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PUBLIC HEALTH AND HEALTH PLANNING COUNCIL
AD HOC COMMITTEE ON NURSING HOME CERTIFICATE OF NEED
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Zoom
TRANSCRIPT

Mr. La Rue Good afternoon, everyone. Thank you for joining us for our second of four Ad Hoc Committee meetings. At our last meeting, we had a rather robust discussion regarding the qualifications of applicants and got into a couple of deep conversations around financing and how we were tracking different things and how things were review. I just want to remind everyone that the purpose of this committee is to examine the policies and procedures around the CON process for and character and competency for nursing homes. As I mentioned, we're going to have four meetings. This is the second. We're optimistic that by the third meeting, we're going to start developing some recommendations. Today, based on the discussion we had at the last meeting and what we thought was the necessity of clarifying and providing some more background information, we're fortunate to have with us today Ken Evans from the New York State Department of Health, who's going to review how the Health Department reviews the finances when they're looking at applications in support of both the short and long-term financial sustainability. If I do ask that you let Mr. Evans complete his presentation before we get into questions, and then we are going to move on to Amy Held and Paul Mahoney from the Office of the Attorney General, New York State Medicaid Fraud Control Unit, to share their views and help provide and understanding on related party transactions. And then after that presentation, again, we ask that you allow them to complete their presentation before we ask questions. We'll have a period for questions and answers.

Mr. La Rue Did you want to make any opening remarks?

Ms. Deetz Thanks, Scott. I think we're good to go. I'm looking forward to the presentation. Hopefully, everyone finds it informing and just to thank you to Ken and to Amy and Paul for agreeing to present today. Turning it back to you.

Mr. La Rue Thanks, Val.

Mr. La Rue Ken, as Val said, thank you very much for joining our Ad Hoc Committee. We look forward to your presentation. The floor is yours.

Mr. Evans Sure.

Mr. Evans Thank you very much.

Mr. Evans I'm going to present today. I'll be sharing the slides shortly, but my name is Ken Evans. I'm the Deputy Director for the Division of Health Economics and Provider Assistance. Like Scott said, we're going to be talking about the financial review today.

Mr. Evans Let me share my screen here.

Mr. Evans Can everybody see that?

Mr. Evans Perfect.

Mr. Evans The first slide, we're just going to talk about the statutory requirements and the regulatory requirements briefly. I've gone too far. Nope. We're going to be talking about the statutory requirements and the regulatory requirements around what governs or authorizes us to basically do the financial review for CON. The first thing is, we're talking about Public Health Law 2801-A3C is where they introduce the financial review for the CON, for establishment CONs. We have Public Health Law 28023D, which also introduces the financial review for construction CONs. Those statutory requirements are then further explained in the regulatory requirements in the New York Code of Rules and Regulations 710.2 and 600.2. we'll go into more detail on those in a minute. Essentially... What all of those regulations boil down to is that in the financial reviews for the CON process, we're looking at two basic things. We're looking at financial capability and financial feasibility. Those are the two things that we look at when we do the financial review. A little bit about financial capability and a little bit about financial feasibility. Financial capability is the ability for the applicant or whoever's doing the project to obtain funding to be able to complete the project. If it's an acquisition of real property and an establishment, then they need to be to demonstrate that they have the capacity to fund whatever the purchase price is, whatever the construction cost is, whatever they need in order to be able to do that. That's financial capability in the long and short of it. Financial feasibility, as Scott mentioned earlier, kind of focuses on the long-term financial forecast for the organization. How are they going to be sustainable into the future? We don't want to see a healthcare organization open up and then close down simultaneously very shortly thereafter. We want them to be providing healthcare to the communities that they serve well into the future. We want to be able to demonstrate that through budgets and so on and so forth. Public Health Law 2801, Establishment or Incorporations of Hospitals. Essentially, what this boils down to is the Public Health and Health Planning Council should not approve a certificate of incorporation, articles of organization, or an application for establishment unless it is satisfied insofar as applicable as to, and then it jumps down. There's a bunch of things. This is where we talk about public need and a few things in between there. Then it jumps to Section C, and it says the financial resources of the proposed institution and its sources of future revenues. We have historically interpreted that to mean basically financial capability and financial feasibility at the end of the day. Again, this is the Public Health Law for establishment of hospitals.

Mr. Evans The next slide, Public Health Law 28023 states that the commissioner in approving construction of a hospital shall take into consideration and be empowered to request information and advice as to the adequacy of financial resources and sources of future revenue. Essentially, the same thing for an establishment application and a construction application. There is no difference between the two. We have historically interpreted this to be financial feasibility and financial capability. Regulations that also govern our requirements. In the New York Code and Rules of Regulations of Title X, Section 600.2B3 for establishment, the applicant must satisfactorily demonstrate to the Public Health and Health Planning Council that there are adequate finances to properly establish and conduct the proposed facility. You need to be able to basically do what you're saying you're going to do. You need to be able to complete the project from a financial resources perspective. We go into New York Code of Rules and Regulations, Title 10, Section 7102B4 and Section 6. The application setting forth the scope and concept of the project shall include the following, if applicable, an estimate of total project cost of construction predicated upon construction schedule, an outline of the proposed financing of the total project costs, including the sources of any federal, state or financial support. That's pretty much what we have to govern what our financial review is at the end of the day. We have historically interpreted that, the department has historically interpreted that to be financial capability, the ability to complete the project, whatever the total project

cost is, and financial feasibility, the ability sustain operations well into the future. What I want to do is I want to go into a little bit of detail kind of about what the financial review is and what we do to kind of basically accomplish that.

Mr. Evans What the financial review is...it's a three-year analysis of project costs and revenues. Factors that we would consider in reviewing for the three-year future, the forecast would be what resources the operators must certify they have or will have sufficient resources to meet the facility's expenses and the residents need in a nursing home situation. We ensure that they have the direct care spend of 70% of revenues on the direct resident care with at least 40 percent of residents facing staff. We look at the operating history. We look if it's a new operator, we'll look at their past, what they've done, certain things. We look any related nursing homes that they may own. We look basically what are the overall finances around this organization. We want to see that they have a track record of financial viability. They have positive working capital and assets.

Mr. Evans On the financial capability side, so applicants must provide documentation that covers all aspects of the project's funding. We want to understand if you're paying with cash, where's the cash coming from? If you're doing a financing, what is the financing structure? What are the sources of any other funds if you are doing bond financings, if you going to do fundraising, whatever you're doing. How are you obtaining that? In some cases, and in most cases, we will ask for a business plan is kind of our last resort. We try and get a sense from the applicant of what the finances is going to be. A lot of times it's very straightforward. We don't need to go into a full business plan. We want to understand exactly how they're going to finance the project. Financial feasibility, financial feasibility evaluates the reasonableness of projected revenues and expenses, the ability to sustain operations capacity to retire debt in the future. We look at detailed revenue and projects revenue and expense projections. We will evaluate that three-year budget. If you can't prove financial feasibility within a three-year budget we'll extend it to a five-year budget. Generally, when we report to PHHPC, we report only the three-year budget, just because that's what fits on the page to be honest with you. We want to be able to ensure that the nursing home is able to sustain operations well into the future. We don't want them to have financial hardships in year one, year two, year three. We also will look at their working capital requirements and be able ensure that they can, if there is going to be an operating loss in years one, that they have enough working capital to be able overcome that. They have that equity available to them on the day one of the operations.

Mr. Evans I want to go into the financial review process a little bit. The financial review process, what we do, the applicant is required to provide us with information. We don't go out and do a lot of research. We get all of our information from the applicant. The applicant is requiring providing that to us. In the application process, they provide us the current year revenues and expenses in a projection for the first and third year of operations after the proposed changes have happened. If you're an establishment, it would be the first and third year after you take over the ownership. If you are constructing something, it would be the first and third after you completed the construction project. They have to provide us with certified financial statements. Those certified financial statements have to reconcile with the current year. We verify that they reconcile with the currently year in the budget. We make sure that what we're looking at from the current operations is in fact what the certified financial statement reflect. They have provided us with a proposed method of financing of any purchase price or construction costs. Again, so financial feasibility, financial capability, and provide us with the proposed method of funding any working capital. That's what the applicant provides us. What the department starts to do then on going forward basis is the first thing we do is we reconcile the current year in the budget,

revenue and expenses to the audited financial statements. This ensures that what the CPAs, when they're going out and doing the audits are seeing is in fact what is reflected in the budgets. We see any discrepancies, we ask questions. We'll go back. We'll have them revise the budget as needed. We then start to look at the budget for years one and three. We analyze the change in reimbursement rates from the current year to what the applicant, now this specifically in establishment applications. If you're proposing that there's going to be significant increases in Medicare reimbursement or rates or significant increases of Medicaid or commercial rates, we look at that and we assess that for reasonableness. We will analyze any kind of major growth or decrease in revenues or in expenses from the current year. Again, we're looking for reasonableness as it relates to the budget. Is what you're saying you're going to do in years one and three? Is it attainable? Do we believe that it can be achieved based on your current business plan? We'll also look at utilization. Utilization from the current year is a very tricky area. We know a lot of nursing homes are struggling across the state, may not have fully staffed beds, may have reductions in utilization. There may be an applicant that is coming in to take over a particular nursing home. They're saying that they're going to go from, you know, 75/80% utilization, and they're going to bump that to 95. We were going to want to understand how they're going to get that extra 15% utilization. I mean, utilization is obviously what drives the overall financial feasibility of a nursing home. I think the most important thing is once we've done our analysis, we're going to engage the applicant regarding all of the assumptions that they used in preparing the budget and any observations that the department may have come across while we were doing our review. Any of the things that we had previously mentioned, we're going to be looking to have them explain to us how is it you're going to achieve that stuff? Pretty much the last thing we do on financial feasibility, we ensure that all of the above align with what the application says it's going to do. The application as a whole is basically a larger business plan that the applicant has put in front of the department for the department to review and then present to PHHPC with recommendation. If the applicant and the overall application doesn't align with what the assumptions are telling us in the budget, then we've just prompts more questions, and we'll go back and forth with the applicant to ensure that everything makes sense.

Mr. Evans The financial review process. Again, this is what the department does. The department will evaluate the proposed financing. We determine how the project is going to be financed, whether it be cash bonds, grants, fundraising, commercial borrowing, or any combination of all these. A lot of times we see applications that have two, three, four, sometimes all of these potential financings. Once the financing has been determined, the department will verify with the applicant that they have access to any equity or capital needs. That they can have an executed grant contract, that they demonstrate that they have bond financing or the ability to finance with a commercial lender. We do that to ensure that at the end of the day, what the council sees can actually be done based on the financial capability of the applicant. Just wanted to take a minute and just talk about leases specifically. What we do on the financial review side when we evaluate a lease. We will evaluate the relationship between the landlord and the tenant. We ensure that the landlord, if they don't already own the property have the capability to acquire the property and enter into a lease with the applicant. We also get two letters from licensed real estate agents attesting to the fair market value of the rent. We indicate that in our report every time we present it to PHHPC if there is a relationship between the landlord and the tenant. We ensure that the cost associated with the lease is included in the budget and that the applicant remains operationally feasible. When we're looking at the lease, we're looking' at it primarily to indicate if there's a relationship and then to ensure that they've included those costs in the capital component of their budget. They can be operationally feasible at those lease terms. That's pretty much all we do with our review of any of these lease

arrangements. I think I went a little faster than I intended, but that pretty much concludes my presentation. Any questions?

Mr. La Rue If folks want to raise their electronic hand, if you go down to the react, you could raise your hand and then we'll call on you as we see the hands go up.

Mr. La Rue Ann Monroe, you're clapping or raising your hand?

Ms. Monroe I don't know why I'm waving. Thank you very much, Ken. When you say the applicant is reviewed, what about if the applicant is a subsidiary of another company or has owned significantly by another company. How far up the chain do you review their financial capability and feasibility?

Mr. Evans Okay, so that's a good question. When we review the applicant for financial capability and feasibility, we'll look at whatever the sources of funding that they're using are. If there's a parent organization over that organization and they may be supplying some funding to some aspect of the review, we'll ensure that whatever that parent organization or grandparent organization has the resources to be able to do whatever they're saying they're going to do at the end of the day. It doesn't just stop at the applicant. It goes to wherever it needs to go in order for them to demonstrate to us that they have the working capital, that they the access to the equity that they need in order to be financially feasible and financially capable into the future.

Ms. Monroe If the applicant shows that they're going to be getting a significant loan, for example, from a parent or another organization in their universe, you look at the capability of that organization to both make the loan and manage with that loan?

Mr. Evans Yes, we would. We would also report out in our report on whatever the interest rate was, that they're charging it alone, whatever, what the terms are, generally interest and amortization schedule, timeline.

Ms. Monroe Scott, I have one more question. May I ask it now?

Mr. La Rue Yes, then we'll go to Lindsay.

Ms. Monroe We hear some stories about facilities paying outrageous rent to a parent who owns the building. You said you get two letters from real estate agents speaking to the actual market value of the building for rent. How could that be happening that there seems to be quite a bit of concern about excess rents being charged? How would that happen?

Mr. Evans I mean, our reliance, when we're looking at a lease, we're basically trying to, again, ensure two things. We're trying to ensure that the applicant is going to be financially feasible into the future and financially capable of completing a project. Where rent becomes a problem for us is when rent is in excess of maybe what a fair market value would be, and it creates a financial hardship on the applicant right into the future. We rely on these licensed real estate agents essentially to document for us that what the proposed rent is across the state, you know, anywhere in the state could be out in Buffalo, up in the Adirondacks, down in the city. We rely on the licensed real state attestation to ensure or to at least test that the rent is reasonable. If a licensed real estate agent was to send in an attestation, and in fact the rent was not reasonable. I don't know. I can't really answer that. We're kind of relying on that attestation for the reasonableness of the rent.

Ms. Monroe Thank you.

Ms. Farrell Can you define that for us? What are your expectations?

Mr. Evans I think I missed the first part of that. You said cash and working capital.

Ms. Farrell I mean, you define it as six months on hand, two months on hands, two months on hand.

Mr. Evans Sure.

Mr. Evans When we look at an application for working capital requirements, and again we report out on this in our report under the capability and feasibility section. Working capital is generally going to be two years of the third year of expenses, or two, I'm sorry, two months of the third year of expense. We want them to have a minimum of two months of the third-year expenses on there. It changes a little bit. There's subtle little differences to it. If you're going to have a loss in the first year, as you're saying ramp up your utilization or you're doing whatever you're going to do, we want to see the working capital requirement a little bit higher. We'll detail that out in the report as to how we came to the number that we came to, and how they're going finance that working capital. Again, working capital has to be financed 50% with equity, and it can be financed up to 50% of financing.

Ms. Farrell Thank you.

Mr. Evans Sure.

Mr. La Rue Thank you, Ken.

Mr. Evans We're going to move to the Medicaid fraud control unit and then we'll wrap up.

Mr. Thomas I'll be really quick.

Mr. Thomas I'm sorry if I missed it. The applicant submits the two letters from the licensed realtor. Is that correct?

Mr. Evans The applicant is required to get the two letters and submit them because the realtors don't have access to our electronic CON system. The letters come from a licensed realtor. We verify that they're from a license realtor and that we recognize or can at least look up online the real estate entity.

Mr. Thomas You just give due diligence sufficient to confirm the licensure?

Mr. Evans Yes.

Mr. Thomas Thank you.

Mr. Evans Yep.

Mr. Thomas Thank you.

Mr. La Rue Thank you, Ken. We appreciate the presentation. We're going to move on to Amy and Paul from the Office of the Attorney General and the New York State Medicaid Fraud Control Unit.

Ms. Held Good afternoon. Thank you for the opportunity today to present the findings from the Office of the Attorney General's Medicaid Fraud Control Unit regarding investigations and enforcement actions we've taken relating to for-profit nursing homes. My name is Amy Held. I'm the Deputy Attorney General for the unit. I'm here with my colleague, Paul Mahoney, who is the Assistant Deputy Attorney General for the unit. Today, we're going to be talking about four topics; quickly, who the Medicaid Fraud Control Unit is, some questions that we know were raised at the last Ad Hoc Committee meeting, nursing home legal framework, then findings of repeated illegality and fraud with respect to eleven nursing homes, and common shareholder and operator defenses. First, the Medicaid Fraud Control Unit is part of the Attorney General's Office. It is independent from the Department of Health and the New York State Medicaid program. Legally required to investigate fraud by Medicaid service providers and by persons that collude with those providers to defraud the Medicaid program. Is also legally required to investigate allegations of patient abuse and neglect in residential health care facilities, regardless of the payment sources of those patients. We understand at the last PHHPC meeting in September, some of the Ad Hoc Committee members raised questions about the effect of related party transactions on operations and resident care, the effect splitting ownership of the operator from real estate, fair market value in the relationship to rent, the effective collusive related party transaction on CMS Staffing ratings, whether DOH and PHHPC approved persons make decisions in operations, and a relevance of character and competence regarding shareholders. This presentation will address some of those questions. First, it's important to understand that nursing homes operate in a very highly regulated legal framework. These are just three of the most important duties that are important to understand related to the findings of our investigation. Nursing homes are required under federal and state law to provide all required care and individualized care plans for the patients. This includes medical care, assistance with activities of daily living, all basic care, also to provide infection prevention and control that's effective. In addition, nursing homes are required to operate with sufficient and competent staffing to deliver required care. This does not mean hitting a particular number of HPRD. The law requires the nursing homes to operate with sufficient and competent staffing to deliver the care that's actually required by the residents that live in those homes. Finally, nursing homes have legal duties to limit admissions to only residents for whom the nursing home can provide required care. In addition, the nursing home legal framework includes the reality that most nursing home revenue is from Medicaid and Medicare. Those programs have the government paying reliably per resident day. The government relies upon operator certifications that it delivered the required care and followed the laws. The reimbursement system means that a higher nursing home census results in more revenue for the nursing home. In addition, the DOH and PHHPC operator approval processes include character and competence reviews. This is important because nursing homes owe many duties to very vulnerable residents who live within them. These are not pizza shops or widget-making factories. Nursing homes are also required to file accurate and truthful cost reports and payment certifications to the Department of Health.

Ms. Held I'll move to the findings of repeated illegality and fraud under Executive Law 6312 that this office has made with respect to eleven nursing homes in eleven separate, in seven separate enforcement actions. We'll go through these and we'll cover some findings from the Attorney General's 2021 nursing home report. One common finding for each and every one of the investigations was a repeated illegality under Executive Law 6312,

specifically in each of these situations of nursing homes. Vulnerable people living in these for-profit nursing homes suffered preventable neglect, abuse, injuries of pressure ulcers, sepsis, falls, fractures, dehydration, UTIs, and dehumanizing humiliation from lying for hours in their own waste in soiled clothes and diapers. Many times, the residents were lying in their soiled garments after they had pressed the call bell asking for support with their toileting needs and not received it in time. Sometimes some of those residents, our findings reflect, began walking to the toilet themselves fell down and were injured. In each of these instances, these findings of neglect and injury and suffering occurred in nursing homes before or after the pandemic, sometimes during the pandemic too, but certainly before or after the pandemic. Lastly, in the petitions that we filed, there were very graphic, horrifying, and tragic photos of many of these injuries. We have spared those, spared you those today, but they are available in public filings in case you're interested. Another common finding in all of the cases were from the outset, the shareholders of the operators and the related party landlords and the relative party management companies implemented a coordinated fraudulent asset stripping scheme disguised as elder care, while they disregarded the nursing home's legal duties to operate with sufficient staffing to limit admissions and to provide care. In addition, these same operators engaged in collusive related party real estate transactions that saddled the homes with obligations to pay unnecessary mortgage debt. In addition, they transferred millions of dollars and inflated rents and made other collusive payments to related party landlords and shareholders that facilitated upfront profit-taking while the home disregarded their legal duties. Another finding was that the operators paid quote-unquote management companies that they or their family members or business partners owned. They entered into non-arms-length collusive arrangements requiring the homes to pay related party fees for duplicative or sham services that provided little or no benefit to the homes. They then caused the homes to operate while disregarding their legal duties to the residents. Meanwhile, the nursing homes engaged in repeated illegality by neglecting the residents, by disregarding the duties to operate with sufficient staffing, including RN supervision. It's really important for nursing homes to have sufficient RN supervision, yet this is often the first thing cut because those are more expensive positions. RNs are critical to provide training to direct care staff, to do duties that no other nursing staff can provide, and to do training and supervision of staff while they're working. Other nursing home duties that were ignored and violated during this time was the duty to limit admissions to residents for whom they could provide care. As a result, the homes hurt vulnerable people who depended on them for care, yet didn't get it. I'm going to go over findings from four lawsuits that the Attorney General filed in 2022 and 2023. These weren't the typical kind of civil lawsuits where a complaint is filed. These were more like summary judgment motions. What that means is the office filed verified petitions that were very detailed with factual findings that were supported by numerous affidavits backing up the factual findings of the petition. The purpose was to address systemic causes of abuse and neglect. All of these are publicly filed cases. In each of these actions, which covered seven nursing homes, there were five common findings. One, preventable, neglect, injury, and suffering of vulnerable people. Two, insufficient staffing levels and insufficient compensation paid to staff. Three, continued resident admissions despite insufficient staffing. Four, upfront profit-taking by shareholders through collusive related party transactions. Five, control or influence by persons not approved as the operator in operator decisions, followed by operator complicity in upfront profit-taking. Why and how did these things happen? The first one, neglect happened because people didn't get the care that the homes were required to provide. It's very simple. Why were the homes operated with insufficient staffing? Under this scheme, the homes reduced staffing, including RN supervision, and operated with too few direct care staff to provide required care to residents. Why was it done? It was done to reduce expenses of the nursing home because staffing is an

expense. It was also done to facilitate upfront profit-taking by operators or shareholders of related parties. How was it done? Well, there were decisions made in operations to cut staffing to insufficient levels. There were decisions to set limited budgets for the nursing home staffing. There were decision made to assign staff regularly. Too many care duties. Provision of inadequate training and are in supervision to that staff. This created poor working conditions and required staff to decide which care to provide. This resulted in staff burnout and high turnover. Another method was to use temporary staffing from related party staffing agencies instead of full-time employees who were familiar with resident care needs. That's more expensive and less efficient. Lastly, they offered direct care compensation that was too low to enable the home to hire and retain sufficient numbers of competent staff. Why they offer too low compensation? Because money was being taken out from upfront profit taking. Another finding was while the nursing homes were operating with insufficient staffing, the operators continued to admit additional residents. Why? In order to increase the census and revenue to facilitate more upfront profit taking by the shareholders. Why and how did upfront profit taking occur by the shareholders? Primarily through related party transactions. Not exclusively. Why was this done? A benefit to upfront profit taking is it conceals the high dollar amount of upfront profit-taking, meaning the amount of money that's being transferred from the nursing home to the shareholders. What's the benefit of that? If it's hidden, people won't get as upset by it. It also enabled industry lobbyists to falsely claim Medicaid rates are too low for nursing homes to be profitable to falsely claim that staffing shortages cause insufficient staffing rather than behaviors.

Mr. Mahoney We wanted to briefly address the question of this fiction of the staffing shortage. It's a semantic distinction. It's not a real distinction. As the New York State Nurses Association, who should know very well how many nurses are in New York State and how willing they are to work, said in an op-ed in Cranes in 2023, it is not a nursing shortage. It is only a shortage of nurses willing to work under the current conditions. Nursing shortage implies that there are no people, but people have to be willing to accept the jobs. Our own analysis in many forms shows that those people exist and are available for the facilities. This next chart will be a little bit difficult to see clearly on the screen, but we have it in larger scale for you. It's a map of New York State. What we've done for the purpose of this illustration is we took the 2025 CMS staffing star ratings for all the nursing homes in New York State. That was the first map we had. We removed all the five-star facilities. We said, maybe, for the sake of this illustration, the five-star facilities have superpowers. We removed them from the map. We removed the two and the three star facilities, the kind of mediocre staffing facilities. What we are left on this map is the one star and special focus facilities and the four-star facilities. The facilities that are above average, but not superstars. When you project this on the map, you see that those facilities are in the same geographic area, the same economic area. In suburban Albany, for example, there are four-star facilities, and there are one-star facility. Same thing in Buffalo, Syracuse, Rochester, and the Metropolitan area. Facilities in the same town can have above average staffing and below average staffing. If everyone was suffering from a staffing shortage, that would not be possible.

Ms. Held In addition to build on Paul's point, what we heard from and what we learned during our investigations. People who have nursing licenses did not want to work in nursing homes that had poor conditions and insufficient staffing and often quit and refused to work in such homes because they were afraid of losing their licenses. If they made a mistake, someone else made a mistakes, their license was on the line, and it wasn't worth it for them. How or why is there control or influence on a complicit officer by persons who are not approved as the operator when the operator is making operations decisions? This

occurs or has occurred by shareholders and officers of related party landlords and of management companies that were not approved as operators controlling or influencing operations decisions that were made by complicit operators. These decisions promptly transferred revenue from the homes to shareholders through collusive related party transactions all while the operator disregarded the home's legal duties. This behavior prioritized shareholder upfront profit taking from the home while disregarding and violating the home's legal duties. How and why does upfront profit taking occur? You may have heard of upfront profit taking by the use of the term tunneling or funneling. It's the same behavior. Other entities have created research reports using those other terms. What upfront profit-taking means is it is the structured transfer of millions of dollars in Medicaid, Medicare, and other patient care revenue from the home to shareholders and related parties with a number of other things that are happening at the same time. Before legally required care is delivered, without regard to quality of care, for services with no or insufficient value to the residence or the home in exchange for the inflated fees, it's made to persons associated with operators who are legally required to ensure that care or to operators themselves. It's made through self-negotiated, collusive related party negotiations and transactions. Not arm's length transactions. It's arranged for and paid in disregard of the nursing home's duties to operate with sufficient staff, limit admissions, and provide care. The different types of vehicles that are used include rent payments, mortgage payments where capital goes from the mortgage goes to shareholders instead of the nursing home in some instances, other loans and related party management and consulting fees as well as other vendors. There was a decision issued by the Commercial Division in New York County in 2024 that recognized upfront profit taking. It's publicly filed. I won't go through it, but it recognizes the concept. This was a position in which the court denied the twenty-seven respondents' motion to dismiss.

Mr. Mahoney One thing that the terminology in these matters can often be somewhat confusing and downright misleading. The real estate transactions and the operating transactions are a single economic business proposition. In all the facilities that we examined, there was not a preexisting real estate company and a pre-existing operating company that had contrary interests to each other and had a traditional landlord-tenant relationship. In fact, they had a unitary ownership of the land and the operating license. In the transactions that we questioned, it was a conscious decision to separate those two operations, not for the reasons that are often said of liability or insurance or something of that sort, but to extract profit. Groups of people had to work together to divide up the ownership interests in very small fragments, which does not work unless you have an overarching economic agreement to act in concert with each other. The real estate company is set up simply to hold a piece of property in title and to charge rent to the operating company. It's essentially a shell company whose only income is the rent to pass it through to the owners. There are four ways that upfront profit was siphoned out through the real estate alone. One is inflated rent. We've heard about fair market value, but that's essentially an opinion of someone. The rent easily covers the expenses and the cases we examined, and then quite a bit more taken as shareholder distributions. There are often cash out mortgages in which the property is purchased for millions of dollars in excess of the amount of money it costs to buy it from the prior owner. That millions of dollars are then sent directly into the pockets of the people who took out the loan. It doesn't go to capital, improvements in the property, or anything of that sort. It's just added money. The problem with that, in addition to many other problems is that the operating company is paying for the money that's essentially already being used for other purposes than operating the company, operating the nursing home. There were also fraudulent promissory notes in which shareholders of the company lent additional money for no reason at very high interest rates to the operating companies. The opposite, no interest

loans from some of the facilities to the owner's other business interests, including nursing homes in other states. That's very clearly a violation of the purpose of expenditures of Medicaid revenue in New York.

Ms. Held Our findings also reflected upfront profit taking through management companies. What we noticed and found is that the shareholders of the nursing homes and the management companies were the same persons in some instances. In other instances, the shareholders of the operator were family members of the management company shareholders. For example, the parents would own and control the management company. The son, the daughter, or sons and daughters-in-law were shareholders of the operator. The question that's interesting is would the management companies have passed character and competence review? Would the shareholders of that company pass? If not, why are they participating in operations decisions? Other ways of taking money out, we talked about the staffing companies. There were other vendors. We've seen other vendors of sham technology services, purported lab services, and other services. It can happen to any kind of vendor services. In addition, no show jobs. In many of the examples, in many of enforcement actions, we found that the operator was transferring upfront profit to shareholders of the nursing home that was identified in cost reports falsely as salaries when the shareholders did not work what was claimed at all or didn't work the amount that was claimed. This is just an example to show you that in one of the decisions where the court denied the respondents motions to dismiss the petition, the court recognized all of the different types of financial fraud that were alleged in the petition. I think Paul already covered the different types of ways that rents and landlords.

Dr. Heslin I don't think there's an HR for that.

Ms. Held Someone's not on mute.

Dr. Heslin I almost never think of it. Although I hate Cucksacking when I was 40, and I ended up with neurological and with cardiac complications.

Ms. Held We can skip this slide. I think Paul's already explained the different ways, the findings that we've had in certain cases about real estate transactions. What's interesting is a month after we filed the special proceeding in June of 2023, we're letting to repeated fraud and illegality in four nursing homes. In less than a month, the court granted the Attorney General's application for preliminary injunctive relief in the form of appointing an independent financial monitor. The court did so, recognizing the financial schemes that we've talked about and saying that the Attorney General has demonstrated what amounts to a massive fraud, whereby respondents through myriad financial machinations managed to siphon Medicaid and Medicare funds for themselves without permission. The court found that it was likely that the fraud would simply continue unless an independent financial monitor was appointed, so the court appointed one. That was in place during the pendency of the litigation. Can an operator substantially increase rent payments to a related party landlord without cutting staffing and operating with insufficient staffing? The answer is no. I want to mention that some people talk about investments and real estate investments. This is a red herring in these types of situations because when an investor makes an investment in a business, whether it's a pizza shop or a tech company startup or a publicly straight traded stock, there's a risk of loss. For example, if the business does not perform well or make a quality product or service. In the cases we found, there was no risk of lost from these transactions because they were collusively designed upfront profit transfers right back to the shareholders in many instances. This particular chart is a simple way to understand some of the findings that we have. What this chart represents in one of

the cases, Villages of Orleans. It takes the cost report data that the nursing home filed with the Department of Health from 2012 to 2020. In the middle, you'll see a black horizontal line in 2015. That's when ownership changed from the county to the for-profit operator. What you can see from this chart is the nursing home expenses expenditures on direct care staffing dropped dramatically when ownership changed. Direct care staffing expenses before the transaction amounted between 29 to 44 percent of the nursing home's expenses. That's the light green portions of each of those columns. You can see after the purchase by the for-profit entity, these expenses on direct care staffing dropped to between 11 percent to 19 percent. At the same time, you'll see by looking at the bottom portion, the red portion of the chart that the real estate expenses for rent went up dramatically. When the county owned it, the rent expenditures were between 5 and 6%. Yet afterwards, when the for-profit operator purchased the facility, the amount of rent expenditures paid to a related party landlord was between 19 and 26%. This is a cash flow chart from the same case, which is in our petition, which explains the cash flow that went from Medicaid, from Medicare, from other government proceeds into the operator, which is comprehensive at New Orleans. How \$15 million went out to the related party landlord, \$1.8 million went to the management company. You can see on the right side how much there's overlapping ownership by the shareholders of the management company and the related party landlord. How many millions went to each of the shareholders. Overall, our findings reflect that profits as a percentage of total funds transferred was 22%. That's \$18 million. This is another chart in another special proceeding that has a similar finding that's just so easy to see when you look at the cost reports that were filed by one of the homes. It shows the same pattern that direct care expenditures in light green before 2015, which was when ownership changed, were between 29 and 44% pretty high, and then afterwards they dropped dramatically. Similarly, amount the nursing home spent on rent expenses was very low and then increased dramatically. In addition, it's not surprising to know that another finding of this investigation was that the nursing homes experienced lower CMF staffing ratings under the new for-profit ownership.

Mr. Mahoney What's the real-life implication of these percentage points? Sometimes the percentage point or the absolute dollar value doesn't convey the real story. In the petition and the findings of the center's facilities, across three years, 2019 to 2021, we did some calculations. How many hours of direct care could be paid for by reducing the profit that was taken from the facility, not eliminating it, not going into deficit spending, reducing it. The stark example here is Buffalo Center. Buffalo Center became a special focus facility. Yet the owners and the landlords, who are just two individuals working together, if they had only taken \$3 million less out of that special focus facility, over 34,000 hours of additional direct care could have been provided. The same calculation is true for every one of those four facilities that was involved in that. This is not anti-profit. It is about taking profit before the care is delivered. Special focus facility by definition is not delivering care. \$3 million left that facility, even though it could have purchased a great deal of direct care.

Ms. Held Would you go back to the previous slide? I wanted to point out one more thing.

Ms. Held That is, if you look at the top of this chart, you'll see there is a red line that's horizontal. What it shows is that's the breakeven line for the nursing home. It shows that the operator operated the nursing home not to make a profit, but so that the nursing pretty much broke even or maybe made a little bit of profit. It could have made so much more, except that the operator worked and planned to take out the upfront profit through related party transactions, management company fees, related party rent fees, and other staffing fees. This is a finding from another special proceeding against Fulton Commons in which, in this case, it was a little bit different. The owner, the primary shareholder of the operator

was the same primary share holder of the real estate related party. Under sworn testimony, he explained that there was no written lease and that he just set the rent at what he wanted to set them at. What was clear from the findings is that it was set so that he could extract millions and millions in upfront profit. Our findings in this case included that between 2018 and 2020 he increased rent on an annual basis requiring the nursing home to pay more and more. He raised rent by close to \$1.5 million in 2018. By almost 18% in 2020, even though the nursing homes operating revenue fell dramatically. Another thing that these findings show is, oh, in this case, Fulton paid rent that was at a rent-revenue ratio between 21 and 30 percent each year, which is well above the state average. What does this mean? Well, we've heard the term fair market value. The term fair-market value can be useful in discussing rents that are set in arm's transactions. Arms-length negotiated transactions between non-related entities in a particular commercial market. However, it's clear that fair market value as a concept has a very different meaning where the amount of rent is inflated and set in collusive negotiations between related parties just to take out upfront profit while the nursing home ignores its duties.

Ms. Held In this example that's on the screen, you'll see that Buffalo Centers, the home that Paul discussed earlier paid a significantly higher rent to revenue ratio than the state average. It paid between 11 to 16% of its revenue as rent, even though the statewide rent average, state rents revenue average was only seven to 10% during the same time period. This resulted in an additional \$5.7 million being taken out as upfront profit to the related party landlord. In the Cold Spring Hills case, the court issued a decision and order on the Attorney General's petition. The court granted the second cause of action for repeated fraud under Executive Law 6312 against some of their respondents, the realty respondents and their members, and also granted relief on the fourth cause of action for repeat illegality under Executive Law 6312 against Cold Spring Hills acquisition and it's two managing members. That's the operating company. The full text of the order and the papers are available online. To go into it just a little bit more in more detail, the court found with respect to the decision on repeated illegality that the examples that the petitioner, the Attorney General provided, established a lack of care. The court specifically said, any lack of appropriate care, whether it concerns a single resident or hundreds of residents must be adequately acknowledged by the court as a violation of law. The court referenced many state and federal regulations that the nursing home violated, as well as unacceptable practices. The court found that the appropriate remedy was the appointment of an independent health care monitor. The court's decision also found repeated and persistent fraud by the related party landlord for an undisclosed \$16 million dollar subordinated promissory note in favor of lending partners LLC that required the nursing home to pay two million dollars in interest at 13% interest rate after two of these. Shareholders submitted affidavits in 2016 to the Department of Health that said they would provide the equity to the extent it was needed. However, as explained in our petition and in the court's decision, by November of 2018 the realty had refinanced the mortgage on the real property, folded in the promissory note with interest into a new loan and that became part of what they required the operator to pay. The court ordered each of the four individual members of the real estate company to pay over \$500,000 to the nursing home for a total of \$2 million. This office is appealing the court's decision to the extent that the causes of action, to the sense that the court dismissed causes of actions that were not granted. Respondents are also appealing the decision. And that is the status of that decision.

Mr. Mahoney Amy, we may want to move through this rent slide quickly.

Ms. Held This is some data from cost reports that were filed, just to let you know. In 2021, 550 New York nursing homes filed cost report data. Of these, 381 reported a rent

expense, the rest didn't. 90% of the for-profits paid rent. Some findings from the Attorney General's nursing home report that are relevant, there were many, include that during the pandemic, for-profit nursing homes had lower CMS staffing ratings and had higher rates, higher death rates than not-for-profits or government nursing homes regardless of geographic location. In addition, for-profit facilities have a financial motivation to operate with insufficient staffing to facilitate transfer of upfront profit to owners and related parties.

Mr. Mahoney What is the effect of fraud and deceit in the certificate of need application process? Here's one effect. This is from the petition in the villages of Orleans. After the new ownership took control, that's new ownership simultaneous real estate and operating company, the CMS ratings dropped in every category. The quality measures became among the worst in the state. In October of 2014, the villages was owned by the county and had overall rating of three stars middling. January of 2015, new operator, new landlord. February of 2015, overall rating is now two stars. April of 2015, overall rating is one star. March of 2021, special focus facility. When the person who was actually operating the facility, we'll get to that in a moment... Was asked the question, were the operators aware that the facility's quality measures were dropping? That person took his rights under the Fifth Amendment to the United States Constitution. Yet, that same person and his operating group were paid \$2 million in management fees. It's a fair question to ask. Why would an operator, why would the owner pay management fees to a management company that downgraded the facility's health care performance from three stars to special focus facility? The answer from our assessment is that it's because it was only a vehicle to take money out of the facility. It's not a rational business decision to pay management people to drive the company into the ground. It is rational if you want to extract money. How do we know this? We heard earlier about the requirements for approval. Well, the requirements of approval were only followed prima facie for show in that matter. This is testimony we took of the person who is the owner on paper under oath or under penalty of perjury brought the deal to us. He offered us, the owner to be a 5% owner to me, and my children half a percent each, a total of 19%. That sounds like a very small amount of control, and a very smaller amount of ownership. He went on to testify. When it came to get the CON, he said to me there's too many partners involved. It'll take a very long time to get CON approval, and the villages wants to close. Is it okay if we use your name as 100% and then we'll file applications to change the ownership to the way it's supposed to be? I said, "Fine, no problem." Of course, none of the regulations that we or Mr. Kent have shown, is there anything about borrowing someone's name for the CON, of course, and the amendments on change of ownership and control are very clear. Those weren't complied with. In fact, the owner went on to testify, and some in substance, when did you learn you were still the 100% owner? I learned years later when there was a problem at Orleans, and all of a sudden, I'm told I'm 100% ownership. Who are they that told you this? Morty Lahasky. He goes on to testify. You only have one investment with this person? Yes. Do your family members have any investments with Lahasky, Gast, or Sam Halper, who are other people who are named in the testimony? I'm not sure, but I highly doubt it. We don't know whether his recollection was correct or not, but these people over on the red circles are family members of the person who is testifying, who were investors with those people in one facility of which a pair was convicted by the federal government in the Western District of Pennsylvania in 2024, precisely for filing false staffing reports and filing false MDS data. That's the sort of thing where the character and competence review can be distorted by this gamesmanship. I think Amy, we should pick up on the similar slides.

Ms. Held This chart is from one of our petitions, and it reflects that on the left side, those are the shareholders of the operating company. On the right side, those are the

shareholders of the real estate company that's related party. What it shows is that if you look at the colors that match, that represents family relationships between the family members that are shareholders of the operating company and the real estate company. On the left, in light green, that was the managing member, the son of a 25% owner of the real estate company. In yellow, that's a 25 percent shareholder of the operating company who was the daughter of a person who was a 25% owner of the real estate company and also had a consulting company that was paid money by the operator. In the red, there were two individuals who were 12.5% shareholders of the operator, and they themselves were also shareholders of an entity that owned 25% of the real estate company, and their parents owned 60% of that company, and their siblings, another 20%. These are some operator shareholder defenses that we heard in the special proceedings that we filed. In more than one instance, the respondent said that the courts should not focus on the neglected residents. We had affidavits from residents and their family members in each case describing multiple instances of abuse, neglect, and injury and death in some instances. The defense was because many people were not neglected, the court should not focus on findings of neglect and abuse. That's not the law. Another argument is that profit taking is allowed, regardless of whether the nursing home complies with its legal duties. That's not the law. We've also heard that staffing shortages justify operation with insufficient staff and continued admission of residents. Well, that's not law. Even if there were an actual staffing shortage that would not excuse the nursing home from breaching its duty to limit admissions to those residents to whom it can provide required care. In addition, we've heard that disclosures made to DOH and PHHPC to obtain CONs need to be truthful only at the moment of filing. That's contrary to the law. In addition, many of the filings contain misleading or false statements. In addition, we've had that approval of CONs by the public health agencies and advisory bodies means that they agree to the financial arrangements. All of them are appropriate. That's contrary to law and public policy. Lastly, in one of the instances, an operator alleged that its poor financial condition permitted it to violate DOH closure plan requirements and DOH guidance that required confidentiality of proposed closure plans and permitted the operator to publicly announce its quote-unquote emergency evacuation of residents for financial reasons a week before Hanukkah and Christmas. Well, that's not the law. It represents a self-interested use of the residence as human shields to try to create pressure on government agencies. The status of the special proceedings is this. The one in Nassau County against Fulton Commons is settled. There was restitution paid. There's a resident care fund that's funded and there are independent healthcare and financial monitors in place that are protecting the residents in order to deliver long-term reform. In the case against centers involving four nursing homes of over 1,100 residents, they are also protected by independent healthcare and financial monitor. Significant restitution and resident care funds were paid to deliver long-term reform obligations. In both of those cases, the settlements contained findings that are admissible by the Attorney General in actions to enforce these settlements. In Nassau County, in the Cold Spring Hills case, the court denied the motions to dismiss then issued a decision on the petition. I described that to you. It's also available publicly in its full form. Shortly after this office obtained injunctive relief to stop the illegal emergency evacuation for financial reasons, just days before Christmas in Hanukkah, the home then filed for bankruptcy. The receiver, a temporary receiver is now in place. The independent healthcare monitor is still in place and the office has filed a motion to replace that independent healthcare monitoring with one that is independent. In addition, as I mentioned, the appeals of the court's decision in order by both parties are pending. Lastly, in Orleans County, the court denied, for the most part, the defendant's motions to dismiss. They dismissed a few of them, minority shareholders, and that case is ongoing.

Mr. La Rue Well, Amy and Paul, thank you for that presentation, very insightful, especially as it relates to the questions we've had as members of the council, as various applications have come forward, really voicing some of these exact concerns that you presented here today.

Mr. La Rue I'll open it up for questions.

Mr. Thomas Thank you, Scott.

Mr. Thomas Thank you, Amy and Paul, for that detailed review. A quick question, I don't know whether you will answer or can answer. I guess it's a two-part question. The actions that you're describing are, while serious, very, very serious, they're generally civil, is that right? These are not criminal proceedings.

Ms. Held The four that I've described our civil proceedings and the advantage of filing them the way we filed them was because we were seeking not only return of public funds but most importantly to remedy the danger that the residents were in and that was the special proceeding allows for quick injunctive relief to put in independent health care monitors and independent financial monitors. In fact, in two of the cases within fifteen months of filing, we were able to get those monitors in place. I told you in one case, we were to get them in place within a month. However, I also referred to other enforcement actions and two of those included parallel proceedings against for-profit nursing homes. One of those is discussed in the appendix, Appendix B to the Attorney General's nursing home report. In that case, the office brought a criminal prosecution against the nursing home and its owner and high managerial agent for endangering residents. At the same time, had a parallel civil action. That resulted in restitution, that resulted in convictions. But by the time that action was concluded, the home had been sold to another entity. There was not an opportunity to put in place the reforms to protect the residents. In another case, there was another parallel action, the Medford case, I won't go into all of it, but we have brought criminal actions as well.

Mr. Thomas Thank you.

Mr. Thomas Just one follow-up really quick, and I won't dominate you, Scott. It sounds like, and I don't want to put words in your mouth that you do have the tools at your disposal in your office. What I'm wondering is, are your tools sufficient to discourage this kind of behavior? That's why I asked whether you bring criminal charges. From our release from my chair, civil proceedings, and the loss of money is one thing. Some of these liberties are totally a different matter. So, anyway, just a reaction to that, Amy. It sounds like you use all the tools at your disposal, and you have them at the center, of course is the home and its patients. That's the center of everything you do, but just a reaction to that.

Ms. Held Well, and I forgot to mention in the Fulton case, we had a parallel proceeding as well. In that case, we had a parallel prosecution of the nursing home. Its director of nursing and another employee because a resident was sexually assaulted and the home covered it up. In that case we had both the criminal and the civil action proceeding at the same time and they were resolved at the time. As you know, in a criminal case, the standard of the burden of proof for the government is higher. It's beyond a reasonable doubt. In a criminal action, I'm not aware of the ability to get that same kind of injunctive relief quickly to protect the residents from further exploitative behavior.

Mr. Thomas Great. Thank you very much.

Mr. La Rue Amy, there was a request if you'd stop sharing the screen. For members who don't have two screens, they can't see the people talking.

Ms. Monroe Yes, thank you.

Ms. Monroe This was very interesting. If you were to make one or two suggestions to us as to how we might strengthen the front end of the CON process to maybe nip some of these things in the bud, what would be your recommendation?

Ms. Held Well, a couple things come to mind, and Paul may have additional ideas, but one of the things is there are many excellent laws on the books that are designed to protect residents. It seems like, at least anecdotally, in some cases, the people that are seeking approval are seeking exemptions in some ways from things. Holding the line on the law would seem to be helpful. Knowing that, you know, keeping in mind the things we said about fair market value when you're talking about related party transactions that's something that can mean something totally different. Here we have related parties compared to a commercial relationship. We're also available. We have data that if it would be helpful for you all in any way that you think of you let us know and we can come back with more data if that would be helpful.

Ms. Held Paul, do you have anything in particular that would be helpful?

Mr. Mahoney I would recommend reading the report the Attorney General issued in 2021. It had a series of recommendations towards the end of it. I don't have it right in front of me at the moment. They included in this area in particular providing the Department of Health with additional enforcement and review staff to strengthen the laws about staffing. The corollary, I think, it relates to what we've been discussing here. Just because the process has existed for a long period of time doesn't mean it should go forward making the same friction with the people that it's intended to protect, the residents of the country of the facilities. I think a lot of the actors in the cases that we examined shaped their behavior to file pieces of paper that would be acceptable under the expectations of the process, having no intent to actually carry out residential healthcare protections. It was merely to get to yes from the regulatory agencies. A healthy skepticism of those applications might be warranted. For example, you saw in the testimony we quoted how easy it was for one person to say, oh, my children will have a half percent. The next minute, I'll be the 100% owner. That's not an arm's length transactions, just deal making between two individuals.

Mr. La Rue Thank you.

Dr. Soffel Hi. Thank you. Denise Soffel. I am a member of the council. I want to pick up on Ann's questions as is often the case. Ann and I think in very similar patterns. The tool that we have as the PHHPC is the CON process. I'm thinking about where in the CON process might we have forestalled those kinds of problems. Could you have predicted these outcomes, these fraudulent outcomes, based on the data that we currently receive and review as part of the CON process? If not, what might we add to the CON process that would help us act as a red flag to catch these kinds of interaction, dynamics before we have approved them? Because the only tool in our quiver right now is the CON process. That's what we do, right?

Ms. Held I'm not as clear as I probably should be with this process. Do you have the opportunity to ask operators questions?

Dr. Soffel Yes.

Ms. Held It might be helpful to ask, if you don't already prep, you already do. Who's going to be making the decisions? Why is there a need for a management company? We see you want approval for certain leases or management company transactions. How do you know that that will enable the nursing home to still have sufficient revenue to operate with sufficient staffing and to limit admissions? I mean, even just getting answers to those questions might be helpful, but I have to think about it some more.

Mr. Mahoney Very few of the stakeholders on the applicant side are actually, when you look at the documents closely, very few people are required to certify to the truthfulness of the statements involved. Very few of people are held to the truthfulness of those statements going forward. As we saw several times, they thought nothing of just changing the transaction very, very shortly after the approval was granted. Systems that would lock those representations into a long-term model for individual accountability would be useful. We did not do some examples we had of those small 9 and 10 and 12 percent shareholders submitting paperwork to the Department of Health in this body saying they would learn and would take on the higher level of responsibility and oversight and knowledge of how to operate a facility. When we examined them under oath five years later, they said, no, I never actually did that. I never did any of the training or classes. I deferred to my Father, who's so knowledgeable in the healthcare business and is so successful as a nursing homeowner, I defer to him on all judgments of that

Dr. Soffel Unfortunately, we have been in a very difficult situation recently of a county saying they can no longer afford to operate a nursing home and a for-profit operator saying they are willing to take it over and it's either allow them to take over or shut the nursing home down and that's a rock and a hard place, which is part of what has stimulated this set of conversations.

Ms. Held One thing we heard is in during at least one of these situations was that there was a not-for-profit that was interested in purchasing the nursing home. But of course, the not-for-profit wasn't offering as high of a purchase price as another for-profit entity that was going to that had different financial motivations. What would happen if the application were denied? Would that result in more nursing homes eventually being operated by not-for-profits once the inflated mortgages are devolved or dissolved and the related party relationships are dissolved? Would it allow for more not-for-profit ownerships? I don't know. Maybe break the cycle.

Mr. La Rue Thank you.

Mr. La Rue It is 4:30pm. Dr. Ruge has had his hand up for quite some time. We'll take that. I'm sorry, Dr. Friedrich, that's going to be the last question. I'm sure if we forward questions to Colleen, we could submit them to Amy and Paul, and they will answer them so that we have them for the next meeting.

Mr. La Rue Dr. Ruge, I'm afraid I'm going to have to ask you to take the last question.

Dr. Ruge Actually, I have kind of a statement, a question, and then a suggestion. The statement is just to repeat what Denise has said, and that is certainly in the region where I live, there is an enormous switch from for-profit agencies to for-profit because the expense is simply becoming affordable, whether it's a public institution or public

government sponsor or another not-for-profit. Are these rare exceptions these lawsuits, or is this really a significant percentage of those transactions that have come under this needed scrutiny and demonstration of violations?

Mr. Mahoney The percentage of facilities, because we based the actions on the ability to generate the affidavits, the first-person accounts, and the harm from individuals is a relatively limited number of facilities. I think we identified eleven in this presentation. The ownership groups that are represented by the names among the respondents are a much, much higher percentage of the ownership of for-profit facilities. One of those ownership groups accounts for at least 10% of the total facilities in New York and more like 15%. These are very round numbers. I don't have a chart in front of me. Another group accounts for another roughly 10 to 15%. A third settlement that we've had accounts for owners of ten or fifteen facilities. The practices are broader than the number of actions brought. They're very labor intensive and resource intensive actions, which is one of the reasons why we brought them as injunctive actions to try to get as much protection. These are not isolated, unusual actors who have interposed themselves into the New York market. They are people who have been in the market in New York for a long time.

Mr. La Rue Thank you.

Dr. Ruggie Let me just finish with my suggestion. And that is a suggestion for Scott, you, Scott, and all of us on PHHPC is, what can we do to avert some of this abuse? Whether it's a new kind of review of CONs or new regulatory positions, it's fascinating to hear all this, but we should be looking for ways to avert these kinds of issues, if we possibly can.

Mr. La Rue I completely agree and the next Ad Hoc meeting, Dr. Ruggie, we're going to transition into developing recommendations that we will hopefully agree on by the fourth committee meeting, but I'll be happy to address that at the next meeting when we start developing recommendations. Doctor, again, I apologize. We couldn't get to you. If you submit your question to Colleen, we'll get it answered to our guests who participated today. Thank you very much. It was extraordinarily informative and helpful to us. Thank you. To the Department of Health who helped organize this meeting and Colleen, thank you for your work and we'll see everyone at the next Ad Hoc Committee meeting.

Ms. Monroe Do we have one set?

Mr. La Rue We will be releasing dates shortly. Thank you, everyone.