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S100862
ILLINOIS HEALTH FACILITIES AND SERVICES REVIEW BOARD
LONG-TERM CARE ADVISORY SUBCOMMITTEE MEETING

REPORT OF PROCEEDINGS

Bolingbrook Golf Club
2001 Rodeo Drive
Bolingbrook, Illinois

June 24, 2014
10:05 a.m. to 2:06 p.m.

Reported by: Anca Hrisca, CSR, RPR

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PRESENT:

- MR. MICHAEL WAXMAN, Chairman;
- MR. WILLIAM BELL, Co-Chairman;
- MR. DALE GALASSIE; Board Member;
- MR. BILL CASPER, Member;
- MR. PAUL CORPSTEIN, Member;
- MS. CECELIA CREDILE; Member;
- MR. TIMOTHY PHILLIPPE, Member;
- MR. DAVID RAIKES, Member;
- MR. MICHAEL SCAVOTTO, Member;
- MR. TERRY SULLIVAN, Member; and
- MR. FRANK URSO, General Counsel.

STAFF PRESENT:

- MS. COURTNEY AVERY (Appeared telephonically);
- MR. GEORGE GROSS (Appeared telephonically);
- MR. WILLIAM DART;
- MS. ANN GUILD;
- MR. NELSON AGBODO;
- MS. CLAIRE BURMAN; and
- MS. CATHERINE CLARKE.

ALSO PRESENT:

- MR. CHARLES FOLEY;
- MR. JOHN FLORINA; and
- MS. ELIZABETH GUZMAN.

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1 CHAIRMAN WAXMAN: Okay. Frank, we'll
2 start with you.

3 MR. URSO: Frank Urso, counsel to the
4 Board.

5 MR. AGBODO: Nelson Agbodo, HFSRB Staff.

6 MR. DART: Bill Dart, IDPH Staff.

7 MEMBER PHILLIPPE: Tim Phillippe,
8 Christian Homes.

9 MEMBER CASPER: Bill Casper,
10 CJE SeniorLife.

11 MEMBER CORPSTEIN: Paul Corpstein,
12 IDPH Licensure.

13 MS. GUILD: Ann Guild, HFSRB.

14 MS. GUZMAN: Proxy Elizabeth Guzman for
15 Ms. Nina Johnson.

16 MR. FLORINA: John Florina, visitor.

17 MEMBER SCAVOTTO: Michael Scavotto,
18 committee member.

19 MEMBER SULLIVAN: Terry Sullivan,
20 committee member.

21 MEMBER RAIKES: David Raike, committee
22 member.

23 MR. GALASSIE: Dale Galassie, member of
24 the Health Facility Review Board.

1 MS. BURMAN: Claire Burman, Board Staff.

2 CHAIRMAN WAXMAN: Mike Waxman for Chair.

3 CO-CHAIRMAN BELL: And Bill Bell,

4 Co-chair.

5 CHAIRMAN WAXMAN: Dale, we welcome you.

6 MR. GALASSIE: Thank you.

7 CHAIRMAN WAXMAN: Nice having you.

8 We need to approve --

9 MR. URSO: Mike, we need to get the
10 people on the phone.

11 CHAIRMAN WAXMAN: Oh, I'm sorry.

12 People on the phone, would you identify
13 yourselves, please.

14 MS. AVERY: Hi. Good morning. It's
15 Courtney.

16 I apologize for not being there in person.
17 I got pulled in on a grant to help out with the
18 governor's office at the last minute.

19 CHAIRMAN WAXMAN: You're probably
20 sitting at home drinking iced tea in your pajamas.

21 MS. AVERY: I'm in the office . . . in
22 my pajamas.

23 CHAIRMAN WAXMAN: Who else is on the
24 phone?

1 MS. AVERY: Mike Constantino and
2 George Gross, and they may be on mute.

3 George, are you still there?

4 MR. GROSS: Yes, ma'am. George Gross,
5 IDPH Staff.

6 CHAIRMAN WAXMAN: Is Mike on the phone,
7 also?

8 MS. AVERY: He should be. I'm going to
9 call and make sure we didn't lose him.

10 CHAIRMAN WAXMAN: Okay.

11 MS. AVERY: Go ahead.

12 CHAIRMAN WAXMAN: Thank you.

13 So we don't have -- we have no voting
14 members on the phone at this point; right?

15 MR. GROSS: No.

16 CHAIRMAN WAXMAN: Okay. The group needs
17 to approve Elizabeth being the proxy for Nina Johnson,
18 so I need a motion.

19 MEMBER PHILLIPPE: First.

20 MEMBER SCAVOTTO: Second.

21 CHAIRMAN WAXMAN: Mike Scavotto second.

22 All in favor?

23 (The ayes were thereupon heard.)

24 CHAIRMAN WAXMAN: Any opposed?

1 Okay. You owe them 50 cents and the rest a
2 quarter. Welcome to the group.

3 MS. GUZMAN: Thank you.

4 CHAIRMAN WAXMAN: Need approval of the
5 agenda.

6 MEMBER SULLIVAN: So moved.

7 MEMBER RAIKES: Second it.

8 CHAIRMAN WAXMAN: Terry made the motion,
9 and we have a second.

10 So all in favor?

11 (The eyes were thereupon heard.)

12 CHAIRMAN WAXMAN: Any opposed?

13 The motion carries.

14 Third, we need an approval of the
15 transcripts from the April 30th meeting.

16 MEMBER PHILLIPPE: So moved.

17 CHAIRMAN WAXMAN: Tim?

18 MEMBER SCAVOTTO: Second.

19 CHAIRMAN WAXMAN: Michael, thank you.

20 All in favor?

21 (The eyes were thereupon heard.)

22 CHAIRMAN WAXMAN: Any opposed?

23 The motion carries. Thank you very much.

24 Who is doing the update on the revisions to

1 the CON -- are you, Mike? Or is that Staff?

2 MS. BURMAN: I'm going to be doing that.

3 CHAIRMAN WAXMAN: Claire is doing the
4 update for the Staff report.

5 MS. BURMAN: It's a mini report. I just
6 wanted to let the subcommittee know that we did not
7 forget about putting together the draft rule changes
8 for you. We need a little more time to complete that.
9 That together with the fact that this meeting is
10 primarily focused on the by -- by itself programmed
11 for the long-term care beds, we thought that we would
12 be better off pushing it off to the next meeting of
13 this group so we can have a better concentration on
14 that document.

15 CHAIRMAN WAXMAN: Michael, as chair
16 of that subgroup, do you have anything you wish to
17 add or --

18 MEMBER SCAVOTTO: No, I don't. We
19 submitted our report, and, from what I know, it's been
20 accepted.

21 CHAIRMAN WAXMAN: And we, as the big
22 group, thank you for all the work that you and Cece
23 and others have done.

24 Cece called a few minutes ago. She should

1 be here shortly.

2 Again, thank you, Michael.

3 Okay. Unfortunately, Item 5 is not going to
4 roll that fast, in case you were thinking we'd be out
5 of here early.

6 Okay. Just as a housekeeping task, I have
7 an unfortunate conference call at 11:30, so Bill will
8 take over at 11:30.

9 Lunch is scheduled for what time?

10 MS. CLARKE: Twelve o'clock.

11 CHAIRMAN WAXMAN: Okay. So we'll break
12 for lunch at 12:00.

13 This is the Staff's report; correct?

14 MS. BURMAN: Yes.

15 CHAIRMAN WAXMAN: As I look around the
16 room, Claire, you are Staff.

17 MS. BURMAN: All right. As follow-up
18 to the UIC study, I know that a number of the members
19 here were hopeful that we could ask for additional
20 changes to their study. They aren't willing to do
21 that unless we prepare a new contract and come up with
22 more funds, so --

23 CHAIRMAN WAXMAN: Shock.

24 MS. BURMAN: Yeah. So we don't really

1 see that that is going to be happening.

2 And it would be suggested that we take
3 whatever we feel is useable from the document that
4 they did prepare and incorporate it with the rest of
5 our findings when we put a presentation together for
6 the Mother Board, HFSRB.

7 CHAIRMAN WAXMAN: Did this letter get
8 submitted?

9 MS. BURMAN: I had asked Courtney, and
10 she said no but she was going to.

11 CHAIRMAN WAXMAN: And will you?

12 MS. BURMAN: Yes.

13 CHAIRMAN WAXMAN: Again, a point of
14 information, Bill and I and Courtney and Claire -- is
15 there anybody else -- and, Frank, I think you were on
16 the call -- we wanted to make it perfectly clear to
17 the Mother Board this subcommittee's position in terms
18 of the UIC report.

19 So there is a letter somewhere between here,
20 Courtney, and Dale and his group that reads the
21 following: "Dear Chairperson Olsen, as you may be
22 aware, the Long-Term Care, LTC, Advisory Subcommittee
23 of the Health Facilities and Service Review Board,
24 HFSRB, has been analyzing a possible development of a

1 long-term care bed buy/sell program in Illinois. As
2 part of the subcommittee's analysis in consideration
3 of such, a program -- in consideration of such a
4 program, the University of Illinois at Chicago, UIC,
5 was contracted to develop a study of how this type of
6 activity would impact Illinois.

7 "As the chair and spokesperson of the LTC
8 Advisory Subcommittee, I am contacting you to clearly
9 state that the subcommittee members are not in
10 agreement with the UIC study which strongly recommends
11 the elimination of the HFSRB. The subcommittee did
12 not request that the UIC team provide their opinion
13 or any comment regarding HFSRB or CON activities and
14 considers the comments to be unnecessary and
15 unwelcome.

16 "At a future date, the LTC Advisory
17 Subcommittee will provide HFSRB with a full analysis
18 and recommendations regarding the development of an
19 LTC bed buy/sell program.

20 "If you have any questions or require any
21 further information concerning this matter, please
22 contact me at or my e-mail address." And signed by me.

23 So we wanted the committee to know that
24 we felt strongly enough that we didn't want the

1 Mother Board to think we were kind of voting to
2 dissolve the Mother Board, which supports our
3 committee, which made no sense at all. So that letter
4 is either in Cathy Olsen's hands or will be.

5 Have you seen or aware of it?

6 MR. GALASSIE: No.

7 CHAIRMAN WAXMAN: Okay.

8 Courtney, do you know where the letter is?

9 MS. AVERY: Yeah. Ms. Olsen has it, and
10 she's been extremely, extremely busy and will respond
11 to it and alert the other Board members at our July
12 meeting.

13 CHAIRMAN WAXMAN: Okay. That being --

14 MS. AVERY: She does have it.

15 CHAIRMAN WAXMAN: Okay. I guess, is
16 anyone on this committee upset that we put that letter
17 in place, before we move on?

18 MEMBER SULLIVAN: No. Although I found
19 the UIC study pretty stimulating and interesting.

20 I mean, I totally agree with the letter. I think UIC
21 went way beyond what we asked them to do.

22 But what they did investigate I thought
23 was -- sparked good discussion here and -- and opened
24 up -- opened up my mind a little bit more, too.

1 CHAIRMAN WAXMAN: Before we go any
2 further, Cece, do you want to identify yourself for
3 the record?

4 MEMBER CREDILLE: Cece Credille,
5 representative of the Illinois Healthcare Association.

6 MR. GALASSIE: I would agree with what
7 Terry said, if I may. And I can't determine if they
8 went beyond the scope. I think Frank and Courtney
9 made that determination and I respect that.

10 That having been said, I still respect the
11 recommendation. It doesn't mean that I agree with it,
12 but I think it's healthy for the Board to hear those
13 comments, and as we know, this regulatory process is
14 different in every state. So I -- I don't really have
15 a problem with the recommendation.

16 CHAIRMAN WAXMAN: You will lose your big
17 income.

18 MR. GALASSIE: That's true. That's
19 true.

20 CHAIRMAN WAXMAN: Okay. Now we're back
21 to carry on.

22 MS. BURMAN: Okay. Okay. Well, on the
23 agenda we're going to be looking at Ohio's long-term
24 care bed buy/sell program.

1 We're going to start with page 10 in your
2 packet that you were sent in the committee indication.
3 Page 10. And this is simply a follow-up to the IHCA
4 comments regarding Ohio's program, which was very
5 helpful.

6 And Cece was good enough to put me in touch
7 with part of the team that constructed Ohio's program
8 some 20 years ago. It was very good to talk to her.
9 She was very open and -- and full of details. She was
10 just -- you know, it was very helpful to get her take
11 on all of this.

12 They started out -- she read actually a lot
13 of the material that I sent her, and my hats off to
14 her for doing that because it was quite a bit.

15 And I meant for her to kind of pick and
16 choose what she wanted to see. But she actually read
17 transcripts, and she was kind of chuckling while we
18 were talking because a lot of the things we are
19 struggling with in trying to study this whole idea,
20 they went through many, many times. And over the last
21 20 years, they have tweaked the program. It didn't
22 just start out in the program that you have today.

23 MEMBER CREDILLE: Can I just say,
24 I can't do this for 20 more years.

1 MEMBER SULLIVAN: Is that a motion?

2 MEMBER CREDILLE: Yeah, really, Claire.

3 We should do it --

4 MEMBER SULLIVAN: I second it.

5 MEMBER CREDILLE: -- as a motion. Oh,
6 my God.

7 MR. URSO: One person needs to speak at
8 a time or else the court reporter is not going to be
9 able to get this great conversation down. Thank you.

10 MS. BURMAN: Okay. We'll get right
11 into it.

12 Okay. I took the document that's entitled
13 "Follow-Up to ICA Comments." And in red -- I don't
14 know if you printed yours in color -- but I added onto
15 some of the points that Cece provided.

16 No. 3, there are bullet points after the
17 first paragraph, and that's what I learned from
18 Ms. Kenny.

19 She stated that the prices stated in the UIC
20 report are not verified by the Ohio CON agency. Those
21 were just -- they were provided but not verified.

22 And Ms. Kenny believes that UIC used price
23 figures that include intercounty transfers, which in
24 Ohio means there was no cost involved. And,

1 therefore, by adding those to the bundle, it kind of
2 skews the average price, it lowers it. I just want to
3 make sure that's clear.

4 She -- although she hasn't been with the
5 agency for a number of years now, she tracks those
6 figures herself. And according to the figures that
7 she has taken into account that do not include the
8 intercounty transfers, from 1999 to 2008, prices
9 averaged \$17,305 per bed. Then they made some changes
10 prior to 2009, and then they saw more activity kind of
11 die down a bit. They saw more activity at that point.

12 So between 2009 and 2012, the prices
13 ranged -- or rather averaged -- \$16,090 per bed.

14 MEMBER CASPER: Claire --

15 MEMBER CREDILLE: Yeah, so -- Claire,
16 I'm looking at page 18 at UIC's study just because it
17 was so low. It looks like at the low water point in
18 the UIC study, they have it below \$5,000 per bed.

19 And so it's very clear that it's a
20 substantive difference that I think needed to be
21 communicated to operators who have a fear and a
22 concern about what buy/sell will do to the cost of
23 their bed and then the actual transaction and just
24 implications for the industry. Because it's -- that's

1 substantive.

2 MS. BURMAN: Yes. It's a significant
3 difference.

4 MEMBER SULLIVAN: And this seems far
5 more realistic, you know, this update.

6 MS. BURMAN: Well, I'm just reporting
7 what I was told.

8 MEMBER PHILLIPPE: That's actually close
9 to what we did per bed. We were looking at
10 developments in Cincinnati. And we had two contracts
11 to expand the facility we were managing, and they were
12 in that range.

13 So it probably varies across the market,
14 though, depending on the payer mix or across the
15 state.

16 CHAIRMAN WAXMAN: Bill -- I'm sorry.
17 Bill, are you aware of any recent sales? Any recent
18 sales? Do you happen to know what the average bed
19 price was?

20 MR. DART: No, I do not.

21 CHAIRMAN WAXMAN: Anybody aware of a
22 recent sale and know what the bed price was?

23 MR. URSO: Are you talking about in
24 Ohio?

1 CHAIRMAN WAXMAN: No, in Illinois.

2 MR. DART: You mean an Illinois
3 transaction where there was --

4 MR. GALASSIE: It's not allowed in
5 Illinois.

6 CHAIRMAN WAXMAN: I'm talking about an
7 outright sale of a nursing home.

8 MEMBER CORPSTEIN: Oh.

9 CHAIRMAN WAXMAN: I guess I wasn't
10 clear.

11 MR. URSO: You want a computation based
12 on --

13 MEMBER PHILLIPPE: Like in a change of
14 ownership?

15 CHAIRMAN WAXMAN: Yeah, change of
16 ownership.

17 MR. URSO: We haven't seen a change in
18 ownership.

19 MR. DART: We see very limited
20 documentation.

21 MR. FOLEY: Between 15- -- I'm sorry.
22 Between 30,000 a bed to in excess of a
23 \$100,000 a bed, depending on your geographic area.

24 MEMBER SULLIVAN: And payer mix.

1 MR. FOLEY: And a payer mix and
2 everything else.

3 So there's a wide range there.

4 MEMBER CASPER: Just a quick question.
5 Can somebody just refresh my memory on what
6 the definition in Ohio of an intercounty bed transfer
7 is? Are those between county facilities, or are those
8 any beds that are transferred within the county, same
9 county? I just think it would be helpful.

10 MR. GALASSIE: I guess it's within the
11 county.

12 CHAIRMAN WAXMAN: Yeah, I don't think
13 it's county facilities. I think it's transactions
14 between facilities of counties.

15 MR. GALASSIE: It should only have one.
16 If you have a county facility, you can only have one.

17 MEMBER CASPER: Right. Yeah, so -- so
18 any bed transfers that take place within the same
19 county are at no cost depending -- regardless of
20 who's --

21 MS. BURMAN: It's more an exchange
22 than --

23 MEMBER CASPER: Uh-huh. Okay.

24 MS. BURMAN: -- than anything else.

1 MEMBER CASPER: That's not right. That
2 can't be correct.

3 MEMBER SULLIVAN: It doesn't sound
4 right.

5 MEMBER CASPER: Yeah.

6 MS. BURMAN: What doesn't sound right?

7 MEMBER SULLIVAN: An exchange? What do
8 you mean "an exchange"? I give you 40 beds, and you
9 give me . . .

10 CHAIRMAN WAXMAN: A handshake.

11 MEMBER SULLIVAN: A handshake.

12 Thank you very much, Michael.

13 CO-CHAIRMAN BELL: Wouldn't that be
14 considered if you were -- if it was a corporation,
15 that you may be moving beds from one facility to
16 another, so there really wouldn't be any cost?

17 MEMBER PHILLIPPE: That's what I thought
18 it meant, personally.

19 CO-CHAIRMAN BELL: That's what I figured
20 an exchange was.

21 MEMBER SULLIVAN: And you can only do
22 that within the same county? You can't move it -- if
23 I am a corporation and I have something in Lake
24 County,

1 I can't move the Lake County beds to Cook County beds?

2 MEMBER CREDILLE: Right. So you could
3 move Lake to Lake, Cook to Cook, DuPage to DuPage, if
4 you were the same owner.

5 MEMBER SCAVOTTO: Is it intercounty or
6 intercompany?

7 CHAIRMAN WAXMAN: Good question.

8 MEMBER SULLIVAN: Yeah, and --

9 MR. GALASSIE: I think those are issues
10 for you to recommend. I mean, the fact that Ohio may
11 or may not do it, who cares?

12 MEMBER SCAVOTTO: It makes sense as
13 intercompany.

14 MEMBER CASPER: But if there's a zero
15 cost to those transactions, then I think it's
16 important,
17 if we're comparing, that we understand what the
18 definition is as we talk about it.

19 MR. GALASSIE: Sure.

20 CHAIRMAN WAXMAN: I would think -- and,
21 Tim, you probably have a better handle on it -- even
22 intercompany, the value of a bed is not the same in
23 your company, is it? Right?

24 MEMBER PHILLIPPE: No. No. I mean,

1 just like people said, it depends on the location, the
2 age of the building. It's all -- it's a business.

3 CHAIRMAN WAXMAN: Sure.

4 MEMBER PHILLIPPE: Think about the bed
5 as a business. And so it's whatever the business is
6 worth. That's what everybody is saying.

7 CHAIRMAN WAXMAN: Yeah. So intercompany
8 would still have a value. So it should be at --
9 I mean, there should be no -- there is a cost
10 associated with intercompany. And that --

11 MEMBER PHILLIPPE: It wouldn't be for
12 me. Because if I have -- I have most of my debt in a
13 joined obligated group, like a lot of not-for-profit.

14 So, essentially, my -- I don't have all my
15 beds -- buildings separated with HUD loans like some
16 people do. All but two of them are actually in one
17 big obligated room, so I can move them around no
18 problem. If you had a law --

19 CHAIRMAN WAXMAN: A law.

20 MEMBER PHILLIPPE: -- I could move my
21 beds around and nobody cares.

22 You know, I have no idea how publicly-traded
23 companies are structured debt-wise. So maybe they are
24 similar enough that they can actually do the same.

1 MR. GALASSIE: But wouldn't you want
2 to be able to trade within your company at no cost?
3 Right?

4 MEMBER PHILLIPPE: Some people might
5 think that gave a great competitive advantage in this
6 state to the large chains if we did that.

7 MR. GALASSIE: That's true.

8 MEMBER PHILLIPPE: So if you're a large
9 chain, you may want that. But I'm a small chain, a
10 very small, so -- but -- but we should think about
11 that and the impact.

12 CHAIRMAN WAXMAN: But -- yeah, so the
13 real criteria is going to be how the balance sheet is
14 set up, whether that that is by home per home and the
15 bed is securing the debt by home rather than by
16 company because then it makes a difference.

17 MEMBER PHILLIPPE: Right.

18 MR. GALASSIE: Isn't it really more of a
19 policy decision? I mean, ultimately, I would see this
20 committee making a recommendation to the Mother Board
21 on a policy as to how this is functioning.

22 CHAIRMAN WAXMAN: But I think our
23 recommendation has to be based upon what works in the
24 marketplace.

1 MR. GALASSIE: Oh.

2 CHAIRMAN WAXMAN: And as we know, most
3 loans are secured by beds, licensed beds. So you
4 can't exchange them without having a balance sheet
5 implication, which then impacts the collateral to the
6 loan.

7 So in Tim's case, which I haven't heard of
8 before, all his debt is secured in a big umbrella, so
9 it doesn't matter where he moves beds.

10 But between those two gentlemen who are not
11 in the same ownership, the bed has value on the
12 balance sheet.

13 So we have to -- as we make our
14 recommendations, we have to be in the position to make
15 recommendations based upon all the different kinds of
16 ownership; otherwise, we can cause some problems
17 for Tim.

18 MEMBER PHILLIPPE: Just in terms of the
19 policy concept, really, the financing follows State
20 policy. So we don't necessarily have to be, I think,
21 limited by however people choose to be financed right
22 now in the State of Illinois because --

23 MEMBER SCAVOTTO: I agree with that.

24 MEMBER PHILLIPPE: -- banks will always

1 change to meet market need.

2 MEMBER SULLIVAN: Right.

3 MEMBER PHILLIPPE: Typically.

4 So, I mean, we should consider it. I think
5 we're right to consider it, but we shouldn't limit it
6 because people can change.

7 And also -- because I have two HUD financed
8 buildings, also, they are separate from the obligated
9 group along with some other things. I'm not totally
10 sold on the fact we can't do anything with those
11 buildings. If I can sell beds and pay off debt or do
12 something with it, I don't see the banker having a
13 problem with that.

14 CHAIRMAN WAXMAN: I remember one of the
15 meetings when Mr. Sheets attended, who is an attorney,
16 health care attorney --

17 MEMBER PHILLIPPE: Uh-huh.

18 CHAIRMAN WAXMAN: -- and he made the
19 comment, if I remember correctly, that it could cost
20 up to \$50,000 to the home to rewrite the documentation
21 to secure a loan. True or not true?

22 MEMBER PHILLIPPE: I used a different
23 attorney.

24 MEMBER SCAVOTTO: That was not -- my

1 recollection is that was not Charles -- Chuck Sheets.

2 I thought it was the guy sitting next to me who was --

3 CHAIRMAN WAXMAN: It wasn't Mr. Sheets?

4 MEMBER SCAVOTTO: It wasn't him. It
5 wasn't Chuck.

6 CHAIRMAN WAXMAN: But it was an
7 attorney?

8 MEMBER SCAVOTTO: I don't know. I think
9 it was --

10 CHAIRMAN WAXMAN: No, I think it was the
11 owner -- it was the owner or part owner of a nursing
12 home chain.

13 MEMBER SCAVOTTO: And I'd like to see
14 that \$50,000 legal bill for doing that.

15 But I -- I agree with Tim on this as a
16 policy decision. If you're going to make this
17 available, I don't think it's our problem to
18 figure out --

19 MEMBER SULLIVAN: The financing.

20 MEMBER SCAVOTTO: -- what the owner's
21 balance sheet ought to look like. I think that's --
22 you make the program available, and if Tim's balance
23 sheet works, great; if it doesn't work, tough taco.
24 He can figure out a way to make it go.

1 CHAIRMAN WAXMAN: Mr. Foley?

2 MR. FOLEY: For the record, the
3 individual was Gerry Jenich, who --

4 CHAIRMAN WAXMAN: Oh, you're right.
5 Thank you.

6 MEMBER SCAVOTTO: You're right.

7 MR. FOLEY: Of course I'm right.

8 MEMBER SCAVOTTO: The record will show
9 that this is the first time in modern history that
10 he's been right.

11 MR. URSO: I have a motion on that.

12 CHAIRMAN WAXMAN: Thank you for both of
13 you pointing out both those facts.

14 Okay. Moving on.

15 MS. BURMAN: We'll move on now to
16 Point No. 2. Ohio requires owners who are going to
17 enter into a buy/sell kind of transaction to give at
18 least 10 percent of the excess beds back to the State
19 so that the State will have a pool of beds.

20 And this requirement originated in the
21 governor's office. They were very concerned with the
22 number of excess beds in that state.

23 And if you look at No. 6, as a result of
24 that change, the Ohio long-term care bed need was

1 reduced from 53 beds per thousand, age 65-plus, to
2 46 beds per thousand, age 65-plus. Their need formula
3 is geared to that age group only, and it is beds per
4 thousand. That's how they handle their bed-need
5 determination.

6 So that was interesting and that was a later
7 development that occurred in 2012.

8 MEMBER SULLIVAN: Does anyone remember
9 what Illinois' bed per thousand is? I know I -- I --
10 Mike Constantino, do you know that? Or Nelson?

11 MR. URSO: Paul.

12 CHAIRMAN WAXMAN: Paul?

13 MR. AGBODO: No.

14 MEMBER CORPSTEIN: No. I have the exact
15 stats of beds that we have licensed --

16 MEMBER SULLIVAN: Okay.

17 MEMBER CORPSTEIN: -- but not per
18 thousand.

19 MEMBER CREDILLE: Hold on. I have
20 actually that piece of paper.

21 This is from census data from April 2010
22 released in 2011. So Illinois has 64.1 beds per
23 thousand of 65 and older.

24 MEMBER PHILLIPPE: That's actual?

1 MEMBER CREDILLE: It's from SNF bed and
2 occupancy data, American Health Care Association, and
3 the census bureau.

4 MEMBER SULLIVAN: And what's the
5 national average, Cece?

6 MEMBER CREDILLE: National average, it
7 says 43.5.

8 CHAIRMAN WAXMAN: Terry, does that sound
9 logical to you?

10 MEMBER SULLIVAN: Yes. Yeah. The 43.5
11 was what was sticking in my head. I was almost going
12 to blurt that out.

13 But the 64 per thousand is a little
14 shocking. It would seem to me that that makes us one
15 of the highest in the nation.

16 MEMBER CREDILLE: Yeah, with the State
17 occupancy here of 78 percent.

18 MEMBER SULLIVAN: Yeah. That's about
19 right.

20 CHAIRMAN WAXMAN: Right.

21 But, again, then we're back to the whole
22 issue of license versus occupied, the unknowing number
23 of how many people have a license of 200 and could
24 only put 180 in the facility if they tried because

1 they've turned them into offices and other places and
2 hold on to the license numbers.

3 So we're still -- we will always struggle
4 with that number.

5 MS. BURMAN: Well, we'll move on, then.
6 We'll talk a little bit about the moratorium.

7 Ohio placed a moratorium in effect as of
8 July 1993. And that was the first thing they thought
9 of doing when they were responding to the number of
10 excess beds. This is one of the reasons that the
11 buy/sell program perhaps is successful in Ohio,
12 because the only way you can get beds is through the
13 buy/sell program. The CON Board in Ohio does not
14 review any other kinds of services; it's strictly
15 long-term care.

16 And there is an outline of the kinds of
17 procedures that they review in Ohio under a document
18 that is called "Frequently Asked Questions," which is
19 available also on their website.

20 Okay. But, anyway, getting back to the
21 moratorium, the only way to obtain long-term beds,
22 again, in Ohio is through the buy/sell program, and
23 it's really due to the moratorium. This is, of
24 course, according to a person that I spoke with.

1 The CON review for the buy/sell program
2 activity takes an average of nine months. This is
3 according to her.

4 In one of the other documents that
5 I included in this stack of information on Ohio, they
6 say the range is from three to nine months, but it
7 depends on what kind of process you're looking at,
8 what the actual project is. So it takes some time to
9 go through it and make sure everything is the way that
10 they would like it to be.

11 Okay. The seller keeps the license for the
12 beds being sold until the CON permit is obtained, and
13 after the CON is approved, the new owner licenses the
14 beds so they can be used. So they established that a
15 little bit further into the program.

16 The last point that I -- I did ask her
17 about -- it wasn't really a part of what Cece had on
18 her sheet there, but I was curious because we've
19 discussed it a number of times in the subcommittee --
20 is what happens to the need for Medicaid beds? That's
21 a big -- a big issue.

22 And in response to that, she said that Ohio
23 developed the "One Bed, All Bed Rule" originally to
24 address the concern. And the policy required that all

1 Long-term care beds must be Medicaid certified.

2 That's how they started off with this.

3 At first, all of the Medicaid facilities
4 filled up too quickly. And, of course, they have a
5 better reimbursement rate than Illinois, so that's
6 what happened for Ohio.

7 Then as a result of them filling too
8 quickly, they had a new problem. And as a result of
9 that, the requirement was revised so that facilities
10 that reached 80 percent Medicaid occupancy were not
11 required to fill any more Medicaid beds.

12 And now they've reduced it again, so the
13 percentage was dropped to 25 percent Medicaid.

14 So that's Ohio's Medicaid story for
15 long-term care.

16 But, yeah, they -- they were quick enough to
17 adjust things as they saw --

18 MEMBER SULLIVAN: And they don't have
19 the 20 bed, 10 percent rule that we have?

20 MS. BURMAN: No. No, they do not.

21 Yeah, so that's that point right there.

22 Then the other documents that I sent,
23 starting especially with page --

24 CO-CHAIRMAN BELL: The other thing,

1 Terry, is Ohio does not have a licensure program for
2 long-term care. So all of your beds have to be
3 certified. So there is no licensed-only beds in Ohio
4 for long-term care. They all have to be certified for
5 either Medicaid and/or Medicare.

6 MS. BURMAN: Okay. Then if we turn to
7 page 23, which is about Ohio CON today, they had some
8 recent revisions to what they have been doing, and
9 they've done this a number of times, which they seem
10 to have a good handle on everything, have been able to
11 make more changes more quickly than some other states
12 in terms of their CON roles.

13 The new ruling, which is stated up at the
14 top here, authorizes the review of CON application for
15 review of application of wanting more beds within a
16 county and replacement of long-term care facility and
17 increasing capacity of all the existing beds in the
18 same county, and the majority of CON files regarding
19 long-term beds are filed under this section. Those
20 are the types of reviews under that section or in
21 their statute, really.

22 Okay. Then the next statute, which is 593,
23 authorizes the review of applications for relocation
24 of long-term care beds from a county with a projected

1 excess to a county of projected need. And the formula
2 is based on the projected population over 65 at least
3 five years out. And quite frankly if you project more
4 than five years, it waters down and you can't really
5 count on that.

6 Statewide, the county occupancy rates, they
7 look at that and then the calculated bed need to
8 target a 95 percent occupancy. So that's their
9 occupancy level in Ohio, 90 percent.

10 Okay. "The excess beds must be greater
11 100." So that's new.

12 "No increase in occupancy if less than
13 85 percent, even if need is projected. Bed need is
14 determined every four years after the first cycle of
15 two years. 10 percent of the beds must be
16 surrendered."

17 And the formula was developed by the Ohio
18 Department of Health with collaboration by the
19 industry, so it would be like working with our
20 subcommittee here. And validation of the formula
21 was conducted by the Scripps Gerontology Center at
22 Miami University, and it states the players in that.

23 So these, again, are fairly new, polishing
24 the apple.

1 Then the next rule or statute is 592 -- oh,
2 we already did that one.

3 593. Here we are. "Formula is designed
4 only to allow the redistribution of beds to meet the
5 needs in long-term care in counties where there may be
6 a shortage of beds due to increasing population of
7 over age 65.

8 "The Ohio Department of Development is the
9 resource for population projections. Based on
10 projections for 2025, the statewide occupancy rate
11 could be as high as 97 percent. At a 97 percent
12 occupancy rate, the current excess will banish and
13 access to care could be an issue in some counties."

14 And then they gave you an idea of how many
15 applications were filed. In 2010 filings, there were
16 14 applications for new facilities and no applications
17 for -- or no bed surrenders because that's part of the
18 application.

19 In 2012, the filings were, again,
20 14 applications for new facilities. No beds were
21 surrendered, 20 counties need a total of 2,968 beds,
22 24 counties have an excess total of 8,202. The
23 remaining counties either have an occupancy rate below
24 85 percent or have no need based on population

1 projections.

2 MEMBER SULLIVAN: Claire, just to
3 clarify, 14 applications for new facilities and no
4 beds surrendered, so beds surrendered are not sold,
5 they're just totally given back.

6 CHAIRMAN WAXMAN: Given back to the
7 State.

8 MS. BURMAN: Given back to the State for
9 the pool.

10 MEMBER SULLIVAN: So 14 applications for
11 new facilities were all beds that were purchased from
12 other facilities.

13 MS. BURMAN: Yeah, there's one action,
14 which is you go in to propose a new facility.

15 MEMBER SULLIVAN: Okay. I thought Ohio
16 didn't allow new facilities.

17 MS. BURMAN: In some instances they do.

18 MEMBER SULLIVAN: Just replacement
19 facilities. I could be wrong at that. Am I?

20 MS. BURMAN: This is straight from the
21 State. I did not put this together.

22 MEMBER SULLIVAN: Okay. I thought
23 I read somewhere else where -- that you can only
24 expand --

1 MEMBER CASPER: Maybe their moratorium
2 has been lifted.

3 CO-CHAIRMAN BELL: If there's a
4 moratorium, how can they have new beds?

5 MS. BURMAN: Well, they're not new.
6 They're --

7 MEMBER SULLIVAN: If I want to build a
8 new facility, I buy 20 beds, 20 beds, 20 beds, and
9 build a new 60-bed brand new facility, although I --
10 and maybe I got confused, but I thought they didn't
11 allow you to build a new facility; it had to be at the
12 expansion of an existing facility.

13 I don't know, do you --

14 MS. BURMAN: No. They allow new
15 facilities --

16 MEMBER SULLIVAN: Okay.

17 MS. BURMAN: -- but it's not in every
18 instance.

19 MEMBER PHILLIPPE: It's good to know.

20 MEMBER SULLIVAN: Okay.

21 MS. BURMAN: So it goes under a review
22 to make sure --

23 MEMBER CREDILLE: Well, they allow new
24 facilities with bed need. It goes back to the whole

1 bed-need premise. You can't just buy beds and have no
2 bed need. I mean, it's still part of the --

3 MEMBER SULLIVAN: Okay.

4 MEMBER CREDILLE: -- formula to address
5 access.

6 MS. BURMAN: Right.

7 MR. GALASSIE: What happens to the beds
8 the State gets? When they giveback 10 percent.

9 MS. BURMAN: Well, then --

10 MEMBER CASPER: They probably extinguish
11 those licenses.

12 MR. GALASSIE: I'm sorry?

13 MEMBER CASPER: They probably extinguish
14 those licenses.

15 MEMBER SULLIVAN: Right. Diminishing
16 the total number.

17 MEMBER CASPER: Because the policy goal
18 is to bring the number back down.

19 MR. GALASSIE: Right. Yeah. We know
20 60 beds per thousand over time are diminished because
21 of the 10 percent giveback.

22 MS. BURMAN: Right. So they -- they are
23 somewhat satisfied with that arrangement. They
24 think -- they like the way that that's been moving.

1 They'll keep, you know, studying it to see which way
2 it goes because a lot of things can happen, especially
3 with all the different changes that are expected.

4 So --

5 MEMBER CREDILLE: Well, my understanding
6 is that the beds that go back to the State, then the
7 State can -- those are also beds that you can apply
8 over time for a certificate of need.

9 MR. GALASSIE: Uh-huh. I would
10 think so.

11 MS. BURMAN: Yeah --

12 MEMBER CREDILLE: If that's the only
13 way -- the moratorium on the total beds, the beds that
14 are pulled out, then, that allows the State to have
15 those beds. So then if you had -- like in Illinois,
16 if there was access issues in downstate Illinois or
17 wherever it is, then the State has that pool of beds
18 to say, "All right. It's constant, but we have beds
19 that can still be utilized." Right? I think I got
20 that right.

21 MS. BURMAN: I believe so, but then it
22 would get into the whole review of, are they going to
23 place where there is a proven need?

24 MEMBER CREDILLE: Yes.

1 MS. BURMAN: Yeah. So it's --

2 MR. GALASSIE: Can I hear some reaction
3 for that from the industry? I mean, how do you feel
4 about that 10 percent giveback concept if you were
5 selling or buying beds?

6 CHAIRMAN WAXMAN: Mr. Foley?

7 MR. FOLEY: I think -- Mr. Galassie,
8 if I may make a comment on that, I think it's -- we
9 should come up with some sort of a number where there
10 is 10 percent or ratio of beds or whatever because,
11 otherwise, you're just going to find yourself
12 transferring beds from one part of the state to
13 another without even affecting the total State counts.
14 So at least this way you will, in fact, see a net
15 reduction in beds. So we need to do something
16 like that.

17 MR. GALASSIE: Seems like we do.

18 MR. FOLEY: I'm sorry?

19 MR. GALASSIE: It seems to me like we
20 need to do something.

21 CHAIRMAN WAXMAN: Tim?

22 MEMBER PHILLIPPE: Practically speaking,
23 it probably just affects the price of the bed.
24 Because you're buying extra, then it's going to

1 probably artificially increase, depending on what
2 the -- you know, what's available out there, supply
3 and demand, so -- and it will, then, if it's used --
4 I would be more in favor of it being used to decrease
5 the total number of beds across the state than I would
6 if somebody has a pool and we can give them to whoever
7 they want to build a new building.

8 Because it looks like the policy in Ohio is
9 used to reduce the total number of beds. And I know
10 Ohio -- Indiana has used a different kind of method,
11 because they've also worked on reducing the number of
12 beds at long-term care for the last 20 years. So that
13 makes sense really.

14 MR. GALASSIE: Yeah.

15 CHAIRMAN WAXMAN: Do you have beds in
16 Ohio?

17 MEMBER PHILLIPPE: I used to operate
18 two buildings -- two campuses in Ohio. We pulled out
19 about a year ago.

20 CHAIRMAN WAXMAN: Okay.

21 MEMBER PHILLIPPE: Because we were
22 managing another non-for-profit -- we haven't looked
23 at the building -- I looked at developing some new
24 campuses there and pulled out.

1 Besides, the market is kind of risky right
2 now. It's a good state, it's just a very different
3 state, I think. And from a business perspective.
4 I don't mean to live in or anything, just
5 businesswise.

6 MR. GALASSIE: Well, I'm a novice, that
7 I admit. But it seems to me, overall, you guys want
8 the highest bed counts per thousand.

9 MEMBER PHILLIPPE: Right.

10 MR. GALASSIE: It should be one of our
11 goals to diminish that overall.

12 MEMBER PHILLIPPE: That's right.

13 CHAIRMAN WAXMAN: Michael?

14 MEMBER SCAVOTTO: I'm not so sure. The
15 dead bed isn't costing anybody anything except the
16 owners. It's not costing the industry anything. The
17 State's not paying for it until it's used.

18 CHAIRMAN WAXMAN: Correct.

19 MEMBER SCAVOTTO: And --

20 MR. FOLEY: State is making money on it,
21 too; it's getting bed tax.

22 CHAIRMAN WAXMAN: Getting bed tax on it.

23 MEMBER SCAVOTTO: Well, that -- we
24 debated that here, too. That's right. That's a fair

1 point. That's right.

2 But it's -- again, looking at it from Tim's
3 lens, from the policy perspective, one of the reasons
4 we have such an inordinately high number of beds in
5 Illinois is because the system's been set up to
6 institutionalize people.

7 Now, we can't solve all problems, but we've
8 got -- I recall the RFP that was issued by HFS on
9 their managed care initiative, and their data had
10 Illinois 6th nationally in the tendency to
11 institutionalize. And they want to change that. And
12 you don't change that without having developed other
13 opportunities.

14 But, I mean, I can see giving up some beds,
15 but I can also see the argument that, you know, who
16 cares? You know, they're not costing anybody anything
17 except the owners. And as -- I mean, that situation
18 resolves itself if the delivery system changes.

19 CHAIRMAN WAXMAN: Does it cost -- for
20 example, if I have a product line where there is
21 a large demand for it but I'm in an over-bedded
22 geographical area, does it cost me my ability to
23 increase my bed count when I go before the
24 Mother Board because they're going to look at

1 geographically that that area's overbedded?

2 MEMBER SCAVOTTO: Yeah, they might.

3 MR. GALASSIE: It seems to me they will.

4 MEMBER SCAVOTTO: Yeah, I think they
5 would do that.

6 MR. GALASSIE: Sure.

7 MEMBER PHILLIPPE: There's another
8 practical issue that I think the Staff pointed out
9 before, and that is that there could be -- the census
10 below 90 percent in a month, there appears to be no
11 bed need. However, there's poor access.

12 MR. GALASSIE: Exactly.

13 MEMBER PHILLIPPE: So I have a full
14 building -- or somebody has a full building -- and we
15 think there's a need in this market; we would like to
16 add on. However, we don't because of the way this is
17 structured.

18 The census is below 90 percent because
19 people don't want to fill all their beds. They're
20 trying intentionally not to fill all their beds and
21 keeping their Medicaid numbers lower. So that's kind
22 of a weird thing that affects really the industry as a
23 whole in access.

24 So, in a way, it does hurt because if we

1 take away those accessed beds, then it's a more fair
2 comparison. And I'm not advocating to go and take
3 everybody's beds away overnight under 90 percent or
4 anything, by the way. I'm just saying it does really
5 matter because it affects the whole process.

6 CHAIRMAN WAXMAN: It does.

7 MR. URSO: Right.

8 CHAIRMAN WAXMAN: Somebody else had
9 their hand up besides --

10 MR. URSO: I think they answered it.

11 The bed need formula is predicated on
12 utilization, and you start talking about higher
13 numbers than artificial numbers that excuse the whole
14 formula and ties into what we're talking about here.

15 CHAIRMAN WAXMAN: Right.

16 MR. URSO: So it does cause that. So
17 your need numbers are off because you're dealing with
18 artificial numbers.

19 CHAIRMAN WAXMAN: Right.

20 MEMBER SCAVOTTO: Right. Your need
21 numbers are off because you're dealing with licensed
22 beds.

23 MR. URSO: Right.

24 So if you reduce the number of licensed beds

1 to actual beds or close to it, then that formula
2 should be more true to reality --

3 MEMBER SCAVOTTO: Or rather than reduce
4 the number of licensed beds, you can make your formula
5 on the basis of actual --

6 CHAIRMAN WAXMAN: Occupied beds over --

7 MEMBER SCAVOTTO: -- actual resident
8 days.

9 CHAIRMAN WAXMAN: Right.

10 MEMBER SCAVOTTO: Which is what anybody
11 in the -- on the provider side is going to do that.

12 CHAIRMAN WAXMAN: Are we aware of any
13 State that does that? Not that we can't be first,
14 but . . .

15 MS. BURMAN: They use licensed beds.

16 CHAIRMAN WAXMAN: Every State uses
17 licensed beds?

18 MS. BURMAN: Yeah.

19 MR. GALASSIE: And are we looking at
20 need-based countywide numbers, regional numbers? When
21 it comes in front of the Board.

22 MS. BURMAN: Planning areas.

23 MR. URSO: Planning areas.

24 MS. BURMAN: Many of the planning areas

1 are counties.

2 MR. GALASSIE: Yeah.

3 MR. URSO: Some may be larger or smaller
4 than counties --

5 MR. GALASSIE: Sure.

6 MR. URSO: -- depending on the county.

7 MR. GALASSIE: Well, I certainly would
8 see where these numbers are skewed in the larger urban
9 counties. Because, as the point you made, within that
10 county, there would be very well two or three pockets
11 of actual need and access problems, but it doesn't
12 show based upon the overall numbers.

13 CHAIRMAN WAXMAN: Yeah. I mean, you
14 know, we all -- I think we all know of homes where
15 I wouldn't let my dog go to, and yet those homes count
16 in the formula. You know? And there are homes where
17 I would want to leave a close person, and they don't
18 have any empty beds.

19 So, I mean, that's the market issue versus
20 the formula issue that we've got to deal with.

21 Mr. Foley?

22 MR. FOLEY: I was just going to say,
23 just to follow up what Tim was saying, unfortunately,
24 it also hurts a lot of our existing providers in those

1 areas where there are, in fact, excess beds according
2 to our present formula. It does restrict him -- a
3 good facility, whether it's a four-star, five-star, or
4 whatever, if they're sitting there with their
5 90 percent plus, 95, 98 percent occupancy, they
6 cannot add beds because there's not a need for beds.

7 This committee had talked previously on
8 several occasions about introducing, you know,
9 different variances, such as a high occupancy
10 variance, to allow for those good facilities to add
11 additional beds if they could justify the need.

12 MR. GALASSIE: Uh-huh. It still seems
13 to me that we want to diminish that overall number.

14 MEMBER PHILLIPPE: Yes.

15 MR. GALASSIE: I think so.

16 MR. FOLEY: Seems what?

17 MR. GALASSIE: It still seems to me that
18 one of our goals should be to diminish that overall
19 number, perhaps through this giveback to the State
20 process.

21 CHAIRMAN WAXMAN: How many beds can you
22 hold in your garage, Bill?

23 MR. DART: Just a handful.

24 MR. URSO: That's how you start.

1 MR. DART: It might not make a dent.

2 CHAIRMAN WAXMAN: Chuck?

3 MR. FOLEY: I know in the past,
4 Mr. Galassie or this committee had also talked about
5 maybe just notifying each State, tell them what it is
6 we're trying to do to reduce the unused beds, write a
7 letter to them, and see if they would voluntarily give
8 up beds. I don't think you'll get, you know, a mass
9 response of people wanting to give up beds, but it
10 does happen.

11 I mean, we see a lot of times in the
12 inventory where facilities are, in fact, giving up
13 10 to 12 beds, you know, for whatever reason. So
14 facilities do, in fact, give up beds. But I think a
15 lot of facilities are under the impression that a bed
16 is worth a dollar, so I don't want to give it up.

17 CHAIRMAN WAXMAN: I think the fact that
18 owners are paying bed tax on empty beds is proof that
19 they don't want to give up beds. I mean, Jesus,
20 I could save, you know -- what's the bed tax?

21 MR. DART: I'm not aware of the current
22 number.

23 MEMBER SCAVOTTO: The basic is 150 and
24 then --

1 MR. DART: That's right.

2 MEMBER SCAVOTTO: And then it was
3 revised on top of that. We've got the basic, and now
4 we're going to advanced. It's 607 on top of that.

5 CHAIRMAN WAXMAN: So we're talking about
6 big dollars that you could save out-of-pocket cost by
7 giving up licensed beds, and yet I'm not aware of
8 anyone who has stepped forward who saying, "Please
9 take away my empty bed so I can save a bed tax."
10 They're paying the bed tax.

11 MEMBER SULLIVAN: Well, the dollar 50 is
12 on licensed beds. The 607 is on occupied beds.

13 CHAIRMAN WAXMAN: Okay.

14 MR. GALASSIE: But aren't you also
15 inviting -- or allowing more competition by giving up
16 your beds? I mean, isn't that an issue?

17 MEMBER PHILLIPPE: That's the theory.

18 MR. GALASSIE: If you're holding onto
19 beds, you're making it more difficult --

20 MEMBER PHILLIPPE: Yes.

21 MR. GALASSIE: -- for someone else who
22 can't have that bed --

23 MEMBER SCAVOTTO: As long as you have
24 that 90 percent.

1 CHAIRMAN WAXMAN: Yeah, but also
2 understand that you may have licensed beds that you
3 couldn't put a body into if you had to because you've
4 turned that space into the MDS coordinator's office or
5 the activity space or you built a second therapy room.
6 So you couldn't put a bed in there if you wanted to.

7 So you hold the license for beds that could
8 go -- used to go somewhere but couldn't go there now
9 anymore, but -- so, yeah.

10 I mean, you are inflating -- you are
11 creating competition or impacting competition without
12 the ability to take any more people in than what you
13 have room for, which is usually considered less than
14 your licensed number.

15 MEMBER PHILLIPPE: I think what you said
16 is the most -- we probably should just table this
17 discussion because it's not getting anything done
18 because what you said is the most important thing.

19 I think for most people, they are mostly
20 concerned about somebody building a new building in
21 their marketplace because the new building will not be
22 serving Medicaid. I don't care what anybody tells
23 you. That market will be serving Medicare first and
24 maybe private pay, wherever the money is. And so

1 that's the number one issue.

2 And the second is I've been in meetings for
3 five years talking about buying and selling beds. If
4 everybody in the state doesn't know it, they're not
5 very well connected. Because why would I do it in the
6 last five years when we were talking about the
7 potential of settling them?

8 So I don't think it does us any good to talk
9 about it much more, because until we settle here,
10 nobody wants to -- I think everybody smart is going to
11 hang onto their beds.

12 CHAIRMAN WAXMAN: Well, I think one of
13 the things we wanted to do today was to get a decision
14 made as to what we're really going to recommend.

15 MEMBER PHILLIPPE: So I will -- if we
16 could kind of move to -- if we're moving step-by-step,
17 I like the idea of some kind of a 10 percent giveback.
18 That makes sense from public policy perspective. It
19 means a lot of complaints we've had over the years
20 now -- we've been talking about this it seems like --
21 and it is one way -- if we can't get to the 85 percent
22 target, we reduce the number of beds. Whereas, it may
23 not be a big impact -- it depends on how many are
24 traded -- but it will be some impact at least.

1 MR. FLORINA: Just one comment.

2 Is there some legal issue here as far as
3 ownership of having the right to have a bed that would
4 become a matter of argument in forcing facilities
5 going to give up the bed?

6 MR. URSO: John, you need to state your
7 name for the court reporter.

8 MR. FLORINA: John Florina.

9 MEMBER SCAVOTTO: I have a question.

10 CHAIRMAN WAXMAN: Wait.

11 John, raise your question again, please.

12 MR. FLORINA: Is there some legal issue
13 as far as having ownership for the right to have a bed
14 because you have a certificate of need permit for such
15 bed even if you choose not to use it? Could you be
16 forcing people to give up beds that they don't want to
17 give up if you change the rule?

18 CHAIRMAN WAXMAN: Frank?

19 MR. URSO: I don't think that's a
20 question we can answer right now because there's a lot
21 of factors.

22 But CON isn't the group that says you have
23 an X number of beds. It's really licensure. It's the
24 licensed beds that -- so it's the Department of Public

1 Health that says, "We're going to give your license
2 for X number of beds."

3 But that's an interesting question and
4 I think one that requires, perhaps, some more
5 research.

6 MR. FLORINA: I wasn't expecting an
7 answer. I just wanted to throw it out there in a
8 discussion.

9 MR. GALASSIE: Would the Department
10 of Public Health look at need issues when determining
11 whether to give a license?

12 MR. URSO: No.

13 MR. GALASSIE: Does that come back
14 to us?

15 MR. URSO: The Board. So the Public
16 Health is for quality --

17 MR. GALASSIE: Yeah.

18 MR. URSO: -- you know, fire safety --

19 MR. GALASSIE: Sure.

20 MR. URSO: -- structure.

21 Right, Bill?

22 CO-CHAIRMAN BELL: Uh-huh. Yeah.

23 MR. URSO: Paul and Bill.

24 They look at staffing and policies and

1 procedures, things like that.

2 MR. GALASSIE: And they would talk to us
3 prior to giving licensure?

4 MR. URSO: You need a CON before you get
5 a license. So a CON is prerequisite.

6 MR. GALASSIE: Yup.

7 MR. URSO: If you don't have a CON, you
8 can't get a license.

9 MEMBER SCAVOTTO: And the CON --

10 MR. URSO: In our State.

11 Pardon me?

12 MEMBER SCAVOTTO: And the CON specifies
13 the number of beds.

14 MR. URSO: It does but it's based on
15 licensure. Licensure is really -- am I correct, Bill?
16 Am I right?

17 MEMBER PHILLIPPE: Uh-huh. That's
18 right.

19 CHAIRMAN WAXMAN: Tim?

20 MEMBER PHILLIPPE: Just to clarify what
21 I was saying, I wasn't recommending we take beds away
22 or anything. I was just saying if we have a voluntary
23 program that permits people to buy and sell and trade
24 beds, then we can build that into that program.

1 Now, my guess is it's not forcibly taking
2 anyone's beds away; it's a voluntary program. And so
3 it would be easier to have the reduction of 10 percent
4 in a voluntary program because we're not requiring any
5 reduction.

6 MR. GALASSIE: Sure.

7 MEMBER PHILLIPPE: Right?

8 MEMBER SCAVOTTO: And that was -- that
9 was my take on what you -- because I understand what
10 you're saying.

11 You know, can someone confiscate beds?
12 I see that as a separate issue. And this -- I don't
13 see -- I don't see Tim going after that at all.

14 MEMBER PHILLIPPE: Uh-huh. Right.

15 MEMBER SCAVOTTO: That's my reaction
16 to it.

17 CHAIRMAN WAXMAN: The question is if the
18 policy was created, does that policy, then, override
19 any legal right, any legal issue?

20 MR. URSO: Someone can challenge the
21 constitutionality of that kind of policy or that kind
22 of statutory amendment. I mean, those arguments can
23 be made.

24 MR. GALASSIE: But, again, as Tim said,

1 we're talking about a voluntary program. If two of
2 these folks choose to buy and sell between one
3 another, they're doing so on their own accord. So
4 that's when we would step in and say, "There's a
5 10 percent giveback as a result of the right to do
6 that."

7 MEMBER PHILLIPPE: That's what
8 I think, too.

9 MR. GALASSIE: Because of public policy
10 wanting to diminish that overall number over time.

11 MR. URSO: And that's the way you would
12 structure it, lay it all out that way, so it's an
13 agreement within the parties.

14 CHAIRMAN WAXMAN: 10 percent from the
15 buyer or 10 percent from the seller? Where does the
16 10 percent come from, the buyer or the seller?

17 MEMBER PHILLIPPE: In the long run, it
18 doesn't matter. It's just the price.

19 MEMBER CREDILLE: It's the buyer.

20 CHAIRMAN WAXMAN: It's the buyer?

21 MEMBER CREDILLE: It's the buyer.

22 MEMBER PHILLIPPE: Yeah.

23 MEMBER CREDILLE: The buyer gives back
24 10 percent of the beds. And then at some point the

1 State, then, has a pool of beds.

2 So, let's say, I don't know, they're talking
3 about 2025 or something, then they would have a pool
4 of beds that they could utilize when there may be
5 access issues. Because in the future you may have
6 access issues.

7 MR. GALASSIE: Sure.

8 MS. GUILD: But they have a moratorium,
9 so that would -- it wouldn't matter whether Illinois
10 chose to have a moratorium or not because the Planning
11 Board could always allow you to have more beds based
12 on need --

13 MEMBER CREDILLE: But is that plan
14 constant? So the beds that are given back to the
15 State, it's not increasing the beds. They're in a
16 pool sitting over here. So you're never increasing
17 the number of beds --

18 CHAIRMAN WAXMAN: Well, actually,
19 someone said they get delicensed, which means you're
20 reducing the number; right?

21 MEMBER CREDILLE: Well, you're reducing
22 them today, but then the State has the ability to put
23 them back.

24 CHAIRMAN WAXMAN: To relicense them,

1 yeah.

2 MEMBER CREDILLE: To relicense, to have
3 a process if there are access issues.

4 MEMBER CASPER: I think there is no
5 legal right to a license, and it depends how the
6 statute of the State and the regulations are written.
7 Because under suitability review, the State has the
8 ability -- or under licensure -- the State can revoke
9 a license. So, I mean, there's plenty of --

10 MR. FLORINA: For due cause.

11 MEMBER CASPER: Right.

12 MR. FLORINA: You can't arbitrarily --

13 MEMBER CASPER: What causes that right
14 to sell that license to another party says that
15 10 percent of that number of beds has to revert to the
16 State, then that's the law, and you can choose to
17 participate or not.

18 MR. FLORINA: It's voluntary.

19 MEMBER CASPER: Right.

20 CHAIRMAN WAXMAN: So just so I have it
21 correct in my mind, if I am going to -- if I want to
22 buy 10 beds at a price of \$20,000 a bed, I, therefore,
23 have to buy 11 beds at \$20,000 and give each --

24 MEMBER CASPER: 11.1 beds.

1 CHAIRMAN WAXMAN: Thank you.

2 -- and I give the 1.1 bed back to the State,
3 and I'm out \$20,000 in the process.

4 MR. FLORINA: That's a negotiation
5 between the buyer and seller.

6 CHAIRMAN WAXMAN: Well, agreed.
7 Let's say we agree on \$20,000. So as the
8 buyer --

9 MEMBER CREDILLE: But your --

10 MEMBER CASPER: But your agreement would
11 factor in that 10 percent, so --

12 MEMBER CREDILLE: Right. And --

13 CHAIRMAN WAXMAN: Oh, okay.

14 MEMBER CASPER: Right.

15 MEMBER CREDILLE: -- the buyer is
16 looking to future business. So it's a moment in time.

17 CHAIRMAN WAXMAN: Chuck?

18 MR. FOLEY: I guess I'm just really torn
19 by this whole thing. I mean, I can see the advantages
20 of a buy/sell program.

21 At one point Mr. Scavotto was saying who is
22 really hurting, you know, if we have empty beds out
23 there. But yet, at the same time, I do agree that
24 because of the inventory and the way that we keep

1 track of the inventory, we do have a lot of excess
2 beds, and it is preventing a lot of good beds being
3 built, state-of-the-art beds being built, in a lot of
4 the areas.

5 But, I guess, one of my concerns is that
6 there are still yet several, several unanswered
7 questions regarding this entire process. We've been
8 spending a lot of time on this and, obviously, nothing
9 has been done.

10 And I guess one of the questions I ask is,
11 you know, who is this -- who is this rule going to
12 benefit? Is it going to benefit the patient in any
13 way, shape, or form? No, not really. It's just going
14 to benefit only those people that could afford to buy
15 beds.

16 MEMBER SCAVOTTO: Right.

17 MR. FOLEY: And as Tim has indicated,
18 forget about Medicaid because they're not going to
19 have Medicaid beds. If they're going to buy beds and
20 they're going to build a facility or build a new wing
21 or whatever, it's going to be that short-term Medicare
22 insurance, private pay cliental, and possibly no
23 Medicaid at all, if you have to have Medicaid. If you
24 force them to have Medicaid, then it may not end up

1 being financially viable.

2 CHAIRMAN WAXMAN: No, I think --

3 MR. GALASSIE: Well, let me give you an
4 example, if I may. And, again, at least in my mind.

5 Lake County has a public facility, 300 beds.

6 Lake County wants to build a new facility.

7 MR. FOLEY: 224 beds, sir.

8 MR. GALASSIE: 224 beds.

9 So they have to come in front of the
10 CON Board to build that new facility. And, again, the
11 data that the Board is looking at is false.

12 MR. FOLEY: Yeah.

13 MR. GALASSIE: Because maybe it's only
14 80 percent. I don't know what the number is.

15 You know, so I think, from a public policy
16 standpoint, what I say, we want to get the more
17 realistic numbers. I think it does make a difference.
18 It doesn't -- on an individual, in terms of the cost
19 issues, I agree with Cece. At this point in time,
20 I don't think it's terribly relevant. Nobody's
21 writing the check to the State. But the State would
22 have more realistic numbers by which to make a
23 decision to help this industry move forward.

24 MEMBER PHILLIPPE: That's right.

1 MR. GALASSIE: So I would hope a
2 consensus to adopt some sort of giveback 10 percent,
3 perhaps at some point in time.

4 MEMBER SULLIVAN: Mr. Chairman?

5 CHAIRMAN WAXMAN: But I do have to
6 say -- I'll be right there.

7 Chuck, I think there is a point you did
8 miss, that it does impact the public to the extent
9 that it will make access available in areas where
10 there isn't access if beds are -- if the inventory is
11 reduced.

12 So that if you came before the Board with an
13 application in an area that has now been shown to have
14 a need because the licensed beds in that area have
15 been reduced, then the public is going to benefit.

16 MR. FOLEY: Yes, in that respect you are
17 absolutely correct.

18 It is my understanding -- and Staff please
19 correct me -- it is my understanding that this -- our
20 bed need is, in fact, going to be changing in the next
21 few months. A new inventory is coming out.

22 Am I hearing that correctly?

23 MR. AGBODO: We can't -- we don't know
24 for sure. We don't know.

1 MR. FOLEY: I'm sorry?

2 MR. AGBODO: We are going to have a new
3 inventory, but we don't know what -- how that will
4 look like.

5 MR. FOLEY: Okay. I guess I'm asking
6 that question. Because if it is, in fact, coming out,
7 that, you know, obviously could show an entirely
8 different picture. It may, in fact, open beds and get
9 results. At the same time, I don't know what it's
10 going to show. Nobody knows that. You know?

11 Right now in the State of Illinois there's
12 only about half a dozen planning areas in the state
13 where one can, in fact, build, you know, a new
14 facility because all areas in the state are
15 overbedded.

16 CHAIRMAN WAXMAN: Terry?

17 MEMBER SULLIVAN: I feel like we are, as
18 we have in the past, floating around the issue, and
19 the test part of me -- Claire has prepared a wonderful
20 document of the questions that we should be asking.

21 Should we be doing this in a little more
22 organized way and start taking on these questions?

23 CHAIRMAN WAXMAN: Yes.

24 MEMBER SULLIVAN: Okay.

1 CHAIRMAN WAXMAN: Thank you, sir.

2 MEMBER PHILLIPPE: And being consistent
3 with that, it would seem to me the logical thing is,
4 as you bring up a point, we vote on it as a criteria.
5 We can always change when we get a total. Get it all
6 together, maybe come back and change it.

7 But as we go over each point, we kind of
8 vote on it, settle on it, and move onto the next one
9 because we've been on this 10 percent thing for a long
10 time.

11 CHAIRMAN WAXMAN: I totally agree
12 with you.

13 In fact, that was our -- that was how we put
14 this agenda together.

15 MEMBER PHILLIPPE: That's what I
16 thought.

17 CHAIRMAN WAXMAN: So . . .

18 MEMBER PHILLIPPE: It looked that way.

19 MEMBER SCAVOTTO: Tim, did you make a
20 motion?

21 MEMBER PHILLIPPE: So I will make a
22 motion that if we do a bed transfer program that it
23 would be -- the process would include purchasing
24 enough beds to give the 10 percent match back to the

1 State.

2 MEMBER CREDILLE: Can I ask a
3 clarification first?

4 Do we have a vote somewhere that counts that
5 we're going to move forward to the Board that we
6 support a buy/sell --

7 MEMBER PHILLIPPE: Right.

8 MEMBER CREDILLE: -- before we get to
9 the 10 percent? Are we -- have we covered our bases
10 in the past?

11 MEMBER SCAVOTTO: No. No. This is just
12 one issue.

13 MEMBER CREDILLE: Well, how can you vote
14 for 10 percent if we haven't voted for it by itself?

15 CHAIRMAN WAXMAN: We're building the
16 elephant one piece at a time.

17 MEMBER PHILLIPPE: Yes.

18 MR. FOLEY: Small pieces and then --

19 MS. GUILD: Basically --

20 MEMBER PHILLIPPE: To clarify, I moved a
21 motion at the last meeting to get a sense from the
22 committee -- subcommittee, that we approve the
23 concept, in general, of transfer of beds with some
24 caveats, you know, depending on how it works out.

1 But, in general, we, I think, agree that we
2 support that concept.

3 MEMBER CREDILLE: Are we good with that
4 from the prior meeting? I thought it was like a fake
5 straw vote or some --

6 MEMBER PHILLIPPE: It was.

7 MEMBER CREDILLE: -- such thing.

8 MEMBER PHILLIPPE: It was.

9 MEMBER CREDILLE: So -- but before you
10 come you with components --

11 MEMBER PHILLIPPE: Yeah.

12 MEMBER CREDILLE: -- don't you have to
13 say that, "Yes, this committee is supporting a
14 buy/sell concept in the State of Illinois"? Does the
15 Board have to approve that first before we even do
16 components?

17 MR. GALASSIE: Well, why don't you make
18 that motion, then? Or another motion to address.

19 MEMBER PHILLIPPE: Okay. I will make
20 the motion more concrete, but I think that -- but just
21 to clarify, I want to say no because I -- I like the
22 concept. And I think some people who voted no last
23 time told me I think that it depends what it ends up
24 looking like. If it ends up looking like something

1 I don't like, I'll vote no on that -- the total.

2 MS. GUILD: Right.

3 MEMBER PHILLIPPE: I can't vote on an
4 item until I know what it's going to look like.

5 And I think we do have to build it one piece
6 at a time. Otherwise, we might end up with a
7 rhinoceros, and I thought we were building an
8 elephant.

9 MS. GUILD: Right.

10 MEMBER CREDILLE: Well, Frank, does the
11 Board have to have -- what does the Board need from
12 us? Do they have to approve the buy/sell?

13 CHAIRMAN WAXMAN: Which Board are you
14 talking to? Are you talking about our -- this Board
15 or that Board? (Indicating.)

16 MEMBER CREDILLE: No, that Board.
17 (Indicating.)

18 MR. GALASSIE: That is committee of the
19 Board.

20 CHAIRMAN WAXMAN: Right.

21 MEMBER CREDILLE: So does the Board have
22 to approve the buy/sell concept first so that we can
23 go forward with components, or no?

24 CHAIRMAN WAXMAN: No.

1 MEMBER CREDILLE: We can -- no.

2 MR. GALASSIE: You need -- in my
3 opinion, you need to -- ideally, you would develop
4 recommendations to come the Board. If you choose not
5 to, the Board will hear that.

6 MR. URSO: And don't you think, Dale,
7 they can do it any way they want?

8 MR. GALASSIE: Sure.

9 MR. URSO: And if they want to -- just
10 the whole umbrella concept.

11 MR. GALASSIE: Right.

12 I think as they're putting the elephant
13 together, you can either do a voting process or you
14 can ask for a consensus.

15 Is there a consensus to consider some sort
16 of buy/sell agreement? Show of hands.

17 Is there a consensus to consider some sort
18 of 10 percent buyback with a public policy willing to
19 reduce overall bed count? Show of hands.

20 I mean, I think that's sufficient in the
21 process.

22 CHAIRMAN WAXMAN: Well, you did a
23 consensus -- I wasn't here last time, but was there a
24 consensus to move forward with the buy/sell?

1 (The ayes were thereupon heard.)

2 CHAIRMAN WAXMAN: There was.

3 Does that satisfy --

4 MEMBER CREDILLE: If you took that as a
5 "yes," we're going forward with that? Good for me.

6 MS. GUILD: Ultimately, the Board has to
7 decide, and they're going to want to know what they're
8 voting for. And unless they see the details, they're
9 not going to be comfortable because, what does a
10 buy/sell program mean? So this way you go through the
11 steps and you see --

12 CHAIRMAN WAXMAN: Right. We all agree
13 we're going through the steps.

14 MS. GUILD: Right.

15 CHAIRMAN WAXMAN: But I think --
16 I understand Cece's concerned about how can you put
17 a piece together if you don't know what the board
18 concept is.

19 So we have a consensus that we are moving
20 forward with the buy and sell.

21 Yes, sir?

22 MEMBER CASPER: Can I second Tim's
23 motion and then make a comment?

24 CHAIRMAN WAXMAN: Sure.

1 MEMBER CASPER: Okay. So I'll second
2 that motion.

3 And then my comment is: I would agree with
4 that motion, except that I think it's premature to put
5 a percentage on the giveback amount. Because I think
6 that's what Ohio does, but it may or may not make
7 sense in terms of the overall regulatory scope in this
8 state.

9 So I think that I would -- and I'll vote yes
10 at this point, but I think it's subject -- subject to
11 some --

12 MEMBER PHILLIPPE: That's true.

13 MEMBER CASPER: I think there's a lot of
14 data crunching that should go behind the
15 recommendation on that number.

16 CO-CHAIRMAN BELL: I think that's what
17 Mr. Galassie was saying. We're just going to deal
18 with generalities.

19 And if the Board then agrees that, yes, this
20 is the direction that they want us to go, then we will
21 drill down a little bit farther and come up with
22 further numbers and that type of thing.

23 But I think we're just looking for general
24 consensus on ideas that would be part of a buy/sell

1 program.

2 CHAIRMAN WAXMAN: The motion that was --
3 the motion that was approved at the last meeting
4 was -- motion to recommend the development of a
5 long-term care buy/sell program with the possibility
6 of an open market approach and limited regulation, and
7 that was approved 9, opposed 1, abstained 1.

8 So there is in the minutes a motion that was
9 approved to move forward.

10 Okay. That being said, Tim, do you wish to
11 accept his --

12 MEMBER PHILLIPPE: Yes.

13 CHAIRMAN WAXMAN: -- amendment to your
14 motion?

15 MEMBER PHILLIPPE: Yes.

16 CHAIRMAN WAXMAN: So we have an
17 amendment, we have a second. All in favor?

18 (The ayes were thereupon heard.)

19 CHAIRMAN WAXMAN: Any opposed?

20 Paul, you had your hand up, and I didn't get
21 to it. I'm sorry.

22 MEMBER CORPSTEIN: Yes.

23 As we move through these various questions
24 and take straw votes on them or what have you, are we

1 just assuming that the Board is going to put a
2 moratorium on the beds? Because if that's not
3 assumed, then really all of this is just academic,
4 "Oh, sounds like a good idea. We can do this. We can
5 do that." We recommend it to the Board, "Yes, it
6 sound like a good program. This might help the
7 industry. This will help reduce beds."

8 If there's no moratorium on beds, then
9 what -- what is the point of all of this? They're not
10 going to enter into contracts with each other and buy
11 beds from each other when they can get them free from
12 the Board. Right? So . . .

13 MEMBER SULLIVAN: Not if there's a -- no
14 bed need.

15 MEMBER CORPSTEIN: Well, there are ways
16 around that.

17 MEMBER SULLIVAN: Yes, there are.

18 MEMBER CORPSTEIN: I mean, you can -- if
19 a facility is closing and you want to build a facility
20 in an area that has no need, I've seen where they've
21 worked out contracts with the closing facility, "We're
22 going to accept a hundred percent of your residents."
23 Of course, they don't have to go there, but that
24 swayed the Board in saying, "Okay. You can go in the

1 facility in this place that has no need because you're
2 going to take the beds from that county and that
3 closing facility."

4 So, I mean, there are ways around it.
5 I mean, that's probably not the only way around it.

6 But, I mean, I can vote in concept, "Oh,
7 this sounds like a good idea or that doesn't sound
8 like a good idea. We should take beds from here or
9 whatever." But if there's not going to be any sort of
10 moratorium, then I don't know what we're recommending.

11 We're recommending that we put this program
12 in placement. Okay. The Board accepts that. Fine.
13 There's no moratorium, what's the point of the
14 program?

15 CO-CHAIRMAN BELL: The moratorium is a
16 consensus.

17 MEMBER CREDILLE: Well, my PA recommends
18 a moratorium that I presented at the last meeting.
19 Because I agree with you that we need a moratorium to
20 make this program work, and there's already an
21 artificial moratorium, essentially, given the current
22 state of affairs.

23 CHAIRMAN WAXMAN: Chuck?

24 MR. FOLEY: I think before we go through

1 that process -- I mean, don't we first of all have to
2 come up with rules and regulations for a buy/sell
3 program before we put a moratorium in place, if that's
4 going to be a part of it? I mean, it may come out --
5 the end result of this may be we still may not have a
6 buy/sell program for whatever reason.

7 CHAIRMAN WAXMAN: Well, I think we're
8 looking for -- moving forward with the concept.

9 MR. FOLEY: That's right.

10 CHAIRMAN WAXMAN: And the concept of a
11 moratorium should be one of the steps in the process.

12 MR. FOLEY: It doesn't mean we're going
13 to do it right now is what I'm saying.

14 CHAIRMAN WAXMAN: I'm saying we can.
15 I'm saying this group can -- if it chooses -- can make
16 the motion and get consensus of a moratorium. And
17 it's just out there with all the other steps that we
18 will then come back and decide what we're going to
19 move forward.

20 MR. DART: This is that part of the bed
21 sell policy program; right?

22 MEMBER CREDILLE: Correct.

23 MR. DART: It's part and parcel part of
24 the whole thing, Chuck, not its own separate policy.

1 MEMBER SULLIVAN: Well, that's item
2 No. 2 in --

3 CO-CHAIRMAN BELL: Yeah, I think we've
4 seen it. We're going to just --

5 MEMBER SULLIVAN: So, I mean, if we're
6 onto moratorium that's good, but I would like to start
7 getting this in an organized way.

8 CHAIRMAN WAXMAN: Fine. I thought we
9 agreed we're going to do that.

10 MEMBER SULLIVAN: Yes.

11 CHAIRMAN WAXMAN: It's your fault.

12 MEMBER CASPER: So are we --

13 CHAIRMAN WAXMAN: You said no.

14 MEMBER CASPER: Should we have a
15 discussion about the concept of a moratorium on beds?

16 MEMBER SULLIVAN: We could.

17 CHAIRMAN WAXMAN: We could.

18 MEMBER SULLIVAN: Sure.

19 MEMBER CASPER: Because I'd like to make
20 a comment.

21 I think that one of the two factors I think
22 that we need to consider, one is that, for better or
23 worse, the discussion here is largely informed by a
24 model from one state, and I think this -- I just know

1 that there are states that have other models where
2 licenses can be sold within a state, and I think that
3 to base our discussions only at looking at what is
4 done in Ohio, although the university team said that
5 there were a lot of similarities in the economics
6 behind the program, there's a lot of differences in
7 the policy initiatives and the policy implications.

8 So the second factor is that, clearly due to
9 beds that are not occupied, there's a lot of excess
10 capacity. And based on looking at comparative numbers
11 across states, you would clearly think that there's
12 excess beds available in Illinois. So those are
13 two facts.

14 That being said, there are models,
15 I believe, in states where you can buy and sell a
16 license, and there is not a moratorium on new nursing
17 home beds being made available. So I don't think
18 they're mutually exclusive, as it seems to be implied
19 here.

20 Now, the number of licensed beds in the
21 state relative to the population and the need may be
22 an overriding factor here. But I think that we have
23 to really be conscious of all of those factors in the
24 discussions.

1 CHAIRMAN WAXMAN: So, Bill, are you
2 opposed to the concept of a moratorium?

3 MEMBER CASPER: No.

4 CHAIRMAN WAXMAN: Okay.

5 MEMBER CASPER: I'm just saying that
6 I don't know that I have enough information about how
7 it would work if there were not a moratorium based on
8 what might be done in other states. And I think it's
9 an area where, as a committee member, I would like to
10 have more information before I sort of vote on it
11 one way or the other.

12 CHAIRMAN WAXMAN: So you're proposing
13 that we don't add to our elephant a moratorium
14 statement at this point in time?

15 MEMBER CASPER: Right. I mean,
16 that's -- unless based on discussion, I might have a
17 different opinion after the discussion, but I just
18 think --

19 CHAIRMAN WAXMAN: Okay.

20 MEMBER CASPER: -- it's an element of
21 what we have to think about.

22 CHAIRMAN WAXMAN: Terry?

23 MEMBER SULLIVAN: I think when we --
24 when I say "we," I mean, the three associations --

1 started talking about the concept five years ago, even
2 before this committee was formed, the concept of
3 moratorium was such a political hot potato that there
4 was a feeling of -- and that was five years ago -- a
5 feeling of let's keep the two issues separate -- to
6 get buy/sell off the ground, let's not complicate it
7 with the moratorium issue.

8 However, I think as we've had lots of
9 discussions over the past five years, there probably
10 is more of a leaning towards moratorium, particularly
11 with the Illinois healthcare being in favor of it.

12 I think that, you know, it's probably an
13 easier sell now, although I think if people are going
14 to be opposed to buy/sell, it may very well be the
15 reason they oppose is because of a moratorium. That
16 could be the piece of the elephant that somebody would
17 reject the elephant.

18 But I think it does help make the program
19 work. There's no question about it. You know,
20 buy/sell becomes -- if the only way you can increase
21 a bed -- or get a bed is by buying it, you know, a
22 moratorium definitely provides an incentive, although
23 I think Missouri has a buy/sell program without a
24 moratorium.

1 MR. FOLEY: That's correct.

2 MEMBER PHILLIPPE: They do.

3 MEMBER SULLIVAN: So, I mean, it can
4 work without the moratorium. It's not an essential
5 piece.

6 MEMBER SCAVOTTO: Yeah, I don't see the
7 connection in this. I can see a buy/sell working with
8 or without.

9 And I say that from the standpoint that as
10 far as buy/sell, I'm agnostic. I don't care if we do
11 it, I don't care if we don't do it. I don't think
12 it's going to make a whole lot of difference.

13 So I'm kind of interested how the moratorium
14 makes the buy/sell --

15 CHAIRMAN WAXMAN: What's your feeling
16 about a moratorium?

17 MEMBER SCAVOTTO: Pardon?

18 CHAIRMAN WAXMAN: What's your feeling
19 about a moratorium?

20 MEMBER SCAVOTTO: I tend to be opposed
21 to moratoriums.

22 CHAIRMAN WAXMAN: Even as overbedded as
23 we are?

24 MEMBER SCAVOTTO: Uh-huh.

1 MR. GALASSIE: Isn't there an actual
2 moratorium because it's overbedded?

3 CHAIRMAN WAXMAN: Well --

4 MEMBER CREDILLE: It's artificial now.

5 MR. GALASSIE: Yeah, it's artificial
6 now. The reality is.

7 MEMBER CREDILLE: In reality, it's here.

8 MEMBER SCAVOTTO: Well, what do you need
9 a moratorium for? You're not doing anything.

10 MEMBER SULLIVAN: Well, except we
11 have -- have, what, three variances, four variances?

12 MR. URSO: And the 10 percent rule.

13 MEMBER SULLIVAN: And the 10 percent
14 rule.

15 So, I mean, even though we have bed need, we
16 still have many ways of getting around bed need.

17 MR. GALASSIE: And keep in mind, if
18 I may, even if you choose not to recommend the
19 moratorium, once the committee's recommendations
20 ultimately go to the Board, the Board is going to look
21 beyond your recommendations and it's going to look at
22 public policy. And the feeling there is that public
23 policy is enhanced by moratorium. You know, I mean,
24 I'm not suggest -- the Board certainly wants to follow

1 your recommendations, I think, but just for
2 perspective.

3 CHAIRMAN WAXMAN: Are you sharing a
4 feeling, or are you just making a point?

5 MR. GALASSIE: I'm making -- I'm trying
6 to make a point, that public policy is part of what
7 the Board's role is. So look a little broader.

8 MEMBER SULLIVAN: Could we have a
9 recommendation that we don't have an opinion about a
10 moratorium, the bed buy program can work with or
11 without a moratorium --

12 MR. GALASSIE: Sure. Or you can
13 recommend no moratorium.

14 CHAIRMAN WAXMAN: I think -- Terry, what
15 I think is that we need to address the issue, and that
16 is addressing the issue. The fact that this committee
17 doesn't have an opinion about it says that we looked
18 at it and we're going to pass it up to the Mother
19 Board. I'm fine with that recommendation.

20 Tim?

21 MEMBER PHILLIPPE: I think our position
22 depends on where we sit, you know, that part of the
23 elephant we're grabbing a hold of.

24 So I can see public policy advantages to

1 having a more manageable number, trying to stop it,
2 the continued growth because -- somebody said long ago
3 in our meetings, who was advocating for home and
4 community-based services, it does seem like the more
5 beds you have in the state, the more ways you find to
6 fill them. If you don't have the beds, there seem to
7 be home and community-based services, which is better
8 for the citizens, many people would say at least.

9 The second one is someone copied the bylaws.
10 You know, and I encourage you to go back and look.
11 And it does talk about innovation as being part of our
12 focus. Innovation normally is not helped by keeping
13 everything the same. You know?

14 To the extent it's hard to build, you
15 probably have less innovation. So if you do things to
16 make it harder to do something new, you probably have
17 less innovation, typically, because there's no reason
18 for people to go.

19 MR. FOLEY: Good point, Tim.

20 MEMBER SCAVOTTO: That is so dependent
21 upon financing. It is so dependent upon financing.

22 MEMBER PHILLIPPE: It is.

23 MEMBER SCAVOTTO: It's a good point.

24 It's a good point, but it's the wrong planet.

1 CHAIRMAN WAXMAN: Wrong what?

2 MEMBER SCAVOTTO: Wrong planet.

3 MEMBER PHILLIPPE: Okay. So another
4 point is it affects that it's competition. People
5 that would prefer to not, in general -- that could be
6 me sometimes, too -- who do not want new competition
7 in their market would have preferred to have a freeze.
8 Why? Because it's going to be harder to build if you
9 have to buy the bed. Okay. That's what you're
10 saying.

11 Because I was in Ohio and had worked on this
12 a little bit, and probably others have more
13 information than I do. But in my experience, it
14 drives up the cost of expanding or doing something
15 innovative because you're paying for additional cost
16 of the bed on top of construction and everything else.

17 And then the thing that makes it a little
18 more -- makes it a little different in Illinois is
19 nobody is building for a Medicaid resident. Right?
20 And Medicaid is, what, up to 70 percent of the total
21 in the consensus?

22 MEMBER SULLIVAN: 67.

23 MEMBER PHILLIPPE: So about 70 percent.
24 I don't care what anybody says. I'll have

1 to go with that until we say differently, but so far
2 I've heard people say it differently and it's not true
3 later.

4 They don't build for Medicaid because
5 the funding is not adequate for innovative care or
6 private rooms or anything for Medicaid residents in
7 the State of Illinois. So when people are building,
8 they're building for private pay and for the short
9 stay transitional care, really.

10 And that does make a difference because then
11 if you have a freeze -- and I'm agnostic, too, about
12 it -- but if you have a freeze, and say I cannot add
13 10 percent beds without paying and buying them, that
14 means any time I want to expand or do something,
15 I have to add the cost of buying the beds on top of
16 it, and it almost assures that I cannot afford to
17 serve Medicaid people. And more than
18 50 percent of our census in our -- in my organization
19 is Medicaid, State of Illinois. So we serve Medicaid
20 people, and I understand the issue.

21 So it just makes it harder to serve the
22 underserved if we limit it. So I -- personally,
23 I understand all the reasons for trying to reduce the
24 number or have a freeze, but we want to think about

1 how that affects the underserved population.

2 Does that make sense?

3 MR. GALASSIE: Did you say 70 percent of
4 the long-term care population in Illinois is Medicaid?

5 MEMBER PHILLIPPE: Yes.

6 MEMBER SULLIVAN: 67.

7 MEMBER PHILLIPPE: So 67 to date, which
8 is a big deal.

9 MR. GALASSIE: Uh-huh. Sure. Yeah.

10 MEMBER PHILLIPPE: And particularly
11 compared to -- even Missouri. I've worked in
12 Missouri, also.

13 The differential between what's paid for
14 Medicaid, private pay, and Medicare is more extreme in
15 Ohio than anyplace -- I mean more extreme in Illinois
16 than anyplace else in the Midwest, virtually anyplace
17 else in the country. So it does skew how people make
18 decisions about who serve. So I don't know that it
19 matters in a way.

20 I would -- the only thing I would say is we
21 don't want people -- we want to make sure the rules
22 are clear so nobody can just be adding beds so they
23 can sell them or move them later.

24 MEMBER SULLIVAN: So, Mr. Chairman,

1 shall we say that --

2 MR. FLORINA: The buy/sell program --
3 I'm sorry.

4 MEMBER SULLIVAN: Shall we say that this
5 committee is agnostic when it comes to moratorium?

6 CO-CHAIRMAN BELL: Yes.

7 MR. FLORINA: I had a comment.

8 I've seen a lot of good discussion in the
9 meetings that I've come to for this subcommittee, and
10 you're trying to define the landscape and you're
11 starting to get in a lot of detail areas, and I'm not
12 sure exactly where to go with it.

13 But I was reading the report that just came
14 out in May that was online regarding the auditor
15 general regarding the whole program, and there was
16 two areas in there that I thought had some relevance
17 to what committee deals with on the detail side.

18 One was the development of a statewide
19 comprehensive plan, and secondly was the hiring of
20 a planner specifically for, as I understand it,
21 long-term care.

22 So I'm not trying to bring up more issues,
23 but is that tied in in any way to all this discussion
24 of what might else be happening as these things

1 develop and what the timeframe is for that? So we
2 don't design this great system and then find out it's
3 going to be overwritten by some larger forces.

4 MR. DART: So there is a law in the
5 books for comprehensive health planning. It's not at
6 all specific to long-term care, but, of course, that
7 will be a part under its umbrella. There are steps
8 being taken to create that funding. It's always a
9 concern, so IDPH is moving deliberately, cautiously
10 towards, you know, putting that up when you start
11 something, and then you find out that there's no funds
12 to sustain it.

13 So we are moving towards establishing it,
14 but there is no hard timeframe that I can share with
15 you now.

16 MR. GALASSIE: And if I may, and this is
17 just my opinion, but I would say when the legislature
18 revised the whole health facilities review board
19 process, it was very robust in its timing to do so,
20 this committee being part of the robustness for the
21 Board.

22 Subsequent to that, the funding has not been
23 there to support it. So I, for one, would doubt that
24 we would see a planner being added to the Staff for

1 long-term care. It's just a reality check.

2 CO-CHAIRMAN BELL: And if we wait for
3 the State, we'll be waiting forever.

4 So what is our opinion, then, on the
5 moratorium? That there is no opinion on the
6 moratorium? That we had the discussion, and there
7 just wasn't consensus on a moratorium at this point in
8 time, depending upon where we are where with the --
9 what the Board comes back with from their perspective?

10 If they come back and say that they believe
11 that there should be some type of moratorium, full,
12 partial, or whatever, then we would have further
13 discussions and determine that at this point -- or at
14 that point in time?

15 MEMBER SULLIVAN: Yeah.

16 CO-CHAIRMAN BELL: So is that --

17 MEMBER SULLIVAN: That's fair.

18 MEMBER SCAVOTTO: Yeah.

19 CO-CHAIRMAN BELL: -- fair?

20 MEMBER SULLIVAN: A fair reflection on
21 the opinion of this committee.

22 MS. GUILD: The other thing is that this
23 framework document that asks a number of questions
24 including that, this can be all put together, once

1 this group makes decisions, into some sort of straw
2 man proposal.

3 And a lot of these questions all relate to
4 each other, so maybe at the end of the day this Board
5 is going to come back -- or this advisory committee is
6 going to come back and say, "In contact stuff, all the
7 recommendations we made, this piece makes sense or
8 not, or some other piece makes sense or not."

9 So having no opinion now, you still have
10 another opportunity to revisit it once we get through
11 the entire list and figure out if there are other
12 questions that aren't on there.

13 MEMBER PHILLIPPE: That's true.

14 CO-CHAIRMAN BELL: So do we need a
15 motion on this now, or do we just say we're putting
16 this in the parking lot or whatever you call it at
17 this point?

18 MEMBER SULLIVAN: What are we nodding?

19 MEMBER PHILLIPPE: Put it in the parking
20 garage.

21 MEMBER SULLIVAN: Put it in the garage.

22 CO-CHAIRMAN BELL: Okay.

23 MR. GALASSIE: We'll put this in the
24 garage.

1 MEMBER SULLIVAN: Yeah, we'll put this
2 in the garage.

3 CO-CHAIRMAN BELL: All right. Claire,
4 what -- how do you want to -- with your discussion
5 agenda --

6 MS. BURMAN: You can use whatever
7 document is easier to use trying to get opinions on
8 all the different considerations.

9 MS. GUILD: We just did the second --
10 we just did the second question on the framework
11 document. So we can do No. 1 and then continue.

12 MS. BURMAN: Yeah. Or there's the other
13 document that is what the committee had worked with
14 before.

15 MEMBER SULLIVAN: Right.

16 MS. BURMAN: The bullet points.

17 MEMBER SULLIVAN: So we're on geography.

18 MR. GALASSIE: Can I have a page number?

19 MEMBER SULLIVAN: It's 3 -- page 1.

20 3 is handwritten.

21 MEMBER PHILLIPPE: I want to personally
22 thank the person who doesn't need to be high tech that
23 actually made page numbers in pencil. This is so
24 helpful because you often get documents and they print

1 out separately and you can't figure out what that is.

2 MS. BURMAN: That would be Cathy.

3 MS. CLARKE: Thank you.

4 CO-CHAIRMAN BELL: Okay. So then the
5 first -- or the next item we'll talk about
6 is geography.

7 And then the question becomes, is that if
8 we're going to do a bid buy/sell program, are we going
9 to be looking at a statewide program, within a
10 planning area, within a travel -- specified travel
11 distance, within a county? What is the opinions or
12 ideas of the subcommittee on that concept?

13 MEMBER SULLIVAN: I think, as Claire
14 mentions in the last sentence, we've kind of leaned
15 towards statewide after a lot of discussion in the
16 past.

17 I think Missouri right from the start did it
18 statewide with the Planning Board chairman being very
19 uncomfortable with that and then changing his mind
20 after the experience. He said the marketplace
21 actually does tend to even things out, and it didn't
22 skew up.

23 Whereas in Ohio when they started out, it
24 was strictly within a county, and it really skewed the

1 prices with some counties being really high and other
2 counties nobody even wanted to buy, much less sell.
3 It was only when they began to open it up more that
4 there was more of an equalization of price.

5 So I have worked my way from five years ago
6 where I thought it should be a 30-minute timeframe to
7 I think if it's going to work, it should be statewide.

8 MEMBER CREDILLE: I agree.

9 MEMBER SULLIVAN: I make a motion that
10 we do statewide.

11 MEMBER SCAVOTTO: Second.

12 MEMBER CREDILLE: Second.

13 CO-CHAIRMAN BELL: All in favor?

14 (The ayes were thereupon heard.)

15 CO-CHAIRMAN BELL: Opposed?

16 MR. FLORINA: No discussion?

17 CO-CHAIRMAN BELL: Any discussion on
18 that?

19 MEMBER CORPSTEIN: Nobody's concerned
20 that all the beds will move above I-80? That we are
21 top heavy and that the beds will migrate from
22 underserved southern counties to the all-important
23 above I-80 part of Illinois? It's what I worry about,
24 I guess, maybe.

1 MEMBER PHILLIPPE: Can I ask a question?

2 Because my assumption is that the southern
3 part of the state where I mostly work is -- has low
4 census, and so that's the reason those beds would
5 move. So if they have low census, why do they have
6 poor access?

7 MEMBER CORPSTEIN: Well, because
8 Medicaid rates are low, people are dropping their
9 Medicaid beds. And in poorer counties, which you
10 serve, are mostly Medicaid.

11 MEMBER PHILLIPPE: That's true.

12 MEMBER CORPSTEIN: You start selling off
13 your excess beds. They are bought by people up here.
14 They may have a few token Medicaid beds in order to
15 get certified for Medicare.

16 But I can tell you from experience, people
17 are coming to me often, and that's what they are
18 talking about is dropping their Medicaid beds, getting
19 their beds upgraded to skilled so that they can be
20 available for Medicare, and then eliminating their
21 Medicaid beds because they don't want to be available
22 for Medicaid residents because they can't afford it,
23 essentially.

24 So mostly what I'm worried about is Medicaid

1 access --

2 MEMBER PHILLIPPE: That's fair.

3 MEMBER CORPSTEIN: -- in the southern
4 half, the majority of the state, let's say, not the
5 top third.

6 MR. FOLEY: I think as we scroll through
7 this, Paul, this entire exercise, I think once we're
8 finished, I think that would probably answer some of
9 your concerns.

10 MEMBER CORPSTEIN: Right.

11 And I'm worried -- Ohio is more diverse,
12 let's say. They have many large cities spread
13 throughout the state. We have many large cities
14 all at the top of the state. Thereby, the whole
15 two-thirds of the state is --

16 MR. FOLEY: But I think what we're
17 seeing a lot of the small counties down South is the
18 fact that the population down there is, in fact,
19 decreasing. People are, in fact, moving out all those
20 small counties.

21 I don't think it's going to be the State's
22 intent to have a particular geographic area totally,
23 totally underserved. I don't think that would be the
24 intent of the Board or even of this subcommittee.

1 You know, I think part of this process
2 should include looking at the stats in each one of
3 those geographic areas to see what impact that could
4 have -- would have on that specific location, making
5 sure that the bodies are going to still be there, or
6 maybe they're not going to be there, what impact it is
7 going to have on the area. And I think, as I said, a
8 lot of that would be discussed as we're going through
9 the following pages.

10 But you did bring up --

11 MEMBER CORPSTEIN: No, I'm swayable.
12 I'm just -- those are my concerns.

13 MEMBER SCAVOTTO: I would second. All
14 the work I've done in Illinois reflects what Charles
15 is saying. The census isn't there. There are some
16 that are aligned with the hospital and a hospital
17 referral pattern, and they're doing okay.

18 But a lot of the providers that I see are
19 hurting for census, and they're -- you're not going to
20 see those beds full in our lifetime unless there's a
21 population explosion down there. And that's a
22 demographic fact that I see.

23 So, yes, I understand the point about the
24 beds being moved, but I don't see the access because

1 they're not serving anybody now nor are they likely to.

2 MEMBER CASPER: At the risk of mixing
3 metaphors, the elephant in the room is the Medicaid
4 rate in the state, which totally skews the market no
5 matter how you look at it.

6 And I don't think we're -- it's not our
7 mandate. We're not going to solve that here, and so
8 I think we have to kind of work around that fact.

9 MEMBER PHILLIPPE: That's true.

10 MEMBER SULLIVAN: That's 2.

11 CO-CHAIRMAN BELL: On a statewide.

12 MR. FLORINA: I have a question.

13 CO-CHAIRMAN BELL: Yes, sir.

14 MR. FLORINA: If you allow this to go
15 statewide, is there any limitation on the number of
16 beds, then, that can be created in what's a current
17 planning area versus what we already have?

18 MEMBER SULLIVAN: That's Question No. 3.

19 MR. FLORINA: Because it has an impact
20 on existing providers, too, from a competitive
21 standpoint obviously.

22 But coming from an independent operation
23 for years, is there going to be, you know, larger
24 organizations just coming in and taking over your

1 market area because now they can do so and they have
2 the resources to accomplish that versus an independent
3 facility? That doesn't, you know, obviously support
4 the whole concept of free enterprise, you know.

5 MEMBER SULLIVAN: Uh-huh.

6 MR. FLORINA: But it does create a
7 problem for existing operations.

8 MEMBER SULLIVAN: I think that was my
9 original position of maintaining it within a 30-minute
10 drive time.

11 But as we've looked at other states, again,
12 that -- the marketplace does seem to treat the whole
13 system fairly. I am less worried about that whole
14 concept than I was before.

15 MR. FLORINA: Did you have any data
16 to support what happened to independent or smaller
17 operations versus larger operations as this developed
18 throughout the planning areas?

19 MEMBER SULLIVAN: No.

20 MR. FLORINA: Because there's probably
21 no independence left. It's probably all multifacility
22 ownership as it's developed. That would be my belief
23 as to what happened without having any data to support
24 one way or the other.

1 CO-CHAIRMAN BELL: Yes, sir?

2 MEMBER PHILLIPPE: I kind of want to
3 interfere in the middle of discussion to what you
4 said.

5 You know, we participate in the Supportive
6 Living Program, which is a Medicaid kind of waiver
7 program. But in -- and so you build a building, and
8 you don't fill it up with Medicaid people most of the
9 time. You have a range, but you have a minimum
10 percent. 25 percent is the rule we use, actually.

11 MR. FOLEY: 25 percent.

12 MEMBER PHILLIPPE: Two options.

13 And I am also concerned about access for
14 Medicaid residents. I've heard it expressed actually
15 in Board meetings where I happened to be there.

16 And, you know, it would be kind of a
17 creative idea to mandate rooms in new development for
18 Medicaid. What's done now is Medicaid certification.
19 But my experience, when I look around, that doesn't
20 mean the building has any Medicaid people in it. It
21 just means they agree to certify their beds for
22 Medicaid, to get it approved, but there's no
23 enforcement, I don't think. Nobody comes back later
24 and checks their census on that new building.

1 MEMBER SCAVOTTO: That's right. That's
2 right.

3 MEMBER PHILLIPPE: And the building that
4 was approved for Medicaid -- I've heard an argument
5 about it at Board meetings before -- doesn't have any
6 Medicaid in it.

7 And so I don't know if that's something the
8 Board is able to do or not, but it would meet your
9 need and actually a lot of citizens. I mean,
10 70 percent of the people in long-term care, or
11 67 percent today you said, are Medicaid residents, and
12 there are places with poor access. There are. You
13 have to go long distances because nobody's building
14 for them.

15 CO-CHAIRMAN BELL: I think that's
16 correct.

17 And I think that will be part of the
18 discussions and maybe something that we can have under
19 the buyer requirements, that if you're going to buy at
20 a certain percent -- you know, that may be a
21 discussion point we can have when we get to the buyer
22 side, is that a certain percentage of those have to be
23 dedicated or labeled as Medicaid.

24 MEMBER SCAVOTTO: Yes. Yes. But this

1 is where it gets complicated. Because I believe you
2 spoke eloquently not too long ago that no one's doing
3 this with Medicaid in mind. And it's tough -- it's
4 tough to do anything of a financial nature based on
5 Medicaid. It's a fact of life.

6 MEMBER PHILLIPPE: That part's true.

7 However, it may be true to do something with
8 a minimum percentage of Medicaid.

9 And I'd also prefer to have strict rules
10 that have to be followed versus people coming and
11 saying one thing and then building and doing something
12 else.

13 MEMBER SCAVOTTO: Uh-huh. That makes
14 sense.

15 MEMBER PHILLIPPE: Because then we know
16 what we're getting. I mean, it just seems like good
17 public policy to me. You know what you'll end up
18 with.

19 MR. FOLEY: I think it's what Bill just
20 said. Once we go through these pages, I think we can
21 look at that better.

22 MR. GALASSIE: So --

23 MR. FOLEY: The buyer's or the seller's
24 responsibility making sure.

1 The whole thing depends on, like you said,
2 Tim, what is financially viable. You know, how many
3 Medicaid beds can I have if I'm going to build a
4 replacement facility in a specific location?

5 I think the financial is going to tell you
6 how many beds should, in fact, be Medicaid versus
7 private pay Medicare.

8 And if you're in a market area where there
9 is a high Medicaid, you're not going to have that much
10 of a choice but to offer more Medicaid beds, you know,
11 period.

12 But you're also going to have locations
13 where there may not be a high Medicaid population,
14 just a high private pay population, maybe like
15 Lake County. It used to be that way; I don't know if
16 it is today.

17 MR. GALASSIE: No, there's a significant
18 Medicaid population.

19 MR. FOLEY: I'm sorry?

20 MR. GALASSIE: There's a significant
21 Medicaid population.

22 MR. FOLEY: Yeah. And so you can't
23 really force people to go Medicaid if they don't want
24 to go Medicaid. But, yet, I do agree that some

1 percentage of beds need to be Medicaid, and it should
2 be follow-up -- I think that's what's crucial -- it
3 needs a follow-up to make sure they provide Medicaid
4 services.

5 MEMBER PHILLIPPE: So, anyway, with what
6 you said, I would support statewide.

7 MR. FOLEY: Yeah.

8 MEMBER PHILLIPPE: Okay.

9 MR. FOLEY: Let's go on.

10 CO-CHAIRMAN BELL: Seller requirements.

11 Here we get to the number, occupancy rates.

12 Is there a minimum or a maximum number of
13 beds that can be --

14 MEMBER SULLIVAN: You can sell all your
15 beds now. You just can't sell some of your beds if --
16 if I'm allowed to sell 120 of my 120-bed facility
17 right now, why not let me sell 30? I don't think
18 there should be a minimum. I don't see putting
19 restrictions on the seller of --

20 MEMBER SCAVOTTO: I thought you were
21 going to sell 119.

22 MEMBER SULLIVAN: Right. And keep one
23 bed. There you go.

24 I don't -- on the seller, I don't think we

1 should have limits. If the seller feels -- other than
2 selling an occupied bed. You know, if your average
3 occupancy is 70 percent, I don't think you should be
4 shipping people out of your facility. That's probably
5 the one -- one area I see.

6 But in terms of artificial stuff, if I have
7 20 empty beds and I want to sell 20 beds, I -- you
8 know, let's do it. Let the marketplace call that one.

9 MEMBER CASPER: Well, let me play
10 devil's advocate here.

11 Suppose you have, just a round number,
12 100 beds in double occupancy rooms, and they're --
13 you're 80 percent occupied but you want to create all
14 private rooms because that's where the future --

15 MEMBER SULLIVAN: Uh-huh.

16 MEMBER CASPER: -- is going, over a
17 period of time that would require you to reduce your
18 census somehow, but would you want to preclude
19 somebody from being able to do that? Because there
20 are rules from transferring people, and you have to
21 have a process in place. So because, what you just
22 said, is if you got an occupied bed, you can't sell it.

23 MEMBER SULLIVAN: Okay. I'm open to
24 that.

1 I mean, people change their business plan
2 all the time. And, yes, sometimes that means that
3 people need to move, and the facility assists them.

4 Now, I know some of the advocates would
5 probably not like that.

6 MEMBER CASPER: Right.

7 MEMBER SULLIVAN: I mean, you can't --

8 CO-CHAIRMAN BELL: But then you get into
9 the whole -- then you bring in the licensure process
10 of an involuntary discharge.

11 MEMBER SULLIVAN: Uh-huh.

12 CO-CHAIRMAN BELL: I mean, and that --
13 that's by individual. So it's going to get very
14 complicated, I think, if you start going with occupied
15 beds.

16 MEMBER SULLIVAN: Right.

17 CO-CHAIRMAN BELL: I mean, I can see if
18 you've got 20 beds today, you can go ahead and do
19 that.

20 But if you want to get 30 more, you are
21 going to have to wait until those people transfer out
22 voluntarily or you come up with some other method to
23 move them that they are in agreement with. Otherwise,
24 you really are going to create a big problem within

1 the State and the process with involuntary discharges.

2 MR. FOLEY: What about your first
3 question there? Should a seller be allowed to create
4 a need in a planning area? I believe that's very
5 important. If there's not going to be a limit to the
6 number of beds, is it a problem if it then creates a
7 need in that particular planning area? Or are they,
8 in fact, going to be underserved?

9 And this goes back to what I said earlier.
10 We need to look at the population stats in that area
11 to see if the populations are there, is not there,
12 whatever.

13 So, again, I think we should look at that
14 first question.

15 MEMBER SCAVOTTO: It creates a need
16 using licensed beds.

17 MR. FOLEY: Right.

18 MEMBER SCAVOTTO: It may not create a
19 need using actual census, and that's the debate that
20 we had earlier.

21 MR. FOLEY: Yeah.

22 CO-CHAIRMAN BELL: I think one of the
23 concepts was is that the seller can sell only the
24 number of beds in excess of the Board's 90 percent

1 occupancy standard, the number necessary to reduce
2 that facility's occupancy to the Board of 90 percent
3 occupancy standard.

4 Is that out of bounds or is that . . .

5 MEMBER PHILLIPPE: In general, what
6 I would support is the fewest rules as possible --

7 CO-CHAIRMAN BELL: Uh-huh.

8 MEMBER PHILLIPPE: -- to get the goal we
9 need and let the market kind of shift it out.

10 CO-CHAIRMAN BELL: Uh-huh.

11 MEMBER PHILLIPPE: So for -- along with
12 what's good for the consumer.

13 So what I would say is we set a target, and
14 we say, "You only can sell empty beds, and they've
15 been empty for 60 days, 90 days." We put a timeline
16 on it, and those are the beds we can sell.

17 I mean, we track beds; right? We track
18 rooms. And -- but something like that.

19 You know, I think it wouldn't be good to --
20 I don't know if I would support the idea of selling
21 beds and making people move. No offense.

22 But I -- so something that allows --
23 whatever that works the easiest for tracking and
24 regulation that we're basically selling empty beds.

1 And then, personally, I don't care if it
2 goes down to 95 percent occupancy, which is -- I'd
3 love to -- I mean, I've had buildings -- I think it's
4 great to run 97 percent occupancy because that means
5 people want what you have to offer and it's efficient.

6 MR. FOLEY: So, Bill, are we going to
7 notify each facility and ask them how many beds
8 potentially could be on the market as being for sale
9 in your facility? And, if so, who's going to
10 inventory and who's going to broker those beds?

11 MEMBER CREDILLE: But it's up to the --

12 MR. GALASSIE: No. The State does.

13 MEMBER CREDILLE: We don't need to do
14 that. This is a seller agreeing that they want to --
15 want to or have beds that they can sell.

16 MR. GALASSIE: That's between the
17 two of you.

18 MEMBER CREDILLE: Right. It's between
19 buyer and seller.

20 CO-CHAIRMAN BELL: Should there be a
21 timeframe as to how long a bed was vacant before it
22 can be considered?

23 MEMBER CREDILLE: Oh, my God, how would
24 we manage that?

1 CO-CHAIRMAN BELL: And how would
2 you . . .

3 MR. FOLEY: Through the inventory,
4 through the patient days of the last couple years.

5 MEMBER PHILLIPPE: Or another fast way,
6 a simple way, because we track census, and we track
7 occupancy; right? Percentages.

8 MR. FOLEY: Yeah.

9 MEMBER PHILLIPPE: So it would be easier
10 and simpler to track if we just set a target based on
11 average occupancy over a period of time. And you just
12 go to down to that and you assume -- because beds move
13 around, people move around.

14 You know, I might have 85 percent occupancy,
15 but every bed was used sometime in a four-month
16 period. That's what you're talking about.

17 So we just use a percentage of occupancy and
18 say up to that? And that kind of practically is the
19 same thing.

20 MR. GALASSIE: And by the end of the
21 day, aren't we -- by "we" I mean the State -- taking
22 the owner's words for it? We're not physically going
23 out validating it.

24 MEMBER PHILLIPPE: But you have a report

1 on occupancy; right? So you could check occupancy to
2 show that people are being honest, whereas the other
3 numbers -- other things would be hard to verify.

4 MR. GALASSIE: I doubt the State has the
5 resources to be sending people out to verify it.

6 MEMBER PHILLIPPE: You don't know
7 occupancy.

8 MR. DART: Well, yeah, we have an idea,
9 but I think something like an attestation from the --
10 from the people that are engaging the transaction that
11 this is, in fact, the case or they are at least
12 saying, "We are acknowledging you did it. We're
13 putting forward our signature that we met these
14 requirements."

15 And then if we find out later by any other
16 meetings that that's not the case, then there could be
17 some repercussions.

18 MEMBER PHILLIPPE: That's fair.

19 CO-CHAIRMAN BELL: So there still will
20 be some type of a modified CON process that these
21 people are going to have to go through to do this
22 buy/sell program.

23 MR. DART: I would say so.

24 MEMBER SULLIVAN: Yes.

1 CO-CHAIRMAN BELL: Maybe not the stamp
2 that we have for others, but there should be something
3 in place that --

4 MR. URSO: Monitors.

5 CO-CHAIRMAN BELL: Yeah.

6 MR. GALASSIE: Sure.

7 MEMBER CASPER: It could also be
8 regulated through licensure.

9 MR. DART: Well, both, I think,
10 licensure and the Board are going to have to work
11 together on this like other aspects of long-term care.

12 CO-CHAIRMAN BELL: So far we've got that
13 we cannot sell an occupied bed, and then we're going
14 to go off on some type of an attestation of some type
15 of percentages of occupancy or the number.

16 MEMBER SCAVOTTO: Uh-huh.

17 CO-CHAIRMAN BELL: What about another
18 question that is in here is about -- what about beds
19 licensed under the Hospital Licensing Act?

20 MEMBER SULLIVAN: I don't see why you
21 can't sell them.

22 CO-CHAIRMAN BELL: Okay.

23 MEMBER SULLIVAN: I don't -- yeah. Why
24 put a restriction on that?

1 MR. DART: I agree. There's not that
2 many of them.

3 CO-CHAIRMAN BELL: No -- yeah, there's
4 fewer and fewer all the time.

5 MEMBER CORPSTEIN: A thousand beds.

6 CO-CHAIRMAN BELL: Is there anything
7 else under -- yes, Ann?

8 MS. GUILD: I have one that isn't on
9 here.

10 Let's say you have a facility that is
11 extraordinarily low occupancy, you're not making any
12 money, and you would otherwise, under current Board
13 rules, discontinue the facility.

14 MEMBER SULLIVAN: Or sell it.

15 MS. GUILD: Well, presumably, if you're
16 selling it, you're selling it, then, to someone who
17 would operate the bed at that site and run that
18 facility.

19 Should you be able to sell all the bed --
20 instead of a discontinuation, should you be able to
21 sell all the beds to a facility in a different part of
22 the state instead of just discontinuing it?

23 I mean, right now there's already a process
24 for discontinuation, but it would -- it would give an

1 incentive to somebody who was not performing well
2 to -- instead of just discontinuing, to sell the beds.
3 Does it matter?

4 MEMBER SULLIVAN: But still close down.

5 MEMBER SCAVOTTO: Well, if you sell all
6 the beds --

7 CO-CHAIRMAN BELL: You're selling an
8 occupied bed.

9 MS. GUILD: Well, say you have
10 five residents --

11 CO-CHAIRMAN BELL: Uh-huh.

12 MS. GUILD: -- and you've got, you
13 know -- obviously, you can't run a facility with
14 really, really low occupancy like that. You can't
15 make -- you can't meet your revenue generation goals.

16 CO-CHAIRMAN BELL: Uh-huh.

17 MEMBER PHILLIPPE: Actually, I think
18 that's a good question.

19 Because this was being done when I first
20 moved into the state not knowing anything. I looked
21 at communities who operate in southern Illinois in the
22 area, and there's like three or four facilities, and
23 they all have low census in old buildings. I thought,
24 "This is good. I'll just come in and buy one of them

1 and build a new building." Well, no, it's not so
2 simple.

3 It would actually be good for the consumer
4 if there's -- don't you think? It would be good for
5 the consumer if there's a way --

6 MEMBER CREDILLE: Stop waving.

7 MS. CLARKE: I don't mean to interrupt.

8 MEMBER PHILLIPPE: I'm not even Italian,
9 I'm French.

10 It would be good for the State if there's a
11 way, when we're doing this, that it would be a simpler
12 process than it is today to be able to, in the same
13 area, just buy the beds and build a new place. That's
14 what you're saying.

15 MS. GUILD: Well --

16 MEMBER PHILLIPPE: You're not moving the
17 beds. So the issue that you have is moving the beds
18 to another area.

19 MS. GUILD: If you're discontinuing a
20 whole facility.

21 MEMBER PHILLIPPE: If you're continuing.
22 But it's kind of a separate issue, rather than just
23 moving and adding on, is buying the beds and building
24 a nice, new place right there in the same area, the

1 same community.

2 MR. GALASSIE: Well, the CON process
3 today is discontinuing. So there's a process for
4 that.

5 CO-CHAIRMAN BELL: How would the Board
6 handle that, Frank, if somebody came and said, you
7 know, "I am thinking about -- there's three facilities
8 in this area that all have low census, and,
9 apparently, the owners are willing to sell. I'm
10 thinking about buying those three, combining it, and
11 building a brand new facility"?

12 MR. FOLEY: That's fine.

13 MR. GALASSIE: We'll go through the CON
14 process.

15 MEMBER PHILLIPPE: People tell me it's
16 complicated.

17 MR. URSO: You'd have to abide by those
18 rules about discontinuation and then establishing a
19 new facility.

20 CO-CHAIRMAN BELL: But there would be
21 nothing -- I mean, there would be nothing from the
22 Board's perspective that you can't do anything like
23 that or -- it seems like, as Ann was saying -- I mean,
24 and as Tim was saying, too -- it would be a benefit to

1 those residents because they're moving from some
2 buildings that have some questionable operations in a
3 both physical plant and maybe carewise, and you're
4 building a new facility and being able to offer them
5 new services or better services than what they had.
6 It would seem to me that that would be something
7 that's a win-win on all sides.

8 MR. URSO: I mean, they just have to
9 abide by the particular rules in dealing with the
10 transactions of the change of ownership and the
11 discontinuations, if there's establishments.

12 CO-CHAIRMAN BELL: But it's doable.

13 MR. URSO: I would say so.

14 Anybody have any other thoughts on that?
15 Claire?

16 MS. BURMAN: Well, I think that would
17 work if the new facility would be in an area that
18 needs a new facility.

19 CO-CHAIRMAN BELL: Well, I would think
20 it would be in that general area where you got --

21 MS. BURMAN: Well, yeah, I mean --

22 CO-CHAIRMAN BELL: -- that you aren't
23 going to move that to Chicago or something.

24 MS. BURMAN: No. It would still be a

1 fuller review --

2 CO-CHAIRMAN BELL: Yeah.

3 MS. BURMAN: -- than what we've been
4 talking about.

5 MEMBER PHILLIPPE: Practically speaking,
6 I've been told it's complicated and difficult,
7 but I --

8 MR. GALASSIE: Because of the State
9 rules?

10 MEMBER PHILLIPPE: Yeah, because it
11 just -- the policy -- the building you're buying has
12 low census. So we're talking about building a new
13 building with low census. It's surely not meeting
14 90 percent rule; right? There's some of those kinds
15 of issues.

16 But, anyway, we don't have to get
17 sidetracked.

18 MR. URSO: You'd have to look at the
19 specific rules --

20 MEMBER PHILLIPPE: Yeah.

21 MR. URSO: -- in terms of projections
22 and things of that nature.

23 MEMBER PHILLIPPE: Right.

24 CO-CHAIRMAN BELL: I would say if we

1 find that's the case, then maybe there needs to be
2 some type of provision for Mother Board on -- or the
3 big CON process on how those are handled, those types
4 of processes. Maybe there should be something that
5 addresses those specifically.

6 MR. URSO: Good point.

7 MEMBER PHILLIPPE: But practically
8 speaking, I don't think it's wise for the State to
9 have whole buildings closing and selling their beds
10 and moving them to a whole different part of the
11 state. I think at some point --

12 MS. GUILD: Right. That's what I was
13 getting at.

14 MEMBER PHILLIPPE: -- we're going to
15 have access -- that's what you're saying, isn't it?

16 MS. GUILD: Right. Right.

17 MEMBER PHILLIPPE: We're going to have
18 access issues.

19 MS. GUILD: Or providing an incentive to
20 sell something that, otherwise, wouldn't have been a
21 commodity that you can sell.

22 MEMBER PHILLIPPE: Right.

23 MR. URSO: Yeah. So creating a market
24 for the wrong reasons.

1 MS. GUILD: Right. Exactly.

2 MR. GALASSIE: Paul, how many of the
3 beds in central or southern Illinois are going to end
4 up in --

5 MEMBER CORPSTEIN: Right.

6 And isn't it like a self-repeating cycle?
7 Well, there's more people above I-80 because there's
8 more facilities and there's more stuff up here, so we
9 build more stuff up here, so that draws more people
10 and it just, you know, goes around.

11 MR. URSO: Well, see, that's why I think
12 this is going to require a whole series of rules that
13 kind of overlays the monitoring of this whole process
14 so that those kinds of disadvantages and unintended
15 consequences don't occur, as best as you can.

16 MR. GALASSIE: And perhaps the analogy
17 from the Board's perspective is like with the
18 hospitals.

19 You know, there's hospital systems want to
20 build more hospitals in the collar county areas and
21 several of them rejected because of need issues.

22 MEMBER PHILLIPPE: One way to limit
23 that, because we've talked about it before when we --
24 two years ago, a year and a half, we talked about a

1 pilot kind of idea, and one way to limit that is just
2 don't allow the beds to be used for new facilities;
3 they can only be used for expansions.

4 If we use it for expansions instead of new
5 facilities, that limits some of that motivation built
6 to buy up beds from southern Illinois and build new
7 buildings.

8 MS. GUILD: And those are under buyer,
9 those questions.

10 MEMBER PHILLIPPE: And that kind of
11 limits that.

12 But don't you think that would kind of help
13 take care of that?

14 MR. URSO: Well, you know, I think
15 that's an excellent idea. I think to develop a pilot
16 first because, oftentimes, we find when we -- when we
17 propagate rules, they need to be tested.

18 You know, maybe you were thinking of a
19 path of rules that just don't have any practical
20 applications. So a pilot allows you to be able to
21 test your hypothesis, so to speak.

22 MEMBER PHILLIPPE: That's true.

23 MEMBER CREDILLE: We also at one point
24 talked about a pilot, though, being a finite period of

1 time. It didn't have to be geography. We could say,
2 "Well, we're going to try this pilot two years, not
3 12 counties."

4 MS. GUILD: Right.

5 MEMBER CREDILLE: And so then you
6 reevaluate after a time period, which isn't normally
7 how we think about it, but that is an interesting
8 concept.

9 MR. GALASSIE: I think it's an excellent
10 idea.

11 MR. URSO: We talked about how a CON is
12 going to affect all this, you know, accountability.

13 CO-CHAIRMAN BELL: So I've heard the
14 thought about this being a pilot.

15 Is that something that we vote on or get
16 consensus on now, or is that something we wait until
17 the end until we see what everything we've got
18 together and then decide on a pilot? What's the --
19 what's the committee's thoughts on that?

20 MEMBER SULLIVAN: Let's postpone the
21 pilot question.

22 CO-CHAIRMAN BELL: Okay.

23 MS. BURMAN: Let's park it. No?

24 MEMBER CASPER: I would agree with that.

1 Put it in the parking lot with the moratorium.

2 MEMBER PHILLIPPE: But I like -- I would
3 say I like the idea of a pilot, because there's lots
4 of unintended consequences when you make policy
5 changes. I think that's wise. You learn --

6 MR. GALASSIE: Any new implementation is
7 only enhanced by a pilot, in my opinion.

8 CO-CHAIRMAN BELL: So in the parking
9 lot, we now have the pilot concept and the moratorium
10 issue. Okay.

11 Is there anything else under the seller
12 requirements?

13 And I'll turn it back over to Chairman
14 Waxman --

15 CHAIRMAN WAXMAN: No, you're doing
16 great.

17 CO-CHAIRMAN BELL: -- on the seller
18 requirements.

19 There's some questions in there about the
20 20 bed, 10 percent rule, but I think that's a whole
21 separate issue that we need to discuss irregardless of
22 buyer/seller. That's a whole issue I think in and of
23 itself what we do with that.

24 MEMBER SULLIVAN: Well, you've got

1 Questions 2, 3, 4, 5, and 6.

2 How often can beds be sold?

3 MEMBER PHILLIPPE: Who cares?

4 MEMBER SULLIVAN: Who cares? Yeah, that
5 one's settled.

6 MEMBER CREDILLE: But in Ohio they have
7 a finite period of time to sell the beds, I think it's
8 annually, because of the process it takes through the
9 CON process.

10 And they actually got a little -- it struck
11 the system a little bit because it took them longer
12 than they thought when they first rolled this out.

13 I think that was in the UIC study a little
14 bit there.

15 MEMBER CASPER: They took development
16 time into account in terms of setting up the
17 marketplace. So if the beds are sold today, they're
18 not going to come online in the marketplace.

19 CO-CHAIRMAN BELL: Yeah, but if they've
20 got to go through the process, you're going to have --
21 you already have a set time.

22 But you can't start selling a bed and then
23 turn around and you're going to sell it again if
24 they're still in the process from the first, so . . .

1 MEMBER CREDILLE: Well, it takes --
2 I mean, any of us that have been involved, it takes
3 two years to get a building built or -- and, in
4 addition, it's going to take you, I don't know, 12 to
5 18 months. So already it's backlogged.

6 MEMBER PHILLIPPE: The -- connected to
7 that -- I don't know if the question's here, but
8 actually Claire did identify this in one of the State
9 issues -- the only -- I don't care, you know, how
10 often you can do it, because if we set a rule, the
11 people who are well connected and closest to the
12 knowledge base will move first, and they will get
13 their applications in quickly.

14 And other people, maybe the stand-alones,
15 the others that are not so well connected, won't tend
16 to know first.

17 So as long as the department can -- or the
18 Board can cope with it, the Staff can cope, I don't
19 care how often.

20 I actually care how long you have once --
21 you have an agreement, the Board approves it, so you
22 can go ahead and make the transaction.

23 It does seem to me we don't want people
24 piling up inventories. We want to be based on a

1 construction project, and they get a certain amount of
2 time to build, to use that bed. If they don't,
3 something happens.

4 So we're not just people stockpiling beds.
5 That happened, I think, in another state or two.

6 MS. BURMAN: New Jersey.

7 MEMBER PHILLIPPE: They just thought
8 they were building resources for the future somehow.

9 MEMBER CORPSTEIN: And I have a
10 comment, too.

11 How often beds can be sold, that's not how
12 often beds can be added; right? So I can sell beds
13 every day. Here's a bed, here's a bed, here' a bed.
14 The 20, 10 percent rule is every two years.

15 CO-CHAIRMAN BELL: Right.

16 MEMBER PHILLIPPE: Right.

17 MEMBER CORPSTEIN: So you can only add
18 beds to your inventory every two years. You can sell
19 them as often, I guess, as you want, according to
20 this, But you can only add those -- just because you
21 buy a bed gives you -- I don't know how it's going to
22 be laid out. Maybe that will be the CON.

23 But does that negate the -- I can, you know,
24 buy a bed this week, and two months down the line

1 I can add a couple, and then two weeks down or a month
2 down, I add another one. Is that -- the 20,
3 10 percent every two years -- is that going to be
4 coming into play as how often do you buy them?

5 Just because you buy them, you may have the
6 certificate of need -- I guess, this is a -- in lieu
7 of a certificate of need for those beds -- it doesn't
8 necessarily mean that that bed is going to be
9 licensed. You've still got to go through a physical
10 plan to help review and all that kind of stuff, too.

11 So how often they can be sold I think is
12 less important than how often you can add to your
13 facility.

14 MEMBER SULLIVAN: Right.

15 I think a number of the states that we
16 looked at do have a right --

17 MEMBER CORPSTEIN: And it'll be --

18 MEMBER SULLIVAN: -- do have a thing of
19 you can't add -- once you've sold beds, you can't add
20 right afterwards.

21 MEMBER CORPSTEIN: Right.

22 And how often they can be sold, I mean,
23 they're going to go into a pool, I assume, or a broker
24 will manage this in some -- I don't know about you two

1 just entering into an agreement, you still buy beds
2 between each other or what have you, whether that
3 comes into play, or whether all the beds will be
4 gathered and put into a broker who's running that,
5 I don't know, and then they will administer and mete
6 around the beds to buy them based on the rule?

7 MEMBER PHILLIPPE: This is my
8 preference: We let the market take care of it.

9 MEMBER CORPSTEIN: Right.

10 MEMBER PHILLIPPE: And that means we
11 negotiate a contract, and it's contingent on Board
12 approval, really. That's the way it works in the
13 other states. And so if the Board approves it, we
14 do it.

15 Now, my guess is what will eventually happen
16 is that there'll be people who make it their job to be
17 connectors, and then they will be people who -- in
18 Ohio, I want to buy beds. I don't go looking around
19 personally. I actually go to people who work in that
20 field, who are attorneys and people who -- that's just
21 part of their brokers, that's part of their job. They
22 help connect people who are selling -- buying and
23 selling.

24 I think that's easier than having another

1 state -- or some organization -- that runs a bureau
2 somewhere of beds.

3 MEMBER CORPSTEIN: Not another one.

4 MEMBER PHILLIPPE: What do you think?
5 You want to do that?

6 MEMBER CORPSTEIN: No. No.

7 MEMBER PHILLIPPE: So if we let the
8 market take care of it, somebody will try to figure
9 out how to make a business model out of helping to
10 connect people.

11 MEMBER SULLIVAN: Yeah. I -- more than
12 a moratorium, I think the 20 bed, 10 percent rule
13 might get more game playing and undermine the system
14 than anything else.

15 I mean, in some sense, this whole buy-
16 exchange was not supposed to increase beds. In fact,
17 a lot of facilities may, in fact, decide that, "I'm
18 going to exercise my 20-bed increase so I can sell
19 them." And so we've -- we may have an explosion of
20 beds of people who increase beds only to sell them.

21 MEMBER PHILLIPPE: Two on that.

22 I mean, just to be practical, we all agree,
23 I think, don't we, that if you're selling beds, you
24 can't add beds again for quite a while, maybe never.

1 10 years, five years, maybe set a timeline.

2 And then, second, I would think if I add --
3 if I come in and use the 10 percent rule and act fast,
4 I can't sell those beds until I've added onto the
5 building and they are in service and I have census
6 issues; then later on, if I have occupancy, after
7 I have already added onto the building. Wouldn't you
8 think? I mean, you don't want people just --

9 MEMBER CORPSTEIN: Right. We don't want
10 to make --

11 MEMBER PHILLIPPE: -- they never put
12 them in service.

13 MEMBER CORPSTEIN: Right. A market just
14 to market and make money off of cooking the system.

15 MEMBER PHILLIPPE: That would be awful.

16 MEMBER SCAVOTTO: I'm confused by
17 several things.

18 4 and 5, the 20 and the 10, and the 10 and
19 the 10 to me are -- are confusing, because it seems to
20 me that those things would almost dictate that you add
21 beds through the 20, 10 or the 10, 10 rule before you
22 buy them.

23 But it also strikes me that this issue that
24 we're talking about is very complicated and makes

1 me -- I mean, I've always been a believer in the
2 pilot, but I also think that we're not going to be
3 ready to move on this until we've run a bunch of
4 scenarios through this. And we should -- we should do
5 that.

6 We should be open to the idea of maybe
7 breaking this work up into some other -- into some
8 work groups. This is a lot to handle.

9 I mean, the more scenarios we run and test
10 against the rules, once we finally get to them, the
11 more prepared we'll be to send forward a
12 recommendation that makes sense, that hangs together.

13 Right now, I can see so many almost
14 competing incentives in this thing that we're going
15 to have to work through those. And we'll never work
16 through them all, but if we can eliminate -- if we
17 have eliminate a good percentage of them, I think
18 we'll make a stronger recommendation --

19 MEMBER CREDILLE: Well, and you -- back
20 to the moratorium, which I realize we tabled, but if
21 there was a moratorium, then this couldn't happen,
22 Questions 4 and 5.

23 MEMBER SCAVOTTO: Uh-huh.

24 MEMBER CREDILLE: So if there was a

1 moratorium, 4 and 5 wouldn't happen.

2 And then for you to add onto your
3 building --

4 MEMBER SCAVOTTO: Right.

5 MEMBER CREDILLE: -- it could be a
6 buy/sell.

7 MEMBER SCAVOTTO: Right.

8 MEMBER CREDILLE: If you -- if we keep
9 coming back to the same place, and if our ultimate
10 goal is we know we have too many beds in the state --

11 MEMBER SCAVOTTO: Well, now, that's
12 possible. That's possible.

13 But, now, at the same time, if I want to buy
14 30 and I have haven't exercised my 20 that I have
15 under this rule, maybe I should only buy 10.

16 So how these things play together -- you
17 know, I may end up for a moratorium. Right now I'm
18 opposed to it, but I might end up being for it, but
19 not until we see how these things work out.

20 And I think there's so many aspects of this
21 policy that are going to interplay with one another
22 that I just want us to be open to the fact that we
23 haven't done our homework on this yet. It's a good
24 debate, but we haven't -- we're not ready for prime

1 time.

2 CHAIRMAN WAXMAN: Cathy, do we know
3 where our lunch is?

4 MS. CLARKE: It's on its way up.

5 CHAIRMAN WAXMAN: So if I may, can we
6 take a break and reconvene in 2 1/2 minutes and --
7 whatever. Take your time eating lunch, so make your
8 phone calls and do whatever you need to do.

9 (Recess taken, 12:14 p.m. to
10 12:58 p.m.)

11 CHAIRMAN WAXMAN: Okay. It's been
12 suggested that the document that's labeled page 6
13 might be an easier document to work off of than the
14 one we have been working off of. It may not be as --

15 MEMBER SULLIVAN: Documents labeled
16 page 6.

17 CHAIRMAN WAXMAN: It says, "Illinois
18 sale of long-term care beds point of consideration for
19 discussion purposes only." And it's four pages long.

20 MEMBER SULLIVAN: What does it look
21 like?

22 MR. FOLEY: Right here. Right here.
23 (Indicating.)

24 MEMBER SULLIVAN: Oh, I see.

1 MEMBER SCAVOTTO: The other 6. The
2 handwritten 6.

3 MEMBER SULLIVAN: Got it.

4 CHAIRMAN WAXMAN: Okay. We're all in
5 good shape now?

6 MR. URSO: Mike, I don't know if we have
7 anybody on the phone.

8 Is anybody there? Anybody on the phone?

9 We'll keep it open in case they come back
10 in. At least I think it's open.

11 CHAIRMAN WAXMAN: We had no voting
12 members, so -- we have our quorum, so the only -- the
13 only person who disappeared is Dale.

14 Okay. We kind of left off -- I'm going to
15 refer to Bill for a second -- at?

16 CO-CHAIRMAN BELL: We were dealing with
17 the seller requirements. I think the things that we
18 had dealt with so far were that -- could not sell an
19 occupied bed, that through the CON process -- whatever
20 that ends up being -- that there would be some type of
21 a percentage -- the number of beds that could be sold
22 would be based offer of the percentage of occupancy
23 off of some report, and there would be some type of an
24 attestation or whatever, that that was correct, that

1 their percentage was correct, and that we were okay
2 with the sale of hospital beds that are in the
3 long-term care program.

4 And then our -- I think we were -- left the
5 discussion.

6 We were talking a little bit about the
7 20 bed, 10 percent rule and any other issues that
8 might be left on the table with regard to the seller
9 side.

10 CHAIRMAN WAXMAN: Any issue on the
11 seller side that you want to address before we kind of
12 jump to the buyer side?

13 Yes, ma'am?

14 MS. GUILD: From the seller side, the
15 one thing that -- I think this group already sounded
16 like they had a consensus from previous meetings, but
17 the use of the funds from the sale was something that
18 we didn't talk about today.

19 CHAIRMAN WAXMAN: Yeah, we've raised
20 that issue at a lot of different meetings, that -- and
21 it's Point 3 on this document, "The seller must
22 provide a detailed explanation of how the money
23 obtained from the sale of excess beds will be used to
24 improve the seller's facility. No later than two

1 years after a sale of the bed, the seller will submit
2 documentation verifying that the funds from the bed
3 sale have been committed by legal contract and/or used
4 to improve a seller's facility as stated in the
5 application."

6 We've had that discussion for several
7 meetings. So are we into making consensus
8 motions?

9 Tim?

10 MEMBER PHILLIPPE: Can I just comment on
11 that?

12 CHAIRMAN WAXMAN: Sure.

13 MEMBER PHILLIPPE: I can understand the
14 rationale to say the requirement to be used for
15 capital.

16 CHAIRMAN WAXMAN: Uh-huh.

17 MEMBER PHILLIPPE: That's the idea in
18 improving quality. But I think in reality,
19 practically speaking, that is so difficult --

20 CHAIRMAN WAXMAN: Well, I think --

21 MEMBER PHILLIPPE: -- to manage and
22 improve and -- the whole process of legally watching
23 it and confirming it, I just think it's too much
24 trouble.

1 CHAIRMAN WAXMAN: I thought the other --
2 the other thing that we said would be allowed was to
3 reduce the debt --

4 MEMBER PHILLIPPE: Uh-huh.

5 CHAIRMAN WAXMAN: That -- improvement or
6 reduce the debt. I thought we said that could
7 happen, too.

8 MEMBER PHILLIPPE: So -- but who's going
9 to -- so how big is your enforcement arm going to be
10 that you actually track all these, measure it, make
11 sure people did what they say they're going to do?

12 MR. FOLEY: Well, the cost report will
13 give you that answer.

14 MEMBER PHILLIPPE: What?

15 MR. FOLEY: The cost report will give
16 you that answer. That's one mechanism.

17 MEMBER PHILLIPPE: I'll give you an
18 example. Okay. I'm going to take \$5 1/2 million on
19 capital.

20 CHAIRMAN WAXMAN: Okay.

21 MEMBER PHILLIPPE: Okay. So -- because
22 you have to have a certain amount of routine; right?
23 Roofs and stuff. I've got old buildings.

24 So I can sell all my beds and always say I'm

1 using it for capital because I will always -- because
2 I planned on spending money on capital anyway.

3 MEMBER SULLIVAN: Uh-huh.

4 MEMBER PHILLIPPE: So -- right?

5 So unless somebody's not going to spend any
6 money on capital for their buildings -- it's going to
7 be hard to get by with the old buildings in Illinois
8 without spending some money.

9 MEMBER SULLIVAN: That's okay.

10 CHAIRMAN WAXMAN: So are you
11 suggesting --

12 MEMBER PHILLIPPE: I just think,
13 practically speaking -- I mean, it's okay if people
14 want it. But, practically speaking, it would be
15 easier to say, "It's not our business."

16 MEMBER SULLIVAN: I'm leaning slightly
17 the opposite direction of, yes, it's difficult to
18 enforce, but I like setting a standard. I like
19 setting an attestation. I don't mind a report two
20 years later that indicates how the money was spent so
21 that it isn't just thrown away.

22 And, yes, it will be spent on capital, and
23 it will be hopefully spent on some kind of improvement
24 to the facility or debt reduction.

1 I don't think it hurts putting the standard
2 in there. Not to have the standard means you have
3 some operators who will just walk away, pocket the
4 money, and not do anything for their facility.

5 MEMBER PHILLIPPE: My guess is the
6 operators who are like that will figure out how to do
7 it anyway.

8 MEMBER SULLIVAN: They may very well,
9 but I think it's important to set the standard.

10 MEMBER CREDILLE: One of the charges of
11 the committee is, again, to look for innovation and
12 modernization.

13 And some of our thought process was --

14 MEMBER SULLIVAN: Right.

15 MEMBER CREDILLE: -- that the seller,
16 then, could modernize or enhance their business --

17 MEMBER SULLIVAN: Right.

18 MEMBER CREDILLE: -- whether that be the
19 physical plant or debt reduction, it enhances business
20 because for all the folks on this side of the table
21 and the folks who aren't here, that we all need be
22 worried about access and making sure that we still
23 have appealing facilities and facilities that serve in
24 communities.

1 MEMBER SULLIVAN: Uh-huh. And that may
2 very well happen naturally, which -- and I'm in favor
3 of, but I think the standard should be there.

4 MEMBER CREDILLE: I agree.

5 MEMBER SULLIVAN: As difficult as the
6 enforcement -- you know, I mean, we're not going to
7 hold people's feet to the fire, but I think the
8 standard should be there.

9 MEMBER SCAVOTTO: So you're saying no
10 enforcement?

11 MEMBER SULLIVAN: You have to have an
12 attestation and a two-year report would be my
13 recommendation.

14 And, yes, people can fudge that and play
15 with it all they want, but at least they have to
16 respond to something.

17 MEMBER SCAVOTTO: I'm sitting there
18 thinking, sell 20 beds, 10,000 beds, \$200,000,
19 somewhere around in there, not a lot of capital. You
20 can do some, not a whole lot. I'm saying, why bother?

21 So if you -- I'm winding up with Tim on
22 that one.

23 MEMBER SULLIVAN: Okay. Uh-oh. We're
24 going to park this, I think.

1 I think it's important to have the standard.

2 MEMBER SCAVOTTO: It's just an opinion,
3 that's all it is.

4 MR. URSO: Dave, looks like you're
5 thinking of something.

6 MEMBER RAIKES: I agree with Terry just
7 having a standard there in place. I know it's hard,
8 but it just makes good policy. I mean, in everything
9 that we do, that's our attention to --

10 MR. FOLEY: I can't hear.

11 CO-CHAIRMAN BELL: Talk a little bit,
12 Dave.

13 MEMBER RAIKES: That's our attention to
14 good policy.

15 CO-CHAIRMAN BELL: He agreed with Terry
16 that he thought there ought to be a standard.

17 MR. FOLEY: Okay.

18 MEMBER CASPER: It's -- my opinion is
19 I think it's a reasonably good policy, but I think
20 back to the University of Chicago report and then
21 what -- what one of their conclusions was that there's
22 really not enough capital generated in a buy/sell
23 program to make a meaningful contribution to
24 improvement of -- capital improvement of facilities.

1 And so I -- you know, as a policy -- and you
2 can make a statement of policy, but unless the dollars
3 are there to show that you can actually accomplish
4 something with it, I'm not sure that it's anything
5 other than cosmetic.

6 MR. FOLEY: And you can have a policy
7 that if the result -- if the sale results in the
8 amount in excess, say, of picking out \$100,000, then,
9 yes, you have to; anything less than that you, no, you
10 don't have to. If you want to put it in your pocket,
11 you can.

12 Because I don't think I agree. I don't
13 think that if push comes to shove, no one provider is
14 going to really get rich off of this, you know, by any
15 means. If he has any common sense, he will put the
16 money back in the facility or reduce the debt.

17 Yeah, you're going to have a few that would
18 want to put it in their pocket. But, at the same
19 time, I agree with some kind of accountability
20 because, you know, I don't think anybody is going to
21 sell a lot of beds from one facility.

22 So if it is just five, 10, or 15 beds,
23 again, you're not going to generate that much revenue.

24 MEMBER SULLIVAN: Right. Accountability

1 would be good.

2 MR. FOLEY: But accountability for the
3 moment -- for accountability, I think that would work.

4 CHAIRMAN WAXMAN: Are we applying it to
5 someone who wants to move?

6 MEMBER SULLIVAN: I make a motion that
7 one part of the elephant be that -- and I don't
8 believe that there should be a lot of seller
9 restrictions, but one of them should be an
10 accountability of, if you're selling beds under the
11 system, there should be some accountability to how you
12 are improving your facility or doing debt reduction
13 and -- involving a attestation and a two-year report.

14 CHAIRMAN WAXMAN: Anybody want to second
15 that?

16 MEMBER CASPER: I'll second it.

17 CHAIRMAN WAXMAN: Okay. All in favor?

18 (The eyes were thereupon heard.)

19 Any opposed?

20 MEMBER SCAVOTTO: Yeah.

21 CHAIRMAN WAXMAN: We have one
22 opposition. But we're building consensus, so we'll
23 just move on.

24 MEMBER PHILLIPPE: I don't think it

1 matters.

2 CHAIRMAN WAXMAN: Anything on the --
3 anything else on the seller's side before we look at
4 the buyer's side?

5 CO-CHAIRMAN BELL: What about the issue
6 of the seller being a corporation where they're
7 wanting to move beds from one to another? It's not --
8 it really isn't a sale.

9 MEMBER SULLIVAN: Then it really isn't
10 a sale.

11 CO-CHAIRMAN BELL: How does that --
12 I mean, is there same restrictions on them?

13 MEMBER SCAVOTTO: So it's an intercounty
14 transfer.

15 MEMBER SULLIVAN: Yeah, that's exactly
16 it. And then there's no sale, maybe a dollar. So how
17 are we going to use the dollar or use the no dollars
18 if there's no dollars involved --

19 MEMBER SCAVOTTO: Wait a minute. You
20 just made the motion.

21 MEMBER SULLIVAN: I know. I guess, I'm
22 saying there is no accountability on a corporation
23 moving beds around just like in Ohio.

24 I mean, how are you going to use the excess

1 money involved? There's no excess money. So what --
2 what to report?

3 MEMBER PHILLIPPE: An observation.

4 And there are people, I guess, that have
5 like 80 facilities in the state, 90, whatever. When
6 we're thinking about all this, we're thinking about
7 the rest of us, at least me in that rest of us. And
8 so we should think through like all these rules aren't
9 going to have any impact on people that own a lot of
10 buildings in the state. And so -- but it will change
11 for them because, basically, then, it gives those
12 organizations the right to just transfer all over the
13 state however they want.

14 MEMBER CREDILLE: But in Ohio they could
15 transfer only where there was a bed made. They
16 couldn't just transfer willy nilly where they
17 wanted to.

18 MEMBER PHILLIPPE: That's a good
19 question.

20 But as we've already said, there's only a
21 bed need in how many locations?

22 MEMBER CREDILLE: Right.

23 But they've been doing this for long time in
24 Ohio.

1 MEMBER PHILLIPPE: If we're going to
2 transfer only where there's a bed need, unless your
3 new report changes everything somehow, I think we're
4 wasting a lot of time here.

5 MR. FOLEY: Thank you. Thank you.

6 MEMBER PHILLIPPE: We're just wasting a
7 lot of time. Let's go back to a 10 percent rule and
8 forget months of discussions --

9 MR. FOLEY: Thank you.

10 MEMBER PHILLIPPE: -- because there's no
11 point, really. There's only a few places there's a
12 bed need currently. And if we're going to work within
13 that criteria, what's the point?

14 CHAIRMAN WAXMAN: Do we know when this
15 report is coming out?

16 MR. AGBODO: I wish Mike Richard can
17 speak to this because, you know, he's the person
18 handling that policy.

19 But we -- as far as data -- we are
20 collecting the data now, and it might take two more
21 weeks to finish the corrections, and then -- but, you
22 know, last time we talked, actually, we had the idea
23 to take the report to the next Board meeting, which is
24 on July 14. Then before we are going to have to

1 publish it.

2 MR. DART: This is the inventory; right?
3 Which is different than the bed need calculation.

4 MEMBER PHILLIPPE: Explain that.

5 MR. DART: So what Nelson is talking
6 about is we do a survey of the facilities annually,
7 and that's what they're compiling the final results of.

8 MEMBER SULLIVAN: Oh, okay.

9 MR. DART: The population projection
10 that is go into the inventory determine the bed need.

11 MEMBER SULLIVAN: Right.

12 MR. DART: Those were adopted by the
13 Board.

14 The latest ones were adopted last year?

15 MR. URSO: Yeah.

16 MR. DART: Okay.

17 MEMBER SULLIVAN: Oh, this is just the
18 annual long-term care report --

19 MR. DART: Correct.

20 MR. FOLEY: Questionnaire.

21 MEMBER SULLIVAN: -- questionnaire.
22 That's not a big deal.

23 MR. DART: No.

24 So I think we're a year away from the new

1 inventory. I don't know if you heard something else,
2 but --

3 MR. FOLEY: No, I just heard --

4 MR. DART: Okay. I think the inventory
5 was adopted last fall by the Board, and it's a
6 two-year inventory, and Nelson's doing work on the
7 population projection for the new work.

8 MR. AGBODO: Right. The population
9 projection will be done in December. So, you know,
10 the inventory will be next year probably. Because the
11 projection had to come first, and it's due in
12 December.

13 MEMBER PHILLIPPE: So can I ask you a
14 question? I guess I got lost in what Cece said.

15 Currently, we can already add -- people can
16 add beds, 20 beds, 10 percent rule. All we're talking
17 about for the transfer here is adding to a current
18 facility.

19 So, practically speaking, all we're talking
20 about is a number bigger than that; right? Because
21 why would you buy beds if you could just automatically
22 add them? So -- unless we freeze that.

23 MEMBER SCAVOTTO: I agree. I agree.

24 MEMBER PHILLIPPE: Okay. And then,

1 second, if we actually only allow the beds to be
2 added -- to be bought if there's a bed need, then
3 I want to know why we're doing it at all. Because
4 you can already do it if there's a bed need; right?

5 MR. FOLEY: Right. Up to 20 beds,
6 10 percent.

7 MEMBER PHILLIPPE: So why are we putting
8 a process --

9 MEMBER SULLIVAN: No.

10 MEMBER PHILLIPPE: What?

11 MEMBER SULLIVAN: He said up to 20 beds,
12 and I said no.

13 If there's a bed need in the area, you can
14 build all you want.

15 MEMBER PHILLIPPE: If there's a bed
16 need, that can do it. Right?

17 MR. FOLEY: You cannot increase your
18 license capacity above the 20 beds, 10 percent. You
19 can go up to that without a permit. Anything more
20 than that, you need a permit.

21 MEMBER SULLIVAN: But if there's a bed
22 need, you can go anywhere you want.

23 MR. URSO: We're talking about an
24 establishment of a new facility where there's a bed

1 need. That's what Terry is talking about.

2 MEMBER SULLIVAN: Right.

3 MR. URSO: Then that -- the rule doesn't
4 apply.

5 MEMBER PHILLIPPE: Or you add on --
6 because I've done this. I add on to the facility more
7 than the 10 percent, 20 beds. But there was a bed
8 need in the community, so I went through the process
9 and I added on.

10 So I don't think there's a reason to talk
11 about transfer if we're saying you have to have a bed
12 need to buy beds and add them because it just defeats
13 the whole of the concept.

14 MEMBER CREDILLE: It does. Right. It
15 does.

16 MEMBER SULLIVAN: I know over lunch,
17 even -- even though we had parked the concept of
18 moratorium and we voted that we are all agnostic,
19 I probably had a divine revelation and came -- and
20 came to Yahushua.

21 After we get into the individual issues,
22 particularly the 10 percent, 20 percent bed need,
23 whatever, the system is -- this system's not going to
24 work without a moratorium. I mean, I -- that's my new

1 revelation, not that I'm changing a vote yet.

2 But, yes, as we get into the individual
3 issues, the system -- why are we doing this unless we
4 have a moratorium?

5 MR. URSO: And you need to get into this
6 kind of minutia to figure out how to draft rules and
7 how to put this on the table. You need to do this.

8 MEMBER SCAVOTTO: There's so many
9 scenarios that can play out in this thing.

10 MR. URSO: Exactly.

11 MEMBER SCAVOTTO: We haven't modeled any
12 of them.

13 MR. URSO: That's why, you know,
14 somebody talked about a pilot. Well, yes, we could
15 test portions of this. Now --

16 MEMBER SULLIVAN: And I slightly
17 disagree with you.

18 MEMBER SCAVOTTO: Well, that's okay
19 because I can vehemently disagree with you. It
20 doesn't bother me at all. So if I'm getting to you,
21 that's good.

22 MEMBER SULLIVAN: We have had many
23 pilots around the country. I mean, Claire has done an
24 excellent job --

1 MS. BURMAN: Thank you.

2 MEMBER SULLIVAN: -- of compiling what
3 is being done in other states, and Ohio is not the
4 only issue. We have many other states that have tried
5 variations of this.

6 And so a lot of the issues that we're
7 dealing with, other states have dealt with, and
8 they've come you with rationales and reasons based
9 on whatever their political and planning philosophy
10 may be.

11 And, you know, everyone comes to
12 conclusions, but I think Claire has pretty much boiled
13 down most of the issues that other states have dealt
14 with. And I think you can talk to every other state
15 and bring up an issue and they'll say, "Oh, yes," and
16 it gets settled by a combination of good public
17 policy, provider input, political agendas, and
18 whatever. You know, that's what it comes down to.

19 But, no, I think we could have a pilot in
20 Illinois, but many of the other states have piloted
21 all of these issues.

22 MEMBER PHILLIPPE: Can I -- go ahead.

23 MR. FOLEY: I guess I was just going to
24 ask, do we know in the State of Illinois, all of our

1 facilities, what percent is owned by individual versus
2 major corporations?

3 I'm trying to see who is going to be really
4 be an active player in this process.

5 MEMBER CORPSTEIN: That's difficult to
6 determine because some facilities, let's say like the
7 ManorCares --

8 MR. FOLEY: Okay.

9 MEMBER CORPSTEIN: -- they're -- we
10 license entities; right? We don't license
11 corporations; right?

12 MR. FOLEY: Right.

13 MEMBER CORPSTEIN: So ManorCare has
14 46 entities, one for every single facility, and
15 they're easily identifiable by their naming cycle.

16 But like Epirion, which is going on right
17 now, they have 15, 16 facilities. They all have a
18 different entity that there's no -- you can't look at
19 one paper and say, "Oh, this one goes with this one."

20 I can examine the ownership and maybe I see
21 the same individuals --

22 MR. FOLEY: Yeah, common denominator.

23 MEMBER CORPSTEIN: Right.

24 -- but there will be -- maybe these

1 two facilities are the same, but these have a third
2 person who's not.

3 MR. FOLEY: That's true.

4 MEMBER CORPSTEIN: So who's going to
5 determine, "Okay. Well, they're part of the
6 corporation"? It's more like a management structure.
7 They have a management company set up. They set up a
8 whole bunch of entities and have a bunch of
9 facilities, but they're not a corporation running
10 these facilities; they're a management company that is
11 organizing the facilities. Maybe they have different
12 owners in between each facility. Maybe some of those
13 share in the manage- -- overall management of the
14 company. But how they would determine, "Okay. Well,
15 this corporation has 40 facilities -- "

16 MR. FOLEY: They all would have a common
17 denominator of some sort; is that correct?

18 MEMBER CORPSTEIN: Right.

19 But there are some individuals in the
20 State of Illinois that may have a 5 percent share in
21 hundreds of facilities, not all of them are they any
22 sort of controlling interest or part of the management
23 company or anything like that. They're investors, and
24 there's plenty of that. How are you going to

1 differentiate between, well, they're part of the
2 corporation or they're not? ManorCares are easy.
3 Petersons are easy. But there's plenty that are kind
4 of unassociated. Maybe they have an overall
5 management company that's managing the facilities for
6 the licensed entities, but that doesn't necessarily
7 mean that they are the actual owners or that is a
8 corporation, that whole long string. You know,
9 there --

10 MR. FOLEY: Well, I guess the point I'm
11 trying to make is that if the majority of our beds are
12 owned, controlled, whatever word that you want to use,
13 by the major players, whoever they may be -- I'm
14 talking about these corporations, ManorCare, for
15 instance -- if the majority of owned beds are owned by
16 organizations like ManorCare, regardless of how
17 they're set up, if by owning multiple facilities,
18 ManorCare decides that they want to build a brand new
19 facility in an area that is currently -- have excess
20 beds, in going through -- they could go through --
21 I would say let them go through a CON process and let
22 them say, then -- without going through a buy/sell
23 program, let them then say that we are going to take
24 beds from each one of these facilities plus

1 10 percent to build this brand new facility. They
2 still have to go through the CON process, it's still
3 no guarantee, but at least they can do something in an
4 area that is overbedded.

5 If I may pick on ManorCare, I can pick on --
6 of course, Rosewood just sold, you know, but there's
7 still multiple facilities there. Alden has multiple
8 facilities. You mentioned Peterson.

9 I mean, right there alone is several
10 thousand beds with just those few corporations.

11 MEMBER CORPSTEIN: Sure.

12 MR. FOLEY: So maybe somehow we can work
13 out a process with these bigger players. Okay? If
14 they could take beds from their own facility, that
15 might give us -- plus 10 percent -- a reduction in
16 beds in the state of Illinois, if that's our goal.

17 Am I making sense?

18 MEMBER SULLIVAN: Uh-huh. You're making
19 sense, Chuck.

20 MEMBER CORPSTEIN: The major players.

21 MEMBER SULLIVAN: And the interesting
22 thing, and we pick on ManorCare, they're about the
23 only --

24 MEMBER CREDILLE: I'm feeling really

1 good right now.

2 MEMBER SULLIVAN: But for whatever
3 reason -- we know the reason -- the Illinois Medicaid
4 rate, there aren't a lot of national players in
5 Illinois.

6 MEMBER PHILLIPPE: Right.

7 MEMBER SULLIVAN: Most of the major
8 management groups -- I won't call them corporations --
9 are all Illinois based. And we could all spend
10 90 seconds and name them all. I mean, they're all --
11 we all know who they are, anywhere from 10 to wherever
12 Peterson is up to now. But they're all Illinois
13 players and -- yeah -- no, I think your idea's good,
14 that there's -- if you're going to bring beds into an
15 overbedded area, you need to justify what the logic
16 is, even if you're transferring beds. And it's almost
17 like we're not doing buy/sell anymore, we're doing
18 transfer.

19 MR. FOLEY: So let's create another
20 variance. Instead of going through this process,
21 let's create a variance that will allow this to
22 happen.

23 And, again, part of that variance would be
24 that they could do this in any part of the state where

1 they have facilities plus 10 percent.

2 Because these companies -- I don't know,
3 Frank, Staff, help me out. I mean, these companies
4 are the ones that are borrowing probably the most
5 applications anyway. So I guess this would hold true
6 to any multiple facilities or owners, whether they
7 have 5 or 6 facilities or 10 facilities or
8 50 facilities. Let them take beds from their own
9 facilities, if they qualify.

10 MEMBER CREDILLE: If I am where Paul is,
11 it's very hard to tell who the owners are and
12 operators are --

13 MEMBER CORPSTEIN: Yes, it is.

14 MEMBER CREDILLE: -- that are in the
15 State of Illinois that we all are in marketplace
16 this way.

17 MEMBER SULLIVAN: Uh-huh. I have a
18 5 percent ownership. Does that mean that -- as part
19 of a bigger corporation, can they use me to transfer
20 beds to another place that I have a 5 percent
21 ownership?

22 MR. FOLEY: Look, I don't have all the
23 answers. I just brought out an idea. You guys come
24 up with the answers.

1 MEMBER SULLIVAN: It's not a bad idea.

2 MEMBER PHILLIPPE: I kind of brought the
3 discussion up, I think, a minute ago, but -- mistake,
4 mistake -- but I think rather than trying to identify
5 the people, it's more just think about the public
6 policy issues.

7 MEMBER CREDILLE: Right.

8 MEMBER PHILLIPPE: That's all.

9 It doesn't matter if there's five of them,
10 there's one. It's just the public policy issue.

11 Now, I think if you can only transfer beds
12 to expand a building, not to build a new one, as we've
13 talked about before --

14 MEMBER SULLIVAN: Right.

15 MEMBER PHILLIPPE: -- that really limits
16 a lot of what might happen because that limits new --
17 because, otherwise, you can just pool your beds and
18 move them around, build new buildings.

19 MR. FOLEY: But at least we are reducing
20 the State inventory excess --

21 MEMBER PHILLIPPE: 10 percent.

22 MR. FOLEY: And at least we're going --
23 let's do something for our residents. At least we're
24 going to give our residents of that State a brand new,

1 state-of-the-art facility.

2 MEMBER PHILLIPPE: So you are arguing to
3 build a new one?

4 MR. FOLEY: I'm sorry?

5 MEMBER PHILLIPPE: Are you arguing to
6 build a new facility with transferred beds?

7 MR. FOLEY: Yeah.

8 MEMBER SCAVOTTO: Sounds like it.

9 I'm having some trouble with understanding
10 of the logic here.

11 So I've heard that we have -- we're worried
12 about, just an example, transferring beds, buying beds
13 and having them transferred into an overbedded area.
14 I can see that.

15 But isn't it possible that you can transfer
16 beds within an overbedded area?

17 MEMBER SULLIVAN: Uh-huh.

18 CHAIRMAN WAXMAN: Uh-huh.

19 MEMBER SCAVOTTO: You can do that;
20 right?

21 CHAIRMAN WAXMAN: Right.

22 MEMBER SCAVOTTO: That seems to me to be
23 a logical policy position for a buy/sell program.

24 I come back to the -- I think we want to

1 focus on policy, I agree with you. I don't think
2 we've done enough scenario -- we haven't done any
3 scenario planning. If I were going to roll this thing
4 out, I'm back to that.

5 I wouldn't come in -- I wouldn't go out in
6 the light of day without running a bunch of scenarios
7 on this so we can --

8 MEMBER PHILLIPPE: That's wise.

9 MEMBER SCAVOTTO: Every time we turn
10 around, we're picking on Cece. But let's face it,
11 you're a convenient target.

12 But we're also talking about moving beds.
13 We're worried about moving beds in an overbedded area,
14 and there have been half a dozen examples that have
15 come up today. You're rightly concerned about beds
16 going north of I-80, and I'm not.

17 But the fact of the matter is, we don't know
18 what happens. And I don't think we're going to know
19 the implications until we -- until we test it. And
20 we're not going to test it today, that's for sure.

21 MR. FOLEY: Well, I guess I'm just
22 talking about something -- maybe this might be
23 something that we might want to consider other than
24 this buy/sell concept since, if we can get past this

1 entity issue, you know, and find that common
2 denominator, and if they control -- if these multiple
3 owners control most of the facilities in the state
4 anyway, we probably could reduce a lot of empty beds
5 in the state, if they have to be -- you know, comply
6 with the 10 percent rule. That might be an answer.
7 It might be an easier answer than going through this
8 whole process.

9 MEMBER SULLIVAN: Or do both.

10 MEMBER SCAVOTTO: Would you explain
11 that?

12 MEMBER CREDILLE: I -- yeah, we could do
13 both.

14 MEMBER SULLIVAN: Well, I mean, have a
15 transfer of variance within corporations but also
16 allow -- I mean, this becomes a permissive system --
17 allow the buying and selling of beds, also.

18 MEMBER CREDILLE: Yes.

19 MS. GUILD: Why does it matter?

20 So what? You're selling a bed. You're part
21 of a big company, and you're selling a bed for a
22 dollar, and you sell 40 beds, and you say, "I have
23 \$40, so I'm going to reframe a picture in my front
24 lobby or something."

1 You know, does it matter? Do you need to
2 create two different systems just to -- I mean, we
3 were talking about the requirements on the seller of
4 how they're going to use the money.

5 The big companies -- I think at the last
6 meeting there was a lot of discussion about how the
7 10 bed, 10 percent --

8 MR. FOLEY: 20 bed.

9 MS. GUILD: -- 20 bed, 10 percent wasn't
10 sufficient if you wanted to add like a new service
11 line --

12 MR. FOLEY: Right.

13 MS. GUILD: And that's why, even if you
14 are a big company, you might want to have more than
15 that flexibility.

16 MR. FOLEY: I mean, I'd just hate to see
17 Illinois cut itself off if somebody wants to build a
18 brand new, state-of-the-art facility.

19 Now, keep in mind, we're still talking about
20 a full CON review. They still have to comply with all
21 those rules, maybe even require a market study.

22 I don't know. Especially if you're in an area that's
23 overbedded.

24 But if they still want to bring those beds

1 in -- and we said earlier also that most of the people
2 that's going to participate in this buy/sell program
3 will be the big bullies anyway. It's really not going
4 to affect -- it's really not going to affect the small
5 person down South that just owns one facility.

6 Most -- I'm not saying he's not going to, but it will
7 be highly unlikely, although possible, for somebody
8 wanting to buy beds to add to his existing facility.

9 I don't think it's going to happen too often, though.

10 MEMBER SULLIVAN: It allows the small
11 guy to sell beds.

12 MR. FOLEY: Yeah.

13 MEMBER SULLIVAN: I mean, I think that's
14 one of the bigger changes, is that, you know,
15 I have 120 beds and I'm utilizing 70 or 80 of them,
16 maybe I can get some cash for debt reduction and have
17 a smaller facility. I wouldn't dismiss that it's only
18 for the big guys.

19 MR. FOLEY: Have we really looked at the
20 inventory book statewide to look at each individual
21 planning area to see by planning area the number of
22 excess beds that are present by planning area?

23 I don't think you're going to find too many
24 planning areas -- there are -- with excess -- I'm just

1 going to pick a number and say 50 beds. Most of the
2 excess areas have numbers less than 50 beds in terms
3 of being an excess.

4 So I don't think it's going to -- I don't
5 know. I don't know. I guess the impact of this is
6 just going to be -- it's not going to make that much
7 of a difference, I guess, is what I'm trying to say.

8 MEMBER SULLIVAN: You're probably right.

9 MR. FOLEY: Yeah.

10 MEMBER PHILLIPPE: Question: You talked
11 about wouldn't have an impact of expanding a current
12 facility or building new ones?

13 MR. FOLEY: Either one.

14 MEMBER PHILLIPPE: Okay. I'll give you
15 an example from Indiana.

16 MR. FOLEY: Okay.

17 MEMBER PHILLIPPE: Indiana -- and it
18 would work downstate. Indiana did not have a CON
19 process.

20 MR. FOLEY: That is correct.

21 MEMBER PHILLIPPE: I think they have a
22 freeze, they go off and on, but they didn't have one.

23 And so one new company sprang up with a
24 business model of going into towns of 20 -- let's say

1 40,000 people where you had three or four buildings,
2 they were all older, and they'd build a new building.
3 And they built that building only for the private
4 paying Medicare, only.

5 So what happened in those markets is it
6 did put pressure on everybody else to fix up their
7 building a little bit. But what it also did, it made
8 everyone else less effective.

9 Because, basically -- and it's not as skewed
10 as much, actually, as -- the rates are much higher in
11 Indiana than they are in Illinois. So what's -- the
12 difference -- the scenario planning you're talking
13 about you have to consider is the payment structure in
14 Illinois where you have high Medicare, private pay,
15 and you have very low Medicaid.

16 So what that means is people billed for
17 Medicare and then maybe some private pay -- CCRC is
18 built for private pay. But they even today want
19 Medicare. They even don't want to use the variance so
20 that -- they actually want to get a larger skilled
21 unit and then also be able to take Medicare people.

22 So it does make a difference because let's
23 say -- we're just scenario planning now -- I have a
24 chain of 40, 50 buildings and I'm allowed to use my

1 beds and move them around to build new buildings.
2 Okay? What that means is I can go build new buildings
3 near hospitals for Medicare every place that I think
4 is a viable market. That's good for those companies
5 who do that, and it's good for you because it's
6 business because they have to go through the
7 application process.

8 However, it's actually -- is it good for
9 the other citizens who are actually being funded by
10 Medicaid? And so that tiny fraction of the market
11 is doing well and hurting everybody else. So that
12 means, for the other consumers who can't afford a
13 private pay building only, the quality of their
14 building, they're going to have less revenue to try to
15 actually provide good services.

16 That's what worries me about it. It's
17 actually how it affects really the marketplace here.
18 Because there are people I know, who you guys have
19 talked about in last meetings in the past, coming up
20 to pitch this innovative idea, transitional care.

21 MR. FOLEY: Right.

22 MEMBER PHILLIPPE: Which is basically
23 what some of us are already doing. It just means
24 private room with nice gym, therapy gym, and then

1 trying to work well with the hospital for Medicare.
2 I've got that going on already, and you probably --
3 other people do.

4 But that's -- why do they pitch that?
5 Because that's where all the money is.

6 So I think we do have to be careful that a
7 tiny fraction does not hurt everything else.

8 MR. FOLEY: Well, again, I think the
9 rules -- I'm sorry, John. Go ahead.

10 MR. FLORINA: Okay. In reference to
11 your example, you're saying is if you increase the bed
12 supply in an area that's beyond what the need is, for
13 competitive reasons, that you're going to hurt the
14 providers that are in that area.

15 MEMBER PHILLIPPE: And incidentally, you
16 should -- you probably will hurt the people who live
17 in that area because the tiny fraction is getting all
18 the money that now is being split across multiple
19 locations to help the quality of care.

20 I mean, you can argue they just do it to
21 take property and use the money to provide quality of
22 care. But hospitals, because of the ACO Act in
23 bundling, they're already trying to specialize and
24 refer to fewer skilled buildings.

1 CHAIRMAN WAXMAN: Correct.

2 MEMBER PHILLIPPE: That's already a
3 trend. It's happening aggressively in some markets.
4 So that's already happening, and it will be just speed
5 it up, the process, really.

6 MR. FLORINA: So to follow up, if that's
7 the truth, that's what's going to happen, that if we
8 allow a statewide system care to just allow beds to be
9 built in any planning area that people can transfer or
10 buy beds for, then you're going to hurt the existing
11 network market providers, patients, whoever's in that
12 area by doing so. Because we have no parameter on how
13 many beds you can put --

14 MEMBER PHILLIPPE: Well, you might,
15 except we're just talking about expanding a current
16 facility versus building new ones. It's a slower
17 process when you have more time to see what the impact
18 will be.

19 MR. FLORINA: But if there's empty beds
20 now and there's no need and you want to bring in
21 another how many, 100, 10 percent, whatever it is,
22 into the planning area, now you have additional excess
23 beds.

24 MEMBER PHILLIPPE: That's true.

1 MR. FLORINA: So you put more pressure
2 more on whoever's there already trying to operate.

3 MEMBER PHILLIPPE: Because we're trying
4 to balance out the idea of allowing for innovation --

5 CHAIRMAN WAXMAN: Right.

6 MEMBER PHILLIPPE: The people in Ohio,
7 what I remember one thing they said, the beds moved
8 from higher quality on general from lower quality
9 facilities.

10 And so when we talk about bed need, we are
11 pretending that long-term care is like gasoline.

12 When I was a kid, my father only bought
13 standard oil because he said that's so much better
14 than that cheap gas. Right? He paid extra for it.

15 Well, we are assuming -- and then one day we
16 found out it is all the same.

17 CHAIRMAN WAXMAN: Right.

18 MEMBER PHILLIPPE: But we are pretending
19 every bed is the same, it's a commodity. And it's not
20 a commodity.

21 So we're trying to find the balance,
22 I think, between treating it that way, like every
23 bed's the same, and then the other side, but we still
24 allow for some innovation and change in the

1 marketplace.

2 CHAIRMAN WAXMAN: And I agree with you.

3 I mean, we've been talking about that since
4 day one that --

5 MR. FOLEY: Since 1927.

6 CHAIRMAN WAXMAN: -- all beds are not
7 equal. I mean, all providers are not the same. And
8 that a demand can exist in a location where a quality
9 program has reached its occupancy, and there could be,
10 you know, ugly homes or bad providers all around it
11 with empty beds. I mean, we've addressed that issue.

12 The other thought that's occurred to me,
13 thinking out loud, which usually gets me in trouble,
14 if I have a home somewhere geographically not
15 favorable and I can't sell the home as is, I could
16 liquidate my assets by selling off the beds; right?
17 So I could close the nursing home bed by bed.

18 MR. FOLEY: Just sell your operations.
19 You know, just sell your operations.

20 CHAIRMAN WAXMAN: I could sell 20 beds
21 here and 20 beds there and 20 beds someplace else, and
22 now I don't have a nursing home anymore. And I would
23 get more money than trying to sell it as an existing
24 home because nobody wants to buy it where it is;

1 right?

2 MEMBER SULLIVAN: And we get a low
3 performing operator out of the business.

4 CHAIRMAN WAXMAN: So you're advocating
5 that my idea is good?

6 MEMBER SULLIVAN: I think that your idea
7 is good. I honestly do.

8 I mean, you are getting a moderately poor
9 facility with a moderately adequate operator a
10 legitimate way to get out of the business.

11 MR. URSO: So it's an organized way of
12 discontinuing it.

13 MEMBER SULLIVAN: Yes. As opposed to --

14 MEMBER PHILLIPPE: Bankruptcy.

15 MEMBER SULLIVAN: -- continuing to force
16 this operator to operate and eventually discontinue,
17 loses his HUD loan, you know, get in trouble with the
18 banker.

19 But, you know, somebody buys the beds, the
20 residents go where -- somewhere that may, in fact, be
21 better. You know, it's a marketplace solution to
22 getting some operators out of the system.

23 MR. FOLEY: So in that scenario, you
24 want to keep the beds within the planning area for the

1 sake of the residents.

2 MEMBER SULLIVAN: That's one option.

3 MR. FOLEY: You don't want to send them
4 up to Chicago if they're up from down South.

5 CHAIRMAN WAXMAN: I would suspect that
6 to make this undesirable, it's probably less than
7 50 percent filled in the first place. So you're not
8 talking about a 100-bed or a 60-bed facility and
9 moving 60 people. You're probably talking about
10 60-bed facility and moving 10 people or 20 people.

11 MR. FOLEY: Right. Claire?

12 Whenever Claire raises her hand, I think
13 there's something wise coming.

14 MS. BURMAN: This issue, obviously, came
15 up in other states that have a buy/sell program, and
16 several of them, what they do is they limit the number
17 of beds to relate to whatever your occupancy target is.

18 So you can sell all the excess beds that get
19 in the way of you reaching the occupancy target if you
20 have too many beds, and that's how they limit it.

21 CHAIRMAN WAXMAN: Okay.

22 MS. BURMAN: And, yet, if they want
23 to get rid of all their beds, they can sell their
24 facility. You know, I mean, that's another option for

1 them and --

2 MEMBER SULLIVAN: But nobody wants --
3 nobody wants to buy your facility. People want to buy
4 your beds.

5 CHAIRMAN WAXMAN: Right. Right.

6 MS. BURMAN: So they don't get carried
7 away with the whole idea of selling beds, you put a
8 limit of some type. And many of them choose whatever
9 their occupancy rate is in that state.

10 MEMBER SULLIVAN: Although I'm -- my
11 question is, why not have that operator totally out of
12 business? Because nobody wants his frigging' 1950s
13 building or his 30 percent occupied Medicaid
14 population. It's like, why not give him an out?
15 I don't know. Just a thought.

16 CHAIRMAN WAXMAN: That probably would
17 have solved, if it existed today, some of those small,
18 old buildings, that had to pay a lot of money to get
19 Springfield to comply with those regs --

20 MEMBER SULLIVAN: Yup.

21 CHAIRMAN WAXMAN: -- out of the
22 business.

23 MEMBER CREDILLE: Yup.

24 MR. URSO: So how does that fit with

1 public policy, Tim?

2 MEMBER SCAVOTTO: Well, the policy angle
3 on this I think is pretty interesting because I would
4 challenge Tim's thinking on this one, and I think a
5 bed is a bed is a bed.

6 I don't agree that there's differentiation
7 in long-term care. You stop and think about it, when
8 you look at how it's put together, we have franchise
9 protection and the certificate of needs program.

10 MEMBER PHILLIPPE: True.

11 MEMBER SCAVOTTO: And you can only --
12 I know this isn't -- this isn't what you were thinking
13 about, but I think it's an implication that we end up
14 thinking through. We don't allow facilities to be --
15 to expand unless there's a bed need.

16 When you're looking at the bed-need
17 calculation, all beds are the same.

18 CHAIRMAN WAXMAN: Uh-huh.

19 MEMBER SCAVOTTO: All beds are the same.

20 And we were looking -- when we looked at our
21 workroom and we looked at the 90 percent renovation
22 factor, we recommended against that. We want to see
23 that 90 percent eliminated.

24 But you couldn't renovate your facility

1 unless everybody else in the area was operating at
2 90 percent, whether they were great operators like
3 Terry or bad operators like Wax.

4 And, you know, we have these standards where
5 everybody's got rights, every provider's got rights
6 and issues. And when you peel away the layers of the
7 onion, I think, policywise, we don't differentiate.
8 We're treating the industry like it's a commodity.

9 CHAIRMAN WAXMAN: I think you're right.
10 I think a bed is a bed is a bed.

11 It changes when it gets inside of a
12 building, and that particular building does something
13 unique with it.

14 MEMBER SCAVOTTO: I'm not -- I think
15 that in terms of -- I'm not suggesting that you could
16 do anything different with CON. I don't know how you
17 could. It's -- drafting that would be a problem.

18 CHAIRMAN WAXMAN: But you are right.
19 I mean, a bed is a bed is a bed.

20 It changes when you get inside of a
21 particular management group or building.

22 MEMBER SCAVOTTO: Yeah, you can
23 differentiate your services. I agree with that. And
24 people should is what I think.

1 But policywise --

2 CHAIRMAN WAXMAN: It's a bed is a bed is
3 a bed.

4 MEMBER SCAVOTTO: -- I think we're into
5 franchise protection in a big way.

6 MEMBER PHILLIPPE: So are you for
7 franchise protection or not? I got lost there.

8 MEMBER SCAVOTTO: You know, if you're --
9 no -- no, I'm not. But if you're in a certificate of
10 need, I think it goes with the territory.

11 So I think Illinois and the certificate of
12 need is franchise protection.

13 MR. URSO: But, by listening to you, it
14 gets us back to where we were before. This need is an
15 artificial -- artificially formulated because you
16 don't have true numbers. Okay? So you keep bumping
17 into that scenario, and something's gotta get fixed.
18 I mean, that's I think what this committee has tried
19 to wrestle with.

20 Something needs to be fixed, but nobody
21 wants to really take the step and say, you know, we
22 are dealing with false numbers here, bad data.

23 And if you compare everything to the data,
24 then you're going -- everything is going to come out

1 garbage. I mean, you're not going to get true
2 numbers.

3 MEMBER SCAVOTTO: Right.

4 From my perspective, a good example of that,
5 we wrestled with this in our work group, the use of
6 licensed beds. I mean, you've got a bunch of empty
7 licensed beds.

8 MR. URSO: Correct.

9 MEMBER SCAVOTTO: So where do you find
10 yourself? So why are we worried about the ones that
11 are empty? They're not doing anybody any harm.

12 What are we doing the ones that are full?

13 MR. URSO: So is there a difference
14 between actual beds and licensed beds? Are all those
15 beds the same?

16 MEMBER SCAVOTTO: Yeah, are all the beds
17 the same?

18 MEMBER CREDILLE: Claire's suggestion of
19 what other states have done is an interesting concept.

20 MEMBER SCAVOTTO: Yeah.

21 MEMBER CREDILLE: You can only --
22 however you worded it was great, but --

23 MS. BURMAN: But that's in excess of the
24 occupancy rate.

1 MR. FOLEY: I'm sorry, Claire?

2 MS. BURMAN: You can solve the number of
3 beds that are in excess of what you had that filled
4 the occupancy rate.

5 MEMBER SCAVOTTO: You can sell
6 unoccupied beds.

7 MEMBER CREDILLE: So you would say -- so
8 in Illinois is currently 90 percent; right?

9 MS. BURMAN: Correct.

10 CHAIRMAN WAXMAN: So we use Illinois,
11 and then if you had -- I can't do the math here, but
12 you could only sell to that 90 percent.

13 So if you had a 200-bed building, 90 percent
14 of what you were trying to get to, though. It's
15 not -- if you were licensed for 200 --

16 MR. FOLEY: 90 percent is about 180.

17 MEMBER CREDILLE: It's not really 180.

18 But what if you want to operate -- I'm
19 making this up. What if you want to operate 140?
20 What if you want to operate 150?

21 So are you looking at 90 percent of 150 as
22 opposed to 90 percent of 200 so that you could sell
23 down to 90 percent of 150? I'm making this up.

24 You're 200, you want to go to 150, then

1 you'd have that 90 percent occupancy of 150 so you
2 could sell 50-plus beds; right?

3 MS. BURMAN: Yeah. That's where the
4 cutoff would be because the goal is to make everybody
5 90 percent --

6 MEMBER CREDILLE: So you have your new
7 building, your new modified, your new whatever you're
8 looking to do, 90 percent of that number; right? Is
9 that what you're saying?

10 MS. BURMAN: If you're a seller.

11 MEMBER CREDILLE: If you're a seller --

12 MS. BURMAN: Right.

13 MEMBER CREDILLE: -- and you have a
14 200-bed building, and you think, optimally, I want to
15 have a 150-bed building.

16 MS. BURMAN: Let's do it from the
17 other end.

18 Let's say you're at 90 percent occupancy and
19 all of a sudden you filled up every single bed beyond
20 that point. All those extra beds beyond 90 percent
21 are what you are able to sell under that kind of
22 restriction.

23 MR. DART: You just said they were
24 filled. I thought you just said you went up to 100

1 percent occupancy.

2 MS. BURMAN: Well, if you did, you could
3 sell the remaining -- the excess 10 percent.

4 MR. URSO: After they were unoccupied.

5 MS. BURMAN: Right.

6 MR. DART: I followed Cici's example.
7 I did not follow yours.

8 MEMBER SCAVOTTO: So then you're
9 90 percent.

10 MS. BURMAN: Let's say a 100-bed
11 facility, 90 beds are filled, 10 are not, you can sell
12 the 10 empty beds.

13 CHAIRMAN WAXMAN: Right. That we all
14 understood.

15 MR. DART: You said something about
16 being filled 100 percent.

17 MR. FOLEY: Yeah, now their 90 is at 100.

18 MS. BURMAN: Well, that's their call
19 because they're not going to remain at 90 percent
20 every single day, are they?

21 MR. DART: I think Chuck was agreeing
22 with you. There were 90 beds and 90 people, so they
23 were 100 percent occupied.

24 MS. BURMAN: Yeah. I mean, that's their

1 choice. They don't have to sell all the alternate
2 excess beds once they're 90 percent. That's their
3 choice.

4 MR. DART: And I think that's the same
5 thing that Cece was saying, which is that you had a
6 150-bed facility and you were 90 percent of 150,
7 selling everything over 150.

8 MEMBER CREDILLE: Right.

9 CHAIRMAN WAXMAN: And you're licensed
10 for 200.

11 MEMBER CREDILLE: And you're licensed
12 for 200.

13 CHAIRMAN WAXMAN: There are a lot of
14 buildings that look just like that.

15 MEMBER CREDILLE: There are a lot of
16 buildings that look -- I mean, I can't say 200 beds.
17 I can't use that as an average, but there are lots of
18 buildings out there that --

19 MS. BURMAN: I think we're stuck with
20 looking at it in terms of licensed beds because that's
21 what --

22 MEMBER CREDILLE: Right. That's just
23 what I'm saying.

24 MS. BURMAN: That's what we have set up.

1 Until we all agree on the definition of what is an
2 operating bed. Because we've talked about this
3 several times before, and that always got --

4 CHAIRMAN WAXMAN: The State already has
5 a definition of an operational bed, does it not?

6 MR. DART: Nothing you really hang your
7 hat on.

8 We have information in the surveys about
9 occupied beds, but that is something that is required
10 in the act that we don't really have at this point.

11 CHAIRMAN WAXMAN: I thought it was
12 something to do with like -- it could be -- it has
13 been occupied or can be occupied within 24 hours?

14 MS. GUILD: That's for hospitals.

15 CHAIRMAN WAXMAN: I'm sorry?

16 MS. GUILD: That's for hospitals.

17 MR. FOLEY: No. We talked about that
18 here in this committee also in terms of this of a
19 definition.

20 CHAIRMAN WAXMAN: I thought that was a
21 nursing home definition, too.

22 MR. FOLEY: Yeah, we talked about that.

23 CHAIRMAN WAXMAN: You know, and a bed
24 that's been thrown away because that room is now an

1 activity room can never be an occupied bed, but
2 it's --

3 MEMBER SULLIVAN: Sure, it could.

4 CHAIRMAN WAXMAN: -- counted as a
5 licensed bed.

6 What?

7 MEMBER SULLIVAN: Sure, it could. You
8 just take away the activity room.

9 MEMBER PHILLIPPE: Just for sake of
10 practicality, I would say we skip the license phase
11 because we're trying to define things instead of
12 produce what the other definitions -- it's too hard.

13 MEMBER SULLIVAN: It gets very
14 confusing.

15 MEMBER PHILLIPPE: It's not useful.

16 MEMBER SULLIVAN: To paraphrase
17 Shakespeare, a licensed bed by any other name still
18 smells like a licensed bed.

19 CHAIRMAN WAXMAN: But it's the licensed
20 bed count that gets us all in trouble trying to figure
21 out, you know, how to build anything off of it because
22 it's such a nonvalid number.

23 MR. URSO: Maybe we should relicense the
24 beds at the actual number.

1 MEMBER SULLIVAN: Whoa.

2 MEMBER PHILLIPPE: That would get a big
3 turnout at the next meeting. Put that on the agenda;
4 you will get the attorneys here next time.

5 CHAIRMAN WAXMAN: I like that idea,
6 Frank.

7 MEMBER CREDILLE: You only have
8 15 minutes or so.

9 MEMBER SCAVOTTO: Nice knowing you,
10 Frank.

11 MR. FLORINA: We're coming back to the
12 same thing we talked about for years, but we know what
13 the average correct bed count is, so we know where
14 we're going from there.

15 Using the numbers we had even earlier today,
16 our Illinois rate of, you know, 64.1 people per
17 thousand is probably high because we're counting all
18 of our beds, and it's probably somewhat less than that
19 if we knew what the real number was. So we wouldn't
20 look so much more out of whack with other states, but
21 we want to go on a big quest here to eliminate all
22 these beds in Illinois. I mean, yeah, we still have a
23 lot more, but we're starting from a fictitious number
24 to begin with. So we're back to the same argument.

1 In the discussion before about the
2 90 percent of whatever amount, I'm not as concerned
3 about the number of beds somebody wants to sell. I'm
4 concerned more about the additional beds you put into
5 a planning area that's over and above the current bed
6 need. That's the concern to me. Not how many you
7 want to sell but how many end up being in a planning
8 area.

9 CHAIRMAN WAXMAN: But somebody wouldn't
10 buy those beds unless they had a use for them.

11 I mean --

12 MEMBER CREDILLE: Right.

13 MEMBER SULLIVAN: Right.

14 CHAIRMAN WAXMAN: -- we have to believe,
15 as Mike has said thousands of times, demand and supply
16 should run the whole system.

17 So if I am in an overbedded planning area
18 and I want to buy beds, it must be because I have a
19 waiting list or I have a program that I have --

20 MEMBER SULLIVAN: Or a service that
21 people want.

22 MR. FOLEY: No, I don't agree with that
23 because there's a lot of people out there -- I think
24 just what Tim has said -- they want those extra beds

1 just so they can capture another market, i.e.,
2 short-term Medicare.

3 Now, you can look at your own occupancy rate
4 and they still can be at 75, 80 percent and they note
5 they have to do something, so let's renovate the
6 facility, and in order to renovate, I have to build
7 these additional beds, and I am going to use these
8 additional beds only in a new part for my short-term
9 Medicare, but I still have not done anything to my
10 existing facility.

11 You know, that happens all the time, Frank.
12 We've seen that many times.

13 MS. GUILD: But so what? Because --
14 what's wrong with that? So you've got a big facility
15 and you want to put on an addition for a short-term
16 Medicare population where, presumably, you're making
17 more money. Ultimately, that's going to help your
18 whole entire facility's occupancy.

19 MR. FOLEY: If you're sitting there with
20 low occupancy and if you want to provide this new
21 innovative approach which is called short-term
22 Medicare, then delicense some of your beds, renovate
23 your existing facility, convert your Jack and Jill
24 rooms into private rooms with private baths, put some

1 money into the facility and delicense the beds, then
2 you have your short-term Medicare instead of still
3 having low occupancy in an existing building, and now
4 you're adding some additional beds, and like John said
5 here, all you're doing is adding to the already
6 overbedded area, and you still -- and your existing
7 building still has unutilized beds. All you're trying
8 to do is you're trying to capitalize one segment of
9 the population, short-term Medicare and private pay.

10 MEMBER CASPER: But the flaw in that,
11 though, is, why would you buy beds that you don't
12 need?

13 MR. FOLEY: I'm sorry, Bill.

14 MEMBER CASPER: I said the flaw in that
15 thinking is, why would you buy beds if you had unused
16 beds already in your building?

17 MR. FOLEY: You know, that's a good
18 question.

19 MEMBER CASPER: But there's no economic
20 logic to that. I don't see that --

21 MR. FOLEY: You would.

22 MEMBER CASPER: But you just said that
23 that's what people would do.

24 MR. FOLEY: Well, what people are doing

1 now, since we don't have a blind sale, they're just
2 going ahead and adding beds to their existing
3 facility, and even though it's an in an overbedded
4 area.

5 MEMBER CASPER: But I think part of --
6 my sense was part of the logic of this, in addition to
7 redistribution of beds, is to create a little bit more
8 of an open market concept.

9 And I think if somebody's willing to buy
10 bed, invest in a building with a short-term program
11 that boosts their occupancy and other operators are
12 not, then we're getting a little bit away from the
13 franchise mode of operation that keeps people that
14 aren't willing to invest in their buildings, that run
15 substandard operations in business, and I think that's
16 a good policy goal.

17 MEMBER CREDILLE: I agree. We don't
18 want substandard. As an industry and as a policy,
19 that's not what we want.

20 CHAIRMAN WAXMAN: I agree with you.

21 MR. FOLEY: Since we need to, I guess,
22 move, because I see Tim is getting ready to leave --

23 CHAIRMAN WAXMAN: He's heard too much
24 from you already.

1 MR. FOLEY: MEMBER SCAVOTTO earlier
2 pointed out -- or he suggested an idea of breaking
3 this up into small committees and take, you know, a
4 certain number of these questions of each committee
5 and come back at the next meeting, possibly.

6 And, number two, you gave an alternative
7 approach, I gave an alternative approach. I think
8 those two approaches need to be further explored, you
9 know, if at all possible, to see whether that should
10 go in conjunction with a buy/sell program or just
11 stand alone for the next year to see what happens.

12 So there are -- I think we do have some
13 stuff on the table right now that this committee
14 should, in fact, consider.

15 MEMBER SULLIVAN: So, in conclusion

16 CHAIRMAN WAXMAN: Yeah, I was going
17 to say.

18 Wow. So if I -- if I hear the concept of
19 subgroups again -- and subgroups we probably have
20 decided work best three or four members tops -- the
21 topics would be a seller subgroup and a buyer
22 subgroup? What's -- or let me give you the onus of
23 what subgroups definition would you put out there for
24 people to become a part of?

1 MR. FOLEY: I think the paper that
2 Claire put together have a lot of questions there.
3 I think we just need to divide up those questions
4 because I think those questions will generate more
5 questions.

6 And, as Mike was saying earlier, there's a
7 lot of scenarios out there that we haven't even come
8 up with, and I think that everybody should be coming
9 up with some of these scenarios.

10 CHAIRMAN WAXMAN: So you're saying the
11 subgroups should be based on the questions.

12 MR. FOLEY: Yes, sir.

13 CHAIRMAN WAXMAN: Okay.

14 MR. FOLEY: Unless somebody disagrees.

15 MS. GUILD: Well, we're mostly through
16 seller; right?

17 MEMBER SULLIVAN: Yes, we're mostly
18 through seller.

19 MR. FOLEY: You've got the pilot, you've
20 got program mechanics, you've got the buyer, the
21 seller, the buyer requirements, seller requirements.
22 We already talked about the moratorium, we already
23 talked about geography. So we've just got the seller,
24 the pilot, and program mechanics.

1 MS. BURMAN: 20, 10 bed percent.

2 MR. FOLEY: Yeah.

3 MEMBER SULLIVAN: And what did we park?

4 Moratorium and --

5 CO-CHAIRMAN BELL: And the pilot.

6 MEMBER CREDILLE: Moratorium and pilot.

7 MEMBER SULLIVAN: Moratorium, pilot,
8 buyer/ seller.

9 MR. FOLEY: Mechanics.

10 MS. GUILD: And those might be more
11 obvious, the moratorium and the pilot, when we figure
12 out the rest of the program.

13 MEMBER SCAVOTTO: I think you're on to
14 something. I'd do seller and buyer and see where
15 we are.

16 CHAIRMAN WAXMAN: Yeah, that's kind what
17 of what I said, and then when I got all those strange
18 looks, I --

19 MEMBER SCAVOTTO: Well, the next time
20 you want to make a suggestion, pass it to me in
21 writing.

22 CHAIRMAN WAXMAN: Okay. So I heard from
23 MEMBER SCAVOTTO that we should divide into sellers and
24 buyers, and we know that he is right on with his

1 ideas, so --

2 MEMBER SCAVOTTO: Yeah, I hope so.

3 CHAIRMAN WAXMAN: -- is there -- I will
4 throw it out. Anybody wish to take either a seller or
5 buyer question and share a subcommittee among you?

6 MEMBER SULLIVAN: Separately a buyer
7 committee and a seller committee?

8 You're nodding and she's saying no.

9 MS. BURMAN: I think it works better if
10 one subgroup handles both because they have to work
11 together.

12 CHAIRMAN WAXMAN: Do you agree?

13 MEMBER SULLIVAN: I agree with Claire.

14 MEMBER SCAVOTTO: I think that's a
15 better idea. I'm okay with that because as long as --
16 no, I'm serious. As long as we end up coming back and
17 assessing where we are.

18 CHAIRMAN WAXMAN: Okay.

19 MEMBER SCAVOTTO: Because I think your
20 point is good about the pilot and the mechanics
21 because we want to find out where we're going before
22 we assign work.

23 CHAIRMAN WAXMAN: So then I'll throw the
24 question out again.

1 Is there someone here who'd like to chair a
2 subcommittee looking at buyer and seller?

3 MEMBER CREDILLE: I'll do it.

4 CHAIRMAN WAXMAN: Thank you, Cece.

5 Anybody have the courage to become part of
6 her subcommittee?

7 MEMBER CASPER: I'll do it.

8 CHAIRMAN WAXMAN: Okay. So Bill.

9 Mr. Foley, do you want to be part of the
10 subcommittee?

11 MR. FOLEY: I'd love to be part of the
12 subcommittee.

13 CHAIRMAN WAXMAN: You're not a voting
14 member, though.

15 MR. FOLEY: But I can still participate.

16 CHAIRMAN WAXMAN: We need one more
17 member to be part of her committee.

18 MEMBER SULLIVAN: Tim Philippe.

19 CHAIRMAN WAXMAN: I think if we called
20 Tim, he would do it.

21 MS. BURMAN: Sure.

22 CHAIRMAN WAXMAN: Now, is there a
23 suggestion that there be another subcommittee at this
24 point to look at another subject?

1 MEMBER SULLIVAN: The moratorium pilot
2 concept?

3 MEMBER CASPER: I think we're getting
4 consensus that we need to come back with --

5 MEMBER SCAVOTTO: I move that
6 nominations for further subcommittees be closed.

7 CHAIRMAN WAXMAN: I accept that and vote
8 in favor of it. Okay.

9 MEMBER CREDILLE: When are we meeting
10 next? Are we meeting in August? We back in to
11 subcommittees -- the subcommittee of the subcommittee
12 backs into --

13 CHAIRMAN WAXMAN: I agree with you.
14 Do we have another meeting scheduled?

15 MS. BURMAN: No.

16 MR. URSO: No, I don't think so.

17 CHAIRMAN WAXMAN: So we've been meeting
18 every two months. So this is June. So that means we
19 should be meeting in August. And we should be
20 meeting -- this is the 20 --

21 MR. URSO: 24th.

22 CHAIRMAN WAXMAN: So August 19th or
23 August 26th?

24 MR. URSO: Yeah. Those are Tuesdays.

1 CHAIRMAN WAXMAN: Anybody with a
2 conflict on the 19th or 26th? Or anyone with a
3 preference for the 19th or 26th of August?

4 MEMBER CORPSTEIN: Is any on a Friday?

5 CHAIRMAN WAXMAN: No, they're both
6 Tuesdays.

7 MEMBER CORPSTEIN: Oh.

8 CHAIRMAN WAXMAN: We'll go with the
9 26th, then.

10 So our next meeting will be the 26th. I'm
11 assuming Staff will arrange for us to be here.

12 MS. BURMAN: Yeah.

13 MEMBER CREDILLE: Frank, because there's
14 three people on the subcommittee, do we have to have a
15 person --

16 MR. URSO: Who's on the subcommittee?

17 MEMBER CREDILLE: There's three of us.

18 MR. DART: Cece, Bill Casper --

19 MEMBER CREDILLE: I'm guessing Tim and
20 Bill. Threes three of us.

21 Does that mean I have to have a court
22 reporter?

23 MR. URSO: It's not required for that
24 number, but if you want to get an accurate record, you

1 might want to do that.

2 MEMBER CREDILLE: Well, I'm going to
3 discuss it with my folks.

4 CHAIRMAN WAXMAN: Cece, let me know when
5 you're going to do your call.

6 MEMBER CREDILLE: Then we are. We'll
7 have to do it, then.

8 CHAIRMAN WAXMAN: And I suspect Bill
9 might want to be there, too.

10 MEMBER CREDILLE: Okay. Well, then
11 we'll need one however we do it.

12 MR. URSO: That's what happened last
13 time, too. More people joined and we all of a sudden
14 had an open meeting.

15 CHAIRMAN WAXMAN: Mr. Foley?

16 MR. FOLEY: Why don't you have -- since
17 there's a lot of the members here, why don't you have
18 at least one other committee doing the same thing and
19 then get those two together at the next meeting?

20 CHAIRMAN WAXMAN: I think that's too
21 complicated.

22 MR. FOLEY: Too complicated?

23 CHAIRMAN WAXMAN: Because I think it
24 would be much better have a committee come back with a

1 report that we all hear, and then we move on.

2 I need a motion to adjourn, unless anyone
3 has questions or business.

4 MEMBER SULLIVAN: Second.

5 CHAIRMAN WAXMAN: Did someone make a
6 first?

7 MEMBER SULLIVAN: Yeah. Cece.

8 CHAIRMAN WAXMAN: Okay. All in favor?

9 (The ayes were thereupon heard.)

10 CHAIRMAN WAXMAN: Any opposed?

11 Thank you.

12 And thank you, Ms. Court Reporter.

13 (Which were all of the
14 proceedings had in the
15 above-entitled matter,
16 concluding at 2:03 p.m.)

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