

**MINUTES OF THE COST TRENDS AND MARKET PERFORMANCE
COMMITTEE**

Meeting of April 29, 2014

MASSACHUSETTS HEALTH POLICY COMMISSION

**THE COST TRENDS AND MARKET PERFORMANCE COMMITTEE OF THE
MASSACHUSETTS HEALTH POLICY COMMISSION**
Center for Health Information and Analysis
Daley Room, Two Boylston Street, 5th Floor
Boston, MA 02116

Docket: Tuesday, April 29, 2014, 9:30 AM – 11:00 AM

PROCEEDINGS

The Massachusetts Health Policy Commission's (HPC) Cost Trends and Market Performance Committee held a meeting on Monday, April 29, 2014 in the Daley Room at the Center for Health Information and Analysis located at Two Boylston Street, 5th Floor, Boston, MA 02116.

Members present were Dr. David Cutler (Chair), Dr. Paul Hattis, and Dr. Wendy Everett.

Ms. Kimberly Haddad, representative for Mr. Glen Shor, Secretary for Administration and Finance arrived late to the meeting

Mr. Rick Lord was absent from the meeting.

Chair Cutler called the meeting to order at 9:32 AM.

ITEM 1: Approval of minutes

Chair Cutler made no changes to the minutes. Dr. Everett noted that the date of the next meeting had to be amended on the final page. She proposed amending it to "April 29, 2014." Commissioners agreed on this amendment.

Dr. Cutler asked for a motion to accept the minutes as amended. Dr. Hattis made the motion and Dr. Everett seconded. Members voted unanimously to approve the minutes as amended.

Dr. Cutler provided an overview of the day's agenda. He stated that the Cost Trends and Market Performance Committee has varied missions ranging from researching and publishing the annual cost trends report to conducting cost and market impact reviews.

Dr. Cutler stated that the day's agenda would be a discussion of the processes surrounding cost and market impact reviews and notices of material change. He stated that, by statute, the HPC must define certain terms relating to notices of material change. He noted that the day's meeting would be a discussion on these terms.

At this point, Ms. Kimberly Haddad, representative for Mr. Glen Shor, Secretary for Administration and Finance, arrived at the meeting.

ITEM 2: Discussion the regulation development for material change notices

Ms. Karen Tseng, Policy Director for Market Performance, introduced the day's presentation and reviewed the three areas for which staff would present definitions. She noted that she would pause at the end of each substantive slide for discussion.

She reminded committee members that they heard definitions for primary service areas (PSAs) and dispersed service areas (DSAs) at the prior meeting.

ITEM 2a: Background of statutory definitions for HPC review of material change notices

Ms. Tseng began by detailing the role of the HPC in reviewing provider transactions through material change notices and cost and market impact reviews (CMIRs). She noted that the HPC is dedicated to innovative care delivery and payment models and that the agency's review of provider transactions ensures that providers proposing significant changes in the health care market place submit measurable indicators of how those changes are likely to result in improved performance.

Ms. Tseng stated that the purpose of the HPC's reviews is not to presume that market changes will have negative impacts, but rather to conduct a data-driven examination of such changes to promote transparency and accountability

Ms. Tseng outlined the statutory factors for a review of material change. She stated that, while a subset of factors is reviewed for MCNs, the HPC considers all factors when completing a CMIR. Ms. Tseng commented that the HPC evaluates CMIRs across cost, quality, access, and public interest. Ms. Tseng stated that, for a full CMIR, the HPC evaluates market share, prices, and TME in the full context of the transaction. This means that the CMIR assesses not just the historic performance of the parties prior to the transaction, but also the anticipated impact of the transaction on market share, prices, and TME.

Ms. Tseng stated that the statute requires the HPC to define three terms - "materially higher price," "materially higher TME," and "dominant market share." Ms. Tseng stated that these terms would be discussed at length later in the meeting.

Ms. Tseng reviewed the approach to developing definitions for statutory terms. She noted that, where data is robust, the HPC is able to create transparent guidelines on terms. She clarified that in areas where data is evolving, the definitions will be more flexible.

Dr. Hattis asked about the availability of regularly reported data for all payers. Ms. Tseng responded that there is regularly reported data for 10 payers, who represent the majority of the market.

Ms. Tseng summarized the modeling completed by HPC staff and experts. Dr. Cutler asked for a list of local and national experts employed by the HPC. Ms. Tseng replied that the principle expert is Bates White. She noted that the HPC also employs Analysis Group and Gorman Actuarial, as needed.

Dr. Cutler asked for any other questions regarding the background of statutory definitions. Seeing none, he moved to the next agenda item.

ITEM 2b: Proposed definitions and discussion of significance of statutory factors

Ms. Tseng reviewed the statutory background for CMIRs. She highlighted that a review is triggered when: (i) the provider or provider organization has a dominant market share for the services it provides; (ii) the provider or provider organization charges prices for services that are materially higher than the median prices charged by all other providers for the same services in the same market; and (iii) the provider or provider organization has a health status adjusted TME that is materially higher than the median TME for all other providers for the same service in the same market.

Dr. Hattis asked whether the criteria apply to provider organizations prior to a transaction. Ms. Tseng responded that the HPC has been charged with assessing providers based on these three criteria. She noted that a CMIR report would clarify if the proposed transaction would lead to an increase or a decrease in market share. Dr. Everett clarified that the HPC was not asserting that meeting these three criteria would mean the automatic denial of a transaction.

Ms. Tseng stated that, based on its findings, the HPC may also elect to refer a matter to the Attorney General for further review. Subsequent to a referral, the Attorney General may choose to investigate or take other actions to protect consumers in the health care market.

Mr. David Seltz, Executive Director of the HPC, noted that the statute allows the HPC to review the system as well as individual organizations if the Commonwealth does not meet the cost growth benchmark.

Dr. Hattis asked if there are any deliverables associated with the referral to the Office of the Attorney General. Ms. Lois Johnson, General Counsel, stated that options are laid out in the statute.

Before moving to define specific terms, Ms. Tseng stated that each had a two part definition: a noun and a modifier. She noted that Chapter 288 provided a definition that modeled price and TME. She stated that staff focused on cutting the data to examine thresholds for materially higher.

Ms. Tseng reviewed the proposed definition for "materially higher price." She stated that materially higher price is a provider's price, as may be defined by CHIA pursuant to 957 CMR 2.02 or by the HPC, for a payer or set of payers which constitute at least one-third of such Provider's revenue, which exceeds the weighted mean price of similar Providers or Provider types for the same payer or set of payers.

Ms. Tseng next broke down the definition. She stated that the weighted mean price reflects the volume of services provided by each provider in a payer's network. It is calculated by weighting each provider group's relative price by the normalized percent of network payments received by that provider group and dividing by the sum of normalized percent of network payments.

Ms. Tseng stated that, when analyzing price for Massachusetts' payers, the mean exceeds the median and the weighted mean exceeds the unweighted mean. Ms. Tseng stated that the staff recommends adopting the weighted mean because it is the most exclusive and focused.

Ms. Tseng noted that, because of the way the three major payers play into the market, the staff recommends that the HPC adopt the definition: "for a payer or set of payers which constitute at least one-third of such Provider's revenue, which exceeds the weighted mean price of similar Providers or Provider types for the same payer or set of payers."

Dr. Cutler asked whether "one-third of payers" included only the commercial market or the total market. Ms. Tseng replied that the staff did not want to prematurely add "commercial" to the definition. She stated that, for a provider's price to be materially higher, it should be assessed against 1/3 of the commercial market.

Dr. Cutler asked if Ms. Tseng recommended adding "commercial" into the definition of materially higher price. Ms. Tseng recommended not restricting the definition in regulation. She suggested included the specific definition in a technical appendix.

Dr. Everett asked why the HPC would not include Medicare in the assessment of materially higher price. Ms. Tseng replied that the regulation would allow for the future inclusion of Medicare.

Ms. Tseng reviewed the definition of TME, stating that it is all medical expenses associated with caring for a patient population expressed over a given time. She noted that TME can be health status adjusted to reflect that more complex patients will consume more medical services.

Ms. Tseng defined "materially higher health status adjusted total medical expenditure" as: "a Provider's health status adjusted total medical expenses, as may be defined by CHIA pursuant to 957 CMR 2.02 or by the Health Policy Commission, for a payer or set of payers which constitute at least one-third of such Provider's revenue, which exceeds the weighted mean health status adjusted total medical expenses of similar Providers or Provider types for the same payer or set of payers."

Ms. Tseng stated that the definition differs from total healthcare expenditures (THE) because THE includes the administrative cost of premiums. Commissioners discussed how the HPC defined THE for Lahey Health System's acquisition of Winchester Hospital.

Ms. Tseng noted that the TME is currently reported for HMO patients, but that the Commonwealth should make progress to measure TME that can be attributed to a provider for PPO patients'. Dr. Cutler asked how the HPC would evaluate materially higher price for organizations that did not have TME, such as two rehabilitation centers. Ms. Tseng responded that the definition calls for TME as defined by CHIA *or* by the HPC. She noted that the HPC's TME would include measures of hospital efficiencies. She stated that institutions, like rehabilitation centers, would be evaluated on other measures of efficiency that could substitute for TME, such as adjusted measures of revenue or readmissions. Dr. Cutler suggested consulting with experts to define TME for primary care.

Dr. Hattis asked whether staff would analyze the weighted mean based on the provider's market or statewide data. Ms. Tseng replied that it is easier to complete a statewide analysis in a short period of time, but that there is value to a market-based assessment. Dr. Hattis asked how the HPC defines "similar providers" within a market. Ms. Tseng responded that the analysis includes an examination of many factors; she stated that a list of these factors has been produced in HPC CMIR reports.

Dr. Hattis asked whether it was advisable to define "materially higher" as more than 1/3 of the commercial market. He expressed concern that this fraction was too low. Dr. Cutler stated that the definition makes sense when considering the end goal.

Ms. Haddad asked why staff selected to include the weighted mean price and how it is calculated. Ms. Tseng responded that the weighted price is provider revenue as reported to CHIA. She noted that the selection of the weighted price is a policy decision about how selective the HPC would like to be. She stated that staff recommends that materially higher means being in a more restrictive class.

Dr. Cutler asked how comfortable experts were on the specifics of the definition for materially higher price. Ms. Tseng responded that the experts agreed on the definition. She noted that the experts gave the HPC data and left the policy decision to the agency.

Ms. Haddad asked why the HPC elected to use the weighted mean price when the statute uses the median price. Ms. Tseng responded that the statute mentions that materially higher will be something above the median price. She stated that the HPC staff recommended the weighted mean price because it is above the median.

Ms. Tseng introduced Dominate Market Share. She stated that there is no universal definition for dominate market share in the statute. Rather, the HPC is charged with defining markets and service areas. Ms. Tseng noted that the staff presented on dispersed service areas and primary services areas at the previous meeting of the Cost Trends and Market Performance Committee.

Ms. Tseng stated that a service area or market is service line specific. She noted that there is comprehensive statewide data on hospital services which allows staff to calculate robust service areas. Ms. Tseng noted that staff would begin discussing the calculation of physician service areas in the coming months. She stated that there is little statewide data on outpatient and post-acute services, making this the most difficult area to define. The staff's approach to the definition of service areas is to give as much guidance as possible where there is good information and data.

Dr. Cutler asked whether there is a large conceptual difference between inpatient and outpatient care when defining service areas. Ms. Tseng affirmed that theoretically there is not, but that there is not enough data to understand what the outpatient service areas look like.

Ms. Tseng stated that the HPC does not expect to create a uniform threshold or number for all service areas. Rather, the staff recommends creating a qualitative definition of dominance as a concept to which organizations aspire. Once the qualitative definition exists, the staff can specify thresholds where there is data available.

Ms. Tseng explained that, since data is available for inpatient hospital services, the staff modeled the threshold for dominate market share as 40% of the commercial inpatient discharges in one or more of the hospitals primary service areas. She noted that market shares in primary service areas that are associated with higher prices and TME are well established. Thus, she stated, the staff was able to ascertain the difference between using 20% and 40% in the definition of dominate market share to gain better confidence in the 40% figure.

Ms. Tseng stated that there is not yet a threshold for dominate market share for inpatient hospital services in DSAs. She stated that the research on this topic is still evolving and, as such, staff will return with a definition when the data is available.

Ms. Tseng stated that it is qualitatively important to talk with market participants to determine the nuance of why a particular market share can pose benefits or burdens. She stated that the quantitative analysis is generally used for the initial 30-day review because it can be completed more rapidly.

Dr. Cutler asked how confident the HPC experts were in the 40% figure. Ms. Tseng responded that they had strong confidence.

Dr. Everett asked how staff arrived at the 40% figure. Ms. Tseng responded that 40% does not apply in other states. She stated that experts initially suggested the number based on 50 years of Massachusetts data. Ms. Tseng explained that staff examined all transactions over a five year period. She further explained that staff assessed market shares, concentration, and pricing information before and after transactions to vet the expert's initial sense that 40% was the correct figure.

Dr. Hattis noted that if a transaction falls below the 40% threshold, it does not mean that the HPC cannot employ its ability to electively refer it to the Office of the Attorney General.

Dr. Everett asked that staff capture the context of the day's discussion in draft regulations.

Mr. Seltz framed the process for the regulations. He noted that the concepts reviewed before the committee would be drafted into regulations. He stated that the process would be iterative, with multiple opportunities for input from the committee and public.

ITEM 2c: Proposed updates to material change notice filing

Ms. Tseng briefly reviewed the types of transactions received from April 2013 to present.

Ms. Tseng next reviewed the proposed updates to the MCN form. She detailed the origin of the interim guidance, which currently governs the filing process. Ms. Tseng stated that the interim guidance has been effective and flexible. She noted that parties and stakeholders have been cooperative with this guidance. Ms. Tseng clarified a few minor process points for filing a notice of material change.

Dr. Hattis asked when the 185 day timeline for reviewing a transaction begins. Ms. Tseng responded that it begins on the day that the HPC has received the complete data from the parties.

Dr. Cutler recommended that the staff update the filing form to include a description of any service changes *considered* by the parties. The staff's initial recommendation was for any service changes *anticipated* by the parties.

Ms. Tseng summarized next steps for the regulations governing MCNs. She noted that staff anticipated proposing draft regulations in summer 2014.

ITEM 5: Public Comment

Dr. Cutler opened the meeting for public comment.

An audience member representing the Massachusetts Association of Nurse Practitioners asked about calculating physician services. Ms. Tseng responded that she would return with further details on the question.

An audience member representing the Boston Chamber of Commerce asked that the committee take time to review the definitions and receive public feedback prior to endorsing them.

Dr. Cutler stated that the committee could continue processing the definitions and return with more questions at the June 4 meeting. Dr. Hattis affirmed that he would like to hear more public feedback on the proposed definitions. Ms. Haddad agreed that the Committee should take time to review the day's presentation.

Dr. Cutler asked staff to summarize the issues presented at the day's meeting and circulate to the Committee members.

ITEM 6: Adjournment

Chair Cutler announced the next meeting of the Cost Trends and Market Performance Committee (June 4, 2014) and adjourned the meeting at 10:58 AM.