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Mr. Kraut While the room is getting reset, welcome back. We're now back in session having ended the Executive Session.

Mr. Kraut I now like to have a motion to approve the minutes of October 6th, 2022 of the meeting minutes.

Mr. Kraut I have a motion, Dr. Berliner. A second, Dr. Torres.

Mr. Kraut All those in favor?

All Aye.

Mr. Kraut Opposed?

Mr. Kraut The motion carries.

Mr. Kraut I'm now going to turn it over to Dr. Morley to give the report of the Office of Primary Care and Health Systems Management.

Dr. Morley Thank you, Mr. Kraut.

Dr. Morley Can you hear me?

Mr. Kraut Yes, we can.

Dr. Morley I'm Dr. John Morley. I'm the Deputy Commissioner for the Office of Primary Care and Health Systems Management. Beginning my report with the Center for Health Care Policy and Resources, the PPE Stockpile Methodology. The department is actively reaching out to key identified stakeholders, including nursing home and hospital associations, labor unions and medical societies in New York State to explore alternative methods for hospitals and nursing homes to ensure an adequate PPE stockpile in the event of another pandemic should supply chains be disrupted. Number two, Prescription Drug Regulations. To implement public health laws Section 280 B, the department is currently developing regulations to instruct hospitals how to register as a donor or recipient entity for unused prescription drugs. These regulations will help indigent patients access and afford needed medications. Number three, nurses across New York, the NANY program, will continue to work towards publishing the request for applications prior to the end of this month, December 31st. From the Bureau of Emergency Medical Services, the World University Games for 2023 will be taking place in Lake Placid. World University Games, also known as WUG 23. It's an eleven-day international festival and competition that combines high level sports with educational and cultural events. It'll be in Lake Placid and nearby towns between January the 12th, 2023 and January 22nd, 2023. The department, along with other agencies of the New York State WUG Commission and the organizing committee, have been participating in monthly planning calls since the Fall of 2021. The department determined early on that the organizing committee would be required to obtain a Part 18 permit for the event. The Bureau of EMS staff continue to work with the organizers on completing the Emergency Management Report. From the Bureau of Narcotic Enforcement, as I'm certain you're aware, the COVID-19 pandemic accelerated the evolution of some segments of health care delivery system to New Yorkers. The practice of telemedicine expanded greatly, preserving and extending access to care. The

federal government and New York State have both recognized that telemedicine continues to play a vital role while the federal public health emergency due to the COVID-19 persists. The federal DEA is permitting telemedicine practitioners to prescribe controlled substances without the usual prerequisite of an in-personal physical examination. To ensure the continued availability of medically necessary access to controlled substance medications, the Commissioner of Health has determined that it's necessary to permit controlled substance prescribing by telemedicine in the same manner that the DEA permits limited to the duration of the COVID-19 federal public health emergency. This determination will sustain access to controlled substance medications and provide consistency for telemedicine practitioners, pharmacists and patients. The department intends to finalize and post this termination online for the duration of the COVID-19 federal public health emergency. There has been a cybersecurity events at a large hospital system in New York City. The system suffered a cyber incident on approximately 11/21/22, which resulted in the disabling of their electronic health record. All sites are currently using read only access to information. I remind folks that the events that are taking place in Eastern Europe and in Russia have led to significant increases in hacking events. There's a great deal of susceptibility to this problem in the United States. Our health care transformation group, Statewide Health Healthcare Transformation Three is in the final stages and we anticipate announcements of awards very shortly. We aim to have out the request for applications for statewide for in early 2023. The Center for Provider Services and Oversight. I'm happy to report that there are no significant workforce actions also known as strikes in New York State at this time. The Safe Nurse Staffing Bill, the work group met three weeks ago and reviewed the draft annual report as required by statute. We very much appreciate their input on that report. We continue to work on regulations for safe nurse staffing with the unions, with the hospital associations and with the Governor's Office. As you did hear from the Commissioner, there is a plethora of virus activity in the communities. These viruses are having a very clear and direct impact, not just on individual patient level, but on the system level. Hospitals are full and the long-standing issue of crowding in the emergency departments of hospitals continues unabated. The ED issue is having an impact on more than patients in the hospitals. It's affecting the EMS system. CMAC, the State Emergency Medical Advisory Committee and SEMSCO, the State Emergency Medical Services Council, have both raised concerns about this impact on EMS. Where an EMS crew could transfer a patient to the care of the hospital, be ready for their next emergency call, be it a motor vehicle accident, a gunshot wound, heart attack, stroke or whatever the emergency is that relate to the activation of the 911 system. It was being done in under thirty minutes. It's now not unusual, not rare for it to take over two hours to transfer a patient to the care of the hospital staff. This is having a very significant time on response times. The times that it takes for the ambulance to arrive at the motor vehicle accident, at the scene of whatever event has occurred or wherever the emergency is necessary. The Chair of CMAC recently met with our own Chair of the council and Dr. Ruggie. I will leave to Mr. Kraut further details on the discussion that took place between the Chair of CMAC and himself and the outcome from that discussion. That's the end of my report. I'll be happy to take any questions. Again, I'll look for any additional information from the Chair of this committee related to the CMAC request.

Mr. Kraut Let me just comment before we open up for questions. As we all are aware, the challenge of staffing our facilities throughout the state, particularly in our Upstate in a rural areas, has had numerous unintended consequences beyond the walls of the institution. One of the things the SEMSCO had pointed out is we're experiencing an issue with ambulances in rural areas who are coming to the ED, are being asked to wait many times in the ED, but more often outside of the day with their patient to keep the patient on a stretcher because of the inability of the hospital or the ED staff to accommodate that

patient. There's insufficient staff. There's sufficient beds. There's insufficient resources. As you could expect, that backs up. Particularly in a rural area where they don't have a lot of ambulance services, you can't get that crew back out on the road if they can't drop off a patient on the stretcher that they have. That has repercussions for the amount of time it takes for the ambulance crews to respond to the next call if they can't do it. One of the things both Dr. Rugge and I, in discussing this, we believe this is an issue to that it has serious ramifications. We want Dr. Rugge and the planning committee to kind of have a discussion about it, to shine light on it and make the administrative and the regulatory and the community people aware in the state of this problem and to try to work out potential solutions that might be beneficial in doing this. This is where I think a good role of the committee. John, I think you've already kind of have discussions that you plan to schedule that at the next cycle. Is that correct?

Dr. Morley Yes.

Mr. Kraut I'll leave it up to you, John, if you could add anything.

Dr. Rugge Thanks to Dr. Morley, there have been very preliminary discussions about how to organize an approach to this particular problem of system stress. I think there can be some early on ways to address it and also may open up a broader discussion about how do we deal with system stress overall. Looking at convening a meeting within the next month or two of the Planning Committee and the hope of developing both an agenda and a series of proposals for consideration by the council and the department.

Mr. Kraut It's another indication, as we talked before, about health equity, the prevention agenda, public health, it's the interconnectedness of all these different offices within the department and the need to have alignment within. Essentially, even as we try to pivot away from some more mundane activities to focus in on public health and strategy and policy for the state. This is a good example that we could use this venue to do so.

Mr. Kraut With that, if there's any other questions for Dr. Morley, I'll give it to Dr. Berliner, Dr. Boufford, then Dr. Kalkut, then I'll go to Albany.

Dr. Rugge Dr. Bennett has a comment.

Dr. Bennett Could I just have a comment? I think this kind of gridlock in the system is obviously multifactorial. What it's causing is gridlock everywhere. I believe, as I look at it, the single most important feature in the gridlock right now is workforce. It's workforce, workforce, workforce. If you look at the hospitals in Upstate New York, particularly in this region, they don't have enough staff. Private practices are starting to feel the same thing. That's why the ambulances are waiting to unload their patients. It's workforce, workforce, workforce.

Dr. Berliner What that's led to is an interconnectedness in terms of problems. As we've heard, difficulties with staffing the nursing homes lead to back up in terms of hospital capacity, which leads to backup of ED capacity, which leads to our ambulances with patients in the parking lots for hours. It's unacceptable. We can't solve all the problems at once, but at least we can begin as a planning entity to look at how to address the issue of those access problems for the ambulances in the ED. That may lead to some broader discussion about what can we do for the health system in general.

Mr. Kraut Thank you.

Mr. Kraut Howard.

Dr. Strange John, this is one of my favorite topics. Many years ago, we approved the dissolution of evening operations for the emergency room at the Lake Placid Hospital, but it was our understanding at the time that if there was an international competition, they would have to go back to twenty-four-hour operation. In light of your comments about the problems with workforce and staffing, when do they cut back to twenty-four-hour operation? When does that end again?

Dr. Ruge Others in the department may know more about this than I, but as I understand it, the parent organization, Adirondack Medical Center, Adirondack Health.

Mr. Kraut Hold on.

Mr. Kraut Howard asked the question. He's basically giving you an agenda item for the committee meeting.

Dr. Ruge Fine.

Mr. Kraut Let's get that into the agenda of the committee, because I got to move the meeting along. That's all. I just wanted to let you know this is a topic that we're going to be taking up. It's multifactorial. If you have questions or comments, please direct them to Dr. Ruge, so we make sure it's part of the agenda of that committee.

Mr. Kraut I now called on Dr. Boufford, then Dr. Kalkut, and I'll go back up to Albany.

Dr. Boufford Thanks.

Dr. Boufford I just want to change topics. I have sort of three questions. One has to do with your very helpful report on the authority you have over, if you will, non-hospitals around the surge and flex question. One of the points in the minutes that I wanted to raise is not so much... I appreciate the fact that you cannot include entities over which the department has no authority in any surge and flex regulation. Part of their request repeatedly, which I was making every time this regulation came forward, was the fact that and again, to the degree that you can be Article 28 institutions, ambulatory care institutions, primary care institutions that you do regulate and the local health department had not been involved in, perhaps not been used to the full extent they could have in the initial COVID response, but importantly, that they be involved in planning for the next one. I think your response was, we will turn to them when the next one comes along. If necessary, we'll use them more. The request I think, or I would make at least would be that we would talk about how they would be involved in developing the plan for the next response. Because right now on the regulatory side, we've looked at the only folks involved in their planning our hospital. That's that one comment. The second one I wanted to raise is that I had previously also requested that the council be provided with and this can be in the next meeting, the current language that's being used to link the prevention agenda performance with the CON link. I know we're going to be looking at CON's with equity and other things, but I think it'll be really... I'd like to reopen that conversation and see where we might take it forward with other entities when that happens. Finally, this is a little bit off, but colleagues of mine that are very involved in primary care were concerned about the Governor's veto of a set of commission that had been proposed by the legislature, one of which was a commission to oversee the new primary care initiative to

bring more attention to primary care in the state of New York. I appreciate there are lots of complex reasons why not to have a lot of other bodies that have to be staffed and worked on. I wondered if your office has a plan B relative to the idea of a primary care initiative that really looked at the sector of the health care delivery system in a way that is very badly needed, I think, especially as we move into our next wave.

Dr. Boufford Thank you.

Mr. Kraut John, I'll just let you respond.

Dr. Rugge In terms of the Article 28, we are talking to the folks. The FQHC's and other groups are very anxious actually to help and to participate. We have not come to concrete mechanisms in terms of what they will do, but we are talking with them about that and they're willing and interested.

Mr. Kraut Local health departments as well.

Dr. Rugge Thank you.

Dr. Rugge Yes.

Dr. Rugge We talked to the local health departments on a monthly basis.

Dr. Boufford John, I appreciate you're in touch with these folks. I'm really talking about a very specific agenda item and I think perhaps would be great to work with them around how they could be incorporated into appropriately into planning for the next COVID response.

Dr. Rugge Those are things that we are talking to them about. We just don't have an outcome yet that I can speak for them in terms of what they will be doing. This is something that has been a conversation with them. The issue of current language on the CoN and the prevention agenda, we will get that to you before the end of the week, which ends tomorrow so that gives us twenty-four hours.

Mr. Kraut Take a week.

Dr. Rugge We're overdue on that. I apologize. We will get that to you as soon as we can.

Dr. Rugge In terms of the private practice issue, we have not been focusing on that so far, but that is something that we will be working on in January of 2023.

Mr. Kraut John, you may have mis-spoke. You meant not private practice, primary care.

Dr. Rugge Sorry. Primary care. You're right.

Mr. Kraut Go ahead.

Dr. Boufford To clarify, the legislature proposed a commission on primary care that would oversee an initial primary care initiative broadly drawn. That was my question.

Dr. Rugge I'm not familiar with that legislation at all.

Mr. Kraut You might want to look at the language of what was proposed because I suspect it'll be subsumed.

Dr. Rugge Was that the last session that that was something that was proposed?

Mr. Kraut Yes.

Dr. Boufford They were vetoed. There was a bucket of commissions. Among those was the primary care commission that was to have initiated the primary care initiative.

Dr. Rugge Thank you.

Dr. Rugge It didn't make it onto my list at all, so it will now.

Mr. Kraut Dr. Kalkut.

Dr. Kalkut John, thanks for your report. I wanted to make a comment. I'm assuming it came out of your office, which is the laboratory guidance for Ebola virus disease testing for hospitals and off campus emergency departments. Our people and I assume it's not the first time you've heard some of this. The people will not or do not want to use the main laboratory to do routine laboratory testing for people under investigation, patients under investigation in the emergency department for Ebola, CBC, patients with potential Ebola for CBCs liver function tests and the like. They feel they would have to take their machine that does thousands of tests a day offline and would disrupt the hospital flow because a major piece of equipment is out of service until it's decontaminated. There are other issues, obviously, with point of care testing, which is the other option that the guidance offers. It probably is more feasible, but obviously there is expense and having to do laboratory tests like this for twenty-four hours other issues, staffing, space, etc. Again, very difficult to implement. I understand the urgency of identifying a case of a patient with Ebola. The outbreak in Uganda has continued, but the difficulty in implementation of this guidance is really, I think, a major issue across the hospital community.

Dr. Morley It did not come from OPCHSM. is not part of our office. It is in public health. Having said that, I've participated in conversations about this topic. I'm not sure what the difficulty is. This is not like a prion where you have to burn equipment that gets used. This is a virus like other viruses. Yes, it is a serious virus that causes serious illness, But I've been told by the laboratory folks there is no reason to take equipment off line if it's been used for Ebola. It's just like any other virus in terms of the systems that they use and the protections. As long as you're following the usual protections, you're fine.

Dr. Kalkut I'd argue that there are viruses in blood where many specimens our people feel that the machines need to be decontaminated before putting back into service. Let's not dispute one way or the other here. That's an issue that we're hearing.

Mr. Kraut Can we take it back to Office of Public Health and particularly the Director of the Wadsworth Laboratories, maybe to follow up with Dr. Kalkut and his associates. I'm sure from what I understand, it's a little more broad based than just Dr. Kalkut's institution.

Dr. Morley We'll be happy to have the Wadsworth folks contact you.

Mr. Kraut Thank you, John.

Mr. Kraut There are no other questions for Dr. Morley, I'd like to move on and get a report from the Office of Aging and Long Term Care.

Mr. Kraut Adam.

Mr. Herbst Adam Herbst, Deputy Commissioner for the Aging and Long Term Care. I'd like to refer to my October remarks and I'll go into some detail towards the end of my comments to consider to address some of the concerns raised regarding the safe staffing regulations that were discussed and considered at the November 17th meeting. First, I'd like to describe some high priority activities in my office since my last report in October. I previously reported, OALTC will continue to spearhead the implementation and execution of this New York State's master plan for aging. This is intended when the Governor signed the Executive Order two months ago now. This master plan that intended to create a blueprint of strategies for government, the private sector and nonprofits support older New Yorkers. It's also intended to address challenges related to communication, coordination, caregiving, long term financing and innovative care, and ensure that state policy and programs are coordinated and aligned to ensure that all New Yorkers can age in our state with freedom, dignity and independence for as long as possible. Today, I am proud to report that yesterday, December 7th, we launched the first meeting of New York's Master Plan for Aging. The council is comprised of heads of New York State agencies and all commissioners. The council will not only be responsible for receiving recommendations from the Stakeholder Advisory Committee and providing a final report.

Mr. Kraut We're going to ask you to sit. We need to see the screen. We need to communicate with our folks in Albany.

Mr. Kraut Thank you.

Mr. Kraut Just don't block the screen so we can communicate.

Mr. Kraut Thank you.

Mr. Herbst Our charge is to deliver to the Governor a final master plan set of recommendations in late 2024. At the convening of the agency, council was only a first step. Our next step will be to convene a master plan stakeholder advisory committee that will bring together approximately twenty-five aging experts from across the different sectors in New York State to gather feedback and input through a series of stakeholder engagement sessions and will support the creation of the master plan in collaboration with the Agency Council. Beyond the Council and Stakeholder Committee, stakeholders and members of the public will have multiple opportunities to provide feedback and to engage in the development of our states master plan for aging. These opportunities to include participating in stakeholder engagement sessions, town halls and other public forums and serve on subcommittees so we can hear from everybody and it's fully inclusive. As I stated back in October, I look forward to continuing to work with the Public Health and Health Planning Council as a partner in addressing the health and long term care needs of our aging population in New York. At a quick glance, OALTC has already initiated some very important work, one of which is the processing of the applications. As you may be aware, the department released the new licensure application process in mid-August. Although we expected a steady of applications you would be asked to approve that is not necessary occurred. To date we have received a total of fifteen applications acknowledged by the Department to review since the lifting of the moratorium. Staff are currently reviewing on a first come, first served basis. That said, I did commit to looking at the various licensure

processes to determine if we could streamline the process without compromising quality. This work is very much underway. I am pleased to report that under the leadership of Mark Furnish processes are being examined and work is developing right now on a management agreement consolidation plan. This process should be in place by November of 2023. I look forward to updating this group at our next public conversation with a next step. Another important initiative that my office is working on is the nursing home quality, which remains at the forefront of everyone's mind. We will continue efforts to improve nursing home quality, leveraging our toolbox of resources within the department, which include the legislative and regulatory processes, the executive budget and thoughtful policy development that we are very much working on as we end this calendar year. We look forward to partnering with you on some very important policy initiatives in the next year for nursing and quality. One additional initiative that I'd like to highlight today is the PACE reform. We continue our discussions and planning on structural alternatives for the program of all inclusive care for the elderly, also known as the PACE program. As previously mentioned, we will continue to work with our partners in the Medicaid office, external stakeholders and this body on these alternatives. That being said, I'd like to go on relatively quickly, but like to go to my final comments with respect to the safe staffing regulations. I first want to thank you for the thoughtful and engaging discussion on the two safe staffing regulations on November 17th. I want to take some time now to address some concerns that have been raised since that time. I want to assure you that the department did not mislead this body. Both the 7040 direct care spending regulation and the minimum nurse staffing regulations were the direct result of two prescriptive statutes that specifically required the Department of Health to draft and adopt regulations. At the November 17th meeting, I explained in detail the procedural history of both the 7040 direct care spending and the minimum staffing statutes. Again, to be transparent and clear with you all, I want to give a very brief synopsis today. The 7040 direct resident care spending statute was enacted by the legislature as Chapter 57 of the law as of 2021. The law was slated to go into effect on January 1st, 2022. However, the Governor declared a state of emergency suspending the implementation date from January 1st, 2022 through March 31st, 2022 based on the workforce shortage facing our state and the nation. The minimum nurse staffing statute was enacted by the Legislature and became Chapter 156 of the laws of 2021. This law was slated to go into effect on January 1st, 2022 as well. However, the statute, like the 7040 direct care spending was suspended by the Governor's state of emergency from January 1st, 2022 through March 31st, 2022. Therefore, both statutes went into effect and have been the law in New York since April 1st, 2022. The enacted laws mandate the drafting and adoption of regulations by the Department. Further, public health law mandates that you approve any regulation related to Article 28 nursing home facilities before the department can proceed to adopt a regulation by publishing them in the state register. On November 17th, I also outlined the procedural reasons why both regulations were coming before you, as they did. If the regulations had not been approved on November 17, it would have led to, at the very least, another sixty-day delay in complying with the statutory mandate to adopt these regulations because of the required re-issuing and associated public comment period. As I stated to you all on November 17th, the department is in a unique position. The two regulations presented are legislative mandates placed on the department. I said on November 17th that to properly enforce the legislative mandate and to ensure uniformity and consistency across the industry regulations must be in place. I want to be clear that the two laws are in fact and have been since April 1st, 2022. In other words, the requirement that every residential health care facility spend a minimum of 70% of revenue on direct resident care and 40% of revenue on resident facing staffing, as well as the requirement that every nursing home maintain daily average staffing hours equal to 3.5 hours of care per resident per day by a certified nurses aid, licensed nurse or a nurse aide had been in place, once again, since April 1st, 2022.

These are statutory requirements. The Legislature placed the responsibility on the Department of Health to set up a guidepost to the notice of standards and provide flexibility to grant waivers.

Mr. Herbst Excuse me.

Mr. Herbst Let me say that again.

Mr. Herbst The legislature placed the responsibility on the department that set up guidepost to enforce these regulations. We at the department have tried to put notice of standards and provide the flexibility to grant waivers and to ensure the industry knows how to document the evidence needed for the waivers. Approval of these regulations allows the department to establish the process for applying for waivers and for exclusions of revenue under the 7040 direct resident care spending statute, as well as the processes for demonstrating the existence of mitigating factors under the nursing home staffing level statute. The regulations are needed to ensure that everyone is on notice of the standards, provide the flexibility to grant waivers and to ensure the industry knows how to document the evidence needed for the waivers. Approval of the regulations allows the department to establish the process for applying for waivers and for the exclusions of revenue under the 7040 direct care spending statute, as well as the process for demonstrating the existence of the mitigating factors, the nursing home staffing levels statute. Somewhat redundant. I cannot speak to the specifics of pending litigation today. However, a letter recently sent by the New York State Health Facilities Association and the New York State Center for Assisted Living indicates the department misinformed you as to what your options were in deciding whether to approve these mandated regulations. According to an interpretation by both of these associations, the statutes cannot be enforced first adopted the regulations. I want to reiterate that the two laws are in effect and have been in effect since April 1st. It is the department's responsibility, once again, to set up the guidepost to enforce through regulations, and thus failure to adopt the regulations would not have nullified the statutes. Rather, it would leave the industry to operate in a vacuum, resulting in a widespread confusion with respect to both statutes. Such a result would create an ethical responsibility and should be rejected. In fact, in response to questions about what members could do to express its displeasure at the situation, it would suggest the department should reach out through formal communication. I know that you all take your role as members very seriously. You were presented the scenario now in front of the state of New York due to these two legislative mandates. You asked tough and reasonable questions. The department has outlined the scenarios as to what would happen if you did not approve these regulations. Everything done on November 17th by the department was transparent. I hope this discussion today clarifies the situation for you all. As always, I encourage everyone to feel free to reach out to me on this and any other issue that related to aging and long term care. I must end my conversation before I open up to remarks acknowledging Dr. Bassett, who obviously has spoken already today. I want to thank Dr. Bassett, who has only helped our Department of Health in many ways. Dr. Bassett helped us lay the foundation for change and the landscape in the state of New York for aging and long term care. She helped build the foundation that will help us with respect to the long term care community for the long haul. Dr. Bassett helped us begin the process setting very important priorities to better serve all New Yorkers. She is specifically focused and has worked and partnered with me on the needs of aging New Yorkers. I really hope we all can agree and thank Dr. Bassett together in terms of all of her wonderful work over the course of the last year.

Mr. Herbst Thank you.

Mr. Kraut There are two issues here. There's just questions you want to raise. I just want everybody to be aware of the time. We can be losing our quorum if we don't move. Just to be very clear about the questions. Mr. La Rue then Mr. Holt and then Dr. Berliner.

Mr. La Rue Good afternoon, Scott La Rue, member of the council. Thank you for your comment. We appreciate the work that the department has done to really implement legislation that they did not write. We know how complicated it is. We all want more staffing. There's no doubt about that, but it needs to be funded. Even though the legislation did not fully fund what this is going to cost, there was some dollars in the state budget. Could you share with us the timeline or when you think the methodology for distribution will be and when you think they'll be able to start distributing the funds?

Mr. La Rue Thank you.

Mr. Herbst Very important question. We have been actively discussing this actually as recently as this morning. We hope to come back at the next meeting with some very specific indication of a timeline. We hope to distribute that as soon as possible.

Mr. Kraut Mr. Holt.

Mr. Holt Couple of questions. You were discussing the process for waiver in the department to determine the criteria. Can you give us an idea where you're at in that process and when we can expect to see what those criteria would look like?

Mr. Herbst Sure.

Mr. Herbst Thank you.

Mr. Herbst Mark, can you speak to that one moment? I'm just trying to catch my breath here.

Mr. Furnish Yes.

Mr. Kraut The question was about process and timing on the waivers.

Mr. Furnish We are in the process. On December 15th, we are meeting with the Department of Labor to discuss defining acute labor shortages. Once we develop that protocol, we will issue guidance that will be distributed in the form of a dear administrator letter to the industry and to the public at large with that.

Mr. Furnish Thank you.

Mr. Holt Adam, just one other comment, I guess, as much as anything. Appreciate the fact that the department is developing a plan on aging that's forward looking. Have to say, I'm greatly concerned, particularly Upstate, about what the future looks like for us in the long term care sector. It's one thing to be forward looking. It's another thing to get there. From my perspective, I don't know of a colleague provider who's not facing really extreme financial stress right now. I know you know that, but I just want to make sure I said that for the record.

Mr. Herbst I appreciate that. We're very much aware of that.

Mr. Kraut Is the subject for Adam?

Mr. Kraut Why don't you go ahead.

Dr. Berliner I'm wondering if you could say something about the Upstate nursing home that was cited by the Attorney General and specifically the role of the Department of Public Health. Did they raise it? Did they bring it to the Attorney General? And also, I think this council approved a whole bunch of homes by the same ownership. What is the department doing in that regard?

Mr. Herbst I turn to my colleague, the general counsel.

General Counsel I think all I can say is that the case was referred by the department. There was the referral letter to the AG and we have been working in cooperation with the Attorney General on the investigation.

Dr. Berliner Thank you.

Mr. Kraut I think Mark wants to respond to that.

General Counsel Can you repeat your question?

Mr. Kraut The other homes this ownership group may own or have an interest in. Is there surveillance? I guess Howard's asking, are you taking a closer look at those?

General Counsel I don't want to comment on the investigation that's ongoing.

Mr. Herbst I will just say that we, like all surveillance activity, we are ensuring that there's quality of care at every facility. We're very astute to this. My team is working very hard across the state.

Mr. Kraut Before I move on to the next item, is there any questions for Mr. Herbst from Albany?

Mr. Kraut At the conclusion of the meeting in which we adopted the regulations, the council made a resolution to direct the Chair to prepare a letter to send to the Health Chair Leadership. In that letter, which we had shared with all of you for comment, we acknowledged and in fact commended both the legislature and the Governor and promulgating these regulations, being clear that the objectives of high quality care, appropriate staffing and resources in the nursing homes are a goal that we all share. In addition, we had many suggestions we felt that could actually strengthen that statute and improve it for its objective. In doing so, we then drafted a letter for you that everyone had reviewed. We received everybody's comments. We sent it to you for draft. I'd now like a motion authorizing the sending of that letter to the legislature.

Mr. Kraut I have a motion for Mr. Thomas. I have a second, Dr. Kalkut.

Mr. Kraut Any conversation?

Mr. Kraut All those in favor?

All Aye.

Mr. Kraut Opposed?

Mr. Kraut Abstention?

General Counsel Can you please do a roll call vote.

Mr. Kraut Okay.

Mr. Kraut Go ahead.

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

General Counsel Dr. Bennett?

Dr. Bennett Yes.

General Counsel Dr. Berliner?

General Counsel Dr. Boufford?

Dr. Boufford Yes.

General Counsel Dr. Gutierrez?

Dr. Gutierrez Yes.

General Counsel Mr. Holt?

Mr. Holt Yes.

General Counsel Dr. Kalkut?

Dr. Kalkut Yes.

General Counsel Mr. La Rue?

General Counsel Mr. Lawrence?

General Counsel Dr. Lim?

General Counsel Ms. Monroe?

Ms. Monroe Yes.

General Counsel Dr. Rukke?

Dr. Rukke Yes.

General Counsel Dr. Strange?

Dr. Strange Yes.

General Counsel Dr. Torres?

General Counsel Dr. Watkins?

Dr. Watkins Yes.

General Counsel And the Chair?

Mr. Kraut Yes.

General Counsel Passes.

Mr. Kraut Thank you very much.

Mr. Kraut Before I go to the committee report, I don't know if all of you are aware, but Dr. Gutierrez has made a very difficult decision to resign from the council at the end of this month. Throughout his eleven years of service, I don't think words on a resolution are going to be appropriate for me to reply. I'll just kind of do it. The role, the dedication that he's done to ensuring that every New Yorker has access to quality health care, supporting the prevention agenda. He has literally weathered storms to attend and manage the Codes Committee meeting, assist with obtaining a quorum. I just cannot begin to tell you how much we all appreciate your perspective, your wisdom, your support this many years. You've not only been a strong pillar for others to look up on, lean on for advice and direction, you have been a soul in the conscious of this body. The first day you served here you have taken on some of the most difficult challenges that not only chairing codes, but in reviewing actions against licenses. When you speak, your sense of commitment to always try to do what is right and in the best interests of health care of New Yorkers is an enormous example. You are what every member should aspire to be and to act. I don't understand how I can actually express the words about the privilege it's been to serve with you. We're so grateful for the integrity, your dedication, your contributions, and your enduring commitment to patient care. On behalf of all of us, I thank you. We have a resolution for you. I am not reading it. I would like to turn the mic over to you and to share with us your parting thoughts with us. Again, I wish I was there. I'd be hugging you.

Dr. Gutierrez Thank you, Jeff.

Dr. Gutierrez Thank you, everybody here today and all those that were along the way. I feel that the challenges that we are going through now will demonstrate the metal of this group. Were it not for the virus and the other things that to come, we would be in better shape, but we are not. I think our actions have been correct. Our actions have been sincere.

Mr. Kraut You may have hit the button. It may be off, but we can't hear you. Your mic may be off.

Dr. Gutierrez Mic is on.

Mr. Kraut Just bring it closer.

Dr. Gutierrez I think that the discussions that we had today.

Dr. Gutierrez Can you hear me now?

Mr. Kraut Yes.

Dr. Gutierrez Discussions that we had today were very robust.

Mr. Kraut We're going to ask you to change the mic, because we are not hearing you at all.

Mr. Kraut I'm not going to let this moment pass without hearing your words.

Dr. Gutierrez Is this better?

Mr. Kraut A little bit.

Mr. Kraut It's a little fuzzy.

Ms. Monroe Jeff is too.

Ms. Monroe You are too, Jeff.

Total Webcasting The Zoom sessions audio is failing, so that's what's happening right now. We would have to reset the Zoom session to correct it. We were hoping to move along, I guess. I don't know. It's up to you.

Mr. Kraut What if I call you on the phone and then I'll play it through the mic here.

Dr. Gutierrez That's what we need to be able to switch techniques and switch approaches so we succeed. We are all suffering the results of three horrible years. We have survived that. I think that we'll go forward and succeed. I'm sorry I have to leave now. I would love to stay and learn some more because I've been learning for eleven years. It's time for me to give somebody else a chance to work at the council. Is a last thing that I'll do as a physician today. I had a great life, a great experience with the council. I thank you all for the opportunity to have been able to do this. Stay well, stay healthy. Go forward. You're doing the right thing. We are doing the right thing.

Dr. Gutierrez Thank you.

Mr. Kraut Thank you.

Mr. Kraut You're certainly hearing us. We're all standing up. We have about forty members of the public who are doing likewise here. Thank you so much. We can't say enough. People come and go, but this guy really hits hard. You're going to be missed.

Mr. La Rue I've got to leave, unfortunately.

Mr. Kraut We're going to move right now to the voting.

Mr. Kraut Is that okay?

Mr. La Rue Okay.

Mr. La Rue There's a couple of things. I wanted to mention.

Mr. Kraut Because we're going to lose quorum.

Mr. La Rue Yeah, I'm part of the quorum you're going to lose.

Mr. La Rue Just a quick question. On the nursing home applications that are coming up today that were approved at the previous committee meeting. I don't know if the department had an opportunity to review those for the issues that were laid out in the AG's report and not just specifically to the ownership, but the whole issue of a realty company holding the real estate and whether the amount being paid or the rent is reasonable, because it seemed like in the allegation that the AG made that that was the way that they were tightening allegedly funds out of the home.

General Counsel Good afternoon. I'm an attorney at the Department of Health. We have reviewed those kinds of things in the project that will be presented. One of them is going to be deferred at the department's request.

General Counsel Thank you.

Mr. Kraut Can we start with Establishment Project Review, please?

Mr. Kraut I'm going to call the first application given to me here because Dr. Kalkut is away and Mr. Robinson is unavailable.

Mr. Kraut I call application 22 12 48 C, NYU Langone Hospital, Long Island to certify a new single Specialty Ambulatory Surgery Extension Clinic on the seventh floor of 211 Station Road, Mineola. Conflict recusal declared by Dr. Kalkut, who's out of the room. DOH and DRC issues. Approvals with contingents and conditions were recommended.

Mr. Kraut May I have a motion?

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

Mr. Kraut Any comments from the department?

Mr. Kraut Any questions from the council?

Mr. Kraut All those in favor?

All Aye.

Mr. Kraut Opposed?

Mr. Kraut Abstention?

Mr. Kraut The motion carries.

Mr. Kraut Call Dr. Kalkut in, please.

Mr. Kraut You want me to stop and go to Codes, because if we miss Codes, we got to keep a quorum for Codes.

Mr. Kraut I'm suspending the establishment of Project Review.

Mr. Kraut I'm now going to ask Mr. Holt to give us the Codes.

Mr. Holt Good afternoon. At today's meeting of the Committee on Codes, Regulations and Legislation, the committee reviewed and voted the recommended after the following regulation for approval before the full council. First, investigation of communicable diseases. Members of the Health Department here. They presented the regulation for emergency adoption. They're available for any other questions.

Mr. Holt I move the acceptance of this regulation.

Mr. Kraut I have a motion.

Mr. Kraut May I have a second?

Mr. Kraut Dr. Strange.

Mr. Kraut Any questions from the council?

Mr. Kraut All those in favor?

All Aye.

Mr. Kraut Opposed?

Mr. Kraut Motion carries.

Mr. Holt Second was face coverings for COVID-19 protection. Members of the Health Department presented this regulation for emergency adoption to the committee. They're available if you have any questions.

Mr. Holt I move the acceptance of this regulation.

Mr. Kraut I have a motion from Mr. Holt, a second by Mr. LaRue.

Mr. Kraut Any questions from the council?

Mr. Kraut All those in favor?

All Aye.

Mr. Kraut No opposed.

Mr. Kraut Go ahead.

Mr. Holt Third, impact virus on the list of sexually transmitted diseases. Again, the Health Department presented information on its regulation for emergency adoption. They're here should there be any questions.

Mr. Holt I so move.

Mr. Kraut I have the motion from Mr. Holt. I have a second by Dr. Strange.

Mr. Kraut Any questions from the council?

Mr. Kraut All those in favor?

All Aye.

Mr. Kraut Opposed?

Mr. Kraut Abstentions?

Mr. Kraut Motion carries.

Mr. Holt Next, we had maximum prepayment levels that was presented for information only.

Mr. Holt Finally, we had the public water systems. Again, the Health Department presented information to the committee during that meeting.

Mr. Holt I so move the adoption.

Mr. Kraut I have the motion to adopt. I have a second, Mr. LaRue.

Mr. Kraut Any questions from the council?

Mr. Kraut All those in favor?

All Aye.

Mr. Kraut Opposition?

Mr. Kraut Abstentions?

Mr. Kraut The motion carries.

Mr. Holt That concludes my report.

Mr. Kraut Thank you very much, Mr. Holt.

Mr. Kraut I'll now turn it back to Dr. Kalkut to provide the report of the project review recommendations and establishment actions.

Mr. Kraut Thank you.

Dr. Kalkut Application 22 11 91 B, Maxillofacial Ambulatory Surgery Center, LLC in Suffolk County. This is to establish and construct a single specialty freestanding ambulatory surgery center at 100 Townline Road and Apple, specializing in oral and maxillofacial surgical procedure. Both the department and the committee recommend

approval with conditions and contingencies with a recommendation of the operating certificate five years from the date of issuance.

Dr. Kalkut Next is 2 2 1 2 0 6 E, Northern Westchester Facility Project LLC doing business as Yorktown Center for Specialty Surgery. That's in Westchester County. This is a transfer of 20.04% from sixteen existing members to eleven new members and seek Public Health Council approval of eight existing members. Both the department and the committee recommend approval and a contingency.

Dr. Kalkut 2 2 1 1 2 1 3 E, Performance Surgical Center, LLC doing business as Performance Surgical Center in Kings County. This is to establish a Performance Surgical Center LLC as the new operator of Millennium Ambulatory Surgery Center, a multi-specialty freestanding Surgical Center at 1408 Ocean Avenue in Brooklyn. Please note that on Page 3 of the exhibit, contingency number one has been removed due to being placed on the application in error. Both the department and the committee recommend approval with conditions and contingencies for an exploration of the operating system to get five years from the date of issuance.

Dr. Kalkut I so move.

Mr. Kraut I have the motion to move those applications.

Mr. Kraut May I have a second?

Mr. Kraut Dr. Torres.

Mr. Kraut Any questions on any of those applications?

Mr. Kraut All those in favor?

All Aye.

Mr. Kraut Opposed?

Mr. Kraut Abstentions?

Mr. Kraut The motion carries.

Ms. Monroe Yes, it's quick.

Ms. Monroe When we have looked at other ambulatory surgery centers in the past, one of our concerns has been whether or not they take Medicaid at their center. If not, that that will add undue burden to the local safety net hospital. Can the department just tell me whether or not these three, whether they will take Medicaid. If not, if we could approach them for reconsideration of that.

Mr. Kraut The establishment committee did look at that and discussed it the data within the court, but I'll give it to the department to answer it directly. That was the question we did resolve a committee meeting.

General Counsel We did take a look at that. The Medicaid revenues, the projected Medicaid revenues are always part of the operating budget submitted. They are part of the

exhibit. These three facilities have submitted Medicaid projections that meet what we have historically approved. Also, as noted, there are a limit to life put on the operating certificate and they'll be coming back to the department for us to take a look at what was actually delivered in terms of charity care and Medicaid for indefinite life.

Mr. Kraut Any other questions?

Mr. Kraut Are we okay to proceed?

Mr. Kraut I'll take no answer as no answer.

Mr. Kraut Dr. Kalkut.

Dr. Kalkut 2 2 1 1 4 5 B, Apple Care helped in Kings County to establish and construct a new diagnostic and treatment center at 1570 Fulton Street in Brooklyn. The department and committee recommended approval with condition and contingencies.

Dr. Kalkut 2 2 1 2 2 7 B, Parkchester DTC LLC doing business as Parkchester Diagnostic and Treatment Center in the Bronx, which is to establish and construct a diagnostic treatment center at 1879 Gleason Avenue in the Bronx. Perform renovations and construct new space adjoining existing building. The department and the committee recommend approval with condition and contingencies.

Dr. Kalkut 2 2 1 2 3 1 B, A Friendly Face Academy Corporation in Richmond County. Establish and construct a new diagnostic and treatment center for primary care and other medical specialties at 1887 Richmond Avenue in Staten Island. The department and the committee recommended approval with conditions and contingencies.

Dr. Kalkut 2 2 1 2 6 5 , JAL 28 LLC doing business as A Merryland Health Center in Kings County. This is to establish JAL 28 LLC as the new operator of A Merryland Health Center, a diagnostic treatment center at 2873 West 17th Street in Brooklyn. Currently operated by A Merryland operating LLC and Certified Medical Services and other medical specialties. A note from the department on Page 2 of the exhibit. Contingency number one has been removed due to being placed on this application in error. The department and committee recommend approval with conditions and contingencies.

Dr. Kalkut I so move.

Mr. Kraut I have a motion.

Mr. Kraut May I have a second?

Mr. Kraut Dr. Berliner.

Mr. Kraut Any questions on any of these applicants?

Mr. Kraut All those in favor?

All Aye.

Mr. Kraut Opposed?

Mr. Kraut The motion carries.

Dr. Kalkut 1 9 2 2 0 4 E, Highland Nursing Home. I believe this says North County Nursing and Rehabilitation Center in St. Lawrence County. This application has been deferred at the department's request.

Dr. Kalkut Next is 2 0 2 0 3 4 E, Ulster Nursing Home Operations, LLC doing business as Golden Health Center for Rehabilitation and Nursing in Ulster County. This is to establish Ulster Nursing Home Operation LLC as the new operator of the 280-bed residential health care facility located at 99 Golden Hill Drive in Kingston currently operated as Golden Hill Nursing and Rehab Location Center. The department and committee recommended approval with conditions and contingencies.

Dr. Kalkut 2 1 0 1 0 8 7 E, the Premier Center for Rehabilitation of Westchester, LLC, DBA, Springvale Nursing and Rehabilitation Center in Westchester County to establish the Premier Center for Rehabilitation of Westchester LLC as the new operator of Bethel Nursing and Rehabilitation Center, a 200-bed residential healthcare facility located at 67 Springvale Road. The department and committee recommend approval with condition and contingencies.

Dr. Kalkut I so move.

Mr. Kraut I have a motion.

Mr. Kraut May I have a second?

Mr. Kraut Second, Mr. Thomas.

Mr. Kraut Any questions?

Mr. Kraut All those in favor?

All Aye.

Mr. Kraut Opposed?

Mr. Kraut Abstention?

Mr. Kraut The motion carries.

Mr. Kraut We have to repeat one number.

Dr. Kalkut Ulster Nursing Home Operations, LLC doing business as Golden Hill Center for Rehab and Nursing.

Dr. Kalkut Thank you.

Mr. Kraut Just before we conclude, I also want to take the time to recognize that Lisa Thompson, who retired a short while ago, has been with us from the very beginning. She was instrumental in developing a lot of the policies and procedures and the successful operation that we have done. She always was a volunteer, a friendly face. Dr. Boufford and I have issued a resolution for her. She started in the department when Dr. Axelrod, Dr.

Chase and Dr. De Bono, Dr. Novello, Dr. Dames, Dr. Shah, Dr. Zucker, Dr. Bassett. She had a phenomenal career starting back in June of 1987, I think. Working with the Public Health Council, the Establishment Committee first, then working as the Assistant Executive Secretary to us. You know how dedicated she was. She was exceptional, nice person, always volunteering to do things. She allowed our counsel to move forward with the work. We want to thank her for her integrity, resourcefulness, ethic, professional demeanor, and most importantly, her sense of humor under all circumstances.

Mr. Kraut Lisa, I don't have the resolution with me, but I'm sure in Albany we'll give it to you. We'll have it framed and everything. Thank you for coming back. See, alumni day.

Mr. Kraut Lisa, we wanted to thank you so much.

Mr. Kraut Our next meeting is going to be on January 26th in Albany. There is a committee meeting February 9th in Albany and New York City both.

Mr. Kraut May I may have a motion to adjourn the Public Health and Health Planning Council meeting.

Mr. Kraut We are adjourned.

Mr. Kraut Thank you.