TUESDAY, MARCH 9, 2021 1:53 P.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 Monday, March 8th.

Mrs. Peoples-Stokes.

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

dispense with the further reading of the Journal of March the 8th and ask that the same stand approved.

ACTING SPEAKER AUBRY: Without objection, so ordered.

Mrs. Peoples-Stokes.

MRS. PEOPLES-STOKES: Thank you so much, Mr. Speaker. I'd like to provide a quote for the day. Again, we are going to hear posthumously from the Notorious RBG, Ruth Bader Ginsburg. As everyone knows, she was an Associate Justice of the United States Supreme Court. She left us in 2020, but these words are still with us, Mr. Speaker, and they say: *Fight for things you care about, but do it in a way that will lead others to join you*.

Mr. Speaker and colleagues, members do have on their desk the main Calendar as well as an A-Calendar, and I'd now like to advance that A-Calendar, Mr. Speaker.

ACTING SPEAKER AUBRY: On Mrs. Peoples-Stokes' motion, the A-Calendar is advanced.

MRS. PEOPLES-STOKES: Thank you. After there are any introductions and/or housekeeping, we're going to begin our work today with the -- on the Calendar with resolutions on page 3, and then we're going to take up the following seven bills relating to nursing homes: Rules Report No. 27, Rules Report No. -- by Mr. Gottfried; and Rules Report No. 34 by Mr. Gottfried; Rules Report No. 35 by Mr. Bronson; Rules Report No. 36 by Mr. Kim; Rules Report No. 37, Mr. Gottfried; Rules Report No. 38, Mr. Gottfried; and

Rules Report No. 39 by Ms. Lunsford. Mr. Speaker, there is absolutely a need for a Majority Conference at the conclusion of our work today. We will speak with our colleagues on the other side of the aisle to help determine what their needs are, but that's we have, Mr. Speaker, and we're ready to proceed.

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

The Clerk will read resolution on page 3, Assembly No. 92.

THE CLERK: Assembly Resolution No. 92, Mr. DeStefano.

Legislative Resolution memorializing Governor Andrew M. Cuomo to proclaim March 2021 as Music in our Schools Month.

ACTING SPEAKER AUBRY: Mr. DeStefano on the resolution.

MR. DESTEFANO: Thank you, Mr. Speaker, for the opportunity to speak on this resolution. Music enriches our lives and is key to a component of our culture. In a scholastic setting, music provides for a well-rounded education and grounds for students in numerous disciplines that will benefit them throughout their lives. National Music in our Schools Month is an annual celebration by the National Association for Music Education which engages music educators, students, communities from around the country in promoting high-quality music and education. This year, the

Association's 48 is highlighting music in our schools, an effort that began as a single Statewide advocacy day and has since grown to a nationwide, month-long celebration.

As part of this appreciation month, students will perform various concerts in State Legislatures, concert halls, and schools to showcase their talent to America's youth. Music has been part of human history since mankind first discovered its love for this beautiful and cherished art form in events such as our Music in our Schools, to allow it to continue and progress for it to evolve. That's why I'm proud to sponsor this resolution identifying March 2021 as Music in our Schools Month in the State of New York. This recognition will go a long way toward preserving a part of American's rich past and contribute greatly to the music education of our youth.

Thank you, Mr. Speaker.

ACTING SPEAKER AUBRY: Thank you, sir.

Mr. Manktelow on the resolution.

MR. MANKTELOW: Thank you, Mr. Speaker. I want to commend the sponsor for bringing this resolution forward. What a great time. We're coming into springtime and we're dealing with the COVID issues that we have going on, and music is such an important part to these young people's lives in our school systems, whether it's Catholic school, public school, private school, and anything that we can do as legislators to make sure they're back together creating music together, making that lovely sound, anything that we can do would be awesome. And, again, moving that rule from

12-foot to six-foot rule to get them even closer.

So again, I want to thank the sponsor for this -- this piece of -- or this resolution and fully back it, and I think about our children back home and I look forward to hearing them play again. So thank you, Mr. Speaker.

ACTING SPEAKER AUBRY: Thank you, sir.

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

Page 4, main Calendar, Rules Report No. 27, the Clerk will read.

THE CLERK: Assembly No. A05841-A, Rules Report No. 27, Gottfried, Weinstein, Sayegh, Steck, Simon, Cusick, Barron, Abinanti, Cook, Glick, Vanel, Lunsford, Cahill, L. Rosenthal, Pichardo, Richardson, Bronson, Zebrowski, Thiele, Williams, Bichotte Hermelyn, Carroll, Fall, Gallagher, Forrest, Cruz, Stirpe, Nolan, Clark, Colton, Perry, Santabarbara, Hunter, Jackson, Zinerman, Griffin, Kelles, Jacobson, Sillitti. An act to amend the Public Health Law, in relation to the use of psychotropic medications in nursing homes and adult care facilities.

ACTING SPEAKER AUBRY: There it is.

(Pause)

An explanation is requested, Mr. Gottfried.

MR. GOTTFRIED: Thank you, Mr. Speaker. This bill, which we've passed several times before, deals with regulating how psychotropic drugs are prescribed and administered in nursing

homes. Several reports have documented that New York's rate of using psychotropic drugs essentially as what are often called "chemical restraints" on nursing home residents is a lot worse than in a lot of other states. It is a very serious problem where, in many cases, nursing homes use psychotropic drugs to essentially zonk out patients so they are quiet and sit in the corner, and don't do anything, and don't eat up any staff time, and it does people serious medical and -- and psychological damage.

And this bill would put in some tight restrictions to make sure that when these drugs are prescribed, either the patient -- the resident or a family member understands what's being done, that there are restrictions so that once the prescription is written, it isn't just used again and again just at the convenience of staff, et cetera. As I say, it's a bill we have passed before. It is strongly supported by people who advocate for the welfare of nursing home residents.

ACTING SPEAKER AUBRY: Mr. Goodell.

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

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

MR. GOTTFRIED: Certainly.

ACTING SPEAKER AUBRY: Mr. Gottfried yields.

MR. GOODELL: Thank you, Mr. Gottfried. Is there a definition of "psychotropic drugs" in this bill?

MR. GOTTFRIED: Yes. It's right there at the

beginning of the bill. It means a drugs that affects -- if you want me to read it, I can: "A drug that affects brain activity associated with mental processes and behavior including, but not limited to, antipsychotics, antidepressants, antianxiety drugs or anxiolytics and hypnotics."

MR. GOODELL: Would this, then, also include medical marihuana?

MR. GOTTFRIED: It probably would not because the Medical Marihuana Law says that it is not a drug for a lot of legal purposes. It's an interesting question. I don't think medical marihuana fits the description that -- fits this definition, in any event. And also, with medical marihuana, as with controlled substances, we have a fairly strict system for keeping track in the State's system of medical marihuana certifications for patients. It's also, at the moment, a -- a very expensive product because no third-party coverage covers it.

MR. GOODELL: Thank you, Mr. Gottfried. This bill requires that any prescription be renewed every two weeks, with certain exceptions in the event of an emergency situation. But if it's a non-emergency situation, does this bill provide an alternative mechanism for renewing a routine prescription where the representative may be unavailable, out of town, on vacation, or not responding in order to give consent? So other than an emergency situation, is there any other exemption from requiring reauthorization by the patient or a representative every two weeks?

MR. GOTTFRIED: Well, I haven't read the bill word

by word in a little while, but I don't believe there is such an exemption. The nursing home would certainly want to pay attention to the patient's prescription and when it's coming due for a -- for a refill. But these are -- these are dangerous drugs and I would not want a -- a nursing home to fall into the habit of deciding that they want to go look for approval for renewal when they have a reason to believe that the family member is not available, or -- or to not really look that hard for the family member and then claim, *Oh, we couldn't reach them*. People need to take these drugs a lot more seriously and carefully and -- and professionally than they do.

MR. GOODELL: Certainly many of these medications, as you point out, are very serious, but also for many of these medications, there's very, very serious health consequences if they are cut off without the patient going through a --a regimen of reducing the prescription amounts or -- or otherwise being carefully monitored. Is there any provision to protect those patients who are on long-term medications where the termination of the prescription, or delay in the renewal itself could cause very serious issues? Other than the emergency provisions, is there anything else in this bill that would deal with those types of drugs where there's very serious withdrawal symptoms and potentially fatal problems if a prescription is not renewed?

MR. GOTTFRIED: Well, first of all, I don't think there is such language in the bill but, second of all, more importantly, you know, this bill's been around for a long time and in all that time,

no pharmacist has told me there's a problem with the language. No -- I don't think any physician has said, *Gee, you're not adequately providing for renewals*, et cetera, et cetera. You know, no -- no nursing home resident advocate has expressed concern about the language. So I -- I think -- I think if somebody has said this to you, I think they are raising a phantom concern and I'd have to wonder what their agenda was.

MR. GOODELL: Along those lines, I'm -- I'm happy to forward some of the memos in opposition that we've received that may be helpful in filling out that issue. One other question I had --

MR. GOTTFRIED: May I ask whether any of those memos came from somebody other than nursing home operators or their trade associations?

MR. GOODELL: Yes. The Medical Society of the State of New York has a memo in opposition.

MR. GOTTFRIED: Okay.

MR. GOODELL: And I assume they are thoughtful on these kinds of issues.

MR. GOTTFRIED: Generally, although their -- their general view on legislation is that anybody who tells any doctor that on any given occasion you can't do something or you have to follow some process, The Medical Society, like almost every other group in America, will oppose it because they assume they know best.

MR. GOODELL: Indeed, as do we, as legislators sometimes we feel the same way.

MR. GOTTFRIED: As a group they may know best, but there are certainly individual physicians and an awful lot of them work for nursing homes who cooperate in the -- in the outrageous abuse of these drugs, and that's a serious problem. And if the nursing home or the doctor has to plan ahead and think about renewal, that's better than having a lot of nursing home residents zonked out and suffering the medical consequences.

MR. GOODELL: As you know, some of these psychotropic drugs are prescribed on a long-term basis. I mean, we're talking about a patient that might be on them for years and years at a time. Is there any exception -- any exception in this legislation for those types of drugs where the medication is periodically reviewed, not every two weeks, but periodically reviewed, but intended to be a long-term medication?

MR. GOTTFRIED: No. The bill -- in order to be protective and to avoid the circumstance where a nursing home says, *Oh, this is really good for grandma*. Just says, *Oh, grandma needs this permanently* and grandma is zonked out permanently. We don't want that. And if it means that somebody has to think every two weeks about are we damaging grandma for the convenience of the nursing home operator, that's better than what's going on today.

MR. GOODELL: Well, I was very thankful that none of my grandparents, nor even my parents had to be on any psychotropic drugs, but I'm also aware that oftentimes these drugs, when used properly, enable a resident to have a normal productive

life. I mean, they're extraordinarily helpful for -- for many patients. So I'd be hesitant to suggest that our licensed physicians who are prescribing these are doing so with the intent of zonking out grandma, but if I may -- as you know, sometimes --

MR. GOTTFRIED: By the way, certainly there are physicians, maybe it's even the vast majority of physicians, who when they prescribe these drugs are doing it for what they believe are good reasons. But the Centers for Medicaid and Medicare Services and any number of advocacy groups have all said that the abuse and overuse of psychotropic drugs in our nursing homes is a really serious problem and it is especially serious in New York compared with other states.

MR. GOODELL: And, indeed, you are correct, of course, but in response to that, hasn't the Medicaid Program and Federal regulations been implemented to address this issue specifically, and I'm referencing, for example, the regulations contained in 42 CFR 483.43. I mean, it seems that the Federal government has already acted in this area, haven't they?

MR. GOTTFRIED: Well, they've taken some action. By the way, the two week renewal rule happens to be one of those Federal rules. So we're not inventing that, that is one of those Federal rules. And yes, the Federal government has for many years been concerned about what's going on with these drugs and has tried to crack down on them. And some of the language in this bill copies some of the Federal protections and puts those -- the enforcement of those directly in the hands of -- of the State, as -- as well as CMS, and

that's important because the Health Department is here; CMS is not always right here. So you know, your point about Federal regulations is a good one, and the bill is consistent with those Federal regulations but even with those Federal regulations, New York is still an outlier on this issue, so we need to do better.

MR. GOODELL: One of the other issues that's been raised by some folks is that sometimes the patient may be seen in a physician's office which is always, you know, a preferable way to do it. The physician, based on a careful and thoughtful analysis of the patient may prescribe medication and then the patient subsequently goes into a nursing home. Do you envision that physicians who don't normally practice in nursing homes are now going to be forced to make, if you will, in a sense, a house call every two weeks, or do you envision that a nursing home physician or someone employed by the nursing home would have to take over that case?

MR. GOTTFRIED: Well, there are circumstances in which a physician can prescribe a drug without having the physical presence of the patient in front of a physician, even more so now that we have more use of telehealth, but -- and this bill would not change those rules, but particularly because the nursing home patient is isolated from ordinary day-to-day social contact with people who could look at grandma or grandpa and say, *Oh my God, you know, he shouldn't be sitting there zonked out like that. What -- what the heck is going on?* That's, you know, that's part of the problem. And so for a doctor sitting in his or her office writing a prescription for who

knows how many months is -- is -- is not going to be in a position to be doing -- to be using the same level of care as if that doctor every two weeks is reminded to reexamine the situation.

MR. GOODELL: Thank you, Mr. Gottfried. I appreciate your comments.

MR. GOTTFRIED: And, by the way, that's why the Federal government -- that's why -- part of why the Federal government requires that.

MR. GOODELL: Thank you, Mr. Gottfried.

For someone who grew up in the -- the 1960s, I will share with you that I did not participate in psychotropic drugs, prescription or otherwise, but there were many people who paid good money to be zonked out apparently during that time frame, but that's a little bit different than what we're dealing with now.

On the bill, sir.

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

MR. GOODELL: I appreciate the objective of my colleague Mr. Gottfried to ensure that the medication for our nursing home patients is appropriate, and that's a concern that's been addressed extensively by Federal regulations and is already covered by a lot of provisions. The concern that I have is that some of these provisions, while certainly well-intended, create very practical problems. First, this bill would require that the patient, if they're capable, if not, a representative, sign off on a renewal of a prescription. So even if the physician reexamines it, does the full job,

recommends it, cannot issue a new prescription unless a representative or the patient signs off, and if the patient's not capable and the representative is unavailable because they're on vacation or they're out of the country or out of the area, then you run the risk that even though a physician has carefully analyzed the situation and recommended the continuation of the prescription, that cannot be renewed.

So because we already have comprehensive regulations on this and there's a tremendous danger if some of these drugs are not renewed in a thoughtful manner, I'm compelled to vote against it and would recommend that my colleagues oppose it, although I certainly appreciate my colleague's desire to make sure that grandma's not zonked out. Thank you, sir.

ACTING SPEAKER AUBRY: Thank you.

(Pause)

Read the last section.

THE CLERK: This act shall take effect on the 180th day.

ACTING SPEAKER AUBRY: The Clerk will record the vote on Assembly print A-5841-A. This 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

Party -- or Conference, rather, will be generally in the negative on this bill, but those who would support it should please call the Minority Leader's Office and let us know. Thank you, sir.

ACTING SPEAKER AUBRY: Thank you.

Ms. Hyndman.

MS. HYNDMAN: I would like to remind my colleagues that this is a Party vote. Majority members will be recorded in the affirmative. If there are any exceptions, I ask Majority members to contact the Majority Leader's Office at the number previously provided.

(The Clerk recorded the vote.)

ACTING SPEAKER AUBRY: Thank you. And as is our custom, we'll get back to it, this is the first vote of the day.

Mr. Stirpe to explain his vote.

MR. STIRPE: Thank you, Mr. Speaker. To explain my vote. My father spent the last eleven-and-a-half years of his life in a nursing home, and after a few months of him walking around late at night and being attacked by another resident, they started giving him Haloperidol, which is known as Haldol. Within a few months, he stopped reading the paper, he stopped watching TV and within less than a year, he stopped recognizing us or anybody else. So it was perfect for the nursing home. He didn't move around at all and they always knew where he was. But I just want to thank the sponsor for this sorely-needed bill and I hope the Senate passes it. Thank you, sir.

ACTING SPEAKER AUBRY: Mr. Stirpe in the

affirmative. Thank you, sir.

Mr. Goodell.

MR. GOODELL: Thank you, sir. Please record the following Republican members in the affirmative: Mr. Ashby, Mr. Byrne, Mr. Gandolfo, Mr. Miller -- I apologize, Ms. Miller, Melissa Miller -- Mr. Reilly, Mr. Schmitt, Mr. Tannousis, and already recorded here on the floor is Mr. Durso, Mr. Lawler, Mr. Giglio -- or Ms. Giglio. Thank you, sir.

ACTING SPEAKER AUBRY: Thank you. So noted.

Mrs. Peoples-Stokes.

Are there any other votes? Announce the results.

(The Clerk announced the results.)

The bill is passed.

On the A-Calendar, Rules Report No. 34, the Clerk will read.

THE CLERK: Assembly No. A00232-C, Rules Report No. 34, Gottfried, Darling, Woerner, Galef, Barron, Dinowitz, Bronson, González-Rojas, Cusick, Steck, Anderson, Simon, Jacobson, Cook, Colton, Forrest, Santabarbara, Griffin. An act to amend the Public Health Law, in relation to increasing monetary penalties for Public Health Law violations and providing support for the Nursing Home Quality Improvement Demonstration Program.

MR. GOODELL: Explanation, please.

ACTING SPEAKER AUBRY: An explanation is

requested, Mr. Gottfried. We need you to unmute yourself. There we go.

MR. GOTTFRIED: Okay. Thank you, Mr. Speaker.

So this bill would increase penalties under the Public Health Law in several ways. The basic $2,000 penalty, which has not been raised in an awful lot of years, would be raised to $3,000; same for penalties imposed by local health departments. For a violation involving a nursing home, a general hospital or things that are commonly called adult homes, the penalty would be raised to $5,000. For a second offense within 12 months that involves danger to health and safety which currently has a $5,000 penalty, that would go up to $10,000. And for a violation that involves actual serious physical harm to a patient, the current $10,000 maximum penalty would go to $20,000. And for penalties involving a nursing home where the dollar amount is more than $10,000, the excess would be paid into the Nursing Home Quality Improvement Program.

And let me stress, these are maximum penalties. In the vast majority of cases, the penalty that is assessed is dramatically less than the maximum and in many cases where a penalty or violation is found, you know, if the -- the wrongdoer can generally bargain their way down to no penalty if they eventually fix the problem. The privilege that most New Yorkers who might get accused of wrongdoing are not afforded.

ACTING SPEAKER AUBRY: Mr. Byrne.

MR. BYRNE: Thank you, Mr. Speaker. Will the

sponsor yield for some questions?

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

MR. GOTTFRIED: Certainly.

ACTING SPEAKER AUBRY: The sponsor yields.

MR. BYRNE: Thank you, Mr. Speaker and thank you, Mr. Chairman. We had some similar conversation in Committee earlier today about fines and penalties, so I'm going to try to go through some of those same questions, but before I start I do want to comment again, like I did in Committee, that I'm glad that we're having this debate here as a Legislature and that this isn't crammed simply in the Budget, because I know there's a similar proposal but even more extensive in the Governor's 30-day amendments. Would you mind just briefly trying to explain the difference between this bill-in-chief and some of the Budget amendments?

MR. GOTTFRIED: Well, first of all, before I do that I want to apologize to you and other Health Committee members. I made a mistake in the meeting when we were discussing the penalties. I guess in the context of one of the other bills we may be doing today where I said that the Public Health Law Section 12 penalties has language that says if there is some other piece of law that sets a different penalty, that other one applies. I was misremembering a provision that said that if some other piece of law says that something is a misdemeanor or a felony that applies, but the Public Health Law does not say what I said it says.

As for your -- your question, what I elaborate on the differences between the bill in front of us and what's in the Governor's budget proposal, I will say that what's in the Governor's budget raises penalties a whole lot more than this bill does. I think where we increase the penalty, like, from $2,000 to $3,000 I think he even increases it from $2,000 to $10,000. So if you think this is harsh, we're -- we're nowhere near in the Governor's ballpark on that point. And so I -- you know, we'll -- we'll see whether any of that gets -- gets done as part of the budget, but this bill is -- is very different and has much lower penalties than the Governor's proposing.

MR. BYRNE: Well, that was my read and while I'll likely be objecting and voting no on this bill, I would say that if I had to pick between this one or the Governor's proposal, I would pick this one, so I will say that.

MR. GOTTFRIED: Good choice.

MR. BYRNE: It's the preferable of the two. But I do have --

(Laughter)

-- thank you, and thank you for your comments earlier clarifying the record from -- from our discussion in Committee. As always, when we talk about increasing fines and penalties, I think there's this intention to help drive better behavior, better actions, and hopefully better quality care, but there's also this other concern about, well, where are those dollars coming from where they could otherwise be used to maybe invest in capital expenses, to make not only to help

with, perhaps, staffing, but also just quality of life issues in some of these facilities, not necessarily always care, but there's other amenities that they could add that are not always directly tied to care. And when we're adding penalties, sometimes there's that risk of taking those -- those dollars and resources from them.

I do want to -- obviously if they do something that's -- that's wrong, we're not saying there shouldn't be any sort of punishment. Your comment, I noticed you were saying, you're right. A majority of these fines are less than the maximum. A lot of them may be less than the existing maximum. So let me just pose that question. If -- if so many of them are less than the maximum, why are we looking to increase it now? Is that -- are we looking to have all of these -- basically all the fines be scaled up?

MR. GOTTFRIED: Well, I think -- I think there are cases in which the maximum fine is levied and in cases in which you would wish that the fine could be substantially higher, especially in the categories in this bill of repeat offenders and people that cause harm and, remember, the -- the -- the basic $2,000 penalty has not been touched in many, many years, I forget exactly how many, but if you were just adjusting for inflation you'd be doing this or more. And also, you know, if the -- the penalty is $2,000 and you're an inspector and you say, *Well, this isn't the worst case I've seen, so I'll propose $1,000*. If the maximum is $3,000 then maybe instead of recommending $1,000 you might recommend $1,500. And given inflation since the last time we looked at these penalties, I think that's

appropriate.

And on the other point about does this take money away from patient care, you know, unfortunately the -- the people who gave -- (inaudible/mic cut out) whose conduct puts them in line for higher fines, particularly for repeat offenders and people whose offenses caused actual harm, which is where the -- the real meat of this bill is, those people are not people who if they weren't paying the fine they'd be paying for extra nurses or extra quality food. They're people who if they weren't paying a fine it would either be going into profit or -- or an Executive salary or fattening a contract with a -- with a contractor that they have an economic relationship to. So the notion that we're taking money -- we're taking food out of the mouths of nursing home residents I -- I think is a fantasy.

MR. BYRNE: Well, another question, since you did kind of mention this I think earlier, this is amending the Public Health Law so this is not targeted at one specific sector in health care. This is -- this is all sectors, this is hospitals, this is nursing facilities, this is full care facilities, private, non-profit, public sector, all of the above; that's correct?

MR. GOTTFRIED: That is correct.

MR. BYRNE: Okay. And I think that -- I think that's -- while we talked about these things, I think that makes -- that makes sense, we -- we at least look at -- treat them all equally. I just -- I bring that up because I know in previous debates on other bills we -- we kind of get this -- this perspective about a certain sector is a certain

way and if there's -- there's issues, I think it should be looked at regardless of what sector they come from. And I -- I do have concerns ultimately that this might be still too much of an increase, but I again, Mr. Chairman, I'll thank you for your work on this bill. While I will be voting no, I do prefer it than -- other than the budget proposal from the Governor and the 30 day amendments. So while I don't like these things in the budget to begin with, if it does, I would rather have yours than the Governor's. Thank you.

MR. GOTTFRIED: Thank you.

ACTING SPEAKER AUBRY: Thank you.

Ms. Walsh.

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-232-C. This 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. On Rules Report No. 34, Assembly Bill No. 232-C, the Republican Conference is generally voting in the negative. If there are any members who'd like to vote in the affirmative, please contact the Minority Leader's Office. Thank you, sir.

ACTING SPEAKER AUBRY: Thank you.

Mrs. Peoples-Stokes.

MRS. PEOPLES-STOKES: Majority colleagues, this will be a Majority members in the affirmative on this one. Should colleagues desire to vote negative, please feel free to contact the Majority Leader's Office. We will so appropriately record your vote.

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

(The Clerk recorded the vote.)

Ms. Walsh.

MS. WALSH: Thank you, Mr. Speaker. To explain my vote.

ACTING SPEAKER AUBRY: To explain her vote, Ms. Walsh.

MS. WALSH: Yes, thank you. I didn't have any questions because my -- my colleague Mr. Byrne asked them all, so that's why I didn't debate that bill, but I do want to say that I -- I agree that we do need to deter bad behavior and I think that these fines had not been -- and penalties have not been increased since 2008, which is 13, if my math is right, is 13 years ago; that's quite a long time. So I am going to be voting in favor of this bill because I think that it serves an important public policy. So I will be in favor of it. Thank you.

ACTING SPEAKER AUBRY: Thank you, Ms. Walsh.

Mr. Lawler.

MR. LAWLER: Thank you, Mr. Speaker. I

appreciate the sponsor putting this bill forward. As my colleague just said, these fines have not been raised in many years and given what we have experienced this year as a deterrent to ensure that our nursing homes are doing what is right and doing what is in the best interest of their patients, I -- I support the push to increase the fines. I don't think it is too exorbitant an increase and I -- I think obviously given what we have seen and what we are dealing with is important to do so, so I will be voting in the affirmative.

ACTING SPEAKER AUBRY: Mr. Lawler in the affirmative.

Mr. Goodell.

MR. GOODELL: Thank you, sir. As is aptly demonstrated on this bill, the Republican Conference believes in the big tent with encouraging our members to express their personal views, and I think we're all strengthened by that diversity. Having said that, with the greatest respect and admiration for a couple of my colleagues, I wanted to mention the reasons why I'm voting no.

During the last year we've seen an extraordinary difficult time for many of our restaurants, health care workers, businesses, nursing homes. In my district, our nursing home was struggling to provide the high-quality care. One of my nursing homes in particular never had a citation. They had a substantial number of their staff that were out on quarantine and, as you know, particularly during the early phases, people would go out on quarantine if they were exposed and there wasn't enough test kits around. And then they

followed it up with a massive amount of testing, which was extraordinarily disruptive, and then if they had a positive case they had to implement very strict protocols. And in one of my nursing homes, the administrator herself was delivering meals to the residents because they were so short-staffed. And we've seen restaurants who are just struggling to stay alive, and take-out was fine for some restaurants, but without full capacity, many of the restaurants in my districts couldn't even survive.

And so to come up right at this time and talk about increasing fines anywhere from 50 percent or doubling fines, it's the wrong message. We need to help our businesses survive, move forward rather than coming at them with a big stick, we need to be encouraging them every way we can to survive. Thank you, sir.

ACTING SPEAKER AUBRY: Mr. Goodell in the negative.

Mr. Goodell.

MR. GOODELL: Thank you, sir. The following highly respected members from my Conference are voting yes: Mr. Lawler, Ms. Miller, Ms. Walsh and Mr. Durso. Thank you, sir.

ACTING SPEAKER AUBRY: So noted.

Are there any other votes? Announce the results.

(The Clerk announced the results.)

The bill is passed.

THE CLERK: Assembly No. A01010-A, Rules Report No. 35, Bronson, Lupardo, Seawright, Stern, Clark, Gottfried,

Nolan, Jacobson, Meeks, Simon, Englebright, Griffin, Lunsford, Aubry, Forrest, Santabarbara, Anderson. An act to amend the Public Health Law, in relation to directing the Department of Health to make publicly available the results of all inspections conducted by such Department in nursing homes and other residential health care facilities in the State during the COVID-19 State disaster emergency and thereafter.

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

MR. BRONSON: Yes, Mr. Speaker. This bill would require the Commissioner of Health to publish each nursing home inspection on their website within 30 days of the enactment of the bill, and any patient identifying information would be redacted from the published information.

ACTING SPEAKER AUBRY: Ms. Walsh.

MS. WALSH: Mr. Speaker, will the sponsor yield for just a few questions?

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

MR. BRONSON: Yes, I will, Mr. Speaker.

ACTING SPEAKER AUBRY: The sponsor yields.

MS. WALSH: Thank you so much. So just a couple of questions. As far as the time frame of 30 days, do you believe that that is a realistic time frame to accomplish the posting that the bill is going to require?

MR. BRONSON: The -- yes, because they have this information and previously, there was requirements for them to have this information available for FOIL requests and things of that nature. Current law requires summaries of these reports to be provided, but not the actual report. So they have the information. We -- we chose to only go back to a start date of March 7th which is around the beginning of the COVID situation, and we felt it was important for this information to get up on this website as soon as possible for family members and others to have the information available to them.

MS. WALSH: Yeah, and while I completely agree with you that I think that this is very important information that I would want to have, you know, regarding a place where my own loved one was living, I just -- I was wondering how long it's taking currently for this information even in the summary form that you indicated, the less detailed form, is making it on to a website. Isn't it many, many months or, like, over a year on average doesn't it take to get on -- on to the website?

MR. BRONSON: Well, if it's taking -- I -- I don't know if that's the case, but if it's taking that long it's unacceptable. And this law is going to require 30 days and, you know, certainly in the beginning for them to catch up from March 7th to the date that this law is -- is signed and implemented, you know, that -- that may have some burden on the Department of Health but, you know, I think that burden is far outweighed by the need for families to have this information and, quite frankly, the need for the Legislature to have

that information available. So with that additional information, we possibly could be making policy decisions that will improve the situations that is happening in nursing homes.

MS. WALSH: So one question I had is what about a facility's response to an inspection? So say that there's an inspection and there's certain deficiencies that have been noted in the course of the inspection. Will the website indicate the facility's response to that assessed deficiency?

MR. BRONSON: It -- it -- it doesn't call for their response, but it does call for the need for whatever the corrective actions are required. So the corrective actions would be required, but not necessarily, you know, if they have a retort or a response or they have a counter position; the legislation doesn't speak to that being published.

MS. WALSH: All right, yeah, and that's kind of what I was getting at. So if -- if you're not going to -- and I mean this is very important data that I'm sure will be relied upon by family members because it will allow users to compare nursing homes throughout New York. So I think it's important that information get out there, but also if there -- if there is a position that the facility has, it seems like that might be something that should also be indicated. If there is corrective action that is being required, will the website be updated to indicate perhaps that those deficiencies have been addressed and how quickly or anything like that?

MR. BRONSON: Well, it doesn't specifically require

that, but certainly that would be allowed. It's not required. What's required is that the inspection and the results of the inspection are -- are posted. Certainly -- and included in those inspections, as I understand it, is, you know, what would be the remedial steps that are necessary. So, you know, the information's out there and the public, families, the Legislature, we would be able to follow up and -- and check with the nursing home to see if they've taken corrective steps.

MS. WALSH: Thank you very much.

Mr. Speaker, on the bill.

MR. BRONSON: Thank you.

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

MS. WALSH: So I completely agree with the sponsor and I thank the sponsor for bringing this bill forward in terms of wanting to provide good, accurate information in a reasonable time frame that will allow loved ones to be able to help to seek out the best care for their -- for their family members throughout the State. I would just suggest, and that's kind of where I was trying to go with my questioning, that there is kind of another side to a story and I think it would be good information, I would want to know as a family member, well, if there was a deficiency but if it was corrected and it was corrected immediately, that would also tell me something that might be useful information in making determinations about where to place my loved one.

So I would, you know, I would encourage that

consideration. I understand that this is perhaps a lot of data that's going to be put into the website, but maybe moving forward that could be considered. I think just out of fairness to the nursing home facilities who will obviously want to take corrective action, the good ones will, and it would be good to note that for people who are interested in the consumers. So thank you.

ACTING SPEAKER AUBRY: Thank you, Ms. Walsh.

Mr. Manktelow.

MR. MANKTELOW: Thank you, Mr. Speaker. Would the sponsor yield for a few questions?

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

MR. BRONSON: Yes, I will, Mr. Speaker.

ACTING SPEAKER AUBRY: Mr. Bronson yields.

MR. MANKTELOW: Thank you, Mr. Bronson. It's good to see you. I wish you were on the floor down here with me, but it's good to see you on -- on the screen. One of the questions I had was the 30 days, is that from the start of the investigation or is that from the day of the findings?

MR. BRONSON: It would be once the inspection is completed as we move forward. Certainly there were inspections that were conducted since March 7th, so that would be 30 days from the signing of the law.

MR. MANKTELOW: All right, thank you, sir. And

do these inspection reports include only annual inspections or do they also include DOH inspections such as infection control or resident/family complaints?

MR. BRONSON: These are Department of Health inspections of nursing homes.

MR. MANKTELOW: So these that I just said would all be included in that, is that correct?

MR. BRONSON: Any -- any inspection whether it's a regularly scheduled inspection or I think as required under law that there is at least one unannounced inspection over a certain period of time, I don't recall specifically if it's 12 months or 18 months.

MR. MANKTELOW: Okay. I have just two more questions and I believe my colleague probably covered these, but I just want to be sure. Will the DOH website show point of correction activities by the nursing home at any time?

MR. BRONSON: It will show what the inspection results are and what the corrective, remedial steps need to be.

MR. MANKTELOW: And my last question, Mr. Bronson, is if a facility is appealing the findings of the inspection, will -- will DOH note or update if the appeal is upheld or adjudicated?

MR. BRONSON: It's not specifically addressed in the piece of legislation, but my anticipation would be in the determination of when is a completed inspection, and if they're still a, you know, that the DOH and the nursing home are going back and forth on that, that I wouldn't consider that a completed inspection until

the DOH finalizes its finding plus what the remedial steps are taken.

MR. MANKTELOW: So then it's my understanding that if the facility is appealing the inspection, then it would not be posted until that is finalized, is that correct?

MR. BRONSON: Yeah. Again, it's not specifically addressed, but I think the intent in the -- in the legislation is that once the inspection's completed, meaning any appeal processes or things of that nature, once that's completed then there's a final determination by DOH. That's what would be posted.

MR. MANKTELOW: Okay. Thank you, Mr. Sponsor, and thank you, Mr. Speaker.

ACTING SPEAKER AUBRY: Thank you, sir.

Read the last section.

THE CLERK: This act shall take effect immediately.

ACTING SPEAKER AUBRY: The Clerk will record the vote on Assembly print 1010-A. 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. González-Rojas to explain her vote.

MS. GONZÁLEZ-ROJAS: Thank you, Mr. Speaker, to explain my vote.

ACTING SPEAKER AUBRY: Please.

MS. GONZÁLEZ-ROJAS: I rise in favor of this

legislation and I thank the bill sponsor for their work on it. As I have said previously, the death of New Yorkers in nursing homes must be remembered as a loss of many loved ones who died because of serious gaps in our health care system and because of special interest. But we can right these wrongs now that existed prior to COVID-19 as well.

This legislation will require the Department of Health to publish online all inspections conducted in nursing homes and residential health care facilities during the COVID-19 crisis. It is part of the many steps that we need to take to ensure that New Yorkers are provided with the information necessary for accountability and sound decision-making. With the additional visits encouraged by this legislation to nursing homes to examine if violations or deficiencies have been corrected and a study on best practices, I am hoping that we will not see the devastating loss of life that we have seen in this State. Thank you so much and I vote in the affirmative.

ACTING SPEAKER AUBRY: Ms. González-Rojas in the affirmative.

Mr. Bronson to explain his vote.

MR. BRONSON: Yes, Mr. Speaker, to explain my vote. This bill would require the Commissioner of Health to publish on the Department of Health website in a manner that is publicly accessible the results of all inspections conducted in a nursing home. It would have to be done within 30 days and any patient identifying information would be redacted and the published information would indicate why that particular piece of information was redacted. It

would apply retroactively to all inspections beginning on the day of the emergency declaration for COVID.

Mr. Speaker, it shouldn't take a scathing report by the Attorney General for critical information about our State nursing homes to be accessible to the public. In the wake of this tragedy, it's more important than ever that New Yorkers have the transparency they need to make informed decisions and trust that their loved ones are being properly cared for. This legislation will ensure the public receives the complete and accurate information we need to better protect our most vulnerable, as well as ensure no other families ever have to undergo this combination of confusion and grief again that they experienced during COVID.

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

ACTING SPEAKER AUBRY: Mr. Bronson in the affirmative.

Are there any other votes? Announce the results.

(The Clerk announced the results.)

The bill is passed.

THE CLERK: Assembly No. A03131-A, Rules Report No. 36, Kim, Steck, Hevesi, Epstein, L. Rosenthal, Niou, Bichotte Hermelyn, Glick, Thiele, Griffin, Montesano, Jacobson, Dickens, McMahon, Seawright, Stern, Barron, Rozic, Byrnes, Gottfried, Barnwell, Solages, Norris, McDonough, Zinerman, Abinanti, Santabarbara, Mitaynes, Lupardo, Jackson, DeStefano,

Lawler, Hawley, Salka, Byrne, Anderson, Tague, Simpson, Kelles, Wallace, Dinowitz, Forrest, Blankenbush. An act to amend the Public Health Law, in relation to establishing requirements for residential health care facilities during a State disaster emergency involving a disease outbreak.

MR. GOODELL: An explanation, please.

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

MR. KIM: Thank you, Mr. Speaker. At the peak of the COVID pandemic, many of us who dealt with nursing homes and the families with loved ones in these facilities experienced first hand the lack of clear and responsible directions and accountability from the State Department of Health. This bill would provide a framework for greater accountability and oversight for nursing homes, especially -- specifically during times of crisis such as the current State disaster emergency declared as a result of COVID-19.

ACTING SPEAKER AUBRY: Mr. Goodell.

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

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

MR. KIM: Yes, sir. Yes.

MR. GOODELL: Thank you, Mr. Kim. Under this bill, if the infection rate within a particular facility goes above a threshold, I think it's five percent, then it triggers an obligation by the

Commissioner of Health to appoint a temporary operator, is that correct?

MR. KIM: Yes. If the nursing home fatality rate of at least five percent of the residents resulting from the disease outbreak, the Commissioner of Health would be required to establish daily communications with the facility to ensure the facility is adequately prepared to ensure the health and safety of residents. Just to clarify, Mr. Goodell, this is only when the rate increases or remains the same over a 15-day period, the Commissioner of Health will appoint -- shall appoint a temporary operator to assume responsibility for operating the facility.

MR. GOODELL: Thank you. As you appreciate, as we come out of the COVID crisis, initially they were talking about a 14-day quarantine, so my question then is shouldn't the time period be longer than 15 days since any infection rate or death rate within a facility might reflect what happened a week or two earlier?

MR. KIM: That's certainly a good point, Mr. Goodell. We've looked at different rates and days, this is what we came up with after speaking with the families and the workers and a number of other experts, but we can certainly revisit it at a later time. But this is the compromised date and percentage that we came up with for -- for this bill.

MR. GOODELL: And this bill calls, then, for the appointment of a temporary operator appointed by the Health Commissioner to assume sole control and sole responsibility for the

operation of the facility until such time as, A, all the residents have been safely transferred to another residential care facility or, B, transferred to a community-based setting. Am I correct that those -- those are the two only two triggers, or the only two responsibilities of the temporary operator?

MR. KIM: Right. But also, you know, we will be tracking the infection rate percentage so if they're able to control -- I'm sorry, hold on one second. Hold on one second. Mr. Goodell, I'll be right back.

MR. GOODELL: As with Mr. Kim, I always take phone calls from my wife no matter what I'm doing --

(Laughter)

-- and I meant that as a compliment to both my wife and Mr. Kim.

MR. KIM: All right. I'm trying to restart my video, Mr. Goodell, if they'll let me.

MR. GOODELL: Certainly.

MR. KIM: Okay. Thank you.

Yes, Mr. Goodell --

MR. GOODELL: (Inaudible) -- looking good, Mr. Kim.

MR. KIM: Thank you, Mr. Goodell.

So if we are able to control the infection rate, we believe under this bill we can go back to restoring the normal procedures and give the authority back to the nursing home facilities.

MR. GOODELL: And I appreciate that comment very much, Mr. Kim, because the language of the bill says that the temporary operator will stay in control until all the residents are transferred out. But am I correct from what you just said that in reality, let's say a week later, the infection rate drops precipitously, then the temporary operator would no longer be in control, is that correct?

MR. KIM: The intent is to give the facilities, if they're acting in good faith, as much opportunity to go back into doing their jobs, which is why the other parts of the language is more of a supportive -- providing supportive measures so they could actually do their jobs, whether it's emergency money, emergency health appropriations or other ways to support the facilities, especially the ones that are trying to act in good faith, a chance to do their jobs.

MR. GOODELL: As you can appreciate, for many residents of a skilled nursing facility, in particular, a transfer itself can be extraordinarily disruptive, upsetting, and even dangerous for some of them. Shouldn't the first priority of a temporary operator be to keep the -- to correct the infection, address the health issues and keep the residents in the same facility? Shouldn't that be their first objective and then only if they are unable to, look at transferring residents to some other facility?

MR. KIM: Mr. Goodell, yes. Our first goal is to have daily communications to measure the PPE status, the staffing status, as well as the infection rate. So there is ample opportunities in

the front end to give the nursing home facilities a chance to control the spread of infection rates. Only if they cannot do so after a certain period, the temporary operator will be activated. And I just want to clarify, this is a direct, you know, legislation that comes from my personal experience being on the ground, and as well as the families, where for months, all the Department of Health has done was call these facilities once a day to get fatality numbers. That's all they've done, that's all we've witnessed at the peak of the pandemic. They have not done enough and this is a way to make sure that they're giving clear support, as well as a mechanism to prioritize the needs of the families and the residents that are in these places at the peak of these type of pandemics.

MR. GOODELL: I share your total frustration with the role of the State Health Department during this crisis, whether it goes back to ordering COVID-positive patients in the nursing homes or the Governor's insistence on complete liability exemption. I'm just concerned, though, that if I read this bill correctly, there's no due process provisions in the bill for a facility that might be facing closure to even question what was happening, is that correct?

MR. KIM: We believe it's an emergency so we want to act swiftly and give the facilities plenty of opportunities to get it under control. If they are not protecting the lives and the safety of residents, we believe the Department of Health should have the authority to act and protect these residents.

MR. GOODELL: And if the Department of Health is

wrong either in their data or their approach, or the temporary operator unfortunately shuts down the facility even if the infection rate drops within a matter of days after he takes over, does this bill authorize the owners of the nursing home to bring an action, a civil action against the Department of Health, or the State, or the temporary operator if they are not operating properly?

MR. KIM: It does not.

MR. GOODELL: Thank you, Mr. Kim.

On the bill, sir.

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

MR. GOODELL: My colleague has been upfront for some time urging a different approach to our nursing homes, and I commend him for that. I share in his deep, deep frustration with a lot of the actions by the State Health Department, starting with a deadly order, continuing with a doctored report - I can't believe our top doctor is doctoring reports - the continued coverup, and the entire situation on every one of us on both sides of the aisle are deeply concerned and deeply frustrated. At the same time, I think we need to recognize that when we're dealing with private entities, whether they're a private not-for-profit or a private for-profit facility, we need to have a balanced approach. And that means that the legislation itself needs to provide due process, basic due process protections.

Over the last year, we've seen over and over where our Health Department has fallen down on the job. That this bill

assumes that the Health Department never makes a mistake, that they're entirely accurate and correct, a Health Department that wouldn't provide us with data for ten months is asked to act within 15 days based on data. That would scare the living daylights out of me if I were an owner or operator of a for-profit or a not-for-profit nursing facility. And there's no ability under this legislation for that operator to challenge that determination, or seek judicial review, and that's critical.

And then the language goes on to say that the temporary operator will continue until all the patients are transferred out. In other words, will continue in control until the facility is shut down. It doesn't recognize -- the language of the bill does not recognize that the temporary operator should only operate until the infection rate has been addressed, and that their mission, their first mission should be to bring the facility into compliance and to protect the life and safety of the residents. Their mission should not be, first and foremost, to transfer all the residents somewhere else. And for those who aren't familiar with the nursing home industry, I'll share with you: The nursing homes must run with a 95 percent or higher occupancy with a certain number of private-pay patients or they cannot survive, they simply cannot survive. And so for many parts of our State, shutting down a nursing home is not easy because there's no capacity elsewhere, and sometimes the closest nursing home is a long ways away; in my county, it could be 20, 30, 40, 50 miles away.

So we need to be very careful with the actual

language. And part of the challenge we all wrestle with is when we are so frustrated with what's happened over the last several months that we don't -- we overreact. We aren't careful about making sure there's due process. We aren't careful about treating a temporary operator as just a temporary operator. We're not careful about including in the language the protections that we need to have a balanced approach. So while I'm deeply, deeply thankful for my colleague's efforts and leadership in this area, I will not be supporting this bill until the language of the bill reflects the fundamental fairness with operators as well as the residents, gives the operators due process that expressly states that our focus has to be on patient safety and not just transferring or shutting down a facility. Thank you, sir, and thank you to my colleague.

(Pause)

ACTING SPEAKER AUBRY: Read the last section.

THE CLERK: This act shall take effect immediately.

ACTING SPEAKER AUBRY: The Clerk will record the vote on Assembly print 3131-A. 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. Goodell.

MR. GOODELL: Thank you, sir. While this is a fast roll call vote which means that members will typically be voting yes

unless they call the Minority Leader's Office, and this is on Rules Report No. 36, Calendar No. A-3131, I will be voting no and those who also have concerns over this bill, particularly the due process issues and the focus on closing the facility rather than fixing the facility, are encouraged to call the Minority Leader's Office. We do have several fine members of my caucus that will certainly be voting yes, and I encourage anyone who wants to vote yes to do so, but if they are concerned as I am, then I would recommend they call and let us know. Thank you, sir.

ACTING SPEAKER AUBRY: It is 3131-A, Mr. Goodell.

MR. GOODELL: Thank you, sir.

ACTING SPEAKER AUBRY: You're welcome.

Mr. Kim to explain his vote.

MR. KIM: Thank you, Mr. Speaker. I just want to take this moment to thank the Speaker, my colleagues, and everyone involved on putting the slew of nursing home bills, including the one that we're voting on today, and thank everyone for just focusing on solutions that will put this industry -- hold this industry accountable while finding real solutions to make sure that we prioritize the needs of the residents and the workers in these facilities.

This particular bill that we're passing, I believe, is a step towards strengthening the nursing homes' residents Bill of Rights, which many of you already know that the Federal government already passed in 1986 and the State of New York also codified into law, but

during emergencies, we found that the State, under the Department of Health and under this Executive, often prioritizes the needs of the businesses instead of the lives that are -- that are desperate for support and help in these facilities. I believe this bill corrects that by making sure that we are holding the Department of Health more accountable to do their job, to -- to take a balanced approach in providing the support up front, but if not, we, you know, give them the authority to go in and take over these facilities that may not be equipped to save people's lives.

The issue of due process, the established operator has an opportunity to have a hearing prior to the appointment under the current temporary operator statute, so there is due process built in to this procedure and I hope -- and I will support in the affirmative and I hope my colleagues will do so as well. Thank you so much, Mr. Speaker.

ACTING SPEAKER AUBRY: Mr. Kim in the affirmative.

Mr. Goodell.

MR. GOODELL: Thank you, sir. Please record the following Republicans in the negative: Mr. Angelino, Mr. Brown, Mr. DiPietro, Mr. Fitzpatrick, Mr. Gallahan, Mr. Hawley, Mr. Manktelow, Mr. Montesano and Mr. Tague.

ACTING SPEAKER AUBRY: So noted.

MR. GOODELL: Thank you, sir.

ACTING SPEAKER AUBRY: Are there any other

votes? Announce the results.

(The Clerk announced the results.)

The bill is passed.

THE CLERK: Assembly No. A05684-A, Rules Report No. 37, Gottfried, Galef, Clark, Taylor, Paulin, Abinanti, Bichotte Hermelyn, McDonald, Hevesi, Bronson, Wallace, Steck, Dinowitz, Thiele, Perry, González-Rojas, Englebright, Jackson, Cusick, Anderson, Simon, Barrett, Sillitti, Jacobson, Cook, McMahon, Richardson, Forrest, Buttenschon, Santabarbara. An act to amend the Public Health Law, in relation to requirements for residential health care facilities and nursing homes.

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

MR. GOTTFRIED: Okay. Thank you, Mr. Speaker. This bill deals with the -- what is commonly called the Certificate of Need process, the process by which a new nursing home is -- is approved by the Health Department or a sale of a -- of a nursing home, or a major modification to it. And the bill says that there would be notice to a list of -- of parties including the general public, the Long-term Care Ombudsman, the regional Health Department Office. If there are -- if it's a modification or a sale of an existing nursing home the notice would go to -- to residents and to employees, labor organizations representing employees and the like.

The application would include looking at whether there is a prior history of any proposed controlling person, principal

shareholder, principal member, et cetera, of the applicant in owning another nursing home and whether they provide a -- a high level of -- of care there, and -- and being able to take that into consideration in whether to improve them for taking over this new facility. It would provide that information on those ownership -- other interests be made public. It would provide that a -- the operator has to notify the Health Department of any family ties of the -- of the ownership with service providers and facility contractors. It provides that if there is a, you know, a change in ownership that for a period of time the -- the staffing and the terms of employment of those staff members has to be continued so they aren't just thrown out wholesale on day one.

It also says that if a nursing home owner or operator delegates the operation or control of the facility to some other party, that that does not diminish the operator or owners' responsibility and liability for the operation of the facility.

ACTING SPEAKER AUBRY: Mr. Byrne.

MR. BYRNE: Thank you, Mr. Speaker. And thank you, Mr. Chair, for that very thorough explanation of this bill. Couple things that I wanted to just drill down on. Must provide notice of an application to the public, I think that's good. Provide the application to the State Office of Long-term Care Ombudsman and the Regional Office having geographical location where the nursing home is, I think that's good, I think there's some good things in this bill. My first question is when we're talking about --

ACTING SPEAKER AUBRY: Mr. Byrne, you're

asking the sponsor to yield, are you not?

MR. BYRNE: Yes, oh, I'm sorry. I'm going right into it, sir. Yes. Will the sponsor yield?

ACTING SPEAKER AUBRY: That's okay. There we go.

Mr. Gottfried, will you yield?

MR. GOTTFRIED: Yes.

MR. BYRNE: Mr. Chairman, it is not the same being there on the floor, I miss the Sergeant-at-Arms, his candy over to the right of me and I'm in my district office where we just painted so it's a -- a little crazy over here, but I thank you for yielding and indulging me with that thorough explanation. As I said, there are some good things in this bill that I think almost everybody in the Chamber can accept and support. I do still have some -- some questions to drill down on. Where it talks about requiring an application for a nursing home's establishment or incorporation to include information regarding character competence and standing in the community, that is referenced again where the bill prohibits an application from being approved unless these persons or entities have demonstrated character competence and standing in the community. Is there a definition for those terms? I know there's some other examples where people cannot be considered in this bill, but specific to those terms, character competence and standing in the community and providing a high -- consistently high level of care at any nursing home. Is there a definition or intent that you can speak to on the bill?

MR. GOTTFRIED: Well, certainly character competence and standing in the community are terms that have been in this very statute for decades that I know of and I imagine even longer than that. And certainly over that period of time, and I -- I imagine there is language in Health Department regulations that clarifies it, certainly there are -- there is experience with probably tens of thousands of CON applications over the years that have given those words, including through litigation, a -- a settled meaning. So I know I couldn't recite that off the top of my head, but I could, you know, find you any number of -- of lawyers who could recite case law on that in their sleep.

The high level of -- of care, there is language later in the bill that -- that sets some examples of that, but it's also -- it would also be a -- a judgment question for the -- for the Public Health and Health Planning Council to consider, just like character competence and standing in the community.

MR. BYRNE: Thank you, Mr. Chairman, and I -- I understand that. I just think when we're passing this, it's nice to get things on the record as far as how you define it and your intent. Also, you did mention at least -- there are specifics that are also mentioned in the bill - I alluded to it earlier - a facility cannot be considered to have provided a high level of care -- a high level of care if it has, for example, earned a 2-Star rating or less by the Federal Center of Medicare and Medicaid Services, commonly known as the CMS Rating. We've talked about this a few times in Committee with our

colleagues, and I know there's sometimes concern about using this as a barometer for looking at our facilities and an example that was raised in one memo that I received was that, for example, a 2-Star overall rating, even though it may -- a facility may have a 2-Star overall rating even though it has a 5-Star rating of quality and measures simply because it had a bad survey three years earlier. You -- would you agree with that as a possibility, and is that something you think this bill also addresses or no?

MR. GOTTFRIED: Well, I think it is appropriate to consider that record. You know, it's not easy to get in a -- in a final record that there are serious problems in a facility. And if that -- if it was there two years ago, it's not likely that they have miraculously turned into, you know, model citizens overnight. So I -- I think looking at recent history -- you know, we're not talking ancient history, but looking at recent history is -- is really appropriate.

MR. BYRNE: Other -- other question, and I think I know the answer to this, but sometimes I surprise myself and will add something, I get a completely different response and then it changes our debate, but one of the latter sections in the bill that a nursing home operator cannot diminish their responsibility or liability to operate a nursing home or provide contracted or agreed to nursing home services, delegating responsibilities to a third-party. Now I'm looking at that and I'm understanding that as a facility could be contracting out for per diem workers, staff, but also it could be some sort of a catering service. Would those examples apply to you, would that make sense,

and are there other examples that you can think of.

MR. GOTTFRIED: Well, I think we're -- we're making sure here that, you know, ordinary rules of liability are not evaded here. You know, if you hire somebody to come into your facility and provide food, you have a certain responsibility to check them out and make sure they're doing a good job. And if -- if they get people in your facility sick, there is a fair chance that you may well be held liable for the misconduct of the people that you chose and brought into the facility. You know, that's kind of ancient, Anglo-American Common Law and it ought to -- we ought to be making sure that it applies here because otherwise, you have a situation where, you know, you contract out the operation of the facility to a paper corporation that has no assets at all and no business doing anything like this, and when something goes wrong, the owner who has all the money, you don't want that owner saying, *Oh, go sue the XYZ shell corporation that has no assets, see what it gets ya. Me with all the money, I'm off the hook*. So we don't want that.

MR. BYRNE: But you mention that this is more of a Common Law or an Anglo-Saxon Law that's been long established, but here we are changing the law to -- to make this happen. So you bring up some of those examples, are you saying that that is something that is happening today, that there are people who have been wronged by these -- these third-parties that have not been able to hold the facilities liable that haven't been able to file a suit?

MR. GOTTFRIED: Well, what we want to do here is

-- and, yeah, there are lots of instances where nursing home owners certainly try to evade that responsibility. I can't cite you examples of cases where they've gotten away with it, but I think it's important to put it clearly in the statute. And the bill does not -- is carefully worded here. If you look on line 54, what it says is that that contracting out, et cetera, shall not diminish any responsibility or liability that the operator would otherwise have. So we're not imposing new liability here, we're saying the contracting out doesn't get you off the hook for a liability that you would otherwise have.

MR. BYRNE: It's a good point, I appreciate that. And another question: We're talking about nursing homes, but the State is also a very large stakeholder in this for many reasons of which we have State-run facilities. This would apply to them as well now and are they -- is the State protected from this liability now before this bill passes?

MR. GOTTFRIED: Well, you wouldn't be suing -- if you had a -- a claim against a State-run nursing home, you would be suing the -- the agency or probably freestanding corporation that is the owner of that nursing home, so you're not suing the State of New York itself. So if you were going -- if you were heading towards the question of sovereign immunity, that would not apply because your lawsuit would be against the nursing home that the State happens to own.

MR. BYRNE: Okay. Thank you, Chairman.

I'll be speaking on the bill, Mr. Speaker.

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

MR. BYRNE: Thank you, Mr. Speaker. With whatever time I have left, I want to certainly thank the Chairman for his very thorough explanation and taking the time to answer my questions. We've discussed this bill, I think, several times whether it be in Committee or on the floor today. And I understand the intent and I commend the sponsor for the intent that he's trying to present here and help all those nursing home residents and make sure that there's transparency in this process and public input, and valued stakeholders.

I do have concern about how this could delay or prevent consolidations among non-profits -- not-for-profit nursing homes and may delay some necessary contractual arrangements for management or staffing services. I do have concerns about opening up liability as well. I think the sponsor spoke actually pretty well on that and addressed some of my concerns but, nonetheless, I still have some remaining questions on that. So I expect I'll be voting no on this bill, but again, I want to thank the sponsor for taking the time to answer my questions. Thank you, Mr. Speaker.

ACTING SPEAKER AUBRY: Certainly. Thank you, Mr. Byrne, and thank you for those sentiments as you started. I can only remind you of an old Diana Ross song, *Someday We'll Be Together*.

(Laughter)

Ms. Walsh.

MS. WALSH: Thank you, Mr. Speaker. Will the sponsor yield?

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

MR. GOTTFRIED: Yes, I will.

MS. WALSH: Thank you so much, Mr. Gottfried. So my -- my colleague asked some of the questions that I wanted to ask, I do have a couple more and if they're redundant, I apologize, but I just want to be sure that I'm understanding the -- the bill properly. As far as the section which would require 90 days notice of any management or staffing contract, I'm -- I'm a little concerned that -- that during, you know, a pandemic, as we've been experiencing, many nursing homes had to use staffing agency contracts to maintain safe staffing levels. Would you care to comment about that 90 days notice as being a practical problem, particularly during a state of emergency or the current pandemic.

MR. GOTTFRIED: Point me to the -- do you have the page and line?

MS. WALSH: I believe it's -- well, page and line is difficult. I think it's Section 2803-X of the Public Health Law. Let's see if I can find it.

MR. GOTTFRIED: Ah, okay, I got it. Yeah.

MS. WALSH: Thank you. You're better than I.

(Pause)

MR. GOTTFRIED: Well, the first part of that sentence is -- is existing law. All we're doing there is changing the term "residential health care facility" to "nursing home," on the theory that three syllables are better than ten.

(Pause)

MS. WALSH: It would be page 3, maybe around line 14 or so.

MR. GOTTFRIED: Yeah, yeah.

MS. WALSH: Yeah.

MR. GOTTFRIED: Well, that sentence applies -- that says you have to give the Department prior notice if you have a family relationship with the entity that you're proposing to contract with. You know, it's not all that hard to find a staffing agency that your cousin doesn't run. The problem here is that all too often, nursing homes contract out with entities that are really a, you know, a sham and they're run by a family member and it's just a way to syphon money of the facility off into, you know, your cousin's pocket and it find its way back into your pocket. So if there's an emergency and you urgently need to contract with somebody and it's not just a question of, you know, expanding an existing contract, that sentence only requires notice to the Department where you have picked a family member's agency to contract with.

MS. WALSH: You're absolutely right. So instead of looking there, would you please take a look at page 3, line -- starting around 35. So the notification regarding the management operations,

staffing agency or other entity to be involved in the operations of the facility. I apologize, I think I misdirected you at the beginning there.

MR. GOTTFRIED: Okay. Let me just read it.

MS. WALSH: Of course.

(Pause)

MR. GOTTFRIED: Well, again, it's -- it's very important that the Health Department have this kind of information. The likelihood that a nursing home on such short notice is going to want to bring in a staffing agency that they don't already have a contract with and it's just a matter of expanding it I think is limited. Also, as we've seen in emergencies, the Health Commissioner - and I'm not here referring specifically to the Governor's powers under the Executive Law - but in emergencies, Health Commissioners have authority to -- to make exemptions and make exceptions. So I think if you're talking about a genuine emergency, I don't think this would be an obstacle. And I don't know whether in the case of the COVID epidemic any nursing home actually didn't bring in a brand new staffing agency on less than three-months notice.

MS. WALSH: That's -- that's actually what -- the reason why I asked the question is at least anecdotally I heard that that was the case, that there were some nursing homes that had never, in the past, needed to bring in outside staffing agency, but because of the pandemic and I don't know whether it was -- I don't know what the problem was with the existing staff, maybe it was an infection or maybe it was a reluctance to, you know, to work in a facility where

they were afraid of danger to themselves, whatever the reason there were some nursing homes that felt the need to go out and contract in order to maintain these safe staffing levels. So I think your explanation is well-taken that in a true emergency, the Department of Health, then, would have the ability to relax these requirements as contained in the bill and the section that we were just talking about, and that's fine.

I think just -- I think just moving ahead, the -- is there anything in the bill -- I think that I had a note here that if a not-for-profit consolidated with another not-for-profit or a hospital, then the new parent company would be required to maintain or retain all of the employees. Is that a true statement based on how this bill would operate?

(Pause)

MR. GOTTFRIED: Yeah, if you look on the top of page 4 starting on line 1, it says that a new owner or operator, management company, et cetera, shall retain all employees for at least 60 days. There is an exception - at the very end of that sentence it says "except for cause." So if there are employees who, for cause, need to be fired, they could certainly do that.

MS. WALSH: And I do see that, and thank you. I think that the concern with that section is just that that might, even if you take the cause out of it, it might just be expensive and possibly redundant to have two CFOs, two IT Directors, two Directors of Social Work, you know, et cetera, and that could, in fact, drive up the

cost unnecessarily at a time, really, when, as I think has been pointed out, Medicaid reimbursement is not covering costs and some not-for-profits are facing the prospect of a closure or sale. So I think that's more of a -- I suppose that's more of a comment than a question, but I did just want to make sure that that is, in fact, how the -- how the bill would operate, at least for that 60-day period. Everybody, when -- when the two entities consolidated, would need to be still retained, but for cause.

MR. GOTTFRIED: Well, and -- and -- and there are exceptions. For example, the -- the nursing home administrator could be replaced immediately, but essentially what this calls for is a -- a short, reasonable transition process primarily so that workers are not just unceremoniously thrown out. And I think it would be -- it would be rare when a bona fide -- where you have a bona fide merger or takeover of a not-for-profit by another not-for-profit where this kind of transition process would be an obstacle. And it's easy to see circumstances in which having one owner come in and just throw everybody else out overnight could -- could create a real problem --

MS. WALSH: Yeah.

MR. GOTTFRIED: -- both for -- for frontline workers, but also for -- for administrators and for the running of the facility.

MS. WALSH: Thank you for that answer. I guess -- I just have a little bit of remaining time. I wanted to bring up an issue that Mr. Byrne, my colleague, had brought up, and that has to do with

the nursing home operator not being able to diminish the responsibility or liability to operate the nursing home or provide contracted or agreed to nursing home services delegating responsibilities to a third-party. He mentioned something like food, you know, like a food service or something. I was thinking like cleaning services, but in any event, under current law a facility operator who negligently hired an incompetent contractor would be responsible, but this seems to make the facility a guarantor of anybody that they would contract out with. Would it allow a facility to maintain, for example, like a cross claim if they were sued; could they still cross claim or are they -- or it's strictly liable?

MR. GOTTFRIED: No, there's no obstacle here to the nursing home suing the contractor, and there's really no obstacle to the injured party suing the contractor. It's just that you would be -- the injured party would be entitled, essentially, to have the people holding the money be -- also be named as a defendant. And again, the problem here is - and it's not just in the nursing home world, it happens in other lines of business, I'm sure as well - where you put pieces of the operation in the hands of a shell company that has no assets and then when -- when there's a lawsuit, the injured party is left holding the bag. And that, we just don't want that happening here and so that's the purpose of that language.

MS. WALSH: I see, but even -- even under our current law, a court could pierce the corporate veil where the corporation is merely a shell, so is this language that's being inserted

in the bill really necessary?

MR. GOTTFRIED: Well, I think it is there to make everything very clear, because there -- there are instances in which this kind of thing happens and it -- the bill just makes clear that this is not a way for evading your legal responsibility.

MS. WALSH: Very good. Thank you so much for your responses, Mr. Gottfried.

MR. GOTTFRIED: You're welcome.

ACTING SPEAKER AUBRY: Thank you.

Mr. Montesano.

MR. MONTESANO: Thank you, Mr. Speaker.

On the bill.

ACTING SPEAKER AUBRY: On the bill, sir.

MR. MONTESANO: Thank you. First, I just want to take this opportunity to thank the sponsor of this bill because I think it is much needed in today's times. You know, right now, unless anybody here has the experience, and I've done so for many of my clients in the past, there is much more scrutiny than this when you're applying for a State Liquor Authority License to open a bar or a restaurant. The background checks, the fingerprints, the financial data, everything they do is even more substantial than what we're asking here for now. And I think this is a very timely piece of legislation because the owners and operators of nursing homes have become very creative over the years of how they incorporate themselves, who they do business with, how they involve themselves

with different vendors.

And the big item today is farming out work; hospitals do it also. As a matter of fact, in our court system they bring an outside vendor to provide maintenance and cleaning; they don't use in-house people. Everybody is using outside vendors for cost-saving measures. But additionally, it will take liability off of themselves or reduce their liability when something else goes wrong. If you bring in an outside vendor, both of you's are going to share liability. So it reduces the liability exposure to a nursing home because they have somebody else to charge it out to.

But I think we have to look at, it's very appropriate that there's a high level of scrutiny for people who apply for a license to operate a nursing home. There's a lot of foreign influences involved, there's a lot of different people involved in creating these nursing homes and to operate them because they're very lucrative, notwithstanding what a lot of people would like us to believe. And there are exceptions to the rule because there are some small nursing homes, especially in the more rural part of the State, that struggle to stay afloat and, you know, run a legitimate operation. But as we come Downstate, especially into Westchester, Nassau, Suffolk, New York City, it's a phenomenal business and it's hundreds of millions of dollars a year that's funneled through them by Medicaid and by self-pay patients. So we do have to scrutinize who runs these places.

You know, getting to the issue that was raised by some of my colleagues before, when you talk about a shell corporation

and piercing the corporate veil, I've come across this personally in the course of my practice where corporate shares or LLC shares being held by a corporation that holds an interest in a nursing home doesn't have individuals holding those shares, but those shares are held by a trust, which further insulates anybody getting a judgment against them. So forget about the shell corporation not having an asset, they could have their corporate shares held by a trust and you're not getting into that trust.

So there's many different obstacles they use to protect themselves, to insulate themselves, and I see no reason why we shouldn't be more stringent with them when applying for an operating license, and the rules of how they operate, vendors they bring in, that's all acceptable, I know why they bring in vendors, again, cost savings, but also to spread out liability. But it's up to them to scrutinize who these providers are, who these vendors are and who they're employing.

We've been speaking in the last several weeks about the vulnerable population we have in nursing homes, and this is exactly why we need to have this heightened level of scrutiny, because these people can't take care of themselves, they can't even speak for themselves in many cases, and their families cannot be on top of them all the time for those who even have families available to be with them. There are some people in nursing homes that have no one whatsoever to pay attention to what goes on. So I think while, you know, we don't like to be too restrictive with them, I think in this type of case we have to be.

And one note I would make, you know, to the sponsor and to other members is that I think down the line we have to take a serious look at how we fund the Department of Health and their staffing. You know, in my -- now in my 11th year in the Legislature, we pass many bills that throws more responsibility and work on the Department of Health, the DEC and other State agencies, but we never attach any funding to them for extra staff. And we're always told well, they'll be able to do this within the scope of their current, you know, budget or work staff. And I think we've come to this point, especially with the Department of Health, that we've overtaxed them. And, you know, it takes staff to go out and investigate, it takes staff to go out and review documents and so on and so forth, and that also takes funding. So I think as we move along in these areas, this is something that we're going to have to take, you know, a good -- a closer look at.

So for these reasons and for the reasons presented by the sponsor in his explanation and debate, I'll be supporting this bill and voting in the affirmative. Thank you, Mr. Speaker.

ACTING SPEAKER AUBRY: Thank you, sir.

Mr. Burdick.

MR. BURDICK: Thank you, Mr. Speaker. And I first want to commend the sponsor for his work on this bill and his persistence in bringing it forward. And I've been listening closely to the very interesting discussion and debate about it and, you know, I think that what distinguishes what's going on in the nursing home industry from other lines of business is that we're finding that practices

have become pervasive, that it then calls upon our responsibility to do something about. I think that Chair Gottfried has said does this occur in other areas? Yes, it probably does, but at a point I think we have a responsibility to step in, and I think we've reached that point, and particularly, when you're dealing with a very vulnerable population. And so that's why I think that there is substantial reason to take action. And the argument has been made about yes, you could pierce the corporate veil where you have an effort to insulate one corporation from liability by creating another corporation, but piercing the corporate veil is not an easy thing to do. It's a pretty heavy burden on the plaintiff to bring that.

I also would like to align my thinking with the previous speaker about the funding for the Department of Health, because just in the short time since I've arrived in the Assembly, this being my first term, I have seen time and again where we are taking action which does require more from agencies that need to enforce it. So I hope that we'll be mindful of that as we continue in our work on the budget.

So I will be supporting this and, again, I commend Chairman Gottfried for his work on it and for the Speaker for bringing this to the floor. Thank you.

ACTING SPEAKER AUBRY: Certainly.

Mr. Burdick and for new members, if you're speaking on a bill, you need to announce that it is on the bill, or that you're asking the sponsor to yield so that the sponsor does not have to, if he

were here in the Chamber, he'd be standing while he was trying to figure out what you were going to get to. So please keep that in mind. Thank you very much.

Read the last section.

THE CLERK: This act shall take effect immediately.

ACTING SPEAKER AUBRY: The Clerk will record the vote on Assembly print 5684-A. This 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. On Rules Report No. 37, Bill 5684, the Republican Conference is generally in the negative, although we certainly have some fine members that want to call the Leader's Office and express their support for this bill. Thank you, sir.

ACTING SPEAKER AUBRY: Mrs. Peoples-Stokes.

MRS. PEOPLES-STOKES: Thank you, Mr. Speaker. I should remind colleagues that this will be -- Majority members will be voting in the affirmative. Should colleagues decide to be an exception, they can contact the Majority Leader's Office and their vote will be properly recorded.

(The Clerk recorded the vote.)

ACTING SPEAKER AUBRY: Mr. Goodell.

MR. GOODELL: Thank you, sir. Please record the

following Republican Assemblymembers voting in the affirmative: Mr. Durso, Mr. Fitzpatrick, Ms. Miller, Mr. Montesano and Mr. Ra.

ACTING SPEAKER AUBRY: So noted.

Mrs. Peoples-Stokes.

MRS. PEOPLES-STOKES: Mr. Speaker, if you could please record our colleague, Judy Griffin, in the negative on this one.

ACTING SPEAKER AUBRY: So noted.

Are there any other votes? Announce the results.

(The Clerk announced the results.)

The bill is passed.

THE CLERK: Assembly No. A05685-A, Rules Report No. 38, Gottfried, Gunther, Galef, Clark, Taylor, Paulin, Abinanti, Bichotte Hermelyn, McDonald, Hevesi, Bronson, Wallace, Steck, Dinowitz, Thiele, Perry, Jacobson, Englebright, Jackson, Cusick, Anderson, Simon, Barrett, Sillitti, Cook, Colton, McMahon, Aubry, Richardson, Forrest, Kelles, Buttenschon, Santabarbara, Durso. An act to amend the Public Health Law, in relation to establishing a required resident care spending ratio for nursing homes.

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

MR. GOTTFRIED: Thank you, Mr. Speaker. This bill would establish a mandatory minimum percentage of a nursing home's resident -- revenue that must be spent on what the bill defines as "resident care." There's a long definition of what would be treated

as "resident care," and it requires that at least 70 percent of the -- of the total revenue be spent on resident care and that at least 60 percent be spent on employees who provide direct care to residents, specifically nurse aides, LPNs and RNs. And if a nursing home in a particular year does not meet those requirements, the Health Department would be authorized to recoup the difference either by taking it from their next year's Medicaid funding or by suing the nursing home. And that's pretty much what the bill does.

ACTING SPEAKER AUBRY: Thank you. Mr. Byrne.

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

MR. GOTTFRIED: Yes, indeed.

ACTING SPEAKER AUBRY: The sponsor yields.

MR. BYRNE: I remembered that part this time. Thank you, Mr. Chairman, again. This busy day of back and forth debating with you, sir, it is a pleasure, as always.

First question I have for you is we talked about previous proposals and policies about not-for-profits and for-profits and public nursing homes and how great our not-for-profit nursing homes are in that they dedicate their revenue towards their mission. This bill applies to all nursing homes, including non-profits. May I ask why?

MR. GOTTFRIED: Well, because we do want to make sure that even in a non-profit nursing home, funding is --

funding goes primarily to direct care because you could have a non-profit entity whose ownership entity was not quite as publicly-spirited as some others and was syphoning money off to executives or family members of executives, et cetera. So while it is true that on the whole, non-profit nursing homes spend a much higher percentage of their revenue on resident care than for-profits, you know, there's a -- there's a spread and we want to get them all up to an appropriate level.

MR. BYRNE: Would you acknowledge that a lot of capital costs from these facilities are also necessary to either deliver direct care safely or improve resident quality -- quality of life? That's something we at least alluded to earlier in a different debate, but obviously it's not just the -- the direct care, but capital costs can also improve quality of life and different amenities for residents at nursing homes. Would you agree with that statement as well?

MR. GOTTFRIED: Well, in a general sense, sure. If, you know, if the roof falls in it's hard to deliver quality care. And this bill certainly allows nursing homes to do capital spending, it just wouldn't come out of the 70 percent. And, of course, you know, in almost all cases, you know, if you have $1 million capital expenditure, you don't pay for that out of one year's budget, you -- you borrow money and you pay it out in -- in debt service over a period of -- of years. That's how any entity would do that.

MR. BYRNE: I would agree. I mean, even local municipalities with bonding, and I can completely agree with that

statement. I find that interesting because obviously debt service is excluded from that 70 percent number, yes --

MR. GOTTFRIED: Correct.

MR. BYRNE: -- percent number, as well. So I could marry into that, as well, and I'll get to that point, but as far as capital projects, and I brought this up in Committee and in Ways and Means a little bit, but I didn't really quite drill down. I wanted to bring up a couple capital improvements that a lot of facilities may have to do in dealing with the pandemic. For example, upgrading HVAC and air filtration systems, that's important control of airborne infections, converting semi-private rooms to private rooms, adding additional private bathrooms, creating structural separations among units to support cohorting - I hate that word - adding entrances and exits, developing safe visitation spaces - visitation, not that there's been much of that this past year - or creating even more home-like environments. All those things would count as capital expenditures, would they not?

MR. GOTTFRIED: I -- I think they would, yes.

MR. BYRNE: And so I think that's where I'm going with this, I think you can tell, is while I appreciate there is still an ability within their financing to fund capital projects and there is an ability to fund administration and fund debt service, it's certainly restricted by saying 70 percent of the total operating revenue is on resident care, of which 60 percent of it is required by -- the direct care by Certified Nurse Assistants, Licensed Practical Nurses and

Registered Nurses. There is a lot of other funds that are needed to operate these facilities, but getting back to the debt service element to it -- and actually, you know, skipping ahead. I think we addressed the debt service portion. Maybe one of my colleagues might follow up on that. You did mention it in your explanation, if a non-profit, for-profit public sector nursing home, they fall short on the share that they have to pay, there is a -- there's a stick to this bill, right, and that would be that the facility would be required to remit the shortage amount to the State in a time and manner established by regulations. Can you expand on that? Or is that pretty -- did I just made that clear?

MR. GOTTFRIED: I -- I think that's pretty straightforward, yeah. You know, because the -- I mean, the dollar amounts involved are such that, you know, a $2- or $3,000 fine is -- is not going to do the trick if they're pocketing too much of the money instead of spending it on resident care. So they would now have a very powerful incentive to spend it on resident care rather than paying it back to the Department.

MR. BYRNE: Some other questions that were -- that were raised to some of our colleagues was about continuing care, retirement community nursing facilities, as well as pediatric homes and that they were included. And the CCRC nursing facilities receive little or no Medicaid reimbursement under design to promote reliance on private pay arrangements. It seems that this really is going to impede on how they want to determine how their own money is going to be spent on their nursing home. Is there a reason or explanation

you can provide as to why these CCRC nursing facilities are included in this bill?

MR. GOTTFRIED: Yeah. And first of all, it would only apply to the nursing home itself. It would not apply to any other part of the continuing care retirement community. And the fact that the for-profit entity that owns a nursing home also owns a retirement community doesn't really mean that we don't have a legitimate concern about making sure that the people whose -- whose condition deteriorates to the point where they are moved into a nursing home need to be properly taken care of. So whatever question you might ask about, you know, *Well, why can't a private pay for-profit nursing home do whatever it wants?* Well, because we're protecting the nursing home residents. And the same answer would apply even if the nursing home is part of a collective that -- that owns, you know, a very nice retirement home. It really shouldn't make any difference.

MR. BYRNE: Thank you, Mr. Chairman. I appreciate your comments on the bill, as always.

Mr. Speaker, on the bill.

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

MR. BYRNE: Thank you, Mr. Speaker. And again, I'll thank the Chair for taking the time to answer my questions. Some of my colleagues may be following up as well. I -- I appreciate the intent of this bill, like I do with many of the sponsor's bills. I voted yes -- in the affirmative on some of the package that we passed today;

I voted no on some other pieces. This is one that I will be voting in the negative on.

I understand the desire to try to drive more focus on direct care, but there are a lot of other needs that need to be considered for operating these facilities, and capital expenses and debt service, those are two very important ones. A lot of times we focus in on administrative costs, but capital expenses, they're not, as I pointed out earlier in our debate, it's not just about building some Taj Mahal, they have very real effects on patient care, including some of the needs that were discovered even more so throughout the course of the pandemic, like upgrading the facilities to have better infection control and HVAC systems. So I think that is a concern of mine, as well as just in general terms. I -- if a facility is a private pay and people do want to go to it because they like that facility and they do a very good job, I think that they have the ability to make some of these decisions.

And there is another concern that costs might be -- this might actually just encourage facilities to be spending more because if they're not able to meet that proportion, they might have to just spend up and then perhaps even drive themselves more in debt. So there is a concern about that as well.

Again, as always, I thank the sponsor for his time and consideration. I know he has worked hard on this issue and I appreciate that, but I will be voting in the negative, Mr. Speaker. Thank you.

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, indeed.

ACTING SPEAKER AUBRY: Mr. Gottfried yields.

MR. RA: Thank you, Chair Gottfried. So I want to go through a few different areas. Mr. Byrne did touch on several of them, but just to get a little more in depth in them, just starting with, you know, the -- the issue of how this applies to both for-profit and not-for-profit and, you know, are not-for-profits -- I know several years ago there were some requirements that were put in relating to, you know, administrative costs, executive salaries, things of that nature, if they get a certain percentage of their revenues through, you know, substantial amount through State funding, and we know these not-for-profit entities are, you know, this is their mission is providing these services. And I understand what you said, you know, there are -- there are perhaps some bad actors who maybe are trying to put, you know, relatives on the payroll or things like that, but just generally I would be concerned that these requirements could impact that when these -- these -- these particular not-for-profits are already required to and are reallocating that funding towards their mission. And, you know, as a result of this, if they're not complying with it they have to remit it to the State. So should there not be some, you know, different

approach between the for-profits and the not-for-profits with regard to this?

MR. GOTTFRIED: I don't think so. I think how much of a nursing home's income needs to be spent on resident care doesn't really, to me, doesn't really vary based on whether it's a for-profit facility or not. Interestingly, you know, if you look at the data, a very substantial portion, much higher -- well, a very substantial portion of not-for-profit nursing homes are already spending not only 70 percent, but in many cases a lot more than 70 percent on the items that we would consider resident care. The not-for-profits, by and large, are -- are grouped well below 70 percent. So I think what that teaches us is that you can run a -- a good nursing home spending 70 percent or more on -- on resident care. Today, there -- there is no regulation that -- that focuses on the -- the percent of -- of revenue, and one result is that that makes it easy for facilities that have a mind to do so to syphon off an awful lot of their money away from -- from resident care and into the pockets of either owners or entities that contract with the owner, and it's time for that to end.

MR. RA: Okay. So you -- I mean, you just alluded to it, so I'll go there in terms of any contracted services. You know, I think -- and I said this last week with a lot of these bills and I voted for many of them and many of them are very well-intentioned, but I think there is a need for us to pull back at some point and get all the information about what's going on. And I know -- and I would note that during this pandemic we've gone through that there seems to be,

you know, situations where nursing homes had to go and rely on some contracted services, because as you know, at the height of this, I mean, it was all hands on deck. We were bringing in health care workers from other states, we were, you know, pulling health care workers from one facility or different units all trying to fight this pandemic which was, you know, an unprecedented situation and one perhaps that we certainly can learn a lot from at this point but, you know, it was hard to be truly prepared to understand what the needs were going to be.

So one of my concerns would be, does this impact a facility's, you know, situation in the future if something like that happens and they are -- they were to need to bring in additional help through contracted services?

MR. GOTTFRIED: No, not at all. What it -- what it does is, first of all, it means that the next time we have a problem, more of our facilities will be better prepared for that problem because they will be spending enough of their money on staff and other direct -- and other resident care issues. If you're -- if you're understaffed to start with, you're in a much worse shape when you find that you really need more staff. So being better staffed, if this bill helps with that and if the Safe Staffing Bill that I hope we do helps with that, they'll be better prepared in the future.

The reason for the 80 percent language in the -- if you're contracting out for staff is that we want to make sure that when you're contracting out for staff, you're getting staff and it's not just the

way to pay your cousin a whole lot of money on the pretext that your cousin is sending in nurses. That's why we --

MR. RA: Sure. I mean, I think -- I think that's an issue that, though, we could perhaps get at in other ways without something that I, you know, I think if you're paying 120 percent to bring in some -- some staff and you're getting 80 percent back, and let's assume you're doing things properly, you know, it's above board, you're not trying to just pay to some contracted entity because you're trying to do a favor for somebody or, you know, move money around in an improper manner. I mean, I would think that's going to create a disincentive to bring in that staff and, I mean, if there's one thing we already know it's that many of these entities were under staffed and that caused many problems during the height of this pandemic.

MR. GOTTFRIED: Well, I think a contract agency is always going to take some money off the top for their administrative expenses, and that's perfectly appropriate, just don't call it staffing, call it administrative expenses of the staffing agency. And if you're paying them $100 to get $80 worth of staff, then we should count that you're getting $80 worth of staff. You can pay the staffing agency whatever you want, just don't call it all staffing.

MR. RA: Okay. So I want to move to one, you know, one other issue, and Mr. Byrne did allude to this in terms of different types of facilities and -- and formats, you know, and my understanding is this particular definition, you know, the requirement of the 60 percent of minimum resident care spending be dedicated to

direct care cost provided by RNs, LPNs, and aides. Now what about settings where the staffing arrangement tends to rely more heavily on physicians, nurse practitioners, and -- and therapy staff. You know, is this a one-size-fits-all approach that may not take into account the different types of facilities and -- and patient populations?

MR. GOTTFRIED: Sounds to me like you're describing not a nursing home, but a stepdown unit in a general hospital, so I -- I don't see that as being a -- a significant issue here and I don't know that -- that a nursing home that is spending a chunk of its money on, let's say physicians or nurse practitioners, doesn't also need to spend the appropriate percentage on -- on nurse aides and the like. If there are people in your nursing home who need physicians and -- and nurse practitioners, they are probably also in very significant need of -- of nurse aides and RNs.

MR. RA: Okay. So I want to get into one other piece of, you know, we're obviously viewing so many of these issues through the lens of this pandemic and, you know, a year ago or maybe a little over a year ago at this point, you know, I think so many of these, and I don't even want to get into the capital issue because that certainly is implicated by this, but so many of these entities couldn't have contemplated some of the needs they would have to get through that period and -- and suddenly, you know, having to spend on all kinds of things that would be looked at as non-direct care costs under this. You know, would things like PPE and, you know, physical barriers, all that type of stuff be outside of this direct care? I mean, I

could see instances where these are obviously needed things and I think we're likely going to set up these types of facilities differently as a result of this to be ready to, unfortunately, have to deal with an infection, you know, we talked about that other bill earlier. But would things like that be outside of this -- this definition and how does that impact a facility that has to, you know, respond to a future pandemic and make sure they have the equipment to protect the patients and the staff?

MR. GOTTFRIED: Well, first of all, those expenses -- I believe if you look carefully at the -- at the definition of "resident care" would be included in resident care. That's number one. Number two -- and number two, you know, the Department can -- the Health Department can easily define those expenses as being what the bill refers to as "ancillary care services." Also, by the way, I noticed that -- that medical care, which would bring in your physicians and -- and nurse practitioners, would be included in the -- in the -- in the definition of "resident care" under the bill.

MR. RA: All right. Thank you, Mr. Gottfried.

Mr. Speaker, on the bill.

ACTING SPEAKER AUBRY: On the bill, sir.

MR. RA: And I have to say, it's always -- always a pleasure to have these conversations with Mr. Gottfried and, certainly, often I miss serving on the Health Committee, which I had the opportunity to do for many years and see so many of these bills come through and learn everything I've had the opportunity to learn on

serving on that Committee.

I just want to, you know, pulling back when we look at this whole package, and I think back to the bill we did last week that is designed to -- to deal with this issue that has now come up and was talked about in the Attorney General's report about, you know, we've gone from 40.5 percent to 30.5 percent over -- over the last decade or so in terms of not-for-profit nursing homes and, you know, trying to address that. But the problem I see here, you know, this is going to go into effect next year in 2022 and obviously we all hope we're in a much better place and we're moving in that direction certainly with the vaccinations going out, but these facilities are still going to be struggling as a result of what they've gone through the last year plus. And new requirements that they're going to have to deal with, they may be dealing with, you know, things like debt service on -- on capital improvements that they had to make to respond to this, and that's going to be calculated outside of this.

So we're going to have a situation where we're ensuring there's no new for-profit entities. And like I said last week, I think that the better approach is to -- and part of why I supported the previous bill is because I think we need to judge the facilities on their merits rather than say they're for-profit, they're not-for-profit, they're no good, they are good based on just -- just that alone. But -- but I think we're going to be reducing the ability of for-profits to open and existing companies to open new entities and then further, potentially squeezing not-for-profits with this piece of legislation as well.

So I have great concern, number one, how this impacts those entities as this goes into effect, as they're just trying to recover from this pandemic, but also, as they're trying to plan ahead for the next health crisis and trying to make sure their facilities are prepared that they can deal with the worst of what they saw in the last year, that they have the ability to maybe make more of their rooms private so that they can isolate a patient who has symptoms of some, you know, infectious disease, so that they can, you know, if they need to convert certain facilities inside -- inside their walls so that they can, you know, section -- section off the facility, or even some of the more advanced equipment that they may need to meet the needs of their patients.

So for those reasons, I'm going to be casting my vote in the negative, and I hope that we continue to not just have a dialog about this, but really seek the full answers, whether it's through hearings or otherwise, to make sure we know everything we need to know so that we can act accordingly with our -- with our statutory response to make sure that in the future, we can do our very best to make sure the residents of -- of nursing homes are safe.

Thank you, Mr. Speaker.

ACTING SPEAKER AUBRY: Thank you, sir.

Mr. Goodell.

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

ACTING SPEAKER AUBRY: Mr. Gottfried, will

you yield? Mr. -- there we go.

MR. GOTTFRIED: All right. There we go.

ACTING SPEAKER AUBRY: Thank you, sir.

Will you yield?

MR. GOTTFRIED: Yes, I yield, certainly.

ACTING SPEAKER AUBRY: The sponsor yields.

MR. GOODELL: Thank you, Mr. Gottfried. I was getting a little bit nervous there. This legislation has various percentages in it, the 70 percent of the revenue has to go to patient care, only six percent of that has to be to certain types of staff. Where did those percentages come from?

MR. GOTTFRIED: They come from looking at data on current levels of spending that -- that most nursing homes are able to either exceed or come pretty darn close to. So they weren't just picked out of a hat, they're -- they're based on -- on experience and what it -- what we have found that -- that good nursing homes can afford to do.

MR. GOODELL: And is this based on statistical analysis and, if so, what was the correlation efficiency between these numbers and care?

MR. GOTTFRIED: Well, I don't know that anyone has done a mathematical analysis, you know, trying to run correlation between CMS Star numbers and -- and your percent of resident care, and that would be a questionable value because the CMS Star rating system is -- is a little -- is a little dicey to begin with. But certainly,

you know, you can -- you can eyeball a list and -- and -- and see where nursing homes who are well-known as being problems are and where nursing homes that are well-known as -- as being quality facilities are. And it certainly makes logical sense that nursing homes that spend more money on the things that we have put in the 70 percent category would be doing better.

MR. GOODELL: Of course this is all -- this bill all relates to financial accounting, so if you don't mind, I wanted to ask some questions. The definition of revenues appear to be quite broad, including any revenue from any source. So if a not-for-profit, for example, received a grant from a foundation for a capital investment, or maybe new furniture, new beds or new furniture or new equipment, or -- or things of that nature. Am I correct, the entire amount of the grant would be considered revenue even though it's a one-time non-reoccurring source of income?

MR. GOTTFRIED: Well, no. There -- there is a definition of "total operating revenue" and it means revenue received by the nursing home from or on behalf of residents of the nursing home, government payers or third-party payers to pay for a resident's occupancy of the nursing home, resident care, and the operation of the nursing home. So if, you know, some multi-millionaire makes a grant to a nursing home or even people in town, you know, give the money through a bake sale, that would not be -- fit the definition of, you know, third-party payers paying for resident care. So that kind of outside grant or -- or contribution would not count as total operating

revenue.

MR. GOODELL: And that would apply even if the grant, for example, was used to buy health care equipment, you know, whether it's ventilators or -- or any other type of equipment?

MR. GOTTFRIED: Right. And -- which means that the 70 percent requirement would not apply to those dollars and that's because they are not being paid by a third-party payer to pay for the residents care, et cetera.

MR. GOODELL: Now can we talk a little bit about what resident care expenses are not included in this formula? Am I correct that in calculating the amount spent on resident care, we exclude all administrative expenses, capital expense, and debt service?

MR. GOTTFRIED: Well, we exclude administrative costs other than nurse administration, but other than that exception, you're right.

MR. GOODELL: And I see that in making these mathematical calculations, it's all on an accrual basis, but presumably any pay -- payment or civil penalty, if you will, to the Health Department is -- is expected to be made in cash. Does this bill address the situation where a nursing home might have significant account receivables, and so on an accrual basis they might not be making this ratio, but on a cash basis, they might be?

MR. GOTTFRIED: I -- I don't know that -- I don't know that what you're saying would -- would -- would be the case.

Part of the reason for using accrual basis is that because of the way Medicaid pays for things, a nursing home in 2021 might well be -- would almost certainly be getting payments from the Health Department for services they delivered in 2020 or 2019, maybe even earlier. And so you want both the revenue and the expenses applied to the correct year. And, you know, one consequence of that is that, you know, when -- when a given calendar year is up, you -- you may not be able to say at that moment what all the expenses were and what all the revenue was, but at some point you'd be able to add all that up.

MR. GOODELL: Well, I appreciate that explanation, but as you can equally appreciate, almost all your patient care expenses are direct cash flow issues. You don't tell your nurses, *I'll pay you in two years when I get Medicaid reimbursement.* Your nurses expect to be paid every week or biweekly or whatever --

MR. GOTTFRIED: Right.

MR. GOODELL: -- so it's entirely possible with Medicaid reimbursements being a year or two behind that you could be paying way in excess of the 60 to 70 percent on a cash flow basis even though on an accrual basis -- I mean on a cash flow basis you may be way ahead of that, but if you look at just an accrual basis, the accrual basis gives the facility revenue credit for revenue it hasn't actually received. How does this bill address that problem?

MR. GOTTFRIED: It makes a choice and it says accrual basis. Most businesses operate on an accrual basis, as I understand it, and pay their taxes on an accrual basis.

MR. GOODELL: Does this -- does this bill --

MR. GOTTFRIED: By the way, if the bill --

MR. GOODELL: I'm sorry.

MR. GOTTFRIED: Excuse me. If the bill said cash basis, I would bet you'd find six reasons why cash basis was a crazy way to do it.

MR. GOODELL: Actually, I've always operated my business on a cash basis and, thankfully, all my checks have been able to been cashed, but do we -- does this bill require the facilities to do an audited financial statement and, if so, does it have to meet GASB standards, or FASB, or what standards do they have to meet?

MR. GOTTFRIED: This bill does not apply -- does not speak to their accounting methods. I am quite certain that there are other regulations and requirements elsewhere that deal with their accounting mechanisms.

MR. GOODELL: And do we anticipate that these -- oh, I'm sorry.

MR. GOTTFRIED: And there's 2805-E of the Public Health Law regulates their cost reports which this bill plugs into, so there are accounting requirements all over the place here.

MR. GOODELL: I appreciate that. Now under this bill, if a facility for some reason isn't spending 70 percent of its revenue on -- on patient care, let's say they're spending 60 percent on patient care, they would then have to pay the Health Department ten percent of their total revenue, is that correct?

MR. GOTTFRIED: Yes.

MR. GOODELL: And is there any exceptions under this bill --

MR. GOTTFRIED: Otherwise -- otherwise they'd have a big incentive to tell the Legislature and their law to go fly a kite which is wrong.

MR. GOODELL: So is there any exception to that payment to the Health Department if, for example, the facility has an absolutely clean inspection report, I mean -- and let's say - and this has happened in my -- in my county, I have some great facilities - not a single citation. Do they still have to pay that extra money back to the Health Department?

MR. GOTTFRIED: If they're breaking the law and they're not spending their money on resident care, yes.

MR. GOODELL: And if they have a 5-Star rating --

MR. GOTTFRIED: By the way -- by the way, that's what we want them to do and, by the way, for a long time at the State and Federal level, we have told health insurance companies that a certain percentage of their revenue has to be spent on -- on benefits. It's not an alien concept here.

MR. GOODELL: And likewise, I assume that regardless of what performance measurement you use, whether it's a 5-Star rating, and you and I both have some concerns over the accuracy of that, whether it's patient satisfaction surveys, it doesn't matter if the facility has 5-Star perfect ratings in every single category,

patient satisfaction is 100 percent, it has, you know, recommendations that are a mile long, if they don't meet these ratios they have to pay money back -- or pay money to the Health Department, is that correct? This is not -- this payment is a financial calculation, not a performance calculation, is that correct?

MR. GOTTFRIED: It is, and that's partly in order to have something that is a little more of an objective standard rather than an opinion survey.

MR. GOODELL: Thank you very much.

MR. GOTTFRIED: There are ways you can -- you can effect an opinion survey. This makes sure that there is real quality resident care. I don't -- I think you're probably fantasizing about some nursing home that is going to be able to short-change on -- on spending for -- for resident care, but somehow miraculously, all -- all the residents will be happy. I -- I find it hard to --

MR. GOODELL: To imagine?

MR. GOTTFRIED: -- I find it hard to believe that that's realistic and, by the way, what I wouldn't want to give a nursing home is a financial incentive to cherry-pick patients that are healthier than others and need less care and leave the patients who require a high degree of care to the suckers who haven't figured out that game yet. That's not a world we want to create where a nursing home has an enormous incentive to turn people away who need care.

MR. GOODELL: Thank you, Mr. Gottfried.

On the bill.

MR. GOTTFRIED: Yup.

ACTING SPEAKER AUBRY: On the bill, sir.

MR. GOODELL: I can safely say that everyone in the Chamber or participating by Zoom wants to have the highest quality nursing care available to anybody, and our focus and our legislation should be on quality, but that's not what this bill does. This is an accounting bill. This bill doesn't focus on how highly rated a nursing home is, or how happy the residents are, or how few deficiencies, if any. Under this bill, it's all accounting, it's accountants, not health care experts that determine whether you comply with this bill. Think about that. You have to have an accountant that understands accrual compared to cost basis. You have to have an accountant figuring out all these percentages. And this bill excludes some things that all of us I think would agree are related to quality.

Let's keep our focus. Our focus is not whether you're spending 65 percent on one category or 72 percent. It's not an accounting issue, it's a quality issue. And we want quality. Now I'll give you a specific example. In my county, we operate a county nursing home and we decided we wanted to upgrade the facility. And all the residents and the administrators and all the health care experts said, *These are the things you need to do, you need to make investments in the facility, you need to upgrade the facility. You need to improve the quality of the food, you need to improve the kitchen and the air conditioning, and the air filtration*. And guess what? All

those expenses would be excluded under this bill; in fact, many people start by looking at the quality of the facility itself, is it run down, does it need to be painted as the walls chip, does it smell? And a lot of that relates to capital investments, but capital investments are all excluded from this. If you've got an old, run down facility and you don't have any debt, it's going to be easier for you to comply with this. Why? Because debt service is excluded from this calculation. But if you have a beautiful new facility, state-of-the-art, highest quality care, but your debt payments kicked you over these financial thresholds? It doesn't matter how long your waiting list is, it doesn't matter that you have absolutely clean inspection reports and a 5-Star rating, if you don't meet these financial calculations, you're sending money to the State of New York. Think about that. The State of New York, in essence through this bill, is imposing a civil penalty on nursing homes based on their accounting, even though they might not have any fines. At least when it comes to fines we have caps. This has no cap.

Because this is an accounting bill and not a health care bill, I will be voting against it and recommending my colleagues do the same. Thank you.

ACTING SPEAKER AUBRY: 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: Mr. Gottfried yields.

MR. MANKTELOW: Thank you, Mr. Speaker, and thank you, Mr. Gottfried. We've talked about resident care here this afternoon, and can you explain to me again what your view is of resident care?

MR. GOTTFRIED: My -- you want me to read you the -- I mean, I can read you the definition in the bill if you like.

MR. MANKTELOW: No, not in the bill. I want your, what you think resident care is.

MR. GOTTFRIED: I -- I think resident care is what's listed in the bill. I'm missing -- maybe I'm not getting the point of your question.

MR. MANKTELOW: Well, like my colleague that was just up, he's talking about resident care and what's in resident care, and I know, too, as well serving at the county level --

MR. GOTTFRIED: Okay. Several -- several things that he mentioned are included in the statutory definition, like spending on -- on food and -- and a lot of other services.

MR. MANKTELOW: Well, I know that, as I was saying, serving at the county level, having the opportunity to be on the nursing home committee for nine straight years, having the ability to interact with our nursing home, looking at the real numbers, looking at what the staffing is looking at, what residents consider important to them, this goes back to resident care. And as my other colleagues have said that resident care just isn't about food, it just isn't about how

much money you spend back on the individual, it's about the facility. Do you have a pool, do you have an outdoor place to go, do you have a place where the residents and the families can go and sit down together outside or inside. That's all resident care. And looking at these numbers in the 70 percent and 60 percent, I just don't understand where that percentage is coming from. And a little earlier, Mr. Gottfried, you talked about better staff. Can you explain to me what better staff is?

MR. GOTTFRIED: What I was referring to there was really more a question of making sure you have an adequate supply of staff but, obviously, you want staff who are well-trained and experienced as much as possible.

MR. MANKTELOW: Yeah, absolutely. And what we're seeing here in New York --

MR. GOTTFRIED: Yeah, and -- and, by the way, you talked about how the -- whether the facility has a swimming pool. There's nothing here that says the facility can't spend money on a swimming pool. They would -- they would go into debt to do that and pay debt service. The debt service would be part of what would come out of the 30 percent. They just can't take money away from food and keeping the building warm and nurses to take care of the patients. They can't take money away from that to spend it on the debt service for the swimming pool, that's all.

MR. MANKTELOW: Absolutely. But I think that's a decision that -- that the facility needs to make themselves. I don't

think the State should be dictating every little fine aspect of running a nursing home. So back to the question of better staff, again, in your eyes, what is better staff? What is that to you?

MR. GOTTFRIED: I'm sorry, what did I leave out from my answer as to the term "better staff" that leaves you puzzled? I talked about quantity, I talked about quality.

MR. MANKTELOW: Okay, so better staff. Do you know what we're missing in New York State right now?

MR. GOTTFRIED: Both. Many of our facilities, maybe even the vast majority of our facilities, are understaffed and many of them need more experienced and better trained staff.

MR. MANKTELOW: Absolutely, and I agree with you. The -- the issue we have in New York, not only with our nursing homes but our -- our senior living facilities, our hospitals, is the fact is there's only so many nursing staff to go around, so many aides to go around. And one of the issues we have in New York State is we are not -- maybe not the highest, but one of the highest taxed per capita in the United States and people are leaving New York State. And for us to do safe staffing and for us to do better staffing and having the individuals there to care for the residents, we have got to do something at the State level to help these nursing homes to be able to pay more money to these individuals. And until we take a hard look at that, we can do all this other stuff and that's just icing on -- on -- I won't use that -- lipstick on a pig. It -- it really is what's going on out there. And --

MR. GOTTFRIED: No, if --

MR. MANKTELOW: -- I -- I --

MR. GOTTFRIED: -- if that's a question -- if that's a question, if your suggestion is that if we gave multimillionaires and billionaires that own nursing homes a -- a lower State tax bill they would spend it on improving the nursing homes, I think that's a dangerous fantasy.

MR. MANKTELOW: Oh, absolutely not. We -- we know that's not the case and -- and that's not happening out there.

So I just -- just a -- just the questions about nursing homes and again, last week we had a bill that you put up, I believe, that dealt with nursing homes. Again today we're dealing with several bills on the floor. You know what is -- I guess, Mr. Gottfried, what is your -- your end result of -- with all these bills on the nursing homes? Where do you want to see us going in New York State? Do we want to continue to help our nursing homes? Do we want to help better staff them? Do we want to get rid of them? I mean, really what is the -- what is the end game that you're trying to do here to help me better understand where we need to go?

MR. GOTTFRIED: I -- I want people who are put in a nursing home to be in a facility that is run by people who are motivated by caring for them and who carry out that motivation by putting their money where their motivation is and spending the money we give them on patient care and not siphoning it off through paper corporations and other gimmicks to themselves or their friends.

MR. MANKTELOW: So that's really what this is about, is making sure the -- the money doesn't go to friends, corporate partners, board members. It's more about staying at the nursing homes, correct?

MR. GOTTFRIED: That's a big piece of it, yeah. And making sure that the people who own our nursing homes are people whose -- whose history is not one of running hellholes.

MR. MANKTELOW: So --

MR. GOTTFRIED: Yeah.

MR. MANKTELOW: As -- as a State, as legislators of New York State, how much do we want to get in everybody's business? Do we want to be -- do we want to be in every little integral part of a nursing home's business? As New York State?

MR. GOTTFRIED: I only want -- want the State involved in their business enough to make sure that we are protecting the people who live in their facilities. And that is a -- to me, that is high an obligation for us in the Legislature as you could imagine. And if that means that a multimillionaire who owns a nursing home oh, my goodness, has to find an accountant who understands accrual accounting, the notion that somebody would say, *Oh, my goodness, you're going to make them find an accountant who understands accrual accounting* - which is the standard for generally-accepted accounting principles - and we're complaining that a nursing home might have to hire the services of an accountant who understands accrual accounting, that's a horrendous burden? Give me a break.

MR. MANKTELOW: I -- I totally agree with you. I'll -- I'll give you that break because you're absolutely right. They should be able to understand accrual versus cash -- cash basis. But, you know, so we're holding these nursing homes at such a high standard from a lot of the issues brought on with the pandemic with -- with COVID-19 and -- and what they've been through. And it just makes me think about, you know, we're targeting -- targeting them with so many different bills and rules and regulations. And I -- I don't see one bill come forward yet that offers up help. Not a fine, but actually offers up education to help these nursing homes be better at what they do. That we should be proactive instead of reactive or proactive instead of negative about this and always talking about fines. How much are we going to fine New York State for the 15,000 residents that died in the nursing homes? How much do we pay back to those families that lost the loved ones because this Administration made the choice to send those loved ones with COVID back to the nursing homes and couldn't do a thing about it? We talk about the nursing homes being -- being negative about doing things not the right way, but yet we have a state that caused 15,000 deaths in those nursing homes. Why are we not helping these nursing homes to make that never happen again? Why are we not doing things on this floor to make sure that those families are taken care of? That's what this is all about --

MR. GOTTFRIED: That's a -- if -- if that's a question, first of all you're raising an important but -- but completely

different question, number one. Number two, 80 percent of nursing home beds are filled with people who are on Medicaid --

MR. MANKTELOW: That's correct.

MR. GOTTFRIED: So we're -- we're paying, through Medicaid, the vast bulk of these nursing homes' residents. And of the 20 percent who are not on Medicaid, a huge chunk of them are on Medicare. So the government is already paying nursing homes almost every dollar they take in. And we have bills on -- we've had bills on the floor that we've passed that talk about making sure that nursing homes and their staff understand infection control and the like. I don't know that -- I mean, I suppose somebody could make a proposal that we spend even more taxpayer money than we're already spending on nursing homes to set up a school for them on how to run a nursing home. It would be an interesting idea, a separate bill. But we've got people -- two-thirds of our nursing homes are owned by for-profit entities that looked at the nursing home and said, *You know what? Nobody's forcing me to put my money into a nursing home. I'm doing it cause I can make a lot of money doing that.* We used to have a third of our nursing homes were for-profit. It's now two-thirds. And what that tells us is that nursing homes are -- can be darn good business for a for-profit owner, especially if you have low enough personal standards. And it's time that we raise those standards.

MR. MANKTELOW: All right. Thank you.

MR. GOTTFRIED: And that's -- that's what this bill does.

MR. MANKTELOW: Thank you, Mr. Gottfried.

On the bill, please.

ACTING SPEAKER AUBRY: On the bill, sir.

MR. MANKTELOW: Thank you, Mr. Speaker. On the bill. I'm just so afraid that we're going down a road that we may never be able to come back on. As we continue to put pressure on each and every nursing home, whether it's private, for-profit, not-for-profit, we are putting an undue amount of stress on these individuals, these facilities, especially coming out of the COVID pandemic. We're still in it. Do we really know what they're up against financially? And we're putting more pressure on them. And I've seen firsthand what good facilities can do and what bad facilities can do. And again, we should be helping all the facilities, and if we can't -- if they can't make it, then we need to make some changes. But at the same time, we cannot hurt the people that are doing a really, really good job. Because I'm concerned that there's going to come a point in time when people are going to say, *Enough is enough. And if we can't make a living here, if we can't help our employees, well, we're going to leave the State.* And -- and I want to know where each and every one of those residents in that nursing home are going to go.

So I cannot support this bill. And again, I thank the sponsor for the time. And thank you, Mr. Speaker.

ACTING SPEAKER AUBRY: Mr. Stirpe.

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

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

MR. GOTTFRIED: Yes, indeed.

ACTING SPEAKER AUBRY: Mr. Gottfried yields, sir.

MR. STIRPE: Thank you. To sort of answer this recurring question of where did the 70 percent come from, let me ask you this: Didn't we look at data across the State of all the nursing homes in New York State and come up with a couple of facts? On average, the not-for-profit nursing homes provided a higher level of care than the for-profit ones. And, two, didn't we look at how much do they spend for this better quality care, you know, of their budget? I mean, didn't we look at any of that?

MR. GOTTFRIED: Well, you're -- you're absolutely right. You know, another word for it is that yeah, this is actually evidence-based legislation.

MR. STIRPE: There you go.

MR. GOTTFRIED: We looked at the spending on -- on these pieces of -- of a nursing home's budget, and there are a lot of nursing homes that spend a lot more than 70 percent on what this bill calls for. They're the better nursing homes. And the really bad nursing homes that you and your family, you wouldn't want them anywhere near, yeah, they're the ones that spend a whole lot less. And yes, the -- there are nursing homes with higher quality and lower quality, and that certainly tends to correlate with whether they're

for-profit and how much they spend on resident care. And none of that shouldn't surprise anybody.

MR. STIRPE: Right. So it's really -- based on all the evidence, we don't see many nursing homes that spend 20 percent of their budget on -- on direct care, even if they have a swimming pool, that are providing great service for their residents. I mean I would assume that anyway.

MR. GOTTFRIED: Well, I -- I think you're absolutely right. And this legislation and -- and others that we've considered are -- are rooted in -- in real world experience. In many cases very unfortunate real world experience. It's not just made up out of somebody's fantasies. We're talking about real experience here.

MR. STIRPE: Well, thank you very much. I -- I appreciate all the work you've done devising this bill and I look forward to its passing. Thank you.

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.

MR. LAWLER: Thank you, sir. So, for the 70 percent of -- of its total operating revenue on -- on resident care, does

this apply to all three types of nursing homes, for-profit, non-profit and government-run?

MR. GOTTFRIED: Yes.

MR. LAWLER: Okay. So in terms of a for-profit I generally would understand how you get there. How -- can you explain to me how the70 percent is going to apply to the -- the government-run facilities and how that works?

MR. GOTTFRIED: Well, I'm not quite sure what you mean by "how." The arithmetic is -- the process is -- is the same. And I don't think -- I hope nobody thinks that a -- that a government-run nursing home ought to be held to a lower standard.

MR. LAWLER: No, I'm -- I'm -- I'm curious just how we're going to -- how we fund it. For instance, you know, generally speaking, with labor costs on -- on the government side, certainly, you know, we tend to see that go incrementally up. So I'm curious how we're going to maintain the 70 percent ratio in terms of -- of resident care. Are we -- are we intending every year to increase the budget for government-run nursing homes at the same ratio that, let's say, labor costs rise?

MR. GOTTFRIED: Well, with one or two exceptions New York State does not, you know, directly fund a nursing home. We -- other than through the Medicaid program. And the Medicaid program is a complex system for how much it -- how it decides what to -- to pay a nursing home. Generally not enough. But that's a different topic. So it's a -- I -- I -- I don't think the question of

a public nursing home is a -- is that different a question. And almost all public nursing homes are -- are county, not State. And yeah, they certainly ought to be held to -- to the same standard. I -- I don't think any -- anyone should argue that they should be let off the hook or held to a lower standard. You could make a case that they should be held to a higher standard, but we're not arguing that today.

MR. LAWLER: Okay. So if -- if a government-run healthcare -- a nursing home facility does not meet the 70 percent threshold or the 60 percent requirement on direct care, what is -- what is the penalty on that? How -- how are we handling that?

MR. GOTTFRIED: The same way for any other nursing home. The Health Department would either take the money back out of their next year's Medicaid payments or future Medicaid payments or sue them.

MR. LAWLER: Okay. And --

MR. GOTTFRIED: Or some combination.

MR. LAWLER: And in a previous bill that we passed last week we put a cap on the number of new for-profit facilities, correct?

MR. GOTTFRIED: That is correct.

MR. LAWLER: Okay. So theoretically, down -- down the road here, the number of for-profit facilities -- and -- and you and I had this discussion -- you are hopeful in the future -- and correct me if I'm putting words in your mouth, but I think you are hopeful for the future that the number of for-profit facilities will

decline, correct?

MR. GOTTFRIED: Yeah. And -- and I think if we -- if we are successful in telling for-profit owners that, *You're actually going to have to spend money on resident care and pocket less than you thought you were going to*, that some of those owners that were only interested in pocketing a lot of money will see the wisdom of turning their facility back over to a not-for-profit operator. I would certainly love to see that happen.

MR. LAWLER: Okay. So let's put aside non-profit for a second. Would it be your hope that more government-run facilities, obviously some combination with non-profit, but would you like to see an increase in the number of government-run facilities?

MR. GOTTFRIED: Not necessarily. You know, our -- our healthcare system is -- in New York is overwhelmingly operated, at least on the institutional side. Like every hospital in New York State now is either non-profit or -- or -- or government -- I don't know if anybody's in the business of creating new publicly-owned hospitals in New York. So I -- I think the not-for-profit model works pretty well, particularly when there's appropriate regulation. I don't think we should be -- I mean, I don't have an interest in pushing counties into opening up more county-owned nursing homes, although if -- if that makes sense to a particular county, I'd -- I'd -- I'd wish them well in that and try to help. So I don't -- I don't think it's something where I have an opinion that I want more of this or more of that.

MR. LAWLER: Okay. In terms of getting back to the -- the 70 percent of total operating revenue being dedicated on -- on resident care, am I correct in assuming that if other costs continue to rise for the facility, whether it's a government-run or a non-profit, that they will have to find ways to get revenue to meet that 70 percent requirement?

MR. GOTTFRIED: Well -- well, if costs are rising, chances are what they are spending on what the bill considers resident care would also be rising and so they would continue to be -- if they're meeting the 70 percent today, they would continue to meet the 70 percent in the future. Now, if -- if you're saying if -- if costs for nursing homes rise, you know, for a whole variety of their legitimate cost items across the board, since almost all of their income comes from Medicaid and Medicare, will that increase pressure on Medicaid and Medicare to more properly fund our nursing homes? Whether this bill passes or not, that will be true.

MR. LAWLER: Okay.

MR. GOTTFRIED: And I would certainly want us to meet that responsibility.

MR. LAWLER: I guess --

MR. GOTTFRIED: Just like if -- if, you know, if -- if inflation drives up the cost of our elementary and secondary schools, we want the State and local governments to meet those costs as well. And what's good for, you know, the -- a principle that's good for school aid or paving our highways ought to be good for taking care of

our nursing home residents, too.

MR. LAWLER: I guess what I'm getting at is, you know, based on previous debate and conversation and -- and reiterated in this conversation, it -- it ultimately is your objective to get -- to get rid of for-profit nursing homes in the State of New York and instead have a model mostly non-profit, some government. If you're saying --

MR. GOTTFRIED: Well, I wouldn't -- I wouldn't say my goal is -- I wouldn't phrase it as -- as getting rid of them. I think -- I think we are overly dependent on for-profit facilities, number one. And number two, the reason we have so many for-profit facilities is -- is because of conditions and phenomena that I think are very troubling, and we should be reversing those conditions. And I think the result of that will be that people who want to own a nursing home just to make money will find some other place to invest their money.

MR. LAWLER: Yes, 49 other states. I think when we --

MR. GOTTFRIED: Well, you know, if -- if they buy more nursing homes in other states, I feel sorry for the nursing home residents in those other states. Maybe they'll buy -- you know, if -- if they go to New Jersey they're going to find a 90 percent spending requirement. And there are any -- there are a zillion ways to invest your -- your -- your hundreds of millions of dollars in America. You don't have to put it in a -- in a nursing home where the profit comes from depriving people of quality care.

MR. LAWLER: So -- okay. So ultimately, though, if

we go to a model that is more reliant on government-run healthcare and nursing homes and -- and non-profit nursing homes, I just want to drill down on -- on the government-run for a second. Do you agree that the -- the cost of the Medicaid program will increase under a model that is less reliant on for-profit nursing homes and more reliant on government-run and -- and some level of non-profit?

MR. GOTTFRIED: I -- I don't understand the logic of that at all. If Medicaid is paying for nurses instead of paying for nurses and millionaires' profits, I don't think the latter is good for Medicaid. I'd rather Medicaid isn't paying some of its money for owners' profits.

MR. LAWLER: Okay.

On the bill.

ACTING SPEAKER AUBRY: On the bill, sir.

MR. LAWLER: Thank you. I think -- I -- I appreciate what the sponsor is trying to -- to focus on. And -- and none of us want anyone who is in a nursing home to be in a situation where they are not receiving the proper care. And all of us, especially in light of what has occurred this year, want to make sure that they are, in fact, receiving the best care that -- that they can, regardless of their wealth or their ability to -- to pay for it. I think we are at a point in our State, though, where there is really a push in this -- in this Chamber and down the hall to drive businesses out of this State. And the idea that if you make a profit you are somehow evil. You are somehow not good for the State of New York. And when I -- when I

look at some of the bills, including this one, it seems that the push is really to -- to put every restriction on the ability of anyone to make money in this State. And it's going to have two major consequences: People will leave the State in droves, as they have over the last decade. We've lot over 1.2 million people for a reason. And businesses will relocate. As I said, there's 49 other states that people can invest their -- their money in. And if we want to go down that road, just understand the consequence of it. The consequence of it is a facility that was for-profit that was paying taxes becomes non-profit or government-owned is no longer paying taxes. Well, what does that mean to a local municipality? It means that they lost tax revenue. It means that they have to raise taxes elsewhere. It's not just this particular bill, it is -- it is this approach that we have in this Body to try and restrict the ability of people to own and operate a business. There are plenty of reforms that we can put in place to ensure that people are receiving great quality healthcare. And affordable healthcare. But trying to run businesses out of our State is -- is certainly not a way to do it, and certainly not a way to ensure that we have the resources from a governmental level to pay for all of these programs that we want to. We have the most expansive Medicaid program in the -- in the country in the State of New York. We pay 49 percent more than the average of the other 49 states. It's not a function of not spending money, it's how we spend it. We are forcing municipalities to pay a quarter of the cost of the Medicaid program. Well, when you take away tax revenue from them, it makes it a lot

harder to pay for that 25 percent.

So I will not be voting in favor of this bill and I urge my colleagues not to as well. Thank you, Mr. Speaker.

ACTING SPEAKER AUBRY: Mr. Salka.

MR. SALKA: Mr. Speaker.

ACTING SPEAKER AUBRY: Yes, sir.

MR. SALKA: Will the sponsor yield for a question or two?

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

MR. GOTTFRIED: Yes.

ACTING SPEAKER AUBRY: Mr. Gottfried yields, sir.

MR. SALKA: Thank you, Chairman. Just -- I'm a little vague on -- in the bill, lines 38 through 41 state the Commissioner shall make regulations, make medical assistance, State plan amendments, seek waivers from the Federal centers for Medicaid -- Medicare and Medicaid services and take other actions reasonably necessary to implement this section. Mr. Gottfried, could you just briefly elaborate on what maybe some of those amendments might be or what waivers that would be sought to comply with the -- the particulars of this bill?

MR. GOTTFRIED: Well, first of all, that -- that is boilerplate language that we put into legislation that -- that, you know, in any way bumps into the Medicaid program. And since these

facilities are overwhelmingly funded by Medicaid, it seemed to be prudent to put that in there. Also we talk about recouping or deducting amounts from a facility's Medicaid payment. It would -- it may well be appropriate to check in with -- with the Medicaid program to make sure that they don't have a problem with that. At the very least we would probably need to put a State plan amendment into our Medicaid plan saying that that's what we do. But short answer is, this is -- this is routine boilerplate.

MR. SALKA: So this could not be considered or could be considered a de facto penalty if, in fact, the nursing home doesn't comply with this? Or would that be a possibility, that -- that Medicare and Medicaid reimbursement would be held back if, in fact, the nursing home was found out of compliance?

MR. GOTTFRIED: I'm -- I'm not quite sure I understand your question. We would -- we would be telling the nursing home, *If we gave you a dollar on the understanding that you were going to spend 70 cents of it on -- on resident care and you only spent 60 cents on revenue care, we want 10 cents back. Because we gave it to you for a purpose and you didn't use it for that purpose. Give it back to us.* I think it's a perfectly sensible thing to say. It -- it does make sense to put in language to make sure that we -- that we check in with the Federal government to make sure they're not going to be upset about that.

MR. SALKA: Okay. All right. Well, thank you. Thank you for the explanation, Mr. Gottfried.

ACTING SPEAKER AUBRY: Read the last section.

THE CLERK: This act shall take effect immediately.

ACTING SPEAKER AUBRY: The Clerk will record the vote on Assembly print 5685-A. This is a Party vote. Any member who wishes to be recorded as an exception to their 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 generally be voting against this legislation, which is Rules Report No. 38, A.5685-A. If there's any member that would like to vote in favor of it, please contact the Minority Leader's Office. Thank you, sir.

ACTING SPEAKER AUBRY: Ms. Hyndman.

MS. HYNDMAN: I would like to remind my colleagues that this a -- a Party vote. Majority members will be recorded in the affirmative. If there are any exceptions, I ask Majority members to contact the Majority Leader's Office at the number previously provided.

(The Clerk recorded the vote.)

ACTING SPEAKER AUBRY: Thank you.

To explain his vote, Mr. Otis.

MR. OTIS: Thank you, Mr. Speaker, and thank you Chairman Gottfried. I'm going to support this bill because I think that the purpose is -- is something that we need to address to make sure

that all patients in New York State are getting quality care and quality personal care. But I am going to request that as details are worked out on this bill with the other House and with the Executive Branch that we look to fine tune some of the provisions of this bill because my -- my fear is that there are some institutions that are providing excellent personal care that can be quantified, but it not may not meet these ratio metrics because they spend a lot of money on other quality of life issues at their facilities, whether they be capital or -- or other sorts of things. And there are other kinds of budgetary outliers that in individual cases need to be addressed. So if there can be some language to provide for exceptions or to deal with those special circumstances, at the same time making sure that quality care is provided, that would be my request.

But I vote in the affirmative and thank the sponsor for his leadership on this issue. I vote aye.

ACTING SPEAKER AUBRY: Mr. Otis in the affirmative.

Mr. Durso.

MR. DURSO: Thank you, Mr. Speaker. I just wanted to rise to explain my vote. I know this bill is not perfect, not by any stretch. As -- as my colleague that just spoke before me, I hope that in the future some of these ratios and -- and these -- the implementation of this bill can be re-looked at and maybe amended to make sure that the facilities that are doing the right thing don't get punished or penalized in that regard. And I understand the concerns

of everyone on both sides of this issue. But I cosponsored this bill because I believe it's -- it's what's right. It's what's doing right for the people in the nursing homes that we're supposed to be taking care of. The intention of this bill, I believe, is to ensure the proper care for the people in these nursing homes and in these facilities. They're the most vulnerable population. We now know that. And with everything that's gone on over the past year, it's -- it's a group of people that we really need to look after and take care of. Also, to make sure that our loved ones have the best care possible, take care of -- taken care of properly by properly-trained people, properly-staffed facilities and properly-paid people in those facilities to take care of our loved ones.

It's for those reasons, Mr. Speaker, and I do thank the sponsor for this bill and I'll be voting in the affirmative and do hope in the future that we can make sure that our facilities that do the right thing get taken care of for doing the right thing. But at this time I will be voting in the affirmative. Thank you.

ACTING SPEAKER AUBRY: Thank you, sir. Mr. Durso in the affirmative.

Mr. Cahill to explain his vote.

MR. CAHILL: Thank you, Mr. Speaker. And I thank the sponsor for advancing this legislation. Oftentimes when we vote on bills we have to determine whether more good than harm is done by them, and I believe, as my previous colleague from Westchester County indicated, this is one of those instances where a great deal of good is being done in this legislation. However, there

may be some unintended consequences and where others may be concerned about this or that aspect of it. I am particularly concerned about the impact on the Continuing Care Retirement Communities. They are often the place where people invest their life savings and expect to have a great deal to say about how those facilities operate for the remainder of their lives. And that may or not comport with spending a certain percentage of money on the skilled nursing facility or the supervised living area or the private areas. And I would also seek to correct or modify the record in one regard: There are 13 community -- Continuing Care Retirement Communities in New York State. Twelve of them are for-profit, one of them is technically for-profit owned by not-for-profits. So we are not talking here about people who are -- are doing bad things. But on balance, this legislation advances a very important goal. And I withdraw my request and vote in the affirmative.

ACTING SPEAKER AUBRY: Mr. Cahill in the affirmative.

Mr. Goodell.

MR. GOODELL: Thank you, sir. Please record Mr. Durso in the affirmative. We have no other exceptions. Thank you, sir.

ACTING SPEAKER AUBRY: Don't worry, Mr. Durso, there's an echo in the room.

Ms. Hyndman.

MS. HYNDMAN: Please note that the following

members will -- will be voting in the negative: Dan Rosenthal, Judy Griffin, Steve Stern and Simcha Eichenstein.

ACTING SPEAKER AUBRY: So noted. Thank you.

Are there any other votes?

(Pause)

Ms. Walsh.

Ms. Walsh: Thank you, Mr. Speaker. Would you also please record Mr. Smith in the affirmative? Thank you.

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

Announce the results.

(The Clerk announced the results.)

The bill is passed.

THE CLERK: Assembly No. A06052, Rules Report No. 39, Lunsford. An act to amend the Public Health Law, in relation to requiring infection updates and infection control planning in residential healthcare facilities.

MS. WALSH: An explanation, please.

ACTING SPEAKER AUBRY: An explanation is requested, Ms. Lunsford.

MS. LUNSFORD: Thank you, Mr. Speaker. This bill is designed to expand the existing pandemic emergency plan to include a specific plan to cohort patients infected during the pandemic and to expand the communication plan to make sure that family

members and loved ones are informed expeditiously of any infections that are discovered within the facility.

ACTING SPEAKER AUBRY: Mr. Byrne.

MR. BYRNE: Thank you, Mr. Speaker. Will the sponsor yield for some questions?

ACTING SPEAKER AUBRY: Ms. Lunsford, will you yield?

MS. LUNSFORD: Yes, I will, Mr. Speaker.

ACTING SPEAKER AUBRY: Ms. Lunsford yields, sir.

MR. BYRNE: Thank you, Ms. Lunsford. Speaking about the new requirement for this bill, it would require residential healthcare facilities to update all residents, authorize family members and guardians of residents at the facility within 12 hours of the detection of the presence of an infection by a resident or staff member. That -- that's correct?

MS. LUNSFORD: Yes --

MR. BYRNE: Right, in your --

MS. LUNSFORD: -- that's correct.

MR. BYRNE: Okay. This was -- I was planning on voting yes for this in Committee and we had a -- a discussion which kind of raised some red flags for myself and perhaps some of my colleagues, and it is how we're defining infection. Is it in your understanding that we're looking -- well, first of all, and I don't think it's -- it's defined specifically in the bill. Is this -- is it your intent that

this is going to be for all infections, or the infection that is caused by the pandemic disease?

MS. LUNSFORD: This bill relates specifically to a pandemic emergency response plan, so the infection at issue in the bill would be the infection that is the subject of that pandemic.

MR. BYRNE: Okay. Well, I -- I think that was a pretty clear answer. I appreciate that. I understand that this is pertained to the pandemic emergency response plan. I'm not sure pandemic emergency was properly defined in the original bill either. But in the language I didn't see a clear answer. And in our debate I was concerned because if this was interpreted as any infection while we're in a pandemic emergency and they're executing a pandemic emergency response plan, the concern would be, if this wasn't clarified, that all of a sudden they would have the responsibility of having these automatic notifications within 12 hours to all of the residents and their family members and guardians for any infections. And as I'm sure you're aware, a lot of these facilities do deal with infections, you know, and -- and a lot of patients and residents with a lot of different medical issues. Some of them have more serious issues and some of them have infections like, for example, C.diff or MRSA, which are also serious and can be spread or contagious. But then you also could have something as broad as a sexually-transmitted disease. And I wanted to make sure that just because we're in a pandemic emergency we're not going to be automatically notifying all the residents and their family members that one staff member or one

particular resident had something like an STD. So in your understanding that is clearly not the case. I think most of -- a lot of the debates that we've heard so far, Ms. Lunsford, the AG's report was cited and I have to think that is part of the justification for your bill, is -- is that correct?

MS. LUNSFORD: That is correct, yes. That this comes directly out of those August hearings where we learned that nursing homes were not taking appropriate precautions.

MR. BYRNE: And -- precisely. So I just wanted to read this into the record, too, just so -- again, I -- I just want to get this as clear as possible because one of the recommendations, if I'm reading this correctly, *formally enact and continue to enforce regulatory requirements that nursing homes communicate with family members of residents promptly, but not later than within 24 hours of any confirmed or suspected COVID-19 infection and any confirmed or suspected COVID-19 death*. So it's specific, again, to the -- the infection in question as is related to the pandemic. Again, that was my primary concern about this bill, and I thank you for taking the time to answer my question, Ms. Lunsford.

MS. LUNSFORD: You're welcome, sir.

ACTING SPEAKER AUBRY: Read the last section.

THE CLERK: This act shall take effect on the 60th day.

ACTING SPEAKER AUBRY: The Clerk will record the vote on Assembly print 6052. This is a Party vote -- 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. Walsh to explain her vote.

MS. WALSH: Thank you, Mr. Speaker. I'd like to commend the sponsor on her first bill before this Body, and I appreciate my colleague's questions earlier, which were really mine. I will support this bill. I -- I only hope -- it doesn't really state in the bill, but I do hope that in terms of HIPAA that when this notification is made to family members or guardians or, you know, people who are in -- who have residents that are in the facility that, you know, care will be taken to try to protect the privacy and private information of the individuals with the infection.

But I -- I commend the sponsor, I think it's a great bill and I'm happy to support it. Thank you.

ACTING SPEAKER AUBRY: Ms. Walsh in the affirmative.

Mr. Gottfried to explain his vote.

MR. GOTTFRIED: Thank you, Mr. Speaker. First of all, I want to thank all of my colleagues for both those who have been sponsors of pieces of this legislation and those on both sides of the aisle who have supported this package. I just want to add one point. People have talked about how this legislation is focused on the COVID situation. That is certainly on everyone's minds. But the

problems that this whole package is aimed at are problems that were in our nursing homes, seriously in our nursing homes, to the disadvantage of -- of nursing home residents and their families long before the COVID virus evolved. And if it may be that this moment has created an opportunity to finally take action on this issue, that's all well and good. But we should always remember, these problems are not new. These problems have festered for years and it's long overdue for New York to be taking action and I'm proud to vote in the affirmative on Ms. Lunsford's first bill.

Thank you. I vote in the affirmative.

ACTING SPEAKER AUBRY: Mr. Gottfried in the affirmative.

Mr. Byrne.

MR. BYRNE: Thank you, Mr. Speaker. To explain my vote.

ACTING SPEAKER AUBRY: To explain your vote, sir.

MR. BYRNE: I just wanted to commend the sponsor again. Thank you for taking the time to answer our questions and make it clear what the intent of this bill is. I do support it. If we need a chapter amendment to just make it clear so there's no need for the DOH to interpret "infection," I would support that as well. Whether that's a chapter amendment supported by the Governor or Lieutenant Governor, I would be glad to support that. But I -- again, I want to thank the sponsor for this bill. I think it's a very good idea, and the

Office of the Attorney General for pushing this idea and her running with it.

So again, thank you, Mr. Speaker. I will be voting in the affirmative.

ACTING SPEAKER AUBRY: Mr. Byrne in the affirmative.

Ms. Lunsford.

MS. LUNSFORD: Thank you very much. I would like to thank all of my colleagues again for their sponsorship of this entire package and for allowing me to carry this bill today. This is government at work. This is government responding to problems. This is us listening to the stakeholders and to the people most affected by a problem and bringing real solutions. And I'm really proud to be a part of this, and I want to thank my colleagues across the aisle for your careful questions, for my colleagues over here who have supported all these bills, and I look forward to continuing to do the work of the people.

Thank you.

ACTING SPEAKER AUBRY: Ms. Lunsford in the affirmative.

Mrs. Peoples-Stokes to explain her vote.

MRS. PEOPLES-STOKES: Thank you, Mr. Speaker, for the opportunity to explain my vote. I want to join colleagues in congratulating our new colleague on her first bill. But I also want to say to the debate that has gone on for all day regarding

how to make nursing homes safer and stronger and better for those that are in need of them. I've said this a couple of times last week, but it bears reiterating because Mr. Gottfried just spoke of it again. Our nursing homes in the State of New York have really been a problem for a while. And I think the measures that we've taken today as well as Ms. Lunsford's bill is going to help us right-side the ship that's been going the wrong way. I think we've moved to the right position on this one and it's my pleasure to vote for this bill as it was for the others.

Thank you, Mr. Speaker.

ACTING SPEAKER AUBRY: Thank you.

Are there -- Mr. Goodell to explain his vote.

MR. GOODELL: Thank you, sir. I will be supporting this bill and I appreciate the efforts of my colleagues. I very much appreciate all the comments and expertise we also heard from our colleague Mr. Gottfried. Having also served with him on the Health Committee I certainly appreciate it. Even though I don't always agree with his bills, I always agree with his knowledge and integrity for sure. As -- as my colleagues have acknowledged, the nursing home industry does face many challenges and some of those became readily apparent over the last year. I would remind my colleagues, though, that typically 80 percent or more of the residents in nursing homes are on Medicaid, and historically Medicaid has paid only a fraction of the actual cost of operating a nursing home. So here we are as the Legislature, we're criticizing nursing homes for not

providing enough staff support, enough care, enough PPE, whatever, while at the same time our payment rate for Medicaid is only a fraction of the actual cost. So we ought to step up to the plate ourselves. And when we start paying a more appropriate rate we're going to see a more appropriate response from our nursing homes.

But with that, I -- again, I appreciate my colleague's comments and her sponsorship of this bill.

And if I may just jump a little bit ahead, the only exception we have is Mr. DiPietro on this particular bill. Thank you.

ACTING SPEAKER AUBRY: So noted.

Are there any other votes? Announce the results.

(The Clerk announced the results.)

The bill is passed.

And Ms. Lunsford, congratulations even though you've been congratulated by everyone.

(Applause)

And Ms. Lunsford, for you and many others who passed their bills in this era, I hope when we're all back together again we'll have one full House surrounding applause for all of you who have done this work in such difficult conditions. Thanks and congratulations.

Mrs. Peoples-Stokes.

MRS. PEOPLES-STOKES: Mr. Speaker, do we have any housekeeping or resolutions?

ACTING SPEAKER AUBRY: We have neither

housekeeping nor resolutions.

MRS. PEOPLES-STOKES: Thank you. Could we call on Ms. Hunter for an announcement?

ACTING SPEAKER AUBRY: Ms. Hunter for an announcement.

MS. HUNTER: Yes, thank you, Mr. Speaker. There will be a need for a Majority Conference at the conclusion of our Session today.

ACTING SPEAKER AUBRY: Majority Conference, conclusion of Session.

Mrs. Peoples-Stokes.

MRS. PEOPLES-STOKES: I now move that the Assembly stand adjourned until 10:30 a.m. Wednesday, March the 10th, tomorrow being a Session day.

ACTING SPEAKER AUBRY: The Assembly stands adjourned.

(Whereupon, at 5:49 p.m., the Assembly stood adjourned until Wednesday, March 13th at 10:30 a.m., Wednesday being a Session day.)