



EXECUTIVE SESSION

Bernard K. Jarvis Hall of Learning
Association of American Medical Colleges
655 K Street NW, Suite 100
Washington, DC 20001

Thursday, September 19, 2024
9:01 a.m.

COMMISSIONERS PRESENT:

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SONJA L. BJORK, JD
TRICIA BROOKS, MBA
DOUG BROWN, RPH, MBA
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ANGELO P. GIARDINO, MD, PHD, MPH
DENNIS HEAPHY, MPH, MED, MDIV
TIMOTHY HILL, MPA
CAROLYN INGRAM, MBA
PATTI KILLINGSWORTH
JOHN B. MCCARTHY, MPA
ADRIENNE McFADDEN, MD, JD
MICHAEL NARDONE, MPA
JAMI SNYDER, MA

KATHERINE MASSEY, MPA, Executive Director

AGENDA

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[9:01 a.m.]

EXECUTIVE DIRECTOR MASSEY: So good morning.
Welcome to the new 2024-2025 analytics cycle. It is good
to see everyone.

ANNOUNCEMENTS

* EXECUTIVE DIRECTOR MASSEY: I wanted to start
with a few announcements. We are missing Verlon this
morning and kind of throughout the actual meeting, and so
hopefully, you saw in an email that I circulated yesterday
when I sent you the slides that she is dealing with a very
unexpected family emergency, was extremely upset to miss
the meeting. This happened kind of really at the eleventh
hour, and she wishes that she could be here but
unfortunately cannot due to extenuating circumstances.

So we are lucky enough to have Bob as our vice
chair, ready, willing, and able to step in. Bob and the
policy directors and I spent a fair amount of time
yesterday going through the agenda. So I think that he is
very well prepared and fit to the task.

So I would just ask, because this is a little bit
unexpected, that you kind of afford us some patience and

1 grace as we kind of move through the agenda. It is the
2 best laid plans. Sometimes they go awry, but we are ready
3 to pivot. So that is one announcement.

4 The other thing, just to be fully transparent, is
5 that when we start the public meeting, Bob will indicate
6 that Verlon is chair because this was an announcement that
7 was made off cycle. If the public attendees are not
8 tracking some of the announcements that come out via our
9 press releases or our social media updates, they may not
10 know that Melanie rolled off and Verlon is now in the role,
11 and we want to make sure that we are fully recognizing that
12 she is our chair and serves in a leadership position. So
13 Bob will start with that announcement and then will also
14 make note of the fact that Doug and Mike have joined the
15 Commission. So that is fantastic news, and we will be
16 making note of that when we first kick off.

17 Just for everyone's awareness, I think everyone
18 is catching on, but we have got a couple of remote
19 Commissioners today. So that means that when we do get to
20 the point of our Executive Session at lunch, there will be
21 some IT issues that we just need to manage through, and I
22 will make sure to make note of that as I am talking through

1 the agenda.

2 So what we would like to do today is go through
3 the executive agenda, talk about the sessions that are on
4 tap. If we have additional time, we are just going to give
5 a brief update on what is happening in Hill activity and
6 then Katherine Rogers, who is our not-so-new Deputy
7 Director, is joining us, and she has been thinking about
8 how to refine some of the processes tied to travel
9 reimbursements and things like that. So hopefully, these
10 are process improvements that will make it easier for you
11 and swifter for you to submit your receipts and receive
12 reimbursement. So we are going to go through some
13 housekeeping rules at the end of today's executive session.

14 So let me take a brief pause there and see if
15 there are any questions, comments, level-setting remarks,
16 and if not, I will move into the agenda.

17 And let me just confirm, Patti, Sonja, Carolyn,
18 you guys can all hear? You have no problems with audio?

19 COMMISSIONER INGRAM: This is Carolyn. I can
20 hear. Thank you.

21 EXECUTIVE DIRECTOR MASSEY: Okay. Fantastic.

22 COMMISSIONER BJORK: I can as well. Thank you.

1 EXECUTIVE DIRECTOR MASSEY: Okay. Great.

2 COMMISSIONER BJORK: Cross check --

3 [Laughter.]

4 EXECUTIVE DIRECTOR MASSEY: So let's actually
5 kind of just address that one, the kind of one point about
6 speaking and kind of making sure that we have got good
7 communication with in-person Commissioners as well as
8 remote. So in talking with Bob -- and correct me if I am
9 wrong -- you know, we had had last year -- and especially
10 with Melanie as chair -- a kind of pattern or rhythm that
11 if you were interested in making a comment, you made eye
12 contact or you were able to kind of flick a finger, raise a
13 hand, and we were always kind of keeping track of who was
14 inclined to speak or respond to some of the conversation
15 that was going on.

16 This time around, I think we are going to try
17 something a little bit different. Because we have got a
18 little bit of a bifurcated platform, we do want to make
19 sure that we are not missing anyone's voice. If you could
20 raise your hand in Zoom, that would be the preferred
21 approach for this meeting. We may need to pivot again when
22 Verlon comes back, but for today, if you could raise your

1 hand, that would be the preferred approach.

2 **### PLAN FOR THE DAY**

3 * EXECUTIVE DIRECTOR MASSEY: So let me start going
4 through the agenda. We are going to start this morning
5 with an extended period that discusses all of the final
6 rules that CMS has recently promulgated. Many of these
7 rules will be familiar to you because we provided public
8 comment, and that public comment was presented to you. You
9 provided us feedback and advice about what messages to
10 stress and what aspects of Medicaid and MACPAC analysis to
11 highlight, but now these rules are final, and in some
12 instances, CMS did change from the proposed policy to the
13 final policy.

14 So we have three objectives in reviewing the
15 final rules with you. One is to give you just a high-level
16 overview of the shifting sands of Medicaid policy so that
17 you are well grounded in the new framework that we are
18 operating within.

19 The second is that the policy directors will be
20 highlighting where MACPAC made comment and where CMS
21 responded affirmatively or in a kind of partial response,
22 because I think it is important for us to not only

1 highlight for you, but also for the public that when we
2 make comment, CMS is taking that seriously and they do
3 respond.

4 And then the third element is that in some
5 instances, the final policy actually intersects with
6 analytic work that we had in queue. So it is important for
7 us to emphasize those points so that you know that we have
8 needed to make adjustments and you might need to make
9 adjustments in your thinking as we are talking about those
10 policy issues.

11 So no action is needed here. We will pause --
12 and this is a little bit of a different strategy. We will
13 pause after the summary and presentation of each rule to
14 see if there are any questions. If you have a question
15 about a policy that was not directly addressed by the
16 presenter, that is fair game to kind of raise or make a
17 point of, and I would also say that sometimes you guys are
18 really invested in some of the aspects of the policies that
19 were finalized. And if you want to kind of proffer a
20 comment, we welcome that.

21 We will not be able to, in many instances,
22 respond because, as you well know, we are an evidence-based

1 organization. The implementation timeline for a lot of
2 these policies is extended. It can be the year 2024 all
3 the way out to 2027 and beyond. And so without
4 understanding how the policies are implemented or what
5 evidence or data they are generating that we can then
6 evaluate, it may be an extended period before we can
7 actually figure out what the impact of the policies are.
8 But I know that, like I said, you have been very invested
9 in different elements of the policy, and so we want to give
10 you an opportunity to provide input.

11 Okay. Heidi. Oh, now I have got to pivot.

12 Okay.

13 COMMISSIONER ALLEN: Oh, I did not mean to
14 interrupt you. Sorry.

15 EXECUTIVE DIRECTOR MASSEY: Yeah.

16 COMMISSIONER ALLEN: I thought that that was a
17 silent way of raising my hand.

18 With that, with the fact that implementation can
19 be years and years off, does that mean that there might be
20 an opportunity for MACPAC to do -- to -- and I understand
21 that, like, implementation, you never know how something is
22 going to be implemented, but you do have a sense of

1 direction. Is there any opportunity for MACPAC to do work
2 that could inform implementation?

3 EXECUTIVE DIRECTOR MASSEY: So we consider our
4 role to provide comment when comment is solicited. So to
5 the extent that CMS, through their implementation and
6 guidance documents, may be asking for public comment, which
7 occurs very rarely, then we can assess at that point if we
8 have any researcher analyses that might be able to help
9 shape CMS's approach.

10 We have not heard from CMS exactly kind of how
11 they are thinking about their implementation activities.
12 They can be pretty involved, right? Some of these policies
13 are complex, and they may need to kind of engage with
14 stakeholders. They have got to make sure that they kind of
15 run it through their own internal controls and so on and so
16 forth.

17 The only piece of information that I would share
18 that is somewhat relevant is that NASDDD, which is an
19 association with which we have a pretty strong partnership,
20 recently had a directors' forum, and CMS did present and
21 speak at a very high level about how they were approaching
22 implementation, and the timeline was much more extended

1 than I think we initially thought in the sense that some of
2 the initial feedback that we received is that there will
3 not be guidance documents issued, at least on the LTSS
4 side, until the next calendar year. So I think we are
5 going to be in a wait-and-see, depending on what the policy
6 area is and how they are staffing for a while.

7 COMMISSIONER ALLEN: So do you think that, you
8 know, with -- and I saw some timelines in the memos that
9 were, like, 2028.

10 EXECUTIVE DIRECTOR MASSEY: Right.

11 COMMISSIONER ALLEN: It felt like, you know, with
12 things that are so far off, if we feel like there is
13 missing evidence, that we could -- you know, because with a
14 timeline like that, you could get it into our calendar.
15 You could have meetings. You could have public -- you
16 know, like, we could go through a process, the kind that we
17 normally do, and still be able to provide that.

18 EXECUTIVE DIRECTOR MASSEY: If there are policy
19 points of interest, you should absolutely rate them.

20 COMMISSIONER ALLEN: Okay.

21 EXECUTIVE DIRECTOR MASSEY: And then we can see
22 to what extent we can incorporate that into the pipeline.

1 COMMISSIONER ALLEN: Yeah. Okay, awesome.

2 EXECUTIVE DIRECTOR MASSEY: Tricia?

3 COMMISSIONER BROOKS: Yeah. I think that -- I
4 think it's right about the regs, and God only knows what
5 will happen after the election. If it goes one way, we may
6 not even see these regs implemented. But the MACs and the
7 BAGs, the Medicaid advisory committees and the beneficiary
8 advisory committees, that is moving really fast, and
9 because we are often wanting more of the beneficiary voice
10 at the table at multiple levels, these BAGs will be
11 important.

12 I'm not sure that continuing to follow the
13 development of that and look at best practices, because I
14 think states are going to struggle to engage beneficiaries
15 meaningfully, and we should be on top of who's doing a good
16 job of that, I think.

17 EXECUTIVE DIRECTOR MASSEY: There are also
18 opportunities, as I think many of you are aware of, to
19 monitor, and so it could be that we come back to the MACs
20 and the BAGs at some future meeting to have a panel
21 conversation, perhaps, and just kind of talk about, you
22 know, how progress is evolving. So yes, there are

1 definitely opportunities for us to dip back in.

2 Okay. Any other comments or questions?

3 [No response.]

4 EXECUTIVE DIRECTOR MASSEY: Okay. After we talk
5 about the final rules, we will move to work that was first
6 introduced last year, and it is about how beneficiaries
7 access, in a timely manner, HCBS, and we were looking at
8 multiple policy levers. If you recall, we were talking
9 about presumptive eligibility, expedited eligibility. We
10 were also interested in person-centered planning, level-of-
11 care determinations, et cetera.

12 So given the volume of feedback that we were able
13 to get our arms around, when it came to the environmental
14 scan that we completed and released in the month of August,
15 we decided to split the work into two phases. So for this
16 year, we will be focusing on presumptive eligibility. You
17 may hear us shorthand that to "PEOPLE" or "expedited
18 eligibility," again, the acronym "EE."

19 So what we did over the summer was engage in
20 qualitative interviews with a number of stakeholders to
21 kind of figure out whether or not there were any policy
22 barriers or challenges to having states adopt some of those

1 flexibilities, and so you will hear Tamara talk through the
2 findings and the themes that emerged through those
3 interviews.

4 I think one of the things that came up is this
5 notion of confusion in terms of the CMS guidance that is
6 already on the books, which CMS essentially thinks is
7 sufficient, and then what the states understand to be the
8 flexibilities. And one of the areas that was particularly
9 confusing was how, when states adopt these flexibilities,
10 they implement and stand up provisional plans of care for
11 each beneficiary who does have that expedited eligibility,
12 and when I'm saying that, I just mean access to services
13 faster.

14 And so given the particular confusion around
15 provisional plans of care, we are going to have a dedicated
16 session in our October meeting just on that topic. So if
17 you hear this morning that we're kind of talking at a high
18 level about policy flexibilities and the framework and you
19 don't hear provisional plans of care, it's because we're
20 waiting to have that dedicated session in October.

21 Jami, did you have a question?

22 COMMISSIONER SNYDER: [Speaking off microphone] -

1 - like learning all over again.

2 So, but just to be clear, there is a federal
3 regulatory construct --

4 EXECUTIVE DIRECTOR MASSEY: Yes.

5 COMMISSIONER SNYDER: -- for presumptive
6 eligibility, but not expedited eligibility, right?

7 EXECUTIVE DIRECTOR MASSEY: Right. So --

8 COMMISSIONER SNYDER: Did I read that correctly?

9 EXECUTIVE DIRECTOR MASSEY: So what we're
10 learning is that presumptive eligibility that is done in a
11 hospital setting, first initiated in the hospital setting,
12 there is a very clear statutory pathway, and so you can use
13 the hospital presumptive eligibility for HCBS services.
14 And I think we've got like at least one state that is doing
15 that.

16 The difference is that certain states don't want
17 the hospital to be the determining entity in that
18 eligibility status. So they may want to use some other,
19 for example, community-based entity, and in that case,
20 because there is no state plan option, CMS has been
21 facilitating that flexibility through 1115 waiver.

22 And so there are a couple of examples where

1 states have pursued 1115 waivers to accomplish that goal
2 and objective, and so that will be covered in the
3 conversation and in the research.

4 COMMISSIONER SNYDER: But that's for presumptive
5 eligibility, right?

6 EXECUTIVE DIRECTOR MASSEY: That's for
7 presumptive eligibility.

8 COMMISSIONER SNYDER: But this idea of expedited
9 eligibility, which is a little different is --

10 EXECUTIVE DIRECTOR MASSEY: Expedited eligibility
11 -- and I don't want to like steal Tamara's presentation,
12 but it's more of like a concept.

13 COMMISSIONER SNYDER: Exactly.

14 EXECUTIVE DIRECTOR MASSEY: It's kind of like
15 it's the idea of there are things that states can do to
16 make sure that the process is faster, swifter, that
17 individuals get access to services in a kind of more
18 efficient turnaround.

19 COMMISSIONER SNYDER: Okay. That makes sense.
20 Thank you.

21 EXECUTIVE DIRECTOR MASSEY: Okay, great. Okay.
22 So now we're going to have public comment per the agenda,

1 and then we will have a pretty abbreviated lunch, and
2 that's because we have invited an external speaker to join
3 us. So hopefully, many of you are familiar with Sara
4 Rosenbaum. She is a professor at GW, basically kind of an
5 expert in Medicaid law. She is also a former MACPAC chair.
6 And so we reached out to her over the summer after some of
7 the SCOTUS rulings came down to see if she would be
8 amenable to just talk to us in a casual setting at a very
9 high level about how she was thinking about what the
10 consequences of some of those Supreme Court rulings may be,
11 especially on our work.

12 And this is particularly relevant and germane
13 because when we offer recommendations, there are, per our
14 statute, three entities that we can provide that
15 recommendation to, right? There's the U.S. Congress,
16 there's the HHS Secretary, and states. And so kind of
17 depending on how HHS is viewing and how the courts are
18 viewing the administrative authority afforded to HHS, we
19 just wanted to be a little bit ahead of the game in
20 thinking about when we contemplate policy options and
21 recommendations, should we be directing it to the Congress
22 or to HHS? And so we just wanted to kind of start some of

1 these conversations.

2 Now, let us be clear. There are a lot of
3 unknowns, and I think that Sara will say that there are a
4 lot of unknowns. But at the same time, it just gives us
5 kind of something to gnaw and to kind of think about as
6 we're going through this cycle.

7 So we are treating this as an executive session.
8 This is going to be super casual. Sara will be in person.
9 I have slides that I can hand out if you are interested in
10 a hard copy. They were also circulated soft copy based on
11 Carolyn's good recommendation. I would just ask, as I put
12 in the email, that you not circulate those because they
13 are, I think, her proprietary thought product, and we just
14 want to make sure that we keep it within the family.

15 But when we did our prep meeting with Sara, she
16 is going to be, I think, pretty conversational, and so ask
17 whatever you want. This is kind of your time to converse
18 one-on-one with her.

19 Now, the one thing is that when we usually have
20 lunch, we keep everyone on the public meeting session, and
21 we just pause it. But what we're going to need to do for
22 this is switch back to the executive session link so that

1 we make sure that Carolyn and Patti and Sonja can hear
2 Sara's conversation. So there's just going to be a little
3 bit of a switcheroo that we're going to need to be
4 cognizant of at that time.

5 Okay. Let me pause. Any kind of questions,
6 thoughts, reactions to Sara joining?

7 [No response.]

8 EXECUTIVE DIRECTOR MASSEY: Okay. So then we
9 have just a few more sessions to review before the end of
10 the day.

11 So we are going to revisit the work that we did
12 on administrative simplification tied to 1915(c) waivers.

13 Now, you will, I think, recall that last year we
14 presented you with three policy options. So the first was
15 advice to CMS to issue additional technical assistance for
16 the state plan authorities. The second was to extend the
17 renewal period from five years to an undefined period. The
18 third was to eliminate cost neutrality.

19 This is how we interpreted your feedback to that
20 starting bid. The first was that the technical assistance
21 was -- and I will be more kind of casual in saying this --
22 a bit of a nothing burger, so not super compelling, not

1 something that felt like an imperative. So we dropped that
2 policy option moving forward.

3 On the waiver renewal period extension, we are
4 now coming back to you with a more definitive policy option
5 that would take the period from five years to ten years,
6 and there's no strong, strong evidence to recommend ten
7 years. But there is precedent for 10 years because under
8 the Trump administration, there were, I think, two 1115s
9 that were extended for a ten-year period. So now you've
10 got an end date, an alternate end date.

11 On the cost neutrality, we did a couple of things
12 just to kind of make sure that we were continuing to
13 collect information. We asked the Congressional Budget
14 Office for an estimate of what the cost implications and
15 budget implications are. That came back with a \$1 billion
16 score over ten years.

17 Remember, based on Sean's conversation with us
18 during last year's executive session, these are not point
19 estimates. These are ranges, but it does give you an order
20 of magnitude.

21 We had additional stakeholder interviews that
22 were reflected in the memo that we presented, and then the

1 last thing that we did was we heard a lot about the value
2 of being transparent with the data. So we did amend the
3 policy option to direct -- let me put it this way -- to
4 remove the cost neutrality requirement but then also to
5 direct HHS Secretary to do an annual report that shows kind
6 of the value of HCBS relative to institutional spending.

7 Now, there were -- I think it was a little bit of
8 a spicy conversation, so lots of different thoughts, ideas,
9 and debates. We expect the same now, but hopefully you
10 have at least one or two additional data points that help
11 to flesh out your thinking.

12 I will say we are always beholden to you and your
13 preferences. If you decide to move forward with the waiver
14 renewal, that's fantastic. It is not intrinsically tied to
15 the cost neutrality policy options. These are independent.
16 They do not have to move forward as a package. So you can
17 move forward with one, both, or none, and all of those
18 options are perfectly fine.

19 But what we are looking for in this particular
20 session is some guidance about what to do next, because if,
21 for example, you decide to move forward with the renewal
22 period, we will come back in October with specific

1 recommendation language that you can then react to, modify,
2 and edit, so that we can ultimately drive this to a vote.

3 So it is important for us, at this point in the
4 process, just to kind of understand what we need to start
5 refining more specifically.

6 Okay. Public comment and break, and then we're
7 in the home stretch for Thursday.

8 So we are going to introduce new work on PACE.
9 So we are going to start with a 30-minute conversation
10 about what the background of PACE is, so what the model is,
11 how the integrated care strategy is approached by those
12 providers, who is generally enrolled in PACE, what the
13 research and evidence indicates as the outcomes to PACE
14 maybe, how PACE organizations are paid. So this is really
15 kind of foundational. It's setting the stage for you to be
16 better armed to then transition into the panel
17 conversation.

18 So we will have a panel conversation with three
19 experts. They will be virtual. One is a CMS leader who
20 works on the PACE program. Then we have representatives
21 from the state of North Carolina and the state of
22 Massachusetts. And we are going to run the panel

1 conversation in the way that we traditionally have, where
2 there will be 30 minutes of moderated questions from the
3 analysts. Then we'll open it up to you for 30 minutes, and
4 then we'll have 30 minutes to debrief after we get through
5 the conversations with our guests.

6 Sonja, did you have a question?

7 COMMISSIONER BJORK: Yeah, but my question was
8 back on the waivers.

9 EXECUTIVE DIRECTOR MASSEY: Yes, let's go back.

10 COMMISSIONER BJORK: I was just wondering if you
11 could say a little bit more about the consequences of a
12 recommendation for changing the cost neutrality
13 requirement. Like is that an explosive type of
14 recommendation that would be earth-shattering, or is that
15 not that big of a deal? To me it feels like a big deal.

16 EXECUTIVE DIRECTOR MASSEY: I think it is a
17 little bit of a big deal. I mean, I think that when we did
18 see additional stakeholder interviews, and the analysts
19 will correct me if I'm wrong, but when we did the
20 additional stakeholder interviews over the summer, the
21 option is not a slam dunk. There are pros and there are
22 cons. So I feel like we are really kind of giving you

1 something to wrestle through.

2 I think that when we did the research and
3 analysis, we thought there was enough evidence to justify
4 the option. But just because we have the evidence it
5 doesn't necessarily mean that you might think that it's a
6 good idea. We just think that we've got the evidence base
7 to kind of get us across the finish line. And some of the
8 evidence that we collected were kind of the in-depth
9 reviews that we did of the waiver cost neutrality
10 calculations that states submit to CMS. We did baseline
11 assessments. We did calculations of what the
12 administrative burden was.

13 Because if you recall back to the foundational
14 policy question, it was in response to state feedback that
15 there are many, many HCBS waivers that are currently
16 approved, and it's just a burden for states to kind of
17 manage all of these. It takes staff time, and sometimes
18 some of the staff perspective is I'd rather be working on
19 quality improvements or access improvements than kind of
20 paperwork associated with waiver compliance.

21 Patti, did you have thoughts?

22 COMMISSIONER KILLINGSWORTH: Yeah, and I'll make

1 these in the public session, as well. And none of this
2 will surprise you, Kate. I do think it's a big deal,
3 Sonja, and I think it sets a really big deal for states as
4 they manage these programs.

5 I completely agree that there's opportunity from
6 an administrative burden perspective to change the amount
7 of burden that is placed on state agencies as it relates to
8 demonstration across neutrality on an annual basis.
9 Although as somebody who has done these demonstrations for
10 25 years, I will tell you that the primary burden is not in
11 generation the demonstration across neutrality itself,
12 because that's largely a report that's spit out of your
13 Medicaid Management Information System.

14 Most of the burden comes in the attachments
15 around quality that are important but certainly require a
16 fair bit of work and have to be done in a certain format
17 and all of that for CMS.

18 So I think that we could eliminate the
19 administrative burden without eliminating the requirement,
20 which I think at least my experience as a state official is
21 that that was very important from a legislative standpoint
22 in terms of working with people to end up funding home and

1 community-based services. It was certainly important from
2 a legal perspective in terms of helping the states manage
3 its budget and be able to defend against litigation.

4 And so I have really significant concerns about
5 this, and again, I'll bring those up later.

6 MS. TABOR: I tend to agree with Patti. I know
7 that there's a lot of work that goes into trying to make it
8 balance, and sometimes it's smoke and mirrors. It's not
9 always putting the numbers together and proving it. But it
10 feels like that is an effort to make sure that they don't
11 explode. They're guardrails. There's a guardrail there,
12 even though I think there's a lot of negotiation that goes
13 on and perhaps some of it isn't on solid ground. But
14 without a guardrail at all what might happen if you don't
15 even have to pay attention to this.

16 I will just add that there are times when I think
17 we do need to spend more money and waive something. So
18 it's a bit of a conundrum, but thanks for bringing it up,
19 Sonja. I think that is going to be the question. And the
20 Commission has gotten feedback in the past on actions
21 they've taken, from our friends on the Hill, like the
22 letter on work requirements back a number of years ago. So

1 I think we have to be sensitive to that.

2 EXECUTIVE DIRECTOR MASSEY: Okay. So we go Mike,
3 Jami, and then Heidi.

4 COMMISSIONER NARDONE: I was just going to add to
5 Patti's concerns about what does it mean to get rid of cost
6 neutrality. And just looking at the 372s and the amount of
7 work that's involved in it, the cost neutrality piece is
8 only one piece of those 372s. There's all the quality,
9 metrics. And it seems like, I mean, we are kind of
10 transitioning into a new phase here, where we're
11 introducing the HCBS quality metrics. And I assume that's
12 going to have to require some sort of rethinking about what
13 is in the 372s.

14 So I wonder if it's really not more feasible, as
15 we think about this kind of transition, we think about how
16 do we rework the 372s so that they get us the information
17 that we want around quality. I think it is helpful for
18 states to be able to point to the fact that these services
19 at HCBS are less than institutional costs. I mean, I think
20 it's very helpful for the argument in many legislatures.

21 I'm really reluctant to just kind of go away from
22 that, even though I know it's an easier thing. It does

1 feel like we're transitioning, perhaps, to a new framework
2 for assessing what a state provides on an annual, or I
3 guess the HCBS quality metrics, if I recall, are every two
4 years.

5 EXECUTIVE DIRECTOR MASSEY: So that actually -- I
6 mean, Mike, so please make that comment again in public
7 session -- and that actually is a good example of why we're
8 spending time talking about the final rules. So if you
9 actually want to -- I mean, it would be amazing if you
10 could cross-reference maybe back to the initial session
11 that we're having in the public venue, just so that you can
12 help the public kind of make the same connection that
13 you've just shared with us right now. That would be great.

14 Okay, so Jami and then Heidi.

15 COMMISSIONER SNYDER: Okay. And I just have a
16 question actually for Patti. I wanted to go back to sort
17 of your thoughts on this issue, Patti. So are you saying
18 that you're in agreement with the recommendation or the
19 option that's outlined by the analysts to eliminate the
20 cost neutrality test but to continue to require states to
21 collect data via the CMS 372, and then have CMS issue this
22 annual report? Would that get us there? I'm just curious.

1 COMMISSIONER KILLINGSWORTH: No. No, it wouldn't
2 get us there, and I would not be in support of any proposal
3 to eliminate the cost neutrality requirement. I think it
4 is a fundamental aspect of these programs. It's important
5 and should remain.

6 I would be okay with a recommendation to not
7 require that states have to demonstrate their compliance
8 with cost neutrality every year. I really think that's
9 sort of where we got off track a little bit is that we took
10 compliance with the federal requirement as a signal that
11 the federal requirement isn't necessary. But we don't know
12 if they'd meet it or not if it wasn't a federal
13 requirement. So that's kind of one thing.

14 Two is that the goal is really to eliminate the
15 burden, not to change the policy. So we can eliminate the
16 burden by eliminating the annual demonstration.

17 I do think, personally, again as a state
18 official, there is tremendous value in those financial
19 reports, the financial part of the 372 reports. I think
20 you should know how your money is being spent every year.
21 I think you should know what utilization looks like,
22 service by service. I think there's value in those. But

1 if it makes a huge difference, I'd be okay with eliminating
2 the annual demonstration and really leaving that to states'
3 discretion. I would not be okay with eliminating the
4 actual requirement for cost neutrality.

5 EXECUTIVE DIRECTOR MASSEY: Okay. Any other
6 questions or comments on the topic? Okay. Any other
7 questions or comments on PACE?

8 [No response.]

9 EXECUTIVE DIRECTOR MASSEY: We're good on PACE.
10 Okay. So then we're good for the day.

11 So then there will be a dinner for Commissioners
12 if you're interested in joining. If you haven't RSVP'd
13 just please flag for me or for Kiswana.

14 **### OTHER DISCUSSION**

15 * EXECUTIVE DIRECTOR MASSEY: There was just one
16 other point that I wanted to raise, which is last year it
17 was a little touch and go for a while when it came to our
18 appropriations, and I think that you were on the receiving
19 end several times of notifications that we were about to
20 exhaust our appropriations. We were doing that because we
21 have a shutdown plan in place, and one of the steps in a
22 plan is to make sure that we're transparent and we're

1 alerting people who are affected by any kind of disruption
2 or suspension in the availability of financial resources.

3 What we are hearing from the Hill, because we
4 just had our briefings when we talked about the agenda for
5 today and for tomorrow, is that they are, at this point,
6 not panicked. You may have seen, in the reports, that
7 Leader Johnson advanced a six-month extension. That
8 failed. But there are conversations around a shorter
9 extension that would take us probably in the three month
10 range.

11 And the feedback that we got from folks on the
12 Hill, that again I would just kind of appreciate stay in
13 this room, is that because it is an election year they are
14 not expecting to have a shutdown kind of precede the
15 election. So that gives us, I think, some hope and
16 optimism that they're going to be able to sort things out
17 in the next like -- I think they've got 10 working days,
18 because the legislative calendar is different than the
19 actual calendar.

20 If, for some reason, things to awry, you may get
21 the notification for us, because we do want to make sure
22 that we're compliant with our own policies and procedures.

1 So don't be alarmed. Hopefully if that comes out, that
2 might just be pro forma as we comply with our policy.

3 Okay. So that, I think, is it for me. Does
4 anyone else have any questions? Patti, sorry. I am not
5 doing well with the raise hands. I apologize.

6 COMMISSIONER KILLINGSWORTH: Obviously, neither
7 am I because I didn't intend to do it, so I'm sorry.

8 EXECUTIVE DIRECTOR MASSEY: Okay, okay. So then
9 can I turn it over to Katherine to kind of do the
10 housekeeping that we referenced at the start?

11 **### OTHER HOUSEKEEPING ISSUES**

12 * MS. ROGERS: Good morning, everybody. I'll try
13 to keep this relatively brief because a lot of this should
14 hopefully just be on background.

15 So I wanted to, as Kate mentioned, go over a few
16 travel-related things. We are streamlining a few steps on
17 our side, but I'm going to go a little top to bottom on the
18 travel reimbursement, just so you see where those are
19 going, and hopefully next week and the weeks to come after
20 that you see it in real time while you're submitting your
21 reimbursement requests.

22 So of course when you onboarded as a

1 Commissioner, and that's varying lengths of time ago, there
2 was initial training and documentation about how to get
3 reimbursed for your travel expenses. Some things are
4 really easy to remember and some things are harder to
5 remember. So if ever you have a question, you just don't
6 know there are lots of people to ask, myself included,
7 Kiswana. Any of the folks on the operations team know the
8 answers to more questions than I do, so please don't
9 hesitate to ask.

10 But since some of those parts of the travel
11 process have been sort of internally at MACPAC, I just want
12 to talk through a few of these pieces.

13 At the start of the fiscal year you're issued a
14 blanket travel authorization that covers your travel for
15 the entire year. Before each meeting you are responsible
16 for booking your travel. We do like to send a reminder,
17 but under no circumstances do you have to wait for a
18 reminder to book your travel. The only reason, as Kate
19 just talked about, we don't have our fiscal 2025
20 appropriation yet, so we can't issue your ticket for fiscal
21 year 2025, but you could book it. We just won't issue it
22 yet because we can't pay for it yet. That's the only

1 circumstance in which there's any question about booking
2 travel in advance.

3 We do ask that you use ADTRAV, our travel agency,
4 because that is a sort of centralized process for the
5 federal government and federal travel. It ensures we get
6 best value for the federal government. We also do not get
7 cancellation fees, and it ensures you get a seat on the
8 plane or train. In the event they bump somebody else, you
9 are going to stay on the plane. So great news there.

10 If you book travel outside of ADTRAV, for
11 example, you have a personal stopover that we cannot
12 reimburse for, something like that, we will reimburse you,
13 as probably most of you are familiar, up to what we
14 would've paid the ADTRAV. That's called the City Pair
15 Program. I could talk at length about that. I will spare
16 you.

17 So generally speaking, before the meeting,
18 advance notice of anything like if you do have a personal
19 stop and you're booking your travel outside of ADTRAV, we
20 do really appreciate advance notice because that affects
21 how we prepare your voucher after the meeting. So that's
22 always helpful.

1 If you cannot attend the meeting in person, as
2 per policy, notify the Executive Director and the Chair as
3 soon as possible, because that also impacts not just the
4 travel but also our meeting preparations, more generally.

5 One of the changes we're implementing is we now
6 have a travel mailbox. And this will hopefully make things
7 simpler for you. This meeting will be different. Instead
8 of corresponding directly with Kiswana, who is not where
9 I'm gesturing -- she stepped outside, but you know Kiswana
10 -- we have a new mailbox that's
11 Commissioner.Travel@MACPAC.gov. Pretty simple. Reminders,
12 receipt requests will come from that mailbox, and we ask
13 that you send things to that mailbox instead of sending
14 them to Kiswana.

15 This mailbox is only for travel. Correspondence
16 with Kate, obviously, keep emailing Kate directly. If you
17 have questions about something else you are welcome to
18 contact Kiswana or me or anybody else.

19 Okay. So around the meeting time, I don't think
20 there's a lot to cover here. Receipts are requested for
21 anything, either required for anything over \$75. And if
22 for some reason -- this will be pretty rare because for

1 Commission meetings we do book hotels rooms for you -- but
2 if you ever find yourself paying for lodging, and that's
3 been approved by MACPAC, we must have your lodging receipt
4 under all circumstances.

5 The last sort of change here is that we have
6 changed our order of operations in the review. So you
7 should get your voucher within about two days of your
8 complete document. So say you send in receipts, you don't
9 get any questions from us, everything makes sense to us and
10 everything is great, you should get your voucher to review
11 and sign within about two business days. We've built in an
12 extra layer of review before it comes to you, so you might
13 see a slightly longer timeline than before, but we're still
14 aiming for two business days.

15 The faster you can sign and send it back to us,
16 the better, so appreciate your cooperation on that.
17 Generally speaking, once it comes back to us, we send it to
18 our finance team. They also review it. They may have
19 additional questions. Some of you have probably
20 experienced this, that we get another question from finance
21 and we do send it back to you. That's a piece that we're
22 trying to minimize with an additional layer of review

1 before it comes to you.

2 I think that's all of the changes. You'll get a
3 nice email from Commissioner.Travel@MACPAC.gov on Monday.
4 But you are welcome to submit your receipts before then if
5 you like. Just please try to use that mailbox. It's
6 Commissioner.Travel@MACPAC.gov. But again, you don't need
7 to originate that email. We will email you on Monday.

8 John has a question. Please go ahead.

9 COMMISSIONER McCARTHY: You said personal travel,
10 but lots of our travel isn't personal of nature. It is
11 like --

12 MS. ROGERS: For a different reason.

13 COMMISSIONER McCARTHY: Yeah. Like I'm at a
14 client site and I've got to fly from the client site here.
15 A part of it was we were always told that in order to get
16 that reimbursement -- so first off, ADTRAV won't book that
17 for us. Like if I ask, like I need to fly in from Utah
18 because I'm in Utah, they're like, "We can't book that for
19 you." Okay, so I've got to do it myself.

20 But the other thing they may say is to get the
21 reimbursement you have to have a copy of your boarding
22 pass.

1 MS. ROGERS: I'm so glad you asked.

2 COMMISSIONER McCARTHY: Is that true? Because
3 nowadays if it's electronic, and I'm at the meeting so
4 obviously I flew --

5 MS. ROGERS: You got here.

6 COMMISSIONER McCARTHY: -- I got here. It just
7 happened once and I forgot to take the picture of it, and
8 on your app it disappears. So is it true that you have to
9 have a copy of the boarding pass?

10 MS. ROGERS: Yes. We need a receipt and a
11 boarding pass. So I would say best practice, if you are
12 flying on a non-ADTRAV ticket, just take a screenshot of
13 your boarding pass as you're getting on the plane, if you
14 think of it.

15 Thank you for bringing that up. Basically, if
16 you're flying not your standard route, so if you are from
17 St. Louis and you fly St. Louis to D.C. and back, that's
18 what we can reimburse for. So you might have a business
19 stop along the way, and you might have just been in a
20 different place and you're going to go to a different
21 place, you can book those and we will reimburse according
22 to your standard route. But we do need a copy of the

1 boarding pass.

2 Another question from John.

3 COMMISSIONER McCARTHY: I'm the one that's
4 traveled a lot. I'm sorry. The other one was back to this
5 question about what is a standard route, because I've kind
6 of gone around on this one. Being that I'm a person who
7 happens to live in two places -- half the year I'm in
8 Phoenix and half the year I'm in Columbus -- sometimes
9 ADTRAV is like "nope," and then I've got to go through it
10 and then they adjust it. So do I just have to send you
11 guys a change of address?

12 EXECUTIVE DIRECTOR MASSEY: Can I answer that?
13 So we've put your snowbird locations on record, so you
14 should be fine from either Ohio or Arizona.

15 MS. ROGERS: And this is good, for anybody else,
16 if you there is a known standard that we need to know about
17 and will help us get things processed more or through
18 ADTRAV, again please just communicate those to us. It's
19 much easier to handle those in advance than retroactively.

20 EXECUTIVE DIRECTOR MASSEY: All right. Thank
21 you. Does anyone else have any questions about travel,
22 travel reimbursements, booking, et cetera? Because this

1 is, I have to say, one of the more complicated aspects,
2 administratively, of the type of standard processing that
3 we do.

4 COMMISSIONER BROWN: What's the typical time for
5 once it's approved? When will we get that? What's the
6 time to get the check?

7 MS. ROGERS: I might let finance also chime in,
8 but generally speaking we're sending it over to our
9 partners within five days of it being approved. Speaking
10 from my own experience, I was paid very quickly when I had
11 a travel voucher. Maybe a week or two? Five to seven
12 business days.

13 EXECUTIVE DIRECTOR MASSEY: Any other questions?

14 COMMISSIONER ALLEN: For those of us who are
15 really lazy and don't like to send receipts because it
16 takes our precious time to go and find our Ubers and things
17 like that, but do want to get reimbursed for just our
18 stipend, can I just say I want that and then just get the
19 automatic voucher or thing that I sign instead of not --

20 MS. ROGERS: You could tell us -- I would really
21 love it if you would just do this in one email -- if you
22 would like that to be for the whole cycle, if you would

1 like it to be for one meeting. As long as you just
2 affirmatively tell us we will proceed. It helps us just to
3 have the confirmation. So as long as we have the
4 confirmation, we will proceed that way. Thank you for
5 asking that question.

6 EXECUTIVE DIRECTOR MASSEY: Sonja.

7 COMMISSIONER BJORK: I just wanted to clarify;
8 you said that any expenses under \$75 you don't need a
9 receipt? So that includes your Uber or your Lyft or meals
10 while you're traveling. Is that right?

11 MS. ROGERS: That's true. We would love receipts
12 if you have them. They are required for \$75 or more. And
13 for meals, generally we are authorizing your travel on,
14 it's called -- I just took a federal travel regulations
15 training so I apologize -- it's called Lodging Plus. And
16 we're going to reimburse you for meals and incidental
17 expenses according to the standard GSA-approved per diems,
18 which you'll often see on your voucher is like M&IE. And
19 you do not need to itemize anything on your meals unless
20 you're traveling under a different sort of framework.

21 So we don't need receipts for any meals, and we
22 won't reimburse you for any meals apart from the M&IE.

1 And, of course, we're providing at least some of your
2 meals. So you'll see that reflected in your M&IE, as well.

3 COMMISSIONER BJORK: thank you.

4 EXECUTIVE DIRECTOR MASSEY: Okay, great. Any
5 other questions -- travel, agenda, logistics?

6 COMMISSIONER HILL: Let me just say, for the
7 record, there's enough acronyms that now we have to talk
8 about M&IE, as well.

9 UNIDENTIFIED VOICE: I also think that PE for
10 presumptive eligibility is really confusing with private
11 equity. I'm just putting that out there.

12 COMMISSIONER HILL: Perhaps a session on
13 acronyms.

14 EXECUTIVE DIRECTOR MASSEY: Okay. We do have an
15 acronym list on our website, so we try to anticipate some
16 of the confusion.

17 All right. So if there's nothing else, we've
18 built in a break. We will start promptly at 10. Thanks,
19 everyone.

20 * [Whereupon, at 9:48 a.m., the Executive Session
21 was adjourned, to reconvene at 8:45 p.m. on Friday,
22 September 20, 2024.]



EXECUTIVE SESSION

Bernard K. Jarvis Hall of Learning
Association of American Medical Colleges
655 K Street NW, Suite 100
Washington, DC 20001

Friday, September 20, 2024
8:45 a.m.

COMMISSIONERS PRESENT:

ROBERT DUNCAN, MBA, Vice Chair
HEIDI L. ALLEN, PHD, MSW
SONJA L. BJORK, JD
TRICIA BROOKS, MBA
DOUG BROWN, RPH, MBA
JENNIFER L. GERSTORFF, FSA, MAAA
ANGELO P. GIARDINO, MD, PHD, MPH
DENNIS HEAPHY, MPH, MED, MDIV
TIMOTHY HILL, MPA
CAROLYN INGRAM, MBA
PATTI KILLINGSWORTH
JOHN B. McCARTHY, MPA
ADRIENNE McFADDEN, MD, JD
MICHAEL NARDONE, MPA
JAMI SNYDER, MA

KATHERINE MASSEY, MPA, Executive Director

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P R O C E E D I N G S

[8:45 a.m.]

EXECUTIVE DIRECTOR MASSEY: Good morning,
everyone.

COMMISSIONERS: Good morning.

EXECUTIVE DIRECTOR MASSEY: We have two topics
that we want to cover this morning. First, we're going to
review the sessions that we have slated to cover in our
public meeting schedule, and then we do want to circle back
to the conversation that we were having related to the
1915(c) waivers, just so that we as staff have a clear
understanding of what our next steps are.

PLAN FOR THE DAY

* EXECUTIVE DIRECTOR MASSEY: So let's talk about
the agenda first. We're going to start at 9:30 with a
conversation about a population, a new population that
we're taking a closer look at, which is youth with serious
behavioral health needs, and this will first be framed as a
multiyear project. So we're going to spend some time as we
did in September of last year when we were talking about
hospital financing, talking about kind of the populations
and the different vantage points that we can assume when

1 we're really trying to analyze the dynamics, the policies,
2 and the population in a more in-depth way.

3 And so this year we will start with a
4 conversation that looks at the question of access to
5 residential treatment facilities, and there are many. And
6 Melissa is going to talk about what the policy
7 infrastructure is and what some of the policy issues are.
8 This is a foundational session. So we really encourage you
9 to ask questions, clarifying questions that will help you
10 understand and get a good handle on how dynamic this
11 particular kind of part of the provider continuum is.

12 After we get through this year -- hopefully we'll
13 finish this year, this conversation about access -- then we
14 will hopefully in year two move to a conversation about
15 what the oversight expectations are from both the federal
16 government and from the states in evaluating and reviewing
17 and monitoring residential treatment facilities along with
18 the quality outcomes that they produce or perhaps do not
19 produce.

20 And then in the third year, we're going to want
21 to look at the issue from the community-based perspective,
22 looking at what policy levers, mechanisms, and

1 flexibilities are available to states as they try to serve
2 populations in the community.

3 Now, one of the things that I just want to note
4 and why it's really important for us to think about this as
5 a multiyear project and to spend some time talking with the
6 public about how we're approaching the issue is we want to
7 be really sensitive to the fact that just because we're
8 starting with a conversation about access, this is not us
9 expressing the Commission's prerogative that we are in some
10 way shape or form a proponent of institutional settings.
11 And so you will note, because we were quite conscientious
12 about this, that throughout the memo and throughout the
13 materials, we talk about appropriate levels of care so that
14 if it is not appropriate, that is not something that we're
15 actually trying to evaluate, so just want to kind of put
16 that out there. When we had the conversations with the
17 Hill over the summer about this topic, that was one of the
18 things that they stressed.

19 And also, just for your awareness, there is an
20 active investigation that's being led by Senate Finance
21 into residential treatment facilities. That was not one of
22 the prompts for us to engage in the research. Our research

1 began before we understood that they were going to take on
2 the investigation. It just so happens that we're moving on
3 the topic concurrently.

4 Heidi?

5 COMMISSIONER ALLEN: So I'm not sure if I should
6 ask this in the public meeting or not, but I worked in a
7 residential treatment center for four years. And at that
8 time, private insurance had started really significantly
9 limiting residential stays to the extent that parents were
10 required to give their children up to the state in order
11 for the child to qualify for Medicaid to go into
12 residential treatment. It's kind of the parallel of long-
13 term care services and supports.

14 I'd really like to understand the scope of that,
15 because it does seem like if our recommendations are going
16 to Congress, then if this is happening a lot, then a fair
17 recommendation from my perspective would be that they need
18 to think about the limits that are being imposed in private
19 insurance so that we do not have a situation where parents
20 have to give up their parental rights in order to access
21 care.

22 But I don't understand how -- you know, this is

1 just what was happening in my hospital. I don't understand
2 at the aggregate how serious this issue is and how
3 compelling, you know, it might be. So I would really -- I
4 don't know quite how you study that, because you can see if
5 somebody's in foster care or essentially in the state, but
6 you don't necessarily know and -- yeah.

7 So I think it's complicated, but I do think it's
8 really important to understanding the issue.

9 EXECUTIVE DIRECTOR MASSEY: Yeah. So I would
10 absolutely raise that consideration and sensitivity in the
11 public meeting.

12 COMMISSIONER ALLEN: You would? Okay.

13 EXECUTIVE DIRECTOR MASSEY: It's contemplated in
14 the slide deck.

15 COMMISSIONER ALLEN: Okay.

16 EXECUTIVE DIRECTOR MASSEY: So you will see
17 references to relinquishment, and that is that pressure
18 that parents and families feel to relinquish custody in
19 order to access services. So that is one dynamic.

20 I will also say, since you kind of cracked the
21 door open, that one of the issues that was constantly
22 raised when we've been talking with states was residential

1 treatment. The relinquishment was a particular concern as
2 was out-of-state placement, and so I suspect that we will
3 be having conversations about out-of-state placement as
4 well. And that's appropriate also to raise in the public
5 session.

6 COMMISSIONER ALLEN: I just took a bite of food.
7 But is the out-of-state placements due to state policies
8 around involuntary treatment?

9 EXECUTIVE DIRECTOR MASSEY: There are many
10 dynamics, and I think we're at the beginning of the
11 research. So I don't want to say definitively. I will
12 just note that sometimes states have enhanced flexibility
13 to negotiate higher than fee schedule rates if they're
14 placing a child out of state, and what we've heard
15 anecdotally is that that could be one of the drivers?

16 COMMISSIONER ALLEN: Okay.

17 EXECUTIVE DIRECTOR MASSEY: Since we opened up
18 for questions and -- John?

19 COMMISSIONER McCARTHY: We have a client that I'm
20 working with. So it's not fully public yet, but it's going
21 to be in public where in their state -- well, sorry, but
22 it's Colorado, where they just had a EPSDT lawsuit and they

1 won. And their issue is with private insurance, back to
2 what Heidi was saying, and that parents of kids and private
3 insurance can't get their kids the services they need,
4 especially residential care.

5 So they're exploring an 1115 waiver to basically
6 take all kids -- basically make a Medicaid buy-in program
7 so people on commercial insurance would move into Medicaid
8 to be able to get access to the services under EPSDT that
9 they're unable to do, and then how do you pay for it is
10 like either a tax on and private insurers or they get
11 something else.

12 And so, like, this is a really timely issue
13 because it's not just a Medicaid issue. I mean, kids just
14 cannot get these services right now.

15 COMMISSIONER BJORK: And isn't that interesting
16 now that Medicaid's going to pick up where the commercial
17 insurance providers are not doing what they need to do?

18 COMMISSIONER McCARTHY: It's just an idea. It
19 hasn't happened.

20 COMMISSIONER BJORK: Yeah.

21 COMMISSIONER McCARTHY: Just an idea.

22 COMMISSIONER BJORK: No, I know. It's a great

1 idea, because they're trying to do a workaround after years
2 of challenges with this. But isn't that very interesting?

3 I would have thought that the ACA and mental
4 health parity and some of these efforts to force some of
5 the plans to be better about coverage would have had an
6 impact, but it sounds like it's still a really bad problem.

7 EXECUTIVE DIRECTOR MASSEY: Okay. So I think
8 that this is going to be a lively conversation.

9 Okay. After we talk about residential treatment
10 facilities, we're going to transition into external quality
11 review, and some of the Commissioners with more tenure may
12 recall that we actually brought this topic to you two
13 cycles ago. But we weren't able to cross the finish line
14 when it came to recommendations because we had some
15 staffing issues on our side.

16 So now that we've got those nulled out, we want
17 to come back and talk about the relevant findings that are
18 still, I think, appropriate topics of conversation, even in
19 light of the 2024 managed care rule.

20 So What we're asking you to do in this particular
21 session is to really kind of, like, focus on the findings,
22 kind of process them, provide your reactions to them and

1 whether or not you feel that they are compelling so that we
2 can identify next steps and possibly come back to you with
3 policy options.

4 And some of the findings are around issues such
5 as is there the right focus on outcomes measures versus
6 process measures? There is one mandatory EQR activity
7 that, for example, does not have explicit outcomes measures
8 included in it.

9 There are other questions about what the level of
10 transparency is for the final reports the, annual technical
11 reports from the EQRs. So what is the kind of
12 comprehension level of the findings? Can stakeholders use
13 them? Does it facilitate cross-state comparison? Is that
14 even important? Is that important to you? Is that
15 something that you want to kind of promote and indicate is
16 kind of one of the important results of an EQR effort?

17 And then there are also questions about how
18 states use them, So sometimes it's a pass/fail. Sometimes
19 it's a percent rating. Sometimes it prompts a corrective
20 action. Sometimes it's a conversation with a plan
21 indicating that there are areas where they may need to do
22 better.

1 So what we're really interested in, especially
2 because we've had personnel changes on the Commission, is
3 just to kind of hear how you view the EQR process. From
4 our perspective, this is one of the only games in town when
5 it comes to federal policy that dictates and provides
6 instructions about how managed care is monitored and
7 overseen. And so we do have a separate project that we
8 will be coming back to you about that speaks to managed
9 care accountability. That is really more about the tools
10 that are embedded in managed care contracts and what
11 incentives are there, what potential penalties are there,
12 but this is kind of taking it up a higher level and really
13 talking about the policy structure, the federal policy
14 structure. So that will be the conversation about EQR.

15 After we talk about EQR, we're going to
16 transition into a discussion about juvenile justice. So
17 again, some of you may remember that we published a chapter
18 in 2023 that was focused on adults leaving incarceration,
19 and that chapter resulted in the identification of several
20 policy and operational considerations that the federal
21 government and states should take into account as these
22 criminal justice-involved beneficiaries are moving from

1 institutions into the community. And that work just so
2 happened to dovetail with CMS guidance on the same topic.

3 One of the pieces of feedback that we received
4 from the Commission was that we focus on a youth-driven
5 population, because the scope of that chapter was
6 exclusively on adults, and the Commission was interested in
7 identifying whether or not there were any particular
8 considerations that applied to a juvenile population. And
9 so that's what we're coming back to talk to you about
10 today.

11 We are going to provide a brief recap on the 2023
12 chapter, because there are similarities and through lines,
13 but then we have some really good data that the team
14 collected through lit reviews that actually do talk about
15 some of the distinctive features.

16 And then we will finish with a conversation about
17 hospital financing. So MACPAC in 2017 issued a hospital
18 pricing index, and the index at the time was really
19 important for two reasons. It allowed for a comparison of
20 Medicaid reimbursement to Medicare, and then it also
21 facilitated the comparison of hospital reimbursement across
22 states. And we have not updated that analysis since 2017.

1 In 2017, we actually used MAX data, and so, for example,
2 we've updated now to T-MSIS.

3 So what we did to make sure that we were
4 anticipating what the potential methodological issues were
5 was that we convened a technical expert panel, which we
6 call a TEP, and the TEP was comprised of actuaries,
7 representatives from hospital associations. CMS was
8 represented. We had MedPAC there because they spent a lot
9 of time really digging into Medicare reimbursement. And
10 what we were trying to do was identify the issues that we
11 needed to know in advance to make sure that whatever we did
12 in terms of design of the analysis was as defensible as
13 possible, right? So we wanted to kind of try to minimize
14 critiques when we actually go out and publish the work and
15 release it into the policy community.

16 We had also done a validation study to kind of
17 figure out is the data -- or I should say are the data that
18 are included in T-MSIS usable? What we found was that
19 inpatient has kind of a high degree of validity, outpatient
20 not so much. We're going to have to work on it.

21 But the TEP surfaced different types of
22 considerations that we do need to take into account, such

1 as how are we dealing with wage levels, how are we dealing
2 with outlier cases such as high-cost NICU and things like
3 that?

4 So, what we'd like to hear from you for this
5 conversation is, are there other dynamics within the
6 context of hospital reimbursement that we should think
7 about?

8 I should also say that data sources was another
9 conversation that came up a fair amount in the TEP. So we
10 can't just exclusively use T-MSIS when we know that there
11 are so many supplemental funding streams.

12 So DSH audit reports, state-directed payment
13 preprints, UPL calculations, et cetera, et cetera, like
14 what do we need to take into account? What is important?
15 We're kind of, like, looking for advice and counsel on
16 those types of issues.

17 What we're also looking for is any specific
18 analysis or cut of the data that you as Commissioners feel
19 would be useful or important to how you contemplate the
20 issue. So if that is, for example, an urban/rural cut. let
21 us know that in advance, because we are moving at the
22 beginning of the fiscal year into the design phase. So you

1 have an opportunity to influence what that design is
2 comprised of.

3 COMMISSIONER ALLEN: Look, is it possible to look
4 at, like, hospital consolidations and things like that?

5 EXECUTIVE DIRECTOR MASSEY: So we're looking at
6 the reimbursement and pricing, not some of the larger
7 issues around ownership consolidation.

8 COMMISSIONER ALLEN: Okay. That's what I was
9 wondering, yeah.

10 EXECUTIVE DIRECTOR MASSEY: Patti?

11 COMMISSIONER KILLINGSWORTH: You can tell me if
12 this is too far afield for the public comments.

13 So I have long wanted to really try to build
14 incentives into hospital payments, especially as it relates
15 to discharges and how that impacts utilization of
16 institutional services versus home- and community-based
17 services. I think DRG payments really make hospitals just
18 want to get people out quickly, without regard to where
19 they go when they leave, and so the easiest discharge is
20 always a skilled nursing facility, especially for the
21 dually eligible population. And there's little incentive
22 for a hospital to care about whether people go home and

1 whether they invest any time in helping people go home.

2 And so we were successful in Tennessee in at
3 least linking supplemental payments, directed payments to
4 their supplying of ADT feeds and at least discharge
5 information. But I really wanted that to be more
6 comprehensive and including the discharge plan and really
7 in engaging hospitals in a meaningful way and really
8 facilitating education about community-based options and
9 coordination with a person's health plan, their Medicaid
10 health plan, around coordination to home, if that's really
11 what they desired. I was not successful in getting there.

12 But it seems to me we have this entity who
13 receives tons of Medicaid dollars for whom the incentives
14 are really misaligned to the policy goals that we have, and
15 it impedes access to home- and community-based services in
16 a really meaningful way for people.

17 EXECUTIVE DIRECTOR MASSEY: Sure. So I think --
18 totally take your point, and I think that there's a lot
19 there. I think that in the context of this project, the
20 most immediate intersection that I can see based on where
21 the team is coming from is, like, perhaps in how value-
22 based payments are structured. And so we might be able to

1 accommodate some of that.

2 I know that they've been trying to think about
3 how VBP factors into total reimbursement, but the outcome
4 or the output that is really what we're expecting at the
5 end are kind of like a series of numbers, and then, you
6 know, from that, we'll be able to maybe kind of do
7 additional digging.

8 I think the question that you're raising about
9 discharge planning is something that we can take back and
10 maybe kind of think about in the context of future work, so
11 appreciate you raising that.

12 COMMISSIONER KILLINGSWORTH: Yes. So just tell
13 me what I should or shouldn't say in the public meeting so
14 that I don't get this project off track, right?

15 EXECUTIVE DIRECTOR MASSEY: You can say -- yeah,
16 you can say it all.

17 COMMISSIONER KILLINGSWORTH: Okay.

18 [Laughter.]

19 EXECUTIVE DIRECTOR MASSEY: I mean, I think
20 that's an important point, and we definitely want to make
21 sure that we're offering you the platform. I think that
22 just in terms of setting your expectations in terms of how

1 we can leverage it, it would probably be on the VBP side,
2 most of all.

3 COMMISSIONER KILLINGSWORTH: Okay. Thank you.

4 EXECUTIVE DIRECTOR MASSEY: Okay. Okay, great.

5 Any other questions about the agenda?

6 [No response.]

7 **### DISCUSSION ON 1915(c) WAIVERS**

8 * EXECUTIVE DIRECTOR MASSEY: Okay, great.

9 So before I turn it over to Bob to revisit the
10 conversation that we had on 1915(c) waivers, especially for
11 the new Commissioners, I just want to spend a moment kind
12 of talking about votes, because it's not usually in
13 September that we're kind of on an accelerated time frame,
14 ready to move to votes as quickly as we are with this
15 particular project.

16 So kind of going back to basics, you will find
17 that the team will present findings to you, right? I just
18 talked about how Allison will be doing that with EQR.

19 And then depending on the Commission conversation
20 and depending on kind of the appetite and how we pick up on
21 the conversation, we can take some of the findings and move
22 to the next stage of our traditional work-planning process,

1 which is the identification of policy options, and that is
2 where we are on the 1915(c) waivers, where we have the idea
3 of a policy intervention or the foundation of a potential
4 recommendation.

5 But before we kind of get all the way down the
6 road to a recommendation, we want to solicit feedback, make
7 sure that we're kind of picking up on the preferences of
8 the Commission and understand some of the nuances that we
9 need to take into account.

10 Presuming that we get positive feedback on the
11 policy option, then we move to the second, to final stage,
12 which is the recommendation itself, in which case we will
13 add more precise language. We will have more explicit
14 rationales. We will tease out what the implications are to
15 many stakeholders within the health care community, and
16 then ultimately, it will go to a vote.

17 The Commission's preference is not that we
18 achieve consensus on votes. In fact, we actually like
19 there to be some debate. We also provide at the time of
20 the vote an opportunity to Commissioners to provide some
21 context around their thinking so that you can be on the
22 record to say "I fully support this recommendation" or "I

1 support it with certain reservations, the reservations
2 being X, Y, Z," or a no vote, abstention.

3 But what we don't usually like to do is get to a
4 point where the vote is straight down the middle, because
5 that indicates that there isn't kind of overwhelming
6 support for a given policy option within the Commission,
7 and especially for Congress, when they are trying to
8 leverage our recommendations in the context of their
9 policymaking, it's not like -- it doesn't convey that the
10 Commission really kind of stands behind it, right, that
11 there's hesitation, and there's more -- just debate and
12 kind of context that maybe they need to take into account.

13 So if a vote will fail, we will not advance it,
14 or if a vote really is kind of that down-the-middle vote,
15 we are not inclined to advance it.

16 So I just wanted to kind of put that out there
17 that kind of speaks to kind of our preferences, our
18 tradition, our precedent, why we do what we do, because I
19 think that that's important before we get to the next step,
20 which is me checking it over to Bob so that we can go back
21 to the policy options and to figure out what could or
22 should come back next time around as a recommendation. So

1 you will see more formal language, and like I said, you
2 will see that explicit rationale and stakeholder impact.

3 Any questions on that?

4 [No response.]

5 EXECUTIVE DIRECTOR MASSEY: Okay, great.

6 So let me just say one other thing, before I turn
7 over to Bob. So we do do this at times during executive
8 session. So do not be alarmed that we're just kind of
9 taking -- this is not your final vote, right? This is just
10 a sense of the Commission so that we understand where we're
11 going.

12 Tricia?

13 COMMISSIONER BROOKS: If home- and community-
14 based services are so critically important, why have we not
15 talked about making them a state plan option rather than
16 tinkering with the waiver process to make it work better?

17 EXECUTIVE DIRECTOR MASSEY: So one of the reasons
18 why is because there's no good source of data. One of the
19 reasons why we're going into kind of the HCBS data deep-
20 dive is so that we learn more about what's happening,
21 because we don't have the data, the justification, the
22 evidence to kind of indicate, yes, this should absolutely

1 be a state plan option.

2 And I will also say HCBS is a state plan option
3 in a number of cases, right, when it comes to the -- Patti,
4 correct me if I'm wrong. It's like what (I), (j), (k)?

5 COMMISSIONER KILLINGSWORTH: It is. And I think
6 that the -- I hear what you're saying, and I agree with it.
7 The problem is, I think, that the minute you make something
8 a state plan option and a state agrees to do it, now it
9 becomes incumbent upon the state to make it available to
10 all of the people who might qualify for it, right?

11 So states get wary sometimes of the state plan
12 options because it leaves them with little capacity to
13 manage their budgets, and that's just sort of practical
14 reality. So there's a greater hesitancy, I think,
15 sometimes on the state plan side to make things available.

16 Now, if we could pair that up with the ability to
17 choose whether to offer nursing facility services and how
18 much of them to offer, that might make it a little bit more
19 possible, but I'm not sure that it's the easy solution
20 because states do worry about their budgets too.

21 COMMISSIONER BROOKS: Well, there are state plan
22 options that allow you to target populations or have

1 limitations. So I -- you know, I really -- the incremental
2 process of Medicaid is just really quite ineffective over
3 the long term, and we talk about issues for decades and
4 don't solve them. And I -- you know, at some point, I just
5 feel like we need to be a little bolder, but it's one
6 person's opinion.

7 * VICE CHAIR DUNCAN: All right. Thank you, Kate,
8 for teeing this up, and to that question, if they'll put up
9 on Policy Option 1.

10 So again -- and Kate talked about where we want
11 it from a voting standpoint, but it also gives direction to
12 our staff on how much emphasis and time to put into
13 something or if they need to clarify.

14 So yesterday in hearing the discussion, it felt
15 like there was consensus around Option 1. So as a straw
16 vote, those that feel comfortable with Policy Option 1, as
17 written, if you could show your hands, both physically and
18 on the screen.

19 [Show of hands.]

20 VICE CHAIR DUNCAN: Moving it from five to ten
21 years, yes. Okay. Thank you.

22 And then Policy 2, Option 2, I felt a lot of

1 waffling taking place on that. So if you could put No. 2
2 up, please, as it relates to the cost neutrality test.

3 Sure you can.

4 COMMISSIONER NARDONE: As the newbie, as one of
5 the newbies, the way this was kind of couched, at least in
6 the materials, was this was about administrative
7 simplification, right? And I know there are a lot of
8 issues, right, about, you know, what should be the costs
9 and should there be some sort of tests around that. But
10 when I was looking at it, I was looking at it primarily
11 through that lens, right? And I just want to be clear if
12 that's the focus.

13 I realize there are pros and cons that are
14 associated with this, right? But I just wanted to be clear
15 on that point, because that kind of, -- I mean, I'm just
16 trying to think through like what -- like, from my
17 perspective, that when I look at this, from an
18 administrative point, I don't think it really makes -- I'm
19 not sure it delivers on what you're trying to achieve and -
20 - or what I thought was the perspective on what we were
21 trying to achieve.

22 But, you know, from a perspective of should there

1 be a cost neutrality test, I mean -- so I'm struggling with
2 this vote based on what is the goal of what we're trying to
3 achieve.

4 VICE CHAIR DUNCAN: Jami?

5 COMMISSIONER SNYDER: Well, I was going to say, I
6 think that was the kind of resounding sentiment yesterday,
7 really around whether this achieves the end goal of
8 administrative efficiency, right, or relieving some of the
9 administrative burden.

10 And I've heard a number of people say we still
11 need to kind of go back to the table around is the cost
12 neutrality test a meaningful test, but that's not where
13 we're --

14 VICE CHAIR DUNCAN: That's not the question we're
15 getting at.

16 COMMISSIONER SNYDER: Oh, yeah, yeah.

17 VICE CHAIR DUNCAN: Sonja?

18 COMMISSIONER BJORK: Well, we're not actually
19 voting right now. So the question is, do we look into it
20 more? Right? And so I just think there was enough
21 questions around it that it's still worth looking into
22 whether it really does ease the administrative burden, and

1 if it's just, you know, kind of a pro forma kind of waste
2 of time to make states go through this cost neutrality
3 demonstration every time.

4 We heard from Patti that she thought it was not
5 that big of a deal, but then some of the stakeholders that
6 we interviewed, they thought, "Oh my gosh, this is huge.
7 It causes a lot of hassle for us."

8 So I'm in favor of investigating it some more.

9 VICE CHAIR DUNCAN: Carolyn?

10 COMMISSIONER INGRAM: First, I apologize to my
11 fellow Commissioners for not joining yesterday. I had to
12 testify here in New Mexico at a legislative hearing and
13 couldn't get out of it. I tried really hard, by the way.

14 VICE CHAIR DUNCAN: We were sending you good
15 vibes, by the way.

16 COMMISSIONER INGRAM: Thank you. Not my favorite
17 thing to do, but okay.

18 Was there any middle ground discussed on this in
19 terms of other options to consider? I think as a former
20 state leader, it's going to be hard to say to get rid of
21 the whole cost neutrality demonstration. It's used for a
22 lot of different things. It's used to make sure that the

1 program doesn't get stretched so thin that you're not able
2 to actually provide enough care to enough members. It gets
3 used in lawsuits against the state, I guess, fortunately or
4 unfortunately for some people.

5 But there's a lot of reasons legality-wise about
6 the cost neutrality demonstration. Was there any other
7 middle ground discussed yesterday about -- and maybe this
8 is to some of the point Mike Nardone was trying to bring
9 up, but of other options that will ease burden besides just
10 this one?

11 And I realized the first one that you just put
12 up, and I don't have a problem with that, but this one is,
13 I think, more difficult to vote yes on.

14 VICE CHAIR DUNCAN: No, there was nothing more
15 than what we discussed on this.

16 Heidi?

17 COMMISSIONER ALLEN: I don't remember when this
18 became just administrative simplification. I felt like
19 this has been an ongoing body of work around increasing
20 access to home- and community-based services and making
21 sure that this is a robust and thriving option for states,
22 and that administrative simplification was part of it.

1 I feel like it is a middle ground to say that
2 this information will still be collected and that this
3 information will be reported to CMS and CMS will report out
4 to the public. I do believe that states have tools at
5 their disposal to manage their budgets, which they can
6 employ in this program just like they do other programs,
7 because it's not a requirement.

8 And I do feel like it does signal something
9 around the institutional bias, even though I know that it's
10 only one part of many layers of institutional bias to say
11 that institutional spending is the target that we peg this
12 by. Institutional spending can go as high as it wants, and
13 as long as, you know, home- and community-based services is
14 below that, then we're fine, when home and community based
15 services serve so many more people. And sometimes it may
16 cost more to serve somebody in the community, but that that
17 may be the right thing to do. And having a policy in place
18 that prohibits that probably causes harm to a very, very
19 small number of people, but people for whom if they were
20 presented to us as a case study, we would be like, oh, we
21 don't know that -- you know, like, these people with really
22 significant, significant needs who have a reason to be in

1 the community, you know.

2 So I really think that this is an opportunity to
3 send a signal, and that I don't know that it would cause an
4 explosion of the budget. I think the states would continue
5 to use the tools that they have at their disposal, and they
6 would know those numbers and could act on those numbers
7 appropriately, but they wouldn't have to be doing this
8 work.

9 So I do see, yes, there might be a minor
10 administrative simplification, but for me, the benefits are
11 more than that.

12 VICE CHAIR DUNCAN: Thanks, Heidi.

13 We'll let Dennis speak, and then we'll come do a
14 straw vote on this. For the reality is, if depending on
15 where the straw vote goes, we can continue to bring this as
16 a discussion topic to look at moving forward.

17 Dennis?

18 COMMISSIONER HEAPHY: Yeah, thank you. And I
19 apologize for being late and for not being on camera.

20 So I agree with everything that Heidi said, and I
21 think with the administrative burden that removing cost
22 neutrality, given all the other options states have to

1 reduce cost, all the levers they have, that this really
2 doesn't add anything to the states. And so I think we
3 should jettison it based on that. Thank you.

4 VICE CHAIR DUNCAN: Thank you, Dennis.

5 All right. Voting as the Policy Option No. 2 as
6 written as it is now, who would support No. 2? Please show
7 with a raise of hands.

8 [Show of hands.]

9 VICE CHAIR DUNCAN: Looking on screen. Okay.
10 All right.

11 COMMISSIONER INGRAM: For those of us who are not
12 there and we can't see everybody on the screen, can you
13 just tell us what the count was?

14 VICE CHAIR DUNCAN: It was 75 to 2 -- no, just
15 kidding. It was -- we had 3 in support, and 14 -- or I
16 guess 13, since Verlon is not here -- 4, 4 in support, so
17 as the policy is written. So thank you. That gives us
18 direction. But also the discussion drives us to more
19 conversation around what that is and how we get there. So
20 thank you.

21 Back to you, Kate.

22 EXECUTIVE DIRECTOR MASSEY: Okay. So we are

1 going to take a short break, and then public meeting starts
2 at 9:30. Thanks for that feedback.

3 * [Whereupon, at 9:19 a.m., the executive session
4 was adjourned.]

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