

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

TRANSCRIPT OF PROCEEDINGS  
BEFORE THE  
TEXAS WORKFORCE COMMISSION  
AUSTIN, TEXAS

PUBLIC MEETING )  
PURCHASING FROM )  
PEOPLE WITH )  
DISABILITIES )

ADVISORY COMMITTEE MEETING  
THURSDAY, DECEMBER 8, 2016

BE IT REMEMBERED THAT at 11:00 a.m. on  
Thursday, the 8th day of December, 2016, the above-entitled  
matter came on for hearing at the Texas Workforce  
Commission, 101 E 15th Street, Room 151, Austin, Texas 78778

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

TABLE OF CONTENTS

PAGE

PROCEEDINGS, THURSDAY, DECEMBER 8, 2016

AGENDA ITEM NO. 1 ..... 3

AGENDA ITEM NO. 2 ..... 4

AGENDA ITEM NO. 3 ..... 12

AGENDA ITEM NO. 4 ..... 45

AGENDA ITEM NO. 5 ..... 87

AGENDA ITEM NO. 6 ..... 92

AGENDA ITEM NO. 7 ..... 99

ADJOURNMENT

REPORTER'S CERTIFICATE ..... 100

## P R O C E E D I N G S

THURSDAY, DECEMBER 8, 2016

(11:06 a.m.)

## AGENDA ITEM NO. 1

MS. LANGENDORF: Well, the introduction of Advisory Committee members and staff. Can we start down here?

MR. TILLSON: You bet. Lee Tillson, East Texas Lighthouse for the Blind.

MR. WELLS: Dave Wells, West Texas Lighthouse for the Blind.

MR. QUIGLEY: Sean Quigley, On Our Own Services.

MS. LANGENDORF: Jean Langendorf, Disability Rights Texas.

MS. WILKINSON: Michelle Wilkinson, Easter Seals Central Texas.

MS. LOGAN: Linda Logan, DD Council.

MR. JOHNSON: Larry Johnson.

MS. LACY: Brandye Lacy.

MS. LANGENDORF: Great. Okay. And staff, if you all would --

MR. SERNA: Ed Serna, Deputy Executive Director, Texas Workforce Commission.

MR. MOORE: Kelvin Moore, Program Manager,

1 Purchasing from People with Disabilities.

2 MR. JOSEPH: Howard Joseph, Program Manager,  
3 Purchasing from People with Disabilities.

4 AGENDA ITEM NO. 2

5 MS. LANGENDORF: Thank you, all. All right.  
6 Next item on the agenda's public comment. We have two  
7 individuals that have signed up. Gary Anderson, if you'd  
8 like to I guess come up here. Great.

9 MR. ANDERSON: Hi, everyone.

10 MS. LOGAN: Hello.

11 MR. ANDERSON: I'm Gary Anderson. I'm in  
12 business development for PCSI which is a CRP here in Austin.  
13 And so we recently learned that a lot of colleges,  
14 universities and university hospitals utilize Texas use for  
15 some of the services that we provide, so we just wanted to  
16 come down and introduce ourselves and maybe network and --  
17 and find out how we could employ multiple people with  
18 disabilities through contracts under state-use.

19 So we do housekeeping, facilities,  
20 janitorial, custodial, call center. And we are nationwide.  
21 We're Texas-wide. We already have some Texas state-use  
22 contracts, so we're familiar with the system but -- and so  
23 that's what our public comment was is how we can employ  
24 more people with disabilities even hundreds on -- on one  
25 location.

1 MS. LANGENDORF: Any questions?

2 MR. QUIGLEY: Are there any particulars that  
3 you're -- that you're looking at?

4 MR. ANDERSON: We've been in talks with UTMB,  
5 and so they're the ones who kind of identified the process  
6 that -- that we could go through for services on -- on that  
7 scale. We also bid last year not knowing that it could've  
8 been gone through Texas state-use, UT MD Anderson. They had  
9 a housekeeping proposal that we went through, and we were  
10 one of the finalists. So we've -- we've gone through the  
11 process on -- on the bidding side, and now we're interested  
12 in seeing how we can operate on the Texas use side.

13 MS. LANGENDORF: And as I understand it and  
14 maybe this is staff clarification, UT or UTMB, it's their  
15 choice to use or they have to use it first?

16 MR. MOORE: They should use it first  
17 depending on the -- you know, the money that you're using,  
18 the -- the allocated money they're using. If they're paying  
19 out of general revenues, they should use it -- they should  
20 utilize the program.

21 MS. LANGENDORF: But if they're doing other  
22 funds --

23 MR. SERNA: If they're -- they're using local  
24 funds, then they have -- they have the option. So it's --  
25 for universities it's unique because of the -- where they

1 stand in government and then also the fact that they --  
2 their funding sources. So depending on how they funded the  
3 project --

4 MS. LANGENDORF: Oh, got it. Okay.

5 MR. SERNA: -- they could end up having the  
6 option. For a state agency, it's clear that that's not the  
7 case.

8 MS. LANGENDORF: Okay. But for UT, like the  
9 hospital, if they're using my insurance company's payment or  
10 something --

11 MR. SERNA: Right.

12 MS. LANGENDORF: -- that's not state funds.

13 MR. SERNA: Yes, ma'am.

14 MS. LANGENDORF: Okay. Interesting.

15 MR. SERNA: But what -- what I would like to  
16 -- to do if you don't mind, Madam Chair, and Gary, maybe --  
17 maybe visit with you. We'll -- we'll set up -- set up a  
18 time to -- to visit with you and -- and TIBH and -- and kind  
19 of go over the opportunities and the -- opportunities to  
20 employ more individuals with disabilities and get you all  
21 more engaged --

22 MR. ANDERSON: Great.

23 MR. SERNA: -- engaged in the program.

24 MR. ANDERSON: That would be fantastic. Now,  
25 according to the folks at UTMB, they identified that these

1 particular services do have to go through state-use first.  
2 That's how it was communicated to us.

3 MR. SERNA: Right.

4 MR. ANDERSON: And they were -- they said  
5 that they would've gone through that process had they known  
6 that we existed so --

7 MR. SERNA: Okay.

8 MR. ANDERSON: -- so that -- that was the  
9 main thing that -- that we learned for that particular  
10 service, and that was housekeeping.

11 MR. SERNA: Okay. Cool.

12 MR. QUIGLEY: And do you know if they put it  
13 on the exception list?

14 MR. MOORE: That's a good question. I would  
15 have to look and see. How long ago was that?

16 MR. ANDERSON: They went out to bid last  
17 year, in mid last year, so they -- they said we're just a  
18 little bit late on that.

19 MR. MOORE: Okay.

20 MR. ANDERSON: There is another opportunity  
21 coming up for bid though for their outbuildings.

22 MR. MOORE: They should show up on exception.

23 MR. JOHNSON: I'm -- I'm a little bit of at a  
24 disadvantage because I don't hear as well as the rest of the  
25 members of the committee, so I may ask you something you

1 already answered, but --

2 MR. ANDERSON: Sure.

3 MR. JOHNSON: How many -- how many positions  
4 or how many employees do you currently have and -- and how  
5 would you classify them in terms category?

6 MR. ANDERSON: They're all categories, so we  
7 have every type of disability that we employee. We employee  
8 1,400 people across the U.S., and we have a high portion of  
9 those are people with disabilities.

10 MR. JOHNSON: Well, what I meant -- I didn't  
11 mean that -- I meant the -- the classification of jobs. Are  
12 they clerical jobs? Are they manufacturing jobs? You know,  
13 what -- that's what I'm trying to ask.

14 MR. ANDERSON: We have a variety, so there  
15 are professional jobs. There are managerial jobs,  
16 supervisory, hourly staff. Your -- we have custodial  
17 workers. We have facility folks who are doing electrical,  
18 you know, so they're -- they're really the -- the folks with  
19 certifications, electrical, mechanical, HVAC. We have -- we  
20 have everything from custodial workers up to middle  
21 management.

22 MR. JOHNSON: Okay. And -- and what  
23 percentage of your employees right now are people with  
24 disabilities?

25 MR. JOHNSON: About 84 percent, 83-84

1 percent.

2 MR. JOHNSON: Okay. It sounds like you're in  
3 good shape, on a good road.

4 MR. WELLS: Gary --

5 MR. ANDERSON: Yes.

6 MR. WELLS: -- Gary, are you affiliated with  
7 Source America or TIBH?

8 MR. ANDERSON: Yes, we are.

9 MR. WELLS: Okay.

10 MR. QUIGLEY: Do you all provide hospital  
11 services as --

12 MR. ANDERSON: Yes.

13 MR. QUIGLEY: -- under the federal program?

14 MR. ANDERSON: Yes, we do. We have six  
15 hospitals currently. Our largest hospital is Naval Medical  
16 Center in Portsmouth. That's in Virginia. And we have over  
17 200 employees both on facilities and housekeeping for the  
18 whole hospital.

19 MR. JOHNSON: Are any of your employees paid  
20 less than minimum wage?

21 MR. ANDERSON: No.

22 MS. LACY: Do you have people with  
23 disabilities in middle management positions?

24 MR. ANDERSON: Yes.

25 MR. JOHNSON: What is your goal? When you

1 say you'd like to find ways to employ more people with  
2 disabilities, do you have specific goal you want to attain?

3 MR. ANDERSON: Yes, we are looking for  
4 long-term contracts. Typically, contracts are five years  
5 with our customers, so we would provide all of the  
6 employees, the systems, computer systems. We would pay our  
7 employees, and those folks would have benefits typically.  
8 Most everyone has competitive wages, so we're looking at a  
9 long-term contract or opportunities where we can do  
10 placements as well, VRCR.

11 MS. WILKINSON: Now, you mentioned that you  
12 have some skilled workers with electrical, mechanical, do  
13 you provide training for that?

14 MR. ANDERSON: We do provide training for  
15 that, and a lot of times we're looking at -- for people who  
16 have some experience in that, and then we'll do cross  
17 training so that way they can look at -- say you have  
18 someone who has plumbing experience or electrical  
19 experience, with some training they could learn to do HVAC  
20 as well, so we'll -- we'll look both for people who have  
21 experience in and maybe military experience. We do hire a  
22 lot of veterans, but then we'll also cross train so that way  
23 they can move up in the organization. And we'll also do  
24 leadership development, so we develop our folks to become  
25 supervisors and managers.

1 MR. JOHNSON: Do you -- do you also support  
2 outplacement of your employees to competitive industry?

3 MR. ANDERSON: Yes.

4 MR. JOHNSON: And -- and what's been your  
5 record in the last couple of years? How many have you been  
6 able to outplace?

7 MR. ANDERSON: That I do not know. We can  
8 find out and let you know. I'm more than happy to do that.

9 MR. JOHNSON: Okay.

10 MS. LANGENDORF: Can I ask TWC or TIBH if  
11 there's any reason UTMB didn't utilize it?

12 MR. SERNA: We'd have to look at the  
13 exception report to determine what -- how they described not  
14 using that.

15 MS. LANGENDORF: Okay.

16 MR. SERNA: But there can be a reason.

17 MS. LANGENDORF: Yeah, there can be a reason.

18 MR. SERNA: Yes, ma'am.

19 MS. LANGENDORF: Okay. We appreciate you  
20 bringing this issue forward --

21 MR. ANDERSON: Thank you.

22 MS. LANGENDORF: -- and hope we -- I mean,  
23 our goal is to see more people with disabilities employed.

24 MR. ANDERSON: We're very excited about the  
25 opportunities, and we have the experience and the ability to

1 do it as well as the track record, so we're happy.

2 MS. LANGENDORF: Super.

3 MR. ANDERSON: Thank you.

4 MS. WILKINSON: Thank you.

5 MS. LOGAN: Thank you.

6 MS. LANGENDORF: Thank you. Next, we have

7 Kyle Piccolo (sic) from the Arc of Texas.

8 MR. PICCOLA: Morning, you all. I'll be very  
9 quick. Nice to see you. I am just wanting to comment from  
10 the last meeting. I typically don't like to give comments  
11 without a follow-up, and I just wanted to say that thank you  
12 for your work on the performance measures, and the Arc of  
13 Texas supports them as you guys created them and hope that  
14 they can move forward as is. Thank you very much.

15 MS. LANGENDORF: Thank you, Kyle. Questions?

16 MS. LOGAN: Thank you.

17 MS. LANGENDORF: Thank you. Okay.

18 AGENDA ITEM NO. 3

19 MS. LANGENDORF: Next on the agenda is update  
20 from the Texas Workforce Commission regarding the state-use  
21 program.

22 MR. SERNA: Good morning. Greetings from the  
23 folks at Houston. The road was --

24 MS. LANGENDORF: Sorry.

25 MR. SERNA: -- the road -- no, no, no.

1 MS. LANGENDORF: We should've had the meeting  
2 there.

3 MR. SERNA: It would -- it might've been a  
4 little bit of a challenge. The conference, the Texas -- the  
5 annual Texas Workforce Conference is being held at the  
6 Hilton Americas, and the -- the two overflow hotels which  
7 are near there are full as well.

8 MS. LOGAN: Oh, wow.

9 MR. SERNA: So we might've had a struggle  
10 finding a meeting place.

11 MS. LANGENDORF: Okay.

12 MR. SERNA: But this is fine. It's not that  
13 bad. Plus, I got to get some kolache's for breakfast, get  
14 some barbeque for lunch in Ellington -- El - Elling --  
15 Ellinger. Anyway, real quick, some of the things that I  
16 wanted to give you all an update on. First off, and  
17 probably most important, is the rules are out for public  
18 comment. The -- the revised rules for the program are out  
19 for public comment.

20 They were up November 26th, and  
21 unfortunately, they -- the responses are due December 26th,  
22 though I'm sure there won't be anybody here to accept them  
23 since the state is closed on that day. But we'll figure  
24 that out. I don't know that anybody was thinking about that  
25 on our -- over in our rules area when they -- when they

1 posted that.

2 To date we have not received any -- any  
3 comments from the rules, but I know that we'll be meeting  
4 with a couple of groups that have expressed an interest in  
5 providing feedback to us on the rules. And, of course,  
6 anything else that does come in in writing. The idea is  
7 that staff will then take the -- the proposed revised rules  
8 with the comments included where we can to the Commission in  
9 January for review and approval, and I'll make sure that you  
10 all are aware of when we're doing that.

11 At the upcoming -- at an upcoming Commission  
12 meeting in December, I believe it's December 20th meeting,  
13 we have two agenda items, one on the management fee that the  
14 CNA, TIBH Industries, is using for the upcoming year, and  
15 the second is to provide feedback to the Commission on  
16 performance of the -- of the CNA. We -- we posted these  
17 items requesting the performance requesting public comment.  
18 The comment period closed last week.

19 MR. MOORE: The -- the last week in November.

20 MR. SERNA: Okay.

21 MR. MOORE: The 18th.

22 MR. SERNA: The 18th. So we'll be -- we'll  
23 be taking in -- in the case of the performance, it is a  
24 report to the Commission. In the case of the fees, it is a  
25 report and a Commission action to approve the fees. Also,

1 our internal audit completed its first review of the  
2 program. When that audit becomes final and is presented to  
3 the Commission, then I'll make sure that the committee  
4 members and TIBH receive a copy of it.

5           There was nothing really -- nothing really  
6 negative in the -- in the audit findings. Probably the most  
7 significant finding that the staff issued -- the most  
8 significant finding has to do with not having executed a  
9 contract for quality review of the products, independent  
10 quality review of the products. Staff's focus for the first  
11 half of the year was to sort of get a handle on the program  
12 and help get the committee set up, et cetera, et cetera.  
13 We'll be turning our focus to the other requirement in the  
14 statute, but that -- that's probably the most -- the most  
15 significant thing that was not accomplished.

16           There were comments about the performance  
17 measures and the certification and the -- the need to have  
18 the -- the advisory committee get the performance measures  
19 recommended to Commission. We responded that there was a  
20 recommendation, and Commission provided feedback and the  
21 advisory committee is reviewing that, and I'll give you an  
22 update on that in a second. So overall, it -- you know, was  
23 what to be expected with -- kind of what we expected in our  
24 -- in our first review of the program.

25           This program will be on a regular internal

1 audit review cycle now. So every aspect of the program will  
2 be included in our -- in our internal audit's annual audit  
3 plan. I don't know -- they'll -- they'll be a follow-up to  
4 this audit this coming year, and then we'll see if they --  
5 if they put the program on the audit plan for the -- for the  
6 next year or the year after.

7 Another significant thing that staff is  
8 working on is draft language for the request for proposal  
9 that we will publishing for the CNA services. They are the  
10 services of an organization to act as the central nonprofit.  
11 The -- the requirement or the goal is that we would have a  
12 new contract executed effective September 1st of 2017. We  
13 will probably post that in February, well, maybe -- maybe  
14 late January. I'll probably post the RFP and then have it  
15 posted for 30 days, receive the responses, evaluate, go  
16 through contract negotiations, and then select, so we should  
17 -- we feel pretty good about being able to hit our target of  
18 the beginning of the fiscal year for contract execution.

19 And then the final item, the performance  
20 measures, performance measures were presented in staff  
21 briefings not in public meeting, were presented to the -- to  
22 our Commissioners. We received feedback from the  
23 Commissioners concerning the measures. Primarily, the  
24 feedback revolved around two main points. The first, and I  
25 had talked to Adam Leonard about these measures, but the

1 first is a request by our Commission that we engage our  
2 division of Operational Insight under the direction of Adam  
3 Leonard in the -- in the formulation of measures.

4 That group develops and manages and reports  
5 on all measures for TWC, federal, state, and internal. This  
6 is an internal state program -- or state and internal  
7 program, so the Commission wants a more formal engagement of  
8 -- of Adam and his group in the development -- or not the  
9 development but in the formulation of those measures. And  
10 I'm going to ask Adam if we have committee meeting in  
11 January, ask Adam to join us to provide feedback on the  
12 measure so we can move forward with those.

13 Second, their second comment had to do with  
14 some of the complexity or the potential complexity of the  
15 measures. The Commissioners were concerned that the  
16 measures would get so complex that they wouldn't clearly  
17 reveal or paint -- paint a good picture of the performance  
18 of the program so specifically, when -- the feedback that we  
19 received, for those measures where were asking for training  
20 material to be developed by the CNA for use by the CRPs or  
21 material to be provided to the employees of the CRP, they  
22 wanted something that was a little bit more concrete that  
23 wouldn't put an undue burden on the -- on the CRPs and at  
24 the same time actually get to the point which was assisting  
25 the individuals with disabilities that participate in the

1 program at understanding their potential opportunity for  
2 advancement within the CRP as well as advancement in a  
3 career outside of the CRP. And they -- they -- they really  
4 couldn't see how we were moving the needle in that direction  
5 clearly enough.

6                   And then also, this is where Adam gets  
7 engaged again, ensuring that the data that we were basing it  
8 on was objective enough to be able to say, yeah, the -- the  
9 results weren't influenced simply by someone saying, yes, I  
10 did that, whether they did it or not, not that -- not that  
11 any CRP would, but, yes, I did that or, yes, they understood  
12 what I told them. There -- there was no closed loop on the  
13 measure to say, yes, I received the material, and I  
14 understood it, and I'm useful and -- and, you know, I'm good  
15 with what I got. There -- there was sort of a missing --  
16 missing aspect to it that closed the loop on -- on -- on  
17 some of the that.

18                   They did agree with the position that the  
19 advisory committee had taken which is to not tie the growth  
20 of the program to a specific 10 percent every year or 5  
21 percent every year because it would be unrealistic but  
22 rather challenged us to work with the advisory committee --  
23 staff to work with the advisory committee to look at how to  
24 depict in the performance measures growth of the program  
25 from the perspective of opportunities and advancements for

1 the staff, those -- those employees with disabilities that  
2 are in the program and not so much the sales growth or the  
3 assumption that sales grow -- sales growth equals a benefit  
4 to those individuals. So that's -- they did agree with the  
5 -- with the committee's position because really none of the  
6 measures that the committee had proposed were looking at  
7 just growing the program by some arbitrary percentage point.

8           One thing that they asked us that we could  
9 not accommodate an answer or provide a good answer to was  
10 how much of this information is already -- has already been  
11 captured and what would it look like if these performance  
12 measures had been in place, and because of the nature of the  
13 performance measures, some of it being new requirements on  
14 the CRPs and the CNA, there's no historical data to be able  
15 to say, well, let's go back and look through the files and  
16 see how much counseling has been provided objectively.

17           And -- and the -- but, again, the  
18 Commissioners wanted us to engage Adam Leonard and his group  
19 to kind of say, okay, we recognize that there are starting  
20 points for some measures, so it's ground zero, but what  
21 information could we get from the CNA or the CRPs to say if  
22 we were reporting as objectively as possible, this is what  
23 these measures would have looked like had we been reporting.

24           And the reason they were asking that is to  
25 determine whether the targets that were set were realistic

1 targets. If -- if past performance indicates, for example,  
2 that -- and I'm just using this as an example, but an  
3 example -- half a day of training was being provided to  
4 employees, then an unreal -- it would be -- it may be  
5 unrealistic to say provide four, to jump from half a day to  
6 four the very first time out. On the other hand, if the  
7 CRPs have quarterly training meetings, they provide  
8 quarterly training, then four is not an unrealistic number  
9 and -- and there may -- there may need to be a stretched  
10 number. So we're going to try to reach out to the -- to the  
11 CRPs or a few key CRPs and see if we can gather any of that  
12 type of information for what this would've looked like  
13 historically given these measures.

14           And -- and then finally, I think I may have  
15 mentioned this, but finally our Commission was concerned  
16 that we were putting undue burden on the CRPs to collect new  
17 information without a real benefit to the employees that are  
18 the focus of the program, and they wanted to make sure that  
19 we weren't doing that. So they wanted to hear a little bit  
20 more from the CRPs, and we'll do that through TIBH, hear a  
21 little bit more from the CRPs about the type of burden that  
22 collecting or reporting some of this information may -- may  
23 cause.

24           And if the burden is, well, I've got to, you  
25 know, I've got to spend two more hours a month doing

1 something, that may -- I'm making this up again -- that may  
2 not be a significant burden. If the burden is to do this,  
3 I'm going to have to hire somebody else, then -- then it  
4 would be a significant burden. I don't believe that either  
5 one of those scenarios is the case. Those are just the two  
6 extremes that -- that were -- that were mentioned to me  
7 by -- by the -- in this case, by the Chairman.

8           So that's kind of where we're at with the  
9 measures. The -- the Commission expects us to be able to  
10 have something back to them, working with the advisory  
11 committee something back to them, within the next -- not  
12 counting this month necessarily but within the next couple  
13 of months. Staff will do work with the -- internally with  
14 Adam and his group, Operational Insights, and provide that  
15 feedback to all the committee members that we get from him.  
16 Plus, we'll have Adam here.

17           And it could be that the measures that we  
18 currently have are the measures that we move forward with or  
19 slightly tweaked to move forward with or that there's  
20 another measures added to it. But I -- that -- that's kind  
21 of where we're at. That's kind of where we're at with the  
22 measures and -- and the feedback that we got.

23           The Commissioners collectively, well,  
24 individually because they -- we didn't -- this did not come  
25 up in public meeting, individually, I say collectively

1 because their comments were -- were pretty much the same --  
2 all through were very appreciative of the advisory  
3 committee's efforts and did see merit in the measures that  
4 were being proposed. Their apprehension was what would this  
5 have looked like historically, would it -- would it really  
6 be, if we looked at historical data, painting the picture  
7 that we want to paint or -- or not painting the picture but  
8 reporting on the performance that we want to report for the  
9 program, the emphasis of which are employees with  
10 disabilities and then -- then finally making sure that there  
11 -- that there's consistent data that is objective that is  
12 being used. That -- that it's -- that it's not something  
13 that we would -- we would say, yeah, we -- we can pull this  
14 data pretty easily.

15           Some of the data is easy to pull from some  
16 point forwards, such as the number of -- the amount of  
17 material or the number of training courses developed by the  
18 CNA for use by CRPs. But then the use of that material and  
19 the collection of -- of the data and the results of the use  
20 of that material is something that the -- the Commission  
21 felt still needed a little bit of -- of -- of tweaking or  
22 improving. So that's where we're at with the -- with the  
23 performance measures.

24           Those cover the items that I wanted to update  
25 the -- the committee on. Again, if we have an advisory

1 committee in January and if the will of the committee, the  
2 Chair and the committee, then I'll make arrangements to get  
3 Adam or one of his key measures folks present at that  
4 meeting to provide us feedback. And then between now and  
5 then staff and I will be working with Adam's group with the  
6 measures that were already developed. So I may be reaching  
7 out to some of you all that are CRPs on the -- that are on  
8 the committee and some of the other CRPs and just say, okay,  
9 if you had to collect this, what would it have looked like  
10 because that's some of the missing -- one of the missing  
11 questions.

12 MS. LANGENDORF: Well, that is very helpful,  
13 and I -- I kind of feel like we've all gone through a  
14 learning experience together. I mean, being that this is  
15 new. I think it will be very useful to us with this  
16 feedback now if staff can propose based on I think what  
17 we've given you as sort of some of the things we wanted to  
18 look at, if you propose back what is more measurable or is  
19 not going to be able to be measurable.

20 I think this is -- I think this is great.  
21 I'm glad it didn't go forward and get chopped down, I mean,  
22 in way, you know, because I think we put a lot of effort as  
23 -- as much as it was in our going back and forth about what  
24 all this means. I think having somebody that does this kind  
25 of stuff, which is your interesting Operational Insight

1 Division, to assist in maybe forming some of the things that  
2 we've put together will be very helpful.

3 MR. SERNA: Yes, ma'am.

4 MS. LANGENDORF: I do have some other  
5 questions about kind of your update, but is there anything  
6 else any of the members would like to --

7 MR. WELLS: Well, I just had a question also.

8 MS. LANGENDORF: Yeah.

9 MR. WELLS: You said that they were -- that  
10 they didn't want to, you know, look at the employment but on  
11 number 3 here, we -- we had recommended a three -- you know,  
12 3 percent annual -- annual increase based on hours worked.

13 MR. SERNA: I -- I think what -- what they  
14 didn't want to see was just a target of sales increase.

15 MR. WELLS: Yeah.

16 MR. SERNA: You know, 10 percent sales  
17 increase.

18 MR. WELLS: Right.

19 MR. SERNA: Looking at -- looking at hours  
20 worked or looking at, again, something that -- that helped  
21 represent the performance of the program relative to those  
22 employees is something that they didn't mind. But in that  
23 case, their concern was how measurable is it really and then  
24 that's the one -- that's one of the ones that meant -- that  
25 triggered the historical.

1 MR. WELLS: Well, the -- yeah, the measurable  
2 thing is -- is fairly simple because we turn in quarterly  
3 reports anyway to TIBH, so.

4 MR. SERNA: Right. And we'll look at the --  
5 we'll look at that, pull that as a historical.

6 MR. WELLS: Yeah, everybody is -- that's  
7 correct; isn't it? You have all that --

8 MR. QUIGLEY: And then, you know, the other  
9 is, you know, increase in wages, that's something else  
10 that's reported as far as, you know, as a raw number. You  
11 can figure that the wages are -- are stagnant or they're  
12 increasing.

13 MR. SERNA: Yes, sir. And we had -- in  
14 meeting with -- and, you know, I've met with Adam in  
15 advance, he looked at these, said, yeah, they look good.  
16 And then interestingly enough I guess he continued to -- to  
17 think about those measures as we were briefing the  
18 Commissioners on the measure, and they asked if Adam had  
19 looked at them, and I said, yeah, they had. Adam's feedback  
20 on the measures were, yeah, I looked at them, but I hadn't  
21 looked at any data behind the measures and then that  
22 triggered the -- the look at -- let's look at the data with  
23 regard to target setting, so.

24 MS. LANGENDORF: I think that -- that's all  
25 really positive, and I think as we can work together --

1 MR. SERNA: Yes, ma'am, we'll work together.

2 MS. LANGENDORF: -- with what you all bring  
3 back to kind of see if we're addressing what we all intended  
4 when we had all those discussions. So I think that's very,  
5 very useful. I would like to talk a little bit -- I mean,  
6 as an update here --

7 MR. SERNA: Yes, ma'am.

8 MS. LANGENDORF: -- I really, really  
9 appreciate and I think everybody got the annual report, I  
10 really appreciate what TWC did with it this time. But it  
11 also raised a whole lot of questions for me. I thought it  
12 was required that a CRP have 75 percent of the individuals  
13 hired and according to the annual report, that's not  
14 happening, and so I don't know. Do we need to have a  
15 performance measure on that or what? Can you all talk about  
16 that? What am I missing? I -- I guess I assume too much  
17 that the law -- well, it is the law. Is it the law? No,  
18 it's a policy that indivdu -- that to be a CRP, you have to  
19 hire at least 75 percent.

20 MR. WELLS: It's in the certification.

21 MS. LANGENDORF: It's in the certification.  
22 So what happens when they don't after a year?

23 MR. SERNA: So as -- so here's what's  
24 happened historically, and then I'll talk a little bit about  
25 what's going to happen prospectively.

1 MS. LANGENDORF: Yeah.

2 MR. SERNA: Historically, as I understand it,  
3 not having had very much history with it, but historically,  
4 when a CRP gets certified or recertified, there's a  
5 requirement that they indicate that there is, you know --  
6 they're -- they're going to hire 75 percent of the  
7 individuals that they -- that they have disabilities.  
8 During the course of operation, if a CRP fails to achieve  
9 that, then they report that to TIBH, and it then got  
10 reported to the council. Now it gets reported to the  
11 Commission or -- or to staff. If there is a failure to  
12 achieve that for two consecutive quarters in a four  
13 consecutive quarter period of time, then what has happened  
14 in the past is that CRP's gotten a nasty letter.

15 MS. LANGENDORF: Okay.

16 MR. SERNA: And if you do it again, you get a  
17 nastier letter.

18 MS. LANGENDORF: Okay. And you get  
19 recertified?

20 MR. SERNA: And they have been recertified.  
21 Prospectively, and this is -- this is some of -- the  
22 committee's responsibility, is to provide -- one of the  
23 committee's responsibilities is to provide recommendations  
24 concerning the certification of CRPs. Separate from that is  
25 the staff's responsibility to use the statute and the rules

1 to manage the program, which is -- which includes  
2 certification and recertification. So the little bit of --  
3 the reason I'm disconnecting the two is not trying to  
4 circumvent a responsibility of the committee, but not  
5 necessarily waiting for the committee to -- to make  
6 recommendations and get those approved.

7           Prospectively, what staff will be doing, and  
8 I've talked to -- talked to our staff, prospectively what --  
9 from now on what staff will be doing is we'll still follow  
10 the process of the first quarter that you fail I think TIBH  
11 contacts and the second quarter TIBH -- at -- at that point  
12 of that second contact, there's a contact by TWC to the CRP  
13 asking for discussion concerning what caused the failure.

14           We have the ability -- we currently have the  
15 ability -- it has never been used, but I believe that it  
16 will be, and I've had conversations with our Commission --  
17 to cancel a contract, reassign a contract, suspend a CRP's  
18 certification or cancel a CRP's certification. And that --  
19 and that's currently in the existing rule, and it's carried  
20 over to the new rule. It's not in -- it's not a new thing,  
21 but it's a thing that has never been utilized.

22           MS. LANGENDORF: So we've never had a CRP --

23           MR. SERNA: Get --

24           MS. LANGENDORF: -- decertified.

25           MR. SERNA: Not that I'm aware of.

1 MR. MOORE: Not for -- not for that reason.

2 MS. LANGENDORF: Okay. Not for not hiring,  
3 and that's the whole purpose.

4 MR. WELLS: Now, Jean, there's some  
5 circumstances sometimes because it's -- it's by contract,  
6 so, in other words, if you've got a contract that has one --  
7 one person, and you've got somebody taking them to that  
8 contract, you know, to -- to work with them, then you --  
9 you're going to be at like 50 percent. You know what I'm  
10 saying?

11 MS. LANGENDORF: Yeah.

12 MR. WELLS: Because it's a tiny little  
13 contract, so it's by individual contract. So sometimes  
14 there is extenuating circumstances where it's impossible to  
15 meet the 75 percent if you do it on a contract basis. And  
16 the CRP may be -- and Fred would know better than I would --  
17 their overall may be over 75 percent, but when you look at  
18 the individual contracts, that may be the issue because  
19 they're tiny little contracts, you know, where they have,  
20 you know, a -- you know, one person --

21 MR. SERNA: Right.

22 MR. WELLS: -- you know --

23 MR. SERNA: The --

24 MS. LANGENDORF: And what -- what I'm  
25 looking at is overall agency.

1 MR. WELLS: Yeah.

2 MS. LANGENDORF: And that's --

3 MR. SERNA: CRP.

4 MS. LANGENDORF: CRP. I'm sorry to confuse  
5 that.

6 MR. QUIGLEY: There, you know --

7 MS. LANGENDORF: Yeah.

8 MR. SERNA: They -- they usually mean  
9 something different to me. I'm sorry.

10 MS. LANGENDORF: CRP. No, but CRP --

11 MR. QUIGLEY: There -- there has been --  
12 there have been -- there have been two quarters in the last  
13 three or four years that our CRP's fallen below the 75  
14 percent for the quarter, and what's happened each time that  
15 that's happened is that we have, on short notice, taken over  
16 facilities for the-- the Texas Department of Transportation  
17 that are in rural areas, and the only way to -- to operate  
18 those contracts is to hire the individuals that were there  
19 when they -- when -- when we took them over.

20 That forced our disabled labor ratios down  
21 for that quarter during that same quarter, what, through  
22 attrition and hiring and -- and what have you, then we build  
23 the numbers back up to where our -- our overall CRP is above  
24 the 75 percent. That particular job location on that  
25 contract that has 27 locations on it may only be at 50

1 percent, but the contract itself will be at 75 and the  
2 company itself will be over the 75 percent.

3 MS. LANGENDORF: The CRP.

4 MR. QUIGLEY: Yes, yeah.

5 MS. LANGENDORF: Again, I understand the  
6 individual contracts. What was reported, which I think is a  
7 great thing to have in this report which was never in the  
8 annual report, is to show that performance because that's  
9 the whole goal of the program. My biggest concern are the  
10 ones that are doing temporary services contracts.

11 MR. SERNA: Right. So --

12 MS. LANGENDORF: And operating at -- I mean,  
13 I don't even want to give you the num -- 16 percent.  
14 Seriously?

15 MR. SERNA: So this is -- this is the  
16 situation if I'm -- if I'm thinking correctly of what you're  
17 referring to that -- that Dave described, we have one -- one  
18 that comes to mind immediately a CRP where collectively the  
19 organization is in excess of 80 percent. Individually on  
20 some of their key contracts, they are well below 20 percent.  
21 And the --

22 MS. LANGENDORF: Now, we're not getting that  
23 information. We're getting only --

24 MR. SERNA: The --

25 MS. LANGENDORF: -- I mean, what you're

1 reporting in the annual report which, again, I applaud you  
2 for that because it -- to me, it was an eye opener. Okay.  
3 Now, I understand what Sunset might've looked at --

4 MR. SERNA: Right.

5 MS. LANGENDORF: -- or, you know, what state  
6 legislatures looked at and why we're -- we've been given  
7 this charge and why TWC's now overseeing the program.

8 MR. SERNA: Right

9 MS. LANGENDORF: These -- I -- I'm -- I --

10 MR. SERNA: So we --

11 MS. LANGENDORF: I thought temporary services  
12 to us or to those of us that want integration that is like  
13 the ideal because individuals get placed at state agencies  
14 or -- I think just state agencies, right?

15 MR. SERNA: Yes, ma'am.

16 MS. LANGENDORF: Okay. And they're  
17 integrated. They're in there with the rest --

18 MR. SERNA: Right.

19 MS. LANGENDORF: -- of us. And so I thought,  
20 wow, that we need to promote that. That should be --

21 MR. SERNA: Right.

22 MS. LANGENDORF: -- 90 percent.

23 MR. SERNA: Right.

24 MS. LANGENDORF: I mean, ideally. Those are  
25 -- those are great outcomes. But then in looking at the

1 agency reported in the annual report, those are some of the  
2 worst offenders.

3 MR. SERNA: And, yeah, you're absolutely  
4 right. So the other thing that when I was mentioning  
5 earlier, the -- the -- maybe I -- maybe I wasn't using  
6 prospectively right, but from some point in the past forward  
7 because it's -- we've already started it from a quarterly  
8 count, quarter count. We have the ability to -- we, the  
9 oversight agency, TWC, and it has always been there in the  
10 rules, it's not new in -- it's not in the --

11 MS. LANGENDORF: Right.

12 MR. SERNA: -- proposed rules --

13 MS. LANGENDORF: Right. In the old --

14 MR. SERNA: -- any different than it was in  
15 the old rules, but we have the ability to consider the --  
16 the circumstances that Dave described and either waive that  
17 situation, you know, it's two people, small contract --

18 MS. LANGENDORF: Sure.

19 MR. SERNA: -- you're never going to get to  
20 75 percent.

21 MS. LANGENDORF: Your support. I  
22 understand. Yeah.

23 MR. SERNA: Right. Or we have the abili --  
24 to -- to waive it or we have the ability to cancel that  
25 contract, to reassign that contract or to affect the

1 certification of the CRP as a whole. And that's one of the  
2 things that we -- that we will be doing, using the rules as  
3 they exist now and then with the modifications that are in  
4 the rules that -- that give us a little bit more  
5 micro-authority, look at -- look at those situations in the  
6 future.

7           The other thing that we believe, because we  
8 agree with -- we have the same conclusion that you did, the  
9 temporary services contracts are probably the absolute best  
10 opportunity for placing individuals. It's like the whole  
11 contract is a placement service.

12           MS. LANGENDORF: Yeah.

13           MR. SERNA: The services contracts are the  
14 second best, and the -- the third best, and this is not a  
15 ranking of what's good and what's evil or bad, the third  
16 best are the manufacturing. So if we -- what we're going to  
17 do is things that don't disrupt the manufacturing piece  
18 which is very stable but focus on the temporary services  
19 contracts and look at the purpose of those. We have -- we  
20 have agencies speaking from experience at other agencies,  
21 knowing what agencies do, we have agencies that are using  
22 our program to shorten a procurement cycle which is fine.  
23 That's what it's intended to do.

24           MS. LANGENDORF: Right.

25           MR. SERNA: But not to the benefit of the

1 goal of the program. And the CRP is put in a difficult or  
2 challenging position because they can say, well, no, I'm not  
3 going to do that, and then they don't -- then that agency  
4 will say, well, I'm -- I'm simply not going to deal with  
5 that CRP for any of my temp. services needs, not just in  
6 this one case.

7                   And I'll use a very specific example.  
8 There's a CRP in Waco that has not had -- or central  
9 Texas -- not had the ability or not not had the ability, but  
10 -- but has failed to achieve 75 percent for a couple of  
11 quarters. I had a phone conversation which is the next  
12 step. I had a phone conversation and the reason was the  
13 agency is requesting particular types of skill sets and  
14 actually in some cases particular individuals that  
15 presumably are going to the agency, I mean, going to the  
16 CRP. And they're using the CRP as sort of a try and then  
17 hire.

18                   MS. LANGENDORF: Yeah.

19                   MR. SERNA: And the agency is the attorney  
20 general. And -- and the -- the comment from the agency of  
21 the CRP is you can work with me or I can find somebody else  
22 to work with me. Well, if they don't work with the agency,  
23 then they have no opportunity to place any individuals --

24                   MS. LANGENDORF: Right.

25                   MR. SERNA: -- with disabilities.

1 MS. LANGENDORF: Or not -- yeah.

2 MR. SERNA: So the agen -- so the CRP is  
3 stuck in a hard spot, so they -- they're asking -- you know,  
4 they're explaining this to me, and my comment to them -- and  
5 I think was in TIBH's offices when I had this conversation  
6 with them -- my comment to them was we needed to address  
7 that with the agencies. We, TWA -- TWC -- TWC needed to  
8 address that with the agencies, not TIBH and not the CRP.

9 But then second, the CRP needed to raise that  
10 to our attention if they were being put in a tight spot.  
11 And I don't think the CRPs in the past have had a full-time  
12 organization that they can turn to as well and say, hey,  
13 look, I've got a problem with this customer of mine. You  
14 know, they're always asking me for blah, and, yes, do they  
15 do hire individuals with disabilities, but if I don't give  
16 them blah, then they're not going to do this.

17 MS. LANGENDORF: Sure.

18 MR. SERNA: So I'm stuck. And they're doing  
19 more of this and they're doing -- there's never been an  
20 organization that -- a full-time state agency with a  
21 commission that has connections to the Governor's office  
22 that -- that can sort of help -- help the CRPs carry that  
23 water and carry that problem. So -- so the kind of -- that  
24 was a very long answer to your question, but what we  
25 reported is what exists now. What we hope to report in next

1 year's annual report should reflect the changes that we will  
2 be making -- with all due respect to the advisory committee,  
3 the changes that we will be making regardless of the  
4 certification criteria recommendations that the advisory  
5 committee proposes to us.

6 MS. LANGENDORF: Right.

7 MR. SERNA: In other words, we're going to  
8 use the tools we already have in the rules.

9 MS. LANGENDORF: Fred wants to say something.

10 MR. WEBER: I as -- from the annual report,  
11 are you getting this percentage from the number of people  
12 with disabilities that -- against the number of people  
13 without disabilities?

14 MS. LANGENDORF: Uh-huh.

15 MR. WEBER: Okay. That 75/25 is based on  
16 hours. It's not based on the number -- based on the number  
17 of people. So you could have eight people with disabilities  
18 working -- working 100 hours, and you could have eight  
19 people with non -- that are not disabled working 10 hours,  
20 and you've met the 75 percent percent criteria. The 75  
21 percent criteria is based on the number of work hours. It's  
22 not based on the number of individuals as you see in that  
23 report, so.

24 MS. LANGENDORF: Okay. Okay. Then --

25 MR. WEBER: I mean, I'm just trying to make a

1 clarification there. I -- I was trying to figure out --  
2 because we have a very small handful of CRPs that don't make  
3 the 75/25, but that's based on hours, not based on  
4 individuals. So I -- I can't -- so, you know, if you're  
5 taking that percentage --

6 MS. LANGENDORF: Well, can we have the hours  
7 then? I mean, if you're --

8 MS. WEBER: Ma'am?

9 MS. LANGENDORF: I would -- I would like a  
10 report of the hours then --

11 MR. WEBER: Okay.

12 MS. LANGENDORF: -- to show that. Because --

13 MR. WEBER: Well, I -- I --

14 MS. LANGENDORF: -- if I'm looking at one  
15 example, now this is an extreme, one person with a  
16 disability, 20 without --

17 MR. SERNA: Who's the CRP?

18 MS. LANGENDORF: East Texas, Goodwill East  
19 Texas, tempo -- temporary services - 20 individuals without  
20 disabilities, one with, 5 percent. That comes out to 5  
21 percent --

22 MR. WEBER: Right.

23 MS. LANGENDORF: -- doing it with the number  
24 of persons.

25 MR. WEBER: Right.

1 MS. LANGENDORF: Now, is that one person  
2 doing all the hours and the 20 did one hour each? I -- I  
3 don't know. If you're saying --

4 MR. WEBER: I don't know. I mean, there --  
5 there -- there are CRP that have not met the 75/25 criteria.  
6 And -- and as Ed clearly articulated, that they do have to  
7 go through the exception, and they have to file in there,  
8 you know, and then they have to file, and then they have to  
9 go through that. I'm just stating that -- that when you  
10 look at these -- look at these individuals, so if you -- if  
11 you have 50 and 50, it looks like -- like 50 -- 50  
12 individuals with disabilities and 50 people without  
13 disabilities, if -- if -- they could still be in compliance  
14 because those 50 with disabilities are working -- have more  
15 -- you know, have 75 of the hours, where the 50 percent  
16 don't have the hours, so --

17 MS. LANGENDORF: Okay. Then -- then I would  
18 just --

19 MR. WEBER: -- that's all -- that -- that's  
20 all I'm saying.

21 MS. LANGENDORF: Yeah, I would ask --

22 MR. WEBER: Plus --

23 MS. LANGENDORF: Back up then to this --

24 MR. WEBER: Plus, the -- the 75/25 is based  
25 on the amount of hours -- I mean, when we you certify, you

1 have to certify the -- certify the facilities, so where  
2 we've run into some issues with like the Goodwills is is  
3 that their -- their charge is -- is -- it used to be  
4 individuals with disabilities. Now it's individuals with  
5 disabilities and barriers to employment. We don't get to  
6 count those individuals with barriers to employment in their  
7 75/25 ratio. So just -- just as a --

8 MS. LANGENDORF: Yeah.

9 MR. WEBER: -- comment. But looking at what  
10 -- what you're looking at, you know, like where you have 39  
11 and I -- I don't know. I mean, but if you just look at the  
12 number of individuals and you take the number of nondisabled  
13 divided by the disabled, it's about hours. It's not about  
14 actual positions. Everybody is required to -- to report on  
15 those positions whether that person works 10 hours, whether  
16 that person works one day for that year or whether --  
17 whether that individual works every day of the year. So I'm  
18 just -- I just -- I just wanted to point that out for  
19 clarification.

20 MS. LANGENDORF: And -- and I think that  
21 would be good for us to see since what we're looking at now  
22 in the annual report provides a different picture.

23 MR. WEBER: Yes, ma'am.

24 MS. LANGENDORF: Particularly in the  
25 temporary services.

1 MR. WEBER: Yes, ma'am.

2 MS. LANGENDORF: That was my --

3 MR. WEBER: And I -- I understand. I  
4 understand. I understand.

5 MS. LANGENDORF: -- that was my, oh my God.

6 MR. WEBER: I understand your concerns. I'm  
7 just saying it -- it could be five and five, and it looks  
8 like 50 percent, but those five individuals with dis --  
9 individuals with disabilities may be working 80 percent of  
10 the hours, but they still have to report those nondisabled  
11 positions. I'm not saying that all of -- that's the case in  
12 all these, that we do have those ones as Ed pointed out,  
13 that are out of compliance, but it -- but it's not based on  
14 the individuals. It's based on the hours.

15 MS. LANGENDORF: Okay.

16 MR. QUIGLEY: And -- and I'm -- I don't have  
17 the report in front of me so -- but the numbers that you're  
18 reporting in that are annual numbers for that project or  
19 that -- that item; is that correct? It's annual number of  
20 employees annually on that location or for that --

21 MR. WEBER: I'm sorry?

22 MR. WELLS: No, quarterly.

23 MR. WEBER: Do what?

24 MR. QUIGLEY: It's the annual --

25 MS. LANGENDORF: Annual number.

1 MR. QUIGLEY: -- number.

2 MR. WEBER: Right.

3 MR. QUIGLEY: And so, you know, like, for  
4 example, at, you know, some of our work locations, due to  
5 the pay scales and what have you, we do have a higher turn  
6 over in our nondisabled workforce than we do in our disabled  
7 workforce that just quit and go away.

8 MR. WEBER: Right. And if Sean has 20  
9 individuals with disabilities and five supervisors, and  
10 those five supervisors turn over three times, he's going to  
11 have those same 20 and 15 nondisabled during that particular  
12 year.

13 MR. QUIGLEY: Right.

14 MR. WEBER: So, again, he's still met the  
15 75/25, but it -- it's just based on hours. It's not just  
16 based on -- on individuals is all I'm saying.

17 MS. LANGENDORF: And I think that is  
18 something we need to look at then.

19 MR. WELLS: You know, the other example Sean  
20 gave about phase in, at the federal side, they have -- you  
21 give them a phase in plan. If you can't make your ratio  
22 initially, the you have to -- then you have to tell the  
23 Commission what your phase in plan is, you know, so.

24 MR. SERNA: One of the things that I want to  
25 make sure that I'm clear in reporting this to -- to the

1 committee and anybody else is when I talk about using the  
2 tools that we have, it is using them judicially because we  
3 don't want to cut off our nose to spite our face and say  
4 we're going to suspend these -- a CRP's certification for  
5 failure to meet because that adversely impacts the  
6 individuals with disabilities that are employed there.

7 MS. LANGENDORF: Yeah, absolutely.

8 MR. SERNA: So we are going to be -- we are  
9 looking at -- Dave, that's a good point, but we are looking  
10 at, okay, what steps will we take that are more concrete,  
11 phase in or something that says, okay -- where we say  
12 instead of -- instead of the CRP saying, well, there's my  
13 plan to get to 75/25 because I have -- I've failed to the  
14 past two quarters, where we would say, these are your  
15 targets for getting to 75 to 25 over the next, you know,  
16 quarter or two quarters, whatever it is, with it being clear  
17 what the ramifications are at that point for failure to  
18 meet.

19 And that may be the loss of that contract,  
20 the suspension of the certification for some period of time.  
21 And, by the way, the significance of the suspension, in my  
22 mind, a suspension of certification is you can't participate  
23 in the program. It isn't shut the CRP down necessarily. It  
24 may. But it means for some period of time, you don't get  
25 contracts under the program.

1 MS. LANGENDORF: Sure. Which --

2 MR. SERNA: You can get contracts, but they  
3 won't be an agency going straight to you to -- to get  
4 something. So we think that will carry some weight so that  
5 will sort of be a more ultimate extreme.

6 The other thing I wanted to talk about, and  
7 we're going to get to it in a little while, the very next  
8 item, but not jumping ahead, is the importance of the  
9 performance measures and the importance of these -- these  
10 requirements that are in rules and how we will be using them  
11 now where they have not been used before has to deal -- it  
12 deals with the certification process. That is our ultimate  
13 ability to manage the program.

14 MS. LANGENDORF: Right.

15 MR. SERNA: So when we look at performance,  
16 when we -- performance based on the measures, performance  
17 based on the requirements and the rules of the CRPs, that  
18 will be taken into consideration at recertification. It --  
19 it -- it's impossible at certification because it's somebody  
20 fresh going, yep, I'm going to do 75/25.

21 MS. LANGENDORF: Right.

22 MR. SERNA: And until they face the  
23 challenges that the CRPs face, you know, they're not going  
24 to -- they -- if they don't confront it, they're not going  
25 to be able to. But at certi -- at recertification, then it

1 -- then it is our opportunity to do that.

2 MS. LANGENDORF: Larry?

3 MR. JOHNSON: Well, I'm a little confused  
4 here about the language in the number 8 under the  
5 certification and recertification guidelines. And I've got  
6 a -- one question I'd like to know how many waivers are  
7 granted, you know, each year because if you -- if you  
8 address the language specific in here, it says, total hours  
9 of direct labor for each contract --

10 MS. LANGENDORF: Larry, we're --

11 MR. JOHNSON: -- will be performed by 75  
12 percent -- will be performed by 75 percent of persons with  
13 disabilities.

14 MS. LANGENDORF: Got it. Okay.

15 MR. JOHNSON: So you're -- you're telling us  
16 and -- and I'm -- I'm understanding that there are small  
17 contracts where this may not apply and -- and if you look at  
18 the total number and so forth, so I'm wondering is this  
19 really a good standard to be applying. And -- and how many  
20 -- how many times are waivers necessary to exempt the CRP  
21 from complying?

22 AGENDA ITEM NO. 4

23 MS. LANGENDORF: Number 9 I think is what  
24 you're -- and -- and we will move to --

25 MR. JOHNSON: Number 9, yes. I'm sorry.

1 MS. LANGENDORF: -- the next agenda item as  
2 long as we're talking about the certification proposed by  
3 TWC that we were provided with.

4 MR. JOHNSON: Right.

5 MS. LANGENDORF: It's number 9.

6 MR. JOHNSON: Number 9. I'm sorry.

7 MS. LANGENDORF: Yeah. No, that's fine. And  
8 if we could back up. One question I have just for  
9 clarification and it may be my -- just my memory at this  
10 point -- 75 percent is not in statute, correct? Everybody's  
11 shaking their head yes. It is something that the rules put  
12 in place.

13 MR. SERNA: Right.

14 MS. LANGENDORF: And how long's it -- has it  
15 always been 75 percent? I'm getting a yes from Fred. Okay.  
16 So 75 percent --

17 MR. WELLS: The program mirrors the federal  
18 programs.

19 MS. LANGENDORF: Federal program. Which is  
20 still 75 percent.

21 MR. WELLS: That's what it's -- that's how  
22 it's established. Yeah.

23 MS. LOGAN: Yes.

24 MS. LANGENDORF: Okay. Does the -- quick  
25 question for anybody that knows federal. Does federal do

1 temporary services -- temporary placements, temporary as we  
2 do, temporary services? Does the federal --

3 MR. WEBER: Yeah.

4 MS. LANGENDORF: They do?

5 MR. WEBER: I think so. I -- I mean, I've  
6 heard of it not as a full -- there's a couple of them  
7 looking at -- you're talking about doing temp services?

8 MS. LANGENDORF: Yeah, temp services.

9 MR. WEBER: They have some agencies that do  
10 some -- some contracts like temp services.

11 MS. LANGENDORF: Okay. And -- and as far as  
12 you know, that's still 75 percent at the federal level?  
13 Does anybody know?

14 MR. WEBER: Again, the 75 percent is direct  
15 labor hours of that -- of that facility.

16 MR. JOHNSON: No, it says of each contract.

17 MR. WEBER: For this -- well, this

18 MS. LANGENDORF: Well, this is the  
19 proposed -- yeah. The --

20 MR. WEBER: Okay. Well, first --

21 MS. LOGAN: Right. For each contract.

22 MS. LANGENDORF: What -- what we're seeing is  
23 as certification.

24 MR. WEBER: Well, let -- let me if I could  
25 first say, this -- this is the certification or

1 recertification requirement that we're looking at on  
2 number 9.

3 MR. JOHNSON: Right.

4 MR. WEBER: So they have to certify that  
5 they're going to meet the 75/25 on direct labor for each  
6 contract necessary for performing services and such so  
7 that's something that they're doing in recertification. If  
8 for some reason that they -- before, if they weren't making  
9 the 75/25 on contracts, they -- it was filed as an exception  
10 to the council, now to TWC. And it was for the council and  
11 TWC now for them to evaluate to decide whether or not they  
12 would approve that -- approve that contract for -- for  
13 state-use.

14 So, yes, it does say for each contract, but  
15 there was a mechanism for -- for the con -- for the TWC to  
16 evaluate whether or not it would move forward. It's  
17 reported as an exception. So that was for each contract.  
18 This is in the certification and recertification. Later in  
19 the rules, you read where it says that they must maintain  
20 the 75/25 for -- for total direct labor hours, and that's  
21 later on. This is for the certification.

22 So -- so, Mr. Johnson, I understand what --  
23 what you're saying. This -- this is -- there is a mechanism  
24 for -- there -- there is two -- two things that are -- that  
25 are -- that are discussed in the rules, one is the overall

1 75/25 of the agency and then, as you -- you pointed out,  
2 under the recertification/certification 75/25 of each one --  
3 each contract. But in the case of each contract, there is  
4 a --

5 MR. JOHNSON: I -- I understand that. And my  
6 question is is this realistic on -- and, again, it may be  
7 necessary to gather data as you're doing to establish a  
8 baseline because, I mean, if you're granting a whole host of  
9 waivers, then maybe this is not a reasonable number.

10 MS. LANGENDORF: What are waivers? How often  
11 are waivers?

12 MR. SERNA: I just asked Kelvin how many  
13 waivers have been granted and this is since September, since  
14 we've had the program, and we've granted two.

15 MS. LANGENDORF: Two waivers.

16 MR. SERNA: Because most of the time --

17 MR. JOHNSON: I mean, maybe it should be 60  
18 percent, you know.

19 MR. SERNA: Most of the time -- well, one  
20 thing I want to be -- I'm sorry. The thing I want to be  
21 clear, our Commission will not reduce that percent; 75 is  
22 going to be 75. It may be more, but it will not be less.

23 MS. LANGENDORF: Okay.

24 MR. SERNA: The -- the Commission made it  
25 very clear to me in the discussion we had about the rules --

1 MR. JOHNSON: Okay.

2 MR. SERNA: -- because I wanted to propose  
3 language that allowed the Commission to establish a percent  
4 other than and just use that language, and all three  
5 Commissioners were adamant, and that's why the rules say the  
6 Commission may establish -- may establish a percent greater  
7 than --

8 MS. LANGENDORF: Okay.

9 MR. SERNA: But they didn't even want the  
10 implication that they would establish a percent less than.  
11 So, Mr. Johnson, I -- I understand what you're saying, but  
12 there's no way my Commission's going to let me --

13 MR. JOHNSON: But it -- but then -- then --  
14 then there need to be consequences.

15 MR. SERNA: Yes, sir, and that -- that's what  
16 I'm saying.

17 MS. LANGENDORF: I agree.

18 MR. SERNA: That's what I'm saying. Let  
19 me -- there -- there are tools or language in the existing  
20 rules, and we -- we carried it forward to the proposed  
21 rules, that give the managing agency, in this case TWC, the  
22 authority to establish consequences for --

23 MR. JOHNSON: Okay.

24 MR. SERNA: -- failure to meet the 75  
25 percent.

1 MR. JOHNSON: Okay.

2 MR. SERNA: In the past, those tools have not  
3 been used.

4 MR. JOHNSON: Right. Okay.

5 MR. SERNA: Those tools will be used now, and  
6 I've had conversations with staff, and I've had  
7 conversations individually with our Commissioners because  
8 this is -- this is not a big P policy item. It is a  
9 operational item, and staff operations. Our Commission  
10 stays out of operations for the most part.

11 Our intention, and not moving forward from  
12 today, but our intention moving forward from about the  
13 beginning of November, which is -- which is -- or maybe it  
14 was October, but at any rate, is to not just send a mean  
15 letter and then a meaner letter, but rather look to take  
16 action either on a contract or a CRP that -- that's failed  
17 to meet without a valid reason. And if the reason is that's  
18 what my customer wants then --

19 MS. LANGENDORF: Yeah.

20 MR. SERNA: -- we'll reach out to the  
21 customer --

22 MS. LANGENDORF: Right.

23 MR. SERNA: -- because we have that ability  
24 as well as the managers of the program. We haven't done  
25 that in the past. In some cases, it's not the CRP that is

1 causing the problem. Though, they're the ones that are  
2 required to meet the 75 percent and are reported on. It's  
3 their customers, the agencies, that are causing the problem.  
4 I don't think it's fair for us to punish a CRP and have  
5 negative ramifications to those employees because of an  
6 agency's actions.

7           If, in fact, it's the CRP, then we'll take  
8 steps regarding the CRP. But they're -- we -- I agree 100  
9 percent that there need to be consequences or ramifications  
10 for failure to meet where there's no valid justification.  
11 And the -- the valid justification is no longer going to be,  
12 I didn't make it.

13           MR. QUIGLEY: This -- in order to track per  
14 contract, then that's going to change the way that the CRPs  
15 report the information to TIBH.

16           MR. SERNA: Yes, sir.

17           MR. WEBER: No.

18           MR. QUIGLEY: Yeah, because we'll have to  
19 report by contract, not gross numbers.

20           MR. WEBER: On -- on the service contracts on  
21 the cost analysis, we -- we know what that 75 or 25. We  
22 know on each one of those contracts because that makes the  
23 exception. On the products, they have to put -- in the  
24 bottom of the product contract, you've got to put what  
25 percentage of that is -- is -- is direct labor so --

1 MR. QUIGLEY: Right. But for an --

2 MR. WEBER: -- we know on each one of the  
3 contracts whether or not it's met the 75/25 because if it  
4 doesn't, it has to go in the exception report to the TWC.

5 MR. QUIGLEY: But, again, you're talking  
6 about the cost projection at beginning of the contract.

7 MR. WEBER: Right.

8 MR. QUIGLEY: Those numbers fluctuate, you  
9 know, can be 94 percent, 85 percent, 90 percent per quarter.

10 MR. WEBER: That's true.

11 MR. QUIGLEY: So if you're going to get  
12 numbers to go back to the -- to TWC with, if they're going  
13 to, you know, put it in an annual report or whatever by  
14 contract, then we're going to have to report labor by  
15 contract, not by overall.

16 MR. WEBER: You mean actual versus the -- the  
17 first of --

18 MR. QUIGLEY: Yeah. Right.

19 MR. SERNA: Yes, sir, that --

20 MR. QUIGLEY: I mean, we get that information.  
21 You get the information on the -- the renewal of the  
22 contract, you get what the percentage was and -- and, you  
23 know, what the actual was.

24 MR. WEBER: Right now those hours are lumped  
25 in on your -- on your -- on the quarterly wage report on --

1 MR. QUIGLEY: Right.

2 MR. WEBER: -- the number of just -- just --

3 MR. QUIGLEY: We're not breaking it down by  
4 contract.

5 MR. WEBER: Contracts.

6 MR. JOHNSON: The other part of this that is  
7 a little concerning to me, it says at the bottom of that  
8 paragraph that the CRP if they intend to seek a waiver, that  
9 they need to present that request at the time of their  
10 application for recertification. So it's kind of like if  
11 they anticipate that they're going to not make it, they can  
12 -- they can request a waiver. But -- but it doesn't -- it  
13 doesn't say, well, if they didn't submit the request for the  
14 waiver but they don't meet this, then what?

15 Because am I off base here? In other words,  
16 the waiver request here it seems to be something to precede  
17 the -- or to accompany the application, and it's either  
18 accepted or -- or not accepted, but -- but what's not  
19 addressed is if that waiver was not approved, and throughout  
20 the course of that year they fall below the 75 percent, that  
21 that's not addressed. I mean, can they retroactively  
22 request a waiver for the fact that they didn't meet it?

23 MR. SERNA: Hold on just -- here -- so okay.  
24 So I'm going to read to you what's in the proposed rule that  
25 addresses what you're -- that addresses your question.

1 In -- I'm not a lawyer so I don't get these right, but in  
2 (d), Community Rehabilitation Programs, 806.41(k), a CRP  
3 shall maintain compliance with the state-use program  
4 regarding percentage requirements related to administrative  
5 costs, supply costs, wages and hours of direct labor  
6 necessary to perform or produce products. Compliance will  
7 be monitored by the CNA and/or the agency and violations  
8 will be reported promptly to the agency.

9 A violation will result in a warning letter  
10 from the CNA or the agency which will then offer assistance  
11 as needed to achieve compliance. A CRP that fails to meet  
12 compliance requirements without a waiver from the agency for  
13 two quarters in any four quarter period shall submit a  
14 written explanation and a represe -- and a representative of  
15 the CRP will be requested to appear before the agency.

16 State-use contracts may be suspended or  
17 certification revoked if compliance is not immediately and  
18 consistently maintained. To attain restate -- restatement,  
19 the CRP must apply for recertification following the  
20 procedures outlined in this chapter. So the reason I  
21 mention that to you is while it is not outlined in -- in  
22 item 9, it's in -- it has been in the rules, and it is in  
23 the proposed rules --

24 MR. JOHNSON: Okay.

25 MR. SERNA: -- that there is the ability for

1 the contract -- for the contract or the CRP to be suspended.

2 MR. JOHNSON: Okay. Yeah, so it is  
3 monitored.

4 MR. SERNA: So -- so there --

5 MR. JOHNSON: Right. Okay.

6 MR. SERNA: Yes, sir. And the intent, my  
7 intent, using the tools we already have is to -- if we don't  
8 issue a waiver, which means there's not a good excuse, to  
9 either trans - transfer, terminate the contract or suspend  
10 or revoke, and there's a difference in my mind between the  
11 two, suspend or revoke the certification. Suspend means  
12 you're in a penalty box for six months, let's say. Revoke  
13 means you're out, and, you know, for the remainder of your  
14 term. You can come back when you would've normally  
15 recertified to seek a certification.

16 So a revocation means you're -- you're out of  
17 the program until the remainder of your term to come back  
18 in. A suspension means you -- bad analogy -- but you're in  
19 a penalty box for six months, you know, we're going to slap  
20 your -- a significant slap of your hand and say you can't --  
21 your certification is suspended for six months or three  
22 months or whatever. But you're not revoked yet, which means  
23 you can come back in without having to go through the  
24 process.

25 So that's in the -- that's in -- I believe

1 that's in the current rules, and we maintained it in the  
2 proposed rules. So, Mr. Johnson, it addresses I think what  
3 you were asking about. Even though they're not in the --  
4 this that's been handed out, they're in the rules that are  
5 out for public comment right now.

6 MR. JOHNSON: Okay.

7 MR. SERNA: And they're in the existing  
8 rules.

9 MR. JOHNSON: All right.

10 MS. LANGENDORF: And -- oh, I'm sorry. Yes?  
11 Go ahead. Linda.

12 MS. LOGAN: Well -- well, I'm -- I'm moving  
13 on to (m), so if you're still on (k) and (l) --

14 MS. LANGENDORF: No, no, no, I'm not.

15 MS. LOGAN: I just have a question about what  
16 would the recourse be for a violation of (m), a CRP must not  
17 serve in whole or part as an outlet or front for any entity  
18 whose purpose is not the employment of individuals with  
19 disabilities?

20 MR. SERNA: I would -- the -- the action that  
21 I would propose to our Commission, and, by the way, a  
22 suspension or a revocation or a cancelation of a contract  
23 are items that we will have to -- we will -- we will take to  
24 our Commission for public -- public meeting so that the CRP  
25 has the opportunity to provide public comment, other

1 individual -- individuals with interest in -- in maybe the  
2 agency or somebody can provide public comment, and staff  
3 will make its recommendation.

4           So the answer to your question is if -- if we  
5 determine that a CRP is just acting as a front then we would  
6 move for revocation, at -- at the, most revocation; at the  
7 very least, the cancelation of that contract, the exclusion  
8 of that contract. So, for example, let's say a CRP -- I'm  
9 going to pick on Sean --

10           MR. QUIGLEY: Okay.

11           MR. SERNA: -- and I know Sean would never do  
12 this, and I mean that sincerely -- Sean's got a lot of  
13 really good contracts, but for some reason, Sean's got a  
14 contract where he -- he's fronting for somebody else that  
15 doesn't intend to hire and -- and -- and place individuals  
16 with disabilities, but we may not want to -- we may not want  
17 to revoke Sean and all his other contracts. But we may say,  
18 okay, Sean, this contract, it's off of state use. It's  
19 cancelled. That we are actua -- we are pulling your  
20 authority to do anything under this contract.

21           If we find that all of Sean's contracts are  
22 like that, then we would seek for more -- or it was -- it  
23 was a greater number, more than just one out of, you know,  
24 50, then we would probably move to a revocation, because at  
25 that point, you know -- and -- and Sean may say, well, look,

1 I did that so I could have enough money to increase wages  
2 over here to do something else over here. There would be an  
3 appeal, I mean not an appeal, but -- but a process that  
4 says, yeah, you -- you get to -- you get to provide feedback  
5 before it gets revoked. Other parties get to provide  
6 feedback. We decide, and then there's an -- there's an --  
7 there's a -- our Commission then gets into a whole appeal  
8 process. But at any rate, that would be the --

9 MS. LOGAN: So there are categories of  
10 violation. There are actions the agency and this is all  
11 like clearly laid out in the rules, right? Actions the  
12 agency can take in response to violations.

13 MR. SERNA: Yes, ma'am.

14 MS. LOGAN: Appeals that the person, the CRP,  
15 can pursue if they wish.

16 MR. SERNA: Yes, ma'am.

17 MS. LOGAN: So that's all very --

18 MR. SERNA: The actions are not because I  
19 wanted the flexibility to be able to say, in this situation,  
20 it's a revocation of that contract. In this situation, it  
21 is a suspension of the certification but not a revocation.  
22 And in this situation, it's revocation. But I don't know  
23 what those situation are yet, and if I attempt to describe  
24 them, then I don't know that I didn't create a loophole to  
25 be quite frank.

1 MS. LOGAN: So --

2 MR. SERNA: I also need to find out, which is  
3 what we've been trying to do this first year, but find out  
4 what the agencies are doing to cause this. There -- there  
5 are agencies, and we'll use TxDOT as an example, they're not  
6 a bad player, by the way.

7 MS. LOGAN: Right.

8 MR. SERNA: But there are agencies that will  
9 contact our CRPs and say, hey, I need this rest area cleaned  
10 up after all this rain, and I need it done this weekend.  
11 Either you get it done or I'm going to contract with Service  
12 Pro to get it done, but one way or another, this rest stop  
13 is getting cleaned up this weekend. And Sean's going to go,  
14 I'll do it, and he grabs two people, one to drive a truck  
15 that doesn't have a disability and one that does have a disa  
16 -- and they clean it up. We never see the contract in  
17 advance. We approve it after the fact.

18 Well, if I set something up that says you  
19 can't do that, well, now Sean's in violation, and if Sean  
20 gets three violations because I say three's the magic  
21 number, and then Sean's suspended. But it wasn't Sean. It  
22 was TxDOT. I got to get to TxDOT and say, you're doing this  
23 too much. And if TxDOT says, hey, look, it's just -- it's  
24 act of God, you know, floods or -- but fire, or -- well, no,  
25 it's not. It's just poor planning on your part, TxDOT, and

1 I know because I was at TxDOT, and they don't do poor  
2 planning, by the way.

3 MS. LANGENDORF: Yeah, I was going to say --  
4 no.

5 MR. SERNA: They -- they're -- TxDOT's the  
6 only organization that actually executes on a long-term  
7 plan.

8 MS. LOGAN: Yeah.

9 MR. SERNA: So when I say poor planning, that  
10 was a bad example. But -- but if we see --

11 MS. LANGENDORF: It's a good example.

12 MR. SERNA: -- but if we see that at the  
13 agency, then penalizing the CRP doesn't -- partially doesn't  
14 seem to make sense. If we see it at the CRP, then that  
15 adjusted, but until I -- having had this program for a  
16 year --

17 MS. LOGAN: Right.

18 MR. SERNA: -- and not ever really used these  
19 tools, the -- modifying the rules because it's helping me  
20 see the tools that we have to use, it would be unfair for me  
21 to arbitrarily say, this situation does this; this situation  
22 does this; this situation does this, and then I've created a  
23 loophole or I've created an adverse impact on the program.  
24 I think Mr. Johnson has something to say.

25 MS. LANGENDORF: Yes.

1 MR. JOHNSON: Could I?

2 MS. LANGENDORF: Yeah, Larry?

3 MR. JOHNSON: Can put you on the spot?

4 MR. SERNA: You can always do that.

5 MR. JOHNSON: What's been the reluctance in  
6 the past to apply these rules, these consequences as it  
7 were?

8 MR. SERNA: I -- I can't answer that since I  
9 was not on the council, but I can speculate what I am  
10 assuming, and this may be completely wrong, so I shouldn't  
11 speak for the individual council members. But me looking at  
12 it from the outside, I would speculate that the reluctance  
13 to use these tools was because of a concern of the adverse  
14 impact that it would have on the program, on the individuals  
15 that were employed for the program.

16 That's still a concern of mine, but I  
17 think -- because I have -- I, TWC, not I, Ed Serna, I have a  
18 staff that I can dedicate to this full time, 100 percent. I  
19 -- I've added staff. I've got myself engaged in it. I have  
20 internal auditors. I have monitors in our Regulatory  
21 Integrity Division that I can turn to. The council didn't,  
22 so the council's --

23 MS. LANGENDORF: That's why. Yes.

24 MR. SERNA: -- thoughts were probably, hey,  
25 look, I just need to keep the program alive and moving

1 forward, meeting once a quarter. They did a great job, but  
2 this is just me looking outside. When I look at what was  
3 already there, I can only speculate that that's why they --  
4 they chose to do what they did.

5 MR. JOHNSON: Okay.

6 MR. SERNA: But -- so and you didn't really  
7 put me on the spot. That's what -- I'm -- I'm sharing with  
8 you what I'm thinking or what -- what I've created in my own  
9 mind as a reason.

10 MR. QUIGLEY: And -- and, again, after --  
11 Larry, one of the -- On Our Own's been involved with the  
12 program for 25 years, and what I've also seen is that the --  
13 the -- the bad player or whatever that -- that's not doing  
14 the right thing. And I don't know all of the actions that  
15 were taken by TIBH or the council, but then in many cases,  
16 those contract were taken over by another CRP before it got  
17 to any higher level.

18 MR. SERNA: That's a good point.

19 MR. QUIGLEY: And, you know, so the -- the  
20 contracts themselves were transferred to another CRP and the  
21 disabled employees that were working at that CRP were then  
22 taken over by the new CRP that took over and then the  
23 numbers were -- were correct. That's just what I've kind of  
24 observed from the outside because I don't know what -- what  
25 all went on between the council and TIBH.

1 MR. JOHNSON: Well, I'm glad we -- you know,  
2 we have a -- a new commitment here to -- to better monitor  
3 and enforce the -- the rules because that's why they're  
4 there. I have one -- Tina, if I may, I just have one

5 MS. LANGENDORF: Yeah.

6 MR. JOHNSON: -- little question about number  
7 8 and if you could tell me if this is true. It says that a  
8 statement of explanation of circumstances requiring  
9 subminimum wages, so is -- has this happened? Does this  
10 happen? Is there a statement provided each time that a CRP  
11 wants to pay minimum wage? Is -- is there a  
12 justifying (sic) -- a justifying statement provided, and  
13 is it provided at that time of reapplication or -- or what?

14 MR. WEBER: Yes.

15 MR. JOHNSON: Yes?

16 MR. MOORE: Yes. This is --

17 MR. WEBER: Yes, there is a statement, I  
18 mean, an explanation at the time of certification.

19 MR. MOORE: Yes, Larry, at the time of  
20 certification, there is a statement that's required and in  
21 the information as get, and 14(c) is required to be  
22 submitted at the beginning of certification and at  
23 recertification. This is -- this allows the -- this allows  
24 us to know that that particular CRP, it will possibly be  
25 paying below minimum wage or have the opportunity to.

1 MR. JOHNSON: Well, I'm just kind of  
2 wondering, the -- the sort of nebulous terminology here of  
3 circumstances. What is -- what kind of circumstances are  
4 presented as justification for paying subminimum wage?

5 MR. MOORE: Well, the fact that the 14(c)  
6 allows that particular CRP legally to -- to -- to pay below  
7 minimum wage, having that 14(c), sub minimum. It allows  
8 them to.

9 MR. SERNA: Larry, I don't think that there's  
10 a clear -- that there's a clear definition or description of  
11 circumstances. One thing I would like to -- one thing I  
12 would like to suggest to the committee is staff crafted this  
13 with the idea that the committee would edit, modify, not  
14 crafted, but put this together, edit, modify, clarify,  
15 elaborate or -- or add to to meet its requirement -- I'm  
16 sorry, allergies -- to meet its requirement, to provide  
17 input to the Commission concerning certification which  
18 includes recertification.

19 So the reason I mention that is if that's  
20 language that the committee wants to propose removing or  
21 elaborating on, you know, circumstances to include or to  
22 only include X, Y, Z or not at all, or if there's something,  
23 Linda, as you pointed out, where that we do want something  
24 more specific, the committee -- the committee does want to  
25 propose something more specific concerning this -- than this

1 ramification.

2 MS. LOGAN: I'm less concerned with that and  
3 more concerned with that it's broadly laid out, you know,  
4 what are grounds -- what -- what's considered a violation.

5 MR. SERNA: Yes, ma'am.

6 MS. LOGAN: And then what recourse --

7 MR. SERNA: Right.

8 MS. LOGAN: -- does the agency have and what  
9 rights to appeal.

10 MR. SERNA: Right.

11 MS. LOGAN: You know, and, as you said, over  
12 time, it will become clear kind of what pots things fall  
13 into. And I can answer that question for myself if I just  
14 do my homework, so.

15 MR. SERNA: No, yes, ma'am. I wasn't trying  
16 to put you on the spot. I was just saying that -- that  
17 there is an opportunity, I'd like to the committee to kind  
18 of understand or, you know, that there is an opportunity for  
19 the committee to say, yeah, this language, elaborate more  
20 here, change these words to this. This is -- this is what  
21 we, the com -- you all, the --

22 MS. LANGENDORF: Okay.

23 MR. SERNA: -- committee want to propose.  
24 This is just kind of having learned our lesson from the  
25 performance measures --

1 MS. LANGENDORF: Yeah. We didn't have  
2 anything to react to. This --

3 MR. SERNA: -- this -- this is staff's  
4 attempt --

5 MS. LANGENDORF: Yeah.

6 MR. SERNA: -- to have you all react to  
7 something versus create something based on what's in the  
8 rules and -- and do all your own research. This was our  
9 attempt at -- at research to at least start the dialogue,  
10 start the -- the exercise or the work on it.

11 MS. LANGENDORF: Okay.

12 MR. SERNA: So, Larry, if -- if you think  
13 using -- going back to -- going back to number -- number 8,  
14 where it says and a statement of explain -- and a statement  
15 of explanation of circumstances requiring subminimum wage,  
16 if -- if you think that there is language that -- that you  
17 can come up with that would say, and a statement of  
18 explanation explaining or statement of explanation outlining  
19 the requirement to pay subminimum wage that includes A, B,  
20 C, D, E, or that is exclusive to include A, B, C, D, E,  
21 we're open to considering that.

22 MR. JOHNSON: I would like -- rather than  
23 defining circumstances, I would rather find some language  
24 that would describe our conviction that the practice of  
25 paying subminimum wage would be phased out over a period of

1 time.

2 MR. SERNA: Yes, sir. I understand that, and  
3 I -- I --

4 MR. JOHNSON: So -- so maybe rather than the  
5 circumstances justifying payment of subminimum wage, it  
6 would read something like a transition plan to phase out the  
7 payment of subminimum wage.

8 MR. SERNA: That -- that's -- that's fine.  
9 The --

10 MS. LANGENDORF: How would -- how would we do  
11 that?

12 MR. SERNA: By -- by simply striking through  
13 that piece of it and we can -- if that's something that the  
14 committee wants to do, we can -- we can take that edit, add  
15 it to the document, so here's what I -- here's what I think  
16 we can do. We can sit here and try to do that like we did  
17 with the performance measures or --

18 MS. LANGENDORF: Yeah. Direct staff.

19 MR. SERNA: -- if -- staff can do that too.  
20 We can do that too. Or each of the committee members can --  
21 and I -- I can send it out electronically in an accessible  
22 document, each of the committee members can annotate their  
23 proposed changes, and then staff will accumulate all of  
24 those, and when we come back at the next advisory committee  
25 meeting go through them with here are the comments that --

1 that Linda had, here are the comments that Jean, here are  
2 the comments that Dave had on this item. Staff reco --  
3 staff recommends this.

4 MS. LANGENDORF: But aren't these going --  
5 isn't the -- isn't TWC going to -- Commissioners going to  
6 take action on this?

7 MR. SERNA: Not on the certification --  
8 they're taking action on the rules.

9 MS. LANGENDORF: But this is kind of from the  
10 rules.

11 MR. SERNA: This is -- this is drawn from the  
12 rules but has -- should have more in it and will have more  
13 in it.

14 MS. LANGENDORF: Oh.

15 MR. SERNA: This was just the start.

16 MS. LANGENDORF: Okay, okay.

17 MR. SERNA: So remember earlier when I was  
18 saying, I'm going to use the tools that are in the rules  
19 now --

20 MS. LANGENDORF: Rules. Okay.

21 MR. SERNA: -- as part of certification,  
22 that's not here. It -- it -- so my point in mentioning that  
23 is the rules have -- should have a very high level. Here's  
24 what's required, and then there can be more detail --

25 MS. LANGENDORF: Got it.

1 MR. SERNA: -- as long as it is published and  
2 -- and made available to everyone in advance, it's not a  
3 secret, then here are the rules. Here's the certification  
4 requirements that are based on the rules, but the language  
5 in the rules is loose enough to have more detail than the  
6 certification requirements. Kind of like an application,  
7 you know, when you --

8 MS. LANGENDORF: Sure.

9 MR. SERNA: So that --

10 MS. LANGENDORF: Okay.

11 MR. SERNA: -- that's -- that's my  
12 interpretation of it. Not everything that's in the rules --  
13 everything that's in the rules will be in the certification  
14 requirement, but not everything in the certification  
15 requirements will be in the rules because the rules allow  
16 for more or less flexibility or more flexibility.

17 MS. LANGENDORF: Okay.

18 MR. TILLSON: Will all this have to be done  
19 by December 26th?

20 MR. SERNA: No, sir. No, sir. That's  
21 only -- that's for the comment on the rules. Does that make  
22 sense?

23 MS. LANGENDORF: Yeah. So right now this  
24 isn't -- what we're looking at is in the -- is in the  
25 proposed rules.

1 MR. SERNA: Yes, ma'am.

2 MS. LANGENDORF: Okay.

3 MR. SERNA: This is the starting point.

4 MS. LANGENDORF: Yes. Got it.

5 MR. SERNA: So -- so for --

6 MS. LANGENDORF: Okay.

7 MR. SERNA: -- so, for example, if -- if  
8 Mr. Johnson -- if the ru - the language in the rules say and  
9 a statement of explanation of circumstances requiring  
10 subminimum wage, semicolon, and, and that's in the rule. We  
11 can't change the rules in the certifica -- in -- in the  
12 requirements. We can add to include such and such and such  
13 and such and such.

14 MS. LANGENDORF: Or --

15 MR. SERNA: Because the rules simply say a  
16 statement of explanation, and then we would interpret that  
17 statement of explanation to include a plan for -- I forget  
18 the -- the --

19 MS. LANGENDORF: Phase out.

20 MR. SERNA: Yeah, that the transition plan  
21 for phasing out subminimum wage.

22 MR. JOHNSON: First --

23 MR. SERNA: So we -- we can put that in  
24 the --

25 MR. JOHNSON: I like it.

1 MR. SERNA: Because it -- it is -- it is --  
2 what's in the rule, it's a statement of explanation, and  
3 then we describe what's a statement of explanation.

4 MS. LANGENDORF: Okay. Staying on that item  
5 and then if we could talk about what Larry has proposed, but  
6 I -- I'm struggling with number 8. Minimum wages will be  
7 paid to customers or -- who are customers? Your customers  
8 as you -- as you talked about was like the attorney  
9 general's office.

10 MR. SERNA: So here's what's confusing.

11 MS. LANGENDORF: Yeah.

12 MR. SERNA: Linda used the phrase agency, but  
13 she was referring to a CRP, I'll bet you, and not a state  
14 agency.

15 MS. LOGAN: Uh-huh.

16 MR. SERNA: Customers in this context refers  
17 to those individuals served by the program, not the people  
18 buying things off the program.

19 MS. LANGENDORF: But anybody being served by  
20 this program is an employee.

21 MR. SERNA: Yes, ma'am, but they are also  
22 customers of the -- of the -- of the program, of the CRP.

23 MS. LANGENDORF: But what we're talking about  
24 is the payments so workers with disabilities.

25 MR. SERNA: We can --

1 MS. LANGENDORF: But customers --

2 MR. SERNA: That's fine. But I'm just  
3 telling you what -- kind of like an agency --

4 MS. LANGENDORF: I understand but --

5 MR. SERNA: So this is the same thing. We  
6 can change the word.

7 MS. LANGENDORF: Yeah, I -- I mean, I really  
8 think we need to say workers with disabilities because truly  
9 those are the only people that can be paid subminimum wage.

10 MS. LOGAN: And I don't understand why we  
11 don't just say employees period.

12 MR. SERNA: That's fine.

13 MR. JOHNSON: Really.

14 MS. LOGAN: Yeah.

15 MS. LANGENDORF: Okay.

16 MS. LOGAN: That's respectful, and it's  
17 accurate.

18 MS. LANGENDORF: So --

19 MS. WILKINSON: I mean, I think the previous  
20 word was consumers at one point.

21 MS. LANGENDORF: Yeah.

22 MS. WILKINSON: Then we moved to customers  
23 and then it was like --

24 MS. LANGENDORF: But or you're -- you're --

25 MS. LOGAN: Clients.

1 MS. LANGENDORF: -- you're in the same part,  
2 if you're an individual with a disability, there's not a  
3 difference between a customer or an individual with a  
4 disability under a 14(c) or a certificate WH228. Okay. So  
5 working on that one, if we -- can we come to agreement --

6 MR. JOHNSON: Yes.

7 MS. LANGENDORF: -- as a committee at this  
8 point? Do we want to?

9 MR. QUIGLEY: I think that it'd be in our  
10 best interest to take the time to take the document, make  
11 our changes, submit them to Mr. Moore, and then come back at  
12 the next meeting with, you know, an outline of comments made  
13 by yourself, myself, everyone, so that we can go through  
14 this relatively quickly.

15 MS. LANGENDORF: Okay. So --

16 MR. QUIGLEY: Because I don't think think any  
17 of us have had the time to really go through and -- and  
18 formulate how we -- how we would -- would -- would want all  
19 of the changes to be made.

20 MS. LANGENDORF: Okay. What's the sense of  
21 the committee? Does that sound good?

22 MS. LOGAN: Are we just talking about this  
23 section?

24 MS. LANGENDORF: No, we're talking about --

25 MS. LOGAN: All the rule?

1 MS. LANGENDORF: This -- this section, (d),  
2 correct?

3 MR. MOORE: Yes.

4 MS. LOGAN: So --

5 MS. LANGENDORF: That we would take it, that  
6 we're going to get an accessible -- was this sent out as a  
7 Word or a --

8 MR. MOORE: Word.

9 MS. LANGENDORF: It was a Word document?  
10 Okay. And then we could each make our recommended  
11 changes --

12 MR. MOORE: Of course, a lot of these -- a  
13 lot of what's in subchap -- in (d) is on the application for  
14 certification.

15 MS. LANGENDORF: Okay.

16 MR. MOORE: If you go -- I don't know if any  
17 of you guys have looked at the --

18 MS. LANGENDORF: Yeah.

19 MR. MOORE: -- application for certification,  
20 if you -- a lot of that is kind of the same thing that's on  
21 the application.

22 MS. LANGENDORF: Okay. So then we could do  
23 that. Is that the will of the committee at our next  
24 meeting, which is going to be January if we can come up with  
25 a date, that we would come back. You will compile our

1 comments.

2 MR. MOORE: Yes.

3 MS. LANGENDORF: We will get them to  
4 Mr. Moore prior to the meeting. Is that okay with  
5 everybody?

6 MS. LACY: Yes.

7 MS. LOGAN: I think that's on.

8 MS. LANGENDORF: Good. Could -- could I ask  
9 one clarification on the front page because I don't  
10 understand where there's -- and this has obviously been in  
11 rule for a long time, number D, under which individuals with  
12 severe disabilities. Normally we don't use that term, but  
13 here it is, and have we defined that?

14 MR. WEBER: It's in the statute.

15 MS. LANGENDORF: It's in the statute?

16 MR. MOORE: It's a statute.

17 MS. LANGENDORF: Have we defined severe?

18 Because --

19 MR. SERNA: Neither we nor the legislature  
20 has defined severe.

21 MS. LANGENDORF: Okay. I mean, it is defined  
22 under HHSC I think or under 14(c) severe is defined.  
23 Anyways, it's something we need to look at but if it's  
24 legislative, obviously, we can't do anything about it  
25 without them changing it, but I would not based on my

1 experience with this program call many of the people  
2 employed severe.

3 MR. SERNA: I would agree.

4 MS. LANGENDORF: Absolutely not severe.

5 MR. SERNA: I would absolutely agree.

6 MS. LANGENDORF: Yeah. So --

7 MS. LOGAN: Yeah.

8 MS. LANGENDORF: I don't --

9 MR. WELLS: What is this -- is it significant  
10 -- what does Source America use?

11 MR. QUIGLEY: Significant.

12 MS. LANGENDORF: Significant.

13 MS. LANGENDORF: And do they define it?

14 MR. QUIGLEY: Which -- it's -- and my HR  
15 people would -- would be a lot better at exact definitions,  
16 but it has to do with the disability or the accumulation of  
17 disabilities and their effect on the ability to work --

18 MS. LANGENDORF: The ability to work.

19 MR. QUIGLEY: -- and -- or the -- has  
20 significant disabilities in two or more life -- life skills  
21 and employment.

22 MS. LOGAN: Right.

23 MR. QUIGLEY: I -- I don't know exact  
24 wording, but that's basically what it boils down to.

25 MS. LANGENDORF: Okay.

1 MR. WELLS: Can I ask a -- Larry, can I ask  
2 you a question?

3 MR. JOHNSON: Uh-huh.

4 MR. WELLS: You know, the change you wanted  
5 to make about phasing out the 14(c) or the commensurate  
6 wages, what's -- what outcome -- what's your outcome --  
7 what's your goal in doing that? What's your -- what do you  
8 think the outcome will be?

9 MR. JOHNSON: I think the outcome is to pay  
10 persons with disabilities a livable wage.

11 MR. WELLS: Well, I think, and this is my  
12 opinion, we don't have a 14(c), and we don't -- we don't pay  
13 commensurate wages, but I think the outcome is also going to  
14 be that some of these people that are -- that are not  
15 qualified or not capable of performing are going to lose  
16 their jobs. And I think that's another outcome.

17 They're going to -- they're going to backfill  
18 with people -- you know, the severely disabled, the people  
19 that we really -- I think we really want to help will be left  
20 behind, and people with less disabilities will be the ones  
21 that will backfill these positions, and so I think the  
22 outcome is going to be different than what you think it will  
23 be.

24 MR. JOHNSON: Well, I will tell you a story.

25 MR. WELLS: Okay.

1                   MR. JOHNSON: Many years ago when I was, you  
2 know, living in Chicago, there was a nonprofit organization  
3 that from time to time -- we were young college students and  
4 obviously like most students, we were poor. And from time  
5 to time, they would have -- make work days, and they would  
6 have us come in and pay us a -- in effect a stipend, not an  
7 hourly pay, but a stipend for us to come in and do some  
8 rather simple tasks of stuffing envelopes or demonstrating  
9 to the public how to use a braille writer, et cetera.

10                   What I'm thinking is we really need to look  
11 at what it is that is being paid to these employees as we  
12 call them. They really are being paid a stipend. They're  
13 being paid a certain amount of money and being given a place  
14 to go. It's kind of a -- kind of a daycare for their -- for  
15 their families, a place for them to show up. They're being  
16 paid a minimum amount of money just to kind of compensate or  
17 -- or assist with their -- you know, with their disability  
18 income that they're receiving. But it's not really a wage,  
19 and so I think we need to call it what it is.

20                   And they're -- they need to -- they need to  
21 address it that way. And most of these organizations are --  
22 are subsidized with grants or -- or -- or with some other  
23 type of funding that comes into them, and they do good work.  
24 And I have no objection to that. But I don't think we ought  
25 to be kind of configuring this to say, well, four people are

1 doing the work of one person. Therefore, we're taking the  
2 \$11 and dividing it up into four -- into four parts.

3           It -- it just -- it seems to me that, yes,  
4 there are some people who are not going to be able to -- to  
5 -- to compete at a -- at a production level that would maybe  
6 justify paying them the minimum wage, but there are some of  
7 those people who could be, and -- and we're denying them  
8 that opportunity, and we're denying them that -- that --  
9 that livable wage that they should be receiving.

10           And for the other folks, then we need to find  
11 another way of providing them with the opportunity to be in  
12 -- in a setting where they can socialize with other people,  
13 where they can have something to do to occupy them, maybe  
14 where they can learn skills, et cetera, but let's not call  
15 it what it isn't.

16           MR. QUIGLEY: Larry, I -- I've -- this I've  
17 Sean. I worked in a sub workshop that had a 14(c) for --  
18 for years before we started On Our Own Services. And On Our  
19 Own Services, we started with the idea that no one would --  
20 would be paid less than -- than minimum wage, and nobody  
21 that works for us now makes minimum wage. Everybody makes  
22 more than that.

23           But to say that it's not work if it is set up  
24 the way that it's supposed to be set up through the  
25 Department of Labor, and the time studies are done properly,

1 and there is adequate work for the individuals that are  
2 working in that assembly line or whatever it may be, then  
3 the -- the way that it's set up that you have to provide  
4 enough work for that person to make the amount, the \$11 an  
5 hour, their work cannot be based on the slowest person in  
6 that line.

7           And where you say that, you know, the -- the  
8 person should be allowed to make the \$11 or -- or whatever  
9 per hour, the -- if the individual has the production  
10 capability of the individual that -- and that the time study  
11 was -- was based upon which is a nondisabled individual, if  
12 they have that production capability, then they can make  
13 that \$11 per hour if it's set up properly, and it's done the  
14 way that 14(c) was designed to be done.

15           I'm not saying that it's all done that way.  
16 I'm just saying that if it is, then when we -- when -- when  
17 I was working for the -- the workshop that did do this, many  
18 of the individuals made above the minimum wage. Now,  
19 granted the minimum wage at that time was 2.85 or 3.35 an  
20 hour but --

21           MR. WELLS: But that doesn't matter really.

22           MR. QUIGLEY: That doesn't matter.

23           MR. WELLS: Yeah.

24           MR. QUIGLEY: That's what the minimum wage  
25 was at that time, and many of the individuals made above

1 that. Now, the individuals that weren't capable of  
2 producing enough, they did not make the -- above the minimum  
3 wage, but they were -- that they were -- they -- they had  
4 the opportunity if they had the skills to do so.

5 MS. LOGAN: Well, if I'm not mistaken, I  
6 think that under WIOA, there's going to be a lot more  
7 expectation around helping people in subminimum wage  
8 settings, develop the skills with supports or not, to earn  
9 minimum wage. And there's going to be a requirement that an  
10 effort to place people in the community is made to give them  
11 choices.

12 I mean, it's a different world that's coming.  
13 It's unclear exactly how it's going to play out, but with  
14 that in mind, I think that taking the -- the more inclusive  
15 in the sense of with proper services and supports, everyone  
16 can make minimum wage which, and I'll repeat this, although  
17 it's not popular, minimum wage is no longer a living wage --

18 MR. JOHNSON: You're right.

19 MS. LOGAN: -- in this country. So it's not  
20 like we're doing people a big favor by paying them minimum  
21 wage.

22 MR. JOHNSON: But we're -- but the concept of  
23 that the person is earning what other people without  
24 disabilities are earning.

25 MS. LOGAN: That's right.

1                   MR. JOHNSON: And that -- and that's a real  
2 important part of the -- of the sense of human dignity. And  
3 also, what we're stating here or what we're -- we're not  
4 saying that there cannot be agencies out there that are  
5 still applying for or using 14(c). That's fine. We're not  
6 opposing 14(c). We're -- we're simply saying with something  
7 like this that we believe that the -- that the use purchase  
8 program should be aimed at providing competitive minimum  
9 wage at least paid opportunities for people with  
10 disabilities. It's -- I mean, it's -- it's a statement from  
11 the state of Texas saying we want to elevate the  
12 opportunities for persons with disabilities in employment.

13                   MS. LANGENDORF: Okay. We will all provide  
14 our -- no, I think it's -- you know where I stand on that.  
15 There's no question. And I think if we're -- we're using  
16 state dollars, it's that whole respect aspect of it. So we  
17 all go through this document, add to as we want, change up  
18 and provide that information to Kelvin, Mr. Moore, as --  
19 prior to our next meeting which we'll get to momentarily.

20                   Anything else on Item 4, Discussion and  
21 Possible Action Regarding Criteria for Community  
22 Rehabilitation Program Certification Process? So our  
23 action, and I don't know if I need a motion to say that's  
24 what we're going to do. Is -- that's what we're going to do  
25 is we're all going to do that, and we need to let the other

1 committee members who are absent which leads me to --

2 MR. SERNA: This is -- yeah, I know.

3 MS. LANGENDORF: We need to fill this  
4 position because --

5 MR. SERNA: Well, that's the only one that is  
6 statutorily designated --

7 MS. LANGENDORF: It's him?

8 MR. SERNA: Not him, it is the Executive  
9 Commissioner of the Health and Human Services Commission or  
10 his designee.

11 MS. LANGENDORF: Okay. So we need to talk to  
12 him about --

13 MR. SERNA: He has designated --

14 MS. LANGENDORF: -- about doing a designee or  
15 something.

16 MR. SERNA: -- that individual.

17 MS. LANGENDORF: Okay.

18 MR. SERNA: He has. He designated that  
19 individual. We'll see about --

20 MS. LANGENDORF: At HHSC?

21 MR. SERNA: Yes, ma'am.

22 MS. LANGENDORF: Okay.

23 MR. SERNA: Ron's at HHSC.

24 MS. LANGENDORF: No, I know that, but I -- it  
25 is HH -- it's not just any agency utilizing the program.

1 MR. SERNA: No, no ma'am. It is specifically  
2 the --

3 MS. LANGENDORF: Okay.

4 MR. SERNA: -- Executive Commissioner at the  
5 Health and human Services Commission --

6 MS. LANGENDORF: Great.

7 MR. SERNA: -- or his designee.

8 MS. LANGENDORF: Or his designee. Oh, it's  
9 not the purchasing person at --

10 MR. SERNA: No, ma'am.

11 MS. LANGENDORF: No. HHSC.

12 MR. SERNA: The language is --

13 MS. LANGENDORF: Okay.

14 MR. SERNA: The language is Charles Smith or  
15 his designee, and he has carried over his predecessor's  
16 designee, Ron Pigott.

17 MS. LANGENDORF: Okay. Great. Perhaps  
18 somebody can have a conversation about we want somebody  
19 that's able to attend.

20 MR. SERNA: I will -- I will ask.

21 MS. LANGENDORF: Will you ask?

22 MR. SERNA: I'll be glad to.

23 MS. LANGENDORF: I'll make the call. We have  
24 yet -- well, actually we're meeting with Charles Smith on  
25 another committee.

1 MR. SERNA: Well, that might be good if  
2 you're already going to be there --

3 MS. LANGENDORF: I may bring it up. Yeah.

4 MR. SERNA: -- just mention to him, Ron  
5 has -- Ron's only been to two meetings.

6 MS. LANGENDORF: One -- two --

7 MR. SERNA: One meeting.

8 MS. LANGENDORF: -- maybe one or two.

9 MR. SERNA: I know he's in the photograph.

10 MS. LANGENDORF: He is.

11 MR. SERNA: So I know what he looks like.

12 MS. LOGAN: He is?

13 MS. LANGENDORF: Yeah. Okay. And he's in  
14 purchasing. He's not --

15 MR. WELLS: Yeah, he's a good guy to be on  
16 this thing.

17 MS. LANGENDORF: -- in services.

18 MR. WELLS: He -- he had some good comments  
19 at the first one.

20 MR. SERNA: He is over --

21 MS. LANGENDORF: No, he is really. He is  
22 purch --

23 MR. SERNA: Yeah, he --

24 MS. LANGENDORF: -- I mean, he is -- yeah, I  
25 mean --

1 MR. SERNA: He's -- I think he's --

2 MS. LANGENDORF: -- I read about him in the  
3 paper, so I know.

4 MR. SERNA: Yeah, right. I -- I don't think  
5 you -- be -- because this was discussion and the discussion  
6 technically is --

7 MS. LANGENDORF: Okay.

8 MR. SERNA: -- continuing, I don't think you  
9 need --

10 MS. LANGENDORF: Action.

11 MR. SERNA: -- an action or a vote --

12 MS. LANGENDORF: Okay. Thank you.

13 MR. SERNA: -- to -- to say provide your  
14 comments.

15 MS. LANGENDORF: Right.

16 MR. SERNA: That will be at the next meeting  
17 when we consolidate and decide on it.

18 MS. LANGENDORF: Okay. Great.

19 MR. SERNA: So this was just the discussion  
20 piece of it, and the discussion continues.

21 MS. LANGENDORF: All right. Sounds good.  
22 Okay.

23 AGENDA ITEM NO. 5

24 MS. LANGENDORF: Item 5, Discussion and  
25 Possible Action Regarding Performance Measures for the

1 State-Use Program recommended by the Advisory Committee for  
2 Consideration by the Texas Workforce Commission. Ed  
3 provided great -- the feedback I really, really, really,  
4 appreciate from the Commissioners. My understanding the  
5 plan now, we can talk about if somebody has recommendations  
6 currently to what we have that we want to consider today or  
7 otherwise we will see this on our agenda in January with  
8 input from Operational Insight.

9 MR. SERNA: Yes, ma'am, Operational Insight's  
10 Director, and I may -- not may, but I'll either get Adam or  
11 one of his number crunching gurus here. That's all they do.

12 MS. LANGENDORF: Okay.

13 MR. SERNA: All 30 of them.

14 MS. LANGENDORF: Do -- did I understand this  
15 correctly that you will take what we have proposed and maybe  
16 come back with drafts that meet more what --

17 MR. SERNA: Yes, ma'am.

18 MS. LANGENDORF: -- they're looking for?

19 MR. SERNA: Yes, ma'am.

20 MS. LANGENDORF: Okay. Does anybody want to  
21 add anything to it today that we want to carry forward?

22 MR. JOHNSON: No, I think it -- I think it's  
23 good.

24 MS. LANGENDORF: Is there any other action  
25 item?

1 MR. JOHNSON: I think it's very -- very well  
2 that we do have them look at history and come up the  
3 baseline because, again, we're operating on sort of  
4 guesswork.

5 MS. LANGENDORF: Yeah.

6 MR. JOHNSON: And so having some historical  
7 data might, indeed, cause us to want to change some of  
8 our -- our targets.

9 MS. LANGENDORF: Any other discussion --

10 MS. LOGAN: I would --

11 MS. LANGENDORF: -- proposed action? Linda?

12 MS. LOGAN: I would just ask that in  
13 presenting this to --

14 MR. SERNA: Adam?

15 MS. LOGAN: -- Adam, yeah, that number 3, I  
16 think we had a brief discussion around it, increase  
17 employment hours paying minimum wage or higher, I thought at  
18 the time we were discussing that we really weren't talking  
19 about increasing hours. We were talking about increasing  
20 the number of people being paid minimum wage.

21 MR. SERNA: Okay.

22 MS. LOGAN: And so if you could just ask him  
23 to reflect on that.

24 MR. SERNA: Yes, ma'am.

25 MR. SERNA: So one of the -- one of the

1 changes would be that language and asking Adam to -- to look  
2 at it either way.

3 MS. LOGAN: Right.

4 MR. SERNA: Okay.

5 MS. LANGENDORF: Any other comments by the  
6 committee on this before we close out this item?

7 MR. JOHNSON: Yeah, there was comment I think  
8 that you made about the Commissioners feeling that one or  
9 more of our measurements were too complex or complicated,  
10 that we needed to simplify them or could you elaborate on  
11 that and -- and -- and how do we proceed with that? Are you  
12 going to rewrite that or what?

13 MR. SERNA: Yes, sir, I'll take a stab at --  
14 at -- at proposing some language. I think what they were --  
15 what they were referring to was more the measures not  
16 reflecting the goals of the program and -- and being maybe  
17 complicating or challenging to report, to actually report,  
18 which is why they -- they wanted to get Operational Insight  
19 very specifically involved.

20 So where we say the -- the pay -- this is the  
21 conversation that we had earlier that -- that Sean had  
22 mentioned -- the pay or the 75 percent or things like that,  
23 that -- that we not be placing a burden that doesn't really  
24 get us anywhere, that we're spinning our wheels to -- to do  
25 a whole lot but not -- not -- not advancing the program or

1 showing an advance.

2 MR. JOHNSON: Which measures particularly are  
3 you talking about?

4 MR. SERNA: I'd have to go back and look.

5 MR. JOHNSON: Okay.

6 MR. SERNA: I'm sorry. I didn't --

7 MS. LANGENDORF: You said something about  
8 complexity training materials, potential for advancement?

9 MR. SERNA: I think I was using that as an --  
10 just as an example.

11 MS. LANGENDORF: Oh, as an example.

12 MR. SERNA: Yes, ma'am.

13 MS. LANGENDORF: Okay.

14 MR. SERNA: I'm sorry. And I apologize --  
15 having -- having driven here, I got here about 10 minutes  
16 before. I didn't even have time to grab all my stuff.

17 MR. JOHNSON: Yeah. Okay.

18 MR. QUIGLEY: We -- we must've been right  
19 next to each other on the highway.

20 MR. SERNA: Yeah. You came down 71.

21 MR. JOHNSON: One question I have is so  
22 what's the -- the target date for these to be finalized and  
23 presented to the Commissioners? Because aren't applications  
24 for recertification and certification, don't they happen at  
25 the beginning of each year or when does that happen?

1 MR. SERNA: No, sir. They happen when the --  
2 when the CRP's three years are up. So they're happening  
3 throughout the year.

4 MR. JOHNSON: Oh, okay. So we don't have a  
5 crucial --

6 MR. SERNA: All 120 don't recertify at the  
7 same time. They -- they recertify on the -- near the  
8 anniversary or before the anniversary of their original  
9 certification plus or minus some months I think but --

10 MR. JOHNSON: Okay.

11 MR. SERNA: So it -- so it -- we have  
12 certifications almost every -- every six to eight weeks.  
13 And that's the period of time that we take things to the  
14 Commission.

15 MR. JOHNSON: Okay.

16 MS. LANGENDORF: All right. Any other  
17 discussion on Item 5? All right.

18 AGENDA ITEM NO. 6

19 MS. LANGENDORF: Hearing none, moving to Item  
20 6, Establish Next Meeting Date, January hopefully.

21 MR. QUIGLEY: I'm out the whole week of the  
22 23rd.

23 MS. LANGENDORF: Okay.

24 MR. WELLS: I am also.

25 MS. LANGENDORF: So we have people out the

1 week of the 23rd. How does the week of the 16th appear?

2 MS. LOGAN: Oh, it's going to be busy here,  
3 right, the legislature starts.

4 MR. JOHNSON: What day of the week?

5 MS. LANGENDORF: Unfortunately, I can't do  
6 Thursday that week, well, almost every week I have something  
7 on a Thursday unfortunately. So Friday? Oh, inauguration  
8 day. Is that inaugurat -- no, not here. It's inauguration  
9 day --

10 MS. LOGAN: It is --

11 MS. LANGENDORF: -- as in president.

12 MR. WELLS: Yeah, I'm not available.

13 MS. LANGENDORF: Okay. Are you going to go?

14 MR. WELLS: Yeah, I'm going.

15 MS. LANGENDORF: No, I'm just kidding.

16 Okay. 20th isn't good.

17 MR. JOHNSON: We could do Wednesdays if  
18 Wednesdays are --

19 MS. LANGENDORF: It's the Employment Force  
20 Task Force if we did some -- I guess we could do something  
21 before 1:00.

22 MS. LOGAN: Wednesday, which Wednesday?

23 MS. LANGENDORF: The 18th.

24 MS. LOGAN: The 18th.

25 MR. WELLS: 18th.

1 MR. QUIGLEY: The 18th works for me.

2 MS. LANGENDORF: 18th works for everybody?

3 MS. LOGAN: Let's see.

4 MS. LANGENDORF: Could we make it 10:30 or is  
5 that hard for you all to make it or 10:00?

6 MR. SERNA: We're here normally.

7 MS. LANGENDORF: Oh, I know, but the people  
8 that are coming in.

9 MR. SERNA: Right.

10 MS. LANGENDORF: I -- I appreciate -- I'm  
11 just saying we'd be --

12 MR. WELLS: I just got leave -- I just -- I  
13 just got to leave like in the dark, that's all or get here  
14 the night before but whatever time you want to do it, I'll  
15 be here.

16 MS. LANGENDORF: Okay.

17 MR. MOORE: You got an alternative date  
18 because I know in January a lot of time there's snow, sleet  
19 and rain, so.

20 MS. LANGENDORF: Yeah. Well, that's going to  
21 be the whole --

22 MR. JOHNSON: What?

23 MR. WELLS: Well, we can't count on --

24 MS. LOGAN: Is an there an alternative date?  
25 Is there --

1 MS. LANGENDORF: 17th?

2 MS. LOGAN: Yeah, I was going to say --

3 MS. LANGENDORF: Tuesday, is that not good?

4 MR. JOHNSON: What day?

5 MS. LANGENDORF: The 17th?

6 MR. JOHNSON: I can't on Tuesdays.

7 MS. LANGENDORF: Okay. Can't do Tuesdays.

8 MS. LOGAN: And you can't on Thursdays; is  
9 that right, Jean?

10 MS. LANGENDORF: That -- I can't do the 19th,  
11 no.

12 MS. LOGAN: Okay.

13 MS. LANGENDORF: PIEC, promoting  
14 independence.

15 MR. WELLS: What was wrong with the 18th?

16 MS. LANGENDORF: The 18th we can -- we could  
17 do if we could do it a little earlier.

18 MS. LOGAN: Yeah.

19 MS. LANGENDORF: 10:00, 10:30?

20 MS. WILKINSON: 10:00?

21 MS. LOGAN: That's not going to --

22 MS. LANGENDORF: Is that too -- is that too  
23 hard on you all that are coming in? Are you coming the  
24 night before? How about TWC? Is that good?

25 MR. SERNA: That's fine.

1 MS. LANGENDORF: 10:00, 18th, going once.

2 MS. LOGAN: I think EFTF starts at 1:00.

3 MS. LANGENDORF: Yeah, that's why I'm saying  
4 if we do it at 10:00, we're good.

5 MS. LOGAN: For like a two hour meeting?

6 MS. LANGENDORF: Yeah.

7 MS. LOGAN: Okay.

8 MR. WELLS: The 18th, 10:00.

9 MS. LOGAN: All right.

10 MS. LANGENDORF: 18th at 10:00.

11 MR. WELLS: Okay.

12 MS. LANGENDORF: Going once.

13 MS. LOGAN: Okay.

14 MS. LANGENDORF: Going twice. Everybody's  
15 good. We're happy.

16 MS. LOGAN: Sold.

17 MR. WELLS: Hey, come --

18 MS. LANGENDORF: Sold.

19 MR. WELLS: How come San Antonio gave us  
20 lunch, and you guys don't give us lunch?

21 MR. SERNA: Because we don't have one of  
22 those great big pizzas. How do you like that for an excuse?  
23 That's not the reason but --

24 MS. LOGAN: That's funny.

25 MR. WELLS: I know what the real reason is.

1 MS. LANGENDORF: Okay. We're January the  
2 18th at 10:00.

3 MS. LOGAN: All righty.

4 MS. LANGENDORF: All right. And prior to  
5 that, what do we want to say as our cut off to get comments  
6 to Mr. Moore?

7 MR. JOHNSON: Now what?

8 MS. LANGENDORF: As far as -- because we  
9 would -- prior to the meeting, it would be good for  
10 everybody to be able to have the comments, correct?

11 MR. JOHNSON: Oh, okay.

12 MR. SERNA: How about the 11th, the week  
13 before.

14 MS. LANGENDORF: The 11th, a week before.

15 MR. SERNA: That gives him a week to --

16 MS. LANGENDORF: That gives you a week --  
17 well --

18 MR. SERNA: Because all he's doing is putting  
19 them together.

20 MS. LANGENDORF: Right.

21 MR. SERNA: Not eliminating anybody's  
22 comments.

23 MS. LANGENDORF: No.

24 MR. SERNA: Then we'll highlight the ones  
25 that we believe will flow better.

1 MS. LANGENDORF: But I'm saying can we get  
2 them in advance of the day.

3 MR. JOHNSON: Oh, I think we should get them  
4 in before the end of the month.

5 MR. SERNA: Well, I think if we -- if we get  
6 them the 11th, he should be able --

7 MS. LANGENDORF: Could you get them out by  
8 Friday?

9 MR. MOORE: Yeah.

10 MS. LANGENDORF: The 12th?

11 MR. MOORE: I don't see why not. We'll give  
12 them -- then we'll have them back to you guys all formulated  
13 and back to you guys by the next day, by the end of the  
14 week, yeah.

15 MS. LANGENDORF: Okay. All right. So then  
16 if we would let the committee members know that are not  
17 here, and everybody here knows that by the 11th, you need to  
18 have your comments on the proposed certification add to  
19 January 11th to Mr. Moore, Kelvin. All right. Anything  
20 else?

21 MS. LOGAN: Yeah.

22 MS. LANGENDORF: Yes?

23 MR. WELLS: I just have a quick question, and  
24 it's my confusion. (d) is part of the rule? It's part of  
25 the rule that was proposed and that public comment is due on

1 by December 26th; is that correct?

2 MR. MOORE: Yes.

3 MS. LOGAN: Okay. But we are kind of  
4 separating (d) out for -- for additional -- let's say for  
5 additional consideration.

6 MR. SERNA: For additional language.

7 MS. LOGAN: Additional language, so it's  
8 likely that (d) will be adopted before we get our additional  
9 language submitted.

10 MR. SERNA: Yes, ma'am.

11 MS. LOGAN: Okay. I'm just trying to --

12 MR. SERNA: Yes, ma'am. I understand.

13 MS. LOGAN: Yeah. Okay. Thank you.

14 MS. LANGENDORF: Okay. Any other questions?  
15 Anything else for the committee? If not, we are going to be  
16 adjourned at 1:01.

17 (Proceedings concluded at 1:01 p.m.)

18

19

20

21

22

23

24

25

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

C E R T I F I C A T E

STATE OF TEXAS        )  
COUNTY OF TRAVIS    )

I, Kimberly C. McCright, Certified Vendor and Notary in and for the State of Texas, do hereby certify that the above-mentioned matter occurred as hereinbefore set out.

I FURTHER CERTIFY THAT the proceedings of such were reported by me or under my supervision, later reduced to typewritten form under my supervision and control and that the foregoing pages are a full, true and correct transcription of the original notes.

IN WITNESS WHEREOF, I have hereunto set my hand and seal this 14th day of December, 2016.

/s/ Kimberly C. McCright  
Kimberly C. McCright  
Certified Vendor and Notary Public

Verbatim Reporting & Transcription, LLC  
1322 Space Park Drive, Suite C165  
Houston, Texas 77058  
281.724.8600