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

**LONG-TERM CARE ADVISORY SUBCOMMITTEE**

**MEETING**

**MARCH 4, 2011**

**ORIGINAL**

**NATIONWIDE SCHEDULING**

OFFICES: MISSOURI Springfield Jefferson City Kansas City Columbia Rolla Cape Girardeau ■ KANSAS Overland Park ■ ILLINOIS Springfield

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STATE OF ILLINOIS  
HEALTH FACILITIES AND SERVICES REVIEW BOARD  
525 West Jefferson Street, 2nd Floor  
Springfield, Illinois 62761  
217-782-3516  
  
LONG-TERM CARE ADVISORY SUBCOMMITTEE  
MEETING  
The meeting of the State of Illinois Health Facilities  
and Services Review Board, Long-Term Care Advisory  
Subcommittee was held on March 4, 2011, beginning at the  
hour of 10:00 a.m., at the Wingate by Wyndham, 101 McDonald  
Drive, Joliet, Illinois.

Reported by:  
Karen K. Keim  
CRR, RPR, CSR-IL, CRR-MO  
Midwest Litigation Services  
401 N. Michigan Avenue  
Chicago, IL 60611

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AGENDA

CALL TO ORDER

1. Roll Call
2. Approval of Agenda
3. Approval of February 18, 2011 Minutes
4. Discussion of Draft Rules -- All
5. Unfinished Business
6. Next Meeting
7. Adjournment

1 PRESENT:

- 2 Michael Waxman - Chairman
- 3 Eli Pick - Vice-Chair
- 4 Laurinda Dodgen
- 5 Carolyn Handler
- 6 Greg Will (for Dave Lowitzki)
- 7 Phyllis Mitzen (via telephone)
- 8 Michael Scavotto
- 9 Timothy Phillippe
- 10 Nanya Johnson
- 11 Stephanie Altman
- 12 Kelly Cunningham
- 13 Teri Dederer
- 14 Patricia Odea Evans

15  
16 ALSO PRESENT:

- 17 Frank Urso - HFSRB Legal Counsel
- 18 Courtney Avery - HFSRB Administrator
- 19 Michael Constantino - HFSRB Staff
- 20 Bill Dart - HFSRB Staff
- 21 Claire Berman - HFSRB Staff (via telephone)
- 22 Charles Foley
- 23 Terry Sullivan
- 24 Jason Speaks

1 CHAIRMAN WAXMAN: Let's call the meeting to  
2 order. We need to do roll call, so if you'll identify  
3 yourselves as we go around the room. Bill, start, please.

4 MR. DART: Good morning. Bill Dart, and I'm  
5 with the Department of Public Health.

6 MS. HANDLER: Carolyn Handler.

7 MS. ALTMAN: Stephanie Altman.

8 MS. DEDERER: Teri Dederer.

9 MS. CUNNINGHAM: Kelly Cunningham.

10 MS. EVANS: Pat Odea Evans.

11 MS. JOHNSON: Nanya Johnson.

12 MR. URSO: Frank Urso.

13 CHAIRMAN WAXMAN: Mike Waxman.

14 MR. PICK: Eli Pick.

15 MR. SCAVOTTO: Michael Scavotto.

16 MR. PHILLIPPE: Tim Phillippe.

17 MR. SULLIVAN: Terry Sullivan for Mike Bibo.

18 MR. WILL: Greg Will.

19 MR. FOLEY: Charles Foley.

20 MR. CONSTANTINO: Mike Constantino.

21 CHAIRMAN WAXMAN: Who do we have on the phone?

22 MR. CONSTANTINO: Phyllis Mitzen and Claire

23 Berman. Thank you.

24 CHAIRMAN WAXMAN: Thank you.

1           A couple of housekeeping things. The agenda  
2 doesn't say how long our meeting is, but I will try to keep  
3 it to two o'clock because I think some of us think that's a  
4 magic number. So, we'll do our best to hold to that.

5           I don't know how it is that every day we pick  
6 for meetings we either get snow fall or heavy rain. So, I  
7 think we're going to unpublish the next meeting date so we  
8 don't have to deal with these issues. So, thank you all  
9 for coming through the rain and however else you got here.

10           You all have a copy of the agenda. I need a  
11 motion to approve it.

12           MR. PICK: So moved.

13           MR. PHILLIPPE: Second.

14           CHAIRMAN WAXMAN: All in favor?

15                           (Ayes heard)

16           CHAIRMAN WAXMAN: Any opposed?

17                           (Pause)

18           CHAIRMAN WAXMAN: Motion carries.

19           I need approval of the minutes from February  
20 18th.

21           MR. PICK: So moved.

22           MR. PHILLIPPE: Second.

23           CHAIRMAN WAXMAN: All in favor?

24                           (Ayes heard)

1 CHAIRMAN WAXMAN: Any opposed?

2 (Pause)

3 CHAIRMAN WAXMAN: Motion carries.

4 Before we get into the crux of the meeting,  
5 which is to finish going through the draft, a couple of  
6 issues I think we need to talk about that we probably  
7 didn't think about early on. We are all here, all of the  
8 members are here, because of an appointment, and attendance  
9 at these meetings is critical, because quorum has to be met  
10 in order for us to carry on any business, and we're pretty  
11 clear now, after some checking, that only appointed members  
12 can make up the quorum and only appointed members can vote.  
13 So, I don't know if you want to tackle this issue today,  
14 but at least think about it.

15 Looking for an amendment to the bylaws that  
16 stipulates the number of acceptable misses at a meeting  
17 before we consider looking for a serious conversation about  
18 replacing, that you may just be too busy to be part of this  
19 committee. So, I don't know if you want to talk about that  
20 today or think about it and talk about it at our next  
21 meeting. I'm open, but I think we need to amend our bylaws  
22 to say X number of misses in a twelve-month period  
23 constitutes that you are dismissed from the committee. Is  
24 that the right word?

1 MR. SULLIVAN: Resigned.

2 MS. DEDERER: Asked to resign.

3 CHAIRMAN WAXMAN: If you want to talk about it  
4 now, fine. If you want to think about it and come to the  
5 next meeting with some ideas, that's fine; but, we do have  
6 to get it in the bylaws.

7 MS. DEDERER: Is there any option to change  
8 the bylaws to allow someone to designate someone to attend  
9 in their place and vote?

10 CHAIRMAN WAXMAN: Frank and I just had a  
11 conversation about that. Our feeling, as well as Dale  
12 Galassie, who is the Chairman of the Mother Board, his  
13 opinion -- I have to agree with his opinions that we were  
14 chosen. We were appointed because of the skill sets we  
15 have; and, therefore, we should be the people who are here  
16 making up the quorum and making up the votes. If someone  
17 can't meet that requirement, then we'll pick somebody else,  
18 but no substitutes in either voting or making up the  
19 quorum. And, I have to agree with that.

20 MR. PICK: Do current bylaws address this at  
21 all?

22 CHAIRMAN WAXMAN: The current bylaws state  
23 that substitute sit-in's do not have the ability to vote.

24 MR. PICK: No, I mean attendance.

1                   CHAIRMAN WAXMAN: No. So, that's why I'm  
2 asking for an amendment either today or next meeting.

3                   MS. EVANS: This is Pat Odea Evans.

4                   There has been an increase workload from what  
5 was originally presented to us as what would be entailed,  
6 and there might be a difference between, you know, working  
7 meetings and those requiring a vote. Some -- there's a  
8 difference between, like, work meetings where you're  
9 collaborating and discussing and trying to put together  
10 things, and meetings that are requiring a voting quorum of  
11 members. I would think that there would be a difference  
12 between those two things. I mean, we've kind of combined  
13 it into one big lump, and that creates an increased burden  
14 of having a quorum, I would think, because there's more  
15 dates added and there's more items to vote on. You know,  
16 instead of having each meeting being a voting meeting, we  
17 could set aside certain meetings to be mandatory.

18                   CHAIRMAN WAXMAN: The problem is, you'll never  
19 know what's going to come up at any given meeting as to  
20 whether or not a vote needs to be taken. You just don't  
21 know. And I agree with you that the early meetings, we've  
22 rushed ourselves and added meetings because of the pressure  
23 from legislation that we have to have something done and,  
24 once that is done, we'll back down a little bit. But, I am

1 not feeling comfortable with trying to say this is a voting  
2 meeting, this is a non-voting meeting. But I hear what  
3 you're saying.

4 MS. ALTMAN: Just to pick up on that, as I  
5 think I mentioned in the first meeting, a lot of us are on  
6 a couple of other task forces. One of them is the  
7 Governor's Task Force on Aging, and those bylaws -- we set  
8 an eighty percent meeting attendance requirement, but  
9 there's only four meetings a year; and, if you're on the  
10 executive committees or subcommittees, there's other  
11 meetings for that.

12 I agree that, in the original appointment, it  
13 wasn't clear how many meetings there would be a year, where  
14 the meetings would be held, what the time period would be  
15 for the meetings, so we didn't really have, I think, a  
16 clear picture of what the committee would be. So, I think  
17 until we set that out -- at least it's hard for me to be  
18 able to say that I would be able to make that minimum and  
19 be fair to the rest of the people on the committee.

20 CHAIRMAN WAXMAN: Again, I'm hearing -- I  
21 don't have an opinion, other than to say that if we make an  
22 amendment to the bylaws, it has to be a quantified number,  
23 because we don't know how many meetings we will have.

24 MR. PICK: Should it be a percentage as

1 opposed to a number?

2 CHAIRMAN WAXMAN: Can you do a percentage if  
3 you don't know the number?

4 MR. PICK: No, because when you know the  
5 number, you can calculate what the real number is.

6 MS. HANDLER: If you add meetings, you don't  
7 know --

8 MR. PICK: Right, you don't know how many.  
9 I'll make a motion -- I would propose that we require 75  
10 percent attendance as the minimum requirement.

11 MR. PHILLIPPE: Per year?

12 MR. PICK: Per calendar year.

13 MR. PHILLIPPE: I'll second that.

14 CHAIRMAN WAXMAN: The bylaws state that  
15 adoption or amendments of these bylaws require a  
16 three-fifths majority of the subcommittee, et cetera, et  
17 cetera, and that it be voted upon during the next  
18 subsequent committee meeting. So you can make --

19 MR. PICK: We'll vote on it next time. That's  
20 fine. So to repeat the motion, it's to require 75 percent  
21 attendance at meetings per calendar year in order to meet  
22 the minimum requirements.

23 CHAIRMAN WAXMAN: I'm fine with that.

24 MR. PHILLIPPE: The motion is only having to

1 do with an attendance requirement?

2 MR. PICK: That's correct.

3 CHAIRMAN WAXMAN: Okay. So, we have a motion.

4 Do I have a second?

5 MR. SCAVOTTO: Second.

6 CHAIRMAN WAXMAN: So, the vote will be at the

7 next meeting. Okay.

8 Did you wish to say something?

9 MS. EVANS: No, that's fine.

10 CHAIRMAN WAXMAN: Okay. I heard a noise. I

11 was trying to respond to the noise. I want to be

12 responsive to anybody who wants to speak.

13 MS. BERMAN: Excuse me. I'm still having

14 difficulty hearing.

15 MR. CONSTANTINO: Claire, I think you're going

16 to have that problem because we do not have microphones on

17 the tables.

18 MS. BERMAN: It sounds like there's a lot of

19 static. I don't know if it's near something that's causing

20 that or what the problem is.

21 MR. PHILLIPPE: These are speaker phones, and

22 if people are rustling papers and talking, it creates

23 problems.

24 (Discussion held off the record.)

1 CHAIRMAN WAXMAN: Does anyone else have any  
2 housekeeping issues they want to address?

3 In case you didn't hear me, if we can complete  
4 our tasks today so that we can get something to the Mother  
5 Board for their 21st, 22nd meeting, we may not have to meet  
6 on the 29th. We can back up a little bit and make an April  
7 date, because we've accomplished a lot. So, we can do  
8 that. That's again --

9 MR. PICK: That's a good point.

10 MS. EVANS: It says May 24th, but this  
11 location isn't available anyways, and that would be the  
12 meeting following the March 29th meeting that's on the  
13 schedule. Is May 24th --

14 CHAIRMAN WAXMAN: Again, let's see how far we  
15 get by the two o'clock mark, and we'll decide what we need  
16 do next, because there are some things everybody has raised  
17 issues about that we put in the parking lot that we want to  
18 come back and talk about for future conversations.

19 Any other issues?

20 Mike, do you need to go back and talk about  
21 the changes that are incorporated into the draft from last  
22 meeting, or do you want to start with where we left off?

23 MR. CONSTANTINO: I'd rather start where we  
24 left off, unless somebody has problems with the changes.

1 MR. URSO: Can I just mention -- does  
2 everybody have the new draft now?

3 (Pause)

4 MR. URSO: Just to note for you, if you  
5 haven't seen that, we incorporated the changes from the  
6 last meeting to this draft, just so you know that.

7 MR. SULLIVAN: My compliments again to Mike  
8 and Frank and Claire. Did a great job in terms of  
9 incorporating that, too.

10 MR. URSO: Claire, too.

11 MR. SULLIVAN: Good job, Claire.

12 CHAIRMAN WAXMAN: That's the document dated  
13 2-26, right?

14 MR. SULLIVAN: And it's very readable.

15 MS. DEDERER: But I have a question. Why  
16 don't we just e-mail it? Why did you need to send a  
17 printed copy? Is that just like required for some legal --

18 CHAIRMAN WAXMAN: Some people may not have the  
19 capabilities of downloading all of this and then wanting to  
20 print it and print it in color. I don't have a problem  
21 with what they do.

22 MS. DEDERER: Well, perhaps we could sign up  
23 and tell you who can receive big files, and that would save  
24 you all some money.

1 MR. CONSTANTINO: Well, I think our intent was  
2 to provide you with colored copies and we didn't know how  
3 many had colored printers. That was our intent.

4 MS. DEDERER: And they are beautiful. This is  
5 nice.

6 CHAIRMAN WAXMAN: Let's move on. Mike.

7 MR. CONSTANTINO: I would like to say we were  
8 able to turn this around so fast because of Karen, our  
9 court reporter, and she --

10 (Applause)

11 MR. CONSTANTINO: I believe she worked on it  
12 over the weekend so she was able to get it to us on Monday,  
13 I believe. Hopefully, she'll do that this weekend too.

14 I think we left off with Section B, Planning  
15 Policies.

16 MR. PHILLIPPE: What page is that?

17 MR. SULLIVAN: 26.

18 MS. AVERY: I'm sorry, Mike, what page?

19 MR. CONSTANTINO: Page 26.

20 And this section goes into our Planning Areas  
21 and our bed-need methodology, and we would like to maintain  
22 this until we've had an opportunity to really look at other  
23 alternatives. The staff at the State agency has not had  
24 that opportunity yet to really delve into if we need to

1 change this or improve it in some way. Our position right  
2 now is we would like to maintain this until we had an  
3 opportunity to do that.

4 Any other comments?

5 MR. SULLIVAN: Mr. Chairman, I certainly --  
6 from the discussions that we had in the earlier meetings  
7 and the work groups, I get a sense that most people on this  
8 subcommittee, and in lots of previous discussions, feel  
9 that the bed-need formula, expertly presented by Mike at  
10 the second meeting, really does not reflect the current  
11 marketplace, and that has several problems. I mean, first  
12 of all, the bed-need formula was developed back in the late  
13 70's, when nursing facilities were the only senior services  
14 program around and nursing homes were averaging around 95  
15 percent capacity. Since then, the whole marketplace has  
16 changed. More people are served in home and  
17 community-based services than they are in nursing  
18 facilities.

19 We have had the Older Adults Act in Title 4  
20 come in, the Home Health Act, the Patient Determination  
21 Act. There has been so much change in the marketplace that  
22 is not reflected in this bed-need formula, and even the  
23 business model of nursing homes has changed in that more  
24 than half of our revenue now is short-term, turnaround

1 rehab that was not -- you know, just measuring how many  
2 people are over 65 or over 85 doesn't measure anything  
3 that's relevant to the current marketplace.

4           The danger with the bed-need formula -- and  
5 part of me says if you want to do it, fine, but the danger  
6 is, this allows anyone who wants to put up the old  
7 institutional, multi-bedroom, long corridor type  
8 facilities, they can under the bed-need formula. And I  
9 know that the Act, when it was passed and revised, said  
10 that this committee and the Board should consider the  
11 bed-need formula, and I take that as the intent to say -- I  
12 mean, we've had a bed-need formula for thirty years. I  
13 take that as they should consider whether we should  
14 continue with the bed-need formula. And this current  
15 bed-need formula doesn't measure anything effective.

16           And on top of that -- and Eli's Planning Area  
17 is an ideal example of that, where it's eighty percent  
18 occupancy in all of the nursing homes, but there is, quote,  
19 a bed need in the area. It doesn't make sense. There is  
20 no bed need when we have fifteen thousand empty beds in  
21 long-term care. We need to be talking about what we're  
22 going to do with that and how we can convert it and change  
23 it to meet the future.

24           And, unfortunately -- not unfortunately --

1 this committee has been set up to talk about the future of  
2 nursing facility care for the next 10, 20 years and  
3 establish a program. The bed-need formula is a creature of  
4 the past.

5 CHAIRMAN WAXMAN: Let me respond to you.

6 MR. SULLIVAN: Two more seconds.

7 CHAIRMAN WAXMAN: Okay.

8 MR. SULLIVAN: I understand the advantage of  
9 some kind of bed-need formula for planning purposes, and I  
10 think that's an appropriate task of the Center for  
11 Comprehensive Health, the planning arm of the planning  
12 board; but, any kind of significant revision is going to  
13 recognize the new rehab senior care marketplace and  
14 everything that's involved in that and twenty thousand  
15 assisted living beds and ten thousand -- nearly ten  
16 thousand supported living beds, that's not going to happen  
17 in a few weeks or even a few months. That's going to be  
18 several years down the road.

19 My recommendation -- Mike Bibo's  
20 recommendation would be that, for now, the bed-need formula  
21 is not relevant to discussions of the future of nursing  
22 facilities in Illinois, and I don't think we need it.

23 CHAIRMAN WAXMAN: Well, my response to you is  
24 that I don't think there is anybody in this room who

1 disagrees with you. However, I think that what we're  
2 trying to accomplish is to get enough material to get  
3 something drafted to get to the Mother Board to meet their  
4 March 21st, 22nd deadline. I think that the issue you  
5 raise requires us to do a great deal of further research  
6 and further work, you know, because, if you read the  
7 statute, it says we shall study and investigate and learn  
8 and do all of that kind of stuff, and I know that -- I  
9 think you were even asked to talk about some of the things  
10 you had done in looking at other states. So, I think that  
11 the issue should lie today or rest today and we can make  
12 our next meeting the beginning of studying the bed-need  
13 formula.

14 MR. PHILLIPPE: I agree.

15 MS. DEDERER: I agree.

16 MR. PHILLIPPE: It's too complicated.

17 MS. AVERY: And, actually, that is our plan.

18 We've had great discussion and debate of when we should  
19 bring that in. And, actually, Claire is gathering some  
20 information from other states that address some of the  
21 issues that the subcommittee has raised in the past,  
22 relocation, selling, all of that. So, we are in the  
23 process of gathering information, and as soon as we get  
24 through this step of the process, we'll dedicate the rest

1 of the meetings for that.

2 CHAIRMAN WAXMAN: Can you, and whoever you're  
3 representing, live with that for today?

4 MR. SULLIVAN: I would just as soon make a  
5 motion to say that we drop bed-need formula.

6 MS. DEDERER: Oh, no.

7 MS. AVERY: The Board wouldn't do that.

8 MR. PICK: You don't have a second.

9 MR. SULLIVAN: Yes, I'll live with it.

10 CHAIRMAN WAXMAN: Will you still talk to me  
11 after the meeting?

12 MR. SULLIVAN: I will still. We can hug and  
13 everything.

14 MR. PICK: At least let me address what we do  
15 in the interim period, recognizing the fact that we're not  
16 in a position to address the current bed-need formula, but  
17 we know we need to work on it. We have projects that are  
18 being reviewed, processed, and determinations made based on  
19 this current bed-need formula. So, how do we address the  
20 interim period between today and when we're able to finally  
21 come to some resolutions as to what we're going to do?

22 MS. DEDERER: The same way we're doing it now.

23 MR. PICK: Here's the difficulty I have. A  
24 project has been approved in our Planning Area based on

1 this project, which is appropriate. This is the process  
2 that's in place. But we're all in agreement that the  
3 process needs to be modified.

4 MS. DEDERER: Does the Mother Board have an  
5 option to not use this and deny it and let the project  
6 appeal, to buy us some time?

7 MR. CONSTANTINO: There are a number of  
8 criteria that are used to assess need. This is just one  
9 criteria. There are criteria regarding service access,  
10 demand, service demand, is there a demand for the beds  
11 being proposed, is there unnecessary duplication of  
12 service? That is all within our current rules. In fact,  
13 that thirty-minute market area that you're -- that Mike  
14 Bibo is proposing is, in fact, in our current rules and is  
15 one of our criteria, and that's all in our current rules.  
16 It is up to the Board to look at it as a whole. Even  
17 though we might say there's a Planning Area need based upon  
18 our need calculation -- and that need calculation is for  
19 calendar year 2005, not 2011 -- that's -- sometimes that  
20 gets confused when you say there's an eighty percent  
21 occupancy and there's bed needs there. Our need  
22 calculation is out four or five years, what we consider  
23 planning. So, in our current rules, we do have other  
24 measures in which to assess need currently.

1 CHAIRMAN WAXMAN: Frank, would an application  
2 submitted prior to the date that we make our change be  
3 governed by the rules that are in place on the date of  
4 submission?

5 MR. URSO: It would be governed by the rules  
6 that are law at the time.

7 CHAIRMAN WAXMAN: So, we couldn't affect that  
8 one anyway, is that right?

9 MR. URSO: That's true. We're talking about  
10 proposed rules right now that are not law.

11 CHAIRMAN WAXMAN: So, even if we all agree to  
12 say the new law today is X Y Z, it would not impact the  
13 application that was made prior to today.

14 MR. URSO: No.

15 MS. DEDERER: You could put in the rule that  
16 it will affect applications that are in process, if JCAR  
17 will approve that.

18 MR. DART: It would still take the six months  
19 to get that approved by JCAR until it's finally adopted.

20 MS. DEDERER: The rule could say anything in  
21 process at the point of adoption will be affected by these  
22 rules.

23 MR. URSO: But I think what you're proposing  
24 is a lot more than just crossing off a single line or

1 adding a single line. You, essentially, have to eliminate  
2 all this discussion we hope to have this morning, just  
3 strike that from the rules, but you need to have something  
4 in its place to move forward. So, your simplistic view of  
5 doing that, I don't think that would work.

6 MS. DEDERER: Okay. I have a question. How  
7 is the bed need -- is the bed need actually used for  
8 planning? Does Public Health sit down once a year and go  
9 through and say we need X number of beds in X service area?

10 MR. CONSTANTINO: We're required by statute to  
11 do it every two years.

12 MS. DEDERER: So, what if you determine -- I'm  
13 just using this as an example -- you only need seventy beds  
14 but you have a hundred beds? What happens, anything?

15 MR. CONSTANTINO: Most of the time, someone  
16 would propose a project in that specific planning area to  
17 meet that need.

18 MS. DEDERER: No, no, I'm saying it's the  
19 opposite. What if in your planning you determine that you  
20 need fewer beds than you actually have?

21 MR. CONSTANTINO: Generally what happens is no  
22 one will propose a project in those areas where there is no  
23 calculated bed need.

24 MS. AVERY: We wouldn't go remove thirty beds

1 from the inventory, no. That wouldn't happen.

2 MR. PICK: So, again as a point of  
3 clarification, since we're not able statutorily to change  
4 anything -- I shouldn't say that. We can only recommend  
5 changes. It requires a process to implement those changes.  
6 Are we in a position to recommend to the Mother Board how  
7 to -- interpret is the wrong word -- how to review or how  
8 to take our counsel about the fact that there are excess  
9 beds in the market, even though the current statutory  
10 process determines that there is a bed need?

11 MR. URSO: I understand your question. I  
12 think this committee can recommend anything and everything  
13 that they think is appropriate. That's why you were all  
14 appointed here as the experts in this field. So, I think  
15 you need to know that you have the flexibility to do that,  
16 and you should.

17 CHAIRMAN WAXMAN: So, if I can put words in  
18 your mouth --

19 MR. PICK: Feel free.

20 CHAIRMAN WAXMAN: I think where you're heading  
21 is, we will tackle this at our next meeting; but, from  
22 today forth, you would like the recommendation to the  
23 Mother Board that we're not in favor of the current formula  
24 or the current methodology or the current --

1 MR. PICK: Halfway, you were there. We would  
2 recommend to the Mother Board to take into consideration as  
3 they determine projects for approval that our  
4 recommendation is that there's an excess number of beds in  
5 the current system and that the formula needs to be  
6 updated, and during the process that we're going through to  
7 review and update and modify its formula for calculation,  
8 that that needs to be taken into consideration in their  
9 review of projects.

10 CHAIRMAN WAXMAN: Mike, does that bother you  
11 in any way, that we leave the words alone today but  
12 recommend that we are very concerned about the formula as  
13 it stands?

14 MR. CONSTANTINO: No. Like Frank said, I  
15 believe this subcommittee can recommend anything to this  
16 Board concerning long-term care. I fully believe that.

17 MS. CUNNINGHAM: Yes, I remember -- and this  
18 may be several years in the past, where I thought the  
19 predecessor --

20 MS. MITZEN: This is Phyllis, and it would be  
21 best -- it would be really helpful to me if Mike would  
22 repeat the recommendation so I could be clear on this  
23 conversation.

24 MR. CONSTANTINO: We're still discussing it,

1 Phyllis. When we get to that point, I'll repeat it for  
2 you.

3 MS. MITZEN: Great. Thank you.

4 MS. CUNNINGHAM: I'll cut to the chase. Does  
5 this committee have the ability to make a recommendation to  
6 the Board to put a moratorium on the approval of new  
7 projects while this issue is being discussed?

8 MR. URSO: I think the subcommittee -- if you  
9 want me to answer?

10 CHAIRMAN WAXMAN: I'm looking at you.

11 MR. URSO: I think the subcommittee could make  
12 that a recommendation, but I'm going to tell you, in  
13 reality, it's going to take some research, some legal  
14 analysis in terms of what occurs, what's the fall-out,  
15 what's the problems, what's the benefits. That will all  
16 have to be taken into consideration, and I don't see that  
17 happening overnight. But I think that you have the ability  
18 to put that on the table.

19 MR. SCAVOTTO: Could I say something?

20 CHAIRMAN WAXMAN: Sure.

21 MR. SCAVOTTO: One of the reasons I  
22 volunteered to serve on this committee was we get a chance  
23 to study the issues, and I'm a big critic of this bed-need  
24 formula. I'm also a big critic of dropping moratorium on

1 everything now. I'm in much more favor of taking the time,  
2 as much time as it takes, for us to do a thorough job and  
3 sending a recommendation that's got the pros and the cons  
4 that we can all agree on. And I think it's shame-on-us if  
5 we don't have the guts to do our homework.

6 MS. DEDERER: I agree.

7 MR. SCAVOTTO: And I want to stick with this.

8 So, as far as the moratorium --

9 CHAIRMAN WAXMAN: Mike, are you okay with what  
10 ultimately I said orally?

11 MR. SCAVOTTO: Probably not.

12 CHAIRMAN WAXMAN: That a recommendation today  
13 that we want the study?

14 MR. SCAVOTTO: Well, I think study by whom?  
15 Study by us?

16 CHAIRMAN WAXMAN: Right. But we want the  
17 Mother Board to be aware that, as this draft comes to them,  
18 we're not satisfied with the way it is currently written.

19 MR. SCAVOTTO: Okay. That's great. Now, I  
20 want to ask you a follow-up question to that. What are we  
21 satisfied with? We don't know?

22 CHAIRMAN WAXMAN: We're satisfied with the  
23 agreement --

24 MR. SCAVOTTO: We can say we're not satisfied

1 with something but what are we satisfied with? We don't  
2 know?

3 CHAIRMAN WAXMAN: That the committee is in  
4 agreement that we need to do further study --

5 MR. PICK: If I can interject, I think the key  
6 factor is vacancies, and I think that's what we want the  
7 Mother Board to take into consideration when reviewing the  
8 project, in addition to bed formula and the existing  
9 process, that our -- what we're -- what I'm suggesting that  
10 we recommend is that vacancy rates in a Planning Area need  
11 to be taken into account when determining whether a project  
12 should be approved.

13 MS. EVANS: There's issues, though, with how  
14 some places have started to go to single room occupancy and  
15 so they may have unlicensed beds that they're not actually  
16 using and it would appear that there are a lot of vacancies  
17 when, in fact, if they are going to more of a single  
18 occupancy formula for their own business purposes, this  
19 isn't reflected, and so we have big gaps in this  
20 information right now, because there are facilities that  
21 have on their own started to convert their spaces to --  
22 from two rooms to one room or from three beds to one bed in  
23 a room, and we do not have really that data to look at.

24 MS. DEDERER: You don't have that data? I

1 thought Public Health knew how many beds were really  
2 available, how many licensed but then how many are actually  
3 set up.

4 MS. EVANS: But that's not reflected in the  
5 formula.

6 MR. CONSTANTINO: That's correct.

7 MS. ALTMAN: But you have that data.

8 MR. CONSTANTINO: We have staff beds, peak  
9 beds.

10 MR. PHILLIPPE: First, I would rather not get  
11 into this. I can give you a list of other things I would  
12 like to talk about on vacancy issues. I think we don't  
13 know where we're going, but we know we have to go somewhere  
14 and it's going to take some time to get to.

15 So the only thing I would suggest is, more  
16 practical to consider -- trying to move faster -- is that  
17 the field of skilled nursing is changing rapidly right now  
18 because of healthcare reform, primarily, and insurance  
19 companies, all the things you guys know. Dramatic change.  
20 I know people are looking to build new buildings and want  
21 to take advantage of that quite quickly. And, I would  
22 think that if the word is out and it's public that we have  
23 concerns about bed needs and we're going to look at it  
24 further, there might be some rush for people to get that

1 project in there before anything happens. That's just -- I  
2 think that's human nature. "I hear this is happening. I  
3 better get mine in now. It's official. I can use this  
4 loop hole to get mine in." I think it's going to take more  
5 time, but I think we need to move expeditiously.

6 CHAIRMAN WAXMAN: What I am suggesting is that  
7 this total agreement that we need to rewrite or rethink the  
8 bed-need formula, I would like -- I think I would like for  
9 this committee then to make a proposal or recommendation to  
10 the Mother Board, as of today, that we are going to do that  
11 starting at our next meeting and to make them aware, but we  
12 will pass on the words that are written today just to keep  
13 this -- keep today's process moving.

14 So, if there's agreement to that -- Frank?

15 MR. URSO: I just want to say that we're going  
16 to be providing to the full Board transcripts of these  
17 proceedings, so they're going to see what has been  
18 discussed, as well as what your firm recommendations are.  
19 So, we want to make sure that communication line is open.

20 The second thing I want to mention is --  
21 perhaps just elaborate. I know that Claire has been  
22 looking at all of the CON states and comparisons, which is  
23 a big task, and I know she is very close to coming up with  
24 the data that you folks have requested, but it's been a

1 difficult process because, you know, a lot of times she's  
2 working trying to cut and paste to get a chart together or  
3 something, and you know how all of that looks when you're  
4 looking at other states and pdf's. I don't know anything  
5 about that. So it's important that you see this material,  
6 what other states are doing, because it's very interesting,  
7 and I just got a glimpse of it with my conversations with  
8 Claire. We should have that available for our next meeting  
9 after the Board meeting. That's what our plan is and  
10 that's what Courtney was talking about, and I think that's  
11 important data for you to look at. Not that we have to be  
12 like New York or Texas or any other big CON states, but  
13 it's important to see how they're dealing with this kind of  
14 an issue, and I think you'd be shortchanging yourself if  
15 you didn't have that information to look at. And, it's not  
16 that we didn't want to get it to you. We wanted to make  
17 sure that we were as comprehensive as possible and detailed  
18 as possible so we can try to answer your questions, because  
19 it's not an easy feat, as Terry is shaking his head, to go  
20 to these other states and figure out what they're doing.

21 MS. DEDERER: Do you have the staff manpower  
22 to have parallel data with the CON data for each state, to  
23 show how many actual nursing facility beds they have and/or  
24 how many beds they have instead? Because, like New York

1 might be a big CON state, but I don't think they have all  
2 of that many nursing facility beds.

3 MR. SULLIVAN: Oh, yes, they do.

4 MR. PICK: Oh, yes.

5 MR. SULLIVAN: They're number one.

6 MS. DEDERER: Well, I thought we were like  
7 48th in terms --

8 MR. PICK: That's reimbursement.

9 MS. DEDERER: No, but I thought we also had,  
10 like, the most percentage of nursing facility beds or  
11 almost the most percentage of nursing facility beds.

12 CHAIRMAN WAXMAN: I would like to move forward  
13 so we can get something accomplished today. Ultimately,  
14 I -- do you want to take a shot at making a recommendation?

15 MR. PICK: Actually, I think Frank captured  
16 it. As long as the transcripts are being shared with the  
17 full Board and our conversation about the issue is going to  
18 move forward, I don't think we need to do anything else.

19 MS. AVERY: And the minutes are posted on our  
20 web site. So --

21 MR. PICK: If someone disagrees but,  
22 originally, I was suggesting that we make a recommendation,  
23 but I don't think we need to.

24 MR. PHILLIPPE: Some of these people are very

1 busy and these transcripts are very long and they may not  
2 actually get that all read before the meeting. I'm not  
3 saying they wouldn't like to try.

4 MS. AVERY: And we'll pull out information and  
5 present it to the Board also, as a staff.

6 MR. PICK: So, if I may then, we would  
7 recommend to the Board, to the full Board, that the issue  
8 of bed-need formula and determination of projects being  
9 approved, that consideration be taken into account that we  
10 are focusing on reviewing bed-need formula in determination  
11 of access for services as our next topic, and that there's  
12 concern among the group that the current formula is not --  
13 does not conform -- no, does not fully address all the  
14 dynamics that are involved in determining whether there are  
15 service needs still unmet in a market area.

16 MR. PHILLIPPE: I second that.

17 CHAIRMAN WAXMAN: Chuck?

18 MR. FOLEY: For the record, first of all, I  
19 want to mention that, as a consultant, I am not involved in  
20 the nursing home area that Mr. Pick is referring to. So,  
21 I'm not involved in it at all. Having said that, I respect  
22 where he is coming from. And, also, Mr. Sullivan, this bed  
23 need has been a very, very serious issue with the Planning  
24 Board. Several times in the past, projects have, in fact,

1 been turned down. Our project has been turned down in  
2 areas where there is a bed need because of the occupancy of  
3 existing facilities. However, the Planning Board, I  
4 believe, also recognizes the fact that just because there  
5 is empty beds does not mean that there is a lot of empty  
6 beds. It goes back to what was said here earlier. A lot  
7 of these beds are not even, quote, accounted for. So, we  
8 have to -- I believe this subcommittee has to look at this  
9 in such a way that, when they revise these rules, that they  
10 look at the occupancy of the existing facilities. I don't  
11 have a problem with that. But to turn down a project  
12 arbitrarily, just because there's a lot of excess beds, I  
13 do have a problem with that; because, as a planning agency,  
14 one agency is going to say there is a need for beds, but  
15 yet on the other side of our mouth, we're saying there  
16 isn't a need because of the empty beds. We have to look at  
17 this. It is a very serious issue. We have to find that  
18 happy medium somewhere, and I'm hoping that this  
19 subcommittee could, in fact, would, in fact, do that.

20 CHAIRMAN WAXMAN: Well, I think you're just  
21 supporting everything that's been said, that we -- this  
22 issue is very complicated, and it's going to take us some  
23 time and, with Staff's help, we're going to do that.

24 We have a motion or recommendation and a

1 second, so can I have a vote on it?

2 MR. URSO: We need to repeat it for Phyllis.

3 (Court Reporter read back.)

4 CHAIRMAN WAXMAN: Okay. Now, Phyllis, are you  
5 okay?

6 MS. MITZEN: I'm good.

7 CHAIRMAN WAXMAN: Can I have a vote? All in  
8 favor?

9 (Ayes heard)

10 CHAIRMAN WAXMAN: Any opposed to recommending  
11 to the Mother Board?

12 MR. PHILLIPPE: I'm going to oppose. I just  
13 think it's an unnecessary step.

14 THE COURT: Okay. That being done then --

15 MR. URSO: So, did it pass?

16 CHAIRMAN WAXMAN: Yes, motion is passed or the  
17 recommendation has passed that, I think, Frank and Courtney  
18 will carry this to the Mother Board to put them on notice  
19 that this is a major concern for the subcommittee, and I  
20 assure -- I want to assure all of you that when we come  
21 back to this issue, which will be our next meeting, you all  
22 will have ample time to speak your mind and share your  
23 thoughts.

24 MR. URSO: I just want to respond to

1 Mr. Foley.

2 MS. MITZEN: This is Phyllis again.

3 Are we putting any time frame around the work  
4 that we're assigning to ourself?

5 CHAIRMAN WAXMAN: We will begin at our next  
6 meeting to look at this issue.

7 MS. MITZEN: Okay.

8 MR. URSO: I just want to respond and say that  
9 your comment about the Board being arbitrary I don't  
10 believe is accurate and correct.

11 And secondly, I just want to inform everybody  
12 that many times the Board gathers its information through  
13 public hearings in terms of what the community thinks, what  
14 the public thinks. So -- and they are provided with public  
15 hearing transcripts, as well as the State Agency Report.  
16 So, there's a lot of things that go into their tool bag, so  
17 to speak, when they make a decision. So, I just wanted to  
18 clarify that for everybody.

19 In addition, we're going to be giving them  
20 these transcripts. So, a lot of information is -- Banker  
21 Boxes of information are provided to the Board members  
22 before they ever hit the stage, so to speak. So, I just  
23 wanted to alert everybody to that fact.

24 CHAIRMAN WAXMAN: With everybody's permission,

1 Mike, can we move on to the next section, and will you  
2 identify that for us, please?

3 MR. CONSTANTINO: Sure. Subpart C, General  
4 Information, page 32.

5 CHAIRMAN WAXMAN: Okay.

6 MR. CONSTANTINO: We begin on the background  
7 of the applicants.

8 MS. DEDERER: Except it's all crossed out.

9 MR. CONSTANTINO: Right. Does anybody have a  
10 problem with the first paragraph on page 32 under Subpart  
11 C?

12 (Pause)

13 CHAIRMAN WAXMAN: Hearing none, move on.

14 MR. CONSTANTINO: Okay. Page 34. Our current  
15 rules ask for the purpose of the project. Anyone have a  
16 problem with that?

17 (Pause)

18 MR. SULLIVAN: Just a quick comment is that  
19 one of the issues that has come up is that, again, the  
20 application process been designed for hospitals as well as  
21 nursing homes. The purpose of the project is an excellent  
22 provision, and I think one of the recommendations is that  
23 we hone in on the key issues in an application, the  
24 statutory ones, namely, purpose of project, background of

1 applicant, financial feasibility, and we will probably  
2 raise questions as we go through, do you really need this  
3 data for long-term care.

4 CHAIRMAN WAXMAN: I think at the last meeting,  
5 this group discussed the fact that we were going to propose  
6 a new application. So, all of that can be worked out at  
7 that time.

8 MR. SULLIVAN: Right. I'm just saying,  
9 purpose of project is a good one. We are affirming that  
10 one.

11 CHAIRMAN WAXMAN: So, you're setting us up for  
12 the future.

13 MR. CONSTANTINO: Any questions on page 35?

14 (Pause)

15 MR. CONSTANTINO: Number 6 on page 36.

16 MR. SULLIVAN: Can I just say that it is my  
17 impression that this section has always been an exercise in  
18 creative writing more than providing any adequate  
19 information or significant information about whether  
20 alternatives were ever seriously considered.

21 MS. DEDERER: And you would propose instead  
22 what?

23 MR. SULLIVAN: I would propose that this  
24 particular section doesn't offer anything to determining

1 the value of a project.

2 MS. ALTMAN: This is number 6?

3 MR. CONSTANTINO: I was talking about  
4 paragraph 6, labeled 6 at the top of the page.

5 MR. SULLIVAN: No, no, no. I thought you were  
6 talking about Section 320.

7 CHAIRMAN WAXMAN: We haven't gotten there yet.

8 MR. SULLIVAN: I'm sorry. He said page 36.  
9 That's what hit me on 36.

10 MR. CONSTANTINO: Any questions on that item 6  
11 at the top of the page?

12 (Pause)

13 MR. CONSTANTINO: Now we're at alternatives.

14 MR. SULLIVAN: And everything I just said I  
15 still say.

16 MS. EVANS: I kind of see your point. It's  
17 like you're arguing against your own project or whatever it  
18 is you're proposing. It's something that a professor would  
19 require in a term paper.

20 MR. SCAVOTTO: Why is it there in the first  
21 place? Does anyone know? Does it provide you any useful  
22 information?

23 MR. CONSTANTINO: Because we've done it in the  
24 past, I think, is mainly the reason it's there now.

1 MS. AVERY: And it -- speaking as my other hat  
2 as an ex-board member, it lets us see that the applicant  
3 has actually done some other -- researched some other ideas  
4 to propose -- other than propose this project, if that  
5 makes sense.

6 MR. SCAVOTTO: Well, it could.

7 MS. AVERY: The argument still is that your  
8 project is needed, but was there other alternatives that  
9 was explored in the application process.

10 MR. SCAVOTTO: Let me give you an example.

11 MS. EVANS: And then what does the Board do  
12 with that information?

13 MS. AVERY: Read it and take it into  
14 consideration and make sure that the applicant has really  
15 looked at alternatives. Rather than spending millions of  
16 dollars, have they looked at other alternatives other than  
17 what they're proposing that will be less costly.

18 MS. DODGEN: Basically, have you done your  
19 homework? Do you know what else is out there? That's the  
20 way I look at it, as have you done your homework, what's  
21 out there, do you know what's out there, how can you  
22 possibly collaborate with others, or whatever the issue is.  
23 That's what I feel like.

24 MR. SCAVOTTO: Let me come back to this again.

1 I've got two clients right now that are going through on  
2 replacement facilities and, if they don't replace them,  
3 they're going to get shut down. It's a regulatory issue.  
4 They're older facilities. They need to be replaced. Let's  
5 apply then for replacement. I think that probably what you  
6 need to know as the Board is is it cheaper to replace or is  
7 it cheaper to renovate? That makes sense.

8 But now what I read here is, maybe I should be  
9 talking to Tim about helping me with this project and maybe  
10 I should be trying to come up with some other service mix  
11 or venture with some other party, which, to me, is -- it  
12 tends to be on the academic side of things, not real  
13 practical in the sense of doing business.

14 MS. AVERY: And I think it can go both ways,  
15 because, if you read the language -- "the most effective or  
16 least costly alternative for meeting the healthcare needs".  
17 So, it can go both ways. Maybe you have collaborated with  
18 Tim or tried to figure out with Tim if we can do some kind  
19 of combined project and it just wouldn't work because of  
20 the different populations you serve.

21 MR. SCAVOTTO: Maybe these clients have been  
22 in the business for 50 or 60 years and this is what they do  
23 and they want to stick with it and they don't want to talk  
24 about collaborating.

1 MS. AVERY: And that's the choice of the  
2 applicant.

3 CHAIRMAN WAXMAN: Chuck?

4 MR. FOLEY: Well, I think what we're looking  
5 at is -- for instance, Mike, on item number 2, pursuing a  
6 joint venture, obviously, I think that was probably meant  
7 for hospital projects. I don't think we find nursing homes  
8 pursuing any joint ventureship. Is that right, Mr. Pick?

9 MR. PICK: Not yet.

10 MR. FOLEY: So, obviously, that's something  
11 this committee could consider taking out, if at all  
12 possible. The rest --

13 MS. MITZEN: Excuse me. May I add something?  
14 If you read A, the listing are examples. All it asks for  
15 is a description of what's been addressed in the way of  
16 alternative approaches to solving your problem. These are  
17 examples. Number 5 is other considerations. So, in the  
18 case that was just cited, you could just put a statement  
19 that if we don't do this, then we'll be closed down.

20 MR. SCAVOTTO: It makes you wonder why you  
21 need it, though.

22 MR. CONSTANTINO: The intent, I think, Mike,  
23 was for the applicant to provide us with a true cost  
24 benefit, and we had so much criticism for that that we

1 backed off of it, a true cost benefit. We heard so much  
2 criticism about how much it would cost and how much  
3 manpower it would take to provide us with a true cost  
4 benefit of the proposed project. That was the intent, I  
5 think, behind this section here originally. And it's  
6 evolved.

7 MR. SCAVOTTO: To me, that makes a lot more  
8 sense.

9 MR. CONSTANTINO: Right, but we had so much  
10 criticism from others, from providers, that we backed off  
11 of it. We didn't insist that they provide it to us, but  
12 that, I believe, was the original intent behind this  
13 section.

14 MS. ALTMAN: I thought that the point of the  
15 Board looking at this is to look at an environmental scan  
16 and find out just not your two alternatives which you  
17 propose, which is are we modernizing this facility or are  
18 we tearing it down and starting again, but is there still a  
19 need for that facility either way or are there other  
20 alternatives.

21 I agree that the person proposing probably  
22 isn't going to give the best argument for getting rid of it  
23 altogether. However, I think it's still important for the  
24 Board to ask the facility to provide justification for

1 that, and maybe somebody else would be making a better  
2 argument against it, but you still, I think, have to  
3 justify your need in the first place, if you're coming  
4 forward to modernize or rebuild.

5 MR. URSO: Some of the cornerstones for the  
6 Board -- you heard these terms thrown out -- access to  
7 care, non-duplication of services, cost containment. I  
8 think those have a role to play in this section also. And  
9 so when the Board looks at what's its purpose, I think it  
10 wants to be able to say, you know, this particular  
11 applicant has taken the time to factor in some other types  
12 of options here and they've decided this is the best way to  
13 go. And -- but I think it dovetails back into what's the  
14 purpose of this Board, and so, that's what I go back to.

15 MS. ALTMAN: I'll give you another example.  
16 I'm also on the Board -- involved in the process which  
17 determines whether federally-qualified health centers in  
18 Illinois get grants to modernize, do construction, and et  
19 cetera, and we have to look at 30 applications and rate  
20 them and all of that kind of thing. And, they, themselves,  
21 are providing their best case, obviously, to either  
22 modernize, add dental chairs, change their whole building,  
23 build a new one, tear down, but they also have this whole  
24 justification section, like this, on kind of what's their

1 reason for existence. Again, in the first place, should  
2 they be here, should they be merging with another one next  
3 to them. I mean, they have to show that before they're  
4 considered to have a high rating on a grant. So --

5 MR. URSO: I think justification is a good  
6 word. That's part of what this is.

7 MR. PHILLIPPE: I'm okay with this because,  
8 from a provider perspective, we tend to think of market  
9 issues, market-driven competition. But really, this is a  
10 function of public policy, and it's useful to the Board in  
11 understanding the issue. So, it makes sense to me.

12 CHAIRMAN WAXMAN: So, can I see by -- I can't  
13 because -- is there anyone opposed to leaving this section  
14 as is?

15 (Pause)

16 CHAIRMAN WAXMAN: So, not hearing anything, if  
17 I said it right, then we are all in favor of leaving it as  
18 is.

19 And, Mike, please continue. Did I say that  
20 right?

21 MR. CONSTANTINO: Okay. We're on page 37. We  
22 begin the review criteria for long-term care facilities,  
23 and the first is a table in which we tell you what you need  
24 to address if you're establishing a service, expansion,

1 CCRC, defined population, and modernization.

2 Anyone have any problems with the table as  
3 presented?

4 MR. SULLIVAN: I think we go through the other  
5 criteria and modify the table based on further discussion.

6 MR. CONSTANTINO: Okay.

7 Page 39, Background of Applicant.

8 Pretty much A has been taken out of the  
9 statute, and then we give you examples under B, and then we  
10 ask you to submit under C information regarding the  
11 facilities currently owned or operated, any adverse actions  
12 taken against any owner or operator by the applicant, and  
13 authorization and so forth, access to any documents  
14 necessary to verify the information.

15 MS. AVERY: Mike, on page 40, under C, should  
16 that be 1, 2, 3?

17 MR. CONSTANTINO: Yes.

18 MS. AVERY: Sorry. We'll get that corrected.

19 CHAIRMAN WAXMAN: Thanks, Courtney.

20 MR. CONSTANTINO: Were we going to address  
21 anything with adverse actions, Frank, because of the new  
22 legislation? We looked at it this week, double A -- I'm  
23 sorry, type A, not double A, type double A.

24 MR. URSO: We changed the definition.

1 MR. CONSTANTINO: Okay.

2 MR. URSO: So, it's included in there.

3 MR. CONSTANTINO: Okay. Do we need anything  
4 here? We've got adverse action. Do we need anything  
5 there?

6 MR. URSO: I don't believe so, unless Claire  
7 has some other thoughts on this. I can't think of anything  
8 right now.

9 MR. CONSTANTINO: All right.

10 MR. PICK: Can I ask a question on this? If  
11 the applicant -- let me see how to phrase this question.  
12 So, the applicant's background is there, has never been any  
13 adverse action, but let's say the applicant develops the  
14 building and leases it away to a third party who may have  
15 had adverse actions in their past. We have no way to  
16 really address that, because we're only evaluating who is  
17 applying for the CON.

18 MR. CONSTANTINO: Right. We have applicant  
19 and co-applicants and, generally speaking, if an entity  
20 controls the building, he would be a co-applicant. So if  
21 you have a management company in there, they would have to  
22 be a co-applicant.

23 MR. PICK: But that's only at this stage.

24 MR. CONSTANTINO: That's only at this stage,

1 right.

2 MR. PICK: So, I guess the loophole I'm  
3 thinking about is the applicant, for lack of a better term,  
4 the dark horse that's coming in and, you know, processing  
5 the whole project, then develops the project and then  
6 immediately turns it over to another entity to operate the  
7 building. It subverts, really, the intent here.

8 MR. CONSTANTINO: We see that all the time.  
9 They -- LLC's are being set up.

10 MR. PICK: That's why I raise the question.  
11 So, we do still -- the Planning Board still has governance  
12 for the first 24 months, correct, because you're --

13 MR. CONSTANTINO: Until the project is  
14 complete, yes.

15 MR. PICK: So, once the building is done and  
16 it starts operating --

17 MR. CONSTANTINO: Until we're notified that  
18 the project is complete.

19 MR. PICK: What's defined as "complete"?

20 MR. CONSTANTINO: Final cost report has been  
21 submitted and a license.

22 MR. PICK: I guess what I'm raising for  
23 consideration is whether we look at methodology that allows  
24 us to carry the intent of -- we're trying to make sure that

1 operators who have poor performance histories are not  
2 operating buildings.

3 MS. DEDERER: Can't you prohibit in the rules  
4 anybody else from taking over without going through an  
5 approval process?

6 MR. PICK: Well, that's not the current  
7 process.

8 MS. DEDERER: I know that, but can't you add  
9 it to this project?

10 MR. SULLIVAN: It does become a matter of the  
11 Illinois Department of Public Health enforcement division  
12 and licensure and relicensure and stuff like that, and they  
13 look at background of applicant in terms of the licensure.

14 MR. CONSTANTINO: One thing we have done,  
15 we've asked for the members of the LLC now, we've asked  
16 them to be identified, anyone owning more than five  
17 percent, on the application.

18 MR. PICK: Right, and I saw that. So that's  
19 not really where my mind is going. Where I'm going is,  
20 they get the process completed and then --

21 MR. URSO: After the front person.

22 MR. PICK: Right, and then it gets handed off  
23 once that stage ends. But, as Terry says -- Terry is  
24 raising that really it's the licensure division of the

1 Department that is responsible for that element and,  
2 perhaps what we can do again is, as a recommendation -- not  
3 necessarily under the purview of the Board, but that we  
4 would recommend that this section of adverse action be  
5 taken into consideration when the Department is reviewing  
6 applicants for licensure.

7 MR. SULLIVAN: That is part of Senate Bill  
8 326.

9 MR. URSO: And I can tell you that we work  
10 very closely with the Department of Public Health and the  
11 licensure division, and the background of applicant has  
12 been a real issue that we have sought to tighten up and  
13 work in unison on. But, I understand, if you're saying  
14 during the permit -- while a permit is still open, maybe  
15 what should be considered, if any changes are made to  
16 the -- any of the applicants or co-applicants, the Board  
17 needs to be notified and then the Board can then decide,  
18 does this need to be delved into a little more. Is that  
19 what I hear you saying?

20 MR. PICK: Yes, yes.

21 MR. CONSTANTINO: If they add an applicant or  
22 co-applicant, they've modified the project. So we'd have  
23 to do a new public notice and ask for another public  
24 hearing.

1 MR. URSO: But I think we need to take a look  
2 at it, but maybe we need to take a look at it from the  
3 aspect of making sure the Board is made aware of any  
4 changes. I know what you're talking about, but maybe we  
5 need to take a look and see if it's tight enough.

6 MR. CONSTANTINO: Sure.

7 MR. PICK: Consistent with that thinking, if  
8 somebody made a change and didn't inform the Board, how  
9 would we find out?

10 MR. URSO: Right.

11 MR. CONSTANTINO: While the permit is open,  
12 they are required to, but we don't know. Yeah, I can see  
13 that.

14 MR. URSO: We just maybe need to take a look  
15 at that language. That would be at 1130, right.

16 MR. CONSTANTINO: 1130 under "Modification".

17 MR. URSO: Those are the Board's procedures,  
18 and we can take a look at it, and it's in the record.

19 MR. CONSTANTINO: One other thing, we do do a  
20 background check on members of the LLC's. We do look at  
21 the sex offender databases, we do that, and any other  
22 databases we can get access to. That's been a new  
23 procedure we put in place here in the last year. So, we do  
24 do that.

1 MR. URSO: There's really been a concern about  
2 making sure we take a look from both the Department as well  
3 as the Board's perspective of background.

4 MR. PICK: Good.

5 CHAIRMAN WAXMAN: For those of you who weren't  
6 here last meeting or may have forgotten about it, at last  
7 meeting we discussed in the section of expanding beds that  
8 people who had adverse action would be examined in that  
9 process also. So, that's sitting out there for us to come  
10 back and address. So, we are very concerned about  
11 people --

12 MR. CONSTANTINO: Yes, Nanya made that  
13 suggestion at the last meeting.

14 CHAIRMAN WAXMAN: Right, and we're going to  
15 follow up. I think there's a great consensus that it needs  
16 to be looked at.

17 MS. HANDLER: We had also talked a couple  
18 meetings ago about having a feedback process with the Board  
19 subsequent to the project completion so that somebody is  
20 coming back and saying, you know, "We projected this need,  
21 this is how we're doing" and, you know, if there is any  
22 change in ownership, it could come -- because if the  
23 project is laid out a certain way and 24 months or 36  
24 months down the road they're circling back to report back

1 to the Board on how their project is doing, given what  
2 they've projected, that could be a way to kind of trigger  
3 or escalate awareness to that type of activity as well or  
4 change in ownership.

5 MR. PICK: Well, not really change in  
6 ownership. The ownership may be the same but the  
7 operation --

8 MS. HANDLER: Right, or the management  
9 company.

10 MR. CONSTANTINO: So what you're asking is  
11 something in the rules that would require a reporting  
12 mechanism back to the Board.

13 MS. HANDLER: And we did discuss that in the  
14 very first meeting. The Board's approving a project, but  
15 they never hear subsequent to that project's completion  
16 really how did it fair, given what was expected to happen.

17 MR. URSO: So, it's like a look back  
18 provision.

19 MR. CONSTANTINO: 90 percent utilization and  
20 back if a change in the applicant happens to take place.

21 MS. ALTMAN: I think in the first meeting that  
22 was one of the issues that was raised.

23 CHAIRMAN WAXMAN: Are we in agreement to move  
24 on?

1 MR. CONSTANTINO: The next section, Planning  
2 Area Need.

3 MR. PHILLIPPE: We're stipulating that for  
4 now -- right?

5 CHAIRMAN WAXMAN: Yes. Moving on.

6 MR. URSO: Does this take us to the end, Mike?

7 MR. CONSTANTINO: Do we want to talk about the  
8 next section, Variance to Computed Bed Need, Continuum of  
9 Care on page 47?

10 MR. PICK: Yes.

11 MR. CONSTANTINO: On page 47.

12 MR. URSO: So everything in between there the  
13 committee is okay with?

14 MS. ALTMAN: We're setting that aside.

15 CHAIRMAN WAXMAN: We are asking you to pass on  
16 our concern with it.

17 MR. CONSTANTINO: Page 47, Variance to  
18 Computed Bed Need, and then it goes on over to the next  
19 page. Currently, we have two, CCRC variance and the  
20 defined population variance.

21 MS. DEDERER: Isn't that part of bed need?

22 MR. PHILLIPPE: We should consider that part  
23 of the bed-need section, don't you think?

24 MS. DEDERER: I would.

1 MR. PHILLIPPE: And put it off until later?

2 MR. SULLIVAN: Well, except I think we're  
3 pretty committed to the concept of the variances, no  
4 matter -- whether we have bed need or not, the variances, I  
5 think, are a key section in that this is where we are  
6 identifying the kind of projects we want to see in the  
7 future.

8 MS. DEDERER: And there might even be more.

9 MR. SULLIVAN: CCRC being one of them and  
10 defined population being another, although at the moment,  
11 it is -- the defined population is strictly for religious,  
12 fraternal, or ethnic groups. I think the committee should  
13 seriously think about whether we want to have -- encourage  
14 clinical specialties as a defined population, that this  
15 facility will specialize in such and such. And the Board  
16 has been doing similar stuff with Alzheimer's, specialized  
17 Alzheimer's facilities, and I guess I'm heading in that  
18 direction, that increasingly with long-term care taking on  
19 much more sophisticated clinical populations, that we  
20 should be encouraging that.

21 CHAIRMAN WAXMAN: I just want to clarify.  
22 You're not heading towards Alzheimer's?

23 MR. PICK: No, he used that as an example.

24 MR. SULLIVAN: I used that as an example as

1 past Board --

2 CHAIRMAN WAXMAN: I just wanted to make sure  
3 you weren't heading towards that also.

4 MR. SULLIVAN: Thank you.

5 CHAIRMAN WAXMAN: So, are you proposing that  
6 we add to this section?

7 MR. SULLIVAN: Um-hum.

8 MS. DEDERER: Now?

9 MR. SCAVOTTO: This is existing language,  
10 right?

11 CHAIRMAN WAXMAN: Yes.

12 MR. SCAVOTTO: That's the way I'm reading it.  
13 So what's being added?

14 MR. SULLIVAN: That clinical specialty be used  
15 as a defined population, as being one of the things that we  
16 want to encourage in the future.

17 MS. ALTMAN: I think --

18 MR. PHILLIPPE: I've been involved in  
19 discussions on this in the past, and it sounds simple. It  
20 gets very complicated in actual practice, and I think it's  
21 worthwhile discussion, but I think to get into it  
22 thoroughly, it will get tied into bed need and the future,  
23 really, I think.

24 MS. ALTMAN: I was going to say the same

1 thing.

2 CHAIRMAN WAXMAN: So, you're suggesting that  
3 the clinical specialty be held off and put into the  
4 discussion of bed needs?

5 MR. PHILLIPPE: I do.

6 MS. ALTMAN: Yes.

7 MS. DEDERER: Yes.

8 CHAIRMAN WAXMAN: Is the consensus that?

9 MR. SCAVOTTO: Yes.

10 (Pause)

11 MR. SCAVOTTO: But I do have a question.

12 CHAIRMAN WAXMAN: I want to make sure I have  
13 consensus so we can move on from this topic. Your  
14 question?

15 MR. SCAVOTTO: Number 2, Mike, on that  
16 continuum of care thing, it starts off, "such a proposal".  
17 What are we talking about? Is this the skilled beds?

18 MR. CONSTANTINO: Yes. That's the only one we  
19 have jurisdiction over.

20 MR. SCAVOTTO: I'm reading this. What are  
21 they talking about? I think you're talking about skilled  
22 beds.

23 MR. CONSTANTINO: Yes, that's it.

24 CHAIRMAN WAXMAN: So, then we're in agreement

1 that this section can stay as is?

2 MR. PICK: For the time being.

3 MR. URSO: Does Phyllis understand what we  
4 have on the table.

5 MR. CONSTANTINO: Phyllis?

6 CHAIRMAN WAXMAN: Okay. Mike, please  
7 continue.

8 MR. CONSTANTINO: We were just wondering if  
9 you understood what was on the table that we were  
10 proposing -- postponing a review of the continuum of  
11 CCRC -- the variances to computed bed need to include it as  
12 part of the bed-need methodology.

13 MS. MITZEN: I absolutely agree with that.

14 MR. CONSTANTINO: Thank you.

15 Page 50.

16 MR. SULLIVAN: Before we leave variance, one  
17 of the major discussions -- and, obviously, we're not going  
18 to decide today -- is the concept of an innovation variance  
19 and --

20 CHAIRMAN WAXMAN: Is that not part of your  
21 clinical?

22 MR. SULLIVAN: No, this will be separate, but  
23 it is a concept that is well worth discussing. And then  
24 between the concept of CCRC's, defined populations, and

1 specialties, and innovation, that really encapsulizes a lot  
2 of the heart of where we want to see the marketplace go in  
3 the next 10 to 20 years.

4 CHAIRMAN WAXMAN: Terry, I don't want to put  
5 you on the spot nor take a lot of time, but do you have an  
6 example of what you might consider innovation, so we all  
7 understand what you're thinking?

8 MR. SULLIVAN: Sure. That the project is  
9 either connected with a university and is going to be doing  
10 research in long-term care, that it is a comprehensive  
11 program that embraces, not only nursing facility, but the  
12 entire continuum, including needed home health services or  
13 community services that are there. So, we're looking at  
14 almost a comprehensive project and not just nursing  
15 facility beds, but providing a continuum in an area that  
16 needs it.

17 CHAIRMAN WAXMAN: Different than CCRC?

18 MR. SULLIVAN: That's different. CCRC is  
19 community.

20 MR. PICK: Choosing community-based services  
21 is part --

22 MR. SULLIVAN: Using the services within the  
23 nursing facility to provide community services.

24 MR. FOLEY: I'd also like to see the

1 subcommittee looking at the possibility of including what  
2 is called a high occupancy variance, to allow for those  
3 facilities currently existing that is operating at high  
4 occupancy rate but cannot add a sufficient number of beds  
5 because there may not be a bed need, so, therefore, they're  
6 held off. But, if that's the people's choice and they want  
7 to go there, but if they are full, I think we should look  
8 at the possibility of having a high occupancy variance.

9 MR. SCAVOTTO: How many variances are out  
10 there?

11 CHAIRMAN WAXMAN: Two.

12 MR. SCAVOTTO: Is that it?

13 MR. PHILLIPPE: Right now.

14 MR. SCAVOTTO: The more variances I'm hearing,  
15 the more questions I have.

16 MR. PHILLIPPE: These are all for future  
17 discussions.

18 CHAIRMAN WAXMAN: There are two in the  
19 statute. I've now heard three proposed or three to  
20 discuss.

21 Again, we said this every meeting, so let me  
22 say it again. This committee's duration is indefinite, so  
23 we do have plenty of time to come back and discuss all of  
24 these issues.

1 MR. PICK: It will survive it.

2 MR. PHILLIPPE: I plan on retiring in a few  
3 years.

4 MS. DEDERER: At a 75 percent attendance.

5 CHAIRMAN WAXMAN: Mike, are you okay, or do  
6 you need a break?

7 MR. CONSTANTINO: We're on page 50, Service  
8 Access. This is bed need again.

9 MR. SULLIVAN: It's bed need. It's  
10 duplicative of other things that are being asked for. It  
11 becomes an exercise in creative writing.

12 MS. ALTMAN: I think we should just put this  
13 aside.

14 MR. SULLIVAN: Put it aside, but these  
15 sections need to be combined into something that makes  
16 sense. If you want to say justification of the project, I  
17 guess that's the way of saying purpose of the project.  
18 Probably should embrace all of this but, having these  
19 separate review criteria that are duplicative just makes  
20 for a longer and longer application.

21 CHAIRMAN WAXMAN: Mike, are you okay with  
22 that?

23 MR. CONSTANTINO: I want to point out number  
24 5, "For the purposes of this subsection, all services

1 within the 45-minute travel time have to meet or exceed the  
2 utilization standards." I think that goes to what Terry  
3 and his -- Mike Bibo, I guess this week, has been  
4 proposing. So when we review a project, we don't believe  
5 there's a service access issue unless all these facilities  
6 within 45 minutes have met the 90 percent occupancy, and --

7 MS. DEDERER: But it's also just one of many  
8 criteria they're using.

9 MR. CONSTANTINO: Yes.

10 MS. DEDERER: So, we're okay at this moment  
11 to --

12 MR. CONSTANTINO: Yes. I just wanted to point  
13 that out.

14 MR. FOLEY: But yet in another part of the  
15 Rules, we're talking about a 30-minute drive time, and then  
16 here we're talking about a 45-minute drive time. So, can  
17 we be consistent?

18 MS. DEDERER: We're going to clean the whole  
19 thing up but just not right now, right?

20 CHAIRMAN WAXMAN: Absolutely.

21 MR. PICK: When we establish criteria for the  
22 area, we should be consistent.

23 MR. SULLIVAN: And I think other parts of the  
24 Rules say 30-minute drive time.

1 MR. CONSTANTINO: Correct. The next section  
2 also says that.

3 MS. ALTMAN: I agree that these things ask for  
4 almost the exact same, so we put it aside in the  
5 justification for need, to balance all of this.

6 CHAIRMAN WAXMAN: We're fine.

7 Mike, move on.

8 MR. CONSTANTINO: Staffing Availability, Page  
9 52.

10 CHAIRMAN WAXMAN: Section 1125.590.

11 MR. CONSTANTINO: Any questions?

12 MS. HANDLER: Aren't there other regulatory  
13 agencies other than JCAHO?

14 MR. PICK: JCAHO is not a regulatory agency.  
15 It's an accreditation.

16 MS. HANDLER: Aren't there other accreditation  
17 organizations other than JCAHO?

18 MR. SULLIVAN: Not really.

19 MR. SCAVOTTO: The hospitals have gone with an  
20 alternative. I forget their name.

21 MR. PICK: I believe the question is whether  
22 this is an adequate process to determine that there really  
23 is staff available.

24 MS. HANDLER: Well, I guess what I was really

1 thinking about is when -- I don't know where Joint  
2 Commission is going to be in 10 years, right, and there's  
3 going -- there are already in the ambulatory care and the  
4 community care settings alternatives to Joint Commission  
5 and there are alternatives in the hospital setting to Joint  
6 Commission. So, I don't know if you want to lock this  
7 industry into Joint Commission, because it seems to me  
8 we're directing us then to actually buy their standards, et  
9 cetera, and directing funds.

10 MR. PHILLIPPE: Does JCAHO even have staffing  
11 funds for long-term care?

12 MR. PICK: We do. There is a section that  
13 addresses staffing criteria, competence. So to answer your  
14 question, they do but it's not numbers.

15 MR. PHILLIPPE: They're not numbers?

16 MR. PICK: No.

17 MS. EVANS: This question is, are there going  
18 to be staff available to staff this facility. So it's not  
19 really about staffing levels, it's just about are you going  
20 to be able to hire enough aides or nurses or a dietitian,  
21 are you going to be able to hire the staff to service this  
22 facility. That's what it's about.

23 MS. HANDLER: And qualified staff, obviously,  
24 because Joint Commission is going to talk about qualified

1 staff.

2 MS. EVANS: I think we should add CARF,  
3 because they cover CCRC's.

4 MR. SULLIVAN: It's only the rich CCRC's that  
5 go to CARF.

6 MR. PICK: I would echo Carolyn's comment that  
7 we should be more generic.

8 MR. CONSTANTINO: So what language are we  
9 proposing?

10 MS. ALTMAN: I have a question.

11 MR. SULLIVAN: Licensure or accreditation  
12 staffing levels?

13 MS. AVERY: Mr. Chairman, we have some  
14 suggested language, but I'm not sure where we're going to  
15 put it. Can you tell me, Mike, so I can put it in my  
16 notes?

17 MR. SULLIVAN: I think in lieu of JCAHO, we're  
18 substituting the word "accreditation".

19 MS. ALTMAN: Does licensure and accreditation  
20 encompass the staffing ratios that were in the --

21 MR. SULLIVAN: That's licensure.

22 CHAIRMAN WAXMAN: Licensure covers CMS and  
23 IDPH.

24 MR. PICK: I would just suggest certification,

1 because certification is for Medicare participation.

2 Licensure is at the State level. So, it would be  
3 licensure, certification, and accrediting agencies.

4 MS. AVERY: Let's make sure we have it clear,  
5 because Claire is going to be making the changes based on a  
6 transcript, so --

7 CHAIRMAN WAXMAN: I need a motion, if we're  
8 going to make a change.

9 MR. PICK: I'll make the motion to modify the  
10 first paragraph -- I guess the only paragraph for 1125.590  
11 under "Staffing Availability" to include -- in addition to  
12 licensure -- certification and applicable accrediting  
13 agencies.

14 MS. EVANS: What about staffing requirements?

15 MR. PICK: Staffing requirements would remain.

16 CHAIRMAN WAXMAN: I have a motion. I need a  
17 second.

18 MS. EVANS: Second.

19 CHAIRMAN WAXMAN: We now have to make sure  
20 Claire heard that.

21 MS. AVERY: We have it in the minutes.

22 MR. PICK: Should we read it back?

23 CHAIRMAN WAXMAN: All in favor?

24 MR. SCAVOTTO: Hang on. Can I ask a question?

1 Just before we vote, you all are going to think I've left  
2 the planet, which if you think that, just keep it to  
3 yourself, but I'm reading this, and there's some other  
4 sections that are coming up, and I'm thinking in terms of,  
5 is the facility needed. I'm not thinking in terms of  
6 whether or not you can staff it. If you can't staff it,  
7 IDPH is going to be all over you. Economically, you're  
8 going to have problems. And so, does it really make a  
9 difference to the determination of need, does it make a  
10 difference to the determination of need that you own the  
11 site or that it is zoned? When was the last time you were  
12 able to build a facility on a site you didn't own? When  
13 was the last time you could build a facility on a site that  
14 wasn't zoned for your purposes.

15 So, the question -- I'm struggling with this,  
16 because I'm thinking, why do we need this information?  
17 Does it help us with the determination of need?

18 MR. SULLIVAN: And I'll point out that every  
19 single application, the answer to this criteria is "Yes, we  
20 will be able to get staff." Nobody submits an application  
21 and says, "Oh, we're going to build the facility and, no,  
22 we're not going to get the staff".

23 MS. ALTMAN: But you have to prove it, I  
24 assume.

1 MR. SULLIVAN: This is another exercise in  
2 creative writing.

3 MR. URSO: This is required by the Act. This  
4 particular inquiry is required.

5 MR. PICK: There's also additional rationale  
6 besides the Act, and that is also depending on the type of  
7 project, as we start to get into more specialized programs,  
8 that you can actually have the type of staff needed. In a  
9 general environment, it doesn't matter. As long as it's  
10 nurses, it's fine. As we start to get into ventilator  
11 management, spinal cord and head injury, you need very  
12 specially trained --

13 MR. SCAVOTTO: And you've got to pay them.

14 MR. PICK: That's exactly right. So I think  
15 this becomes very relevant in the new application we're  
16 talking about doing.

17 MR. SULLIVAN: And I'm not objecting to people  
18 having to address that.

19 MR. SCAVOTTO: To me, it doesn't say anything  
20 about the need. It says everything about your business  
21 planning.

22 CHAIRMAN WAXMAN: Right.

23 MS. EVANS: But you want to know there is a  
24 business plan.

1 MS. ALTMAN: It says the words, "how the  
2 proposed staffing would be achieved".

3 Going back to the health standard, they have  
4 to do the same thing in those applications. They have to  
5 say they have a doctor from this med school, they have this  
6 many people in it, they can have a nurse, they think  
7 they'll have a tech. They have to give something, some  
8 evidence, of how they're going to meet the plan.

9 MR. URSO: Goes back to justification.

10 MR. PHILLIPPE: Don't encourage them to make  
11 it more complicated. I mean, because some of those things  
12 are hard to plan two, three years before you really open.

13 MS. ALTMAN: You have to show some evidence.  
14 It's --

15 MS. EVANS: I'm aware of a facility now that  
16 can't staff their beds so they can't open their facility.  
17 Do we want to put another facility in that same area where  
18 they don't have enough nurses? You have to know what's  
19 going on in your marketplace.

20 MR. PHILLIPPE: I can take the opposite. Say  
21 I want to fight a building, okay? That happens, by the  
22 way, and so -- I just want to talk about how it percolates  
23 out. Then what I could do is, I could gather information  
24 on the use of agency staff and staffing issues in the

1 buildings around it, because they're rampant in our field.

2 CHAIRMAN WAXMAN: But I think every  
3 objection -- I can't say that. The few meetings I've  
4 attended, the objections have always been you're taking  
5 staffing -- those who are objecting to any proposal, you're  
6 taking the few clients and you're taking staffing. Those  
7 are the two that come up in terms of objections.

8 MR. PHILLIPPE: Because there is shortage of  
9 healthcare staffing.

10 CHAIRMAN WAXMAN: I'm not saying they're  
11 wrong. It's just that they always come up.

12 MR. PICK: What precludes agency staff from  
13 qualifying? Those are staff.

14 MR. PHILLIPPE: Well, it is also an indication  
15 there is some kind of shortage.

16 CHAIRMAN WAXMAN: But it has economic impact.

17 MR. SCAVOTTO: We just did an application  
18 where one of the acceptable demonstrations of being able to  
19 staff it was a letter from the agency, staffing agency.

20 MR. PHILLIPPE: There you go.

21 MR. SCAVOTTO: Talk about the tail wagging the  
22 dog.

23 CHAIRMAN WAXMAN: But that has economic  
24 impact, too.

1 MR. SCAVOTTO: Sure it does. That's kind of  
2 what I'm saying. Are the beds needed? That ought to be  
3 our job. If you're dumb enough to submit a plan for a  
4 location that's not zoned for your facility, more power to  
5 you, because -- and those guys are out there.

6 MS. DEDERER: Yes, they are.

7 MR. SCAVOTTO: They're out there.

8 MS. DEDERER: And that's why it's asked is  
9 because they are out there.

10 MR. FOLEY: First of all, Mr. Scavotto, the  
11 CON is site specific. So zoning, I agree with you, nobody  
12 is going to build on a site unless it's properly zoned. So  
13 a lot of people get their CON's first and then they go for  
14 zoning. If they lose their zoning, then their CON is void.  
15 But also keep in mind on staffing that all of this is also  
16 covered in your operational budget. When you're doing your  
17 financial projections, you're going to cost factor in there  
18 any agencies that you may have to use, a doctor, you may  
19 have to have nurses, specialized nurses, other specialized  
20 people. All that is built into your budget.

21 MS. DEDERER: And why waste the Board's time  
22 if you don't have all of your ducks in line?

23 MR. FOLEY: They're not going to build unless  
24 they have all of that anyway.

1 MR. PHILLIPPE: I'm okay with this.

2 MR. PICK: We can move on now because Tim is  
3 okay with that.

4 MR. PHILLIPPE: What I'm thinking now is we  
5 all agree now.

6 CHAIRMAN WAXMAN: But we are going to pick up  
7 the language that you recommended. We have a motion and we  
8 have a second. We need to vote. All in favor?

9 (Ayes heard)

10 CHAIRMAN WAXMAN: Any opposed?

11 (Pause)

12 CHAIRMAN WAXMAN: Motion carries.

13 MR. PICK: What about Phyllis?

14 MR. CONSTANTINO: Phyllis?

15 MS. MITZEN: Yes.

16 CHAIRMAN WAXMAN: How do you vote?

17 MR. PICK: The proposed amendment modifies the  
18 paragraph on page 52 to include the language, in addition  
19 to licensure, also certification and substitutes for JCAHO  
20 the term "accrediting", applicable accrediting agencies for  
21 staffing requirements. Did you get all of that, Phyllis?

22 MS. MITZEN: I have a question about that  
23 section.

24 MR. CONSTANTINO: Okay.

1 MS. MITZEN: That has to do with -- because  
2 this is a work force issue and --

3 MR. CONSTANTINO: Phyllis, I hate to ask you  
4 this, but can you repeat that?

5 MS. MITZEN: My question -- what occurred to  
6 me when I read this section is the consideration that is  
7 given to the availability of the hands-on work force that's  
8 available to do the work in the project, in the proposed  
9 project, and I understand that you were talking about the  
10 specialized staffing that is needed, but it's the hands-on  
11 work force that also does the pulse of the work in the  
12 facility. I don't know if it's an issue or not or whether  
13 or not it's considered in this paragraph.

14 MR. CONSTANTINO: We believe it is being  
15 considered, yes.

16 MS. MITZEN: Okay.

17 MR. PICK: How does she vote?

18 MS. DEDERER: Are you talking about  
19 housekeeping staff and stuff like that?

20 MS. MITZEN: I'm talking about CNA's.

21 MR. PICK: She's talking about the hands-on  
22 care staff.

23 MS. DEDERER: That's included in clinical and  
24 professional.

1 CHAIRMAN WAXMAN: Phyllis, we need your vote  
2 on the proposed changes to the language so that it can be  
3 in the minutes.

4 MR. CONSTANTINO: Are you in favor of the  
5 changes, Phyllis?

6 MS. MITZEN: Could you repeat the motion?

7 MR. CONSTANTINO: Okay. Hold on a minute.

8 MR. PICK: To modify the -- their language to  
9 include, in addition to licensure, also certification and  
10 applicable accrediting agencies for staffing requirements.

11 MS. MITZEN: Yes.

12 MR. CONSTANTINO: Thank you.

13 CHAIRMAN WAXMAN: Thank you.

14 Mike, move on.

15 MR. CONSTANTINO: Next page, page 53, Bed  
16 Capacity. Anyone have any --

17 MS. EVANS: Where do we want to go?

18 MR. SULLIVAN: That's current rules.

19 MS. EVANS: That's hospital?

20 MR. PICK: No, no. This is a nursing  
21 facility.

22 MR. FOLEY: This 250-bed capacity had been  
23 changed over the years from 300 down to 250, and I don't  
24 think -- Mike, correct me if I'm wrong, but I don't think

1 we're seeing applications today for 250 beds. You might  
2 see it for 200, you will see it for a 150, but I do think  
3 that it takes some serious look to see if we could lower  
4 this number from 250, because I've had clients come in just  
5 here recently, wanting to build a 300-bed facility, and I  
6 had to remind them of this 250, and all you're doing -- and  
7 there's a bed need in that area and all you're doing is  
8 just encouraging the institutionalization again. So, I  
9 think if we're going to go with this new model that is  
10 being recommended out there, I think we might want to  
11 consider lowering this number.

12 CHAIRMAN WAXMAN: Mike, can you recall when in  
13 the last six or twelve months any application to you that  
14 was a 250?

15 MR. CONSTANTINO: No.

16 MS. DEDERER: Okay. But if we're going in the  
17 future to potentially multi-use facilities, where you're  
18 having maybe lower level care, you might get to 250.

19 MR. PICK: I would hate to focus on the  
20 number. It comes back to what is the scope of the project,  
21 the population being served. I have a 230-bed licensed  
22 facility. It's a hundred patient rooms. So my operating  
23 capacity is 191, because that's what's set up. So, I think  
24 it goes back to how it's going to be used rather than how

1 big it is.

2 MR. PHILLIPPE: I'll just voice a concern. I  
3 don't know the big cities well, because I'm down south, but  
4 I think just in general, trying to help move towards a less  
5 institutional model in the field, it would be great to see  
6 more things like 150 beds.

7 MR. PICK: That's presuming that the footprint  
8 of the building is the same. It could be a bigger building  
9 with small pods. They're all part of the same building.

10 MS. DEDERER: But then it would be nice --

11 MR. SULLIVAN: Actually, I'm aware of a  
12 project, not in this state, that is in the greenhouse model  
13 of every pod has its own dining room, living room and  
14 twelve bedrooms, but it is an apartment building type  
15 concept with each pod separate unto itself. So, you know,  
16 it would be a question of how we evaluate that.

17 MR. SCAVOTTO: Well, in the cities, you're  
18 going to go up.

19 MR. SULLIVAN: Yeah, they are going to go up.  
20 It's a way of getting greenhouses in the city.

21 MS. EVANS: But you could do each floor as an  
22 individual kind of unit.

23 MR. SULLIVAN: Right.

24 MR. PICK: That's what I say, it's the

1 footprint that changes, and I think our task is not to be  
2 restrictive. It's to encourage innovation and new ways to  
3 do things and, fundamentally, we should be evaluating the  
4 project on the credibility of its vision, on what it is  
5 it's going to be.

6 MR. FOLEY: So, you're taking out the 250?

7 MR. PICK: I would leave the number the way it  
8 is for now and let's see what happens.

9 CHAIRMAN WAXMAN: Yeah. Mike said in the last  
10 twelve months, no one has even proposed 250.

11 MR. PICK: That may be because of what Chuck  
12 said. Because the rule says 250, nobody wants to go quite  
13 to that level.

14 MR. CONSTANTINO: We're seeing 120-bed,  
15 150-bed facility.

16 CHAIRMAN WAXMAN: Anyone getting to 200?

17 MR. CONSTANTINO: No.

18 CHAIRMAN WAXMAN: Move on.

19 MR. CONSTANTINO: The next section, Community  
20 Related Functions.

21 Anyone have a problem with this?

22 (Pause)

23 MR. SULLIVAN: Should be addressed.

24 MR. CONSTANTINO: Okay. The next section,

1 620, Size of the Project.

2 Anyone have a problem with this?

3 MR. PHILLIPPE: I do, actually.

4 MR. SULLIVAN: It's duplicative and  
5 unnecessary.

6 MR. PHILLIPPE: I think we need to allow for  
7 innovation, and what's happening today on projects is,  
8 people are having trouble creating a resident-centered  
9 model in the space restrictions that were set up for two  
10 and three people per room.

11 MS. DEDERER: Why would we have space  
12 restrictions?

13 MR. PHILLIPPE: But we do. We have to squash  
14 it down to make it fit.

15 MS. DEDERER: Why do we have space  
16 restrictions?

17 MR. SULLIVAN: Cost containment.

18 MR. PHILLIPPE: Originally, the rate was based  
19 on cost. But the rate is not based on rate anymore lately.

20 MR. PICK: I wouldn't say that's true. We're  
21 supposed to get it. We don't get it.

22 MS. DEDERER: But the rate is no longer based  
23 on --

24 MR. PICK: The reality is that cost reports,

1 Medicaid cost reports, are submitted and they include  
2 information about the size of the building, and your  
3 support rate is supposed to be adjusted based on that. The  
4 reality is, it hasn't happened since '94 -- I'm sorry,  
5 capital, not support rate. So, while from a practical  
6 standpoint, it's not really being implemented the way it  
7 was intended to be, it's still there.

8 MR. SULLIVAN: This section encourages the  
9 institutional model.

10 MS. DEDERER: Yeah, we don't want to do that.  
11 Well, can we --

12 CHAIRMAN WAXMAN: Mike, your perspective on  
13 this section?

14 MR. CONSTANTINO: Well, we have established  
15 standards based upon -- I'm sorry. I back up a minute. We  
16 revised our standards based upon projects that we have  
17 received, and that -- the size per room has been adjusted  
18 upward here in the last year and a half or so. So, it has  
19 been looked at.

20 MR. PICK: So, we went from what 110 to --

21 MR. PHILLIPPE: A range.

22 MR. CONSTANTINO: We gave you a range.

23 MR. SULLIVAN: And again, that -- consumers  
24 increasingly don't want to be in small, little cubby holes.

1 And this particular provision is saying, you know, if you  
2 don't fit into the average square footage of what was  
3 proposed over the past four or five years, you don't meet  
4 this criteria. It's certainly one that -- Tim recommends  
5 that we drop this one.

6 MR. PHILLIPPE: I've heard a lot of angst  
7 about this from other people in the field.

8 MR. SCAVOTTO: You're going to hear it from  
9 the guy sitting next to you.

10 MR. PHILLIPPE: And it's -- the concern is  
11 what Terry said. If consumers want it and people can  
12 figure out a way to make it pay --

13 CHAIRMAN WAXMAN: Mike, would you ask Claire  
14 if she has some thoughts on this section?

15 MR. CONSTANTINO: Claire, do you have any  
16 thoughts on this section?

17 MS. BERMAN: I think what we could do is do  
18 more research on what other states are doing with this  
19 particular topic. Mike is right in that when we did revise  
20 the standard, we used some historical data from  
21 previously-approved projects over the last, I believe, five  
22 years, to try to stay current. It was all new  
23 construction, is what it was based on. And, if this isn't  
24 really working for the kinds of innovative developments

1 that you are considering, then we just need more data and  
2 have the subcommittee look at the data and come up with a  
3 recommendation.

4 MS. DEDERER: So, can we park it?

5 CHAIRMAN WAXMAN: Yeah, we need a motion to  
6 hold this section and get Staff to do some additional  
7 research on this section.

8 MR. SCAVOTTO: I'll make that motion.

9 CHAIRMAN WAXMAN: Need a second.

10 MR. PHILLIPPE: Second.

11 CHAIRMAN WAXMAN: All in favor?

12 (Ayes heard)

13 MR. CONSTANTINO: Phyllis, did you hear that?

14 MS. MITZEN: I did hear that.

15 CHAIRMAN WAXMAN: Did you vote on the motion,  
16 Phyllis?

17 MS. MITZEN: No, I didn't vote on the motion.  
18 Could we have the Court Reporter repeat it for me?

19 (Court Reporter read back)

20 MS. MITZEN: I understand that we need more  
21 data and that we're going to table it.

22 CHAIRMAN WAXMAN: That's correct.

23 MS. MITZEN: I approve.

24 MR. SCAVOTTO: Mike, before we go on, I just

1 want to make a comment. Do you -- when you review these  
2 projects, how serious are you about the max, the maximum  
3 square foot, because when you look at the table, it's like  
4 425 to 713.

5 MR. CONSTANTINO: If you're over 713, we're  
6 going to be negative on the criteria.

7 MR. SCAVOTTO: So, how does that help  
8 innovation?

9 MS. DEDERER: 713 what?

10 MR. CONSTANTINO: Gross feet per bed.

11 MS. DEDERER: So, anything over 713 you're  
12 going to be negative on?

13 MR. CONSTANTINO: Yes, as of right now.

14 MR. SCAVOTTO: The point -- I just want to  
15 make sure that with respect to my clients, which tend to  
16 have high Medicaid loads -- I can sympathize with your  
17 desire for innovation, but with any sort of Medicaid load  
18 at all, with Medicaid rates in Illinois being what they  
19 are, you're not going to have any innovation.

20 MS. EVANS: But there should be a minimum  
21 standard, not necessarily --

22 MR. SCAVOTTO: The minimum standard is fine,  
23 and I would drop the maximum. If you can afford it, fine.  
24 But bigger implication for policy here is that you're not

1 going to see a whole lot of innovation funded with the  
2 Medicaid rate disparity that you've got in Illinois.

3 MR. CONSTANTINO: Are you going to see single  
4 rooms funded by Medicaid? I don't know.

5 MR. SCAVOTTO: I think it's --

6 MR. SULLIVAN: I think it's in the works.

7 MR. SCAVOTTO: And that's an open question  
8 right now, but it depends -- it all depends on the money.  
9 I think people would love to do it, but they're hamstrung  
10 right now.

11 MR. CONSTANTINO: I've been told that a lot of  
12 people use our standards as negotiating tools with their  
13 architects and their builders.

14 MR. FOLEY: That's right.

15 MR. CONSTANTINO: Is that true? I'm asking  
16 you guys.

17 CHAIRMAN WAXMAN: Chuck is saying it's true.

18 MR. SCAVOTTO: In our practice, what we do is  
19 we put the business model together, and we say, "We need to  
20 replace the facility. This is what we can handle in terms  
21 of debt capacity. This is what we can handle in terms of  
22 debt service coverage to make it work." Now, the people  
23 who let the architects loose and say, "Design the Taj  
24 Mahal", they have to negotiate it.

1 MR. FOLEY: That was the purpose of years ago  
2 having the square footage maximum in there, mainly because  
3 we would see a lot of architectural firms build a Taj Mahal  
4 and a lot of wasted space where they would build, say, a  
5 5000-square-foot multi-purpose room that would never be  
6 utilized by anybody. But yet, based on your reimbursement  
7 rate, people were paying for that, private-pay rate, people  
8 were paying for that, and it was never used. So, it was a  
9 matter of scaling the facility down a little bit in size.  
10 In the old days was -- also, if you wanted to build an  
11 800-square-foot facility and it was above the maximum, if  
12 you could justify it, fine. Staff was still negative  
13 because they had the maximum range, but it was also giving  
14 you an opportunity to justify it. If you couldn't justify  
15 it, you don't get it. But if you had an innovative program  
16 that you want to introduce and utilize and it took you to  
17 315 or 750 or whatever -- not three, but 715, 730,  
18 whatever, fine, as long as you could justify it.

19 CHAIRMAN WAXMAN: Think we've agreed that  
20 we're going to get more information from Staff.

21 I think we're at a great spot to take a break.

22 (Recess)

23 CHAIRMAN WAXMAN: We will reconvene. Mike?

24 MR. CONSTANTINO: I think we left off with

1 zoning. Anyone have any questions regarding zoning?

2 MR. SULLIVAN: We need it consistent.

3 MR. PHILLIPPE: Maybe I can second his  
4 question. It has to do with making sure that the people  
5 submitting applications aren't stupid, have a business plan  
6 kind of category. And maybe the field is more developed  
7 than it used to be. The industry has come a long way in  
8 many ways on the business side, and do we really need to  
9 worry about it?

10 MS. DEDERER: You know, we had an experience  
11 reviewing some RSPs where the criteria were really well  
12 laid out, a huge healthcare firm made applications and, you  
13 know, in spite of that, some of them knew they didn't meet  
14 the criteria, but they applied anyway. And so, people have  
15 to sift through hundreds of pages to all of a sudden find  
16 out, well, they kind of didn't meet this big criteria and,  
17 ultimately, they got thrown out after people spent a whole  
18 ton of time going through it.

19 MR. PHILLIPPE: I'm just saying, like on  
20 zoning, if you're not zoned, you can't build. Well, why do  
21 we need it? If it's not zoned, they can't build it, and  
22 then if you can't approve it, they're going to move it  
23 someplace else, right?

24 MR. CONSTANTINO: Yes, it's site specific.

1 MR. PHILLIPPE: So in the long run, it's their  
2 issue.

3 MR. CONSTANTINO: The application would be  
4 null and void if it's not on that site. So, they would  
5 have to come back and submit a new application.

6 MR. SCAVOTTO: And the application is -- has a  
7 time limit, too, right?

8 MR. CONSTANTINO: Right. They could ask for a  
9 project renewal. They could ask for that. We do have that  
10 process in place.

11 MR. SCAVOTTO: Tim, I appreciate you bringing  
12 that up. When I brought up that earlier, I know you're  
13 going to have zoning, I know it's not going to come out of  
14 here, and I know you're going to have site that's not  
15 coming out of here, but my purpose is to make sure we're  
16 focused on whether or not the thing is needed.

17 MS. DEDERER: But isn't that the whole thing  
18 that -- the bed need that we have set aside. That's the  
19 big need. That's the bulk of all of this. Now we're just  
20 doing a little bit here and there.

21 MR. SCAVOTTO: Right. If you gave me a  
22 Certificate of Need and you presumed I had a site and you  
23 presumed the site was zoned, you presumed I had a business  
24 model, and the people to staff it, and I failed and you

1 yank my Certificate of Need, you are out of nothing.

2 MS. DEDERER: Review time.

3 MR. SULLIVAN: Time.

4 MR. SCAVOTTO: You get your fees for that.

5 MR. PHILLIPPE: We pay a fee for that. We pay  
6 a big fee for the process.

7 MS. DEDERER: To the Review Board, to the  
8 Mother Board.

9 MR. PICK: There's an application fee, sure.  
10 Big time.

11 MR. FOLEY: Can I add it's too?

12 (Laughter)

13 MR. PHILLIPPE: Actually, this is the thing  
14 that gets talked about on the provider side, so I feel like  
15 I have to share this. It's probably true there are people  
16 out there that are foolish.

17 MS. DEDERER: Or they think "I'm going to get  
18 this, so I'm going to submit it and say I got it".

19 MR. PHILLIPPE: But the penalty for them if  
20 they do that is very huge, because they're going to have to  
21 pay all of these legal fees and application fees all over  
22 again. It's going to be huge. It's not like a tiny  
23 penalty for a provider.

24 MR. CONSTANTINO: Tim makes a good point.

1 MR. PHILLIPPE: Some of the things that may  
2 make your job bigger, more complicated, may not be a waste  
3 of time if you put the responsibility back on the provider.

4 MS. DEDERER: So, you don't think that would  
5 take anything away from the process?

6 MR. CONSTANTINO: I don't personally, no.

7 MR. FOLEY: What you have to do here is just  
8 submit a letter from a zoning official. They're not asking  
9 that you have to have zoning. All they're asking for is  
10 what is the status of zoning, basically; and a zoning  
11 officer can write a letter and say this applicant applied  
12 for application, period. That's it.

13 MR. PHILLIPPE: I'm not saying people can't  
14 get it. What I'm saying, is it worth the process? Is it  
15 worth the time you spend on it? If people don't get it,  
16 they're going to pay a heavy penalty for it, because it's  
17 going to be their mistake. If they want to do it, they  
18 have to come back all over again and pay the legal fees all  
19 over again, which is high, or consultants, whoever help you  
20 with it. So, why do all of the work?

21 MR. PICK: Frank, is this in the statute? Is  
22 this required in the statute?

23 MR. URSO: Claire has noted that it's required  
24 by the Act, and I wanted her to clarify.

1 MR. PHILLIPPE: If it's required by the Act,  
2 I'll shut up.

3 MR. URSO: Could Claire respond to this?

4 MR. CONSTANTINO: Claire, do you have any  
5 response to that?

6 MS. BERMAN: I am curious. How much time does  
7 it take to fulfill this requirement?

8 MR. FOLEY: Five minutes.

9 MR. URSO: Well, the question was, you know,  
10 the justification for asking for this, basically, and if  
11 you can elaborate on that.

12 MS. BERMAN: It's basically making sure you  
13 have all of the primary ducks in a row. It's not just  
14 whether you meet the bed-need requirements. If there are  
15 other factors that go into your project, and this is one  
16 that I don't think would be a big problem. I mean, I'm  
17 sorry, I don't know who was speaking but, yes, you're  
18 right, everyone in your line of business knows about zoning  
19 and you have to take care of that or else the permit  
20 doesn't mean anything. That's true. But the same is true  
21 if you go back to staffing availability. Who is going to  
22 propose to have a new service or an expanded service if you  
23 don't have the staffing available? It's kind of down that  
24 road of thinking.

1 MS. DEDERER: So then, you're supporting the  
2 proposal to take it out?

3 MS. BERMAN: No. I mean this is a very real  
4 question that I have, is what kind of time and effort goes  
5 in to sending a letter or filling out a form to get the  
6 zoning approval?

7 MR. PHILLIPPE: Okay. I've done it and so I  
8 can't say it's very hard. It actually -- on the provider  
9 side -- and I've had input on this over time, how the  
10 application process -- some of it is set up to ensure that  
11 the provider is not stupid. Really, that's the idea,  
12 really. And the question is, is that time well spent? And  
13 so on some of these kinds of things that don't go to bed  
14 need at all or the whole concept of certificate, they go  
15 towards trying to have a good process. Maybe it was needed  
16 30, 40 years ago. It was a newer industry then. People  
17 were going out and didn't know what they were doing, like  
18 they did a few years ago with assisted living, thinking  
19 anybody could build assisted living. It's not like it's a  
20 lot of time, and if it's in the law, it doesn't matter  
21 anyway.

22 CHAIRMAN WAXMAN: That's what we were trying  
23 to get Claire to answer. Is it in the statute?

24 MR. CONSTANTINO: I don't remember. I

1 can't --

2 MR. SULLIVAN: It's not italicized, so I raise  
3 the question if it's in the law.

4 MR. FOLEY: I was going to comment, if I may.

5 Several years ago, I do recall at least three  
6 cases where individuals did, in fact, get a CON, went  
7 through the process, paid all the fees, and did not know  
8 that zoning was, in fact, required and, basically, it  
9 brought up a lot of questions, is that fair to somebody  
10 else, especially if there was a bed need, now that you held  
11 this up for a month, a year, a year and a half, as you were  
12 going through your entire process. Now you have to go  
13 through zoning and you didn't even know it. So, this was a  
14 notification only upfront.

15 MR. PHILLIPPE: So, it didn't matter anyway.

16 MR. PICK: How could they have not known it?

17 MR. FOLEY: We had about three of them and  
18 they must have submitted their letters and they got  
19 through.

20 MR. CONSTANTINO: We've got one right now that  
21 has a zoning problem. It's one in Springfield, and they've  
22 asked to delay the project. The neighbors are complaining  
23 about it.

24 MR. PICK: The community was against the

1 project?

2 MR. CONSTANTINO: Right, and the project was  
3 approved.

4 MR. PICK: If I may, I think stepping back  
5 from the unique specifics of this element, I think Tim  
6 raises a very important point because, as we re-engineer  
7 the process, we're going to be seriously entertaining,  
8 introducing new and different elements that are currently  
9 not in the system. So, if we retain all of the elements in  
10 the existing system and add all of these new ones, we're  
11 going to make this a much more complex than it is now.  
12 That's not our objective. Our objective is to -- I believe  
13 our objective is to simplify some of the steps that are in  
14 the existing process and either replace them or enhance it  
15 with new approaches and objectives in what it is we're  
16 trying to accomplish, because we're all here with the  
17 same -- in agreement of the same principle. This current  
18 system doesn't work in today's environment. So that means  
19 we have to re-engineer this.

20 CHAIRMAN WAXMAN: I think the question -- I'm  
21 sorry. The question I think we have to answer, is it in  
22 the statute? Because if it is, we're -- if it's not, we  
23 can talk about getting rid of it.

24 MR. PICK: Right. I guess my question is, if

1 at the end of the day we determine that there are some  
2 elements in the current process that are in statute the  
3 that need to be changed, isn't that part of our charge,  
4 that we're going to recommend to the Legislature to  
5 introduce a bill to add or delete? Let's not discount  
6 something only because it's in the Act. I think what it  
7 establishes is it's going to take more effort and process  
8 to change it.

9 CHAIRMAN WAXMAN: So can we hold this until we  
10 determine if it is in the statute? If it isn't, we can  
11 come back and do something about it next meeting. If it  
12 is, we can still come back and do something about it next  
13 meeting; but, what we will do will be different.

14 MR. CONSTANTINO: The only thing I can think  
15 of being in the Act, Frank, would be site.

16 MR. URSO: Right. I think that's what the  
17 reference might be to, the site language.

18 MS. AVERY: That's what I was thinking.

19 MR. CONSTANTINO: We'll check on that.

20 CHAIRMAN WAXMAN: Okay. Thank you.

21 MR. CONSTANTINO: Next, Assurances.

22 (Pause)

23 MR. CONSTANTINO: I think this goes to the  
24 question or the recommendation that Carolyn had that we

1 make a recommendation. Do we all agree to that?

2 (Pause)

3 CHAIRMAN WAXMAN: Chuck, do you have a  
4 question?

5 MR. FOLEY: I always have a problem in getting  
6 clients to sign this, quote, letter because it does -- in  
7 fact, it's like, "What happens to my project if I don't?  
8 You know, I'm up, I'm built, I'm operating." What does  
9 this really and truly mean? I agree with what was said  
10 earlier, that we should have some kind of reporting  
11 mechanism after the fact. Don't have a problem with that.  
12 But up front, I'm filing a CON application and I go to  
13 Mr. Pick and I say, "Yeah, you got to assure this Board  
14 that you're going to fill this at this period of time, and  
15 you have to sign it" and you're going to come to me and  
16 say, "But what if I don't?" Then you'll pull my permit  
17 from me. So what does this really and truly mean?

18 MR. CONSTANTINO: Do you want me to answer?  
19 We're asking for attestation from the applicant that you  
20 are going to meet that utilization standard within two  
21 years, Charlie.

22 MR. FOLEY: Right.

23 MR. CONSTANTINO: If you do not sign that,  
24 we'll be negative on the criteria and we'll point that out

1 to the Board. The Board has the authority to approve it or  
2 not.

3 MR. FOLEY: What I'm trying to say, what  
4 happens if they don't meet it?

5 MR. CONSTANTINO: There is nothing in our  
6 current rules.

7 MR. PICK: That's one of the things we're  
8 talking about. We want to put some teeth in this.

9 MS. EVANS: But the reality is that,  
10 basically, they're saying in good faith their intent is to  
11 fill the building. They cannot predict everything that's  
12 going to happen in the future. It's not saying we can't  
13 hold them to the fact that they don't fill it, if their  
14 intent was to fill it and they're actively working to fill  
15 it. They're not building it to have a vacant property that  
16 they're going to resell.

17 MR. SCAVOTTO: Isn't it a best efforts thing?

18 MR. PHILLIPPE: Same thing with zoning. Why  
19 is it necessary? If I build a building and I don't fill  
20 it, I'm stupid. You don't build a nursing home to fill it  
21 with hay, right? I mean, really, I'm serious. You don't.

22 MS. EVANS: You might build it to resell it.

23 MR. PHILLIPPE: They can still resell it.

24 This has nothing to do with that.

1 MS. EVANS: Right.

2 MR. PHILLIPPE: I'm just looking for stuff  
3 that takes time, takes everybody's time, and the question  
4 is, is it worth it anymore?

5 MR. CONSTANTINO: I think the idea was to  
6 avoid having the Board approve a 120-bed project and  
7 ultimately there's only eighty percent of the beds that are  
8 filled. That was what we were trying to get at and have,  
9 again, the excess bed capacity that everyone is complaining  
10 about.

11 MR. PHILLIPPE: And I agree with you, and it  
12 makes good sense. It's stupid to build something you can't  
13 fill, because the margins are very small in Illinois. But  
14 the other side of it, there's no teeth in it anyway.  
15 What's the point?

16 MR. CONSTANTINO: Carolyn's recommendation --  
17 the recommendation that we're going to be making to the  
18 Board goes to that, I think.

19 MR. PHILLIPPE: Now, if we go to something  
20 more serious here that would make sense.

21 CHAIRMAN WAXMAN: So we should tie this to the  
22 recommendation where we talk about feedback or review?

23 MR. PICK: Follow-up review.

24 MR. SCAVOTTO: Wait a second, though.

1 very, very small, and I still meet the minimum standards of  
2 Public Health. How would this board know whether or not I  
3 have enough square footage then to provide services for  
4 these so-called specialized areas?

5 MR. PICK: If you're posing the question to  
6 me, my response would be, it's more than just the square  
7 footage. It's, again, encompassed within the total package  
8 of the service. If I want to do a brain injury program and  
9 I have a rehab area that's oriented towards that  
10 population, in addition to the bedroom and the dining area  
11 and the other --

12 MR. FOLEY: So, I'm providing all the space  
13 though, everything that's required --

14 MR. PICK: So to me, it goes back to, if  
15 you're an experienced provider in this arena and you're  
16 going to submit an application at 350 square feet per bed,  
17 it's telling me, you don't have a program that's viable  
18 because you don't have enough space to meet the needs of  
19 that population.

20 MR. FOLEY: And that's my point. Thank you,  
21 sir.

22 MS. HANDLER: You know that, but the Board  
23 doesn't.

24 MR. PICK: Again, it goes back to the

1 qualified applicant and their experience to really  
2 elaborate on why they need this space. So, in my mind,  
3 eliminating the square foot requirement doesn't eliminate  
4 the requirement for the applicant to be able to rationalize  
5 and justify the space they need in order to provide  
6 services. But, again, is the Board in a position -- do  
7 they know how many square feet are needed to take care of a  
8 mentally ill patient? No. It's the provider.

9 MR. SULLIVAN: And this doesn't tell you  
10 either.

11 MR. PICK: This doesn't tell you either. So,  
12 really, it goes back to you're evaluating the applicant and  
13 the overall content of their application and less focused  
14 on each individual item. But, now you need reference  
15 points because that's all you have to go by. And so, you  
16 need data that says other ventilator programs are using  
17 generally this amount of space. "How is your program going  
18 to meet their needs when it's substantially lower or  
19 substantially higher?" Then that's the opportunity for the  
20 provider to provide you justification.

21 MS. AVERY: Well, two things. One, I totally  
22 am against eliminating this; but, if we take it to the  
23 Board from this committee, we're going to have to have some  
24 concrete rationale for the Board to support something like

1 that, because it gives us that benchmark as to where we  
2 need to determine. And I think that if we go back to what  
3 Eli said earlier about looking at specialized care  
4 categories, this can be sub-parts of that, where we'll get  
5 that feedback and information from the industry to say, "If  
6 you have this type of facility, this is what you need."  
7 But I think it will be a hard sale to eliminate that  
8 totally without a real concrete argument to present to the  
9 Board. So how about we handle that kind of information  
10 when we look at the specialized care categories.

11 CHAIRMAN WAXMAN: I'm fine with that.

12 MS. EVANS: So, you're suggesting that we keep  
13 our minimum -- our maximum set?

14 CHAIRMAN WAXMAN: Until we define the whole  
15 concept of specialized units.

16 MS. EVANS: Part of the problem I would have  
17 is that we're already hearing loud and clear from all of  
18 the providers out there that it's not an adequate number.

19 MS. AVERY: But we don't have an alternative  
20 at this point to take to the State Agency Board to say this  
21 is the justification for eliminating this. All I hear is  
22 we need to eliminate it and send this Rule to the Board,  
23 and I don't think it's going to fly with the Board.

24 MR. PHILLIPPE: That's good input to have.

1           CHAIRMAN WAXMAN: We are attempting to get a  
2 document so we can meet -- with a full understanding that  
3 we're going to come back and we have several significant  
4 items to redefine, rewrite and justify and make those  
5 recommendations.

6           MS. EVANS: I think what's interesting is part  
7 of the struggle that groups like the Pioneer Coalition have  
8 is that they kind of bump up against regulations like this,  
9 and I really -- as far as consensus from -- I'm hearing  
10 from almost everyone else, having the maximum set at this  
11 number is probably not a good place to be.

12           CHAIRMAN WAXMAN: I don't think anyone is  
13 suggesting that that maximum is going to be there forever.

14           MS. AVERY: Right.

15           CHAIRMAN WAXMAN: All we're saying is that in  
16 order to move forward, if we leave it here until we can  
17 finish the document, we have complied with their March  
18 21st, 22nd date and we know we have to come back and  
19 rewrite all of these sections and kind of unify several  
20 significant topics that we've talked about. That's all I'm  
21 suggesting. If the group wishes to do something about that  
22 immediately, then we need to make a motion.

23           MR. PHILLIPPE: The part that I heard,  
24 though -- because you don't talk a lot, but you have a lot

1 to say when you do talk.

2 MS. AVERY: Thank you.

3 MR. PHILLIPPE: Is that it's not going to  
4 happen anyway. It's important to the Board for its own  
5 reasons; and if we do it this way, it's going to be  
6 rejected anyway. So, we're better off tabling it until we  
7 have enough information to meet their needs.

8 MR. URSO: Don't a lot of these pieces depend  
9 and intertwine with each other? So when you come up with  
10 the final product, don't you want to be able to tackle  
11 every aspect from size to categories of service to bed  
12 need? I mean, that would seem to be a much more  
13 comprehensive approach, rather than saying, "We don't like  
14 this today." You're right. But then what if the flavor  
15 changes once you get into it and you take a look at the  
16 whole thing?

17 MS. ALTMAN: That makes sense.

18 CHAIRMAN WAXMAN: Mike, Appendix B.

19 MR. CONSTANTINO: Appendix B, again it's the  
20 standards related to the financial criteria.

21 MR. SULLIVAN: Same issues. I mean, this  
22 is -- every project goes through extensive review at this  
23 point by the financiers in order to come up with an  
24 adequate business plan, and these criteria are guidelines

1 for the Staff, but I don't think relevant to what we're  
2 doing.

3 MR. PHILLIPPE: I will also add that I made  
4 that same comment earlier about the finances and we said it  
5 was too complicated to deal with now and we should table it  
6 for a later discussion.

7 MR. SULLIVAN: Mine was merely a place setting  
8 objection.

9 MR. URSO: Was it yours or Mike Bibo's?

10 MR. SULLIVAN: Definitely Mike's.

11 CHAIRMAN WAXMAN: I hope everyone is here next  
12 month so you can be Terry again.

13 (Laughter)

14 CHAIRMAN WAXMAN: We are happy to have you,  
15 Terry, whoever you are.

16 MS. HANDLER: Mike, do we have a parking lot?  
17 Is someone keeping track of a parking lot?

18 MS. AVERY: It's in our minutes.

19 MS. HANDLER: Could I suggest that maybe for  
20 the parking lot, when we're getting back to some of these  
21 things, maybe part of what we are expecting from applicants  
22 is to demonstrate best practices for which the Staff could  
23 evaluate their application against? Because those -- it  
24 sounds -- the industry is moving. It is dynamic. It is

1 not static. So current best practices are really the gauge  
2 for the day, and maybe that should be part of the  
3 application process. What are the best practices for which  
4 this application should, in fact, be compared against,  
5 whether it's, you know, size or financials or whatever.

6 MS. ALTMAN: I think that's very good.

7 MS. HANDLER: Kind of the onus is going back  
8 to the applicant.

9 CHAIRMAN WAXMAN: I think that's a good idea.  
10 Also another great idea sitting out there is to make sure  
11 our applicants are qualified, they're not sitting either  
12 behind a fake corporation that have adverse actions against  
13 them. So, we need to hold on. Again, it is back to  
14 quality of care issues, too.

15 What I would -- well, we need to finish this  
16 and then I'm going to ask Staff to do something.

17 MR. CONSTANTINO: Page 72. It's, again, much  
18 the same, 73, 74, 75, 76, 77.

19 MR. SULLIVAN: Nobody wants to ask about  
20 the --

21 MR. PICK: Going, going.

22 MR. CONSTANTINO: 78.

23 MR. SCAVOTTO: The only thing I would observe  
24 is, if you decide to dump these things, great. If you

1 decide to keep them, great. But, we ought to be  
2 consistent. Some of these standards early on in red, which  
3 I suspect is new language, apply to new facilities only. I  
4 think they should apply to all facilities, unless we say  
5 you're exempted because of a bond rating.

6 MS. DEDERER: But how are you going to handle  
7 that?

8 MR. SCAVOTTO: Easy. How? You require all  
9 facilities -- unless they have a certain bond rating, you  
10 require all facilities to respond to these standards.

11 MS. CUNNINGHAM: Could you do it through  
12 licensure?

13 MR. SCAVOTTO: The financial?

14 MS. CUNNINGHAM: I mean, just part of the --  
15 never mind.

16 MR. PICK: You're only speaking to this  
17 financial section.

18 MR. SCAVOTTO: Yeah.

19 MR. PICK: Not the whole package.

20 MR. SCAVOTTO: Only to the financial package.

21 MS. HANDLER: So, like an annual --

22 MR. SCAVOTTO: Earlier in this document, there  
23 were the same financial criteria that only applied to new  
24 facilities, and they should apply, in my opinion, to all

1 facilities, unless the existing facility can demonstrate  
2 financial power.

3 CHAIRMAN WAXMAN: So you mean an old facility  
4 that's looking for a new building or remodeling?

5 MR. SCAVOTTO: Yeah.

6 MS. HANDLER: New applicants. I was  
7 thinking --

8 MR. PICK: I thought you meant currently  
9 operating buildings that --

10 MR. SCAVOTTO: The language in the document is  
11 new.

12 MR. PICK: You're talking about existing  
13 facilities applying for modernization.

14 CHAIRMAN WAXMAN: I think point well taken.  
15 Do we need a motion that we're approving this document at  
16 this point?

17 MR. URSO: Yes.

18 CHAIRMAN WAXMAN: We already made the  
19 recommendation that we have said to them that, in terms of  
20 bed count and that whole area, that we are not in favor of  
21 what's written, but we're giving it to them with -- coming  
22 back with better ideas. So, I need a motion to approve  
23 this document to send to the Mother Board.

24 MR. PICK: I'll motion to approve the document

1 with the revisions that are currently in place and  
2 providing that we will continue to make revisions in the  
3 future in the areas that we designated that require more  
4 time and effort to review and make recommendations.

5 CHAIRMAN WAXMAN: I need a second to the  
6 motion, please.

7 MS. ALTMAN: Second.

8 CHAIRMAN WAXMAN: We have a second. All in  
9 favor?

10 (Ayes heard)

11 CHAIRMAN WAXMAN: Any opposed?

12 (Pause)

13 CHAIRMAN WAXMAN: What I would like Staff to  
14 do for our next meeting, or if you get it in the mail to  
15 us, is to pull out of the transcripts all of the major  
16 topics that we said we will address at future meetings  
17 that's in the parking lot and I think, either if you guys  
18 want to take a shot at grouping them for us, and then when  
19 we meet again, we'll prioritize where we want to start,  
20 whether it's the financial stuff, whether it's the  
21 application process, the application document itself,  
22 whether it's beds, we'll prioritize that and start working  
23 on those.

24 Next question I have, the next meeting

1 scheduled is when?

2 MR. PICK: March 29th.

3 CHAIRMAN WAXMAN: We've done a great deal of  
4 work. Do you want to meet on March 29th? Do you want to  
5 take a break?

6 (Discussion held off the record.)

7 CHAIRMAN WAXMAN: We'll let Staff do some  
8 work. No meeting March 29th. We'll delete that one. I  
9 did hear agreement not to meet.

10 MS. EVANS: Yeah.

11 MR. SULLIVAN: First or second week in April,  
12 though, because after that, we're hitting Passover and  
13 Easter.

14 (Discussion held off the record.)

15 CHAIRMAN WAXMAN: Let me say it again. No  
16 March 29th meeting. We're going to look to see if we can  
17 come up with a date in early part of April. Site unknown.  
18 Open to look at a variety of alternatives. I just don't  
19 want to have a meeting and then have somebody sit there  
20 and -- as maybe all of you are aware or maybe some of you  
21 are aware, the Tribune and the newspapers are all in front  
22 of the nursing home today. They're closing one down. We  
23 just need to be very careful that --

24 MS. DEDERER: Whose nursing home?

1 MS. ALTMAN: The Aldin Kids' one, where the  
2 kid died.

3 MR. URSO: I'd just like to say, in terms of  
4 process, we're going to put this draft together with the  
5 changes that this committee has recommended, present that  
6 to the full Board. The full Board may say, "Well, send it  
7 back. We've got a question about this one or clarify that  
8 or what" -- we don't know at this point how the Board is  
9 going to react. So, there might be some part of the next  
10 meeting, or maybe all of it, I don't know, that might be in  
11 reaction to what the Board thinks about this. Maybe there  
12 won't be anything. Maybe there might be a lot. So just so  
13 you know.

14 MR. PICK: Can I make a motion to adjourn.

15 MS. EVANS: Second.

16 CHAIRMAN WAXMAN: All in favor.

17 (Ayes heard)

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19 END OF MEETING

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## CERTIFICATE OF REPORTER

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



KAREN K. KEIM

CRR, RPR, CSR-IL, CCR-MO

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1 Mike, finish what you were going to say.

2 MR. CONSTANTINO: We would have difficulty  
3 pulling anyone's license. We don't have that authority.  
4 The Board doesn't have that kind of authority, if that's  
5 what you're looking at as a mechanism.

6 MR. SCAVOTTO: No.

7 MR. CONSTANTINO: We don't have that  
8 authority.

9 MR. PICK: I don't think we're prescribing  
10 what the remedy is. We're merely identifying that if we're  
11 requiring follow-up data about performance, we've got to do  
12 something about it. If it's referred to the licensing  
13 agency, fine. There has to be something associated with  
14 accountability.

15 MR. CONSTANTINO: Frank, I think we could  
16 define penalties.

17 MR. PICK: That will pay your salaries.

18 MR. FOLEY: Two things --

19 MR. URSO: Not what we're worth.

20 (Laughter)

21 MS. EVANS: We would have to prove that they  
22 didn't intend to ever fill the building.

23 MS. HANDLER: No, best efforts.

24 MR. PHILLIPPE: Everyone is going to make

1 their best efforts. Here is the thing: If within two  
2 years they don't fill the building, then they lose the beds  
3 down to 90 percent census, so you take away beds and let  
4 someone else use them.

5 MR. URSO: You're spelling out exactly how  
6 you'd have to put this in the law. You'd have to have  
7 details and everyone would have to understand it and what  
8 the criteria are and what the penalties are. So, that  
9 would have to all be spelled out.

10 MR. PHILLIPPE: So that's something for later  
11 discussion.

12 MR. PICK: That's a remedy.

13 MR. FOLEY: On this specific criterion,  
14 obviously, in the financial -- and you have to do your  
15 financial projections. You're saying you can reach  
16 occupancy level at what time period, number one. Number  
17 two, you're also signing the application form that  
18 specifically states everything in this application is, in  
19 fact, true and accurate. So, you know, again, why do we  
20 need this assurance statement when we're already signing an  
21 application? It's already there.

22 CHAIRMAN WAXMAN: Two things we've already  
23 agreed, that we're going to look at revising the  
24 application process. So, that's part of that. And two --

1 I forgot what two is.

2 MR. FOLEY: We're going to come back to --

3 CHAIRMAN WAXMAN: Chuck, serious question.

4 How long does it take you to put an application together?

5 How many man hours?

6 MR. FOLEY: Oh, my god, several. Seriously, I  
7 am serious. Depending on the size of the application that  
8 you're doing, sometimes, you know, it could take -- if you  
9 want hours, I'm going to say anywhere between -- depending  
10 on the size of the project, anywhere between eighty hours  
11 plus, a hundred twenty hours.

12 MR. PHILLIPPE: Oh, yeah, we put a lot more,  
13 because I have staff time for weeks. So hundreds of hours,  
14 and you're paying people to help you understand the  
15 process, and that's very expensive. And so their time --

16 MR. SCAVOTTO: I want to ask Carolyn what her  
17 question was, because she's been trying to say something.

18 MS. HANDLER: I don't recall. I guess I'm  
19 looking at this in the big picture and, Frank, I wish I  
20 could remember exactly what you said earlier in the  
21 meeting, because you talked about, you know, the Board's  
22 responsibility, and part of what I think a lot of this is  
23 getting at is having someone do their homework in advance  
24 of submitting an application and demonstrating that they

1 have thought through this in an effective way so that we're  
2 not, you know -- that it's not about the proprietor and  
3 only what they're trying to accomplish, but what is needed  
4 in our state, what is cost effective to do, et cetera. I  
5 think you came up with -- you had three things that you  
6 said the Board is responsible for.

7 MR. URSO: Why submit an application if you  
8 don't have the zoning or if you don't think you have the  
9 zoning? You're right. It's stupid to do it. But it's  
10 also a state resource consumer if someone submits an  
11 application and they're not going to get zoning. So why do  
12 it in the first place?

13 MR. PHILLIPPE: I can tell you, I have been in  
14 other states where I have had to go through the zoning  
15 process. It's shorter and its focused on the relevant  
16 issues, not the business issues, and it saves time and  
17 money for everyone.

18 CHAIRMAN WAXMAN: I think Staff is going to  
19 come back and compare other states, so I think that will be  
20 useful.

21 MR. SULLIVAN: What states have you done?

22 MR. PHILLIPPE: Actually, it goes back, and it  
23 was Kentucky.

24 MR. URSO: There's two things I want to say.

1 What I wanted to say is, the Board now -- I don't want you  
2 to get the impression that the Board does not have the  
3 authority to look back and look at accountability, because  
4 they do and they have. Cardiac catheterizations, when the  
5 Board wanted to know what was the status of cardiac  
6 catheterizations, you folks are coming in and saying you're  
7 going to do --

8 MR. CONSTANTINO: 200.

9 MR. URSO: -- 200 in two years, or something.  
10 We wanted to know exactly was that occurring. And so, we  
11 compiled the data. People were requested to provide it.  
12 If they didn't, then there would be some problems. They  
13 provided the data, and I think we even sent letters or  
14 correspondence or had people -- we would call people to the  
15 meeting to explain why they weren't hitting their targets,  
16 and I think we did the same thing with open heart  
17 surgeries, because that's another important service. If  
18 you don't do enough of them, how are you going to get good  
19 at it, so on and so forth. And so, the Board does have  
20 authority. I'm not saying there shouldn't be more  
21 specificity, because I think there should be. Those things  
22 were done when all of a sudden the topic came up and the  
23 Board said, "Let's look at heart catheterizations." But I  
24 think if we had that accountability like every six months,

1 check this, or something like that, but then the authority  
2 is there, specificity is not.

3 CHAIRMAN WAXMAN: Mike, move on.

4 MR. CONSTANTINO: Okay. Modernization.

5 (Pause)

6 MR. CONSTANTINO: Any questions on this?

7 MR. PICK: You know, as housekeeping on (b)  
8 (1), it's while -- it's the Center for Medicare and  
9 Medicaid Services, the nomenclature is CMS, only one M.

10 MR. SULLIVAN: Although that's throughout the  
11 Planning Board's Rules, the double M.

12 MS. HANDLER: Yeah, I think it actually --

13 MS. ALTMAN: Is that the Federal CMS? Then  
14 why does it say IDPH CMMS?

15 MR. PICK: It's two separate entities.

16 MR. SULLIVAN: There should be a comma there.

17 (Discussion held off the record.)

18 MS. DEDERER: Do you need something other than  
19 JCAHO?

20 MR. SULLIVAN: Most recent accreditation  
21 reports, you can make a motion to strike Joint Commission  
22 on Accreditation of Healthcare Organizations, JCAHO.

23 CHAIRMAN WAXMAN: I probably know of two  
24 nursing homes that have gone through JCAHO for whatever

1 reason.

2 MR. PICK: I go through it all the time.

3 CHAIRMAN WAXMAN: Yeah, but you're special.

4 MR. PICK: They're not the only option  
5 anymore, so I would just make it generic, through  
6 accreditation agency reports.

7 CHAIRMAN WAXMAN: Yeah, so I have a motion?

8 MR. PICK: I'll make the motion to substitute  
9 "accrediting agency reports" for the "Joint Commission on  
10 Accreditation of Healthcare Organizations".

11 MR. SCAVOTTO: Second.

12 CHAIRMAN WAXMAN: All in favor.

13 (Ayes heard)

14 CHAIRMAN WAXMAN: Any opposed?

15 MR. CONSTANTINO: Phyllis?

16 MR. FOLEY: Let me back up on top of the page,  
17 item (b) on top of the page, 56. I do like this. I think  
18 this is very good, but I need to ask, are we at Public  
19 Health now keeping track, and would it be noted in the  
20 inventory book of facilities that received like a CCRC or  
21 another variance? Is that going to be noted in the  
22 inventory so everybody will know what is out there and what  
23 isn't out there?

24 CHAIRMAN WAXMAN: Are you asking if the

1 reports separate the two?

2 MR. FOLEY: I guess -- yeah, I'm asking about  
3 maintaining admission limitations, provide assurance that  
4 would maintain admission limitations. So if you've got a  
5 CCRC, you are saying, basically, according to that  
6 variance, just going to admits residents from that campus  
7 setting. So that is restrictive admission. What I'm  
8 asking, are we going to keep track of that in inventory,  
9 that Facility A has a CCRC variance, Facility B has a -- we  
10 don't do that now, but I'm asking, are we going to do it in  
11 the future? Because it's not in the profiles either.

12 MR. CONSTANTINO: When we did the survey last  
13 year, we asked if they are a CCRC and we got back a number  
14 of responses. Evidently, some of those facilities had  
15 built on their campuses assisted living and some other  
16 types of supportive living maybe, and now they consider  
17 themselves a CCRC, so we couldn't depend on that data.

18 MR. FOLEY: That's right.

19 MR. CONSTANTINO: It will take -- our database  
20 is not complete regarding this, so I don't think -- it  
21 would be very difficult for us to go back now and -- we  
22 could try.

23 MS. EVANS: Technically, a CCRC is an  
24 accreditation level that you pay for through CARF. So it's

1 not even -- the way we use that term is not universal.

2 MR. PHILLIPPE: It also has a State definition  
3 in State statute. I know this because I thought mine were  
4 and they're not, and we think of them as CCRC's, some of  
5 them, but we don't follow the rules to make it officially a  
6 CCRC in Illinois.

7 MR. CONSTANTINO: But you weren't approved as  
8 a CCRC.

9 MR. PHILLIPPE: No, we don't have the waiver,  
10 but I know there's a criteria.

11 MR. CONSTANTINO: I don't know where to get  
12 that data, unless we -- we can sure search our database and  
13 try.

14 MS. EVANS: Are you saying we don't really  
15 know for sure who is and isn't?

16 MR. CONSTANTINO: What the Board has approved  
17 as a CCRC, the variance, right. What we did last year was,  
18 part of our survey asked the facilities if they were a CCRC  
19 and even though they were approved just for skilled care,  
20 they had also on their campus put on assisted living,  
21 supportive living, independent living and they considered  
22 themselves a CCRC. But the Board didn't approve them as  
23 such. So, we couldn't rely on that data.

24 MR. PICK: My recommendation is, let's forget

1 about -- since we can't determine, let's go from this point  
2 forward, and that's what we're talking about, is that we  
3 will intend for the Board to track which projects have been  
4 approved under these variances and report them as such, and  
5 we're essentially just grandfathering the ones that are out  
6 there because we don't really know who they are and who  
7 they aren't.

8 MS. HANDLER: Couldn't they produce something,  
9 though? Isn't it something that when the CON is approved,  
10 the facility gets something from the Board that says,  
11 "You're approved under these circumstances"? So, if a  
12 facility believes they have a CCRC variance, then they  
13 should be able to provide the documentation.

14 MR. PHILLIPPE: It's actually just the  
15 opposite. They don't want to have a variance. They want  
16 that to be forgotten so they can be treated like everybody  
17 else.

18 MR. PICK: Right.

19 CHAIRMAN WAXMAN: But you choose whether you  
20 want to take -- if you have a CCRC, you can choose whether  
21 your skilled beds are open to the community or closed to  
22 the community.

23 MR. PHILLIPPE: No.

24 MR. SULLIVAN: Not if you're getting a

1 variance.

2 MR. PHILLIPPE: You can do that if you're a  
3 CCRC, like mine are, but if you're a CCRC and using the  
4 variance, you can't take anybody from outside after the  
5 first year.

6 MR. URSO: You can only take residents within  
7 that campus.

8 MS. EVANS: But then you don't have to meet  
9 the occupancy standard. That's why they're asking for a  
10 variance. Now you don't have to meet that. That's why  
11 people went that route because, otherwise, they wouldn't be  
12 able to build their CCRC because they couldn't get the  
13 nursing home component approved. But there's other --

14 MR. CONSTANTINO: What we saw happen after  
15 they were granted a CCRC variance, a bed need was  
16 identified in their area, then they came back and applied  
17 for an open facility and --

18 MR. PICK: There's nothing precluding them  
19 from doing that.

20 MR. CONSTANTINO: No, nothing.

21 MR. URSO: It's a new CON application, though.

22 MR. PICK: Right. You have to go through the  
23 process. Let's track it from this point forward.

24 CHAIRMAN WAXMAN: Moving on, Mike.

1 MR. CONSTANTINO: Modernization.

2 Anything else?

3 (Pause)

4 MR. CONSTANTINO: Okay. Subpart E. This is  
5 Mike Bibo's area, Specialized Long-Term Care.

6 Essentially, it repeats a lot of stuff -- no,  
7 no, I'm sorry. It does not. I was thinking the bed-need  
8 methodology was included in here. It's not. It's the  
9 criteria for Specialized Long-Term Care.

10 Anyone have any questions on page 57?

11 (Pause)

12 MR. PICK: I have an editorial statement to  
13 make, not necessarily modification.

14 CHAIRMAN WAXMAN: I think Mike has some  
15 issues. I told him if he wasn't here, he'd always have an  
16 opportunity to raise these at another meeting.

17 MR. SULLIVAN: I would say he will probably  
18 address the issues separately with the Department. I don't  
19 know if this will be the forum.

20 MR. PICK: The comment I wanted to make was  
21 about the term "specialized". The list really doesn't  
22 limit what is specialized. I think the example that Frank  
23 just recently brought up about the ability to monitor  
24 whether provider applicants are meeting the standards when

1 we talked about cardiac catheterizations. The whole  
2 evolution of the acute service sector, which went in the  
3 50's from having general med/surg beds as kind of the  
4 standard, because all facilities, that's what they operated  
5 at, and then through the 60's and 70's, as technology  
6 advanced, the development of specialty care service areas  
7 within hospitals, which then became under the purview of  
8 the Board to then authorize which specialized services were  
9 going to be offered in institutions in order to make sure  
10 that they hit the utilization thresholds, I think is  
11 equally relevant to nursing homes today, because we're  
12 moving away from the generalist mentality of "This is an  
13 institution that serves the medical needs of the elderly,  
14 we have few options in the community to meet their service  
15 needs," to a community that becomes much richer with  
16 service options and an institution that starts to  
17 specialize in specific service areas to address service  
18 gaps that exist in the market.

19           And my facility is an example. A third of our  
20 patient population is under 65. Our entire building is an  
21 amalgamation of specialty units. Ventilator support,  
22 dialysis, transplants. So, there's a whole host of  
23 populations that we're serving, and that was the direction  
24 we chose to go. We are atypical in the market because of

1 how far we've evolved. But the editorial that I'm giving  
2 is that we will become, our profile will become the  
3 dominant profile of long-term care facilities, because the  
4 market has changed. There aren't enough clients to support  
5 the number of beds in the market, and they're either going  
6 to innovate in these specialized areas, some of them.  
7 Others will continue to be traditional facilities, but the  
8 number of beds that are out there, given the market  
9 conditions, are far in excess of the need. For  
10 organizations to adapt their resources to what needs are in  
11 the market is what the market is driving.

12 MR. PHILLIPPE: It's actually more than just  
13 having empty beds or whatever. It's also the hospitals  
14 referring people now with higher acuity, faster. There's  
15 penalty for readmissions. And so the way to improve the  
16 quality of care is more by grouping the pathways, and you  
17 can't do that by spreading people around the building. You  
18 need to specialize.

19 MR. PICK: Not everybody understands that yet.

20 MR. PHILLIPPE: The hospitals want it, the  
21 federal government wants it, and to get a higher quality of  
22 care and better outcomes, I think you need to do that.

23 MR. PICK: I think we also need to govern how  
24 this happens, because, like the cardiac catheterization, if

1 every nursing home decides they want to do a ventilator  
2 building and they've got three vents in the building,  
3 they're not going to do it very well, because they don't  
4 have the critical mass to develop the competency in the  
5 staff and the management disciplines in order to maintain a  
6 quality program. So, I think it's -- in my mind, it's not  
7 a question of how do you control what number of beds are  
8 going to be available in a specific service application.  
9 It's how do we ensure that the services that are being  
10 offered are not being offered because they're convenient or  
11 easy to put into a building, and then they crash and burn  
12 in six months to a year.

13 MS. HANDLER: Or they're high margin.

14 MR. PICK: Or they're high margin and everyone  
15 wants to be there. It comes back to, are they qualified to  
16 do the service? Do they have the skills to do it? Can  
17 they maintain the quality level to ensure the health and  
18 safety of the patients? To me, that's the editorial I want  
19 to introduce. So, the whole area of specialized long-term  
20 care requires scrutiny in that it needs to be expanded  
21 beyond the populations that are currently listed.

22 MS. ALTMAN: Could you also address how that  
23 plays out for the DDMI population?

24 MR. PICK: I think it's exactly the same, that

1 if you have -- the issues that I saw emerging in the press  
2 of having a small section of MI's mixed in among geriatric  
3 populations speaks to exactly that. If you're a general  
4 facility, you can admit anybody. It really creates the  
5 opportunity to do that. So, if you're, again, governed by  
6 what services you can offer to the community and it's based  
7 on your qualification and the competencies of the staff and  
8 your ability to effectively manage the needs of that  
9 population, it changes the whole dynamic. The issue that  
10 we're really, I think, at a crossroads of is we're still in  
11 a generalist mentality in an environment that is really  
12 searching for specialist solutions.

13 CHAIRMAN WAXMAN: Tim, you looked like --

14 MR. PHILLIPPE: I just agree on the MI  
15 population, because I'm a psychologist, and I managed  
16 mental health problems for twenty years, and I was just  
17 shocked when I got here. To be fair, I was.

18 MR. URSO: When you got to this meeting?

19 MR. PHILLIPPE: No, no, no. About how we  
20 handle MI population. And I see it the same, is there  
21 could be good programs. I'm not saying it's a bad setting,  
22 if you have the programming and you do it right. But just  
23 to fill the beds because they're cheap and you make good  
24 money on it, you don't have to provide any services, that's

1 a different issue.

2 MS. ALTMAN: That's a major issue for our  
3 organization.

4 MR. PHILLIPPE: I think it is, too. It's the  
5 same really.

6 MR. PICK: My experience is equally applicable  
7 to these other populations. If you have a rehab program  
8 and you have heart failure patients and joint replacements  
9 and diabetics with wound complications and they're all  
10 mixed together, the program is not going to be very  
11 effective. It's going to be very effective at emptying the  
12 hospital bed, but that's it.

13 MS. ALTMAN: So then is your proposal going  
14 forward that this idea of specialized care needs to be part  
15 of the determination of bed need, whether they're meeting  
16 the needs of the specialty population, whether they're  
17 meeting the qualifications? I completely agree with you.

18 MR. PICK: Yes.

19 CHAIRMAN WAXMAN: I think it's a general  
20 consensus. As Eli pointed out, it's a great picture of  
21 where I think those homes that will succeed in the future  
22 will go compared to those that continue to believe that the  
23 general population will still seek out a nursing home bed.

24 MS. ALTMAN: I don't have as much faith in the

1 market forces that Eli does.

2 MS. DEDERER: Absolutely not.

3 MR. PICK: I think if we leave things the way  
4 they are, that's the only option. That's the way it's  
5 going to emerge. But, I think, why subject the public to  
6 be the guinea pigs to determine which organizations are  
7 going to be successful in being able to offer these  
8 services from those that aren't, and that is the reality  
9 today.

10 MS. DEDERER: But the existing organizations  
11 aren't going to be applying.

12 MR. PICK: They will if they feel that they  
13 need to fill the beds and they have to start offering these  
14 services in order to do it.

15 CHAIRMAN WAXMAN: The issue you're going to  
16 run into, I think, is that in a large metropolitan area,  
17 you have enough players to choose to specialize. But when  
18 you get into some of the smaller towns where there is only  
19 one nursing home with 50 beds, now you've got a problem.

20 MR. PICK: Well, again, I think we're trying  
21 to offset the competing pressure of the client wants to be  
22 close to home. The reality is that's always their first  
23 choice. But I think the issue still is, is the  
24 organization competent at providing the service? And even

1 downstate, you'll find organizations that have ventilator  
2 programs, but patients have to travel a long distance to  
3 get to that service.

4 MS. DEDERER: They do?

5 MR. PICK: Yes. Is it worth it? The question  
6 is, is it worth it? It doesn't pay for me to drive four  
7 hours to end up in a crappy program.

8 MS. DEDERER: I want to restate what I was  
9 saying. If you don't apply for a specialty program, you  
10 can keep doing what you're doing now and there's nothing  
11 that's going to stop it.

12 MR. SULLIVAN: I think Eli has a good starting  
13 point, and I think the purview of this committee and the  
14 Board would be on new projects and initiation. I don't  
15 think it can stop there. We have to talk about licensure  
16 and certification of all of these programs across the  
17 board, because at some point, the purview of this Board  
18 stops.

19 MR. PICK: Right.

20 MR. SULLIVAN: They can't control things  
21 beyond that. But, I think it should be part of the bigger  
22 picture of, if you're going to do specialty care, first of  
23 all, you need to get that clarified through here. But, you  
24 also need the license, you need the certification, and the

1 ongoing enforcement in order to continue to provide that,  
2 and I think we're heading in that direction and we should.

3 CHAIRMAN WAXMAN: Now you're putting a great  
4 deal of pressure on the State, because now they have to  
5 have the nursing staff and other type of inspectors that  
6 have the specialized skills to inspect the specialized  
7 programs.

8 MR. PICK: In a perfect world, that would be  
9 true.

10 CHAIRMAN WAXMAN: Unfortunately, that's not  
11 Illinois.

12 MS. CUNNINGHAM: I take issue with the last  
13 comment. The State actually is -- and I'm not with the  
14 Department of Public Health, but I do know that they have  
15 put some efforts recently to beef up their surveyor staff,  
16 to hire more, and a lot of that was driven by the Nursing  
17 Home Safety Task Force legislation.

18 Just to speak real quickly to the  
19 certification issue, and this grew out of that same  
20 legislation last summer. There was created a statute, a  
21 certification program, although rules have not been  
22 implemented yet or they're still being developed, that  
23 requires nursing facilities that seek to serve a population  
24 with serious mental illness to apply for special

1 certification and to meet special standards. So,  
2 that's kind of a step. It's not everything. I think the  
3 State recognizes some of the deficiencies.

4 CHAIRMAN WAXMAN: That is good. Frank?

5 MR. URSO: If I hear you correctly, right now  
6 hospitals have different categories of service. You've got  
7 med/surg, you've got peds, you've got ICU. Are you  
8 suggesting we should have categories of service, so to  
9 speak, in long-term care?

10 MR. PICK: That's exactly what I am saying.

11 MR. URSO: Therefore, we focus the need to  
12 that specialization. So, perhaps maybe not this meeting,  
13 but maybe that's what this group really needs to refine,  
14 because now what we have is general long-term care. We  
15 have specialized long-term care.

16 MR. CONSTANTINO: Skilled care, right.

17 MR. URSO: It's just generic. If, in fact,  
18 you're saying there needs to be all of these specialties,  
19 maybe that's what this committee needs to look at,  
20 categories of service within long-term care.

21 CHAIRMAN WAXMAN: We already identified three  
22 additional specialized care that needed to be addressed  
23 when we come back and do that. So, I think we are moving  
24 in that direction.

1 MR. PICK: Just as an added, the other is,  
2 because it's a generalized long-term care public policy  
3 kind of mindset, the Department of Public Health hires  
4 general nurses. There's nothing to determine that they  
5 need nurses that are experienced in ventilator care, renal  
6 care, cardiac care, because the patients are all part of a  
7 general population. So, I think that the opportunity we  
8 have as we define the direction is also to provide some  
9 framework for the licensure and certification divisions of  
10 Public Health to move their staff and staff training in  
11 that direction as well.

12 CHAIRMAN WAXMAN: I just saw your hand.

13 MS. HANDLER: I just would like to ask that  
14 when we have this discussion, that we also look at that  
15 defined population component of the Rules, because  
16 that's --

17 MR. PICK: Absolutely.

18 CHAIRMAN WAXMAN: Chuck.

19 MR. FOLEY: I like that concept, and I think  
20 we are moving in that direction, but I think we're also  
21 adding another level to our problem, because now we're  
22 going to have to maybe dictate, going back to the size of a  
23 facility, as to how many beds that facility should have,  
24 because if you've got a facility that wants to do, let's

1 say, vent patients, you're talking about a 100-bed facility  
2 with vent patients, there's not a facility in Chicago that  
3 could do that. So, you're going to have vent patients --

4 MR. PICK: He's right. In my mind, it's not a  
5 facility that's dedicated to one specialized population.

6 MR. FOLEY: So, you could have  
7 multi-specialties.

8 MR. PICK: Absolutely. In my building, we  
9 have seven, eight different populations that we're  
10 targeting, but we have units that are dedicated to a  
11 specific service and so, therefore, the staff on that unit  
12 have the competencies to effectively manage that  
13 population.

14 MR. FOLEY: So, we're going to say that a unit  
15 must be at least this size in terms of number of beds and  
16 also in terms of --

17 MR. PICK: I don't know.

18 CHAIRMAN WAXMAN: Let's hold that.

19 MR. PICK: I think we're fast forwarding.

20 CHAIRMAN WAXMAN: That's a parking lot. We'll  
21 come back to it.

22 I promised we'd be out by two, so, Mike, can  
23 you move forward.

24 MR. SULLIVAN: Let's go right to page 64.

1 We're basically going past this specialized long-term care  
2 section and taking it as is.

3 MR. CONSTANTINO: Mike Bibo is the one that's  
4 had a issue with what we've done here, so I don't know if  
5 you want to wait until Mike's comments --

6 CHAIRMAN WAXMAN: I told him he'd have an  
7 opportunity, but you're saying he's going to do it in a  
8 different direction?

9 MR. SULLIVAN: I think so. I'll check with  
10 him.

11 MR. PICK: Today you are him, so tell us what  
12 you think.

13 MR. SULLIVAN: I think we should move on.

14 MR. PICK: There's the answer.

15 CHAIRMAN WAXMAN: There's the answer.

16 MR. PICK: All right.

17 MR. CONSTANTINO: Financial and Economic  
18 Feasibility.

19 CHAIRMAN WAXMAN: You're on page 64?

20 MR. CONSTANTINO: 64.

21 CHAIRMAN WAXMAN: Okay.

22 MR. CONSTANTINO: Essentially, what we've done  
23 here is we've copied what the task force -- not the task  
24 force, I'm sorry -- what the associations have provided,

1 and inserted this into this section. It is verbatim what  
2 they did.

3 MS. DEDERER: So, why would Mike have anything  
4 else he wanted to say?

5 MR. PICK: We're not talking about this  
6 section.

7 MS. DEDERER: Oh, sorry.

8 MR. CONSTANTINO: This closely reflects what  
9 we have in our existing Rules. So, if anyone has a  
10 question on page 64 --

11 (Pause)

12 MR. CONSTANTINO: It is just definitions.

13 MR. PHILLIPPE: It's a fairly significant  
14 amount of work, right?

15 MR. PICK: Oh, yes.

16 MR. CONSTANTINO: Yeah, Claire has spent quite  
17 a bit of time on it.

18 MR. PHILLIPPE: Is this similar to zoning in  
19 that the purpose of this is to make sure that people can  
20 afford to do the project they're asking to do?

21 MR. CONSTANTINO: Yes.

22 MR. PHILLIPPE: Is it possible that we can  
23 consider some things? I've seen in other parts of  
24 healthcare, sometimes you would be exempt if you had some

1 sort of accreditation. If you're getting HUD financing,  
2 for example, or bank financing, or I would do tax exempt  
3 bonds, you already have to get all of this done and  
4 approved by the finance people and so, essentially,  
5 somebody else who is an expert in feasibility studies --  
6 not to say you aren't also -- but, you know, the people who  
7 live and die financial feasibility, they weren't so perfect  
8 I know a couple years ago, but they're mostly the experts.

9 So, I just wondered if that was a possibility  
10 that they can be exempted if they've gone through the  
11 process and had HUD financing, some kind of bank financing,  
12 somebody has already approved it.

13 CHAIRMAN WAXMAN: Is that part of reviewing  
14 the application process?

15 MR. CONSTANTINO: Yeah.

16 MR. PHILLIPPE: I'm asking whether you all do  
17 this extra work again in this format when you've done it  
18 for maybe two bankers already --

19 CHAIRMAN WAXMAN: And I'm suggesting when we  
20 review the application process itself, you can add that.

21 MR. PHILLIPPE: So, we don't need to look at  
22 it here then?

23 CHAIRMAN WAXMAN: That's -- I'm suggesting  
24 your point is valid. I'm suggesting that it be part of

1 when we say we're going to revise the application.

2 MS. HANDLER: It's kind of a substitution, is  
3 that what you're --

4 MR. PHILLIPPE: Yeah.

5 MS. HANDLER: So maybe instead of the language  
6 of "exempt", we can say "State something that's already  
7 been submitted and approved."

8 MR. SULLIVAN: A lot of the criteria that we  
9 put into the association proposal matches the HUD criteria  
10 very similarly. It tracks nicely.

11 CHAIRMAN WAXMAN: Mike, continue on.

12 MR. CONSTANTINO: Okay. Then on page 65, more  
13 definitions.

14 Any questions?

15 (Pause)

16 MR. CONSTANTINO: 66.

17 (Pause)

18 MR. CONSTANTINO: 67.

19 (Pause)

20 MR. CONSTANTINO: 68.

21 (Pause)

22 MR. CONSTANTINO: 69.

23 (Pause)

24 MR. CONSTANTINO: And we come to Appendix --

1 MR. SULLIVAN: Well, I am -- I will just bring  
2 up on 69 that it be -- meaning the standards of Appendix B  
3 and Administrative Code 1130, my preference is that it be  
4 in here and not referenced to 1130, because I think 1130  
5 applies -- has a lot more applications with hospital type  
6 stuff. I'd like to see a long-term care section on the  
7 financial and viability rules and, quite frankly, I think  
8 it could stop here. I'm not sure we need Appendix A and  
9 Appendix B.

10 MR. CONSTANTINO: Appendix A is the size  
11 standards.

12 MR. SULLIVAN: Of which we've had a  
13 discussion. And the biggest issue is that, yes, the amount  
14 of space is getting larger as time goes on, based on  
15 consumer expectations, and this becomes an area where the  
16 Staff says, "Well, you're over 570 or 713, therefore, it's  
17 a -- you don't meet that criteria. But, you can explain  
18 it." And all of this is based on the past five years. We  
19 have five years ahead, and the reason it was changed is  
20 because just about all the applications didn't meet the  
21 square footage criteria, because everyone was exceeding it.  
22 I'm not sure that we need it. I think, in particular, this  
23 square footage thing with the business model defines square  
24 footage and not what is essentially a historical, past

1 experience.

2 CHAIRMAN WAXMAN: Your feeling, Mike?

3 MR. CONSTANTINO: It's up to the committee. I  
4 like the use of the standard. It gives the staff a number.  
5 And what will happen on these projects is, we'll be left  
6 with making a subjective judgment by Staff that sometimes  
7 we don't have the expertise to do.

8 MR. SCAVOTTO: Judgment by Staff in --

9 MR. CONSTANTINO: When we write our State  
10 Agency Report.

11 MR. SCAVOTTO: In what respect?

12 MR. CONSTANTINO: Regarding the size of the  
13 beds, size of the rooms, gross square footage standards.

14 MR. SULLIVAN: Why is that needed?

15 MR. SCAVOTTO: I hate to agree with Terry in  
16 public, but I do.

17 MR. CONSTANTINO: It goes back to the costs of  
18 the project and it gives us a number, the Staff a number,  
19 that we can put our hat on.

20 MR. URSO: It's a point of comparison.

21 MR. SCAVOTTO: If I'm too small, if I don't  
22 have enough space, I'm not going to get a license approved  
23 anyway.

24 MS. EVANS: And nobody is going to want to

1 live there.

2 MR. SCAVOTTO: And if I built too much, I'm  
3 not going to be able to pay for it.

4 MR. CONSTANTINO: We operate at a maximum.  
5 Licensure operates at a minimum. So you have to meet the  
6 minimums, but we're operating at a maximum. That's why  
7 that number -- we ask for this number.

8 CHAIRMAN WAXMAN: Chuck?

9 MR. FOLEY: I was getting ready to say what  
10 Mike said. Licensure works with a minimum number. We work  
11 with a maximum number. I got to agree with Mike that this  
12 is a guiding tool for the Staff. Obviously, when they are  
13 reviewing the projects, especially if we get into the  
14 specialized type facilities, how big, how small should a  
15 unit be, they're going to specialize in this category of  
16 service or this category of service, you know, projects do  
17 have a tendency of over building. The purpose of this is  
18 cost containment, and if you leave it wide open, you know,  
19 again, they could go back and start building Taj Mahals  
20 where square footage will probably never be used and people  
21 are paying for it.

22 MR. PHILLIPPE: The question is, though,  
23 today, not the past, but today, why do we care if they  
24 build it too big?

1 MR. FOLEY: Cost containment.

2 MR. PHILLIPPE: But it's not containing costs  
3 I don't think anymore, because we're not paid based on it  
4 anymore. Used to be paid based on it. But today, there is  
5 no payment tied to it.

6 MR. SCAVOTTO: The State is going to pay the  
7 same.

8 MR. PHILLIPPE: Nobody is going to help you  
9 out if you build it too big.

10 MS. ALTMAN: I guess my feeling again, does it  
11 have any real connection to quality? I mean, it sounds  
12 like originally you wanted to do it so you could have some  
13 rough idea of quality in terms of whether people are  
14 building something that was way too small.

15 MR. PHILLIPPE: No, it was the opposite.

16 MS. ALTMAN: If it has nothing to do with cost  
17 anymore, I see no reason for it.

18 MR. PHILLIPPE: It doesn't help quality. It  
19 holds quality down. The funding was based on cost  
20 originally, so if you built too much, the Government is  
21 paying too much and it's driving costs up. It's not cost  
22 based anymore.

23 MS. ALTMAN: Then it makes no sense to me at  
24 all, unless it has some relation to quality. What does the

1 information give you?

2 MS. CUNNINGHAM: I was just going to share a  
3 little bit about my perspective on cost and the HFS's,  
4 State Medicaid agency's, perspective on cost, because I've  
5 been really kind of fascinated by this argument. I see  
6 really little relationship or little value that can be  
7 gained from trying to limit a maximum -- to limit, I guess,  
8 the size of a unit, you know, based on cost because -- and  
9 I'm also a little -- I don't want to be too encouraging  
10 of -- I know you have to think as owners and operators of  
11 your revenue streams when you propose projects, but to use  
12 our current Medicaid rate methodology to do that, as  
13 political as it is, as frozen as it's been for years, as in  
14 flux as it is, why -- moving forward, why would we want to  
15 do that?

16 MR. PHILLIPPE: Right.

17 MR. SCAVOTTO: Why would we want to do what?

18 MS. CUNNINGHAM: Have a maximum based on cost  
19 when --

20 MS. EVANS: It's an old system.

21 MS. CUNNINGHAM: And it could be that I'm just  
22 not understanding.

23 MR. PHILLIPPE: No, I think that's what we're  
24 saying, too. We agree.

1 MS. EVANS: Except the Staff would like to  
2 have a guide post but --

3 MS. CUNNINGHAM: I get that too, as a Staff  
4 person.

5 MS. EVANS: But if there is no guide post  
6 there, they don't have to compare it to anything.

7 CHAIRMAN WAXMAN: Mike, are you looking for a  
8 cost per square foot?

9 MR. CONSTANTINO: Yeah, we do a cost per  
10 square foot.

11 MR. PHILLIPPE: That's another one.

12 MR. SULLIVAN: That we don't like.

13 MS. EVANS: But again, what's the purpose of  
14 it if it's -- if a cost report doesn't have to be filed or  
15 if --

16 CHAIRMAN WAXMAN: It still has to be filed.

17 MR. PICK: But it doesn't affect the rate.

18 MS. EVANS: Then what's the point of it?

19 MR. PHILLIPPE: If I can understand  
20 philosophically the history, it was first the payment  
21 issue, which was real back then, because if you drive the  
22 costs up, the State is paying more. But it doesn't exist  
23 anymore, like you said. But the other side of it, the  
24 Board sees their role to be more of a parent here, to help

1 poor providers who have poor plans. I really think that's  
2 part of it.

3 MR. SULLIVAN: That's why we call it a Mother  
4 Board.

5 MR. PHILLIPPE: And sometimes that's a very  
6 good use of government resources, to protect people from  
7 doing stupid things. I'm not sure if it's that important  
8 right now in our field. I'm not sure if it matters that  
9 much. If people can get financing, they have a plan, it's  
10 based on -- I can tell you, from talking to people doing  
11 this, they have to skinny down what they think people want  
12 in their community to make it fit the criteria. If you're  
13 doing specialized populations, they're going to need extra  
14 equipment. That drives the cost up, too.

15 MR. PICK: More bedrooms.

16 MS. EVANS: Equipment takes up a lot of room,  
17 and that's part of the reason why hospitals have had to go  
18 to bigger rooms. There's a lot of stuff in there.

19 MR. SULLIVAN: But also the other thing that  
20 has changed in the past thirty years is the whole financing  
21 picture. You know, back in the 70's, it's like,  
22 cough-cough, "I want to build 200 beds" and the banks threw  
23 money at you. That doesn't happen anymore.

24 MR. PICK: That's not the case anymore.

1 MR. FOLEY: It doesn't.

2 (Laughter)

3 MR. PICK: What banks are you going to?

4 MR. SULLIVAN: I want to talk to your banker.

5 MR. PHILLIPPE: These are much more expensive  
6 than they were to build 30 years ago, too. That's  
7 something to think about, too. You are talking  
8 multi-million dollars for fairly small projects. So they  
9 get scrutinized greatly at the financing level today.  
10 These projects are probably more scrutinized today than  
11 they were 30 years ago, also.

12 MR. PICK: There are other dynamics as well.  
13 Providers weren't building buildings 30 years ago. General  
14 contractors were and selling them because they could get  
15 HUD money to build, and the days of 50's and 60's, when it  
16 was post-World War II, families and the VA benefit that was  
17 driving construction shifted to HUD, and so you had general  
18 contractors who didn't know how to do all of this stuff.  
19 So, you needed a board to tell them what to do.

20 MR. PHILLIPPE: They could use you in assisted  
21 living those years ago.

22 CHAIRMAN WAXMAN: Mike, given all of the  
23 criteria that you have in the review process, if this was  
24 removed, would it affect the output or the final result of

1 your review drastically?

2 MR. CONSTANTINO: Well, again, I go back to  
3 the cost containment of the Board. That's one of their --  
4 what the Act requires the Board to do as part of cost  
5 containment, and we're getting push-back now from the  
6 General Assembly that we don't do enough of that.

7 And this is a personal opinion. I just hate  
8 to see that removed, because it gives us a criteria which  
9 we can hang our hat on. But, it's up to this committee.  
10 It's not my personal opinion.

11 MR. PHILLIPPE: Could you explain so I can  
12 understand, so I can understand something. As I understand  
13 cost containment within the State, unnecessary spending is  
14 important. How does this help with that today?

15 MS. ALTMAN: What State money --

16 MR. PHILLIPPE: What are they trying to  
17 control the cost of, maybe?

18 MR. CONSTANTINO: I have no idea. When we  
19 have a maximum, they cannot exceed this maximum or we're  
20 going to be -- have a negative criteria. We have a maximum  
21 gross square footage.

22 MS. ALTMAN: We get it, but we're just saying,  
23 if the money that is paid out right now from the State to  
24 facilities is flat, there's nothing about them being bigger

1 or smaller that doesn't make any difference on this cost  
2 anymore. It used to, but it doesn't anymore. So what  
3 could possibly --

4 MS. HANDLER: You're talking in terms of  
5 reimbursement, but if you look at the highest level, isn't  
6 the Board looking at what is the amount of money being  
7 spent on healthcare in different segments across the state?  
8 They're looking at this -- aren't they -- isn't the Board  
9 looking at really the highest level of planning across the  
10 state, what kind of dollars are being spent in acute care?  
11 Cardiac cath, I think, is a great example when you look at  
12 it from an acute care perspective. Every hospital is  
13 putting in a cardiac cath lab and all of a sudden, guess  
14 what. You know, cardiac caths go up, reimbursement dollars  
15 out of the total pot now going to cardiac cath have risen.  
16 Is there a real need? I mean, you know, the question is,  
17 is there a real need? If any of us needed a cardiac cath,  
18 our doctor said you need a cardiac cath, you're not going  
19 to say no. There's that borderline of is it -- is access  
20 growing, is access increasing the utilization, or is there  
21 really an access gap? And I think that's what the policy  
22 board is trying to figure out, a way to do better.

23 MS. ALTMAN: I didn't understand why the  
24 physical size makes any difference.

1 MS. HANDLER: I think when we're talking about  
2 cost containment, that's where they are trying to get to.  
3 I'm not saying this is an effective way to do that.

4 MS. EVANS: One of the things is, though, it's  
5 the quality of life for the people that end up, you know --  
6 where this becomes their residence and, you know, I know we  
7 don't talk about that because we're talking about these  
8 skilled beds and high medical needs that some of the  
9 patients need. We also have that population. And now  
10 we're saying, "Okay, this is your square footage you're  
11 allowed to live in," and that is a quality of life issue  
12 for some people, and I think that that's the part we're not  
13 talking about, but that's one of the things that is holding  
14 back. By having a limit on the size, we're creating an  
15 environment that somebody who could be maybe creative in  
16 the future won't even consider developing because there's a  
17 regulation that prevents them from being creative with how  
18 they provide a residence for someone.

19 MS. HANDLER: So is there another way to look  
20 at it then? How do we help the Board accomplish that? But  
21 maybe this isn't the vehicle.

22 MR. PHILLIPPE: That's right.

23 MR. URSO: This isn't a perfect system. We  
24 all recognize that, and I think we just -- collectively, we

1 have to decide what the best approach is. Maybe it's not  
2 this range. Maybe it's a different way of looking at it,  
3 and that's -- I think by this discussion we're gathering  
4 that kind of momentum, and I think that's good.

5 MR. PICK: I'm going to suggest that cost  
6 containment is an important aspect of what we need to do,  
7 that maybe there's different ways to apply how to contain  
8 costs than limiting the size of the space.

9 CHAIRMAN WAXMAN: And I want to thank you for  
10 bringing up the whole quality of life issue, because I  
11 don't think we've thought about that or maybe not said it  
12 out loud in today's meeting. But you're absolutely right,  
13 quality of life is extremely important, and I think we do  
14 have an obligation to think about that.

15 MR. FOLEY: Let me ask a question, please.  
16 Medicare -- we're focusing this conversation on Medicaid,  
17 but where is the reimbursement mechanism on Medicare? Do  
18 they, in fact, look at any of these issues in terms of  
19 reimbursement based on size?

20 CHAIRMAN WAXMAN: Not anymore. Used to.

21 MS. EVANS: That's an old system.

22 CHAIRMAN WAXMAN: The old cost reports allowed  
23 for square footage reimbursement by designated areas, but  
24 not anymore.

1 MR. PICK: We could argue that by reducing  
2 quality of life, we're actually increasing healthcare costs  
3 because depressed patients get sicker with more  
4 complications, requiring more services. So as I said, for  
5 us, it's really delinking. We need to delink square  
6 footage with the focus of cost containment. It's  
7 appropriate care at the appropriate time in an appropriate  
8 setting, is what gives you the optimal outcome. So, that's  
9 lower cost and more efficient delivery of care.

10 MS. CUNNINGHAM: Just real quickly. I wanted  
11 to give a nod to Nanya here, who is the State ombudsman on  
12 the Department of Aging, who has been very active in the  
13 pioneering movement in the nursing homes and can probably  
14 echo the importance of quality of life as well.

15 MS. JOHNSON: A few years ago, CMS, as a  
16 Pioneer Network, held a symposium at DC, and they were  
17 talking about environments, and I think that would be an  
18 excellent vehicle to go and research as well, and then,  
19 too, CMP money was used not too terribly long ago for  
20 innovations for facilities to apply to change environments  
21 and introduce new models of care. So, you know, there's a  
22 blueprint out there and, you know, Illinois -- we've been  
23 introducing culture change since '99, and Illinois has yet  
24 to have a greenhouse, you know. So, I think the

1 information and research is out there. It's just getting  
2 it.

3 MR. PHILLIPPE: So, it sounds like there's a  
4 lot of people that think the maximum size doesn't make a  
5 lot of sense today. Actually, I do think minimum does,  
6 personally, because the Board is controlling who gets the  
7 bill, and you don't want to build cheap places that are not  
8 good for consumers and keeping out lesser quality programs.

9 CHAIRMAN WAXMAN: So, the question is, is this  
10 something we need to come back and address in a larger  
11 conversation, rather than trying to fix it right now?

12 MR. SULLIVAN: Let's fix it now.

13 MR. PHILLIPPE: It's not very hard, is it? We  
14 just take off the number on the top end there, right?

15 MR. SULLIVAN: No, licensure determines the  
16 minimums.

17 MR. PHILLIPPE: And licensure already has  
18 minimums.

19 MR. SULLIVAN: I don't think we need Appendix  
20 A.

21 CHAIRMAN WAXMAN: I don't think we want to go  
22 there right now, Tim. Are you afraid of it?

23 MS. ALTMAN: There seems to be consensus.

24 MR. PICK: Is it in the Act?

1 MS. EVANS: Even though licensure determines  
2 the minimum number, if we said we had a new minimum, then  
3 that wouldn't really affect licensure.

4 CHAIRMAN WAXMAN: Terry, I'm sorry. I didn't  
5 realize Appendix A was solely that one paragraph. I  
6 apologize.

7 MR. FOLEY: I want to file an application for  
8 a specialized facility. We have --

9 CHAIRMAN WAXMAN: I recommend Mike Scavotto to  
10 help you.

11 (Laughter)

12 MR. FOLEY: We have no maximum square footage.  
13 We have no minimum square footage. Now, I want to build a  
14 specialized facility and I'm very cognizant of cost, so I  
15 want to keep my costs down. Minimum standards for Public  
16 Health, they have minimum standards in some parts by  
17 departments only, but not gross square feet per bed. Beds,  
18 they have minimum standards.

19 MR. PICK: 110 square feet per bed.

20 MR. FOLEY: Some departments, like for storage  
21 and like for dietary, ten square feet per bed, et cetera,  
22 et cetera. But it is not an overall total gross square  
23 feet per bed, like what we have here. So, I want to build  
24 something, let's say, at 350 square feet a bed, which is