NEW YORK STATE DEPARTMENT OF HEALTH
PUBILC HEALTH AND HEALTH PLANNING COUNCIL
SPECIAL COMMITTEE ON CODES, REGULATIONS AND LEGISLATION
SPECIAL FULL COUNCIL MEETING
ESTABLISHMENT AND PROJECT REVIEW
SEPTEMBER 15, 2022 10:15 AM
ESP, CONCOURSE LEVEL, MEETING ROOMS 2-4, ALBANY
90 CHURCH STREET, 4TH FLOOR, CONFERENCE ROOMS 4A AND 4B, NYC
TRANSCRIPT

Tom Holt Morning. I'm Tom Holt, and I'm the Chair of the Committee on Codes, Regulations and Legislation. Before we get started with our meeting today, I'd like to remind council members and staff and the audience that this meeting is subject to the Open Meeting Law. Is broadcast over the internet. The webcast is accessed at the Department of Health's website. The On Demand webcast will be available no later than seven days after the meeting for a minimum of thirty days, and then a copy will be retained in the department for four months. There are some suggestions or ground rules to follow to make this meeting successful. Because there is synchronized captioning, it's important that people do not talk over each other. Captioning cannot be done correctly with two people speaking at the same time. The first time that you speak, please state your name, and briefly identify yourself as a council member or DOH staff. This will be of assistance to the broadcasting company to record this meeting. Please note that microphones are hot, meaning that they pick up every sound. Therefore, I ask that you avoid rustling papers next to the microphone and to be sensitive about personal conversations or sidebars as the microphones can pick up this chatter. As a reminder for the audience, there is a form that needs to be filled out before you enter the meeting room, which records your attendance at the meeting. It's required by the Commission on Ethics and Lobbying and Government and in accordance with Executive Law, Section 166. This form is also posted on the Department of Health's website under Certificate of Need. In the future you can fill out this form prior to council meetings. We thank you in advance for your cooperation in filling our duties as prescribed by the law.

Tom Holt And with that I'd like to call to order the meeting of the Codes, Regulations and Legislation Committee.

Tom Holt We do have members from the public who intend to speak, I think, at the Albany site this morning. For those folks who will be speaking, I'd like to remind them that you need to limit your comments to three minutes or less. You'll be notified at the two-minute time limit that you have one minute remaining. Presenters are limited to one person per organization. We'd ask you that you'd be prepared to deliver your comments promptly after your name is called. Your name will be called in order. Move close to the microphone to deliver your remarks. We thank you. I also want to recognize that we did receive several letters in advance of this meeting from Leading Age, the state association and a number of individual providers who responded. Those letters were received and distributed to the members of the committee and council as well.

Tom Holt The first regulation that we have for discussion this morning is for emergency adoption. The hospital and nursing home personnel protective equipment requirements. Can I have a motion for a recommendation of adoption for this emergency regulation to the full council?

Tom Holt So moved.

Tom Holt And a second?

Tom Holt All in favor?

Tom Holt That motion carries.

Tom Holt Ms. Jacqueline Sheltry and Jonathan Karmel of the Department are available and will provide us with information on this.

Jaclyn Sheltry Good morning. My name is Jacqueline Sheltry. I'm in the Center for Health Care Policy and Resources at the department. This emergency regulation amends both parts 405 and 415 of Title Ten to require hospitals and nursing homes to maintain a 60-day supply of PPE to protect personnel at those facilities. Specifically, the amendments to Section 405.11 of Title Ten will require hospitals to maintain a 60-day PPE supply by August 31st, 2021. The regulation sets forth calculations for each type of PPE, multiplied by the number of the hospital staffed beds, in addition to another specific multiplier set forth in the regulation. The regulation further provides that for hospitals, the Commissioner has discretion to increase the PPE supply amount from 60 days to 90 days and directs those hospitals should rotate through their stockpile to reduce waste and maximize shelf life. It further provides that failure to maintain the 60-day required amount of the stockpile may result in penalties, including revocation, limitation, or suspension of the license. Additionally, the regulation amends Section 415.19 of Title Ten relating to nursing homes to require nursing homes also to maintain a 60-day PPE stockpile again by August 31st, 2021. Additionally, it sets forth the calculations for each type of required PPE multiplied by the quote unquote applicable positivity rate, the number of the nursing homes certified beds as set forth in the operating certificate, and third by another specific multiplier as set forth in the regulation. The regulations define the term applicable positivity rate by setting forth three possible calculations and the greater of which must be used by the facility. As with hospitals, the regulation directs that nursing homes should rotate through their stockpiles to reduce waste. And again, the regulation provides that failure to maintain the PPE stockpile may result in penalties, including revocation, limitation, or suspension of the license. Required PPE includes gowns, gloves, surgical masks and N95 respirators. I know this regulation would be a re adoption on an emergency basis and no changes have been made since the last emergency adoption. However, proposed regulations are pending. The public comment period closed on August 8th and the comments are under review with the department currently.

Jaclyn Sheltry Thank you.

Tom Holt Thank you.

Tom Holt For the members of the committee and council. We've got a couple of speakers in Albany who I think will ask to speak first and then we'll open it up to the members of the committee and council for discussion. If I could ask the two speakers that have identified themselves in Albany, I apologize. I believe it's a Stephen Summer and David --- to come forward, identify themselves. A reminder, once you've identified yourself, you'll be given three minutes to speak.

Stu Summer Thank you.

Stu Summer Good morning. Commission members, staff, public. I actually think I'm... I thought I signed up to speak to the flex and surge and to the vaccinations in nursing homes. If this is specifically to the PPE, that's not why I came to speak. I apologize if I put my name on the wrong piece of paper.

Tom Holt Please proceed with your comments. Your time will start now.

Stu Summer Okay.

Jaclyn Sheltry We can hold your comments until we discuss the surge and flex regulations as well as the vaccination regulations.

Stu Summer That's fine with me.

Tom Holt Okay.

Tom Holt Thank you.

Tom Holt Is there another speaker who identified themselves in Albany to speak on this regulation?

David Hello. My name is David --- and thanks for the opportunity to speak here. I've prepared a few comments here. Sorry. I don't do this every day. Come and speak publicly in meetings, so please bear with me. Apologies in advance should I misspeak. My Mother has been in an assisted living facility in New York State since 2018. I can tell you that firsthand, and I can assure you my experience is shared by many others that the government intrusion and overreach into how seniors go about their lives has reached epic proportions and is ruining their quality of life while at the same time directly subverting their constitutional rights. Of course, the prime example is the absolutely shameful example set by Cuomo, who was famously run out of office for his draconian diktats, which directly resulted in the deaths of thousands of senior citizens in New York State residential care facilities. The constant use and obsession with PPE results in a demoralized under oxygenated staff who are less responsive to the day to day needs of our senior citizens. The obsession with PPE places an undue burden on these facilities. Government intrusion has also resulted in facilities being seriously short staffed with a corresponding decline in the standard of care residents receive. This is because people don't enjoy wearing masks all day long and personally witnessing what's going on in these facilities, they don't wear the masks all day long. They pull them down under their nose, etc. It's basically mask theater, as I'm sure many of you are aware. If any of you can remember prior to 2020, the whole world, including guidelines and recommendations of bodies such as the CDC and the WHO, were in agreement regarding the use of face masks. They all agreed that the best quality studies randomly concluded that face masks did nothing to stop the spread of community transmission of influenza like viruses. Some studies actually showed an increase in transmission where masks were used. Reading from the World Health Organization June 2022 publication. The likely disadvantages of the use of masks by healthy people in the general public include potential increased risk of self-contamination through the manipulation of the face mask and subsequently touching eyes and face, potential self-contamination that can occur if non-medical masks are not changed when wet or soiled, which creates favorable conditions for microorganisms to amplify, potential headache, breathing difficulties, potential development of facial skin lesions, irritant dermatitis or worsening acne and difficulty with communicating clearly. I've witnessed all these. Many of these things happened to my mother.

David I have more to read.

Tom Holt Those could be submitted in advance to the meeting, and we certainly would accept those after the fact, but you're limited to three minutes.

Tom Holt Thank you.

David Would you mind reading this? It's your right.

David Thank you.

Tom Holt Thank you.

Tom Holt Do we have any other speakers signed up in advance to speak on this particular code?

Tom Holt I'll then open the meeting or the discussion to the members of the committee and the council.

David I requested that Stu take his place to finish reading what I have prepared.

Tom Holt You signed up for the other regulations. You hadn't signed up in advance for this.

David He signed up for both. Yes, he did.

Stu Summer What I would like to know is am I allowed to speak for three minutes to each of the regulations that are being discussed.

Tom Holt As long as they are specific to those regulations, the answer is yes.

Stu Summer Okay. Then I'll speak to the regulations about PPE.

Stu Summer Where do I start?

Tom Holt If you would identify yourself and we'll start the clock once you do.

Stu Summer My name is Stu Summer. I live in Hillsdale. Industrial hygiene is that science and art devoted to the anticipation, recognition, evaluation and control of those environmental factors or stresses arising in or from the workplace which may cause sickness, impaired health and well-being, or significant discomfort among workers or among the citizens of the community. OSHA relies on industrial hygienist to assess workplace safety, including air quality monitoring and air quality safety. A group of industrial hygienists in a 27-page letter to the CDC, NIH and other top government officials point out serious flaws in the CDC mask guidance. I quote from their letter We the undersigned, professional experts in the field of industrial hygiene with combined experience of nearly 150 years, are highly concerned with the inaccurate and misleading guidance being promoted by the CDC on its website regarding efficacy of masking to prevent COVID-19 and now similar guidance regarding respirators and request for immediate correction to said guidance. The guidance is overly broad, inaccurate, and especially inappropriate for children and the general public.

Stu Summer To summarize in 2020, decades of patient, rigorous science on masks was reversed based on low quality, hastily thrown together studies assembled by captured agencies such as the CDC. I say captured because it is an open secret that their science is hugely corrupted by pharmaceutical industry money. Since that date, much real-world data has accumulated further showing the communities, states and countries that had less masking---

Tom Holt One minute remaining.

Stu Summer Did the same or better than places with strict mask controls.

Stu Summer Thank you, Chairman.

Tom Holt Thank you.

Tom Holt Thank you very much.

Tom Holt I'd now like to open the discussion to the members of the committee and counsel.

Tom Holt Ms. Monroe.

Ann Monroe Yes.

Ann Monroe Thank you, Mr. Holt.

Ann Monroe Ann Monroe, member of the council. I just want to understand from the department. I'm running a facility. I'm expected to have 60 days in reserve of whatever the PPE is that I'm supposed to have. Then I have an emergency and I dip into those 60 days, so now I have only 45 days. Am I subject to some fines or some other way of discipline from the department for dropping below the 60-day supply that I'm supposed to have? How is that determined whether I'm in violation or I've used it for the right reason or how that works?

Tom Holt Does the department have a response?

Jaclyn Sheltry Thank you for your comment. The regulation does require an ongoing 60-day PPE supply. However, the facility is allowed to use the stockpile pursuant to the new section that was recently added to require facilities to use their stockpile and rotate through to reduced waste. A facility would be allowed to, in your case, take some of the stockpile to eliminate the potential for waste, but then replenish it. You're always maintaining that 60-day PPE stockpile amount.

Ann Monroe Well, that's assuming that it's available. I probably wouldn't have gone into the stockpile if it was available.

Jeffrey Kraut Just to clarify. If you dip into the stockpile and it's not available, what period of time are you granting the facilities to replenish their supply back to the 60 days without a penalty?

Jaclyn Sheltry The regulation doesn't set forth a specific period of time the department will look back on to allow the facility to replenish. However, we will keep tabs essentially on whether or not there is dips in the supply chain for various types of PPE and take that into account during surveillance.

Jeffrey Kraut There's no hard and fast rule that you are going to give guidance to the surveillance group. It's going to be flexible based on situational awareness. Is that correct?

Jaclyn Sheltry That's correct. We take into account everything regarding the supply chain issues, regional availability of PPE, etc.

Jeffrey Kraut Okay.

Jeffrey Kraut I have another question. I'm sure you saw the letter we received from Leading Age, which essentially repeats the comments that were made on at least four different code cycles. One of the things you said is we're picking there's three different methodologies and you have to take the most onerous one. If well, onerous may not be the word, but the one that requires the highest amount of stockpile. A lot of that methodology is based upon a peak COVID positivity rate that the state experienced two years ago and has subsequently changed. Do you foresee a change in those formulas? Because, you know, the Governor has, you know, declared the public health emergency over. So, you know, at what point would the department revisit the requirements?

Jaclyn Sheltry You're correct. The applicable positivity rate is set forth in the nursing home component of the regulations. Right now, there's no plans to change the three different methodologies used to calculate the applicable positivity rate. As you may be aware, we're using the Johns Hopkins study and at this moment the department hasn't found any similarly reliable study to set forth those rates until and if and when such a study exists, we would certainly be willing to go back and look at the regulation and reassess it. But at this time, we're going to continue using that applicable positivity rate formula.

Jeffrey Kraut When do these regs return to us again?

Jaclyn Sheltry The regulations, if adopted and promulgated today would expire around the end of November as an emergency basis. However, we are looking at promulgating them on a permanent basis right now.

Jeffrey Kraut The thing I would request as a council member is that when you do bring them back to us on an emergency basis, that we would like to know, and maybe if you make this aware, there will be other research by that time that would allow you to amend these regulations to be more contemporary. One of the problems I think we have as an industry is we pass regulations to deal with a certain set of circumstances, but we don't go back and evolve those regulations as our circumstances, technology, and knowledge change. I think one of the, particularly here, we should try to be as contemporary as possible with the best knowledge in science and research. That's all. Maybe before it comes back, there is some evidence of that occurring. Because I can't believe the research you've done today would support some of the regulation. That's all. But it's a good idea to keep a stockpile. I'm not arguing with that. It's just a question of how much and at what point.

Tom Holt Thank you, Mr. Kraut, and we would look forward to the department's response to that question when it comes back before us in the November cycle.

Tom Holt Mr. Lawrence.

Harvey Lawrence Harvey Lawrence, a member of the council. During the pandemic as a federally qualified health center and a primary care provider, one of the things that we struggled with at the outset and through most of the pandemic was the PPE. I would like the department to also look at what would be an acceptable reserve or stockpile for primary care providers.

Tom Holt Thank you, Mr. Lawrence.

Tom Holt Just a general comment for the members of the council who are speaking today. Not one who's ever been accused of speaking lightly. They're having a hard time hearing us up in Albany. When you're speaking into the microphones, if you would, please make sure you get them as close as you possibly can. That would be helpful.

Tom Holt Thank you.

Tom Holt Are there other questions?

Kevin Watkins I have a question here in Albany if I can.

Tom Holt Please go ahead and identify yourself.

Kevin Watkins Kevin Watkins, council member. I have a question regarding the regulations that we just talked about. Basically, the requirement for these entities to maintain this level of PPE can be quite costly, I think. Is there any relief, like state aid, to reimburse the entities of the costs for keeping this level of PPE?

Jaclyn Sheltry Unfortunately, I'm not aware of that, but we can discuss internally and let you know. The flip side of that is while we recognize that there are costs to both hospitals and nursing homes for this, we want the staff and the residents and patients to be as protected as possible, which is why we're looking at the 60-day PPE stockpile. The one other thing I would note is that statutorily nursing homes are required to maintain a two-month PPE stockpile. These regulations really coincide with the statutory requirements as well. We can discuss internally about federal programs to provide relief. Unfortunately, I'm not aware of any.

Unknown I apologize if this has been discussed in previous meetings, because I am a newcomer to the council. I am sort of curious about how there are specific PPE requirements were determined for both hospitals and nursing homes and what standards were used to establish that this was the appropriate recommendation for facilities.

Tom Holt I do think that was referenced in response to Mr. Kraut's question earlier, but if the department would like to elaborate on that specific part of the question, please go ahead.

Jaclyn Sheltry This is Jackie Sheltry again. You're correct. I referenced a study in 2020 from Johns Hopkins University that looked at, I believe, over 9 million patients in the entire Kaiser Health System in order to determine what applicable multipliers should be used by facilities, both hospitals and nursing homes and other types of health care facilities that are unaccounted for in this regulation, in order to ensure that patients are adequately

protected based on surge rates nationally. I can't speak to all of the multipliers, but that's what's really reflected in the regulation where we're looking at either certified beds or staff beds for nursing homes and hospitals, as well as the specific multipliers that the Kaiser recommended facilities use to ensure that there is sufficient PPE to rotate through and protect patients in the event of a surge.

Tom Holt Thank you.

Tom Holt Mr. La Rue.

Scott La Rue Good morning. Scott LaRue, member of the council. I just wanted to follow up on Mr. Watkins. There shouldn't be a belief that this does not cost the facility any financial resources or that you could take a 60-day stockpile and just rotate it into use and exchange it, because there's items in the 60-day stockpile that you wouldn't use 60 days' worth per a pandemic under normal operating procedures. You're going to be disposing or trying to give this to another entity to use. A perfect example would be N95 respirator masks. They weren't used in nursing homes prior to COVID. If you had a 300-bed nursing home, you might have 6 to 8 people and some kind of infection control protocol. A lot of this PPE, which I support, I never want to be in the position of not having PPE. I support the stockpile of it, but let's not pretend it doesn't cost anything. Some of these resources will have to be disposed of at the end of 60 days if you can't find someplace to donate them or have usage for them.

Scott La Rue Thank you.

Tom Holt Thank you, Mr. La Rue

Tom Holt Are there other questions from the members of the committee or council?

Tom Holt Anybody up in Albany?

Tom Holt I would just remind this vote is for the members of the committee only. The members of the committee that are present today are myself, Dr. Watkins, Dr. Yang, Mr. Kraut.

Tom Holt Has Dr. Rugge arrived in Albany?

Tom Holt The four of us. This is a vote amongst those four members of the committee.

Tom Holt All in favor?

All Aye.

Tom Holt Opposed?

Tom Holt That motion carries.

Tom Holt Thank you.

Tom Holt The next regulation that we have for emergency adoption is the surge and flex coordination system.

Tom Holt Can I have a motion for a recommendation of adoption of this merger regulation to the full Public Health and Health Planning Council?

Tom Holt Mr. Kraut.

Tom Holt Dr. Yang.

Tom Holt Thank you.

Tom Holt Ms. Jacqueline Sheltry and Jonathan Karmel of the department are available and will provide us with information on this proposal.

Jaclyn Sheltry Good morning again. This regulation amends both Title Ten and Title Eighteen, principally by adding a new Part 360 to Title Ten. The regulation consists of four core components. First, and principally, it authorizes the Commissioner of Health in the event of a declared state disaster emergency to direct regulated health care facilities to increase acute care bed capacity by up to 50%, postpone elective procedures, allow temporary physical plants changes, and designate health care facilities as trauma centers. Additionally, the regulation would direct hospitals to develop surge and flex response plans, which would include, among other things, plans for PPE, stockpile maintenance, staffing, maintenance and increasing bed capacity. Additionally, the regulation allows the Commissioner to waive various clinical laboratory requirements in order to increase specimen testing capabilities. And finally, in both Title Ten, as well as Title Eighteen, clarifies the Commissioner of Health's authority to suspend or modify regulations in the event of a state disaster emergency. This includes exceptions for health care facilities, hospitals, as well as adult care facilities in Title Eighteen. I know this is going to re adoption. No changes have been made since the last emergency adoption. However, proposed regulations are pending. The public comment period closed on August 8th and again, the department is actively reviewing the comments we received.

Jaclyn Sheltry Thank you.

Tom Holt Thank you.

Tom Holt We do have one individual in Albany who has signed up to speak on this regulation.

Tom Holt Mr. Summer.

Stu Summer Thank you, Chairman.

Stu Summer My name is Stu Summer. I live in Hillsdale. I'm a retired schoolteacher. Dear Council members, I'm here to comment on proposed Regulation 10360 in the context of the Commission's overall response in the last few years. The context includes an overall thrust to alter the functioning of governance in New York State, with a simple declaration of an emergency without transparent sharing of data with the public. This takeover included lockdowns, mask requirements, the curtailment of public meeting laws, forced vaccinations without informed consent as a condition of employment. Most egregious of all, the quarantine of any individual for any length of time in any facility in the state on the mere suspicion of contact with someone with a declared contagious disease without any provisions for how such quarantine would end. These are all regulations you have approved. I am a liberal Democrat, and this is against everything this country stands for.

All of these policies and actions were taken without a shred of epidemiological evidence that they would help. Thank God a judge saw through your quarantine regulation. One might be forgiven for thinking that this is all behind us. After all, Governor Hochul ended the endless state of emergency this week. We don't have to look far to see that the drive to undermine New York State governance is ever active in these regulations. The overall thrust of 10360 is to make the Health Commissioner and through her, the Governor, the de facto commander of every hospital in the state. The regulation codifies that during such a declared emergency, again, no doubt is necessary. The Commissioner can expand or contract hospital staffing, bedding, and equipment. She can move any patients she wishes anywhere she wishes. She can curtail family, legal counsel or health practitioners from seeing the patient. Indeed, in 361B, it declares, all authorities granted to the Commission shall be subject to any conditions and limitations that the Commissioner may deem appropriate. She gets to decide if she has any limitations. Quite incredible. Finally, in 362 A1 is the following. All the commissioners at the Commissioners direction health care facilities shall postpone up to 100% of non-essential elective procedures or allow such procedures only pursuant to conditions as the Commissioner may determine. This would lead straight to the situation we had before where hospitals, in order to stay in business, were forced to code enormous numbers of their NON-COVID patients as COVID thus driving up the perceived pandemic. A case in point was my County of Columbia, the Health Department.

Tom Holt Your time is expired.

Stu Summer I'll take a half a minute more.

Stu Summer Even though fewer people were dying than any of the last ten. Fewer people were dying, and yet it was an emergency. The fact that the regulation is in emergency adoption is either out of date given how close dropping of the emergency or it points to emergencies expected just around the corner, perhaps to the virus of the month.

Stu Summer Thank you, Chairman.

Tom Holt Thank you.

Tom Holt We have questions from the members of the committee or counsel to this regulation.

Kevin Watkins I'm asking for a point of clarification if I can.

Tom Holt Please, Dr. Watkins.

Kevin Watkins I was reading the regulation and under Section 400.1 where we are amending it to read as my guess it says, read as follow. If you go to Page 13 of that regulation where it starts off, where provide it further that should the governor declare a state disaster emergency pursuant to Section 28 of the executive law, which suspend or otherwise modify state statutes pursuant to his authority under Section 29-A of the executive law. Is there a way we can get that his changed to correlate with what the other sections say?

Jaclyn Sheltry Yeah. Absolutely.

Kevin Watkins Okay.

Kevin Watkins Thank you very much.

Tom Holt Dr. Watkins, thank you for the close reading of that language.

Tom Holt Are there other questions from the members of the committee or the council?

Tom Holt Seeing none that I would call the question all in favor?

All Aye.

Tom Holt Any opposed?

Tom Holt That motion carries.

Tom Holt The third and final regulation in front of us today is for adoption. Its COVID-19 vaccination of nursing homes and health care facility, residents, and personnel. We do have several folks who have signed up to speak regarding this proposed adopted regulation and just want to remind folks that you will be required to adhere to that three-minute time limit because we have multiple speakers here this morning.

Tom Holt Can I have a motion?

Ann Monroe Chairman.

Tom Holt Will do.

Tom Holt Hopefully you heard. Perhaps you didn't. Ms. Monroe's request that folks in Albany also speak a little bit more closely to the microphone because we're having a harder time here in the city as well.

Tom Holt Can I have a motion for the recommendation of adoption of the regulation to the full Public Health and Health Planning Council?

Tom Holt Dr. Yang.

Tom Holt Mr. Kraut.

Tom Holt Thank you.

Tom Holt Mr. Jonathan Karmel and Valerie Dietz of the Department are available and will provide us with information on this proposal.

Jonathan Karmel Hello. This is Jonathan Karmel from the department. This regulation for final adoption continues to require nursing homes and adult care facilities to conduct ongoing COVID-19 vaccinations of their residents and personnel. Specifically, the regulation requires nursing homes to offer COVID-19 vaccines to unvaccinated residents and personnel and to post conspicuous signage throughout the facility, reminding personnel and residents that the facility offers COVID-19 vaccinations. The regulation also requires adult care facilities to arrange for unvaccinated residents and personnel to receive COVID-19 vaccinations outside the facility, for example, at a pharmacy. Additionally, the regulation requires facilities to provide personnel and residents who declined to be

vaccinated, a written affirmation for their signature, which indicates that they were offered the opportunity to receive or have arranged a COVID-19 vaccination, but they declined. At past meetings, this regulation was approved on an emergency basis and was also on the agenda for information to be proposed for permanent adoption. It was proposed for permanent adoption on June 8th, 2022, with a public comment period that ended on August 8th, 2022. In response to public comments, some minor changes have been made to the regulation. The Department agreed with a public comment that excessive amounts of signage mutes the home like atmosphere of adult care facilities. While the regulation continues to require conspicuous signage, the regulation now makes it clear that signage is not required at all points of entry and exit and in each residential hallway. Also, references to re-admission of adult care facility residents have been removed because the department agreed with a public comment that the term readmission is not applicable to adult care facility residents. At this time, we'd be happy to take any questions.

Tom Holt Thank you, Mr. Karmel.

Tom Holt We do have several folks in Albany who have signed up to speak. I have on my list, Mr. Summer, Mr. ---, Ms. Sheldon, Mr. --- and Ms. -----. I'd ask you to come forward and be ready to speak, identify yourself, and your three minutes will start with that identification.

Tom Holt And reminder, if you would, please speak into the microphones.

Tom Holt Good morning again. My name is Stu Summer. I'm from Hillsdale, New York. It seems to me as if this regulation is actually either trying to or will make the health care crisis worse. The proposed regulation already beleaguered health care staffs of nursing homes to get the shots, get the shots, get the shots. They're free. Has the committee or the staff not noticed that there's a statewide shortage, indeed, a nationwide shortage of health workers? I personally know at least five nurses and doctors who have quit in the last year and a half rather than get the shots. I personally know two health care workers who have been severely injured by the shots. I know one healthy young doctor who died shortly after his second injection. Heart attack. You should know perfectly well by now that the MRNA is not stable, doesn't stay at the injection site, does lead to a whole range of injuries and doesn't work to decrease transmission or infection. We all know this now. If you want to help support patient well-being and safety, we hire the nurses and doctors and staff who refuse the now failed shots. If you want to encourage current staff to get the shots, how about mandating informed consent by publishing each injections ingredients and peer reviewed studies of each ingredient toxicology and the toxicology of the interactions between those ingredients. Good luck. It would be a great step forward. Thank you for your attention.

Tom Holt Thank you, Mr. Summer.

Tom Holt Again, I would just ask it to pull that microphone as close to you as you can. We'd appreciate it.

Tom Holt Thank you.

Tom Holt Excuse me. I'm just going to stop you. We're really not able to hear you. I'm not sure if that's the system or whether we need to have you pull. You literally can't get that thing close enough to your mouth to be able to have it work effectively.

Michael Can you hear this?

Michael This is Michael.

Tom Holt We can hear it, but it still is relatively low.

Michael Because we're right on the mic.

Tom Holt Yeah.

Michael Can you get the volume turned up in your room, please?

Tom Holt Let's just pause for a moment here so we can get this addressed.

Michael Do you hear this okay, Tom?

Tom Holt Yeah, that came through well.

Michael You want to try again?

Audience Member Mr. Chairman, members of the committee, can you hear me?

Tom Holt Let me go ahead and reset the clock and then again, identify yourself and we can hear you loud and clear now.

Tom Holt Thank you.

Audience Member Thank you.

Audience Member My name is --- --- and I'm from Columbia County. And as I mentioned before, I'd like to thank you for your service.

Tom Holt And again, I apologize to interrupt.

Audience Member A little bit louder.

Tom Holt Try to project a little bit more or try to get it closer to you, so that will be able to properly hear your important comments.

Audience Member Okay.

Audience Member If it's too loud in this room, I apologize.

Audience Member My name is --- ----. I'm from Columbia County. I've come today to talk to you about what my experience was at the Columbia County Fair recently. At the Columbia County Fair, some friends of mine and I have been active in health over the last couple of years. We had a booth at the Columbia County Fair, and we talked to members of the public at length over a period of six days. The primary concern in the members of the public that we spoke with was that they were no longer as concerned about what is sort of still an unknown health situation. Nobody really knows anymore what's going on with the so-called coronavirus, because there's so many different theories about it now. What they were really concerned about was the mandatory injections. The reason why

we're concerned about the mandatory injections is because everybody has a horror story. Everybody has a friend or a family member who has been hurt, who has died, who has not been able to work, not been able to go to school or something like that. As a result of those numerous stories, we got the sense that what has obviously been put forward as a solution is now clearly neither solution or what's the... There's a famous phrase for this. The solution is worse than the problem. There's certainly I'm sure a heartfelt effort part of this committee to make a good effort to be productive in the health care environment. The people have definitely spoken in my experience, and we would really like you to revisit the whole principle of mandatory injections. Communications regarding that, freedom of conscience with respect to it. The risk to one's job and the school and in general, our concern is that the direction is wrong. At this point the public is speaking, the data from the public is speaking. We would really like you to consider taking a better look at the science around the injections and the value, in particular the vaccine adverse event response system data. As a result of that, we think that this kind of injection system is misguided.

Audience Member Thank you very much.

Tom Holt Thank you very much.

Tom Holt Next on the list, I have a Ms. Sheldon. Come forward and identify yourself. Again, as a reminder, as close to the mic as you can get would be helpful.

Michael She's not going to speak, Tom. We're just moving around to the next one.

Tom Holt Michael. I'm sorry. We didn't hear what you expressed there.

Michael Ms. Sheldon is not going to speak. We're moving on to the next speaker.

Tom Holt If you would identify yourself.

David Can you hear me now?

Tom Holt Yes, we can.

Tom Holt Thank you.

David Would you like me to speak this loud?

Tom Holt Yes, that would be great.

David Okay.

David My name is David. I live in Ghent, Columbia County, New York. Regarding the COVID-19 vaccinations of nursing home and adult care facility residents and personnel. I am strongly, personally against these regulations as they can clearly be seen to be attempts to coerce and pressure people who have no interest in receiving the experimental MRNA gene therapy. That's in the words of a Moderna executive. Take issue with him if you don't agree. I believe strongly that that is their right of refusal, and they should not be pressured, much less coerced. I'm deeply. Moreover, I'm deeply saddened that we live in a world today where our fellow citizens and neighbors are working to subvert and undermine the constitutional rights of their fellow Americans. I'm talking about government overreach that's happening in places like this committee room and the one in New York City. I cannot

understand how it is that anyone could believe it's in their purview to subvert the constitutional rights of their fellow citizens on the most fundamental level autonomy over their own bodies. At the time of the writing of the Constitution, smallpox was circulating in the community and yet there's no provision made for the government to declare states of emergency and grant themselves more and more power. New Yorkers are waking up to the tyranny that's taking place. This committee, I may remind you, is not made up of elected officials. Our elected representatives have wisely voted against these measures. The power grab by Hochul to give herself power to declare whatever disease she wants an emergency and willy nilly decide who will be detained and quarantined. I've read the proposed regulation and that's exactly when it provides for. The language is wide open to abuse of power where so-called health authorities can detain, and quarantine American citizens based on nothing other than hearsay that they've been exposed to whatever virus of the month Hochul declares is of concern. This is the very definition of government overreach, as these matters have already been debated and voted down wisely by our legislature. This is an attempt to bypass the correct legislature procedure. If indeed we were ever to arrive at a place where such measures are needed, the legislature is the place where these regulations should be passed, not in the back room in Albany or in New York City. I believe transparency is what's missing, because people are much less inclined to do the wrong thing when they know what their fellow citizens are watching. In closing, I'd like to know which of you members voted in favor of the famous Section 2.13 regarding isolation and quarantine procedures? Is it a matter of public record? I was informed by a gentleman earlier that it's not. I'm going to ask those of you that voted in favor of--- Do not raise your hands.

Tom Holt Your time is expired.

Tom Holt Thank you.

David I see now that you've all voted in favor. I'm very disappointed. Disappointed in you as a citizen.

Tom Holt Your time is expired.

David To revisit, as just suggested, the scientific---

David Vaccination of your fellow citizens.

David Thank you.

Tom Holt Thank you.

Kayla Can you hear me?

Tom Holt Closer would probably be better.

Kayla Okay, how about this?

Tom Holt If you can keep it there, I think we can hear you okay.

Kayla I'm just about eating it.

Kayla Okay. I don't have that much more to say.

Tom Holt If you would, please just identify yourself for the record.

Kayla My name is Kayla.

Tom Holt Thank you.

Kayla What came to mind all the time, the recent time we just celebrated the 75th anniversary for the code. The basis of that code is that you cannot give a medical experiment to someone without their informed consent. Part of that consent is something that still addressed ingredients within the vaccine, and for most people, that is not presented to them. Therefore, for receiving something without the proper consent. I think we need to look at that as human beings, what we're giving people and what we're expecting, also this aspect of being coerced. The fear that somebody will lose their job, that there's pressure that you won't be able to see your loved ones in the hospital or nursing homes. Children not being able to go to school without a vaccine. This is all entirely humanist of us. We need to band together. We need to share. We need to be in community. You find the higher rates of suicide. I believe in health. I really believe in doing the best that you can possibly for the people you love.

Tom Holt One minute remaining.

Kayla The people that you care for, whether you're in hospital, at home, in nursing homes or wherever it is. As part of our care for one another, we need to have a broader reach so that people that want a chance to have a vaccine or a process or a procedure done, they should have the choice. Just as someone should have the choice not to, because maybe there's something else that they know is best for them.

Kayla Thank you.

Tom Holt Thank you.

Tom Holt Those are all the folks that we had signed up in advance to speak on this regulation.

Tom Holt We now turn it open for questions for the members of the committee or the council. Just as a reminder, the members of the committee who are with us today are Dr. Watkins, Dr. Yang, Mr. Kraut and myself.

Dr. Kalkut I have a question for the department.

Dr. Kalkut Is there guidance on what you mean by vaccination? The number of vaccines, the types of vaccine? As everyone knows, at the end of August, a new vaccine was given emergency use authorization that has specificity against an Omicron variant. Where does that all fit in? What's the guidance for facilities?

Jonathan Karmel Sure.

Jonathan Karmel So, first of all, this regulation is just requiring the offering of the vaccine to nursing home residents and personnel and adult care facility residents and personnel. Now, that the new vaccine has come out, that's the only booster that is available, so that is

what would be offered, and residents and personnel would be provided information about. We will provide further guidance as needed.

Tom Holt Ms. Monroe and then Mr. Kraut.

Ann Monroe Thank you and thank you for your comments from the public. We know that there's always a line between encouragement and coercion. It's hard sometimes to know where that line is. It can often be a result of whether or not there is an incentive or a disincentive to the facility to have its residents vaccinated. I'm asking the department if there is any either financial or on the reverse, some putative disincentive for a facility to have more or less of its residents vaccinated.

Valerie Deetz Good morning. My name is Valerie Dietz. I'm the Deputy Director for the Office of Aging and Long-Term Care. Again, to further what Mr. Karmel already said, we are expecting that nursing homes and adult care facilities encourage, educate and offer the vaccine. Either offer it in the nursing home or on the adult care facility side to arrange so that individuals could be vaccinated at a clinic or at a community provider's office. There is no incentive that I am aware of. Again, from a public health standpoint, we do strongly encourage and support vaccinations for our nursing home and our adult care facility residents and staff.

Valerie Deetz Thank you.

Ann Monroe To understand you, if an if a facility does not have a certain level of vaccinated residents, there is no consequence to that facility from the department's perspective. Is that accurate?

Valerie Deetz On the offering of the vaccination, the regulations clearly require that there's documentation to support that the residents were provided, that they had opportunity to consent for the vaccine. The facilities must maintain that documentation on file for the department to review in the event of any surveillance activities.

Jeffrey Kraut You're not going to get exactly an answer, okay? Let's be clear. If there is a public health emergency and residents are dying at a record number because they're not vaccinated, I think that would be pretty much incentive to the facility to go and affirmatively make sure that everybody gets vaccinated. Because, you know, we had a major when you look at mortality rates in congregant living facilities, were particularly vulnerable and not only in nursing homes, adult homes or in the OPWDD residences. Those are you know; I would hope that notwithstanding the regulations, you know, the ownership and the oversight governance of these facilities are going to do the right thing at the right time, but I don't think you're going to get an answer to your question.

Ann Monroe Well, I'll accept that I may not get an answer to my question, but I---

Jeffrey Kraut And I'm not getting them off the hook. I'm just trying to...

Ann Monroe I mean, short of residents dying daily, I just want to be sure that one of the members of the public spoke about that.

Jeffrey Kraut Yes.

Ann Monroe About where is persuasion and where is coercion. I think if there is an incentive to the provider to do one or the other, that's what we're going to see. I'm trying to understand where the line is. If the department's not prepared to talk about that, I accept that. I am concerned that in some cases, especially if payment varies by vaccination status, we will see more coercion than just opportunity.

Valerie Deetz Thank you for that comment.

Valerie Deetz And just for purposes of clarity, there is no payment incentive for higher rates of vaccination.

Jeffrey Kraut There you go.

Ann Monroe Thank you for that answer.

Tom Holt Thank you.

Tom Holt Mr. Kraut.

Jeffrey Kraut Yeah, I'm going to without being repetitive, we received yet additional a different letter from Leading Age on some of the issues. I'm not going to repeat the comments I made under the previous regulation about revisiting some of this. The thing that I just want to have a question. I know you're not going to rewrite the regulation, but the regulation is similar, but not identical to the federal regulations. There is the potential, as they point out in the letter, to generate confusion and maybe trigger duplicative penalties or actions. Maybe when you issue the regulation, if it's approved in the dear administrative letter, you can clarify to the industry if there is a difference of opinion between those two regulations, what will control and how to avoid the concern that's been raised. I'm not expecting you to rewrite it now, but I think when you would distribute it, there should be some advisory to respond to that issue. You don't have to respond now. I'm just suggesting that that's a thing that you should take under consideration.

Tom Holt Thank you.

Adam Deputy Commissioner for the Office of the Aging Can you hear me?

Adam Deputy Commissioner for the Office of the Aging Adam, Deputy Commissioner for the Office of Aging in long Term Care. I think it's a very valid point in our department's intention is not to cause confusion. Quite the opposite. We will take that under consideration. Certainly.

Tom Holt Thank you.

Tom Holt Other questions from the members of the committee or counsel?

Tom Holt Seeing nothing, then I'll call the question.

Tom Holt All in favor?

Tom Holt Opposed?

Tom Holt And then that motion carries, and it will go to the full council for adoption later this morning.

Tom Holt Mr. Kraut, that concludes the meeting of Codes and Regulations.

Jeffrey Kraut Thank you very much.

Jeffrey Kraut Just to let the audience know, we're going to call a special Public Health and Health Planning Council meeting to take up one item and then at the conclusion of that meeting we'll return to the normal committee day agenda for the Establishment Committee.

Jeffrey Kraut I'm calling now the September 15th special Public Health and Health Planning Council meeting, welcoming members, participants, and observers. You heard at the outset of today's events about that we're broadcasting under the open meeting law. Have synchronized captioning. Not to speak over each other. That we've asked everybody who is in attendance to make sure that their presence is recorded on a form which is outside the meeting rooms in both Albany and in New York. I have one item on today's agenda. I'm going to turn the meeting over for to Mr. Holt to give us a report on the actions of the Committee on Codes, Regulation and Legislation.

Jeffrey Kraut Mr. Holt.

Tom Holt Thank, Mr. Kraut.

Tom Holt At today's meeting of the Committee on Codes, Regulations and Legislation, the committee reviewed and voted to recommend adoption of the following emergency regulations for approval before the full council. First up, the hospital and nursing home personnel protective equipment requirements. Ms. Jacqueline Sheltry and Jonathan Karmel from the Department have presented this regulation to the committee on Codes and are available to the Council should there be any questions of the members. I so move to accept this regulation.

Jeffrey Kraut I have a motion from Mr. Holt. I have a second from Dr. Yang.

Jeffrey Kraut Was there any comments or questions from the counsel for the Department?

Jeffrey Kraut Hearing none. I'll call for a vote.

Jeffrey Kraut All those in favor?

All Aye.

Jeffrey Kraut Opposed?

Jeffrey Kraut I don't see anything in Albany.

Jeffrey Kraut The motion carries.

Tom Holt Second was surge and flex health coordination system. Jacqueline Sheltry and Jonathan Karmel of the department have presented this regulation to the committee on

Codes and are available to the council should there be any questions of the members. I so move the adoption of this regulation.

Jeffrey Kraut I have a motion from Mr. Holt and I have a second by Dr. Berliner.

Jeffrey Kraut Are there any questions from the council?

Jeffrey Kraut Dr. Boufford.

Dr. Boufford Thanks.

Dr. Boufford I have one relative to this. I've raised in the council a couple of times the issue that this surge and flex arrangement is only applies to acute care hospitals and has not taken into account an integrated response to emergencies from primary care facilities or local health departments. This council had a series of meetings, public meetings a couple of years ago laying out the issues there. I had requested on several occasions that if this couldn't be amended and it was, I think the sense from staff was that it was focused on hospitals, that there would be a complementary or hopefully an integrated approach for future emergency response that would include providing things like PPE solutions, vaccines and others to primary care and local health departments integrated with hospital action. Secondly, I think the point that Mr. Lawrence made. This issue for long term care in local health, I mean, I'm sorry for primary care and local health departments that would need to be first coverage by the state, probably because there would need to be some financing mechanism that was looked at rather than assuming that they could buy and hold in storage that kind of whatever the reserve would need to be for them. Mainly, I think the distribution issue was the key issue. I want to raise it yet again. I haven't seen and maybe in this there could be a staff comment on whether those conversations have begun or if they could begin and we could get a report back at a future council meeting.

Dr. Boufford Thank you.

Jeffrey Kraut So, you know, right now you've heard Dr. Boufford's comments and Mr. Lawrence's comments. Could we have a response at the next meeting on October 6th, so we can kind of see where the department is. I don't know who I'm directing that at, but Colleen, could you please put that on the list when you do discuss the agenda and have one of, I think we're going to have four or so reports from the Commissioner, the deputy commissioners. Just find out who has that responsibility and just have it discussed.

Jeffrey Kraut Is that acceptable?

Dr. Boufford Yes.

Jeffrey Kraut Thanks, Dr. Boufford.

Jeffrey Kraut Yes, Dr. Torres.

Jeffrey Kraut Make sure it's turned on and get close.

Dr. Torres Just for clarity. At the next meeting, we would then review any updates so that we could finally vote at the full council.

Jeffrey Kraut Well, I think between answering the question and drafting regulations, there's a little work to be done. I'd just be happy to get an answer. Just what's the current thinking on this and that's the issue. I don't know. The answer might be the state maintains a stockpile, you know, because the state was maintaining a stockpile. I just don't know how much is rotated and stuff like that.

Dr. Boufford Just to add, I think the evidence was that my deeper concern was economics, primary health care facilities and local health departments were not included in the planning or the implementation response to the COVID emergency. It was very hospital focused and no criticism of the hospital's response, but it seems to me our responsibility and I've raised this probably on a couple of council meetings over the last several months to understand what the thinking, what the plan might be around a more integrated response plan for going forward or something that was complementary to this relative to non-hospitals.

Jeffrey Kraut It's really planning for the third wave of whatever variation may occur.

Dr. Boufford Natural disaster. It doesn't have to be...

Jeffrey Kraut I don't think it'll be a definitive answer, but it will at least be responsive to Dr. Boufford's request is what are you thinking about? And then between thinking and making it a reality, there's some process issues the department has to go through.

Dr. Torres Does this tie back to Mr. La Rue's comments earlier regarding the timeframe on the stockpile?

Jeffrey Kraut No, I think that's a separate issue that we've asked them to respond to. And that, we asked that before it returns to us, which would be 60 or 90 days, that that issue is addressed.

Dr. Torres I'm just making sure that this vote has nothing to do with that.

Jeffrey Kraut No, no. This vote stands on the regulations as proposed and placed in our book untouched.

Jeffrey Kraut Any other questions?

Jeffrey Kraut Hearing none, I'll call for a vote.

Jeffrey Kraut All those in favor?

All Aye.

Jeffrey Kraut Opposed?

Jeffrey Kraut The motion carries.

Jeffrey Kraut One more.

Jeffrey Kraut Sorry.

Tom Holt Thank you, Mr. Kraut.

Tom Holt Lastly, we have the COVID-19 vaccinations of nursing home and adult care facility residents and personnel. Mr. Karmel and Ms. Dietz from the department presented this regulation to the committee on Codes and are available to the council should there be any questions of the member. I so move the adoption of this regulation.

Jeffrey Kraut I have a motion from Mr. Holt. I have a second by Dr. Yang.

Jeffrey Kraut Are there any questions on this motion?

Jeffrey Kraut Any comments from the council?

Jeffrey Kraut Hearing none, I'll call for a vote.

Jeffrey Kraut All those in favor?

All Aye.

Jeffrey Kraut Opposed?

Jeffrey Kraut The motion carries.

Tom Holt That concludes my report.

Jeffrey Kraut Thanks, Mr. Holt, and thank you, members of the committee and the council.

Jeffrey Kraut The next full meeting of the Public Health and Health Planning Council is going to be held on Thursday, October 5th. I'm sorry. You write five. I thought it was six. It's my brother's birthday, so I know I'm going to see him because I was going to call him and say I can't come. It's going to be on Thursday, October 6th, both in Albany, in New York City, and now I'll adjourn the council and turn over the meeting to Dr. Kalkut, who will run the Establishment committee.

Jeffrey Kraut Thank you very much.

Dr. Kalkut Thank you.

Ann Monroe Dr. Kalkut, could you tell us, or someone tell us who is present in Albany? I see Dr. Watkins, but I don't know if anyone else is there. Dr. Watkins is our sole member there?

Dr. Kalkut Yes. I'm the sole on the council here, yes. I see a name tag for Dr. Rugge, but I don't think he's made it here yet.

Dr. Kalkut Did you get that?

Dr. Kalkut I'm going to convene the Establishment of Project Review Committee. Let's dive in. The first is 221218C, United Memorial Medical Center in Genesee County. There's a conflict and recusal by Mr. Thomas who's leaving the room. This is to certify a new extension clinic at 8103 Oak Orchard Road, Batavia, providing primary care, other medical

specialties, and a single specialty ambulatory surgery service, which is gastroenterology. The department recommends approval with conditions and contingencies.

Dr. Kalkut Can I ask for a motion?

Dr. Kalkut Dr. Berliner. Second, Mr. La Rue.

Dr. Kalkut Shelly.

Shelly Glock Thank you.

Shelly Glock Good morning. Shelly Glock from the department. This application, United Memorial Medical Center is requesting approval to construct and to certify a new extension clinic to be located on Orchard Road in Batavia. The proposed site will be known as the RRH Batavia Destination Campus. It will also contain extension clinics operated by the Unity Hospital of Rochester and Rochester General Hospital. All three of those hospitals are operated by Rochester Regional Health. The other two applications, which are administrative review applications are being reviewed by the department concurrently. The extension clinic will be located in a health professional shortage area of primary care, and it will provide a variety of medical services to the residents of Genesee, Orleans and Wyoming counties. The clinic will provide a wide array of services, including primary care that you can see listed, including otolaryngology, allergy rheumatology, endocrinology, infusion, neurology, pain management, urgent care, gastroenterology, orthopedics, imaging and lab. While this will be a new site of service, the majority of visits to the Rochester Regional Health Batavia Destination Campus are being relocated from currently spread out, old and inefficient existing practices and clinics. In the first year after completion, the applicant is projecting that roughly a little over than 78% of the projected volume will actually consist of existing visits that are being currently seen at those other locations. The majority are currently being take are taken place on their North Street campus, which is facing a severe parking problem. Following completion of this project, it's anticipated that some of those old medical inefficient medical office buildings on that North Street campus could be demolished to mitigate the parking issue. With the majority of those providers who are currently seeing patients in those buildings, those visits would be relocated to this new site, which is approximately 2.2 miles from the hospital campus. Projecting about 21% Medicare, Medicaid and charity care. Total project costs will be funded 90% through a bond issuance with the remaining project, cost will be met with Rochester Regional Health Funds. I do want to note that the Finger Lakes HSA did recommend approval on the project, as does the department, with conditions and a contingency.

Dr. Kalkut Thank you.

Dr. Kalkut Questions from the committee on this project?

Dr. Kalkut Any member of the public who wishes to speak?

Dr. Kalkut I note that United Memorial has representatives to answer any questions.

Dr. Kalkut Ms. Monroe.

Ann Monroe If I may, I did ask Shelly about there is a federally qualified health center very close to this operation. I'm always interested in the impact something like this would have

on an FQHC. I asked if there was a letter of support or of disagreement from the FQHC and was told that there is not. I'm assuming that there's... Because this is kind of moving current services to a different place, the FQHC is not affected in terms of pulling patients from one to the other. Could the applicant just confirm that for us?

Dr. Kalkut Thank you.

Dr. Kalkut Please state your name and position.

Dan Ireland Good morning. Dan Ireland, President of United Memorial Medical Center. Thank you for the question. Actually, we have a very productive and great working relationship with Oak Orchard. While we don't have a letter in the packet, we offer many complimentary services with them. This this project will enhance it by bringing specialists and consulting specialists that they already refer to. It really is going to make it easier for their patients to access health care and allow us to continue to bring some of the services listed that are not being relocated. The growth services will be bringing specialists are right now their clientele have to travel out of the community for.

Ann Monroe Thank you.

Dr. Kalkut I believe that was it.

Dr. Kalkut Thank you for your answer.

Dr. Kalkut Once again, any other questions?

Dr. Kalkut I would call for a vote.

Dr. Kalkut Please say aye for approval.

All Aye.

Dr. Kalkut Any opposed or abstentions?

Dr. Kalkut The motion carries.

Dr. Kalkut Next is 211143E AMSC LLC doing business as Downtown Bronx ASC in Bronx County. This is to transfer 100% of membership interest in AMSC, LLC, doing business as Bronx County ASC. The department recommends approval with conditions and contingencies with an expiration of the operating certificate three years from the date of completion of the application.

Dr. Kalkut May I have a motion?

Dr. Kalkut Dr. Berliner. A second by Mr. La Rue.

Dr. Kalkut Shelly.

Shelly Glock Thank you.

Shelly Glock AMSC is an existing Article 28 Multispecialty Ambulatory Surgery Diagnostic and Treatment Center and are located on Brook Avenue in the Bronx. This application is

requesting approval to transfer 100% of its current member interest to People's ASC LLC, whose proposed members you can see listed in the exhibit. This center began operating in December of 2016. The physicians at the center have performed gastroenterology and pain management procedures, as well as orthopedic, plastic and podiatry surgeries. The incoming members intend to bring on additional specialties including vascular, general, urology and gynecology. Dr. ---- I apologize if I mispronounced that. Who is Board Certified in Internal Medicine and Gastroenterology will serve as the Medical Director. AMSC has negotiated a transfer agreement for emergency backup services with Montefiore Medical Center, which is just about four miles away. They're projecting 47% Medicaid and the department, based upon a review of character and competence of the proposed members and financial feasibility, is recommending approval with conditions and contingencies with an expiration of the operating certificate three years from the date of the completion of the application.

Dr. Kalkut Thank you.

Dr. Kalkut Questions from committee members.

Dr. Kalkut Mr. Kraut.

Jeffrey Kraut I have a question, but it wouldn't be directed to the department maybe when if the applicant. Let's just make sure there's nothing for the department, then I have one for the applicant.

Dr. Kalkut Certainly.

Dr. Kalkut Let's hold that in abeyance.

Dr. Kalkut Are the questions for the department?

Dr. Kalkut Dr. Berliner.

Dr. Berliner Shelly, is there any change to the facility that's part of this application in terms of the new services that would be provided?

Shelly Glock You mean like construction? I do not believe so. It can be confirmed by the applicant.

Dr. Kalkut Yeah, we can also pose that to the applicant.

Shelly Glock This is a transfer membership.

Dr. Kalkut Other questions for the department?

Dr. Kalkut Can I ask the representatives from the applicant to come up.

Dr. Kalkut Please introduce yourself.

Joan Camera Good morning. My name is Joan Camera. I'm a consultant to the applicant, this Doctor Lawrence ---, who will serve as the Medical Director, and Jay Silverman, who is legal counsel to the applicant.

Dr. Kalkut Great.

Dr. Kalkut I'd ask you to get as close to the mic as you can.

Joan Camera Yes. Will do.

Jeffrey Kraut My question is and it's a little unfair, you may not be able to answer it, but I'm going to ask it anyway, because you may know the answer. Because you're the new management group. You hadn't been involved in its operations before. When we look at an article 28, we were just surprised to see they accepted no Medicaid managed care. You have a substantial increase in Medicaid managed care. Is it that the doctors that are joining have existing practices that are migrating those patients? Do you have any idea why they excluded Medicaid managed care?

Joan Camera Actually we did have a chance to have a discussion with the current operator about that. The information that was provided under the 2020 was, in fact, flipped. It was a clerical error. It should have been reflected as Medicaid managed care visits, although they were very low, and that was attributable to just the late start on their Medicaid contracting. That they can now report. Fast forward as 2022, there's actually, I believe you said there are eight Medicaid managed care contracts in place plus two pending.

Jeffrey Kraut You're not starting from zero. You have contract because there's no way if you take over that you're going to get to 3 million in revenue without contract.

Joan Camera Correct. Correct.

Jeffrey Kraut Thank you.

Dr. Kalkut Dr. Berliner.

Dr. Berliner Given that you're bringing in a whole variety of new, more intensive services, will there be any new construction that's necessary?

Joan Camera No, there are currently five OR's and there's no anticipated right now, no anticipated changes to the physical plant.

Dr. Berliner Thank you.

Dr. Kalkut Other questions from the committee?

Dr. Kalkut I actually have one. In the summary, the facility was shut down in early 2020 and the current year is 2020. What's happened with the site over the past couple of years?

Jeffrey Kraut Well, maybe I'll let Dr. --- address that.

Unknown It's Dr. ---, but that was very close. Very close. We still been operating. We are approximately 1,100 mostly gastroenterology procedures right now with some mix of gynecology. There's the current cash flow. Obviously, we operate at a pretty big deficit, but we're fully operational.

Dr. Kalkut 2020 was the last year when it was fully operation.

Unknown Prior to COVID.

Joan Camera During 2020, the information we got from the current operators is that they closed even earlier than Governor Cuomo's Executive Order of March, and they didn't reopen until July, which was two months subsequent to Governor Cuomo's reopening. So, that's why the numbers that you're seeing are rather low. Some of the doctors had originally committed to practice at the site, did not return once the COVID pandemic restrictions were lifted.

Dr. Kalkut Thanks for the clarification.

Dr. Kalkut Any other questions for the applicant?

Dr. Kalkut Thank you.

Dr. Kalkut Any other members of the public who wish to speak?

Dr. Kalkut Seeing none, I'd call for a vote.

Dr. Kalkut All in favor?

All Aye.

Dr. Kalkut Opposed?

Dr. Kalkut Abstain?

Dr. Kalkut The motion carries.

Dr. Kalkut Thank you.

Dr. Kalkut Next application is 221095B, Empire CSS LLC doing business as Empire Center for Special Surgery in Richmond County. This is to establish and construct a new multi-specialty ambulatory center at 845 Hylan Boulevard in Staten Island. There's a note from the department on page one of the exhibit. It should read. Jason Kofinas, M.D., who is a board certified in obstetrics and gynecology, will serve as the center's Medical Director and managing member. The department recommends approval with conditions and contingencies with an operating certificate expiration of the operating certificate from the date of issuance.

Dr. Kalkut Can I have a motion for this?

Dr. Kalkut Dr. Berliner.

Dr. Kalkut Second, Mr. La Rue.

Dr. Kalkut Shelly.

Shelly Glock Thank you.

Shelly Glock This application Empire CSS is requesting approval to establish and construct an article 28 Diagnostic and Treatment Center to be certified as a multi-specialty freestanding ambulatory surgery center. The facility will consist of four operating rooms and will originate initially provide general surgery, gynecology, orthopedic, otolaryngology, pain management, podiatry, and neurologic surgery services. The proposed members of Empire CSS LLC are highlighted in the exhibit. They are Gabriel Figueroa, OMF AFC Holdings LLC and then you have Dr. Jason Kofinas, 100% member of that Holding LLC. Between those two individuals, you have 100%. As mentioned, Dr. Kofinas is board certified in obstetrics and gynecology. He will serve as the Medical Director and the managing member. The applicant has entered into a transfer affiliation agreement with Staten Island University Hospital and they're projecting approximately 5% Medicaid, 2% charity care. Budget seems reasonable. Based upon our review, the department is recommending approval with conditions and contingencies with an expiration of the operating certificate five years from the date of its issuance. If I could just add something. There is only one other operational freestanding in Richmond County and there is another one that is pending, so I just wanted to mention that.

Dr. Kalkut Thank you.

Dr. Kalkut Questions from committee members.

Dr. Kalkut Any member of the public who wishes to make a comment?

Dr. Kalkut See none, I'll call for a vote.

Dr. Kalkut All in favor?

Dr. Kalkut Opposed?

Dr. Kalkut Abstain?

Dr. Kalkut The motion carries.

Dr. Kalkut Next is 221224E, 21 Reade Place ASC LLC doing business as Ridgeview Endoscopy in Dutchess County. This is to transfer 41.66% ownership to five new members of the sole member LLC at the department recommends an approval with a condition.

Dr. Kalkut Motion by Dr. Berliner.

Dr. Kalkut A second by Mr. La Rue.

Dr. Kalkut And Shelly, back to you quickly.

Shelly Glock Thank you.

Shelly Glock 21 Reade Place ASC is an existing single specialty gastroenterology freestanding ASC located in Poughkeepsie. This application is seeking approval to transfer 41.665% membership interest from the seven existing members to five new members, which you can see in the exhibit on page one. Individual background reviews indicate that those proposed members have met the standard for approval under public health law, and this application is being brought to the council as required because the total percentage of interest being transferred is greater than 25%, so needs to go before the council. The

center did begin operations in July of 2014. There are no program changes as a result of this request. The department is recommending approval with a condition.

Dr. Kalkut Thank you.

Dr. Kalkut Questions from committee members?

Dr. Kalkut Any member of the public who wishes to speak?

Dr. Kalkut Seeing none, I'll call for a vote.

Dr. Kalkut All in favor?

All Aye.

Dr. Kalkut Opposed?

Dr. Kalkut Abstain?

Dr. Kalkut The motion carries.

Dr. Kalkut Next is 221267E, Advanced Endoscopy LLC doing business as Advanced Endoscopy Center in the Bronx. Is a transfer of 10.71213% ownership interest from three withdrawing Class B members to One New Member LLC. Department recommends approval with a condition.

Dr. Kalkut Motion?

Dr. Kalkut Dr. Berliner reliably and Mr. La Rue.

Dr. Kalkut Thank you.

Dr. Kalkut Shelly.

Shelly Glock Advance and Advanced Endoscopies Center is an existing single specialty gastroenterology freestanding Article 28 ASC. They're located in the Bronx, and they are seeking approval to transfer 10.712% membership interest in the Center to PE Health Care Associates, LLC. The current and the proposed membership of Advance Endoscopy Center as shown on page three of your exhibit. You can see that the current ownership consists of three members. Class A, which is 13 physician members at 60%. Class B are three non-physician members: Barry Tanner, Christina Morrison, and David Young at 10.7%. And then the Class C member is MMC, GI Holdings West Inc, which is a not-for-profit entity with Montefiore Medical Center as its path of sole corporate member at 29%. This application is really a legal restructuring. There's no new individuals associated with the ownership of the center, and upon approval, the Class A and Class C members will remain the same, but the three existing Class B members will transfer their entire membership interests to PE HA. The center began operations in May of 2007. There's no changes and services location being proposed. Dr. Stein is the current Medical Director and he'll remain as the Medical Director. There no project costs and the department is recommending approval with a condition.

Dr. Kalkut Thank you.

Dr. Kalkut As mentioned in the executive summary, this is the first of six CON applications with PE Health Care Associates involved in this sort of transfer.

Dr. Kalkut Any questions from the committee?

Dr. Kalkut Mr. Kraut.

Jeffrey Kraut Mine is for the applicant.

Dr. Kalkut Why don't we have the applicant come forward. Please introduce yourself.

Frank Cicero I'm Frank Cicero, a consultant representing the applicant.

Market President Market President for the six ASC's and for all of New York State.

Barry Tanner I'm Barry Tanner. I'm one of the members and also part of BE.

Jeffrey Kraut Thank you.

Jeffrey Kraut Got the right people here.

Jeffrey Kraut It's more a generic question and it'll apply to all the applications. What's the reason for the restructuring just in general and then I have one other question.

Frank Cicero I'll take that, and Barry may wish to say more. PE has a significant presence in New York State, a total of 16 centers that they're involved with. These are the six original centers that they're involved with, including two that were in existence before there was even limited life for ambulatory surgery centers. The other centers have PEHA, physicians, endoscopy, health care associates as a member. These six applications are simply a corporate restructuring to make all of them the same to simplify their daily life.

Jeffrey Kraut Understand that.

Jeffrey Kraut Who is responsible for managing the centers the oversight of the quality?

Frank Cicero The physicians are in charge at this entity, the individuals, this entity is in a minority position.

Jeffrey Kraut They don't have delegated power?

Frank Cicero No.

Jeffrey Kraut Each entity has its own governance process, its own quality overview. It creates a standards and policies.

Frank Cicero That's correct.

Jeffrey Kraut Okay.

Jeffrey Kraut And you do the administrative back office, billing?

Frank Cicero That's also correct.

Jeffrey Kraut Thank you.

Frank Cicero Yep.

Dr. Kalkut Other questions for the applicant?

Dr. Kalkut Any other members of the public who wish to make a comment?

Dr. Kalkut I see none.

Dr. Kalkut Thank you very much.

Dr. Kalkut I'd like to call for a vote.

Dr. Kalkut All in favor?

All Aye.

Dr. Kalkut All opposed?

Dr. Kalkut Abstained?

Dr. Kalkut The motion carries.

Dr. Kalkut Next is 221268E, Carnegie Hill Endoscopy, LLC in New York County. There's a conflict and recusal by Dr. Lim, who's leaving the room. This is to transfer 18.66% ownership interest from three withdrawing Class B members to One New Member LLC. The department recommends approval with a condition.

Dr. Kalkut I need a motion.

Dr. Kalkut Dr. Berliner and Mr. La Rue for a second.

Dr. Kalkut Thank you.

Dr. Kalkut Ms. Glock.

Shelly Glock Thank you.

Shelly Glock This is the second of the six applications that Dr. Kalkut mentioned were before the committee today. This one, the Carnegie Hill Endoscopy LLC is an existing single specialty Gastroenterology Freestanding ASC. Located on Lexington Avenue in New York, New York. This application is seeking approval to transfer 18.66% from the Class B members to the Center to PE Health Care Associates, which I now know is as PEHA. The current ownership consists of three member classes. Class A has 21 physician owners and one entity owner at 74%. You can see this in the exhibit class. We have three non-physician members and those are Barry Tanner, Christina Morrison and David Young, and the Class C member is Mt. Sinai Ambulatory Ventures, which is a wholly owned subsidiary of Mount Sinai Health System. Again, this application is a legal restructuring. There's no new individuals associated, and the application is being processed concurrently

with five other that are before you today. Upon our review, we've determined that the proposed members meet public health standards under public health law, and we are recommending approval with a condition.

Dr. Kalkut Thank you.

Dr. Kalkut Questions from the committee?

Dr. Kalkut Anyone from the public who wishes to comment?

Dr. Kalkut Seeing none, I'll call for a vote.

Dr. Kalkut All in favor?

All Aye.

Dr. Kalkut Opposed?

Dr. Kalkut Abstain?

Dr. Kalkut The motion carries.

Dr. Kalkut 221269E, East Side Endoscopy LLC doing business as Eastside Endoscopy and Pain Management Center. Dr. Lim continues to be out of the room because of a conflict. This is to transfer 41.9 to 6% ownership interest from three withdrawing members to A New Member LLC. 83.33338% interest from two withdrawing members to an existing member within to Member LLC and 9.36% from an existing member to a New Member within a Member LLC. Department recommends approval with a condition.

Dr. Kalkut Dr. Berliner makes a motion. Mr. La Rue seconds.

Dr. Kalkut Shelly.

Shelly Glock Eastside Endoscopy is an existing dual single specialty freestanding ASC. Certified for gastroenterology and pain management that's located in New York County. Seeking approval to transfer on the membership 40.3648 membership from three withdrawing Class B and an additional 1.5612 from withdrawn Class A. You can see the details of that change of ownership on Page Four of the exhibit. The class members are eight physician owners and three physician owned LLC's. Class B are the three members Barry Tanner, Christina Morrison and David Young, and the Class C member is Mt. Sinai Ambulatory Ventures. Upon approval of this application, there's no... I'm sorry. The center began operating in January 2010. They have four procedure rooms. They're providing gastroenterology services and they later added pain management as a second specialty as I previously noted. There's no change in services or location. This application is one of six before you today. The department is recommending approval with a condition.

Dr. Kalkut Thank you.

Dr. Kalkut Questions from the committee?

Dr. Kalkut Questions from the public?

Dr. Kalkut I call for a vote.

Dr. Kalkut All in favor?

All Aye.

Dr. Kalkut Opposed?

Dr. Kalkut Abstain?

Dr. Kalkut The motion carries.

Dr. Kalkut Please have Dr. Lim come back in the room.

Dr. Kalkut 221270E, Endoscopy Center of Niagara LLC in Niagara County is to transfer 49% ownership interest from one withdrawing Class A Member LLC to two New Class A Member LLC. Department represents approval with a condition.

Dr. Kalkut Dr. Berliner makes the motion. Second by Mr. La Rue.

Dr. Kalkut Shelly.

Shelly Glock Endoscopy Center of Niagara. This is an existing single specialty Gastroenterology Freestanding ASC. This application is seeking approval to change the composition of the Class A membership. The current membership consists of co-owner ownership consist of two membership classes. Class A is center of Western New York and Class B member is North Towns Venture LLC, which is comprised of two entities at 50% and Niagara Falls Memorial Medical Center 50%. The Class A Member Endoscopy Center of Western New York is divesting from the facilities, so the entire 49% Class A ownership will be transferred to Two New LLC as depicted in your exhibit whereby 60 Holdco LLC will acquire a 37.21% membership in PE Health Care Associates will acquire 11.79%. All members of the Two New Member LLC are the current members of ECWNY Individual background indicates the proposed members have met the standard and public health law for approval. This application is being reviewed concurrently with the others you see before you today. The department is recommending approval with a condition.

Dr. Kalkut Thank you.

Dr. Kalkut Questions from the committee?

Dr. Kalkut Questions from the public?

Dr. Kalkut Ms. Monroe.

Ann Monroe Please. This is really just a clarifying question. If all of the Class A and Class B members of Endoscopy Center of Western New York are now going to be Class A members through the two other LLC's what's changing? Is anything changing? I know will remain the majority owners, but I'm just wondering what's different and why it's coming before us.

Shelly Glock It's coming before you because it's a legal transaction that's required by statute to come before you, quite honestly. If you look at the current and proposed

structure, although the individual members are, you know, not changing the Class A Center of western New York LLC they are divesting so they will not... That LLC is not part of the proposed entity. The ownership will be PE Health Care Associates, PEHA and 60 Holdco. Holdco LLC. Those will be as well as the Class B members not changing. It's a legal transaction that needs to go. You can see that the actual members, the individual members aren't changing, but the LLCs are.

Jeffrey Kraut This comes up like we sit here, and we look at some application, say, what are we doing? I just want to probe what your thinking was. There's no change in location. There's no change in service. There's no change in facility. Because there's greater than a 5 or 10% change in ownership, the statute, not regulation, I think. The statute requires us to review the character and competence of people that are coming in. But if the group is an existing group and they are rearranging their ownership percentages, it raises the question does it have to come up to a full review and this could be done administratively? These are one of these things that I think the department and maybe the Office of Long-Term Care in Aging will take a look at that there are certain transactions. If all they're doing is rearranging and there's no new members, do we necessarily have to... It shouldn't come to us. I think clearly, if it's a new member, hasn't run a nursing home, it's got to come to us. Where they're rearranging the decks on the chair, and it meets the code, and it beats legal and character and competence review internally. It's a question of like, what are we doing here, really? Is in that context that you asked the question because I'm trying to identify examples that we might at one day come back to some regulatory restructuring or reform, so we spend less time on low value applications and more time on things in the context of the prevention of gender and health equity and things that need a little more of our attention. That's where the question comes from, right?

Ann Monroe Well, yes, frankly. It's all the same people.

Dr. Kalkut It's all the same. There may not be a better example.

Jeffrey Kraut So, Adam, I just would suggest, you know, you kind of came in the tail end here. We're basically saying if there is an app and I know it's a statute, so it requires a legislative response, but maybe that can be placed into a next package of bills for the next session is if all we're doing if the ownership group is the same, if all they're doing is rearranging stock ownership among themselves or a restructuring, does it really have to come to the council or could it be processed under administrative review, but recognizing it's a statutory requirement and we can't. That was the context for Ann's question.

Jeffrey Kraut Thank you.

Dr. Kalkut Point of clarification.

Attorney at Department of Health I'm an attorney at the Department of Health and counsel. I just wanted to clarify that when there are changes within an already existing established legal entity that may not necessarily come to the council, but if there is a new legal entity that is not already established to operate, correct, correct. Even if you have the same individuals, once you bring in a new legal entity that is not licensed to operate or by our statute established to operate that facility, correct, that triggers it having to come.

Dr. Kalkut Converting it to an LLC.

Attorney at Department of Health Two different legal entity.

Jeffrey Kraut You're right. Talk amongst ourselves if it still needs to come up.

Attorney at Department of Health We'll work on streamlining things.

Jeffrey Kraut I mean, just streamlining the process.

Attorney at Department of Health Just understand that to be established to operate a facility, you have to come to that.

Jeffrey Kraut Got you. I appreciate that clarification.

Dr. Kalkut Right now, the streamlining would have to be me talking faster. It looks like so.

Dr. Kalkut Questions from the public?

Dr. Kalkut Seeing none, I'll call for a vote.

Dr. Kalkut All in favor?

All Aye.

Dr. Kalkut Opposed?

Dr. Kalkut Abstain?

Dr. Kalkut The motion carries.

Dr. Kalkut 221271E, Endoscopy Center of Western New York LLC in Erie County to transfer 100% ownership from 15 withdrawing members to Two New Member LLC's. The department recommends approval with a condition.

Dr. Kalkut Can I have a motion?

Dr. Kalkut Mr. La Rue.

Dr. Kalkut Second, Dr. Berliner.

Dr. Kalkut Thank you.

Dr. Kalkut Shelly.

Shelly Glock Thank you.

Shelly Glock This application Endoscopy Center of Western New York is existing single specialty gastroenterology to freestanding ASC, located in Erie County. They are seeking approval to transfer 100% membership from 15 withdrawing members to Two New member LLC's, which you can see on Page Three. The Class A members are 12 physician members at 75.93%. Class B has three non-physician members. Those are Barry Tanner, David Young and Christina Morrison. Upon approval of the project, they'll have one Class A member and one Class B member, both comprised of subsets of the current individual members. Again, this is one of what five others that we're looking at today. Upon approval,

they will, as I mentioned, have one Class A member, one Class B member. No changes in services or operations. The department is recommending approval with a condition.

Dr. Kalkut Thank you.

Dr. Kalkut Questions from the public?

Dr. Kalkut All in favor?

All Aye.

Dr. Kalkut Opposed?

Dr. Kalkut Abstain?

Dr. Kalkut The motion carries.

Dr. Kalkut Next is 221272E, Island Digestive Health Center in Suffolk County. This is to transfer 10% ownership from three withdrawing members to One New Member LLC. The department recommends approval with condition.

Dr. Kalkut I have a motion. Mr. La Rue.

Dr. Kalkut Mr. Thomas.

Dr. Kalkut Shelly.

Shelly Glock Island Digestive Health Center, LLC is an existing single specialty gastroenterology Article 28 Freestanding ASC there located in Suffolk County. They're seeking approval to transfer 100% membership interest in IDHC to PE Health Care Associates, LLC. The current ownership consists of three member classes; Class A, Class B, Class C. I do want to note that the class A member is... Oh, I'm sorry. I said 100. Thank you, Mark for correcting. Approval to transfer 10% membership. The Class A member is advanced GI LLC, which is comprised of five physicians, Class B is three non-physician members and the Class C member in this application is the Good Samaritan Hospital Medical Center, whose sole corporate member and established cooperator the Catholic Health System of Long Island. Upon approval of the project, the Class A and Class C members will remain the same. The three existing individual Class B members will transfer their entire membership interest in the center, which is 10% to PEHA. The PEHA has three members, which are the current individual Class B members. There's no change in services being proposed. The department is recommending approval with a condition.

Shelly Glock Thank you.

Dr. Kalkut Questions from the committee?

Dr. Kalkut Comments from the public?

Dr. Kalkut Let's call for a vote.

Dr. Kalkut All in favor?

All Aye.

Dr. Kalkut Opposed?

Dr. Kalkut Abstain?

Dr. Kalkut Motion carries.

Dr. Kalkut This is to establish to construct a new diagnostic and treatment center at 663rd Street in Brooklyn to provide primary care and other medical specialties. The department recommends an approval with condition and contingencies.

Dr. Kalkut Can I have a motion?

Dr. Kalkut Dr. Berliner. Mr. La Rue.

Dr. Kalkut Thank you.

Dr. Kalkut Ms. Glock.

Shelly Glock Is a not-for-profit corporation. Requesting approval to establish and construct an article 28 Diagnostic and Treatment Center to provide primary care and other medical specialty services in a health professional shortage area for primary care. The proposed center will be in renovated leased space in Brooklyn. Has seven board members that you can see in the exhibit on Page One, including the proposed Medical Director, Dr. Kellman. The individual background review indicates that the proposed members have met the standard for approval under public health law. The proposed clinic is affiliated with the school, which operates under charter from the Board of Regents of the New York State Education Department to operate a school for children aged 5 to 21 diagnosed with autism spectrum disorders and or pervasive developmental disorders. The establishment of the DTC is part of an overall plan to provide comprehensive care to the community that is underserved. Goal is to reduce preventable hospital admissions for people in the community through treatment and education. The target service area includes neighborhoods of Borough Park and Bensonhurst, but they will also serve residents in adjoining neighborhoods in the entire Brooklyn Borough. Commodities Medical Center, which is 1.8 miles away is expected to be the backup hospital, and they are projecting Medicaid utilization at about 72% with charity care at 2%. The department has reviewed the application for character and competence, public need, and financial feasibility, and we are recommending approval with conditions and contingencies.

Dr. Kalkut Thank you.

Dr. Kalkut Any questions from the committee on this proposal?

Dr. Kalkut Members of the public who wish to speak?

Dr. Kalkut Let's then call for a vote.

Dr. Kalkut All in favor?

All Aye.

Dr. Kalkut Opposed?

Dr. Kalkut Abstain?

Dr. Kalkut The motion carries.

Dr. Kalkut 221212E, Smile New York Outreach LLC in Bronx County. This is to transfer 100% ownership interest from one withdrawing member to a new member within the Sole Member LLC. Department recommends approval with a condition and contingency.

Dr. Kalkut May I have a motion?

Dr. Kalkut Dr. Berliner. Mr. La Rue.

Dr. Kalkut Thank you.

Dr. Kalkut Shelly.

Shelly Glock Smile New York Outreach LLC, is a proprietary Article 28 Diagnostic and Treatment Center with a fixed site on in the Bronx on Cotonou Parkway.

Shelly Glock Thank you.

Shelly Glock They're requesting approval to transfer a 100% ownership interest in the DTC to one new member. The sole member of Smile is Dr. Steven Marshall, and he's proposing to transfer his membership interest to New Member Smile Outreach Holdings LLC, whose sole member is Dr. Craig ---. The individual background review indicates that the proposed member has met the standard for approval under public health law. Smile provides in-school preventative dental services, which are exams, cleanings and sealants and some restorative care to underprivileged children in New York City schools. They're currently authorized to the school-based Health Center Dental Program to serve children in Bronx, Kings, New York, Queens, Richmond, and Westchester Counties. The fixed site is for the delivery of restorative care that can be provided at the school site and where referral to Smile's community dentist network is not preferable or if not practical for the parents or guardians. There will be no changes in services, staffing or the dental director as a result of this application. They're projecting almost 70% Medicaid, charity care, 15%. The full purchase price is being financed through Reachout Healthcare America LTD. The department is recommending approval with a condition and a contingency on the project.

Dr. Kalkut Thank you.

Dr. Kalkut Questions from the committee?

Dr. Kalkut Dr. Berliner.

Dr. Berliner I don't recall. I may be wrong about this, but I don't recall a dental facility ever being a DNTC.

Jeffrey Kraut It's funny you say that because I have a written down. I wish we saw more of these because there's a desperate need for dental health in our primary care infrastructure and network. Mr. Lawrence could probably speak more extensively than me,

but I was trying to... I don't remember ever approving a DNTC for dentistry. Just a great program and I know you guys have some history with this.

Dr. Kalkut We have a very similar program at school health that was legacy of the Lutheran Hospital, now part of NYU Langone. There are 43 sites with dental care. We're talking about not just exams, but dental treatments. It's a great program.

Dr. Kalkut Yes, I would think so. The program I was talking about, and it's immaterial to this is in the schools themselves, not a free standing. The school doesn't own it. The school rents or allows us to practice.

Shelly Glock It's allowed under public health law. We do have others I'm told by staff. It's licensed DTC providing the services as outlined.

Dr. Berliner If I'm one of the, you know, the old Lutheran places that I'm located in a school, I'm getting a fixed fee.

Jeffrey Kraut Yeah.

Dr. Berliner Right?

Jeffrey Kraut It's under the FQHC model. The Article 28 the FQHC not, the dental is independent of the FQHC. This is a freestanding one and we just wish we saw more of them.

Hugh Thomas Good morning. Hugh Thomas, member of council. Just a quick question. This is an established the DNTC center, the ownership of which is being changed, correct? I'd be curious, given the conversation, which is we run the school-based programs but not like this should be curious at some point to have a little background at some point. No rush. About when it was established in its history because you're right, we've not had in my time here I've never heard of one. I'd be curious just when it got established and what their track record has been.

Shelly Glock I don't have that information. I believe the applicant is here.

Dr. Kalkut Why don't we ask them. Regale us with your history.

Frank Cicero Frank Cicero, a consultant to the applicant. Dr. Abramowitz apologized for not being here today. He could not cancel patient visits today. This was initially established as a DNTC center about ten years ago as a demonstration project and came back to the department for its indefinite life and a part of the condition to become a full-fledged DNTC center was to establish the site on Cortona Parkway. That was done and exists today and that's where children who are identified through the school-based programs are referred to if they require restorative dentistry. The mix has been essentially the same since the start and projects to be the same. This is just a transition. Dr. Marshall came from your program, Dr. Kalkut, and helped to make this place what it is with a true dentist in charge of it. Dr. Abramowitz hopes to continue that in the next succession, as Dr. Marshall is near retirement age.

Dr. Kalkut Thank you.

Frank Cicero Thank you.

Dr. Kalkut Any other questions for this applicant?

Dr. Kalkut Thank you, Frank.

Dr. Kalkut Let's call for a vote.

Dr. Kalkut All in favor?

All Aye.

Dr. Kalkut Opposed?

Dr. Kalkut Abstain?

Dr. Kalkut The motion carries.

Dr. Kalkut Next is 221184E, Emerest Certified Home Health Care of New York LLC doing business as Royal Care. Certified Home Health Care of New York is in Bronx County. Dr. Torres and Mr. La Rue declare an interest. This is to establish Emerest Certified Home Health Care of New York LLC as the new operator of Cabrini Certified Home Health Agency as a certified home health agency. Currently operated by Cabrini of Westchester and relocated to 798 Southern Boulevard in the Bronx. The department recommends approval with condition and contingencies.

Dr. Kalkut Can I have a motion?

Dr. Kalkut Dr. Berliner. Mr. Thomas.

Dr. Kalkut Thank you.

Dr. Kalkut Shelly.

Shelly Glock Emerest Certified Home Health Care of New York LLC is requesting approval to be established as the new operator of Cabrini of Westchester, its which is in Article 36 Certified Home Health Agency. The seller is a not-for-profit corporation, and they also operate a 304 bed RACF located at the same address. Cabrini Certified Home Health Agency is currently authorized to serve the Bronx, New York, and Westchester Counties. The two proposed members are shown in your exhibit each of 50%. Those proposed members are also current members of Royal Care Certified Home Health Care, which is the operator of a licensed CHA serving Nassau in Queens counties. The individual background review indicates that those proposed members have met the standard for approval under public health law. Their budget shows primary Medicare what we would expect to see what the CHA, but they're also projecting about 25% visits will be Medicaid charity care. Based upon our review of character and competence, public need and financial feasibility, the department is recommending approval with contingencies and a condition.

Dr. Kalkut Questions from any of the committee members?

Dr. Kalkut Questions from the public?

Dr. Soto I'm sorry. I was struck by looking at the proposed number of visits and patients and the degree of growth in the program between the current and year three. Currently in 2022, they had 763 visits and they're projecting 26,000 in year three. I wanted to understand about what they're going to be doing that would generate that kind of dramatic growth in operation?

Dr. Kalkut Please come up.

Dr. Kalkut May I ask you to please introduce yourselves?

Debra Lynch Sure.

Debra Lynch Debra Lynch, consultant for the applicant, Mrs. Albert Salem, the applicant.

Dr. Kalkut You just got to get close.

Debra Lynch I got to get closer.

Debra Lynch Certainly the plan growth was building on the experience of the operator previously with the CHA in Nassau and Queens. Was a very deliberate growth within the first year. The one thing Royal has done through their experience with the existing CHA is focused on employees and the transition of employees has an active program. I think we addressed it in the application of just onboarding staff, continuing education of staff, really working in an electronic network to quickly educate on board staff. There is a deliberate growth within that first year and then confident that will meet the projections in the third year. Does that answer your question?

Dr. Soto Where are these patients going to be coming from? I mean, are you thinking you will be taking patients away from all the other CHA's? Are you thinking you're going to generate new demand for service?

Debra Lynch We have established relationships with Cabrini and they'll continue. Cabrini has been restricted to Westchester. Their focus has been on within the nursing home. This CHA will serve the three counties that will serve Bronx, Westchester, and New York. I mean, that's a large service area with the potential growth there.

Dr. Kalkut Dr. Torres.

Dr. Torres To your point as well because the industry is so challenged right now with nurses and especially with home health aides. Incredibly so. As I was looking at the numbers, I was like, wow, that's pretty aggressive as well. It's wonderful, but the realistic picture of the workforce is a concern for the industry at large. And the more North you go, the more challenging it becomes, more rural the area, depending even in the Westchester region, the more challenging it is. I don't know the point of saturation for, you know, Dobbs Ferry, which is where more or less Cabrini is located, but I don't see such a large census piece. Again, this is just what we're all facing in the industry.

Josh Klein Josh Klein, the CEO of Royal Care. I'm happy to report that as a company, we are one of the best recruiting aspects within the home health position for methods that we do for recruiting. We have established facilities that advance growth for caregivers. We have lines to come to work for us versus other companies. Actually, just a little, tiny little background. We've built facilities that have spa services for caregivers that give them free

manicures, pedicures, and advanced education to continue. We recruit better than most anyone else in this arena as well as for nurses. We have the confidence that we are recruiting our recruiting at a rapid pace, although that you're hearing and others that do not have that opportunity for the efforts that we do within recruiting.

Dr. Kalkut I see there's a Royal certified CHA in Nassau, in Queens. Is there a track record of volume growth? The initial question in that entity?

Josh Klein Yes, there is.

Dr. Kalkut A fivefold increase over two years.

Debra Lynch I would say yes. It was similar and maybe even a little above. Royal took over the operations of Franklin CHA serving Nassau and Queens and successfully grew that.

Josh Klein I would just like to say during COVID from all the other entities in reference to home health care, we had a 93% during the pandemic of attendance for the efforts that we were able to do. Versus anybody else, our retention rate is higher than anyone else in the industry.

Dr. Kalkut Dr. Soto.

Dr. Soto Maybe that's the council member. This is a question more on our side. Is there any outcomes or penalties if someone doesn't meet their projection?

Dr. Kalkut I don't believe so. I defer to the department. I don't believe so other than the financial implications of not getting their volume projections.

Dr. Kalkut Mr. La Rue, did you have a comment?

Mr. La Rue I was just curious what published data you were using to say that your 93% retention rate was better than anyone else in the industry? I'm not aware of any published information about what the retention rates were during the pandemic.

Josh Klein This is not CHA, I was talking about the licensed home agency. We kept data from the best to our ability in reference to that.

Mr. La Rue How did you get it from your competitors to know that that was a factual statement?

Josh Klein We've had some internal conversations with lots of them. Did we get the actual numbers, we believe that we are, but we don't have that. I agree with you.

Dr. Kalkut Why don't you just reframe it anecdotally?

Josh Klein Anecdotally. Yes, yes. Correct.

Josh Klein I apologize for that.

NYSDOH Is Royal a not-for-profit organization or a for profit?

Josh Klein A for profit.

NYSDOH This is a case where a CHA is going from a current not for profit entity to a for profit entity.

Dr. Kalkut Yeah.

NYSDOH Is that an issue that this committee talks about?

Jeffrey Kraut Well, we talk about it when it's presented, but it's been the trend in the industry.

NYSDOH Understood. The question I would ask is, is it a good trend or is it a troubling trend?

Jeffrey Kraut Well, I would say it's a good question to ask. What we've been focused on is access. You have an existing facility that is taking care of patients. We tend to air on the side of not disrupting that and giving other providers who may be better equipped or making more investments in order to keep maintaining and growing access. It is a valid question to ask, but it's going to come up in almost every application save hospitals that this is going to come up because the industry has moved into an LLC and a for profit, something that we don't recognize enough. We do talk about it frequently in this room. You should have been here for Pace.

Jeffrey Kraut I'm sorry. I don't want to prolong the conversation. Let's hope Mr. Hertz is going to give us some kind of an overview of the office long term care and aging at our full meeting on the 6th, and I'm sure that he may touch upon that. It will not be the focus of his conversation.

Mr. Hertz I certainly will.

Dr. Kalkut Any other questions for the applicant?

Dr. Kalkut No other questions from the public.

Dr. Kalkut I'd call for a vote.

Dr. Kalkut All in favor?

All Aye.

Dr. Kalkut Opposed?

Dr. Kalkut Abstain by Mr. La Rue.

Dr. Kalkut Thank you.

Dr. Kalkut And Mr. Thomas.

Dr. Kalkut The motion carries.

Dr. Kalkut Thank you.

Dr. Kalkut My apologies.

Dr. Kalkut A certificate of dissolution. This is JGB Health Facilities Corporation request consents for filing to dissolve JGB Health Facilities Corporation. The department recommends approval for questions. We need a motion following.

Dr. Kalkut God, I'm falling apart.

Dr. Kalkut Motions by Dr. Berliner and Mr. La Rue.

Applicant Questions only.

Dr. Kalkut Ms. Monroe.

Ann Monroe They went out of business. Am I correct?

Ann Monroe Dr. Soto and I were talking about this. If they're already out of business, what is our role? Is there any value in our reviewing this?

Dr. Kalkut This is a legal clean up issue. Any corporation that has been formed under establishment when it dissolves, has to come back to us. I would just say an administrative requirement right now or a regulatory reform.

Attorney at Department of Health Well, it's really a statutory requirement because they were required to come to become established. If they want to remove from their purposes or if they would like to dissolve, it also is considered a change in the existing medical facility and so that is a regulatory component of the requirement that it comes, but it is also a requirement that we approve the change or the dissolution or Supreme Court purposes if they are going to court, but particularly for charitable purposes for the Attorney General's Office.

Ann Monroe They haven't really dissolved yet. They're waiting for us.

Attorney at Department of Health The legal requirement to be able to seek permission from the Attorney General's charities bureau to give them permission to dissolve.

Dr. Kalkut We will see everybody on October 6th for the next full council meeting.

Dr. Kalkut Thank you.