

THURSDAY, MARCH 4, 2021

10:55 A.M.

ACTING SPEAKER AUBRY: The House will come to order.

In the absence of clergy, let us pause for a moment of silence.

(Whereupon, a moment of silence was observed.)

Visitors are invited to join the members in the Pledge of Allegiance.

(Whereupon, Acting Speaker Aubry led visitors and members in the Pledge of Allegiance.)

A quorum being present, the Clerk will read the Journal of Wednesday, March 3rd.

Mrs. Peoples-Stokes.

MRS. PEOPLES-STOKES: Mr. Speaker, I move to

dispense with the further reading of the Journal of Wednesday, March the 3rd and ask that the same stand approved.

ACTING SPEAKER AUBRY: Without objection, so ordered.

Mrs. Peoples-Stokes.

MRS. PEOPLES-STOKES: Thank you, Mr. Speaker. Thank you, colleagues. We're into our Thursday this week of Session. I would like to provide a quote as we are in Women's History Month from Ruth Bader Ginsburg, also known as Notorious RBG, who we unfortunately transitioned in 2020. Her words to us today, *Women will only have true equality when men share with them the responsibility of bringing up the next generation.* I want to thank our jurist for those words and for the legacy that she has left us all.

Mr. Speaker, members have on their desks a main Calendar. Our principal for today is going to be working on our nursing home package. We're going to be doing Rules No. 22 by Mr. Gottfried, Rules No. 23 by Mr. Kim, Rules No. 24 by Mr. Hevesi, Rules Ms. Clark 26, Rules 28 by Mr. Gottfried again, and then Rules Report No. 31 by Ms. Woerner. We'll go in that order, Mr. Speaker. And at the conclusion of our work on the floor today it is clear that we will need to have a Majority Conference. And we will, of course, speak with our colleagues to see what their needs will be as it relates to that.

That's the general outline, Mr. Speaker. So if there are any introductions and/or housekeeping, now would be a great time

for that and we can move forward with our nursing home agenda.

ACTING SPEAKER AUBRY: Certainly. We have neither housekeeping nor -- right -- no -- but we do have a resolution on page 3. Good morning.

The Clerk will read.

THE CLERK: Assembly Resolution No. 86, Ms. Reyes.

Legislative Resolution memorializing Governor Andrew M. Cuomo to proclaim March 4, 2021 as Obesity Awareness Day in the State of New York.

ACTING SPEAKER AUBRY: Ms. Reyes on the resolution.

MS. REYES: Thank you, Mr. Speaker. Today, March 4th, marks World Obesity Day. The week of February 28th through March 6th is recognized as Obesity Care Week. One in four New Yorkers and 14 percent of children ages 2 through 17 are impacted by obesity. In New York, nearly 11 percent of youth ages 10 to 17 have obesity, giving New York a ranking of 46th among the 50 states and -- and Washington, D.C. The Bronx, the -- the borough I love and represent, is ranked as the most overweight county in New York with 68 percent of its adult population being either overweight or obese. For years, the Bronx has been ranked 62 of all 62 counties in the State in terms of overall health outcomes. In the State of New York, obesity rates and their correlating risks of serious disease and health conditions such as Type 2 diabetes, hypertension, heart disease,

lymphedema, stroke, multiple cancers, overall low quality of life including depression and mental disorders have undoubtedly contributed to the morbidity and mortality rates related to COVID-19. With the understanding that obesity is a disease, Obesity Care Week was founded in 2015 as a global initiative focused on addressing weight bias in healthcare, employment, entertainment and education, and advocating for further investment in the education, prevention and treatment of the disease of obesity. And to create a platform and a space for those struggling with this disease to share their experiences.

So I'm proud to sponsor this resolution and continue to fight for those much-needed resources in -- in fighting back this disease -- the disease of obesity. Thank you, Mr. Speaker.

ACTING SPEAKER AUBRY: Thank you, Ms. Reyes.

On the resolution, all those in favor signify by saying aye; opposed, no. The resolution is adopted.

Page 4, Rules Report No. 22, the Clerk will read.

THE CLERK: Assembly No. A00244-A, Rules Report No. 22, Gottfried, Weinstein, Thiele, Seawright, Paulin, McDonald, Abinanti, Lupardo, Dinowitz, Jackson, Englebright, Nolan, Meeks, Hevesi, Cahill, Bronson, Barron, Magnarelli, Montesano, Lawler, Schmitt, Brabenec, McDonough, Salka, Cusick, Lunsford, Kelles, Byrne, Zebrowski, Steck, Anderson, Simon, Glick, Vanel, L. Rosenthal, Pichardo, Richardson, Williams, Bichotte Hermelyn, Walker, Otis, Sayegh, Stirpe, Woerner, Stern, Sillitti,

J.D. Rivera, Abbate, Jacobson, Cook, Carroll, Gallagher, Colton, Fall, Aubry, Forrest, Cruz, Clark. An act to amend the Public Health Law, in relation to creating the Health Emergency Response Data System.

ACTING SPEAKER AUBRY: Ms. Walsh.

MS. WALSH: An explanation, please.

ACTING SPEAKER AUBRY: Mr. Gottfried, an explanation has been requested.

MR. GOTTFRIED: Yes, Mr. Speaker. This bill -- this bill would establish what is called the HERDS system, which is a data collection system the Health Department has been running without any statutory authorization or regulation. This would give it statutory existence, and perhaps most significantly at the moment, it would require that the HERDS data, without individual identifying information, be made available to the public and the press pretty close to real time.

ACTING SPEAKER AUBRY: Ms. Walsh.

MS. WALSH: Thank you, Mr. Speaker. Will the sponsor yield for a few questions?

ACTING SPEAKER AUBRY: Mr. Gottfried, will you yield?

MR. GOTTFRIED: Yes.

ACTING SPEAKER AUBRY: The sponsor yields.

MS. WALSH: Thank you, Mr. Gottfried. I just have a couple of questions about this in picking up on your explanation of the bill. As you said, we already do have a HERDS system that is --

includes OHEP, Office of Health Emergency Preparedness. Is it true that this bill will bring Department of Health under the HERDS system?

MR. GOTTFRIED: Well, it will bring the HERDS -- the HERDS system will be under the Department of Health. I'm not quite sure what your question. The people who would be required -- the people who would run the system are the Department of Health. The people who would -- who would be required to submit information to the system are the -- are healthcare providers that are spelled out in the bill and further in regulation.

MS. WALSH: Under our current -- under our current law, is -- is Department of Health currently required to turn that type of data over within a certain period of time?

MR. GOTTFRIED: No. Certainly not within a certain period of time. There is no law that specifically says they have to turn it over to anybody ever, except for the Freedom of Information Law, which requires somebody to sue them under the Freedom of Information Law as recently happened. And it took months and months and months to get a batch of the data from them. Under this bill they would be required on a constant, practically realtime basis, to make the data public.

MS. WALSH: Yes. So as you recently -- as you just pointed out, recently the Empire Center had to bring a lawsuit against the Department of Health because the Department of the Health did not turn over -- or was not turning over information regarding nursing

home death data within a -- in response to a FOIL request that the Empire Center had brought. Is that what you were referring to when you said a recent lawsuit?

MR. GOTTFRIED: Exactly. The Empire Center, which of course I often disagree with on a lot of issues, was 100 percent on point on this topic and has done an enormous public service in -- in that litigation.

MS. WALSH: So in addition to the Department of Health's prior failure to respond to a FOIL request, without that Empire Center lawsuit having been brought, also, the Department of Health took something like ten months to produce information that was requested at hearings held last year regarding the nursing home crisis during COVID; isn't that correct?

MR. GOTTFRIED: That is correct.

MS. WALSH: Now, with that type of delay --

MR. GOTTFRIED: And that --

MS. WALSH: I'm sorry.

MR. GOTTFRIED: That's part of the impetus for this bill.

MS. WALSH: That's kind of what I was wondering. I suspected as much, but I'm -- I'm glad to hear you say that. There has been some comment that a seven-day turnaround in producing this information once it's received by DOH is burdensome, and I'd like to get your -- your comment on that concern about turnaround time maybe being too quick.

MR. GOTTFRIED: Well, you know, that's why God gave us computers. The other day I got a press release from the Governor that came in the -- in my e-mail at 3:35 in the afternoon, and it said that some number -- the -- you know, in -- in -- down to single digits, people had been administered the new batch of vaccines by 11:00 that morning. And if by 3:30 they can tell us exactly how many people in the entire State of New York got that vaccine by 11:00 a.m., they can do this.

MS. WALSH: I also wanted to know, there had also been a concern raised about what to do -- there's been -- people have said at different points during this pandemic that it's almost like you're trying to fly a plane while you're building it, and basically saying that they're -- they're -- necessarily -- you're going to -- you're going to expect that there will be errors made. If there are errors in the data that's being provided, is there anything in this bill which allows for changing the data or correcting any errors that might occur, especially when we're considering that we will be in a -- in an emergency situation at the time that this HERDS system will be coming into play?

MR. GOTTFRIED: Well, the bill doesn't speak to correcting errors. I -- I think it's inherent that if they discover that they have a -- that either erroneous information was sent to them and incorporated into the report or if they somehow made a mistake, the law would -- would call on them to correct it. It -- it doesn't speak to that specifically.

MS. WALSH: Very good. Thank you very much, Mr. Gottfried.

Mr. Speaker, on the bill.

ACTING SPEAKER AUBRY: On the bill, Ms. Walsh.

MS. WALSH: I really commend the spence -- the sponsor, rather, for bringing this measure forward. I -- I was unsurprised to hear him say that the -- the genesis for the legislation really came from what we have seen from the Department of Health, or rather more -- maybe more appropriately, what we have not seen in any kind of a timely way from the Department of Health over the last year. And I think that anything that this Body can pass which will provide more of a check on the Department of Health and a requirement that as this information is received by the Department of Health that they need to turn it around and provide it to the press, the Legislature, the public, in as close to real time as possible. I think it's critically important as we -- as we move forward and through not only this emergency, but future emergencies.

So, I will be supporting this bill and I would greatly encourage my colleagues to also support it. Thank you, Mr. Speaker.

ACTING SPEAKER AUBRY: Thank you, Ms. Walsh.

Mr. Goodell.

MR. GOODELL: Thank you, Mr. Speaker. Would the sponsor yield?

MR. GOTTFRIED: Certainly.

ACTING SPEAKER AUBRY: Mr. Gottfried, will you yield?

MR. GOTTFRIED: Yes.

ACTING SPEAKER AUBRY: The sponsor yields.

MR. GOODELL: Thank you very much, Mr. Gottfried. I know that this proposed legislation requires data from the Health Department to be available publicly within a few days. But don't they already have a statutory requirement to respond within five days of a FOIL request?

MR. GOTTFRIED: I'll take your word for it that that -- that those words are in the FOIL statute. But the FOIL statute also has language in it about, you know, they can get more time if they need it to collect the data, et cetera, et cetera, et cetera. And from the day the FOIL law was passed decades ago, that language has been used to -- to avoid giving out FOIL information. This bill just says get the information out as close to real time as possible and in no event more than seven days after it is received. So I think this language is a -- is a much clearer demand than -- than the FOIL statute.

MR. GOODELL: A few years ago I FOILED the Health Department for some information and they were very nice and polite. They just didn't give me a response. And so --

MR. GOTTFRIED: Well, not yet.

MR. GOODELL: So I enlisted the help of the Committee on Open Government, and the head of the Committee on

Open Government I think called two or three times at my request, asking the information. I then put their phone number on speed dial and called every single week, and it took months before I got the information. How -- and -- and as you saw in the Empire Center lawsuit, they filed a FOIL request, sued the Health Department for this critical nursing home data. The Health Department then requested extensions of time over and over and over and asked for adjournments. Finally, the Supreme Court judge got fed up and said, *There's no justification for any more adjournments, and Forward the information provided.* Why should we trust the Health Department to comply with this law when they have apparently openly flaunted other laws that already required them to provide the data?

MR. GOTTFRIED: Well, I don't know that "trust" is the right word. I would say this bill has a -- a hard cutoff mandate and does not offer an opportunity to make excuses and say, *We need more time.*

MR. GOODELL: But under the FOIL law, as you know, if a party is forced to sue the Health Department to get data and there's no explanation or justification whatsoever for the refusal to comply with that data request, the court, as they did in the Empire Center and the Justice Center lawsuit, can order the State to pay attorney's fees and the cost of the lawsuit. Is that something that should be included, do you believe, in this bill as well?

MR. GOTTFRIED: The -- the bill does not provide for attorney's fees. I would say whether attorney's fees ought to be

available is probably something that would be determined in accordance with -- with general law. I -- this bill does -- does not include such a requirement. I -- I think as long as the bill has a very clear-cut mandate to make the information public within a fixed number of days, I think we should expect compliance, I would assume reluctant compliance by the Health Department. If that turns out to be a major problem we can -- we'll try to see the nature of the problem and see what statutory repair might be needed. So -- but the short answer to your bill [sic] is no, it doesn't have an attorney's fee provision in it.

MR. GOODELL: I read the transcript of -- of your meeting with the Administration's top officials dealing specifically with the inability of the Health Department, or the unwillingness of the Health Department, to provide critical information on nursing home deaths. And at that time, the Commissioner of Health, Dr. Zucker, gave an explanation that suggested that the Health Department doesn't have that data readily available. Is that an issue that's -- that this bill addresses, or can you address that?

MR. GOTTFRIED: Well, of course within hours after the -- or days, I guess, after the court order, the data magically appeared. So clearly, the Health Department did have the data. They could have and should have released it a lot earlier, because if they could do it a couple of days after they got a court order, they could have done it a couple of days before they got the court order. Or a couple of months. This bill would make it crystal clear that they have

that data, and it would make it crystal clear that they have an obligation to make that data public. If this bill had been on -- on the books, I think we would have been having a very different series of discussions. I think the public would have had a very different and much more accurate and perhaps frightening picture of how many nursing home residents died of COVID.

MR. GOODELL: I -- I agree. Of course, even more important than us having that information and having it readily available, we would certainly hope that our Health Commissioner and those who are developing and implementing health policy have that information available. Based on your discussions with the Commissioner of Health, do you believe he understood or knew or had the data available early on in the pandemic over the actual number of people who were dying in our nursing homes or dying in our hospitals immediately following a transfer from nursing homes? Do you believe he had the information he needed to make thoughtful and intelligent policy decisions at that time?

MR. GOTTFRIED: Yes, I believe he had it through three key sources which would have -- might have given him overlapping information. Number one, COVID is a reportable communicable disease. The Health Department for generations has had a responsibility, and healthcare providers have had a responsibility to give the Health Department detailed information when there is an out -- a case of a communicable disease. And the Health Department is supposed to track that down and do contact

tracing and all sorts of things if that happens, whether it was a case of typhoid or food poisoning or COVID. So from that statute I believe the Health Department was gathering data through a system call SPARCS. And I can never remember what SPARCS stands for. It's a system under which since 1979 the Health Department has been gathering very detailed data about hospital care. It's a terrific system. I'm quite certain the SPARCS data included this information. Now, the Health Department says the SPARCS data comes in over a period of months, so they wouldn't have had it on the quick time frame that I was talking to them about. Okay, I can understand that. Although if you're looking for general information, not fine precision, I think even the SPARCS system could have given us that information a lot sooner. And then there is the HERDS system that they operate, which also brings this data to the Department on a -- on a pretty much daily basis. So the Health Department, I think through at least three sources, undoubtedly had the information either with great precision or in general numbers that could have and should have been shared with all New Yorkers.

MR. GOODELL: I've always appreciated your expertise in these areas, Mr. Gottfried, and today is just one more example of that level of expertise. And I'm on some level reassured that the Health Department knows what's going on. Although for months and months they told us they didn't, which was very disconcerting when they kept telling us they didn't know what was going on and didn't know how many people died in hospitals that

came from nursing homes, which made me question how the heck were they doing contact tracing if they didn't even know where the people came from when they died in hospitals.

MR. GOTTFRIED: Right.

MR. GOODELL: Are you comfortable, though, that they were doing thoughtful, knowledgeable, intelligent contact tracing and actually knew all along the number of deaths or certainly the magnitude of the deaths that were attributable to nursing homes?

MR. GOTTFRIED: I believe they were. The people in that part of the Health Department -- you know, that's a part of the Health Department that goes back to the 19th Century, I think. And everything I've ever known tells me that they have a very strong embedded sense of professionalism. In addition, certainly in New York City, the -- the communicable disease contact tracing, as far as I know, would be largely the responsibility of the City Health Department, whose professionalism and responsibility on these matters I've always had great confidence in. So I'm pretty sure the State and New York City knew where the cases were and where they came from. They were just not sharing it with the rest of us.

MR. GOODELL: I saw that in December of last year in a PowerPoint presentation our Governor put up a slide that listed where people were getting exposed and -- to COVID based on contact tracing. And it had 30 different categories, and it was purported to be accurate to the hundredth of a -- a percent. And so for example, I think it said that based on contact tracing, 1.42 percent came from

bars and restaurants. And when I saw that data I was astounded that they could be accurate to a hundredth of a percent, but had no clue or certainly weren't disclosing to us, how many people contacted COVID in a nursing home who died in a hospital. Did you see any data back in December that would have given a clue of what the true numbers were?

MR. GOTTFRIED: Well, I -- I think we knew pretty accurately -- as no one's had any reason to doubt it, I think we knew pretty accurately the number of people who were dying of COVID, and we knew how many of them were dying of COVID in a hospital. And, yeah, the Governor was putting out press releases with that information with great precision every day. And it's similar to what Ms. Walsh and I discussed. The -- what we were not told was how many of those people contracted their COVID in a nursing home or even how many of them came from a nursing home. And -- and that was the -- the very key point that a lot of us were concerned about. Because if -- if a whole -- I mean, it turned out that at least 50 percent more nursing home residents were coming down with COVID and dying, then we had been led to believe because they were only counting the people -- the nursing home residents who died in the nursing home. They were not counting those who died in a hospital as having coming from a nursing home. And I -- I often compared that to, you know, if -- if you want to know about traffic deaths on Western Avenue in Albany, if they -- if they don't tell you how many people got hit by a car and died at Albany Medical Center, well then you're

not being given the traffic death information. Or with shooting deaths or anything of the like. Same thing here with COVID-19 and -- and nursing home residents. They were keeping from us a -- a very important set of data.

MR. GOODELL: Well, I know as the -- as the longstanding Chairman of the Health Committee, you have a deep, personal commitment in focusing on the health of New Yorkers. What -- can I ask what did you ask for, and what kind of response were you getting as the Chairman of the Health Committee, and do you think this bill would help in that regard?

MR. GOTTFRIED: We started asking about nursing home residents who went to the hospital and died of COVID well before our August hearings. We asked for this information at the August hearings. We asked for it in letters that we sent to the Commissioner as a follow-up to those hearings. We asked for it in a -- in a meeting -- in a -- in a phone meeting that the Health Department organized to explain to us why the information we wanted wasn't really in the SPARCS system. And so we made very clear that if we -- if we shouldn't have referred to SPARCS, tell us where it is and send it to us. And, you know, we kept asking. And, no, we didn't get a response until the Health Department response from the Empire Center's lawsuit. And the answers that they gave us at that point were in the transcript of that February 10th meeting that -- you know, that the whole world has now been able to see, and those answers were really not very communicative.

MR. GOODELL: Thank you very much, Mr. Gottfried, and thank you for your service.

MR. GOTTFRIED: Thank you.

ACTING SPEAKER AUBRY: Thank you, sir.

Mr. Lawler.

MR. LAWLER: Thank you, Mr. Speaker. Will the sponsor yield?

ACTING SPEAKER AUBRY: Mr. Gottfried, will you yield?

MR. GOTTFRIED: Yes.

ACTING SPEAKER AUBRY: Mr. Gottfried yields.

MR. LAWLER: Thank you, sir. And thank you for putting this bill forward. I'm proud to cosponsor it with you, and I think this is an important service to the people of the State of New York so thank you for doing it. A few questions. The -- and as my colleague brought up, the February 10th meeting, you know, I commend you because I think you were really trying to get to the heart of the matter and tried to get answers as to how this data is collected with respect to the nursing home crisis that -- that we are dealing with and trying to get substantive explanation as to where this -- this data was coming from. So, one of the questions you asked is does the HERDS data mention what the patient died from, and what is your understanding of the response that you were -- that you were given from Dr. Zucker?

MR. GOTTFRIED: I'd have to look back at that

specifically. There is another bill sponsored by Senator Gustavo Rivera that we are working on with him that would focus a little more specifically on what information would have to be included in -- in HERDS. So this bill sets up the system and says you've got to make the information public. This bill doesn't specify fully what information would have to be transmitted. Senator Rivera's bill is aimed at doing a lot of that. I am hoping -- hoping that we will get that on the floor soon.

MR. LAWLER: Okay. And that -- that's great to know because I think part of what was interesting with the transcript - which I don't necessarily believe everything that that office releases, but for the purpose of this conversation let's assume that the transcript is accurate - it seemed like they were suggesting, you know, the alphabet soup. And you went through obviously SPARCS and some of the other systems, that it's trying to, like, funnel all of this information from different systems, and that they couldn't necessarily -- within the current construct of HERDS, they couldn't necessarily determine whether or not somebody came from a nursing home. Is that your understanding, that it required other additional information that they needed to consolidate?

MR. GOTTFRIED: They -- they've said things like that. I -- I find that extremely distressing. You know, if somebody showed up at a hospital or if a handful of people showed up in a hospital in -- in your Assembly district with salmonella, in a matter of hours the Health Department would have a pretty good idea where

they -- their last meal that gave them the salmonella, and if it was a nursing home, I think there would be health inspectors in that nursing home's kitchen in a matter of hours.

MR. LAWLER: No question.

MR. GOTTFRIED: And -- and certainly, if it was a case of typhoid, and it ought to be true with a -- with a case of COVID. And the fact that there are thousands and thousands of COVID cases at any given moment, a lot more than there are salmonella cases, doesn't mean -- it is not an excuse.

MR. LAWLER: Agreed. So this bill seeks to set up the system by which we will collect all of this information. Senator Rivera's would be seen as a companion bill that would kind of specify what information needs to be collected, correct?

MR. GOTTFRIED: Correct. And -- and again, what this bill does is not only set up the system in statute because it already exists --

MR. LAWLER: Right.

MR. GOTTFRIED: -- without statute, but in some ways the -- the real key line in the bill is where it says you've got to make the information public within a matter of days.

MR. LAWLER: Right. So it talks about making the public -- the info public within a week of DOH receiving it. How -- how do you envision and does the bill speak to that information being made available to the public?

MR. GOTTFRIED: Well, it says it would be made

available to the government entities, healthcare providers, the public, including posting on the Department's website.

MR. LAWLER: Okay. Given what occurred in -- in -- and part of what, you know, the con -- that February 10th conversation was really about, which was the withholding of information, do you have confidence in Dr. Zucker to release this data going forward?

MR. GOTTFRIED: I have confidence in Dr. Zucker as long as somebody outside the Health Department doesn't interfere.

MR. LAWLER: Fair enough. The -- in -- in my colleague's line of questioning you intimated that you had first begin -- begun asking for this information before the August hearing with Dr. Zucker.

MR. GOTTFRIED: Yes.

MR. LAWLER: Do you recall when that may have been? Was it some time in May when -- when the AP and others had first started kind of reporting about the nursing homes?

MR. GOTTFRIED: I think it was May -- May or June. I -- I can't nail that down precisely.

MR. LAWLER: Okay. And -- and so when you first inquired, that was before any Department of Justice investigation had begun, correct?

MR. GOTTFRIED: As far as I know. I mean, I -- you know, DOJ doesn't tell me when they're beginning an investigation.

MR. LAWLER: But based -- based on the comments by Ms. DeRosa in -- in the February 10th transcript, DOJ inquired in August --

MR. GOTTFRIED: No. We -- we started asking about this well before that. You know, I know -- from what I understand, the -- the Cuomo Administration was -- was concerned about the Trump Administration, you know, looking over their shoulder not in a friendly way. And I can understand that. But that -- that doesn't -- that certainly does not justify either not collecting information or collecting it but not making it public as appropriate.

MR. LAWLER: Right. So -- and then the reason I asked that is because you obviously, as -- as Chairman of the Health Committee, were asking for this information, at least some of it in part, prior to August. And were you given an explanation at any time between when you first inquired and, let's say, August as to why the information was not available or why they could not provide it, or did they just not reply to you?

MR. GOTTFRIED: You know, I don't recall specifically whether they either just didn't reply at all or whether they said, you know, *It's not that easy, we don't have that information handy*, whatever. Certainly, they -- they never said, *We'll get you that information*.

MR. LAWLER: But it's -- it's fair to say that the explanation -- if there was an explanation, the explanation given was not the same as the one that was stated in -- on the February 10th call

about a Department of Justice investigation.

MR. GOTTFRIED: No. That -- I never heard that given as an explanation for not providing the information. You know, we heard second- and thirdhand that the Administration, you know, was -- was nervous about our -- our inquiries and nervous about us holding public hearings because they were concerned about the Trump Administration, although my sense of that was that it was more a political concern, not a -- a legal concern.

MR. LAWLER: Right. Right. And were you, as the Chairman of the Health Committee, ever told between August and February 10th when you were on that call, were you ever told during that time that your request was put on hold until the Administration responded to the Department of Justice request?

MR. GOTTFRIED: No.

MR. LAWLER: So you -- you, as the Chair of Health, were never informed of that.

MR. GOTTFRIED: Correct.

MR. LAWLER: Okay. All right. I appreciate it.
Thank you, sir.

MR. GOTTFRIED: You're welcome.

MR. LAWLER: On the bill.

ACTING SPEAKER AUBRY: On the bill, Mr.
Lawler.

MR. LAWLER: Thank you, sir. This bill is critical.
I think what we have all seen over the last year is a massive amount of

stonewalling by the Administration with respect to turning over critical information to inform the public. There was a March 25th Department of Health order that mandated COVID-positive patients go into nursing homes, and that the nursing homes did not have the ability to reject them. They could not test them. They could not take their temperature. They must accept them. That order lasted for 46 days. When we finally did receive the data because of the lawsuit by the Empire Center and an analysis was done, it is clear that many more people were infected and many people died as a result of that order. And so when we look at the need for this type of information (technical interference) --

ACTING SPEAKER AUBRY: Mute those....

MR. LAWLER: Thank you.

ACTING SPEAKER AUBRY: Thank you.

MR. LAWLER: Thank you, Mr. Speaker. When we look at the need for this type of information, it is critical so that we can avoid something like this ever happening again. If we knew in April or May that so many people were dying from the nursing homes and the true total number of deaths, it would've been a lot easier to address some of these -- some of these crises right away. And so the fact that we didn't have this information available, the fact that the Administration clearly stonewalled and covered up and did not respond to repeated requests from this Body and our colleagues in the Senate is unacceptable. And this -- this law seeks to rectify that for the future and make sure that we can make accurate and credible

decisions with respect to nursing homes and with respect to a public health crises.

So I commend the sponsor for putting this bill forward, and I look forward to working with him and my colleagues on the companion bill that he mentioned by Senator Rivera so that we can make sure that we have all of the information necessary for the public and our Health Department and everybody involved to make appropriate decisions. Thank you, Mr. Speaker.

ACTING SPEAKER AUBRY: Thank you, sir.

Mr. McDonald.

MR. MCDONALD: Thank you, Mr. Speaker.

On the bill.

ACTING SPEAKER AUBRY: On the bill, sir.

MR. MCDONALD: I want to thank the sponsor for his leadership on this bill. As many of you know, it's been well-documented. We had many hearings on the whole nursing home response. We also had a meeting a couple months ago, which has been pretty well-noted, where we had an opportunity as the respective Chairs to question Dr. Zucker on a couple things. And in my questioning back and forth he talked about the HERDS data and the SPARCs data and the difference between the two, and different information that was gotten and not gotten. And this helped create part of the gap of information for accurate information to truly arrive at a number of how many people had died in nursing homes. There's -- there's inconsistencies. I'm not making excuses by any stretch of

the imagination, but it became very clear not only in the hearings but in the subsequent conversations that this needed to be rectified, and I'm glad that the sponsor has dove in with both hands and both feet to make sure this is reality.

Thank you.

ACTING SPEAKER AUBRY: Mr. Barron.

MR. BARRON: Thank you, Mr. Speaker. I want to commend not only the sponsor of this bill, but the chairmanship that Dick Gottfried has provided over the decades. It's incredible. He's extremely, extremely professional, well-informed, committed and hardworking. And on this issue and this bill, it shows that. And I also want to strongly criticize the disrespect for the Department of Health, Dr. Zucker, and all of the non-professionalism and non-communicative during a pandemic, a crises such as this. And my district was one of the highest deaths of seniors, and some of them are from nursing homes in the City. Percentage-wise, not in terms of numbers. And so to the Chair, to the sponsor, I want to thank you. And I will continue to say that I think these kinds of behaviors by the Governor, by the Department of Health, should be investigated on an independent level. I think high crimes and misdemeanors is appropriate. I will say over and over again, I think we should launch an inquiry on impeachment. The deaths are unconscionable, unacceptable. And if I could, I'd make a citizen's arrest of the Governor. This is a -- a shame and a disgrace. But I want to thank the sponsor of this bill because at least now he's putting a little more teeth

and getting some more respect, and particularly for the most vulnerable population in our State. There's an African proverb that says - and not all of the seniors have - but it's an African proverb that says, *Take care of those who have lost their teeth, because they took care of you when you were teething.* And our seniors certainly took care of us, even the ones who didn't lose their teeth have taken care of us over the years, over the decades. We wouldn't be where we are as a Black community or any community for that matter if it hadn't been for our seniors. And so we should provide all the protection that we can for them. We owe it to them, and we owe it to the State to protect the most vulnerable in the State, our beloved seniors.

So thank you to the Chair, and I definitely will be voting in the affirmative.

ACTING SPEAKER AUBRY: Mr. Burdick.

MR. BURDICK: Thank you, Mr. Speaker, and thank you, Chair Gottfried for the significant work you have done in bringing this bill to the floor. Your perseverance, your integrity, your thoughtfulness. You've been very dispassionate throughout the entire process. And while as the discussion that ensued on this suggested, it can't be an iron-clad guarantee that the public or the Legislature will get the information and data to which it's entitled. It does certainly close loopholes and gives us a much better opportunity and path for getting that data. And I want to thank you for putting together a very well-constructed system for providing what should have been provided to the public and to the Legislature previously. There's no

question that it's reprehensible that that information had not been shared, and hopefully that will not recur.

And so thank you again for your efforts, and I very much support it and will be voting in favor. Thank you.

ACTING SPEAKER AUBRY: Mr. Kim.

MR. KIM: Will the sponsor yield for a couple of questions?

ACTING SPEAKER AUBRY: Mr. Gottfried, will you yield?

MR. KIM: He's nodding, but he's muted.

MR. GOTTFRIED: Now I'm unmuted.

ACTING SPEAKER AUBRY: Mr. Gottfried yields.

MR. KIM: First, Chairman Gottfried, thank you so much for your persistence and all your hard work over the past few months.

My first question is, could the Executive have done this on his own without legislation over the last few months?

MR. GOTTFRIED: Yes.

MR. KIM: And secondly, how -- I mean, you -- you -- I think you are the front expert on HERDS and anything related to health data collection. How hard is it to consolidate and aggregate life-and-death information, in your -- in your opinion?

MR. GOTTFRIED: Well, I'm sure it's more complicated than I know. And it depends in part on how focused you are on what degree of precision. You know, the -- the SPARCS system

likes to get the data really precise, and that's why it -- it sometimes can take months of checking back, back and forth. So that final SPARCS data I -- I gather can sometimes take six months to be totally fully cleaned and verified. The HERDS data, on the other hand, can and is -- can be and is gathered a whole lot more quickly. It's -- and it -- you know, if you want to know -- if you want to know how many nursing home residents died of -- in a hospital from COVID, if -- if somebody says to you, *Well, it's somewhere between 5,000 and 5,300*, that's what you need to know. There are some people who need to know whether it's 5,226. But most of us don't need that level of precision. And if -- if it turns out a month later that the 5,236 patients -- patients really didn't die of COVID but died of something else, that doesn't really change the -- the basic reality. And so, we want at least some of that information out very quickly. If -- if it takes longer to make it really 100 percent precise, fine.

MR. KIM: Mr. Gottfried, if we -- if we had even the rough estimate numbers in realtime, in your opinion could we have legislated differently and put forth solutions months earlier before today?

MR. GOTTFRIED: I don't know how much response would have called for legislation or simply stronger legislative and public demand for administrative action. I think almost everything that needs to be done here can be done administratively. It -- but it's -- it's a strong demand from the public, including the Legislature, that helps make that action happen. So maybe it would've produced

legislation, but it certainly would've produced stronger action.

MR. KIM: Thank you, Mr. Gottfried.

On the bill.

ACTING SPEAKER AUBRY: On the bill, sir.

MR. KIM: Thank you, Chairman Gottfried. As always, you know, you've just done a wonderful job and I think so many people are learning throughout this process from how you've conducted yourself in overseeing nursing home facilities and their healthcare facilities. I do believe that if we had the data in realtime, whether it is in rough form, an estimation, it would've impacted policy. But by not -- by the Administration not doing that, they took that right away from us. So that's why it's so critical, in my opinion, that we do support this measure moving forward so they do not have any excuses to suppress life-and-death information from the public and to our Body.

So I fully support this and I -- I urge my colleagues to support this measure as well. Thank you.

ACTING SPEAKER JONES: Read the last section.

THE CLERK: This act shall take effect immediately.

ACTING SPEAKER JONES: The Clerk will record the vote on Rules Report No. 22. This is a fast roll call. Any member who -- who wishes to be recorded in the negative is reminded to contact the Majority or Minority Leader at the numbers previously provided.

(The Clerk recorded the vote.)

Ms. Woerner to explain her vote.

MS. WOERNER: Thank you, Mr. Speaker, for allowing me to take a moment to explain my vote. I am very pleased to be able to support this bill today. We should never turn our eyes away from data. Data is our friend. It helps us get to the root cause of problems. And it is -- it is deeply disappointing to me that our State government turned its eyes away from data that could have saved people's lives. So it is -- I -- I commend the Speaker for his persistence in pursuing this legislation. I commend Assemblymember McDonald as well for his work in convening hearings that -- that brought to the forefront the need for this kind of legislation, and I look forward to working with the sponsor on the next piece of legislation that fills in the database that -- that makes sure that we have always access to all of the data necessary to make smart policy decisions.

Thank you very much.

ACTING SPEAKER JONES: Ms. Woerner in the affirmative.

Mr. Byrne.

MR. BYRNE: Thank you, Mr. Speaker. I, too, want to just thank our colleagues, the Chair of Health and the Chair of Aging, for their comments on this particular proposal. We should not be waiting months and months to get this valuable data that we've had to go throughout almost the entire year. I -- I thank the -- the Chairs, both Chairs, for conducting and participating in those hearings and forums this past year. Multiple requests were made that were already

mentioned. Some of us even tried to go to the Federal government to try to help get this information. And putting this in statute is definitely a very good step in the right direction. And there was a point in time - I just wanted to mention this - where I was able to get more information, more data, from the Empire Center's website than I was from the Department of Health. That's embarrassing.

So I think this is very valuable, and I want to thank, again, the Chair for introducing it and I vote in the affirmative.

ACTING SPEAKER JONES: Mr. Byrne in the affirmative.

Ms. Niou.

MS. NIOU: Thank you, Mr. Speaker. Just to explain my vote. I wanted to say that this is a very important piece of legislation. I know how these families felt because I listened to them when they lost their loved ones and were unable to be able to be there with them or unable to see numbers that reflected who -- where they had passed, how they had passed. And I know that, you know, our Chair of Healthcare [sic] and our Chair of Aging both fought valiantly to try to make sure that this information was given to us so that we could legislate as a Body. And I think that is so important and so key that we, you know, make sure that all of our information is up-to-date so that we can actually legislate accordingly.

So I want to say again how -- how much I am grateful for both of our Chairs for fighting for this, and for our Chair of Health to valiantly, you know, ask for this data time and time again in our

public hearings. So I want to, you know, have my colleagues also vote in the affirmative and I just wanted to let you know that I'm also voting in the affirmative. Thank you.

ACTING SPEAKER JONES: Ms. Niou in the affirmative.

Mr. Colton.

MR. COLTON: Thank you, Mr. Speaker. I wanted to rise to explain my vote because we have been through a very, very difficult year. And we've been through a year where so many families have lost loved ones and friends and have felt so much hurt. And when you have problems and when you go through difficult years, it's our responsibility as the Legislature to look at what happened, to look at ways that we can change existing law or existing practice to make it easier to avoid such tragedies in the future. I want to thank the sponsor, who has done a tremendous job in putting this and a number of other bills in this package together. And I think it really is members of the People's House, all of us, coming together in one voice and supporting a package of bills that will help prevent future tragedies and will help make the law more responsive and government more responsive in order to deal with crises that we continually face.

So, Mr. Speaker, I withdraw my request and I vote in the affirmative.

ACTING SPEAKER AUBRY: Mr. Colton in the affirmative.

Ms. Fahy.

MS. FAHY: Thank you. I, too, rise in support of this bill and want to also commend the sponsor, the Chairs of the hearing, and of course the Speaker for bringing this to the floor. This is -- well, there's a lot of important bills we are doing this week, but this is a critically important one. We talk all the time about having data-driven decisions, as well as the need for transparency in government. Sunshine is the best disinfectant. I -- I -- I -- it still is somewhat of a mystery to me as to why these numbers were not shared earlier, and -- and I think it ended up making many issues worse as a result of -- of not being shared sooner. In fact, not having data fuels speculation at times, and -- and certainly while data can at times can be misused, data is important. It's important to drill down. It's important to have good data to influence our policy decisions. In fact, this data has influenced a number of bills that we're working on in this case, especially as it relates to -- to nursing homes.

So, thank you again to the sponsor, the Speaker and my colleagues who did chair all those hearings, as well as the AG for also helping on this matter. And let's hope that this is yet another sign or another indicator that transparency matters and it is important that government work together, especially when we are facing such extraordinary public health crises as we have for the last year with this pandemic. Thank you, and with that I vote in the affirmative.

ACTING SPEAKER AUBRY: Ms. Fahy in the affirmative.

Mr. Anderson.

MR. ANDERSON: Thank you, Mr. Speaker. I rise to explain my vote.

ACTING SPEAKER AUBRY: Proceed.

MR. ANDERSON: Thank you, sir. It's critically important, Mr. Speaker, that we have data. Data-driven results and information allows us to make better decisions. And at this point in time I critically, critically believe that this bill would help in that process and I commend the sponsor -- sponsor, Mr. Gottfried, for his tremendous work and diligence in making sure that we can get the data that we deserve. And we need to make the best possible result -- decision, excuse me. I -- I also want to just state, in effort of the bills and the things that we're doing today to really bring about transparency and accountability, we've got to make sure that the Executive is in line and is supportive of our right as the Legislature to request information, and I think that that bill helps us do this. And we'll continue to ensure that accountability is made for our folks who live in nursing homes and all spaces of the Department of Health going forward.

Thank you, Mr. Speaker.

ACTING SPEAKER AUBRY: Mr. Anderson in the affirmative.

Ms. Seawright.

MS. SEAWRIGHT: Thank you, Mr. Speaker. I'm proud to cast my vote in the affirmative for this important piece of legislation. I thank our sponsor, Chairman Gottfried, for bringing

transparency to the health emergency reporting data system. Data should be open and available to the reporting physicians, institutions and the public. Today, by passing this legislation, we're shedding sunlight on better oversight and transparency.

I'm honored to support this important piece of legislation and cast my vote in the affirmative. Thank you.

ACTING SPEAKER AUBRY: Thank you. Ms. Seawright in the affirmative.

Mr. Goodell.

MR. GOODELL: Thank you, sir. To explain my vote. I support the efforts of my colleagues to pass more legislation requiring the Department of Health release information they should release anyway. And what this discussion has revealed touches on one of two important issues: This legislation deals specifically with the fact that the Department of Health refused to comply with our existing FOIL law and turn over the data within seven days as requested by the Empire Center, and it took months and months of litigation before the courts ordered it to comply with current law. And their violation was so egregious, the court awarded attorney's fees and costs. And that information was turned over only after the Attorney General's office somehow got the relevant data. And it was subsequently discovered it was an intentional coverup. But that's only half the issue, because we now have the data. And so while I hope this legislation will prevent us from being in the dark again and I hope that the Health Department will comply with this additional

requirement even though they ignored all previous requirements by statute, we can only hope. And I'm always optimistic. But the real issue before us is how could such a deadly decision have been made? And for that, we do not yet have the memorandum that occurred inside the Health Department, the recommendations of their top epidemiologists. We do know that two weeks before they made that decision the CDC said that they were using every tool at their disposal to protect nursing home residents because they were the most vulnerable. We know that. And we know the day after this deadly decision was made, experts from all around the State said, *Are you crazy?* So we're addressing with this legislation the data, which we already have, and I support that and that's great and that's why I'm voting for it. But now let's do the real investigation and make sure we don't have such a deadly decision occurring in the future that kills hundreds and hundreds of our senior citizens.

Thank you, sir.

ACTING SPEAKER AUBRY: Mr. Goodell in the affirmative.

Mr. Santabarbara.

MR. SANTABARBARA: Thank you, Mr. Speaker. I want to thank the sponsor for bringing this legislation forward. During this pandemic we saw how a breakdown in the HERDS data communication created another element of difficulty in ensuring a proper government response. I'm a cosponsor of this bill and it has my full support. This legislation mandates a timely -- timely release

of this data so we can protect our communities as we work through this ongoing pandemic and also avoid similar obstacles in the future. This information will help healthcare providers and government agencies alike to form policies during healthcare emergencies. We rely on this important information. Certainly during a pandemic and going forward, this change will help us form the proper response. The sooner we have accurate and comprehensive healthcare data during a crisis, the sooner we can implement stronger emergency response policies to save lives and also deploy resources efficiently -- efficiently.

I cast my vote in the affirmative.

ACTING SPEAKER AUBRY: Mr. Santabarbara in the affirmative.

Mr. Lavine.

MR. LAVINE: Thank you, Mr. Speaker. Each of us tried to help families with loved ones in nursing homes. Some of us had loved -- loved ones in nursing homes. This wasn't just in New York State. Far in excess of 170,000 Americans in nursing homes died in the United States, and many more in nursing homes died in the European Union. We know that the Department of Health and the Governor gave us figures that were not fully accurate. But for the life of me, I cannot understand or comprehend why we weren't advised that there were additional thousands who were taken from nursing homes to hospitals and that those people perished. The Department of Health was certainly aware of this. But to me, the great mystery is

why there was no such disclosure to the public. That is a mystery that has yet to be solved. But solve it or not - and I believe we will solve it - but solve it or not, mistakes were made, and God help us if we do not learn from those mistakes.

I want to thank the Chairs of Health and Aging for their efforts in this effect -- to this effect and effort and I cast my vote in the affirmative. Thank you.

ACTING SPEAKER AUBRY: Mr. Lavine in the affirmative.

Mr. Lemondes.

MR. LEMONDES: Thank you, Mr. Speaker, for letting me explain my vote. And thank you to the sponsors for putting this forward. I think it's critical and a perfect piece of bipartisan legislation as the result of something that afflicted us all throughout our State. Most importantly, though, it's a reminder of the role of integrity in elected officials. It's a reminder that not only does transparency matter, but having personal integrity and doing the right thing for the right reason at the right time matters. That didn't happen in this case. People intentionally covered up this information which led to the deaths of many thousands of New Yorkers. Public officials, if they are not trustworthy, are of no value to the people that they purport to serve.

I cast my vote in the affirmative in that this legislation will help us move forward and help us understand the necessity and role of personal integrity in times of crisis and in times

of regular business. Thank you, Mr. Speaker.

ACTING SPEAKER AUBRY: Certainly. Mr. Lemondes in the affirmative.

Mr. Cahill.

MR. CAHILL: Thank you, Mr. Speaker. First, I want to just point out a critical component of this legislation. It not only allow -- it not only requires the Department to provide this information to the public, it also allows the Department to provide this information to the public with some greater measure of freedom from the interference of outside forces. By making the Department of Health directly responsible for providing this information to the public, we have potentially, hopefully, removed the filter that allowed individuals, if they did, from keeping this information from the public for their own private purposes.

So I salute our Chair of the Health Committee and congratulate him on this timely, important and necessary legislation. But I also think it's important to take a moment to thank the Speaker of the Assembly for his aggressiveness in pursuing an agenda to address information that has only recently come to light, and to put together a package of bills that will undoubtedly improve healthcare for all New Yorkers. And to those who think that any of us think that our work is done, be assured, we know it is not. There is much more to do, and we are here to do it. As long as we have the tools, we will do the right thing.

I withdraw my request and vote in the affirmative.

ACTING SPEAKER AUBRY: Mr. Cahill in the affirmative.

Ms. Griffin.

MS. GRIFFIN: Thank you, Mr. Speaker, for allowing me to explain my vote. I commend the Chair of the Health Committee for introducing this important legislation, as well as the Chair who initiated these hearings that conveyed the need for this factual information. Transparency and accountability always matter. Data drives policy decisions, and as legislators, data like this can help us take proactive steps to respond in a timely manner to major health issues. This has the potential to save lives today and in the future, and help all of us protect our most vulnerable. I am proud to cosponsor this bill, and also thank the Speaker for supporting these vital measures in this nursing home package of bills.

Thank you. I vote in the affirmative.

ACTING SPEAKER AUBRY: Ms. Griffin in the affirmative.

Mr. Abinanti.

MR. ABINANTI: Thank you, Mr. Speaker. It has often been said knowledge is power. This bill will give us the knowledge, the information that we need to exercise the rightful powers of the New York State Legislature. Without the information, we are powerless. I appreciate the sponsor's taking the lead on this. He has been arguing for a long, long time on behalf of the powers of the State Legislature. I am proud to be part of the Legislature that's

going to reassert its powers in this time of a pandemic.

I commend the sponsor and I vote in the affirmative.

ACTING SPEAKER AUBRY: Mr. Abinanti in the affirmative.

Are there any other votes? Announce the results.

(The Clerk announced the results.)

The bill is passed.

THE CLERK: Assembly No. A03397, Rules Report No. 22, Kim, Gottfried, Weinstein, Epstein, Jacobson, Byrnes, Montesano, Niou, Glick, L. Rosenthal, Barron, Griffin, McDonough, Steck, Carroll, Cymbrowitz, Hevesi, Simon, Quart, Zinerman, Abinanti, Seawright, Mitaynes, Jackson, Anderson, Thiele, DeStefano, Lawler, Hawley, Salka, Tague, Simpson, Kelles, Otis, Vanel, Lunsford, Cahill, Pichardo, Richardson, Bronson, Zebrowski, Williams, Bichotte Hermelyn, Sayegh, Dinowitz, González-Rojas, Gallagher, Forrest, Nolan, Clark. An act to repeal Article 30-d of the Public Health Law relating to the Emergency or Disaster Treatment Protection Act.

ACTING SPEAKER AUBRY: Mr. Goodell.

MR. GOODELL: An explanation, please.

ACTING SPEAKER AUBRY: Mr. Kim, an explanation is requested.

MR. KIM: Thank you, Mr. Speaker. The bill would return to the status quo and eliminate the legal immunity from liability enacted one year ago for negligence resulting from treatment of

individuals during the COVID-19 pandemic period. The bill repeals Article 30-d of the Public Health Law, the Emergency or Disaster Treatment Protection Act. The law affords healthcare facilities, including nursing home and long-term facilities and certain professionals and corporate executives immunity from liability, civil or criminal, for harm or damages alleged to have been sustained as a result of an act or omission in the course of providing healthcare services during the COVID-19 emergency period.

ACTING SPEAKER AUBRY: Mr. Byrne.

MR. BYRNE: Mr. Speaker, will the sponsor yield for some questions?

ACTING SPEAKER AUBRY: Mr. Kim, will you yield?

MR. KIM: Yes.

ACTING SPEAKER AUBRY: The sponsor yields.

MR. BYRNE: Thank you, Mr. Kim. I know you've worked very hard on this issue and you've been very public about your position, so I appreciate all the advocacy that you've done. I'd like to just make sure we get some questions clarified here. The initial bill, Article 30-d was put into policy through the budget last year, and we did a partial rollback - I think it was in June or July - that basically took away the immunity for the non-COVID-related treatment. Would that be correct in your -- in your view, and is there any other gaps that this repeal would fill?

MR. KIM: We did a partial modification of -- of

immunity prospectively, end of July -- July. I'm not sure when the Executive signed that bill that limited the scope of immunity. And we struck certain things like transfer or arranging care for COVID, as well as non-COVIDs, but we did not touch some of the Executive or corporate-level immunity shields that was given in the original language.

MR. BYRNE: Okay. My -- my understanding is in treating COVID-19, a lot of medical professionals have expressed concern that the healthcare workers could be held liable or sued for utilizing any new treatment that could become available that later turns out to be ineffective. We -- we do have other variants and strains of the virus emerging, and information that we've been getting from public health officials throughout the course of this pandemic has changed. And that's not a slight on them, it's just the nature of the world that we're living in. Could you help address or answer some of those concerns and how that could affect some of these workers?

MR. KIM: Mr. Byrne, so I believe each of us has an obligation to act reasonably under the circumstances. When it comes to civil liability, when a worker acts within or -- or -- or a frontline worker or doctor of professional work, their work enacts within the scope of the worker's employment, the employer will be held responsible for any damages that may be recovered. So here, the nursing home, hospital or corporate or individual owners bears ultimate responsibility. The organization, facility or owner would be the party against whom the recovery would be made. And also, Mr.

Byrne, the moment we broaden the legal immunity to shield the corporate executives, the businesses, the shareholders, the trustees behind the facilities this no longer became about protecting frontline workers. It actually ended up undermining the workers, the doctors in their -- in their ability to pursue recourse. So I think this actually ultimately helps the workers as well.

MR. BYRNE: Thank you for that answer. And I -- I do acknowledge that we're still in the middle of this pandemic. I do think most people would acknowledge we're also in a better place than we were last spring and even last summer. We do certainly know a lot more about this virus. With that said, I -- I do also understand that last year, physicians, nurses, other frontline workers were asked to do a lot more than they normally would. Some cases they were asked to do extraordinary things, in many cases without adequate Personal Protective Equipment. Many health professionals were asked and actually provided care beyond their traditional scope. So there is concern about, you know, the work that they've already done and that this type of repeal could increase liability to them retroactively. I know there's been discussion about that and my understanding is this proposal does not have any sort of retroactive effect to increase that liability. Can you confirm that?

MR. KIM: Mr. Byrne, that ultimately will be up to the courts to decide. My intention here is to reinstate the status quo. But as you know, the power to restore civil liability does exist without question. For example, the Legislature did that recently by reopening

our civil rights to sue in the Child Victims Act.

MR. BYRNE: And I -- and I do understand that. I that's -- I think the concern is extending that to frontline workers. And I think a lot of folks -- while I think you may have acknowledged that the immunity was overly broad -- that there was a -- a need to provide some sort of liability protection during the height of the pandemic when hospitals were being told they had to double their capacity. There was this concern about people having patients in the middle of their hallways. So I -- I under -- I understand that. I also, like I said before, Mr. Kim, I think we're in a different place now than we were last spring. And I wanted to ask this other question. It came up in the Health Committee, and it can get a little confusing. But when we talked about the state of emergency, my understanding is the liability and immunity provision is tied to the current state of emergency and the pandemic. So if the state of emergency ended, Article 30-d would no longer be affected. Is that correct in your -- in your understanding?

MR. KIM: It is my understanding. The way that it was written, if there was the end of the pandemic this immunity would have expired with the end of the pandemic. But as it stands, you know, we're still -- we haven't determined that. But we do feel like we are ready to go back to normal liability standards, and we all -- we are no longer in triage. Nursing home facilities, hospitals, know exactly what they need to do, how much they should invest to protect our residents and they should be held to the same standard before this immunity was given.

MR. BYRNE: Thank -- thank you, Mr. Kim. I'm not one to quote representatives or executives from New York City, but I found this to be interesting from our Local Governments hearing, budget hearing earlier this year. Mayor Bill de Blasio said, quote, "We all say we want a recovery. Well, recovery means back to normal. It means restoring the things we've had, not living in a state of emergency for the rest of our lives," end quote. That's why I wanted to bring that up, because I think that is another way to try to roll this back. If we're not in a state of emergency, that would have that effect. So while we understand the -- the dangers that still exist, I think that it's something worth noting.

Also, separately from this bill but a similar topic, I know concerns have been raised about how the immunity provisions were put into law, what outside factors influenced this type of policy. I do hope that if there was anything that was nefarious, the truth comes to light. I also understand that there was Federal proposals from Mitch McConnell and Congress as well. And if there is anything that needs to be unearthed I hope it does, and I do want to thank you for taking the time to answer my questions, Mr. Kim, for your advocacy on this issue. I understand other colleagues may have other concerns. The medical community has certainly raised their concerns. But I do feel we are in a different time and place than we were this last spring, and I do plan to vote in the affirmative.

Thank you.

MR. KIM: Thank you, Mr. Byrne.

ACTING SPEAKER AUBRY: Thank you, sir.

Ms. Byrnes.

MS. BYRNES: Thank you, Mr. Speaker. If I could ask the sponsor a question, please.

ACTING SPEAKER AUBRY: Mr. Kim, will you yield?

MR. KIM: Yes.

MS. BYRNES: Thank you.

ACTING SPEAKER AUBRY: The sponsor yields.

MS. BYRNES: In the Health Committee we were at least kind of lead to believe that the intention of this bill was not to be -- that it would not be retroactive. Is it my understanding that as we now prepare to vote on it that you're not in a position to state that your intention is that this bill should go forward versus attempting to achieve a retroactive effect?

MR. KIM: Again, my intent is to reinstate the status quo, and it will ultimately be up to the courts to decide whether the civil liability will be applied retroactively. But what I can do tell you is that the -- according to the U.S. Constitution and the New York State Constitution which prohibit ex post facto criminal liability, this means it is not lawful to retroactively create a crime. But no similar restrictions apply to civil liability.

MS. BYRNES: All right. As -- as the sponsor of the bill, though, is it your intent that it not be retroactive or is it your intent that it is retroactive?

MR. KIM: I believe that Article 30-d went into effect on April 30 -- April 3rd when the bill was signed by the Executive, and retroactively give corporate legal immunity to healthcare and nursing home businesses going back to March 7th. This means that any person who might have suffered in a healthcare or nursing home facility due to negligence during the month of March 2020 lost their rights as patients and residents without even knowing about it. So -- so it's also equally important to acknowledge that, you know, these facilities acted during that time period, March 7th through April 3rd without any reliance on the legal immunity. So I do believe that when we repeal this it will apply for that month. As far as for April 3rd to the present, you know -- you know, it will have to be determined in court.

MS. BYRNES: What is your intent, though?

MR. KIM: My intent is because they did not -- because the Executive took away the patients' and the residents' rights to get access to information and were banned from entering the premise [sic] to prove if there was any gross negligence, if there was any reckless behavior. And the Executive also issued a mandate saying that medical records are waived. So he -- he made it impossible to prove -- for the families to prove if there were any reckless intentional behavior. So as we strike this, I do believe that it should be applied retroactively. But again, that has to be determined in court because it is not stated in writing in this particular piece of legislation.

MS. BYRNES: Thank you, sir.

MR. KIM: Thank you.

ACTING SPEAKER AUBRY: Thank you.

Mr. Salka.

You will have to unmute Mr. Salka or Mr. Salka will have to unmute himself.

(Pause)

There you go, Mr. Salka.

MR. SALKA: Thank you, Mr. Speaker. Will the sponsor yield for a question?

ACTING SPEAKER AUBRY: Mr. Kim, will you yield?

MR. KIM: Yes.

ACTING SPEAKER AUBRY: The sponsor yields.

MR. SALKA: Thank you, Mr. Speaker. Mr. Kim, we know that through this pandemic there's been a lot of -- there's been a lot of -- of issues with how to treat a particular patient. I know that mechanical ventilation was considered an option and now we find that mechanical ventilation might have actually worked against what our -- our clinical goals were, and that was to stabilize the patient and, you know, get them oxygenated as they should. So the point I'm trying to make is there were a lot of different treatments that were being offered. Some worked and some didn't. What the concern that I'm getting from some of the health professionals I spoke to is that, *Are they going to come back on us because we used sound clinical*

judgment at that time based on what we knew? We wouldn't have had -- and the outcomes weren't exactly what we wanted them to be, sometimes as serious as -- as death. So I guess what their question is, is will they be held responsible because now, as you said, there is a -- a retroactive element in this. Will they be responsible for making decisions that might not necessarily been the best known that we know now, so they're going to end up being held liable for a treatment that was based on a lot of data that we weren't -- weren't sure of. So their concerns -- a lot of people, a lot of physicians, a lot of nurses, a lot of Allied Health people that I know that did the best that they could at the time. As anything in medicine goes, new information comes up, better treatments, better best practices. So, in fact, can I go back to those people and tell them that, *You, in fact, won't be held liable, although you did the best that you could at the time.*

MR. KIM: Mr. Salka, thank you for that question. I believe the standard of care, both in terms of expectations as well as the legal requirements for licensed professionals was never changed. There is an obligation to act reasonably and in good faith in all circumstances. Our bill simply reinstates the status quo with respect to standard civil liability. So in other words, Mr. Salka, if there -- if all the hospitals during that time period were dealing with the pandemic and they're dealing with the same level of -- of complicated decisions, they already are shielded with a -- a -- a higher liability standard because of the comparative standard of care. So it was really unnecessary to put this into statute. And the only reason why we

broadened the scope was not to protect the workers, because we did have an Executive Order on March 23rd where the Governor unilaterally did this to protect the frontline workers through an Executive mandate. But he broadened that scope from March 23rd to April 3rd, the law that they put in, to protect the corporations, the businesses, the trustees behind the scenes. Not the frontline workers. But the moment he did that, he undermined, actually, the doctors and the frontline workers who were treating because they also lost their -- their recourse if something does bad happen to them at the workplace. So I do believe this is the right step in going back to normalcy, but also going back to protecting and prioritizing the needs of our frontline workers that are doing all the hard -- hard decisions and when -- while holding some of the corporate interests who might be making bad decisions in the back end.

MR. SALKA: Thank you, Mr. Kim. Thank you for your answer.

And Mr. Speaker, on the bill.

ACTING SPEAKER AUBRY: On the bill, Mr. Salka.

MR. SALKA: This is a bill that obviously had been written to approach a very unique situation in a lot of respects. The pandemic was a public health crisis that we haven't seen in generations. And I'm going to support this bill. I do have concerns that a court of law might look at the lack of best practices that was available for treatment guidelines with this, but I am hoping that a

court would be able to consider those -- those circumstances; again, unique, to say the least.

So I'll be voting in the affirmative on this bill and I -- I thank the -- the sponsor for this.

ACTING SPEAKER AUBRY: Thank you, sir.

Mr. Gottfried.

MR. GOTTFRIED: Thank you, Mr. Speaker. You know, the short answer to a lot of the questions about what the liability might be going forward is what -- you know, our roles of civil liability have developed over centuries of common law. They're not easy to recite in a minute. People write books about it. But the short answer is, whatever the rules of liability were before 30-d became law will be the rules of liability going forward. Generally speaking, healthcare providers are held to what is called the "reasonable community standard of care." You know, in the early 19th Century, a surgeon who didn't wash his or her hands would not get sued. Ever since then, they would get sued because the standard of care changed. And the rules of liability change according to the circumstances. There is what is known as a "crisis standard of care." If your hospital is in the middle of a tornado, we expect -- you know, we don't expect people to do everything they would have done before the tornado. This just restores the longstanding rules of liability going forward. As for retroactively, you know, my own sense would be that the change in the liability rules would only be applicable going forward. I don't think a court would apply it retroactively, but that would be up to -- to

a court. In any event, the bottom line is the rules of liability that used to apply will be brought back.

Thank you. And I want to commend the sponsor for moving this bill forward. It's a very important piece of legislation. Thank you.

ACTING SPEAKER AUBRY: Thank you, Mr. Gottfried.

Mr. Goodell.

MR. GOODELL: Thank you, Mr. Speaker. Would the sponsor yield?

ACTING SPEAKER AUBRY: Mr. Kim, will you yield?

MR. KIM: Yes.

ACTING SPEAKER AUBRY: The sponsor yields.

MR. GOODELL: Thank you very much, Mr. Kim. I -- I often think it's important to understand where we've been in order to understand where we need to go. This immunity provision, was that initially enacted by an Executive Order? Am I correct on that or am I mistaken?

MR. KIM: Yes, there was a March 23rd - I believe it was 201.10, correct me if I'm wrong - but he framed the original Executive Order as an extension of the Good Samaritan Law to help recruit volunteers and people, which was a good, I think, public relations thing. And although, I think legally when we looked at the actual provisions, it wasn't necessary legally. But it was a good PR to

recruit people to come in and help these facilities. But -- but the entire -- the first -- first Executive Order was entirely designed around work -- protecting workers and frontline workers and their ability to work without the fear of getting hurt through a -- through a civil lawsuit.

MR. GOODELL: And then following the Executive Order that gave limited immunity to frontline workers there was legislation that was passed that extended it to the entire entity, including corporate leaders. How -- how -- where did that legislation come from?

MR. KIM: Mr. Goodell, it is my understanding that the broadened language came from the Executive Office.

MR. GOODELL: Was it part of Governor Cuomo's budget proposal or was --

MR. KIM: Yes.

MR. GOODELL: -- it a standalone bill? I apologize. Thank you for your patience in bringing me up to speed.

MR. KIM: It is my understanding, Mr. Goodell, it was in the budget and it was the Governor's proposal that he put into our 2020 Budget as an Article VII language.

MR. GOODELL: So that was not a legislative addition granting that liability waiver?

MR. KIM: It was not.

MR. GOODELL: Now, you've been following this and I know you've been very, very concerned about this for a long

time and I appreciate your thoughtfulness and your leadership on this. What was the explanation that was given by the Governor for including this in an Article VII Budget Bill? Because after all, it didn't really deal with the budget, right? It dealt with liability protection for third-parties. It really didn't have any appropriation or any budgetary significance. What was the explanation given by Governor Cuomo for including this liability waiver in a Budget Bill?

MR. KIM: Well, their only explanation is that you voted for it, that (unintelligible) members voted. I did not vote for it, as -- along with many of my colleagues. It actually passed by one vote in our House last year, that particular budget. But so far that has been his public explanation, that it was us, that we voted for this provision, even though he's the one that proposed it and put it into our budget.

MR. GOODELL: Is there anything under our current law that would prohibit the Governor from again issuing an Executive Order extending liability protection to -- to these facilities?

MR. KIM: Not to my understanding, Mr. Goodell. But I think in light of everyone paying attention to the process, I do not foresee him in the next few months daring to put a toxic poison bill without the public's input into the Executive Budget. I do not see how he could actually do that. Last year, even the Chair of the Health Committee didn't know. And I know for a fact that he reads almost every single word of that budget and he didn't even know that this language was in in the last hour.

MR. GOODELL: You may recall last year we passed

a Tenant Protection Act dealing with moratoriums and we had various provisions in there. And you may recall that the Governor signed that bill and then with an Executive Order pulled the rug out from under it anyway. Do we -- but you don't think he would do that for this one? Sign it and then pull the rug out anyway?

MR. KIM: I can't speculate on his behavior and how he conducts himself. That's on him. We -- all we can do is do our jobs, Mr. Goodell, and do the right thing by these bills. And if you want to legislate -- and whether you agree or disagree on giving these businesses liability, you and I both know it should be done openly where the public and the families and the businesses could have their input and decide in open space, not in the dark.

MR. GOODELL: I absolutely agree with your observation. Of course in a typical civil situation when we're looking at civil liability we look at the negligence standard. Mr. Gottfried discussed that a little bit. And when you look at a negligence standard you often look at government regulations or government guidelines as setting the appropriate standard. Can we reassure nursing homes that if they were complying with the Governor's directive to take COVID-active patients into their facilities and that resulted in hundreds and hundreds of additional deaths as reported by the Empire Center, that they would have a defense against civil liability based on compliance with the Governor's directive?

MR. KIM: Again, Mr. Goodell, that has to be determined in court. But I think what you're referring to in legal terms

is what we call "detrimental reliance." And if that is the case, if they're citing Article 30-d as a reason for them -- for more people dying, that is an admittance of them -- of Article 30-d essentially being a disincentive. That's another way to look at it for some of these facilities. Not all facilities, but some of the bad operators using this as a reason to not do more to help people with a loss. I know that there are many other good operators. Regardless of Article 30-d or whatever the Governor was doing, they were spending every dollar that they had to try to help people, and those operators should be helped and should be supported legislatively or however we can. But, you know, we can do that moving forward. Determine who are making the right decisions, and for those who did everything possible, we can legislate in a separate bill to try to help them.

MR. GOODELL: Thank you very much, Mr. Kim.

On the bill, sir.

ACTING SPEAKER AUBRY: On the bill, Mr.

Goodell.

MR. GOODELL: I deeply appreciate my colleague, Mr. Kim's, efforts in this area and I appreciate his continued diligence. As mentioned by some of our colleagues, when COVID first hit it placed an incredible unprecedented strain on our hospitals and nursing homes. And I am very fortunate in my district that I have some incredibly dedicated and committing nursing home operators and hospital administrators. But in addition to dealing with the -- the novel aspects of COVID, they had to deal with the fact that they had

significant staff that were often quarantined. The remaining staff were working double shifts. It was a -- many of their nursing home residents were in isolation within the facility. I mean, it was a horrific, horrific strain on the frontline workers and on the administration. I know one of my nursing homes, their administrative staff were delivering meals because they'd shut down all the congregate dining in an effort to minimize social contacting and minimize the potential spread. So I understand the incredible effort on the part of everyone in our nursing homes and our adult day care facilities and in our hospitals to put the lives and safety of the residents first. And their mission was compounded when Governor Cuomo ordered them to take positive act -- active COVID patients into their facility and placing incredible additional stress on nursing homes and adult care facilities that they could not prevent. So I understand why those liability protections were in place. And in large part, sadly, those liability protections were in place by statute to protect our nursing homes from liability created by our own New York State Health Department. What a shocking situation. But as Mr. Kim correctly points out, and his two other colleagues, our knowledge of COVID has developed. Treatment options have developed. The vaccine is being spread slowly, but it's getting out there and the situation has changed. And so while I certainly understand and appreciate the incredible effort by our frontline workers and the administration in all these facilities to do the very best they could under extraordinarily difficult circumstances, I do

think we are now ready to lift those extraordinary liability protections. A lot of questions have been asked whether those protections are being lifted retroactively. I don't think they should. I think there's very, very serious constitutional due process issues if you try to impose retroactive liability. And I'm confident, as Mr. Gottfried pointed out, that the courts will apply this prospectively, as they should.

So with that clear understanding and the legislative history and with the recognition that the situation has changed, I will be supporting it and urge my colleagues to do the same. Thank you, sir.

ACTING SPEAKER AUBRY: Thank you.

Ms. González-Rojas.

MS. GONZÁLEZ-ROJAS: Thank you, Mr. Speaker.

On the bill.

ACTING SPEAKER AUBRY: On the bill, Ms. Rojas.

MS. GONZÁLEZ-ROJAS: I want to thank the bill sponsor for this very important legislation. It has been said that COVID-19 has exposed the great inequities of our society, and I believe this to be true. I also believe that some of us understand that what happened in this nursing homes crisis is a historical proclivity of a capitalist system that puts profit over people time and time again. The cover-up of half of the deaths at the nursing homes were a result of corporate greed and a way of politics that only perpetuates that

greed and dehumanization of people. And just so that we are reminded, these were New Yorkers; parents, grandparents, aunts, uncles, New York's elders and loved ones. And as heartbreaking as it is, it is not a surprise that the nursing homes were granted immunity. The Greater New York Hospital Association has contributed over \$1 million to this Governor, and the President of this association even acknowledged themselves that they lobbied hard for the Executive Order that the Governor has put forward to protect them after people with COVID were allowed admission to the nursing homes, contributing to over 15,000 deaths. The budget language that was put in last year to limit how many COVID victims would be able to file malpractice suits against facilities clearly protects their industry's profits. We must now right this wrong. We must bring light to the darkness of this cover-up.

I urge my colleagues to vote in favor of this bill, and I vote in the affirmative. Thank you so much.

ACTING SPEAKER AUBRY: Thank you so very much.

Mr. Tague.

MR. TAGUE: Thank you, Mr. Speaker. Would the sponsor yield for a quick question, please?

ACTING SPEAKER AUBRY: Mr. Kim, will you yield?

MR. KIM: Yes.

ACTING SPEAKER AUBRY: The sponsor yields,

sir.

MR. TAGUE: First of all, Mr. Kim, I just want to commend you. Not only for your sponsorship of this bill, but also your guts to come forward and to ask that the truth be told and standing up for the people of New York and for what you believe in. So I want to commend you and say as a fellow New Yorker and a colleague, thank you. Thank you very much.

Mr. Kim, during this -- during the Health Committee hearings, budget hearings and in some press conferences, both the Executive and the Commissioner of Health has blamed the spread of the disease in our nursing homes on the employees. And that is my big concern with your bill. I do plan on voting for it. I know that this question has been asked to you or posed to you different ways this morning, but I just want to hear from you, you know, the frontline workers at these facilities, will they or will they not be held liable? And I ask that because of the way that the Executive and the Health Commissioner have just come out and said, *Well, it was the fault of these frontline workers*. So I -- that -- that's my question, sir.

MR. KIM: Mr. Tague, is it not the intent of me to jeopardize the frontline workers and the work that they've done. It should be the -- it's the businesses, the executives, the trustees, shareholders who made the poor decisions - if there were poor decisions - that should be held liable. And in most common civil lawsuits it's not the individual employees that are being held liable, it's the businesses behind them. And the moment that the Executive

broadened the immunity to cover the business entities, it no longer became about protecting frontline workers. It actually took away the workers' ability to pursue any kind of recourse themselves. So I believe that lifting this also will restore the rights of the frontline workers, and if they do feel like the bad decisions that are being made are -- are leading to transmission of a pandemic, they're also hurt. They should also have recourse. But under the -- under the current provisions they might not have that, so I believe by lifting this we're also protecting the workers as well.

MR. TAGUE: Okay. Thank -- thank you very much, Mr. Kim.

On the bill, Mr. Speaker.

ACTING SPEAKER AUBRY: On the bill, sir.

MR. TAGUE: I -- I just again want to commend you, Mr. Kim. I also want to commend our Committee Chair on Health, Mr. Gottfried, and Mr. McDonald for all your hard work since this coronavirus started. I will be supporting your bill today, and all I can say is, is don't stop telling the truth and keep fighting.

Thank you very much, Mr. Speaker.

ACTING SPEAKER AUBRY: Thank you, sir.

Ms. Woerner.

MS. WOERNER: Thank you, Mr. Speaker.

On the bill.

ACTING SPEAKER AUBRY: On the bill, Ms. Woerner.

MS. WOERNER: In a year that's been as long as this one has, it's -- it's almost hard to remember what things were like last April and May. And I can remember snippets of conversations with the CEOs and the administrators at the nursing homes that are in the 113th Assembly District. And the calls where they would say, *Wait a minute. We got a new directive and it seems to conflict with the one we got two days ago. And I didn't understand the one two days ago and I still don't understand this one. Can you get me answers?* I would get calls from them that said, *How do we get more PPE? We don't have any PPE. We're reusing PPE.* I would get calls as the summer wore on to say, *Please, can you help us get test kits? We need to start testing our residents. We need to start testing our employees. And we can't get test kits here in the North Country.* That's what the year was like for many of the hospital administrators and -- and nursing home administrators, at least in the part of the State that I was in. And I really feel for them. They -- they worked 24/7 to keep their residents and their staff healthy and safe and to try and deal with this -- with this changing regulatory environment that they were thrown into because of all of the Executive Orders that this Governor issued. It was a difficult time for them and they did the very best they can. It is unfortunate that as time has gone on we have seen that there are bad actors who took advantage of the limits on liability to use it as an excuse to neglect patients, to neglect their responsibilities to keep their residents safe and their staff safe. And unfortunately, that is the world that we live in.

So I'll be supporting this bill today because we should always hold bad actors accountable. And it is my hope that this is applied prospectively and not retroactively because of the environment in which our nursing home administrators had to deal. Changing and confusing orders, lack of appropriate equipment, staffing challenges. We should never create a situation where people can take advantage of loopholes. That's why we have to repeal this -- this law. But it is important that it not be -- that we not hold the good actors responsible for having made -- made decisions that didn't work out in light of all the -- all of the changing environment that was around them.

So I want to thank the sponsor for his continued emphasis on improving the quality in our nursing homes and addressing the bad actors, and I will be voting in the affirmative. Thank you.

ACTING SPEAKER AUBRY: Thank you, Ms. Woerner.

Mr. McDonald.

MR. MCDONALD: Thank you, Mr. Speaker.

Would the sponsor yield, please?

ACTING SPEAKER AUBRY: Mr. Kim, will you yield?

MR. KIM: Yes.

ACTING SPEAKER AUBRY: The sponsor yields.

MR. MCDONALD: Hey, Ron. Ron, thank you for

your bill, and I want to thank you for your hard work. You've been dedicated early upfront on this whole process. And, you know, to pick up on a -- the prior member's comments, this bill does go after the bad actors and I know that is your intent. I think the concern I have, and I just want to share it, is I think some of the good actors are going to be pulled into this process. We had the Health Committee meeting the other day. The answer was very clear, is this bill retroactive. The answer was very clear: No, it's not. It wasn't really a question, it was pretty much straightforward. And I think in today's debate I've been a little bit concerned -- and -- and I'll give you a for instance, Ron. I remember exactly where I was when the former President of the United States got on the TV and started talking about hydroxychloroquine. I remember it because it's a difficult word to say and he was having a difficult time with that. And immediately I went to my wholesaler supply list and watched the inventory in front of my eyes go from 2,000 bottles to nothing within 15 minutes. My point in saying that is hydroxychloroquine and azithromycin were very heavily used by a lot of healthcare professionals in a good faith attempt to save people's lives. Come to find out, hydroxychloroquine was not that effective. And come to find out - thanks to pharmacists at LIU who did the research - azithromycin was actually detrimental to individual's health. And my concern is the -- in a debate it indicated -- and I'm not trying to use your words, so you can clarify for me -- that there may be a civil responsibility for health professionals who were actually trying to do the right thing. And that's why I'm really trying --

because when I look at the bill, the bill is probably the simplest bill we'll ever see. You know, this is -- this is a new bill, it's effective immediately upon passage, and I don't see anything about retroactivity in this. So I -- I wanted to be comforted to know that health professionals, both those licensed and those who literally came out of retirement - I know many who came out of retirement, license expired, to help in this process - that they are not going to be subjected to frivolous lawsuits or legitimate lawsuits.

MR. KIM: I appreciate your question, Mr. McDonald. And I don't want to conflate this, quote, "immunity bill" with worker protection. Our intent is not to go back and punish the frontline professional workers who were dealing with COVID. They already have a shield during this time of crisis, a crisis standard of care. They're already protected. And it's -- it is much -- it is already very difficult to bring civil liability lawsuits in this type of situation. The moment that this was expanded and broadened to protect the business entities and the trustees and shareholders, the investors behind these facilities, it became a different piece. It's kind of like saying I'm going to support monopolies in the world and small businesses at the same time. It doesn't work that way. If you support monopolies you're destroying mom and pops. So the moment that it was brought into the employers and the businesses, it no longer became a discussion about protecting frontline workers.

Now, I do want to point out that during the month of March there were people in hospitals that were mistreated, that had

suffered, that should have had patient rights that we -- well, the Legislature -- well, that the Governor retroactively took away. So during the month of March there was no -- any kind of corporate immunity. So if you went to a hospital and you were -- and you have a loved one who was giving birth and something tragic happened, and due to negligence or whatever, your right to recourse was retroactively taken away for everything non-COVID. I do believe because there was no reliance on that corporate immunity for that month, that once we -- once we strike this, those rights should be restored for the month of March for all things related to the healthcare facilities and nursing homes. But from April to now, in terms of retroactively and civil liability with -- especially applying to the business entities, not to professionals, I believe the courts will ultimately have to determine what that looks like moving forward.

MR. MCDONALD: And like I said, Ron, and I -- I really -- I value and appreciate your attempt. It is genuine and real. I think my concern -- and this is probably something that will be part of the legislative process going forward, and yes, it could be in the courts -- but, you know, quite frankly, you know, a lot of physicians pay a lot of malpractice already. I don't know why we want to keep increasing those premiums.

MR. KIM: Well, (unintelligible) --

MR. MCDONALD: Because at the end of the day, there's already advertisements going on TV (unintelligible).

MR. KIM: Right.

MR. MCDONALD: So the reality is, there's an industry out there that may look at this as an opportunity -- which, you know, I'm sure you've been sued. I've been sued in my lifetime. It's not a fun process to begin with. It's an expense, and -- and -- and it's just -- there's the concern from my perspective.

MR. KIM: I understand your concern, but I also don't think we should reduce this moment of sparring frivolous lawsuits. You know, when the State fails to protect 15,000 families and their loved ones, the only thing they have is right to recourse. And the courts were perhaps the last thing for them to feel protected, and -- and we took that away from them. And we took their ability to even look at data because they completely waived medical recordkeeping. They completely banned the families from coming in, observing reckless behavior. So it's already virtually impossible at this point for families to prove that there was something wrong. So the fact that we're going back and forth over the fear that there might be frivolous lawsuits, I don't think it's the right space for the argument. Because I think one thing we can all agree on, John, is that we can legislate whatever protection for the professions on a separate bill. But bring in all the professionals and we can do a separate, open discussion on what that should look like. But the way that this was done, where we did not debate this openly. We did not have the families. We didn't have the professionals that you're concerned about coming in to testify why we needed this. And we raised liability standard in the dark without anyone's input. That's why, at minimum, we should strike

this. And if you want to work on another bill to protect certain categories, I'll be more than happy to engage you in that discussion and work on that bill with you, Mr. McDonald.

MR. MCDONALD: I appreciate that, Ron.

On the bill, Mr. Speaker.

ACTING SPEAKER AUBRY: On the bill, sir.

MR. MCDONALD: You know, the sponsor brings up some very good points. And I -- and I do -- I appreciate his efforts. He's -- he's doing the work that needs to be done. Yes, I do share my concerns about the health professionals who stepped up when many people would have stepped back. Let's face it. As we are now moving through the anniversary of last year, March, April, May. And as one of the few health professionals in the Legislature I probably watch this with a little -- a little bit different critical eye on the medical end and maybe other aspects. Chaos reigned in every single hospital and emergency room and any other place where people could get healthcare. Chaos reigned. We collectively as a society, but the medical community in particular, was dealing with a crisis of unknown proportions that quickly changed not day by day, but minute by minute in many aspects. I do believe many individuals made the right decisions at the right time when it came to providing patient healthcare. And arguably, unfortunately, in some circumstances the result was not what was hoped for.

I do look forward to working with the sponsor on opportunities to tighten this up to give a lot of those providers who did

step up a little bit more comfort going forward. Thank you.

ACTING SPEAKER AUBRY: Thank you.

Mr. Carroll.

MR. CARROLL: On the bill, Mr. Speaker.

ACTING SPEAKER AUBRY: On the bill, sir.

MR. CARROLL: I want to commend the sponsor for bringing this bill forward today. Transparency is the greatest disinfectant. As we approach the one-year anniversary of COVID and emergency powers and lockdowns, we must begin to stitch back our society. The blanket immunities that were given were wrong and caused damage. Even if they were well-intentioned. Even if we can understand that there was great chaos and stress on our healthcare systems during the worst days of COVID in March, April and May. But mistakes, terrible mistakes, were made. They may not have been intentional. There may have been good intentions for why choices were made. But clearly, there were choices that were made that caused death and harm. And orders like blanket immunity allow for actors in the healthcare system to act with impunity. We don't want them to act with impunity. We want, just like everyone wants, them to have fair, transparent laws and a fair and transparent system that allows us to learn from our mistakes. We never want to repeat the mistakes of the nursing home debacles again. It has hurt countless numbers of lives. The only way we can learn from those mistakes is to make sure that we have a well-functioning justice system that provides people rights and recourses. This bill starts that process. It

won't be the last bill. It will not be a magic bullet. This Legislature needs to do so much work to make sure that the mistakes of the past are not done again.

So I commend the sponsor for this bill. I commend the sponsor for his leadership on this issue, and I hope that all of my colleagues will be voting in favor of this very important legislation. Thank you, Mr. Speaker.

ACTING SPEAKER AUBRY: Thank you, sir.

Mr. Lavine.

MR. LAVINE: Thank you very much, Mr. Speaker.

Will the sponsor yield for a couple of brief questions?

ACTING SPEAKER AUBRY: Mr. Kim, will you yield?

MR. KIM: Yes, sir.

ACTING SPEAKER AUBRY: The sponsor yields.

MR. LAVINE: Thank you, Mr. Speaker. Mr. Kim, an Executive Order was issued on March the 23rd by the Governor, and that provided special protections for frontline healthcare providers, doctors, nurses, physician's assistants. So they had -- they had protection so long as they didn't commit any acts that involved gross negligence. So, here's my -- here's my confusion, and I've been listening pretty carefully, but this is not the easiest of stuff even for lawyers to comprehend. Or for legislators. Your bill doesn't take those protections away from those frontline healthcare providers, does it?

MR. KIM: Yes, 100 percent.

MR. LAVINE: Thank you.

On the bill. Thank you.

ACTING SPEAKER AUBRY: On the bill, sir.

MR. LAVINE: On this question of liability, I've been very, very torn. But I want to just describe my sense and my intention. I think that my anger with respect to the provision that ended up in the budget dealing with 30-d of the Public Health Law stems a lot from the fact that I think it put us all in danger. But secondly, it stems from my belief that doing budgets can be very, very dangerous because the negotiations go on and on and on up until past the 11th hour. I was not aware of this provision being in -- in the budget, and I'm -- I'm not alone in that. But I don't want to allow or permit my anger at that factor to affect those people who provided emergency and essential medical services to those who were suffering from COVID. So on the question of retroactivity, it is my intent that there should be no retro -- retroactive removal of those protections that were granted in the March 23rd Executive Order. And I just want to make that clear.

Mr. Kim, many thanks, my friend.

ACTING SPEAKER AUBRY: Thank you, sir.

Ms. Niou.

MS. NIOU: Thank you, Mr. Speaker. Will the sponsor yield to a couple of questions?

MR. KIM: Sure.

ACTING SPEAKER AUBRY: Mr. Kim, will you yield?

MR. KIM: Yes.

ACTING SPEAKER AUBRY: Mr. Kim yields.

MS. NIOU: So, I actually had a couple of questions just to clarify what's, you know, the previous speaker had just asked was very key. The provisions that were for healthcare workers that were made in an Executive Order, they're not being affected, right?

MR. KIM: No.

MS. NIOU: And so, the -- the legal immunity language that was actually put into our budget at the last minute, that language actually has retroactivity in it, correct?

MR. KIM: Yes.

MS. NIOU: And so they somehow are able to protect, you know, from liability retroactively and yet, you know, they're not asked -- there's objection somehow to having retroactivity in this bill to repeal it.

MR. KIM: That's right. They took away people's resident and patient rights retroactively with this bill.

MS. NIOU: And for how long was that?

MR. KIM: From March 7th to April 3rd.

MS. NIOU: And so when they're talking about patients, it's not just people who are COVID positive, correct?

MR. KIM: It was all patients during that time. Non-COVID patients as well.

MS. NIOU: So, if I went in for knee surgery and somebody was to make a mistake on my knee, I wouldn't be able to have any kind of protections, correct?

MR. KIM: If you went during that time period, in March, yes. If -- with this immunity, your -- certain -- certain recourse and certain part of your rights as a patient was taken away from you.

MS. NIOU: And nobody was alerted of that in New York, correct?

MR. KIM: Not to my knowledge. Unless -- unless you try to pursue some sort of a civil liability case or seek recourse for something that was wrong to you.

MS. NIOU: So when -- when some of these families went to seek recourse for healthcare issues not even having to do with COVID that -- or healthcare negligence that happened when it didn't have anything to do with COVID, what was the answer to them during this period of time?

MR. KIM: Repeat that question, Ms. Niou.

MS. NIOU: During this period of time that was covered under the retroactivity put into our budget for the liability that was, you know, given immunity from by the nursing home -- for the nursing home executives, what -- what were people told when there were medical malpractices or any kind of negligence in (technical interruption).

MR. KIM: Mr. Speaker, did she -- is my computer

frozen or did she freeze for a minute?

ACTING SPEAKER AUBRY: Right.

Ms. Niou, you'll have to repeat that question. We lost you in the interim.

MS. NIOU: I'm so sorry. My wi-fi is very new and my -- is it better now without my video?

ACTING SPEAKER AUBRY: It sounds like it, yes.

MS. NIOU: Okay. So I just wanted to ask, so for anybody who was going to the hospital or had gone to the hospital in that period of time and had surgery of some sort or any kind of other healthcare, you know, related issue and had gotten, for example, you know, some kind of, you know, negligence or some kind of medical malpractice thing happen to them, what was being told to them at that -- if -- if their -- if what happened to them happened in that period of time and if it was non-COVID-related?

MR. KIM: Well, there when -- I think based on some of our conversations with constituents, many of the law firms didn't take their cases because of the legal shield.

MS. NIOU: So if their cases were not taken, who is going to be able to help them?

MR. KIM: Um, I don't know. That's a good question.

MS. NIOU: So, this is why I think that your bill is so important. I just wanted to say, you know, that, you know, I think that when one thing is able to have retroactivity, the other to fix it should

also be able to have retroactivity, in my mind. I don't know if that makes any sense to you, Mr. Kim.

MR. KIM: Well, yes. Well, Ms. Niou, I think in addition to that, I think there -- because the number of Executive Orders by the Governor made it impossible to prove gross negligence or intentional harm or reckless behavior. You know, I think that when the courts ultimately look at that, they will look it at favorably, in my opinion. Because how will these -- how -- how are these families supposed to prove that their loved ones were treated recklessly when they don't -- they don't have the medical records and they were forbidden from entering the nursing homes for seven months?

MS. NIOU: Thank you, Mr. Kim.

On the bill, Mr. Speaker.

ACTING SPEAKER AUBRY: On the bill, Ms. Niou.

MS. NIOU: You know, this bill does not take away any of the protections of our healthcare workers on the front lines, and this does not take away the protections for even the, you know, medical personnel who were actually making sure that we had frontline protections for our patients. I just wanted to clarify that for all of the folks who had been asking questions on retroactivity. I think that it is so important that we recognize that the previous language in the budget actually provided retroactivity for the healthcare executives, and actually that caused great harm for people who were not able to bring their cases up in the -- in -- in our State when there

was medical malpractice or any kind of harm done to them, even if it didn't have anything to deal with -- with, you know, COVID-19 or any of the healthcare practices therein. And I believe that, you know, the retroactivity is a huge piece here. But at the same time, I don't believe that this bill actually is trying to impose that. It is actually making it so that it is up to the courts. So I wanted to clarify that for -- for folks who are asking these questions. Thank you.

ACTING SPEAKER AUBRY: Thank you, Ms. Niou.

Mr. Epstein.

MR. EPSTEIN: Will the sponsor yield for a few questions?

ACTING SPEAKER AUBRY: Mr. Kim --

MR. KIM: Sure.

ACTING SPEAKER AUBRY: -- will you yield?

MR. KIM: Yes.

MR. EPSTEIN: Mr. Kim, who do you think this bill is going to protect if we pass this and it's signed by the Governor?

MR. KIM: It will protect the families and the residents of nursing homes who, by the way, as you know, have a higher standard of rights than even hospital patients because we have passed laws at the Federal and State level to give them a bill of rights that we failed to provide during this pandemic.

MR. EPSTEIN: Do you think in any way that nurses or other health practitioners are going to be worse off because of

passing this bill, or do you think that their -- their immunity remains mostly the same?

MR. KIM: I -- I -- it will remain the same. I think it will actually protect them even further by holding their employers and the companies behind these facilities accountable.

MR. EPSTEIN: Thank you.

Mr. Speaker, on the bill.

ACTING SPEAKER AUBRY: On the bill, Mr. Epstein.

MR. EPSTEIN: Thank you. I -- I just want to applaud the sponsor of this bill. This is a -- we have to acknowledge back in, you know, the crisis that we were having a year ago that we made some rash decisions. And I think this was one of them where we gave immunity where it wasn't warranted. And -- and Assemblymembers, you know, and the sponsor of this bill and other members had hearings and focused on the crisis and we realize now that the immunity was over -- was an overreaction. The question we have to answer is what is our job and who are we to protect? We are to protect the most vulnerable New Yorkers. Reversing this immunity allows us to protect those New Yorkers who need our support. They need our help. There are families that are grieving. They've lost their loved ones. People could have been injured and they would have no recourse in the courts. This gives an opportunity to bring their case, get a lawyer and eventually have recourse. It is what our legal system allows to do, it is what's fair and right.

I applaud the sponsor, I encourage all my colleagues to support this bill. Thank you, Mr. Speaker.

ACTING SPEAKER AUBRY: Thank you.

Read the last section.

THE CLERK: This act shall take effect immediately.

(Pause)

ACTING SPEAKER AUBRY: The Clerk will record the vote on Assembly print A-3397. This is a fast roll call. Any member who wishes to be recorded in the negative is reminded to contact the Majority or Minority Leader at the numbers previously provided.

(The Clerk recorded the vote.)

Mr. Abinanti to explain his vote.

MR. ABINANTI: Thank you, Mr. Speaker. This legislation repeals Public Health Law Article 30-d which was inserted into the 2020 budget at the last minute at the Governor's instance to provide extraordinary protection to healthcare facilities from the usual liability for dangerous neglectful actions. The mantra of the medical profession is, *Do no harm*. In New York State, that mantra is -- is protected and enforced through government action and through individual action. Government action does not protect the individuals or provide a remedy in most cases. Where an individual is injured, the individual must rely on the tort system to enforce the standards with respect to medical care. We hope that even in the pandemic the rule of do no harm is -- is followed. But lapses occur. By pausing the tort

system, we perverted the entire system in the State of New York. Today we correct that error which was inserted into the budget at the last minute by the Governor of the State of New York. Most of us did not know that that language was being inserted into the budget, and certainly would not have approved it in the broad blanket fashion which it was inserted into the budget. I find it curious that the Governor had issued protections for individuals, but when it came to something broader, much more controversial, it was inserted into something that we would all vote for.

So I commend the sponsor, and I believe that it is long time past for this legislation to be approved. We need to reassert the tort system in the State of New York that took years and years to develop. And it should be up to the courts to determine when a defendant did the right thing, or was a bad actor and injured one of the citizens of the State of New York. So I vote in the affirmative.

ACTING SPEAKER AUBRY: Mr. Abinanti in the affirmative.

Mr. Byrne to explain his vote.

(Pause)

Mr. Byrne, you're unmuted now?

MR. BYRNE: Yes.

ACTING SPEAKER AUBRY: Go ahead.

MR. BYRNE: Thank you, Mr. Speaker. I want to again thank the sponsor for taking the time to answer our many questions. And I know the point was raised about the Child Victims

Act and a lot of our concerns about retrospectively this being applied. The Child Victims Act from a couple of years ago - I had to look it up on the computer - it's over five pages long and really is more tied to the statute of limitations and the ability to file a claim. I don't believe it really opens up that liability. And I looked at the bill from the sponsor. It was mentioned by my colleague Mr. McDonald, this is really a simple bill. Section 1, Article 3-d of the Public Health Law is repealed. Period. That's it. And it says this act shall take effect immediately. So I think it is very different than the Child Victims Act. I'm not -- and we've -- we've heard from our colleagues, the Health Chairman and I've spoken with some legal counsel for our Conference. It is my belief that this is being applied prospectively. I do believe we are in a different time and place than we were last spring. I would like to see the state of emergency be lifted so we can get to some semblance of normalcy. I know that there's still dangers and we want to be as safe and responsible as possible, but it is with the belief and understanding that this bill is being applied prospectively, not retrospectively, that I will be voting in the affirmative.

Thank you, Mr. Speaker.

ACTING SPEAKER AUBRY: Certainly. Mr. Byrne in the affirmative.

Ms. Gallagher.

MS. GALLAGHER: I want to thank the Speaker and the sponsor for the -- having the courage to bring this bill forward. I

believe this bill is an appropriate response to the Attorney General's report on nursing home deaths this past year. And I hope that from this great tragedy we can take the lesson that corporate shields designed to protect executives and stakeholders often protect them over frontline workers and patients. It creates disaster. When we prioritize corporations our constituents lose. Let's be clear that this is the end of an era. Corporations need to be held accountable and information must be public and transparent. Healthcare is a human right and we must prioritize the vulnerable. It is our most precious responsibility as legislators.

And with that, I am proud to vote in the affirmative.

Thank you.

ACTING SPEAKER AUBRY: Ms. Gallagher in the affirmative.

Ms. Byrnes.

MS. BYRNES: Thank you, Mr. Speaker. If I could be heard on my vote.

ACTING SPEAKER AUBRY: Please explain your vote.

MS. BYRNES: Thank you, sir. You know, I vehemently disagreed with the original -- with the original act, but now, for better or worse, for a year we've been operating under it. I enthusiastically voted in favor of this bill in Committee after there was discussion in Committee about whether or not it would or wouldn't be given retroactive effect. You know, I know that there are a lot of bad

actors out there who deserve to be held accountable, but there are also good actors, people who operated in good faith who looked at the statutes and did their best. And I'm greatly concerned about litigation stemming out of this after for a year people operated in good faith. I know the importance of legislative intent, and I know people have said a lot of things here indicating they're in favor it not being retroactive. But the sponsor's position carries tremendous weight if -- when it does come to court. And I'm actually really upset that now I feel compelled to vote no. Not because I don't like the bill, but only because I don't like the possibility it could be retroactive and hurt good people who did their best in terrible times.

Thank you, sir. I will be voting no.

ACTING SPEAKER AUBRY: Ms. Byrnes in the negative.

Ms. Niou.

MS. NIOU: Thank you, Mr. Speaker. I just wanted to commend the sponsor on his bill. I believe that this bill has the right intent and it also makes it so that, you know, we are protecting New Yorkers in the best way that we can now that they had basically no protection in a period of time. And I -- as I see it, there is not going to be the kinds of harms done that were presented by other speakers saying that it's possible that there can be harms to our frontline workers. We all know, and the Speaker and our sponsor has clarified that there has no retroactive effect on any of our frontline workers because that is under an Executive Order that is different

from the liability provision that was given in our budget.

So I just wanted to say thank you again to our amazing sponsor of the bill and that I am voting very much in favor of this piece of legislation. Thank you.

ACTING SPEAKER AUBRY: Ms. Niou in the affirmative.

Ms. Fahy to explain her vote.

MS. FAHY: Thank you. Thank you, Mr. -- let's see if I'm on.

ACTING SPEAKER AUBRY: You're on.

MS. FAHY: I think I'm on. Okay. Thank you.

Thank you, Mr. Speaker and thank you for this opportunity to speak. Thank you to the sponsor for all of your work on this. I just want to be clear, as some of my colleagues spoke earlier, this has been a very long and difficult year. I have many nursing homes in my district, and last year I'm one of those that reached out to the AG because I didn't -- I was getting concerned about not getting appropriate answers and trying to sort through. I also reached out to a number of my nursing homes to see what I could do. And I have to say one of the best stories I heard from one of them is how creative they were in their time of absolute desperation to get PPE. And they reached out to the Dental Association, knowing dentists were closed down and they were able to get PPE to help protect people in their nursing homes. So for my colleagues that have repeatedly said there were many good actors last year, many actors who in nursing homes that went through

extraordinary efforts and great expense to keep their residents, to keep their staff safe. There were bad actors. Absolutely, there were bad actors. And we all know those horror stories. So I just want to be on the record as well that I think that this is important. My understanding as well is that this was not retroactive, it was prospective. And I also want to be on the record because we -- we still have a lot to sort out. And along with some of the previous debates earlier today, we are still sorting through what is -- what went wrong and how we can improve matters. The AG report that we received a month or so ago is, by her own words were that was a preliminary report or a blueprint, if you will. Today we're seeing more reports and more analysis that is shedding more light on -- on the for-profit and not-for-profit homes. So let's just try to be fair here and recognize that there was good and bad. And again, I just want to be on the record saying that my understanding is that this is prospective.

Thank you, again, to the -- to the sponsor and the Speaker and for all those who have weighed in here. With that, I stand in the affirmative.

ACTING SPEAKER AUBRY: Ms. Fahy in the affirmative.

Ms. Kelles.

MS. KELLES: Thank you, Speaker. I -- I'd like to explain my vote. This -- this discussion is in the context of the end of thousands of deaths and I think it's really important that we -- we always keep that in mind, as many have here today, that ended in -- in

states of sadness, isolation and now we understand, misinformation. The most important consideration in my eyes for my affirmative vote is that with information and accountability we may have made different decisions with different outcomes. The -- the sponsor has -- has clarified that, and I think that it's important for us to remember that, and for that I think it's very, very important to support this. More -- also important, rights were not modulated to protect public health. They were removed entirely from patients and nursing home residents and healthcare workers to protect businesses.

So, I want to thank the sponsor for not only his diligence in doing the research, being well-informed, keeping us all well-informed, but also standing up to public criticism, abuse and ridicule and standing strong to bring this forward. I want to thank the Speaker for bringing this bill to the floor. And I also, as a new legislator, I want to thank this entire Body. This is inspiring. This is why I ran. This is why I'm here, to see that we stand strong when there are issues that need to be addressed, there are issues that need to be improved, there are problems that need to be solved no matter how hard, no matter how uncomfortable, no matter how difficult, that this Body stands up, faces it and -- and addresses it and create solutions.

So, thank you to all of you for the inspiration. I stand in the affirmative.

ACTING SPEAKER AUBRY: Ms. Kelles in the affirmative.

Mr. Anderson.

MR. ANDERSON: Thank you, Mr. Speaker. I rise to explain my vote.

ACTING SPEAKER AUBRY: Proceed.

MR. ANDERSON: Thank you. I -- I want to thank the sponsor, Mr. Kim, who has been a steadfast leader in the Assembly on this issue for months. Even when it put his self and his body and life on the line and at risk. I -- I want to thank you for your bold leadership and advocacy and demanding transparency and justice in what is still a painful time for so many. And like you said in your writings, the corporate legal immunity would have never passed as a standalone bill, and it's unjust that the Executive has added this provision into the annual budget knowing that the Legislative Body would not be able to vote against it, and now this has led to increased suffering during the pandemic. And while I wasn't in this Body last year, more transparency on this would have been much better for legislators during last year's budget, and we hope that this legislation would create that additional transparency for nursing homes and healthcare facilities. My constituents have contacted my office with deep concerns about this -- the actions of healthcare systems in the past few months. And this is very personal for so many people who are struggling to understand where to go or not sure where to turn. We have to ensure that the motives of lobbyists and special interests don't interfere with the truth of the tragedies that happened here at these nursing homes. We can no longer predicate our healthcare decisions on the dollar and not on the real human lives that are

impacted by the decisions we make in healthcare. And we see that's what happened during this nursing home debacle. This is what's happening in my district with the reduction of hospital beds by private consultants who are working with the State Department of Health to do this. For-profit medical institutions and blanket immunity equals pain and suffering for our community.

So, I strongly, strongly support this bill and the sponsor and I will be voting in the affirmative, Mr. Speaker.

ACTING SPEAKER AUBRY: Mr. Anderson in the affirmative.

Mr. Lawler.

MR. LAWLER: Thank you, Mr. Speaker. There's been a lot of talk about good actors and bad actors, and yes, there are both. But let's be clear that in this episode the worst actor of all was the Governor. And he even earned an Emmy for it. And if we want to bring justice to these families, then we should even consider revoking qualified immunity for the Governor and his Administration for their handling of this episode. They issued an order on March 25th that sent COVID-positive patients into nursing homes. And on April 3rd they inserted immunity for those very nursing homes. Why? Why would you do that? Let's connect the dots. It's very simple: They knew people would die. And that's why they inserted immunity for those nursing homes. The Orders by the Governor have created a lot of problems for these facilities. And even yesterday we had to pass legislation so that we can get the families and the caregivers back into

the nursing homes to visit their loved ones. To be their advocates, to fight for them. This entire year has been a disaster from start to finish. That's why we're dealing with these bills here today.

On the issue of retroactive versus moving forward, the bill doesn't speak to it. There is no retroactive revocation of immunity. We're simply voting to expire today something that would have expired at the end of this -- at the end of this crisis. So, just so we're very clear, on the issue of intent this is going forward. That is what the bill does. It does not speak to retroactively revoking it. Unfortunately, because of the disastrous decisions of this Governor, you know, we are in this situation and that's what we should be focused on.

I vote in the affirmative and I thank the sponsor for putting this legislation forward.

ACTING SPEAKER AUBRY: Mr. Lawler in the affirmative.

Mr. Gottfried to explain his vote.

MR. GOTTFRIED: Thank you, Mr. Speaker. Also on the question of retroactivity. It is highly unusual for a law to be applied retroactively. When the Legislature wants a law to be -- to have retroactive effect, we know how to do that. We put in special language that makes it crystal clear like, this act shall take effect immediately and shall be deemed to have been in full force and effect since whenever. There's none of that language here. So we don't have to worry about this being applied retroactively. By the way, if it was

retroactive, what that would mean is, you know, is there a doctor out there or a nursing home or a hospital administrator who says, *Oh my goodness, I thought it was okay for me to be careless. Now you're telling me I -- I was wrong to be careless?* So I don't know that I have a lot sympathy for somebody if we were trying to make this retroactive. But we're not. So, I don't think that's an issue. This is a very important bill to restore justice to a lot of injured people. It's 100 percent in the traditions of our rules of -- of liability built up over hundreds of years in -- in this country and -- and before. We should get this bill done.

Thanks. I vote in the affirmative.

ACTING SPEAKER AUBRY: Mr. Gottfried in the affirmative.

Mr. Eichenstein to explain his vote.

MR. EICHENSTEIN: Thank you, Mr. Speaker. I came to the floor with every intent to support this important piece of legislation. But I'll be honest, during the debate, listening in to the debate I -- I grew a bit concerned. But with my previous colleague, our Health Chair, clarifying that this legislation is not retroactive and should -- should the intent be to be retroactive, there is clear language for that.

I support this legislation and I vote in the affirmative.

Thank you.

ACTING SPEAKER AUBRY: Mr. Eichenstein in the affirmative.

Mr. Burdick.

MR. BURDICK: Thank you, Mr. Speaker. And I wish to thank the sponsor. And as the previous -- previous speaker had said, one of my colleagues and some of the new members, the action that we're about to take truly is a testament to our ability to act in a unified manner, to recognize the critical problem with existing law and to fix it. And to fix it by removing the immunity provision. I have to say that I especially appreciated the fact that we did have this dialogue regarding what the intent is. And I, too, want to thank Chair Gottfried for his explanation that for the law to be retroactive, the Legislature would have explicitly stated that it's retroactive. There's no such language that exists in this legislation. It is the clear intent of this Body that it be prospective. I am thoroughly satisfied that that would be how it will be treated. And I am very grateful to the sponsor for bringing forward this extremely important legislation to restore rights of people who are receiving healthcare, but without eliminating the ability of those who provide that healthcare to be able to do so without fear that there could be responsible actions will be subject to any kind of undue liability.

So, again, my thanks to the sponsor and also to the Speaker for bringing forward these very important reforms in nursing home practices. So, I will be supporting very proudly this legislation. Thank you, Mr. Speaker.

ACTING SPEAKER AUBRY: Mr. Burdick in the affirmative. Thank you.

Ms. Griffin.

MS. GRIFFIN: Thank you, Mr. Speaker, for allowing me to explain my vote. I commend the Chair of the Aging Committee for introducing this important legislation and for all of his hard work. It is paramount to ensure that going forward nursing homes and healthcare facilities are held accountable for negligence, and now they will be. I am proud to cosponsor this bill with the understanding that it is prospective. Throughout the pandemic I reached out to lend support to local facilities. Many nursing home operators in AD 21 as well as others out of district took proactive steps, actions and made investments to mitigate risk, and as a result their facilities experienced much less fatalities and hardship. I don't believe nursing home operators that ran facilities as efficiently, safely and compassionately as they could at an extremely challenging time should be held accountable retroactively.

I thank the Chair of the Health Committee and our Speaker for all of the hard work on all of these initiatives, and I am proud to vote in the affirmative. Thank you.

ACTING SPEAKER AUBRY: Ms. Griffin in the affirmative.

Are there any other votes? Announce the results.

(The Clerk announced the results.)

The bill is passed.

THE CLERK: Assembly Bill No. A03919, Rules Report No. 24, Hevesi, Gottfried, Weinstein, Barron, Meeks, Bronson,

Dinowitz, González-Rojas, Anderson, Steck, Fall, Epstein, Otis, Sayegh, Stirpe, Woerner, Stern, Sillitti, Simon, Glick, Vanel, Lunsford, Cahill, L. Rosenthal, Pichardo, Richardson, Zebrowski, Thiele, Williams, Bichotte Hermelyn, Abbate, Carroll, Lupardo, Abinanti, Gallagher, Forrest, Cruz, Nolan, Clark, Jackson. An act to amend the Public Health Law, in relation to establishing requirements for the transfer, discharge and voluntary discharge from residential healthcare facilities.

ACTING SPEAKER AUBRY: On a motion by Mr. Hevesi, the Senate bill is before the House. The Senate bill is advanced.

Mr. Goodell.

MR. GOODELL: Would the sponsor yield for questions?

ACTING SPEAKER AUBRY: Mr. Hevesi?

MR. HEVESI: I would be happy to. It seems like Mr. Goodell doesn't want to hear my great explanation, but --

ACTING SPEAKER AUBRY: Mr. Hevesi yields, Mr. Goodell.

MR. GOODELL: I -- I appreciate that, Mr. Hevesi, and I'm -- I'm looking forward to your explanation to my questions, which I'm sure will cover the same ground.

MR. HEVESI: Sounds good.

MR. GOODELL: So, this bill would provide that no residential healthcare facility will transfer or discharge a resident, and

then there's a list of four exceptions: It's necessary for the resident's health; it's necessary for the other residents' health that perhaps the person being discharged is dangerous to others; the facility goes out of operation; or the resident fails to pay. But then on -- on page 2 on line 20 to 25, which is subparagraph (f) it says they can transfer a patient if the resident no longer needs their services. So there's -- am I correct that you have to read all the way to paragraph (f) and there's actually five grounds upon which you can transfer or discharge patients?

MR. HEVESI: Andy, that's a really good question. Can you give me the line again so I could clarify?

MR. GOODELL: It's -- it's on page 2, lines 20 through 22. It's subparagraph (f).

MR. HEVESI: The answer to that question is yes, Andy. You know, you're right. It's -- yes, those are the five circumstances in which we would allow patients to be transferred. But I want to be clear - and I didn't get this from your question - not to a homeless shelter. Because this is -- and Andy, let me give you two seconds of -- of the impetus of this bill. I think it'll be -- it'll clarify where we are. The reason why we're doing this bill is because we have seen nursing homes discharging patients to homeless shelters which are not equipped to handle their needs. Not equipped to provide medication management, nursing help, doctors. So in no circumstances you should be sending a nursing home patient to a homeless shelter, and definitely not during COVID, which we've seen a spike in the number of patients being transferred that way because

the statistics have shown us that if you are a patient -- I'm sorry, not a patient, if you were a resident of a congregate care homeless shelter during COVID you're twice as likely to die. So the fact that nursing homes were essentially wiping their hands of -- of these patients and sending them to a place where they can't be cared for, that's what we're going after here. It's a good question about the four circumstances that we put requirements on for discharge or voluntary discharge or transfer. But, yeah, it looks like there's five. I think you're right.

MR. GOODELL: Thank you for that clarification. And I see subparagraph (c) requires a 30-day notice before there's a transfer or discharge. But then there's a number of exceptions. The first exception would be if you're transferring the patient because of their health needs. The second is you're transferring the patient because of the health needs of others. There's a third exception, if I'm not mistaken, if the facility can't provide the necessary services. So my question then is, does the 30-day notice also apply to subparagraph (f) where the patient no longer needs the service?

MR. HEVESI: No, I don't believe so.

MR. GOODELL: Okay. Now, the 30-day notice is required to be sent to at least four entities: The resident, of course - I certainly appreciate that. You want to let them know they -- they're being discharged; the resident's lawful representative, if any; third is a family member of the resident, if known; and four, the Long-Term Care Ombudsmen.

MR. HEVESI: Yes.

MR. GOODELL: Is this the Long-Term Care Ombudsman that we hope to create in subsequent legislation coming up later on our Calendar?

MR. HEVESI: We hope so. Yes, sir.

MR. GOODELL: Okay. Nothing like prospective legislation, right, Mr. Hevesi?

MR. HEVESI: Well, you've got to hand it to the Assembly Democratic Majority. We are so in sync that I can pass bills knowing what's about to come. Isn't that amazing?

MR. GOODELL: It is always amazing. Thank you, Mr. Hevesi, for those explanations.

MR. HEVESI: Thank you, sir.

ACTING SPEAKER J.D. RIVERA: Thank you.
Mr. Gottfried.

MR. GOTTFRIED: Yes, thank you, Mr. Speaker. Just to clarify, the Long-Term Care Ombudsman does exist, has existed. It's a valuable program that's been in law and in practice for many, many years. The bill we're going to be taking up doesn't create it, it strengthens it and expands it.

Thanks.

ACTING SPEAKER J.D. RIVERA: Thank you, Mr. Gottfried.

Read the last section.

THE CLERK: This act shall take effect immediately.

ACTING SPEAKER J.D. RIVERA: Thank you.

The Clerk will record the vote on Rules Report 24. This is a fast call -- a fast roll call. Any member who wishes to be recorded in the negative is reminded to contact the Majority or Minority Leader at the numbers previously provided.

(The Clerk recorded the vote.)

Are there any other votes? Announce the results.

(The Clerk announced the results.)

The bill is passed.

THE CLERK: Assembly Bill No. A05436-A, Rules Report No. 26, Clark, Gottfried, Weinstein, Kim, Lunsford, Burdick, Fahy, Wallace Simon, Zinerman, Griffin, González-Rojas, Magnarelli, Galef, Thiele, McDonald, Otis, Meeks, Bronson, Rozic, Cusick, Steck, Colton, Barrett, Barron, Cruz, Anderson, Sayegh, Stirpe, Woerner, Stern, Glick, Vanel, Cahill, L. Rosenthal, Pichardo, Richardson, Zebrowski, Williams, Bichotte Hermelyn, Dinowitz, J.D. Rivera, Abbate, Sillitti, Buttenschon, Carroll, Lupardo, McMahon, Abinanti, Gallagher, Fall, Jacobson, Nolan. An act to amend the Elder Law, in relation to directing the Office of the State Long-Term Care Ombudsman to advertise and promote the Long-Term Care Ombudsman program (Part A); to amend the Elder Law, in relation to directing the Director of the State Office for the Aging, in consultation with the State Long-Term Care Ombudsman and the commissioners of the departments responsible for the license or certification of long-term care facilities, to establish policies and procedures for

reporting, by staff and volunteers of the Long-Term Care Ombudsman program, issues concerning the health, safety and welfare of residents at long-term care facilities (Part B); and to amend the Public Health Law, in relation to including access to State Long-Term Care Ombudsman program staff and volunteers within the pandemic emergency plan prepared by residential health care facilities (Part C).

ACTING SPEAKER J.D. RIVERA: Read the last section.

THE CLERK: This act shall take effect immediately.

ACTING SPEAKER J.D. RIVERA: The Clerk will record the vote on Rules Report 26. This is a fast roll call. Any member who wishes to be recorded in the negative is reminded to contact the Majority or Minority Leader at the numbers previously provided.

(The Clerk recorded the vote.)

Ms. Clark to explain her vote.

MS. CLARK: Excuse me for -- I meant to -- we want to explain the bill, but here I am explaining my vote for the bill. You know, near -- as mentioned by our colleague previously, the New York State's Long-Term Care Ombudsman program was established more than four decades ago as part of the federal Older Americans Act. Its primary purpose is to advocate for residents by investigating and resolving complaints made by, on, or behalf of residents; promoting the development of resident and family councils; and informing government agencies, providers and the general public

about issues and concerns impacting residents of long-term care facilities. But what we have seen over the past few years and what was made worse by the COVID-19 health pandemic is that this is often not the case. There is significant evidence and testimonials from family members and ombudsmen's staff and volunteers that indicate the program is not working as well as it was intended. And given the situation we are now facing with our nursing homes and long-term care facilities, we must do more to protect our seniors and most vulnerable. This legislation will help. Through three parts this bill will do the following: Promote awareness of the program so we can recruit and expand the number of volunteers; create a strong line of communication between the program staff and volunteers and the agencies that investigate and resolve the complaints that are filed; and to ensure that ombudsmen are included in all pandemic emergency plans. We must make sure there's access to residents and their families at all times. We have an opportunity to transform care for our seniors and residents in long-term care facilities. I want to thank all the cosponsors of this legislation. The overwhelming support is a testament to how important we believe this program to be, how vital our ombudsmen are to the care of our loved ones, and the vision we all collectively have to make this an even better program than it is today.

Thank you. I vote in the affirmative.

ACTING SPEAKER AUBRY: Ms. Clark in the affirmative.

Ms. Lunsford.

MS. LUNSFORD: Thank you very much. I want to commend the sponsor of this bill for bringing forth such an essential change to this law. The intent of this law is fantastic. We need more laws like this that empower not just our community, but the people who are directly receiving care to contribute more to our understanding of how care is working in practice. As an attorney who handled many, many cases involving nursing home neglect and abuse, I can tell you how many times I received phone calls from family members whose problems were patterns of poor care. Waiting too long to get attention when someone needed the restroom. Meals not being served on time. Medication being served late. Small things which wouldn't add up to something that would justify to file legal action. And I would encourage them to use the Ombudsman program, but it didn't function like it should, and there weren't ombudsmen in their facility and they didn't have a way of communicating this information to the authorities who could make a real difference. So I am super excited to support this bill, to cosponsor this bill and to vote for it today to make sure that our residents, our families and our community have a real say in how our nursing homes are run.

So thank you again to the sponsor and I vote in the affirmative.

ACTING SPEAKER AUBRY: Ms. Lunsford in the affirmative.

Ms. Wallace.

MS. WALLACE: Thank you, Mr. Speaker. I'd like to thank the sponsor for putting forth this legislation. This is a great piece of legislation. It's an incredible program, and we need to strengthen the Ombudsman program. Essentially, the ombudsmen act as an additional set of eyes and ears and help residents address any issues that they're experiencing, and really can -- can sort of act as though of somewhat of a whistleblower if they see things that are problematic. So I want to thank the sponsor. I also want to say that for quite a while I've been advocating -- I know the sponsor also has asked to increase the funding to the Ombudsman program to make sure that we match our legislative intent with action. So I would like to encourage everyone as we move toward the budget process to keep in mind the need for this legislation and the need to fund this program at a level that is comparable to other states who have similar programs.

So, thank you very much, and I vote in the affirmative.

ACTING SPEAKER AUBRY: Ms. Wallace in the affirmative.

Mr. Meeks.

MR. MEEKS: Thank you, Mr. Speaker. I rise in the affirmative in support of the Ombudsman program. It's a great program. As a labor organizer I would often take it upon myself to meet with the ombudsmen and get their feedback on issues pertaining to the facilities in which I represented. So I think we need to continue

to strengthen this program and expand it, and I am in support of resources to support this program as well.

Thank you.

ACTING SPEAKER AUBRY: Mr. Meeks in the affirmative.

Are there any other votes? Announce the results.

(The Clerk announced the results.)

The bill is passed.

And Ms. Clark, congratulations are due to you for your first bill passed on the floor of the Assembly.

(Applause)

Tradition has it, Ms. Clark, that it never gets any better than this. Everything else is downhill. So congratulations.

The Clerk will read.

THE CLERK: Assembly Bill No. A05842, Rules Report No. 28, Gottfried, Weinstein, Steck, Bronson, Simon, Barron, Abinanti, Cook, Anderson, Epstein, Otis, Stirpe, Woerner, Dinowitz, Glick, Vanel, Lunsford, Cahill, L. Rosenthal, Pichardo, Richardson, Zebrowski, Thiele, Williams, Bichotte Hermelyn, Carroll, Gallagher, Aubry, Forrest, Nolan, Clark, Colton, Jackson. An act to amend the Public Health Law, in relation to the establishment, incorporation, construction or increase in capacity of for-profit nursing homes.

ACTING SPEAKER AUBRY: An explanation is requested, Mr. Gottfried.

MR. GOTTFRIED: Yes, Mr. Speaker. And if -- if I

may just correct you a little bit, I first -- I passed my first bill an awfully long time ago, and it's not all downhill from there.

(Laughter)

So, what this bill says is that going forward we would not be licensing any new for-profit nursing homes in New York, nor would we be increasing the resident capacity of any nursing -- for-profit nursing home in New York. The second subdivision of the bill basically says that if you've got an existing for-profit nursing home, this law wouldn't bar you from dropping a shareholder, picking up a new shareholder, et cetera. We needed to say that because those transactions are done in the same section of the law as creating a new for-profit nursing home or expanding it. The core of the bill, though, is no more new for-profit nursing homes, no expansion of their capacity.

ACTING SPEAKER AUBRY: Mr. Byrne.

MR. BYRNE: Thank you, Mr. Speaker. And I thank the Chairman for that explanation. Will Chairman Gottfried yield for some questions?

ACTING SPEAKER AUBRY: Will you yield, Mr. Gottfried?

MR. GOTTFRIED: Yes, indeed.

MR. BYRNE: Thank you, Mr. Gottfried. We discussed this bill in Committee as well. And I'd like to start with a series of questions. Do we know precisely how many violations or closures enforced by the DOH may have occurred for the for-profit

nursing homes compared to the non-profit nursing homes in our State?

MR. GOTTFRIED: I don't have that data. I'm quite certain it exists. It's -- one problem with that data is that of course it's dependent on whether our nursing home inspectors are doing their job properly and are inspecting for-profit nursing homes as diligently as they're inspecting the not-for-profits and that they're inspecting either category effectively. And I think we know from experience that that's not true. What we do know is that if you look at statistics on patient deaths and, you know, bad quality indicators like bedsores and the like, that data shows - both in New York and around the country - that for-profit facilities provide much poorer quality care with much more frequent bad outcomes than not-for-profits.

MR. BYRNE: So I -- I understand your point about the -- the inspectors, and my understanding is that they do regulate all these facilities. Obviously, the -- the private, the for-profit and the public nursing homes. So, I'd just like -- that if -- if we're going to talk about the inspections and the regulation from the State, I think that is an important conversation and discussion to have and I'm sure there's probably other proposals we'll ultimately debate and discuss in this Chamber. But that doesn't necessarily split apart the -- the different sectors, public or private nursing homes. They're all regulated by the State of New York. You -- you referenced the -- the -- I believe in the sponsor's memo you referenced the AG's report. Is that the same AG's report that revealed the underreporting of COVID-19 fatalities, residents, nursing home residents?

MR. GOTTFRIED: Yes.

MR. BYRNE: It is. So, I bring that up because I did look at that and I think it had some interesting points about how there are -- it seems to put a significant association with performance and fatalities with for-profit nursing homes versus the non-profits. I bring that up - and you may not have been able to see this - but like in the course of this Session today, the Empire Center released a report based on the updated data that was missing when the AG's report was put out. Because at that time, as you are fully aware, it was not available publicly, at least. And it seems that the -- the information, at least on -- there's points about, obviously, staffing ratios but also fatalities that it is more proportionate to what the actual breakdown of for-profit nursing homes is compared to the non-profit sector. Have you been able to look at that report? I -- I wouldn't begrudge you if you haven't because I only learned about it this -- this morning. But I'd still like to ask the question, have you been able to look at that data yet?

MR. GOTTFRIED: Well, I've -- I've glanced at it. And as I said earlier today, there are many things on which I disagree with the Empire Center. And the -- the judgment about the low quality of -- on average of for-profit nursing homes is not restricted to data on how many of their residents were transferred to hospitals and died there in the last year. This has been an issue for years and years before that. I don't know whether not-for-profit nursing homes for some reason had more of their residents transferred to a hospital and

died there. Or if that was the case, why that might have been. But it is clear based on numerous analyses over the years, most recently the National Bureau of Economic Research - a very reputable and -- and middle-of-the-road entity - put out a -- a scathing report that made very clear that for-profit nursing homes have higher levels of patient death, have more serious negative quality indicators and -- and by the way, cost more. So, this is not something just related to the -- the recent COVID death experience, it is a longtime phenomenon.

MR. BYRNE: Yeah, I understand that. I -- I bring that up because it is obviously a very recent report and it was -- the AG's report was something that was sourced in the sponsor's memo. Would you at least -- would you acknowledge, too, that there is for-profit nursing homes that have very good records, that don't have violations and that have high star ratings, CNS star ratings. Would -- would you acknowledge that as well? That there are --

MR. GOTTFRIED: As far as I know there are some -- some good ones. And if your next question is are there some not-for-profit nursing homes that are not very good, I'm sure that's true, too. On the whole, though, there is a -- a -- a very clear difference in performance between the two groups. And, you know, until a few years ago two-thirds of our nursing homes in New York were not-for-profit. Now it's flipped. And I would say the main reason it has flipped is not for any good reason, but simply for the fact that the for-profit folks have figured out that there are ways to take a lot of nursing home revenue and put it in their pockets instead of

putting it into patient care.

MR. BYRNE: Well, minus the -- the latter part of your response, Mr. Chairman, the -- you did read my mind, that was going to be my next question about non-profits because I think there is -- obviously it depends on the provider and the facility. And again, these are all State-regulated facilities. I do want to knowledge also, this was a topic we brought up in Committee, that we do have a growing aging population, and from my perspective, so long as our -- our aging population continues to stay in New York - because we do have a separate problem with many of these people retiring and leaving the State of New York for other unrelated reasons - those that do stay here, we have increased demand for services. It's not solely nursing home-related. We talked about this in Committee. Some of it's home care-related, some of it's community services for the elderly with county governments. But nursing homes is going to be an increased need so long as we have a growing aging population in this State. And we need to make sure that we at least have the capacity to meet those needs. So, my -- my concern here is, with essentially putting a moratorium or banning the expansion or development of any new for-profit nursing homes, we're going to -- going to be limiting the ability for the private sector to invest and actually expand that capacity to meet the growing need here in New York State. As it -- as it is right now, do you believe we have the capacity available to meet that need minus the private sector?

MR. GOTTFRIED: Well, we're not -- we're not

suggesting that the private -- that the for-profit nursing homes are going to disappear tomorrow or be shut down. Yes, I believe we have adequate capacity today. The adequacy of our capacity would also depend on the extent to which we protect and support and enhance home care so that people can do what most people want to do, which is be cared for in their home rather than being institutionalized. But, you know, people were creating nursing homes under not-for-profit or ownership forever. We're not -- we don't have to be dependent on for-profit providers in order to have nursing homes. We have a lot of hospitals in New York and a lot of them expand their capacity. None of them is for-profit. So, lots of parts of our -- of our healthcare system do very well, thank you, relying on -- on not-for-profit providers. We used to do that with nursing homes. We should be getting back to doing that.

MR. BYRNE: Thank you, Chairman.

On the bill, Mr. Speaker.

ACTING SPEAKER AUBRY: On the bill, sir.

MR. BYRNE: I want to thank the Chairman for taking the time to answer my questions in Committee and on the floor this afternoon. I do have a different take on this. We should be encouraging private investment to expand access to care for -- for all New Yorkers, particularly our -- our elderly. I think this is going to limit their ability to invest. It's not just about new facilities, but expanding existing facilities to increase capacity. We're going to be limiting that by essentially prohibiting any new facilities from being

here in New York State. I -- I understand the sponsor's point about hospitals being non-profits, but as -- as many members, and perhaps the Chair himself would -- would acknowledge in -- in previous debates, those non-profits do have very significant marketing budgets. Some of these -- those at these hospitals have very generous salaries. And the public sector and the non-profit sector are not without their own problems. And I know this anecdotally from various facilities that are publically run in my district and just outside of my district, including nursing homes. And I understand that, again, we talked about this before, there's bad actors, there's good actors. There's those that over-perform and those that under-perform. And we do regulate all these facilities of the State of New York, and if we can do better with those regulations we can certainly have those conversations and those discussions and debate on how to do that. But by eliminating the growth of this one sector, I really do believe we're limiting that private investment to expand access to care. I -- I understand the intentions. And some of my colleagues may look at the for-profit sector sometimes as the boogeyman, right? If we want to look at someone that's, *Well, they're putting profit over patients.* You know what? I -- I -- I don't think anyone goes into healthcare with that intention. I personally worked for a private for-profit medical group. It's filled with amazing workers from the healthcare industry, and I think that most folks that go into the for-profit sector, particularly in healthcare, they're doing it with the best of intentions. I'm not saying anyone is questioning those intentions, but I -- I think that limiting

their participation in nursing homes isn't the -- the right answer for some of the challenges we face.

Again, I want to thank the sponsor for his time and answering my questions, and I will be encouraging a no vote on this particular bill.

ACTING SPEAKER AUBRY: Thank you, sir.

Mr. Ra.

MR. RA: Thank you, Mr. Speaker. Will the sponsor yield?

ACTING SPEAKER AUBRY: Mr. Gottfried, will you yield?

MR. GOTTFRIED: Yes.

ACTING SPEAKER AUBRY: Mr. Gottfried yields.

MR. RA: Thank you. Just a -- a few questions. I mean, it's -- it's a fairly simple bill, but number one, when a -- if a facility has already had something in the pipeline that's already gone through approval, you know, an expansion, are -- are they able to still continue with that?

MR. GOTTFRIED: As long as they have their -- their approvals, this would not take their approvals away. That's correct.

MR. RA: Okay. Now, what if they have, you know, an approval that's been submitted that they're waiting for action on?

MR. GOTTFRIED: If there is a -- like an application for establishing a nursing home that is pending?

MR. RA: Yes.

MR. GOTTFRIED: If this bill becomes -- from the day this bill becomes law, those things would not be approved.

MR. RA: Okay. And --

MR. GOTTFRIED: Correct.

MR. RA: And that would be the same for an existing for-profit nursing home that maybe has a -- has an application in to expand?

MR. GOTTFRIED: Correct. If it has not been approved yet, once this bill becomes law it would not be approved.

MR. RA: Okay. Thank you. And my other question then would be, you know, if a -- under existing law, if a for-profit nursing home were to put in an application for an expansion or maybe an operator who has one already to, you know, to make a --a new facility, does the Department consider, you know, their CMS ratings when determining whether to -- to grant that?

MR. GOTTFRIED: That may be considered to some extent. Although what we know they generally ignore is that if -- if -- if an -- if an applicant owns a half a dozen nursing homes around the State and is trying to open a new one and has a terrible record in their existing ones, that's not going to prevent them from getting a new license to inflict their services on more people. We do have a bill that we will be taking up, I expect in the near future, that would clean that up. Whether it's a -- a for-profit or a non-for-profit. But the answer to your question is so that today a bad record counts for very little in

getting further approvals.

MR. RA: Okay. So my -- my question, then, though would be like, you just mentioned that other bill and I think that's -- I think that, you know, makes sense, you know, whether it's a for-profit or a not-for-profit that we would consider the track record of -- of an operator and certainly if they have an abysmal record, they're probably not an appropriate entity to be opening a new facility, and I think that makes perfect sense from a public health standpoint and a consumer protection standpoint. But why -- why not look to something like that as opposed to this that, you know, really will equally impact a for-profit operator that has that bad track record, as it would one that has an excellent track record?

MR. GOTTFRIED: Well, part of the problem is that there are a lot of facilities that have a -- a poor history or provide poor service who don't get caught up in our -- in our system. It's quite common that our -- the State's inspectors go through a nursing home and somehow don't see a lot of the problems. And we know that because sometimes a Federal inspector from CMS goes through the same facility a few days later and spots a whole bunch of problems. So, the fact that somebody has on paper a good record from the State Health Department doesn't really tell you that you would want to send your loved ones into their hands. And so, it -- I believe it makes sense for us to conclude that for-profit ownership is a dicey proposition and we should not be increasing our reliance on that method of ownership.

MR. RA: Okay. And -- so, just lastly, and you did

speaking about this is a little bit with -- with Mr. Byrne, but just some of that information that was in the Attorney General's report in terms of mortality in for-profit nursing homes and trying to maybe extrapolate some data, and he did mention the Empire Center is out with -- with this report that's really now adding the newly-released data that I know yourself and many others fought very hard to finally get released by the Department of Health, so is -- is that part of the impetus for that, that there were problems in the for-profit nursing homes during COVID? I know you said the problem does predate that and, you know, serving on the Health Committee under your leadership for many years, I know we've passed all kinds of different bills through -- through Committee dealing with -- with nursing homes so there is, obviously, issues prior to this, but is part of your impetus to this thinking that those for-profit facilities performed poorer during the pandemic?

MR. GOTTFRIED: I think that's a -- that's really maybe just an added demonstration of the need. If we were having this discussion a year ago or a year-and-a-half ago, I would be as eager to get this bill done. I -- I think on this bill and on several bills in this area, our experience with COVID has focused a lot of people's attention and created a momentum for action, but the need for action was very definitely there long before this virus evolved.

MR. RA: Okay. Thank you, Mr. Gottfried.

Mr. Speaker, on the bill.

ACTING SPEAKER AUBRY: On the bill, sir.

MR. RA: You know -- you know, this applies certainly to this bill, but more generally to this package of bills, many of which are -- are -- are good bills that I supported and, you know, many of them I think have passed unanimously, but when we talk about this area right now, the thing that troubles me is that we're still in a situation where we didn't get accurate information and we haven't gone that extra mile to go and truly get all the information we should have before we're taking actions. Yes, you know, the sponsor is entirely right, a lot of these issues do predate the pandemic, but I think as a Legislature in enacting reforms for nursing homes and, you know, there's these bills, there's the proposals that are now part of the budget that were added by the 30 day amendments, I think we need to get a full picture of what went on so we take appropriate action. You know, something like this, I understand that we want to have, perhaps less reliance on for-profit entities versus not-for-profit, but my problem with this is you're -- we're painting with a broad brush and I understand, maybe there are problems with inspections, then let's -- let's address that and make sure that the, you know, ratings and the inspections are accurate to what's going on so that, you know, a facility can't skate when on paper they look like they're doing good, but they're really not.

You know, with regard to, you know, applications for new facilities or expansions, let's find ways of acting so that we do take a real look at their past performance before we grant -- we grant them an expansion, grant them a new facility. We can do that without

hurting the entities that are doing the right thing by their patients, are protecting their patients, are good facilities. So I think this just paints too broad a brush in that regard and -- and to have, any time you have an operator that's doing the right thing that essentially gets treated the same way as the ones that aren't, I don't think that is a fair thing and I think it has, like the previous speaker said, has -- has the likelihood that it's going to hurt the ability to have adequate facilities for the residents of this State.

So, again, as a Legislature, we need to get to the bottom of what went on in our nursing homes throughout this pandemic, and I think, you know, we have the Department of Justice inquiry, that's important, I'm happy that's going on, but we need to do something as a Legislature. We need to get the information that we need to have so that we can make appropriate changes to that system and help protect the residents of this State, not just, you know, during perhaps, you know, a future pandemic, but just on a day-to-day basis. There's a lot that we need to learn and -- and we can't learn it and can't fully act appropriately and comprehensively without those facts.

Thank you, Mr. Speaker.

ACTING SPEAKER AUBRY: Thank you, sir.

Mr. Manktelow.

MR. MANKTELOW: Thank you, Mr. Speaker.

Would the sponsor yield for a couple questions?

ACTING SPEAKER AUBRY: Mr. Gottfried, will you yield?

MR. GOTTFRIED: Yes.

ACTING SPEAKER AUBRY: The sponsor yields.

MR. MANKTELOW: Thank you, sir. Thank you -- thank you, Mr. Gottfried. Just a couple quick questions on nursing homes. Have you visited -- how many nursing homes have you visited?

MR. GOTTFRIED: I don't know, a few.

MR. MANKTELOW: A few. Have you visited non-for-profits versus profit nursing homes -- for-profit nursing homes?

MR. GOTTFRIED: I know I have visited not-for-profits, I'm not -- I don't recall whether I've been to a for-profit nursing home.

MR. MANKTELOW: Where were those nursing homes, were they Upstate, Downstate, up North, Long Island? Were they throughout New York State?

MR. GOTTFRIED: Primarily in the five boroughs, but not entirely; I've been to nursing homes on Long Island and in Upstate.

MR. MANKTELOW: Okay. Whereabouts in Upstate have you been?

MR. GOTTFRIED: I -- I don't recall the specific communities. I -- I do know when I was there I was not acting as a trained nursing home inspector and I also know that when I was there, the operators had invited me and knew I was coming.

MR. MANKTELOW: Okay. So -- so Upstate, to you, Mr. Gottfried, is that just outside of Albany, is that Rochester, Syracuse, Buffalo?

MR. GOTTFRIED: I'm -- I'm not quite sure where this question is going, but I don't remember.

MR. MANKTELOW: Okay. All right. So another question: Why -- do not-for-profit pay taxes?

MR. GOTTFRIED: Generally they do not. I gather there are some odd circumstances in which part of a piece of property might for some reason be taxed, but generally they do not pay taxes. Obviously their employees and their officers pay personal income taxes.

MR. MANKTELOW: Right. Sure, like anybody that makes money, even someone that works at a not-for-profit pays taxes. So one of my questions, we have both not-for-profits and for-profits in my district. We have some really good nursing homes, for-profit and not-for-profit, and my concern here is -- one of my concerns is if I'm a for-profit nursing home provider and we're doing a really good job for the residents of my area, no -- no big problems with the facilities, no big problems with the residents or with the families, why should I not be able to expand my operation?

MR. GOTTFRIED: Well, first of all, you say they're a good operation, I would say how do you know?

MR. MANKTELOW: Because I've been there.

MR. GOTTFRIED: Right. I mean, I'm sure they tell

you they're a good operation, but how do you know? Secondly, what you -- what you do know for sure is that a significant chunk of their revenue goes to -- goes to profit and not to patient services. So you start -- you start out with a slice off the top that's not available for patient care if it's a for-profit facility.

MR. MANKTELOW: Okay. So just before I forget my question, so if you haven't visited these facilities, I have, you're saying a good portion of the money or a part of the profits is going towards -- towards the owners and not the residents; how do you know that?

MR. GOTTFRIED: Because that's the essence of a for-profit facility. If you weren't planning -- I mean, maybe it's a for-profit facility that's headed into bankruptcy, I suppose, but if it's a well-running for -- if it's a for-profit facility that isn't heading into bankruptcy, kind of by definition a good chunk of the money that comes in is going into profit. If not, why wouldn't they operate as a not-for-profit entity and not be paying taxes as well as syphoning money off to profit? And, you know, the reality is if you look at data on what portion of facility revenue is spent on -- on resident care, you get much worse percentages, lower percentages in for-profit facilities rather than not-for-profit facilities. It almost, by definition, has to be that way. And part of what you need to think about if you're looking at a system is what are the built-in economic pressures and incentives? And the economic incentives and pressures that are structurally inherent in a for-profit entity is that the -- the compelling obligation of

the people who operate it is to deliver profit to the owners. A for-profit company that doesn't adhere to that legal obligation, among other things, could be sued by its stockholders. That's reality and you have to -- you -- you ignore that reality at your peril.

MR. MANKTELOW: Well, I think -- I think that's where one of the -- that's where one of the issues are. You know, we're looking at Downstate facilities which are much bigger than Upstate facilities, I absolutely know that, just because of the amount of people. I think, again, as we look at pieces of legislation for New York State, again, we're -- we're looking at the model of, as you said, the five boroughs, the New York City area versus the rest of Upstate New York. You really need to take time if you're going -- I would think if we're going to try to move something forward like this, why would we not take time to look at all of New York State?

We, as legislators, are responsible to the residents of New York State no matter where they live, and one of my concerns here is if we move this forward and we have some really good for-profit facilities, what are they going to do? I mean, if they're doing a good job, they're expanding their business, they're providing jobs, they're paying taxes but, most of all, they're -- they're providing a home for residents. If they decide to move out of New York State or leave New York State because they can't grow, we're not allowing them to grow, where are those residents going to go, first of all, and, second of all, if I own three or four facilities and I'm leaving New York State, what do I do with my facilities, the ones that I'm paying

taxes on? Am I just going to walk away and then they just go away and you're not going to get anymore taxes?

I just think that we're making this too broad of a, as I think one of the Assemblyman said earlier, a big broad band stroke with a paint brush. There are some really good facilities out there and, I'm sorry, we cannot categorize every single for-profit as being a bad facility, and I think that's what we're tending to do. We need both of them. We need to have them both work together, and just cutting one completely out of the picture is not going to be good for New York State or, most of all, for the residents that need them.

MR. GOTTFRIED: Well, if that was a question, the answer is the laws of economics don't stop working because you went north of the Bronx. The laws of human nature and the desire of people to make a profit don't stop working just because you're in the sainted territory of Upstate New York. And, by the way, the data show it. There are -- there are some horrendous for-profit nursing homes in Upstate New York. Ask some of our colleagues who read the newspapers in the Buffalo area about all the horrendous stories in recent years about some pretty horrendous nursing -- for-profit nursing homes operating in their areas.

And it's not just the Buffalo area, this phenomenon -- I mean, the studies of this phenomenon are not just limited to the five boroughs, they're nationwide studies, certainly New York State wide, and you can't -- at your peril do you ignore the -- the rules -- well, the compelling laws of economics. For-profit entities are driven and are

legally driven primarily by a goal to make a profit. And, you know, in many -- in almost all areas of our economy, that drive serves us pretty well. Health care, I would say, is not one of them and this isn't a question of whether, you know, people in the five boroughs are somehow badder behaviors, you know, guilty of worse behavior than people in the clean air of Upstate New York. Nor are these -- are the for-profit nursing homes going to pick up and leave because we don't let them expand within New York. There's no reason why that would be the case.

MR. MANKTELOW: Well, you know, growing a business, whether it's a nursing home, whether it's a manufacturing facility, good employers want to grow, to give their employees more things, to expand the opportunity for employees to work there, and they need to be able to do that. And by doing this, you're not going to be able to expand. I cannot put a new facility, you know, two communities over because now I'm not going to be allowed to do this. And I really don't see why New York State should be getting involved with deciding whether it should be a for-profit or a not-for-profit. We should have both, and both -- both entities should have the equal opportunity to grow, and we're not allowing this. We're saying, *No, because you're a for-profit we're not going to allow you to grow in New York State anymore.*

And I just think we are doing a terrible disservice to the people we represent, to the residents that are using some of these facilities. We, as legislators, are going to do this -- and you talk about

data, the data shows this, the data shows that; we watched data through this whole pandemic in our nursing homes and not every piece of data was -- was given, and we know now what that data is. So data can be manipulated any way you want it to be, and if we're going to use data, that's why I suggest let's look at all of New York, let's look at all the facilities. Let's do a task force where we're really getting the information and let these -- let these individuals grow. That's a part of being in America. Are we -- is the next thing we're going to do, are we going to stop for-profit housing? Are we going to -- is it all going to be not-for-profit housing?

I just think we're opening up Pandora's Box. We have a great system. Let's not hurt the people that are doing a great job, let's go after the people that aren't and let's give our DOH people that do the inspections and the other individuals the ability -- and the people to do so, and let's go after the bad actors and let's not hurt the good for-profit individuals, because they are providing a great service to great people and great residents of New York State.

So I thank you for your time, Mr. Sponsor, and, Mr. Speaker, on the bill.

ACTING SPEAKER AUBRY: On the bill, Mr. Manktelow.

MR. MANKTELOW: Yes, as -- again, as we talked about, and we talked about this for a little while here, we are -- we are going down a very wrong way with for-profit. There are some really good for-profits, but it seems like in New York State we've got this

mindset that people that make money abuse that money and pad their pockets. That's not the case. Good business people want to grow, they want to grow with good employees, they want to grow their business so their employees can grow, so their employees can move forward, can raise families. That's what it's about. That's what capitalism is about. This is more looking like socialism than capitalism.

I'm not going to support this bill. I'm going to ask for the rest of the -- my colleagues on both side of the aisle not to support this. Where are we going? For instance, take a ride, take a ride to Czechoslovakia, take a ride to the European countries, see what they got there. I've seen it. Look at the housing in New York City. Look at what NYCHA has in New York City versus private individuals that provide housing. I saw that in Mr. Kim's district. He showed us for-profit and New York State housing -- or New York City housing in New York City. What a difference. For-profit do a good job. Let them grow, let them pay taxes, let them be a part of making New York a great State again and a better State.

So, again, thank you, Mr. Speaker, for the time. Mr. Sponsor, thank you for taking the questions, and I will be voting no on this. Thank you.

ACTING SPEAKER AUBRY: Ms. Walsh.

MS. WALSH: Thank you, Mr. Speaker. Will the sponsor yield for a quick question?

ACTING SPEAKER AUBRY: Mr. Gottfried, will

you yield?

MR. GOTTFRIED: Certainly, yes.

ACTING SPEAKER AUBRY: Mr. Gottfried yields.

MS. WALSH: Thank you, Mr. Gottfried. My question is -- is pretty simple. It's just, is there -- is there a current -- or under this bill, is there a process for a county to seek a waiver from these provisions to ask the Commissioner of Health and the Public Health, the Health Planning Council to waive these requirements contained in this bill and allow a for-profit to locate?

MR. GOTTFRIED: No.

MS. WALSH: Okay. All right. Thank you so much.

Mr. Speaker, on the bill.

ACTING SPEAKER AUBRY: On the bill, Ms. Walsh.

MS. WALSH: There's been a lot of conversation already, I don't wish to duplicate it. I just want to say that I think my concern is that we have an aging population and, as others have said, there is going to be a continuing demand for a number of options for elder care in our State. I think that if we pass a bill like this, I'm concerned that we could have nursing home deserts, you know, throughout the State.

And I would just offer this brief example from my own community to support that. In my -- one of the counties that I represent, my home county, there was a -- the county had run a nursing home and it ran for a number of years at a loss and finally the

county decided that they needed to basically unload the nursing home because it was just -- it was breaking their budget. So a for-profit nursing home operator came in, purchased it, and started to run it and then fairly abruptly at the end of last year during COVID, during this pandemic, they decided to close and we had a number of residents who had to be relocated on very short notice during a pandemic.

And I really hadn't had to deal with that issue before as a legislator, but what I found was although there's a -- there's a preference to keep residents within a 50-mile radius of where they had lived, it was difficult to find, in some cases, placements for these individuals because there just wasn't -- there wasn't enough beds available that were able to take these people. And that's a concern of mine and probably of yours, too, because we want to keep elderly residents near where their families or where they may have caregivers who may be able to assist in their care and people who love them. And the further away you have to place people, the harder it is for family members to remain engaged in their family's care. We talked about that a lot yesterday as we passed the essential caregivers bill.

So I just think that I absolutely agree with the earlier comments about painting with a broad brush and really, the need for us to get to the bottom and to do a full investigation into our nursing homes so that we really can tailor our legislative actions to the problems that are identified. I respect the Attorney General's report and I do think it contains some lessons, and I know that the sponsor's indicated there are some other reports and data, but I'm uncomfortable

at this point supporting this piece of legislation because I do believe that it -- it lumps all for-profits into one category and not-for-profits into another category and I just -- I just think that that's a little bit misplaced. So, I will be unable to support this bill, although I absolutely support measures to ensure quality care and I think that our -- this legislative Body could and should do as much as it can to ensure that inspections are being done and done properly, and that we have rules and regulations in place to make sure that the elderly receive the best possible care that they can. Thank you.

ACTING SPEAKER AUBRY: Thank you.

Mr. Meeks.

MR. MEEKS: Thank you, Mr. Speaker.

On the bill.

ACTING SPEAKER AUBRY: On the bill, sir.

MR. MEEKS: I think this bill is definitely necessary.

Over the ten years before I came to the Assembly, I was a labor organizer representing several nursing homes from Monroe County to Allegany County, as well as Erie County. During that tenure, I've seen facilities go from not-for-profit to for-profit nursing facilities. And the more facilities that became for-profit it seemed as if it was a race to the bottom. More focus was on profits opposed to the resident care. It was to the point where we had a number of employees that were -- some were not even making close to a living wage, and they would take money out of their own pockets in order to buy hygiene products for the residents in which they were providing care for.

I think there's definitely a need for more accountability for these nursing facilities. Something that we would often see was related party transactions. This was where on surface, they would show us that they were not making any profits, and when you looked a little deeper, you would find that these -- these facilities were making profits hand over fist. So when the nursing home was losing money, the real estate was making money by the way of another LLC. And we also found that each LLC was another family member. Sometimes it may have been in the wife's name or the son's name.

So I urge each and every one of you to vote in the affirmative for this legislation. It's a step in the right direction and we have a number of more steps to take to assure that we're doing what's in the best interest of residents in nursing homes across the State of New York. Thank you.

ACTING SPEAKER AUBRY: Thank you, Mr. Meeks.

Mr. Lawler.

MR. LAWLER: Thank you, Mr. Speaker. Will the sponsor yield?

ACTING SPEAKER AUBRY: Mr. Gottfried, will you yield?

MR. GOTTFRIED: Yes, indeed.

ACTING SPEAKER AUBRY: Mr. Gottfried yields, sir.

MR. LAWLER: Thank you, sir. The great thing about our Democracy is a half-hour ago we had unanimous agreement and half-hour later we're having a good debate. But I think this debate is emblematic of a bigger discussion and a discussion that is about the direction of the State in so many ways. And so, I have a few questions and then I will speak on the bill. As I understand it, we're talking about 401 for-profit nursing homes, which leaves I believe 218 non-profit or government-owned nursing homes; is that correct?

MR. GOTTFRIED: That's about the proportion, yes.

MR. LAWLER: Okay. Do we know how many of the 218 non-profit or government-own entities have one- or two-Star ratings?

MR. GOTTFRIED: I don't know that off the top of my head, but there are people who do and it's -- would not be hard to find out.

MR. LAWLER: Okay. Do we know how many deaths have occurred as a result of COVID in those 218 non-profit homes, nursing homes?

MR. GOTTFRIED: Again, I have not added that up by the two different categories, for-profit on the one hand, others on the other. That data is -- is available now. I do know, though, that there have been numerous studies over the years that show that on the whole, patient deaths are much more common in for-profit facilities.

MR. LAWLER: And your belief is that is based on the simple premise that they are putting profits over -- over people?

MR. GOTTFRIED: Well, I -- I think the correlation is pretty clear and it's certainly correlates with what you would understand are the -- are the economic forces and dynamics at work, namely a -- a -- a legal and economic pressure to take a substantial chunk of the money that comes in and put it into -- into profit. And we see that not only in straight profit payments, but as Mr. Meeks just mentioned, you know, you see arrangements where there are these, you know, fantastic chains of ownership and leases and mortgages and whatnot that if you ever sort through them, they end up putting more and more of the facility's money into the pockets of the owner, the owner's cousin, the owner's spouse, et cetera. And that -- you know, it's like the force of gravity, you know, that -- that drives money away from patient care and into profit. And unless you believe that spending money on patient care doesn't help patients, that dynamic has got to result in poorer patient care.

MR. LAWLER: Well, I would -- I would say we, in the State of New York, spend the most money on education, we spend the most money on health care and, yet, rank in some of the middle categories, so I don't necessarily agree that money always equates to either better care or better education when you -- when you look at some of the outcomes. But if you believe -- I know you said this bill does not eliminate the for-profit sector, it just puts a cap on the ability to, you know, add new facilities or expand existing facilities, but based on your argument, you -- you believe that the for-profit sector is bad. So do you think ultimately that the for-profit nursing homes

should be eliminated in New York ultimately? Even though that's not what this bill does, it does kind of start that trajectory. So, do you think they should be eliminated?

MR. GOTTFRIED: I think if we could -- if the world somehow phased them out of existence, the result would be a better world, yes.

MR. LAWLER: Okay, so --

MR. GOTTFRIED: Is there a practical way to make that happen? I haven't looked at that. By the way, on the correlation between spending and quality, if when the school runs come out of this year's budget, your local school districts end up getting less State aid, I would recommend that you not go back to your constituents and say, *Well, you know, State aid to education, you know, that doesn't really help. You can run good schools without all that money*, don't say that.

MR. LAWLER: I appreciate you bringing that up because the State school aid runs actually eliminate \$6.7 million to my district, of which I will not support and, in fact, I put a bill in to change the school aid formula so that my district is actually treated fairly like New York City and Long Island and gets \$11 million in additional State aid. So, I would appreciate if you actually want to cosponsor my bill to change the State school aid formula, that would be terrific.

(Laughter)

In fact, I'll give it to you so it can get passed.

(Laughter)

MR. GOTTFRIED: I think I'll stick to what may or may not be my area of expertise.

(Laughter)

MR. LAWLER: I appreciate that. So, following up on my line of questioning, what type of -- if you believe for-profit elimination would make the world a better place, what type of ownership do you, in fact, think is best, government-owned or non-profit?

MR. GOTTFRIED: I think a combination of both. I think -- my impression is that in general, not-for-profit institutions in this area have worked better, although there are exceptions. I know in the hospital area, many of our finest hospitals are public hospitals. So I don't think I would, as a rule, prefer for-profit versus -- I'm sorry, not-for-profit versus public ownership because I think the dynamics for quality work strongly for both.

MR. LAWLER: Okay. So in this scenario, wasn't it the, when we're talking about government-owned, right, and the idea that government is -- is a much better way to go than -- and the public sector is much better way to go than the for-profit sector, wasn't it the government that made the decision to send COVID-positive patients into nursing homes thereby causing a lot of these deaths that we're -- that we're very concerned about?

MR. GOTTFRIED: Obviously that was a decision made by some combination of the Health Department and -- and the

Governor. I would note they were not doing so in the context of operating a health care facility. Whether that, you know, I don't think anyone would argue that every decision that anyone in government has ever made relating to health care has been -- has been correct. We could debate the pros and cons of that particular order some other time.

MR. LAWLER: One thing I might point out to you --

MR. GOTTFRIED: I don't think the quality of that order is relevant to whether for-profit ownership is the right way to go.

MR. LAWLER: I -- I think it is relevant for this reason: Most of the cost of Medicaid is involved with long-term care and so when some of these decisions are being made by government, it very much is about the bottom dollar and it very much is about the cost of these programs. So when we're saying under this idea that oh no, government would never make decisions based on money or based on the cost of programs, that's not true. And I think when all is said and done here, there's going to be a lot more questions about why that March 25th order was, in fact, issued, why the immunity was given and what the basis for that decision was. And I think -- I think that is something that absolutely needs to be looked at when we're making decisions like this as to whether or not we think the government or non-profit sector and the costs of some of these services and programs, you know, whether or not they would be better equipped to deal with this.

On the bill.

ACTING SPEAKER AUBRY: On the bill, sir.

MR. LAWLER: Thank you. There's a reason people are leaving New York State in droves and respectfully to my colleague, it's because of bills like this. We are pushing a socialist agenda and a government takeover of our economy, of health care, of housing, and it's just -- it's interesting that this Body seems to believe that anybody who owns a business, anybody who employs people, anybody who pays taxes is somehow bad; yet, I'm sure when our one-House budget resolution comes out, there's going to be a lot of tax increases in there and a lot of focus on revenue. But if we want to turn everything into a non-profit and we want to eliminate for-profit ownership, where are we getting the tax revenue from? Who is going to pay for all of these programs and expenses if we don't have people paying into the system?

The idea that because you own a business you're somehow bad or evil is really disconcerting, and I think we should really take a long hard look at why over 1.2 million New Yorkers have left and they've gone to states where the business climate is a lot more friendlier, where the tax climate is a lot more friendlier. There's a reason for that, and it's legislation like this. I will not be supporting this legislation.

ACTING SPEAKER AUBRY: Mr. Angelino.

MR. ANGELINO: Mr. Speaker, I rise to speak on the bill.

ACTING SPEAKER AUBRY: On the bill, sir.

MR. ANGELINO: By amending a section of an innocuous law that people aren't even aware surrounds them, the Public Health Law, that limits any business or the expansion of an existing business will have private investors shivering, fearful of which chapter of laws we're going to amend next and targeting which industry is going to fall out of favor. Over the last year, nursing homes have been on everybody's minds and there were catastrophic issues surrounding them, and we passed a lot of great legislation today and this week.

For-profit nursing homes pay taxes all across New York State, many in my district employing hundreds if not thousands, and if there -- if there's a need to decide which are good and which are bad, this Body should be investing and funding more inspections by the Department of Health. There are some very good for-profit nursing homes that I'll probably end up in if I'm lucky. If the laws of economics are working, as I heard earlier, people are going to be able to choose with their wallets which nursing homes they would care to live in or for their loved ones. And if the laws of economics are working, those that are bad will close from non-use.

This bill passage will cause private investors to stop investing in New York and in our State for fear of which industry is next, and for these reasons, I urge all of my colleagues to carefully consider the future of our State and vote this bill in the negative. Thank you.

ACTING SPEAKER AUBRY: Thank you, sir.

Mr. Jensen.

MR. JENSEN: Thank you, Mr. Speaker.

On the bill.

ACTING SPEAKER AUBRY: On the bill, sir.

MR. JENSEN: Thank you very much. I am opposed to this bill for a lot of the same reasons that my colleagues have risen in their opposition. This legislation unfairly targets our nursing home operators who are good operators (unintelligible/mic cut off), administrators, staffers, nursing staff who are dedicated to increasing patient care and by limiting their ability to grow will create a care crisis in a lot of communities across the State, particularly in rural -- rural environments. Certainly, there's tremendous need for long-term care when it comes to pediatric units, there's one in Rochester, there's one in Buffalo, there's one in Syracuse and Albany, but there is tremendous need for that type of service, as well as respiratory units, there's waiting lists across this State to get into long-term care facilities who provide that essential care.

I'm opposed to this. I believe that we should be investing more, like my colleagues have said, in making sure that the facilities are operating in the best way possible, and I appreciate the time, Mr. Speaker.

ACTING SPEAKER AUBRY: Thank you, sir.

Ms. Woerner.

MS. WOERNER: Thank you, Mr. Speaker.

On the bill.

ACTING SPEAKER AUBRY: On the bill, Ms. Woerner.

MS. WOERNER: So, corporate law doesn't require that directors generate a return for their shareholders and, in fact, some don't. But many take that as their most important fiduciary duty. And I will pick up on a story that my colleague talked about. In a neighboring district to mine, there was -- there was a county-owned nursing home, and the county found that it could no longer support that nursing home and they sold it to a for-profit entity. A couple years later, that for-profit entity sold it to another for-profit entity which was located out-of-state. Within two years, that nursing home, which had been a highly-rated, high-quality nursing home was on the CMS worst of the worst list. It was well-inspected and found to be lacking. They stayed on that list for two years and then rather than address the problems, rather than step up to their responsibilities to their patients, they abruptly sold it, throwing people into a crisis, clearly a company that while it did not have a fiduciary responsibility to return profit to its shareholders, it chose to do that.

I have two not-for-profit nursing homes in my district that raise grant money, that have great philanthropy support and are able to survive as not-for-profits and fulfil the mission of high quality resident care. I would submit to you that there are good actors and bad actors in every category. And as a capitalist, I am a big believer that the capitalist economy has generated wealth in this country and, granted, it's not been equal, but has made our country the -- the envy

of the world. So I'm not advocating for a -- for a lack of capitalism in our society, but I do believe that in health care the mission is the most important thing. And to the extent that there are for-profit entities that put the fiduciary responsibility that they don't have to put in front, but they put that in front of the patients, I find that very troubling. And for that reason, I'm -- I'm going to support this bill. I don't think it's perfect. I think there are ways it could be improved, but I tell you, I think it's important that we strike a balance in favor of the residents. And this bill strikes that balance in favor of the residents. And so for that reason, I'll be supporting it and I urge my colleagues to do the same.

ACTING SPEAKER AUBRY: Thank you, Ms. Woerner.

Ms. Cruz.

MS. CRUZ: Thank you, Mr. Speaker. Will the sponsor yield for a quick question?

ACTING SPEAKER AUBRY: Mr. Gottfried, will you yield?

MR. GOTTFRIED: Yes, sir.

ACTING SPEAKER AUBRY: Mr. Gottfried yields.

MS. CRUZ: Mr. Gottfried, just a point of clarification. The bill would prevent new homes with poor CMS ratings from being opened by -- I'm sorry, by being opened by current owners with poor CMS ratings, correct?

MR. GOTTFRIED: Well, it would prevent -- this bill

would prevent a nursing -- a for-profit nursing home --

MS. CRUZ: A for-profit nursing home.

MR. GOTTFRIED: -- being opened by anybody.

There is another bill we will be dealing with, probably not today, dealing with approving ownership in part based on your track record with other nursing homes. This bill doesn't do that.

MS. CRUZ: That's -- that's what I wanted to clarify.

Thank you.

MR. GOTTFRIED: Okay, yep.

ACTING SPEAKER AUBRY: Mr. Goodell.

MR. GOODELL: Thank you, sir.

On the bill.

ACTING SPEAKER AUBRY: On the bill, sir.

MR. GOODELL: All of us on both sides of the aisle have as our top priority ensuring that our senior citizens in nursing homes have the highest quality of care that's possible. That is our objective, and it certainly is an objective that I share with the sponsor. And over the last few days, we passed a number of bills to encourage that to occur by requiring that the quality ratings be posted on the DOH web page so that those who are looking to place their loved ones into a nursing home can look and see what kind of quality rating that facility has. And we passed legislation that would require nursing homes to provide prospective clients or patients with a list of violations in the past so that everyone knows right up front which are the good nursing homes and the bad nursing homes. And all of those

bills that passed with very, very strong if not unanimous bipartisan support recognized that in our economic theory, competition with knowledge improves quality and price. And we see it everywhere, right. We see it in automobiles, we see it in products. The more competition we have, the more knowledgeable consumer, we get better quality, we get innovation and we get better prices.

So with the objective of making sure that we have the best quality nursing home care available to our residents, what's this bill do? This bill says if you are the worst rated not-for-profit, you are free to expand, you are free to buy other facilities. And it also says if you're the best rated for-profit --

MR. GOTTFRIED: And we do have another bill that would deal with that question.

MR. GOODELL: And I appreciate my colleague's comment; I'm not sure he knew he was on the live mic, but I still appreciate it.

But this bill bans even 5-Star private nursing homes from meeting the need or expanding or providing more service. That's not what we want to do, right? We want to make sure that the nursing homes that are providing the worst quality go out of business, whether they're for-profit or not-for-profit. We don't want them around. And for those nursing homes that provide the best quality, we want to encourage them to expand, right, we want them to build nursing homes, we want them to provide services. But that's not what this bill does. This bill doesn't make decisions based on the demonstrated

quality or capabilities of the owners, it makes a decision based on whether or not the owner is paying property taxes or not paying property taxes, whether they're paying income taxes or not paying income taxes, whether they're not-for-profit or whether they're for-profit. And there are no exemptions in this bill. You have a critical shortage in one county and a 5-Star not-for-profit wants to come in and meet that critical shortage. This bill says sorry, you can't come here because you're not-for-profit you're for-profit.

Now, we're told this only applies to new companies coming in, but it ignores the fact that you can be a not-for-profit and already spend millions of dollars acquiring the land, doing the architectural drawings, doing the engineering, spending tens of thousands of dollar in preparing a detailed application, and this bill says too bad. You just lost your entire investment. And because this bill is not based on quality or a legitimate interest in the government to -- to foster high-quality operators, it violates the Equal Protection Clause in both the New York State Constitution and the Federal Constitution, and we have Court of Appeals cases, for example, that say exclusionary zoning. Violates the Equal Protection Clause. And for those of you who don't pay a lot of attention to the Equal Protection Clause, it basically says those who are essentially the same need to be treated the same. And so the government purpose of providing high-quality nursing care means that you have to treat those who provide high-quality nursing care the same whether they're for-profit or not-for-profit or you violate the Constitution.

We want to promote more competition with good actors. We want to discourage those who are bad actors. We do not want to go down the road of saying, in a discriminatory manner, in violation of the Equal Protection, that one class of actors are all bad or shouldn't be allowed to expand and another class of actors are all good and should be allowed to continue when the data paints a different picture. And when you look at the data, the picture becomes much more complex than just who has 5-Star ratings and who doesn't, because when you look at the actual data, you discover that for-profit nursing homes have about twice as many high-intensity patients than not-for-profit. And you discover, to my surprise, the data shows that for-profit nursing homes tend to pay their nursing staff more than not-for-profits. And those two facts are related, of course, because if you're providing more intensive care, you need more qualified staff and you pay them more or you can't recruit them.

So there's a lot of factors going on, but I think it's incredibly important for us, as a Legislature, to keep our focus on what our mission is. And our mission is not to eliminate the private sector, that's not our mission, right? Our mission is to ensure that we have the highest quality of care for our loved ones. So our mission ought to be to encourage the high-intensity 5-Star private sector nursing homes to expand. That ought to be a part of our mission, just as we want to encourage those high-quality not-for-profits to expand.

Now I'll share one example. Many, many years ago, when I had a beard and dark hair, I had the good fortune of serving my

county as the County Executive. And we had a county-operated nursing home. And it should be no surprise that as a Republican, I believe in smaller government. And so, I told the nursing home operators that if they couldn't operate profitably and couldn't compete with the private sector in terms of quality or price, I would move to privatize them. And they said, *Thank you very much, Mr. County Executive, but if you want us to compete with the private sector, we have to up our game because the only way for us to be profitable is for us to be able to successfully compete with the private-paid patients and they want to have a higher quality of service.* And I said, *Okay, I understand.* So I backed them when they put in central air conditioning, which was a major project on a very old masonry building. I backed them when they put in semi-private rooms. I backed them when they upgraded the entire facility. They were profitable by being better, by providing better service.

Now sadly, during the same time period, we had a for-profit nursing home, and they were not focused on quality and they went out of business because the residents knew that that was the last place you wanted to spend your last days. So the competitive market with good information, it sets and promotes higher quality, higher service, more efficiency, more innovation, and all the things that we in this Legislature support.

So let's focus on what's important. Let's encourage the great for-profit nursing facilities to expand in New York State. Let's encourage the great not-for-profits to expand in New York State.

And on a bipartisan basis, let's make it easier, as we have already done in the last few days, making it easier for patients to discover which facilities are the best so that they vote with their faith, and the facilities that are not well-run go out of business and the ones that are well-run, whether they're for-profit or not-for-profit expand. This bill ignores hundreds of years of free market experience that tells us that good competition results in better outcomes.

So let's keep our focus. And I can assure my colleagues on both sides of the aisle, the Republican Caucus is 100 percent behind improving the quality, but we are opposed, in general, to legislation that violates the Equal Protection Clause, that hurts good players while ignoring bad players based on factors that are not necessarily relevant to what our issue is, which is patient care. For that reason, I will be opposing this and urge all my colleagues to do the same. Thank you, sir.

ACTING SPEAKER AUBRY: Thank you.

Mrs. Peoples-Stokes.

MRS. PEOPLES-STOKES: Thank you, Mr.

Speaker. Will the sponsor yield for a couple questions?

ACTING SPEAKER AUBRY: Mr. Gottfried, will you yield?

(Pause)

Mr. Gottfried, will you yield? He needs to be unmuted. There we go.

MR. GOTTFRIED: Yes.

MRS. PEOPLES-STOKES: Thank you, Mr. Gottfried, for this is an issue that you've actually been working on for a number of years, the differences between profit and not-for-profit nursing homes. So the ratings that the State has with the 1-Star and the 5-Star, is that similar to the Federal ratings on nursing homes?

MR. GOTTFRIED: Yes, it is similar and I think most observers believe that the fact that a given facility has a 5-Star rating doesn't really tell you that it's at the top of the line.

MRS. PEOPLES-STOKES: Okay. And so Medicare actually pays almost double what Medicaid will pay for a patient to be in a for-profit or a not-for-profit; is that right?

MR. GOTTFRIED: That is correct.

MRS. PEOPLES-STOKES: So is there any real -- I would say is there any real difference in the number of Stars that these facilities might receive based on the fact whether they only accept Medicare patients, or they only are able to take Medicaid patients.

MR. GOTTFRIED: That's a -- that's a very important point, because Medicare only pays for the first three or four months of nursing home care if you have been discharged from a hospital. So it's essentially post-acute care and that means that an awful lot of those patients then leave the nursing home facility. So a facility that chooses to concentrate on Medicare patients and leave the, you know, everybody else to the other nursing home to take care of, nursing homes that focus on the Medicare population will get paid a lot more and naturally, you know, may be able to pay their staff more, may be

able to look better because they're not in the really very difficult business of providing custodial care. And so, I think that accounts for some of the statistics we're hearing about that say, well, the for-profit facilities shine in some areas; they shine because they focus on people who are just out of the hospital and try to move them out if they need long-term custodial care.

MRS. PEOPLES-STOKES: So as you mentioned earlier in your comments, you know, there's been extensive investigation into the nursing home community in Western New York and Buffalo where I live, and there have been a number of reports that people go into nursing homes, private sector nursing homes, they expend their three months that they should be there under Medicare and then when they get to the point where they need to be cared for by Medicaid, then these exact same really good nursing homes, for-profits, find a way to send them home because now they know they're going to get a different reimbursement for them.

MR. GOTTFRIED: Yes.

MRS. PEOPLES-STOKES: And so I clearly think that that has some implications on the difference between a for-profit and a not-for-profit. And so, I wanted you to speak a little bit about how this bill, your bill, will impact not-for-profit.

MR. GOTTFRIED: Well, the main thing it will do is end the effort of for-profit owners to -- to expand and push them out of the field. We will need to pay a lot of attention to our not-for-profit nursing homes and publicly-owned nursing homes if this bill becomes

law. In a lot of communities, the availability of a for-profit buy-out has often, sort of, covered up the fact that we do not properly support public nursing homes and for-profit nursing homes, and the fact that a for-profit owner will move in often enables us to kind of look the other way while the new for-profit owner, yes, keeps the building open, but is siphoning off a lot of the money.

So this legislation, while it's important, is not going to, on its own, clear up the problems with our nursing homes, not by a long shot, but it is an important step in the right direction. And I think you're asking very important questions here.

MRS. PEOPLES-STOKES: So I actually have some really -- a really good private sector nursing home business in my community. What would this legislation do to prevent -- to stop their business? I mean, I can see them not having another nursing home, they already have five, that might be a good number to stop at, but would -- would it insist that they have to now go down to four nursing homes, or would they have to go down to three nursing homes or would they have to go out of business totally in the State of New York?

MR. GOTTFRIED: No. All it would -- it would say two things: Number one, they would not be able to create or take over more nursing homes, and they would not be able to add to their existing bed capacity. But it would not tell them to sell to somebody else or go out of business.

MRS. PEOPLES-STOKES: Okay. And so is there a

sunset on this legislation at all?

MR. GOTTFRIED: No.

MRS. PEOPLES-STOKES: Okay. And, you know, lastly -- well, thank you. I appreciate -- I want to commend you for sponsoring this legislation, and I kind of believe, just listening to the debate here today, that some people have a different concept of where you're trying to go here. This is not to say that people can't or should not be in business in the State of New York; in fact, this is saying that they absolutely should be in the business in the State of New York, but there's ways in which they have to be in that business and there's a service that they have to deliver. To suggest that this is somehow pushing us toward a socialist agenda, which I don't necessarily agree with, I will say that these people went into business because we do have a socialist agenda already. They are paid by Medicare dollars. They are paid by Medicaid dollars. That's not private sector money. Those are public dollars. And public dollars should be in a position where they can demand that you get a specific outcome. If you're not willing to stand up to that outcome, then you shouldn't be in the business. And the investigations that have been going on in my community around nursing homes was at least two years before COVID ever hit.

So I think a lot of the recommendations that my colleague is making here today with this legislation, although their interest is to COVID, they actually have nothing to do with it. What they have to do with is how do we get to a place where we're using

public dollars in the best way to deliver nursing home care to those people who are the most vulnerable.

Now, full disclosure, my father died almost 20 years ago. When he was on his deathbed he said, *Promise me you will not let your mother go into a nursing home*. I promised that and I guarantee you they will not create one in the State of New York where my mother will go, but for her sister, or her neighbor, or even your neighbor, Mr. Speaker, I want them to be able to go to a quality nursing home. I think we can get closer to that by the bill that has been crafted here by our colleague.

This is the right way to take our State, not necessarily to say that we don't want private sector business, but to say that we want the best nursing home facilities in the country. I think we get closer to that by putting parameters on the business that are in right now. So I want to thank the sponsor for this legislation. I look forward to voting in the affirmative for it.

ACTING SPEAKER AUBRY: Thank you.

Read the last section.

THE CLERK: This act shall take effect immediately.

ACTING SPEAKER AUBRY: The Clerk will record the vote on Assembly print A-5842. The vote on that bill is a Party vote. Any member who wishes to be recorded as an exception to the Conference position is reminded to contact the Majority or Minority Leader at the numbers previously provided.

Mr. Goodell.

MR. GOODELL: Thank you, sir. The Republican Conference will be generally opposed to this legislation. If there's any member that would like to support it, they are encouraged to call the Minority Leader's Office. Thank you.

ACTING SPEAKER AUBRY: Thank you.

Mrs. Peoples-Stokes.

MRS. PEOPLES-STOKES: Mr. Speaker, this will be a Party vote in the affirmative. Colleagues desiring not to vote with us and be an exception on this one, please feel free to contact the Majority Leader's Office and we will so record you.

ACTING SPEAKER AUBRY: Thank you, Mrs. Peoples-Stokes.

Ms. Lunsford to explain her vote.

(The Clerk recorded the vote.)

MS. LUNSFORD: Thank you very much. The free market is not the answer to all problems. We have seen this time and time again. If the free market could solve this nursing home problem, our for-profit nursing home system would be outperforming our not-for-profits handedly. But that's not what we see. When you place a bottom line on a service that affects public health and safety, you incentivize profit over the people you serve. When those people are our seniors, our most vulnerable, you're incentivizing practices that destroy quality of life and shorten lives.

I hear from my colleagues a concern that people will stop investing in our entire private sector because of this bill, designed

to prevent a shell game that effectively launders Medicaid dollars and our seniors' life savings so they can line the pockets of those same investors. This bill doesn't eliminate the private nursing home industry, but it does prevent the expansion of an industry that, as a whole, has proven to deliver consistently subpar care. The good actors who provide quality care to our seniors in the for-profit sector right now should have no problem continuing to operate under our rules. But those that don't may struggle and they may choose to close their doors, but they may also choose to change their practices. They may put more funding towards direct patient care. They may buy new equipment and upgrade their facilities. They may hire more staff. And if they want to expand, the not-for-profit sector is available to them.

To say that our seniors, or our loved ones with disabilities, or our children in pediatric nursing home settings should be kept in facilities that deliver substandard care that leave our loved ones filthy in their beds, that serve near inedible food, simply to serve the investors is offensive. I have been in these facilities, I have sued these facilities, and I support this bill to ensure that every one of our nursing home residents will be treated with the care and dignity they deserve. Thank you to the sponsor of this bill, and I vote in the affirmative.

ACTING SPEAKER AUBRY: Ms. Lunsford in the affirmative.

Ms. Hyndman.

MS. HYNDMAN: Thank you, Mr. Speaker, for allowing to express my -- my vote -- explain my vote. As a former staffer with the investigations and audit unit in SED, I remember never having enough resources to do the work that we needed, whether it's technology or staff members, and I think about the employees in the Department of Health who don't have the equipment, who don't have the -- enough staff to go into these nursing homes and do an adequate job. I also think about the not-for-profit nursing home in my district that essentially over almost 50 veterans died, and that bothers me tremendously that individuals were not able to get into nursing homes before these tragedies took place. Also, thinking about former CNAs who became LPNs who became RNs who became MDs or DOs, who saw travesties and now want to open their own nursing homes, women who look like me, I'm concerned about their opportunities being cut off; therefore, I'm voting in the negative on this bill. Thank you.

ACTING SPEAKER AUBRY: Ms. Hyndman in the negative.

Mr. Anderson to explain his vote.

MR. ANDERSON: Thank you, Mr. Speaker, to explain my vote.

ACTING SPEAKER AUBRY: Sir.

MR. ANDERSON: Thank you. I think that this piece of legislation - and I commend the sponsor for this bill - I think that it establishes the clear rules of engagement for for-profit nursing

homes, and it also creates the opportunity for us to have better tracking mechanisms for our nursing homes. And it also, most importantly, Mr. Speaker, allows us to clearly identify that people are more important than profits, and that our nursing homes where people who were negatively impacted by this COVID-19 crisis can be held accountable to that fight.

So, in -- in closing, I'd like to say that I vote in the affirmative on this bill. Thank you, Mr. Speaker.

ACTING SPEAKER AUBRY: Mr. Anderson in the affirmative.

Mr. Gandolfo.

MR. GANDOLFO: Thank you, Mr. Speaker, to explain my vote. I, like every other person in this Body, wants to see the highest quality of care in our nursing homes, especially in light of our State's disastrous handling of nursing homes during the COVID pandemic. But I don't see how we can say if a nursing home is providing 5-Star care and is rated that way by the CMS that they can't expand at all. I don't see how that's a positive for care in nursing homes. You know, obviously, if you have these substandard facilities who are treating patients horribly and neglecting them, they should be held accountable and we should address that. But to say a -- a facility that is providing top-quality care can't expand and continue providing that care to patients in all of our districts just because they're a for-profit facility, I just don't think that's a positive step here.

So with that, I -- I will yield back my time and vote in

the negative. Thank you, Mr. Speaker.

ACTING SPEAKER AUBRY: Mr. Gandolfo in the negative.

Mr. Byrne.

MR. BYRNE: Thank you, Mr. Speaker. I want to thank the sponsor for taking the time to answer our questions and for the constructive debate. A lot has already been said, and I don't want to be overly verbose or redundant. My concerns are that some of our colleagues are conflating the for-profit private sector with the substandard care. There are certainly many high-quality for-profit nursing facilities, and there are sub-par non-profit and public facilities. And if we're going to truly have a discussion about improving quality care, then we have to look at the standard of care and actually look at those measurements and -- and not just if it's for-profit or non-profit. I do take some exception to this -- this rhetoric and narrative, not just in this debate, but generally, against a for-profit sector. And I hear it being discussed as if it's a scapegoat, that this is going to be the answer. Now, the sponsor made it clear that this alone is not going to be the answer and I appreciate that. But for folks who -- who think that it's just a -- those -- those dirty for-profit capitalists who are trying to make money, those folks really do care. I worked for a non-profit EMS agency before I was elected. I've worked for another large non-profit and a for-profit multispecialty medical group. I'm not a clinician, but I can tell you I worked with a lot of frontline workers. These people care tremendously about their jobs and the care that they

provide. When I worked as an EMT I took patients to for-profit facilities, non-profit facilities, publicly-run facilities. I'm a believer in options, and right now by capping the amount that we can expand for-profit facilities, we are limiting those options here in New York State. And for those reasons and many that were already cited I will be voting no. I also want to add that it is in the interest of for-profit facilities to run an efficient, high-quality facility. It is in their interest. The better they do, the more successful they are, the more money they make.

But with that, again, I will be voting in the negative and encourage my colleagues to do the same.

ACTING SPEAKER AUBRY: Mr. Byrne in the -- in the negative.

Mr. Tannousis.

MR. TANNOUSIS: Thank you, Mr. Speaker. As the Ranking Member of the Aging Committee, I am a negative on this bill. I just find it difficult to understand why a nursing home with a 5-Star rating who is doing an exceptional job and service for our seniors will not be allowed under -- to continue under -- under this bill. So for that reason, I am against it. And especially my district where there is an increasing need for senior housing, I am against this bill.

Thank you very much.

ACTING SPEAKER AUBRY: Thank you, sir.

Are there any other votes?

We have exceptions?

MRS. PEOPLES-STOKES: Mr. Speaker, we do have some exceptions: Mr. Stern, Mr. Eichenstein, Mr. Weprin, Ms. Griffin, Mr. Daniel Rosenthal, Ms. Pheffer Amato, Mr. Sayegh, Mr. Jones, Ms. Sillitti, Mr. Cusick, Mr. Barnwell, Mr. Santabarbara and Ms. Hyndman.

ACTING SPEAKER AUBRY: Thank you. So noted.

Again, are there --

(Pause)

Are there any other votes? Announce the results.

(The Clerk announced the results.)

The bill is passed.

THE CLERK: Assembly Bill No. A05847, Rules Report No. 31, Woerner, Gottfried, Weinstein, Jacobson, Buttenschon, Anderson, Otis, Sayegh, Stirpe, Dinowitz, Sillitti, Simon, Glick, Vanel, Lunsford, Cahill, Barron, L. Rosenthal, Pichardo, Richardson, Bronson, Zebrowski, Thiele, Williams, Bichotte Hermelyn, Carroll, Lupardo, McMahon, Abinanti, Gallagher, Stern, Forrest, Cruz, Nolan, Clark, Jackson. An act to amend the Public Health Law, in relation to antimicrobial resistance prevention and education.

ACTING SPEAKER AUBRY: Read the last section.

THE CLERK: This act shall take effect on the 90th day.

ACTING SPEAKER AUBRY: The Clerk will record

the vote on Assembly print A-5847. This is a fast roll call. Any member who wishes to be recorded in the negative is reminded to contact the Majority or Minority Leader at the numbers previously provided.

(The Clerk recorded the vote.)

Ms. Buttenschon to explain her vote.

MS. BUTTENSCHON: Thank you, Mr. Speaker. I rise to explain my vote. Our healthcare facilities have seen unprecedented times with the COVID-19 pandemic and with new disease and strains constantly emerging. I understand the importance of this bill, as it will improve patient outcomes by reducing the spread of infection. It is imperative that we continue to work together to determine what is best for all New Yorkers. So I appreciate the sponsor bringing this bill forward and I will be supporting this bill.

Thank you.

ACTING SPEAKER AUBRY: Ms. Buttenschon in the affirmative.

Ms Woerner to explain her vote.

MS. WOERNER: To explain my vote. Since I'm batting cleanup on the package today, I want to -- I want to begin by just saying thank you to all my colleagues for the attention that you have brought to the -- to the need to reform our nursing homes in New York State to -- to improve patient quality. This has been a robust debate today, and a lot of information has been brought forward and I think the package of bills that we are supporting will go a long way.

This particular bill addresses a specific problem of the rise of viruses and infections that are -- that are resistant to drugs. And it builds on a CMS regulation that in answer to Mr. Goodell's question yesterday establishes the requirement to -- to measure the effectiveness of the antimicrobial program and -- and include a -- an antimicrobial utilization rate and the mitigation plans for when those rates spike. A -- an important improvement over what CMS requires to date.

So, I want to thank you all again for the great debate today and for the great work that we did collectively to improve the quality of nursing homes for residents in New York State. Thank you.

ACTING SPEAKER AUBRY: Ms. Woerner in the affirmative.

Mr. Rodriguez.

MR. RODRIGUEZ: Thank you, Mr. Speaker, for the opportunity to explain my vote. This is a very significant piece of legislation along with the various other ones that we're passing today and -- and tomorrow to address what we really know has been a disparity of care in many nursing home facilities, particularly during the COVID-19 pandemic. We have seen almost 13,000 deaths related to this and -- and we need to be able to say that in these circumstances and certainly moving forward either through the immunity provisions that we have passed before or to make sure that we increase reporting transparency and the level of care that exists in our existing nursing home facilities, that we're taking all actions to make sure that our loved ones are cared for in the future.

So as a result, I will be voting on this bill in the affirmative and thank the sponsor for her work and all of the sponsors on this very important issue. Thank you.

ACTING SPEAKER AUBRY: Mr. Rodriguez in the affirmative.

Are there any other votes?

We have an exception, Mr. Goodell?

MR. GOODELL: Yes, sir. Please record Mr. Walczyk in the negative on this legislation. Thank you, sir.

ACTING SPEAKER AUBRY: So noted. Thank you.

Announce the results.

(The Clerk announced the results.)

The bill is passed.

Mrs. Peoples-Stokes.

MRS. PEOPLES-STOKES: Mr. Speaker, we do have a privileged resolution that Mr. Sayegh would like to speak on. Immediately following that, I would say if you have any other resolutions or housekeeping we should take that up. Either call on Mr. Goodell and one back to myself and...

ACTING SPEAKER AUBRY: Certainly, Mrs. Peoples -- first we will take of a bit of housekeeping.

On a motion by Mr. Gottfried, page 5, Rules Report No. 27, Bill No. A.5841, amendments are received and adopted.

On a motion by Mr. Abinanti, page 6, Rules Report

No. 29, Bill No. 5844, amendments are received and adopted.

On a privileged resolution, Calendar -- Resolution 78, the Clerk will read.

THE CLERK: Assembly Resolution No. 78, Mr. Sayegh.

Legislative Resolution mourning the death of Lawrence Otis Graham, prominent attorney, best-selling author and distinguished citizen.

ACTING SPEAKER AUBRY: Mr. Sayegh on the resolution.

We need to unmute Mr. Sayegh.

Right, we -- Mr. Sayegh is still not unmuted. Still not. We've got a technical problem with Mr. Sayegh. Somebody please reach out to him so we can fix his problem.

(Pause)

Still not connected.

MR. SAYEGH: Hello?

ACTING SPEAKER AUBRY: There we go. How are you, sir?

MR. SAYEGH: Okay. Sorry about that --

ACTING SPEAKER AUBRY: Good to see you. Now you can go --

MR. SAYEGH: Always a pleasure. Mr. Speaker, thank you very much. I rise this afternoon to -- to support and present this resolution to honor the life and times of Lawrence Otis Graham of

Chappaqua, New York, here in Westchester County. A prominent attorney, best-selling author, a distinguished citizen. And today I share an honor in his life with my fellow Westchester delegation who are also cosigners on this resolution. Lawrence Otis Graham is a Westchester writer whose books on the African-American experience won national acclaim, provided a thorough look into the issues of race and class in Black America. He died recently, February 19, 2021 at an early age of 59. Son of Betty and Richard Graham, graduated White Plains High School here in Westchester. Received his bachelor's degree from Princeton University and his Juris Law degree from Harvard Law School. Prominent corporation real estate attorney, he had an impact on understanding race not only in Westchester County but across the nation. And he had his hands on the pulse of African-Americans and their experience. He did a great job navigating the political dynamics of our County through his commentary and perspectives on Westchester Cable News 12. He ran for Congress in 2000, chairing in various local and county and national organizations. Someone who has displayed not only the leadership in our community, but in addition to it a distinguished career as a best-selling author of 14 nonfiction books about politics, education, race and class in America. Some of which include, *Our Kind of People: Inside America's Black Upper Class*, a *New York Times* and national bestseller which Fox Entertainment is currently developing into a television series. *The Senator and the Socialite: The Story of America's First Black Political Dynasty*. And his essay

collection as a member of a -- a very elite country club in Connecticut. When he was just 30 years old, he took a job as a busboy, especially when he put aside his degree at Princeton and Harvard, took a job as a busboy to experience what a Black young man had to go through working at a very exclusive country club in Connecticut. And today we honor his life. We honor his memory. Whereas, he's survived by a wife of 29 years, Pamela Thomas-Graham; his two sons, Gordon and Harrison; and daughter Lindsey; his brother, Richard; and godmother Mirian. You know, we honor his life, we honor his commitment. The knowledge he has provided for us in Westchester County and the entire nation through his legal work, his -- his support of community-based organizations, his ability to encourage and motivate individuals, the disadvantaged and everyone else. And especially his leadership as a most noted author and writer.

So today, you know, we honor his legacy and honor his life through this resolution. Thank you very much.

ACTING SPEAKER AUBRY: Thank you.

On the resolution, all those in favor signify by saying aye; opposed, no. The resolution is adopted.

Mrs. Peoples-Stokes, we have a few other resolutions which we will take up on one vote.

On the resolutions, all those in favor signify by saying aye; opposed, no. The resolutions are adopted.

(Whereupon, Assembly Resolution Nos. 87 and 88 were unanimously adopted.)

Mrs. Peoples-Stokes.

MRS. PEOPLES-STOKES: Mr. Speaker, if you could please call on Mr. Goodell for an announcement, and immediately following him if you can call on Ms. Hunter for an announcement.

ACTING SPEAKER AUBRY: Mr. Goodell.

MR. GOODELL: Thank you, sir. Would you please call on Mr. Norris for an important announcement.

ACTING SPEAKER AUBRY: Mr. Norris for an important announcement.

MR. NORRIS: Thank you, Mr. Speaker. There will be a Minority caucus, members only, at 4:30 today. So 4:30 today, a Minority caucus, members only. Thank you.

ACTING SPEAKER AUBRY: Minority caucus as described by Mr. Norris.

And Ms. Hunter.

MS. HUNTER: Yes. Thank you, Mr. Speaker. There will be an immediate Majority Conference at the adjournment of Session.

ACTING SPEAKER AUBRY: Majority Conference at the end of Session.

Mrs. Peoples-Stokes.

MRS. PEOPLES-STOKES: Mr. Speaker, I now move that the Assembly stand adjourned until 10:00 a.m., Friday, March the 5th, tomorrow being a Session day.

ACTING SPEAKER AUBRY: The Assembly stands adjourned.

(Whereupon, at 3:45 p.m., the Assembly stood adjourned until Friday, March 5th at 10:00 a.m., Friday being a Session day.)