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Tom Holt Good morning. My name is Tom Holt, and I'll be chairing the Codes and Regulation and Legislation Committee this morning. I'd like to remind council members, staff and the audience that this meeting is subject to the open meeting law. It is broadcast over the internet. The webcast are accessed at the Department Health website. 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 retained in the department for 4 months.

Tom Holt There are some suggestions or ground rules to follow to make this successful. Because there is synchronized captioning, it's important that people do not talk over each other. Captioning cannot be done correctly with two people speaking at the same time. First time you speak, please state your name and briefly identify yourself as a council member or DOH staff. This will be of assistance to the broadcasting company to record this meeting. Please note that the microphones are hot, meaning that they will pick up every sound. I therefore ask you to avoid rustling papers next to the microphone and also be sensitive about personal conversations or sidebars as the microphones will pick up that 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 the meetings. It is required by the Joint Commission on Public Ethics and in accordance with the Executive Law Section 166. The form is also posted on the Department of Health's website under the Certificate of Need. In the future, you can fill this form out prior to council meetings. Thank you for your cooperation in fulfilling our duties as prescribed by law.

Tom Holt There are three emergency regulations for adoption proposals and one regulation for regular adoption on today's agenda. I'd like to remind folks that we do have a number of speakers that have signed up for one of the discussions we'll be having this morning and would remind folks to, you'll be limited to three minutes of speaking and one presenter per organization. If there are going to be multiple folks expressing the same perspective, we would ask you to try to consolidate those comments in consideration of everyone's time.

Tom Holt For emergency adoption, the investigation of communicable disease isolation and quarantine. Mr. Jason Riegert of the department is available and will provide us with information on this proposal.

Jason Riegert Good morning. My name is Jason Riegert. I'm an attorney for the Department of Health. I'm here this morning to ask the council members to vote on a renewal of the communicable disease and Isolation and Quarantine Emergency Regulation package. To briefly summarize this emergency package, amend Part 2 of the state sanitary code to update and clarify the department's authority, as well as the local health department's authority to take actions to control the spread of communicable disease, including the use of isolation and quarantine for highly contagious communicable diseases. The emergency regulation also amends Part 405 of Title 10 to require hospitals

to report syndromic surveillance data during an outbreak of a highly contagious communicable disease. Language was also added to permit the Commissioner to direct hospitals to take patients during such an outbreak. Finally, this package creates a new Section 58-1.4 to clarify clinical laboratory reporting requirements for communicable diseases. No substantive changes have been made since the last time this package was before the council in November for an emergency adoption. Of note, though, steps were taken after that November 18th council meeting to make the regulation permanent. A notice of proposed rulemaking was filed. The public comment period is set to expire on Monday, February 14th, after which the department will assess all of the comments and determine if any revisions are necessary to the regulation or if it can be adopted, as is, at which point we will have to bring the right package back to the council for adoption. The package will be good for 60 days, so we might have to bring it back on an emergency basis one more time as well. We're asking the council members today to vote on this renewal as New York is still in the midst of a pandemic and renewing this emergency regulation will enable the department to continue our public health prevention measures to stop the spread of disease without a lapse while again, we work through the permanent rulemaking process.

Jason Riegert Thank you.

Lito Gutierrez I move for the renewal.

Tom Holt Thank you, Dr. Gutierrez.

Tom Holt Do I have a second?

Tom Holt Dr. Yang.

Tom Holt Thank you very much.

Tom Holt Other questions from the committee for Mr. Riegert?

Jeffrey Kraut I have one. It's not a question. It's just a comment. I have a communication from the Chair of the State Assembly, Richard Gottfried, reminding the council and the department that this regulation fails to identify the role of PA's in reporting and in communicating with patients. It limited to physician. He wants to remind us that that's not consistent with the scope of practice law that was passed. He's given us memorandums on this. And when this regulation may come back to us for re adoption, I'll ask the department to review his communication and alter the regulation as appropriate with respect to the role of PA's.

Tom Holt Thank you, Mr. Kraut.

Jeffrey Kraut Ms. Soto.

Nilda Soto Good morning. Nilda Soto, member. I have a question of clarification. Since it expires on February 14th, which is next week on Monday, how does our vote today impact that process of still receiving input from the general public.

Tom Holt There's kind of two different tracks to try to answer your question as best I can. There's the permanent rule making track, which has a 60 day public comment period and then this is an emergency rulemaking, so they're somewhat side by side in that sense. The

public has had 60 days to provide comment. In addition, they could still comment on the emergency adoption as well.

Tom Holt Does that answer your question?

Nilda Soto I'm just curious if we voted it in a certain manner. What impact wif anything will have those who continue or wish to make a comment up until February 14th?

Tom Holt It should have no impact. The comment period will still end on Monday.

Tom Holt Does that answer your question?

Nilda Soto Yes, thank you.

Tom Holt Dr Watkins.

Dr. Watkins Good morning. Kevin Watkins, member of the council. I have a quick question regarding the regulation, and I'm not sure if I asked it before, but under 2.6 of the regulation. I believe this is Page 5 under investigation and response activities. Before we make this permanent or take it for a permanent adoption, I was wondering if there was a way that we could at least define who these qualified representatives would be, as identified on the second sentence of Part A, and was wondering if the department could make some reference as to who those qualified representatives could be.

Tom Holt Are you looking for an example of a qualified representative?

Dr. Watkins Well, maybe a more clear definition of who those qualified representatives would be.

Tom Holt I mean, we can certainly try to break that down a little bit and make it clear.

Dr. Watkins Thank you.

Tom Holt Thank you.

Tom Holt Ms. Monroe, do you have a question?

Ann Monroe Yes, thank you.

Ann Monroe I want to pick up on Ms. Soto's question just so it's clear. We're adopting today the emergency if we adopt it and we will again see this regulation, which will reflect public comments and the kinds of things that we've talked about here in terms of definition. We'll see that again before it is permanently adopted. Is that accurate?

Tom Holt Yes, that is accurate.

Ann Monroe Public comment period ending after we adopt this does not does not obviate their full participation in the permanent?

Tom Holt That is correct.

Ann Monroe Thank you.

Tom Holt Thank you.

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

Jeffrey Kraut I believe there are none on the screen.

Tom Holt Thank you.

Tom Holt We do have a number of folks in the public who have signed up to speak on this proposal. I'm going to list off several names in order and ask you to be ready to go. And again, would remind you that you're limited to three minutes for your comments and would ask if it's going to be a consistent message shared by a group that you do try to consolidate that messaging.

Tom Holt Coming up first, and I apologize if I don't get the pronunciations of these names correctly, but we have Judy, next will be Doug, following will be Chris and then Howard.

Tom Holt I would ask you each to come forward.

Jeffrey Kraut And Tom just ask that they identify themselves, the organization they represent.

Tom Holt Thank you.

Tom Holt And if you would state your name and identify what organization you're representing.

Judy Sure.

Judy My name is Judy. I am speaking as a leader of the Capital District Region for the People's Coalition of New York. The People's Coalition represents over 80 advocacy groups across the state and represents over 250,000 people in the state of New York. In your emergency justification for this emergency regulation, you not only failed to provide data to confirm that isolation and quarantine measures work, you failed to provide any adequate or complete data on the subject at all. How can you adopt an emergency regulation with exceedingly little to no data to underpin its justification? As public health representatives and professionals, you simply cannot. Because if you do, not only do you defy all reason and logic, you show all of the people in the great state of New York that you are not concerned with data when making decisions that greatly impact their lives. You must vote no to this emergency regulation. The field of public health was designed to be protective in nature and to provide the public with a variety of intervention measures that will help them to overcome barriers to good health. This emergency regulation provides new definitions for cases, isolation, quarantine and vaccination and qualified professionals, qualified representatives that are exceedingly vague. This provides the Department of Health Commissioner with great flexibility to abuse powers that will be granted through it. This changes the nature of the field of public health from protective to weaponized. This is reprehensible and is a second reason that you must vote no to this emergency regulation. Also, the isolation and quarantine guidance documents generated to explain how to implement these emergency regulations consistently discriminates against unvaccinated people based on their vaccination status. Vaccination status is a medical condition as outlined by the ICD 10 codes developed for it, making the Isolation and Quarantine

Emergency Regulations the backdrop for ongoing violations of the American Disabilities Act across the state. This is the third reason that you must vote no to this emergency regulation as you are coercing illegal activity across the state. Finally, the very vague definition of vaccination, which is so incredibly vague that it can be determined that at any time given by the New York State Department of Health Commissioner, this gives the Commissioner the ability to change the definition from two shots to two shots with one two or three, or, as in the case of Israel, four boosters, for example, on a whim. This changing definition will cause massive levels of medical discrimination across the state on an ongoing basis. This is not a balanced approach to public health interventions. This is public health being used as a weapon against its own people. In summary, you fail to provide adequate data to support an emergency regulation for isolation and quarantine measures. You include vague definitions that lend themselves to an abuse of power on a level never seen before known in this great state of New York or in the United States of America, both New York State and U.S. constitutions are violated by such abusive strokes of power. For all of these reasons, you all must vote no.

Judy Thank you.

Tom Holt Next up, Mr. Esmond.

Tom Holt And again, if you would state your name and identify the organization you're representing.

Doug My name is Doug Esmond. I'm representing many organizations, of which I'm a parent advocate and concerned citizen for New York. I come here today with my own personal story of being a New Yorker who has been greatly affected by lockdown measures, had my living and life profoundly affected in a negative way. I've also had the clarity to see the path that we're on. Several years ago, I was here as a parent advocate working to retain the legislation that would keep my kids in school regardless of their vaccine status. I have seen over the past few years more and more parents join the group, the so-called fringe minority group that we were a part of as these restrictions grow and grow and grow. I come here today to warn against any further movement towards this corruption and this tyranny. This medical tyranny. Some questions to ask before we continue to pass these regulations. What will they accomplish? Who will it be used against; sick people who are truly a threat or simply people who choose not to comply with more lockdown tyranny? Do we really think any one person should be handed this type of power to inflict punishment on anyone they deem a threat? Have we not seen already how absolute power as exhibited by the former Governor has become absolutely corrupt? Have we not seen recently with the Johns Hopkins metadata study about lockdown measures of which New York participated in more than many other states had literally no effect on this? What happened to allowing for a balanced process? What happened to encouraging concerned citizens to engage in discourse and lobby? Why can't I go in that building without vaccine status or without disclosing my vaccine status? In closing, we stand ready for these words; truth, health, faith and freedom. Truth, real truth. Nothing but the truth, the actual truth, the actual numbers. Health, real health, not fake health, not the measures that just are there to enforce more tyranny. Faith, faith in God above, but faith in our institutions restored. Finally, that equals freedom. Where does New York go from here?

Tom Holt Thank you.

Tom Holt Next up, we have Chris, and following him is Howard and then next will be David and Linda Burghardt. I would ask you to be ready.

Chris Good morning. My name is Chris. I'm here representing the People's Coalition of New York, as well as every student and child across the state. I come before this body this morning to address the isolation and quarantine amendment that is being considered for emergency adoption by this council. It is with grave concern that I question this proposal and whether or not it is needed for consideration under an emergency status. As we enter year three of a COVID pandemic, so to speak, we can all agree that things have come a long way in dealing with the public health situation. Thanks to research vaccines and therapeutics, which nobody wants to speak of, we are now better equipped to handle the threat of COVID-19. We also now understand that we need to find a way to live with COVID-19, as this is not going to be something eradicated like the great Dr. Fauci had once claimed. Based on the above points, there is no need to consider COVID-19 in emergency any longer, which includes the mandatory isolation and quarantine practices that we have been abiding by. If proposals such as this being considered here today are sincerely needed, they should be considered through the legislative process. The process that has been the foundation of our country and this state for a very long time. Never before until now would we ever have thought to circumvent that legislative process, which is so paramount to protecting our freedoms and maintaining our order and our governmental structure. I ask why? Why are we not going through the full legislation for this process? Why would we continue the isolation and quarantine protocols which have been used to segregate people across this state. For over two years now people such as myself have been fighting and advocating for constitutional rights to be restored. We want to be able to make choices that are best for us, our families and our children. It is time to end the government's control over how we live our lives and what our children are put through on a daily basis. This is a constitutional right and a freedom that has been fought for with sacrifice since the founding of this great country. Isolation and quarantine have hampered our constitutional obligation to educate our children. Not COVID. The isolation and quarantine processes have kept children, teachers, staff members out of schools, making it impossible to educate our students.

Jeffrey Kraut 30 seconds.

Chris The isolation of quarantine procedures were the reason for shutting down our schools down. Keeping kids and teachers out of the classroom. And creating social and emotional deficiencies in our students. We need to stop these unconstitutional practices immediately.

Tom Holt Thank you.

Tom Holt Next up, Howard.

Tom Holt Following will be David Hatch and Linda Berger.

Howard Good morning, members of the Public Health and Health Planning Council Codes Committee. My name is Howard. I'm a resident of Saratoga County. I'm sitting as a voice for the millions of New Yorkers who have been affected by the emergency mandates and the potential to extend those. The status quo does not warrant an emergency that would call for this control. The actual data does not support this notion that there is a crisis. The true numbers do not support a crisis or emergency, either. Nothing whatsoever justifies constitutional rights being taken away, particularly when it comes to the isolation and quarantine proposals being proposed here. The CDC's own data shows that natural immunity is more effective than any of the vaccines. Mandates, therefore, are unjustifiable,

unnecessary and again unconstitutional. The people have spoken. We want our voices heard. Stop the mandates. This is going too far and is no longer necessary based on data. There is no longer an emergency. We need to treat COVID the same way we do the flu. Get a vaccine if you want and wash your hands. If you're sick, stay home. Early interventions work and the death rates if you remove comorbidities are very low based on actual data. We are able to live this life without mandates. If people want a quarantine test and get vaccinated, wear masks, as adults, they can make that choice for themselves and they can make that choice for their children. However, it is our right to decide what is best for ourselves without the government enforcing it. The emergency is over, and the power being proposed for the Commissioner is very broad and gives extraordinary latitude and discretion that is unconstitutional.

Jeffrey Kraut One minute remaining.

Tom Holt One minute.

Howard Thank you.

Howard We are the ones who are in charge of our bodies, not the government. Therefore, these emergency adoptions with regard to the above, must not pass. Freedom must prevail.

Howard Thank you.

Tom Holt Thank you.

Tom Holt Next up, David Hatch.

Tom Holt Following Mr. Hatch, Linda.

Tom Holt Is there a David Hatch?

Tom Holt Next up is Linda.

Tom Holt State your name and the organization you're representing.

Linda Can my name is Linda. I am not representing an organization, I'm here as an individual. I come from the Southern tier of New York. I would like to start off just by making an observation that you stated that we are in a pandemic currently, that's why we're making all of these decisions about emergency mandates, and we just took our masks off. That's pretty whatever. I'm here to speak to the proceedings and the process. The science has been ignored. There's no sense debating that. People have made their arguments and they've fallen on deaf ears. I want to go back to our founders. Our founders took great pains and risked their lives to create documents to protect our rights and our freedoms against the tyranny that they were experiencing in their time. As a voter, I look at this process, and all I've heard for months on the mainstream media is voter suppression. Voter suppression, voter suppression, voter suppression. This is voter suppression. What is occurring now is total anarchy against the rights of voters. As a voter, I elect someone to come to Albany to represent me and hopefully convey my viewpoint via their elected position. You're taking that right away from them. You're taking that right away from me. That is voter suppression. You elect people to come here and represent you. I assume everybody here votes. You send them to Albany and they don't get to vote on stuff that

affects my life. It's pretty personal. It's really personal when I get a phone call advising me not to go to school events because someone fears for my safety.

Tom Holt One minute remaining.

Linda That's suppression. It's silencing my voice. It's silencing every voice in this state if you circumvent our elected officials. Not that we or I get my way all the time. But if you want to talk voter suppression, this is it and it's tyrannical. It's exactly what our founding fathers tried to have us never have to experience again. Here we are. We're having an individual or a few individuals make declarations that affect our personal life and how we live. I certainly hope you will not extend these mandates, determinations, whatever you want to call them any longer.

Linda Thank you very much.

Tom Holt Thank you.

Tom Holt Next up is Jennifer Harrison, followed by Dr. Michael Purcell.

Tom Holt There a Jennifer Harrison?

Tom Holt If you would take a seat, state your name and let us know who you're representing.

Dr. Michael Purcell Hi. My name is Dr Michael Purcell, fellow of the American Academy of Asia-Pacific internist. I am a constitutional physician and I'm here to represent myself and as founder and owner of the Purcell Integrative Osteopathic Clinic, as well as a concerned citizen and parent. Long and short is that lockdowns don't work and they do more harm than good. And basically, this is based on, a number of analysis that come out. What we have here is a dilemma. You can call it the corona dilemma or whatever. But a good analogy is that old train car switching the tracks kind of thing. If you decide to switch the tracks, early on you may save one person. What are the downstream effects to this group of people over here? And that's what we need to consider, especially when setting public policy. Long and short, is that we found that the effects of lockdowns have been negligible to be honest.

Dr. Michael Purcell I am missing the one sheet that I wanted to have. I'm sorry.

Dr. Michael Purcell Oh, here we are.

Dr. Michael Purcell Basically, they showed that the average lockdown in Europe and the United States only reduced COVID 19 mortality by 0.2 percent compared to COVID policy based solely on recommendations. In addition, shelter in place orders were also ineffective, reducing COVID-19 mortality by 2.9 percent. Overall, the meta analysis failed to confirm that lockdown had a large significant effect on mortality rates. In addition, we have this other study that does show that there is a rapid decline in social interactions and then in addition, economic depression and loss of lives. In addition to growing fear, which impacts everybody in a negative way,. We'll speak a little bit more to the financial. Bbasically that these lockdowns have made in the name of public health until the trade offs that we're not adequately considered. At the same time, these cause severe adverse effects on many millions of people disproportionately among the disadvantaged. And I will

say as a pediatrician, very much so on the children and their developmental and social development.

Tom Holt Your time has expired.

Dr. Michael Purcell Basically our lockdowns affect the entire world. They have a huge burden additionally, financially. That's not my major concern, but I know it's money speaks to some. This is an explanation from...

Tom Holt Your time has expired.

Tom Holt If you would conclude your commitment.

Dr. Michael Purcell Yes.

Dr. Michael Purcell Can I submit slides?

Jeffrey Kraut You can provide us with your written comments.

Dr. Michael Purcell Thank you very much.

Jeffrey Kraut Thank you.

Tom Holt That represents all the folks that we had signed up. Is there anyone else from the public wishing to speak on this regulation?

Jeffrey Kraut We have a comment from Lito.

Tom Holt Dr. Gutierrez.

Lito Gutierrez Thank you very much.

Lito Gutierrez I just want to make a comment for us, members of the committee and the council. I'm concerned about the fact that we hear people complain about this being violating individual rights. This is an example as with many others of people that don't know the history of this. We are not making anything new. The process of quarantine, isolation and all those other things that are being objected against or objected at this point are not new. They have existed forever. Our founding fathers were mentioned twice. People maybe forget or did not know that Washington decree that people needed to be vaccinated against smallpox while they were in camp the worst of the Winter. And that was a rule by a founding father. Things have improved since then. We have increased the definition and the detail of each one of the regulations, and they will continue to improve or change depending on who the next or what the next epidemic or pandemic or endemic may be. Why am I saying this? Because I think that one of the things that the Health Department needs to do is educate the public about why we are here and how we got to where we are.

Lito Gutierrez That's all.

Lito Gutierrez Thank you.

Tom Holt Thank you, Dr. Gutierrez.

Tom Holt We do have a Jennifer Harrison is here. She'd like to come forward and identify herself and organization. Remind you, you have three minutes and would remind speakers both for this regulation and the other one's upcoming to speak to the regulation itself that we're going to be debating here this morning.

Tom Holt Thank you.

Jennifer Okay.

Jennifer Hi. My name is Jennifer Harrison. I'm here just representing myself as a New York voter, as a health care worker that has been greatly affected by all these regulations and overreaching of government. I hear you all speaking a lot about the whole basis of this. There's a lot of words, a lot of points, a lot of distraction. The main point is that the government is making decisions based on a supposed state of emergency. I think we keep getting away from the point that there's a lot of speak of evidence of a pandemic. I ask that you all really do some due diligence on your part to acknowledge the fact that this is not so. It has never been so. That has never been a state of emergency. There are far greater health risks in New York and in our entire country that have much greater impact on the American people than this created situation. We're in a place now where we're considering overreaching and ignoring constitutional freedoms because the government needs to step in based on an emergency, which fails to be evident. I ask each and every one of you to examine your everyday lives and see, where is this emergency? If you turn your TV's off and you look around in your family and your life, I don't believe you see one. I do believe very strongly that I am here to speak truth. I am a person of deep faith. I would ask that each of you truly examine yourselves when you lay down at night and ask yourselves, What are you doing? All these words that you're saying are not based on truth. This proposed legislation is just another example of something that has been created that is unnecessary. There is no data to support that there is a pandemic. There is no data to support that we are in a state of emergency or ever have been in the State of New York. And as a health care worker who cannot do my job anymore, because I am. It's insane is what it is. I just would ask that you really take a look at the actual data. I want to say I really have a lot of respect for these doctors that are speaking out like Dr. Percell, Dr. Peter McCullough that are speaking on the actual data. I would ask that you really look at this in and subside the distraction and acknowledge the fact that there is no state of emergency. New York and no other government, no other state has the right to just rip up the constitution, throw it in a wastepaper basket and set it on fire, because you guys have decided that there is something that's considered an emergency that is not so.

Jennifer Thank you very much.

Tom Holt That concludes the list of folks who had signed up in advance.

Tom Holt We do have a motion and a second on the table.

Tom Holt Would ask if there are any other questions from the members of the committee itself?

Tom Holt Seeing none, I will call the question.

Tom Holt All in favor?

All Aye.

Tom Holt Opposed?

Tom Holt Abstentions?

Tom Holt And then that motion carries.

Tom Holt Aagain, this is just the Codes committee at this point. This will be coming before the full council shortly.

Tom Holt The next regulation that we have for emergency adoption is face coverings for COVID-19 production. Mr. Jason Reiger from the department is available and will provide us with information about this proposal. I do want to make note that we have received well over 1,000 communications from the community, and those have been distributed to the members of the council for their review and consideration. We also do have quite a few folks signed up to speak on this regulation and would remind folks again to speak specifically to the regulation that we have in front of us, not some of the tangential issues that are out there. I would remind you all to consolidate your messaging. If you're speaking from one organization or if your message has already been conveyed, please don't come up to just repeat what's already been shared. The council is paying close attention to all of this being shared here today.

Jason Riegert Thank you.

Jason Riegert This emergency regulation adds Section 2.60 to Part 2 of the state sanitary code regarding face coverings for COVID-19 prevention. The express terms of the regulation are the same as when the council voted on this emergency regulation at its November 18th, 2021 council meeting. The Emergency Regulation permits the Commissioner of Health to issue determinations to require face coverings in certain settings based on COVID-19 incidence and prevalence, as well as other public health or clinical risk factors related to COVID-19 disease spread. Importantly, the emergency regulation does not require the use of face masks, but instead leaves that determination up to the discretion of the Commissioner. Again, based on the incidence and prevalence of COVID-19. For your awareness, while there is no longer a broad indoor mask mandate, there is still a Commissioner's determination issued pursuant to this regulation that requires masking in health care settings regulated by the department, adult care facilities, schools, correctional facilities, homeless shelters, as well as public transportation conveyances and transportation hubs. We are asking the council members today to vote on a renewal of this emergency regulation to allow the Commissioner to continue to determine whether face masks should be worn in certain settings as the department continues to closely monitor the incidence and prevalence of COVID-19.

Jason Riegert Thank you.

Lito Gutierrez I'm all for approval.

Tom Holt Thank you.

Tom Holt We have a motion.

Tom Holt Is there a second?

Dr. Yang Second.

Tom Holt Dr. Yang, thank you.

Tom Holt We have the second.

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

Tom Holt Mr. Kraut.

Jeffrey Kraut I just want to be sure, Jason, we approve this. The Commissioner also has the power to repeal.

Jason Riegert To repeal her determination, correct.

Jeffrey Kraut Thank you.

Tom Holt Thank you, Mr. Kraut.

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

Jeffrey Kraut We're not seeing any at this point.

Tom Holt Seeing none, and I will begin going through our list and again, restate what I've already restate what I've already said. Please be considerate of everyone's time here. We do have a number of folks that have signed up to speak and would ask that you try to consolidate your messaging. I will list off the first several folks and ask you to be ready to come up and speak, identify yourselves and the organization that you're representing and start moving forward when I call your name.

Tom Holt First up Ann, followed by Jim Mayor, David Weinberg, followed by Jennifer.

Jeffrey Kraut What's the timing limit on this? How many people have signed up to speak?

Tom Holt We have 20 folks that have signed up to speak and at the discretion of the Chair, we will ask everyone to consolidate their comments down to two minutes of speaking time, if you would please.

Unidentified Speaker I think that's wrong, but okay.

Unidentified Speaker I traveled 4 hours to come here.

Unidentified Speaker We need three minutes.

Unidentified Speaker Yeah, I think that's wrong.

Tom Holt Please, please, please, please, please excuse me. If I could ask the members of the audience to be quiet, we're trying to best manage everyone's time here this morning.

Unidentified Speaker Needs to remain three minutes.

Jeffrey Kraut I would just say if it's three minutes and there's no repetition from what we just heard and it's new information, we should proceed.

Tom Holt We'll proceed with three minutes.

Tom Holt Again, identify your name and your organization, please.

Ann My name is Ann. I'm a registered nurse with 40 years experience, working 37 of those years at the only level one trauma center in all of Suffolk County and 35 of those years in the operating room. I am no longer able to work my job because of these mandates, and it needs to stop now. You are losing experienced health care workers that you will never be able to replace. Today, I'm here to speak about the masks. Masks do not prevent viral transmission of SARS-CoV-2. Even an N95 mask will not prevent transmission of the SARS-CoV-2 virus. N95 masks were designed to screen out 95 percent of particles that are 0.3 microns or larger. The SARS-CoV-2 virus is 0.1 micron in size, so the masks do absolutely nothing to prevent transmission of this virus. They are completely ineffective. In actuality, the masks are actually harming people. It is increasing their carbon dioxide levels and decreasing their oxygen levels, both of which cause inflammation in the body, which can lead to illness. Decreased oxygen levels can also inhibit the CD4 T cell lymphocytes, which can actually lead to an increased infection in people. The masks are actually causing this increased infection in the risk in these people. The reduced oxygen levels associated with prolonged mask wearing also leads to headaches in most people. Children at a very low risk of developing serious side effects and SARS-CoV-2, yet they are being forced to wear masks all day long in school. This is causing psychological harm and affecting their social skills. There has been a 51 percent increase in attempted suicide in American teenage girls. There's also been an increase in speech delay referrals in children. In conclusion, the masks do not prevent infection or transmission of the SARS-CoV-2 virus. They are completely ineffective. They should never have been used in the first place. They're actually causing harm to people by increasing their carbon dioxide levels, decreasing the oxygen levels, leading to inflammation and an increased risk of illness. Masks are causing psychological harm and speech delays in children. I strongly oppose this amendment, and you must vote no to this emergency regulation.

Tom Holt Thank you.

Tom Holt Next up, we have Jim, followed by David and then Jennifer.

Jim Good morning.

Jim I will cut down my comments to two minutes.

Tom Holt Thank you.

Jim I'll ask you to bear with me because Mr. Gutierrez kind of trying to suppress the principles of freedom that just isn't going to fly. I appreciate your a health counsel, but principles in what goes into health care policy has to be always a basic. I'm going to refer to the founders. You can apply this the mask coverings or any aspect of the policies you create. The founders cited a long train of abuses in their day one such abuse under the hand of King George the third was his having erected quote, a multitude of new offices and sent hither swarms of officers to harass the people. We citizens of New York are being harassed. We continue to state the harassment which have come to us by force. Regulations, mandates, edicts from Albany that come from officers who seem

disconnected from we, the people. Harassments that are oppressive, illogical and reasoning and often driven by motivations of money and control. The situation won't last forever. Soul searching is going to prevail, along with the exposure of a lot of truth. I implore you to be on the right side of history. Do not be a part of this medical tyranny of which there is no legal, scientific or moral standing. Public health policy in New York needs a new direction. Other states and nations are now addressing the health care issues of our day in a more enlightened way. Learn from them. Be inspired by them. The truckers convoy in Canada that has brought their nation's capital to a standstill is happening for a reason. The people of Canada are tired of being oppressed. Stop strong arming New Yorkers under the pretense of an emergency. There is no emergency, except a state of fear that has been accomplished by manipulation and always remember that the US Constitution is never suspended under any circumstance. This means no vaccine mandates, no taking away of parental rights, no illegal vaccine passports, tracking or quarantines. May the principles gifted to us by our founders apply to your deliberations and decisions as a council on our behalf. May true public health solutions be found, which let freedom ring.

Jim Thank you.

Tom Holt Thank you.

Tom Holt I'd like to invite the next four speakers all up, and then we will just pass the microphone between you in order to keep things moving along. The next four speakers in order are David, Janet, Karen and Judy.

Tom Holt If you would state your name and your affiliation and when you're three minutes is up, if you would pass the microphone to the next speaker.

Tom Holt Thank you.

David Thank you.

David My name is David. I'm speaking as a private citizen who loves the great state of New York. We are in year three of a supposed pandemic. We have endured lockdowns, isolation and being forced to wear masks that are medically useless. We have seen a program of mass vaccination, including vaccinations of children who are at nearly zero risk from COVID-19. The governments of New York have taken away the variability of essential workers, the essential workers that just a year ago were praised so highly to earn a living if they refuse to comply with vaccines and masks that appear increasingly ineffective at everything besides enriching Big Pharma. Despite all the promises of doom, the death rates from COVID-19 never rose above an aggressive flu season. All of these measures have failed to eliminate this virus. It is clear we must learn to live with COVID as we do with other illnesses. It is time for this commission to accept that we, as citizens, have the right and the ability to make our own decisions as to what is medically best for ourselves and our families. That bear life existence is not enough. That we, as Americans, have a God given right to freedom and liberty. That is why you must reject these regulations, all emergency and permanent basis.

David Thank you very much.

Tom Holt Thank you.

Tom Holt Next up, Jennifer.

Jennifer Hi. My name is Jennifer. I'm a certified pediatric nurse practitioner. I live in Center Court on Long Island. I have a practice. I've been working with children for over 20 years. I provide primary care to children. I see children all day long. I'm looking around the room right now and I can't imagine what it must be like for students, because I'm looking around the room and I cannot even tell for a second if any of you are sad, happy, exhausted. I don't know. I can't tell because I can only see your eyes. It makes me so sad to think about our children. Aall of us know and say out loud that the CDC. Sure. I'm used to speaking very loud. I've been to a lot of board of ED meetings. The CDC announced just a couple of weeks ago that the masks, the cloth masks that the children have been told to wear for the past two years aren't doing anything. We put our children into masks for two years that don't do anything. They have caused a significant amount of harm to our kids, a significant amount of harm. I hear it all day long from patients. I can rattle off for hours. I'll give you one. Seven year old comes in and tells me that she's wearing her mask and she has asthma, right? Her name is Caitlin. She has asthma and she has to wear a mask in school. She can't go to school because every time she puts her mask on, she has wheezing episodes. She was given a medical exemption by her pulmonologist, and it was refused by the district. Now, this child's been out of school for months and months and months. Children also come into my office and tell me and I hear it on the street that I have to wear my mask to protect grandma and grandpa. We, as a society of people, have put this incredible responsibility onto our children and we should be ashamed of ourselves. Our children think they're responsible for keeping the elderly people around us healthy. That is not correct and is extremely stressful and producing anxiety and depression. The American Academy of Pediatrics just stated that we are in a they stated that we are in a state of emergency for mental health issues for our children. That is one of the reasons why, as we put this tremendous responsibility on our children. I ask all of you to please. I heard the other woman speak before you are all here. You all have children or you've been a child or you're around children. The mask needs to come off. They're not at risk for COVID. That's been proven. I can send you the studies. They're not asymptomatic spreaders. That's been proven. I can send you every study. They're not at risk. The masks are hurting them. There's no reason to extend this emergency. There's no reason to even discuss an amendment to keep it in place permanently, ever. This is abuse on our children. It needs to stop. Please, all of you vote no to this emergency amendment.

Jennifer Thank you.

Tom Holt Thank you.

Tom Holt We'd also like to invite Allie and Jean to come up and be ready to speak when it's your turn.

Tom Holt Next, I have Karen.

Karen Good morning. I'm Karen. I'm a Saratoga County resident. I represent myself. I'm a Mother of a senior. We are now headed for the third year in a world which includes SARS-CoV-2. Much has been learned since March of 2020. It is now time to let the mask emergency order expire. The state of emergency in this country is over. New York has survived and thrived following past health outbreaks like smallpox, the Spanish flu, tuberculosis and the Hong Kong flu, to mention a few. However, none of the mentioned outbreaks changed how our government operates and how our citizens live their everyday lives. It is time the state moves forward free of the emergency masking orders. Our

children deserve to get their childhood back free of masks. The damage done by blocking children's ability to communicate, socialize and breathe freely will be with this nation for many years. The government cure recommended was far worse than the disease, particularly for the children. All four of my grandparents, who were native New Yorkers, survived the Spanish flu as teenagers. They did not mask up when other viral outbreaks happened, nor did they mask their children. They did not give up their sovereign rights and allow ongoing emergency orders. It is time for the Empire State to take the lead and move forward. Natural immunity is an awesome gift we are blessed with. Studies of survivors of the deadly Spanish flu found they still carried immunity 90 years later.

Tom Holt One minute remaining.

Karen Surely we are at herd immunity. We do not need to continue the emergency order for masks. Please vote no to continue emergency orders. They are not necessary.

Karen Thank you.

Tom Holt Next up, Judy.

Judy Good morning again. My name is Judy. Again, I am speaking as one of the leaders of the Capital District Region for the People's Coalition for New York. Again, we represent over 80 advocacy groups across the state. That total is more than 250,000 people across the state. I am asking this committee to recommend withdrawal of the face covering regulation for three reasons. One, this is no longer an emergency. Yesterday, Governor Hochul spoke and said how all of our metrics are good. Overall cases, positivity rates, total hospitalizations, cases per 100,000 people and new admissions are all down. Vaccines and boosters are up and hospital capacity is up as well, meaning more beds are available, which means we are not in a state of emergency. We are in the green quote unquote green category across the board, and therefore there is no emergency. Number two, how can this regulation be voted on as written? One of the parts of the regulation states masks are to be worn in a public place and when unable to maintain or when not maintaining social distance. However, yesterday Governor Hochul announced lifting the statewide mask or vaccine requirement for indoor places and businesses effective today, February 10th. How can this regulation even be voted on as written if part of it is no longer in effect the same day it is to be voted on. Number three, a judge in the New York State Supreme Court, Judge Rainmaker, ruled that the way in which the rule was promulgated was unconstitutional. Did you guys hear that? Unconstitutional. We live in a constitutional republic. This is a problem, and I'm hearing people say that this should be circumvented and absolutely in no way shape or form should our United States Constitution be circumvented. Judge said a law that was promulgated and enacted unlawfully by an executive branch state agency and therefore a void and unenforceable as a matter of law. The mask mandate must fail as violative of the State Administrative Procedure Act. For those three reasons, I ask that you have this regulation withdrawn and not voted on today, or it must be voted no for across the board today. This makes absolutely no sense, and you guys know that. There is no emergency. We need to live with COVID, and individuals and parents can make the personal decision about what they'll do with their children. We need choice. This is not 2020. It's 2022.

Tom Holt Thank you.

Tom Holt I'd also like to ask that Howard, Annie and Gregory, if you would also please come forward and be prepared to speak.

Tom Holt Next up, I have Ally and Jean.

Jean Hi. My name is Jean Warner. I represent my children and the children of this state who are being tortured daily with having to strap masks on. As time has progressed, the COVID-19 pandemic has diminished to almost nothing. COVID-19, especially Omicron, is essentially benign in children. They are not affected by the virus. If they acquire the virus, their symptoms are similar to a cold milder than the flu. The masks are completely unnecessary and useless for children. They are ineffective and do not protect the children from the virus at all. The masks are a form of abuse and torture at this point. The children are forced to wear the masks for more than 7 hours a day, often more if they do extra curricular activities. They only get a relief at recess if they are allowed. Even worse, are sports that require children to one with masks on their faces. Clearly, this restricts their breathing. Adults have the option of pulling their masks down or off when they are alone. Children do not get this chance as they are constantly surveilled during the school day. Therefore, they inhale their exhaled carbon dioxide all day. You don't have to be a medical professional to realize this is unhealthy. They also do not get the free flow of oxygen. My son complains that he often has difficulty taking a deep breath at school, but is reprimanded when he pulls his mask down to breathe. Socially, they do not see the expressions on their teachers in peer spaces. They cannot see the smiles of the person forming their words. This is damaging to the children psychologically, which will manifest itself in the future. The health of a child encompasses the whole person. It does not pertain to one aspect in this case trying to stop the spread of the virus. A basically benign virus to children. The government needs to treat children like unique, valued human beings. The mask policy is unnecessary and abusive. Why is the state not acting in the best interest of our children? The Governor keeps renewing the mandate with endless promises to lift them at a future date. When that day comes, she renews the restrictions. There have been no parameters set. No tangible goals to be reached. We, as parents, know what is best for our children and demand that the mask requirements for children be lifted today, now, not two weeks from now or after the next holiday. They deserve to breathe now. Do the right thing. Lift these barbaric mandates and free our children. Do not let another moment of a child saying they can't breathe go by. There is no threat from these beautiful people. Let them breathe.

Annie Good morning. My name is Annie. I am a taxpayer, a mother, a grandmother, a retired state clerical worker and deputy town clerk of Summit New York. I'm here on behalf of the people of New York, speaking in allegiance to both our state and national constitutions. As professionals who have the well-being of New York at heart, I ask that you hear and consider my words. That doesn't mean talk to your neighbor or get on your cell phone or write a letter or read something. I don't even see faces directed towards the speakers. It is the most rude thing I have ever experienced in my life. In response to claims that this reality has occurred in the past, using smallpox as an example, it does not stand up. The quickest vaccination ever developed was mumps. It took 5 years to be developed, tested and approved. However, it was not effective or sustained. 19 years later, another vaccination replaced it. Now, we are all expected to line up for a vaccination with new technology that has been produced in under a year and that does not effectively prevent transmission. Regarding face coverings, I can shed some light on why masks are ineffective. My daughter works for one of the three major producers of vaccines. Her life depends on her N95 mask when she enters a laboratory. She would never set foot in a laboratory environment without one. But not just any N95 mask. Some are for construction dust, paint, fumes and other uses. Also, my daughter is required to change her mask every one to five hours per regulation due to bacteria buildup on the breathing surface, as has

been mentioned, and she is fit tested for regularly for a proper seal so that air does not escape in or out. Men who work in her environment must be clean shaven to achieve that seal. Men who work in environment must be clean shaven to achieve that seal. These scientific requirements demonstrate that the masks we have been wearing for the past two years are not effective. They do not provide complete protection. They do constrict breathing, however. I object strenuously to a continued masking requirement of any sort, especially for children. The population least in danger, which has been impacted emotionally, socially, cognitively and physically. The real threat is the constant and repetitive challenge to our way of life and our freedom by mandates and controls. You must vote no on this regulation.

Tom Holt And before we get started, I'd like to ask Debbie Janssen, Suzanne and David also to come forward and be prepared to speak when it's your turn.

Ally Hi. My name is Ally. I'm a resident of Suffolk County. I'm representing fed-up parents throughout the state. Parents that just want to protect their children. I am sitting here today as I am in opposition to emergency regulations that are potentially being extended here today. Governor Hochul's Executive Order from January 15th, 2022 expires on February 15, 2022. The executive order was written because of the unknown variant and on January 15, 2022, the positivity rate was 12.9, with the seven day rolling average of 16.4 percent. As of February 9th, we are at a positivity rate of 3.67 percent and a rolling seven day average of 4.4 percent. The daily metrics and data from New York State Department of Health website showed that hospitalizations, death and positivity rates are falling and are very low. It is the responsibility of this committee to use actual numbers and data based on pre emergency medical urgency and endemic rates to prove that we are still in an emergency. If that is unattainable, this committee must end the emergency regulations. You must wake up and see the harm that is being done. You must unmask these kids. I want to remind everyone the face covering emergency proposal face first came up on August 27, 2021, and was in effect for 90 days. Then, on November 24th, 2021, it was once again brought up, but this time as an emergency and proposal, and the emergency part expires on February 21st, 2022. How can this proposal still be considered an emergency after 180 days, especially after yesterday's press conference with the Governor, where we learned our numbers in areas are all good, but still, she wants the kids masked. How can this make sense to anyone? It can't, because it doesn't. Through several variants of COVID, the number of deaths among children is less than 1 percent. More kids died of the flu each year prior to COVID, and we never thought to mask the kids in school or shut them down for a period of time.

Tom Holt One minute.

Ally The variant spread faster than any other variant, but it was also like the common cold or flu. Many children now have natural immunity from actually getting COVID. That will protect them, not these useless face masks. I ask you not to approve this as an emergency once again, instead leave the decision of masking to parents. These kids have been masked too long. It's child abuse at this point. It's time to stop harming our kids. It's time to let them breathe fresh air. There is no emergency, so you must vote no. Let's get back to normal. Let's let our kids remember what normal feels like. These kids are miserable and masked. They cannot breathe. Their development is being hindered. If you vote yes, and extend the emergency order and keep our kids in masks, you can go to bed at night considering yourselves child abusers.

Howard Good morning, council members of the Public Health and Planning Council Codes Committee. My name is Howard. I'm a resident of Saratoga County. I understand that the State Administrative Procedures Act recognizes certain emergency situations may require rapid action. Section 2026 allows agencies to immediately adopt rules that are necessary for the preservation of the public health, safety or general welfare. However, these three proposals that are being decided today are no longer an emergency. The face coverings the first emergency proposal was on August 27th, 2021, and is over 5 months ago. The reporting and testing emergency proposal was first published on September 2, 2021. Isolation and quarantine has been in effect for months as well. 2018 a desire quote to preserve the status quo unquote or quote a potential concern about a disruption is not sufficient to justify the use of SAP as administrative procedures for emergency rulemaking unquote. The New York State Supreme has vacated emergency rules where an agency failed to sufficiently justify the emergency nature of the rule, as quote the mere parroting of the phrase the public health, safety or general welfare with no specific facts, unquote will not be considered an adequate justification for an emergency regulation. While the COVID-19 pandemic and the Governor's emergency declaration offer support for emergency regulations that state agencies implement during the official emergency period, agencies must still be able to articulate the connection between the pandemic and urban see action. What are the justifications that would require these three proposals to be adopted once again as emergency? You have not provided data to support the extensions. Therefore, you must reject the proposal to an extent based on an emergency.

Tom Holt One minute remaining.

Howard The fact is that masks don't work. They don't work in preventing the spread of respiratory viruses or aerosols. It is unnecessary and unneeded. The preponderance of data and evidence shows that masks are not effective at stopping the spread of respiratory viruses and through aerosols. There's at least six major studies in 2020 alone that have shown in, by the way, including a massive November 2020 systemic review of 67 studies that show that masks in the community won't prevent the spread of respiratory viruses. Therefore, since the masks don't work and they are considered to be a medical device.

Tom Holt 15 seconds.

Howard Thank you.

Howard You are in effect, mandating the use of a medical device without a medical exam and practicing medicine without a license. You must vote no on this emergency extension.

Howard Thank you.

Tom Holt I have a Gregory, Debbie, Suzanne and David.

Greg Hey. Good afternoon or morning. My name is Greg. I work with the New York State Council School Superintendents for professional organization, representing about 700 school superintendents. I'm used to most of my advocacy relating to education directly and not Department Health, so this is an awkward seat for me to be in in the first place. We sent a letter that we authored to the Commissioner and the Governor, and I believe you guys received that. In essence, it's arguing for a set of measures to determine when masks will go away or at least a transition away. The Governor's comments were helpful that we're looking at potentially moving away from asking or at least mandatory masking in early March. Still defined metrics for communities to look at would go a long way. It helps

provide confidence from the health field that there's actual scientific data that the state's going to follow for when mask will go away and if they will come back. That will, in the long run support, transitions around risk based mediation that need to occur. One of the quotes from our letter that I'll just read that I think summarize it. Despite continued uncertainty regarding COVID-19, the state should write clear guidance and universal mask requirements and when and how those will evolve. The best way to do this to reasonable, understandable, achievable metrics based on recommendations from medical professionals for when masking rules will eventually be changed. Absent this clarity, families might assume that the current rules and regulations will continue in perpetuity. I think the Governor's comments indicate they won't continue in perpetuity, but communities still lack a clear understanding of what will occur. Maybe that will come out soon. The Governor indicated that will, but I encourage you through any amendments to regulations to provide those metrics. Also, once universal masking fades away, please do not implement a regulation that requires boards to affirmatively vote one way or the other on whether to have masks. We recognize that they can choose to approve masks, but asking school boards to affirmatively decide yes or no. First, just an opt in will create more and further controversy. Communities are strained, their threads are being pulled. School leaders are working to keep one another and keep schools functioning. We look forward to partner with you and we look forward to seeing how this proceeds and what the Governor and the Department of Health change going forward.

Tom Holt Thank you.

Greg Thank you.

Debbie Good morning. My name is Debbie. I live in Saratoga County. I'm a concerned citizen. I'm here to speak for the children.

Tom Holt If you could just pull the microphone a little bit closer, perhaps.

Debbie Okay.

Debbie Thank you.

Debbie Weeks ago, the CDC announced that masks do not work to stop the transmission of COVID-19. Yet here in New York, the Governor has mandated masks for children. The simple truth is that children are not at great risk of dying of COVID-19. They have a greater chance of dying by drowning or car accidents, but no one outlaws swimming or driving. The number of children who have died of COVID-19 is similar to that of the flu and is very low. Forcing children to wear masks at this point is child abuse. Children need to see people's faces to learn expressions and moods. Their communication skills are being thwarted. It's difficult to hear and understand a teacher, a friend or classmate who is wearing a mask. Children need to see the formation of the words by the lips and mouth in order to increase their learning. By forcing masks on children, you are causing them to believe they are germ ridden and dangerous that their breath can harm someone. The psychological damage is being done to children in the name of science. This is not science. It is lies. It is a false witness. The mask mandate was unconstitutionally implemented and circumvented the legislative process. All mask mandates should be lifted immediately, now that the truth has come out. Also, there is no reason whatsoever to quarantine people who may be considered a health risk. This is extreme overreach by the Governor and Commissioner. We are watching. The truth has been exposed. There is no more COVID-19 emergency. If you turn off your TV, you will realize this. ed

Tom Holt One minute remaining.

Debbie There is no reason for an emergency adoption of the amendment for face coverings. I ask you to vote no. There is no more COVID-19 emergency. Let's stop with the mandates, the fear mongering sneaking changes to rules and laws through the back door. Let's get back to the Constitution.

Debbie Thank you.

Tom Holt Thank you.

Tom Holt Next up, I have Suzanne.

Tom Holt I would ask David, Dr. Patel and Chris to come forward and be ready to speak when it's your turn.

Suzanne Good morning. My name is Suzanne. I am a lifelong resident of New York State. I've lived in Upstate New York my entire life. I love this state and I never had any intention of going anywhere else. But what has been going on since COVID has really changed my mind. With high taxes, these restrictive regulations that have been going on and the oppressive politics in New York, where we are not being heard when we have a meeting like this and half the people can't even bother to come and sit here face to face to listen to us when this meeting is open. That's very telling and very disappointing for me. I want a government that keeps my community safe and maintains our roads and bridges. I don't need the government to tell me how to raise my child, how to care for my family, run our business or what we should do for our own health care. My husband and I are both adults who are perfectly capable of providing for our own family. The job of our elected officials is to serve us as their constituents, not rule over us as overlords. We don't need or want your mask mandates. These mandates are unconstitutional and completely unnecessary at this point. The government's role is to not tell me what to do, what to put on my face, or how to protect my own health and the health of my family. I'm tired of being treated like we are stupid and not heard. I ask that you do not vote yes on this.

Suzanne Thank you.

David My name is David. I'm representing myself.

David Can you hear me?

Tom Holt Yeah.

David Thank you.

David You guys go to checking your emails, sending out your tweets. I need you to pay attention.

Tom Holt If you could, please keep your comments directed to the regulation.

David I'm directing it to the people doing the tweeting.

David I want to give it up to the people behind me that are trying to reason with you and say they love New York. I just want you to let you know I hate New York because people like you have made it a cesspool. My wife and I will be leaving as soon as possible. Can we stop pretending that this is about the science and health? This is about money and power. That's it. The fact that I can go to a restaurant, and if I'm this high, I have to wear a mask. But if I'm this high, I'm safe. It's ridiculous. The fact that you're firing people, health care workers who aren't vaccinated can't be there, but people who are vaccinated that are COVID positive can go to work. This isn't about science. This is ridiculous. I have no faith and confidence. I'm not going to tell you to vote or not vote how to vote on this because you guys have proven time and time again, you're going to vote your pockets. It doesn't matter what these people behind me or anybody tells you about the science behind this, the detriment to the children, how it's affecting businesses. That doesn't matter. The only thing that matters to you is, can I get money for this? Oh, I can? Good to go. Stop pretending it's about science. It's not. Everybody here knows it and so do you. A two minute Google search from any one of you or anybody here can read what anybody else has said. This is not rocket science. This is not hidden. It's out in the public. Stop pretending that it's something else.

Tom Holt One minute remaining.

David That's all I have. This is a shame. I was born and raised here, and what's happening is disgusting. It's disgusting.

David That's it.

Tom Holt Next, I have Dr. Mike Purcell and Chris.

Dr. Michael Purcell Hi. Dr. Michael Purcell, speaking again. Constitutional physician and I'm speaking specifically, you know, within my area of specialty regarding this. I am a board certified pediatrician and internal medicine physician. Long and short is that there are many downsides to wearing the mask. And so for the marginal benefit that may be derived, the harm outweighs the good once again. Whenever we're doing anything in medicine, we should always be considering why we're doing it and what the benefit is. Long and short is that there is much, much more harm, especially to our children in using these masks. The other speakers already spoke to the facts regarding that children do remarkably well. I can speak from personal professional experience. I took care of I don't know hundreds, at least well over 100 children in the past two years throughout this COVID. Very few had any issue. Out of all of those, I had one child that had a prolonged cough, which is very common with the deep onset viral pneumonia usually takes weeks, sometimes months, to clear. He did fine. I had one other child in our group practice that had something a little rash on the feet. Some people call COVID toes. Once again, no sequelae to any of those that we've seen. When it comes to the masking, though, you know, like I said, it doesn't seem to protect the kids. My niece and nephew personally have had COVID twice attending school, and they've been following all the rules. They get taken out of school and then their mom has to leave work and it's become a great burden when this is literally for children by and large, a cold or less. Many have no symptoms or very mild symptoms. The other detrimental things to this is the fact that these masks are unsanitary. We have worsening breath and other bad bacteria in the mouth that are more anaerobic and geared because we have high, low oxygen tension that occurs. Where the kids are repeating the CO₂. We're seeing a lot of kids complaining of headaches, not just kids, but adults also come to me, and they're having headaches that are resolved by

breathing freely the air because we're designed to thrive in a 21 percent oxygen environment and that's not what these masks do. They don't allow us to get that.

Tom Holt 15 seconds.

Dr. Michael Purcell Thank you.

Dr. Michael Purcell Let me just speak to the developmental issue. Dr. Robert Malone is excellent on this. I recommend you look into things he said.

Tom Holt Your time has expired.

Dr. Michael Purcell Thank you.

Dr. Michael Purcell Developmental impacts of the children are significant, and we need to protect our children.

Dr. Michael Purcell Thank you.

Tom Holt Thank you.

Chris I'll keep it really brief. As a former school board president in one of our local school districts here in the State of New York. I felt I was forced to resign my position on the school board based on a January 24th decision that was handed down by the Supreme Court justice. What it put in place was it put our school board members in a position where we had to choose whether we were going to stand for the Constitution of the United States and the Constitution of New York State, or whether we were going to stand for dictatorship? Rule by Kathy Hochul, Commissioner Rosa in our Public Health Commissioner here in the State of New York. I find it very appalling that our government wouldn't put elected officials like myself in that position. I think you should know the impact that all of the decisions that you're making here today have and all of us who don't have the authority to go against it, but we've just got to shut our mouth and carry on your agenda that you want to see carried on to our children. And in closing, I'm going to tell you a story. My kids play basketball. You ever played a basketball game for 30 minutes with a mask and a muzzle over the top of your mouth? Of course not, because it's not even scientifically possible. These kids aren't wearing the masks in school properly. They're not wearing the mask when they're playing sports properly. The minute they get out of those schools, the masks are thrown on the ground. As a state that's supposed to be worried about the environment, how does that make you feel? Lastly, I'll close with this. I'm a public official. I sit in many meetings. And if I ever acted like the individuals act in this room, one guy who left. He couldn't be bothered by anything anybody wanted to say. This gentleman here has sat with his arms and legs crossed. I've got one gentleman on the couch up there who hasn't paid attention to one thing the speaker said. And there's another gentleman on the Zoom call whose act like a two year because he doesn't want to be bothered what we have to say. But I can promise you this. Come November 20 22, this will all change when all the tyrannies are done and voted out of office. I hope, I hop t to God. That happens because the actions you people are taking here today, the actions our government are taking here today are extremely unconstitutional, unnecessary and does nobody any good. As the gentleman before me said, it's all about the power and it's all about the money. You should all be ashamed of yourselves.

Tom Holt That concludes the list of folks who had signed up to speak to this regulation and would remind the members of the committee and council that we have a motion and a second in the table.

Tom Holt Ask if there are other questions from the members of the committee or council?

Tom Holt Ms. Monroe.

Ann Monroe Yes, thank you. I do have a question.

Ann Monroe I do not believe that these decisions that are being made are being made capriciously by the Department of Health. Nor do I believe that it is for other purposes. But I am wondering what metrics are used to determine the Governor's decision yesterday and the lack of inclusion of children in that decision. And so I really would like to understand how the department makes those decisions so that not only us as members, but the public would understand the process that went into those decisions and why they are the right ones at the right time. I don't know who could respond to that, but I do think there need to be metrics of some sort, and I think the school board representative spoke to that. I believe there must be metrics because how else do you make the decision, but are those transparent and publicly understood? I would have to say from everything we've heard, from the letters and the people have spoken that that process is not well understood, whether or not you agree with it. I would like to understand from the department; their process, who they consult with, what levels they use to make the decisions that we see before us today.

Ann Monroe That's just my comment.

Ann Monroe And as I said, I don't know of people in the world could respond to that. But I think at some point we need to better understand the way that some of these decisions are made so that we can better understand our role in either supporting or asking for amendments.

Jeffrey Kraut Maybe there's somebody in the room. I know the Governor addressed it at her press conference yesterday and answered that question. Maybe somebody can repeat what she said.

Jason Riegert I don't know if I could repeat exactly what she said. I mean, I think what the regulation calls for is, again, looking at the incidence and prevalence of COVID-19, other public health factors and risks. There is a wealth of information that's published daily on the Department of Health's website that provides all of those metrics. And then as far as the schools, because that's a big one that the Governor mentioned that again, looking at that data, looking at those metrics and then making that determination, I believe she said after the February break is what she said.

Travis O'Donnell Hi. This is Travis O'Donnell from the State Health Department. I can add to that.

Tom Holt If I could ask the audience to please be quiet so we can respond, please.

Tom Holt Thank you.

Travis O'Donnell Travis O'Donnell from New State Health Department. The specific metrics we're looking at currently with respect to schools and masking our cases per 100,000, percent positivity, hospital admission, hospital admissions, pediatric hospitalizations, vaccinations and global trends in COVID-19 transmission and the surrounding states that have been relaxing mask requirements looking at the trends there.

Ann Monroe Do we have targets for those metrics?

Travis O'Donnell Targets have not been developed yet.

Ann Monroe That would be important I think so that people know how close or how far.

Tom Holt Again, if I could ask the members of the public to please refrain from outbursts.

Ann Monroe I was just saying I think targets are important to better understand how close or how far away we are from reaching goals that the department has in mind for making its decisions. So that's enough from me, but I would just like to see those targets set.

Tom Holt Thank you, Ms. Monroe.

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

Harvey Lawrence Yeah.

Harvey Lawrence Harvey Lawrence, a member of the council. Having listened to the comments that were made, I guess I'm asking the department to take on more of a proactive approach to educating the public about the health challenges and the need for these regulations. I just think that there's got to be more information shared and repeated and distributed that bring people in communities across the state, along with the changes that are necessary to combat the pandemic and that type of information campaign is critically important because I think in absent that there creates a void.

Tom Holt Thank you, Mr. Lawrence.

Tom Holt Any other questions, then from the counsel of the committee?

Tom Holt Hearing none, we have a motion and a second.

Tom Holt I will call the question and remind the members present that this is for the committee, not the full council at this point.

Tom Holt Members of the committee in favor please signify by saying, aye.

All Aye.

Tom Holt Any opposed?

Tom Holt Abstentions?

Tom Holt Motion carries.

Tom Holt Thank you.

Tom Holt For the next regulation for emergency adoption, there's a COVID-19 reporting and testing Mr. Jason of the department is available and provide us with information on this proposal.

Jason Riegert Thank you.

Jason Riegert This emergency regulation renewal adds two sections to Part 2 of the state sanitary code sections 2.9 and 2.62. Section 2.9 requires schools to submit daily reports to the Department of all COVID testing and positive test results. This applies to public and private K through 12 schools, as well as certain pre-kindergarten programs. This allows the department to closely monitor COVID-19 testing and prevalence incidents in schools. Section 2.62 permits the Commissioner to issue determinations requiring routine COVID-19 testing based again upon the incidence and prevalence, as well as other public health and clinical risk factors related to COVID-19. Ssince September of 2021, there has been a Commissioner's determination pursuant to this emergency regulation, which is still in effect and outlines specific requirements for testing of teachers and staff in schools. We're asking the council today to approve this emergency regulation to allow the department to continue to closely monitor COVID-19 infection rates in schools.

Jason Riegert Thank you.

Tom Holt Thank you.

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

Lito Gutierrez I make the motion to proceed.

Tom Holt Dr. Gutierrez.

Tom Holt And a second?

Tom Holt Dr. Watkins.

Tom Holt Thank you.

Tom Holt Questions from the committee or the council?

Tom Holt We do have a number of speakers who have signed up and as we have been trying to coordinate this would call the first several folks up and ask them to come forward and be ready to speak when it's their turn. I'll list off the first several names and ask you to be ready. Judy, Jennifer, Dr Mike Purcell and Emma. If you would please come forward, state your name and your affiliation, and again would remind folks to speak to the regulation that we're discussing today and try not to be repetitive of the other speakers.

Tom Holt Thank you.

Judy Good morning. My name is Judy. I am speaking as a leader of the Capital District Region for the People's Coalition for New York. The People's Coalition represents over 80 advocacy groups, representing a sum total of over 250,000 members across the State of New York and growing. And yet again, the emergency justification that you provide for this

emergency regulation is a copy and paste job with little to no data to support continuing these requirements. It's interesting that the Department of Health can come here and say that there's plenty of data, yet what gets printed and put out to the public is a copy and paste job from your emergency justification from, I don't know, maybe 6 months ago. It's a little ridiculous, and it's a slap in the face to New Yorkers who deserve to know exactly why emergency regulations are being thrust upon them. From a public health perspective, it has come to my attention that schools have been used as pawns in your surveillance initiative. During Delta, children were never the drivers of COVID-19, yet your regulations have been forcefully used in schools across the state, and point of care testing was started in schools. The testing reporting parameters used in schools is discriminatory at their core. Again, placing undue requirements on the unvaccinated. The State of New York is supporting discriminatory practices in schools across the state and are in violation of the American Disabilities Act. The idea of testing bias is not new to many fields and presents a very real danger to the data accumulated in schools during this school year. The testing protocol in these selected populations, with tests that are well known to create false positives, is an extreme case of testing bias. Since Delta was not really a problem for children, but the state decided to move testing into schools during the school year, one can only logically conclude that this was an opportunity for testing bias to drive positive test case rates to lay the foundation for mask and vaccine mandates. Additionally, there was a meeting on January 11th, 2021. The Department of Health professional, who sits here today, admitted that PCR tests and antigen tests are only proxies for confirming a positive test. This destroys your contention that testing using these methods is vital for the surveillance of COVID-19. This also destroys your credibility and continuing to make decisions for the public and the State of New York. Since you are willing to accept faulty data to lay the basis for this and other emergency regulations and for mask and vaccine mandates, the public cannot trust you. I also notice that the committee decided to put forth emergency regulations on November 10th to test the deceased. Yes, it's dead people. That includes those who died at home, on the way to the hospital in funeral homes across the state. This particular testing protocol reasonable suspicion of COVID-19, not even a confirmatory proxy PCR antigen test. It seems that this is less about surveillance to achieve sufficient and reliable data and more about gaining a lot of insufficient and faulty data to support an agenda. You must vote no on this emergency regulation since the people in the great state of New York are beginning to lose trust in your ability to adequately protect them due to faulty decision making.

Emma My name is Emma. I'm twenty four years old, and yes, I may be young, but I can see very clearly that this country, when everyone old is gone, this is my country that I'm going to have to pick up the pieces of. I don't want to be picking up more pieces of this country than I have to be. I grew up proud that this country was known as the land of the Free and the home of the brave. I could sing the whole Star-Spangled Banner from a very young age, and I could recite the whole Declaration of Independence. Every day, I see both freedom and bravery slipping away under the never ending unconstitutional and unscientific mandates which facts cannot justify. My first nephew is due to be born this Spring, and I'm not going to stand by and watch is under the name of science and kindness, his rights to make his own future medical decisions are stolen by a government that has milked fear for all its worth to gain power. I know something about fear because I have had anxiety my whole life, and you cannot let fear when. His Mother is a nurse, and she constantly has her livelihood jeopardized by never ending testing and harassment over her vaccine status. What if he wants to follow her into the medical field? Will he have any rights regarding his own health left at all in 20 years? These mandates need to end. Any of us who can think know they're helping nothing but the government's agenda. We do not need more of them. As a lifelong student of history, I know how freedom is lost and it's

often stolen in the name of safety, but we are not descended from people who wanted safety. We are the free and the brave. Please stop trying to tape what our country's founders fought and died to give us.

Tom Holt Thank you.

Tom Holt The next speakers that I have identified on the list are Dr. Mike Purcell, Emma and ---.

Unidentified Dr. Purcell is not here.

Tom Holt Emma.

Unidentified That was her.

Tom Holt Annie, followed by Mr. Tallon, David and Johnny.

Annie Good morning. My name is Annie. I am a taxpayer, a Mother, a Grandmother, a retired state clerical worker and Deputy Town Clerk. I am here on behalf of the people of New York, speaking in allegiance to both our state and national constitutions. None of this makes sense. You know it. At this point, everybody knows it. A friend recently said to me, if it doesn't make sense, the reasons put forth our supposed well-being are not the real reasons. What could they be? Let's see. Dollars and cents, we've talked about that. Control and compliance. To what end I'm not really sure. There's some general ideas tossed around. We don't really know. Actual harm to our elderly who costs so much to the system, to our children who can't really defend themselves, to our heroes, the military, first responders, health care professionals, all of these people are at risk. Are we defenseless now? We are not defenseless. We will not stand down. This is not going away. Do you think that there will be no price to pay for your actions? Do you think that there will be no price to pay for your actions for your participation in this repression and dismissal of the concerns of the people of New York in this country? It's not going to end well for you. Watch out.

Jeffrey Kraut I don't believe threatening members of the council advances your cause.

Tom Holt I'm sorry. Repeat, Mr. Kraut.

Jeffrey Kraut I don't believe speaker's threatening members of the council advances your cause.

Annie That was not a threat. I have no power over you. You have the power. I am looking into the future and I trust our country and the constitutional systems of our country.

Tom Holt Thank you.

Annie I didn't have my three minutes. You rebutted something. You accused me of something. I did not make a threat. Let's not pretend I made a threat.

Tom Holt Thank you.

Jeffrey Kraut Okay, fine.

Tom Holt Next, I have Chris.

Chris I'm going to speak again as a former school board member and the metrics that were used as far as the testing that we've been since day one have had a severe impact on everything that we've done, especially at the school district level. We've gone through the Governor, Governor Cuomo, Dictator Cuomo. When he was here, he came out with a 10 day or 7 day rolling average of hospitalizations, the rolling 7 day average of positivity rates. All of that information was extremely subjective and I'll tell you why. I live in a county where there's 53,000 people. On average, we would get anywhere between 200/150, very low number of people getting tested for COVID-19, which made our positivity rates through the roof between 8, 10, 11, 12 percent for the entire pandemic. But it was only based on those 200 or 300 people that were tested. It's not based on the 53,000 people that we have in our county, so it's subjective data. Why was it subjective data? I'll tell you why. It fit a narrative for the last administration and this administration to keep the power and to keep the hammer over our heads to be able to tell us what we will be able to do and what we won't be able to do. And in regards to the testing, the testing that is the most inaccurate testing we have ever seen. When you can pour a bottle of water in a rapid test and have it come back positive for COVID, you think that's a little strange? Or if you can pour a bottle of corona in a coronavirus test and it also comes back positive, a little strange. The metrics and the data that we use into own admission, the data that was reported in hospitalizations was false. The data received for the deaths associated with COVID-19 was false, but it all fit American narrative and it all associated with dollars and cents. These testing procedures and these quarantine procedures and the data that we're using has been flawed from day one, and nobody has had the courage or at least the know how to make it so it's accurate data.

Tom Holt Thank you.

Tom Holt Next, I have David, followed by Johnny.

Tom Holt Thank you.

David I didn't plan on speaking twice. I just wanted to come back up and address some things that were said.

Tom Holt If you're going to be speaking, it needs to be directed towards this regulation that we're discussing.

David It is.

Tom Holt Okay.

Tom Holt Thank you.

David She had said that she believes the people that are making these decisions and trying to make these decisions aren't acting capriciously. I wanted to read you the definition, which is rules changing often and quickly, not logical or reasonable. And then the other gentleman that was saying that there just needs to be more information gotten out there so these plebs aren't doing wrong. I was told a long time ago, everybody's got a toolbox and you never know what tools are in people's toolbox until they open their mouth. You guys are letting everybody here know you got no tools. I travel around for a living all over this country and it's shocking to me even now, almost three years into this. There's

freedom in this country. You go to places like Idaho, Tennessee, Montana, South Dakota, Florida, Texas. This isn't a thing there. It's just not. There's no masks in sight. People are going about their lives. Businesses are open. And then you come to places like Seattle, Washington or Albany, New York and look around. What's happening. Are we in a different country? Is this a different country? This is still the United States, right? It doesn't make sense. I go back to this is power and money. This is control. That's it. It's a way for you guys to decide who gets to go where and who doesn't. I want to end with my wife when I went to the library about two weeks ago. We couldn't go in because we don't have a mask, but we could go through a side door and we would be serviced there. I remember in school they used to tell us about slavery and discrimination in the South, where Black people couldn't go into the restaurants that the white people could go to, but they could get served at a window in the back. It was discrimination then. It's still discrimination now.

David Thank you.

Tom Holt Next, I have Johnny.

Tom Holt If you'd state your name and who you're representing, please.

Johnny I'm Johnny. I'm here because of my Mom speaking, and I'm here to represent my Mother. I'm also against the vaccination in schools and the testing in schools, because that is just not the answer. It will not work. They have proven. They have proven multiple times that these COVID tests can be proven false negative or false positive. I may be only 16, but I know, and if a 16 year old can tell you guys that you guys are all wrong, there is something wrong. You guys should know that this is not going to fix anything. You guys should also know that almost everybody behind me, my cousin sitting across from me, they all support what I have to say. They all know that you guys are wrong. If we can tell you that you're wrong and we're just as average citizens, then there's something wrong. You guys need to fix what you're doing, get straight and do the right thing. Instead of just getting all the money, as my Uncle has said, instead of just going for the money and the power to actually do something. Testing isn't going to work because it's going to be negative and it can be positive, and they can be false negative and positive. That's the problem that I see here. If the tests were actually real and true and actually did something, then that would, I would support it, but they don't. Vaccinations don't work.

Tom Holt One minute remaining.

Johnny Thank you.

Johnny A real vaccine lasts your whole lifetime. These vaccines are not real. You need boosters every time. If 6 months from now, you need a booster that's not a real vaccine. That doesn't work in schools. Kids are being tortured because of this. I'm 16 and I can tell you that. If I can tell you that, these people can tell you that you're doing something wrong.

Johnny Thank you.

Tom Holt Thank you.

Tom Holt Our final speaker is Joseph.

Joseph Hello. My name is Joseph. I'm an elected official in the Town of Rotterdam. The real pandemic here is your lust for power. The real virus is authoritarianism. What you're

trying to do here is you're trying to further aggrandize the power of the state. What you're doing is you're risking the actual power that you have to guide us in public health. People don't trust the state like they should. The experts like they should. You guys can't even come up with the data or the metrics for why Queen Hochul has made the decision that she's made. We can see the Emperor has no clothes. We know it's related to polling data. We know that it's not popular anymore and this is an election year. You guys are risking the authority that you have by trying to capitalize and expand your power. Consider that when you vote that what you're going to do is going to have consequence. History is going to look and is going to condemn what you guys are doing. The masks don't work. It's theater. It's abuse psychologically, especially on our children. What are your objectives here are is going to backfire on you. I say, you know, please be careful in what you're about to do.

Joseph Thank you.

Tom Holt Thank you.

Tom Holt Would remind the members of the committee that we have a motion and a second on the table.

Tom Holt Would ask if there are any other questions of the committee or the council members at this point?

Tom Holt Seeing none, I would call the question of the members of the committee.

Tom Holt All those in favor?

All Aye.

Tom Holt Opposed?

Tom Holt Abstentions?

Tom Holt And that motion carries.

Tom Holt Thank you.

Tom Holt Lastly, we have a regulation for adoption. Article 28 nursing homes establishment. Notice and character and competency requirements Ms. Marthe Ngwashi and Shelly Glock from the department are available and will provide us with information on this proposal.

Marthe Ngwashi Good afternoon. My name is Marthe Ngwashi. I'm an attorney at the Department of Health. This regulation responds to changes that the Legislature enacted to Article 28 of the public health law and more specifically, Section 2801, establishment or incorporation of hospitals. The changes are directed at nursing home establishment applications. I'm going to go over a few things because we did talk about this regulation previously for information last September, but I wanted to just give everybody a reminder about what prompted it and how we are here today. There were three new additions to the law in Section 2801A. The first is transparency when a nursing home establishment application is received by the department. The second is the law granted a review and recommendation roll to the state long term care ombudsman. The third is the law

incorporates new character and competence criteria for individuals that are the subject of the nursing home establishment application. We were required to draft regulations. The regs were filed in the state register last November. The public comment period concluded on January 18th. We received two public comments which were addressed in an assessment of public comment and also responded to the public comments. The comments were generally related to seeking clarification regarding implementation and also requiring additional standards in the regulation. No substantial revision was made to the regulation and thus we bring it forward to you today for adoption. In terms of this regulation, the proposed regulation amends Title 10 NYCRR Section 600.1, which has applications for establishment and 600.2, which is requirements for approval. Altogether, the proposed regulations were designed to strengthen the establishment application review process for all Article 28 facilities generally and nursing homes specifically. In Section 600.1, the amendment addresses statutory notice requirements. A new subdivision was added to Section 600.1 to define the appropriate method and timing for new statutory notice requirements when a nursing home establishment application is acknowledged by the department and thereafter placed on the agenda. Notices go to the Long Term Care Ombudsman and if it's an existing nursing home, the residents, staff, union and other designated representatives. The department is responsible for notifying the Ombudsman and in the case of an existing nursing home, the current operator and the applicant are responsible for notifying the residents, staff, union and other designated representatives. 600.2 requirements for approval. The first amendments to this section update requirements for approval pertaining to establishment applications for all Article 28 facilities and reference review and evaluation criteria and acceptable legal entity types for such applications. Paragraph 2 of Subdivision B of Section 600.2 makes the character competence and standing in the community, or, as we call it, CMC review standard comparable for all applicants. The amendment also includes a limited liability company as an acceptable legal entity applicant whose members are also subject to CMC review. Next, Paragraph 4 of Subdivision B of Section 600.2 is amended to include additional titles of applicant individuals. It removes a reference to outdated reporting requirements that no longer appear in statute. It clarifies establishment application review criteria and defines the terms recurrent and prompt correction related to violations at Article 28 facilities. Note that the clarifications and the definitions are all based on current law and regulations. Finally, a new Paragraph 5 was added to section 600.2 to specify information used to determine whether a consistently high level of care has been delivered at a nursing home operated by an applicant in the prior 7 years. There are four parts to this regulation. The first discusses the minimum consideration that you must contemplate when making a determination about a consistently high level of care rendered at a facility. The second outlines the criteria used to determine whether a consistently high level of care has been rendered at a facility. The third specifies four occurrences that will trigger a determination that a consistently high level of care has not been rendered at a facility or instances that will prompt an automatic disapproval of an application. Those instances are closure of a facility or where a facility has closed as a result of a settlement agreement from a decertification action or license revocation. Number two, a health care related facility, agency or program that was the subject of a decertification action or license or revocation. Number three, involuntary termination of a health care related facility, agency or program from the Medicare or Medicaid program. Number four, violations found, which either threatened to directly affect patient, resident, health, safety or welfare or resulted in direct significant harm to the health, safety or welfare of patients or residents and were recurrent or were not promptly corrected. Those are the four instances that may trigger an automatic disapproval. The fourth part of this new paragraph in the regulation flushes out the criteria that looks at the number and percentage of nursing homes and the applicant individuals portfolio with a two-star or less reading. The findings of this analysis may trigger an

automatic disapproval, and there are three components to this. One is 40 percent. The other is 48 month ownership period and the last is 5 or more nursing homes. If greater than 40 percent of the nursing homes in a portfolio that the operator has owned for at least 48 months or more have a two-star or less CMS rating, a determination is going to be made that a consistently high level of care has not been rendered. One thing to note about this part is that if there are less than 5 nursing homes, then a determination is going to be made based on the other criteria for the review criteria. This part of the regulation sets forth the uniform transparent and outcome based standards to determine when a consistently high level of care has been delivered by applicant operators in the nursing homes they have owned in the past 7 years. One of the things that I also wanted to mention is that there are a number of look back periods, which I know might be a little confusing for some. I just wanted to go over the look back period that appear in the statute and also in the regulation. I'll tell you which ones are new and which ones are already in existing law, which should be hopefully simplify it for you. There are five look back periods all together. The first one that I'm going to talk about is an existing law. It's what we all know. It's applicable to all Article 28 facilities. It's 10 years. The CNC review criteria that we look at to determine whether or not there has been a substantially consistent high level of care at facilities is a 10 year look back period. This is a holdover from current law. We are seeking to make a chapter amendment to this law so that the look back period is going to be consistent across all our provider types. But right now, we still have to follow the 10 year look back period for all Article 28 facilities. That's the first look back period. The second look back period. These are all going to be new look back, these other four look back periods that I'm going to be talking about. They were prompted as a result of the nursing home establishment application law that went into effect last year. The first one is 7 years. Overall, for the CNC criteria for individuals that submit a nursing home establishment application, we would be looking back 7 years to determine whether or not nursing homes that they have in their portfolio for those past 7 years and it's all across the country, not just New York State meet the character and competence criteria. The next look back period is 5 years. 5 years considers the character and competence minimum considerations. It also encompasses the specified occurrences that would trigger an automatic disapproval. The other look back period is 3 years. 3 years relates to the recurrence of violations. If there is a violation at a facility that threatened to directly affect the health, safety or welfare of any patient or resident, and it was recurrence or was not promptly corrected, we look back 3 years to determine whether or not there is an issue of a recurrence of violations. The final look back period is 48 months or 4 years. This is the one that I was talking about that's in the regulation regarding the 40 percent threshold. If you own greater than 40 percent of your nursing homes in your portfolio that you have owned for 48 months or more have a two star or less CMS rating, there will not be a determination that you have maintained a consistently high level of care. That's an overview of the law and its corresponding regulation. We wanted to make sure that we went over this with you in a little bit more detail. Despite the fact that it's up for consideration for adoption today, because we do intend to start bringing forward nursing home establishment applications and hope that you will vote to approve this for adoption.

Marthe Ngwashi Thank you.

Tom Holt Thank you.

Tom Holt Before we proceed with the discussion, I need to have a motion.

Tom Holt Dr. Gutierrez.

Tom Holt And a second?

Tom Holt Dr. Watkins.

Tom Holt Thank you.

Tom Holt I also want to acknowledge that the council and the committee did receive some communication from Leading Age New York in response to this regulation and wanted to acknowledge it's received as well.

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

Tom Holt Mr. Kraut.

Jeffrey Kraut Yeah, I just want to give a little context. It's not specific. I just want to remind the council members who have been with us for a couple of years and particularly in the newer ones, to give this a little context. This is in partly response to our frustration, if you will, of getting a clearer definition of character incompetence. We felt that the regulation, what we were presented with were situations where there were not guidance on how to somewhat objectively, but as you've heard, some of this is subjective to understand how we might evaluate a potential applicant. I would just say, if you read the Leading Age letter, which was well written and well detailed, there are clearly problems, I think, with the process. There is some confusion. There's not confusion. There's questions about how this is exactly going to work in the time frames. We're going to have to work through a lot of those things and maybe perfect this, but it's a start and it'll be a useful guideline, I think when we do get the applications coming through here. It'll be helpful to guide our conversation in a little more structured way than we had previously been given. I just want to give that kind of historic context because part of this regulation really stems from the council asking for this guidance.

Tom Holt Thank you, Mr. Kraut.

Tom Holt Ms. Monroe, do you have a question?

Ann Monroe Yes, I do.

Ann Monroe Two quick things. There is a new term that's included in the regulations called controlling person. What is the department using as the definition for a controlling person other than personality?

Jeffrey Kraut My children will have a comment.

Marthe Ngwashi Hi. It's Marthe Ngwashi again. I'm an attorney at the Department of Health. The definition of controlling person is already found in Article 2801A, Section 16. The reason why we included it is because what happens with the law is that it may be interpreted that that part of the law does not apply to a controlling person, and that's the reason why we wanted to make sure that it was included.

Ann Monroe And can you just briefly tell me the definition?

Marthe Ngwashi Sure, I'm going to get it for you. Just a second.

Ann Monroe Okay.

Marthe Ngwashi You can ask your other question, and I'll tell you what the definition is.

Ann Monroe I was very surprised when I learned about the star ratings for nursing home compare that unlike all of the other star ratings or other types of facilities, nursing homes are rated on a forced quintile. You must have 20 percent 5 star and you must have 20 percent 1 star. My concern with that, first of all, I would hope the Department of Health would advocate to really change that to be more rated against a standard like the others are. But in the meantime, how much weight is being placed on just the stars? I know of the department adds some dimensions to the stars, but how much weight is being put on star ratings, which I think are flawed in their assignment?

Shelly Glock I'll take that.

Shelly Glock Hi. This is Shelly Glock with the department. That's a great question. Thank you for raising it. So the star ratings, of course, are not without flaws. However, I just want to point out that the forced quintile applies to the star rating for inspections. The star rating is really made up of three different components. The base of the star rating is the star rating from the inspections, which is the surveillance recertification surveys and complaints. That rating is a forced quintile, as you pointed out. However, nursing homes can either gain stars or lose stars to the base inspection star rating based on their rating for staffing and quality measures. That is why that we have composed a 40 percent threshold, right? We're going to get away from focusing on a single occurrence, a single facility. We're really looking at potential applicants entire portfolio and the 40 percent is really derived because of the forced quintile. You would expect to see in a normal distribution that 20 percent of their homes would be 1 percent, 20 percent would be two star for inspection ratings. And that's before you get a plus or minus star for the other factors I mentioned. The 40 percent threshold represents what you might see in an average portfolio with a forced quintile, and we are proposing that a finding of substantially high quality of care could not be rendered if they are above that. They've got a higher percentage of their portfolio than that forced quintile. And again, a one or two star facility based on inspections can gain a star for quality metrics or staffing.

Ann Monroe Thanks for that explanation.

Marthe Ngwashi Thanks for your patience.

Marthe Ngwashi I also want to just correct the citation for the definition of controlling person is actually found in Section 2801A 12 A. The definition is it means a corporation, partnership, limited liability company or other entity. Any person who by reason of a direct or indirect ownership interest, whether of record or beneficial, has the ability acting either alone or in concert with others with ownership or membership interests to direct or cause the direction of the management or policies of said corporation partnership, limited liability company or other entity. I goes on from there, but that's the gist of what controlling person is.

Ann Monroe It's an individual.

Marthe Ngwashi It's an individual.

Ann Monroe Okay.

Ann Monroe Thank you.

Jeffrey Kraut When when you do the application, aren't we now requiring people to identify as the managing partner or owner, so we're clear who the controlling person is?

Marthe Ngwashi We've always required that it is disclosed to us who might be the managing member or controlling person in an entity because we would require to know that either based on a legal entity type or based on the percentage of ownership. That's not something that would be new. It's just that, as I was saying, all of these terms that are defined were not consistent throughout the law or throughout regulation. We wanted to make sure that they were so that all of the individuals, regardless of the percentage of their ownership, that they understood that all of these laws and regulations applied to them equally.

Jeffrey Kraut Yeah.

Jeffrey Kraut Just one other question.

Jeffrey Kraut We're going to be using LLC. I know we've used them before. In some other venues, we see parents and grandparent organizations. Does this affect that? When you look at who is the controlling interest, are these going to be owned in the names of individuals still? Or can there be parent and grandparent entities that would be subject to the character and competence?

Marthe Ngwashi The only time that we would make a distinction about whether or not someone is not subject to the character and competence review criteria is if a grandparent or parent is asserting that is not going to have the direction and control over the facility that would require it to be subject to the CMC, right? The terms that we use are active or passive. If they have passive authority, then they may not be subject to the review in the ordinary course. But if they have active powers and authority, then they would have to be subject. The other thing is, for many of the facilities that we're talking about, particularly nursing home, everyone is going to be subject to the review criteria because you would not be able to have an entity above that is, first of all, not a natural person, because that's a requirement in Article 28. We wouldn't really see that here, but we always look at the organizational document to determine the governance structure and then we make a determination from there.

Jeffrey Kraut Thank you.

Tom Holt Thank you.

Tom Holt Dr. Gutierrez, did you have a question?

Dr. Gutierrez It was answered.

Tom Holt Thank you.

Tom Holt No one had signed up in advance to speak to this regulation, so would just ask one last call for questions or comments from the committee or the council?

Tom Holt Hearing none, there is a motion and a second.

Tom Holt All those in favor?

All Aye.

Tom Holt Opposed?

Tom Holt Abstentions?

Tom Holt And that motion carries.

Tom Holt That concludes the Codes and Regulations committee report.

Jeffrey Kraut Thank you, Mr Holt. Thank you, committee members and members of the public and the staff for that committee.

Jeffrey Kraut What I'm going to do is I'm going to open up the council. We only have Dr. Bassett with us for a short period of time. I'm going to open up the meeting and then ask Dr. Bassett to give her report, and then I'll go back into the order in which I do it.