Tuesday, January 8, 2019
Commencing At 1:00 p.m.
Ending At 2:10 p.m.
CHFS Building
Frankfort, Kentucky
MR. SKAGGS: I am Terry Skaggs, and before we get the meeting started, I know a sign-in sheet went around, and we were kind of getting the idea of who was here. But would everybody introduce themselves very quickly so we know who all is in the room.

MS. JOHNSON: My name Betsy Johnson. I'm just here as an observer, but I'm the president of the Kentucky Association of Healthcare Facilities, and I also serve as the executive director of the Kentucky Center for Assisted Living.

MR. JOHNSON: Wayne Johnson, also with the Association. I'm the VP of Finance.

MR. LEWANDOWSKI: Adam Lewandowski, administrator at Cold Spring, still part of the Cave Spring.

MS. McINTOSH: Sarah McIntosh with Hargis & Associates, and also chair of the billing --

MS. LEHMAN: Janine Lehman with Wells Health Systems, and I do the MDS training.

MR. TRUMBO: Jay Trumbo with Health Systems of Kentucky, and on the MAC and TAC.
MR. GRAY: David Gray with the
Cabinet for the Health and Family Services.

MS. HUNTER: Jill Hunter, Medicaid.

MS. STECKEL: Carol Steckel,
Medicaid.

MS. HUGHES: I'm Sharley Hughes,
and I'm going to be your all's Medicaid
liaison so for the TACs.

MS. GUICE: Lee Guice, Medicaid.

MR. BECHTEL: Steve Bechtel,
Medicaid.

MR. SKAGGS: All right. I know the
court reporter sent out the minutes last
time. Are there any modifications,
corrections, anything to those minutes? If
not, we'll just move on. I don't think
anybody has to approve them.

Before we go into the agenda, I'd like a
minute to note this, that in the future
meetings, we're going to place some different
focus on the discussion topics included on
the agenda. In the last MAC meeting, the --
I'm going to put you on the spot.
Commissioner Steckel stated that the purpose
for the TAC and the MAC should be to deal
with systematic issues affecting providers.
And with that in mind, during our past TAC
meetings, the agenda topics have dealt more
with detail issues, such as information
systems, billing, eligibility issues, that we
think can be individually addressed by
association staff members and/or our
committees with the appropriate Medicaid,
DCBS, day old guardianship representatives
rather than taking up the allotted time here
in this TAC meeting.

So our intent from this point forward is
to highlight important issues that are
critical to nursing facility providers around
the state. The issues included on today's
agenda are of primary importance to ensure
nursing facility providers are able to
provide quality care in the Commonwealth.

So with that, we'll get started with the
agenda.

The first issue that we have on the
agenda is to obtain full inflation, July 1,
2019, and we'll go into some detail.

Wayne, have you passed out the
information? Are you going to?
MS. STECKEL: Would you mind if I just added to your comment?

MR. SKAGGS: Absolutely.

MS. STECKEL: Because I am thrilled to hear -- because I came prepared to repeat exactly what you said, so ditto. I'm very excited about that, and we are sincere in wanting the policy discussions, and we'll be bringing things that are, you know, maybe early ideas that are neither good or bad, but that we'd like to try out with you all and hope that you'll do the same thing with us. And the more we know about the -- I mean, you've got a ringer in your organization, so but the more you know about the, not hardships, but the obstacles we have to face, the better we can design a program that does work on behalf of our beneficiaries. So we're excited about the direction that you're taking the committee.

I have one concern in that there is only representation from one long-term care organization. It needs to be more representative of others. So --

MR. SKAGGS: Actually, the Leading
Age is supposed to have a seat on the Board or on the advisory committee, and we have reached out to Tim Veno on several occasions, multiple occasions in the past, asking him -- but we've reached out to Tim and asked that they appoint someone. In fact, I think Wayne, knowing the makeup of both associations, has even made some recommendations on some very key, financial individuals within the Leading Age organization. Tim's just not just appointed anyone at this point in time. So maybe coming from the Cabinet it might spark, you know, light a fire to get that individual here.

It's our concern, as well, because we don't want a situation where we're having a discussion with you and then Leading Age comes in behind us and they've got a completely different agenda.

MS. STECKEL: Right, right.

MR. SKAGGS: We feel like the issues that we've got coming up today are stellar issues in both associations. We, as an association, had a meeting November, late
October, early November. We actually brought Leading Age and the Leading Age board and our board together. There were more representatives from our board than there were from Leading Age, but we did get them together that night to start opening the dialogue. Their Chair was a good friend of mine. I'm the Chair of the Kentucky Association of Healthcare Facilities. So we worked together and put that meeting together. We're reaching out more. We're trying to make sure that when we come to Frankfort with issues, it is being communicated to Leading Age so that they're not going to, you know, come in -- so but I would love to have someone from their organization here. I mean, for years Bob Koester served for them, and Bob retired several years ago, there hasn't been an appointment.

MS. STECKEL: So in light of that, and, thank you, and I'll reach out to Tim and see if we can't get them to be involved because it would be important to all of us for all the reasons that you said.
You'll be hearing some of the other things that we're changing. We're going to go through the calendars and make sure we're not overlapping meetings. The leadership can be at the meetings that we'd like to be at. I don't think --

MS. HUGHES: There is one. Your all's July the 10th meeting does overlap, and I can either ask you all to change or the other TAC to change. You're the first meeting that I've come to that had an overlap.

MR. JOHNSON: I believe it was the 9th and we changed it to the 10th, actually, initially.

MS. HUGHES: Actually, the 10th is just a really busy day with TACs. If we can do it another day, we could do it the 11th, that afternoon, at this same timeframe.

MS. JOHNSON: Could we do it on the 9th?

MS. HUGHES: The 10th is what it is currently scheduled for.

MS. JOHNSON: We initially took the 9th which is a Tuesday, which is --
MS. HUGHES: It would be an overlap, then, on Tuesday, also. We can do the 16th if you want to keep it on a Tuesday, or the 2nd. Wait, that might be a bad week to meet because of the 4th of July holiday. People take vacations.

MR. SKAGGS: I can do 11th or 16th.

MR. JOHNSON: Yeah.

MR. SKAGGS: Everyone else?

MS. HUGHES: The 11th at the same time?

MR. SKAGGS: That'd be great.

MS. HUGHES: Thank you all so very much for being able to do that.

MS. STECKEL: And the other thing is Sharley will now be your key contact, so we've had the TAC management kind of spread out every which way, and it was managed very well and everyone was doing a great job, but it's harder to coordinate when it's done that way. So Sharley will be your key contact. Anything that you need, reach out to her. She'll reach out to the subject matter experts when we get the agenda which will be due two weeks prior to the meeting. Changes
can be made ten days, I think, ten days prior to the meeting.

MS. HUGHES: Seven to ten days.

MR. SKAGGS: We want to get the agenda out as quickly as possible because we like to have good discussion when we're here.

MS. STECKEL: Well, and I'm trying to be consistent with all the TACs so that everybody's hearing the same thing, and then Sharley and I and the executive staff will determine which Medicaid subject matter experts will be in attendance at the meeting.

Okay. Thank you for making the one big change that we needed you to make.

MR. SKAGGS: Let me just say this, and I appreciate you reaching out and interrupting there a moment ago. This is very informal, please. You know, I've got -- I work -- I'm a Baptist preacher's kid, so I've got that gift of gab, and if I don't work from a script or something I've written down, I will be here all afternoon. You know, I've got some things I want to say, but this is a discussion. It's not -- it's not us just making our statements. It's, I mean,
we want to be productive in this. We appreciate it.

Have you got the graphic? Wayne is passing out a 1-page graphic which shows rates of inflation over the past 10 years. As you can see from the handout, the Medicaid nursing facility price adjustment, which is noted in the blue line at the bottom, has fallen short of the inflationary adjustment paid by CMS or Medicare patients in the past.

The CMS inflation rate shown by the red line is the global insight CMS nursing home without capital market basket percentage. That's a lot of words. The inflation rate is for -- for the Medicaid has been one-tenth of 1% over the past five years falling short of meeting our labor and other direct and indirect patient costs.

Many providers across the state, I believe, we are in a state of crisis and we're trying to retain quality employees while doing so while receiving these nominal inflationary adjustments paid by the state over the past five years. And, obviously, we're coming today to request a full
inflationary adjustment to be paid July 1, and I know you all won't address that or can't address it today in full, but that's the ask going in to today.

And I'll just say this, you know, we've got -- one-tenth of 1% increase in 65 to 75% of our overall revenue picture when we're having to pay 1 to 5% increases in wage to be able to keep up with the hospitals, to even be able to keep up with McDonald's in a lot of our smaller communities, and, you know, the rates have not been rebased in 10 plus years and current rates are just not supporting the increases that we're seeing, not only on the wage side which is 60, 70% of our overall cost, but we've got -- it's on the agenda. We've got liability cost increases and things that we have no control over due to the issues here in Kentucky, and we're not keeping up. So I again ask for July 1 would be that the Cabinet consider a full inflationary adjustment to the Medicaid rates.

Anybody want to chime in?

MR. TRUMBO: Yeah. The question is
is at what point does this become Medicaid's fault when quality care can't be delivered anymore? You know, I mean, when do we cross over to that -- I mean, providers are doing all they can, but our revenues are fixed. I mean, we get whatever Medicare gives us. We get whatever Medicaid gives us. The little bit of private paid that nursing homes have in this day and age, there's no incremental margin there. So we're kind of on a downhill spiral here, and, I mean, you want quality for your customers. They're our customers, too. But at some point, we have to agree that we can't sustain. So that's the hard question that we have is what can we do?

MS. STECKEL: Well, and unfortunately, I have not had time to look at -- I know we had scheduled and then I had to reschedule in some time to learn about the nursing home reimbursement except for fair rental which I refuse to even think about because my brain won't accept it. For some reason, I am not capable of learning fair rental. But the other stuff, I'm really capable of. I don't know if any of you all
know, I used to work and actually own part of
nursing homes in Alabama, so I've worked in
long-term care. I've been on the floors
scrubbing underneath the kitchen tray and
from everything up from there, so I know what
you guys are going through.

I haven't had a chance, yet, to go into
the reimbursement, and that's what I need to
do, and working with Lee and with Steve, to
see where we are, what's the base line, and
what we need to do to move forward. Okay.
And knowing it's an urgent issue.

MR. TRUMBO: I mean, is Medicaid
able to do something to help end this
process?

MS. STECKEL: I don't know --
July 1st would be an issue of how we change
the budget in a biennium, and the budget is
set. So we'd have to come up with revenue to
-- we'd have to figure out where the revenue
would come to pay for it. So, no, without
revenue.

MR. SKAGGS: So in the budgeting
process, no increase was scheduled?

MS. STECKEL: Well, there isn't a
budgeting process for this year. Steve, do you want to address this?

MR. BECHTEL: So when we did the biennium budget, I did put an increase in there to allow for our budget, but as you know, our budget was the 2018, but what we got funded was not what I put into the budget projections. What we were funded with the 2018 minus 6.65 percent. So regardless of what I put into our budgeting format and budgeting projections, that's all I got reimbursed or got funded. So now I've got to figure out, not just nursing facilities, but hospitals and physicians. I've got to make sure all those fit, that square peg fits in that round hole. So that's the dilemma that we have.

Now, we are looking at our budget forecast right now, as you know. We, if I may say, we did go out and state that we were about $290 million shortfall over the biennium. Now, that's not a true shortfall. It's what did our consensus forecast -- what did we forecast that was going to be needed in expenditures and in funding minus what we
received in the 2018 minus 6.25, and that was
the $290 million shortfall.

We had since had some decrease in
enrollment. Our enrollment's gone down since
May, or April or May. It went down 50,000
people that we've seen.

Now, what that does is it's not more for
you guys, but it lowers our cap payment to
the MCO's because that's what drives the MCO
cap payment is enrollment. So as that goes
down, we're not maybe not -- I'm trying not
to get in the weeds on you here, Lee, but
when those enrollments go down, you have a
less MCO payment which allows us extra funds
there to maneuver within.

So we will consider the -- what I
present, and I haven't talked with you about
it, yet, but what we present to the sitting
commissioner every year is we give what is
the rate's going to be, what would be the
overall spin from the nursing facilities if
we do it at the full inflationary, if we do
it at 75% of the inflationary, 50%, 25%, and
so on. And when I hand that to the
Commissioner, they make a decision and then
they tell us what -- so, unfortunately, the last five years, they told me to keep it at the .1, because of the budget situation where we found ourselves in.

So if we can fit it, you know, and if it fits our other agenda items, we'll definitely consider it. I hope that doesn't get too far in the weeds for you guys, but I'm maybe talking more to Wayne than anybody.

MS. STECKEL: So I may have misspoken because I didn't think there was an opportunity to look at the budget this biennium, this year in the biennium. So it sounds like there is. The last thing we want is businesses to go out of business, especially -- or provide substandard quality of care because what we're not, or are, paying.

So let us get further down, plus we were looking at a scary budget number, and now it looks, thanks to a variety of fortuitous circumstances, that we may not be doing as poorly as we thought. So I can't give you an answer today, but I can tell you we'll look at it.
MR. BECHTEL: And the other thing, if I may, I did reach out to Wayne -- when was that -- three, four weeks ago and advised him if you all wanted to look at another provider tax, you know, increase in provider tax, I will caution you that CMS is really coming down hard on those now here recently. But if they wanted to, we'd looked at this every year in the last past years. We said, no, we're not going to do it. But if we have the mechanism to do that, I told Wayne if we could come up with that proposal before May -- it's been waiting until May because we have to do it before June 1st because it has to be over at Revenue before June 1st in order to have it in place on July 1st. But that's something that we could reach out to. But the reason I reached out to him was for that purpose of maybe if we didn't have a way to fund it, maybe we could look at having that revenue coming in from the provider tax.

MR. SKAGGS: Obviously, as a provider, we would prefer not -- that the monies come, you know, from the Cabinet. Now, it's my understanding that the
provider tax increases that we have -- or not
-- and I won't call them provider tax
increases. The provider tax funding that we
have thrown out in the past two or three
proposals that we've done are within the
current state health plan that basically we
are below the capitated rate within the
provider tax statute is my understanding, and
all we were attempting to do in that was to
basically bring it up to what the statute
allows, which as I understood it and correct
me if I'm wrong, as I understood it required
no CMS input at all as long as we were within
the approved statutory amount.

MR. BECHTEL: For those three, I
call them silos, but three different silos.

MR. SKAGGS: Yes. As long as we
stayed within those and it was a uniform
adjustment that that didn't require CMS to do
much of anything. Correct me if I'm wrong.

MS. STECKEL: I think we would
still have to do a state plan. Even the
percentage would be -- but it's a lot easier
-- to your point, it would be a lot easier if
we made no substantive changes to the policy,
but we're just increasing the amount. But
independent of the provider specific taxes,
I'd like to get back to having somebody,
Wayne and his team, but somebody come in and
help me understand the way we currently
reimburse because the other question I would
put on the table is are there --
understanding that the pie has to be bigger,
so don't panic. Because I knew what your --
I know what your first response will be if I
hadn't said that, but are we paying nursing
homes as efficiently as we could or should?
So, you know, and I don't even have the
baseline to know how we're doing it now. So
I would also ask you all to think through are
there reimbursement methodologies, and I know
we're about to have to go through a new
change with the PDPM. See, I don't even know
all the acronyms, Dave. So as we move to
that, is there a way that we can both address
the historic shortfalls, but then be more
efficient in the way that we're paying?
I don't know the answer to that, and I
don't know whether it's yes or no, so but I
would ask that we be thinking through as we
go through this agenda and as we move forward with nursing home reimbursement issues.

   MR. SKAGGS: And I'll answer -- go ahead, Betsy.

   MS. JOHNSON: By efficient, are you relating that to quality? What do you mean by efficient?

   MS. STECKEL: Quality, and are we being efficient in that -- what I don't want to do -- quality is the number one. But then I also don't want to reward somebody for just spending money. So are we spending money and getting a value out of it? So and there are a lot of ways that that's been tested and tried and reimbursed in a variety of states, but --

   MS. JOHNSON: And I'm not speaking about TAC, but I think we would like to spend money in order to improve quality. So I think that should be the ultimate goal, and whether that be in workforce or, you know, any kind of infrastructure changes or whatever. But clearly, as Jay outlined as far as the crisis situation we currently are in, there's been no money to spend toward
improving quality, especially around the workforce issues. I mean, we're just not competitive. We are just not competitive at all. And so when you think about that, I think you need to think about --

MS. STECKEL: I think we're actually on the same wavelength. So for instance, and, again, when I said earlier that sometimes ideas will be thrown out and they may be bad ideas, they may be good ideas, but they're kernels. But for instance, let's look at a reimbursement system that rewards training and raises for CNAs versus I'm just going to give you a $2 per member per month pay raise. Do you see?

So I think we're on the same page. I'd rather -- I'd rather target our spending than just here's some money, I know you guys are going to do good things, because you all may, but you do know you have members that aren't. So that's what I would like -- so I think we're saying the same thing.

MS. JOHNSON: I think we are, yeah.

MR. TRUMBO: Sounds like you're wanting to -- we're actually reimbursed on a
per diem. It's not based on membership. So, you know, they have to have gotten service for us to get paid.

MS. STECKEL: Right.

MR. TRUMBO: And so the efficiency of that, I mean, I don't know if there's a whole lot more efficient way to do that, but to your point about quality, we have seen other states that have portions of the rate attributed to quality services and that those providers that demonstrate those things are able to get those funds, which I think kind of goes to what you would like to see.

MS. STECKEL: Yeah. And I think even with the per diem rate, there are incentives for efficiency that you can put into the system, so and it's just a matter of us working through it. And I know it's on the agenda for later, but the PDPM issue, we've got to deal with it. I need to be up to speed on it. Our folks are learning about it and how -- so, one, how does that impact -- we're going to have to do it, how does it impact it, and then this issue of the reimbursement rate underneath that. At the
time we're doing the PDPM 10 we then do --
I'm almost constitutionally not able to say a
raise, but increase of reimbursement in such
a way that it accomplishes what we're talking
about here. So does that make sense?

MR. SKAGGS: Uh-huh. Well, and
kind of going on what you all've already
discussed, I mean, the incentive in our
current program, we're a case make system so
the higher acuity residents we are able to
take on and care for, the better our
reimbursement is. You know, but you get in a
catch 22 situation in that if you can't get
the staff in the building to be able to staff
up then you can't take on those higher
acuities. Then you all start hearing from
the hospitals because the hospitals have got
these extreme high acuity folks in beds that
they can't find placement for.

You know, so it's a system that can be
tweaked, I agree. There are ways to do it,
but what I'm seeing in other states is when
they are doing this type of conversion and
starting anew, you've got to fully fund it
anew, you know, and to get away from the
one-tenth of 1%, where we're behind, you've got to fully fund it anew, jump off from there.

MS. STECKEL: Got you. Yeah, and that's why I said I understand the pie needs to be bigger. Wayne, if you wouldn't mind, I'm going to have Sharley work with Donna and get you back on my calendar to help --

MS. JOHNSON: We're back on your calendar.

MS. STECKEL: Are you? Okay. Good. To help me learn about the reimbursement.

MR. JOHNSON: 22nd, I think.

MS. STECKEL: Perfect. Perfect. So that will be helpful just, much to the dismay of some of my folks, I'd like to get in the weeds on certain things, and this is one of them that I'd like to get in the weeds on. So I need to know what we do now and understand it better in a very detailed way, but I hear what you're saying and agree.

MR. SKAGGS: All right. Anything else on -- great discussion. I appreciate that. Liability costs. In July of '18 the
association testified in a Medicaid oversight committee meeting that nursing facility professional liability rates have increased drastically over the past ten years. TAC member Jay Trumbo was at the table during the meeting, and he stated that liability premium cost increases have almost crippled several facilities resulting in two providers filing for bankruptcy protection, and a nonprofit facility dropping liability coverage entirely and going bare. The association conducted a general and professional liability survey of its members in the Spring of 2018. I think Wayne is handing that out at the current time. And I will say I'm disappointed in the number of the participants, but the freestanding nursing facilities provided that responded to the survey have seen a 47 and a half percent year over year annual increase in their liability costs. As you know, in the past several years, we've attempted to work through the legislature on tort reform. We worked on the medical review panels which have been struck down as unconstitutional. There have been some other bills that have
been introduced. These costs can't continue
to be borne by nursing facility providers
much longer.

We're looking to see does the Department
have any thoughts on the liability costs and
would you support potential legislation like
on an affidavit of merit or something along
those lines that might ease our burdens? And
let me just tell you this, we work with --
March 1 was our renewal this past year. We
have a facility that has had no liability
claims. They've had -- they're a 5-star
facility. They're off the charts on the
staffing. And just because of the State of
Kentucky, and lack of tort reform, our
liability insurance cost rates, or rates,
tripled this past year. I'm talking -- it's
a small facility, but we're talking 45,000 to
about 140,000 in a one-year -- and the thing
about it is with these liability companies,
they ask for all that money up front.
There's no quarterly payment, monthly payment
like you do with your automobile insurance
and your home insurance.

Worked with another facility that had
one claim. You know, it had not gone to trial. It's just a claim, but it's a claim with -- you've seen the name -- Wilkes & McHugh. Because of the Wilkes & McHugh, the liability insurance companies go nuts. They think they're going to have a big settlement. This particular facility went from 90,000 a year -- it's a larger facility -- 90,000 a year in overall liability costs to 650,000 in a one-year jump. That's money that we need to be paying staff to provide quality care in that building, and it's not money that we can just go out and find. As I indicated, 65 to 75% of their residents are Medicaid. They got a one-tenth of 1% increase. They're an average case mix facility. So, you know, they're not taking care of the highest acuity, they're not taking care of the lowest acuity. They're right in that midline.

But what we're hearing going into March 19th renewals is that even though there's been no claims on either one of those buildings, we're facing anywhere from 40% to 100% increase over what we're currently running. And, again, no claims at all.
We're being told by the agents it is 110% market-driven. The insurance companies are saying, We don't want to do business in Kentucky, but we've got to do business in Kentucky, therefore we'll charge the premium necessary to do business in Kentucky, knowing that Kentucky hasn't done any -- made any efforts to work reform.

So, again, we are going to the legislature. Betsy, I know you're waiting, and I appreciate it. She tempers me. She does. She gets me off of my pedestal and speaks.

MS. JOHNSON: I'm very passionate about this.

MR. SKAGGS: You made it to the 8th.

MS. JOHNSON: Do you mind if I read the e-mail that I received between Christmas and New Years that I shared with you?

MR. SKAGGS: Please, share that. Absolutely.

MS. JOHNSON: So this is from a member who's based out of Utah, and they do business across the country, and they're
fairly new to Kentucky, I think a year after
I started. So they've been -- I think 2015.
So they're fairly new to Kentucky. But so:
"It's me again. Hope you're well. I'm
reaching out to let you know we have seen a
tremendous spike in premiums for PLGL
coverage. We had one of Joseph's facilities
still on traditional policy and we just
received their quote today."

Joseph being their regional guy that's
got their Kentucky guy.

"We just received their quote today for
2019. 7,850.00 per bed per coverage. We'll
be moving it into our high deductible
offshore program, but that doesn't mean this
will be a long-term or satisfactory solution.
The premium costs are driven by the claims
and frequency. Whether we get a traditional
insurer or high deductible program, these
kind of expenses just can't be sustained much
longer by the industry. Best and happy new
year."

And that is just one of many e-mails and
calls that I received. I know Wayne receives
more than I do. So it isn't just the people
on this committee. It's a statewide problem. And just to let you know, I've reached out to Dr. Alvarado who is now, as you know, a chair of Health and Welfare, he's very passionate about this issue. I need to follow up with him, but I believe he'll be willing to have a committee hearing on this whether it be during the session or during the interim. It's going to be something we'll be talking more publicly about because it's simply not sustainable.

MR. JOHNSON: I was just going to say in light of the survey that we did just because it looks like there's very few, but the corporates actually self-insure, so really what we were looking at doing is really targeting the single facilities and that's really what the survey was. So even though it looks like there's a small number, we weren't cherry-picking the most extreme examples or anything. It was simply the single facility that responded that are paying your conventional, you know, general and professional liability premium, you know, premiums each year.
MS. STECKEL: So how is this represented in the cost reports or in the reimbursement methodology?

MR. JOHNSON: How is it?

MS. STECKEL: Uh-huh.

MR. JOHNSON: Commissioner, it's only reflected if there's a rebasing. So 2008, which was the last time that it was rebased, that would have been when --

MS. STECKEL: The cost incurred at that time. Got you.

MR. JOHNSON: Right.

MR. SKAGGS: And the increases that we're talking about have been incurring over about the last three to four years.

MS. STECKEL: Sure.

MR. SKAGGS: Realistically.

MR. TRUMBO: This chart also is not showing the providers that have dropped coverage that have gone to zero coverage. Well, the good news is they're not paying a premium. The bad news is if they get a bad enough lawsuit, they'll just hand the keys over. That's just not -- that's not a healthy way to do business.
MR. SKAGGS: Well, we work with a county facility down in south central Kentucky that just got their quote in. It looked bad, as far as I was concerned. I mean, it was about a 25% increase, and that's about what we anticipated. But the negotiating point with this particular facility is, okay, we've got you in a situation where you're a zero deductible provider. For this 25% increase, you get a $50,000.00 deductible next year per claim. Okay? So, you know, you've gotten about $20,000.00 worth of increase in the overall premium, but one claim means it's 70,000, two claims it's a 120,000, etcetera, etcetera. They came back to us and said, We'll cut it to 10% if you go to $100,000.00 deductible. And I'm doing the math on it and I'm thinking, okay, so we save 10,000, but every potential claim that's out there, even though we don't anticipate any, every potential claim that's out there costs us $100,000.00 up front. You know, that's the environment that we're working with.

MS. STECKEL: Sure. Tell me what
you all do in risk management, how aggressive is your risk management program, particularly for those types of facilities?

MR. SKAGGS: I'll tell you ours is extreme because it's dictated by our insurance companies. Most of the liability carriers in the state even write you, you've got to participate in their risk management program. You've got to allow them to come in and do the front end training, and then you've got to follow certain protocols throughout the year to assure that you are mitigating the risk.

MS. LEHMAN: And they also come in and audit your policies and procedures to make sure that you've got everything up to their standards for regular, operational needs.

MR. SKAGGS: So especially for the independent owners like us, our risk management, even though we had risk management in place, it's being dictated at a higher level by the insurance companies who are willing to write us.

LEWANDOWSKI: And my facility just recently went through that, and we are one of the organizations that operate, you know, in a different state. So I mean, my per bed is $1,000.00 in Kentucky, versus the state just north of us is $250.00.

MS. JOHNSON: Just to let you know that statistics from -- I did share that with the house republican caucus. They gave us the opportunity to speak back in December about some of the pressure points on our profession, and so I shared their specific example of just across the river in Ohio, the significant difference in the premiums. Again, we're going to be talking about that a lot in the coming year.

MR. SKAGGS: The legislature is very aware of this. I mean, we tell it to everyone that will listen to us at this point. There's got to be some kind of relief, and the only way we can get it is through the legislature. We understand that. This year our focus -- I mean, obviously we'd like to go full tort, etcetera, etcetera, but our focus is the certificate of -- or an
affidavit of merit, whichever case it may be.

MS. STECKEL: Can you explain that?

MR. SKAGGS: That's what I was going to do. I mentioned Wilkes & McHugh, and you kind of shook your head, no.

MS. STECKEL: I'm not familiar with them. Is it a lawyer --

MR. SKAGGS: They're a Florida based organization.

MS. STECKEL: Oh, got to love Florida.

MR. SKAGGS: They're a Florida based organization.

MR. TRUMBO: They're a cousin of Morgan & Morgan.

MR. SKAGGS: They're just not for the people. They're for themselves.

MS. STECKEL: Well, I hate to tell you, Morgan & Morgan --

MR. SKAGGS: They're not for the people, either. Yeah. But when you get an inquiry from Wilkes & McHugh, it's about 100 pages thick. It alleges everything but nothing specific. I mean, they say that their rights have been violated, their
dignity has been violated, but they never
come down to saying what standard of care has
been breached. And that's what -- that's
what's concerning to the insurance companies
is that, and fortunately our Supreme Court
has now said that resident rights is not
something -- is that right?

MS. JOHNSON: You want me -- yeah.

MR. SKAGGS: Please.

MS. JOHNSON: Now I'm really going
to get into the weeds.

MR. SKAGGS: It's important.

MS. JOHNSON: It is very important.

We're just sued differently -- we're just --
the trial attorneys attack us very
differently than they do other medical
professionals.

MS. STECKEL: One of the things I
did was coordinate the legal actions, even
though I'm not a lawyer, for the company. We
had 18 nursing homes, so I --

MS. JOHNSON: Yeah. Everything
from the full-page ads to these guys being
inundated with records requests. The OIG
within this Cabinet will tell you that they
get calls from attorneys all the time trying
to get information. They encourage people to
file a complaint with OIG first, let the OIG
do the investigation, and then they take that
information and they build some sort of case
that may or may not have merit. And I will
tell you, I mean, things happen in nursing
facilities, and just like they happen in the
operating room and elsewhere, and
professionals who make mistakes should be
held accountable. I mean, I think everybody
in this room would agree with that. But we
are just targeted in a different way.

So I think the Supreme Court has
actually provided us an opportunity in their
medical review panel's opinion because what
they said was a medical review panel
legislation applied broadly to negligent
cases which is found in common law and with
regard to those rights found in common law
you cannot deny access to the court system
under Section 14 of the Kentucky
Constitution. But residents' rights, as you
may or may not know, is a statutorily created
right for those who are residing in nursing
facilities or -- yeah, they have to actually be residing in the nursing facility. That's another Kentucky Supreme Court that was in our favor.

So I think we're also going to be looking at some legislation that can put some unique protections for nursing facilities knowing that we are, and I know, you know, people won't believe us, but we are unfairly targeted every single day, which feeds into every other on this agenda item. Because can you imagine living in Wolfe County and you're working in that nursing facility, which is probably the largest employer in that county, but you have to open up your local newspaper and see a full-page ad saying that you're killing old people? I mean, wouldn't you rather go work at McDonald's or the Dairy Queen that's right around the corner?

So I mean, this environment that we have in Kentucky, and with the flat Medicaid rate is -- it has created a significant crisis for our profession. So that's a lot of legalese, but I do think there's some opportunity there to look at residents' rights and how we are
sued differently than physicians and hospitals and other medical providers to figure out if we can build up to, you know, protection. I think everybody in this room would agree, and I'm not an attorney and I'm all about access to the courts, but we need to figure out, you know, these Morgan & Morgan, Wilkes & McHugh's who know if they just start inundating with them records requests, there's going to be a check written because they don't have the time, the energy, or the money to fight. That's a broken system because that's your all's money going to John Morgan who has a big jet parked down in Florida. It's not going back into, you know, care for these residents. So I'm going to get off my soapbox.

MS. STECKEL: I don't know that you've talked to the folks at Alabama's nursing home association because it's about -- gosh, it's been a while now. We went through a very aggressive effort, the association, and they -- I lovingly refer to it as the boys, the big companies, the Alabama companies, and made a bunch of
changes.

MS. JOHNSON: I actually haven't.

MS. STECKEL: So you may want to --

I'll get you some contact information if
you're interested, but --

MS. JOHNSON: Okay.

MS. STECKEL: Including, you know,
how -- what they could ask for in a records
request, and I mean, it was pretty extensive.

MR. SKAGGS: And I'm a layman, I'm
not a lawyer, but my understanding on the
affidavit of merit is they have to actually
state in their action what the breach is.
You know, and that's what we're looking for
support on. You know, I don't think that
support on something like that would cost the
Cabinet anything, and obviously it would help
us from our end on controlling costs,
etcetera. I honestly think, and I'll retire
before it ever happens, but I honestly think
that without tort reform, what we've seen in
the last year to two, is the independents
like myself can't afford to do business
anymore, and we're selling out, and you're
selling out to large out-of-state
corporations. They're buying them out up. They're pulling in management companies that -- you've read the newspapers. Yeah, so sometimes the management companies they hire don't have the best reputations in other states. They're betting on the boomers turning 75 in 2020. They're betting on the fact that by 2025 they can unload and they can walk away with a lot of money.

What we're seeing and hearing is that there are companies coming in, not only to Kentucky, but to other states and making these purchases who don't provide quality care. They know that they've got fixed reimbursement, therefore the only way that they can be profitable like they want to be is to cut costs. And when 65% of your costs are labor, that's the first place they start looking. Yeah, they can squeeze the vendors out here for an extra 2 or 3%, but, you know, that's not going to make a profit margin they're looking for when they're coming in and buying up facilities in Kentucky.

Unfortunately, over the past couple of years, the small operators like us have
reached a point where we can't operate. We're selling out to these guys, and then we start hearing from past employees as to what they're dealing with now under new ownership, new scenario. We don't want that for the residents of Kentucky. We want to be able to operate or provide that -- we think personal care that we give as a small, independent provider that many times you don't get with the big corporations. But without some relief somewhere, you know, that's where we are.

MS. STECKEL: Betsy, can you get me some information so that I can share this with Hans, our lawyers, and with Adam, who's also a lawyer. Based on what you said, I don't think we would have a problem supporting it, but it would need -- I need to run this through. So if you could just get me --

MS. JOHNSON: I'd be happy to.

MS. STECKEL: -- some information about it. I want to make sure -- I only play a lawyer on TV.

MS. JOHNSON: I think it's
important for us to be very transparent in what we're going to be trying to pursue in this legislative session because I know you all will get questions, your government relations folks when they go over there in the hallways, but these are -- these are pressure points, and in the end, as Medicaid contractors, we're trying to protect the money just as much as you all are, make sure it's going back to resident care, and that's why we're pursuing the legislative agenda we're pursuing in the session.

MS. STECKEL: I know exactly what you're saying and exactly the problems you're going through, you know, and not to be tried with been there done that, so I hear you, and we would want to help in any way that we can as long as there was a commiserate and you've answered that, but with the risk management, the quality programs, and that -- you know, a bad actor is a bad actor. But I had one lawsuit, a loss of consortium for a person and it never graced the doors of the nursing home of her partner the entire time, the entire 10 or 12 years that he was there. So,
you know, and that's just the tip of the iceberg. So I'm know I'm preaching to the choir, but I hear you and know because I've been there.

So let me see, but I do -- in this case I'm not comfortable just saying absolutely we can support the affidavit of merit, but if our lawyers and the Secretary agrees, then we'll come back and support it.

MS. JOHNSON: Okay. Thank you.

MS. HUGHES: Now, Betsy, we have size limits on how much you can put in an e-mail.

MR. SKAGGS: Hand-delivered.

MS. JOHNSON: I was thinking a one-pager.

MS. STECKEL: Thank you. Yeah, we'll be glad to look at that. That makes perfect sense.

MR. SKAGGS: Excellent. Wayne, I know -- do you have the summary of CMP costs that was on the agenda?

MR. JOHNSON: No, I don't have a summary.

MS. STECKEL: Well, but that's one
of the things -- I know we've got one project
that I've signed off on to use the CMP money
for some workforce development. There's a
lot of money in that pool.

MS. JOHNSON: 32 million. Again,
that's Medicaid dollars, you know. Share of
it has to be Medicaid dollars. I can give a
brief summary of what's happening on that
survey.

MR. SKAGGS: Please.

MS. JOHNSON: You know, when I
started this job in 2014, and the only thing
anybody wanted to talk about was the survey
environment in Kentucky. And, you know,
well, it was -- the litigation environment
and survey environment. And so at that
point, the Chair of our association said,
Let's create a task force to look at because
we can't just go to Frankfort complaining.

We have to have some data.

So sure enough, we worked with American
Healthcare Association, our national
association, and we have a fantastic research
department. And lo and behold, yes, this
environment is bad.
MS. STECKEL: It's Region 4.

MS. JOHNSON: Yeah, Region 4 is the worst in the country, and then Kentucky is the worst in Region 4.

MS. STECKEL: Wow.

MS. JOHNSON: So we, back then and currently, back then being 2014, we are number one in the nation and number one in Region 4 for the amount of CMP's being assessed against our facilities. Although the amount of citations being issued against or deficiencies being found against a facility that is not the most when they are cited is typically the very severe and most severe, immediate jeopardy. So we are number one in the amount of CMP's being assessed, and number one of IJ's being issued against our facilities.

So then that begs the question, well, maybe we just have really poor quality facilities in this state, so we had to look at that, as well. And would I say we're the best? No. But are we an outlier as regard to the worst? No. We are solidly in the middle, and I think everybody on the TAC
committee will tell you we want to improve. We want to change that needle, but without -- with a flat Medicaid rate and workforce issues, being sued all the time, just all the pressures, it's almost impossible to focus on quality. And, also, when you have surveyors constantly in your building, because -- and I have some theories I'm going to keep to myself here if I can, but, you know, we feel like there's something, you know, I think your sister agency and the OIG has some work to do. I'm going to be with the Region 4 folks on Tuesday, and I plan on speaking my mind to them. This is a problem with all the Region 4 associations. We're all together, but I'm in the worst situation leading this association. And so, you know, regulating a nursing facility is very important. It assures that everybody is doing what they should do. We're taking Medicare/Medicaid dollars, we understand the government has to have oversight, but it should be an environment that, again, encourages quality and rather it being the punitive environment that we are feeling because I can tell you I
woke up to a text on Saturday morning from a facility where there was a complaint about a missing linen. It turned into a 4-day complaint survey. They dug and dug and dug and could not find any unsubstantiated complaint about the linen. They found something else. I think if anybody else were watched for that long you're going to find something wrong with what they're doing. We're all human, right?

So they ended up getting a deficiency, and, you know, what is that -- how is that improving the quality of those residents' lives? I don't see it. And then there's much more or worse examples.

And so recently we took this data, the most recent data we have, including $32 million in the CMP fund, and talked to Secretary Brinkman about it. That was in December. He seemed very concerned about the data he saw. I don't know if it'll result in anything, but we might be pursuing legislation, too, that looks at, to the extent that the state can control the survey process to see how surveyors are trained, to
make sure there's not conflicts of interest
among those surveyors, and that we're all
working toward the same common goal which is
to care for those residents in the best way
we can.

So, again, I think that's just a
highlight. When you're fining facilities
that much and they're writing those checks
that'd be put in that fund, that's not money
coming back to resident care, and it's -- I'm
very happy to hear that you signed off on
that CMP grant. We have been working on this
for two years. We really think that money
would be well used by trying to encourage
people to join the workforce in long-term
care as their career path. It's a true
calling, and it's not for everybody, but if
we can get the word out there and get people
right of high school to become a CNA, you
know, I think that's important. So that's
how that relates, and it's just another
pressure on our profession.

MS. STECKEL: Well, and with $32
million, there's a lot of programs that we
could do focused on quality.
MS. JOHNSON: Yes.

MS. LEHMAN: And one other thing, if I could, working off what Betsy just said, it's a vicious cycle because these surveys are out there now for everybody to look at, a nursing home compare, and that's where administrators are going. They have full-time people doing nothing but reviewing the survey, and that's where all of our lawsuits are coming from. I mean, all you have to do is have something written in the deficiency whether true or not, whether it was an immediate jeopardy or not. And I'm a legal nurse consultant as well, as part of our risk management, and I'm seeing lawsuits just unbelievably based on a survey that really didn't have any merit to it.

MS. STECKEL: The lawyers don't even have to do any work.

MR. SKAGGS: That's correct.

MS. STECKEL: Okay. I'd like to work -- I know that that's out of the OIG, that pool of money, but whatever I can to do to work with Steve to see how we can start bringing up some of that for quality
investments.

MR. SKAGGS: Thanks, Betsy. Appreciate it. The third item on the agenda is RUG III after PDPM. Originally, in the last TAC meeting, we did discuss the PDPM implementation. I think we surprised you with it. But since then, we've gotten an update that Myers and Stauffer might be able to address the Department's support for continuing RUG III through September of 2020. I know for sure it would be less costly for providers. I think it would be less costly for the state if we could continue to use RUG III going through that 2020 date. And I guess the question on the table at this point in time is could we avoid upgrading to RUG IV, and is that something that could be considered going with RUG III through 2020.

MR. JOHNSON: Terry, CMS has agreed -- you may know this, but they have agreed to support RUGs through September 30th of 2020. That's why that date. So that was something -- I think it was an open door forum called that CMS had in December when they had that announcement. So that's why they --
MR. SKAGGS: Okay. I'm working from my notes. It's always good to have you in the room.

MS. STECKEL: Let us look at this and see what we can do.

MR. SKAGGS: You know, one of the things that we -- when we started going to PDPM, trust me, we're going constantly to these PDPMs. I've heard the same thing over and over five or six times now, and the thing about it is I learned something new every time I go into one of these. But the one thing from our Medicaid experts that we've utilized when we worked on reimbursement issues with the Cabinet in the past, is that going to PDPM our risk is greater on the crossover back to Medicaid than it probably is on what we've got to do to maintain our reimbursement or improve our reimbursement on the Medicare side. It's that crosswalk from the Medicare MDS down to Medicaid that probably gives us the greatest risk. And maintaining that RUG III system as is, going forward with CMS being willing to support it, we feel like it's the best way to go.
MR. TRUMBO: Least amount of change in a world of change.

MR. SKAGGS: Yeah. PDM is going to be huge for nursing facility providers. I mean, it's a completely different mindset going in. It's not going to be delayed. It's going to be in place October 1 of this year, and like I say, we're training constantly on it now.

MR. TRUMBO: Shift away from therapy?

MR. SKAGGS: Yeah, yeah.

MS. STECKEL: Are we doing training for our folks?

MS. GUICE: The training is being offered by CMS or the learning collaborations.

MS. STECKEL: Are our folks participating in all of that?

MS. GUICE: Yes.

MR. SKAGGS: For us, the PDPM side of it is so huge that our national association has developed the programs and the training and is pushing them down the state. So everything that we're getting --
we're hearing the same thing that Alabama is
and Ohio is, Indiana, etcetera. Anyone who
participates in the American Healthcare
Association has that opportunity for the same
webinars, the same onsite trainings and all
of that that we've got coming up.

MS. STECKEL: Is this through Mike
Cheek?

MR. TRUMBO: Yeah, he's the
trainer.

MS. STECKEL: I would call on one,
too, but we've been closer friends,
adversarial friends, closer friends, so
depending on generally where I am. So but
he's very, very good at what he does. Very,
very good. Okay.

MR. SKAGGS: So at this point,
we've gotten through what we had on the
agenda, and I have written a couple notes
here. At the meeting on the 22nd, Wayne is
going to bring the information to help you
understand our current --

MS. STECKEL: Teach me about
reimbursement.

MR. SKAGGS: -- system. From the
liability side, you're going to provide her with information on the affidavit of merit and what we're looking at going forward. And then we've got the question out to you regarding the RUG III component.

MS. STECKEL: Perfect. This has been a great meeting, and I hope we continue like this. And I'll reach out to Tim Veno about getting Leading Age involved in these discussions, too, so that we can have a very robust --

MR. SKAGGS: Well, as a profession, we want to make sure that when we come and sit down with the Cabinet, with the OIG, with anyone that touches our profession, we want to make sure that we're not saying one thing, that they're not saying another thing. We've been able in the past few months to bring signature healthcare into our association. At one point in time a couple years ago, it's what Leading Age thought, what KCF thought, and what Joe thought. Well, now Joe's working with us at this point. We're reaching out to Leading Age and trying to get one voice as we come in because we're not
going to be productive if we don't. If we come in with one voice, then we can stick to the issue and hopefully resolve some issues.

MS. STECKEL: I agree. Anything, Lee? Did I miss anything, or, Steve?

MS. GUICE: I don't think so.

MR. TRUMBO: Got any updates on clocks or --

MR. SKAGGS: I know that's in the wings, but --

MS. STECKEL: No. That's --

MS. STECKEL: No. That's actually, that would be appropriate. So as you all know, the -- and this doesn't affect you all, but the co-pays went into effect on January 1st. So we are not seeing significant impact that everyone was predicting so -- which is what we thought.

MR. TRUMBO: The sky has not quite fallen?

MS. STECKEL: Correct. Correct.

MS. GUICE: Today.

MS. STECKEL: Today, yeah. I should say knock on wood. The 1115 Kentucky Health Waiver is going full tilt, the implementation for April 1st. So we are
looking forward to that and having that rolling on April 1st. Jill, would you like to give an update on the 1915(c)?

MS. HUNTER: Sure. Absolutely. We have in the 1915(c), we're doing a complete redesign. So we dropped all six of our waivers yesterday for public comment, so they're out for a 30-day public comment, and we'll be moving those forward in a -- very innocuous changes. This time they're very basic, getting definitions more in line, creating some consistency between the waivers, and then we'll be moving forward. We're also doing a complete rate study on the waiver side of things.

MS. STECKEL: Did I leave anything out? I think that's all we have going on with Medicaid. David, did I leave anything out with the Cabinet?

MR. GRAY: No.

MS. STECKEL: The only way we're going to be able to serve our beneficiaries is if we have more meetings like this, and I am open -- my door is always open, and I had a pharmacy TAC this morning and said the same
thing to them. My way of doing business is if we've got an issue or we want to talk about something, get everybody in the room, and let's talk about it and work through it because 95% of the time you can resolve it. You may not get everything you want, I may not get everything that I really wanted, but we're serving the beneficiaries and we're solving the problems.

There will be times we'll disagree, and that's okay. That happens, and it is what it is. But respecting each other, and talking to each other, and working through issues is what makes it work. So I am committed to that. I think you know that the folks here at Medicaid are committed to that. So whatever we can do to continue, we're looking forward to it. Thank you. This is exciting.

MR. SKAGGS: And we appreciate it. I feel like, you know, I'm three hours from here, and I feel like that I have -- sometimes when you drive up, you feel like you've wasted your time. I don't feel that way today. I feel like it's been very productive, and appreciate the input, and
we'll get you the information and look forward to the next meeting in April.

MS. STECKEL: Wonderful. Thank you all very much.

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(Court Reporter’s Note: At this time, the TAC Meeting went off the record. The motion to approve the last meeting's minutes was made, and by a unanimous vote, the Minutes were approved.)

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REPORTER'S CERTIFICATE

STATE OF KENTUCKY   )
COUNTY OF FRANKLIN )

I, Kathryn Marshall, Court Reporter and Notary Public in and for the Commonwealth of Kentucky at Large, do hereby certify that the foregoing typewritten pages are a true and accurate transcript of the proceedings to the best of my ability.

I further certify that I am not employed by, related to, nor of counsel for any of the parties herein, nor otherwise interested in the outcome of this action.

IN WITNESS WHEREOF, I have affixed my signature and seal this 16th day of January, 2019.

Kathryn Marshall, Court Reporter
Notary Public, State-at-Large
Notary ID 420146

My Commission Expires: August 3, 2019