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TRANSCRIPT

Tom Holt Good morning. We're going to go ahead and get started with the Codes Committee.

Tom Holt Good morning. My name is Tom Holt. I'm the Chair of the Committee on Codes, Regulation Legislation. I call this morning's meeting to order. We do have a number of speakers that are here today. I would remind folks that you have three minutes. I will serve as the timer for that. We would ask that folks not be redundant of the speakers that might have gone before you. We would ask that if you had submitted your letters in advance, which we received many to just please not be redundant to what has already been received. Those communications had been distributed to the council and we've had them available for our review prior. We just remind the members of the overall counsel that are here today for the purposes of voting the members of this committee are myself, Mr. Kraut, Dr. Yang, and Dr. Soffel. This morning we have five regulations on the agenda. First up for emergency adoption, the investigation of communicable disease.

Tom Holt Can I have a motion for a recommendation of adoption to this regulation?

Tom Holt Dr. Yang.

Tom Holt Mr. Kraut.

Tom Holt Mr. Jason Riegert and Dr. Lutterloh of the Department are available and will provide us with information on this proposal.

Jeffrey Kraut I think Jackie's doing it.

Tom Holt Albany, we're ready for you. Not hearing you.

Jeffrey Kraut Let's use hand signals.

Jeffrey Kraut You're on mute. We can't hear you.

Jeffrey Kraut We'll give you a second.

Jeffrey Kraut Jaclyn, can you just get a little closer to your mic? You're not coming in strong enough.

Jeffrey Kraut Is this Jason's reg?

Jaclyn Sheltry I believe so, yes.

Jeffrey Kraut They're working on the sound, I suspect, from his face. Very good reading body language now.

Jeffrey Kraut Jason, maybe you dial us. I mean, seriously, we can call and we'll put the mic to the phone.

Jason Riegert You can hear me?

Jeffrey Kraut Yes, we can. You guys were muted. We weren't.

Jason Riegert They told us that you had to unmute us.

Jason Riegert Can you hear me now?

Jason Riegert Thank you for that.

Jason Riegert Again, my name is Jason Riegert. I'll be the one that's presenting this regulation. It's an emergency regulation concerning the investigation of communicable diseases. Just to briefly summarize, the council's seen this one before. The emergency regulation repeals and replaces Section 2.6 of the State Sanitary Code relating to communicable diseases to update and clarify existing local health department authority for investigating communicable disease cases. Specifically, the updates to Section 2.6 include setting forth specific actions for local health departments to take to investigate a case, suspected case or outbreak or unusual disease. Clarifying the authority of the Commissioner of Health to lead disease investigation activities in certain circumstances, such as where there's multiple jurisdictions are affected and codifying the requirement that local health departments report to the Department of Health during a disease outbreak. Emergency regulations also amend Section 405.3 of Title 10 to require hospitals to report syndromic and disease surveillance data during an outbreak of a highly contagious communicable disease and to allow the Commissioner of Health to direct hospitals to accept patients during such an outbreak. Finally, the regulation updates the term monkeypox to mpox in two places within the State Sanitary Code. This regulation was last approved on April 18th on an emergency basis. There is a change to the regulation. It removed Section 58-1.14 of Title 10, which clarified clinical laboratory reporting requirements for certain communicable diseases. This was removed because that section of regulation has since been adopted in a separate package concerning clinical laboratory. It's no longer needed in this emergency package. Again, we're asking the Codes Committee today to approve the emergency regulation that will enable the department to continue to effectively monitor the spread of communicable diseases throughout New York State.

Jason Riegert Thank you.

Tom Holt Thank you, Jason.

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

Tom Holt Nobody signed up from the public to speak on this regulation, just would ask one last time.

Tom Holt I would call the question, all in favor?

All Aye.

Tom Holt Opposed?

Tom Holt That motion carries.

Tom Holt Thank you.

Tom Holt This motion now goes to the full council for its adoption.

Tom Holt Next up, we have the hospital and nursing home PPE requirements. I just want to acknowledge that we did receive several communications from the associations on this regulation. They were distributed to the committee members and the council in advance.

Tom Holt Can I have a motion for recommendation of adoption of this regulation.

Tom Holt Dr. Yang.

Tom Holt Mr. Kraut.

Tom Holt Jaclyn Sheltry and Jonathan Karmel from the department are available and will provide us with information on this proposal.

Jaclyn Sheltry Good morning. This is Jaclyn Sheltry from the Department of Health. I'm here again to present the PPE regulations for hospitals and nursing homes. I won't spend too much time on the details of the regulations because I know that these have been before your committee multiple times before. I will just highlight that the regulations continue to require a sixty-day PPE stockpile for both hospitals and nursing homes, or, in the case of hospitals, the ability to extend for a ninety day stockpile requirement in the Commissioner's discretion. Again, the regulations continue to require the same types of PPE for both hospitals and nursing homes, including gloves calculated by single count, gowns, surgical masks, N95 respirators. I'll finally note that the methodology continues to remain unchanged, relying principally on 2020 Johns Hopkins methodology in consultation with Kaiser Health. However, again, the regulations add a provision both for hospitals and nursing homes that if an alternate methodology is developed, the Commissioner of Health has discretion to suspend these regulations and implement alternative regulations pursuant to that new methodology. In addition to these unchanged provisions, the one component to the regulations that I do want to highlight this committee is in Section 415.19, that is the nursing home section of the regulations, pursuant to feedback from the industry, the department has amended the definition of applicable positivity rate, which is one of the factors used in the nursing home stockpile calculation for their PPE to clarify for the nursing homes that were previously designated by the department as a COVID only facility, those facilities should use the statewide average, which is approximately 20.15%, not their actual facility statewide average given the populations that these designated nursing homes served during the pandemic. That is the only substantive change in these regulations.

Jaclyn Sheltry I'll turn it over to the committee if there are any questions about the content.

Tom Holt Thank you.

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

Tom Holt We had no one signed up from the community to speak on this.

Tom Holt I would call the question, all in favor?

All Aye.

Tom Holt Opposed?

Tom Holt Abstentions?

Tom Holt That motion carries.

Tom Holt Thank you.

Tom Holt Next up for adoption, we have clinical staffing and general hospitals.

Tom Holt Can I have a motion for adoption?

Tom Holt Dr. Yang.

Tom Holt Mr. Kraut.

Tom Holt Thank you.

Tom Holt Mark Hennessey from the department is available and will provide us with information on this proposal.

Mark Hennessey This regulation implements statutory requirements in Public Health Law 2805T, which require that regulations be promulgated relating to staffing in intensive care units, in critical care units and requirements for reporting performance. The department, after receiving feedback, arrived in this regulation at a requirement for a minimum of one to two patient ratios for those units and a creation of a template for reporting purposes. In the case of the one to two ratio, there are allowances for the attending practitioner to determine whether a patient fits within the criteria for that level of ratio coverage. This regulation also sets a number of factors that need to be considered in development of the plan. The public comment period on these regulations closed on May 1st. The department received four comments from labor and advocacy organizations as well as hospital associations. General theme of those comments was seeking flexibility on the implementation of the new requirements and comments regarding the importance of implementing specific ratios around staffing in intensive care units and critical care units. There was also a comment urging the quick adoption of these regulations, which are part of why we're here today. The comments, in essence, represent the differing interests of general hospital management and general hospital employees. No additional changes have been made to the regulations based on public comment. The department recommends approval of these regulations at this time.

Tom Holt Thank you, Mark.

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

Tom Holt Not seeing any.

Tom Holt Again, we had known, and the community signed up to speak.

Tom Holt With that, I will call the question.

Tom Holt All in favor?

All Aye.

Tom Holt Opposed?

Tom Holt That motion carries.

Tom Holt Thank you.

Tom Holt Next up, we have inclusion of health equity impact assessment as part of the Certificate of Need Application process. As I had indicated, we do have a number of speakers who have signed up in advance for this. I would just ask you folks to get ready to come up. Let me just read ahead of time the order in which we'll be going and then we'll go through the process here. We have Henry Moss, Lois Utley, Heidi Siegfried, Francesca Barone, Deborah Sokoler and Mbacke Thiam, Margaret Graham, Lloyd Bishop and Faith Daniel and would remind you all to be ready to speak following the person immediately in front of you. Again, would ask if your comments are simply redundant from what you might have submitted to us in advance to please not just repeat yourself. We've already received those communications, have had a chance to review them in advance. Also if your comments have been addressed already by a speaker in front of you would ask you to consider that as well. I will be the timekeeper. You have three minutes. I'll give you a notice when you have one minute remaining.

Tom Holt With that, can I have a motion to adopt this recommendation?

Tom Holt Mr. Kraut.

Tom Holt Dr. Soffel.

Tom Holt Thank you very much.

Tom Holt Johanne Morne, Tina Kim and Jason Riegert from the department are available and will provide us with information on this proposal.

Johanne Morne Thank you.

Johanne Morne Good morning, everyone. I'm Johanne Morne, Deputy Commissioner of the Office of Health Equity and Human Rights for the Department of Health. I am joined by Tina Kim, Deputy Director of the Office of Health Equity and Human Rights, as well as Casey Griffin, Health Program Coordinator, and Jason Riegert, associate counsel on screen to seek the committee's recommendation to the full council for adoption of the regulations regarding the inclusion of the Health Equity Impact Assessment as part of the Certificate of Need process. As way of background, a new Section 2802B of the Public Health Law will go into effect on June 22nd of this year and require Article 28 health care facilities seeking the council or Commissioner of Health approval for certain project applications to submit a Health Equity Impact Assessment. The purpose of the Health Equity Impact Assessment is to understand the health equity impacts of a specific project that will be undertaken by a health care facility as well as understand impacts specific to

medically underserved groups and ensure that community input and assessment of barriers and factors that may contribute to mitigating health disparities are considered when a Certificate of Need Application is being reviewed by the department. The proposed regulation adds a Section 400.26 to Title 10 of the New York Codes, Rules and Regulations, and the new section of regulation, outlines and clarifies key components of the Health Equity Impact Assessment and defines key terms including independent entity, meaningful engagement, conflict of interest and stakeholders. Sets forth certain exemptions for when a Health Equity Impact Assessment is not required and requires the use of standardized documents for the completion of the assessment. Clarifies a component required to be in an assessment and also makes conforming changes to Section 600 and 710 of Title 10 to contemplate the submission of a health equity impact assessment. The proposed regulations include exemptions for non-clinical infrastructure, repair and maintenance and one for one equipment replacement projects that do not require prior approval, but instead only require a written notice prior to the commencement of the project. Minor construction and equipment projects subject only to limited review unless such project would result in the elimination, reduction, expansion or addition of beds and services. Establishment, whether new or change in ownership of an operator, including mergers and acquisitions unless such establishment results in the elimination of services. A reduction of 10% or more in certified beds, certified services, operating hours, or a change in the location of service. Projects undertaken by diagnostic and treatment centers that serve 50% or more Medicaid and or uninsured patients combined, as outlined in the statute, are not subject to the Health Equity Impact Assessment requirement. Under the proposed regulation, The Health Equity Impact assessment will include the following contents, which will be submitted through a template issued by the department. The independent entity will conduct meaningful engagement of the community and stakeholders, commensurate with the size, scope and complexity of the facility's proposed project. The proposed regulation provides a description of mechanisms for meaningful engagement, such as but not limited to phone calls, community forums, surveys and written statements. The department will require documentation of statements received from stakeholders in the community, including a summary of all statements within the department, reserving the right to request complete copies of said public statements. The department will require documentation of the contractual agreement between an independent entity and the facility, as well as a number of attestation and acknowledgement forms that will need to be completed by either the facility and or the independent entity. Finally, the proposed regulation includes a requirement that the applicant submit a copy of the full Certificate of Need Application, as well as a copy with proposed redactions that would be posted for public view as required by the statute. The regulatory public comment period closed this past Monday, June 12th. During the sixty-day comment period, the department received forty-three comments. A wide range of stakeholders submitted public comment such as hospital systems and associations, consumer advocates, health care providers and associations, as well as citizens of New York State. It's important to note that starting from late Fall of 2022, up until as recently as last week, the department has been regularly convening stakeholders to provide a regular forum for updates, discussion and feedback. Given our regular engagement of stakeholders over the course of several months, the points that came in through the regulatory public comment period were consistent with what we have heard through stakeholder meetings and public comment raised during the March and April meetings. I will highlight key themes of public comment with a high-level summary in order of how the term or topic is outlined in the proposed regulation. With respect to the definitions of independent entity and conflict of interest. Overall, there was a strong show of support for how the department outlined the qualifications and expectations of the independent entity, as well as conflict of interest. Comments spoke to the department's decision to not issue a

list of independent entities for facilities to choose from. As noted, the parameters of independent entity are broadly stated, yet provide enough specificity to ensure independent entities possess a baseline level of expertise and experience and have no conflict of interest as required by law. On the definitions of meaningful engagement and stakeholders. There has been strong support for what the department has outlined in terms of how meaningful engagement is to be conducted. Inclusion of culturally competent communication from the independent entity with medically underserved communities. The definition of stakeholders is framed to ensure a comprehensive and inclusive approach in accordance with the statue. Regarding exemptions. We received numerous comments voicing strong opposition to the department exempting further facility projects on top of what has been outlined in the proposed regulations, as well as opposition to exempting further facility types from the Health Equity Impact Assessment requirement altogether. The department also received comments from health care facilities requesting various additional exemptions to be considered. The department maintains that the regulations strike the right balance and so no amendment to the exemptions are needed at this time. That said, we do have clarifying changes that we anticipate making in the near future. I will discuss those in just a moment. On the topic of closures. We want to acknowledge several commenters that noted facility closures being a gap when it comes to the Health Equity Impact Assessment requirement. This continues to be under review. The department is actively discussing and in the process of considering revision to a closure plan process in light of the key principles under the Health Equity Impact Assessment requirement for a Certificate of Need Application. With respect to the concerns of cost, providers, stakeholders have registered through the regulatory public comment process that the Health Equity Impact Assessment requirement will add too high a cost burden to facility projects, raising concern that the requirement will dissuade innovation and upgrades, as well as make it more difficult to pursue projects related to quality of life, quality of care, infection control and safety reasons. The department does not intend for the Health Equity Impact Assessment requirement to dissuade necessary projects, innovation or upgrades, which is evident in how we have designed the program. In accordance with the intent outlined in statute, the department plans to closely monitor the first year of implementation to determine the average cost associated with getting a Health Equity Impact Assessment and determine if there are ways to help bring those costs down. Based on public comment through the regulatory process, the department is not proposing any substantive revisions to the regulation at this time. The regulation before you is the same as when it was presented to you on March 30th and April 18th. The department is planning to put together a new separate regulatory package to address minor revisions that were suggested during the regulatory public comment period. We anticipate those minor revisions to include; making minor adjustments in response to requests for the verbiage of the proposed regulations to be more inclusive by stating residents wherever the regulation currently states patience, clarifying that minor construction and equipment projects subject to limited review will only require a Health Equity Impact Assessment if such project would result in a 10% or greater reduction, expansion or additions of certified beds or services or a permanent change in location. This would bring minor construction and equipment projects subject only to limited review in line with the requirements of established projects. I'll now conclude my remarks with updates on the department's implementation of and readiness for the Health Equity Impact Assessment requirement. The Office of Health Equity and Human Rights has developed a series of program documents with the input of subject matter experts across the Health Department. The goal is to distribute program documents before the law takes effect next week, which will take place before consideration of the full council on the 29th. We've worked with staff in the Department Center for Health Facility Planning, Licensure and Finance, as well as the state's Information Technology Services Agency to build the application system so it can begin accepting Health Equity Impact

Assessment documents with the Certificate of Need applications starting June 22nd. We're continuing to staff a dedicated Health Equity Impact Assessment unit in the Office of Health Equity and Human Rights. The Director for this office has been hired. The unit is hiring additional staff, but for the start of this program, staff on board are trained and ready to review assessments are underway. It is important to note that additional staff will also be hired throughout the Department for this Health Equity Impact Assessment program. We have additionally launched a dedicated Health Equity Impact Assessment page on the new Office of Health Equity and Human Rights webpage and have established a central email address for stakeholders to contact the assessment unit within our office. Given this, I ask that the Committee recommend to the full council that the adoption of the regulations regarding the inclusion of a Health Equity Impact Assessment as part of the Certificate of Need process.

Johanne Morne Thank you.

Tom Holt Thank you.

Tom Holt Do we have questions from the members of the committee or the council?

Tom Holt Mr. Kraut.

Jeffrey Kraut I want to thank you, because I worked with Ms. Monroe and Ms. Kim and the staff and Jason, and they've been... This has really been a very thorough process, somewhat unique in the number of stakeholders you've engaged with. I think given the wording in the statute and how you had to transfer that into the regulation, you've done an amazing job, I think. It's the program documents that everybody is asking us for now. You said you will have them available for the full meeting. Do you know when they'll be mailed?

Tina Kim Tina Kim, DOH staff. We will have those materials finalized and ready for the mailing date of the full meeting, which is next week.

Jeffrey Kraut Next week.

Jeffrey Kraut Thank you.

Tina Kim We hope to have those program documents finalized even before that mailing date. They will be available, but we'll make sure that the council receives them as soon as they are out.

Jeffrey Kraut As you outlined in your comments, a lot of the questions are not about the regulation that we're looking at, which really closely follows the statute. In fact, it's dictated by the statute. It's about the implementation. We won't know that until they actually see it. That's fine. As long as we have it, I think before the meeting and the council has a chance to look at it. They'll understand the context of how those are going to be applied. I think that will be critical. Thank you again and good luck. I know you'll do a great job. No, seriously, I know how dedicated how you worked on this. I just want to thank you and all the staff and everybody in the department who worked on this. It was a big, big, big project in a very short period of time.

Tom Holt Thank you for those comments, Mr. Kraut.

Tom Holt Any other questions?

Dr. Soffel I have a question.

Dr. Soffel What happens in the week between the day that this is supposed to start and the week that it gets approved by the council? How do you enact a new regulation that has not yet been approved?

Jason Riegert Can you hear me?

Jason Riegert The statute itself goes into effect on June 22nd. There's a significant amount, I think, you know, just like Jeff was saying, a significant amount of what is required is in the statute. So, really, you know, regardless of what we have in regulations, Health Equity Impact Assessments are going to be required after June 22nd when they're submitted. I think a lot of it is making sure we have the systems in place to accept those applications and have the forms in place. The regulations dictate a lot of the nuance, some of the exceptions. I think there will be a short gap, like you said, but we're also not proposing any changes. These have been out in the public. The public comment period commenced in April. The regulations are going to be the same. People have had some time with them. We'll have those documents available. Unfortunately, you know, just given the way the timing works with the council meetings and getting things approved and then getting them published in the state register, there will be a small gap from when the regulations themselves are actually set.

Tom Holt Thank you.

Tom Holt Dr. Kalkut.

Dr. Kalkut Thanks very much for the summary. I also want to compliment you on just the thoroughness of what you've done. As Jeff said, the number of stakeholders you have spoken to and incorporated. There was a lot in the public comment, but I wanted to ask you to summarize, if you can, for me what changes were made in the actual implementation based on the public comment period for the past sixty days? You mentioned some. I just wanted if you could just capsulize for me.

Johanne Morne I'll give the mic to Ms. Kim in a moment.

Johanne Morne I think is, as noted in the comments, really the changes or amendments that have been made based on input spoke to, number one, the references in which we speak to the individuals receiving care. Making sure that there was a broader application of terms. Realizing that the Article 28 facilities are a number of different types of facilities. Looking at opportunities in which we could clarify, I think there were still questions that kept coming in as it related to what was being exempted versus not, what were the percentages of change, how is that defined, etc.? I think the reality is in many of our conversations, there are a lot of what ifs and that also is spoken to in the fact that in the first year, we recognize that we're going to have to also continue to learn and work with the key stakeholders that are responsible for the implementation of the Health Equity Impact Assessment to determine if further change will be needed. To be frank, the changes are not expansive or really what's the word I want... Substantial. They're just that they were an opportunity to help further understand who is responsible for the implementation of this assessment.

Tina Kim Thank you.

Tina Kim I just want to add that, you know, certainly the comments helped to bolster the clarification and the guidance that the program has included in the program documents. Making sure that the expectations were clear in terms of what is the question that is being asked, what is the type of information that the department is asking for? The public comments strengthened the amount of clarification and guidance that we will be giving in the program documents such as the instructions that are accompanying the template and making sure that the questions are appropriate for all facility types, for example, but also making sure that they are framed in a way where it's relevant for the project that is being discussed. We've also refined what has previously been referred as like the checklist. That has been refined a great deal as a result of the public comment, wanting to make sure that what has been outlined in the regulations is clearly understood as facilities determine which projects are subject to inclusion of a Health Equity Impact Assessment or not. Definitely refining the checklist and as well as the various, attestation and acknowledgement forms that we've done to make sure that, for example, there was a strong number of comments asking about a conflict of interest. Making sure that the fields in the conflict-of-interest form can get to some of the concerns that were raised during the public comments. Those refinements were made and are now incorporated in the program documents. We also anticipate that we will continue to engage stakeholders, independent entities and facilities regularly as this law goes into effect. That will also inform how we further strengthen and refine our program documents in place.

Tom Holt Thank you very much.

Tom Holt You have three minutes to speak. I will be your timekeeper. I'll warn you when you have one minute remaining.

Tom Holt I would just remind folks, if you've not spoken into the microphone before, make sure the green light is on and get it as close to you as you can so that everybody can hear your comments.

Tom Holt Go ahead, Mr. Moss.

Mr. Moss Thank you.

Mr. Moss My name is Henry Moss. I'm with the New York Statewide Senior Action Council. Statewide advocates for legislation and programs that are needed by seniors and their families, especially those with limited resources. I'm here because the proposed rules are vitally important for protecting older and younger adults who will need or who need or will need a nursing home or other institutional setting. Their physical, mental and emotional needs and those are the families are unique. To affirm a significant change in an institution, we must know how it might affect especially the institutional quality standards as established by CMS and the New York Department of Health. The most important standard is the staff to resident ratio. With insufficient staff, the likelihood of neglect grows. Patients will suffer long hours waiting for care, have reduced social activities, suffered greater isolation and see a greater use of anti-psychotic medicines to manage behavioral problems. Unfortunately, New York ranks near the bottom of all states on the staffing ratio standards. Most importantly, however, are the numerous studies that show that the for-profit nursing homes rank well below the nonprofit and public nursing homes on these quality standards, and particularly responsible for our low national ranking. Fifteen years ago, under 50% of nursing homes were for profit. Today it's 65% and it's growing. We've seen frequent headlines, stories about neglect and abuse in the for-profit facilities. We are

aware of numerous past and ongoing investigations by CMS, the Department of Health and the New York Attorney General. The situation is being worsened as private equity continues to buy up nursing homes. They load up the acquisitions with debt, they beef up the bottom line and they ready them for sale in five to seven years.

Tom Holt Mr. Moss, you have one minute remaining, but I do want to make sure that you're speaking on the Health Equity Inclusion Regulation.

Mr. Moss Yeah.

Tom Holt Okay.

Mr. Moss Absolutely.

Tom Holt Thank you.

Mr. Moss Nursing homes have to meet national standards. That's one of the things that's going to be involved in the health equity.

Tom Holt One minute remaining.

Mr. Moss As is well known, private equity investors have short term goals. Today 11% of nursing homes nationally are owned by PE. A 2021 report from the National Bureau of Economic Research found that purchases of nursing homes by private equity are associated with higher patient mortality rates, fewer caregivers, higher management fees and a decline in patient mobility. The primary goal of all for profit institutions is to increase or protect profits in executive pay. Concern for the well-being of residents and their families are secondary. Nursing home residents are the most vulnerable members of our community. We cannot allow owners and managers of these facilities to make important changes, including change in ownership, without addressing the impact of the changes on the current and future residents of their families. This study must include the voice of older adults, people with disabilities who are in these institutions.

Tom Holt Thank you, Mr. Moss. Your time has expired.

Mr. Moss Thank you for the opportunity.

Tom Holt Thank you.

Tom Holt Please introduce yourself and again, speak directly to the microphone.

Tom Holt Thank you.

Ms. Utley Sure.

Ms. Utley Good morning. Actually, I guess it's afternoon now. Lois Utley, an independent health equity advocate. Thanks for the opportunity to present some brief comments on these rules. You're going to hear from a number of my colleagues about the importance of these Health Equity Assessments to protecting access to care for various groups of medically underserved people. The department has done an excellent job in signing strong standards for unbiased assessments by organizations that have the necessary expertise and no conflicts of interest. I was delighted to hear just now that the department does not

anticipate adding any new exemptions to these rules. I'm one of the people who has opposed any additional exemptions and even still has a concern about the addition of exemption for limited review applications. As you know, that was not part of the statute. It's something the department has added. I want us to pledge all of you to keep a close eye on that. It's important that limited review applications that cause the loss of access to services are evaluated for their impact on medically underserved people. Just yesterday, we learned of two new proposed closures of labor and delivery units as hospitals in New York, one in Troy and one in Niagara County. We are aware that in the past, sometimes these closures have been carried out through limited review applications that never come before this council and are decided without public comment. It is extremely important to us that these types of closures of entire units within hospitals do go through a Health Equity Impact Assessment.

Tom Holt One minute remaining.

Ms. Utley Consolidation of the health delivery system is continuing in New York. At the same time, you know, we're seeing new facilities being proposed in regions where middle class or affluent residents have commercial insurance and are already well served. The result of this is an exacerbation of existing health disparities. We look forward to having future meetings of this council includes discussion of each project's potential impact on health equity, that there will be a strong and robust discussion on council members of how medically underserved people would be affected positively or negatively by a project.

Ms. Utley Thank you.

Tom Holt Thank you.

Tom Holt We'll just ask Francesca, Deb and Mbacke to be ready.

Tom Holt Heidi Siegfried is our next speaker.

Heidi Siegfried Good afternoon. My name is Heidi Siegfried. I'm an attorney With over thirty years of experience serving and representing low income and homeless people and people with disabilities. I am here to support these regulations, which I believe are strong and will ensure unbiased assessments by independent entities that have the expertise in health equity issues and are capable of engaging affected community members. We appreciate the strong definitions of meaningful engagement of effective community members with advance notice and multiple suggested means to comment and to participate. We especially appreciate the expectation that they be culturally competent with the example of offering people with disabilities accessible online surveys. The Disability Rights Movement has a slogan, nothing about us without us. We love that slogan. In order for us to be included in these processes of the Health Equity Impact Assessment, the independent entity has to understand the need to make accommodations available. I also urge no further exemptions from the Health Equity Assessment and am concerned about the limited review Certificate of Need that it could possibly be abused. We actually did not support the exemption for the FQHC's in Planned Parenthood. Because there are plenty of Planned Parenthood that don't have raising and lowering exam tables, for example. This would be an opportunity for them to consider that and to not make that mistake. Health facility is pursuing mergers or acquisitions should welcome the opportunity to review their project, make sure that it's done right, that it's accessible.

Tom Holt One minute remaining.

Heidi Siegfried This will avoid later litigation. To the extent that transactions result in relocation, reduction or elimination of services it's an opportunity to mitigate. People with disabilities have rights under the ADA to accommodations. Studies conducted by Harvard's Lisa Etzioni show that 35.8% of physicians report knowing little or nothing about their legal responsibilities under the ADA. They know that they don't do this. It becomes a negotiation. The person with a disability has to train their providers and has to negotiate with their providers to get the accommodation. If we see a reduction or elimination or consolidation of services or relocation, this means that that person with a disability is going to have to retrain and renegotiate with a new set of providers. This really places an additional burden on them and disrupts their care, frankly, because it's hard. It's an invisible burden.

Tom Holt Thank you.

Tom Holt Your time has expired.

Heidi Siegfried Thanks.

Tom Holt Thank you.

Tom Holt I would ask Francesca, Deborah and Mbacke to come forward. Following them, we have Margaret Graham, Mark Hannay and Lloyd Bishop and then finally, Faith Daniel.

Francesca Barone Good afternoon. My name is Francesca Barone. I would like to thank you for allowing me to present these comments on behalf of the Hispanic Federation, a nonprofit seeking to empower and advance the Hispanic community. Members of our statewide network, Community Voices for Health Accountability have diligently fought for the enactment of Health Equity Impact Assessments, which aimed to ensure that advancing health equity becomes a priority when the State Department of Health and council consider proposed health facility transactions, including opening and closing of facilities. We are eager to see the law take effect and provide the department and the council with independent assessments of how proposed projects would affect medically underserved people and what measures can be taken to mitigate negative and predicted effects. Health Equity Impact Assessments are crucial to understanding the scope and breadth of services being offered. For the immigrant community, in particular, the assessments are critical in order to comprehend resource allocation and determine where services are available and in what language. Immigrants, especially those with limited English language abilities, often face challenges in navigating a health system that is ever evolving. Reducing services in central hubs may not, not only discourage people from engaging with the health care system, but also make it difficult to travel, find or access needed health care services. Limiting access or aggravating the problem can further exacerbate existing health conditions. Additionally, the community already struggles to find providers who offer culturally and linguistically competent care. Therefore, Health Equity Impact Assessments must ensure that additional barriers to care are not created. To reduce the inequities, especially barriers that immigrants may face when accessing services, it is critical for the assessments to address the unintended consequences of reduced access to care. The analysis must ensure that we are providing culturally relevant programs and services that enhance user satisfaction, increase adherence retention and improving health outcomes, offering interpretation services which are critical to increasing access to services and ensuring cultural competence at an organizational level by including a diverse workforce that reflects the user population.

Tom Holt One minute remaining.

Francesca Barone Affordable and accessible care to local communities in need. We strongly urge the state to ensure that final regulations result in robust Health Equity Assessments that are inclusive and take into account the cultural and linguistic diversity of our state. Thank you for the opportunity to provide these comments and we look forward to continuing working together on behalf of our community.

Tom Holt Thank you very much.

Deborah Sokoler My name is Deborah Sokoler. I have long COVID, and I also have a vocal cord disability, so I hope you can hear me okay. I also speak as a caregiver for disabled family members and as a longtime access advocate and health policy researcher. I strongly support these regulations to finally implement the bill that state legislators passed fully two years ago. Though my previous written comments suggested ways the regs should be strengthened in the future, it's time to start using these valuable intelligent regulations without further delay. I am worried that the two new proposals mentioned a few minutes ago to close maternity units are perhaps being rushed to avoid meeting Health Equity Assessments. I urge that the council not yield to any industry pressure to weaken regulations by exempting more hospital proposals or changing the requirement for clearly independent assessors. The statute calls for an independent entity to do the assessments. The regulatory provisions to avoid conflicts of interest are crucial. When you buy a house, you surely don't use a home inspector employed by the seller. Likewise, New York officials, patients and taxpayers must not rely on Health Equity Assessments by someone independent of the CON applicant. Regarding meaningful engagement, the draft regulations appropriately require multiple avenues for community input. That's key for people with disabilities who, for example, may be unable to speak or attend in-person events or computer skills. As someone using one of New York's very few own COVID clinics, I worry that across the nation, some such clinics are already closing, even as COVID creates new long COVID cases. In my third year as a long COVID long hauler with thousands of other New Yorkers in their fourth year, I greatly fear that crucial services will be closed, cut back or relocated. I'm glad to hear that the department feels the state should immediately fully implement the assessment requirements this month as the statute requires.

Deborah Sokoler Thank you.

Tom Holt Thank you very much.

Tom Holt If you would make sure you pull the microphone as close to you as you can.

Mbacke Thiam Thank you, Mr. Holt. Thank you, everyone, for the tremendous work that you all are doing in these regulations. My name is Mbacke Thiam. I'm the Housing and Health community organizer at Center for the Independence of the Disabled New York. The Boards of People with Disability in New York, New York City. We are a non-profit organization founded in 1978. We are part of the Independent Living Centers Movement, a national network of grassroots and community-based organizations that enhance opportunities for all people with disabilities to direct their own lives. Our community encountered significant challenges before obtaining care when their local facilities reduce or eliminate services. Forcing patients and their children to go elsewhere may have a huge impact on the behavioral and developmental upbringing of the children. I highly support

this bill, but at the same time, I'm more worried about the assessors and I believe they should be independent and may also have the emotional intelligence to see our people with disabilities. Also, it may have an impact on the children when they are turned down or forced to go to another place. The chance of the children receiving the care they need at the right time may be small or inexistent. That's why independent assessor is needed to fairly monitor the assessment. Health equity is not just reducing disparity in our health system but having accessible and fair resources that promote good health for all. I'll be very short.

Mbacke Thiam Thank you.

Tom Holt Thank you very much.

Tom Holt I would then ask our next speakers; Margaret Graham, Mark, Lloyd Bishop and Faith Daniel to come forward.

Margaret Graham Good afternoon. Per my earlier comment, you know that I'm here as a member of New York's Statewide Senior Action Council. You also know that I have years of experience working inside the health care system. Let me just say, I applaud this effort. I also encourage this council to encourage the health systems in the state to look upon this as an opportunity actually. David Kendrick twenty years ago pointed out that medical care is but a part of someone's health. I don't think I need to tell people in this room that. I think you all know it. Trying to get the medical system to acknowledge that is quite the challenge. I know the culture of the health system. When you are the squeaky wheel you're given a corner office in the basement, fifty feet, fifty buildings away from everybody else until you get the message. I hope that this assessment is used as a strategic tool to motivate your squeaky wheels to speak a little bit louder and for the rest of the system to recognize that they've got something important to say. You may also start to see improvement in staffing, staff morale if they think that the hospital or the facility that is about to be built is for that community and taking those concerns into consideration, morale is likely to go up. Please don't look upon this as a cost. Look upon it as an opportunity and urge your facilities to take advantage.

Margaret Graham Thank you.

Tom Holt Thank you very much.

Faith Daniel Thank you.

Faith Daniel Good afternoon. My name is Faith Daniel. I was born and raised in the South-Central Bronx. I'm committed to advocating for reproductive justice and health equity in New York. I am also the daughter of two immigrant parents who came to the United States to provide for me. I am a lesbian woman that one day would like to have children with my partner. I am also a facilitator for Community Voices for Health System Accountability, CVHSA is a statewide network of health care advocates who collectively focus on ensuring that New York State oversight of health facilities considers community concerns about proposed transactions and the likely impact on health equity. As a person that is deeply passionate about public health, reproductive justice and health equity, I applaud the Office of Health Equity and Human Rights for the development of strong regulations in the Health Equity Assessment Act. As a public health practitioner, we know that prevention is key. The Health Equity Impact Assessment will finally provide needed information on health provider transactions, and how they can negatively affect medically

underserved people. It is critical that all transactions be made with communities in mind. The same nothing for us without us, as Heidi noted from the Disability Justice Movement, holds true with health provider transactions. Medically underserved groups, many that myself, family, friends, community members and even many here are part of already face barriers to care. Immigrants, especially those with limited English language abilities, can be challenged by trying to navigate a changed health delivery system and interact with new groups of conditions. People with low incomes who rely on public transportation can face long trips for needing medical care when hospitals or cleaning services are relocated. LGBTQIA Plus people can face the loss of trusted clinicians and welcoming sites of medical care when consolidations, eliminations or relocation of services disrupt the health care system they have worked hard to assemble. This is particularly true for people needing gender affirming care, who often struggle to find providers of such care and may be unable to find replacements. Black, Latinx, Asian American, Native Americans and other minorities often struggle to find health providers who treat them with dignity and respect and may be challenged by trying to replace such trusted providers. Pregnant people can face long chips for prenatal care for labor and delivery when hospitals close. These access problems would be exacerbated by projects that reduce or relocate those services, as well as major hospital construction projects planned for already well served neighborhoods can also harm health equity, increase in disparities between well-off and underserved areas. Any approval of a transaction must weigh how these impacted by structural racism will be affected. If not, the council is not making informed decisions around health equity.

Faith Daniel Thank you.

Tom Holt Thank you very much.

Tom Holt Thank you.

Lloyd Bishop I'm Lloyd Bishop, Senior Vice President for Community Health Equity at the Greater New York Hospital Association. On behalf of our members who are very supportive, obviously, of health equity, we do appreciate DOH's usual openness to working with us in terms of all the work you had to do and the balancing you have to do on this issue. We look forward to the ongoing engagement and partnership on the implementation as this implementation proceeds, as Deputy Commissioner Morne said. As Mr. Kraut said, the program documents are very important. That is, those are the questions that we are getting. We look forward to seeing those. We are also hoping that, and we've said this to our Ms. Morne and the staff, we are hoping that DOH will develop a process for conferring with providers on the requirements before the assessments proceed.

Lloyd Bishop Thank you very much.

Tom Holt Thank you very much, Mr. Bishop.

Mark Hannay Good afternoon, members of the committee and the council. My name is Mark Hannay. Professionally, I'm Director of Metro New York Health Care for All, which is a coalition of community groups and labor unions in the Greater New York City region that work together on health care issues. Along with Faith Daniel, I help to co-lead the Community Voices for Health System Accountability collaborative project that is bringing together health advocates from across the state to address issues around what's happening in the hospital sector, in the hospital industry and the state's role and your council's role in guiding that. We are excited to be working with the department and the

council on a variety of issues, including this one. I've also in my regular life, as a regular New Yorker, I've worked over the last three or four years with coalitions of groups in the Lower Manhattan community that have centered their work around Beth Israel Hospital in New York Eye and Ear infirmary. I have some sort of experience around that too. I want to just kind of start off my comments to you about this particular issue. Like, I am really excited that this is finally happening in New York, and New York is once again being a leader state when it comes to health care issues along, we're somewhat following in the footsteps of Oregon and some other states, but we're going to be out there on this issue of health equity. I really appreciate the legislators who wrote this law, the department for your role in helping to implement it and the support that the council is providing in this process. We all know in the wake of the pandemic how important the issue of health equity is and mitigating it. It's been a long existing issue way before the pandemic. We all know that. Thank you to the department for engaging with the whole range of stakeholders, including us community advocates, because it's a new world for us. I want to thank you for that. Just to focus in on one issue that came up in the comments. The council talked around closures. We're excited to hear the department wants to be looking at that. We hope the council will support them in that effort. It really is sort of a missing piece in the state's oversight of the hospital industry and its operations in New York. We look forward to working on that. I guess I'll conclude my remarks there.

Mark Hannay Thank you.

Tom Holt Thank you very much.

Tom Holt That concludes the public comments that we had for folks signed up in advance.

Tom Holt I would just like to take a moment to thank all the members of the public who took the time to be with us today and share your comments. It's a meaningful part of our process to receive your feedback and your input. Thank you very much for being with us this morning.

Tom Holt Mr. Kraut.

Jeffrey Kraut If there's any other questions, let's get if there's any other questions or comments from the council.

Jeffrey Kraut Just to clarify so it's clear to the public, the applicants, the regulations become effective on CONs filed after June 22nd. All CONs filed up to and including June 21st would not be subject to this.

Jeffrey Kraut That's clear?

Jeffrey Kraut Okay.

Jeffrey Kraut Just so everybody knows, this becomes the rule of the land on the 22nd and forward.

Tom Holt Thank you for clarifying the point, Mr. Kraut.

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

Tom Holt Hearing none then I'll call the question.

Tom Holt All in favor?

All Aye.

Tom Holt Opposed?

Tom Holt Motion carries.

Tom Holt Thank you very much.

Tom Holt Lastly on the agenda, and this is just for information. We have the removal of the COVID vaccine requirement for personnel and covered entities. Dr. Heslin is here with us this morning or this afternoon to present this regulation.

Dr. Heslin Thank you very much.

Dr. Heslin Jason's going to actually present it. I'm supporting him.

Tom Holt Thank you.

Jason Riegert Thank you for your support.

Jason Riegert For the record, my name is Jason Riegert, I'm an attorney with the New York State Department of Health. I'm here to present for information proposed regulation to repeal the regulatory requirement that hospitals, nursing homes, diagnostic and treatment centers, hospices, homecare service agencies and adult care facilities ensure that personnel are fully vaccinated against COVID-19. The proposed regulation simply repeals in its entirety Section 2.61 of Title 10 of the NYCRR and the requirement that covered entities ensure personnel are fully vaccinated against COVID-19. The regulation also makes conforming changes to remove references to Section 2.61 throughout Title 10 and Title 18. Of Note, on June 5th, the CMS published a final rule in the Federal Register that withdrew the federal COVID-19 vaccination mandate for certain health care providers. With the repeal of the federal and now state requirement, health care facilities in New York State would be able to individually consider how to implement their own internal policies regarding COVID-19 vaccination of personnel. The proposed regulation, finally, the proposed regulation has been filed with the Department of State. It will be subject to a sixty-day public comment period that will commence on June 28th and will run through August 28th. After the completion of the public comment period, the department will assess all of the comments and the regulation will come back to the council before it can be fully adopted.

Jason Riegert Thank you.

Tom Holt Thank you, Jason.

Tom Holt Did you have a comment?

Dr. Kalkut Thank you very much.

Dr. Kalkut I think the repeal of these emergency regs are important and sort of point to the science that when the data is there where we no longer need mandate they can be repealed in this way. I think it's a great step forward and certainly true on a national basis.

Dr. Kalkut Thank you.

Tom Holt Dr. Soffel.

Dr. Soffel You know, I feel much better knowing that the people that I'm dealing with have been vaccinated against COVID. I'm wondering whether there's been any thought. I don't know if it's a regulation or if it's hospital specific that during flu season, that hospital staff, if they have not been flu vaccinated, wear a button that says, I have not been or the other way around. I'm wondering if there's any thought to doing something similar so that patients, especially who are in an inpatient setting and don't have the option of who takes care of them could kind of at least know that their caretakers have or have not been vaccinated against COVID.

Tom Holt Mr. Kraut.

Jeffrey Kraut Some places have some indication that you have been vaccinated on your ID badge.

Dr. Soffel For COVID as well.

Jeffrey Kraut Mine just says vaccinated.

Jeffrey Kraut It's a question consumers have to ask. It's a consumer issue.

Jeffrey Kraut Flu is mandatory in most places, and I think it'll be up to each institution to decide how to do COVID. I would say, you know, particularly what happened in nursing homes, there should be a high incentive of consumers and families asking when you get admitted. Is your staff going to be vaccinated? Assuming the vaccine is effective, and we have an effective vaccine for that particular strain. It's a good point.

Tom Holt And then in the past and up to this point, staff prior who weren't being vaccinated for the flu vaccine by choice then were required to wear a mask in that setting. I suspect that this will be handled similarly as we go forward.

Tom Holt Any other comments or questions?

Tom Holt This was before us just for information today.

Tom Holt Jeff.

Jeffrey Kraut This was presented for information. When will it return for adoption?

Jason Riegert The public comment period goes till August 28th. I don't know the exact date of the next Codes Committee meeting, but I think it's the end of August. I'm not sure if we'll make that or not.

Jeffrey Kraut Our next Codes Committee is four days before that on the 24th. Is this something that we're going to have to approve on an emergency? You're doing it on a regular basis. It's not emergency adoption.

Jason Riegert This is just through the regular proposed rulemaking.

Jeffrey Kraut Okay.

Jason Riegert I will say, we did put out a dear administrator letter. That went out to facilities on May 24th, notifying them of our intent to repeal this regulation pending approval. Specifically stated that effective immediately as of May 24th, the department was going to see citing providers for failure to comply with these requirements. That's why we really don't need this on an emergency basis because we're able to use a little regulatory discretion while we're going through the process.

Peter Robinson I think that there is obviously an issue around hiring.

Jeffrey Kraut It's legal issues.

Peter Robinson Maybe to suggest, Jeff, that maybe what we can do is even though we have the regular Codes Committee on the 24th, maybe we can prior to the full council meeting, just have this Codes item brought.

Jeffrey Kraut I mean, let's work out the thing because for a variety of some legal opinions in some settings. Certain actions to be taken that are done legally. Maybe we'll see if we can approve it, have a special meeting, if necessary, to do that. That's all. We'll work with everybody to make it happen, I guess.

Tom Holt Thank you.

Tom Holt That concludes the meeting on Codes and Regulations.

Jeffrey Kraut The full council is going to be held on June 29th in New York City. Then our next meeting cycles. The committee meeting is August 24th in Albany and September 7th in Albany. Those are the next two times we're together. I want to wish everybody a meaningful July 4th holiday weekend and Juneteenth is on Monday. Thank you again for all your hard work and efforts.

Jeffrey Kraut We’re adjourned.