



NEW JERSEY LAW REVISION COMMISSION
Final Report to Eliminate Duplicative Definitions
Sections of the Health and Vital Statistics Statute in Title 26

April 21, 2022

The work of the New Jersey Law Revision Commission is only a recommendation until enacted.

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Project Summary¹

In July 2017, the Commission authorized a project to consolidate two duplicative definition sections contained in Title 26 (alternatively, the “Health Act”).² The first statute in the Health Act, N.J.S. 26:1-1, defines the same six groups of terms as the statute immediately following it, N.J.S. 26:1A-1, using almost identical language.³

After reviewing the large number of defined terms in the Health Act, Staff requested an expansion of the project to “examine whether it would be beneficial to further consolidate the definition sections” in Title 26.⁴ Staff then identified terms that are defined repeatedly and consistently, and are used throughout the Health Act, to be incorporated into a consolidated definition section.

With the goal of creating an easily identifiable and broadly applicable definition section at the beginning of the Health Act, the Commission recommends combining N.J.S. 26:1-1 and N.J.S. 26:1A-1 into one consolidated definition section, by harmonizing the definitions of the six terms contained therein and eliminating the older statute, N.J.S. 26:1-1.⁵ The Commission also recommends adding eighteen new terms to the proposed consolidated definition section in N.J.S. 26:1A-1, and deleting duplicative definitions of these terms in other sections of the Health Act.

Background

New Jersey established the State Board of Health in 1877 to “take cognizance of the interest of health and life among the citizens of this state.”⁶ In 1915, the Board’s powers were vested in the newly formed New Jersey Department of Health.⁷ After the enactment of a revised New Jersey Constitution in 1947, the Legislature introduced N.J.S. 26:1A-1 which defined the same terms as the act establishing the Department of Health.⁸ In 1950, both N.J.S. 26:1-1 and N.J.S. 26A:1-1 were amended “to change the terminology of the Department of Health.”⁹ In 1951, the statutes were again amended to add their present language.¹⁰

¹ Preliminary work on this project was conducted by: Christopher Mrakovcic, a former Legislative Law Clerk; Bishoy Shokralla, a former Legal Intern; and Joseph Pistritto, a former Legislative Fellow during their respective tenures with the New Jersey Law Rev. Comm’n.

² Title 26 (“Health and Vital Statistics”) (N.J.S. 26:1-1, et seq.)

³ N.J.S. 26:1-1 defines the terms (1) “State department,” “department of health,” “department,” (2) “Commissioner,” “Director,” (3) “Council,” (4) “Division,” (5) “Division director,” and (6) “Local board,” “local board of health.” N.J.S. 26:1A-1 defines all of the same terms, except “Director.”

⁴ N.J. Law Revision Comm’n, *Minutes NJLRC Meeting*, *1-2 (Jan. 17, 2019), available at www.njlrc.org (last visited April 7, 2022); N.J. Law Revision Comm’n, Memorandum Regarding Duplicative Definitions of the Public Health Statute, *3 (Nov. 5, 2018), available at www.njlrc.org (last visited April 7, 2022).

⁵ N.J.S. 26:1-1 was enacted as L.1915, c. 288, p. 517 [1924 Suppl. § 89-1a et seq.]. All other sections originally contained in that Chapter were subsequently repealed and N.J.S. 26:1A-1 was added as L.1947, c. 177, § 1, eff. July 1, 1947.

⁶ N.J. Dept. of State, <https://nj.gov/state/archives/cathealth.html> (last visited April 4, 2022).

⁷ *Id.*

⁸ L.1947, c. 177, § 1, eff. July 1, 1947.

⁹ L.1950, c.29, §§ 1 & 7, eff. April 11, 1950 (changing the term “bureau” to “division”).

¹⁰ L.1951, c. 69, §§ 66 – 67, eff. May 14, 1951.

Over the more than sixty years since these sections were last amended, hundreds of defined terms were added to the Health Act.¹¹ Some of these terms are also defined in N.J.S. 26:1-1 and N.J.S. 26:1A-1; some are defined several times, and in some cases, in different ways, within Title 26; and some are defined just once or twice in the entire Health Act.¹²

Analysis¹³

• *Consolidation of N.J.S. 26:1-1 and N.J.S. 26:1A-1*

Based on the original project proposal, the Commission sought to consolidate the six terms defined in both N.J.S. 26:1-1 and N.J.S. 26:1A-1 into a single definition section. Five of these terms are defined identically by the two statutes,¹⁴ but the term “local board” (or “local board of health”) is described in significantly more detail in N.J.S. 26:1-1.

The divergence between the two definitions stems from the 1951 amendments to the Health Act. The Legislature incorporated the concepts of “consolidated” and “county” boards of health into the definition of “local board” in both N.J.S. 26:1-1 and N.J.S. 26:1A-1.¹⁵ The Sponsors’ Statement explained that, alongside other amendments to the Health Act, the purpose of the change was “to empower municipalities to join together in creating consolidated local health districts.”¹⁶

Although the Sponsors’ Statement does not indicate why the definition sections were amended differently, the definition of “local board” in N.J.S. 26:1A-1 was expanded to explain when “consolidated” or “county” boards of health would fall within the definition of “local board.” The definition in N.J.S. 26:1A-1 simply stated that the “local board of health . . . includes any consolidated local board of health or county local board of health created and established pursuant to law.”¹⁷

As there are no other mentions of “consolidated” boards of health within the Health Act, and “county” boards of health are defined elsewhere,¹⁸ the detailed explanation in N.J.S. 26:1-1 is not necessary to fully define “local board.” Therefore, the Commission recommends modifying N.J.S. 26:1A-1 to include additional defined terms and serve as the consolidated definition section and recommends deleting N.J.S. 26:1-1 in its entirety.

• *Defined Terms Included in the Proposed Consolidated Definition Section in N.J.S. 26:1A-1*

To provide a comprehensive and useful definition section in N.J.S. 26:1A-1, the various defined terms in the Health Act were assessed to determine which duplicative definitions are

¹¹ Almost 140 statutes are entitled “Definitions” or “Defined terms” in Title 26.

¹² A complete list of the 670 defined terms, and the number of times they are defined, was compiled by Christopher Mrakovcic, former Leg. Law Clerk. (on file with NJLRC).

¹³ Given the large number of statutes affected by the proposed modifications, the relevant statutes are set forth in the Appendix attached to this Report, rather than included in a separate section in the Report itself.

¹⁴ In N.J.S. 26:1-1, the terms “Commissioner” and “Director” are interchangeable but the term “Director” does not appear in N.J.S. 26:1A-1.

¹⁵ L.1951, c.69, §§ 66 – 67, eff. May 14, 1951.

¹⁶ Sponsors’ Statement to A.B. 1 (Jan. 9, 1951), later codified at L.1951, c.69, §§ 66 – 67, eff. May 14, 1951.

¹⁷ N.J.S. 26:1A-1.

¹⁸ N.J.S. 26:3A2-2; N.J.S. 26:3A2-23.

appropriate for consolidation and which could be eliminated. In addition to the six original defined terms in N.J.S. 26:1-1 and N.J.S. 26:1A-1, which make up the first group of terms in the proposed consolidated definition section, two more discrete groups of defined terms are proposed as additional defined terms in the consolidated definition section.

The second group includes terms defined repeatedly and consistently within the Health Act but not in N.J.S. 26:1-1 and N.J.S. 26:1A-1. Since the definitions of these terms are substantially identical, they can simply be relocated to the consolidated definition section in N.J.S. 26:1A-1, and duplicative occurrences deleted from the remainder of the Health Act.

The third group are terms that are repeatedly, but not always consistently, defined. To the extent that the differing definitions could be merged, a consolidated definition is included in the consolidated definition section. Defined terms with definitions that were incompatible with the consolidated definition are left intact because N.J.S. 26:1A-1 directs that the definitions therein are applicable “unless otherwise specifically indicated.”

Group One: Terms Contained in N.J.S. 26:1-1 and N.J.S. 26:1A-1

Six terms are defined in N.J.S. 26:1-1 and N.J.S. 26:1A-1. Excluding the definition sections in those statutes, the term “Department” (or “State department” or “Department of Health”) is defined consistently across all 41 occurrences of the definition.¹⁹ Therefore, the Commission recommends that all 41 duplicative definitions of the term be eliminated from Title 26.

Similarly, the term “Commissioner” is defined 56 times in the Health Act.²⁰ Six of these definitions also include the Commissioner’s “designee” or “authorized deputies, representatives, agents or employees.”²¹ With respect to the 50 definitions that are identical to the one in N.J.S. 26:1A-1, the Commission recommends striking all of them from the Health Act.

However, with respect to the six alternative definitions of “Commissioner,” striking the definitions may inappropriately limit the power of the Commissioner’s agents and designees. Alternatively, modifying the consolidated definition of “Commissioner” in N.J.S. 26:1A-1 to include designees or agents could encroach upon powers specifically delegated to the Commissioner of Health. Consequently, the Commission does not recommend any modifications to those six definitions.

Finally, the term “local board of health” is defined once.²² The definition is not identical to that found in N.J.S. 26:1A-1, but adheres closely enough to fall under the definition therein. The Commission recommends deleting this duplicative definition from the Health Act. The three remaining terms (“council,” “division,” and “division director”) are defined multiple times within

¹⁹ These three terms are consistently defined as “the State Department of Health” or “the Department of Health.”

²⁰ The term “Commissioner” is defined as “the State Commissioner of Health,” “the Commissioner of Health,” “Commissioner of the Department of Health” or “the Commissioner of the State Department of Health.”

²¹ N.J.S. 26:2A-3(j); N.J.S. 26:2F-3(b); N.J.S. 26:2G-32(a); N.J.S. 26:3A2-3j; N.J.S. 26:12-3d; N.J.S. 26:13-2.

²² N.J.S. 26:3-69.1(1).

the Health Act. However, in each instance the defined term refers to a specific council, division, and division director, and therefore, the Commission recommends these terms remain unmodified.

Group Two: Consistently Defined Terms

To achieve the goal of creating a consolidated definition section of terms that are used consistently throughout the Health Act, terms used in multiple sections of the Health Act that have a common definition are recommended for inclusion in the consolidated definition section in N.J.S. 26:1A-1.

There are a small number of terms used in Title 26 that meet these criteria. The terms include: “adult,” “Alzheimer’s Disease and related disorders,” “birthing facility,” “contagious disease,” “infectious disease,” “local health agency,” “local registrar or registrar,” “long-term care facility,”²³ “Medicaid,” “Medicare,” “state,” “State Registrar,” “substance use disorder,” “vital records” and “vital statistics.”

Among this group of terms, all of the duplicative definitions use almost identical language,²⁴ and appear in more than one chapter within the Health Act. The Commission recommends adding these terms to the consolidated definition section in N.J.S. 26:1A-1 and eliminating all duplicative definitions.

Group Three: Inconsistently Defined Terms

The final group of defined terms included in the consolidated definition section in N.J.S. 26:1A-1 are those that are defined inconsistently but are still amenable to consolidation. The terms “covered person,” “hospital,” and “person,” are defined sufficiently similarly to formulate an accurate general definition and delete almost all duplicative definitions throughout the Health Act.

The term “covered person” is defined four times in Title 26.²⁵ The only difference between the defined terms is that one definition is specific to dental plans.²⁶ Since that definition is included in a statute devoted entirely to dental-plan-related definitions, the Commission recommends leaving it intact.²⁷ Otherwise, the Commission recommends adding the defined term “covered person” to N.J.S. 26:1A-1 and eliminating the remaining duplicate definitions from the Health Act.

²³ N.J.S. 26:2H-12.87 also defines the term “long-term care facility.” However, this statute was recently amended to exclude all facilities except nursing homes. Therefore, the Commission does not recommend that this definition be modified. *See* S.B. 2790, 2020 Leg., 219th Sess. (N.J. 2020) (identical to A.B. 4430), later codified as L.2021, c. 190, § 1, eff. Aug. 5, 2021.

²⁴ There are some slight variations in wording, but none that affect the substantive meaning of the definitions.

²⁵ N.J.S. 26:2S-2; N.J.S. 26:2S-26; N.J.S. 26:26-29; N.J.S. 26:2SS-3.

²⁶ N.J.S. 26:2S-26 (“a person on whose behalf a carrier offering a dental plan is obligated to pay benefits for or provide dental services pursuant to the plan”); *compare* N.J.S. 26:2S-2 (“a person on whose behalf a carrier offering the plan is obligated to pay benefits or provide services pursuant to the health benefits plan”).

²⁷ N.J.S. 26:2S-26 (“Definitions relating to dental plans”) contains three additional terms relating specifically to dental insurance coverage.

“Hospital” is also defined four times in the Health Act.²⁸ One definition diverges significantly from the other three, which all appear in the same chapter.²⁹ Consequently, the Commission recommends that the three consistent definitions of “hospital” be eliminated from Title 26 and added to the definition section in N.J.S. 26:1A-1.

The final term, “person,” is defined five times in the Health Act. Although the Legislature provided a general definition of “person” in N.J.S. 1:1-2, the definitions in the Health Act are not identical to each other or the definition in N.J.S. 1:1-2.³⁰ Three definitions contain non-exclusive and similar lists of qualifying entities, while the other two provide more expansive, but discrete lists.³¹ The Commission recommends that the three open-ended definitions be consolidated and included in the consolidated definition section. The Commission does not recommend any modification to the other two definitions, in order not to disturb any legislative intent to limit the scope of the definition of “person” in certain circumstances.

Accordingly, the Commission recommends that eighteen new terms be added to the proposed consolidated definition section in N.J.S. 26:1A-1,³² and 149 instances of duplicative definitions of these terms be eliminated from the Health Act.

Defined Terms Excluded from the Modified Definition Section in N.J.S. 26:1A-1

The terms that are not included in the consolidated definition section in N.J.S. 26:1A-1, can be divided into three categories. The vast majority of defined terms in the Health Act fell within the first category and were used only within statutory sections addressed to a specific topic. These terms are generally defined only once or twice, and tend to be unique, in that they are proper nouns, medical or scientific terms, or irrelevant to other sections of the Health Act.

The second category includes terms with broad applicability that are defined many times in the Health Act. These terms are excluded because almost all the definitions were either partially or wholly incompatible with one another. The inconsistency between these defined terms most often arose when the definitions were tailored to address a specific issue.

The third category includes a small number of terms that are consistently defined, but only appear in a single chapter or article. The terms in this category do not appear to be suitable for a general definition section, but potentially, a consolidated definition section could be created within a single chapter of the Act, and duplicative definitions could be eliminated, within that chapter. Without further expanding the scope of this project, it is unclear whether this would be beneficial or unnecessarily complicated.

²⁸ N.J.S. 2H-5.25; N.J.S. 2H-7.5; N.J.S. 26:2H-18.52; N.J.S. 26:6-78.

²⁹ The three statutes in Chapter 2H define “hospital” as “a general acute care hospital licensed pursuant to P.L.1971, c. 136 (C.26:2H-1 et seq.),” while the definition in N.J.S. 26:6-78 includes a detailed list of attributes.

³⁰ N.J.S. 26:2A-3(b); N.J.S. 2A-17; N.J.S. 26:2A-24; N.J.S. 26:2C-2; N.J.S. 26:2J-2g.

³¹ N.J.S. 26:2A-3(b), N.J.S. 2A-17 and N.J.S. 26:2J-2g contain open-ended language (“or other similar entity,” “including but not limited to”), while N.J.S. 26:2A-24 and N.J.S. 26:2C-2 contain a finite list of entities.

³² This count does not include the addition of “local board of health” to the original list of terms contained in N.J.S. 26:1A-1.

Category One: Unique Terms

The Health Act contains hundreds of defined terms that have specific relevance, and the majority of these terms are defined only once. Generally, these terms are complicated scientific and medical terms, proper names of programs, organizations, and officials, or appear in, and are relevant to, just one chapter.³³ Consolidating these terms in a general definition section would render it extremely unwieldy and increase the inconvenience of looking up the meaning of unique, complicated, or unfamiliar terms.

Category Two: Inconsistently Defined Terms

Another large category are terms defined so inconsistently that creating a consolidated definition is impossible. Despite being defined in many different places within the Health Act, terms like “health care professional,” “health care provider,” and “health care facility,” cannot be consolidated simply because the terms are defined in the context of specific issues or topics.³⁴

For instance, a “health care provider” is defined in Chapter 2 and Chapter 2N as a “health care professional” and “health care facility” with certain licensing, but the definition in Chapter 2 is limited to those that “provide health care services to newborn infants,”³⁵ while the definition in Chapter 2N refers only to those “that administer[] vaccinations.”³⁶ Similar incompatibilities exist in the definitions for other terms that might otherwise seem to lend themselves to a general definition section, like “carrier” or “patient.”

Other terms, although they are not defined nearly as often, simply have definitions that cannot readily be reconciled. For example, a “minor” in Chapter 5C is a person under twelve³⁷ but is a person under eighteen in Chapter 6.³⁸ Similarly, a “child” is defined as ranging in age from one to five years old,³⁹ to under nineteen,⁴⁰ to under twenty-two,⁴¹ depending on its location in the Health Act.

Category Three: Contained Terms

A final, small category of terms are those that have identical definitions, but do not appear outside the chapter in which they are first defined. In this category are terms like “cohorting”⁴² and

³³ For example, “‘Radiation accident’ means any occurrence or event during the operation and maintenance of any nuclear facility or during the transportation of radioactive material, which results in the release of unnecessary radiation, as defined in section 1 of P.L.1958, c. 116 (C. 26:2D-1),” as defined in N.J.S. 26:2d-39e.

In N.J.S. 26:2-90, the term “‘Von Willebrand disease’ means a bleeding tendency resulting from a genetically determined, hereditarily determined, or acquired deficiency of the von Willebrand factor in the blood.”

³⁴ Cumulatively, these three terms are defined more than twenty times in the Health Act.

³⁵ N.J.S. 26:2-111.1.

³⁶ N.J.S. 26:2N-8.

³⁷ N.J.S. 26:5C-5.

³⁸ N.J.S. 26:6-78.

³⁹ N.J.S. 26: 2-131.

⁴⁰ N.J.S. 26:2H-143.

⁴¹ N.J.S. 26:2-96a & -149b.

⁴² N.J.S. 26:H-12.87, -12.97, & -87.3 (“means the practice of grouping patients who are or are not colonized or infected with the same organism to confine their care to one area and prevent contact with other patients.”)

“marihuana,”⁴³ which have identical definitions but are not used outside of Chapter 2H or Chapter 2, respectively.

Outreach

In connection with this Report, comments were sought from knowledgeable individuals and organizations, including: the Legislative Services Office at the New Jersey Department of Health, the New Jersey Department of Children and Families, the New Jersey Department of Community Affairs, the New Jersey Department of Human Services, the Administrative Office of the Courts, the New Jersey Department of Banking and Insurance and the New Jersey Department of the Treasury.

Outreach was also conducted to 21 county health departments,⁴⁴ New Jersey Legal Services, Disability Rights NJ, the Community Health Law Project, the South Jersey AIDS Alliance, and the Chair and Chair-Elect of the Health Law Section of the New Jersey State Bar Association. Finally, outreach was made to numerous organizations and associations in various health fields.⁴⁵

Support

The Commission received support for the proposed modifications from Disability Rights New Jersey, “the federally funded, designated protection and advocacy system for people with disabilities in the State of New Jersey.”⁴⁶ Director of Policy Mary Ciccone wrote that Disability Rights New Jersey is “overall . . . supportive of the efforts to reduce duplicative definitions and consolidate them into one section.”⁴⁷ Director Ciccone also pointed out two “inconsistencies in the comments [to the Appendix that] should be addressed.”⁴⁸

First, in many comments the term “Department” is capitalized, while in some others it is not.⁴⁹ Director Ciccone indicated that Disability Rights New Jersey “believe[s] that the

⁴³ N.J.S. 26:2-81 – 82 (“shall not mean hemp or a hemp product cultivated, handled, processed, transported and sold pursuant to the “New Jersey Hemp Farming Act” P.L.2019, c. 238 (C.4:28-6 et al.)”)

⁴⁴ The county health departments contacted include the Atlantic County Division of Public Health, Bergen County Dept of Health Services, Burlington County Health Department, Camden County Department of Health and Human Services, Cape May County Health Department, Cumberland Department of Health, Essex County Department of Health, Gloucester County Department of Health and Senior Services, Hudson Regional Health Commission, Hunterdon County Department of Health, Mercer County Division of Public Health, Middlesex County Office of Health Services, Monmouth County Board of Health, Morris County Division of Public Health, Ocean County Health Department, Passaic County Department of Health, Salem County Department of Health, Somerset County Department of Health, Sussex County Department of Health and Human Services, Union County Office of Health Management, and Warren County Health Department.

⁴⁵ These organizations include the Medical Society of New Jersey, the New Jersey Pharmacists Association, the New Jersey Addiction Professionals Association, the American Physical Therapy Association of New Jersey, the New Jersey Dental Association, the New Jersey Psychological Association, New Jersey Primary Care Association, and the Health Care Association of New Jersey.

⁴⁶ Letter from Mary Ciccone, Director of Policy, Disability Rights New Jersey, to Whitney G. Schlimbach, Counsel, N.J. Law Rev. Comm’n, at 1 (Mar. 24, 2022) (on file with the NJLRC).

⁴⁷ *Id.*

⁴⁸ *Id.*

⁴⁹ *Id.* at 1-2.

capitalization should be consistent.”⁵⁰ Additionally, in the comment to N.J.S. 26:2F-3, Director Ciccone noted that “duplicative definitions of the terms ‘Commissioner’ and ‘Local health agency’ are proposed for removal,” but that the revised version of the statute does not eliminate “Commissioner” because it “specifies the State Commissioner of Health or his designee.”⁵¹

Staff incorporated the comments from Disability Rights New Jersey into the Appendix accompanying this Draft Final Report, and additionally reviewed the Appendix for other inconsistencies similar to those pointed out by Disability Rights New Jersey.

Additionally, Staff received an email from Dr. Paschal Nwako, County Health Officer & Public Health Coordinator for the Camden County Department of Health and Human Services, stating that he was “glad someone is looking at the various discrepancies in Title 26,” and that “[w]e in the public health practice community have been saying this over the years.”⁵²

Legislation

There are several pending bills that address various statutes in the Health Act.⁵³ None of these bills address the duplicative definition sections contained in the Act. However, there are three pending bills that affect relevant definitions in N.J.S. 26:2B-8 and N.J.S. 26:2G-22.⁵⁴ Additionally, there are two bills⁵⁵ that propose repealing various subsections in Chapter 2K⁵⁶ and one bill proposing to repeal the entirety of Chapter 16.⁵⁷

Conclusion

To achieve the goal of providing an easily identifiable and broadly applicable definition section at the beginning of the Health Act, the Commission recommends consolidating the definition sections in N.J.S. 26:1-1 and 26:1-1A, adding eighteen additional defined terms to the proposed consolidated definition section in N.J.S. 26:1A-1, and eliminating 149 instances of duplicative definitions from other parts of the Health Act.⁵⁸ These proposed modifications, as well as the relevant statutes, are set forth in the Appendix.

⁵⁰ *Id.* at 2.

⁵¹ *Id.*

⁵² Email from Dr. Paschal Nwako, County Health Officer & Public Health Coordinator for the Camden County Department of Health and Human Services, to Whitney G. Schlimbach, Counsel, N.J. Law Revision Comm’n (Jan. 26, 2022) (on file with the NJLRC).

⁵³ References to relevant pending legislation are set forth in the Comment to the affected statute in the Appendix.

⁵⁴ A.B. 2586, 2022 Leg., 220th Sess. (N.J. 2022) was introduced Feb. 14, 2022, and S.B. 1042, 2022 Leg., 220th Sess. (N.J. 2022) (identical to A.B. 1952) was also introduced Jan. 31, 2022. These bills propose replacing the current definition of “Commissioner [of Health]” with “Commissioner of Human Services,” and “Department [of Health]” with “Department of Human Services.”

⁵⁵ A.B. 2196, 2022 Leg., 220th Sess. (N.J. 2022) was introduced Feb. 7, 2022, as was S.B. 1047, 2022 Leg., 220th Sess. (N.J. 2022) (identical to: A.B. 798). Although the bills each propose repealing different statutes in Chapter 2K, the remaining statutes are not affected by the bills’ other proposed amendments.

⁵⁶ The statutory sections affected by both A.B. 2196 and S.B. 1047 are N.J.S. 26:2K-7, -21, -35, -39, -47.1, and -49, and N.J.S. 26:2K-55 is affected by S.B. 1047 only.

⁵⁷ A.B. 1415, 2022 Leg., 220th Sess. (N.J. 2022) (proposing to repeal N.J.S. 26:16-3).

⁵⁸ In addition, the Commission recommends eliminating five instances of subsections that were previously “deleted by amendment.”