

Brain Injury Commission

Meeting Minutes

November 12, 2019

12:00-3:00 pm

Ashburton Place, 21st Floor, Conference Room 2

Date of meeting: November 12, 2019

Start time: 12:13 pm

End time: 3:09 pm

Location: Ashburton Place, 21st Floor, Conference Room 2, Boston, MA 02108

Members present (sorted by last name):

Beth Adams – *Massachusetts General Hospital*

Dorothée Alsentzer - *for Dan Tsai, Assistant Secretary, MassHealth*

Rep. Gerard Cassidy – *MA House of Representatives*

Senator Harriette Chandler – *Massachusetts State Senate*

Rep. Kimberly Ferguson – *MA House of Representatives*

Nicole Godaire – *Executive Director, BIA-MA*

Ted Johnson – *Former NFL Player, ESPN Analyst*

Dr. Swathi Kiran – *Boston University*

Carole Malone – *Assistant Secretary, Office of Elder Affairs*

Adelaide Osborne – *MA Rehabilitation Commission*

Undersecretary Lauren Peters – *Executive Office of Health and Human Services*

Yves Singletary – *for Dr. Monica Bharel, Department of Public Health*

Marilyn Price Spivack – *Family Member, Founder of BIAA & BIA-MA, Spaulding Rehabilitation Hospital*

Toni Wolf – *Commissioner, Massachusetts Rehabilitation Commission*

Members participating in the meeting through conference call line:

Helene Robillard – *Brain Injury Survivor*

Members absent:

Dr. Imiogele Aisiku – *Brigham and Women's Hospital*

Senator Dean A. Tran – *Massachusetts State Senate*

Secretary Francisco Ureña – *Department of Veteran Services*

Dr. David K. Urion - *Boston Children's Hospital*

Proceedings

The meeting was called to order at Representative Ferguson 12:13 pm. Representative Ferguson opened the meeting with any discussion of the minutes from November 12th. Nicole Godaire from the Brain Injury Association of Massachusetts clarified and confirmed that only schools compliant with MIAA are required to have a head injury plan in place. Health and Human Services Undersecretary Lauren Peters abstained from the vote. Department of Elder Services Secretary Carole Malone made the motion to approve the minutes, and the minutes were approved as amended.

Whitney Moyer, Chief, MassHealth OLTSS, began the first presentation of the meeting. She made it clear that the presentation is more on services for MassHealth consumers, and not as focused on eligibility requirements. The details of her presentation can be found on the slide deck posted on the Brain Injury Commission website. Marilyn Spivack highlighted the importance of transportation and noted that there may be a problem with the interpretation of the language in the regulations regarding 90 day stay eligibility requirements. Dorothée Alsentzer said she would look into the language to clarify any questions.

Matt Venio, First Deputy Commissioner, Division of Insurance, presented without slides on the role the Division of Insurance plays. He explained that the DOI does not implement programs or design services, but more regulates the insurance companies that operate in Massachusetts. They do not regulate managed care organizations (MCOs) that contract with MassHealth or deliver MassHealth services. In some instances the DOI licenses the MCOs but they regulate commercial insurance in the market place. Half of the plans in Massachusetts are self-insured plans, which DOI does not regulate, nor do they regulate Medicare.

The commission asked what carriers are actually covering for consumers with brain injuries. Mr. Venio explained that the division does not receive filing from the plans on what they cover and don't cover. DOI does want to engage with the commission to understand how this plays out within the commercial carriers. Mr. Venio was unable to speak to the specific features and health plans and what they cover for brain injury. He believes the division can be helpful and wanted to cover the statutory role that DOI covers.

Mr. Venio read excerpts from the Massachusetts General Laws, particularly Chapter 176O, which outlines Health Insurance Consumer Protections. He went on to discuss how the laws mandate health plans to provide what is medically necessary, as determined by a person licensed in the appropriate specialty related to the injury. He assures that the statute provides a number of checks on this. For example, if a provider makes a request and the insurance determines not medically necessary the provider or consumer can request an appeal. As part of that review if the carrier's medically necessary criteria are lacking or disconnected, then that can be brought to light and shared with the DOI. Mr. Venio stated that the DOI has the ability to issue a market conduct examination of any product. If after that examination they see problems they can launch an investigation. He issues a caveat that they are not clinicians, so they do not have the capability to evaluate in house, but they do have tools in place to do so. Mr. Venio offered to survey carriers and see their level of care for those with brain injuries, as the DOI does not have an annual survey for carriers. Mr. Venio stated that there was a mandated review by the Center for Health Information Analysis (CHIA) and they probably have really good information to use in order to report information back to the commission.

The Commission asked if the DOI does not do an annual review how they know that the insurance companies are staying within the mandate. Mr. Venio answered that the DOI relies on the NCQA accreditation every year. He asked if anyone had any questions.

Commissioner Wolf asked how a carrier determines what services to provide.

Mr. Veno answered that it is determined according to the plan they have put together in writing, pursuant to the state's laws. These plans need to be evidence based, aligned with clinical best practice, and presented to their members. He again stressed that the DOI relies heavily on NCQA to make sure insurance plans are compliant.

Representative Ferguson followed up on the question by asking for clarification that some providers could only provide 5 occupational therapy sessions and others could provide 20 and a consumer would have to appeal. She also asked if self-insured plans could possibly be designed to have no coverage for therapies or services.

Mr. Veno answered that Representative Ferguson was correct, however there are some requirements under federal which he cannot speak to.

Senator Chandler stated that people are just "lucky" in terms of what they get for insurance, because most consumers do not look at the fine print of coverage and look at the premiums. She wondered what happened to the people who do not have appropriate coverage.

Ms. Godaire answered that they would have to turn to MassHealth.

Representative Ferguson stated many individuals try to private pay and scrape it together.

Mr. Veno stated that the DOI operates within the statute they're given.

Senator Chandler asked how an individual would switch from commercial insurance to Medicaid.

Mr. Veno answered that he is unable to speak to how they enter the MassHealth coverage. He stated that there is a system where health insurance is designed to treat the trauma immediately and cover some portion of rehabilitation but there is not a clear line on when commercial insurance will stop covering and an individual would have to turn to MassHealth. He stated that from a commercial insurance provider's perspective, a consumer who has a lengthy rehab has plateaued. He pondered where does the DOI'S role end and where does long term care begin?

Senator Chandler stated people with commercial plans find themselves stuck if they're not quite at the level of saturation or custodial care, but can't afford any more of that. She asked if there is some level that is minimal that all commercial plans should cover.

Mr. Veno answered that the minimum is evidence based treatment that is producing therapeutic value.

Senator Chandler asked if there is any evidence that a certain amount should be the minimum and if any plans had coverage that fell below that.

Mr. Veno answered that he did not know the answer to that question but that he suspected there is, but warned that he believes there will always be a gray area.

Ms. Adams stated that oftentimes a family is hit with the reality of their insurance coverage once their loved one wakes up from a coma and the hospital is ready to discharge them, but they are ill prepared to leave. She believes it is a large black hole and would love to see it closed.

Ms. Spivack stated that the only coverage for rehab that can get an individual to full function is workman's compensation, but even that is changing. She stated that the issue is rehab is a major piece of medical care. She believes often time for traumas the immediate medical treatment has a "good outcome" if one survives. Once they have addressed the initial trauma they send you home. She stated that the difference with rehab is a good outcome is if one leaves rehab far more independent than anyone expected that individual to be. She stated that the evidence based research is far different now. For example cognitive rehab is so advanced that there is no question that it helps. However, many plans do not cover it. If you walk to the elevator you're out of here, but you may have no idea why you're going to the elevator. Ms. Spivack stated that the fact is whatever it is that affects one's cognition, affects one's medical status, and a brain injury is the beginning of a chronic disease. It does not go away. If an individual gets it at 15, 16, 22 then that individual will have a condition at 55. She believes if the insurance begins to look at that the consumer is suffering there may be change.

Undersecretary Peters stated that she would like to add to Senator Chandler's question on whether there is an established evidence based requirement of minimum coverage. It is in the legislature's prerogative to say they believe there is a minimum amount of treatment needed and that would be the genesis of some sort minimum coverage legislation. There may be different views on minimums, but they are doing it within what they are allowed to do. If there is a change across the floor, then that may be helpful.

Mr. Veno added that the survey may not show wide variation and that it is impossible to know until after the survey is conducted.

Undersecretary Peters asked if the DOI oversees and enforces mandated benefits, as Massachusetts has more mandates than most other states.

Mr. Veno answered that the DOI's enforcement division does.

Ms. Godaire stated that it would be very helpful to see the results of the survey to see if there is a baseline and minimum.

Mr. Veno answered that he believed the conversation would be most productive once that information is available.

Senator Chandler stated that is not the Commission's expertise and it was surprising there was such wide variation.

Mr. Veno answered to be clear that he did not know for sure.

Senator Chandler replied that it is unknown and that is very concerning. She stated that she was putting herself in the place of the family that is told they don't have enough insurance. They

don't quite qualify for MassHealth but they can't afford what would have to come out of their pockets. She stressed that this is a real issue for the Commission.

Ms. Adams asked to add to these statements. She stated that if a family maxes out on their benefits they are bumped to a skilled nursing facility, which is not appropriate. She stated that it is a horrific thing to tell a family that even though there is more room to improve, they need to step down. There is no continuity for improvement and they come back years later because they didn't get the best care. She stated that there is an opportunity to save dollars here.

Representative Ferguson stated that she wouldn't want to set a mandate and then have plans that cover more than that mandate lower their coverages to exactly the minimum mandate.

David Russell, the Health Systems Manager from Humana Military Healthcare, Tricare East, introduced himself and stated he will try to be illuminating but also brief. He stated that brain injuries disproportionately affects Tricare consumers specifically because of the nature of the military. He stated that he believes the Tricare coverage is adequate. He forewarned that his slides may be a little vague, because the relationship between Humana, Tricare, and the government is mandated by the federal government. The details of his presentation can be found on the slide deck posted on the Brain Injury Commission website.

Representative Ferguson asked if someone goes in for 2 physical therapy visits, can that individual go for an increase in visits.

Mr. Russell responded that they are able to authorize more visits after just 1 visit and that they value feedback. He continued with his presentation, speaking on who qualifies for Tricare coverage.

Dr. Kiran asked what happens to non-active service members.

Mr. Russell responded that if they served 20 years or are medically retired they can stay on as a Tricare retiree, but there is an enrollment fee for those who enrolled after 2018.

Representative Ferguson asked if he sees issues regarding TBIs and if there are any gaps he may see.

Mr. Russell responded that he is stationed on more of a support base, so they don't see a lot of TBI's in this area, but in general there is a gap in care, especially for those who have not served 20 years.

Senator Chandler asked, in terms of parallel practices, if there is conflict or gaps between the state and federal government on services provided.

Mr. Russell responded that Tricare is a product of the federal government. As such, most care for military comes from the federal level and he has not noticed any gaps.

Ms. Spivack stated that at Spaulding she has served children covered by Tricare and it was not difficult to interact with the insurance provider.

Mr. Russell concluded his presentation and the Commission stopped for lunch.

After a short break, Ms. Godaire presented on the prior Commission's report. The details of her presentation can be found on the slide deck posted on the Brain Injury Commission website.

Representative Ferguson asked if the commission should take a vote to see where commissioners land on the old report vs the new report.

A significant part of the discussion of the past report was regarding a registry for survivors and the definition of "brain injury survivors". Ms. Spivack pointed out that Massachusetts does not have a registry and therefore it is impossible to keep track and have a metric for brain injury survivors. She highlighted that in 2011 the commission recommended lumping ABI and TBI survivors together for policy changes, but noted that for treatment, the two are still very different.

Ms. Godaire stated that sports concussions are counted if the patient ends up in the emergency room.

Mr. Singletary stated that the epidemiology report was a huge lift and took a lot of manpower. he warns that a second report or updating the numbers may not be useful if they have to pull resources from other projects to put it together.

Ms. Godaire stated that DPH hasn't done the conversion of the epidemiology report with the new ABI classification.

An epidemiologist from DPH responded that currently DPH has only asked for data through 2015. However, CHIA has more recent data, but getting it from CHIA to DPH is a length process.

Ms. Godaire stated that it was unclear how many people in the state had a brain injury until 2011 because of the epidemiology report. However, even if DPH pulls the data again, it may not be as useful as there would still only be data up until 2015.

Ms. Alsentzer stated that the report should have a recommendation for a future epidemiology report with a timeframe, rather than leaving it open ended.

Ms. Spivack stated that brain injuries from motor vehicle accidents are going down and now the injuries are from falls with children and elderly. In the next ten years it'll be a huge demographic switch for those needing assistance. She stated that case management should be the number one issue addressed in the report.

Dr. Swathi Kiran asked if folks have the visibility into programs offered, do we need to spend as much time researching needs for continuum of care and individualized case management. Ms. Osborne noted that the numbers and data we have do not give us a holistic sense of what people

need, to know what people need we need their names and ages. The biggest takeaway from the listening sessions is that people are relatively in the dark about what resources are available to them.

Commissioner Toni Wolf asked how the commissioner should prioritize new recommendations for the upcoming report. Senator Chandler noted that we need to figure out what has happened since the last report and meld it with prior recommendations. Representative Ferguson mentioned the importance of regional centers, as well as the IT issues in MRC. She also highlighted that the commission needs a concise ask for the FY'21 budget. The commission should figure out what needs funding from the budget and what can carry behind as a multiyear project.

Ms. Spivack again pointed out the need to know who is being served in the commonwealth and if a registry is something feasible for the commission to look into. Undersecretary Lauren Peters brought up that an issue the commonwealth is facing right now is low occupancy rates in nursing homes, and it may be beneficial to find out the reason for such low intake of brain injury patients. Ms. Spivack noted it may be a good idea to develop a questionnaire for nursing facility employees to obtain this data. Undersecretary Peters noted that Mass Senior Care could be part of this larger conversation.

Senator Chandler and Representative Ferguson implored the commission to come up with five recommendations each to be ready to discuss for December 9th.

Representative Cassidy motioned to adjourn the meeting at 3:09. The motion was seconded by Dorothee Alsentzer.

The next meeting of the Brain Injury Commission will be December 9th at 10:30 am at the State House room 428.