

NEW YORK STATE DEPARTMENT OF HEALTH
SPECIAL COMMITTEE ON CODES, REGULATIONS AND LEGISLATION
JANUARY 11, 2022
CONCOURSE MEETING ROOM 6, ALBANY AND ZOOM

Mr. Kraut Good morning. My name is Jeff Kraut. I Chair the Public Health and Health Council for Health Planning Council meeting.

Mr. Kraut I'm privileged to call to order a special meeting of the Public Health and Health Planning Council on January 11th, 2022.

Mr. Kraut I will start the meeting by turning it over to Dr. Gutierrez, who will run the meeting of the Codes committee.

Mr. Kraut Dr. Gutierrez.

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

Dr. Gutierrez Good morning, everyone. I'm Dr. Gutierrez, Chair of the Committee on Codes, Regulation and Legislation.

Dr. Gutierrez I have the privilege to call to order a Codes committee meeting and welcome members, participants and observers.

Dr. Gutierrez For information, I should alert everybody that we have received several comments concerning nursing home visitation protocols and COVID testing for visitors. None of the emergency regulations proposed for adoption today concerning nursing home visitation or COVID testing for visitors. If you were planning to make comments about that, realize that that's not in the agenda today. Webcasting procedures. I would like to remind council members, staff and the audience that this meeting is subject to the open meeting law and is broadcast over the internet. The webcasts are access at the Department of Health website at NYHealth.Gov. The on demand webcast will be available no later than 7 days after the meeting for a minimum of 30 days, and then a copy will be returned in the department for four months. There are some suggestions on ground rules to follow to make this successful. Because there is synchronized captioning, it is 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 you speak, please state your name and briefly identify yourself as a council member or DOH staff or member of the public. This will be of assistance to the broadcasting company to record this meeting. Please note that the microphones are hot meaning they pick up every sound. I therefore ask that you avoid rustling of papers next to the microphone and also to be sensitive about personal conversations or sidebars, as the microphones would pick up this chatter. As a reminder for our audience, there is a form that needs to be filled out before you enter the meeting room, which records your attendance at meetings. It is required by the Joint Commission on Public Ethics in accordance with Executive Laws Section 166. The form is also posted in the Department of Health website at NYHealth.Gov under Certificate of Need. In the future, you can fill out the form prior to the council meetings.

Dr. Gutierrez Thank you for your cooperation in fulfilling our duties as prescribed by law.

Dr. Gutierrez After having called to order the Committee on Codes, Regulation and Legislation, I will make a couple of other remarks from members of the public. If you are called to make comments on any of the four proposals we have, you have three minutes or less to make them. I will limit one presenter per organization. Please be prepared to deliver your comments promptly after your name is called. To that effect, your name will be called in order. Please move close to the position with the microphone in order to deliver your remarks. Maybe I'm going to be wrong, I think I have four regulations in the agenda today for adoption.

Dr. Gutierrez Number one for emergency adoption is hospital and nursing home personal protective equipment or PPE requirements. Mr. Mark Furnish and Jonathan Karmel of the department are available and will provide us with information on this proposal.

Mr. Mark Furnish Good morning. My name is Mark Furnish. I'm with the department. The first regulation up is the PPE requirement regulation. This is the third time reiteration you've seen of this. It's expired in 90 days. There's no material or any changes to the regulation that you've passed twice already. What it allows for is each hospital and nursing home shop assess and maintain a supply of all necessary items of PPE to protect the health care personnel for at least 60 days. Lays out the formulas for each; single gloves, gown, surgical masks, N95 masks. The Commissioner shall have the discretion to increase the stockpile requirement from 60 days to 90 days where there is a health emergency declared and failure to do so may result in revocation limitation or suspension of a hospital's license or nursing home. 14 day grace period for first violations.

Mr. Mark Furnish And that's the regulation.

Dr. Gutierrez Is this the place where some comment was made about the fact that the regulation did not specify PPE or protective equipment that was washable and reusable?

Mr. Kraut Just to be clear for the record, we received a letter from Jim Klein of Leading Age dated January 9th, 2022 requesting clarification in the methodology the differential between reusable and disposable gowns. In addition, have denominator issues with respect to licensed versus staffed beds and asking the Department of Health personnel responsible for this methodology to clarify this for his membership. We would hope the Department of Health would take those comments to heart and to respond to Mr. Klein and his organization as well.

Mr. Mark Furnish Point taken.

Dr. Gutierrez I would like to have a motion for recommendation of adoption of this emergency regulation to the full council.

Dr. Gutierrez I have Tom Holt.

Dr. Gutierrez I have a second, Dr. Watkins.

Dr. Gutierrez Are there any questions from the committee or the council for Mr. Furnish or Mr. Karmel?

Dr. Gutierrez Are they members of the public who would like to comment on this proposal?

Dr. Gutierrez I'm sorry.

Colleen We have one member.

Dr. Gutierrez Please come forward. You have three minutes to deliver your remarks. Identify yourself on the institution you represent.

Dawn of Bellevue Woman's Center Good morning. My name is Dawn. I am a registered nurse at Bellevue Woman's Center, Schenectady New York. I am here to comment on the regulatory amendment concerning hospital and nursing home PPE requirements. We are glad that PPE requirements have slowly improved over the course of the pandemic, despite the opposition from many providers. It shows just how urgently our providers need to move from a just in time mindset to just in case mindset that more accurately reflects the nature of health care. We want to be clear all health care workers should be wearing an N95 or equivalent respirators right now for PPE and source control, considering the extremely transmissibility of the American variant of COVID-19. It is widely reported that the N95 is more reliable way to contain transmission of Omicron than the cloth or regular surgical masks. I just want to say surgical masks in our facilities that are issued to us at our shift start are actually not medical grade surgical masks. Right on the boxes themselves, it says, not for medical use. The only place that in our facility that is being issued an actual surgical mask for medical reasons is actually in the surgical suite. Just wanted clarification there. We are concerned because the Department of Health and Health Care Providers are utilizing the CDC's contingency guidelines for isolation and quarantine of health care workers, and the CDC has also issued crisis guidelines with even lower criteria. The CDC states allowing health care workers with SARS-CoV-2 infection or higher risk exposures to return to work before meeting the conventional criteria could result in higher health care associated transmission. Exposure in the community is considered high risk. Therefore any formula used to determine the appropriate number of respirators to stockpile should reflect in this and consider the level of guidance to the facility using it. Also ideally, the team members should be able to don and new N95 mask, not just when they request it. Vaccination is not a substitute for the need for access to testing for PPE, source control and environmental controls that prevent airborne transmission. The data being collected in New York is demonstrating that the effectiveness of the vaccine is being strained due to Omicron surge. The current crisis has demonstrated that we have been saying all along we need a comprehensive, layered approach to control. Lastly, the urging of the DOH to promote and recommend the use of reusable respirators, including half mask respirators, have included allowances for these devices in the proposed stockpile regulation. There are models of EHMR's available now with design improvements, increased comfort, elimination of exhalation valve, less interference with communication. Are more long term, cost effective and environmentally sound alternative to disposable respirators.

Dawn of Bellevue Woman's Center Thank you so much for your time.

Dr. Gutierrez Thank you very much.

Mr. Kraut Could I just ask if you have written remarks, could you please submit them to Colleen Leonard electronically, so we have it for the record.

Dawn of Bellevue Woman's Center Absolutely.

Dawn of Bellevue Woman's Center Thank you.

Mr. Kraut Thank you.

Dr. Gutierrez Thank you, Mr. Kraut.

Dr. Gutierrez Are there any other questions from members of the public?

Dr. Gutierrez If not, I'd like to call a vote. We have quorum for the committee.

Dr. Gutierrez All in favor?

Dr. Gutierrez Against?

Dr. Gutierrez Anybody abstaining?

Dr. Gutierrez The motion carries.

Dr. Gutierrez Item number two for emergency adoption is COVID-19 vaccination of nursing home and adult care facility residents and personnel. Mr. Jonathan Karmel and Dr. Emily Lutterloh of the Department are available and will provide us with information on this proposal.

Dr. Gutierrez Health Department personnel, please go forward.

Jonathan Karmel Hello. This is Jonathan Kamel from the Department of Health. This is also a renewal of an emergency regulation that's been in effect ever since the vaccine became available. This emergency regulation requires 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 residents and personnel and depose 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. There are changes compared to the previous emergency regulation. As with the other regulation that is being presented today, the fourth one that's being presented. This regulation adds the booster shot to the vaccine requirement, as far as offering it to the personnel and residents. This regulation now cross-references that other regulation that will be the fourth one that we're going to consider today, which requires nursing home and personnel to be up to date on their COVID vaccinations. Just to be clear, this is not the regulation that is adding boosters. That's the fourth one that we're going to talk about. This is just a continuation of the regulation that requires nursing homes and adult care facilities to offer the vaccines to residents and personnel, and it just adds a cross reference to that other regulation.

Dr. Gutierrez Thank you very much, Mr. Karmel.

Dr. Gutierrez Can I have a motion for emergency adoption of this proposal, please?

Dr. Gutierrez I have Mr. Holt.

Dr. Gutierrez I have Dr. Watkins.

Dr. Gutierrez Any further questions or discussion by members of the committee or the council?

Dr. Gutierrez Seeing none, I proceed with a vote.

Mr. Kraut Is there any public?

Dr. Gutierrez No, I have nobody from the public listed.

Dr. Gutierrez All in favor, please raise your hand.

All Aye,.

Dr. Gutierrez Anybody opposed?

Dr. Gutierrez Any abstentions?

Dr. Gutierrez The motion carries.

Dr. Gutierrez Number three for emergency adoption is entitled Surge and Flex Health Coordination Systems. Mr Furnish and Jonathan Karmel of the Department are available and will provide us with information on this proposal.

Dr. Gutierrez Please go ahead.

Mr. Mark Furnish This is Mark Furnish from the department. Again, this is the third time we've seen this come. It's an emergency regulation. No changes from previous incarnations of this, and once enacted, this will be good for 90 days. It's designed to maximize the effectiveness and efficiency of the statehealth care delivery system and mitigating the health of New York residents. Health facilities show increase an increase up to 50 percent the number of acute care beds and or changes in service category during an emergency. At the Commissioner discretion, can postpone up to 100 percent of elective surgeries. Enhanced staffing capacity available supplies of PPE shall maintain PPE for declared emergencies that could last 60 days. Statewide coordination plans of discharge transfer and receiving a patients. Maintaining a statewide health care data management system to monitor and coordinate during an emergency. Each hospital will have a surge and response plan that will deal with the Bed Surge Plan, which deals with a 50 percent increase. A PPE Surge Plan, which is a 60 day supply. A Mass Casualty Plan. A Staffing Plan. A Capital Plan. There's also provisions in here that streamline laboratories. The Commissioner can modify or suspend any regulation if it will hinder surge and flex plans across all facility types.

Mr. Mark Furnish And that's the regulation.

Dr. Gutierrez Thank you very much, Mr. Furnish.

Dr. Gutierrez I need a motion to proceed with further discussion.

Dr. Gutierrez I have Dr. Yang.

Dr. Gutierrez I have a second by Dr. Watkins.

Dr. Gutierrez Are there any questions from members of the council, from members of the committee or members of the council?

Dr. Gutierrez We have one person who has asked to speak on this proposal.

Dr. Gutierrez Jennifer, please.

Dr. Gutierrez Ann Monroe.

Ann Monroe Thank you.

Ann Monroe Just clarification. We received a letter from not from care, but the...

Mr. Kraut Association

Ann Monroe Who are in assisted living, etc. saying that they don't have the same access to the Surge and Flex Center as hospitals and nursing homes. I'm wondering why that's the case.

Mr. Mark Furnish That's a good question, and I'll bring that back and give you an answer shortly.

Ann Monroe Thank you.

Dr. Gutierrez Back to Albany.

Dr. Gutierrez Jennifer.

Dr. Gutierrez Thank you.

Dr. Gutierrez You have three minutes to deliver your remarks, please.

Jennifer Good morning. My name is Jennifer. I am a registered nurse in a critical unit at Albany Medical Center Hospital. I've been working as a frontline caregiver since 2006. I am here today to comment on the items being considered for emergency adoption, specifically the amendments being made to address the Surge and Flex Health Coordination System. We, as nurses, are grateful to Governor Hochul for taking quick and decisive action by implementing the Surge and Flex system and to the Department of Health for creating regulations as quickly as our state bureaucracy allows. However, my colleagues and I are also here out of desperation due to the truly emergent conditions our patients are facing in our facilities. We are hopeful that all of you will hear what we have to say and take our recommendations seriously. I want to be clear the framework for the Surge and Flex system is crucial, and we support this process. Increase statewide coordination between systems that normally view each other as competitors, ensuring districter PPE supplies are maintained. Creating surge plans that are definable and increasing staffing and bed numbers. These are all extremely important measures that must be taken during the surge, but we believe that more must be done on the regulatory front to strengthen this framework. Nurses and other frontline caregivers made it clear before the pandemic that our facilities were irresponsibly cutting bed capacity and staffing

at unsafe levels. The Surge and Flex Plan addressing these issues is proof that our facilities were making poor choices. Our facilities are required to report their staff bed capacity during the pandemic and our analysis shows many of them have decreased the number of beds available prior to the current surge. So far we have not seen evidence they are going back up quickly enough. We believe that one of the primary reasons for this is the worsening staffing conditions all our facilities face across all components of the care system. How does this translate at the bedside? As a critical care nurse, I know that we need a strict adherence to a two patient maximum per nurse on duty. It is absolutely shameful that the Department of Health refuses to promulgate regulations requiring one is a two ratio in critical care units, despite the law passed last year requiring them to do so. We are feeling the impact of this inaction right now. My colleagues across the state are reporting consistently that our employers cannot meet that baseline requirement for safe patient care in our units. A critical care nurse at Montefiore Medical Center reported yesterday that he had five patients assigned to him in an ICU. Also, we have received over 500 reports from our critical care colleagues and nearly 40 percent of those reports showed unsafe staffing levels in their units. Despite the new requirements for PPE, many of my colleagues across the state are lacking appropriate PPE that they need to provide safe care. We need stricter reporting requirements upon activation of this surge and flex. Our employers must be specifically required to report total care team members that are out due to COVID positivity and symptoms.

Mr. Kraut Can we have your written remarks submitted to Ms. Leonard as well, please.

Jennifer Thank you.

Dr. Gutierrez Thank you.

Jennifer Thank you for your time.

Dr. Gutierrez Are there any questions from members of the committee or members of the council? This is a renewal of an emergency regulation.

Dr. Gutierrez Any further discussion?

Dr. Gutierrez If not, I need a vote.

Dr. Gutierrez All in favor?

Dr. Gutierrez Anybody opposed?

Dr. Gutierrez Any abstention?

Dr. Gutierrez The motion carries.

Ann Monroe This is Ann again.

Ann Monroe I just wonder am I going to get an answer to my question during the meeting or later?

Mr. Mark Furnish I want to check with the subject matter experts, so I will get that to you after the meeting.

Ann Monroe Okay.

Ann Monroe Thank you.

Peter Robinson You're breaking up, Ann.

Mr. Kraut Ann, we didn't hear your response.

Ann Monroe I said, thank you.

Mr. Kraut Oh, okay.

Dr. Gutierrez Last for emergency adoption is COVID-19 transmission by covered entities. We have Mr. Jonathan Karmel and Emily Lutterloh from the Department available and will provide us with information on this proposal.

Mr. Kraut Make a motion.

Dr. Gutierrez I'm sorry.

Mr. Kraut Just a motion to introduce it.

Dr. Gutierrez We have passed number three, and we are now into the beginning of number four.

Mr. Kraut I know. Just in order to put it before the Codes committee, you need somebody to second.

Dr. Gutierrez Okay.

Dr. Gutierrez I have Patsy Yang.

Dr. Gutierrez Who seconds?

Dr. Gutierrez Tom Holt.

Mr. Kraut Okay.

Dr. Gutierrez Was that a second?

Mr. Kraut Yes.

Dr. Gutierrez Okay.

Dr. Gutierrez Go ahead.

Dr. Gutierrez Who's the speaker?

Jonathan Karmel It's me. This is Jonathan Karmel again from the Department of Health. This third emergency regulation continues to require that personnel of hospitals, nursing homes, diagnostic and treatment centers, hospices, home care services agencies and adult care facilities be vaccinated against COVID-9. The rule is applicable to personnel

who could potentially expose patients, residents or other personnel to COVID-19. The third emergency regulation requires personnel to have received any booster or supplemental dose as recommended by the CDC. If you approve the regulation, it becomes effective. I'm going to talk a little bit now about timing, because I know that you all have questions about the timing of when personnel have to receive the booster shot. First of all, if you approve the regulation, it becomes effective when it is filed with the Secretary of State. Obviously, facilities will need some time to make sure that personnel who are already eligible for a booster get the booster. As an example of how it would work for personnel who become eligible for the booster in the future, assume that an individual received their second dose today, and the CDC recommendation is to get the booster 5 months after the second dose. Today is January 11th, so 5 months after today is June 11th. In this example, does that mean that the booster must be administered exactly on June 11th? No. The department would not require the booster to be given on a specific day. Rather, there would be a window of time after June 11th in which the individual could get the booster. In the case of schoolchildren who have to get childhood vaccinations that have multiple doses, such as measles, that window of time is two weeks. There is precedent for a two week window. As I said, a lot of people are already eligible for the booster. However, if many, many people all got the booster on the same day, they would all be likely to have side effects the next day at the same time, and we would not want to have large numbers of people are calling out sick at the same time. We understand that there could be an issue and there may be a need for staggering when people get the boosters. Also in my example, I gave the example of 5 months, but that's not necessarily what the CDC recommends. In my example, 5 months was June 11th. If that individual went to a pool party on Memorial Day, and got COVID, would they still be required to get the booster on June 11th? I don't know that. I don't know what the CDC recommendations are regarding a person who may have natural immunity in addition to their vaccinations. The questions of timing still need to be worked out. This regulation does require the personnel to receive their booster shots.

Jonathan Karmel And that's the end of my presentation

Dr. Gutierrez Thank you very much, Mr. Karmel.

Dr. Gutierrez Are there any questions for Mr Kamal from members of the committee?

Dr. Gutierrez Yes, Tom Holt.

Tom Holt Thank you.

Tom Holt And let me just say on the front end, I'm concerned as a provider about the impact of this mandate at this time, given where we're at as a provider community. Another 1 or 2 percent of the workforce out at this point, I think, is just going to have devastating effects, potentially. I struggle with balancing what I believe is the right thing to do, which is to get the booster against our ability as a provider to provide care at this point. Back to the issue of timing. You said when it would be filed with the Secretary of State and then went on to express the uncertainty that still remains around all of these issues. When would you anticipate were this to be approved that this would then be filed with the Secretary of State? Do you have any sense of what the timeline would look like? I think that's one of the major concerns that we all have given. The number of folks that need to be boosted at this point.

Jonathan Karmel I don't have the answer to all of those questions, but guidance will be forthcoming from the department on the exact timing of when we expect compliance cetera. I don't have the answers to those questions right now.

Dr. Gutierrez Mr. Thomas.

Hugh Thomas Good morning, everyone. Hugh Thomas, a member of the council. I want to second Mr. Holt's comments that, you know, we are struggling to balance what has done in terms of approving regulations regarding vaccine mandates with the realities, at least in our region, regarding staffing overwhelmed team and despite the fact that some team members may have and have had vaccines to this point. We are right now receiving significant amount of questions and resistance to a booster mandate. As an organization, we support it from a public health perspective, but we are in the middle of surge in this community as we are at statewide and nationwide and we have daily today, we have 690 staff people out in our system. What we're concerned about and I'd like the Commissioner and the department to understand is that timing is extremely important here. To impose this booster and have any effect on people walking out at this moment would have really significant detrimental effects on our operations.

Hugh Thomas Thank you.

Dr. Gutierrez Thank you.

Dr. Gutierrez Any other questions?

Dr. Gutierrez Mr. Kraut.

Mr. Kraut What I'm hearing and what the department just told us, you know, I know everybody tries to want certainty, but what I'm hearing is that providers are going to have clinical and operational discretion in implementing this regulation. You heard the department say you won't give it to everybody on the same day if that affects your staffing and the like. What I'm hearing and correct me if I'm wrong, there are clinical and operational discretion on how we administer this within the parameters of the right.

Dr. Gutierrez Any comments on that?

Jonathan Karmel Well, just to respond to the last couple of comments, we are well aware of the staff shortage issue and we will implement this in a way that tries to minimize as much as possible, exasperating the staff shortage issues that you're all facing.

Dr. Gutierrez Ann Monroe.

Ann Monroe Jeff, I would like you to point me to the part of the regulation that says there's clinical and operational discretion. I really don't see that in what's before us. I appreciate that at the state level, we will hear that they will implement it in a way that works for everyone. I don't understand how in light of this regulation and requirement that's possible.

Mr. Kraut Again, in the regulation it may not say that explicitly, but I think the Commissioner has the power and the department in compliance on how they monitor and how they adjudicate that how they review that. Look at this point, we never get certainty on a lot of these issues. It's a question of how the department approaches the implementation. Again, what I feel comfortable is the regulation is absent any timeline.

This is about implementation of the reg. What we're hearing the department say is addressing some of the concerns that have raised not only by the council members, but by the letters we receive. There's an acknowledgement that this could have an impact on staffing and I don't think the intent is to exacerbate that problem, but it's to help us manage through it as we comply with the reg.

Dr. Gutierrez Any other questions or comments?

Dr. Gutierrez Yes.

Sabina Lim Can you hear me okay?

Dr. Gutierrez Yes.

Mr. Kraut Go ahead.

Sabina Lim Thank you.

Sabina Lim Again, strongly echo all my colleague's comments about the impact of timing, particularly the impact this month and next month. But I have a clarification question. The language specifically says a booster shot or a supplemental dose. Could you clarify what you mean specifically about a supplemental dose?

Emily Lutterloh Yes.

Dr. Gutierrez Identify yourself, please.

Emily Lutterloh My name is Emily Lutterloh. I'm the Director of our division of Epidemiology. Some people who are immunocompromised are recommended to have what's called an additional or in this regulation, a supplemental dose to complete their primary theory, so that would be a primary series of three doses for those people. And then, of course, the booster after that. I want to make one other point here, too. I understand the concerns about a requirement for a booster possibly leading to some additional staff to leave. I just want to make sure everyone is considering that from what we know thus far about the additional protection that a booster offered. Without a booster, there are going to be more staff out with COVID and spreading COVID to other staff and having them out as compared to with a booster, where there will be increased protection for those staff. That's a balance that it's very important to consider too.

Dr. Gutierrez Thank you very much.

Dr. Gutierrez Ms. Monroe, please.

Ann Monroe First of all, I want to say I was 100 percent supportive of the initial vaccine regulation and still am. I would like the department to provide us with data that will have more people out who only have two vaccines than those with the booster. And secondly, all of the concerns that we've seen in a lot of the letters is about timing. And if timing is not in the regulation, where are people getting it? And even my colleagues on the panel, why are we so concerned about the timing if there hasn't been any kind of statement about how quickly this is going to be put in place? I don't know if I'm being clear, but timing seems to be a critical issue and one in my mind as well. And while I appreciate the department's concern, to me, we have to take into account the impact on our colleagues who are

providers and hear their concerns very loudly and not necessarily leave it to the discretion of the department on how this is going to be implemented. I guess that's a bunch of questions. First of all, what's the data that people who don't have a booster will be out more than people who do? And secondly, if it's not in the regulation, why has there been so much discussion about timing and why is that so important to have implemented immediately? Excuse me if I'm not clear, but I have those two questions

Emily Lutterloh I can speak a bit to the data question there. First of all, if you take a look at our public dashboard, you can see that the vaccine effectiveness overall has somewhat declined. I should make the point that Omicron has only been on the scene here in New York for a little bit over a month. Certainly more data will be forthcoming, but we do have some initially here in New York and elsewhere. But if you take a look at our public dashboard, vaccine effectiveness has started to decline a bit and we're seeing less decline for the over 65 people and we think that's because they've been good about getting boosters. The biggest decline has been seen amongst kids who have not typically, for the most part, been boosted yet. That is some hint in our New York data itself that boosters are extremely helpful. There's also a paper out in the U.K. where it hit earlier that showed a diminished vaccine effectiveness, but that was much improved when people got their booster. There is data out there, even though we're only a little more than a month into this with the variant.

Ann Monroe Well, excuse me, but if it's children who are not who are showing the decline, I don't think that's relevant to the work that we're doing here today.

Emily Lutterloh It's not just children it's more so seen in children, but there is a decline in the age for the that would be in the workforce also.

Dr. Gutierrez Mr Lawrence, your hand is up. You want to comment.

Harvey Lawrence Harvey Lawrence, member of the council. Similar to my colleagues, I do share the concern as a provider that at some point this will again cause some rumbling within our staff and some issues around compliance and also tracking compliance and following through. I think one of the issues that I have is it's really at some point, the more flexibility you have, then it seems to suggest that maybe the urgency is not really there for having the booster, because if the scientist is indicating that the booster should be available and be taken early to prevent additional illness and transmissibility, then it seems to me that the posture has to be a little more aggressive in terms of limiting the amount of time and flexibility. Because if you are spanning a time and stretching a time out, then it sort of suggests that, well, it's optional and it's really something that can be delayed. I would like to have some clarification on the efficacy as well as the urgency.

Mr. Kraut Just to be clear, the urgency you mean about the need to administer this?

Harvey Lawrence Yeah, because I don't think you can have it both ways that at some point that you have, what is being suggested is that there's an enormous amount of flexibility and when this can be administered. And then at the same time, say that there's it's urgent, needed to minimize illness within the community.

Mr. Kraut Well, let's just be clear, I think the regulation calls for it to be administered as quickly as possible, right? That's clear. There is some practical issues and the science indicates, the paper in the U.K., the study that came out of Arizona, that you're 31 times more likely to be hospitalized without the booster than you would with the booster. There's

more research coming out every time. I think this is a fact based regulation. We are concerned as providers, but again, we're trying to protect, as was just mentioned, the workforce, the individuals and the patients. I don't think there's dispute about the intent, right?

Harvey Lawrence I think what I'm attempting to do is to get clarification that if it's in fact something that is urgently needed, that we say so and then look at the consequence. The consequences are, I think, that we're going to have to address these providers and that is that we may again brush up against staffing challenges, diminished staffing in our establishments. We just need to understand what is the top line priority and then what are the consequences. I sort of got the sense that, well, we could, there's some flexibility, but there that flexibility is going to be to the detriment of everyone involved then we should say that.

Mr. Kraut But that's no different than October when we passed that the first time mandating the vaccine. The circumstances are identical.

Harvey Lawrence That's what I'm alluding to that we said this is what we're going to do because of the urgency and we're going to bite the bullet on that. At this point, I'm hearing at some point that either it is the same degree of urgency or less urgent and we need to have a little more time to implement this. Again, I just want to get a clear understanding of urgency, efficacy, so that if we act that we know that we're acting because it is urgent and that there's going to be some level of efficacy that is important to take place in a timely fashion.

Mr. Kraut Maybe the department should answer that because I think the science could deal with that.

Dr. Gutierrez I was hoping that I could ask Dr. Lutterloh if she wants to answer some of the questions brought up. I would recognize at this point a Scott La Rue commenting next and Dr. Strange.

Dr. Gutierrez Go ahead.

Emily Lutterloh I definitely do think there is urgency here. I think everyone in this room and listening to the stream is aware of the fact that we're at the height of a surge at this moment. Also, I want everyone to keep in mind, I'm not sure how many of you are clinicians, but the thinking with boosters is that they improve the protection almost immediately because of the way the immune system works, and it works, called the anamistic response. There is some urgency here, and I think the flexibility, of course, is needed to make sure that this can be implemented without disruption. I think that's the purpose of it, but there very much is an urgency here.

Dr. Gutierrez Thank you, Dr. Lutterloh.

Dr. Gutierrez Those that have spoken, please put your hand icon down.

Dr. Gutierrez I have Mr. La Rue next.

Scott La Rue Good morning, Scott LaRue, member of the Public Health Council. My concern here isn't about the necessity of the booster. I fully support the the use of boosters and getting our team to take the boosters. I'm more concerned about the implementation

of this regulation. I'm not sure why we're being asked to approve what seems like half a regulation because it's lacking the detail around how it's going to be implemented. If you use the Memorial Day pool example, we have hundreds of employees. I actually have 4,000 employees, but this will only apply to those who have not provided documentation of the booster. Every single one of them is going to have or could have a different effective date of which they are required to get the booster. I'm concerned it is sufficient flexibility so that if the surveyor comes in by building, I'm not at risk of an immediate jeopardy because we missed one employee who was at the pool party on Memorial Day weekend and the significant amount of work that will be required to track this. Again, I support it. I think everybody wants to be fully compliant, but you're asking us to approve a regulation that doesn't really tell us how we're going to be held accountable on the punitive end of this, which is my concern.

Dr. Gutierrez Thank you, Mr. La Rue.

Dr. Gutierrez Dr. Strange, please go forward.

Dr. Strange Dr. Strange, Public Health Council position.

Dr. Gutierrez You're breaking up.

Dr. Strange Can you hear me now?

Mr. Kraut No.

Dr. Gutierrez No.

Dr. Strange Can you hear me now?

Dr. Gutierrez Maybe better. Go ahead.

Dr. Gutierrez Now, we lost you.

Dr. Gutierrez While Dr. Strange comes back, let me make a remark that we have five people scheduled to talk. I will mention your name so you come forward close to the microphone where you're going to be speaking from; Amy Lake, Jim Meyer, Judy, Jim Klein and Rick Lawrence will be speakers.

Dr. Gutierrez Is Dr. Strange back on?

Colleen Not yet.

Mr. Kraut Why don't you just continue with the comments and then we'll come back.

Dr. Gutierrez Any of those five that I mentioned prepared to speak?

Dr. Gutierrez Go ahead.

Dr. Gutierrez You need to come forward, please identify yourself and the institution that you represent. Let me alert you that you have three minutes to deliver your remarks

Mr. Kraut I will give you a one minute warning.

Amy Thank you.

Amy Good morning, everyone. My name is Amy Lake Marrero. I'm from Dutchess County. I have worked in health care for 18 years. For the last 11 years, I have worked as an X-ray tech for local hospitals. In March of 2020, when no one knew the truth of this illness, my fears were put to the side to help others. My coworkers and I worked without proper PPE and adequate staffing. Every single patient that presented with COVID-19 symptoms or who was COVID positive had a chest X-ray performed by my coworkers and I. We were considered heroes and thanked daily by the news media. Fast forward to October 2021, because I would not be coerced into injecting my body with an experimental new MRNA nanotechnology poison, I was fired as if I meant nothing to the same medical facility that so desperately needed me one year prior. I have been into health since I was a small child. My Grandmother taught me at a very young age all the ways to keep my body and mind as healthy and strong as possible. I find it troubling that the CDC or any other news media outlets have discussed more ways to improve one's immune system. Nothing about the use of vitamin D, vitamin C, zinc or quercetin to strengthen our body, not ingest supplements either, but in our food. The Director of the CDC announced just yesterday that 75 percent of COVID deaths were people who had four or more co-morbidities. Although this may be great news and great information for some, this is something many of us knew in April 2020. Why do the healthy need to be vaccinated for the safety of the unhealthy? Why is anyone being forced to take an experimental drug that does not even prevent the transmission of COVID? Why is shedding not making the news?

Mr. Kraut You have one minute.

Amy If the panel is unaware of vaccine shedding, you should not have the responsibility of voting for this today. The decision by Governor Hochul to mandate health care workers to be vaccinated has created unsafe conditions within the health care system of New York for both patients and medical professionals. Governor Hochul's poor decision is directly affecting patient care to all that seek medical treatment. The local hospital in Dutchess County is running on a patient to nurse ratio of 10 to 1 each. Patient care tech is getting between 20 and 40 patients in one shift. Let me say that again, some PCT's are getting 40 patients per shift. This is beyond dangerous. The chance of a nurse or PCT making a medical error is greatly increased when there is staffing such as this. 20 ICU nurses have quit because of the dangerous staffing and unreasonable demands of this experimental vaccine. Bronchoscopies ordered by Pulmonologists are not being performed. .

Dr. Gutierrez Thank you.

Jim Thank you.

Jim I'm Jim. I'm from Upstate New York. I'm just representing the public. I have a very brief prepared statement to share. And before reading it, simply want to say that in public or health care policy, we always have two way trade offs and that in the larger picture, there is both clinical health and there also is the health of our republic. There has been a lot of manipulation of data and the science and safety of the vaccinations and this proposed booster are definitely not settled. Its potential harms and adverse reactions could actually represent potential for what you have already mentioned here as what you're trying to avoid and that's a shortage of health care workers, which we just heard about. I'd also like to say there is no legal standing for a mandate for anyone when it comes to putting something in their body. The US Constitution and New York constitution exist to

preserve our god-given freedoms. You are obligated to support these principles in these documents. I oppose all so-called mandates or use of emergency powers related to COVID-19 protocol or vaccinations, and all currently proposed bills in the New York State Senate and Assembly that would take away our New York citizens rights to determine for themselves or their children what will go in or on their body. New Yorkers are capable of making their own educated decisions. My wife has been a faithful and excellent registered nurse here in New York State I'll say for 42 two years. In September of 2021, her rights to make her own health care decisions were violated by a mandate to get a COVID vaccination or leave her job and thereby lose her ability to serve her patients and support her co-workers.

Mr. Kraut You have one minute.

Jim Thank you.

Jim This is all wrong. This is no way to treat frontline heroes. The direction from Albany has been unacceptable. We, the people are frustrated with your collective actions which have been violating our constitutional rights. If you have personally protected our freedoms during this time of chaos, thank you. If you have not personally protected our freedoms during this time of government dysfunction and overreach, please do some soul searching and do all that is in your power to protect our freedoms.

Jim Thank you for your consideration.

Dr. Gutierrez Thank you.

Dr. Gutierrez Next Speaker.

Judith Hi. Thank you so much for having me today. My name is Judith. I'm a member of the public. My background is Biochemistry and Molecular Biology. I also have a Master's degree in Public Health and Environmental Health and Toxicology. I ran PCR in a lab. I will address that in just a moment. I would just like to ask everyone on this panel if you have any misgivings whatsoever about this mandate, please vote no, and let it come back to the table. Every time this planning council puts forward something that is not well thought out and planned. I don't agree with any of them. I think all of this is an overreach. Florida is handling things very differently. Go ahead and check it out. Every time something is put forward that is not well thought out and not well defined, the rest of the New York State public ends up being victims to that particular regulation that was not thought out or well planned, and that's across the board. This is clearly not well planned. Let me just back up. If we're going to talk about a pandemic, we should talk about why and how we're defining a pandemic. Back during the swine flu, the definition of pandemic included mortality cases. That actually changed right after the swine flu and now does not include mortality cases. Now, it's just cases. That's it. We're using PCR, which Kary Mullis, who designed the PCR test, said should never be used to determine whether something is infectious or not. We're using that to diagnose and confirm infection. There are scientific studies out there talking about inferring infection. That's not what you do when you're trying to lay the basis for mandating vaccines. PCR was phased out December 31st, 2021, because it could not tell the difference between flu cases and coronaviruses and even old coronaviruses. We have a highly outrageous number of cases that could be have been the flu, old coronavirus, because PCR was never the test to be able, and it's laying the basis for all of your further mandates and actions. I will get into the mRNA vaccines as well. Phase three clinical trial. We are doing human experiments. Basically, all previous mRNA vaccines were not

approved that have been used. A study for HIV, Sara and Merz were never approved to go out and be used on humans. And now, all of a sudden, we're in an emergency situation. We're using mRNA vaccines. These vaccines are not effective. It's like putting a four by four bandage on an eight by eight wound. And every time you boost on top of it, the spike proteins that are deposited from the first round of vaccines are now being fought by the body every time you boost. We're going to have autoimmune issues because you're going to see that the booster is going to start fighting the spike proteins that have deposited in the organs of every single person that's been vaccinated. That beyond all of the other adverse events that have not been recorded or have been reported that are being subsequently ignored. Pfizer doesn't have to give you any data for eight months. This is garbage. You're going to keep doing this to people and it's complete garbage. You have junk data and you don't have enough data to move this forward. I would urge everyone here to vote no, please.

Dr. Gutierrez Your time is up.

Dr. Gutierrez Thank you very much.

Dr. Gutierrez I have two more speakers.

Dr. Gutierrez Please take the identified yourselves.

Jim Klein Hi. I'm Jim Klein, the President and CEO of Leading Edge in New York. We represent not for profit and government sponsored long term care providers. The concerns that we raised in our letter have already been spoken to. I just wanted to give you a on the ground assessment of what's going on. Staffing is the shortest it's ever been in my 40 years of dealing with health care in the nursing homes. Right now, a recent poll from our members, we took it yesterday. 74 percent are already restricting admissions. 49 percent have shut down units. Anything that the state does to exacerbate that, like doing a booster mandate, is going to have an impact. We checked the latest data. Right now, 22 percent of the nursing home staff are boosted. This would be a major undertaking in an extremely short amount of time. No offense to my friends at the health department, but we're not sure that we can trust them to allow for a slow rollout of this. There is no way that you can vaccinate 88 percent of the staff in a short amount of time. It's also going to be a logistical nightmare of trying to keep track of when everybody has to get boosted. A two week window is not nearly enough. The other thing is we keep making this a binary choice of either doing boosters or not doing boosters. The state has tremendous amount of resources at their command. The state did not have to roll this out as we're going to do mandate on boosters. We suggested to the Governor and the Health Commissioner back in November that there needed to be an emergency increase in the Medicaid rates so that we could pay bonuses so that we could pay for recruitment and retention of staff. We could have pulled down enhanced federal Medicaid reimbursement, but no action was taken. There are things that the state could do to help. New York City is providing booster teams to go around to boost workers in nursing homes and assisted living. None of the resources of the state have been focused on that effort here. We find it to be a punitive environment and one that we are not comfortable going forward with. We strongly support vaccination and boosters. It's just the timing is not right. This should be delayed at least until the state budget is taken up. Has made a lot of interesting proposals on staffing that if those resources were applied that we might be able to then do a mandate on boosters. Right now you're going to create a dangerous situation at nursing homes across the state.

Dr. Gutierrez We're getting feedback.

Mr. Kraut Can we have everybody mute particularly in the room or anybody on the Department of Health.

Mr. Kraut Thank you, that took care of it.

Dr. Gutierrez Thank you, Mr. Kraut.

Dr. Gutierrez We have one more speaker.

Rick Good morning. My name is Rick. I am here to speak on behalf of my wife, Janine.

Dr. Gutierrez Could you say your last name.

Rick Lawrence.

Dr. Gutierrez Go ahead.

Rick My wife has worked in the health care field for almost 30 years and has been an R.N. for 13 of those years. On November 22nd, she was suspended from her position as a hospice administration nurse, because she chose not to receive the COVID-19 vaccine. Apparently, this makes her a danger to her already dying hospice patients. Since the beginning of the pandemic, she has worked at a major hospital in a private practice and most recently in hospice home care. During this time, she has made some interesting observations, particularly relating to the COVID vaccine. She has observed numerous cases of severe adverse reactions, as well as death in some cases. In one case, a 35 year old Mother of three who was previously in excellent health, received the shot and then came to the office with multiple serious medical issues. She had difficulty walking, changes in her mental status, cardiac arrhythmia and extreme fatigue, which made every day functioning nearly impossible. She came seeking help, but no doctor would give her any answers. There was no talk of possible adverse effects from the vaccine. On a personal level level, her close friends, parents both died within three weeks of receiving their vaccine, though neither had conditions severe enough to cause their death. Early December, my friend messaged me that her Dad got the booster shot the day before that his doctor recommended and that they were at the hospital. Her Father woke up the day after his booster disorientated and ended up on the floor. The doctor at the hospital said it was definitely from the shot. His blood pressure was in the high 60's when they released him with no written discharge plan. Some of his labs were abnormally elevated as well. A few weeks later, he was back in the hospital due to a stroke and is now in rehab. In my wife's opinion, this vaccine is not safe for anyone, and I agree.

Mr. Kraut You have one minute.

Rick Thank you.

Rick If we look at the current statistics, we are seeing more and more vaccinated people who are both contracting and transmitting this virus. Clearly, this vaccine is not effective. My wife asks, Can you tell me why 34,000 health care workers in New York State have been willing to give up their jobs and their livelihoods rather than take this mandated experimental vaccine? Are you willing to take any responsibility? Do you even care if anyone that you have mandated to take this vaccine is found to have serious health issues or even dies as a result of it? These are unconstitutional. Mandates need to end now.

Rick Thank you.

Dr. Gutierrez Thank you, Mr. Lawrence.

Dr. Gutierrez Having no further requests from the public, I go back to Dr. Strange to make a questionable remark.

Dr. Gutierrez Go ahead, please.

Mr. Kraut I guess he's not able.

Dr. Gutierrez I'm sorry.

Mr. Kraut I just wanted to read into the record a couple of things. I just want to acknowledge we received approximately 200 emails on this subject from the public, including letters representing in addition to Mr. Klein and Leading Age, which he described we received from Cathy at the New York Association of Health Care Providers and Lisa Newcomb from the Empire State Association of Assisted Living recognized issues about the staffing challenges, the cost of staffing agency, the lead time to implement the challenges of a particularly a decentralized, immigrant based home care workforce to be reached and the need and the importance of regulatory relief to free up the workforce and to have flexibility in the implementation of the regulations. I just wanted to read that into the record and talk it over to you if anybody else has comments or the department.

Mr. Kraut I'd like to go into an Executive Session before we vote.

Dr. Gutierrez I have two requests; one from Dr. Ruggie and the other one from Dr. Berliner.

Dr. Gutierrez Dr. Ruggie first.

Dr. Gutierrez Unmute yourself, please.

Dr. Ruggie Can you hear me now?

Dr. Gutierrez Yes.

Dr. Ruggie Sorry to have been late. I had a conflict and had to join late. I'm not sure whether anyone addressed how to what degree does the booster shot avert contagion?.

Dr. Gutierrez We discussed it.

Dr. Ruggie Is there data? Is there a two sentence summary or not?

Mr. Kraut Go to the department.

Emily Lutterloh I can refer to a paper that came from the U.K.. They're a bit of ahead of us in terms of when the Omicron variant hit and therefore the, you know, the chances they've had to get data out. I can read from there the abstract of this paper and the results where they said that from two weeks after BNP 162 B2 booster, which is Pfizer V, the vaccine effectiveness increased to 71.4 percent, with the 95 percent confidence

interval interval of 41.8 to 86. And for AstraZeneca, it was up to 75.5 percent. So, yes, there was definitely an increase in vaccine effectiveness after booster.

Dr. Ruggie For the individual receiving the booster, because I understand vaccinated people may still be carriers, I may still be contagious. Do we have data regarding whether the booster prevents infection, so the health worker who may be boosted can still give the infection in which case the booster didn't make any difference.

Emily Lutterloh That's an extremely tough one to say. Remember that if you reduce the number of infections in those health care workers, just by that measure alone, you're reducing the chance that they can spread to patients, which is the major concern. You are asking a different question, which is that among those who do become infected, does the vaccine prevent spread? I think the question is tougher. It's tougher than you might know to answer because, there are a lot of proxy measures for infectiousness that are used, such as PCR or even viral cultures. Remember, those are just proxy measures. And just because a PCR or even an antigen test or even viral culture is positive, people may assume that that means that they can transmit. That may or may not be the case there. If you recall, there was a study and I can't quote the exact study for you, but there was a study way back in 2020 with the original variant where they looked at actual transmissibility. They were not using a proxy measure. They were looking at when during the course of illness did people transmit. They didn't find much transmission after day 6. We all have to remember we're using proxy measures here. The question, the specific question you're asking about if a person is infectious or excuse me, if a person is infected, when are they infectious is once you know that the viral culture is negative, that's a pretty good indication that they're not. But before that, you know when they might be that's a tough question to answer.

Dr. Gutierrez Thank you very much.

Dr. Gutierrez I have Dr. Berliner.

Dr. Berliner Yeah, I want to follow up on something that Jeff started about the large number of emails that were received regarding this issue. I'm wondering if in the future we can require people to provide a name and an institutional organization or just a private citizen to those e-mails, because all we're getting are email addresses and I don't know who they are or what they are. We require people in the public session to give a full name and a relationship.

Mr. Kraut That's an excellent idea. We were concerned about it. I just didn't want to. I just felt everybody should see everything. You can give appropriate weight based on the comments that were received. I think that's an excellent idea for the future. We'll put that into codification.

Dr. Gutierrez I'd like to wrap it up.

Dr. Gutierrez I see that in. Mr. Lawrence still has his hand up. You have any comments or you're done?

Harvey Lawrence I just have a question. I appreciate the response with regard to the urgency. I just wanted to get a sense for what is the flexibility and how will the department implement the mandate if it's adopted to minimize the impact on the staffing?

Dr. Gutierrez Who wants to answer that?

Jonathan Karmel So, yes, we have the twin state disaster emergency right now, a staff shortage and also COVID itself, and addressing those two emergencies at the same time creates a conflict. We're seeing that again today. We want to implement this booster requirement as soon as possible, but possible is the key word there. There are logistical challenges and we recognize that and we'll take that into account when we issue guidance.

Mr. Kraut I'd like to now go into an Executive Session. I want to consult with our legal counsel on litigation matters potentials, and so if that's okay, if you could bring them, just suspend the meeting for a moment. I'd like to confer with our legal counsel.

Dr. Gutierrez We are suspending the meeting.

Colleen Dr. Gutierrez?

Dr. Gutierrez Yes.

Colleen Dr. Gutierrez, you do need to make a motion to go into Executive Session.

Dr. Gutierrez I need a motion for that.

Dr. Gutierrez Can I take that as your motion, Jeff?

Mr. Kraut I would prefer if you make the motion and another member of the committee seconded.

Dr. Gutierrez I will make the motion.

Dr. Gutierrez I see Dr. Watkins.

Dr. Gutierrez All in favor?

Dr. Gutierrez Anybody opposed?

Dr. Gutierrez The motion carries.

Dr. Gutierrez We go into Executive Session.

Dr. Gutierrez Still before noon and we are resuming the meeting of the Codes, Regulation and Legislation. Present for the committee are; Dr. Watkins, Mr. Holt, myself, Mr. Kraut, Dr. Ruggie, Dr. Lewin and Dr. Yang. I am going to make sure that you understand that the questions I'm going to ask for further questions from the committee. If you are members of the council, you can ask questions, but I will open that up after the committee has had a chance to ask questions and then I will put it to a vote.

Dr. Gutierrez The meeting is back in session.

Dr. Gutierrez Are there any further questions from members of the committee?

Dr. Gutierrez Thank you.

Dr. Gutierrez Are there any questions or comments from members of the council now?

Dr. Gutierrez Hearing none, I'm going to have the motion put to a vote.

Dr. Gutierrez All in favor?

Dr. Gutierrez Identify yourself by voice and hand and stay on until we can count everybody.

Colleen Point of clarification. This is for the Codes committee?

Dr. Gutierrez Only members of the Codes committee. We have five hands up I see.

Dr. Gutierrez You see anything else, Colleen?

Dr. Gutierrez Anybody again in the Codes committee?

Dr. Gutierrez Any abstentions in the Codes committee?

Dr. Gutierrez I see Dr. Watkins.

Dr. Gutierrez Colleen, can you give us a read of the vote?

Colleen Motion carries with the one abstention.

Mr. Kraut Thank you.

Dr. Gutierrez Thank you very much.

Dr. Gutierrez That concludes the Codes committee.

Dr. Gutierrez And with that, I close the meeting, moving on to the council session.

Dr. Gutierrez Thank you very much.

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