

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

10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
VIRTUAL JOINT PUBLIC HEARING:

RESIDENTIAL HEALTH CARE FACILITIES AND COVID-19

UPSTATE NEW YORK

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

PRESIDING:

Senator Gustavo Rivera
Chair, Senate Standing Committee on Health

Senator Rachel May
Chair, Senate Standing Committee on Aging

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

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

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

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

1 SENATE MEMBERS PRESENT:

2 Senator George Borrello

3 Senator Pat Gallivan

4 Senator Pam Helming

5 Senator Betty Little

6 Senator Sue Serino

7 Senator Jen Metzger

8 Senator Brad Hoylman

9

10 ASSEMBLYMEMBERS PRESENT:

11 Assemblymember Jake Ashby

12 Assemblymember Thomas Abinanti

13 Assemblymember Charles Barron

14 Assemblymember Carl Brabenec

15 Assemblymember Edward Braunstein

16 Assemblymember Kevin Byrne

17 Assemblymember Marjorie Byrnes

18 Assemblymember Kevin Cahill

19 Assemblymember Joseph DeStefano

20 Assemblymember Natalia Fernandez

21 Assemblymember Sandy Galef

22 Assemblywoman Aileen Gunther

23 Assemblymember Ellen Jaffee

24 Assemblymember Mark Johns

25 Assemblymember Ron Kim

1 ASSEMBLYMEMBERS PRESENT (continued):

2 Assemblymember Brian Manktelow

3 Assemblymember Missy Miller

4 Assemblymember Michael Reilly

5 Assemblymember Doug Smith

6 Assemblymember John Salka

7 Assemblymember Al Taylor

8 Assemblymember Monica Wallace

9 Assemblymember Brian Williams

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

	SPEAKERS:	PAGE	QUESTIONS
1			
2	Stephen Hanse	13	23
3	President & CEO		
4	Lisa Volk		
5	Director of Clinical and Quality Services		
6	NYS Health Facilities Association		
7	James Clyne	13	23
8	President		
9	Leading Age New York		
10	Mary Jo Botindari	122	145
11	Resident		156
12	Syracuse, New York		
13	Jerry Maldonado	122	145
14	Resident		156
15	Newburgh, New York		
16	Mikko Cook	122	145
17	Daughter of NYS Nursing Home Resident		156
18	Ventura, California		
19	Virginia Wilson-Butler	122	145
20	Ombudsman, and Resident		156
21	Brooklyn, New York		
22	Vincent Pierce	153	156
23	Resident of Coler Hospital		
24	Spokesperson for Voices of Coler		
25	Steve Lampa	199	220
	Partner with Kensington Senior Living		
	Chair of Argentum NY Advisory Board		
	Stephen Knight	199	220
	CEO		
	United Helpers		
	Kimberly Townsend	199	220
	President and CEO		
	Loretto		

1	SPEAKERS (continued):	PAGE	QUESTIONS
2	Jason Santiago	199	220
3	Chief Operating Officer		
4	The Manor & Springside at Seneca Hill		
5	Rachel Dombrowsky	199	220
6	Owner/Operator		
7	Harbor House Assisted Living and		
8	Oyster Bay Manor Assisted Living		
9	Ruth Heller	265	277
10	Executive Vice President, 1199 SEIU		
11	United Healthcare Workers East		
12	Brenda Anderson	265	277
13	LPN, and 1199 SEIU Member		
14	St. Catherine Laboure Healthcare Center		
15	Iris Purks	265	277
16	Certified Nursing Assistant,		
17	and 1199 Member		
18	Safire Rehabilitation of Northtowns		
19	Vanessa Brooks	265	277
20	Home Health Aide and		
21	Healthcare Workers Rising Member		
22	MedTemps and Venture Forthe agencies		
23	Kathy Febraio	310	320
24	President and CEO		
25	NYS Association of Healthcare Providers		
26	Al Cardillo	310	320
27	President and CEO		
28	Home Care Association of NY		
29	Sorrelle Leslie Braugh	348	366
30	Spokesperson		
31	Teresian Home Family Council		
32	Lynn Goliber	348	366
33	Member		
34	Teresian Home Family Council		
35	Bonnie Webster	348	366
36	Resident		
37	Caledonia, New York		

		PAGE	QUESTIONS
1	SPEAKERS (continued):		
2			
3	Donna Morgans	348	366
4	Family Council Chair		
5	Van Duyn Center for Rehabilitation		
6	and Nursing		
7			
8	David Hoffman	389	414
9	Chief Compliance Officer		
10	Carthage Area Hospital		
11			
12	Mary D'Ercole Pritchard	389	414
13	Former Ombudsman		
14			
15	Bobbie Sackman	389	414
16	Member Leader		
17	New York Caring Majority		
18			
19	Cynthia Rudder	389	414
20	Founder and Former Director		
21	LTCCC		
22			
23	Mary Somoza	389	414
24	Patient Advocate		
25	Self-Direction Families of New York		
26			
27	Tania Anderson	442	464
28	Chief Executive Officer		
29	ARISE Independent Living Center		
30			
31	Meghan Parker	442	464
32	Director of Advocacy		
33	NYS Association on Independent Living		
34			
35	Douglas Hovey	442	464
36	President and CEO		
37	Independent Living, Inc.		
38			
39	Keith Gurgui	442	464
40	Systems Advocate		
41	Resource Center for		
42	Accessible Living, Inc.		
43			
44	Gail Myers	483	506
45	Deputy Director		
46	Statewide Senior Action Council		
47			
48			

	SPEAKERS (continued):	PAGE	QUESTIONS
1			
2	Lindsey Heckler	483	506
3	Supervising Attorney		
4	Center for Elder Law & Justice		
5	Marydel Wypych	483	506
6	Co-Chair		
7	Elder Justice Committee of		
8	Metro Justice		
9	Sandy Reiburn	483	506
10	President		
11	Save Our Seniors		
12	Alexia Mickles	544	561
13	Staff Attorney		
14	Empire Justice Center		
15	Timothy Clune	544	561
16	Executive Director		
17	Disability Rights New York		
18	Ann Marie Cook	544	561
19	President and CEO		
20	Lifespan of Greater Rochester		
21	John Holt	596	608
22	Director of Legal Services & Policy		
23	Vera Institute of Justice -		
24	The Guardianship Project		
25	Beth Haroules	596	608
26	Senior Staff Attorney		
27	NYCLU		
28	Thomas Mahoney	615	630
29	Chief Medical Officer		
30	Common Ground Health		
31	Bill Hammond	615	630
32	Senior Fellow for Health Policy		
33	Empire Center		
34	Nina Kohn	615	630
35	Professor		
36	Syracuse University College of Law		

1 SENATOR RIVERA: Good morning, everyone.

2 This is State Senator Gustavo Rivera from the
3 33rd District in The Bronx, Chair of the Health
4 Committee, and Chair of this, our second hearing
5 related to the impact of COVID-19 on nursing homes
6 and other home-care settings around the state.

7 Today we will be mostly focusing on Upstate.

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

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

13 Senator Rachel May, the Senate Chair of
14 Aging;

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

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

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

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

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

25 Mr. Gottfried.

1 ASSEMBLYMEMBER GOTTFRIED: Good morning,
2 everyone.

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

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

8 This is going to be a very long hearing.

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

12 We are reminding everyone, do not talk --

13 OFF-SCREEN SPEAKER: Has resolved itself.

14 And -- just hold on a second.

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

18 ASSEMBLYMEMBER GOTTFRIED: Yes.

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

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

24 SENATOR RIVERA: But I can still hear you.

25 Your video will come back in a second.

1 Continue with your procedural --

2 ASSEMBLYMEMBER GOTTFRIED: Okay.

3 So don't talk while driving.

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

7 The witness testimony will be limited to
8 5 minutes for each witness.

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

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

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

20 That's it.

21 SENATOR RIVERA: All right.

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

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

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

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

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

8 SENATOR RIVERA: Objection is so noted.

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

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

16 Assemblymember Bronson.

17 ASSEMBLYMEMBER BRONSON: Thank you,
18 Mr. Chair.

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

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

24 We are joined by the Rankers in the Assembly:
25 Ranker Kevin Byrne for health;

1 Ranker Jake Ashby for Aging;

2 And, Brian Manktelow for Oversight.

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

6 We have Assemblymember Al Taylor;

7 Assemblymember Brian Williams;

8 Assemblymember Doug Smith;

9 Assemblywoman Aileen Gunther;

10 Assemblymember Joe DeStefano;

11 Assemblymember John Salka.

12 We also have Member Carl Brabenec with us;

13 Assemblymember Kevin Cahill;

14 Assemblymember Mark Johns;

15 Assemblymember Natalia Fernandez;

16 Assemblymember Ron Kim;

17 Assemblymember Sandy Galef;

18 Assemblymember Missy Miller.

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

21 ASSEMBLYMEMBER JAFFEE: Assemblymember
22 Ellen Jaffee.

23 ASSEMBLYMEMBER BRONSON: My apologies, Ellen.

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

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

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

6 Yes.

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

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

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

16 STEPHAN HANSE: Good morning.

17 SENATOR RIVERA: One second, sir.

18 Mr. Gottfried.

19 ASSEMBLYMEMBER GOTTFRIED: Yes.

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

22 STEPHAN HANSE: I do.

23 ASSEMBLYMEMBER GOTTFRIED: Okay.

24 STEPHAN HANSE: Thank you.

25 As Senator Rivera stated, my name is

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

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

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

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

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

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

25 Prior to the pandemic, New York's

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

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

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

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

10 We were also facing significant financial
11 constraints.

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

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

18 New York's nursing homes, approximately
19 78 percent are served by Medicaid.

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

24 First and foremost, we serve the most
25 vulnerable population.

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

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

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

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

12 Then we had staff becoming infected with
13 COVID-19.

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

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

23 We faced significant shortages in testing.

24 Tests were limited.

25 Lab testing was in scarce capacity.

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

3 The CDC guidelines did not prioritize
4 long-term care.

5 The CDC guidelines set forth three levels of
6 priority:

7 Level 1 was front-line staff with symptoms;

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

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

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

17 Throughout the pandemic we were dealing with
18 massive costs.

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

24 There were significant supply-chain issues.

25 We were calling all throughout the world, for

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

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

5 It was clear that the --

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

8 STEPHAN HANSE: Sure.

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

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

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

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

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

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

23 SENATOR RIVERA: Thank you, Mr. Hanse.

24 STEPHAN HANSE: Thank you, Chairman.

25 SENATOR RIVERA: Thank you, Mr. Hanse.

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

3 With our affiliates we represent over 500 --

4 SENATOR RIVERA: Mr. Clyne?

5 JAMES CLYNE: Yes?

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

9 JAMES CLYNE: I do.

10 ASSEMBLYMEMBER GOTTFRIED: Okay.

11 SENATOR RIVERA: Please continue, sir.

12 STEPHAN HANSE: We represent over
13 500 long-term-care providers: nursing homes,
14 assisted-living, market-rate housing, HUD housing,
15 and adult-day health, and home care.

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

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

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

1 40 percent of them needed two-person assist
2 to sit up.

3 Half have dementia.

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

6 So it is a very extremely fragile population.

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

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

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

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

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

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

25 There were plenty of residents who decided

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

23 Right now, New York State's Medicaid rate is
24 \$64 a day short in covering the cost of care; one of
25 the worst in the nation.

1 And just to give you some context:

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

4 Medicare covers 15 percent.

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

8 So the shortfall in Medicaid is serious.

9 23 other states invested in their nursing
10 homes.

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

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

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

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

19 I'm not going to go through them.

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

24 SENATOR RIVERA: Thank you, Mr. Clyne.

25 We will have -- Senate will lead off

1 questions.

2 Recognized for 5 minutes, Senator Rachel May.

3 SENATOR MAY: Thank you.

4 And thank you both for testifying.

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

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

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

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

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

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

24 Secondly, staffing shortages.

25 We have, in rural counties, significant,

1 tremendous staffing shortages, the CNAs and
2 LPNs.

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

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

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

16 JAMES CLYNE: Well, over 70 percent --
17 75 percent of the revenue goes towards staff.

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

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

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

1 down to staffing.

2 SENATOR MAY: Okay. Thank you.

3 So I also wanted to ask about racial
4 disparities.

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

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

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

11 SENATOR MAY: Racial disparities and
12 outcomes.

13 So, worse outcomes for people of color.

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

19 So some of it is skewed just by geography.

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

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

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

1 in a significant manner.

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

5 SENATOR MAY: Okay.

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

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

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

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

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

20 STEPHAN HANSE: Sure.

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

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

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

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

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

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

12 Our providers work closely with the ombudsman
13 program.

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

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

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

20 SENATOR RIVERA: Thank you, Mr. Hanse.

21 Thank you, Senator.

22 Assembly.

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

25 And, I will recognize Chair Gottfried for

1 5 minutes.

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

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

10 So far the department has not responded to
11 that request.

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

14 JAMES CLYNE: We would be fine with it.

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

17 STEPHAN HANSE: I would agree with Jim.

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

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

25 ASSEMBLYMEMBER GOTTFRIED: Thank you.

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

7 JAMES CLYNE: Right.

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

11 But in reality, Medicaid days are
12 71.6 percent of the days in a nursing home, and
13 Medicare is 15 percent, and private pay is 7.6.

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

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

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

1 the subacute care units in nursing homes throughout
2 the state.

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

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

9 JAMES CLYNE: Well, no, it's the other --
10 it's -- it's -- they are 15 percent of the days, but
11 26 percent of the revenue.

12 ASSEMBLYMEMBER GOTTFRIED: 26?

13 JAMES CLYNE: Yeah.

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

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

20 ASSEMBLYMEMBER GOTTFRIED: Okay, thanks.

21 That's it for me.

22 Thank you, Assemblymember.

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

25 SENATOR SKOUFIS: Thanks very much.

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

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

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

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

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

15 JAMES CLYNE: Neither have we.

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

19 STEPHAN HANSE: I am not.

20 JAMES CLYNE: No.

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

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

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

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

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

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

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

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

21 STEPHAN HANSE: And I would add, from the
22 data standpoint, the State, by the -- conducted
23 688 infection-control surveys, every nursing home in
24 the state of New York, and many were surveyed twice.

25 Out of all those infection-control surveys,

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

3 SENATOR SKOUFIS: Okay. Thank you for that.

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

6 SENATOR SKOUFIS: Right. Of course.

7 I know that we have a number of panels later
8 today with family members, I think upwards of
9 10 family members of New Yorkers, who died in
10 nursing homes by COVID.

11 We heard from some at the last hearing.

12 We had an avalanche of people who wanted to
13 testify.

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

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

23 And that's to be expected in some cases.

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

1 every single detail.

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

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

13 Yes, they identify the problems.

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

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

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

25 If anything, we feel sometimes they go too

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

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

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

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

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

15 SENATOR RIVERA: Thank you, Mr. Clyne.

16 Thank you, Senator.

17 Assembly.

18 ASSEMBLYMEMBER BRONSON: Uh, yes, the
19 Assembly recognizes Chair John McDonald for
20 5 minutes.

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

23 Thank you for being with us today.

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

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

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

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

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

11 JAMES CLYNE: That is exactly.

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

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

17 So, again, there's two populations.

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

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

25 ASSEMBLYMEMBER MCDONALD: I imagine --

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

3 ASSEMBLYMEMBER MCDONALD: -- go ahead, Steve.

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

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

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

21 Okay, very good.

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

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

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

3 We watch these numbers daily.

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

7 STEPHAN HANSE: Anecdotally, in surveying our
8 members of residents, almost throughout the state
9 are negative. And our staff have been below
10 1 percent positive.

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

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

17 That's significant.

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

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

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

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

5 JAMES CLYNE: Yes.

6 STEPHAN HANSE: Yes.

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

9 JAMES CLYNE: It does not.

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

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

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

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

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

25 And some of the recommendations for the use

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

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

6 ASSEMBLYMEMBER MCDONALD: Right.

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

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

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

16 JAMES CLYNE: We're following the science.

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

19 STEPHAN HANSE: Yeah, no, we closely follow.

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

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

1 buildings for the HVAC systems, things of that
2 nature.

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

6 SENATOR RIVERA: Thank you so much,
7 Assemblymember.

8 Thank you, Mr. Hanse.

9 I'll recognize myself for 5 minutes.

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

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

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

19 STEPHAN HANSE: Sure.

20 Thank you, Senator.

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

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

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

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

8 SENATOR RIVERA: Remember, I only have
9 5 minutes, so I want to make sure that -- very
10 little commentary, just give me top-line
11 recommendations.

12 STEPHAN HANSE: Yep.

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

15 SENATOR RIVERA: Thank you.

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

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

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

1 SENATOR RIVERA: Got you.

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

4 SENATOR RIVERA: Got you.

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

13 Right?

14 STEPHAN HANSE: Senator, those are the top
15 three.

16 Thank you.

17 SENATOR RIVERA: Thank you. All right.

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

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

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

24 And this is for Mr. Clyne as well.

25 -- that it used this power to put any

1 facility in receivership?

2 STEPHAN HANSE: Not during the pandemic, no.

3 JAMES CLYNE: Correct.

4 SENATOR RIVERA: Mr. Clyne -- okay.

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

7 28 days is the current -- is the current, you
8 know, standard by the State.

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

12 Tell us about the 28 days.

13 STEPHAN HANSE: Sure.

14 We have recommended to the State that we
15 narrow the quarantine requirements of our staff for
16 14 days.

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

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

1 friend, or loved one for 28 days.

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

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

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

14 SENATOR RIVERA: Got you.

15 Mr. Clyne, I figure you'd agree?

16 JAMES CLYNE: Yeah.

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

20 They are taking, any positive test shuts down
21 visitation.

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

1 testing positive.

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

4 SENATOR RIVERA: Since I only --

5 JAMES CLYNE: And I would think --

6 SENATOR RIVERA: -- got you.

7 Sorry.

8 Since I only have 40 seconds --

9 JAMES CLYNE: Yeah, that's it.

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

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

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

1 at least sounds [indiscernible] --

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

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

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

8 We would support that.

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

11 Thank you.

12 Assembly.

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

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

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

19 I believe the testimony was:

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

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

1 is no as well.

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

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

6 We don't have the details of that.

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

13 Were there corrective steps taken after a
14 violation was identified?

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

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

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

1 improving some particular facility.

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

4 STEPHAN HANSE: Yeah, well, and as I --
5 the example I mentioned earlier, the
6 688 infection-control surveys conducted by the
7 department of health, those four immediate
8 jeopardies, they would have to be addressed
9 immediately, and the department would remain in the
10 facility.

11 ASSEMBLYMEMBER BRONSON: Okay.

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

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

19 ASSEMBLYMEMBER BRONSON: Okay.

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

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

1 You know, serving people in a pandemic is
2 difficult.

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

5 ASSEMBLYMEMBER BRONSON: Okay.

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

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

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

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

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

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

4 JAMES CLYNE: We agree.

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

9 ASSEMBLYMEMBER BRONSON: Okay.

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

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

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

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

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

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

1 ones aren't able to get their hair done.

2 And I think that's another significant issue.

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

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

7 Thank you, Assemblymember.

8 Followed up, Senator Serino, recognized for
9 3 minutes.

10 OFF-SCREEN SPEAKER: Five minutes.

11 SENATOR RIVERA: Five.

12 Apologies.

13 Senator Serino recognized for 5 minutes.

14 SENATOR SERINO: Thank you.

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

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

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

25 And I can only hope that they're at least

1 tuning in to hear what everyone has to say.

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

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

10 So, three parts:

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

13 And can you make suggestions for going
14 forward?

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

10 Is this the best we could do?

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

13 SENATOR SERINO: Okay.

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

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

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

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

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

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

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

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

9 So, it's three-part:

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

12 Was it use useful for them?

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

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

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

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

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

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

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

6 They can rise through the ranks.

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

10 It is a very fulfilling and successful
11 career.

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

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

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

22 SENATOR SERINO: Thank you.

23 SENATOR RIVERA: Thank you, Mr. Clyne.

24 Thank you, Senator.

25 Assembly.

1 ASSEMBLYMEMBER BRONSON: My apologies.

2 Next we will go to Ranking Health Chair
3 Kevin Byrne.

4 ASSEMBLYMEMBER BYRNE: Thank you.

5 I kind of got promoted there, in a way.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

4 However, the end result leaves much to be
5 desired.

6 Those stories will not be told in this forum
7 today.

8 Why?

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

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

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

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

17 I say this to make one thing crystal-clear:
18 When this hearing does conclude, likely very
19 late into the evening, we, members of the Assembly
20 Minority Conference, are not done listening.

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

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

1 COVID-positive patients.

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

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

12 I tend to agree with that statement.

13 And, Mr. Clyne --

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

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

25 And in that, I understand you made your

1 positions known about the order.

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

7 So my question is:

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

11 Do you still believe those statements to be
12 accurate?

13 And, should it have been revised?

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

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

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

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

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

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

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

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

10 JAMES CLYNE: Sure.

11 ASSEMBLYMEMBER BYRNE: It's limited time.

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

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

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

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

20 So I believe I'm out of time.

21 I'm hoping my colleagues will follow up.

22 Thank you, sir.

23 SENATOR RIVERA: Thank you, Assemblymember.

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

1 SENATOR GALLIVAN: Thank you, Chairman.

2 Good morning, everybody.

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

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

10 And that's for a different day.

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

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

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

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

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

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

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

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

9 STEPHAN HANSE: Sure.

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

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

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

17 In those instances we worked with them.

18 They would ship in the PPE.

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

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

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

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

4 SENATOR GALLIVAN: Thanks.

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

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

12 But --

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

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

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

23 That did not feel like it was helpful.

24 SENATOR GALLIVAN: [Indiscernible
25 cross-talking] --

1 STEPHAN HANSE: [Indiscernible
2 cross-talking] --

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

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

8 What will that do to your members?

9 STEPHAN HANSE: That would close facilities.

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

14 They are now going out of business.

15 That's with no additional cuts.

16 STEPHAN HANSE: Yeah, bankruptcies in
17 Buffalo.

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

21 SENATOR GALLIVAN: Okay. Thanks.

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

1 monitoring device in his or room.

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

5 What is your reaction to that?

6 Do you have any thoughts about this proposed
7 legislation?

8 STEPHAN HANSE: That can be done now under
9 law.

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

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

15 SENATOR GALLIVAN: Okay.

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

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

23 STEPHAN HANSE: Thank you.

24 SENATOR RIVERA: Thank you, Senator.

25 Assembly.

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

4 ASSEMBLYMEMBER ASHBY: Thank you,
5 Mr. Chairman.

6 Thank you both for being here today.

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

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

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

18 STEPHAN HANSE: No.

19 JAMES CLYNE: Were not.

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

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

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

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

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

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

17 ASSEMBLYMEMBER ASHBY: Mr. Clyne, anything?

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

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

1 or providers who were open to doing that.

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

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

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

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

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

14 ASSEMBLYMEMBER ASHBY: Mr. Hanse?

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

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

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

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

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

7 STEPHAN HANSE: I have not looked recently.

8 JAMES CLYNE: I have not looked recently
9 either.

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

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

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

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

20 STEPHAN HANSE: Yeah.

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

1 How many of them resulted in immediate
2 jeopardy?

3 STEPHAN HANSE: The best of my knowledge, on
4 out of the 688 infection-control surveys,
5 4 facilities.

6 ASSEMBLYMEMBER ASHBY: 4 out of 640-plus
7 investigations?

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

9 ASSEMBLYMEMBER ASHBY: 688.

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

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

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

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

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

3 SENATOR RIVERA: Thank you, Mr. Hanse.

4 ASSEMBLYMEMBER ASHBY: Thank you both for
5 your time.

6 SENATOR RIVERA: Thank you, Assemblymember.

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

9 SENATOR O'MARA: Thank you, Chairman.

10 Good morning, everyone.

11 Good morning, Steve, and Jim.

12 Thank you for being here and giving this
13 testimony.

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

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

1 JAMES CLYNE: I am.

2 STEPHAN HANSE: I am.

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

5 JAMES CLYNE: The day it came out.

6 STEPHAN HANSE: I as well.

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

12 Do you agree or disagree with that statement?

13 JAMES CLYNE: I disagree with it.

14 SENATOR O'MARA: Okay, and why so?

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

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

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

22 It can be done.

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

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

6 It's just completely inappropriate.

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

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

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

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

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

1 That's what my members were interested in.

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

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

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

13 STEPHAN HANSE: I agree.

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

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

25 JAMES CLYNE: Well, certainly, I testified to

1 that already. Upstate, that was the case.

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

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

9 STEPHAN HANSE: Exactly.

10 SENATOR O'MARA: Okay.

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

16 STEPHAN HANSE: I do not.

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

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

24 STEPHAN HANSE: It differs throughout
25 regions.

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

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

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

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

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

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

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

21 Thank you.

22 Assembly.

23 ASSEMBLYMEMBER BRONSON: Thank you, Senator.

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

1 ASSEMBLYMEMBER MANKTELOW: Good morning.

2 Thank you, Mr. Chairman.

3 Thank you, gentlemen.

4 Again, about how many facilities do you guys
5 oversee?

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

8 JAMES CLYNE: I represent approximately
9 200 nursing homes. But, all sites of care,
10 over 500.

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

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

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

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

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

1 One of the most significant issues really
2 became the cost.

3 What we saw is, the cost of one test was
4 \$100.

5 JAMES CLYNE: Yeah, it was a tough timeline.

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

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

13 So were they able to do good, or not?

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

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

18 Initially, the concern was the turnaround
19 time.

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

23 JAMES CLYNE: Yeah, we were able to comply.

24 ASSEMBLYMEMBER MANKTELOW: Okay. Thank you.

25 And I know we've talked about PPE equipment

1 and gear quite a bit already this morning.

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

7 Did you guys do those same compliances as
8 well?

9 JAMES CLYNE: The members have to do the
10 compliance.

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

13 JAMES CLYNE: Yeah -- yes.

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

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

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

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

1 from the New York State Department of Health on the
2 25th of May. And the PPE equipment was expired at
3 that point. And, at the same time, a lot of the
4 test kits that were given were unlabeled.

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

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

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

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

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

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

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

23 ASSEMBLYMEMBER MANKTELOW: All right.

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

1 Department of Health.

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

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

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

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

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

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

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

20 ASSEMBLYMEMBER MANKTELOW: All right.

21 All right, thank you.

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

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

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

9 SENATOR RIVERA: Thank you Assemblymember.

10 Thank you, Assemblymember, your time has
11 expired.

12 I will recognize Senator Jen Metzger for
13 3 minutes.

14 SENATOR METZGER: Thank you, Mr. Chairman.

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

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

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

24 What kind of planning is your organization
25 undertaking?

1 Should we be taking regional approaches?

2 It seems to me that we should be.

3 And I also want to ask about PPE.

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

7 Have there been problems in obtaining the
8 necessary stockpiles?

9 If you could just speak to both of those
10 questions?

11 STEPHAN HANSE: Sure.

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

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

17 There were some issues in terms of storage.

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

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

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

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

4 SENATOR METZGER: Okay.

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

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

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

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

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

17 STEPHAN HANSE: And that planning is
18 happening now.

19 SENATOR METZGER: Okay. Thank you.

20 SENATOR RIVERA: Thank you, Senator.
21 Assembly.

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

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

25 ASSEMBLYMEMBER BRONSON: Very good point.

1 ASSEMBLYMEMBER KIM: Thank you, Chairman.

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

8 Just a yes or no.

9 STEPHAN HANSE: Yes.

10 JAMES CLYNE: I don't understand the
11 question.

12 ASSEMBLYMEMBER KIM: Okay.

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

18 JAMES CLYNE: Yes.

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

22 JAMES CLYNE: Yes.

23 ASSEMBLYMEMBER KIM: Okay.

24 STEPHAN HANSE: Yes.

25 ASSEMBLYMEMBER KIM: Do you think without

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

3 JAMES CLYNE: Yes.

4 STEPHAN HANSE: Yes.

5 ASSEMBLYMEMBER KIM: Okay.

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

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

14 ASSEMBLYMEMBER KIM: Okay.

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

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

22 Do you agree with that?

23 JAMES CLYNE: No.

24 It's not a reversal.

25 The March 25th said you couldn't discriminate

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

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

7 But the new --

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

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

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

15 ASSEMBLYMEMBER KIM: Okay.

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

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

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

25 ASSEMBLYMEMBER KIM: Out of curiosity, and

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

4 Do you know?

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

8 ASSEMBLYMEMBER KIM: Okay.

9 I'm out of time.

10 Thank you.

11 SENATOR RIVERA: Thank you, Assemblymember.

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

14 Back to Assembly.

15 ASSEMBLYMEMBER BRONSON: I will now recognize
16 in the Assembly, Assemblymember Tom Abinanti for
17 3 minutes.

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

20 And thank you, gentlemen.

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

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

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

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

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

9 ASSEMBLYMEMBER ABINANTI: Yes, yes.

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

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

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

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

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

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

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

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

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

16 STEPHAN HANSE: Yes.

17 JAMES CLYNE: There are some.

18 ASSEMBLYMEMBER ABINANTI: There are some?

19 JAMES CLYNE: Yes.

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

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

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

1 ASSEMBLYMEMBER ABINANTI: Out of how many?

2 JAMES CLYNE: Out of 615.

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

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

9 That's the problem with it.

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

13 JAMES CLYNE: We know of one case.

14 ASSEMBLYMEMBER ABINANTI: So we don't know --

15 JAMES CLYNE: There was one case in early
16 March.

17 ASSEMBLYMEMBER ABINANTI: And that's about
18 it?

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

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

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

1 Could you comment on that quickly?

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

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

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

9 ASSEMBLYMEMBER ABINANTI: Okay. Thank you.

10 ASSEMBLYMEMBER BRONSON: We will next go to
11 Assemblymember Aileen Gunther, recognized for
12 3 minutes.

13 Aileen, are you there?

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

16 ASSEMBLYMEMBER BRONSON: Yes, we can.

17 ASSEMBLYMEMBER GUNTHER: Okay.

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

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

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

1 nursing home?

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

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

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

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

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

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

19 And as Jim pointed out earlier, it's almost
20 80 percent of our costs go to salaries.

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

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

25 And what we've throughout the state, and

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

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

7 This is droplet-spread.

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

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

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

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

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

22 ASSEMBLYMEMBER GUNTHER: I'm not talking
23 about private.

24 I'm talking about dedicated isolation rooms.

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

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

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

6 Am I correct?

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

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

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

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

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

22 Oh, time's up.

23 Sorry.

24 SENATOR RIVERA: Assemblymember, your time
25 has expired.

1 I'm sorry.

2 ASSEMBLYMEMBER BRONSON: Thank you.

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

5 ASSEMBLYMEMBER BARRON: Thank you very much.

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

11 That was the most egregious act.

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

14 We have no way of detecting that, really.

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

18 Also, the state legislature has some
19 responsibility in this.

20 How could anybody pass a budget that cuts
21 2.5 billion from Medicaid, pass a budget that cuts
22 400 million from the hospital budget, and some of
23 the other areas, during a pandemic, and then this
24 governor parades across the nation like he is some
25 great successor, and caused all of this death and

1 destruction in our neighborhood.

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

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

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

11 California and Texas were, particularly
12 California.

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

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

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

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

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

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

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

11 So maybe you can address that.

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

16 And, by the way, no revenue package.

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

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

21 STEPHAN HANSE: Thank you, Assemblymember.

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

24 SENATOR RIVERA: Very quickly, since his time
25 expired.

1 STEPHAN HANSE: All right.

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

6 SENATOR RIVERA: Thank you, Mr. Hanse.

7 Move on to the next Assemblymember?

8 ASSEMBLYMEMBER BRONSON: Thank you.

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

11 ASSEMBLYMEMBER REILLY: Thank you,
12 Mr. Chair.

13 Thank you to the panel for providing their
14 testimony.

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

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

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

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

4 JAMES CLYNE: Neither do we.

5 It would be handled individually by the
6 facility.

7 ASSEMBLYMEMBER REILLY: Okay.

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

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

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

17 STEPHAN HANSE: Not with us.

18 JAMES CLYNE: Not with us.

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

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

25 STEPHAN HANSE: Yeah, they did not consult on

1 this order.

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

9 So I guess that's very disappointing.

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

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

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

23 So, thank you again for giving us the
24 opportunity.

25 JAMES CLYNE: I just want to be clear, we

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

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

8 SENATOR RIVERA: Thank you, Assemblymember.
9 Moving on?

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

12 Marjorie, are you with us?

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

15 Thank you very much, sir.

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

18 I appreciate all of the witnesses being here
19 today.

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

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

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

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

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

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

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

14 It was something that was not foreseen.

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

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

1 a high rate of infection as well.

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

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

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

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

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

21 I would love to see the data.

22 SENATOR RIVERA: Thank you, Assemblymember.

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

25 SENATOR RIVERA: Member, your time has

1 expired.

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

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

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

8 Go ahead.

9 ASSEMBLYMEMBER BRONSON: Thank you,
10 Assemblymember Byrnes.

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

13 ASSEMBLYMEMBER SALKA: Thank you,
14 Mr. Chairman.

15 And thank you to the gentlemen who are
16 testifying.

17 Let's just get this straightened out here.

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

20 God forbid we do have another wave of the
21 coronavirus.

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

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

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

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

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

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

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

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

19 STEPHAN HANSE: In terms of --

20 ASSEMBLYMEMBER SALKA: -- no, go ahead.

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

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

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

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

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

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

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

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

23 Some have access to labor pools; others do
24 not.

25 So, really, the two factors really become, to

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

3 ASSEMBLYMEMBER SALKA: Are your organ --

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

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

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

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

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

22 JAMES CLYNE: Absolutely.

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

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

4 ASSEMBLYMEMBER SALKA: Thank you, gentlemen.

5 SENATOR RIVERA: Thank you, Assemblymember.

6 I believe we have one more Assemblymember?

7 ASSEMBLYMEMBER BRONSON: Thank you.

8 And for the last questioner from the
9 Assembly, we have Assemblymember Kevin Cahill, for
10 3 minutes.

11 ASSEMBLYMEMBER CAHILL: Thank you,
12 Mr. Chairman.

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

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

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

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

3 I reasonably anticipated that opportunity
4 would be presented today.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

25 We're all together in the continuum. We

1 should not be segmented.

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

5 Instead of after the fact.

6 Really -- and it's happening now.

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

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

13 And then [indiscernible cross-talking] --

14 SENATOR RIVERA: Thank you, Mr. Hanse.

15 And that's -- the time has expired.

16 Thank you, Assemblymember.

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

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

22 ASSEMBLYMEMBER BRONSON: I don't mean to
23 interrupt.

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

1 period.

2 SENATOR RIVERA: Apologies.

3 ASSEMBLYMEMBER BRONSON: No problem.

4 Assemblymember Joe DeStefano, for
5 3 minutes.

6 ASSEMBLYMEMBER DESTEFANO: Thank you.

7 Thank you, Chairman Bronson.

8 I have a question.

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

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

14 There was a major shortage of PPE.

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

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

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

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

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

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

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

8 ASSEMBLYMEMBER DESTEFANO: All right.

9 You stated that 12 million wasn't enough.

10 In the future --

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

13 ASSEMBLYMEMBER DESTEFANO: -- right.

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

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

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

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

25 STEPHAN HANSE: And what we're seeing is

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

5 ASSEMBLYMEMBER DESTEFANO: Understood.

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

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

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

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

20 STEPHAN HANSE: We do have members who
21 shared.

22 ASSEMBLYMEMBER DESTEFANO: I understand that.

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

25 What was the issue on trying to relocate

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

3 What would the problem have been to relocate
4 the equipment?

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

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

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

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

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

16 SENATOR RIVERA: Thank you, Assemblymember.

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

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

21 Thank you, Chair.

22 SENATOR RIVERA: All righty.

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

25 Two quick procedural things.

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

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

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

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

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

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

25 We do apologize that we have not -- that

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

3 There is no conspiracy, folks.

4 There were just too many requests.

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

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

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

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

16 Thank you both, gentlemen.

17 With that we will move to the second panel.

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

20 We are joined by Mary Jo Botindari --

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

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

25 Jerry Maldonado, a resident of Newburgh,

1 New York;

2 Vincent Pierce, resident spokesperson for
3 Voices of Coler;

4 Mikko Cook from Ventura, California;

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

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

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

16 JERRY MALDONADO: I do.

17 MARY JO BOTINDARI: I do.

18 MIKKO COOK: I do.

19 VIRGINIA WILSON-BUTLER: I do.

20 ASSEMBLYMEMBER GOTTFRIED: Okay.

21 Fire away.

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

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

1 MARY JO BOTINDARI: Nope, it's correct.

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

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

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

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

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

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

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

1 I asked about testing him for COVID.

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

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

7 I told her I couldn't do it.

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

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

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

16 They asked me if I wanted to continue
17 antibiotic treatment.

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

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

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

25 After this call, I reached out to the county

1 executive, Ryan McMahon.

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

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

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

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

12 I said, Well, I'm not okay.

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

15 That my issue was not getting him tested.

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

18 And then I also heard them say, "We wouldn't
19 even know how to go about it." So they thought
20 they'd have to get the health department involved.

21 I never heard back from the social workers.

22 The county executive office request was not
23 honored, nor was the request by Dr. Gupta, who was
24 the commissioner of the health department in
25 Onondaga County.

1 The nursing home denied all requests.

2 My father died two days later, with no test.

3 SENATOR RIVERA: Ma'am, is that the end of
4 your testimony?

5 MARY JO BOTINDARI: Yes, sir.

6 SENATOR RIVERA: Thank you so much for
7 joining us today.

8 We will -- next, let's hear from
9 Jerry Maldonado, resident of Newburgh, New York.

10 JERRY MALDONADO: My name is Jerry Maldonado,
11 and I'm here today to bear witness on behalf of my
12 mother, Luce [indiscernible] Maldonado, who would
13 have celebrated her 82nd birthday today, but whose
14 life was cut short due to a series of reckless
15 public-policy decisions that unnecessarily exposed
16 her to COVID-19, and ultimately claimed her life.

17 My mother was a resident of
18 Northern Metropolitan Nursing Home in
19 Rockland County, where she lived for 5 1/2 years.

20 It's my belief that her death, and the death
21 of countless others, could have been prevented.

22 To that end, I'd like to make three points to
23 you all today.

24 First: The COVID crisis in New York's
25 nursing homes was a preventable crisis.

1 It was fueled by poor public-policy
2 decisions, like the department of health's
3 March 25th directive.

4 In a cruel twist of fate, while healthy
5 families like mine were locked out of nursing homes
6 and forced to stay away from our loved ones, my mom
7 was locked into a facility with COVID-positive
8 patients released from a hospital, ignoring all the
9 lessons learned from the Washington State's COVID
10 outbreak just a few weeks earlier.

11 Worse yet, despite the governor's daily press
12 briefings, families like mine were kept in the dark
13 about this important policy change and actively
14 misled by nursing home officials.

15 For over two weeks, beginning in late March,
16 I reached out to the facility's management, asking
17 if they could inform us of any positive patients --
18 COVID patients so that we could reassess her care
19 situation.

20 And for nearly two weeks we got no response.

21 It was only after my mom developed her first
22 COVID symptoms that I confronted the director of
23 nursing, and he finally admitted to me that, in
24 quote, his words, he had been forced to admit COVID
25 patients into the facility by the State, and that he

1 could not guarantee that my mom had not been exposed
2 to COVID.

3 I was apoplectic.

4 For nearly two weeks my family had been
5 intentionally kept in the dark about this policy
6 change, stripping us of the ability to make informed
7 decisions that could have saved her life.

8 Secondly, many nursing homes, like
9 Northern Metropolitan, were in no way prepared to
10 safely care for COVID-positive patients released
11 into the facilities as I witnessed firsthand.

12 Despite assurances, the facilities did not
13 have dedicated isolation capacity to quarantine
14 COVID patients.

15 Instead, they simply treated them in their
16 own rooms in the same wings with the general
17 population, with no additional precautions or
18 dedicated staffing, putting all nursing home staff
19 and residents at risk of exposure.

20 Both the State and nursing home executives
21 and Northern Metropolitan were complicit in this
22 manmade disaster.

23 The State did not provide nursing homes with
24 the sufficient testing capacity to trace or prevent
25 the potential spread of COVID among patients.

1 They also did not proactively verify that
2 nursing homes had the ability to safely care for
3 COVID patients before releasing them into these
4 facilities, knowing full well that many of them are
5 understaffed and overcrowded even on their best day.

6 Nursing home executives were also responsible
7 for failing to proactively notify families of
8 suspected COVID cases in their facilities.

9 They didn't provide their staff with
10 sufficient PPE, and they failed to put in place
11 protective measures, to ensure the health and safety
12 of they are staff and residents.

13 And, finally, accountability and justice
14 demands that we have a more accurate count of
15 COVID-related fatalities in the state's nursing
16 homes.

17 Case in point:

18 On April 11th my mom passed away from
19 COVID-related symptoms.

20 To our dismay, on April 14th we received a
21 draft copy of my mother's death certificate from the
22 nursing home that misrepresented her cause of death
23 as heart failure, dementia, and hypertension.

24 For days I contested her death certificate,
25 and was even urged by some of the nursing home staff

1 to simply bury her with an inaccurate death
2 certificate.

3 But we refused to let the memory of her
4 suffering be erased, and we advocated for
5 accountability, until they reluctantly modified her
6 death certificate just hours before her burial.

7 However, since she was never officially
8 tested for COVID at the facility, her death, and the
9 death of countless others like her during the height
10 of pandemic, are still not included as part of the
11 state's official COVID-related death count,
12 rendering her suffering and her death invisible.

13 We need to ask ourselves: How many people
14 like my mom are missing from the official death
15 count, and why?

16 And so in closing:

17 While we can't change the past, we have to
18 ensure that these deaths have not been in vain.

19 Moving forward, we must make sure that
20 families are provided with timely information on
21 important policy changes that impact their safety.

22 Families have a right to know in real time if
23 nursing home residents have been potentially exposed
24 to deadly infectious outbreaks so that we can make
25 informed decisions about their care.

1 Secondly: Nursing homes must be equipped
2 with sufficient PPE and testing supplies to test all
3 staff and residents on a regular basis.

4 And, finally, we need a more thorough and
5 comprehensive count of all nursing home-related
6 deaths since the onset of the pandemic, to assess
7 the true impact of the crisis.

8 We owe to it families like mine, and
9 countless others, who have suffered the pain of
10 losing a loved one, to have their lives and their
11 deaths fully accounted for and memorialized as part
12 of our collective vow to never let this happen
13 again.

14 Thank you.

15 SENATOR RIVERA: Thank you, Mr. Maldonado.

16 Next is Mr. Vincent Pierce on the -- on the
17 Zoom right now.

18 We will move on to Mikko Cook from Ventura,
19 California.

20 And apologies if I mispronounced your name.

21 MIKKO COOK: [Inaudible.]

22 SENATOR RIVERA: Please unmute, Ms. Cook.

23 There you go.

24 MIKKO COOK: Thank you.

25 Dear honorable senators and assemblymembers,

1 thank you for this opportunity.

2 My name is Mikko Cook, and I'm representing
3 not only my father, a person with Alzheimer's and a
4 patient at Hudson Park Rehabilitation and Nursing
5 Center, but also my mother, his wife, my brother,
6 two sisters, and their families.

7 You might wonder why a daughter in California
8 is testifying about the care of her father in
9 New York.

10 Because, at this point, my family in Albany
11 have the same access to my dad as I do, and that's
12 the problem.

13 This is my dad.

14 Ron Von Ronne [ph.].

15 He isn't a big man; only 5-foot 4 inches
16 tall. But when you meet him, the first thing you
17 notice isn't his size, it's his smile.

18 My dad smiled a lot, and he loved making
19 other people smile.

20 That's why he dedicated the end of his
21 working life to teach people with disabilities how
22 to ski at the adaptive sports program, and ran the
23 winter ski program for [indiscernible], a
24 [indiscernible] foundation camp.

25 The best was when dad took a kid who had no

1 hope of walking again, down a ski run for the very
2 first time.

3 He would smile for a week afterwards.

4 This is my dad a month ago.

5 This picture was taken from my video call
6 with him at Hudson Park.

7 On this call we learned all of his clothing
8 had gone missing. No shirts, no shoes, not even a
9 pair of pants.

10 The closet which my mother kept stocked with
11 freshly cleaned outfits was empty.

12 Dad was living in a hospital gown.

13 COVID and its fallout has scrubbed away my
14 family's ability to not only manage my father's
15 care, but to keep him safe.

16 Before the virus, my family worked together
17 with the staff at Hudson Park to stay on top of
18 dad's well-being, even locating his missing items.

19 Frequent visits to see him and weekly outings
20 to bring dad to their houses helped my family see
21 whether or not he was eating well, getting decent
22 sleep, and still smiling.

23 More importantly, it gave dad time in a world
24 quickly disappearing to him, surrounded by people he
25 loved, holding his hand, and making him laugh.

1 For dad, in those fleeting moments, he was
2 safe, and his life made sense.

3 And then one day, we just never returned.

4 A week and a half ago my father was a
5 assaulted by another resident.

6 According to Hudson Park, dad was going
7 through the man's things, when the man punched my
8 father and knocked him to the ground, leaving him
9 with a large bump on his temple and a tear in his
10 arm.

11 Of course, you too might find yourself
12 rummaging through someone else's things when
13 everything you own is gone.

14 Communication between Hudson Park and our
15 family are lifelines and context around how dad is
16 faring, and the quality of his well-being is limited
17 and unreliable.

18 Mom made numerous calls to the facility,
19 requesting he be sent to the hospital for
20 evaluation, and asking for a video call to see his
21 injuries.

22 Five days after the incident, she got her
23 video call.

24 The hospital trip, over a week later.

25 We had to beg for contact with dad.

1 Over 100 days passed before our family had
2 seen my father, digitally or in person, despite
3 complaints registered to the facility, the
4 ombudsman, the nursing home complaint hotline,
5 various politicians, media outlets, and
6 Governor Cuomo.

7 Dad's recent assault left me frantically
8 dialing an ombudsman's office whose phone had been
9 taken off the hook.

10 We are scared, furious, and heartbroken.

11 We need solutions, and time is running out.

12 In two short months, weather and flu season
13 will decimate any chance of outside visitation.

14 We need context, understanding, and a chance
15 to make in-person contact with dad as his personal
16 supports.

17 Reliable and consistent communication between
18 families and both the facility and oversight
19 agencies, with clear directives on issue resolution,
20 is a good start.

21 And we need to see dad, and not through a
22 glass with a telephone.

23 My father has not breathed fresh air or felt
24 the sun on his face since March 9th, a former ski
25 instructor.

1 Why not designate one family member who is
2 tested as staff is, adheres to all the PPE rules,
3 and is limited to a loved one's room for visitation?

4 My family would gladly sacrifice visits from
5 many of us so that hope for my dad's well-being
6 could be guaranteed by one of us.

7 Please do what you can to help my dad,
8 Ron Von Ronne, and so many New Yorkers like him.

9 Once upon a time he was a champion of our
10 most vulnerable population, and now you can be too.

11 Thank you.

12 SENATOR RIVERA: Thank you, Ms. Cook.

13 Next we will hear from
14 Virginia Wilson-Butler, a resident of Brooklyn.

15 VIRGINIA WILSON-BUTLER: Good afternoon to
16 all the chairs.

17 My name is Virginia Wilson-Butler. I'm an
18 ombudsman in Brooklyn, thanking God, that through
19 him all things are possible.

20 My story is about my aunt Eva Johnson and the
21 nursing home she lived in since 2016.

22 It tells the story of the negligent care she
23 received, and her final days at Buena Vida Nursing
24 Care in Bushwick.

25 My aunt was total care: confined to a bed,

1 could not speak, and completely dependent on
2 Buena Vida to care for her.

3 She did not enter the facility this way.

4 She was diagnosed with dementia. The
5 dementia progressed rapidly, and I have to believe
6 that the care of the facility added to the quick
7 progression.

8 I also believe that nursing homes needed beds
9 at this time, 2020, and were getting paid for COVID
10 cases.

11 A resident like my aunt who needed total care
12 was a good candidate for an empty bed.

13 The following are my personal on-hand
14 observations at the nursing home, which can speak to
15 what could possibly and probably happen when I was
16 not there.

17 Sitting in her wheelchair in the dining room
18 right after lunch, in her urine and diarrhea for
19 45 minutes before staff responded to my need to help
20 her.

21 Her meals being placed in front of her, to
22 get cold, and her waiting until someone was free to
23 feed her. Sometimes I did it myself.

24 Falling out of her wheelchair, feet entangled
25 in the legs of the chair, and her sister/my mother

1 watching her lay on the floor, waiting for a CNA to
2 help.

3 My aunt confused, and my mother in tears.

4 The one day a week they bathed her, I saw
5 them wheel her from the bathroom, dripping wet.
6 Hair soaked, no towel on it. Her body covered only
7 with a facility nightgown in front of her, and her
8 feet soaking wet.

9 And when CNA was questioned, she replied,
10 "I was going to finish in the room."

11 In bed, the diaper was soaked with urine and
12 diarrhea. Of course, she had bedsores.

13 Once again I asked the CNA about that, and
14 she replies:

15 I'm off on duty. The next shift will take
16 care of her;

17 Or, I don't have her today. I'll find out
18 who.

19 Mrs. Johnson was not always total care. And
20 there was a number of incidents where she fell out
21 of the bed, trying to go to the bathroom or just
22 getting up.

23 Another bathing incident, CNA asked if
24 I could watch her for a minute. She needed to go
25 the nursing station.

1 I found that rather odd, but took the
2 opportunity to look in and check on my aunt.

3 I found her seated in a chair, pointing to
4 her vaginal area, asking me: What is that? I don't
5 know what that is.

6 She was asking me to explain to her what that
7 purple area, with pimples -- the infected purple
8 area, with pimples and itching, was due to.

9 Well, I found out it was due to a bad fungus
10 rash she had developed.

11 This time when I questioned the CNA, she
12 stated she had no idea. This was the first time she
13 had my aunt.

14 I then requested that every head of every
15 department get down to that floor immediately.

16 No one could explain, but they tried hard to
17 convince me this happened overnight because no one
18 reported this in her chart.

19 No, I didn't believe that.

20 I sent a complaint to DOH, and heard back
21 from them one and a half years later, stating they
22 found no fault with the facility. They were up to
23 code on everything.

24 Finally, from March 2020 to May 4, 2020, the
25 day she died, Ms. Johnson lost 15 pounds.

1 Received oxygen on April 21st and an IV
2 fluid with antibiotics.

3 She was diagnosed, presumed COVID.

4 X-rays showed pneumonia.

5 She never had a fever. She never had a
6 cough.

7 In this time frame, they stated, at first,
8 everything with her was normal -- her weight, her
9 eating, her therapy, hand device, her bedsore --
10 until, all of a sudden, she's not eating, the
11 bedsore got bigger. It doesn't look good.

12 Communication with the facility was very
13 difficult in the beginning, until I requested
14 e-mails from all caring for my aunt.

15 And then I started sending e-mails, as well
16 as phone calls, almost on a daily basis, either a
17 follow-up incident, another issue, medication,
18 bedsores, social engaging, eating.

19 Most of the replies were, "We will take care
20 of it and get back to you."

21 Some of the conversations were, they weren't
22 aware of the issue or incident.

23 Some of the calls were aggressive,
24 disrespectful, and downright unacceptable.

25 I know you're probably saying, Why didn't you

1 move to her to another facility?

2 Well, we contemplated that, but after careful
3 research, there was none any better.

4 As an ombudsman, I had a little inside info,
5 and most of the facilities had the same neglect, or
6 even worse.

7 Some of my recommendations are:

8 Revising camera -- revisiting camera ideas in
9 the residents' rooms;

10 Rolling beds for total-care patients so that
11 they don't have to wait on CNAs to be repositioned
12 or to receive bedsores;

13 Clear masks, so that when staff goes into the
14 residents' rooms, they're not confused, and they're
15 not -- they don't understand who's coming in to
16 visit with them;

17 And, more staffing, more training, more
18 compassion, more patience.

19 These people, and these stories, are not all
20 about a paycheck.

21 DOH -- I have DOH letters, documents,
22 e-mails, pictures, for over four years of negligent
23 care for a woman.

24 I ask that all of these things be revisited.

25 I appreciate everyone on this call today, and

1 everything that they said, and all of the plans.

2 But, how are these residents really going to
3 be taken care of?

4 I can't help my aunt anymore; rest in peace.

5 But I can help someone else.

6 And I say: God is good all the time, and all
7 the time God is good.

8 Thank you.

9 SENATOR RIVERA: Thank you,
10 Ms. Wilson-Butler.

11 And last, but certainly not least,
12 Mr. Vincent Pierce, resident spokesperson for Voices
13 of Coler.

14 VINCENT PIERCE: [Inaudible.]

15 SENATOR RIVERA: Mr. Pierce, we can't hear
16 you.

17 Even though you're not in mute, I do not know
18 if your mic is working. We can't hear you.

19 Take yourself off of mute, sir, and see if it
20 works.

21 We still can't hear you, sir.

22 Let's do this:

23 Since there's a technical issue, I know that
24 there are a few assemblymembers that are already
25 signed up to have questions, as well as a Senator.

1 We'll try to -- let's figure out the -- let's
2 get a question or two in, and let's see if we can
3 get [inaudible] situation fixed so we can hear his
4 testimony.

5 OFF-SCREEN TECHNICIAN: Yes, we'll send
6 Mr. Pierce to the green room, to troubleshoot the
7 mic issue.

8 SENATOR RIVERA: Okay.

9 So Mr. Pierce should go back to the green
10 room, the place where you were before, sir.

11 So go to the last link you were sent, the
12 original one, and they will figure out the technical
13 aspects over there, and then put you over here once
14 it's fixed.

15 And thank you for your patience,
16 Mr. Coler [sic].

17 For the moment, going to the Assembly to lead
18 us off in questioning.

19 Oh, and before, actually, just before, the --
20 I want to thank all of you for being here, thank you
21 for sharing the stories with us.

22 I know they were difficult to share, but it
23 is very important to hear from you.

24 Thank you so much.

25 And my condolences to all of you who have

1 lost loved ones.

2 Assemblymember.

3 ASSEMBLYMEMBER BRONSON: Yes.

4 We'll go to Chair John McDonald for
5 5 minutes.

6 ASSEMBLYMEMBER MCDONALD: Thank you to all
7 for your appearance today, and sorry to hear your
8 stories.

9 Unfortunately, these stories are becoming
10 more and more real, and we're hearing them far too
11 often.

12 Mikko, it's good to see you. I know we've
13 exchanged some e-mails.

14 And I just want to follow up with you
15 directly. I just want to make sure I read it
16 correctly and I'm hearing correctly.

17 So were you calling the ombudsman, and it was
18 just -- was it a fast busy, or just the phone was
19 busy all the time, or just no answer?

20 [Assemblymember motions to witness.]

21 MIKKO COOK: Okay.

22 Sorry about that.

23 And, hi, and thank you so much for addressing
24 my issues.

25 When I was calling, I was -- it was after

1 I had just learned from my mother that my dad was
2 told -- or, that my mother was told that my dad
3 didn't need to go to the hospital.

4 And so I immediately called the ombudsman's
5 office. And because I'm in California, I was trying
6 to make sure that I was calling before the office
7 closed at 5:00.

8 So I started calling around 2:00 my time.

9 And I just kept calling and just kept
10 calling, and it was just a busy signal. Like a good
11 old-fashioned busy signal.

12 And so I was curious, and so I decided to
13 call after 5:00 Eastern time. It was still busy.

14 And at 6:00 Eastern time, it was still busy.

15 And at that point I stopped calling because
16 I figured the office was probably closed for the
17 day.

18 I still -- it was my assumption that the
19 phone was off the hook, because I can't -- I assumed
20 that it was off the hook because it was busy
21 after-hours.

22 ASSEMBLYMEMBER MCDONALD: And pursuant to our
23 conversation, I immediately sent your concern to the
24 department of health, and they were to follow up.

25 Did your father eventually get to the

1 hospital to be examined?

2 MIKKO COOK: He did, eight days later after
3 the incident, get sent to the hospital.

4 And this, I believe, in large part, had to do
5 with my sister, completely fed up with not getting
6 any responses, threatened the nursing home and the
7 social worker, and said, "I will call adult
8 protective services unless he can go to the
9 hospital."

10 And was told, "Okay, we'll send him."

11 And so he did go, and he did get a brain
12 scan.

13 ASSEMBLYMEMBER MCDONALD: And I trust all is
14 okay, or no?

15 MIKKO COOK: Oh, yeah. Everything is.

16 ASSEMBLYMEMBER MCDONALD: Thank you.

17 Thank you, Chair.

18 SENATOR RIVERA: All right, we'll follow up.
19 Let's check -- let's do a quick check.

20 Do we have Mr. Pierce, or we're still trying
21 to resolve the technical issue?

22 OFF-SCREEN TECHNICIAN: Still working on it.

23 SENATOR RIVERA: Thank you.

24 We'll go to the Senate, Senator Rachel May,
25 recognized for 5 minutes.

1 SENATOR MAY: Thank you.

2 And thank you to all of you for telling these
3 very difficult stories.

4 It does mean a lot to us, to be able to
5 really understand what's going on.

6 But I know it's hard, and I feel for all of
7 you.

8 I wanted to ask Mary Jo a question about
9 something you said, when you said that the nursing
10 home told you they wouldn't know how to go about
11 testing your father.

12 What do you think they meant by that?

13 Did they mean they just didn't know how to do
14 the tests, or they didn't have the tests?

15 Oh, can't hear you.

16 Can you unmute yourself?

17 SENATOR RIVERA: You're unmuted, ma'am.

18 Go ahead.

19 MARY JO BOTINDARI: I thought exactly how
20 they said it: They didn't know how to get a
21 resident tested.

22 They told me that the two nursing staff got
23 tested outside of the facility, and the other
24 resident that tested positive, only got tested
25 because he was taken to the hospital, where he was

1 tested at the hospital.

2 SENATOR MAY: I see.

3 MARY JO BOTINDARI: Yeah, they didn't know
4 what to do.

5 SENATOR MAY: How to get a test inside the
6 facility.

7 And do you have any reason to believe --
8 I think what I heard from Mr. Maldonado was a real
9 reluctance to test.

10 Do you think there was, in any way, an effort
11 to maybe minimize the numbers of identified COVID
12 cases by not testing?

13 I can -- either one of you can answer that.

14 MARY JO BOTINDARI: I absolutely feel that.

15 I felt like it was a bad PR if they started
16 testing patients, because there were many.

17 After the article went in the newspaper, many
18 families reached out to me with the same story:
19 pneumonia, no COVID test, refusal.

20 They tamped the numbers. And I don't -- if
21 we're trying to fix the problem, you have to own the
22 problem.

23 And nobody was doing that.

24 JERRY MALDONADO: And in my case, I think it
25 was a combination.

1 I think, one, the nursing home had a complete
2 inability to test.

3 They told me that they could not perform any
4 tests in-house, and that my mom would have to be
5 sent to a hospital.

6 My mom was Spanish-speaking, speaks no
7 English, and we would lose her in the hospital
8 system. So we said we can't send her out.

9 That's number one.

10 Two: They said, that, whatever it was had
11 spreading like wildfire.

12 Right?

13 They hadn't really had any cases until after
14 this directive on March 25th.

15 A number of cases happened after that. And
16 they were told -- the frontline nursing staff were
17 told by management to simply treat anyone who had
18 COVID-like symptoms with the assumption that they
19 had COVID.

20 And so they were treating patients with
21 hydroxychloroquine, without having any positive
22 confirmation because they couldn't test in-house,
23 whatsoever.

24 SENATOR MAY: Okay. Thank you.

25 On a different topic:

1 So I want to say I have introduced bills for
2 video monitoring and communication, to improve that.
3 And, also, another one for stricter testing.

4 But I would welcome your specific ideas about
5 what would make it easier to -- to -- for the family
6 members to understand what is going on.

7 I guess -- and we did hear from Virginia
8 about the ombuds program. And I guess Mikko reached
9 out to the ombuds program too.

10 But I'm curious about, Mary Jo and Jerry, did
11 you have communication with an ombudsperson?

12 Did you know that that program existed?

13 MARY JO BOTINDARI: I did not.

14 SENATOR MAY: Okay.

15 And then -- this is a tough question.

16 I asked the previous witnesses about racial
17 disparities in outcomes. And they simply said it
18 was because the geography of the state was such,
19 that the nursing homes that were having the most
20 mortality were also the nursing homes that had the
21 most people of color as residents.

22 Anybody on this panel have an alternative
23 view of what was going on?

24 Do you think especially -- Ms. Wilson-Butler
25 and Mr. Maldonado, do you think there was -- or,

1 were racial motivations or disparities in the way
2 that your loved ones were being treated?

3 JERRY MALDONADO: In my case, I think that
4 there was not linguistically-appropriate care
5 available, to be quite frank with you.

6 Right?

7 And that that obviously did have a disparate
8 impact on Latinos, and on my mom in particular, in
9 the Hudson Valley.

10 Right?

11 It had been something that we had been
12 struggling with for a very long time. And so it
13 became incredibly difficult when they kept families
14 out, because then my mother couldn't communicate
15 with anyone.

16 Right?

17 She was one of few Spanish-speaking.

18 Some of the staff spoke Spanish sometimes,
19 but rarely.

20 And so we being locked out of the facility,
21 unable to be kind of mediators for her, made her
22 care really, really complicated, and it slowed down,
23 kind of, the quality of her care, basically.

24 I mean, she had been developing a cough for
25 days, and was untreated, until we finally got their

1 attention over the phone.

2 And so I do think that there are disparities
3 that need to be kind of further examined.

4 SENATOR RIVERA: Thank you, Senator.

5 SENATOR MAY: Thank you.

6 We now have Mr. -- let's cross our fingers
7 and hope that his sound works.

8 If you can unmute yourself, sir.

9 Okay?

10 We still can't hear you.

11 Could you maybe bring the microphone closer.

12 Maybe that's what it is.

13 VINCENT PIERCE: Uhm --

14 SENATOR RIVERA: There you go.

15 VINCENT PIERCE: -- all right.

16 How is everybody doing?

17 I want to thank you for having me.

18 My name is Vincent Pierce. I'm a resident --

19 I'm actually from Newburgh, New York. But I'm a

20 resident at Coler Hospital on Roosevelt

21 [indiscernible] in New York.

22 I've been here since 2012.

23 And ever since this pandemic, it's been
24 crazy, because I feel like, at the beginning, they
25 was -- they actually brought coronavirus patients

1 from hospitals to here. And I feel like they was so
2 into that, that they wasn't putting a plan in place
3 if it was to spread in the nursing home.

4 And once they did, like, they told everybody
5 to treat everybody as if they was positive with the
6 coronavirus.

7 Which I feel like that wasn't right, because
8 that, right there, caused a lot of people that
9 didn't have to get sick with it, that didn't have to
10 die. And they wasn't separating people from the
11 sick, until, like, we would complain, complain,
12 complain, about being in rooms with people with the
13 virus, being on the same unit with people with the
14 virus.

15 And we were complaining to people that's put
16 in place to take our grievances, and to do something
17 about it.

18 And nothing was being done, until the travel
19 nurse went to "The Post," and put in a report with
20 "The Post."

21 Then that's when they started separating
22 people, but by then it was too late. We was already
23 2 1/2 months into the pandemic, and a lot of people
24 died that didn't have to die.

25 And I feel like our voices are not being

1 heard.

2 And we complained, complained, complained, as
3 residents, to the people that's put in place to
4 protect us, and nothing is getting done.

5 We're being called liars by the
6 administration, basically saying, "we're getting the
7 wrong information," when this is what we're living;
8 we're seeing this. We're seeing plenty of people
9 that we live with pass away from the virus.

10 They're lying about how many people passed
11 away. They're not giving correct numbers when
12 they're asked.

13 And it's just -- it's sad.

14 You know, we can't -- we don't have no type
15 of movement, no type of quality of life anymore.
16 And we can't even go sit in front of the building
17 without being threatened that we'll be quarantined
18 on a unit for two weeks, for just going outside to
19 sit in front of the building.

20 And I feel like that's wrong.

21 And they say, it's the State, the health
22 department.

23 When you call the health department, they
24 say, by them not letting us out, that's them.

25 So I feel like we're being lied to.

1 We don't get any information on what's going
2 on.

3 And I feel like they put everybody in the
4 same category, as if everybody can't think for their
5 self or make the right decisions for their self.

6 And I feel like that's wrong.

7 And I keep seeing like a lot of people, a lot
8 of people, they didn't have to die from this virus
9 in here if they would have did the right thing from
10 the beginning.

11 And I have Voices of Coler, where I have a
12 petition to remove the CEO of the hospital, because
13 he just totally denies everything. He doesn't take
14 our complaints seriously.

15 And, like, I've been here for -- since 2012.
16 And the people that's around us, like, we see each
17 other more than we see our families. So we consider
18 each other family.

19 So I feel like I lost a lot of family members
20 that I didn't have to lose.

21 And, once again, I thank ya'll for having me.

22 SENATOR RIVERA: Thank you for your
23 testimony, Mr. Pierce.

24 We now hand it back to the Assembly.

25 ASSEMBLYMEMBER BRONSON: Thank you.

1 I will now recognize myself for a period of
2 5 minutes.

3 And first let me just say to all of the
4 family members, and to you, Vincent, thank you for
5 sharing your stories with us.

6 It's vitally important, as policymakers, that
7 we hear the real-life stories of you and your
8 families, and we know what you went through.

9 This is going to help us to make better
10 policy decisions, help us to put things into place,
11 that will provide for the safety of your loved ones,
12 both their safety and their good health.

13 I'd like to ask Virginia:

14 As an ombudsperson, you know, we've talked a
15 lot to folks about the sense of being isolated.
16 And, in large part, we've talked about that from an
17 emotional caregiving support role.

18 But what we haven't talked about is the value
19 of family members going into nursing homes and being
20 the eyes and ears for their residents and for their
21 families.

22 How has your role as an ombudsperson -- you
23 talked a little bit about the difficulty.

24 Well, first of all, are you going back into
25 nursing homes now?

1 VIRGINIA WILSON-BUTLER: As far as I know,
2 the last, you know, meeting that we had, they said
3 no. So I'm still just waiting for the green light.

4 ASSEMBLYMEMBER BRONSON: Okay.

5 And share with us, explain to us, and put it
6 on the record, what was the difference in fulfilling
7 your role during COVID-19 as compared to what it was
8 pre-COVID-19.

9 VIRGINIA WILSON-BUTLER: So I didn't have any
10 contact with any of the residents in my nursing
11 facility because most of the patients were dementia
12 patients who, total care, really couldn't talk.

13 And I received most of my information from
14 the director of social work, who kind of gave me an
15 overview and an update on the patients, stating
16 that, if there were any incidents or problems or
17 complaints, that she did turn it over to the
18 ombudsman.

19 And I just never got any messages about that.

20 So, you know, they stated that, you know,
21 everything was fine in the facility.

22 But because I couldn't really go in there and
23 I really couldn't get to speak to the residents,
24 because the resident council president had passed
25 away. And the vice president had a stroke. And

1 then the next person that they put in charge was
2 just not able to communicate.

3 So the communication was really bad after the
4 COVID.

5 I mean, it was pretty bad before the COVID
6 because the residents were just afraid of
7 retaliation, and they did not want to speak against
8 anything that was happening to them in the facility.

9 So, it was really tough; it's a really tough
10 volunteer position.

11 ASSEMBLYMEMBER BRONSON: Okay.

12 And for all of the family members, I believe
13 some of you talked about possibly being on the phone
14 with your loved one inside the facility.

15 We've heard about some folks who -- here
16 locally, folks have talked about Facetiming with
17 their loved ones.

18 Did all of you experience that ability, at
19 the very least, to see your loved one during the
20 height of COVID-19, from the standpoint of
21 Facetiming or phone calling?

22 MIKKO COOK: I'll talk to that.

23 We -- when the lockdown first happened, we
24 would call the nurse's desk to try to access my dad.

25 And it was a rare opportunity, if he was

1 walking past the nurse's desk, then we could talk to
2 him.

3 But then when COVID -- infected COVID
4 patients came into the facility, we didn't want him
5 wandering around the hall because we knew there was
6 COVID on his floor. So, we stopped calling him.

7 And it took from March 13th, I think is
8 when they locked down, to the beginning of May,
9 before they ever said anything about video calls.

10 And then when we tried to get video calls, it
11 took my sister something like six weeks before they
12 would actually schedule a video call.

13 And it wasn't until I went on Facebook and
14 threw a fit, that we actually were assigned a new
15 social worker, who was then told -- who told us she
16 was using her personal phone to connect us with my
17 dad.

18 And when -- after -- we only had her for like
19 a few weeks, and then she was gone; she was let go
20 from the facility and told not to return.

21 And this might have something to do with the
22 fact that I mentioned that in a news story.

23 And then we called to get more video
24 conferences, and were told, "We've never done video
25 conferences, and I'm not sure why you're even asking

1 that. We don't have the equipment."

2 Sorry I took everyone's time up.

3 JERRY MALDONADO: If I could add, very
4 quickly, it was completely ad hoc.

5 I thank God for the social worker who
6 actually took out of her own time and her personal
7 phone, to go see my mom, and we'd try to
8 communicate.

9 But there wasn't a structured way to it,
10 actually, systematically. And so we were kind of at
11 the mercy of staff.

12 SENATOR RIVERA: Thank you, Mr. Maldonado.

13 I will now recognize Senator Skoufis for
14 5 minutes.

15 SENATOR SKOUFIS: Thanks very much.

16 And just to echo what my colleagues had said
17 at the onset, I want to thank each of you for
18 participating and sharing your really powerful
19 stories.

20 Quite frankly, you know, the testimony that
21 you share, it's my opinion that you all shared the
22 most important testimony of any of the stakeholders
23 that we hear from, and give us the most guidance
24 forward in terms of, you know, how we can legislate
25 and how we can do better for next time.

1 So with that in mind, and I'll start with
2 Jerry, who, you know, it's great to see you. I know
3 we've briefly spoken about what happened to your
4 mother. And I'm glad you're here, but I'll start
5 with you, if I could.

6 You had mentioned that you made it very clear
7 to nursing home administration that you wanted a
8 phone call if COVID was introduced into the nursing
9 home.

10 It sounds like you never got that phone call.
11 You found out separately on your own.

12 I assume you confronted the nursing home at
13 some point about that.

14 What did they offer to you as an explanation
15 as to why they couldn't pick up the phone?

16 Obviously, there's a lot of chaos happening
17 in nursing homes; that is understandable.

18 But to not have the decency to -- to --
19 especially after asking, after requesting, that they
20 give you a phone call, what was their explanation?

21 JERRY MALDONADO: Thank you, Senator Skoufis,
22 just for your leadership in these hearings, and for
23 the rest of the committee.

24 I, quite frankly, was in communication with
25 them frequently, and they would ignore that piece of

1 my question, actually.

2 Every time I spoke with them through
3 e-mails, they would not answer that one particular
4 piece of question.

5 Right?

6 Again, it was only until after my mom
7 developed a cough -- right? -- that it was kind of
8 undeniable, and a fever, that the director of
9 nursing -- the staff would tell me, they passed it
10 to the director of nursing, and then he finally
11 admitted it, again, in his own words, that they "had
12 been forced to accept COVID patients, and they
13 couldn't guarantee my mom's safety."

14 From my perspective, they were afraid of
15 liability purposes -- right? -- and were not sharing
16 that information.

17 I actually believe that it was an unintent --
18 it was an intentional decision not to inform
19 families.

20 And I felt like that robbed families of our
21 ability to care for our loved ones.

22 I would have pulled my mom out of that
23 facility.

24 She would be alive today, actually, had we
25 had actually again been informed about this policy

1 change proactively.

2 SENATOR SKOUFIS: Thank you.

3 Just, yes or no, briefly:

4 Did the rest of you all on the panel make
5 sort of a similar request?

6 And did you ever get that call from your
7 respective nursing homes that your family members
8 were in, that COVID was in that facility?

9 VIRGINIA WILSON-BUTLER: For a long time
10 calling, the Buena Vida in Bushwick stated there
11 were no cases. But they had to, you know, say that
12 my aunt was presumed COVID because of a cough.

13 No fever, no other signs and symptoms, but
14 because of her cough.

15 And then, eventually, they took the X-ray.
16 They stated she had pneumonia.

17 But her death certificate said that she died
18 of natural causes.

19 So...

20 SENATOR SKOUFIS: Okay.

21 Anyone else on that, very briefly? Because
22 I have one other question.

23 MIKKO COOK: Can you repeat your question?

24 SENATOR SKOUFIS: Just, did you request that
25 the nursing home give you that same heads-up that

1 Jerry Maldonado described, a phone call, if and when
2 COVID was introduced to your father's nursing home?

3 MIKKO COOK: Yes, yes.

4 SENATOR SKOUFIS: And did you ever get that
5 call?

6 MIKKO COOK: My mother called and asked.

7 My mother was the one who reached in every
8 time to find out.

9 SENATOR SKOUFIS: But did they ever then call
10 back when the virus was in the nursing home to let
11 you all know?

12 VIRGINIA WILSON-BUTLER: No, no.

13 MIKKO COOK: I think she ended up asking when
14 it was, and they told her, yeah.

15 And then there were frequent automated calls
16 that then announced how many people had it after
17 that.

18 SENATOR SKOUFIS: Got it. Right.

19 Okay. If I can just move on, again, Jerry,
20 you mentioned that there was no separate unit for
21 COVID-positive residents in nursing home.

22 CDC guidelines are very clear that separate
23 units were urged.

24 I don't understand why it wasn't made
25 explicitly clear in New York State directives or

1 mandates.

2 But, can you speak to that a little bit, as
3 to what the actual logistics of the nursing home was
4 during the past five months?

5 Were there any changes in where residents
6 were, or was it exactly the same as it was
7 pre-COVID?

8 JERRY MALDONADO: From what I could see, it
9 looked exactly the same, except, you know, the
10 nursing had maybe light masks.

11 Basically, you know, again, nursing homes are
12 usually overcrowded, understaffed. Right?

13 And so they didn't have the space, actually,
14 to segregate folks, and so COVID-positive patients
15 were intermixed.

16 My mom was in a dementia unit, where folks
17 kind of wander.

18 She was in her room. Other folks with kept
19 in their own room with other kind of patients. And
20 there was no special staff kind of attached to these
21 folks.

22 So while nurses and CNAs would come and see
23 my mom, then they'd go to another room with a
24 patient that was not positive, actually -- right? --
25 without changing equipment.

1 This is how it spread like wildfire.

2 SENATOR RIVERA: Thank you, Senator.

3 SENATOR SKOUFIS: Thank you.

4 SENATOR RIVERA: Now we'll go to the
5 Assembly.

6 ASSEMBLYMEMBER BRONSON: We'll next recognize
7 Chair Richard Gottfried for 5 minutes.

8 ASSEMBLYMEMBER GOTTFRIED: Thank you.

9 First -- okay.

10 First a question for Mr. Pierce.

11 "The New York Post" story about Coler that
12 you mentioned described some pretty horrendous
13 conditions at Coler.

14 On the other hand, we've heard people say,
15 oh, that's not true. Everything is fine at Coler.

16 What would you say about that, about the
17 general conditions at Coler both today and in the
18 recent past?

19 VINCENT PIERCE: Okay, I would say, when
20 I first read that "Post," or seen that "Post," I was
21 happy that somebody really stepped in, and somebody
22 that they would pay attention to, so people can see
23 that when it was coming from us that it was true.

24 And like I said, like Coler is -- I don't
25 know if anybody knows, but Coler is big. So they

1 had this space to separate people.

2 They just wasn't doing it, until then.

3 Like, that's the advantage that we do have,
4 is that we have this space, but they just wasn't
5 using it.

6 [Indiscernible cross-talking] --

7 ASSEMBLYMEMBER GOTTFRIED: But the -- I'm
8 sorry. Go ahead.

9 VINCENT PIERCE: -- no, go ahead, go ahead.

10 ASSEMBLYMEMBER GOTTFRIED: The story talked
11 about general conditions of lack of sanitation and
12 other major problems at Coler.

13 Was that your experience?

14 VINCENT PIERCE: Yes.

15 Just like Jerry just said, they had a lack of
16 PPE.

17 I would get -- a nurse could would come from
18 a COVID patient to take care of me, with the same
19 equipment on. And it's just amazing how this wasn't
20 the only place that that was going on.

21 But that right there is like a commonsense
22 thing. Like, why would you take care of a COVID
23 patient, then come to a non-COVID patient?

24 Like, that's how it spread, that's one of the
25 big reasons how it spread, was cross-contamination.

1 And, yeah, it was lack of PPE, lack of
2 sanitation wipes... lack of everything.

3 ASSEMBLYMEMBER GOTTFRIED: Okay.

4 Thank you.

5 And I have a quick question for
6 Ms. Wilson-Butler, because you're both a family
7 member and part of the ombudsman program, I assume,
8 as one the volunteers.

9 VIRGINIA WILSON-BUTLER: Yes.

10 ASSEMBLYMEMBER GOTTFRIED: You know, we've
11 been urge -- I've been urging the department to
12 require nursing homes to periodically notify family
13 members and residents about the ombudsman program.

14 And the answer the department has given, and
15 industry people this morning said, well, we have a
16 poster up in every nursing home, talking about the
17 ombudsman program.

18 Do those posters do any good?

19 And do families -- should families really be
20 periodically, and residents, notified about the
21 ombudsman program, and how to contact it, and what
22 it can do for them?

23 VIRGINIA WILSON-BUTLER: When my aunt was
24 admitted into the nursing home in 2016, I had no
25 idea what an ombudsman was.

1 Okay?

2 There was no posters up; there was nothing.

3 In her incidents and, you know, care, I did a
4 research for myself and found the program, and
5 I became an ombudsman.

6 Now, when I received my own facility,
7 New York Congregational, there are posters up on
8 every floor, stating the telephone number.

9 Now, do these dementia patients and other
10 residents with, you know, just different health
11 issues, really, are they -- do they really know to
12 call these numbers?

13 No, they don't.

14 Do the family members even care?

15 I personally would stand outside and hand
16 them the flyers, talk about the ombudsman program.

17 But, yes, none of the residents' families,
18 none of the residents, are really aware.

19 And if they are aware, once again, they are
20 scared of retaliation and they will not report
21 incidents.

22 So, therefore, the ombudsman, we do the best
23 that we can, and we try to help the ones that will.
24 But most of them will not because of retaliation
25 from the facility.

1 ASSEMBLYMEMBER GOTTFRIED: Okay. Thank you.

2 I think we're really, all of us, very
3 frustrated about what we can do to make the
4 ombudsman program more effective.

5 I would assume more adequate funding would
6 help.

7 Thank you.

8 VIRGINIA WILSON-BUTLER: Thank you.

9 SENATOR RIVERA: Thank you, Assemblymember.

10 I'll actually recognize myself for 5 minutes,
11 and just follow up exactly on that point right
12 there, as far as the ombudsman program.

13 What you're describing, Ms. Wilson-Butler, is
14 this is pre-COVID, you're saying that there were
15 concerns.

16 So kind of -- this is incredibly concerning
17 to me because, outside of the issue of whether they
18 should have been under, certain circumstances,
19 allowed within facilities during the pandemic, if
20 you're saying that we have a program whose purpose
21 is supposed to be, residents and their family
22 members being able to discuss issues with particular
23 facilities, so that you can have -- I mean, you can
24 be a spokesperson for them, as the name implies, it
25 is incredibly concerning to me that you're saying

1 that there is a -- that there is an underlying
2 threat, that most family members that know about the
3 ombudsman program, or residents.

4 So tell us a little bit more about the
5 retaliation part of it.

6 Obviously, I don't want to -- you know,
7 I figure that the fact that you're being public
8 about it, and I appreciate it, because it means that
9 you're, you know, obviously, tough enough to take
10 it.

11 VIRGINIA WILSON-BUTLER: Absolutely.

12 SENATOR RIVERA: So tell us a little bit
13 about that, because it is incredibly concerning to
14 me that there is this idea that there would be
15 retaliation, and that that is just a regular
16 expected thing.

17 VIRGINIA WILSON-BUTLER: Well, in my own
18 facility where I am the ombudsman, a lot of times,
19 speaking to my residents, they would give me an
20 issue.

21 And once I said to them, okay, well, I need
22 you to sign the paper, or just give me permission,
23 to go forward, and to question the social worker,
24 question, you know, whoever I needed to question,
25 and then they would say, no, no, no, no, I don't

1 want that, because, you know, they may do something
2 to me tonight. You know, they may, you know, tie me
3 up.

4 I heard "tie me up."

5 They would -- you know, there were just
6 different things that they would do. You know, come
7 in and just be nasty and aggressive. And, you know,
8 sometimes if they asked for something, they would
9 say, no, because, you know, you spoke to the
10 ombudsman today.

11 SENATOR RIVERA: I'm sorry to interrupt,
12 Ms. Wilson-Butler.

13 Am I correct in what I heard, that there were
14 residents who said that, in prior instances of them
15 sharing issues that they had with the facility, that
16 that facility then tied them up?

17 VIRGINIA WILSON-BUTLER: They -- they --
18 that's what they would say to me.

19 So I'm not -- I can't say that they did
20 because I never saw it.

21 And I could also say that these patients are
22 dementia patients, so, are they believable?

23 You know, there were cases where it could
24 have been considered abuse, but, to go further, they
25 didn't want to.

1 So I really cannot give you, you know, this
2 is really what happened because I was a witness to
3 it, or, that we went so far as to get the true
4 confessions from the resident or the family members.

5 It was -- there were -- there were, you know,
6 bruises, there were marks, there were everything,
7 but, we couldn't go any further because the family
8 members and the residents just didn't want to do it.

9 SENATOR RIVERA: Okay.

10 Any of the other family members want to
11 comment on this issue of ombudspeople, and how --
12 it's -- I don't think it could be an effective
13 program if there's this risk of that -- that the
14 facilities are going to respond.

15 I don't know if anybody wants to chime in on
16 that.

17 All right.

18 JERRY MALDONADO: I would just say that it
19 was not a very effective program.

20 In my mother's facility there was very little
21 advertising of it.

22 Anytime I had an issue, I would have to go
23 straight to the staff. And it wasn't really clear
24 how to navigate that system.

25 So I would say it's not an effective system.

1 VINCENT PIERCE: Yeah, and me --

2 VIRGINIA WILSON-BUTLER: I would say it's not
3 effective because we don't have the funding.

4 Sorry.

5 SENATOR RIVERA: Got you.

6 Mr. Pierce, go ahead.

7 VINCENT PIERCE: Yeah, and me living in a
8 nursing home, I never heard of the program, until
9 now. Like, they just started putting up flyers
10 about the ombudsman. Like, I never heard of it
11 until now.

12 And like I say, I've been in here since 2012.
13 And all I knew is, send my complaints to was the
14 State, which that doesn't help. Even when they --
15 the State comes, they don't talk to the residents at
16 all, to ask them what's going on.

17 Like, they go straight only to the staff.

18 And then it's, like, they know when the State
19 is coming. So they get everything together before
20 they even come and make everything look good.

21 SENATOR RIVERA: All right.

22 Thanks to all of you.

23 VIRGINIA WILSON-BUTLER: Can I just say one
24 thing?

25 SENATOR RIVERA: Yep, please, go ahead,

1 ma'am.

2 VIRGINIA WILSON-BUTLER: So in my facility,
3 I don't know about them only going to the staff.

4 But I went to each of the individuals, most
5 of the individuals who could speak to me, in that
6 facility.

7 So the staff was never really included in the
8 conversations, unless I had an issue that could be
9 taken care of without me opening a case.

10 SENATOR RIVERA: Got you.

11 Thank you; thank you all.

12 My time has expired.

13 Assembly.

14 ASSEMBLYMEMBER BRONSON: Thank you.

15 We'll next go to Assemblymember
16 Aileen Gunther, recognized for a period of
17 3 minutes.

18 Aileen?

19 SENATOR RIVERA: Assemblymember?

20 Do you have another Assemblymember on deck?

21 ASSEMBLYMEMBER BRONSON: Yes.

22 Let's move then to Assemblymember Ron Kim,
23 3 minutes.

24 ASSEMBLYMEMBER KIM: Thank you.

25 Thank you.

1 They don't look at my mother and other
2 nursing home residents like they are human beings.

3 All they see is data and numbers.

4 After meeting up with hundreds of families,
5 hosting endless Zoom and town halls, and personally
6 experiencing the trauma of losing a loved one in a
7 nursing home, that statement by a woman named
8 Carmen, who couldn't testify with you all today,
9 stood out the most for me.

10 You know, we have a system that normalizes
11 the dehumanization of a so-called "less productive
12 members of our society," especially our vulnerable
13 and elderly population.

14 We have a chance now to work on real
15 solutions around your guidance and feedbacks, and
16 not just put Band-Aids on a broken system.

17 So, Jerry, you know, you said you would have
18 pulled your mother out of the nursing home if you
19 had known all the facts.

20 Do you know other families who feel the same
21 way, or anyone else on this panel feel the same way?

22 JERRY MALDONADO: I do.

23 I know lots of folks who felt like they
24 weren't informed in a timely basis, and, subsequent,
25 family members got ill throughout his process.

1 I feel, again, that we were deprived of the
2 basic right to know -- right? -- of informed
3 consent.

4 And for that, quite frankly, I will never
5 forgive the department of health for taking away
6 that right from our family.

7 ASSEMBLYMEMBER KIM: Would it have been --
8 would you have had a financial burden to you and
9 your family for taking on your mother back home?

10 JERRY MALDONADO: At the beginning of the
11 COVID crisis I started working remotely, so
12 I actually had the capacity to bring her in.

13 I would have taken on the burden that we
14 would have needed to take it on, and cared for her
15 in our house.

16 But, again, we were never given that
17 opportunity.

18 Right?

19 By the time we found out, she had already
20 been sick.

21 ASSEMBLYMEMBER KIM: Well, and I guess for
22 others as well, like, do you think we should do
23 more, especially during a pandemic, an emergency, in
24 arranging and paying for home care?

25 Like, our benefit system is so ridged, that

1 we know how much people are getting in nursing homes
2 a day.

3 Why can't we make it a little bit more fluid
4 and more portable, so the same amount of money they
5 get in nursing homes could be transferred to home
6 care where families clearly want to take them out?

7 JERRY MALDONADO: A quick response,
8 Assemblymember Kim, because I think you're
9 absolutely right: The system is fundamentally
10 broken.

11 It is much more inexpensive to treat for a
12 family member at home than it is to treat them in an
13 institutional facility.

14 And we actually sought that option in many,
15 many years, but, always, were never able to give
16 that.

17 My mom was institutionalized because we
18 couldn't care for her 24 hours a day.

19 Had we had the right nursing support at the
20 home, it would have been cheaper, more effective,
21 and she would probably still be with us today.

22 VIRGINIA WILSON-BUTLER: I totally agree.

23 ASSEMBLYMEMBER KIM: Thank you all.

24 SENATOR RIVERA: Thank you, Assemblymember.

25 Now I'll recognized Senator Sue Serino for

1 5 minutes.

2 SENATOR SERINO: I think -- sorry.

3 Am I [indiscernible] -- oh, I'm good.

4 SENATOR RIVERA: [Indiscernible] hear you.

5 SENATOR SERINO: Okay. Sorry, Mr. Chairman.

6 Thank you so much.

7 And to Mikko and Mary Jo, so sorry to hear
8 about your dads. Thank you for telling us the
9 story.

10 Jerry, your mom, and today would have been
11 her birthday, my heart goes out to all of you.

12 Virginia, thank you for -- you know, I always
13 say our personal stories propel us forward.

14 Yours is a true story of that, becoming an
15 ombudsman. Thank you.

16 And, Vincent, thank you for sharing your
17 voice here too.

18 And we do have to do a better job to let
19 people know about the ombudsman because it's such a
20 great program.

21 I'm sorry that you all didn't know about it.

22 But I have a question.

23 Did any of you reach out directly the
24 governor's office or the department health to share
25 your story?

1 And if so, have you received a response?

2 I know, Mikko, you said that you did.

3 I just didn't know if you received a
4 response.

5 MIKKO COOK: I never received any responses
6 to the times that I have reached out to the
7 governor's office, nor did anyone in my family, or
8 anyone on our path, receive anything back.

9 I think it was just like a form.

10 And when we -- I did the nursing home
11 complaint hotline, and Assemblymember McDonald
12 helped, and made a call, I did get a call the next
13 day, saying that they contacted the regional office,
14 and that I should follow up with my dad's bump on
15 his head.

16 And I said, How long before I do that?

17 And they said, Well, you should give them
18 probably a week before you call them, because
19 they're so backed up.

20 SENATOR SERINO: Shame on them.

21 VIRGINIA WILSON-BUTLER: So, yes --

22 SENATOR SERINO: Anyone else?

23 VIRGINIA WILSON-BUTLER: -- yes, I did reach
24 out to DOH, and heard back from them like a year and
25 a half later, stating that there was nothing found

1 in the facility and they were up to code.

2 So one other thing I just wanted to let you
3 know, that being a family member, and also an
4 ombudsman, is kind of a thin line.

5 Yes, the ombudsman program is very important
6 to the patients who cannot, cannot, speak for
7 themselves.

8 And just because they are a little afraid,
9 that doesn't mean that we still are not needed,
10 because there are quite a few of them who will, who
11 will, allow to us continue with the case and have it
12 open.

13 SENATOR SERINO: I forgot to mention,
14 Assemblymember Kim, thank you so much for sharing
15 your story, and I'm sorry for your loss about your
16 mom.

17 So -- and this is a question for all of you:

18 If you could prioritize one or two changes
19 that the State can make to take better of care of
20 those like your loved ones, what would be at the top
21 of your list?

22 VINCENT PIERCE: I would say, communication.

23 MIKKO COOK: Vincent, you go first. You're
24 more in there.

25 VINCENT PIERCE: I would say -- I would say

1 better communication, to really reach out to the
2 patients that can speak for their self and tell you
3 what's really going on.

4 They definitely don't do that.

5 They come, they go straight to the nurses,
6 straight to administration. And they hand-pick who
7 they want to speak for the hospital, people that
8 they know is going to not tell them what's the bad
9 things.

10 SENATOR SERINO: Anyone else?

11 MIKKO COOK: I would like to add, there was,
12 I think an Assemblymember, who mentioned creating a
13 program where an essential family caregiver is like
14 staff.

15 Get us in there before the weather changes
16 and flu season and another surge hits, because we do
17 so much to help with the care of our loved ones
18 while they're in the facility or taking them out of
19 the facility.

20 And as staff starts to drop in terms of
21 numbers and the ability to keep eyes on, who's going
22 to do better than like adding in a family member,
23 one designated one, who can help do that?

24 JERRY MALDONADO: And moving forward,
25 building on that, three recommendations:

1 I think, as Senator Metzger said, the state
2 should be preparing right now to send COVID-positive
3 patients into specialty-care facilities.

4 We've got to be preparing now.

5 We know that these facilities are already
6 overcrowded, understaffed.

7 And so, that's number one.

8 Number two: Nursing homes really have to be
9 prepared with sufficient PPE and testing capacity
10 on-site. And they should be testing both staff and
11 residents on a regular basis.

12 And then to three, as I said, the
13 communication piece.

14 Right?

15 Really, families have the right to know of
16 any confirmed or suspected COVID patients.

17 The nursing home got away with a loophole.

18 Right?

19 Because they couldn't test on-site, they said
20 that there were no positive cases they could
21 confirm, though they were treating the patients with
22 hydroxychloroquine.

23 Many folks died. Those deaths are not
24 counted.

25 And so there needs to be kind of some

1 right-to-know passage -- right? -- so that families
2 can be informed.

3 SENATOR SERINO: And, Jerry --

4 VIRGINIA WILSON-BUTLER: I'm going stick with
5 the camera.

6 Oh, I'm sorry.

7 SENATOR SERINO: No, you're good.

8 VIRGINIA WILSON-BUTLER: I'm going stick with
9 the camera in resident's room.

10 SENATOR SERINO: And, Jerry, you had
11 mentioned, because of -- they weren't isolated,
12 I actually had a plan for specialty-care centers.

13 And the governor and the department of health
14 totally ignored it.

15 So -- and this is something that, talking to
16 family members, we know that is something that needs
17 to be done.

18 So thank you so much for all sharing your
19 stories today, and I'm so, so sorry.

20 Thank you.

21 SENATOR RIVERA: Thank you, Senator.

22 Assembly.

23 ASSEMBLYMEMBER BRONSON: Yes.

24 Next we will recognize Monica Wallace for a
25 period of 3 minutes.

1 ASSEMBLYMEMBER WALLACE: Thank you so much.

2 I want to first thank you all for sharing
3 your stories with us today.

4 Your stories are so important because they
5 help provide context and insight into how the
6 policies that we've heard about played out in the
7 individual nursing homes.

8 So I really appreciate that you're taking the
9 time out of your day to come and share those stories
10 with us.

11 [The video and audio freezes.]

12 SENATOR RIVERA: Is Assemblymember Wallace
13 frozen?

14 We're going to give her a couple more seconds
15 to see if she comes back in.

16 All right.

17 Do you have another Assemblymember who is on
18 deck?

19 And then we'll go back, see if --

20 ASSEMBLYMEMBER WALLACE: Family members often
21 access -- act as the conduit to communicate with --

22 SENATOR RIVERA: Assemblymember Wallace, just
23 so you know, I'm sorry to interrupt, you were frozen
24 for a good, 10, 15 seconds.

25 So if you want to start again?

1 ASSEMBLYMEMBER WALLACE: Oh, okay.

2 Okay, sure.

3 I'll try again.

4 SENATOR RIVERA: Go ahead.

5 ASSEMBLYMEMBER WALLACE: So I just was
6 saying, thank you so much for sharing your stories.

7 Your stories are important.

8 They help provide insight into how many of
9 these policies played out on the ground in the
10 individual nursing homes.

11 So while it's very heartbreaking to hear
12 these stories, it's also really critical that we do
13 hear these stories so that we can help make positive
14 changes.

15 I especially appreciate the comments that
16 were made about how important it is to allow family
17 members access to their loved ones in the nursing
18 homes, not only because they provide that emotional
19 support and help with the well-being -- the
20 emotional well-being of their loved ones, but, also,
21 because it's critical to the care and treatment of
22 their loved ones.

23 They are the individuals who can communicate
24 back and forth with the doctors and the staff on
25 their --

1 [The video and audio freezes.]

2 SENATOR RIVERA: The connection seems to be a
3 little off. We'll give her another 10 seconds to
4 come back.

5 ASSEMBLYMEMBER WALLACE: -- is understaffed.

6 SENATOR RIVERA: Your connection froze again.

7 ASSEMBLYMEMBER WALLACE: I'm still cutting in
8 and out in?

9 SENATOR RIVERA: I'm sorry.

10 But please --

11 ASSEMBLYMEMBER WALLACE: That's okay.

12 I'm actually in my Assembly office.

13 Apparently, the Internet connection is not that
14 great here.

15 Can you hear me?

16 SENATOR RIVERA: Yes, ma'am.

17 ASSEMBLYMEMBER WALLACE: Okay.

18 Terrific.

19 I just want to say that I recognize that the
20 ombudsman office is understaffed, and we need to
21 direct more resources into that program.

22 I think it was last year, or the year before,
23 the comptroller did an assessment, and noted that
24 New York State funds this program at half of what
25 other states of similar size in residents and

1 facilities fund the program at.

2 So we definitely need to beef up that
3 program.

4 We're recognizing here how critical that
5 program is.

6 I want to thank to Ms. Wilson-Butler for her
7 work in volunteering in that program. You're truly
8 doing God's work in advocating on behalf of the
9 residents.

10 And I guess the question that I wanted to ask
11 was: You know, to help us to get a better sense of
12 how the program works, do you just go to the one
13 nursing home, or do you go to different nursing
14 homes, volunteering?

15 And have you been given any explanation as to
16 why you're not allowed to resume those visits?

17 VIRGINIA WILSON-BUTLER: So right now I'm
18 just assigned to one nursing home.

19 You know, we are looking for volunteers all
20 the time to, you know, join us on the program.

21 There aren't that many of us to really spread
22 out among all of the nursing home facilities.

23 No, we haven't been given an explanation on
24 why we can't go back yet.

25 Like I said, the meeting that we had last

1 week stated that, you know, we're still not allowed
2 to go back in, yet.

3 So, there's no explanation, why?

4 ASSEMBLYMEMBER WALLACE: Okay.

5 SENATOR RIVERA: Assemblymember,
6 [indiscernible --]

7 ASSEMBLYMEMBER WALLACE: Yeah, it cut out a
8 little bit, but I did hear what you said, and I echo
9 that you -- I know that there has been a reduction
10 in volunteers over the years.

11 So we do need to do a better job at making
12 the program known to the residents, but also to
13 individuals who might want to volunteer to that
14 program.

15 It's incredibly critical, so we need to
16 direct resources to advertising it more, and making
17 sure everybody knows, and helping to recruit
18 additional volunteers.

19 VIRGINIA WILSON-BUTLER: Yes.

20 ASSEMBLYMEMBER WALLACE: Thank you so much.

21 SENATOR RIVERA: Thank you, Assemblymember.

22 There is currently no other senators signed
23 up to ask questions.

24 Back to the Assembly.

25 ASSEMBLYMEMBER BRONSON: Okay. We will then

1 go to Assemblymember Missy Miller, recognized for a
2 period of 3 minutes.

3 ASSEMBLYMEMBER MILLER: Hi.

4 Thank you so much.

5 And thank you to the families for being here
6 and sharing this testimony.

7 As Monica Wallace just said, it's
8 heartbreaking for us to hear, but it is so critical
9 for us to hear -- for everybody to hear what's going
10 on.

11 And, Mikko, you had brought up a point that
12 family is repeatedly -- and we touched on this last
13 week as well -- family is repeatedly treated as
14 visitor, not as part of the care plan; part of, you
15 know, helping to take care of their loved ones.

16 And that's a devastating oversight on behalf
17 of New York State, that the family can only help.

18 So thank you for bringing up that very
19 important part.

20 The other thing is, I think what we're
21 learning from you guys is, we have this ombudsman
22 program that people either don't know about it, or,
23 what's worse, and is tragic, is that they're afraid
24 to be on record.

25 You know, and we hear this in the senior

1 population, the nursing home population, but we hear
2 this even in community care through OPWDD.

3 I get tons and tons of calls of people, of
4 families, calling to, you know, ask about a
5 situation or for help with a situation.

6 When I ask for their name and their number,
7 and I'll look into it, they're afraid to give it to
8 me, because they're afraid that their loved one is
9 going to get bad treatment, or, you know, left out
10 of certain things.

11 So I think that these testimonies are going
12 to help us tremendously moving that forward as well.

13 So I just -- I don't really have any
14 questions.

15 I just want to thank you for bringing these
16 things to light.

17 Thank you.

18 VIRGINIA WILSON-BUTLER: Thank you.

19 ASSEMBLYMEMBER BRONSON: Thank you.

20 SENATOR RIVERA: Thank you, Assemblymember.

21 Go ahead.

22 ASSEMBLYMEMBER BRONSON: We'll next go to
23 ranking member of health, Kevin Byrne, for
24 5 minutes.

25 [Dog barking.]

1 ASSEMBLYMEMBER MURPHY: That's not mine.

2 [Laughter.]

3 ASSEMBLYMEMBER MILLER: First, let me just
4 thank the witnesses again on the panel right now for
5 sharing your very personal stories and your
6 experiences.

7 The more we hear from people like you, the
8 better we can do our jobs, to learn from our
9 experiences and craft better state policies.

10 So [video and audio freezes].

11 I wanted to make sure I thanked you, again,
12 echoing the comments from my colleagues previously.

13 I did have a couple of questions.

14 It seems like some of the witnesses are from
15 various areas in the state.

16 Obviously, Albany County and upstate, and
17 I think we have someone from the New York City area
18 as well.

19 One of the things that's been talked about a
20 little bit, in reviewing, whether it's a study from
21 the DOH, or just some of this data, and this
22 testimony, is the -- looking at these numbers
23 holistically for the entire state, sometimes it can
24 paint a different picture than looking at data and
25 specific examples, experiences, in individual

1 facilities.

2 An example is, there are certain counties,
3 for example, that have much higher fatalities than
4 other counties did. And sometimes it tells a
5 different story.

6 And I'm just curious if you would feel a
7 more -- a more pointed analysis, or a breakdown
8 review, of what's going on in nursing facilities,
9 particularly throughout this pandemic, would make
10 sense, or do you think it makes sense to keep
11 looking at this statewide?

12 Obviously, we care about all of the residents
13 in New York State regardless where they live.

14 But does that make sense to you, to look at
15 this maybe a little bit more specifically at the
16 various facilities?

17 Any of you can speak up and answer if you
18 feel comfortable answering that.

19 JERRY MALDONADO: I'll start.

20 Yes, I actually think that we need a much
21 more thorough and deeper kind of accounting for the
22 crisis.

23 I think we need to look at it both kind of
24 regionally and statewide, but we also look at it,
25 kind of, how nursing homes account for deaths.

1 Right?

2 I don't feel like we're tracking them
3 accurately. I don't think we have tracked them
4 historically accurately.

5 Again, as I said, in my case, there were a
6 number, including my mom, who were suspected COVID,
7 but because they didn't have testing equipment, they
8 didn't count her.

9 Right?

10 And there were at least, that night when
11 I was there when my mother passed away, there were
12 three or four other patients who were similarly in
13 critical condition.

14 When I checked on the website to see the
15 nursing home's death count, they didn't count those.
16 They were very severely undercounting.

17 So I do think we need a more in-depth
18 accounting across the state, looking at regional
19 peculiarities.

20 ASSEMBLYMEMBER MURPHY: Thank you, Jerry.

21 And to that point, you know, the governor
22 announced earlier on during the pandemic that the
23 attorney general's office and the department of
24 health was going to be leading an investigation into
25 some of the issues surrounding nursing homes.

1 Obviously, the importance of having this
2 hearing, as legislators, is crucial, so we can be --
3 provide that oversight too, as a legislative body.

4 But I would ask any of the witnesses if they
5 have heard from the department health or the
6 attorney general's office regarding this
7 investigation?

8 I think that your comments would be help, or
9 could be helpful.

10 Have there been any outreach from the
11 AG's office or have you reached out to them since
12 this pandemic began?

13 JERRY MALDONADO: I have reached out to the
14 AG's office, and have not heard back.

15 ASSEMBLYMEMBER MURPHY: Anybody else?

16 MIKKO COOK: We have left voice messages on
17 the AG's hotline. And somebody would call and ask
18 questions, but then you had no idea what happened
19 after that.

20 And as I stated before, we have left all
21 sorts of messages for the governor's office, with no
22 reply.

23 VINCENT PIERCE: Yeah, [indiscernible
24 cross-talking] --

25 ASSEMBLYMEMBER MURPHY: Please, go ahead,

1 sir.

2 VINCENT PIERCE: -- when you say
3 investigation, I'm in a nursing home, so I don't --
4 even after the article in "The Post" came out, they
5 said there would be an investigation.

6 I haven't seen it.

7 Like, I don't see it.

8 Like I said, they don't come in and talk to
9 the residents or the patients at all.

10 So I don't see it.

11 ASSEMBLYMEMBER MURPHY: Thank you, Vincent.

12 I think it's important that we have a
13 multi-pronged approach to this.

14 I know the legislature, we passed, I believe
15 there was a study bill, into looking into racial
16 disparities from the coronavirus.

17 Have anyone reached -- been contacted about
18 that?

19 Has there been any outreach from the
20 department of health into a study, into racial
21 disparities caused by this virus?

22 JERRY MALDONADO: There has not.

23 ASSEMBLYMEMBER MURPHY: There has not.

24 Okay.

25 Thank you.

1 SENATOR RIVERA: Thank you, Assemblymember.

2 ASSEMBLYMEMBER BRONSON: We have no further
3 witness -- or, questioners on this.

4 Thank you.

5 SENATOR RIVERA: All right.

6 Lastly, just -- let me just put in again:

7 I thank all of you for taking the time to
8 share this incredibly personal story with us.

9 Please know that all the information that
10 you've given us, we're already thinking about how to
11 implement it, and, we will continue in conversations
12 with you.

13 And, lastly, for any -- and there are a
14 couple of other family panels that we will have
15 today, but thank you for being the first on that.

16 With that, we will be taking a 10-minute
17 break.

18 So let's put 10 minutes on the clock, get
19 that sandwich ready, you can have your lunch.

20 And we will be back here in 10 minutes.

21 MIKKO COOK: Thank you.

22 [A recess commenced.]

23 [The hearing resumed.]

24 SENATOR RIVERA: Welcome back, folks.

25 Before we call the next panel, a very timely

1 announcement on time from Chairman Gottfried.

2 ASSEMBLYMEMBER GOTTFRIED: Well, thank you.

3 So, we've been making great time here.

4 In 3 1/2 hours we have had seven witnesses,
5 so that's two witnesses per hour.

6 On the witness list we have 36 more witnesses
7 listed.

8 So that will come out to 18 hours of further
9 testimony, which I think puts us at 9:00 in the
10 morning, give or take.

11 Senator Rivera and I are committed to staying
12 all 18 hours.

13 We would just ask every member, when you
14 start doing your Q&A, if you would just let everyone
15 know whether you are also committed to stay the full
16 course.

17 SENATOR RIVERA: And with that, we rock on.

18 Next panel will be led off by Steve Lampa
19 from the New York Board -- he's the New York board
20 chair and partner at Argentum;

21 Stephen Knight, CEO of United Helpers;

22 Kimberly Townsend, president and CEO of
23 Loretto;

24 Jason Santiago, chief operating officer of
25 The Manor at Springside at Seneca Hill;

1 And, Rachel Dombrowsky, owner/operator of
2 Harbor House Assisted-Living and Oyster Bay Manor
3 Assisted-Living.

4 ASSEMBLYMEMBER GOTTFRIED: And before you
5 testify, do each of you swear or affirm that the
6 testimony you are about to give is true?

7 OFF-SCREEN SPEAKER: I do.

8 OFF-SCREEN SPEAKER: I do.

9 SENATOR RIVERA: Is Mr. Lampa already on
10 the screen?

11 No. We're waiting for Mr. Lampa.

12 Is Mr. Lampa on the screen?

13 Yes, he is.

14 STEVE LAMPA: I am, and, yes, I do.

15 SENATOR RIVERA: Thank you.

16 You may start, Mr. Lampa.

17 STEVE LAMPA: Okay. Thank you.

18 Honorable members of the Senate and the
19 Assembly, thank you for the opportunity to testify
20 at this critical hearing.

21 I'm Steve Lampa, partner with Kensington
22 Senior Living, and the chair of Argentum New York
23 Advisory Board.

24 It's my pleasure to speak with you today on
25 behalf of the New York chapter of Argentum.

1 Argentum is the nation's largest trade
2 association, serving companies that own, operate,
3 and support senior living communities in the U.S.

4 Our association fully supports the Senate
5 recommendation and legislation to establish a task
6 force to examine the impact of coronavirus pandemic
7 on long-term care in New York.

8 Argentum New York also welcomes the
9 opportunity to participate with this task force as a
10 long-term-care stakeholder.

11 All the Argentum New York members are
12 licensed as adult-care facilities and
13 assisted-living residence.

14 These are long-term-care settings that are
15 distinct from nursing homes, as they serve different
16 populations for different purposes, and they are
17 authorized and regulated differently.

18 Our communities are our residents' homes.

19 To give you a picture of our residents, more
20 than half of them are over the age of 85, another
21 30 percent are between the ages of 75 and 84.

22 They require assistance with activities of
23 daily living, and often cope with multiple chronic
24 conditions. As such, they're amongst some of the
25 most vulnerable to the virus.

1 Assisted-living residents [sic] have been on
2 the front line of this crisis from day one;
3 dedicated staff members work around the clock to
4 provide high-quality care, support, and services to
5 their residents, while protecting them and
6 themselves from COVID-19.

7 Diligence in infection control for our staff
8 members continues when they go home to their own
9 communities.

10 At the outset, communities had to close the
11 doors to visitation by family members and to
12 non-essential personnel.

13 Group activities and dining, which are
14 essential to the day-to-day life enrichment within
15 assisted-living communities, were significantly
16 altered and limited.

17 To combat the sense of isolation and
18 loneliness, and to head off negative clinical
19 outcomes, staff members had to get creative in
20 engaging residents in alternative social
21 interactions and activities, and to promote their
22 mental and physical well-being.

23 They developed alternative means for
24 residents to stay connected to family members and
25 loved ones through the use of technology and various

1 other methods of communication.

2 Based on our members' shared experiences, and
3 the most critical lessons we've learned, we would
4 ask to you consider recommendations in the following
5 five areas:

6 First is testing.

7 We need support with funding and access to
8 broad-based accurate and rapid testing for staff and
9 residents. We need to consider sampling approaches
10 that will provide strong surveillance while
11 requiring less laboratory resources.

12 Secondly, in terms of PPE, to provide access
13 to PPE on a priority basis for assisted-living, as
14 needed, and to support the transition from the
15 crisis PPE conservation strategies that we had to
16 employ early on, to more conventional use of PPE in
17 infection control.

18 Thirdly, examine and establish
19 carefully-managed visitation policies to ensure
20 residents remain safely connected to their families,
21 friends, and community.

22 Number 4: Ensure that priority access to a
23 vaccine, once developed, is available to ACF
24 residents and employees.

25 And, finally, in the area of learning,

1 maintain a balanced and reasonable DOH reporting
2 system, and share the results of the data collection
3 and analysis from those reported systems.

4 So, once again, on behalf of our members,
5 thank you for the opportunity to provide testimony
6 at this hearing.

7 SENATOR RIVERA: And thank you, Mr. Lampa.

8 Followed up by Mr. Stephen Knight, CEO of
9 United Helpers.

10 STEPHEN KNIGHT: [Inaudible.]

11 SENATOR RIVERA: Can't hear -- there you go,
12 Mr. Knight.

13 STEPHEN KNIGHT: Is that better?

14 SENATOR RIVERA: Yep, there you go.

15 STEPHEN KNIGHT: Good afternoon.

16 I too want to thank everyone for the
17 opportunity, and taking the time to listen to
18 everyone.

19 I also want to thank the family members and
20 Mr. Pierce for sharing their experiences. You are
21 the key to systemic change.

22 Those folks are the key.

23 United Helpers was founded in 1898, and
24 provides a complete continuum of post-acute
25 services.

1 We serve over 2400 people daily at
2 52 locations in St. Lawrence and Jefferson county.

3 St. Lawrence County is the largest county in
4 New York State and home to only 110,000 residents.

5 While many nursing homes and assisted-living
6 facilities struggle financially and experience
7 similar challenges, I will also speak to the unique
8 challenges that rural providers face.

9 No Medicaid trend factor since 2008. Imagine
10 82 percent of your revenue frozen for 12 years;

11 Very high Medicaid population;

12 Managed Medicaid has increased costs and
13 reduced cash flow;

14 Historic suburban and urban rate additions
15 are not provided to rural providers;

16 Reimbursement rates significantly below
17 hospitals, counties, and New York State operations,
18 making recruitment and retention nearly impossible;

19 Many unfunded mandates without reimbursement,
20 like mandatory minimum wage;

21 Critical-access hospitals take needed
22 Medicare business;

23 Too many rural acute hospital beds, resulting
24 in hospitals taking needed nursing home business;

25 Severe nursing shortage even compared to

1 suburban and urban areas.

2 In summary:

3 Skilled nursing and assisted-living operators
4 have seen their customer's acuity increase
5 dramatically;

6 New York State demands and mandates increase;
7 New York State oversight become more
8 punitive;

9 And payer systems become more complex for
10 all, while reimbursement has stayed flat for
11 decades.

12 Skilled nursing facilities and
13 assisted-living facilities play a key part in
14 New York State's continuum of care, and they will
15 continue to do so in the future.

16 In many cases, they are the best and most
17 cost-effective choice.

18 COVID-19 has laid bare many of the
19 challenges, bottlenecks, and funding inequities that
20 have been festering for years.

21 It's time for operators, New York State
22 Department of Health, and legislators to all take
23 responsibility; come together and fix these
24 longstanding problems instead of blaming operators
25 for systemic issues.

1 For example, the nursing shortage presents
2 challenges for every health-care provider in
3 New York State.

4 While over 30 states utilize medication aides
5 in nursing homes, New York State does not.

6 If every nursing home utilized 10 medication
7 aides in New York State, 6,000 nurses who pass
8 medications would be available to fill many
9 necessary positions.

10 In addition, the newly-created medication
11 aide position would provide career opportunities for
12 our most qualified certified nursing assistants.

13 Let us start innovating and focus on outcomes
14 instead of process.

15 Thank you again for convening these very
16 important meetings.

17 SENATOR RIVERA: Thank you, Mr. Knight.

18 You caught me mid-bite.

19 Apologies.

20 Next we will have Kimberly Townsend,
21 president and CEO of Loretto.

22 KIMBERLY TOWNSEND: Good afternoon.

23 Honorable members of Senate and Assembly,
24 thank you for the opportunity to testify at this
25 very important joint hearing today.

1 My condolences to the families in the last
2 panel who recently lost their loved ones due to
3 coronavirus.

4 I'm Kimberly Townsend, and I'm the president
5 and CEO of Loretto.

6 Loretto is a 19-site long-term-care system
7 that serves 10,000 individuals each year, and
8 65 percent of those individuals are
9 Medicaid-eligible.

10 We are a safety-net provider, offering a full
11 range of long-term-care services, including skilled
12 nursing, short-term rehabilitation, adult medical
13 day services, senior housing, and PACE.

14 So just to set the context of this
15 conversation, there are 100,000 New York State
16 residents in nursing homes today, and 63 percent of
17 those individuals are Medicaid-eligible, meaning,
18 that Medicaid pays for their long-term-care
19 services.

20 As you've heard previously, the Medicaid rate
21 for skilled nursing facilities in New York State has
22 not had a cost-of-living increase or a trend-factor
23 increase since 2008.

24 Pre-COVID, on the average, Medicaid paid
25 \$64 per person per day below the cost of care.

1 And so, consequently, in 2018, the average
2 margin for long-term-care facilities was, negative,
3 negative .2 percent.

4 So far in 2020, long-term-care providers in
5 New York State have sustained a 1.5 percent cut to
6 the Medicaid rate, and the impact to Loretto, the
7 negative financial impact, was \$1.6 million.

8 And then COVID struck.

9 And I fear that COVID may be an extinction
10 event for many long-term-care facilities in
11 New York State.

12 In the last six months, Loretto has spent
13 \$2 million for PPE in the informal markets because
14 the supply chain still has not normalized.

15 We've paid \$6.99 for an N95 mask that cost
16 88 cents last fall.

17 We've also conducted 15,000 mandated employee
18 tests, with no insurance coverage, because they're
19 not medically necessary, and, potentially, no
20 reimbursement from any source, including FEMA.

21 The Provider Relief Funds under the CARES Act
22 have been helpful to skilled nursing, but
23 insufficient, and there's been no relief funds for
24 PACE programs, adult-care facilities, or adult
25 medical day.

1 So, going forward, Loretto respectfully
2 requests that the legislature prioritize the
3 following items:

4 Funding to stabilize the long-term-care
5 system, particularly the safety-net system in
6 New York State, and particularly recognizing the
7 heroic efforts of New York State essential
8 health-care workers.

9 Two: Priority access to PPE.

10 We still have challenges getting critical
11 PPE, such as gloves and disinfectants.

12 We'd also like to see priority access to
13 rapid testing.

14 And then we would be looking for protection
15 from liability for the good-faith efforts to deliver
16 quality care in an unprecedented public-health
17 crisis.

18 And, finally, Loretto would like to partner
19 with New York State, to seek state and local
20 government relief from our federal government.

21 We realize that New York State cannot help us
22 until they, likewise, receive help from our federal
23 government.

24 Thank you for the opportunity to testify
25 today, and thank you for the important work that you

1 do every day.

2 SENATOR RIVERA: And thank you for your
3 testimony, Ms. Townsend.

4 Next, Jason Santiago, chief operating officer
5 of The Manor and Springside at Seneca Hill.

6 JASON SANTIAGO: Thank you for the
7 opportunity to testify today.

8 My name is Jason Santiago, and I serve as the
9 chief operating officer for Seneca Hill Manor, a
10 120-bed skilled nursing facility in Oswego County.

11 Seneca Hill is an affiliate of Oswego Health,
12 an independent community health system that employs
13 approximately 1200 people.

14 Currently, Seneca Hill employs 197 staff
15 members and cares for 120 residents.

16 I think it's fair to say that COVID-19 has
17 challenged and impacted everyone.

18 Thankfully, so far, Seneca Hill has had zero
19 COVID-19-positive resident cases, and only two
20 positive employee cases.

21 The hypervigilance of our staff in following
22 the guidance of the CDC and the department of health
23 has contributed to our very low infection rate.

24 Despite having that low infection rate,
25 however, COVID-19 has still forced us to account for

1 several complex changes that have had a domino
2 effect in managing our nursing home.

3 One of these changes came in the form of
4 Executive Order 202.30, regarding staff testing.

5 I agree with Governor Cuomo and
6 Commissioner Zucker on the importance of staff
7 testing to help protect our residents, our most
8 vulnerable; however, we were then faced with the
9 immediate challenge of how we were going to
10 accomplish the required testing process, and certify
11 compliance to the department of health and
12 Commissioner Zucker.

13 We did not take this executive order lightly.

14 Fortunately, other nursing homes and
15 assisted-living community administrators in
16 Oswego County banded together rather quickly, along
17 with our local hospital, Oswego Hospital, to help
18 get access to tests via Oswego Hospital's drive-thru
19 testing site.

20 Since May 18th, Seneca Hill Manor has
21 conducted 2,213 tests of our staff.

22 [The video and audio freezes.]

23 SENATOR RIVERA: I think that we -- that
24 Mr. Santiago has frozen.

25 We will wait for a couple more seconds.

1 JASON SANTIAGO: [Indiscernible] the number
2 of tests needed, based on our weekly HERDS survey,
3 [indiscernible cross-talking] --

4 SENATOR RIVERA: Mr. Santiago, just so you
5 know -- just so you know, you were frozen for about
6 10 seconds there.

7 But keep going.

8 JASON SANTIAGO: Okay.

9 I'll just go back to the last sentence.

10 Thankfully, the department of health stepped
11 up and has sent us the number of tests needed, based
12 on our weekly HERDS survey and the New York State
13 health commerce system.

14 However, there was definitely a lack of
15 communication from the DOH side regarding how and --
16 when and how many test kits would be arriving.

17 Second: The turnaround time for test results
18 has fluctuated anywhere between 7 to 10 days.

19 Currently, we're waiting eight days for
20 results.

21 Staff are continuing to be tested prior to
22 receiving the results from the previous tests.

23 Yes, all of our staff are wearing PPE;
24 however, we could have an asymptomatic employee
25 providing close hands-on-care to our residents while

1 awaiting those test results.

2 Another impact that was related to COVID-19
3 has been to pull nurses away from resident care to
4 provide the staff testing.

5 Nursing homes have historically been
6 challenged to provide adequate staffing even
7 pre-COVID-19.

8 It has been difficult for our nurses trying
9 to complete their day-to-day tasks, also while
10 simultaneously conducting staff testing.

11 And one last thing I want to highlight is the
12 cost associated with COVID-19 testing.

13 With 2,213 tests conducted, originally at
14 \$100 per test, now recently increased to \$150 per
15 test, the direct cost impact to our organization is
16 approximately \$276,000.

17 While we recognize the importance of proper
18 testing, that is a significant financial burden for
19 any organization to have to take on.

20 At Seneca Hill Manor, we're committed to
21 providing the best, safest care possible for our
22 residents, and support the decision-making based on
23 scientific data.

24 I simply share this real-world cost
25 associated with COVID-19 testing so you can see the

1 significant financial constraint it adds, especially
2 considering how tight budgets are becoming.

3 I'd like to close my testimony by emphasizing
4 that we've all been challenged by this virus.

5 Seneca Hill Manor, along with many of my
6 upstate and downstate colleagues, respectfully
7 request funding to help mitigate the costs
8 associated with COVID-19 testing.

9 All nursing homes need to be on the highest
10 priority list for access to testing and PPE to
11 continue to protect our residents.

12 We need continuous, timely communication and
13 planned guidance from the department of health to
14 help all nursing homes manage our facilities safely
15 during this pandemic.

16 Thank you for your time and attention, and
17 the opportunity to testify today.

18 SENATOR RIVERA: Thank you for being with us
19 today, Mr. Santiago.

20 Next we will hear from Rachel Dombrowsky,
21 owner and operator of Harbor House Assisted-Living
22 and Oyster Bay Manor Assisted-Living.

23 Apologies if I got your name wrong.

24 RACHEL DOMBROSKY: You did not, sir.

25 Thank you.

1 Good afternoon, everybody.

2 Thank you for inviting me to participate.

3 So far it seems that I'm the only -- I am
4 from Nassau -- we are from Nassau County.

5 We are only a two-facility campus.

6 One building is specifically for dementia
7 care, and the entire building is dementia-related.
8 Every floor is separate, and every -- we place our
9 residents according to their cognition.

10 So, basically, we are running three
11 assisted-living facilities under one roof.

12 And the other building, Oyster Bay Manor, is
13 an assisted-living, with a very strong medical model
14 within the guidelines of the department of health.

15 Originally I had a very long -- I had sent in
16 testimony. And, originally, I was going to stick to
17 that testimony.

18 And I'd like to say that, State
19 Senator Skoufis had invited me last week to join.

20 I was going to speak -- I was going to stick
21 to the testimony, but there's been so much said up
22 until now, that I really feel that I just need to
23 speak to what has been -- what has been addressed so
24 far.

25 I have to tell you that the most help that we

1 have gotten in our facility were from our
2 associations.

3 Argentum, Steve Lampa, watch every day,
4 getting e-mails from the organization.

5 AESA (the American Empire State Association)
6 has been extremely helpful.

7 Steve Hanse, who spoke on the last panel for
8 NYSHFA [indiscernible], for keeping us updated
9 constantly.

10 I would like to tell you what we've done
11 here, and it still didn't help enough.

12 And when I was asked by the senator's office
13 to speak, I felt that it was -- it wasn't proper to
14 speak because it was -- even though we put so many
15 things into place here to -- for -- to manage the
16 illness, it still didn't help us enough.

17 We had PPE.

18 We had -- we started to test our residents as
19 soon as we could, which was with Northwell Health.

20 We had wonderful policies and procedures.

21 And the reason for that, I believe, because
22 I'm in congregate care for 29 years, I felt that,
23 when you are in congregate care, all of you that
24 are, we know that infectious diseases are so
25 dangerous for us. And it's not just -- it's not

1 just the pandemic now, and it's not just COVID.

2 It's flu. It is -- it is C. difficile
3 that can come into a building. It's MRSA.
4 It's candida auris.

5 All these things are dangerous for our
6 population.

7 And so I became very involved years ago by --
8 with infectious diseases, to protect my residents in
9 the facility.

10 So that was very helpful. And the
11 relationships that I established were helpful
12 because of that.

13 So, let's say, the tips, the infection
14 prevention strategy, the United States of America
15 was telling me, Michael Diamond called me and told
16 me, "Close your building." And that was in January.

17 So we closed our building in Jan -- the end
18 of January, the beginning of February, to all -- to
19 all visitors.

20 Now, that is horrific for families, and
21 horrific for ombudsmen, but I wanted to keep our
22 residents safe.

23 We had a wonderful -- as far as the
24 department of health, a wonderful sanitation system
25 set up.

1 And as an owner and a -- as an owner and
2 operator, and being responsible for 150 residents,
3 plus 150 staff members, one-to-one, and seeing the
4 staff members come up to that one point of entrance
5 in the building, and knowing, possibly, that not
6 only were some of my residents positive, we didn't
7 know at that point, but that I was perhaps going to
8 infect those staff members who were heroes and were
9 coming into the buildings.

10 And that's a horrible feeling for anybody to
11 have.

12 I know my time is short, and I would like to
13 say that, my ask would be, that we --

14 Time is up, I see.

15 -- that we have --

16 SENATOR RIVERA: Finish your thought, ma'am.

17 RACHEL DOMBROSKY: May I go on?

18 SENATOR RIVERA: Finish your thought, ma'am.
19 Go ahead.

20 RACHEL DOMBROSKY: Okay yeah.

21 -- so my ask would be, that we consider, as
22 Senator Serino had mentioned last week, that we
23 consider a specialty facility for infectious
24 disease, which I put in an application four years
25 ago to the department of health, and so far have not

1 heard.

2 So when other people that testified mentioned
3 that they had not heard from the department of
4 health, was two years, three years, I'm one of them.

5 And that would have been an
6 infectious-disease facility specifically, not --
7 I was not a visionary -- I was a visionary, perhaps,
8 I was not a prophet [indiscernible cross-talking] --

9 SENATOR RIVERA: Thank you, Ms. Dombrowsky.

10 Thank you, Ms. Dombrowsky.

11 RACHEL DOMBROSKY: Thank you.

12 SENATOR RIVERA: Leading off for the Senate,
13 recognizes Senator Rachel May for 5 minutes.

14 SENATOR MAY: Thank you.

15 And thanks to you all of you for testifying.

16 I want to particularly talk to
17 Kimberly Townsend from my hometown --

18 Good to see you here.

19 -- and actually playing off against that last
20 comment, you had a special COVID unit in one of your
21 facilities.

22 Do you want to say just a little bit about
23 that?

24 What did it cost to put that together?

25 Did it have dedicated staff?

1 And did that have repercussions for the rest
2 of your facilities?

3 How did that work?

4 KIMBERLY TOWNSEND: Well, before there was a
5 prohibition against discharging COVID-positive
6 patients to skilled nursing, we set up a COVID unit,
7 a dedicated COVID unit, negative pressure unit.

8 The cost of the unit, all in, was about a
9 half million dollars.

10 It was in one of our rehab floors,
11 RN-staffed. And we had just really begun to get
12 going with the unit, with hospital discharges. And
13 then the positive hospital discharges were stopped.

14 And so, eventually, the unit trickled down to
15 very few people, and we closed it down, which is
16 unfortunate if we all anticipate seeing a resurgence
17 of coronavirus in the fall.

18 Thank you, Senator May.

19 SENATOR MAY: And let me also ask you,
20 because my father-in-law was in an assisted-living
21 facility under Loretto's auspices.

22 And I'm just wondering, you didn't mention
23 this, but since you've got the whole range of types
24 of facilities, do you think that the rules that are
25 in place are inappropriately broad over all of

1 those, and should there be different rules for
2 assisted-living than for skilled nursing?

3 KIMBERLY TOWNSEND: Well, I think our system
4 is different from other systems, in that we have a
5 high level of acuity across our systems.

6 Both with skilled nursing and our adult-care
7 facility has people who are high acuity.

8 I would say there are distinctions between
9 adult-care facilities and skilled nursing facilities
10 that would call for different treatment.

11 And the recent differences in terms of return
12 to work of positive -- COVID-positive employees is
13 an example, I think, of New York State becoming a
14 little bit more precise in their policymaking and
15 regulation-making around adult-care facilities
16 versus skilled nursing.

17 SENATOR MAY: Okay, thank you.

18 And then for all of you, the issue of family
19 members being allowed to visit, this has come up
20 over and over and over, and it's really important.

21 And I wonder if any of you sees a path to,
22 say, designating one or two family members as
23 compassionate caregivers, or something of that sort,
24 so that we can -- the way that they do in
25 Massachusetts or Minnesota, that we could get some

1 of the family members into the facilities to be
2 giving the care, and, as well as the -- just raising
3 the spirits of people in the facilities?

4 STEPHEN KNIGHT: I guess I would chime in and
5 say --

6 This is Steve Knight from United Helpers.

7 -- we're open to anything where we can keep
8 folks that are living with us connected to their
9 family, their loved ones, and their friends.

10 And we've done a lot of things, you know,
11 through Facebook, through a program called "Smile of
12 the Day," so that you could send a smile to your
13 loved one through Facebook.

14 We've done car parades, and brought residents
15 outside safely distanced under the trees, and let
16 the families drive by with signs and holler out the
17 sunroof.

18 And those kinds of things.

19 So we're certainly open to any ideas in where
20 we can bring people closer together.

21 It's important.

22 SENATOR MAY: Okay, great.

23 And then my last one is just following up:

24 I'm sure you heard some of the previous
25 testimony, especially about retaliation, if

1 people -- if residents brought forward a complaint
2 that they -- or they might be afraid to complain
3 because they were afraid of retaliation.

4 Have you ever heard of anything like that in
5 your facilities? And what have you done about it?

6 STEPHEN KNIGHT: I've had a couple of
7 families say that before, or send me an e-mail. And
8 I have gone directly to them, into the facility, to
9 talk it out.

10 I mean, I've heard that before.

11 But we have a "comment" card throughout our
12 skilled nursing facilities, in many of our programs.

13 And that "comment" card, all of those
14 "comment" cards go directly to me, in this case, and
15 are tracked.

16 But I respond to each and every single one of
17 them.

18 SENATOR RIVERA: Thank you --

19 STEPHEN KNIGHT: I've even had family members
20 say that, you're not -- I call and tell them who
21 I am. And then they say, No, you're not.

22 [Laughter.]

23 SENATOR RIVERA: Thank you so much.

24 Thank you so much, Mr. Knight.

25 SENATOR MAY: Okay. Thank you very much.

1 SENATOR RIVERA: Thank you, Senator.

2 Assembly.

3 ASSEMBLYMEMBER BRONSON: We'll go to Health
4 Chair Richard Gottfried, recognized for 5 minutes.

5 ASSEMBLYMEMBER GOTTFRIED: Thank you.

6 First of all, Ms. Townsend referred to
7 protection from liability.

8 And I would just ask her, or anyone else who
9 can hear me: If you have a legal memo, or
10 something, that would explain why New York law on
11 liability does not accommodate the burdens upon you
12 of being in the middle of an epidemic, and why that
13 isn't accounted for in the legal doctrine of being
14 held to provide reasonable -- a reasonable standard
15 of care, I'd be interested in seeing that.

16 I don't want to talk about it right now.
17 That would take an hour or two.

18 But if you've got a document, I'd appreciate
19 it if you'd e-mail it to me.

20 My question, that anybody could comment on,
21 is about for-profit facilities.

22 I assume they make a profit, because their
23 numbers have been skyrocketing for recent years.
24 And I assume people aren't investing like crazy in
25 losing businesses.

1 So if funding is inadequate, where does the
2 money for the profit margin come from?

3 STEPHEN KNIGHT: Well, I would just give you
4 a very quick example.

5 Most of our expenses are in labor.

6 And the five-star reports just came out, and
7 one of the items in that five-star is, how many
8 hours of care you have per resident per day.

9 Just to give you a very -- I did a very quick
10 calculation on direct care, and it's state -- with
11 statewide and nationally. I believe it has both.

12 If I were to cut my care to the statewide or
13 national average, I would save at least a half a
14 million dollars in my operating expense.

15 It comes down to labor.

16 You can't save money and make profit on
17 washcloths.

18 KIMBERLY TOWNSEND: I would agree with Steve.

19 Loretto is a non-profit, so I can't speak
20 with expertise to the for-profit industry.

21 But our costs are in labor.

22 And, in general, non-profits, at least
23 according to national studies, do tend to have a
24 richer staffing model than for-profits. And that's
25 where the cost lies.

1 And it's important to [inaudible].

2 ASSEMBLYMEMBER GOTTFRIED: We've lost you.

3 SENATOR RIVERA: You muted yourself,
4 Ms. Townsend, on that last comment.

5 KIMBERLY TOWNSEND: I'm sorry.

6 I said, it is very important to have
7 appropriate staffing levels.

8 RACHEL DOMBROSKY: Can I say something?

9 I don't know if I'm on.

10 SENATOR RIVERA: Yes, you're on.

11 Go ahead.

12 RACHEL DOMBROSKY: Okay.

13 I think I agree with Stephen, that there --
14 and Kim, that they're -- when I said 100 residents
15 and 100 staff members, there you go, it's a
16 one-to-one.

17 If you want to run a fine facility, you need
18 the staff there, and that is the biggest cost.

19 And a lot of us, a lot of the assisted-living
20 facilities --

21 ASSEMBLYMEMBER GOTTFRIED: If I could
22 interrupt, my question was not, what do for-profit
23 facilities spend their money on?

24 My question is: If facilities don't have
25 enough revenue to provide quality care, and that's

1 what everybody has been telling us, where does the
2 money that goes to the investors come from?

3 Because, during all these years, when
4 Medicaid hasn't provided increases, and minimum wage
5 has gone up, et cetera, et cetera, people are still
6 buying for-profit facilities, and converting
7 not-for-profits into for-profit.

8 So I'm assuming there is money somewhere for
9 the profit.

10 Where does it come from?

11 RACHEL DOMBROSKY: I think there's a
12 tremendous range of, for-profits, and for-profits, a
13 tremendous range in the industry, because they're --

14 STEVE LAMPA: For private pay, it comes
15 from --

16 RACHEL DOMBROSKY: -- for private pay,
17 exactly.

18 STEVE LAMPA: -- yeah, private pay, it comes
19 from the residents that stay in the communities that
20 pay rent and care costs.

21 And what's happened with this virus, is that
22 the costs for testing and for PPE have grown
23 significantly.

24 For example, in a community that I'm aware of
25 in White Plains, with 200 employees, that's \$20,000

1 a week in testing. That's a lot of money.

2 SENATOR RIVERA: Thank you, Assemblymember.

3 Your time has expired.

4 ASSEMBLYMEMBER GOTTFRIED: Okay.

5 SENATOR RIVERA: We will now go to

6 Senator Serino, recognized for 5 minutes.

7 SENATOR SERINO: [Inaudible.]

8 SENATOR RIVERA: Can't hear you, Sue.

9 SENATOR SERINO: Thank you, Mr. Chair.

10 SENATOR RIVERA: There you go.

11 SENATOR SERINO: And thank you, everybody,

12 for being here today.

13 I'm going to talk quick because have I five

14 questions.

15 So, throughout this pandemic, it seems to me

16 that assisted-living facilities have been grouped in

17 with nursing homes when it came to guidance and

18 executive orders. And, as a result, those orders

19 didn't exactly take into account the differences in

20 the populations you serve.

21 Would you agree with that?

22 That's basically a yes or a no, for

23 everybody.

24 And, for example, you've been impacted by the

25 same ban on visitors as the nursing homes, but that

1 policy fails to take into account that your
2 residents can come and go from the facility.

3 I see in some of the testimony here, notably
4 from Argentum, you're advocating for some changes to
5 the visitation policy.

6 So can you speak to that?

7 Whoever wants to answer?

8 Steve, maybe?

9 STEVE LAMPA: Yeah, there are differences.

10 But, you know, with the pandemic, people have
11 not been able to come and go as readily as they had.

12 You know, when somebody goes outside of the
13 community, they're now in an environment where they
14 could potentially be exposed to the coronavirus.

15 And, so, we very much discourage people going
16 out, and coming back into the community, if they're
17 not going to do -- be willing to do some
18 quarantining when they're doing that.

19 So, it's tricky.

20 They're not as free to come and goes as they
21 were, and that's creating a lot of problems with
22 people's spirits.

23 SENATOR SERINO: Oh, yeah, I can imagine.

24 So, thank you.

25 I also share your concerns with the cost of

1 testing.

2 A local assisted-living facility in my
3 district, at the start of the mandate, estimated it
4 could cost them over 400,000 per building to adhere
5 to the mandate. And they also struggled to find a
6 lab that would guarantee turnaround results.

7 Which I know has been a big problem, all of
8 you have mentioned that.

9 I'm also hearing from others now that, due to
10 the backlog, some labs are no longer honoring prior
11 commitments. And this is putting an even greater
12 strain on the staffing.

13 So it's clear you need the resources to fund
14 the testing.

15 But in addition to that, do any of you have a
16 proposal on how the mandate could be amended to be
17 more effective?

18 STEVE LAMPA: Well, rapid testing is really
19 important.

20 You know, waiting 7 to 10 days for results
21 not only makes it a logistic lead up to administer a
22 program, but you could have somebody working for a
23 week and not know that they're positive. And that's
24 really dangerous.

25 So the rapid testing, and maybe some changes

1 to sampling.

2 Maybe pool testing, that could drop some of
3 the costs and be a little bit more -- and still
4 provide rapid results.

5 Maybe these are things that could be looked
6 at.

7 SENATOR SERINO: Thank you, Steve.

8 And then, Ms. Dombrowsky, you have an
9 application pending in front of the department of
10 health to create a step-down facility for infectious
11 diseases.

12 Had that application not been stuck in
13 bureaucratic backlog for years, maybe we would have
14 had a facility on Long Island that could have safely
15 taken COVID patients without jeopardizing the health
16 of others.

17 Do you think creating more step-down or
18 specialty-care facilities or units should be a top
19 priority as we move forward?

20 RACHEL DOMBROSKY: Absolutely.

21 Had that facility been approved in a timely
22 fashion, there would have been several facilities.

23 Others would have joined, perhaps, and
24 started that program, because everything was done
25 for the program: policies, procedures, job

1 descriptions, architectural, a building was
2 identified. There was a major health-care system in
3 the area; Northwell was interested.

4 And it was -- it cost hundreds of thousands
5 of dollars, just like one of my colleagues said,
6 to -- for testing.

7 And this concept was put into the
8 department's hands four years ago, and they
9 encouraged me to continue.

10 And there were doctors and epidemiologists
11 and experts and infection-control experts in the
12 field.

13 I'm the layperson. I was the one that just
14 brought -- as an operator, I brought that to the
15 department of health with a passion, but more
16 importantly, knowing that, in congregate care, we
17 need infection control. And you need to take those
18 people that are infected, no matter COVID, or with
19 anything else, to leave the facility, go someplace
20 else, get better, a step-down, a rehab, in this
21 environment, take care of them.

22 Let's say somebody with C. difficile, that
23 takes two pills a day, and they could be there for
24 two weeks.

25 And, yet, it was not approved.

1 It wasn't not approved. It's, just, there
2 was no answer.

3 SENATOR SERINO: There was no answer.

4 RACHEL DOMBROSKY: It was never approved.

5 No answer.

6 SENATOR SERINO: Thank you very much.

7 I got the same thing, no answer, when

8 I talked about a specialty-care facility --

9 [Indiscernible cross-talking.]

10 SENATOR SERINO: Thank you.

11 SENATOR RIVERA: Thank you, Senator.

12 SENATOR SERINO: Thank you, everybody.

13 SENATOR RIVERA: Thank you, Senator.

14 Assembly.

15 ASSEMBLYMEMBER BRONSON: Yes, next up is

16 Chair John McDonald, recognized for 5 minutes.

17 ASSEMBLYMEMBER MCDONALD: Good morning -- or,
18 good afternoon, everybody.

19 Thank you for your testimony.

20 I'm going to just try to bump into a couple
21 quick things, and I lost my notes, so bear with me
22 for a second.

23 Steve, I wanted to kind of pick up where
24 Senator Serino was, delving into a couple of things.

25 Just to be clear:

1 I'm assuming, even though, you know, your
2 facilities are kind of in a funny situation --
3 right? -- you can be treated like a nursing home in
4 some instances, and sometimes you can't --

5 Although it doesn't seem to be working to
6 your benefit, at least that's the impression I'm
7 getting.

8 -- but residents aren't just coming and going
9 as they're pleasing.

10 I'm assuming there is, pretty much, a
11 clamp-down at this stage, and, basically, it's out
12 for medical visits, and that's about it.

13 Am I correct in that assumption?

14 STEVE LAMPA: That's pretty much it. Yeah.

15 ASSEMBLYMEMBER MCDONALD: Yeah.

16 I mean, the frustrating part with the
17 population is, you know, they are physically,
18 mentally, and emotionally, probably in a little
19 better shape than those who are in skilled nursing
20 facilities. They're more mobile, so I imagine their
21 frustration level; whereas, the frustration level in
22 the nursing home community is probably more coming
23 from the outside in.

24 I think there is a shared frustration. It's,
25 basically, family members, but also the actual

1 residents, who might have a greater wherewithal,
2 saying, I want to get out, I want to do things.

3 So this gets to the 28-day policy.

4 And I'm assuming your position is, because
5 I read your testimony, that 14 days is adequate.

6 Do you guys feel comfortable with that?

7 I mention this because, I think it was
8 Chairman Gottfried threw this at the New York City
9 group last week, saying, you know, we continue to
10 want to put pressure on the department to review
11 this policy. But there's also a fear that things
12 could swing in the other direction.

13 And how do you guys feel about that?

14 STEVE LAMPA: Yeah, certainly don't want them
15 swinging in the other direction, that's for sure.

16 The problem is, if residents and families
17 can't see each other, that strangles the human
18 spirit, just plain and simple. And it leads to a
19 lot of negative outcomes health-wise.

20 So reducing it to 14 helps, or, there may be
21 other solutions to allowing safe visitation.

22 Visitation is tricky.

23 You know, where we've been able to do some
24 outdoor visitation, it has to be very carefully
25 managed, or it can -- you know, people are so happy

1 to see each other after these, you know, many
2 months, that they -- they -- you know, they get too
3 close.

4 And -- you know, so it has to be carefully
5 managed.

6 So I don't know if it's just a relaxation of
7 the 28 days. Certainly that would help.

8 But there may be other -- other ways in which
9 we can manage visitation safely without creating
10 additional risks.

11 ASSEMBLYMEMBER MCDONALD: I want to commend
12 Rachel on your comments about the step-down
13 facility.

14 This is something we've been talking about,
15 not only in regards to nursing homes, but also those
16 in any kind of congregate housing.

17 Whether it's developmentally disabled, OMH,
18 the whole nine yards, I think that's something that
19 always bears worth repeating because, there is a
20 concern, coming this fall, that we may be revisiting
21 much that we experienced this past winter.

22 I guess my final question, for anybody who is
23 willing to accept it: You know, more and more, in
24 the last week or two, we're starting to see more and
25 more articles, information, about the overall

1 physical environment, and that simple things like
2 open windows to get fresh air, air exchanges,
3 humidity control.

4 These may be items that come with a very
5 simple solution; they may come with a complex
6 solution.

7 I guess, how well are you positioned to be
8 able to handle some of these requirements that might
9 be coming forward, or at least recommendations?

10 RACHEL DOMBROSKY: I'll speak to that first,
11 if my colleagues don't mind.

12 I've called on several companies to get
13 estimates for the MRV, anything MRV, more than a MRV
14 aid; and, also, to have UVC lighting, UVC technology
15 with the filters, because I'm -- we're -- I'm so --
16 we're all so concerned about the air.

17 Of course, the best practices for surface
18 control have been used here, and in my colleagues'
19 facilities as well.

20 I think that, here --

21 And I would like to share that if it helps
22 anybody.

23 -- a lot of our residents, especially in
24 nursing homes, and I'm not a nursing home, but my
25 residents are not like they were 20 years ago when

1 I started here at 29 years ago. They're in nursing
2 homes. And I walk on the floor and I say, I'm
3 running a nursing home.

4 So what we did is, we created a -- a sink
5 that goes -- sinks that go around the buildings, and
6 they go to the residents to wash their hands.

7 It's a simple thing.

8 You take a sink, you put it on castors, you
9 push it, and it goes to the residents themselves.

10 [Inaudible.]

11 SENATOR RIVERA: Thank you, Ms. Dombrowsky.

12 Thank you, Ms. Dombrowsky. The time has
13 expired.

14 Going now to -- recognize Senator Metzger for
15 3 minutes.

16 SENATOR METZGER: Thank you, Mr. Chairman.

17 Two questions.

18 One: Following up on the discussion about
19 specialty facilities, step-down facilities, I had
20 asked this question of our first panel, whether
21 planning was underway.

22 I think that it has to be done regionally.

23 We have to make sure these facilities are
24 available in all of the regions throughout the
25 state.

1 I was told that planning is underway.

2 I was curious.

3 We have members of this panel that had a
4 step-down facility, or wanted to have one.

5 Have you heard, have you been -- have you
6 heard anything about this planning process?

7 So, clearly, you need to be reached out to.

8 My second question is: Did you have a policy
9 in place at your facilities to enable your residents
10 to have virtual visits with family members during
11 this time?

12 How accessible was it for family members?

13 Because I've definitely -- we've heard
14 testimony that it wasn't -- actually, in the last
15 panel, that it was not accessible universally.

16 I've certainly heard that elsewhere, outside
17 of this hearing.

18 So this is something of great concern
19 because, obviously, that isolation is incredibly
20 damaging, psychologically, emotionally, and
21 physically.

22 And -- so if you could talk about what
23 policies you have in place, that would be great.

24 KIMBERLY TOWNSEND: So this is Kim Townsend.

25 So to answer your first question, we

1 repurposed our step-down unit to become a COVID
2 unit. And now we've repurposed it back to being
3 just a step-down unit.

4 We have not had additional conversations with
5 DOH regarding the repurposing of that step-down unit
6 for the fall, specifically to address infectious
7 diseases.

8 In terms of your second question, we've done
9 over 50,000 virtual visits between residents and
10 their families.

11 And so we've made a real effort to keep
12 residents connected to their families, insofar as
13 some residents are able to do virtual visits. And
14 some families are able do virtual visits, and some
15 aren't.

16 But there is certainly no substitute for a
17 person-to-person contact between a resident and
18 their loved ones.

19 SENATOR METZGER: And I'm a big fan of
20 outdoor visits, by the way.

21 I understand they have to be managed, but
22 I think that, in this weather, this should be
23 happening, you know.

24 Thank you.

25 STEPHEN KNIGHT: A large portion of one of

1 our -- our activities department is doing, is
2 helping residents connect with family and friends,
3 and organizing outdoor parades, and things like
4 that.

5 Anything to keep them connected.

6 SENATOR RIVERA: Thank you, Senator.

7 Thank you, Mr. Knight.

8 Assembly.

9 ASSEMBLYMEMBER BRONSON: Next we'll go to
10 Ranking Member Assemblymember Kevin Byrne.

11 ASSEMBLYMEMBER BYRNE: Thank you, colleagues.

12 And thank you to the panel for sharing your
13 testimony again.

14 I know we've had some reports early in the
15 year about some significant bottlenecks in receiving
16 COVID-19 test results.

17 I know we're talking, this hearing is more
18 for the upstate area. But that was specific to the
19 New York City metro area.

20 Some individuals reportedly waited over a
21 week to receive results.

22 And I'm just wondering if you have
23 experienced any similar delays in receiving results
24 in your facilities?

25 That could be for either of you.

1 How about we start with Mr. Lampa?

2 I guess I could expand on, if there's been
3 any -- do you have suggestions on how we can improve
4 testing policies?

5 And I'll throw in visitation policies as
6 well.

7 STEVE LAMPA: Yeah, okay. [Indiscernible.]

8 Yeah, the testing policies, we've got to have
9 broad-based in testing. I mean, there's no doubt
10 about it: faster.

11 Could there be some sampling schemes that
12 would allow, you know, excellent surveillance
13 without having to go to every single employee every
14 week?

15 Or, could some pooling strategies allow us to
16 do that quickly and efficiently?

17 And pooling, if, when done well, can drop the
18 number of tests required by 40 to 60 percent.

19 That would help the laboratories.

20 It would help us in particular, if we could
21 get good results fast.

22 ASSEMBLYMEMBER BYRNE: Thank you.

23 Now expanding on that, have you received, or
24 expect to receive, any State financial support to
25 assist with those testing policies, including those

1 that are mandated?

2 STEVE LAMPA: Well, [laughing].

3 ASSEMBLYMEMBER BYRNE: You want to say yes.
4 Right?

5 STEVE LAMPA: Sure, it would help.

6 But, you know, if we can reduce the number of
7 tests, you know, that could bring the cost down
8 pretty significantly.

9 So, yeah, it would be great if the money is
10 available, but, you know.

11 ASSEMBLYMEMBER BYRNE: Yeah, that's always a
12 challenge.

13 STEVE LAMPA: I'm not thinking there's a big
14 giant pot of money sitting around waiting for us to
15 grab. You know?

16 ASSEMBLYMEMBER BYRNE: No, I see that
17 challenge too, on multiple levels.

18 How about, visitation policies, is there
19 anything you can expand?

20 I know some discussions have been said from
21 my colleagues about visitation policies.

22 Is there anything you can expand on that, on
23 how we can improve visitation policies at some of
24 your facilities?

25 STEVE LAMPA: Okay.

1 Well, the weather is going to turn. And so,
2 outdoor visitation, while it's probably the safest
3 route to go, isn't going to be possible here in
4 some -- a few short months.

5 So we have to come up with safe internal
6 visitation, face-to-face visitation, because, as Kim
7 mentioned, while we're doing thousands of Zoom calls
8 and Facetime calls, it doesn't take the place of
9 personal visitation.

10 So we've got to be able to submit plans that
11 are -- that strongly manage the risks of
12 face-to-face gatherings.

13 ASSEMBLYMEMBER BYRNE: Thank you, sir.

14 Appreciate your time and your testimony this
15 afternoon.

16 And I would just expand that out to -- those
17 questions to any other members of the panel, if they
18 would like to chime in.

19 But, that's all I have for this panel.

20 KIMBERLY TOWNSEND: So we are a large-volume
21 tester, and we do about 1700 tests a week.

22 And, initially, we had trouble finding a lab
23 that had capacity to process.

24 So we were connected to a national lab. And
25 then when their turnaround time became 12 days, we

1 were dropped by that lab, and had to go out about
2 two -- three weeks ago now, and find another lab to
3 do testing.

4 But just to give you a sense:

5 So we did 1700 tests last week.

6 We had one positive employee case out of
7 those 1700 tests --

8 ASSEMBLYMEMBER BYRNE: Wow.

9 RACHEL DOMBROSKY: -- at a cost of
10 \$100 apiece.

11 So I agree with Steve, perhaps we are at a
12 point now where we could look at pooled testing.

13 ASSEMBLYMEMBER BYRNE: Thank you.

14 KIMBERLY TOWNSEND: For now.

15 SENATOR RIVERA: Thank you.

16 Thank you.

17 We don't have members in the Senate asking
18 questions at this time.

19 Back to the Assembly.

20 ASSEMBLYMEMBER BRONSON: We now have Ranking
21 Member Brian Manktelow, for 5 minutes.

22 ASSEMBLYMEMBER MANKTELOW: Thank you,
23 Mr. Chairman.

24 Jason, if I could ask you a couple of quick
25 questions?

1 JASON SANTIAGO: Sure.

2 ASSEMBLYMEMBER MANKTELOW: I was reading in
3 your testimony here that, recently, the cost for
4 testing has gone from 100 to 150.

5 Why is that?

6 JASON SANTIAGO: That was the increase that
7 the lab that we are using has increased rather
8 suddenly.

9 Originally, it was \$100. And then we got
10 notification that it was going up to \$150.

11 Didn't get adequate notice on that.

12 ASSEMBLYMEMBER MANKTELOW: So just doing
13 quick numbers:

14 You've got about 197 staff members, so say,
15 200.

16 At that increased cost, that's \$20,000 a
17 week, at twice a week.

18 JASON SANTIAGO: Well, it was twice a week
19 for the first 30 days. And then the executive order
20 changed to once a week, depending on if the staff
21 were actually working that week. If staff were on
22 vacation, they didn't have to get tested that week.

23 So that does alter the number of tests you
24 have to do.

25 ASSEMBLYMEMBER MANKTELOW: So it's going to

1 be around eight to ten thousand dollars a week now,
2 instead of the twenty thousand?

3 JASON SANTIAGO: Yeah, it will fluctuate;
4 but, yes.

5 ASSEMBLYMEMBER MANKTELOW: How do you recoup
6 that?

7 JASON SANTIAGO: That's a good question.

8 I mean, I think that's why we're here; we're
9 asking, is we probably need funding to help us
10 support the testing that we need.

11 ASSEMBLYMEMBER MANKTELOW: And with the
12 testing, what's the turnaround time for you as far
13 as getting the test results?

14 JASON SANTIAGO: So it was 10 days. It has
15 dropped to 8 days.

16 ASSEMBLYMEMBER MANKTELOW: Okay. Thank you,
17 Jason.

18 One other question.

19 Being in my district, we've talked a lot
20 about not having enough staff members.

21 Do you guys have that situation where you are
22 as well, not having enough staff people?

23 JASON SANTIAGO: I'd be hard-pressed --
24 I think you'd be hard-pressed to find any nursing
25 home that says that they're adequately staffed.

1 I think that's a challenge for us.

2 You know, we do the best that we can to
3 provide the care for our residents. That's -- you
4 know, we're a mission-based organization.

5 But when you add COVID-19, which no one could
6 have predicted, it's definitely thrown a curve for
7 all of us, with providing, you know, additional
8 resources from our staff to help with testing, and
9 pulling them away [video and audio freezes] --

10 ASSEMBLYMEMBER MANKTELOW: Yeah, I know
11 visiting --

12 Is he still on?

13 Jason?

14 OFF-SCREEN TECHNICIAN: He's having some
15 connectivity issues.

16 SENATOR RIVERA: We might have lost him.

17 Go ahead, Assemblymember.

18 You still have some other folks.

19 ASSEMBLYMEMBER MANKTELOW: Well, I kind of
20 wanted to direct this next question to Jason.

21 I guess I'll just hold off for the moment,
22 until he comes back on, if that's okay?

23 SENATOR RIVERA: We'll do this: We'll go to
24 the Senate, since we have a senator on this side.

25 Hold two minutes for the assemblymember,

1 please. And when he comes back, he'll get it.

2 ASSEMBLYMEMBER MANKTELOW: Thank you.

3 SENATOR RIVERA: We'll move now, recognizing
4 5 minutes for Senator James Skoufis.

5 SENATOR SKOUFIS: Thanks very much.

6 And thanks to each of you for participating
7 today, coming on.

8 I think your insight is valuable to us.

9 And, you know, one of the -- one of the
10 recurring themes that we've heard from some of the
11 family members who have testified today, and last
12 week, is a concern --

13 And now, granted, this is predominantly on
14 the nursing home side, but I do think it's relevant
15 to hear from people on this.

16 -- one of the recurring themes that we've
17 heard is this concern surrounding communication, or
18 lack thereof, from the facility to the families.

19 Today, for example, we heard from an
20 individual constituent of mine, actually, who
21 explained that he explicitly requested that his
22 mother's nursing home reach out to him when -- if
23 and when COVID was introduced into his mother's
24 nursing home.

25 He never got the call. He found out after

1 the fact.

2 He might have been able to respond, get his
3 mother out of the facility, if he had gotten that
4 call that he never did get.

5 Can you speak to how your facilities handled
6 that type of a communication?

7 Did you hear from family members, hey, please
8 call us if the virus is introduced into your
9 facility?

10 Did you make it clear to your staff, on the
11 administration side, that these calls needed to be
12 made? Were they made?

13 Can you speak to that, briefly, please?

14 STEPHEN KNIGHT: In our case, we have a
15 "one-call system," we call it. And all of the
16 family members, and, whomever, who wants to, is part
17 of that. And there's immediate notification if
18 there's a COVID-positive patient/resident.

19 And, we actually do it with staff too.

20 And I've taken to actually notifying our
21 media too, because I think the more quickly you get
22 that information out, the more vigilant our staff
23 are and the rest of us.

24 So we make it a priority to make sure
25 everyone is notified.

1 SENATOR SKOUFIS: And was that system set up
2 at the onset, from the beginning, or was that
3 incorporated a little bit into the pandemic?

4 STEPHEN KNIGHT: A little bit of both.

5 It wasn't as widely used earlier, but it's
6 very widely used now with COVID.

7 SENATOR SKOUFIS: Okay.

8 And I see some shaking of heads; similar?

9 KIMBERLY TOWNSEND: Yeah, likewise, we were
10 under a mandate.

11 I mean, according to HHS, as of May 8th, you
12 had to inform family members if there were any
13 COVID-positive cases within your facilities, skilled
14 nursing or adult-care facilities.

15 [Indiscernible cross-talking] --

16 SENATOR SKOUFIS: I think if I may interrupt,
17 I think the concern was, with the family members,
18 pre that order. Right?

19 So the apex of the situation here in New York
20 was certainly before May, or the middle of May,
21 even.

22 And there were family members who wanted to
23 know, okay, the first case, let me know because then
24 I want to do something with my parent, with my
25 grandparent. Not something that's incorporated when

1 you've already had, you know, 10 cases, 50 cases,
2 et cetera.

3 Do you get what I'm saying?

4 KIMBERLY TOWNSEND: Yeah, sure, absolutely.

5 We didn't have our first case until after
6 that mandate.

7 So we were informing people within 24 hours,
8 by phone, by letter, on a family Facebook page -- a
9 closed family Facebook page.

10 So upstate was a little bit different.
11 I think we lagged a little bit in timing, or at
12 least that was our experience at Loretto.

13 But --

14 SENATOR SKOUFIS: Forgive me, I want to get
15 the last question in. Sorry to interrupt.

16 So, you know, I think there's going to be a
17 robust legislative response following these
18 hearings. And you're going to see new bills
19 introduced, new laws incorporated, here in New York.

20 I suspect there will probably be some regs
21 that are looked at and reviewed from these past
22 five months.

23 I hope, I'd like to think, that the
24 department of health will, you know, take the
25 opportunity to view some things in hindsight and

1 maybe do things differently.

2 What have you all learned from these past
3 five months, things that were not put in place prior
4 to March, where, now, you look at the past
5 five months, okay, that's a good idea to keep around
6 even after the pandemic is over?

7 This is a good practice, a best practice,
8 let's keep it around.

9 I think I only have time for one of you to
10 respond to that, please.

11 STEPHEN KNIGHT: I guess I'll chime in.

12 SENATOR SKOUFIS: Okay.

13 STEPHEN KNIGHT: You know, we always work,
14 and you can always do a better job, on
15 communication.

16 But we put a lot of different channels of
17 communication in place, and, training, spot
18 training, retraining, that weren't in place before,
19 you know, specialized teams, et cetera, to do some
20 things more quickly than we had done them before.

21 SENATOR SKOUFIS: Okay. Thank you.

22 KIMBERLY TOWNSEND: I would say screening,
23 widespread screening, in PPE management.

24 SENATOR RIVERA: Thank you, Ms. Townsend.

25 Now, Mr., Santiago can you hear us and can

1 we hear you?

2 JASON SANTIAGO: I can hear you fine.

3 SENATOR RIVERA: Okay.

4 Put two minutes on for
5 Assemblymember Manktelow -- I'm going to
6 mispronounce your name, sir.

7 ASSEMBLYMEMBER MANKTELOW: Very good.

8 Manktelow.

9 SENATOR RIVERA: Manktelow, Manktelow.

10 ASSEMBLYMEMBER MANKTELOW: Thank you,
11 Senator.

12 Please, another question I was talking about,
13 staff members, and not having enough staff.

14 When the minimum wage went into effect a few
15 years ago, did that have an effect on staff members
16 at our nursing homes, our senior living facilities?
17 Do you think it did?

18 SENATOR RIVERA: Mr. Santiago seems to have
19 been frozen, or is really pondering the question for
20 a long time. One of the two.

21 I believe he is past pondering.

22 All right. We're going try this one more
23 time after a Senate round.

24 Senator Tom O'Mara, I'm hoping that you are
25 not going to ask Mr. Santiago questions, because

1 he's still pondering the last one.

2 Recognize Senator O'Mara for 5 minutes,
3 please.

4 SENATOR O'MARA: Thank you, Chairman.

5 No, I don't have a question specifically for
6 Mr. Santiago. Although, if he comes back online,
7 he's certainly welcome to add in.

8 Since I think it was our second round of
9 individuals testifying today, that had, James Clyne
10 from Leading Age testified, and I had asked about
11 average wages.

12 They have provided from Leading Age, that the
13 median upstate LPN wages are \$20.90 a week, and
14 CNAs are \$14.48 -- I'm sorry, an hour. That was
15 an hour.

16 So \$21 an hour, and 14.50 an hour, making the
17 salary ranges, from CNA, to an LPN, 30,000 to
18 43,000 dollars.

19 Now, we have a nursing shortage in this state
20 overall, and, in particular, in nursing homes.

21 Is the wage that's being paid, in your
22 opinions, the reason that we have the nursing
23 shortage that we have in the nursing homes?

24 Or are you more competing with these
25 positions with hospitals and other health-care

1 providers?

2 If someone wants to jump in on that.

3 STEPHEN KNIGHT: I think I spoke earlier
4 about just the inequity in reimbursement between the
5 hospitals, between the state operations.

6 Just to give you an example, very quickly:

7 New York State operations in my area are
8 pretty heavy.

9 They couldn't get nurses, so they implemented
10 a \$12,000 geographic bonus on top of your wage.
11 A \$5,000 add-on for evenings, and a \$7,000 add-on
12 for nights.

13 So that's \$19,000 if you want to work nights,
14 over and above a salary and benefits that we
15 couldn't compete with in the first place.

16 So that's really the issue.

17 People, literally, call our facilities and
18 try to recruit them, from the hospitals, from state
19 operations, and some other places.

20 Does that answer your question?

21 SENATOR O'MARA: It helps.

22 Any of the others?

23 So --

24 RACHEL DOMBROSKY: [Indiscernible] -- I'm
25 sorry.

1 SENATOR O'MARA: -- okay, go ahead.

2 RACHEL DOMBROSKY: -- on Long Island, we're
3 paying \$26 to \$28 an hour for LPNs. And we're
4 paying at least 15, if not more, and we do have med
5 techs on the floor as well, which was mentioned the
6 other day -- or, which was mentioned a few minutes
7 ago.

8 So we are paying.

9 I think what's happening is that, I think
10 people are being frightened to come back, even
11 though we had a very small amount of staff members
12 getting sick.

13 But I think because of the summer and a lack
14 of child care, I think that really has made an
15 impact on getting people to come to work.

16 At this point, I'm hoping that if schools
17 open up, it will change.

18 At this point, it's a summer day. People are
19 home with their families. They're getting
20 unemployment. And it's best to stay home, and to be
21 safe.

22 And then you have the warriors that are
23 coming in every day and doing their shifts. And
24 they are the devoted staff that we count on, and
25 they come in.

1 SENATOR O'MARA: Thank you.

2 And I would think that the minimum-wage
3 increases that went in over the last few years,
4 particularly with the \$15-an-hour minimum wage at
5 fast-food restaurants, would actually lure away,
6 certainly, certified nursing assistants, to make
7 \$15 an hour at a much simpler and easier job.

8 But as you mentioned, there are those that
9 are dedicated to this, and this is their calling,
10 and this is what they want to do.

11 But at \$14.50 an hour, you know, 50 cents
12 lower than fast food, I would think it would make
13 recruiting extremely difficult at that level.

14 RACHEL DOMBROSKY: We agree.

15 And assisted-living facilities use HHAs
16 instead of CNAs. We're not allowed to use CNAs
17 in an environment, even though they have more of an
18 education.

19 So that's [indiscernible].

20 SENATOR O'MARA: Thank you all very much for
21 testifying today. Appreciate it.

22 RACHEL DOMBROSKY: Thank you.

23 SENATOR RIVERA: All right, thank you.

24 We're going give one last try. I believe he
25 might be on the phone.

1 Is he on the phone yet, Mr. De La Cruz?

2 OFF-SCREEN TECHNICIAN: He is not.

3 SENATOR RIVERA: Okay.

4 Then go to the next assemblymember.

5 We're going to try for round three, if we get
6 past the assemblymember.

7 Go ahead.

8 ASSEMBLYMEMBER BRONSON: We will recognize
9 Ron Kim for 3 minutes.

10 ASSEMBLYMEMBER KIM: Thank you.

11 So on page 23 of the New York State
12 Department of Health Nursing Home Report in July, it
13 touches on the claims that a profit motive was
14 involved in both the eviction of low-income
15 residents and the admittance of COVID-19 patients,
16 the later -- the later of which would have yielded
17 greater reimbursement for treatment than Medicaid
18 patients, due to a favorable reimbursement formula
19 that had been implemented by The Center for Medicaid
20 and Medicare Services.

21 Additionally, a "New York Times" article
22 titled "They Just Dumped Him Like Trash: Nursing
23 Homes Evict Vulnerable Residents," established that
24 it is, indeed, profitable for nursing homes to
25 accept COVID-positive patients, bringing in an

1 additional \$600 a day per resident, than it is to
2 keep Medicaid patients who have milder conditions.

3 Given that 63.3 percent of nursing homes in
4 New York State are driven by for-profit nursing
5 homes, and, as of late May, with for-profit nursing
6 homes constituting 60 percent of confirmed and
7 74 percent of presumed nursing home fatalities, do
8 you think the State should investigate the potential
9 profit motives of nursing homes during this
10 pandemic?

11 STEPHEN KNIGHT: I'm only going to respond
12 and say that I think each facility has to be looked
13 at individually. And, it's a very complicated
14 issue, that all comes down to quality, and the
15 systems you have in place.

16 And I think it should focus on that.

17 ASSEMBLYMEMBER KIM: So you think each
18 nursing home should be looked at, but not whether
19 the for-profit motives had any impact in the
20 outcome?

21 STEPHEN KNIGHT: I guess that would be
22 facility by facility, on whatever their motives
23 were.

24 I do know where I am in my area.

25 There are only two home-care agencies, just

1 to give another example. And ours is the
2 not-for-profit.

3 And we were the only facilities taking COVID
4 patients because it was so expensive.

5 ASSEMBLYMEMBER KIM: Thank you; thank you for
6 that.

7 Rachel Dombrowsky, if you're still on, just a
8 quick question.

9 You said back in January, February, you
10 started implementing policies, based on advice, to
11 keep people -- visitors out, and implement better
12 practices.

13 Did you -- did you have any fatalities in
14 your nursing home?

15 And was that policy an effective way to
16 prevent the infection -- infectious spread?

17 RACHEL DOMBROSKY: We had fatalities.
18 I traced -- we traced it back to one individual that
19 was sent out.

20 Whenever somebody is sent to a hospital, we
21 send an aide with them.

22 So the aide and the individual, who was not
23 COVID-positive, was sent to a hospital, and lingered
24 there in the emergency room for several -- for
25 three days, I believe, and contracted COVID then.

1 They were sent back without a test. It was
2 the end of January.

3 Both of them subsequently got COVID, but they
4 are both alive and well.

5 SENATOR RIVERA: Thank you, Ms. Dombrowsky.
6 Thank you, Assemblymember.

7 All right, so last -- the last attempt here.

8 Do we have the gentleman on the phone?

9 OFF-SCREEN TECHNICIAN: Yes.

10 SENATOR RIVERA: All right.

11 So put him on the phone. Give
12 Assemblymember Manktelow 1 minute 37 seconds.

13 Go ahead, sir.

14 ASSEMBLYMEMBER MANKTELOW: Jason, can you
15 hear me?

16 JASON SANTIAGO: I can.

17 I apologize for the issues.

18 ASSEMBLYMEMBER MANKTELOW: Oh, no problem.

19 Yeah, just really quick:

20 In our rural upstate area, where I was going
21 with this was, with the minimum wage, and
22 Senator O'Mara has already kind of asked the same
23 question, but I'll ask you: Has the minimum wage
24 really affected the capabilities of getting other
25 people to work in a nursing home or a senior living

1 facility?

2 JASON SANTIAGO: It definitely has presented
3 a challenge for us, more so than I've seen in years
4 past.

5 It was tough enough to have people want to
6 enter into the long-term-care industry. It takes
7 really special people that really want to develop
8 and start a career in long-term care.

9 But the minimum-wage impact has been -- we
10 definitely have been feeling that. And it's hard to
11 compete with those larger, you know, whether it's
12 retail or the fast-food industry, when they're
13 offering, you know, let's say, \$15 an hour. It's
14 just very difficult to be able to recruit those
15 folks.

16 So, yes, it definitely has been an impact to
17 our organization, and I'm sure many of my peers as
18 well.

19 ASSEMBLYMEMBER MANKTELOW: That's what I'm
20 hearing around the area.

21 So, Jason, thank you for getting back to me.
22 I very much appreciate it.

23 And thank you, Mr. Chair.

24 SENATOR RIVERA: All righty.

25 There's no further questions from the Senate.

1 Assembly?

2 ASSEMBLYMEMBER BRONSON: No further questions
3 from the Assembly.

4 SENATOR RIVERA: All right.

5 Thank you so much, all of you, for being part
6 of the panel today.

7 Have a great rest of your afternoon.

8 Next panel, we'll move forward with:

9 Ruth Heller, executive vice president for
10 1199 SEIU, United Healthcare Workers East;

11 Brendan [sic] Anderson, NLPN [sic], an
12 1199 member, from St. Catherine Labourne [sic]
13 Healthcare Center.

14 Iris Purks, certified nursing assistant,
15 1199 member, from Safire Rehabilitation of
16 Northtowns;

17 And, Vanessa Brooks, Home Health Aide and
18 Healthcare Workers Rising member, from MedTemps and
19 Venture Forthe agencies.

20 All right.

21 ASSEMBLYMEMBER GOTTFRIED: Okay.

22 And do each and every one of you swear or
23 affirm that the testimony you're about to give is
24 true?

25 RUTH HELLER: Yes.

1 BRENDA ANDERSON: Yes.

2 IRIS PURKS: Yes.

3 VANESSA BROOKS: Yes.

4 SENATOR RIVERA: Okay.

5 ASSEMBLYMEMBER GOTTFRIED: Okay.

6 SENATOR RIVERA: All right, Ms. Heller, go
7 ahead.

8 RUTH HELLER: Good afternoon.

9 My name is Ruth Heller, executive
10 vice president of 1199 SEIU, United Healthcare
11 Workers East. We're Upstate and Western New York,
12 where we represent workers in nursing homes,
13 hospitals, and home care.

14 We want to thank you for holding a second day
15 of hearings to examine what happened in nursing
16 homes during this pandemic, to learn the lessons
17 that we need for the future, and consider changes to
18 the nursing home industry.

19 We appreciate the opportunity to share some
20 of the union's perspective of the nursing home
21 response to COVID-19 in upstate, and two of our
22 member leaders will discuss their very different
23 experiences.

24 You will also hear from a home-care worker
25 who is a member of Healthcare Workers Rising, a

1 non-profit organization that brings together
2 non-union health-care workers to advocate for better
3 jobs and better care.

4 I will try not to repeat the details that you
5 already heard last week from my downstate colleagues
6 regarding testing and cohorting, lack of PPEs,
7 inadequate sick-pay policies, and staffing
8 shortages.

9 But I want to note that the background
10 challenges and experiences apply equally to upstate.

11 You also have my longer written statement.

12 Last week Chairman Gottfried asked if
13 unionization made a difference, while noting that
14 maybe that was a softball question.

15 Frankly, I think that was a very fair
16 question.

17 Not only were unionized workers in a better
18 position to organize when they needed to fight a
19 problem employer for PPEs, they also have the
20 structures in place to have a seat at the table as
21 an advocate for their residents, and hands-on expert
22 for the employers who welcome their input through
23 labor management, infection control, and health and
24 safety committees.

25 Communication was and is key.

1 Members told us over and over about not
2 knowing what was happening, not knowing if a
3 resident or co-worker was infected, not knowing why
4 there was a PPE shortage, and not being trained on
5 how to properly use PPE.

6 This created stress, anxiety,
7 [indiscernible], and fear.

8 The lack of communication was particularly
9 frustrating for those of us in upstate.

10 Facilities saw what was happening downstate
11 and should have immediately swung into action by
12 bringing workers and managers together.

13 Facilities that were affected set up weekly,
14 and sometimes daily, COVID-19 updates for all staff.

15 They held regular in-service trainings on CDC
16 guidance. They explained the situation with PPE.

17 When worker leaders were included, and they
18 educated their co-workers, information flowed
19 through the building better.

20 The other important practice was real
21 collaboration around problem-solving.

22 We have facilities where workers and
23 management identified a problem, and workers came up
24 with solutions and implemented changes.

25 This happened with PPE distribution and

1 work-flow issues.

2 In some nursing homes, this also happened
3 around hazard pay and staffing challenges.

4 Some agreements provided extra pay to all
5 workers in appreciation of the stress they were
6 experiencing;

7 Others provided additional pay for workers
8 who volunteered to work on a COVID-specific floor;

9 And some offered extra pay for working extra
10 hours.

11 Where these types of collaboration happened,
12 workers felt valued, were able to contribute their
13 front-line knowledge and experience, and facilities
14 were either able to slow the spread or keep
15 infections to a minimum, while nearby facilities had
16 higher levels of infection.

17 Last week a question was asked, as to whether
18 we saw a difference in the response of for-profit
19 nursing homes and not-for-profits.

20 While I don't want to say that all
21 for-profits behave badly, or all non-profits had
22 better responses, we did see a general difference.

23 More of the non-profit nursing homes worked
24 with us in the two areas I just addressed:
25 communication and collaboration.

1 Some of the for-profits did too.

2 But our biggest challenges came from some of
3 the for-profits with out-of-town owners who took a
4 go-it-alone approach and left the workers in the
5 dark.

6 We also noticed that nursing homes connected
7 with hospital systems were more successful in
8 limiting the spread of COVID in their facilities.

9 We attribute that to earlier and more
10 completeness of PPE, and better infection-control
11 training and oversight.

12 After listening to the stories of residents,
13 families, and workers on the front lines, we hope
14 that you will commit to a plan to dramatically
15 improve the quality of long-term-care services in
16 our state.

17 The New Jersey Legislature recently
18 introduced a comprehensive package of reforms, and
19 our state should not be far behind.

20 1199 members stand ready and willing to work
21 with you.

22 Thank you for taking the time to listen to us
23 today.

24 SENATOR RIVERA: Thank you, Ms. Heller.

25 Next we'll hear from Brendan [sic] Anderson,

1 LPN, and 1199 member, from St. Catherine
2 Lebourne [sic] Healthcare Center.

3 BRENDA ANDERSON: Good afternoon.

4 My name is [indiscernible].

5 [Indiscernible.]

6 I appreciate the opportunity to speak to you
7 today.

8 [Indiscernible.]

9 SENATOR RIVERA: Ms. Anderson? Ms. Anderson?

10 Ms. Anderson, I'm sorry to interrupt you.

11 It's very, very difficult to hear you.

12 Is it possible that you could move to another
13 place that maybe has a slightly better signal?

14 I figure you're on your phone.

15 BRENDA ANDERSON: Can you hear me now?

16 SENATOR RIVERA: Keep speaking, because it's
17 just very difficult [indiscernible cross-talking] --

18 BRENDA ANDERSON: Can you hear me now?

19 SENATOR RIVERA: Keep going.

20 BRENDA ANDERSON: Can you hear me now?

21 [Indiscernible]?

22 Okay.

23 I'm [indiscernible] to say our facility did a
24 great job during the pandemic.

25 We felt prepared, and got through it with

1 only two residents passing, and a handful of my
2 co-workers getting sick.

3 Unfortunately, that is not true for the other
4 facilities around us.

5 The key I think was a [indiscernible] between
6 management and the union.

7 We stand up for our rights, but we try and
8 fight [indiscernible].

9 The other key was, management was very
10 involved from the beginning.

11 We had enough PPE.

12 We learned the correct way to [indiscernible]
13 the equipment.

14 Corporate stayed in the building.

15 We prayed together.

16 They made sure we were healthy so we could
17 keep the residents healthy.

18 We had regular updates on what was going on
19 and [indiscernible] that came down from the CDC,
20 which kept our [indiscernible] levels down.

21 Honestly, sometimes we [indiscernible].

22 When I hear the stories of nursing homes
23 [indiscernible].

24 They took us [indiscernible] serious.

25 We got ready, and worked with management, we

1 got through it.

2 Thank you.

3 SENATOR RIVERA: Thank you so much,
4 Ms. Anderson.

5 And next we will hear from Iris Purks,
6 certified nursing assistant, and 1199 member, from
7 Safire Rehabilitation of Northtowns.

8 IRIS PURKS: Yes, good afternoon.

9 My name is Iris Purks. I'm a certified
10 nursing home assistant at Safire Rehab. I worked
11 there for 26 years.

12 At the time of the pandemic I was working as
13 a unit clerk and a CNA.

14 As I watched on the news about COVID-19
15 residents dying, chaos, lack of PPE, workers getting
16 sick, I felt this in my life.

17 I was one of many employees to be affected by
18 the virus in my building.

19 Even though I was feeling sick, and was
20 exposed by a co-worker and a resident, I couldn't
21 get a test because I didn't have the three main
22 symptoms.

23 About a week later, after losing my sense of
24 smell, I was able to get tested at a pop-up shop.

25 I tested positive four days later, and I went

1 back to -- I tested positive four days later, stayed
2 out work for the required 14 days, and went back
3 without being retested. It wasn't required.

4 Only when Cuomo gave the order that nursing
5 home workers must be tested, I was tested.

6 At this point, I had been back to work for at
7 least two weeks, and was told I had to leave work
8 because I still was positive.

9 I was sad because I felt better.

10 One of my co-workers tested positive, and
11 took it home to her husband who she cared for. And
12 he died days later due to the COVID. She still
13 feels the guilt.

14 When the surge hit us, it was chaos.

15 We didn't have enough staff;

16 Staff was going between floors;

17 Rooms wasn't properly cleaned;

18 We lacked PPE and guidance on how to use it;

19 And very poor communication, from owners to
20 managers, to immediate staff that was caring for
21 these residents.

22 At one point we arranged a short protest -- a
23 silent protest with the union, using signs,
24 demanding proper PPE.

25 The union helped us get our first N95s, and

1 workers felt pressure to go back to work, sick, or
2 didn't want to get tested, because they couldn't
3 afford to lose pay.

4 I tried to do everything by the book, and
5 even I lost a week's work without being paid.

6 So I understand why workers was reluctant to
7 miss work.

8 If we are going to prepare for the next surge
9 of COVID, I feel workers need a few things.

10 We need PPE and training on how to use it;

11 We need assurance that we won't lose pay;

12 Cooperation, communication, and honesty.

13 Without these things, we will be right back
14 where we started: more chaos and loss of lives.

15 Thank you.

16 SENATOR RIVERA: Thank you, Ms. Purks.

17 Last, but certainly not least, we will hear
18 from Vanessa Brooks, Home Health Aide and Healthcare
19 Workers Rising member, who works at MedTemps and
20 Venture Forthe agencies.

21 VANESSA BROOKS: Good afternoon.

22 My name is Vanessa Brooks, and I am a
23 home-care attendant in Rochester.

24 I've been at home -- I've been a home-care
25 attendant for two years.

1 I like taking care of my little old ladies,
2 and I miss them because, right now, I'm unemployed.

3 I had COVID-19, and I -- wait, excuse me.

4 I had COVID-19, and I am too scared to go
5 back to work without proper PPE, because I can't
6 risk getting them sick or my family sick, because
7 the disease is no joke.

8 I started feeling sick on April 30th, and
9 I got tested on May 2nd, and found out I was
10 positive.

11 I cried because I seen all the people on the
12 news was dying from this. So I feared for my family
13 and for my little old ladies.

14 I started off with a cough, aches, I had
15 fever. Then I got cramps in my feet. I lost sense
16 of taste and smell. The pain was so great, all
17 I could do was just rock back and forth.

18 When I first tested positive, the department
19 of health told me to quarantine for two weeks, and
20 I got paid for those two weeks.

21 After that, there was no pay.

22 Once I felt better, so I called my two jobs,
23 told them I tested negative.

24 But when I told them in the midst of that
25 that I was being -- I was negative, and I asked

1 them, before I come back, would they give me the
2 proper PPE, which is the N95, once I told them that,
3 they told me that I was on my own. If my doctor
4 wanted me to have it, it was his job to get it.

5 But my doctor told me, no, that I didn't work
6 for him. I worked for the two agencies.

7 So with that being said, me and the doctor
8 and -- me and my doctor talked.

9 I felt better staying home, because I don't
10 have the proper PPE, and I didn't want to affect my
11 two old ladies, and, basically, my family, because
12 I have an asthmatic son here, and I definitely don't
13 want to give, you know, the virus to him.

14 So I said to my employees [sic], if you guys
15 can't get me the proper PPE, I'll just sit home.

16 And my two old ladies, they call me every now
17 and then to see how I'm doing, see if I'm coming
18 back. But I told them that I refuse to come back
19 without the proper PPE.

20 Thank you.

21 SENATOR RIVERA: Thank you so much,
22 Ms. Brooks.

23 And now Assembly will lead off questioning of
24 this round.

25 ASSEMBLYMEMBER BRONSON: Okay.

1 I will recognize myself, having not seen a
2 hand risen from the co-chairs, for 5 minutes.

3 So we've been hearing from some of the folks
4 in the industry about labor costs, and, you know,
5 some distinction in not-for-profit organizations
6 versus non-profit facilities.

7 And, you know, this is kind of like the union
8 softball question that Chair Gottfried asked last
9 Monday.

10 And you all know, I'm a labor guy, and, you
11 know, I have a philosophy, and you actually talked
12 about this philosophy, and that is, when management
13 and labor come together at the table, they can be
14 true problem-solvers, because they have different
15 perspectives, but they're all in it for the same
16 objective: providing the best service possible.

17 But the cost of labor is important in that.

18 And we raised the minimum wage for the very
19 purpose of recognizing and respecting our workers.

20 So, you all are heros, you're on the front
21 lines, you're taking care of the most vulnerable
22 among us.

23 And, you know, to the statements about
24 raising the minimum wage, or the hourly cost of
25 staff people being too high, and trying to do

1 something about that, you know, I'll send it to you,

2 Ruth:

3 You know, what's the impact if we don't pay
4 our workers a wage sufficient that they can take
5 care of their own families and take care of
6 themselves?

7 RUTH HELLER: All right, well, let me answer
8 this in a couple of different ways.

9 I mean, your last question is, obviously, if
10 you don't pay folks a living wage, then they're not
11 going to be interested in this work, and they can't
12 support their families.

13 I think the question that was raised about
14 the for-profits versus the not-for-profits, and "how
15 do they make their money?" part of it is, yes, the
16 for-profits may understaff or underpay. But the
17 other piece of it that needs to be talked about,
18 I think is a little bit about the nursing home
19 financing.

20 And I know we did submit a brief about the
21 financing.

22 So what the for-profits often do, if you look
23 at when they submit a certificate of need, you will
24 see that they're buying the nursing home, and then
25 they're buying the property. And they also have a

1 management contract.

2 So even though the nursing home per se may
3 look like it's losing money on the books, they're
4 actually making money because of the amount they
5 have to pay to the real estate company, and then the
6 amount that they paid to the management company, and
7 then all the other affiliations with that owner.

8 And that's, you know, why one of the things
9 we hope to see in the future is more transparency in
10 the ownership and a change in the finances.

11 I know it was spoken about from
12 Richard Mollot last week, about requiring a certain
13 percentage of the funding go to front-line care and
14 front-line providers and direct care, and that we
15 pay attention to that.

16 The challenge with the minimum wage, as you
17 know, being in upstate, the minimum wage in upstate
18 is not even going to \$15 at this point.

19 So we have a lot of work to do to continue to
20 increase that to \$15.

21 At this point, you may make less in a nursing
22 home than you do in a fast-food place.

23 So it's imperative that we increase the wages
24 of the people who work in the nursing homes.

25 If we really believe that they're essential,

1 and we really believe that you're heros, we need to
2 pay them and recognize them and value them
3 accordingly.

4 ASSEMBLYMEMBER BRONSON: Yeah.

5 And so -- and that does recognize, and some
6 of my colleagues have brought this up, the
7 competition to bring people into a very difficult
8 industry, taking care of our elderly and people with
9 disabilities, and others, in our nursing homes,
10 compared to whether or not you're flipping burgers.

11 So, I certainly recognize that.

12 But I also want to make sure that we
13 recognize, you know, that we call folks "heros" in
14 these industries, and I think our ability to pay
15 them, and making sure that we have reimbursement
16 rates so that they can get paid, are essential.

17 The -- and then your second part, in
18 connection with the profit, so, just so I'm clear:

19 So what you're saying is:

20 There are folks who own several different
21 companies. And then they're -- or, relatives, or
22 something of that nature.

23 And so the money that's going into the
24 nursing home is going to a management company, or
25 going as rental into a lease agreement, or things of

1 that nature.

2 So that's a mechanism, you know, in essence,
3 really, to shift from using those reimbursement
4 funds and other revenues for patient care, and
5 shifting it so it's for-profit in those other
6 related companies.

7 Is that correct?

8 RUTH HELLER: Yes.

9 And we're hoping to get that changed in the
10 future.

11 [Indiscernible.]

12 We need more funding to the nursing homes,
13 but we need there to be strings attached.

14 ASSEMBLYMEMBER BRONSON: Thank you.

15 And thank you all for coming in and
16 testifying today.

17 SENATOR RIVERA: Thank you, Assemblymember.

18 I recognize Senator Rachel May for 5 minutes.

19 SENATOR MAY: [Indiscernible] and Ruth, it's
20 great to see you.

21 I wanted to ask something I asked last week,
22 essentially, but, the department of health,
23 basically, pointed the finger at staff in terms of
24 why there was spread of the virus in nursing homes.

25 Not I'm not blaming the staff, but just

1 saying that the data show that staff were probably
2 bringing it into the nursing homes.

3 So, assuming that they're right about that,
4 what do you see as the main drivers of that?

5 Was it people working multiple jobs?

6 Was it inadequate PPE?

7 Was it not -- no time to really use the PPE
8 properly?

9 Do any of you have a sense of what that
10 would -- what would have been the main thing?

11 IRIS PURKS: I do.

12 They didn't take us seriously in the
13 beginning. It's just like the flu, and it's going
14 to go away.

15 But it wasn't like the flu and it didn't go
16 away.

17 If we had PPE, they didn't give it to us. It
18 was locked up.

19 I could personally say, when we had the
20 shutdown and we couldn't go anywhere, I was going
21 home to work, home to work.

22 Well, residents caught it, an employee caught
23 it.

24 When an employee caught it, she was one of
25 our friends.

1 She let us know that she had it.

2 But the nursing home wasn't trying to let us
3 know that she had it, because they didn't want to
4 get us upset or scared, or whatever.

5 And then when a resident got it, I was taking
6 care of residents without N95s; no proper
7 equipment, no proper precaution.

8 And I felt that I got it in the nursing home
9 at my workplace.

10 My family didn't have it. None of my
11 children had it.

12 And I was very sad for them, but think that
13 it was all being brought in by the employees,
14 because I felt that I got it at work, and so did my
15 co-worker that took care of her sickly husband, that
16 took it home to him, where they both ended up in the
17 hospital, and, he passed away. And he just came
18 back six months later.

19 So, they put the blame on the employees, and
20 it was just unfair.

21 SENATOR MAY: Right.

22 So --

23 IRIS PURKS: PPE was a big part in, how to
24 take it off, how to use it.

25 We was not told.

1 SENATOR MAY: -- right.

2 Does any of you have a sense -- this might be
3 to you, Ruth -- of what percentage of employees work
4 more than one job, work between different
5 facilities?

6 RUTH HELLER: Yeah, I actually don't know
7 what the percentage is.

8 I would echo about the PPE issue, that --
9 because, in the same county, you could have two
10 nursing homes, one that had an explosion, like the
11 Safire, explosion of COVID cases, and then another
12 one in the same county that didn't.

13 And so, as far as coming in and out of the
14 community, if you had good PPE within the nursing
15 home, you were able to stem the flow.

16 SENATOR MAY: Okay. Thanks.

17 And this is to all of you: How would you
18 characterize morale among workers in the industry at
19 this time?

20 IRIS PURKS: Well, in my facility the morale
21 is very low because the employees and the owners and
22 management do not see eye to eye.

23 The more we tried to get the owners involved,
24 even with the union help, they didn't want -- they
25 wanted to go their own separate way.

1 They thought the union didn't have no place
2 in their nursing home business, which they did.

3 And I felt like they blamed us.

4 And when it came down to it, like, we were
5 told, we eating in the lunchroom, we couldn't social
6 distance, go stand outside.

7 I mean, I think it was very bad, and always
8 putting it all on us, it was all our fault, that,
9 you know, this happened in their facility.

10 So the morale is very low.

11 They have no -- they do not believe nothing
12 that [inaudible].

13 SENATOR MAY: Thank you.

14 And then my last question is about bringing
15 family members back into the facilities.

16 And I assume you all agree that that's a
17 valuable thing to do.

18 Does any of you have good ideas about the
19 best way to do that, safely?

20 RUTH HELLER: Well, I think what's really
21 important is that, whatever plan gets put together,
22 there is input from the family and the staff, and
23 not just, you know, an administration decision that
24 comes down from on high.

25 I think this is really good that you're

1 hearing from residents and you're hear -- well, not
2 residents, but, you're hearing from families and
3 you're hearing from staff.

4 Obviously, the more you can meet outside, the
5 better.

6 SENATOR MAY: Okay.

7 Thank you all.

8 SENATOR RIVERA: And we did hear from one
9 resident in the last panel.

10 Now to the Assembly.

11 ASSEMBLYMEMBER BRONSON: Now we'll recognize
12 Chair Dick Gottfried for 5 minutes.

13 ASSEMBLYMEMBER GOTTFRIED: Thank you.

14 I have a question for Ruth Heller.

15 You talked about -- as others have, about the
16 question of for-profit facilities using a network
17 of, this one owns the building, it's related to that
18 one, et cetera, as a way of, essentially, siphoning
19 money out that doesn't get labeled directly as
20 profit, and the need for legislation to try to clamp
21 down on that, which I certainly agree with.

22 Are -- is there legislation, either enacted
23 or proposed, in other states on this topic that we
24 might, to use one of my favorite words, plagiarize?

25 RUTH HELLER: Yeah, I would recommend taking

1 a look at what was recently introduced in
2 New Jersey, because that includes what they call --
3 you know, what's called "direct-care loss ratio," so
4 that you have to report the total revenue, and how
5 the revenue gets spent on direct care versus
6 administrative costs and outside expenses.

7 And they're proposing that there be a maximum
8 amount of revenue that can go to profit and
9 administrative costs.

10 So I know that one, in particular. There may
11 be other states as well.

12 And we can certainly get you that
13 information.

14 ASSEMBLYMEMBER GOTTFRIED: Okay.

15 And do you know who in New Jersey we might
16 contact on that legislation?

17 Like, do you know who the sponsor is?

18 Or, is there an 1199 person in New Jersey we
19 could reach out to?

20 RUTH HELLER: Yeah, we can get you that
21 information.

22 The sponsors were Vitale and Danieri [ph.].

23 And, also, for your research purposes, they
24 had a report done by Minot Consulting, which we can
25 get you that report too.

1 I don't think the results there would be
2 dramatically different than what we saw in
3 New York State.

4 ASSEMBLYMEMBER GOTTFRIED: Okay.

5 Yeah, if you can connect us with that, that
6 would be super.

7 Thank you.

8 I'm done.

9 SENATOR RIVERA: All right, thank you.

10 Thank you, Assemblymember.

11 Moving on, I recognize Senator Skoufis for
12 5 minutes.

13 SENATOR SKOUFIS: Thanks very much.

14 And thanks to each of you for your testimony,
15 and, more importantly, as others have rightfully
16 noted, your work these past many months, which has
17 been more important than ever.

18 So I'd like to focus on, and I guess this is
19 for Iris, and if, Ruth, you want to partner in an
20 answer:

21 I have a bit of a history myself with a
22 Sapphire nursing home down here in my district in
23 Orange County, except this one is spelled,
24 S-a-p-h-i-r-e, as opposed to, S-a-f, as it's spelled
25 up by you.

1 And they share common ownership. I guess, if
2 they just change a couple of letters, they can, you
3 know, just, basically, call it the same name.

4 But they're all owned by the same collection
5 of folks.

6 And the tussle I had down here a couple of
7 years ago was with 1199 and its membership, over how
8 workers were being treated after a not-for-profit
9 sold to this for-profit, Sapphire.

10 It's clear, based on reporting that I've read
11 up by you in the Buffalo area, that there are a
12 number of Safire nursing homes that have quite a
13 history of problems: mistreatment of both residents
14 and workers.

15 It's happened here where I am in
16 Orange County.

17 I count six Safire-owned nursing homes
18 throughout New York with a history of severe
19 problems.

20 And so my question to you is:

21 What do you think we ought to do when there
22 is this repeated, repeated, over years and years and
23 years, history by ownership at various nursing homes
24 throughout the state of mistreating workers and its
25 residents?

1 Should we stop allowing them to open up or
2 purchase new nursing homes?

3 OFF-SCREEN SPEAKER: Absolutely.

4 SENATOR SKOUFIS: Should we do more than just
5 slapping them on the wrist with fines?

6 Should we be pulling licenses?

7 I have grown very frustrated, and now maybe
8 my feelings are boiling over, given what I'm hearing
9 from you, and what's happened in these facilities
10 vis-a-vis COVID.

11 I have grown enormously frustrated that,
12 these operators, these owners, continue opening up
13 facilities, continue going on, you know, collecting
14 fines here and there as if nothing has otherwise
15 happened.

16 Meanwhile, their residents and employees are
17 being treated like second-class citizens, and that's
18 putting it very kindly.

19 So I want to turn it to you.

20 What do you think we ought to do with owners
21 like those at Safire who can't get it right or
22 refuse to get it right?

23 What do we do?

24 IRIS PURKS: Get rid of them.

25 Yes.

1 I've been there for 26 years.

2 And the last, six, seven years, they took

3 over:

4 Cut staff by half;

5 The working wage is probably 12.88 bringing

6 in a CNA;

7 You can't talk to them;

8 They hire big-time lawyers.

9 I mean, it's hard -- we've been fighting
10 them, but it's hard to fight them. They don't want
11 to work with us.

12 So I'm trying to better the place, because
13 they not trying to involve us in any of the
14 activities.

15 You know, they'll blame us for the
16 activities, but not involve us.

17 And it's continuing on in a couple of nursing
18 homes here; you hear the same stories.

19 And then the State come in and tap them on
20 the shoulder, and they continue on doing what they
21 do, because they get away with it.

22 RUTH HELLER: I think --

23 IRIS PURKS: Go ahead.

24 RUTH HELLER: -- the issue that you're
25 raising, Senator, about limiting the number of

1 nursing homes that they can go out and purchase,
2 I think is certainly worth investigating.

3 So, tightening the certificate-of-need
4 process, so that if someone owns nursing homes with
5 a star rating, or, has a history of problems, that
6 they're not able to go purchase additional nursing
7 homes.

8 SENATOR SKOUFIS: Thank you.

9 SENATOR RIVERA: Thank you, Senator.

10 Assembly.

11 ASSEMBLYMEMBER BRONSON: Yes, next we will go
12 to Assemblymember Tom Abinanti for 3 minutes.

13 ASSEMBLYMEMBER ABINANTI: Okay, am I there?

14 There we go.

15 ASSEMBLYMEMBER BRONSON: Yes, you are.

16 ASSEMBLYMEMBER ABINANTI: Thank you.

17 To the speakers, thank you very much for
18 telling us your experiences. It's very, very
19 helpful.

20 I wanted to ask you about visitation.

21 I know you touched on it a little bit.

22 Has your nursing home at all allowed
23 visitors?

24 BRENDA ANDERSON: Well, we have

25 [indiscernible].

1 IRIS PURKS: We haven't at Safire because we
2 just had another resident test positive. So we're
3 on another 28 days.

4 And I'm kind of worried because we have
5 residents that don't -- can't -- don't apply by --
6 they won't wear a mask. I mean, you know, they have
7 behaviorals.

8 We worried about, if the visitors come in,
9 them hugging and, you know, because they haven't
10 seen them in a long time.

11 ASSEMBLYMEMBER ABINANTI: Right.

12 IRIS PURKS: I think [indiscernible
13 cross-talking] --

14 ASSEMBLYMEMBER ABINANTI: Have they come up
15 with any type of equipment that you can use other
16 than a mask?

17 I mean, for example, one of the things I've
18 seen that's been helpful, are kids with disabilities
19 are wearing hats with visors, and they've been
20 wearing those.

21 And there are other types of masks that have
22 been -- so the nursing home has, in no way, tried to
23 solve this problem; they just exclude visitors?

24 IRIS PURKS: They just walk around.

25 You know, certain residents just walk around

1 because they will not put it on. They're just not
2 going to wear it.

3 ASSEMBLYMEMBER ABINANTI: What about doctors;
4 are doctor allowed in?

5 I mean, I've had a report that, at one
6 nursing home, the doctors weren't even allowed to
7 come in. A patient's outside doctor was told that
8 he couldn't come in.

9 IRIS PURKS: Well, we have a doctor, and he
10 wears the whole full gear. And he does come in and
11 see his patients.

12 ASSEMBLYMEMBER ABINANTI: Right.

13 But do doc -- are patients allowed to have
14 their own doctors, other than the nursing home
15 doctor?

16 IRIS PURKS: No.

17 BRENDA ANDERSON: Oh, no.

18 IRIS PURKS: No, not at our nursing home.

19 BRENDA ANDERSON: Not at ours, either.

20 ASSEMBLYMEMBER ABINANTI: Okay.

21 Is that common? Or do some nursing home
22 allow --

23 BRENDA ANDERSON: Yes, yes.

24 Yes, once you become a resident in a nursing
25 home, they primarily use their staff physician.

1 [Indiscernible.]

2 ASSEMBLYMEMBER ABINANTI: [Indiscernible
3 cross-talking] the nursing home -- the people at a
4 nursing home should at least have the right to have
5 their own doctor come in and check them out if they
6 wanted to.

7 IRIS PURKS: No, they do not.

8 BRENDA ANDERSON: No.

9 ASSEMBLYMEMBER ABINANTI: They don't allow
10 them to do that?

11 BRENDA ANDERSON: No.

12 IRIS PURKS: They might, for a period of
13 time, can go see their doctor. But not recently.

14 BRENDA ANDERSON: Right, right.

15 ASSEMBLYMEMBER ABINANTI: People
16 [indiscernible cross-talking] --

17 BRENDA ANDERSON: They can go out the
18 facility. They can go [indiscernible]. But not
19 [indiscernible] --

20 ASSEMBLYMEMBER ABINANTI: But what about
21 dental care, and things like that, how do get they
22 get that?

23 IRIS PURKS: They've been going out, and they
24 have dental come in to see them.

25 They have their own dental team that comes in

1 to see them.

2 ASSEMBLYMEMBER ABINANTI: Are they still
3 allowed to do that now in?

4 IRIS PURKS: Yes, they have been.

5 ASSEMBLYMEMBER ABINANTI: Okay.

6 Thank you very much for your service.

7 By the way, just one comment.

8 One of you did comment that you felt that you
9 were being blamed for the spread of the virus.

10 I don't think any -- none of us are blaming
11 you.

12 I know it did come down from the
13 administration that they thought that the transfer
14 came as a result of staff going in and out.

15 But nobody's intending to blame you for that.

16 I think as we've had this conversation, it's
17 up to the nursing home to find a way to protect you
18 so that that doesn't happen.

19 So -- but thank you very much for your
20 service, and for your testimony.

21 SENATOR RIVERA: Thank you, Assemblymember.

22 Now for the Senate, I recognize
23 Senator Serino for 5 minutes.

24 SENATOR SERINO: Thank you, Mr. Chairman.

25 And thank you, ladies, for being here today,

1 and for all of your hard, dedicated work.

2 I greatly appreciate it.

3 With regard to PPE training, it was brought
4 up at the last hearing, and additional information
5 was shared with me afterwards, but can you speak a
6 little bit about the PPE training that you yourself
7 received?

8 And, can you speak to whether your colleagues
9 received that same training, or is there a disparity
10 in who is getting what training?

11 VANESSA BROOKS: Well, for me, I'm a
12 home-care worker, and we didn't get no training.

13 We was just told to put the mask on, put the
14 gloves on, and check your fever.

15 And -- which was kind of scary because we're,
16 like, okay, should there be a nurse there with us?

17 You know, because I'm going from house to
18 house.

19 And they didn't come out and teach us
20 nothing.

21 We just, basically, had to do what they told
22 us to do -- sorry, told us to do: Put the mask on,
23 put the gloves on, and check your fever before you
24 go in.

25 And that was it.

1 IRIS PURKS: And in mine -- I work in a
2 nursing home. We wasn't trained.

3 They was, like -- kind of, like, it was
4 common sense that we dealt with, you know,
5 precautions.

6 But we never dealt with a pandemic precaution
7 with this type virus.

8 So we didn't know how -- we didn't know how
9 to [indiscernible], or, you know, we didn't know how
10 to do that.

11 I really learned, and I put up a stink, that
12 they teach. And then, weeks later, we had
13 in-services about how to use it, or whatever.

14 But I learned from the union. They did a
15 class on it, I watched a video, and that's how
16 I learned.

17 And I explained it to some of my co-workers.

18 But after weeks, they did try to give us an
19 in-service on it.

20 But in the beginning, oh, it's common sense.
21 You do it like any other contagious disease.

22 So, that wasn't appreciated with the
23 employees, because they were scared. This was
24 something they had never dealt with.

25 SENATOR SERINO: Yes, absolutely.

1 IRIS PURKS: Yes.

2 SENATOR SERINO: From what we've been hearing
3 from everybody, of course, PPE needs to be our top
4 priority.

5 But can you guys speak to any other practices
6 that are happening in the facilities during this
7 time that you would want to see improved?

8 I know [indiscernible cross-talking] --

9 [Indiscernible cross-talking by everyone.]

10 SENATOR SERINO: -- oh, go ahead.

11 IRIS PURKS: Okay, like, knowing, like, the
12 State just came in with new admits, coming in from
13 the hospital, or whatever. They needed to be
14 quarantined, I don't know, in their room for
15 14 days.

16 There was kind of confusion, because ours was
17 coming in and was being, you know, let to go to
18 therapy, or wherever they needed to go, without the
19 precautions. I mean, just a mask.

20 But on their door it says, you need to gear
21 up and put all these precautions on.

22 So I didn't understand, why would you bring a
23 resident out with just a regular mask if we've got
24 to wear the whole stuff, the whole uniform, to go
25 into their rooms?

1 So it's still confusion, and I'm still
2 confused about, what do we do?

3 Do they stay in their room for 14 days, or
4 are they allowed to come out to smoke, or do their
5 regular activities?

6 SENATOR SERINO: All right.

7 That's a good question.

8 And, also, do you feel that there was enough
9 isolation taking place between the COVID and the
10 non-COVID patients, and with staffing who were
11 working with the COVID-positive patients, only
12 working with those residents?

13 Or was there a crossover because of staff
14 shortages or other reasons?

15 IRIS PURKS: It was a crossover, crossover at
16 our place. And short of staff.

17 So, we went from COVID room to a patient
18 without COVID.

19 Sometimes we was told that we can wear the
20 same gown or the N95. You can't lose, you only get
21 one of them.

22 So, yeah, we wore the same equipment, from
23 one patient to the next, COVID and not. And they
24 were on all floors.

25 They started off with trying to make one

1 unit, but it didn't work.

2 So...

3 BRENDA ANDERSON: And we did have
4 [indiscernible] one unit. And I was a nurse on that
5 COVID unit.

6 And there was one way -- you came in one way,
7 and you went straight down the hall to the end. And
8 that's the way you went out.

9 There was no mixing of floors. There was no
10 mixing of staff.

11 IRIS PURKS: Good.

12 BRENDA ANDERSON: You worked the COVID unit,
13 that's the unit that you stayed on.

14 RUTH HELLER: So as you're hearing, there was
15 quite a range of responses.

16 It was, really, I mean, facilities were so
17 different, from doing the absolute COVID right way,
18 cohorting thing to do, with separate entrances and
19 exits, and no floating between the floors.

20 And then there were other nursing homes that
21 just threw their hands up, and people were floating
22 all over the place and not changing their PPEs.

23 SENATOR RIVERA: Thank you so much,
24 Ms. Heller.

25 Assembly.

1 SENATOR SERINO: Thank you.

2 ASSEMBLYMEMBER BRONSON: Next we'll go to
3 Chair John McDonald for 5 minutes.

4 ASSEMBLYMEMBER MCDONALD: Thank you.

5 And to Ruth and our whole panel here, thank
6 you for your testimony today.

7 Ruth, I just wanted to follow up a little bit
8 on what my colleague Mr. Gottfried was speaking to.

9 If I didn't know any better, it sounds like
10 it's almost, with some of these entities, they have
11 multiple management entities that are doing a
12 variety of different things.

13 Is it -- what is it in particular?

14 Because it sounds like it's a pyramid scheme
15 in some aspects, and I just want to understand it
16 better.

17 RUTH HELLER: Well, my understanding is it
18 would be, one management company, several nursing
19 homes.

20 So the nursing home would contract with the
21 management company to provide the services, and so
22 that they pay out money from their nursing home to
23 this management company.

24 ASSEMBLYMEMBER MCDONALD: Okay.

25 RUTH HELLER: Or -- yeah, I mean, that's

1 generally how the management services work.

2 ASSEMBLYMEMBER MCDONALD: And so that's the
3 only --

4 RUTH HELLER: And you --

5 ASSEMBLYMEMBER MCDONALD: -- I'm sorry.
6 Go ahead.

7 RUTH HELLER: -- you can see that in their
8 certificate-of-need application. So you can see who
9 owns the real estate, someone else owns the real
10 estate, how much they're going to have to pay in
11 rent, how much they're going to have to pay in the
12 management contract, each time they're changing
13 their ownership status.

14 ASSEMBLYMEMBER MCDONALD: And beg my
15 ignorance on this, but, in regards to the management
16 company, is there any disclosure requirements that
17 the State requires in a certificate of need in
18 regards to who the principals are? Or are they
19 LLCs? Or what are they?

20 RUTH HELLER: There are some, but we think
21 there needs to be a lot more transparency in terms
22 of [indiscernible cross-talking] --

23 ASSEMBLYMEMBER MCDONALD: I'm not trying to
24 catch you off guard.

25 I'm a big proponent, at the end of the day,

1 unlike 34 years ago, the public is all in in regards
2 to funding with public money; and, therefore, if you
3 want to accept public money, you also have a
4 responsibility to subject yourself to greater
5 disclosure, in that perspective.

6 And I think that's along the lines of what
7 you're talking about.

8 And -- well, you're talking about the fact
9 that the management company is profiting, whereas
10 the operations, which impacts our workers and our
11 residents, is struggling.

12 And I get it, I understand it, and
13 I appreciate your comments.

14 And I look forward, too, to the information
15 you're going to share with Dick in regards to a
16 solution in New Jersey.

17 But I think we will also be focusing on
18 greater transparency of the principals of the
19 management company when the certificate of need is
20 provided.

21 Thank you.

22 I'm good.

23 RUTH HELLER: And, again, we did submit
24 various issue briefs that would address this,
25 whether it's the financing or the nursing home

1 industry overview.

2 And I actually did find, as I was looking
3 through one of the briefs, there was a question
4 about workers working in more than one facility.
5 And there has been a study that shows that about
6 7 percent of the nursing home workers are working in
7 more than one facility.

8 And that's in the issue brief on the industry
9 overview.

10 ASSEMBLYMEMBER MCDONALD: Thank you.

11 SENATOR RIVERA: Thank you, Assemblymember.

12 Senator O'Mara, at some point you had your
13 hand up. I'm not sure if you stepped away.

14 I believe that he did, therefore, back to the
15 Assembly.

16 ASSEMBLYMEMBER BRONSON: Thank you.

17 And I join my colleagues Chair McDonald,
18 Chair Gottfried, in wanting to get more information
19 about the industry, and, in particular, for-profit.

20 And with that we now will go to
21 Assemblymember Ron Kim, recognized for 3 minutes.

22 ASSEMBLYMEMBER KIM: Thank you, Mr. Chairman.

23 Yeah, I just want to continue my -- the
24 conversation that we've been having with
25 Chairman Gottfried, and Mr. McDonald as well.

1 Ruth, I'm sorry if you have already covered
2 this, but I had to step out for a minute.

3 To recover the impact of private-equity
4 investors and hedge fund investments in the nursing
5 home sector?

6 RUTH HELLER: We didn't talk about that
7 specifically. We talked about financing in general.

8 And I said the nursing homes need more
9 funding, but they should have funding with strings
10 attached, so that a certain percentage must be
11 designated towards direct-care providers and not be
12 taken out of the system for profit.

13 ASSEMBLYMEMBER KIM: Right.

14 So -- I mean, speaking of transparency, do we
15 have any access to information, who -- what firms or
16 what private-equity investors are in this space, and
17 what -- and how much money they have poured in --
18 into this space?

19 RUTH HELLER: I don't think we have enough
20 transparency to actually untangle the web of
21 financing behind the nursing homes.

22 I know we tried to do that from time to time,
23 and we get somewhat deep into it, but we need a lot
24 more transparency to see the various owners and
25 where the money is coming and going.

1 ASSEMBLYMEMBER KIM: And is it -- is it also
2 true that there's a lot of real estate in this space
3 as well, that some of these facilities own their own
4 property, and also have taken investments from
5 private-equity firms?

6 RUTH HELLER: It's common in the for-profit
7 area for there to be an owner of the nursing home
8 and a related owner of the real estate. And then
9 the nursing home pays the rent to the real estate
10 company, which is often related to the same owner of
11 the nursing home.

12 ASSEMBLYMEMBER KIM: Right, so in other
13 words, they're -- they're integrated in multiple
14 different ways in this business, from real estate,
15 to leasing, to a management.

16 It's almost like they created a monopolistic
17 ecosystem, where they have vertically integrated
18 themselves. And, no matter what the situation,
19 they're winning, because even if the nursing homes
20 are failing as a business, it's almost, they have
21 access to the property. They can probably flip that
22 property for a profit and convert it into luxury
23 condos, or whatever.

24 Is that an accurate assessment of what we're
25 dealing with?

1 RUTH HELLER: I guess I'm with you as far as
2 you went until the flipping for luxury condos.

3 That -- you know, that really is
4 location-specific.

5 But I think everything else that you said
6 certainly supports the recommendation that has been
7 made, that we look at, you know, a medical-loss
8 ratio-type approach to the funding like they have
9 for health insurance, to make sure that most of the
10 money is being spent on direct care and not being
11 taken out of the system.

12 ASSEMBLYMEMBER KIM: All right. Thank you.

13 SENATOR RIVERA: Thank you, Assemblymember.

14 I believe that is the last person
15 questioning.

16 All right, Panel 4, thank you so much for
17 being with us.

18 I remind everyone, we've still got seven to
19 go.

20 All right?

21 Panel Number 5, and I'm just saying,
22 [indiscernible] now, and they're not going to be
23 here six hours from now.

24 I'm watching ya'll.
25

1 Panel Number 5, we're joined by:

2 Kathy Febraio -- I hope I pronounced your
3 name correctly -- president and CEO of the
4 New York State Association of Healthcare Providers;

5 And, Al Cardillo, or Cardillo (different
6 pronunciation), president and CEO of the
7 Home Care Association of New York.

8 ASSEMBLYMEMBER GOTTFRIED: Okay. And do each
9 of you swear or affirm that the testimony you're
10 about to give is true?

11 I think they need to be unmuted.

12 SENATOR RIVERA: They need to be unmuted and
13 they need to be on the...

14 Okay, there you go.

15 ASSEMBLYMEMBER GOTTFRIED: Okay. Do you each
16 wear swear or affirm that the testimony you're about
17 to give is true?

18 AL CARDILLO: I do.

19 KATHY FEBRAIO: I do.

20 ASSEMBLYMEMBER GOTTFRIED: Okay.

21 SENATOR RIVERA: All right, Ms. Febraio, or
22 Febraio (different pronunciation)?

23 KATHY FEBRAIO: Febraio.

24 SENATOR RIVERA: Febraio.

25 Please.

1 KATHY FEBRAIO: All right.

2 Thank you for the opportunity to share the
3 experiences of the home-care industry as we continue
4 to face this unprecedented public-health crisis.

5 I'm Kathy Febraio, president and CEO of the
6 New York State Association of Healthcare Providers.

7 We represent LHCSAs, CHHAs, and FIs in the
8 CDPAP program, all of which employ essential workers
9 during this COVID emergency declaration.

10 Home-care providers' needs are among those
11 essential workers on the front lines in the battle
12 against COVID.

13 Home care is there, caring for the sick, the
14 elderly [inaudible] New Yorkers.

15 Home care is keeping these New Yorkers from
16 being admitted to hospitals or congregate-care
17 settings, and caring for them after being
18 discharged.

19 Being out in the community, and with training
20 in infection control, home care is a valuable
21 resource that should not be overlooked.

22 Now, more than ever, home care is the health
23 care provider that can provide essential relief to
24 the overburdened health-care system, but it needs to
25 be recognized and treated as such.

1 As COVID took root across the state,
2 home-care agencies experienced an almost immediate
3 downturn in service hours, by as much as 20 percent,
4 as patients and their families canceled services out
5 of fear or because families in lockdown were
6 available to provide care.

7 At the same time, home-care agencies who were
8 already reporting outstanding accounts receivables
9 from managed long-term-care plans, many in excess of
10 \$1 million, began to experience a 10 to 20 percent
11 slowdown in payments, adding financial challenges at
12 a time when expenses were increasing dramatically.

13 PPE costs jumped as much as 20 times.

14 Overtime costs skyrocketed as aides became
15 unavailable due to quarantine, fear, illness, or
16 child-care issues, and, at the same time, agencies
17 were experiencing decreases in reimbursement.

18 Workforce challenges that were already
19 impacting the industry became more apparent and more
20 strained.

21 Child-care options evaporated at a time when
22 essential workers needed them the most.

23 Recruitment and initial training of aides
24 came to a halt, and aides were recruited away from
25 home care to work in other care settings.

1 Regardless, HCP and its members sprang into
2 action to protect patients, workers, and the
3 community.

4 Home-care providers focused their time and
5 energy on helping their patients, their workers, and
6 their families.

7 They made hand sanitizer.

8 They even hired tailors to make masks because
9 they could not access PPE through regular commercial
10 means, and there were difficulties in obtaining them
11 through the State's mechanisms.

12 Providers were distributing a two-week supply
13 of PPE to their aides in order to minimize exposure
14 and repeated trips on public transportation.

15 Home-care providers continually provided
16 training on infection control, stopping the spread,
17 and appropriate donning, doffing, and cleaning and
18 storage of PPE.

19 Providers communicated with their aides
20 through multiple channels and in multiple languages,
21 with information, and access to state and federal
22 resources, and child-care resources and safety
23 videos.

24 HCP has members who arranged nurses' calls to
25 patients as often as three times a week, to

1 constantly assess and reassess how patients were
2 doing and what resources were needed to keep them
3 safely at home.

4 Still, others supported their aides and
5 patients by having a nurse on-site outside the home
6 of a COVID-positive patient on the first visit, to
7 answer questions and concerns, and ensure extra
8 support for the safety, health, and comfort of the
9 patient and the aide.

10 We also have members who used their Paycheck
11 Protection Program funds to provide aides with
12 additional pay during the peak of the pandemic.

13 HCP, faced with members who were not able to
14 access PPE, started PPE group-buying opportunity,
15 obtained donations, distributed hundreds of
16 thousands of pieces of PPE, and worked with other
17 associations and the City of New York, to ensure the
18 industry received PPE in the most vulnerable region
19 of the state.

20 All this while oftentimes being told home
21 care was not a priority.

22 We ask for your support in the delay of the
23 following policies and programs that are
24 inappropriate to implement during a pandemic:

25 The CDPAP RFO decision;

1 The LCHSA RFA release in the fall;

2 A new cost report;

3 Electronic visit verification and aide unique
4 identifiers;

5 And, implementation of the department of
6 health's per-member, per-month, reimbursement for
7 CDPAP.

8 At the end of our written testimony you will
9 find a list of deadlines that are coming due for the
10 home-care industry.

11 October and November are going to be a tough
12 time.

13 Thank you.

14 SENATOR RIVERA: Thank you, Ms. Febraio.

15 Mr. Cardillo.

16 AL CARDILLO: Thank you very much,
17 Mr. Chairman.

18 I'm Al Cardillo. I'm the president and CEO
19 of the Home Care Association of New York State.

20 Our organizational members include federal-
21 and state-certified home health agencies, licensed
22 agencies, hospice agencies, managed long-term-care
23 plans, and an array of home- and community-based
24 programs, and allied services and support for people
25 at home.

1 We thank you for this public hearing, and
2 it's so very necessary.

3 And we salute all of our home-care and
4 hospice front-line personnel who have been
5 incredible heroes throughout, in navigating the
6 extraordinary complexities of service in this
7 pandemic, and, most importantly, maintaining patient
8 care and safety at home.

9 I'll focus concisely on several key points
10 ahead, and the details will be in my written
11 testimony.

12 I think it's first important to point --
13 important to underscore the pivotal and systemic
14 role that home care and hospice have played in the
15 pandemic, as in, every single day in this health
16 system, caring for over 800,000 extremely frail,
17 medically-complex, and vulnerable patients across
18 the state.

19 And this includes the provision of the
20 direct-care coordination of services, prevention of
21 facility admissions, transition of facility patients
22 home, and more.

23 This also includes the care of thousands of
24 COVID and COVID-suspected individuals.

25 Support for home care means the support of

1 these patients, but it also is a consequence for the
2 entire operation of the delivery system which can't
3 function without home care and hospice.

4 Second: I commend to your attention the
5 concept of a "home care first" policy for New York,
6 or, the opportunity to have the option of care at
7 home optimized for patients, and presented as the
8 first option for them when medically appropriate and
9 possible, whether for rehab, post acute, long-term,
10 or other forms of care.

11 Listening to all the testifiers today,
12 I think of what this might have meant to countless
13 individuals and families, as well as the system
14 overall, if this were in place.

15 But what you need to know is, is that
16 New York has had a "home care first" policy since
17 the late '70s. It's in various parts of the
18 statute.

19 But time and reforms and a sprinkling of
20 other changes have ebbed the enforcement of this.

21 I think it's time to revisit this policy and
22 make it a robust signature policy of the state of
23 New York.

24 The need for PPE to protect patients and
25 workers is self-evident, and you've heard about this

1 throughout the entire set of presentations.

2 It's critical for home care and hospice, but
3 we struggled throughout this process, particularly
4 at the outset, and particularly in New York City.

5 I might add that there was a period of weeks
6 and weeks where home care and hospice were not even
7 given eligibility for PPE from New York City
8 emergency stockpiles.

9 And as Kathy mentioned, we all had to work to
10 reverse that.

11 And I appreciate the more recent efforts of
12 the City to work with the industry.

13 We urge you to adopt policies ensuring home
14 care and hospice priority status for PPE, adequacy
15 of supply, and structural PPE funding for providers
16 and managed-care plans.

17 Related to this, "emergent essential
18 personnel" designation is vital for providers,
19 personnel, and patients in emergency response for
20 all of them.

21 In 2017 we worked with the legislature and
22 governor to enact a statute that required procedures
23 for home care and hospice essential status in local
24 emergency-management plans; yet, over the entire
25 course of COVID, the experiences of home care and

1 hospice have been incredibly irregular and uneven in
2 this entire regard.

3 It's urgent that the State and local managers
4 and management procedures diligently [indiscernible]
5 home care and hospice essential status.

6 Workers and workforce have been impacted in
7 innumerable ways: professionally, personally, and in
8 overall workforce supply and accessibility in COVID
9 care.

10 And you've heard this throughout the
11 testimonies today.

12 We urge the provision of policy and budget
13 support for workforce professional- and
14 personal-related needs, including recruitment,
15 training, retention of an adequate workforce supply,
16 enhanced funding for front-line worker compensation
17 during COVID.

18 We also ask your specific help in securing
19 prompt department of health approval of our proposed
20 online and hybrid training program for home health
21 and personal-care aides.

22 Training has been pretty much sidelined
23 during this because of social isolation. And this
24 gives us an opportunity to go forward.

25 Virtually, all aspects of operations have

1 Rachel May, recognized for 5 minutes.

2 SENATOR MAY: Thank you, Mr. Chair.

3 And thank you both for your testimony.

4 Mr. Cardillo, I wanted to follow up on a few
5 things with you.

6 First of all, I would love to know more about
7 your online training that you've put together. That
8 would be really helpful to know, so that we can
9 extend it across the state.

10 AL CARDILLO: Thank you.

11 SENATOR MAY: But I also wanted to ask about
12 rural areas versus cities, and how you compare the
13 home-care workforce shortages in those two types of
14 geographical areas.

15 AL CARDILLO: Well, you know, the shortages
16 across the state manifest in different ways.

17 There are shortages in the professionals; so,
18 for example, in nurses, that seem to be, in effect,
19 everywhere in the state that are having an overall
20 impact on the system.

21 With respect to home-care aides and
22 personal-care workers, the shortages also are around
23 the state, but they manifest in different ways.

24 In some circumstances it's a matter of
25 retention.

1 So you might have the supply to bring into
2 recruitment, but the importance is then being able
3 to retain that workforce with the proper supports
4 that the workforce needs for the retention.

5 In other cases, it's a matter of both
6 retention, but that the supply of the individuals is
7 not in the pipeline.

8 We have actually, you know, submitted
9 legislation on ways in which we could improve
10 attraction to the occupation and support within the
11 field.

12 I think either one house or the other has
13 passed that legislation of recent, but it's not
14 really gone into a finalization between the houses,
15 and certainly with the governor.

16 But we would love to work with you on
17 addressing that problem.

18 SENATOR MAY: Wonderful.

19 Yeah, that's my legislation, and I would very
20 much like to work with you on it, so that we --
21 I mean, both recruiting and retaining the workers is
22 so important --

23 AL CARDILLO: Yes.

24 SENATOR MAY: -- and figuring out how the
25 pandemic is going to affect that, I think.

1 AL CARDILLO: And I think relating to the
2 personal needs of individuals.

3 I mean, between lives lost, the fear of
4 working, you know, the fear of not having access,
5 all that has been so critical within COVID, but also
6 on an ongoing basis.

7 Kathy mentioned child care, transportation,
8 these are basic things that people need in order to
9 deliver services and to feel supported and to be
10 supported on the job.

11 SENATOR MAY: So let me drill down on one
12 specific thing.

13 I met with somebody who is a caregiver for a
14 family member, and let go of his other home-care job
15 so that he could just be caring for that family
16 member during the pandemic, and not, potentially, be
17 spreading virus, you know, going from house to
18 house.

19 Have you seen that very much?

20 How many home-care workers are in it partly
21 because they're caring for somebody they have a
22 personal relationship with?

23 AL CARDILLO: Well, I think there's more of
24 that experience in the consumer-directed model.
25 I mean, that's, I would say, very prevalent in that

1 model.

2 In the other models, I mean, what I would
3 certainly say is, is that the delivery of the
4 service really encourages the kind of relationship
5 and personal closeness that the caregiver has with
6 the patient, and it often very much becomes a
7 family-like, you know, feeling.

8 We have tremendous stories that we could
9 share with you about the heroic things that people
10 have done, the aides have done, for individuals that
11 are way outside the normal bounds of what anybody
12 would do in their work. But it's a reflection of
13 that devotion in the field.

14 I think it's very often felt that this is a
15 fly-by-night, and people come in and they'd leave.

16 We've had people who are home health aides
17 for 40 years. We just honored one last year.

18 And it's truly amazing their level of
19 dedication.

20 In Central New York I met somebody who had
21 been a home health aide for over 25 years, who was
22 overjoyed with the ability to do the work that she
23 did with her patients.

24 SENATOR MAY: That's great.

25 Let me just ask one additional question.

1 How many different cases is one person
2 typically taking?

3 I'm just concerned about the traveling, or
4 the, you know, communicating [sic] between --

5 AL CARDILLO: Well, you know, in home care
6 it's a varied situation, and scheduling is an
7 incredible art, and I think it's a high-level thing
8 in home care, because some individuals need several
9 hours of care; others need extensive care, 8 hours a
10 day, 16 hours a day, or even a live-in.

11 So the assignment of a person for patients
12 really is going to vary based on that patient's need
13 and the kind of people that they're supporting.

14 One thing I would say is, in this current
15 budget, one of the MRT proposals is going to a
16 task-based orientation and care.

17 So task-based is something that, while may
18 lead to certain efficiencies, breaks care into
19 certain duties and functions, and I think has the
20 prospect of really interfering with what is the
21 hands-on, compassionate aspects of what care is all
22 about.

23 SENATOR MAY: Okay. Thank you.

24 SENATOR RIVERA: Thank you, Senator.

25 Assembly.

1 ASSEMBLYMEMBER BRONSON: Yes, next we will
2 have Chair Gottfried for 5 minutes.

3 ASSEMBLYMEMBER GOTTFRIED: Yeah, thank you.

4 A couple of questions for either of you.

5 A basic question is: Has Medicaid taken any
6 action since the epidemic, anything favorable, in
7 relation to home care?

8 Any letting up on the effort to, in my view,
9 destroy the consumer-directed program?

10 Any indication of a willingness to relax or
11 postpone the new budget legislation that restricts
12 access to home care by raising the number of
13 activities of daily living you have to need
14 assistance with?

15 Or, just basically defunding of home care,
16 and regulations to make sure that, when the State
17 puts money into the supply chain of home care, it
18 ends up getting to the providers and the workers?

19 Has Medicaid done anything positive for home
20 care since early March?

21 AL CARDILLO: I think I'll let Kathy go
22 first.

23 KATHY FEBRAIO: Thanks, Al.

24 Well, as you'll see the -- in our written
25 testimony, we did provide an outline of deadlines of

1 policies that are going to be going into effect over
2 the next couple of months.

3 You know, things were distracted during the
4 peak of the pandemic. And we all repeatedly asked
5 for delays in implementation of some of these
6 massive changes to the system.

7 And, you know, initially, we weren't hearing
8 anything because we were in the midst of the
9 pandemic.

10 But in the last couple of weeks things have
11 just revived themselves.

12 I mean, as recently as two weeks ago, we
13 found out about a private-pay portal that the
14 department of health is introducing, that hadn't
15 been mentioned since the MRT brought it up months
16 ago. And now it's going to be in place by
17 November 1.

18 And agencies, literally, had about a week's
19 time to indicate their interest in this pilot.

20 So, you know, we've submitted questions, want
21 to know more information about it.

22 We've not heard anything back.

23 The CDPAP program, we have been hearing, it
24 was supposed to be announced July 1, the new
25 contracts. And week after week after week it gets

1 delayed, but only one week at a time.

2 And this is life-altering for these fiscal
3 intermediaries, along with their consumers and
4 caregivers. It's going to be a massive transition,
5 and it's going to be 75,000 people.

6 And right now, if they do it this Friday, as
7 we're now supposed to hear, you're going to be
8 having this happening at the end of September when
9 all of these other policies are changing, that are
10 going to be huge impacts on the industry as well.

11 It's -- we feel like they're creating a
12 perfect storm of their own making.

13 And it's all avoidable if we would just take
14 a step back and take a breath, and delay some of
15 these decisions, and see what effect the pandemic
16 has on the industry before we continue with massive
17 changes.

18 ASSEMBLYMEMBER GOTTFRIED: But in terms of,
19 for example, anything to recognize that your revenue
20 is down and your costs are up, anything in the
21 Medicaid program to indicate an awareness of that
22 and a response to it?

23 AL CARDILLO: I would say, Assemblymember, a
24 couple of things to that.

25 One is, is that the methodologies that the

1 department uses for either episodic rates or for
2 MLTC, because they're historically-based, they don't
3 allow for revisiting of the actual payment levels to
4 reset them to address current costs.

5 I mean, that's always been a -- that lag has
6 always been a problem. And in a pandemic, it really
7 wipes out the -- I think the ability to properly
8 respond.

9 There's been no other affirmative action,
10 like, you know, distributing financial relief or
11 funding.

12 One action that I think -- one set of actions
13 that has been helpful are things like the
14 flexibility in the regulations and procedures,
15 particularly telehealth.

16 There was an expanded set of capability for
17 home care in Medicaid telehealth that has been a
18 godsend, I think. And I hope that that's
19 permanentized.

20 But there hasn't really been an affirmative
21 addressing of the fiscal status of the industry in
22 this.

23 We projected close to \$200 million of losses
24 that we think will be attributable to COVID for home
25 care in this fiscal year -- state year, I'm sorry.

1 ASSEMBLYMEMBER GOTTFRIED: Thank you.

2 AL CARDILLO: Thank you.

3 SENATOR RIVERA: Thank you, Mr. Chairman.

4 I'll recognize myself for 5 minutes.

5 A couple of quick things.

6 First of all, Mr. Cardillo, I did cut you off
7 at the end of your presentation. I apologize for
8 that, but still got seven panels to go.

9 If you could top line.

10 And I'll -- and Ms. Febraio, I'll give you
11 the same opportunity if you'd like it.

12 -- to give me some top-line recommendations.
13 Don't go too deeply into them because there's
14 another question I want ask to both of you.

15 But, top-line recommendations of what the
16 State needs do.

17 AL CARDILLO: Absolutely. I'm happy to go
18 right through.

19 So one is the -- one is, ensuring that there
20 are state-adopts policies that give priority status,
21 or at least adequacy, for home care and hospice with
22 PPE.

23 Enforce the "essential personnel" designation
24 for home care and hospice so that we don't have to
25 fight to argue, whether it's with law enforcement or

1 anybody else, that home care and hospice workers are
2 essential in that case.

3 We really need support for workforce and
4 personnel. Again, whether it's the personal kinds
5 of needs that you've heard about in this hearing.

6 Also, the workforce shortage has really been
7 exacerbated in this.

8 And so things like support for the online
9 program that Kathy and our organization have done
10 together, that would be of tremendous [indiscernible
11 cross-talking] --

12 SENATOR RIVERA: I'm very interested -- I'm
13 very interested in that.

14 You're saying that -- by the way, just to
15 switch to Ms. Febraio for a second, you said that
16 you have not heard a response from the State for
17 months?

18 AL CARDILLO: Well, no, that was on -- that
19 was our nurse practitioner; allowing nurse
20 practitioners and PAs to order home care.

21 The federal government allowed that, like,
22 four months ago, and that's still not been
23 implemented.

24 And there are already some state laws on the
25 books, that, actually, Mr. Gottfried sponsored in

1 1991 or '2, that recognize nurse practitioners to
2 order home care if the feds ever came around.

3 So they've come around, and the State still
4 hasn't released it.

5 But the online training was something, within
6 the last two weeks, that our two organizations, and,
7 actually, Leading Age and another organization,
8 submitted together to the State.

9 SENATOR RIVERA: Got you.

10 Anything you want to add, Ms. Febraio?

11 KATHY FEBRAIO: I'd like to say thank you for
12 passing Senate Bill 8361, which would have provided
13 some additional PPE funding for home care. And hope
14 that the Assembly might be able to take that up.

15 It was going to ask for the MLTCs to help
16 support home care in supplying PPE. They are as
17 responsible for the patient as we are.

18 I agree with the other comments Al made as
19 well.

20 SENATOR RIVERA: Got you.

21 Last comment -- last question:

22 There is, as I understand it, the industry
23 requested something called "HERDS" (health emergency
24 respond data systems).

25 Can you tell me a little bit about what that

1 is, and what the response has been from the State.

2 AL CARDILLO: Thank you, Senator.

3 That was going to be one of the items
4 I covered.

5 So the HERDS system is, basically, a survey
6 system that's activated in emergencies.

7 The -- starting, I would say, late March,
8 perhaps -- or maybe early March, the health
9 department requested, every day, hospices, home
10 health agencies, licensed agencies, to submit data
11 on their PPE access, the number of COVID cases; all
12 information on all of their rosters.

13 We were also trying to jointly survey
14 agencies to figure out what their needs were. But
15 they were -- because they being surveyed every day
16 by the department and by other sources, we had to
17 pull back.

18 So we requested the results of those surveys,
19 as an association, to be able to utilize that for
20 our situation awareness and work with the providers.

21 It was never granted to us.

22 We repeatedly requested, I appealed to the
23 governor's office, I appealed to the department
24 repeatedly.

25 And I have to say, this is the first time

1 I ever remember, and I've been around these jobs for
2 many years, that never, in an emergency, was this
3 critical data not shared with the industry, because
4 that's setting up your game plan. And we were in a
5 position to try to help the department and help the
6 providers.

7 So if you asked me today, exactly how many
8 were reported on the last survey of COVID-positive
9 home-care patients? I couldn't tell you because it's
10 not shared with us.

11 And, you know, I'm animated in this because
12 I think it's a very wrong position to not share this
13 data.

14 SENATOR RIVERA: Thank you --

15 KATHY FEBRAIO: And I'd like to
16 [indiscernible cross-talking] --

17 SENATOR RIVERA: -- oh, yes.

18 Please, please, go ahead.

19 KATHY FEBRAIO: I would like to add to that,
20 the initial thought was to not have the licensed
21 LHCSAs do surveys.

22 We were able, through our connections, to be
23 able to bring a major technology firm to the table,
24 who worked pro bono, created a survey system for the
25 licensed services agencies, and allowed us to

1 participate in that data collection.

2 But, again, we did not have access to it.

3 We asked for it especially to be shared with
4 New York City, who was beginning to distribute PPE.
5 But it was not -- it was not made available to them
6 either.

7 SENATOR RIVERA: Okay. Thank you both.

8 Assembly.

9 ASSEMBLYMEMBER BRONSON: Next we'll have
10 Ranking Member Jake Ashby, 5 minutes.

11 ASSEMBLYMEMBER ASHBY: Thank you,
12 Mr. Chairman.

13 And thank you both for being here this
14 afternoon.

15 It sounds like the level of communication
16 that you've had with the State has been kind of
17 fractured, at best.

18 What would you say has been the worst impact
19 you've experienced since March because of this?

20 AL CARDILLO: Well, this is what I would
21 raise as a concern, is that, because home care, you
22 know, is impacted by regulation of different
23 bureaus -- the Medicaid bureau, the programmatic
24 bureau, the epidemiological -- many things were not
25 coordinated among those bureaus.

1 And I think that -- not only was that
2 difficult, but there was a lack of knowledge about
3 some things that are fundamental to home care and to
4 hospice.

5 So the department would put out policies, and
6 they wouldn't even address a home-care or hospice
7 issue, when it was clear that it should have been,
8 or would not have distributed to our industry.

9 Or the other thing would be, there was --
10 there were clearly -- there was a lack of
11 understanding as to how things worked.

12 So we had to go back to the department and
13 say, You just put this out. You need to work with
14 us to correct it.

15 And so, at first it would cause confusion in
16 the field, and then you'd have to claw it back to
17 correct it, and then put that out.

18 One quick example: When the department put
19 out its initial telehealth guidance for expanded
20 reimbursement, home care was not even mentioned in
21 it.

22 Home care is the first and broadest form of
23 telehealth in the entire state. It was omitted from
24 the entire document.

25 So I know Kathy can give many examples, so

1 I'll stop there.

2 ASSEMBLYMEMBER ASHBY: And was there any
3 rationale for their exclusion?

4 AL CARDILLO: I think just lack of
5 information, lack of awareness, of that, you know.

6 And we -- and then it really sort of
7 continues today.

8 We've created a statewide program to train
9 home-care and hospice clinicians to do COVID testing
10 at home. So that way, we keep people from being in
11 hospital or being dislocated to congregate sites.

12 I've been asking for several months for the
13 procedures that the agency should abide to bill our
14 claim when, you know, their doctor orders the
15 service.

16 I still can't quite get an answer to it.

17 I know they're trying, but it would be great.

18 We have over 2,000 clinicians that have
19 enrolled in this program to do this.

20 ASSEMBLYMEMBER ASHBY: Thank you.

21 KATHY FEBRAIO: And we've also -- you know,
22 certainly, hospitals were the top priority when
23 everything hit, you know, back in March and April.

24 And we had to fight to be, you know, brought
25 to their attention.

1 We were always reminding them of who we are,
2 what we do, how we help. And it just -- we just
3 weren't on the radar for a very long time.

4 And since then, you know, we've had key
5 retirements in the key positions in the department
6 of health, but no one understands long-term care,
7 and no one understands home care.

8 So now we are going to have to start over
9 with some other folks, and explain to them where we
10 are in this pandemic, where we're going, and what we
11 need.

12 ASSEMBLYMEMBER ASHBY: Thank you.

13 In terms of the nursing home transition and
14 diversion program that's been up and running, has
15 that -- have there been any changes or suggested
16 changes recently that you would see as being
17 positive towards your associations?

18 If you had to make any that would be, what
19 would they be?

20 AL CARDILLO: Well, we certainly -- we
21 certainly would echo the need for flexibility in the
22 program, and how it's able to work, you know, within
23 the pandemic.

24 You know, like I said, I think that the
25 department was pretty good with respect to finding

1 areas, and trying to be responsive to areas of flex,
2 even though some of them have not come through.

3 But I think that that would be important.

4 Also, support for training dollars, you know,
5 because I think -- right now, I think training, and
6 taking the learning that's been done, that we didn't
7 have when this started, and translating it into
8 where we are in the future I think would be good for
9 that program.

10 KATHY FEBRAIO: And as Al mentioned earlier,
11 programmatically, we report to different portions of
12 the department of health. And sometimes, you know,
13 policies would come out, but, oh, no, that doesn't
14 apply to the NHTD program and the TBI program;
15 they're different.

16 So we were all, you know, needing to connect
17 dots, and that just made everything take longer.

18 ASSEMBLYMEMBER ASHBY: So streamlining
19 [inaudible]?

20 AL CARDILLO: Those are --

21 KATHY FEBRAIO: [Indiscernible cross-talking]
22 communications, I guess, would be the --

23 ASSEMBLYMEMBER ASHBY: Okay.

24 AL CARDILLO: There's a bill, too, before the
25 legislature that would add the TBI program, I think

1 the transition program, several programs, to the
2 list of -- or, conditions to the list of more
3 flexible eligibility to receive services that were
4 constrained in the budget, where you have to have
5 more than two ADLs.

6 And so, again, one of the bills basically
7 says that -- puts -- puts if you have -- if you
8 have -- the original law says, if you have a mental
9 issue, that -- a mental-health-related need, like
10 dementia, that the threshold is only one activity of
11 daily living.

12 But this bill that the legislature has in
13 would add TBI, it would add mental-health-related
14 [indiscernible cross-talking] --

15 SENATOR RIVERA: Thank you.

16 Thank you, Mr. Cardillo.

17 Time has expired.

18 ASSEMBLYMEMBER ASHBY: Thank you, both.

19 AL CARDILLO: Of course.

20 SENATOR RIVERA: I'll recognize
21 Senator Serino for 5 minutes.

22 There you go.

23 SENATOR SERINO: Thank you very much,
24 Mr. Chairman.

25 Thank you.

1 And thank you, everybody, for being here
2 today.

3 Home care is so important. It plays such an
4 important role in allowing our seniors to age in
5 place.

6 And that's why I carried a few bills to
7 incentivize home care and addressing staffing
8 shortages, especially in a pandemic setting, as you
9 know, where we really are trying to get folks to
10 stay at home, home care is even more important.

11 And, Al, I'd also like to learn more about
12 the online training proposal you have, that you
13 could send to me afterwards, if that's okay?

14 AL CARDILLO: [Indiscernible.]

15 SENATOR SERINO: When it came to staffing
16 issues, did the State do anything during this time
17 to help you, first of all, hire or retain staff?

18 And did you have access to the volunteer
19 staffing portal that was run by the department of
20 health?

21 AL CARDILLO: Kathy, do you want to answer,
22 or would you like me to go first?

23 KATHY FEBRAIO: Well, I'll take the staffing
24 portal.

25 I would say we didn't have access to it, but

1 it really was being utilized by other entities
2 earlier, more quickly, with higher needs.

3 And what we actually found was, some of our
4 workers were moving into the assisted-living
5 facilities, or into the SNFs, and we experienced
6 that as a shortage rather than as an assist.

7 AL CARDILLO: Yeah, and I don't think that
8 there was any, that I can think of, overall action
9 to try to affirmatively support recruitment and
10 retention in all of this.

11 So the -- I mean, the online program is an
12 exact example of something that could be very, very
13 helpful.

14 But, also, you know, you can't -- if the idea
15 is to provide these important personal and
16 professional supports at a time when you're already
17 in a fiscally-precarious situation, there's new
18 budget cuts coming and you're losing funds under
19 COVID, you can't make that happen out of nothing.

20 So I think we really need some recognized
21 support in that.

22 SENATOR SERINO: Thank you [indiscernible].

23 Oh, sorry, Kathy. Go ahead.

24 KATHY FEBRAIO: One program I'd like to point
25 out, that we've been working on, we've received

1 grant funding from the Iroquois Health Care
2 Association, one of the statewide WIOs. And we
3 are putting getting a mentorship pilot program for
4 some upstate and downstate agencies where new hires
5 are being connected with a more seasoned
6 professional, to help them on board, to get them
7 comfortable, to answer questions, and to give them a
8 better connection as they're out in a home on their
9 own for the first time.

10 And we'll be doing a significant amount of
11 research on retention rates, as well as satisfaction
12 of these workers.

13 So we're hoping in the coming months to be
14 able to report back to, our findings, what we're
15 seeing, what worked, what we could improve, and what
16 the legislature might able to do to help in the
17 future, if this were to become more widespread.

18 SENATOR SERINO: Thank you.

19 That information is so critical for us.

20 And, Al, I have to tell you, I love how
21 animated you were about the HERDS survey.

22 It's just been crazy, and not being able to
23 access this survey is huge right now.

24 So it's incredibly helpful information.

25 And I would argue that everybody in this

1 hearing should make it a top priority to do what we
2 can to get that information to these organizations,
3 because when we talk about what we can do better,
4 moving forward, this could play a critical and
5 immediate role in improving response.

6 So, thank you; thank you so much.

7 Thank you.

8 I'm done, Mr. Chairman.

9 SENATOR RIVERA: Thank you so much.

10 Assembly.

11 ASSEMBLYMEMBER BRONSON: Yes, we will
12 recognize Tom Abinanti for 3 minutes.

13 ASSEMBLYMEMBER ABINANTI: [Inaudible] today.

14 I just have some general questions.

15 Has the federal government done anything to
16 be of assistance in your area, that we should be
17 aware of?

18 AL CARDILLO: Well, thus far -- I mean, thus
19 far, most of the stimulus packages have really been
20 aimed, and have assisted, I think, on the hospital
21 side.

22 Very, very little.

23 There was some initial Medicare money, but
24 that was -- the providers had to turn around so fast
25 with that, that a lot of -- again, a lot of it

1 really was never able to flow.

2 Both Kathy and I have been doing a lot of
3 work advocating right now in this final stimulus
4 package -- well, this next stimulus package, for
5 having home care recognized for essential financial
6 relief for providers and for support for workers.

7 Also, Senator Gillibrand has been working on
8 correspondence to CMS on telehealth, in support of
9 telehealth.

10 So, that's, you know, yes.

11 ASSEMBLYMEMBER ABINANTI: Okay.

12 And the other question, if I can, is: Are
13 there any numbers showing, the number of cases of
14 COVID? The number of deaths for workers, clients,
15 et cetera?

16 Is there any way of fitting you into the big
17 picture?

18 I haven't heard any discussion about that.
19 Maybe I missed it.

20 But I was wondering if there was any way of
21 fitting your industry into the big picture.

22 KATHY FEBRAIO: I think the HERDS data that
23 we've been referring to, that the department of
24 health has collected, is going to be the best
25 resource for that.

1 And, you know, Al and I gather what we know
2 about in our own associations, but that's not the
3 full complete picture.

4 So I would suggest that you request some of
5 that data, to see [indiscernible] what's happening
6 in the bigger picture.

7 ASSEMBLYMEMBER ABINANTI: But there's nothing
8 out there yet?

9 AL CARDILLO: I could tell you that, that the
10 Visiting Nurse Service of New York, for example, has
11 served nearly 3,000 COVID-related individuals.

12 And in home care, the numbers that we have,
13 that we have access to, is in the thousands.

14 You know, again, it's partial data.

15 So -- and I think if we have the information
16 from the department, it would be helpful.

17 I would make one point:

18 When you consider vulnerable population,
19 virtually, all of the home-care population are
20 high-risk for COVID morbidity and severity.

21 And that is something, so that every patient
22 in home care in COVID is a critical patient.

23 It's not just the numbers that have the
24 positive diagnosis, and that's overlooked a lot.

25 Thank you, Assemblymember.

1 ASSEMBLYMEMBER ABINANTI: Okay, lastly, the
2 question is: What happens if the changes that you
3 referred to in response to the previous questions
4 actually take place?

5 Where do people go?

6 And what's the future; what happens?

7 KATHY FEBRAIO: It's going to be a challenge
8 in the future, where people are going to be finding
9 it more and more difficult to get home-care
10 services, and they're going to have to go to other
11 institutions or other settings to get their care.

12 SENATOR RIVERA: Thank you so much,
13 Mr. Assemblymember -- Ms. Febraio and Assemblymember
14 and Mr. Cardillo.

15 Don't think that there are any other
16 questioners from the Assembly.

17 That's correct?

18 ASSEMBLYMEMBER BRONSON: That is correct.

19 SENATOR RIVERA: All righty.

20 So we will now take our second, and maybe our
21 last, break of the day.

22 We still have, I'll remind everyone, six more
23 panels to go, so let's make it a good one.

24 Go get that coffee, come back in 10 minutes,
25 let's get this done.

1 Thank you, folks.

2 [A recess commenced.]

3 [The hearing resumed.]

4 SENATOR RIVERA: All right.

5 Welcome back, everyone.

6 We're going right on to Panel 6, where we
7 will be joined by:

8 Sorrelle Leslie Braugh, spokesperson for
9 Teresian House Family Council. I hope I pronounced
10 that correctly;

11 Also, by Lynn Goliber, member of
12 Teresian House Family Council;

13 Bonny Webster, a resident of Caledonia,
14 New York;

15 And, Donna Morgans, Family Council Chair for
16 the Van Duyn Center for Rehabilitation and Nursing.

17 ASSEMBLYMEMBER GOTTFRIED: And do each of the
18 four of you swear or affirm that the testimony you
19 are about to give is true?

20 LYNN GOLIBER: Yes.

21 SORRELLE LESLIE BRAUGH: I do.

22 DONNA MORGANS: Yes.

23 BONNIE WEBSTER: Yes.

24 SENATOR RIVERA: Alrighty, how about
25 Sorrelle Leslie Braugh.

1 I hope I pronounced your name correctly.

2 SORRELLE LESLIE BRAUGH: You did perfectly.

3 And I think I want to start out and just
4 thank all of you in the Assembly and Senate today
5 for this wonderful hearing, and an opportunity, and
6 I consider it an honor, to be able to speak in front
7 of you today.

8 It gives me much hope and faith.

9 And I thank you for all your time and work
10 and advocacy in doing this.

11 I live in Albany, New York, and have lived in
12 our Capital District for the past 50 years.

13 Professionally, I've retired recently from,
14 what I always felt grateful for, a long and
15 challenging, rewarding career in New York State
16 government, primarily in the State's public service
17 department, and the New York State Division of the
18 Budget.

19 Today, though, I'm hoping to do my best as
20 family council spokesperson to help represent the
21 families and their loved ones at Teresian House
22 Center for the Elderly, a 300-bed nursing home
23 located in Albany, as well as personally for my own
24 parents, who also live there, Donald and
25 Beatrice Cohen, who, incredibly, are 94 and 95 years

1 young, they would say, but can no longer advocate
2 for themselves.

3 The decision to place my parents in a nursing
4 home last year, even after multiple hospitalizations
5 and a definitive medical evaluation by their
6 primary-care physician, was still not an easy one to
7 make.

8 After all, there are probably few seniors
9 who, when faced with the decision to move to a
10 full-time skilled-care facility, jump up and down
11 for joy and exclaim, Yes, a nursing home, that's
12 exactly where I want to live.

13 Well, my parents were no different.

14 And when I shared that Teresian House would
15 be their new home, I can firmly report to all of you
16 that I never heard dad and mom exclaim, Yes,
17 Sorrelle, we totally agree, and can't wait to live
18 out our remaining years on Washington Avenue
19 Extension.

20 While no one could have predicted the
21 cataclysmic events that would befall our state, and
22 the deadly impacts of coronavirus this past spring,
23 it is of little surprise that nursing homes would
24 not be able to be successfully handle, certainly in
25 the first instance, the exacting and myriad

1 precautions and consequences of COVID.

2 If hospitals did not have sufficient nursing
3 staff, personal protective equipment, or testing,
4 certainly nursing homes were grossly ill-equipped to
5 be able to both safeguard and comprehensively care
6 for its residents and staff.

7 Worse, it became clear to all of the
8 residents' families that chronic problems for years
9 before of insufficient staffing at nursing homes
10 throughout New York State, although perhaps
11 seemingly sufficient to meet what appears to be
12 department of health standard, that COVID presented
13 an unsurmountable crisis this past spring.

14 Since March of this year, Teresian House
15 sadly saw the passing of 17 of its residents, and at
16 the peak, 60 of its staff.

17 But I haven't done my job here today if you
18 and I are only going to address the need to
19 investigate and evaluate what would be better
20 responses for this state's nursing home, going
21 forward, and for the future, because there is
22 something that absolutely needs to be addressed
23 immediately, and that is the need for family members
24 to be able to visit with their loved ones.

25 We all recognized and supported that family

1 members were prohibited from visiting loved ones in
2 nursing homes at the start of the pandemic, and we
3 supported it.

4 But there have been some dire consequences
5 these five months, and it can no longer go
6 unaddressed.

7 The one constant concern and anguish that
8 I hear over and over again from families is that
9 their loved one's dementia has progressed
10 exponentially during these past five months.

11 Worse, the overwhelming depression and
12 isolation of not being able to see one's family, and
13 for the most part, not understanding why we are not
14 coming to visit them as we had before, usually on a
15 daily, if not weekly basis, has caused a pervasive
16 hopelessness and despair not previously experienced.

17 I also want to raise, if I could, that there
18 are a multitude of family members who come to visit
19 their loved ones at Teresian House and nursing homes
20 across the state every single day.

21 And besides bringing happiness to their
22 confined loved ones, these family members reflect a
23 dedicated and volunteer workforce of staff at every
24 single nursing home in New York State.

25 Family members fundamentally support nursing

1 home care.

2 We often come at meal times to help --

3 SENATOR RIVERA: Ma'am, if could you
4 actually -- wrap up, please, because your time has
5 expired.

6 So if you could wrap up.

7 SORRELLE LESLIE BRAUGH: Yes, I will.

8 SENATOR RIVERA: Thank you.

9 SORRELLE LESLIE BRAUGH: We provide those
10 essential daily services, like, food cutting,
11 feeding our parents, toileting, dressing them,
12 helping to organize their rooms, and most of all
13 important, is that we are sometimes their best eyes
14 and ears to look after them, and to notice changes
15 in sores, in perhaps bruising, that we can quickly
16 call attention to it.

17 SENATOR RIVERA: Thank you, ma'am.

18 SORRELLE LESLIE BRAUGH: If I had all the
19 data --

20 SENATOR RIVERA: Thank you, ma'am.

21 SORRELLE LESLIE BRAUGH: Oh. Okay.

22 SENATOR RIVERA: That we go -- that we go to
23 the other folks.

24 Miss Goliber, please.

25 Is that how you pronounce your last name?

1 LYNN GOLIBER: Yes. Thank you.

2 SENATOR RIVERA: Go ahead, ma'am.

3 LYNN GOLIBER: I'm also -- my mom is 96, and
4 she also is at Teresian.

5 I loved that the last gal showed a picture.

6 So, I'll show you mom.

7 She's a little bit happy. She's doing a
8 Facetime call with my brother here.

9 The problem is, she can't hear him.

10 So, although Facetiming, with window visits,
11 are better than nothing, they absolutely don't
12 substitute for in-person.

13 I had written down testimony, but I've been
14 listening since 10:00 this morning, I've been
15 hanging in there with ya, and a few things have
16 crossed my mind with other thoughts.

17 I have to say I'm grateful that DOH is not on
18 the call.

19 I heard over and over and over again that you
20 really wanted to hear from real people, and, you
21 know, how this impacted boots on the ground and
22 family lives.

23 And I truly believe, if DOH was on this call,
24 it would be a finger-pointing and blaming, and all
25 of this time would have been eaten up with a lot of

1 conversation you all can have later, and I'm sure
2 you're going to have later.

3 So I appreciate that, people like
4 Vincent Pierce, the resident spokesman.

5 I'm wish there were more. I'm sure there's
6 more residents.

7 Let's not underestimate how brave he was to
8 actually testify on being living in a home.

9 Teresian has 300-plus beds, 350-plus workers.

10 I know at one point we had 55 staff positive.
11 We had 17 deaths.

12 I don't believe anyone was transferred from a
13 hospital that didn't live there previously, and we
14 had 20 residents positive, or more.

15 In hindsight, I wonder, and during this time,
16 I wondered, it's been five months.

17 So Teresian actually did set aside a COVID
18 unit, an entire floor.

19 It was never used.

20 Teresian has all private rooms.

21 So all the residents who became positive
22 stayed in their own room on their own floor.

23 And, staff, whether it was CNA, LPNs,
24 cleaning, meal -- people who work with the meals,
25 all provided services to those residents who were

1 both positive and negative.

2 I wonder, if all of the positive residents
3 were designated to the COVID unit and we had
4 designated staff to attend to them, if our outcomes
5 would have been different.

6 I won't dwell on the staff shortages. You're
7 fully aware of that.

8 But I wonder if DOH audited payroll records
9 to determine if staffing was, in fact, adequate.

10 I don't find adequate staffing, nurses or
11 LPNs, who are -- or CNAs, doing double shifts,
12 and one shift on one floor and another shift on
13 another floor.

14 And, again, positive and negative residents
15 are being attended to by the same staff.

16 I also made a call to DOH on my own to
17 this -- the call center, because we heard that a
18 staff member was told to come to work. We know
19 you're positive, but you're asymptomatic and you can
20 come to work.

21 Couldn't believe it.

22 I called. The call center person told me the
23 exact same thing: Nursing home staff, as long as
24 they're asymptomatic, can go to work. They just
25 need to isolate at home.

1 I immediately called the governor's office.

2 I didn't get a call back, but I got a call
3 back within the hour from someone in DOH, who
4 apologized. Said that their call centers were
5 corrected with information. That all their
6 epidemiologists were in the field. That they had
7 untrained people on the phones.

8 But I wonder how much damage that may have
9 caused with giving out that type of incorrect
10 information.

11 Next steps:

12 I can't advocate enough for in-person visits.
13 Outside visits, we are running out of good
14 weather.

15 Consider this:

16 Staff are allowed to go to graduation
17 parties, staff can go to restaurants, staff can sit
18 at a bar; yet families are not allowed to be with
19 their loved ones.

20 That is illogical, and that is cruel.

21 There has to be a way to get people outside,
22 and, eventually, we need to be inside.

23 Thank you.

24 SENATOR RIVERA: Thank you, ma'am.

25 Next we'll hear from Bonny Webster, resident

1 of Caledonia, New York.

2 BONNIE WEBSTER: Hi. Thanks for having me.

3 I'm the daughter of a COVID-19 victim.

4 My mother, June Brown, passed on May 6th from
5 the effects of COVID at the Hurlbut Nursing Home in
6 Avon, New York.

7 I was first notified by the nursing home on
8 March 24th that the facility had a positive patient.

9 That was the last communication I was able to
10 obtain.

11 That was the one and only COVID communication
12 I would receive.

13 They would kindly give me updates on my mom's
14 health.

15 I still, to this day, do not know how COVID
16 got into that facility.

17 It was a 40-bed facility, and when my mom
18 passed away, they had 19 positive cases.

19 I had tried calling her room many times,
20 without any answer, or it just rang busy, for days.

21 My mother was blind and unable to hang up the
22 phone.

23 We finally thought we had devised a system to
24 be able to talk to my mom.

25 We would call the nursing home, schedule a

1 time for them to go in, get dressed in PPE. We
2 would call her room, they would pick up the phone
3 and hand her the phone.

4 After the phone call, mom would just set the
5 phone down; thus, why it would ring.

6 But why it would ring for days at a time is
7 beyond me. I have no explanation for that.

8 We were able to do this for a few times, and
9 then we were kindly told that they needed to use new
10 PPE each time we wanted to talk to her, dwindling
11 the short supply.

12 I only spoke to my mother three times from
13 March 18th to April 28th.

14 I'm not sure how to explain how I felt about
15 being told that.

16 We tried several times to visit her window.
17 Her curtains were always closed during many
18 different times of the day that we would try to go
19 visit.

20 We were able to visit twice and be able to
21 see her.

22 While a staff member stood there in fresh
23 PPE, they would open her window, and we could watch
24 her sleep for a few minutes, and then [inaudible]
25 were closed again.

1 We could just see her drifting away.

2 April 18th we were told that she tested
3 positive.

4 She died May 6th.

5 We were given daily updates on her fever and
6 overall condition.

7 I last spoke to her on April 28th.

8 She went non-verbal on May 1st. Struggled to
9 eat. Stopped eating May 2nd. And due to increased
10 pain and discomfort, they started the all-popular
11 morphine drip.

12 I sat next to her window for 7 hours as she
13 drifted away and left this world on May 6th.

14 On June 5th, my 87-year-old father, a retired
15 state trooper, removed me from his will and deeded
16 the house to my brothers because he was holding me
17 responsible for putting her in the nursing home and
18 contracting COVID.

19 On June 13th, my father committed suicide
20 from the devastation of her loss and his own mental
21 destruction from not seeing her.

22 My father gave up his will to live.

23 His depression skyrocketed, and mental
24 problems just exploded upon lockdown and not being
25 able to see her.

1 They died 68 days apart.

2 I'm not sure why I couldn't think about a
3 two-way baby monitor to communicate with mom without
4 interfering with the nurses, but that's a little too
5 late now.

6 Not sure why the curtains had to be closed
7 all the time.

8 Not sure why there wasn't enough PPE.

9 Not sure why the nursing home wouldn't
10 answer, or couldn't answer, any of my questions
11 about residents testing positive.

12 Our nurses and staff didn't have the tools or
13 the staff to properly attend to our family members.

14 It's just horrific what has taken place.

15 Unfortunately, our family has been dealt a
16 huge blow from this pandemic.

17 Thank you.

18 SENATOR RIVERA: Thank you so much,
19 Mrs. Webster.

20 Next, we will hear from Donna Morgans, family
21 council chair for the Van Duyn Center for
22 Rehabilitation and Nursing.

23 DONNA MORGANS: Good afternoon.

24 My name is Donna Morgans, and I am here as
25 the chairperson of the family council at Van Duyn

1 Center for Rehabilitation and Nursing in Syracuse.

2 Van Duyn is a 513-bed facility located in
3 Onondaga County.

4 Our loved ones are parents and grandparents,
5 sisters and brothers, aunts and uncles, and
6 children.

7 At the start of the shutdown, there was
8 significant confusion.

9 Directives were coming from federal, state,
10 and county officials. They were changing daily, and
11 sometimes multiple times a day.

12 Residents and families were concerned
13 confused, and afraid.

14 Residents were abruptly moved to create a
15 COVID wing, and then a COVID floor. Our loved ones
16 were restricted to their rooms with the doors
17 closed.

18 This created significant concern for
19 families.

20 Resident falls and the possibility of injury
21 would go unnoticed.

22 Meals were delivered to the rooms. What if a
23 loved one choked?

24 Residents lives have been turned upside down.
25 The continuity of care was disrupted. Many

1 residents are now being cared for people they do
2 not -- cared for by people they don't know.

3 The negative mental, emotional, physical, and
4 social impact this has created continues.

5 We're all experiencing fear, anxiety,
6 depression, discouragement, disappointment, and
7 loneliness.

8 We're living with daily uncertainty.

9 The physical deterioration of our loved ones
10 is inevitable.

11 They have no opportunity to move around.

12 The doors to resident rooms were opened on
13 June 20th, yet they're still in their rooms.

14 The recreation department is doing their best
15 to supply residents with things to keep them
16 entertained, as well as visit with them.

17 Residents are able to consistently
18 communicate with families via telephone or a variety
19 of online platforms, once a week, and sometimes
20 more, but that is not enough.

21 We must be allowed to physically interact
22 with our loved ones, and, to advocate for them.

23 It wasn't until May 10th that twice-a-week
24 testing was required for staff.

25 At Van Duyn, there have been no new resident

1 cases since the reporting for the week ending
2 May 24th. And prior to that, tragically, there were
3 20th deaths.

4 While the staff, and we don't even know if
5 they're direct-care staff or ancillary staff, are
6 continuing to test positive.

7 Van Duyn staff, under the leadership of
8 Administrator Amy Mahoney, has done an exceptional
9 job in keeping so many of our loved ones
10 COVID-19-negative.

11 But while our loved ones remain isolated in
12 their rooms, the employees are free to do as they
13 wish when they're not working.

14 The claim that this isolation is to protect
15 our vulnerable needs to be looked at.

16 The conditions which we and our loved ones
17 are currently experiencing feels more like
18 punishment than protection.

19 Is there anything more precious than spending
20 time in the presence of a loved one?

21 Who, more than family members, would take
22 every precaution possible to see our loved ones
23 safely?

24 This pandemic has put a spotlight on nursing
25 home care.

1 The time for surveys, studies, hearings, and
2 investigations needs to be set aside for action that
3 will ensure better care for our loved ones.

4 Ombudsmen are allowed to enter the
5 facilities; however, because of the lengthy wait
6 times for test results, they have not been able to
7 meet the 7-day requirement.

8 There are several things that we need to
9 happen at both the federal and state levels to help
10 repair this crisis.

11 Nursing home employees are essential workers,
12 they need to be treated as such: provide PPE,
13 testing for staff and residents with faster results,
14 paid sick leave, overtime pay, and hero pay.

15 Improve staffing: staff training and
16 education, infection control, and resident care.

17 Ensure transparency and consistent
18 communication between government officials,
19 facilities, residents, and family members in regard
20 to all policies relating to care, restrictions,
21 visitation, testing, and end-of-life procedures.

22 Pursue all possible solutions to minimize the
23 social isolation of our loved ones, including taking
24 a closer look at the extreme criteria in the phases
25 to open nursing homes to family visits.

1 And I can't stress enough, we need to get in
2 there. The isolation of our loved ones needs to
3 end.

4 Thank you.

5 SENATOR RIVERA: Thank you, ma'am.

6 This round will be led off by the Assembly.
7 Assemblymember Bronson?

8 ASSEMBLYMEMBER BRONSON: Okay.

9 Yes.

10 Unfortunately, my computer is telling me that
11 my Internet connection is unstable, so if I'm not
12 coming through, I apologize.

13 That being said, first of all, I want to
14 thank all of you for sharing your family stories.

15 But we will recognize Assemblymember Ron Kim
16 for 3 minutes.

17 SENATOR RIVERA: Assemblymember Kim?

18 Going twice, Assemblymember Kim?

19 I have a senator on deck.

20 We'll go to the Senate --

21 ASSEMBLYMEMBER BRONSON: [Indiscernible] --

22 SENATOR RIVERA: -- yep, we'll go to the
23 Senate first.

24 Recognize Senator Rachel May for 5 minutes.

25 SENATOR MAY: Thank you.

1 I was trying to not be the first one to lead
2 off, but, I guess no luck.

3 Anyway, thank you so much for your testimony,
4 and especially to Bonnie for opening that
5 heart-breaking story to all of us, to share that
6 with -- I mean, the courage it took to step forward
7 is incredible.

8 So I -- hats off to you.

9 I just wanted to ask a couple of questions
10 about the family councils.

11 We've been hearing all day about issues with
12 communication, and the stress that it's put on
13 family members and on staff, that communication just
14 keeps breaking down at nursing facilities.

15 And I just would like to hear from you about
16 the role of the family councils between the
17 administration and the ombudsman program.

18 Where do you see your role, and where do you
19 see the potential for better communication to
20 happen?

21 SORRELLE LESLIE BRAUGH: I thank you for the
22 question, if I could.

23 One of the things early on that we asked of
24 the CEO and the executive management team of the
25 nursing home was to provide us with daily updates on

1 COVID-positive -- COVID-positive patients,
2 COVID-positive staff, as well as which residents
3 were transferred to hospitals with COVID, and,
4 looking, quite honestly, at the data.

5 And we wanted it daily, similar to what the
6 governor was receiving and reporting out to the
7 citizens of this state.

8 I'm fortunate to report, that after a lot of
9 give-and-take and back-and-forth, we actually do
10 have it, and they continue to report out daily to
11 us, except not on weekends.

12 In addition, we asked for weekly
13 conference-calls meeting with the CEO and the
14 executive team, to provide a give-and-take on
15 real-time questions about our loved ones since we
16 weren't able to see them.

17 For the most part, this has gone off fairly
18 well; however, it's not necessarily continuing, and
19 it's at the behest, obviously, of the management.

20 And this is some of the frustration.

21 SENATOR MAY: And do you have the capability
22 to communicate with everybody, with all of the
23 residents and family members in the nursing home, or
24 do they have to somehow come to you?

25 SORRELLE LESLIE BRAUGH: They have to somehow

1 come to us.

2 And we have requested of the -- it's a really
3 good question.

4 We have requested of the administration,
5 because we now see that they are taking in new
6 residents, to please provide that information to the
7 family council so that we could reach out for
8 support.

9 This past Sunday we did a socially-distanced
10 outside meeting, interestingly, right at the
11 Teresian House, and underneath the windows of our
12 beloved parents, to provide support to one another.

13 It's that dire of an issue, it's that
14 anguished.

15 I too was going to share a picture of my
16 parents, but this is the picture. My parents are in
17 the third window down from the top. You can see
18 them as clearly as I can.

19 That's how difficult it is.

20 SENATOR MAY: Yeah.

21 And the ombudsman program, what -- tell me
22 what your relationship is to that, because I'm
23 finding it a little hard to figure out, what are the
24 [indiscernible cross-talking] --

25 [Indiscernible cross-talking by everyone.]

1 LYNN GOLIBER: I think early on we didn't
2 have a representative.

3 We struggled to get callbacks or get
4 information.

5 And then, from my recollection, the person
6 had already resigned or stepped down. There wasn't
7 a replacement.

8 And we were under the impression that they
9 weren't allowed in anyway. So...

10 DONNA MORGANS: And at Van Duyn, we -- the
11 ombudsman, I'm holding family council meetings twice
12 a month on Zoom. And so members, twice a month, we
13 meet, and the questions we have go directly to the
14 administration.

15 And the ombudsmen have been participating in
16 our family council meetings.

17 So, unfortunately, the director in our area
18 tried to go in, and he got tested, and couldn't meet
19 the 7-day requirement to actually go in.

20 So that was in the paper last week.

21 So I don't know that he's been able to get in
22 because he'd have to be retested.

23 SENATOR MAY: Okay.

24 Thank you so much.

25 And once again, thank you for your courage to

1 step forward and talk to us.

2 SENATOR RIVERA: Thank you, Senator.
3 Assembly.

4 We've got Ron on deck?

5 ASSEMBLYMEMBER BRONSON: Assemblymember
6 Ron Kim for 3 minutes.

7 SENATOR RIVERA: There he is.

8 ASSEMBLYMEMBER KIM: Thank you.
9 Thank you, Chairman.

10 And thank you everyone for testifying today.

11 Just a show of hands, how many people are
12 familiar on this panel, the nursing home bill of
13 rights for residents?

14 Everyone's familiar.

15 And are you all familiar that we passed a law
16 in 1986 at the federal level, that was strengthened
17 at the New York State level, that have, in my
18 opinion, one of the strongest protections for
19 nursing home residents in the country?

20 So this was --

21 SORRELLE LESLIE BRAUGH: No, but I'm so glad
22 you're saying all this, because I do think that
23 their civil rights have been trampled.

24 I do.

25 They just can't advocate for themselves.

1 ASSEMBLYMEMBER KIM: Right, so that was --
2 that was the reason why we created these bill of
3 rights in the first place -- right? -- because these
4 are members who can't fight for themselves; they're
5 vulnerable, they don't have a voice in the political
6 process.

7 So when we send off our loved ones, at least
8 we knew, when we signed all these documents, that
9 we're sending them to a place where their -- they
10 have rights, and their level of care was at a -- was
11 a higher standard than sending them off to a
12 hospital, even.

13 I mean, that's -- so during this pandemic,
14 I just don't understand how we treated nursing homes
15 like hospitals, when we clearly had a different
16 standard of care that we instituted into law at the
17 state level for these residents.

18 Do you -- I mean, these rights, you know,
19 these bill of rights, clearly says that they have a
20 right to communication, they have a right to be
21 taken care for.

22 It's very crystal-clear, you know, what their
23 rights are on this list.

24 Do you think -- the visitation, I mean, do
25 you think, based on those bill of rights, are we

1 violating those bill -- those fundamental rights of
2 residents by denying them, denying the daily
3 essential caregivers that we know that these family
4 members are, by denying them the right to visit and
5 communicating properly with [indiscernible]?

6 LYNN GOLIBER: So I think that, considering
7 we had a pandemic, it's unprecedented.

8 You know, we're balancing protection, and
9 you're -- you could be looking at semantics.

10 Are they visiting? Yes.

11 Do we have Facetime? Yes.

12 Is it the same? Absolutely not.

13 When we also send them off, I prefer to think
14 that I had to have my mother cared for in a way that
15 I couldn't meet her medical needs or her health
16 needs at home.

17 There may be people who say you have a
18 choice. Maybe this is not the place for you.

19 I don't have a choice.

20 ASSEMBLYMEMBER KIM: Ma'am, I have 10 seconds
21 left.

22 I mean, it's my understanding, about
23 10 percent of the people who are visiting are
24 considered daily essential caregivers.

25 Do you think, at the least, those people

1 should be allowed in and given exception to

2 [indiscernible cross-talking] --

3 SORRELLE LESLIE BRAUGH: Yes.

4 LYNN GOLIBER: Yes.

5 SORRELLE LESLIE BRAUGH: And I would say
6 further, Assemblymember Kim, is that if we have now
7 figured out an opportunity and ways to do safe
8 visits for our state's correctional facilities, for
9 rehabilitation programs, for group homes, certainly
10 we are all smart enough and humane enough to figure
11 out visitation for our vulnerable senior citizens.

12 SENATOR RIVERA: Thank you so much.

13 Thank you so much.

14 I now recognize Senator Serino for 5 minutes.

15 SENATOR SERINO: Thank you very much,
16 Mr. Chairman.

17 And I just want to say thank you to all of
18 you. I commend you, all of you, for telling your
19 stories. And we should all be so fortunate to have
20 such fierce advocates as all of you.

21 Thank you.

22 I know how painful, I'm sorry, what you had
23 to go through, but I appreciate you being here and
24 telling your story.

25 I wanted to know if you guys, if any of you,

1 found it easy to get through to the homes to get
2 updates on your loved ones?

3 I know some of the folks have said that they
4 are getting daily updates on statistics.

5 But if you called the home for specific
6 information on your parent, were you able to get it?

7 LYNN GOLIBER: I have been fortunate enough
8 to get a callback.

9 But we know that we get lots of calls and
10 e-mails from other family members who say they don't
11 get a callback, and the phone rings and rings and
12 rings.

13 And we also know that the staffing can be
14 horrific, and you are always trying to balance, do
15 I really need to make that phone call, or do I allow
16 the staff to attend to my parent?

17 Because I imagine, without this visitation,
18 that phone is ringing off the hook.

19 SENATOR SERINO: [Indiscernible
20 cross-talking] --

21 DONNA MORGANS: And at Van Duyn --

22 SENATOR SERINO: -- I'm sorry. Go ahead,
23 Donna. I'm sorry.

24 DONNA MORGANS: -- they have done a nice job.
25 And I actually, as part of the family

1 council, we requested updated phone lists, so if we
2 couldn't get them to answer at the floor, who can we
3 call next?

4 And they did provide, literally, overnight,
5 we got updated lists, because, in my personal case,
6 my aunt got moved to a different floor. So I had no
7 idea who to contact. And the facility was so big
8 that, she didn't know who her care providers were.
9 And, you know, she was on the floor that they
10 created a COVID wing.

11 So, in an effort to make sure she was being
12 cared for properly, brought it to the family
13 council, and we all did the same thing.

14 And they have been responsive.

15 SENATOR SERINO: That's good.

16 Anybody else?

17 SORRELLE LESLIE BRAUGH: I think the biggest
18 issue is that most of us were there just about every
19 day in the facility, and we had a firsthand
20 knowledge of what was going on and what wasn't.

21 So, at times, calls are easy to get through.

22 Oftentimes, though, just like the pandemic
23 created havoc with staffing for resident care, they
24 weren't prepared to be able to handle all of the
25 phone calls coming in.

1 And, oftentimes, phones weren't answered,
2 and, just, staff was just way too overworked to be
3 able to handle this.

4 And I think we're all empathetic to staff
5 because we know many, many of them are dedicated and
6 went above and beyond.

7 But everyone would say that communication can
8 be better. Everyone would say that.

9 LYNN GOLIBER: And let's also remember,
10 because of staff shortages, even when you did get
11 through, you're talking to somebody who doesn't know
12 your parent.

13 So to say, "oh, she's fine," when the reality
14 is, she's having an incredibly difficult day, that
15 person may think that's her baseline.

16 So it's not necessarily effective
17 communication anyway.

18 SENATOR SERINO: And, Bonnie [indiscernible
19 cross-talking] --

20 BONNIE WEBSTER: I was able to get regular
21 daily updates.

22 Three of the nurses that worked at the
23 nursing home are nurses because of my mother.

24 My mother was a head nurse at a nursing home
25 for 35 years.

1 SENATOR SERINO: Wow.

2 BONNIE WEBSTER: And the head nurse there
3 worked under my mom years and years ago.

4 So they were very good about keeping me
5 updated on her, you know, fever/no fever, what she's
6 eating, what she's not.

7 As far as that goes, it was good.

8 It was more the trying to communicate with my
9 mom and not having the staff.

10 And, of course, we didn't want to jeopardize
11 the health of another patient so that we could talk
12 to mom.

13 But it would have been nice.

14 I only talked to her three times before she
15 died.

16 I mean, it's just... (shrugs shoulders).

17 SENATOR SERINO: Yep.

18 BONNIE WEBSTER: [Inaudible.]

19 SENATOR SERINO: I am so, so sorry.

20 You know, I have a proposal for grants that
21 would actually be for hiring staff just specifically
22 to answer those calls, so we weren't taking away
23 from the staff that are caring for your loved ones,
24 because we've heard this time and time again, that
25 we could have just a dedicated person to answer your

1 phone calls.

2 So, thank you once again for all of your
3 testimony today.

4 I'm so sorry.

5 Thank you.

6 Thank you, Chairman.

7 SENATOR RIVERA: Thank you for that,
8 Senator Serino.

9 Assembly.

10 ASSEMBLYMEMBER BRONSON: We will now
11 recognize Assemblymember Tom Abinanti for 3 minutes.

12 ASSEMBLYMEMBER ABINANTI: Video?

13 There we go.

14 To all of you, I want to say thank you for
15 coming forward.

16 Just because there's not a lot of questions
17 doesn't mean we're not paying attention, we don't
18 hear you.

19 I understand how difficult it is to have gone
20 through what you went through, and how even more
21 difficult it is for you to come forward and tell us,
22 and relive, what you've gone through.

23 So thank you very much for coming forward.

24 And what you're doing today is really, really
25 very important; it is so important that the real

1 impacts of these unconscionable and misguided
2 policies that have come from the health department.

3 And it's most important that the health
4 department hear from real people what they've
5 refused to hear all along: That their policies in
6 the guise of trying to make things better are really
7 making things worse.

8 They just don't seem to get it.

9 They're worried about numbers.

10 They're worried about image.

11 They don't want to be accused of doing
12 something wrong.

13 Well, they're hurting people.

14 They're really hurting people.

15 So I very much appreciate your coming
16 forward.

17 I'm not going to ask you any questions.

18 I just want to thank you over and over again.

19 I have a child with a disability who is
20 living with me. But I've spoken to so many other
21 parents who are going through exactly the same thing
22 that you're going through.

23 The kids are away at schools, the kids are at
24 group homes, and they haven't seen them in months,
25 because these vulnerable people are locked down just

1 like your relatives have been.

2 And this is a terrible policy, and you're
3 part of the solution.

4 So thank you for speaking out, and keep doing
5 it: keep speaking out.

6 Let's get the public to understand the hurt
7 from these misguided policies.

8 Thank you very much.

9 SENATOR RIVERA: Thank you, Assemblymember.

10 There are currently no Senate members asking
11 questions.

12 Back to the Assembly.

13 ASSEMBLYMEMBER BRONSON: Thank you, Senator.

14 We have one more assemblymember to ask
15 questions, and I will recognize for 3 minutes,
16 Assemblymember Marjorie Byrnes.

17 ASSEMBLYMEMBER BYRNES: Thank you.

18 I appreciate your courtesy, to the Chair.

19 And, again, the testimony that's been
20 provided in this panel, as well as the other panels
21 all day today, has been exceedingly powerful; very
22 emotional, frightening, what you've been through.

23 And, hopefully, we, as an entire state, will
24 grow tremendously from it.

25 Bonnie, you are my constituent, and you

1 actually stopped me along the road, and -- one day
2 when I was walking my dog, to ask me what you needed
3 to do to be able to tell what happened.

4 I just have a couple of questions for you.

5 Your mom was at a for-profit nursing home.

6 How much, if you know, did your family pay
7 per month to be at this care facility?

8 BONNIE WEBSTER: 13,575 a month.

9 I wrote the checks out each month.

10 ASSEMBLYMEMBER BYRNES: Okay.

11 And, again, I know that you felt you were
12 treated well by the staff, but, ultimately, even
13 with that type of serious expense, they couldn't
14 keep her safe, or, for whatever reason, didn't.

15 Dr. Zucker had testified a week ago for a
16 couple of hours, and then left before all the
17 questions that were going to be posed to him were
18 answered.

19 And nobody was here today from the department
20 of health.

21 What would you like to say, if you had the
22 chance, to Dr. Zucker, or to the owner of the
23 facility that your mom was at?

24 BONNIE WEBSTER: I don't think I can say that
25 here.

1 I'm very displeased with how that mandate
2 from March 25th went down.

3 My mom worked under Hurlbut when she was at
4 the Conesus Lake Nursing Home, and I know that he
5 was -- he's always been a very cheap person.

6 I'm sure that staff was very short, as it has
7 always been short.

8 They -- this pandemic just blew everybody
9 away.

10 It's the entry-level staff that they needed
11 significantly more of. We needed people to assist
12 the families and the residents, to be able to see
13 them, to be able to answer the phones.

14 My mom's phone went busy for days at a time.

15 Why was it not put up on the phone?

16 Or it would ring for days on end. Why?

17 Why is there -- I don't have those answers.

18 I don't -- I couldn't open -- I couldn't see
19 through the window.

20 I don't know if she was soiled.

21 I don't know if she was able to eat.

22 Somebody helped her eat, she was blind.

23 She needed significant help.

24 I just -- I would love to have them sit down
25 and just listen to me.

1 ASSEMBLYMEMBER BYRNES: I wish they were here
2 and did listen to you.

3 BONNIE WEBSTER: Yeah, me, too.

4 SENATOR RIVERA: Thank you, Assemblymember.

5 Again, no Senate members.

6 To the Assembly.

7 ASSEMBLYMEMBER BRONSON: [Indiscernible]

8 I had mentioned that was going to be the last
9 Assemblymember, but, Chair McDonald has now raised
10 his hand.

11 SENATOR RIVERA: You all [indiscernible], you
12 all [indiscernible] getting in the last minute, last
13 minute.

14 Go ahead, [indiscernible].

15 ASSEMBLYMEMBER MCDONALD: Last minute.

16 And to all, thank you for participating,
17 particularly our Albany crew here, Lynn and Sorrelle
18 from Teresian House.

19 I have to tell you, as much as Teresian House
20 is outside my district, my colleague Pat Fahy and
21 I worked very closely together, and I'm very
22 familiar with some of the concerns that you've
23 raised.

24 I myself had constituents in my district
25 calling to complain about some of the issues at

1 Teresian House, particularly -- which I don't know
2 if you know this or not -- but, well into a month
3 into the pandemic, they were still allowing and
4 encouraging residents to sit together and have
5 dinner in congregate dining.

6 Which I found that -- when I first heard that
7 I was surprised.

8 I contacted the health department and said,
9 we need to clarify this quickly.

10 But my question to you is this:

11 You know, today's panel, last week's panel,
12 everyone is bringing real-life experience and real
13 issues, and we appreciate the time.

14 Listening to some of your testimony, I think
15 the challenge boils down to a simple thing: it's
16 communication.

17 It's giving you the opportunity to
18 back-and-forth hear what's going on.

19 And I've heard in a couple of other panels,
20 and I've got questions about this, but I'll throw it
21 out to you guys: If the management at Teresian
22 House came to you and said, "Hey, listen, we're
23 short-staffed," as has been mentioned by many
24 people, "we need some volunteer help here," is there
25 an army there that would help them in regards to the

1 simple things, like answering the phone?

2 Trust me, we've all been through the
3 frustration our constituents dealt with with
4 unemployment. We know what it's like to be
5 frustrated by the phone now ringing or not being
6 answered.

7 Is that something an army could come together
8 and we would have a team behind us?

9 LYNN GOLIBER: There is no doubt.

10 We offered that multiple times. Probably
11 every single weekly phone call met with resistance.
12 And maybe we understand the logistics of it all.

13 But no doubt that we had offered it every
14 single time for volunteers.

15 ASSEMBLYMEMBER MCDONALD: I imagine there's a
16 concern about, you know, need to do background
17 checks, just like anything else, which you would
18 want if someone's going to be in there, in that
19 facility.

20 But I think this is something that, in a
21 preparedness effort, doing a recruitment, and doing
22 the background checks early on, God forbid,
23 something bad does happen, this is an opportunity to
24 better address the crisis, I would think.

25 LYNN GOLIBER: One suggestion that I continue

1 to make is:

2 I assume, don't know, that there are multiple
3 committees within a nursing home.

4 And I would propose and advocate for a family
5 representative on every committee as they're
6 developing policy and procedures.

7 ASSEMBLYMEMBER MCDONALD: Good point.

8 Sorrelle?

9 SORRELLE LESLIE BRAUGH: I would just say we
10 stand ready and willing to help. And there's a
11 phenomenal array of resources and professionals,
12 both in the health-care field who make up the family
13 council, as well as other professions, that might be
14 very helpful to Teresian House.

15 We want to support them. We want to do the
16 best by our loved ones.

17 And I think that, you know, we would just
18 stress to all of you, that I think we can come up in
19 New York State with a policy that provides safe
20 visitation with our loved ones.

21 There's just no reason not to have it.

22 It just, coincidentally, my father is a retired
23 professor of social work at SUNY Albany, who was,
24 ironically, an expert in his field in gerontology.

25 And he often would extol the virtues of

1 societies and cultures who took care of all of their
2 citizens, but particularly their elderly and their
3 most vulnerable.

4 And he would be testifying right here beside
5 me, saying that we're smart enough, and we're
6 sensitive and humane enough, that we can work this
7 out.

8 We have to work it out, and it cannot wait.

9 ASSEMBLYMEMBER MCDONALD: Thank you, and your
10 father should be proud.

11 Thank you, Mr. Chair.

12 SENATOR RIVERA: Thank you, sir.

13 And that brings this panel to an end.

14 Thank you so much for your participation
15 today.

16 And I know how difficult it was to share some
17 of these stories.

18 Please know that we not only recognize your
19 bravery, but we take everything that you say into
20 account as we move forward in making policy, to make
21 sure that we can avert unnecessary deaths in the
22 future.

23 So thank you so much for being part of this
24 panel.

25 LYNN GOLIBER: Thank you for having us.

1 SORRELLE LESLIE BRAUGH: Thank you.

2 BONNIE WEBSTER: Thank you.

3 DONNA MORGANS: Thank you.

4 SENATOR RIVERA: Moving on, we have -- we'll
5 be joined by:

6 David Hoffman, chief compliance officer for
7 Carthage Area Hospital;

8 Mary D'Ercole Pritchard -- I hope
9 I pronounced that correctly -- former ombudsman;

10 And Bobbie Sackman, member leader for the
11 New York Caring Majority.

12 Actually, two more people on that panel:

13 Cynthia Rudder, founder and former director
14 of LTCCC;

15 And last, but certainly not least,
16 Mary Somoza, patient advocate, Self-Direction
17 Families of New York.

18 ASSEMBLYMEMBER GOTTFRIED: Okay. And before
19 I swear everyone in, I just want to join everyone in
20 our appreciation and admiration for the family
21 members and the one resident who have testified to
22 us today and last week.

23 It's not easy; it takes a lot of courage and
24 strength. And I think it's helping to move this
25 issue forward.

1 Having said that, do each of the five of you
2 swear or affirm that the testimony you're about to
3 give is true?

4 DAVID HOFFMAN: I do.

5 BOBBIE SACKMAN: Yes.

6 CYNTHIA RUDDER: I do.

7 ASSEMBLYMEMBER GOTTFRIED: Okay, fire away.

8 SENATOR RIVERA: We'll be led off by
9 David Hoffman.

10 Go ahead, Mr. Hoffman.

11 DAVID HOFFMAN: Thank you.

12 As I appear before you today to offer my
13 personal opinions on the state of our health-care
14 delivery system, I wear many hats.

15 I am, in turn, the chief compliance officer
16 for three hospitals in the North Country and the
17 long-term-care facilities that two of them operate.

18 I'm also a health-care attorney and litigator
19 who has spent many years defending clinicians and
20 institutions in medical malpractice cases.

21 And, I'm a clinical bioethicist, practicing
22 at a variety of institutions, and teaching bioethics
23 at Columbia University and the Albert Einstein
24 College of Medicine.

25 But, I am also here as one of thousands of

1 New Yorkers who is still mourning the death of two
2 beloved victims of COVID-19; one who passed away in
3 an assisted-living facility and the other in an
4 acute-care hospital.

5 From most perspectives, what I want you to
6 understand most clearly, is that the immunity
7 granted by the Emergency or Disaster Treatment
8 Protection Act (the EDTPA) did not cause the
9 thousands of COVID deaths and other harms in
10 New York, and its recent partial repeal will not
11 prevent the same problems from occurring in the
12 future.

13 What is missing in both cases, the
14 indispensable other half of the formula, is a crisis
15 standard of care that will help clinicians
16 understand how they should act when circumstances
17 prevent them from providing all the care and respect
18 they would normally be expected to provide.

19 We are simply not permitted, legally, to
20 substitute a public-health ethic of care for the,
21 quote, normal standard of care we owe the
22 individuals.

23 Only you, the legislature, can fix that.

24 Neither the EDTPA or its partial repeal will
25 prevent the next wave of COVID deaths. Only a

1 legally enforceable crisis standard of care can.

2 Public-health ethics, as an exception to the
3 usual duty of clinicians to respect patient
4 autonomy, can only operate when that ethical
5 standard is explicitly authorized by law.

6 There are numerous examples:

7 Reporting of shootings, stabbings,
8 sexually-transmissible diseases, direct observation,
9 therapy for tuberculosis, and even the gun SAFE law
10 that you passed.

11 It is absurd that my colleagues at
12 Columbia University had to devise a means of
13 connecting two or more patients to a single
14 ventilator.

15 But rest assured, that step could not have
16 been even attempted, other than in reliance upon a
17 public-health ethic and legal immunity.

18 Likewise, it's ineffective to mandate that
19 facilities purchase a 90-day supply of PPE on the
20 open market when there is no available supply, or,
21 that we have to shut down visitation in
22 long-term-care facilities when a single resident
23 tests positive, but with no legal authority to stop
24 "outside visits" at the same institution.

25 Immunity, without an alternative standard of

1 care, is, as we have seen, a recipe for disaster.

2 There is, for example, no good reason that my
3 father-in-law was taken to a hospital for a COVID
4 test over the strenuous objection of his daughter,
5 my wife, who is his health-care agent.

6 But the facility staff simply didn't know
7 better. It was not a teachable moment.

8 Currently, and without clinically-supported
9 basis, we must send health-care providers home for
10 two weeks, even after a false-positive COVID test,
11 when replacement workers are either unavailable or
12 unaffordable.

13 Frankly, we can't even afford those tests,
14 and the results are taking far too long for them to
15 be of any value.

16 During the AIDS crisis, we settled on the
17 practice of universal precautions because then a
18 test was not available.

19 We should adopt that same approach now. That
20 would address our visitation problem.

21 Likewise, holding a long-term-care facility
22 patient in the hospital, waiting for a negative
23 COVID test result, is a violation of that resident's
24 freedom, and, at present, with no legal defense.

25 What are we to do if that patient signs out

1 against medical advice (AMA) and then returns to
2 their home, which happens to be a long-term-care
3 facility?

4 Do we lock the doors, or call the police?

5 And what if a family member refuses to wear a
6 mask when a hospice worker arrives at a patient's
7 home to provide care?

8 Who is more important: that patient, or the
9 next 100 patients, or that hospice worker
10 themselves?

11 SENATOR RIVERA: If could you finish your
12 thought, since your time has expired.

13 DAVID HOFFMAN: Yep.

14 And what is our legal obligation?

15 Blanket grants of immunity and discharge
16 planning by executive orders, these are crude tools
17 that are ill-suited to the delicate task at hand.

18 I'll save the rest of my comments if there
19 are any questions.

20 SENATOR RIVERA: Thank you, Mr. Hoffman.

21 Next, I believe that we've been joined over
22 the phone by Mary D'Ercole Pritchard.

23 Is that the correct pronunciation of your
24 name, ma'am?

25 MARY D'ERCOLE PRITCHARD: Are you talking to

1 me?

2 SENATOR RIVERA: Mary Pritchard?

3 Do we have Mary Pritchard on the phone?

4 OFF-SCREEN TECHNICIAN: One second.

5 SENATOR RIVERA: Okay.

6 If we do not...

7 Okay.

8 MARY D'ERCOLE PRITCHARD: Hello?

9 SENATOR RIVERA: Yes.

10 MARY D'ERCOLE PRITCHARD: My name is
11 Mary D'Ercole Pritchard, and I was a New York State
12 ombudsman from 2002 until 2016.

13 And, currently, I serve on the board of the
14 Statewide Senior Action Council.

15 I live in Schenectady County in the city of
16 Schenectady.

17 Thank you for the opportunity to testify
18 today.

19 I am here because the crisis in long-term
20 care that has been exacerbated by the
21 [indiscernible] -- the pandemic has impacted my
22 friend.

23 There has been a growing crisis in the
24 quality of care and the oversight by the State in
25 residential long-term care.

1 This includes inadequate staff-to-resident
2 ratios, and less than optimal visitation facility by
3 the long-term-care ombudsman program.

4 My friend has a 95-year-old mother whom she
5 used to visit twice a day to feed lunch and dinner.

6 She was unable to do such since the pandemic
7 began.

8 Her mother then fell out of her wheelchair,
9 and was found later on the floor by a therapist who
10 was walking by her room.

11 She broke her nose, and she was taken to the
12 hospital.

13 When she was released, the family hired a
14 private aide to come to the nursing home twice a day
15 to feed her.

16 My friend found out that her mother had
17 developed a bed sore because she had been left in
18 her bed from dinner until lunch the next day.

19 That bed sore has since turned into a wound,
20 and she is now receiving wound-care treatment.

21 She has declined so much, that the nursing
22 home suggested that she be put on comfort care.

23 The family agreed to this, but asked that
24 morphine only be given after they were notified.

25 But this request was disregarded, and she

1 received morphine without consent or knowledge of
2 her family.

3 An update to some of this, because this is
4 some information that I just received from her, you
5 need to know that, before the epidemic started, my
6 friend had a camera in the room. And she was told
7 that she needed to remove that camera because it
8 broke HIPPA regulations.

9 She suggested that anybody who came in, that
10 didn't want her to see what was going in, take a
11 washcloth and put it over the camera so she could
12 have the comfort, after they left and they took the
13 washcloth off, to see her mother in bed sleeping.

14 It didn't happen.

15 They made her take the camera out.

16 Now, that she has had this issue with the
17 administration of the drug. They have -- I'm glad
18 to say, decided to take all their information to the
19 department of health.

20 She talked with her sister in Rochester and
21 her brother in Connecticut, and they decided they
22 needed to report the details to department of
23 health.

24 They were assigned a case number, and they're
25 awaiting action.

1 They are now allowed to go into the nursing
2 home only because her mother is currently placed on
3 hospice, and it is end of death.

4 That's why they are going into the nursing
5 home.

6 Safe staffing, or an ombudsman like myself,
7 could have helped in a situation like this one.

8 The ombudsman program needs to be a separate
9 entity in a place to help the residents of the
10 nursing homes.

11 An example that I can provide was when
12 I was an ombudsman under the umbrella of the
13 Capital District Red Cross.

14 It took me three years, and various nursing
15 home directors, to finally convince the nursing home
16 to have a family council, with monthly meetings.

17 We brought in speakers to address the needs
18 and concerns of the family.

19 It is the responsibility of the State to
20 ensure that there is quality care accessible to
21 those who need it, and that those receiving care are
22 able to age with dignity.

23 SENATOR RIVERA: Ms. Pritchard?

24 MARY D'ERCOLE PRITCHARD: I urge you to
25 include solutions to the long-term-care crisis in

1 your budget negotiations through the legislative
2 session.

3 SENATOR RIVERA: Ms. Pritchard?

4 MARY D'ERCOLE PRITCHARD: Thank you for the
5 opportunity to speak, and I'd be pleased to answer
6 any questions you have.

7 SENATOR RIVERA: Thank you, Ms. Pritchard.

8 Following up, we'll hear next from
9 Bobbie Sackman, member leader for New York Caring
10 Majority.

11 BOBBIE SACKMAN: Thank you.

12 My name is Bobbie Sackman. I'm a member
13 leader with the New York Caring Majority.

14 The New York Caring Majority is comprised of
15 older adults, people with disabilities, home-care
16 workers, and family caregivers.

17 And I just want to say, I've been sitting
18 here also since 10:00 or 10:30 this morning,
19 listening. And I'm angry, and I'm going to cry, I'm
20 just heartbroken.

21 The first two speakers, the industry
22 associations, sounded like la-la land to me once the
23 families came on. And I know we're all getting that
24 message.

25 So what do we do about it?

1 I think there's a myth out there -- this is
2 not in my testimony.

3 I think there's a myth out there that,
4 somehow, people in nursing homes don't have
5 families, that nobody cares about them, that they've
6 been abandoned.

7 Well, obviously, that couldn't be further
8 from the truth.

9 And in our state -- and every time we say
10 "department of health," can we please say
11 "Governor Cuomo"?

12 He's been the governor for 9 1/2 years.

13 Please, "New York Tough," with all the people
14 that testified today, and the ones we haven't heard
15 from.

16 So one of the solutions I'm here to talk
17 about is home care.

18 I know we've heard about home care, and yet
19 we see all these cuts to the home-care budget, to
20 Medicaid.

21 We see that most of the workers are women of
22 color and immigrants. And this is part of the
23 systemic racism in the New York health-care system.
24 And I think we need to call it out, both the nursing
25 homes and how we treat home-care workers.

1 Four out of five of the nursing homes in
2 New York State, where at least a quarter of the
3 residents were Black or Latino, had COVID-19 cases,
4 but those nursing homes, where only one out of
5 three, where the population was less than 5 percent
6 Black and Latino, had -- there was less than
7 5 percent had COVID cases.

8 There was a clear disparity in what -- in the
9 number of cases.

10 And so it seems like our nursing homes are
11 about as segregated as our society, and it's time to
12 address this.

13 So home-care jobs are actually a solution,
14 and we're also desperate for solutions these days.

15 And I know you know this, but it's all about
16 salary and wages and dignity.

17 It's about a tax-revenue package, so that the
18 119 billionaires in New York State, and the multiple
19 millionaires of New York State, can pay their fair
20 share, and pay up. That would be "New York Tough."

21 Enough of this "New York Tough."

22 The "New York Tough" is everyone that we've
23 listened to today.

24 These are green jobs.

25 Please, when you're thinking about the

1 environment, you passed great climate, environmental
2 package of laws recently. These are green jobs,
3 they're sustainable jobs.

4 They can -- we need thousands of home-care
5 workers around the state. These jobs can be filled
6 immediately when people are desperate for
7 employment.

8 This is an answer.

9 And I know I wasn't quite going to be this
10 angry when I spoke, but I have to say that,
11 six hours, or whatever it is, later, I am so angry.

12 The irony is, I got into this field,
13 literally, 50 years ago, because my grandmother died
14 in a nursing home, and I think had similar
15 treatment, which is why, as a very young person at
16 that point, I said something needed to be done.

17 So I know I'm conflating nursing homes and
18 home-care, but it's all part of the long-term-care
19 system.

20 So, please, let us not leave all of these
21 great hearings you've done, and kudos to all of you
22 for sitting through this and holding it, and being
23 thoughtful who gets to testify and all, but please
24 don't let this be the end.

25 We're not done with the pandemic, but we're

1 also just not done with people growing old.

2 And we're certainly not done with people with
3 disabilities.

4 And so, please.

5 I don't know that I have much else to say.

6 I also want to say -- well, I do have one
7 more thing.

8 The family caregivers you heard from today,
9 I don't know if this was their case, but many women
10 feel forced to leave their jobs to keep their loved
11 ones home.

12 And there have been studies that have shown
13 they lose \$300,000 over their career, in wage
14 compensation, in pension, in the time lost in the
15 Social Security system.

16 They can't get back into the workforce, you
17 know, when they seek to do that.

18 So this is a women's issue.

19 I know you're all men -- many of you are men.

20 But so many of this -- so much of this.

21 So how are we going to have a caring economy
22 in this state?

23 And this is the future.

24 Instead of giving tax breaks to our
25 economic-development programs, to all the

1 corporations that develop about 2 1/2 jobs, this is
2 where we should be putting our money: into home
3 care, into nursing homes, and building the caring
4 economy I know we all want.

5 So thank you.

6 I know I've have been a little bit all over
7 the place, but I just -- it is a reaction to
8 everything I've heard today.

9 Thank you so much.

10 SENATOR RIVERA: Thank you, Bobbie.

11 And I would have expected nothing else from
12 you, by the way.

13 Thank you for that.

14 Next we will hear from Cynthia Rudder,
15 founder and former director of LTCCC.

16 CYNTHIA RUDDER: Thank you.

17 My name is Cynthia Rudder, and I was the
18 founder and director of LTCCC from 1982 to 2012.

19 Today I'm a consultant, working on research
20 projects with national and state advocacy groups.

21 I started my research and advocacy into
22 nursing homes in 1979.

23 You have heard conflicting information today
24 and last week.

25 Providers think their care is fine.

1 The department of health's surveillance and
2 enforcement is too punitive.

3 Families and residents describe terrible
4 conditions, both before and during the pandemic, and
5 little enforcement from the State.

6 My studies give credence to families and
7 residents.

8 You have heard from providers, they don't get
9 enough money, and I've heard this for 40 years, yet
10 there's little focus on how the money they get is
11 spent, and whether it's spent on care.

12 I could talk on reimbursement issues, but
13 I only have 5 minutes today.

14 I urge you to read my many studies on the
15 State's ability to monitor [indiscernible], and the
16 care issues related to reimbursement.

17 Why did COVID-19 have such a disastrous
18 effect on our state's nursing home residents?

19 When I told some colleagues that I had only
20 5 minutes to testify, they said, Why don't you just
21 refer the legislators to the numerous testimonies
22 that you gave over the years?

23 Makes sense.

24 But since I do have 5 minutes, and,
25 unfortunately, I have new data, I'll go on.

1 I believe that the long history of poor care
2 in our nursing homes, and the failure of our
3 surveillance and enforcement system, have led to a
4 perfect storm.

5 Surveyors are not identifying the
6 deficiencies that families and residents see.

7 You heard from them today.

8 And when these surveyors find these
9 deficiencies, they're rated as "no harm," and,
10 therefore, the enforcement is non-existent
11 [indiscernible].

12 I conducted a study in 2005, comparing the
13 number of deficiencies identified by federal
14 surveyors to the number found by state surveyors at
15 the same facility at the same time.

16 And I found, over a three-year period,
17 federal surveyors identified over four times the
18 number of violations than did the State.

19 When surveyors do identify violations, they
20 rarely classify it as causing harm.

21 Although a study conducted by HHS, over the
22 inspector general in 2011, found an estimated
23 22 percent of Medicare residents experienced harm.

24 New York cited only 5 percent of all the
25 deficiencies for Medicare and Medicaid residents.

1 And for the year 2019, right before the
2 pandemic, they cited only 2 percent as causing harm.

3 98 percent of all the deficiencies they
4 found, they said caused no harm. Maybe a potential
5 for harm.

6 But once a deficiency is listed as "no harm,"
7 even if it has a potential for harm, the sanction
8 that is issued is often the cost of doing business,
9 and is not a real incentive to improve care.

10 Infection prevention and control is
11 longstanding, and it's been a serious problem in
12 nursing facilities.

13 Between 2013 and 2017, 82 percent of nursing
14 facilities nationwide were cited.

15 Most infection-control deficiencies are cited
16 as a low level, so that financial penalties are not
17 imposed.

18 In 2016, new regulations required nursing
19 facilities to develop a plan to deal with the
20 pandemic, just like COVID-19.

21 The industry lobbied heavily against this
22 regulation, and 43 percent of nursing homes across
23 the country violated it. They had no plan.

24 I believe the lack of a plan is why we were
25 caught unprepared.

1 In New York State, there were 544 citations
2 for infection between 2017 and 2019. Not one of
3 them were labeled as "harm."

4 And what was interesting on the targeted
5 [indiscernible] that the Feds required, almost none
6 of them were rated as "no harm."

7 And that's just not feasible, given the
8 deaths and -- there had to be some violations that
9 caused harm.

10 Recommendations:

11 We -- I once again am calling for a change in
12 our state surveillance and enforcement system.

13 We need to hold [indiscernible] accountable.

14 New procedures must be in place to make sure
15 non-compliance is identified; each deficiency is
16 followed up, not just by saying you have a plan, but
17 reviewing the plan to see if it has an impact on
18 residents.

19 The legislature must be more careful to
20 monitor what's happening in the surveillance and
21 enforcement program, to see if there is an impact on
22 residents.

23 Surveyors must be given the time they need to
24 identify deficiencies.

25 Right now, they don't have the time to

1 accurately do it.

2 They must make sure that surveyors are
3 trained to understand how to ask the appropriate
4 follow-up questions, and to make sure there really
5 was no harm.

6 But potential for harm is serious, people.

7 SENATOR RIVERA: Ma'am, if you could --

8 CYNTHIA RUDDER: [Indiscernible] --

9 Yes, last sentence.

10 SENATOR RIVERA: Sure.

11 CYNTHIA RUDDER: Last sentence.

12 SENATOR RIVERA: Yes, ma'am.

13 CYNTHIA RUDDER: Potential for harm is
14 serious.

15 State fines should be given for potential for
16 harm.

17 It's not given now.

18 And it should be high enough to be
19 meaningful.

20 SENATOR RIVERA: Thank you, Ms. Rudder.

21 Last, but, again, certainly not least,
22 Mary Somoza, patient advocate, Self-Direction
23 Families of New York.

24 You're unmuted, Ms. Somoza. Go ahead.

25 Ms. Somoza, can you hear me?

1 MARY SOMOZA: Oh, oh, yes, yes.

2 SENATOR RIVERA: Good.

3 MARY SOMOZA: Sorry.

4 SENATOR RIVERA: Go ahead.

5 MARY SOMOZA: Can you hear me?

6 SENATOR RIVERA: Yes, ma'am.

7 Go ahead.

8 MARY SOMOZA: You can hear me. Okay.

9 I want to address the issue of home care,
10 which a lot of the parents that we work with, that
11 we have a big -- very large parent group, where
12 recipients are of two types of home care:

13 Self-direction, which we receive through the
14 office of people with developmental disabilities of
15 New York;

16 And I am a governor-appointee to the advisory
17 council of the office of people with developmental
18 disabilities since 1991; appointed by our present
19 governor's father.

20 And then we have the other -- the other part
21 of our parents receive services through
22 consumer-directed personal-care services.

23 And both of these entities are -- and some
24 parents receive services from both.

25 These entities are fiscal intermediaries, and

1 so we are responsible, we, the family member, are
2 responsible, for recruiting, training, hiring,
3 firing... everything related -- work-related to the
4 people who come to help us in our home.

5 Since it was -- has always been difficult for
6 the last few years to recruit aides to work with our
7 young adults and children, because of the very, very
8 low wages of these -- that the agencies are paid.

9 But with COVID, our families have faced a
10 huge phenomena.

11 And I think it's one of the issues that you
12 were interested in hearing about, because you don't
13 have data on COVID infections by people who are
14 being served in home-care situations, and you don't
15 have data of people who have died in those
16 situations.

17 And neither do any of us.

18 We don't know because we're all isolated.

19 We are only joined together as through
20 listservs, where we share information with each
21 other.

22 But the underlying factor is that all of us
23 lost help.

24 Some families did not want people in their
25 homes, and decided not to have people coming from

1 the outside into their homes to help.

2 And many of them, like myself, I just
3 physically cannot -- I have two quadraplegic
4 daughters who are now 36 years of age. And just the
5 physical work of taking care of them is, it's around
6 the clock, it's 24/7. And I cannot manage on my
7 own.

8 And, oftentimes, families like myself, in
9 something like this pandemic, we are the resource of
10 last resort when all our aides quit, because they
11 don't want to travel on the subway to come to our
12 homes, they're getting minimum wage, they are not
13 getting PPE, or hazard pay, or any of the things
14 that would maybe incentivize these people to come --
15 these aides to come and work for us.

16 And another element which is surprising, and
17 as a total liberal and advocate for assistance for
18 people in need, we have found that the unemployment
19 benefits given to people who are unemployed have
20 caused us to face a big shortage in people wanting
21 to come and work with us, because many of the people
22 who did work for us are -- were getting more in
23 unemployment than they would be to work in our
24 homes.

25 And I believe that's just a small niche,

1 because I do believe that unemployment benefit was a
2 vital necessity to so many of the people in this
3 country, that just saved us from total disaster.

4 But [indiscernible] several months
5 [indiscernible].

6 I had one -- I had seven girls doing
7 different shifts. And some of the families --
8 I mean, I have two girls.

9 But some of the families who have one adult,
10 they had maybe help from four or five different
11 caregivers, different shifts, and they end up just
12 themselves.

13 And in my case, one aide, and one aide who
14 would come for one week, and then the next week take
15 off.

16 So we were -- families were getting
17 completely overwhelmed with this situation.

18 And we can't -- these girls cannot get COVID
19 testing for free. The agencies -- the CDPAP
20 agencies do not provide free COVID testing.

21 [Indiscernible cross-talking] --

22 SENATOR RIVERA: Ms. Somoza, if you could
23 finish your thoughts --

24 MARY SOMOZA: You don't get PPE.

25 SENATOR RIVERA: -- as your time is expired.

1 MARY SOMOZA: You don't get any of the
2 advantages, and we're [indiscernible], the safest
3 place for our families, for our family members.

4 SENATOR RIVERA: Ms. Somoza?

5 MARY SOMOZA: [Indiscernible
6 cross-talking] --

7 SENATOR RIVERA: Ms. Somoza?

8 MARY SOMOZA: -- if you just see what happens
9 in the nursing homes --

10 SENATOR RIVERA: Hello, Ms. Somoza?

11 Hello? Ms. Somoza?

12 MARY SOMOZA: Yes, [indiscernible].

13 SENATOR RIVERA: Your time has expired.

14 I just wanted to make sure to let you know
15 that. I'm sorry.

16 MARY SOMOZA: Pardon?

17 SENATOR RIVERA: Your time has expired.

18 We're now going to move on to the questions.

19 MARY SOMOZA: Okay.

20 SENATOR RIVERA: But thank you for your
21 testimony, ma'am.

22 We will lead off with the Senate,
23 Senator Rachel May, recognized for 5 minutes.

24 SENATOR MAY: Thank you, and I'll be quicker
25 than that.

1 I want to thank all of you, and I especially
2 want to thank Bobbie and Cynthia for your anger,
3 because I think it's so appropriate, and we need to
4 hear it.

5 I just -- I mean, I -- you know, I have been
6 a very strong advocate for more resources for home
7 care, for figuring out the home-care workforce
8 shortage, or trying to find answers to these
9 problems.

10 But I guess I would like to hear from you:

11 What would make home care the most practical
12 option for people, or a more practical option than
13 it is right now?

14 OFF-SCREEN SPEAKER: You mean home care?

15 SENATOR MAY: Home care, I mean, it's what
16 people want, and it is the most cost-effective to
17 the State.

18 How do we make it so that people have access
19 to -- more people have access to it?

20 BOBBIE SACKMAN: Well, if could I take a
21 moment, we know we have a home-care crisis in this
22 state, as I think we have nationally.

23 People come into the field, they don't stay,
24 because of salary, because of working conditions.

25 The New York Caring Majority is fighting to

1 make these jobs dignified.

2 They don't -- they leave -- there was just
3 a report released by Hand In Hand in the
4 Hudson Valley, and they show that, something,
5 I think, it was like 70 percent of people leave
6 because there's no career ladder.

7 So we, in essence, have jobs that treat
8 people really poorly. And if they have any choice,
9 they leave.

10 And so what I was trying to say, and I'll be
11 done in a moment, is that we need what we call a
12 "caring economy."

13 And a caring economy invests state dollars
14 and tax dollars in good-paying jobs, to bring people
15 into the field, and to provide them with the
16 training.

17 And we've watched our state, led by the
18 governor, go in a very opposite direction.

19 SENATOR MAY: Thank you.

20 I know there was a report that came out just
21 a week or two ago in the Hudson Valley, about how
22 the people want these jobs, they like the jobs.
23 It's not that these are bad jobs; they're just
24 poorly recompensed and valued.

25 And we've got to figure that piece out.

1 [Indiscernible cross-talking by multiple
2 people.]

3 SENATOR MAY: I have another question --

4 DAVID HOFFMAN: I think training is an
5 important part of the equation.

6 In the North Country, we simply can't get
7 trained home health aides.

8 And bear in mind, that the same people who
9 provide home-based home health services are
10 promoting home-health-aide services in
11 assisted-living facilities.

12 So we've been working with our community
13 colleges to try to develop more training programs.
14 They're short of instructors.

15 So, it's a whole ecosystem.

16 But, absolutely, there needs to be a career
17 path for people who enter the health-care
18 professions as home health aides, just as there
19 needs to be for people who start out as EMTs, as
20 I did.

21 SENATOR MAY: Right.

22 Clear path and advancement possibilities to
23 make it feel like a career.

24 I had a question for Mary Pritchard.

25 Is she still on?

1 Can you hear me, Mary?

2 OFF-SCREEN TECHNICIAN: She is not.

3 SENATOR RIVERA: Unfortunately, we lost her.

4 SENATOR MAY: Oh, we lost her?

5 Okay.

6 Well, one of the others of you might want to
7 take it, I don't know. It was about the ombudsman
8 program.

9 And she said something that suggested that it
10 ought to be independent of the State.

11 I don't know if other people have --

12 CYNTHIA RUDDER: I'd like to talk to that.

13 This is Cynthia Rudder.

14 I truly think that -- I know that, last week,
15 you had an ombudsman who said that she was
16 independent.

17 That really isn't true.

18 The ombuds program is housed in the office of
19 aging, which is under the governor -- within the
20 governor administration.

21 That means it's not independent.

22 And it should be independent.

23 And there are a number of states where the
24 ombudsman is outside the government of the state.

25 And I think it's very important.

1 When I was active in LTCC [sic], over many
2 years, I had many ombudsmen calling me up, saying,
3 Can you talk to the press? Can you call the health
4 commissioner? Can you do, this, because I have so
5 many problems, and I'm not permitted to really
6 advocate.

7 They don't -- they're not permitted, really,
8 to follow the Older Americans Act, which requires
9 them to do things, like, help in legislation, talk
10 to media, if necessary.

11 The State does not permit them to.

12 So they must be independent.

13 And I think that's what Mary meant.

14 SENATOR MAY: Okay. Thank you.

15 DAVID HOFFMAN: But there's one ombudsman
16 function that applies during normal circumstances,
17 and the need for a very different ombudsman function
18 during a pandemic or other crisis.

19 And that, again, is a standard-of-care
20 question that relates to the incident command system
21 for emergencies.

22 SENATOR MAY: Okay. Thank you so much for
23 that.

24 SENATOR RIVERA: [Indiscernible.]

25 Assembly.

1 ASSEMBLYMEMBER BRONSON: Thank you.

2 First, I just want to check with
3 Chair Gottfried. Your hand was raised, but then
4 went back down.

5 I'm not sure if you wanted to ask questions?

6 ASSEMBLYMEMBER GOTTFRIED: Yes.

7 ASSEMBLYMEMBER BRONSON: Okay.

8 Then I will recognize Chair Gottfried for
9 5 minutes.

10 ASSEMBLYMEMBER GOTTFRIED: Okay. Thank you.

11 This is just such a terrific panel, people
12 I've worked with forever.

13 And I just have to give special mention to
14 Cynthia Rudder for being, not only, for decades, one
15 of the leading long-term-care advocates in New York,
16 nursing home advocates, but for decades the only --
17 practically the only nursing home advocate in
18 New York.

19 But I have a question for Bobbie Sackman.

20 All day during the hearing, everybody,
21 virtually, talked about the need for more funding.

22 And I kept thinking to myself, who am I going
23 to ask the question of, don't -- doesn't that mean
24 we need revenue?

25 And I thought to myself, I'll ask

1 Bobbie Sackman that question.

2 But, you went and said the "R" word.

3 So maybe you can elaborate on it.

4 We've got a state where our governor insists
5 that we have a cap on Medicaid spending, we have a
6 cap on overall spending.

7 How do we -- how can we possibly provide
8 appropriate long-term care, whether it's nursing
9 home or home care, or anything else, unless we raise
10 the necessary revenue from New Yorkers with high
11 wealth, and then spend it?

12 I guess I've answered my own question.

13 OFF-SCREEN SPEAKER: I think you answered
14 your own question.

15 BOBBIE SACKMAN: I was going say the same
16 thing.

17 Yeah, I mean, in truth, I honestly don't
18 know, you know, how much to add to that.

19 I think it's an attitude, I think it's a
20 political philosophy, and I think Governor Cuomo has
21 shown in the 9 1/2 years he's been governor,
22 sometimes he talks like you thought he took office a
23 week ago.

24 He's been overseeing this state for almost
25 10 years.

1 He can't have it both ways.

2 He can't be brilliant, and then pretend he
3 doesn't know.

4 We need more money.

5 We are blessed, if you want to call it
6 blessed, I don't know.

7 We have billionaires in this state.

8 We happen to be the financial capital of the
9 world.

10 And, yet, we have a governor and an
11 administration, and I'm sure there are those in the
12 state legislature who agree with him, that says, no,
13 no, no, they're going to leave the state.

14 They don't leave the state.

15 They get around the tax rules, but they don't
16 leave the state.

17 So I absolutely, and I have a feeling there's
18 many other folks throughout this whole day, this
19 is -- we can't be in an austerity budget.

20 This is cruel.

21 We have just listened to heart-wrenching
22 stories of death. And we can't blame the staff,
23 whether it's home-care workers, people in nursing
24 homes.

25 We have gone on a path of Medicaid cuts for

1 years now, and yet the governor and his
2 administration won't own up to it, and they won't go
3 for more revenues, because he's playing some kind of
4 game with the federal government right now.

5 And so I think -- that I know it's hard.

6 Cuomo got a lot of kudos for his press
7 conferences.

8 But, I think we have to -- yeah, I agree with
9 you, thumbs down.

10 Remember when they used to say that Giuliani
11 was America's mayor?

12 I keep just saying that because people have
13 an image of New York.

14 So we have to keep calling it out, and not
15 just to be nasty or anything like that.

16 People's lives are at stake.

17 Whether it's nursing home residents, the
18 staff, and families, we have to try to get our voice
19 out.

20 And I don't know how much to keep adding to
21 that, and it's not easy now. The governor has built
22 himself a big platform.

23 But we need to figure out how to keep
24 fighting that, because we all need more money in
25 this state.

1 The pandemic shows we need more money.

2 ASSEMBLYMEMBER GOTTFRIED: Thank you.

3 MARY SOMOZA: Listen to us.

4 The governor doesn't listen.

5 We get families writing and calling, and we
6 answer every advocacy call out there, to stop the
7 desperate cuts that they're doing.

8 Nothing.

9 At one point he used to answer my letters
10 because I was an appointee.

11 Nothing.

12 Persona non grata.

13 It's very demoralizing for our families who
14 are struggling with so little right now, and yet
15 we're being asked to advocate for every single thing
16 that we have fought for, our families have fought
17 for, for the last 45, 50 years.

18 And the system will disintegrate, because
19 programs will close because of lack of funding.

20 They will have to let people go, and they
21 won't be able to afford to get those people back.

22 So everything that we built up to keep our
23 family members in the community, earning money,
24 going to jobs, it's all going to fall apart.

25 Because, my daughters can't get out of bed in

1 the morning. They need somebody to get them out of
2 bed, and I can't do it.

3 I'm, more or less, your age, Dick.

4 And -- a little -- one year younger, I think.

5 But it takes a toll on families after a while
6 when we have to do that physical caretaking.

7 And even with families who don't have to do
8 the physical, some of their family members require
9 around-the-clock care --

10 SENATOR RIVERA: Thank you, Ms. Somoza.

11 Ms. Somoza.

12 MARY SOMOZA: -- and assistance --

13 SENATOR RIVERA: Thank you, Ms. Somoza.

14 MARY SOMOZA: -- because of --

15 SENATOR RIVERA: Ma'am, your time --

16 MARY SOMOZA: -- [indiscernible] problems.

17 SENATOR RIVERA: -- the Assemblymember's --

18 MARY SOMOZA: And it is extremely hard.

19 SENATOR RIVERA: Ma'am -- Ms. Somoza,
20 Ms. Somoza, the Assemblymember's time has expired.

21 Now I recognize Senator Sue Serino for
22 5 minutes.

23 SENATOR SERINO: Thanks again, Mr. Chairman.

24 And, you know, Bobbie, you've always been
25 such a dynamo.

1 And I saw the report [indiscernible] you did
2 in the press conference that you mentioned, that
3 talked about astronomical rate in which people leave
4 the home-care field because they feel very
5 under-valued.

6 How horrible and sad is that?

7 I also liked what David had to say about
8 needing to establish a career path and more
9 effective training.

10 And I don't know if you were watching
11 earlier, Al Cardillo talked about online training
12 that could be very effective right now.

13 So that's the question I had:

14 Do you think that's a good step to take now,
15 as we work towards a more long-term progress on this
16 front as well?

17 Whoever would like to [indiscernible] the
18 question.

19 DAVID HOFFMAN: Absolutely.

20 Online training has really come into its own
21 during the pandemic.

22 I've been teaching bioethics online for
23 years.

24 I've been teaching advanced first-aid and
25 emergency medical technology for years.

1 It can be done.

2 We in the North Country, especially, because
3 of our geography, and because of the distances that
4 have to be traveled, especially in the winter, have
5 a hard time connecting people who want to become
6 home health aides to a training program.

7 So anything done online with a practicum as a
8 separate component would be a huge benefit for
9 long-term-care facilities in the rural parts of
10 New York State.

11 BOBBIE SACKMAN: And I would only add to
12 that, to make sure that those who want to take the
13 online training, that there's a way they can make
14 sure they have the technology to do it.

15 You know, we're seeing that with students.
16 We can't make assumptions about people.

17 CYNTHIA RUDDER: Since we're talking about
18 staffing, if I can just bring up one other issue:

19 In most of the discussion about staff in
20 nursing homes, and why nursing homes can't get
21 staff, they talked about the money.

22 And I just want to say, I did a study, where
23 I went into six or seven nursing homes, on all
24 shifts. And [indiscernible] focus was with all
25 levels of staff, asking them, what makes, for them,

1 a satisfying job?

2 And in the top 10, you would expect
3 number one to be money.

4 It was not.

5 It was being treated with dignity.

6 And a lot of the reasons that the staff do
7 not want to work in nursing homes -- and I don't
8 care what the providers say -- is they're not
9 respected.

10 And I can speak forever on this.

11 And look at my study.

12 Please, don't just say "give money, money."

13 Yes, they have to have a living wage, but
14 believe me, it goes way beyond that.

15 Nursing homes, generally, are not nice places
16 to live or work, and we have to change that, at
17 least before I have to go, I hope.

18 DAVID HOFFMAN: Again, let me just reiterate
19 that, need to distinguish between different kinds of
20 long-term-care facilities, because what we think of
21 as nursing homes, need one level of licensure and
22 experience, and what is required at a
23 assisted-living facilities is a different level of
24 experience and training.

25 And we need to accommodate all of them.

1 SENATOR SERINO: Right.

2 And I'd also like to commend Cynthia for
3 pointing out that we need a more independent
4 enforcement in advocacy.

5 And I'd like to follow up with you more about
6 this later on, if we could.

7 CYNTHIA RUDDER: Yes, I would love to.

8 SENATOR SERINO: Thank you, everybody.
9 Thank you. I'm done, Mr. Chairman.

10 SENATOR RIVERA: Thank you, Senator.
11 Assembly?

12 ASSEMBLYMEMBER BRONSON: Yes, next we'll
13 recognize Assemblymember Ron Kim for 3 minutes.

14 ASSEMBLYMEMBER KIM: Thank you, Chairman.

15 Bobbie, you know -- so, instead of a caring
16 economy that pays people to take care of each other
17 in our community, it seems like we've actually
18 normalized the devaluation of care work for the last
19 few years.

20 Do you think there's a correlation between
21 the devaluing of home-care workers and privatization
22 of [indiscernible] facilities?

23 BOBBIE SACKMAN: Sorry, privatization of,
24 what?

25 ASSEMBLYMEMBER KIM: Of care facilities, or,

1 you know, nursing homes.

2 BOBBIE SACKMAN: I do think that, from what
3 we've heard, that more money is put into the profit
4 side than into the direct-care work.

5 And I also think about this in the home-care
6 side.

7 You need -- it is rocket science to even
8 figure out who operates nursing homes, and that's
9 very much done on purpose.

10 We have what I would consider a failure of a
11 business model for nursing home care.

12 I would throw that into the home-care side as
13 well.

14 When the profit comes in, you know the
15 motives change.

16 And it doesn't even mean the non-profits are
17 perfect either, but at least they're mission-driven.

18 And so we have -- what I've -- and
19 Cynthia Rudder, I know, I think we used to see each
20 other many, many, many years ago.

21 So this is all kudos to you, because this is
22 what you spent your career on.

23 And -- but I think that, when the profit
24 motive comes in, I've been basically talking to
25 folks -- and this is why, Cynthia, you probably know

1 much more -- I'm beginning to hear words, like, oh,
2 those operators, those owners, it's a cabal, it's
3 like the mob.

4 There's so much fear, and we've heard about
5 that today, the trepidation, to report anything.

6 There's something wrong.

7 That's not a caring environment; that's fear.

8 So we have something very poisoned or toxic
9 at this point.

10 And I think that -- I don't know how we
11 change that system, but I think we've gone way off
12 base, and it's not mission-driven.

13 And so everybody pays for that.

14 CYNTHIA RUDDER: I'd like to just say that
15 our whole nursing home reimbursement system does not
16 have a lot of incentives to find quality care.

17 There is a lot of incentives for profit in
18 the system for both not-for-profit and for profit.

19 So at some point we can talk about that and
20 look at it.

21 That's, of course, Bobbie, you're right,
22 I spent a lot of time on reimbursement.

23 Look at the incentives in the system of
24 giving billions of dollars into the nursing home
25 industry.

1 Are we getting anything for that money?

2 You could talk about -- I'd love to talk to
3 some people [indiscernible] think about that, as he
4 says, for decades. And we've tried to change the
5 system together. And in little ways we have, but
6 not enough. Not enough.

7 DAVID HOFFMAN: And it bears mentioning that
8 we have no for-profit hospitals left in New York,
9 not because there's anything inherently wrong about
10 profit, but because we don't have the regulatory
11 mechanisms that recognize the difference between
12 non-profit, mission-driven organizations and
13 for-profit business organizations.

14 SENATOR RIVERA: Thank you.

15 Thank you, Assemblymember.

16 So I'll recognize myself for 5 minutes.

17 Two things:

18 I certainly could not possibly -- it is
19 impossible for me to agree more with Bobbie,
20 regarding both the fact that we -- as well as
21 everyone who's mentioned it so far, that we need
22 more revenue.

23 And that it is beyond insane and
24 unconscionable that we have not -- that we actually
25 fear billionaires and millionaires "supposedly"

1 moving out more than attacking poor working-class
2 people and vulnerable people who are going to get
3 cuts in services, and they're the ones who are going
4 to get screwed.

5 And, apparently, this governor does not --
6 simply does not care.

7 So, simple, we definitely need more revenue.

8 And the fact that he's been there for 9 years
9 means that this is something that he has been doing
10 for all of that time.

11 So, certainly, there's many of us who would
12 not ever give him a pass on that.

13 But what I wanted to spend the rest of the
14 time, I want to start with Ms. Rudder, and anybody
15 else who wants to jump in, I want to talk about the
16 ombuds pro -- the ombudsman -- ombudsperson program.

17 It is -- tell us a little bit about states in
18 which the program is truly independent?

19 Because, I, like Senator May, and probably
20 many others, are concerned, like we have heard from
21 ombudspeople people today, who told us how sometimes
22 the program is ineffective because people fear, that
23 if they bring it up, that the -- that they will
24 get -- you know, that they will not really be held
25 to account, as far as the agency -- the entities are

1 concerned -- the care entities.

2 So could you tell us a little bit about how
3 such a program works in other states, and maybe the
4 bill that we could consider?

5 Go ahead.

6 CYNTHIA RUDDER: Yeah, I know, I worked with
7 about six or seven states across the country on an
8 issue about nursing home closures with the ombudsman
9 program.

10 Michigan, for instance, is independent, the
11 state of Michigan, and it works -- it works well.

12 There are issues.

13 When the ombudsman program is independent,
14 there are issues always between the regulatory arm
15 of the state and the ombudsman.

16 And I spent a lot of time in Michigan, trying
17 to help them to work together.

18 And I found that a problem, you know,
19 because, often, the reg -- and particularly in
20 Michigan, the regulatory people were focused on just
21 regulation.

22 The ombudsman was trying to raise the spirit
23 of what's going on.

24 And there were fights between, the State
25 saying, we have to the rules, and the ombudsman

1 saying, yes, but these are the rules.

2 But it works well.

3 There's nothing wrong with having an
4 independent office -- it's not an office, but an
5 independent part that's not under the state
6 government.

7 They're more advocacy-minded.

8 They feel they can go to the press.

9 They feel they can go in on nursing homes.

10 They can do things; they don't have to ask
11 permission to do things.

12 And they feel they can follow the rules and
13 the Older Americans Act much more easily than
14 worrying if they're going to insult or offend
15 higher-ups.

16 SENATOR RIVERA: Yeah, and that -- and
17 I certainly would love to look at further, because
18 having that program be an independent one,
19 certainly, the idea of it definitely appeals to me.

20 I don't know if anybody else wants to jump
21 in --

22 CYNTHIA RUDDER: I could try to get -- do
23 some research and get you some states that are
24 independent. There are a lot of them.

25 SENATOR RIVERA: We should caucus. We'll

1 caucus.

2 CYNTHIA RUDDER: Another issue, by the way,
3 is use of volunteers. I just want you to consider
4 that.

5 SENATOR RIVERA: Okay.

6 CYNTHIA RUDDER: Having volunteers the way we
7 do in New York is problematic.

8 That's another issue that has been raised
9 about ombudsmen: not having enough paid staff that
10 are professional.

11 You know, ombudsmen do a wonderful job, but
12 they often, in my opinion, get co-opted by the
13 nursing home, to be honest with you --

14 SENATOR RIVERA: Okay.

15 CYNTHIA RUDDER: -- because they're there,
16 and they have to work through the nursing home.

17 They have the state office telling them, you
18 got to work through the nursing home.

19 So they sometimes feel there are certain
20 things they cannot do, or they have to be -- or --
21 and they're really -- they're not professional
22 advocates.

23 They do wonderful jobs on some things, but
24 when it comes to systemic issues, I think that's a
25 problem.

1 You need really professional high staff.

2 So that's another way of a state sometimes do
3 it differently.

4 And I would be glad to talk about that.

5 SENATOR RIVERA: You want to jump in on that,
6 Bobbie?

7 MARY D'ERCOLE PRITCHARD: This is
8 Mary Pritchard. I would like to speak.

9 SENATOR RIVERA: Go ahead, Mary.

10 MARY D'ERCOLE PRITCHARD: Mary Pritchard.

11 SENATOR RIVERA: Go ahead.

12 MARY D'ERCOLE PRITCHARD: Yes.

13 I was in the ombudsman program when it was
14 purely volunteer, and it was run under the umbrella
15 of the Red Cross.

16 And we were driven by one thing, and one
17 thing only, and that was the resident; not the
18 family, not the nursing home, no place else but the
19 resident.

20 And that was so good because that's what you
21 needed to hear.

22 Sometimes I had to be between even the family
23 and the resident.

24 Many times between the nursing home and the
25 resident.

1 But I was driven by the resident.

2 I left the nurse -- the ombudsman program
3 because I stayed home with my husband.

4 And so I know the home-care situation very
5 well too.

6 SENATOR RIVERA: Thank you.

7 MARY D'ERCOLE PRITCHARD: And that was in
8 2016.

9 SENATOR RIVERA: Thank you, Ms. Pritchard.

10 MARY D'ERCOLE PRITCHARD: But, that's when
11 the change came about.

12 SENATOR RIVERA: Ms. Pritchard --

13 MARY D'ERCOLE PRITCHARD: And I really think
14 it needs to be independent.

15 SENATOR RIVERA: Ms. Pritchard, thank you.

16 My time has expired.

17 Assembly.

18 ASSEMBLYMEMBER BRONSON: We'll now recognize
19 Assemblymember Tom Abinanti for 3 minutes.

20 ASSEMBLYMEMBER ABINANTI: Thank you, again,
21 Mr. Chairman.

22 First of all, to Mary Somoza, thank you for
23 raising the issue of people with disabilities.

24 We have a very short window of time left this
25 evening. I'm not going to get into that. I've

1 tried to raise it myself.

2 All I would ask is that the health chairs
3 consider joining with maybe the mental-health
4 committee, and holding a separate hearing of the
5 impact on COVID on people with disabilities.

6 The department of -- I mean, OPWDD has
7 reduced monies available, cut services, and totally
8 ignored the fact that COVID requires greater
9 services.

10 So, Mary, thank you for raising the issue.

11 I'm just going to stop right there.

12 And now I'd like to turn to Bobbie Sackman.

13 Thank you for your efforts and the comments
14 you made.

15 Again, I'm going to be very brief.

16 I thought it was interesting that the
17 governor proposed a piece of legislation called
18 "New York Cares Act," which we passed in the
19 legislature, but it was restricted to providing
20 unemployment compensation to workers.

21 Everybody else had to deal with "New York
22 Tough."

23 So the response for people who needed
24 unemployment compensation got the New York Cares
25 Act.

1 Everybody else, the policies that were
2 causing harm to New York, instituted by the
3 governor, his answer was: New York, tough.

4 Thank you, Bobbie.

5 BOBBIE SACKMAN: Uhm, do you just want me to
6 comment on that? Or --

7 ASSEMBLYMEMBER ABINANTI: It's up to you.

8 BOBBIE SACKMAN: -- oh, okay.

9 I think where Cuomo is missing the boat, if
10 you want to put it politely, is that he hasn't
11 brought us together as a state.

12 I think people are naturally together.

13 We hear a lot about mutual aid because that's
14 who we are as human beings.

15 But when you start splitting -- you know,
16 whether it's workers or family members, or residents
17 of nursing homes, or people who live in the
18 community, he hasn't brought us together.

19 He's been playing this by the numbers, he's
20 been playing to a national audience.

21 We have to give him some credit, the numbers
22 did come down.

23 I don't want to say he didn't do anything,
24 especially when you look at other governors around
25 this country that are insane.

1 And so I want to give him credit.

2 But I think the only way I can respond is, we
3 need a leadership that really brings us together.

4 And I'm seeing it's still too political.

5 And what we haven't talked about today, is
6 where do the political donations go? And what role
7 are they playing in decisions that get made along
8 the way?

9 ASSEMBLYMEMBER ABINANTI: All right, Bobbie,
10 thank you.

11 I think we agree.

12 But back on the topic today, just, what -- in
13 the 30 seconds left, what should we take away from
14 your testimony?

15 SENATOR RIVERA: There's 30 seconds left.

16 ASSEMBLYMEMBER ABINANTI: What should we do?

17 BOBBIE SACKMAN: What should we do?

18 ASSEMBLYMEMBER ABINANTI: Yeah, 25 words or
19 less.

20 BOBBIE SACKMAN: All right.

21 You need -- you definitely need a legislative
22 package that you can force the governor to pass.

23 You've got to figure out how the legislature
24 has more power in the budget.

25 I'm sorry to say that.

1 We know that he has a lot of control.

2 And we need to make the families and people
3 of New York know that you have a different view than
4 the governor of New York in what's happening.

5 SENATOR RIVERA: Thank you for that.

6 Thank you, Assemblymember.

7 And thank you all members of this panel.

8 Enjoy the rest of your evening.

9 We are here for four more.

10 Okay?

11 Don't forget, folks, there's four more.

12 Here we go:

13 Panel Number 8, we are to be joined by:

14 Tania Anderson, chief executive officer of
15 ARISE Independent Center [sic];

16 Meghan Parker, director of advocacy,
17 New York State Association of [sic] Independent
18 Living;

19 Douglas Hovey, president and CEO of
20 Independent Living, Incorporated;

21 And, Keith Gurgui, or Gurgui (different
22 pronunciation) -- I apologize if I mispronounced the
23 name -- systems advocate, Resource Center for
24 Access -- hold on, let me get the whole name
25 correctly, and that is the -- systems advocate for

1 the Resource Center for Accessible Living,
2 Incorporated.

3 ASSEMBLYMEMBER GOTTFRIED: [Inaudible.]

4 SENATOR RIVERA: Mr. Gottfried, can't hear
5 you.

6 ASSEMBLYMEMBER GOTTFRIED: [Inaudible.]

7 SENATOR RIVERA: There you go.

8 ASSEMBLYMEMBER GOTTFRIED: There we are.

9 Okay.

10 So we have 4 more panels, but 16 individual
11 witnesses.

12 So, do the four of you swear or affirm that
13 the testimony you're about to give is true?

14 DOUGLAS HOVEY: Yes.

15 KEITH GURGUI: I do.

16 TANIA ANDERSON: I do.

17 ASSEMBLYMEMBER GOTTFRIED: Okay, fire away.

18 SENATOR RIVERA: And to lead us off will be
19 Tania Anderson.

20 TANIA ANDERSON: Thank you.

21 Good afternoon, senators and assemblymembers.

22 Thank you for conducting these critical
23 hearings, and thank you for considering my
24 testimony.

25 I'm Tania Anderson, CEO of ARISE Child and

1 Family Service.

2 ARISE is the independent living center for
3 the Central New York counties Onondaga, Oswego,
4 Madison, Cayuga, and Seneca.

5 Since 1979 we have served people of any age
6 with any disability, connecting with more than
7 7,000 people annually.

8 I feel a tremendous sense of urgency speaking
9 to you today.

10 We are experiencing a once-in-a-lifetime
11 crisis through the COVID-19 pandemic, yet this
12 crisis has laid bare something we have known all
13 along: that people in nursing homes are
14 disproportionately poor, disproportionately people
15 of color, and people facing a median life expectancy
16 of just five months.

17 As Brian O'Malley of CDPAANYS testified on
18 Monday, nursing homes are where we send the poor to
19 die, and nobody wants to go to a nursing home.

20 However, collectively, as our elected
21 officials, you have the power to fortify existing
22 tools and programs to give New Yorkers the ability
23 to live in the community with chronic health
24 conditions or disabilities.

25 You have the tools to allow New Yorkers to

1 successfully age in place.

2 At ARISE, we administer the Open Doors
3 Transition Center as one of the programs
4 [indiscernible] people out of nursing homes and into
5 the community.

6 Even during the pandemic, we have
7 successfully transitioned 38 people since last
8 October.

9 Our manager in this program told me a story
10 about a 78-year-old man she was able to move from a
11 Rome, New York, nursing home to an apartment in
12 Camillus after working with him for nine months on
13 the logistics.

14 On his moving day, she packed her car with
15 his belongings, and helped him buy groceries for the
16 first time in 18 months.

17 He was transformed and changed from a man
18 waiting to die to a vibrant member of our community.

19 That it took 9 months pre-COVID to plan this
20 move is both a testament to our staff's tenacity and
21 the massive problems in our systems of care.

22 ARISE actively promotes changes in state
23 policies to enable more people with disabilities to
24 live independently in the community.

25 The U.S. Supreme Court's ruling in LC versus

1 Olmstead mandates that people with disabilities
2 receive services in the most integrated setting
3 possible.

4 At a time when nearly 40 percent of the
5 state's fatalities from COVID-19 occurred in nursing
6 homes, it is imperative that policymakers prioritize
7 independent living for senior citizens and people
8 with disabilities as the humane and responsible
9 alternative to nursing homes.

10 ARISE is committed to helping people avoid
11 nursing homes and live in the community of their
12 choice.

13 ARISE administers programs such as the
14 nursing home transition and diversion, and the
15 traumatic brain injury waiver, programs, which
16 leverage federal funding to set up service
17 coordinators and personal-care aides.

18 The consumer-directed personal-assistance
19 program is a critical piece to allowing people to
20 remain in their homes by training and hiring their
21 own aides.

22 The program is significantly less expensive
23 than nursing home care.

24 The program has recently been under attack;
25 the proposals to reduce the number of fiscal

1 intermediaries administering it, cut rates to levels
2 that do not cover costs, and tightening eligibility.

3 It's ironic that the heroic personal-care
4 assistants who risked so much are some of the
5 lowest-paid workers in our system of care.

6 Rates proposed by managed-care companies
7 presume that these workers will receive the minimum
8 wage.

9 Our rapid transition housing and health-care
10 advocacy programs help locate suitable housing that
11 is affordable and accessible for people in danger of
12 being placed in nursing home care.

13 As noted previously, our Open Doors program
14 works with families and residents, helping set up
15 discharge plans from the nursing homes, arranging
16 for all the needed services for success in the
17 community.

18 Staff in the program continue to monitor
19 individuals for one year after discharge to ensure
20 their success.

21 ARISE is committed to helping people still in
22 nursing homes.

23 We administer the long-term-care ombudsman
24 program that's been the topic of many questions this
25 afternoon.

1 The ombudsman program, as you know, is the
2 subject of an October 2019 report by New York State
3 Comptroller Tom DiNapoli.

4 The report outlines serious deficiencies, and
5 I encourage you to look at it closely.

6 Chronic underfunding has led to severe
7 understaffing and other problems.

8 During normal times, staff and highly-trained
9 volunteers are present to advocate for residents for
10 their improved safety and quality of life.

11 Throughout the pandemic, ARISE's 2.5 paid
12 staff, responsible for 6,895 beds in 64 facilities
13 in our region, have been the critical link between
14 families and their loved ones in nursing homes.

15 Since the facilities closed, our staff
16 handled 93 cases and more than 900 consultations to
17 residents, visitors, and staff.

18 Our programs manager is living this nightmare
19 firsthand. He had not seen his mother since
20 March 13th, and was able to hug her through layers
21 of PPE only last week.

22 In conclusion:

23 I urge you to credit the programs that
24 New York already has in place, and support them with
25 adequate funding.

1 As the COVID-19 pandemic continues its grim
2 instruction, we can learn to support all New Yorkers
3 in dignity and safety.

4 Thank you very much.

5 SENATOR RIVERA: Thank you, Ms. Anderson.

6 Next we'll hear from Ms. Meghan Parker,
7 director of advocacy of the New York State
8 Association of Independent Living.

9 MEGHAN PARKER: Hi, and thank you so much for
10 having me.

11 Again, my name Meghan Parker from the
12 New York Association on Independent Living; or,
13 NYAIL.

14 NYAIL and the independent living centers
15 across the state provide a wide array of services
16 [indiscernible] that help people stay out of
17 institutions and live in the community with
18 appropriate supports and services.

19 If COVID-19 did anything, it's only
20 highlighted underlying issues that have long existed
21 in nursing facilities and other congregate care
22 settings.

23 Understaffing, poor infection control, and
24 lack of oversight and enforcement all undermine the
25 health and safety of residents in these facilities.

1 COVID-19 only exacerbated these, and there
2 should be little doubt that these issues directly
3 contributed to the crisis we saw in these facilities
4 over the past several months due to COVID-19.

5 Further, the State also has oversight for
6 other congregate-care settings, including adult
7 homes and group homes.

8 And we saw similar crisis in those settings
9 as well, yet the solutions to those problems are
10 likely far different in an OPWDD group home, for
11 example, than in a nursing facility.

12 And so I was happy to hear
13 Assemblymember Abinanti's comments earlier, and join
14 him, in calling for the State to investigate what
15 happened in those facilities, to make sure it
16 doesn't happen again.

17 Despite the setting, one of the most
18 important things the State needs to do, though, is
19 to have a plan in place so that people can rapidly
20 transition out of these facilities in the middle of
21 a crisis, like COVID-19.

22 NYAIL and many, many other statewide
23 organizations did a sign-on letter back in April,
24 that we sent to the governor, outlining quite a
25 number of recommendations.

1 They're in my written testimony. I'll only
2 touch on a couple.

3 But it's very important that services be
4 provided -- that services be approved within a day;
5 that assessments for home-care and consumer-directed
6 personal assistants, which has proven to be very
7 effective for infection containment, you know,
8 during this time, that that -- those approvals be
9 expedited, that people are quickly given a place to
10 go.

11 So we saw that dormitories and hotels are
12 completely vacant, or, mostly, used as places that
13 people can quarantine and get out of the
14 institution.

15 For people who rely on agency-managed home
16 care, the State should quickly assess plans for
17 capacity, and just send people there, based on
18 capacity and [indiscernible], and shouldn't be able
19 to turn people down in the middle of a crisis.

20 And just skip a few.

21 But nobody should be discharged from these
22 institutions against their will, or transitioned or
23 transferred to another institution.

24 But what I really want to spend a couple
25 minutes talking about, and we've already heard quite

1 a bit about it, is the State's need to better invest
2 in home- and community-based services.

3 This is where people want to live, and this
4 is where people would be much safer.

5 Yet, the State has taken steps in the
6 opposite direction, unfortunately, in recent years.

7 We've seen, as other sectors, wages increase
8 and home care stays stagnant.

9 That people aren't able to recruit and retain
10 aides to -- so that they can live in the community.

11 I don't blame them.

12 You know, these are mostly -- these home-care
13 aides are mostly women of color who are providing
14 these services.

15 It's physically- and often emotionally-taxing
16 work; it's hard work.

17 And so if you can make more working at a
18 fast-food restaurant, why would you stay, you know,
19 in this field, unless it's a real calling?

20 But, it doesn't pay nearly enough, and we've
21 seen that.

22 We heard about Hand In Hand, you know,
23 released their study just last week, showing a
24 crisis in the Hudson Valley.

25 We know there's been a crisis in parts of

1 upstate for a long time, and nobody should be sent
2 to an institution because they can't get home-care
3 workers.

4 The State's policies from the Medicaid
5 redesign team, you know, in this past budget, a
6 number of policies were put in place that will only
7 make it harder for many people to access home- and
8 community-based services.

9 And, right now, the State is in the middle of
10 implementing the nursing home carve-out for managed
11 care.

12 So this was passed a couple years ago, but,
13 essentially, originally, the State had carved
14 nursing homes into managed care so that, as part of
15 their Olmstead plans, that people could more easily
16 transition out of institutions.

17 But then the decision was made that the State
18 needed to save money, and is doing this as a
19 cost-savings measure in the middle of a pandemic.

20 It should be halted.

21 We heard a lot about long-term-care ombudsman
22 program.

23 And NYAIL has long-called for additional
24 funding so that people have that protection who are
25 stuck in institutions.

1 And I will just wrap up by saying: That if
2 we have learned anything from this crisis, it should
3 be that institutionalizing people in an antiquated
4 system of care, where their lives are put at risk,
5 is morally and ethically wrong.

6 If the State acts now --

7 SENATOR RIVERA: Thank you, Ms. Parker.

8 MEGHAN PARKER: Okay.

9 Thank you.

10 Next, we'll hear from Douglas Hovey,
11 president and CEO of Independent Living,
12 Incorporated.

13 DOUGLAS HOVEY: Great, thank you.

14 Good afternoon.

15 My name is Doug Hovey, and I'm president and
16 CEO of Independent Living, Incorporated, and
17 Independent Home Care, Incorporated, two
18 organizations that operate out of the mid-Hudson
19 region.

20 I also serve as a member of The Most
21 Integrated Setting Coordinating Council.

22 And I'll just mention quickly that we are
23 failing miserably at meeting the most
24 integrated-setting mandates in New York.

25 And we've got to do more work to try to turn

1 that around.

2 Let me begin by saying, thank you to the
3 leadership, and thank you for the opportunity to
4 speak with you today on behalf of all New Yorkers
5 who find themselves caught up in the whirlwind of
6 facts and fantasies that undoubtedly occur when
7 family members become disabled and require long-term
8 care.

9 Although there are a number of long-term-care
10 solutions, the option that clearly dominates
11 decision-making continues to be placement in a
12 nursing home, based upon beliefs that is
13 congregate-care facilities are the safest choice.

14 These assumptions have been deeply challenged
15 as thousands of nursing home residents needlessly
16 lost their lives to COVID-19.

17 The impact of these deaths has been
18 immeasurable to friends and family members
19 continuing to grieve while the first wave recedes.

20 Clearly, we have been traveling down the
21 wrong path.

22 In the twenty-first century,
23 institution-based services neither are our only
24 option, nor are they the best option, for ensuring
25 the safety and well-being of our most vulnerable

1 citizens.

2 Despite efforts to improve the institutional
3 model, conditions in nursing homes today are very
4 much the same as they were when my agency was first
5 founded over 30 years ago.

6 It's time to adopt a new vision, one that
7 embraces the right of individuals to actively
8 participate in decisions that affect the care that
9 they receive, and to live with dignity in the least
10 restrictive setting.

11 And it's time to systematically phase out the
12 last vestiges of a broken system, the costs for
13 which can be measured in both dollars and spent
14 lives, a system that necessitates government grant
15 immunity as protection against its intrinsic flaws.

16 I'm firmly convinced that New York State can
17 lead the transformation of long-term-care practices
18 from a twentieth-century model, shaped by historical
19 biases, misguided assumptions, and special
20 interests, into a new age of community care that
21 places the individual at the center of the service
22 paradigm.

23 As much as people have a fundamental right to
24 enjoy the first two phases of their lives, they also
25 have a right to enjoy the third phase as senior

1 citizens.

2 And we have an obligation to improve the
3 community level of supports needed to ensure that
4 barrier-free living is more than just a theoretical
5 construct.

6 We need to energize a process at the local
7 level that's supported by the State, much like
8 the Single Point of Access implemented by the
9 New York State Office of Mental Health, which meets
10 weekly to address the housing and service-support
11 needs of people diagnosed with a mental illness.

12 The simple fact is, we need a similar model
13 for people with physical and age-related
14 disabilities that focuses on keeping people in their
15 own homes as a priority, or help them find other
16 homes if they are -- for some reason, can't stay in
17 their home.

18 Subacute nursing facilities should not be
19 seen as -- they should only be seen as a short-term
20 remedy, and never as permanent housing.

21 In our hearts, we all know that warehousing
22 large numbers of individuals in hospital-like
23 buildings and --

24 SENATOR RIVERA: Sir, I'm sorry, I'm sorry to
25 interrupt.

1 Could you turn your camera back on, please?

2 Just want to make sure that we keep it for
3 posterity.

4 DOUGLAS HOVEY: I apologize.

5 SENATOR RIVERA: Go ahead.

6 DOUGLAS HOVEY: Yeah.

7 The simple fact is, we need a similar
8 approach for people with physical and age-related
9 disabilities that focuses on keeping people in their
10 own homes.

11 Subacute nursing facilities should only be
12 seen as short-term remedies, never permanent
13 housing.

14 In our hearts, we all know that warehousing
15 large numbers of frail elderly in hospital-like
16 buildings, in double or triple occupancies and
17 sharing bathrooms, inescapably creates a high risk
18 for resident safety, and compromises quality of
19 care.

20 Even before the pandemic, 82 percent of all
21 nursing homes were cited for infection prevention
22 and control deficiencies, according to the
23 U.S. Government Accountability Office.

24 We can blame the 6500 nursing home deaths on
25 the virus, but the real fault is not with the virus,

1 but, rather, with the institutional model of care.

2 In response to thousands of deaths here in
3 New York State, multiple recommendations for change
4 have been made, and they may all sound good on
5 paper, but the reality is, they don't work.

6 It's just not possible to keep people safe in
7 institutional settings.

8 The COVID-19 pandemic is a tragic wake-up
9 call for all of us, and a test of our ability to
10 reimagine long-term care in ways that replaces
11 facilities with communities, nursing homes with real
12 homes, and segregated approaches to care, with
13 assistance that is fully integrated into community
14 life.

15 There are several best-practice models out
16 there that we can learn from.

17 The dam has burst.

18 Segregated institutional solutions have
19 failed us time and time again.

20 Let's stop trying to plug the leaks and
21 rebuild a new, smart, more compassionate system that
22 honors and respects and values and protects our most
23 vulnerable citizens.

24 SENATOR RIVERA: Thank you, Mr. Hovey.

25 DOUGLAS HOVEY: We can do this.

1 SENATOR RIVERA: Thank you, Mr. Hovey.

2 DOUGLAS HOVEY: We can do this together.

3 Thank you.

4 SENATOR RIVERA: Thank you, Mr. Hovey.

5 Next, we'll hear from Mr. Keith Gurgui --

6 I hope I pronounced your name correctly, sir --

7 systems advocate for the Resource Center for

8 Accessible Living, Incorporated.

9 KEITH GURGUI: Can you hear me?

10 SENATOR RIVERA: Yes, sir.

11 KEITH GURGUI: Okay.

12 Thank you, chairs, and members of the

13 committees.

14 My name is Keith Gurgui. I'm the systems

15 advocate at The Resource Center for Accessible

16 Living, or, RCAL, in Kingston, New York.

17 We have been the independent living centers

18 serving Ulster County since our founding in 1983.

19 I also testify today as a member of

20 The Carrying Majority, a resident of New York, an

21 individual with a disability, a son of two

22 registered nurses, and a recipient of long-term

23 care, specifically, split-shift, 24-hour personal

24 care.

25 In fact, it has been 11 years to this very

1 day that I became introduced to living life with a
2 disability after suffering a spinal cord injury
3 while on summer vacation in 2009.

4 My disability, as well as my experience
5 working at RCAL, has given me a unique familiarity
6 with the complexities of both receiving and
7 providing home- and community-based services.

8 I am acutely aware that if it were not for
9 being able to live home and work at home, my health
10 and quality of life would be in severe jeopardy.

11 And that's true regardless of the current
12 state of affairs.

13 But, now, after the outbreak of COVID-19, the
14 idea of ever having to be admitted into a nursing
15 home is truly terrifying.

16 And thanks to the great care I get, I have
17 never been admitted to the hospital or gotten any
18 bedsores for 11 years now.

19 So, knock on wood.

20 We know nursing homes are not the safest
21 places for seniors, those who are immunocompromised,
22 or those with disabilities, to be. And, for years,
23 nursing home executives have put profit over people.

24 So it's no surprise that these institutions
25 were not equipped to protect the residents they're

1 responsible for when the pandemic hit.

2 In contrast, home care is safer, and I think
3 I'm a testament to that, and costs less, on average,
4 than institutional care.

5 And New York's aging population is growing
6 rapidly while our nursing homes are overwhelmed.

7 Now, I obviously have a clear bias in
8 preferring to live at home, but I also acknowledge
9 that there are those New Yorkers that, for one
10 reason or another, have no alternative but to live
11 in a nursing home.

12 That being said, it's unfortunate that there
13 aren't stronger home- and community-based supports
14 in our state.

15 I do recognize that many of you are in the
16 middle of working hard to help home-care workers
17 earn a dignified wage.

18 I thank Senator May for supporting the
19 initiatives that she spearheaded, which was outlined
20 on the July 29th release of The Carrying Majority's
21 report on home care, including sponsoring
22 legislation for home-care jobs and the innovations
23 fund that would create pilot programs across the
24 state to help boost home-care jobs.

25 I also want to thank Assemblymember Ron Kim

1 and his colleagues in the Assembly and Senate for
2 their work on ending the legal immunity for nursing
3 homes.

4 However, we can and we must do more.

5 Let's not forget, that even before the
6 pandemic, advocates were fighting against the
7 Medicaid redesign team's proposed cuts to Medicaid
8 spending and the reimbursement-rate reductions, the
9 fiscal intermediaries running the consumer-direct
10 personal-assistance program.

11 Now, with an even more dire economic future
12 looming, we should be protecting and strengthening
13 our personal-care systems and discussing raising
14 reimbursement rates, not slashing them, and have to
15 raise the necessary revenue to do so.

16 If there is one message I would like to send
17 today, is that New York is one of the key financial
18 hubs of the entire world.

19 There are solutions to properly funding our
20 essential workers.

21 But nothing worth doing is ever easy, nor is
22 it always popular with the public.

23 This state, and this nation, is at a
24 crossroads, and we can choose to either devolve into
25 further depression and chaos, or we can muster our

1 collective courage and forge an equitable future for
2 all.

3 I pray you choose the latter.

4 Thank you.

5 SENATOR RIVERA: Thank you for that, sir.

6 And we will -- let me make sure that I got
7 everybody on the panel.

8 Yep.

9 The Assembly leads off in the questioning on
10 this panel.

11 ASSEMBLYMEMBER BRONSON: Thank you.

12 We will begin by recognizing Assemblymember
13 Kevin Cahill for 3 minutes.

14 ASSEMBLYMEMBER CAHILL: Thank you.

15 And I apologize in advance if I get cut off
16 here in the middle, as Keith knows, of the very
17 serious thunderstorm, because we're just about a
18 mile apart in real life.

19 I wanted to just take a few moments to speak
20 to the issues that are being raised by this
21 particular panel.

22 They raise issues that are challenging in the
23 best of times.

24 And, in these times, when we are hearing
25 about budget cuts, when we are hearing about the

1 need for our general populations to monopolize our
2 health-care system, these folks in the community for
3 advocacy for disabled people, people with
4 accessibility limitations, are oftentimes not the
5 first people on our minds.

6 So I would like to give this opportunity for
7 this panel to emphasize those things that they think
8 are most important about what we ought to be
9 thinking about with the accessibilities community.

10 And I would also urge each and every one of
11 you to take some time after this hearing and visit,
12 R-C-A-L, dot, O-R-G.

13 R-C-A-L, dot, O-R-G.

14 That's RCAL.org, and read Keith's newsletter
15 that he publishes on a regular basis, and get a more
16 detailed presentation about what his concerns are.

17 So with that, I would like to use my
18 remaining minute and forty seconds and allow the
19 panel to address what they think is most important.

20 KEITH GURGUI: Well, I'll just chime in to
21 say that, I think hazard pay would have been nice
22 for health-care workers running around and being
23 called "essential."

24 They didn't have to do it.

25 They're here saving me and helping me live my

1 life.

2 That's the one thing that, really, I thought
3 was kind of a slap in the face to them.

4 Hazard pay, the State and the feds didn't do
5 anything in that respect.

6 But, that's my two cents.

7 TANIA ANDERSON: I would point out that, in
8 your question, there's a fundamental philosophical
9 issue, that there's a division by people who
10 supposedly do not have a disability and those that
11 do.

12 Accessibility benefits everyone in our
13 community, whether it is someone with a physical
14 disability, someone who wants to age in place,
15 someone who has a temporary disability for whatever
16 the circumstance might be.

17 We have found through this pandemic that many
18 accessibility features that were put in place under
19 the ADA now benefit us all, with touchless sinks in
20 bathrooms and toilets in bathrooms, and doors that
21 have a push button that we don't need to hold the
22 handle.

23 So accessibility benefits everyone in our
24 state.

25 And the more we can understand that, that

1 it's an investment in every New Yorker, not just a
2 segment of New Yorkers, I think that's important.

3 The other piece is that, as a return on
4 investment for any -- the dollars that are spent on
5 home- and community-based services go further and
6 faster than institutional care, and it provides a
7 higher quality of life and fundamental power for the
8 folks that are directing their own lives.

9 And that's what independent living is about.

10 SENATOR RIVERA: Thank you, Assemblymember.

11 Now recognizing Senator Jane [sic] Metzger
12 for 3 minutes.

13 SENATOR METZGER: Thank you, Mr. Chairman.

14 I don't have a question specifically, but
15 I just want to really thank you all for
16 participating.

17 Your perspectives are so important.

18 It's so great to see you both again, Doug and
19 Keith.

20 I participated in the Hand In Hand press
21 conference that you mentioned, Doug, and in full
22 agreement with you that New York needs to focus on
23 how best to keep people in their homes.

24 It's the right thing to do for people's
25 quality of life, for their dignity, and it's good

1 fiscal policy.

2 And I agree as well that this pandemic has
3 really brought an important focus on the
4 public-health value of home care as well.

5 So, I just wanted to, again, just thank you,
6 and let you all know that, you know, I will do
7 whatever I can to make that happen and support that.

8 Thank you very much.

9 DOUGLAS HOVEY: Thank you, Senator Metzger.

10 SENATOR RIVERA: It was Senator Jen Metzger,
11 not Jane Metzger.

12 SENATOR METZGER: I wondered about that,
13 but...

14 SENATOR RIVERA: My apologies on that.
15 Back to the Assembly.

16 ASSEMBLYMEMBER BRONSON: We recognize
17 Chair Gottfried for 5 minutes.

18 ASSEMBLYMEMBER GOTTFRIED: Thank you.

19 I'm wondering, is there a segment of the
20 population that can receive home care, but for whom
21 being in a nursing home might be better?

22 And I'm thinking of people who have no
23 other -- no one else in their home, no family in
24 their home, no family living nearby, who could or
25 would see them on a regular basis; no relationships

1 with neighbors who would stop in regularly and see
2 them.

3 And would those -- would that population have
4 more of an opportunity for socializing, whatever
5 their socializing ability might be, in a nursing
6 home?

7 And is that population a real number? Is it
8 infinitesimal?

9 Are there ways to provide them socialization
10 in their home?

11 And are we using those means today at all?

12 What is the real world on that question?

13 DOUGLAS HOVEY: Well, I think that there's a
14 big opportunity to reimagine the long-term-care
15 system as we know it.

16 We're still working with a system that's, you
17 know, 50, 60 years old, large congregate-care
18 facilities.

19 We closed most of the large developmental
20 centers, most of the large psychiatric centers.

21 It's unfortunate that the nursing homes are
22 the last on the list.

23 It will come. I don't know if we're quite
24 ready for it, but I think it's time to reimagine and
25 redirect and reinvest in smaller, more

1 community-like support-centers facilities.

2 There's great examples of this across the
3 nation.

4 There are 300 models called the "greenhouse
5 project," that's administered by a gentleman by the
6 name of Bill Thomas.

7 They're smaller support facilities that
8 accommodate about 12 to 15 individuals.

9 They each have their own individual bedroom,
10 and they have their own bathrooms, and they have a
11 lot more dignity. And they do share some common
12 areas within the facility. And they have support
13 teams that are utilized just in that particular
14 facility, around the clock, for individuals who you
15 identify, Assemblymember Gottfried, that we might
16 think are not capable of living in the community
17 with home-care support.

18 So I don't think it's either home care or
19 nursing homes as we know them today here in
20 New York State.

21 I think there's an entirely different model
22 that needs to evolve, that provides a greater level
23 of independence and support, and helps people to
24 really be a part of the local community and not
25 separate.

1 We have meetings all the time, routinely,
2 weekly meetings, of our provider systems around the
3 state, every single week.

4 And not once are we ever talking about the
5 population of people in nursing homes. And that's a
6 problem.

7 You know, during this whole COVID epidemic,
8 we talked about people with mental illness living in
9 the community, and we talked about people with
10 developmental disabilities. But never once did we
11 talk about people in nursing homes, because they're
12 presumed to be separate, large, segregated
13 institutions.

14 They're the forgotten people. There's an
15 ageism around transferring people -- older to
16 nursing facilities.

17 When we were negotiating different pieces of
18 legislation several years ago with the department of
19 health, for the nursing home transition and
20 diversion waiver, the department of health said that
21 they were willing to support passage of the law for
22 the waiver, but, it would only apply to people under
23 the age of 65.

24 That was the most insulting thing I ever
25 heard.

1 I don't care if you're 115, you deserve to
2 live in the community with supports.

3 And I think 100 percent of everyone can live
4 in the community with supports. It's, just, you
5 have to think differently and reimagine a different
6 model.

7 TANIA ANDERSON: We're doing that work every
8 day at ARISE with our Open Doors and other programs.

9 We're working one-on-one with folks that you
10 would think don't have a community of support, don't
11 have any way to being successful, and we figure it
12 out.

13 Sometimes it takes 9 months, sometimes it
14 takes 18 months, sometimes it's quicker. But we
15 figure it out, one by one, with that intention
16 because we're problem-solvers.

17 ASSEMBLYMEMBER GOTTFRIED: Thank you.

18 SENATOR RIVERA: Thank you, Assemblymember.

19 And now recognizing Senator Rachel May for
20 5 minutes.

21 SENATOR MAY: Thank you.

22 And I think I'll be quicker than that.

23 I wanted to start just by thanking Tania for
24 what you just said, and for what you do.

25 I was -- I had the honor of giving ARISE an

1 award for 30 years of service in our community. And
2 the service they have done is unbelievable.

3 And so thank you for the work that you do.

4 TANIA ANDERSON: Thank you.

5 SENATOR MAY: I just had one question for any
6 and all of you, which is: What states should we be
7 looking to for models of doing this right, either in
8 the pandemic itself or more generally?

9 TANIA ANDERSON: I actually would look within
10 New York because, as I mentioned in my testimony, we
11 have a lot of tools in our toolbox.

12 We have a lot of things in place that, if
13 they are adequately funded and given the profile and
14 the acknowledgment that they deserve, we can use
15 those existing tools to transition people
16 successfully out of nursing homes, to keep people
17 safe in the community.

18 We don't really need to reinvent the wheel.
19 That always takes more time anyways.

20 We've got dedicated networks of advocates
21 with independent living, with the CDPAP program,
22 Open Doors, ombudsmen, et cetera, that are experts
23 and know the work, and want to do the work.

24 SENATOR MAY: Thank you.

25 Anyone else?

1 DOUGLAS HOVEY: I think it takes redirecting
2 the long-term-care dollars.

3 It's not something where we flip a switch and
4 it happens overnight. It's a process, and it takes
5 time.

6 But to Tania's point, there are other
7 alternatives that make perfect sense.

8 There are lots of solutions, they're just not
9 appropriately supported and funded.

10 So we really have to look at redirecting
11 those funds and embracing other models.

12 I mentioned the greenhouse project.

13 I can't speak to other states necessarily.
14 I'm not that familiar with other states so much.

15 But, that particular model is one to look at,
16 if we do need to have small facilities for 12 or 15
17 people, that are part of a local community effort,
18 that get services from the local community-based
19 organizations.

20 Right now, there's no coordination between
21 the state and the localities and the community-based
22 organizations that are responsive to the needs of
23 the long-term-care community. There's absolutely no
24 support.

25 It's all targeted to other disability groups.

1 So we need a system like, I mentioned
2 earlier, the Single Point of Access meets weekly, to
3 talk about the service needs and the housing needs
4 of people that have a mental-health diagnosis.

5 And that's administered by the office of
6 mental health.

7 But if we present somebody, a quadraplegic
8 who needs housing, who is homeless, to that group,
9 they'll tell us, oh, we're not allowed to serve
10 them.

11 So there's no mechanism in place at the local
12 level to provide the supports that Tania is talking
13 about.

14 It's very limited. I mean, it's done in
15 pockets around the state, but it's not universal or
16 consistent like the office of mental health's
17 Single Point of Access, as an example.

18 SENATOR MAY: Okay. Thank you very much.

19 I'm done.

20 Thank you, Senator.

21 Assembly.

22 Assemblymember Bronson?

23 ASSEMBLYMEMBER BRONSON: Uh, yes.

24 We no further questioners on the Assembly.

25 SENATOR RIVERA: All right.

1 Senator Skoufis, I recognize for 5 minutes.

2 SENATOR SKOUFIS: Thanks very much.

3 And thanks to everyone who shared testimony,
4 and especially good to see you, Doug.

5 Hope you're all well.

6 So I thank you, if for no other reason, than
7 I think it's valuable for us, as legislators, to be
8 challenged to think a little bit differently on
9 these issues.

10 And over the coming weeks and months, we need
11 to do that.

12 Now we've heard a lot today and last week
13 about how vulnerable residents of nursing homes have
14 been exposed to very dangerous situations the past
15 five months.

16 We haven't heard as much -- hopefully, you
17 all can shed light -- on how much more safe it is in
18 the consumer-directed program with home care in
19 general.

20 Certainly, it stands to reason that, you
21 know, in a more one-on-one, or far more limited
22 setting, you know, there's not going to be as much
23 transmission of the disease.

24 But can you all speak to whether you had some
25 data, or even some anecdotal evidence, as to how

1 many of your employees, your home health aides, have
2 been infected?

3 How many of -- how many of -- how many
4 New Yorkers who are enrolled in the
5 consumer-directed program have become infected?

6 And if so, by who?

7 Can you speak a little bit about how the
8 virus has existed or not existed in the home setting
9 compared to nursing homes?

10 TANIA ANDERSON: So if I may, I can say that
11 ARISE operates the consumer-directed
12 personal-assistance program in Onondaga and Oswego
13 counties.

14 We have 325 consumers enrolled in that
15 program, with about 400 personal-care assistants.

16 We have had positive cases among staff and a
17 couple of the consumers. It's fewer than 10, total.
18 There have been no serious illnesses, certainly no
19 deaths.

20 And because we're in the community, and
21 because we are taking the same precautions as
22 everyone on this call, in terms of self-isolating
23 and PPE and handwashing, et cetera, the folks in
24 that program are able to keep themselves safe just
25 as you and I are.

1 And that's just one of the real strengths of
2 the community-based services, is that a person
3 receiving the services has the power.

4 We also have programs for people with
5 developmental disabilities, and they are also all in
6 the community.

7 So we do not have the issues that we've in
8 some of the group homes because those very basic
9 safety measures and precautions can be taken much
10 more simply.

11 SENATOR SKOUFIS: And the rest of you,
12 similar, very low numbers in your experience?

13 DOUGLAS HOVEY: We also have
14 consumer-directed personal-assistance programs.

15 Since the mid-90s, the legislation was
16 passed in '95, ratifying the program.

17 But we have 400 people in the mid-Hudson
18 region.

19 We've had one death due to COVID; sadly, one
20 death. And we've had about five or six of the
21 workers who tested positive, that we're aware of.

22 Now, I did speak with two senior VPs from
23 two of the largest managed long-term-care companies,
24 the insurance companies, who shared that preliminary
25 review of their data for the second quarter of the

1 year, tells them that the consumer-directed
2 home-care model was exponentially lower in the
3 number of COVID cases than was licensed home health
4 care. And then, of course, nursing home was
5 exponentially higher than the two home-care services
6 models that [indiscernible].

7 SENATOR SKOUFIS: But when you get that, if
8 you wouldn't mind sharing it, Doug, if you're able
9 to.

10 DOUGLAS HOVEY: And I don't know if
11 anything's been universally, uh -- uh, a database
12 has been, you know, developed.

13 This was all sort of preliminary analysis of
14 their data, but speaking volumes of the home-care
15 models in supporting people in the community,
16 keeping that infection rate down.

17 SENATOR SKOUFIS: Yeah.

18 And just, lastly, I know my time is running
19 out.

20 I'm a fan of comparative politics.

21 I think we shouldn't reinvent the wheel if we
22 don't need to.

23 Can any of you speak to what you view as
24 maybe sort of the model states, or the model couple
25 of states, that got it right over the past

1 five months, that have a better system, program, for
2 home care in place than we do here in New York?

3 MEGHAN PARKER: I think we might have to get
4 back to you on that.

5 You know, I'm not sure if we have heard,
6 unless one of you can correct me if I'm wrong, of
7 another state.

8 Of course, other states are just being hit
9 hard now, and so, I guess, you know, they're kind of
10 dealing with what we dealt with several months ago.

11 But I think we might have to follow up with
12 all of you, if there is a model or a state that
13 really got it right, because I'm not sure that we
14 have that answer for you today. But we can
15 definitely follow up, yeah.

16 SENATOR RIVERA: Thank you, Ms. Parker.

17 And last, but certainly not least, recognize
18 Senator Sue Serino for 5 minutes.

19 SENATOR SERINO: Thank you, Mr. Chairman.

20 And, Keith, it's so nice to see you again.

21 I just want to say a big thank you to all of
22 you.

23 I really want to drive Tania's point home,
24 that making investments in accessibility benefits us
25 all.

1 And here in Dutchess County where I'm from,
2 we think differently, and have made accessibility a
3 top priority.

4 In this pandemic, I think we've learned a lot
5 about how we can do that even better, and how we can
6 take innovative ideas we've gotten from complying
7 with the ADA, and incorporating them into our
8 communities now.

9 And I've been asking the same question of
10 everybody today, so I'm going to ask of you guys
11 too: If you had to set your priorities to improve
12 the State's response to long-term care, going
13 forward, what would be at the top of your list?

14 DOUGLAS HOVEY: Just quickly, I would say
15 supporting a couple of pilot projects, maybe one
16 downstate and one upstate, similar to the greenhouse
17 project; smaller, more personalized, not-for-profit
18 facilities that can support people in a more
19 human -- humane and dignified way.

20 That's just one example.

21 TANIA ANDERSON: I would say, putting a halt
22 to the assault on the CDPAP program in New York.

23 It's something that is -- has grown quite a
24 lot, has been very successful, and it's less more
25 expensive than folks originally thought.

1 It's far less expensive than nursing homes,
2 far safer, and it's a good model, and it's something
3 that independent living created, and it can be
4 brought back to its core of independent living.

5 And please look at that issue.

6 SENATOR SERINO: Thank you very much, Tania.

7 DOUGLAS HOVEY: I would echo that as well.

8 The consumer-directed model started out in
9 1995, and now there's ninety -- almost 90,000 people
10 who use that service every day.

11 It's critically important to their survival.

12 SENATOR SERINO: Yes.

13 Well, thank you, and thank you for everything
14 that you do, for being advocates.

15 And I really appreciate you all being here
16 today.

17 DOUGLAS HOVEY: Thank you.

18 TANIA ANDERSON: Thank you.

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

21 Doing one last check on the Assembly side, no
22 questions over there?

23 ASSEMBLYMEMBER BRONSON: We are all set on
24 the Assembly side. Thank you.

25 SENATOR RIVERA: All right.

1 Thank you so much.

2 You're all excused for your evening, but we
3 will soldier on.

4 And with the next panel:

5 Gail Myers, deputy director of Statewide
6 Senior Action Council;

7 Lindsey Heckler, supervising attorney,
8 Center for Elder Law & Justice;

9 Marydel Wypych -- I hope I got that
10 correctly -- co-chair of the Elder Justice Committee
11 of Metro Justice;

12 And, Sandy Reiburn, president of Save Our
13 Seniors.

14 Once the folks are on.

15 Okay.

16 ASSEMBLYMEMBER GOTTFRIED: [Inaudible.]

17 SENATOR RIVERA: Can't hear you
18 [indiscernible] -- can't hear you, Dick.

19 One more time to unmute it, dude.

20 Now.

21 ASSEMBLYMEMBER GOTTFRIED: Okay. I was
22 unmuted.

23 Can't trust everything you read.

24 So, notwithstanding that, do you each swear
25 or affirm that the testimony you're about to give is

1 true?

2 MARYDEL WYPYCH: I do.

3 SANDY REIBURN: I do.

4 LINDSEY HECKLER: Yes, I do.

5 GAIL MYERS: I sadly do.

6 ASSEMBLYMEMBER GOTTFRIED: Okay.

7 SENATOR RIVERA: All right, we will start,
8 actually, with Gail Myers.

9 GAIL MYERS: Okay.

10 I have been very sad all day, since listening
11 to all this since 10:00 this morning, and since
12 listening to it last week.

13 We are just in such a state of crisis.

14 And I very carefully scripted my 5 minutes so
15 that could I get everything in, which, of course,
16 I can't.

17 But I've been working in health-care policy
18 and advocacy for a very long time, and I am so sick
19 and tired of playing whack-a-mole with our
20 health-care system.

21 You know, something happens, and it pops out,
22 and we treat it as a crisis, and then something else
23 pops out.

24 So, you know, nursing homes are popping out.
25 We've been talking about the conditions in nursing

1 homes for dozens of years.

2 And, you know, and now home care is
3 underfunded, and that pops out.

4 We really need something comprehensive, and
5 I would be very remiss if I didn't start with
6 saying:

7 We need to reimagine long-term care;

8 We need to fund it;

9 And we need to have New York health to
10 include long-term-care benefits for everyone, from
11 cradle to grave;

12 Redeploy those workers that are now very busy
13 denying health-care costs into delivering service,
14 and being at the bedside no matter where they're
15 needed.

16 We have the population in the state.

17 What we don't have is the will to make
18 significant change happen.

19 Today I'm testifying on behalf of the many
20 callers to statewide patients' rights helpline, who
21 asked us to share the challenges those needing care
22 and their families have experienced during the
23 pandemic.

24 You've heard from many people today, some of
25 whom are our callers.

1 Most complained that residents were
2 declining. Family members attributed this to social
3 isolation, inadequate staffing, and lack of visitors
4 who often supplement care.

5 You've heard that at both hearings.

6 You know, I want to make the point that there
7 are people who are suffering because they have this
8 horrible disease. They have COVID, they're alone,
9 they're in the nursing homes.

10 But there are people who are suffering and
11 declining who don't have COVID, who are in the
12 nursing homes. And they were suffering before, and
13 they're suffering more now because the staff has
14 been called away to the higher-need cases.

15 Residents have been confined to their rooms,
16 they are totally isolated.

17 Some were not receiving assistance in getting
18 out of bed or toileting.

19 They have resulting bedsores and mobility
20 issues.

21 You've heard that today.

22 And it is just totally demoralizing to say
23 there is a better solution.

24 That solution, of course, is staffing. And
25 I'm sure you'll hear more about that from some of my

1 colleagues on the panel.

2 But we did a quick look, and as the December
3 reports on staffing that the facilities have to
4 file, which have just been suspended for a while,
5 less than 85 percent of the nursing homes in our
6 state met the minimum recommended qualifications of
7 4.1 hours per resident per day.

8 Only about 15 percent met the minimum
9 standards.

10 Now, there are two new studies that came out
11 about the pandemic and staffing.

12 I refer to them in my written testimony.

13 But studying of California nursing homes, the
14 finding was: Low RN and total staffing -- low total
15 staff was associated with more infection-control
16 deficiencies and with facilities that had
17 COVID-19-positive residents.

18 A Connecticut nursing home study done by
19 someone at the University of Rochester, found that
20 higher RN staffing helped reduce virus transmission
21 and deaths.

22 We've really got to get our hands around this
23 now that the information is out there.

24 We've got recommendations on visitation.

25 We want compassionate-care exemption to be

1 expanded to people who have declining psychosocial
2 health.

3 We believe there should be an essential
4 support person assigned from every family that can,
5 someone who has recently, frequently, visited who
6 supports the person in a nursing home.

7 Open visitation for every facility.

8 Do not go with the reported -- with the
9 28 days required when no infection of staff or
10 residents. We just think that's excessive caution.

11 And there needs to be clear communication
12 plans about when things open, and when they go in
13 and out of opening, as the stages go through.

14 We're particularly distressed today about the
15 state of the long-term-care ombudsman program.

16 We're surprised and distressed to see that
17 the ombudsman is not testifying before you.

18 We have not seen any indication that the
19 extra federal CARES money, \$1.2 million, has been
20 distributed in New York State.

21 And we just need to remind you, of course,
22 that new methods of volunteer recruitment have to
23 take place for the ombudsman program.

24 It may be calling in the National Guard to
25 help at this point, but those who are most likely to

1 be at risk of the disease are often the people who
2 are volunteers in the ombudsman program. And
3 they're not going back into these facilities until
4 there is a viral treatment and a vaccine.

5 That's it.

6 [Indiscernible.]

7 SENATOR RIVERA: Perfectly on time,
8 Ms. Myers. Thank you so much.

9 Next, we will hear from Lindsey Heckler,
10 supervising attorney, Center for Elder Law &
11 Justice.

12 LINDSEY HECKLER: I thank you for the
13 opportunity to testify today.

14 I am a supervising attorney at the Center for
15 Elder Law & Justice located in Western New York,
16 where we provide free civil, legal, and advocacy
17 services to older adults and people with
18 disabilities.

19 We are partnered with the local regional
20 long-term-care ombudsman program. And as that
21 program's legal liaison, we advocate for the rights
22 of people living in nursing homes and adult-care
23 facilities.

24 The growing crisis of substandard care in
25 nursing homes and other settings is not new.

1 The pandemic has exacerbated these issues and
2 brought long overdue public scrutiny.

3 To keep things short, please see our detailed
4 written testimony that discusses the longstanding
5 issues with long-term care, and our recommendations.

6 While the department of health is not without
7 fault for its handling of its oversight
8 responsibilities before and during the pandemic,
9 nursing homes have always had the legal
10 responsibility to only admit residents they can
11 provide the care and services to meet that
12 individual resident's need.

13 However, we know they do not, and this is not
14 a problem that's limited to COVID.

15 For example, a nursing home was cited in
16 February when a resident in his bariatric shower
17 chair could not fit through the doorway, was
18 injured, and needed 18 sutures at a hospital.

19 The nursing home admitted a person without
20 ensuring the basic hygiene practice of a shower
21 could safely occur.

22 I use this example for this point:

23 Yes, that March 25th advisory issued to
24 nursing homes did state that "no resident shall be
25 denied admission solely based on COVID status."

1 However, the advisory did not negate the
2 requirement that nursing homes only admit a resident
3 if they can provide care and services to that
4 person's needs.

5 DOH and CMS issued multiple guidance to
6 nursing homes prior to March 25th, that, in part,
7 discussed the importance of cohorting, having staff
8 dedicated to COVID residents, and furloughing staff
9 with potential exposure.

10 If a nursing home was short on staff or other
11 resources needed to meet the needs of current
12 residents, that nursing home should not have
13 accepted new residents from hospitals.

14 A denial of admission due to not having
15 sufficient resources is not the same as denying a
16 patient admission based on a confirmed or suspected
17 diagnosis of COVID.

18 The department of health also played a part
19 in the thousands of resident deaths by failing to
20 timely and fully enforce necessary nursing home
21 regulations.

22 Infection-control practice in nursing homes
23 have been a longstanding issue that have plagued
24 facilities for years, including, for example, when
25 COVID was silently spreading in our facilities.

1 On February 27th, a facility was cited when
2 staff failed to wear appropriate PPE when entering a
3 resident room or droplet precautions were in place.

4 This facility was again cited May 11th for
5 infection-control violations.

6 March 20th, CMS stopped all state
7 inspections, except for the focused infection
8 control survey and complaints triaged at immediate
9 jeopardy.

10 June 1st, CMS began allowing states to expand
11 beyond those restrictions, at the state's
12 discretion, including full surveys and complaints.

13 To our knowledge, DOH has not resumed full
14 surveys, and seems to only be investigating
15 complaints that are likely triaged at the IJ level.

16 So, serious quality-of-life issues continue
17 every day unchecked in these facilities.

18 For example, a Western New York nursing home
19 was cited for failure to maintain resident call-bell
20 systems in working order.

21 This affected all of the resident units.

22 Staff stated, the system had not worked for
23 months, and residents were on 15-minute checks and
24 given a cat bell to ring.

25 Interviewed residents stated, they were not

1 given a bell to ring, did not know how to call for
2 help, and had to scream for help.

3 One resident stated, he had lived there for
4 about six months, and the call bell at his bedside
5 had problems for the first three months, and
6 completely broken for the last three.

7 DOH determined this deficiency was a pattern,
8 and there was only the potential for more than
9 minimal harm, but no harm occurred.

10 This issue was happening for months, and
11 residents were left to scream for help.

12 I highly doubt no harm occurred.

13 Think of it:

14 You're sick, in pain, waiting for assistance
15 to the bathroom, and you do not get it.

16 You have to cry out for help, and you do not
17 know whether that help will come.

18 No harm?

19 Really?

20 Were medical records reviewed to make sure
21 patients got their medications on time?

22 No harm.

23 This facility had 117 citations over the past
24 3 years, compared to the statewide average of 27,
25 including being cited 3 times for infection-control

1 violations.

2 How long is this facility going to be allowed
3 to continue to operate before effective action is
4 taken?

5 Is the State going to allow another
6 Emerald South where residents died before it was
7 closed?

8 DOH must resume its full certification
9 surveys, and properly tackle its backlog of over
10 5,000 complaints, and actually call the
11 complainants.

12 It is time that New York, DOH, and society
13 stop being complicit in substandard care that occurs
14 in our nursing homes.

15 The business as usual is not working.

16 We are willing and able to work with the
17 legislature, DOH, and others to improve the quality
18 of care, not only in our long-term-care settings,
19 but also in the community.

20 Thank you for your time.

21 SENATOR RIVERA: Thank you. Perfect timing,
22 Ms. Heckler.

23 Next we'll hear from Marydel Wypych.

24 I hope I pronounced your name correctly,
25 ma'am.

1 MARYDEL WYPYCH: Hi. It's Marydel Wypych,
2 but that's okay.

3 SENATOR RIVERA: Marydel Wypych. Thank you.

4 MARYDEL WYPYCH: I'm with the Elder Justice
5 Committee of Metro Justice, which is a
6 Rochester-based volunteer advocacy organization.

7 I also want to say that, my mother, who
8 passed away in February, lived for over 13 years in
9 a nursing home.

10 So that's how I came to advocacy.

11 Governor Cuomo compared COVID-19 in a nursing
12 home to fire in dry grass.

13 While the residents have many health problems
14 and require intimate care, we assert that "the dry
15 grass" is actually the systemic, long-time neglect
16 and inaction by New York State and federal
17 governments to nursing home problems which have been
18 documented for decades.

19 Please consider two major contributors to
20 over 6400 COVID nursing home deaths:

21 Inadequate direct-care staffing levels, and
22 lax department of health enforcement of nursing home
23 regulations, which Lindsay just talked about
24 wonderfully.

25 Although today's residents require many hours

1 of direct care each day, between 10 and 15 percent
2 of New York State nursing homes meet the federal
3 guidelines of 4.1 direct hours -- care hours per
4 day, which is a ratio of about 1:6 residents.

5 Some homes have ratios of 1:20.

6 During this pandemic, many nursing homes have
7 experienced even lower staffing levels due to
8 illness and attrition.

9 Direct-care ratios have been reported as
10 1:20, and even 1:30.

11 Overtaxed, tired staff make unintentional
12 mistakes, take shortcuts, which may lead to resident
13 illness, accidents, and deaths.

14 These are unacceptable at any time, but
15 especially so in a pandemic.

16 Over 20 years of research has found that
17 higher staffing levels positively -- are positively
18 related to residents' health, safety, and
19 well-being, and lower staffing levels are associated
20 with decreased functional outcomes, such as moving
21 on their own and taking care of themselves.

22 An increase in medical issues, such as
23 bedsore, urinary tract infections, weight loss,
24 falls, and serious injuries occur, and, then, they
25 require even more staff attention.

1 Lower staffing levels are associated with
2 increased use of drugs and restraints to control
3 residents.

4 Additionally, lower staffing levels are
5 related to more health-code violations.

6 The department of health's July report
7 concluded that overall rating of nursing homes were
8 not associated with the number of COVID fatalities
9 reported.

10 We question those findings.

11 We compared the number of COVID deaths in the
12 33 Monroe County nursing homes to their star
13 ratings, with "1" being well below average, and
14 "5" being well above average.

15 Our results indicated that, of the 125 deaths
16 in Monroe County, 16 percent occurred in nursing
17 homes with 3- to 5-star ratings, and 84 percent
18 occurred in nursing homes with 1- to 2-star ratings.

19 Facilities with the lowest ratings had lower
20 staffing levels.

21 It is clear that an industry that puts profit
22 above health and safety and quality of life will not
23 meet federally-recommended staffing standards
24 without legislation.

25 According to the CDC, one to three million

1 serious infections occur in U.S. facilities, and
2 380,000 residents die of those infections every
3 year.

4 According to the government accounting office
5 (the GAO), reported May 2020: Infection-control
6 deficiencies were widespread and persistent in
7 U.S. nursing homes prior to COVID-19.

8 40 percent received infection and prevention
9 deficiencies in 2018 and '19, and '19 had
10 deficiencies of multiple consecutive years,
11 19 percent.

12 Nursing homes with 5-star ratings had
13 9.7 percent, and nursing homes with 1- to 2-star
14 ratings had 35.7 percent, of serious deficiencies
15 across multiple years.

16 The report also found that 24 percent of
17 New York State nursing homes have
18 infection-prevention deficiencies, such as not using
19 proper hand hygiene or use of procedures to mitigate
20 spread of illness across multiple years.

21 The GAO report appears at odds with the
22 DOH report, it seems.

23 Using data from the LTCCC website,
24 U.S. nursing home citations, 2016 to '19,
25 New York State inspectors reported deficiencies as

1 harm to residents fewer than 2.2 percent of the
2 time. Fines are rarely leveled even for severe
3 violations.

4 And I think this was mentioned earlier as
5 well.

6 And when those fines are levied, they're
7 often small and meaningless.

8 So with a history of deficiencies and no
9 accountability, it's no wonder that COVID-19 spread
10 through nursing homes and caused 6400 deaths.

11 Please use this tragedy -- the tragedy of
12 this pandemic as an opportunity for change.

13 To end the systemic long-term neglect and
14 inaction, we urge you to recommend to the
15 New York State Legislature, this year --

16 SENATOR RIVERA: Very quickly, if you could
17 wrap up, please.

18 MARYDEL WYPYCH: Yes, I'm almost done.

19 -- pass the Safe Staffing for Quality Care
20 Act based on CMS staffing guidelines.

21 Take actions to assure that the department of
22 health strongly asserts its regulatory powers over
23 nursing homes, through unannounced inspections,
24 [indiscernible cross-talking] --

25 SENATOR RIVERA: Actually, I'm going to have

1 to -- I'm going to have to [indiscernible] we have
2 to move on to the next person.

3 Thank you, Ms. Wypych.

4 I believe that we have been joined again by
5 Ms. Sandy Reiburn, president of Save Our Seniors.

6 SANDY REIBURN: Okay.

7 SENATOR RIVERA: Yes.

8 SANDY REIBURN: Can you hear me?

9 SENATOR RIVERA: Yes, we can.

10 Go ahead.

11 SANDY REIBURN: Okay. Thank you.

12 Thank you for having me, and thank you for
13 your yeoman's work, how wonderful you all have been
14 last Monday, and then again today.

15 I'm the daughter of a 99-year-old woman who
16 died earlier this year.

17 And my testimony has to do with the problems
18 that were inherent in long-term-care facilities and
19 nursing homes well before we ever knew what COVID-19
20 was.

21 And I sent in a testimony, which I call
22 "Truth with a Cudgel."

23 And so what I'm going to do is read you some
24 of the facts that I put together, that I think, in
25 some cases, duplicate much of what is said, but, in

1 other cases, reinforce items that I think should
2 have been more focused on.

3 So, Fact 1:

4 The department of health, the public health
5 and health planning council, Dr. Zucker, are
6 de facto enablers of harm to the elderly,
7 demonstrated by years of malfeasance, and confirmed
8 by the commissioner's evasive testimony on 8/3.

9 Fact:

10 The malfeasance and mismanagement of the
11 department of health, in its failure and
12 responsibility and oversight to ensure safety for
13 those --

14 Are you still hearing me?

15 Yes. Okay.

16 I don't see me up there, which is just as
17 good.

18 -- the malfeasance and mismanagement of the
19 department of health, in its failure of
20 responsibility and oversight, to ensure safety for
21 those New Yorkers relying on this agency to protect
22 them, has gone on for years.

23 There has been a systemic failure, which has
24 allowed the coronavirus to find its perfect victims:
25 Those who were never attended to sufficiently long

1 before, as I said, we ever heard of COVID-19.

2 Fact:

3 If New York State Title 10 CRR requires and
4 subjects long-term-care facilities to inspection and
5 the enforcement of conditions, operations, and
6 quality of care, unquote, why would Governor Cuomo
7 erode liability options which would normally hold
8 accountable those who flouted their New York State
9 licensed-facility oversight obligations?

10 Any pretext often avowed for the
11 New York State Attorney General; i.e., the executive
12 branch's attorney, like Barr is to Trump, to
13 investigate its own sister agency, the department of
14 health, will be a de facto conflict of interest and
15 the final blow to any pretext of credibility of
16 New York State government's stewardship of
17 New York -- of nursing home accountability and
18 purported honest oversight.

19 Fact:

20 Any pretext often avowed by the
21 New York State Department of Health; i.e., the
22 appointees of Governor Cuomo, to investigate
23 itself; namely, to remedy itself, in view of the
24 well-known and widely-publicized failures of that
25 department's oversight, enforcement, and moral

1 imperative, must not be permitted.

2 Fact:

3 Any impaneling of oversight committees
4 generated by a new bill to fund its realization must
5 be thoroughly vetted prior to their appointments.

6 A prerequisite of a clean record, showing no
7 campaign financing, nor political donations, must be
8 required.

9 The usual suspects must not be certified as
10 independent judges.

11 Fact:

12 Ombudsmen could and should play an important
13 role, but irrespective of how much funding to
14 increase their numbers, they will never fulfill
15 their promise to be the interlocutors protecting the
16 nursing home patient, unless the following is also
17 addressed:

18 Ombudsmen have no enforcement powers.

19 Ombudsmen may be interviewing fearful
20 patients while operators or their staff hover close
21 by.

22 People have addressed that.

23 Ombudsmen are confronted by limitations
24 inherent in Alzheimer's patients, as well as a
25 majority of elders with hearing loss, and an ability

1 to fully understand and sufficiently exchange
2 problems and issues succinctly, like my mother.

3 The department of health is a house of cards.

4 I won't go into those facts, but please do
5 read my testimony.

6 The public health and health planning
7 commission is a -- council is a failed agency.

8 It fails due diligence prior to licensing an
9 applicant.

10 It fails to prevent bad owner-operators from
11 certification.

12 It has council members with conflicts of
13 interests. Recusal is inadequate.

14 Whoops.

15 Start my -- you're asking me to restart?

16 SENATOR RIVERA: No, no, no.

17 We could hear you [indiscernible
18 cross-talking] --

19 MARYDEL WYPYCH: Oh, I got a message up here.

20 Sorry.

21 The PA -- the public health and health
22 planning council has only one consumer rep.

23 A restructure is imperative.

24 The public health and health planning council
25 ignores chronic histories of violations when

1 licensing ongoing operators.

2 Fact:

3 If you go to the Chris Glorioso's report on
4 March 29th, NBC, it will tell you that the governor
5 has quietly signed off on giving \$850 million, to be
6 split among more than 600 nursing homes.

7 And Leading Age, James Clyne, thought it was
8 a great idea.

9 Come on folks, let's get real.

10 Fact:

11 Until and unless there's coordination with
12 New York City's guidance on property ownership of
13 facilities, there will be an unsustainable deficit
14 of facilities.

15 The left hand doesn't know what the right
16 hand is doing.

17 Evasion by New York State enables evermore
18 real estate churns, like in my mother's case, and
19 the dismantling of assisted-living and nursing home
20 facilities in New York City.

21 And, then, I don't have really any time, but
22 have I to say one thing:

23 The MLTC 24-hour home-attendant shifts allow
24 slave-labor wages of only 13 hours paid for
25 24 hours.

1 Remarkable and disgusting.

2 How can you let this continue?

3 And if I had more time, I'd tell you some
4 more stuff.

5 SENATOR RIVERA: I'm sure --

6 SANDY REIBURN: But please do read --

7 SENATOR RIVERA: I'm sure, Ms. Reiburn, not
8 only is your testimony all on the record, but,
9 number two, I know that a couple of my colleagues
10 want to follow up with you, so I'm sure you will
11 have an opportunity.

12 And to start us off --

13 SANDY REIBURN: May I say one last thing?

14 I have done a Nancy Drew-like investigation
15 of collusion between nursing home owner-operators.

16 I have paper trails --

17 SENATOR RIVERA: Well, I'll say this,
18 Ms. Reiburn -- I will say this, Ms. Reiburn, because
19 we have to get to the questions, but I am sure that
20 the word "investigation" peaked a colleague's ear.

21 That would be Senator James Skoufis.

22 SANDY REIBURN: I'm available, the price is
23 right.

24 SENATOR RIVERA: We'll start off with
25 Senator -- with Senator Rachel May, recognized for

1 5 minutes.

2 SANDY REIBURN: Thank you.

3 Thank you for your attention.

4 SENATOR RIVERA: Yep.

5 SENATOR MAY: Thank you.

6 And thank you, Sandy, for bringing up that
7 issue that we've been hearing about today, of people
8 being afraid to report.

9 And I would like you or Gail to comment, or
10 Lindsey to comment, on, to what extent do we think
11 that there is rampant underreporting of problems
12 that are -- have been occurring in nursing homes and
13 long-term-care?

14 SANDY REIBURN: I think there's total
15 underreporting.

16 And I've been told by one of the very
17 wonderful ombudsman, "What can I really do?"

18 Come on.

19 This is a -- really a sham.

20 All the rules, regulations, codes, and
21 checklists in the world will never mitigate this
22 unless you go to the source, which is the licensing
23 of bad operators.

24 LINDSEY HECKLER: Can I jump in?

25 [Indiscernible cross-talking by multiple

1 people.]

2 LINDSEY HECKLER: Okay.

3 We have clients, and then in my work as the
4 legal liaison with the Regional 15 -- Region 15
5 ombudsman program, we counsel them on what their
6 options are, and their next steps.

7 However, when they tell us, No, I do not want
8 you to file -- help me file a complaint with the
9 department of health; No, I don't want you to help
10 me file a complaint with the attorney general's
11 office, we're bound to that confidentiality.

12 We also represent a lot of residents in
13 nursing home involuntary discharges.

14 Even though we start the appeal process, and
15 that goes through, we have clients who don't want us
16 to push on DOH to actually do a complaint
17 investigation because they're afraid of retaliation.

18 It is a legitimate fear.

19 GAIL MYERS: We have people that we refer to
20 the department of health hotlines, because they're
21 calling us, and we say, this is something that
22 should be investigated, in our opinion.

23 And it's a pretty good opinion.

24 The phone is not answered.

25 So someone will finally get the gumption up

1 to make the phone call, and nobody answers at the
2 DOH. Or, they answer, and they say, well, we'll
3 look at this, but it doesn't seem like it's imminent
4 harm. So we'll put it on file. And when we go to
5 do our survey, you know, maybe in 18 months, we will
6 check on it.

7 People are getting no sense of recourse when
8 they do have the courage to make a complaint.

9 And it is just demoralizing for people in the
10 facilities.

11 They also don't want to blame the staff, but
12 they do find that they fear that they may be
13 retaliated against.

14 I was an ombudsman in an assisted-living
15 facility in the Capital District.

16 People would say, I can't talk to you because
17 they'll see me talking to you.

18 That is an amount of fear that we have to
19 overcome.

20 I, instead, would go to play bingo with them,
21 and sit next to them, and they can talk to me during
22 bingo. And that's how I found out a lot of stuff,
23 but I never won.

24 SENATOR MAY: Okay.

25 That's all I had.

1 Thank you.

2 SENATOR RIVERA: Thank you, Senator.
3 Assembly?

4 ASSEMBLYMEMBER BRONSON: We will start with
5 Chair Richard Gottfried, 5 minutes.

6 ASSEMBLYMEMBER GOTTFRIED: Thank you.

7 Ms. Heckler, you were talking about the whole
8 issue of, quote/unquote, no harm being found in
9 violations, and you were talking particularly about
10 nursing homes.

11 This hearing is also about adult homes.

12 And we've had a very difficult time over the
13 years dealing with enforcement legislation about
14 adult homes.

15 Is this issue of serious violations being
16 written up as, quote/unquote, no harm, is that a
17 phenomenon in adult homes as well as nursing homes?

18 LINDSEY HECKLER: Yes.

19 And one of the challenge with adult homes and
20 adult-care facilities, in general, is, unlike
21 nursing homes, department of health does not
22 publicly post on its profiles' website copies of the
23 actual surveys or statements of deficiencies.

24 All they do is put the regulatory --
25 regulation that was violated.

1 So, it's really hard, unless you FOIL-request
2 every single report from the department of health,
3 to actually point examples.

4 And you have the same issues in adult homes
5 as nursing homes, where residents are afraid of
6 retaliation.

7 And to further complicate matters is, many
8 residents, if they do complain, they're threatened
9 with illegal evictions.

10 And unlike nursing homes which have the right
11 to appeal to the department of health, adult-care
12 facilities don't have that right.

13 Instead, if the resident says, no, I'm not
14 leaving, it's up to that adult home to initiate the
15 special-court proceeding in local courts.

16 And that's a problem.

17 And as a result, we see a lot of harms being
18 swept under the rug.

19 ASSEMBLYMEMBER GOTTFRIED: Thank you.

20 And I just want to say to Ms. Reiburn,
21 Jo Anne Simon [ph.] let me know to expect really
22 terrific testimony from you, and you did not
23 disappointment.

24 SANDY REIBURN: Well, I hope I didn't shame
25 myself, but, you know something?

1 I am willing to sound like an idiot on behalf
2 of all those people who don't have a voice.

3 This is their 8 minutes and 46 seconds being
4 taken away from them.

5 We need the strength of the Assembly and the
6 Senate to step up and push back on this emperor, and
7 get this done.

8 ASSEMBLYMEMBER GOTTFRIED: Thank you.

9 SENATOR RIVERA: Ditto.

10 And since -- remember I told you,
11 Ms. Reiburn, that that was somebody piqued by the
12 word "investigation"?

13 That would be Senator Skoufis, recognized for
14 the next 5 minutes.

15 SANDY REIBURN: I know. I've fallen in love
16 with Senator Skoufis.

17 You like old ladies?

18 SENATOR RIVERA: He is dreaming, he is
19 dreaming.

20 SANDY REIBURN: No, really.

21 SENATOR RIVERA: [Indiscernible] 5 minutes.

22 SENATOR SKOUFIS: You're making me blush.

23 I don't even know what to say to that, other
24 than, I'm taken.

25 I'm sorry.

1 But I really don't have a question.

2 I just want to thank all of you for your
3 testimony.

4 And, Ms. Reiburn, I would love to follow up
5 with you. You mentioned you've done a lot of
6 research.

7 SANDY REIBURN: I've got a lot of stuff on
8 Safire, for example.

9 SENATOR SKOUFIS: Terrific.

10 So I'd love to connect afterward.

11 And I just ask that you look forward to my
12 office reaching out.

13 SANDY REIBURN: Thank you. I will.

14 SENATOR RIVERA: Thank you, Senator Skoufis.
15 Assembly?

16 ASSEMBLYMEMBER BRONSON: Yes, thank you,
17 Mr. Chair.

18 I will recognize myself for 5 minutes.

19 Thank you to all the panelists for your
20 testimony today. It's been really helpful.

21 And I look forward, Gail, to reading your
22 full document.

23 I always get more information and learn a lot
24 when I do that.

25 So -- but I want to ask a couple of other

1 people questions, though.

2 First of all, Ms. Heckler, you just responded
3 to Chair Gottfried's question, and you stated what
4 the DOH has to post -- or, I guess, what they do
5 post in connection with inspections, and the
6 regulations that were violated that they found in a
7 nursing home.

8 Could you just expand on that a little bit?

9 Because I'm not familiar with it:

10 What do they have to post?

11 And, don't we know what the corrective
12 actions are, or what the fines are, in those
13 postings?

14 LINDSEY HECKLER: Yeah.

15 Sorry, you're cutting out.

16 But, for nursing homes, the department of
17 health, on their profiles' website, the nursing home
18 profiles, they post, unfortunately, redacted --
19 [indiscernible] redacted, copies of their inspection
20 reports, also known as the "Statement of
21 Deficiencies."

22 Along with that, they include the directed
23 plan of correction.

24 That's also a part of a federal requirement.

25 For the adult-care facilities, adult-care

1 facilities, or, "assisted-living," as it's commonly
2 called, is primarily State-regulated, not federal
3 regulated.

4 So as a result, it's up to the States to pass
5 law to really protect the residents and provide
6 oversight.

7 In the adult-care facility profiles' website,
8 only shows the violation or the regulation that was
9 violated, not the actual deficiency or the statement
10 of deficiency.

11 So when the department of health goes into a
12 facility, finds a violation of a regulation and
13 issues a deficiency, they have what's called the
14 "statement of deficiency."

15 That does not currently exist on that
16 department of health profiles' website.

17 And I've been doing this since, roughly,
18 2016. And every year they say, we're working on it.

19 Why should people have to call up and ask?

20 They should be able to just click on a button
21 and see it.

22 And, also, I really encourage the legislature
23 to pass a law that requires nursing homes and
24 adult-care facilities to post their statements of
25 deficiencies on their public website.

1 That will go a long way to at least pushing
2 for change, and also educating the consumers.

3 ASSEMBLYMEMBER BRONSON: Yeah.

4 So, you know, in the area that I'm more
5 familiar with, and that's labor law, we require
6 postings all the time, if a company has been found
7 in violation, and so that all the employees know.

8 And, certainly, I think we should consider
9 legislation in the same arena here, where we would
10 post that for the family members and for the
11 employees at that [inaudible].

12 LINDSEY HECKLER: And I think you could do
13 that also with the staffing levels.

14 At -- nursing homes are required to
15 [indiscernible] staffing on Skype.

16 Why not also require them to post that on
17 their public website.

18 ASSEMBLYMEMBER BRONSON: Thank you.

19 And I apologize. My Internet connection is
20 continuing to tell me it's unstable, so I'm not sure
21 how much I'm coming through.

22 But, Marydel, I wanted to give you the
23 opportunity.

24 You and I have met a couple of times, we
25 talked on the phone.

1 You were going to begin your list of
2 recommendations of, what can we do -- to be done, to
3 deal with the systemic failure, and the failure of
4 oversight and the staffing issues?

5 I'm going to yield my minute twenty seconds
6 to you, if you want to finish, and let us know what
7 your recommendations would be to take corrective
8 action.

9 MARYDEL WYPYCH: Okay.

10 Well, I almost got through.

11 Well, we want the department of health to
12 assert its regulatory powers over the nursing homes,
13 by doing unannounced in-person inspections.

14 Have true and meaningful findings of harm.

15 This was discussed earlier.

16 Meaningful fines, and, revoking licenses for
17 chronically poor-performing homes.

18 So those were the recommendations.

19 And, also, please pass Safe Staffing.

20 Because we talked -- or, it's been discussed
21 over and over again about the staffing in nursing
22 homes being a problem.

23 So those recommendations.

24 ASSEMBLYMEMBER BRONSON: And -- okay.

25 Thank you, Marydel.

1 And I just want to point out, and your point
2 here is, this isn't just COVID-related.

3 These problems existed long before COVID, and
4 COVID [indiscernible] happened, and take those
5 corrective steps.

6 Is that correct?

7 MARYDEL WYPYCH: Right, exactly.

8 Exactly. It didn't just happen starting in
9 March. This has been going on a long time.

10 ASSEMBLYMEMBER BRONSON: Great. Thank you.

11 My time's up.

12 SENATOR RIVERA: Thank you, Assemblymember.

13 Who is next on the list over there?

14 We don't have any current senators asking
15 questions.

16 ASSEMBLYMEMBER BRONSON: Okay. Thank you.

17 We next will have the ranking member of
18 health, Kevin Byrne.

19 ASSEMBLYMEMBER BYRNE: Thank you, ladies.

20 I also want to thank the witnesses that have
21 been speaking before you. I've taken a little bit
22 of a break, asking questions, and I've just have
23 been listening.

24 But, just because I don't ask questions
25 doesn't mean we're not listening.

1 I'm very appreciative of everyone that's
2 giving their testimony today, and sharing their
3 stories and their experiences.

4 But, particularly, I want to ask a couple
5 questions to, I believe it's Ms. Heckler, and
6 Marydel. I'm sorry, I don't want to mispronounce
7 your last name.

8 But it seems to me that, of significant
9 concern is, the quality in the nursing facilities
10 that it's, obviously, not universal.

11 I believe, Ms. Heckler, you highlighted some
12 specific examples in nursing facilities that have
13 been problem areas for residents.

14 And I believe one of you cited the DOH
15 report, which concluded, it's on page 25, in the
16 "Conclusions," that "data suggests nursing home
17 quality is not a factor in mortality from COVID."

18 Is it safe to say that you two would disagree
19 with that conclusion?

20 LINDSEY HECKLER: Yes.

21 ASSEMBLYMEMBER BYRNE: Okay.

22 You -- would you both suspect that, if we had
23 a complete comprehensive number of nursing home
24 deaths, that could tell a different story,
25 potentially?

1 LINDSEY HECKLER: I think, yes.

2 MARYDEL WYPYCH: I do, too.

3 I think the problem with the DOH report was
4 that, it only looked at a short window of time, just
5 a certain number of weeks.

6 So the data that they looked at was very
7 incomplete, in our opinion.

8 So I think that was a problem with it.

9 And I think if we looked at -- if we ever
10 found out how many total deaths occurred of people
11 who were living in nursing homes, including the ones
12 that died in hospitals, we would have a better
13 picture.

14 ASSEMBLYMEMBER BYRNE: Including the number
15 of deaths that continue to occur after the peak of
16 nursing home deaths in the report.

17 I believe it was after April 8th, we've
18 continued to lose lives.

19 It's not like after the peak, all of sudden,
20 it just went away. We continued to lose lives,
21 tragically.

22 That was my first question.

23 I also wanted to bring this up, I was going
24 to mention this later with some other witnesses,
25 but, it seems that it might apply here too:

1 When we're looking at the quality of nursing
2 facilities, we're looking at more of a regionalized
3 basis, or, localized, very specific; not statewide
4 numbers.

5 And one of the things that has troubled me
6 is, we hear the department and the administration
7 talk about how the state is -- has done so well
8 because we have a lower percentage of deaths in
9 nursing homes, partially because, quite frankly,
10 [indiscernible] had so many total deaths.

11 But if you look at specific counties, and you
12 don't look at the entire state, it starts to tell a
13 very different story.

14 And I bring this up because, my colleague,
15 who is not on any of these committees, Mr. Hawley,
16 represents Orleans County. And I believe that
17 county, close to 54 or 55 deaths were in nursing
18 facilities, or adult-care facilities.

19 So that tells you a very different story than
20 looking at the total statewide number.

21 Do you believe that the State would benefit
22 from having a separate or a different or additional
23 study that would drill down into specific nursing
24 facilities, and would look more at the quality of
25 care?

1 LINDSEY HECKLER: I think it would.

2 And I would also like to point out that, in
3 Western New York, we have had three specific
4 infection-control surveys, that DOH found immediate
5 jeopardy.

6 There was a nursing home in Orleans County
7 that was cited at immediate jeopardy for
8 infection-control violation.

9 So your colleague is correct, that he should
10 be concerned about what's going on there.

11 ASSEMBLYMEMBER BYRNE: Okay. Thank you.

12 And I kind of want to go to Sandy, and just
13 tell me, you know, say something like, tell me how
14 you really feel, and unload.

15 But I just -- I appreciate your testimony.

16 And I'll leave it up to my colleagues to ask
17 additional questions.

18 Thank you so much for our time.

19 SANDY REIBURN: Can I respond to that?

20 May I respond to that?

21 ASSEMBLYMEMBER BYRNE: You've 30 seconds of
22 my time. If you want to use it, go for it.

23 SANDY REIBURN: Look, everybody wants to play
24 nice, go along to get along.

25 And when does the rubber meet the road?

1 So forgive for being so outraged, but,
2 somebody has to do it. And I'm willing to be the
3 sucker who does it.

4 ASSEMBLYMEMBER BYRNE: No, no apology
5 necessary.

6 I'm grateful that you are here.

7 I think I can speak for everybody, we're all
8 very grateful for your time.

9 Thank you.

10 SENATOR RIVERA: Indeed.

11 And I would actually just reiterate that
12 Mr. Byrne and myself rarely agree on things.

13 We both have a bipartisan agreement that
14 outrage is necessary at this moment.

15 So, there is that.

16 Currently there -- I just have -- I recognize
17 myself for 5 minutes. Probably won't take that
18 long, but I have one question.

19 We heard this morning from the providers
20 associations. They talked about the inspections
21 that are done upstate, that are done regionally, and
22 are inconsistent.

23 There was some testimony that said the
24 capital region inspects three more -- three times
25 more than downstate.

1 And I just wanted to know if you folks think
2 that this is true, if you can comment on it?

3 Should it be more consistent, and why it
4 isn't?

5 If you have anything to add to that.

6 LINDSEY HECKLER: It should be more
7 consistent, especially with the new federal
8 inspection process that's all computer-based, which
9 I have certain issues with. But now is not the
10 time.

11 In our written testimony, if you go to
12 page 26, we outlined the discrepancies between the
13 metro regional offices and the rest of the state.

14 We find it very hard to believe, when the
15 nursing -- that the nursing homes in the
16 metropolitan region, that have less staffing, are
17 doing better on their nursing home inspections, as
18 one example, when staffing is directly correlated
19 with the quality of care.

20 SENATOR RIVERA: Any other comments from the
21 other folks?

22 If not, I give up my time.

23 Back to the Assembly.

24 Thank you.

25 ASSEMBLYMEMBER BRONSON: And the Assembly

1 will now recognize Ranking Member Jake Ashby.

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

4 Lindsey, earlier we heard testimony from
5 Leading Age, that, out of, I think it was 600-plus
6 investigations that they did, there were only four
7 that resulted in immediate jeopardy findings.

8 Do you find that odd, to have the volume of
9 investigations, and only four results in immediate
10 jeopardy, given the circumstances that we've been in
11 since [indiscernible]?

12 LINDSEY HECKLER: I find that extremely odd,
13 and I would question the, you know, speed by which
14 department of health inspectors went through these
15 facilities.

16 I believe it was -- excuse me -- Marydel that
17 was provided the specific infection numbers.

18 I would be curious to see the data from the
19 department of health about the numbers of
20 infection-control surveys, and the amount of time
21 the surveyors spent inside the facilities.

22 ASSEMBLYMEMBER ASHBY: Do you think, given
23 that there were only four IJs issued, that that
24 should be cause for an independent investigation?

25 LINDSEY HECKLER: Yes.

1 ASSEMBLYMEMBER ASHBY: Thank you.

2 SENATOR RIVERA: All right.

3 Nobody else from the Senate at this moment.

4 Oh, actually, I'm sorry, I'm sorry, I'm
5 sorry.

6 Senator Serino, recognized for 5 minutes.

7 SENATOR SERINO: Thank you, Mr. Chairman, and
8 I'll be brief.

9 You know, I'm really disturbed today by how
10 often that we're hearing about residents who
11 genuinely fear retaliation if they report their
12 concerns.

13 So what can we do about that; how do we get
14 to the bottom of that issue?

15 In other industries, we have a confidential
16 hotline, and all these other things, but they
17 wouldn't really work in these settings.

18 So, do any of you have any proposals to
19 address this, that we should look into? Any ideas?

20 SANDY REIBURN: Yes, may I?

21 You have to give enforcement ability.

22 There has to be a way that an ombudsman can
23 take that problem and do something with it;
24 otherwise, they have no teeth.

25 Secondly, as long as the public health and

1 health planning council continues to license people
2 who have paid to play, they will continue to have a
3 trap door, the foxes are in the hen house.

4 And that is real.

5 So those are two ways to mitigate some of the
6 problem.

7 GAIL MYERS: And I want to add that we really
8 need consumer and resident and family education.

9 Some of it starts with the ombudsman, but it
10 is the State's responsibility.

11 There's a document that the State has
12 produced, advocates called for an establishment of
13 the Nursing Home Residents' Bill of Rights.

14 It is in the law.

15 Sometimes you get it upon admission in the
16 big stack of paper that you get.

17 The document is printed off the DOH website,
18 only in English and Spanish.

19 We look at the number of people who have been
20 suffering, who speak other languages, who are from
21 other ethnicities.

22 You can't call the department of health and
23 say, could you please mail me that?

24 No, we don't mail publications anymore.

25 Well, I'm a resident in a nursing home, and

1 I don't have access to go on the web and print it
2 out.

3 People call my office, I'm sure they call
4 everybody else, and say, can you send that to me?

5 We really think that there needs to be a
6 public-awareness campaign.

7 And above all else, you know, I hear these
8 things about not immediate jeopardy.

9 But one of the biggest, hugest concerns that
10 I always feel, is about people who are denied their
11 dignity.

12 You heard earlier about someone who was
13 brought out in the hallway from a bath, just with a
14 sheet thrown over her, dripping wet.

15 I mean, people do not believe that they have
16 the right to dignity, and it is right there in the
17 Nursing Home Residents' Bill of Rights.

18 So if we just really ramped up, letting
19 people know that they deserve better, and that they
20 can get better.

21 Give them the tools they need to assert their
22 rights.

23 Get the ombudsman into facilities.

24 They are rarely in facilities because there
25 are enough of them.

1 That was all documented by the comptroller.

2 That needs to be improved.

3 There should be family councils that's not a
4 mandate.

5 And I don't know that you should make it a
6 mandate, residents' councils are mandated.

7 But family members throughout these hearings
8 have been telling you, they didn't know, they didn't
9 know who to call.

10 We just need to do public education and
11 reassert.

12 They have the right to be treated with
13 respect, with dignity, with quality.

14 And you can't disregard the studies that show
15 that there's a disproportionate impact on people of
16 color, and, that there is a disproportionate problem
17 for nursing homes with underreporting.

18 If you talk about, you know, four immediate
19 jeopardies, we're telling you that there's complete
20 underreporting.

21 Those are surveillance teams that are coming
22 in, just, you know, on an emergency basis right now.

23 The California study found a complete
24 connection between infection control and the
25 emerging pandemic.

1 Looking at all the citations in
2 New York State that were not immediate jeopardy,
3 but they found infection control lacking, should
4 have known that this was going to be a hotbed for
5 this pandemic to spread, because infection control
6 is the first and last thing you need to pay
7 attention to in order to make sure that quality care
8 is going to be delivered, with staffing.

9 MARYDEL WYPYCH: I just want to say, that
10 I think we need to get the survey agencies -- the
11 surveyors in there as soon as possible.

12 They've been out for months, and, we need to
13 know what's happening in nursing homes.

14 LINDSEY HECKLER: I agree with Marydel.

15 I would like to reiterate:

16 CMS, since June 1st, allows, at the State's
17 discretion, surveyors to go in on routine complaint
18 investigations and certification surveys.

19 SENATOR SERINO: Yeah, and I know we talked
20 earlier about the ombudsman, because they do post
21 that there are ombudsmen. But a lot of people are
22 not aware of it.

23 And I think we have to do a better job of
24 educating people, and better job on taking care of
25 our ombudsmen, so we can encourage them to want to

1 be able to work in the facilities.

2 So, I want to say thank you, everybody, for
3 everything that you do for our facilities.

4 Thank you.

5 SENATOR RIVERA: Thank you, Senator.

6 Assembly?

7 ASSEMBLYMEMBER BRONSON: Next up, we'll have
8 Assemblymember Doug Smith, for 3 minutes.

9 ASSEMBLYMEMBER SMITH: Thank you very much.

10 And I just want to thank everybody again for
11 having this as day two.

12 I have been listening all day, but I've kind
13 of decided to limit my comments so that we can take
14 as much testimony as possible.

15 My question for Ms. Reiburn, because you
16 really have piqued my interest here:

17 Unfortunately, last week, when we held the
18 first hearing, we only had the department of health
19 commissioner and an aide from the governor for a
20 very short period of time, who dodged and deflected
21 for about two hours, and then bolted.

22 And they're not back today.

23 So, Ms. Reiburn, I would really be
24 interested, because I know there's a number of
25 questions that I would have for the department of

1 health under oath.

2 What are some of the questions that you might
3 have?

4 SANDY REIBURN: Well, I mean, what I would --
5 I have more questions, frankly, for the public
6 health and health planning commission, because these
7 are the people who give the acknowledgement of
8 character and competence, when, if anybody cares to
9 look at the paper trail of the same LLC-covered,
10 disguised owner-operators, will find in their other
11 facilities, outrageous, terrible, actions against
12 their residents, to say nothing of the fact that
13 many of these so-called owner-operators are, in
14 fact, real estate churners. That is their main
15 business.

16 And these -- as was discussed earlier, this
17 kind layering of LLCs and health-care agencies and
18 ownership and the incestuous relationships, this is
19 really, to me, as I said, where the rubber meets the
20 road.

21 And when you have people, such as this
22 Balboni, I mean, he's like -- you know, he's -- he's
23 umbilically attached to Governor Cuomo.

24 I mean, there's so many things that these
25 people, who purport to be the arbiters of what a

1 nursing home should be, and how wonderful they are,
2 they're busy shtupping --

3 Anybody know that word?

4 -- shtupping Governor Cuomo.

5 Come on.

6 ASSEMBLYMEMBER SMITH: Well, if I could -- if
7 I could redirect you a little bit, because, maybe
8 along the lines of what you're saying:

9 I did find it very interesting -- and I'm an
10 educator. My background is in education, so, I'm
11 really taking this in.

12 But I did find it very interesting this
13 morning, when I was listening to some individuals
14 who represent nursing homes, I was a bit shocked
15 when they really didn't find a problem with the
16 March 25th order that required nursing homes take
17 in COVID patients.

18 In fact, what I heard, what I understood,
19 was, they said, well, we've been taking them anyway,
20 so it really wasn't that a big deal.

21 Did you find anything odd about that?

22 SANDY REIBURN: Well, what I know is just a
23 matter of monetizing.

24 The fact is, is they were incentivized to
25 take. Medicare paid for additional \$600, I think it

1 was, as opposed to the 200 that they would normally
2 get from Medicaid, which is, what,
3 60-something percent of a lot of these facilities'
4 residents, patients.

5 And so the incentive situation was such, that
6 they were delighted to take these COVID people,
7 especially when, subsequently, Cuomo said, you have
8 a shield. We're not going to blame you. Nobody can
9 sue you.

10 [Indiscernible cross-talking] --

11 ASSEMBLYMEMBER BYRNE: Well, thank you very
12 much.

13 And maybe if you have a podcast, a few of us
14 will listen on our ride up to Albany.

15 So, thank you.

16 SANDY REIBURN: I don't want to be sued for
17 libel, let's put it that way.

18 SENATOR RIVERA: I do believe that, even
19 though this is -- all of this is for posterity, and
20 I believe that, Yiddish, you get a pass on Yiddish.

21 So, shtupping is very, very [indiscernible
22 cross-talking] --

23 SANDY REIBURN: It's Brooklyn, baby. It's
24 Brooklyn-ese.

25 SENATOR RIVERA: -- very allowed.

1 No further questions from the Senate.

2 Back to the Assembly.

3 ASSEMBLYMEMBER BRONSON: Thank you.

4 And a couple more questioners on the Assembly
5 side.

6 We'll go next, for the 3 minutes, to
7 Assemblymember Tom Abinanti.

8 ASSEMBLYMEMBER ABINANTI: [Inaudible]
9 particularly for your candor.

10 Whoops.

11 I'm still -- you've got to unmute me?

12 Okay, there we go.

13 So thank you all for your candor.

14 I'm from Brooklyn, so I understood every word
15 you said, Sandy.

16 Thank you very much.

17 Originally from Brooklyn.

18 One of the things that I heard one of you say
19 was, we really need to withdraw licenses.

20 Yet, one of the other witnesses today said,
21 that just leaves everybody in limbo. We would be
22 better off replacing the operators with a temporary
23 operator.

24 But what troubled me was, I don't know that
25 there's a system in place to do either.

1 Do we need some kind of a system out there so
2 that there's a real threat to these owners of these
3 facilities, that if you don't shape up, we will, in
4 fact, push you out, because we've got some people
5 ready to go?

6 And, secondly, do we need to strengthen the
7 retaliation statutes, to protect people, to report
8 what's going on in these facilities?

9 Anybody who would like to respond.

10 LINDSEY HECKLER: I think there is a system
11 in place; however, it happens behind closed doors
12 with the department of health.

13 So, for example, the nursing home that I used
14 for the call-bell system just a few minutes ago,
15 when they bought that nursing home from a
16 non-profit, they bought it as a package deal with
17 two adult homes.

18 They voluntarily closed one of the adult
19 homes, and then voluntarily gave up receivership
20 because, allegedly, DOH putting pressure on them.

21 For nursing homes, this happens behind closed
22 doors.

23 And I think you could put more pressure on
24 operators who are not doing their job, to de-certify
25 certain beds. And make sure every single resident,

1 before a closure, has meaningful opportunity to
2 return to the community or a better facility of
3 their choosing.

4 That does not happen.

5 ASSEMBLYMEMBER ABINANTI: Well, how do we do
6 that?

7 What do we need to change?

8 What do we change?

9 How do we fix this?

10 I think [indiscernible] would like to hear
11 from you on how do you suggest we change these laws?

12 What do we do, better, to solve the problems
13 you just talked about?

14 We're not going to hear that answer tonight.

15 But if you would give us in the future, some
16 guidance on that.

17 So, anybody else?

18 GAIL MYERS: Well, Mr. Abinanti, I will
19 answer a different question.

20 Earlier in the day that you raised, was about
21 how to get families, both for those who have
22 children in facilities and those family members that
23 are caring, back into the facilities?

24 And there are states that have already taken
25 steps to create the "essential visitor." And they

1 have the right to go in for a couple hours, a couple
2 times a week, or a couple times a day.

3 In my testimony, I've given some innovative
4 practices during the pandemic that include those.

5 A few of them have been mentioned before.

6 In terms of the whistleblower protections,
7 I wouldn't choose to speak for the labor unions, who
8 can tell you whether they need a stronger law than
9 the piece that you just passed.

10 But for the family members, and for the
11 residents --

12 SENATOR RIVERA: Very quickly, please.

13 GAIL MYERS: Sorry.

14 -- for the family members and the residents,
15 getting those essential visitors back in there will
16 make the biggest difference about speaking up and
17 complaining about problems.

18 SENATOR RIVERA: Thank you so much,
19 Ms. Myers.

20 [Indiscernible cross-talking by multiple
21 people.]

22 SENATOR RIVERA: Actually, we have to go to
23 the next questioner.

24 We still have three panels, ma'am.

25 Assembly.

1 ASSEMBLYMEMBER BRONSON: Yes, the next
2 questioner will be Ranking Member Brian Manktelow.

3 ASSEMBLYMEMBER MANKTELOW: Yes, thank you,
4 Mr. Chairman.

5 Sandy, just a question for you.

6 I have a couple nursing homes in my district.

7 And as we've talked about --

8 Or anyone can answer this.

9 -- and Assemblymember Abinanti just made
10 reference to this:

11 In a situation where we have these seniors in
12 our homes, and when the owners of the homes aren't
13 doing their job, what do we do in a situation like
14 this where something needs to be done?

15 The money, the fines, doesn't seem to do
16 anything. The department of health comes in
17 constantly to check these nursing homes.

18 And, you know, where do we go from there?

19 Because, if we take the license away, that
20 means we've got another bunch of seniors that need
21 to go someplace, and our nursing homes are
22 chock-full now.

23 SANDY REIBURN: What I was --

24 ASSEMBLYMEMBER MANKTELOW: [Indiscernible
25 cross-talking] --

1 SANDY REIBURN: Sorry. Excuse me.

2 What I was about to answer, the previous
3 question, was, "what do we do?" I think that there's
4 a model that could be adapted and translated that
5 hospice coverage takes care of.

6 I mean, hospice coverage takes special care
7 of those who are at life's end, and there's a model
8 there that I think could be adopted and should be
9 implemented.

10 Groups like, Calvary, for example, that do
11 such remarkable work under the auspices of hospice
12 caregiving.

13 Visiting nurses that have the hospice adjunct
14 do tremendous work.

15 And there is a moral and ethical template
16 that they use.

17 And I think, in some way, that should be
18 parlayed on to just the model in general for nursing
19 homes; but, in particular, those who flout any kind
20 of decency and regulations.

21 You don't allow the victims that are such, to
22 remain as victims of these very people because you
23 don't know what to do with them.

24 I'm sorry.

25 ASSEMBLYMEMBER MANKTELOW: Well, Sandy, one

1 of the problems that I see right now is, between our
2 nursing homes and our senior living facilities,
3 they'll come in and do an inspection on a senior
4 living facility and have the fine superhigh, and
5 just for, really, things that really don't need to
6 be that way.

7 But at the same time, they will go into a
8 nursing home and nothing seems to happen.

9 You know, they keep adding another issue,
10 another issue, and nothing really seems to come to
11 terms with it.

12 I mean, what do we do?

13 I mean, what can we do as legislators to
14 change that?

15 SANDY REIBURN: Criminal action.

16 I mean, misdemeanors and civil action is
17 toothless.

18 If somebody kills somebody, they go to jail.

19 And, I'm sorry, but this is what is
20 happening.

21 These people, these vulnerable old people,
22 are subject -- voiceless people, are being tormented
23 and done away with.

24 This is criminal action, and that should be
25 considered.

1 ASSEMBLYMEMBER MANKTELOW: Okay, so when we
2 have DOH, who we're trusting to look into this, do
3 we hold them accountable as well?

4 SANDY REIBURN: You bet.

5 They need to be cleaned up, there's no
6 question.

7 From Zucker, all the way down to the public
8 health and health planning council, they need to be
9 cleaned up.

10 ASSEMBLYMEMBER MANKTELOW: From the bottom
11 up, and from the top down. Correct?

12 SANDY REIBURN: Well, the point is, is that
13 if there were really stakeholders who were actual
14 family members, who were a part of these
15 evaluations, you would get at least a balance.

16 You don't have that.

17 You have self-dealing, self-interest, in some
18 cases developers, in some cases adjuncts to
19 equity-stakes investors -- this is who's running the
20 DOH.

21 This is an outrage.

22 So, I'm sorry, because I know it's a terrible
23 thing to say, well, what are you going to do with
24 them?

25 But you have to do more than just say, well,

1 we're stuck, we're trapped, we gotta take what we
2 get.

3 No, no.

4 ASSEMBLYMEMBER MANKTELOW: All right.

5 Well, thank you for your -- all of you, thank
6 you for your testimony today.

7 And, God bless you, and we'll definitely be
8 in touch.

9 Thank you.

10 SANDY REIBURN: God bless you back.

11 SENATOR RIVERA: All right.

12 Any there other questions from the Assembly?

13 ASSEMBLYMEMBER BRONSON: That was our last
14 questioner.

15 SENATOR RIVERA: All right, folks.

16 This is the last break, last break before we
17 go and power through to the last three panels.

18 Let's take 10 minutes.

19 Thank you, everyone, for coming in and
20 testifying.

21 10 minutes.

22 [A recess commenced.]

23 [The hearing resumed.]

24 SENATOR RIVERA: All right, folks, welcome
25 back, the last break.

1 We're going to power through to the end.

2 And I want to thank each and every single one
3 of my -- of the members, both of the Assembly and
4 the Senate, both majority and minority, we're still
5 here.

6 They continue to care about this, and I thank
7 each and every single one of them.

8 And I thank our panelists for waiting.

9 And we are now joined by Panel 10; that is:
10 Alexia Mickles, staff attorney at
11 Empire Justice Center;

12 Timothy Clune, executive director for
13 Disability Rights New York;

14 And Ann Marie Cook, president and CEO of
15 Lifespan of Greater Rochester.

16 ASSEMBLYMEMBER GOTTFRIED: Okay.

17 So we have a total of eight more witnesses to
18 go.

19 And, do the three of you swear or affirm that
20 the testimony you're about to give is true?

21 ALEXIA MICKLES: I do.

22 ANN MARIE COOK: I do.

23 ASSEMBLYMEMBER GOTTFRIED: Okay. Fire away.

24 SENATOR RIVERA: Thank you so much.

25 And to lead us off, Alexia Mickles, please.

1 ALEXIA MICKLES: Hi. My name is
2 Alexia Mickles. I am a staff attorney with
3 Empire Justice Center's health-law unit. My -- a
4 non-profit, multi-issue, public-interest law firm,
5 focused on changing the systems within which
6 low-income families live.

7 I work out of our Rochester office,
8 primarily serving clients who reside in Upstate
9 and Western New York.

10 An important aspect of my job is helping
11 people access and keep the services they need in
12 order to remain in their homes and avoid nursing
13 homes in the first place.

14 I want to share two clients' stories with you
15 today.

16 At the beginning of the year, we represented
17 two similarly-situated clients, both elderly, living
18 with various ailments, including advancing dementia,
19 and had family members willing to work as caregivers
20 in order to keep them at home through the
21 consumer-directed program.

22 They faced a reduction in their services by
23 their managed long-term care (or MLTC) plan that
24 would render it impossible for them to remain safely
25 in their homes, and both appealed.

1 Despite rigorous advocacy, these families
2 endured entirely different outcomes.

3 While one client had her case heard before an
4 administrative law judge, and received a favorable
5 fair-hearing decision, keeping her in the community
6 immediately before the start of the pandemic, the
7 other client's case was never heard on its merits.

8 The appeal process itself, that final level
9 of protection, failed her.

10 Instead of remaining safely at home, she
11 languishes in a nursing home during the pandemic,
12 and still has yet to have her case heard six months
13 later.

14 Two similarly-situated clients enrolled in
15 the exact same plan, both fiercely represented by
16 the same attorneys, and yet living completely
17 different lives during these unprecedented times.

18 This is not the system that our elderly
19 population deserves.

20 Today I want to highlight three issues and
21 offer a few recommendations.

22 First: Seniors are being forced into
23 institutions.

24 Despite the benefits of staying in one's home
25 rather than entering a facility, state policy still

1 favors nursing homes over home care.

2 We believe everybody, not just the wealthy,
3 should be able to receive the care they require in
4 order to live safely in the community if that is
5 their choice.

6 We need to avoid stereotypes about who is
7 safe only in an institution, and make sure that the
8 system supports and respects the basic rights of
9 aging and disabled New Yorkers who cannot afford to
10 pay privately for home care.

11 Not only is that the most dignified way for
12 our clients to live, but it is also most
13 cost-effective.

14 As has been highlighted by CDPAANYS in their
15 written and oral testimony last week, the state
16 costs of nursing homes is significantly higher than
17 the consumer-directed program.

18 Second: We need to address systemic
19 unfairness in maintaining home care.

20 The process by which New Yorkers obtain and
21 maintain their Medicaid services is neither simple
22 nor intuitive.

23 Even before the pandemic, this was a grueling
24 task for our clients.

25 The vast majority of people who require

1 long-term care must enroll in an MLTC in order to
2 access the services they need.

3 MLTCs are private insurance companies that
4 determine the scope of services their enrollees
5 receive.

6 DOH pays each plan a capitated rate per
7 enrollee; in other words, they receive the same
8 dollar amount for each enrollee regardless of the
9 services received.

10 This creates a dangerous incentive.

11 The MLTC profits on enrollees with relatively
12 low needs, but loses money on those with relatively
13 high needs.

14 In the months leading up to pandemic, we saw
15 an uptick in MLTC plans seeking to reduce home-care
16 hours, particularly for those who received 24-hour
17 continuous care.

18 Medicaid appeals are complex, with confusing
19 notices, and critical deadlines.

20 Only after properly navigating the system can
21 someone have an opportunity to argue against a
22 proposed reduction at a fair hearing.

23 It can easily take more than six months
24 between starting the appeal and receiving a final
25 decision.

1 Often families are forced to make the choice:
2 Move their loved one prematurely to a nursing
3 home, or, face mounting bills as they attempt to pay
4 out-of-pocket for aide services, or lose wages while
5 they struggle to provide the care themselves.

6 When the time comes for the hearing, it's
7 David versus Goliath for those without legal
8 representation.

9 We have repeatedly heard from our clients
10 that it would be almost impossible for them to
11 navigate this system, let alone succeed on their
12 own.

13 Third: The barriers to timely legal
14 representation is unacceptable.

15 We've heard at length about the issues of
16 maintaining direct contact between residents and
17 families during the peak of COVID-19.

18 Just as the notices and timelines are
19 important for those trying to maintain their home
20 care, nursing home residents are also receiving
21 critically important legal communications by mail;
22 for example, notices relating to their Medicare or
23 Medicaid coverage, or even more pressing, notices
24 relating to potential discharge from the facility.

25 Let me be clear: Receiving those notices in

1 a timely manner can result in life-changing
2 consequences for seniors and their familiars.

3 COVID has forced us to look hard at nursing
4 homes. The pandemic has worsened, and underlined
5 existing inequities for low-income seniors.

6 We are at a unique moment, and New York has
7 an opportunity to meaningfully improve its policies
8 surrounding long-term care.

9 I would like to leave you with our three most
10 pressing recommendations.

11 One: Invest more, not less, in home-care
12 services for Medicaid beneficiaries, including the
13 consumer-directed program;

14 Two: Continue to fund organizations who can
15 help New Yorkers obtain and maintain their Medicaid
16 services. This includes a wide range of agencies,
17 from ombudsman and community-based organizations, to
18 legal-service providers;

19 And, three: Impose a duty of care on
20 facilities to provide information to residents and
21 their families regarding ombudsman and legal
22 services.

23 Empire Justice is ready and willing to work
24 with you on this.

25 Thank you for this opportunity.

1 SENATOR RIVERA: Thank you, Ms. Mickles.

2 And apologies for mispronouncing your name
3 earlier.

4 ALEXIA MICKLES: No problem.

5 SENATOR RIVERA: Next up will be -- we'll
6 listen to Timothy Clune, executive director,
7 Disability Rights New York.

8 TIMOTHY CLUNE: Good evening.

9 Thank you for having me here today.

10 I'm the executive director of DRNY, and we
11 are the designated protection and advocacy system
12 for New York State.

13 The P&A system was created in the 1970s as
14 a result of Geraldo Rivera's exposé of the horrific
15 abuse and neglect of children and adults with
16 disabilities at the Willowbrook State School on
17 Staten Island.

18 Each state and territory has a P&A system.

19 As the P&A, we provide free legal and
20 advocacy services to people with disabilities, but
21 we also monitor congregate-care facilities to ensure
22 that those living there are not subjected to abuse
23 and neglect.

24 There's been significant testimony today
25 about nursing homes.

1 I have listened to all of it, and it has been
2 very enlightening. It's also very deja vu.

3 I've been in this job for 30 years, and the
4 things I'm hearing today are just repetitive.

5 I would say, with respect to DOH, that we
6 know that the State's decision to require nursing
7 homes to readmit patients with COVID-19 without the
8 proper resources was ill-advised and had deadly
9 consequences.

10 But what I would like to do is to focus on
11 friends and family members with intellectual and
12 developmental disabilities living within the
13 OPWD [sic] system, both private- and state-run.

14 The State's response to COVID was largely
15 ignored, the health and safety of people with
16 disabilities living in these congregate facilities.

17 Our research found that 437 COVID-related
18 deaths in OPWDD residences.

19 DOH has been command central for all COVID-19
20 policy guidance.

21 OPWDD deferred to, and largely adopted, the
22 DOH guidance, even though that guidance did not
23 always take the needs of this population into
24 account.

25 For example, DOH failed to prioritize these

1 congregate-care settings for access to PPE.

2 This failure put both residents and staff at
3 high risk of contracting, spreading, and dying from
4 COVID-19.

5 Direct-service professionals (DSPs) provide
6 intimate care for residents throughout the day,
7 including physical assistance with washing,
8 toileting, dressing, and eating.

9 It's impossible to maintain 6 feet of
10 separation.

11 You live in close proximity to one another
12 and often cannot adhere to prevention protocols,
13 which included wearing a mask, thoroughly and
14 frequently washing hands, avoiding touching their
15 faces, and touching others.

16 OPWDD advised their providers in March that,
17 if they were unable to obtain PPE, they should
18 contact their local OEM.

19 Since these settings were not a priority with
20 OEM, obtaining PPE was almost impossible.

21 In late March, OPWD [sic] issued guidance,
22 advising, in sum and substance, that PPE must be
23 used when any resident is suspected of having
24 COVID-19.

25 Despite this clear acknowledgement, the State

1 still refused to put these facilities on equal
2 setting.

3 DOH's mandated testing in nursing and
4 adult-care facilities, but they failed to mandate
5 testing at OPWDD facilities.

6 Testing DSPs and residents were not made a
7 priority of the general population.

8 Despite the risk associated with these
9 working conditions, staff and residents were not
10 required to be regularly tested.

11 This places them all at a greater risk of
12 exposure.

13 DOH suspended all hospital visitation,
14 including DSPs. This left individuals with complex
15 needs and limited communication skills alone at a
16 time when the hospitals were overwhelmed with COVID
17 patients, and they were ill-equipped to bridge very
18 critical communication barriers.

19 It was not until late -- in middle April that
20 DOH finally allowed DSPs into the hospital.

21 CMS made it easier for states to modify their
22 policies under the home- and community-based waiver
23 through Appendix K.

24 This would have allowed states to use HCBS
25 funds for DSPs to accompany and support individuals

1 during a hospital stay.

2 And even DOH recognized that the presence of
3 a support person for these patients in hospitals is
4 critical to avoid negative health outcomes.

5 However, DOH -- I'm sorry, OPWD [sic]
6 determined that it was not necessary.

7 The State must do everything in its power to
8 support the funding of DSPs for our clients in
9 hospital settings.

10 In sum:

11 It's been over 30 years since the passage of
12 the ADA, and over 21 years since the Olmstead
13 decision.

14 New York must take a hard look at its current
15 congregate-care model for people with disabilities.

16 And as we have seen over the last six months,
17 this model has been a death sentence for many.

18 Priorities must change, and resources must be
19 redirected, to allow more people to live at home;
20 otherwise, we're going to be having this
21 conversation, five, ten years from now.

22 New York must ensure that the goals of the
23 ADA and Olmstead are finally realized.

24 And, finally, the State's
25 emergency-preparedness protocols failed to

1 prioritize, and often even take into account, the
2 needs of people with disabilities.

3 The pandemic has confirmed what we already
4 knew: People with disabilities are the first to be
5 impacted and the last to be considered.

6 Thank you, Mr. Clune.

7 And next we will hear from Ann Marie Cook,
8 president and CEO, Lifespan of Greater Rochester.

9 ANN MARIE COOK: Thank you so much, Senator.

10 As you said, my name is Ann Marie Cook. I'm
11 president and CEO of Lifespan. And I'm also a
12 certified ombudsman, and I have been for the last
13 20 years.

14 I want to thank all of you, not only for
15 holding this important hearing, but also for your
16 perseverance.

17 I've been watching most of it all day, and
18 you've just been incredible, listening to the
19 speakers.

20 Just to give you a brief background:

21 Lifespan is a non-profit organization, and
22 we're dedicated to helping older adults and family
23 caregivers.

24 We serve about 43,000 people a year, we did
25 last year, through 30 different services. And we

1 serve as the regional ombudsman in the Finger Lakes
2 Region, a 9-county area.

3 As you have heard from so many people,
4 COVID-19 has presented many challenges for residents
5 and their families.

6 And I'd like to speak to you today, and focus
7 my remarks on the importance of the long-term care
8 ombudsman program, and how imperative it is to
9 strengthen this program.

10 Throughout the pandemic, I want to assure
11 you, the ombudsman staff and volunteers have
12 remained engaged with residents, families, and
13 facilities, to provide information and support.

14 And, in fact, in our program, our numbers
15 spiked in April, as families called us, and I have
16 to tell you, they were distraught, they were
17 frightened, and they were desperate for information.

18 I have supplied you with my written comments,
19 so I am going to keep this short, and just highlight
20 a few, I think critical, points, to ensure that we
21 strengthen the ombudsman program, and really how it
22 was highlighted, the need to do this during this
23 pandemic crisis.

24 First of all: Request that the department of
25 health establish safe protocols, and you've heard

1 this a lot, for families to visit.

2 We are still getting calls from families all
3 the time, questioning this 28-day rule.

4 We've had several facilities in our area
5 almost make it, and then go back -- the clock goes
6 back.

7 They're desperate.

8 And they tell us all the time: We're in the
9 facilities, and we know they're short-staffed before
10 COVID. How is my loved one getting care now?

11 We have very little information we can give
12 back.

13 Second thing is, and I know you have supplied
14 funding in resources to nursing homes, to receive
15 the right technology to do, sort of, Zoom and
16 Facetime calls. But I'm telling you, it's not
17 enough for families.

18 And we really, especially before a second
19 wave hits, we need to make sure that they have the
20 right technology in place, so that families can
21 receive the daily, or at least weekly,
22 communication.

23 And many families didn't between their loved
24 ones and themselves.

25 Third thing is, I think we need to publicize

1 the ombudsman program more.

2 First of all, no one in the field even knows
3 what an "ombudsman" is, so it's very difficult to
4 explain, you're an advocate. They don't know what
5 it is and what it does.

6 Under normal circumstances, posters are hung,
7 of course, in nursing homes, about the phone number
8 and a short description about what it is.

9 But, really, families had to scramble of who
10 they could find to advocate for them during this
11 time.

12 It just needs to be publicized better.

13 The fourth point, I think my most critical
14 point is, it is bizarre to me that the ombudsman
15 operates without any partnership at all with the
16 department of health.

17 I'll give you just a few short examples.

18 It is not a requirement for the department of
19 health to update the ombudsman when we make a
20 complaint.

21 We make a complaint, really, into a black
22 hole. There's no partnership at all to explain to
23 us the resolution of that complaint.

24 In fact, we have to call just the general
25 1-800 number to do that complaint.

1 And, finally, I also think it's bizarre, as
2 DOH is doing surveys in homes, they are not required
3 to contact the ombudsman.

4 We're in these homes every single week, and
5 you would think it would be natural for the
6 surveying team to contact the ombudsman about
7 staffing, care issues, or quality-of-life issues.

8 But it's really haphazard, at best, if we
9 receive a call.

10 And I think there needs to be -- if they
11 haven't done it so far, an informal partnership,
12 there needs to be a partnership so that we can make
13 sure residents are cared for.

14 The fifth one: We need to provide additional
15 resources for involuntary discharges in nursing
16 homes.

17 It was so prevalent in our area, that
18 Lifespan created an involuntary discharge task
19 force.

20 We started this group because long-term
21 residents were not provided legal council,
22 information, or help when they received an eviction
23 notice.

24 The ombudsman was their only advocate.

25 You and I would receive more information if

1 we were being evicted.

2 I see my time is up.

3 I have submitted written comments, and I want
4 to thank you very much.

5 I had other points you will see in my written
6 comments.

7 But thank you very much for listening.

8 SENATOR RIVERA: Thank you, Ms. Cook, for
9 your testimony, and everybody else.

10 The Assembly will lead off in this
11 questioning.

12 ASSEMBLYMEMBER BRONSON: Thank you.

13 We will start with Chair John McDonald, for
14 5 minutes.

15 ASSEMBLYMEMBER MCDONALD: Good evening,
16 everybody.

17 Thank you for your testimony.

18 Tim, why don't I start off with you.

19 First of all, thank you.

20 Probably rightfully so, there's been a lot of
21 discussion about nursing homes the last two Mondays.

22 But I've always said from the beginning, that
23 there is another -- this is about congregate housing
24 in general.

25 It's about all vulnerable populations.

1 And as one who actually works with the
2 disability community on a regular basis, you're
3 spot-on in regards to the fact that this was an
4 under-the-radar group that just was not really paid
5 attention to.

6 You know, I guess my question to you is, and
7 I brought this up with the nursing homes, and
8 I think it's applicable here:

9 A lot of people are rightfully focusing on
10 the March 25th discharge order.

11 But my contention all along is, is that many
12 of these individuals, you know, say somebody wants
13 to go back to their home.

14 I get that, I understand that.

15 On the other hand, I know, particularly the
16 [indiscernible] population, particularly when you
17 look at the traditional two-story home, people in
18 these small bedrooms, they're just not going to
19 comply.

20 They're not going to wear a mask.

21 They have behavioral issues, and, in some
22 situations, very severe.

23 But the thought of having a step-down
24 facility, if this was to come back and rear its ugly
25 head again, would be, to me, a logical conclusion.

1 And I think OPWD [sic] had some -- one or two
2 of those set up in certain parts of the state.

3 They weren't here in the capital region.

4 I think there was one down in Broome County,
5 I believe. I think there was one outside of the
6 city.

7 Do you have any comments on that, if they
8 were successful or not?

9 Or do you think the idea is a good idea or a
10 bad idea?

11 TIMOTHY CLUNE: [Inaudible.]

12 ASSEMBLYMEMBER MCDONALD: (Assemblymember
13 motions to witness.)

14 ANN MARIE COOK: Shocking, I unmuted myself.

15 I think we have an opportunity to make
16 change. Right?

17 When my -- my comments about what happened at
18 Willowbrook in the 1970s, and here we are in 2020,
19 still talking about horrific conditions in
20 congregate care.

21 So I think the better approach would be
22 looking at the resources that we are already
23 expending on the institutions that we already have,
24 and how we can reallocate them.

25 This is not going to be easy, but if we don't

1 start addressing it now, we're just going to have to
2 deal with another pandemic at another time.

3 We talk about people living in
4 congregate-care facilities like it was a choice.

5 Right?

6 The individuals never chose to go to an
7 OPWD [sic] facility.

8 In terms of the step-down, Assemblymember,
9 I'm not dodging your question.

10 I mean, I've heard about it.

11 I look at the conclusion.

12 You know, when I deal with my staff in my
13 office, I know that the answer should be "A."

14 Now, let's figure out how to get there, and
15 not rely on things that may be a little bit easier.

16 So it would be easier to have a step-down
17 facility because it might not be as disruptive.

18 But I think the larger conversation is, how
19 do we do better?

20 Right?

21 And I'm not going to sit here and tell you
22 that I have all the answers.

23 But I will sit here and tell you that my
24 staff is willing to work with you, and we've met
25 with you, to try to address some of these issues.

1 But, I mean, I remember doing litigation
2 against adult homes in the 1990s because the
3 conditions were horrific, because the insider
4 trading or just the Ponzi schemes that were going on
5 between the operator and owner of the building, and
6 so forth.

7 We're still talking about it today.

8 I've listened to the testimony all day, and
9 it was just deja vu.

10 Rip off the book-report cover, and you can
11 see the same exact problems.

12 ASSEMBLYMEMBER MCDONALD: We will follow up
13 with your office, and I appreciate your comments.

14 I guess, Ann Marie, just one other question.
15 You may want to unmute yourself while I'm throwing
16 it at you.

17 We've been listening about the ombudsperson,
18 as Senator Rivera says all day long.

19 And, you know, is it just that it's better
20 off to have your head down in a pumpkin patch and
21 ignore them, or do we need to require a response?

22 I find it insulting, that if a person who is,
23 basically, volunteering their time, or giving of
24 their time, is, basically, trying to care for
25 somebody, that they can't get a response, if they're

1 legitimate.

2 In this situation, they're legitimate.

3 ANN MARIE COOK: I think, like you said, you
4 have to require it, because it hasn't happened in
5 voluntary ways before.

6 So it's a requirement, and it needs to be.

7 ASSEMBLYMEMBER MCDONALD: Thank you.

8 SENATOR RIVERA: Thank you, Assemblymember.

9 And now from the Senate, recognize
10 Senator May for 5 minutes.

11 SENATOR MAY: Thank you.

12 I want to follow up a little bit more about
13 that, Ann Marie.

14 And, first of all, just let me say what
15 amazing work you do, and how lucky we are to have
16 you advocating for seniors here upstate.

17 So, I'm just trying to understand how the
18 ombuds -- I thought I understood, but now I feel
19 like I understand less all the time.

20 So the ombudsperson reports -- is housed
21 under the office for the aging, but reports to the
22 department of health? Is that what you're saying?

23 ANN MARIE COOK: Well, I'm saying, when we're
24 in a nursing home and we see a quality-of-care issue
25 that we feel it's appropriate for the department of

1 health to know about and investigate, we do the --
2 call the 1-800 number. And we're not looped back in
3 to hear about the resolution of that complaint.

4 Now, we're in the home, so oftentimes you,
5 you know, pick up on what happened. But, there's no
6 partnership in which they say, thank you for making
7 the complaint. And, by the way, this is what we
8 found.

9 We oftentimes never hear.

10 SENATOR MAY: So what -- can -- do you have a
11 vision of what that partnership would look like?

12 Would it be one designated person in DOH who
13 would be the contact, or would it be some other kind
14 of system?

15 ANN MARIE COOK: Well, it could be, or a team
16 of people, in which, once we make a complaint, and
17 that DOH, hopefully, investigates that complaint, in
18 which we're simply given a call back, to say, this
19 is the resolution to that complaint.

20 I also think, vice-versa, as I said before,
21 I think DOH could glean a lot from those of us who
22 are in the nursing homes every single week, about
23 what we see, before they go in and do their survey
24 process.

25 SENATOR MAY: Right.

1 Thank you.

2 And then, Alexia, I had a question for you
3 about the managed long-term-care system.

4 You talked about people failing to get
5 notice.

6 And one thing we've heard is that people can
7 now time out after -- if they're 90 days in a
8 nursing home, they can suddenly lose their managed
9 long-term-care plan for home care.

10 And that's a problem.

11 But, also, the fact that some of them don't
12 even know that that's happening is also a problem,
13 and it may be a bigger problem.

14 So can you talk about that?

15 Have you heard about these kind of cases?

16 And, what is the solution that you see?

17 ALEXIA MICKLES: Sure.

18 I mean, this has been going on even before
19 this new rule, you know, this disenrollment after
20 90 days.

21 Even before that was even proposed, we've had
22 clients who, we've been try -- you know, they lived
23 independently in the community with just a little
24 bit of help. And then after an accident or a fall
25 or something, they end up in a nursing home. And it

1 just gets infinitely more complicated to get them
2 back home once they're in that nursing home.

3 And, now, when you add into that, that
4 they're now being disenrolled from the managed
5 long-term-care plan.

6 And a little bit about what goes into that
7 process is, you have no say in it.

8 Even before this new 90-day rule, it was,
9 basically, one person's decision at a nursing home,
10 to check a box on a form that says, you're
11 permanently placed. You're not going to go home
12 again.

13 And you have no say in that, unless you
14 timely request a fair hearing, argue it on the
15 merits, get some help, probably, arguing it on the
16 merits, because it can be complicated, disputing the
17 facility's doctor's opinion versus your own, you
18 know, family, or whoever's, opinion that you want to
19 go home.

20 The process is complicated enough.

21 And now when you're adding into that, that
22 you only have 90 days to be in that nursing home,
23 basically, it just makes it that much harder, and
24 you're making it impossible for people to get back
25 home.

1 I mean, we have letter -- we've signed on to
2 letters with other agencies that do similar work to
3 us, to the department of health.

4 We've been advocating for a halt on these
5 disenrollment, you know, notices for the last couple
6 months, I want to say. And those have been, you
7 know, unanswered.

8 So I think you're exacerbating an already
9 existing problem, which is that, when you're in that
10 nursing home, it's already hard to get out.

11 Now let's disenroll you from your MLTC plan,
12 have fun reenrolling again.

13 It's a very difficult process.

14 SENATOR MAY: Right.

15 And, just very quickly, can you comment:

16 We've heard that, not only do people not know
17 about the ombudsman program, they also don't know
18 about the residents' bill of rights.

19 Is there do you have ideas how to make that
20 more visible, more known, to people, in 10 seconds?

21 ANN MARIE COOK: Sure, yeah.

22 I mean, I know people have talked about
23 posting information about ombudsman programs in the
24 nursing home.

25 That's one step, that's great.

1 But notices need to have information about
2 ombudsman and legal-service providers.

3 The staff themselves at the nursing home
4 needs to know about the ombudsman program. A lot of
5 times they don't.

6 And then that means the residents and their
7 families don't learn about it either.

8 So, education.

9 SENATOR RIVERA: Thank you.

10 SENATOR MAY: Thank you.

11 SENATOR RIVERA: Thank you.

12 Thank you, Senator.

13 Assembly?

14 ASSEMBLYMEMBER BRONSON: Yes.

15 Next, I'll recognize Chair. Gottfried for
16 5 minutes.

17 ASSEMBLYMEMBER GOTTFRIED: Thank you.

18 I have a couple of questions for Alexia.

19 The issue of people who need a lot of hours
20 of care not qualifying for it, and ending up in a
21 nursing home, is there also now going to be an issue
22 of people who really do need home care, and may need
23 many hours of home care, but who don't meet the
24 "three activities of daily living" test that we just
25 enacted?

1 And then I've got a couple of other
2 questions.

3 ALEXIA MICKLES: Right.

4 So you're talking about a high-needs nursing
5 home resident who doesn't meet the "three activities
6 of daily living" requirement?

7 ASSEMBLYMEMBER GOTTFRIED: Or somebody who's,
8 at the moment, at home, and needs home care, but
9 doesn't meet the three ADL test --

10 ALEXIA MICKLES: Right.

11 ASSEMBLYMEMBER GOTTFRIED: -- and, therefore,
12 gets shipped off to a nursing home.

13 ALEXIA MICKLES: That's going to happen.
14 It's just going to happen.

15 And it's going to be terrible, because you're
16 talking about people who could easily live at home
17 with just a little bit of help.

18 And the three activities of daily living,
19 let's clarify what that -- what goes into that
20 determination, is:

21 Someone comes to your home from Maximus and
22 gives you an assessment, and tells you exactly --

23 And Maximus is a DOH contractor.

24 -- they tell you exactly what you need, and
25 how many tasks you need help with.

1 They, basically, refer that to the MLTC plan,
2 who then says the exact same thing; they come there,
3 they do an assessment.

4 And everyone but you has a say in what kind
5 of care you need, even though, now, your doctor,
6 even their opinion doesn't matter, because now they
7 want to have an independent physician review, and
8 not even have your own treating physician.

9 So you're going to create so many more people
10 that are now going to be forced into institutions.

11 And it's -- these assessments are basically
12 going to say, you require supervision and
13 monitoring, and Medicaid doesn't cover that.

14 And the problem is, a lot of activities of
15 daily living require active help, active assistance,
16 but it's going to be labeled as "supervision" or
17 "monitoring" just because that's what the assessor
18 decides.

19 So a lot of these things are happening
20 outside of this person's control.

21 ASSEMBLYMEMBER GOTTFRIED: Okay.

22 And another question:

23 In your listing the three things you would
24 want us to do, the last was to impose a duty of
25 care, and then I didn't get what it was a duty of

1 care of.

2 ALEXIA MICKLES: Okay.

3 ASSEMBLYMEMBER GOTTFRIED: If you could just
4 finish that sentence.

5 ALEXIA MICKLES: Yes, and I know you've
6 talked about this a lot today.

7 The third recommendation was: Impose a duty
8 of care on facilities to provide information to
9 residents and their families regarding ombudsman and
10 legal services.

11 ASSEMBLYMEMBER GOTTFRIED: Ah.

12 ALEXIA MICKLES: And then I added, that we
13 were ready and willing to work with you on that.

14 ASSEMBLYMEMBER GOTTFRIED: Oh, okay.

15 And just my last comment is:

16 We're going to want to get back to you, and
17 to Ms. Heckler from the center, and others who have
18 testified today, about drafting legislation on some
19 of the things you've testified about.

20 So don't be surprised when you get an e-mail
21 from us.

22 ALEXIA MICKLES: I look forward to that.

23 ASSEMBLYMEMBER GOTTFRIED: That's it.

24 SENATOR RIVERA: Thank you.

25 Thank you, Assemblymember.

1 Now recognize Senator Serino for 5 minutes.

2 SENATOR SERINO: Thank you, Mr. Chairman.

3 And thank you all so much.

4 You know, I worked with Ann Marie for some
5 time now, and when I think of state money well
6 spent, I think of Lifespan.

7 You know, you get your most bang for your
8 buck with all the hard work that you guys do.

9 And, Ann Marie, you also gave some great
10 suggestions that we haven't heard yet today.

11 And I know, I, for one, will be moving
12 forward to do what we can to implement them, and we
13 should absolutely be moving to make these
14 requirements.

15 Earlier today we heard a few folks testify
16 that the ombudsman program should be a bit more
17 independent as well.

18 And does anyone here want to weigh in on that
19 today, too?

20 ANN MARIE COOK: The only thing I can say,
21 Senator -- and thank you very much for your
22 comments -- is I do feel like we operate at a
23 boots-on-the-ground level very independently.

24 You know, I think we need more resources.

25 One of the things I didn't get to say is,

1 while it's very difficult to ask you all for more
2 resources now, I just go back to another person,
3 hours ago, that talked about the New York State
4 Comptroller's report, that said most facilities in
5 this state don't have an ombudsman.

6 They have -- all those residents have no
7 advocate, and, it's really painful.

8 And the only way to prevent the retaliation
9 that was also brought up is, when you're there every
10 single week and you know the residents, and you're
11 talking to them all the time, and they begin to open
12 up to you about their concerns, that's the only way
13 we're going to do it.

14 So -- I mean, the ombudsman program needs
15 additional resources, so it's not on the backs of
16 all volunteers, but we have a strong paid staff
17 underneath them.

18 But, you know, we operate very independently,
19 and I'm happy with the support we receive.

20 SENATOR SERINO: And, Ann Marie, too, I know
21 that you're talking about the ombudsman
22 [indiscernible].

23 But Lifespan does amazing work, through the
24 E-MDTs, to help seniors who have been victims of
25 financial scams retrieve their finances.

1 You guys have been so successful.

2 So I'm wondering, one thing that we haven't
3 really talked about today, at either -- or,
4 actually, at either of the hearings: Are you guys
5 worried about a rise in senior scams?

6 And residents in nursing homes,
7 assisted-living, and other long-term-care facilities
8 we know are certainly not immune to scams in the
9 best of times.

10 Is this something that we need to be paying
11 more attention to now, to better protect our seniors
12 from being victimized?

13 ANN MARIE COOK: Well, thank you, Senator.

14 We have seen a huge increase in scams during
15 the COVID crisis, COVID scams. And we have seen
16 people lose hundreds of thousands of dollars in the
17 last few months.

18 Now, I believe, I will check on this, most of
19 the cases that we have, have been older adults in
20 the community who have suffered further isolation
21 because of COVID, and, all of a sudden, have been
22 victimized.

23 So I will get back to you if there has been
24 an increase in facility-based scams.

25 But, certainly, community-based scams.

1 SENATOR SERINO: And, you know, another
2 thing, we keep talking about raising awareness about
3 the ombudsman program, but that name might be a
4 little outdated.

5 I'm just throwing something out there:

6 Should we be thinking about renaming it,
7 like, patient advocate, or, official resident
8 advocate, something to that effect?

9 It's just something to think of, because
10 people don't immediately connect what an "ombudsman"
11 is.

12 So -- but thank you very much [indiscernible
13 cross-talking].

14 ANN MARIE COOK: I agree completely, because
15 no one knows what an "ombudsman" is except all of
16 you right now on this Zoom call.

17 SENATOR SERINO: Yep.

18 Well, thanks again.

19 SENATOR RIVERA: Thank you, Senator.

20 Assembly?

21 ASSEMBLYMEMBER BRONSON: Yes, thank you.

22 I will recognize myself for 5 minutes.

23 Ditto what Senator Serino just said about
24 Lifespan.

25 I can say that because you're my neighbor,

1 you're my constituent.

2 So, all that being said, you do great work,
3 as well as the other panelists.

4 I'm going to start with you, Ann Marie, and
5 you had mentioned, a lot of people have already
6 asked about the ombudsman program.

7 And I too think, if nothing else, it should
8 become gender-neutral, somehow.

9 But the -- so I'm not going to go over that
10 because they asked my questions already.

11 What I do want to talk to you about are the
12 first two recommendations, and I think they go
13 hand-in-hand.

14 The first was: To come up with safe protocol
15 for families to visit.

16 And the second was: To do more with the
17 technology so that, if we are doing social
18 distancing of some sort, that we're providing those
19 services.

20 We've heard a lot of testimony about this,
21 and a lot of testimony about how having those
22 visitations, in part, allows the family member to
23 continue to be part of the caregiving team.

24 The family member is there for emotional
25 support, and the family member is also there as the

1 eyes and ears for the patient or the resident.

2 Can you give us some -- what -- what safe
3 protocols have you thought of, or you, in
4 conversations with other organizations, on how we
5 can get family members into these nursing homes so
6 that they can visit their loved ones?

7 ANN MARIE COOK: Well, and thank you so much,
8 Assemblymember, and thank you for all that you do.

9 In some cases, especially now, with the
10 weather the way it is, I think it would be perfectly
11 appropriate to have these visits outside, you know,
12 and much safer for the resident, it's safer for the
13 family and other residents.

14 And I think we have to be creative here.

15 I also think that there's a lot of homes that
16 have the ability to have a room for just safe
17 visiting, and move the resident to that room with
18 their family members so they're not interacting with
19 other residents of the home.

20 I think it's imperative.

21 And you said, the families are part of the
22 care team.

23 And so, this absence has been awful for
24 families, and we have to do more.

25 And then the other thing I will say about the

1 technology, there's a huge, wide gap between what
2 different homes are doing.

3 Some are doing incredible.

4 But, honestly, and I heard some of the
5 speakers today, months have gone by and they have
6 only been able to connect through technology a
7 couple of times with their family members, and it's
8 just unacceptable.

9 ASSEMBLYMEMBER BRONSON: And then -- thank
10 you.

11 So the other part of this, and I'd like you,
12 Ann Marie, to answer it, but I also would like
13 Ms. Mickles to answer this, because she had talked
14 about investing more in home-care services.

15 But, Ann Marie, you and I have talked a lot
16 about home care. We've done some increased
17 investment.

18 But how could that help us in the midst of
19 COVID-19, and thereafter?

20 And then if Ms. Mickles (different
21 pronunciation) will -- or, Mickles, rather would
22 also answer that question.

23 ANN MARIE COOK: Yeah, I mean, home care is
24 critical.

25 We have one social worker, her full-time job

1 is helping residents who want to leave a nursing
2 home/get out of a nursing home, and make sure the
3 proper supports are in place.

4 And the key proper support is, obviously, the
5 availability of home care.

6 In our region, as you know, Assemblymember,
7 I mean, part of the problem too with that is that,
8 you know, we don't have enough home care either.

9 I mean, this is such -- long-term care, in
10 general, is such a mammoth issue that we have to
11 tackle.

12 But we also have to increase the availability
13 of home care so that people have options of how they
14 receive their care.

15 ASSEMBLYMEMBER BRONSON: And, Ms. Mickles, if
16 you could answer to that in connection your point of
17 investing more in home-care services.

18 Unmute yourself.

19 ALEXIA MICKLES: Sorry.

20 Basically, I talked a lot about the obstacles
21 and challenges that Medicaid beneficiaries face,
22 trying to either obtain or maintain home-care
23 services.

24 An increase in funding, especially to CDPA,
25 which a lot of people have talked today, about cuts

1 that are happening, or going to happen.

2 Investing more in that, remove some of those
3 obstacles, just naturally. It makes it readily -- a
4 little more available.

5 Investing in knowledge and communication and
6 education in these programs so more people even know
7 about it.

8 Investing in resources, like information
9 about legal-service providers who can help with
10 these kinds of obstacles.

11 I think all of that is a way that you can
12 help get more people to either stay in their home or
13 go back home.

14 ASSEMBLYMEMBER BRONSON: Thank you.

15 SENATOR RIVERA: All right.

16 We do not have senators at this moment asking
17 questions.

18 Back to the Assembly.

19 ASSEMBLYMEMBER BRONSON: Okay.

20 We'll then recognize Ranking Member
21 Jake Ashby.

22 ASSEMBLYMEMBER ASHBY: Thank you,
23 Mr. Chairman.

24 Thank you all for your testimony, and
25 sticking with us into the evening.

1 Just a quick question for Ms. Mickles.

2 Earlier, when you were talking about
3 individuals scoring low on an evaluation, in terms
4 of number of ADLs, and then facing going to an
5 institution, at that point, if they scored low on a
6 certain number of ADLs, is there any triggering
7 mechanism that would involve home care -- or,
8 home-based therapy, either restorative or
9 maintenance therapy, that may help bridge that gap,
10 that may be able to help them stay at home, and see
11 if they would be able to do it?

12 ALEXIA MICKLES: I think I understand your
13 question.

14 So if someone's already at home, can they
15 maybe stay home even if they don't meet the criteria
16 for the three ADLs, maybe by obtaining therapy,
17 like, for example, someone who got injured, or
18 something like, maybe they could stay home that way?

19 ASSEMBLYMEMBER ASHBY: Well, when you were
20 talking about having, you know, someone who maybe
21 has a cognitive deficit, in needing a certain level
22 of cuing.

23 Right?

24 Whether it's [inaudible] cue or oratory cue,
25 kind of developing a strategy that would enable them

1 to maintain their independence, utilizing those
2 types of cues, utilizing -- doing something like
3 that so they can stay home.

4 ALEXIA MICKLES: Yeah.

5 ASSEMBLYMEMBER ASHBY: Are any -- is there
6 any mechanism written into this policy that would
7 have that happen?

8 ALEXIA MICKLES: Not that I'm aware of.

9 I know -- the way that we work with our
10 clients in order to try and maybe bridge that gap
11 you're talking about, of trying to meet a
12 requirement for home care, is that, yes, other
13 services can be used in combination with what you're
14 asking for.

15 But, also, we have a lot of people who,
16 especially in the consumer-directed program, their
17 relatives would like to work with them on a daily
18 basis with, things like music therapy, things like
19 speech, things that can help them with swallowing,
20 with things like that, that might necessarily not
21 show up on or reflect on a score on a test -- or, a
22 task-based assessment.

23 So I definitely think there's ways you can
24 try to work to get it.

25 I don't know if there's anything written,

1 like a policy, that says, that, here's how you can
2 stay at home.

3 But I think --

4 ASSEMBLYMEMBER ASHBY: What about --

5 ALEXIA MICKLES: -- [indiscernible
6 cross-talking] advocate for it.

7 ASSEMBLYMEMBER ASHBY: What about simple home
8 modifications, widening doorways?

9 ALEXIA MICKLES: Oh, that exists. It
10 definitely exists.

11 ASSEMBLYMEMBER ASHBY: [Indiscernible
12 cross-talking] --

13 ALEXIA MICKLES: Yeah, I mean, clients have
14 difficulty getting that kind of thing done by
15 themselves. And even with an attorney, not only can
16 take a long time, but can be very difficult to get.

17 I mean, it's just a difficult process. And
18 navigating that process, even with representation,
19 can take a long time, and it can be very, very, very
20 challenging.

21 ASSEMBLYMEMBER ASHBY: Yeah, I am acutely
22 aware.

23 But the reason that I was asking about it is
24 because I know that we all encounter people who need
25 a lot more care [inaudible].

1 So the people that you were kind of, you
2 know, mentioning, that are on that fringe element,
3 if we were able to keep them at home, and, at that
4 point, help get family in there like you're talking
5 about, and we're able to really help stabilize at
6 that point before they need an abundance of care,
7 you know, it just may be something, you know, we
8 could look into writing into policy.

9 ALEXIA MICKLES: Yeah, I think that sounds
10 great.

11 I think anything you can do to avoid getting
12 into the institution in the first place, staying in
13 your home in the first instance, is a great way to
14 maintain dignity and to keep people healthier.

15 ASSEMBLYMEMBER ASHBY: All right.

16 Appreciate your time. Thank you.

17 ALEXIA MICKLES: Thank you.

18 SENATOR RIVERA: Thank you for that.

19 I'll actually recognize myself for 5 minutes,
20 although it probably will take less.

21 I just wanted to quickly ask about
22 discharges.

23 We've heard about different instances during
24 the day, about what -- what is a safe discharge?

25 I think we can all agree, that if there's a

1 patient -- somebody who is a nursing home resident,
2 and, for some reason, the family wants to be able to
3 have that person leave to go with them back home,
4 that there needs to be some standards of safety.

5 However, we have seen how, currently --

6 I mean, I want to get your sense on this.

7 -- it has been my understanding that some
8 folks feel that the current standard is way too
9 difficult to be able to meet by families who might
10 still be able to provide a safe space for their
11 family members, and yet want to be able to extricate
12 them from the situation, that they might get
13 COVID-19 if they think that they're over -- over --
14 you know, that they're at risk.

15 So do you have any comment on that, any
16 folks, any of you?

17 ANN MARIE COOK: I think it's very difficult
18 to get somebody discharged, especially now from a
19 nursing home.

20 Under normal circumstances, it takes months
21 for us to set up what's appropriate, where they will
22 consider it a safe discharge, honestly.

23 And during COVID, we have not been able to
24 successfully transition anybody out of a nursing
25 home in our area.

1 SENATOR RIVERA: Do you feel -- and this is
2 for either Ms. Mickles or Mr. Clune.

3 Do you feel that there is something that we
4 could do to help families be able to achieve this
5 discharge while still meeting safety requirements
6 that would be necessary for them to be safe to go
7 back home?

8 Go ahead, Ms. Mickles.

9 I can't hear -- oh, there you go.

10 ALEXIA MICKLES: I think that it's
11 interesting that there's such difficulty.

12 I know there's a difficulty in getting people
13 voluntarily to be able to discharge.

14 I'd like to know why there's such -- why it's
15 so easy for them to be involuntarily discharged, why
16 all the power resides with the nursing home.

17 I mean, it's a safe discharge if they go to a
18 homeless shelter, if they go to a hospital.

19 I mean --

20 SENATOR RIVERA: I was actually going to
21 follow up about that.

22 Sorry to interrupt.

23 Please continue.

24 ALEXIA MICKLES: No, no, that's okay.

25 I mean, I just want to know, where's the

1 balance of power?

2 Why does the family who wants to, like
3 Ann Marie mentioned, try to take someone home, you
4 know, especially during the pandemic, why do they
5 have such a difficult time?

6 Why can't we do something to help them?

7 We should be able to help the families who
8 want to take someone out, while, at the same time,
9 taking a little bit of power away from the facility
10 to just say, oh, this is a safe discharge. You
11 know, you're being involuntarily discharged for
12 reasons A, B, or C. Goodbye and good luck.

13 I just don't -- yeah.

14 SENATOR RIVERA: I would certainly want to
15 work with you folks on kind of balancing that out in
16 a better way.

17 Mr. Clune, I interrupted you.

18 Please go ahead.

19 TIMOTHY CLUNE: That's perfectly fine.

20 I agree with everything you said.

21 I think looking behind, you know, why the
22 obstruction to the discharges would be a good first
23 step, as well as, it comes down to funding; funding
24 community supports so that people can actually go
25 back to the home.

1 And I think facilities play that card, and
2 say, well, there aren't enough community supports,
3 so, therefore, we can't let you go. It doesn't
4 matter that maybe your family wants to take you.

5 But it does come down to funding right now.

6 SENATOR RIVERA: Okay.

7 ALEXIA MICKLES: Can I also add, too, it's
8 related, on March 21st -- Empire Justice Center,
9 along with other agencies, including
10 Lindsay Heckler, CELJ, and others, on March 21st
11 we requested that DOH impose a moratorium on all
12 involuntarily discharges, and that has been
13 unanswered to this day.

14 And like someone else mentioned before,
15 Ann Marie, there are evictions. I mean -- and we
16 heard from the ALJ, anecdotally, who handles these
17 cases -- these discharge cases, that they are
18 happening during the pandemic at a steady pace.

19 So why are these evictions still going on?

20 Why was our letter unanswered?

21 I mean, these are all things that we just
22 would like to know the answers to.

23 SENATOR RIVERA: To paraphrase my colleague,
24 Dick Gottfried, you should expect a call from us
25 about how to actually, potentially, resolve this

1 legislatively.

2 TIMOTHY CLUNE: You may want to -- if I may,
3 just in the last couple seconds, you may want to
4 also consider all of the people who are transferred
5 out of state; New Yorkers who are transferred to
6 out-of-state nursing homes.

7 We have visited several.

8 In years past, people were shipped to
9 New Jersey nursing homes. And our investigation
10 showed that they did not have skilled nursing needs.

11 The truth is, when someone is in a
12 psychiatric center, or another State-based facility,
13 the State is paying 100 percent of the bill.

14 When you go to a nursing home, the feds pick
15 up half.

16 Do the math.

17 SENATOR RIVERA: And, actually, I'll be
18 honest, that's not something that we talked about
19 enough, of people transferred out of the state of
20 New York.

21 But my time has expired.

22 Thank you so much.

23 Back to the Assembly.

24 ASSEMBLYMEMBER BRONSON: We'll next recognize
25 Assemblymember Tom Abinanti for 3 minutes.

1 ASSEMBLYMEMBER ABINANTI: Okay, there we go.

2 Thank you all.

3 I'd like to talk a little bit to Tim Clune.

4 Tim, we've discussed some issues before, and
5 I'd like to work with you on some of the stuff that
6 you spoke about today.

7 I'm pleased that you highlighted for
8 everyone, the number of deaths, the lack of PPE, the
9 testing, et cetera.

10 These were issues that I raised, daily, on
11 the telephone calls that assemblymembers had with
12 the governor's staff, and they just kind of
13 dismissed them, and said, we're dealing with them,
14 we're dealing with them, we're dealing with them.

15 Well, obviously, they didn't.

16 And, secondly, there was a newspaper article
17 August 5th, about how some of the agencies that
18 had residential group homes, basically, ignored the
19 orders of DOH and OPWDD. And those group homes had
20 a death rate of half of what the other residential
21 group homes had.

22 And it seems that the OPWDD regulations and
23 approval process just got in the way of doing what
24 was right for the residents.

25 So it seems to me that maybe your agency

1 wants to take a look at a lawsuit under the ADA, and
2 see if there's a basis here for some punishment for
3 the people in the state government who have
4 neglected people with developmental disabilities
5 that they're charged with taking care of.

6 But I'd like to ask you, number one: Is
7 there a bill of rights for people who are in OPWDD
8 facilities?

9 I have a bill I've been trying to pass for
10 several years, and OPWDD keeps blocking it.

11 I don't know why our staff and our leadership
12 is more interested in hearing OPWDD than parents.

13 But we're hearing there's a bill of rights
14 for people in nursing homes.

15 I don't think there's one for people in OPWDD
16 facilities.

17 Secondly: Is there a way of designating
18 parents or relatives as "essential visitors," so
19 that people don't get lost in group homes and can't
20 get to see any family members, just like we were
21 talking about with -- earlier with nursing homes.

22 And, lastly: Do we have retaliation
23 protection for people who work at the group homes?

24 TIMOTHY CLUNE: So to your first -- to your
25 first point, bill of rights, there are a lot of laws

1 that protect people in institutions.

2 The problem is, if a particular facility is
3 unwilling to follow those -- the bill of rights,
4 it -- it's not really worth a lot. Unless there's
5 enforcement, it's really difficult to deal with
6 that.

7 We have no problem suing and holding people
8 accountable.

9 We had to file DOJ complaints against the
10 State regarding the PPE issue.

11 We had to file a complaint regarding the
12 potential for ventilator allocation issues,
13 discriminating against people with disabilities.

14 So we are --

15 SENATOR RIVERA: Actually, wrap up, sir,
16 since his time has expired.

17 TIMOTHY CLUNE: All right.

18 So we've been keenly aware of that.

19 And, yes, the appointment of
20 "essential people," it seems to be a no-brainer.

21 SENATOR RIVERA: Thank you.
22 Assembly.

23 ASSEMBLYMEMBER BRONSON: We have no more
24 questioners on the Assembly side.

25 Thank you.

1 SENATOR RIVERA: Ho-ho.

2 Thank you, folks, for your time this evening.

3 And we are two down, folks, two panels down.

4 Next panel, we will have:

5 John Holt, director of the legal services and
6 policy, Vera Institute of Justice - The Guardianship
7 Project;

8 And, Beth Haroules, senior staff attorney for
9 NYCLU.

10 I might have mispronounced your name.

11 I apologize if I did.

12 Wait until these folks come on.

13 Monsieur Gottfried, are you with us?

14 There he is.

15 ASSEMBLYMEMBER GOTTFRIED: Here I am.

16 SENATOR RIVERA: They're not here yet.

17 Okay. They're -- are there --

18 JOHN HOLT: Good evening.

19 ASSEMBLYMEMBER GOTTFRIED: And do you both
20 swear or affirm that the testimony you're about to
21 give is true?

22 JOHN HOLT: Yes, I do.

23 BETH HAROULES: Yes, I do, too.

24 SENATOR RIVERA: All righty.

25 Mr. Holt, go ahead.

1 JOHN HOLT: Hi.

2 I'm John Holt. I'm the director of legal
3 services and policy for the Vera Institute of
4 Justice - Guardianship Project.

5 We are a non-profit agency which serves as
6 court-appointed guardian, pursuant to Article 81 of
7 the Mental Hygiene Law.

8 In our 15 years in operation, we have served
9 over 500 individuals in New York City who a judge
10 has determined have some functional limitations and
11 require the assistance of a guardian to prevent them
12 from coming to harm.

13 The pandemic and actions taken to stem the
14 spread of COVID-19 have had a profound impact on the
15 guardianship system.

16 Tragically, this impact includes the
17 widespread contraction, and too often death, from
18 the virus.

19 Due to the underlying medical conditions that
20 are often the clinic basis of the functional
21 limitations that led to guardianship, it may be
22 expected that we would see disproportionate outcomes
23 in the rates of death among this population.

24 However, the disparities experienced between
25 those in nursing facilities and those in their own

1 homes should not be seen as inevitable.

2 While we do not have any data at this point
3 that would conclusively prove this hypothesis, our
4 experience may, unfortunately, prove representative
5 of that of many guardians across the state.

6 Out of the 173 living clients under our care
7 on April 1st, only 153 were still alive on
8 May 1st, a loss of approximately 11.5 percent of
9 our clients in a single month.

10 While the 80 nursing home residents under our
11 care made up 46 percent of our client base, they
12 accounted for 95 percent of the deaths.

13 These outcomes are even more concerning,
14 considering that many nursing home residents can and
15 should be receiving long-term care in their homes or
16 less-restrictive settings, but are prevented from
17 doing so by a number of factors.

18 While the issue of overinstitutionalization
19 is incredibly relevant in assessing the response to
20 the current crisis, and planning for future
21 contingencies, I wish to focus on three
22 recommendations specific to nursing facilities.

23 One: Permit access to facilities for
24 participants in hearings for the appointment of a
25 guardian;

1 Two: Allow guardians charged with overseeing
2 the care of residents to visit;

3 And, three: Take action to prevent data and
4 communication system breakdown that impede medical
5 decision-making by guardians.

6 From the outset of the pandemic, there's been
7 a class of nursing home residents who have been
8 identified as needing a guardian, in part, due to
9 their compromised ability to understand their health
10 status and make decisions regarding medical care.

11 Guardianship is meant to be an expedited
12 legal proceeding in the interests of mitigating the
13 potential harm to those alleged to be incapacitated,
14 yet despite the heightened importance of timely
15 access to guardianship in a public-health crisis,
16 we've seen a virtual freeze into new appointments
17 for nursing home residents.

18 The visitation restrictions in facilities
19 have prevented Court-appointed counsel, evaluators,
20 and the court personnel needed to conduct a hearing
21 from interacting with the alleged incapacitated
22 person to the extent needed to assert their right to
23 meaningfully participate in the proceedings and
24 challenge the allegations of incapacity.

25 We need policies that allow access to alleged

1 incapacitated persons sufficient to permit hearings
2 to proceed, so that those who require the
3 appointment of a guardian get the protection to
4 which they are entitled.

5 We have heard from many of the witnesses over
6 the last two hearings of the adverse effects that
7 nursing home visitation restrictions have had on
8 residents.

9 But there's an even greater impact when the
10 restricted party is a guardian, charged with
11 ensuring that there's adequate and appropriate care.

12 It's very difficult to holistically monitor
13 the condition of our clients, and to advocate for
14 adjustments to their care, when we are unable to see
15 them in person.

16 Due to their functional limitations, many of
17 our clients are unable to use technology to connect
18 with us, and the nature of the communications with
19 those who can do not lend themselves towards
20 monitoring changes in their physical and mental
21 condition.

22 Without being able to enter the facility, we
23 are unable to observe the environment in which care
24 is being provided, and be watchful for indicators of
25 substandard treatment.

1 Personal-needs guardians are not simply
2 outside decision-makers. They are an integral part
3 of the care team for an incapacitated person, and
4 must act as their eyes and ears.

5 We must enact policies that allow safe access
6 to nursing facilities for guardians so that they can
7 perform the critical functions of overseeing care
8 for those unable to understand their medical
9 situation and advocate on their own behalves.

10 Without the pandemic, we have been called
11 upon again and again to make medical decisions,
12 a role that is reliant on two critical factors to
13 choose treatments that are in accordance with our
14 clients' known wishes or best interests: Timely
15 notice of changes in medical status that necessitate
16 the guardian's input, and access to the care team,
17 to discuss the information needed to actually make
18 those decisions.

19 During the pandemic we experienced breakdowns
20 in both of these systems.

21 Notification of the development of symptoms
22 was often delayed. In some circumstances, the
23 facilities failed to even provide notice that a
24 client had been hospitalized.

25 When we identified the possible need for

1 medical decision-making, getting in touch with staff
2 to have conversations about care was difficult, and
3 reaching the primary-care physician is almost
4 impossible.

5 The information systems and staff in nursing
6 facilities must be able to consistently and accurately
7 identify the guardian as a surrogate decision-maker,
8 provide them timely notice for the need for
9 decision-making, and have open and accessible lines
10 of communication with the guardian to discuss
11 changes in the plan of care.

12 In conclusion:

13 While we understand the complexity and
14 unprecedented nature of the present public-health
15 emergency, in the future, the protection of nursing
16 home residents must be a priority.

17 But we need to make sure that even the most
18 proactive and aggressive responses of any New Yorker
19 who is in need of a guardian has meaningful access
20 to the court resources and processes necessary to
21 protect them and their rights, and that the
22 thousands of New Yorkers who rely on the assistance
23 of a guardian to oversee their care, make medical
24 decisions, can be assured that the effectiveness of
25 their guardian will not be curtailed precisely when

1 they need it most.

2 Thank you.

3 SENATOR RIVERA: Thank you, Mr. Holt.

4 And now we'll hear from Beth Haroules --

5 I'm not sure if I've pronounced your name
6 correctly. Apologies.

7 -- senior staff attorney for NYCLU.

8 BETH HAROULES: Yes, good evening.

9 My name is Beth Haroules. I'm not only a
10 senior staff attorney at the NYCLU, I am plaintiff's
11 counsel in [indiscernible] litigation.

12 The NYCLU has long taken the position that
13 segregated institutions are dangerous and unhealthy
14 for residents and staff, and the pandemic's impact
15 on residential health-care facilities reaffirms the
16 wisdom of this stance.

17 The view applies with equal force to other
18 congregate-care settings: IRAs, ICFs, operated
19 for people with developmental disabilities by OPWDD;
20 psychiatric hospitals; psychiatric institutions;
21 community-based residential treatment facilities;
22 and other supported group homes certified by the
23 New York State Office of Mental Health (or OASAS).

24 These are settings where workers' and
25 residents' risk of infection and death are just as

1 high as those in residential health-care facilities,
2 but where we have institution data and other public
3 reporting.

4 We join with others today who have spoken to
5 urge that these committees conduct similar oversight
6 hearings with respect to the impact of COVID-19 in
7 all congregate-care residential settings in
8 New York State.

9 Back in March, the renowned infectious
10 disease scientist Dr. Peter Hotez testified to
11 Congress that COVID-19 was the angel of death for
12 elderly living in Italian and in Washington State
13 residential health-care facilities.

14 Dr. Hotez's remarks were widely reported.

15 We had warning here in New York State about
16 how COVID-19 would ravage people living in
17 congregate-care settings, and we failed to act.

18 We have heard that the COVID-19 pandemic has
19 pulled back the curtain on longstanding deficiencies
20 present in most of New York's residential
21 health-care facilities.

22 Living spaces make distancing impossible;
23 understaffing for infection-control protocols;
24 inadequate planning; substandard care; along with
25 more recent problems, such as the lack of PPE, and

1 failures to test residents and their direct-support
2 professionals, have all contributed to the damage we
3 are witnessing now.

4 I'm terribly sorry that Dr. Zucker and his
5 staff were not present to hear the wrenching
6 testimony of the families and residents today.

7 Yet again, DOH is absent; absent from doing
8 its job to provide oversight, and absent from
9 hearing about the substandard conditions DOH permits
10 our elderly and medically-frail people to live in.

11 You have our written testimony.

12 We have offered you a series of
13 recommendations.

14 I would like to focus quickly on six [sic]
15 points:

16 Data testing;

17 The need for an independent analysis of why
18 COVID ravaged the health-care facilities;

19 Staffing levels;

20 Support to CNAs;

21 And Article 30-d, immunizing residential
22 health-care facility.

23 I know we don't have a lot of time.

24 I really urge you to ensure that the lack of
25 data transparency across all New York State agencies

1 providing certified services in congregate care
2 settings are provided to you.

3 We need data about all deaths and all
4 reasons, from the start of the calendar year,
5 relating to COVID-19 infections and deaths.

6 Without that information, we will not be able
7 to fight this pandemic, we will not be able to make
8 appropriate decisions around the nature of care and
9 services, overcrowding, and the like, that occurs in
10 institutional settings.

11 New York State must establish an ongoing
12 COVID-19 viral testing program, and, as well, a
13 testing program that identifies antibodies in
14 individuals who may have been exposed or suffered
15 from COVID, in order to engage in cohorting and
16 other infection disease-control protocols.

17 We really need you to ensure that there's
18 independent analysis of how COVID ravaged
19 residential health-care facilities.

20 DOH, McKenzie, have come up with a
21 self-serving report.

22 There needs to be an independent commission
23 established to investigate exactly what happened
24 here.

25 We know that Governor Cuomo stopped the

1 concept of an independent commission in his daily
2 pandemic briefing today.

3 There should be a commission composed of
4 academic leaders, community advocates, members of
5 the public, representing a cross-section of
6 New York State, to investigate the conditions under
7 which the coronavirus arrived, spread, infected,
8 disabled, and killed residents and staff in
9 congregate-care settings.

10 You've heard about the inadequate staffing
11 levels. I won't repeat that.

12 We ask you to do all in our power to support
13 the needs of essential workers.

14 90 percent of nursing, psychiatric, and
15 home-care aides are women.

16 Black women are overrepresented in the
17 congregate-care workforce. And, overall, the
18 majority of women working as home health and
19 personal care aides are women of color, whose
20 economic security is already precarious, due in
21 large part to the systemic racism that has devalued
22 caregiving [indiscernible] poverty-level wages.

23 We urge you to take this moment to
24 reconsider, in its entirety, the way the nursing
25 home industry and congregate-care settings are set

1 up in New York State.

2 The institutional model of care, like all the
3 other institutional models of care, are broken and
4 failed.

5 We have fought for almost 50 years for our
6 [indiscernible] class members, people with
7 intellectual and developmental disabilities, to live
8 in the least restrictive settings most appropriate
9 to their needs.

10 If we cannot support our elderly and
11 medically-frail at home in their communities, at the
12 very least, we owe it to them to move the system of
13 care to a system that permits them to live in
14 smaller, more personalized settings that will ensure
15 meaningful quality of life, integration into the
16 community, protection from harm, and high-quality
17 medical services.

18 Thank you for holding these hearings, and
19 taking our testimony.

20 SENATOR RIVERA: Thank you, Ms. Haroules.

21 Currently, no Senate members asking
22 questions.

23 Assembly?

24 ASSEMBLYMEMBER BRONSON: We have one member
25 who would like to ask questions.

1 I recognize, for 3 minutes, Assemblymember
2 Tom Abinanti.

3 ASSEMBLYMEMBER ABINANTI: Thank you very
4 much, both of you.

5 First of all, John, you said that you were
6 unable to make the medical decisions for your wards.

7 Who made those decisions?

8 Somebody was deciding medical care.

9 And, is that not illegal, or at least
10 unlawful?

11 And did those people not violate the law by
12 making decisions for an incompetent who could not
13 consent to the care?

14 JOHN HOLT: There were a few specific
15 situations where people were sent to hospital
16 settings, where we were not able to be involved in
17 the care decision-making.

18 And in some of those instances, the care
19 decisions were being made by other surrogates, under
20 the Family Health Care Decision Act, who were family
21 members, without the hospital being aware that there
22 was guardian in place, which is problematic.

23 In the nursing facilities themselves, I think
24 the problem was less about being able to eventually
25 being involved, but only being brought into the

1 process when a person was really approaching end of
2 life, where the decision-making was really, frankly,
3 around COVID, about ventilator or no ventilator.

4 And, at that point, you know, we haven't been
5 able to intake the information on an ongoing basis
6 to understand how people are declining, and
7 responding to the treatment they're receiving,
8 because we're not getting notification.

9 [Indiscernible cross-talking] --

10 ASSEMBLYMEMBER ABINANTI: Yeah, but how is
11 family member -- I thought the family members were
12 being kept out.

13 So how -- they weren't making the decisions
14 either.

15 JOHN HOLT: With the family members, that was
16 in a hospital setting.

17 So, someone went to the hospital. The
18 nursing facility didn't notify the hospital that
19 there was a guardian in place.

20 A family member was somehow notified, or they
21 were misidentified as the surrogate decision-maker,
22 and that family member was contacted.

23 And, in fact, in that particular case, we --
24 the person actually passed away in a hospital
25 setting, and we didn't find out for, basically, a

1 week, until after the person had passed away, that
2 they had even been hospitalized, let alone passed
3 from COVID.

4 ASSEMBLYMEMBER ABINANTI: All right. Thank
5 you.

6 JOHN HOLT: In the nursing facilities, you
7 know, really, it was just -- we had a very difficult
8 time proactively trying to reach out and understand
9 what's going on with the care.

10 I heard other testimony before that echoed
11 our experience, where you call, someone, if you can
12 get them to answer the phone, who has not been
13 involved in the care --

14 ASSEMBLYMEMBER ABINANTI: [Indiscernible].

15 All right. Thank you.

16 JOHN HOLT: -- and says, you know, "they're
17 fine."

18 ASSEMBLYMEMBER ABINANTI: I'd like to go to
19 Beth quickly.

20 "The least restrictive environment."

21 Even to this day, all of the day hab programs
22 are not open, and many of the people who live in
23 group homes have been, basically, locked in, because
24 there's nowhere for them to go and they can't get
25 out.

1 Is that not a violation of the law?

2 And can you not bring a lawsuit, maybe a
3 habeas corpus proceeding, or sue them, because now
4 these people can't see their families, can't get out
5 of the facilities, and they can't go to the day hab
6 programs they're supposed to go to because they're
7 not open.

8 It seems to me that there's a violation of
9 the "least restrictive environment" requirement.

10 BETH HAROULES: Yeah, there's definitely
11 that. There is an absolute lack leadership by
12 OPWDD.

13 They have deferred completely to the agencies
14 and to the providers to determine when, and under
15 what circumstances, they should comply with some
16 guidance.

17 The guidance is perfectly fine, both for the
18 reopening of the day programs, and for opening up
19 visitation within the group homes.

20 OPW [sic] has deferred completely to the
21 providers to make those determinations, and that's
22 why we're seeing massive shut-ins.

23 We've also seen a reopening of day programs
24 without sufficient safety plans because the state
25 has lost its funding to provide in-home day

1 services.

2 So day programs --

3 SENATOR RIVERA: Thank you, Ms. Haroules.

4 BETH HAROULES: -- are just opening up.

5 SENATOR RIVERA: Yep, thank you,
6 Ms. Haroules.

7 Thank you.

8 Assembly.

9 ASSEMBLYMEMBER BRONSON: Uh, yes, we'll next
10 recognize Chair Gottfried for 5 minutes.

11 ASSEMBLYMEMBER GOTTFRIED: Yes, question for
12 Beth Haroules.

13 You mentioned the need for an independent
14 commission to look at all of what's happening here,
15 and suggested involving academics and advocates and
16 others.

17 As you may know, one of our next witnesses
18 may be discussing something very much like that
19 idea, Bill Hammond.

20 My question for you is:

21 That would probably involve considerable
22 cost.

23 Lots of the people who could do terrific work
24 may or may not be able to work entirely as
25 volunteers.

1 Do you have any thoughts about -- and if you
2 don't have them off the top of your head, give
3 it some thought -- as to where we might turn for
4 funding?

5 Because I think, inherent in the idea, is
6 that the funding not be government.

7 BETH HAROULES: Yeah, I mean, I think, you
8 know, there's some serious issues. Right?

9 We don't want a government-funded commission.

10 But, you know, I think the World Health
11 Organization might be a, you know, source of
12 resources here to bring to bear sufficient
13 academics, epidemiological folks, community members,
14 staff who are working in these facilities, and
15 researchers.

16 I think the concept of a sort of civic
17 commission that would be assessing, from soup to
18 nuts, what happened, how it happened.

19 I mean, to state, as DOH and McKenzie have
20 done, based on data that no one has seen, that the
21 staff and family members were the sole source of
22 transmission of COVID into these facilities, is
23 just -- it defies belief.

24 I mean, there are a lot of other things going
25 on in terms of infectious disease-control protocols,

1 and what everyone else has been talking about during
2 these hearings.

3 ASSEMBLYMEMBER GOTTFRIED: Okay.

4 Well, if you could give some thought to what
5 foundations or other sources might be interested in
6 chipping in for such a thing, that would be useful.

7 That's the only question I have.

8 SENATOR RIVERA: All righty.

9 I don't think we have any further questions
10 from the Assembly.

11 Is that correct?

12 ASSEMBLYMEMBER BRONSON: That is correct.

13 SENATOR RIVERA: All right.

14 Thank you both so much for being with us this
15 evening.

16 And now, without further ado, the final
17 panel --

18 And now I know that we're trying really hard
19 to get to midnight, and we probably won't, but we
20 will definitely get to 12 hours, won't we?

21 Let's see.

22 -- Panel 12 would be:

23 Thomas Mahoney, chief medical officer for
24 Common Ground Health;

25 Bill Hammond, who waited this long, senior

1 fellow for health policy for the Empire Center;

2 And, Nina Kohn, who also waited this long,
3 Dr. Nina Kohn, professor for Syracuse University
4 College of Law.

5 ASSEMBLYMEMBER GOTTFRIED: And do each and
6 every one of you swear or affirm that the testimony
7 you're about to give is true?

8 DR. THOMAS MAHONEY: I do.

9 BILL HAMMOND: I do.

10 DR. NINA KOHN: I do.

11 ASSEMBLYMEMBER GOTTFRIED: Okay.

12 SENATOR RIVERA: Okay.

13 Thomas Mahoney, kick off the last panel, sir.

14 DR. THOMAS MAHONEY: Thank you.

15 I am Dr. Tom Mahoney. I'm the chief medical
16 officer of Common Ground Health.

17 For those not familiar, the agency's mission
18 is through collaboration and partnerships, to bring
19 greater focus to community health issues, data
20 analysis, resident engagement, and solution
21 implementation.

22 I thank you for the opportunity to present to
23 this meeting.

24 The COVID pandemic, in many ways, has laid
25 bare the shortcomings of the current health and

1 health-care infrastructure.

2 For this hearing, my goal will be to focus on
3 observations, addressing structural issues, things
4 that we need to do to be prepared for a second surge
5 or future pandemic.

6 We need to address the systemic problems.

7 We can't regulate or inspect our way out
8 around these failings.

9 My comments are based on the experience of a
10 community collaboration to address increasing
11 morbidity related to COVID in the regions' nursing
12 homes.

13 We convened the first week of April, at the
14 request of Dr. Michael Mendoza, the commissioner of
15 health for Monroe County.

16 Facilitated by Common Ground Health and the
17 Finger Lakes PPS, the group was convened with the
18 realization that the community was facing a crisis
19 that was new to all of us, with many yet unanswered
20 questions and challenges.

21 It was acknowledged that health care is an
22 ecosystem, where we're all interdependent --
23 hospitals, post-acute-care settings, long-term care,
24 home care, medical providers -- and that there would
25 need to be a coordination of all players who often

1 work in separation and isolation or in competition
2 to improve the community outcomes.

3 So the conclusion is, collaboration was
4 needed to address systemic issues in a unique way.
5 We can't be effective without all players working
6 together.

7 For example, the collaboration that we did,
8 brought together leaders from the county; two large
9 hospital systems; representatives from the nursing
10 homes, large, small, for-profit, not-for-profit,
11 county-run, and they were part of the whole group,
12 including representatives from Finger Lakes Medical
13 Directors Association as providers, home-care
14 agencies, and, Lifespan, who talked to you in a
15 previous presentation.

16 We found that shared data was necessary.

17 Community data was reported by the Center for
18 Community Health and Prevention Infectious Disease
19 specialist.

20 This data has collected and summarized by the
21 Monroe County Health Department, with the assistance
22 of the CDC and the New York Department of Health
23 Emerging Infections Program, so we were actually
24 able to give the group a picture of the actual
25 occurrences in nursing homes of both staff and

1 residents.

2 This data was extremely helpful in getting
3 the group, and allowing them, the participants, to
4 understand their place in the community, and share
5 in solutions.

6 This is -- the clear thing that popped as our
7 very largest issue was the need to ensure adequate
8 workforce.

9 Top on the list is that long-term care
10 system, with -- where its workforce, for many years
11 now, reimbursement has been long -- has been -- in
12 Medicaid has been stagnant and the cost of providing
13 care had risen.

14 The result was the increasing burden on
15 front-line CNAs and nursing staff, with CNAs often
16 with wages below a living wage.

17 We've talked before about other issues: PPE.

18 It was very important, but also instruction
19 is essential.

20 You heard that from several prior
21 presentations, but this is an issue that the
22 committee heard extensively on.

23 The equipment acquisition actually, in our
24 region, using OEM, was fairly smooth; however, what
25 we found is that there was a clear lack of ability

1 to instruct all those to be using that.

2 And we had to create our own poster
3 presentations that went to the community, developed
4 by this group and Emory University.

5 The -- all senior citizens also need to be
6 considered in the community control of illness.

7 Our data reviews found that addressing
8 nursing home, but not assisted-living and congregate
9 senior centers of housing, created some
10 public-health issues that were really a problem.

11 SENATOR RIVERA: Make sure you wrap up, sir,
12 since your time has just expired.

13 DR. THOMAS MAHONEY: Yes.

14 That issue, what we're looking for is, that
15 ALFs move into a position where they have to have
16 some medical direction in case of emergencies.

17 Other issues [indiscernible cross-talking] --

18 SENATOR RIVERA: Thank you for that, sir.

19 Yep.

20 Bill Hammond!

21 BILL HAMMOND: Mr. Rivera, thank you for the
22 opportunity to testify.

23 Thank you for your stamina.

24 It's good to be here this evening.

25 The past five months have made clear that

1 New York was uniquely vulnerable to a pandemic, and
2 also dangerously unprepared to fight it.

3 It's that lack of preparedness, I think, is
4 the most fundamental reason that so many people
5 died, including way too many residents of nursing
6 homes.

7 I don't think it was about bad luck or the
8 subways or European tourists.

9 It was, if we had been better prepared the
10 way, say, for example, South Korea was, we wouldn't
11 be talking about European travelers, we wouldn't be
12 talking about a March 25th order from the health
13 department, and we probably wouldn't be having this
14 hearing.

15 So our main focus should be making sure
16 nothing like this happens again, bolstering our
17 public-health defenses, and that starts with an
18 honest assessment of what happened and why.

19 And, unfortunately, we can't do that on an
20 assessment at this point, especially with respect to
21 nursing homes, because the State is withholding the
22 data we need to do that.

23 Unlike, virtually, every other state,
24 New York is not counting nursing home deaths that
25 occur outside of the facility, and most often in

1 hospitals.

2 So the official toll of about 6500, as high
3 as that is, and as horrifying as it is, it's an
4 understatement of the real loss of life.

5 And not knowing the true number, and the more
6 detailed information about which facilities had how
7 many deaths, it makes it really impossible to
8 continue with the process of learning from mistakes.

9 The CDC has put out its own incomplete data.
10 It only started in mid-May, so it kind of missed
11 most of the pandemic.

12 But the numbers they gave us for more recent
13 weeks, if you line them up against the health
14 department, they show that it looks like about
15 40 percent of the people that the CDC counted died
16 outside of nursing homes, and, therefore, didn't
17 show up in the DOH count.

18 If you extrapolate from that, that suggests
19 that the true toll of coronavirus in New York's
20 nursing homes is several thousand higher than we
21 have been told so far, maybe in the neighborhood of
22 10,000 or more.

23 Another concerning indicator is that the
24 vacancy rate in New York homes has really
25 skyrocketed.

1 It's usually around 8 percent. And more
2 recently it's up to 21 percent.

3 That translates to 13,000 patients who
4 normally would be, that aren't there.

5 I think that's consistent with a high death
6 toll, but also with a sharp drop in new admissions.

7 The DOH report of July 6th, it undermined
8 its own credibility because it used that same
9 incomplete data that they've been giving to the
10 public. And, also, it went beyond what the evidence
11 said in reaching conclusions, and contrary to how
12 it's been described, it was not peer-reviewed.

13 That said, I think it did present evidence
14 that the March 21st order certainly was not the
15 sole source of coronavirus in nursing homes.

16 The coronavirus rampaged through the state
17 much earlier than we realized, and, as a result, it
18 got into nursing homes and it was spreading
19 rampantly there before the March 25th order was
20 issued.

21 On the other hand, I would not say it was not
22 a significant factor, which was one of the
23 conclusions the DOH reached.

24 I don't think that's consistent with the data
25 either.

1 I think what happened was, it made a bad
2 situation worse, and it's really hard to say how
3 many deaths you would attribute to one cause or
4 another.

5 I've heard a lot today about -- oh, and as
6 Mr. Gottfried mentioned, I think the solution, when
7 the DOH is demonstrating that it's not approaching
8 this with a fair mind, that it's in a defensive
9 mode, and it's not sharing data, I think that
10 bolsters the case for bringing -- for establishing
11 some kind of completely independent commission that
12 would do an investigation of what happened.

13 I've heard a lot of talk today about how
14 nursing homes don't have enough staff, and the staff
15 aren't paid well, and the quality of care delivered
16 is poor.

17 Where -- and I absolutely believe all of
18 that. It's consistent with my own research on this
19 topic.

20 Where I do balk, though, is at the idea that
21 the root of all these problems is that the State
22 isn't spending enough money.

23 By almost any measure, New York spends a
24 great deal of money on Medicaid.

25 It has one of the most generous such programs

1 in the country on a per capita basis.

2 SENATOR RIVERA: Can you finish up?

3 BILL HAMMOND: Oh, I'm sorry.

4 Okay, I'm finished.

5 SENATOR RIVERA: All right, so you finished
6 in the middle of a sentence, which I'm sure that we
7 will get back to you.

8 Last, but certainly not least, the cleanup
9 hitter, and with the same energy that I gave the
10 first person that spoke in the damned day, I will
11 give you Dr. Nina Kohn.

12 Please, bring us home!

13 DR. NINA KOHN: Thank you.

14 My name is Nina Kohn. I'm a professor at
15 Syracuse University College of Law, and the Solomon
16 Center Distinguished Elder Law Scholar at Yale Law
17 School.

18 And my research focuses on the civil rights
19 of older adults and those in congregate-care
20 settings.

21 So I'm going to focus on policies and
22 practices that have made residents vulnerable to
23 COVID and its impacts, and concrete policies that
24 can improve well-being, going forward.

25 So one source of vulnerability has been

1 facilities' overreliance on part-time staff and
2 staff who work in multiple facilities.

3 Adopting a one-site rule that limits staff to
4 working in one facility, which we've seen many
5 Canadian provinces do, could reduce spread between
6 facilities, and, indeed, a new study suggests that
7 eliminating staff linkages between homes could
8 reduce infections by 44 percent.

9 A one-sided policy, however, must be paired
10 with policies incentivizing hiring full-time
11 direct-care workers, or it does create a risk that
12 we'll have a worker shortage or financial distress
13 to workers.

14 Another factor that increases vulnerability
15 is a lack of accountability for facilities,
16 including around infection control.

17 This gap is well documented in nursing homes.

18 Even when state inspectors find that a home
19 violated regulations designed to protect residents,
20 the home is often merely directed to correct the
21 situation with no follow-up that corrections are
22 made.

23 The rare fines that are typically levied are
24 so small, they're toothless.

25 That's a problem everywhere in this country,

1 but especially so in New York where average fines
2 are well below the national average.

3 Going forward, the State needs to impose
4 consequences for regulatory violations that put
5 residents at risk, consequences that actually deter
6 bad behavior.

7 And that will include rolling back, fully,
8 Section 3082 of the budget bill, which rewards
9 neglect and dangerous behavior by granting
10 facilities, owners, and administrators astonishingly
11 broad immunity for unreasonably causing foreseeable
12 harm to residents.

13 Another factor increasing vulnerability is
14 insufficient direct-care staff.

15 Most homes, especially for-profit facilities,
16 were dangerously understaffed even before COVID.

17 Now, research is linking nursing-staff
18 levels, and staff levels more broadly, to
19 facilities' ability to control outbreaks.

20 Minimum staffing requirements, like those in
21 the Safe Staffing Quality Act that have been
22 proposed, are really essential to ensure that
23 facilities have the staff needed to avoid systemic
24 neglect.

25 Any increased funding for facilities amid

1 this pandemic must be conditioned on adequate
2 direct-care staffing.

3 Isolation is also endangering residents.
4 It's itself a harm, causing great psychological
5 suffering and poor health outcomes, as you've heard
6 today. But it's also a risk factor for abuse and
7 neglect.

8 Research shows that the presence of non-staff
9 in facilities protects residents.

10 The ombudsman program could be a powerful
11 tool to counter isolation [ph.] -- isolation,
12 I should say, and to strengthen oversight, but
13 current policies are undermining it.

14 For example, rather than helping ensure that
15 ombudsman can safely go into facilities, DOH has
16 encouraged "remote advocacy."

17 That's a farce for residents who most need
18 ombudsmen.

19 It enables facilities and staff to be
20 de facto gatekeepers to the very people who might
21 report their bad behavior.

22 Going forward, we need ombudsmen prioritized
23 for PPE, and encouraged, perhaps required, to
24 regularly visit all residential care facilities even
25 amid the pandemic.

1 To further this, the State should promulgate
2 protocols, unlike the current ones, that do not
3 allow facilities to act as gatekeepers for
4 ombudsmen.

5 And we need to invest in a professional
6 ombudsmen workforce, and not rely just on the
7 wonderful volunteers.

8 This pandemic has shown the folly of that.

9 Combating isolation is also going to require
10 recognizing residents' rights to associate with
11 family and friends.

12 The State must unambiguously require
13 facilities to facilitate virtual visits by phone or
14 video conference when in-person visits are
15 unfeasible, and rescind guidance that gives
16 facilities discretion to deny residents in-person
17 visits.

18 That discretion allows our worst facilities
19 to avoid scrutiny by further depriving residents of
20 their civil and human rights.

21 Instead, this State should require facilities
22 to allow in-person visitation in accordance with
23 state protocols.

24 And you could look to the protocols
25 promulgated at Ryerson University in Canada, in

1 collaboration with provider and advocacy groups, to
2 guide that.

3 So, finally, I'll just say:

4 That this pandemic really --

5 SENATOR RIVERA: Very quickly, please.

6 DR. NINA KOHN: Yep.

7 -- exposes the danger of underfunding home
8 and community services to begin with, and the
9 problems we're seeing in congregate care more
10 broadly.

11 Thank you.

12 SENATOR RIVERA: Thank you.

13 You know, there's an incredibly cheesy, but
14 incredibly entertaining movie, in the '80s called
15 "The Last Dragon." And it has a very cheesy song
16 attached to it.

17 (Singing) You are the last panel. Uh nah nah
18 nah nah.

19 Assembly, lead us off!

20 ASSEMBLYMEMBER BYRNE: Holy shit.

21 [Indiscernible.]

22 [Laughter.]

23 ASSEMBLYMEMBER BRONSON: With that, we will
24 begin with --

25 [Laughter.]

1 ASSEMBLYMEMBER BRONSON: -- Chair Gottfried
2 for 5 minutes.

3 ASSEMBLYMEMBER GOTTFRIED: Well, if I was
4 going to do a song-and-dance routine, I'd need more
5 than 5 minutes.

6 So, I'll pass on that.

7 But I will --

8 SENATOR RIVERA: Your video, Dick. We can't
9 see you.

10 ASSEMBLYMEMBER GOTTFRIED: Oh, hold on.

11 SENATOR RIVERA: (Singing) You are the last
12 panel.

13 There you go.

14 ASSEMBLYMEMBER GOTTFRIED: Okay.

15 Still not going to do the song-and-dance
16 routine.

17 However, I will take the bait and ask
18 Bill Hammond:

19 You were about to comment on what about
20 New York's Medicaid program does or doesn't have
21 anything to do with nursing home -- with the nursing
22 home situation, et cetera.

23 Are we underfunded, or not?

24 What do you think?

25 BILL HAMMOND: Thank you for letting me

1 finish that point.

2 What I was trying to say is that, if Medicaid
3 spending -- if high Medicaid spending was going to
4 deliver better care and protect us from a pandemic,
5 we would have been golden, because we -- our
6 per capita Medicaid spending in New York is not only
7 double the national average, it's about 29 percent
8 higher than the second-highest state.

9 We're -- we're off the charts when it comes
10 to -- and that's -- that's a combination of having
11 broad eligibility, generous benefits, and then high
12 per-recipient spending.

13 And, in particular, our spending in long-term
14 care is high, and our spending on nursing home care
15 is high, and our spending on home care, at least the
16 part of it that's known as "personal assistance,"
17 I believe, at this point, New York alone spends more
18 on -- spends more on Medicaid personal assistance
19 than all of the other 49 states combined.

20 It's so we're -- the idea that we -- that the
21 answer to any of our problems is just pumping more
22 money into that, I just think it fails on the logic
23 test.

24 I think we have to look at how we spend the
25 money. And, also, we have to look at targeting it

1 more carefully to the people who need it the most.

2 So that's the point I'm making.

3 I actually don't question the idea that we
4 have serious quality problems all over the place in
5 our health-care system, and in nursing homes in
6 particular.

7 ASSEMBLYMEMBER GOTTFRIED: Okay.

8 And as a treat for those of you who stayed
9 till this ungodly hour, I don't know if I've
10 announced this earlier, but, the health department
11 tells us that the December health department report
12 on the question of safe staffing will actually be
13 made public on August 14th, this Friday.

14 So that's -- I guess I would only add that,
15 Bill, we would be interested in continuing a
16 discussion as to how New York's home-care spend --
17 or, long-term-care spending might be better targeted
18 and better spent.

19 BILL HAMMOND: Well, here's the other point
20 that I managed to not make:

21 I think the top priority, to the extent you
22 have any money to spend, which doesn't seem likely
23 under these circumstances, but to the extent you do
24 have some money to spend, I think the top priority
25 should be public health.

1 It should be bolstering the surveillance
2 capabilities, the testing capabilities, the contact
3 tracing, to try to build up something that looks
4 like what they have in South Korea, which ended up
5 being the most powerful protection for the health
6 and lives of the South Korean citizens, than
7 anything that would happen in a nursing home, than
8 anything that would happen in a home-care setting or
9 in a hospital.

10 Those -- the goal of a public-health
11 protection is to keep -- to keep people out of
12 hospitals and to keep the virus out of nursing
13 homes.

14 And that is where things really broke down,
15 I feel, in New York.

16 And, by the way, the federal government blew
17 this very badly, you know, especially with respect
18 to testing. The leadership in the White House was
19 either non-existent or awful.

20 The -- but, more importantly, the lessons of
21 that, is that New York shouldn't count on the
22 federal government to protect it from the next
23 pandemic.

24 It needs to have its own -- its own
25 capabilities in that area.

1 And, actually, public health is
2 traditionally, primarily, a State function.

3 So that would be my pitch, is that you put
4 some resources and effort into public health.

5 SENATOR RIVERA: And your time --

6 ASSEMBLYMEMBER GOTTFRIED: And, of course --

7 SENATOR RIVERA: -- expired, but, go ahead.

8 I think I know what you're going to say.

9 If not, I'm going to say it, because I'm
10 going to take 5 minutes now.

11 ASSEMBLYMEMBER GOTTFRIED: We have to say
12 that South Korea, like Taiwan, has a
13 well-established single-payer health-care system.

14 SENATOR RIVERA: There's that.

15 I'll take my 5 minutes now.

16 BILL HAMMOND: [Indiscernible
17 cross-talking] --

18 SENATOR RIVERA: Hold on, Bill. Hold on,
19 Bill.

20 BILL HAMMOND: -- [indiscernible
21 cross-talking] --

22 SENATOR RIVERA: Hold on, Bill.

23 I will recognize myself for 5 minutes, and
24 I will continue the point that our colleague was
25 making.

1 It's, like, you are correct, public health --
2 the public-health measures actually are the best way
3 to avert a crisis getting out of hand, like it did
4 in the United States.

5 But that is much easier when you have a
6 single-payer system.

7 But that is not my question.

8 I have two for you.

9 One, related to --

10 And I do appreciate you -- you all hanging
11 out this late, because, even though we disagree on a
12 lot, I respect the work that you do.

13 You are thorough, you are serious, and you
14 come at it from a different angle, which
15 sometimes -- but we'll get you on board.

16 Number one: Have you filed FOIL requests for
17 the administration?

18 If so, for what; what information did you
19 request?

20 How long ago?

21 Have you gotten any answers from them?

22 BILL HAMMOND: Well, I did recently request
23 the full count of nursing home deaths, because it
24 seemed like -- I had expected them to put it out.

25 I thought the DOH report would be their

1 opportunity to do it.

2 They didn't do it.

3 So --

4 SENATOR RIVERA: That's actually my second
5 question, because I was going to lead to that, and
6 it's, like: Do you agree that -- I mean, if you --
7 if you -- we talk a lot about the rates of death.

8 We talked about it with the commissioner of
9 health last week.

10 Have you looked at it?

11 I know that you've spoken about it -- you've
12 spoken about it in some of the stuff that you've
13 written, but I want give you a second to kind of
14 talk about that.

15 And do you agree that, in addition to not
16 including hospital deaths of nursing home residents,
17 facilities may have underplayed deaths by COVID?

18 Would you agree?

19 BILL HAMMOND: Oh, yeah.

20 The CDC, actually, if you look very closely
21 at it, there is a sign of excess deaths beyond what
22 they reported as COVID deaths.

23 And it's -- in other words, their overall
24 death rate was unusually high, at least compared to,
25 say, the last few weeks.

1 And -- and the -- the coronavirus toll by
2 itself doesn't explain why their death rate was so
3 high.

4 So it -- certainly, it bears investigation.

5 SENATOR RIVERA: Got you.

6 And even though I'm not -- I am certainly
7 looking forward to the report on Friday, I'm not
8 holding my breath for the report on Friday,
9 regardless of what they told us they're going to do.

10 Now, I want to give Dr. Kohn and Dr. Mahoney:

11 Dr. Kohn, any -- any comments on the -- on
12 the issue of maybe having a single-payer system
13 would help us deal with public-health matters?

14 Anything?

15 DR. NINA KOHN: Well, what I will say is
16 that, if you want to prevent illness getting into
17 residential care facilities, then you need to
18 protect the health and welfare of the workers.

19 Right?

20 So when you're not protecting your workers'
21 health and safety, you're not protecting your
22 residents' health and safety.

23 And I think one thing that this epidemic has
24 shown us, is that the interests of workers and the
25 interests of residents are perhaps much more aligned

1 than we're typically led to believe.

2 So when you deny workers health benefits,
3 when you deny workers sick leave, that creates a
4 tremendous risk for residents.

5 SENATOR RIVERA: Got you.

6 Dr. Mahoney, any comments?

7 DR. THOMAS MAHONEY: Certainly.

8 I think that that observation is correct,
9 that the big issue of the workers in nursing homes,
10 in terms of both their health, the morbidity that
11 they -- morbidity and mortality that they suffered,
12 and the impact that it had within the nursing homes,
13 can't be ignored.

14 And health care is certainly one of the
15 biggest issues that comes up if you look at
16 questioning of those workers.

17 SENATOR RIVERA: Got you.

18 All right. Thank you.

19 BILL HAMMOND: Can I say something here?

20 SENATOR RIVERA: Really quickly, bro.

21 BILL HAMMOND: I would point out that before
22 New York --

23 SENATOR RIVERA: [Indiscernible
24 cross-talking] --

25 BILL HAMMOND: -- before New York had it bad,

1 Italy had it bad, and Spain had it bad, and the UK
2 had it bad, and Belgium had it bad.

3 Those are all countries with single-payer.

4 So, single-payer, maybe it has some
5 advantage, but, in and of itself, it's not
6 protective against the pandemic.

7 A pandemic [indiscernible cross-talking] --

8 SENATOR RIVERA: [Indiscernible
9 cross-talking] --

10 BILL HAMMOND: -- is medical care, not
11 [indiscernible] --

12 SENATOR RIVERA: [Indiscernible] in
13 agreement, sir.

14 But if you don't have to worry about paying
15 for tests, if you don't to have worry about whether
16 you're going to access to treatment or not, if you
17 don't have to worry about whether you're going to
18 be -- whether it's -- contact tracing is going to be
19 built into the system -- well, I'm sure that we'll
20 have many more conversations about this.

21 My colleagues are waiting.

22 That is my time.

23 Assembly.

24 ASSEMBLYMEMBER BRONSON: Thank you, Senator.

25 And I will recognize myself for 5 minutes.

1 And thank you, panel, for being here, and
2 we're not going to resolve the New York Health Act
3 discussion this evening, but it's always fun to
4 watch you go back and forth on that.

5 And I'm on the side with Mr. Gottfried and
6 Senator Rivera.

7 With all that, Tom, first of all, thank you
8 for what you do at Common Health -- Common Ground
9 Health, and all the research that you all do over
10 there to help make sure that we provide good health
11 care in our wonderful Greater Rochester region.

12 You talked about looking at data, sharing
13 data, bringing in the various stakeholders to have
14 discussion.

15 And what -- out of those conversations that
16 you had up in Monroe County, did you walk away with
17 concrete ideas of what we could have done better,
18 and what we need to do, as we face a second surge or
19 some other pandemic?

20 Are there a handful of recommendations you
21 can give to us as state policymakers?

22 DR. THOMAS MAHONEY: I think that the one
23 thing that came out is, that there were some -- the
24 nursing homes already have a mutual aide agreement,
25 and that allowed, to some degree, shifting within

1 the nursing home community, that was -- that was --
2 at least lessened the burden, somewhat.

3 We're now actually having discussions with
4 the hospitals to join that because, as you look at
5 the outbreaks within the nursing homes, they weren't
6 simultaneous.

7 And if we can create the ability to shift
8 resources, and the biggest resource that came in
9 short supply was staffing in these homes, if the
10 mutual aide agreement actually allows for among the
11 nursing homes has that potential, and if you add
12 hospital systems to that, which has a much deeper
13 workforce, it may be an opportunity -- and we're
14 still discussing it in the group -- it may be the
15 opportunity to be able to shift staff to where the
16 greatest need is.

17 When one nursing home was out over
18 50 front-line employees, it was really difficult to
19 maintain care there.

20 The need for staffing, we tried -- we tried a
21 public-relationships campaign to increase work.

22 We figured that people were -- had lost their
23 jobs in other areas and could come in and fill in.

24 Unfortunately, that was very disappointing.

25 So I think we have to consider some of these

1 other opportunities.

2 ASSEMBLYMEMBER BRONSON: And I know that
3 we've had discussions regarding home health care,
4 and the inability to really attract and retain those
5 workers.

6 And you had talk about, if we're going to
7 address this, we have to address the entire senior
8 citizen population.

9 So that's not only the folks who are in
10 nursing homes; it's the folks who are in adult
11 facilities, folks who are receiving home care.

12 DR. THOMAS MAHONEY: Correct.

13 ASSEMBLYMEMBER BRONSON: Did you have more
14 detailed conversations about how can you shift that
15 workforce, and make sure that you have adequate
16 staffing at all areas that we're going to need it
17 in?

18 DR. THOMAS MAHONEY: The experience of home
19 care during this was, actually, that there was a
20 decrease in need because much of their work had been
21 postoperative care for short periods.

22 So the issue is an ongoing one within home
23 care, but it boils down to the inability to pay at a
24 level that they can retain staff.

25 The ability to shift seems less likely there.

1 ASSEMBLYMEMBER BRONSON: Okay.

2 Thank you very much.

3 Back to the Senate.

4 SENATOR RIVERA: Thank you, sir.

5 Followed up by Senator Skoufis, recognized
6 for 5 minutes.

7 SENATOR SKOUFIS: Thanks very much.

8 And thanks to all the witnesses on this panel
9 for waiting so long.

10 And, thank you, Chair Gottfried, for pointing
11 out that we're finally getting this report on
12 Friday.

13 The second sort of piece of that statement,
14 however, is that the department of health has,
15 literally, broken the law for the past eight-plus
16 months.

17 This report was statutorily due to us on
18 December 31st of last year.

19 And I would just point out, and maybe
20 suggest, that it is commonplace for agencies to
21 disregard statutory directives from the legislature.

22 It has happened for many years.

23 It happened when Republicans were in control
24 of the Senate.

25 It's happened while Democrats are in control

1 of the Senate.

2 And, you know, I would just suggest that
3 perhaps we ought to maybe seek a legal remedy as
4 this continues to happen.

5 It would have been extremely helpful to have
6 this report by January 1st, ahead of the pandemic.

7 Nevertheless, I'd like to talk to
8 Mr. Hammond.

9 I've read much, if not all, of your work over
10 the past five months throughout the pandemic.

11 And I want to focus on something that's in
12 your written testimony, and I think you've mentioned
13 it.

14 You cite the State's lack of preparedness as,
15 really, the primary driver of the high death toll
16 here in New York.

17 You also made reference to the federal
18 government sort of dropping the ball.

19 And, you know, I think you mentioned testing,
20 which is certainly something we've been looking for
21 testing, a national testing regimen, for the past
22 five months.

23 PPE. It's very difficult for the State, as
24 we've realized, to go out and source on our own,
25 PPE, or manufacture PPE.

1 That needs to be done nationally.

2 The Trump administration cut, they
3 eliminated, a national security council office that
4 was strictly focused on pandemic work.

5 So in your written testimony, you suggest,
6 well, we can't rely on the federal government.

7 Look what the NYPD did following 9/11.

8 They set up, I don't know if it's offices,
9 but efforts of some kind, around the world to
10 monitor terrorist activity.

11 Are you suggesting that we do something
12 similar, where we have a state CDC with offices
13 around the world?

14 You know, I would respectfully suggest that a
15 pandemic by its very nature is a global issue.

16 It's not an epidemic.

17 This is a pandemic we're living through, and
18 it is the responsibility of the national government
19 to provide for the national defense.

20 You know, the State doesn't engage in foreign
21 affairs, doesn't engage in national defense.

22 So I'm just curious, what specifically you
23 suggest that the State move in and fill a national
24 void of?

25 You know, we can't count on the federal

1 government.

2 What should the State be doing to fill that
3 void that the national government should be doing?

4 BILL HAMMOND: Yeah, I brought up the NYPD to
5 give a sense of a kind of outside-the-box thinking
6 that's needed here.

7 I don't necessarily think the State should
8 have public-health experts stationed in Beijing or
9 London.

10 But what I do -- so one reason that the
11 testing was so inadequate is that there were so many
12 people to test.

13 So the earlier you can catch an outbreak, the
14 easier it is to manage. Everything else flows from
15 that.

16 It now turns out, it's pretty clear, that we
17 had thousands of cases in New York in February.

18 We didn't know -- we didn't test anybody
19 positive until March.

20 By that time we probably had, you know, like
21 I say, tens of thousands of cases.

22 It appears that the pandemic actually peaked
23 around the time that the March 25th shutdown was
24 ordered.

25 So we needed to have -- we needed to put

1 emergency rooms and doctors' offices on high alert
2 for any sign of flu-like symptoms that weren't the
3 flu, or any sign of unusual viruses.

4 If -- and then we also needed to have that
5 army of contact tracers kind of standing by, like
6 the National Guard, or something.

7 I mean, I'm spitballing here.

8 I'm not an epidemiologist, but it does seem
9 to me that that is where everything went south for
10 us, at that very early stage.

11 And by the time we woke up to what was going
12 on, it was too late for us to prevent a major
13 catastrophe.

14 SENATOR SKOUFIS: Thank you.

15 SENATOR RIVERA: Thank you, Senator.

16 Assembly.

17 ASSEMBLYMEMBER BRONSON: Next we'll recognize
18 Chair John McDonald for 5 minutes.

19 ASSEMBLYMEMBER MCDONALD: Thank you to
20 everybody on the last team this evening.

21 Bill, I appreciated your comments this
22 evening. Found them interesting.

23 You know, a lot of people are focusing on the
24 March 25th, and your comments were kind of right
25 down the middle on that; not really pointing

1 fingers, not really pointing blame.

2 Just, basically, I think -- I don't want to
3 characterize your comments, but, basically, you
4 know, the challenges we face are a combination of
5 many miscues, both at the State and federal level.
6 But also the fact that we've been dealing with a
7 virus that has, basically, tricked and evaded every
8 epidemiologist in the world. And we were kind of
9 building the plane while we were flying it.

10 That being said, what I wanted to ask,
11 actually, I surprised Dick Gottfried didn't ask
12 this, because I think he asked it of an earlier
13 panel, is, you know, there's obviously a lot of
14 calls for an investigation of this, and an
15 independent investigation.

16 And one of the challenges, and maybe it's
17 just me, because I've only been doing this for
18 20 years, is truly finding what is "independent."

19 How do we find independent entities that are
20 not going to be in this ultra-biased world so
21 favoring one end or the other?

22 I'm just curious if you have any thoughts or
23 comments?

24 And I open it up to the other panelists as
25 well.

1 BILL HAMMOND: I mean, my concept of it is to
2 keep -- anybody who is dependent on government for
3 the majority of their funding should stay away.

4 People directly involved in the health-care
5 system at the top level should stay away.

6 We should focus kind of on academic-type
7 researchers.

8 And you should also try to get a balance.

9 You know, so if you do have people who are
10 going to be perceived as being more on the left, you
11 want to also have people who are perceived as being
12 more on the right, so that if they can speak with
13 one voice, it feels like a consensus that cuts
14 across party lines.

15 It was mentioned earlier that this is going
16 to be expensive.

17 I have no idea how much it would cost.

18 I actually think the money would be there.
19 I think there would be foundations who would be more
20 than happy to support this kind of work.

21 And, also, I was kind of hoping that this
22 group would bootstrap what people like myself are
23 doing anyway.

24 I fully intend to be doing all the research
25 I can on what happened.

1 And so my thought was, to take all of that
2 work that's happening already, and combine it, you
3 know, to coordinate between it, to share findings,
4 et cetera.

5 DR. NINA KOHN: I would second the
6 recommendation of academia.

7 Obviously, I'm in it.

8 I will say, though, that there's a time for
9 investigation and there's a time for action.

10 And right now, I would hate to see all this
11 energy that's been put into thinking about what
12 could be done to save lives going forward, to be,
13 instead, focused purely on a retrospective, because
14 we have lives on the line now.

15 And I think we have some very good evidence
16 about what could be done to save lives of workers
17 and residents, going forward.

18 And I will note that there was some really
19 quite remarkable testimony in the very first
20 session -- I did listen to all of them -- from the
21 industry, saying, basically, look, even without this
22 order, we would have taken these people.

23 That should concern you all, because what
24 you're hearing is that the profit motive was such,
25 that homes would have accepted these people.

1 So that tells me -- right? -- that we
2 absolutely need to be making sure that we're
3 thinking prospectively, because there's some very
4 dangerous behavior that facilities are willing to
5 engage in.

6 ASSEMBLYMEMBER MCDONALD: Thank you.

7 That's it.

8 SENATOR RIVERA: All right.

9 Thank you.

10 We'll follow up by Senator Rachel May,
11 recognized for 5 minutes.

12 SENATOR MAY: Thank you very much.

13 And I want to turn and talk with
14 Professor Kohn, and I'm pleased that
15 Syracuse University is so ably represented here.

16 I wanted to follow up on a few things you
17 said.

18 You talked about restricting staff from
19 working multiple jobs.

20 We had some testimony last week about the
21 reason they do that, is because they can't make ends
22 meet otherwise, and they're not allowed to do
23 overtime. So they have to then work two 8-hour
24 shifts instead of one longer shift at one facility.

25 So that isn't really a question, just a

1 comment about that, but more on the minimum staffing
2 levels you talked about.

3 We're going to have this report, supposedly,
4 coming out on Friday.

5 How will we be able to judge if the
6 department of health's assessment of what are safe
7 staffing levels really are, you know, something we
8 can rely on?

9 DR. NINA KOHN: Well, I mean, I think the
10 good news there, is that there are decades of
11 research on what experts believe to be safe staffing
12 levels based on all the data that has come out of
13 nursing homes for decades.

14 And there really does seem to be consensus
15 among experts as to what those minimum safe staffing
16 levels are.

17 You know, certainly, more staff is better in
18 an ideal world.

19 But we're looking at, roughly, 4.1 hours of
20 direct staff time per resident per day to avoid
21 systemic neglect.

22 So I think you can compare that to the
23 established research, and I'd be happy to share more
24 of that with you.

25 SENATOR MAY: Right. Thank you.

1 And then the commissioner kept saying that
2 one of the reasons for their -- that March 25th
3 order was, that they didn't want to discriminate
4 against people with COVID-19.

5 And that has bugged me.

6 Like he said, it's like you couldn't
7 discriminate against people with AIDS.

8 And it feels like a completely different
9 situation to me.

10 And I'm just wondering, if you heard that, if
11 it sent up any flags for you as a legal scholar?

12 DR. NINA KOHN: Frankly, I don't think that
13 holds water.

14 SENATOR MAY: Thanks.

15 I don't, either.

16 And then, finally, I wanted to talk to you
17 about the ombudsman program because we've heard a
18 lot about it today.

19 I gather you have an understanding of a lot
20 of different models that are out there, and
21 especially when we're talking about independence.

22 Can you weigh in on what you think is a model
23 we should be looking at in New York State?

24 DR. NINA KOHN: Absolutely.

25 And I will say that, before I became an

1 academic, I was a legal-aid attorney, representing
2 nursing home residents and frail elders in
3 five counties in Upstate New York, and had the
4 opportunity to work with many ombudsman programs.

5 And I will say, I think the State should be
6 very sensitive, not only to independence vis-a-vis
7 the State, but independence vis-a-vis the counties.

8 And when I was working in counties, I saw
9 very different behavior based on how individual
10 ombudsman offices were paid for.

11 Our most aggressive ombudsmen at that time
12 were actually county officials. They were not
13 afraid of angering or annoying facilities because
14 they were county officials, and no one was going to
15 pull their grant if they pissed people off.

16 Excuse me.

17 Whereas, ombudsmen offices that were
18 continually going to the county for grant money or
19 re-upping their grants had to be much more concerned
20 about being politically astute, and we tended to see
21 less aggressive efforts on that part.

22 So I do think you should be thinking about
23 how things are doled out at the county level, not
24 just at the state level.

25 And it is critical to have the professionals

1 in there, because they build up expertise, and they
2 also build up relationships with other community
3 organizations who can be critical to advocate and
4 support residents and their families.

5 SENATOR MAY: Thank you.

6 And then my last question was about, you said
7 remote advocacy doesn't work with the ombudspeople
8 because the facilities are acting as gatekeepers.

9 Did you mention that there are models
10 where -- usable protocols, let's say, for how to
11 prevent the facilities from being gatekeepers?

12 DR. NINA KOHN: Well, one is, you need
13 in-person visits.

14 But, two, if you don't, then you need to have
15 technology that residents can access without
16 substantial faculty -- facility assistance to do
17 that.

18 And when you have facilities serving as the
19 gatekeepers to video conferencing or phones, then it
20 just doesn't work.

21 So if you're not going to have in-person,
22 then you need to be putting as much technology as
23 you can in the hands of residents or, you know,
24 resident councils.

25 SENATOR MAY: Okay, great.

1 Thank you very much.

2 SENATOR RIVERA: Thank you, Senator.

3 For those people track, we are past 12 hours.

4 Assembly!

5 ASSEMBLYMEMBER BRONSON: And we have a lot
6 more to do.

7 SENATOR RIVERA: Oh, yeah.

8 ASSEMBLYMEMBER BRONSON: Next we will
9 recognize Assemblymember Kevin Byrne for 5 minutes.

10 ASSEMBLYMEMBER BYRNE: Thank you.

11 And it is late in the evening.

12 We had a feeling it was going to go late.

13 I want to thank all of the people providing
14 their testimony.

15 And, Mr. Hammond, you've written extensively
16 on a lot of this subject matter, and I want to thank
17 you for that, and your testimony today and answering
18 these questions.

19 I did want to drill down on a few other
20 things. And we'll see how much I can get through
21 with the time allotted.

22 I think it's fair to say that, while the DOH
23 maintains its findings, conclude that the
24 March 25th order wasn't the predominant source of
25 COVID-19 in nursing homes, is it still not fair --

1 is it not still fair to conclude that it remains
2 dangerous to reintroduce the virus, potentially, to
3 patients in nursing facilities filled with other
4 elderly patients, many of whom have underlying
5 health issues or other comorbidities?

6 Do you think that reintroducing it, still --
7 I think you said this in your testimony, I just want
8 to make sure I get this right -- that while it might
9 not have been the driver, and it seems that you
10 accept some of the findings from the DOH report,
11 that it still could have made a bad situation worse?

12 BILL HAMMOND: Oh, yes.

13 I mean, in the initial reports they said
14 that, something like, 20 percent of homes hadn't had
15 any coronavirus at all until one of these discharged
16 patients arrived.

17 They later revised that.

18 But, I mean, that's the point: There were
19 probably some homes that had managed to stay
20 completely coronavirus-free, against all the odds.
21 And then, you know, by order of the State, they were
22 required to accept a patient who was positive.

23 I mean, this gets back to the preparedness
24 issue.

25 A good solution to this problem of taking

1 stable patients out of hospitals, is to have a
2 coronavirus-only nursing home available. But you
3 would need to have that available before the crisis
4 hits, and you would need to have a plan in place,
5 you know, to manage that process, and to alert all
6 the people involved that this was going on.

7 And none of that happened until we're flying
8 the plane.

9 ASSEMBLYMEMBER BYRNE: Now, just to go back a
10 little bit, I understand that it existed in a large
11 percentage of the nursing facilities in the state.

12 That doesn't mean that, you know,
13 reintroducing it again is likely not helpful.

14 And this is another question.

15 I haven't really got an answer.

16 I wanted to ask this of the commissioner, and
17 we didn't have time.

18 You know, the timeline has been referenced a
19 lot.

20 On April 8th, do you happen to know how many
21 fatalities we had in nursing facilities, even with
22 the count as it is, that doesn't include fatalities
23 in hospitals, and what the total is today?

24 BILL HAMMOND: I don't remember what the
25 number was, but that's about when it peaked. It's

1 about when it peaked statewide, in fact. It wasn't
2 just nursing homes.

3 It was around that three- or four-day period.

4 ASSEMBLYMEMBER BYRNE: But is it fair to say
5 that we continue to lose, I believe it was several
6 thousand, after that?

7 BILL HAMMOND: We did.

8 ASSEMBLYMEMBER BYRNE: Okay.

9 And that's another point that I feel like
10 sometimes is missed, that the grand scheme of
11 things, is that we still lost more lives than any
12 other state in the nation.

13 And I brought this up earlier with one of the
14 panels, and this is kind of from my colleague
15 Mr. Hawley who represents Orleans County:

16 The administration likes to point out that
17 we're, I think, 45 out of the 50 states when you
18 look at proportion, to nursing home deaths to total
19 deaths.

20 And it's a little misleading to me because
21 our total death count is so high.

22 But then, in Orleans County where Mr. Hawley
23 resides, it was 54 to 55 deaths were from a nursing
24 facility.

25 Now, that paints a very different picture.

1 And I get this sense that sometimes looking
2 at the statewide number, it kind of dilutes and
3 changes the narrative from what's happening locally.

4 I have some concerns knowing that it's not
5 complete. And that it almost seems like this is --
6 it goes out of its way to paint a different story.

7 Would you have any other comments on that?

8 Would you agree with that concern?

9 BILL HAMMOND: I think the picture painted in
10 that report made me wonder if nursing homes
11 themselves weren't becoming kind of vectors of the
12 pandemic, because they described that the infection
13 rate among staff, according to their data, peaked in
14 mid-March. And that, ultimately, somewhere between
15 a quarter and a third of all staff in nursing homes
16 showed signs of infection.

17 I mean, that's an extraordinarily high rate
18 of infection by any standard.

19 And so -- so -- and that was something that
20 the report just kind of, it said, yeah, it was
21 really bad among the staff. And it didn't go the
22 next step, which is, well, what do we need to do to
23 prevent that from happening when something like this
24 arises again?

25 SENATOR RIVERA: Thank you, Mr. Hammond.

1 Thank you, Assemblymember.

2 The Assembly [sic] recognizes
3 Senator Tom O'Mara for 5 minutes.

4 SENATOR O'MARA: Thank you, Chairman.

5 Thank you, Nina, Tom, and Bill for hanging in
6 there with us throughout this day, and sticking so
7 late.

8 You know, I think throughout the testimony
9 that we've seen today, and last Monday, I think
10 we've gotten a lot of candor from witnesses that are
11 family members; witnesses that are workers,
12 employees, in the facilities; and even from the
13 ombudsmen that are there.

14 And it seems to me a little bit maybe less
15 candor on the situation from the facility
16 administrators themselves, and even the couple of
17 associations that testified today.

18 And I'm just wondering what your thoughts are
19 on whether you -- because we talked about the
20 funding for these facilities is so important,
21 whether these administrators hold back a little bit
22 on what their true feelings are with the situation,
23 and particularly in reference to the March 25th
24 order, that it may not be as it seems, from their
25 testimony.

1 Any thoughts on that?

2 DR. THOMAS MAHONEY: Is there directed to me?

3 SENATOR O'MARA: Any one of you three.

4 Nina?

5 DR. NINA KOHN: I'll say I think the
6 facilities got a tremendous, unwarranted, and
7 incredibly dangerous gift in the budget bill,
8 preceded by the executive order, around immunity,
9 giving not only direct-care workers, but,
10 executives, administrators, the whole ownership
11 chain, immunity from liability, even from criminal.

12 And there was some suggestion it might be
13 necessary to address these issues.

14 And with that type of gift, it's really hard
15 to look the gift horse in the mouth.

16 SENATOR O'MARA: Thank you.

17 DR. THOMAS MAHONEY: Also, I can give you a
18 perspective from the data in Rochester.

19 And the peak in the nursing homes came well
20 after the order.

21 There was not a temporal relationship.

22 Our peak was much later.

23 It wasn't until, really, we shifted to double
24 protection with PPE, so both masks and face guard,
25 and then universal testing, that we were able to see

1 the rate come down.

2 But there wasn't a spike within a couple
3 weeks of the administrative order.

4 SENATOR O'MARA: Bill, any thoughts on that?

5 BILL HAMMOND: I mean, I -- I start from an
6 assumption that everyone involved in the situation
7 was dealing with extremely difficult circumstances,
8 and trying to make good-faith decisions under
9 pressure.

10 I mean, everybody in the health-care system,
11 in fact, everybody in life, has financial
12 motivations for what they do.

13 And, certainly, when you get to the level of
14 an association president, they're a couple steps
15 removed from what's happening on the ground.
16 They're speaking for a group of people who control
17 their lives.

18 I mean, I -- and as you mentioned, they have
19 a vested interest in staying in the good graces of
20 the health department and the Cuomo administration.

21 You know, that's just the way the system
22 works.

23 It's one of the reasons why I think the
24 investigation has to be as independent from that
25 process as possible.

1 SENATOR O'MARA: Thank you.

2 And I certainly agree with that.

3 Bill, one thing you mentioned in your initial
4 testimony was, that this department of health report
5 about the March 25th order, that Dr. Zucker
6 presented with his, what I would call, a
7 "self-serving" slide show, PowerPoint presentation,
8 on his interpretation of their own data, you said it
9 wasn't peer-reviewed, in essence, even though the
10 administration is calling it "peer-reviewed."

11 Can you elaborate on that a little bit?

12 BILL HAMMOND: Well, I mean, "peer-review" in
13 the academic world is where the author doesn't pick
14 the peer-reviewers. The journal that's publishing
15 the paper does. And they try to find people who --
16 they may be acquainted with the author, but they
17 work at a separate institution, and so they're in a
18 position to comment, you know, and to put in
19 criticism.

20 In this case, they went to chief executives
21 of hospitals who receive boatloads of State funding.

22 In one case, Michael Dowling is very close to
23 the Cuomo family.

24 It was not an arm's-length situation.

25 SENATOR RIVERA: Thank you, Senator.

1 SENATOR O'MARA: Thank you.

2 SENATOR RIVERA: Assembly.

3 ASSEMBLYMEMBER BRONSON: Thank you.

4 Next we will have Assemblymember Jake Ashby
5 for 5 minutes.

6 ASSEMBLYMEMBER ASHBY: Thank you.

7 Thank you, Mr. Chairman.

8 Thank you to the panel for sticking with us.

9 Mr. Hammond, earlier in your testimony you
10 alluded to vacancy rates among the nursing homes.

11 And I'm wondering if you could just elaborate
12 a little bit more on your findings, in terms of
13 vacancy rates, and maybe discrepancies, or a lack of
14 discrepancies, of nursing home death.

15 BILL HAMMOND: I mean, it's more of raising
16 a question than answering it.

17 The states routinely ask nursing homes: How
18 many beds do you have, and how many of them are
19 empty?

20 Which is kind of -- it's an odd way of doing
21 it, if you ask me.

22 I don't know why they don't just ask, how
23 many patients do you have? which would get to, more
24 or less, the same answer.

25 And for 10 years -- I mean, the data that the

1 State posts online goes back 10 years. And for
2 10 years, the vacancy rate has held almost
3 rock-steady between, say, 6 and 9 percent.

4 And, you know, in the past couple of years
5 it's been rock-steady at 7 or 8 percent.

6 And then, all of a sudden, in late March, it
7 goes straight up and levels off at around 20, 21, or
8 22 percent.

9 I mean, that's completely unprecedented, at
10 least as far as the data goes back.

11 And it's consistent with, you know, what
12 everybody knows now is just a horrific situation in
13 the nursing homes.

14 People -- I heard somebody testify earlier
15 that it's very hard to do a voluntary discharge.

16 So I think we have to kind of rule out the
17 idea that it was, you know, family spontaneously
18 pulling their loved ones out because of the
19 coronavirus.

20 What I think did happen was a sharp drop in
21 admissions, especially in parts of the state because
22 of the lack of elective procedures, and because of
23 just even more heightened concern about going into a
24 nursing home.

25 And so you're left with sort of

1 13,000 missing patients, and that's double the
2 official death count.

3 And the question is, where -- you know, how
4 much of that extra half of -- you know, the other
5 6500, how much of that is people who died from
6 coronavirus? How much of it is people who died from
7 other causes that were indirectly related to the
8 stresses of the pandemic? And then how much of it
9 is a drop in admissions?

10 And I don't have those answers.

11 ASSEMBLYMEMBER ASHBY: Thank you.

12 I know states like California had issued an
13 advisory to long-term-care centers in their state,
14 asking if families could take their loved ones out
15 of the nursing homes.

16 And that may have caused a decline in their
17 census.

18 Do you think New York could have benefited
19 from something like that.

20 BILL HAMMOND: Yeah, potentially.

21 I mean, as was discussed earlier, this is not
22 an easy thing to do under any circumstances.

23 You have to provide substantial, you know,
24 support and care for the resident in the home.

25 If that could have been done, there's, you

1 know, a likelihood they wouldn't be in a nursing
2 home in the first place.

3 ASSEMBLYMEMBER ASHBY: Correct.

4 BILL HAMMOND: So it's not easy to do under
5 normal circumstances.

6 It's even that much harder to do when
7 visitors aren't allowed in the home, when the staff
8 and administration of the home are necessarily
9 preoccupied with, you know, other issues.

10 So, I mean, again this is a matter of
11 preparedness.

12 If we had had more time to think some of this
13 stuff through in advance, by the time these
14 questions were coming up, in retrospect, the state's
15 pandemic had already peaked.

16 ASSEMBLYMEMBER ASHBY: Right.

17 I can appreciate the banter between you and
18 Senator Skoufis earlier about an agency that could
19 be dually tasked at the federal and state level to
20 prepare for such things.

21 And, in fact, one exists. Right?

22 It's our National Guard, it's our
23 Air National Guard, which, in a rare, you know,
24 display of public cooperation at the federal and
25 state level, we saw the USS Comfort come in, and,

1 unfortunately, not be utilized to its fullest
2 extent.

3 But perhaps that's something to look to
4 expand upon later on down the road, the role of
5 public-health officers in both of those departments.

6 It has both federal oversight and state
7 oversight, with the authority of the Governor.

8 BILL HAMMOND: Yeah, I mean, I didn't
9 actually envision it as being a joint agency.

10 I thought the State should have its own
11 independent -- maybe in conjunction with New York
12 City, its own independent public-health capability
13 that it doesn't seem to have now.

14 I mean, I would have thought we had it;
15 I would have thought that we had a pretty
16 sophisticated health department in New York State,
17 actually.

18 ASSEMBLYMEMBER ASHBY: So sophisticated.

19 SENATOR RIVERA: Thank you, Mr. Hammond.

20 Thank you, Assemblymember.

21 Last, but not least, for the Senate,
22 recognize Senator Serino for 5 minutes.

23 SENATOR SERINO: Thank you, Mr. Chairman.

24 And I want to thank all of you.

25 We are truly ending with a very powerful

1 panel tonight.

2 And this question is for Bill, or anyone else
3 on the panel, or if you know of anyone, that might
4 have inquired with the department of health, or
5 filed a FOIL request, to access the raw HERDS survey
6 data.

7 Any of you guys know an answer to that?

8 BILL HAMMOND: I haven't asked for it at that
9 level.

10 SENATOR SERINO: No?

11 BILL HAMMOND: I mean, I wouldn't be
12 surprised if journalists have done that, though.

13 SENATOR SERINO: Oh, good point.

14 Because we heard earlier today that
15 professional organizations weren't doing their own
16 surveys because it was overwhelming facilities, and
17 HERDS was supposed to be collecting this data.

18 However, they have not been given access to
19 that data, so they haven't been able to use it to
20 inform decisions or improve responses.

21 So I'm just wondering if any other outside
22 entities or research institutions are actively
23 seeking that data specifically.

24 And like you said, Bill, maybe it's the
25 journalists that are doing that work, if you guys

1 don't know of anybody else.

2 BILL HAMMOND: When I heard that testimony,
3 I made a mental note that I should put in that FOIL.

4 I mean, I wouldn't expect to get it for a
5 period of months, but, I'm interested to see it.

6 SENATOR SERINO: Absolutely.

7 And just one more.

8 The State had a volunteer staff portal that
9 we've heard was wholly inadequate to meet the need
10 of long-term-care providers during this time.

11 We also heard a lot about health
12 professionals being recruited away from
13 long-term-care facilities with different incentives
14 and significant monetary raises.

15 We heard one panelist talking about how a
16 nurse could make thousands more by leaving their
17 nursing home and going to New York City.

18 Are any of you looking into how the State is
19 tracking how public dollars were spent during this
20 pandemic?

21 And do we know, or are we trying to find out,
22 who is footing the bill for these health-care
23 workers, many of whom came from out of state, and
24 many who were pulled directly out of high-need
25 areas?

1 BILL HAMMOND: I don't feel like I -- this
2 doesn't -- I mean, one thing I did observe earlier
3 on was, upstate hospitals suddenly had a lot of
4 excess staff, and it turned out that they could find
5 temporary work.

6 They were furloughed by their normal
7 employers, whether -- primarily hospitals. And
8 there was this huge demand for them downstate, and
9 so they had to make a decision: Do I want to expose
10 myself to the virus and the stresses of that
11 situation?

12 So I think there was some of that going on,
13 but I don't have much more beyond that.

14 SENATOR SERINO: Anyone else?

15 DR. THOMAS MAHONEY: No.

16 DR. NINA KOHN: No?

17 SENATOR SERINO: All right.

18 Well, okay.

19 That's all that I have, Senator Rivera.

20 SENATOR RIVERA: Thank you, Senator.

21 Assembly.

22 ASSEMBLYMEMBER BRONSON: We will next go to
23 Assemblymember Brian Manktelow, for 5 minutes.

24 ASSEMBLYMEMBER MANKTELOW: Thank you,
25 Mr. Chairman, and thank you, panel, for being here

1 at this late hour.

2 Mr. Hammond, earlier in your testimony,
3 I believe you said that you believe that the DOH is
4 in a defensive mode.

5 If so, why do you feel they're in a defensive
6 mode?

7 BILL HAMMOND: Well, the structure of that
8 report on July 6th, although it didn't explicitly
9 say this, it was pretty clear reading between the
10 lines that it was primarily about pushing back
11 against criticism of the March 25th order, and
12 stretched the point quite a bit.

13 You know, I kept looking at some of the
14 language, and they said it was not a significant
15 factor, the March 25th order.

16 I'm not sure exactly what that means.

17 Does that mean it wasn't a factor at all?

18 Or, you know, are they trying to imply that
19 there's some statistical barrier above which it
20 would be significant or below which it wouldn't be
21 significant?

22 I thought that was not language that would
23 have survived peer-review, actually.

24 I think an epidemiologist would have called
25 them out on that.

1 ASSEMBLYMEMBER MANKTELOW: Thank you.

2 You know, we've been on these hearings for
3 two days now, almost 20 -- now we're going on 12,
4 and 9, for 21 hours.

5 To this point we've only had DOH on these
6 testimonies for two hours.

7 We talked about doing an independent
8 investigation of what's happened.

9 If we did that, how would we get the DOH to
10 answer any of their questions?

11 Anybody?

12 BILL HAMMOND: That's one of the drawbacks of
13 doing it through private independent groups, is that
14 they wouldn't have subpoena power.

15 All they'd have is, potentially, a sense of,
16 you know, they kind of have the public behind them,
17 or at least a sense of moral authority.

18 But they could only -- they would have to
19 rely upon the cooperation of official sources.

20 ASSEMBLYMEMBER MANKTELOW: As legislators, do
21 you feel that we should subpoena DOH?

22 BILL HAMMOND: If necessary, yeah.

23 ASSEMBLYMEMBER MANKTELOW: Well, they seem to
24 be the common denominator here on all the
25 testimonies, and they seem to be one that's

1 continually lacking to be at the table.

2 And I just don't see how we're ever going to
3 get any answers.

4 If we're going to be looking at the past, and
5 we want to look at the future on what we're going to
6 do to make sure this doesn't happen in New York
7 State again, how are we ever going to do that
8 without having the true numbers, the true testimony,
9 from the DOH, so, as legislators, we can act
10 accordingly to do what's best for our people and
11 moving forward.

12 I really want to do it, and I think we owe it
13 to every individual in New York State that we
14 represent.

15 And -- you know, I again ask, I hope, that we
16 do get a chance to subpoena DOH and get them back to
17 the table so we can ask some of these questions, not
18 only from the members here this evening or today,
19 but many of the members that are not on these calls,
20 I know they want to ask questions.

21 So I'm hoping that we will do that in the
22 near future because, still, we haven't answered
23 every question.

24 And I think that the people that we represent
25 have a right to know what's really going on.

1 And for us to do our job to the best of our
2 abilities, we need to do that.

3 So, panel, thank you for staying on for such
4 a late hour, and I'll turn it over.

5 Thank you.

6 SENATOR RIVERA: Thank you.

7 Assemblymember.

8 Currently, we have no more senators asking
9 questions.

10 [Indiscernible cross-talking.]

11 ASSEMBLYMEMBER BRONSON: Very good.

12 Next we will go to Assemblymember
13 Tom Abinanti for 3 minutes.

14 ASSEMBLYMEMBER ABINANTI: And here I thought
15 everybody was in a hurry to get home, and the list
16 of people just keeps adding.

17 Thank you all for being so informative.

18 I will say that, at the end of the evening,
19 the panels were just as good and as strong as the
20 ones that started us off.

21 So, thank you very much.

22 I just would comment on this conversation
23 about an independent panel, independent
24 investigation.

25 I think the administration has to be careful

1 that there isn't some civil lawsuit brought, and
2 that some judge doesn't decide that the judge is
3 going to issue subpoenas, and allow documents to be
4 brought to court, or, that some U.S. attorney
5 doesn't decide to take a look at what's going on
6 here, given the gravity of it.

7 I think the administration would be better
8 off to consent to an independent investigation by
9 people that we can all agree to.

10 But I want to talk to the professor just for
11 a moment.

12 I am troubled, very much so, by one
13 conversation that we've been having over and over
14 again, and that is the right of a resident to leave
15 a facility.

16 I don't understand how a nursing home, which
17 is not the appointed guardian of someone, can say
18 "you can't leave."

19 I don't get that.

20 And to say that you have to stay here because
21 there's not a safe place for you to go, when it's
22 documented that the nursing home actually has COVID,
23 and where you want to go is a place that doesn't, to
24 me that outweighs everything.

25 So can you, as a law professor, talk a little

1 bit about the right of a person to determine where
2 they live, or the guardian of that person to
3 determine where they live, and what kind of care
4 they get?

5 DR. NINA KOHN: Great question.

6 ASSEMBLYMEMBER ABINANTI: [Indiscernible]
7 talk to me about this, please.

8 DR. NINA KOHN: So it's a common
9 misunderstanding, where facilities think they can
10 limit a person's ability to leave a home.

11 Unless a person is subject to guardianship,
12 the guardian has the power to make the decision, and
13 the guardian is refusing to let the person go, or,
14 you have a 72-hour hold, and all of the procedures
15 for a 72-hour hold, the facility cannot prevent that
16 person from leaving.

17 What the facility can do, and this is quite
18 problematic, is have the person discharged against
19 medical advice.

20 And the problem there is that other providers
21 may be unwilling to pick up that person and provide,
22 for example, the in-home services they need if that
23 person is discharged AMA.

24 But a common misunderstanding, and I think
25 it's not uncommon for facilities to tell people they

1 can't leave, when, in fact, that is plainly false.

2 ASSEMBLYMEMBER ABINANTI: Well, it sounds to
3 me like a basis for a lawsuit.

4 If somebody died because they were kept,
5 I mean, there were stories about people who were
6 about to be discharged, and then it was delayed, for
7 some technical reason, and then they died of COVID.

8 SENATOR RIVERA: Thank you, Assemblymember.

9 ASSEMBLYMEMBER ABINANTI: It sounds like the
10 basis for a lawsuit.

11 SENATOR RIVERA: Thank you, Assemblymember.

12 ASSEMBLYMEMBER ABINANTI: Okay.

13 Despite a law that says they can't

14 [indiscernible cross-talking] --

15 SENATOR RIVERA: Thank you, Assemblymember.

16 Next --

17 We're just a couple away. We're coming on
18 13 hours. That's why I'm cutting you off.

19 Go ahead.

20 ASSEMBLYMEMBER BRONSON: We'll recognize
21 Assemblymember Missy Miller for 3 minutes.

22 ASSEMBLYMEMBER MILLER: Hi.

23 Thank you so much for being here and
24 testifying.

25 I have a question for Mr. Hammond, and,

1 actually, anybody can jump in.

2 You know, I think it's fair to say we have
3 all learned -- whether we've wanted to or not, we've
4 all learned quite a lot about this virus.

5 From the department of health, the Governor,
6 all of the electeds, the families, the doctors,
7 researchers, you know, everybody's gotten quite an
8 education.

9 Governor Cuomo had made a comment about how
10 the federal government was wrong from day one and
11 New York has been right from day one.

12 But when you take into account the number --
13 the massive number of deaths overall in New York,
14 but, also, the nursing home deaths, what do we tell
15 families who have lost loved ones in that way, that
16 we've been right since day one?

17 Like, how do we, you know, even present it
18 that way?

19 And what have we learned as far as, what do
20 you do differently for the second wave?

21 Do you think that the department of health
22 and the homes have learned anything or enough to
23 protect people?

24 BILL HAMMOND: I mean, we've had a lot of
25 discussion about trying to pry, you know, mortality

1 statistics out of the health department.

2 I feel like there's a deeper issue, which is,
3 the health department is supposed to be the
4 department that protects the public health, and that
5 means they have to be -- they have to be kind of a
6 fair and impartial arbiter of what's actually going
7 on.

8 And they can't allow themselves to be
9 distracted by political considerations, such as,
10 protecting the commissioner's reputation or the
11 governor's reputation.

12 And so when you see evidence of a
13 self-justification tendency, it makes me -- it kind
14 of makes me despair for the kind of thought process
15 you're talking about, which is, to take to heart
16 what happened, to acknowledge that mistakes were
17 made, especially very early, and then correct them.

18 DR. NINA KOHN: And I fear we're learning
19 exactly the wrong lessons -- right? -- that we're
20 seeing too many facilities cry poverty at the same
21 time, when we know that private equity is busy
22 investing in facilities.

23 And we're seeing facilities that neglect
24 residents getting rewarded with protections against
25 responsibility for that neglect.

1 So I fear that if something isn't done to
2 really look at the systemic issue, the message we'll
3 send to families is: We learned nothing and this
4 will happen again.

5 SENATOR RIVERA: Thank you, Professor.

6 Thank you, Assemblymember.

7 And I believe that we have one more person on
8 deck.

9 ASSEMBLYMEMBER BRONSON: We do indeed.

10 One last person, Assemblymember Kevin Cahill
11 will bring it home for us.

12 SENATOR RIVERA: No pressure, Cahill!

13 None at all.

14 ASSEMBLYMEMBER CAHILL: You know, if you want
15 me to stay, I will, in just a minute, give me a
16 couple minutes.

17 Bill, I'd like to build off a comment that
18 you offered before when a discussion was being had
19 of an independent panel.

20 I believe you suggested some sort of
21 numerical balance between people from the left and
22 the right.

23 Wouldn't it be a better idea to choose people
24 based upon their expertise, their integrity, their
25 skill, and their reputation, than to give one wit

1 about what their politics are?

2 BILL HAMMOND: I, of course, would expect
3 them to be super-qualified in various fields,
4 although I would say I wouldn't want it to be every
5 last member of this to be a professor.

6 I think you need -- you need a breadth of
7 perspectives and experience, is what I was trying to
8 say.

9 And I thought in the interests of kind of
10 trying to bridge the partisan divide, if you could
11 get people with a range of perspectives, and then
12 get them to agree on what happened, and agree on a
13 set of recommendations, that would be more powerful,
14 if it -- like I say, if it had some kind of
15 cross-partisan pedigree.

16 ASSEMBLYMEMBER CAHILL: I take your point,
17 but I would also point out that, the very idea of
18 the pandemic having any sort of partisan patina to
19 it has been one of the problems from the beginning.

20 We have never experienced approaching a
21 national crisis as a Republican and a Democrat, a
22 liberal and a conservative, a left and a right,
23 issue, as we have this time, when, you know, I go
24 back to pretty far back, the Cuban missile crisis,
25 the World Trade Center, the Challenger disaster,

1 those weren't left and right.

2 Those were understood to be something of
3 national significance, of significance to all of us,
4 without regard to our party.

5 So I do thank you for your point.

6 And, Mr. Chair, Madame Chair, all you chairs,
7 I'd like to thank you for enduring over 20 hours,
8 over 100 witnesses, including Dr. Zucker who was
9 kind of enough to appear to testify voluntarily.

10 I would repeat what I offered this morning,
11 that perhaps we should consider using our subpoena
12 power.

13 But I would also support an independent
14 investigation, using the subpoena power of the state
15 legislature, to compel that which cannot be obtained
16 voluntarily, and not to assess blame.

17 This is to make sure that we can protect our
18 citizenry in the future.

19 6400 deaths are a tremendous number, but each
20 one of those deaths is associated, as we heard
21 today, with an entire family of people who
22 experienced the tragic loss.

23 And I think we should all be cognizant of the
24 human cost here.

25 But, with that, I would like to say thank

1 you, one and all, and thank you for the opportunity
2 to close out here.

3 SENATOR RIVERA: Thank you so much,
4 Assemblymember.

5 And on that note, I will remind everyone, not
6 only thank everyone for, yes, getting right to the
7 end --

8 I'm not sure if anybody outside of us is
9 tuned in.

10 If you are, God bless you.

11 -- but remind everyone that we're going to do
12 this again on Wednesday.

13 On Wednesday we have the -- there will be a
14 hearing tomorrow on elections and COVID-19.

15 But on Wednesday we have one related to
16 hospitals and the effect of COVID-19 on hospitals.

17 So expect for us to have another late night.

18 And we are creeping in on 13 hours, as I give
19 the last word to my colleague Assemblymember
20 Dick Gottfried.

21 ASSEMBLYMEMBER GOTTFRIED: And
22 Commissioner Zucker says he will be with us on
23 Wednesday morning, so -- on the topic of COVID-19
24 and hospitals, along with a wide variety -- people
25 with a wide variety of viewpoints.

1 It should be a very interesting hearing.

2 SENATOR RIVERA: And likely just as long as
3 this one.

4 And with that, have a very good night, one
5 and all.

6 I will see you all on Wednesday.

7 Take care, folks.

8 ASSEMBLYMEMBER BRONSON: Good night.

9 ASSEMBLYMEMBER GOTTFRIED: Thank you, all.

10

11 (Whereupon, the virtual joint committee
12 public hearing concluded, and adjourned.)

13

---oOo---

14

15

16

17

18

19

20

21

22

23

24

25