

8 Perhaps we could work backward, since we
9 had the report from the Health Care Practice
10 Taskforce more recently with the two recommendations
11 that Darlene and Rowen presented to us. They're on
12 a single sheet of paper that's in your packet, if
13 you can find it, and it would be the two
14 recommendations at the bottom of the page.

15 Are the Alliance members comfortable with
16 the recommendations on licensure in the forms?
17 Wayne?

18 MR. SENSOR: Thank you, Governor.
19 This may be as good a time as any to talk about sort
20 of form and function of recommendations, since this
21 is the first batch that we've received, and mine is
22 really, I guess, around a -- how tight and how
23 specific do we wish to entertain. And I'll just
24 point and note, for example, recommendation 2.1.
25 And by the way, I'm fond of all five of these

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1 recommendations, but 2.1 particularly, the first
2 part of the paragraph talks about State Alliance
3 should call upon the executive branch of the Federal
4 Government to work with the Alliance to identify
5 challenges. And my sense is that we know what the
6 challenges are, and what we need to do is, in the
7 latter half of the paragraph, create mutually
8 acceptable solutions, and so my notion would be, you
9 know, how directive do we want to get with our
10 recommendations?

11 This is a soft and politically appropriate
12 way to say we're going to sit down and figure it
13 out. I think we know the issues. I think we need

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14 need to now engage the executive branch, in this
15 case from a federal perspective, to hammer through
16 solutions. So, there was one example.

17 In a later batch of recommendations, we
18 talk about encouraging online certification of
19 licensure. And my plea would be when? You know.
20 I'm reticent to lay goals out there that don't have
21 any timeline, and maybe as we begin to get more
22 specific with the recommendations, may want to --
23 might want to consider tightening those and putting
24 some date on them. Thank you.

25 GOVERNOR JIM DOUGLAS: Phil?

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1 GOVERNOR PHIL BREDESEN: Just a point
2 of -- Kathleen, we are adopting these on an interim
3 basis with the idea being at the end of the first
4 year tying them up with a ribbon and providing a
5 comprehensive set, so I guess while these would be
6 adopted today or not, whatever, there still might be
7 an opportunity to edit them in the fashion that -- I
8 had exactly the same -- as a matter of fact, it is
9 the 2.1 that I was going to speak to when it came up
10 again.

11 But is it appropriate to say that we will
12 adopt these now, we'll adopt some in October, that
13 maybe there's a let's go through these now and put
14 them in common form and make them as specific as we
15 could for a sort of final approval in Jan when we
16 meet again? Is that appropriate?

17 MS. NOLAN: Yes, and I think it's
18 reflective, as well, of how the task forces have

19 approached these, which is to try to get some things
20 going quickly.

21 GOVERNOR PHIL BREDESEN: Right.

22 MS. NOLAN: In essence, these will at
23 this time kind of sit in the ether, and be there as
24 things that you have already deliberated, discussed,
25 so that it's not something where you're trying to
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1 sort through a massive amount of processes and
2 recommendations. But yes, we want to come back and
3 overlay some strategies.

4 GOVERNOR PHIL BREDESEN: So maybe
5 rather than an approval of the recommendations,
6 these might be we would like to move them to the
7 next stage, which is put them in a bucket so we can
8 look at them as a group and really agree on them as
9 a group at the end.

10 MS. NOLAN: I think if we could at
11 this point accept these recommendations from the
12 task force, and that would be the language that you
13 have accepted, you've heard, you have no bones of
14 contention that remain, then when we come to a
15 conclusion point --

16 GOVERNOR PHIL BREDESEN: You may want
17 to edit them or you may --

18 MS. NOLAN: That's right. It may be
19 that you put dates to some, you change others at
20 some later time, once you have the whole collection
21 in front of you, I think.

22 GOVERNOR PHIL BREDESEN: Brian?

23 MR. DaVORE: Just because I have the
24 benefit of tracking AHIC, I think I want to second

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25 Wayne's point that we put these in a bucket as a 102

1 recommendation, with the caveat that we become much
2 more specific, narrow in focus, put measurable time
3 lines on these things, as well as metrics that we
4 can track, because I think what happens is they get
5 tossed again into the ether, we tend to declare
6 victory and walk away after we throw them into the
7 ether.

8 I think Marshall and I were talking last
9 night about getting these things to have some real
10 teeth, to where you'd love to people on the federal
11 side or on the state side to take notice, to either
12 object, to have some real issues with these things,
13 because there's something behind them. It's not
14 just a recommendation.

15 And maybe a point of clarification
16 indication, who are we recommending these to? Are
17 we recommending these to the chairs or the cochairs,
18 and then they'll take this to HHS, or are they
19 taking this to the NGA for further dissemination? I
20 guess I'm trying to figure out what these look like
21 going forward, and maybe you can clarify that.
22 Maybe Kathleen can clarify that for the group as a
23 whole.

24 GOVERNOR JIM DOUGLAS: Kathleen?

25 MS. NOLAN: It depends to some extent 103

1 on the recommendations themselves. So at this
2 point, the State Alliance has behind it you all
3 here, and so the idea was to wade through pass we

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4 talked about here, maybe it's the wading-through
5 process and we accelerate it from a state level.

6 In terms of things that are to the Federal
7 Government, there is no entity behind this to back
8 up recommendations to the Federal Government, and
9 thus, the sort of -- as we might have agreed, the
10 sort of -- this weak wording of recommendation 2.1.
11 But I think we can begin to tailor what this means,
12 depending on the recommendations.

13 Those that are going out to states at this
14 point are to states, to consider as they enter into
15 any one of these issue areas, and to understand that
16 there's been some work here, and they really need to
17 pay attention to it, and there's been a lot of work
18 by the task forces and by the Alliance. When it
19 comes to anything that would have private sector
20 recommendations, again, that's to work at the state
21 level with private sector, et cetera.

22 When it comes to the federal, it's a
23 slightly different ball game, and it is a question,
24 first of all, that the voting members are
25 representatives of national associations, as well,
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1 including the National Governors Association, and so
2 there may be a vehicle for transporting those into a
3 more known and acknowledged structure for advocacy
4 at the federal level.

5 GOVERNOR PHIL BREDESEN: Just a quick
6 question: At the NGA meetings, we always have these
7 meetings in which we approve all sorts of things
8 that came out of the committees. Is that what you
9 intend with this in some fashion?

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10 MS. NOLAN: Yes, in the sense that we
11 would approve them, and then we move forward with
12 the strategy for dissemination and for --

13 GOVERNOR PHIL BREDESEN: So I guess in
14 some technical sense what we're doing is ultimately
15 recommending these to the NGA as a body to adopt
16 them as a set of recommendations, which I is really
17 good, because we're all a bunch of great people and
18 so on, but getting the NGA behind these series of
19 recommendations has a lot more legs to it than one
20 more group has met and done this, yeah.

21 GOVERNOR JIM DOUGLAS: Dave?

22 DR. SUNDWELL: Just very quickly, I'm
23 sure it hasn't escaped you that those of us in the
24 executive branch of state governments are waiting
25 patiently for your recommendations hoping and

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1 anticipating it will give us great leverage in
2 getting our stubborn legislators you loosen up the
3 appropriations to get them what we need, so we're
4 really anticipating, with some great expectation,
5 these recommendations.

6 GOVERNOR JIM DOUGLAS: Marshall?

7 DR. RUFFIN: Just to follow on David's
8 comment, I've noticed that most of the observations
9 deal with standards of operation, which are fine,
10 and they would tend to influence legislation. I
11 haven't sensed much discussion or interest in what
12 the executive branch can do as the largest payer and
13 the largest provider of care.

14 In most states, with the public health

15 agencies, the public health clinics, and the
16 academic health centers, state government is one of
17 the largest providers, and in most states, Medicaid
18 and public employees' insurance are the largest
19 payers. Shouldn't we be spending more time on what
20 the state executive branch, as payor and provider,
21 could do to stimulate health information exchange?

22 GOVERNOR JIM DOUGLAS: That's why we
23 have a task force on public programs that Dr. Medows
24 is providing leadership on. Rhonda?

25 DR. MEDOWS: We will have a list for
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1 you of all the things that we recommend that the
2 state executive branch, in conjunction with the
3 legislative branch, actually needs to achieve, and
4 that includes the role as a payer, Medicaid, SCHIPS,
5 state employee health plan, as well as the provider
6 role in public health.

7 GOVERNOR JIM DOUGLAS: Joy?

8 MS. PRITTS: I have a kind of general
9 question going back to what the Alliance's charge
10 is. Are we focusing on actual items at the state
11 level? A lot of -- some of these recommendations
12 are things to be conveyed at the federal level, and
13 there are other -- a lot of other groups who have
14 been making these recommendations, such as AHIC at
15 the federal level, and so I'm kind of -- I don't
16 remember exactly where we're putting our focus on
17 here, and would like some clarification on that.

18 GOVERNOR JIM DOUGLAS: Well, I think,
19 as Kathleen suggested, our recommendations will go
20 in different directions depending upon what they

21 are -- some to the Federal Government, and 1.1
22 encourages the President to call on Secretary
23 Leavitt to designate a single certification body.
24 Others are quite state-specific, such as online
25 applications and reciprocal agreements for

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1 licensure, so I think it will vary on what the
2 specific recommendation is. Well, shall we --
3 Wayne?

4 MR. SENSOR: Probably taking you the
5 same place, Governor Douglas, that you were going to
6 go. As a nonvoting member, I can't put your motion
7 on the table, but I would simply say, with the
8 notion that we're looking for affirmation to move
9 these into the -- into a semi-completed work product
10 and that more specificity would probably be wrapped
11 around those, I am personally comfortable with the
12 recommendations.

13 GOVERNOR JIM DOUGLAS: Shall we, as I
14 suggested, address the Health Care Practice
15 Taskforce ones first, the two at the bottom of the
16 page, and see what your pleasure is Senator Moore,
17 you want to show that you are an enlightened
18 legislator and start a --

19 SENATOR MOORE: As long as it doesn't
20 cost me anything.

21 GOVERNOR JIM DOUGLAS: It won't at
22 this point.

23 SENATOR MOORE: I would move adoption
24 of -- you want to do it one at a time?

25 GOVERNOR JIM DOUGLAS: Why don't we

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1 take the two health care --

2 SENATOR MOORE: I move adoption of
3 Recommendation 1 and 2 of the Health Care Practice
4 Taskforce.

5 GOVERNOR JIM DOUGLAS: Thanks so much.
6 Is there a second? Seconded by multiple members,
7 ensemble. Any discussion on those two
8 recommendations, again with the understanding that
9 we've just discussed that there will be -- this is
10 an ongoing process there will be more development,
11 refinement, specificity as appropriate as we go
12 forward? Well, are you ready for question of
13 adopting these? If so, all in favor say aye.
14 Opposed, no?

15 The ayes have it. We've adopted the two
16 recommendations of the Health Care Taskforce.

17 Now, the -- don't know whether to consider
18 five or two with subrecommendations -- of the Health
19 Information Protection Taskforce. Are there
20 questions about any of them or -- Hardy.

21 MR. MYERS: I think that to the extent
22 a particular recommendation -- and I'm here focusing
23 specifically on 2.0 for these comments, to the
24 extent that it involves a -- in effect, an
25 invitation or appeal to the states, try to make

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1 common cause on behalf of change in the interest of
2 removing some obstruction to the achievement of the
3 kind of system here. I think that the -- we're
4 speaking here about alignment of privacy
5 protections.

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6 I think that the change we're inviting to
7 be pursued commonly ought to be described as -- with
8 as much clarity as we can. In other words, in the
9 interest of trying to keep that as narrow as we feel
10 it can be and still work within some structure.
11 Because the broader that effort is, the harder
12 politically it becomes to achieve commonality.

13 So I'm not proposing wording changes right
14 now, but in this further stage development, I think
15 that that would be a clarification we could strive
16 for. Within the recommendation itself, even if the
17 total report would make clear what we're talking
18 about, I think as narrow to having the
19 recommendation itself. With that clarification, as
20 well.

21 GOVERNOR JIM DOUGLAS: Thanks, Hardy.
22 We want these to be as useful as successful as
23 possible. So that's a good suggestion. Phil?

24 GOVERNOR PHIL BREDESEN: Yeah, on that
25 same subject, I was going to say, this is the

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1 appropriate time, as these committees come back with
2 future recommendations, I would love to see them so
3 specific that we're all sitting around the table,
4 not saying, Oh, my gosh, what does this mean but we
5 think you need to back down a little bit in
6 specificity of this to make it more general.

7 I mean, err on the side of really saying
8 this is what we want you to do, and then we can come
9 back from the other side, I think we'll get a
10 better, tighter product if we do. A suggestion to

11 the task force.

12 GOVERNOR JIM DOUGLAS: Is there a
13 motion to adopt the recommendations of the IP
14 Taskforce? Joy?

15 MS. PRITTS: Before we move, I would
16 like to voice some concern with recommendation 2.1,
17 particularly after reading the report. There was --
18 I think it's very important that when we're -- and
19 this goes for recommendation 2.0 also, that when
20 you're considering aligning laws, to look at the
21 policies that underlie those laws and why they were
22 drafted the way they were.

23 In particular, I'm just going to go off on
24 a very brief riff here. The part two challenge,
25 part of that, with the requirement for consent and
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1 the high protection of that information, is so that
2 people who seek substance abuse treatment will not
3 be prosecuted. And so that is a kind of concern
4 that is not present in other types of health
5 information.

6 So you can't just align the laws. You need
7 to also look at the policies underlying those.
8 Sometimes I think I have a real fear that when we're
9 talking about aligning laws, particularly at the
10 federal level, people are talking about using the
11 HIPAA privacy rule as the de facto standard. When
12 it was written, it's very clear that they weren't
13 going to set high standards, they were going for the
14 base standard, recognizing that all these other laws
15 were still out there.

16 So there should be -- you can have

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17 alignment, but you need to also take into
18 consideration the policies behind those. They may
19 not be able to be aligned perfectly.

20 GOVERNOR JIM DOUGLAS: Brian?

21 MR. DaVORE: Just a question for you.
22 Would you even recommend, or even think about
23 possibly narrowing the focus and not including
24 mental health? I think what happens is when you
25 toss everything into the mix, the permutations and
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1 combinations of state laws just becomes, I mean,
2 exponential. Would that even be a possibility, and
3 something we should consider, in the sense of if you
4 begin to kick a few things off the wagon, focus
5 initially on primary care -- I'm talking and
6 thinking out loud, but --

7 MS. PRITTS: Well, there are a few
8 ways of doing this. I mean, one of the ways that
9 they've done this in other countries when they are
10 addressing these issues is they do remove some of
11 the more sensitive health information from the table
12 at the beginning, until they've figured out the
13 information that they feel is -- I would call -- I
14 use the term loosely, but less sensitive. So
15 there's one model there.

16 Another thing is that you can focus more on
17 the format, instead of the substance. There's a lot
18 of room for improvement in all of these, like the
19 part two regulations, the Medicaid regulations, as
20 to the uniformity in the forms that are used, like
21 the consent, the authorization forms, and how you

22 can make those work in an electronic environment.

23 People who've studied this look even at the

24 HIPAA privacy rule and say there are things in that

25 don't really work in an electronic environment, 113

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1 either, so it's just not alignment; there are a lot
2 of other issues there, too. So I would also
3 encourage looking at how these work electronically
4 going forward.

5 It's -- if you just align what we have now,
6 that's not going to get us where we need to go, one;
7 and two, you need to deal with the sensitive medical
8 information in some fashion, but just aligning it
9 may not be the answer.

10 GOVERNOR JIM DOUGLAS: This is a
11 helpful discussion. I think it shows the challenge
12 that we're facing, the difficulties coming up with
13 some recommendations that move us in the right
14 direction in a way that's feasible and acceptable.
15 The question, I think, for us today is are we
16 comfortable adopting these, understanding that
17 they're an interim set of recommendations, and the
18 discussion we've just had, I think, will inform the
19 task forces as they move forward and defined them in
20 the future. Herb?

21 DR. CONAWAY: Well, I mean, given what
22 was -- I just have to interject, I guess, the
23 opposing view of I believe the record ought to be as
24 complete as we can make it, because that -- a
25 complete record leads to the best decisionmaking. I 114

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1 mean, best decisions are supported by the best data
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2 and most complete data, so I would have a concern
3 about pulling these things off the table.

4 Now, politically it might be difficult to
5 get these -- I mean, these laws developed because
6 there was constituency around them driving these
7 things, driving legislatures to put these various
8 things in place. And one of the, you know,
9 leadership questions is going to be to deal, in a
10 paradigmatic way, with some of these big questions.
11 Should we continue to stigmatize mental health by
12 keeping it in the shadows? That's a question.
13 Should we continue to stigmatize HIV by keeping it
14 in the shadows?

15 And particularly when so much that is done
16 there involved with the health care has impacts on
17 other aspects of a person's life, particularly if
18 you want to look at them as a unity, that health
19 care is health care in its entirety, whether it be
20 reproductive health for some folks, mental health,
21 substance abuse, et cetera, it's all part of
22 providing care to an individual with individualized
23 particularized needs that need addressing in the
24 health care system, so I'm for putting it all in,
25 and maybe technology will help us distribute it

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1 perhaps safer than we could do it in a paper basis
2 today.

3 The other thing I have to say also as a
4 theme is that a lot of these questions around
5 consents, I mean having -- you give consents all the
6 time -- you know, a lot of patients are not going

7 to -- now, for the lawyers, I guess, you've got to
8 be careful about this, but a lot of this stuff is --
9 you know, we do a lot of things now that, for 99
10 percent of the time, don't have an impact at all on
11 what happens to a patient.

12 They'll come in and sign this form, folks
13 will look at, got a fourth-grade education, you
14 know, I have a cold today, whatever the case may be.
15 A lot of these things are going to take care of that
16 outlier case, but for the bread-and-butter stuff
17 that's done all over the country, I just hope that
18 we don't, because we have technology that we can
19 apply to it, make things a lot more difficult than
20 they are.

21 A lot of things happen easily now, and I
22 hope we don't have technology making things harder.
23 Because we can do something doesn't mean we should.

24 GOVERNOR JIM DOUGLAS: Joy?

25 MS. PRITTS: Can I make a language
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1 suggestion that I think might help me, at least,
2 with this one. I don't get to vote, so I know that
3 I don't have a full say here, but if we would add
4 the language, "in a manner that ensures appropriate
5 consumer protections stay in place" to 2.1 as it is
6 in 2.0, I think that would make me feel more
7 comfortable.

8 GOVERNOR JIM DOUGLAS: So you're
9 suggesting at the end of the paragraph, after
10 "health information exchange," to add, "in a manner
11 that ensures appropriate consumer protections are in
12 place"?

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13 MS. PRITTS: Yes.

14 GOVERNOR JIM DOUGLAS: What do the
15 members think? Yeah. Doesn't sound too
16 controversial, Joy, so I --

17 MS. PRITTS: Okay. There you go.

18 GOVERNOR JIM DOUGLAS: How about the
19 leaders of the task force? Bill? Sallie?

20 DR. HACKER: We both approve.

21 MS. HUNT: We're fine.

22 GOVERNOR JIM DOUGLAS: Well, would
23 anyone like to offer a motion? Senator Moore moves
24 that this set of recommendations be adopted, as
25 amended by the language that we just added to 2.1.
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1 Seconded by Sandy. Any further discussion? If not,
2 are you ready to adopt it? If so, all in favor
3 signify by saying aye. Opposed, no. The ayes have
4 it. We've adopted these recommendations as amended.

5 Well, thanks to Rowen, Darlene, Bill,
6 Sallie, and Rhonda for their leadership and hard
7 work, and we look forward to further recommendations
8 from two of the task forces and the initial set from
9 the one dealing with public programs, so thank you
10 again.

11 Well, we picked up a few minutes after our
12 late start this morning. Lunch is going to be
13 served in the Lake Champlain Room, Salon B, which is
14 upstairs, I believe, so you'll get a little exercise
15 if you take the stairs in order to get ready for
16 lunch, and shall we shoot for a 1:30? Is that still
17 realistic? I think it is. So let's try to

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reconvene at 1:30. Thank you.

19 (Morning session ended at 12:36 a.m.)

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