  
2                   resulted in OMIG achieving two key  
3                   objectives: First, protect the integrity of  
4                   the Medicaid program; and second, maintain  
5                   open communications and understanding with  
6                   program stakeholders to avoid imposing  
7                   unnecessary burdens on a health care delivery  
8                   system under siege by the COVID virus and  
9                   ensure that, most importantly, New Yorkers'  
10                  access to health care services is sustained  
11                  to the best extent possible.

12                  These collaborative efforts have  
13                  enabled OMIG to both deliver on its mission  
14                  to protect the integrity of the Medicaid  
15                  program while supporting the provider  
16                  community's unwavering commitment to deliver  
17                  health care services under the most dire  
18                  circumstances.

19                  For example, preliminary 2020  
20                  calendar-year figures for the agency's cost  
21                  savings and Medicaid recoveries are estimated  
22                  at more than \$2.9 billion. Breaking that  
23                  down, OMIG's proactive cost-avoidance  
24                  measures alone delivered estimated savings of

1 more than \$2.4 billion. OMIG recoveries --  
2 including audits, third-party liability, and  
3 investigations -- total more than  
4 \$558 million.

5 Throughout 2020, OMIG also continued  
6 to focus on managed-care-related program  
7 integrity initiatives. For example, OMIG's  
8 various match-based audits and data analyses  
9 efforts resulted in 419 finalized audits with  
10 more than \$159 million in recoveries.

11 As part of its collaborative effort to  
12 protect the Medicaid program, OMIG continues  
13 to work closely with managed care  
14 organizations and their special investigation  
15 units to address network provider fraud,  
16 waste, and abuse.

17 Also, through legislation enacted in  
18 2019 designed to hold MCOs accountable for  
19 the program integrity obligations outlined in  
20 their contract with the state, OMIG in 2020  
21 continued reviews of each of New York's  
22 15 mainstream MCOs to assess their compliance  
23 with contractual standards that prevent  
24 fraud, waste or abuse.

1                   In addition to the mainstream plans,  
2                   OMIG will review managed long-term-care  
3                   plans' compliance with contractual standards.  
4                   These managed-care reviews constitute an  
5                   essential component of OMIG's program  
6                   integrity efforts in the managed-care arena.

7                   Also OMIG, in collaboration with its  
8                   sister agencies and numerous stakeholders,  
9                   continues to play a critical role in  
10                  implementing MRT II initiatives designed to  
11                  enhance accountability and oversight while  
12                  improving access to high-quality healthcare  
13                  services.

14                  Rooting out fraud, waste and abuse in  
15                  the Medicaid program is central to OMIG's  
16                  work. To that end, the agency maintains  
17                  strong partnerships with law enforcement and  
18                  agencies at the local, state and federal  
19                  levels. OMIG investigators, auditors, data  
20                  analysts, and other licensed healthcare  
21                  professionals work closely with agency  
22                  partners to help identify and hold  
23                  accountable those who seek to exploit the  
24                  Medicaid program for personal gain.

1                   For example, in 2020 OMIG worked  
2                   closely with the New York City Special  
3                   Narcotics Prosecutor and other law  
4                   enforcement partners in a joint investigative  
5                   effort that led to the arrests of a  
6                   Manhattan-based psychiatrist and a medical  
7                   assistant for their alleged roles in selling  
8                   prescriptions for addictive controlled  
9                   substances drugs -- with no legitimate  
10                  medical purpose -- for cash. The  
11                  investigation revealed a blatant disregard of  
12                  both the healthcare professionals' oaths to  
13                  do no harm as well as the rule of law.

14                  OMIG will continue to work with its  
15                  law enforcement and government partners to  
16                  hold fully accountable those who jeopardize  
17                  the health and safety of the most vulnerable  
18                  New Yorkers by attempting to defraud the  
19                  Medicaid program.

20                  Now more than ever, OMIG's  
21                  comprehensive Medicaid program integrity  
22                  efforts serve to help sustain New York's  
23                  healthcare delivery system. Our office looks  
24                  forward to continuing our work with

1 providers, stakeholders, and our partners at  
2 every level to overcome the challenges before  
3 us and to seize renewed opportunities to  
4 enhance Medicaid program integrity today and  
5 tomorrow.

6 Thank you, and I'm pleased to address  
7 any questions you may have.

8 CHAIRWOMAN KRUEGER: Thank you very  
9 much.

10 And let's see -- we have hands up, but  
11 I want to make sure I double-check with our  
12 chairs. Senator Rivera, do you have any  
13 questions for --

14 SENATOR RIVERA: Good for the moment,  
15 Madam.

16 CHAIRWOMAN KRUEGER: Fine. Then I'm  
17 going to move to Senator Harckham, who I know  
18 had his hand up first.

19 Are you there, Pete?

20 SENATOR HARCKHAM: Yeah, I'm just  
21 trying to unmute and start my video. There  
22 we go. Thank you very much, Madam Chair.

23 Inspector, thank you so much. Good to  
24 see you, even though my screen is blocked,

1 but -- there we go. Thank you very much.

2 Thank you for your testimony.

3 I want to talk about -- you spoke  
4 about wanting to avoid unnecessary burdens in  
5 your investigations and their outcome. And I  
6 think we can all agree that we want to weed  
7 out fraud and abuse. But I want to talk  
8 about audits of opioid treatment providers.  
9 There was one in New York City that found  
10 \$400 in administrative fraud, ended up with  
11 over a \$7 million penalty. They ended up  
12 closing their doors. Fifteen-hundred  
13 medication-assisted-treatment patients lost  
14 those slots.

15 Another ongoing investigation in  
16 Western New York, similar thing -- \$800 in  
17 administrative issues that led to about a  
18 \$4 million price tag. And that is going to  
19 be closing, another 1500 medication-assisted-  
20 treatment slots.

21 We're in the midst of an opioid death  
22 crisis. Do you think that's good public  
23 policy that when there's no blatant fraud or  
24 abuse or theft from New York State, to be

1 ending 3,000 medication-assisted-treatment  
2 slots when it's nearly impossible to start  
3 new slots?

4 ACTING MEDICAID INSPECTOR IVES:  
5 Senator, thank you for the question.

6 To start, we do recognize the vital  
7 services these programs provide. And we do  
8 recognize, particularly right now, with the  
9 health crisis and the opioid crisis, how  
10 important those services are.

11 I do want to clarify. OMIG is not  
12 responsible for closing programs. We do  
13 perform these audits. We think they perform  
14 a critical function in terms of just  
15 reviewing and making sure that the programs  
16 are meeting the necessary requirements as  
17 outlined by the federal government. And part  
18 of why we do these audits, and a very  
19 important reason, is if we don't test to make  
20 sure that the programs are meeting the  
21 federal requirements, the federal government  
22 can come in themselves and perform these  
23 audits, which jeopardizes the funding right  
24 at its base for providing these services.

1                   So we do recognize this. We have  
2                   heard the concerns that were raised. We also  
3                   work on a case-by-case basis with each of the  
4                   auditees. I am familiar with the audit  
5                   you're speaking of in Western New York, and  
6                   we are in communication with that provider  
7                   group at this point.

8                   But I do want to stress how important  
9                   we see these programs to be, and working with  
10                  these providers on a case-by-case basis on  
11                  each of these audits.

12                 SENATOR HARCKHAM: Well, I would just  
13                 say -- and thank you for that. But is there  
14                 no discussion internally that if we fine  
15                 these people \$7 million, they're going to  
16                 close their door? I mean, aren't there ways  
17                 to have administrative sanctions and policies  
18                 put in place -- probation, something to keep  
19                 the doors open so that we're not risking 1500  
20                 people's lives?

21                 ACTING MEDICAID INSPECTOR IVES: Yes.  
22                 And obviously that is a big concern. We  
23                 would never want to risk anyone's safety.  
24                 That would be contrary to our mission right

1 at its heart.

2 We do work hand in hand, like I said,  
3 with our partner agencies to look at that and  
4 are constantly reviewing policies to see  
5 where we may need to make improvements. But  
6 I would like to stress we work with each  
7 auditee individually on their audits. We do  
8 have opportunities available for -- if  
9 providers are having financial hardship, they  
10 can go through a process with our agency.  
11 But also throughout the audit process we  
12 stress communication and getting as much  
13 documentation as we can to support the  
14 services that they're providing to make sure  
15 that it is in line with program requirements.

16 SENATOR HARCKHAM: Well, that's my  
17 time. I'd like to follow up offline. Thank  
18 you, Investigator.

19 ACTING MEDICAID INSPECTOR IVES: Thank  
20 you.

21 CHAIRWOMAN KRUEGER: Assembly?

22 CHAIRWOMAN WEINSTEIN: Yes, we have  
23 Assemblyman Byrne, the ranker on Health,  
24 five minutes.

1 ASSEMBLYMAN BYRNE: Yes, thank you.

2 And I don't think I'll have to use the whole  
3 five minutes, which I'm sure my colleagues  
4 will appreciate.

5 And I just want to say, you know,  
6 thank you for your work. Again, as you said  
7 earlier, obviously we do want to eliminate as  
8 much fraud, waste and abuse as we possibly  
9 can. And I understand your efforts to ensure  
10 Medicaid integrity. And that doesn't stop,  
11 obviously, throughout the course of this  
12 pandemic, and in many ways your audit work is  
13 even more important now than ever.

14 Yet I have heard from various home  
15 care providers that some of the OMIG  
16 audits are being approached as if we're not  
17 living in this crazy COVID world. And when  
18 auditors can sometimes show up unannounced,  
19 some providers aren't always prepared to  
20 accommodate a new influx of people arriving  
21 on-site, given all the various social  
22 distancing policies and pandemic  
23 restrictions. And in some cases it's been  
24 shared with me that audit teams have

1 expectations for in-person interviews with  
2 provider managers who are justifiably working  
3 remotely.

4 So what is OMIG doing to try to make  
5 this audit process more flexible, considering  
6 the situation that we're all living in? And  
7 considering the discussions that you may have  
8 heard earlier about expanding telehealth, I  
9 would ask if that's, you know, possibly one  
10 technology and resource that we could use to  
11 try to address some of these concerns.

12 ACTING MEDICAID INSPECTOR IVES: Thank  
13 you. We -- {audio glitch}. When the  
14 pandemic started, we went to remote and  
15 equipped our staff with resources to work  
16 remotely. We have been performing our audit  
17 activities remotely. We have not been going  
18 on sites. So, Assemblyman, if there are  
19 specific examples, let's please connect so  
20 that I can talk to you about that.

21 But we have done this remotely  
22 specifically to make sure that we maintain  
23 health and safety of the providers, of the  
24 individuals that they're serving, and of our

1 staff. So we have communications either  
2 through Webex, we accept documentation  
3 electronically.

4 And also understanding that, you know,  
5 the focus needs to be on the care of the  
6 beneficiaries. We have been working to make  
7 sure if there needs to be flexibility in  
8 terms of time frames for responses, if we  
9 need to do things kind of piecemeal and work  
10 with them to get responses. We have been  
11 trying to be as flexible as we can to make  
12 sure that we come to some mutually agreeable  
13 time frames and how we're conducting our  
14 audits.

15 ASSEMBLYMAN BYRNE: Thank you, ma'am.

16 And as far as the specifics, I will  
17 follow up with your office. So if there is  
18 any sort of miscommunication, we can have  
19 that addressed. And I do thank you for your  
20 time and your testimony here this late  
21 afternoon, early evening.

22 ACTING MEDICAID INSPECTOR IVES: Thank  
23 you.

24 CHAIRWOMAN WEINSTEIN: Thank you. We

1 go to the Senate.

2 CHAIRWOMAN KRUEGER: I see Senator  
3 Rachel May with her hand up.

4 SENATOR MAY: Right. Hi. Thank you  
5 for testifying here. Okay, I got my video  
6 going.

7 Just one quick question. When we did  
8 our hearings last summer about nursing homes,  
9 one thing we heard over and over was that the  
10 fine structure was such that the operators  
11 just built it into their operating budgets  
12 and it didn't actually change their behavior.

13 And I'm wondering, what input do you  
14 have into the levels of fines? And do you  
15 think they are at the level where they do  
16 discourage the kinds of behavior that we want  
17 to be discouraging?

18 ACTING MEDICAID INSPECTOR IVES: Thank  
19 you.

20 To clarify, OMIG performs program  
21 integrity oversight in the nursing homes.  
22 However, we are limited to looking at the  
23 reimbursement rates, the cost reports, and  
24 the Medicaid funds that are going into the

1 nursing homes. So our audits really do focus  
2 on the cost-base funds that are going into  
3 the nursing homes. So I would feel out of  
4 place responding to the fines.

5 SENATOR MAY: All right. Thank you.

6 ACTING MEDICAID INSPECTOR IVES: Thank  
7 you.

8 CHAIRWOMAN KRUEGER: Assembly?

9 CHAIRWOMAN WEINSTEIN: We have no one  
10 else. I think they used up all their energy  
11 with Dr. Zucker.

12 CHAIRWOMAN KRUEGER: I think they did  
13 too. Although I do have one question for  
14 Erin, to follow up from Senator Harckham's  
15 questions.

16 So if -- you really got me on \$400 in  
17 fines for administrative errors. Is  
18 \$8 million actually the increased fines that  
19 you put on top of that from the State of  
20 New York? How could that be the math? Even  
21 though you don't know what the provider is  
22 and I don't know what that provider is. How  
23 could a \$400 penalty translate to an  
24 \$8 million fine?

1                   ACTING MEDICAID INSPECTOR IVES: So to  
2                   clarify, because I do think it's important  
3                   terminology. We do audit against  
4                   overpayments, identified overpayments. So  
5                   payments that were already made to a provider  
6                   that show up in the claims.

7                   For these audits we review the claims.  
8                   And I think you've heard us talk before, we  
9                   use extrapolation -- sampling and  
10                  extrapolation. So what we do is take a  
11                  sample of claims and apply, especially at  
12                  this late hour, very complicated mathematical  
13                  procedures.

14                  But it does -- it's statistically  
15                  valid. It takes the claims and it reviews  
16                  across. So the \$400 that they're referring  
17                  to may be for one claim, but that one error  
18                  may show up across multiple claims in our  
19                  audit, which is how it gets raised up to the  
20                  amounts that you're hearing.

21                  We have been using this methodology  
22                  for years across multiple categories of  
23                  services. It's also used at the federal  
24                  government for the OIG audits that are

1           conducted. And part of our reasoning for  
2           doing the audits this way -- I know when you  
3           see the end dollar amount, it may have a  
4           shock value. But understand that by looking  
5           at that and using that statistically valid  
6           sample, we're also trying to reduce the  
7           administrative burden on providers.

8                         We take 100 claims, look at them.  
9           Where we identify an error, we do project it  
10          out. So that is how you do get to the  
11          mathematical totals.

12                        CHAIRWOMAN KRUEGER: And so in this  
13          storyline you are offering, would that  
14          presumably mean the error you found was  
15          people who were not eligible for Medicaid  
16          coverage of whatever the service was, so when  
17          you extrapolate out you're basically clawing  
18          back every dollar that went into the program  
19          for that patient or that universal patient  
20          you think were wrongly evaluated as  
21          Medicaid-eligible?

22                        ACTING MEDICAID INSPECTOR IVES:  
23          Correct, that can be one example that could  
24          go across multiple claims for different

1 beneficiaries. So it could be a mistake, as  
2 you point out, across multiple claims.

3 CHAIRWOMAN KRUEGER: And so there were  
4 two examples that Senator Harckham gave you.  
5 I mean, are these everywhere in the state?  
6 How many per year of this kind of storyline  
7 are you seeing?

8 ACTING MEDICAID INSPECTOR IVES: In  
9 terms of specifically for the opioid  
10 treatment?

11 CHAIRWOMAN KRUEGER: Yeah, we'll stick  
12 with that.

13 ACTING MEDICAID INSPECTOR IVES: Okay.  
14 We've conducted fewer than 15 audits.

15 And I will tell you that actually, of  
16 the audits we've conducted, we finalized five  
17 and they're posted on our website. The  
18 majority of them have had little to no  
19 findings.

20 So what we are seeing is that there  
21 are providers who are doing it correctly.  
22 There are providers who are meeting all the  
23 program requirements. We're pleased to see  
24 that and want to see that. But we do have to

1 focus on those who may have issues in their  
2 programs that we do make sure we protect the  
3 funding.

4 I think it's been a theme throughout  
5 the day -- I've been listening throughout the  
6 day -- to make sure that the resources we do  
7 have in the program are protected. So that's  
8 where our audits come into play.

9 CHAIRWOMAN KRUEGER: And is it your  
10 experience that with this kind of audit where  
11 you're finding errors that may total quite a  
12 bit of money, that there's fraud involved or  
13 just somebody didn't know how to run their  
14 program correctly and was making approvals  
15 that didn't fit the category of eligibility  
16 for the Medicaid program?

17 ACTING MEDICAID INSPECTOR IVES: I'll  
18 speak to the audits we've conducted. We have  
19 not seen fraud. It does look like there were  
20 some program issues, which was why it  
21 remained as an audit and ended up with the  
22 findings.

23 I think, as you're aware when we've  
24 expressed over the years our mission, if we

1 do identify fraud, we do make appropriate  
2 referrals to law enforcement or to the MFCU.

3 CHAIRWOMAN KRUEGER: And when OMIG was  
4 started years ago, I started asking this  
5 question every year, so I'm going to ask it  
6 now. There are some people who believe when  
7 you say Medicaid fraud you're talking about  
8 poor people intentionally fraudulently  
9 ripping off the Medicaid program.

10 But is that still true that that is  
11 not the universe of people that OMIG is  
12 finding against, that it's very hard to  
13 commit individual Medicaid fraud to your own  
14 advantage?

15 ACTING MEDICAID INSPECTOR IVES: We do  
16 find that providers -- unfortunately, there  
17 are many out there who do take advantage of  
18 the Medicaid population. They will use many  
19 different schemes to benefit from what is  
20 supposed to be these funds going to and  
21 services provided to the Medicaid population.

22 So yes, Senator, you're correct.

23 CHAIRWOMAN KRUEGER: All right, that  
24 you can't really pull off Medicaid fraud

1 without provider participation leading the  
2 way. Did I say that correctly?

3 ACTING MEDICAID INSPECTOR IVES: Yes.

4 CHAIRWOMAN KRUEGER: All right, thank  
5 you. Thank you for your time today.

6 ACTING MEDICAID INSPECTOR IVES: Thank  
7 you.

8 CHAIRWOMAN KRUEGER: Anyone else jump  
9 in while we were having that dialogue and  
10 need us?

11 CHAIRWOMAN WEINSTEIN: No. No.

12 CHAIRWOMAN KRUEGER: Nope? Then we  
13 are going to let you go to continue your day  
14 or your work. Thank you very much for your  
15 work for the State of New York.

16 ACTING MEDICAID INSPECTOR IVES: Thank  
17 you for your time.

18 CHAIRWOMAN KRUEGER: All right. For  
19 those of you who have been hanging out hoping  
20 we would someday get to the nongovernmental  
21 representatives, we are at that point.

22 So you are set up in panels. So I  
23 will read out the full panel of people. Then  
24 you will each get three minutes to testify.

1           Then anyone who wishes to ask questions --  
2           again, hand up, the best way to get Helene or  
3           my attention, and you have three minutes to  
4           ask the entire panel your questions.

5                        So not unlike the earlier part of the  
6           day, if you really want a more detailed  
7           answer, you might be saying, Don't answer me  
8           now, I would like your follow-up with me.  
9           And I suggest that all of our panelists will  
10          be willing to do follow-up with you.

11                       Also we have all of your testimony,  
12          panelists, and can read that. So please  
13          don't feel a need or even try to read us your  
14          testimony, because if you're fast enough to  
15          read your entire testimony in 3 minutes, you  
16          are a very good speed reader, but we won't  
17          know what you're saying anyway. So it would  
18          be preferable if you each bullet-point your  
19          key issues from your testimony. Count on us  
20          as legislators to have learned to read. And  
21          again, we can follow up with you afterwards,  
22          because this all becomes like speed-dating,  
23          and we're starting this portion at 5:15 in  
24          the afternoon on the last day of hearings.

1 So thank you for putting up with us.

2 And the first panel: The Healthcare  
3 Association of New York State, Bea Grause;  
4 the American College of Ob-Gyns -- excuse me,  
5 obstretians -- I can't even do this. I  
6 always say ob-gyn because it's easier --  
7 Dr. Camille Clare; the New York Society of  
8 Physician Assistants, Maureen Regan; the  
9 director of the Greater New York Hospital  
10 Association, David Rich; and the Visiting  
11 Nurse Service of New York, Hany Abdelaal.

12 And we'll just start with Healthcare  
13 Association of New York.

14 MS. GRAUSE: Thank you, Chairman  
15 Krueger -- Chairwoman Krueger. Good  
16 afternoon -- or good evening, almost --

17 CHAIRWOMAN KRUEGER: Almost.

18 MS. GRAUSE: -- Chairs Krueger,  
19 Weinstein, Rivera and Gottfried and committee  
20 members. My name is Bea Grause, president of  
21 HANYS, representing not-for-profit hospitals,  
22 health systems, and post-acute-care providers  
23 across New York State.

24 We thank you for your continued

1 support. HANYS and our members appreciate  
2 the difficult state fiscal situation.  
3 However, COVID-19 also created unparalleled  
4 fiscal challenges for our members. Our  
5 members showed up, they worked tirelessly  
6 together to coordinate response efforts and  
7 ensure the highest level of public and  
8 patient safety. We spent billions of dollars  
9 to increase capacity, buy supplies and  
10 equipment at higher-than-usual prices, and  
11 bring in additional staff as needed. And all  
12 this was done while, for much of that time,  
13 elective surgeries were canceled.

14 A Kaufman, Hall analysis that we  
15 conducted for HANYS estimated that over the  
16 period of this year, a little more than one  
17 year, hospitals across the state will have  
18 suffered a 20-to-25-billion-dollar loss in  
19 revenue. That's about 30 percent of their  
20 revenue. On top of that, that doesn't count  
21 the \$2 billion in recurring reductions from  
22 last year's budget.

23 So in review of this year's budget, we  
24 urge you to consider our five principles for

1            recommendations. First, do no harm. I think  
2            that's obvious. Second, reject cuts, any  
3            cuts to Medicaid. Medicaid currently, we  
4            estimate, pays about 67 cents on the dollar.  
5            Third, strengthen healthcare. And  
6            particularly, as was discussed earlier today,  
7            the telemedicine and managed-care changes.  
8            Fourth, fix harmful policies such as 340B and  
9            the indigent care pool, as has been  
10           discussed. And finally, support new  
11           investments. We urge the Legislature to  
12           support the investments that are included in  
13           the Executive Budget.

14                    Just a couple of quick things. Again,  
15                    reject the budget's 1 percent  
16                    across-the-board cut to the Medicaid program.  
17                    Adopt our proposal, HANYS' proposal, to  
18                    create a short-term glide path to the newly  
19                    adopted indigent care pool funding model, and  
20                    reject this year's proposal to eliminate  
21                    state support of the public indigent care  
22                    pool.

23                    Delay implementation of the damaging  
24                    proposal for the 340B drug pricing program.

1 We support the increased premiums for the  
2 Essential Health Plan. Enact sensible  
3 managed-care reforms, including  
4 classification of pay-and-pursue policies.

5 We support the enactment of telehealth  
6 payment parity. Encourage -- make sure that  
7 for-profit health insurers achieve the state  
8 budget's Medicaid spending goals while  
9 securing justified community reinvestments.

10 And finally improve reimbursement for  
11 New York's struggling not-for-profit nursing  
12 homes, to ensure that resident care and staff  
13 are not shortchanged.

14 This pandemic has proven time and  
15 again that our nonprofit hospitals, health  
16 systems, post-acute-care providers and their  
17 frontline and support staff, are there for  
18 all New Yorkers 24/7. And in that context, I  
19 want to support Dr. Zucker's March 25th  
20 directive.

21 As he has stated, the first reason is  
22 because the science is absolutely there, and  
23 it's supported by the science. And the  
24 second reason is because of the context. Our

1 hospitals were in urgent life-and-death  
2 situations, and we believe that the directive  
3 saved lives at the hospital level.

4 In closing, HANYS is committed to  
5 working with you to ensure that the  
6 highest-quality care is accessible and  
7 affordable to New Yorkers. And we thank you  
8 again for your support.

9 This concludes my testimony.

10 CHAIRWOMAN KRUEGER: Thank you.

11 Dr. Clare?

12 DR. CLARE: Good evening, or  
13 afternoon. My name is Dr. Camille Clare, and  
14 I'm an obstetrician and gynecologist, and I  
15 serve as the chair of the American College of  
16 Obstetricians and Gynecologists -- yes, it is  
17 a mouthful -- ACOG, District II.

18 Thank you for this opportunity to  
19 provide testimony on the proposed Executive  
20 Budget. We really greatly appreciate the  
21 Legislature's work over the past several  
22 years to support a variety of maternal  
23 mortality prevention initiatives and for  
24 enacting legislation to improve New York's

1 maternal mortality review process through the  
2 creation of the Maternal Mortality Review  
3 Board.

4 This review board is critical to  
5 identifying the causes and contributing  
6 factors in maternal deaths, to address the  
7 disparities -- as we know, Black women are  
8 three to four times more likely to die of a  
9 pregnancy-related death than white women --  
10 and importantly, to develop and implement  
11 actionable strategies for prevention.

12 The review board is active in its  
13 work, and we urge the Legislature to ensure  
14 that this work is supported and continues.

15 Secondly, we ask that the Legislature  
16 include \$250,000 in general operating funds  
17 for the Safe Motherhood Initiative. Funding  
18 for this program is typically added by the  
19 Legislature during the budget process.  
20 ACOG's Safe Motherhood Initiative works with  
21 obstetrical teams across the state to develop  
22 and implement clinical bundles that outline  
23 standardized approaches for managing  
24 obstetrical emergencies associated with

1 maternal mortality and morbidity.

2 Funding is necessary to be responsive  
3 to recommendations from the Maternal  
4 Mortality Review Board and ensure providers  
5 across the state can learn from the reviews,  
6 implement actionable strategies for  
7 prevention, allow SMI to continue hospital  
8 implementation support, enhance safety  
9 bundles with a specific focus on health  
10 equity and respectful care, and develop a  
11 cardiac bundle.

12 We ask you to ensure changes to  
13 telehealth that prioritize health equity and  
14 access. As a practicing OB-GYN, telehealth  
15 is an extremely important and useful tool to  
16 me to contact patients during the pandemic.

17 We next ask you to reject physician  
18 disciplinary process changes which would  
19 disregard essential due process protections  
20 when a complaint is filed against a physician  
21 to the Office of Professional Medical  
22 Conduct. The commissioner already has  
23 authority to take summary action prior to the  
24 conclusion of disciplinary hearings.

1                   Finally, we ask you to reject the  
2                   proposed Excess Medical Liability Program  
3                   changes which would require physicians who  
4                   are already experiencing losses due to the  
5                   pandemic to pay 50 percent of the cost of  
6                   excess medical malpractice insurance, which  
7                   is a critical program for high-risk  
8                   specialties.

9                   We appreciate the Legislature standing  
10                  with the physician community, particularly  
11                  during this extremely difficult time. Please  
12                  consider us a continued resource on women's  
13                  healthcare in the future. I really  
14                  appreciate the opportunity to meet with you  
15                  all, and am happy to answer any questions  
16                  that you may have. Thank you very much.

17                  CHAIRWOMAN KRUEGER: Thank you.

18                  Maureen.

19                  MS. REGAN: Good evening. Thank you  
20                  very much for the opportunity to present  
21                  before this committee.

22                  The pandemic that we are currently  
23                  working our way through has shed light on the  
24                  PA profession and our ability to treat

1 patients of every age in every clinical  
2 discipline and in every healthcare setting,  
3 including home care, school health, mental  
4 health, and occupational medicine. We care  
5 for those who are critically ill and those  
6 seeking primary and preventative care via  
7 brick-and-mortar facilities or telemedicine.

8 Health system CEOs, COOs and CMOs  
9 across the state turn to PAs to help manage a  
10 significant surge volume of patients in the  
11 clinical and the administrative space. One  
12 CMO stated he didn't really appreciate the  
13 impact of PAs, colleagues he has worked with  
14 for many years, and that PAs are an  
15 invaluable solution based on their education  
16 in medicine, their clinical and procedural  
17 training, and their flexibility. He stated:  
18 "You are the cross between a stem cell and a  
19 3D printer."

20 Our ability to be able to respond at  
21 this level was primarily due to the action of  
22 the executive order setting aside the need  
23 for a PA to have a supervising physician.

24 I'd like to speak to the impact of PAs

1 across the state over the past year.  
2 Speaking with the CEO and CMIO at Urban  
3 Health Center, an entity that sponsors  
4 multiple federally qualified health centers  
5 in the Bronx and Queens, taking care of some  
6 of our most vulnerable populations, they must  
7 rely on PAs to staff their primary and  
8 specialty care clinics. They cannot hire  
9 physicians, and when they do, the turnover is  
10 significant.

11 The leadership of this federally  
12 qualified health center is extremely  
13 frustrated that PAs are not recognized by  
14 New York State Medicaid managed care as  
15 practitioners.

16 Executives who support Medicaid  
17 managed care plans are also frustrated that  
18 this barrier exists, as their enrollees  
19 experience significant delays in getting  
20 healthcare appointments.

21 PAs need to be recognized by New York  
22 State Medicaid managed care and be able to  
23 have their own panels. PAs are doing the  
24 work and are addressing the inequity.

1 Patients need to be able to find PAs to  
2 reduce delays in care, which are forcing  
3 increased costs and other detrimental  
4 effects.

5 Stakeholders cannot objectively see  
6 the impact of the work PAs are doing. There  
7 needs to be objective validation when  
8 employers look for workforce and care model  
9 solutions. All insurance entities in  
10 New York State need to enroll PAs as  
11 practitioners in their plans.

12 Transparency in who is providing care  
13 to our patients is imperative. Our  
14 policymakers and our healthcare delivery  
15 systems rely on it. The federal government  
16 supports direct billing for PAs. I encourage  
17 New York State to do the same.

18 Northwell Health has used a PA to  
19 guide their employee health, their entire  
20 healthcare delivery system. At Noyes  
21 Hospital in Finger Lakes, a cardiology PA  
22 with emergency management experience was able  
23 to transition to run a COVID testing center.  
24 In Western New York, the general physician PC

1 developed a telehealth model run by their  
2 physician leadership along with a PA. PAs in  
3 Central New York have been able to do the  
4 same for patients who would not have access  
5 to care.

6 This pandemic has laid bare many  
7 barriers and opportunities to healthcare in  
8 New York State. With the support of the  
9 Legislature, we look forward to addressing  
10 and setting aside administrative barriers.  
11 This is not a scope-of-practice issue, nor is  
12 it a training issue. It's an imperative to  
13 establish equitable care.

14 With all due respect to our valuable  
15 physician, pharmacy and nursing colleagues,  
16 the PA profession has not been mentioned once  
17 in any discussion today, despite being named  
18 the number-one profession by U.S. News &  
19 World Report in 2021. We need to change  
20 that.

21 PAs are often not included in  
22 healthcare language and/or bill language,  
23 leaving true intent up to interpretation --  
24 and more often, misinterpretation -- creating

1           confusion and delays. We cannot leave this  
2           up to random interpretation of HR  
3           departments, recruiters, EMR vendors or  
4           practice managers.

5                   I ask our legislative colleagues to  
6           please reach out to us, as we are a huge  
7           resource for the interpretation of the  
8           training and scope of PA practice. We  
9           welcome the engagement. Please be sure to  
10          transparently include PAs in guidance and  
11          bill language pertaining to the delivery of  
12          healthcare that fall within our education,  
13          training and scope. Our public's health and  
14          our fiscal health depend on it.

15                   Thank you.

16                   CHAIRWOMAN KRUEGER: Thank you.

17                   Next, David Rich.

18                   MR. RICH: Thank you.

19                   Last year was like no other. Our  
20          hospitals mounted the largest mobilization of  
21          healthcare resources in the nation's history.  
22          We mourn every patient that died. But we are  
23          also proud of the brave women and men in our  
24          institutions who cared for and safely

1 discharged 145,000 patients since February.  
2 They pioneered innovations that have been  
3 replicated around the world. They used  
4 resources no hospitals had ever been asked to  
5 use before. They saved thousands of lives,  
6 and we owe them a huge debt of gratitude.

7 But all of this came at great  
8 emotional and financial cost. Hospital  
9 financials tanked in 2020, from the double  
10 whammy of reduced use and increased costs.  
11 Without the dollars secured by  
12 Senator Schumer, our hospitals would have  
13 fallen off a financial cliff. But we're not  
14 out of the woods. New Yorkers are not using  
15 hospital services as they did before.  
16 Inpatient use is down 16 percent and ER use  
17 is down 34 percent.

18 There's not going to be any more  
19 hospital relief from Congress, so we need you  
20 to do three things, respectfully.

21 One, provide new funding for  
22 hospitals. For 13 years, hospitals have  
23 effectively not received an increase in their  
24 Medicaid rates. That's why we have dozens of

1 hospitals on a closure watch list. State  
2 funding from the new COVID relief bill should  
3 be used to wipe out cuts and increase  
4 Medicaid rates.

5 Two, rein in the abusive practices of  
6 for-profit insurance companies, who made huge  
7 profits during the pandemic, collecting  
8 premiums while most hospital services were  
9 shut down. We urge you to revisit one of the  
10 reforms that wasn't enacted last year, known  
11 as "pay and pursue," which would require  
12 insurance companies to actually pay for care  
13 delivered to their enrollees.

14 And three, don't impose costly  
15 mandates that would put hospitals in an even  
16 worse financial position. This includes  
17 staffing-ratio legislation that we all know  
18 would cost hospitals and nursing homes  
19 \$4 billion.

20 With regard to nursing homes, let me  
21 be clear: We support reasonable and funded  
22 reforms. We represent not-for-profit nursing  
23 homes, which are the gold standard for  
24 long-term care, but that gold standard is

1 rapidly disappearing. We're losing 5 percent  
2 of our not-for-profit homes per year. This  
3 is a matter of great concern, and we urge you  
4 to conduct a thorough examination of this  
5 phenomenon.

6 For nursing homes, we need you to  
7 increase Medicaid rates. And we are also  
8 interested in a proposal that would require  
9 homes to dedicate 70 percent of their revenue  
10 to direct resident care. We want to be sure,  
11 though, that the missions of not-for-profit  
12 and public nursing homes are protected in the  
13 process.

14 Finally, I would draw your attention  
15 to an essay published yesterday by the five  
16 CEOs of the largest voluntary hospital  
17 systems in the state. They point to  
18 scientific studies from across the globe that  
19 have found that COVID patients are most  
20 infectious early in their illness and are  
21 very unlikely to still be infectious or  
22 contagious when they are discharged from the  
23 hospital. It would greatly benefit the  
24 discussion about hospital discharges if we

1 all become acquainted with the science of the  
2 infectiousness of COVID-19.

3 Thank you so much for your support,  
4 and thank you for your consideration. And  
5 I'm happy to take any questions.

6 CHAIRWOMAN KRUEGER: Thank you.

7 And last on this panel, from the  
8 Visiting Nurse Service of New York, Hany --  
9 I'm sorry, I'm going to just --

10 DR. ABDELAAL: That's okay, don't  
11 worry about it.

12 CHAIRWOMAN KRUEGER: Say it for me  
13 once so I can try and get it right.

14 DR. ABDELAAL: Sure. Thank you for  
15 the opportunity to testify. I am Dr. Hany  
16 Abdelaal, and not from the HANYS association.  
17 I'm president of VNSNY CHOICE Health Plans,  
18 which includes the largest non-for-profit  
19 managed long term care plan as well as a plan  
20 that integrates Medicaid and Medicare  
21 services for dually eligibles.

22 I'm also the chair of New York's  
23 Nonprofit Managed Long Term Care Coalition,  
24 and that is the capacity in which I am

1 speaking to you today.

2 Our plans help over 130,000 frail and  
3 elderly New Yorkers stay in their homes  
4 instead of having to go into nursing homes.  
5 This includes helping our members with their  
6 basic needs. And I want everyone to focus on  
7 this; this is moving from place to place,  
8 bathing, toileting, eating, socializing, and  
9 going to the doctor. Without us, these basic  
10 functions would not happen.

11 CHOICE Long Term Care Plan serves over  
12 24,000 members, and I want you to hear about  
13 the demographics: 73 percent are female,  
14 75 percent are a race other than white. The  
15 average age is 75. The average income is  
16 under \$900. And most of our members have  
17 more than five chronic conditions. And most  
18 of them speak one of 20 primary languages  
19 other than English. So this is the most  
20 vulnerable residents in our community.

21 During the public health emergency,  
22 CHOICE, like other MLTC plans, was there for  
23 our members. We made sure our most  
24 vulnerable members had support despite the

1           aide shortage. We made sure that members who  
2           were food-insecure had enough to eat. We  
3           provided counseling and supported isolated  
4           members, and we sent over a million masks to  
5           our members during the PPE shortage.

6                        So today I'm going to focus our  
7           comments on the quality incentive funding  
8           that the Executive Budget eliminates. This  
9           has been an incredibly valuable tool to align  
10          MLTCs and our providers to improve quality of  
11          care for the managed long-term-care  
12          population. These funds really fund  
13          incentive payments, create predictive models,  
14          provide realtime patient level performance  
15          data to our providers, and they educate and  
16          train care managers.

17                       And the result of that is it works.  
18          Over the last four years the Quality  
19          Incentive Program has helped us improve  
20          outcomes for our members on virtually every  
21          measure -- that's reducing ER visits,  
22          hospitalizations, serious falls, and  
23          including vaccination.

24                       So the Executive Budget eliminates

1           this quality incentive pool, and this is  
2           essentially a quality disincentive. Not only  
3           does this fly in the face of over two decades  
4           of health policy, it seriously undermines the  
5           quality infrastructure that MLTC plans have  
6           built and hurts the home care agencies that  
7           are using value-based payments to enhance  
8           their operations while paying home health  
9           aides who put themselves out there every day  
10          during this crisis to serve our most  
11          vulnerable members.

12                        Since well before the pandemic,  
13          quality plans and providers were partners  
14          with New York State to address these health  
15          disparities and ensure the population remains  
16          home. We urge the Legislature to restore the  
17          quality funding pool and make the pool  
18          permanent in statute to support  
19          long-term-care services for tens of thousands  
20          of disabled and frail New Yorkers.

21                        Thank you for your time, and thank you  
22          for supporting us.

23                        CHAIRWOMAN KRUEGER: Thank you all  
24          very much.

1 I know that Gustavo Rivera had a  
2 question or two.

3 SENATOR RIVERA: I do, and it will be  
4 brief.

5 Hello, everyone. Okay, so I have a  
6 few -- obviously, hopefully you folks were  
7 tuned in during the marathon session that we  
8 just had, and so I wanted to ask a couple of  
9 questions. Certainly you all expressed in  
10 different ways the concerns that you have  
11 about the Medicaid cuts. So I wanted to  
12 ask -- and I've asked some of you when you've  
13 come and met with me, and some other  
14 organizations as well, but I want to do so  
15 publicly as well, related to the raising of  
16 more revenue in the State of New York and how  
17 essential it is, particularly as it relates  
18 to making sure that when it comes to  
19 education, to healthcare and to other basic  
20 services, that we do not make those cuts,  
21 that we actually get more revenue.

22 Does anyone want to take this  
23 opportunity on behalf of their organization  
24 to actually say how essential more revenue by

1 taxing the wealthy would be? This is your  
2 opportunity.

3 MS. REGAN: Senator Rivera, if I may.

4 SENATOR RIVERA: Please.

5 MS. REGAN: There are 25 PA programs  
6 in New York State, including in urban, rural  
7 and suburban areas, many hosted by SUNY and  
8 CUNY institutions. A very young, qualified  
9 workforce. Many of your constituents are  
10 struggling with workforce solutions --

11 SENATOR RIVERA: Yes, ma'am.

12 MS. REGAN: -- the problem across the  
13 state. And the ability to re-channel some of  
14 those funds into those educational  
15 opportunities to solve workforce issues is  
16 significant.

17 SENATOR RIVERA: So you would say that  
18 having more revenue to be able to provide, in  
19 this particular sense, in the programs you're  
20 talking about, to be able to train more folks  
21 that could be new to the workforce, the  
22 healthcare workforce, you would be supportive  
23 of that.

24 MS. REGAN: Yes. There are over

1 18,000 licensed PAs currently in New York  
2 State. State Ed is handling about 1500  
3 licenses a year. And that represents about a  
4 30 percent increase in the past five years.

5 SENATOR RIVERA: So more revenue would  
6 help that happen.

7 MS. REGAN: That's right. There's a  
8 huge demand for people to go into the PA  
9 profession.

10 SENATOR RIVERA: Gotcha.

11 I'm guessing the other folks are not  
12 going to take the bait.

13 MS. GRAUSE: Senator?

14 SENATOR RIVERA: Yes, ma'am.

15 MS. GRAUSE: We don't have a position  
16 on how you raise revenue, but certainly more  
17 revenue for healthcare is something that we  
18 would support. But we don't have a position  
19 on how you raise that. That's --

20 SENATOR RIVERA: I would ask you, as I  
21 have privately, to please go back to your  
22 membership and develop a position,  
23 particularly during the budget negotiations.  
24 Greater New York, same thing. Get your

1 members to get on board to please, let's tax  
2 the wealthy, because the folks who you serve,  
3 the Medicaid patients that you serve all  
4 across the state are the ones that are  
5 suffering because of these cuts. And we need  
6 to actually assuage some of those cuts.

7 Also, I just wanted to get people's  
8 opinion on the global cap. There is a bill  
9 that I have to actually get rid of it. I  
10 have made the argument many times that it is  
11 an -- it was an invention, there's no  
12 question about that. And whether it's a  
13 useful invention -- the administration  
14 continues to insist that it is, I continue to  
15 insist that it is not.

16 Does anybody want to take a public  
17 position on the global cap during this  
18 moment?

19 MR. RICH: Yes, Senator, I will.

20 We have a lot of concerns about the  
21 fact that the global cap has really not  
22 changed since it went into effect in 2011.  
23 Last year, as part of the MRT 2 process, a  
24 lot of the MRT members talked about it.

1           The administration also talked about  
2           at least making adjustments. Because as  
3           Senator Krueger pointed out before, when you  
4           have so much enrollment growth, that crowds  
5           out everything else. It crowds out the  
6           ability to do important investments  
7           elsewhere. It's why providers have not had  
8           an inflation increase in 13 years -- well, in  
9           nine years, but they haven't had since longer  
10          than that.

11                 So we would very much support, at the  
12          very least, reforming it. We haven't taken a  
13          position on actually getting rid of it  
14          altogether.

15                 SENATOR RIVERA: So this is another  
16          one where I would ask you to go back to your  
17          memberships and consider that amongst your  
18          board.

19                 Anybody else want to take a position  
20          on this?

21                 MS. GRAUSE: We will. We'll consider  
22          it, Senator. There definitely are challenges  
23          with it. But it's complicated, as you know.

24                 SENATOR RIVERA: Oh, certainly it is

1           complicated. But certainly I believe it's  
2           necessary to at the very least reform it, and  
3           at the most get rid of it, which is why I  
4           have a bill.

5                     Anybody else? We've just got  
6           50 seconds. If not, it's okay.

7                     Doctor, Dr. Clare, thank you for  
8           bringing up all the concerns that you have  
9           about maternal mortality. It is  
10          incredibly -- I'll give you the last  
11          40 seconds to just tell us a little bit more  
12          about how important it is to make sure we get  
13          it right in this budget.

14                    DR. CLARE: Yeah, I think in  
15          particular funding the Safe Motherhood  
16          Initiative would really be key, because we  
17          want to implement some of those clinical  
18          bundle strategies that we've developed, and  
19          the recommendations that have come from the  
20          Maternal Mortality Review Board.

21                    So I think that's really one of the  
22          most important things I can really advocate  
23          for. That would include \$250,000 to really  
24          fund this initiative. We know the good work



1 members, both institutionally and personally,  
2 for their work over the last almost year now.  
3 It's certainly been a challenging time for  
4 everybody in the healthcare field and, you  
5 know, really answering the call in  
6 unprecedented circumstances.

7 I just wanted to -- and I think this  
8 would be particularly for HANYS and Greater  
9 New York Hospitals to talk a little bit more  
10 about some of the nursing home reforms? And  
11 in particular it was mentioned regarding the  
12 revenue restrictions that are proposed.

13 We've seen these types of things in  
14 the past, you know, with not-for-profits and  
15 things like that, and one of the things we've  
16 seen is that perhaps costs that are  
17 considered to be one thing or another by a  
18 particular sector versus what they're  
19 considered by the state may not always match  
20 up, and it causes some issues.

21 So -- and I know you mentioned, you  
22 know, it not -- it being something that could  
23 particularly clash with making sure that  
24 not-for-profit and public entities can comply

1 with their missions. So if you could  
2 elaborate with regard to that a little bit  
3 about things we need to keep in mind when  
4 crafting that proposal.

5 MR. RICH: Sure, absolutely. Thank  
6 you, Assemblyman.

7 We represent only not-for-profit and  
8 public nursing homes. And for the most part,  
9 they do spend more on direct resident care  
10 and staffing than their for-profit  
11 counterparts do. And so we prefer this kind  
12 of proposal much more than staffing ratios,  
13 for instance, mandatory staffing ratios.

14 What we would like to make sure,  
15 though, is we've seen there are some nursing  
16 homes that do not -- who have very different  
17 cost structures, like specialty nursing  
18 homes, pediatric nursing homes, those who  
19 serve HIV and AIDS, continuing care  
20 retirement communities and others who may  
21 need to be exempted altogether from it.

22 We'd want to make sure that when  
23 you're looking at what cost centers you're  
24 including from a cost report, they really are

1           what we would view as things that enhance  
2           resident care and patient care. And that's  
3           sort of where some of the details come in.

4                        But for the most part, for the  
5           not-for-profit and public community, it's a  
6           better proposal than the ratio bill, for  
7           instance.

8                        MS. GRAUSE: Yeah, I think David's got  
9           that right. The devil is in the details.  
10          And for not-for-profit nursing homes, the  
11          vast majority of their budget goes to direct  
12          patient care in the form of salaries for  
13          caregivers.

14                        So I think just making sure that  
15          there's clarity around the expenses and what  
16          would be counted in is critically important.  
17          But we think, again, making sure that the  
18          dollars go to patient care is really the most  
19          important part of that.

20                        ASSEMBLYMAN RA: Thank you.

21                        CHAIRWOMAN KRUEGER: Thank you.

22                        I think -- well, for me for the  
23          Senate, just following up on those questions,  
24          do you think we can put the genie back in the

1           bottle and reverse ourselves and no longer  
2           allow for-profit nursing homes in New York  
3           State? Do you think if we get the formulas  
4           right that not-for-profit providers will come  
5           back into this universe?

6                     MR. RICH: You know, I think -- oh, go  
7           ahead, I'm sorry.

8                     MS. GRAUSE: I guess I would have to  
9           say if you want to -- I think it's a money  
10          question. I think if you want to have  
11          services in the state, you have to cover the  
12          cost of those services.

13                    So I think it boils down to making  
14          sure that you can have not-for-profit nursing  
15          homes that can actually have a margin,  
16          because without the margin, no mission.

17                    MR. RICH: Yeah. And I think as we  
18          mentioned before, given the fact that nursing  
19          homes are often 90 percent Medicaid, and the  
20          Medicaid program has really underfunded them,  
21          I think that's why we're seeing the  
22          not-for-profits who do have higher cost  
23          structures because they do spend more on  
24          residents' care and on, you know, other

1 things that cost more.

2 We see them bought up by the  
3 for-profits, and that's because the  
4 for-profits, once they buy them up, really  
5 cut back on a lot of the things that the  
6 not-for-profits were spending on in order to  
7 fulfill their mission.

8 So it's really a function, as Bea  
9 said, of the Medicaid rates. And they've got  
10 to be improved if we're going to turn this  
11 around.

12 CHAIRWOMAN KRUEGER: And I think  
13 that's a lesson for us also when we're  
14 walking into the new world of telemedicine.

15 I think that we've all seen during  
16 COVID how valuable expanded telemedicine  
17 options can be, particularly in areas that  
18 are geographically distant from large numbers  
19 of doctors and medical centers.

20 But there also seems to be a push for  
21 for-profit telemedicine, and my gut is to be  
22 very hesitant of that. Has anybody looked at  
23 the differences between for-profit  
24 telemedicine and remaining in our

1 not-for-profit model here in New York?

2 MR. RICH: I have not, but we will  
3 certainly look at that, absolutely.

4 DR. CLARE: I would just like to add  
5 that, you know, really payment parity is  
6 really key for telemedicine services for all  
7 payers. And also coverage for audio-only  
8 options.

9 You know, I take care of patients that  
10 are in a safety-net hospital system and so  
11 therefore really allowing for those options.  
12 It really was invaluable for me as an OB-GYN  
13 in the height of the pandemic almost a year  
14 ago to really have access to my patients. So  
15 really payment parity is super-key, and  
16 coverage for audio-only would really help  
17 these services.

18 MR. RICH: We absolutely agree with  
19 the payment parity comment. Thank you,  
20 Doctor.

21 CHAIRWOMAN KRUEGER: Thank you.  
22 Although we're not going to tell women, We're  
23 not coming to help you deliver your baby  
24 anymore, you just -- we'll walk you through

1 on the computer, right?

2 DR. CLARE: Well, that's for the  
3 outpatient services. We know for inpatient  
4 services they always have to come in. But  
5 for outpatient services, prenatal care, we  
6 know that's super important to ensure those  
7 good outcomes and reduce maternal mortality,  
8 so, you know --

9 CHAIRWOMAN KRUEGER: That's just my  
10 bad sense of humor.

11 (Laughter, overtalk.)

12 DR. CLARE: I got it, I got it. No  
13 worries.

14 CHAIRWOMAN KRUEGER: I'd better stop  
15 before I do more damage.

16 Assembly.

17 CHAIRWOMAN WEINSTEIN: Assemblyman  
18 Cahill.

19 ASSEMBLYMAN CAHILL: Thank you so  
20 much.

21 And if I had my pots and pans here,  
22 I'd be banging them for the people that work  
23 for you to thank you for everything that  
24 you've done over the past year.

1                   I just sent a message to one of the  
2                   people in the Department of Health that while  
3                   Dr. Zucker was testifying, the one and only  
4                   COVID patient at the Health Alliance of the  
5                   Hudson Valley was released, and it was my  
6                   brother-in-law. So this is a good sign, not  
7                   only that my brother-in-law got out, but that  
8                   there was only one patient there today.  
9                   That's terrific news.

10                  Now, Ms. Grause and I had had an  
11                  opportunity on Monday to talk at length about  
12                  a variety of different issues. One of the  
13                  things I said to her, and I think our group  
14                  kind of misinterpreted my reporting for  
15                  advocacy -- although I will say I am a  
16                  supporter of the idea -- I do believe that  
17                  this Legislature is of a mind to consider  
18                  seriously staffing ratio bills.

19                  And I would just urge you, as people  
20                  who represent a very important industry, to  
21                  start to think in terms of how you want to  
22                  contribute to that dialogue instead of  
23                  thinking about how you can resist it.  
24                  Because if it happens, it happens. I'd

1           rather have you be part of the solution than  
2           have it be something that was imposed upon  
3           you.

4                       MR. RICH: We would agree with you.

5                       ASSEMBLYMAN CAHILL: Greater New York  
6           has mentioned the finances of COVID for the  
7           hospital systems and the nursing home systems  
8           in our state. You had lower admissions at  
9           the emergency room, you had fewer surgical  
10          procedures -- two of the last remaining  
11          profit centers for our hospitals. And profit  
12          is the wrong word. Two of the last areas of  
13          hospital services that make more money than  
14          they cost.

15                      MR. RICH: Mm-hmm.

16                      ASSEMBLYMAN CAHILL: And then you also  
17          mentioned that there were increased costs  
18          associated with COVID as a result of all  
19          this.

20                      Do you feel that you can recover from  
21          this with one-shot extraordinary help? And  
22          can we get back on track to where we were --  
23          let's change that. Can we get back on track  
24          to finally reaching a point of a path toward

1 permanent solvency for our healthcare  
2 institutions?

3 MS. GRAUSE: It's going to take a  
4 while. It's certainly going to take a while.  
5 There are a lot of moving parts.

6 Frankly, many hospitals have not seen  
7 the cases come back in terms of their  
8 outpatient surgery. I think the prices are  
9 still high for PPE. The requirements to  
10 warehouse PPE still exist. So it's going to  
11 take a while.

12 And I think telemedicine will help in  
13 some areas, but I think it will still be a  
14 challenge revenue-wise for other providers.

15 MR. RICH: Yeah, and it's a very big  
16 concern from a public health standpoint too.

17 I mean, having only 64 percent of the  
18 people in the ER that you used to have --  
19 we've always wanted to have fewer people in  
20 the ER, but if it's just because they're not  
21 coming and getting healthcare, then that's  
22 really a problem.

23 But I think especially for our  
24 safety-net institutions, those Medicaid

1 rates -- some increase in Medicaid rates is  
2 so important. We keep having like bailouts  
3 and Band-Aids for them year after year after  
4 year. We really just need to take care of  
5 the revenue structure in one fell swoop.

6 ASSEMBLYMAN CAHILL: So my clock was  
7 set for three minutes instead of five, but  
8 let me just be very brief and --

9 CHAIRWOMAN WEINSTEIN: It's three  
10 minutes.

11 CHAIRWOMAN KRUEGER: It's supposed to  
12 be.

13 ASSEMBLYMAN CAHILL: Okay. So very,  
14 very quickly, thank you for your comments on  
15 medical malpractice, excess medical  
16 malpractice. Very important.

17 I would urge you all to start thinking  
18 about trying to formulate a group to  
19 reconsider how we deliver healthcare in  
20 New York. We have to get off the triage and  
21 get on a real plan.

22 So thank you very much. We'll be  
23 looking at everything, and hopefully we'll be  
24 doing the right thing by you through this

1 budget.

2 MR. RICH: Thank you.

3 MS. GRAUSE: Always happy to do that.

4 DR. ABDELAAL: Thank you.

5 CHAIRWOMAN KRUEGER: Helene, you have  
6 another hand.

7 CHAIRWOMAN WEINSTEIN: Another two.  
8 Assemblyman Byrne.

9 ASSEMBLYMAN BYRNE: Thank you. And I  
10 want to thank you again for all your  
11 testimony and just sticking through the  
12 entire hearing. It's much appreciated.

13 A couple of questions and comments.  
14 One, Maureen, you're right, we should be  
15 talking about physician assistants more. And  
16 my wife would agree.

17 You mentioned in your testimony about  
18 many New York State websites incorrectly list  
19 PAs as registered rather than listed. I  
20 would be curious as to what specific  
21 websites. I don't expect you to get that to  
22 me now, but perhaps that's something that our  
23 committee and we can do, whether it's writing  
24 directly to the state agency or through

1           legislation. But I would be interested in  
2           that.

3                       I also wanted to just say thank you  
4           again for your comments, all of you for the  
5           most part, on the opposition to the  
6           elimination of the Indigent Care Pool for  
7           public hospitals. I tried to mention it  
8           earlier, but Westchester Medical Center is  
9           just outside my district, but it's in one of  
10          the counties I represent, and I believe that  
11          they're even more disproportionately more  
12          impacted from that elimination because the  
13          county does not contribute like some of the  
14          other public hospitals.

15                      Also heard some of your concerns about  
16          the shift from the 340B retail pharmacy  
17          benefit, from Medicaid managed care to fee  
18          for service. I appreciate that.

19                      And I wanted to just -- you know,  
20          after my comments if there's anything you  
21          want to elaborate on, I would appreciate that  
22          and give you that opportunity.

23                      The same thing with, again, just like  
24          the Insurance chair, about the Excess Medical

1 Malpractice Insurance Program. I appreciate  
2 your comments.

3 As far as the nursing homes, the  
4 30-day amendments, that was more of a  
5 specific question I had. Some of these  
6 penalties are substantial increases from what  
7 is current. And I know there's been  
8 proposals in the past from some members in  
9 the Health Committee -- I think the chair.  
10 And I tend to think that these types of  
11 policies and discussions should be separate  
12 from the budget, not in the budget.

13 They seem to be pretty significant in  
14 a jump. And I'd like to ask if you had any  
15 comments or questions on that. And if  
16 there's anything else you wanted to add, by  
17 all means please do.

18 MR. RICH: Assemblyman, on the  
19 financial penalties, they're very big  
20 increases. And they're not just for nursing  
21 homes, those are for all providers, so  
22 hospitals and other providers as well.

23 So we are very concerned about that.  
24 I mean, you know, we already feel like the

1 fines are sufficient. And we don't want to  
2 see them increased.

3 MS. GRAUSE: Yeah, I don't think fines  
4 are helpful in terms of operation or, most  
5 importantly, in terms of an improvement.

6 I think you raised a lot of issues,  
7 Assemblyman, and we are always happy to come  
8 in and talk to you in more detail. There's a  
9 lot of detail there. There's also a lot of  
10 relationship between many of the Medicaid  
11 issues and some of the proposals in the  
12 budget. We're happy to talk to you about  
13 that.

14 ASSEMBLYMAN BYRNE: Thank you. And I  
15 guess my point on the fines is if we're going  
16 to have those discussions, I don't think it  
17 should be in the budget. I think it's too  
18 easy for things to get packed in. And if we  
19 want to debate that, we should do it  
20 separately and include all the stakeholders,  
21 including you folks.

22 So thank you.

23 MS. GRAUSE: We would agree with that.

24 CHAIRWOMAN WEINSTEIN: Assemblyman

1 Jensen.

2 ASSEMBLYMAN JENSEN: Thank you very  
3 much, Madam Chair.

4 Just want to get back into the  
5 staffing conversation again. So really for  
6 our hospitals and our nursing homes, what do  
7 you guys see as really the nursing needs that  
8 you're seeing from your members on a daily  
9 basis, whether it's RNs, LPNs, CNAs? Where  
10 do you see the biggest need?

11 And when you're looking at those  
12 staffing needs, do you think that flexible,  
13 evidence-based, data-driven models will  
14 really be preferable to adapt to what patient  
15 resident needs are on a day-to-day basis,  
16 rather than something that's mandated across  
17 the board for every facility across the  
18 state?

19 MS. GRAUSE: Assemblyman, I couldn't  
20 agree with you more. I think the pandemic  
21 has demonstrated the need for flexibility.

22 And I think if you have seen one  
23 staffing model in a hospital, you've seen one  
24 staffing model. There are big differences

1           between large academic medical centers and  
2           how they are able to staff, and a small  
3           critical-access hospital.

4                       And so I think having that flexibility  
5           to make decisions locally -- and also,  
6           staffing needs vary according to the  
7           acuteness of the patient. I'm a registered  
8           nurse myself, and a hospital -- a patient's  
9           needs may change minute by minute. In a  
10          nursing home, the patient's needs are much  
11          more stable. And so there are vast  
12          differences.

13                      So I think that allowing those -- the  
14          decision-making to happen within the facility  
15          is really the most appropriate. And the  
16          pandemic showed that.

17                      ASSEMBLYMAN JENSEN: I apologize for  
18          the background noise on my end. I'm at the  
19          dinner table with my 2-year-old, so I  
20          apologize.

21                      MS. GRAUSE: Lucky you.

22                      DR. CLARE: We love coworkers. So we  
23          love coworkers.

24                      (Laughter.)

1 ASSEMBLYMAN JENSEN: Does anybody else  
2 want -- David, did you have any thoughts  
3 on --

4 MR. RICH: Sure, no. Thank you, and  
5 thank you for your comments on this issue  
6 earlier today.

7 Totally agree with Bea. And I think,  
8 you know, as I mentioned on the nursing home  
9 side, we would prefer the kind of approach  
10 that the 70 percent -- the requirement to  
11 spend 70 percent on direct resident care, we  
12 much prefer that to inflexible ratios that  
13 are in the bill.

14 You know, to Chair Cahill's comment  
15 before, we would definitely want to be part  
16 of a solution. In the past, unfortunately,  
17 the only option out there has been the bill  
18 that, you know, DOH and Cornell told us all  
19 last August would cost \$4 billion for  
20 hospitals and nursing homes and require us to  
21 hire 70,000 new people. So we clearly can't  
22 pass that.

23 But we definitely would want -- we are  
24 very willing to have conversations, and I

1 believe some are actually happening even as  
2 we speak. So we would like to be part of a  
3 solution.

4 ASSEMBLYMAN JENSEN: In the 10 seconds  
5 I have, just a yes -- so do you really see  
6 the need not just for RNs, but the LPNs and  
7 CNA positions across the board are really  
8 what are needed for our health system right  
9 now?

10 MR. RICH: Oh, absolutely. We need  
11 all of them.

12 ASSEMBLYMAN JENSEN: Thank you very  
13 much.

14 Thank you, Madam Chair.

15 MR. RICH: And PAs.

16 CHAIRWOMAN WEINSTEIN: We go to  
17 Assemblyman Palmesano.

18 ASSEMBLYMAN PALMESANO: Thank you.

19 Appreciate you being here and what you  
20 do.

21 This is more directed towards HANYS  
22 and the Greater New York Hospital  
23 Association. Particularly I know the  
24 comments were brought up during your initial

1           comments about the Indigent Care Pool. And I  
2           just wondered if you could elaborate a little  
3           bit more on that from the perspective -- are  
4           you concerned about counties having to have  
5           an increased burden with the removal of the  
6           state's share of the Indigent Care Pool and  
7           the overall impact this could have on county  
8           property taxpayers, on your healthcare  
9           facilities, and the delivery of healthcare in  
10          general? Just anything you could elaborate  
11          on that.

12                        Because I know that's something that  
13          has a lot of concern, especially I always  
14          worry about cost shifts to counties and  
15          property taxpayers and how that might  
16          impact -- any thoughts you might have on that  
17          proposal?

18                        MS. GRAUSE: Sure. Certainly. I  
19          think there are a couple of moving parts.

20                        We agree with you on the removal of  
21          the state support for the public Indigent  
22          Care Pool. And I think we also have a  
23          proposal that would smooth out the changes  
24          year to year for the providers who receive

1           those Indigent Care Pool funds, so that the  
2           burden of loss is evened out over time.

3                       So we agree with you on that part, but  
4           we also have the concern about the providers.

5                       MR. RICH: Yeah. And I would totally  
6           agree. And, you know, as I believe it was  
7           Assemblyman Byrne mentioned before, different  
8           counties have been supporting their public  
9           hospitals in different ways. In Westchester,  
10          the county doesn't really put in the local  
11          share. The hospital itself is financing  
12          that. Erie County deals with it differently,  
13          and Nassau County deals with it differently.  
14          The SUNYs, they don't have a taxing ability  
15          to put up the state share that would be taken  
16          away from them.

17                      So we really, really would urge you to  
18          reject that cut, both because of the impact  
19          on counties -- who, by the way, need relief  
20          also and not new costs shifted to them. And  
21          it's not clear they'd even be able to pick up  
22          the slack even if they were able to -- or  
23          that they would be willing to. They've got  
24          other priorities as well.

1                   So we think it's a -- we think it's an  
2                   ill-advised cut.

3                   ASSEMBLYMAN PALMESANO: Thank you very  
4                   much.

5                   CHAIRWOMAN KRUEGER: Anyone else,  
6                   Assembly?

7                   CHAIRWOMAN WEINSTEIN: We're done.

8                   But I think you have someone now,  
9                   Senator Serino.

10                  CHAIRWOMAN KRUEGER: Oh, hello, Sue  
11                  Serino popped up.

12                  Senator Sue Serino.

13                  (Pause.)

14                  CHAIRWOMAN KRUEGER: Turn on your  
15                  speaker.

16                  SENATOR SERINO: Sorry. Darn buttons.

17                  Thank you, Madam Chair.

18                  And thank you so much for being here.

19                  You know, a big part of our  
20                  conversation today was we were talking about  
21                  bolstering staffing. So how do we improve  
22                  the workforce pipeline, whether it's CNAs,  
23                  RNs, PAs, doctors, what have you? Do you  
24                  have recommendations for bolstering the

1 healthcare workforce so the staffing  
2 shortages aren't as common as they are today?

3 MS. GRAUSE: Thank you, Senator.

4 There are a lot of things that are  
5 already in place, and I think it certainly  
6 takes time. I think the legislation for a  
7 Bachelor of Science in Nursing in 10 is one.

8 I think career ladders starting early  
9 in schools. It's actually quite a complex  
10 area. But, you know, kids -- when I was in  
11 high school, you know, you could be a teacher  
12 or a nurse. I'm dating myself, but that --  
13 you know, those were the choices, and I chose  
14 nursing. But kids, young boys and girls have  
15 lots and lots of different career choices.  
16 And I think starting early and making sure  
17 that kids understand the wonderful rewards  
18 and career paths for people who choose  
19 healthcare is something that we have to do a  
20 lot more of.

21 But there's many more ideas. But yes,  
22 we would love to talk to you about a lot of  
23 our ideas around that.

24 SENATOR SERINO: I would love to do

1           that. I love going into the schools, and I  
2           think we really have to start in middle  
3           school, right? By the time high school rolls  
4           around --

5                     MS. GRAUSE: It's too late.

6                     SENATOR SERINO: -- it's too late.

7                     Yeah, so I'd love to continue this  
8           conversation. And thanks again for being  
9           here today.

10                    MS. GRAUSE: Of course.

11                    MS. REGAN: I think the challenge as  
12           it relates to PAs, as I mentioned, is to  
13           ensure that PAs are included in regulations,  
14           guidance, statutes, bills. We're often left  
15           out, and if people don't see us, they assume  
16           that PAs cannot provide the function.

17                    A perfect example is when the DOH set  
18           out the vaccination guidance, PAs were not  
19           mentioned in it. Doctors, nurses were.  
20           Clearly, by our license, we can. I spent  
21           many a day in Nassau County with the  
22           commissioner of health in Nassau County,  
23           volunteering time to give out the vaccines.  
24           But we had to get clarification from the

1 Department of Health because if we were not  
2 specifically listed, they assumed that we're  
3 not providing the care.

4 It's very, very difficult to get that  
5 redirected once that initial guidance has  
6 been rolled out. So it's imperative, again,  
7 on bill language, any kind of DOH guidance,  
8 that PAs are explicitly included. We have  
9 licenses to practice just like our physician  
10 colleagues, we report to the Board of  
11 Medicine, we get disciplined by the OPMC.  
12 But we're often -- we're often left out of  
13 that language.

14 MS. GRAUSE: That's a good point.

15 SENATOR SERINO: It's helpful. Thank  
16 you.

17 CHAIRWOMAN WEINSTEIN: All right.

18 Anyone else here tonight? Nope.  
19 We're going to thank the panel for staying  
20 with us. Well, you didn't really have to  
21 stay with us. We used to make you come to  
22 Albany; now you just turn on Hollywood  
23 Squares at the right time.

24 But indeed, thank you very much for

1           being with us and for sharing your opinion  
2           with us.

3                     DR. CLARE: Thank you very much.

4                     CHAIRWOMAN KRUEGER: Thank you.

5                     And our next panel --

6                     MS. REGAN: Thank you, Chairwoman  
7           Krueger and Chairwoman Weinstein.

8                     CHAIRWOMAN KRUEGER: Thank you.

9                     Our next panel is 1199SEIU, Molly  
10          Silva (sic); the Consumer Directed Personal  
11          Assistance Association of New York State,  
12          Bryan O'Malley; the Home Care Association of  
13          New York State, Alyssa Lovelace; and the  
14          New York State Council for Community Behavior  
15          and Healthcare, Lauri Cole.

16                    And again, you've all submitted  
17          testimony. You're not going to try to read  
18          it, because you only have three minutes. And  
19          then we will ask the panel any questions we  
20          wish to ask. And know that we all have your  
21          full testimony and people can definitely  
22          follow up with you after this hearing this  
23          evening.

24                    So our first speaker is Molly Silva.

1 MS. SILVA: Good afternoon. My name  
2 is actually Milly Silva.

3 CHAIRWOMAN KRUEGER: Excuse me.

4 MS. SILVA: I serve as an executive  
5 vice president of 1199SEIU United Healthcare  
6 Workers East. And we are submitting written  
7 testimony on behalf of the 300,000 healthcare  
8 workers that we represent in the State of  
9 New York.

10 And so I want to focus my remarks  
11 specifically on the need for nursing home  
12 reform. At 1199SEIU we represent over  
13 65,000 nursing home workers in 343 nursing  
14 homes across the state, providing the  
15 hands-on care that residents need to thrive.

16 There are a few points that I want to  
17 be able to bring to the group today. Number  
18 one is that even before this pandemic, our  
19 members were increasingly concerned about the  
20 conditions that they were experiencing at the  
21 nursing homes, where we saw owners who have  
22 chosen to increase their profits rather than  
23 invest in the staff needed to provide the  
24 hours of residents' care that our seniors

1           need at the facilities.

2                       During the pandemic, the crisis became  
3 exponentially worse. It looked like the  
4 failure to provide personal protective  
5 equipment, it looked like workers who were  
6 being pressured to return to work despite  
7 being ill and also, at times, having the  
8 challenge of being in a situation where they  
9 weren't receiving the sick-leave time that  
10 they needed in order to be able to recover  
11 during their quarantine leave. And it also  
12 included a failure to guarantee that nursing  
13 homes were using appropriate infection  
14 control measures.

15                      Our members' experiences and a  
16 comparison with other states make it  
17 abundantly clear that serious reform of the  
18 industry is needed. A few key points.

19                      New York ranks worse than 38 others in  
20 the number of hours per day of hands-on care  
21 that residents receive -- and, not  
22 coincidentally, is one of only 12 states  
23 without any minimum state standards for hours  
24 of care. Directly related to that, we have

1           one of the worst rates of pressure ulcers in  
2           high-risk, long-stay residents.

3                       Even as care suffers, too many nursing  
4           home owners are extracting profit from these  
5           homes. The average spend on resident care is  
6           just 65 percent of overall revenue, with  
7           35 percent being spent on staffing. And  
8           because these are averages, let's be mindful  
9           that there are large groups of nursing homes  
10          who are spending even less.

11                      Raising the floor and requiring that  
12          homes spend a minimum of 40 percent on  
13          staffing and a total of 70 percent on  
14          resident care -- again, as a minimum -- will  
15          shift approximately \$500 million that can go  
16          towards resident care. And these are dollars  
17          that are already in the system.

18                      And this kind of a minimum standard  
19          will also target the bad actors. Over  
20          70 percent of New York's nonprofit nursing  
21          homes already meet these standards, but only  
22          20 percent of for-profits do. Taxpayer  
23          dollars should be spent where they matter, on  
24          resident care.

1 I'm closing with we want to thank the  
2 Senate for passing S4336A, which would  
3 achieve that goal. Urgent reform must be  
4 addressed in the budget, especially as it  
5 concerns how Medicaid dollars are spent. We  
6 want to thank Governor Cuomo for including it  
7 in his 30-day budget amendments, and we  
8 believe that the additional proposals made by  
9 Governor Cuomo regarding limits on profits,  
10 the issue of related party transactions,  
11 increased transparency and reporting, and the  
12 appointment of temporary receivers are the  
13 kinds of reforms that we need.

14 So we urge you as legislators to seize  
15 this moment and change the nursing home  
16 system so that it is one where we are putting  
17 patient care first over profits.

18 Thank you for the opportunity to  
19 address you.

20 CHAIRWOMAN WEINSTEIN: Thank you.

21 Now Bryan O'Malley.

22 MR. O'MALLEY: Hi. Good evening. I'm  
23 Bryan O'Malley, executive director of the  
24 Consumer Directed Personal Assistance

1 Association of New York State, or CDPAANYS.  
2 And on behalf of the 139,000 people who use  
3 CDPA and the fiscal intermediaries that serve  
4 them, thank you for the opportunity to  
5 testify and thank you for everyone's strong  
6 support of CDPA, both today and over the last  
7 several years.

8 The mounting death toll from nursing  
9 homes is receiving a lot of attention, but  
10 the shocking statistics are obscuring a more  
11 basic fact. This pandemic didn't create  
12 these conditions, it merely placed a  
13 spotlight on them and made them worse.

14 We have to take steps to protect those  
15 in nursing homes, but we can't stop there.  
16 We have to shift the focus of care to the  
17 community, because it doesn't take an expert  
18 to know that the best way to avoid dying in a  
19 nursing home is not to enter one to begin  
20 with.

21 To do this, we have to address  
22 New York's worst-in-the-nation home care  
23 workforce crisis. We must pass the Fair Pay  
24 for Home Care, which will require that the

1 state and plans fully fund a home care wage  
2 equal to at least \$22.50 an hour. According  
3 to the PHI home care workers, who are  
4 primarily women of color, earn an average  
5 annual salary of just \$22,000 a year. That's  
6 \$8,000 less than the full-time fast food  
7 employees upstate. The wage is so bad that  
8 over half of workers must rely on Medicaid  
9 and other benefits to survive.

10 And according to a new report from the  
11 CUNY School of Labor and Urban Studies,  
12 Fair Pay for Home Care would be the most  
13 successful economic development initiative in  
14 decades. They estimate that investing in  
15 Fair Pay for Home Care would generate  
16 increased revenue and savings of  
17 \$7.6 billion. They further estimate that it  
18 would create 20,000 new home care jobs a year  
19 for over a decade. And because these folks  
20 will spend their money on food, housing and  
21 other necessities, there will be significant  
22 economic spillover supporting local  
23 businesses ravaged by the economic collapse  
24 and generating yet another 17,500 jobs per

1 year.

2           There's no better way to "build back  
3 better" from COVID. Passing Fair Pay for  
4 Home Care, we can simultaneously address the  
5 failures of the long-term-care system,  
6 institutional bias, a home care workforce  
7 shortage, longstanding racial and  
8 gender-based inequity, and struggling local  
9 businesses and economies.

10           We also have to address the reason for  
11 the cuts over the past decade and repeal the  
12 Medicaid Global Cap that rations healthcare  
13 and disproportionately impacts seniors and  
14 the disabled. The global cap is why the  
15 state made the choice to cut \$2.2 billion  
16 from our Medicaid program at the same time  
17 that we were starting a once-in-a-century  
18 pandemic. No policy over the past decade has  
19 been more responsible for furthering the  
20 state's institutional bias.

21           And we don't just have to repeal the  
22 cap, we have to repeal the home care and CDPA  
23 eligibility cuts that resulted from it,  
24 particularly the discriminatory activity of

1           daily living requirements and the overly  
2           bureaucratic enablist {?} assessment  
3           provisions passed last year, both of which  
4           disqualify those in need from receiving home  
5           care or CDPA while still allowing them to go  
6           to a nursing home and jeopardize hundreds of  
7           millions in federal funding.

8                     In closing, and finally, we urge you  
9           to pass the Invest in Our New York project  
10          package. Budget cuts, regardless of where  
11          they are located in the budget, impact the  
12          same people. We cannot ask disabled folks or  
13          anyone to choose between their Medicaid,  
14          education, housing or food.

15                    Thank you for granting me the  
16          opportunity to testify.

17                    CHAIRWOMAN WEINSTEIN: Thank you.

18                    I appreciate people staying, but I  
19          just really encourage people to look at the  
20          clock. We're approaching the ninth hour of  
21          the hearing, and we have more than --  
22          probably 35 witnesses left. So -- don't get  
23          so excited, Gustavo.

24                    SENATOR RIVERA: I gotta keep -- I

1           gotta stay, I gotta stay here, I gotta stay  
2           here.

3                         (Laughter.)

4                         CHAIRWOMAN WEINSTEIN: So Home Care  
5           Association of New York State -- oh,  
6           Senator Krueger is back. Home Care  
7           Association of New York State.

8                         CHAIRWOMAN KRUEGER: Great. Thank  
9           you.

10                        MS. LOVELACE: Hi. I'm Alyssa  
11           Lovellace. I'm the director for public policy  
12           and advocacy with the Home Care Association.  
13           Thank you so much for having me here today.

14                        HCA, we represent home care agencies,  
15           hospice providers, managed long-term-care  
16           plans, waiver programs, allied health, HMOs  
17           and other provider types located across the  
18           state.

19                        First and foremost, we ask the  
20           Legislature to reject the Executive's budget  
21           proposals that would reduce any Medicaid for  
22           home- and community-based care.  
23           Specifically, the 1 percent across-the-board  
24           cut to Medicaid providers. That includes

1 home care and hospice funding, which is  
2 actually a 2 percent cut for us given the  
3 cuts we're already seeing. Cuts to managed  
4 long-term care plan premiums and the  
5 elimination of the \$150 million quality  
6 funding, which was previously mentioned by  
7 the VNSNY.

8 The Governor also called for a  
9 50 percent reduction for home care and  
10 hospice workforce recruitment and retention  
11 wage benefit funds. These funds actually  
12 help employ our workforce. Earlier today it  
13 was stated that perhaps we can do without  
14 these funds by our Medicaid director. They  
15 seem like pennies, but to these providers  
16 they're not. They help with payment.

17 We need to make it less hard for our  
18 agencies to retain their workforce,  
19 especially now, considering home health aide  
20 employment increased by 79 percent statewide  
21 between 2014 and 2020.

22 What would also help the state  
23 workforce is the expansion of telehealth. We  
24 request that the Executive's telehealth

1 provision is amended to include healthcare  
2 flexibility within telehealth, and include  
3 guardrails for coordination, quality and  
4 prevention of loopholes.

5 We'd like to see the Legislature  
6 provide financial stability for home care,  
7 hospice and plans, and make some investments  
8 in the industry by ensuring the Department of  
9 Health carries out its obligation to update  
10 and raise the episodic, fee for service, and  
11 minimum wage Medicaid rates for home care,  
12 directing a fair share of federal and state  
13 COVID-19 relief to home care and hospice  
14 providers, and making the cost of PPE and  
15 related safety protocols ongoing components  
16 of the state's healthcare reimbursement  
17 system. In 2020 home care agencies alone saw  
18 a 136 percent increase in PPE expenses.

19 And finally, we ask that the  
20 Legislature consider HCA's "New York Home  
21 Care First" model. This would provide  
22 COVID-19 relief measures for community-based  
23 care and stable Medicaid financing, and a  
24 supportive regulatory structure that provides

1 critical flexibilities for operations, care  
2 delivery, and efficiency while protecting  
3 quality and the integrity of care and support  
4 for workforce retention, preparedness and  
5 sufficient capacity to meet patient care and  
6 demand.

7 We need to ensure that our home care  
8 agencies and hospice providers are taken care  
9 of at the end of the day. They are really  
10 doing God's work in the field. They are  
11 helping the most vulnerable populations at  
12 home, and there are hundreds of examples  
13 within how we collaborate along with  
14 different hospital systems and community  
15 partners. And I'm happy to talk offline and  
16 share more of these stories and solutions  
17 with you.

18 CHAIRWOMAN KRUEGER: Thank you.

19 Next, Lauri Cole.

20 MS. COLE: Good afternoon -- actually,  
21 good evening. I'm Lauri Cole. I'm the  
22 executive director of the New York State  
23 Council for Community Behavioral Healthcare.  
24 We are a statewide membership association

1           representing mental health and substance  
2           abuse providers across New York.

3                       I'm here today to ask your assistance.  
4           The behavioral health system is really  
5           hanging by a thread. We've been ravaged by  
6           three concurrent public health disasters with  
7           the opioid epidemic, increasing rates of  
8           suicide, and COVID-19. New York families and  
9           communities are devastated. The system of  
10          care designed to provide prevention,  
11          treatment and rehabilitative options is  
12          sorely underfunded and in crisis. The demand  
13          for our services far outpaces our ability to  
14          respond. And every data point indicates it's  
15          going to get worse.

16                      There should be no cuts to mental  
17          health and substance use disorder addiction  
18          systems of care. Instead, we're proposing  
19          smart investments. This year we have  
20          requests that would return resources that  
21          belong to our system of care to include a  
22          set-aside of funds from the state's  
23          healthcare transformation fund account,  
24          consistent with Assemblyman Gottfried and

1 Senator Rivera's bills A264 and S2531; a  
2 request that all state aid funding withholds  
3 be restored; and that the state honor its  
4 commitments to reinvest savings from our  
5 system back into it.

6 Behavioral health services were  
7 transitioned to managed care in 2015. The  
8 law and policy of the state is clear:  
9 Managed care savings from our system go back  
10 to the system of care.

11 Before we transitioned, stakeholders  
12 were very concerned about money being  
13 siphoned out of the system by plans for their  
14 profits. We spent countless hours working in  
15 collaboration with the state on language to  
16 ensure state guidance and documents to  
17 include -- to ensure transparency in the  
18 process and for managed care savings to  
19 accrue to the system of care from which it  
20 came.

21 At that time there was ample evidence  
22 in literature and historical context for us  
23 to have concerns about the siphoning off of  
24 funds once we transitioned to Medicaid

1 managed care. We saw it coming, we put in  
2 safeguards, but the state has again left the  
3 chicken coop open for the foxes.

4 To date we haven't received a single  
5 document of substance in response to four  
6 FOIL requests we filed in the early fall,  
7 through counsel seeking information that  
8 should be readily available if the state was  
9 holding the health plans accountable for  
10 meeting behavioral health expenditure targets  
11 and medical loss ratios established as part  
12 of the transition. Our written testimony  
13 goes into great detail about this.

14 However, the questions we have remain.  
15 What is the state hiding? Could it be that  
16 the state allowed the plans to retain funds  
17 that were supposed to be returned back to the  
18 system of care? We are calling for a full  
19 accounting of the managed care savings from  
20 our system of care, as well as the shortfalls  
21 in behavioral health expenditures by the  
22 Medicaid health plans. And we are asking for  
23 your help to ensure that these funds are  
24 properly invested back for essential

1 behavioral health services needed now more  
2 than ever.

3 Thank you.

4 CHAIRWOMAN KRUEGER: Thank you.

5 Anyone, questions? Then -- oh,  
6 Assembly, I see a hand up on your side.

7 CHAIRWOMAN WEINSTEIN: Yes, we now  
8 have Kevin Byrne for three minutes.

9 ASSEMBLYMAN BYRNE: Yup, sorry about  
10 that. Just trying to jump to it.

11 Thanks again for your testimony. The  
12 questions are more directed towards Alyssa  
13 from the Home Care Association. I'm not sure  
14 if you were following along with our  
15 questions earlier. I asked something of our  
16 inspector general, OMIG, regarding audits  
17 during the pandemic and how it's affected  
18 some of the on-site assessments.

19 And I was curious if you had -- if you  
20 were following along, if you had any comments  
21 to share, if there's any specific knowledge  
22 that you may have or insights from some of  
23 your members.

24 MS. LOVELACE: Yes, certainly. Thank

1           you, Assemblymember.

2                       When I heard that response it seemed  
3           very vague to me, because as an association  
4           representative we hear from the providers on  
5           a daily basis. And I can tell you right now  
6           I heard from one just yesterday or the day  
7           before, and they said that they're on their  
8           tenth survey of the year. And we're in a  
9           pandemic. So, I mean, that seems a little  
10          ridiculous to me.

11                      Do I understand why we're having  
12          surveys? Of course I do. Can they be  
13          perhaps a little bit more streamlined given  
14          our circumstances? Absolutely. We need to  
15          make it easier for these providers, again,  
16          not harder.

17                      ASSEMBLYMAN BYRNE: I understand that.  
18          I was a little surprised because it made it  
19          sound like everyone was remote and they  
20          weren't doing in-person surveys, which was  
21          not my understanding. So I thank you for  
22          your additional clarification, and we'll have  
23          to follow up with the inspector general.

24                      Thank you.

1 MS. LOVELACE: Certainly. Thank you  
2 so much.

3 CHAIRWOMAN KRUEGER: Thank you. Thank  
4 you, everyone, for being with us this  
5 afternoon/evening.

6 We will move on to our next panel. We  
7 have Beth Finkel, state director of AARP  
8 New York; Talya Schwartz, president,  
9 Metro Plus Health Plan; James Clyne,  
10 LeadingAge New York; Heidi Siegfried,  
11 director of health policy for CIDNY,  
12 Center for Independence of the Disabled,  
13 New York; and Douglas Hovey, CEO of  
14 Independent Living, Inc.

15 We'll start with Beth Finkel.

16 MS. FINKEL: Hi. Thank you so much.  
17 Good evening, everyone. Thank you so much to  
18 Senator Krueger and Assemblymember Weinstein  
19 and members of the committee.

20 I just want to start off centering us  
21 on the numbers, which I think you're well  
22 aware of. But in New York State, according  
23 to the CDC, 95 percent of the COVID-19 deaths  
24 were people 50 and older -- 95 percent of the

1 deaths, 50 and older. Which is why what  
2 we're talking about today is so important.

3 This year's budget really has to  
4 prioritize struggling older New Yorkers.  
5 There's been some really fatal, literally  
6 fatal flaws that have been highlighted in our  
7 long-term-care system, putting vulnerable  
8 nursing home residents' health, safety and  
9 staff really in a terrible position. The  
10 loss of life of over 15,000 New Yorkers from  
11 nursing homes has just been terrible. And it  
12 just shows you what has come before but, if  
13 we don't do something now, what is going to  
14 continue to happen in generations going  
15 forward.

16 AARP has a five-point plan. I'm going  
17 to hit the highlights of it for you.

18 One is quality of care. We recommend  
19 that all nursing homes be required to spend  
20 more resources on direct care, along with  
21 increasing nursing home staff levels and  
22 working to ensure strict compliance with  
23 infectious disease controls, including  
24 increasing staffing for the Long Term Care

1 Ombudsman Program.

2 AARP strongly recommends that the  
3 state add \$5 million to the Long Term Care  
4 Ombudsman Program, which currently has a  
5 funding level of 1.19 million. We need to  
6 hire and train more professional staff. We  
7 know that during this pandemic, because long  
8 term ombudsmen for the most parts were  
9 volunteers and older people who could not go  
10 into the system, that whole level of  
11 oversight was missing.

12 Retroactive repeal of legal immunity.  
13 I know that's come up with a lot of other  
14 testimonies before mine. We just need to  
15 stop shielding long-term-care facilities for  
16 any negligent care. Families have to have  
17 recourse.

18 Transparency. AARP recommends  
19 codifying the requirement of daily reporting  
20 of data on fatalities and infectious rates  
21 among both residents but also staff.

22 Home- and community-based services.  
23 We need \$27 million more in home- and  
24 community-based services so we can keep

1 people out of nursing homes and institutions,  
2 which cost more money every way you think  
3 about it, and it's not what older people nor  
4 their families want for them.

5 Visitation; this has been hit before.  
6 We need to ensure long-term-care facilities  
7 are providing safe in-home facilitative  
8 virtual visitation.

9 We need to expand telehealth.

10 And I just want to thank you -- oh, my  
11 God, I did it, 3 seconds to go. I thank you  
12 all. More details in my testimony. But nine  
13 hours and counting, cheers to all of you for  
14 doing this. Can't thank you enough for the  
15 wonderful advocates that you all are.

16 CHAIRWOMAN KRUEGER: Thank you.

17 Okay, next is Talya Schwartz.

18 DR. SCHWARTZ: Good evening, and thank  
19 you for the opportunity to testify today on  
20 behalf of the Coalition of New York State  
21 Public Health Plans.

22 I'm Dr. Talya Schwartz, president and  
23 CEO of Metro Plus Health Plan, a wholly owned  
24 subsidiary of Health + Hospitals. We serve

1 over 120,000 Medicaid beneficiaries in New  
2 York City, with most of our beneficiaries  
3 identifying themselves as minorities.

4 I'd like to talk to you today about  
5 the elimination of the Medicaid quality  
6 incentive bonus in the Executive Budget.  
7 This step is in direct opposition of New York  
8 State's goal to reduce inequity and  
9 disparities in healthcare, which is the very  
10 mission of our plan.

11 For many years Metro Plus Health and  
12 other plans have been committed to closing  
13 gaps in the care of the underserved  
14 population, and we have been successful in  
15 doing so. This was possible due to the  
16 investments we made in people who specialize  
17 in quality improvement methods so that the  
18 improvements actually stick, in methodology,  
19 in data, and ongoing collaboration, including  
20 financial incentives, with our provider  
21 partners.

22 The majority of the quality incentive  
23 funds we receive from the state are  
24 distributed to top-performing providers to

1 sustain and continue incentivizing good  
2 quality of care for our members. And we have  
3 good evidence that this foundation, that was  
4 built over many years, has paid off. In the  
5 past four years our quality work has led to  
6 over 10,000 more breast cancer and colorectal  
7 cancer screenings. Over 6,000 more members  
8 improved control of their diabetes. And over  
9 1700 additional new moms received post-partum  
10 care.

11 These are just a few examples as to  
12 why this funding matters. We applied the  
13 quality incentive funds in a variety of  
14 effective ways. Since the population we  
15 serve often cannot find time to take care of  
16 themselves, we bring the care to them. Our  
17 members can get health screenings, dental  
18 care, immunizations and more in their  
19 communities.

20 We hold between 50 and 70 community  
21 events a year. We incentivize our members to  
22 take care of their health through a member  
23 rewards program which doesn't just push  
24 people to get a checkup and track their steps

1 and get flu vaccines, but this program was  
2 critical to support our most vulnerable  
3 members when we sent 10,000 boxes of food and  
4 PPE at the height of the pandemic.

5 We launched a diabetic peer program  
6 matching people with controlled diabetes to  
7 people with uncontrolled diabetes. This  
8 program resulted in a 30 percent increase of  
9 better control. To make the program really  
10 work, we needed to also address food and  
11 housing insecurities, transportation for  
12 almost 19 percent of the participants, and  
13 problems with taking medications for over  
14 one-third of the participants, in which case  
15 we assisted with home delivered medications,  
16 pill packs, and calling doctors to order  
17 refills.

18 Getting meaningful improvements takes  
19 investment of resources.

20 In closing, we cannot afford to ignore  
21 that the populations served by this quality  
22 funding are at the highest risk. And as we  
23 have come to learn through the recent  
24 pandemic, the entire healthcare system will

1           suffer if their healthcare needs are not  
2           addressed. I urge you to restore the quality  
3           funding pool and protect it by including  
4           statutory language to make the quality pool  
5           permanent in the budget bills.

6                     Thank you.

7                     CHAIRWOMAN KRUEGER: Thank you.

8                     And next we have James Clyne,  
9           LeadingAge New York.

10                    Turn your speaker on.

11                    MR. CLYNE: Yup, thank you.

12                    I represent over 400 long-term-care  
13           providers across New York State, the full  
14           continuum of care -- nursing homes, assisted  
15           living, home care, managed long-term-care  
16           plans, and housing for the elderly.

17                    Over the next 10 years, the over-65  
18           and over-85 population of New York State is  
19           going to grow by 40 percent, yet the state  
20           has completely failed to invest in services  
21           for seniors. Over 65 percent of the  
22           not-for-profit and county homes, heading into  
23           the pandemic, were already losing money, and  
24           67 percent of the CHHAs in New York State

1           were losing money heading into COVID.

2                     The Medicaid reimbursement rate for  
3           nursing homes is the worst in the country  
4           when you compare expenses to reimbursement.  
5           There's a loss of \$64 a day for serving  
6           Medicaid recipients in nursing homes. That's  
7           because the state has not provided a  
8           cost-of-living increase in 12 years, and at  
9           the same time has done a billion dollars  
10          worth of budget cuts in long-term care over  
11          the last three budgets, twice the amount of  
12          any other area in Medicaid.

13                    At the same time, the state has failed  
14          to invest in long-term-care services, either  
15          through the Transition Grant Program or the  
16          Medicaid DSRIP program, the federal waiver.  
17          In the case of the transition program, only  
18          10 percent of the funds have gone to  
19          long-term care. And as far as the DSRIP  
20          program, only 2 percent of the funds have  
21          gone to long-term care -- even though  
22          long-term care makes up 42 percent of the  
23          state's Medicaid budget cap.

24                    Since 2014, 50 county and

1 not-for-profit nursing homes have been sold,  
2 13 have closed, and 30 assisted living  
3 programs have also closed.

4 The system was fragile going into  
5 COVID. The state made the matter worse by  
6 doing a half-percent Medicaid cut in April.  
7 So in the middle of a pandemic, the state did  
8 a cut to the largest funder of services in  
9 nursing homes and one of the largest funders  
10 in home care.

11 The providers faced enormous costs,  
12 whether it was PPE, testing, or staffing.  
13 These costs have not been reimbursed. The  
14 federal government did provide some aid, and  
15 we thank them for that, but the federal aid  
16 for nursing homes covered roughly one-third  
17 of the increased costs as a result of COVID.

18 So we had a fragile system hit by a  
19 pandemic that both the federal government,  
20 CDC and the state were unprepared for, and  
21 the long-term-care system has faced the  
22 consequences of that.

23 Thank you for the opportunity, and I'd  
24 be happy to answer any questions.

1                   CHAIRWOMAN KRUEGER: Thank you very  
2                   much.

3                   And our next is Heidi Siegfried,  
4                   CIDNY.

5                   MS. SIEGFRIED: Hi. I'm the health  
6                   policy director at Center for Independence of  
7                   the Disabled in New York. And we were  
8                   founded in 1978. Our mission is to serve  
9                   people with all types of disabilities, so  
10                  that would be mobility impairments but also  
11                  people who are deaf and hard of hearing,  
12                  blind and low vision.

13                  And the idea is that we want to make  
14                  sure that people have the services and  
15                  supports necessary to remain independent in  
16                  the community, and also the policies to help  
17                  people remain independent in the community  
18                  and not be going into institutions like  
19                  nursing homes, like psychiatric centers, like  
20                  prisons.

21                  So we have always supported the  
22                  New York Health Act. I haven't heard anyone  
23                  mention that yet today. But that would be  
24                  the gold standard for us in terms of having

1 health coverage.

2 But the second thing that's at the top  
3 of our list is the Medicaid Global Cap.  
4 We've been traveling up to Albany to oppose  
5 this for many years now because we really did  
6 see that, you know, it operated to really cut  
7 down on the services that are necessary for  
8 us to remain independent in the community.

9 So these cuts were not carried out by  
10 the Governor or the Legislature, they were  
11 carried out by managed long-term-care  
12 companies. Which was that we simultaneously  
13 required people who were dual-eligibles to  
14 get their care through managed long-term-care  
15 companies, and hours of home care that was  
16 necessary to avoid going into institutions  
17 were cut.

18 The only way to keep those hours was  
19 to use the due process system to request a  
20 fair hearing, and of course it's very  
21 important to have consumer assistance funding  
22 to help people with these fair hearings  
23 because they wouldn't be able to exercise  
24 their rights without it.

1           The other consumer assistance that's  
2           very important to us that -- it does come  
3           through the Aging Committee, but the  
4           Long Term Care Ombuds Program. We operate  
5           the Long Term Care Ombuds Program for  
6           New York City, and we've been requesting an  
7           increase in our funding for many years. And  
8           now that I hear that Beth is requesting  
9           5 million, I think we will too. We had  
10          mostly been asking for 3 million all these  
11          years.

12           But, you know, the state and the city  
13          comptroller have both come out with reports  
14          explaining how underfunded it is: New York's  
15          at the bottom of the heap in terms of putting  
16          in its own funds for the program. And we  
17          would actually need 23 more full-time  
18          staff -- this is what the comptroller found  
19          in New York City -- just to be fully staffed  
20          at what has been recommended long ago by what  
21          used to be the Institute on Medicine.

22           I do want to say that we do support  
23          the Fair Pay for Home Care campaign that  
24          Bryan mentioned, and also the innovation fund

1 to try to help have a workforce for when we  
2 get those hours restored. We have to have  
3 people to staff them. Sometimes we just find  
4 that there isn't people to staff them.

5 And we do support the revenue, yes --

6 CHAIRWOMAN KRUEGER: Thank you. You  
7 ran out of time, so I'm just going to cut you  
8 off there, okay?

9 MS. SIEGFRIED: Sure.

10 CHAIRWOMAN KRUEGER: Thank you very  
11 much.

12 And our last testifier on this panel  
13 is Douglas Hovey, Independent Living, Inc.

14 MR. HOVEY: Well, good evening. And  
15 it's great to see my colleague from New York  
16 City, Heidi Siegfried. Nice to see you,  
17 Heidi.

18 My name is Doug Hovey. I'm the  
19 president and CEO of Independent Living,  
20 Incorporated.

21 We're also, like CIDNY, a consumer-run  
22 cross-disability service organization. We're  
23 a member of the New York Association on  
24 Independent Living, which consists of

1           41 Independent Living Centers throughout  
2           New York State. Much of our work is  
3           dedicated to advocating for the  
4           long-term-care needs of older adults and  
5           people with disabilities. I also serve as a  
6           member on CDPAANYS -- you heard from Bryan  
7           earlier -- and also the Most Integrated  
8           Setting Coordinating Council.

9                         We know there are a number of  
10           long-term-care options. However, the one  
11           that seems to dominate most thinking and  
12           planning processes continues to be placement  
13           in nursing homes, based on the  
14           institutionally biased belief that congregate  
15           care facilities are the safest choice. These  
16           assumptions have been deeply challenged as  
17           thousands of our nursing home residents  
18           needlessly lost their lives to COVID-19. The  
19           impacts of these deaths are immeasurable.

20                        I'm going to get right to the point  
21           and tell you, it's time to plan for the  
22           phased elimination or systemic closure of  
23           nursing homes -- in a planned fashion, one  
24           that protects the interests of nursing home

1 residents, but also ultimately protects  
2 people who are faced with nursing home  
3 placement.

4 Most of you know even the  
5 best-operated nursing home is not a good  
6 place to be. I don't think any one of us  
7 signs up to be in a nursing home. We have  
8 the capacity to support people in the  
9 community. We need to build up our community  
10 infrastructure so that we can continue to  
11 help people to age in place with dignity and  
12 respect, like they deserve.

13 Several legislators asked  
14 Commissioner Zucker today if the DOH can  
15 ensure improvements in the quality of care  
16 for nursing home residents. Let's be clear.  
17 Government does not have the power to control  
18 nursing homes. They never have. They never  
19 will. It would take an act of God or some  
20 miracle to change the outcomes for nursing  
21 home patients and to stop the high incidence  
22 of infection, including urinary tract  
23 infections, respiratory infections, skin  
24 breakdown into decubitus ulcers, influenza,

1 gastroenteritis, sepsis, and now COVID-19 and  
2 its evolving strains, right, all endemic to  
3 institutional congregate care settings.

4 By design, congregate care  
5 institutions are a recipe for depression,  
6 mental and physical illness, and premature  
7 death. We're in the 21st year of the  
8 21st century. It's time to call for the  
9 phased elimination and create a better  
10 collaboration between state and local  
11 governments and a better coordination of care  
12 at the local level.

13 We can do this. We can support people  
14 to remain in the community, to age in place.  
15 There are great programs that are available  
16 that can help do this. We just have to give  
17 more attention to them.

18 And my time is up.

19 CHAIRWOMAN KRUEGER: Your time is up.  
20 Thank you very much.

21 MR. HOVEY: Thank you.

22 CHAIRWOMAN KRUEGER: I see the hand of  
23 Rachel May.

24 SENATOR MAY: Yes, thank you.

1                   And Mr. Hovey, I hope you will end up  
2                   being on the Reimagining Long Term Care Task  
3                   Force if the bill gets passed and signed into  
4                   law.

5                   MR. HOVEY: I'd be honored to. Thank  
6                   you.

7                   SENATOR MAY: I have two questions for  
8                   several of you. One of them is about getting  
9                   people off the waiting list for home care  
10                  services.

11                  Two years ago the Office for the Aging  
12                  put \$15 million in the budget to do that, and  
13                  they also claimed it would save \$34 million  
14                  in Medicaid costs by keeping people out of  
15                  nursing homes. This year you're telling me  
16                  and I'm advocating for that 27 million to get  
17                  people off the new waiting list, but I don't  
18                  have a number and I'm wondering if anybody  
19                  can estimate what it will save in actual  
20                  Medicaid costs to the state, how many people  
21                  might be likely to stay out of nursing homes  
22                  and, you know, save money for the state that  
23                  way.

24                  MS. FINKEL: Senator, I will just say

1 I know I owe you that number. You asked me  
2 for it, and I'm working on it.

3 SENATOR MAY: Okay.

4 MS. FINKEL: -- you put me on the spot  
5 and I'll give it to you -- great. But if  
6 not --

7 (Unintelligible cross-talk.)

8 SENATOR MAY: I don't mean to put you  
9 on the spot. I want to go on record, I want  
10 to go on record that we are talking about  
11 savings. This is an investment that pays  
12 off.

13 MS. FINKEL: Absolutely. Thank you.

14 SENATOR MAY: And my other question  
15 was about the fiscal intermediary process.

16 So I represent Syracuse. Central  
17 New York has some great organizations that  
18 have been acting as fiscal intermediaries for  
19 quite a while. They fill really important  
20 niches in our continuum of care in our  
21 region, and none of them was selected to be a  
22 fiscal intermediary in the latest  
23 competition. And I'm wondering if any of you  
24 has concerns about that process, if you feel

1           like the results are going to be okay and we  
2           should just move on, or if it is worth  
3           fighting about those results.

4                       MR. HOVEY: I think there are a lot of  
5           people who are concerned about the process,  
6           the RFO selection process. But I think also  
7           we're concerned about the radical change,  
8           that 80 percent of the providers have been  
9           eliminated. Which, you know, if you do the  
10          math, about 60,000 people or more, 60,000 to  
11          70,000 people are going to be looking for a  
12          new fiscal intermediary. So there's going to  
13          be this massive attempt to try to ramp up  
14          these existing 68 programs and ratchet down  
15          close to 300 programs.

16                      That's a massive undertaking. And if  
17          you talk to any of the experts, consultants  
18          in this type of transformation, they'll tell  
19          you it takes 36 months minimum to do this  
20          effectively without massive disruption to the  
21          population.

22                      SENATOR MAY: Thank you very much.  
23                      And thanks for sticking it out so  
24                      long.

1 CHAIRWOMAN KRUEGER: Helene?

2 CHAIRWOMAN WEINSTEIN: Yes.

3 Assemblywoman Miller.

4 CHAIRWOMAN KRUEGER: Melissa, are you  
5 there?

6 ASSEMBLYWOMAN MILLER: Yup, I'm here.

7 CHAIRWOMAN WEINSTEIN: There she is.

8 ASSEMBLYWOMAN MILLER: I'm just  
9 waiting for the video to go on.

10 You know, what Senator May was just  
11 asking, I have significant concerns over the  
12 same issue. They did somewhat of a similar  
13 move with the managed care -- you know, the  
14 Medicaid service coordination agencies into  
15 CCOs. And every -- you know, all the  
16 consumers were promised the sun and the moon  
17 and the stars, and the transition was so  
18 chaotic, there were just way too many  
19 providers -- way too many consumers for the  
20 agencies that were now CCOs. You know, they  
21 went from, I don't even know, thousands to I  
22 think seven CCOs. So I have significant  
23 concerns.

24 Are you concerned that you're going to

1 have consumers that will be without care?

2 MR. HOVEY: I think we should be very  
3 concerned about the transition in such a  
4 short period of time, there's no question  
5 about that. It's a big, big restructure, a  
6 massive restructuring of a large system that  
7 serves -- Bryan said 139,000 people receive  
8 services. That's a lot of people.

9 ASSEMBLYWOMAN MILLER: So  
10 successfully.

11 MR. HOVEY: Right. So if you take  
12 80 percent of the providers, you know, you  
13 can theoretically say 80 percent of that  
14 130,000 are going to be looking for a new  
15 provider to get connected so that they don't  
16 have a disruption in their services. And  
17 these are services that obviously you know  
18 that help people get out of bed in the  
19 morning to get bathed and get showered and  
20 get their meals made.

21 ASSEMBLYWOMAN MILLER: And the  
22 alternative is when they can't get that care,  
23 the state can't seem to grasp that  
24 inadvertently it becomes way more expensive

1 for them when these consumers now wind up in  
2 skilled care facilities or nursing homes  
3 because they cannot get the care in the  
4 community that this provides.

5 So -- well, thank you very much for  
6 all that you're doing. And I hope and pray  
7 that we can help with this and dissuade some  
8 of those changes from being made.

9 MR. HOVEY: Thank you.

10 CHAIRWOMAN KRUEGER: Thank you.

11 And I see Senator Sue Serino's hand  
12 up.

13 SENATOR SERINO: Thank you,  
14 Madam Chair.

15 And I would just like to start off by  
16 saying thank you to all of you for all of  
17 your great work and your great advocacy.

18 And I know it's late, but I have a  
19 quick question for Jim. Jim, in your  
20 testimony you mentioned that the medical  
21 model adult day healthcare programs have not  
22 been permitted to reopen since March of last  
23 year. And I think it's an important service  
24 for countless New Yorkers -- not just for the

1 program attendees, but also for the  
2 caregivers who get important respite using  
3 the programs. But it's often overlooked.

4 So can you speak of it, Jim, or anyone  
5 else who would like to weigh in, to the  
6 impact of that policy and those closures?

7 MR. CLYNE: It has been a burden on  
8 the families who have had to take care of  
9 their loved ones at home. Often these are  
10 people with advanced medical conditions,  
11 which is why they are in the adult day health  
12 program. So you're completely on target.

13 It's positive for the beneficiaries to  
14 be able to come somewhere, to be able to see  
15 other people. And it's important for the  
16 families to be able to take a break of  
17 providing 24-hour care.

18 And we believe that we can open the  
19 programs, be safe, be effective, especially  
20 now with vaccine that's available. As a  
21 matter of fact, if they had included the  
22 adult day people into the vaccination program  
23 with their parent nursing homes, they would  
24 all be vaccinated now. Which is something we

1 had advocated for but were not taken up on  
2 that.

3 SENATOR SERINO: That's a really good  
4 point too, Jim, because I was just going to  
5 mention that. That would have been great,  
6 right, to have these medically fragile people  
7 vaccinated there. So yeah, thank you. And  
8 hopefully we can all keep on -- we've been  
9 advocating, and we can all keep on advocating  
10 for them to reopen again.

11 Thank you.

12 CHAIRWOMAN KRUEGER: Helene, I think  
13 you have a few Assemblymembers.

14 CHAIRWOMAN WEINSTEIN: Assemblyman  
15 Jensen.

16 ASSEMBLYMAN JENSEN: Thank you,  
17 Madam Chair.

18 This question is for Jim. We  
19 certainly a lot of times today talked about  
20 needed increased staffing. So you could just  
21 tell us a little bit about some of the  
22 struggles that your members face -- whether  
23 they're nursing homes, assisted living,  
24 independent living, whatever it may be --

1           some of the struggles that your members are  
2           seeing in hiring staff, recruiting staff.

3                     And not just nursing staff, but really  
4           activities staffing, housekeepers, kitchen  
5           staff, things of that nature. Where are you  
6           really seeing the need, and what do they have  
7           to struggle with to get those people in the  
8           building and working?

9                     MR. CLYNE: Well, the staffing problem  
10          for my members is across the board, as you  
11          just pointed out, every job title you  
12          mentioned.

13                    Obviously it's particularly tough  
14          recruiting RNs because we're competing with  
15          hospitals, in many cases, which pay better.  
16          And you have to remember that the financial  
17          situation for my members was fragile to begin  
18          with, and then add the increased costs of PPE  
19          and testing on top of that. It's just been a  
20          struggle to recruit and retain staff.  
21          Particularly, again, for the -- I think the  
22          undeserved bad press about nursing homes, the  
23          workers who worked in the nursing homes  
24          through this pandemic are heroes, and they



1           problem is in home care, where people  
2           upstate, they simply can't get -- they're  
3           authorized for hours, and they can't get  
4           caregivers to come in. And that's a huge  
5           problem upstate.

6                        ASSEMBLYMAN JENSEN: So is there a  
7           drop-off that if you go to hiring from an  
8           agency or you're bringing in outside care  
9           staff, is there a drop-off in the level of  
10          care because they don't have an association  
11          with that specific facility?

12                      MR. CLYNE: I don't want to say  
13          there's a drop-off in the level of care, but  
14          certainly there are some academic studies  
15          that show that the retention of staff in  
16          nursing homes is better for the long-term  
17          care because they simply know the residents  
18          better, they know what their conditions are.

19                      It's the same in home care too. If  
20          you can keep a consistent staff person in the  
21          home, it's better, regardless of the service.

22                      ASSEMBLYMAN JENSEN: Thank you, Jim.  
23          Thank you, Madam Chair.

24                      CHAIRWOMAN KRUEGER: Thank you.

1 Any -- I see one more. Two more.

2 SENATOR RIVERA: I'm here, actually.

3 CHAIRWOMAN KRUEGER: Oh, I'm sorry.

4 Gustavo Rivera, Senator Healthcare.

5 SENATOR RIVERA: Thank you.

6 I don't know how many folks are still  
7 tuned in, but I want to make sure that I give  
8 an opportunity to all of you, considering the  
9 folks you serve, everything that you point --  
10 and I don't need the 10 minutes. I will --

11 CHAIRWOMAN WEINSTEIN: You only get  
12 three. It's only three minutes anyway.  
13 Three minutes to talk about the  
14 Health budget.

15 (Laughter.)

16 SENATOR RIVERA: Yes, I know. I know.

17 So I want to give you all an  
18 opportunity, particularly considering the  
19 folks that you serve, all the issues that you  
20 mentioned around the populations that you  
21 care so much about.

22 The question is an open question, and  
23 it is to all of you who would like to answer  
24 it. What difference would it make, for the

1 populations that you serve and the issues  
2 that you describe, for the New York Health  
3 Act to become law? Anybody can take that.

4 MS. SIEGFRIED: Well, I mean, I said  
5 that we supported the New York Health Act,  
6 and especially now that it has long-term  
7 care.

8 But the reason is not -- you know,  
9 most other health advocates will tell you  
10 about the remaining uninsured or the premiums  
11 and copays. And for us, it's really just  
12 that it would be so wonderful to have the  
13 same health insurance for your whole life not  
14 to constantly be proving disability and  
15 recertifying and falling out of your  
16 coverage.

17 And it would be great if it was  
18 accountable to a democratic process once  
19 we're successful in restoring the balance of  
20 power in New York.

21 SENATOR RIVERA: Anybody else want to  
22 chime in?

23 MR. CLYNE: We support universal  
24 coverage. Our concern is the state right now

1 is the worst payer in the country for  
2 long-term care. So putting them in charge of  
3 paying for long-term care for everybody  
4 raises some concerns.

5 So unless there's some protections to  
6 guarantee reimbursement -- again, New York  
7 is the single worst payer in the country for  
8 expenses to reimbursement.

9 SENATOR RIVERA: And really -- enough,  
10 Mr. Clyne, there is -- thank you for bringing  
11 it up. There is actually language in the  
12 bill that specifically says that the rates to  
13 be established by the board of the New York  
14 Health Act, the New York Health Act Board,  
15 would actually -- would have to correspond to  
16 the cost of care. Which is actually  
17 something that does not exist anywhere in law  
18 anywhere else.

19 So it would be in statute that the  
20 rates to be established would have to  
21 correspond to the cost of care. So there you  
22 go.

23 CHAIRWOMAN KRUEGER: There you go.

24 SENATOR RIVERA: Anybody else? I just

1 want to make sure I give people the  
2 opportunity.

3 Thank you, Madam Chair.

4 CHAIRWOMAN KRUEGER: Thank you. See,  
5 Helene, it was healthcare, it just wasn't the  
6 Governor's --

7 CHAIRWOMAN WEINSTEIN: That's great.  
8 That's great.

9 We have two Assemblymembers. Who will  
10 also be brief, I'm sure.

11 Assemblyman Kevin Byrne first.

12 ASSEMBLYMAN BYRNE: Thank you.

13 First, allow me to just agree with  
14 Heidi as far as asserting equal balance of  
15 power and having the Legislature -- I'm  
16 assuming that you're intending -- as a  
17 coequal branch of government. I like that,  
18 even though I do have a slightly different  
19 take on the New York Health Act.

20 I do want to make at least a statement  
21 for Jim, LeadingAge and your members, as well  
22 as a lot of the other folks we're probably  
23 going to hear from later that represent adult  
24 care facilities, nursing homes. We've heard

1 a lot about this is a hot topic, and it  
2 really is sad that it's become this political  
3 issue. I know a lot of us have been talking  
4 about this because we care deeply about the  
5 policies that we put forth as a state and we  
6 want to make sure that we have sound policy  
7 that protects our residents, our fellow  
8 neighbors and New Yorkers. And we have, at  
9 least speaking for myself, a lot of  
10 frustration with the Department of Health and  
11 the Governor's administration.

12 But I don't want that to be turned to  
13 making certain, you know, industries and good  
14 people into scapegoats. We do have  
15 front-line workers in these adult care  
16 facilities. And I want to thank you for what  
17 your members have done. They should get a  
18 parade, like every other healthcare worker.  
19 And I just wanted to make that statement, if  
20 nothing else.

21 And far as the question, Jim, to you,  
22 these 30-day amendments, I'm sure you can  
23 elaborate a little bit on some of your  
24 concerns. I think anytime we have these

1 kinds of conversations about increased  
2 penalties -- these are really, really  
3 significant penalties -- this discussion  
4 should be separate from the budget. I don't  
5 think it's appropriate to include.

6 And on adult care facilities, this  
7 removal of the rectification clause that's  
8 been brought forth, I have a lot of concerns  
9 about that.

10 So, Jim, I wanted to ask you if you  
11 had any other comments that you would like to  
12 elaborate with the rest of my time.

13 MR. CLYNE: I just want to -- that's a  
14 good point. The penalties are really over  
15 the top.

16 And if you talk to anybody, nobody  
17 thinks that the Health Department is slack in  
18 their regulation. I just had a member call  
19 me today, they had their ninth infection  
20 control survey. No problems have been found,  
21 but their ninth survey since the start of the  
22 pandemic. I mean, it begins to get a little  
23 ridiculous.

24 And on the adult care facility side,

1           you have to look at those penalties. Those  
2           are per day penalties that they've enacted.  
3           So the penalties on nursing homes are  
4           different than the penalties on assisted  
5           living and adult care facilities. These are  
6           actually even more draconian than they look  
7           like at first blush.

8                         So the problem is not a problem of  
9           regulation, the problem is a problem of  
10          supporting providers in what they need with  
11          resources, with PPE, and with good advice on  
12          how to care for people.

13                        ASSEMBLYMAN BYRNE: Thank you, Jim. I  
14          appreciate your comments and your testimony.  
15          And thank you to everybody else as well.

16                        CHAIRWOMAN KRUEGER: Thank you. Okay.

17                        CHAIRWOMAN WEINSTEIN: Thank you.  
18          Assemblyman Palmesano -- right, you don't  
19          have -- I don't see another Senator.

20                        CHAIRWOMAN KRUEGER: No, I'm just  
21          looking for an Assembly -- oh, there he is.

22                        CHAIRWOMAN WEINSTEIN: Yes.  
23          Assemblymember Palmesano.

24                        MR. HOVEY: You're on mute.

1 ASSEMBLYMAN PALMESANO: Sorry about  
2 that. Hi, my question is for Mr. Clyne this  
3 evening.

4 Mr. Clyne, I want to talk about the  
5 transition from long-term Medicaid managed  
6 care to the fee-for-service model,  
7 particularly for our nursing homes. It's my  
8 understanding from conversations that I've  
9 had that the fee-for-service model works  
10 better for some, while the Medicaid managed  
11 care model works better for others.

12 And I'll give you an example in my  
13 district. I had a facility that negotiated  
14 fair rates with the managed care company  
15 which they thought were fair and proper, but  
16 now they were required to transition to a  
17 fee-for-service model. And what that did is  
18 it's cost them a half a million dollars a  
19 year in reimbursements.

20 And you couple that with the 1 percent  
21 reduction and other cuts, plus other pending  
22 actions that are being talked about with the  
23 Legislature and the costs they've had during  
24 the pandemic, it's really kind of a recipe

1           for a devastating impact on a small rural  
2           facility -- and concerns relative to other  
3           facilities and their long-term solvency.

4                        So my first question for you is do you  
5           have any data showing how this has impacted  
6           your different facilities, your members --  
7           good, bad or indifferent, the overall impact  
8           that's going to have on them?

9                        MR. CLYNE: The overall impact was  
10          positive to go away from managed care because  
11          of delays in payment.

12                       But there are rural facilities that  
13          are key providers in their area who were able  
14          to negotiate additional funds from managed  
15          care programs. We would hope that the state  
16          would take that into account as they look at  
17          the rate-setting system.

18                        If they want to keep -- if the state  
19          wants to keep not-for-profit and county  
20          providers in the system, they need to do  
21          something about the rates. If they don't,  
22          you're going to end up with a system that's  
23          going to be predominantly or almost  
24          exclusively for-profit. I mean, it already

1 is predominantly, but that's the way it's  
2 going.

3 ASSEMBLYMAN PALMESANO: That's what I  
4 was going to get at.

5 Wouldn't it have been better, if we're  
6 going to move to that fee-for-service model,  
7 which if it works well for some -- wouldn't  
8 it have been better and more -- {Zoom  
9 interruption} -- to include a hold-harmless  
10 provision in that process so those facilities  
11 that were able to negotiate better, fairer  
12 rates were not being penalized for being able  
13 to do that?

14 And so do you see any opportunity for  
15 that to be revisited? Have you had  
16 conversations with the State Department of  
17 Health or Budget along those lines, looking  
18 at that as we move forward?

19 Because I just think that would be a  
20 wiser thing to do, instead of having those  
21 institutions out there, like the one in my  
22 district, that again lost half a million  
23 dollars because of this change that they were  
24 required to go along with, when they worked

1 the process and had a fairer reimbursement?

2 MR. CLYNE: Yeah, we have a couple of  
3 members who are talking with the department  
4 right now, looking at the Vital Access  
5 Program as a way to supplement their rate and  
6 maybe move to a transition.

7 In rural areas, a lot of times it's  
8 the nursing home which is in many cases a  
9 vertically integrated provider providing home  
10 care and housing, they're the only ones  
11 available to really do care management with  
12 boots on the ground.

13 ASSEMBLYMAN PALMESANO: All right,  
14 thanks. I'd love to have a future discussion  
15 with you on that issue. Thanks for what  
16 you're doing and your --

17 MR. CLYNE: Love to do it.

18 ASSEMBLYMAN PALMESANO: -- service to  
19 our communities. Thank you.

20 MS. FINKEL: Is it okay if I just  
21 answer the question that Senator May asked  
22 about the savings? Can I just real quick  
23 answer that?

24 CHAIRWOMAN KRUEGER: Okay.

1 MS. FINKEL: So she asked what the  
2 savings would be on the \$27 million increase  
3 to home- and community-based services. It  
4 would be \$60 million would be saved by an  
5 investment of \$27 million.

6 CHAIRWOMAN KRUEGER: Thank you.  
7 Did you get that, Rachel? Were you  
8 listening?

9 SENATOR RIVERA: Rachel had to leave.

10 CHAIRWOMAN KRUEGER: She had to leave.

11 Okay, we'll make sure she gets that  
12 information. Thank you, Beth.

13 SENATOR RIVERA: Marriage maintenance,  
14 apparently.

15 CHAIRWOMAN KRUEGER: Ah.

16 Thank you all very much for being with  
17 us this evening. Appreciate it.

18 And we're going to move on to the next  
19 panel, which will be New York Association of  
20 County Health Officials, Sarah Ravenhall;  
21 New York Health Plan Association,  
22 Eric Linzer; Medical Society of the State of  
23 New York, Bonnie Litvack; and New York State  
24 Association of Health Care Providers,

1 Kathy Febraio.

2 Hello, everyone. Who's up first?

3 Sarah is up first. Are you here?

4 MS. RAVENHALL: Hello. I'm here.

5 CHAIRWOMAN KRUEGER: Great. Welcome.

6 MS. RAVENHALL: Thank you.

7 Senator Rivera, Assemblymember

8 Gottfried, Senator Krueger, Assemblymember

9 Weinstein and esteemed committee members,

10 thank you for this opportunity to present the

11 state budget priorities of New York's

12 58 local health departments. I know you

13 share my pride in the thousands of public

14 health professionals who have continuously

15 put themselves in harm's way to respond to

16 the pandemic. They have met this challenge

17 with profound courage, inexhaustible

18 commitment, and unrivaled expertise.

19 They are now fully engaged in vaccine

20 administration, even as they fulfill

21 innumerable other public health

22 responsibilities. I've never been more

23 proud, humbled and honored to represent them.

24 This year we respectfully request the

1 following in response to the Executive's  
2 proposed budget:

3 Restoration of proposed cuts to  
4 Article 6, state aid in New York City, and  
5 restoration of categorical public health  
6 funding.

7 Incorporation of health positive  
8 revenue producing proposals with revenue  
9 earmarked for public health. These proposals  
10 are detailed in our full testimony document.

11 An invitation to provide input into  
12 the regulated adult-use cannabis policy being  
13 proposed by the state and Legislature. If  
14 enacted, local health departments will be  
15 tasked with provision of community education  
16 and dedicated funding will be needed.

17 New York State continues to confront a  
18 growing number of monumental public health  
19 challenges. In 2018, vaping-related lung  
20 illness; 2019, a massive measles outbreak;  
21 and in 2020, the first global pandemic in  
22 recent history. All these events coincide  
23 with ongoing public health issues such as  
24 increased rates of sexually transmitted

1 infection, hepatitis A outbreaks, opioid  
2 overdose and deaths; suicide fatalities;  
3 children with elevated blood lead levels, and  
4 others.

5 Year after year we see decreasing  
6 appropriations proposed within the Article 6  
7 funding line for our local health departments  
8 due to administrative actions, the local  
9 property tax cap, and in some cases cuts in  
10 reimbursement, such as the one proposed in  
11 New York City.

12 Local health departments have not  
13 received an increase in core public health  
14 aid in more than six years. Instead, state  
15 budget appropriations for public health  
16 spending have been either flat-funded or  
17 reduced. We're experiencing the greatest  
18 public health disaster in a century. If we  
19 fail now to recognize that public health  
20 support must be increased, then we're already  
21 surrendering to the next public health  
22 threat.

23 We ask you, New York's respected  
24 lawmakers, to reinvest resources into the

1 public health infrastructure in New York  
2 State.

3 These facts leave me with two  
4 important questions. Why has the Executive  
5 proposed profound cuts to public health in  
6 the midst of a public health crisis? My  
7 second question, which I direct to all  
8 New York State policymakers, is what do you  
9 need from us to help you effectively and  
10 appropriately resource our local public  
11 health infrastructure?

12 Thank you for your leadership and the  
13 opportunity to present today.

14 CHAIRWOMAN KRUEGER: Thank you.

15 Next, Eric Linzer.

16 MR. LINZER: Thank you.

17 On behalf of our 28 member health  
18 plans and the 8 million individuals who they  
19 provide coverage for, appreciate the  
20 opportunity to offer testimony this evening.

21 Throughout the current pandemic, the  
22 health and well-being of New Yorkers has been  
23 the number-one priority of our member health  
24 plans. We're proud of the work that they've

1 done to protect patients, support the  
2 delivery system, and assist employers.

3 This has included eliminating  
4 cost-sharing for COVID-19 testing and  
5 treatment, as well as for telehealth  
6 services, providing financial support to the  
7 delivery system, extending premium grace  
8 periods for consumers and small businesses,  
9 and working with the state and local public  
10 health authorities and the delivery system to  
11 provide information to residents about the  
12 COVID-19 vaccine and that they'll receive the  
13 vaccine at no cost.

14 Given the current public health  
15 crisis, we are concerned about the  
16 significant cuts to the Medicaid program,  
17 particularly the cuts to the health plans  
18 that the Governor's budget has proposed,  
19 totaling more than \$1.5 billion. This  
20 includes a reduction that the state has  
21 described as reflecting the reduction in  
22 utilization that took place in the second  
23 quarter of last year. However, what this  
24 fails to acknowledge is that that was for

1 just one quarter and merely delayed the  
2 delivery of care until the latter half of  
3 2020 and into 2021, as plans have experienced  
4 a return to normal and increased utilization  
5 beginning in the third quarter of last year.

6 Further, we're concerned about the  
7 cuts that Dr. Schwartz had mentioned on the  
8 last panel, having to do with the  
9 managed-care Quality Incentive Program. And  
10 really this begs the question of, you know,  
11 are these cuts necessary, as well as the size  
12 and scope of these cuts.

13 It's an open question, considering  
14 that the federal government has recently  
15 announced it's extending the Enhanced FMAP  
16 funding through June of next year, but the  
17 Governor's proposal has only counted on the  
18 enhanced funding through June of this year.

19 When you consider that, coupled with  
20 the additional increases in Enhanced FMAP  
21 that's being considered in Washington, D.C.,  
22 and other additional federal aid to the  
23 states that New York is expected to receive,  
24 we think that these cuts are unwarranted and

1 unnecessary, and we would urge the  
2 Legislature to ensure that as part of the  
3 budget process any Enhanced FMAP goes to  
4 where it belongs, which is back to Medicaid  
5 to offset these proposed cuts.

6 In addition, we remain concerned and  
7 opposed to the administration's plan to  
8 transition the Medicaid pharmacy benefit from  
9 managed care to fee-for-service. We don't  
10 think that it's going to generate the savings  
11 and will actually cost the state money. More  
12 importantly, it's going to adversely affect  
13 the quality of care for millions of Medicaid  
14 enrollees, particularly those with chronic  
15 health conditions and who rely on their care  
16 to be integrated and coordinated across the  
17 continuum.

18 We do support the Governor's proposal  
19 to eliminate the \$20 monthly premium for the  
20 Essential Plan. We also support the  
21 Governor's budget proposal to allow for  
22 multi-state licensure for telehealth  
23 services, and creating an interstate  
24 licensure program.

1                   So with that, I appreciate the  
2                   opportunity to testify and look forward to  
3                   answering any questions.

4                   CHAIRWOMAN KRUEGER: Thank you very  
5                   much.

6                   And our next speaker -- oops, I lost  
7                   my little chart, sorry. Excuse me. After  
8                   Eric Linzer is Bonnie Litvack, Medical  
9                   Society of the State of New York.

10                  DR. LITVACK: Thank you very much for  
11                  the opportunity to testify. I am Dr. Bonnie  
12                  Litvack, and I am president of the Medical  
13                  Society of the State of New York, which  
14                  reports over 20,000 physicians across every  
15                  specialty and in every region of the state.

16                  Our members have been serving on the  
17                  front lines through the pandemic, putting  
18                  their health and their families' health at  
19                  risk because of their dedication to serving  
20                  their patients. We are enthused by the  
21                  steady progress New York is making in  
22                  increasing the number of those vaccinated and  
23                  the steady decrease in new COVID cases. We  
24                  continue to work with the administration to

1 promote the importance to our patients of  
2 receiving the vaccine, as well as advocating  
3 for community physicians to receive doses to  
4 immunize their patients.

5 We, though, have many concerns with  
6 the proposed state budget. There are some  
7 positive aspects, such as state licensing of  
8 pharmacy benefit managers and a proposal to  
9 increase the supply of personal protective  
10 equipment, but on balance, the adverse  
11 proposals outweigh the positives.

12 We're certainly hopeful that the  
13 federal COVID percentage will eliminate the  
14 need for significant cuts, but we share the  
15 concerns expressed earlier by Assemblyman  
16 Cahill, Assemblyman Byrne and others, about  
17 the impact of the proposal that would require  
18 17,000 physicians in the Excess Liability  
19 Insurance Program to bear 50 percent of the  
20 cost of these policies.

21 The program has always served as a  
22 critical compromise to address the  
23 significant healthcare system implications of  
24 New York's excessive liability costs that far

1           exceed any other state. Yet this one budget  
2           proposal would foist thousands of dollars of  
3           new costs on physicians, and even tens of  
4           thousands of dollars when their patient  
5           visits and their revenues are down. Many  
6           physicians will simply be unable to afford  
7           this, will forgo the coverage and/or leave  
8           the state.

9                        We're also concerned, as Assemblyman  
10           Salka mentioned, about the \$200,000 cut to  
11           MSSNY's Committee for Physician Health. It's  
12           a critically important program that's funded  
13           through physician registration. It assists  
14           physicians suffering from mental illness and  
15           substance abuse, and it's a highly successful  
16           program that's more important than ever in  
17           this time of COVID.

18                      We also strongly urge you to reject  
19           Article VII proposals that we believe are  
20           very counterproductive and would -- such as  
21           proposals that would grant the Commissioner  
22           of Health wide discretion to disclose  
23           complaints about physicians to the public  
24           without adequate due process. That has the

1 potential to unfairly destroy physician  
2 reputations in the communities they served.

3 We're also concerned with the  
4 proposals to significantly expand the scope  
5 of big box pharmacy chains to provide  
6 healthcare services without physician  
7 coordination.

8 We have identified several other  
9 concerns in our written testimony, and I'm  
10 happy to answer any questions for you. Thank  
11 you again for the opportunity to testify.

12 CHAIRWOMAN KRUEGER: Thank you.

13 And our last testifier for this panel,  
14 New York State Association of Health Care  
15 Providers, Kathy Febraio.

16 MS. FEBRAIO: Thank you. I am Kathy  
17 Febraio, president of the New York State  
18 Association of Health Care Providers,  
19 representing home care across the State of  
20 New York.

21 I thank you for the opportunity to  
22 testify and to update you on the state of the  
23 home care industry as it continues to provide  
24 safe and economical care during the pandemic

1 while we are simultaneously responding to  
2 significant policy changes.

3 The experience of the last year has  
4 clearly shown it is essential to invest in  
5 and to protect the economic viability of the  
6 home care industry in order to ensure  
7 individuals with disabilities, those with  
8 chronic illness, and elderly populations  
9 continue to have access to services that  
10 allow them to remain in the comfort and  
11 safety of their homes. Patients do better at  
12 home.

13 It is not the time to add more  
14 upheaval and uncertainty to the industry, as  
15 the state has charted its course to do --  
16 which the recently announced CDPAP contract  
17 awards has highlighted. Extensive state  
18 regulations and policy changes crushed the  
19 industry by creating completely avoidable  
20 turmoil, chaos, gaps in care, and barriers to  
21 service.

22 Home care needs your support. We are  
23 asking you to eliminate the language enacted  
24 in last year's budget that created the coming

1 LHCSA RFO. This is going to play out just  
2 like the CDPAP RFO.

3 We ask you to reimburse providers for  
4 the increased cost of personal protective  
5 equipment and COVID-related expenses. We  
6 thank you for your support of Bill S2543 and  
7 A179. However, MLTC plans are receiving  
8 COVID-related rate reductions for decreased  
9 utilization, and they are passing that  
10 reduction to home care providers beginning  
11 March 1, to defray the impact to the plans --  
12 this while home care has experienced  
13 drastically increased costs for services.

14 MLTCs will immediately share the  
15 burden of reduction and fail to reimburse  
16 actual expenses. Unfortunately, this is the  
17 norm.

18 We ask you to reject the 1 percent  
19 across-the-board Medicaid cut, to eliminate  
20 the Medicaid Global Spending Cap, and reject  
21 the Governor's cut in recruitment and  
22 retention funding.

23 We ask that you allocate at least  
24 25 percent of the Healthcare Transformation

1 Fund to home- and community-based services,  
2 and to require managed-care organizations to  
3 directly pass through minimum wage funding to  
4 their providers.

5 We ask for the elimination of the  
6 requirement for an unnecessary independently  
7 audited financial statement for wage parity  
8 reporting. We ask to make permanent the  
9 nursing home transition and diversion and TBI  
10 waiver programs from managed care. And we  
11 ask, if there is any federal funding to be  
12 had, that you ensure that New York State  
13 passes it on to the front-line providers.

14 Thank you.

15 CHAIRWOMAN KRUEGER: Thank you.

16 Any questions from any of my  
17 colleagues?

18 CHAIRWOMAN WEINSTEIN: We have  
19 Assemblyman Ra who would like to ask a  
20 question.

21 CHAIRWOMAN KRUEGER: Certainly.

22 ASSEMBLYMAN RA: Thank you, Chairs.

23 Good evening, everybody. I just  
24 wanted to follow up with Dr. Litvack

1           regarding -- she went into this a little bit  
2           with the excess medical malpractice proposal.  
3           And, you know, we had a little conversation  
4           about this with the insurance superintendent  
5           earlier today, who basically provided, you  
6           know, little detail other than to say that  
7           she felt that the medical malpractice market  
8           had stabilized and, you know, that she didn't  
9           think this was going to be that disruptive of  
10          a proposal.

11                        I would tend to disagree, and I see  
12          you certainly do. And you seem to have  
13          pretty detailed numbers in your testimony.  
14          So I'm just wondering if you can elaborate  
15          more on your methodology in those numbers and  
16          really the impact that it would have on costs  
17          of something that is already, you know, a big  
18          problem in New York State.

19                        DR. LITVACK: Yes. So thank you for  
20          asking those questions.

21                        Yes, this is a huge problem if it goes  
22          through as proposed. This really would  
23          affect our community physicians, those in  
24          independent practice, those that are not in

1 self-funded employer plans. And these  
2 practices are running on very thin margins as  
3 we speak right now. They have had to deal  
4 with the increased cost of the personal  
5 protective equipment. They've had to deal  
6 with the decreased number of patients,  
7 decreased numbers of procedures, and in  
8 addition to having had their offices closed  
9 for periods of time.

10 This, as I said, would add thousands  
11 and sometimes tens of thousands, depending on  
12 which part of the state you're in and, you  
13 know, which specialty you're in.

14 ASSEMBLYMAN RA: Well, thank you --  
15 sorry, go ahead.

16 DR. LITVACK: That's okay. And  
17 premiums right now are still way too high.  
18 We have the numbers; we can share those with  
19 you from MLMIC and others. But our costs,  
20 you know, far exceed any other state in the  
21 country.

22 ASSEMBLYMAN RA: And as you point out,  
23 if last year was a bad time to adopt this  
24 proposal, then this year is a really bad time

1 to adopt this proposal. So thank you.

2 CHAIRWOMAN KRUEGER: Thank you.

3 Any other members wanting to ask  
4 questions?

5 CHAIRWOMAN WEINSTEIN: Yes, we  
6 actually have Assemblyman Byrne also, and  
7 then Assemblyman Palmesano.

8 Assemblyman Byrne.

9 ASSEMBLYMAN BYRNE: Yes, thank you,  
10 Chair.

11 And ditto to the comments made by my  
12 colleague Mr. Ra. I completely agree that if  
13 it was bad last year, it's even worse now.  
14 And we're hopefully getting a lot of federal  
15 relief, which will make a lot of these  
16 decisions a little bit easier for us.

17 My follow-up question was -- I tried  
18 to mention it with the commissioner, but  
19 quite frankly we don't have enough time when  
20 we're trying to go through these budget  
21 hearings. And it's about Part Q in I believe  
22 the Health and Mental Hygiene Budget. And  
23 this is directed more for Bonnie,  
24 Dr. Litvack.

1                   It's the section that would allow the  
2                   commissioner to report professional  
3                   misconduct, allegations of misconduct, and  
4                   without due process. Now, we've already  
5                   passed legislation I think in recent years  
6                   about people have to -- physicians have to  
7                   post a notice now, which some people didn't  
8                   like, about the Office of Professional  
9                   Misconduct {sic}. But now we're -- this is  
10                  really a step much further where they're  
11                  looking to have the commissioner release this  
12                  information. My understanding is if there's  
13                  an imminent danger, if there's something like  
14                  that, they already have that option. But if  
15                  you start distributing information about a  
16                  physician -- like I have a real concern that  
17                  this could ruin someone's career when it's an  
18                  allegation and they haven't had their due  
19                  process yet.

20                  Can you elaborate on this a little  
21                  bit? It seems to be a perennial issue. At  
22                  least I think it was brought up last year,  
23                  and we're going at it again this year. And  
24                  hopefully we can get it taken out. But I was

1 just hoping you could elaborate on that  
2 again.

3 DR. LITVACK: Sure, I'm happy to.

4 So this issue is exactly as you've  
5 described. The Medical Society is absolutely  
6 committed to the safety of the public. And  
7 the commissioner already does have the  
8 authority to remove somebody -- their ability  
9 to practice right now. This goes beyond that  
10 and allows them to remove somebody before  
11 they've had any due process.

12 And when you look at our system, our  
13 OPMC, the Office of Professional Medical  
14 Conduct, system for adjudicating these  
15 issues, of the claims, 97 to 98 percent of  
16 them are dismissed without any charges being  
17 filed and without any action being taken.  
18 And with that being the case, this would do a  
19 tremendous amount of harm if these were made  
20 public before the physician actually had an  
21 ability to defend themselves against this.

22 And so this would be a very harmful  
23 thing that would eliminate due process for  
24 physicians.

1 ASSEMBLYMAN BYRNE: Thank you, Doctor.

2 And I think we all know that once  
3 something's on the internet, it's on the  
4 internet forever, so it's very hard to repair  
5 the damage once it's been done.

6 And again, I would say in a similar  
7 vein to what we said before, if it was a bad  
8 idea last year, I think it's a bad idea this  
9 year. We're asking our physicians and  
10 healthcare workers to do so much. I don't  
11 think this would be an appropriate change.

12 But thank you.

13 DR. LITVACK: And thank you for  
14 rejecting it last year, and hopefully you'll  
15 reject it again this year.

16 CHAIRWOMAN WEINSTEIN: Assemblyman  
17 Palmesano.

18 ASSEMBLYMAN PALMESANO: Yes, thank you  
19 very much.

20 My question is for Sarah.

21 Sarah, there's been much discussion  
22 during these hearings around the state's  
23 proposal in the budget to eliminate the  
24 \$139 million of the state's share for the

1 Indigent Care Pool. You know, myself and a  
2 number of my colleagues always worry about,  
3 when we see things like that, about cost  
4 shifts, possible mandates or unfunded  
5 mandates to our county governments.

6 I know it was discussed, I think with  
7 some of the comments that were made, that  
8 Westchester doesn't participate. Do you know  
9 what counties are contributing or not  
10 contributing, and if so, how much? I mean,  
11 right now obviously counties are forced to  
12 contribute to the distressed fund, I think  
13 it -- I can't remember the amount of it, of  
14 \$250 million.

15 You know, do we know how much our  
16 counties are participating right now, or not  
17 participating, and to what amount? I mean,  
18 obviously our counties are struggling  
19 financially right now. You know, this  
20 mandate, if they had to pick up more or do  
21 contribute more, it would be certainly  
22 difficult for them to handle. And certainly  
23 that would have an overall impact on our  
24 delivery of our healthcare system and quality

1 care.

2 So do you have any thoughts on that or  
3 comments on that proposal and how to -- what  
4 you know?

5 MS. RAVENHALL: Thank you for that  
6 question. I don't have those numbers off the  
7 top of my head. I can circle back and work  
8 on getting those for you, and perhaps work  
9 with the Association of Counties to find some  
10 of that data for you.

11 But you're bringing up a really good  
12 point. We're seeing continual shifts from  
13 state funding to, you know, locality funding,  
14 picking up the share of certain services.

15 One of the services that we're looking  
16 at is rabies funding, which was completely  
17 eliminated from the proposed Executive  
18 Budget. This is a public health issue, and  
19 it's essentially being eliminated from the  
20 budget. Anybody who is exposed to rabies  
21 needs -- there needs to be a public health  
22 intervention. And so we're really concerned  
23 about seeing some of these cost shifts to  
24 localities when they are struggling so much.

1                   So I appreciate that thought, and I  
2                   can get back with you.

3                   ASSEMBLYMAN PALMESANO: I note that in  
4                   last year's budget, and I think this year's  
5                   budget again has -- I think it's  
6                   \$250 million. I think it's 200 million for  
7                   the city and \$50 million for the other  
8                   counties for distressed hospitals.

9                   And that's an assessment that's coming  
10                  off the county's books already right now.

11                  MS. RAVENHALL: Right.

12                  ASSEMBLYMAN PALMESANO: That's another  
13                  thing that we're all worried about.

14                  So thank you very much. And thanks  
15                  for what you do.

16                  MS. RAVENHALL: Thank you. You too.

17                  CHAIRWOMAN KRUEGER: So, Helene, I  
18                  just have more a recommendation to  
19                  Dr. Litvack, who's the doctor from the  
20                  Medical Society of New York, that I'm going  
21                  to ask you to please read the City and State  
22                  article that came out yesterday, "New York  
23                  Doctors Get Away With Sexual Misconduct."

24                  And it's a fairly scathing report on

1 the Office of Professional -- whatever the  
2 office stands for within the Department of  
3 Education, and how they don't ever find  
4 anyone guilty of anything. And it's an  
5 exposé with a bunch of previous workers  
6 coming forward to say that.

7 Now, I actually have a bill on making  
8 it more restrictive --

9 (Zoom interruption.)

10 CHAIRWOMAN KRUEGER: I'm sorry?  
11 Someone else is talking.

12 -- that you really need to look into  
13 making sure that this office is functioning  
14 correctly. Because I know it's a very small  
15 number of doctors who are both unqualified to  
16 be performing medicine or otherwise very bad  
17 people. But when we don't have a system in  
18 place that people have confidence in that  
19 they will actually penalize the people who  
20 should be prevented from continuing to  
21 provide medicine or who should be stopped  
22 from doing bad behaviors, it makes us all  
23 look terrible.

24 And so that is why I have the bill,

1           because it turns out tracking doctors with --  
2           who are being found guilty in court of sexual  
3           assault and still letting them continue their  
4           work in their private offices or even in  
5           hospitals in New York State, and then years  
6           later, Oh, look, we caught them again. Oh,  
7           look, we've caught them again. That's not  
8           okay.

9                        So I don't know that I agree with what  
10           the Governor is proposing in his budget this  
11           year, but I'm telling you -- I'm urging you,  
12           as the medical community, get behind  
13           reasonable standards for investigations and  
14           make sure they're taken seriously, because  
15           these hurt -- when these stories come out,  
16           they hurt you. And 99 percent of you would  
17           never be involved in these things, but if  
18           you're supposedly part of a peer review  
19           system and you never catch any of your peers  
20           except the behaviors are going on, it's a  
21           serious problem.

22                        So that's my recommendation to you.

23                        With that, anyone else? Okay. Then  
24           we're going to move on to the next panel.

1 Thank you all very much for being here with  
2 us tonight and testifying.

3 And our next panel is Health People,  
4 Chris Norwood; Community Healthcare  
5 Association of New York State, Rose Duhan;  
6 and Callen-Lorde Community Health Center,  
7 Wendy Stark.

8 Good evening, everyone or anyone. And  
9 let's start with Chris Norwood, if you're  
10 here. Is Chris here? I don't think so.

11 Okay, how about Rose. Rose, are you  
12 here?

13 MS. DUHAN: I am here, thank you.

14 CHAIRWOMAN KRUEGER: Let's start with  
15 you, thank you.

16 MS. DUHAN: Thank you to the chairs  
17 and the members who have persevered for  
18 hanging through this late night session. I  
19 appreciate all of your dedication.

20 I'm Rose Duhan, CEO of the Community  
21 Healthcare Association of New York State. On  
22 behalf of New York State's 70 community  
23 health centers, caring for 2.3 million  
24 New Yorkers, I'm here to express our grave

1 concerns about the pharmacy benefit carve-out  
2 from Medicaid managed care to  
3 fee-for-service, which will eliminate access  
4 to the 340B program.

5 The 340B program allows covered  
6 safety-net healthcare providers, including  
7 community health centers, to purchase  
8 pharmaceutical drugs at reduced costs.  
9 Community health centers reinvest the savings  
10 into initiatives that expand access to care,  
11 particularly for the uninsured and  
12 underinsured.

13 New York's community health centers  
14 provide care to about one-third of all  
15 uninsured individuals in New York State.  
16 340B enables patients to receive free or  
17 low-cost drugs and support services such as  
18 intensive outreach to those who have been  
19 isolated during the pandemic, including  
20 follow-up needed for chronic disease  
21 management and ensuring children do not fall  
22 behind in immunizations.

23 340B savings have made it possible for  
24 health centers to quickly pivot to

1 vaccination activities, outreach and patient  
2 education, making sure people come back for  
3 second doses, and standing up vaccination  
4 events for communities of color and in rural  
5 parts of the state.

6 Health centers are grateful to have  
7 received vaccine allocations, and 340B makes  
8 it possible to vaccinate communities most at  
9 risk from COVID-19.

10 The proposed change will result in  
11 enormous financial losses, programmatic  
12 reductions, and staff cuts for impacted  
13 providers. Perhaps what is most devastating  
14 is that the carve-out will have the biggest  
15 negative impact on the health outcomes of the  
16 state's sickest and poorest communities, the  
17 very patients hit hardest by COVID-19.

18 Community health centers are testing  
19 and vaccinating patients in their communities  
20 and are able to do so because of 340B. This  
21 carve-out will have devastating and lasting  
22 effects on the healthcare safety net at a  
23 time when Black, brown and poor community  
24 members and their providers can least afford

1           it.

2                   In the recent economic crisis we have  
3           seen growth in Medicaid enrollment and in  
4           uninsured populations that benefit from the  
5           services made possible by this program. The  
6           Executive has proposed creating a funding  
7           pool of \$102 million. This proposed funding  
8           is woefully inadequate given the massive  
9           losses the carve-out would cause, and  
10          unreliable as a long-term solution for  
11          sustainability, as any pool created by the  
12          state is subject to future budget cuts and  
13          delayed distributions for purposes of state  
14          cash management.

15                   We have learned today that DOH is  
16          moving forward with notifying Medicaid  
17          participants that the carve-out will take  
18          effect May 1st, undermining your ability to  
19          negotiate a solution. It is unacceptable  
20          that New York would move forward with this  
21          carve-out during the most significant public  
22          health crisis in modern history. We urge the  
23          Legislature to reverse this policy.

24                   Thank you. I'm happy to take any

1 questions and give you back 25 seconds.

2 CHAIRWOMAN KRUEGER: Thank you very  
3 much.

4 And do we have Wendy Stark, from  
5 Callen-Lorde?

6 MS. STARK: Yes, I'm here. Thank you  
7 so much.

8 Thank you so much to the chairs and  
9 the members of the committee and for doing  
10 this all-day marathon. We really appreciate  
11 it.

12 So Callen-Lorde Community Health  
13 Center is one of the 70 community health  
14 centers Rose just spoke about. We are in  
15 Manhattan, the Bronx, and Brooklyn. But I  
16 can almost guarantee you that we serve  
17 somebody in your district, because we have  
18 patients coming to us from all over the state  
19 because we are what's called a magnet health  
20 center. We have a particular mission, to  
21 serve LGBTQ communities and people living  
22 with HIV, and so we draw people that are much  
23 more geographically diverse than some of our  
24 colleagues.

1 I don't know how else to say this,  
2 other than I am begging you -- Senator Brouk  
3 said earlier today in the hearing that she  
4 got a message from a CEO of an organization  
5 in her district who would be impacted also by  
6 the Medicaid pharmacy carve-out in ways that  
7 are existentially threatening. And I'm here  
8 tonight to tell you this is not being  
9 hyperbolic, this is going to destroy the  
10 safety net at the worst possible time in  
11 history, right at this moment.

12 We serve people who are -- one-third  
13 of our patients are uninsured. One-quarter  
14 of our patients are people living with HIV.  
15 One-third of our patients are people of  
16 transgender or nonbinary experience. Over  
17 half of our patients are people of color.  
18 Many of our patients live at or below the  
19 poverty line. This is not the time to hurt  
20 our state's safety net.

21 We have been providing primary care  
22 throughout. We provided medical staffing in  
23 a hotel for folks who would otherwise be  
24 living in the New York City shelter system

1           who had COVID, near the beginning of the  
2           pandemic. Our staff are exhausted. Many of  
3           those staff's salaries, our nurses, our  
4           front-line folks, our lab techs, our doctors,  
5           our PAs, our nurse practitioners, they have  
6           been at this with little to no time off since  
7           March. Their salaries, many of them, are  
8           paid through the revenues that come out of  
9           this program. This was an intentional way to  
10          support the safety net.

11                   And there is a 340B reinvestment fund  
12          that's been proposed, as Rose mentioned,  
13          which is meant to help offset the revenue  
14          losses that this would cause. I would argue  
15          that this is a micro version of the global  
16          cap. And we ask you to reject it, as well as  
17          the carve-out overall, and of course reject  
18          the global cap. It is foundationally the  
19          wrong approach to our state's Medicaid  
20          program.

21                   There is a delay bill on the table  
22          from Assemblymember Gottfried and  
23          Senator Rivera -- it is A1671A and S2520 --  
24          to have the community health centers and HIV

1 special needs plans, have the carve-out piece  
2 delayed until April of 2024.

3 There are other solutions to this. We  
4 can find a solution to the PBM transparency  
5 issue. We are on the same side about this.  
6 This is not the way to do it.

7 Thank you so much for your time and  
8 attention.

9 (Pause.)

10 SENATOR RIVERA: You're on mute, Liz.  
11 You're on mute.

12 CHAIRWOMAN KRUEGER: I'm sorry. I was  
13 saying, except no one could hear me, that I  
14 believe Chris Norwood has now joined us.

15 MS. NORWOOD: Yes. Oops --

16 CHAIRWOMAN KRUEGER: You ready?

17 MS. NORWOOD: Thank you very much. I  
18 am Chris Norwood, executive director of  
19 Health People, which is entirely a peer-led  
20 health education and disease prevention  
21 organization in the South Bronx.

22 There's a major reason New York State  
23 had the most COVID deaths in the nation. It  
24 is because the New York State Department of

1 Health absolutely refuses to have any  
2 coherent plan to either prevent chronic  
3 disease or help people who have chronic  
4 disease achieve the good self-management that  
5 still protects their health and does not  
6 leave them this vulnerable to any virus or  
7 variant that comes along.

8 I will start with diabetes. In the  
9 first surge of COVID in the spring of 2020,  
10 diabetes deaths in New York City increased by  
11 a staggering 356 percent, the most in the  
12 nation, and state diabetes deaths outside  
13 New York City increased the most of any  
14 state.

15 International studies, however, soon  
16 made clear that these deaths, along with  
17 serious complications like heart, lung and  
18 kidney injury, were mainly occurring in  
19 people with diabetes whose blood sugar was in  
20 poor control.

21 At the time, my organization,  
22 Health People, was providing the only  
23 community diabetes self-management program in  
24 the South Bronx, teaching thousands of people

1 with diabetes how to lower their blood sugar  
2 and achieve good control. The state  
3 completely destroyed and defunded this vital  
4 community self-care initiative just as it  
5 become clear that blood sugar control was  
6 vital to survival during COVID.

7 New York has 2 million people with  
8 diabetes, some 600,000 on Medicaid. To this  
9 day, despite what should be the lesson of  
10 unprecedented diabetes deaths, the State  
11 Department of Health still refuses to support  
12 a single self-care community-based initiative  
13 for diabetes or, for that matter, for any  
14 other chronic disease anywhere in New York  
15 State.

16 The Diabetes Self-management Program  
17 we were providing, which I believe other  
18 people try and work with, is well-proven to  
19 reduce blood sugar, weight, depression and  
20 multiple diabetes complications. It slashes  
21 new cases of kidney disease by 90 percent the  
22 first year after people participate, which  
23 means it also slashes the number of  
24 New Yorkers who will be chained to dialysis.

1                   Most important, communities themselves  
2                   can take the lead in this kind of life-saving  
3                   education. We entirely trained people from  
4                   the South Bronx with diabetes and  
5                   pre-diabetes to deliver this.

6                   I really urge the Legislature --  
7                   you've heard over and over how things that  
8                   prevent and save money are the first to go.  
9                   It is so senseless. And hopefully you will  
10                  look at these life-saving programs and  
11                  assure, with any money that comes from  
12                  Washington, it will be used to truly build  
13                  health, and that at least 250 million will be  
14                  devoted to community-led chronic disease  
15                  prevention and self-care programs across the  
16                  state.

17                  CHAIRWOMAN KRUEGER: Thank you.

18                  MS. NORWOOD: Thank you very much.

19                  CHAIRWOMAN KRUEGER: Thank you all  
20                  very much.

21                  All right, do I see any hands up?

22                  Gustavo Rivera, Health chair.

23                  SENATOR RIVERA: It will be brief.

24                  Thank you. Thank you, Madam Chair.

1                   Thank you all for being here. Thank  
2                   you for remaining here, particularly because  
3                   it is so important what you're bringing to  
4                   the table. You represent folks all across  
5                   the state that -- I want to talk particularly  
6                   about the 340B program. We talked about the  
7                   delay bill that I encourage my colleagues to  
8                   get on. And we certainly need to push back  
9                   on the Governor in a real way about this.

10                   I want you to specifically make the  
11                   connection about how the flexibility of this  
12                   program has allowed different -- whether it's  
13                   you, Wendy, at Callen-Lorde, or any of your  
14                   members at CHCANYS -- talk about the  
15                   flexibility of this program and the fact that  
16                   the savings that are utilized to actually  
17                   invest in care for the people that you serve,  
18                   and how the proposal from the Governor --  
19                   compare the two, whether you think that one  
20                   would be -- that this program that -- the  
21                   proposed, you know, 100 million, 102 million  
22                   from the Governor would compare to what you  
23                   get now from the federal program, as far as  
24                   flexibility.

1 MS. STARK: It's hard to say the math.  
2 Callen-Lorde alone stands to lose \$12 million  
3 a year from this change, and I don't --

4 SENATOR RIVERA: So what's your  
5 total -- what's your total --

6 MS. STARK: Ninety-five million.

7 SENATOR RIVERA: So it's a chunk, a  
8 chunk.

9 MS. STARK: Yeah, it's a big chunk.

10 So right now I use this money to pay  
11 for nurses, for example, who provide nursing  
12 triage to patients who are calling and saying  
13 "Should I go to the emergency room? I'm  
14 having this symptom." We are keeping people  
15 literally out of the emergency rooms by  
16 paying for these nurses, as one example.  
17 Right?

18 We have case managers who are helping  
19 people with housing support, all kinds of  
20 things.

21 And so, again, I do the analogy to the  
22 global cap. If we have a certain amount of  
23 money every year that stays stagnant and that  
24 we have to fight for it every year, we cannot

1 be as flexible or do planning around it. How  
2 can you hire staff based on a pool of funding  
3 that changes year over year and that shrinks  
4 year over year, and how --

5 SENATOR RIVERA: Or that might not  
6 exist. Or that might not exist next year.

7 MS. STARK: Exactly. Exactly.

8 HIV. We have done so well in this  
9 state around getting the number of new  
10 infections down and getting people virally  
11 suppressed. So many of our patients are  
12 people living with HIV. We put all kinds of  
13 support services around that with this money.  
14 These are why these numbers are good. The  
15 whole HIV services system in this state is  
16 going to have a really drastic change to our  
17 revenues if this happens.

18 SENATOR RIVERA: CHCANYS?

19 MS. DUHAN: Yeah, and I would say that  
20 this pandemic has really demonstrated the  
21 necessity for the flexibility of these funds.

22 We -- you know, health centers were  
23 told on the Thursday before Christmas that  
24 they would be receiving hundreds of doses of

1 the vaccine on Monday, and health centers  
2 were able to get staff ready, they were able  
3 to schedule vaccine, they were able to put  
4 extra people on the phones because they were  
5 all of a sudden flooded with calls from the  
6 community: "Can I get the vaccine?"

7 They have to do scheduling, they have  
8 to have people who can be there to be there  
9 at the vaccination events. So this is really  
10 something where health centers -- there was  
11 no extra funding that was coming in to make  
12 it possible to turn around and stand up these  
13 events where -- in the communities where we  
14 know people have been most adversely impacted  
15 by the pandemic.

16 So it's really --

17 SENATOR RIVERA: Senate and  
18 Assemblymembers that are still on, get on our  
19 bill, get on Dick's bill, get on my bill so  
20 we can make sure that we stop this, please.

21 Thank you, Madam Chair.

22 CHAIRWOMAN KRUEGER: Thank you.

23 Any Assemblymembers, Helene?

24 CHAIRWOMAN WEINSTEIN: No, we are

1 ready to move on.

2 Thank you for being here.

3 CHAIRWOMAN KRUEGER: All right, thank  
4 you all very much for coming. We're covered  
5 very broadly during the earlier parts of the  
6 hearing. So thank you very much.

7 Next up, Panel F. And I've learned  
8 some people were working off an older version  
9 of the testimony list, so sorry, but now  
10 we're on Panel F for the correct version.  
11 Empire Center for Public Policy, Bill  
12 Hammond; Consumer Reports, Chuck Bell;  
13 New York State Area Health Education System,  
14 Leishia Smallwood; and Center for Health  
15 Outcomes and Policy Research at the  
16 University of Pennsylvania, Linda Aiken.

17 Are you with us, Bill? Okay. Good  
18 evening. You get to start.

19 I can't hear you; turn your mic on.

20 MR. HAMMOND: All right.

21 Good evening. Thanks for the  
22 opportunity to testify.

23 This year has taught us a painful  
24 lesson about the importance of public health

1           infrastructure. The places in the world that  
2           had the strongest infrastructure were able to  
3           respond quickly and effectively to the  
4           pandemic, and they kept their loss of life  
5           and economic disruption to a minimum.

6           Unfortunately, the United States and New York  
7           were not among those places.

8                         Public health is one part of  
9           New York's health system that has suffered  
10          reductions in funding unlike any other. I  
11          will give you an example. The Wadsworth  
12          Center, our world-renowned public health  
13          laboratory, over the past 10 years it has  
14          lost 40 percent of its publicly reported  
15          funding and about two-thirds of its staff.

16                        Now -- and other functions in the  
17          Health Department have seen similar dramatic  
18          reductions. There's a caveat, is that we  
19          have something called the Health Research,  
20          Incorporated. It's a kind of off-the-books  
21          part of the Health Department, and there are  
22          often jobs and money that's kind of stashed  
23          there. I would argue that the  
24          Health Department, if it wants a really full

1 view of the public health system, it needs  
2 transparency into HRI.

3 With respect to Medicaid, the picture  
4 actually is quite different. This is a  
5 program that's been growing rapidly. This  
6 year alone, its overall funding is projected  
7 to be up \$4 billion, or 5 percent. That's  
8 about twice the rate of inflation.

9 The structural imbalance in that  
10 program that existed before the pandemic is  
11 still there, it hasn't really been fully  
12 addressed, and we are sustaining this  
13 unsustainable funding with temporary federal  
14 aid. And when that temporary federal aid  
15 goes away, as it inevitably will, we're going  
16 to have a hole that's that much bigger to  
17 fill and that much more painful to deal with.

18 With respect to nursing homes, until  
19 just a couple of weeks ago, on February 10th,  
20 when the court ordered the Health Department  
21 to turn over the data, it was really  
22 impossible for people outside the Health  
23 Department to do any kind of in-depth  
24 analysis of policies around nursing homes,

1 including the March 25th guidance.

2 Using the data that the Empire Center  
3 obtained, we were able to find a  
4 statistically significant correlation between  
5 the admissions of coronavirus-positive  
6 patients into nursing homes and higher death  
7 rates in those nursing homes. It's on the  
8 order of several hundred additional deaths.  
9 So it doesn't explain the entire situation in  
10 nursing homes, but it was a contributing  
11 factor.

12 And this is one small part of what  
13 should be a larger in-depth investigation  
14 into the pandemic, so that we can figure out  
15 what went wrong and prepare ourselves so that  
16 it never happens again.

17 Thank you for listening.

18 CHAIRWOMAN KRUEGER: Thank you very  
19 much.

20 And next is Charles Bell, program  
21 director, Consumer Reports.

22 MR. BELL: Madam Chairs Krueger and  
23 Weinstein, Chairs Gottfried and Rivera,  
24 Breslin and Cahill, members of the committee,

1           thank you for your stamina and perseverance  
2           and indefatigable commitment to healthcare  
3           democracy.

4                        So Consumer Reports enthusiastically  
5           joins with Health Care for All New York,  
6           who's coming behind me on Panel G, to urge  
7           the Assembly and Senate to please adopt the  
8           language in the Patient Medical Debt  
9           Protection Act in both one-house bills.

10                      This act would provide common-sense  
11           protections to protect patients against  
12           medical debt and unfair billing practices, to  
13           lessen the interest rate for medical debts,  
14           and to avoid surprise billing. So we urge  
15           that adoption.

16                      Number two, the COVID-19 pandemic has  
17           brought home to all of us how a previously  
18           unknown disease can wreak havoc, not just on  
19           our lives in New York but worldwide. And so  
20           a key lesson of that is that we need to  
21           prioritize public measures for emerging  
22           threats and exercise strategic foresight.

23                      So in New York State we believe -- and  
24           many of our coalition partners, such as

1 NYPIRG and Center for Food Safety -- that we  
2 should work together to protect the continued  
3 effectiveness of medically important  
4 antibiotics like tetracycline and ampicillin  
5 by clamping down on their routine overuse and  
6 inappropriate use in both healthcare settings  
7 and farming.

8           And it's an astonishing fact that  
9 two-thirds of the medically important  
10 antibiotics that we rely on in the  
11 United States are given not to people, but  
12 administered to food animals -- not because  
13 the food animals are sick, but to prevent  
14 them from becoming sick because they're  
15 living in overcrowded and unsanitary  
16 conditions.

17           So in 2018 the New York State  
18 Department of Health worked on this report  
19 (showing), the Stop Antibiotic Resistance  
20 Roadmap plan, which was a great first step.  
21 And from that report we have learned that  
22 58 percent of 175 hospitals said they had an  
23 antibiotic stewardship program, which is very  
24 important, and we commend them. But that

1           also means that 73 hospitals did not, and so  
2           that needs follow-up.

3                       And the plan also acknowledged that  
4           agricultural overuse is a significant issue  
5           in New York State, but they did not put into  
6           place restrictive measures, a binding plan or  
7           a timetable to get it under control.

8                       So for that reason, we urge you to  
9           incorporate into the state budget language  
10          the Combating Antimicrobial Resistance Act,  
11          sponsored by Assemblymember Linda Rosenthal  
12          and Senator Kavanagh, which would prohibit  
13          the use of medically important antibiotics in  
14          food-producing animals for the routine  
15          purposes of disease prevention.

16                      We need New York State, as part of its  
17          budgetary activities and its operating  
18          practices, to implement a Stop Antibiotic  
19          Roadmap that actually solves the problem for  
20          both healthcare settings and for farming, and  
21          prevents the next pandemic. Fully 24 percent  
22          of our infections comes from the food that we  
23          eat and our farm animals. So we have to  
24          treat both sides of the equation.

1                   Antibiotics are life-saving drugs.  
2                   It's our civic and public health obligation  
3                   to protect them. Thank you very much.

4                   CHAIRWOMAN KRUEGER: Thank you very  
5                   much.

6                   Next we have Leishia Smallwood,  
7                   New York State Area Health Education System.

8                   MS. SMALLWOOD: Thank you, Madam  
9                   Chairs Krueger and Weinstein, Senator Rivera,  
10                  and the joint committee for hearing my  
11                  testimony tonight.

12                 Founded in 1998, New York State AHEC  
13                 System is a health workforce training  
14                 initiative federally funded to provide  
15                 education, training, and community services  
16                 to each and every county throughout New York  
17                 State. Our network aims to address the  
18                 health disparities in medically underserved  
19                 areas and increase diversity in the  
20                 healthcare workforce throughout New York  
21                 State.

22                 We know the importance of having  
23                 healthcare professionals be representative of  
24                 the population they serve, especially in

1 medically disadvantaged areas. We support  
2 this objective by recruiting health  
3 professions students from diverse  
4 backgrounds, with emphasis on minorities, to  
5 expand their formalized training through  
6 exposure to the health issues in the  
7 underserved communities, to attract their  
8 interest in working in these communities  
9 after graduation.

10 We believe in the "grow our own" model  
11 and providing health career exposure pipeline  
12 services for youth, putting them in hospital  
13 and clinical settings to cultivate their  
14 interest in the various health professions.

15 We provide clinical rotations and  
16 internships for future providers in both  
17 urban and rural settings to better understand  
18 those patient populations.

19 We connect health professions graduate  
20 students to medically underserved vacancies  
21 in the communities and promote debt reduction  
22 incentive programs for MUC practice.

23 We provide continuing education  
24 workshops and trainings for our current

1 healthcare providers on critical topics in  
2 the healthcare industry.

3 We facilitate opioid prevention and  
4 education programs for high schools,  
5 colleges, and the community. We coordinate  
6 MAT trainings, facilitate Narcan trainings  
7 for both high school and college students.

8 We support maternal health through our  
9 Doula Project to provide education and  
10 support services to women, especially  
11 minorities, to help reduce and prevent  
12 childhood births and deaths.

13 We support mental health as a partner  
14 with Project TEACH, funded through the Office  
15 of Mental Health to promote education,  
16 services and trainings provided to PCPs  
17 across the state in the rapid mental health  
18 diagnosis and treatment for children and  
19 adolescents.

20 During this pandemic we provide COVID  
21 workshop series to current health professions  
22 students entering the workforce, to educate  
23 them on topics like trauma-informed care and  
24 the effects of COVID-19, and proper PPE

1 utilization.

2 We do community education, going door  
3 to door in neighborhoods with high infection  
4 rates, handing out CDC guidelines for COVID  
5 safety.

6 We have a focus on working with  
7 organizations to track members to fill open  
8 positions. As we know, it's going to be  
9 exacerbated through this COVID, post-COVID.  
10 We know there's going to be service gaps and  
11 shortages. And we are looking to help be on  
12 the frontline to replenish and be a crucial  
13 provider to working with those organizations  
14 to identify workers that we've lost in the  
15 pandemic through sickness and fear.

16 This pandemic has provided many  
17 challenges to our network which limit our  
18 ability to work in an in-person environment  
19 with our students and community partners.  
20 AHEC adapted to this challenge and developed  
21 a robust virtual platform to continue our  
22 programming and services.

23 With our previous 20-year funding  
24 history with the state, we are seeking a

1 restoration of \$2.2 million in funding to  
2 continue to support the work and services  
3 that AHEC provides, but which many of our  
4 educational partners and students come to  
5 rely on greatly.

6 Thank you.

7 CHAIRWOMAN KRUEGER: Thank you very  
8 much. And our last speaker is Linda Aiken,  
9 professor and director, Center for Health  
10 Outcomes and Policy Research, University of  
11 Pennsylvania.

12 PROFESSOR AIKEN: Thank you so much.

13 I am Professor Linda Aiken from the  
14 University of Pennsylvania Center for Health  
15 Outcomes and Policy Research and the Leonard  
16 Davis Institute of Health Economics.

17 My remarks today are a brief summary  
18 of findings from our independent study  
19 related to pending legislation, the  
20 Safe Staffing for Quality Care Act, with  
21 regard to hospital staffing. More details  
22 are available in three peer-reviewed  
23 scientific publications in prominent medical  
24 journals.

1                   In January and February of 2020, right  
2                   before COVID, we conducted original research  
3                   on nurse staffing, surveying nurses from  
4                   116 acute-care general hospitals in New York  
5                   State. We linked these findings on staffing  
6                   levels to the clinical outcomes of  
7                   418,000 Medicare patients treated in these  
8                   same hospitals.

9                   Is hospital nurse staffing in the  
10                  state a problem that should be addressed?  
11                  And we conclude yes. We found that  
12                  patient-to-nurse staffing ratios in adult  
13                  medical and surgical units varied widely and  
14                  unjustifiably across hospitals, from  
15                  hospitals where nurses took care of four  
16                  patients each to hospitals where nurses took  
17                  care of almost 11 patients each. Remember,  
18                  this was before COVID and not counting ICU  
19                  staffing.

20                  These greatly varying ratios have  
21                  preventable negative consequences for  
22                  New York State residents. Our findings show  
23                  that every one patient increase in  
24                  patient-to-nurse ratios is associated with a

1           13 percent increase in risk-adjusted hospital  
2           death rates, and similarly in significant  
3           increases in length of stay and readmissions.

4                        So is the proposed legislation likely  
5           to improve patient outcomes and resource  
6           efficiency in New York State hospitals? And  
7           we conclude yes. We estimated that were all  
8           New York State hospitals staffed at the  
9           4:1 ratio proposed in the pending  
10          legislation, more than 4,370 deaths would  
11          have been avoided just among elderly Medicare  
12          patients. Many more deaths would have been  
13          avoided if all patients were counted.

14                       Savings of a minimum of \$720 million  
15          would have been achieved because of avoided  
16          days of hospital care, and those savings  
17          could be reinvested in employing more nurses.

18                       So in summary, the immense variation  
19          in patient-to-nurse ratios across hospitals  
20          in New York State results in significant  
21          numbers of avoidable deaths and unnecessary  
22          expenditures. Our study shows that setting  
23          reasonable minimum standards for safe  
24          hospital nurse staffing statewide is feasible

1 and in the public's interest.

2 Thank you.

3 CHAIRWOMAN KRUEGER: Thank you very  
4 much.

5 Any questions from my colleagues?

6 CHAIRWOMAN WEINSTEIN: Assemblyman Ra  
7 has a question.

8 CHAIRWOMAN KRUEGER: Certainly.

9 SENATOR RIVERA: Ra first, that's  
10 fine. Ra can go first, I can go second.

11 CHAIRWOMAN WEINSTEIN: Oh. Okay.

12 ASSEMBLYMAN RA: Thank you, Chair.

13 Good evening. I just had a quick  
14 question for Mr. Hammond.

15 You're a popular guy today. There was  
16 a question to the extent people knew you and  
17 everything else, but I'm sure you heard  
18 earlier, either directly or indirectly, that  
19 Commissioner Zucker spoke about -- basically,  
20 I mean, he stated in almost certain terms  
21 that he believed there was zero additional  
22 deaths as a result of the March 25th order.  
23 He left open the possibility that maybe there  
24 could be one, because he didn't want to say,

1           you know, never. But he said there wasn't  
2           any.

3                        So I was just wondering if you had any  
4           thoughts on those statements.

5                        MR. HAMMOND: I mean, I guess I would  
6           wonder what his basis is for saying that.

7                        His department published a report in  
8           July which made the case that it wasn't  
9           responsible for all of the deaths and it  
10          wasn't responsible for the peak of deaths,  
11          but it didn't actually address the question  
12          of whether it was a contributing factor.

13                       I mean, the kind of analysis that my  
14          colleague Ian Kingsbury and I did was kind of  
15          an obvious way of getting at that question.  
16          And it didn't appear like the  
17          Health Department had done that kind of  
18          analysis. They have much better data than we  
19          do, and so if they did, it would probably be  
20          a more accurate assessment.

21                       And so either they did the analysis  
22          and didn't like the results or they didn't do  
23          it at all. And so I don't think you can -- I  
24          don't know what the basis is for his

1 statement about that.

2 ASSEMBLYMAN RA: And, I mean, I would  
3 agree. And certainly, as you've said, you  
4 know, not having the underlying data to  
5 utilize until recently made it hard for  
6 anybody to do any independent look at this.

7 So I do -- I'd be remiss if I didn't  
8 thank you and the Empire Center for your  
9 persistence in obtaining that data, because  
10 despite the commissioner's representations  
11 that it would have been provided for this  
12 budget hearing, I don't believe for a second  
13 we would have seen the information if they  
14 weren't forced to do so by a court.

15 So thank you for that and for your  
16 good work on the issue.

17 CHAIRWOMAN KRUEGER: Gustavo Rivera.  
18 You're muted.

19 SENATOR RIVERA: Here we go. Yup, I  
20 gotcha. Thank you so much, Madam Chair.

21 Mr. Bell, first of all, good evening.  
22 And good evening to everybody else,  
23 obviously. But I wanted for you to talk a  
24 little bit more -- I'm very thankful of your

1           plug for the Patient Medical Debt Protection  
2           Act. And the -- the -- if you could talk a  
3           little bit more about the concerns that you  
4           have, based on your experience, your deep  
5           knowledge about consumers and how consumers  
6           are affected by medical debt.

7                     And I will -- so if you could tell us  
8           a little bit more about why you think it's so  
9           important to pass it in the State of  
10          New York. Because I know you mentioned it in  
11          passing in the middle of all the other  
12          things.

13                    Go ahead.

14                    MR. BELL: Oh, sure, sure.

15                    So Community Service Society has done  
16          an excellent job documenting some of the  
17          actions, legal actions that have been carried  
18          out against patients in New York State. But  
19          essentially there have been over 50,000  
20          lawsuits against patients for hospital-based  
21          medical debts in the last five years in  
22          New York State.

23                    And we are just like super-concerned  
24          that during a pandemic where it's hard for

1 people to keep well, people absolutely may  
2 need medical care. And it's their right,  
3 it's their absolute right to get it. We want  
4 people to be able to get medical care in the  
5 U.S. with full dignity and respect.

6 And so while we want to eliminate the  
7 financial barriers on the front end, we don't  
8 want the surprise financial gotchas on the  
9 back end. And too often, you know, consumers  
10 are basically running a maze.

11 And so within this bill, which we  
12 worked on with your employee and our dear  
13 friend in the Senate, Kristin Sinclair --

14 SENATOR RIVERA: Yes, you did.

15 MR. BELL: Yeah, who did a fantastic  
16 job -- we put together several measures that  
17 we think that really would improve the  
18 patient experience of care and simplify  
19 medical billing, which would also be probably  
20 a boon for both our providers and our health  
21 payers.

22 We don't want people to be leaving the  
23 hospital with financial stress and other  
24 psychological complications that come with

1           that. And these -- one of the measures is to  
2           say to hospitals, Could you please create a  
3           simplified medical billing system so we can  
4           get one bill for a hospital visit instead of  
5           30 bills and 30 different explanation of  
6           benefit forms.

7                         There has to be a way in the  
8           United States that we could simplify the  
9           administration of billing. New York Health  
10          absolutely is one way that we could do that.  
11          I personally am like a huge --

12                         SENATOR RIVERA: I look forward to  
13          working with you on this. I only have  
14          30 seconds --

15                         (Overtalk.)

16                         MR. BELL: We need to make it simpler  
17          for the patients. And then also  
18          standardizing the charity assistance is very  
19          important --

20                         SENATOR RIVERA: -- work with you to  
21          pass it --

22                         MR. BELL: There are other things in  
23          there we need to get done.

24                         SENATOR RIVERA: I need my last

1 15 seconds to say, Bill --

2 MR. HAMMOND: Yes, sir?

3 SENATOR RIVERA: I don't know if this  
4 is worth anything, sir, but I sure know who  
5 you are.

6 (Laughter.)

7 SENATOR RIVERA: And I also -- I  
8 also -- I will say this for the record, I  
9 respect your work immensely. And just like  
10 you were thanked before by Assemblymember Ra,  
11 thank you so much for continuing to do the  
12 work relentlessly on this to make sure that  
13 we got to the truth. So --

14 MR. HAMMOND: Thank you, Senator.

15 CHAIRWOMAN KRUEGER: Thank you.

16 Any other Assemblymember?

17 CHAIRWOMAN WEINSTEIN: No, but I  
18 believe you have another Senator.

19 CHAIRWOMAN KRUEGER: Well, we have me.  
20 Who else do we have?

21 CHAIRWOMAN WEINSTEIN: I see Sue  
22 Serino's hand raised.

23 CHAIRWOMAN KRUEGER: Oh, hello. I  
24 didn't see you in the darkness, excuse me.

1 Sue Serino, please go first.

2 SENATOR SERINO: Thank you,  
3 Madam Chair.

4 And Bill and everybody, thank you so  
5 many for all of your hard work. Greatly  
6 appreciate it.

7 And Bill, you've been very clear  
8 about -- over the last four months about the  
9 need to use everything that we've learned  
10 during this time to ensure the state is  
11 better prepared to act in the future. You've  
12 pointed out that that's actually the reason  
13 that data is so important when we're talking  
14 about these health issues, because that data  
15 is what actually informs policies and makes  
16 all the difference between sort of spinning  
17 our wheels versus making effective changes.

18 So with that in mind, my question is  
19 for everyone on this panel. Based on what  
20 you know today, what can the state do  
21 today -- starting with this budget, I  
22 guess -- to be better prepared to act with  
23 this current pandemic still raging, and in  
24 the face of any future pandemic, maybe to be

1 better prepared for the current pandemic too?  
2 We know the numbers are still concerning and  
3 we're seeing the changing strands as well.

4 So that's open to everybody.

5 MR. HAMMOND: I would -- my first  
6 recommendation would be to conduct an  
7 investigation, make it as independent as  
8 possible, make it as in-depth as possible.  
9 And that way it would kind of start with a  
10 lot more transparency about what happened.

11 I mean, we had to engage in a  
12 months-long court battle to get one data set  
13 out of what would probably be hundreds if not  
14 thousands of data sets. So we would need the  
15 cooperation from the Cuomo administration to  
16 get to the bottom of things.

17 But you can't really -- I mean, my  
18 testimony was about -- implied that we need  
19 to invest in our public health  
20 infrastructure. But we don't really know  
21 what part of that infrastructure to invest in  
22 until we have a better understanding of what  
23 happened. It's very easy to get caught up in  
24 narratives and theories about, you know, was

1           it Italian tourists or was it the subway  
2           or -- you know, there are different theories  
3           about why New York was hit so hard.

4                        I think we really ought to try and  
5           understand more definitively what the bottom  
6           line was.

7                        SENATOR SERINO: Thank you, Bill.

8                        PROFESSOR AIKEN: I'll add there, if I  
9           could, on the nurse staffing issue.

10                      The title of one of our papers is  
11           "Chronic Hospital Nurse Understaffing Meets  
12           COVID-19." And this is exactly the situation  
13           in New York State. And New York City has the  
14           worst staffing in the state. And New York  
15           City of course is a gateway city for all  
16           kinds of communicable diseases coming in  
17           through the three airports.

18                      So it's already well known that  
19           New York City and New York State has  
20           substandard nurse staffing in their hospitals  
21           compared to other states. This is an  
22           example. Patients and hospitals in New York  
23           get three hours fewer RN hours per day than  
24           patients in California. This is a lot of

1 nursing care.

2 So, you know, the evidence is clear.  
3 If we want to be better prepared for a surge  
4 in the future, we need to fix what's going on  
5 in normal circumstances.

6 SENATOR SERINO: Yup, thank you. I  
7 agree.

8 CHAIRWOMAN KRUEGER: Professor, I have  
9 a follow-up for you.

10 First off, thank you for being here  
11 tonight, because I think it does highlight  
12 the value of actually doing research and  
13 finding out what's happening.

14 So you just said California offers  
15 three hours more of nursing per day than  
16 New York City. Do they spend that much more  
17 on healthcare than we do per person? My  
18 understanding was they didn't.

19 PROFESSOR AIKEN: No, they don't. And  
20 they have a mandate -- of course, everybody  
21 probably knows California has a similar  
22 mandate to what's being proposed in New York.

23 It was an unfunded mandate. The  
24 hospitals were able to meet the mandate

1 without any closures, and the safety-net  
2 hospitals in particular improved their  
3 staffing dramatically. So it touched on all  
4 of the things -- very positive results from  
5 California.

6 CHAIRWOMAN KRUEGER: Thank you very  
7 much for that.

8 CHAIRWOMAN WEINSTEIN: We have -- oh,  
9 I'm sorry.

10 CHAIRWOMAN KRUEGER: Sorry. I was  
11 just going to say: Bill, yes, thank you for  
12 your work.

13 Sometime you're going to explain to me  
14 why you agree with me completely on the  
15 importance of expanding our public health  
16 system but you basically have a problem with  
17 Medicaid, which is ensuring that we have  
18 funding for almost every New Yorker to  
19 actually now have health insurance. So --  
20 but not tonight, because we only have three  
21 minutes. But we'll sit and we'll talk about  
22 that.

23 And Chuck Bell, I swear, we kept  
24 fixing the surprise bills. Didn't we get

1           that bill done last year? Why does it  
2           keep -- it's like a whack-a-mole, it keeps  
3           coming back.

4                       MR. BELL: Well, we have an  
5           extremely --

6                       CHAIRWOMAN KRUEGER: -- the Cahill  
7           guy, yeah.

8                       MR. BELL: Yeah. We have an extremely  
9           complex system.

10                      But the particular thing that the fix  
11           that the Patient Medical Debt Protection Act  
12           would make would be to clarify the issue that  
13           when you get incorrect provider directory  
14           information, that you relied on the  
15           provider's assurance that he or she  
16           participates in your healthcare network, or  
17           you relied on the insurance company directory  
18           and it turned out to be incorrect, that the  
19           patient would be fully protected from  
20           surprise billing in that circumstance.

21                      And that is eminently fair. We're  
22           asking consumers to do a lot of work to  
23           consult those directories and go to  
24           in-network providers, and then when they

1 follow all the rules, they should not be  
2 penalized for doing that.

3 So it's very straightforward. I don't  
4 think anyone really disagrees --

5 CHAIRWOMAN KRUEGER: Right.

6 MR. BELL: -- that the fix should be  
7 made, except it becomes a clash between  
8 different interest groups.

9 CHAIRWOMAN KRUEGER: Just like last  
10 year's story. Okay, thank you very much.

11 Sorry, Helene, I kept cutting you off.

12 CHAIRWOMAN WEINSTEIN: I was just  
13 going to say we have a number of  
14 Assemblymembers, so we'll start first with  
15 Kevin Cahill.

16 ASSEMBLYMAN CAHILL: I will be very  
17 brief, thank you very much.

18 Senator Krueger, yes, there are still  
19 a few little things we have to do to tinker  
20 with the surprise billing law. But also  
21 there's a significant amount that we have to  
22 do with medical debt. And we're going to  
23 both work on both of those things.

24 I will just take a few moments, not to

1 ask any questions but to thank each and every  
2 one of you panelists, and remind you that  
3 this is the just the beginning of the part  
4 where we need you most. You are people who  
5 analyze problems and then give us good,  
6 substantive analysis that allows us to plan  
7 for the future.

8 And we can't really always do that in  
9 the middle of the crisis, but I honestly feel  
10 that we are on the way out of this crisis,  
11 and this is exactly the time where we have to  
12 examine every aspect of it and try to make  
13 sure we do it better so that the next time  
14 things are not as bad as this time.

15 So I thank each and every one of you  
16 for not only your testimony, but for your  
17 good work along the way. And Bill Hammond,  
18 you're my favorite guy to always disagree  
19 with except for those occasional times when  
20 we agree, so -- and this happens to be one of  
21 them. Thank you.

22 CHAIRWOMAN WEINSTEIN: Thank you.

23 So Kevin Byrne?

24 ASSEMBLYMAN BYRNE: Chair, just a

1 quick question before we start. Everyone  
2 gets what, one round, on these panelists,  
3 right?

4 CHAIRWOMAN WEINSTEIN: Yes. Yes.

5 ASSEMBLYMAN BYRNE: Okay, thank you.

6 CHAIRWOMAN WEINSTEIN: Three minutes.

7 ASSEMBLYMAN BYRNE: Three minutes,  
8 thank you.

9 So I'm going to just go to Bill  
10 Hammond. And I have three questions, so I'll  
11 try to be efficient with my time.

12 One, our state's Medicaid budget,  
13 \$82.9 billion -- that's the federal, state,  
14 local share. It's going to extend the  
15 Medicaid Global Cap. Is that still  
16 effective, do you think, in controlling any  
17 sort of costs in our state budget?

18 MR. HAMMOND: It's a lot less  
19 effective, because it's been -- it's been  
20 riddled with loopholes and exceptions. And  
21 it's been kind of disregarded. The monthly  
22 reports have stopped. The Governor's never  
23 actually enforced it.

24 I think it would have been useful a

1 couple of years ago to contain the deficit  
2 that was developing before it got too large.

3 ASSEMBLYMAN BYRNE: Understood.

4 I also want to thank you and the  
5 Empire Center, Bill, for all your work this  
6 past year on many issues. But I think it's  
7 shocking that I could find more information  
8 about nursing home data on the Empire  
9 Center's website than the Department of  
10 Health's website.

11 And it's alarming to me that the  
12 Department of Health continues to conflate  
13 total state numbers with nursing home  
14 resident numbers. And to my knowledge, the  
15 July report that's commonly referenced by the  
16 Department of Health defending the March 25th  
17 directive, in many cases they didn't use  
18 statewide numbers. They used nursing home  
19 resident numbers, just not those that died in  
20 a hospital.

21 Would that be correct?

22 MR. HAMMOND: That's correct.

23 ASSEMBLYMAN BYRNE: So I think they  
24 understand the difference and they just seem

1 to be spinning the story now.

2 A last question, since I think  
3 everyone just gets one question, I get the  
4 last word here. The New York so-called  
5 Health Act was brought up a couple of times  
6 and I have concerns about the lower  
7 reimbursement rates; you know, when the  
8 public sector costs the state increased  
9 taxes, you know, the effects on quality care.

10 Do you have any -- you can use the  
11 rest of my time to maybe, you know, offer  
12 your opinions on what that would do and why  
13 perhaps this is not the time to take on such  
14 a costly program in New York.

15 MR. HAMMOND: Well, it would be  
16 enormously expensive. It would require tax  
17 increases beyond anything that's been  
18 proposed even in the current Legislature.

19 But also I think it's kind of missing  
20 the point. I mean, I know that there are  
21 certain ways in which a single-payer system  
22 might have helped during the crisis. But the  
23 public health system is the part that would  
24 have prevented the crisis, or would have

1 minimized the crisis.

2 The -- the public health system is the  
3 one that would have made it unnecessary for  
4 people to go to the hospital in the first  
5 place, and would have made it unnecessary for  
6 us to shut down visitation in nursing homes.

7 It's --

8 ASSEMBLYMAN BYRNE: A unified vaccine  
9 distribution would probably make sense, but  
10 not -- I don't think you need a single payer  
11 for that. But I just wanted to chime in on  
12 that point. I think that would have been  
13 helpful too, to your point.

14 Thank you. That was -- I know Mr. --  
15 that Chairman Rivera has had some very nice  
16 words about you, and I just figured I'd drop  
17 that in since he already asked his question.

18 Thank you.

19 (Laughter.)

20 CHAIRWOMAN WEINSTEIN: Okay. We go to  
21 Assemblyman Jensen, who maybe has some nice  
22 things to say about Bill Hammond.

23 ASSEMBLYMAN JENSEN: You know what? I  
24 have nice -- I do have something to say,

1 Bill. Not a question. But I do notice that  
2 you're the only panelist today, only witness  
3 who has a bookcase without Bill Clinton's  
4 My Life on it. So that is something I did  
5 notice.

6 But my question is actually for  
7 Professor Aiken. And forgive me, I haven't  
8 read your -- UPenn's research on the safe  
9 staffing bill, but I just want to ask you a  
10 couple of quick questions about your  
11 research.

12 So looking at -- reviewing your data,  
13 so you mentioned that New York City sees the  
14 most troublesome staffing levels. Is there  
15 any merit, based on the numbers between  
16 upstate and downstate, to maybe doing a  
17 phased-in approach starting with New York  
18 City and then moving towards the rest of the  
19 state on that sort of model?

20 Secondly, the question is did your  
21 research look at -- to increase the staffing  
22 numbers and the ratios, about the  
23 availability of nurses, RNs, the rest of the  
24 nursing care teams, and the availability of

1           those staff members to reach those mandated  
2           ratios in the hospitals in New York?

3                   PROFESSOR AIKEN:  Yes.  Well, let  
4           me -- thank you for those questions.  Let me  
5           take the last one first, on the issue of  
6           whether New York has enough nurses.

7                   And this is a common reason why states  
8           consider staffing ratios but don't adopt  
9           them.  And there's a lot of misinformation  
10          about the supply of nurses.

11                   So New York State has substantially  
12          more nurses per population than, for example,  
13          California that has already passed such  
14          legislation.  So for example, in New York  
15          State there are almost 19 nurses per  
16          1,000 population.  And in California, they  
17          only have 11 nurses per 1,000 population.  So  
18          there are sufficient nurses in New York  
19          State.

20                   Moreover, there are 34 other states  
21          that have adopted the nursing licensure  
22          compact, which allows for multi-state  
23          licensure.  Now, New York State hasn't  
24          adopted that and so the Governor had to, in

1 his emergency powers, waive that requirement  
2 during the pandemic. That wouldn't be  
3 necessary if New York State went along with  
4 the other 34 states and passed that  
5 legislation.

6 We are graduating now 170,000 new  
7 nurses coming into the workforce every year  
8 in our country. I know earlier today there  
9 was some discussion about increasing the  
10 supply. We really have quite a robust supply  
11 of nurses in the U.S.

12 On the issue of the phase-in, I think  
13 certainly New York City is of concern because  
14 of the communicable disease threat posed by  
15 the airports in New York City. But I don't  
16 know that I think necessarily phasing it in  
17 by region would be the way to go. I think  
18 giving hospitals a period of time to get  
19 ready for it and not pass it immediately on  
20 them would be a better thing, but to pass it  
21 statewide.

22 ASSEMBLYMAN JENSEN: Okay. I think  
23 I -- I have more questions, but I've run out  
24 of time. So thank you.

1 CHAIRWOMAN WEINSTEIN: Thank you.

2 Senator Krueger, I think we're  
3 finished with this panel.

4 CHAIRWOMAN KRUEGER: We are finished  
5 with this panel. Thank you very much. I was  
6 just looking at a memo that came in.

7 Thank you all for being with us and  
8 for reminding us of the value of doing  
9 research and real-life experience impacting  
10 where we go next in New York State.

11 And the next panel will be made up of  
12 Amanda Dunker, Health Care for All New York;  
13 Elisabeth Benjamin, vice president of health  
14 initiatives, Community Service Society of  
15 New York; Lara Kassel, coalition coordinator,  
16 Medicaid Matters New York; Louise Cohen, CEO,  
17 Primary Care Development Corporation; and  
18 Anthony Feliciano, Commission on the Public's  
19 Health System.

20 Hello, everyone. And I hope you're  
21 all there. We'll just call out your name and  
22 see if you pop up to talk.

23 Amanda Dunker.

24 MS. DUNKER: Hi. Thank you for the

1 opportunity to testify tonight. I'm  
2 testifying on behalf of the Health Care for  
3 All New York Coalition, which represents over  
4 170 member organizations statewide, and we  
5 work on ensuring that New Yorkers have health  
6 coverage and have access to affordable,  
7 quality healthcare.

8 I am going to leave medical debt for  
9 the next speaker and highlight four other  
10 budget issues related to healthy equity in my  
11 testimony.

12 New York's health policies  
13 systematically underfund care for low-income  
14 and even moderate-income New Yorkers. Years  
15 of this means that surviving COVID-19 comes  
16 down to your wealth or your race for many  
17 New Yorkers. So first is that New York has  
18 failed to ensure that everyone has health  
19 insurance. There are no coverage expansions  
20 proposed in this budget.

21 One solution would be to enact the  
22 New York Health Act. That would cover  
23 everyone. It would eliminate differences in  
24 providers' financial stability based on the

1           wealth of their patients.

2                       At a minimum, the budget should expand  
3           Essential Plan coverage to immigrants who are  
4           income-eligible and have had COVID-19 but are  
5           excluded because of their immigration status.  
6           Immigration status is still one of the  
7           biggest barriers to coverage in New York.  
8           It's -- 20 percent of people who are without  
9           U.S. citizenship in New York are uninsured,  
10          compared to 5 percent of the general  
11          population.

12                      Expanding coverage for them through  
13          the Essential Plan would make an enormous  
14          difference for some of the hardest-hit  
15          communities in New York State, and it would  
16          ensure that the hospitals who care for people  
17          in those communities receive revenue for that  
18          care.

19                      Second, public hospitals should not be  
20          excluded from receiving Indigent Care Pool  
21          funds. The purpose of the Indigent Care Pool  
22          is to support hospitals that care for people  
23          who are enrolled in Medicaid or are  
24          uninsured. Public hospitals serve far more

1 of those patients than New York's private  
2 hospitals, and they should not lose access to  
3 Indigent Care Pool funds.

4 New York has to ultimately change how  
5 indigent care pool funding is distributed.  
6 If New York had chosen to use those funds  
7 exclusively for safety-net hospitals over the  
8 past 20 years, they would have received over  
9 \$13 billion more in funding.

10 Third, safety-net providers should be  
11 protected from across-the-board Medicaid rate  
12 cuts. New York State law categorizes  
13 hospitals who serve the most uninsured or  
14 Medicaid-covered patients as enhanced  
15 safety-net providers. Those hospitals should  
16 be protected from rate cuts.

17 There are big differences in payer mix  
18 at hospitals across New York, so Medicaid  
19 hospitals -- hospitals that serve more  
20 Medicaid patients -- obviously are hurt much  
21 more by these across-the-board Medicaid cuts.  
22 Some hospitals only have 2 percent of their  
23 patients covered by Medicaid. There's others  
24 where it's up to 80 percent.

1                   The Medicaid Global Cap that triggered  
2                   those cuts should be repealed. The fact that  
3                   New York is cutting rates for hospitals in  
4                   the midst of a health and economic crisis of  
5                   this scale, and is specifically targeting  
6                   hospitals that serve the most affected  
7                   communities with those cuts, is a perfect  
8                   illustration of what is wrong with the  
9                   Medicaid Global Cap.

10                   Finally, I would like to point out  
11                   that the majority of people hospitalized for  
12                   COVID-19 are still hospitalized in New York  
13                   City, and reductions in state funding for  
14                   public health programs that only apply to  
15                   New York City are inconsistent with what  
16                   public health data is telling us to do.

17                   Thank you.

18                   CHAIRWOMAN KRUEGER: Thank you.

19                   Next we have Elisabeth Benjamin,  
20                   Community Service Society of New York.

21                   MS. BENJAMIN: Thank you.

22                   First of all, you know, big shout-out  
23                   to you, Chairwoman Krueger, Chairwoman  
24                   Weinstein, Chairman Gustavo Rivera,

1 Chairman Cahill. You all are lions, you  
2 know, as Chuck Bell said -- I mean, just  
3 hanging in there and hearing true democracy  
4 happen. And thank you for your service and  
5 for your service to the public of New York  
6 State.

7 I really want to speak about three  
8 things. First of all, of course, we support  
9 everything at the Community Service Society  
10 that Amanda Dunker just spoke about on behalf  
11 of Health Care for All New York. But I'd  
12 like to focus on the Essential Plan, the  
13 Patient Medical Debt Protection Act, and  
14 consumer assistance programs.

15 In terms of the Essential Plan, the  
16 Affordable Care Act gives us the money to  
17 fund the Essential Plan. And it's called the  
18 Basic Health Plan in the Affordable Care Act;  
19 we renamed it the Essential Plan. And we  
20 have a \$4.5 billion surplus, thanks to the  
21 federal government, in our Essential Plan  
22 trust fund, as Donna Frescatore testified  
23 today.

24 Now, great news that the Cuomo

1 administration is trying to get rid of the  
2 \$20 premium for medical benefits. But the  
3 Affordable Care Act is extremely clear: The  
4 surplus of the trust fund should only be  
5 spent on improving benefits or reducing  
6 premiums for the beneficiaries.

7 Instead, the Cuomo administration is  
8 suggesting to spend \$650 million on a -- what  
9 do they call it? -- some kind of program for  
10 the insurance carriers, and a \$450 million  
11 rate hike for the providers. Now, at the  
12 same time they're saying we should still  
13 require beneficiaries to spend \$30 to cover  
14 their vision and dental.

15 The first and foremost thing we should  
16 do, under the Affordable Care Act, is get rid  
17 of that \$30 premium for vision and dental for  
18 Essential Plan beneficiaries. These people  
19 are below 200 percent of poverty; they don't  
20 have an extra \$30 a month to pay for vision  
21 and dental. That's \$150 million.

22 What you do with the remaining surplus  
23 after that is another question that I'll  
24 leave for another day. But number one, we

1           should be getting rid of that stupid vision  
2           and dental premium, \$30 per member per  
3           month -- \$150 million. And then -- you know,  
4           and we have plenty of money, we have  
5           \$4.5 billion.

6                         Second, we really think that it's time  
7           to level the playing field between the  
8           patients and the industry. Medical billing  
9           is a nightmare in New York State. You know,  
10          we have one gentleman that went in for a  
11          kidney stone; he came out with 28 different  
12          bills. That's not okay. One visit, one  
13          bill. You go into the hospital, you should  
14          come out with one consolidated bill that  
15          explains what's going on.

16                        Number two, our -- people are being  
17          sued -- oh, my gosh, I'm already out of time.  
18          Fifty thousand people have been sued, over  
19          5,000 people during the pandemic. We have to  
20          get rid of this 9 percent interest rate for  
21          people in judgments.

22                        And last but not least, thank you for  
23          your support for the consumer assistance  
24          programs. I'll take questions. I'm sorry, I

1 ran out of time.

2 CHAIRWOMAN KRUEGER: Okay. That's all  
3 right. We're going to continue on before we  
4 take questions.

5 Lara Kassel, Medicaid Matters  
6 New York.

7 MS. KASSEL: Good evening. Thanks  
8 very much.

9 I am Lara Kassel, I'm the coordinator  
10 of Medicaid Matters New York. We are the  
11 statewide coalition representing consumer  
12 interests in Medicaid.

13 Thank you so much for being here at  
14 this late hour. Thank you so much to your  
15 staff. I would be remiss if I did not thank  
16 them as well. We can't see them, but thank  
17 you so much, staff.

18 And I would also be remiss, I feel, if  
19 I would not make the suggestion that perhaps  
20 a hearing this long be broken up into more  
21 than one day, that perhaps you do the  
22 government officials in one day and the rest  
23 of us on the next day. Just a suggestion for  
24 next year.

1 I'm going to move through as quickly  
2 as possible, in particular because some of my  
3 other colleagues on this very panel have  
4 touched on, or will -- are about to touch on,  
5 I believe, some of the same issues.

6 You know, we are very pleased, for  
7 instance, about the elimination of the  
8 Essential Plan premiums, but let's go further  
9 than that and use some of the trust fund  
10 money to eliminate the dental and vision  
11 premiums.

12 We are very pleased that this budget  
13 does not include direct cuts to eligibility  
14 for programs, like previous years. Last  
15 year's budget restricted eligibility for  
16 home-based care through the Managed Long-Term  
17 Care Program. We would be much happier if  
18 this budget went even further. It doesn't do  
19 any cuts; let's make it go further by  
20 repealing last year's eligibility program  
21 changes.

22 With those things said, this budget  
23 really fails to help New York get closer to  
24 where we need to be as it relates to health

1 equity and promoting a system that emphasizes  
2 community-based services. We need this  
3 budget to invest in the home care workforce.  
4 Medicaid Matters supports the Fair Pay for  
5 Home Care Campaign and the restoration of the  
6 Home Care Recruitment and Retention Fund.

7 We also need this budget to protect  
8 safety-net providers -- community health  
9 centers that rely on the 340B program,  
10 essential safety-net hospitals. We need  
11 hospitals that meet the definition of  
12 essential safety net not to be cut by  
13 across-the-board cuts. And we need public  
14 hospitals to receive Indigent Care Pool,  
15 hospital charity care funding. They are the  
16 ones that provide much more services to  
17 people who are low-income, uninsured, people  
18 on Medicaid; they should be the ones to get  
19 the allocation from the charity care funding.

20 What this brings me to in my  
21 15 seconds is that we must repeal the  
22 Medicaid Global Cap. None of these  
23 investments will be possible with the cap in  
24 place.

1                   And with the last few seconds, I  
2                   really want to urge folks to consider  
3                   restoring funding for adult home residents.  
4                   The funding for advocacy that supports them  
5                   and the funding for services outside of their  
6                   daily -- what do you call it, per diem or  
7                   whatever, has been cut, and we need that  
8                   funding to be restored.

9                   Thanks.

10                  CHAIRWOMAN KRUEGER: Thank you.

11                  Our next speaker is from the Primary  
12                  Care Development Corporation, Louise Cohen.

13                  MS. COHEN: Great. Thank you for  
14                  letting me testify here today, and I  
15                  appreciate all of your work and the work of  
16                  your staff. I echo what my colleagues have  
17                  said.

18                  For those of you who don't know us,  
19                  the Primary Care Development Corporation is a  
20                  not-for-profit community development  
21                  financial institution dedicated to building  
22                  excellence and equity in primary care.

23                  So I have a couple of points I'd like  
24                  to make here today. The first one is I

1           continue to suggest and to urge you to reject  
2           the harmful cuts to Medicaid that have been  
3           proposed in the Governor's budget. These  
4           will certainly jeopardize primary care in a  
5           very significant way.

6                         And that we think that any additional  
7           dollars in Medicaid should be going towards  
8           building the primary care system. We know  
9           that primary care is about prevention, it's  
10          about early diagnosis and treatment, and  
11          those are the things that reduce cost at the  
12          other end of the healthcare scale.

13                        You've heard a lot about 340B, and I'm  
14          also here to urge you to oppose the 340B  
15          carve-out. But I want to give a little bit  
16          of a different perspective.

17                        As a community lender -- for example,  
18          we have lent millions of dollars to  
19          Callen-Lorde, who you heard from earlier, in  
20          order to create -- help them create their  
21          facilities and build out facilities in both  
22          Manhattan and in Brooklyn. And we know that  
23          originally when we lent to them, no bank was  
24          going to lend to them, so it really required

1 a community development financial  
2 institution.

3 Well, this 340B situation is going to  
4 ensure that a number of FQHCs and certainly  
5 aid service organizations are potentially  
6 going to default. And that means that no  
7 bank, no commercial lender will ever lend to  
8 them again. And so what you're actually  
9 doing is not only destabilizing them from an  
10 operational point of view, you're actually  
11 destabilizing them from the long-term-capital  
12 point of view. And I think that's a  
13 perspective that perhaps has not been brought  
14 out as much in the 340B conversation.

15 I also want to tell you a little bit  
16 about some research that we've done at the  
17 Primary Care Development Corporation with  
18 funding from the Legislature from last year.  
19 We looked at FQHC penetration into New York  
20 State and its relationship to COVID-19  
21 sickness and death, and here's what we found.

22 In New York State we found,  
23 unsurprisingly, where people delayed  
24 healthcare due to cost and where there are

1 large numbers of people without health  
2 insurance, there was more COVID sickness and  
3 death.

4 But we also found that  
5 neighborhood-level COVID-19 mortality rates  
6 are lower in communities with a greater  
7 number of federally qualified health centers,  
8 particularly in counties with high rates of  
9 uninsurance. And while we know that  
10 communities that had fewer primary care  
11 providers before COVID-19 had worse outcomes  
12 during COVID-19, what we also know is that  
13 going forward, unless we flip that and we  
14 increase the amount of primary care, that  
15 we're going to continue to have these  
16 devastating impacts, particularly on  
17 low-income communities of color.

18 And so this reinforces the idea that  
19 in the safety net, the safety net is  
20 essential, that Medicaid should provide more  
21 access to primary care, and that the 340B  
22 carve-out will have significant negative  
23 impacts on communities that you all serve.

24 Thank you.

1 CHAIRWOMAN KRUEGER: Thank you.

2 And our last, but certainly not our  
3 least -- although we did let a man sneak onto  
4 this panel. How did that happen?

5 Anthony Feliciano, Commission on the  
6 Public's Health System. How are you doing?

7 MR. FELICIANO: Good evening,  
8 everyone. As stated before, I'm Anthony  
9 Feliciano. I'm the director of the  
10 Commission on the Public's Health System. I  
11 also serve on the board of APICHA Community  
12 Health Center. I also serve on the board of  
13 the Campaign for New York Health.

14 As advocates we often talk about  
15 austerity hits the poorest the hardest, we  
16 talk about consequences of cutting money for  
17 public health and Medicaid for far higher  
18 costs in the future and long-term impacts to  
19 marginalized communities. But I want to say,  
20 as a person who's a Latino, we're hurting  
21 now. We've been hurting for years when it  
22 comes to care and access. And it's not just  
23 us -- people with disabilities, women,  
24 children, a range of marginalized

1 communities, including indigenous people.

2 So it's clearly, to me, an attack by  
3 the Governor, and to me it's a racist attack  
4 in many ways when we cut public health  
5 funding in certain ways. So, you know, we  
6 ask that, one, we restore funding for  
7 Article VI programs to New York City and  
8 ensure full state reimbursement back to  
9 36 percent. We want to strengthen our city's  
10 public health system.

11 And you have seen in my testimony the  
12 amount of services that are impacted, which  
13 means the types of communities that are being  
14 impacted, communities of color and other  
15 communities.

16 But I want to talk of the notion that  
17 New York City can access federal dollars, and  
18 it was mentioned even the CDC. Those sources  
19 of federal funding sometimes are not  
20 fungible, right? And it's misguided to think  
21 that New York City is not looking for every  
22 dollar that they can on the federal level.  
23 But it is really misguided to think this way.  
24 And it's really discriminatory to New York.

1           The other thing is obviously what our  
2           colleagues have said, is limiting any  
3           proposal, reject it, to eliminate the state's  
4           share of the Indigent Care Pool to our public  
5           hospitals, to add language that protects our  
6           enhanced safety net providers from the 1  
7           percent across-the-board cuts, to repeal the  
8           global spending cap. And it was mentioned  
9           before, but the global spending cap has  
10          similar effects to what conservative states  
11          are doing when they have block grants, and  
12          what's happening there.

13          So the other thing, as someone who's  
14          on the board of a community health center, is  
15          to reject the Governor's 340B cuts. I really  
16          think we should penalize wasteful executive  
17          pay and non-patient-care spending, support  
18          various proposals from Invest in Our New York  
19          on the tax breaks that the super-rich are  
20          getting, pass the New York Health Act, ensure  
21          safe staffing.

22          But really, if we really want to be  
23          anti-racist, then we need to invest in our  
24          communities and in the services that they

1           rely on and not undercut it while we're in a  
2           pandemic. And to be honest, it's not like  
3           racism is going to go away after the  
4           pandemic. But we're not prepared as a city  
5           to deal with any new pandemics, and we can  
6           see COVID-19 as a disease being endemic as  
7           part of the registry {sic} that we're going  
8           to have to deal with for a very long time.

9                     Thank you.

10                    CHAIRWOMAN KRUEGER: Thank you.

11                    Questions from my colleagues?

12                    Gustavo Rivera.

13                    SENATOR RIVERA: I got a few, very  
14                    quick.

15                    Thank you so much for hanging out with  
16                    us this late in the evening. You covered a  
17                    lot of things that are important.

18                    I'll start by saying that as far as  
19                    Anthony's point about the continuing impact  
20                    of health inequities in communities of color  
21                    and poor communities, that's something that's  
22                    kind of built into the system for a very long  
23                    time, and therefore we have to act  
24                    proactively to push it back, which is where

1 the medical debt protection act -- which I'm  
2 going to go to you in a second, Elisabeth  
3 Benjamin -- as well as the New York Health  
4 Act, which we've talked about a little bit  
5 today but we certainly can talk about it a  
6 little bit more.

7 But Elisabeth, if you wanted to kind  
8 of talk a little bit -- I mean, I know that  
9 Chuck talked about it before, but as far as  
10 the Medical Debt Protection Act and how it  
11 has impacted exactly what Anthony was talking  
12 about, whether we're talking about  
13 communities of color that have had historic  
14 inequities in healthcare -- are they impacted  
15 worse by medical debt? And would this bill  
16 actually help those communities out?

17 MS. BENJAMIN: Thank you so much for  
18 asking that, Senator Rivera. You are so  
19 right.

20 Buffalo, people of color four times  
21 more likely to be in medical debt than white  
22 people. Rochester, three times. Syracuse,  
23 twice. Westchester County, also twice as  
24 bad. Queens -- you know, I mean the profound

1 racial disparities in medical debt are so  
2 upsetting, it sort of shocks the conscience.

3 Moreover, the hospitals, New York  
4 State hospitals, every single one is a  
5 501(c)(3) charity. Why are they suing people  
6 for 9 percent interest?

7 I'm really glad that Helene Weinstein  
8 has a bill with Senator Thomas to cut  
9 interest for judgments from 9 percent to the  
10 U.S. Treasury rate. A first step would be to  
11 say just for medical debt. We can all agree  
12 that charitable hospitals should probably not  
13 be charging 9 percent interest and they  
14 should be charging the U.S. Treasury rate, as  
15 Chairwoman Weinstein suggests, for all  
16 consumer debt.

17 I don't care if we take the Governor's  
18 proposal to get rid of all -- you know, use  
19 the Treasury rate for all judgments, or  
20 Assemblywoman Weinstein's for all consumer  
21 debt, that covers medical debt, or yours,  
22 Senator Rivera, just to make it start with  
23 baby steps for medical debt. But there's  
24 just so much that needs to be done on medical

1 debt, from cleaning up the surprise bill;  
2 from one visit, one bill; from standardizing  
3 patient financial liability bills; from  
4 getting rid of facility fees, or at least the  
5 patient obligation for them; to making  
6 hospitals required to cooperate with the  
7 All Payer Claims database.

8 I mean, we just need to make it  
9 better. It's just mind-boggling what  
10 patients have to navigate through in terms of  
11 medical billing, and we must step up now,  
12 especially for communities of color, but  
13 really for everybody.

14 SENATOR RIVERA: Thank you so much.  
15 Thank you for coming out this evening, and  
16 thank you for the --

17 MS. BENJAMIN: Thank you. Thank you  
18 for having us.

19 CHAIRWOMAN KRUEGER: Thank you.

20 Others?

21 Well, I also just want to thank you  
22 all for being here and for always -- really,  
23 the whole group of you always focusing on  
24 what we can't forget in trying to make sure

1           that we're providing quality healthcare for  
2           everyone.

3                     And, I mean, I get calls every day --  
4           I supposedly represent the wealthiest  
5           district in New York, but I get calls every  
6           day from people terrified about these bills  
7           that they're getting, that they don't  
8           understand them, they just know they couldn't  
9           possibly pay them. And they don't even  
10          understand why they're getting them; they  
11          were originally told "Oh, no, you won't have  
12          any bills."

13                    And these are elderly people, and so  
14          you can see them thinking: I'm going to end  
15          up back in the hospital with another heart  
16          attack just by opening the envelopes that  
17          come from my hospital. So we've got to take  
18          care of this.

19                    Thank you all. We're going to  
20          continue to the next panel.

21                    PANELIST: Thank you.

22                    CHAIRWOMAN KRUEGER: Thank you.

23                    And our next panel will include the  
24          Pharmaceutical Care Management Association,

1           Lauren Rowley; the Community Pharmacy  
2           Association of New York State, Mike Duteau;  
3           and the Pharmacists Society of the State of  
4           New York, Thomas D'Angelo.

5                     Welcome. All right, is Lauren here?  
6           Can we start with her?

7                     MS. ROWLEY: I'm here.

8                     Thank you, Madam Chair. And thank you  
9           all for -- I appreciate the opportunity to  
10          once again be invited to participate in this  
11          hearing, regardless of how late it is  
12          tonight.

13                    My name is Lauren Rowley. I'm the  
14          senior vice president of state government  
15          affairs at the Pharmaceutical Care Management  
16          Association, the national trade association  
17          representing PBMs, or pharmacy benefit  
18          managers.

19                    PBMs administer prescription drug  
20          benefits for more than 266 million insured  
21          Americans. In New York we administer  
22          prescription drugs not just on behalf of  
23          health plans, but for hundreds of self-funded  
24          unions, school boards, and municipalities and

1 employers across the state. These are  
2 entities in your communities with limited  
3 budgets who depend on PBMs to manage their  
4 drug benefits and their drug spend.

5 Our members' ability to perform PBM  
6 services and utilize PBM tools effectively  
7 have real-life implications for them, their  
8 members and their families.

9 PBMs are on the front lines, working  
10 to maintain access and affordability of  
11 prescription drugs. We help reduce the cost  
12 of drugs by encouraging the use of generics  
13 and affordable brand medications; by also  
14 reducing waste and increasing medicine  
15 adherence; by doing claims processing;  
16 creating pharmacy networks; offering  
17 mail-service pharmacy, which was very  
18 critical during the pandemic; offering  
19 specialty pharmacy drug utilization review,  
20 which is responsible for identifying adverse  
21 events at the point of sale, and disease  
22 management and adherence initiatives, as well  
23 as formulary management.

24 PBM tools like formulary management

1 and policies that promote lower-cost  
2 therapies over more expensive ones are relied  
3 upon by employers and millions of New Yorkers  
4 to mitigate the high cost of prescription  
5 drugs.

6 The Governor, as you know, has  
7 re-introduced his licensure proposal that we  
8 have opposed in previous years. While we  
9 continue to have serious concerns with this  
10 proposal, as a general matter PCMA and our  
11 members do not oppose licensure, state  
12 regulation or transparency.

13 We do believe that there should be  
14 transparency of all actors in a drug supply  
15 chain, however -- pharmaceutical  
16 manufacturers, wholesalers, pharmacy services  
17 administrative organizations, or PSAOs, and  
18 PBMs. But I think it's important to also  
19 recognize that we are not the reason drugs  
20 are so expensive. That starts and stops with  
21 the drug manufacturers. They set the price,  
22 they raise the price.

23 We believe that much of the  
24 Legislature's rightful focus on consumers and

1 drug prices has unfortunately been  
2 misdirected. The prevailing narrative being  
3 told is that PBMs are putting independent  
4 pharmacists out of business in New York, when  
5 the objective evidence shows that is simply  
6 not true. Independent pharmacies make up  
7 nearly 58 percent of the total number of  
8 pharmacies in New York State, so must be in  
9 our pharmacy networks.

10 We look forward to working with you as  
11 these issues continue to go, and I am happy  
12 to answer any questions.

13 CHAIRWOMAN WEINSTEIN: Thank you.

14 Now, Community Pharmacy Association.

15 MR. DUTEAU: Hi. Can you hear me?

16 CHAIRWOMAN WEINSTEIN: Yes, we can.

17 MR. DUTEAU: Good evening. My name  
18 is -- oh, I have an echo.

19 CHAIRWOMAN WEINSTEIN: We can hear  
20 you. Just go ahead.

21 MR. DUTEAU: Can you hear me now?

22 CHAIRWOMAN WEINSTEIN: Yes.

23 MR. DUTEAU: Okay, great. Thank you.

24 Good evening, members of the panel.

1 My name is Mike Duteau and I'm a licensed  
2 pharmacist in New York and also president of  
3 the Chain Pharmacy Association of New York  
4 State.

5 Thank you again for the opportunity to  
6 present this evening and also thank you, as  
7 always, for your strong past support of  
8 community pharmacy.

9 As you are aware, the state  
10 pharmacists and pharmacy have played  
11 essential and expanded roles in the state's  
12 response to the COVID-19 pandemic.  
13 Pharmacies have remained open and have served  
14 as a trusted access point for COVID-19  
15 testing as well as vaccinations, and we've  
16 also ensured that patients have maintained  
17 access to their medications and other  
18 incredibly important pharmacy care.

19 We look forward to continuing to serve  
20 our communities as we work to improve public  
21 health and access to care overall.

22 This evening we'd like to comment  
23 briefly on multiple Executive Budget  
24 proposals.

1                   First and foremost, we are asking that  
2                   the transition from Medicaid managed care to  
3                   fee-for-service be implemented without  
4                   significant changes or delays. This change  
5                   would positively impact nearly 7 million  
6                   New York patients who have been subjected to  
7                   benefit and network restrictions or other  
8                   limits that have harmed patient access and  
9                   care. It also benefits the state, saving at  
10                  least \$100 million annually by improving  
11                  transparency and removing cost from the  
12                  system.

13                  I will pause there. We certainly  
14                  acknowledge and understand the hardship that  
15                  would be created with certain provisions for  
16                  340B entities. But that is not created by  
17                  the transition to fee-for-service. That  
18                  actually is created by the requirement that  
19                  New York State pick up the savings, rather  
20                  than allowing the entities to reinvest that  
21                  back into their practices and ultimately the  
22                  communities.

23                  So we feel that the best option is to  
24                  transition to fee-for-service but delay

1           affecting 340B providers for at least three  
2           years as the state and all stakeholders are  
3           able to work through this to ensure that  
4           patients, pharmacies, providers and everybody  
5           can provide and receive the care that they  
6           all deserve.

7                     Additionally, we also oppose the  
8           1 percent across-the-board cut for all  
9           providers. Given the significantly increased  
10          need for access to healthcare for Medicaid  
11          patients, especially during the pandemic, we  
12          think that this is the last place we should  
13          be looking to save money in the budget.

14                    We also support the budget proposal to  
15          authorize licensed pharmacists to administer  
16          recommended CDC-approved vaccines for adults.  
17          Since 2008, pharmacists in New York have  
18          routinely administered certain adult  
19          vaccinations, including those with implement  
20          doses and scheduling requirements --  
21          initially for shingles, and now the COVID-19  
22          vaccines. Moving forward would allow  
23          New York to join the 48 other states that  
24          already authorize pharmacists to administer

1 all CDC-approved and recommended vaccines for  
2 adults.

3 We also support making permanent the  
4 ability for pharmacists to order and  
5 administer CLIA-waived tests, as authorized  
6 for COVID-19 and flu tests during the  
7 pandemic. Pharmacists are extremely well  
8 prepared to order and administer these tests,  
9 given their training and expertise. And in  
10 fact, we've been providing other CLIA-waived  
11 tests for communities for many years.

12 Convenient locations, accessible  
13 hours -- these have allowed pharmacies to  
14 effectively provide these tests to their  
15 communities. And just like vaccines,  
16 New Yorkers have responded very positively to  
17 having access to the test at their local  
18 pharmacies.

19 Importantly, we support and believe  
20 that clear communication and collaboration  
21 between a physician and the pharmacist or  
22 other healthcare providers is essential to be  
23 included in this language.

24 CHAIRWOMAN WEINSTEIN: Can you wrap

1 up --

2 MR. DUTEAU: Finally, and importantly,  
3 we support pharmacy benefit manager  
4 regulation and ask for urgent action,  
5 including registration, licensure and  
6 oversight of PBMs in New York State.  
7 Patients and providers --

8 CHAIRWOMAN WEINSTEIN: Thank --

9 MR. DUTEAU: -- need these protections  
10 to end unfair practices.

11 CHAIRWOMAN KRUEGER: Thank you. Thank  
12 you. Sorry, we had to cut you off for time.

13 And our last speaker, Pharmacists  
14 Society of the State of New York.

15 MR. D'ANGELO: Hi. Good evening,  
16 everybody. Can you hear me okay?

17 CHAIRWOMAN KRUEGER: Yes.

18 MR. D'ANGELO: Very good.

19 Honorable Finance Chair Senator  
20 Krueger, Honorable Ways and Means Chair  
21 Assemblymember Weinstein, Senator Rivera,  
22 Assemblyman Gottfried, and distinguished  
23 members, my name is Thomas D'Angelo. I am a  
24 licensed pharmacist in Long Island, and I own

1 two independent pharmacies. I'm currently  
2 the president of PSSNY, the Pharmacists  
3 Society of the State of New York.

4 On behalf of PSSNY and the pharmacists  
5 we represent, thank you to both the Senate  
6 and Assembly for all of the support in the  
7 past. We really do appreciate it.

8 It has taken a global pandemic for  
9 pharmacists to officially be recognized as  
10 critical healthcare providers. While  
11 doctors' offices closed, hospitals became  
12 overwhelmed and couldn't handle normal  
13 patients that were ill with other than COVID,  
14 pharmacies remained open. We took great  
15 personal risk, we became front-line COVID  
16 testing locations. Many of my colleagues did  
17 succumb to the disease, unfortunately.

18 When the COVID-19 vaccine became  
19 available, pharmacists once again rose to the  
20 challenge. Today we have vaccinated  
21 thousands of patients across New York. We  
22 stepped up when the state and the communities  
23 needed us most.

24 As legislators debate the merits of

1 COVID-19 executive orders, we must point out  
2 that certain orders were only necessary  
3 because the legislators had not acted to  
4 expand our scopes of practice in the past.  
5 And we have proven during this pandemic that  
6 we are ready and capable of handling these  
7 challenges.

8 We are calling on the Legislature to  
9 enact PBM reform in the budget now,  
10 immediately. For the last several years  
11 there have been various PBM reform measures  
12 in the proposed budget and in the  
13 Legislature. All have been rejected for  
14 various reasons, or vetoed. The PBM reform  
15 in the proposed budget is very good for  
16 pharmacy and patients. While it does not  
17 contain the stringent public health law and  
18 patient protections which PSSNY strongly  
19 supports, the proposed reforms are very  
20 strong.

21 PSSNY supports providing the  
22 Department of Financial Services broad  
23 regulatory authority over the PBMs. If you  
24 enact the proposed reform measure in the

1 budget, PSSNY strongly supports subsequent  
2 legislation to further strengthen patient  
3 protections.

4 But we need this now. The parasitic  
5 PBMs have their hands around our throats and  
6 our backs against the wall. Let's not let  
7 the perfect become the enemy of the good.

8 PSSNY's positions on the budget  
9 proposal at this time. PSSNY supports the  
10 language in the proposed budget for pharmacy  
11 benefit managers. PSSNY suggests the  
12 Legislature incorporate person protections  
13 into the final enacted budget. That said,  
14 PSSNY supports passage of language as is if  
15 the sides cannot agree on the scope of  
16 additional patient protections.

17 As far as the expansions of scope of  
18 practice for pharmacists, PSSNY is in favor  
19 of the language regarding vaccinations and  
20 CLIA-waived testing. There's absolutely no  
21 policy-based justification at this time for  
22 limiting the types of adult vaccines a  
23 pharmacist can perform in the State of  
24 New York.

1                   The budget proposal also contains a  
2                   provision regarding collaborative drug  
3                   therapy management, CDTM. While PSSNY does  
4                   recognize the value of CDTM, it does not  
5                   reflect the needs of patients in the  
6                   community. PSSNY is of the opinion that  
7                   collaborative medical management, or CMM, is  
8                   more in line with community needs. Time and  
9                   again it has been demonstrated that patients  
10                  are more successful with their drug therapy  
11                  when a pharmacist is directly involved.

12                  Regarding fee-for-service, there has  
13                  been a lot of discussion today and for  
14                  several weeks around the fee-for-service  
15                  carve-out. PSSNY is calling on the  
16                  Legislature to allow the implementation to go  
17                  forward without delay, immediately. Every  
18                  state that has moved their pharmacy benefit  
19                  to fee-for-service has realized millions of  
20                  dollars in savings, and New York will be one  
21                  of them as well.

22                  In conclusion, lessons from this past  
23                  year have taught us that pharmacy is a  
24                  critical part of New York's healthcare

1 system. PSSNY is asking the Legislature to  
2 support pharmacy by passing PBM reform in the  
3 budget, as well as expanded immunization  
4 authority and other critical scope-of-  
5 practice issues that will continue to enhance  
6 New Yorkers' lives.

7 CHAIRWOMAN KRUEGER: Thank you.

8 Any members -- oh, look, I'm seeing  
9 multiple members.

10 CHAIRWOMAN WEINSTEIN: We have a  
11 number of Assemblymembers.

12 Assemblyman Cahill.

13 CHAIRWOMAN KRUEGER: Okay, I'll check  
14 with Gustavo. Are you -- Gustavo, are you  
15 in --

16 SENATOR RIVERA: I'm going to let some  
17 of the Assemblymembers go first.

18 CHAIRWOMAN KRUEGER: Okay.  
19 Assembly.

20 SENATOR RIVERA: You know I'm a  
21 cleanup hitter. I'm a cleanup hitter.

22 (Laughter.)

23 CHAIRWOMAN WEINSTEIN: Assemblyman  
24 Cahill.

1 ASSEMBLYMAN CAHILL: Everybody wants  
2 to get home even. Even though we're home, we  
3 still want to get home home.

4 Thank you, everybody. And I always  
5 appreciate it when we put the independent  
6 pharmacists on the same panel with PCMA.  
7 It's like having the fourth of July right in  
8 front of us.

9 So thank you all for coming here  
10 today, and thank you also for your  
11 perspectives. Mr. D'Angelo, I'd like to  
12 address some of the things that -- in  
13 particular, about not letting the perfect get  
14 in the way of the good.

15 I want to just go over a few  
16 differences in the Governor's fake proposal  
17 for PBM management and the official proposal  
18 by the Legislature. The definitional section  
19 almost doesn't exist. The bill lacks a form  
20 of accountability for PBMs. There is no  
21 transparency in the bill. There absolutely  
22 is no duty of care to the patients. And if  
23 you were here earlier today, you heard that  
24 the administration opposes that concept.

1                   There is no prohibition against PBM  
2                   substitution. There is no drug price appeal  
3                   process. So perhaps after I'm done with this  
4                   tirade you can explain to me how that is the  
5                   good that the perfect is in the way of,  
6                   because to me it doesn't sound like it's very  
7                   good.

8                   So with that, let me explain to you  
9                   what happened last year. Last year we knew  
10                  the Rutledge decision was pending. We knew  
11                  it was not here yet. Now the Rutledge  
12                  decision has clearly said that regulation of  
13                  PBMs is not regulation of health plans.  
14                  That's what Justice Sotomayor said.

15                  We also -- although I wasn't concerned  
16                  about this, given the fact that it was passed  
17                  either unanimously or nearly unanimously --  
18                  did not have what we call veto-proof  
19                  majorities in both houses. We do now, and  
20                  I'm pretty sure the sponsors are anxious to  
21                  move forward with their bill to have it  
22                  considered.

23                  So I would urge you to go back to your  
24                  association and ask them to stand for the

1 really, really good over the really, really  
2 bad.

3 So with that, I'd like to just ask  
4 Ms. Rowley, in your comments you indicated  
5 that you generally oppose the Governor's bill  
6 but that you support some levels of  
7 registration and licensure.

8 Can you please tell me in the next 52  
9 seconds what it is about the Governor's  
10 proposal for PBM regulation that you don't  
11 like?

12 MS. ROWLEY: We think it gives really  
13 broad regulatory authority to the  
14 superintendent on a lot of different issues  
15 that, you know, are of concern to us,  
16 obviously. I mean, I think that, you know,  
17 in contrast, we really have serious  
18 objections to I think the Assembly and the  
19 Senate bills. We think that there's a lot of  
20 constitutional problems with them. We do  
21 believe that they run afoul of ERISA,  
22 frankly, on the fiduciary issue alone.

23 So, I mean, we're -- I guess our hope  
24 is that after the third year of kind of going

1 through this that maybe all parties can come  
2 to the table and negotiate something that  
3 makes sense for everybody.

4 ASSEMBLYMAN CAHILL: Thanks so much.

5 By the way, I was reading the PCMA  
6 memo on Rutledge, and it doesn't exactly say  
7 that you've concluded that PBM regulation  
8 runs afoul of it. You said, be careful  
9 because states are going to start regulating  
10 you. That's what your own internal memo  
11 says.

12 But that's okay. I'm out of time. I  
13 do want to thank you. And if I run into  
14 Superintendent Lacewell, I will tell her that  
15 she has a kindred spirit on her understanding  
16 of the Rutledge decision. Thanks so much.

17 MS. ROWLEY: I'll be happy to address  
18 that issue of, you know, our memo, if I may.

19 You know, we believe that --

20 CHAIRWOMAN WEINSTEIN: Excuse me.

21 MS. ROWLEY: Okay, sorry. Sorry,  
22 Senator.

23 CHAIRWOMAN WEINSTEIN: Is  
24 Senator Rivera up, or does he want us to go

1 forward with another Assemblymember?

2 CHAIRWOMAN KRUEGER: He's fine. Go  
3 ahead with another Assemblymember.

4 CHAIRWOMAN WEINSTEIN: Assemblyman Ra,  
5 then.

6 ASSEMBLYMAN RA: Thank you, Chair.

7 We're going to try to put some runners  
8 on base for Senator Rivera to clean up so he  
9 can hit a grand slam.

10 Thank you, Chairs. Tough to follow  
11 Chairman Cahill on that one, but I also  
12 always enjoy seeing this panel together with  
13 that issue outstanding from the last couple  
14 of -- couple of budget cycles.

15 But I did want to get into a different  
16 issue. Tom, you know, you're aware of my  
17 support on the PBM issue, but I did want to  
18 ask about the immunization and the scope of  
19 practice issue. Because one of the things  
20 that I've learned over the years -- you know,  
21 from yourself, from Howard Jacobson -- is  
22 that when you create uncertainty with, you  
23 know, what you're able to vaccinate for, it  
24 just -- it muddies the waters.

1                   And I remember when -- a few years ago  
2                   when we were in the midst of a bad flu season  
3                   and the Governor came out and said, "Hey,  
4                   pharmacists can immunize children." And I  
5                   was talking to Howard about the issue and he  
6                   said, "Yeah, that's great that came out, but  
7                   I don't have the vaccine in stock because I  
8                   couldn't give it, so why would I have stocked  
9                   it?"

10                   So I was wondering if you can  
11                   elaborate more on the importance of creating  
12                   certainty both with this proposal and  
13                   perhaps, you know, getting rid of some of the  
14                   sunsets that are there that cause you to have  
15                   to, you know, every couple of years ask for  
16                   extensions and expansions of those  
17                   authorities.

18                   MR. D'ANGELO: Right. So -- that's  
19                   exactly right. You know, we -- if we were  
20                   allowed to do all CDC-recommended vaccines or  
21                   any vaccine that was then emergency-approved  
22                   by the CDC, when this COVID vaccine came out  
23                   we would have already had a process in place  
24                   to jump right in and get going.

1                   It didn't turn out that way because we  
2                   had to get special approval to administer the  
3                   vaccine, then we had to go through all the  
4                   training -- because not every pharmacist was  
5                   trained to do the whole NYSIIS system because  
6                   we don't vaccinate children. So -- and  
7                   that's basically -- it was a child platform.

8                   And exactly right, a couple of years  
9                   ago when things got hard, it was okay for us  
10                  to vaccinate at that time.

11                  New York is still almost dead last as  
12                  far as what they're allowed to vaccinate.  
13                  The rest of the country is way ahead of the  
14                  pharmacists in New York as far as what  
15                  they're allowed to vaccinate. And that's  
16                  really not necessary. Nothing says that we  
17                  should be held back.

18                  ASSEMBLYMAN RA: Well, and thank you,  
19                  because I know you're busy, you know,  
20                  vaccinating people. Because, you know, your  
21                  Garden City South location's right around the  
22                  corner from my house, and I see the lines out  
23                  there every morning. So keep up the good  
24                  work. Good to see you.

1 MR. D'ANGELO: Thank you very much.

2 CHAIRWOMAN WEINSTEIN: Rebecca

3 Seawright, then.

4 ASSEMBLYWOMAN SEAWRIGHT: Thank you,  
5 Chairs.

6 Good evening, pharmacists. Thank you  
7 for your testimony this evening. I grew up  
8 in a pharmacy. My father was a pharmacist,  
9 and my older sister, so I grew up as a child  
10 working in retail pharmacy.

11 We heard testimony tonight about your  
12 interest in expanding the scope of practice.  
13 How would you take into account the needs of  
14 senior citizens? Which is very important in  
15 my district here on the Upper East Side and  
16 on Roosevelt Island. And I want to also  
17 encourage early hours be reserved for senior  
18 citizens in order to reduce their waiting  
19 time, especially in this pandemic.

20 MR. D'ANGELO: So who's that question  
21 to?

22 ASSEMBLYWOMAN SEAWRIGHT: Any member  
23 that would like to answer it.

24 MR. DUTEAU: Maybe I can start, and

1           you can finish up?

2                   MR. D'ANGELO:  Sure, Mike.

3                   MR. DUTEAU:  Great.

4                   So thank you very much for the  
5           question.  You know, I think there's a lot  
6           that we've learned just recently with this  
7           pandemic, from finding new ways to schedule  
8           the COVID vaccine.

9                   Also a lot of these scope of practice  
10          expansion proposals really are focused on the  
11          elderly population -- for example, CDTM --  
12          and allowing us to better collaborate with  
13          physicians on medication adherence and really  
14          chronic disease that affect the elderly --  
15          diabetes, hypertension.  I think this helps  
16          us be much better positioned to treat and  
17          care for those patients in that age group.

18                  And then when you combine that with a  
19          lot of the operational programs that we  
20          continue to develop and evolve, I think  
21          pharmacy has never been better positioned now  
22          to help care for all of our patients, but  
23          especially the elderly.

24                  MR. D'ANGELO:  Yeah, and I'll pick up

1           where Mike left there.

2                       So far during the vaccination program  
3           I've noticed that the elderly have had a much  
4           easier time dealing with their local  
5           community pharmacies -- getting an  
6           appointment, getting there, making sure the  
7           vaccine was done. It's convenient for them,  
8           they're comfortable with those pharmacists,  
9           they're comfortable with their local  
10          pharmacist, they're like family to them.

11                      You know, in my pharmacy in  
12          particular, we have -- we're only allowed to  
13          vaccinate people 65 and older. So all of  
14          those elderly people at this point are coming  
15          to our pharmacies and being taken care of.

16                      And independent pharmacies,  
17          pharmacies -- community pharmacies, they  
18          usually offer free delivery so the patients  
19          do not have to leave their home for their  
20          medications. The collaborative management  
21          between doctors and pharmacists to treat  
22          patients or to monitor their drug therapy to  
23          make sure it's being effective. You know,  
24          these are all things that the elderly would

1 benefit from more than anybody.

2 ASSEMBLYWOMAN SEAWRIGHT: Thank you.

3 Thank you all. And thank you, Chairwomen.

4 CHAIRWOMAN KRUEGER: Thank you.

5 Rebecca Seawright and I happen to  
6 overlap in our districts, so I'll just point  
7 out I really do find, Rebecca, that the  
8 pharmacies where the person can just talk to  
9 someone on the phone or go in and talk to the  
10 pharmacist, it's working so much better  
11 during a pandemic than trying to go through  
12 the computer systems that some of the larger  
13 chains have been able to set up but our  
14 seniors can't figure them out.

15 So I do agree that there's a real  
16 difference in the direct care someone can get  
17 at times like this from knowing their  
18 pharmacist and their local pharmacy.

19 Thank you, Helene. Do you have any  
20 other members?

21 CHAIRWOMAN WEINSTEIN: Yes, we do have  
22 one more before Senator Rivera. So we have  
23 Assemblyman Byrne.

24 ASSEMBLYMAN BYRNE: Thank you. I

1           actually had to relocate. I was listening, I  
2           wasn't going to ask questions, I had to head  
3           back home.

4                        But my question was for Ms. Rowley.  
5           You wanted to finish your comment about an  
6           internal memo, and I just wanted to give you  
7           the time to -- that I have to address that  
8           comment.

9                        And I do want to thank everybody else  
10          for their testimony as well.

11                       MS. ROWLEY: Yeah, I just wanted to --  
12          thank you so much for the question.

13                       We believe, and I believe actually  
14          NCPA actually put out something that also  
15          said that we think this is a very narrow  
16          decision by the court. It basically viewed  
17          the law's procedural requirements -- map  
18          lists, appeal procedures, reverse and rebill,  
19          and decline to dispense -- as simply  
20          enforcement mechanisms to accomplish the rate  
21          regulation.

22                       So from that premise, the court  
23          concluded that the Travelers decision, which  
24          was a 25-year-old Supreme Court decision,

1 decides the case. So -- which is, again,  
2 about rate regulation and the state's  
3 authority to regulate rates on ERISA plans.

4 It did not do away with all the other  
5 court decisions and precedent that has been  
6 set on ERISA preemption. The court also  
7 didn't say it was a good idea, they didn't  
8 say it was good public policy, they didn't  
9 say it wasn't going to cost money. In fact,  
10 in the Sotomayor opinion, they did say it was  
11 going to cost money on ERISA plans and that  
12 folks in Arkansas may pay more.

13 So I just think that's an important  
14 distinction to have here with regard to  
15 ERISA, since it's such a complicated issue.  
16 And we do believe there's still a lot of  
17 ERISA preemption issues out there. Just  
18 regulation now has been solidly decided by  
19 first Travelers and now Rutledge.

20 Thank you so much for the question.

21 CHAIRWOMAN KRUEGER: Thank you. So  
22 now Senator Gustavo Rivera.

23 SENATOR RIVERA: I'll be very brief.  
24 I'll just -- I'll certainly thank Ms. Rowley

1 for correctly pronouncing the name  
2 "Sotomayor," Justice Sotomayor, and also to  
3 say that we have a very strong disagreement.

4 I actually have been working with my  
5 community -- I've been talking to community  
6 pharmacies, certainly the Pharmacists  
7 Society, as well as other folks that have  
8 come to tell us about the issues that they  
9 have.

10 We passed it last year, the Governor  
11 vetoed -- or is it two years ago? The 'rona  
12 makes everything very, very complicated. But  
13 I know we passed it, it was vetoed by the  
14 Governor. We certainly -- I'm supportive of  
15 some of what's in the Governor's budget, but  
16 I'm looking forward to passing legislation  
17 that is stand-alone.

18 So with that, thank you, Madam Chair.  
19 I am good.

20 CHAIRWOMAN KRUEGER: Thank you.

21 Well, thank you all very much for  
22 being with us tonight, appreciate it.

23 And we're going to move on to our next  
24 panel, which is --

1 MR. DUTEAU: Thank you.

2 MR. D'ANGELO: Thank you.

3 CHAIRWOMAN KRUEGER: Thank you.

4 -- the American Cancer Society,  
5 Julie Hart, senior director, New York  
6 government relations; and Housing Works,  
7 Charles King, CEO.

8 Good evening.

9 MS. HART: Good evening. Thank you.

10 Do you want me to go ahead and start?

11 CHAIRWOMAN KRUEGER: Yes, please.

12 MS. HART: Hi, everybody, I'm Julie  
13 Hart. I'm the Government relations director  
14 for the American Cancer Society Cancer Action  
15 Network. Thank you so much for sticking with  
16 us tonight. A huge thank you to your staff  
17 and also to all the staff members that helped  
18 put this together so that we can still  
19 advocate virtually and safely. It is greatly  
20 appreciated.

21 So you do have a copy of my written  
22 testimony that has significant details in  
23 there, so I just want to highlight a couple  
24 of items. As you can see on the first page,

1 the toll that cancer takes on New Yorkers is  
2 significant. About 120,000 New Yorkers will  
3 be diagnosed with cancer this year, and  
4 nearly 34,000 people are expected to lose  
5 their battle to cancer. So there's still  
6 very grim statistics.

7 I've also listed -- you can see on the  
8 bottom of the first page -- the main types of  
9 cancer and also cancer deaths. We anticipate  
10 about 6800 people will lose their battle to  
11 lung cancer this year. And I know in  
12 New York we've done a lot on tobacco control  
13 in recent years, so thank you for all that  
14 you are doing. We certainly still need to do  
15 more when it comes to tobacco control so that  
16 we can reduce those lung cancer numbers.

17 In addition, if you look on page 3,  
18 there are some numbers related to smoking  
19 rates in New York. So currently in New York  
20 about 12.8 percent of adults are still  
21 smoking, but there are significant pockets  
22 where that smoking rate is much higher -- if  
23 you look at those that report poor mental  
24 health, young cancer patients, Medicaid

1 recipients. So there are still significant  
2 pockets where the smoking rate is very high.

3 Now, one of the most effective tools  
4 that we have to reduce smoking rates is our  
5 tobacco tax. And our tobacco tax in New York  
6 has not been raised in over a decade. We're  
7 currently at \$4.35 per pack. If we increase  
8 our cigarette tax by just one dollar, that  
9 would encourage about 54,000 New York adults  
10 to quit and about 22,000 kids would be  
11 prevented from becoming addicted smokers.

12 So that cigarette tax has real public  
13 health benefits. And in addition, that money  
14 should be used for programs like the Tobacco  
15 Control Program and keep that program whole  
16 so that adults have the tools that they need  
17 to quit and that we can keep encouraging kids  
18 to not smoke, period.

19 So on the last page, you'll see my  
20 recommendations, because I know I'm almost  
21 out of time. But we encourage you to adopt a  
22 tobacco tax, a cigarette tax of one dollar  
23 per pack and then a parallel tax on other  
24 tobacco products, and then to use that money

1 for the Tobacco Control Program and also to  
2 maintain funding for the Cancer Services  
3 Program so that people can still get safe  
4 cancer screenings.

5 So thank you. I appreciate your time.

6 CHAIRWOMAN KRUEGER: Thank you.

7 Charles?

8 MR. KING: Good evening. And thank  
9 you for holding this important hearing.

10 Historically I've testified at this  
11 hearing about steps we need to take to end  
12 the AIDS epidemic. Tonight, however, I come  
13 before you to urge the Legislature to protect  
14 New York's safety-net providers at a time  
15 when we have never been more important yet  
16 face dangerous attacks by Governor Cuomo,  
17 even as the state's mismanagement of the  
18 COVID-19 crisis becomes more evident.

19 The Executive Budget not only fails to  
20 rise to the historic moment we are facing,  
21 but its healthcare provisions include  
22 proposals that will undermine both individual  
23 health of vulnerable New Yorkers as well as  
24 our health system.

1                   Last April we threw Housing Works into  
2                   the COVID response, operating a hotel for  
3                   homeless people with COVID, expanding to  
4                   provide medical and behavioral health  
5                   services to six quarantine and MOCJ hotels,  
6                   delivering COVID tests to our consumers, our  
7                   neighbors, and all of HRA-funded supportive  
8                   housing staff and residents. We've fought  
9                   for vaccines, though initially shut out of  
10                  the distribution system, and we're not  
11                  vaccinating our staff and qualifying  
12                  consumers.

13                  To do all this COVID work we've had to  
14                  secure all of our own PPE, invested thousands  
15                  of dollars to cover unfunded costs -- even  
16                  while the Governor decided to withhold  
17                  20 percent of our contract reimbursement,  
18                  though we were expected to continue to  
19                  perform at a hundred percent.

20                  How does it make sense in the middle  
21                  of a massive public health emergency to  
22                  withhold funds from safety net providers  
23                  caring for the poorest and most marginalized  
24                  residents of this state?

1                   Now we face a pharmacy carve-out for  
2 managed care that will cut millions of  
3 dollars of funding through the federal 340B  
4 program. We estimate the impact on Housing  
5 Works to be as much as \$8 million a year,  
6 with substitute funding which we estimate  
7 will be a maximum of 40 cents on the dollar.

8                   Let me explain why this is so  
9 important. We have always used our 340B  
10 funding to pay for services and care that is  
11 unreimbursed. With COVID we've used 340B  
12 funding to buy smartphones for our low-income  
13 consumers so that they can participate in  
14 telehealth, helping consumers download the  
15 telehealth and training them in its use.

16                   It has also paid a large share of our  
17 COVID testing and vaccination program. To  
18 adequately staff a vaccination program just  
19 to deliver 100 vaccinations a day, with  
20 patient education, documentation submission,  
21 preparation and post-vaccination observation,  
22 costs us \$100,000 a month. Our reimbursement  
23 per injection is \$12 -- in other words, less  
24 than a quarter of the expense.



1           thankful about that, shouldn't you?

2                   MR. KING:   So I didn't want to take  
3           any of my time to thank you all.  For three  
4           years in a row, I have been the last --

5                   SENATOR RIVERA:  Very last.

6                   MR. KING:  -- person to testify.

7                   SENATOR RIVERA:  So I'm very thankful  
8           to both of you for being with us.

9                   And I certainly agree with you,  
10          Ms. Hart, about some of what we need to do to  
11          continue to push down smoking rates in the  
12          State of New York.

13                   And Charles, you've made the point, as  
14          was made earlier by other folks about the  
15          flexibility of 340B, of what you're able to  
16          do with the 340B savings, the flexibility  
17          that it allows you to be able to react in a  
18          situation when you need to, and considering  
19          that you serve folks who are so vulnerable to  
20          begin with.  I thank you for doing that,  
21          thank you for speaking out.  And we continue  
22          to -- hopefully we will be able to push back  
23          on this, because it's a bad idea, it's silly,  
24          we shouldn't do it.

1                   So that's it from me, Madam Chair. I  
2                   don't know if they -- anyway, I'm done,  
3                   Madam Chair.

4                   CHAIRWOMAN KRUEGER: I have a question  
5                   for Julie.

6                   So for forever we've believed that  
7                   New York had the highest taxes on cigarettes.  
8                   Is that still true, or have we fallen behind  
9                   over the last couple of years?

10                  MS. HART: Right now DC has the  
11                  highest tax, at \$4.50 per pack. But if you  
12                  look at state and local taxes combined, there  
13                  are some -- like Chicago's is over \$7 per  
14                  pack. So there's certainly precedent for  
15                  going much higher. And that dollar increase  
16                  would bring in about \$38 million in new  
17                  revenue.

18                  CHAIRWOMAN KRUEGER: Well, we've also  
19                  always made the argument that cigarette taxes  
20                  discourage people from starting to smoke at  
21                  all. So it doesn't necessarily increase  
22                  revenue, it saves lives because it's --

23                  MS. HART: Right. First and foremost,  
24                  it prevents kids -- kids are more

1 price-sensitive than adults are, as well.

2 CHAIRWOMAN KRUEGER: And that's -- the  
3 research still shows that that's true?

4 MS. HART: Yes.

5 CHAIRWOMAN KRUEGER: So the targeted  
6 audience of perhaps who would be more  
7 discouraged than ever from smoking would be  
8 younger people?

9 MS. HART: Yes, absolutely. Kids are  
10 much more price-sensitive.

11 CHAIRWOMAN KRUEGER: And we had done  
12 some changes in the laws around the flavored  
13 tobaccos and other things. Is there also  
14 research findings that those are  
15 discouraging -- or encouraging kids not to  
16 get into smoking or vaping because they can  
17 no longer buy the candy-flavored product?

18 MS. HART: Yeah. Well, we certainly  
19 know that kids are enticed by flavors. And  
20 we know also that tobacco companies have a  
21 history of targeting minority communities,  
22 particularly with menthol. So we don't have  
23 yet research on New York's law just because  
24 it is so new. But I imagine that we will

1 have that at some point.

2 CHAIRWOMAN KRUEGER: Got it. Thank  
3 you very much.

4 MS. HART: Thank you.

5 CHAIRWOMAN KRUEGER: Thank you as  
6 always, Charles, for your work.

7 We're going to move along to the  
8 New York Caring Majority, Bobbie Sackman; the  
9 Empire State Association of Assisted Living,  
10 Lisa Newcomb; and the New York State Health  
11 Facilities Association, Stephen Hanse.

12 Is everybody here? Do I see people?  
13 Let's see. Bobbie, are you with us?

14 MS. SACKMAN: Yes.

15 CHAIRWOMAN KRUEGER: Oh, hi there.  
16 Yes. Welcome. Why don't we start with you.

17 MS. SACKMAN: Thank you. Good  
18 evening, everybody. Thank you for the chance  
19 to testify.

20 My name is Bobbie Sackman. I'm with  
21 the New York Caring Majority and Jews for  
22 Racial and Economic Justice. And the Caring  
23 Majority is comprised of older adults, people  
24 with disabilities, home care workers and

1 family caregivers who are working to address  
2 the injustices in our long-term-care system.  
3 Our central focus is the Fair Pay for Home  
4 Care Act, which Assemblyman Gottfried and  
5 Senator May have kindly and generously taken  
6 on the prime sponsorship for.

7 Well, it certainly has been a long  
8 day. And I thought just for a moment, if you  
9 could all think about a care story that you  
10 might have -- and I think we all have a care  
11 story, somebody that's been in our lives that  
12 needed care and maybe even needed home care.  
13 This is -- it's not about them, this is very  
14 much about us.

15 And so the workforce caring for older  
16 adults, the home care workforce, are  
17 predominantly women with children and  
18 immigrants. The state pays them poverty  
19 wages. They're averaging about 18,600 a  
20 year. This has led to a dramatic home care  
21 shortage statewide. In parts of the state,  
22 especially upstate, you can't even find a  
23 home care worker. You just can't. And so  
24 the Fair Pay for Home Care Act is good for

1 New York's economy, it's good for New York's  
2 care.

3 Testifying with me today are millions  
4 of older New Yorkers, people with  
5 disabilities, home care workers and family  
6 caregivers. We are indeed a caring majority.  
7 We all urge you to support the Fair Pay for  
8 Home Care Act.

9 We support the New York Health Act --  
10 thank you, Senator Rivera. When it's passed,  
11 we need to pay home care workers enough so we  
12 have home care workers. That's the other  
13 piece of the pie here.

14 The Fair Pay for Home Care Act would  
15 raise home care wages to 150 percent of  
16 minimum wage, about \$22,000 a year to \$35,000  
17 a year. The CUNY School for Labor and Urban  
18 Studies just released a report -- released  
19 the executive summary so far -- and they  
20 found out that this act would generate  
21 \$7.6 million -- \$7.6 billion for the state  
22 economy through new income and sales tax  
23 revenue, economic spillover, and reductions  
24 in Medicaid and social assistance.

1                   Medicaid is the best investment the  
2                   state can make to generate jobs and increase  
3                   revenue for the coming years.

4                   As New York faces widespread  
5                   unemployment over the next decade, the act  
6                   would bring in 20,000 jobs a year. So  
7                   200,000 jobs over the decade. It would  
8                   additionally create 18,000 jobs a year, or  
9                   180,000 jobs over a decade, in industries via  
10                  increased spending and economic activity.  
11                 Doing the math, that's 38,000 jobs a year.

12                 Investing in Medicaid and putting  
13                 economic development funds in home care is  
14                 smart. They're shovel-ready. They keep  
15                 people safe -- I see my time is up. So we're  
16                 just asking you to pass the Fair Pay for  
17                 Home Care Act and also the Home Care Jobs  
18                 Innovation Fund, which did get into the  
19                 Senate one-house bill last year, and then the  
20                 pandemic hit.

21                 Thank you very much.

22                 CHAIRWOMAN KRUEGER: Thank you.

23                 Next we have Lisa Newcomb, Empire  
24                 State Association of Assisted Living.

1 MS. NEWCOMB: Thank you, and good  
2 evening.

3 A few of you already know about the  
4 state's chronic underfunding of the adult  
5 care facility/assisted living industry, with  
6 only one SSI increase in 30 years. I'll  
7 refer you to my testimony for details. But  
8 suffice to say it's virtually impossible to  
9 take care of 80- and 90-year-old seniors,  
10 meeting all their needs for \$42 a day.

11 So with the Governor's proposed budget  
12 and 30-day amendments, we get more injury  
13 upon injury. Today the department already  
14 has broad fining authority. The Public  
15 Health Law authorizes specific fining  
16 authority over ACFs. And if you look at the  
17 history of their fines, they have exercised  
18 that authority with zeal, both before and  
19 during the pandemic.

20 The 30-day amendments not only  
21 dramatically increase the per-day  
22 violation -- and somebody mentioned it, it is  
23 per day -- it multiplies our maximum per-day  
24 fine tenfold, from \$1,000 a day to \$10,000 a

1 day. It also eliminates our ability to  
2 rectify minor, less serious infractions  
3 without a concurrent fine. So one minute  
4 late per survey -- you know, we've been doing  
5 those daily surveys for 300-and-some-odd  
6 days. One minute late, you're subject to a  
7 fine.

8 So why -- you know, we feel as if we  
9 are under attack. And, you know, there  
10 haven't been big allegations of wrongdoing  
11 during the pandemic. In fact, despite  
12 virtually all the mandates being imposed on  
13 us as have been imposed on nursing homes,  
14 with no funding assistance, the ACFs have  
15 fought valiantly to protect both their  
16 residents and staff. So why then attack this  
17 industry, many of whom are family-owned  
18 businesses that struggled to make ends meet  
19 even before COVID?

20 While the numbers of positive cases  
21 and deaths are not as high as those in  
22 nursing homes -- but one is too many, as  
23 somebody said earlier -- we have not escaped  
24 unscathed. ACF residents are still frail

1 seniors in a congregate living arrangement,  
2 and that is where we know COVID preys.

3 ESAAL's more than 300 licensed members  
4 and their staff have worked tirelessly  
5 throughout this nightmare to keep our  
6 residents safe -- this with almost no state  
7 government support other than some PPE for a  
8 short period of time when there was no other  
9 place to get it, and even that support was  
10 much delayed.

11 ACF providers and staff should be  
12 praised and honored, not punished, which is  
13 what this budget does. It punishes us -- and  
14 for what, we really don't know. We can only  
15 surmise that, to use the Governor's own  
16 words, it's just politics. Moreover, the  
17 Governor's budget wipes out funding for the  
18 one and only program that the state dedicates  
19 to ACFs that serve the indigent on SSI --  
20 that program is EQUAL -- a modest  
21 \$6.3 million. We ask that you restore that.

22 Just quickly back to the fines -- I  
23 see I'm out of time -- and removal of the  
24 ability to rectify minor violations. We've

1 heard comments that it's simply an attempt to  
2 adjust for inflation, our per-day fines.  
3 Well, that would be fair if the same could be  
4 said in terms of the SSI rating, adjusting  
5 that for inflation.

6 And it's also important to note that  
7 our violations are per day, unlike nursing  
8 homes and hospitals, so potentially we could  
9 be paying more for the same infraction than a  
10 nursing home or a hospital.

11 And if you give the department the  
12 ability -- more broadly, power -- without  
13 giving ACFs the chance to fix these minor  
14 issues, the department will abuse it.

15 CHAIRWOMAN WEINSTEIN: Thank you.

16 CHAIRWOMAN KRUEGER: Thank you.

17 And our next testifier is  
18 Stephen Hanse, New York State Health  
19 Facilities Association.

20 MR. HANSE: Good evening, and thank  
21 you.

22 My name is Stephen Hanse, and I have  
23 the privilege of serving as president and CEO  
24 of the New York State Health Facilities

1 Association and the New York State  
2 Association for Assisted Living, a statewide  
3 organization representing over 425 skilled  
4 nursing and assisted living providers who are  
5 not-for-profits, for-profits, and  
6 government-sponsored facilities.

7 When it comes to the COVID-19 pandemic  
8 and its impact on nursing homes and assisted  
9 living providers, the focus must be placed  
10 where it truly belongs: First, with the  
11 virus itself; second, with the state's  
12 hospital-centric approach to combating the  
13 virus; third, to the state's over 12 years of  
14 continuous nursing home Medicaid cuts; and  
15 fourth, to New York's long-term-care  
16 workforce crisis.

17 At the onset of the pandemic the state  
18 failed to immediately focus fully on the  
19 needs of nursing homes and assisted living  
20 providers, and instead implemented a  
21 hospital-centric approach that led to  
22 severely limited access to testing and  
23 extensive staffing and PPE shortages in  
24 nursing homes.

1                   The COVID-19 virus first appeared in  
2                   the United States at a nursing home in  
3                   Washington State, with devastating  
4                   consequences. New York disregarded this fact  
5                   and implemented its hospital-centric approach  
6                   to combating the virus, instead of focusing  
7                   on the people who are vulnerable to the  
8                   COVID-19 virus -- namely, nursing homes  
9                   residents.

10                   Upwards of 90 percent of New York's  
11                   nursing home resident care is paid for by  
12                   Medicaid. However, the state has cut  
13                   Medicaid reimbursement to nursing homes for  
14                   over 12 years. And even in the middle of the  
15                   pandemic, the state cut Medicaid to nursing  
16                   homes, creating a \$2 billion reimbursement  
17                   void that was only exacerbated by the state's  
18                   primary focus on hospitals throughout the  
19                   pandemic.

20                   The statewide average cost of  
21                   providing around-the-clock nursing home care  
22                   is \$266. However, the statewide average  
23                   Medicaid reimbursement for 24-hour care is  
24                   \$211, resulting in nursing homes being

1 reimbursed \$8.79 an hour to care for our most  
2 vulnerable. This reimbursement is for  
3 not-for-profit, for-profit and  
4 government-sponsored facilities.

5 Prior to the COVID-19 pandemic, NYSHFA  
6 was working with the Department of Health to  
7 address the state's long-term-care workforce  
8 crisis. The workforce shortage is well  
9 documented. Nevertheless, New York has  
10 failed to implement efforts to truly address  
11 this crisis and recruit and retain women and  
12 men into fulfilling careers in long-term  
13 care.

14 And as we address the 2021-'22 state  
15 budget, it is critical that the Legislature  
16 and the Executive work in partnership with  
17 nursing home providers and treat long-term  
18 care as an investment, not an expense. In  
19 looking at the 70/40 revenue proposal  
20 advanced in the Legislature and by the  
21 Governor, several issues must be addressed,  
22 including specifying Medicaid revenue and  
23 increasing the reimbursement rate to nursing  
24 homes in order to make this proposal both

1 legal and feasible.

2 If the state is sincere about putting  
3 residents first, the Legislature must  
4 implement genuine reform that truly  
5 safeguards nursing home residents and staff;  
6 namely, increasing Medicaid reimbursement to  
7 nursing homes and resolving the workforce  
8 shortage crisis. Addressing these two issues  
9 in the 2021-'22 enacted state budget will  
10 truly benefit the men and women receiving  
11 essential care in New York's nursing homes.

12 Thank you.

13 CHAIRWOMAN KRUEGER: Thank you.

14 Any questions?

15 CHAIRWOMAN WEINSTEIN: Assemblyman  
16 Dilan.

17 CHAIRWOMAN KRUEGER: Okay.

18 Are you there, Erik? Ah.

19 ASSEMBLYMAN DILAN: Yeah, I'm here.

20 Just very quickly, to Bobbie Sackman,  
21 you mentioned some items in your testimony  
22 that are more legislative in nature. I'm  
23 just asking if maybe, to spare the committee  
24 time, if you'd reach out to me tomorrow so we

1 can discuss them.

2 And I just want to say, you know, I  
3 loved working with you in a previous life.  
4 We should reconnect and work together again.  
5 Please reach out.

6 Thank you, Madam Chair.

7 MS. SACKMAN: Can I -- could I just  
8 respond?

9 CHAIRWOMAN WEINSTEIN: Sure.

10 MS. SACKMAN: Thank you, Assemblyman.  
11 It's really nice to see you as well. We are  
12 seeking to include the pay -- pay -- oh, my  
13 God, I'm so tired.

14 CHAIRWOMAN WEINSTEIN: Home care.

15 MS. SACKMAN: -- Fair Wages for Home  
16 Care in the budget. So that's why I'm here  
17 testifying.

18 ASSEMBLYMAN DILAN: Yeah, and that's  
19 why I brought it up. Because the first thing  
20 we worked on together in my previous life, my  
21 first chairmanship as the senior center  
22 subcommittee chairman in the Council, was  
23 COLAs for senior center workers. And now I  
24 see that all the social service workers who

1 take care of seniors automatically get COLAs,  
2 and a lot of that happened because of the  
3 work that you did.

4 So reach out tomorrow, we'll talk more  
5 in-depth. And I'll give the chairs back  
6 their time.

7 MS. SACKMAN: Will do. Thank you very  
8 much.

9 ASSEMBLYMAN DILAN: And for the  
10 chairs, just to let you know I'm always here  
11 and always paying attention. And I'm very  
12 quiet.

13 CHAIRWOMAN WEINSTEIN: Good. We  
14 almost did a roll call before to see if  
15 everybody was really here who's still logged  
16 in.

17 (Laughter.)

18 CHAIRWOMAN KRUEGER: Yeah.

19 CHAIRWOMAN WEINSTEIN: We do have  
20 Assemblyman Byrne for a question.

21 CHAIRWOMAN KRUEGER: Certainly.

22 ASSEMBLYMAN BYRNE: Yes, thank you,  
23 Chairs.

24 And this is more directed to

1 Mr. Hanse, Steve. I asked this question when  
2 some of the hospitals were giving their  
3 testimony as well. The 30-day amendments  
4 provide some significant changes that affect  
5 adult care facilities, hospitals, nursing  
6 homes, basically a lot of folks in the  
7 healthcare industry -- some very significant  
8 proposed fines and other changes.

9 I tend to think that this type of  
10 discussion should be separate from the  
11 budget, and I think it's a very steep  
12 proposal. But I would like to just get your  
13 comments and your thoughts.

14 MR. HANSE: Sure. Thank you,  
15 Assemblyman.

16 Yes, many of the fines are increased  
17 over 500 percent. Really when you look at  
18 that approach, really, fines don't work in  
19 terms of ensuring quality care.

20 And really when you look at all the  
21 proposals, quite frankly, included in the  
22 30-day amendments, they really don't speak to  
23 quality care. They don't speak to the issues  
24 that really face long-term care throughout

1 the pandemic. They're proposals that are  
2 framed as resolutions, but they're really  
3 not. You really need to look at the historic  
4 underfunding of Medicaid and, quite frankly,  
5 New York's long-term-care workforce crisis.

6 ASSEMBLYMAN BYRNE: Thank you, Steve.

7 And I would just echo the comments I  
8 made earlier to Jim Clyne from LeadingAge, I  
9 would share that with you too. I know  
10 there's been a lot of conversation and  
11 discussion about nursing homes, adult care in  
12 general this year, and I think there's been  
13 this stigma attached to it because of all the  
14 conversations that we've had and some of the  
15 things in the press.

16 And it certainly was not, you know, my  
17 intention. And I do want to make sure I  
18 thank, you know, all the workers, the  
19 frontline workers that you do represent. It  
20 is a very difficult job. It takes patience,  
21 it takes a lot of dedication. And  
22 particularly when you're going into an  
23 atmosphere where, you know, this virus is  
24 being spread everywhere, I just want to be

1           sure I made those comments as well.

2           So thank you.

3           MR. HANSE: Thank you, Assemblyman.

4           CHAIRWOMAN KRUEGER: Okay, thank you  
5 all for being with us tonight. Appreciate  
6 it. Take care, get home safe. Well, you're  
7 probably home already, let's be --

8           (Overtalk.)

9           PANELISTS: Good night. Thank you.

10          CHAIRWOMAN KRUEGER: Good night,  
11 thank you.

12                 Our next panel is the national office  
13 for the Nurse-Family Partnership,  
14 Emily Frankel; the Association of Perinatal  
15 Networks, LuAnne Brown; the Citizens'  
16 Committee for Children, Alice Bufkin; and  
17 certainly last but not least, Steve Sanders,  
18 Agencies for Children's Therapy Services.

19                 Okay. Everybody here? Emily, are you  
20 here?

21                 MS. FRANKEL: Yes.

22                 CHAIRWOMAN KRUEGER: Why don't you  
23 start us off.

24                 MS. FRANKEL: Sure. Hi, everyone.

1 I'm Emily Frankel, the government affairs  
2 manager for Nurse-Family Partnership. Thank  
3 you so much for the opportunity to present  
4 testimony today.

5 Nurse-Family Partnership is an  
6 evidence-based home visiting program that  
7 partners low-income, first-time-pregnant  
8 women with a registered nurse from early in  
9 pregnancy through the child's second  
10 birthday. A portion of NFP's funding comes  
11 from the state, thanks to the long-standing  
12 support of the Legislature. We cannot thank  
13 you enough for your partnership.

14 I come before you today, on behalf of  
15 the 162 NFP nurses and the nearly  
16 4,000 New York families they serve, to urge  
17 you to reject the multitude of cuts facing  
18 NFP in the Executive Budget.

19 First, there is a 20 percent cut to  
20 NFP's DOH appropriation which reduces our  
21 funding from \$3 million to \$2.4 million and  
22 would reduce the number of families we  
23 currently serve. We respectfully ask the  
24 State Legislature to reject this cut.

1           The NFP programs in New York City and  
2           Monroe County are facing an additional cut  
3           through the Governor's 20 percent reduction  
4           to the Community Optional Preventive Services  
5           Program. COPS funding supports programs that  
6           prevent at-risk children and youth from  
7           entering the child welfare system.

8           The Governor's combined cuts to NFP's  
9           line item and to COPS would lead to workforce  
10          reductions of at least six nurse home  
11          visitors for New York City's NFP program, as  
12          well as at least 150 low-income families  
13          would no longer receive NFP.

14          The Governor's third cut to NFP occurs  
15          through a reduction to Article VI funding  
16          from 20 to 10 percent. This would lead to  
17          further workforce and service reductions for  
18          NFP. Additionally, the 1 percent  
19          across-the-board Medicaid cut would also  
20          impact our programs who are authorized to  
21          bill targeted case management.

22          NFP's capacity has already been  
23          impacted by the 20 percent withholds on state  
24          government contracts. To absorb this

1 reduction in funding, many programs  
2 instituted hiring freezes for nurse  
3 positions. Now is not the time to reduce  
4 funding for vital programs like Nurse-Family  
5 Partnership. NFP nurses support the very  
6 populations that have been hit hardest by the  
7 pandemic.

8 At the height of the pandemic, many of  
9 our moms were unable to receive prenatal and  
10 postpartum care due to the closure of medical  
11 practices and clinics. Our nurses played a  
12 critical role in filling these gaps in care.  
13 Through regular telehealth visits, NFP nurses  
14 were able to conduct clinical screenings and  
15 assessments, identify and monitor medical  
16 complications, and help their clients get the  
17 healthcare that they needed.

18 If enacted, these Executive Budget  
19 cuts will undermine the essential services  
20 that NFP provides to low-income families. I  
21 ask that you stand up for Nurse-Family  
22 Partnership, our nurses, and the low-income  
23 mothers and children we serve, and restore  
24 our funding in the state budget.

1 Thank you very much.

2 CHAIRWOMAN KRUEGER: Thank you very  
3 much.

4 Next, LuAnne Brown, from the  
5 Association of Perinatal Networks.

6 MS. BROWN: Good evening. I'm LuAnne  
7 Brown, CEO of Buffalo Perinatal Network and  
8 chair of the Association of Perinatal  
9 Networks, or APN. I also spent 30 years at  
10 Women and Children's Hospital in Buffalo as a  
11 nursing administrator, and my background is  
12 in OB. So I have the experience of working  
13 both in the healthcare system and the  
14 community-based organizations.

15 Thank you for allowing me to present  
16 on this panel as it relates to legislation  
17 needed regarding child and maternal health as  
18 well as addressing high maternal morbidity  
19 and mortality.

20 APN is an umbrella organization of 16  
21 perinatal networks and has focused on  
22 maternal health for over 25 years. It  
23 includes the Maternal-Infant Community Health  
24 Collaborative, or MICHC, which works with

1 community health workers, or CHWs, and it's  
2 funded by the Department of Health.

3 The perinatal networks and other MICHHC  
4 programs are organizations embedded in  
5 communities across the state who interact  
6 with the most vulnerable women and families  
7 every day and advance perinatal health.

8 The focus of CHW maternal programs is  
9 to ensure that women reach full-term  
10 pregnancy through prenatal care attendance,  
11 and it also assures enormous savings in  
12 reduction in intensive-care nursery stays.  
13 CHWs tend to be from the community that they  
14 serve, and they share lived experiences as  
15 clients, in addition to having an established  
16 relationship with the community.

17 The Affordable Care Act has also  
18 promoted the use of community health workers  
19 within home visiting programs.

20 One recommendation from Governor  
21 Cuomo's Women's Agenda to reduce maternal  
22 mortality was to expand and enhance CHW  
23 services. Due to this recommendation, cuts  
24 from the previous two years were restored so

1 programs could return to their baseline  
2 staffing.

3 Interestingly, in the rest of the  
4 world 20 percent of resources are dedicated  
5 to medical services, and 80 percent to social  
6 supports, while in the United States this is  
7 reversed. We are of the belief that we can  
8 realign our priorities and prevent medical  
9 complications, which is much more  
10 cost-effective.

11 Listening sessions coordinated by the  
12 Department of Health in 2018 gathered women  
13 from around the state to gather their  
14 thoughts on their birth experience, and one  
15 woman stated: "I wouldn't have made it  
16 without my CHW." We feel the CHW model  
17 should be a universal option for all women.

18 So based on this information, many of  
19 these programs are subject to the state  
20 20 percent withhold, which began last April,  
21 even though our programs are not involved  
22 with Medicaid. These were for services we  
23 had already provided, and we're hitting our  
24 one-year mark. We're requesting that the

1 COVID-19 funds being clawed back from managed  
2 care and MLTC be earmarked for our agencies  
3 rather than swept away from the budget.

4 We would like to introduce legislation  
5 that allows reimbursement of CHW services, as  
6 other states have done. High-risk zip codes  
7 could be targeted if global funding was not  
8 available. And we also recommend that CHWs  
9 be integrated into health homes and Medicaid  
10 managed care plans, care models and care  
11 teams.

12 Thank you very much.

13 CHAIRWOMAN KRUEGER: Thank you very  
14 much.

15 Our next speaker is with the Citizens'  
16 Committee for Children, Alice Bufkin,  
17 director of policy for child and adolescent  
18 health.

19 MS. BUFKIN: Good evening. Thank you  
20 to the chairs and the committee members and  
21 all of your staff for the opportunity to  
22 testify today, especially for sticking around  
23 so late in the evening.

24 My name is Alice Bufkin, and I am the

1 director of policy for child and adolescent  
2 health at Citizens' Committee for Children, a  
3 multi-issue children's advocacy organization  
4 dedicated to ensuring every New York child is  
5 healthy, housed, educated and safe.

6 I want to focus my testimony on a  
7 handful of issues we find critically  
8 important as children and families approach a  
9 year of surviving this pandemic.

10 First, I echo many before me in  
11 opposing the many cuts and cost shifts in the  
12 Executive Budget that will severely harm the  
13 state's public health infrastructure and its  
14 ability to recover. We oppose cuts to the  
15 safety-net hospitals, including the proposed  
16 elimination of the state's share of the  
17 Indigent Care Pool, as well as proposed cuts  
18 to enhanced safety-net facilities.

19 Moreover, we oppose the reduction to  
20 the state's share of New York City's  
21 Article VI program. Of the more than  
22 4,000 children who have lost a parent or a  
23 guardian to the virus, 57 percent have been  
24 in the Bronx, Brooklyn or Queens. Cuts to

1 New York City's Article VI services impact  
2 programs providing immunizations, lead  
3 testing, tuberculosis services, maternal and  
4 child health, mental health, chronic diseases  
5 and many other areas.

6 There are no federal resources sitting  
7 untapped that can simply replace the  
8 collective damage of those cuts. We must  
9 fully restore state reimbursement to  
10 36 percent. And, more broadly, we cannot cut  
11 public health funding in the middle of a  
12 public health crisis.

13 Additionally, we urge the state to  
14 reject cuts to the Nurse-Family Partnership,  
15 as you just heard about, and to take urgent  
16 steps to address children's behavioral health  
17 challenges that have been exacerbated by  
18 COVID-19. Children have faced a year of loss  
19 of loved ones, of illness, economic  
20 insecurity, disrupted learning, isolation,  
21 anxiety. Mental health needs are rising,  
22 access to care has declined, and the result  
23 has been a surge in children in psychiatric  
24 distress, hospitalizations, and families left

1 on wait lists desperate for care.

2 To begin to address this, New York  
3 must start by rejecting the proposal to  
4 remove \$22 million from Community Mental  
5 Health reinvestment. Those are funds that  
6 are desperately needed now more than ever.  
7 The state must also reject cuts to local  
8 assistance, which will harm the behavioral  
9 health sector, among other sectors.

10 We also urge passage of legislation  
11 sponsored by Senator Rivera and  
12 Assemblymember Gottfried that will enable  
13 coverage of children and family treatment and  
14 support services in the CHP program, moving  
15 us closer to parity between Medicaid and CHP.

16 More generally, we believe the state  
17 must invest in a full continuum of behavioral  
18 health supports for children, putting them in  
19 early care and education settings, in schools  
20 and in communities to combat the effects of  
21 existing and exacerbated trauma.

22 Lastly, I want to address the serious  
23 challenges facing children in the Early  
24 Intervention Program. After years of

1           inadequate rates, we are now seeing the  
2           compounded impact of COVID-19. In June 2020  
3           the number of EI providers was down  
4           15 percent compared to 2019. The number of  
5           children enrolled in EI is at its lowest  
6           point since 2013, and the number of EI claims  
7           has dropped 29 percent.

8                       We strongly oppose the \$13.7 million  
9           reduction to EI in the Executive Budget. We  
10          also urge, instead, the state to enact a  
11          covered lives proposal which would assess  
12          \$40 million from commercial insurers and  
13          reinvest those funds back into the EI system.

14                      I want to thank Chair Cahill for  
15          bringing this up, because commercial insurers  
16          overwhelmingly deny claims for services  
17          children need, putting the burden and costs  
18          on providers and the state. It's time they  
19          pay their fair share and time we prioritize  
20          the needs of children, young children with  
21          developmental delays and disabilities.

22                      And I just want to address the  
23          question Senator Rivera raised earlier. We  
24          do support the elimination of the global cap,

1 and we do support identifying revenue options  
2 to prevent cuts.

3 Again, I want to thank you all so much  
4 for your time and truly thank you for your  
5 championing of issues that impact children  
6 and families. Thank you.

7 CHAIRWOMAN KRUEGER: Thank you. And  
8 then Agencies for Children's Therapy  
9 Services, Assemblymember Steve Sanders.

10 MR. SANDERS: Thank you very much,  
11 Chair Krueger, good friend Chairwoman  
12 Weinstein, good friend, colleague Chairman  
13 Kevin Cahill, the great Kevin Cahill,  
14 Chairman Rivera, all the ranking members who  
15 are still here, and all the members who have  
16 sat through now, what, is 12 hours of this  
17 budget hearing. You are all heroes.  
18 Heroines and heroes.

19 (Laughter.)

20 MR. SANDERS: I did that for a number  
21 of years, but not to the extent that you all  
22 are doing it this year. So I really  
23 appreciate all the work you've put in, and  
24 your staff.

1                   And whoever decided that Alice should  
2                   speak before me was prescient. Thank you for  
3                   those comments, Alice, about Early  
4                   Intervention. And so here's the perfect  
5                   segue. I represent the agencies that provide  
6                   Early Intervention services to 70,000  
7                   learning disabled or developmentally disabled  
8                   children every year.

9                   The Governor has made three proposals  
10                  this year that impact Early Intervention.  
11                  None of them are good. They either reduce  
12                  services to children or they reduce rates for  
13                  teletherapy. At the same time that we're  
14                  trying to promote teletherapy as the new  
15                  medium to reach many more people around the  
16                  state, the Governor proposes to cut the rates  
17                  for teletherapy. It's a bad idea.

18                  There's a better idea, and Alice  
19                  touched on it, and I want to amplify on her  
20                  remarks. Covered lives. This was a proposal  
21                  that the Assembly and the Senate included in  
22                  its one-house bills last year.

23                  The fact of the matter is that for the  
24                  entire entirety of the Early Intervention

1 Program, commercial insurance has failed to  
2 pay its fair share. As Kevin Cahill  
3 mentioned earlier today, they pay 2 percent  
4 of the program. Two percent. They paid  
5 2 percent 10 years ago, they paid 2 percent  
6 20 years ago, and they'll continue to pay  
7 2 percent no matter what reforms we try to  
8 initiate. They continue to evade their  
9 responsibility to pay their fair share.

10 What does that mean? That means the  
11 state and counties subsidize all of the  
12 claims that commercial insurance rejects.  
13 They reject 85 percent of the claims that  
14 they receive each year. The way to generate  
15 more money, save money for the counties, save  
16 money for the state, have commercial  
17 insurance finally pay its proportionate fair  
18 share, is to cover the Early Intervention  
19 Program under the covered lives program.

20 It will save money for the state and  
21 counties, and finally commercial insurance  
22 will be paying their fair share and we won't  
23 have to reduce rates and we won't have to  
24 effect cuts.

1                   So I thank you for your time. I thank  
2                   you for all of your efforts this year, a very  
3                   tough year, and all the years that you've  
4                   been working to improve the Early  
5                   Intervention Program. Thank you all.

6                   CHAIRWOMAN KRUEGER: Thank you.

7                   Anyone want to ask a question?

8                   CHAIRWOMAN WEINSTEIN: Yes,  
9                   Assemblyman Abinanti has raised his hand, so  
10                  let's go to him.

11                  CHAIRWOMAN KRUEGER: Okay. You're on,  
12                  Tom.

13                  CHAIRWOMAN WEINSTEIN: Tom? Go ahead.

14                  CHAIRWOMAN KRUEGER: Get off of mute.

15                  ASSEMBLYMAN ABINANTI: I'm trying.

16                  There we go. I clicked that button several  
17                  times, but okay.

18                  I just want to thank Alice and --  
19                  where's Assemblyman -- there he is, there's  
20                  Steve over there. I want to thank both of  
21                  you for staying around so long and  
22                  highlighting an issue that really needs to be  
23                  highlighted, the whole issue of Early  
24                  Intervention.

1           The Governor has tried to use an  
2           attempt to get commercial insurance to pay  
3           for part of Early Intervention as an excuse  
4           to do all kinds of, quote, reforms. And they  
5           really are just excuses to cut state support  
6           for Early Intervention. Which is really  
7           foolish, as we all know, because Early  
8           Intervention is a program that gets kids when  
9           they can be most helped.

10           When I was a county legislator, we  
11           were -- the county was subsidizing it and the  
12           counties tried to get out of the  
13           responsibility for running the programs or  
14           administering them, and the Governor then  
15           substituted this other thing that we have out  
16           there now, some kind of fiscal agent or  
17           something like that. None of this has  
18           worked. Your proposal for covered lives is  
19           the way to go, and I thank you for raising  
20           it, for both of you.

21           I just want to ask, what is the status  
22           of the field these days? And I mean we  
23           haven't had a report on how the fiscal  
24           intermediary is working. Or is it working?

1 Can either of you comment on that and tell us  
2 what's happening there?

3 MR. SANDERS: Well, I can give you a  
4 little bit of comment.

5 When the state fiscal agent was  
6 contracted for, I think back in 2013, one of  
7 the stated goals was to improve the recovery  
8 of money from commercial insurance. They  
9 were paying 2 percent of the grand total,  
10 about a \$700 million Early Intervention  
11 Program. And if you use that as a metric for  
12 whether they've been successful or not, and  
13 you fast forward now eight years, commercial  
14 insurance is still paying 2 percent.

15 ASSEMBLYMAN ABINANTI: And now we're  
16 paying this fiscal intermediary -- this  
17 fiscal agent to do paperwork?

18 MR. SANDERS: Well, the fiscal agent  
19 is paid for a lot of purposes, administrative  
20 purposes, but it doesn't appear that they've  
21 been successful in being able to retrieve  
22 more money from commercial insurance.

23 Now, I would just add this. Aside  
24 from the fact that we -- I think we should

1 all be insulted a little bit by the fact that  
2 commercial insurance every year rejects  
3 85 percent of the claims that are submitted  
4 to commercial insurance. If that wasn't bad  
5 enough, they leave the counties and the state  
6 to subsidize the expenses. Because whatever  
7 commercial insurance rejects, the state and  
8 counties have to pay 50 percent each.

9 So we're paying for what commercial  
10 insurance has refused to pay all these years.

11 ASSEMBLYMAN ABINANTI: Madam Chair,  
12 can I follow up with one question, very  
13 brief?

14 Has the problem that we saw over the  
15 years, that the fiscal agent wasn't paying  
16 the Early Intervention providers timely, has  
17 that problem been solved?

18 MR. SANDERS: It's better than it was  
19 seven or eight years ago. But when a  
20 provider submits a claim that would go to  
21 commercial insurance, it goes through a whole  
22 rigmarole, which is so unnecessary. It has  
23 to be adjudicated by commercial insurance.  
24 That costs them time and money.

1                   Ultimately, with all of that effort,  
2                   sometimes a lot of back-and-forth between  
3                   insurance companies and early intervention  
4                   agencies, at the end of the day insurance is  
5                   going to reject 85 percent of the claims.  
6                   They do that now, they did that last year,  
7                   they'll do that next year, no matter what  
8                   kinds of other reforms we try to put into  
9                   place. So --

10                   ASSEMBLYMAN ABINANTI: Thank you.

11                   CHAIRWOMAN WEINSTEIN: Let's move on.  
12                   You have a number of members who have raised  
13                   their hand. Tom, you got people interested.

14                   Assemblyman Cahill.

15                   ASSEMBLYMAN CAHILL: Thanks so much.

16                   And I just want to tell you when I  
17                   listened to your testimony, this entire panel  
18                   but especially my dear and long-time friend  
19                   Steve Sanders, I really get a lump in my  
20                   throat because you're talking about taking  
21                   care of children from the womb right on up to  
22                   the time when they can start to maybe take  
23                   care of themselves.

24                   And you're talking about needs that

1           have existed for a very long time, but also  
2           the one area that we know that if we invest,  
3           if we invest, we will create productive  
4           tax-paying adults who will contribute back to  
5           society. We will invest in creating  
6           independence. We will invest in creating  
7           great students and, who knows, maybe the next  
8           Einstein. We don't know what's out there.  
9           And thank you all for the good work that you  
10          do.

11                     Steve, I have a slightly different  
12          take on what New York State is doing with our  
13          providers. I don't want anybody to walk away  
14          thinking that the providers are just dealing  
15          with the big bad insurance companies. A lot  
16          of the claims that are denied are denied  
17          because they're not covered by health  
18          insurance. And health insurance only covers  
19          what health insurance covers.

20                     That doesn't stop the State of  
21          New York from forcing providers to pursue  
22          health insurance. It doesn't stop them from  
23          forcing them to pursue claims that cannot  
24          ever be paid. But what it does force them to

1 do also is to take that meager little payment  
2 that they get for the service, for early  
3 childhood intervention services, and divide  
4 it between actually taking care of a child  
5 and bill collecting.

6 And all for what? At the end of the  
7 day, it's not that the provider is going to  
8 get more for that, it's that the state is  
9 going to get less -- have less of a  
10 responsibility for it. It is immoral. We  
11 need to fix it.

12 I want to thank you all again for your  
13 tenacity in sticking around for this long  
14 time. I did -- I was able to extract from  
15 the superintendent this morning a commitment  
16 to take a serious look at this issue. I am  
17 surprised, but she acted as if she didn't  
18 know much about it, but she expressed a  
19 willingness to learn. And I'm certainly sure  
20 that you are entirely capable of teaching  
21 her.

22 So with that, I would welcome you  
23 using my last 40 seconds for any comments you  
24 want to make. But I know the chairs would

1           rather I just say thank you and drop the mic.

2                       Thanks, everybody.

3                       MR. SANDERS: I think it's we who  
4           thank you.

5                       CHAIRWOMAN WEINSTEIN: Thank you. So  
6           we're going to go to Assemblywoman Solages.

7                       SENATOR RIVERA: I think she might  
8           have left.

9                       ASSEMBLYMAN ABINANTI: Oh, no, she's  
10          here.

11                      ASSEMBLYWOMAN SOLAGES: I'm back.

12                      (Laughter; cross-talk.)

13                      ASSEMBLYWOMAN SOLAGES: Abinanti woke  
14          me up.

15                      So I just want to thank all the  
16          panelists. You know, the saying goes that  
17          it's easier to build strong children than to  
18          repair broken men. And so I thank you for  
19          what you're doing.

20                      And we know that pandemic life may  
21          have lasting effect on our babies, but it's  
22          even taking a greater toll on our parents.  
23          So these programs that you have provided that  
24          holistic approach of, you know, ensuring that

1 families are, you know, protected. And so as  
2 a state we should commit to protecting these  
3 essential health and behavioral services and  
4 supports and make targeted investments. So,  
5 you know, I thank you all.

6 And especially to NFP, I've seen  
7 firsthand that this program really has  
8 supported those who have been hardest hit.  
9 There was a panel -- a roundtable in which I  
10 heard many of the nurses talk about how they  
11 had to be furloughed or there were many cuts  
12 and their colleagues were laid off.

13 And so I know that the budget  
14 basically, essentially is going to dismantle  
15 NFP in two major locations. But will it  
16 destabilize I guess the whole network that we  
17 took so long -- you know, NFP took so long to  
18 build?

19 MS. FRANKEL: Thank you so much,  
20 Assemblywoman Solages, for your support.

21 That's my concern. I mean, we're  
22 seeing -- we've already had one closure in  
23 Cayuga County. We don't know where the --  
24 when the cuts are going to stop. You know,

1 on top of the withholds, if there are going  
2 to be more in the future. There's a lot of  
3 uncertainty.

4 And I am concerned, especially where  
5 we have county health departments, especially  
6 in upstate New York, that they're also  
7 responding to the pandemic. So we have NFP  
8 nurses that are working three days a week on  
9 NFP and two days a week they're working to  
10 provide vaccines. The same thing in our  
11 New York City implementation.

12 So I don't know. I can't answer that.  
13 But it doesn't look good right now.

14 ASSEMBLYWOMAN SOLAGES: How about for  
15 any of the other panelists, is this going to  
16 destabilize programs that took so long to  
17 implement?

18 MS. BUFKIN: I will say on the -- oh,  
19 I'm sorry, go ahead, LuAnne.

20 MS. BROWN: Yeah, I mean we've been --  
21 Buffalo Prenatal's been in existence for  
22 25 years and, you know, we had -- we also  
23 have a Healthy Families Program, which is  
24 another important program. And that program

1 has taken a huge hit. I had to lay off seven  
2 people in September. So that's 200 families  
3 that are impacted.

4 And, you know, most of these programs,  
5 whether it's Nurse-Family Partnership or  
6 Healthy Families or community health workers,  
7 we're the only support some of these families  
8 have. I mean, they're estranged from their  
9 families, they don't get any support except  
10 from us.

11 So despite COVID going on -- and as  
12 usual, nonprofits were the ones to step up in  
13 these type of programs, and we were out  
14 there -- we did a food pantry, we were  
15 delivering food and diapers to our clients.  
16 And these are the programs they decided they  
17 want to withhold.

18 So it's very frustrating, I guess,  
19 because I see my staff working really hard  
20 and my clients being impacted. And I just  
21 think, you know, as someone mentioned, this  
22 is the beginning of life here. This is where  
23 you're starting to build a healthy adult.  
24 And when you impact those programs, you

1 impact these adults that can be valuable to  
2 communities.

3 CHAIRWOMAN KRUEGER: Well, I also just  
4 want to thank you all for your work. And  
5 many of you and your organizations have been  
6 educators of mine for years.

7 And there's no doubt about it, if we  
8 invest in the earliest time from pregnancy  
9 through a child's really fifth year of life,  
10 you can pretty much be assured things are  
11 going to go okay. And if you screw it up in  
12 the first five years, you can pretty much be  
13 assured from a government perspective you're  
14 going to have to spend a whole lot more money  
15 for, as the Assemblymember just said, the  
16 broken adults that you end up with.

17 So we know what the answers are, and  
18 they're very inexpensive. And so it's  
19 infuriating when we see ourselves going  
20 backwards this way.

21 And I just also want to give a shout  
22 out to Citizens' Committee for Children, who  
23 we know very well down in New York City, but  
24 the rest of the state may not know them. But

1           this year I think is the first year they put  
2           out a statistical book that covers every  
3           county in New York State for poverty data and  
4           other indicators. And when you're a  
5           legislator and you're trying to see what's  
6           going on in your area or how you're doing in  
7           comparison to other areas, that kind of data  
8           that's statewide but broken down in ways you  
9           can use it can be very, very valuable.

10                        So I'm sure that the Citizens'  
11           Committee for Children would be happy to get  
12           you those copies of those books. Am I right?

13                        MS. BUFKIN: Absolutely.

14                        CHAIRWOMAN KRUEGER: Oh, good, okay.  
15           I was telling them you wanted to give them  
16           the books.

17                        MS. BUFKIN: I would be very happy to  
18           get that to anyone.

19                        CHAIRWOMAN KRUEGER: That would be  
20           great.

21                        MS. BUFKIN: Thank you so much for  
22           bringing that up.

23                        CHAIRWOMAN KRUEGER: Thank you.

24                        All right --

1                   CHAIRWOMAN WEINSTEIN: We still have  
2 another Assemblymember.

3                   CHAIRWOMAN KRUEGER: Oh, you do?

4                   CHAIRWOMAN WEINSTEIN: Yes,  
5 Assemblyman Jensen.

6                   ASSEMBLYMAN JENSEN: Thank you very  
7 much. I'll be much briefer than I have in  
8 the past.

9                   I just wanted to echo Misters Abinanti  
10 and Cahill and just thank our Early  
11 Intervention advocates. Certainly I know  
12 firsthand how critically important those  
13 services are. I didn't speak until I was  
14 five, I had speech impediments, speech delay.  
15 And I know for sure that I wouldn't be doing  
16 this if it wasn't for the Early Intervention  
17 services that I had. And I certainly  
18 wouldn't be able to use my voice to speak on  
19 behalf of those I serve in my community.

20                   So just thank you to our advocates,  
21 not just in Early Intervention but, like what  
22 Member Solages said, and Chair Krueger, thank  
23 you for everybody who's advocating right from  
24 birth through -- right into older ages. So

1 thank you.

2 CHAIRWOMAN KRUEGER: Thank you.

3 All right. We covered everybody now?  
4 Oh, wait, I see -- wait, are you raising your  
5 hand, Gustavo? No. But Josh Jensen might  
6 have been raising his hand, I wasn't sure.

7 CHAIRWOMAN WEINSTEIN: No, he's done.  
8 We're done.

9 CHAIRWOMAN KRUEGER: Fine. Okay.  
10 Thank you, panel. Greatly appreciate your  
11 hard work and being with us this evening.

12 And we're moving on to -- I know you  
13 can't believe this, but the last panel of the  
14 last hearing.

15 SENATOR RIVERA: Sign me up for two  
16 rounds, please. Sign me up for two rounds of  
17 questions.

18 (Laughter.)

19 CHAIRWOMAN KRUEGER: Sit down, relax,  
20 Gustavo Rivera.

21 All right. So certainly not the  
22 least, but appreciate everybody waiting this  
23 long with us. Clerical-Administrative  
24 Employees Local 1549, Ralph Palladino,

1           2nd vice president; New York State Nurses  
2           Association, Judith Cutchin, president,  
3           New York City; and Feeding New York State,  
4           Dan Egan, executive director.

5                   Health and food, what a better way to  
6           chose out the evening.

7                   Good evening. Hi. Let's see, shall  
8           we start with you, Ralph? You have to turn  
9           on your voice.

10                   MR. PALLADINO: Oh, yes. Hi.

11                   CHAIRWOMAN KRUEGER: Hi.

12                   MR. PALLADINO: Good evening. Good  
13           evening.

14                   Yes, Local -- thank you, by the way.  
15           Local 1549 has 14,000 members working for the  
16           City of New York, 5,000 of whom work in the  
17           New York City Health + Hospitals and Metro  
18           Plus HMO.

19                   So we think that the principles that  
20           the state should be following in budgeting  
21           for safety-net hospitals is the following.  
22           One, Medicaid dollars should follow where the  
23           Medicaid patients are. Two, Medicaid  
24           reimbursement rates should be based on true

1 cost of care. Three, fairness in  
2 distribution of funds to care for the  
3 indigent patients is a must. Sadly, this  
4 Executive Budget fails on all three.

5 Specifically, what we need to do in  
6 terms of what we're asking for is that we  
7 have no Medicaid cuts for safety-net  
8 hospitals as defined by Public Law  
9 2807-c(34). Funding should be increased.

10 And with that, we should also end the  
11 global cap, which in practice means less  
12 services and less staff -- and also, I might  
13 add, leads to the overuse, as it does in  
14 hospitals where we are, of the exploitative  
15 temp agencies for contracting out. That is  
16 very bad.

17 Two, reject the proposed shift in the  
18 share from state to localities for the  
19 indigent care pools. New York City has  
20 already stepped up with billions of dollars  
21 in support over the last number of years,  
22 after 16 years of cuts by former mayors. The  
23 city itself is facing a huge deficit already,  
24 and we are short-staffed in every agency,

1 including the police department. And I say  
2 clericals in the police department, 911.

3 The city itself is facing a huge  
4 deficit, so how could we possibly take up the  
5 ICP payments? This amounts to a cut. It's  
6 not going to happen.

7 Now, New York City Health + Hospitals  
8 and Metro Plus are public and proud. Health  
9 + Hospitals had a \$100 million cut from its  
10 budget and lost \$1.2 billion from the COVID  
11 war. How could we distribute the cuts we --  
12 I'm sorry. How could we absorb the cuts?  
13 How could we serve the poorest communities  
14 with the greatest disparities in care? Who  
15 will do that but us?

16 People should not pay lip service to  
17 this severe, long-standing problem. They  
18 should pay with proper funding to end it.  
19 And we should be -- Medicaid is an economic  
20 engine for communities, it raises revenues.  
21 Investing in care for high disparities means  
22 healthier and less future costs for sicker  
23 patients. And we need to tax the rich, as  
24 the New York coalition says.

1                   CHAIRWOMAN KRUEGER: Thank you. Your  
2 time just ended. Well done.

3                   Thank you. Our next speaker is Judith  
4 Cutchin, the president of the New York Nurses  
5 Association. Good evening, Judith.

6                   MS. CUTCHIN: Hi, good evening. Thank  
7 you for allowing me the time to testify. My  
8 name is Judith Cutchin, and I am testifying  
9 on behalf of the New York Nurses Association.  
10 I am director at large of the New York State  
11 Nurses Association board of directors and the  
12 president of the Health + Hospitals Mayoral  
13 Executive Council, the largest NYSNA unit,  
14 representing almost 10,000 of our total  
15 membership of 44,000 nurses.

16                   We have submitted our full testimony  
17 on the proposed budget items related to  
18 healthcare, but I want to focus on three  
19 critical issues in my testimony today.

20                   First, we think it is outrageous that  
21 the budget is considering hundreds of  
22 millions in cuts to hospitals and other  
23 health services in the middle of an ongoing  
24 pandemic. We should not be cutting. We

1 should be increasing funding to build up our  
2 public health infrastructure to be able to  
3 deal with COVID and future health  
4 emergencies.

5 In addition, we should be expanding  
6 funding for our hospitals and other providers  
7 in the front-line fight against the pandemic.  
8 We should also be providing more funding for  
9 Medicaid to cover uninsured people, including  
10 undocumented workers.

11 Second, we should be implementing  
12 minimum staffing standards for all hospitals  
13 and nursing homes. In my hospital we saw  
14 firsthand that we did not have enough staff  
15 to provide care that patients needed, and  
16 that contributed to higher death tolls in all  
17 of our hospitals and, as it was noted by the  
18 Attorney General's report, in our nursing  
19 homes.

20 Establishing minimum staffing  
21 standards is also vital to addressing racial  
22 and economic disparities in care. Richly  
23 funded private hospitals with more staffing  
24 had more PPE and other equipment than the

1 public and other private-sector hospitals.  
2 Those disparities have a devastating impact  
3 on the communities of color and low-income  
4 patients that safety-net hospitals serve.

5 Minimum staffing standards are a first  
6 step towards addressing inequalities and  
7 inequities in healthcare.

8 Finally, where we have to provide  
9 increased funding for enhanced safety-net  
10 hospitals and other safety-net hospitals. We  
11 should be increasing ICP and DSH funding for  
12 these hospitals, increasing their Medicaid  
13 reimbursement rates to reflect their  
14 disproportionate share of these patients.

15 Now is not the time for business as  
16 usual in addressing our healthcare budget  
17 gaps. We need to take bold action to  
18 increase spending, mandate minimum staffing  
19 standards, and target extra funding to our  
20 safety net. Instead of cutting costs, the  
21 budget must be balanced and vital social  
22 service spending must be increased by raising  
23 taxes on the wealthiest New Yorkers,  
24 Wall Street investors and corporations that

1 have gotten richer during this crisis.

2 The Legislature needs to rise to the  
3 occasion. We are in a serious crisis, and we  
4 need to act like it.

5 Thank you very much for allowing me to  
6 speak. Thank you.

7 CHAIRWOMAN KRUEGER: Thank you very  
8 much.

9 And our last speaker, Dan Egan from  
10 Feeding New York State.

11 MR. EGAN: Thank you all, Senators and  
12 Assemblymembers, for staying with us to work  
13 so late into the evening. We really  
14 appreciate your hard work and the care you've  
15 shown for the health of the people of our  
16 state. I applaud your endurance, and I will  
17 try to talk fast.

18 Last year when I was here I said that  
19 every county in New York is home to people  
20 who cannot afford adequate food, and it's  
21 about to get worse. I wish I had been wrong.  
22 Last year over 2.2 million New Yorkers were  
23 food-insecure. This year, right now, over  
24 3 million New Yorkers are food-insecure.

1                   That's a 46 percent increase in need.  
2                   Please remember that number. In some  
3                   communities it's a lot higher. You've all  
4                   seen the lines of people waiting.

5                   I want to talk to you about a  
6                   different line, the line of wasted food.  
7                   Even as we have millions of New Yorkers going  
8                   hungry, we are wasting perfectly good food --  
9                   1.2 billion pounds of produce are being  
10                  wasted every year, never even leaving the  
11                  farm because it has no market. The farmers  
12                  did their jobs; the market failed.

13                  You might ask, what does 1.2 billion  
14                  pounds of foods look like? That amount of  
15                  food would fill 30,000 tractor trailers. If  
16                  you park those tractor trailers end to end,  
17                  bumper to bumper, one behind the other, that  
18                  line of trucks would stretch from Montauk to  
19                  Buffalo, 450 miles of food being thrown out.

20                  You didn't see that line in the media,  
21                  but you need to be aware of that. In a  
22                  normal year, the year before COVID, the  
23                  10 food banks of Feeding New York State  
24                  distributed over 250 million pounds of food.

1           So far, in the first 10 months of the  
2           pandemic, we've distributed 397 million  
3           pounds, a 62 percent increase.

4                     We are prepared to do more. We expect  
5           and need to do more over the next few years.  
6           I'm asking you for three things to help us  
7           out.

8                     First, HPNAP. It's a great program.  
9           It funds critical operational costs for us.  
10          It's been funded flat for quite a few years.  
11          The Executive Budget proposes \$34.5 million.  
12          In recent years the Legislature has restored  
13          500,000 to fund that program at 35 million  
14          annually. We're thankful for that support.  
15          We ask you to restore that again.

16                    But beyond that, recall that the need  
17          for food is up 46 percent. A proportionate  
18          increase in HPNAP would add 16 million for a  
19          total funding level of \$51 million.

20                    Second, I think you all know what a  
21          fantastic program Nourish New York has been.  
22          We've supported over 4,000 New York farms  
23          while providing over 17 million pounds of  
24          food. We applaud Senator Hinchey and

1 Senator Borrello for introducing Senate bill  
2 S4892, which establishes Nourish New York as  
3 a state program.

4 It is essential that Nourish New York  
5 continue, and we request 100 million be  
6 allocated to Nourish New York this year and  
7 the program be put on a permanent basis.

8 Third, the Department of Environmental  
9 Conservation is responsible for the Food  
10 Scraps Law, and we ask that they be funded  
11 adequately so that we can help them  
12 administer the execution of that law.

13 I just want to conclude I hope  
14 everyone understands from all this we have  
15 all the resources we need to solve the  
16 problem of hunger. All I ask is that you let  
17 us use them.

18 CHAIRWOMAN WEINSTEIN: Thank you.

19 CHAIRWOMAN KRUEGER: Thank you.

20 Any Senators? Assemblymembers?

21 CHAIRWOMAN WEINSTEIN: Yes. We have  
22 Assemblyman Abinanti and then  
23 Assemblyman Jensen to follow.

24 CHAIRWOMAN KRUEGER: Okay.

1 ASSEMBLYMAN ABINANTI: Okay, thank you  
2 to the three of you.

3 I'd like to address the last gentleman  
4 who just spoke. I thank you for raising the  
5 issue of food insecurity or, put in common  
6 language, hunger. When a kid goes to school  
7 without having had breakfast, he's not  
8 thinking food insecurity, he's just hungry.

9 So we appreciate very much your  
10 raising that issue with us. That's really a  
11 health issue.

12 You discussed the Food Scraps Law. I  
13 would just like to note that there was just  
14 an amendment to that, a bill that I sponsored  
15 and Peter Harckham sponsored in the Senate.  
16 The Governor just signed the bill. It's  
17 going into effect immediately. What it does  
18 is set up a mechanism for the largest  
19 supermarkets to provide food to our food  
20 banks.

21 It's only going to be a small piece of  
22 the entire puzzle of trying to resolve this  
23 issue, but it is something that's there. And  
24 your asking for more money to make sure that

1           this program works is a very good request.

2           So thank you for raising that.

3                       And thank you to all of you, and thank  
4           you to the entire -- to the chairs, who spent  
5           the entire day doing this. I admit I've  
6           jumped off several times to do several other  
7           Zooms, attended some other meetings. But you  
8           guys have -- you know, you've been there all  
9           day, so thank you for carrying the ball for  
10          us, for the chairs and the ranking members.  
11          You guys sat here and heard it all, so thank  
12          you very much for doing this on all of our  
13          behalfs.

14                      MR. PALLADINO: Assemblyman, can I  
15          just say to you -- thank you for bringing up  
16          food. I just want to remind you, the SNAP  
17          program -- the importance of the SNAP  
18          program. It's also there, and it's also an  
19          economic engine for the state. So let's not  
20          forget that too.

21                      But thank you for saying that.

22                      CHAIRWOMAN KRUEGER: And there was one  
23          more Assembly person?

24                      CHAIRWOMAN WEINSTEIN: Yes,

1 Assemblyman Jensen to close, I believe.

2 ASSEMBLYMAN JENSEN: Thank you very  
3 much.

4 Just very quickly to Mr. Egan, I know  
5 another food initiative that you didn't  
6 mention was the Ugly Food Initiative. I know  
7 it's a pilot program in the Mid-Hudson  
8 region.

9 Do you think that's going to be a  
10 viable program to go statewide to get some of  
11 those more -- less desirable pieces of  
12 produce to folks who are food-insecure?

13 MR. EGAN: Thank you. It may be. I  
14 think it remains to be seen.

15 I would just add to that that there's  
16 top-quality produce that's not even being  
17 harvested. So what we need is the tools to  
18 get that to the people who need it.

19 ASSEMBLYMAN JENSEN: Thank you,  
20 Mr. Egan.

21 And just to echo my colleague, it's  
22 been an honor to spend the day with the  
23 chairs and the rankers and my colleagues in  
24 the Assembly and the Senate. So thank you,

1           everybody.

2                   CHAIRWOMAN KRUEGER: Thank you.

3                   MR. EGAN: Thank you.

4                   CHAIRWOMAN KRUEGER: So I think in  
5 closing I also want to thank all three of  
6 you. I mean, obviously the inequities of  
7 Medicaid funding and the importance of the  
8 safety-net hospitals, Ralph, were the theme  
9 of, you know, almost the whole day, for  
10 obvious reasons.

11                   For the Nurses Association, I hope you  
12 heard the testimony of the researcher from  
13 the University of Pennsylvania. We have the  
14 right nurse match, and we save people's  
15 lives. It's as simple as that. You can  
16 actually look at the numbers and see it.

17                   So personally I can't thank both of  
18 your members enough for the work that they  
19 are doing during this pandemic every day.  
20 And I don't even know how you can communicate  
21 to them how much we really are aware of what  
22 they are doing and the critical role they  
23 play, and can't imagine that we would be  
24 getting through this pandemic without them

1           there every day.

2                   So thank you, thank you.

3           MR. PALLADINO: Thank you.

4           MS. CUTCHIN: Thank you.

5           MR. PALLADINO: Can I say one thing to  
6 you, Madam Chair?

7           CHAIRWOMAN KRUEGER: Certainly.

8           MR. PALLADINO: I just remember being  
9 many years ago someplace on the east side of  
10 Manhattan on Election Day with all these  
11 young people, and there was like a revolution  
12 going on. And, you know, whatever happened  
13 that night on Election Night, it was a damn  
14 good choice. Thank you.

15                   (Laughter.)

16           CHAIRWOMAN KRUEGER: Thank you for  
17 being there.

18                   (Laughter.)

19           SENATOR RIVERA: Closing time  
20 (singing).

21                   (Laughter; overtalk.)

22           SENATOR RIVERA: (Singing.) So finish  
23 your whiskey or beer.

24           CHAIRWOMAN WEINSTEIN: Okay, I think

1           it's time to go.

2                     SENATOR RIVERA: (Continuing to sing.)

3                     CHAIRWOMAN KRUEGER: -- I've been out  
4           doing anti-hunger work from before I jumped  
5           into politics, and so I couldn't be happier  
6           that you were there and being able to build  
7           systems when we need them. The Nourish  
8           New York system, it's a win/win/win, just  
9           like SNAP is. Right? It's money to make  
10          sure that farmers can hire workers to pick  
11          the crops, so more people get jobs and the  
12          crops get delivered then to food banks for  
13          distribution to hungry people in need.

14                     And we see a federal government that's  
15          taking these issues more seriously also.  
16          Thank goodness.

17                     And yes, I am not going to take up any  
18          more time. This is now the official end of  
19          the last budget hearing for this year on the  
20          Governor's Executive Budget. I want to thank  
21          all the staff people behind the scenes from  
22          the Senate and the Assembly for all the work  
23          you did to make this all look like it was  
24          smooth and easy.

1           I want to thank so much my chairs and  
2           my rankers on every hearing, but particularly  
3           Helene Weinstein, who -- you know, with a  
4           smile on our faces, we got up every day and  
5           said, I don't know how this one's going to  
6           work out, but we'll get through it. And we  
7           did, with pride. And we let the public see  
8           more and more of how government tries to do  
9           things.

10           And hopefully we will end up with a  
11           better budget this year because of all this  
12           hard work. Because we have a lot of  
13           assignments in front of us, don't kid  
14           yourselves. But we also are the State of  
15           New York, and we can do the things other  
16           people can't do.

17           So I just really want to thank you  
18           all. Get home safely --

19           (Interruption.)

20           CHAIRWOMAN KRUEGER: Pardon? Get home  
21           safely. Get some sleep. No, I have a  
22           meeting with Health + Hospitals at like 9 in  
23           the morning, so I have to get to sleep fast.

24           SENATOR RIVERA: Closing time

1 (singing).

2 CHAIRWOMAN WEINSTEIN: Okay, I think  
3 it's time. I just wanted a moment to --  
4 let's mute that man.

5 I wanted to take a moment also to just  
6 thank both my cochair, Liz Krueger, the  
7 rankers Senator O'Mara and Assemblyman Ra,  
8 and all of the staff behind the scenes that  
9 have really made this look like we knew what  
10 we were doing.

11 And thank you all for your testimony,  
12 those -- this last panel, but all of the  
13 people not only today, but all of the weeks  
14 leading up to today.

15 CHAIRWOMAN KRUEGER: Thank you. Thank  
16 you, Tom. Thank you, Ed. Bye.

17 SENATOR O'MARA: Thank you. Well  
18 done.

19 (Whereupon, at 10:17 p.m., the budget  
20 hearing concluded.)

21

22

23

24