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PUBLIC HEALTH AND HEALTH PLANNING COUNCIL
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TRANSCRIPT

Mr. Kraut Thank you, Mr. Holt and the committee members, members of the council. I'm Jeffrey Kraut. I have the privilege to call to order the February 9th, 2023, meeting of the annual Public Health and Health Planning Committee Council Meeting. I want to welcome members, participants and observers. As a reminder for all our audience, by now you know that you need to fill out a form which records your attendance at this meeting in accordance with Executive Law 166. We post this form on www.NYHealth.Gov under the Certificate of Need. The email a completed form should all be sent to Colleen.Leonard@Health.NY.Gov. We appreciate your support in us meeting the law. Obviously, we are subject to the Open Meeting Law. Broadcast after the internet. Make sure you're on mute. Don't move around papers. We're doing synchronized captioning, so let's not talk over each other. Again, please identify yourselves when you first speak. I want to encourage members, staff and the public to join the Department of Health's Certificate of Need Listserv. This unit regularly sends out important council information, notices, our agenda, all the material that's included in the agenda, meeting dates and other policy matters not only for the full meeting but for all of our committee meetings. There are printed instructions at the reference table how to join listserv. You can contact Ms. Leonard for assistance. During the course of the meeting, I'll make this mention out for the public and members of the public who are observing us. You're going to see computers, iPads, phones open in front of members. That is not because they're distracted or playing solitaire. That's because today's agenda contains 637 pages. When you include yesterday's planning meeting and other letters and communications we received from public and other interested parties, we have over 850 pages of documentation that's supporting today's agenda. The most efficient way and environmentally appropriate way for us to consult our notes and the information being discussed and provided is by looking at a computer screen in front of us. It does not mean we're not engaged. It does not mean we're not listening. Before I go through today's meeting, I want to just be clear for the record, who's attending. In Albany, we have Dr. Boufford, Mr. Holt, Dr. Lewin, Ms. Monroe, Dr. Ortiz, Dr. Rugge, Dr. Soffel, Dr. Torres, Dr. Watkins. In New York, we have Dr. Berliner, Dr. Kalkut, Mr. La Rue, Mr. Lawrence, Dr. Lim, Mr. Robinson, Ms. Soto, Dr. Strange, Mr. Thomas, Dr. Yang and myself. I believe the Commissioner is joining us as well in Albany. For today's meeting, there's going to be a vote on the appointment of the council's Vice Chair. We're going to hear reports. First, let me just say that it is my pleasure that we are welcoming Acting Commissioner Dr. James McDonald, who is joining us today. I'll call on him in a moment. I just want to just acknowledge and congratulate you on your appointment. I've had the pleasure of having a brief conversation with Dr. McDonald about the council's work and the efforts. He's very aware of it. I think you saw a lot of evidence of that at yesterday's meeting of the Public Health and Health Planning committees and the engaged conversations and the support we receive from department staff in those meetings and will continue to do so. You'll hear from the Office of Public Health, the Office of Health Equity and Human Rights, the Office of Aging and Long-Term Care and the Office of Primary Care and Health Systems Management. We'll get a report for adoption and discussion from the Codes Committee. Mr. Robinson will present recommendations of the Establishment and Project Review Committee. We'll also hear in addition under the reports, and I will move these up before the Establishment Committee

of Dr. Boufford to give us a brief report on the activities of yesterday's meeting for both the Public Health Committee and the Health Planning committees. Members of the Council and most of our guests understand we've organized our agenda, particularly for Establishment and Project Review, which captures the roles and responsibilities of the council. We're going to be batching certificates of need. I hope you've all looked at our agenda. If there's any objection to how we batched those things, please let us know. I now want to move to the election of the council's Vice Chair.

Mr. Kraut I make a motion to re-elect Dr. Boufford to serve as Vice Chair.

Mr. Kraut May I have a second?

Mr. Kraut Dr. Berliner, thank you.

Mr. Kraut All those in favor?

All Aye.

Mr. Kraut Opposed?

Mr. Kraut I'm assuming in Albany it's all affirmative, with the possible exception of Dr. Boufford.

Mr. Kraut Everybody should get a hug for a variety of different reasons. I've recently appointed Dr. Patsy Yang to serve as the Codes Committee Vice Chair and Ms. Ann Monroe as Vice Chair of the Planning Committee. I'd like to thank both of them for serving as well as Dr. Denise Soffel to serve as a member of the Codes Committee. We agree. Thank you for giving us that work. With the exceptions that I've made, there's no other changes to the standing committee. Mr. Robinson will Chair and Dr. Kalkut is Vice Chair of Establishment and Project Review. Dr. Boufford as Chair and Dr. Torres as Vice Chair for Public Health. Dr. Rugge is Chair. Ms. Monroe is Vice Chair of Health Planning. Mr. Holt as Chair. Dr. Yang as Vice Chair of Codes, Committees, Regulations and Legislation. Mr. Thomas has agreed to take on the tremendous task of chairing the Health Personnel and Interprofessional Relations Committee Activities. Dr. Boufford will continue to chair and lead the Ad Hoc Committee to lead the State Health Improvement Plan. I'd like to thank all the members of the council for their hard work and dedication. We look forward to a very productive year, keeping in mind our goals and our service in maintaining and improving the health of New Yorkers. As I said, it's my pleasure to welcome Dr. James McDonald, who's going to update the council about the department's activities since our last meeting.

Mr. Kraut Welcome, Dr. McDonald.

Mr. Kraut Thank you so much for joining us.

Dr. McDonald Thank you, Chairman.

Dr. McDonald It's great to be here today. Just to tell you a little bit about myself for just a moment, because I think most of you probably haven't met me before. I am actually board certified in pediatrics as well as board certified in general preventive medicine and public health. I actually grew up just a few miles North of where I'm sitting right now in a little town in Albany County called Cohoes, New York. I did join the New York State Department of Health in July of 2022 as a Medical Director of the Office of Public Health. I've been to this

meeting twice before in that role. I just want to underscore; I am beyond happy to be back home. I can tell you, as someone who graduated from Siena College in June of 1986, I had no idea it wouldn't be until June of 2022 before I would permanently return home. It has really just been thrilling for my wife and my kids to be back where we've come to know as home forever. My career has been more of an adventure than I ever really thought it would have been. I served as an active-duty pediatrician for six years in the United States Navy. The Navy was very generous in moving me around the country, as it often is. I've had a chance to serve in many parts of the United States. I also got to serve in Okinawa, Japan for two years as a pediatrician, which was just, again, a wonderful lifetime experience here. I enjoyed that. I've practice, I guess, on my own volition, a lot of other parts of the United States as well. I've always been attracted to underserved parts of the United States. That brought me to an underserved area in Pennsylvania for some time after the Navy. I also worked on the Navajo Reservation for two and a half years in Chinle, Arizona, which is just a delightful part of the area. The Navajo people have affected me deeply and profoundly for the better in so many ways. I've also practiced in rural Tennessee. I've spent the last fourteen years in Rhode Island, the last ten plus years serving in various leadership roles of the Rhode Island Department of Health, culminating in January of 22, serving as the Acting Director of the Rhode Island Department of Health. Here we call it Commissioner. There, it's called Director. It's really thrilled to be here as the Acting Commissioner of the New York State Department Health as I now enter my sixth week on the job here. It is fun to follow in the footsteps of Dr. Bassett. However, I really got a chance to know her and respect her very deeply. She's laid a beautiful groundwork for the work that we, quite frankly, must continue to do to strengthen the department and the health and the well-being of everyone who calls New York home. I am really happy to be here for the full council meeting of the Public Health and Health Planning Council. I think it's important, you know, the work you do really is important work. I'm beyond thankful for all the work you've done. It's not lost to me how many hours I volunteered for this council, not just in coming to the meetings, but, you know, Chairman Kraut, you talked about the 800 plus pages that committee members have to review ahead of time. There's an enormous amount of commitment and time you make to this. I just want to make sure it's really clear. I'm very thankful for all the work you do. I recognize the service that is involved in being a member of this great council, which really quite substantially. You've adopted many, many emergency regulations during the pandemic. You've done a lot of things outside the pandemic as well that have been very critical in the state’s role in us with the pandemic. One of the emergency regulations you addressed was the statewide face mask requirement for health care facilities, which that statewide face mask requirement, health care says has served us well. I want to underscore; the pandemic is not over. It's not lost on me that twenty days from now we're going to be at the three-year mark since patient number one in the State of New York. We are in a period of transition. It's generally recognized COVID is a treatable and preventable disease. We're in a time of transition where the state of emergency nationally is winding down. We see now more than ever the need for organizational and personal responsibility as our persistent way forward. I know and we know at the State Department health that masking is effective and has kept many people very safe throughout the federal public health emergency. We're quite frankly, not in the same place we were in 2020. Neither 2021 nor the 2022 where Omnicom really did just sort of just overtake us in many ways. I want to make sure it's clear to you, you know, I am not throwing away my facemask and I keep one with me and I encourage you to do the same as well. However, we do see our COVID infections as a state decreasing. We see our hospitalization levels more importantly, decreasing. It allows us to shift from blanket mandates to approach in which we provide people with the information and tools they need to protect themselves and their families and their organizations. We've given health care facilities and general public the information they need to protect themselves from the

spread of COVID, not just masking, but ventilation requirements and ventilation advice, vaccinations and handwashing and other non-pharmacological public health measures have been very helpful. One of the things that's not on your agenda today, and this is something maybe unusual about what's not on your agenda, is we're not asking the Public Health and Health Planning Council committee to renew the emergency regulation on masking in health care settings. It will expire on February 12th, 2023. Not that I expect you to remember this, but when Jason Riegert and I were here at the last meeting, that's what we asked you to do, is renew it one more time. We're not asking you to renew that today. What we're doing now is we're shifting our request to hospitals and other health care facilities to follow the Centers for Disease Control and Prevention guidance and to come up with their own plan for when masking may be required for their staff based on community cases, not on vaccine status. When and where masking should be required facilities, already have infection prevention staff to implement, monitor and enforce. I think this transition is an important step forward moving beyond the public health emergency. COVID numbers steadily dropping since the start of the year, which I'm very thankful for. Just to give you a few numbers, because we are the State Department of Health. We love to give people numbers. We had 14,541 cases in January 2023 that we knew of admitting there are limitations with the numbers we know from testing, but it's a consistent number. We had 4,094 on February 6. We see decreases in deaths. More importantly, we see decreases in hospital admissions. We also see decreases in resident cases in nursing homes that are also declining as well. As the COVID numbers drop, you know, we do look forward to May 11th at the end of the federal public health emergency. We're not there yet. We are looking to that moment when COVID boosters are as routine as you get your your flu shot. I do think it's important to state this, is that the Bivalent COVID booster, you know, it is safe and effective. I think it's one of those things where we should all use our agency in our role to be helpful, just to encourage our friends and neighbors and others to just get the Bivalent COVID vaccine as much as possible. I certainly got mine back in September when I was able to. Highly encourage others to do the same as well. I want to shift a little bit to a conversation a little bit about flu vaccine and flu season. Flu was a hard year for New York. It came early this year. It hit us hard. We're seeing those numbers declining significantly. This week we saw another week of declining cases. It's the seventh week in a row of declining. We dropped 34% over the previous week. That said, flu is still widespread across the state. We did have one pediatric death last week reported that raised the number of children lost to flu this year to nine. I want to talk a little bit about another public health emergency that's kind of unwinding a little bit. Polio and mpox have been significant issues in New York State in particular. The department has responded, you know, with quite frankly, agility and quite frankly quite well to both polio and to mpox and quite effective work in both cases here. We've entered a new phase of recovery in preparation of both those and working course at the department, being prepared for what we could see in the Spring. As this emergency unwinds, the department continues forward and we're preparing for what the future could give us. We're asking to make permanent the designation of mpox as a sexually transmitted infection to ensure we're protecting all those at risk, including underage, sexually active people. We have the resources, staffing and budget to increase awareness, distribute vaccines and provide treatments. I want to shift to just another topic, you know, another important public health issue, which is that of emergency department wait times. They are problematic in New York. Backlogs of patients have forced some people to wait hours or even days for care. The backlog extends to hospital parking lots, where ambulances with patients, quite frankly, are detained and have to help care for people until there's room in the emergency department. A very complex and multifactorial issue. I'm very thankful for the people department as well as the Public Health and Health Planning Committee for the work they're doing in this complex issue. It's working together on issues like this that we're going to make a difference in this. These

issues didn't crop up overnight. They won't go away overnight. I'm very confident about working together, which is really what public health is. It's collaboration towards really helping the population. We're going to overcome this. One step forward resolving this issue is the emergency triage, treat and transport model. It's sometimes called ET3. The emergency triage treats, and transport model is voluntary. It's a five-year payment model from the Center for Medicare and Medicaid Services, also known as CMS, that allows for greater flexibility for ambulance care teams to address the emergency health needs of the Medicare fee for service beneficiaries. Under this pilot, will be reimbursed to take patients to an alternate destination other than an emergency department so they could go to a primary care office, maybe an urgent care clinic, or a community mental health center. The emergency medical services team is also authorized to initiate treatment in a place with a qualified health care partner early either at the scene or at the 911 emergency responder or via telehealth. This kind of flexibility can not only help ease the backlog emergency departments by redirecting patients who do not need to go to the hospital, but it also sees patients and their families time resulting in significantly lower out-of-pocket costs. We do need to keep going forward with developing a statewide disaster response system capable of rapidly deploying emergency medical services resources, as well as establish a program that integrates health care systems and community care medicine to increase patient care. I want to underscore, looking ahead, I am hopeful. I am optimistic, which is something I haven't really been able to say quite a bit in the last three years. I think a lot of us will say that. The pandemic is not over, but I am optimistic. I don't want to sound too optimistic, but I just want to underscore the moments that I really feel we're in here right now. It's a preventable, treatable disease. We deal with COVID in particular. It is a time of transition. One of the things I think about with the pandemic is how much it affected all of us deeply. It affected us all personally. It still does. Although it's not over, we do have the tools we need to live with this. We have a great vaccine. We have effective treatment. There's masking. There are other strategies we can all do that we can live with this. I think we're just transitioning to a time where organizational and personal responsibility really do become more of where I see our future. I do look forward to collaborating with you in the future.

Dr. McDonald Thank you.

Mr. Kraut Commissioner, thank you so much and appreciate those remarks.

Mr. Kraut Does anybody have any questions for the Commissioner?

Mr. Kraut It's like parliament, you know, as the Prime Minister.

Mr. Kraut Anything in Albany?

Mr. Kraut Ms. Monroe.

Ms. Monroe Thank you.

Ms. Monroe It's very nice to meet you, Commissioner.

Ms. Monroe I'm hoping that the next time we get together, which I guess would be April, you'll be able to share a little more with us about what the Governor and the department's priorities are in the new budget and how that impacts the work of the department in its variety of areas and suggestions about how we might think of some things differently. I very much appreciate the update on COVID and all of that, and I think that's important for

us to know, but I would ask that you kind of broaden your view next time to talk about priorities and areas that need investment that are supported by the Governor and the legislature, or perhaps not as supported as you would have hoped. Is that too much to ask?

Dr. McDonald It's not too much to ask. We'll just plan on it. We'll make a date. Let's just do it. I'll be here and we'll be happy to talk about that. You bet.

Mr. Kraut I have another question from Dr. Kalkut in New York.

Mr. Kraut Thank you.

Dr. Kalkut I thank you very much for the remarks. I think the announcement about lapsing of the emergency mask regulations will be met with a lot of satisfaction and I think is a reflection of how well we have done over a long period of time with COVID treatment, prevention and prevention of health care workers. Just to clarify, with the lapsing of the regulations on Sunday, decisions about mask use in individual facilities, hospitals and skilled nursing facilities will return to an institutional decision. Is that the correct interpretation?

Dr. McDonald Yes.

Dr. Kalkut Thank you, Sir.

Mr. Kraut Well, Commissioner, again, thank you. We appreciate the time. We look forward to the next and continuing conversations. Again, you know, personally, I just want to thank you for your support of the council. We got off to a great start these last six weeks.

Mr. Kraut Thank you very much.

Dr. McDonald Thank you, Chairman.

Mr. Kraut Thank you.

Mr. Kraut Now, I'm going to introduce Dr. Bauer to give a report on the activities of the Office of Public Health.

Mr. Kraut Dr. Bauer.

Dr. Bauer Thank you, Chairman.

Dr. Bauer Good morning. Ursula Bauer, Deputy Commissioner for Public Health. Today, I am pleased to share with you the launch of the planning process for the next six-year cycle of the prevention agenda, New York's Health Improvement Plan. The kickoff was yesterday at the meeting of the Public Health Committee, joined by the Health Planning Committee. Thank you to Dr. Boufford and Dr. Rugge for chairing that meeting and committee members for the robust dialogue and guidance as we begin the planning process. We provided members with a high-level overview of the prevention agenda, including state aid to localities. Members noted that the lion's share almost 50% of state aid reimbursements to local health departments supports activities to control communicable diseases. That's true before COVID in 2019 as well as during COVID in 2021 and 2022. Article 6 State aid does not include the additional resources that local

health departments received for the COVID response specifically. OPH's Deputy Director for Science then presented the midpoint progress for the current 2019 to 2024 cycle. Specifically, trends in prevention agenda indicators from the 2019 to 2021 period. Across 99 public health indicators, 32 were unchanged over the three-year period. 29 targets were met. 19 worsened during that period. 18 improved even though targets were unmet. This 99 prevention agenda indicators are dispersed across six priority areas, in addition to the overarching priority area of improving health status and reducing health disparities. We have priority areas focused on preventing chronic diseases, promoting healthy and safe environments, promoting healthy women, infants and children and promoting well-being and preventing mental and substance use disorders. Finally, preventing communicable diseases. Within the preventing communicable diseases priority, 50% of the indicator targets were met. Recall this is the area that receives the most state aid reimbursement. While the preventing chronic disease priority which receives the least state aid reimbursement had only 16% of indicators met. Committee members noted this association. It also may be the case that the more indicators within a priority, the less likely the indicator targets will be met. For example, the preventing communicable disease priority has 10 indicators while preventing chronic diseases has 25. This issue of considering how to strategically focus the work of the prevention agenda in order to create the greatest impact was raised during the conversation and will continue to be a point of discussion throughout the planning period. How do we balance the breadth and the depth of prevention agenda priorities? We also heard from Deputy Commissioner Joanne Morne, who introduced us to the work of the Office of Health Equity and Human Rights and offered some guiding principles to address health disparities and more effectively build health equity into the prevention agenda. These include investing in neighborhoods, amplifying community voices, addressing social determinants, the essential role that meaningful work plays in improving lives and the importance of investing in youth. Committee members raised questions about how we engage and empower community voices and the role of the Ad Hoc Leadership Committee in lifting up diverse perspectives as well as mobilizing community action. While community engagement and action were recognized as essential to the success of the prevention agenda, members also recognized the levers that state agencies and state government can bring to bear on both social determinants and public health. We discussed the need to better understand the value the prevention agenda brings to the state and our represent and our residents. Last year, 2022 was the 15th year of the prevention agenda. We don't yet have a rich understanding of whether the existence of the prevention agenda has actually contributed to public health improvements. Is it a framework that galvanizes action and accelerates improvements in public health outcomes? Is it a framework that simply tracks the impact of the vital work that we are doing every day? It may be time over this 18-month planning period to assess this approach to public health improvement and explore ways to tweak, to modify, to advance the approach. The prevention agenda relies on robust partnerships and is largely a voluntary undertaking. Are there ways to strengthen the investment in public health improvement? For example, by leveraging community benefit requirements, by reordering the priorities of Article 6 state aid reimbursement or even by shifting to a further upstream approach of focusing on strengthening the conditions that allow people to achieve their highest level of health rather than on mitigating the adverse effects that occur when those conditions are poor. I'm grateful for the rich discussion that we had yesterday with Public Health Committee and Health Planning Committee members and looking forward to the continuing partnership as we explore these and other questions and plan the next cycle for the prevention agenda.

Dr. Bauer Thank you.

Mr. Kraut Thank you very much, Dr. Bauer.

Mr. Kraut Are there questions for Dr. Bauer?

Mr. Kraut Any in Albany?

Mr. Kraut I have some in New York.

Mr. Kraut I'll go to New York.

Mr. Kraut Mr. Lawrence.

Mr. Lawrence Harvey Lawrence, a member of the council. Unfortunately, I was not able to make the meeting yesterday, but I did have a question regarding leveraging the impending 1115 waiver. The resources of that to support many of those initiatives. Did that come up during your conversation yesterday?

Dr. Bauer That absolutely did come up. It's been a topic that we've been thinking about and are eager to explore with our local health department colleagues with the Ad Hoc Leadership Council, so definitely we see opportunities there.

Dr. Bauer Thank you.

Mr. Kraut Any other questions?

Mr. Kraut Dr. Bauer, I just have one.

Mr. Kraut It's just really a comment. Look at it from the resources of the state. You acknowledge it's hard to measure impact. It's very difficult to get accurate measures here. I think part of it is, you know, we may not be using the most contemporary tools and all the data. This is going to be a broken record to somebody. The department is sitting on an all-payer database that has identified data that is able to measure at small areas, movements in in utilization, in health status and utilization of care. We have yet to get that in the hands of researchers, think tanks, policy makers, where I suspect that we can create a new generation of tools because the data is so much richer, we have so much better data. I would just leave it at that, that that would be something we have been trying to liberate. Good data presented and analyzed in a neutral way will drive good policy. We're going to come back to this issue when we talk about health equity in the impact statements, because if the state can't measure it, how is any one provider going to be held accountable for movement there? It's just not going to happen unless we have a good basic, simple set of data and not end up with just information that doesn't really answer the question. I'll just leave it at that. It doesn't need a response. For everybody who sat in your seat, I have made this statement, unfortunately, for many, many years. I hope you will help us liberate that information and get it outside of the department into the academic circles and think tanks. That's all I would say.

Mr. Kraut Dr. Bauer, thank you very much.

Mr. Kraut Somewhat on a related topic, it's now my pleasure to introduce Ms. Morne to give us a report on the activities of the Office of Health Equity and Human Rights.

Ms. Morne Well, thank you very much, Chairman.

Ms. Morne Good morning, everyone. For those who heard some of my remarks from yesterday, I apologize, but I'm back. Sometimes repetition is good. Let me start with the good news that I can offer. I'm really excited to announce that we are ready to launch our Health Equity Leadership Institute that will be launching in the month of March. What this is, is a 12-month virtual learning collaborative that is prioritizing physicians, advanced practice nurses and health facility administrators. This has been a project that has been in the works for some time. In addition to providing the actual education as it relates to health equity, it's also the opportunity for us to evaluate the actual application of the competencies that are being reviewed. I'll be sure to have more updates on that as we look at the individuals who are participating and certainly the outcomes that we anticipate as we continue to look for those opportunities to integrate and leverage equitable practices across our service delivery platform. The next point of good news I want to share is that the 2021 New York State LGBTQIA Plus Health and Human Services Needs Assessment has now been published. Just quickly, if I could review some of the takeaways that we've gained from that health assessment. The first thing is that we certainly have noted a generational shift. This came up yesterday in the Public Health Committee discussion as far as looking at the needs and the continuing emerging issues, both from the perspective of youth as well as from the perspective of those who are aging. With the shift, what we find is that community members over the age of 35 and those under 35, as one can imagine, are having very unique, nuanced experiences, expectations and needs. As a result of that, we have to work in partnership with New York State's LGBT Health and Human Services Network to assess the services that are currently available and determine the additional services that we need to develop in order to effectively respond to the presenting needs. What we find in terms of disparities as far as the needs, the access and the outcomes within the LGBTQ Plus community is that it strongly replicates very strongly with the racial and ethnic health disparities that we see as far as patterns across our nation and in the majority of the needs and issues that have been examined within this survey consistent with other health disparities we see that individuals who identify as Black, Indigenous or other people of color certainly are reporting a higher level of need and lower needs as far as the actual service access available to them. As far as patterns related to privilege and health inequities, again, we see the patterns that mirror across our nation and in New York State, as much as we are such a progressive state and we have done diligent work to ensure access to services throughout every region of our state. What the needs assessment would tell us is that we have additional work to do, especially as it relates to access for physical health, mental health and other psychosocial points of support. I'm going to move onto an item that was raised yesterday during the Public Health Committee. That was specific to the data collection for individuals who identify as Asian or Pacific Islander. I very briefly touched on the fact that there is current law that speaks to the data collection and the steps that we need to take in order to ensure that there is specific data and reflection of individuals who identify as Asian and Pacific Islander. For background, the legislation that was passed and signed into law requires that every state, agency, board or commission that directly collects data on ethnic origin for residents of the State of New York use separate categories for a number of Asian and Pacific Islander groups. That would include but isn't necessarily limited to individuals who identify as Chinese, Japanese, Filipino, Korean, Vietnamese, Cambodian, Indonesian, Pakistani, Sri Lankan or Taiwanese. Since the bill passage, the Office of Minority Health and Health Disparities Prevention and Office of the Office of Health Equity and Human Rights has been working collectively and in partner with community to develop the next steps as far as operationalizing the intent to this legislation. There is an existing draft of an implementation plan that is currently under review. The implementation plan includes the department's phased approach in implementing the changes as needed, as well as

identifying some of the practices that can be used universally and the challenges that exist. The challenges as it relates to data and data collection in a consistent manner across not only the department, but I would suggest other, or all state agencies was a discussion point from yesterday as well. We look forward to the opportunity to use this legislation and exercise as an opportunity to show how in fact we can collect data that is more informative and more reflective of the individuals being served. I'd like to talk for a moment on the Racial Equity Working Group. This may be a new working group for some. Essentially, as background, in December of 2021, a bill that was signed into law focuses on the fact that in New York State we've declared racism as a public health crisis, posing a threat to health, safety and overall quality of life. With that, the law mandates that a racial equity working group be developed within the New York State Department of Health. The intent or charge of this group is to study racism's impact on public health while making recommendations for actions that are necessary to reduce or eliminate racial and ethnic disparities. There will be a planning meeting with the membership. The membership is to represent individuals with lived experience from across New York State. That planning meeting will help to create the framework which will be utilized as we move forward with the intent of providing a report to the legislature by the end of the year December 31st. Additionally, as it relates to the long-standing Health Equity Council previously referred to as the Minority Health Council, their next meeting will be March 24th. That meeting will be held in New York City. I also want to bring some of the more recent points of concern that we have been working on across the department. First is an increased number of HIV diagnosis among people who use drugs in Broome County of New York State. What we have found is an increase in the number of individuals who are diagnosed with HIV as compared to past years. The preliminary number of new HIV cases among individuals who report a history of injection drug use diagnosed in the second half of 2022 within Broome County, has been elevated. Most of the diagnoses have occurred in individuals who identify as white, female and between the ages of 30 to 39. When asked the risk factors that were reported included unsuppressed viral load, a lack of recent HIV treatment, multiple sexual as well as injection partners and transactional sex. We are also looking at the preliminary data, which at this time indicates an increase in the number of individuals diagnosed with both Hepatitis C and syphilis coinfection. When we identify clusters such as this, there is a policy and guidance that goes into effect. The state works very closely with the local health department, in this case within Broome County, as well as with our funded and non-funded partners in those regions. In order for there to be an immediate response as well as points of outreach, education and intervention in an effort, number one, to collect this information to help us know how to prioritize our response and also two, of course, to help eliminate any further transmissions. At this point by this morning, a release should have been issued as it relates to the identification of resistant gonorrhea. As background, there was a reported novel strain in Massachusetts of highly resistant gonorrhea. January 20th, Massachusetts issued a clinical alert to make sure that providers were aware of this. Together with the AIDS Institute and our Wadsworth Laboratories, a health advisory has been sent that includes a briefing on these novel cases. The guidance that providers should be using if there is a suspected case of multidrug resistant gonorrhea, as well as the instructions on how to send specimens to Wadsworth Laboratories for processing. In a situation such as this, there is an infrastructure in place to monitor susceptibility. That includes enhanced testing, enhanced case surveillance, sentinel surveillance and partner services. Along those lines, I also want to make note of the fact that the latest County Overdose Quarterly Report was released. This is in January of this year. No surprise that based on what you see, based on data that's available as well as media report, we continue to see an increase as it relates to opioid related death as well as overdose. We had a 14% increase reflected for 2021 as compared to 2020. That's about a little less than 5,000 individuals that were lost. There's about a 13%

increase in outpatient emergency department visits, a 30% increase in outpatient emergency department visits for opioid overdose, also including fentanyl presence and a 12% increase in emergency medical naloxone administration. My reason for raising this here is to speak for a moment and ensure that everyone on the committee and council is aware of the fact that New York State Department of Health has a very significant history as it relates to harm reduction and intervention. The recent opioid increases that we're seeing not only in New York State, but across our nation is also largely due to the presence of fentanyl, as well as other illicit drugs that are being placed within the opioids. The history of harm reduction, which begins from the 1990's, includes access across New York State to syringe exchange programs, the distribution of naloxone, drug user health hubs, which act as a point of contact directly for an individual, for example, that is being released for an emergency department, as well as increased access and training for medication assisted treatments such as Suboxone. I think that's a very important point to be raised. When we talk about equity and when we talk about the reduction of disparities, as well as stigma and discrimination, I think we have to look at these areas across the board. I think it's very important to understand the infrastructure that New York State maintains in responding to this critical issue.

Ms. Morne Thank you.

Mr. Kraut Thank you very much.

Mr. Kraut Are there any questions?

Mr. Kraut Ms. Soto.

Ms. Soto My comment is that amongst the people who were at the meeting on Monday, yesterday, excuse me. I want to say that I appreciated your quick response. Some of it like within 24 hours regarding some of our comments and issues, namely that we wanted more specification on the collection of Asian-American data and also attention and reporting of the Asian population. You make reference to that group with the LGBT group. I want to commend you of listening to us and like I said, within 24 hours responding.

Ms. Morne Thank you.

Mr. Kraut Thank you.

Mr. Kraut Any other questions in Albany?

Dr. Soffel I have one very, very quick question. I'm sorry, Jeff. I just was wondering; do you have a listing of who's on the Racial Equity Working Group and what their agenda will be? Because I just was quickly looking at the Department of Health website and couldn't find it.

Ms. Morne Yes.

Ms. Morne No, it's not up yet. The website has to be updated as we continue to put the finishing touches on the upcoming planning meeting. We do have a list of individuals that will be on the group and I'm happy to share that outside of the meeting. I'll send that to Ms. Leonard.

Ms. Morne You're welcome.

Mr. Kraut Thank you again.

Mr. Kraut We are looking forward to more reports. I know we'll come back with a code change, hopefully in the March meeting. We'll see a little more of you. I neglected when Dr. Bauer spoke. We touched on the laboratory and that to make people aware that the state has started rebuilding and consolidating probably the nation's premier public health laboratory outside of the CDC is the Wadsworth Lab. To Ms. Monroe's comments about, you know, ask our help. That is a vital resource. I'm sure everybody on this panel will be strong and loud advocates for funding for our laboratory to see it maintains that leading edge science and accessibility to New Yorkers. I just wanted to mention that.

Mr. Kraut I'd like to turn to Mr. Herbst to give a report on the activities of the Office of Aging and Long-Term Care.

Mr. Herbst Thank you, Chairman.

Mr. Herbst Good morning. My name is Adam Herbst, Deputy Commissioner for the Office of Aging and Long-Term Care. I'd like to begin by describing something that my office spent a great deal of time on and we will for the next few years. New York State is the fourth largest population of older adults in the United States, with 3.2 million New Yorkers over the age of 65, a number that is projected to grow to 5.3 million by the year 2030. Caring for these older New Yorkers is expensive. The state spends more on long term care services annually, which is about $32 Billion than any other service. To address the needs of the state's aging population Governor Kathy Hochul signed Executive Order 23 last Fall, which directs the state to develop a master plan for aging. The urgency is clear. We're facing a tidal wave of aging New Yorkers here in New York State. My office, the Office of Aging and Long-Term Care has spent an enormous amount of time in the last few months developing the master plan with our partners in state government, the Office of Aging and other state partners, which I'll mention in a few moments. Planning out the intricate network of government and health care systems dedicated to designing the road map and how New York will provide the necessary care and resources to ensure people can age in place for as long as possible, which is our goal. Our goal is to create a blueprint of public health in age friendly strategies for government, the private sector and the nonprofit sector to support older New Yorkers to remain in their home or to remain in New York for as long as possible. The executive order has directed us to provide the Governor with a specific set of recommendations that address the challenges related to communication, coordination, caregiving, long term care services and finances and innovative care. We also want to ensure that state policy and programmers are coordinated and aligned to ensure that New Yorkers can age in our state with freedom, dignity and independence for as long as possible. Since our last meeting, we've launched the Master Plan for Aging Council, which is comprised of the heads of many state agencies and the commissioners and experts and leaders from across the aging and long-term care ecosystem, including some members here. To strengthen our path moving forward, I've proposed a set of guiding principles and key considerations that will help guide the operations and substantive content of the council and the committee work. We've also begun the process of soliciting input from state agency leads on the challenges that their programs face in reaching and helping the aging population in New York. We've selected subcommittees two topics to focus on the master plan deliberations, and with various subcommittee members participating on that. Finally, we've launched a new public website that is going to provide information and updates on all the work that the Master Plan for Aging will be trying to accomplish. My hope is that the stakeholders and members

of the public will have multiple opportunities to provide feedback and to engage in the development of the master plan. These opportunities will include participating in statewide stakeholder engagement sessions, which will include town halls and other public forums to help ensure that we've heard from as many New Yorkers as possible. Lastly, we will continue to build and sustain our momentum through our subcommittees and public engagement with different venues and work with the Public Health and Health Planning Council as a partner in addressing the health and long-term care needs within the master plan's processes. As you may be aware, the master plan is a large initiative and there will be many updates over the next couple of years. I look forward to partnering with all of you on this. Next, I'd like to provide a quick glance at some work that my office, the Office of Aging Long-Term Care, has been initiating recently. As you may be aware, we released a new licensure application process in mid-August. Since that time, OALTC has hired a significant number of staff to process and review these applications and has worked to streamline and improve the application review process. There are currently 36 pending applications. Starting in the March cycle, I look forward to bringing these applications to this body for review. Further, my team continues to work on reforming and consolidating the looks of management agreement policy to help reduce the continuing backlog that has occurred in processing and improving management agreements. I believe, and I hope that the policy will go into effect later this month. Very important to this body and to our state is ensuring high quality nursing home quality of care and to remain at the forefront for all of us. Nursing home quality care is very important, clearly. We have taken the first steps in OALTC to reform the quality review and with the recent statutory changes to character and competence. The 40% CMS star rating test for nursing homeowners who own five or more nursing homes over the course of 48 months, and the input of the long-term care to the CON and process has made the process clearer and has served as a quality gatekeeper on several pending applications. However, there is still much work to be done. To that end, my team will help start a process of reviewing the rent payments for inter-connected ownership structures, for the reasonableness for such rents. Once developed, OALTC will include this review in all nursing homes and exhibits presented. OALTC will also review all outstanding CON applications and move towards disapproval of CON applications that have languished sometimes for years due to the poor ownership quality history. As we continue to improve the process with your assistance and guidance in the coming months, I look forward to working with Health Policy and Planning Committee and the Establishment and Review Committee at upcoming meetings to discuss and explore additional ways to help improve nursing home quality in the CON process. Parenthetical to the nursing homes are adult care facilities acts, which falls within the licensure and surveillance of OALTC. ACS provide long term non-medical residential services to adults who are substantively unable to live independently due to physical, mental or other limitations associated with age and other factors. Residents in these settings do not require the continuing medical and nursing services provided in acute care hospitals, inpatient psych facilities, or skilled nursing facilities. Unlike Article 28 nursing homes or hospitals, Article 36, CHAS and Article 40 hospices and unlike the component of the Medicaid Assisted Living Program, they are not subject to the approval or recommendation. That being said, because of the importance of ACF's in the long-term care continuum, I am dedicated to bringing updates to you surrounding our work in OALTC to ensure access, promote quality of care in perpetuity. Governor Hochul has proposed legislation in this year's executive budget, which creates a system of quality reporting metrics as a first step towards establishing consumer transparency in ACF's. The proposal includes an annual collection and reporting of quality measures for each ACF. These quality measures will be established by my office in consultation with stakeholders and will be made available to the public, along with additional information that might be helpful. I look forward to speaking with you all about ACF's going forward. I'd like to briefly mention

PACE reform. We continue our discussions and planning on structural alternatives for the program of all-inclusive care for the elderly, better known as PACE. I'm pleased to announce that on December 28th, the Governor captured into law PACE reforms, Chapter A 12 of the Laws of 2022 seeking to streamline the regulation of PACE programs by developing uniform authorization and encompassing all program requirements into singular licensure improve oversight of PACE organizations. These changes maintain the same level of oversight of all PACE programs that exist today from all across the program areas. This new PACE reform becomes effective in June of this year. OALTC will continue to keep this body posted on all new developments with respect to PACE. I look forward to speaking with you all on that. I want to next thank you for the continued, thoughtful and engaging discussion on the two safe staffing regulations that we discussed in November and December. As promised, I wanted to update you on the progress made at this time. First, with respect to the nursing home minimum staffing requirements 3.5HPRD. DOH consulted with the on the Department of Health determination of an acute labor supply shortage for the 2022 quarterly review periods of Q2, Q3 and Q4. The recommended has been advanced for agency review. Nursing homes will soon be notified once the determination is publicly available. My team is in the process of finalizing and circulating policies, procedures, forms and communications necessary to begin enforcement of the minimum staffing, compliance, determination. As discussed previously, my staff will be available to assess facilities as needed once finalized within the industry. Although we are not yet at the finish line, our goal is to begin compliance assessments around April 1st, 2023. Next is the nursing home direct resident spending requirement, also known as the 7040 spend. This is another area where my team is working to finalize the compliance review process, which is very complicated, as you can imagine and includes the cross functional components within the Department of Health and specifically our partners within the Medicaid program, including the long-term care reimbursement team. Please keep in mind that to assess compliance, the department will rely in part on the submission of the annual Nursing Home Cost Reports to determine compliance in 2022. Cost reports are due to the Department of Health approximately at the end of July 2023. Compliance reviews begin when nursing homes submit these cost reports. I look forward to updating you at that particular time. We're confident that we have identified a tentative solution to address any concerns that were raised about hospital-based nursing homes and the fact that in many instances not all their annual cost reports do not align with the expense cost centers defined in the regulation. We have developed a survey to capture applicable revenue and expense data that will include an attestation form and will engage stakeholders prior to the implementation. Our goal is to disseminate the administrator letter to hospital-based nursing homes in early April, so they may prepare for completing the survey on a timely basis. Finally, I'd like to give you all a brief update on the executive budget. Governor Hochul released the executive budget. There have been many exciting new initiatives directly related to aging and long-term care. These items showcase Governor Hochul's strong commitment to our aging population and align with my teams, and OALTC's mission and vision of helping older New Yorkers live healthy, meaningful lives with dignity and independence in the least restrictive setting. The Governor's state of the state and executive budget did invest quite a bit in areas that I think are going to be very important for OALTC, specifically expanding access to primary care, investing in provider reimbursement, providing for provisions for staffing, investing in veterans nursing homes and subsidizing comprehensive health insurance eligible workers. Importantly. In addition, the executive budget is providing for managed care plan integration and other reforms, the expansion of the Medicaid buys in program, increasing supportive housing funding and providing for the pharmacy benefit actions. We believe that these budget items will help broaden access to aging services, improve quality and transparency in long term care settings, and provide funding for home care teams to help serve lower income

older New Yorkers in their communities in addition to providing respite care for caregivers who need to rest. We applaud the Governor for her ongoing efforts to provide for a livable, safe and healthy New York for all aging New Yorkers. As always, please do not hesitate to reach out to me and my team with questions or concerns you have as we partner together to enhance the New York's aging and long-term care agenda going forward.

Mr. Herbst Thank you very much.

Mr. Kraut Thank you very much for that report.

Mr. Kraut Any questions?

Mr. Kraut Mr. La Rue.

Mr. La Rue Good morning. I want to start out first by again expressing how enthusiastic I am that the Governor and the Department of Health is so focused on the issues of long-term care and the aging population. We've been talking about this for a number of years at this council and to see the momentum and the movement is really positive and greatly appreciated. In terms of the budget or the staffing legislation, first, is there any indication yet when the funds are going to be released that were in the prior year's budget to pay for the increased staffing? I know a number of providers without that cash aren't able to achieve the 3.5 requirement.

Mr. Herbst Thank you, Scott. Thank you for those comments. I appreciate that greatly.

Mr. Herbst We are actively moving this process forward and I hope with our partners in the Medicaid office, in the department legal team and our partners in the chamber, that we can advance these funds imminently and as soon as possible. I can't give a specific timeline yet, but it is certainly something we're working very hard on right now.

Mr. La Rue In the budget proposal that was submitted is the 5% replacing the additional funding that was being put forth for the staffing, the 5% Medicaid increase? Does it have any impact on the prior year's allocations as it was presented?

Mr. Herbst It's not replacing. Last year is last year. This year is this year. The 5% should go forward. We're very hopeful that 5% will have an impact. I know that you've been very active in advocating for this increased funding. I'm looking forward to making those funds available. We are making those funds available. We think we'll have a great impact in this year's budget.

Mr. La Rue Thank you.

Mr. Kraut Are there any questions in Albany?

Mr. Holt Jeff, a comment?

Mr. Kraut Go ahead, Tom.

Mr. Holt Thanks, Jeff.

Mr. Holt Adam, thank you also, as Scott indicated for all the work that your office is doing. Again, more and more of a comment than a question and just want to speak specifically to

what we're experiencing Upstate. I think that the applications that we've had before us at project review last cycle and then again, this cycle really point out how incredibly challenging our staffing situation is. I'm appreciative of all that's been put into the budget in terms of additional support proposals for the Medicaid reimbursement for us, but it's a long way to go. You were talking earlier in your comments about a multiyear approach to dealing with aging services in New York State, which obviously we understand we need to approach it that way, but we also have to get the existing provider community to that point. I'm just greatly concerned about what's happening Upstate now. Again, I think some of the applications that we're seeing in front of us now before Project Review speak to those challenges. I think it's even much more dire when we talk about smaller rural communities where we don't have redundant capacity. I think, you know, we've been challenged at the committee level around approvals for some of these applications because we're being presented with choices that aren't ideal for us. We just need to continue to focus not only on the long term but also getting there between then and now.

Mr. Holt Thank you.

Mr. Herbst Appreciate that thought. I look forward to partnering. My team looks forward to partnering with you on this.

Mr. Kraut Thank you.

Mr. Kraut Any other questions?

Mr. Kraut Mr. Thomas.

Mr. Thomas Very quickly, Hugh Thomas, member of council. Good morning, Mr. Herbst. I just wanted to clarify in terms of your statewide Committee on the Aging and the various committee members, will you be looking at the entire Medicaid program or just focus exclusively on long term care? The reason I ask is just because the public data has been announced over the last number of days that the Medicaid program overall not just lives in your control has exceeded 8 million people now. That 32 billion may be light. I just wanted to ask the question and hopefully there'll be an interdisciplinary conversation as you're going through your work.

Mr. Herbst Well, I appreciate the question. My friend and colleague, the Medicaid Director, is a participant on the Master Plan for Aging, very much aware of the driver of the aging and long-term care costs in the Medicaid program and certainly something that will be a relevant conversation.

Mr. Kraut Well, to your point, I think a little over 30% of New Yorkers now are insured through Medicaid. It's no longer an entitlement program for the poor. We've expanded it in very practical ways.

Mr. Thomas In important ways, Mr. Kraut. When you layer in the Medicare enrollment, well, you've got about 12 million people in the state that are on some kind of government insurance, leaving aside the public health well, well regarded decisions. It's just the economics.

Mr. Kraut Hence why government is the major player, not payer and not a major payer.

Mr. Kraut Thank you so much.

Mr. Kraut I'm now going to call on Dr. Morley to give a report on the activities of the Office of Primary Care and Health Systems Management.

Dr. Morley Good afternoon, Mr. Chairman. Thank you very much. I'm Dr. John Morley. I'm the Deputy Commissioner for OPCHCM. From our Center for Health Care Policy and Resources, our Doctors Across New York Program, the Physician Loan Repayment and Physician Practice Support Program, the solicitation of interest for Cycle 9 was released January 18th. The enacted budget for fiscal year 2223 provides funding in the amount of $15, 800,000 and is expected to result in approximately 132 three-year awards. Previously funded cycles provided $9,000,000 in funding and we appreciate the increase. Awards will provide up to $120,000 in total funding to a physician who agrees to practice in an underserved area for a period of three years of service. Individual physicians and health care facilities are eligible to apply. Applications were being accepted up until yesterday, the 8th at 4:00pm. The solicitation of interest is posted on the department web page. NANY, the nurses across New York program, the solicitation of interest is expected to go out later this month. From our Bureau of Emergency Medical Services, EMS for Children Program is starting to roll out the National Pediatric Emergency Care Coordination Program for emergency departments. This is a voluntary program. It is designed to help emergency departments to be well prepared to handle pediatric emergencies by following national best practices for both equipment and training. Trauma in New York State is seeing an uptick in level three applications from hospitals who feel they're already treating many trauma patients and would like to elevate the care and recognition by becoming verified Level 3 trauma centers. The State EMS Council recently completed an EMS sustainability whitepaper that was released and is available on the Bureau of the EMS web page under the meeting section as part of the Council Public Documents. From our Bureau of Narcotic Enforcement, the drug takeback program that was passed and established in 2018 mandates that drug manufacturers establish, fund and manage an approved drug takeback program for the safe collection and disposal of unused covered drugs. There are currently two approved program operators in New York State with over 1600 kiosks and 214 mail back locations available to the public. Over £71,000 of medications have been collected since June of 2022. Additional information is available on the Bureau of Narcotic Enforcement website as part of the DOH website. Telemedicine, and this is still under BNE, Bureau of Narcotic Enforcement. On January the 31st, the New York State Acting Commissioner, Dr. James McDonald, issued a determination concerning the use of telemedicine. This guidance ensures the continued availability of medically necessary access to controlled substance medications by allowing the use of telemedicine for patient evaluations and prescribing to the same extent that the Drug Enforcement Administration permits for the duration of the federal COVID-19 emergency. Registered practitioners can prescribe Schedule 2-4 controlled substance medications to patients for whom they have not conducted an in-person or medical evaluation, provided that the prescription is issued for legitimate medical purposes by the practitioner acting in the usual course of professional practice. The practitioner is acting in accordance with applicable state and federal laws, and that telemedicine communication is conducted using audio, visual, real time two-way interactive communication system. I must point out that health care providers may initiate buprenorphine for the treatment of opioid use disorder with a telephone evaluation only, which expands access to this lifesaving medication to assist combatting the opioid epidemic in New York. The determination Letter can be found on the BNE website with the New York State Department of Health website. Health Care Transformation, there's considerable interest in statewide health care transformation. We're aware of that. We're in the final stages of moving this through the process. We expect to announce the winners of that before the end of this month. We're working to get

it out as soon as we possibly can. That will be immediately followed by the RFA for State Health Care Transformation program for again, immediately after three is released. From the Center for Providers Services and Oversight, I'm very happy to say that the draft regulations for Safe Nurse Staffing were presented to the Codes Committee just a couple of hours ago. On a different note, from the same Center for Service Providers, Providers Services. Adirondack Health, the Lake Placid has submitted a closure plan for their freestanding emergency department in October. The purpose of the closure is described by Adirondack is to provide financial relief as more long-term plans are established. Currently, it is open from 8:00am to 8:00pm seven days a week. The plan requests permanent closure. The CON is being requested or being processed to remove the ED service. Adirondack Medical Center Emergency Department is located in Saranac Lake, 11 miles away and will remain open 24/7. From our Center for Provider Services and Oversight, One Brooklyn Health had a substantial, significant cyber event that was in the press. They suffered an interruption in normal I.T. operations in late 2022. OPCHSM worked with them to help ensure the critical capacity information was continuing to be collected during the time period where OBH was unable to do that, provide that information. OBH resumed full operation in early January. Cyber events are increasingly happening. We wish this committee to remind as many folks as they can of the importance of following just the basic rules of cyber security in addition to having the usual protections at a higher level. Hospital strikes, four New York City hospitals went on strike in January from the Mount Sinai system and Montefiore system. OPCHSM staff performed monitoring activities and collected data from the facilities to assure patients that were remaining in the facilities were receiving appropriate levels of care. The strike, fortunately resolved in a matter of days. The Buffalo blizzard was a substantial event that occurred weeks ago. OPCHSM staff responded and helped staff operations to respond to the Buffalo blizzard in late December. Teams from the Bureau of EMS staffed the Erie County Emergency Operations Center during the duration of the storm. Other staff created situational awareness reports and helped to mitigate the difficulties at the facilities. The 2023 State of the State approval process of health care projects. In 2023, Governor Hochul directed the Department of Health to review and amend the CON process, including raising the cost threshold for projects that need to file a CON and revisiting the definition of, quote, public need, end quote. These and other CON reforms are intended to reduce administrative burden and approval times for more rapid modernization of the state health care infrastructure. The department last updated CON requirements in 2017 and will be looking at you to recommend changes in recent discussions as well as feedback we have received from providers and stakeholders. We wish to work in partnership with all of these folks. We look forward to working with this council that will be proposing some recommendations to them in the coming months. Finally, the Planning Committee met yesterday. I'll leave some additional details to the Chair of that committee, Dr. Rugge, but I would just like to say the meeting was the result of a request from Simec and Semco to discuss concerns they felt had a public health impact and to make recommendations to this body for help with the issue of delays impacting EMS and 911 response times. The meeting brought in health care experts from across the continuum, from primary care and from hospitals through EMS. Speakers from Heaney's Greater New York, Iroquois, the New York College of Emergency Physicians, Mt. Sinai and many other entities addressed the committee as well as provided written reports. Several potential responses were identified by the participants. There will be follow up. There will be a more detailed report coming to this committee. As it was only just yesterday, it was hard to get a collection of data for a detailed report, but we will have one at the next committee meeting.

Dr. Morley If you have any questions, Mr. Chairman, or members of the committee, I'd be happy to take them at this time.

Mr. Kraut We have some questions in New York; Dr. Kalkut and then Dr. Berliner.

Dr. Kalkut Thank you for your report.

Dr. Kalkut I wanted to ask if you could update the council on the status of the 1115 Medicaid waiver, the health equity reform submission.

Dr. Morley That would come under it. I'm not able to do that. That would come under a different office, but we'd be happy to obtain that for the next meeting or to get you information between now and then.

Dr. Kalkut Thank you.

Mr. Herbst It is progressing right now. We don't have much of an update just yet that we can go into, but we can certainly, as John just said, we can provide one, but it is progressing. If you have specific questions, we can take that back.

Dr. Kalkut It really was where it stands in the pipeline. I think the whole council is interested in that.

Dr. Kalkut Thank you.

Mr. Kraut Dr. Berliner, then Ms. Soto, then I'll go to Albany.

Dr. Berliner Dr. Morley, we thank you for your report, which was quite comprehensive. As you know, I have an inexplicable interest in the state of emergency services in Lake Placid. If I understood what you were.... I'll tell you why. As you know that in Lake Placid, they've closed the emergency room for the night, except when there's an international event. There was a romcom on Netflix around Christmas time where someone gets sick at night and ends up going to a vet because there's no emergency room. I thought, my God, this is what we did. We allowed this to happen. Netflix owes us money. The real question is, if this other urgent care center is not going to be operating, does that really mean that there is no emergency service within a reasonable distance from Lake Placid in the winter months when transportation might not be too good?

Dr. Morley I'm not sure how you would define a reasonable distance, but I'd just like to highlight that this is a very, very large state and there are many, many residents that don't have EMS services available or a hospital in some areas. In terms of Lake Placid, 11 miles away in Saranac Lake, is a hospital with a 24/7 emergency room.

Dr. Berliner I mean, no question there are lots of areas that suffer from a lack of nearby emergency services. This is a particular tourist area. It's an area where people are doing what some might consider to be relatively dangerous activities, some into the night. Given the...Maybe not this year, but given the the typical weather conditions, it might be more difficult to get from Lake Placid to Saranac than it might be in some other areas.

Dr. Morley We are in conversation with them about their request about their interest in still providing care in the area, just not labeling it a freestanding emergency department, but they would potentially still have providers that would be seeing patients.

Mr. Kraut Hold on. Hold on. I'm going to lose quorum again today.

Mr. Kraut Let's just get the questions.

Ms. Soto I have three I think sort of short questions. I'm familiar with Doctors Across New York. These are already licensed physicians. The Nurses Across New York, already licensed nurses? That's the first question. The second is, is there any discussion anywhere in between the state whether it's the department or not about increasing the class size in terms of the health professions? New York City Council about four, six years ago provided salary support for about five nurses to become faculty in the CUNY system, because they have more qualified applicants than they had openings. Part of the problem is not enough faculty. The last one sort of related is, are there any initiatives going on to increase individuals entering the health professions? One of the incentives could be loan forgiveness along the lines of your loan is forgiven if you work in an underserved area, which keeps being brought up. The challenges for some of these are having and reaching the optimum or required staffroom. Again, is Nurses Across New York already licensed nurses? Discussion about increasing the class size in the health professions. Any initiatives like a loan forgiveness to encourage people to enter the health professions?

Dr. Morley Thank you for your questions.

Dr. Morley The first question, yes. They must be licensed. This is an incentive intended to get them to work in an underserved area. They would be graduates and we would be helping them with loan repayments. It's a number similar to the Doctors Across New York Program. We're hoping that this grows in terms of the amount of money that we are able to offer them. Second in terms of there's a great deal of discussion about the issue you described about class size. We've raised it with state education as well. The Governor and the legislature have indicated and are financing the initiation of the, quote, Center for Workforce Innovation. We've identified what we believe is going to be an excellent director for that center that we hope to have starting in the next month or two. The first responsibility will be to hire additional staff. The Center for Workforce Innovation will then coordinate with other state agencies the O agencies, OASIS, OMD, Office of Children and Families, other services that provide health care services as well as state education, looking to find as many ways as we can to encourage people to enter health care professions. Nurses get the most attention and appropriately so, because the need is so great and because we depend so heavily upon them, but they're not the only area that we have a significant shortage of. We're going to be looking for laboratory technicians, imaging experts. We're looking for people to get into the health care arena in multiple different areas. We want to do anything that we can to support that.

Mr. Kraut Thank you.

Mr. Kraut We're going to lose quorum again. I have members that are having to leave. Cannot stay. I have to move the agenda.

Mr. Kraut If there's any other questions for Mr. Morley, please talk to him after the meeting. Dr. Rugge, Dr. Boufford, I know you want to give you a report. A lot of the people were there yesterday. Some of us viewed it. Can you give us a few minutes of a report? If anybody has questions, if they would contact them directly so I can move the agenda. Again, unfortunately, we've just been informed members have to leave and I will not be able to have any votes today.

Dr. Rugge This is John Rugge. Let me try to go fast. As we've already heard from Dr. Morley, he was approached by the past Chair of the State Emergency Services Council regarding concerns over offloading delays at the E.R. ramp. Dr. Morley kindly referred this to this council and the planning committee. Commissioner MacDonald then also enlisted first Deputy Commissioner Heslin to help and partner with us. We had our initial meeting yesterday. Very preliminary data indicates a stable census among the emergency departments, but a significant increase in the number of ambulance ride. Likewise, there has been a increase in offloading times, certainly across the middle part of the state capital district, Finger Lakes, Central New York. This is complicated by the fact there's been a notable decrease in the number of squads and an even more significant decrease in available EMT staff. As Dr. Morley indicated, we had had presentations by key stakeholders of across the state and elaborate data presentations by Dr. Heslin from the department. The upshot is everyone acknowledges significant stresses bouncing back and forth across the system, not only offloading problems but over boarding in the ED, overloading of the hospitals inability to access long term care for discharges. This has resulted in our developing a whiteboard of necessary areas for further research opportunities for improvements and hopefully eventually suggestions for reform and specific actions recommended by the council. Since this meeting happened only yesterday, we will be working through all the issues raised yesterday and bring in a more detailed report and a proposed workplan to the council on April 18, and then this committee will go back to work with the schedule and hopefully have suggestions for first steps in reform.

Mr. Kraut Thanks very much.

Dr. Rugge Thank you.

Mr. Kraut Dr. Boufford.

Dr. Boufford Thanks.

Dr. Boufford In the spirit of quickness, I just want to make a couple of extra comments on top of Ursula's excellent report for us to thank her and her team for putting a meeting, a very rich meeting together, especially adding new analytic staff who have replaced retirements for continue to analyze and update the data that is coming in on the prevention agenda. I think connecting to the Deputy Director for Sciences Office. We'll have a capacity to really update the evidence base that I think can lead to informed streamlining, as Ursula mentioned, of the prevention agenda and also a better opportunity to integrate the equity elements and monitoring and evaluation. I want everybody to remember. I am so delighted to hear about budget opportunities because this has been the most cost-effective initiative that the state has ever undertaken in public health. There has been zero funding of this effort from the beginning. It's very exciting to see the commitment to replacing staff. Similarly thanking Joanne Morne for joining as part of a core group and I think going forward Dr. Bauer's commitment to bringing in the Commissioner of Mental Health, Oasis who have been core members of the prevention agenda from the beginning and really very important efforts to have objectives in ageing and also priority area in mental health and wellbeing added. We're delighted to have that happen. Observations around the complementarity of the prevention agenda to statewide initiatives. One Adam Herbst mentioned is the master Plan for Aging. We see it as a way to address a lot of the population health, community conditions, elements of the master plan, as a lot of work will have to go unnecessarily on the service side in the work that Adam's taken on. Similarly, complementing the waiver on the prevention agenda effort is very aligned with the Plan for

Heroes going forward, which will add planning. Activities are supposed to be multi-stakeholder. We have those platforms already at local level and similarly the SDN networks, we got into a discussion of the role of CBOs and addressing broader determinants of health. Finally, for the Public Health Committee members, we did flag issues that have been of ongoing concern to the Public Health Committee, which we hope to take up in future meetings. One is on the public health workforce, which was mentioned. The other is an update on the maternal mortality initiative, which the council has been very interested in for about 4 to 5 years now, and similarly engaging again on community benefit as a potential source for alignment of hospital engagement in their community prevention agenda coalitions with their dollar commitments to improving health in their communities. Finally, the Public Health Committee have been taking on the issue of violence in the prevention agenda before COVID. Hopefully, that can come back in the fullness of time as we move forward for the revision process.

Dr. Boufford I'll stop there.

Dr. Boufford Thank you.

Mr. Kraut Thank you very much, Dr. Boufford.

Mr. Kraut I'd like to have a motion to move into an Executive Session. The purpose is to confer with counsel on an attorney client privilege matter.

Mr. Kraut May I have a motion?

Mr. Kraut I have a motion, Dr. Berliner.

Mr. Kraut I have a second, Dr. Strange.

Mr. Kraut All those in favor?

All Aye.

Mr. Kraut Opposed?

Mr. Kraut Motion carries.

Mr. Kraut Will the public please exit the room. You'll be in the hearing room one. We'll call you back in when we are ready.

Mr. Kraut Our call to order back the meeting, I would report of the Committee on Codes, Regulation and Legislation.

Mr. Kraut Mr. Holt.

Mr. Holt Thank you, Mr. Kraut.

Mr. Holt At today's meeting and Codes, Regulations and Legislation, the committee reviewed and recommended for adoption one regulation, and we heard two proposals for information. The regulation that is before us for adoption relates to mpox virus adding it to the list of sexually transmitted diseases. We did receive a report from the department on this regulation.

Mr. Holt I move the acceptance of this regulation.

Mr. Kraut I have a motion.

Mr. Kraut May I have a second?

Unknown Speaker Here in Albany.

Mr. Kraut Any questions from the council?

Mr. Kraut All those in favor?

All Aye.

Mr. Kraut Same thing in Albany, assume everybody voted affirmatively.

Mr. Kraut Anybody opposed?

Mr. Kraut Abstentions?

Mr. Kraut Motion carries.

Mr. Holt There were two items, as I indicated, that were on for discussion only clinical staffing in general, hospitals and perinatal services, perinatal regionalization, birthing centers and maternity birthing centers. Those regulations will be coming back before the council at some point in the future.

Mr. Holt That concludes today's meeting of the Codes.

Mr. Kraut Thank you very much, Mr. Holt, and thank the council members for doing that.

Mr. Kraut I now turn it over to Mr. Robinson for the report of the Committee on Establishment of Project Review.

Mr. Robinson Thank you, Mr. Kraut.

Mr. Robinson As he mentioned, we're going to be taking these out of the order of the agenda and focusing on those applications that have recusals. We'll begin by asking Mr. Kraut and Dr. Strange to leave the room and Dr. Boufford, we will be making the motions on these applications to you as the Vice Chair.

Dr. Boufford I am in position to accept them.

Mr. Robinson Thank you.

Mr. Robinson I'm bringing forward application 2 0 1 2 2 E, True North 3DC LLC doing business as Grand Boulevard Dialysis in Suffolk County, again noting the conflict and recusal by Mr. Kraut and Dr. Strange. This is to establish True North 3DC LLC as the new operator of the 20 station Chronic Renal Dialysis Center located at 860 Grand Boulevard Deer Park that is currently operated as an extension clinic of the Bronx Dialysis Center. The department recommended approval with conditions and contingencies. The

committee did vote for approval with conditions and contingencies, with two members opposing at the May 19th meeting, so a cycle earlier. I want to bring to the attention of the council members a letter that was distributed from the applicant, which I think and I'm going to actually turn to my colleagues on the council, particularly Mr. Lawrence and Dr. Berliner. Unfortunately, Dr. Gutierrez is no longer with us, but also Dr. Gutierrez had some very specific questions. After reading that letter and understanding where things are going, I believe that those concerns have been very well addressed, in particular with DaVita now moving to less than 50% ownership and the decision making around quality of care, the formulary and other issues that have been a real concern of several members of this council, that those have been addressed. Therefore, I am making a motion to approve the application.

Dr. Boufford Motion to approve.

Dr. Boufford Is there a second?

Dr. Boufford Second from Mr. Holt.

Dr. Boufford Is there any discussion or questions from staff or members of the council?

Dr. Boufford Any in New York City?

Mr. Robinson Mr. Lawrence has a comment or a question.

Mr. Lawrence I reviewed the letter and it does satisfy the concerns with regard to ownership and also around the quality issues that were raised at the time.

Mr. Robinson Thank you, Sir.

Dr. Boufford Thank you.

Dr. Boufford Any other comments from New York City?

Dr. Boufford None here in Albany.

Dr. Boufford All in favor?

All Aye.

Dr. Boufford Any opposed?

Dr. Boufford Any abstention?

Mr. Robinson Unanimous here in New York.

Dr. Boufford Any abstentions?

Dr. Boufford The motion passes.

Mr. Robinson Thank you.

Mr. Robinson A sister application 2 1 1 2 4 4 E, True North 4DC LLC doing business as Peconic Bay Dialysis in Suffolk County. Again, Mr. Kraut and Doctor Strange in recusal. This is to establish Peconic Bay Dialysis as the new operator Peconic Bay Dialysis, a 13-station chronic renal dialysis facility at 700 Old County Road Suite 4 Riverhead, currently operated by Knickerbocker Dialysis Inc. The department recommends approval with conditions and contingencies. As with the earlier application, the committee recommend approval with conditions and contingencies with two members opposing at that same May 19th meeting. The letter that I referenced for the previous application applies to this one as well.

Mr. Robinson I make a motion to approve the application.

Dr. Boufford Is there a second?

Dr. Boufford Mr. Holt.

Dr. Boufford Any questions or concerns from council members?

Dr. Boufford Any in New York City?

Dr. Boufford Peter any in New York City? I can't see the group.

Mr. Robinson None in New York.

Dr. Boufford In that case, we'll vote on the motion.

Dr. Boufford All in favor say, aye.

All Aye.

Dr. Boufford Any opposed?

Dr. Boufford Any abstentions?

Dr. Boufford I see none in Albany.

Dr. Boufford Any in New York City, Peter?

Mr. Robinson None in New York.

Dr. Boufford The motion passes.

Mr. Robinson Thank you very much.

Mr. Robinson Can we have Mr. Kraut and Dr. Strange back in the room.

Dr. Boufford I think it's the same people.

Mr. Robinson I'm sorry. We're taking this out of order, my confusion. Keep them away.

Mr. Robinson Application 1 8 2 1 4 4 C, Nassau University Medical Center in Nassau County. Also, a conflict and recusal by Mr. Kraut and Dr. Strange and an interest by Dr.

Lim. This is to certify cardiac catheterization and electrophysiology and cardiac catheterization, percutaneous coronary intervention or PCI services with requisite renovations. This is being processed as a full review. The department recommends approval with conditions and contingencies, as did the committee.

Mr. Robinson I so move.

Dr. Boufford Is there a second?

Dr. Boufford Dr. Torres.

Dr. Boufford Any questions?

Dr. Soffel I have a question about this one.

Dr. Boufford Dr. Soffel.

Dr. Soffel I never call myself Dr. Soffel, but that's okay. My question was around need for this application because as I read the application, I saw that there are many other cardiac catheterization facilities on Long Island that are relatively close to where this one is being operated. I just wanted to understand why the department determined that there was a need for additional services.

Ms. Glock Thanks for the question.

Dr. Boufford Please identify yourself, so people in New York City know who's talking.

Ms. Glock I'm sorry. Shelly Glock from the department.

Ms. Glock Thanks for the question.

Ms. Glock As stated in the staff report, the cardiac services regs under 709.14, which were adopted in September of 2019, requires facilities to project a minimum of 36 emergency PCI procedures in year one of operation. An emergency PCI is anything that's not elective or scheduled. In this application they are referring approximately 50 PCI and EP cases out each year. That referral out of that number of cases indicates that they are able to meet the 36. The other programs in the area are there and this reduces the transfer of those patients who might need that service showing up at the door. That's how the regulations read. You have to show a need of 36. This application has demonstrated that they meet that regulation for public need.

Dr. Boufford Any other questions or comments from members of the council?

Dr. Boufford Let's move to a vote.

Dr. Boufford All in favor, aye.

All Aye.

Dr. Boufford Any opposed?

Dr. Boufford Any abstentions?

Dr. Boufford None in Albany.

Mr. Robinson All in favor in New York.

Dr. Boufford Therefore, the motion is passed.

Dr. Boufford You can now invite Mr. Kraut and Dr. Strange back.

Mr. Robinson We will do just that.

Mr. Robinson Apologies, but continuing out of order on the agenda.

Mr. Robinson This is application 2 2 2 0 1 1 B, Flushing Endoscopy Center, LLC in New York County. An abstention by Dr. Lim. This is to certify a three single specialty ambulatory surgery center extension Clinic for Gastroenterology, Otolaryngology and Urology at 168 Center Street in New York and transfer 38.65% ownership interest from three members to two existing and four new members. The department recommend approval with conditions and contingencies with an expiration of the operating certificate five years from the date of issuance. The committee made a similar recommendation.

Mr. Robinson I so move.

Mr. Kraut I have a motion.

Mr. Kraut May I have a second?

Mr. Kraut I have a second, Dr. Strange.

Mr. Kraut Any comments?

Mr. Kraut Any questions for the department?

Mr. Kraut All those in favor, aye?

All Aye.

Mr. Kraut Opposed?

Mr. Kraut Abstentions?

Mr. Kraut The motion carries.

Mr. Robinson Thank you.

Mr. Robinson Application 2 2 2 0 2 4 B, 787 Ortho ASC LLC doing business as Peakpoint Midtown West ASC in New York County. Again, a conflict in recusal by Dr. Lim. Establish and construct a new multi-specialty ambulatory surgery center at 787 11th Avenue in New York. Please note that the hours of operation were corrected in the exhibit to state that they were open Monday through Friday, not Thursday and Friday. With that modification, the department has recommended approval with conditions and contingencies, with an

expiration of the operating certificate five years from the date of issuance. The committee made a similar recommendation.

Mr. Robinson I so move.

Mr. Kraut I have a motion.

Mr. Kraut May I have a second?

Mr. Kraut Thank you, Dr. Berliner.

Mr. Kraut Any questions on this application?

Mr. Kraut All those in favor, aye.

Mr. Kraut Opposed?

Mr. Kraut Abstentions?

Mr. Kraut The motion carries.

Mr. Robinson Thank you.

Mr. Robinson Application 2 2 2 0 8 9 B, Peakpoint Flatiron LLC in New York County. Again, a conflict and recusal by Dr. Lim. Establish and construct the dual single specialty Ambulatory Surgery Center at 1115 Broadway, New York for Ophthalmology and Otolaryngology, head and neck surgical services. Again, note that the DBA has been removed from the application. The facility name will remain Peakpoint Flatiron LLC. Also, the hours of operation were corrected in the exhibit. The state open Monday through Friday and not Monday and Friday. With that, the department has recommended approval with conditions and contingencies, with an expiration of the operating certificate five years from the date of issuance, as did the committee.

Mr. Robinson I so move.

Mr. Kraut I have a motion.

Mr. Kraut I have a second, Dr. Berliner.

Mr. Kraut Any questions on this application?

Mr. Kraut All those in favor, aye.

Mr. Kraut Opposed?

Mr. Kraut Abstentions?

Mr. Kraut The motion carries.

Mr. Kraut Just do the certificate and get it out of the way.

Mr. Robinson Beth Israel Medical Center Certificate of Amendment to the Certificate of Incorporation. This is not the application on New York Eye and Ear. To change the purposes of the application. Dr. Lim, again, a conflict in refusal. The department and the committee recommend approval.

Mr. Robinson I so move.

Mr. Kraut I have a motion.

Mr. Kraut I have a second, Dr. Berliner.

Mr. Kraut Any questions?

Ms. Monroe Excuse me. Which one are we on?

Ms. Monroe Which application are we on?

Mr. Kraut The certificate of incorporation for Beth Israel Medical Center for their nursing school.

Ms. Monroe Thank you.

Mr. Kraut We're just getting rid of the ones with recusals, that's why. I know we're jumping around, but we're just trying to make sure we have enough votes when we have to.

Mr. Kraut Are there any questions about the certificate of incorporation?

Mr. Kraut All those in favor, aye.

Mr. Kraut Opposed?

Mr. Kraut Abstentions?

Mr. Kraut The motion carries.

Mr. Robinson Application 2 1 2 2 5 2 B, Upstate Endoscopy Associates LLC doing business as Upstate Endoscopy Center in Rensselaer County. A conflict and recusal by Dr. Bennett. I don't believe he's here today. Establish and construct a single specialty ambulatory surgery center for Gastroenterology at 112 McChesney Avenue in Troy. Department recommending approval with conditions and contingencies and an expiration of the operating certificate five days from the date of issuance, as did the committee.

Mr. Robinson I so move.

Mr. Kraut I have a motion.

Mr. Kraut May I have a second?

Mr. Kraut Dr. Strange.

Mr. Kraut Is there any questions on this application?

Mr. Kraut All those in favor, aye.

Mr. Kraut Opposed?

Mr. Kraut Abstention?

Mr. Kraut The motion carries.

Mr. Robinson For those of you watching from home, we're now going back to the regular order of the agenda, and we'll just go down the ones that we haven't covered.

Mr. Robinson Application 2 2 1 2 5 7 C, Open Door Family Medical Center Inc in Westchester County. This is to certify an extension clinic at 2 Church Street, Ossining to provide medical services, primary care and medical services and other medical specialties as a safety net. The department is recommending approval with conditions and contingencies, as did the committee.

Mr. Robinson I so move.

Mr. Kraut I have a motion.

Mr. Kraut I have a second by Dr. Torres.

Mr. Kraut Any questions on this application?

Mr. Kraut All those in favor, aye.

Mr. Kraut Opposed?

Mr. Kraut Abstentions?

Mr. Kraut The motion carries.

Mr. Robinson Thank you.

Mr. Robinson Application 2 2 2 0 1 2 C, New York Eye Surgical Center in Saratoga County. An interest by Dr. Bennett who is not present. Convert from single specialty ophthalmology ambulatory surgery to multi-specialty able to secretary surgery with no construction. Department recommending approval with conditions and a contingency as did the committee.

Mr. Robinson I so move.

Mr. Kraut I have a motion.

Mr. Kraut I have a second, Dr. Berliner.

Mr. Kraut Any questions on this application?

Mr. Kraut All those in favor, aye.

Mr. Kraut Opposed?

Mr. Kraut Abstentions?

Mr. Kraut The motion carries.

Mr. Robinson Application 2 2 2 0 8 7 C, Mount Sinai, Beth Israel in New York County. I want to note a conflict in recusal by Dr. Lim on this application. This is to certify New York Eye and Ear Infirmary of Mt. Sinai as a new division of Mt. Sinai Beth Israel with no change to beds or services. The department has recommended approval with a condition and contingency. A lengthy conversation at the committee level, resulting in no recommendation coming forward.

Mr. Robinson I move the approval of this application.

Mr. Kraut I have a motion to approve.

Mr. Kraut I have a second by Dr. Berliner.

Mr. Kraut A second by Dr. Torres.

Mr. Kraut Are there any comments or questions from the council members on this application?

Ms. Monroe Could you repeat the condition, Mr. Robinson, that has been added to this application approval?

Mr. Robinson I don't believe there was a condition added from the original application that was presented by the department. Do you have anything that is different than what the department included in its original condition and contingencies?

Ms. Glock Nothing has been added.

Ms. Monroe Did I misunderstand you, Mr. Robinson?

Mr. Robinson I said that there was a considerable debate at the committee meeting and we could not develop a recommendation as a result of that. The application was brought forward to the full council without a recommendation.

Mr. Kraut Dr. Berliner, Mr. Lawrence.

Dr. Berliner When the comprehensive health planning law was developed in 1964, it created the categories of providers and consumers. The reason for that was because the federal government was going to be putting so much money into the health care system through what became Medicare and Medicaid the next year. It was thought it was important for people and communities to have some say in what hospitals and other institutions did, that it was no longer just going to be, well, the money is out there so we can do whatever we want. We can build what we want. We can shop what we want. We can add any equipment that we want. We're still stuck with providers and consumers for better or worse. We get divided up that way when we're put on councils such as this. In this particular case, we find a provider who has had almost no communication with the public. It is very rare to find the long list of elected officials who were saying, you didn't talk to us. We don't know what you're doing. It is very rare to find somewhat differently a long

list of staff that work at the hospital saying, we don't know what you're doing. This is not a good thing. Talk to us. Let us have a debate about this. I mean, for this, I'm just amazed at the lack of public communication about what they want to do. This is not switching six beds out of a unit someplace that should be within the purview of the administration. This is affecting, I mean, a major institution in New York City. The fact that it's been around for a long time is less important than the fact that it serves large numbers of underserved people. I have no idea what the institution intends to do going forward except that nothing will change, which somehow doesn't sound satisfying. It's also worth noting that the reason why this has to be rushed through, according to the applicants, is that if the hospital was below 2% occupancy or two patients per day occupancy, it will lose its CMS certification as a hospital. Well, that sounds bad until you try to think about what does that actually mean? I mean, is there someone sitting at a desk with their finger over the button and as soon as the number drops to 1.9, they go, you're gone? Is this going to take a year or two until someone studies it, see if it goes up again and stuff like that? I might add, as a former professor of health administration at a number of institutions that if a institution can increase the occupancy by 1%. We're talking about what I would consider to be really poor administration. For those reasons, I don't think this should be approved.

Dr. Berliner Thank you.

Mr. Kraut Mr. Lawrence.

Mr. Lawrence I was initially going to respond to whether there were contingencies. I don't think they were official contingencies from the council, but I believe that the applicant made a pledge that there would be no change in the operations of New York Eye and Ear. That pledge was, as I understood it, was unequivocal that there. I think hopefully that's in the record. I had similar concerns about what is the rush and what is the need, especially, since I believe Mount Sinai is already the sole member in New York Eye and Ear. What would be the difference? What I understood was that the difference would be that this would allow New York Eye and Ear to continue as a functioning hospital and that otherwise that may not be the case. That was, I thought, a pretty compelling argument. If that argument is valid, then I think we have an obligation to take that on either face value or to hear that there's some other compelling reason not to proceed with this. I don't know if the applicant is here and whether we can get that pledge again.

Mr. Kraut I think the pledge is part of the record, but let's just get all the comments out on the ground and we'll talk to the department.

Mr. Kraut Are there any comments in Albany?

Mr. Kraut Dr. Boufford.

Dr. Boufford I was having a flashback on this discussion of community consultation, shall we say, around the one of the last times when the obituary care facilities. I think it was at the Beth Israel and Mount Sinai. There was a similar problem, I guess. I wanted to ask a question about this. I mean, A, I think it's just kind of unimaginable that an institution as sophisticated as this would have this problem. I wondered if in the conversation with them, because they are the sole owner, it sounds like I may have misstated the actual term of art. Perhaps they did not think that they needed to do that. They're saying, there are not going to be any changes. They're just continuing in charge and they're going to continue to do what they've been doing. I just wondered if that came out at the committee, because I wasn't there. I'm not a member of the committee.

Mr. Kraut Yes, it did.

Mr. Kraut What I'm going to do at the conclusion of these questions for the purpose of some of the members who weren't there, I'm going to recount some of the facts going back to actually that 2020 application that you just referenced when Beth Israel was looking to move to the New York Eye and Ear site. I'll come back to that, and I'll touch on that.

Dr. Boufford Thank you.

Mr. Kraut Any other questions?

Dr. Rugge Yes.

Dr. Rugge This is John Rugge.

Mr. Kraut Yes.

Dr. Rugge My concern is that there was significant opposition from both their own staff members, members of the community and elected officials, and apparently no meaningful engagement by a senior administration making the proposal. There was no back and forth, no ability for me in any case to assess who's right here. Without being able to make that determination, I cannot find a way to support the application. I'm also concerned that the pledge of no further changes will be totally unenforceable. This is not something that will come back to us. Therefore, they could say no changes. If they need changes, they're going to have to make them. Therefore, that's not a basis for me to make a determination.

Dr. Rugge Thank you.

Mr. Kraut Okay.

Mr. Kraut Denise, I think you had your hand up.

Dr. Soffel Yes, I do.

Dr. Soffel Thank you.

Dr. Soffel I want to raise for those who weren't at committee a point that I raised during the committee meeting, which is that this question of the hospital being at risk of losing its CMS authorization to operate as a facility is not mentioned at all in the application materials. It was only brought up after the fact in his presentation and his correspondence after the application had been submitted. When I asked about why this had not been part of their original application, the answer was we forgot to mention it or something to that effect, which I found a rather disingenuous response to what I thought was a pretty straightforward question. I would also like to support Dr. Berliner's comments. I think that the fact that we got so much correspondence from elected officials, from community member, from the hospital, residents and staff and former residents and trainees is really troubling to me that the hospital did not do its necessary stakeholder communication engagement conversations so that there was a mutual understanding of why this was being done and how it was of benefit to consumers, to the community, to health equity issues, to the sort of agenda that we as a council should be thinking about. I share the concerns that this is not a well-presented application.

Mr. Kraut Would you like to make another comment, Mr. Lawrence and then I'd like to do a summary here.

Mr. Lawrence I guess my question then, what is the consequence of not acting them as a sole member? The institution will then step back and if in fact they then have the option without any input from the council or anyone else to do whatever they wish.

Mr. Kraut That's correct.

Mr. Kraut Let's just put this in context for those of you who were not present, I just want to recount some of the history. I pulled the previous applications, all the letters from the 2020. Just to remind everybody, we or our predecessor councils approved the merger with Beth Israel as part of its formation with Continuum in 1999. We approved the merger of Continuum into the Mount Sinai Hospital Group again in 2013. We affirmed that. We have in an addendum to the application that the Mt. Sinai Hospital Group, Mt. Sinai, Beth Israel, St. Luke's, New York Eye and Ear, South Nassau, the other hospital in Brooklyn. They are all boxes. They all have a common governance, common management oversight. The active parent is the Mount Sinai Hospital Group board. There is no oversight or board change here. What we're being asked to do is to move a box under Beth Israel Medical Center, something we have approved numerous times for many hospitals. We had done so without any real conversation or community input. That might explain, but does not forgive the terrible, the inadequate conversations given the history of this application and what had done. We are being asked to do so is because of this low occupancy. Those of us who run hospitals, CMS doesn't sit and wait to do a budget to push a button. They walk into the hospital and on the day, you walk in, if you don't have the two patients, they just walk in and say, that's it. Here's the letter. There are things you do. Let's be honest. No government action is absolutely what you call it. Just because opponents say they weren't engaged by the hospital doesn't mean the hospitals didn't engage with some, but not the ones here, which is problematic because they were very engaged in the previous application. This was a serious thing. Now, we have also raised that there was a historic low occupancy here. 2016 it was 1.8 average daily census; 2017 it was 1.8. 2019 was 2.2. The plan to avert the CMS issue was the application in 2020. Let's come back to that. Just so you know, we know from the document they actually increased their average daily census over the year to 2.2 post COVID. On 96 days we were given information. There were zero patients there. On 41% of the days, there were less than 2%. In 2020, we were given another application to have a bed reduction at Beth Israel Medical Center and to move it to the site of New York Eye and Ear. Now, just for those of you who are not in New York City, we're talking two blocks. 13th and 14th Street sits New York Eye and Ear. I think 1516 through 17th is Beth Israel. It's not 11 miles in the Adirondacks. It's two city, three city blocks. Five-minute walk. Just put that the context here of what they're trying to do. We approved the establishment of the construction of a 70-bed hospital at a cost of $700,000,000 that would have averted this low occupancy thing in New York Eye and Ear. We intentionally we already approved the merger between New York Eye and Ear and Beth Israel, but a physical merger of physical relocation, $600,000,000. Now, we understood there was significant community opposition and some of the same issues that we had today that you just spoke about we had then. You think you'd learned from that, right? Post-COVID, Mt. Sinai now comes to us and abandons that plan and says we're not doing it. They come to us and say, now we're not moving ahead with that. In order to preserve the mission and activities now requests us to protect against that possibility with CMS to simply move the operating system. Now, they said in writing, no closure of any clinical program. They did mention the gender affirming surgery was moving to, I think, the

Amsterdam location on Morningside. No change in access. No change in bed availability. No change in union jobs or the status of the union jobs. No change in GME. No change in oversight or governance. This is, in their mind, was an administrative movement to essentially do that. There was a consequence of not approving that. Now, we've received a lot of letters and communication. We heard from the voice from community residents that expressed concern about a loss of service, reduced access to care. Some, they view this as a merger. That's a technical detail. Some people would call it a merger. We just call it an operating certificate movement. A lot of this has already occurred. Some of the things that people expressed fear of... Merging into Beth Israel has already occurred as a practical matter. I reviewed the correspondence in January 2020. The same concerns about reduction here. I think what we've learned from the issue here is you need to communicate with those that you know are going to oppose. I think the point that Dr. Berliner and Mr. Lawrence and Denice and the others said. There's no question here that they did a poor job. They might not have thought they had to do it because they thought it was a simple movement of an operating certificate. They believe, I think now. I'm not naive. I don't think the outcome would have been different. I think many issues about health care, this is really about trust. We have an institution. We have a community. I made this point at the Project review committee. When Mount Sinai says no change just don't trust them. It's an element of trust. It's so hard. If they did have those communications, I don't think Mount Sinai necessarily would have changed its position because all it's doing is trying to preserve the mission. The fact of the matter is the most likely outcome of those conversations would be agreement on one central point. We disagree. They'll agree to disagree. I expressed my disappointment at Sinai for the reasons you said, but also the community who frankly celebrated Beth Israel in Mount Sinai just a short two years ago. This is about change. Denise remembered; we were talking about Saint Vincent. Part of the reason Saint Vincent couldn't get a project approved is because every project it proposed, there was somebody opposing it. It got into this vicious cycle where it ended up and we'd all agree, should never have closed, never have closed. They couldn't get any agreement with the community. They couldn't get the level of support. Here we are. In the past, we've not only approved, but we also have encouraged the movement of inpatient care into ambulatory surgery. We approved multiple CONs, many of them from New York Eye and Ear to take their inpatient care, moving into ambulatory care centers. Almost eight centers I think we approved that are owned by New York Eye and Ear and now the group. We've approved consolidation of operating certificates to move one hospital as an operating division of another. In 2000, we approved Manhattan Eye and Ear to go into Lenox. There was a big fight with the same issue. The medical staff, they went into court. We approved New York, NYU, Brooklyn to go into the NYU. We approved Syosset to go into North Shore. I can keep going on and on with a list of hospitals that we've done. Now, how do you know that there's no change? How do you do that? I guess it is a matter of the record. If there is a change, if there's a change to any license programs there, it has to come back to us because a change in any other additional change in the operating certificate requires at least discussion. I take a look at this, and I look at three criteria, and I know there's a four; need, financial feasibility and because it's an existing provider, character and competence is not an issue here. On this basis of need, there's no question about the need. The community says it's needed. The hospital's committed to doing it. The financial feasibility. The community has identified the financial losses that have been in that hospital. This provides stability since it's now going to be consolidated on the financials of Beth Israel and as part of the Mount Sinai Hospital Group, as it always was. That's why, you know, I think at this juncture, I wanted to call for a revote, but I wanted to recount the history of what we were trying to do here. Now, coming back down to the trust, it is going to be an issue. I get it. Other than we put requirements in here, but we can't say to an institution, you can never change. In this day

and age, it's impossible. I'm just trying to say, let's look at what we're being asked to do. I know there's a lot of other activities around what we're being asked to do but take it down to the essence that we are preserving a hospital. We are preserving access to that care, and we are preserving essentially an institution that is simply saying the sponsors saying we're going to support it.

Mr. Kraut Dr. Berliner.

Dr. Berliner Jeff is our Chair because he's incredibly politic and well-spoken, but I don't think what he said is entirely accurate or to the point. We have closed institutions, taken away their operating certificates when they were going out of business. The place that we're talking about Eye and Ear has internal reserves of over $150,000,000. It's not going out of business financially. What no one has spent any time talking about and it's hard to discuss this because there is no evidence one way or the other is that if I was a real estate developer, you know, I would be drooling at the prospect of getting the New York Eye and Ear site in the East Village, probably one of the hottest markets in New York City. Two years ago, or three years ago, we heard from Mount Sinai that they were going to basically close Beth Israel and talked about all the money they were investing in it without saying how much money they were going to get from selling the Beth Israel property, which is larger and therefore probably even more valuable. I don't think you can just say that, well, we've taken away operating certificates before, so this is not any different. I think it's incredibly different.

Mr. Kraut If they were motivated by the real estate, they would have been approved to do it.

Dr. Berliner Well, you know, okay.

Mr. Kraut But they didn't.

Dr. Berliner Well, they didn't. Again, never explained to our counsel. That's okay. We understand they're going to take a 650-bed hospital and shrink it to 40 and then COVID happened a month later. It didn't make as much logical sense as it might have then. I think what the community, I think what the elected officials, I think what the hospital staff is asking for is give us a plan. Tell us how you're going to do this. This is a distinguished institution, not that other place that have closed haven't been distinguished in their own ways. But tell us, how are you going to preserve the legacy and what some might say the greatness of New York Eye and Ear in a place which no longer has the name New York Eye and Ear. I don't think that means that they can never come back with an application. I think people just want to hear give us a plan that makes sense.

Mr. Kraut I just pulled up the transcript of what Mr. Lawrence was asking about. This is a direct quote. They gave us a plan. It's very important question. It's an unqualified commitment. As everybody knows exactly what we're committing to. There will not be any closures of New York Eye and Ear inpatient beds. There will not be any closures of New York Eye and Ear clinical programs. There will be no change in local access. It is true that some we are, as I've said, over ten years, we've made adjustments to improve access to our communities and made investments. It doesn't mean everything will happen where it is today, but we're not closing a single program. We are going to ensure that access, particularly for our most disadvantaged patients are there. There will be no change to the board that governs our operations. There is no change for the graduate. There's going to be no change to the union status for our unionized employees as well. We commit to all of

those things. It's in the record. What more do you want them to do? Well, I'm just saying, we keep saying things. Our job is to help facilitate and guide change in the state. Change is not easy. Nobody likes change. Every time something happens. Do you believe him or not? That's a fundamental issue. I get that. I can only say that I know what the record is. The Department of Health knows this. There has to be accountability by the department on these actions.

Mr. Kraut Ms. Soto and then Dr. Strange and Dr. Rugge.

Ms. Soto Could you repeat what you read from? Something about the location of where some of these services are may change.

Mr. Kraut Well, I think over the last ten years, they said they've made multiple adjustments to improve access. It doesn't mean that everything happens where it is today, but we don't close a single program. I think what he was also referring to is the gender affirming surgery had been moved out of the hospital. In one of the letters we received, it was indicated they did so because they just felt they wanted to have it in a more full-service environment because the risks that accompany surgery of that nature.

Mr. Kraut Dr. Strange and then Dr. Kalkut.

Dr. Strange A point of clarification. Approving this in my mind, is protecting us more and protecting the community more in a sense because of the conditions that you just read. What does disapproval mean to us?

Mr. Kraut I don't know. They'll have come up with another plan, but CMS could walk it. I mean it's been in the paper. If I was CMS, I'd walk in there.

Dr. Strange Disapproval could mean they close it and they make it a real estate deal.

Mr. Kraut I can't speak for the applicant, so I don't know.

Dr. Strange What I'm saying is approving it protects the hospital base and everything that they're currently.

Mr. Kraut I'd like to believe that.

Mr. Kraut Dr. Kalkut and then I'll go to Albany.

Mr. Kraut I think it's hard to be more eloquent on two opposing positions than what we've heard just now. I don't know. Well, I do know. Acknowledged that the communication was terrible. They didn't speak to people or if one believes sort of the volume of emails and conversations that have taken place. I also think you can't stand in the way of change. Preserving services in a neighborhood, in a community has to be paramount. The risk of closing, the risk of of losing GME and hospital rates I think is real and will be disruptive or destructive to services provided in that community. I personally have had experience at Long Island College Hospital. I was in a room with physicians. I'm a physician. Who were trained, started out their practices and were going to finish their practices? They said, and it was the same thing that the I don't remember the census. This is a group of physicians, some whom I trained with, said we can admit 50 patients to this hospital. I said, do they need to be in the hospital? What do you mean you can admit 50 people as if it's a whim or a fill the beds? It was closed. There's been a freestanding ED there since then. It has 100

visits, 95 visits a day. In a month, there'll be 180,000 square feet of ambulatory care and a freestanding ED in a new place. There's change in the system, right? We are stewards of that change to a degree. I think the argument about trust, I think, is, as Jeff and Howard said is one of the keys here. If we're not keeping up with the move towards ambulatory, the move to bigger rooms, the move to modernization, then we're not doing our job.

Mr. Kraut Any comments in Albany?

Dr. Rugge Yes, John Rugge.

Mr. Kraut Go ahead, John.

Dr. Rugge I'm very sensitive and aware of the arguments just made by Dr. Kalkut. By the same token, rather than our job protecting the future. Well, we heard in executive session is our job is assessing need. In this case, the management of this facility did not describe the need to its own community, to its own stakeholders, and also has not been forthcoming to us in terms of what's driving this until late, oh, we forgot that we're going to be decertified. It just seems like it's establishing a bad precedent for us to be approving something when there's not been true adequate communication with either its own community or with us. That puts me in a very difficult position in terms of where to go, in terms of making a vote.

Dr. Rugge Thank you.

Mr. Kraut I'd like to call a vote unless there are any comments or questions just to see where we end up and then we could take it from there.

Mr. Kraut We have a motion to approve.

Mr. Kraut All those in favor, aye.

Mr. Kraut Opposed?

Mr. Kraut We have a delay. We're going to have to do a roll call.

Ms. Leonard Dr. Boufford?

Dr. Boufford Yes.

Ms. Leonard Mr. Holt?

Mr. Holt Yes.

Ms. Leonard Dr. Kalkut?

Ms. Leonard Mr. La Rue?

Ms. Leonard Mr. Lawrence?

Ms. Leonard Dr. Lewin?

Dr. Lewin Yes.

Ms. Leonard Ms. Monroe?

Ms. Monroe No.

Ms. Leonard Dr. Ortiz?

Dr. Ortiz No.

Ms. Leonard Mr. Robinson?

Dr. Ortiz Ortiz is yes.

Ms. Leonard Mr. Robinson was yes.

Ms. Leonard Dr. Rugge?

Dr. Rugge No.

Ms. Leonard Dr. Soffel?

Dr. Soffel No.

Ms. Leonard Ms. Soto?

Ms. Leonard Dr. Strange?

Dr. Strange Yes.

Ms. Leonard Dr. Torres?

Dr. Torres No.

Ms. Leonard Dr. Watkins?

Ms. Monroe He says no.

Ms. Leonard Please repeat that for the record. We couldn't hear.

Dr. Watkins No.

Dr. Ortiz This is Dr. Ortiz. My vote was yes.

Ms. Leonard Your vote was yes?

Dr. Ortiz Yes.

Ms. Leonard Okay.

Ms. Leonard 11 affirmative. 11/6.

Ms. Leonard Motion fails.

Mr. Kraut We have the motion failing.

Mr. Kraut Let's talk about what we can do. We can add conditions on here that we'll address. We can add additional conditions now. What additional conditions would be satisfactory? We can add a condition that if there is any type of change. What would work to make this affirmative, do you want to add conditions on to the application that what they stated is part of the approval process? Just so I know what I'm talking about and I'm not misrepresenting, what are the consequences of doing that? Does that give it great... The statements made are not statements they are now part of it that they can't make changes? What are the ramifications of doing that? I just need some guidance.

Ms. Ngwashi Good afternoon. I'm an attorney at the department.

Ms. Ngwashi Is someone in New York City talking?

Mr. Kraut You can go ahead. We're trying to understand if we add conditions to the application, what kind of conditions would address the concern that, you know, this is what they said, but to give it greater, I guess, regulatory levers.

Ms. Ngwashi First, I'd like to address the fact that we do need to keep in mind that the application as it is presented is what the council is considering and preparing its motion for a vote. I'd like to emphasize that. When you are thinking about potentially adding for this project, which is a construction project where the Public Health and Health Planning Council offers its recommendation to the Commissioner who renders the final determination.

Mr. Kraut This is not an establishment, this is a construction.

Ms. Ngwashi This is a construction project.

Mr. Kraut Oh, I'm sorry. I misunderstood.

Dr. Rugge What's being constructed?

Mr. Kraut We let it go.

Dr. Rugge What's being constructed?

Mr. Kraut I didn't realize that. I'm sorry. We have a vote, and the vote would move on to the Commissioner.

Dr. Rugge Excuse me. What makes this a construction project?

Ms. Ngwashi Any projects that are not establishment projects are categorized as construction projects. These are already established entities.

Mr. Kraut This is a currently established provider. That's why character and competence wasn't a component. It was only need and financial feasibility. If that's the case, we do not have a vote or nor a recommendation to the Commissioner. We will pass it on to the Commissioner for action.

Mr. Kraut Yes.

Dr. Rugge I'm wondering if we can be notified when the Commissioner makes a decision?

Mr. Kraut Yes.

Mr. Kraut We now require when the Commissioner acts on anything that we have not recommended that we're notified. The Commissioner will make the final determination in that respect.

Mr. Kraut Thank you.

Mr. Kraut Mr. Robinson.

Mr. Robinson Thank you.

Mr. Kraut I gave us an option.

Mr. Lawrence We lost the opportunity to impact on this?

Mr. Kraut That's correct.

Mr. Lawrence Thank you.

Mr. Kraut You had an opportunity to make a motion to amend. Nobody did.

Mr. Kraut Here we go.

Mr. Robinson This is an application for midwifery birthing services. This is an establish and construct. To be sure people are clear, this is an establishment application. This is application 2 0 2 0 8 6, the Coit House LLC, located in Erie County. This is to establish and construct a midwifery birthing center to be located at 414 Virginia Street in Buffalo. The department recommended disapproval. As with the previous application, there was a lengthy conversation and I think a very informative one in which, among other things, we had significant debate about the character and competence. I also want to point out that because the department's recommendation stopped at the point of looking at character and competence, the rest of the application, the facilities requirements, the financial feasibility, the other things that are looked at by the department was not conducted. The application right now is only coming to us with that element of the review process done. It essentially came to a halt. That's where we stand.

Mr. Robinson With that and the no recommendation from the committee, I make a motion to support the department's recommendation for disapproval.

Mr. Kraut I have a motion to disapprove.

Mr. Kraut May I have a second?

Mr. Kraut Dr. Berliner seconds it.

Mr. Kraut Dr. Torres as well.

Mr. Kraut Let's open this up for discussion.

Mr. Kraut Does the department wish to make a statement before we do?

Dr. Morley I would like to make a statement. This is Dr. John Morley, the Deputy Commissioner.

Dr. Morley Thanks very much.

Dr. Morley Out of respect for the committee's time, I will abbreviate remarks that were a little longer earlier. At the time of this application comes, we're presenting revised regulations for paternity birthing centers which articulate the regional perinatal system in New York. Additionally, we have engaged and are engaged in ongoing conversations to ensure standards are attainable for applicants to meet industry standards that are necessary to serve low risk patients. We strongly support the growth of midwifery birthing centers. The Coit House application was initiated over two years ago. The department spent well over 100 hours in dealing with this application, including over 20 hours of my time over the last 9 months. As was stated, we have only one other instance in the last 10 years where the department recommended disapproval of an application for establishment. Multiple reasons for this were presented by Ms. Glock for this disapproval. The committee is in receipt of a letter from the County Medical Examiner, as well as a pediatrician in the community. Both letters recommended against approval. It's highly significant to us that a County Medical Examiner would write such a letter. I would like to highlight some of what was written in that letter. Quote, I would like to alert you to two deaths that occurred due to gross negligence on the part of the midwives in this facility. There is no doubt with adequate medical care both of these children would be alive today. These deaths are currently under investigation by the Office of Professional Discipline. In both of these cases, the practitioners of this midwifery showed careless disregard for human life and two lives were lost because of it. I would ask that you do not expand their license, as I am certain that this will lead to more unnecessary deaths. That's from the letter of the Medical Examiner. I did call the Medical Examiner at their suggestion and spoke with them. It was very clear as to why she came to the conclusion she did. I'd like to state for the record that our requests for additional information, specifically what steps were taken in response to the two infants were not supported by any evidentiary documentation or proof. Many meetings and a great deal of time went into the review of this application. We do not make the recommendation lightly. We move this application forward as it is the right of the applicant to request so. We do not have an outcome from the State Education Office of Professional Discipline. Given that the process is confidential, we have no way of knowing when it will be complete. It is possible it could be years from now. As has been the case in the past the Coit House project is not an application the Department would have brought forward to prepare for its consideration as the individual applicant is the subject of an open and active investigation by a licensing entity which puts at potential jeopardy the practice license that the applicant has submitted an application for consideration. Those are my comments. If anyone has any questions to me, I'd be happy to take them.

Mr. Kraut Does anybody have questions for Dr. Morley?

Mr. Kraut None in New York.

Mr. Kraut Any up in Albany?

Mr. Kraut There's nobody in Albany have any questions about this?

Ms. Monroe We may have comments.

Mr. Kraut Comments is fine.

Mr. Kraut Anybody have comments in Albany, please?

Ms. Monroe I do.

Ms. Monroe This is Ann.

Mr. Kraut Okay.

Ms. Monroe First of all, I have great respect for the work of the department. In the years that I've been on the council, we have seen things the same way and where we didn't, we were able to handle them through contingencies that the council would put on applications that managed to address our needs. It's been very strong work, but I just can't support this recommendation and I'll give you four reasons. There's too much disagreement between the applicant and her attorneys and the department about what was provided and what was not provided. These are very respected attorneys in Western New York, and they provided emails and specifics about things that they had provided the department. I'm not saying they're right and the department is wrong, but with this great difference between what the applicant is saying was provided and what the department says is not provided just raises a lot of questions for me. The second is we have no regulations. If this had come before us at a later point, I would feel perhaps differently about it. I agree with Dr. Morley that two deaths and a very serious letter from the Medical Examiner belong in the investigation of her liability. She was not one of the midwives that were quoted from the Medical Examiner. While she is a director and has accountability, we don't know whether she's going to be found responsible or vindicated by this investigation. To me that creates a real question of ambiguity that to me, needs to be considered. I'm glad that Mr. Robinson talked about architectural review, because that took up a lot of time at our committee meeting when the department had made it very clear that they did not look at architectural because they stopped at character incompetence. My preference, frankly, is that the applicant would have withdrawn their application. I think it's terrible that we've gotten to this point and to withdraw it and bring it back under regulations would have made a lot of sense, but she didn't do that. We don't have the option, as I understand it, at the council, to pend or defer or whatever happened to the two that we looked at today who had been deferred since May. We don't have that option. In that respect, since it's not been withdrawn and I have strong concerns about the collective work that was done on this application and the importance of midwifery, as talked about in terms of the regulations, I just can't support the department's recommendation and I will be voting no.

Ms. Ngwashi Chair, I would just like to make a comment.

Mr. Kraut Hold on. We have Dr. Strange here for a minute.

Mr. Kraut Go ahead.

Dr. Strange I appreciate your comments, but as a physician, as a practicing physician, as a Chair of a department, somebody who sits on the board of OPMC also when I hear that kind of a quality raised by a Deputy Commissioner coming from a public official in Erie

County and local people. As you clearly stated, there has to be accountability whether or not that practitioner was actively involved or not. She was a leader. She was an overseer. She was an administrator. We owe that community. I agree midwifery is important and it's something we all need to continue to strive to get, especially into our communities of need in our communities that have access issues. We also should never, never ever allow us to compromise quality or even think about the potential of compromising quality. I think, Jeff, what you said at the beginning about character and competence coming back to potentially bite us both as a collective body and personally, although we are protected, so I'm not worried about my personal liability. There is no way that I cannot state that the Department of Health did the right thing here and we must...as a practitioner, I can know in no other way in my heart and soul does not support what the Department of Health has put forth. This person, this group of people want to come back again with another application somewhere down the road when they've cleared themselves if that so happens. We have an obligation to this community and to the State of New York not to ever even think about allowing some sort of care that potentially is dangerous.

Mr. Kraut Dr. Kalkut and Mr. Lawrence.

Dr. Kalkut I completely agree with Dr. Strange. It's hard not to think as a physician taking care of patients. I've worked a lot with birthing centers. I have a lot of respect for them and the work they do and the professionalism that's been evident to me. The patient group that they take care of, low risk patients, predominantly, and for good reason. You have two deaths in a relatively short period of time to give our approbation to that operator, I think sends a terrible message and puts us in a compromised position. I think the department has done a good job here. The reasoning is sound, and I don't see how I can vote for this.

Mr. Kraut Mr. Lawrence.

Mr. Lawrence I think at the committee meeting I indicated that I supported birthing centers and would like to see many more of them. I also would, I guess, ask and push that maybe the applicant would reconsider and withdraw the application. My vote at that time was to encourage that to happen. I think the applicant is well intended, but I think at this point, you know, it would have been in the applicant's best interest to withdraw the application. My vote is going to be with the department this time.

Mr. Kraut Did you want to make a statement?

Ms. Ngwashi Yes.

Ms. Ngwashi Thank you.

Ms. Ngwashi I just wanted to state that it is reasonable for an applicant to defend their character and competence and present information in a way that achieve the goal of illustrating that the applicant is of good moral character and competence. The department also has a responsibility to conduct reviews to address any apparent or anticipated inquiry about a proposed project. That is what happened here with this project application. That is what happens with all project applications. Ms. Monroe, to some of the things that you said, I would just like to add some clarity. Number one, there are midwifery birth center regulations in place currently. The regulations that were presented today are amendments to those regulations that are already in place. Any of those amendments would not have had any impact on the project application as it has been presented. I want to make sure that people are clear on that. There are regulations in place. Number two, the architectural

review. Please note this for the record. The architectural review is not at issue with this project application. It was done, as were other reviews, like legal, like financial. However, as Ms. Glock indicated when she presented this project application, those reviews and recommendations for other things; architectural, legal, financial were not concluded because there was an issue with character and competence. Character and competence is a statutory requirement. If you do not meet that, then you fail for establishment purposes. The last thing that I would like to mention is whenever there is an investigation that we are alerted to either by a licensing entity or a District Attorney's Office, the US Attorney's Office, the Attorney General's Office, any law enforcement agency. We do not move applications forward with a favorable recommendation because we are not able to make a recommendation based on a pending outcome where there has been no resolution. That is the case for any application that we have brought forward in the past. This is a policy of the department that we're not intending to change.

Ms. Ngwashi Thank you.

Mr. Kraut Thank you.

Ms. Monroe May I just make a quick response?

Mr. Kraut Yes.

Mr. Kraut Go ahead.

Ms. Monroe I agree with you. I don't understand why after 22 months of being with the department, we have to bring it forward right now. I don't understand why it can't either continue dialogue with the applicant and or proceed later with an investigation.

Mr. Kraut That was the applicant's choice. That was their right. We offered that. They chose not to do it. Y

Ms. Monroe We offered what?

Mr. Kraut We offered to remove the application. Not remove the application. We had asked the applicant to essentially take the application away from consideration.

Ms. Monroe I understand that, but what I'm saying is, if the department has had this application for 22 months, but there's been no resolution on the litigation or whatever you call it as a legal thing, why did the department have to bring it forward right now? I don't need to have an answer and I don't want to get into a debate with you. I made my point. I made what I wanted to where my vote is, and I think we should hear from others and then take it to a vote.

Ms. Ngwashi I really do need to clarify. I really need to clarify this for the record. It is the applicant's right to bring a project forward. It is not the department bringing projects forward to respond to it just on our own, just because we want to. When projects are ready to move forward, we bring them to the council for consideration. That is what happened here. The applicant wanted to move this project forward despite the fact that we had conversations about some deficiencies moving forward. The project is here because it's an establishment project, and the Public Health and Health Planning Council is the one that renders a final determination. The department makes the recommendation. That being said, that's what we would like to be able to accomplish here.

Mr. Kraut Is there any other comments in Albany?

Dr. Soffel Hi. This is a very troubling application. I was reminded that the application had been denied based on the fact that the operator had not demonstrated a substantially consistent high level of care as being rendered. I was told that that that when Ms. Glock gave her presentation about the application at the committee meeting two weeks ago, that she laid out the reasons. I actually went back and watched it again because I didn't see it the first time. I think that the thing that was flagged as the challenge in this application was that when these sentinel events happened, that there was not a response on the part of the applicant that demonstrated that there had been a root cause analysis and a review of what had happened and what had gone on and a review of policies and procedures within the operation that would reflect a responsiveness to the concerns that have been raised. As I read then all of the correspondence from the applicant and went back and watched her testimony as well, it sounded like she tried to be responsive and that there was some lack of responsiveness on both sides and lack of transparency in the whole process. Dragging out over 28 months is it seems... I don't quite know what was going on and I would say that I believe that the department absolutely operates in good faith and works really hard at what they do. It seems like when I read all of the correspondence that somehow some things didn't do these didn't quite come together and I don't quite know why. I also was quite troubled by an allegation in one of the letters that the letter from the Medical Examiner had actually been solicited by the department, which was quite a startling statement for someone to make. I think that there was a enough questions about the process that I am not comfortable supporting the department's recommendation.

Mr. Kraut We're about to lose a quorum because people have to leave. All I would say to the rest of you is we need to vote. We have never in the years I've been in this council had a statement that we just had about an applicant like Dr. Morley and whether you want to give that weight or not I'm just suggesting to you never in our history has the department made a statement as Dr. Morley just made about an applicant.

Mr. Kraut With that, I'd like to call a vote.

Mr. Kraut All those in favor of the recommendation.

Mr. Kraut Hold on.

Mr. Kraut Go ahead.

Mr. Kraut That's what I was just about to do.

Mr. Kraut A yes vote is a vote to disapprove the application. Now, if we disapprove the application, the applicant has an appellate right. They can go to get an Article 78 hearing. if any of the issues that were raised by Ms. Monroe, Dr. Soffel may have any merit it'll go before an administrative law judge. They may return the application to us. They may resubmit it. It's done without prejudice. They can come back in at any time and reapply.

Mr. Kraut Am I correct?

Mr. Kraut There's no prejudice in the vote, but it gives them the right to go and do that.

Mr. Kraut If you're voting yes, you're voting to disapprove. If you're voting no, you're not voting to disapprove.

Mr. Kraut All those in favor of the motion to disapprove the application if you would raise your hand.

Mr. Kraut In New York, it's unanimous.

Mr. Kraut Dr. Boufford and Dr. Rugge.

Mr. Kraut If you're voting opposed, please raise your hand.

Ms. Leonard Two opposed.

Mr. Kraut We have two opposed.

Mr. Kraut The motion carries.

Mr. Kraut The application is disapproved.

Mr. Kraut Mr. Robinson.

Mr. Robinson It's really a privilege to be a part of this council and this committee and to have a conversation like we had. I just commend you all and the department.

Mr. Robinson Application 1 9 2 2 3 7 E, JAG Operating LLC doing business as Foltsbrook Center for Nursing and Rehabilitation. This is in Herkimer County. This is to establish JAG Operating LLC as the new operator of Foltsbrook Center for Nursing and Rehabilitation. A 163-bed skilled nursing facility located at 104 North Washington Street in Herkimer. Please note that an amendment was added to the exhibit of a map displaying nursing homes within ten miles of the current facility. The department recommended approval with contingencies. There is no recommendation from the committee.

Mr. Robinson I make a motion to approve the application with contingencies, as the department did.

Mr. Kraut I have a motion to approve.

Mr. Kraut I have a second by Dr. Berliner.

Mr. Kraut Are there any comments?

Mr. Kraut Yes, Mr. La Rue.

Mr. La Rue Yes.

Mr. La Rue At the committee meeting I opposed the application but based on the information the department provided and the letters that we received from the community, I'm going to be changing my vote today.

Mr. Kraut Thank you very much, Mr. La Rue.

Mr. Kraut Are there any questions in Albany?

Mr. Kraut All those in favor, aye.

Mr. Kraut Opposed?

Mr. Kraut The motion carries.

Mr. Robinson Application 2 1 2 1 1 7 E, Livingston to Operations LLC doing business as Livingston Hills Nursing and Rehabilitation Center. This is in Columbia County. This is to establish Livingston Two Operations LLC as the new operator of Livingston Hills Nursing and Rehabilitation Center, a 120-bed residential health care facility at 2781 Route 9 in Livingston. The department recommended approval with contingencies, as did the committee earlier today.

Mr. Kraut I have a motion.

Mr. Kraut May I have a second?

Mr. Kraut Dr. Strange.

Mr. Kraut Any questions on this application?

Mr. Kraut All those in favor, aye.

Mr. Kraut Opposed?

Mr. Kraut Abstentions?

Mr. Kraut The motion carries.

Mr. Robinson Application 2 2 2 1 2 4 E, Woodcrest Rehabilitation and Residential Health Care Center in Queens County. Transfer 20% ownership interest from one withdrawing member to one new member. The department recommends approval with a condition. The committee voted similarly this morning.

Mr. Robinson I so move.

Mr. Kraut I have a motion.

Mr. Kraut I have a second, Dr. Berliner.

Mr. Kraut Any questions on this application?

Mr. Kraut All those in favor, aye.

Mr. Kraut Opposed?

Mr. Kraut Abstentions?

Mr. Kraut The motion carries.

Mr. Kraut We didn't do a Cayuga.

Mr. Robinson Did I miss Cayuga?

Mr. Kraut Cayuga, the certificate of incorporation.

Mr. Robinson Oh.

Mr. Kraut And then you got to go back and do the category once, right? You can batch those.

Mr. Robinson This is a certificate of incorporation of incorporation for Cayuga Health Care System. A name change. You'll recall this was in relation to services that were already approved. This is just aligning the bylaws and the corporate structure to confirm that as opposed to us approving those programs. We did that already. The department recommends approval, as did the committee earlier today.

Mr. Robinson I so move.

Mr. Kraut I have a motion.

Mr. Kraut I have a second, Dr. Berliner.

Mr. Kraut Any questions?

Mr. Kraut All those in favor, aye.

Mr. Kraut Opposed?

Mr. Kraut Abstentions?

Mr. Kraut The motion carries.

Dr. Boufford Excuse me. Dr. Ortiz has left.

Mr. Kraut Thank you.

Mr. Robinson I'm going to batch the remaining applications.

Dr. Boufford Excuse me. Dr. Ortiz and Dr. Watkins have left.

Mr. Kraut Nobody else can leave until these last applications are done, because then we lose the quorum.

Mr. Kraut Go ahead.

Mr. Robinson 2 2 1 2 8 0 Specialist One day Surgery LLC transferring 100% ownership interest to a new member LLC comprised of the current members and one new member, and then immediately transfer 25% ownership interest to a new not for profit corporate member. Note that a revised staff report has been distributed and posted which corrects the proposed membership table. Application 2 2 2 0 3 6 B, Excelsior ASC LLC doing business as Excelsior Ambulatory Surgery Center in Kings County. This is to establish and

construct a new multi-specialty ambulatory surgery center at 8 33/65th Street in Brooklyn. This one involves the approval with conditions and contingencies and an expiration of the operating certificate five years from the date of issuance. Application 2 2 1 2 8 1 B, Integrated Care Services in Kings County Establishing construct a new diagnostic and treatment center at 14 26/39th Street in Brooklyn. Application 2 2 2 0 3 2 B, Mount Valley Care LLC in Rockland County establish and construct a new diagnostic and treatment center at 290 Route 59 in Spring Valley. Application 2 2 2 1 2 3 E, The Knolls at and Inc in Orange County, establishing the notification as the new operator of the 40-bed residential health care facility, which is part of a continuing care retirement community of 214 Herriman Drive, Goshen, currently operated by Glenn Arden Inc. In all instances, the department and the committee recommend approval with conditions, contingencies, and in the one instance, a five-year limitation on the application.

Mr. Robinson I move those applications.

Mr. Kraut I have a motion.

Mr. Kraut I have a second by Dr. Berliner.

Mr. Kraut Any questions on any of these applications?

Mr. Kraut All those in favor, aye?

Mr. Kraut Opposed?

Mr. Kraut Abstentions?

Mr. Kraut The motion carries.

Mr. Robinson That concludes the report of the Establishment of Project Review.

Mr. Kraut Thank you.

Mr. Kraut That was a very disjointed agenda. We really appreciate everybody's communication. I just want to let you know that the next regularly scheduled committee day is on March 30th. The full council will be on Tuesday, April 18th. We've gotten a request from some of the members to stop by preceding the meeting to get everybody together in one location. I think given some of the nature of the discussions, we'd be better off if we're in a room. On the next cycle, those meetings will be held in New York City and only in New York City. We're going back to essentially one site per cycle. We need to get back together. It's just challenging us, I think. We'll see how that goes. We are trying to get changes in the Open Meeting Law for extraordinary circumstances to participate by Zoom for members, but so far, we haven't been successful, but we're going to try. The next meeting cycle will be only in New York City.

Mr. Kraut I have motion to adjourn.

Mr. Kraut So moved.

Mr. Kraut We are adjourned.

Mr. Kraut Thank you, everybody.

Mr. Kraut Thank you for this and the committee days and the work and thank the department.