



EXECUTIVE SESSION

Hemisphere Room
Ronald Reagan Building and International Trade Center
1300 Pennsylvania Avenue NW
Washington, D.C. 20004

Thursday, December 12, 2024
9:03 a.m.

COMMISSIONERS PRESENT:

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JAMI SNYDER, MA

KATHERINE MASSEY, MPA, Executive Director

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[9:03 a.m.]

WELCOME REMARKS

* CHAIR JOHNSON: All right. Good morning, everybody. Hope you all are well, and I know if many of you are like me, you had some travel woes yesterday -- or I know some folks had it this morning, but we're all here.

What? No one has their what?

UNIDENTIFIED SPEAKER: [Speaking off microphone.]

CHAIR JOHNSON: Oh. Oh, I gotcha. I thought I was just, you know, really being robust in my speaking. Is it okay now?

UNIDENTIFIED SPEAKER: [Speaking off microphone.]

CHAIR JOHNSON: All right. Okay, all right.

So it's good to see everybody. Hope you all had a great Thanksgiving. I know we didn't have a meeting in November. So we have a lot on the agenda today. For the executive session, we have a couple of great topics -- or I think mostly all great topics.

But I did want to start it out just by talking a little bit about a little thing called the election that just occurred. You may have -- may or may not have heard

1 about it. But, you know, I think it's always important
2 just to kind of level set, particularly when we're in a
3 position like this as Commissioners but also as federal
4 staff.

5 I know that having experienced four transitions
6 during my federal term -- I know Tim, he's a little bit
7 older than me. So he had -- probably had a couple of more
8 different as well. I think Mike, too, as well. We've
9 definitely seen through those transitions, how it really
10 brings some opportunities and some different challenges,
11 too, as well. But the important thing is we always
12 understood is that these transitions really were
13 significant moments in our government, right, and something
14 that we embrace as public servants, but also we embrace as
15 citizens.

16 And so one thing that was really helpful to us,
17 too, I think -- and I think Tim can probably attest this as
18 well -- is that we were always focused on our North Star.
19 What remained constant through that time was always the
20 vital work that we were doing. And so I'm saying this to
21 the staff. You as public servants, it's a really important
22 role that you play, and so it's really important that you

1 focus on the mission that we have at hand. And that's to
2 strengthen the Medicaid and CHIP program, and I say that to
3 the Commissioners, too, as well.

4 And so our dedication here is really what's going
5 to be important. We're going to continue to be making sure
6 we're focused on evidence-based information. We're going
7 to make sure that we are giving the right information to
8 the right people and regarding all of the right information
9 that's needed to transform what we're trying to do.

10 So it's not about politics here, but I do also,
11 as I look around the rooms here as Commissioners -- is we
12 bring that unique, diverse experiences. We come from
13 different backgrounds. We have different jobs that we've
14 played, and so it is really important for you all to make
15 sure that you're providing your voice continuously and
16 making sure that we are getting the full picture of what
17 we're trying to do with the program.

18 And so also really important is to think about
19 the role of the Commission in general, and that is we are,
20 of course, a nonpartisan group. And we will remain to be
21 so. Again, we have that diverse experience that we have,
22 and we have to remember that we do have an analytic agenda.

1 And remember that the analytic agenda is not just formed
2 out of, you know, just something that we decided to do just
3 happenstance, right? It really was formed in terms of the
4 interest of the Commissioners that we have at hand, the
5 intelligence and the passion that we have from the staff
6 for sure, as well as the stakeholders that we've heard from
7 across the country.

8 And we also have informed it through the four
9 corners. You were at the retreat. You know that we take
10 the feedback that we receive from them very seriously, and
11 then we do have ongoing conversations with them. And so
12 that analytic agenda is really robust from that
13 perspective.

14 The other thing I think is really important to
15 point out is that, you know, we are in a time of
16 uncertainty, right? We have an idea of what could be
17 coming, but we could be wrong. That's something I think
18 that we've seen over and over again. People change in
19 terms of direction or thoughts of where they want to go,
20 and then we also know that we've been able to pivot
21 appropriately.

22 I think about the COVID pandemic. A few of us

1 here -- I think Tricia and then the folks that came in with
2 me -- we remember the pandemic and how we had to pivot
3 around the analytic agenda there to make sure we're
4 covering those issues.

5 So as we go through the next year and two years
6 and three years -- and for John, seven years because he got
7 that extra year that not many of us have had -- it's going
8 to be really important that we continue to remember our
9 role, that we continue to remember the value that we add
10 here as a Commission.

11 And then it's also important that we know that
12 we're not here to lead the conversation. So regardless of
13 what we may have heard or we think that may be coming, we
14 are here to support this program, to make sure that we're
15 educating people appropriately.

16 So I know before, we had talked about pulling
17 together some of the old -- was it the 2016 Medicaid reform
18 information? And we will continue to do that, but we won't
19 be releasing that until we get the signal that that's
20 what's needed.

21 So I did want to just give you guys some time too
22 for questions if you had any. I know, again, this could be

1 a new thing for some of you, but I also want to just give
2 you time just to either add to what I've said or have any
3 questions.

4 [No response.]

5 CHAIR JOHNSON: Okay. All right. So I will turn
6 it over to Kate who's going to walk us through the agenda.

7 **### PLAN FOR THE DAY**

8 * EXECUTIVE DIRECTOR MASSEY: Okay. Fantastic.
9 Good morning, everyone.

10 So we're starting this morning with a discussion
11 in an Executive Session about ethics training. So
12 technically, all of the Commissioners are government
13 employees, and we have as part of our internal policy an
14 ethics training requirement that we review what the
15 standards are on an annual basis. We have not really been
16 doing this and wanted to make sure the staff are doing it,
17 but we wanted to bring the Commissioners into that
18 conversation.

19 We timed the ethics training to precede the GAO
20 reminder that you will need to resubmit your financial
21 disclosure forms in January. So we also thought that if
22 there were any questions about the financial disclosure

1 forms, what needed to be included, anything of the sort,
2 you could also pose that to our general counsel, so that if
3 they have the answers right away, they can provide them.
4 If not, we can go back to GAO on your behalf and make sure
5 that all of the Commissioners have the benefit of
6 responding to those questions and understanding what the
7 answers are. So we'll be transitioning into the ethics
8 training right after we're done with our internal
9 conversation.

10 So after we go through the ethics training, then
11 we'll switch to the public meeting, and we have two
12 sessions on Medicaid managed care. The first session will
13 be the introduction of new work on managed care
14 accountability, and we've spoken with you about the project
15 previously. We are exploring whether or not the federal
16 government and states have the tools that they need to
17 effectively hold health plans accountable to contractual
18 expectations.

19 And one of the reasons why there's an emphasis on
20 accountability is that we're looking at all of the policy
21 levers. So that includes things that are more punitive or
22 that are penalties as well as different levers that are

1 incentives. So the entire spectrum and continuum of tools
2 are considered in the project.

3 In terms of where we are in the status of the
4 project, we have completed the state scan. So you will
5 have seen in your memo that we captured, based on MCO
6 contract review, how many of these tools are being used
7 state by state.

8 And the other thing that I want to note is that
9 procurement is also being considered and contemplated in
10 the context of the report.

11 So we're in the process right now of
12 transitioning to qualitative interviews, and we wanted to
13 get a sense of the Commission, any reactions to the scan,
14 the environmental scan. The federal policy review is also
15 included in the memo and in the materials. Do you have any
16 feedback for us on the direction of the project, any
17 specific points, elements, nuance that we should be taking
18 into account before we bring it back to you?

19 Just so that you're aware, in terms of the timing
20 of this project, you will not hear about it again until the
21 '25-'26 analytic cycle. So we're kind of doing a pulse
22 check with you right now, but then we'll be getting into

1 the meat and any potential policy options during next
2 year's analytic cycle.

3 COMMISSIONER ALLEN: One thing I thought was
4 interesting is how several of the levers were used as both
5 incentive and sanction.

6 EXECUTIVE DIRECTOR MASSEY: That's right.

7 COMMISSIONER ALLEN: So I'd like to know more
8 about the nuances between that. Like, for example,
9 transparency or public reporting, like, what makes it a
10 punishment versus a reward? So that's from something I was
11 interested.

12 EXECUTIVE DIRECTOR MASSEY: That's great. And
13 then, Heidi, you'll bring that up at public session, right?
14 Okay, perfect.

15 Oh, Patti. Sorry. You guys, I'm still terrible
16 with the raised hands. Okay, I'm going to try to do
17 better.

18 COMMISSIONER KILLINGSWORTH: It's all good. Good
19 morning.

20 So when I looked at sort of the research
21 questions, I think the one thing that I feel like I don't
22 understand how we're going to approach it is understanding

1 the efficacy of the different kinds of options or tools
2 that states have. So it says that it's one of the things
3 we're going to look at is what's really effective. I think
4 in order to think about any sorts of recommendations, we
5 really do have to understand like what works in terms of
6 actually improving performance. Is there evidence that we
7 can look at? How are we going to go about that part?

8 And maybe we have ideas, maybe we don't, but it
9 is something that I'm going to bring up, if that's okay.

10 EXECUTIVE DIRECTOR MASSEY: Yeah, that sounds
11 great, Patti, and that's the type of feedback that I think
12 will help guide Chris and Allison's next steps.

13 Dennis?

14 COMMISSIONER HEAPHY: Yeah. My question actually
15 follows up on Patti's, and that's because all states have
16 different priorities and goals that they're holding the
17 MCOs accountable for. So how do we know the efficacy if
18 there's a lack of uniformity in state expectations for
19 performance?

20 EXECUTIVE DIRECTOR MASSEY: Okay, great. So,
21 Dennis, these are all great comments. I think they're also
22 well-tailored for the public conversation and debate. So

1 please make sure to re-raise those when we get to the
2 public session.

3 John, did you have a question?

4 [No response.]

5 EXECUTIVE DIRECTOR MASSEY: Okay.

6 So after we move away from the accountability
7 project, we'll transition into external quality review.

8 Last month, we discussed policy options. Now
9 we've transitioned the policy option into recommendation
10 language, and so just as a reminder, there are three
11 proposed recommendations, one that would require outcomes
12 data for the triennial compliance review. This is the only
13 one of the four mandatory activities for which outcomes
14 data are not currently required.

15 The second recommendation would prompt the
16 standardization of EQR findings across states and across
17 plans. And I think one of the things that we really wanted
18 to clarify -- this was emphasized in the memo -- is that
19 this recommendation does not prompt the collection of new
20 data. This is really more about the reorganization of
21 existing data so that we can introduce some efficiency into
22 the way that these data are reported. So kind of,

1 hopefully, some standardization will help with that
2 efficiency argument.

3 The third recommendation would be to have states
4 submit 508 compliant reports to CMS and to have CMS post
5 those reports centrally on a website; most likely,
6 Medicaid.gov.

7 So we just want to make sure that the Commission
8 feels comfortable with the phrasing of the recommendation
9 language.

10 Also, in the memo, we provide the rationale which
11 would, by and large, be transitioned into the draft chapter
12 as well as the implication for stakeholders. So if there
13 are any points that you did not see raised in the memo that
14 you would like us to incorporate, this morning's session
15 would be the time to do that so that we can prepare a
16 chapter that best reflects the Commission's thoughts,
17 perspectives, views.

18 Okay. After we talk about external quality
19 review, we're going to move in -- oh, Mike?

20 COMMISSIONER NARDONE: So the second, if I have
21 a concern about how the actual recommendation is drafted,
22 that's like when I should bring that up in the meeting,

1 right?

2 EXECUTIVE DIRECTOR MASSEY: You should.

3 COMMISSIONER NARDONE: Okay. Because I feel
4 there's a kind of a disconnect between what we're trying to
5 accomplish in number two and like what's drafted in the
6 memo, because what we're looking for, I think, is some sort
7 of standardization and summarization to make the report
8 actually useful to people.

9 EXECUTIVE DIRECTOR MASSEY: Mm-hmm.

10 COMMISSIONER NARDONE: And I don't think that
11 comes out in the recommendation as it's drafted now. I'm
12 not sure I have alternative language, but I think it's
13 focusing on the summarization and standardization of some
14 of the summary points that maybe are critical in terms of
15 the review, so that when somebody looks at it, they know,
16 like, what are the important points, because right now,
17 it's like 200 pages of, you know --

18 EXECUTIVE DIRECTOR MASSEY: Right. So what would
19 be most helpful, even though you said that this was not
20 something that you were ready to craft language, would be a
21 specific edit to the recommendation language so that we
22 know what the gap is and how to fix it? Because the other

1 issue is that because this is ultimately a recommendation
2 that all of you will be voting on, we need to make sure
3 that we're kind of still maintaining some loose consensus
4 so that we understand how we're sizing up before we hit the
5 vote in January.

6 So we can take that. If it's helpful, I think
7 this session -- no, this session comes before lunch. See
8 what you can do, Mike, if you've got -- between now and
9 this session to see what you can do to provide some
10 specific.

11 COMMISSIONER NARDONE: Open my mouth --

12 EXECUTIVE DIRECTOR MASSEY: No, no. But this is
13 why we present the recommendation language to you.

14 COMMISSIONER NARDONE: Well, it's also if other
15 people agree with me.

16 EXECUTIVE DIRECTOR MASSEY: Right. That's true.

17 COMMISSIONER NARDONE: I mean, I'm a person who
18 feels that way.

19 COMMISSIONER SNYDER: I'm sorry. I'll just chime
20 in. I had the same kind of question or concern, Mike, and
21 isn't it the case that we're -- like, the challenge here is
22 that some states do things, like, compliant versus

1 noncompliant, and other states have kind of a continuum of
2 compliance, you know, in terms of how they rate plan
3 performance?

4 EXECUTIVE DIRECTOR MASSEY: So we have in
5 previous work discussed how states rate the health plans
6 via the EQR report, and then you do get into a thumbs up,
7 thumbs down. Sometimes you get into percentage scoring,
8 right? There's kind of all different ways.

9 I don't think that we're saying that states
10 necessarily need to standardize the way that they rate the
11 health plans, but that kind of to the point that we're all
12 raising, the information and findings unearthed via the EQR
13 examination be summarized and presented in a way that is
14 easily translatable and digestible.

15 COMMISSIONER SNYDER: That's -- yeah.

16 EXECUTIVE DIRECTOR MASSEY: So we're more than
17 welcome to accept word edits. So that sounds like it's
18 going to be a fruitful conversation.

19 Okay. So then, Mike and Jami, your hands are
20 raised.

21 COMMISSIONER NARDONE: [Speaking off microphone.]

22 EXECUTIVE DIRECTOR MASSEY: That was before.

1 Okay. So satisfied on that point?

2 COMMISSIONER NARDONE: [Speaking off microphone.]

3 EXECUTIVE DIRECTOR MASSEY: Okay. Okay.

4 So then we transitioned to children and youth
5 with special health care needs. Last time, we discussed
6 the findings, and so there was a lot of good conversation
7 among the Commissioners, lots of traction, I think, with
8 the findings that Linn and Ava identified.

9 So we left with the sense that the Commission
10 wanted to consider policy options. So we are coming back
11 with four policy options for your feedback and reaction.

12 The first policy option would require states to
13 develop a transition of care planning approach and make
14 that policy and approach publicly available.

15 A couple of points, right? One is that when we
16 talk about the process and the approach, we do want to make
17 sure that the individualized and tailored transition of
18 care plan is a component of said policy because that was
19 one of the issues that kept on resurfacing, and there is
20 good literature that's described in the rationale that
21 indicates that a solid, tailored transition plan helps to
22 improve outcomes. So I think that's one point.

1 The emphasis on public reporting is crucial
2 because when we conducted the focus groups, there was a lot
3 of confusion among beneficiaries, families, and caregivers
4 about what the state policy is and what they were entitled
5 to in the way of transition support. So we're trying to
6 kind of thread the needle by including a policy option that
7 has those two mandatory components to it.

8 The second policy option would be for CMS to
9 produce guidance that discusses all of the current
10 programmatic flexibilities through which they can fund
11 transition of care planning activities, because what we
12 learned is that the current program actually does provide
13 states a lot of different pathways to supporting
14 transitions of care, whether that be CPT codes that help
15 with billing and potentially multiple providers being seen
16 on the same day, targeted case management.

17 There's also the vehicle of managed care
18 contracting through which states can set expectations
19 around care coordination specifically for children and
20 youth with special health care needs. So there are a lot
21 of levers, and there's no one consolidated place where all
22 of that information is collected. So policy option number

1 two attempts to remedy that.

2 The third policy option would also be directed to
3 CMS, and it would direct the administration to develop,
4 design, and collect measures that discuss transitions of
5 care. So we don't know, for example, how many transitions
6 of care occur in a complete way. We don't understand any
7 type of kind of quality or outcomes around those
8 transitions of care. And we also don't understand the
9 beneficiary experience, and so we'd really like to get more
10 information. And this measurement and kind of lack of
11 information came up and featured very prominently in the
12 course of our research.

13 And then the fourth policy option is actually
14 directed to the Secretary of HHS, and it would require
15 state Medicaid agencies as well as Title V agencies to
16 define their respective roles and responsibilities in the
17 required interagency agreements that they must sign,
18 because what we also found is that while HRSA has a role in
19 the provision of kind of care or supports around children
20 and youth with special health care needs, oftentimes there
21 can be siloing in a state because there's not a lot of kind
22 of maybe intentional or strategic cross-collaboration. But

1 the IAA is one way that we can try to encourage some more
2 communication and collaboration among agencies, and so that
3 might be a mechanism that we can consider.

4 So those are the four policy options that would
5 be helpful if we understood kind of what the Commission's
6 reaction is. If there is traction or if there is something
7 missing, we'll come back in future meetings to discuss
8 policy options and/or recommendation language, depending on
9 how the discussion goes.

10 The other thing that I would note is we had a
11 really fulsome conversation the last time that we met, and
12 there was some discussion around eligibility and
13 eligibility pathways, and I just wanted to remind the
14 Commission that the phases of this work are in two.

15 So this year, we're talking about transitions of
16 care. So we're really talking about the receipt of
17 services and how individuals move from pediatric to adult
18 providers, but next year, we're coming back to just talk
19 specifically about coverage and churn and how people move
20 from, for example, an eligibility pathway that is more
21 child-oriented to an adult-oriented pathway. And so we
22 have new data analyses that are in the pipeline that help

1 from a quantitative perspective support the conversation,
2 and so we prefer to have the discussion on eligibility next
3 year when we've got more to share.

4 Okay. A couple of -- so, Mike, John -- this is
5 feeling like a public meeting, you guys.

6 COMMISSIONER NARDONE: Sorry.

7 EXECUTIVE DIRECTOR MASSEY: Mike, John, Doug, and
8 Patti.

9 COMMISSIONER NARDONE: So maybe this is because
10 when I came to this work, but I'm still struggling a little
11 bit what the definition is of children health care with
12 special needs --

13 EXECUTIVE DIRECTOR MASSEY: So --

14 COMMISSIONER NARDONE: -- like in terms of how
15 big -- how big is this? Does it include kids with physical
16 disabilities, IDD, kids' IDD, foster care? I mean,
17 depending on the state, they define this differently.

18 And the only reason I raise it is because we are
19 making recommendations around -- like, I think all these
20 recommendations are definitely headed in the right
21 direction. I just don't know what the population is, and I
22 think we might all have definitions in our head about what

1 -- who the children with special health care needs are.

2 EXECUTIVE DIRECTOR MASSEY: So last year, we did
3 talk about how the definition of children and youth with
4 special health care needs can vary by state. One of the
5 things that we did as a narrowing principle was that we
6 said for the purposes of the work that we would be
7 discussing this year, it would be focused on essentially
8 Katie Beckett kids or children and youth with special
9 health care needs who are eligible for the program via the
10 SSI eligibility pathway.

11 So if you look at the policy option language,
12 you'll see that there is actually bounds around the
13 population that have been incorporated into the draft
14 language.

15 Now, one of the things is that, you know, if a
16 state decides to, for example, set a very broad definition
17 of children and youth with special health care needs, for
18 example, in response to Policy Option 1, were it to be
19 implemented, there's nothing that precludes them from going
20 broader.

21 CHAIR JOHNSON: I understand we need for the --

22 EXECUTIVE DIRECTOR MASSEY: For the -- how are we

1 doing for the --

2 CHAIR JOHNSON: It's 9:30.

3 EXECUTIVE DIRECTOR MASSEY: Okay. So then we're
4 almost done. We're almost done, I promise. Okay. So then
5 John, Doug, Patti.

6 COMMISSIONER McCARTHY: I just had a question,
7 because on these recommendations, both on EQRO and this
8 one, I'm not -- I don't necessarily think they're the right
9 recommendations.

10 But my question is, like, on this one, we're
11 talking about telling CMS to collect, measure, and access
12 to transition, but we're not measuring, like -- and even
13 reading through the memo, we're not measuring if what those
14 states were doing led to better health outcomes. So we
15 never have a recommendation of like work with NCQA to look
16 at HEDIS measures to measure these things or work with
17 state health and value strategies. Is that because we can
18 only recommend to Congress and CMS?

19 EXECUTIVE DIRECTOR MASSEY: Yes.

20 COMMISSIONER McCARTHY: Okay.

21 EXECUTIVE DIRECTOR MASSEY: Yeah. So per the
22 authorizing statute, we can formulate recommendations to

1 three entities. So it's Congress, the HHS Secretary, and
2 the states.

3 I think the thought on the measurement was that
4 it would be an extension of some of the kind of quality
5 measure infrastructure that CMS has been building out as of
6 late so that it would be building upon an existing
7 structure as opposed to creating something de novo.

8 Okay. Doug and then Patti.

9 COMMISSIONER BROWN: I think the question or
10 concern that I have is around Title V. I'm not
11 understanding enough of the details in Title V as to what's
12 covered for children with special health services. I know
13 that 30 percent of their spending has to be on this
14 population.

15 I know part of it is some states -- in the pre-
16 read, some states -- there's a lot of collaboration between
17 Medicaid --

18 EXECUTIVE DIRECTOR MASSEY: Right.

19 COMMISSIONER BROWN: -- and Title V. In other
20 states, there's not. But there are regulations inside that
21 Title V that if -- I don't understand how some of those
22 regulations apply to this population from a background

1 standpoint.

2 EXECUTIVE DIRECTOR MASSEY: Sure.

3 COMMISSIONER BROWN: And that if we can talk
4 about that or at least try to link those together during
5 our discussion today, that would help me kind of understand
6 where those cross-pieces are and if we need to make policy
7 or if we just need to make sure that HRSA does more about
8 communicating what the policies are.

9 EXECUTIVE DIRECTOR MASSEY: So that's a good
10 flag, and so I think Linn and Ava can try to address some
11 of that in their presentation, if they're not hitting the
12 mark, then make sure to follow up with a question
13 specifically about that. I appreciate it, Doug.

14 Okay. Patti?

15 COMMISSIONER KILLINGSWORTH: Yep. I'll be super
16 quick.

17 So understand completely the desire to separate
18 continuity of eligibility from benefits and providers. I
19 think the intent is that benefits fits in this current
20 bucket of work, but it's challenging, and it shouldn't be
21 lost in the mix, right? It's not just about going from
22 pediatric to adult providers. It's about transitioning

1 from an EPSDT benefit --

2 EXECUTIVE DIRECTOR MASSEY: Yes.

3 COMMISSIONER KILLINGSWORTH: -- to an adult
4 benefit, which is substantially different.

5 The other thing I'll just quickly note is that I
6 don't disagree with the way that children and youth with
7 special health care needs have been defined sort of using
8 the eligibility parameters of Katie Beckett and SSI. But
9 let's just note that the age limit for that, right, is 18,
10 and then the -- sort of the benefit transition doesn't
11 happen until 21. And so somewhere in there, we kind of
12 have to tease all of that out and make -- sort of deal with
13 how overlapping eligibility and benefits really is.

14 EXECUTIVE DIRECTOR MASSEY: Okay, great. And
15 then, Patti, you'll raise that again, please, at the public
16 session?

17 COMMISSIONER KILLINGSWORTH: [No response.]

18 EXECUTIVE DIRECTOR MASSEY: Okay. Thanks so
19 much.

20 Okay. So after we conclude the children and
21 youth with special health care needs conversation, then we
22 will move to a review of a notice of proposed rulemaking on

1 Medicare Advantage, and while Medicare is clearly outside
2 of MACPAC's domain, because we work very closely on
3 policies affecting dually eligible beneficiaries, to the
4 extent that some of the Medicare proposed rules have duals-
5 related policy in it, then we do consider that kind of in
6 our lane.

7 So the proposed rule was issued. There are some
8 provisions that affect duals. CMS is attempting to
9 articulate policies that I think further integration
10 efforts, whether that be around streamlined identification
11 cards or health risk assessments.

12 There was also what I would characterize as a bit
13 of a left-field policy that was incorporated into the MA
14 rule tied to anti-obesity medication, and in this case,
15 there actually is a Medicaid interaction. And CMS did in
16 its preamble request comment on that particular policy as
17 well as the implementation considerations, and based on
18 prior work that we've done, we think that there may be an
19 opportunity for MACPAC to opine.

20 So essentially, as was summarized in the memo,
21 there is a dynamic where the anti-obesity meds would be
22 provided to dually eligible beneficiaries. There are

1 differences in terms of the soonest point at which Medicaid
2 could start providing the drug versus when Medicare would
3 start providing the drug, because any change to Medicare
4 coverage would need to be in synchronicity with the Part D
5 bids, which means that there could be a disconnect. And
6 that was one of the tension points that we raised in the
7 memo, and we wanted to seek comment on whether or not
8 that's something that should be incorporated into our
9 comment letter.

10 I'm going to try to go over this really quickly
11 because there are some Commissioners who haven't been here
12 when we've submitted comment letters.

13 When we have comment letters, we try to discuss
14 not only the contents of the rule, but also the evidence
15 that we have to substantiate a comment at a public meeting,
16 which is what we're doing today. After we have the
17 conversation, we will draft the comment letter, and then we
18 will ask for Commissioners to volunteer to review it and
19 provide feedback to make sure that it accurately reflects
20 the conversation that we had and any concerns that we
21 wanted to raise. And then ultimately, it will go to Verlon
22 and Bob for their final review and sign-off.

1 So, in terms of timing, the comment letter is due
2 to CMS by the end of January. So we will circulate a draft
3 probably -- I think it's like the week of January 6th. Can
4 I ask for volunteers to review that letter? Angelo, Tim,
5 John -- hands up mean that you're volunteering? Okay,
6 fantastic. Okay. So then John, Dennis, and Patti. Okay.
7 And then Doug, yeah. Okay, all right. So that's
8 fantastic.

9 Let me just recap and make sure I didn't miss
10 anyone. So I have Angelo, Tim, John, Dennis, Patti, and
11 Doug as volunteer reviewers. Okay, fantastic.

12 So, Mike, you want to do that too? Okay, great.

13 All right. So we will send around the letter,
14 like I said -- I think it's the second week of January - so
15 that you can review. We'll provide instructions in terms
16 of how to receive your feedback. Thank you so much for
17 volunteering.

18 Okay. And then the last session that we have for
19 today is new work that we're introducing on self-direction
20 in HCBS.

21 So, just for your background, this kind of
22 spawned from conversations that we were having about how to

1 address the HCBS workforce issues, because self-direction
2 is one pathway through which beneficiaries can hire, for
3 example, family members or caregivers, and so we wanted to
4 explore this a little bit more. Plus, the Commission has
5 not previously actually published on self-direction.

6 So we're going to start with a background
7 session, and in the memo, we covered several things. One
8 is the origins of the model. So it started with cash and
9 counseling, and then it evolved into self-direction.

10 We also reviewed the federal policy framework,
11 and then we conducted a literature review to make sure that
12 we were picking up on any evaluations, any data or
13 information that would be relevant to the conversation. So
14 Gabby and Brian will be talking you through that.

15 Then we will transition into a panel, and the
16 panel has several different perspectives. We have a state
17 perspective. Someone from New Jersey is joining us. We
18 also have the perspective of a researcher. So someone from
19 Penn State will be joining us. And then we were lucky
20 enough in partnership with NASDSE to identify a beneficiary
21 who is currently self-directing his services to join us.
22 And he will be on the panel as well as his mother, who is

1 part of his care team.

2 And so I would just note -- I mentioned this in
3 the briefing on Friday -- that Robert is a non-traditional
4 communicator. So some of our questions have been provided
5 in advance so that he can use his kind of assistive device
6 to help communicate. You're more than welcome to ask
7 questions. Just be aware that Pamela, who is Robert's
8 mother, might be answering as opposed to Robert. And
9 they've presented before, and they're used to this dynamic.
10 But I just wanted to make sure that there was sensitivity
11 on our end about it.

12 Okay. Patti, did you have a question about self-
13 direction? k

14 COMMISSIONER KILLINGSWORTH: A comment and a
15 comment that I prefer to make in executive session and not
16 in public, that we can talk about that.

17 As a former state leader, I have seen the good,
18 the bad, and the ugly of self-direction. And there is a
19 mix, right? And the challenges of self-direction are the
20 conflicts that it can sometimes create around even what's
21 in the best interest of the person as well as the potential
22 misuse of Medicaid funds, sort of over-supporting. And

1 it's really difficult to make adjustments in supports when
2 the people who are being paid to deliver those supports are
3 family caregivers.

4 I kind of doubt that that's keyed up, if you
5 will, as part of the discussion, but I think in the
6 conversations that we have with state leaders, we really
7 need to understand, you know, not just the benefits and the
8 operational challenges, but the other potential challenges
9 that states see kind of drive utilization and make changes
10 in services really difficult, given the dynamics of payment
11 processes here.

12 EXECUTIVE DIRECTOR MASSEY: So, Patti, that is
13 just A+++ in terms of the type of comment that's
14 appropriate for executive session.

15 In response to comments, one is that in
16 conversations that we've been having with states, this
17 actually has come up. So if it provides any reassurance
18 that we've already been receiving that feedback, we have.

19 There have been concerns about the ability to
20 oversee the program. I think some of the problem solving -
21 - some of the discrepancies between structures around
22 agency direction versus self-direction, and so the example

1 that I think is really easy to emphasize is, for example,
2 critical incident reporting, right? Agencies have
3 different standards for CI reporting, and then self-
4 direction, I think states feel like they don't have a
5 really good handle on that. So that's just one example.

6 The other thing that I will say is -- and I put
7 this out there just for your consideration. In the memo,
8 there's a subsection that talks about use of
9 representatives and caregivers, and I think that's also,
10 Patti, getting to some of the tension that you're talking
11 about. That has also been flagged as a potential hot-
12 button area. So any kind of probing questions, especially
13 on use of representatives or caregivers, might give us kind
14 of, you know, some momentum to explore that issue and topic
15 a little bit more vigorously.

16 Dennis?

17 COMMISSIONER HEAPHY: Yeah, my comment's actually
18 about determination of need. So I support cash and
19 counseling.

20 One of the concerns I have is if there's any
21 information about how -- if people are very successful in
22 how they utilize their funds and actually maybe utilization

1 is reduced, but the cost remains the same because -- let's
2 say someone uses less PCA hours, but the cost goes up
3 because they're paying those PCAs more money, how do we
4 ensure that there is not going to be a reduction in
5 services provided to the person, like a reduction in PCA
6 hours, because they're using less PCA hours, even if
7 they're paying them more money? Does that make sense?

8 EXECUTIVE DIRECTOR MASSEY: Yeah, it totally
9 makes sense. Yeah. Sorry, Dennis.

10 COMMISSIONER HEAPHY: That wasn't covered in
11 there, and that's something that I would like to know a
12 little bit more in an executive session comment or an open
13 comment.

14 EXECUTIVE DIRECTOR MASSEY: Right. It's
15 something that we've talked about internally, right? It's
16 this tension around budget authority, which is if your
17 budget is constructed using the fee-for-service input, yet
18 you are paying above what that fee-for-service rate is,
19 where does the give come in? And it could come in in fewer
20 hours, so totally get that dynamic. That actually is
21 appropriate for public meeting, if you don't mind restating
22 it.

1 COMMISSIONER HEAPHY: Yep. Sure.

2 EXECUTIVE DIRECTOR MASSEY: Okay, great.

3 COMMISSIONER ALLEN: Can I --

4 EXECUTIVE DIRECTOR MASSEY: Yeah.

5 COMMISSIONER ALLEN: Is it, though, that they're
6 not getting the hours that they need because they have to
7 reduce them to pay more to get somebody to do the work at
8 all? And isn't that kind of a concern? I mean, it's -- I
9 think what -- Dennis, what I hear you saying is the concern
10 is that flexibility will be taken away, and people won't be
11 able to hire someone to do the work at all. But it still
12 seems kind of like an unfair place for a beneficiary to be
13 in, where they then have to make do without the support
14 that they need for certain hours during the day to get the
15 support at all.

16 COMMISSIONER HEAPHY: I'm sorry. We juggle this
17 all the time. Like, in the hours that we have, it just --
18 it's always a give-and-take. But you're right. You're
19 absolutely 100 percent right. That's a huge issue. We do
20 with less. We do -- we'll do with less in order to
21 basically survive in the community.

22 EXECUTIVE DIRECTOR MASSEY: Okay. Any other

1 questions or comments about the agenda for the day?

2 Tricia?

3 COMMISSIONER BROOKS: I want to go back to the
4 children with special health care needs, and sorry I didn't
5 -- wasn't fast enough to get my hand up.

6 On Recommendation 3, I have concerns about it. I
7 serve on the Core Set Review work group. I have for five
8 or six years now, and we can't recommend that CMS design a
9 measure, a quality measure. It's not the way it works, and
10 quality measures are years in the development. And CQA
11 being the biggest one, typically they're introduced in a
12 commercial environment and then, you know, copied over for
13 other attainment.

14 But in order to even get a quality measure under
15 consideration for a recommendation, it has to be -- have a
16 quality steward, someone who's gone out and designed and
17 developed and tested. It has to be in place in Medicaid,
18 in several states.

19 So I really have concerns with the use of the
20 word "design."

21 EXECUTIVE DIRECTOR MASSEY: Okay. So I think one
22 note -- and Linn and Ava can point this out when they're at

1 the table presenting. I don't think that it was solely
2 quality measures that they were thinking of including.
3 Some of them just might actually be output measures, right,
4 in terms of like how many people are receiving the
5 transition of care plan and so on and so forth. But that
6 distinction is super important for us to be specific about.

7 So let us try to make sure that the intent of
8 Policy Option No. 3 is clear, and then if you could please
9 make sure that that point that you just made is restated in
10 public session, we'd appreciate it.

11 COMMISSIONER BROOKS: I think it's to use the
12 word "measure" as opposed to "data collection."

13 EXECUTIVE DIRECTOR MASSEY: That's a great --
14 right? That's a great distinction. Yes. Fantastic.

15 Okay. All right. Can we transition now to
16 ethics training? I know everyone's really excited about
17 their annual training.

18 So I am going to pass the baton. Katherine is
19 going to help facilitate along with TJ and Thom, who
20 provide us with legal support throughout the year. So this
21 might be the first time that you are meeting them, but they
22 are online and ready to go through the training.

1 **### ANNUAL ETHICS TRAINING**

2 * MS. McGRATH: Good morning. I'm TJ McGrath, and
3 I, along with Thom Rogers, are your general counsel for the
4 Commission. So because it is the first time we're meeting
5 you, we thought we'd give you just a really brief
6 background of where we came from.

7 So I started my legal career with the military.
8 I was an active duty judge advocate general. I served for
9 30 years, 12 years on active duty and 18 years as a
10 reservist. When I jumped to the reserves, my civilian job
11 at first was with the executive branch with TRICARE
12 Management Activity, now Defense Health Agency. And from
13 there, I then jumped to be the deputy general counsel at
14 the Congressional Budget Office. I served 10 years there,
15 my last three years being their general counsel, before
16 switching over to be the general counsel to MedPAC, and now
17 general counsel to MACPAC earlier this year.

18 Thom?

19 * MR. ROGERS: Hi. I'm Thom Rogers. Like TJ, I am
20 a former active duty judge advocate with the Air Force. I
21 served active duty for 25 years, followed that up with a
22 year as an ethics counsel for the Air Force. I've also

1 done ethics for the White House, and I served in Congress
2 as a staffer during my Air Force career, so a little bit of
3 experience across the gamut of government.

4 MS. McGRATH: Thanks. Slide 8.

5 So today, we're going to cover why ethics? Like,
6 why is this of importance such that you should have annual
7 training and why we're going to spend an hour of your very
8 valuable time on it? Why do the rules apply to you as
9 Commissioners or special government employees, which means
10 you meet -- you're part-time, you meet intermittently,
11 you're not a full-time employee? So we'll discuss why that
12 is still -- ethics are still applicable to you. Which
13 rules apply? Because as intermittent government special
14 employees, not everything applies in full force as they
15 would for regular government employees. What you should do
16 when you run into a situation and you have doubt, you're in
17 a gray area, and you want some answers. And then we'll try
18 to save some time at the end for questions.

19 So first, why ethics? Slide, Kate or Katherine.
20 Why ethics? So the last five to six years, you've probably
21 seen a ton of headlines from all branches of governments,
22 from both political parties and more of ethics, and a lot

1 of it has been caught in some flash-type headlines, but
2 most of it comes down to actual financial disclosures,
3 gifts and failing to report, and an appearance of
4 preference.

5 So the Supreme Court has not been immune. I'm
6 sure everybody has seen that the justices and/or their
7 wives with the symbols that they display that appear to
8 show that they're biased and should be recusing themselves
9 from particular cases. But this came up, and then
10 actually, Congress tried to pass a law called the Judiciary
11 Act of 2021. And it focused on having the justices
12 disclose gifts, travel, income. So much like your
13 financial disclosures, which they already do, they were
14 just going to heighten it.

15 It didn't pass, but Biden, President Biden then
16 this year called for a binding code of conduct, and that
17 would require them to disclose more gifts, refrain from
18 public political activity. So it would constrain their
19 ability to act in their private lives and recuse themselves
20 from cases. So very important in the Supreme Court.

21 Also on the Senate side, Senator Menendez was
22 convicted in July of 2024 of accepting bribes, and a lot of

1 his cases focused on the gold bars that were seen in the
2 courtroom, which distracted. But really what the committee
3 found when they investigated him was that over six years,
4 he failed to disclose gifts and the value of gifts on his
5 financial disclosure reports as required by Senate and
6 federal law. He'll be sentenced next year on 29 January.

7 The House and the Republicans have not been
8 immune from this. Congressman Santos was also
9 investigated, and the thing that -- for a multitude of
10 things, but the one that really got the hook on him and got
11 him referred to the Attorney General was false statements
12 on financial disclosure forms. He failed to disclose
13 salaries. He failed to disclose gifts, and some of the
14 gifts, he tried to defend himself by saying they weren't
15 gifts. It was mortgage payments and other things that do
16 count as gifts. And then some salaries, he simply
17 minimized and/or completely skipped. So that's what got
18 him referred.

19 He has a plea agreement. He'll be sentenced in
20 February of next year, but under the plea agreement, he's
21 going to pay close to \$375,000 in restitution and over
22 \$200,000 in a forfeiture fee.

1 Family members can also be impacted, as we've
2 seen with President Biden and his son. Anything your
3 families do, if it catches the headlines and it looks like
4 they are paying to play, which means you get access. So
5 like if somebody wants access to a committee member and
6 they think they can get it through a Commissioner or their
7 spouse or their child, that's what that's going to sort of
8 look at and play out. But you don't want to give the
9 impression that you have access and you're willing to take
10 bribes for it. So you need to be cautious, and we'll talk
11 about how those situations might arise in a little bit.

12 And the United States is not the only country,
13 right? King Charles was under the gun when he was prince
14 for pay to play with his charities where people were
15 selling access to him and royal family members if people
16 would donate to the charities.

17 So all of this, all of these cases and more come
18 down to confidence in the government. So you want people
19 to have confidence in the government, in its elected
20 officials, and in its government employees, which applies
21 to you. Even though you're working part-time, you still
22 are a government employee. It's a public service, and it

1 requires you to place loyalty to the Constitution, the laws
2 of the land, and ethical principles above private gain.

3 So to ensure that the public has confidence in
4 you, we put some rules in place that you must follow. Some
5 of them are criminal, so we'll try to actually point those
6 out to keep you out of really hot water. And it applies to
7 all government employees, even those that only serve 130 or
8 less days a year. So you need to uphold these.

9 We're going to go through the main stumbling
10 blocks of what applies to you. This is why we have ethics
11 training. We'll look at filing financial disclosure --
12 we'll be spending a lot of time on that since that's coming
13 up -- and conflicts of interests. We'll take a quick look
14 at limitations on gifts and then what to do if you're
15 confused.

16 So to start, I've got a really quick red and
17 green light. It's from the executive branch, so it does
18 not apply to you necessarily as written. But all of the
19 foundations and principles that underpin this -- it's found
20 in the Code of Federal Regulations -- apply to all
21 government employees. And the legislative branch has the
22 same principles. They formulate it a little differently,

1 and they don't have a handy red/green stoplight-type thing.
2 And the judicial branch.

3 So the only one here that because you're part-
4 time and intermittent, on the top of the don't list, your
5 financial disclosure, sometimes you can hold interests,
6 financial interests. You just need to disclose them so
7 that public knows there might be a little bit of a conflict
8 there. So we'll go into that more with your financial
9 disclosures.

10 Thom?

11 MR. ROGERS: So, on financial disclosure, for the
12 staff and the Commissioners, there are slightly different
13 rules. For the Commissioners, it's required by the
14 authorizing statute for MACPAC, and it's run by GAO instead
15 of by the Senate. The Senate ethics rules still apply to
16 MACPAC. So we're going to talk about some Senate ethics
17 rules, but your financial disclosure process is slightly
18 different.

19 For those of you that recognize the lady in the
20 picture, her name was Darleen Druyen. She was
21 Undersecretary of the Air Force for Acquisition. She is a
22 terrible example or good example, depending on how you look

1 at it, in that she swayed contracting in the Air Force to
2 Boeing, who then hired her. She had previously worked for
3 Boeing. They also hired her daughter, her son-in-law. And
4 as that developed in 2003, she ended up being convicted of
5 a felony, arrested, put in jail, then in house arrest.
6 Boeing also suffered from that. Boeing's CEO and CFO at
7 the time both lost their jobs. The CFO also went to
8 prison, and Boeing paid about \$615 million in fines and
9 restitution.

10 So the disclosure here, the reason this comes up,
11 is your financial disclosure includes outside positions
12 that you currently hold or that you're in negotiations to
13 hold, so that we can recognize or the GAO can help
14 recognize conflicts of interest that might exist in those
15 positions, not just in assets or financial holdings that
16 you have.

17 Your GAO-administered financial disclosure, as
18 Kate mentioned, is coming up in January. Important to do a
19 complete disclosure and a timely disclosure. Failure to do
20 a complete and timely disclosure can actually result in
21 fines. That's up to the GAO to decide if they want to fine
22 you or not. But more importantly, I think is incomplete

1 disclosure doesn't allow for people to help you recognize
2 those potential conflicts.

3 While I will repeat throughout this that it is
4 ultimately your responsibility to recognize the conflict
5 and take action to resolve it, the financial disclosure and
6 some of the processes we'll discuss are intended to help
7 you with that process.

8 If you can't complete it by the deadline GAO
9 sets, you need to request a delay before the deadline.
10 Deadline is a hard deadline, and delays cannot be granted
11 after the deadline. So, if you don't get it in, they can't
12 help you with the subsequent delay or fine.

13 And then some common errors that have been noted
14 in the past. When we look at financial disclosure, we want
15 to make sure that you're disclosing your spouse's assets,
16 spouse's positions held, gifts to your spouse, and also
17 those of your children under 21 who live with you or who
18 are currently your dependents.

19 At the very end of the form, on the last page,
20 there are three contacts at GAO listed. They can help you
21 with how GAO wants you to complete this form. As you'll
22 see at the end and as Kate mentioned, we are also, TJ and

1 I, available. If you have questions, just ask Kate or
2 Katherine to get those to us.

3 Conflict of interest seems pretty basic. We do
4 basically look at it as the idea of anything, whether real
5 or just the potential appearance, that would make people
6 question your impartiality in your government role.

7 I'm going to speed a little bit. So do make me
8 pause just because you guys had great discussion earlier,
9 and that means we have a little bit more limited time to
10 talk with you this morning.

11 So TJ mentioned some of the conflict issues are
12 criminal in nature. 18 U.S. Code, for those of you that
13 aren't lawyers, is where we have our federal criminal
14 statutes and Sections 201 to 209 cover the conflict crimes.
15 They don't all apply to you because you're special
16 government employees, but the big one for you is Section
17 208, and that prohibits you from doing anything in your
18 government role that would have a benefit or impact to your
19 family or your personal financial interest. And that can
20 include close business relationships.

21 So a couple of pop quizzes you'll have as we go
22 through here. I won't wait too long for you to answer

1 them, given the time crunch. But the basic question, based
2 on your service as a Commissioner, the National University
3 of Germany, which I believe is fake, but the National
4 University of Germany invites you to give a speech and
5 offers to pay you an honorarium for the speech, and the
6 National University, as its name suggests, is state-funded.
7 Can you accept this offer, go give the speech, and accept
8 the honorarium, based on your role as a Commissioner?

9 You can shake your head yes or no. I'm doing it
10 backwards. No. I like Angelo, I'm seeing violently shake
11 no. And so that is the correct answer.

12 So there's a couple prohibitions that come into
13 play here. In your role as an SGE, you're an employee of
14 the government, and officers and persons holding positions
15 of trust in the U.S. government are prohibited from
16 accepting emoluments under the U.S. Constitution from
17 foreign governments. So there's the constitutional bar
18 that comes into play there, but you're also prohibited from
19 accepting honoraria.

20 So the Senate specifically prohibits that.
21 There's a Supreme Court case -- and I see your hand, Heidi.
22 Hold on one second. There's a Supreme Court case that the

1 executive branch is bound by. That means the executive
2 branch has to allow honoraria in certain circumstances.
3 The Senate does not abide by that. It didn't cover the
4 Senate. So you are prohibited from all honoraria.

5 Heidi?

6 COMMISSIONER ALLEN: So I'm an academic, and I
7 get asked to give talks all the time. And they're often,
8 like, through endowed, you know, funds that are meant to
9 bring in speakers. So is it -- so that I -- like, I
10 couldn't go to Canada and give a talk about health policy,
11 which my expertise is in, and get to -- receive the
12 honorarium because I work on -- I'm on MACPAC?

13 MR. ROGERS: Well, and that's a key distinction
14 that we have to make is why are you asked? So if you're
15 asked to give this speech because in your non-MACPAC role,
16 in your academic role, you're an expert in this field and
17 they're asking you based on that, not because you're a
18 Commissioner, then that's fine.

19 COMMISSIONER ALLEN: Okay.

20 MR. ROGERS: But if they're asking you because
21 you're a Commissioner, then you can't accept.

22 COMMISSIONER ALLEN: Gotcha. Isn't there a

1 bigger question as to whether we can speak on behalf of the
2 Commission? I don't think we're ever allowed to actually
3 accept something as Commissioner unless we clear it with
4 everybody else.

5 MR. ROGERS: That's a great point.

6 COMMISSIONER ALLEN: Right. Yeah. That makes
7 sense.

8 MR. ROGERS: We'll get into gifts a little bit
9 later, but yes, you speak as a Commission, not as an
10 individual Commissioner. So that's a great point.

11 So next slide is the misuse of your position. It
12 just goes through basically a little bit of a laundry list
13 of different ways that you could misuse your position, and
14 again, we're talking about while you're a Commissioner. So
15 to the extent you're not in Washington, D.C., or on Zoom
16 for a meeting from your civilian office, you're not being
17 paid by the federal government, you're doing purely your
18 civilian and non-governmental work, this doesn't apply.
19 But to the extent your Commissioner role is in play, all of
20 these would apply to you.

21 And I'll give you a quick example. Obviously,
22 MACPAC is not the only one who has SGEs working with them,

1 and these are based on reality. An employee of the
2 Department of Commerce was asked by a friend who was trying
3 to export firearms, why his license wasn't being approved
4 at the Department of Commerce. So the employee then went
5 to the next meeting where he was an SGE to ask why his
6 friend's license wasn't being approved and could we get
7 that expedited. And that's a misuse of position. As an
8 employee of the federal government, you can't represent
9 other people's interests before the federal government. So
10 even though in your civilian job, you might be able to do
11 that, once you put on your Commissioner hat, you can't come
12 to the Commission and ask for anything on behalf of someone
13 else.

14 Next slide. And another pop quiz is your niece
15 has just accepted a job with a MACPAC contractor. You saw
16 the answers. So hopefully you blinked while Katherine
17 showed that. But it's obvious, I think too. Your niece
18 has accepted this job. The company she works for is a
19 MACPAC vendor. Can you come to the next Commission meeting
20 and talk about how great your niece's employer is?
21 Honestly, whether that's in hopes of they're going to
22 expand their contract with MACPAC or not, can you talk up

1 the MACPAC vendor to the other Commissioners or to the
2 staff?

3 And the answer is no, thank you, because you
4 can't use your position as a Commissioner to benefit family
5 members' financial interests.

6 And now I will pass it off to TJ to talk about
7 outside activities.

8 MS. McGRATH: Okay. So further than just not
9 using your position, you can't use your title. So when we
10 talk about outside activities and what you're doing
11 outside, sometimes that may conflict with what the
12 Commission is doing and may require you to disqualify
13 yourself. But you also can't take that title with you to
14 your outside activities for private gain, so not for the
15 gain of yourself, relatives, family, nonprofit
16 organizations at which you serve as an office member,
17 employee, or any other business relationship for colleagues
18 or in the endorsement of any product, service, or
19 enterprise. Absolutely can do it in your civilian
20 position, but you can't say, I'm endorsing this, and as a
21 Commissioner of MACPAC, right, you should listen to me more
22 closely than other people," or however that would play out.

1 For example, if you're hired to write -- if an
2 SGE is hired to write regulations for the EPA relating to
3 disposal of hazardous waste, they may not also serve as the
4 president of a nonprofit environmental organization that
5 routinely submits comments on such regulations, because
6 there's an inherent conflict there. You can't be on both
7 sides of the bench.

8 And that doesn't mean you can't do anything. It
9 just means sometimes you might need to have a conversation
10 and disclose it so that we can go through the nuances and
11 say whether this is an actual conflict or whether there's
12 an appearance of conflict that Kate Massey needs to take
13 under advisement and/or whether there's some other
14 guardrails we can put in place for you and whether that's
15 recusal or public disclosure or something else that just
16 sort of safeguards you from the appearance of using your
17 position and title for something else.

18 These particular restrictions apply even on the
19 days you are not performing your Commissioner duties and
20 even if the work you do is not compensated.

21 So, in Maine, this is all because you may never
22 disclose nonpublic MACPAC information, and sometimes that

1 blends as you're having these conversations on other
2 committees and other nonprofits that this information you
3 have -- you're not bringing your best to them if you don't
4 use that, but you can't use that. So that's where those
5 conflicts come in and creates a rub.

6 And the same the other way. Sometimes you might
7 be asked to serve on an executive branch-type commission as
8 an advisor, but you might get information that is private
9 from the legislative branch. And then what do you do when
10 you come to a Commissioner meeting? Are you bringing your
11 best advice and counsel to MACPAC if you have all this
12 other information that you're not allowed to disclose? So,
13 again, it doesn't mean you can't ever do it. It's just
14 sometimes we need to talk through it. And the answer might
15 be, yeah, you can't do it, or the answer might be, oh, you
16 can do it, but we need to do this, this, and this, and put
17 this in place before you do it so that there's no issues
18 and no appearances.

19 And again, all of this is to protect you, your
20 reputation, and MACPAC and its reputation, because if its
21 reputation is harmed, then it's of no value to Congress.

22 COMMISSIONER ALLEN: So I have a question about

1 that. Mainly, in that listing the MACPAC affiliation seems
2 to be a requirement for disclosure for other things that I
3 do.

4 So, like, for example, when I publish in JAMA, I
5 have to list anything that is related to my work and my
6 work is related to Medicaid that could give an appearance
7 of how -- you know, so, like, I'm a little confused.

8 MS. McGRATH: Yep. Nope. The fine line is you
9 absolutely can list your title on résumés, on your bio.
10 Like, if your organization lists you on the bio and they
11 want to say that you are a Commissioner, that is factual,
12 that is true. There's no problem with that.

13 The problem comes in when you either start
14 trading on that and using it in your outside activities,
15 right? You say, I want to be on this board and you should
16 hire me because I'm a Commissioner and have access to blah,
17 blah, blah. That's right where you crossed the line. And
18 whether you're accepting money, that the more nuanced is
19 the information that you're gathering, right? So, if
20 there's a conflict of the two, we're going to give advice
21 and counsel and it necessarily requires you to rely on
22 nonpublic information from MACPAC, that's where you need to

1 take a break and say, time out, I need to figure this out,
2 because you don't want to inadvertently cross a line where
3 you're giving advice, but that advice subsumes into it
4 information you got in a private executive session that's
5 not public, that has information that's not public yet,
6 maybe on a policy recommendation that may or may not ever
7 go forward and is still under consideration, and you don't
8 want to disclose the opinions. So those are the types of
9 things we're trying to ward off in advance of doing it.

10 But the fact that you are a Commissioner and your
11 title, absolutely, that can be on your résumé. That could
12 be on the website. That is a factual thing that is true,
13 and that is not hidden in any way, shape, or form. Does
14 that help?

15 COMMISSIONER ALLEN: Yes. Thank you.

16 MS. McGRATH: Is there another question? Sonja?

17 COMMISSIONER BJORK: Yeah, that's me.

18 Thanks for all the specific examples. I love
19 those.

20 You know, we're all on the Commission because of
21 our different areas of expertise. So, for example, I run a
22 Medicaid managed care plan, and we're talking about the

1 regulations and the oversight of health plans. So, if I
2 started making my position, man, we don't need any
3 oversight, you know, or these three recommendations, let's
4 not do any of them because managed care plans, they'll just
5 run great themselves, I would never do that, of course.
6 But isn't there naturally some appearances of conflicts of
7 interest that can come up just because of who we are in our
8 regular life?

9 Another example is Dennis might be saying
10 everyone should be able to hire whoever they want. Well,
11 that's because of his experience as a consumer of, you
12 know, home- and community-based services. So could you
13 speak a little bit to that, where that line falls?

14 MS. McGRATH: Yes, absolutely. You are hired
15 because of your outside full-time position, because of the
16 knowledge and the experience that you bring to the field.
17 The statute specifically requires a diverse, wide, from
18 different ends of the spectrum, but they want the debate,
19 right? They want that tension.

20 The key to it is that you disclose. So your
21 public financial disclosures that GAO posts will have all
22 of that. So if the public wants to see what your

1 background is or wants to see where your interests may lie,
2 they can go look at that, and it's above board and that's
3 open for everybody to look at. And then that they can
4 either give your opinion, right, they can weight it based
5 on those interests, or they can look and make sure that the
6 other interests are also being represented at the
7 Commission.

8 And that's also why, as Kate said, it's a
9 consensus-type thing, right? It's not going to be one
10 person with particular agendas making all these decisions.
11 It has to be a consensus among people that come from all
12 these different walks and bring all of this experience to
13 bear on the issue, because that's what's helpful to
14 Congress.

15 COMMISSIONER BJORK: Thank you.

16 MS. McGRATH: Okay. So fundraising. You may not
17 raise -- fundraise in your MACPAC Commissioner role. You
18 can in your personal capacity. So this is one of those
19 that you can leave your Commissioner hat at home and still
20 play in the political field for whichever side you're on in
21 your personal capacity, but there are some constraints.

22 So obviously, don't do it from subordinates,

1 MACPAC staff, not in a federal building, not wearing
2 buttons and hats, displaying all of that during a MACPAC
3 Commission meeting, especially the public ones. And again,
4 it goes back to not using your status as a MACPAC
5 Commissioner to solicit those types of funds. So you can
6 leave this one.

7 And when it comes to the same day as a MACPAC
8 Commission meeting where people may be watching the public
9 meetings, that gets tricky too if later on you're on the
10 news that night fundraising somewhere else. So it's
11 helpful to have it on a completely separate day. It just
12 makes that break more apparent to the public, even though
13 that is not specifically required.

14 And lobbying, you may not engage in lobbying in
15 your official capacity, and this comes down to your meeting
16 days. If you take a lunch break from this meeting and run
17 over to the Hill and try to lobby on one particular policy
18 or another that behooves your private organization, it's
19 going to look like you're doing it as a Commissioner, which
20 as we said before, you don't speak as a Commissioner. You
21 speak as a commission. So you need to be careful on those.

22 Now, if Congress calls you over in your private

1 capacity and you have to respond and go, you just need to
2 make it clear that you're not acting or speaking on behalf
3 of the Commission or acting as a Commissioner, that you're
4 there in your private capacity when you're talking to that
5 staff or a member of Congress. So, again, just trying to
6 always delineate when you're acting as a Commissioner and
7 when you're acting in your private capacity for your
8 personal organization.

9 So Senate Rule 41, right, is a very strict one.
10 You can't engage in political activities while on duty, and
11 I know we're foot stomping this and probably repeating
12 ourselves. But it's really important because this is the
13 one that can get you into trouble.

14 And the way to protect yourself from all of this
15 is to fill out your financial disclosure fully so that it's
16 out there, so that people know what your positions are,
17 they know what your interests are, and they can bring that
18 to bear when they're trying to decide how much weight to
19 give what you're talking about as a Commissioner. So
20 you're restricted from engaging in particular activities.

21 And now Thom is going to -- go ahead, Katherine.
22 I saw you flip. Perfect timing. Thom?

1 MR. ROGERS: Great. MACPAC has a Conflict of
2 Interest Committee that consists of five to seven
3 Commissioners. I don't know how many are currently on it.
4 Sorry. It includes the Vice Chair, as it says, and their
5 job is to help you discern whether you have a conflict or
6 not.

7 Ideally, they are going through your financial
8 disclosures prior to any meeting where a vote is being held
9 to see if there's something that needs to be brought up and
10 that you should consider as whether you need to recuse
11 yourself.

12 Important thing, as I said earlier, it's always
13 your responsibility to determine whether you have a
14 conflict and to take action to recuse yourself. This is
15 just something to help you with that.

16 Next slide. The committee looks at heightened
17 risks of conflict. Important, that doesn't mean all risks
18 of conflict. So this slide lists a couple, which is going
19 to be whether you hold \$50,000 or more in stock in certain
20 companies, whether you've received gifts over \$5,000 in the
21 preceding 12 months. This applies to you, your spouse, and
22 your children.

1 Next slide. Income from entities over \$50,000 or
2 whether you serve on a board as a director or officer of an
3 entity, whether that's a paid or non-paid position.

4 As you look at these, important to consider that
5 the committee is looking at \$50,000 or more for income,
6 \$50,000 or more for assets. Your financial disclosure is
7 for \$15,000 or more in assets, \$1,000 or more in income,
8 much lower thresholds.

9 And if you look at a Department of Justice
10 concern for what do they consider a potential conflict
11 amount, it would be any amount could generate a conflict.

12 So we look at the words there, "particularly,"
13 "directly," "predictably" -- I'm skipping "significantly,"
14 "intently" -- to determine, is this a conflict that is a
15 real conflict or just something in passing? So you can see
16 what the definitions of those are.

17 And what we're looking at here is, is there a
18 predictable effect based on your relationship and any
19 action you might take that could have a financial impact on
20 the entity or individual?

21 "Significantly," again, this is the term the
22 committee uses, and it's what a reasonable person think it

1 was a significant amount, a significant impact. Again,
2 this is to help you realize if there's a conflict or not.
3 It doesn't necessarily mean there isn't a conflict just
4 because it's not significant. The Department of Justice
5 looks at it as any financial impact regardless of the
6 amount.

7 Next slide. For gifts, the general rule from the
8 Senate is you may not accept gifts, but there are a ton of
9 exceptions. One of the easiest is that there's a \$50, \$100
10 limit, which means you can accept a gift worth \$50 or less
11 as long as you don't accept a gift of that amount so often
12 that it exceeds \$100 aggregate in a reporting period.

13 You can always accept gifts based on personal
14 relationship. One of the things I got asked often as an
15 ethics counselor was -- there's this lobbyist, let's say,
16 who I'm personal friends with or "prohibited source" that
17 we would call it -- I'm personal friends with, and they
18 want to give me a Christmas gift or take me to a really
19 nice restaurant that's going to cost more than \$50. Can I
20 do that? If it's truly a personal relationship, yes. If
21 your personal relationship with this lobbyist is because
22 they're a lobbyist and they want to take you to lunch every

1 week, then no, that's not really a personal relationship.
2 That's a lobbyist taking you to lunch. You have to be able
3 to defend that personal relationship.

4 Widely attended gatherings or things that are
5 available to large groups of individuals are also accepted.
6 If you get a discount as a federal government employee that
7 all federal government employees get, that's fine, but as
8 our pop quiz goes into, if you get a gift because you're a
9 Commissioner -- and even though it's all the Commissioners
10 -- you can just go to the next one -- it's not a big enough
11 group to get that broad class widely acceptable gift.

12 In a widely attended gathering, the pop quiz was
13 you're going to go to the Stanley Cup finals and sit in a
14 seat in the arena. That is not a widely attended gathering
15 because you can talk to maybe four people sitting around
16 you, and you need, by Senate rules, to be able to talk to
17 at least a hundred people. So much, much bigger
18 gatherings.

19 Next slide.

20 COMMISSIONER ALLEN: I had a question about that.

21 MR. ROGERS: Sure, Heidi.

22 COMMISSIONER ALLEN: So my wife works for Pfizer,

1 which is, like, a big pharma company, and they have, like,
2 box tickets for things. And every now and then, she wins
3 the drawings to get that. Am I not allowed to go to that
4 because I'm a --

5 MR. ROGERS: Again, great question. If you're
6 married and your spouse receives a gift that is based
7 solely on her professional duties from her job, has nothing
8 to do with your role as a Commissioner, then you can
9 benefit from that as her spouse.

10 If it's given to your spouse -- and I think we
11 saw this in Senator Menendez's case where his fiancé was
12 given several that were intended to influence him. If
13 that's the scenario, then it's bad. Don't do that. But if
14 it's truly given to your spouse merely because of her
15 connections, that's fine. You can benefit from that.

16 Okay. Next slide, please. And we'll wrap up
17 here. The basic thing to remember here is ethics can
18 sometimes seem very intuitive and at other times seem very
19 complicated. And so the easiest thing to do if you're not
20 sure is ask a question.

21 So you can funnel questions to the GAO about the
22 financial disclosure form, but you can also funnel them to

1 us through the staff. And TJ and I will be happy to give
2 you our insights.

3 Ethics is a weird thing. Asking the question
4 doesn't guarantee everything is good. I've had issues
5 where I've seen people get bad ethics advice. But where it
6 does help you is that if you've asked the question and the
7 ethics attorneys have given you bad advice, it will
8 mitigate any negative that happens to you is the best way I
9 can say that. So your safest course is to ask when you're
10 in doubt, and then move forward based on the advice that
11 you get.

12 Okay. If you have more questions -- it's three
13 minutes past when I was supposed to end. Sorry. But if
14 you have any questions, please feel free to funnel them to
15 us, and we will get back to you guys with the answers.

16 MS. McGRATH: Thom, I see just one hand. If we
17 can answer one question --

18 MR. ROGERS: Sure. I'm sorry.

19 MS. McGRATH: -- then we can wrap up. Thank you
20 so much.

21 Bob?

22 VICE CHAIR DUNCAN: Yeah, thank you. Appreciate

1 it, Katherine. Thanks, Thom.

2 A question on the financial disclosure.

3 Previously, my investments are in mutual funds, which are
4 diversified. And last year, because of moving into the
5 Vice Chair, I wanted to be extra cautious. So I asked my
6 financial advisor, and he broke out all of the different
7 mutual funds. Do I have to go to that degree to report, or
8 can you put Vanguard and what's in Vanguard?

9 MR. ROGERS: Yeah. So if you have a truly
10 diversified mutual fund -- and I'll caveat that in a second
11 -- then no, you can list the mutual fund. If you have a
12 mutual fund that is specific to an individual industry or a
13 country or state, then you have to be specific about the
14 assets held in that mutual fund and break it out. But if
15 it's truly just I have a very broad mutual fund that
16 invests in small cap stocks, that's fine.

17 VICE CHAIR DUNCAN: All right. Thank you, sir.

18 COMMISSIONER BROOKS: So last year, I was asked
19 to break out my Vanguard for the very first time. They
20 came back to me and asked me how much was invested in
21 health care-related assets, even though I don't control the
22 fund.

1 MR. ROGERS: Right.

2 COMMISSIONER BROOKS: And I had my financial
3 counselor break it out, and that satisfied them. But the
4 answer last year was, no, you need to break it out.

5 MR. ROGERS: We lucked out.

6 MS. McGRATH: I think that distinction is the
7 healthcare because of MACPAC and what it's looking at. But
8 other general mutual funds, that would not apply to.

9 COMMISSIONER BROOKS: Well, it wasn't listed as a
10 health care-related asset. It was a general indexed mutual
11 fund. It is a retirement account.

12 MR. ROGERS: Yeah. So --

13 MS. McGRATH: Same here. They asked all of us
14 that last year. It's kind of going overboard.

15 MR. ROGERS: Yeah, my comment on that would be
16 the GAO Ethics Office can always ask follow-up questions,
17 and so that's up to them to decide what additional details
18 they'd like.

19 But from a general reporting standpoint, you are
20 okay, Tricia, in doing -- I have a general mutual fund,
21 here's what's there. GAO is also okay in coming back and
22 saying we'd like more information.

1 Okay. With that, we'll wrap up then. Thank you
2 very much for your time, and again, we're happy to ask any
3 additional questions through the staff.

4 MS. McGRATH: Thank you.

5 CHAIR JOHNSON: Thank you so much.

6 All right. So we have until 10:30 when the
7 public meeting starts.

8 * [Whereupon, at 10:19 a.m., the Executive Session
9 was recessed, to reconvene at 8:45 a.m. on Friday, December
10 13, 2024.]

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EXECUTIVE SESSION

Ronald Reagan Building and International Trade Center
Hemisphere Room
1300 Pennsylvania Avenue, NW
Washington, D.C. 20004

Friday, December 12, 2024
8:46 a.m.

COMMISSIONERS PRESENT:

VERLON JOHNSON, MPA, Chair
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

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[8:46 a.m.]

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PLAN FOR THE DAY

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CHAIR JOHNSON: Good morning. We have a couple of things we want to cover this morning in executive session. We're going to start off with an agenda review. Then we'll get a temperature check from yesterday and some insights that you'll have from that one, and I think we have a couple of comments maybe from some other events that Commissioners have been in.

So I'll turn it over to Kate, then, for the agenda review.

* EXECUTIVE DIRECTOR MASSEY: Okay, great. Good morning.

So we are going to start this morning with a discussion about timely access to HCBS, and during last month's meeting, we had a dedicated conversation to discuss provisional plans of care. And there was some Commissioner feedback provided during that session, two points in particular that we're responding to this month. One was some questions about why states were not implementing provisional plans of care, despite the fact that many may

1 have had the authority to do so. So we went back to the
2 interview notes and the research to make sure that we could
3 more crisply respond to that outstanding question.

4 And then there was some questions/concern raised
5 among the commission that was then reinforced by public
6 comment about the possibility of CMS issuing additional
7 guidance tied to provisional plans of care. When we had
8 engaged CMS directly and spoken to some stakeholders, they
9 had referenced what is referred to as Olmstead Letter No.
10 3, and we actually excerpted Olmstead Letter No. 3 in the
11 memo because it is -- while CMS considers enough on the
12 topic, it is rather pithy. So we wanted to actually show
13 that to you so that you can gauge it on your own.

14 But one of the things that we wanted to offer to
15 Commissioners as an option is a potential recommendation
16 that would instruct CMS to provide more enhanced guidance
17 on the use and implementation of provisional plans of care.
18 So there is a policy option that Tamara will be reviewing,
19 and we would really appreciate your feedback on that point.

20 After we talk about timely access to HCBS, then
21 we're going to have a conversation about an intensive data
22 project that we've been engaged in. We've mentioned this I

1 think at several points in the past because it's just taken
2 us so long, but we cleaned up three years worth of T-MSIS
3 data specifically on LTSS-related claims.

4 And so the focus -- because we want to start kind
5 of pushing out the data and previewing what the data tell
6 us, the focus will be on HCBS spending and utilization for
7 this morning's session. And we'll talk about demographic
8 characteristics as well as spending by some of the taxonomy
9 code cleanup that we've done. So I think that should be
10 really interesting.

11 There's a lot of potential presented by that data
12 set. So we're having conversations internally about what
13 additional issue briefs we might be able to spin off, how
14 it might be able to inform other HCBS work in the queue, as
15 well as potential sessions at some point in the future.
16 But it was a huge investment of time for our team as well
17 as for Mathematica who provided assistance to us, and so we
18 just really want to make sure that it's fully leveraged.

19 After we talk about HCBS spending and
20 utilization, we'll transition to a conversation about a
21 technical expert panel that we convened over the summer.
22 And this was the follow-on work to exploration that we were

1 doing about policy levers, specifically in the rate-setting
2 sphere that we could identify or generate evidence in
3 relation to that would address the HCBS workforce
4 crisis/pressures that states and the federal government are
5 currently facing.

6 And so if you'll recall from last year, we did
7 some qualitative interviews. We also published a
8 compendium that explained what the rate-setting policies
9 were across 1915(c) waivers. We pulled together a
10 technical expert panel, or TEP, that included
11 representatives from CMS, from states, actuaries, national
12 experts, et cetera, just to kind of see if some of the
13 themes that were identified last year could withstand a bit
14 of a pressure test. What we identified actually through
15 the TEP was that they did, in fact, reinforce the themes
16 that were previously identified.

17 So some of the tension points in the context of
18 HCBS rate setting are that there are different requirements
19 for rate setting expectations between, for example, 1915(c)
20 waivers and fee-for-service.

21 There are also some data gaps. So, for example,
22 wage data are not readily available when actuaries and

1 states are doing the wage buildup, which can be really
2 challenging, because then states are using proxy data,
3 which is not as precise.

4 Then I think we all recognize that sometimes for
5 a number of different reasons and factors, there can be DCW
6 rates that vary across programs even within a given state,
7 and that can really put pressure on some of these programs
8 as DCWs move back and forth, kind of creating disruption
9 for the beneficiary, for the state, et cetera. So
10 questions about whether or not the Commission wants to
11 opine on maybe an ideal state is a possibility.

12 So Katherine and Emma are going to be talking
13 through the TEP findings. There are facilitation questions
14 that we're putting up in the slides. Hopefully, you saw
15 that when I circulated the slides earlier this week. The
16 goal of the session is really to focus on the findings to
17 kind of figure out where the Commission is gravitating
18 towards as policies or issues that we might want to opine
19 on, and that can be via a policy directional statement, or
20 it can be through a policy option. We just need to kind of
21 understand how you guys are reacting to some of those
22 issues and findings.

1 And then we will finish this morning with a
2 highlight of MACStats. So I think all of you are aware
3 that we publish an annual data book. It's coming out on
4 December 18th. We use the public meeting as a way to
5 promote the availability of those data, and so Asher will
6 be talking about what was included in the publication and
7 some of the trends and will share some data, presentations,
8 and visualizations with you.

9 The other thing that I just wanted to highlight,
10 which is a little bit of a precursor to the January
11 meeting, is that we are driving towards three chapters in
12 the March report to Congress. So just want to make sure
13 we're all level set on what will be included in that
14 congressional report.

15 The three chapters all have potential
16 recommendations. So the first will be regrouping on HCBS
17 authorities. You haven't heard from it in a while because
18 we spent a fair amount of time talking about it last year,
19 but just as a reminder, we do have one pending
20 recommendation that you will vote on tied to extending the
21 waiver renewal period from five years to ten years. So
22 that will be one chapter.

1 The second chapter will be the EQR chapter that
2 Allison reviewed yesterday, and so we've still got three
3 potential recommendations in play there.

4 And then the HCBS timeliness project will also be
5 included in a chapter. So Tamara is presenting a policy
6 option just based on the way that scheduling fell out,
7 partly because I'm not sure we had really anticipated a
8 potential recommendation tied to that work. I think in our
9 minds it had been descriptive before we really heard your
10 feedback as well as feedback from the public. That one is
11 going to be a bit compressed. So we'll move from the
12 policy option language that we're talking about here
13 directly to recommendation language in January, and then we
14 will ask you for a vote.

15 So I know that that's a bit, like I said, more of
16 a compressed time frame, but we really do need, in
17 particular, your feedback on HCBS timeliness so that we all
18 know what to do and how to craft the chapter, so that when
19 the chapter is circulated for your review prior to the
20 January public meeting, it's an accurate reflection of the
21 Commission's intentions and next steps.

22 Any questions about any of the sessions this

1 morning?

2 [No response.]

3 EXECUTIVE DIRECTOR MASSEY: Okay.

4 **### DISCUSSION OF THURSDAY MEETING**

5 * CHAIR JOHNSON: Great. So since we've gone over
6 today's session, let's talk about yesterday. Were there
7 any insights or thoughts that you all want to share from
8 your experience yesterday in these different sessions?

9 Yes, Tricia.

10 COMMISSIONER BROOKS: So I'm still a little hung
11 up on the first recommendation on the children with special
12 health care needs, which was to Congress to -- I mean, I
13 guess where I'm hung up is that I felt like I got different
14 responses from Kate and Linn on the question of, are we
15 asking Congress to mandate that there be a transition of
16 care plan? Is that what we're asking?

17 EXECUTIVE DIRECTOR MASSEY: The policy option is
18 to require all states to have a policy articulating their
19 transition of care planning process, including the
20 development of an individualized, tailored transition of
21 care plan for the populations that were specified. So it's
22 the SSI TEFRA kids.

1 But when you had -- I guess the confusion for me,
2 Tricia, was that you had characterized it as a benefit, and
3 we're asking for the articulation of a policy, right? And
4 so then because of the flexibility currently available to
5 states, they may have varying approaches in terms of how
6 they craft their policy.

7 COMMISSIONER BROOKS: Right.

8 EXECUTIVE DIRECTOR MASSEY: Some might do it as a
9 dedicated benefit, for example, through targeted case
10 management. Some of it may do it through care coordination
11 supports through a managed care plan. And so we don't want
12 to be prescriptive based on the variation that we found in
13 exactly how they develop that transition of care plan.

14 COMMISSIONER BROOKS: That's helpful. I am not
15 in disagreement with doing this. I guess I just have
16 concerns about opening up the statute, because anytime you
17 open up the statute, you open it up to other things that
18 happen, but that should not stop us from making a good
19 recommendation.

20 EXECUTIVE DIRECTOR MASSEY: If the statutory
21 approach is generating concern among Commissioners, we
22 could always pivot and direct it to states.

1 I think the issue is that we thought that the
2 evidence was compelling enough to have it be a program-wide
3 requirement, whereas if we formulate the recommendation to
4 states, it's a recommendation that they can take or leave.
5 And we don't really have a good way of tracking whether or
6 not they adopt it or comply with our recommendations.

7 COMMISSIONER BROOKS: So are there similar
8 policies on other aspects of Medicaid that we can point to?

9 EXECUTIVE DIRECTOR MASSEY: Yes. The team was
10 following up on that question and I think will have a more
11 precise answer.

12 I think actually that we did find some examples
13 that may have been relevant. So why don't -- how about
14 this? Because Linn is not mic'd up right now. We'll
15 address that at the break.

16 COMMISSIONER BROOKS: Okay.

17 EXECUTIVE DIRECTOR MASSEY: And then we'll make
18 sure that it's addressed in the next memo so that all the
19 Commissioners are aware.

20 COMMISSIONER BROOKS: And thank you. I don't
21 know that there are other concerns by Commissioners. It
22 may be just me. For a vote, I would still vote yes.

1 CHAIR JOHNSON: Patti?

2 COMMISSIONER KILLINGSWORTH: Quick question.

3 Will there be any adjustments made to that recommendation
4 based on the conversation from yesterday?

5 EXECUTIVE DIRECTOR MASSEY: Patti, which one are
6 you talking about? The children and youth with special
7 health care needs?

8 COMMISSIONER KILLINGSWORTH: Yes, correct.

9 EXECUTIVE DIRECTOR MASSEY: So yeah, we'll go
10 back and make sure that we're taking into account the
11 Commissioner feedback on all of the recommendations because
12 we definitely need to be more specific on three, which was
13 the measures.

14 We can be more specific on one if there's
15 additional feedback that -- or different words that folks
16 want to have emphasized in number one.

17 What we usually do, just as a level set, right,
18 is that we had a really good, rigorous conversation about
19 the policy options. So we go back, and we look at the
20 themes and the questions that Commissioners raised during
21 the session, and then we try to directly address those in
22 next month's memo. So children and youth with special

1 health care needs is coming back in January.

2 So, for example, we heard questions about Title V
3 funding and what Title V supports versus what Title XIX
4 supports, so we can be more clear and crisp in our
5 presentation of the information there.

6 We heard questions about what the components were
7 of IAAs. So we reviewed all of the IAAs. We can make sure
8 that we're talking about what is currently captured in
9 those legal documents and what the requirements are, right?
10 So we can make sure that we're kind of giving you
11 assurances based on some of the points of confusion that
12 you had. And then, like I said, clearly, there's a fair
13 amount of work to do on the data collection efforts.

14 So we'll go back, and we'll do that for all four
15 of the options. But if there's something specifically that
16 you're looking for, Patti, tied to number one, can you just
17 let me know what that is?

18 COMMISSIONER KILLINGSWORTH: Yeah. And I've
19 articulated it on a couple of different occasions now, but
20 I really feel like the definition omits a group of kids for
21 whom transition planning is particularly important, and
22 that is kids who need institutional level of care.

1 Again, either by virtue of 42 CFR 435.217 or an
2 alternative authority provided under a demonstration, but
3 it would be a child who's institutionalized or
4 participating in an HCBS program by virtue of meeting
5 institutional level of care. Those kids really need
6 transition planning, and they're not necessarily going to
7 be in a Katie Beckett or TEFRA or SSI eligibility category.

8 EXECUTIVE DIRECTOR MASSEY: Yeah. So let us go
9 back and take a look at that. I did have that -- thank you
10 for reminding me. I do have that comment jotted down.

11 I think the only thing that we need to double
12 check is that we scoped the work as being Katie Beckett,
13 TEFRA, quote/unquote, "exclusive" in the way that we
14 approached our work, and we just need to make sure that the
15 findings and the evidence translate to the population that
16 you're talking about. So just give us a little bit of time
17 to see if we can engage in that crosswalk, but I definitely
18 take your point. And let's see what we can do.

19 COMMISSIONER KILLINGSWORTH: Thank you.

20 CHAIR JOHNSON: Bob, do you have some comments?

21 VICE CHAIR DUNCAN: Yes. I just wanted to say, I
22 thought the panelists, the session with Robert, in fact,

1 that was powerful, and so I just wanted to highlight the
2 staff for pulling that together. It was nice. And Heidi
3 said it yesterday. It's always nice to hear from the
4 people that we're serving, and so I just wanted to say
5 thanks to the team for doing that.

6 CHAIR JOHNSON: Thanks, Bob. I echo that and
7 also would like to look for more opportunities for us to
8 engage in that same way as we go down these paths. So
9 that'd be great.

10 But thank you, staff. You guys did a great job.

11 All right. Let's see. Dennis.

12 COMMISSIONER HEAPHY: Thank you.

13 I have just two quick comments. One is regarding
14 going back to the IAA. I think just to strengthen in the
15 document -- I don't even know if it's CMS providing
16 guidance to states on how to improve the transition to
17 turning 22 and how Medicaid should be working with the IAA.
18 I mean, there should be Department of Education and the
19 IAA, but I just think that there's a lot more needs to be
20 done to ensure there's integration of what's being done for
21 the school system, and the system that the kids are going
22 to be transitioning to. So nothing, no problems with the

1 recommendation itself, but more about what needs to be done
2 moving forward after this.

3 I don't know if Kate or someone wants to comment
4 on that, but that's -- to me, it's a lack of -- it just
5 didn't happen. And that's why I keep pushing it.

6 EXECUTIVE DIRECTOR MASSEY: Absolutely, Dennis.
7 So we'll take that point, and we'll make sure that it's
8 reflected in the materials.

9 COMMISSIONER HEAPHY: And then my other point
10 was, yeah, I thought the presentation was great. It was
11 also the best-case scenario. I actually have a friend who
12 had cerebral palsy, dysarthric, and lived with her mom and
13 grandmother, and the situation became so toxic. My friend
14 was just going up, and she made the decision to go into a
15 nursing home, and it was a good decision for her. But just
16 I don't think the level of stress can be overstated in
17 terms of people who choose the direct service route and how
18 different the needs are of different populations that go
19 the direct service route, whether it's folks with ID/DD,
20 folks with physical disabilities, folks with AIDS.

21 I think when we look at HCBS, we really have to
22 be population-appropriate and person-centered in how we

1 tackle this. So I would love to hear from New York -- what
2 was it? -- California, New York, Massachusetts, and another
3 state from down South to see how they do things, so we get
4 a broader picture of what direct services look like in
5 those states. I don't know if you have thoughts on that.

6 EXECUTIVE DIRECTOR MASSEY: So that sounds good.
7 I think that the states have already been selected for
8 self-direction that we're interviewing and engaged with,
9 Dennis. So we can follow up with you and let you know. I
10 can't remember off the top of my head which five states
11 we're speaking with. So we can follow up with you and make
12 sure that you're aware of that.

13 COMMISSIONER HEAPHY: Thank you. Thank you very
14 much. It was great. The presentations were great.
15 Thanks.

16 CHAIR JOHNSON: Thank you, Dennis.

17 Any other thoughts? John.

18 COMMISSIONER McCARTHY: I thought it was
19 interesting, and this applies to the managed care work
20 we're doing too -- is that Robert's mother said one of the
21 things that's most disruptive is when the state re-procures
22 the physical intermediaries. And her point was, hey,

1 everything is going great, so why would you have to change
2 it? Because it's a huge disruption to our lives.

3 And this is that tension that we have, right?

4 And I just wanted us to be thinking about that, because we
5 were just talking about managed care procurement and the
6 other one. Same thing, it is a big -- when you change
7 those things, it's a disruption to people's lives. And
8 what is the balance on those different pieces of what
9 you're looking at?

10 Now, of course, from his mother's perspective,
11 everything was great. They were doing great. So why would
12 you change it? They, of course, don't see some of the
13 other stuff that maybe it wasn't, or maybe there's cost to
14 it. I don't know. But from an individual receiving
15 services through Medicaid, those things are just like -- it
16 doesn't make any sense from their side.

17 From our side, it makes tons of sense, but I
18 think it's one of those things that we probably need to
19 think about both when we're looking at the self-directed
20 piece of it and what does that look like, and also, when
21 we're looking at managed care, oversight and re-
22 procurement.

1 CHAIR JOHNSON: That's a great, great, great
2 point. I agree with you.

3 Any other thoughts? Mike.

4 COMMISSIONER NARDONE: So one of the things I was
5 reflecting on after the managed care presentation -- and I
6 think this is something we need to think about as we're
7 developing our recommendations -- is how do we, in addition
8 to adding new requirements, also streamline or make the
9 processes more effective? So that I think there's a lot of
10 work that goes on at CMS in terms of reviewing contracts.
11 I mean, there's -- I don't know how many items there are
12 that states go -- that the CMS goes through to review
13 contracts. They review every actuary report to be
14 actuarially sound.

15 That makes a lot of sense when it's 100 percent
16 state funding -- federal funding, but maybe there are
17 states that maybe you could do more of a risk-based
18 strategy about how you review rates.

19 I'm not necessarily suggesting that that's the
20 recommendation, but I do think when we're thinking about
21 the overall accountability around managed care, we also
22 look at ways that reduce the workload in certain other

1 aspects to focus on the higher priority items, because
2 states and CMS are strapped.

3 And just kind of layering on another few
4 requirements, I struggle with that, because I know it's --
5 I'm just -- I confess, that's the way I'm thinking too.
6 Like, we need to, you know, add some more requirements, but
7 I do think we have to be somewhat conscious of how do we do
8 things in a more efficient way. And I don't -- you know,
9 I'm not in that conversation, and maybe I'm just hoping,
10 reflecting on kind of the EQR presentation juxtaposed
11 against kind of the accountability, the managed care
12 accountability presentation earlier, or are there ways we
13 could be thinking about actually prioritizing things?

14 EXECUTIVE DIRECTOR MASSEY: So, Mike, can I ask a
15 clarifying question? Were you talking about the managed
16 care accountability project?

17 COMMISSIONER NARDONE: Talking about -- I'm
18 talking about the managed care accountability. Well, I'm
19 talking about it. I mean, I think it's more general too,
20 right? But I do think -- I do think, for instance, in
21 managed care accountability, there are things we could do
22 to hold states more accountable for how they manage managed

1 care, right?

2 I also think there may be ways to make it a more
3 efficient process for states so that it is less cumbersome,
4 less time consuming. CMS does a lot of work to do
5 oversight of contracts that I'm not really sure between the
6 folks in this room is really particularly valuable to
7 quality.

8 I'm just thinking, as we're moving to a system
9 that looks more for outcomes, like, we should be also
10 thinking about are there ways to streamline the activities
11 that go on.

12 EXECUTIVE DIRECTOR MASSEY: Sure.

13 COMMISSIONER NARDONE: I don't have any answers.
14 Like, I don't have any answers. I'm just kind of thinking
15 about just our general approach going forward as to how can
16 we be, you know, more effective, you know, more effective
17 in terms of the processes that we have.

18 And I don't know. Verlon, you were at CMS. Tim.
19 I mean, it seems like we do a lot of stuff that maybe we
20 don't have to do, right?

21 CHAIR JOHNSON: No, I agree, and a lot of times,
22 it's rooted in historical, right?

1 COMMISSIONER NARDONE: Yeah.

2 CHAIR JOHNSON: So we've always done it this way,
3 so we're going to continue doing it this way. But it
4 doesn't really make sense, and so when people start to ask
5 the questions, when we're able to change it, so I agree
6 with you on that.

7 COMMISSIONER NARDONE: It's like, well, it
8 shouldn't always be additive.

9 CHAIR JOHNSON: Exactly.

10 COMMISSIONER NARDONE: It should also be -- there
11 also might be instances where we could be subtractive and
12 still accomplish our goals.

13 EXECUTIVE DIRECTOR MASSEY: So I just want to
14 clarify what the intent of that project is, which is to
15 look at the tools in the toolbox, right, the flexibilities
16 available to the states and the federal government in
17 engaging in the oversight.

18 So I just -- when you said, well, will we think
19 about requirements, we're not making suggestions that
20 states should engage in X, Y, Z type of oversight activity.
21 What we're saying is, is the range of CMPs to corrective
22 action plans, to performance bonuses, et cetera, does that

1 give you what you need, or is there anything that we need
2 to establish in reg or in statute that helps you engage in
3 the plans in a really constructive way to make sure that
4 they're contractually required -- that they're
5 contractually compliant. So I just want to make sure that
6 that was clear.

7 COMMISSIONER McCARTHY: That is totally clear.

8 EXECUTIVE DIRECTOR MASSEY: Great.

9 COMMISSIONER McCARTHY: Let me say it in a way
10 that is not as nice as Mike is saying it, because he's a
11 nicer person than me, I keep being told.

12 I think the issue is -- even in what you just
13 said is like, is there something else we need to add to
14 statute? But what are we going to take away? So, like,
15 and you're at CMS or you're at the state -- I'm going to
16 make it up. You've got 100 staff, but you have to do the
17 work of 110 people. Well, now we just added two things,
18 but we don't get 112 people. And you're never going to get
19 112 people.

20 So like in the EQRO piece, we do great work on
21 that, right? But my point is, like, maybe we shouldn't
22 have EQRO reports at all. Like, we don't look at that,

1 because if nobody's using them and they're not usable,
2 like, why do it?

3 And it's back to what Verlon just said. It's
4 like it's because it's in statute and we always have.
5 Well, maybe there's something better to do. So I guess
6 that's a little bit of like -- my concern is every time we
7 do a recommendation, we're adding another thing on, but
8 we're never saying, oh, and get rid of these five things,
9 these rules, and so don't do this oversight or that type of
10 a thing.

11 And so, you know -- and I'm saying in here in
12 executive session, because it's -- like, it's hard to say
13 that in a public session sometimes of, like, oh yeah, get
14 rid of that thing. Next thing you know, pitchforks come
15 out, and people are coming after you.

16 So I think that's just -- because Mike and I were
17 talking about a little bit last night of, like, these
18 agencies are strapped. And so, you know, when does it --
19 they just ignore us because we're just piling on.

20 COMMISSIONER NARDONE: I can't believe I'm
21 agreeing with John. I've really gotten to a bad place.

22 [Laughter.]

1 COMMISSIONER ALLEN: I think that what we're
2 trying to do is make these more meaningful. And, I mean,
3 isn't that really what we're trying to do is make it worth
4 doing? But to like throw away oversight, but you know what
5 I mean? But to say like these -- I mean, I know that the
6 things that we're creating are not perfect and that they
7 don't -- there's not a lot of capacity for doing the things
8 that we're talking about doing, but they seem worth doing,
9 you know? And I think that sometimes these things come up,
10 and we're like, ah, the states are so strapped. And we
11 have a lot of -- we have a lot of former state Medicaid
12 directors in this room right now. We just happened to, and
13 that comes out a lot with these kinds of conversations,
14 because people are like, oh, states, you know, don't have
15 the capacity, dah, dah, dah, dah.

16 And I appreciate that, but you guys were all
17 amazing state Medicaid directors, which is why you're here
18 in MACPAC. And the federal government does have a role in
19 trying to make sure that what's happening in the states is
20 equitable and good and high quality. So I think these are
21 the tools that we have at our disposal, and we should try
22 to make them as good as possible, as meaningful as

1 possible.

2 And to me, the goal is always raise the capacity
3 for outside researchers to use these sources of data to
4 understand what's happening.

5 I agree that CMS will never have kind of the
6 capacity to do some of this stuff, but the data right now
7 in so many cases is kind of worthless. You know, it's not
8 -- it's inaccessible. It's not analyzable. It's not
9 apples to apples. It's not, you know -- and like -- and so
10 then it's just like nobody's using it. And so sometimes
11 you have to invest a little bit more to make it something
12 that outside researchers can then use to try to understand
13 what's happening and shine the light on things that do need
14 to be, you know, the light need to be shined on.

15 And it's not to get Medicaid directors in
16 trouble. It's not to get states in trouble, but it's to
17 identify places where we should turn our focus so that, you
18 know, consumers can benefit from the increased intention.
19 That's kind of -- you know what I mean?

20 But I get the struggle, but I feel like that's
21 the North Star that I'm always taking into these
22 conversations.

1 CHAIR JOHNSON: Thank you, Heidi.

2 Angelo.

3 COMMISSIONER BROOKS: I want to chime in with
4 Heidi here, because I think our role is to determine how we
5 can make Medicaid better, right?

6 Now, we've never approached it from John's
7 perspective of can we make it better by getting rid of
8 stuff, right? Well, we could make it better by having a
9 single program for dual eligibles, right? Have we ever,
10 you know -- and there are things that could be done that
11 would make it more efficient and that are bold moves, but,
12 you know, it's really -- you know, all of the stories
13 you're hearing in the past week after the CEO of
14 UnitedHealthcare's assassination, you know, it's just that
15 this health care system is broken. What the hell is wrong
16 with America? We are the smartest, best country in the
17 world, and yet we have one of the most screwed up health
18 care systems ever. And we make poor people jump through
19 hoops to get care, and that's a basis of most
20 industrialized nations, the concept that everybody's going
21 to get something, right? And we just seem to try to
22 squeeze poor people out of coverage.

1 So I'm going to get off my soapbox and shut up,
2 but I think we have to keep looking at the program and
3 deciding how it can be made better. And if it needs more
4 resources, then we need to say it needs more resources, as
5 simple as that.

6 COMMISSIONER GIARDINO: I would just like to say
7 I completely support the idea of efficiency. So as we're
8 looking at these things, I would look to the people that
9 are really in the weeds, the former Medicaid directors.
10 What is it that could go? And then we can look at the
11 policies around that.

12 But I certainly do not support not having
13 oversight, and it seems to me it was a meeting or two ago
14 when we were suggesting some kind of standardization around
15 financial reporting. We did suggest getting rid of one
16 thing because the other thing was better. So it's not like
17 we haven't talked about efficiency, but that is not a new
18 concept. That didn't just happen at this meeting. We've
19 always talked about is there a way to systematize or use
20 better.

21 So if we're going to force people to do EQR
22 reports, make the reports valuable. I thought that was

1 efficiency. I thought that was the whole discussion. If
2 you're going to make every state do it, make it that it's
3 useful, you can benchmark, you can compare, you can look.
4 I thought that was efficient. Did I miss something?

5 EXECUTIVE DIRECTOR MASSEY: So we were making an
6 efficiency argument in the memo on EQR. So I will say
7 that. So that actually was kind of the streamlining and
8 efficiency component was something that we thought helped
9 to justify that particular policy option.

10 The other thing that I'll say is the Commission
11 and the staff are definitely open to the elimination of
12 requirements. We didn't move forward, but, I mean, I just
13 want to provide a reminder that we did recommend the
14 elimination of the 1915(c) cost neutrality, right? And
15 that was because we thought that this was a test that
16 states were generally meeting and et cetera, et cetera.

17 Now, this Commission did not move forward with
18 it. That is totally fine, but I just hold that up as an
19 example of we are open to and our research and our analysis
20 does support rethinking requirements if there is --

21 COMMISSIONER GIARDINO: Kate, can I just comment
22 on that? Because we suggested that because we didn't think

1 of the added value, and that's what this Commission should
2 do. So it's not like we're not aware that if you're going
3 to add stuff, you have to take stuff away. So I don't see
4 that we're not paying attention to that.

5 CHAIR JOHNSON: I don't think that that was the
6 intent of the conversation and we weren't paying attention
7 to it. I think it was just a reminder that these are
8 things we should be holding true.

9 COMMISSIONER GIARDINO: But we talk about it. So
10 I'm going to try to do a reminder.

11 CHAIR JOHNSON: I agree 100 percent, yeah.

12 COMMISSIONER GIARDINO: I run a big organization.
13 If you add something, you have to take something away.

14 CHAIR JOHNSON: Yeah.

15 COMMISSIONER GIARDINO: But I would say people
16 should suggest what should go away and what's the evidence
17 that that level of oversight is not necessary.

18 I will always argue strongly that oversight of
19 quality of care that's delivered at the bedside is
20 important. So I'm not willing to say that that's
21 superfluous.

22 CHAIR JOHNSON: Thank you, Angelo. And I think

1 everyone around the table probably agrees with you on that
2 too as well. So I appreciate that.

3 Any other comments?

4 COMMISSIONER NARDONE: I just think -- I mean, I
5 just want to say --

6 CHAIR JOHNSON: You opened a can of worms.

7 COMMISSIONER NARDONE: I'm not for -- yeah,
8 really, I should've just shut up.

9 [Laughter.]

10 COMMISSIONER NARDONE: No, but I guess what I was
11 really more in the context of the managed care work, and I
12 don't know that everyone's -- I don't know that I feel that
13 I know all the areas that are potentially -- you know, that
14 are maybe looked at as things that maybe could go away,
15 right?

16 But I guess what I'm just saying is as we do our
17 work and as we do our thinking about managed care
18 accountability, because I agree, we have to hold managed
19 care companies accountable. But I think that there are
20 processes that maybe we could look at tweaking.

21 Like, for instance, when we talked about the
22 372s, which are the HCBS documents, I think we did have a

1 discussion about as you're moving to more of a quality
2 infrastructure where you're looking at outcomes, maybe some
3 of the things that we're collecting in 372s is not really
4 as valuable. It's not just about the cost neutrality.
5 There's a lot of other stuff in the 372s.

6 So the thing is that I think all I'm just saying
7 -- this is all I'm just saying, is that I would hope that
8 as we're doing the managed care accountability work that
9 we're also looking and thinking about and asking
10 stakeholders about what are the processes that really
11 reinforce quality, and then are there things that are maybe
12 not as useful? That's all I'm saying. It's finding the
13 right balance, because no one is more supportive of a
14 quality Medicaid program.

15 CHAIR JOHNSON: Thanks a lot.

16 So we actually are up against some times.

17 COMMISSIONER NARDONE: I'm sorry.

18 CHAIR JOHNSON: I know we have Dennis and Tricia.
19 Do you want -- can you table your conversation, or do you
20 need to make your comment now?

21 COMMISSIONER BROOKS: I just want to throw out,
22 you know, that life is going to change here over the next

1 four years.

2 And you talk about efficiency. One of the things
3 that we've heard that they're interested in getting rid of
4 is ex parte reviews, and that's efficient, right? So I do
5 think we're going to have to be prepared to, in some way --
6 I just can't imagine that we can go four years doing
7 business as usual with the work plan carved in stone
8 without some impact. And I think we Commissioners have to
9 think about that.

10 CHAIR JOHNSON: Yeah, definitely. Make sure
11 we're pivoting as necessary.

12 And then, Dennis?

13 COMMISSIONER HEAPHY: Yeah. I do think
14 yesterday's conversation was about efficiency but also
15 transparency. And so it was -- to me, I thought it was
16 exciting that we're going to bring increased transparency
17 to actually something that's not transparent at all, data
18 is just not transparent. And that would help the states
19 and the management of MCOs as opposed to creating more work
20 for them. So yeah, I just think it was a great
21 conversation, and yeah, that's all I have to say.

22 CHAIR JOHNSON: Thank you, Dennis. Appreciate

1 it. Appreciate it.

2 All right. So we'll take a break now, and we'll
3 be back at 9:30 for the public session. Thank you, guys.

4 * [Whereupon, at 9:23 a.m., the Executive Session
5 concluded.]

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