

## MEDICARE PAYMENT ADVISORY COMMISSION

## PUBLIC MEETING

The Horizon Ballroom  
Ronald Reagan Building  
International Trade Center  
1300 Pennsylvania Avenue, N.W.  
Washington, D.C.

Thursday, January 13, 2011  
9:45 a.m.

COMMISSIONERS PRESENT:  
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ROBERT BERENSON, MD, FACP, Vice Chair  
SCOTT ARMSTRONG, MBA  
KATHERINE BAICKER, PhD  
MITRA BEHROOZI, JD  
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GEORGE N. MILLER, JR., MHSA  
MARY NAYLOR, PhD, RN, FAAN  
BRUCE STUART, PhD  
CORI UCCELLO, FSA, MAAA, MPP

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1 P R O C E E D I N G S [9:45 a.m.]

2 MR. HACKBARTH: Okay. It's time to get started.  
3 Good morning and welcome to our guests in the audience. As  
4 I think everybody knows -- certainly the Commissioners, I  
5 hope everybody in the audience -- today and tomorrow's  
6 meeting will be devoted principally to final votes on our  
7 update recommendations for this year. Since we last did  
8 update recommendations a year ago, obviously there has been  
9 a major change in law, that being PPACA, and I wanted just  
10 to make a few introductory comments to put our update  
11 recommendations in the context of PPACA.

12 There has been, of course, much discussion of the  
13 fact that among many other changes, PPACA made important  
14 changes in the Medicare program, including changing the  
15 updates for the various providers who serve Medicare  
16 patients. What PPACA did not do was change MedPAC's  
17 mandate. Our mandate continues to be what it was before  
18 PPACA, which is to year by year make recommendations to the  
19 Congress on the appropriate update in payments for the  
20 various provider groups, doing so with an eye towards  
21 payments that are appropriate for the efficient delivery of  
22 high-quality services to Medicare beneficiaries.

1           I want to emphasize year by year. One of the  
2 features of the Affordable Care Act that has received a lot  
3 of discussion is that it provides for ten years a formula  
4 update for providers related to market basket minus  
5 productivity. That is important, but it in no way alters  
6 MedPAC's charge, which is year by year. We're not talking  
7 about what the rates should be for the next ten years. Our  
8 responsibility is to make a recommendation to the Congress  
9 for the next fiscal year, and we will do that as we have  
10 done in previous years using what we refer to as a payment  
11 adequacy payment framework that takes into account a number  
12 of different factors, where available, information on  
13 provider financial performance, margins, but also  
14 information about access to care, access to capital, quality  
15 of care, and the like.

16           Having said that, by changing the budgetary  
17 baseline, what PPACA does is change the baseline for  
18 calculating the budgetary effect of MedPAC recommendations.  
19 And so we'll make a recommendation for each of the provider  
20 groups. That number will be compared to the new budget  
21 baseline established by PPACA, and there will be either a  
22 cost or a savings score attached to it based on the new

1 baseline.

2           As we talk about our update recommendations, one  
3 of the things that you will hear is that we are beginning  
4 our discussion of each provider group, whether it be  
5 hospitals or physicians or home health agencies, with a  
6 presumption of no increase in prices. That is the starting  
7 point for the discussion. The end point may be very  
8 different, but we don't believe that there ought to be any  
9 presumption of an increase in prices.

10           Now, some people might be tempted to characterize  
11 that, report that, for those of you in the audience who are  
12 reporters, "Oh, MedPAC has somehow disagreed with the  
13 Congress on market basket minus productivity." I would urge  
14 you not to make that comparison because it's an apples-to-  
15 oranges comparison. If you want to compare MedPAC's  
16 recommendations to what Congress has done, you compare our  
17 final update recommendation, whatever that number may be,  
18 with what is in the congressional baseline. And we will do  
19 that for you and help you make that comparison for each of  
20 the sectors.

21           One last word about the context. This meeting is  
22 principally focused on the update in the base rates for the

1 various provider groups, but that is but one of three  
2 instruments of payment policy that we discuss at MedPAC. A  
3 second is how the dollars are distributed. So the way we  
4 think of the update is that it establishes the size of the  
5 pool of dollars available for hospitals or for physicians or  
6 for home health agencies, et cetera.

7 A second critical issue is how those dollars are  
8 distributed, and from time to time we will couple an update  
9 recommendation with a recommendation about the distribution  
10 of the dollars. So an example of that in the past has been,  
11 in the case of physician services, we have recommended a  
12 bonus for primary care physicians. That's an example of a  
13 distributive recommendation that we linked to an update  
14 recommendation in the past.

15 In the case of home health services and skilled  
16 nursing facility services, we've linked update  
17 recommendations to recommendations about how to change the  
18 case-mix adjustments systems that distribute the dollars  
19 based on the needs of different types of patients. That's  
20 an important distributive recommendation.

21 The third lever that we talk about but will not  
22 focus on so much in the next couple days is the payment

1 method itself. MedPAC in recent years has spent a lot of  
2 time talking about the need for payment reform, which is --  
3 we use that term, "payment reform," to talk about more  
4 fundamental changes in how we pay providers. Examples of  
5 payment reform would be medical home and moving away from  
6 simply fee-for-service payment for physicians to include a  
7 per patient payment as well as a fee-for-service payment.  
8 That would be an example of payment reform. Or bundling  
9 around a hospital admission, including not just the hospital  
10 inpatient services but also physician services and post-  
11 acute services within some window, that would be another  
12 example of payment reform. ACOs would be a third.

13           So the fact that we are focused in the next day or  
14 so principally on updates should be in no way construed as,  
15 oh, this is the most important thing in Medicare. The  
16 distributive recommendations and payment reform  
17 recommendations are equally, if not more important in many  
18 cases. But the update process is a fundamental part of  
19 MedPAC's mission, and Congress has charged to us, and that's  
20 what we will be doing for the next couple days.

21           So, with that preface, let's turn to the initial  
22 presentation on physician and other health professional

1 services. Cristina.

2 MS. BOCCUTTI: Okay. So this morning Kevin and I  
3 are going to summarize the discussion that we had last month  
4 and also address some of the questions and issues that you  
5 raised during the meeting.

6 First, just a background on services provided by  
7 physicians and other health professionals. These services  
8 include office visits, surgical procedures, and a broad  
9 range of diagnostic and therapeutic services. Keep in mind  
10 that providers can furnish them in all settings, not just in  
11 offices.

12 In 2009, Medicare paid about \$64 billion for these  
13 services, and among the 1 million practitioners that are in  
14 Medicare's registry, about half are physicians who are  
15 actively billing Medicare, and the other half include other  
16 health professionals such as nurse practitioners, physical  
17 therapists, and chiropractors. I'll note that about 90  
18 percent of the fee schedule billing does come from  
19 physicians, but the other 10 percent come from the other  
20 health professionals. Then keep in mind also that almost  
21 all fee-for-service beneficiaries received at least one fee  
22 schedule service in the year.

1           We're going to be going kind of quickly because I  
2 want to make up a little bit of time, so please feel free to  
3 ask questions when that time comes.

4           Before I get to the payment adequacy analysis, I  
5 want to reiterate two underlying contextual issues that you  
6 all have raised, and I want to ensure you that we're going  
7 to be including discussions of this not only in this chapter  
8 but in future work.

9           So first is about enhancing access to primary  
10 care. The Commission will continue to discuss ways that  
11 Medicare can promote primary care to sustain beneficiary  
12 access to it. Good, accessible primary care is essential  
13 for a well-functioning delivery system. And it's also  
14 crucial for patient management, particularly for elderly and  
15 disabled patients that have chronic conditions.

16           The second issue, of course, is regarding the SGR.  
17 The Commission recognizes that in addition to budgetary  
18 implications of overriding it, Medicare is facing another  
19 cost related to the SGR, and that is, the frustration of  
20 providers and their patients that are stemming from the  
21 uncertainty of the Medicare payment for those services.  
22 There are looming cuts, as we know, and temporary fixes that

1 have gone on in the last couple years, and we hear -- and I  
2 want to ensure that we understand that this is problematic  
3 for providers and for the patients, and it's even burdening  
4 CMS resources.

5 So looking at the SGR specifically, changes to  
6 payment policies that we can explore as we continue would  
7 want to retain the advantages that expenditure target  
8 approaches have while doing its best to minimize the  
9 disadvantages that the current SGR system contains.

10 Now, this slide here is about the payment adequacy  
11 framework that you're going to be hearing about throughout  
12 the day for all other sessions. But since we're the first  
13 ones to go, we want to put this list up here.

14 I remind you and the audience that each year, as  
15 Glenn just stated, as required by statute, MedPAC makes  
16 recommendations to Congress on payment updates for most  
17 health sectors. To come to this recommendation, the  
18 Commission deliberates and makes a judgment as to the  
19 adequacy of payments in each sector.

20 So today you are going to discuss whether the 2011  
21 payments are adequate, taking into account the indicators  
22 that we have here on this slide. So those are going to

1 carry through each time. And, in addition, referring to  
2 that last bullet there on payments and costs in 2011, I want  
3 to emphasize that MedPAC is required to consider the costs  
4 of efficient providers when making their update  
5 recommendations.

6           So now to review the findings that we talked about  
7 last meeting regarding physician and other health  
8 professional services, first I'll start with access, and as  
9 we discussed last month, we surveyed -- our first point was  
10 that we surveyed over 8,000 people, which included an  
11 oversample of African Americans, Hispanics, and Asian  
12 Americans. And half of the people in this survey were  
13 Medicare beneficiaries age 65 and over, and the other half  
14 were privately insured people age 50 to 64.

15           We found that most Medicare beneficiaries are able  
16 to get timely appointments and find a new physician when  
17 they need one. We also found that Medicare beneficiaries  
18 reported better access than their privately insured  
19 counterparts. Medicare beneficiaries continue to be less  
20 likely to forgo care compared to privately insured  
21 individuals.

22           I'll note here that, at Mitra's request, we tried

1 to add some more details about forgoing care, but it really  
2 is small cell sizes, and we try to be as specific as we can,  
3 but still having credibility about the numbers that we  
4 produce. So I would still want to say that Medicare  
5 beneficiaries were less likely to forgo care, and we did  
6 find that the private insurance groups seemed more sensitive  
7 to costs. They said that one of the reasons that they  
8 didn't forgo care was cost more often than Medicare  
9 beneficiaries who did forgo care.

10 Then referring now to these last two bullets on  
11 the slide, we see that needing to find a new physician,  
12 particularly a primary care physician, is really quite  
13 uncommon. Specifically, only 7 percent of Medicare  
14 beneficiaries and, the same percent, 7 percent of privately  
15 insured people said that they had occasion to look for a new  
16 primary care physician. So one could argue that that  
17 suggests that people are generally satisfied with the  
18 current primary care physician that they have.

19 Now, of course, we indicated the problems that  
20 people are facing when they're in that situation, but it's  
21 important to keep in mind that it's a small population that  
22 were even looking. But as I said, for primary care

1 physicians that was more difficult, the survey respondents  
2 indicated, than finding a specialist. So finding a  
3 specialist when you had to was a bit easier.

4 Another specialty that you all raised during last  
5 month's discussion was about psychiatrists, and that was  
6 discussed as one of the specialties that has had difficulty  
7 for finding referrals for Medicare patients in particular.  
8 And I want to mention that last year when we had focus  
9 groups with physicians, that was raised then as well, and so  
10 we've reiterated that in the chapter draft that you have  
11 before you, that psychiatrists have been mentioned and  
12 highlighted as a difficult referral source.

13 Moving on, from the oversample of minorities in  
14 our survey, as we discussed last meeting, we continue to see  
15 that minorities in both insurance groups experience more  
16 access problems than whites. Keep in mind, however, that  
17 Medicare minorities reported better access compared with  
18 privately insured minorities. That means the discrepancy  
19 was a bit narrower for Medicare beneficiaries, and on the  
20 whole, their report of access problems was lower.

21 With respect to rural beneficiaries, we find  
22 consistently that rural Medicare patients reported better

1 access compared with their rural privately insured  
2 counterparts. So when you're just looking in rural areas,  
3 you again find that Medicare beneficiaries in rural areas  
4 report better access than the privately insured ones. But  
5 if you're only looking at Medicare beneficiaries, we found  
6 that those in rural areas were a little more likely to  
7 report problems scheduling a timely routine care  
8 appointment. But in finding a new primary care physician,  
9 they had an easier time than urban beneficiaries. These  
10 differences are very small, though, I want to reiterate, but  
11 it does show you that there's a bit of a mixed picture  
12 there, and we look at it both within just Medicare urban and  
13 rural and then comparing Medicare to private.

14 Moving on here, we also, as we talked about last  
15 time, looked at other national patient surveys and found  
16 analogous results to our survey. I reviewed this list last  
17 month, but I'm just going to mention one item that Mary  
18 brought up, and that's about the Commonwealth Fund survey.  
19 That's the third major bullet there. That was a survey that  
20 inquires about access to "medical care from a doctor or  
21 other medical health professional." That's the exact  
22 definition used there. And I think that perhaps for next

1 year's MedPAC survey we should consider using that kind of a  
2 definition and perhaps probing a little bit more about  
3 primary care and who the patients are receiving -- many  
4 times, you know, there are more questions that come out of  
5 changing the survey when you get the results, but I think  
6 that this is a really good thing that we should be pursuing,  
7 and maybe we'll talk more as we work on that survey.

8           This slide lists other physician surveys that we  
9 also reviewed, and I'm just going to raise a point because  
10 there were some questions about whether these results  
11 distinguished between acceptance of all or some patients and  
12 whether these surveys are asking about new Medicare  
13 beneficiaries and not just established patients.

14           So in response, I just want to note that the NAMCS  
15 and the HSC survey do refer to new patients, and I want to  
16 make that clear. But the HSC survey further distinguishes  
17 between acceptance of all, some, most, or none.

18           Just to put a data point out there, that survey  
19 found that 74 percent of Medicare physicians accepted all or  
20 most new Medicare patients. It also found that practices  
21 that were most likely to accept new Medicare patients were  
22 those that were specialists, in rural areas, new physicians,

1 and those in group practices.

2 And then that sort of leads us to this next survey  
3 that I didn't really highlight last time, and this is a  
4 survey that the Medical Group Management Association  
5 released, or at least they released the results, and it  
6 found that 92 percent of medical group practices accept new  
7 Medicare patients; 7 percent take only those that are  
8 established patients that age into Medicare; and then 1  
9 percent do not accept any Medicare patients.

10 Next slide. This is a quality slide that we went  
11 over last time, and it's on ambulatory quality measures.  
12 It's a claims-based survey across the U.S., the whole  
13 national population. And it found that 35 out of 38 of the  
14 indicators improved slightly or were stable during these two  
15 comparison years. And among the three that declined, the  
16 differences were small but statistically significant.

17 Now Kevin is going to keep going with the  
18 analysis.

19 DR. HAYES: As we reported in December, Medicare  
20 claims data show that the volume of physician services  
21 continued to grow in 2009. We also noticed that at least  
22 since the year 2000, volume growth has been lower for major

1 procedures and evaluation and management services compared  
2 to imaging, tests, and other procedures. Yes, imaging  
3 growth has decelerated some in recent years, but it has  
4 remained positive after many years of rapid volume growth.  
5 Meanwhile, we have seen further increases recently in the  
6 growth rate for tests.

7           Before I leave that slide, let me just mention  
8 that at the December meeting Ron brought up the point about  
9 early data on volume growth in 2010. It is true that CMS  
10 actuaries have begun to use data on total spending for  
11 physician services for 2010 to do some of their preliminary  
12 calculations for the SGR. But we do not yet at this point  
13 have detailed claims data necessary to analyze growth in the  
14 volume of services in 2010, that would not be at the level  
15 of total services nor by type of service.

16           We can say that the CMS Office of the Actuary and  
17 others have been documenting a broad slowdown in national  
18 health care spending, a slowdown that has been attributed to  
19 the weak economy.

20           Now, on to the other indicators in this sector,  
21 the ones you saw last month, there was, first, the ratio of  
22 Medicare's payment rates to private PPO rates, and they had

1 remained stable. We also have continued high levels of  
2 participation rates and claims paid on assignment. And  
3 looking forward to 2012, the year for which you would make  
4 an update recommendation, CMS' preliminary forecast of the  
5 Medicare Economic Index was 0.7 percent. Since the mailout  
6 of the draft chapter, the forecast of the MEI for 2012 has  
7 gone up to 1.0 percent, and it will be re-estimated several  
8 more times between now and next year.

9 I keep getting ahead of myself here. We do you  
10 want to come back to this first bullet on this slide and  
11 remind you that Bob made an important point last month about  
12 performance-based payments and that those payments are not  
13 included in the claims data that we use to compare Medicare  
14 and PPO payment rates. We have started to look at this, and  
15 I can provide some more details if there are questions.

16 As discussed in December, stakeholders have  
17 expressed a concern that this sector's updates have been  
18 less than changes in input prices, whether those changes are  
19 measured by the MEI with or without a productivity  
20 adjustment. On the slide, the updates are represented by  
21 the lower line with the Xs; the MEI is the line with  
22 triangles; and the MEI without the productivity adjustment

1 is the line with the squares.

2 As we pointed out last month, however, the problem  
3 with such is that they do not consider volume growth and its  
4 effect on practitioner revenues. By contrast, spending  
5 growth includes growth in the volume of services. In the  
6 graph, the top line is growth in volume of service per -- or  
7 spending per beneficiary. And it's the updates plus the  
8 volume growth that bring about increases in practitioner  
9 revenues from Medicare.

10 Last month, we described, in addition to our work  
11 on the physician update, a study for the Commission by the  
12 Medical Group Management Association and the Urban  
13 Institute, a study that considered: first, the actual  
14 compensation received by physicians; and, second,  
15 compensation simulated as if all services were paid under  
16 Medicare's physician fee schedule. Based on data for 2007,  
17 actual compensation averaged across all specialties was  
18 about \$273,000 per year. As expected, average simulated  
19 Medicare compensation was lower, at about \$240,000.

20 Comparing specialties, we see disparities when we  
21 look at hourly compensation, a measure that accounts for  
22 differences among specialties in hours worked per week. The

1 disparities are largest when primary care is compared to  
2 nonsurgical, procedural specialties and, separately,  
3 radiology.

4           If we look instead at simulated hourly  
5 compensation, we see some narrowing of the disparities  
6 between primary care physicians and specialists, but it is  
7 minimal. In any case, these disparities raise concerns  
8 about equity and the future of the practitioner workforce.  
9 With that in mind, we are continuing to work on issues  
10 concerning the valuation of services in the physician fee  
11 schedule. You can expect to see more on this at future  
12 meetings.

13           Cristina will now present the draft update  
14 recommendation.

15           MS. BOCCUTTI: So on to the chairman's draft  
16 recommendation for fee schedule services. The Congress  
17 should update payments for physician fee schedule services  
18 in 2012 by 1 percent. So a bit of background on this.

19           For 2010, the update was 0 percent from January to  
20 May, but 2.2 percent from June through December.

21           For 2011, this year, there was no update from  
22 where it left in 2010.

1           Then for next year -- that is, 2012, the year for  
2   which we are making a recommendation -- the SGR calls for at  
3   least a 25-percent cut and then another one in 2013.

4           The Commission has stated that it is not  
5   supportive of these multiple payment cuts. We've said that  
6   in past chapters. So given the array of factors that Kevin  
7   and I reviewed and we discussed in the draft, basically  
8   generally good access, stable quality, increasing volume, et  
9   cetera, and a need to be fiscally disciplined while  
10  maintaining access to physician and other health  
11  professional services. We have the proposed recommendation  
12  on the screen.

13           Regarding the implications of this recommendation,  
14  the spending effects are, of course, large because any  
15  increase would be scored relative to the deep cuts that the  
16  SGR calls for in current law. So that's why you're looking  
17  at this spending bucket, and maybe I should mention for all  
18  the future update discussions you're going to have, these  
19  are spending buckets that we discussed with CBO, where we're  
20  not getting a specific point estimate, and it's not MedPAC's  
21  role essentially to make these point estimates. But we do  
22  talk with CBO and say does it fit into a low spending

1 bucket, a medium? And so the parameters you'll see that we  
2 have on this screen, this is the highest bucket to be clear.  
3 But you'll see other sort of buckets where you have a range.  
4 And Glenn might want to talk about that more, but for the  
5 audience and for the Commissioners here, that's where we  
6 come to this spending implication.

7           And then the other beneficiary and provider  
8 implications, we see that there would be an increase in  
9 beneficiary cost sharing and premiums certainly relative to  
10 what the SGR is calling for, but I want to reiterate that  
11 the increases would be in line with what has been happening  
12 in previous years, because it's an update that is in line  
13 with what has been going on in previous years.

14           Then the final bullet is that this update  
15 recommendation would continue to maintain physician and  
16 other health professional acceptance of Medicare  
17 beneficiaries.

18           There is one more slide we want to make sure we  
19 leave you with, and that is about the issues that I  
20 mentioned at the beginning of the presentation. So this is  
21 about the commitment from the Commission to continue working  
22 on ways to enhance access to primary care, exploring other

1 levers, and to continue examining the SGR payment policies.  
2 Again, we talked about the mounting frustration and the  
3 looming cuts that are creating some of these anxieties, and  
4 to look again at advantages of expenditure, target  
5 approaches, but minimizing those that we see in the current  
6 system.

7 MR. HACKBARTH: Thanks, Cristina and Kevin. Thank  
8 you, Cristina, for explaining the spending effects, and let  
9 me ask you just to go a little bit further. If you would,  
10 put that slide up for a second. Could you describe for the  
11 audience what the buckets are? I don't want people to look  
12 at this slide and see, say, \$10 billion over five years and  
13 think, oh, that means it's \$10.1 billion. When it's over,  
14 that means it's just over a boundary. So could you just  
15 describe the buckets in a little bit more detail?

16 MS. BOCCUTI: Sure. I don't know the exact  
17 parameters of each bucket. I'm going to say this, but  
18 Shinobu might be able to help me. She's our liaison in this  
19 regard. I think the first one is \$250 million. Is that --  
20 maybe you could grab a microphone, Shinobu.

21 DR. MARK MILLER: She can come to this one.

22 MS. BOCCUTI: She's really the one that's --

1 MR. HACKBARTH: Great.

2 MS. BOCCUTI: And then I'll talk about the  
3 physician one that you mentioned, Glenn.

4 MR. HACKBARTH: Yes.

5 DR. MARK MILLER: And since Shinobu is bashful,  
6 she's making me do it.

7 [Laughter.]

8 DR. MARK MILLER: This will be dealt with later.

9 [Laughter.]

10 DR. MARK MILLER: The buckets actually go down --  
11 I'm just kidding, okay? The buckets go down further than  
12 that. We have a bucket as low as "less than 50 million," 50  
13 to 250, 250 to 750, 750 to 2 billion, greater than 2  
14 billion. That's the one-year buckets. But that's just --  
15 and then there's a set of five-year buckets. So we have  
16 these categories. We worked the categories out with CBO in  
17 sort of ranges, and as Cristina said, we just basically  
18 interact with them to say, is this roughly the right bucket  
19 that it goes in.

20 MR. HACKBARTH: And the reason that we use buckets  
21 is not to be evasive and obscure, but our mission is not to  
22 do budget estimates. That's CBO's responsibility. Having

1 said that, CBO has a lot of things to do other than just  
2 work on our estimates, so we have this process whereby we  
3 have these informal conversations that are precise enough to  
4 get it in a bucket but not asking CBO to work on a point  
5 estimate as they would do for the Congress on a legislative  
6 proposal.

7 MS. BOCCUTTI: So with your question, there  
8 shouldn't be a misperception that it's around \$2 billion.  
9 It's more.

10 MR. HACKBARTH: Right.

11 MS. BOCCUTTI: It is more, and I can -- we can read  
12 off the numbers from CBO, but I want to be clear. This is  
13 just above the biggest bucket. And again, the reason is  
14 that there are huge cuts and those cuts that are in the SGR  
15 that would happen in 2012, they would go on. They would  
16 continue. So if you had a 25, say -- and even the amount of  
17 the cut isn't specifically determined yet. We'll say it's  
18 upwards of 25 percent just for that year. Then the payments  
19 would continue -- would go down again the following year and  
20 continue to be low. So a one percent update this year, if  
21 that were to continue in that realm, the difference would be  
22 very large and that's why we're getting to these numbers

1 that may look large here, but they're even larger, and I  
2 think that's the point you wanted to make, Glenn.

3 MR. HACKBARTH: Exactly. Exactly. In just a  
4 minute, we will turn to our normal process of clarifying  
5 questions followed by a second round of comments, but I just  
6 want to make a few other observations before we begin that.

7 First of all, those of you in the audience who  
8 follow MEDPAC's work will realize Ron Castellanos is not  
9 here. Ron got caught up in the travel disruptions due to  
10 the snow and could not make it to the meeting, so that's a  
11 loss. On this particular topic, I know he's got a lot of  
12 feelings and things to say.

13 The second broad observation is that those of you  
14 who came to the December meeting will recognize that some of  
15 our recommendations have -- the draft recommendations have  
16 changed since the December meeting. This one has not, but  
17 others later in the day have changed, and the process we use  
18 is that we have the discussion at the December public  
19 meeting. I follow up that conversation with individual  
20 conversations with each of the Commissioners on the  
21 recommendations and we use the combination of the public  
22 discussion in December and the one-on-one conversations to

1 refine the package that will be presented over the next  
2 couple days.

3           A third broad observation that's illustrated by  
4 this recommendation is that all of our recommendations will  
5 be expressed as a number as opposed to a formula. So in  
6 some years past, we have expressed recommendations as  
7 marketbasket or marketbasket minus something, and in recent  
8 years, we've gradually evolved away from that and began, I  
9 think actually with physician services, expressing  
10 recommendations as a number as opposed to a formulaic  
11 statement. With this year's package of recommendations, we  
12 will have completed that process. All recommendations will  
13 be stated as a number as opposed to through a formulaic  
14 statement.

15           I want to be clear. The fact that we don't use  
16 marketbasket language in the recommendation does not mean  
17 that we don't take projected marketbasket increases into  
18 account in formulating the final recommendation. It's just  
19 that we're not expressing recommendations in that format any  
20 longer.

21           Then one last comment. At the December meeting,  
22 Cristina presented much the same -- in fact, the exact same

1 survey information that we collected on beneficiary  
2 satisfaction with access, and I tried to explain how that  
3 data could be accurate and reconciled with the fact that,  
4 for example, some members of Congress get a lot of  
5 complaints from constituents about having impaired access to  
6 services. And I want to try that again, because what I said  
7 was misinterpreted and misreported in December in a couple  
8 cases.

9           So we have these survey data that broadly show, as  
10 Cristina described, that access to services for Medicare  
11 beneficiaries is as good or perhaps even better than access  
12 to care for privately insured patients in the under-65 age  
13 group. And we show only a small number of patients  
14 reporting problems in finding a new physician. As Cristina  
15 described, we're talking about, first of all, a small  
16 percentage of Medicare patients having to look for a new  
17 primary care physician, and then a fraction of those saying  
18 that they're having a problem, a small problem or a big  
19 problem. When you do the math, you know, we're talking  
20 about a couple percent of Medicare beneficiaries saying that  
21 they're having a problem finding a new primary care  
22 physician. So that's what the data show.

1           And what I tried to do is explain how that might  
2 be consistent with a particular Congressional district  
3 experiencing a lot of phone calls and a lot of letters  
4 complaining, and I think there are two ways that you might  
5 reconcile those numbers. One is that our survey information  
6 is national survey data and there is variability in markets.  
7 In some markets, access for Medicare beneficiaries may be  
8 more problematic than in other markets. It's important to  
9 keep in mind that the problem areas, where they exist, it  
10 may have nothing to do with Medicare payment rates but have  
11 something to do with what's going on in the market overall  
12 and access to care, to primary care physicians. Too few  
13 primary care physicians in general for all patients of all  
14 types, shifts in the demographics of the population. There  
15 are a lot of things that could go into making an acute  
16 access problem in a particular area. So that's one reason  
17 that a particular member of Congress might be getting a lot  
18 of complaints and seem like our data are too optimistic, if  
19 you will.

20           The second point that's worth keeping in mind,  
21 that even if it's only a couple percent of Medicare  
22 beneficiaries experiencing problems finding a new physician,

1 that's a lot of people. Two percent is, you know, like  
2 900,000 people, approaching a million Medicare  
3 beneficiaries. And you work that out on a per Congressional  
4 district basis, that's still a lot of people who could be  
5 experiencing significant problems -- severe problems that we  
6 need to worry about. But that -- it's still consistent with  
7 our overall national survey result.

8           So I just want to be really clear. There were  
9 some reports that I said that I didn't think our survey  
10 results were accurate. That's not what I'm saying. I do  
11 think our survey results are accurate, but I'm trying to  
12 explain how they can be accurate and there still be  
13 significant problems that Medicare patients are experiencing  
14 and a significant amount of mail coming into a Congressional  
15 office. I don't think there's an inherent conflict in those  
16 data points.

17           So I will shut up for a while now and we will  
18 begin round one clarifying questions with Karen.

19           DR. BORMAN: On the SGR conversation, can we  
20 easily break out the proportion that is really the result of  
21 fixes that weren't paid for, you know, that were paid for to  
22 the future and so that they add artificially to the total --

1 the cumulative number of the SGR as opposed to the parts  
2 that relate to true, if you will, excess utilization above  
3 the estimates? Do we have a, even a feel for sort of what  
4 percentage of it is driven by that, sort of Congress-made  
5 fixes that said --

6 MS. BOCCUTTI: So you're sort of saying the effects  
7 of sort of the compounding component --

8 DR. BORMAN: Right, a little bit, and --

9 MS. BOCCUTTI: Let me think about that --

10 DR. BORMAN: -- part of it is really due to  
11 physician practice versus that's due to sort of just the  
12 budget calculation. It doesn't particularly affect the  
13 update this year, but as we continue, as we say in our goal  
14 to continue to look at the SGR and other frameworks, that  
15 perhaps it would be helpful for us to have at least an idea  
16 of what relates to what.

17 MS. BOCCUTTI: Let's think about what's possible.

18 DR. BORMAN: Thanks.

19 MR. HACKBARTH: Round one clarifying questions.  
20 George and then Herb.

21 MR. GEORGE MILLER: Thank you. On Slide 6,  
22 please, we're talking about access with minorities. This

1 slide, just talking in general, can you break down for  
2 specialists, because in the reading it seems to me that  
3 there was more of a problem with minorities getting access  
4 to specialists than primary care. Could you talk a little  
5 bit more about that, and then what potentially would be the  
6 levers to solve that if there could be in your research? I  
7 read a couple things here in the --

8 MS. BOCCUTI: Well, I'm looking at that chart. I  
9 guess there's on page 14 -

10 MR. GEORGE MILLER: That's what I have.

11 MS. BOCCUTI: -- and I assume -- yes. We did not  
12 dig deeper into finding that result, but that's something  
13 that we can look into a little bit more in future work. I'm  
14 not sure we'll be able to include that in this work --

15 MR. GEORGE MILLER: Right.

16 MS. BOCCUTI: -- but maybe there are some other  
17 studies that I could try a little harder to look at and see  
18 if there are some findings there about specialists and  
19 access by race and another demographics.

20 MR. GEORGE MILLER: Yes. That's the problem  
21 that's troubling with me, because if the majority -- if a  
22 specialist is available for one segment of the population,

1 but not for another, that's troubling to me and that's why I  
2 want to use that specific issue. Both have Medicare. Both  
3 live in the same community. But minorities are not getting  
4 to specialists the same rate as whites, and that's just a  
5 problem for me. All right. Thank you.

6 MR. KUHN: If I could look at the chart on page  
7 ten, and I'm curious about the lines of growth and  
8 particularly just want to ask maybe Kevin a question on  
9 imaging. We know we had significant growth rates in the  
10 first half of the decade. It slowed a little bit in the  
11 second half of the decade. I think mostly the policy lever  
12 was a DRA, which slowed it dramatically. But I guess some  
13 of the data I've seen recently or have heard about recently  
14 seems to indicate that imaging is -- the growth rate in  
15 imaging is pretty much flat or at least some modalities it  
16 is actually decreasing. Is that, in a sense, what we're  
17 seeing from the claims data right now, or do we still see  
18 imaging continuing to increase?

19 DR. HAYES: The overall growth rate for imaging,  
20 2008 to 2009, was two percent. But we did see some declines  
21 within that general category. You know, they had to do with  
22 one category of MRI, nuclear medicine, that kind of thing.

1 Is that what you mean?

2 MR. KUHN: Yes. That's correct. So that we are -  
3 - that's consistent with what I'm seeing, and so I just  
4 couldn't tell from this chart if that's kind of what we were  
5 seeing, as well, and that sounds like it's consistent, then,  
6 so thank you.

7 DR. HAYES: Yes.

8 DR. BERENSON: Yes. I want to follow up on Herb's  
9 question. In the chapter you gave us, you made the point  
10 that the volume growth data can be affected by changes in  
11 site of care. And in the discussion on hospitals, there's a  
12 discussion about hospital acquisition of physician  
13 practices. So I want to sort of understand what that  
14 phenomenon does to the volume growth. Am I right to say  
15 that the impact would be on practice expenses, that  
16 physicians who are now provider-based and building as part  
17 of a hospital would no longer get their practice expense?  
18 In the Physician Fee Schedule, there would be a separate  
19 payment to a facility. Their work wouldn't be any  
20 different. So I guess, I mean, one, is that correct, and  
21 two, then is there a downward -- is there a bias under-  
22 reporting volume growth in the Physician Fee Schedule

1 because of this shift if it's mostly going in that direction  
2 and is accelerating?

3 DR. HAYES: Yes. It is true that the way the  
4 payment would work, the physician would continue to bill for  
5 the professional component of the service and that that  
6 would still appear as a fee schedule payment, but that  
7 payment for, as you put it, the practice expense component  
8 would shift from payment under the fee schedule to payment  
9 under the outpatient prospective payment system.

10 MR. HACKBARTH: This is a volume count. This  
11 isn't dollars.

12 DR. HAYES: Correct.

13 MR. HACKBARTH: So if this is just a volume count,  
14 that wouldn't affect these numbers, right, because you would  
15 still have a bill for the professional component that would  
16 go into the volume count.

17 DR. HAYES: You would still have a bill, but it  
18 would be -- the shift of practice expense out of the fee  
19 schedule would, in a sense, represent a change in the  
20 intensity of the service. Recall that the term "volume" as  
21 we use it includes both number of services and the intensity  
22 of the service, the RVU associated with a service. And so

1 the RVU for a service payment would go down because we have  
2 payment for the professional component but not for practice  
3 expenses.

4 MR. HACKBARTH: So that's helpful. So this is a  
5 volume and intensity graph?

6 DR. HAYES: Correct.

7 MR. HACKBARTH: Because as I recall, in our table  
8 in the chapter, we present both the volume column and a  
9 volume and intensity column. This is actually volume and  
10 intensity.

11 DR. HAYES: Correct.

12 MR. HACKBARTH: Okay.

13 DR. MARK MILLER: And I think his statement is  
14 true about if you were just counting the services.

15 MS. BOCCUTTI: Units.

16 DR. HAYES: Yes.

17 DR. MARK MILLER: The units, the first section of  
18 the table that's in the chapter. But the second section on  
19 volume intensity, which is reflected here, would be affected  
20 by the point that Bob is making.

21 DR. HAYES: Yes. Yes.

22 DR. BERENSON: And so if I could just finish up,

1 to follow up Herb specifically, would we be able to  
2 calculate sort of for imaging, because some of the -- and  
3 what we're aware of apparently is cardiologists in  
4 particular who had been doing a lot of nuclear studies and  
5 other services in their offices are one of the specialties  
6 that are now being acquired by hospitals, and so imaging  
7 might be falsely low, I think. Are we able to calculate  
8 sort of, make an adjustment for the shift in site of service  
9 to actually get a different number for volume growth for  
10 imaging, for example?

11 DR. HAYES: What we could do is look at volume  
12 growth by place of service, right, and so we would -- you  
13 would expect to see, then, fewer services billed from a,  
14 quote, "office setting" and more services billed from a  
15 facility setting.

16 DR. MARK MILLER: Bob, I think when we get to the  
17 OPD, ASC, and hospital presentations, there's been a  
18 specific attempt to try and parse -- right. Okay. Good  
19 enough.

20 DR. NAYLOR: So, Cristina, Kevin, thanks so much  
21 for a great chapter and for responsiveness to so many of the  
22 comments from last month's meeting. I do have, on Slide 25,

1 two questions, and this relates specifically to the  
2 recommendation.

3 DR. HAYES: What was that slide number again?

4 DR. NAYLOR: Oh, I'm sorry. I'm dyslexic.  
5 Fifteen.

6 [Laughter.]

7 DR. NAYLOR: I'm moving ahead faster than we  
8 should, right?

9 [Laughter.]

10 DR. NAYLOR: So I wanted to know if the  
11 recommendation explicitly should read that should update  
12 payments for hospital and other health professional  
13 services, and let me just comment on that, that the  
14 Affordable Care Act and IOM have stimulated use of nurse  
15 practitioners in primary care practices, so where in 2009  
16 ten percent of Medicare spending accounts for spending by --  
17 or direct reimbursement to those NPs and PTs, it might grow  
18 by 2012. So I wanted to know, does this payment schedule  
19 recommendation include all health professionals and should  
20 we state that?

21 MS. BOCCUTTI: Yes. We'll make sure we make this  
22 clear. That's a very good point. But technically speaking,

1 it's still called the Physician Fee Schedule --

2 DR. NAYLOR: Okay.

3 MS. BOCCUTTI: -- and that's what these Part B  
4 payments are coming off of. It's the list of 7,000 services  
5 and it is not specific to who bills them. It's who can  
6 possibly bill them, which includes these other  
7 practitioners. And so whether it's a physical therapist or  
8 a nurse practitioner, they're billing off of what's called  
9 the Physician Fee Schedule. And so what's different here,  
10 then, I'll mention, and for this very reason, it doesn't say  
11 physician services. It says Physician Fee Schedule services  
12 to address that, as well. And I think maybe what we'll do  
13 is we'll make it really clear that multiple health  
14 professionals bill off of that Physician Fee Schedule and  
15 this applies to them.

16 DR. NAYLOR: Terrific.

17 MS. BOCCUTTI: Is that --

18 DR. NAYLOR: Yes, that's great.

19 MS. BOCCUTTI: Okay.

20 DR. NAYLOR: And the second has to do with the  
21 spending implication. If we were to see a shift in the  
22 providers of primary care in 2012 that's expected as a

1 result of the IOM recommendations around opening scopes of  
2 practice, et cetera, have we modeled what that shift might  
3 look like? You know, NPs in the Physician Fee Schedule are  
4 reimbursed at 85 percent of the physicians, et cetera. So  
5 have we modeled what a changing dynamic might look like in  
6 the primary care provider workforce in terms of spending  
7 implications?

8 MS. BOCCUTI: Well, this is really about this  
9 recommendation. In terms of modeling that, again, this sort  
10 of falls into a discussion that we have with CBO about what  
11 bucket this would fit. And so perhaps in those discussions,  
12 we'll raise that issue and see. But we are not modeling  
13 specifically the projection, but I hear what you're saying.

14 MR. HACKBARTH: So perhaps what we could do is --  
15 my hunch is that that effect, however important, is not  
16 large enough to change the bucket location of this number  
17 because we are so far over the boundaries --

18 MS. BOCCUTI: Right.

19 MR. HACKBARTH: -- but we could say in the text  
20 that to the extent that there was such a shift over time, it  
21 would affect spending under the Physician Fee Schedule.

22 MS. BOCCUTI: Mm-hmm. And to be clear, this

1 workforce question, there are a lot of nurse practitioners  
2 and other health professionals who are providing the  
3 services, but it's billed because the physician is  
4 supervising them. So there's that 85 percent rule that  
5 you're talking about and that's about directly billing,  
6 you're right. But then there's other. There is going to be  
7 more workforce, as you said, and it doesn't mean that it  
8 would be affected because of the way it's billed.

9 DR. NAYLOR: So I absolutely agree, but we have  
10 now several States opened their scope of practice to get  
11 direct billing --

12 MS. BOCCUTI: Right.

13 DR. NAYLOR: -- so it could.

14 MS. BOCCUTI: Right.

15 DR. NAYLOR: And I'm just --

16 MS. BOCCUTI: Absolutely.

17 DR. MARK MILLER: I almost see this, and I know  
18 you're not saying this, but I almost see your question as  
19 different, which is what are the implications of the recent  
20 changes in the legislation and the opening up of the State  
21 practices to supply utilization. I'm almost viewing it as  
22 separate from what we happen to be doing here today, and I'm

1 sort of viewing your question more broadly for us to think  
2 about as we go down. Not to change what you're saying, but  
3 I see almost a bigger issue behind what you're asking.

4 MR. HACKBARTH: Okay. Round one clarifying  
5 questions. Mitra, Peter, and Mike.

6 MS. BEHROOZI: Thanks very much for putting in the  
7 additional textural stuff about people forgoing care.

8 A couple of questions about the survey. The  
9 privately insured individuals, we kind of know what private  
10 insurance looks like or is about. But with respect to the  
11 Medicare beneficiaries, do we ask if they have Medigap  
12 coverage, if they have supplemental coverage, and do we know  
13 whether they are dual eligibles, and would the survey  
14 include dual eligibles?

15 MS. BOCCUTI: Regarding other insurance, we've  
16 tried hard. We've tried to see if they're in an MA plan and  
17 that is just -- in order to get this survey done, to get it  
18 the most timely, to get it out there to be the year that  
19 months ago they were being asked, if we can get that survey,  
20 it needs to be relatively short and it's conducted primarily  
21 on the phone. We have not found reliable results on  
22 questions about other insurance. We can really just parse

1 through Medicare. So we can't talk about supplemental and  
2 other insurance.

3 I do not think -- we do not disqualify someone if  
4 they're dual, if they also have Medicaid. But if they don't  
5 have Medicare and they do have Medicaid, so if they're the  
6 under-65, they're not included.

7 MS. BEHROOZI: So when you refer to the lowest-  
8 income people and what they report about forgoing care, that  
9 could include duals, as well. It's not like the lowest  
10 income above the dual eligibility level or something like  
11 that --

12 MS. BOCCUTTI: Absolutely. Of the Medicare, right.

13 MS. BEHROOZI: Right.

14 MS. BOCCUTTI: Absolutely.

15 MS. BEHROOZI: Okay.

16 MR. BUTLER: So the purposes of us looking at  
17 access is to inform the payment update to make sure we have  
18 enough doctors and timely appointments. So on page seven,  
19 or Slide 7, I'm just trying to clarify who we're serving.  
20 The first one, these are the other surveys, so it's pretty  
21 clear the CAHPS one is the fee-for-service population,  
22 because that's who we're really talking about here. Are all

1 the previous results that you have related specifically and  
2 only to the fee-for-service enrollees?

3 MS. BOCCUTTI: No. Like I was saying with Mitra,  
4 we have not been able to parse specifically fee-for-service.  
5 So there are MA patients in that survey. But this CAHPS  
6 survey, which is much larger, does -- and they can start  
7 from knowing what -- it's from CMS, so they know what the  
8 patient has when the survey is sent out to them. So that's  
9 how they're able to distinguish exactly what insurance  
10 they're under, MA or traditional Medicare.

11 MR. HACKBARTH: The reason for combining the MA  
12 and the Medicare fee-for-service is that we have found  
13 through testing that Medicare beneficiaries doesn't  
14 accurately consistently distinguish between, oh, I'm  
15 traditional Medicare versus Medicare Advantage plan members.

16 MS. BOCCUTTI: Or prescription drug plan, and that  
17 made it more confusing, too.

18 MR. HACKBARTH: And so the errors in their self-  
19 classification just seemed too great to try to do that, that  
20 cut.

21 MR. BUTLER: So I know we're talking more about  
22 the MA plans tomorrow --

1 MR. HACKBARTH: Yes.

2 MR. BUTLER: -- and this issue will come up again,  
3 but it will, as we increasingly bundle, whether it's episode  
4 or ACO level, this question will even become more relevant  
5 in terms of the access issue, I think.

6 DR. CHERNEW: Can you go to the recommendation  
7 slide, which I think now is 15? When you get to the five-  
8 year projection, that assumes that the 2012 recommendation  
9 doesn't affect the SGR amount. So I could have thought  
10 about this a different way, which is you have a 2012 one  
11 percent increase like the recommendation says, but that  
12 would, with no change in the -- if I understand correctly --  
13 this is why it's a question -- what that would do is that  
14 would make the SGR hole just a ton bigger in 2013, and then  
15 the five-year implication, if the SGR was still in force,  
16 would actually be it wouldn't cost us anything. So how  
17 should I think about the recommendation vis-a-vis the  
18 spending vis-a-vis the SGR?

19 DR. MARK MILLER: Well, do you want me to answer?  
20 Yes, the sort of stunned silence. And you guys need to help  
21 me out here.

22 First of all, I just want to say this.

1 Particularly as we go through these buckets and we look at  
2 this number -- this is more editorial before answering your  
3 question -- this one, it's relevance to reality, and I'm  
4 using that term very loosely, is very tentative, because, I  
5 mean, the assumption here is the baseline drops dramatically  
6 and stays down, and then this is saying, well, if you give  
7 this moderate one percent update, you have to fill all that  
8 difference and it's billions of dollars. And so this is  
9 predicated on the assumption that that happens, and, of  
10 course, year after year, that hasn't been happening. So the  
11 first point is it has a tentative hold on reality.

12           Your second, more directly to your question, it is  
13 true that with no change in the SGR, eventually, the SGR  
14 pulls it all back. So any increase you give over some  
15 period of time, it gets pulled back, and that length of time  
16 is made longer by the fact that you forgave it for one year  
17 and gave an --

18           DR. MARK MILLER: [Off microphone.] Or makes it  
19 bigger --

20           DR. CHERNEW: It makes it bigger, and that's what  
21 -- I'm trying to say the same thing. You have to add a  
22 longer time to take back. However, what I don't think is

1 true is you get it back in five years. I think it still  
2 costs in the five-year window. You dig it out over a much  
3 longer period of time. That's the last sentence that I'm  
4 less comfortable with.

5 MS. BOCCUTTI: Well, what I have here, because  
6 everybody can download this, these are the CBO's projections  
7 from, I think, April 2010, and so just for a one-year -- now  
8 they have it for 2011 because this happened last year. But  
9 just to put this out there, for a one-year, if it was an MEI  
10 update for just one year and then the, we could call it  
11 cliff, that's what's written here -- I didn't make that word  
12 up -- if the drop were allowed to go, just the one year is  
13 almost \$9.5 billion. And then the next year there would be  
14 a drop, too.

15 Now, that means that your five-year projection  
16 includes that amount, but then it will be collected. Of  
17 course, the updates will be dramatically lower. So it's  
18 always going to be in your five-year and ten-year window  
19 because you spent that. You spent that in that year and you  
20 spent it in the next year.

21 MR. HACKBARTH: What you're saying, Cristina, if I  
22 understand you correctly, is that the first year effect is

1 large enough to put us into the five-year --

2 MS. BOCCUTTI: Exactly.

3 MR. HACKBARTH: -- in the five-year bucket --

4 MS. BOCCUTTI: Right.

5 MR. HACKBARTH: -- even if you assume it's all

6 taken back --

7 MS. BOCCUTTI: And there's no --

8 MR. HACKBARTH: -- you still have the one-year

9 cost.

10 MS. BOCCUTTI: Right.

11 DR. CHERNEW: So just to clarify my clarifying

12 question, our assumption is really just a one-year

13 assumption with no assumption about any change to the SGR,

14 so eventually, it might not be even the five-year window,

15 but eventually, the fiscal ramifications of this would be

16 essentially none because we're not changing the SGR --

17 MS. BOCCUTTI: Right.

18 DR. CHERNEW: -- but we would have a big increase

19 now and not one later.

20 MS. BOCCUTTI: Right. If there was a cut, there  
21 would be zeroes in those years, individual years later on.

22 But that's exactly right. This is not an SGR

1 recommendation. It's a one-year recommendation and the  
2 costs are beyond our biggest bucket.

3 DR. CHERNEW: Right. Despite --

4 MS. BOCCUTTI: If we could write --

5 DR. CHERNEW: -- the SGR is still going to take it  
6 back.

7 MS. BOCCUTTI: Right. Right. Right, because you  
8 had to spend it.

9 DR. BAICKER: So just to make sure I got that,  
10 there are two different ways you could score this -- not  
11 that we do scoring -- sort of dynamically where it feeds  
12 back into the SGR and that updates over time, or statically  
13 where you pretend the baseline is the SGR as if this didn't  
14 happen. Those two would give you different numbers, but  
15 both of them are so big that they're in the same bucket, so  
16 we're not trying to distinguish them.

17 MS. BOCCUTTI: Yes.

18 MR. HACKBARTH: Okay. We've made it to round two.

19 [Laughter.]

20 MR. HACKBARTH: So round two comments, and we are  
21 woefully behind, so please be as crisp as possible. Karen  
22 and then Scott.

1 DR. BORMAN: First, let me say I support the  
2 recommendation as it lists there. I think that it's  
3 appropriate, given the pressures on physician and other  
4 appropriately licensed health care professionals providing  
5 services under the fee schedule at this point in time for  
6 all the reasons that are nicely outlined in the chapter.  
7 And I particularly appreciate the Commission as a whole  
8 being supportive of the concerns for the beneficiaries and  
9 the physicians and other professionals that they utilize by  
10 virtue of these short-term fixes.

11 Just a couple of things that I would say, and  
12 wouldn't necessarily relate to this recommendation or this  
13 chapter, but as we continue to go forward, I hope that we  
14 will continue to -- in consideration of what a multi-  
15 disciplinary or a multi-level workforce looks like, that we  
16 continue to use language that helps us differentiate when  
17 we're delivering primary care services, which can be  
18 delivered by a variety of practitioners, versus perhaps  
19 things that are uniquely primary care physician services  
20 that we need to be quite careful on that, and on an analytic  
21 basis that we continue to explore when should we start  
22 parsing out some of those pieces of the data and which ones

1 might be relevant to future considerations, because there  
2 will be, you know, the question that Mary raised about  
3 modeling may, in fact, now be a very small piece of the  
4 puzzle, but I think as we think about workforce in general  
5 terms and what it should look like and what the implications  
6 of that are, that the very bright analytic staff that we  
7 have will come up with much better questions and thoughts  
8 about that than I ever could. But I think we should keep  
9 that in mind.

10           And then one other thing I might suggest at some -  
11 - not necessarily in the current landscape chapter, but  
12 perhaps at some future time -- is we have taken a number of  
13 steps to try and enhance primary care rewards over the past  
14 several years. Certainly the 2007 five-year review of  
15 physician services resulted in a major redistribution. The  
16 practice expense new formula did some similar things. So  
17 perhaps a text box at some point that outlines all the moves  
18 that have been made so that we can consider what might or  
19 might not be appropriate in the future based on what we have  
20 already done, I think might be a helpful reminder for us and  
21 hopefully for our audience at the Congress and their staffs,  
22 where some of that stuff gets lost in the turnover that goes

1 on in the legislative branch.

2 MR. ARMSTRONG: Glenn, I, too, support the  
3 recommendations. The one point I wanted to make, actually  
4 building on several comments made about this upcoming study  
5 regarding primary care or regarding access more broadly, in  
6 addition to the points just made, I would also just say that  
7 we've seen and we've had our own experience dramatically  
8 increasing access that's valuable, that's useful, that's  
9 effective access, not just through non-physician providers  
10 but through kinds of access that don't presume you're  
11 sitting in an exam room being seen by a provider. Whether  
12 it's through e-mail contact or telephone calls or group  
13 visits, there are so many other ways in which you can  
14 dramatically improve effective access. My hope would be our  
15 study includes that kind of evaluation, as well.

16 DR. STUART: I also support the recommendation.  
17 I'd like to respond to a point that Peter raised, if you  
18 could go back to Slide 7, please. That's too far back.

19 [Laughter.]

20 DR. STUART: Seven. The MCBS does contain  
21 administrative indicators of whether the person is in fee-  
22 for-service or in an MA plan, and so it would be possible to

1 look at individuals who are in fee-for-service to determine  
2 whether they had differential issues with respect to access  
3 as opposed to those in MA plans. So the question is, were  
4 the numbers that you represented here and in the text of the  
5 chapter restricted to the fee-for-service population in MCBS  
6 or did they cover everybody?

7 MS. BOCCUTI: With the MCBS, I don't think I  
8 deleted those that had MA. So that's a very good point.  
9 Let me look at that. I mean, it's a bullet point in the  
10 chapter, but I just -- I did non-institutionalized, but  
11 that's a good point, to make sure we're looking at fee-for-  
12 service.

13 DR. STUART: And I think it also might be useful  
14 just in a footnote just to indicate how they differ in MA  
15 plans, where you would expect much lower problems with  
16 access, but so that we could focus on an answer to your  
17 question.

18 MS. BOCCUTI: Was there another one, or just MCBS  
19 that you're asking about?

20 DR. STUART: [Off microphone.]

21 MS. BOCCUTI: Okay. Okay.

22 MR. HACKBARTH: That's a good point. A challenge

1 within MCBS in terms of our needs is the lag, the time lag,  
2 and that's why we do the phone survey. But by doing it,  
3 we've got some limitations.

4 DR. STUART: Two-thousand-and-eight, and it does  
5 allow you to make that comparison.

6 DR. MARK MILLER: Can I do a real quick  
7 commercial, also just heads up for tomorrow. In the MA  
8 session, there will be some discussion of data between MA  
9 and fee-for-service, so just -- I know you're excited.  
10 Something to look forward to.

11 DR. KANE: Yes. I mean, I support the one  
12 percent. I guess at some point, it would be nice to have  
13 the discussion not couched in comparing it to this "when  
14 pigs start to fly" context --

15 [Laughter.]

16 DR. KANE: -- of the SGR actually being imposed,  
17 and I think there can be some more reasonable metrics that  
18 we should be looking at. I'm sorry. My husband has been  
19 playing "Angry Birds." I don't know if you all know that  
20 game, but they're flying at pigs.

21 [Laughter.]

22 DR. KANE: But I do think it would be useful in

1 the future -- I won't be here to look at this, but I would  
2 like to see other types of things to compare it to. For  
3 instance, how much are the private sector fees going up and  
4 what's the context of private sector fees? And, for  
5 instance, what's the impact on the beneficiaries paying the  
6 Part B premium, particularly those who actually have to pay  
7 the premium increases rather than the 75 percent who have  
8 been held harmless? I think that's more meaningful for me  
9 than this SGR stuff and I think we just end up getting  
10 totally distracted by what does this mean relative to the  
11 SGR, but there's much more meaningful things to be thinking  
12 about. I mean, physician income relative to the income of  
13 the population, or how fast is physician income going up  
14 relative to the income of the population. Those would be,  
15 to me, would generate a much more meaningful discussion of  
16 what's the right amount to raise this.

17           So as I say, I think the one percent, given the  
18 sensitivity and the frustration that providers are feeling  
19 and the concerns that we want to maintain access and we  
20 don't really know quite what's happening out there, those  
21 are all very important reasons to support the one percent.  
22 But I don't feel the "when pigs can fly" context is the

1 right one and I'd like us to start thinking about how to  
2 change that, even though there is this SGR out there.

3 MR. HACKBARTH: Good point. On the one issue of  
4 how quickly private fees are going up, I think we can infer  
5 that the rate of increase is similar to Medicare's because  
6 our ratio of Medicare to private payments is pretty stable.

7 George?

8 MR. GEORGE MILLER: Yes. Just to follow up, and  
9 this question came to my mind when Bob was talking about the  
10 questions of where fees are applicable with physician  
11 practices being bought by hospitals, my question is do we  
12 have a feel of the impact or how many physicians are selling  
13 to hospitals? Do we have scientific numbers or evidence?  
14 And this may be a better question in some of the other  
15 chapters, but do we have that now in this analysis and why  
16 they may be selling? It could be because of the uncertainty  
17 of the SGR, or do we have a feel for that at all?

18 DR. MARK MILLER: More of what we have, and you're  
19 going to see this starting in the next session and then in  
20 the session following that, more of what we have is less how  
21 many physicians are selling practices and why. We don't  
22 have a lot of information on that. What we're looking at is

1 looking at the trends and the volume in the different  
2 locations and kind of inferring what seems to be happening.  
3 And both in the ASC presentation and in the physician -- or,  
4 sorry, hospital presentation, this is going to get teased  
5 out a little bit more and it relates a little bit to what  
6 Bob was saying.

7 MR. GEORGE MILLER: I will wait until then.

8 DR. MARK MILLER: But actually, physician  
9 practices and why, not so much on that, just sort of the end  
10 result --

11 MR. HACKBARTH: But there are -- in fact, Bob, you  
12 have done some market work where you've interviewed people  
13 about these trends. So there's anecdotal information, but  
14 I'm not sure that there is --

15 DR. BERENSON: I'd like to say it's more than  
16 anecdotal. We call it qualitative research --

17 [Laughter.]

18 MR. HACKBARTH: Qualitative research.

19 DR. BERENSON: -- where I come from. No, Health  
20 System Change --

21 MR. HACKBARTH: We lawyers call it anecdotal, but  
22 --

1 [Laughter.]

2 DR. BERENSON: No. Health System Change has just  
3 completed its seventh round of site visits. I was one of  
4 the people who made site visits and I'm pretty confident  
5 we'll be writing a paper on our findings in the relatively  
6 near future about all the reasons that physicians and  
7 hospitals are getting together and reasons why in some cases  
8 they're not getting together. So our research will be  
9 published later this year.

10 MR. HACKBARTH: [Off microphone.] Round two.

11 DR. BERENSON: One, I support the recommendation.  
12 I just wanted to pick up on Bruce's good suggestion about  
13 using the MCBS to try to see if there's any differential  
14 between MA and fee-for-service. It's interesting, Bruce.  
15 Your hypothesis was that there would be less of a problem in  
16 MA and that's possible, but we saw that for this 50 to 64  
17 population, there was more of a problem in commercial  
18 insurers. So if, in fact, there's less of a problem in MA,  
19 it may have something to do with network adequacy  
20 requirements or something in MA. So it would be very  
21 important to understand if there is a difference, so I  
22 endorse that suggestion.

1 MS. UCCELLO: Just quickly, I want to -- for all  
2 of these, I just want to be on the record for supporting  
3 using this zero as our starting point and then also  
4 reiterate that it's the end point that matters when we're  
5 comparing. And then I support this recommendation.

6 DR. NAYLOR: I support the recommendation with the  
7 clarifications and also because I'm persuaded that  
8 beneficiaries' access to services will not at all suffer as  
9 a result of this recommendation.

10 DR. DEAN: I support the recommendation with some  
11 hesitation, partly just because we have such a, I don't know  
12 what the right word is, distorted distribution system that  
13 this update goes into that I -- part of me says that any  
14 money we put in it just makes our problem worse rather than  
15 better. But I would wholeheartedly support what Scott said,  
16 that we really -- and in that context, what you said, Glenn,  
17 about payment reform recommendations, I think are way more  
18 important than anything we do here. And so this, in fact,  
19 is probably a relatively small issue. The payment reform  
20 issues are so much more important. And to follow on with  
21 that, I really appreciate what was said emphasizing the  
22 importance of enhancing primary care and dealing with SGR

1 and all those things. We really need to look at new payment  
2 structures, new models of delivery and all those things if  
3 we're really going to make efficient use of Medicare  
4 resources.

5 MS. HANSEN: I support the recommendation. I also  
6 appreciate, frankly, the various parts that have been  
7 brought up, but I want to underscore, and it probably is  
8 relative to the study that you're going to be coming out  
9 with, the thing that -- I attended a medical specialty group  
10 meeting and noticed the trending, that in a very short  
11 period of time, for example, cardiologists, about 80 percent  
12 may be somehow connected to an employment situation rather  
13 than in individual practices. So it's a trending, and found  
14 that the family practice folks are beginning to move in  
15 that. So this will have impact on the other end that was  
16 brought up, but to be able to have a broader aspect to  
17 consider this as we move also to payment reform changes. So  
18 it's like we've got to note these organic shifts that are  
19 happening quickly in the marketplace, but they have  
20 implications about access and payment reform. So I really  
21 think that work that's coming up is going to be very  
22 important.

1           MR. HACKBARTH: We are ready to vote. So on the  
2 recommendation, would you put that up, please? All in favor  
3 of the recommendation, please raise your hands.

4           Opposed?

5           Abstentions?

6           Okay. Thank you very much.

7           Next is ambulatory surgical centers.

8           MR. WINTER: Good morning. We'll be reviewing  
9 some basic information about ASCs and our payment adequacy  
10 indicators, and also addressing some questions that were  
11 raised by commissioners at the December meeting. At that  
12 meeting, we talked about not making a recommendation for an  
13 update for ASCs for 2012. However, several commissioners  
14 asked to have a vote on a recommendation, and so we will be  
15 presenting a draft recommendation today.

16           So first, starting with some important facts about  
17 ASCs, Medicare paid ASCs \$3.2 billion in 2009, an increase  
18 of about 5 percent per fee-for-service beneficiary from  
19 2008, ASCs treated 3.3 million Medicare beneficiaries in  
20 2009, and there were 5,260 Medicare-certified ASCs. In  
21 addition, about 90 percent of ASCs have some degree of  
22 physician ownership, and according to data from an MGMA

1 survey Medicare payments account for 17 percent of ASC  
2 revenue on average.

3 I'd like to spend a moment addressing questions  
4 that were raised at the last meeting.

5 Bruce asked us to clarify how the growth rate of  
6 HOPD services presented in the ASC chapter relates to the  
7 growth rate shown in the hospital chapter. In the hospital  
8 chapter, we show that all HOPD, all outpatient department  
9 services -- that is all surgical and all non-surgical --  
10 grew by 4.3 percent per year from 2004 through 2009. In the  
11 ASC chapter, we break this growth rate down into two  
12 components -- surgical procedures that are covered in ASCs  
13 and all other HOPD services.

14 Surgical services covered in ASCs grew by 0.1  
15 percent per year in outpatient departments from 2004 through  
16 2009, and these services account for only 5.6 percent of  
17 total HOPD volume. Meanwhile, all other outpatient  
18 department services grew by 4.5 percent per year.

19 George asked us to explore further why Medicare  
20 beneficiaries who are African American are less likely to be  
21 treated in ASCs than outpatient departments. Some of this  
22 difference is related to the higher proportion of African

1 Americans who are eligible for both Medicare and Medicaid,  
2 which we call dual eligibles. Dual eligibles, regardless of  
3 their race, are less likely to be treated in ASCs, and there  
4 could be a couple of reasons for this.

5 First, there is evidence that physicians are less  
6 likely to refer their Medicaid patients to an ASC than their  
7 Medicare or commercial patients, and this comes from a study  
8 done by John Gabel and colleagues.

9 Second, a majority of state Medicaid programs  
10 don't pay the Medicare cost-sharing for dual eligibles if  
11 the Medicare rate, not counting the cost-sharing, exceeds  
12 the Medicaid rate, and this could make dual eligibles less  
13 financially attractive to ASCs.

14 Third, this could be influenced by decisions about  
15 ASCs about where to locate. For example, they may prefer to  
16 locate in areas that have more commercially insured  
17 individuals.

18 And finally, we've been hearing that some Medicaid  
19 programs do not cover services in ASCs, and we're trying to  
20 get some more information about this.

21 Another issue that came up was the market basket  
22 for ASC services. CMS currently uses the consumer price

1 index for all urban consumers to update ASC payments. The  
2 CPI-U includes a broad mix of goods and services and may not  
3 be a good proxy for ASC input costs. Ron and Nancy asked us  
4 to look at whether an alternative price index would more  
5 accurately measure changes in ASCs' input prices than the  
6 CPI-U.

7 In last year's report, we examined whether the  
8 hospital market basket or the practice expense component of  
9 the Medicare Economic Index would be an appropriate proxy  
10 for ASC costs. We used 2004 ASC cost data from a GAO survey  
11 to compare ASC expenses to hospital and physician practice  
12 costs. Although the GAO data were not sufficient for  
13 comparing each category of costs across settings, they did  
14 suggest that ASCs have a different cost structure than  
15 hospitals and physician offices. Given this finding, the  
16 Commission recommended that ASCs submit cost data to CMS  
17 which would decide whether to use an existing Medicare price  
18 index for ASCs or develop an ASC-specific price index.

19 This slide summarizes our findings on payment  
20 adequacy which we presented to you last month. Access to  
21 ASC services has been increasing as shown by the growth in  
22 the number of beneficiaries served as well as volume per

1 fee-for-service beneficiary, and there's also been an  
2 increase in the number of ASCs. Meanwhile, access to  
3 capital has been at least adequate. However, we lack data  
4 on cost and quality of ASC services, so we are not able to  
5 assess quality of care or to calculate a margin. And the  
6 Commission has previously recommended that ASCs be required  
7 to submit cost and quality data.

8           So this leads us to the following draft  
9 recommendation: The Congress should implement a 0.5 percent  
10 increase in payment rates for ASC services in calendar year  
11 2012 concurrent with requiring ASCs to submit cost and  
12 quality data.

13           Our payment adequacy indicators suggest that a  
14 moderate update is warranted for 2012. Cost and quality  
15 data are important to help determine the adequacy of  
16 Medicare payments to ASCs, select an appropriate market  
17 basket for ASC services, and assess and reward ASC  
18 performance. Thus, our recommendation for a modest update  
19 is linked to a requirement that ASCs submit cost and quality  
20 data.

21           Here, we talk about the implications of the draft  
22 recommendation.

1           In regards to spending implications, under current  
2 law ASCs are scheduled to receive an update for 2012 that is  
3 equal to the increase in CPI-U minus multifactor  
4 productivity growth. Based on the current forecast of CPI-U  
5 and productivity growth, the update would be 0.8 percent.  
6 Thus, our draft recommendation of 0.5 percent would decrease  
7 federal spending by less than \$50 million in the first year  
8 and less than \$1 billion over 5 years.

9           In regards to beneficiary and provider impacts,  
10 because of the growth in the number of ASCs and the number  
11 of beneficiaries treated in ASCs, we don't anticipate that  
12 this recommendation would diminish beneficiaries' access to  
13 ASC services or providers' willingness or ability to furnish  
14 those services, and ASCs would incur some administrative  
15 costs to submit cost and quality data.

16           This concludes our presentation, and we'd be happy  
17 to take any questions.

18           MR. HACKBARTH: Okay, round one clarifying  
19 questions beginning on this side.

20           Peter.

21           MR. BUTLER: If I can articulate this, one thing  
22 we really don't know is we looked at if we knew physician

1 ownership down to the individual surgeon and looked kind of  
2 a two-by-two matrix -- ownership in a surgery center, no  
3 ownership -- and then looked at where they do their cases --  
4 in an outpatient hospital or a surgery center. So you could  
5 get, for example, a physician that didn't have ownership but  
6 in fact uses a surgery center frequently, versus. It would  
7 be an interesting way to display this, to see what the  
8 impact is of this.

9 I realize these are small dollars in terms of some  
10 of the other services, but that would be -- I don't think  
11 we've done that, right? We probably could.

12 MR. WINTER: Well, the difficulty is that we don't  
13 have data on physician ownership of ASCs or many other kinds  
14 of facilities. So --

15 MR. BUTLER: I thought in our disclosure  
16 recommendations and all those other things.

17 MR. WINTER: Yes.

18 MR. BUTLER: That's forthcoming, right?

19 MR. WINTER: We made the recommendation.

20 Unfortunately, that part of that recommendation was not  
21 adopted, has not been adopted yet by Congress. PPACA did  
22 include some of our other recommendations on reporting on

1 financial relationships between physicians and drug and  
2 device manufacturers but not regards to physician ownership  
3 of ASCs and other facilities.

4           Some of this information is reported right now to  
5 CMS if physicians are partners in a facility or have an  
6 ownership share above a certain percentage, I believe, but  
7 those data are not publically available. And so we don't  
8 have the information to, with certainty, link physicians to  
9 ownership of an ASC.

10           Studies that have tried to look at this use a  
11 proxy measure for ASC ownership. So they at whether  
12 physicians who do at least 30 percent of their cases in an  
13 ASC, and they assume that they're owners, but they don't  
14 have definitive information.

15           MR. HACKBARTH: Round one clarifying questions?

16           MR. GEORGE MILLER: Yes, on slide -- well, I guess  
17 I'll start with Slide 3. And in the text, again I greatly  
18 appreciate staff breaking out the information concerning  
19 dual eligibles and African Americans. I'm still struggling  
20 with the fact that it seems that this is a growing segment,  
21 that patients seem to be happy, physicians seem to be happy.  
22 There's access to care, but again we have this large and

1 significant portion of the Medicare beneficiaries that are  
2 not getting that same service.

3 I'm struggling with the why. If a service is good  
4 for a patient, other than it seems to be, my words,  
5 financial, but even though you have the same assurance at  
6 not being used or not taking to where a physician ownership  
7 -- those are my words. Whereas, physician ownership. So it  
8 seems to be a financial issue, and if that's the case my  
9 question is why do we have a recommendation for an update.

10 I get and support the quality data information. I  
11 get and support getting cost data information, but I'm  
12 struggling with why an update. So maybe that's more of a  
13 statement than a question.

14 MR. HACKBARTH: I think that your point is a vital  
15 one, that so far as we can tell there does not seem to be  
16 the same type of access to this particular service. I don't  
17 think that's unique to ASCs. In fact, within various  
18 provider groups there are particular providers who adopt  
19 strategies to get the most profitable patients that they  
20 can, and they can be strategies related to location. They  
21 can be strategies related to what services are offered.  
22 There are a lot of ways to do it.

1           So the problem is an important one, and I fear a  
2 fairly pervasive one. I don't mean to tar all health care  
3 providers, but this is not, unfortunately, an uncommon  
4 problem. And then the issue, if I'm right about that  
5 observation, is how effective is a payment update as a tool  
6 for dealing with this pervasive and critical problem.

7           And I think if we were to say for ASCs we've got  
8 this issue and we've got to reduce the update, we ought to  
9 be reducing updates for almost all other provider categories  
10 as well because there are providers within the hospital  
11 world, within the physician world, within the SNF world who  
12 are also consciously using strategies to select profitable  
13 patients.

14           MR. GEORGE MILLER: They at least know that we're  
15 going to raise the question and hold them accountable.

16           MR. HACKBARTH: I think the question is not only  
17 appropriate. It's a vital question to raise, and the issue  
18 is what are the tools that we have at our disposal to  
19 address it.

20           Other round one clarifying questions or comments?

21           DR. BORMAN: Just a quick question to make sure  
22 I'm not going off on a tangent, interpreting. As we look at

1 what appears to be a regrouping and shuffling back toward a  
2 hospital environment for some of this. That would then  
3 assume that these less complex and presumably less unit-  
4 charge cases, procedures, events would be moving back to  
5 this hospital-based setting, so that the mix of the hospital  
6 would then on per average, the costs, at least in theory,  
7 might go down. Is that a true statement?

8           So that just let's assume the scenario that  
9 everything, that there were no more ASCs. Thus, just for  
10 the sake of argument say doomsday scenario, no more ASCs,  
11 where everything is moved back to an institutional setting.  
12 Okay?

13           That now the mix here is a much broader range of  
14 illness severity, extended procedure and so forth, that it  
15 might eventually lead to a rebasing or recalculating or  
16 changes in the formula relate. Some of that could be  
17 recouped through changing that formula based on the change  
18 in mix. Is that -- would that be a logical though  
19 progression from what you've outlined?

20           DR. ZABINSKI: It's a possibility. I think the  
21 only way to know is after the fact and see what shakes out.

22           DR. BORMAN: But it would result in a lowering of

1 the average, would lessen the average complexity of the  
2 hospital outpatient.

3 DR. ZABINSKI: To the extent, yeah, the ASC  
4 patients are less complex, then yes.

5 MR. HACKBARTH: The problem is that our payment  
6 method doesn't adjust for the difference in complexity, and  
7 so if they move and if all ASCs went away tomorrow and the  
8 mix of hospital outpatient department patients changed as a  
9 result, it wouldn't necessarily automatically happen that we  
10 would have a reduction in expenditures because the payment  
11 systems don't work that way.

12 DR. ZABINSKI: That means this is like sort of a  
13 budget neutrality requirement over time. I mean one could  
14 see a rejiggering of the relative payment amounts for  
15 different services in the hospital area. But as far as a  
16 reduction in overall spending, no.

17 MR. HACKBARTH: Round two comments?

18 Peter? Or, Mike, did you have your hand up?

19 Okay, Peter.

20 MR. BUTLER: A quick comment, in general, we worry  
21 about physician ownership because it often creates higher  
22 than desirable utilization. In this case, actually one of

1 the ironies is that I think the cheaper ambulatory surgery  
2 center is often due to physician ownership because they  
3 agree to standardize and do processes in a very different.  
4 So it's an interesting kind of dilemma that we're in.

5 DR. MARK MILLER: Now I'm going to make the point  
6 because the other supplement to that question is what  
7 happens to the volume, and if there's any induced volume  
8 that's the other calculation about, on net, what's the  
9 impact.

10 MS. BEHROOZI: Actually, that was the comment that  
11 I was going to make, that you note in the paper that over in  
12 the course of one year the volume per beneficiary with  
13 respect to the newly covered services rose by almost a  
14 quarter. So yeah, this opportunity seems to be, in  
15 addition, the opportunity to increase volume goes hand in  
16 hand with the opportunity to offset more expensive services  
17 elsewhere.

18 And I would state I will vote for the  
19 recommendation, but I would state more strongly even the  
20 requirement to submit cost and quality data. I mean if I  
21 had my druthers I'd say that they shouldn't get the update.  
22 The update should not be awarded unless the requirement for

1 cost and quality data is imposed.

2 DR. DEAN: Just to -- I would -- I do support the  
3 recommendation with some trepidation, mostly for the reasons  
4 that have already been stated. I'm concerned about the  
5 conflict of interest issues. I'm concerned about the issues  
6 that George has raised. And I'm also concerned about the  
7 fact that we're sort of almost flying blind because we  
8 really don't know what the costs are, we really don't know  
9 what the justification for an increase is. And so I'm  
10 hesitant.

11 You know, I think I can support it because  
12 obviously a half percent is not going to be a big issue, but  
13 I think all of those issues really needed to be stated and  
14 need to be emphasized. We've got a lot of serious questions  
15 here.

16 DR. NAYLOR: So I support the recommendation and  
17 would -- I don't know if there's an opportunity to  
18 strengthen it by stating that the increase, as stated  
19 earlier by others, is available only with submission of cost  
20 and quality data. I mean I thought that that was implicit  
21 in the recommendation, and maybe we need to make it much  
22 more explicit.

1 MR. HACKBARTH: Yeah, the language.

2 DR. NAYLOR: It says "concurrent with."

3 MR. HACKBARTH: Yeah, the way I read this language  
4 is this is our recommendation to the Congress: You should  
5 do both of these things, not one or the other. You should  
6 do both of these things.

7 DR. NAYLOR: I didn't think there was a question  
8 until it was raised earlier.

9 MR. HACKBARTH: And we can add language in the  
10 text. I'd just as soon not fiddle with changing the word of  
11 the recommendation, but we can make it real clear in a text  
12 that we're saying they go together, both. It's not  
13 either/or.

14 Others?

15 DR. KANE: Do we already know which quality data  
16 we want? I mean is this -- because I noticed in some of the  
17 other things where we want quality data, but we don't --  
18 like LTCHs, we don't even know yet. You know, we're holding  
19 panels to try to get at that.

20 I mean if we're trying to make a recommendation  
21 that affects 2012 is there time to have these quality  
22 metrics articulated realistically? Or, should we just say

1 or to begin to develop the -- submit the cost data but begin  
2 to develop the quality data in some responsible way?

3 MR. HACKBARTH: Your point about timing is a good  
4 one. So let's assume for the sake of argument I were asked  
5 about this in a hearing. What I would say is that we would  
6 like to see the legislation that gives the update also  
7 include the language that says they must report the data,  
8 and the exact time schedule to begin the reporting of the  
9 data would be based on working out what the appropriate data  
10 are, et cetera.

11 DR. KANE: Otherwise, it sounds like if you don't  
12 give us the data we're not giving you the update.

13 MR. HACKBARTH: Yeah.

14 DR. KANE: I don't think the timing is going to --

15 MR. HACKBARTH: Again, we can use the text to be  
16 clear that we think that the mandate for data ought to be  
17 concurrent with the update, but no, we don't have the data  
18 set. That's not sort of work what we do. That's CMS's  
19 province.

20 DR. KANE: So maybe the notion is that it's  
21 concurrent with Congress passing legislation that requires -

22 MR. HACKBARTH: Yes.

1 DR. KANE: -- rather than the institution  
2 submitting the data.

3 MR. HACKBARTH: Right, right.

4 Other round two comments?

5 Hearing none, all in favor of the recommendation?

6 Opposed?

7 Abstentions?

8 Okay, thank you very much.

9 Our last session before lunch is on hospital  
10 inpatient and outpatient services.

11 DR. STENSLAND: Good morning. During this session  
12 we will discuss the draft update recommendation for Medicare  
13 payments to hospitals. Before I start I want to recognize  
14 Zach Gaumer, Craig Lisk, and Julian Pettengill who presented  
15 earlier analyses to you that led up to today's draft  
16 recommendation.

17 At our December meeting, some of you suggested  
18 that we should be more explicit in presenting how the update  
19 recommendation and DCI adjustments were computed. We will  
20 present those computations more explicitly today as we walk  
21 through the following slides.

22 We evaluate the adequacy of hospital payments as a

1 whole, meaning we examine whether the amount of money in the  
2 system is sufficient. As we discussed last month, Medicare  
3 fee-for-service hospital spending grew by roughly 6 percent  
4 from 2008 to 2009. This resulted in roughly \$148 billion of  
5 inpatient prospective payment system Medicare payments to  
6 hospitals. Critical access hospital payments represent  
7 another \$8 billion of payments. Essentially all 4,800  
8 general hospitals in the country participate in Medicare.

9           During our initial payment adequacy discussion  
10 last month, we noted that outpatient volume has been growing  
11 rapidly, while inpatient admissions have been declining  
12 slightly, and maybe I'll pause a minute to look at those  
13 first two -- the first sub-bullets you see under the "Access  
14 Is Strong" bullet. One of the sub-bullets notes that  
15 office-based visits, visits to physician offices that are  
16 hospital-based grew by 9 percent from 2008 to 2009. And in  
17 contrast, visits to physician offices that were free-  
18 standing only grew by 1 percent. So what this means is we  
19 are seeing a significant shift in the site of care from  
20 free-standing physician offices to hospital-owned-based  
21 practices. And I think as Bob mentioned earlier, there's a  
22 lot of anecdotal evidence of why people are doing this.

1 Certainly part of what people will say is they're preparing  
2 for ACOs, they're preparing for -- there are other strategic  
3 reasons why they're doing it. But also a big reason that  
4 might make it actually feasible when they say we want to  
5 employ the physicians is the economics might work out. And  
6 one of the reasons is that visits to office-based  
7 establishments for the most common physician office visit  
8 are about 60 percent higher if it's hospital-owned versus  
9 free-standing. So there's this big gap in payments that can  
10 be driving some of this shift in site of care we see from  
11 free-standing offices to hospital-based offices.

12 In terms of the other payment adequacy indicators  
13 we have, the quality metrics were mixed. Either they did  
14 not change significantly or they improved. Access to  
15 capital was adequate. And Medicare margins remain low.  
16 While Medicare margins improved in 2009 to roughly negative  
17 5 percent, they're expected to drop to negative 7 percent in  
18 2011.

19 The projected drop in margins in 2011 is primarily  
20 due to a reduction in inpatient payment rates. In 2011, the  
21 2.35 percent update was offset by a 2.9 percent reduction in  
22 inpatient payment rates that was required by law to recover

1 past overpayments stemming from documentation and coding  
2 improvements. The general idea is that margins improved in  
3 2009 due to overpayments stemming from documentation and  
4 coding improvements, and then in 2011 margins will fall back  
5 down as CMS reduces payment rates to recapture past  
6 overpayments.

7           Given the negative margins, some of you were  
8 concerned about hospitals' overall financial health, and  
9 last month, Mike expressed some interest in an early-warning  
10 system for financial troubles. So in this slide, we show  
11 you two indicators of overall financial health. The first  
12 is the total (all payer) margin which represents overall  
13 profitability and indicates a hospital's ability to cover  
14 its expenses and build reserves for future capital  
15 expenditures. The second is what is called EBITDAR on your  
16 slide. This is a hospital's earnings before interest,  
17 taxes, depreciation, amortization, and rent. It represents  
18 a hospital's earnings before capital expenses. In other  
19 words, EBITDAR is used to see if a hospital can cover its  
20 basic operating expenses.

21           The first row in this slide shows that overall  
22 hospital profitability rose a bit from 2001 to 2006 but is

1 now back at a more traditional level, with a median profit  
2 margin of 3 percent. In the second row, we see that between  
3 11 and 17 percent of hospitals had negative total margins  
4 for two of the prior three years during these three  
5 different three-year time periods we're looking at. For  
6 these hospitals to stay open, they will need to improve  
7 their financial performance or find other sources of funding  
8 to pay for their capital expenses, and this could be  
9 donations or government support. While hospitals with  
10 losses are under a greater risk of closure, some do remain  
11 open despite continued losses by either receiving government  
12 transfers or donations of fixed assets which are often not  
13 included in the hospital's income under accounting rules for  
14 government and nonprofit providers.

15 The third row is the EBITDAR margin. It shows  
16 hospitals' revenues were generally 10 or 11 percent above  
17 their basic operating expenses. We also find that 5 percent  
18 of hospitals have negative EBITDAR over two of the prior  
19 three years. What this means is the hospitals cannot even  
20 cover their operating expenses. To remain viable, they will  
21 have to improve their financial performance.

22 We look at total margins and EBITDAR because we

1 find that a majority of hospitals that closed had negative  
2 total margins and had negative EBITDAR in two of the prior  
3 three years. The point is if we see the share of hospitals  
4 with negative EBITDAR shifting upward significantly, that  
5 would be an early-warning sign that we would be at risk of  
6 seeing additional numbers of closures in future years.

7           Given that we do not see big shifts in total  
8 margins or in cash flows as measured by EBITDAR, we expect  
9 the rate of closures to remain at its relatively low level  
10 in the upcoming years. As you may recall from your mailing  
11 materials, over the past 5 years an average of 25 hospitals  
12 have closed per year and an average of 54 hospitals have  
13 opened per year.

14           This slide reviews our findings on financial  
15 pressure. The main point of this slide is that hospitals  
16 under high pressure tend to have lower costs. Lower costs  
17 lead to better Medicare margins.

18           The remaining question is how do the hospitals  
19 under pressure -- those with positive Medicare margins -- do  
20 overall compared to those that are not under pressure. I  
21 think George raised this in December.

22           If we look at the first column, these hospitals

1 are under high pressure due to negative non-Medicare  
2 margins. The result is lower costs and positive 4.7 percent  
3 Medicare margins. However, the Medicare profits are often  
4 not enough to overcome the non-Medicare losses, including  
5 uncompensated care costs. Hence, the median hospital under  
6 high financial pressure has a total -- that means all payer  
7 -- margin of negative 0.7 percent. This means that half  
8 these hospitals under high pressure are losing money  
9 overall. So the point of this first column is to show that  
10 some hospitals are struggling, but Medicare is rarely the  
11 driver of their overall losses.

12 In contrast, look at the last column. We see that  
13 hospitals that are not facing financial pressure tend to  
14 have higher costs and 10 percent losses on Medicare.  
15 However, due to high non-Medicare profit margins, these  
16 hospitals tend to be more profitable overall. Private  
17 profits more than counter balance Medicare losses for these  
18 low-pressure hospitals. The point of the last column is  
19 that wealthy hospitals that are under low levels of pressure  
20 tend to have negative Medicare margins, but those same  
21 hospitals often do well overall.

22 Now let's turn to relatively efficient providers.

1 As you recall, the point of this slide is that there is a  
2 group of hospitals that perform relatively well on quality  
3 metrics and still roughly break even on Medicare, with a  
4 median margin of 3 percent.

5 The question raised last month was, How do these  
6 hospitals do overall? Are some of these hospitals losing  
7 money and in danger of closing despite being efficient?

8 As we see from the first column, the top  
9 performers had a median Medicare margin of 3 percent and a  
10 median total margin of 3 percent. Among these top  
11 performers, only four of the 219 consistently had losses  
12 from 2006 to 2009.

13 So the key points on this slide are: Some  
14 hospitals can do well on quality and cost metrics. These  
15 hospitals tend to do better than average on Medicare. And  
16 very few of these relatively efficient hospitals have poor  
17 overall financial performance.

18 Now let's switch gears to talking about the need  
19 to adjust payments for improved coding and documentation. I  
20 want to take a step back and recall why the new MS-DRGs were  
21 implemented. Back in 2005 MedPAC did a study of specialty  
22 hospitals, and we found certain hospitals were taking the

1 easier cases, and other hospitals took the more difficult  
2 cases. The system had a built-in incentive to specialize in  
3 certain types of care, such as cardiac surgery, and to  
4 specialize in treating less severely ill patients. So  
5 MedPAC recommended paying more for difficult cases and less  
6 for easier cases, and this was supposed to be a budget-  
7 neutral redistribution of payments.

8           When the MS-DRGs were implemented, there was an  
9 incentive for improved coding to capture the higher payments  
10 associated with documenting complications. Hospitals  
11 followed the incentives, coding improved, and payments  
12 increased. By law CMS needs to make adjustments to payments  
13 to offset the coding changes and make the transition to MS-  
14 DRGs budget neutral, as we had recommended.

15           As we stated in December, the Commission has  
16 expressed the following principles behind last year's  
17 recommendation on DCI adjustments.

18           The first principle is that the transition to MS-  
19 DRGs should be budget neutral. This means that payment  
20 rates will have to be reduced by 3.9 percent to prevent  
21 further overpayments from continuing. After that is  
22 accomplished, additional adjustments will be needed to

1 recover past overpayments.

2           The second principle is that these adjustments  
3 should occur gradually to prevent a large financial shock to  
4 hospitals.

5           The next slide shows how the DCI adjustments have  
6 been factored into the update discussions you have been  
7 having during the past month.

8           First, given the expectations for input prices and  
9 the payment adequacy indicators such as volumes, access to  
10 capital, Medicare margins, as well as the costs and margins  
11 of the relatively efficient hospitals, the Commission's  
12 draft recommendation would have been 2.5 percent. This is  
13 the first row in the table.

14           However, there were additional pieces of  
15 information that led to a 1-percent draft update  
16 recommendation. First, DCI increased payments by 3.9  
17 percent, and those increases will eventually have to be  
18 offset. The draft recommendation is to offset 1.5 percent  
19 of those increases in 2015. This is the second row.

20           Turning to the third row, current law requires a  
21 productivity adjustment. Last month the Commission  
22 discussed that given the need for a DCI adjustment, the

1 productivity adjustment is not warranted this year. And as  
2 Glenn told you earlier this morning, we look at the update  
3 on a year-by-year basis, so we're not saying a productivity  
4 adjustment will not be appropriate in future years. We are  
5 just saying that no adjustment is factored into the 2012  
6 recommendation.

7           Now, turning to the third row -- I mean turning to  
8 the last row, that shows the update recommendation, which is  
9 a firm 1 percent. We have eliminated any uncertainty about  
10 the DCI adjustment in addition. The DCI adjustment would be  
11 1.5 percentage points. This means that if Congress chooses  
12 to follow the update recommendation and payments were  
13 updated by 1 percent in 2012, the Commission's position  
14 would be that a 1.5-percent documentation and coding  
15 adjustment would have occurred. The net result would be  
16 that only 2.4 percent of the 3.9 percent in DCI adjustments  
17 would be remaining to be taken in future years.

18           The 1-percent update holds for both inpatient and  
19 outpatient payments. The 1-percent increase on the  
20 outpatient side is appropriate for two reasons:

21           First, we see annual outpatient volume growth of 4  
22 percent. And more interestingly, the volume of office

1 visits for hospital-owned physician practices increased by 9  
2 percent from 2008 to 2009, as I mentioned earlier, and this  
3 is significantly higher than the 1-percent growth we saw in  
4 visits to free-standing offices. And this, as I said  
5 earlier, could reflect the higher level of outpatient  
6 payment -- higher level of payments given to hospitals than  
7 free-standing physician offices.

8           The second point is that a 1-percent update would  
9 be consistent with the draft update presented for competing  
10 ambulatory care sectors such as physician offices.

11           So given the data presented today on payment  
12 adequacy and given the inpatient and outpatient  
13 considerations I just discussed in the prior two slides, the  
14 draft recommendation now reads as follows: That Congress  
15 should increase payment rates for acute-care hospital  
16 inpatient and outpatient prospective payment systems in 2012  
17 by 1 percent. Congress should also require the Secretary of  
18 Health and Human Services to make adjustments to inpatient  
19 payment rates in future years to fully recover all  
20 overpayments due to documentation and coding improvements.

21           The spending implications of this for 2012 is that  
22 it is expected to increase spending because our 1-percent

1 update is higher than what the Congressional Budget Office  
2 assumes would occur under current law. Over five years, it  
3 would decrease payments due to our recommendation that all  
4 past overpayments would be recovered.

5 We now open it up for discussion.

6 MR. HACKBARTH: Thank you, Jeff.

7 I just want to underline a few things that Jeff  
8 said in his presentation. First of all, on the diagnosis  
9 and coding adjustment issue, I want to emphasize again that  
10 there's no implication here that hospitals have done  
11 anything wrong in changing their coding practices. Indeed,  
12 that's appropriate, required for us to accomplish the basic  
13 goal of moving to severity-adjusted DRGs, which is to better  
14 allocate the dollars. So nobody should infer from this  
15 conversation that we're saying that somehow hospitals are  
16 gaming the system or doing anything inappropriate.

17 Having said that, by definition, changes in case-  
18 mix systems should be budget neutral, and that's a principle  
19 that MedPAC has emphasized not just in the case of hospitals  
20 but for all other provider groups as well.

21 On the issue of whether or not there is a  
22 productivity adjustment here, as I said at the outset, the

1 format that we are now using for our update recommendations  
2 has a couple really important features. One is that we're  
3 not going to be characterizing any of our recommendations as  
4 a formula going forward. We're going to be using numbers,  
5 so it's not going to be market basket minus productivity or  
6 full market basket for anybody. We'll actually recommend  
7 specific numeric increases.

8           The second thing that I would emphasize is that  
9 our starting point for hospitals and all other provider  
10 groups is zero, and there needs to be an affirmative case  
11 for either a price increase or price decrease. So the whole  
12 notion of a productivity adjustment is not an explicit part  
13 of the discussion any longer. We will look at all of the  
14 payment adequacy factors and make a judgment year by year  
15 about the appropriate increase in payment rates.

16           The last point I would underline has to do with  
17 the outpatient department rates, and as Jeff indicated,  
18 we've got a really tricky issue developing with regard to  
19 outpatient rates. We started to touch on it in the ASC  
20 discussion. There are certain services that are now  
21 provided in multiple different locations -- physician  
22 offices, ASCs, hospital outpatient departments -- and we pay

1 different rates based on the type of provider. And the fact  
2 that we're paying different rates based on the type of  
3 provider for the same service can cause problems. It can  
4 cause shifts in the locations of services to take advantage  
5 of differences in the payment rates. And there is -- what  
6 is the term? Qualitative research?

7 DR. BERENSON: Qualitative research.

8 MR. HACKBARTH: Qualitative research that  
9 indicates that, in fact, that is becoming an issue, and that  
10 hospitals are buying practices and maybe affiliated ASCs in  
11 order to take advantage of differences in the rate  
12 structure. To the extent that that happens or that process  
13 accelerates, it could result in increases in Medicare  
14 outlays for the exact same services. So over time we need  
15 to look at how to better pay for the same service offered in  
16 different types of locations.

17 Having said that, it's a tricky issue, because we  
18 do know for a fact that there are currently differences in  
19 the patients that receive the exact same service but in  
20 different locations. You know, a type of surgery done on  
21 Medicare patients in an ambulatory surgical center, the  
22 surgical procedure may be the same, the codes and everything

1 the same, but the patient could be different than the  
2 patient that gets the exact same service in a hospital  
3 outpatient department. And folks have heard me say this  
4 before. I know that when I ran a large group practice, we  
5 systematically directed the patients to different locations  
6 based on their co-morbidities, the perceived riskiness of  
7 the patient, and the more difficult patients for the exact  
8 same procedure we sent to the Brigham outpatient department  
9 for the surgery, and the less complex patients we did in an  
10 ASC. So there was a conscious sorting of the patients based  
11 on perceived risk. And as a result of that, we paid the  
12 Brigham a higher rate for doing the same procedure.

13           So we had sort of an ad hoc payment adjustment  
14 that we did through negotiation to take into account the  
15 differences in selection of patients. So, yes, we need to  
16 try to synchronize these rates more effectively, but it's  
17 not going to be a simple task to really do it on an apples-  
18 to-apples basis, a really fair basis. So that's a piece of  
19 work that we have before us in the future to tackle.

20           In the meantime, however, we need to be cognizant  
21 of the risk in having these rates for hospital outpatient  
22 departments and ASCs get further and further apart, because

1 to the extent that they get further and further apart for  
2 treating the exact same patient, the incentives for people  
3 to make strategic decisions about buying up practices and  
4 ASCs get stronger and stronger and stronger. So we've got a  
5 real challenge here in how to deal with this complex  
6 problem.

7           Okay. So now it's time to turn to our Round 1  
8 clarifying questions, and I think this time we are Karen's  
9 side. So clarifying questions?

10           DR. STUART: Yes, I want to pick up on a point  
11 that you just raised, Glenn, about the change in the  
12 reimbursement for a given service. If a physician office --  
13 if a physician practice was purchased by a hospital, as I  
14 understand it, the payment for services provided by the same  
15 physicians would include -- in the former case would be the  
16 RBRVS for both professional and the practice-related  
17 expenses; in the latter case, when they're owned by the  
18 hospital, the professional portion would stay the same. The  
19 practice portion would then be the hospital outpatient  
20 portion.

21           My question is: Is it possible to track  
22 physicians whose practices have been purchased so that we

1 would have some empirical idea about the increase in the  
2 overall cost to the Medicare program?

3 Then also -- and this hasn't been raised yet, but  
4 I think it's important -- there's also an increase to  
5 beneficiaries through the Part B co-insurance rate.

6 DR. STENSLAND: I think we can try to do something  
7 in that order, and you're right, it would be higher co-  
8 insurance.

9 DR. CHERNEW: I think, Bruce, you can't do that  
10 automatically. In other words, if you want to stay in your  
11 same place and just be bought by a hospital, there are rules  
12 that you have to be to be able to use the hospital's  
13 billing. So it's not [off microphone].

14 DR. MARK MILLER: Okay. First of all, just to  
15 qualify Jeff's comment, we can do some looking around. What  
16 I think is going to be very hard to do is to know this  
17 practice was purchased by this hospital. Right? I think it  
18 will be by inference in terms of the data, billing patterns  
19 rather than I can document that. And this is in some ways  
20 related to Mike's point. I don't have information yet that  
21 I want to go through in a concrete way, but we started  
22 making inquiries like how does this work, what are the

1 rules, that type of things.

2           There are some rules. The first impression is  
3 pretty porous and not clear how much oversight is occurring.  
4 I don't want to say this really strongly, but we're starting  
5 to dig into this, and like a lot of issues like this, it  
6 suddenly turns out to be there are things on the books, but  
7 exactly how this is happening is a little bit unclear. So  
8 those are the two areas.

9           Another question is, What are we going to do about  
10 all this? The first two areas we're going to look at is the  
11 patterns in the data to see if they at least conform to the  
12 hypotheses; and, two, how are the rules executed and what do  
13 you have to do to jump this fence from one side to the  
14 other.

15           DR. STUART: Do we know if physicians maintain  
16 their same IDs if they transition from their own clinic to a  
17 hospital-owned clinic?

18           DR. HAYES: The NPI number that uniquely  
19 identifies the physician would appear -- would remain the  
20 same for the professional component.

21           MR. HACKBARTH: Okay. Continuing Round 1  
22 clarifying questions.

1 DR. KANE: Yeah, I have two clarifying questions.  
2 I think one is that the 2.5 percent where we would be in the  
3 absence of DCI, and if zero is our base and we've handed out  
4 a half and a one to the docs and the ASCs because we don't  
5 know anything about their profitability, but we are kind of  
6 worried about it -- not too worried, but, you know, we don't  
7 want to give them zero. But then we do know these guys are  
8 in general, even the profitable ones, even the efficient  
9 ones, and if you look at the distribution, some big share of  
10 them actually are losing money, so we're giving them to --  
11 I'm just wondering how do we get to 2.5 percent, and it  
12 looks an awful lot to me like the market basket.

13 So I guess I just want to, you know, what are we  
14 using to get to 2.5 percent. Is it related to the relative  
15 profitability or is it related to something out there?  
16 That's just a first question, and I know you want to -- you  
17 are going to be able to give me a really cogent explanation.

18 And the second one is more back to the issue about  
19 the outpatient incentives. Does anybody know whether those  
20 facility fees get paid to the doctor or get kept by the  
21 hospital? And so who's the incentive really for? I mean,  
22 if it's the physician, I can understand why they would

1 definitely want to move their practices, but how do they  
2 divvy that up?

3 DR. STENSLAND: I'll do the easy second one, and  
4 Glenn can do the first one. Yes, it goes to the hospital.  
5 But, of course, then the hospital's going pay the doctor,  
6 and you see this greater and greater share of hospitals have  
7 employment relationships with doctors, and they're going to  
8 negotiate a salary, and so it's kind of all fungible. You  
9 know, the hospital gets the money, but then how much of it  
10 does it give the doctor in terms of the salary?

11 DR. KANE: Well, I guess the one question might be  
12 then is the salary in excess of what the professional fee  
13 would have generated and how far in excess is it. I mean,  
14 you know, this requires a qualitative case study approach  
15 probably, but it might be worth getting that sense as well  
16 just to get an understanding of how strong is this. I mean,  
17 you've got in your text that these outpatient facilities  
18 fees are 50 percent, sometimes 50 percent greater than what  
19 you would have gotten in a practice expense. That's a big  
20 chunk of money, and I remember, you know, in my anecdotal  
21 experience, seeing physician practices get put into hospital  
22 cost centers all of a sudden. I think I mentioned this

1 years ago to somebody here, saying, Gee, that seems kind of  
2 odd, why are they all doing that? And now I'm beginning to  
3 see why with that payment differential. But what is really  
4 -- who is benefitting from it? How strong is the incentive?  
5 Because if it's really very -- you know, maybe they  
6 shouldn't be getting that 50-percent add-on, and maybe what  
7 we should be doing instead is, you know, severity-adjusted  
8 APGs.

9 MR. HACKBARTH: I would assume that who gets it is  
10 a matter of negotiation. When a practice chooses to sell to  
11 the hospital, you know, they would negotiate the financial  
12 terms and how much is paid for this, what the salary  
13 commitments are. And it would be very difficult to  
14 disentangle exactly, you know, what's happened to those  
15 dollars. And it will vary based on the negotiations.

16 I think you're probably chasing something that  
17 will be very difficult to run down.

18 DR. BERENSON: This is anecdotal. I've seen some  
19 marketing materials to physicians from law firms as to why  
20 they want to consider being acquired which make the point  
21 that they can get them a higher purchase price by the  
22 reality of these higher payments. So you can't just put it

1 into their ongoing revenue. It is part of the deal.

2           The second thing that we really did find this year  
3 and would be in anything we write up is that, as opposed to  
4 the late '90s when hospitals purchased practices and  
5 basically paid a salary, hospitals are using productivity  
6 metrics based on RVUs. Now, it seems that most of them are  
7 using work RVUs as their productivity metrics and not total  
8 RVUs. But it's conceivable that in these productivity  
9 adjustments -- I mean productivity-based payments that there  
10 is a factor for the higher reimbursement, but that is on a  
11 one-on-one -- I mean, that I can't give you anything  
12 systematic.

13           MR. HACKBARTH: Okay. Let's turn to the first  
14 question, and let me begin with the statement that with this  
15 update recommendation, as with every other update  
16 recommendation that we ever do, there's not a right answer  
17 that you can calculate. There's probably a range of  
18 reasonable potential conclusions, I suppose, to a single  
19 point estimate. Congress, however, likes us to give  
20 specific numbers, and so hopefully we're hitting within that  
21 range.

22           Here's my logic as to how I arrived at this. I

1 said let's assume for a second that we didn't have a DCI  
2 issue and we were doing a hospital update and focusing, as  
3 is our statutory charge, on efficient providers.

4           Would you put up the efficient provider slide?

5           So we've got 219 hospitals in the efficient group,  
6 which is about 10 percent, roughly, of the total pool of  
7 hospitals, and for that group of providers, the average --  
8 or these are medians, right? So the median Medicare margin  
9 is 3 percent.

10           I think, Jeff, you said during your presentation  
11 that there actually were only a small number of the 219 that  
12 were losing money. Was that --

13           DR. STENSLAND: If you look consistently over the  
14 past four or five years, only four of the 219 have  
15 consistently lost money overall.

16           MR. HACKBARTH: Yeah, so what we have is evidence  
17 that there's a group of efficient providers that is able to  
18 make a reasonable margin on Medicare business. If this were  
19 the only providers that existed, what would we do? Well, as  
20 you noted, Nancy, the 2.5 percent is related to the market  
21 basket. So if this was the only group out there making a  
22 modest positive margin, I would be thinking about something

1 that goes up with their input prices.

2           The next step in my thinking was, well, let's look  
3 at some other provider groups that might be in a similar  
4 situation, and two that came to mind were the dialysis  
5 centers that also have a modest positive margin and hospice.  
6 But there's a critical difference. We have a 2- or 3-  
7 percent positive margin projected for, say, dialysis  
8 centers, but that's for all dialysis centers and not just  
9 for the efficient providers. And so we're going, when we  
10 get to the dialysis discussion, talk about a smaller update  
11 for them because we're talking about the full group of  
12 dialysis providers, not just this 10 percent really good  
13 part of the distribution.

14           So I'm thinking that we ought to give a higher  
15 update, when we're only talking about 10 percent of the  
16 population, than we would give for the same average margin  
17 when it's the whole pool. And so I think the update I would  
18 give for the efficient providers is -- or for hospitals is  
19 going to be somewhat higher than I would give for dialysis,  
20 and 2.5 percent, around the market basket, seemed within the  
21 range of reasonable for me.

22           Then the second step in my own thinking about this

1 was that, given the overall distribution of hospital  
2 profitability, I was worried about having no update or a  
3 rate reduction. And so I said, well, I want to have at  
4 least a 1-percent increase in the base rates given the  
5 overall financial performance of the hospital sector. And  
6 then that leads to the calculation -- if you could put up  
7 the other slide, you know, if we would have given the 2.5  
8 percent absent DCI, and we're going to give 1 percent as the  
9 minimum we think is appropriate, the differential of the 1.5  
10 percent is the DCI credit.

11 Now, is that the right answer? Of course, you  
12 know, there are other ways that you could think it through  
13 and other numbers that you could come to. You could say  
14 that maybe not 2.5 percent for the starting point. You  
15 could say 2 percent or some other number. And I couldn't  
16 say that you're wrong. But that's the logic that I used to  
17 get there.

18 The December discussion coupled with the  
19 individual conversations I had with Commissioners after the  
20 December meeting sort of led me to think about the problem  
21 in those terms, that we needed to sort of step one say what  
22 would we have done in the absence of DCI; second step, what

1 do we think the floor needs to be given the overall  
2 performance of the hospital sector; and then from that,  
3 derive what the DCI credit is.

4 DR. KANE: Is it -- I mean, then we start talking  
5 about outpatient and inpatient and having different concerns  
6 about them, but you want to put the same update on them. I  
7 guess that would be the last part of the question.

8 MR. HACKBARTH: Yeah, and then the hospital  
9 outpatient department thinking is very different, because  
10 there's not a DCI issue there. And there my thinking is  
11 more influenced by this multi-site service issue where we  
12 have the same services provided in different sites at very  
13 different rates. Right now the hospital outpatient  
14 departments tend to be at the high end of that payment  
15 distribution, and I think we have to be cognizant, while we  
16 work on this problem, of allowing that spread to get bigger  
17 and bigger over time. So we're already at the high end, and  
18 I don't want to see a 2.5-percent increase there that would  
19 make that spread even wider for fear that it would add fuel  
20 to the fire of, oh, let's go out and buy practices and  
21 convert them to higher payment rates.

22 Again, you know, there's not a right answer there,

1 but that's the thinking. I think we need to sort of try to  
2 contain the spread in rates while we think through how to  
3 handle this multi-site issue.

4 DR. KANE: Could we consider 1 percent for the  
5 hospital inpatient and a half a percent, as we did with  
6 ASCs, for the outpatient? Or do we always have to give the  
7 one number for the combined?

8 MR. HACKBARTH: We don't have to do anything. My  
9 thinking on -- despite what I said about the multi-site  
10 service provider issue, I came in with a lower number for  
11 ASCs because of the cost and quality thing. Tom and George  
12 and others have really emphasized we need to send a signal  
13 there that we've got to get this cost and quality  
14 information. And so I wanted to have a slight difference to  
15 drive home that point.

16 Having said that, you know, it does work contrary  
17 to this goal of trying to synchronize the rates. So we've  
18 got two considerations that are pushing in opposite  
19 directions, and this is how I tried to reconcile them. Is  
20 it the right answer? No, there is not a right answer to  
21 this question. This is simply how I thought through it.

22 DR. KANE: [off microphone].

1 MR. HACKBARTH: Okay. Other clarifying questions?

2 MR. GEORGE MILLER: If you go to Slide 3, please,  
3 I have two questions as well. In Slide 3, is the 9-percent  
4 increase in the hospital-based office visit total  
5 outpatient? Is that a total number? Is that a subset of  
6 all outpatient visits, that 9 percent, please?

7 DR. STENSLAND: So the total all outpatient grew  
8 by 4 percent, and then there's a subset of outpatient which  
9 is just clinic visits to the hospital-owned physician  
10 practices, and that grew by 9 percent.

11 MR. GEORGE MILLER: So that not a total of all the  
12 patient business; that's just a subset.

13 DR. STENSLAND: The 9 is a subset; the 4 is the  
14 total.

15 MR. GEORGE MILLER: All right. So what percentage  
16 of that 9 percent would be of the total outpatient  
17 department visits? Can you calculate that or is that --

18 DR. STENSLAND: Of the growth in outpatient  
19 volume, about a quarter of it, about 25 percent was just due  
20 to the hospital-based office visits growing by 9 percent.

21 MR. GEORGE MILLER: Okay. So today -- and I  
22 understand Glenn's point -- it could be a big number in the

1 future, but today this is not a big number then? That 9  
2 percent is not -- that 9 percent is a very small number, a  
3 small percentage?

4 PARTICIPANT: [off microphone] 1 percent.

5 MR. GEORGE MILLER: Yes, 1 percent, right,  
6 exactly. Thank you.

7 PARTICIPANT: [off microphone] 1 percent of the  
8 quarter --

9 PARTICIPANT: [off microphone] It's a quarter --

10 MR. GEORGE MILLER: It's a quarter -- right,  
11 right, one percentage point. Got it. Okay. But the  
12 concern is, as Glenn so eloquently laid out, that because of  
13 the pay differential this could be a huge growth area. And  
14 I'm just thinking out of the box and off the top of my head,  
15 which could be dangerous, but if that's one of your concerns  
16 and to keep that from happening, could there be a different  
17 payment segment for any new business they acquire? So that  
18 if the current hospital rate was set years ago for  
19 outpatient, recognizing a whole bunch of different factors,  
20 but any -- if a hospital today went out and acquired a  
21 physician practice and you're concerned about them doing it  
22 for shifting payment, why couldn't we set a different

1 payment mechanism for that new business and not affect the  
2 other business? That may be too complicated?

3 MR. HACKBARTH: Well, with the same caveat that  
4 you offered, that this is off the top of my head -- I  
5 obviously haven't thought this through.

6 MR. GEORGE MILLER: It could be dangerous, too.

7 [Laughter.]

8 MR. HACKBARTH: Yes. In fact, in my case I'm sure  
9 it's dangerous. I thought I heard a few minutes ago  
10 somebody say that actually we don't identify, can't identify  
11 when a hospital has purchased an ASC. We can try to infer  
12 that, but that's not data that's routinely collected now.

13 MR. WINTER: [off microphone] It's not accurate.

14 MR. HACKBARTH: Yeah. So just to do the  
15 categorization that is in your model, this is a hospital  
16 that acquired this ASC. We don't track things that way  
17 right now.

18 The second thing is that I'm not sure that a two-  
19 tier payment system would make sense in the long run. So,  
20 you know, we're out now in 2015 or 2020, and we're still  
21 going to pay different rates for the same service provided  
22 within the same institution based on some acquisition that

1 happened in the past.

2 MR. GEORGE MILLER: I understand, but you're  
3 concerned about payment at different places now and trying  
4 to have them be equitable.

5 MR. HACKBARTH: Well, I am, and I think we need to  
6 try to make sure that we're paying, you know, equal amounts  
7 after adjustment for patient differences and the like for  
8 the same service, regardless of location. I think that's a  
9 sustainable system. Having run out into the future --

10 MR. GEORGE MILLER: Off the top of my head.

11 MR. HACKBARTH: -- a difference based on we'll pay  
12 X if it was an acquired practice and Y if it was organically  
13 grown, I just don't think is a sustainable system in the  
14 long run.

15 MR. GEORGE MILLER: Off the top of my head, but  
16 part of my question really dealt with what the other issue  
17 was, the concern, because the MA codes are going up,  
18 increase, the assumption, is that we then need to be  
19 concerned about the increased volume of business, which, you  
20 know, you articulated.

21 My second question has to do with the financial  
22 pressure slide, Slide 6, please. Under the high pressure

1 and the low pressure, can you break down or do you know  
2 where they're located and what percentage of Medicare  
3 business they do have for each one of those?

4 DR. STENSLAND: I think the percentage of Medicare  
5 business is in your mailing materials, and it's going to be  
6 roughly equal.

7 MR. GEORGE MILLER: Equal, okay.

8 DR. STENSLAND: In terms of the high pressure and  
9 low pressure, there's a wide distribution of where these  
10 places are located. In general, the high pressure will tend  
11 to be in a little bit poorer areas. If you're in a wealthy  
12 area, you're less likely to be under high pressure. But  
13 there's a wide distribution of areas.

14 MR. GEORGE MILLER: But wouldn't that have an  
15 impact on this analysis, especially with the location -- and  
16 part of the reason was given earlier for some of the  
17 differentials of disparities because of dual eligibility or  
18 -- because of their location --

19 MR. HACKBARTH: That's actually the hypothesis  
20 here.

21 MR. GEORGE MILLER: Right.

22 MR. HACKBARTH: That these are institutions that

1 tend to have higher Medicaid shares. They've got less  
2 generous private payment.

3 MR. GEORGE MILLER: Right.

4 MR. HACKBARTH: Therefore, they have to manage  
5 their budgets very tightly, and we find that, in fact, they  
6 are able to do that consistent with doing pretty well on the  
7 quality indicators. And it's that combination, low cost and  
8 pretty good performance on quality, that gets them into the  
9 efficient provider category. The institutions have a high  
10 percentage of private-pay patients, and private-pay patients  
11 in particular that come with generous payment amounts. They  
12 are not going to be the high-pressure category, and the  
13 evidence shows that because they have more money flowing in,  
14 they spend more and have higher costs, and that tends to  
15 drive down their Medicare profitability. Their overall cost  
16 structure goes up. When you compare that to the Medicare  
17 payment rate, profitability goes down.

18 So, yes, the high-pressure category, these are  
19 institutions that are compelled by their financial  
20 circumstances to manage tightly, and they can do it at a  
21 significantly lower cost while preserving quality. That's  
22 what makes them efficient.

1 MR. GEORGE MILLER: Okay. Thank you.

2 MR. HACKBARTH: Clarifying question?

3 DR. DEAN: Just a quick question on Slide 2. You  
4 said outpatient spending grew by 11, almost 12 percent, but  
5 volume went up by 4 percent. Is that just a reflection of  
6 the magnitude of the difference in the payments? Or is  
7 there something else going on there? I mean, I didn't think  
8 it was a three-fold difference, which this would imply.

9 DR. STENSLAND: Well, there was 4-percent volume  
10 growth. There was a pretty healthy update of 3-point-  
11 something percent. Then there can be a shift in the types  
12 of services provided, and that adds up.

13 DR. CHERNEW: Service mix increase.

14 DR. STENSLAND: Service mix increase also. So you  
15 have three components: volume, service mix, and price.

16 MR. HACKBARTH: Okay? Good. Others?

17 MR. BUTLER: The good news is I'm not going to ask  
18 about DCI.

19 [Laughter.]

20 MR. HACKBARTH: That is good news, actually.

21 MR. BUTLER: I'm not going down that rabbit trail.

22 DR. MARK MILLER: What's the bad news?

1 [Laughter.]

2 MR. BUTLER: Okay, I think there's opportunities  
3 to create the qualitative research and art of this to more  
4 science more quickly than we think, not for this  
5 recommendation, but let's go back one more time to Slide 11,  
6 just to clarify on this that, you know -- let's not leave  
7 the impression that there's incentive for greater volume  
8 growth. It's just a shift from the doctor's office into an  
9 employment arrangement that actually decreases the  
10 physician's component and payment but adds a facility, which  
11 in the aggregate pays more and is definitely an incentive  
12 and something that needs to be looked at.

13 But I think one technical question related to  
14 this, Jeff, in the materials you sent out, you actually  
15 cited an 11-percent increase in the practices, in these  
16 visits, and that's 2009; and here you say it's 9 percent.

17 DR. STENSLAND: There's two sources of data on  
18 where you can get this information from. You can look at  
19 what is the hospital billing, and the hospital, this is  
20 coming off the hospital bills, the outpatient claims, and  
21 that's going up by 9 percent. The other source that you can  
22 look at that we looked at last time, we decided this is the

1 one we'll go with. The other one we looked at last time was  
2 let's look at what physicians are billing. How often are  
3 physicians billing for the complete package of their  
4 practice expense and their work as if it's in their office?  
5 And how much do they bill it as just for the work component  
6 and say they're doing it in a hospital-based practice? And  
7 that grew at 11 percent. And these things can be a little  
8 different depending on if you maybe have residents  
9 delivering the care and they can actually bill themselves,  
10 but they still may have the facility fee.

11 So they're both basically about 10 percent, so the  
12 general story is the same, but which data source you use, it  
13 will be slightly different.

14 MR. BUTLER: Okay. So what we need is the slide  
15 comparable to what we look at in the physician services in  
16 the Part B that builds up the sources of the increase in the  
17 outpatient, and you've referenced, for example, I think,  
18 that 25 percent of the increase in that year was due to that  
19 phenomenon, shifting to -- but we have imaging, we have  
20 observation stays, we have a number of things that are  
21 building up to the 11-percent increase. So understanding  
22 that will help us know how to, you know, take the blunt 1

1 percent and do it a little bit different in another cycle.

2           One last technical comment. It's not really a  
3 question, but it's around one kind of thing. You threw out  
4 there EBITDAR, you know, and we don't have it anywhere in  
5 the chapter, and usually it's EBITDA not EBITDAR, so I'm not  
6 sure what the -- it's a new -- cash flow is a good one, but  
7 I would -- it's kind of an awkward place to insert it  
8 because it's not in the chapter at all. That's just a  
9 comment because it's not well understood by probably some of  
10 the Commissioners, so I wouldn't overuse that as part of  
11 anything you would explain on the Hill, for example, at this  
12 point in time.

13           MR. HACKBARTH: Jeff, do you want to just say a  
14 little bit more why you chose to add that this time?

15           DR. STENSLAND: All right. So this came out of  
16 last month's discussion in December, and part of it was  
17 Mike's desire for the early-warning system. And we wanted  
18 to look back at a couple of different metrics. One is the  
19 margin, which is a good predictor of closure, and it's also  
20 a good predictor of whether you can have enough money to  
21 continue to fund capital improvements and to pay off your  
22 debt.

1           I think the EBITDAR is also an important metric in  
2   that it basically takes away that debt service and those  
3   rental payments, and it really asks more -- will the entity  
4   be able to keep on operating even in a bankruptcy situation.  
5   And I think the example I would pull out would be from the  
6   mid-1990s. What we saw was a lot of nursing homes had taken  
7   on a lot of debt or they had taken on big rent obligations.  
8   And what happened is a lot of them went bankrupt because  
9   they had negative total margins, and they couldn't pay their  
10   debt, they go into bankruptcy. But they still had the  
11   positive EBITDAR, meaning they could still operate the  
12   facility and generate some revenue for those bond holders  
13   which now hold the facility.

14           So what happened is those facilities didn't close  
15   and the Medicare patients still had access, they still got  
16   their care in those nursing homes, because the cash flow was  
17   big enough to keep the operation going, even if it wasn't  
18   quite big enough to also pay off the bonds.

19           So I think there's two different questions: Do  
20   you have enough money to pay off all your debt and keep on  
21   going? Or do you have money just to keep on going even if  
22   you're defaulting on your debt? So that's why I used those

1 two different metrics.

2 MR. BUTLER: I just found the timing of the  
3 insertion of the concept, even if you're responding to Mike,  
4 was a little -- and rent usually -- that is a cash outlay.  
5 It's part of running -- you know, it's usually not part of  
6 it. So I would just -- but I understand your response.

7 MR. HACKBARTH: [Off microphone] Okay. Round 2  
8 comments.

9 MR. ARMSTRONG: Just two brief comments.

10 First, Glenn, I thought you did a great job of  
11 summarizing this issue of how do we deal with paying  
12 differently for essentially the same or similar services but  
13 just provided in different locations. The only point I  
14 wanted to add to that is that I look forward to our  
15 consideration of what do you do with that. I think there  
16 are similar issues in some of the post-acute areas as well,  
17 and so as we organize that, my hope is it would be a fairly  
18 broad kind of consideration.

19 Second, hospital reimbursement is going to change  
20 so much in the next few years. There are so many different  
21 variables, whether it's what we just heard about the value-  
22 based payments, the IT reimbursement, the impact of ACOs and

1 what that means, or changes in reimbursement relative to  
2 readmissions, and even more than I'm even aware of. I would  
3 just -- I support this recommendation, but in the years  
4 ahead, somehow I'd like to understand better how all of  
5 those come together and impact, you know, the very measures  
6 we use to judge whether these rate changes are appropriate  
7 rate changes. It just seems -- I'm worried that there are  
8 so many moving parts. I think they're all headed towards  
9 certain common policy goals, but exactly what the net impact  
10 of all of them is at this point, for me anyway, is very  
11 difficult to know.

12 DR. BAICKER: I like the framing of the update  
13 preserving the policy tool of a budget-neutral rejiggering  
14 of the risk payment, so I think making it explicit what  
15 share of that we think has been reclaimed and what share is  
16 remaining to be reclaimed is very helpful, and that might  
17 argue for being even more explicit in the discussion of the  
18 outpatient versus the inpatient because they're coming to  
19 the same bottom line. We don't want that to muddy the  
20 waters because there are these very different pieces going  
21 on, and I think they can -- in the discussion they were a  
22 little bit conflated.

1 DR. KANE: I agree with Kate, and I guess the  
2 other piece, I think I'm very concerned about what we're  
3 seeing on the outpatient side and how much that might cost  
4 us. And I just wonder if we shouldn't also try to get in,  
5 at least the text if not the recommendation, that somebody,  
6 CMS or somebody should start looking into sort of severity-  
7 adjusted APGs, you know, hospital outpatient system the way  
8 we had to do on the inpatient side, and with the goal  
9 ultimately of saying, you know, the same price wherever it  
10 goes. Because, you know, your story about higher -- it just  
11 assumes, you know, that patients that are going to the  
12 hospital are all 50 percent more resource intensive, which  
13 they aren't. I mean, they're something more, but they're  
14 not -- and I think that what we really should be doing is  
15 just adjusting for the severity of people going for  
16 outpatient -- for any kind of office visit if we think the  
17 APGs are way off. I mean, if they're way different than the  
18 physician payment because you think they're sicker, we  
19 should be able to show that and create -- and, otherwise,  
20 there's just this terrible incentive to put a whole lot of  
21 people in the hospital-based visit and just cost the program  
22 a lot of money at a time when it's not -- you know, we're

1 really trying to reduce unnecessary expenditures.

2           So unless we can fix that severity adjustment,  
3 then I think I'm sort of in George's camp of we should try  
4 to find ways to stop the excess payment that's happening  
5 with this sort of strategic change of employing physicians.

6           MR. GEORGE MILLER: Yeah, in principle, I support  
7 the draft recommendation and agree with what has been said.  
8 I'm still struggling a little bit on the outpatient side,  
9 particularly because in the chapter the margin's so much  
10 worse on the outpatient side. And I didn't ask this in the  
11 Round 1 clarifying questions, but we see increase in  
12 hospitals, in bad debt, an increase in Medicaid because of  
13 the general economy, and that has an impact on the  
14 hospital's overall structure, and with that increase in  
15 negative margins, you know, I guess I'm a little bit  
16 concerned about just a 1-percent increase in the outpatient  
17 margin in light of all the other discussion. So just making  
18 that comment.

19           And as you look at efficient hospitals, you did it  
20 overall. I didn't see what the outpatient margins were and  
21 if they've improved them overall in that analysis if you  
22 just isolated the outpatient volume. But it was just

1 negative -- it's very negative, 10 percent, if I remember  
2 correctly.

3 MR. KUHN: First of all, I just want to thank  
4 Glenn and Mark and Jeff and Julian for spending a great deal  
5 of time with myself and Peter and George as we kind of  
6 walked through the DCI issue on a number of different calls  
7 and conversations over the last several months.

8 Having said that, I'll support the recommendation  
9 that we have. However, I think over the next year I would  
10 like us to continue to revisit this issue of the DCI. I  
11 think we're pretty good on refinements in terms of the  
12 calculation, but I'd like to explore other options for  
13 calculation as we go forward, because this issue is going to  
14 be with us for a while, and I just want to make sure that  
15 we're as accurate as possible in terms of our calculation,  
16 because it's not only here, but as we all know, on all the  
17 payment systems, and ultimately when we get to ACOs and they  
18 get into the normalization issue, we're going to be having  
19 to make these kind of calculations over and over again. So  
20 the efforts I think we can continue to do here to try to  
21 refine how we calculate coding would be very helpful.

22 DR. BERENSON: Yeah, I just want to say I'm with

1 Scott that we need to deal with this place of service issue,  
2 and I see the conflicts that you've laid out. On the one  
3 hand, we are supposed to capture the underlying costs to the  
4 entity and pay them appropriately, and at the same time we  
5 don't want distorted behavior which we create. And I think  
6 there's some conflict in those two things. And so I think a  
7 similar thing is going on in post-acute, and that's what I  
8 wanted to -- but I think there may be some general  
9 principles. Some of this may have to do with how the costs  
10 are being allocated into which services, and maybe there's a  
11 way to look at that, et cetera. But I just think it's an  
12 important issue that's increasing in importance.

13 DR. NAYLOR: So I support the recommendation. I  
14 think the difference between the outpatient adjustment of 1  
15 percent versus ambulatory care centers of half is at this  
16 point in time, given that we don't have data on cost and  
17 quality from the latter, justified on the differences in  
18 case-mix and the RAND study that shows these are very  
19 different people overall in multiple case-mix variables, age  
20 and insurance status and race, that are being served right  
21 now in the hospital outpatient, et cetera.

22 Then one other comment is the real need to

1 continue to look at quality, and as we're looking at high  
2 performance or -- because that is part of our charge to look  
3 at the most efficient, and concerns raised in this great  
4 chapter about the growing body of evidence that's showing a  
5 disconnect between hospital process measures and key  
6 measures of mortality, readmission, et cetera. So as we're  
7 thinking about who it is we're looking at as our benchmark,  
8 our need to really, I don't know, help advance an agenda for  
9 better quality measures and better ones that show  
10 relationships in efficiency.

11 MS. HANSEN: I support the recommendation, but I'd  
12 like to harken back to actually three comments here. I  
13 think Scott and Bob's comment about this whole piece, and  
14 then at some point perhaps what Nancy brought up was, again,  
15 the severity-adjusted ambulatory side so that it's more  
16 centric to the beneficiary in terms of that. But two points  
17 that came up in last month's meeting that I just wanted to  
18 raise that I think is relevant here. As these forms are  
19 molting, there are impacts that happen to both physician  
20 providers as well as the beneficiaries. The observational  
21 stays that we discussed last time was one example, that as  
22 we tried to negotiate to make this system whole, there are

1 consequences to some of the players, and two I just wanted  
2 to identify I understand. Physicians may not get paid quite  
3 the same way for the services that they're providing when  
4 it's in a different setting just because the payment goes to  
5 another entity, and then again, reiterating that oftentimes  
6 patients who end up going back into the hospital not as a  
7 readmission, because that becomes an anathema and they go in  
8 for observational days, if they end up still getting the  
9 similar services but get post-acute care, they may have a  
10 much higher co-pay issue.

11           So I think these things are -- you know, as these  
12 things are kind of flowing, there are sequelae that I think  
13 we need to highlight and make sure are taken into  
14 consideration.

15           MR. BUTLER: I, too, would like to congratulate  
16 and thank the staff for all the hard work on a number of  
17 fronts on this year's cycle.

18           I just have one additional point, and that is, the  
19 reason I like the 1 percent is not necessarily the amount.  
20 The predictability is very, very important. I think that,  
21 you know, we sit here with the DCI, and we in hospitals  
22 don't sit there, okay, how much did we get out of coding

1 last month or this month. We just track the case-mix index  
2 and try to project forward, you know, in our budget what are  
3 we going to get. So October 1 comes, and if you know it's 1  
4 percent on whatever you're running, it's a much more stable  
5 way of moving forward than getting whipsawed around by, you  
6 know, what are they going to swipe out of here or there.  
7 And that's not an unimportant point, and the same has been  
8 said of the physicians, on SGR and everything else. Some  
9 predictability is important.

10 DR. CHERNEW: I just want to say that in response  
11 to some of these issues of payment, it's going to be an  
12 incredibly difficult and very time-consuming process to try  
13 and get all the new case-mix right based on where you're  
14 going and how you're doing and developing a new case-mix.  
15 And I imagine I might be different than some around the  
16 table, but I think spending a lot of time on developing new  
17 and more refined ways of doing fee-for-service spending in,  
18 you know, a code-specific way as we go forward for  
19 organizational forms to change and technologies to change  
20 and systems that we still can't seem to get them exactly  
21 right on the relative payment stuff for ones we've been  
22 working for a long time strikes me as a lot less important

1 than emphasizing much more strongly this is extremely why we  
2 need to try and do the broader payment reform stuff that we  
3 unfortunately don't get to talk about this month.

4 MR. HACKBARTH: Okay. On that note we are ready  
5 to vote on the recommendation. All in favor of the  
6 recommendation, please raise your hand?

7 Opposed?

8 Abstentions?

9 Okay. Thank you, Jeff.

10 So we are now at the public comment period. We'll  
11 have a brief public comment period in advance of lunch. Let  
12 me quickly review the ground rules. Please begin by  
13 identifying yourself and your organization, and limit your  
14 comments, please, to no more than two minutes. When this  
15 red light comes back on, that will signify the end of your  
16 two minutes. And for those of you towards the end of the  
17 line, if, in fact, a person in front of the line has made  
18 similar comments to yours, please feel free to say, "I agree  
19 with Speaker 1," and not feel the need to repeat everything.

20 With that?

21 DR. CALVERT: Commissioners, my name is Preston  
22 Calvert. Can you hear me okay? I'm the president of the

1 North American Neuro-Ophthalmology Society. It's a  
2 professional society of about 500 members representing the  
3 practicing neuro-ophthalmologists in the United States.  
4 Neuro-ophthalmologists, as some of you know, are cognitive  
5 subspecialists who initially trained in either ophthalmology  
6 or neurology and then have at least an additional year of  
7 fellowship training in neuro-ophthalmology. All of our  
8 members are board-certified in their primary specialty.

9 I'm here to ask that you reconsider your now year-  
10 old policy to stop Medicare payment for consultation  
11 services by specialists. The daily work of our members  
12 involves consultations performed at the request of other  
13 physicians for their patients with unexplained inability to  
14 see properly, double vision, facial and head pain, and many  
15 other complaints. Our consultation service includes  
16 eliciting a complete medical history and a detailed physical  
17 exam done by the doctor him- or herself, often of both  
18 complete neurologic and visual systems, gathering of  
19 complete records of all prior care for that patient, for  
20 this patients' problem, and then a careful review of all of  
21 the imaging studies that have been done in relation to the  
22 problem.

1           There's extensive time required to inform the  
2 patient of our findings and to plan further evaluation and  
3 treatment. We regularly diagnose and treat brain tumors,  
4 multiple sclerosis, myasthenia gravis, stroke, and many  
5 other serious conditions.

6           It's a daily occurrence for every neuro-  
7 ophthalmologist to properly diagnose and treat patients who  
8 have been previously undiagnosed or misdiagnosed. It has  
9 immediate and life-changing effects for the well-being of  
10 our patients and other doctors' patients.

11           The Commission's main focus is on large-scale  
12 measures of patient access to the most frequently required  
13 services by primary care and high-frequency specialty  
14 practitioners. Your assessment by surveys and the  
15 accessibility of specialty services to Medicare  
16 beneficiaries necessarily is dominated by responses  
17 regarding high-volume specialties. However, some of the  
18 perceived quality of American health care and our system is  
19 related to ready access to expert diagnostic and therapeutic  
20 expertise for less frequent but potentially devastating  
21 medical conditions. Access to these specialists that  
22 provide these cognitive services is not likely to be well

1 capture by the surveys that you use.

2           Neuro-ophthalmology is poorly remunerated in the  
3 best of times. Its practitioners work out of the love of  
4 this discipline and a devotion to patient care, research,  
5 and teaching rather than any pecuniary motive. Since the  
6 loss of the consult codes under the Medicare billing system,  
7 in the past year our members have reported a significant  
8 drop in their practice revenues related to the particular  
9 prevalence of Medicare beneficiaries in our practices. Some  
10 of our members have begun refusing Medicare patient  
11 consultations and assignment, and some are considering  
12 opting out altogether. We've begun to see early retirements  
13 of members in the prime of their careers for financial  
14 reasons. And we're troubled by this because we see a  
15 problem in attracting young people to join our specialty.  
16 This specialty attracts a very specific kind of person who's  
17 attracted to those features, and we are losing even the  
18 basic recognition of the work of this subspecialty in the  
19 Medicare payment system.

20           One of the major points that I'd point out to you  
21 is that there's been a breakage of the fundamental mechanism  
22 of medical communication in the failure to require a report

1 from a consultant back to the referring physician. You  
2 broke that when you changed the fee system. And that had to  
3 have been an unintended consequence. I'm sure you did not  
4 mean to do that.

5           So we ask that you either restore the Medicare  
6 consultation codes for reimbursement directly or consider  
7 some kind of MPI-based multiplier for initial inpatient and  
8 outpatient visits from physicians who are recognized as  
9 cognitive specialists to reimburse their efforts for their  
10 patients. Failure to take those steps will degrade our  
11 ability to care for those patients and the ability of their  
12 primary physicians to obtain those consultations. And it  
13 clearly is the case that patient outcomes will worsen, and  
14 we actually have substantial studies to prove that patient  
15 costs, costs to the system will increase as well.

16           Thank you.

17           DR. MARK MILLER: The only thing I would clarify  
18 quickly for the public is the change in the consultation  
19 rules was not a policy change made by MedPAC. It was made  
20 by CMS, and at least at the time, CMS' justification for it  
21 was that the reporting requirements for the consultations  
22 had been lowered. Just so that if you're sitting here

1 wondering what decision he's referring to on your part, it  
2 was actually a CMS decision.

3 MR. HACKBARTH: Okay. And before the next  
4 commenter begins, I know that a couple minutes doesn't seem  
5 like much, but I would emphasize that this is not your only  
6 or even your best opportunity to provide input to the work  
7 of the Commission. Rest assured that on the consultation  
8 issue we've received a lot of letters that have made the  
9 points that you've made. There have been face-to-face  
10 meetings with staff and representatives of various  
11 organizations. So I must limit you to just a couple  
12 minutes. We've got a very full agenda, and we're already  
13 behind.

14 DR. LAING: Hi. With that introduction, thank  
15 you. I'm Tim Laing. I'm with the American College of  
16 Rheumatology. I'm a rheumatologist. I'll save you at least  
17 one of those two minutes because I really wanted to support  
18 the foregoing comments and state that in our society we are  
19 very concerned that the workforce issues and access issues  
20 that result from the inability to recognize specialty  
21 expertise anywhere in the fee schedule -- I also serve as  
22 our RUC adviser -- just seems like a decision that really

1 should be changed somehow, some way, and we'd really  
2 appreciate your consideration.

3 Thank you.

4 DR. McQUILLEN: Hi, I'm Dan McQuillen. I'm the  
5 Chair of the Infectious Disease Society, Clinical Affairs  
6 Committee, and I'm a practicing infectious disease physician  
7 at the Lahey Clinic in Burlington, Mass.

8 I'd echo similar comments to what have been made  
9 before. I've heard personally as part of my role of  
10 practitioners in ID who have stopped seeing Medicare  
11 patients, decreasing access; one at least, perhaps two that  
12 have closed their ID practices because of that decision by  
13 Medicare.

14 We see a lot of opportunities going forward in  
15 terms of when payment reform gets going, particularly in  
16 accountable care organizations. We have about 9,000 board-  
17 certified infectious disease physicians in our membership,  
18 and I think, though we're small, we have a disproportionate  
19 effect on many of the things that are important going  
20 forward in terms of accountable care organizations, quality  
21 of care, preventing infections.

22 One of the problems with the decision made by

1 Medicare is that it makes our financial viability a little  
2 bit suspect going forward. We've already seen some decrease  
3 in applicants in terms of our fellowship positions. What we  
4 would like to discuss with you -- and we've sent, as you  
5 mentioned, letters about this -- is ways in which we can  
6 incentivize this sort of program. ID doctors are the ones  
7 that run, design, implement infection prevention programs,  
8 antimicrobial stewardship. We see opportunities there in  
9 the non-patient care activity payment arena to subsidize  
10 some of our activities and make our profession a little bit  
11 more economically viable while actually helping the system  
12 overall.

13           Thanks very much.

14           DS. CHANG: Good afternoon. My name is Sharon B.  
15 Chang. I'm speaking to you on behalf of the Ambulatory  
16 Surgery Centers Association. We just wanted to say again  
17 how much we're encouraged by the direction that the  
18 Commission is taking in looking across the multiple settings  
19 where surgery can be provided and also very encouraged about  
20 the direction you're taking in terms of quality.

21           Just to reiterate, we have as an industry asked  
22 CMS each time over the last several years that this has come

1 up to institute a quality reporting system for the ASC  
2 setting. Over 1,000 ASCs already voluntarily report on six  
3 NQF-endorsed quality measures. We'd love to see that go  
4 voluntarily nationwide so that consumers can be part of the  
5 movement that you're also talking about of getting a savings  
6 from Medicare every time a patient chooses on the basis of  
7 quality and appropriateness to have that procedure in an ASC  
8 versus an HOPD. When that's appropriate for that client,  
9 the Medicare program saves money each time.

10 We'd love to see an opportunity actually to bring  
11 those two threads together. As we look forward to 2011, one  
12 of the things that we hope to see from CMS is a design for a  
13 value-based purchasing system that would run for ASCs, and  
14 if that gives us an opportunity to demonstrate quality and  
15 efficiency for the Medicare program, we think that's a win  
16 for the ASCs and for the beneficiaries.

17 Thank you very much for the encouraging direction.

18 DR. DONOFRIO: Thank you. My name is Peter  
19 Donofrio. I'm a neurologist from Tennessee, and I'm  
20 representing the American Academy of Neurology. I would  
21 just like to mention our support for restoration of the  
22 consultation codes. Contrary to some of the data we saw

1 from MedPAC today, neurologists are seeing fewer people with  
2 Medicare. About 30 percent of our candidates in a recent  
3 survey mentioned that they were spending less time with  
4 patients with Medicare and seeing fewer of them.

5 My second point is that neurologists actually are  
6 the primary care physicians or principal care physicians for  
7 people with certain chronic neurologic conditions like  
8 multiple sclerosis, ALS, and Parkinsonism. So the bonus  
9 given to the people in primary care was certainly warranted,  
10 but we think there should be bonuses for certain chronic  
11 illnesses cared for by people speaking at this microphone  
12 today.

13 Then, finally, neurologists do save money. There  
14 is data from the American Academy of Neurology that  
15 neurologists save money in the area of stroke and multiple  
16 sclerosis because we spend more time with patients but order  
17 fewer tests, and we have better outcomes.

18 Thank you.

19 MR. HACKBARTH: Okay. We will adjourn for lunch  
20 and reconvene in 45 minutes, which is at 1:30.

21 [Whereupon, at 12:46 p.m., the meeting was  
22 recessed, to reconvene at 1:30 p.m., this same day.]

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AFTERNOON SESSION

[1:36 p.m.]

MR. HACKBARTH: Okay, it's time for us to begin again with Nancy's presentation on outpatient dialysis services. And Nancy, would you go ahead, and I'll stick my head out the door and round up the last couple of commissioners?

MS. RAY: Good afternoon. During today's presentation, I'm going to first follow up on some questions from the December meeting. Then I'm going to summarize information about the adequacy of Medicare's payments for outpatient dialysis services. I will present a draft recommendation for you to consider about updating payments for calendar year 2012. This is, of course, your last presentation before the March report.

Just quickly, an overview of the dialysis sector: In 2009, there were about 340,000 fee-for-service beneficiaries who sought care from more than 5,000 ESRD facilities. Medicare's spending for composite rate services -- that is the dialysis treatment -- and separate payments for dialysis drugs totaled about \$9.2 billion in 2009. Dialysis drugs accounted for about one-third of this total.

So several commissioners had questions from last

1 month, and I'm going to try to answer your questions.

2           George, you had a question about accounting for  
3 new medical innovations under the new payment method. As we  
4 have seen through the years, one of the many advantages of  
5 prospective payment systems is that they allow for a lot of  
6 innovation without any action by Medicare. They just flow  
7 into the payment bundle.

8           According to MIPPA, the ESRD bundle under the new  
9 payment method includes other items and services in addition  
10 to the composite rate services, dialysis drugs and labs that  
11 are furnished to individuals for the treatment of end-stage  
12 renal disease. This provision suggests that the Secretary  
13 has the flexibility of augmenting the bundle over time.  
14 That being said, I'm not a lawyer, so we will monitor this.

15           Karen, you had a question about physician  
16 disclosure. Physicians can have ownership interests in  
17 dialysis facilities and other financial interests as well.  
18 Your mailing materials give some examples of the financial  
19 interests that physicians have with one of the large chains.  
20 Our 2009 recommendation on disclosure of physician ownership  
21 would help CMS and other payers determine the extent to  
22 which physician financial interest influences quality of

1 care, volume and spending.

2 Herb, you had a question on collecting data on  
3 dialysis patient satisfaction. AHRQ has developed a CAHPS  
4 in-center hemodialysis survey instrument; this is for  
5 adults. The survey instrument is up on the web site. That  
6 being said, there is no regular reporting of this  
7 information either by CMS or the CAHPS folks.

8 In a related issue, CMS's new conditions for  
9 coverage requires facilities to include patient satisfaction  
10 as one of their components of their QAPI program, their  
11 Quality Assessment and Performance Improvement program. The  
12 final rule that was issued in 2008 encourages facilities to  
13 use this standardized tool, but the agency did not require  
14 the use of the instrument.

15 Nancy, you had a question on pre-ESRD care, and  
16 we've included a text box in the draft chapter on the  
17 benefits of pre-ESRD care which includes educating chronic  
18 disease patients before they start dialysis about their  
19 renal treatment options and better managing their chronic  
20 kidney disease comorbidities including hypertension and  
21 cardiovascular conditions.

22 A few years back the Commission looked at the

1 provision of pre-ESRD care to fee-for-service beneficiaries  
2 older than 65, and this was before they started dialysis.  
3 Like other researchers, we found that early referral to a  
4 nephrology team reduced some morbidities associated with  
5 ESRD including increased use of home dialysis and increased  
6 use of AV fistulas. A related policy began in 2010 with  
7 Medicare paying for the educating pre-ESRD beneficiaries  
8 about kidney disease.

9 Tom, you wanted to see the distribution of driving  
10 miles for new fee-for-service dialysis beneficiaries. This  
11 is included in the paper, and I'm going to present you the  
12 findings in about one minute when I summarize the payment  
13 adequacy findings.

14 Okay, Bob, Jennie and Karen, we have included  
15 renal-related quality measures in the draft chapter. The  
16 chapter notes that a substantial portion of hospitalizations  
17 are due to renal-related comorbidities including vascular  
18 access and infections. We've included the one-year survival  
19 for dialysis patients, which is higher for African Americans  
20 and other races than whites. We've included vascular access  
21 complication rates and find that AV fistula patients have a  
22 lower rate of declotting procedures than graft patients, and

1 catheter patients have the highest rate of sepsis compared  
2 to fistulas and grafts.

3           So I'd like to shift gears and review the payment  
4 adequacy information. You've seen all of this information  
5 last month. Overall, our indicators are positive. Supply  
6 and capacity is increasing. In the past year, facilities  
7 and stations increased by about 4 percent.

8           Looking at the volume of services furnished by  
9 facilities, we see the growth in the number of dialysis  
10 treatments continues to match beneficiary growth. Use on a  
11 per-treatment basis of erythropoietin, the dominant dialysis  
12 drug, increased between 2008 and 2009. In addition, the  
13 aggregate use of other dialysis drugs, holding price  
14 constant, also increased between 2008 and 2009.

15           In terms of beneficiary access to care, it's  
16 generally good. There was a net increase of about 250  
17 facilities with few facility closures. About 60 facilities  
18 closed. They are smaller and less profitable than the  
19 existing facilities.

20           We did see a greater representation of African  
21 Americans and beneficiaries dually eligible for Medicare and  
22 Medicaid treated by closed facilities. That being said,

1 this affected less than 1 percent of these beneficiaries.

2 We did see that the two large dialysis  
3 organizations that account for 60 percent of all facilities  
4 continue to treat these beneficiary groups.

5 In addition, we looked at the distances  
6 beneficiaries traveled to obtain care as another measure of  
7 access -- that is ease of obtaining care -- as well as the  
8 potential effect of facility closures. This analysis finds  
9 that the distances that new patients traveled to obtain care  
10 remained relatively unchanged in 2004, 2006 and 2008,  
11 including for African Americans and duals.

12 And here are the median distances to the dialysis  
13 facility as well as the distribution in terms of the 25th  
14 and 75th percentiles for some key groups including elderly,  
15 African Americans, duals and beneficiaries residing in rural  
16 areas. I'd like to highlight for African Americans and  
17 duals, the two groups impacted by closures, the travel  
18 distances, median travel distances remain constant or went  
19 down slightly between 2004 and 2008.

20 Quality is mixed. Some measures are high or  
21 improving. Others still need improvement.

22 In terms of access to capital, it appears to be

1 good for both the large dialysis organizations and other  
2 chains. Both groups have been able to obtain capital for  
3 acquisitions. Investor analysts and private equity firms  
4 generally look favorably upon this sector.

5 Here's the 2000 Medicare margin for composite rate  
6 services and dialysis drugs. You saw this last month. It  
7 is 3.1 percent. This is relatively unchanged from 2008.  
8 The stable margin is linked to increased use of  
9 erythropoietin between 2008 and 2009 and the 1 percent  
10 update in the composite rate in 2009.

11 As in previous years, the Medicare margin varies  
12 across provider types. It was largest for the two largest  
13 chains than for everybody else.

14 We are concerned about the direction of the margin  
15 for rural facilities. That being said, this year in 2001,  
16 under the new dialysis payment method, a low volume adjuster  
17 is being implemented, and this will increase payment for  
18 qualifying facilities by 18.9 percent. Rural facilities  
19 will disproportionately benefit from this adjustment. CMS  
20 projected that 45 percent of the facilities who get a low  
21 volume adjustment are rural. By contrast, about one-quarter  
22 of facilities are located in rural areas.

1           The projected margin for 2011 is 1.3 percent.  
2       This includes the MIPPA 2 percent reduction, the 3.1 percent  
3       transitional budget neutrality adjustment and the 2.5  
4       percent 2011 payment update. This projection also includes  
5       a conservative behavioral offset to account for efficiencies  
6       expected under the new payment method.

7           So this draft recommendation attempts to balance  
8       being cost conscious and assuring that providers can handle  
9       cost growth, and it reads: The Congress should update the  
10      outpatient dialysis payment rate by 1 percent for calendar  
11      year 2012.

12          In terms of spending, this recommendation would  
13      decrease spending relative to current law. Under current  
14      law, current law calls for an update of the market basket  
15      less productivity, which would currently result in an update  
16      of about 1.6 percent. This draft recommendation will  
17      decrease beneficiary copayments relative to current law.

18           Thank you.

19           MR. HACKBARTH: Thank you, Nancy.

20           Let's see. So we're starting over on this side,  
21      round one clarifying questions, Mitra and then Jennie.

22           MS. BEHROOZI: Thank you, Nancy. In the paper,

1 you talk about costs increasing, the components of the  
2 increases in costs, and you show that the general and  
3 administrative costs have risen during the period 2004 to  
4 2009 by 6 percent per year and account for nearly 30 percent  
5 of the total costs, whereas the direct patient care costs --  
6 for example, one dear to my heart, the labor costs -- have  
7 gone up only 2 percent per year, and in fact some of the  
8 other direct medical costs have decreased by 0.2 percent per  
9 year.

10 So I thought that greater consolidation, leading  
11 to efficiency, really ought to have an impact on the general  
12 and administrative side as well, right, one infrastructure  
13 to deal with more patients. So this is really kind of  
14 counterintuitive to me. Do you know why?

15 Do you see any evidence of particular things? Is  
16 there a huge explosion in malpractice costs or something for  
17 these facilities?

18 And do you know how this compares to other sectors  
19 where we have data on administrative costs, both the growth  
20 and the total share of that 30 percent?

21 MS. RAY: The answer to your second question, how  
22 this relates to other sectors, I'm kind of looking for

1 somebody else to help me out on that one.

2 DR. MARK MILLER: [Inaudible.]

3 MS. RAY: Yeah, in relation to the first, with  
4 respect to the first one, you know, over the past, gosh, I'm  
5 going to say about five years or so, we have seen higher  
6 growth in G&A than the other components. And I'm trying to  
7 think back to what folks have told me about it, but -- so in  
8 a way, I'd like to get back to you on that, but I do think  
9 it is linked to malpractice and some of the other cost  
10 components feeding into the G&A. At least that's what they  
11 have claimed.

12 DR. MARK MILLER: All right, what we've come up  
13 with on advice of counsel is it's slower at least in the  
14 hospital setting, in the 4 percent range; 6 percent, you  
15 guys were talking about on dialysis. Meanwhile, we'll keep  
16 looking in the background on the post-acute care side.

17 And did you get her first answer? Okay.

18 MS. RAY: [Inaudible.]

19 MS. HANSEN: Thanks, Nancy, for answering  
20 everybody's questions here. There were earlier questions  
21 that we've had about home dialysis, and I notice that with  
22 some of the counseling there's probably some greater

1 increase. A question is do these same companies that  
2 provide the sited dialysis actually operate the home  
3 dialysis programs as well?

4 MS. RAY: Yes, yes.

5 MS. HANSEN: Yes, okay. And what is the -- is  
6 there a significant or just really tiny growth in the home  
7 dialysis programs?

8 MS. RAY: You know, over the past I guess 10 to 15  
9 years we've actually seen a decline in the number of home  
10 dialysis patients. The dominant home dialysis modality  
11 right now is peritoneal dialysis although there are patients  
12 undergoing home hemodialysis as well -- the more frequent  
13 during the day and nocturnal home hemo in the evening.

14 Under the new payment method, there's some  
15 thought. Some people are expecting over the long term for  
16 the use of home dialysis to increase, again because dialysis  
17 drugs will not be included in the payment bundle.

18 Under the previous payment method, the  
19 profitability of dialysis drugs might have been one of the  
20 reasons for the decreasing use of home hemo, of home  
21 dialysis because in general home dialysis patients use less  
22 dialysis drugs than in-center hemo. So, but we'll have to

1 monitor what happens under the broader bundle.

2 MR. HACKBARTH: [Off microphone.] Round one  
3 clarifying questions?

4 DR. BERENSON: Yeah, this is a quick one. We had  
5 an article that we reviewed that suggests there might be the  
6 potential of more than three dialyses a week, producing  
7 higher quality, going to five or six day a week. Under the  
8 current rules, would there be a full dialysis payment if you  
9 went to more than the current number?

10 MS. RAY: Right, that's a really good question.  
11 So right now, even under the broader bundles, CMS pays for  
12 up to three treatments per week. A physician can get a  
13 fourth treatment paid for by going to the local contractor  
14 medical director.

15 That being said, the NIH trial on more frequent --  
16 you're referring to the NIH trial, more frequent  
17 hemodialysis, and found improved cardiovascular outcomes in  
18 physical health than the conventional three times a week.  
19 And I think this is an issue that we plan to think about a  
20 little bit more in the next cycle.

21 DR. BERENSON: Right now, Medicare payment policy  
22 would have a chilling effect on that ability to do that, to

1 have more than three?

2 MS. RAY: Well, again, the medical directors at  
3 the local contractors do pay for the fourth session if it is  
4 -- if the physician can justify it as being medically  
5 necessary for fluid overload, et cetera. So that is being  
6 done right now.

7 The question is given the NIH trial results --

8 DR. BERENSON: Which changes the standard of care,  
9 not just an exception for a particular patient.

10 MS. RAY: Exactly, and I think that's something we  
11 here have to think about a little bit more.

12 DR. BERENSON: Okay, thanks.

13 MR. KUHN: Thanks, Nancy. A couple quick  
14 questions, one on the low volume adjuster. There was some  
15 chatter at one time that that could create an incentive for  
16 gaming in the system, but CMS I think in the final rule did  
17 put some provisions in there to prevent gaming; that is for  
18 facilities to kind of reduce their size, so they could get  
19 that nearly 19 percent added on payment. Do we feel like  
20 the anti-gaming provisions are strong enough?

21 MS. RAY: So what CMS did is it said for new  
22 facilities. So for a facility to qualify they have to

1 provide under 4,000 treatments for the 3 years prior to the  
2 payment year, and for new facilities the way they count the  
3 4,000 is they look at are there any other facilities of  
4 common ownership within 25 miles of that facility.

5 MR. KUHN: Within a geographic area.

6 MS. RAY: So that is, I believe, their mechanism  
7 to try to ensure that low volume is truly a low volume  
8 facility.

9 That's -- I was going to say as we move forward  
10 that is one item that we are going to focus on.

11 MR. KUHN: Thanks.

12 MR. HACKBARTH: On the same topic, I assume that  
13 the low volume adjustment is calculated in an attempt to  
14 calculate what the increase is in your variable costs due to  
15 low volume?

16 MS. RAY: Yes.

17 MR. HACKBARTH: It actually would be your average  
18 costs --

19 MS. RAY: Yes.

20 MR. HACKBARTH: -- to low volume.

21 MS. RAY: Right.

22 MR. HACKBARTH: And so if that calculation is

1 right, you know, your costs should go up if you disaggregate  
2 and go into smaller units

3 MR. KUHN: Right.

4 MR. HACKBARTH: And so there shouldn't be a huge  
5 gaming opportunity is where I'm headed.

6 MS. RAY: Well, I think there was -- I think some  
7 might have been concerned that: Well, this 18.9 percent  
8 adjustment. Well, gee, let's just start reducing the number  
9 of treatments we furnish, or let's start opening little,  
10 smaller size facilities.

11 MR. HACKBARTH: Yeah.

12 MS. RAY: I guess that's the better example.

13 MR. HACKBARTH: Yeah.

14 MS. RAY: And so what CMS is saying is: Well, but  
15 if there's -- if you're Dialysis Chain A, ACME, if you have  
16 any facilities in a 25-mile radius, we're going to count  
17 that in, in terms of the total treatment count.

18 MR. KUHN: So that would be for common ownership  
19 among facilities.

20 MS. RAY: Yeah.

21 MR. KUHN: Just one other quick thing, Nancy, one  
22 other thing to ask is CMS originally, when they created the

1 prospective payment system, had a four-year transition. I  
2 think their early impact analysis was around 45, 50 percent  
3 of the facilities would opt out and decide to go in  
4 immediately, but instead a much higher proportion. What was  
5 that proportion that went in?

6 MS. RAY: So CMS projected that 45 percent would  
7 opt into the new payment method. According to the industry,  
8 it looks -- the industry is saying, based on their survey,  
9 about 90 percent of all facilities have opted into the new  
10 payment method.

11 MR. KUHN: And why did they? What's our kind of  
12 initial analysis why we think that CMS missed the mark in  
13 terms of its impact, so by an order of magnitude of 100  
14 percent?

15 MS. RAY: Oh, well, I don't want to speak for CMS,  
16 but they did it facility-by-facility I think, and so they  
17 didn't recognize that if you're a chain organization you're  
18 going to probably make a decision based for all of your or  
19 none of your facilities.

20 I think there was also -- I've read that some  
21 organizations, I guess to minimize complexity, just wanted  
22 to not have to deal with both the new payment method and the

1 old payment method and just opted for the new payment  
2 method.

3 MR. KUHN: One just observation I make, Glenn, is  
4 this: So many times, people around this table and people  
5 who stand up to the microphone at this table do tend to  
6 criticize CMS a lot, but I think one inference we could draw  
7 from this particular PPS system, that the reason we have  
8 such a high compliance rate, CMS got it. And I think this  
9 is one where we kind of need to pat CMS on the back --

10 MS. RAY: Yeah.

11 MR. KUHN: -- and give them the credit they do,  
12 that they got this one right the first time out with the  
13 industry response at such a high level it was. So good for  
14 the agency.

15 MR. HACKBARTH: And you might expect that CMS  
16 might tend to underestimate the savings potential when you  
17 move to a new payment system, and those who run the  
18 facilities have a better sense of oh, if I get paid in this  
19 new way, you know, I can cut out this cost, that cost, and  
20 do well under the new payment system. And so the benefit of  
21 having the inside knowledge of operations may account for  
22 that differential.

1           George.

2           MR. GEORGE MILLER: Thank you, and I want to thank  
3 you and the staff again for the excellent information,  
4 particularly demographic information in the chapter. I  
5 appreciate it very much.

6           I've got two quick round one questions. I've got  
7 a broader one for round two.

8           First of all, Jennie's question, mine is similar  
9 to that. In home dialysis, what percentage of the total --  
10 and it may have been in the chapter, I just don't remember --  
11 -- of the total dialysis is home dialysis? And it seems that  
12 we can save the system money if we encourage that more  
13 often.

14           I guess part of my question is why is it included  
15 in the bundled payment for all facilities versus separately  
16 to try to encourage and use more home dialysis?

17           MS. RAY: Right now, I think roughly about 10  
18 percent --

19           MR. GEORGE MILLER: Ten percent.

20           MS. RAY: -- of dialysis patients are dialyzing at  
21 home. So the -- for adults, the bundle payment rate pays  
22 the same for home dialysis and for in-center hemodialysis.

1           Now when you're comparing the in-center hemo  
2 versus the home peritoneal dialysis, in general on average,  
3 the cost per peritoneal dialysis patient is lower than for  
4 in-center hemo.

5           MR. GEORGE MILLER: Right.

6           MS. RAY: So, you know, there is the thought that  
7 this broader bundle could be incentivizing peritoneal  
8 dialysis. There is still the outstanding question, however,  
9 for more frequent home hemodialysis which is something that  
10 we're planning on looking at.

11          MR. GEORGE MILLER: Okay, I guess that's part of  
12 my question. I'm not sure if I'm explaining it correctly.  
13 If the goal is to increase home dialysis in either way, is  
14 the bundle -- my question is: Is the bundle payment that is  
15 included, will that generate more home dialysis or will not  
16 generate more home dialysis, the way I read it in the  
17 chapter?

18          MS. RAY: I think all things being equal. I mean  
19 if providers' costs are lower for having --

20          MR. GEORGE MILLER: Home.

21          MS. RAY: -- home peritoneal dialysis than in-  
22 center hemodialysis --

1 MR. GEORGE MILLER: Right.

2 MS. RAY: -- you may over the long term start to  
3 see a shift towards peritoneal dialysis.

4 MR. GEORGE MILLER: Okay.

5 MS. RAY: That being said, you know, facilities  
6 still have stations and chairs that they have to fill. So I  
7 think, you know, one has to be balanced with the other.

8 And you know, not everybody is a candidate for  
9 either.

10 MR. GEORGE MILLER: Candidate, right.

11 MS. RAY: I mean -- you know. There's a lot of  
12 other factors involved in whether, you know, a patient  
13 dialyzes at home or in-center.

14 MR. GEORGE MILLER: Okay. And then the follow-up  
15 question, I don't remember reading it in the chapter, but it  
16 seems to me from what I'm reading that the sooner that a  
17 patient is referred to a nephrologist that that would save  
18 more money in the system. We would not see more  
19 hospitalizations. So I don't know if there's a lever or  
20 mechanism to deal with that issue, but in discussing with my  
21 nephrologist in my hometown and others it seems their  
22 concern is that they don't get referrals early enough, and

1 if there's a way to have an impact that we could get  
2 referrals we'd save the system some money and get folks  
3 appropriate care sooner.

4 MS. RAY: Right, so just a couple of items to  
5 follow up on that. So Medicare, beginning in 2010, has  
6 begun to pay for this pre-ESRD education which hopefully,  
7 assuming the individual has been identified as having  
8 chronic kidney disease, they can -- I think they can receive  
9 up to five or six sessions on counseling, including how  
10 better to manage their comorbidities and giving them all the  
11 different options including transplantation and home  
12 dialysis, and kind of also providing them with better  
13 knowledge about what may be down the road when they begin  
14 dialysis.

15 In terms of cost savings, we found in our analysis  
16 that there was some reduction in patient spending. That  
17 was, I think, primarily focused on the first year of  
18 dialysis. After that, and again I have to go back and  
19 double-check those numbers. But the cost savings, I'm not  
20 sure. I'm not sure how much was past the first year of  
21 dialysis.

22 MR. HACKBARTH: Okay, round one questions,

1 clarifying questions?

2 I see none. Let's proceed to round two comments.

3 Mitra.

4 MS. BEHROOZI: It's really a follow-up to my round  
5 one comment, that you know I think it's worth paying some  
6 attention to, not in this cycle but for the next cycle  
7 perhaps. You know. Just in comparison to hospitals, the  
8 growth in general and administration is 50 percent higher in  
9 this realm, and 30 percent of the costs being administrative  
10 just doesn't sound like, you know, it should go unchecked  
11 without us examining it.

12 MS. RAY: I do want to say something though.  
13 Under the broader bundle, so that distribution may change  
14 because again that's composite rate.

15 But that being said -- what? That's cost, that's  
16 -- but that's composite rate only. Of course under the  
17 broader bundle, now you're going to have drugs and labs in  
18 there as well. So the proportions are going to change  
19 between the labor and the G&A and all those.

20 But that being said, your point is valid.

21 DR. KANE: A question, where do the health  
22 insurance costs fall? And I'm wondering if that's not -- is

1 that in administrative costs or is that in labor costs? Do  
2 we know where they fall because that could be why they're  
3 growing so fast?

4 MR. HACKBARTH: Nancy, what do you mean by health  
5 insurance costs?

6 DR. KANE: The health insurance costs for the  
7 employees.

8 MR. HACKBARTH: Oh, for the employees.

9 DR. KANE: Yeah, that's often one of the fastest  
10 growing and largest pieces of it. It depends on where it's  
11 classified.

12 MR. HACKBARTH: Yeah.

13 MS. BEHROOZI: But that's why I ask what it is in  
14 other sectors. I mean if they were the same.

15 MR. HACKBARTH: Yeah. It would suffice to say I  
16 think it does bear some further investigation. All other  
17 things being equal, you would think the rapid consolidation  
18 in the industry would tend to suppress the rate of growth in  
19 G&A. And for it to be that high and higher than some  
20 others, it's worth looking into further.

21 MS. HANSEN: This goes back to one of the measures  
22 of quality and the fact that not going onto transplantation

1 lists, and so two questions more about kind of the trending  
2 issues.

3 One is this transplantation matter. Are there  
4 sufficient donors, you know, for a growing list of people  
5 who would be on a transplantation list? That's one thing.

6 And the other one is more of an epidemiology  
7 question. Given the rate of adult obesity and older people  
8 with issues, is there kind of a factor of what this program  
9 is going to look like over time in terms of its growth rate  
10 and expense, the whole dialysis program?

11 MS. RAY: In terms of sufficient donors, I mean I  
12 think there is the idea that I think folks would like to  
13 increase the number of kidney donors. You know, people  
14 carrying the cards.

15 MS. HANSEN: Well, part of my question is this is  
16 quality metric, and so we're getting people on lists. Is  
17 that considered one of the measures that you'd look for,  
18 good counseling or something, as part of quality?

19 MS. RAY: Okay, okay, I'm sorry. Okay. If your  
20 question is about having dialysis patients worked up and  
21 included on the kidney transplantation list --

22 MS. HANSEN: Right.

1           MS. RAY: -- yes, that is a metric, and there you  
2 do see differences across different provider types and by  
3 demographics as we pointed out in the text. So that is  
4 something that you would want to see an increase in the  
5 number of patients being put up, being included on the  
6 transplantation wait list.

7           The pre-ESRD counseling could help increase that  
8 by educating patients about their treatment options. You do  
9 hear often patients saying: Well, gee, nobody told me about  
10 home dialysis. Nobody told me about transplantation.

11           I mean there is that, and there is the -- there  
12 are researchers who have shown that people who have been  
13 referred to a nephrology team earlier, before starting  
14 dialysis, have higher rates of being on a kidney transplant  
15 list than those who don't see a nephrologist until they  
16 require dialysis.

17           In terms of the dialysis growth trends in total,  
18 you know we did see a decrease just in this current, I think  
19 between 2007 and 2008, in the rate of ESRD related to  
20 diabetes, and that is a first, and that could be because of  
21 the use of therapies to delay end-stage renal disease. That  
22 being said, you know, I do think that -- I think the growth

1 rate in this area is still predicted to be --

2 MS. HANSEN: An increase.

3 MS. RAY: Increase, yeah.

4 MS. HANSEN: And relative to the other question  
5 about the quality metric, I think being counseled for the  
6 option sounds great. I guess I'm looking at it practically,  
7 as just where the back end. Getting on a list is one thing,  
8 but getting an actual transplant is another.

9 MS. RAY: Absolutely, and there are a limited  
10 number of donors, yeah.

11 DR. DEAN: A couple of things. First of all, just  
12 a comment, I think I mentioned this last time, that I'm  
13 still bothered a bit by the quality incentive program which  
14 seems to me to be based on a very narrow set of indicators.  
15 We have a whole list of things that are relatively easy to  
16 measure. In fact, they're already here. And things like  
17 hospitalization, infection, nutritional status -- those data  
18 are already being collected. They're really important for  
19 long-term outcomes, and they're things that need to be  
20 monitored. So I'm just struck that they're not included in  
21 the program.

22 Secondly, I appreciate your laying out the travel

1 challenges and the distances traveled. I guess I just make  
2 the point that 25 percent of dialysis patients still travel  
3 more than 22 miles, which is a challenge, and it's  
4 especially a challenge if we're really looking at more  
5 frequent dialysis.

6           And I think there's really a tradeoff there  
7 because if you look at that paper the compliance rate  
8 dropped compared to standard dialysis. As the frequency of  
9 dialysis went up, the compliance rate went down. It's a  
10 real burden to have somebody to have to go in five or six  
11 times a week to, you know, wherever they may have to go.

12           So there clearly are medical advantages to it, and  
13 you get a better, more effective dialysis process. On the  
14 other hand, there are some human factors that really work in  
15 the other direction, and so it's just a complicated  
16 business, I think.

17           But I think we just -- we want to be cautious that  
18 we don't jump too rapidly to the idea that since the renal  
19 function may improve. There are other things in the way.

20           MS. RAY: I just want to say something about the  
21 quality incentive program that's beginning, that will begin  
22 in 2012. For the first year of the program, MIPPA laid out

1 the measures. So that's what the agency is using in terms  
2 of the anemia and dialysis adequacy. In the proposed and  
3 final rule, CMS did express interest in adding additional  
4 measures to that, so.

5 MR. HACKBARTH: Round two comments?

6 MR. KUHN: First of all, I support the  
7 recommendation that we have before us.

8 And then also, Nancy, I appreciated in your  
9 comments, I think on page 9 of the overheads, when you were  
10 talking about the margins, the rural margin was down, and  
11 that is a cause for us to pay close attention to. I know  
12 that low volume adjuster will be an important factor in  
13 that.

14 But also as I recall in MIPPA there was also the  
15 opportunity for the Secretary to implement a facility-level  
16 adjuster which the Secretary chose not to do, but I think  
17 that's something that I'd like us to continue to monitor as  
18 well as an option in the future if we don't see those rural  
19 facilities performing like we think they ought to perform.

20 MS. RAY: Just to be clear, MIPPA gave the  
21 Secretary the authority in addition to the low volume  
22 adjuster to also implement a rural adjustment in the

1 proposed and final rule, and the Secretary opted not to,  
2 again citing the applicability of the low volume adjuster  
3 for rural facilities.

4 MR. GEORGE MILLER: I just want to follow up on my  
5 colleague Jennie's comments concerning kidney transplants.  
6 First of all, I do want to recognize and commend and I'm  
7 very pleased that both the Asian Americans and Native  
8 Americans that account for 6 percent of end-stage renal  
9 disease, that they count for 10 percent of the transplants,  
10 and that's absolutely fantastic and remarkable. And I  
11 wonder what we learn from that. Why? What is it that was  
12 done to improve that percentage?

13 But what I am struck with and concerned about the  
14 inequitable situation it seems between African Americans  
15 that make up 32 percent but only get 24 percent and what can  
16 be done to improve that issue. For me, it's problematic.  
17 It has been that way for some time now. And I guess I'm  
18 struggling to put something specific that should be done,  
19 but I do want to raise the issue.

20 I talked with the nephrologist who said that it  
21 should be required. The problem is the workup, and it's  
22 about a year workup, and there should be some mechanism to

1 require. Even though it may be difficult, some of the  
2 socioeconomic factors may be strong and prevalent, but it  
3 should be a requirement -- his requirement, a requirement  
4 that a person requiring the position spend about a year in a  
5 workup to make sure that number is improved.

6           And I don't know if we have any recommendations.  
7 That's just a concern. It may be more of an observation  
8 about that issue, but I do appreciate the information here.  
9 I think we should continue to monitor it and maybe as a goal  
10 to see if that's increased. But it is an inequity and so a  
11 problematic inequity for me.

12           MR. HACKBARTH: Has there been research, Nancy, on  
13 trying to explain the reason for the differential?

14           MS. RAY: I think there is a lot of different  
15 factors that affect the transplantation rate. Some of it is  
16 that again patients may not be informed about their renal  
17 treatment options, and that's something that should be  
18 actionable. And again, the pre-ESRD counseling is hopefully  
19 one way to rectify it.

20           There's the biologic matching process which maybe  
21 somebody else around this table could better explain than me  
22 because I know I'll screw it up, and that has been --

1           DR. MARK MILLER: Just on that point, and I'll  
2 screw it up too, because we spent a fair amount of time and  
3 had some clinicians come in and talk about it, and it was  
4 quite striking to me that there is quite a lot that goes on  
5 and a lot of places that do. And Karen could probably.

6           DR. BORMAN: The things that are most determinate  
7 of transplant survival, if you will, the organ transplant  
8 survival, relate to that matching, and that matching is  
9 genetically determined, and so that within shared gene pools  
10 certain patterns of genetics are more common. And so, it's  
11 not something that anybody does or controls. It relates to  
12 the extent that there are shared genes within different  
13 ethnic groups. So that part is largely uncontrollable.

14           Perhaps the intervention that relates to that  
15 would be more donors from that shared gene pool, and the  
16 donation rates vary widely across ethnicities. In fact,  
17 there's one group that will accept organs but not donate  
18 them, categorically, which is a little bit of a troubling  
19 ethical circumstance when you're in transplant medicine.

20           So I think that the only way I know, George, to  
21 come at that piece of it is education campaigns, and I'm  
22 aware of at least one campaign in north Texas that was

1   extraordinarily effective in boosting the donor rate from  
2   minority groups. So that would be one way to attack that.

3           MR. HACKBARTH: Other round two comments?

4           Karen.

5           DR. BORMAN: Just a couple of things. I think  
6   this is a very fine effort, and Nancy, thank you for trying  
7   to answer my questions and comments. I appreciate your and  
8   staff's efforts.

9           Just a couple of things I would emphasize. I  
10   think there is no question that, for example, infection  
11   rates will be least in AV fistula than they are in graft  
12   than they are in catheters. That's never going to change.  
13   That is inherent in the nature of those things, and so we  
14   need to be a little bit careful in creating implication that  
15   we can get everybody to the best case scenario.

16           While we would love to do it, there are many  
17   patients that by the time they come to vascular access who  
18   no longer have a suitable vein to create. And vascular  
19   surgeons have been very creative, transposing and moving  
20   around veins within the upper arm in order to attempt to do  
21   that, but there is a point at which you kind of reach  
22   diminishing returns. So I'd like to be just a little bit

1 careful about creating any implication out there that we can  
2 get to nirvana fairly quickly.

3           The second, and that also would relate a little  
4 bit to the considerations about peritoneal dialysis and home  
5 hemodialysis, those -- peritoneal dialysis has some very  
6 specific contraindications related to people who have had  
7 multiple prior abdominal operations, for example. There's  
8 not enough access to the surface lining inside the abdominal  
9 cavity to allow effective peritoneal dialysis -- so again, a  
10 factor that's outside of everybody's control. And I think  
11 we want to be just a little bit careful about saying that:  
12 Wow, these things are cheaper. They're as efficient. We  
13 should get everybody there.

14           We should make all reasonable efforts, but the  
15 reality is we aren't going to get everybody there. And we  
16 need to make sure that our quality measurements and so forth  
17 allow for those exceptions and appropriate identifications  
18 of where we can succeed and where we can't.

19           Similarly, home hemodialysis takes a pretty  
20 motivated family, a pretty motivated patient, and we need to  
21 be a little bit careful about those things. But you know  
22 absolutely those things, when we can achieve them, achieve a

1 better goal.

2 And I thank you for taking forward the work of  
3 including transplantation and things that surround it as a  
4 measure because I think at the end of the day if we had  
5 enough donors and we could catch people at the right time  
6 we'd go a long way toward ameliorating this particular  
7 disease.

8 MR. HACKBARTH: Thanks, Karen. That's very  
9 helpful information.

10 So I think we are ready to vote on that  
11 recommendation. All in favor of the recommendation, please  
12 raise your hand.

13 Opposed?

14 Abstentions?

15 Okay, well done, Nancy. Thank you.

16 Next is home health.

17 MR. CHRISTMAN: Good afternoon. As Glenn said,  
18 next, we're going to do home health. And just as a brief  
19 refresher, here's some basic stats on home health. In 2009,  
20 Medicare spent about \$19 billion on home health services.  
21 There are over 11,000 agencies that participate in the  
22 benefit in 2010 and they served over six million episodes

1 for three million beneficiaries in 2009.

2 We will review the framework and several  
3 recommendations to improve program integrity, payment  
4 adequacy, and payment accuracy, as well as beneficiary  
5 incentives. The recap of the framework, which we covered in  
6 depth at the December meeting, will be brief in order to  
7 preserve time for Commissioner discussion. I can provide  
8 additional clarifications during the Q and A, if necessary.

9 Here is an overview of our indicators.

10 Beneficiaries have good access to care in most areas.  
11 Ninety-nine percent of beneficiaries live in an area served  
12 by one home health agency. Sixty percent live in an area  
13 served by ten or more. We have noted there are some areas  
14 that lack access, but in some instances, it appears that a  
15 lack of access is related to factors other than Medicare  
16 payment.

17 For example, we spoke with representatives of one  
18 State that indicated low Medicaid payments and declining  
19 local subsidies were discouraging agencies from providing  
20 services in rural areas. Nationwide, Medicare payments do  
21 not appear to be a problem in rural areas, as rural agencies  
22 have margins of 16.6 percent. The margin for rural remote

1 agencies is over 19 percent. And in addition, there is a  
2 three percent payment add-on in effect for rural episodes in  
3 2010 through 2015.

4           The number of agencies continues to increase, with  
5 over 3,800 new agencies entering Medicare since 2000, and we  
6 have reached over 11,000 agencies in 2010, as I mentioned  
7 earlier. The number of episodes and rate of use continue to  
8 rise, and the annual rate of increase in episode volume  
9 appears to be accelerating. And as we reviewed last month,  
10 quality shows improvement on most measures. Access to  
11 capital is adequate for both private and publicly-held  
12 agencies. And the margins for 2011 are projected to equal  
13 14.5 percent. These margins are consistent with our  
14 findings for previous years. For example, margins have  
15 averaged 17.5 percent since 2001.

16           Overall, these indicators are very similar to what  
17 we have reported in prior years, and next, we're going to  
18 look at recommendations.

19           Many Commissioners at the last meeting felt that  
20 our recommendation on fraud needed to be emphasized, so we  
21 will begin here. For many years, we have noted aberrant  
22 patterns of utilization in home health. This slide lists

1 the 25 counties with the highest frequency of home health  
2 use in 2008. If you compare the share of users and the  
3 episodes per user for each county for the national average,  
4 which is listed below and to the left in yellow, you will  
5 see that these counties are well above average in home  
6 health utilization. Note that the share of beneficiaries  
7 using is two to four times the national average, while the  
8 average number of episodes is also significantly greater  
9 than the national average, and five of these counties have  
10 more home health episodes than fee-for-service  
11 beneficiaries.

12 Differences of this magnitude raise concern that  
13 fraud may be an issue in some areas, particularly because  
14 some of these areas, such as Miami, have already seen  
15 significant program integrity activities. We cannot make  
16 definitive judgments about the role of fraud in high-use  
17 areas from this data, but differences of this magnitude  
18 suggest a need for closer inspection, and if fraud is  
19 revealed to be a factor, swift action.

20 Medicare has new authorities to fight fraud in the  
21 PPACA and home health may be an appropriate place to test  
22 them. Specifically in areas where the Secretary concludes

1 there is widespread risk of fraud, she can implement local  
2 moratoria on the enrollment of new providers and suspend  
3 payment for services in areas that appear to have widespread  
4 fraud.

5           This brings me to a recommendation. It reads,  
6 "The Secretary with the Office of the Inspector General  
7 should conduct medical review activities in counties that  
8 have aberrant home health utilization. The Secretary should  
9 implement the new authorities to suspend payment and the  
10 enrollment of new providers if they indicate significant  
11 fraud."

12           This will decrease spending for home health if  
13 implemented -- now, these savings are already assumed in the  
14 budget baseline by CBO -- and there would be some  
15 administrative costs. In terms of beneficiary and provider  
16 implications, appropriately targeted reviews should not  
17 significantly affect beneficiary access to care or provider  
18 willingness to serve them.

19           Next, we turn to payment adequacy. Before I take  
20 you through the 2012 recommendation, let me remind  
21 Commissioners of changes in the PPACA. The PPACA  
22 implemented a phased rebasing which begins in 2014 and is

1 phased in over four years. The reductions would be limited  
2 to no more than 3.5 percent a year and this reduction would  
3 be offset each year by the payment update. Given the  
4 positive indicators for the industry, the delay seems  
5 unnecessary. In addition, including the market basket  
6 update as an offset makes these reductions similar and in  
7 some cases smaller than those the industry has weathered in  
8 the past, so would likely result in agencies maintaining  
9 high margins.

10 Here is the payment adequacy recommendation for  
11 2012. It calls for an acceleration of the rebasing already  
12 in law to 2013 and the elimination of the market basket  
13 update for 2012. The recommendation reads, "The Congress  
14 should direct the Secretary to begin a two-year rebasing of  
15 home health rates in 2013 and eliminate the market basket  
16 update for 2012."

17 The spending implications are that this would  
18 reduce spending by \$750 million to \$2 billion in 2012 and \$5  
19 to \$10 billion over five years. Some providers may choose  
20 to withdraw from the program. Remaining supply should  
21 provide adequate access to care.

22 In addition to concerns about the high margins,

1 there has also been a concern about the distribution of  
2 payments and whether the payment system provides appropriate  
3 incentives. First, as discussed in prior meetings, the  
4 inclusion of therapy visits as a factor in the PPS allows  
5 agencies to follow financial incentives when determining the  
6 number of therapy visits provided. An analysis by the Urban  
7 Institute found that the current system is highly dependent  
8 on the use of therapy as a predictor for its accuracy. With  
9 therapy as a predictor, the system could explain 55 percent  
10 of costs. Without it, the explanatory value dropped to 7.6  
11 percent. Perhaps most importantly, the current case-mix  
12 explained one-tenth of one percent of the variation in non-  
13 therapy costs, meaning the system is weakest in explaining  
14 the services that are most commonly provided. Most notably,  
15 the case-mix properly identified only 15 percent of the  
16 highest-cost non-therapy episodes.

17 All of these factors suggest the case-mix system  
18 needs to change. If the current system remains in place,  
19 agencies will have an incentive to avoid non-therapy cases,  
20 base the amount of therapy provided on payment incentives  
21 and not patient characteristics, and avoid high-cost non-  
22 therapy cases.

1           Urban developed a revised system that did not use  
2 therapy visits as a factor in setting payments and relied  
3 solely on patient characteristics. The revised system they  
4 developed explained about 15 percent of costs, or about  
5 double the explanatory value of the current system when its  
6 therapy thresholds are removed. The improvement was better  
7 at the service level. For non-therapy services, the  
8 explanatory value of the revised model was 15 percent,  
9 compared to eight percent for the current case-mix without  
10 its therapy thresholds. For therapy services, the revised  
11 model had an explanatory value that was more than double the  
12 current system without therapy thresholds. The revised  
13 system was also more accurate in identifying high-cost non-  
14 therapy cases, identifying 28 percent of them, again, nearly  
15 double the current model. This analysis suggests that an  
16 alternative case-mix which drops the therapy thresholds  
17 would have better accuracy and better incentives than the  
18 current system.

19           This leads to a draft recommendation. It reads,  
20 "The Secretary should revise the home health case-mix to  
21 rely on patient characteristics to set payment for therapy  
22 and non-therapy services and no longer use the number of

1 therapy visits as a payment factor."

2           Now, this change would be budget neutral, and in  
3 terms of beneficiary and provider implications, it would  
4 increase access to care for non-therapy patients and  
5 payments will generally be redistributed to providers that  
6 focus on non-therapy services from those that are more  
7 focused on therapy services. Another way to think of this  
8 is that it would level the playing field between providers  
9 that deliver more therapy and those that deliver more non-  
10 therapy. Currently, the payment system appears to overpay  
11 for therapy services and our proposed changes reduces  
12 payments for those services and redistributes them to non-  
13 therapy services, which appear to be disadvantaged under the  
14 current system. Payments would increase for dual eligibles  
15 and patients who need the most non-therapy services. At the  
16 provider level, we would see increases for nonprofit, rural,  
17 and hospital-based providers.

18           Another issue is ensuring appropriate use of the  
19 home health benefit. Today, physicians and home health  
20 agencies are accountable for following Medicare's enrollment  
21 and coverage standards, but several studies have raised  
22 questions about how effectively they serve this role. Many

1 reports suggest that the locus of control often remains with  
2 agencies which have a financial interest in eligibility and  
3 plan of care decisions. This conflict is even more  
4 troublesome considering the 50 percent increase in home  
5 health] volume that has occurred since 2001.

6           Concerns about over-utilization are further  
7 exacerbated by the lack of cost sharing in home health.  
8 Studies have generally found that beneficiaries consume more  
9 health care services when they have limited or no cost  
10 sharing and that these additional services do not always  
11 contribute to better health. The rapid rise in home health  
12 volume suggests that at least some of this growth may be  
13 increasing Medicare's costs without improving beneficiary  
14 health. Adding a copay requirement would permit patient  
15 choice to serve as an offset to the incentives in the Home  
16 Health PPS, which reward additional volume. However, the  
17 copay needs to set appropriate incentives. It should not  
18 drive beneficiaries to other high-cost settings and minimize  
19 the impact for high-need and low-income patients.

20           With these concerns, there are essentially three  
21 questions to answer: What unit the visit or episode should  
22 the copay be charged at, when should it be charged, and how

1 much it should be. These questions present a number of  
2 competing policy goals and I will now walk through a design  
3 that shows one approach to balancing the various concerns.

4           The first choice is selecting the unit. A copay  
5 could be charged at the per visit or per episode level, but  
6 given the incentives that providers have to deliver more  
7 episodes, a per episode copay seems appropriate. The per  
8 episode copay would encourage beneficiaries to weigh the  
9 need for care at the onset of an episode. Typically,  
10 Medicare relies on physicians to drive this decision, but  
11 some Commissioners have said that physicians do not always  
12 have the information they need to make these decisions and  
13 that they sometimes face consumer pressure from  
14 beneficiaries. An episode-level copay would encourage the  
15 beneficiary to explore alternatives more fully with their  
16 doctor.

17           An episode copay would also be more appropriate  
18 given the incentives of providers under PPS. Under the PPS,  
19 providers receive a fixed payment for each episode so they  
20 have an incentive to produce more episodes but generally  
21 have no incentive to produce more visits. A per visit copay  
22 would provide an incentive for beneficiaries to decline

1 additional visits and this would increase provider profits  
2 because fewer visits would lower provider costs per episode.  
3 A per episode copay would also help to keep the beneficiary  
4 liability predictable and limited. The amount would be  
5 known at the onset of care and would not increase for sicker  
6 beneficiaries who need more visits.

7           Selecting which episodes we wish to charge cost  
8 sharing for is a second step. Because of the nature of  
9 current cost sharing arrangements, community-admitted  
10 episodes, those that do not have a prior acute episode,  
11 appear to be more appropriate for cost sharing than post-  
12 hospital or PAC episodes. Post-hospital patients have other  
13 settings, such as SNFs or IRFs, that generally have limited  
14 or no cost sharing. Charging home health cost sharing for  
15 these patients could have the effect of shifting patients  
16 from home health to other more costly settings.

17           For patients in the community, the situation is  
18 different. They face 20 percent coinsurance for most  
19 services, but pay no cost sharing for home health. Because  
20 home health is more expensive to Medicare than office  
21 visits, this arrangement presents a perverse incentive that  
22 encourages beneficiaries to consider the costs of office

1 visits, but not home health. Also remember the community-  
2 admitted episodes account for a disproportionate amount of  
3 the growth in home health services. Focusing cost sharing  
4 on this category would ensure that only episodes  
5 beneficiaries place some minimal value on would be  
6 delivered.

7           A final issue is the amount. The amount of the  
8 copay depends on the minimum amount of value you would want  
9 a beneficiary to place on an episode and how strongly you  
10 want them to consider alternatives. The goal is to charge  
11 an amount that is not so high as to be overly burdensome and  
12 not so low as to cause beneficiaries to under-value home  
13 health services and use them when they provide minimal value  
14 or other less-costly alternatives would suffice.

15           One way of anchoring this discussion is to start  
16 with the 20 percent coinsurance a community-dwelling  
17 beneficiary would typically incur for outpatient services.  
18 However, this would yield the relatively high amount of  
19 about \$600 in 2008, an amount equal to more than half of the  
20 inpatient deductible. A lower amount of \$150 would arguably  
21 be less burdensome and maintain some incentive for  
22 beneficiaries to consider alternatives. Amortized across

1 the typical non-outlier episode, this amount would come out  
2 to about \$8 per visit for the \$150 copay. This amount is  
3 less than what comparable office visits would typically cost  
4 the beneficiary. For example, a 45-minute visit with a  
5 physician or physical therapist would cost the beneficiary  
6 about \$20 per visit. Under the \$150 copay, a 45-minute  
7 visit at home with a therapist or nurse would cost the  
8 beneficiary on average about \$8, or less than half what they  
9 would pay if they went to the office.

10           Bringing together the various concerns I have just  
11 walked through, an illustrative copay could look like this.  
12 A fixed per episode amount of \$150 would balance concerns of  
13 affordability with the desire for an effective beneficiary  
14 incentive. Focusing on community-admitted episodes would  
15 make the cost sharing incentives for home health consistent  
16 with other services provided in the community and avoid  
17 perverse incentives that could drive beneficiaries to  
18 higher-cost settings. We could exclude low-use episodes,  
19 those with four or fewer visits, so the low-use  
20 beneficiaries are not disproportionately affected, and dual  
21 eligibles would not have to pay because these costs would be  
22 picked up by Medicaid. With these parameters, the copay

1 would affect about one-third of episodes in 2008.

2 Here is a draft recommendation which would  
3 establish a copay as I just described. "The Congress should  
4 direct the Secretary to establish a per episode copay for  
5 home health episodes that are not preceded by  
6 hospitalization or post-acute care use."

7 The spending implications are that this would  
8 reduce spending by \$250 to \$750 million in 2012 and \$1 to \$5  
9 billion over five years. Now, in terms of beneficiary and  
10 provider implications, some beneficiaries who need  
11 relatively few services would have lower cost sharing if  
12 they substituted ambulatory care for home health care.

13 Now, that completes the new recommendations that  
14 we plan to vote on today. We also plan to reprint the third  
15 recommendation from last year that sets up a framework for  
16 patient safeguards. This recommendation addresses concerns  
17 that providers may stint on care when the rebasing is  
18 implemented. Under this recommendation, Medicare would  
19 monitor the payments and quality of care provided during the  
20 rebasing. If it appears that highly profitable agencies are  
21 reducing services and lowering quality to maintain margins  
22 when payments are rebased, this recommendation would permit

1 Medicare to reclaim excess payments and redistribute them to  
2 agencies with better quality and lower margins. And again,  
3 this is unchanged from last year.

4 This final slide sort of provides a brief summary  
5 of the four different recommendations and is for your  
6 reference. I look forward to your discussion.

7 MR. HACKBARTH: Okay. Thank you, Evan.

8 Let's see. I think it's Karen's turn this time.  
9 Any clarifying questions, Karen, Scott, Bruce, Kate, Nancy,  
10 George.

11 MR. GEORGE MILLER: Just quickly, talking about  
12 the copay, in the reading, there was some material that said  
13 -- in the reading material, there was a statement that said  
14 that the HIE study found that some health outcomes were  
15 worse for low-income beneficiaries subject to higher cost  
16 sharing, and I realize you did an analysis saying that the  
17 dual eligibles would be exempted, but what about low-income  
18 folks? This study seems to indicate that even for someone  
19 who has low income, they may not take the benefit or take  
20 the services because they have to pay a copay. Any reaction  
21 to that, or are there other studies that show that this  
22 would be mitigated in any way? I'm just concerned. You've

1 got dual eligibles covered, although you said Medicaid. Are  
2 we talking about Medicare paying it or Medicaid also on the  
3 dual eligibles?

4 MR. CHRISTMAN: I'm sorry. What I meant to say is  
5 that dual eligible Medicare and Medicaid beneficiaries, you  
6 know, their costs would be handled through Medicaid.

7 MR. GEORGE MILLER: Medicaid.

8 MR. CHRISTMAN: Yes.

9 MR. GEORGE MILLER: You said Medicaid, okay, which  
10 is a different issue.

11 MR. HACKBARTH: On the first issue, George, which  
12 is an important issue, it's true for any copay -

13 MR. GEORGE MILLER: Right.

14 MR. HACKBARTH: -- whether it's for home health or  
15 physician services or the hospital inpatient deductible. It  
16 can have a disproportionate impact on low-income people. In  
17 Medicare, as you well know, the way we deal with the people  
18 who are lowest income is through the dual eligibility and  
19 payment through Medicaid. But low income is a spectrum, a  
20 gradation --

21 MR. GEORGE MILLER: Right.

22 MR. HACKBARTH: -- and just because you're a

1 dollar above the cutoff doesn't mean that there's no effect  
2 on you.

3 MR. GEORGE MILLER: Right.

4 MR. HACKBARTH: So it's inherent in copayment. On  
5 the other side of the coin, there are some benefits from  
6 copayment which I won't go through. You know those, so --

7 MR. GEORGE MILLER: Yes.

8 MR. HACKBARTH: I don't have a simple solution for  
9 that.

10 DR. MARK MILLER: I would just add one other thing  
11 to that. In addition to dual eligible, remember we also  
12 have this structured so that the home health episode  
13 following the hospitalization, where the sense is that it's  
14 clear of the medical necessity, is not subject to it. In  
15 HIE's stuff, remember, that stuff was very much more focused  
16 on kind of hospital physician, and I think a big complex  
17 issue with the home health benefit is exactly how much is  
18 needed and when is enough enough. And so we have tried to  
19 think that through. Close to the hospital, no payment.  
20 Second, third episode, that's when it applies.

21 MR. GEORGE MILLER: But in general, I'll just make  
22 a -- I don't know if I should wait until round two -- a

1 philosophical statement. I'm really concerned about the  
2 fraud and abuse, extraordinarily concerned about that. For  
3 those who are listening, the industry and the peers have an  
4 equal responsibility to this. This is absolutely shameful,  
5 this amount of fraud and abuse, especially by the graph that  
6 was put up. There are ways to deal with it if the industry  
7 won't take care of it itself and we shall do that.

8 MR. HACKBARTH: Fraud and abuse is an important  
9 problem, but it's not the entirety of the utilization  
10 problem. And so there are issues about people electing to  
11 use a service when there's no cost consequence for them,  
12 it's a free service for them, and substitute for family  
13 members and other sorts of support. And at the extreme, and  
14 this benefit can sort of turn into a long-term care social  
15 support service as opposed to the acute benefit that it's  
16 supposed to be, and a modest copay is potentially one tool  
17 to help deal with that problem. But it is not, as you say,  
18 without issues.

19 MR. CHRISTMAN: One point I would just note is  
20 that under the illustrative copay we've come up with, that  
21 for most beneficiaries, home health would still be a cheaper  
22 place to get the services than getting the services on an

1 outpatient basis. So for those low-income beneficiaries,  
2 this is an opportunity for -- it would still be a low-cost  
3 substitute.

4 MR. HACKBARTH: [Off microphone.] Clarifying  
5 questions?

6 DR. NAYLOR: Thanks, Evan, for a terrific response  
7 to all of the questions we raised earlier. I'm wondering if  
8 you could comment just generally on -- the Affordable Care  
9 Act has multiple provisions to try to promote use of home  
10 and community-based services, broadly defined, as  
11 substitutes for higher-cost services, such as the emergency  
12 department or hospital. Does this notion of accelerating  
13 rebasing or eliminating the market basket update earlier  
14 have consequences, potential unintended consequences beyond  
15 that which might be removing from markets multiple players?

16 MR. CHRISTMAN: I mean, I think certainly, you  
17 know, whenever you're talking about pulling a significant  
18 amount of money out of a payment system, it's going to  
19 discourage some people from entering and it's going to, you  
20 know, some people may exit. I think what I would say is  
21 that the changes that are happening as a result of the PPACA  
22 or even in our recommendations are relatively modest

1 compared to the reductions the industry experienced in the  
2 1990s. They cut home health payments in half between 1997  
3 and 1998, and at the nadir of the contraction that that  
4 triggered, there were over 6,500 home health agencies in  
5 America. I don't remember the exact number. And so it does  
6 complicate whether or not people are available to  
7 participate in those new models, but I guess it's -- a  
8 significant number of agencies will likely remain in the  
9 program and certainly enough, I would think, to try out new  
10 models. You know, on the flip side, I think some agencies  
11 will look at these new models as a, for lack of a better  
12 term, potential lifeboat to deal with the reductions that  
13 are coming.

14 MR. HACKBARTH: I just want to add one thing on  
15 that, Mary, for the benefit of the audience. I know you  
16 know this. Our draft recommendation in December said a zero  
17 update for fiscal 2012 and begin rebasing in 2012, and if  
18 you put up the relevant recommendation, Evan, and what we've  
19 done is modify that to have zero update in 2012 and begin  
20 rebasing in 2013. As you point out, that is still one year  
21 ahead of what is envisioned in PPACA. The reason for  
22 deferring that one year in our recommendation is to increase

1 the likelihood that we will have the new case-mix adjustment  
2 system in place, and that was something that was discussed  
3 in our December meeting. I just wanted to flag that for  
4 people in the audience.

5 You were going to ask another question, Mary, or -  
6 - are you sure? Clarifying questions, Mitra and Peter and  
7 Mike.

8 MS. BEHROOZI: I'm sorry. I think you just  
9 addressed the first one. So by not putting a date for the  
10 revision of the case-mix adjustor, that means we're  
11 recommending that it be done immediately, as soon as  
12 possible, I mean, is that --

13 MR. HACKBARTH: As quickly as possible, and I  
14 don't know, Evan, if you might want to add anything to that,  
15 but that would be the intent, that this is an urgent matter  
16 that has a significant effect on the distribution of  
17 payments and one that we think is beneficial, and so as  
18 quickly as possible.

19 MS. BEHROOZI: And -- oh.

20 DR. MARK MILLER: I was just going to say, and  
21 also that there is enough research around that we think  
22 there's enough critical mass that they could pick it up and

1 do something in a reasonable amount of time.

2 MS. BEHROOZI: We don't need to specifically say  
3 that it has to happen concurrently, like in our other  
4 recommendation about the payment to ASCs along with the  
5 data?

6 MR. HACKBARTH: The audience for the two  
7 recommendations is -- well, actually, let me just think  
8 about this. So CMS is responsible for the case-mix system,  
9 and which other recommendation would you make it concurrent  
10 with, the rebasing?

11 MS. BEHROOZI: Or in advance of. No, I was  
12 referring back to our ASC recommendation where we explicitly  
13 state concurrently --

14 MR. HACKBARTH: Yes --

15 MS. BEHROOZI: -- which I thought might not even  
16 be strong enough, but at least we state that much. Here, we  
17 don't have any data on the rebasing or --

18 MR. HACKBARTH: Yes. So I'm just thinking aloud  
19 here, Mitra. Help me with it. So the timing of the  
20 rebasing is a recommendation to the Congress. The  
21 acceleration of the case-mix adjustment is an exhortation,  
22 if you will, to CMS. So the audiences are different, which

1 may make the juxtaposition that way a little awkward in a  
2 recommendation. Having said that, I think we could be very  
3 strong in the language in the text about the urgency of the  
4 new case-mix system.

5 DR. MARK MILLER: And it's not for certain, but if  
6 the -- and it is in law that rebasing is to occur, right,  
7 it's on some schedule. One other way to think about it, and  
8 the industry can speak for itself, is if that train is  
9 coming, then the adjustment for the case-mix should become  
10 something that they see as more urgent so that there's some  
11 leveling up of the payments before the rebasing occurs. And  
12 so one would hope there would be some critical mass from a  
13 couple of directions if they think that rebasing train is  
14 coming.

15 MS. BEHROOZI: Yes. I guess there's just the  
16 concern that rebasing happens and they haven't gotten around  
17 to implementing the case-mix adjustor, and as you say in the  
18 paper, Evan, that could really damage the low-margin  
19 agencies who are doing good work, not just because they're  
20 not good at managing. So I think that's the concern,  
21 because, of course, there's a lot of focus on the high-  
22 margin agencies or maybe the places where there's fraud or

1 whatever, but that shouldn't drive the whole discussion. We  
2 have to look at the bottom side, too.

3           And I just wanted to ask another question about --  
4 with respect to copays and comparing them or relating them  
5 to copayments with respect to other services. Could you  
6 just talk, Evan, about what the Medigap coverage -- we had  
7 discussed that explicitly in the prior session on home  
8 health, but now it's out of the recommendation, out of the  
9 presentation, but could you discuss what would happen with  
10 respect to Medigap coverage?

11           MR. CHRISTMAN: I'm going to start to answer and  
12 hope Scott will come up here and join me. My understanding  
13 is that the process of what is covered under Medigap is  
14 governed by the NAIC process, National Association of  
15 Insurance Commissioners, and that they sort of have to  
16 regulate what is in those plans and that that process takes  
17 some time to complete.

18           DR. HARRISON: Right. So the way copays are  
19 covered under Medigap is there are categories of services.  
20 Right now, there's not a copay for the category of service  
21 home health. So what would have to happen is the model  
22 plans would have to change and that usually takes a year or

1 two.

2 MR. HACKBARTH: Evan, under the first issue, it  
3 occurs to me that maybe one approach might be to be very  
4 explicit in the text and say, we have -- this recommends  
5 rebasing begin in 2013. We had previously considered 2012.  
6 We have deferred that in the expectation that by the time  
7 rebasing begins, there would be a new case-mix system in  
8 place and we think that's important, something along those  
9 lines.

10 MR. BUTLER: So I have two questions. One is that  
11 we have \$19 billion in home care spending, and now that  
12 we're in the post-acute world discussion where Medicare has  
13 a much bigger role, what's the total spending on home care,  
14 roughly?

15 MR. CHRISTMAN: I don't know that off the top of  
16 my head. I mean, if you throw in the Medicaid and the  
17 private pay, I believe it's north of \$40 billion.

18 DR. MARK MILLER: Evan, do you know in  
19 freestanding what proportion of their business is Medicare?

20 MR. CHRISTMAN: Um -

21 DR. MARK MILLER: I'm sorry --

22 MR. CHRISTMAN: It's been a while since I've

1 looked at it.

2 DR. MARK MILLER: All right. I'm sorry. I  
3 thought that would help you size it, but --

4 MR. BUTLER: There's some reference to Medicaid  
5 episodes at the end, but okay. So actually, I thought it  
6 would be much more than 50 percent of the total. So let me  
7 ask a different question. Obviously, there's an area where  
8 there's variation, as George pointed out, due to fraud and  
9 abuse, but there's a lot more going on than that. An  
10 interesting question would be to look at the MA plans and  
11 see if the variation is reduced within -- not the absolute  
12 spending in those plans, but, in fact, is there variation  
13 and is the variation in kind of the same places as it is in  
14 the fee-for-service world, because it'll tell you how much  
15 of that is part of the solve for right-sizing and aligning  
16 the post-acute world.

17 MR. HACKBARTH: I don't know what the data would  
18 show, but my hypothesis -- in fact, we talked about this at  
19 an earlier meeting, that in a plan like Scott's, home health  
20 is a service that is closely monitored and integrated into  
21 the clinical care plan in a way that all too often it is not  
22 in the wild, I think was Mike's expression, in the fee-for-

1 service sector. And so I would think that there probably  
2 would be a difference in the patterns.

3 MR. BUTLER: So what would be really stunning is  
4 if you went in the heart of some of those counties where  
5 there's the biggest variation and showed that the MA world  
6 is operating totally different. Then you really could draw  
7 some strong conclusions about that as a lever for handling  
8 post-acute care.

9 DR. CHERNEW: I want to essentially ask a variant  
10 of Mitra's questions, but for Medicaid and the duals. The  
11 way the recommendation is presented now, the one that we're  
12 voting on, the copay one, will Medicaid automatically fill  
13 in that copay for the duals or do there have to be changes  
14 administratively done in the Medicaid programs, so in the  
15 short run, if a Medicaid program facing financial pressure  
16 decided not to pick up the extra copay portion for the  
17 duals, that that would therefore fall on the duals. Is the  
18 Medicaid law, we cover all your copays and if the copays  
19 change, we just cover that, or is the Medicaid law, we cover  
20 these copays and if the copays change, then they have to  
21 change the Medicaid law to fill it in?

22 MR. CHRISTMAN: I think the short answer to your

1 question is that when the cost sharing changes like this for  
2 Medicare is that Medicaid pretty much instantaneously has to  
3 pick it up. Now, there's a wrinkle. The wrinkle is that at  
4 the States' option, they don't have to pay the copay if the  
5 amount of Medicare's payment for the service is higher than  
6 the State Medicaid payment for that same service.

7 MR. HACKBARTH: So there are about 30 States, is  
8 that correct --

9 MR. CHRISTMAN: I believe that's the -- yes --

10 MR. HACKBARTH: -- that have that rule. But it  
11 doesn't fall on the beneficiary to pay it. It's the  
12 provider that --

13 MR. CHRISTMAN: The provider eats it, yes.

14 MR. HACKBARTH: They eat it at that point.

15 DR. CHERNEW: [Off microphone.] So the  
16 beneficiary --

17 MR. HACKBARTH: Right. Was there something --

18 DR. MARK MILLER: We're squared away.

19 MR. HACKBARTH: Okay. I wanted to ask a  
20 clarifying question about the case-mix change. Could you  
21 just remind me, Evan, the estimated impact on rural and  
22 hospital-based home health agencies?

1 MR. CHRISTMAN: Sure.

2 MR. HACKBARTH: This is a topic that Tom and I  
3 talk about a lot and I just wanted to be reminded of the  
4 magnitude of that impact.

5 MR. CHRISTMAN: Okay. So the rural payments go up  
6 a little bit, on average, about 2.2 percent, and the  
7 hospital-based go up by 7.5 percent.

8 MR. HACKBARTH: Okay. All right. I think we're  
9 ready for round two now, round two comments beginning with  
10 Karen and then Scott.

11 DR. BORMAN: I support the recommendations and I  
12 think the one that probably we all struggle with the most is  
13 the one related to the copayment, and at least in terms of  
14 my own thinking, it's helped me to put the -- because I  
15 think we all want to say, let's put this in the perspective  
16 of multiple copays, equity of copays, and so on and so  
17 forth.

18 I think perhaps the other perspective that we need  
19 to consider in this is that we have been discussing benefit  
20 design and the 21st century beneficiary certainly for  
21 several years, and we're progressing down that road, but I  
22 think it's a somewhat long road. It's likely to be a

1 continuing road. And it raises the issue of should we not -  
2 - are there not topics that we should address in the interim  
3 rather than waiting for the ultimate solution.

4           And I think this is one of the topics where  
5 perhaps we should, and the reason that sways me is that in  
6 the time that I've been here, every year as we go through  
7 the update process, we talk about some fairly eye-popping  
8 margins in certain fields compared to certain other fields,  
9 and I think that this is one of them. And I think that we -  
10 - I'm comfortable with the concept that there are things  
11 that deserve more immediate action just as our update  
12 process is an immediate annual thought process versus some  
13 of the more philosophical, programmatic, more broad-based  
14 actions that we take.

15           And so at least for me, I think that we've talked  
16 about home health and the system of home health just as  
17 we've talked about other systems and we've reached a time  
18 where we're obligated as good fiduciaries to make this  
19 recommendation that includes the copayment. I think we all  
20 have warm and fuzzy feelings about the very best that home  
21 health can be, and I think it's a little bit like flavoring  
22 our discussion of hospice, for example. We all have very

1 deep-felt convictions about what a fine service that can be,  
2 about mental health and behavioral treatments and so forth.  
3 And sometimes we have to step back a little bit, perhaps, or  
4 at least I need to instruct myself to step back from some of  
5 those connotations to make a more perhaps detached,  
6 intellectually-based judgment.

7           So short version, I would support the  
8 recommendations.

9           MR. ARMSTRONG: So Karen actually just very  
10 articulately made the same arguments I would make. I would  
11 just add that I come from a point of view where we have to  
12 be very cautious about creating disincentives to invest in  
13 services that overall promote better health and lower costs,  
14 and home health, I tend to believe, is one of those  
15 services. But I think in this case, it is balanced, as  
16 Karen said, against margins and other issues that in the  
17 near term really warrant a copay and, I think, a very  
18 reasonable copay as we're talking about here, not unlike  
19 very reasonable copays that are applied to many other  
20 services that we really want our patients to get because it  
21 does improve health and lower expense trends. In this case,  
22 the Medicare program is spending too much on this service

1 and I think this is a tested approach to mitigating some of  
2 those expense trends and I support it.

3 DR. STUART: I also support the recommendation  
4 with some reservations. The lack of research evidence for  
5 copays for episode-based services is a concern to me. We  
6 don't know what the response is going to be. A hundred-and-  
7 fifty dollars, we have heard, is going to be problematic for  
8 individuals who are right on the, maybe over the dual  
9 eligible threshold. A hundred-and-fifty dollars actually is  
10 a lot compared to what an individual would pay under the  
11 Part B coinsurance for a single visit. And the consequence  
12 of an individual opting not to take home health, which could  
13 include up to 60 visits, on the basis of this one decision,  
14 I think is something that we need to be cognizant about.

15 I guess if we were to think about this in the  
16 longer term and we include strong language about having a  
17 copay, I would also like to see some language that says,  
18 okay, if this thing goes into effect, let's make sure that  
19 we monitor it so that we can at least have a learning moment  
20 and find out what actually happens, because this is not  
21 something tried and true. This really is something new.

22 DR. BAICKER: I'm also focused on recommendation

1 four and I do like the idea of introducing copays and I like  
2 the framing of having the \$150 copayment per episode be  
3 illustrative, not that we have figured out that's actually  
4 the absolutely correct amount, but here's an example that we  
5 think might work.

6           Along those lines, I wonder how sure we are of the  
7 per episode copayment, that in some sense, sticking that  
8 word up in the recommendation makes it sound like we're very  
9 sure that it should be strictly per episode and not some mix  
10 of per episode and per visit. Are we really thinking of the  
11 \$150 per episode as illustrative and the per episode word  
12 should come down into the illustration, rather than we're  
13 sure about the per episode, we're just not sure about the  
14 dollar amount being optimal, and that's a question. It's  
15 not that I am uncomfortable with the per episode payment,  
16 but I'm not sure how prescriptive we want to be along that  
17 one particular dimension versus the others.

18           And the other clarification is when I first read  
19 the phrasing of the dually eligible not being subject to  
20 this, at first pass, it makes it seem like Medicare should  
21 be picking it up, not Medicaid, just like any other  
22 copayment, and then I've understood from the discussion and

1 more of the detail in the text that we mean it's just like  
2 any other copayment. Medicaid picks it up for the dually  
3 eligible. I wonder if we can tweak the wording in the  
4 recommendation to make that a little more clear, because at  
5 first reading, I think people could think that we're  
6 treating this copayment as special relative to the others,  
7 whereas the principle that we're introducing a copayment  
8 somewhere that's kind of parallel to the others is one that  
9 we want to emphasize, not obscure.

10 MR. HACKBARTH: Let me pick up on the first point  
11 and, again, think out loud about this. Clearly, there is no  
12 definitively right answer as to the appropriate level of the  
13 copay. I know of no research existing nor any method of  
14 analysis that would get you to a precise right number.  
15 There's probably a range of possible numbers. Hopefully,  
16 \$150 is inside the range.

17 As Kate noted, the \$150 is not in the bold-faced  
18 text but rather beneath, and I think that's appropriate  
19 given the uncertainty about exactly what the right number  
20 is. My gut instinct, however, is that the per episode issue  
21 is a bit different. If we were to move that, it would have  
22 a more significant effect.

1           If we have -- neither specify the unit nor the  
2 amount, I think the recommendation becomes very abstract and  
3 it's sort of, you know, somewhere, somehow, there ought to  
4 be some kind of home health copay, and I can readily imagine  
5 the situation where Mark or I in a hearing setting or in a  
6 briefing setting say, what does this mean? You haven't  
7 specified the unit. So I think it would really weaken the  
8 impact of the recommendation to take out the per episode  
9 piece as well as the number.

10           Having said that, that is not to deny the issues  
11 about is per episode the right way. If I thought, however,  
12 that there was some way in a finite period of time we could  
13 reach a definitive answer and say to the Congress, oh, we  
14 know the right way to do it is per episode or per case and  
15 here's the analysis and the calculations to prove that, then  
16 I'd say, well, let's hold off and do that and then make the  
17 recommendation. I don't think that there is any way to  
18 definitively say. I think Bruce is right. We need to do it  
19 and test, identify unintended consequences and potentially  
20 be prepared to adjust.

21           So that's my thinking, that this is a reasonable  
22 balance. Take out the dollar amount, move it to the text,

1 but stick with per episode. That was my thinking.

2 Nancy?

3 DR. KANE: I was just wondering if there's been  
4 any MA plan experience that we could learn from or whether  
5 we could suggest a pilot or something that would be, I don't  
6 know, less -- don't go whole hog until you kind of have  
7 tested a few possibilities. But otherwise, I'm supportive  
8 of the idea.

9 MR. GEORGE MILLER: I agree with Bruce's statement  
10 very, very clearly about the copayment. I'm a little  
11 troubled, and he has already said it. I an support the  
12 recommendations, but I share his concerns.

13 DR. BERENSON: First, I'm with Karen and Scott on  
14 the need to do this and not just wait. This is a benefit  
15 that is careening out of control, and so I don't think we  
16 have the luxury of just sort of let's do this in the context  
17 of an overall assessment. Hopefully, we will succeed at an  
18 overall assessment and we can come back to this issue in the  
19 context of a broader assessment, but that could be difficult  
20 and I just think we need to send a clear -- make a clear  
21 statement at this time with the current trends. So I think  
22 we have to proceed. I'm not wedded to \$150 exactly and

1 would be happy if we could sort of use that as an  
2 illustration.

3 I am pretty -- I think it makes sense to do an  
4 episode-based copayment, and Bruce raises the point about,  
5 you know, in some circumstances, it could be substantially  
6 more than an office visit copayment, but we have an  
7 exception for low-visit episodes, four or fewer. Just like  
8 the payment to the provider, there's a different payment  
9 mechanism when there are only a couple of visits. So I  
10 think you --

11 MR. HACKBARTH: Is it four, Evan, is the cutoff?

12 DR. BERENSON: So that's, I mean, and there can be  
13 an occasional case, I suppose, when \$150 is more than five  
14 visit copays, but I think as a general proposition, the  
15 payment -- I mean, the concept now is an episode of care. I  
16 think it's administratively much simpler to administer a  
17 single copayment rather than electing every time.

18 I'm all for -- I agree with Bruce completely.  
19 Let's study the impact of it. But I think we -- I mean, I  
20 agree with the Chairman that we have to say something more  
21 definitive than we'd like some kind of a copay for some kind  
22 of a unit of service. I'm happy to support \$150, but if

1 there's a consensus that we should use that as an  
2 illustration rather than a definitive recommendation, I can  
3 go that way, too.

4 MS. UCCELLO: I pretty much agree with everything  
5 that's been said, and Bob just said a lot of other things  
6 that I was going to say. I'm much more comfortable with an  
7 illustrative \$150 versus the \$300, although I do think, on  
8 average, that's going to be less than some other things.  
9 But if you have just five, six, or even seven visits at an  
10 office, that's still going to be -- the home health copay  
11 will be more expensive than that.

12 I'm not sure -- I'm troubled by that, however, if  
13 for those low-visit cases it is just as appropriate to go to  
14 the office. So it might not be that big of a deal. But in  
15 the end, I support this, especially if the \$150 is framed  
16 more as an illustration.

17 MR. HACKBARTH: I just want to pick up on Cori's  
18 point. So the beneficiary goes, say, for seven visits.  
19 It's \$150 and that works out to 20-some-dollars a visit. If  
20 that prompts the beneficiary to say, "Oh, I will go to the  
21 doctor's office instead," the net effect of that on Medicare  
22 spending is to reduce Medicare spending because we're paying

1 for an episode that's -- what's the average cost?

2 MR. CHRISTMAN: Three-thousand dollars.

3 MR. HACKBARTH: Right. So if it has that effect,  
4 from the perspective of trying to slow the rate of growth in  
5 Medicare spending in this really rapidly growing benefit,  
6 that's a good thing.

7 DR. BERENSON: Although if I could point out,  
8 these are supposed to be homebound patients who can't just  
9 go rushing off to the doctor's office --

10 MR. HACKBARTH: Well, that's true, too. That's  
11 true, too.

12 DR. NAYLOR: They're also not getting comparable  
13 services. I mean, an ambulatory care service is very  
14 distinctly different from home care services, which often  
15 include nursing and home health aides. So you might be able  
16 to make PT in an office comparable to PT in the home, but  
17 you're looking at a very different set of services to a  
18 different population.

19 MR. HACKBARTH: Yes, and that's fair enough. I'm  
20 too tied up in my mathematics. It was Cori's, the actuary -

21 MS. UCCELLO: Throw me under the bus.

22 [Laughter.]

1 MR. HACKBARTH: -- triggered that impulse. Mary?

2 DR. NAYLOR: So I support the recommendations with  
3 varying levels of enthusiasm. Strong support for the fraud  
4 and abuse recommendation. I like the new set of  
5 recommendations, which are placing a premium in 2012 on the  
6 home health case-mix.

7 I was -- my impression earlier was really is there  
8 any way, even though these are different, the case-mix and  
9 CMS, but the recommendation five around protecting the  
10 beneficiaries through sets of strategies, you know, if  
11 there's a way that the text could really also encourage that  
12 in the next year we think about risk corridors and other  
13 strategies to really protect the beneficiaries for an  
14 earlier rebasing. I think if we can put in the  
15 recommendation around the copay that we will also encourage  
16 monitoring as a deliberate part of the recommendation, that  
17 would be appropriate.

18 And the only other comment is, you know, in terms  
19 of eye-popping margins, which I think are important, there  
20 are eye-popping margins within this sector as well as across  
21 these sectors that we need to pay very close attention to  
22 going forward.

1 DR. DEAN: I have several thoughts. On the issue  
2 of the freestanding versus hospital-based providers, Glenn  
3 and I have talked about this quite a bit. I guess I'm  
4 bothered by the reports of, quote, "rural margins" because  
5 those data leave out 90 percent of the State of South  
6 Dakota. We simply don't have any freestanding providers in  
7 the vast portion of the State. They're only in two corners  
8 of the State which are the population centers and the rest  
9 of the State is simply not included in this analysis, which  
10 I understand there's a whole lot of problems with comparing  
11 the numbers and all of that, and yet it seems like these are  
12 the only facilities that are willing to try to undertake to  
13 provide this service and so at least they're situation  
14 should be considered. Now, you know, I understand all the  
15 accounting challenges and so forth of doing that.

16 I guess to move on, I'm also a little bothered by  
17 the comment that the decline of -- or the closing of some  
18 agencies is due to the inadequate payments from other  
19 sources. That may well be true. I caution that that came  
20 from one source. It's a source that I consider highly  
21 credible. But in talking to some of the folks in South  
22 Dakota that have dropped home health as a service, they say

1 just the opposite. They say, we had almost no contribution  
2 from other providers and it was totally a Medicare issue and  
3 it was related strictly to the fact that we have relatively  
4 small numbers of patients and we have to drive a long ways  
5 to serve them and we just simply couldn't cover the cost,  
6 even though when they did drop the service, it hurt their  
7 overall cost report. So they paid a price. They were  
8 shifting some costs. They freely admit that. But they were  
9 losing so much in the rest of the program that they accepted  
10 that because in order to keep the facility going.

11 I think the bottom line, to get a little broader,  
12 I support the recommendations. I think that the rebasing  
13 and the case-mix issues are clearly moving in the right  
14 directions. They're the things that we need to do. The  
15 situations I just referred to are probably special  
16 situations that maybe can't be dealt with in the breadth of  
17 the program, because overall, I thoroughly agree that the  
18 program appears to be out of control. The spending is out  
19 of control and we need to restrict it.

20 I think, to me, the underlying problem is we've  
21 got a benefit that just is not well defined and it's  
22 especially bothersome to me that -- and I thought Scott's

1 comment from last meeting really was the issue. This is a  
2 very important service when it's focused and done for the  
3 right people at the right time. And we haven't been able to  
4 -- in a program like Scott's, you folks obviously look at it  
5 and decide and make good judgments and make good use of the  
6 service.

7 I guess the piece of data that bothered me the  
8 most was the fact that we can't show that people that are  
9 receiving the services have any decline in re-  
10 hospitalizations, and to me, that is the one thing that this  
11 service should accomplish. And if it's not doing that, then  
12 we clearly are missing the mark.

13 So I agree that we need to be cautious about the  
14 copay issues, but I wholeheartedly support the idea because  
15 if the program hasn't really defined clearly what the need  
16 for the service is, hopefully, we can enlist the user in  
17 making a judgment about how valuable the service is and they  
18 maybe will help us to make that judgment. So we need to be  
19 careful about it, but I do think inserting a copay, as long  
20 as we're cautious about how we structure that, makes all  
21 kinds of good sense.

22 MS. HANSEN: I do support the overall

1 recommendations with the same one area of the question of  
2 the copays. I've been deliberating this a lot, especially  
3 as I've been hearing my colleagues, mainly because I do know  
4 that the price barrier could be a reason people don't do  
5 this. But I just wanted to just probably explain the  
6 contours that I think that whether it's the \$150, not  
7 codified but just the sense of some figure that is  
8 reasonable.

9           A flip side of looking at that, I know, Evan, we  
10 came up with the possibly four visits based on a threshold  
11 and whether or not it would take other combinations, like  
12 six visits, so that somebody could really get a sense of how  
13 helpful that is and that there may be some potential value  
14 even though, again, we may not be talking about the \$150.

15           My concern about the benefit careening ahead that  
16 has really driven this whole sense of the community copay  
17 consideration is the fact that somebody was asking about,  
18 say, how Scott might do it in a more managed care  
19 environment, and some of you know that this is the  
20 environment I lived with with this particular set of  
21 population. And what's interesting is -- and when you were  
22 asking, I think, Peter, about could we see what managed care

1 does and is there some comparable, I'd caution that, because  
2 having lived through a model where actually we used very  
3 little home health but used a lot of home care to help  
4 people be stable, and these are technically two defined  
5 separate services. Oftentimes it's the home health has a  
6 more medical license-driven approach to it, and the other  
7 one, if we're maintaining chronicity and keeping people  
8 stable, oftentimes people who do home care with supervision  
9 can do it, which is a very different price point, as well.

10           So I just wanted to be saying that what is the  
11 ultimate outcome is to help people perhaps be stable if they  
12 have a little bit of imbalance and they need to be  
13 stabilized and they don't go to the hospital. It's not only  
14 this one solution to do it. So when we move toward more  
15 episode payments, there are other ways to achieve the  
16 outcome that we're looking at rather than looking at the  
17 discreteness of this. But that doesn't take away from the  
18 concern to make sure that the beneficiary who could benefit  
19 appropriately from the service doesn't just find the price  
20 itself a barrier but find the incentive of the wellness of  
21 being stable as a reason to pay a little bit of money to  
22 help maintain that.

1           So as I said from the onset, I do support this,  
2   but I think that fourth recommendation just could have a  
3   little bit of given flexibility of consideration.

4           MS. BEHROOZI: You've pulled together so much  
5   information, Evan, and it's clear that a lot of what we  
6   respond to is -- I'm going to use an inflammatory word,  
7   it'll probably show up in some article somewhere -- but  
8   clearly some obscene behavior in certain quarters. So I'm  
9   happy that the first recommendation is to really try to get  
10   at that.

11           But I think, then, that we shouldn't keep that as  
12   our framework for looking at the rest of the benefit. So I  
13   am -- you know, clearly, in my first round comments, I  
14   expressed the concern for the good providers that could be  
15   whacked by rebasing before there is the revision to the  
16   case-mix adjustment. So, I mean, if we could insert the  
17   word "immediately" in the recommendation about the case-mix  
18   adjustor, I don't know. We don't do the wordsmithing here,  
19   but I think that we should, as you suggested, Glenn, that we  
20   really should make it clear in the text that we assume  
21   that's coming first to protect the good providers.

22           But similarly, then, when it comes to patients,

1 when it comes to beneficiaries and driving their behavior,  
2 we're looking at an across-the-board, applies equally to  
3 everybody regardless of the appropriateness of the home care  
4 for that person, the home care benefit for that person,  
5 given their condition and given their income level. So I  
6 feel like here we're moving in a progressive direction with  
7 respect to adjusting how the agencies are paid, focusing on  
8 patient characteristics, yet we're ignoring patient  
9 characteristics when we're talking about imposing a copay.

10           So I think that some of those things people have  
11 talked about, I think Bruce's point about the \$150 or  
12 whatever the number being, and Kate sort of supported this,  
13 being a per episode cost creates a cliff. It might be a  
14 small amount of money compared to what Medicare pays. It  
15 might be a small amount of money spread across what  
16 ultimately over the next 60 days that person might receive  
17 in terms of visits. But \$150 is a cliff. There are people,  
18 and let's talk for one second more about what low-income is.  
19 I say more because I've done this before. You have told us,  
20 Evan, before that 50 percent of Medicare beneficiaries make  
21 200 percent of the poverty level or less. That is \$20,000.

22           There are people in New York City -- and I would

1 like to just note that there's probably no one in the room  
2 who's working full time who's making \$20,000 or less. So  
3 when we say \$150 is affordable, I beg you to step outside  
4 your own experience a little bit and think about the people  
5 in New York City who are making that level of income, or  
6 even a little more, who aren't buying a monthly unlimited  
7 Metro card because they can't shell out the \$100 all at  
8 once. They're paying more per ride because they can only  
9 afford to do it as they get their weekly paycheck, as they  
10 cash their weekly paycheck.

11           So I think the per episode direction, directive in  
12 our recommendation, actually is one of the more troubling  
13 ones for me. I think that we should be looking at a  
14 copayment here because it would be equitable. It would give  
15 us a lever to drive behavior toward appropriate utilization  
16 of care. I don't think doing it on an episode basis, on a  
17 level of dollars that is way in excess of what's needed to  
18 drive behavior. There is evidence out there about what  
19 drives elderly patients' behavior. There is a study of the  
20 California Medicare Advantage change in copayment for  
21 outpatient services experience, and we were talking about  
22 changes of \$5 there, or \$8 or something like that, leading

1 people to a lower utilization of outpatient care. And those  
2 authors found, and I know there's some questioning of this,  
3 but that is a study out there -- those authors found that  
4 there was then a hospitalization onset. There was a higher  
5 utilization of hospitalization.

6           So to say, oh, \$150 sounds like a good number and  
7 I'm comfortable with that and it doesn't sound like too  
8 much, I think we really ought to be looking at more evidence  
9 than just from our subjective point of view or even our view  
10 as the payer, as Medicare, what we pay for an episode. We  
11 ought to be looking at it more from the point of view of the  
12 patient, the characteristics of the patient, and look for a  
13 way to -- or encourage the Secretary or somebody to look for  
14 a way to set a copay in a way -- or not a copay, set a  
15 copayment system that would encourage high-value  
16 utilization.

17           There are other tools that Medicare Advantage  
18 plans use. They use prior authorization and denials and  
19 things like that because they're looking to encourage  
20 appropriate care. I can imagine that there are providers  
21 who would be really unhappy that the patients they're trying  
22 to serve say, no, I don't want you to serve me because I'm

1 not going to come up with that \$150, typical good providers,  
2 whatever. And on the other end of the spectrum, there are  
3 providers who would generate more four-visit cases because  
4 there's no copayment or would waive the copayment even  
5 though they're not supposed to. They would treat it as a  
6 bad debt. So I don't know that you get at really  
7 encouraging utilization of high-value care by the  
8 beneficiaries who need it with a per episode copayment.

9 I will say that -- the last thing I want to say is  
10 everything in the recommendation itself other than the per  
11 episode, I would support. I wouldn't support the stuff in  
12 the text about arriving at the \$150, but for me, this isn't  
13 a debate about whether or not there should be a copayment  
14 but how we're talking about it. I can't support it.

15 MR. BUTLER: So my helpful comment is that I  
16 support this as it is and I like the idea of advancing the  
17 concept of copayment now and not just waiting for the next  
18 discussion.

19 The more nebulous thing that I've been thinking  
20 about a lot is, as mentioned earlier in the day, the profile  
21 of all the copays, which are reflected in Table 12. But if  
22 you even go beyond that, we don't have a very beneficiary-

1 centric view of this overall, and what do I mean by that? I  
2 think it was Kaiser Foundation that caught my attention. In  
3 some chart they said, if you're 55 today and you live to 90,  
4 you can expect to spend something like in excess of \$300,000  
5 on health care above and beyond what Medicare will cover,  
6 and you go, whoa. Somebody is going to pay for that or  
7 we'll have to change the system.

8           Similarly, you could take it just on an annual  
9 basis, say an 80-year-old. What are the bills that they are  
10 looking at? They've got the 25 percent copay on the premium  
11 level for Part B. They've got the supplemental, if not  
12 covered by their retiree health. They've got over-the-  
13 counter prescriptions. They've got a number of things, and  
14 if we could kind of look at it from the beneficiaries, what  
15 are the choices they're making both at the premium level as  
16 well as the, you know, and what is that aggregate financial  
17 burden and where -- it will help us -- it would help me a  
18 little bit to look a little bit more carefully about  
19 ultimately where to place the cost sharing.

20           And I hate to turn to my economist on my left to  
21 make that decision for us --

22           [Laughter.]

1           MR. BUTLER: -- but they would know a lot better  
2 than me what impact are you going to have on the appropriate  
3 care and the appropriate place at the appropriate time and  
4 taking the limited dollars that people have and extracting  
5 it from them in the right way at the right time. And for  
6 those that can't afford it, then where do you get others to  
7 support that burden so everybody gets an equal share of what  
8 is needed to take care of their problems.

9           MR. HACKBARTH: Well, before we let Mike address  
10 that, I am not an economist, but I think the evidence,  
11 including going back to the RAND health insurance  
12 experiment, is that copays reduce utilization, but they  
13 reduce appropriate care and inappropriate care in roughly  
14 equal amounts. They're crude tools, and I think to pretend  
15 otherwise is not to be forthcoming about it. And this is  
16 one of the reasons why I've always believed in more managed  
17 care settings where you can be much more deft and focused in  
18 how you try to manage utilization issues and get the right  
19 care to the right person at the right time. I think fee-  
20 for-service, your tools are limited. They tend to be crude.  
21 And so I would be happier if the world would quickly move to  
22 more organized and more effective forms of care delivery and

1 related insurance coverage.

2           Having said that, that's not going to happen  
3 overnight and there is a fee-for-service Medicare program  
4 with an, at best, fragmented and too often chaotic delivery  
5 system and it's causing problems and very high costs paid by  
6 also low-income, hard-working people, paid by -- they're  
7 going to fall at the feet of our children and grandchildren.  
8 And so we don't have the luxury of only using the perfect  
9 tools. I don't pretend to be right and Mitra wrong on this,  
10 but I think our arsenal is, regrettably, way more limited  
11 and way less targeted than we would like it to be in fee-  
12 for-service, given the state of our delivery system. And  
13 where you come down on that is a matter of judgment and  
14 experience and what not.

15           But I want to be clear. I don't think these are  
16 really well-targeted tools for controlling utilization. I  
17 think they're not.

18           DR. CHERNEW: So, I'll start by saying that I had  
19 my little note that was going to be a really rousing and  
20 passionate support of all of these recommendations in four-  
21 part harmony. But since the comments around the table have  
22 pretty much given most of my reasons, I'll skip much of the

1 details. But I would like to say a few things.

2           You know, in much of the work that I do, I spend  
3 my time trying to figure out how the use of copays can be  
4 made less crude, and there's no doubt that, going forward,  
5 this would be a better recommendation if we had more  
6 information and made it less crude in a whole series of  
7 ways. And, of course, I think to the extent that the text  
8 reflects that, I think that's wonderful. But I think it has  
9 to be clear that the text isn't saying, wait until we can do  
10 it better. I think we have to do it. I think we have to  
11 monitor it and then we can do it better as we move through a  
12 whole series of ways. I think it is the fair thing to do  
13 relative to other services. I think that the fraud and  
14 abuse, for example, isn't new. We have had a very hard time  
15 getting it out. I think copays can be very useful given the  
16 geographic variation, for example.

17           I very much worry that the alternative to  
18 something like copays is lower payment rates and I think  
19 that has the potential to be a disaster in a number of ways.  
20 So I think these types of things that we're talking about  
21 actually are needed to preserve the program. From someone  
22 whose family has used home care and find the program in many

1 ways and the people who provide the service to be true  
2 Godsend, I think it's important to try and make the program  
3 as efficient as possible to support it.

4           There's a few things that I view -- so apart from  
5 my general strong support, there are a few issues that I  
6 think I worry about, or at least think are worth mentioning.  
7 The first one is I'm worried about what you've done with the  
8 duals compared to where our imprimatur was, and I'll explain  
9 why. The only advantage of copays is sort of the incentive  
10 effect one way or another. It's not -- I would be happy if  
11 this was budget neutral. It's not -- the goal is not to  
12 just shift more money to the beneficiary away from the  
13 program but instead to provide the right incentives. And,  
14 of course, if we could do it in a more targeted way, that  
15 would be better.

16           The problem is, as you mentioned in response to my  
17 clarifying question, we don't change the incentives for the  
18 duals at all, so in effect, all that's happening in that  
19 population is we're making the Medicaid program -- or  
20 shifting from the Medicare program to the States. And what  
21 I worry about is the State Medicaid programs and the States  
22 in general are under such financial stress that this will be

1 an impediment to moving forward overall because of that  
2 push-back that you get from the States. We don't want to  
3 have to pay this. And if they do have to pay it, they'll do  
4 other things for certain populations that I care about that  
5 will be worse than any of the things related to this because  
6 they're facing this sort of budget constraint.

7           So I guess I recognize Kate's point about you want  
8 the symmetry between this, and I think fairness would  
9 dictate some symmetry. But the expedient side of my brain  
10 says, you know, we're not going to get any incentive effect  
11 for the duals, so all we're really doing is taxing the  
12 States. I'm not really comfortable doing that. So I'd be  
13 happier if the State Medicaid programs didn't have to pick  
14 up the copays where this is. But regardless of what  
15 decision you make on that, I'm going to vote for it with  
16 both hands. That's just my preference.

17           The second point I'll make is there's been this  
18 question about episode or visit, and I think the theory,  
19 like most things in economics, is very clear and ambiguous.

20           [Laughter.]

21           DR. CHERNEW: And what I mean by that is, on one  
22 hand, the theory -- in a costless world, the theory says you

1 want to put the copay where you think the waste is, where  
2 you think the excess use is, and that in my mind would tend  
3 to argue on a per visit basis. It would sort of be more  
4 efficient in a number of ways.

5           On the other hand, as Bob mentioned, I think  
6 correctly, there's transaction costs to doing it a bunch of  
7 ways. It's very hard if you want to do it on a per visit  
8 basis and collect in certain ways. And so I end up being a  
9 little ambivalent as to both the size of the copays - I  
10 think Mitra's, actually, framework that you want to look in  
11 terms of the behavioral response from the perspective of the  
12 person's income as opposed to the share of the benefit is  
13 the correct framework for thinking about it. And so I'm a  
14 little ambivalent about the \$150, but I think, ballpark --  
15 you know, if this was just a debate that we had to have  
16 about what number to put in the text, I hope we could  
17 reserve one way or another to resolve what that number is.  
18 I think for practical purposes, doing it per episode  
19 probably makes the episode strategy more important, and I  
20 agree with you, you'd want to say something a little more  
21 concrete.

22           So in the end, I come down favoring the per

1 episode approach. I could be convinced otherwise. As long  
2 as we monitor and as long as we think about this and revisit  
3 it, as we do the general copay stuff, I think having a  
4 recommendation of a per episode copay in the ballpark -- I  
5 don't know what number Mitra would suggest we pick. I would  
6 pick more than ten. A hundred-and-fifty, I think, is good.  
7 That's down from where we were before. But I'm comfortable  
8 with the way that it's written and I think it's actually  
9 crucially important that we send the message that we do have  
10 to do this and we have to do this now and we have to do this  
11 because we care about the service as opposed to because we  
12 don't.

13 MR. HACKBARTH: Time to vote. So we had a bunch  
14 of recommendations here and we'll go through them one by  
15 one.

16 Okay. On recommendation number one, all in favor,  
17 please raise your hand.

18 Any no votes?

19 Abstentions?

20 Okay. Recommendation number two, all in favor,  
21 raise your hands.

22 Opposed?

1 Abstentions?

2 Number three, all in favor, raise your hands.

3 Opposed?

4 Abstentions?

5 And number four, all in favor, raise your hands.

6 Opposed?

7 Abstentions?

8 Okay. And, Mike, you didn't vote twice, did you?

9 [Laughter.]

10 [Off microphone discussion.]

11 MR. HACKBARTH: Next Carol is going to lead us  
12 through skilled nursing facilities.

13 DR. CARTER: Okay. Today, right now, we're  
14 talking about skilled nursing facilities. I wanted to start  
15 with a thumbnail sketch of the industry. There are just  
16 over 15,000 providers and about 1.6 million, or about 5  
17 percent of beneficiaries, use SNF services every year.  
18 Program spending in 2010 topped \$26 billion. And just as a  
19 reminder, Medicare makes up about 12 percent of a facility's  
20 days, but about double that, about 23 percent, of their  
21 revenues.

22 Here's the framework. We should be very familiar

1 with that at this point. We had talked about all of these  
2 findings in December, so I'm just going to summarize them  
3 here. Access appears stable for beneficiaries. There's  
4 been a steady growth in the number of -- a small increase in  
5 the number of providers since 2000 and a steady growth in  
6 the number of bed days available. Occupancy rates have  
7 declined, indicating that there is phase two admit  
8 beneficiaries.

9           And although there was a small decline in covered  
10 days and admissions, this reflects lower hospital use.  
11 While most beneficiaries appear to have good access to SNF  
12 services, we noted two troubling trends. First, racial  
13 minorities have lower admission rates compared to white  
14 beneficiaries, and we talked about the possible reasons for  
15 this.

16           Second, the number of SNFs treating medically  
17 complex patients continued to decline. And, Jennie, you  
18 noted that the concentration could reflect that many  
19 facilities don't have the capabilities to furnish complex  
20 care, and I incorporated that comment into the chapter.

21           We noted -- we've long noted the biases of the  
22 payment system to furnish rehab therapy and discussed how

1 some SNFs focus on therapy patients while others may  
2 concentrate on more medically complex patients by having,  
3 for example, ventilator units.

4           Bob, you asked about SNFs with high shares of  
5 medically complex cases and you wanted to know what share  
6 that was. At the 99th percentile, these patients make up 31  
7 percent of those facilities. These facilities were  
8 disproportionately rural, non-profit, and hospital-based.  
9 And as the chapter discusses, CMS has taken important steps  
10 to rebalance payments between therapy and medically complex  
11 care, but we think that more still needs to be done.

12           The Commission's outstanding recommendations to  
13 revise the PPS would address some of these disparities by  
14 redistributing payments towards patients requiring medically  
15 complex care and away from therapy care. And it would also  
16 dampen the incentives to furnish therapy services. Based on  
17 their mixes of patients, these revisions would raise  
18 payments for non-profit SNFs and to hospital-based  
19 facilities, and I'll come back to these recommendations at  
20 the end of the presentation.

21           Turning to other indicators, we've examined risk-  
22 adjusted community discharge and rehospitalization rates and

1 have found that quality was unchanged between 2007 and 2008.  
2 In terms of access to capital, access was improved over last  
3 year and Medicare continues to be a preferred payer.

4 Comparing payments and costs, the aggregate  
5 Medicare margin for free-standing SNFs was 18.1 percent in  
6 2009, indicating that Medicare payments were more than  
7 adequate. There continues to be variation in financial  
8 performance across location and ownership, with rural  
9 facilities having slightly higher margins than urban ones,  
10 and for-profits continue to have considerably higher margins  
11 than non-profits, though this is the smallest difference  
12 that we've seen in a few of the past year. But even for  
13 non-profits, they had an aggregate margin of 9.5 percent.  
14 And as we've noted before, if our outstanding  
15 recommendations were adopted, the disparities in margins  
16 would decrease.

17 Nancy's not here, but I answered her question  
18 about whether SNFs with high Medicare margins also have high  
19 total margins and what their Medicaid shares look like.  
20 This is a table with a lot of figures on it, so I'm going to  
21 walk you through it slowly.

22 We divided facilities into quartiles and those are

1 the four columns across the top, and we divided them into  
2 quartiles by Medicare margin and then looked at several  
3 measures. These are all medium values for the quartile.  
4 You can see the Medicare margin for the quartile on the  
5 first line. And on the second line, you can see the total  
6 margins increase across the Medicare margin quartiles.

7 The bottom quartile SNFs had total margins of .1  
8 percent, while the top quartile SNFs had total margins of  
9 6.9 percent. On the third line, you can see that Medicare  
10 share of facility revenues also increase across the  
11 quartiles, and this is a function of their shares of  
12 intensive therapy days, and that you can see on the next  
13 line. Medicare shares of days don't vary very much across  
14 the quartiles, and I didn't put that here on the slide.

15 On the next line, you can see Medicaid share of  
16 days, and you can see that there was very little variation  
17 in the Medicaid shares. On the bottom two lines, you can  
18 see the cost differences and not payment differences really  
19 drive the financial performance differences. Payments per  
20 day were 8 percent higher across the quartiles, but cost per  
21 day varied by more than 30 percent.

22 We also looked at the efficient providers and to

1 be in the efficient group, we looked at both cost per day  
2 and quality measures. And to be in the efficient group, you  
3 had to be in the top third for one measure and not in the  
4 bottom third for any of the measures for three years in a  
5 row. And almost 850 SNFs met these criteria.

6 Comparing these SNFs to other SNFs, we found that  
7 they had a cost per day that was 10 percent lower after  
8 adjusting for differences in case-mix and wages, community  
9 discharges that were 29 percent higher, rehospitalization  
10 rates that were 16 percent lower, and they had higher  
11 Medicare margins, 21.8 percent compared with 17.4 percent.

12 Looking at their historical trends, efficient SNFs  
13 appeared to pursue strategies to both lower their cost  
14 growth and to increase their revenues. So it's clear that  
15 it's possible to furnish relatively low cost, high quality  
16 care and do very well financially.

17 We project the SNF margin to be 10.9 percent in  
18 2011. The margin goes down because payments were reduced in  
19 2010 to more accurately account for the impact of the case-  
20 mix groups that were implemented in 2006, and then in 2011,  
21 CMS reduced the update to account for a past forecasting  
22 error.

1           Bruce, you asked about how sensitive this  
2 projection was to behavioral assumptions behind it. This  
3 projection does not take into account that SNFs can and have  
4 shifted the mix of days to high payment groups. If we  
5 assume that facilities continue to shift their mix of cases  
6 into high payment groups for 2010, but not for 2011, it  
7 raises the estimated margin by almost 3 percentage points.  
8 This is a reasonable projection because the incentives to  
9 shift payments into high -- patients into high payment  
10 groups remained the same in 2010 as they were in 2009. So  
11 we might assume that the recent historical shifts where  
12 patients were grouped would continue.

13           But in 2011, CMS implemented a host of changes and  
14 we don't know how the industry will react to those. And so  
15 we didn't assume any shift in where days get classified for  
16 2011. Under this mix of assumptions, the aggregate margin  
17 would be 13.6 percent instead of 10.9 percent.

18           At the December meeting, we talked about the  
19 possibility of rebasing payments. When the Commission  
20 considered rebasing for home health payments, MedPAC  
21 examined changes in costs and visits since the PPS was  
22 implemented. Likewise, before rebasing is considered for

1 SNFs, we would like to consider the changes in costs and  
2 practice patterns that shape facilities' costs, and see how  
3 these have changed since the base rates were established.  
4 And we plan to do this work over the summer.

5           This leads us to the Chairman's draft  
6 recommendation, and it reads, "The Congress should eliminate  
7 the update to payment rates for SNFs for fiscal year 2012."  
8 Margins are projected to be more than adequate to  
9 accommodate expected cost growth and the productivity  
10 adjustment. This recommendation would decrease program  
11 spending relative to current law by \$250 to \$700 million for  
12 2012 and by \$1 to \$5 billion over five years. Spending is  
13 lower because current law calls for payments to be updated  
14 by the combination of the market basket and a productivity  
15 adjustment. It is not expected to impact beneficiaries or  
16 providers' willingness or ability to care for Medicare  
17 beneficiaries.

18           We view the update as only one tool to help  
19 increase the accuracy of Medicare payments. Other  
20 recommendations seek to improve the targeting and equity of  
21 Medicare's payments. Although CMS has made progress on  
22 improving the SNF PPS, more work remains to be done, and we

1 plan to reprint the following recommendations to revise the  
2 PPS.

3 As I discussed before, if implemented, these  
4 changes would redistribute payments, but not affect the  
5 level of spending. And second, to establish a quality  
6 incentive payment policy so that program payments are tied  
7 to beneficiary outcomes. This would also affect the  
8 distribution of payments.

9 These recommendations would narrow the differences  
10 in financial performance across facilities and level the  
11 playing field between facilities. So we consider them  
12 really a package. The update sets the level and these other  
13 recommendations are a way of distributing in a better way  
14 payments across facilities. And with that, I look forward  
15 to your discussion.

16 MR. HACKBARTH: Okay, thank you, Carol. Let's  
17 see, it's Mike's turn to begin clarifying questions. Peter?

18 MR. BUTLER: So those are kind of stunning  
19 results, that one chart that shows it's about the cost per  
20 day that is the biggest explanatory variable. Right. The  
21 bottom right-hand corner is the \$284 number, is the one that  
22 gets your attention at the bottom as the reason for the

1 difference. It's not so much the mix, Medicare or non-  
2 Medicare or even the share of intensive therapy days. It's  
3 mostly about the cost per day.

4           So that leads to the more intriguing question, why  
5 do they get it so lower? These are labor-intensive  
6 institutions, so it must be either the mix of caregivers,  
7 the amount they're paying, or the number of them. Do we  
8 have any idea why it's \$284 versus \$325 versus \$406?

9           DR. CARTER: I've looked a little bit at that and  
10 that is the work that I plan to do over the summer. We do  
11 know that the differences in costs are both on the routine  
12 side, which is where the nursing cost would be, and staffing  
13 in general, except for admin, and on the ancillary side. So  
14 they're higher for both categories -- those are pretty broad  
15 buckets, but they are higher for both of those. But that's  
16 exactly the work that I want to do over the summer.

17           MS. BEHROOZI: No.

18           Ms. HANSEN: That same chart. It would be  
19 interesting, Carol, would you be looking -- when you say  
20 that there are different things you're going to be looking  
21 at relative to this, and I just wonder what the staff turn  
22 over rates would be in some of these different facilities

1 because staff replacements and things like that, and the  
2 quality sometimes, has been known to vary when you have a  
3 high turn over rate as well.

4 DR. CARTER: As part of the reform law, facilities  
5 are now required to submit staffing data that will allow us  
6 to calculate turn over rates, but right now we don't have  
7 that data. We would be able to look at staffing levels and  
8 staffing mix, but not the turn over. But you're right.  
9 Those are consistently related to quality measures.

10 MR. KUHN: Carol, on Page 13 where the second part  
11 of the recommendations. The three that you list there, the  
12 add a separate non-therapy ancillary, and the other two, if  
13 I remember right, an outlier policy would take an act of  
14 Congress. Is that correct?

15 DR. CARTER: That's right. CMS does not have the  
16 authority to do that.

17 MR. KUHN: But the other two CMS has the authority  
18 to do those on their own, and as I recall right, MedPAC  
19 first published these recommendations in '08. What's been  
20 CMS's general reaction to those first two?

21 DR. CARTER: They are working on a separate NTA  
22 component design. We have talked with them several times

1 about that, the most recent conversation was in the fall,  
2 and they're making progress on that. I don't know if we'll  
3 see something in this proposed rule or not. I would say  
4 that we haven't made much progress in our conversations with  
5 them about the therapy component.

6 MR. GEORGE MILLER: Yes. Again, thank you for  
7 this information. One of the statements made in the chapter  
8 was a little bit surprising to me, so if you could bear with  
9 me just one second. You said racial minorities make a  
10 larger share of medically complex admissions than rehab  
11 admissions and some minority beneficiaries may experience  
12 delays in being transferred to a SNF and may be placed in a  
13 SNF further from home.

14 So based on that statement, do all beneficiaries  
15 who are medically complex have a problem being transferred  
16 or is it just minorities have the problem being transferred?  
17 It's on Page 16 -- I'm sorry -- Page 10 and 11 on the text  
18 in the chapter you sent us.

19 DR. CARTER: What I found was that African-  
20 American beneficiaries made up 10 percent of SNF admissions,  
21 but 16 percent of special care admissions and 17 percent of  
22 clinically complex. And so, they're disproportionately

1 represented in the case-mix groups that were disadvantaged  
2 by the payment system. And so, I was simply stating that  
3 they would be more likely to have delays. But remember,  
4 since hospitalization is a prior requirement, they're in a  
5 hospital. They're waiting for placement.

6 MR. HACKBARTH: So all medically complex patients  
7 are --

8 DR. CARTER: Yes. Sorry.

9 MR. HACKBARTH: -- in that position and may have  
10 reduced access to care.

11 MR. GEORGE MILLER: Right. I just wanted to make  
12 sure --

13 MR. HACKBARTH: Minority patients are a  
14 disproportionate share of the medically complex, so the  
15 impacts falls. Okay.

16 MR. GEORGE MILLER: Yeah, I got it.

17 MR. HACKBARTH: Nancy? Bruce? Scott? Karen?

18 Round 2 comments. Peter? Mitra? Jennie? Tom?  
19 Mary? Cori? Bob? George? Come on, Bruce, you can do it.  
20 Scott?

21 MR. ARMSTRONG: I could make something up.

22 [Laughter]

1 MR. HACKBARTH: Karen?

2 MS. BEHROOZI: So thorough.

3 MR. HACKBARTH: Yeah, Carol gets the prize --

4 DR. CARTER: I think they're worn out.

5 MR. HACKBARTH: -- anticipating and answer  
6 questions. There's Kate. Kate, did you have any Round 2  
7 comment? You almost missed the vote.

8 DR. BAICKER: No.

9 MR. HACKBARTH: No? No. Okay. You are just in  
10 time to vote on the recommendation. All in favor of the  
11 recommendation please raise your hands.

12 Opposed?

13 Abstentions?

14 Okay. Thank you, Carol. Well done.

15 Last for today is inpatient rehab facilities.

16 Let's see. Christine and Craig are going to do  
17 that.

18 MS. AGUIAR: During this presentation, we will  
19 review the adequacy of Medicare payments to inpatient  
20 rehabilitation facilities. First provide inpatient  
21 rehabilitation services to patients after an injury,  
22 illness, or surgery. Medicare fee-for-service is a

1 principal payer accounting for about 60 percent of IRF cases  
2 in 2009 and \$6 billion in spending.

3           During the December meeting, a number of  
4 Commissioners asked questions for follow-up. Glenn asked  
5 for the number of IRF Medicare patients that are admitted  
6 from the community. In 2009, 2.5 percent of IRF Medicare  
7 patients were admitted from the community. These patients  
8 have to pay the Part A deductible. Also in the December  
9 meeting, Ron asked how soon therapy must begin for patients  
10 admitted over the weekend. IRFs are required to initiate  
11 therapy within 36 hours from midnight of the day of  
12 admission, including for patients that are admitted over the  
13 weekend. I will address the remaining questions later on  
14 during the presentation.

15           As a reminder, we use the same framework for  
16 payment adequacy as the other sectors. This slide reviews  
17 our measures of access to care. Overall, our measures  
18 suggest that access to IRF care is adequate. In 2009,  
19 changes in IRF supply varied by provider category. However,  
20 the total number of IRFs remain relatively stable.  
21 Occupancy rates were also stable in 2009 at 62.8 percent,  
22 which indicates that capacity is adequate to handle current

1 demand.

2           The number of rehabilitation beds also stabled in  
3 2009 after declining between 2004 and 2008. Lastly, IRF  
4 volume stabilized in 2008 and 2009 after declining since  
5 2004. In 2009, the number of IRF cases increased by 1.5  
6 percent.

7           Quality of care is another measure of payment  
8 adequacy. Between 2004 and 2010, the gain in functional  
9 status between admission and discharge increased 3.3 points  
10 for all fee-for-service patients. However, over the same  
11 time period, functional status at admission lowered.  
12 Currently we cannot conclude whether the gain in functional  
13 status between admission and discharge is due to an  
14 improvement in quality or due to the declining functional  
15 status at admission.

16           PPACA requires IRFs to submit data on quality  
17 measures beginning in 2014 and the Secretary must publish  
18 the quality measures the IRFs will submit by 2013. This  
19 past November, we convened a panel meeting of IRF  
20 researchers, clinicians, medical directors, and other key  
21 stakeholders to discuss guidance for CMS on selecting which  
22 measures to include.

1           In summary, participants advised that the indirect  
2 consequences of the quality measures should be considered.  
3 Participants were concerned that access to IRF care could be  
4 limited if facilities changed their admission patterns to  
5 select patients that they would expect to perform well on  
6 the performance measures. However, some panelists suggested  
7 that this concern could be lessened by developing condition-  
8 specific quality measures or through risk adjustment.

9           Participants also advised that the quality  
10 measures be malleable and able to change as the  
11 rehabilitation and medical care provided in IRFs evolves.  
12 Participants agreed that both process and outcome measures  
13 are important for analyzing IRF quality of care, and they  
14 discussed potential definitions and considerations for the  
15 measures in the table on the slide.

16           In addition, participants strongly felt that risk  
17 adjustment is necessary. Panelists were also largely in  
18 agreement that the IRF-patient assessment instrument is the  
19 best tool for CMS to use to collect quality data. The  
20 details of the panel discussion are included in your  
21 background materials, and I can discuss the panel's  
22 conversation on any of the measures in detail if you have

1 any questions.

2           Access to capital is another payment adequacy  
3 measure. Hospital-based unit have access to capital through  
4 their parent institution, and as we heard during this  
5 morning's inpatient hospital presentation, hospitals' access  
6 to capital appears adequate. In addition, two major  
7 national free-standing IRF chains are able to access the  
8 capital markets.

9           Per Peter's request from the December meeting,  
10 this graph shows growth in cost-per-case from 2005 through  
11 2009, adjusted for case-mix and wages. In 2005, IRFs were  
12 responding to the compliance thresholds that was renewed the  
13 previous year, and cost-per-case growth was high for both  
14 provider types due to large volume declines.

15           Between 2005 and 2006, the compliance threshold  
16 increased from 50 percent to 60 percent. In 2006, volume  
17 continued to decline across both provider types, and case-  
18 mix increased at a higher rate than the year before as IRFs  
19 adjusted to meet the increase in the compliance threshold to  
20 60 percent.

21           In 2006, case-mix increased by about 7 percent for  
22 hospital-based IRFs and 3 percent for free-standing IRFs,

1 and after adjusting for case-mix, growth in cost-per-case  
2 was lower in 2006 than the previous year for both hospital-  
3 based and free-standing IRFs. After 2006, growth in case-  
4 mix slowed down across provider groups. Since 2007,  
5 hospital-based IRFs adjusted growth in cost-per-case has  
6 been similar to overall hospital-adjusted cost growth.

7 Nancy asked a question during the December meeting  
8 about how free-standing IRFs were able to control cost  
9 growth. To follow up on Nancy's question, we spoke with  
10 representatives of a large free-standing IRF chain. The  
11 representatives attribute their cost management to a number  
12 of factors.

13 First, the representatives stated that cost  
14 management is the main focus of this chain because the  
15 primary service provided in the hospitals is rehabilitation  
16 care. The chain has a history of focusing on cost  
17 management, and as a result did not need to adjust their  
18 cost management strategies in 2008 and 2009 when IRF  
19 payments were held at 2007 levels.

20 Second, within the past two years, the chain  
21 acquired an IT system that permits the hospitals to manage  
22 staff schedules in real time. Since salaries and benefits

1 account for approximately 50 percent of the chain's net  
2 revenues, the chain heavily focuses on managing the number  
3 and mix of staff.

4           Lastly, the chain builds and designs the hospitals  
5 to maximize efficiency. For example, the chain will design  
6 hospitals to be one story, to the extent possible, because  
7 the use of elevators reduces efficiency.

8           IRF margins declined between 2008 and 2009, as we  
9 see on this slide, but remained a healthy 8.4 percent across  
10 the industry. The margin decline in 2009 is expected  
11 because 2009 payment rates were frozen at 2007 levels. The  
12 difference between the 20.1 percent margins for free-  
13 standing facilities and the 0.5 percent margins for  
14 hospital-based units in 2009 is likely due to the ability to  
15 constrain cost growth, as we saw in the previous slide, and  
16 volume.

17           Hospital-based units in general have lower  
18 occupancy rates than free-standing facilities and also tend  
19 to be smaller facilities. Almost half of hospital-based  
20 IRFs are facilities with 11 to 21 beds; whereas, 50 percent  
21 of free-standing IRFs are facilities with 60 beds or more.  
22 To follow up on Nancy's question from the December meeting

1 on total margins, all payer margins for free-standing IRFs  
2 have been healthy since 2002, and were 7.6 percent in 2009.

3 To project the aggregate Medicare margin for 2011,  
4 we modeled the following policy changes for 2010 and 2011.  
5 Market basket minus .25 percent, as specified in PPACA, for  
6 2010 and 2011; and an adjustment to the outlier threshold in  
7 2011, the CMS estimated, will slightly reduce IRF payments.  
8 We estimate that Medicare margins for 2011 will be 8.1  
9 percent.

10 Overall, on the basis of our analysis, we believe  
11 the IRFs could absorb cost increases and continue to provide  
12 care with no update to the payments in 2012. The draft  
13 recommendation is, "That Congress should eliminate the  
14 update to the payment rates for inpatient rehabilitation  
15 facilities in fiscal year 2012."

16 We estimate that this recommendation would  
17 decrease federal program spending relative to current law by  
18 between \$50 and \$250 million in 2012, and by less than \$1  
19 billion over five years. We do not expect this  
20 recommendation to have adverse impacts on Medicare  
21 beneficiaries. This recommendation may increase the  
22 financial pressures on some providers, but overall, a

1 minimal affect on providers' willingness and ability to care  
2 for Medicare beneficiaries is expected.

3 This concludes the presentation. I welcome any  
4 questions.

5 MR. HACKBARTH: Thanks, Christine. Could I ask a  
6 question about the table on Page 10? So the hospital-based  
7 row struck me. I expected there to be a difference in the  
8 level, but there's also a difference in the trend here, a  
9 pretty dramatic difference in the trend. Any theories on  
10 why the trend is so much more steeply downward for hospital-  
11 based?

12 MS. AGUIAR: We think that it's related to both  
13 economies of scale, so in the sense that the hospital-based  
14 IRFs do tend to be smaller facilities and do tend to have  
15 lower occupancy rates. And so, I think that that could be  
16 one factor as well.

17 MR. HACKBARTH: Well, wouldn't that affect more  
18 the level unless they're shrinking in size at a pretty  
19 dramatic rate?

20 MR. LISK: Can I?

21 MS. AGUIAR: Yes.

22 MR. LISK: A couple of things. On the free-

1 standing, you actually saw them reducing costs in 2009, for  
2 instance, in terms of their actual, reducing costs even at  
3 the same time that payment rates were brought back to 2007  
4 levels. So that's one factor that happened.

5 In terms of what the underlying cost growth is for  
6 hospital-based, we look on a case-mix basis, what cost  
7 growth has been in hospitals in general in the more recent  
8 period, but it was higher earlier on because of the decline  
9 in volume. And they were affected more by declining volume,  
10 I believe, with the effect of the threshold rule for cases  
11 to compliance threshold.

12 MS. AGUIAR: Right. I think if you sort of look  
13 at this slide, which this again was per Peter's request  
14 because in the December meeting, we presented this  
15 unadjusted for case-mix and wage index, and I think in this,  
16 you can sort of see the story where the free-standing  
17 facilities have been able to control cost growth a little  
18 bit more.

19 Both sides, both free-standing and hospital-based,  
20 have been impacted by volume declines and also increases in  
21 case-mix. But sort of overall, free-standing facilities  
22 have had higher CMI case-mix indexes since 2002 and we see,

1 especially post-2007, that they are able to manage their  
2 cost growth a little bit better. Which again, that then  
3 led to Nancy's question for us to get some examples of how.

4 MR. HACKBARTH: Okay.

5 MR. LISK: And there was actually also for the  
6 non-Medicare population in the free-standing, there was  
7 actually increases in volume the last two years, I believe.

8 MR. BUTLER: Because this was mine and I'm into  
9 this, but what I remember was that the hospital-based, there  
10 were certainly differences in costs because of the economy  
11 to scale, but their occupancy didn't shrink by very much.  
12 So they went from like 67 to 62 percent, or something like  
13 that, so it didn't look like the rate of decline in volume  
14 was much different in the two, or the occupancy rates, but  
15 they either couldn't manage their costs as well or there's a  
16 change in mix that we can't detect. One or the other. And  
17 if we don't have the data to suggest that they have a  
18 different mix, then we have to conclude that cost management  
19 is what did it.

20 MS. AGUIAR: I think -- and you're right. In the  
21 December meeting, we had the slide on occupancy rates and we  
22 pulled that out for this presentation. But they declined

1 between '04 and '08. Occupancy rates declined by 5.8  
2 percent.

3 MR. BUTLER: From like 67 to 62, right, or  
4 something like that?

5 MS. AGUIAR: Yeah, from 65 to 60.

6 MR. BUTLER: And what happened to occupancy rates  
7 in the free-standing?

8 MS. AGUIAR: So 66 to then 60 was the decline for  
9 hospital-based. And then for free-standing, it was from  
10 about, if you're rounding up, 72 to 67.

11 MR. BUTLER: Yeah, so similar rates of decrease in  
12 occupancy rate.

13 MS. AGUIAR: Right.

14 MR. BUTLER: So now you can say. But if you have  
15 economies to begin with, then it's on a -- I don't know.

16 MR. HACKBARTH: Potentially that would a factor if  
17 they're smaller units to begin with and you have the same  
18 percentage decline. It would hit harder on a smaller unit  
19 with a higher proportion of overhead costs. Okay. Karen,  
20 you're up, clarifying questions.

21 DR. KANE: Just so I make sure I'm correct, the  
22 wage index that we're referring here to is the same as the

1 hospital wage index, correct?

2 MS. AGUIAR: Yes.

3 DR. BORMAN: Okay.

4 DR. STUART: This is also an occupancy question.

5 Is the rate of occupancy, is this just a number of beds that  
6 are there divided by the number of people over time, or is  
7 it staffed occupancy?

8 MS. AGUIAR: No, it's occupancy in terms of the  
9 number of -- let me get you exactly how we calculate that.

10 DR. STUART: I assume it's the former. I mean,  
11 you wouldn't staff a hundred percent of your beds if only 60  
12 percent were --

13 MR. LISK: It's traditionally staffed beds, but  
14 you can have units that they decide that they're only going  
15 to use one of the beds in a unit because of contagious  
16 disease and things like that, too.

17 DR. STUART: Well, that raises a question then  
18 about whether it's the average occupancy that's really the  
19 important thing, or whether it's temporal instability in  
20 occupancy. In other words, is the occupancy, average  
21 occupancy rate low because you have a lot of fluctuations  
22 back and forth that the hospital essentially is unable to

1 control for?

2 MS. AGUIAR: I think what your question is, sort  
3 of asking us -- I want to make sure that I understand -- is  
4 if you're saying, you know, if you have a 1 to 10 or a 10 to  
5 21 bed facility, that sort of any sort of drop in occupancy  
6 will hit them more than a 50-plus facility. Is that what  
7 you're saying?

8 DR. STUART: That I understand. I'm just  
9 wondering about what the fluctuation in occupancy is.  
10 Obviously it's going to have a bigger impact on smaller  
11 facilities, but is it also very large in large facilities?

12 MR. LISK: We really don't know. I mean, we don't  
13 have any way of really checking that. I mean, my impression  
14 has been it's pretty stable, but I'm not -- but that's just  
15 an impression. But even a one-bed change in a ten-bed  
16 facility is big.

17 DR. STUART: No, no, I understand that part. But  
18 I'm just thinking, well, if you have claims with claims  
19 dates, you should be able to -- and you know what the  
20 facility is, you ought to be able to figure out there's a  
21 lot of fluctuation.

22 MS. AGUIAR: Oh, right, exactly. We could

1 definitely figure it out. We might actually already have  
2 that and we just haven't looked at it. So we could get back  
3 to you on that.

4 MR. HACKBARTH: Round 1 clarifying questions?  
5 Kate, Nancy, George?

6 MR. GEORGE MILLER: Yeah, just briefly. In the  
7 chapter, and maybe I completely missed it, but I didn't see  
8 any demographic information for the patients. Did I miss  
9 that?

10 MS. AGUIAR: No, I did have it in the text box  
11 where I was comparing the fee-for-service and Medicare  
12 Advantage patients. So that was the section where it would  
13 be in, but we did not include that MA/fee-for-service  
14 comparison in either the December meeting or in this  
15 meeting.

16 MR. GEORGE MILLER: Text box, okay.

17 MR. HACKBARTH: Herb?

18 MR. KUHN: Christine, just a quick question on  
19 Slide 7. And the issue of the notion that the IRF-PAI would  
20 be the data collection instrument, obviously CMS is  
21 continuing the development of the standardized assessment  
22 instrument for all post-acute care providers. Do we think

1 that would be a good data collection tool?

2 MS. AGUIAR: You mean the Care tool?

3 MR. KUHN: Yeah.

4 MS. AGUIAR: That did come up in the discussion,  
5 and the way that the panel -- we sort of framed the  
6 discussion was, let's just discuss now in the world without  
7 the Care tool having yet been implemented because it's still  
8 sort of not known, I think, when that tool would be rolled  
9 out. And given that the time line for this is fiscal year  
10 2013-2014, the panel were sort of just going into the --  
11 operating in the world where the Care tool would not be  
12 available before then. And so, that's why really they were  
13 focusing on the IRF-PAI.

14 MR. KUHN: That makes sense. I guess the concern  
15 I would have on a go-forward basis is per our conversation  
16 this morning when we were talking about outpatient and  
17 trying to come up or begin the process of a site-neutral  
18 kind of payment system. There's always been the talk about  
19 a site-neutral payment system for post-acute care, and a  
20 standardized assessment tool was going to be key. So I  
21 understand for the here and now the IRF-PAI would be the  
22 useful tool, but we've got to think about transitions as

1 well.

2 MS. AGUIAR: Right, exactly, and that did come up  
3 and that was something that some of the panelists were  
4 supportive of, is using the Care tool and actually we're  
5 really looking forward to when that Care tool came out, not  
6 just as a data collection method for the IRF-PAI reporting,  
7 but also that Care tool, they felt, has more questions that  
8 could be used for risk adjustment that are not currently  
9 being collected.

10 DR. CHERNEW: I just have a question about how  
11 margins are computed from Slide 10 for the hospitals. This  
12 includes a whole series of allocations, right? So of the  
13 costs that you would see, how much of it are things that are  
14 broad hospital things that are allocated to the IRF? You  
15 know, if the IRF went away, it would just get allocated  
16 somewhere else. And how much of it is really -- I don't  
17 know how to quite say this -- direct IRF spending?

18 MS. AGUIAR: I'll let Craig answer this question,  
19 but I think that my understanding is that there was work  
20 done on this in the past few years to check how the  
21 hospital-based costs were, in fact, allocating to the IRFs.  
22 I think that is something that we do definitely want to

1 revisit in the future.

2 MR. LISK: Yeah. In terms of that past research  
3 that we did, in terms of looking at the allocation of IRF  
4 costs -- and I can't remember all the numbers off the top of  
5 my head, unfortunately, but we didn't really see an  
6 allocation problem issue. But yes, you're right about some  
7 of those costs, if the IRF didn't exist, potentially would  
8 be allocated somewhere else because you have that physical  
9 space, for instance, that would have to be allocated as  
10 well.

11 But what we do see, if we look at overall Medicare  
12 margins for hospitals within IRF, we see that their margin  
13 is actually higher. We also see, if we look at the  
14 inpatient margin, we actually see that the inpatient margin  
15 is higher, a little bit higher for those facilities, too,  
16 facilities within IRF compared to facilities without.

17 DR. CHERNEW: So do you interpret that as  
18 facilities that have good margins spend some of it to create  
19 an IRF because they're nice, or do you interpret that as the  
20 IRF is in some way profitable and it helps them with their  
21 margin?

22 MR. LISK: It could be both.

1 DR. MARK MILLER: This is a point that has come up  
2 a couple of times and Craig and I were talking about this  
3 very point. You do see these hospital-based margins and  
4 sometimes you're sort of, like, how the hell does this all  
5 work and how do you keep going when you have these large  
6 margins. Make sure I get this right. In terms of overall  
7 margins and inpatient margins, with and without a hospital  
8 base, an IRF helps you. A SNF helps you. And a home health  
9 is a wash.

10 So you can either interpret that as people -- and,  
11 George, I think you've made this point before where hospital  
12 administrators sort -- and, Peter, maybe you have as well --  
13 sort of looks at the bottom line and looks across lines of  
14 business, or your other hypothesis. I hadn't really  
15 considered that. I'm doing well, so I'm going to offer this  
16 service, but it tends to look like it helps overall.

17 MR. HACKBARTH: Okay. Any others? Let's vote  
18 then. Would you put the recommendation up?

19 That was just Round 1. Excuse me. Round 2?  
20 Karen? Scott? Bruce? Kate? Nancy?

21 DR. KANE: I just have one quick comment about  
22 that cost differential, the rate of growth. It's

1 interesting what they say they do, which is try to manage  
2 staff costs. I call that kind of basic. Does that suggest  
3 that the hospital-based ones don't do that?

4 MS. AGUIAR: I would say the way that they  
5 explained it to me, and I'm only hesitating because I did  
6 ask them sort of as a free-standing facility what are you  
7 doing, less what you think -- compared to what hospital-  
8 based IRFs would be doing. But what they said to me is this  
9 chain in particular has such a focus on cost control and has  
10 historically, and the fact that they were able to get this  
11 IT system within the past year-and-a-half to two years  
12 really helped them because now they could get real-time  
13 reports.

14 So the example they gave me was that they could  
15 see what was the staffing structure like for the shift  
16 before and that they're able to make changes for the shift  
17 then the next day. So they're just able to respond more  
18 rapidly than perhaps other facilities that don't have that.

19 What they did sort of opine about the difference  
20 between the hospital-based is -- and again, depending on how  
21 big the IRF unit is in a hospital-based, and I think they  
22 were talking about the comparisons to much smaller units.

1 Whereas, the representative that I was speaking to was  
2 saying that because they do IRF care, he gets reports every  
3 single day. They focus on that all the time. Whereas,  
4 perhaps in a hospital -- you know, his counterpart might be  
5 more inclined to look at how the operating room is going,  
6 the ER room, and looking for less efficiencies within the  
7 IRF unit if it's really a small unit.

8 DR. KANE: So that would suggest that the focus,  
9 the fact that they're just totally focused --

10 MS. AGUIAR: Exactly.

11 DR. KANE: -- might be the reason they're  
12 relatively more efficient.

13 MS. AGUIAR: Right. The intensity of the focus  
14 and then this IT that has really helped them to respond from  
15 day to day.

16 DR. KANE: It's interesting.

17 DR. NAYLOR: I thought this last set of comments  
18 were really helpful in interpreting the reductions in  
19 margins and the fact that there are no differences in  
20 quality. So I'm very supportive of it.

21 MS. BEHROOZI: You mentioned it, Christine, and I  
22 just wanted to highlight it a little bit, the text box

1 comparing Medicare Advantage and fee-for-service use, and I  
2 realize that it's only the first six months of data, but it  
3 seems like there could be a rich trove of information in  
4 there, noting that MA plans use IRFs at half the rate,  
5 essentially. I'm not saying it quite right, but something  
6 along those lines, and it seems like for higher case-mix  
7 index patients. I just wondered what else you thought you  
8 might be able to divine from this information, what else  
9 you're going to be looking at, and whether you can tell  
10 whether they're using other substitute services for those  
11 other patients.

12 MS. AGUIAR: That's an excellent point and we  
13 presented it right now as a text box and really haven't  
14 emphasized it in the public presentations because this is  
15 just raw data or raw counts, and I definitely, once we get  
16 more of a full year's data, want to be able to look into it  
17 more, do some more sophisticated analyses, try to see sort  
18 of if we could figure out -- you know, because it seems like  
19 they have a shorter length of stay. If you look at it just  
20 initially, like we did, a shorter length of stay, it seems  
21 like they have a higher case-mix index.

22 And taking not exactly the same mix of patients,

1 but they take more stroke patients than you see in sort of  
2 fee-for-service. So that definitely raises a lot of  
3 questions I definitely want to delve into future for the  
4 next cycle and just do a little bit more of a robust  
5 analysis.

6           The limitation to this is, unfortunately, we don't  
7 have the MA data on where else those patients would have  
8 gone to, because only for the IRFs so far are the IRFs  
9 required to report on the MA patients and you don't have  
10 that requirement, I don't believe yet, for the other post-  
11 acute settings. So that is, unfortunately, a limitation  
12 because we can't sort of be able to see, you know, if  
13 they're taking, for example, more stroke patients and less  
14 hip and knee patients than are in fee-for-service. Well,  
15 where are they sending those hip and knee patients to? So  
16 that is a limitation of this data.

17           MS. BEHROOZI: Given the oft-stated desire to be  
18 able to look at post-acute care as a whole, can we consider  
19 a recommendation that the other types of service have to  
20 make the same kind of reporting on Medicare Advantage just  
21 to be able to make better use of this data that's being  
22 generated in the IRF context?

1 DR. MARK MILLER: I may be missing the play here,  
2 but we should be able to start doing that as the encounter  
3 data comes in and, Carlos, on '12 or '13? I can't remember.

4 MR. ZARABOZO: '12.

5 DR. MARK MILLER: '12. So it's supposed to start  
6 coming in 2012. Before everybody gets wildly excited about  
7 that, generally what happens is that the quality of the data  
8 improves over time. Some of the first submission can be  
9 problematic but, you know, I don't want to say that. Maybe  
10 it will be just fine. But in '12 is when it's supposed to  
11 come in.

12 MR. BUTLER: So I'm still not convinced on kind of  
13 the focused factory larger enterprise. I think it can be  
14 run more efficiently, but the rate -- how things change, I  
15 don't really attribute to that. But I'll still support the  
16 recommendation because I don't have data to suggest it ought  
17 to be something else. But I would give you an interesting  
18 observation. The amount of attention that they said,  
19 investing in IT to manage labor, well, while we were doing  
20 that, we completed our inpatient electronic record,  
21 including in our rehab facility so we can follow our stroke  
22 patients. So while they were investing in the management of

1 labor in IT, we delayed our ERP, which is used to manage  
2 labor, and put it into the clinical records side. Maybe  
3 there isn't the ROI in the short run, but it does say  
4 something about -- you know, and that added to those costs  
5 of running that unit. I don't know if that's good or not,  
6 but it does say something about the silo effect on where you  
7 put your dollars. It's just an interesting observation.

8 MR. HACKBARTH: Can we put the recommendation up?  
9 All in favor, please raise your hands.

10 Opposed?

11 Abstentions?

12 Okay, thank you very much. So that concludes our  
13 presentations for today. We'll now have a brief public  
14 comment period.

15 [No response]

16 MR. HACKBARTH: Seeing no commenters, we are  
17 adjourned until tomorrow morning at 9:00 a.m.

18 Commissioners, our dinner meeting begins at 6:00  
19 in the same room where we had lunch.

20 [Whereupon, at 4:30 p.m., the meeting was  
21 recessed, to reconvene at 9:00 a.m. on Friday, January 14,  
22 2011.]

## MEDICARE PAYMENT ADVISORY COMMISSION

## PUBLIC MEETING

The Horizon Ballroom  
Ronald Reagan Building  
International Trade Center  
1300 Pennsylvania Avenue, N.W.  
Washington, D.C.

Friday, January 14, 2011  
9:01 a.m.

## COMMISSIONERS PRESENT:

GLENN M. HACKBARTH, JD, Chair  
ROBERT BERENSON, MD, FACP, Vice Chair  
SCOTT ARMSTRONG, MBA  
KATHERINE BAICKER, PhD  
MITRA BEHROOZI, JD  
KAREN R. BORMAN, MD  
PETER W. BUTLER, MHSA  
MICHAEL CHERNEW, PhD  
THOMAS M. DEAN, MD  
NANCY M. KANE, DBA  
HERB B. KUHN  
GEORGE N. MILLER, JR., MHSA  
MARY NAYLOR, PhD, RN, FAAN  
BRUCE STUART, PhD  
CORI UCCELLO, FSA, MAAA, MPP

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1 P R O C E E D I N G S [9:01 a.m.]

2 MR. HACKBARTH: Okay, good morning. We have three  
3 sessions today--two on updates and then a report on Medicare  
4 Advantage, and Dana is going to begin with long-term care  
5 hospitals.

6 \* MS. KELLEY: Good morning. I'm going to review  
7 our findings on payment adequacy for LTCH services, and then  
8 you'll vote on the draft recommendation.

9 You will recall, of course, that LTCHs furnish  
10 care to patients with clinically complex problems who need  
11 hospital-level care for extended periods of time. In 2009,  
12 about 116,000 Medicare benes - beneficiaries -- had about  
13 131,500 LTCHs days, and Medicare spent about \$4.9 billion on  
14 this care, 404 LTCHs filed Medicare cost reports in 2009,  
15 and Medicare payments to LTCHs were made on a per-discharge  
16 basis based on the MS-LTC-DRGs, which are the same groups as  
17 those used in the acute inpatient PPS but with relative  
18 weights that are specific to LTCH cases.

19 Before I turn to the summary of our update  
20 analysis, I want to note a few changes to the chapter that  
21 were made in response to your comments last month. First,  
22 as requested, I've included a text box outlining MedPAC's

1 previous recommendation on the development of patient and  
2 facility criteria for LTCHs. You can see that  
3 recommendation here.

4 I've also learned that CMS is planning to issue a  
5 proposed rule by September 2011, outlining facility criteria  
6 for LTCHs. My understanding is that these criteria will  
7 conform to those that were outlined in MMSEA. These include  
8 the requirement of a patient screening and review process to  
9 determine appropriateness of admission and continued stay at  
10 LTCHs. However, it's not clear, to me at any rate, what the  
11 basis will be for determining the appropriateness of  
12 admission to LTCHs because MMSEA was silent on that.

13 MMSEA also calls for LTCHs to have a physician on  
14 site on a daily basis and a consulting physician on call.  
15 So I anticipate that those requirements might be included as  
16 well.

17 We've also included a chapter a map that shows the  
18 distribution of LTCHs nationwide. The country looks a  
19 little narrow. And thanks go to Matlin Gilman for his  
20 creation of this map. Here, you can clearly see the  
21 clustering of LTCHs in certain areas of the country, which  
22 we discussed last month.

1           George, you'll find the demographic information  
2 you asked for on pages 17 and 18 of the chapter, and you can  
3 see here as well that beneficiaries admitted to LTCHs are  
4 disproportionately African American. There are a number of  
5 reasons why this might be the case:

6           The higher LTCH use among African Americans might  
7 be due to a greater incidence of critical illness among, in  
8 this population.

9           At the same time, studies of ICU patients have  
10 found that African Americans are less likely to choose  
11 withdrawal from mechanical ventilation and less likely to  
12 have do-not-resuscitate orders. So African Americans might,  
13 for that reason, be more likely to opt for or be directed to  
14 LTCHs.

15           Researchers have also suggested that the  
16 concentration of LTCHs in urban areas could be a factor, and  
17 further, as you can see in this slide, a disproportionate  
18 number of LTCH users are under 65, a subgroup that is itself  
19 more likely to be African American.

20           You also asked about dual eligibles, and our  
21 analysis of beneficiaries admitted to LTCHs in 2009 finds  
22 that 40 percent were dually eligible at some point during

1 the year. Some of these patients may have become dually  
2 eligible over the course of a long spell of illness that  
3 includes an LTCH stay.

4 And finally, Nancy, you asked whether there was a  
5 trend in physician ownership of LTCHs, and we looked at  
6 LTCHs that have opened since 2007 and found that few appear  
7 to be physician-owned.

8 So I'll turn now to our update analysis. First,  
9 we assessed beneficiary access, looking at capacity and  
10 supply. This slide shows the growth in the number of LTCHs  
11 in the U.S. After rising rapidly from the early 1990s until  
12 2005, growth in the number of LTCHs leveled off between 2005  
13 and 2008.

14 But between 2008 and 2009, as you can see here,  
15 there was another uptick in the number of LTCHs, a rise of  
16 about 7 percent. This was surprising to some observers  
17 because of the moratorium that Congress imposed beginning in  
18 July 2007. However, exceptions to the moratorium were made  
19 for LTCHs that were already in the construction pipeline or  
20 that already certificates of need. So that exception  
21 allowed the influx of new facilities that we see here.

22 Preliminary analysis suggests that far fewer LTCHs

1 opened in 2010.

2 The rate of growth in the number of LTCH beds also  
3 picked up between 2008 and 2009, and nationwide there were  
4 about 27,000 certified LTCH beds in 2009.

5 Looking at growth in the number of cases per  
6 10,000 fee-for-service beneficiaries, we see a slight  
7 increase in the past few years.

8 So taken together, these trends suggest to us that  
9 access to care has been maintained during this period, but  
10 as you know, it's difficult to assess access in this setting  
11 because it's not clear that all patients treated in LTCHs  
12 require that level of care or that LTCHs are always the best  
13 place for some of these patients to receive that care.

14 As you know, LTCHs do not submit quality data to  
15 CMS at this time. So we rely on trends in in-facility  
16 mortality, mortality within 40 days of discharge and  
17 readmission to acute care hospitals to assess gross changes  
18 in the quality of care in LTCHs. In 2009, we found that  
19 these rates were stable or declining for most of the top 20  
20 diagnoses.

21 To assess access to capital in the LTCH industry,  
22 we looked first at the three largest LTCH chains, which

1 together own slightly more than half of all LTCHs. These  
2 chains are all publically traded. In 2010, they continued  
3 with construction of new LTCHs that were already in the  
4 pipeline and thus exempt from the moratorium. In addition,  
5 these chains acquired other LTCHs and other PAC providers.  
6 According to the chains' filings with the SEC, all three  
7 have access to revolving credit facilities that they've  
8 tapped to finance these acquisitions.

9           However, smaller LTCH chains and non-chain LTCHs  
10 likely don't enjoy that same access to capital that the  
11 large chains do. Policymakers' increased scrutiny of LTCHs  
12 spending and quality has heightened investor anxiety about  
13 the industry in general, and some analysts consider it to be  
14 one of the riskiest of the health care provider settings.

15           Since implementation of the LTCH PPS in 2003,  
16 average margins for LTCHs have been fairly robust. Overall,  
17 the 2009 margin was 5.7 percent, but margins do vary across  
18 different types of LTCHs. Rural LTCHs and non-profit LTCHs  
19 have significantly lower margins on average than urban and  
20 for-profit LTCHs. Rural and non-profit LTCHs care for a  
21 lower volume of patients on average compared with their  
22 urban and for-profit counterparts, so that may result in

1 poorer economies of scale.

2 For purposes of projecting 2011 margins, we  
3 modeled a number of policy changes. We included updates in  
4 2010 and 2011. For both years, the update was the market  
5 basket less adjustments for documentation and coding  
6 improvements, and the PPACA-mandated reduction for the  
7 applicable year. This resulted in a small but positive  
8 update for 2010 and an update for 2011 of minus half a  
9 percent.

10 We also made an adjustment for changes to outlier  
11 payments in 2011, which we estimate will increased aggregate  
12 payments.

13 All together, these effects will result in  
14 somewhat greater growth in provider costs than in aggregate  
15 payments for these years. Assuming providers' costs go up  
16 at projected market basket levels, we've projected a margin  
17 of 4.8 percent in 2011. You'll note that this is a positive  
18 margin in spite of the negative update for that year.

19 So moving on to the draft recommendation you  
20 discussed last month, it reads as follows: The Secretary  
21 should eliminate the update to the payment rates for long-  
22 term care hospitals for rate year 2012.

1 CMS has historically used the market basket as a  
2 starting point for establishing updates to LTCH payments.  
3 Thus, eliminating the update for 2012 will produce savings  
4 relative to the market basket. We don't anticipate any  
5 adverse impact on beneficiaries or on providers or on  
6 providers' willingness to care for beneficiaries.

7 So before I turn it over to you, I'll just remind  
8 you that PPACA requires CMS to implement a pay-for-reporting  
9 program for LTCHs by October 2013.

10 Our draft chapter includes a summary of the  
11 findings from our recent panel discussion on quality  
12 measurements in LTCHs. We convened this panel to get some  
13 sense of what LTCH-specific quality measures might be  
14 available now or with further development. Our hope is that  
15 the information we learned will be useful to CMS as it moves  
16 forward with quality measures.

17 Our panel suggested that CMS begin with a starter  
18 set of measures, building on those that LTCHs are already  
19 using for internal quality monitoring, and these include the  
20 measures that are listed here.

21 Panelists also discussed the issue of risk  
22 adjustment of quality measures in LTCHs. There was

1 agreement that risk adjustment was generally not appropriate  
2 for patient safety measures as long as a present-on-  
3 admission indicator was used.

4           And panelists agreed that risk adjustment was  
5 necessary for outcomes measures, but the consensus was that  
6 risk varies less in LTCHs than in other settings. Many in  
7 the group argued that the issue of risk adjustment should be  
8 an impediment to moving forward as quickly as possible.

9           Regarding data collection, the panelists generally  
10 agreed that CMS's starter set of measures should be ones  
11 that can be collected from administrative data until a  
12 common assessment tool is available.

13           Our draft chapter also notes that a pay-for-  
14 reporting program is just a first step and urges the  
15 Congress to move as quickly as possible to public reporting  
16 and a pay-for-performance program. We also encourage CMS to  
17 be mindful of the measures that are already being used in  
18 other post-acute care settings and to strive, when feasible  
19 and appropriate, to replicate those measures in the LTCH  
20 quality measurement set, so that policymakers are able to  
21 compare quality of care and patient outcomes across the  
22 post-acute care spectrum.

1           So that concludes my presentation. I'll turn it  
2 back to the recommendation, and I'm happy to answer any  
3 questions.

4           MR. HACKBARTH: Thank you, Dana. Let me ask a  
5 clarifying question. At the outset, you said that CMS is  
6 planning a proposed rule for the fall, covering the facility  
7 criteria, I think you said.

8           MS. KELLEY: That's right.

9           MR. HACKBARTH: It caught my ear that there was no  
10 mention of patient criteria. Could you just elaborate?

11          MS. KELLEY: CMS was not able to give me a great  
12 deal of detail because things are still in a draft form at  
13 this time. What I was told is that the criteria will be  
14 facility criteria, and it will follow closely what was --  
15 what's the word I'm looking for? What was in MMSEA. And so  
16 as I spoke to you before, MMSEA requires the review of  
17 patient appropriateness of admission and continued stay, and  
18 also to have some physician presence in the facility.

19          So my -- the sense I got was that these will be --

20          MR. HACKBARTH: They're sort of combining the two  
21 under the heading.

22          MS. KELLEY: Yes, and that it will be more of a

1 minimum level of criteria rather than a high bar -- that was  
2 the sense that I got. That's my interpretation of what I  
3 was told.

4 MR. HACKBARTH: So round one clarifying questions,  
5 Mike, Peter, Mitra, Tom.

6 Any clarifying questions?

7 Herb.

8 MR. KUHN: Just one quick question, on page 6 of  
9 the presentation, on the growth, on the access and growth,  
10 those additional facilities that we saw continuing to come  
11 through the system, were they hospital-within-a-hospital  
12 facilities or were they free-standing or is there any  
13 indication kind of where the growth has been?

14 MS. KELLEY: We've had -- historically, we've had  
15 some difficulty distinguishing between hospitals within  
16 hospitals and freestanding facilities. It's not always  
17 precisely clear what a facility's status is, which is why  
18 we've stopped reporting the information separately for those  
19 types of providers. But my sense is, having looked at the  
20 data pretty closely, that these are predominantly  
21 freestanding facilities. The payment policy regulations  
22 that have been put in place over the last few years favor

1 freestanding facilities in general over hospitals within  
2 hospitals, particularly given the 25 percent rule.

3 MR. HACKBARTH: George.

4 MR. GEORGE MILLER: Yeah, I don't know if you --  
5 first off, thank you for this report and also the  
6 demographic information. I really appreciate that.

7 And I don't know if you can answer this question,  
8 but in dealing with the hospitals that are considered  
9 efficient providers is there a relationship with the  
10 efficient hospitals, whether they have a LTCH in their  
11 community versus those who may not? Is there a relationship  
12 of them being able to move patients out of their facility?

13 MS. KELLEY: You mean efficient acute care  
14 hospitals?

15 MR. GEORGE MILLER: Acute care hospitals, correct.  
16 I'm sorry. Acute care hospitals.

17 MS. KELLEY: I don't think we've seen such a  
18 relationship, but I -- is Jeff here? Do you?

19 DR. MARK MILLER: [Off microphone.] This is on  
20 the effect of an LTCH?

21 MR. GEORGE MILLER: Yes, of an LTCH on acute care  
22 hospital.

1 DR. MARK MILLER: Yeah, and I think the way --  
2 Craig?

3 You'll remember the conversation we had yesterday,  
4 and Craig, this is your period to get engaged.

5 So the conversation yesterday was when you have a  
6 hospital-based IRF and SNF, it helps the bottom line. When  
7 you have a hospital-based home health, it's a wash on the  
8 bottom line for the hospital.

9 What I think is we don't do this, have the same  
10 kind of calculation for LTCH because even when you're  
11 hospital-based you're basically a separate entity. Okay?

12 MR. LISK: [Off microphone.] Yes.

13 DR. MARK MILLER:

14 So in a sense, even if an LTCH is tucked inside  
15 this, it's not part of the overall cost report and cost  
16 structure.

17 Now it doesn't mean your question could go to a  
18 next level and say well, just tell me what the correlation  
19 is.

20 MR. GEORGE MILLER: Right.

21 DR. MARK MILLER: And I'm not sure we've done  
22 that.

1 MR. GEORGE MILLER: Okay. All right. Thank you.

2 DR. MARK MILLER: But it's not embedded in quite  
3 the same way that the other.

4 MR. GEORGE MILLER: I'm sure.

5 DR. BAICKER: I thought there was an extra  
6 question in what George was saying. It's the presence of an  
7 LTCH in the facility.

8 MR. GEORGE MILLER: Right, in the area.

9 DR. BAICKER: Allow a hospital to send people over  
10 there and make the hospital more efficient --

11 MR. GEORGE MILLER: Correct.

12 DR. BAICKER: -- because they've got a place to  
13 offload those people even if it's not --

14 DR. MARK MILLER: [Inaudible.]

15 MR. GEORGE MILLER: Right, right.

16 DR. MARK MILLER: And I don't know. Let us  
17 recollect our thoughts because as I remember a few years  
18 back --

19 MS. KELLEY: We have danced around this in the  
20 past.

21 DR. MARK MILLER: Yeah. We did some analysis.

22 MS. KELLEY: I'm sorry. We did some very careful

1 --

2 DR. MARK MILLER: It may have been qualitative  
3 analysis.

4 [Laughter.]

5 MS. KELLEY: I'm sure it was detailed quantitative  
6 work.

7 DR. MARK MILLER: Or a vignette. But let us  
8 collect our thoughts on this.

9 MS. KELLEY: Yes.

10 MR. HACKBARTH: On the first issue, the referrals  
11 from the host hospital, there's the restriction on the  
12 percentage of the admissions that can come from.

13 MS. KELLEY: Well, technically speaking, yes,  
14 although that was one, that was part of the relief that  
15 MMSEA provided to LTCHs -- was that the sort of -- the  
16 rolling back of the 25 percent rule that had been being  
17 phased in. So it has a minimal effect at this time.

18 MR. HACKBARTH: Okay. All right. Nancy, did you

19 --

20 DR. KANE: Just a question about my question about  
21 physician ownership, what's the sources of data for that and  
22 how comfortable are you with it?

1 MS. KELLEY: This is a small industry. So I  
2 really can just look at every single provider that opened  
3 between 2007 and 2010. And I, you know, can look into some  
4 background information and make -- it is in some respects  
5 sometimes a guesstimate. Sometimes it's very clear it's a  
6 select facility or it's a kindred facility. You know, one  
7 of the major chains.

8 So I'm not 100 percent certain, but I'm fairly  
9 comfortable. I'm quite comfortable, fairly certain with  
10 that estimate.

11 DR. KANE: The kindreds don't do any kind of joint  
12 venture ownership within these --

13 MS. KELLEY: Not to my knowledge. No, they do  
14 not.

15 MR. HACKBARTH: Questions?

16 Scott, Karen.

17 DR. BORMAN: In looking at the map and thinking  
18 about this and my own personal encounters with LTCH, and  
19 then I'm concerned about overlap issue with the acute care  
20 hospitals that it facilitates. On the other hand, I think  
21 my own personal experience is with an institution that was  
22 very pressured as being really the court of last resort for

1 a state, or for a part of a state.

2 And I think that, and by offloading by these  
3 patients earlier it enables them to deliver more care that's  
4 mission-based.

5 And I'm not sure exactly how we could potentially  
6 get at that, but that might link up, for example, level one  
7 trauma centers. It might in fact be a way to just sort of  
8 biopsy that as some future data point consideration.

9 The other thing is that in the materials you had  
10 the statistic about the percentage, the mortality within 30  
11 days of discharge from an LTCH, and it was quite high as I  
12 recall, and certainly that relates to the gravity of the  
13 illness of these patients, and whatever. But do we have any  
14 way in some future work to tease out -- or maybe it should  
15 be part of thinking about what is reported going forward,  
16 whether that those are primarily due to decisions by  
17 patients or families not to seek additional care versus this  
18 is just a consequence, a health consequence if you will,  
19 because I think as we think about interventions at the end  
20 of life we certainly want to meet everyone's needs as best  
21 we can and to do it with dignity and respect for what they  
22 may or may not want.

1           And so just as we think about these criteria,  
2 particularly for these kinds of places where this event rate  
3 is so high within 30 days, it might be something worth  
4 thinking about, going forward.

5           DR. MARK MILLER: I wanted to follow up on Glenn's  
6 question and just do this carefully. So in talking about  
7 the patient criteria, and then it's facility criteria, but  
8 then as you went through the legislative language you were  
9 saying but it refers to the notion of having a patient  
10 assessment instrument.

11           MS. KELLEY: Or some sort of criteria by which to  
12 assess the patients.

13           DR. MARK MILLER: Yes. So in some ways you could  
14 sort of look at that as saying okay, so there's patient  
15 criteria. Or alternatively, you could look at it as much  
16 more low bar, to pick up where you were, that says the  
17 facility just has to have a patient assessment instrument.  
18 And that could look very different from facility to  
19 facility?

20           MS. KELLEY: I think yes.

21           DR. MARK MILLER: That's a possible?

22           MS. KELLEY: I think that's -- I really don't know

1 sort of where they're headed. They do have some -- there is  
2 some patient review that goes on now.

3 DR. MARK MILLER: As I recall, when we visited the  
4 facilities they talked to us about how they did it, and it  
5 was very different from facility to facility.

6 MS. KELLEY: Right. So you know. It doesn't  
7 require assessment using a particular tool or a particular -  
8 - the law doesn't, or a particular standard. So it's not  
9 clear to me what CMS will use as part of that requirement.

10 DR. MARK MILLER: What I'm trying to convey is --  
11 and I think your line of questioning was headed down this  
12 road -- we could still have a situation where the patient  
13 assessment side of things, of do you need this level of  
14 care, is still pretty wide open even though there is  
15 facility characteristic, or requirements. Right?

16 MS. KELLEY: You know, it's possible. I think --  
17 the industry, I think, feels that they're subject to some of  
18 this review already and that it's become increasingly  
19 stringent, although my understanding is that upon review of  
20 these, after denial when there's -- when they file an appeal  
21 and go back at it, that generally patients, a patient  
22 admission to an LTCH is approved. So I don't know in

1 practice how much it has affected, at the end of the day,  
2 the admission of patients to LTCHs.

3 So I really am not -- I really can't say sort of  
4 how stringent this will be.

5 DR. MARK MILLER: [Off microphone.] That's all I  
6 was asking.

7 MS. KELLEY: Okay.

8 MR. HACKBARTH: One last clarifying question,  
9 Dana. Could you put up the slide 10 with the margins?

10 So when you were talking about the disparity  
11 between urban and rural, you seemed to hypothesize that one  
12 potential explanation might be differences in volume?

13 MS. KELLEY: Yes, the rural facilities tend to be  
14 much smaller.

15 MR. HACKBARTH: Yeah.

16 MS. KELLEY: Quite a bit smaller.

17 MR. HACKBARTH: Have we looked at the relationship  
18 between volume and cost in a systematic way?

19 MS. KELLEY: We have looked at the facilities with  
20 the highest and the lowest margins, and described  
21 characteristics of those facilities, and the highest margin  
22 LTCHs are quite a bit larger, not just their Medicare

1 patients but overall, than the lowest margin.

2 MR. HACKBARTH: So in other contexts, we have  
3 recommended low volume adjustments. Is that something that  
4 we should be considering for --

5 MS. KELLEY: We have not ever really discussed  
6 that in this setting. I think if we were to think about  
7 that one complicating factor would be our consideration of  
8 whether we think low volume facilities can provide the same  
9 level of quality that larger centers can in terms of their  
10 experience dealing with certain types of patients. So I  
11 think that would have to be carefully parsed out. Until we  
12 have good quality information, I think it would be a  
13 difficult thing to look at.

14 MR. HACKBARTH: Yeah. It also occurs to me that  
15 it's a little bit different here than perhaps in the acute  
16 care hospital context. In the acute care hospital context,  
17 this is sort of a core element of the care delivery system  
18 in every community. And you know there are some small  
19 communities where you're going to have small hospitals, and  
20 you need to appropriately pay, given the -

21 MS. KELLEY: You need to maintain some level of  
22 hospital care in the community.

1           MR. HACKBARTH: Given that there are a lot of  
2 communities that seem to do just fine without LTCHs at all,  
3 having a low adjustment rate may not be necessary or  
4 appropriate there.

5           MS. KELLEY: And we've also talked about a model  
6 of a referral center type of model in this setting too.

7           MR. HACKBARTH: Yeah.

8           MS. KELLEY: So it would have to be weighed very  
9 carefully, I think.

10          MR. HACKBARTH: Thank you.

11          MR. KUHN: On that point, if I could just ask,  
12 since we are doing this rural report that's part of ACA, and  
13 I suspect this issue has come up when staff has been out on  
14 some of the field visits -- Mark, maybe you can tell us --  
15 is this something we'll hear more about, the LTCH component  
16 of rural care?

17          DR. MARK MILLER: I have to say to date, and I'll  
18 take any kind of redirect on this. To date, LTCH  
19 specifically has not been a big factor that has come up. I  
20 think that in addition to these things being small, there's  
21 not tons of them out in general and out in rural areas.

22          MS. KELLEY: No.

1 DR. MARK MILLER: The notion of kind of low volume  
2 and how I cover my fixed costs, that certainly is a thread  
3 that comes up in the -- you know, more broadly for a  
4 hospital, yeah. But at least in my travels and actually,  
5 you know, travels -- I'm getting nods over here. This  
6 specifically has not come up.

7 MS. KELLEY: There are only about 30 rural LTCHs  
8 in rural areas. We are trying, looking at -- as part of the  
9 rural report, we are looking at beneficiaries' use of LTCH  
10 services and whether the benes are rural and traveling to  
11 urban facilities. So we'll have a little bit of information  
12 about whether there are rural patients who receive this care  
13 even if they don't have an LTCH.

14 MR. KUHN: So we'll have better patient origin  
15 information and where they go.

16 MS. KELLEY: Yes.

17 MR. KUHN: Okay.

18 MR. HACKBARTH: Okay, round two comments?

19 Mike, and then Peter.

20 DR. CHERNEW: We talk periodically about the silos  
21 across payments, and it's obviously, as many people have  
22 said before, nowhere more clear than in this basic post-

1 acute end-of-life area. And I think there's a lot of things  
2 about this particular LTCH setting that suggests that, not  
3 as part of the payment portion but as part of other work, we  
4 could use it as an example of issues.

5           So for example, George's question which I liked  
6 very much, about the how the presence of an LTCH affects  
7 other facilities, but there's also a question about instead  
8 of looking at it from a facility perspective, look at it  
9 from a type of patient perspective. It's sort of what Herb  
10 was saying, and I think Karen alluded to this, which is for  
11 types of patients that get care different ways.

12           We care a lot about quality. The quality measures  
13 are hard, but not just the quality in the LTCH. But what's  
14 the quality for those types of patients if they had ended up  
15 not going into an LTCH?

16           And the beginning of this chapter talks a bit  
17 about this concern that folks had about costs and you get  
18 paid for the acute care stay, then the LTCH gets paid.  
19 There could be potentially some double payment because of  
20 the way that works. But we don't see across the spectrum  
21 for patients that are likely to go to an LTCH, or might be  
22 candidates, what is their costs compared to the costs of

1 patients that didn't.

2           And the geographic variation in the presence of  
3 LTCHs gives you -- the researcher in me thinks well, wow, if  
4 I had time to really do research, but luckily there's a lot  
5 of really good people here who could maybe investigate, if  
6 you could identify sort of a type of patient. You don't  
7 have to know for sure the patient would have gone to an  
8 LTCH, but just the presence of an LTCH.

9           Even the growth, the numbers that Dana showed  
10 suggests there was almost a three-fold growth in the  
11 availability of LTCHs, surprisingly concentrated for most  
12 models. But the cases pretend thousands stayed about the  
13 same, suggesting the size.

14           So there's something going on that could be  
15 exploited, that might be useful for LTCHs, but it's also  
16 useful for thinking about this across silos. It's also  
17 useful for thinking about bundling.

18           So in a nutshell, I support the recommendation. I  
19 have a few minor things on the chapter like Table 3 says  
20 Medicare spending, but it's really LTCH Medicare spending  
21 per beneficiary. And so this sort of broadening to focus on  
22 the patient population I think is very useful, but overall I

1 think it's very good, and I support the recommendation.

2 MS. KELLEY: The Commission has done work in the  
3 past looking at particular types of patients and how much  
4 the costs that they generated if they went to an LTCH versus  
5 not, and that's information I can -- background information  
6 I can include too.

7 DR. CHERNEW: I think that's useful, but that's  
8 very hard to know because of the switching. But it's really  
9 areas -- patients that are that type --

10 MS. KELLEY: Yes.

11 DR. CHERNEW: -- in the areas that have a lot of  
12 LTCHs versus patients of that type in areas that don't.

13 MS. KELLEY: Yes.

14 DR. MARK MILLER: [Inaudible] -- too, the  
15 probability of using these facilities and that type.

16 MS. KELLEY: Yes.

17 DR. MARK MILLER: There is some stuff that we can  
18 pull back up from previous work and either put in the  
19 chapter or give to you specifically.

20 And I still think there's more to your question  
21 and more to be done. Don't -- this isn't dismissive at all,  
22 but at least --

1 DR. CHERNEW: [Off microphone.] I don't mind  
2 being dismissed.

3 DR. MARK MILLER: No, no, it usually doesn't work  
4 out for me.

5 [Laughter.]

6 DR. MARK MILLER: But I mean there's a platform  
7 there that you could even jump from some things that we've  
8 already done.

9 DR. CHERNEW: And does Scott use -- do you use  
10 LTCHs, Scott?

11 MR. ARMSTRONG: Very, very little. I mean one of  
12 the questions related to your points, Mike, was I wonder  
13 what the LTCH use in MA plans would look like and what we  
14 know about that too.

15 MS. KELLEY: A couple, I guess it was two years  
16 ago now I spoke with a number of MA plans about their use of  
17 LTCHs, and the general sense that I was given was that they  
18 don't use them very often, but that for particular kinds of  
19 patients they do find LTCHs to be useful. And so there is a  
20 smaller share of their patients than in fee-for-service  
21 perhaps that do use LTCHs, but in general their experience  
22 was that patients that stayed a little bit longer in the

1 acute care hospital could then go to a SNF, and that seemed  
2 to be the common theme among the plans that I spoke with.

3 MR. BUTLER: Two comments. One, you said that  
4 there are 30 or so rural. Actually, in the chapter, it says  
5 there are only 21, which is pretty small.

6 MS. KELLEY: I'm sorry I misspoke. The chapter is  
7 correct.

8 MR. BUTLER: So I'm not sure you can draw a lot of  
9 conclusions from 21 out of 400 or so.

10 A related comment to Mike's is I was thinking  
11 about how to understand both regional variation as well as  
12 episode-of-care variation better. We used to look at lot at  
13 days per thousand in the managed care world, and I'm  
14 wondering rather than just -- and I know Carol has shown us  
15 work on dollars in each of the post-acute care sectors. It  
16 would be kind of interesting to look at days per thousand in  
17 each of the sectors like acute care, LTCHs, SNF, et cetera,  
18 because it would get at the utilization versus, you know,  
19 the rate per payment.

20 And if there were patterns either within a  
21 geography or across episodes that showed differences, it  
22 might be a different lens to kind of understand this

1 tradeoff between beds in the various options that we have.

2 DR. DEAN: I guess I would just support the  
3 questions that Mike raised. It just seems to me that even  
4 looking at quality measures in an isolated way, it doesn't  
5 really answer the questions that we need to have answered.  
6 We need to look at quality measures for a particular  
7 condition in different settings and then try to decide, you  
8 know, what is the best approach.

9 And it looks like since there's such a difference  
10 in variation it might be reasonably easy to do because there  
11 are certainly some areas where this service is not available  
12 and some areas where it's very available. It just seems  
13 like it's crying out to decide. We have a model, and we  
14 don't really know exactly where it fits and that it's --  
15 there would be -- I know.

16 I mean I understand you said there's some of that  
17 data, but I think we really need to understand it in a much  
18 more sophisticated way for us to make any reasonable  
19 recommendations about whether we really support and  
20 encourage this model or not.

21 MR. HACKBARTH: Would you put the recommendation  
22 up? Okay, all in favor of the recommendation, please raise

1 your hand.

2 Opposed?

3 Abstentions?

4 Okay, well done, Dana. Thank you.

5 Next is hospice. Okay, Kim?

6 MS. NEUMAN: Good morning. I'm going to recap the  
7 hospice data we discussed at the December meeting. At that  
8 meeting, a couple Commissioners had questions and I'm going  
9 to address those as we go through the materials.

10 So to start with some quick background, as you  
11 know, hospice provides palliative and supportive services to  
12 terminally ill Medicare beneficiaries who choose to enroll.  
13 In 2009, over one million beneficiaries received hospice  
14 services, including 42 percent of Medicare decedents, and  
15 Medicare spending was \$12 billion.

16 So to review the trends in the data, the number of  
17 hospices has grown throughout the decade, growing 50 percent  
18 in total over the 2000 to 2009 period, driven by growth and  
19 for-profit providers. Hospice use among Medicare decedents  
20 has also grown substantially, reaching 42 percent in 2009,  
21 up from 40 percent in 2008, and 23 percent in 2000.

22 Through 2008, hospice use grew among all racial

1 and ethnic groups and in rural and urban areas. Use  
2 continued to grow in 2009 for almost all of these groups.  
3 Herb, at the December meeting, you mentioned that some  
4 states experienced rapid growth in provider supply and asked  
5 whether states that experienced less rapid growth in  
6 providers were seeing growth in hospice use.

7           The increase in hospice use is broad-based.  
8 Between 2005 and 2009, all states experienced an overall  
9 increase in hospice use among Medicare decedents. Some of  
10 the states that experienced the greatest increase in hospice  
11 use among decedents were ones that had modest or no growth  
12 in the supply of providers.

13           This next chart shows the growth in hospice  
14 spending, number of users, and length of stay.  
15 In the first line, you see that Medicare hospice spending  
16 grew substantially throughout the decade, with growth in the  
17 most recent year being 7 percent. This growth is primarily  
18 driven by an increase in the number of hospice users, line  
19 2, and growth in average length of stay, the last line. The  
20 increase in average length of stay reflects an increase in  
21 length of stay for patients with the longest stays.

22           In terms of quality, we are not able to make an

1 assessment of hospice quality because publicly available  
2 quality data covering all hospices are not available. PPACA  
3 will change this. It requires CMS to publish quality  
4 measures in 2012, and in fiscal year 2014, hospices will  
5 face a 2 percentage point reduction in their annual update  
6 if they fail to report quality data.

7           As you know, hospice is less capital intensive  
8 than some other provider types. But that said, access to  
9 capital appears adequate. We continue to see entry of free-  
10 standing hospices, mostly for-profits, but also non-profits.  
11 Provider based hospices have access to capital through their  
12 parent organizations.

13           So turning to margins, the aggregate Medicare  
14 margin in 2008 was 5.1 percent, down from 5.8 percent in  
15 2007. If we look at margins by provider characteristics, we  
16 see free-standing hospices having higher margins than home  
17 health based and hospital-based hospices, partly because of  
18 the allocation of overhead from the parent provider. If  
19 provider-based hospices had overhead cost structures similar  
20 to free-standing hospices, their margins would be 8 to 11  
21 percentage points higher.

22           For-profit hospices have higher margins than non-

1 profits. Urban hospices have higher margins than rurals.  
2 Margins are higher for hospices with longer stays and for  
3 hospices with more patients in nursing facilities and  
4 assisted living facilities.

5           And as you'll recall, our methodology for  
6 calculating margins involves the following. We do not count  
7 overpayments to above-cap hospices as revenues in the margin  
8 calculation. We also exclude non-reimbursable costs from  
9 our margin calculation, consistent with our methodology in  
10 other sectors. This means we exclude bereavement costs,  
11 which if included would reduce the aggregate margin by at  
12 most 1.5 percentage points. We also exclude non-  
13 reimbursable volunteer costs, which if included would reduce  
14 the aggregate margin by 0.3 percentage points.

15           Mitra, you asked at the December meeting for  
16 additional information on the volunteer requirement. We've  
17 added that to the chapter and I'd be happy to do it on  
18 question. So just to review, our margin projection for 2011  
19 is 4.2 percent. It takes into account full market basket  
20 updates for 2009 to 2011, a reduction in the wage index  
21 budget neutrality adjustment in 2010 and 2011 amounting to  
22 about 1 percentage point decrease, additional wage index

1 changes, and additional costs in 2011 for the face to face  
2 visit requirement for recertification of long stay patients.

3 All that taken together gives us our 2011 margin  
4 projection. Looking forward to 2012, payments will be  
5 reduced an additional 0.6 percentage points in 2012 due to  
6 the continued phase-out of the wage index budget neutrality  
7 adjustment.

8 So, in summary, the supply of providers continues  
9 to grow, driven by for-profit hospices. Number of hospice  
10 users increased. Length of stay for the longest stays  
11 continues to grow. Access to capital appears adequate. And  
12 the 2008 margin is 5.1 percent, with the 2011 margin  
13 projection being 4.2 percent.

14 In light of all that, the draft recommendation  
15 reads, "That Congress should update the payment rates for  
16 hospice for fiscal year 2012 by 1 percent." This draft  
17 recommendation would decrease federal spending by between  
18 \$50 and \$250 million over one year and by less than \$1  
19 billion over five years.

20 We do not expect the recommendation to have an  
21 adverse impact on beneficiaries' access to care or  
22 providers' willingness or ability to serve Medicare

1 beneficiaries. And as you know, this recommendation affects  
2 aggregate spending, not the distribution of spending across  
3 providers.

4           In March 2009, the Commission recommended that the  
5 hospice payment system be revised to better align payments  
6 with the level of effort involved in providing services  
7 throughout a hospice episode. This is the U-shaped curve.  
8 This change would make the payment system more neutral  
9 toward length of stay, rather than favoring long stays as it  
10 currently does. It also has the effect of changing the  
11 distribution of payments across providers. Overall, it  
12 would increase revenues to provider-based, non-profit, and  
13 rural hospices, and decrease revenues to others.

14           We plan to re-run this recommendation in the March  
15 chapter because PPACA gives CMS the authority to revise the  
16 hospice payment system in 2014 or later, but gives them  
17 discretion on the structure of that system.

18           We also plan to re-run a recommendation from March  
19 2009 for more OIG scrutiny of a number of issues such as  
20 nursing home/hospice relationships and unusual utilization  
21 patterns among some hospices regardless of patient location.  
22 Since many but not all aspects of the recommendation are

1 under study, we plan to reprint the recommendation.

2 So that concludes my presentation. I look forward  
3 to your discussion and any questions.

4 MR. HACKBARTH: Thank you, Kim. I need a reminder  
5 about the March projections. Could you put up Slide 10 for  
6 a second? So we are modeling the 2011 margin. Now, I was  
7 thinking that our convention, our rule was that what we do  
8 is also take into account policy changes scheduled for the  
9 fiscal year in question, in this case 2012. So we know that  
10 certain things are going to happen in 2012. In this  
11 instance, it's the next step in the reduction in the wage  
12 index budget neutrality.

13 As I interpret what you have on Slide 10, we've  
14 included the reductions for 2010 and '11, but not the one  
15 that's scheduled for the fiscal year in question, 2012.

16 DR. MARK MILLER: And some of what's been -- all  
17 of that information has been reported in each of the  
18 presentations and in the chapters. Some of what has gone on  
19 is, for example, in the hospital world, there's some large  
20 changes like the new IT dollars and there was another major  
21 change.

22 And so, what we've done is estimated through '11

1 and then tried to report out what possible effects are,  
2 quantifying them in the cases where we can, which in Kim's  
3 case, she has the wage index change. That's very  
4 quantifiable. And then in the hospital discussions, if you  
5 remember, last month we said there's some things happening  
6 in '12, big blocky dollars that could move the needle around  
7 a lot. And here is as much information as we have.

8           So as a convention, we've been kind of going  
9 through '11 and saying, "This is what we understand is going  
10 to happen in '12." In some instances, Kim's, we can  
11 quantify it fairly precisely. Other instances, the hospital  
12 world, we had some big kind of movements.

13           MR. HACKBARTH: But I am correct in understanding  
14 that the 4.2 percent does not include the effect of the 2012  
15 budget neutrality adjustment?

16           DR. MARK MILLER: It does not.

17           MR. HACKBARTH: And the magnitude of that is?

18           MS. NEUMAN: 0.6 percentage points.

19           DR. MARK MILLER: I'm sorry. I didn't realize  
20 your question was that simple.

21           MR. HACKBARTH: Yeah.

22           DR. MARK MILLER: I didn't mean to get into all

1 that.

2 MR. HACKBARTH: So Karen, it's your turn. Start  
3 any clarifying questions. Scott? Bruce? Kate? Nancy?

4 DR. KANE: Do hospices also have relationships  
5 with LTCHs? I'm just noticing that the progression of our  
6 post-acute sector presentation seems to go closer and closer  
7 and closer to end of life. I'm just wondering. I guess,  
8 when you look at patients sort of considering -- I mean,  
9 just kind of put the hospice in the LTCH conversation  
10 together a little bit and say, is there anything going on,  
11 and how do people make the decision between the two? Is it  
12 a very different patient mix diagnostically that goes -- is  
13 there any relationship between LTCH and hospice?

14 DR. MARK MILLER: I didn't want to turn it on  
15 until I was sure I was going to say something. Okay.  
16 Here's one thing. I think the most direct answer, and  
17 again, I'm looking for a redirect. We haven't done the last  
18 thing you said, which is tell us the case-mix of the  
19 patients who go here versus here. I don't believe anybody  
20 has done that on the staff so that we could very much  
21 quantify that.

22 A few years back we did a lot of work on LTCHs and

1 went out and visited LTCHs and talked to the medical  
2 directors and them and sort of what happens. It's very  
3 interesting because there were several conversations that I  
4 ended up being part of with medical directors where there is  
5 this, you know, should you be here in an LTCH or has all,  
6 you know, at this point.

7           And you ran into the usual situations where it's  
8 difficult to have -- you know, the physicians, sort of, it's  
9 difficult to have that conversation with the family and I'm  
10 not sure I wanted to do it, and that some families, even  
11 when sort of, you know, you could either go to an LTCH or  
12 you could begin to start thinking about a hospice tract.  
13 Some families are no, you know, I want the LTCH.

14           And some medical directors, being very direct, in  
15 saying, "I'm going to put this person back in" -- I don't  
16 want to say on their feet, but sometimes, you know, for a  
17 few weeks, but they're either going to be back here or  
18 they're going to be going to a hospice. So this is that  
19 tough conversation that, you know, I think, as a society, we  
20 all kind of struggle with.

21           It came up repeatedly when we were talking to the  
22 LTCHs. But I don't think there's any formalized

1 relationship to sort of try and answer your question and we  
2 have never said, "What is the case-mix of the two patients  
3 that tend to sort themselves." I think there's a lot of  
4 family, you know, care choice decisions that drive those  
5 choices.

6 DR. KANE: Maybe --

7 DR. MARK MILLER: Is there anything else I should  
8 --

9 DR. KANE: Maybe this belongs back in the LTCH  
10 discussion, but in thinking about facility and patient  
11 criteria for both them and hospice, since I think there is  
12 that choice that families are making, that that choice  
13 should be made clear. You know, how do you make sure that  
14 the potentially rehabilitatable or, you know, the patient is  
15 really going to the LTCH to start to get better, that that  
16 conversation is made clear.

17 I mean, I'm just trying to go back to what kind of  
18 criteria are people using to make those decisions and are  
19 they getting those conversations. I know this is not a good  
20 topic, but are they getting the kind of conversations they  
21 need to be sure that people really understand what they're  
22 doing and what their options are?

1           Maybe that should be into the criteria discussion  
2 for the LTCH and the hospice, because I think hospice has  
3 the same problem on the other side. They've got people who  
4 might be better off in a long-term care or SNF or even LTCH,  
5 I don't know.

6           It does look like we're having a problem of proper  
7 allocation of people to matching to the care and I don't  
8 know if that should be -- maybe this is not the right place  
9 to start this, but we don't usually look at the whole post-  
10 acute sector in any one setting except for in these update  
11 meetings.

12           But should there be, as part of the criteria, for  
13 getting in these facilities that there is a required  
14 counseling session about what are the options and what are  
15 the likely outcomes of each -- anyway, I'll stop there.

16           But I just find these discussions where the  
17 problem of LTCHs having people who might not be appropriate  
18 and then hospice having these people who stay away too long  
19 and probably aren't appropriate either, that there's  
20 something terribly wrong in the way people are being  
21 allocated to these different models of post-acute care.

22           DR. DEAN: Or you have the hospices with large

1 numbers of live discharges.

2 [Off microphone discussion]

3 DR. KANE: There are some conversations that's  
4 just not happening here that needs and I'm wondering, maybe  
5 even in talking about LTCH patients, criteria or there  
6 should be a similar conversation around hospice patient  
7 criteria and they should all be linked, and maybe the  
8 conversation should be more standardized than it is today.

9 MR. HACKBARTH: Other clarifying questions?  
10 George? Herb? Bob?

11 DR. BERENSON: Kim, go to Slide 4, please. At a  
12 previous meeting, probably the last one, I raised the issue  
13 about the medians and in text you addressed it. I just want  
14 to make sure -- I guess I'm making a data point here since  
15 I'm not just a qualitative researcher. You said that the  
16 median length of stay hasn't changed in a decade? It was 17  
17 in 2000 and 17 now? I think it would be great to add that  
18 row to that table.

19 You now have some good text pointing out that  
20 that's also a problem. We are focused on this sort of  
21 burgeoning of the average length of stay, but I just think  
22 we want to -- in the long run, we are as concerned about

1 that other issue. So I just wanted to highlight that point  
2 and urge you to broaden that table.

3 DR. NAYLOR: So thanks, Kim, for a great report.  
4 I don't know if you've done this before, but the 42 percent  
5 of Medicare beneficiaries that have used hospice, have we  
6 ever compared their total costs to the 58 percent who have  
7 not, considering inpatient costs, et cetera? I mean, I know  
8 about the caps. So I'm just wondering.

9 MS. NEUMAN: We have not done our own calculation  
10 of the costs of hospice, people who use hospice at the end  
11 of life versus people who don't. There is research that has  
12 done that kind of thing.

13 DR. NAYLOR: And could you summarize?

14 MS. NEUMAN: Sure. I think if you look at the  
15 last year of life and compare people who used hospice and  
16 not, I don't think you see a cost difference. I think that  
17 if you start to look at patients with different kinds of  
18 characteristics, patients with different diseases, different  
19 lengths of stay, you can see some savings or some additional  
20 cost depending on, you know, how long they were in hospice  
21 and what condition they have.

22 So it's a mix. But if you look at the last year

1 of life, just in aggregate, there doesn't seem to be a  
2 difference.

3 DR. NAYLOR: So given that this is -- I mean, I  
4 guess, I think this is a natural opportunity again,  
5 especially since this is a benefit intended to be even  
6 shorter term than that, it would be great to kind of get a  
7 sense of what those comparisons might look like given the  
8 differences in terms of total cost for hospice versus  
9 inpatient.

10 So this is probably, as a new Commissioner, the  
11 notion of excluding the bereavement costs, I understand that  
12 that has to do with, I guess, beneficiary-directed costs.  
13 But I'm wondering -- it looked like it could have a fairly  
14 significant impact on margins, about 1.5 percent I think you  
15 estimated, and given how important bereavement is in the  
16 long haul, because we know that people that care for people  
17 who die have higher chronic conditions and greater use of  
18 acute care resources, and the nature of this benefit, can  
19 you just give me some of the background for why excluding in  
20 this benefit?

21 MS. NEUMAN: So the statute says that hospices are  
22 required to provide bereavement to the families of deceased

1 Medicare beneficiaries. But the statute also says that the  
2 Medicare payment rate for hospice shall not include payment  
3 for the bereavement counseling. So because of the way the  
4 statute is written, it's considered a non-reimbursable cost  
5 and our approach on estimating margins is only to look at  
6 reimbursable costs in our margin calculation.

7           That said, we're reporting it out for you so that  
8 you have that information. I think if you want to go back  
9 and sort of wonder the philosophical reason why the statute  
10 did what it did, I think it partly relates to the idea that  
11 once the beneficiary has passed away, then there's  
12 uneasiness about continued Medicare spending once the person  
13 who sort of qualified for the benefit is no longer with us.  
14 That's kind of, I think, the philosophy behind it. But it's  
15 a difficult issue.

16           MR. HACKBARTH: So it's a service rendered to a  
17 non-Medicare beneficiary. Having said that, when I think  
18 about what the appropriate update is, I do the calculation  
19 that you suggested. I think Kim's margin here and then do a  
20 calculation in my head, what would the bottom line be if, in  
21 fact, the bereavement costs were included.

22           DR. MARK MILLER: And I think that's some of what

1 -- we discussed this in December, and I think that's some of  
2 what drives you to go to 1 percent here.

3 DR. NAYLOR: I wanted to clarify that that was  
4 part of our thinking. I knew it was from December. I  
5 wanted to make sure it carried through.

6 DR. MARK MILLER: It is. Can I just say one other  
7 thing about your first question? Jim and Kim know this much  
8 better than I do, so I just want to say this carefully. We  
9 can also excavate this, because this is from the past and we  
10 can give it to you specifically just to help bring you up to  
11 speed, because they went through this literature carefully  
12 because there is this sort of standing thing, a hospice  
13 saves money.

14 But it's more complex than that. And the way I  
15 think about it, just to -- well, for me, a relatively  
16 simpler way to think about it is, the line of whether it  
17 saves or costs money is directly related to how early in the  
18 process the person comes in. The earlier they come in, the  
19 more likely it doesn't because remember what Medicare does,  
20 is it just pays on a daily basis.

21 So it's sort of how soon -- and to the extent that  
22 we're concerned at the highest lengths of stay are growing

1 the fastest, that calculus is potentially kind of coming  
2 apart, that it's not going to be a benefit that on net saves  
3 money. So it's very much -- costs less than conventional  
4 care. It's very much a function of, as Kim said, the kind  
5 of patient that comes in and how long and how far in advance  
6 of the date of death that they come into the benefit. I'm  
7 looking at you. I'm pretty sure I didn't help.

8 DR. NAYLOR: It all gets back to the same  
9 conversation we've been having. We target the right people.

10 DR. MARK MILLER: Well, and the right time for  
11 them to answer --

12 DR. NAYLOR: And the right time, et cetera.

13 DR. MARK MILLER: -- the benefit.

14 DR. NAYLOR: Yeah, exactly. And I think the  
15 Affordable Care Act's focus on getting the right quality  
16 measures for assessing how well we're doing is also -- it's  
17 so complex, but yeah.

18 MR. HACKBARTH: So as I recall, Kim, one of the  
19 more widely quoted studies on this issue is done at Duke, I  
20 think. When was that study done? And more importantly,  
21 what years' data were they using to try to make this  
22 comparison? Do you remember?

1 MS. NEUMAN: No, I don't recall that study. It's  
2 several years old now. I would need to go back and look.  
3 They found the most -- some of the most favorable results in  
4 terms of cost savings of the literature that's out there.

5 MR. HACKBARTH: And so, I wonder whether, given  
6 the trends in the patterns of hospice utilization, whether  
7 it makes sense to do an analysis such as Mary is describing  
8 with more up-to-date data that reflect current patterns of  
9 use of hospice as opposed to what may have existed five or  
10 six, or whatever number of years ago.

11 DR. MARK MILLER: Jim, did you go through that?

12 DR. MATHEWS: We did early on, and in addition to  
13 the length of stay, one of the other significant drivers  
14 with respect to whether or not use of hospice makes a  
15 difference in terms of Medicare spending for decedents, is  
16 whether or not the terminal disease is likely to, under  
17 typical circumstances, trigger the use of expensive Part A  
18 services.

19 So, for example, to take the LTCH example, if a  
20 person with a terminal condition who might have gone to an  
21 LTCH instead elects hospice, that situation is more likely  
22 to result in lower Medicare spending than it would be for a

1 patient with a terminal condition that typically does not  
2 utilize a lot of Part A care.

3           So, for example, debility or adult failure to  
4 thrive, which are also conditions that typically have longer  
5 lengths of stay. So that's another driver. And again,  
6 there is fairly extensive literature on this. In addition  
7 to the Duke study, there was a RAND study in 2004 that is  
8 generally regarded as methodologically one of the best  
9 pieces. I think we can probably dig up our literature  
10 review for you and get it to you.

11           DR. CHERNEW: I just feel obliged to make this  
12 point, which I should say, I'm as fiscally conservative as  
13 the next guy, at least in Massachusetts, but probably other  
14 places as well. It's just, I feel obliged to say, saving  
15 money is not the bar and I challenge us to go through the  
16 fee schedule and find the specialties which save money.

17           So while understanding the fiscal consequences of  
18 what we do, per this discussion, I think is crucial. I  
19 think it leads us to hold services like hospice to a bar  
20 that even a fiscally conservative person should say is not  
21 what the bar should be.

22           MR. HACKBARTH: And I think that's a really good

1 point, Mike. On the other hand, people shouldn't be allowed  
2 to make the argument in favor of more payment for such-and-  
3 such on data that isn't up to date.

4 DR. CHERNEW: And we should be concerned about the  
5 cost relative to the quality. I agree 100 percent.

6 MR. HACKBARTH: Yeah. We're in 100 percent  
7 agreement. So were you finished, Mary? Tom? Mitra?

8 MS. BEHROOZI: Thanks, Kim, for looking into the  
9 issue of volunteers. When you say that you don't count in  
10 the margin calculation the non-reimbursable volunteer costs,  
11 I think we talked last time about the fact that that would  
12 be like the cost of recruiting volunteers or that kind of  
13 thing, because by definition volunteers don't cost any  
14 money. Right? I just wanted to make sure that that was  
15 clear, right? Is that correct?

16 MS. NEUMAN: Right. The volunteer costs reported  
17 on the cost report would be things like recruitment.  
18 There's a volunteer coordinator and that person recruits and  
19 trains the volunteers. There are also some -- they pay  
20 mileage reimbursement to their volunteers and things of that  
21 sort. It turns out, in doing more research on this, there's  
22 a little bit in the paper, that some of these costs, the

1 recruitment and the training apparently, some of them are  
2 getting allocated to reimbursable costs. So it's only the  
3 stuff that's going in the non-reimbursable that we are [off  
4 microphone].

5 MS. BEHROOZI: So then you report in the paper  
6 that per the survey, the hospice survey, 5.6 percent of  
7 clinical staff hours in 2009 were provided by volunteers.  
8 So have you done any analysis of what impact that would have  
9 on the bottom line, if hospices had to pay for those  
10 services, and it's actually a two-part question.

11 The second is, can you tell from the survey, can  
12 you get a distribution of who is using those services? One  
13 of the bigger concerns, of course, is for-profit versus not-  
14 for-profit. Is it high margin versus low margin? That kind  
15 of thing.

16 MS. NEUMAN: So the data I was citing in the  
17 papers from the NHPCO survey, and so I'm citing data that  
18 they've reported out in an aggregate level. I don't know  
19 the extent to which there's more detailed information on  
20 sort of the hospice characteristic, but I can look into  
21 that.

22 I have not done a calculation of what the impact

1 would be if they paid for these services rather than having  
2 volunteers do it. It's something I will think about how to  
3 do. It's going to be complicated in the sense that when  
4 volunteers provide patient care, for example, there are  
5 physicians and nurses and folks who are volunteers, but then  
6 there's also just folks, lay people, who want to help and  
7 they may be helping with shopping or sitting with the  
8 patient while the family member goes out to do something.  
9 That kind of estimating what would happen for that, in terms  
10 of their cost, is difficult. So it's something that we can  
11 think about, but it's going to be hard to get a very strong  
12 number here.

13 MR. BUTLER: So I think I'm right in that hospice,  
14 if you're in an MA plan, the hospice benefit sits outside of  
15 the MA plan and we keep referencing MA plans and what do  
16 they do. I'm just kind of curious in this respect. I would  
17 think MA plans would be encouraged to, incentivized to make  
18 ample use of hospice for their members. Is there any data  
19 around that?

20 MS. NEUMAN: So we have in one of the early tables  
21 in the paper, we have the rate of hospice use for Medicare  
22 Advantage decedents versus fee-for-service, and it is

1 higher. I think the number is 46 percent. Let me just  
2 check here. Yeah, 46 percent of MA decedents in 2009 used  
3 hospice compared with 41 percent in fee-for-service. So we  
4 do see a little bit higher hospice use.

5 I've looked also at length of stay and things like  
6 that. It doesn't look that different on length of stay.  
7 That's about it right now for the data I have on MA versus  
8 fee-for-service.

9 MR. HACKBARTH: Okay. Round two comments. Karen,  
10 Scott, Bruce, Kate, Nancy.

11 DR. KANE: I think I'm happy to support the one  
12 percent, partly because of the issues we discussed, although  
13 it's the most generous that we've given and we've given it  
14 to the acute hospitals whose overall margin was negative and  
15 we're giving it to physicians even though we don't know  
16 their margins. But I think the lack of quality information  
17 makes you a little concerned as to -- lack of quality  
18 information and proper criteria for use does make you very  
19 concerned about this, and the fact that this is mostly for-  
20 profit business and what are we doing here, attracting more  
21 use and better returns without really quite knowing when  
22 people should use it and whether the quality is good or not.

1 So I'm a little concerned --

2 MR. HACKBARTH: Yes.

3 DR. KANE: -- and I think we should keep trying to  
4 work on how to get better data.

5 I think in the future, which I won't be a part of  
6 -- it's kind of nice to have it be a last year so you can  
7 make all kinds of comments that other people have to worry  
8 about -- it would be great to start thinking about how you  
9 can get facility criteria and/or patient criteria that  
10 really make people have to sign off on, what's the right --  
11 or a shared decision making model or something that focuses  
12 on end-of-life care, that really thinks about the behavioral  
13 part of end-of-life care and maybe it's required that people  
14 go through the counseling that's needed to make proper end-  
15 of-life care decisions for their family, not economically  
16 driven at all but really for quality of life.

17 And I think there's a special need to do something  
18 around mentally impaired, and I think we were talking the  
19 other day, maybe there's something in between hospice and  
20 LTCH or SNF that's really respite type of care, that I don't  
21 know that Medicare pays for yet, but maybe we have a whole  
22 group of people who have mental impairment, dementia -- I

1 don't know what failure to thrive is, but maybe that's  
2 related, as well -- maybe there needs to be really a lot  
3 more thought to how does society care for these people most  
4 effectively and keep them in the community as long as  
5 possible. It might be a respite problem for the caregiver  
6 more than it is -- they don't need a lot of acute medical  
7 attention.

8           So I just think this whole post-acute, especially  
9 as you get closer to the end of life, needs a lot more  
10 attention into the best way to direct people. So anyway, I  
11 will support the one percent, but I would be more  
12 comfortable with a half-a-percent because of the problems,  
13 not because they're undeserving.

14           MR. HACKBARTH: Yes. A quick reaction on,  
15 actually, both of your points. On the first one, comparing  
16 what we're giving for different provider groups based on  
17 margins, I would just add one qualification to that, which  
18 is, yes, the bottom line for hospitals is one percent, but  
19 what we've said is that but for DCI, the DCI adjustment, we  
20 would have given a two-and-a-half percent increase. So if  
21 we just look based on financial performance and make that  
22 comparison across sectors, we would have given substantially

1 more to hospitals. But we do have this DCI issue that we  
2 need to deal with.

3           On the second issue, I think in the last couple  
4 discussions, you've made some really important points about  
5 how patients get to the proper services. One of the  
6 challenging aspects of fee-for-service Medicare is that  
7 you've got two types of tools that you can use to try to  
8 deal with that. You can try to adjust payment rates and you  
9 can write regulations. And unfortunately, those are often  
10 relatively crude tools to deal with very subtle issues and  
11 differences among patients. Ultimately, that's the argument  
12 for more organized delivery systems that can better manage  
13 the patient's needs and have responsibility for the full  
14 spectrum of services and care under the rubric of a single  
15 payment. There, you can have clinicians that are intimately  
16 familiar with the patient, with the proper incentives,  
17 directing them to the needed services given their -- not  
18 just their condition, but also their personal tastes,  
19 preferences, and all that. There's only so far we can go in  
20 fee-for-service using adjustments in payment rates and  
21 writing rules to get people to the right place. There are  
22 inherent limits.

1 DR. KANE: I agree, and I do look forward to that  
2 future, which is hopefully more likely than some of our  
3 other futures we've been -- I mean, I look forward to that  
4 happening. But I think to foster it along the way, and  
5 given that we're still mostly in this other world, it would  
6 be helpful to have these criteria, some sort of criteria  
7 that people really try to think about now for when people  
8 should be directed to what care --

9 MR. HACKBARTH: I would put in a plug for payment  
10 reform, since --

11 DR. KANE: I'm all for it.

12 MR. HACKBARTH: -- as our other payment lever.

13 DR. BERENSON: Can I make a comment on that?

14 MR. HACKBARTH: Yes.

15 DR. BERENSON: When you were talking about  
16 something in between LTCHs and hospice and describing  
17 something for cognitively impaired, you -- it sounds right,  
18 but it sounds like it's awfully close to long-term care and  
19 that's sort of where we draw a line. So it is a problem as  
20 to when we get into that area, what we actually can do  
21 within the sort of structure of the program at this point, I  
22 would think.

1 DR. KANE: I get the sense that there's quite a  
2 few people with mental impairments who are getting into  
3 either hospice or SNF under Medicare, because we've talked a  
4 lot about them, and it is a diagnosis that seems to show up  
5 a lot, and if you're in a hospice for three years with  
6 dementia, I kind of think there might be a better  
7 alternative, and that's all. I mean, I'm really --

8 DR. BERENSON: I think that's right, but I don't  
9 think we --

10 DR. KANE: I agree with you.

11 DR. BERENSON: I don't think people should be in  
12 hospice for three years with dementia. I think that's the  
13 problem that we're trying to address right now.

14 DR. KANE: I hear you.

15 MR. HACKBARTH: Round two comments. George?

16 MR. GEORGE MILLER: Yes. I think I can support  
17 the recommendation, also. I somewhat tend to agree with  
18 Nancy about the amount, and mine is for a different reason,  
19 and that is because, quite frankly, the growth in for-profit  
20 hospice over the time. I'll give an anecdotal story. At  
21 least at two of my hospitals, we support the local hospice,  
22 and in one case, our nurses volunteered as part of the

1 process. So we thought that hospice was meaningful. It was  
2 part of our corporate responsibility to help support the  
3 local hospice because of its mission and enhance the  
4 community benefit.

5 But I am very concerned about the growth in for-  
6 profit hospice, and that seems to be the majority of the  
7 growth over the last ten years. So with that said and the  
8 lack of quality, I struggle with the need for a one percent  
9 increase without having that vital information. So I'll sit  
10 here and contemplate the way I will vote before -- or by the  
11 time we make the decision. I would support Nancy and maybe  
12 a half-percent would be more in line because of the lack of  
13 information and growth of for-profit hospices.

14 DR. NAYLOR: So I strongly support the  
15 recommendation and I'm heartened by the fact that CMS will  
16 be publishing quality indicators in the same year that this  
17 payment update is going into place so we will have kind of a  
18 concurrent opportunity to assess quality as we go forward.

19 DR. DEAN: Yes. I think I can support the  
20 recommendation. A couple of thoughts. Just to comment on  
21 the discussion we had in the first round, it just seems to  
22 me -- it bothers me that we put in requirements and then we

1 say we're not going to pay for them, you know, the  
2 bereavement costs. I mean, the government is famous for  
3 that and that money has to come from somewhere, which means  
4 it probably comes from either private pay or other insurance  
5 or whatever. It happens a lot. I'm much more familiar with  
6 nursing home care and it happens a lot there. And so it's  
7 just troubling. I think it's certainly a legitimate  
8 service. I think the requirement that it be there is very  
9 appropriate. But that you require but not support it is  
10 illogical, in my view.

11 I'd like to comment on something that was in the  
12 paper that I think really deserves more consideration, and  
13 that's the idea that perhaps people should be eligible for  
14 hospice without completely rejecting curative care, because  
15 in -- and I don't have a lot of experience with hospice.  
16 It's not widely used in our area. But in the discussions  
17 that I've had, I think that's something that really  
18 frightens people and I don't think they understand how a  
19 hospice service can really take the place of acute care.

20 From what I understand from the literature that  
21 exists in this area, when that requirement of completely  
22 rejecting curative care was relaxed, that, in fact, people

1 really didn't tend to use curative care, but having it  
2 available provided a little bit of sense of security and  
3 probably would allow people to choose this service, the  
4 hospice service, at a much more appropriate time, which  
5 would mean earlier in the phase of -- earlier in the course  
6 of their illness, because we know that we're worried about  
7 long stays, but in my experience, the people that sign up  
8 for hospice, usually by the time they get to the point where  
9 they really finally have decided, yes, curative care is not  
10 going to work, they've got a few days left to live and  
11 hospice intervention really doesn't provide much benefit.  
12 So I think we really need to give some serious thought.

13 I think an analogy in some of the insurance  
14 literature, when you are asking people, would they agree to  
15 an insurance policy that had a closed panel of physicians  
16 versus free choice of physicians, everybody would say, we  
17 want the choice. In fact, when you gave them the choice,  
18 they frequently didn't use it. But it was the option of  
19 having it available was really a pretty important force in  
20 their decision about which sort of structure they were going  
21 to choose.

22 I think in trying to make better use of the

1 potential benefits that hospice has, this is an issue that I  
2 think deserves some serious consideration and hopefully  
3 would get away from these really short stays where, you  
4 know, hospice doesn't do much good.

5 MR. HACKBARTH: This is a really important issue,  
6 Tom, and thanks for raising it. In a way, it echoes back to  
7 Bob's comment in the first round. There are issues at both  
8 ends of the continuum, stays that are too long and also  
9 opportunities lost with stays that are too short, when the  
10 admission is too late in the process.

11 DR. DEAN: Yes.

12 MR. HACKBARTH: I think it was maybe six months  
13 ago, Atul Gawande wrote his very compelling piece in The New  
14 Yorker about end-of-life issues and this was one that Atul  
15 focused on.

16 DR. DEAN: Yes.

17 MR. HACKBARTH: My recollection of that is that  
18 there has been some research -- and Kim and Jim, I'm going  
19 to need your help there -- there has been some research.  
20 Aetna, as I recall, did a demonstration on this and  
21 concluded that, in fact, it did not cost more money in order  
22 to waive the requirement. And then, also, PPACA, as I

1 recall, requires a test of this issue, is that correct?

2 MS. NEUMAN: Yes. There's going to be a three-  
3 year demonstration in 15 sites to waive the curative care  
4 requirement within the Medicare population and see what the  
5 effects are. So my understanding is that that's -- the sort  
6 of plan for that is still being worked out. It hasn't been  
7 released yet. But that's in the law.

8 And then, as you said, there's the Aetna study,  
9 and the thing that's a little bit different about that is  
10 it's a commercially insured population that's younger with a  
11 lot more cancer and so it will be interesting to see in a  
12 different kind of population what happens with a similar  
13 approach.

14 DR. MARK MILLER: [Off microphone.] The other  
15 difference -- I'm trying to remember when we talked about  
16 this last time -- was the Aetna study conducted in the  
17 context of a managed care plan?

18 MS. NEUMAN: Yes.

19 DR. MARK MILLER: And that's the other variable to  
20 keep in mind. There's not just the differences in the  
21 populations. And this comes up -- Mike has made this point,  
22 Scott has made this point, many of you have made this point

1 of when you take a good idea and then put it in a fee-for-  
2 service kind of open-ended unmanaged environment, will you  
3 get the same result that you got in that environment, and  
4 that's -- I think that's another thing that the  
5 demonstration may bring out.

6 DR. DEAN: One other issue, and it follows up on  
7 some of the things that Nancy was saying, I think that we  
8 need to also, just to repeat, I guess, what Nancy say, try  
9 to be sure that we're encouraging people to get to the  
10 programs that have the services that really serve their  
11 needs. And it does bother me that, for instance, we have  
12 this large component of people with dementia going into  
13 hospice because hospice, as I understand it and my  
14 experience, has some -- obviously, it's a terribly important  
15 service, it's a terribly valuable service, but it has  
16 certain skills that I'm not sure are relevant or fit real  
17 well with the needs of people with Alzheimer's disease, for  
18 instance.

19 Hospice are really experts at dealing with pain  
20 and fear and those kind of situations. Those are not really  
21 the needs that people with Alzheimer's tend to have. Their  
22 big needs in the Alzheimer's situation are usually with the

1 caregivers rather than with the patients themselves, and  
2 caregivers need huge amounts of support, but that really  
3 isn't the core of hospice services, at least as I understand  
4 it.

5 So I think -- I don't know exactly how you do this  
6 sorting, but I think it deserves some thought.

7 MS. BEHROOZI: A couple of different points. I  
8 think that where Nancy is going, talking about respite care  
9 or long-term care, whatever you want to call it, I think we  
10 can't avoid it. I recognize that the program says there is  
11 no long-term care benefit, but I think we talked about it in  
12 executive session maybe last time or the time before, and I  
13 don't see Evan here, but there were a couple of Federal  
14 court decisions overturning denials of home care payments  
15 where the justification for the home care was to prevent  
16 deterioration and thereby prevent hospitalization or  
17 whatever.

18 So it's encroaching, kind of. And Scott talks  
19 about the kinds of services that he provides to a Medicare  
20 population to keep them from becoming more acute. So, you  
21 know, it's kind of seeping under the door or whatever, so I  
22 think we do have to pursue -- whatever, make

1 recommendations. Think about making recommendations that  
2 really are transformative of the program as opposed to  
3 incremental around the edges.

4 I just wanted to -- when you talked, Glenn, about  
5 getting people to the right place, you talked about two ways  
6 of doing that, payment rates and regulation, but yesterday  
7 we spent a whole lot of time on the third way, which is cost  
8 sharing to the beneficiaries, right, and driving their  
9 behavior. And the fact that there is no copayment here -- I  
10 am not an advocate for copayments, you know that. And I'm  
11 not just trying to be a lawyer and be consistent. But  
12 rather, I think this ties into the cost savings issue, I  
13 think, as I understand it. And this just might be a small  
14 slice of it, but that was one of the reasons, I understood,  
15 for there not being a copayment associated with hospice  
16 because I thought the idea was that this would be a high-  
17 value service, not only to the beneficiaries who wouldn't  
18 have otherwise have had this service, but that there would  
19 be a net savings, right.

20 So when we're talking about the overall benefit  
21 design, if you started from scratch, what would you do, I  
22 think we have to, yes, think about that.

1           And then on the rationale for the one percent.  
2   I'm glad that Nancy raised it, because I was actually  
3   looking at our handy-dandy little chart here, and just from  
4   the discussion before, I think -- again, not just to be  
5   consistent, but I think we need to make it clear why we're  
6   not doing here what we did with LTCHs, for example, where  
7   the margins are similar. Last year, or 2009 was 5.7 for  
8   LTCHs, 5.1 for hospice. Two-thousand-and-eleven projected  
9   4.8 in LTCHs, 4.2 in hospice. The variation is broad in  
10   both areas, a little more in hospice actually than in LTCHs.  
11   You've had the doubling of freestanding hospices in the last  
12   ten years.

13           Paying for the bereavement that they're not  
14   reimbursed for, I'm not quite as sympathetic, I think, as  
15   some of my colleagues are. The paper made clear that the  
16   1.5 percent is possibly an overstatement and it varies  
17   between for-profit -- I'm sorry, yes, with not-for-profit  
18   providers having about two percent bereavement costs and  
19   for-profit providers having somewhat more than half -- I  
20   mean, a little more than half that. One-point-one percent  
21   of their total costs are bereavement costs. So I think  
22   they're probably able to offset some of that with their

1 volunteers that they're not paying.

2           So I don't know that that justifies our going all  
3 the way from zero to one. If there are other rationales, I  
4 think we need to be clear about them. Otherwise, I think  
5 with Nancy and George, I would opt for less than one, given  
6 the comparisons to the other areas.

7           MR. BUTLER: As we try to convert all this  
8 qualitative research to quantitative and particularly across  
9 these post-acute care sectors, I'm almost back on the  
10 qualitative side in the sense that we're getting into very  
11 sensitive issues. I would really enjoy a panel of, say, a  
12 leading MA plan, a pilot ACO, a post-acute care bundling  
13 company, somebody that we could hear about how they  
14 philosophically are approaching this in their own  
15 organization to give a sense of what the real opportunity is  
16 besides just kind of bundling this stuff together and the  
17 trade-offs and the readiness for it, because we have this  
18 philosophy, we want to hand off responsibility for the,  
19 particularly the post-acute care continuum, and I really  
20 would kind of like to understand better how some are doing  
21 this, and not maybe ones that are just shooting the lights  
22 out but ones that are kind of struggling with this. It

1 would help me understand how well we're really culturally  
2 going to be able to implement some of these trade-offs which  
3 quantitatively may look obvious at some point to us, but  
4 they're more difficult to implement than you may think.

5 DR. CHERNEW: Thanks. I am supportive of the  
6 recommendation, but one nice thing about a siloed system is  
7 you get to make the same comment again and again and again -

8 [Laughter.]

9 DR. CHERNEW: So this is another example, as  
10 people have said, about going for the type of person. So in  
11 my mind, it's not about hospice. It's about cancer  
12 patients. And it's not about hospice, it's about patients  
13 with Alzheimer's or whatever it happens to be.

14 One of the subgroups that I think is particularly  
15 important that hasn't really been discussed much is patients  
16 in nursing homes that then need hospice, where there are  
17 some separate issues. We wrote an issue on this, and just  
18 for Tom's comments, we actually in that paper advocated  
19 removing the requirement for relinquishing access to  
20 curative care for folks in nursing homes and a series of  
21 other things related to that. And I do think there's a lot  
22 that could be done to think about criteria for getting a set

1 of services that aren't necessarily hospice per se, but a  
2 set of services people need as they get closer to the end of  
3 their life, whether it be six months or whatever it is.  
4 There's a whole series of things that one might think about,  
5 and again, it very much depends on the diseases.

6           The only last thing I would say -- and again,  
7 that's not for this, but I think as we go through and think  
8 about this, I think Peter's suggestion was very wise in that  
9 regard.

10           The only other thing I would say is I have very  
11 mixed feelings about George's comment about for-profits  
12 entering. On one hand, I do think it's something you might  
13 worry, not because I am against for-profits. As an  
14 economist, you know I love for-profits. But you worry that  
15 there are a lot of folks coming in, and if we thought they  
16 were coming in and doing really good things in underserved  
17 areas because they're very nimble, that would be great and I  
18 think that's the beauty of having for-profits being able to  
19 do that, and it certainly does soothe me to think that we  
20 aren't too low in what's going on.

21           On the other hand, because hospice is such a  
22 difficult service to measure quality and costs, and I'm

1 written on fiscal Armageddon and so I worry about all of  
2 that other stuff, you worry that there aren't some  
3 opportunities for people who aren't doing a very good job  
4 and how to deal with that, which is one reason why I  
5 supported the copay before and you could probably convince  
6 me to support copays here. Mitra will later.

7           But in any case, that's really what the challenge  
8 is, and it's the challenge in being able to measure quality,  
9 not quality of the hospice per se, which is going to have a  
10 lot of heterogeneity, but quality of the process for the  
11 beneficiaries and what organizations can fit in well and how  
12 we can set up in our paper on hospice. One of the big  
13 things was who is ultimately responsible, not for the  
14 hospice care or not for the nursing home care, but for the  
15 continuum of care, which we took a lot of flack for,  
16 actually. But finding that person or that organization  
17 that's responsible over the spectrum of care is just really  
18 important, and I think we have to think about how we can use  
19 bundling or whatever and quality measurement to encourage  
20 that.

21           MR. HACKBARTH: So I want to go back to Mitra, who  
22 raised several really important points, one about the copay.

1 This is an issue that Bob has also raised before, that there  
2 are some similarities between the issues we're wrestling  
3 with in home health and hospice and we ought to be thinking  
4 about potentially a copay for hospice. And so I think  
5 that's definitely something that ought to be discussed as we  
6 move into broader discussions of a benefit package next  
7 month.

8 On the second issue that Mitra raised, comparing  
9 our recommendation for LTCHs and hospice, here's my  
10 thinking, and it again comes with a caveat that the nature  
11 of this enterprise is there aren't right answers, but I just  
12 wanted to lay out my thinking and why I thought a higher  
13 number was appropriate for hospice than for LTCHs. There  
14 are two elements to it.

15 One is if you look at the history of margins for  
16 the two sectors, you know, going back seven, eight years,  
17 hospice have been pretty consistently in the four or five  
18 percent range, say four-and-a-half to six, in that range.  
19 LTCHs have had a history where three or four years ago, they  
20 were substantially higher, up at the 11.9, ten percent --  
21 11.9, 9.7 percent area.

22 And now I'm going to relate it to something that

1 Mike just said. In LTCH, we have a service about which we  
2 have particular uncertainty about where it fits in the  
3 appropriate care delivery system, substantial profits, a  
4 substantial rush in of for-profit activity. And frankly,  
5 one of my thoughts about LTCHs has been we need to hold down  
6 the margins to deter lots of new entry for a service that  
7 we're not even sure where it fits in a high-performing cost-  
8 effective delivery system. Now, in addition to that, in  
9 fairness, Congress has taken other kinds of steps, including  
10 ultimately the moratorium in PPACA. But because of the  
11 history of higher margins and because of the uncertainty  
12 about the role of LTCHs in the system, frankly, I have  
13 tended there on the low side, not just this year, but in  
14 past years with regard to LTCHs. Some of the same issues  
15 may exist with hospice, but in my own personal assessment, I  
16 didn't think to the same degree.

17 So that was my thinking. Again, there is not a  
18 right or a wrong on this, but I just wanted to respond  
19 specifically.

20 Mitra, then Nancy.

21 MS. BEHROOZI: I just want to respond on the first  
22 point and make clear that I'm not advocating that we impose

1 a copayment in hospice. When it comes to discussing  
2 copayments, I will make the same kinds of arguments, I hope  
3 a little more coherently and less passionately, about how --  
4 the factors that you should take into consideration in  
5 setting a copayment. So I just wanted to make that clear.

6 DR. KANE: The profit differential between hospice  
7 and LTCH, certainly, you know, LTCH is a little higher, but  
8 there's also higher capital requirements and that is how you  
9 fund those, ultimately. So, I mean, I just don't think  
10 that's totally enough. But I agree that the uncertainty of  
11 the value of LTCH is much greater than the uncertainty -- I  
12 mean, hospice clearly has value and fits into the system,  
13 whereas LTCH, we're just kind of wondering what it really  
14 does that a good SNF can't do. But I think if you're going  
15 to start talking about higher and lower profits without  
16 taking into account the capital requirements, it gets kind  
17 of meaningless.

18 DR. NAYLOR: I just wanted to, also, there's been  
19 some conversation about differentiating hospice from long-  
20 term care. We've been working with Alzheimer's patients in  
21 hospice. They're entirely different patients than people  
22 receiving long-term services. I mean, Alzheimer's

1 represents a coexisting problem in someone who has heart  
2 failure, diabetes, and is at end of life. So I think we  
3 need to really -- I mean, it's certainly a challenge to know  
4 when people are end of life because of the complication of  
5 cognitive impairment, but I really think we need to separate  
6 our understanding about long-term services versus hospice  
7 services for people who happen to have major cognitive  
8 impairment.

9 MR. HACKBARTH: Okay. Just a real short one.  
10 We're about a half-hour behind. Karen, go ahead.

11 DR. BORMAN: Just in terms of as we think about  
12 synergies after we get past the updates, the discussion here  
13 about criteria and so forth seems to me to marry up to the  
14 whole shared decision making process. This ought to be a  
15 fertile field for that.

16 The second thing would be that comparative value  
17 across the various post-acute settings, again, I think  
18 should be on our list of things to encourage, that the  
19 Comparative Effectiveness Center begin to look for what  
20 evidence is out there as they begin their work.

21 MR. HACKBARTH: Okay. Would you put up the draft  
22 recommendation. Okay. Time to vote. All in favor, please

1 raise your hand.

2 Opposed?

3 Abstentions?

4 Okay. Thank you very much.

5 And our concluding session is on Medicare  
6 Advantage. This does not involve a vote on an update  
7 recommendation, but we do include a chapter on Medicare  
8 Advantage in our March report each year.

9 Scott and Carlos, you can begin whenever you're  
10 ready.

11 DR. HARRISON: Okay. Today Carlos will present  
12 the quality-of-care sections from the draft MA chapter that  
13 you have, but first I want to briefly remind you about the  
14 enrollment and payment sections that I presented in November  
15 and answer a question also from November. Then I will stay  
16 at the table to answer any questions you may have when you  
17 discuss the chapter as a whole.

18 First, the question. Bob, you wanted to know the  
19 relative risk in plans versus fee-for-service. For 2011,  
20 the plans project an average of 2 percent higher risk than  
21 fee-for-service, and that is up from 2009 when they  
22 projected the average risk would be the same as fee-for-

1 service.

2 DR. BERENSON: Just quickly, that's before the  
3 adjustment for the coding, intensity.

4 DR. HARRISON: Correct. Okay. Now to summarize  
5 from November, over the past year enrollment in MA plans  
6 grew by about 5 percent, to the current level of 11.4  
7 million beneficiaries. Currently, about 24 percent of  
8 Medicare beneficiaries are enrolled in MA plans. Enrollment  
9 did begin to shift out of private fee-for-service plans and  
10 into PPOs and HMOs as plans responded to network  
11 requirements that were mandated in 2008 legislation.

12 For 2011, plans are available to almost all  
13 beneficiaries, and I say "almost" because 0.4 percent of  
14 beneficiaries do not have a plan available.

15 The average number of choices per county declined  
16 from 21 to 12 over the past year, and the decline was due to  
17 the decline in private fee-for-service choices. The average  
18 of eight coordinated plan choices per county remained the  
19 same.

20 Also, we estimate that, on average, Medicare will  
21 pay about 10 percent more to cover a beneficiary in an MA  
22 plan than it would have paid to cover the same beneficiary

1 in fee-for-service Medicare.

2 And, finally, when we examined the PPACA benchmark  
3 changes that will be phased in by 2017, we found anomalies  
4 that would cause benchmarks in some lower fee-for-service  
5 spending areas to exceed those in some higher fee-for-  
6 service spending areas.

7 And now, as promised, Carlos will present the  
8 quality sections.

9 MR. ZARABOZO: Today I will provider an update on  
10 recent trends in the quality indicators for Medicare  
11 Advantage plans, and I will also discuss changes in the law  
12 that introduced a quality bonus payment system for MA. At  
13 the outset, I would like to thank Kelly Miller for her  
14 careful work on the CAHPS data that I will talk about, and  
15 thanks also to Carol Frost for help with the population  
16 distribution data.

17 Before we examine MA plan performance on quality  
18 indicators for the most recent time period, some background  
19 is helpful to put our discussion in context. Last year, the  
20 Commission issued a congressionally mandated report that  
21 dealt with two issues: how to better evaluate quality in  
22 the Medicare Advantage program, and how to compare quality

1 in MA plans to the quality of care in fee-for-service  
2 Medicare. The report had a number of recommendations, such  
3 as the need to develop more outcomes-oriented measures  
4 appropriate for the Medicare population and the need to  
5 collect more data from MA plans. In addition, the report  
6 discussed ways to use available data, and new data, to  
7 compute performance levels in MA and fee-for-service  
8 Medicare. The report also emphasized the need to ensure  
9 strict comparability when comparing one plan to another or  
10 when comparing MA to fee-for-service, for example, by making  
11 comparisons at the appropriate geographic level.

12           Something that is also of relevance to today's  
13 discussion is that the Commission has recommended that there  
14 be a pay-for-performance system in Medicare Advantage to  
15 provide additional payments to plans with demonstrated  
16 higher quality.

17           With that background, we can report on the current  
18 status of some of the recommendations. CMS recently issued  
19 a proposed rule in the Federal Register in which the agency  
20 stated its intention to proceed in the direction suggested  
21 by the Commission's recommendations, for example, by  
22 emphasizing outcome measures and developing additional

1 measures for older Medicare beneficiaries.

2 In terms of concrete changes that have occurred or  
3 are in the works, CMS and the National Committee for Quality  
4 Assurance are working on developing new quality measures for  
5 the MA population. In addition, CMS is proceeding with its  
6 plan to collect detailed encounter data from MA plans, which  
7 can be a rich source of data for comparing MA to fee-for-  
8 service. The encounter data collection is scheduled to  
9 begin in 2012.

10 In another change, CMS now allows preferred  
11 provider organizations, or PPOs, to report certain quality  
12 performance measures in the same way as HMOs, which can put  
13 such plans on a more equal footing when evaluating quality.

14 And, finally, in terms of new developments, recent  
15 legislation -- PPACA - introduced a quality bonus payment  
16 system for MA beginning in 2012.

17 Many of the recommendations that the Commission  
18 made in the mandated report to the Congress last year were  
19 expected to take several years to implement. Thus, there  
20 are still issues with how to go about examining quality in  
21 MA and how we can compare quality in MA to quality in the  
22 fee-for-service sector. As we will discuss in further

1 detail, we see a lot of variation in plan performance as  
2 measured by the current quality measurement systems, but the  
3 data suggest that in some cases these differences do not  
4 necessarily represent differences in quality across plans.  
5 Instead, the differences may reflect specific circumstances  
6 or characteristics of individual plans, including, for  
7 example, the geographic area in which a plan operates, or  
8 the composition of enrollment of the plan.

9           We will also discuss the decision that CMS made to  
10 use a program-wide demonstration to implement the quality  
11 bonus program rather than the approach outlined in the PPACA  
12 legislation. We will talk about this in detail after  
13 presenting our most recent findings on the state of quality  
14 in MA.

15           Before moving on to look at the actual results of  
16 MA quality indicators for the current reporting cycle, I  
17 will remind you of the three sources of quality indicators  
18 that we use to judge the performance of MA plans, which are  
19 shown in this table.

20           HEDIS is a set of process measures and  
21 intermediate outcome measures that plans report.

22           The Health Outcomes Survey, or HOS, is a survey of

1 Medicare beneficiaries asking about their health status and  
2 use of services, and it is used to compute measures of  
3 improved or declining mental and physical health.

4           The third system is CAHPS, a survey of beneficiary  
5 perceptions of the quality of care they receive, ease of  
6 access to care, and health plan responsiveness. CAHPS is  
7 also the source of information on vaccination rates for  
8 beneficiaries in MA and fee-for-service. Because CAHPS  
9 surveys both types of beneficiaries, fee-for-service  
10 Medicare beneficiaries and MA enrollees, CAHPS can be used  
11 to compare MA to fee-for-service.

12           Beginning with the first system I mentioned,  
13 HEDIS, we see what we have typically seen over the last  
14 several years for HMO performance. There has been some  
15 improvement in HEDIS results, with nine measures out of 46  
16 effectiveness-of-care measures showing statistically  
17 significant improvement over the preceding year, which is  
18 slightly better than the performance in the last cycle.

19           Plan performance is highly variable for many of  
20 the measures; in particular, we see in the intermediate  
21 outcome measures that the top performing plans have rates  
22 that can be nearly five times better than the rates among

1 plans in the lowest decile of performance. These  
2 intermediate outcome measures are perhaps the most important  
3 measures in HEDIS. There are seven such measures out of the  
4 46 effectiveness-of-care measures; they include measures of  
5 control of blood sugar, cholesterol levels, and blood  
6 pressure.

7           The current HEDIS results also show what we have  
8 seen in the past, which is that newer HMO plans -- those  
9 that entered the program in 2005 or later -- tend to perform  
10 more poorly on HEDIS measures than more established HMO  
11 plans.

12           We also see that local PPO plans have results that  
13 are similar to HMO plans on measures that do not involve the  
14 review of medical records. Although PPOs can now use  
15 medical record review, it appears from the data that the PPO  
16 results are still often claims-based results without a  
17 medical record review component.

18           There are about 400 HMOs or local PPOs reporting  
19 HEDIS results. Regional plans also report HEDIS results,  
20 but these are large plans covering wide geographic areas  
21 under one contract. HEDIS reporting is at the contract  
22 level, so the most recent HEDIS data set includes 13

1 regional PPO entities reporting. To the extent that a  
2 comparison is possible, regional plans appear to perform  
3 more poorly than other plan types. Having said that, we  
4 should also point out that there may be a reason for the  
5 differences we see with regional PPOs, and that is that  
6 these plans tend to attract more beneficiaries entitled to  
7 Medicare on the basis of disability. Eighteen percent of  
8 regional plan enrollees are under 65, compared to the 11 or  
9 12 percent in each of the other plan types. This population  
10 difference could explain some of the performance differences  
11 for the regional plans. We mention this in part to  
12 reiterate a point that we make in the mailing material,  
13 which, again, is that sometimes what appear to be  
14 differences in quality of care across plans may be a matter  
15 of other kinds of differences, such as the example we gave  
16 in the mailing material of a sophisticated medical record  
17 system possibly explaining much better scores on one  
18 specific HEDIS measure for a particular group of plans.

19 Turning now to the Health Outcomes Survey, the  
20 vast majority of plans have results showing that there are  
21 few outlier plans in terms of whether their members had  
22 improved or declining health over a two-year period compared

1 to expected results and compared to the MA average. This is  
2 similar to results in each of the past several reporting  
3 periods. This year, the only outliers were in mental  
4 health, with eight plans showing better results and 13 plans  
5 showing worse results.

6           Turning to CAHPS, in your mailing material we  
7 included a comparison of vaccination rates and access to  
8 care measures between MA and fee-for-service, but we noted  
9 how one geographic adjustment that we made altered the  
10 results of the MA to fee-for-service sector comparison. To  
11 address this issue, we have adjusted the CAHPS results to  
12 attempt to match geographic areas between the two sectors.  
13 We use state-level data to arrive at a national rate for  
14 fee-for-service to compare to the national MA rate. The  
15 fee-for-service rates are adjusted by the state distribution  
16 of MA enrollment across the country. In that way, the fee-  
17 for-service rate represents the fee-for-service rate for the  
18 areas in which MA plans enroll their members.

19           After this adjustment, what we find is that  
20 vaccination rates are similar in MA and fee-for-service,  
21 with pneumonia vaccination rates being slightly better in  
22 MA. We also see that measures of ease of getting care and

1 access to a specialist are similar, with fee-for-service  
2 showing slightly higher rates of beneficiaries reporting  
3 that they usually or always got a specialist appointment, as  
4 well as care for an illness or for routine care as soon as  
5 the person wanted it.

6           This is the first time we have examined fee-for-  
7 service to MA differences using CAHPS, and we are still  
8 working with the data. We need to be very cautious about  
9 making statements about the performance of one sector versus  
10 the other based on the overall CAHPS results. When we look  
11 more closely at the data, we see that there is wide  
12 variability across geographic areas and across population  
13 types. While we have used one method to attempt to address  
14 the issue of geography, there are other factors to consider,  
15 such as variation by population types. One example that we  
16 noted in the mailing material, for example, is that  
17 employer-sponsored MA enrollees have higher vaccination  
18 rates than other types of MA enrollees; therefore, plans  
19 with a higher concentration of such enrollees would have a  
20 higher plan-wide rate.

21           The upshot of this is that while CAHPS can be used  
22 to compare MA and fee-for-service, factors such as geography

1 make a difference and need to be considered. As I  
2 mentioned, in the congressionally mandated report we  
3 recommended that comparisons between MA and fee-for-service  
4 be made on matched geographic areas. Currently, CMS posts  
5 CAHPS results for fee-for-service at the Plan Finder web  
6 site at Medicare.gov. So, for example, a beneficiary  
7 choosing among different MA plans can see area-level fee-  
8 for-service vaccination rates and MA contract-level rates.  
9 For most states, state-level fee-for-service CAHPS results  
10 are being reported, but there is often a mismatch with MA  
11 results because beneficiaries are comparing the fee-for-  
12 service results to MA results that could be for multi-state  
13 plans, such as regional PPOs, or could be for an HMO or local  
14 PPO that is operating in a very small area within the state.

15 We will now examine how CMS uses the data  
16 collected through the three sources of quality performance  
17 measures to rank MA plans. For several years, CMS has been  
18 using a 5-star rating system to provide relative rankings of  
19 plans. HEDIS, HOS, and CAHPS are major sources of  
20 information for determining a plan's star ratings.

21 There are 51 individual measures that make up the  
22 star system. Each measure is awarded 1 to 5 stars. All of

1 the 51 measures are averaged to arrive at an overall star  
2 rating, with a slight increase possible through an  
3 integration factor that recognizes a plan's consistently  
4 high performance on the measures.

5 The combined average of the 51 individual star  
6 measures for both Part C and Part D -- that is, the drug  
7 component of an MA prescription drug plan -- determines what  
8 a plan's overall star rating will be.

9 Generally, the Commission has viewed quality  
10 measures as including clinical quality measures and patient  
11 experience measures, as we described in the mandated report  
12 to the Congress. In last year's March report to the  
13 Congress, we raised a concern about the methodology for  
14 determining star ratings. On this table you see that most  
15 of the measures used to determine star ratings come from  
16 HEDIS, HOS, and CAHPS, the first rows listed. However, for  
17 the Part C rating -- that is, the rating of performance  
18 under Parts A and B of Medicare -- seven measures are  
19 contract performance measures, making up 19 percent of the  
20 36 Part C measures. Looking at the middle column, the Part  
21 D measures, which measure the performance of an MA plan's  
22 drug plan, we see that two-thirds of the measures are

1 administrative in nature or contract performance measures.  
2 In the last two columns, looking at the combined results,  
3 which are the basis of a plan's overall star rating, we see  
4 that about one-third of the measures are contract  
5 performance measures.

6           The contract performance measures that we are  
7 talking about include three call center measures, which are  
8 the amount of time a caller remains on hold, the accuracy of  
9 information provided to callers, and the availability of  
10 foreign language interpreters and telecommunications devices  
11 for the hearing-impaired. Three other Part C contract  
12 performance measures deal with appeals and complaints, and  
13 another measure is based on corrective action plans that are  
14 put in place based on CMS monitoring visits. Disenrollment  
15 rates were not included this year because CMS did not have  
16 the information available. The 15 Part D measures for MA-PD  
17 plans include three CAHPS measures of patient experience and  
18 two clinical quality measures, in addition to 10 measures  
19 that are contract performance measures.

20           Until this year, the overall star rating for MA-PD  
21 plans was based on their Part C performance, with no Part D  
22 component. Because the measures in Part D are predominately

1 contract performance measures, as we have discussed, the new  
2 approach increases the weight of contract performance  
3 measures in the overall star rating.

4           For some plans, the contract performance measures  
5 can be an even higher proportion of the plan's star rating.  
6 This is because plans can have star ratings even if they are  
7 missing measures. Looking at this year's data, we see that  
8 there are plans with overall star ratings for which half of  
9 the available measures are exclusively contract performance  
10 measures.

11           Now we will talk about why the concerns we have  
12 about the star system have taken on much greater importance.

13           The concerns we have about the star rating system  
14 become especially important now that a quality bonus payment  
15 system is set to begin in Medicare Advantage. PPACA  
16 introduced a bonus payment system beginning in 2012 that  
17 called for CMS to use a 5-star system based on data  
18 collected under the provision of Medicare law dealing with  
19 quality improvement. Under the law, once the bonus system  
20 is fully phased in, plans with four or more stars would have  
21 their benchmarks increased by 5 percent, and in some  
22 counties the benchmark increase would be 10 percent.

1           The law also changed the rules on rebates.  
2   Rebates are the program dollars that plans use to provide  
3   extra benefits to their enrollees when a plan bid is below  
4   the benchmark. Previously rebates were 75 percent of the  
5   bid-to-benchmark difference. That level will be reduced to  
6   70 percent for plans with 4.5 stars or 5 stars, 65 percent  
7   for 3.5- and 4-star plans, and 50 percent for plans under  
8   3.5 stars.

9           In November of last year, CMS announced that it  
10   would undertake a program-wide demonstration of a quality  
11   bonus payment system that would have a structure very  
12   different from the PPACA program. While PPACA awards  
13   bonuses to plans with 4 stars or above, the demonstration  
14   makes bonuses available to plans with 3 stars and 3.5 stars  
15   -- that is, what CMS defines as an average plan, which is  
16   one with 3 stars, will receive a quality bonus.

17           The star system that determines bonuses will be  
18   the one that is currently in use, which was originally  
19   introduced as a consumer information resource under a  
20   different provision of the statute.

21           Here we illustrate the effect of the demonstration  
22   as compared to what would have happened under the PPACA

1 bonus system. Under the demonstration, about 3.5 times as  
2 many enrollees of plans will be in bonus plans. Whereas  
3 under the PPACA rules there would have been nearly 3 million  
4 enrollees in bonus plans, or about 23 percent of all current  
5 enrollees, under the demonstration over 9 million enrollees  
6 are in bonus plans, or about 80 percent of enrollees. The  
7 inclusion of 3- and 3.5-star plans has different effects by  
8 plan type, as shown in the bulleted text on right. While  
9 under 30 percent of HMO or local PPO enrollment is in PPACA-  
10 eligible bonus plans, introducing the demonstration boosts  
11 the proportion of enrollees of such plans in bonus plans to  
12 88 percent in each category. For regional PPOs and private  
13 fee-for-service plans, it is only by virtue of the  
14 demonstration that half of the enrollees of those plans are  
15 in bonus plans. Under PPACA, no regional plans would have  
16 qualified for a bonus, and only 1 percent of private fee-  
17 for-service enrollment would be in a bonus plan.

18           Although CMS did not solicit comments on the  
19 quality bonus program demonstration, the Commission did  
20 provide comments in connection with a recent proposed rule  
21 on MA that CMS published in November. In our comments, we  
22 expressed several concerns. One was regarding the cost of

1 the program. It is not a budget-neutral program. It is  
2 estimated to cost \$1.3 billion more than the PPACA approach  
3 to bonus payments over the course of the 3-year  
4 demonstration.

5 We also commented on the design of the program,  
6 noting that the incentives are very different from the PPACA  
7 design of rewarding only the highest-performing plans. We  
8 also reiterated a concern that the Commission has raised  
9 twice before, once in connection with a program that  
10 increased payments to oncologists, and later in connection  
11 with a program-wide demonstration in Part D. The Commission  
12 expressed concern over the costs of these programs and the  
13 use of statutory authority that was intended as a vehicle  
14 for testing innovations.

15 We look forward to your discussion. In  
16 particular, we would like any comments you have on the draft  
17 chapter, comments on the issue of relative risk scores  
18 between MA and fee-for-service, the unintended inter-county  
19 anomalies that Scott mentioned, and the issues that we  
20 talked about in quality, including means of improving  
21 quality measurement and possibly diminishing the weight  
22 given to contract performance measures in the star system.

1 We also welcome discussion on any other issues you would  
2 like to bring up.

3 Thank you.

4 MR. HACKBARTH: Thank you. Carlos, in the  
5 demonstration of the quality bonus program, what is CMS  
6 purporting to test?

7 MR. ZARABOZO: They think that this will  
8 accelerate improvement in plans, as more plans look to get  
9 to the higher ranking stars.

10 MR. HACKBARTH: I'm having trouble.

11 MR. ZARABOZO: I might have to quote directly from  
12 the --

13 MR. HACKBARTH: Okay. So we're going to start  
14 with clarifying questions.

15 DR. CHERNEW: If I understand correctly -- and I  
16 might not -- the star rating system is relative, so it's the  
17 top X percent of plans or whatever. So if every plan got  
18 better, you wouldn't get necessarily a bonus because your  
19 competition is --

20 MR. ZARABOZO: Right, each of the measures --

21 DR. CHERNEW: If you stay the same and other plans  
22 got better, then you could actually lose your bonus. Is

1 that the way that it's designed?

2 MR. ZARABOZO: Yes, each measure -- within  
3 measures, you have this relative distribution within  
4 measures, so people are moving up, depending on -- different  
5 measures are done differently, but if everybody moves up and  
6 you stay the same, then, yes, there would be a consequence.  
7 You could go down.

8 DR. CHERNEW: Right. And so everyone can't race  
9 to get to the top and then everyone get the bonus because  
10 it's all relative. So unless this is Wobegon -- is that  
11 Lake --

12 MR. ZARABOZO: Lake Wobegon, yes.

13 DR. CHERNEW: Where everyone's above average, but  
14 other than that, they can't do it.

15 MR. HACKBARTH: Isn't that sort of how markets  
16 work, too? You can't really gain any competitive advantage  
17 if everybody's getting better.

18 DR. CHERNEW: That's right, but the point is the  
19 bonus system, that has a different price mechanism that  
20 sorts that out in a way that the bonus system doesn't  
21 necessarily.

22 MR. BUTLER: You know, it's interesting.

1 Employer-based plans are aggressively moving to carrots and  
2 sticks that engage the beneficiary in helping achieve some  
3 of these measures, like screening and cholesterol and all of  
4 those things, and actually financially motivating people to  
5 do that. That really is -- it's another part of the  
6 beneficiary's, you know, shared decisionmaking and  
7 engagement. Has that ever been considered a possibility  
8 under --

9 MR. ZARABOZO: Actually, part of the comment  
10 letter that we alluded to, in addition to commenting on the  
11 star system, we had a couple of comments. One of them was  
12 on the decision of CMS not to allow tiered cost sharing, so  
13 that, for example, on the benefit design where you would say  
14 we're going to waive all co-pays for this segment of the  
15 population, that would not be permitted under the proposed  
16 regulation. So we said, well, maybe you shouldn't have this  
17 blanket prohibition, you should allow some flexibility so  
18 that you can use the co-payment mechanism as a way of  
19 encouraging people to do what you want to encourage.

20 MS. BEHROOZI: Very quickly, the bonus program  
21 will apply to employer group plans the same as others?

22 MR. ZARABOZO: Yes, because a lot of the employer

1 group plans are a plan within a contract number, so that --  
2 I mean, that's -- yeah, most of the enrollment is -- yeah.

3 MS. UCCELLO: Yes, can you just give me a little  
4 more background on this prohibition from using medical  
5 record review? I didn't get what that was.

6 MR. ZARABOZO: Yeah, the PPOs were not allowed to  
7 use medical record review to report on the hybrid measures.

8 MS. UCCELLO: Rationale for that?

9 MR. ZARABOZO: Well, one issue might be from a PPO  
10 point of view. If you have out-of-plan utilization, it's  
11 difficult to get the medical records. So, I mean, that made  
12 it clear that you could not compare those plans to HMO plans  
13 in a sense. Only on the measures that involve only  
14 administrative measures could you make a comparison.

15 DR. BERENSON: Yeah, I want to talk a little more  
16 about the genesis of this demonstration. It has the  
17 earmarks of an earmark. And I guess my question is I  
18 thought that there's administrative rules that OMB set up  
19 about budget neutrality in demos, and what the ACA did was  
20 give exemption for the innovation center, because those  
21 rules are often sort of frustrating to real demonstrations.  
22 But here we have something that may not be a real

1 demonstration, and so I guess my question is: Is that  
2 right, that this had to go through a review for budget  
3 neutrality?

4 MR. ZARABOZO: It had to go through a review, yes.  
5 But I think that budget neutrality is not a requirement.

6 DR. BERENSON: It's not a requirement --

7 MR. ZARABOZO: Demonstrations, is my understanding  
8 of the situation here.

9 DR. BERENSON: I thought that was always the  
10 frustration that people had in trying to get demonstrations  
11 through OMB, that that was an administrative requirement,  
12 not a legislative requirement. So in this case they found a  
13 reason why -- perhaps some justification that the quality  
14 improvement would reduce cost or -- I guess my question is:  
15 This was not exempt from that normal administrative process.

16 MR. ZARABOZO: No. It was reviewed, yes.

17 DR. BERENSON: Okay. That's what I'm asking.  
18 Okay.

19 MR. HACKBARTH: Related to that, so the hypothesis  
20 is that by extending the bonus payments further down the  
21 continuum, that will help improve quality. I guess my next  
22 question is: How would they know? What's their control

1 group here that they're going to say, oh, these people had  
2 to broaden the incentive, these people didn't. How do they  
3 know whether there's been any change as a result of this  
4 demonstration program?

5 MR. ZARABOZO: Usually they hire a contractor to  
6 figure that out.

7 I guess they could use historical information  
8 about a particular plan to say that this is how they  
9 progressed over the years. We instituted this program.  
10 They seem to have improved --

11 MR. HACKBARTH: That would be a really lame --

12 MR. ZARABOZO: Well, I'm just -- I mean, this is  
13 just hypothetical on my part. I don't know exactly what  
14 they're planning in terms of that.

15 MR. HACKBARTH: I'm obviously not going to put you  
16 on the spot. As Bob says, this really doesn't look at all  
17 like a demonstration. This is fairly transparently a way to  
18 give more money to plans, and that's distressing.

19 DR. KANE: Metrics on page 6, basically the HEDIS,  
20 HOS, and CAHPS. I gather HOS is a survey of Medicare  
21 beneficiaries.

22 MR. ZARABOZO: Right.

1 DR. KANE: But the other two, are they at all --  
2 they can survey anybody --

3 MR. ZARABOZO: Oh, no, HEDIS is used throughout  
4 the industry.

5 DR. KANE: It's not just -- in fact, it's not  
6 Medicare.

7 MR. ZARABOZO: Not just Medicare.

8 DR. KANE: It might even not be Medicare. How do  
9 we know how much Medicare -- because, I mean, most people  
10 feel that managing the Medicare population is different than  
11 managing the under-65 population?

12 MR. ZARABOZO: Well, the measures are -- there are  
13 Medicare measures -- there are measures that are exclusively  
14 Medicare, measures that are exclusively commercial, and  
15 measures across -- and then Medicaid is there, SCHIP is  
16 there.

17 DR. KANE: And so the HEDIS measures --

18 MR. ZARABOZO: The HEDIS measures we talk about  
19 are the Medicare population HEDIS measures.

20 DR. KANE: And so the 15 clinical quality metrics  
21 are just for Medicare beneficiaries.

22 MR. ZARABOZO: Only the HEDIS measures that apply

1 to Medicare, right.

2 DR. KANE: But are they -- okay. So they might  
3 also -- they wouldn't include then the results of those  
4 measures --

5 MR. ZARABOZO: No, no. We're talking only the  
6 results for the Medicare population.

7 DR. KANE: Okay. So the clinical, at least it's  
8 only Medicare. And then the same thing for CAHPS or not?

9 MR. ZARABOZO: Right. CAHPS is a variety of  
10 settings in which CAHPS surveys are made.

11 DR. KANE: But is the results that go --

12 MR. ZARABOZO: The results -- we're only talking  
13 about the survey of the Medicare --

14 DR. KANE: Medicare.

15 MR. ZARABOZO: -- MA enrollees and then the survey  
16 of the Medicare fee-for-service enrollees.

17 DR. KANE: Okay. So that's specific to --

18 MR. ZARABOZO: Right.

19 DR. KANE: And then the second question I had is  
20 your comment that they allow for missing measures -- or I  
21 guess they just ignore them. How many missing measures can  
22 you have before you don't get --

1 MR. ZARABOZO: You have to have half of the  
2 measures present, so 26 out of 51 --

3 DR. KANE: But you can pick whichever 26 you want  
4 or is there --

5 MR. ZARABOZO: No. If you fail to report a  
6 measure that you should be reporting, you are given one  
7 star. You can't say, "I don't feel like reporting this  
8 measure," and get -- you know, that's not counted. You get  
9 one star for a measure that you should have reported. If an  
10 auditor says materially biased or something wrong with this  
11 measure, you get one star. So some measures, for example,  
12 private fee-for-service plans are not required to report  
13 these measures, so those measures are not present. For some  
14 HEDIS measures you do not have enough of a population  
15 covered by that particular measure to be able to report. So  
16 that's why you can have missing measures.

17 DR. KANE: Is that the only excuse for what you  
18 can be missing a measure, you have inadequate cell size --  
19 not enough -- or can you --

20 MR. ZARABOZO: On HEDIS, probably on HEDIS, that  
21 would be it, yeah.

22 DR. KANE: Okay, thanks.

1 MR. HACKBARTH: Kate, clarifying questions?

2 DR. BAICKER: Yes, I had a question on the  
3 aggregation of the measures. My understanding is that  
4 they're just an average, a simple average over all the  
5 measures. So then I'm curious if you have any sense of  
6 which measures are actually driving the variability in the  
7 outcome. Each one may be entering equally, but if there's  
8 no variation on some of them, then the other ones are going  
9 to be the drivers of who's in which bin.

10 MR. ZARABOZO: On that point, as we mentioned, the  
11 intermediate outcome measures have a lot of variation, and  
12 they're a large part of the HEDIS measures included in the  
13 star system. If you look at the administrative measures,  
14 there's quite a bit of variation there, too, in the  
15 measures. So that may merit more looking at, what's the  
16 variation occurring here on these administrative measures.  
17 Some measures have very little variation.

18 DR. STUART: I would like to follow up briefly on  
19 a point that I raised last night, and that is, the strategy  
20 of MedPAC with respect to the coming availability of  
21 encounter data after 2012. And I'm wondering whether the  
22 Commission is taking an active role in terms of such things

1 as saying, well, these are the analyses that we would like  
2 to see, and so that has implications for the way the data  
3 are being collected and the timing in which they'll be made  
4 available, or whether we're just simply waiting for CMS to  
5 do whatever they're going to do, and then we come in at that  
6 point.

7 MR. ZARABOZO: Well, we have been talking all  
8 along to the CMS people. In terms of the data they were  
9 requesting, we were kind of waiting for the opportunity to  
10 help with that discussion. So I expect we'll continue to  
11 talk to them and talk about what kinds of analyses we would  
12 like to see, maybe. I don't know. I can't really --

13 DR. STUART: Is there thinking internally in terms  
14 of the kinds of analyses that you'd like to do? Because  
15 that's going to have an implication in terms of, you know,  
16 the types of data you'd like to have.

17 DR. MARK MILLER: Carlos, feel free to start, but  
18 --

19 MR. ZARABOZO: Well, I'm thinking -- I mean,  
20 almost every discussion we have here in non-MA sectors is  
21 what do the MA plans do. So, you know --

22 DR. STUART: Without belaboring it, if we want to

1 do everything with it, then obviously that's not going to be  
2 possible. And so I guess maybe the real question is whether  
3 there are some priorities here that we would like to see and  
4 what some of the inherent difficulties that we would  
5 anticipate having encounter data as opposed to claims data.

6 MR. ZARABOZO: Although a lot of the encounter  
7 data is essentially claims data.

8 DR. MARK MILLER: That part of the comment kind of  
9 threw me. I mean, I think the first pass at this is -- and  
10 you're saying it's everything, but I think our first pass in  
11 thinking about this is looking at the relative utilization  
12 across these sets of services. This comes up repeatedly,  
13 you know, particularly in the post-acute care sector, of  
14 what do MA plans do with this particular service. So I  
15 think in terms of priorities, a first pass was just looking  
16 at the utilization and contrasting it between fee-for-  
17 service and managed care.

18 I've been operating under the assumption that this  
19 looks a lot like claims data and that would enable us to do  
20 that. But, Carlos --

21 MR. ZARABOZO: And that's our impression, too.  
22 It's pretty much claims data, what we're talking about.

1           MR. ARMSTRONG: Just to clarify first one point.  
2    You describe a concern about in certain circumstances up to  
3    50 percent of the reported information would be  
4    administrative rather than clinical quality measures, your  
5    point there being not that those administrative measures  
6    aren't valuable, just that we're talking about clinical  
7    rating and we just need to be aware that in some cases there  
8    could be significant influence from measures that actually  
9    have nothing to do with the clinical care. Is that right?

10           MR. ZARABOZO: That's correct. That's the point,  
11    yes.

12           MR. ARMSTRONG: Okay. The second question I had  
13    was that you looked at the variability of results. My  
14    experience is that MA plans that work closely with regional  
15    care delivery systems that innovate as a result of that are  
16    plans likely to have higher results. I'm wondering if  
17    you've done any evaluation of a measure that's along that  
18    kind of line.

19           MR. ZARABOZO: You mean plans working --

20           MR. ARMSTRONG: Well, for example, I'm thinking  
21    about the Alliance of Community Health Plans, these regional  
22    plans around the country that distinguish -- I don't know

1 actually how you would measure this feature in particular,  
2 but distinguish themselves as either owning, but in most  
3 cases not, actually having a fairly close relationship with  
4 the regional or the local care delivery systems, and as a  
5 result, innovating in ways that purportedly -- and I think  
6 the evidence would show actually -- does drive better scores  
7 against these measures.

8 Did we try to affirm those kinds of features?

9 MR. ZARABOZO: You can look at, for example,  
10 performance by corporate entities, and so the national  
11 health plans, some of them are not very good performers, and  
12 you can do it on that basis. If you would like, we can do  
13 that kind of comparison, a more local plan, how do they  
14 compare to the national plans or plans that are present in  
15 many areas and many of them new to an area. We can do that  
16 kind of comparison.

17 MR. ARMSTRONG: Okay. Thanks.

18 MR. HACKBARTH: So what I hear you saying, Carlos,  
19 is that there's not really granular information to  
20 consistently and systematically distinguish among plan types  
21 and how they're organized and how close the relationship is  
22 with the delivery system. You know, there's a lot of

1 variety on those variables that isn't systematically  
2 captured.

3 MR. ZARABOZO: We could do something like non-  
4 chain plans versus chain plans or something like that. The  
5 other --

6 MR. HACKBARTH: Yeah, but those are real loose --

7 MR. ZARABOZO: -- part about what kind of plan  
8 we're talking about, we don't really have that kind of -- it  
9 would take some digging to --

10 MR. HACKBARTH: It used to be --

11 MR. ZARABOZO: -- categorizing -- I'm sorry.

12 MR. HACKBARTH: It used to be when we talked about  
13 group and staff models as compared to others.

14 MR. ARMSTRONG: Right.

15 MR. HACKBARTH: But I'm not even sure that those  
16 categories are as meaningful as they once were. A lot of  
17 those plans, you know, develop networks and, you know, IPA-  
18 like delivery systems.

19 MR. ARMSTRONG: It just seems to me -- I know at  
20 least my experience is we work backward and we just look at  
21 the top 20 plans.

22 MR. HACKBARTH: Right.

1           MR. ARMSTRONG: You know, features or  
2 characteristics of those plans kind of emerge. But it just  
3 seems to me that part of the work we're trying to do, even  
4 when we talk about, you know, looking at how post-acute  
5 services work or doesn't work or whatever we might be  
6 looking at, it's to cull out, well, what are those  
7 characteristics of health care systems, including both the  
8 benefits, but also then the care delivery itself, that kind  
9 of rise to the surface that end up driving distinctive  
10 results like these.

11           MR. HACKBARTH: Yeah, I think the question is a  
12 great one. The issue is whether the data that's collected  
13 allows us to effectively do that analysis.

14           Okay. Round 2.

15           DR. CHERNEW: I think our discussion of all these  
16 quality things is important, and I'll say a few more things  
17 about that in a minute. But one thing that we haven't  
18 discussed much that I think is fundamentally important is  
19 the material in the chapter -- and you alluded to it briefly  
20 -- the sort of flaws in the payment model going forward with  
21 the sawtooth graph that arises. So I just want to put in a  
22 plug for us thinking about how to continually emphasize that

1 point, because it's something that really can be done. A  
2 lot of this measurement stuff has a lot of problems. We're  
3 not sure how to do it. I don't know if there's a right way.  
4 But I think we -- I guess I'd like sort of a quick answer if  
5 you believe that there really is a fundamental problem that  
6 we could probably solve relatively easier than we could  
7 solve some of the quality measurement issues of which  
8 there's difficult choices and difficult measurement issues.  
9 Is that loosely right? The sawtooth graph that you show is  
10 pretty convincing. That's the problem with the quartiles.

11 DR. HARRISON: Right. We sort of suggested  
12 something that you might do by sort of creating different  
13 floors and ceilings, in effect. But I'm sorry, you want to  
14 go on to the quality --

15 DR. CHERNEW: Well, I will say something about  
16 quality. I just wanted to make sure that we didn't lose the  
17 emphasis on that and have some discussion maybe as we go  
18 forward about the details. I think your solution is fine.  
19 There are probably six different ways you might solve that  
20 problem, and that's one.

21 DR. HARRISON: Right.

22 DR. CHERNEW: But I don't want -

1 DR. MARK MILLER: This will go in the chapter.  
2 We'll say this is a problem, here are some ways you can  
3 solve it. We will stay on the case and keep, you know,  
4 monitoring this. I suspect once the environment sort of  
5 figures this out, it's going to start moving of its own  
6 accord.

7 DR. CHERNEW: That would be good.

8 DR. MARK MILLER: Well, that might require  
9 monitoring as well.

10 DR. CHERNEW: My comment on the quality stuff was  
11 that I do think there's a big issue with how performance is  
12 risk adjusted. We have to understand that for many MA  
13 plans, they're sharing the delivery system, writ large, so  
14 it's not simply the plan. Measuring quality of a plan is  
15 fundamentally different than measuring quality of a hospital  
16 in a certain way or measuring quality of a physician group  
17 in a certain way, because they're sharing the system  
18 overall. And many of these HEDIS measures and some of the  
19 other measures are very subject, I think, to issues of risk  
20 adjustment, as you allude to, but some of the socioeconomic  
21 factors and things that matter really are important for how  
22 the plans end up doing, and I think increased attention to

1 that -- it's mentioned there, but it's mentioned with  
2 disability, but there's a series of other things.

3 Right now, for example, I don't think the quality  
4 measures at all are risk adjusted in any meaningful way.  
5 You just note that there's compositional issues. But the  
6 star system doesn't do any risk adjustment or any --

7 MR. ZARABOZO: Right, the HEDIS measures are not  
8 risk adjusted.

9 DR. CHERNEW: And I also think it's -- I guess the  
10 last question I would have is: I think it's important to  
11 harmonize all of this with what's going on in other sectors,  
12 so this is just one performance measure program. The  
13 private sector has a whole series of other ones. The use of  
14 HEDIS is helpful because many plans use HEDIS-type measures,  
15 although as you know we're only using a subset. I don't  
16 know of any other plans that use like the HOS data to do  
17 their --

18 MR. ZARABOZO: The VA has a survey like that, the  
19 HOS, but I don't know of its use elsewhere.

20 DR. CHERNEW: And do you know if there's any  
21 attempt to harmonize this type of system with other Medicare  
22 programs, say when they measure quality in an ACO? I know

1 we're waiting on the regs, but it would be nice across  
2 different systems, because providers could be serving  
3 managed care patients and be part of an ACO and have  
4 contracts with the commercial sector; and if they all have  
5 different weights and systems and scoring, it's a little bit  
6 harder.

7 MR. ZARABOZO: I think in the fee-for-service,  
8 like in the physician practice group demo, didn't they use  
9 HEDIS kind of measures? Yeah.

10 DR. MARK MILLER: But, Carlos, what I would have  
11 thought you would have said is that what we did do -- and  
12 I'm not forgetting which report, but we did try and give  
13 some direction for CMS how to harmonize and measure between  
14 fee-for-service and managed care. You're correct that at  
15 that time we weren't focused on the ACO angle on all of  
16 this, and there was a lot of direction that you and Carlos -  
17 - the Commissioners and Carlos put together, and John put  
18 together to kind of direct CMS on that issue. But it was  
19 also, if you will recall, a pretty heavy lift. There were a  
20 lot of issues that had to be kind of brought into alignment.

21 MR. HACKBARTH: I want to pick up on your first  
22 point. It seems to me that there's sort of three broad

1 categories of measures. There are some clinical measures  
2 that are most strongly influenced by the providers in the  
3 community, and to the extent that we have health plans with  
4 overlapping networks sharing the same providers, you would  
5 think that within a given market, there wouldn't be too much  
6 dispersion on those measures because they're using the same  
7 providers.

8           Then there might be other quality measures where  
9 the plans have a greater opportunity to differentiate  
10 themselves because their way of influencing them is through  
11 the member contact and, you know, getting members to seek  
12 out certain types of preventive services. And then there's  
13 the administrative measures where clearly plans can  
14 differentiate themselves. And, you know, you'd almost want  
15 a little more finely developed strategy for making  
16 comparisons, rewarding bonuses, focusing on things that are  
17 more within their control, and not having the differences  
18 diluted by things that really they don't control at all.

19           DR. CHERNEW: And, of course, they can select  
20 their providers in various ways as well but [microphone  
21 turned off].

22           MR. HACKBARTH: Yeah, that's true. Good point.

1 It's tricky stuff.

2 MR. BUTLER: Scott, you make some good points  
3 about understanding the characteristics of plans that are  
4 performing at the top level. I think there was a chance to  
5 marry that to -- I know at the beginning of the year we  
6 talked about looking at high-performing health systems and  
7 what their characteristics are, which it starts to come  
8 together with yours. And it's part of the same dialogue,  
9 and I think it's something we ought to think about, not just  
10 looking at the plans over here and the systems over here,  
11 but how they are in this world of aggregation that's  
12 occurring. It would be good to understand systems that are  
13 performing at a high level.

14 MS. BEHROOZI: I'm glad Scott mentioned the issue  
15 about the administrative measures because, you know, the way  
16 it's put out there in the paper is it's of concern, and I  
17 think we should be clearer about what we mean. I mean, I  
18 think to beneficiaries things like how long they have to  
19 wait on the phone and whether there's an interpreted  
20 available for them in their language is critically  
21 important. And, you know, when I go on Medicare, Compare,  
22 whatever, I want to know that stuff as a beneficiary.

1           Whether that should be as important a component  
2 for purposes of bonuses because that's sort of basic good  
3 business practice the way you attract clients kind of thing,  
4 it seems -- right? -- that's another question. And so I  
5 wonder if we could consider recommending separating out the  
6 clinical measures and the administrative measures, not  
7 dropping the administrative measures, taking them into  
8 account in some form, weighting them less, whatever, so that  
9 not only will you achieve maybe a more appropriate or what  
10 we have in mind as a balance between clinical and  
11 administrative, but also if you have plans that don't have  
12 enough of the clinical measures, it'll be more evident  
13 rather than having their total kind of bolstered by the fact  
14 that they've got the administrative measures. I took that  
15 as one of your concerns as well.

16           MR. HACKBARTH: I really like that point, Mitra.  
17 One way to think about it is distinguish between things that  
18 are measured and reported as opposed to things that are  
19 measured, reported, and linked to bonus payments.

20           I think the market works pretty well in terms of  
21 the administrative measures. If you provide beneficiaries  
22 information about, you know, where you have to wait a long

1 time and various service elements, people can readily digest  
2 that information and vote with their feet, and plans that do  
3 well will get more revenue, and plans that do poorly will  
4 get less.

5           What is more difficult for beneficiaries or  
6 patients in general is to make sense of this clinical  
7 performance stuff, and the market may not function as  
8 effectively and fluidly and getting more revenue to the good  
9 performers, and, therefore, having bonus payments through  
10 the payer, there may be a more compelling need for it. It  
11 seems like some more refined thinking along the lines you're  
12 describing could make this more useful and effective. In a  
13 way, we're paying double bonuses for administrative things  
14 where plans are already getting rewards through the pretty  
15 well functioning marketplace.

16           DR. NAYLOR: I probably need a civics lesson, but  
17 are we able to simulate -- and this might have been a Round  
18 1 -- the PPACA provisions and impact on total Medicare  
19 budget and what we're estimating now that we're using  
20 different thresholds in terms of the star system, et cetera,  
21 on total Medicare budget? And that might have been in --

22           MR. ZARABOZO: That's that last slide. It costs

1 \$1.3 billion as compared to the star system under the  
2 demonstration. It adds an additional \$1.3 billion for --

3 DR. NAYLOR: Okay. Thank you.

4 MS. UCCELLO: I agree with a lot of what people  
5 have already said, but I'll kind of piggyback on or combine  
6 Mike and Mitra's comments that the more we move to a more  
7 clinically based measure or index, the more important some  
8 of the risk adjustment is.

9 MR. ZARABOZO: I would like to add there that CMS  
10 recently at a conference said that they were looking at the  
11 issue of weighting of the measures and also how to deal with  
12 special populations, or something like that, I mean, you  
13 know, tending towards. There may be some risk adjustment  
14 issues here that we need to consider.

15 DR. BERENSON: I have one comment related to  
16 Scott's work and then one related to the quality demo.

17 It's helpful to now see where the plans' risk  
18 scores are and to point to the difference between fee-for-  
19 service and MA coding and the fact that we'll now get  
20 encounter data and can recalibrate within MA. But my  
21 concern is related to the Dartmouth study that shows that if  
22 you take the same beneficiary and they relocate, they get a

1 different coding score. They haven't changed their health.  
2 And that sort of picks up on previous MedPAC work related to  
3 episode groupers that found for, I think, a couple of  
4 plausible reasons that you get different scores in different  
5 parts of the country, partly because of more exposure to the  
6 health system, but maybe partly because of different coding  
7 practices.

8 I guess it brings into some question whether there  
9 needs to be ongoing and important refinements of the risk  
10 adjustment model. And I guess my question, which I could  
11 have asked earlier but I'll ask now, is: Is there work  
12 going on in that area? What has been the reaction to the  
13 Dartmouth kind of study? I mean, because we're going to be  
14 using this for ACOs. I mean, we really need to have a very  
15 accurate risk adjuster.

16 DR. HARRISON: I think the focus is still on  
17 collecting diagnoses. I mean, eventually if they move it  
18 within the managed care model, you would probably see less  
19 variation across the country within managed care plans than  
20 you do in fee-for-service, so that may help a little. But  
21 that's probably the extent of it.

22 DR. BERENSON: But no work that you're aware of,

1 like on making an adjustment for coding, a geographic  
2 adjustment even for making -- just like the fee-for-service  
3 to MA adjustment, a geographic adjustment or --

4 DR. HARRISON: No, but remember that the county  
5 rates are standardized for the average risk that you see in  
6 the county. And, you know, there are problems. You could  
7 see that -- I think Miami's risk score is over 1.3. You  
8 know, some of that probably came from excess utilization.

9 DR. BERENSON: Yeah.

10 DR. HARRISON: So Miami's rate is standardized for  
11 that, but when you build a broader model across the country,  
12 it's not adjusted like that.

13 DR. BERENSON: Okay. Related to the quality  
14 program, picking up a little bit on the conversations that  
15 Scott and Glenn were having, from my knowledge if you look  
16 at the top 20 or so MA plans, they are either -- they have  
17 close relationships to the delivery system or they're  
18 located in particular geographic areas where the underlying  
19 delivery system produces, regardless of what the plan is  
20 doing. And so to me the best example of where they come  
21 together is the fact that if you look at the Southeast,  
22 there's almost universally poor performance except in

1 Tallahassee, where there is an exemplary health plan that  
2 has a close connection to its delivery system and scores 1  
3 or 2 in the country.

4           So I think because of the importance that you've  
5 alluded to, Carlos, the importance of geography, because of  
6 the importance of geography, I guess I'm a bit of a  
7 contrarian about having a model that only rewards the top  
8 plans, which may have as much to do with the underlying  
9 delivery system than it does to the incremental benefit of  
10 the plan. And so to me this is an area where a pay-for-  
11 improvement strategy to complement pay for high performance  
12 -- I mean, at the high level. I don't think you can just do  
13 pay for improvement. If CMS had come along with a demo to  
14 sort of try to move plans that were mediocre performers to  
15 being significantly better and had had a bonus system  
16 associated with pay for improvement, I could have seen this  
17 as potentially even a demo, not just a way to get money out  
18 the door. They haven't done that. They've just sort of  
19 lowered the bar. But I do think as we at MedPAC think about  
20 quality and rewards in the MA program, we should focus on  
21 the things that plans -- the incremental benefit that plans  
22 can provide, which is why I actually like the idea of

1 administrative measures being in here somewhere. And those  
2 measures which typically I wouldn't support, like process,  
3 particular process measures around prevention, I mean, I  
4 think in general MedPAC has a view that we should really be  
5 focusing on major outcome measures, and I sort of believe  
6 that. But if, in fact, the outcome measures that we have  
7 would largely be a function of the underlying delivery  
8 system and not the plan, then maybe in this area it is  
9 reasonable to focus on those HEDIS measures, health of  
10 seniors, and administrative measures that we can attribute  
11 to the plan, and to think about maybe pay-for-improvement  
12 strategies, not just pay for performance.

13 DR. MARK MILLER: I don't have any issues with the  
14 notion of pay for improvement, and particularly as you're  
15 starting something off, you may want to do that. You may  
16 want to keep it in place, you know, over the long haul.

17 I would also just ask, when we have this  
18 discussion about the underlying delivery system versus what  
19 the plan can do -- and I know you're not saying this. There  
20 is always this concern that it's like, well, it's the  
21 underlying provider system, and so the plan shouldn't be  
22 held responsible, and I know you wouldn't go that far. And

1 I would just ask us to look hard at some of the outcomes  
2 measures, because readmission rates, use of emergency room,  
3 you would hope, even in a poorly functioning provider  
4 underlying network, that a plan could bring some movement to  
5 those types of things. So I would not retreat immediately  
6 to the HEDIS stuff and say that's all we can do. I would  
7 ask that as a Commission you guys pay some attention to the  
8 outcomes stuff, and the ones where we think, you think, that  
9 the plan can actually have some impact on, because it seems  
10 like there are some.

11 DR. BERENSON: I agree with that. I think of  
12 readmissions as sort of an intermediary outcome as opposed  
13 to mortality, which to me would be a real outcome. But I  
14 absolutely think -- but in that context, I'd be interested  
15 in perhaps rewarding a plan that had a 20- or 22-percent  
16 readmission rate and could under its auspices get it down to  
17 17, even if that wasn't in the top tier nationally. I think  
18 that would be a reasonable approach.

19 Again, I don't think you can overweight the  
20 improvement. You don't want to not reward the good plans,  
21 but finding some balance. But I'm with you. I think we've  
22 got to go measure by measure and try to figure out whether

1 we think that's a measure that the plans can influence. I  
2 think even in an area with poor clinical quality, plans can  
3 make a change, can influence what's going on. And so I  
4 wouldn't say that there's a whole bunch of measures that are  
5 off limits. I just sort of think I like the improvement  
6 paradigm in that situation more than just hitting a  
7 standard.

8 DR. MARK MILLER: And I agree with you that  
9 mortality [off microphone].

10 DR. KANE: I just want to ask a little bit about  
11 the philosophy around where socioeconomic metrics might come  
12 into this, especially if you start thinking about some of  
13 the plans that are, you know, sort of closely associated  
14 with poorer communities as they start to -- some of them  
15 specialize in, actually, poorer communities. Is there any  
16 differential acknowledgment or risk adjustment that goes  
17 into that? I mean, you don't want to encourage worse  
18 performance just because the underlying community has low  
19 socioeconomic metrics, but you also want to acknowledge that  
20 they might be starting off some of these measures with a  
21 population that's just much less amenable to doing the right  
22 thing.

1           So, you know, between language and support systems  
2 and beliefs about or, you know, distrust of the health --  
3 there's a lot of metrics that require a pretty highly  
4 educated person who's willing to be compliant. So I guess  
5 that's one of my concerns about the quality in particular,  
6 or any kind of adjuster when we're trying to, you know,  
7 change the way the payment works based on how they perform,  
8 whether there's some accommodation for the fact that they  
9 might be working with populations that just aren't as easy  
10 to work with. Granted, they should be improving and trying  
11 to get up the scale as fast as everybody else.

12           MR. HACKBARTH: We talked about this a little bit  
13 yesterday, and I think that's a really important issue. It  
14 cuts across all of the quality measurement, pay-for-  
15 performance efforts, not just MA but all the individual  
16 provider sectors as well. And I think you well describe  
17 sort of the tensions that exist. On the one hand, you don't  
18 want to say, oh, poor quality is good enough for people in  
19 low socioeconomic circumstances, for example. On the other  
20 hand, there are differences in the challenge faced.

21           DR. KANE: Especially if the money starts to  
22 change based on -- I mean, that's where you start to worry

1 that, okay, you're scoring low but, you know, you're in a  
2 tough neighborhood. It's like schools with low education  
3 scores. So how do you deal with that? Do you give them  
4 less money? I mean, because they're in a poor community.  
5 So, you know, I just hate to see the payment system start to  
6 perpetuate mediocrity because the money goes to the places  
7 that have the resource to do --

8 DR. KANE: Yeah. So I think that's an issue we're  
9 going to inevitably need to come back to and talk more about  
10 in a variety of contexts.

11 DR. BAICKER: I would just echo Bob's comment that  
12 it's really important to get high-quality risk adjusters,  
13 especially in thinking about the geographic variation. I  
14 know dabbling in this field we're stymied by the fact that  
15 the risk adjusters that are available are clearly affected  
16 by the geography, but using no risk adjuster is the wrong  
17 answer, too. And so you're left with very wide bounds on  
18 lots of things. It's somewhere between no risk adjustment  
19 and wildly over risk adjusting. It seems important when  
20 thinking about changes versus levels in quality. Clearly  
21 you want to reward improvement. You also want to reward  
22 excellence, and that gets into some of the issues we talked

1 about with ACOs, that if you have a one-sided bonus, then  
2 the smaller entities that bound around a lot are going to  
3 get bonuses but not penalties for the movement, and you want  
4 to take into account size as well. So it opens up lots of  
5 issues, but I think you do want to reward both investment  
6 that produces effort and excellent in care provision.

7           The last point I wanted to raise was thinking  
8 about the weighting of the stars that you mentioned. I  
9 would imagine that the reason all those inputs are weighted  
10 equally is because that's seen as neutral in some way. But,  
11 of course, equal weighting isn't neutral. It's a judgment  
12 just as much as any other weighting of the stars is a  
13 judgment. And it seems -- I would doubt that putting equal  
14 weight on all of those measures was actually the way to  
15 produce the highest quality outcomes in the metrics that we  
16 really care about. So I would urge a reevaluation of that  
17 equal weighting of all those criteria that are clearly not  
18 equal inputs into things that we want to be rewarding.

19           MR. HACKBARTH: And as I recall, in the hospital  
20 pay-for-performance program that was just announced, there  
21 too the approach was equal weighting. And I think it is a  
22 default, but it can be a default that leads to problems.

1           The one time I can recall that we grappled with  
2 this issue of how to weight was around home health measures,  
3 and this was like four or five years ago when we were first  
4 starting about pay for performance. And we talked some  
5 about whether these measures should be equally weighted or  
6 not, and you very quickly get into some really tricky issues  
7 that are not easy to answer.

8           So I understand why people do default to equal  
9 weighting, but as Kate says, you know, that's a judgment on  
10 its own, and you end up with some potentially perverse  
11 results.

12           DR. STUART: I'd like to raise something that  
13 we've talked about in the past, but it hasn't come up here,  
14 and that is, the problem of kind of teaching to the test.  
15 Any system that you develop for measuring quality or  
16 rewarding -- particularly when there are rewards based upon  
17 quality measures, then plans have a very strong incentive to  
18 look good on the measure, and they may have a less strong  
19 incentive to look good on other kinds of things that aren't  
20 being assessed. And I think that just comes with the  
21 territory, and we just need to be aware of it. But it also  
22 tells me that it would be very useful to have kind of a

1 back-up, maybe a shadow system by which we could measure  
2 quality in areas that are not being captured by these  
3 measures and use that as kind of a sensitivity test as we go  
4 forward in the development of these pay-for-performance  
5 systems.

6           And I'm just taken with the presentation that we  
7 had yesterday on physician services and assessing ambulatory  
8 quality using a measure that would developed by MedPAC, this  
9 MACIE measure that has 35 or 37 different measures of  
10 ambulatory quality. And when those encounter data become  
11 available, then this is something that one would be able to  
12 do. And so this gets back to the earlier point about, you  
13 know, having some ideas about how you would use those data,  
14 and this would be something that I think should have  
15 relatively high priority.

16           MR. HACKBARTH: When does your second term end,  
17 Bruce?

18           [Laughter.]

19           MR. HACKBARTH: Hopefully you'll be here for the  
20 day when the data arrive.

21           DR. STUART: The timing may not be good [off  
22 microphone].

1           MR. ARMSTRONG: Just briefly, I would add that I  
2 really appreciate many of the comments made by others. I  
3 particularly like the position that MedPAC's taking and the  
4 way we're describing it on this so-called demonstration, the  
5 extension of the bonus, which is and should be concerning.

6           I think the only additional points I would make  
7 would be that the desire to measure these kinds of things is  
8 obviously to advance improvement and to improve the care  
9 beneficiaries are receiving. I don't know how far MedPAC  
10 should go with this, but I do think that this goes beyond  
11 measuring comparative scores of the plans. But it also is  
12 around how do we engage in local communities and more  
13 transparently and comparatively reporting the performance of  
14 the plans, of the providers, so that employers and  
15 individual subscribers and others have access to this  
16 information and it becomes actionable at a whole series of  
17 other levels as well?

18           I know we identify issues and we try to improve  
19 the effectiveness of these measures. As we do, let's also  
20 think about how we can extend the application of these and  
21 make these kinds of metrics really even more powerful.

22           DR. BORMAN: I don't have the sophistication to

1 look at this from sort of the plan administrator level or  
2 some high up level. But as I sit here and think about this  
3 from the patient and the provider, the care deliverer level,  
4 particularly the physician or other allied health care  
5 professionals interacting one on one, particularly in an  
6 office setting, and I think about, you know, it's not just  
7 true for MA, one of the things that keeps hitting me is that  
8 we need to keep pressure on the notions of interoperability  
9 and standardization, that we've got to have all of these  
10 systems, whatever facet of the program, that we're measuring  
11 in and whatever qualities we want to do by and whether it's  
12 administrative or clinical or whatever, we need to be  
13 looking for things where there's overlap to make them the  
14 same, where there's -- and where we're asking parts of a  
15 system to talk to each other, let's make it interoperable.  
16 I think as people, particularly on the small business side,  
17 which many existing physician and other professional  
18 practices are, the cost of the electronic things that will  
19 facilitate this evolution is somewhat daunting, you know,  
20 the EHR monies notwithstanding. And I think we just need to  
21 keep front and center in each of these discussions, not just  
22 MA, about interoperability and standardization of measures

1 where -- overlapping measures where possible.

2 MR. HACKBARTH: Bob's and Kate's comments about  
3 the importance of continuing to improve risk adjustment make  
4 me think about this, sort of the next -- a potential  
5 breakthrough in risk adjustment could come from computerized  
6 medical records and having quick, easy, low-cost access to  
7 clinical information, as opposed to just claims type  
8 information.

9 That's not to say that we shouldn't be trying to  
10 improve the systems with the data that we currently have.  
11 But that could be like a huge improvement opportunity. Is  
12 anybody working on, oh, once we have that data, here's how  
13 risk adjustment will change? You know, there are  
14 organizations -- Kaiser Permanent for one has a huge  
15 database that could now be used to start developing the risk  
16 adjustment system of the future. Is anybody working on  
17 stuff like that?

18 DR. BAICKER: I have just a tiny piece of  
19 information, my impression not hugely well informed, is that  
20 even getting lab values back from labs that we pay for would  
21 go a long way in adding a less -- "gameable" is a strong  
22 word, but a less endogenous measure of patient well-being

1 and that that is relatively simple to attach to claims,  
2 because you're already paying for that line item, and that  
3 it's pretty predictive of patient severity.

4 MR. HACKBARTH: Yeah, we actually made that  
5 recommendation, I think like three years ago now --  
6 unsuccessfully to this point.

7 DR. MARK MILLER: And there is some -- you know,  
8 I'll call it junior varsity things that we can do with the  
9 existing data. Another poor choice of words, I guess. But  
10 I think one thing we can do is look at the variation across  
11 the country and just the numbers of codes, and, you know,  
12 perhaps that gives you something of a poor man's adjuster,  
13 but it's not -- I mean, immediately anybody who's into this  
14 sees the problems with this.

15 Then the other thing is to take a look at the  
16 existing HCC and see how it does for specific populations  
17 and specific -- because, you know, in general, it's got an  
18 inaccuracy. But looking at the tails of the distribution  
19 and see if there's improvement there. That doesn't deal  
20 with the geographic issues, but it does deal with some of  
21 the precision issues.

22 In general, you know, in the mean and the

1 distribution and the average, there's a certain accuracy  
2 there, but how does it do with specific types of patients?  
3 We did some looking at that, and we can kind of go back and  
4 take another look and see if there's any more tweaking that  
5 could go to that.

6 MR. HACKBARTH: Okay, we are done. Thank you,  
7 Scott and Carlos.

8 We'll now have our public comment period.

9 [No response.]

10 MR. HACKBARTH: Seeing no commenters, we are  
11 adjourned.

12 [Whereupon, at 11:50 a.m., the meeting was  
13 adjourned.]