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HEALTH FACILITIES &
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**STATE OF ILLINOIS
HEALTH FACILITIES AND SERVICES REVIEW BOARD**

LONG-TERM CARE ADVISORY SUBCOMMITTEE

MEETING

JANUARY 11, 2011

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STATE OF ILLINOIS
HEALTH FACILITIES AND SERVICES REVIEW BOARD
525 West Jefferson Street, 2nd Floor
Springfield, Illinois 62761
217-782-3516

LONG-TERM CARE ADVISORY SUBCOMMITTEE
MEETING

Meeting of the State of Illinois Health Facilities and
Services Review Board, Long-Term Care Advisory Subcommittee,
held on January 11, 2011, beginning at the hour of 10:00
a.m., at the Wingate by Wyndham, 101 McDonald Drive,
Joliet, Illinois.

Reported by:
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AGENDA

CALL TO ORDER: Tuesday, January 11, 2011, 10:00 a.m.

1. Roll Call
2. Approval of Agenda
3. Approval of November 30, 2010 minutes
4. Overview of this Meeting -- Michael Waxman
5. Discussion of Statute vs. Rules -- Frank Urso
6. Presentation of LTC Associations' Proposed Rules
-- Terry Sullivan
7. Discussion of Proposed LTC Associations' Proposed Rules -- Agency Staff
8. Overview of Group Presentations -- Bill Dart
9. Realistic Goals of Subcommittee -- Courtney Avery
10. Unfinished Business
11. Next Meeting
12. Adjournment

1 PRESENT:

- 2 Michael Waxman - Chairman
3 Jonathan Lavin
4 Laurinda Dodgen (for Dave Vinkler)
5 Greg Will (for Dave Lowitski)
6 Michael Bibo
7 Phyllis Mitzen
8 Sherry Gutermuth (for Timothy Phillippe)
9 Eli Pick
10 Neyna Johnson
11 Teri Dederer
12 Karen Messer (for Kirk Riva)
13 Judy Amiano
14 Kelly Cunningham

15 ALSO PRESENT:

- 16 Frank Urso - Legal Counsel
17 Michael Constantino - Staff
18 Bill Dart - Staff
19 Courtney Avery - Staff
20 Claire Berman (via telephone) - Staff
21 Bonnie Hills - Staff
22 Charles Foley
23 Terry Sullivan
24 Ann Guild

1 START TIME: 10:20 A.M.

2

3 CHAIRMAN WAXMAN: Meeting will come to order.

4 Can we do roll call just by people going around the room?

5 Judy, we will start with you.

6 MS. AMIANO: Judy Amiano.

7 MS. MITZEN: Phyllis Mitzen.

8 MR. SULLIVAN: Terry Sullivan.

9 MS. CUNNINGHAM: My name is Kelly Cunningham.

10 I just want to say I'm with Healthcare and Family Services.

11 This is my first meeting.

12 CHAIRMAN WAXMAN: Are you the member or are

13 you a proxy?

14 MS. CUNNINGHAM: I'm a member.

15 CHAIRMAN WAXMAN: Congratulations. Welcome

16 back.

17 MS. DEDERER: Teri Dederer.

18 MS. GUTERMUTH: Sherry Gutermuth, standing in

19 for Dr. Phillippe with Christian Homes.

20 CHAIRMAN WAXMAN: So you are a proxy. You

21 know the rules about being a proxy? You can't vote, you

22 can talk, and you pay each member a quarter.

23 MR. URSO: My price was a little higher.

24 MS. MESSER: Karen Messer, Life Services

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1 Network, and a proxy for Kirk Riva.

2 MR. DART: Bill Dart with IDPH.

3 MR. URSO: Frank Urso, Health Facilities and
4 Services Review Board.

5 MS. AVERY: Courtney Avery, Health Facilities
6 and Services Review Board.

7 MR. CONSTANTINO: Mike Constantino, IDPH.

8 CHAIRMAN WAXMAN: Mike Waxman.

9 MR. PICK: Eli Pick.

10 MR. LAVIN: John Lavin with Age Options.

11 MR. BIBO: Mike Bibo, representing Illinois
12 Healthcare Association.

13 MS. DODGEN: Laurinda Dodgen, standing in for
14 Dave Vinkler.

15 MR. WILL: Greg Will, proxy for Dave Lowitski.

16 MS. GUILD: Ann Guild, IHA.

17 MR. FOLEY: Charles Foley.

18 MR. WAXMAN: That's it, just Charles Foley?

19 MR. PICK: His reputation precedes him.

20 CHAIRMAN WAXMAN: Thank you all, and, again,
21 for those who drove more than ten minutes, I truly
22 appreciate you making it out.

23 MS. AVERY: Mr. Chair, excuse me. We have
24 Claire Berman on the phone.

1 CHAIRMAN WAXMAN: Okay. Can we hear Claire
2 Berman?

3 MS. AVERY: Claire, you want to introduce
4 yourself?

5 MS. BERMAN: Good morning, everyone. I'm
6 happy to join you, even in an unconventional way. Later on
7 I'll have a few comments on the presentation and what we
8 will be going forward with and will answer any questions.

9 MS. AVERY: Okay. Thanks, Claire.

10 CHAIRMAN WAXMAN: I need a motion to approve
11 last meeting's minutes.

12 MR. PICK: So moved.

13 CHAIRMAN WAXMAN: Need a second.

14 MS. DEDERER: Second.

15 CHAIRMAN WAXMAN: Okay. All in favor?

16 ("Ayes" were heard)

17 CHAIRMAN WAXMAN: All opposed?

18 (No response)

19 CHAIRMAN WAXMAN: Minutes are approved.

20 I'm sorry. I also need a motion to approve
21 the agenda.

22 MR. PICK: So moved.

23 CHAIRMAN WAXMAN: Need a second.

24 MS. MITZEN: Second.

1 CHAIRMAN WAXMAN: Any opposed -- all in
2 favor?

3 ("Ayes" were heard)

4 CHAIRMAN WAXMAN: Any opposed?

5 (No response)

6 CHAIRMAN WAXMAN: Okay. So we have approved
7 the agenda. We've approved the meeting -- minutes of last
8 meeting.

9 Okay. Overall let me talk about what we're
10 doing today. What are we doing today? First of all, is
11 everybody aware that Courtney is now officially a staff
12 person, and her role has been officially designated?
13 Courtney, do you want to quickly explain your new role and
14 what you do?

15 MS. AVERY: Sure. My new role is to oversee
16 the day-to-day operations for the Health Facilities and
17 Services Review Board in relation with Mike, Bill, Frank
18 and Bonnie and Claire, as of December 16th.

19 MS. DEDERER: So that makes you a staff person
20 at IDPH?

21 MS. AVERY: No, I'm a staff person with the
22 Health Facilities and Services Review Board. We're
23 separate but still have an inter-governmental agreement for
24 staff support from IDPH.

1 CHAIRMAN WAXMAN: Okay. The purpose of
2 today's, meeting our main purpose of today's meeting, is
3 try to put everybody in the same place in terms of our role
4 of writing new rules. Now we do know that in order to
5 comply with the requirement that our rules be available by
6 September 1st, and when you back that up in terms of time
7 it takes to make a rule and first and second reading and
8 all of the other good things that take place, our work
9 needs to be done by March. So, first of all, let me try to
10 eliminate anxiety levels. We by statutory are a committee
11 that has a life much longer than next September, and that's
12 critical, because that means all of everything we want to
13 accomplish does not have to be done by March, and I'd like
14 to thank eighteen conference calls and a lot of staff
15 people in the last week to make sure we have that piece
16 absolutely correct. So, hopefully I've eliminated all of
17 your anxiety. The only anxiety left is how in the hell am
18 I going to get home from the meeting? The snow is still
19 coming down. I can't eliminate that one for you.

20 But in terms of what we have to accomplish,
21 all we need to do is to agree on our number one -- and
22 number one may mean one or two points -- priorities and
23 have that in documented form to be passed on to the Health
24 Resource Board by the March date.

1 Frank, am I correct so far?

2 MR. URSO: You are, sir.

3 CHAIRMAN WAXMAN: So, what we need to do is
4 to identify number one priority, which may be one or two or
5 three points, but it's number one priority, and those are
6 going to come from our discussion when we broke into groups
7 and we identified things, and Staff has done some work on
8 helping us compile -- I was going to say "aggregate" but
9 that's the accounting in me. "Compile" is a better word.

10 Now, we've also -- are aware and greatly
11 appreciate the document that several of you in this room
12 have worked on and put together and submitted to the
13 Committee before the Committee was a committee, and we have
14 all shared that. The difference between that document in
15 terms of where it stands now and where we want to look at
16 it is simply -- I'm sure that it was done with best intent
17 and I'm sure it was done with a lot of expertise, and we're
18 not denying any of that. The issue at this point, though,
19 is look around the room, and there's a lot more than the
20 four organizations that put that document together. So, as
21 much as we want to say that could be a starting point, what
22 we do want to say is if it's going to become a starting
23 point, there are some pieces we want to talk about first.

24 Terry Sullivan has been very, very generous to

1 talk about how that document got assembled and walk us
2 through it.

3 Terry, we're grateful for you to do that.
4 After that, the Staff has some comments about that
5 document, and we want to hear what Terry has to say about
6 how the document got put together and, obviously, people
7 who are in this room that helped Terry are certainly --
8 certainly can join and support Terry or add to Terry's
9 presentation. Staff, which is a variety of people, have
10 some comments about that document, some questions, some
11 issues, some concerns and we all need to hear those. After
12 that point then we should all be in the same place.

13 We also have -- and I apologize -- we also
14 have a participant who I have not met but whose role is to
15 be the rule writer, and Claire brings with her a ton of
16 experience in writing rules, and she's been doing this for
17 a long time, and she has some issues -- I'm sorry -- she
18 has some comments about the document, too.

19 So, to paraphrase, if I may, Terry is going to
20 talk about the document that we all are grateful for
21 because it does give us a starting point. Staff has a
22 presentation about some concerns, questions, issues, and
23 things that they need to add to that document. And then
24 Claire wants to talk about that. And before we get into

1 that, we're going to have Frank do a presentation that is
2 called "Discussion of Statute Versus Rules", because we
3 have to know exactly what it is we're putting together.

4 So, that's our goal for today. Staff, are we
5 good on that? Frank?

6 MR. URSO: Mr. Constantino also is going to be
7 speaking about the Staff -- during the Staff presentation
8 portion.

9 CHAIRMAN WAXMAN: Excellent. So, members of
10 the Committee, any questions or any concerns about what
11 we've laid out?

12 (Pause)

13 CHAIRMAN WAXMAN: Hopefully there will be
14 time after these presentations that we can begin to
15 identify what we want to be our number one priorities, and,
16 again, I'm saying "number one", not meaning necessarily a
17 single item, but those that we want to get into the rules
18 that will be written in March and through the system by
19 September. Questions.

20 MS. DEDERER: Not to be dense, but can I
21 presume that the number one priority would be based on the
22 thing that we want changed first?

23 CHAIRMAN WAXMAN: The number one priority
24 would be that item or those items that this committee in

1 aggregate believes to be the most important thing or things
2 that need to be addressed.

3 MS. DEDERER: Thank you.

4 CHAIRMAN WAXMAN: The other thing I need to
5 say -- and it may be superficial to say it but I'm going to
6 do it anyway -- I think with nineteen people on a
7 committee, we have to be aware that we may individually not
8 always get exactly what we want, but I think the soul of
9 this committee is in the right place, and I think we'll all
10 move together as a unit and we'll accomplish what really is
11 good for the industry and for the State and for our
12 residents and all of that good stuff. So, I guess I'm
13 asking, even before we get into any serious discussions,
14 that remember that we are nineteen people with a lot of
15 diversification and a lot of different focuses on how we're
16 addressing senior care and long-term care and all those
17 other good things. So, just to put it out there.

18 I thought nineteen was bad. I got appointed
19 to a committee last week that was twenty-one.

20 MR. PICK: So we're second.

21 CHAIRMAN WAXMAN: Again, diversification is
22 incredible.

23 That being said, Terry, what do you need from
24 us.

1 MR. SULLIVAN: Well, I guess.

2 CHAIRMAN WAXMAN: Frank, do you want to go
3 first?

4 MR. URSO: If you like. Thank you very much.

5 I was really asked by Eli to hopefully not
6 bore you but try to give you some background and draw some
7 distinctions between what a statute is and what a rule is.
8 This is a very basic discussion, and I'll be very glad to
9 entertain any questions, but I hope you get some knowledge
10 from this.

11 But the difference between a rule or
12 regulation and a statute: State statutes are enacted by
13 the Legislature and a statute is a law that's passed by a
14 legislative body. So, in Illinois, of course, that's the
15 General Assembly. And statutes start with an idea, and
16 those ideas become bills, and then statutory law is an
17 enactment of a bill that's not only voted on and
18 essentially approved by the Legislature but also goes to
19 the Governor and the Governor has to assent to that
20 particular bill. Statutes then become the codified laws of
21 this particular state.

22 Now, State administrative law -- rules, excuse
23 me, are what our focus is in this committee, and
24 administrative agencies and state bodies adopt, amend, and

1 repeal rules and regulations under the authority that's
2 granted by statutes. So, rules, regulations, and codes,
3 and rules are sometimes called "codes", but then sometimes
4 statutes are called "codes". So you've got to really take
5 a look at the substance of the documents that you're
6 looking at, because you often see a statute that's called a
7 "code", and you'll often see a rule that's called a "code".
8 So just be aware of that distinction.

9 Let me just give you some basic definitions of
10 what administrative rules are and where they stem from.
11 They emanate from statutory law with a view to apply and
12 administer those laws on the masses by the concerned
13 authorities. Rules and regulations implement the intent of
14 the general law and has a binding force and effect of law.
15 So, what that says is that statutes are laws but rules are
16 also laws, and if there is a conflict between those two,
17 the statutes rule out, generally speaking. Any agency or
18 board may adopt a rule after the Legislature has enacted a
19 statute granting authority to that agency or board. An
20 agency rule or board rule is adopted under the rule-making
21 provisions that are also created in the statute. In
22 Illinois, that statute is the Administrative Procedures
23 Act.

24 So, when this particular committee sets forth

1 its draft of rules, that has to adhere to the
2 Administrative Procedures Act, and the Administrative
3 Procedures Act must be followed if we want to adopt, amend,
4 or repeal any rules.

5 The Executive Branch of State government rules
6 are operating rules orders created by an office of the
7 State under authority granted by the Legislature, and rules
8 are general statements adopted by an agency or a board to
9 make the law it enforces and administers more specific or
10 to govern the agency or board's organization and procedure.

11 This is probably the most encompassing
12 definition of a rule, but rules are an agency or board's
13 directive standard or regulation or statement of general
14 applicability that implements, interprets or prescribes law
15 or policy, or describes the procedure or practice
16 requirements of any agency. Generally, rules elaborate
17 upon the requirements of a rule -- excuse me, of a law or
18 policy. So, the key is that rules should implement,
19 interpret, or prescribe what the law requires.

20 All rules must go through the Joint Committee
21 on Administrative Rules in the State of Illinois, and the
22 acronym for that is JCAR. You've probably heard of JCAR,
23 and JCAR is a legislative support agency that ensures that
24 the General Assembly is adequately informed on how laws are

1 implemented through agency or board rule-making and they
2 facilitate, JCAR does, they facilitate public understanding
3 of the board or the agency's rules.

4 Now, let me just give you some examples.
5 Statutory provisions which allow for rule making is very
6 common, and the Health Facilities Planning Act, which
7 governs the rule making, states that "This Act shall
8 establish a procedure which requires a person establishing,
9 constructing or modifying a healthcare facility as herein
10 defined to have the qualifications, background, character,
11 and financial reserves and resources to adequately provide
12 a proper service for the community." That's what the
13 statute says. And so you'll see in the current Board's
14 rules -- that you may or may not have had an opportunity to
15 take a look at but which we handed out -- emanate from that
16 Act and they essentially prescribe what the Act
17 requirements are.

18 Another section of the Health Facilities
19 Planning Act which more closely hits home to this Committee
20 has to deal with the Powers and Duties Section of the
21 Health Facilities Planning Act, and that's in Section 12,
22 if you care to take a look at it, in the Health Facilities
23 Planning Act, which, by the way, is 20 ILCS 3960, and that
24 particular section in the Board's Act states that "the

1 State Board shall exercise the following duties and powers:
2 Establish a separate set of rules and guidelines for
3 long-term care that recognizes that nursing homes are a
4 different business line and service model from other
5 regulated facilities." The Act also expounds on this
6 sub-committee's authority by also saying that this
7 sub-committee shall be provided a reasonable and timely
8 opportunity to review and comment on any review, revision
9 or updating of the criteria, standards, procedures and
10 rules used to evaluate project applications. That is the
11 key section in the Act that allows this committee to exist
12 and gives this committee its charge, so to speak.

13 Examples -- so I set up some of the statutory
14 provisions. Now, I just want to quickly just elaborate on
15 some rule provisions. And, just to reiterate, rules do
16 several things. They elaborate upon the requirement of a
17 statute; as I said before, they implement, interpret, or
18 prescribe statutory law; they describe the procedure or
19 practice requirements; and they're general statements that
20 provide more specificity on what the statute requires. And
21 you'll notice there are four main sections of rules that
22 the Board's rules encompass right now, the 1100 rules, the
23 1110, 1120 and 1130, and everyone of those emanate and stem
24 from statutory authority.

1 So, when you're taking a look at the rules
2 that we handed out previously, you're going to see that
3 these four sets of rules -- and there's other rules that
4 also the Board has jurisdiction over -- these four sets of
5 rules are most often heard and dealt with and described,
6 and these are the rules that Board Staff reviews
7 applications and also develops their State Agency Reports,
8 which you may have heard of. And so they're very important
9 sections of the rules. They wouldn't exist if there wasn't
10 any statutory authority, is my point.

11 So, that, hopefully, just provides a
12 foundation for what this committee is all about and also a
13 comparison of statutory law versus rules. Does anybody
14 have any questions? Is that too much?

15 CHAIRMAN WAXMAN: Chuck?

16 MR. FOLEY: But the statute has precedent over
17 the regulations; the regulations has precedent over an
18 application form.

19 MR. URSO: Well, I'll agree with the first
20 half of your comment, that the statute is the supreme
21 authority.

22 MR. FOLEY: That's right.

23 MR. URSO: The rules stem from --

24 MR. FOLEY: -- the statute.

1 MR. URSO: So, if there is ever a conflict or
2 ever interpretation needed for that rule, you go back to
3 the statute for that.

4 MR. FOLEY: Right.

5 MR. URSO: And applications, as the Board
6 Staff will, tell you are compared to and assessed against
7 the laws, not only the rules and regulations, but also the
8 statute if you need to go for further definitions and
9 further comparisons.

10 MR. FOLEY: Okay.

11 MR. URSO: Does that make sense?

12 CHAIRMAN WAXMAN: Any other questions for
13 Frank?

14 (Pause)

15 CHAIRMAN WAXMAN: Thank you, sir. Appreciate
16 it. Probably while we're driving home, we'll think of the
17 questions.

18 MR. URSO: They can call Courtney.

19 MS. AVERY: And I'll call Frank.

20 CHAIRMAN WAXMAN: We have a chain of command.
21 What more could you want out of a committee?

22 Terry?

23 MR. SULLIVAN: Would Claire want to sit next
24 to me while I'm talking?

1 (Laughter)

2 MR. SULLIVAN: Anytime you want to come sit
3 next to me, Claire, there's a seat.

4 (Discussion held off the record.)

5 MR. SULLIVAN: Several things that I have been
6 asked to do and I'd like to do today, one of which is to
7 describe the process that we went through to come up with
8 the set of 1125 Regulations which was in your original
9 packet that the Department sent out. I also want to go
10 over the key concepts that we discussed, struggled with,
11 and the conclusions we came to, and then also very briefly
12 run through the seven parts of the proposed regulations
13 that we have here.

14 In terms of the process we've been through, I
15 think in 2008 there was a lot of turmoil and concern
16 throughout the entire provider community, not just
17 long-term care but the hospital community, and we knew that
18 things were beginning to come up and that the Garrett/Dugan
19 Legislative Task Force was going to be wanting to have
20 testimony of what we think about long-term care, and
21 probably over the previous eight years, there was a lot of
22 concern among providers about what was happening with the
23 long-term care regulations and the Planning Board process.
24 Among some of the key issues that were coming up that --

1 ever since its inception but particularly in the previous
2 eight years, the planning process and the regulations
3 became increasingly hospital-focused and hospital-dominated
4 and that we felt like there were a lot of regulations that
5 were being -- and review criteria that were being passed
6 for the hospitals and, "Oh, by the way, it applies to
7 long-term healthcare also, because 1110, 1120, 1130 apply
8 across the board". And most of the three major
9 associations at the time kept filing comments saying, "This
10 doesn't apply to long-term care, can you put in for
11 hospitals the following da-da-da". We kept getting lumped
12 in together, and there was this feeling of like these
13 really don't apply to long-term care, and it was like an
14 increasing number of, I'll call them, barnacles that were
15 being added on to the planning process for long-term care.

16 The other key factor is, of course, the
17 incredible changing nature of the long-term care
18 marketplace. When the bed-need formula and these original
19 regulations were developed back in the 70's, essentially
20 nursing homes were the only senior care focus. A lot has
21 happened in the past thirty years in terms of alternative
22 residential models, like assisted living, supportive
23 living, CCRCs, retirement centers, as well as a whole
24 plethora of home and community-based services. There are

1 more seniors being served in community-based services than
2 in nursing homes right now, and that has radically changed
3 the whole marketplace for senior care. The budget for --

4 MR. URSO: Terry, do you think we need to dim
5 the lights down, or do you think everybody is comfortable
6 with this?

7 MR. SULLIVAN: I think the lights are fine.

8 And the State budget for home and
9 community-based services is now larger than nursing home.
10 Nursing homes are not the senior care focus and shouldn't
11 be. We are a part of that whole continuum.

12 The other thing that has happened radically in
13 the past thirty years is that nursing homes are not the
14 nursing homes of 1970. We are very, very different. We
15 have a very different service model. In 2009, 39,000
16 people went into nursing homes and left within three months
17 after rehab. There is a strong emphasis on rehab as well
18 as specialization, dialysis, the ventilator care, the head
19 trauma, Alzheimer's units. That is becoming increasing
20 focus, and so we want the whole process, the CON process,
21 to recognize the changed model of nursing homes and the
22 increasing emphasis on specialization.

23 And then, of course, there is the other
24 reality of, first, the aging infrastructure of nursing

1 homes. Eighty percent of the existing nursing homes were
2 built between '65 and -- before 1980, with most of them
3 between 1965 and 1980, and with strong state and federal
4 encouragement, there's a real emphasis on nursing homes
5 being mini-hospitals. There's almost a reaction to the
6 boarding house models of the 30's, 40's and 50's with the
7 boarding care homes and the emphasis was that if nursing
8 homes looked like hospitals and cleanliness is next to
9 godliness and sterility is next to perfection, care will be
10 better in these mini-hospitals, and, of course, we went
11 through that experiment for quite a few years, and it's
12 almost like -- I mean, we want a more home-like
13 environment, and we want smaller environments, and we want
14 a different feel than that mini-hospital feel.

15 MR. FOLEY: Terry, even our current nursing
16 home regulations, they were written obviously from the
17 hospital regulations, which obviously created the
18 institutional model.

19 MR. SULLIVAN: Correct. And hopefully we will
20 start getting away from that.

21 And then, of course, the other reality is of
22 lower occupancy. In 1980 the average occupancy in nursing
23 homes when they were the only senior care marketplace was
24 95 percent. Currently it's 78 to 80 percent in every

1 region of the state. We have almost approaching 20,000
2 unused beds in the long-term care system right now, and we
3 need to do something about that. So, that was the -- what
4 was bubbling up in terms of the concerns.

5 With the Legislative Task Force coming
6 together, the Illinois Healthcare Association and the
7 Illinois Council formed a joint committee of its members,
8 saying, "What is it that we want to testify? What is it
9 that we want to change?" LSN also formed its own
10 committee. We did not collaborate at that point. We came
11 together, providing testimony to the Legislative Task
12 Force. Judy was there; I was there. And 75 percent of our
13 testimony, which was developed separately, addressed the
14 same issues. We had the same concerns. There were a few
15 separate issues that we had. Basically, the Task Force
16 recommended that the associations come together and form a
17 joint recommendation. Legislatively we did that, and what
18 we got was sent Bill 1905 or Public Act 3960.

19 As Frank pointed out, it recognized that the
20 senior marketplace is separate from the hospital
21 marketplace. It established this committee in law, the
22 sub-committee in law. Previously, prior to 2000, there had
23 always been an informal, long-term care sub-committee and,
24 actually, a long-term care representative on the Planning

1 Board. That changed in 2000, and I think the long-term
2 care profession was feeling that there was a lack of input
3 that went into the development of regulations and the
4 planning process after there was no longer a long-term care
5 representative or long-term care sub-committee. So, that
6 was somewhat of the push of why we needed this
7 sub-committee, to bring the qualitative expertise and
8 advice of people who know the profession and know the
9 marketplace into the planning process and the encouragement
10 to establish a long-term care planning process separate
11 from the hospital planning process.

12 CHAIRMAN WAXMAN: Terry, the Illinois Nursing
13 Home Administrators Association did not participate?

14 MR. SULLIVAN: Did not participate in that.

15 CHAIRMAN WAXMAN: Okay. Have they ever been
16 heard from?

17 MR. SULLIVAN: All the time.

18 CHAIRMAN WAXMAN: I mean in the process.

19 MR. SULLIVAN: We meet with them regularly,
20 but in terms of this specific process, no, they were not
21 involved in that process.

22 MS. DEDERER: Were they asked to be involved
23 and declined?

24 MR. SULLIVAN: No, they didn't decline.

1 MS. DEDERER: Okay.

2 MR. SULLIVAN: They weren't a part of the
3 process.

4 CHAIRMAN WAXMAN: They're a group made up of
5 people who belong to the other three organizations, so in
6 reality their words have been spoken.

7 MR. SULLIVAN: Right. It wasn't as much of an
8 administrator/professional issue that they were involved.
9 It wasn't -- it had more to do with the marketplace and
10 facilities.

11 From the -- with Senator Garrett and
12 Representative Dugan's encouragement, the three
13 associations met and, obviously, with the time line of
14 having regulations by October 1st, 2010, we said we better
15 put something on the table. Each association contributed
16 five members to an overall steering committee that
17 struggled with some of the key concerns and issues and how
18 to resolve that, and that steering -- the fifteen met six
19 times over six months, basically concentrating on the
20 concepts, and, of course, those five members went back to
21 each of their boards. If any of the Board members of the
22 three associations had questions, they certainly were
23 inputted into that. So, you know, there were fifteen
24 people developing concepts, about fifty people who were the

1 board members of the three associations -- actually, four
2 associations -- kept -- very much had input.

3 We reviewed other states' models. I looked at
4 some of the key issues and looked at what other states were
5 doing, as did Mr. Foley, as did Jason Speaks of Life
6 Services Network. Had some excellent staff work in looking
7 at the details of other states. With the issues that we
8 were dealing with, we found Missouri and Ohio had struggled
9 with the issues both of bed need and of recycling beds
10 rather well, and we had conference calls with Missouri and
11 Ohio that included both the directors of the associations
12 in those states, but also with the head of the planning
13 agencies in those states, and talked about both the
14 legislative and regulatory process and the thought
15 processes that they went through.

16 When it came to writing the regulations, it
17 came down to a much smaller group of about two people from
18 each association. That did include Mike Bibo and Eli and
19 Judy, and we had eight fantastic meetings where we hammered
20 out excruciating details, but through all of this, it was a
21 very educational process, and all of the work was fairly
22 widely distributed as we were dealing with the concepts and
23 dealing with regulations. So there was a lot of input, and
24 some people were very excited about the change. Needless

1 to say, there are always people who say, "I've been doing
2 it this way for 40 years and why would I want to change?"
3 And, you know, it sparked that discussion of, well, "First,
4 take a look at your sixty percent occupancy; maybe there
5 might be a reason you might want to change."

6 But, I mean, the marketplace has changed, and
7 the long-term care profession has to change with it or
8 become dinosaurs. And I think what was emerging out of
9 that is, yes, the next ten years is going to see a very
10 different senior care marketplace, and we better be
11 prepared to step into that new world. We're not going to
12 do things the way we did in 1970, and we shouldn't. And
13 so, it was a very good process where the profession sort
14 of -- it's like why do we need to change? And then it came
15 down to, "We need to change", and that was the basis of
16 where we were going.

17 Key concepts that came out. First of all, the
18 old mini-hospital, institutional model is past, and we want
19 to get away from that. We want to encourage innovative
20 person-centered models. There's a lot of exciting things
21 happening around the country and in Illinois. That's the
22 direction we want to go. We don't want to just have the
23 old cookie cutter institutional models anymore. If we
24 never build another one of those, God bless us all. We

1 would like to see things different.

2 We want to recognize that specialization is
3 also going to be part of the profession of the future.
4 Interestingly, previous federal regulations wanted nursing
5 homes to be everything to everybody, and when it comes to
6 specialization, it can't be. We don't want one ventilator
7 patient there, one there, one there, and one there, and
8 everybody do a lousy job. You want to put the expertise,
9 the physicians, the specialists in one place where you can
10 do a good job with that specialization and identify that
11 specialization.

12 We want to encourage modernization. Again, we
13 have some very old facilities, thirty, forty years old. We
14 want them to be modernized. We want them to down size. We
15 want more private rooms, and we want to increasingly
16 integrate these models into the community-based program
17 that we have going on in Illinois so that there is a
18 smoother transition for the consumer and the client and not
19 some radical change every time you switch programs. So,
20 the more integration we can have in the continuum of care
21 and the community model, the better.

22 Static geographic boundaries don't reflect the
23 marketplace. Those are what we call the health system
24 agency geographic boundaries. They served their purpose

1 for a long time. I think they were effective in getting a
2 good geographic distribution of long-term care services,
3 nursing home services, around the State. Right now -- and
4 I talked to Mike just before -- ninety-five percent of the
5 state has no bed need in any of the HSA areas, and
6 increasingly, the projects that come before the Board, it's
7 not so much the boundaries as what's the market area. And
8 particularly downstate, where you have a -- you have giant
9 HSA's, you could have no bed need in the five counties on
10 the left side of the HSA but over on the west side, there
11 may be bed need, but the area doesn't have a bed need. And
12 so you talk about the marketplace. And already in the
13 regulations, there is drive time, and I think more and more
14 of the projects talk about the market area of driving time
15 rather than just the static boundaries.

16 And then -- and most of those I've talked to,
17 many people in this room, I don't think in terms of the
18 overall policy concepts there is a lot of controversy. I
19 think most people understand those concepts and are heading
20 in that direction. Probably the thing that our committee
21 struggled with the most was over the bed-need formula, and
22 just as we did the last meeting. You know, the bed-need
23 formula was started back in 1977, and it basically says,
24 "How many people are over 65? How many people are over 85?"

1 What's the current nursing home occupancy?" And that
2 determines bed need. Except not everybody that's over 65
3 or 85 is going to go in the nursing home, or shouldn't. In
4 fact, most of them don't at this point, except for maybe
5 for a less than three-month rehab stay.

6 So, the question became, what do we do with
7 the bed-need formula? And I'm going to spend a little time
8 on this, because Bill asked me to, and how our thought
9 process worked. Do we expand the bed-need formula to try
10 to include everybody, assisted living and supportive living
11 and home health and community services and whatever?
12 Probably the most -- I'm trying to avoid the word
13 "complicated" -- extensive bed-need formula that I saw was
14 the New York model that tries to encompass that, and I
15 talked to the guy who was in charge of trying to keep that
16 updated, and he's not a happy camper, because his basic
17 issue was two things: One, it's a very fluid market, and
18 it's very hard to keep track of every adult daycare center
19 and home healthcare agency and how much business they're
20 doing. We may know there's a home health agency, but from
21 month to month to year to year, it's a fluid population,
22 and his biggest thing was, but we really don't know -- we
23 know that there is an impact of home health and assisted
24 living and supportive living in this whole bed-need

1 formula, but we really don't know what. And so we're
2 constantly just kind of saying, "Well, we have so many
3 assisted living beds. That doesn't have a one-to-one
4 correlation, but maybe it's a 75 percent correlation". Or,
5 he said, "We really don't have the statistical back-up to
6 justify what we're doing. We're taking a shot in the dark"
7 and he's being rather honest. I think in a legislative
8 testimony he would use other more subtle words, but he was
9 basically saying, "We're trying to do it. It has an impact
10 and that's fine."

11 The question also -- should we go to a
12 simplified bed-need formula that doesn't try to take
13 everything else in the world, although what is the factor?
14 You know, you can talk about clinical factors of a person
15 who is going to go on to a nursing home. It has to be
16 based on a clinical standard. Do we want to have some kind
17 of clinical standard other than that but that also is a
18 floating target?

19 We talked to Missouri and Ohio about what they
20 do about bed need, and I -- a number of states have a flat
21 standard, a simple standard of each area has to have 55
22 beds per 100,000 residents. The national standard is 44.
23 I think -- I'm trying to think of what the state is. It's
24 one right around here. I think Indiana has standard of 60,

1 and I called them up and I said, "Well, the national
2 standard is 40; how did you arrive at 60?" And he said,
3 "That's what the Legislature decided." And it was all
4 negotiated in a committee of -- some people wanted 57.
5 They basically -- they backed into what they had and said,
6 "Do we want to encourage more beds? Yes? No? Well, let's
7 make it 60, or if we do want to encourage it, let's make it
8 29," you know, but it was basically a very simple but a
9 very political process. Not that we would ever do that
10 here in Illinois.

11 (Laughter)

12 MR. SULLIVAN: Or do we replace the bed need
13 formula with something else? Now, right now -- and I
14 checked with Mike -- 95 percent of the state has no bed
15 need. Very few portions of the HSA's around the state --

16 MR. FOLEY: I just got an update for you, if
17 you would like to have it. First of all, there is a total
18 of 95 Planning Areas in the state. 41 Planning Areas do,
19 in fact, show a need for beds of some kind. That equates
20 to 43 percent. 12 of the 95 Planning Areas have a bed need
21 of 75 beds to a hundred. That equates to approximately
22 12.6 percent. And 10 out of the 95 Planning Areas have a
23 bed need in excess of 100, and that equates to 10.5
24 percent.

1 Thank you, sir.

2 MS. AMIANO: Are those subsets of the 43
3 percent?

4 MR. FOLEY: Yes.

5 MR. SULLIVAN: So, approximately 90 percent.

6 MS. DEDERER: That's a huge discrepancy.

7 MR. CONSTANTINO: Our inventory we took in
8 2008 determined that there was an excess of 4,400 long-term
9 care beds, the difference between the licensed beds and the
10 projected beds. There was an excess in the entire state of
11 about 4,400 beds.

12 MS. DEDERER: But when you said 95 percent of
13 the state, I'm assuming that's 95 percent of the Planning
14 Areas.

15 MR. CONSTANTINO: Planning Areas.

16 MS. DEDERER: Are you two using different
17 standards?

18 MR. CONSTANTINO: I don't know where Charlie
19 got those numbers.

20 MR. FOLEY: From our inventory book,
21 obviously, the latest update.

22 MR. SULLIVAN: I would think geography -- as I
23 looked at the map and little colors on it, I'd say 90 to 95
24 percent of the areas of the state have no bed need.

1 MS. AMIANO: That's in direct conflict with
2 what Chuck just said.

3 MR. SULLIVAN: Well, except I think the
4 geography, as you look at the counties and who has got it,
5 you still come down to 90 percent.

6 MR. FOLEY: Well, you got to look at those
7 areas where there are bed needs where you cannot do
8 anything, you can't build a new facility because the
9 numbers are so small. Today it is very difficult to build
10 a facility, quite honestly, because of cost and everything,
11 for even less than a hundred beds. There was a facility
12 recently that got approved for 75 beds; now they're having
13 problems because of cost. And it's just the numbers now,
14 just don't seem to work out.

15 MR. PICK: Interestingly enough, the 75-bed
16 facility is built for 150. They got 75 beds approved, but
17 all of the rooms are semi-private.

18 MS. AMIANO: But we can't get into all of that
19 right now.

20 MR. SULLIVAN: And, quite frankly, with an 80
21 percent occupancy and 20,000 empty beds, even there there's
22 something -- even in areas where the bed-need formula says
23 there's bed need, the existing facilities are running at 80
24 percent, and so.

1 MS. AMIANO: I think the important thing to
2 remember there, there aren't really that many phantom beds,
3 because a lot of facilities have done upgrades over the
4 years, and what used to be a triple or quadruple room is
5 either a semi or private room. So we would be remiss if we
6 didn't say that this whole phantom bed issue is a huge
7 issue as we start to think about planning and what does
8 that really mean. So, people hold a license for it, but
9 that bed doesn't really exist.

10 MR. FOLEY: That's correct.

11 MS. MITZEN: But somehow it does exist on the
12 books and --

13 MS. AMIANO: And people use it with their
14 bankers, which is the issue at hand.

15 CHAIRMAN WAXMAN: 4,400 is a licensed bed
16 count?

17 MR. PICK: Excess license.

18 CHAIRMAN WAXMAN: Excess licensed bed count
19 and not necessarily in-use bed count?

20 MR. PICK: Correct.

21 MR. SULLIVAN: Right, and occupancy is
22 probably about 20,000 empty beds.

23 CHAIRMAN WAXMAN: And occupancy is based on
24 licensed beds?

1 MR. SULLIVAN: Correct. 20 percent of the
2 licensed beds approved by the CON Board at the moment are
3 not filled, even in areas where there's supposedly a bed
4 need.

5 So, out of our discussions came four basic
6 recommendations. Certainly we wanted a simpler, more
7 streamlined CON review process as it affected long-term
8 care, removing a lot of the hospital level criteria. We're
9 recommending replacing the geographic boundaries with a
10 30-minute drive time as the standard for the market area.

11 We want to encourage modernization and
12 recycling of existing beds, and that's a new concept, and
13 we got it -- there are six states that do it. We talked
14 extensively with Missouri and Ohio and how their program
15 worked. That's basically saying, first of all, there's a
16 moratorium; there are no new beds that can come into the
17 system. If you want to build a facility or expand a
18 facility beyond the statutory requirements -- which
19 existing facilities can expand by 10 percent or 20 beds.
20 But if you want to do more than that, go find them in your
21 market area. In other words, if I'm a hundred-bed facility
22 and I want to build a sixty-bed Alzheimer's unit, one of
23 the things that I should do is buy thirty beds from Frank
24 and thirty beds from Bill and get my sixty beds that way,

1 and that has two advantages. One, we are not increasing
2 number of beds in the system. But, also, the advantage is
3 that those facilities that want to downsize, that have
4 thirty unused beds, they get some capital both to cover
5 their capital expenses and mortgage, but also some money
6 for modernization. And, so, with the 20,000 empty beds, we
7 want to at best use them for something better, or have
8 somebody who can use them for a specialization that the
9 existing facility cannot. And so it allows for an
10 exchange, a recycling of existing beds, without increasing
11 beds, but does provide for some innovation and change
12 within the market area.

13 MS. DEDERER: May I ask a question?

14 MR. SULLIVAN: Sure.

15 MS. DEDERER: Is there any statistical data
16 available in to what percent of the population goes into
17 nursing homes?

18 MR. SULLIVAN: Yes. I just don't have it at
19 my fingertips.

20 MR. PICK: The national is five percent. Five
21 percent of all seniors over 65 will at some point be in a
22 nursing home.

23 MS. DEDERER: That's different than how many
24 of them are going to go this year.

1 MR. SULLIVAN: And that's a difficult thing,
2 because if you asked that question back in 1980, we had a
3 114,000 beds and there was about a 20 percent turnover
4 every year. Now we have about a little over 100,000 beds
5 and there is 100 percent turnover. So, I'll probably say
6 that there's 100,000 people who come in to nursing homes
7 and leave every year at this point.

8 MS. DEDERER: My second question is do we
9 really want to start with the total licensed bed count, or
10 maybe with the in-use count? So, you're taking out the
11 phantom beds that really don't exist anymore, because if
12 you don't, then you're actually allowing the marketplace to
13 increase dramatically by 20 percent.

14 MS. MITZEN: I think we have to look at those
15 phantom beds, though, because those phantom beds are a
16 factor both in the marketplace within the nursing home
17 industry.

18 MR. SULLIVAN: And I think --

19 MS. MITZEN: So we have to be aware of those
20 and have to figure out what to do with them.

21 MS. DEDERER: Be aware of them, but if you're
22 proposing a new process --

23 MR. SULLIVAN: Recycling.

24 MS. DEDERER: -- recycling, you're wanting to

1 recycle beds that haven't existed in 20 years, 15 years,
2 whatever.

3 MR. SULLIVAN: We want to get them off the
4 books. We don't want to expand the system, and, yes, the
5 recycling system is one of the ways that we're saying
6 here -- is one way of addressing the phantom bed issue and
7 the unused beds.

8 MS. AMIANO: One of the other things we looked
9 at is if you have these beds and they have a vacancy factor
10 for how many years and you've taken these triples and put
11 them to singles, whatever, that you in essence lose those
12 over a period of time, and we explored a variety of those
13 options. This is probably where the associations had
14 difficulty in coming together on these concepts, because
15 what the -- who has the beds and where they're located in
16 the state isn't necessarily geographically distributed for
17 a planning process. So there's all kinds of issues around
18 this. This is a wiggly one.

19 MR. SULLIVAN: We struggled with it for five
20 years.

21 CHAIRMAN WAXMAN: Terry, I know this
22 discussion is extremely important. However, I'd like to
23 get your presentation completed so that we have that intact
24 before we start into some details.

1 MR. SULLIVAN: Sure.

2 CHAIRMAN WAXMAN: Please.

3 MR. SULLIVAN: Again, that whole concept was
4 how do we get rid of unused beds and how do we upgrade the
5 older buildings, and I think the recycling concept was
6 something that we found worked in Missouri and Ohio. They
7 both tweaked it. Interestingly, the head of the Missouri
8 Planning Board was originally against the idea, because he
9 thought it would result in a mal-distribution of beds
10 around the state, and Missouri has a process where you can
11 purchase beds anywhere in the state and plant them anywhere
12 else, and he was, like, against that, and he said the
13 experience of the past six years has not resulted in a
14 misdistribution of beds, and he said, "I'm on Board now."
15 He thinks it was a good move, because the market has
16 somewhat decided where the beds are going to be needed and
17 where they can be used. So, he says for Missouri, he's
18 very pleased with how the process worked.

19 Ohio tweaked it where it used to be where you
20 couldn't take beds out of a county, but what happened was
21 nobody wanted to buy beds in the city and everybody wanted
22 to buy beds in the adjoining suburb and so beds in
23 Cleveland were going for \$1,000, beds in whatever the
24 suburb was were going for \$30,000 a few miles away.

1 MR. PICK: Shaker Heights.

2 MR. SULLIVAN: Shaker Heights. Thank you very
3 much. And so what they did was open it up to you can buy
4 beds in your county and the adjoining county, and that is
5 evening things out a little bit more. And so that was
6 their latest change.

7 And, obviously, the last concept that we have
8 is that we don't want anymore cookie-cutter institutional
9 models coming before the Board. We don't want to increase
10 traditional nursing home beds. We want something
11 innovative, any new program.

12 The only way you can increase beds is four
13 ways --

14 MS. AMIANO: Chuck had a question over here.

15 MR. SULLIVAN: Are we taking questions?

16 CHAIRMAN WAXMAN: Yeah, go ahead.

17 MR. FOLEY: I guess my question was that last
18 item, making sure that we don't build an institutional
19 model. The fact is the Board has to recognize that fact.
20 The Board's hands, as I see it, are tied because of the
21 regulations, because licensure standards do, in fact,
22 still, in fact, dictate the institutional model, not a
23 home-like atmosphere. Granted, there are things that can
24 be done. Okay? But because of the way the standards are

1 written, sometimes it is not cost effective to do a lot of
2 things.

3 MR. SULLIVAN: This is true.

4 MR. FOLEY: So I think it has to start at the
5 regulation side.

6 MR. SULLIVAN: Well, that's what these are.

7 MR. FOLEY: Terry, I'm talking about licensure
8 regulations, not ours.

9 MR. SULLIVAN: I think there is -- we have had
10 a lot of discussions with the Illinois Department of Public
11 Health and with CMS, and there is a general tone to want to
12 encourage the new models, the Eden alternatives and the
13 Green Houses and the person-centered models, and they've
14 made that very clear. CMS did a whole sweeping set of
15 changes and regulations last year that, in fact, wanted to
16 encourage that. I think we're following the programmatic
17 direction of CMS and IDPH and hopefully follow it up with
18 architectural changes that go with that, and I think we're
19 on -- I think everyone is on the same wavelength and, yes,
20 I think increasingly, in discussions with counterparts at
21 Public Health, to say, "You know, this particular
22 regulation is enforcing rigidity and routine," it's being
23 heard. Nobody wants to push that model anymore.

24 MR. FOLEY: Just like the Green House concept.

1 We can't build a 30-bed, skilled facility today, because it
2 is not financially viable to do that. As we said earlier,
3 because of cost and everything else, even anything less
4 than a 75-bed facility, you know, is very, very difficult
5 to actually construct. So, people are forced, once again,
6 to build the higher institutional 100-bed, 150-bed, 200 bed
7 facility for economic reasons.

8 MR. SULLIVAN: Okay.

9 MR. FOLEY: So, we need to look at that.

10 MR. PICK: Duly noted.

11 MR. SULLIVAN: To start a new facility it has
12 to be within one of four areas. First of all, you serve a
13 specialized, defined population. Traditionally, in the
14 regulation, defined population was either ethnic or
15 religious. Those were mostly in the 60's and 70's. There
16 haven't been a lot of new ones lately. However, we also
17 included a wider definition of a specialized, clinical,
18 defined population of, say, ventilator care, HIV, high
19 risk, psychiatric care, Alzheimer's unit, that doesn't
20 exist in that market area.

21 Be part of a continuum of care. Retirement
22 community. That's pretty much what has been in the
23 regulations, that if you have a 500-bed retirement center,
24 you can have a 100-bed skilled nursing facility as part of

1 that, providing that the bulk of their population comes
2 from that retired community and not the general population.

3 Or propose something innovative in your market
4 area that isn't there. And, again, we don't have it
5 specifically in the regulations. I think a lot of the
6 ideas that were talked about last meeting would come under
7 some of this structural category of "innovative concepts",
8 like the Green Houses or other residential -- being part of
9 other residential and community-based services,
10 participation in the waiver or the money follows the person
11 programs, being a part of the university research project.
12 I'm throwing out brainstorming ideas. I'm not saying this
13 is part of the regulation, but those are the kinds of
14 things that we want to see encouraged to increase the
15 quality of life and quality of care that's being provided.

16 And the other way you could add beds is taking
17 existing beds and recycle those. So, those would be the
18 only four ways that you could expand in the system.

19 MS. AMIANO: If I could just add, we also
20 talked about this recycling issue. You know, what if
21 people wouldn't sell, and if the time line to get to
22 market, if you had a product. Those are all things that
23 need to be considered in terms of the pricing of it. You
24 know, there is a point -- if someone is going to hold you

1 hostage for a \$100,000 for a license, it's simply not going
2 to work in a model to build. So, there's all kinds of
3 variables that go into that discussion that will need
4 further explanation.

5 MR. SULLIVAN: Right. I'm doing the overview.

6 CHAIRMAN WAXMAN: Terry, I'm assuming that
7 your discussion means that the bed stays in the same class
8 that it currently is; a licensed bed has to be maintained
9 as a licensed bed, a licensed bed can't be converted to an
10 assisted living bed.

11 MR. SULLIVAN: You can convert any licensed
12 bed to assisted living bed now without any issue
13 whatsoever.

14 CHAIRMAN WAXMAN: So in your --

15 MR. SULLIVAN: It would be licensed to
16 licensed.

17 MS. AMIANO: Skilled to skilled.

18 CHAIRMAN WAXMAN: Okay.

19 MR. FOLEY: Nursing to nursing.

20 MR. SULLIVAN: Build nursing beds. If you
21 want to do assisted living, there is nothing outside of
22 licensure that would prevent you right now.

23 In terms of the development of Section 1125,
24 the regulations. Now we're getting into their regulations.

1 The basic development criteria is that the long-term care
2 section should stand alone and be separate from 1100, 1110,
3 1120, and 1130, and so what we included in here is
4 everything that would be needed for a permit and the
5 legislative authority, standing alone, because a lot of
6 those other sections become part of the hospital
7 discussions, and then next thing you know, it's like, "Oh,
8 there's one other thing in 1120(6)(a)(q) that you have to
9 abide by", and it's like, "Wait a minute, this was never a
10 part of the discussion." So, 1125 applies only to
11 long-term care facilities, and if you -- if you are under
12 1125, you are not under 1100, 1110, 1120 and 1130.
13 Hospitals can do anything they want with those sections.
14 Our starting point was based on the current regulations in
15 1100, 1110 and 1120 and 1130, as well as the new concepts
16 in Senate Bill 1905. It establishes a separate application
17 and a simpler review process for long-term care. We
18 eliminated references to the hospital and other provider
19 requirements.

20 And it basically, as we boiled it down, it
21 came down to seven sections, and I can go through those
22 fairly quickly. Subpart A is the authority. That's
23 basically the statutory language that we took from the
24 first part of Section 1100 and 1130, except the language

1 that we have applies only to long-term care. It's
2 basically using the existing statutory and regulatory
3 authority.

4 Subpart B is the Subcommittee, and, again, we
5 formed the concept before the sub-committee got formed, and
6 the starting point was Senate Bill 1905. There are no
7 current regulations about the sub-committee and so we
8 proposed some. The regulations that we have includes all
9 the ex-parte and ethic requirements from the Act.

10 And the purpose of the sub-committee, we had
11 three suggestions, and two of them are right from the
12 statute: Develop and review long-term care standards and
13 regulations. That's almost word for word from the statute
14 of what this committee does. Coordinate with the Center
15 for Comprehensive Health Planning in reviewing standards
16 every three years, and specifically mentioned were bed-need
17 concepts, HSA's, that this committee would work and say,
18 "Where do we want to go with these concepts?" And then the
19 third area we added in was -- and probably not this whole
20 sub-committee, but the idea of providing some expert advice
21 on specific long-term care projects to the Board, and where
22 that came from is that over the -- since the year 2000,
23 when there is no longer a designated long-term care
24 representative on the Board or the sub-committee didn't

1 even exist, I think the impression in the profession that
2 the Board was not being consistent in the projects that it
3 was approving and that there was not a lot of long-term
4 care expertise being provided into the process. And so we
5 were suggesting that people who are familiar with long-term
6 care marketplace provide some expertise on -- particularly
7 since we're going to be dealing with innovative projects.
8 We don't want somebody coming in and say, "yes, we have a
9 green house. We believe green is a soothing color, and so
10 all of the walls are green." Not that the Board would ever
11 buy that, but I think it would be important for,
12 particularly as we're talking about innovation, the next
13 year that a group of experts provide some input into this
14 process.

15 Subpart C is the project classification. This
16 reflects the current practice of identifying substantive,
17 non-substantive, and exempt projects. That's pretty much
18 the current process. We added recycling. "Substantive"
19 means you're basically adding beds into the system.
20 "Non-substantive" is you're not really adding any beds into
21 the system. And "exempt" is either reducing, closing, or
22 is a statutory exemption for -- from the CON process,
23 although all of that process is part of the licensure
24 review process. It would just -- and you would have to

1 inform the CON Board, but you wouldn't be -- it wouldn't
2 be -- it wouldn't need a permit. You don't need a permit
3 to reduce beds.

4 And going into some of the specifics, subpart
5 D is the most in depth review process for long-term care.
6 It involves any new projects or replacement in a new market
7 or a major expansion. A major expansion is beyond 10
8 percent or 20 beds. And replacement in a new market right
9 now, if I have a 100-bed facility and a CON permit for that
10 and a 60-year-old building, I can basically come before the
11 Board and say, "I'm going to tear down the old building and
12 build a brand new one", and the Board usually goes with
13 that. Usually it's on the same campus or across the
14 street. It's a different story of saying, "I have
15 something in Kane County; I'll tear down the hundred beds
16 but I want to locate in Lake County." Well, all right, but
17 that's a major -- that's a substantive review. If you're
18 going to change market areas, you need to have an
19 explanation of why you're coming from Kane to Lake County.

20 The major parts of that, background of
21 applicant. It always looks at what the history of the
22 applicant has been in long-term care, and I should mention
23 that when we propose these -- wrote these regulations,
24 Senate Bill 326 had not been passed yet. There are some

1 background of applicant provisions that we do need to add
2 in here that were added because of the legislation just
3 passed this summer.

4 Purpose of the project, very key, particularly
5 when we're talking about innovations.

6 The variance is one of those four areas that
7 we're talking about, that it's either a defined population,
8 a specialty area innovation, or it's recycling beds.

9 Staffing issues always have to be addressed,
10 and answering, "we're just going to steal them from
11 existing facilities" is not a good answer.

12 MR. PICK: We're not talking practice.

13 CHAIRMAN WAXMAN: That's the basic answer.

14 MR. SULLIVAN: But you're not supposed to say
15 that before the Planning Board.

16 (Laughter)

17 MR. SULLIVAN: Community relations. This has,
18 in fact, been amplified from the current regulations. It
19 is very important that any long-term care project have
20 community support, and by "community support", not just the
21 referral resources but also the towns, villages and the
22 community-based services. It needs to fit into the entire
23 continuum of care and the marketplace for seniors. And,
24 again, one of the innovative things would be that the

1 resources of the long-term care facility also be integrated
2 and help out community services, like adult daycare or home
3 and community-based services or home health and that they
4 work together.

5 Financial viability, of course, is critical.
6 What are the costs going to be and what's your financing?
7 That becomes a basic -- although that has become simplified
8 from -- as we went through it, so much of Appendix A
9 applies to hospitals in terms of the square footage and
10 things like that. So some of the stuff that we eliminated
11 are hospital-level things, like a historical utilization,
12 population service analysis, like what are the prenatal
13 needs in your area -- that doesn't exactly affect the
14 senior marketplace too much -- mal-distribution analysis,
15 square footage analysis, cost per square foot criteria,
16 viability ratios, non-patient related services analysis.
17 We really -- I mean, this is all set up for a more complex
18 hospital structure. The fee schedules for architectural
19 and engineering costs up to a hundred million dollars,
20 moveable equipment ratios -- and we're not talking about
21 beds, we're talking about big things.

22 MR. PICK: MRI's.

23 MR. SULLIVAN: Yes. And pre-planning --
24 they've all been removed because nursing homes have a much

1 simpler organizational structure and service model, and all
2 of that have been creeping up over the years, and so we
3 kind of did go through and say, "Wait a minute, that's
4 really not part of the project review." .

5 The second thing is non-substantive reviews,
6 Subpart E. It's a simpler review. It is for existing
7 facilities that are doing extensive modernization, which by
8 statute is defined as more than \$6.5 million not adding
9 beds. So it's only non-bed modernization. Have we ever --
10 I don't know if we've had a project that ever came before
11 the Board. I mean, we don't do that kind of extensive
12 modernization, but that's in statute. But, if somebody did
13 want to have a seven-million-dollar modernization program
14 with no new beds, they would have to come through for
15 review, as well as an expansion beyond -- a major expansion
16 in your -- I'm sorry. That's supposed to be "in market
17 area". So, a recycled bed that you buy from the facilities
18 right in your area would be a non-substantive review.

19 What's the purpose of the project? Important
20 thing. What's the community support, and what's your
21 financing? Those are the three critical criteria.

22 Based on a substantive review and
23 non-substantive review, the CON Board issues a permit. The
24 permit requirements closely follow what's in 1130 right

1 now, although we did take out any references to hospitals.
2 It is basically a long-term care permit section. The one
3 section that we didn't move over was the post-permit,
4 annual report, which -- I mean, hospital projects sometimes
5 go on for years and years and years. Nursing home
6 projects, you want to get it up as soon as you can. So we
7 have a closing report, but it's not an annual report, with
8 the same criteria.

9 And then finally, the last kind of permit is
10 the exempt one, exemptions which are pretty much in the
11 statute already; namely, if you're going to close a
12 building, reduce beds, change of ownership, minor
13 modernization under 6.5 million, minor expansion of less
14 than 10 beds or 20 percent, the Board must still be
15 notified, but a permit is not needed for any of that. But
16 all of this is still subject to the IDPH licensure and
17 architectural review process, which is quite extensive.
18 So, even if you have a one-million-dollar expansion, you
19 still have to go through Mike Jontry's unit, and sometimes
20 I wonder if the CON process is easier. But we don't need
21 to duplicate that process.

22 So, what do these regulations provide? They
23 certainly reflect that nursing and rehabilitation
24 facilities are not hospitals. It's a simpler market and

1 simpler structure. It reflects what's happening in the
2 senior marketplace right now, reflects the growth of home
3 and community-based services, and alternative residential.
4 It advances clinical -- and it recognizes the advances in
5 clinical care. Good heavens, the people that we're taking
6 care of nursing homes used to be in hospitals 15 years ago,
7 and there's a lot more that we're doing, and the
8 specialization is there. We want to -- it recognizes the
9 simpler organizational structure of nursing facilities, and
10 we want to encourage and recognize that there is an awful
11 lot happening in the innovation of the long-term care
12 delivery system, and I think this sub-committee and this
13 CON process is the ideal way to help transition and
14 encourage that process. This is where it should be
15 happening. This is probably -- the function of this
16 sub-committee is to transition the profession into -- I
17 don't want to say the next century, but certainly the next
18 ten years.

19 And what are these? These are regulations.
20 These are the rules of the game. They are a starting
21 foundation for our deliberation. It provides a structural
22 framework for innovation, and I don't see any
23 inconsistencies with a lot of what we talked about in the
24 brainstorming last week (sic). I think this provides a

1 regulatory sub-structure for where we can take off with
2 discussions about innovation.

3 Any questions?

4 CHAIRMAN WAXMAN: I will allow questions, but
5 no discussion, please, until we hear all of the other
6 presentation so we can tie it all together.

7 MR. LAVIN: Could I just ask about the 35
8 minute --

9 MR. SULLIVAN: The 30-minute drive time?

10 MR. LAVIN: I'm not sure, but I think uptown
11 in Kenwood, they are probably within 30 minutes. Does this
12 have the effect of changing the value of the bed license?
13 I mean, from that thousand dollars in Cleveland versus
14 Shaker Heights, thirty thousand?

15 MR. SULLIVAN: And that's one of the things we
16 wanted to get at. Some states have a 45-minute drive time,
17 some other states have urban, rural, 15-minute, 45-minute.
18 We went back and forth. Thirty minutes seemed like a
19 consistent standard. And, yes, that would make the
20 Chicago -- well 30-minute drive time in Chicago --

21 MR. LAVIN: Depends on time of day.

22 MR. SULLIVAN: Right. You can get a lot
23 further downstate in thirty minutes than you can in
24 Chicago. So -- and it's based on Google or Mapquest, the

1 same standard the Board is using now.

2 MS. DEDERER: How can we propose something
3 that would be in conflict with licensure? I mean, I didn't
4 know that was going to be an issue, and that seems to be
5 kind of basic. I don't know if it's for Terry or to be
6 discussed later. You said you wanted to do stuff that was
7 innovative, but then someone else said that current
8 licensure standards would prevent what you're talking about
9 because they require stuff that --

10 MR. BIBO: It's not in conflict. It's -- the
11 proposal is broader. I mean, right now State regulations
12 that Public Health has and licensure talks about the
13 distance of travel and screen doors and it talks about
14 regulations that are restrictive in nature. This is just a
15 bigger pot. We have to work with the State licensing
16 agency and get them to review. As Terry said, CMS believes
17 it should be done. We've talked to the Department of
18 Public Health Licensure Section. They know they need to
19 modernize facilities. I mean, in Florida, for instance,
20 I'm building a nursing home. I have no nurse's station,
21 because Florida recognizes that with technology these days,
22 you don't need to have a spot where someone has to sit and
23 be at a nurse's station. Technology is all over. Illinois
24 still requires a nursing station in a corridor and the

1 distance of travel between a nurse's station and a bedroom
2 not to be greater than 130 feet. Those things need to
3 change. We're just saying this will allow the framework
4 for changes.

5 MR. SULLIVAN: And Chuck also had a point with
6 that, but I think probably the Department of Public Health
7 is more -- would be more interested in innovation, and I
8 think waivers may become something that will be more and
9 more frequent than they were in the past. But Chuck was
10 also saying, given the current Life Safety Code standards,
11 to build a 12-bed, 30-bed program for Medicaid population
12 is very difficult. You may be able to do it for a Medicare
13 population, which is three times higher than Medicaid, or a
14 totally private pay population, and I don't think any of us
15 want to see innovation strictly for private pay population
16 and create a two-tiered system, and I think any innovative
17 project probably should address what they're going to do
18 about a Medicaid project. But, yes, financing of some of
19 the current Green House projects would be a real issue, but
20 I would like to think that over the next ten years we can
21 be pretty creative about how to make the financing and the
22 revenue work.

23 MS. DEDERER: Thank you very much.

24 CHAIRMAN WAXMAN: Any other questions for

1 Terry?

2 (Pause)

3 CHAIRMAN WAXMAN: Terry, again, thank you
4 very much.

5 (Applause)

6 MR. SULLIVAN: Judy, Eli, Mike were so much a
7 part of this discussion. I was the scribe. I just took
8 notes.

9 CHAIRMAN WAXMAN: Your scribing was very
10 good. But, again, it helps us understand the basis of the
11 document. I think just as important, though, we have to
12 understand whatever concerns and questions Staff has and
13 Claire has. So, before we get into some really substantive
14 type of questions, I think we need to put those pieces
15 together.

16 Bonnie, do you have a time of lunch?

17 MS. HILLS: It's at noon, and I have to
18 collect the money.

19 CHAIRMAN WAXMAN: Why don't we take a break
20 until lunch shows up.

21 (Recess)

22 CHAIRMAN WAXMAN: Next presentation is being
23 led by Mike. So it's all yours.

24 MR. CONSTANTINO: Thank you, Mr. Chairman.

1 I've been asked to make a few short comments on the
2 associations' proposal. While we have reviewed it, the
3 Staff has reviewed it, we do have a few concerns.

4 Our biggest concerns -- we want to make sure
5 the Committee understands that we have to -- any proposed
6 rules that come out of this committee have to be within the
7 scope of the statute. We -- our review of the proposal
8 from the associations, we have some differences in our
9 opinion on how we read that statute. So I'd just like to
10 highlight those, without going into a lot of detail today,
11 if that is okay with everyone.

12 The first topic we'd like -- regarding the
13 powers and duties of the sub-committee, we believe that the
14 powers and duties have been expanded beyond what the
15 statute is requiring, and this is a small example, is that
16 funds are being deposited in the long-term care fund.
17 There is no such fund. The Board only recognizes funds
18 deposited in the Illinois Health Facilities Planning fund.
19 We have to make that agree with the statute.

20 There are some other powers and duties which
21 we believe go beyond what the statute requires, and we
22 would have to address those when we get down to the detail.

23 MR. LAVIN: I'm sorry. I'm familiar with this
24 presentation -- Terry's presentation is my orientation. So

1 are you on one of the slides here?

2 MR. CONSTANTINO: No. This was the handout we
3 received from the association, I think back in May, and
4 they had a complete list of powers and duties.

5 MR. LAVIN: So you're not responding to the
6 summary, you're responding to the original source?

7 MR. CONSTANTINO: Yeah.

8 MR. LAVIN: So they're proposing that there be
9 a long-term care --

10 MR. CONSTANTINO: Long-term care where all
11 fees received from long-term care applications be deposited
12 into that fund. The statute requires that they be
13 deposited in the Health Facilities Planning fund. So
14 there's no mechanism to do what was being proposed. We
15 can't go beyond the statute.

16 MS. AMIANO: It might be helpful to say, what
17 you're referencing was sent out before the last meeting.

18 MR. CONSTANTINO: In fact, I've got copies of
19 this document, if everyone wants it. I've got copies.

20 MS. AMIANO: That might be helpful.

21 (Pause)

22 MS. DEDERER: What section were you
23 referencing?

24 MS. AMIANO: 1125:120.

1 MR. CONSTANTINO: It wasn't our intent to go
2 through line by line of Terry's proposal today. I'm just
3 trying to give a brief overview and example why we think
4 it's that way.

5 The second, membership in term, we believe
6 that's a Board responsibility and not the sub-committee.
7 Again, I think the association proposed a five-member Board
8 and then specified the term of each member. We believe
9 that authority belongs with the State Board and not the
10 sub-committee.

11 We do believe there needs to be a planning
12 section in any rules that come out of this sub-committee.
13 Right now the proposal from the association does not
14 include any planning section. In fact, it eliminates the
15 bed need completely, and our reading of the statute would
16 require this committee to study that bed need methodology
17 before it is completely eliminated, if that is the choice
18 of the sub-committee.

19 The classification of projects, substantive
20 and non-substantive, it has to agree with the statute.
21 It's clearly defined in the statute now, and that is
22 defined as a new or replacement facility, a facility that
23 establishes new service or discontinuation.
24 Discontinuation is no longer applicable to long-term care,

1 but we have to make sure that the sub-committee -- any
2 rules that come out from the sub-committee includes --
3 agrees with what's in the statute today.

4 There is a 60-day review on all projects as of
5 today, and that's defined in statute also, and that
6 disagrees -- I believe the association was proposing a
7 45-day review for non-sub projects.

8 The background of the applicant, that pretty
9 well follows what we have in our existing rules. However,
10 the association would like to see the definition of
11 "adverse action" changed, and that will be open to
12 discussion when we get to that point. We do believe that
13 the -- all projects need to have a need criteria. Right
14 now we do have a need criteria in our present rules. Those
15 are the six questions we addressed at the last meeting. We
16 ask for -- we use the bed need methodology, and then we go
17 down and ask certain questions about is there demand for
18 this service, is there access, will the proposed project
19 result in a duplication of service, and what would be the
20 impact on other area providers. We believe there needs to
21 be in any proposed rules that come out of this
22 sub-committee a need criteria, because the Board is asked
23 to address that need.

24 Variances that are being proposed, we have two

1 in our rules currently that define variance as Terry
2 presented in his rules, and a CCRC variance. We believe
3 the other two need to be fleshed out more, the renovation
4 and the sale of beds. The Staff has had no discussions
5 with the licensure about the sale of beds, and while
6 listening to Terry, evidently you have had discussions with
7 IDPH about this, we have not. We're -- we don't know how
8 that fits in the overall scheme of things with Public
9 Health, so we would have to do some research on that.

10 We do believe there needs to be a
11 modernization criteria, need for the modernization.

12 And then the time frames being proposed in the
13 proposal from the associations do not agree with what the
14 time frames that are in statute today. We are requiring --
15 presently the statute requires 60-day review for all
16 projects, and then 20 days before the meeting end of public
17 comment, 14 days before the meeting there is an opportunity
18 to comment on the State Agency Report, and then that closes
19 at the end of 10 days. Any proposal from this
20 sub-committee would have to include those time frames.
21 That is what is in the statute.

22 The financial criteria as presented, I think
23 it was pretty much -- we could agree with what was
24 presented. The viability ratios had been eliminated, but

1 there is some other aspects that we were pretty much in
2 agreement with.

3 And then, finally, the post-permit
4 requirements, we do not believe that's this committee's --
5 this sub-committee's responsibility. The post-permit
6 requirements lie with the State Board.

7 In summary, that's just a quick overview of
8 how we view this proposal now. I think, hopefully, we can
9 take the best of what we have and the best of what the
10 associations have presented and combine them to have a
11 document that we can go through line by line at our next
12 meetings.

13 I think Claire had a few other comments she
14 would like to talk about.

15 MS. BERMAN: Can everyone hear me?

16 (Pause).

17 MR. PICK: Just barely.

18 MS. BERMAN: Can you hear me now?

19 MR. PICK: Better.

20 MS. BERMAN: Please interrupt me if anyone is
21 having a problem hearing.

22 In regard to the presentation that Terry gave
23 us on the associations' draft rules, I would like to start
24 out by commenting that it's apparent that a lot of time and

1 a lot of thought went into that document and, you know, I'm
2 grateful for his presentation, because he added some
3 additional information that I didn't have privy to before.

4 What I would like to say -- I do have to
5 reiterate that what Mike just said about the draft rules,
6 you know, is all plain fact. There are some compliance
7 issues in terms of reviewing the draft rules up against the
8 Act, but I think going forward from that, one of the big
9 things, as Mike indicated, a lot of the new ideas, like
10 selling of beds and innovations for rule-making purposes,
11 we need more discussion of pros and cons. We need to do
12 some research, and I know a lot of research has been done
13 by the associations. Maybe they could share some of that
14 with us to shorten the time. And the sub-committee would
15 need to determine how they think this would work, what the
16 process would be if we got into these newer ideas.

17 I know I did some research when I first
18 received the draft, trying to find innovations, and a lot
19 of the things that popped up for skilled nursing were
20 programmatic in nature, and one of the things in my head
21 that I can't escape from is that the (inaudible) major
22 function, the regulatory function, is to take care of the
23 placement and the number of beds for each service. So that
24 is the thrust of what the regulatory site does. When this

1 Certificate of Need process started, there was a long-range
2 plan for the whole state, and it was a very thorough
3 analysis of programmatic and bed needs. It combined both
4 by planning area. That's how the planning areas came into
5 being, and by service, and it was very helpful, because it
6 was a more independent basis for an applicant to come in
7 and say, "We need to do this because it ties in with
8 addressing the needs that we see placed in this document."
9 Without that long range plan in place, everyone who comes
10 in for a permit really, at best, is trying to convince
11 everyone else of the need, based on the individual need of
12 the institution. There's nothing else that can be done,
13 because currently there is no long-range plan from an
14 independent agency. So that's really background of that.
15 And the long-range plan was tied in with the CON review in
16 that the review criteria used to have a requirement whereby
17 the applicant would indicate the project tie-in. That was
18 one of the review criteria for years.

19 Anyway, moving on, the main points I want to
20 make, since Mike has covered most of what I was going to
21 say, if we want to focus on what we can accomplish within
22 the mandated time frame, we are able to create a separate
23 set of rules into some document by amending the existing
24 rules. Okay? And one of the amendments can certainly be

1 returning a sub-title of variances to computed bed need.
2 That would include the two existing variance language
3 sections. In terms of ideas that have been discussed by
4 this sub-committee, that needs to be further developed and
5 discussed. It would, therefore, be in future rule making.
6 That would include the bed-need formula and programmatic
7 need formulas, if that is what is needed, and this would
8 include examining occupancy rates, the ghost bed issue, and
9 consideration of geographic differences.

10 The other thing that we would need to look at
11 a little more further and discuss is the selling of beds,
12 also innovative services facilities, and then I know that
13 the work group had talked about assurances, or looking back
14 to see whether the permit holder was able to comply with
15 the requirements, and that that needs to be looked at very
16 carefully.

17 The other topic that I noted from reading the
18 minutes of the last minute is someone touched on the
19 quality in terms of outcomes, and that's another thing that
20 would need to be looked into, but it would require a little
21 more time than we have presently.

22 Now, one of the good things to remember is
23 once we are able to submit draft rules to JCAR to start
24 that process to meet our deadline in September, at the same

1 time we are going to be developing these other ideas. We
2 don't have to wait for the first rule making to be
3 complete. We just keep going.

4 And that's in a nutshell pretty much all I had
5 to say at this point. I'm happy to answer any questions,
6 and if anyone has new considerations or a different way at
7 looking at some of these issues, then we'd always be happy
8 to hear about it.

9 MR. URSO: Claire, some people have some
10 questions for you.

11 MS. AMIANO, claire this is Judy Amiano. What
12 I'm hearing you say -- and I just want to make sure,
13 because it was a little bit difficult to hear you -- that
14 what you can do now is relatively limited, and you would
15 basically be amending the existing rules, and then you said
16 something about variance changes only, and then I lost the
17 last part of that sentence. I didn't understand what you
18 were saying.

19 MS. BERMAN: Oh, I see. Well, one thing we
20 could do, if the sub-committee agrees, there is language
21 for two of the variances that the association documents
22 want. They have been variances for a very long time.
23 Revisions to that is just simply structural, adding a
24 sub-title, variances to compute a bed need. Right now the

1 way the wording is in the rules, it doesn't use the word
2 "variances" at all. It's one of many requirements if
3 applicable. So, it would be a cleaner way to present them,
4 if we had a sub-title "Variances to Compute", and then we
5 would retain the ones we already have, and in the meantime
6 we would work on the two newer ideas.

7 MS. AMIANO: Okay. Thank you for that
8 clarification. You obviously aren't feeling well, so thank
9 you for joining us by phone.

10 MS. BERMAN: I'm so sorry. I don't even know
11 where this is coming from.

12 MR. SULLIVAN: If I can respond to both Mike
13 and Claire, I think some of the stuff that you point out,
14 the statutory and the fund, some of that technical stuff I
15 don't think there is any problem, that we can sit down and
16 work out wording on that. I think Claire kind of
17 identified that the key issues conceptually for the
18 facility ends up being bed need, innovation services, and
19 the recycling. Those are the conceptual areas that are not
20 in exist -- that are based on existing regulations and that
21 I think becomes somewhat of the focus of the discussion.
22 The technical stuff we can clean up fairly easily.

23 MS. AMIANO: What I heard was that those
24 things can't happen in this cycle, it would have to be in a

1 future cycle.

2 MR. URSO: That's what the thought is, because
3 we have a very limited time frame now where these rules to
4 be promulgated, as Senator Garrett has graciously said, is
5 September. So, we want to make sure we hit that target.

6 MS. DEDERER: So what could we do?

7 MR. SULLIVAN: I think Judy has had some
8 discussions with Senator Garrett and Representative Dugan
9 that they're very interested in the concepts that are being
10 proposed, particularly in innovation.

11 MS. AMIANO: Particularly innovation. If I
12 had to put my finger on one thing they want, it's
13 innovation. They want the State of Illinois to be a leader
14 in terms of service provision for aging seniors who need
15 skilled level of care, and so I don't know how we satisfy
16 everyone's needs. It sounds like we have an issue just in
17 process and timing, that we'll need to continue to work on
18 things at a future date, is what I'm hearing.

19 CHAIRMAN WAXMAN: You said you met with Susan
20 and she absolutely would not budge from that date, correct.

21 MR. URSO: Right.

22 CHAIRMAN WAXMAN: Did you hear something
23 different from that?

24 MS. AMIANO: No, no, no. That just goes

1 back --

2 CHAIRMAN WAXMAN: So this is conceptually; she
3 is interested conceptually in change, but something has to
4 be by September 1 and then other things can happen after
5 that date.

6 MS. MITZEN: Or during.

7 MR. PICK: I also want to thank Claire for her
8 presentation, but what I'm hearing is a change by an order
9 of magnitude, when we go from a bed-need calculation in
10 long-term care, which is general, to introduction of
11 programmatic review of how beds are allocated. In the
12 acute environment, they've been doing that for decades.
13 You have ICU beds, rehab beds, there's a whole host of
14 categories where beds are allocated programmatically. In
15 long-term care, that's never happened. So, as we talk
16 about specialized populations, what I heard Claire
17 introduce conceptually is a programmatic model, and that's
18 a change by an order of magnitude, and that's going to
19 require a lot of time and energy to really understand how
20 to structure this, because it's -- it really completely
21 transforms the model.

22 And it's consistent with what we talked about,
23 but I think it puts it into a framework of how to begin to
24 do it in a way that the Board is familiar with, because

1 it's a model that they use in the acute environment.

2 MR. FOLEY: And I agree with you
3 wholeheartedly. This is an issue that is very, very
4 important, and at our last meeting, in reviewing the
5 transcript -- and I did, in fact, take notes -- it appeared
6 that when we broke into small groups, one of the --
7 everybody had several comments about, quote, bed need, that
8 that is, in fact, a serious issue. I don't think this
9 sub-committee really has the time to tackle that very, very
10 large issue at this point in time. That also affects,
11 obviously, the Planning Areas, whether or not we're going
12 to do away with the Planning Areas and introduce a
13 30-minute time frame. I don't think we can make those
14 kinds of decisions right now, because that is very, very
15 critical in trying to define healthcare needs for our
16 residents in the state.

17 CHAIRMAN WAXMAN: Bill, your presentation is
18 about what we can focus on by March.

19 MR. DART: Right.

20 CHAIRMAN WAXMAN: I'm not telling you to
21 start. I just want to make sure people are aware that
22 that's really where the next couple presentations are
23 going, given the time frames, what we can do and not do.

24 MR. URSO: Eli had a question, Mr. Chairman.

1 MS. CUNNINGHAM: Kelly Cunningham. I'd like
2 to make a comment. It seems to me -- and this is my first
3 meeting -- the focus of long-term care, how it is defined
4 by this group, is on seniors aged 65 and older, the
5 geriatric population. Coming from a slightly different
6 perspective, I think -- I don't want the point lost that
7 really long-term care nursing homes, home and
8 community-based settings, whatever, is really
9 cross-disability, cross-age, cross-population, and while
10 this seems to be focused largely on seniors, that certainly
11 seniors are not the only people living in nursing homes
12 these days. We're seeing a dramatic increase in younger
13 populations, populations with behavioral or mental health
14 concerns, and just as we move forward with the development
15 of priorities and rules, I would like to make sure that we
16 keep that point in the back of our minds.

17 CHAIRMAN WAXMAN: Your perspective is what?
18 I'm sorry.

19 MS. CUNNINGHAM: I'm with the State Medicaid
20 Agency, Healthcare and Family Services. I'm Chief of the
21 Bureau of Long-term Care, and have been involved in a
22 variety of projects related to long-term care rebalancing
23 and creation of home and community-based waiver programs
24 and on the nursing home side as well.

1 CHAIRMAN WAXMAN: Thank you. Welcome to your
2 first meeting.

3 MR. LAVIN: I have a question for Claire. Can
4 you hear me?

5 MS. BERMAN: Yes.

6 MR. LAVIN: You were talking about relating to
7 a comprehensive plan in the bed need, I guess. Is that
8 comprehensive plan considered across the state region, or
9 would that be something in the community, a municipalities
10 comprehensive plan? What were you referring to?

11 MS. BERMAN: Well, I was talking about the bed
12 need-formula, which is what we have in place right now, and
13 revisions that could be considered. But, also, some of
14 your discussions kind of went into a broader kind of need
15 determination as programmatic in nature. So, it would go
16 beyond how many beds and where should they be placed, and
17 it depends on where this group wishes to go. We do not
18 have a comprehensive long-range health plan for the state.
19 That's been gone for a while, and if you wanted to start
20 creating something along those lines, I don't know if
21 that's a doable thing. I'm just presenting it as an idea.

22 If you're talking about other levels of
23 service in this wide scope of services and how do you
24 address that, I don't know if they all get lumped into

1 bed-need formula for skilled nursing. Some of it probably
2 does, but some of it probably doesn't, and you might want
3 to separate those two when you start looking at the need
4 formula issue. That includes a lot of other sub-topics,
5 like I was saying, occupancy rates that are currently used,
6 what do we do with ghost or paper beds and then, you know,
7 I know a lot of states, in their rules, they do have
8 consideration of geographic differences.

9 And those are all things that need to be
10 examined and discussed and a consensus needs to be reached.
11 So that's true of all of the topics that I reviewed that I
12 do feel need to be further developed and discussed.

13 Reference the selling of beds, one of the
14 things there is Illinois currently does not have statutory
15 authority to do that. Okay? And it would be good if there
16 was a presentation or two, a discussion of pros and cons,
17 what would be gained by doing this kind of activity and
18 what might be on the reverse side of the coin. You know, I
19 would be interested to know that, and I think many people
20 would like that kind of detail, because it has to be
21 explained. People will ask, "How does this work? How did
22 you determine that it will work?" And that would take a
23 little time to work on.

24 Innovations, when -- I was very intrigued by

1 that, and I did my best to research it, and, like I was
2 saying before, I saw programmatic kinds of things that were
3 innovative, and the Green House referral that you keep
4 making, and research, a research kind of situation with the
5 university. Those, I think, need to be discussed a little
6 bit more so that they can be written into a rule.

7 Any rule, basically -- for need, at any
8 rate -- you need to come up with a statement, an
9 expectation, and then you indicate some kind of
10 documentation, some kind of substantial way to back up what
11 you're claiming. Otherwise an objective review of the
12 project is pretty difficult. The documentation, at least,
13 gives the reviewer an idea of how it's measured, how the
14 need for it is measured. It's not just trying to be
15 bureaucratic about everything. There's a logic to it, and
16 these are things that need to be developed.

17 So, those are just examples, and I hope that
18 I've included the main -- the main topics of interest the
19 work groups came up with. If any are missing, we can
20 easily add that to the list, but what we can do, as I said
21 before, is we can submit draft rules and get them in the
22 JCAR process. They won't be anywhere near what the
23 document that you've reviewed today has in them, but it's a
24 starting point, and in the meantime, while that's in the

1 review process, the sub-committee can work on all these
2 other issues, and as soon as they're ready to go, they can
3 be submitted as a new rule making. You could have two,
4 three, four, however many rule makings, however quickly you
5 want things to move, and that's what we have figured out so
6 far.

7 CHAIRMAN WAXMAN: Claire, this is Mike. When
8 we spoke on one of our conference calls recently, we talked
9 about your putting your thoughts on paper so that the
10 Committee will actually be able to read your thoughts.
11 That's still in your process, right?

12 MS. BERMAN: Yes. To what detail would you
13 want that?

14 MR. FOLEY: As much as possible.

15 MS. BERMAN: Do you want an outline?

16 CHAIRMAN WAXMAN: I don't know how to answer
17 that question. As much as you can put on paper that would
18 allow us to understand your thoughts. So, not asking for a
19 million words, but just enough so we understand what you
20 are conveying to us today, that we can kind of read it and
21 have it with us.

22 MS. BERMAN: All right. Sure. I'd be happy
23 to do that.

24 CHAIRMAN WAXMAN: Thank you, and we'll get it

1 distributed somehow.

2 MR. LAVIN: In terms of doing incremental
3 changes, which I believe is being proposed, are we
4 comfortable looking at an incremental change and
5 understanding if it will have impact on some of these
6 bigger, broader changes? Or is it really just to be in
7 compliance with a particular statutory language right now?

8 MR. CONSTANTINO: Well, we have to be in
9 compliance with the statute. That goes without saying.
10 The way we view it, the Staff views it -- and this is the
11 Staff's opinion -- that we have to meet that deadline, and
12 the only way we believe that can be done is through
13 incremental changes right now. Now, that's what we
14 believe, Mr. Lavin.

15 MR. LAVIN: I'm not going to argue. I just --

16 MR. PICK: You can argue.

17 MR. WAXMAN: Yes, I was waiting for it.

18 MR. PICK: I don't think there's an inherent
19 conflict. I believe what we can do is develop a conceptual
20 model that then breaks down into the procedural steps that
21 we need to go through to get there and that in order for us
22 to be effective, what we need to do by September is
23 establish the short-term goal that's in concert with the
24 long-term goal. Otherwise we're just going to be the --

1 making reactive changes and they aren't going to get us to
2 the end point.

3 MS. AMIANO: Has anyone considered talking to
4 the Legislators and asking them about this date, so that
5 this committee has time to vet some of these concepts
6 before moving forward?

7 CHAIRMAN WAXMAN: Frank has had conversation
8 with Susan, and it was pretty -- well, it's your
9 conversation.

10 MR. URSO: She didn't want to make a change in
11 term of the deadline at all. Now, we continued to talk
12 about the process and the Committee and how, you know, it
13 took a while to get the Committee formed and how long it's
14 going to take to get the rules together. So, she
15 understood that we are doing this not because we were
16 trying to avoid getting rules promulgated, it was just a
17 practical taking consideration of the time necessary to get
18 the rules on the books, and so she was able to give us that
19 next September date.

20 Our thought as Staff is let's open the door
21 and let's get something done that opens the door so that we
22 can always add additional rules and revisions as we -- as
23 more study and further definitions are considered by this
24 committee. To do more than that, we think, is going to be

1 problematic to meet that date to open the door,
2 essentially.

3 CHAIRMAN WAXMAN: I think the key is what Eli
4 says, is that we have to make sure that each recommendation
5 we make over time fits where we want to go, that we don't
6 shoot ourselves in the foot by putting a rule out there
7 that conflicts with our long-range goal. So, I think we
8 have to be aware of what exactly -- you know, what our
9 destination is as a group, agree to it, and then make sure
10 each step gets us in the -- we're moving in the right
11 direction towards that, and I think that's what we have to
12 be careful of, and I think -- Bill, are you doing the next
13 part?

14 MR. DART: Yeah.

15 CHAIRMAN WAXMAN: Do you need a few more
16 minutes to finish lunch?

17 MR. DART: No.

18 I had distributed what we had worked on
19 together, to take what you guys had developed in the last
20 meeting in your group breakouts, and eliminate some of the
21 duplicates, summarize those, and then we discussed how we
22 would rank them as far as -- we're not saying that any one
23 is more important than the other, just ranking them as the
24 need for attention from this group, to try to get some

1 focus as to what types of issues probably should be worked
2 on first, and then the other ones, recognizing this is a
3 long-term group, you can come back to these down the road.

4 And, you know, everything that was discussed
5 is captured here, but, really, by the time you get through
6 the first four of these, that's -- which is modify the
7 current bed-need formula, look at the inputs, incorporate
8 programmatic aspects of care and some of the specialized
9 care, encourage modernization, and programming, its
10 quality, and defining service population, once those first
11 four -- that's a really -- a lot of thought and effort is
12 going to go into just developing rules that would cover
13 those four even, maybe even more narrowly the top two of
14 these to -- with the deadline that we have. So, looking
15 at -- being mindful of that deadline and looking at the
16 issues, this is how we rank them as kind of the priority as
17 to what needs to be tackled first, recognizing that they're
18 all important.

19 MS. DEDERER: I have a technical question.

20 CHAIRMAN WAXMAN: Okay.

21 MS. DEDERER: I couldn't understand everything
22 that Claire said. Can we or can we not add a separate
23 section that's just for long-term care and then leaves the
24 others to relate only to hospital care? Was that addressed

1 as something that could or could not be done?

2 MR. CONSTANTINO: Yes, that can be done.

3 MR. URSO: We think that can be done, yes.

4 MR. CONSTANTINO: The statute requires that.

5 MS. DEDERER: The other thing is with as
6 little time as we had, that may be our top priority, but do
7 we have time to do it justice? I mean, are there any
8 other -- what do you guys really think we can get done by
9 March? I'm hearing that we're basically going to submit
10 what exists.

11 MR. URSO: I think Mike answered that.

12 MR. CONSTANTINO: It's our belief we take the
13 best of what they're proposing, the associations, and what
14 we have. We do believe there needs to be a planning
15 function in an 1110 -- I'm sorry -- the new rules. We do
16 not believe that the post-permit requirements belong in the
17 long-term care, separate section, because we believe that's
18 a Board responsibility, but we do believe a lot of what
19 Terry has done can be incorporated in the new rules and
20 separated out.

21 MS. DEDERER: Well, isn't the Certificate of
22 Need a Board responsibility?

23 MR. CONSTANTINO: Oh, yes.

24 MS. DEDERER: So why is the post-permit

1 process different from the Certificate of Need?

2 MR. CONSTANTINO: The responsibility for the
3 permit is the Board's. It's not this committee's
4 responsibility, and it goes beyond what the statute allows
5 this committee to do, in our reading of the statute.

6 MR. URSO: Post-permit requirements,
7 post-permit compliance cuts through all healthcare
8 facilities that the Board has jurisdiction over. That's
9 what we're saying. So it's going to be the -- the
10 compliance issues are going to be no different for a
11 hospital versus a long-term care facility versus an
12 ambulatory surgery treatment center. We feel they all have
13 to be reviewed for post-permit compliance. That's how we
14 view it now.

15 MS. DEDERER: Okay. So, I mean, 1110, 20, 30
16 currently are about everything. They cross all those
17 boundaries. So I'm not quite seeing the difference, at
18 least on that basis, and I thought the whole purpose of
19 this was to recognize that long-term care facilities are
20 different from hospitals and ambulatory surgical centers,
21 et cetera and maybe they shouldn't have the same
22 post-permit process and, in fact, should have a different
23 process that incorporates some of what we talked about last
24 week, like does anybody look and see whether they

1 accomplish what they said they were going to do.

2 MR. URSO: You're missing the point that the
3 statute dictates how the Board monitors the progress of
4 permits and it sets forth in Section -- I believe it's
5 Section 5 of the statute. It tells us how to monitor these
6 permits.

7 MS. DEDERER: Okay.

8 MR. URSO: So it doesn't say "permits for
9 ambulatory surgical treatment centers" or "permits for
10 end-stage renal dialysis units". It says "all permits".

11 MS. DEDERER: Okay. And couldn't whatever is
12 in the statute be incorporated in this section and maybe
13 enhanced or whatever to apply to long-term care? I'm not
14 trying to beat a dead horse, but we keep taking parts and
15 pieces off of this until there is nothing left. Licensure
16 isn't in here. I'm not sure what's left.

17 MR. CONSTANTINO: You're limited, Teri, on
18 what the statute allows this sub-committee to do, and there
19 is nothing in that sub-committee statutory part that allows
20 you to review post-permit requirements.

21 MS. DEDERER: Okay.

22 MR. CONSTANTINO: That's our reading of the
23 statute. If the sub-committee has a different reading, I
24 don't know, but that's our reading of the statute.

1 MR. SULLIVAN: And part of me doesn't
2 disagree. I mean, yes, it is the Board function. I guess
3 we were singling out that the permits is not the
4 sub-committee responsibility, it's the Board's function. I
5 think what we were trying to go through is what in the
6 permit requirements apply to long-term care, and I don't --
7 there's a few things we took out that were very hospital
8 oriented, I think, and, Judy, I know you feel strongly
9 about that, of some of -- that post-permit requirements and
10 what's expected in the reports go far beyond stuff that
11 long-term care generally does.

12 MS. AMIANO: Let me ask a different question,
13 because what I'm hearing you say in that it's limited by
14 statute. Is there a mechanism or a way that the
15 sub-committee could then make recommendations to the full
16 Board to make amendments to their process to address our
17 concerns? Does that make sense?

18 MR. URSO: That's always a possibility, and
19 jointly this committee could make those recommendations to
20 the full Board, yes.

21 MS. AMIANO: I think we somehow have to think
22 out of the box here. It seems we're being very traditional
23 in our approach. In order to get to a different place,
24 maybe we need to be a little creative in the way we think

1 about it. I don't know what those answers are.

2 CHAIRMAN WAXMAN: I believe one of the
3 functions of Chair is to be the liaison to the Board and
4 update them periodically on our thoughts, our processes,
5 our work, and, obviously, Courtney is part of both. So, we
6 have people that can make -- and I think if we ask for
7 fifteen or twenty minutes, we could probably take a couple
8 people with us to do a presentation, and I think from the
9 day we started meeting, we said that there were two things
10 that we needed to do. One was to write new regs, and the
11 other is to track those things that we think the Board
12 should work on, that we think need to be changed, that we
13 don't have the power to do it, but we want them to do it or
14 want them to pass it on to the people that can do it. So,
15 yes, absolutely.

16 MS. DEDERER: But then you also said at lunch
17 that that's not something we should be concerning ourselves
18 with right now, that will be down the line.

19 CHAIRMAN WAXMAN: I said that?

20 MS. DEDERER: I think you did.

21 CHAIRMAN WAXMAN: I think I said your
22 question belongs to Frank.

23 (Laughter)

24 MS. DEDERER: Okay. But I thought the

1 ultimate answer was, you know, we need to be focused on
2 what we have to do now, and we can make recommendations to
3 the Board later.

4 CHAIRMAN WAXMAN: I think our message today
5 is we need to get something done for the March date so that
6 we are in compliance, to begin with, with their September
7 needs, but that we are a long-term committee and that we
8 can continue to bring forth new rules and new regulations
9 that will be building -- we will be building onto. So,
10 whether -- so what we're trying to do today and our next
11 meeting is to decide what we can bring to the rule writer
12 in March.

13 Judy?

14 MS. AMIANO: Is it important to meet the date
15 or to meet the intent?

16 CHAIRMAN WAXMAN: Both. I don't know how you
17 can divide the two, to be honest with you.

18 MR. CONSTANTINO: It seems to me the date.

19 MS. AVERY: We have to be responsive to
20 Senator Garrett.

21 MR. URSO: And we have to be responsive to the
22 law.

23 MS. AVERY: To the law also, but, as Frank
24 said, she was concerned that it took so long to get the

1 committee together and there's some other components that
2 hasn't been implemented as part of the Task Force. So, we
3 as the Board and Board Staff have to be accountable and do
4 our best. Now, if there's due diligence and we haven't
5 come up with anything, then the sub-committee can
6 communicate that to the Board and we'll just have to
7 communicate that to her, but I wouldn't recommend that.

8 MS. AMIANO: What it gets back to is is the
9 date more important than the substance of the work?

10 MS. DEDERER: The date is going to win, so we
11 might as well just --

12 CHAIRMAN WAXMAN: So the question is, is
13 there any chance of getting a meeting with Susan to talk
14 about our feelings, or are you suggesting that's not a good
15 thing to do?

16 MR. FOLEY: I don't think we have time.

17 MS. AVERY: I think we can just say that we've
18 come to this crossroads, but if we get a document together
19 and we still are kind of not together on it as part of the
20 Board and the sub-committee, then maybe we can go to her
21 and say that. But right now, we probably should try and
22 prioritize and see where we are and get some things done
23 that also has substance and intent.

24 MS. AMIANO: I agree with you.

1 MR. URSO: I think it goes to Courtney's
2 presentation, which is next, talking about the goals.

3 CHAIRMAN WAXMAN: Right.

4 MR. URSO: And see if everybody is comfortable
5 with that.

6 CHAIRMAN WAXMAN: Bill, did you have more?

7 MR. DART: No, not really. I just wanted to
8 put them out there, that we were trying to rank these
9 issues.

10 CHAIRMAN WAXMAN: Let me acknowledge a couple
11 hands, and then we will go to Courtney.

12 MS. MITZEN: I was just going to build on
13 what you were saying. It seems to me that we need to have
14 our next meeting and at that point, I think we can stop and
15 make a decision about what we have in hand. Right now
16 we're doing a lot of background work and a lot of learning.
17 I think at the next meeting, we've got to make a decision
18 as to where we are, and at that point, I think we have to
19 move forward. But I'm still on sand.

20 MR. SULLIVAN: Snow, you mean.

21 MR. URSO: Soft snow.

22 MR. FOLEY: First of all, I would like to
23 thank Mr. Dart, because I think he did an excellent job on
24 trying to recap what happened at the last meeting. I think

1 if you look at his summary sheet, he pointed out a lot of
2 very, very important items that were of serious concern by
3 this sub-committee, and I believe from this list, we
4 probably could pick one or two serious items and sit down
5 and start now and elaborate on those items. There's things
6 in these proposed rules that we could also suggest. I
7 mean, you know, housekeeping, very last page,
8 discontinuation of facility, and reduction of deaths.
9 Fine, let's throw that in the new rules, just to show that
10 we are, in fact, doing something.

11 I would love to take the opportunity to
12 address the variance and all of the variances in the
13 proposed rules, but I don't know if we're really going to
14 have time to do that or not, because if we do, that we have
15 to do it with the bed-need methodology in place and the
16 Planning Areas in place, although I believe that they
17 should remain in place. The deaths, that's something else,
18 but I think our answers lie on this one sheet of paper that
19 Mr. Dart completed, and I think if we just look at this, we
20 could find one or two items that we could really
21 concentrate on.

22 Bill, you owe me lunch now.

23 CHAIRMAN WAXMAN: Judy, did you have
24 something to say?

1 MS. AMIANO: It was just a clarification.
2 Bill, was your summary here -- and you rank ordered them 1
3 through 5 -- was your intent for the group to try to get
4 through the one's and two's, just the one's?

5 MR. DART: Well, the intent is for you to
6 discuss, right, the one's, one's and two's, to see what --
7 you know, how can we bite off a piece of this that is
8 manageable to do something soon that will at least get us
9 started and meet the date that is in the law?

10 MS. AMIANO: Thank you.

11 CHAIRMAN WAXMAN: Courtney --

12 MR. LAVIN: I have a question. The
13 presentation from Terry just now -- and he's not in the
14 room, but is it assumed that we're in agreement with that,
15 that all of those recommendations we're going to try to
16 implement if it's allowable under the law?

17 CHAIRMAN WAXMAN: No, we're not.

18 MR. LAVIN: So we're still going to have a
19 chance to talk about that?

20 MR. FOLEY: Yes, as part of long-term
21 planning.

22 CHAIRMAN WAXMAN: The whole intent was --
23 we've all heard about that document, we've all had it in
24 our hands. The whole intent was to allow the people who

1 put it together to explain their rationale, their thoughts
2 in the process to us, as a sub-committee that is much
3 broader in terms of diversification in what we bring than
4 maybe the mindset of the people who wrote it, and then we
5 wanted to have Staff respond to that document, as well as
6 Claire, who is the official rule writer, respond to that
7 document, so that we, as a committee, have all of the
8 pieces now to understand that document and maybe the
9 strengths and weaknesses of that document. Nothing has
10 been accepted at all, other than discussions of it's a
11 starting point, acknowledging that there may be some needs
12 to add or subtract to that document.

13 MS. AVERY: And that kind of goes into the
14 realistic goals of the sub-committee. For us to come up
15 with just what the Chairman just described and ask again
16 that the committee -- the sub-committee authorize us, as
17 the Board Staff and IDPH Staff, to come up with a set of
18 rules that we can have presented to the next meeting in
19 time to get to the Board in March. What day is our
20 March -- March 22nd?

21 MR. CONSTANTINO: Yes.

22 MS. AVERY: To review them and tell us yea or
23 nay, make these changes, don't make those changes, and we
24 will also ask Chairman Gillespie if there is room on the

1 agenda. I know there is a meeting scheduled for the 25th,
2 this sub-committee. We were asked to move that back to
3 give Staff time to work on that document to give to the
4 Board. So we are asking for the first week in February.

5 But keep in mind that we want to keep
6 realistic about our goals, and as Chairman Waxman said to
7 identify some of the areas that we need to clarify, using
8 the two documents, and come up with proposed rules.

9 CHAIRMAN WAXMAN: So what Staff is asking for
10 is not meeting on January 25th but meeting on February 1st,
11 and I guess if you have your calendars, if you could --

12 MR. PICK: Does that require a motion.

13 MS. HILLS: Well, first, I have to find out if
14 we can meet here.

15 MS. AVERY: We'll meet somewhere.

16 CHAIRMAN WAXMAN: Is there anyone who cannot
17 meet on February 1?

18 (Discussion held off the record.)

19 MR. URSO: My question is -- we're trying to
20 get something to the full Board by March 22nd. How many
21 meetings do you think this sub-committee would like to have
22 before that Board meeting? Is it going to take more than
23 one meeting?

24 CHAIRMAN WAXMAN: I throw that out to the

1 group.

2 MR. PICK: Yes, it's going to take more than
3 one.

4 CHAIRMAN WAXMAN: Probably two. I can't meet
5 the 8th, by the way.

6 MR. FOLEY: Before we decide our next meeting
7 date, maybe we should look and see what kind of work is
8 going to be required between now and then and go through
9 the list of the issues we want to tackle and then decide
10 what those issues are and how long it's going to take Staff
11 to accomplish that.

12 MR. PICK: The other complicating factor is a
13 significant number of members are not here.

14 MR. FOLEY: Almost half.

15 MS. CUNNINGHAM: We need to look at the
16 legislative session days to try to avoid conflicts, if
17 possible.

18 CHAIRMAN WAXMAN: Do you know those dates?

19 MR. BIBO: I will here in a second.

20 MR. PICK: I would suggest we do this
21 electronically.

22 MS. AVERY: We can get a draft out for comment
23 for those who can't make --

24 CHAIRMAN WAXMAN: Chuck, I think what they're

1 trying to do -- and correct me if I'm wrong -- is to take
2 Terry's document -- the document and match it with their
3 concerns and suggest the changes that incorporate as much
4 of the document from the groups that satisfy their
5 concerns. That's the document they're going for.

6 MR. FOLEY: And I think if you look at both
7 the list as well as the proposed rules, you can come up
8 with an answer. As I indicated earlier, there's things we
9 could immediately take action on and include in the new
10 rules: Background of applicant; we talked about earlier
11 that we need a new definition for adverse action. It can't
12 be that, that difficult. I think we could come up with a
13 definition for adverse action. So, we could accommodate
14 that under "background of applicant". We don't want to
15 touch, I don't think, the need aspect of it right now,
16 i.e., the variances, because that's going to require some
17 more timing, obviously. We could, in fact, look at
18 financial viability in some respect.

19 So, there's a lot of stuff between the
20 existing rules and this list here. Part of long-term
21 planning that we've talked about here, part of long-term
22 planning is to -- if you're going to do this, we need to do
23 it the right way, and if we're going to have a need
24 methodology out there, whatever that may be, we have to

1 look at a total picture, and I think the consensus last
2 time was that we need to look at SLF and assisted living,
3 should they be part of this planning process? Okay? Is it
4 possible to bring that issue back to legislation? I don't
5 know, because legislation right now excludes them. Because
6 we need to have that in place in order to do long-term
7 planning with the bed need, because that population group
8 should be included.

9 CHAIRMAN WAXMAN: My understanding is what we
10 would take to the big Board and ask them to carry.

11 MR. URSO: No, the Mother Board.

12 CHAIRMAN WAXMAN: To the mother Board --

13 (Laughter)

14 CHAIRMAN WAXMAN: I totally agree with you on
15 that issue, but it's beyond our scope, and I think that's
16 part of that other list of things that we want them -- our
17 recommendation to them to recommend to legislation to look
18 at. So, I totally agree on that one with you.

19 MS. AVERY: I do also, but we can also keep in
20 mind that we're here indefinite, so we have plenty of time.

21 MR. FOLEY: That's what I thought. We were
22 just trying to pick one or two items right now and get us
23 through the March issue. It doesn't have to be what I just
24 said. It can be any of these items between the proposed

1 rules and this list. Modernization, encourage
2 modernization, and quality program. Maybe that's something
3 we could look at right now and look at -- Mike even said we
4 need some sort of a modernization criteria here in the
5 proposed rules. Is that something we could look at right
6 now? Do we have time to do that? I don't know. That's up
7 for discussion.

8 MR. CONSTANTINO: That's what we're trying to
9 work to, Charlie.

10 MR. FOLEY: That's right.

11 MR. BIBO: The Senate is in Tuesday,
12 Wednesday, and Thursday through the month of February. The
13 House is pretty much Tuesday, Wednesday, Thursday, except
14 if for there's a random Friday and a random Monday that
15 they might be in session.

16 CHAIRMAN WAXMAN: The 1st is a Tuesday.

17 (Discussion held off the record.)

18 MS. AVERY: Also, if it's the desire, we can
19 find a location where we have the call-in availabilities.
20 I think the first meeting we could do it electronically,
21 but the second meeting, when you all vote to send it to the
22 larger Board, we need to have everyone in place.

23 MR. BIBO: We can all be connected with cell
24 phones laying on the table.

1 (Laughter)

2 CHAIRMAN WAXMAN: Is it possible that the
3 document would be in our hands before the 4th so that Judy
4 or anybody else would have time to issue some comments
5 before we meet?

6 MS. AVERY: By the 1st or the 4th?

7 CHAIRMAN WAXMAN: The 4th.

8 MS. AVERY: I'm not following you.

9 MR. LAVIN: I can't make it on the 4th, but
10 you can go ahead.

11 CHAIRMAN WAXMAN: But, again, if you had the
12 document a few days in advance, would you be able to send
13 your comments?

14 MS. AVERY: Are you saying if we have the
15 document in hand by the 31st and then meet on the 4th?

16 CHAIRMAN WAXMAN: Or the 1st or the 2nd.

17 MR. URSO: The 1st is what we're looking for,
18 for adequate time to put it together.

19 (Discussion held off the record.)

20 CHAIRMAN WAXMAN: So we agree on the 4th.
21 Everything after that, we don't know. I feel part of it is
22 how comfortable we are with the document the Staff brings
23 back to us on the 4th, whether we think there is a need for
24 one or two more meetings after that before we present it in

1 March or whether we need one meeting and then go to March.

2 So I think the 4th is cool.

3 MS. DEDERER: But as Mr. Lavin brought up, if
4 we don't ever discuss it -- I mean, if we don't have
5 another meeting after you've added your comments to the
6 proposed draft, then we haven't discussed some of the stuff
7 in the --

8 CHAIRMAN WAXMAN: We're having a meeting.
9 The meeting on the 4th is a discussion of the document that
10 they are trying to merge the two, of which you will have 72
11 hours before the meeting with a chance to review it.

12 MR. URSO: And maybe sooner, if we get it done
13 sooner.

14 CHAIRMAN WAXMAN: And then if we need further
15 discussions because we're not in agreement or have some
16 loose fuzzies, then we'll schedule another meeting to try
17 to finalize the document so that we are in March mode.

18 MS. AMIANO: If I could just make a
19 recommendation, that Staff send out two additional meeting
20 dates. Having worked with a group of people -- which there
21 were only six of us -- it took us nearly a year to get
22 where we were at. So we will need more than one date to
23 discuss these issues. So, if we could send out dates,
24 hold-your-calendar dates, for two additional meetings

1 between now and when you all have to file, that would be
2 fantastic.

3 CHAIRMAN WAXMAN: That's fine. That's a good
4 suggestion.

5 MS. MITZEN: And then move forward on the
6 additional ones, if we need, for the rest of the year.

7 MS. DEDERER: We should consider how often we
8 think we're meeting to cover the follow-up to this
9 submission and try to get those dates.

10 CHAIRMAN WAXMAN: Well, we originally talked
11 about being quarterly, but I think we have a lot more work
12 than quarterly meetings. I don't know whether it needs to
13 be monthly, but maybe every other month after we get this
14 document from March done, and we can discuss that.

15 MS. AMIANO: Thank you, Mike.

16 CHAIRMAN WAXMAN: Is everything on the agenda
17 covered? I should ask.

18 MR. PICK: Unfinished business.

19 CHAIRMAN WAXMAN: Is there any unfinished
20 business?

21 MR. PICK: Before we go on, I would like to
22 give some input to the Staff, particularly about what I'm
23 hearing. Some of the conflict -- or not even conflict, but
24 some of the lack of clarity is to separate the "what's"

1 from the "when's", because we keep getting caught up with
2 what is it that we're trying to do and when does it have to
3 be done. And, again, I think to a great extent "when" is
4 driving "what" we want to accomplish, and I think we need
5 to do it the other way around.

6 MS. DEDERER: But we can't.

7 MR. PICK: But we can. What we can do is make
8 sure that in the course of the Staff's merging of the
9 different recommendations, that we're not limiting
10 ourselves to when everything has to be done to make sure
11 that we're comprehensively reviewing what are the things
12 that need to get done.

13 MS. AVERY: I think what it is with the Staff,
14 with some of the issues -- not issues but concerns with the
15 document is that some items have to be tested. JCAR is not
16 going to just say, "Oh, okay." They're going to ask us,
17 "Why are you making this? Do you have the community behind
18 you?" We have to do the public hearings and all of that.

19 MR. PICK: I don't think there's a conflict,
20 because what that's saying is that this needs to be later
21 than this March date. But I think as we organize the
22 different thoughts, if we incorporate when we think we can
23 get this done, I think it will help kind of sort through
24 the different concepts and the priorities.

1 MS. AVERY: And we can probably put that
2 together also with the future projects.

3 MS. DEDERER: As a point of clarification
4 then, the Staff are going to go through the proposed draft
5 and they're going to insert the current language in places
6 where what's proposed is out of compliance with the
7 statute; is that kind of what's going to happen?

8 MS. AVERY: It will be a working document that
9 will explain a lot, things that we cannot do --

10 MS. DEDERER: I understand, but if you're
11 trying to put together a document, are you going to insert
12 language that currently exists and we're going to talk
13 about that or, you know, what are you proposing to do to
14 that document? Because based on what you're saying, you
15 know, that document includes almost everything we can talk
16 about, right? And so that being the case, some of it we
17 can talk about before March and others are going to have to
18 be put off. Something has to be there to submit rules,
19 right?

20 MS. AVERY: This isn't the exact but I think a
21 document similar to this with comments. When Claire --
22 when she talked about the formatting, she -- this is what
23 she's describing, so it will have red, it will have
24 strike-thru and other language and big "Draft" through it

1 and then probably some comments in the margins. So this is
2 the format.

3 MS. DEDERER: But it will be something that
4 could be submitted?

5 MS. AVERY: Once we get a final document to
6 the Board.

7 MS. DEDERER: Understood.

8 MR. BIBO: I guess I'm struggling to
9 understand why it's believed that not following through
10 with the associations' proposals and coming up with a
11 document that's got to be comprehensive enough for
12 development and to address all the needs over the next
13 years we're working and stuff, why that is going to be any
14 easier to do that route than it is to start with the
15 associations' proposal and build from there, because we can
16 talk and we can meet a deadline date and we can continue to
17 build, but the reality is there has to be some program out
18 there that is going to allow facilities to continue to
19 develop and operate -- not operate but develop and do what
20 needs to be done. You can't just freeze them, unless
21 that's what you intend to do, you know. So, I don't know
22 why it's not easier to start as a base point with the
23 document that was proposed by the associations, rather than
24 you got to have just as comprehensive of a document another

1 way. I'm not sure I understand.

2 MS. DEDERER: So, you're saying that they're
3 starting fresh and maybe inserting language from the
4 proposal from the associations into it rather than the
5 reverse?

6 MR. BIBO: I'm not real clear --

7 CHAIRMAN WAXMAN: I suggest we let them do
8 what they're going to do and then we can have something to
9 talk about.

10 MS. DEDERER: What you do depends on how long
11 it takes us to go through it. It will need a brand new day
12 if it's a completely new document, new order, new whatever.

13 CHAIRMAN WAXMAN: But, again, it's going to
14 be a composition of things you've already read. So it's
15 not totally new. They're trying to take two concepts, two
16 ideas, two documents, merge them into one that they think
17 is in compliance with the statutory requirements, and I
18 think -- in my mind, rather than sit here and talk about
19 what if, let them do it and then we can talk about it.

20 MR. BIBO: Okay.

21 MS. AVERY: I think it will be somewhat clear,
22 but that's the main point, what the Chairman just said,
23 that we have to make sure that whatever we come up with and
24 present to the Board are under compliance with the statute.

1 MS. DEDERER: I understand that, and you went
2 through very nicely and went through their proposal very
3 nicely and said what was wrong with it, and I guess my
4 simplistic presumption was you were going to go through
5 their proposal and knock out what can't be there and
6 substitute something else, but I didn't realize that you're
7 not doing that at all. You're starting from wherever,
8 probably where it is right now, and maybe taking some of
9 their language and putting it in, which means --

10 CHAIRMAN WAXMAN: I'm not sure that's what
11 they're doing.

12 MS. DEDERER: So what are you going to do?

13 MR. PICK: We said it several times.

14 MS. DEDERER: Okay. I'm sorry. I just didn't
15 understand what you said.

16 CHAIRMAN WAXMAN: My understanding, they're
17 going to take Document A and Document B and merge them into
18 Document C, which would then take into account what we want
19 from A and what we want from B and make sure that it all is
20 in compliance with the statutory requirements.

21 MS. AVERY: And B is the current rules and
22 statutory limitations that we have, the statutory language
23 that we currently have.

24 CHAIRMAN WAXMAN: So it's not a brand new

1 document. It's a composite of documents you've already
2 seen.

3 MR. PICK: And what we've been talking about
4 today.

5 MS. DEDERER: I understand. That's fine.

6 MS. AVERY: And we'll do our best to explain
7 in the comments, and then it will also give opportunity for
8 comments from the entire sub-committee.

9 MS. DEDERER: Fine.

10 CHAIRMAN WAXMAN: And Judy's suggestion is
11 well taken, that we have a couple more meeting dates
12 scheduled, so if we feel they haven't done what we as a
13 committee want, we've got more meeting time to adjust.

14 MR. FOLEY: Confusing but yet amusing.

15 MR. PICK: Clear as mud.

16 MS. AVERY: I think the Sub-committee will
17 have the authority to say yea or nay, send this to the
18 Board or not.

19 MR. URSO: Right.

20 MR. PICK: Um-hum.

21 MS. DEDERER: Sure. Maybe what I'm thinking
22 is you have -- and I am not against your proposal, by any
23 means. I'm not saying I endorse anything in it. But we
24 have taken up a lot of committee time to go through the

1 document, to have the overview. It's most of today's
2 meeting, and when you say "merge", that could be anything.
3 That could be nothing that resembles either side. I'm just
4 saying it's kind of --

5 MS. AVERY: No, it will resemble.

6 MS. DEDERER: It will resemble what?

7 MS. AVERY: The proposal and the things that
8 Mike talked about that we looked at, that was a clear
9 conflict. When there is a clear conflict with the statute,
10 we will communicate that, but it will definitely encompass
11 the work that was done by those associations.

12 CHAIRMAN WAXMAN: The intent of -- and you're
13 right, we took a long time today, but the intent was to
14 make sure that all of us -- those of us who had not
15 participated in the writing of that document or in the
16 meetings of that document -- understood where they were
17 coming from, recognizing that some of us have a whole
18 different perspective of long-term care than the people who
19 wrote that document, and bring some other thoughts to this
20 meeting, to the sub-committee. Why they're part of the
21 sub-committee is because of the diversification that we're
22 trying to achieve by having such a large committee and the
23 need to be in compliance with statutory and put it all
24 together. So, yeah, the intent of today was to look at the

1 document, look at what the concerns were, look at what rule
2 making needed to do with it, and give them permission to
3 move forward with putting all those thoughts together into
4 a new document that contains most of everything we all kind
5 of agree with, and we also --

6 MS. DEDERER: How can you say that? We
7 haven't discussed anything. You're taking State Agency
8 comments and their proposal and merging them. Please don't
9 present this as if we've discussed any of this. We
10 haven't. You said, in fact, we don't want to discuss these
11 issues, let them make their presentations. We've asked a
12 few questions to see where they came from, but we've not
13 discussed these issues.

14 MS. AVERY: I think we skipped that part, but
15 the Chairman said -- he did, said let's get through all the
16 presentations and then we'll have discussion. So I think
17 you need to open the floor for discussion.

18 MS. DEDERER: Did that happen? Was I asleep?

19 CHAIRMAN WAXMAN: I apologize. If there's
20 some things you would like to discuss, it's open.

21 MS. DEDERER: It's a huge issue. We've been
22 saying from the beginning it's a big thing. Start it
23 someplace to discuss it. You can't just said, "Let's
24 discuss it", because you stopped us from discussing things

1 that some of us might have wanted to discuss as we went
2 through it.

3 MS. AVERY: I don't think the Chairman
4 intentionally stopped it, but I think it would be a
5 discussion worthwhile, once we have another document, and
6 maybe we do have it in hand, if you want to comment on it.
7 From the Department's point, is that what you're saying,
8 there's some things that --

9 MS. DEDERER: Not at all. All I'm saying is
10 please don't represent what you're planning on give us on
11 the 1st as something we all had input into it. It is
12 something that you had input in and the association had
13 input on it. There are some disagreement with what the
14 associations did. How do you know? You talked to
15 people -- because you talked to people outside the meeting.

16 MS. AVERY: I assumed you were here at the
17 meeting before.

18 MS. DEDERER: I've been at all of the
19 meetings.

20 MS. AVERY: So it was probably something that
21 was discussed --

22 MS. DEDERER: Nothing has been discussed.

23 CHAIRMAN WAXMAN: We're trying to get -- I'm
24 trying to get everybody to the same point, to the same

1 bases of data. That's what I'm trying to make sure, that
2 we all have the same starting point.

3 MS. AVERY: Maybe we can look at it this way:
4 If there is comment that needs to be made on the rules that
5 was drafted by the associations, can that be sent to us
6 electronically?

7 MS. MITZEN: No, no, no.

8 MS. DEDERER: It's the whole committee, the
9 whole thing that the committee is charged with for the
10 whole year. I'm sorry.

11 MS. MITZEN: What Teri is raising for me is
12 what is the process, and I guess I was -- a red flag went
13 up for me, Mike, when you mentioned that -- there were two
14 things that you said. Number one, you wanted the diversity
15 of opinion but, number two, you said we're going to be
16 reviewing a document that we've all kind of agreed on, and
17 I agree with Teri, we really have not had the discussion,
18 and I'm not sure if we're prepared to do that today, and
19 that's why I made the comment that I did before. My
20 feeling is that when we get together next time, we will --
21 those of us around the table with a lot of diverse opinions
22 and a lot of diverse expertise and experience will then
23 bring to bear that expertise and experience to this
24 document.

1 CHAIRMAN WAXMAN: Absolutely.

2 MS. MITZEN: That will then be changed. It
3 will totally be a draft. But I think we need to be
4 prepared to have that discussion, and I think you need to
5 be prepared to frame it as a discussion.

6 CHAIRMAN WAXMAN: Absolutely.

7 MS. MITZEN: And help us to chunk it out so
8 that we can have discussions on each path. We may want to
9 chunk it out in such a way that we have leaders of each
10 part or something, but I think you need to have a strategy
11 for having a healthy, open discussion on this.

12 CHAIRMAN WAXMAN: And you're absolutely
13 right, and I don't disagree with you, and that's why I'm
14 suggesting that let them get the document into our hands 72
15 hours or more so that all of us can from our perspective,
16 bring it back with the points we want to discuss.

17 MS. MITZEN: Not bring it back with the
18 points we want to discuss. I think really -- there are
19 aspects of this document where I think all of us had
20 questions or had comments or something.

21 CHAIRMAN WAXMAN: Is that not discussion?

22 MS. MITZEN: But I think it's -- yes, we can
23 submit our comments, but it's different to have a
24 discussion. It's different to have a sharing and a cross

1 conversation of what we think needs to go in here, and I
2 think you started out by saying we may not all agree with
3 the end product at the end, but the fact is that.

4 CHAIRMAN WAXMAN: And I stick by that.

5 MS. MITZEN: Good. I think we need to start
6 at the beginning. We haven't had a conversation.

7 MS. DEDERER: Can I say something in a
8 measured tone, and I will try to keep my anger down, but I
9 have been saying the same thing and other people are saying
10 the same thing and I don't think it's getting heard. We
11 need to have incremental discussion. There needs to be a
12 starting point, a strategy, as she said, and what is in
13 these rules is the whole thing that we're ever supposed to
14 discuss for this whole long period that we're going to be
15 discussing it. So it's not like we're going to take your
16 new document and list all our comments and go someplace.
17 It's the whole thing we're supposed to be discussing. So,
18 we need to decide what we're going to discuss and do that,
19 because we're only going to get through part of it, and
20 then fix that for the rule submission, and then pick other
21 parts, you know, when we next get together, so there's some
22 sort of organization strategy. "Strategy" is the best
23 word. How are we going to get through to submit something
24 that anybody in this board, besides the two sides that have

1 had any input on, if we don't do that, because we don't
2 have time to submit comments on the whole thing or even
3 discuss the whole thing.

4 MR. BIBO: And I think we need to be a little
5 careful, because we are a sub-committee, as Frank says, to
6 the Mother Board. We're sub-committee to the Mother Board,
7 not to the Staff, and we have opinions, and we need to make
8 sure we're being heard as to what the opinion is, and not
9 everyone will agree with what was prepared by the
10 association today, and we may not always agree, but we want
11 to make sure that it's not being guided -- I mean, the big
12 Board can sit there and say "We don't like what you've
13 done", but we want to make sure that it's our views, that
14 we're leading our own discussion and not we're being led in
15 that discussion.

16 MR. CONSTANTINO: That's not the intent of the
17 Staff.

18 MR. BIBO: And that's why I'm willing to say
19 let's see what comes out in three weeks.

20 MR. CONSTANTINO: All we're offering to do is
21 put on a document that includes both what is and what Teri
22 proposed. That's all --

23 MR. BIBO: Okay.

24 MR. CONSTANTINO: If you want someone else to

1 do it, that's fine with us, Mike.

2 MR. BIBO: No, as long as everybody
3 understands. As you heard the discussion -- I've been
4 sitting here fairly quiet today. I just want to make sure
5 we are clear that there are varying opinions here, and I
6 think it's a little clearer now of what your document is
7 going to be than when we first started.

8 MS. AVERY: I'm really thinking outloud, but
9 there have been parts that have been introduced that are in
10 direct conflict with the statute. So, in the interest of
11 time and review, that we point out those that are really in
12 conflict with the statute and we just concentrate on the
13 parts that are not, and maybe we won't have anything ready
14 for February 4th or before that and that we use that
15 February 4th meeting or whatever to hold this discussion,
16 or we agree to stay here past the next 25 minutes and get
17 things done. But I don't see people being able to go
18 through this -- it was my assumption when I got here that
19 the entire sub-committee had reviewed this document, and
20 that was a wrong assumption to make, because I thought all
21 you all --

22 MR. URSO: But they did.

23 MR. CONSTANTINO: That document has been in
24 the sub-committee's hand.

1 CHAIRMAN WAXMAN: We had it, but I wanted
2 everyone to hear Terry's presentation and Staff's so that
3 they all have the same bases of where this committee should
4 stand as a group in terms of the documentation that the --
5 the document that the four or three associations put
6 together, as well as Staff's concerns about that. That was
7 my intent of today.

8 MS. AVERY: And that's why I assumed that
9 everyone on the sub-committee had been involved with this,
10 until I heard that it was those members of those
11 associations, because I thought everybody was part of one
12 of the four of those associations.

13 CHAIRMAN WAXMAN: No, because you've got
14 people here who are not part of the association today.

15 MS. AVERY: I learned that today.

16 MS. DEDERER: Can I offer an alternative? If
17 you have language that meets the statutory requirement, it
18 must be helpful to make sure that is in the document that
19 you give us and we won't discuss those because we know
20 they're in compliance. Let's discuss some of the new stuff
21 and see if we agree on that and if we don't agree on that
22 we're going to have whatever was in existence stuck in
23 thereto meet the March deadline. Does that make some kind
24 of sense?

1 MS. AMIANO: With all did due respect I think
2 that's what they're proposing.

3 MS. DEDERER: I kept asking if that's what you
4 were going to do but I guess I'm not expressing myself.

5 CHAIRMAN WAXMAN: I thought examples we
6 showed you showed you that where there were conflicts it
7 was going to be in red and comments on the side so that
8 when you get the document, you would see where the
9 conflicts clearly are illuminated in red like an old high
10 school grading paper.

11 MS. AVERY: It doesn't prohibit you from
12 commenting on the existing document that has been put forth
13 by the associations.

14 MS. DEDERER: Understood. We just have to
15 come down to focus on something that is doable.

16 MR. PICK: What I hear you saying, Teri, is
17 that what would be helpful in addition to the consolidation
18 of the documents is discussion points. If we don't limit
19 to a couple of discussion points, we're going to be all
20 over the place and get nothing done.

21 CHAIRMAN WAXMAN: Well, you know, we'll do
22 that. When we put the agenda together, we'll come up with
23 discussion points.

24 MS. DEDERER: That would be great, thank you.

1 MR. PICK: And that those discussion points
2 don't limit where we go past the next meeting, it just
3 identifies what we're going to focus on that next meeting.

4 MS. DEDERER: I think that would be great.

5 MS. CUNNINGHAM: If I can raise one point. I
6 appreciate what you said about valuing the diversification
7 of this committee, because -- and I recognize that we've
8 had a difficult conversation here, but there are so many
9 things going on in the world of long-term care and
10 long-term care transformation and rate setting and
11 licensure that, you know, this is a very important part of.
12 But I think we need to have kind of everybody around the
13 table think about this in the context of a much larger
14 picture as well, because this is an important piece, but
15 it's sort of one piece, and there's a lot of -- lot going
16 on right now.

17 MR. BIBO: And we need to be aware of other
18 Legislation that has already passed and groups that have
19 already worked on similar sort of issues, like the new
20 Medicaid reform, and the whole thing has to be considered.

21 MS. CUNNINGHAM: When we were just trying to
22 come up with a meeting date, we noted a couple conflicts
23 with Older Adult Services Advisory Committee that's been
24 out there for five or six years, trying to transform the

1 long-term care system. This is just one of several -- it's
2 an important piece of several efforts, and the better
3 diversified we are and the better we're able to take the
4 time and look at this in a comprehensive fashion I think
5 the better it is.

6 MR. SULLIVAN: I don't think we're
7 diversified. We all go to the same meetings.

8 (Laughter)

9 MR. PICK: In response to your comment, Kelly,
10 being on the Medicaid Advisory Committee, I think it would
11 be helpful for this group, in order to synthesize all of
12 the different initiatives going on, is get to input from
13 HFS on where the rates methodology is going, what
14 programmatic focus the Department is having, in trying to
15 really reorient how long-term care services are provided to
16 those Medicaid recipients in the state of Illinois. And --
17 because I think that's an important aspect from a planning
18 standpoint, how to make sure that gets incorporated.

19 MR. FOLEY: As part of long-term planning.

20 MR. PICK: Yeah, long-term, not for March.

21 MR. LAVIN: Going back to Teri's and Phyllis's
22 he's, there's some really intriguing ideas that Terry put
23 up on the Board that possibly could be a vast improvement
24 of what we're doing, or possibly not, and if we decide --

1 it sounds to me like some of those things are just not up
2 for discussion because they're not in the particular
3 statute that set this up or whatever. But I don't think
4 we'd be doing our job if we don't talk about trading beds
5 and thirty minutes and those types of things. I think we
6 got to at some point really wrap our minds around what do
7 those mean? Why can't those be part of comprehensive
8 planning, those types of things?

9 MS. AVERY: Those things are.

10 MR. LAVIN: It seems to me if we narrow their
11 proposal, it's a problem as well.

12 CHAIRMAN WAXMAN: I certainly hope you didn't
13 hear me say that they're not open for discussion. I think
14 what we have to understand is that we have a long-range
15 goal in mind, and those things are part of the long-range
16 goal, and that some of the things cannot become part of the
17 rules. They're going to become part of our recommendations
18 to the Mother Board and ask the Mother Board then to take
19 them to the people who can make the changes, but,
20 certainly, I come from the same place that most of them
21 come from in terms of recognizing changes and
22 incorporating -- you know, you can't regulate long-term
23 care without looking at assisted living beds, and you have
24 to talk about making better use of the inventory of beds.

1 So I am in the same spot. We just have to do it according
2 to the cards we've been dealt, some of which allow us to
3 write rules, some of which tell us that we don't have that
4 authority or the power, which is frustrating all of us, but
5 we have to recognize that we can make recommendations,
6 again to use Frank's word, to the Mother Board and make
7 presentations to them, because we are invited to
8 periodically, and ask them to take it to whoever they need
9 to take it to, to change the rules and say, why don't we
10 put all continuity of care or continuum of care under one
11 group of people and get this thing fixed, so that they are
12 all looked at, skilled, intermediate, assisted living and
13 sheltered, whatever else might be there.

14 So, yeah, nothing is not ever going to be
15 discussed. It's point of time that we'll do it and whether
16 it's something that we're going to take up as a
17 recommendation versus something we're going to write as a
18 rule and ask them to bless it.

19 Frank, do you agree?

20 MR. URSO: Yes, I do, and just to further
21 elaborate on Mr. Waxman's fine, eloquent words, all the
22 material that came out of the focus groups was looked at.
23 None of it -- you know, Bill worked along with some other
24 Staff people and put the list together, and everything is

1 there that you came up with.

2 MS. DEDERER: Yes, great.

3 MR. URSO: And we're saying that all of that
4 is important, but it can't be timely met, you know, because
5 some of it is going to involve research and study and it's
6 going to take time. And that's all we're trying to say.
7 Everything is important, nothing is off the table, and it's
8 going to take time to get there.

9 CHAIRMAN WAXMAN: Teri, I hope you're feeling
10 better about where we're heading.

11 MS. DEDERER: I'm sorry. I'm just really bad
12 about losing my temper.

13 MR. FOLEY: No, you're not.

14 MS. DEDERER: I usually take someone to the
15 meeting that just kicks me when I get out of control.

16 (Laughter)

17 MS. DEDERER: I was looking for a strategy,
18 what are we going to do, because it just seems like we talk
19 about this in a big circle, and I can't make it sit down so
20 we can actually talk about something. And, Mike, I mean, I
21 think that what you were going to do is what I thought, and
22 I thought I was asking that question and I just didn't hear
23 the answer right, and that was frustrating.

24 MR. CONSTANTINO: The Staff is not telling the

1 sub-committee to do anything.

2 MS. DEDERER: No. I love Staff. We need to
3 get on paper what we need to get on paper.

4 MR. CONSTANTINO: We have to report to the
5 Board whether or not it's in compliance with the statute.

6 MS. DEDERER: Absolutely.

7 MR. CONSTANTINO: All we've doing is provide
8 assistance to this committee. That's all we're trying to
9 do.

10 MR. BIBO: I agree. Your assistance is great,
11 and we need it. I just think there was some
12 misunderstanding about what document we're getting, and I
13 think we cleared it up very much.

14 MS. DEDERER: It wasn't you.

15 CHAIRMAN WAXMAN: Let the record reflect it
16 was my fault.

17 (Laughter)

18 MS. DEDERER: I am, I'm really sorry. I just
19 want us to do something. There's so much to do.

20 CHAIRMAN WAXMAN: You know, Teri, I appreciate
21 your being up-front about it, because there may be some
22 other people here who may have the same feelings and don't
23 feel like sharing that. So if I don't hear it, I can't fix
24 it, I can't remember respond to it. So I thank you for

1 bringing it forth and, again, please, everybody, if you
2 have any issues, especially negative issues, he's Co-Chair.

3 MR. PICK: I get the negatives.

4 CHAIRMAN WAXMAN: On a serious note, we have
5 spent the last couple weeks in several conference calls
6 with Staff, and I personally and I know Eli, because we
7 were both on them -- I want to thank you for all of the
8 time you guys have already put into this.

9 (Applause)

10 CHAIRMAN WAXMAN: It's kind of --

11 MR. FOLEY: They don't have anything else to
12 do.

13 MS. DEDERER: Do you want to get killed over
14 there?

15 (Laughter)

16 CHAIRMAN WAXMAN: They were all out dancing
17 with the Governor yesterday.

18 (Laughter)

19 CHAIRMAN WAXMAN: We all sit on a lot of
20 committees and boards, and if you don't share anything or
21 have the position that allows you to interact with Staff,
22 you don't realize how much work they're actually doing. So
23 I got that opportunity the last couple weeks, and I truly
24 thank you for all of the presentations.

1 Bonnie, thank you for putting lunch together.

2 I know that was a pain.

3 MR. PICK: Motion to adjourn?

4 CHAIRMAN WAXMAN: Motion to adjourn.

5 MR. PICK: So moved.

6 CHAIRMAN WAXMAN: A motion. Can I have a
7 second?

8 MR. BIBO: Second.

9 CHAIRMAN WAXMAN: All in favor?

10 ("Ayes" were heard).

11 CHAIRMAN WAXMAN: Adjourned.

12

13 END TIME: 1:50 P.M.

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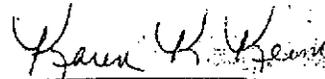
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CERTIFICATE OF REPORTER

I, KAREN K. KEIM, RPR, CRR, a Certified Court Reporter in the States of Illinois and Missouri, do hereby certify that the proceedings in the above-entitled cause were taken by me to the best of my ability and thereafter reduced to typewriting; that I am neither counsel for, related to, nor employed by any of the parties, and further that I am not a relative or employee of any attorney or counsel employed by the parties thereto, nor financially or otherwise interested in the outcome of this proceeding.



KAREN K. KEIM
CRR, RPR, CSR-IL, CCR-MO

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