

Health Policy Commission

Open Public Meeting

April 24, 2013



Agenda

- Approval of minutes from March 12, 2013 meeting
- Report of the Committees
- Presentation by the Attorney General's Office
- Presentation by the Center for Health Information and Analysis
- HPC annual cost trends report
- Cost and market impact review process
- Mandatory nurse overtime guidelines
- Executive Director Report
- Schedule of next Commission meeting

Expected votes today

-
- A** Minutes from March 12, 2013 Commission meeting
 - B** Research topics for the cost trends report
 - C** Process for review of notices of material change
 - D** Draft guidelines on mandatory nurse overtime
 - E** Policy on the reimbursement of commissioner expenses
-

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Vote A: Minutes from March 12, 2013 Commission meeting

Topic

- Approval of minutes from March 12, 2013 meeting

Language

- That the Commission hereby approves the minutes of the Commission meeting held on March 12, 2013, as presented

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Care Delivery and Payment System Reform Committee

Topic

- Registration of provider organizations

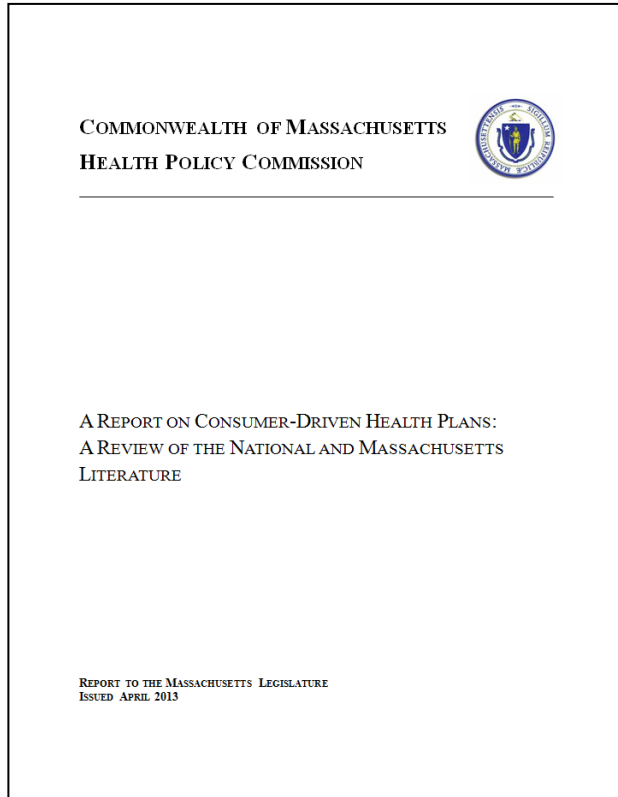
Status

- Update

Community Health Care Investment and Consumer Involvement Committee

Topic	Status
▪ Report on Consumer-Driven Health Plans	▪ Update
▪ One-time assessment	▪ Update
▪ Distressed hospital trust fund	▪ Update

Report on Consumer-Driven Health Plans



- Issued on April 1, 2013
- Available from:
<http://www.mass.gov/anf/docs/hpc/health-policy-commission-section-263-report-vfinal.pdf>

Key findings

- Theory of CDHPs is to provide added financial incentives for consumers to be more active value purchasers
- Literature to date focuses primarily on consumer behavior for those enrolled in CDHPs
 - Massachusetts-specific data is limited
- Studies suggest some reduction in the use of medical services by participants of CDHPs
 - Not yet clear what impact such reductions have on longer-term health outcomes or on total medical spending over many years

Areas of future research

- Understanding the Massachusetts landscape for the current and future use of CDHPs
- Comprehending the dynamics of intermediaries (employers, payers and brokers) that are influencing the take-up of CDHPs
- Gaining knowledge of provider organizations' considerations that are affecting consumers' decisions to switch providers based on price

Update on one-time assessment

Surcharge Payors

Update

- ~90% of Data Verification Forms received
- For remaining surcharge payors, certified letters sent with final deadline of April 15, 2013

Next steps

- Data to be finalized week of April 28, 2013
- Invoices to be sent week of May 6, 2013
- Payments due by June 30, 2013

Acute Hospitals

- 100% of Data Verification Forms received
- All invoices sent as of April 4, 2013

- Acute hospitals have until April 25, 2013 to submit waiver or mitigation application
- CHICI will work with staff to review applications
- Staff will make recommendations regarding any applications to the Commission on June 19, 2013
- Payments due by June 30, 2013

Distressed hospital trust fund

Establishment of Distressed Hospital Trust Fund

- Section 2GGG of Chapter 224
- Funded by one-time assessment
- Total amount of \$128.25 million
 - Less if waiver or mitigation provided to qualifying acute hospitals
- Unexpended funds may to be rolled-over to following year and do not revert to General Fund
- Competitive proposal process to receive funds
- Strict eligibility criteria (on next slide)

Purposes of Distressed Hospital Trust Fund

1. Improve and enhance the ability of community hospitals to serve populations efficiently and effectively
2. Advance the adoption of health information technology
3. Accelerate the ability to electronically exchange information with other providers in the community to ensure continuity of care
4. Support infrastructure investments necessary for the transition to alternative payment methodologies
5. Aid in the development of care practices and other operational standards necessary for certification as an ACO
6. Improve the affordability and quality of care

Cost Trends and Market Performance Committee

Topic	Status
▪ Research topics for the cost trends report	▪ Agenda item; vote needed
▪ Process for review of notices of material change	▪ Agenda item; vote needed

Quality Improvement and Patient Protection Committee

Topic

- Draft guidelines on mandatory nurse overtime

Status

- Agenda item; vote needed

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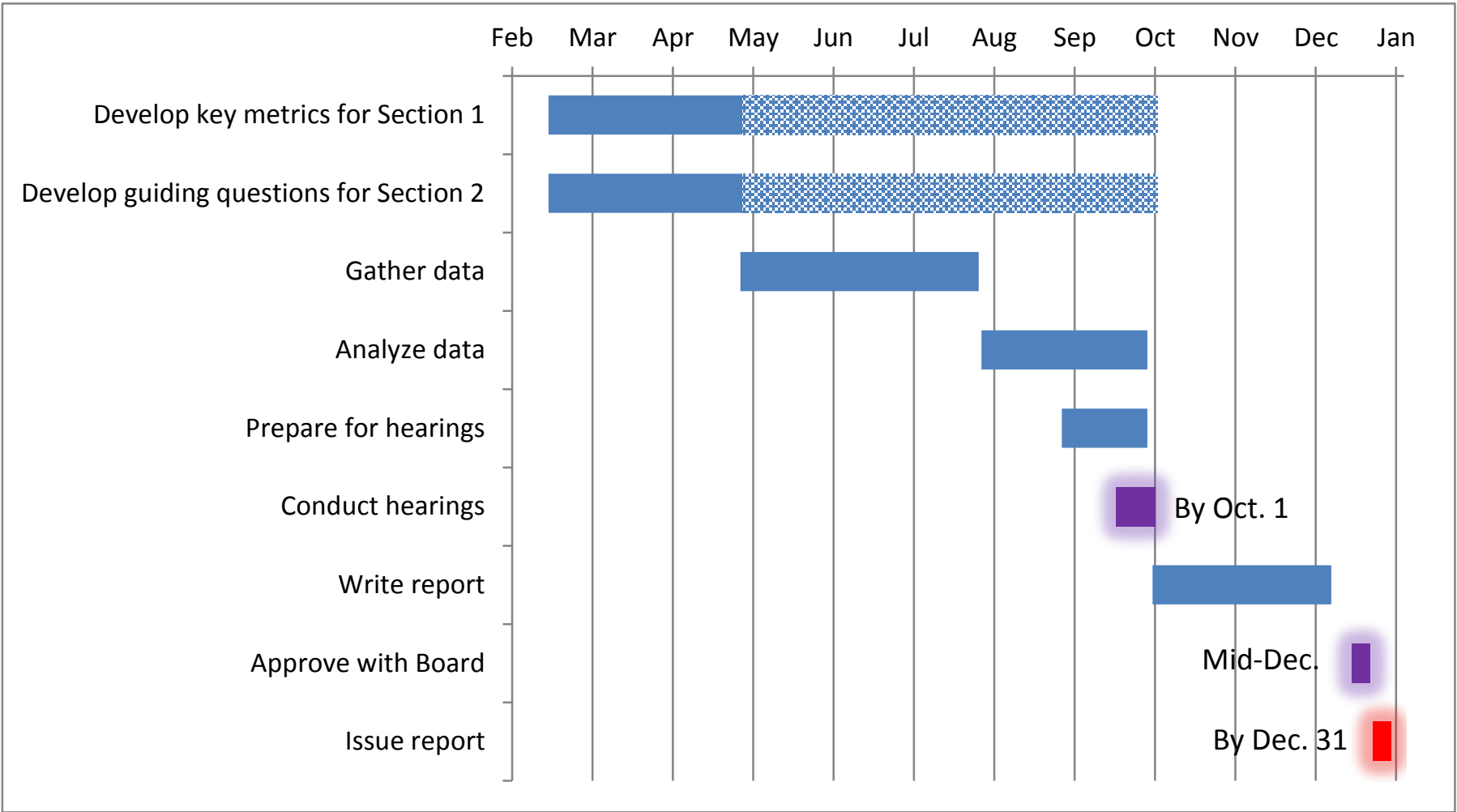
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Timeline for preparing cost trends report



Section 8g of Chapter 224 of the Acts of 2012

The commission shall compile an annual report ^A concerning spending trends and underlying factors, ^B along with any recommendations for strategies to increase the efficiency of the health care system. The report shall be based on the commission's analysis of information provided at the ¹ hearings by providers, provider organizations and insurers, ² registration data collected under section 11, ³ data collected by the center for health information and analysis under sections 8, 9 and 10 of chapter 12C and ⁴ any other information the commission considers necessary to fulfill its duties under this section, as further defined in regulations promulgated by the commission. The report shall be submitted to the chairs of the house and senate committees on ways and means and the chairs of the joint committee on health care financing and shall be published and available to the public not later than December 31 of each year. ^C The report shall include any legislative language necessary to implement the recommendations.

Required outputs

- A. Concerning spending trends and underlying factors
- B. Recommendations for strategies to increase efficiency
- C. Legislative language necessary to implement recommendations

Data inputs

1. Hearings
2. Registration data
3. CHIA data
4. Any other information necessary to fulfill duties

Topics of research for 2013 cost trends report

Section 1: Setting baseline

Goal: develop a set of metrics/ indicators that allow for the analysis of total health expenditure growth

- Descriptive statistics
- Decomposition of total health expenditures
- Access and quality
- Market evolution and current landscape

Section 2: Uncovering drivers

Goal: explore the drivers of cost growth with specific, targeted questions, both forward and backward looking

- Care of costliest patients
- Waste in the system
- Impact of market changes
- Provider cost structure

Section 3: Discussion/next steps

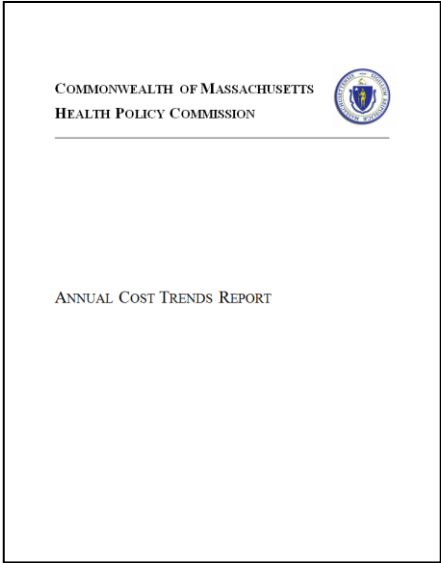
Goal: discuss implications of our findings/ analyses on future of health care landscape and further areas of study

Appendices

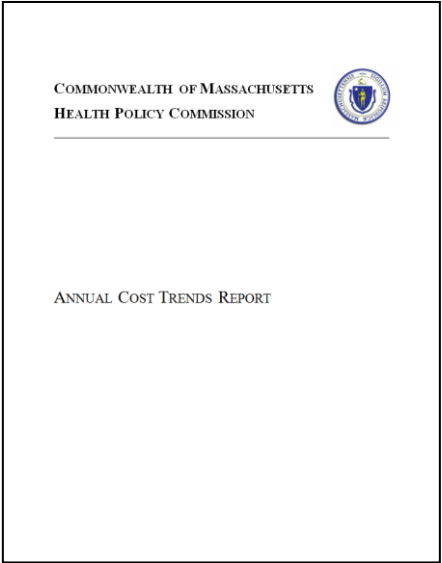
- Summary of sister agency reports
- Summary of Health Policy Commission reports (e.g., CDHP report)
- Methodology for analyses
- Key sources of information on Massachusetts health care and costs

Publication expectations through end of 2014

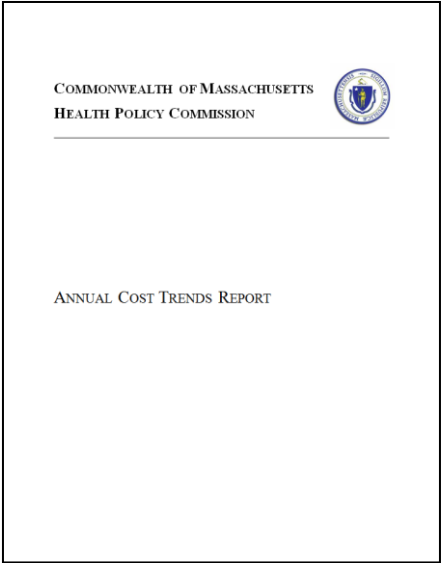
December 2013



Early Summer 2014



December 2014



Total Health Expenditures

2012

2012

2013

APCD

2011

(claims files released by CHIA on ~Jun 30 2013)

2012

(claims files released by CHIA on ~Dec 30 2013)

2012

(claims files released by CHIA on ~Dec 30 2014)

Vote B: Research topics for the cost trends report

Topic

- Approving timeline, process, and topics of research for the 2013 cost trends report

Language

- That the Commission hereby accepts and approves the timeline, process, and topics of research for the 2013 cost trends report, as presented, and authorizes the Executive Director to do all acts and things necessary or desirable to compile such report pursuant to section 8(g) of chapter 224 of the Acts of 2012

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Overview of cost and market impact reviews

Cost and market impact reviews (CMIRs) can be initiated when...

1. ...a material change “...is likely to result in a significant impact on the commonwealth’s ability to meet the health care cost growth benchmark, established in section 9, or on the competitive market.”
2. ...a provider is identified by CHIA as having excessive growth relative to the benchmark

What it is

- Comprehensive and multi-factor review of the provider organization and its proposed change
- Following a preliminary report and opportunity for the provider to respond, HPC issues a final public report summarizing its findings
- Potential referral to the Attorney General’s Office
- Proposed change cannot be completed until 30 days after the Commission issues its final report

What it is not

- Differs from Determination of Need reviews by Department of Public Health
- Differs from antitrust or other law enforcement review by state or federal agencies

Process to initiate a cost and market impact review

Statutory requirements

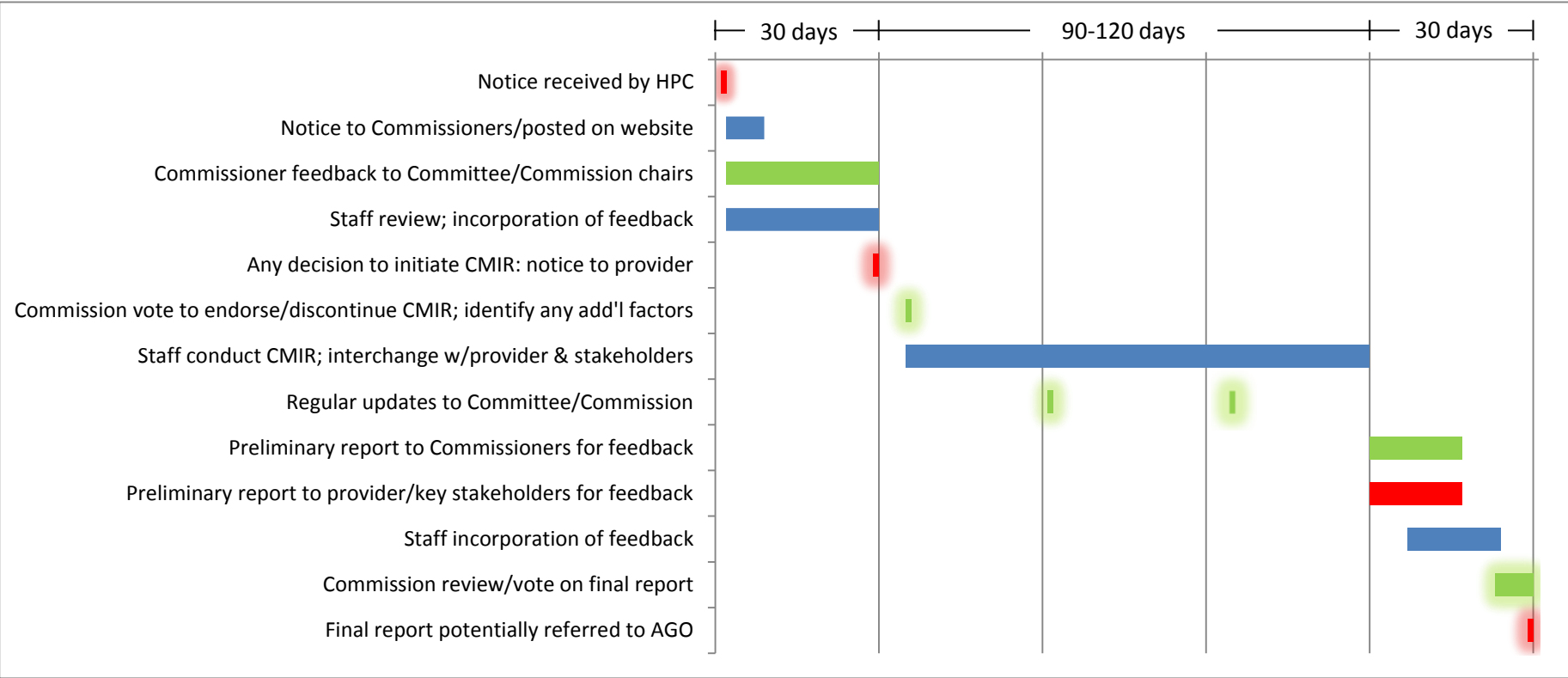
- *Time Constraints*: Notices of Material Change must be reviewed and any cost and market impact review initiated within 30 days
- *Open Meeting Law* requirements constrain timely Commission or Committee review of each notice

Guiding principles to CMIR process

- Transparent
- Timely
- Consistent with Open Meeting Law
- Consistent with chapter 6D
- Commissioner determination of criteria for review
- Input by Commissioners
- Advance review of preliminary and final reports

Sample timeline for CMIR

- = Commission
- = Staff
- = External touch points



Proposed factors for review of material change notices (drawn from statute)

Statutory standard

Factors should evaluate whether the material change is likely to result in a significant impact

- “on the commonwealth’s ability to meet the health care cost growth benchmark” or
- “on the competitive market”

The following factors, as relevant:

Cost impact

- Unit prices, including prices compared to other market providers
- Health status adjusted total medical expenses
- Provider costs and cost trends, including compared to statewide trends

Market impact

- Provider size and market share
- Availability of services similar to those proposed to be provided
- Impact on competing options for health care delivery, including the impact on existing providers of any proposed expansion into a region in which the provider did not previously operate
- Quality, including patient experience and level of coordinated, population-based care
- Methods used to attract patient volume and to recruit or acquire health care professionals or facilities
- Role in serving at-risk, underserved, and government payer populations, including those with behavioral and substance use disorders or mental health conditions
- Role in providing low margin or negative margin services
- Consumer concerns, such as complaints that the provider has engaged in any unfair method of competition, or any unfair or deceptive act

Additional factors

- Other factors in the public interest
- Any factors identified by Commissioners during the initial 21-day review period, or at the first Commission meeting following initiation of any CMIR

Conducting cost and market impact reviews

Inputs

- Staff-led analysis of:
 - Information and documents from the provider organization
 - Publicly available metrics of cost and market impact
 - Information from market participants and other key stakeholders
 - Information from annual hearing regarding any excessive cost growth (M.G.L. ch. 6D, § 8(f))
- Support from expert consultants (e.g., health care economists and actuarial experts) and other advisory experts
- Statute does not specifically exempt any documents HPC gathers from public records law

Outputs

- Factual findings of cost and market impact
- Recommendations, as appropriate, regarding cost and market impact
- Feedback from provider, including written response to preliminary report
- Preliminary report and final report
- No regulatory approval/denial of proposed material change; proposed change may be completed 30 or more days after issuance of final report
- Specific basis for mandatory referral to AGO; provider has:
 - Dominant market share
 - Materially higher prices in its market, and
 - Materially higher TME in its market

Vote C: Process for review of notices of material change

Topic

- Adopting policy on cost and market impact reviews

Language

- That the Commission hereby accepts and approves the attached Policy on Cost and Market Impact Reviews for the reviews that may be conducted from time to time by Commission staff pursuant to section 13 of chapter 6D of the Massachusetts General Laws and authorizes the Executive Director to do all acts and things necessary or desirable to implement this Policy.

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New law on mandatory nurse overtime

Section 226 provides in pertinent part that:

- b) Notwithstanding any general or special law to the contrary, a hospital shall not require a nurse to work mandatory overtime except in the case of an emergency situation where the safety of the patient requires its use and when there is no reasonable alternative.
- c) Under section (b), whenever there is an emergency situation where the safety of a patient requires its use and when there is no reasonable alternative, the facility shall, before requiring mandatory overtime, make a good faith effort to have overtime covered on a voluntary basis. Mandatory overtime shall not be used as a practice for providing appropriate staffing for the level of patient care required.



Goals

- Prohibit the use of mandatory overtime for nurses as a hospital staffing strategy
- Ensure that mandatory overtime is only used in exceptional circumstances, as a last resort
- Protect patient safety

Role of the Health Policy Commission

- Section 226 (d) specifies that the Health Policy Commission (“Commission”) established by section 2 of chapter 6D of the General Laws, **“shall develop guidelines and procedures to determine what constitutes an emergency situation for the purposes of allowing mandatory overtime.”**
 - In developing the guidelines, the Commission is required to “consult with employees and employers who would be affected by such a policy” and also “to solicit comment from those same parties through a public hearing.”
-

Examples from other states

Pennsylvania (43 P.S. sec. 932)

Definition of "Unforeseeable emergent circumstance":

- An **unforeseeable declared national, State or municipal emergency**
- A highly unusual or **extraordinary event** which is unpredictable or unavoidable and which substantially affects the provision of needed health care services or increases the need for health care services. This paragraph includes:
 - an act of terrorism
 - a natural disaster
 - a widespread disease outbreak
- **Unexpected absences**, discovered at or before the commencement of a scheduled shift, **which could not be prudently planned for by an employer** and which would significantly affect patient safety.
- The term does not include vacancies that arise as a result of chronic short staffing.

New York (Labor Law Section 167)

Limitations on mandatory nurse overtime do not apply in the case of:

- A **health care disaster**, such as a natural or other type of disaster that increases the need for health care personnel, unexpectedly affecting the county in which the nurse is employed or in a contiguous county
- A **federal, state or county declaration of emergency** in effect in the county in which the nurse is employed or in a contiguous county
- **Where a health care employer determines there is an emergency**, necessary to provide safe patient care, in which case the health care provider shall, before requiring an on-duty employee to remain, make a good faith effort to have overtime covered on a voluntary basis, including, but not limited to, calling per diems, agency nurses, assigning floats, or requesting an additional day of work from off-duty employees, to the extent such staffing options exist...
- An **ongoing medical or surgical procedure** in which the nurse is actively engaged and whose continued presence through the completion of the procedure is needed to ensure the health and safety of the patient.

Texas (Title 4 c. 258)

Section 258.003 [prohibiting mandatory overtime for nurses] does not apply if:

- A **health care disaster**, such as a natural or other type of disaster that increases the need for health care personnel, unexpectedly affects the county in which the nurse is employed or affects a contiguous county
- A **federal, state, or county declaration of emergency** is in effect in the county in which the nurse is employed or is in effect in a contiguous county
- There is an **emergency or unforeseen event of a kind that:**
 - Does not regularly occur
 - Increases the need for health care personnel at the hospital to provide safe patient care
 - Could not prudently be anticipated by the hospital
- The nurse is actively engaged in an **ongoing medical or surgical procedure** and the continued presence of the nurse through the completion of the procedure is necessary to ensure the health and safety of the patient.

Proposed guidelines for determining what constitutes an emergency situation (1/4)

- An emergency situation for the purposes of allowing mandatory overtime under Section 226 means an unforeseen event that could not be prudently planned for or anticipated by a hospital and affects patient safety in the hospital and where there is a:
 - government declaration of emergency
 - catastrophic event
 - patient care emergency

 - Mandatory overtime shall not be ordered in the case of an emergency situation where there is a reasonable alternative to such overtime.

 - Where an unexpected vacancy occurs despite a hospital's implementation of a reasonable alternative, the hospital is required to exercise a good faith effort to fill the shift on a voluntary basis.
-

Proposed guidelines for determining what constitutes an emergency situation (2/4)

Government declaration of emergency

- A federal, state, municipal, or local declaration of emergency that takes effect pursuant to applicable federal or state law

Catastrophic event

- An unforeseen event that substantially affects or increases the need for health care services, such as a natural disaster, an act of terrorism, or an extended power outage
- Determination shall be made by a hospital's chief executive officer or a specific designee and must be reasonable under the circumstances
- Examples of catastrophic events include events involving numerous serious injuries (e.g., fires, multiple automobile accidents, a building collapse), a chemical spill, widespread outbreak of disease or illness, or other serious event within the hospital

Patient care emergency

- A situation that is unforeseen and could not be prudently planned for or anticipated by the hospital, and that requires the continued presence of a nurse to provide safe patient care
- Determination that a patient care emergency exists shall be made by the hospital's chief executive officer or a specific designee
- May include an ongoing medical or surgical procedure in which a nurse is actively engaged and where that particular nurse's continued presence is needed to ensure the health and safety of the patient
- Shall not include a situation that is the result of routine staffing needs caused by typical staffing patterns, typical levels of absenteeism, or time off typically approved by the hospital for vacation, holidays, sick leave, and personal leave

Proposed guidelines for determining what constitutes an emergency situation (3/4)

Examples include:

Reasonable alternative

- Maintaining a “float pool”
- Creating and posting schedules with minimal staffing gaps at least four weeks in advance of scheduled shifts for the purpose of filling any vacant shifts
- Taking action to fill any remaining vacancies before such shifts occur
- Establishing an “availability list” or “on-call” list of nurses who may be available to volunteer for unexpected vacancies
- Convening daily pre-shift huddles to determine patient placement and staffing requirements
- Ensuring the hospital’s “emergency operations plan” or “disaster plan” provides for staffing assignments during an emergency situation

Good faith effort

- Reaching out to all available qualified staff who are working at the time of the emergency situation
- Contacting qualified employees who have made themselves available to work extra time
- Seeking the use of off-duty, per diem, and part-time nurses
- Seeking personnel from a contracted temporary agency when such staff is permitted by law or regulation
- Determining whether coverage is available from other units in the hospital

Proposed guidelines for determining what constitutes an emergency situation (4/4)

Ongoing monitoring of implementation by HPC

Section 226 requires hospitals to report all incidences of mandatory overtime under the laws to the Department of Public Health

- To review and monitor the implementation of and hospital compliance with these guidelines and procedures, the Commission shall review reports submitted to the Department of Public Health pursuant to M.G.L. c. 111, section 226 about the instances of overtime for nurses mandated by Massachusetts hospitals and shall determine whether changes should be made to the guidelines in accordance with the purposes of the law
- The Commission will review each annual report to determine whether changes should be made to the guidelines and procedures for mandatory overtime in accordance with the purposes of law

Vote D: Draft guidelines on mandatory nurse overtime

Topic

- Authorizing public hearing on proposed guidelines on mandatory overtime for nurses

Language

- That the Commission hereby authorizes the Commission’s Committee on Quality Improvement and Patient Protection to hold a public hearing on the attached proposed guidelines on mandatory overtime for nurses, developed pursuant to section 226(d) of chapter 224 of the acts of 2012, and directs the Committee to report on the hearing and make recommendations to the Commission on final guidelines

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HPC 2013 Implementation Timeline

First quarter (Jan – Mar)

- ✓ Appoint an Executive Director
- ✓ Approve the FY13 budget for HPC operations
- ✓ Announce the HPC Advisory Council and hold the first quarterly meeting
- ✓ Begin to develop strategies for engaging constituencies regarding the implementation of Chapter 224
- ✓ Begin working with other state agencies to minimize duplicative requirements
- ✓ Establish state health care cost growth benchmark for total health care expenditures for calendar year 2014
- ✓ Hold a stakeholder listening session relative to the definition of “emergency situation” for the purposes of allowing mandatory overtime
- ✓ Hold listening session in conjunction with DOI on the registration of provider organizations
- ✓ Issue interim guidance regarding notice of material changes of providers or provider organizations
- ✓ Promulgate regulations and work with the Department of Public Health to ensure the seamless transfer of the Office of Patient Protection to the HPC
- ✓ Promulgate regulations on the administration of the one-time assessment of qualifying hospitals and surcharge payors
- ✓ Research and prepare a report to the legislature on Consumer-Driven Health Plans

Second quarter (Apr – Jun)

- Approve a policy for reviewing notices of material change and initiating a cost and market impact review
- Approve the FY14 budget for HPC operations
- Begin deliberations on the development of new care delivery models
- Begin to develop a competitive grant program to enhance the ability of certain distressed community hospitals to implement system transformation
- Collect the first installment of the one-time assessment
- Consider any applications for a waiver or mitigation of the one-time assessment by qualifying hospitals
- Develop key metrics and examination questions for the annual cost trends report
- Finalize guidance and procedures relative to mandatory nurse overtime
- ✓ Finalize the transfer the Office of Patient Protection
- Hold a public hearing on draft mandatory nurse overtime guidelines
- Hold the second quarterly meeting of the Advisory Council
- Monitor the development and implementation of mental health parity regulations as required by c. 224
- Propose regulations to administer a provider organization registration program
- Review and deliberate on the Attorney General’s annual Cost Trends Examination

HPC 2013 Implementation Timeline

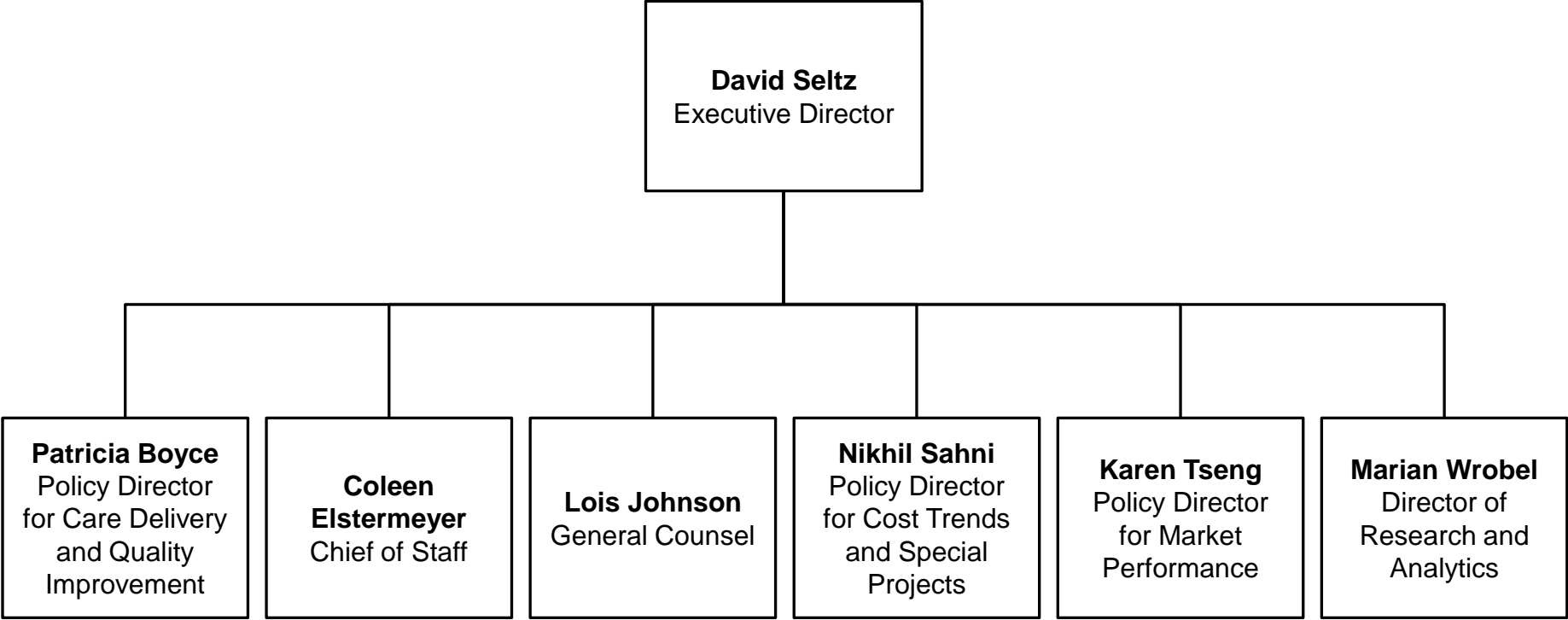
Third quarter (Jul – Sep)

- Adopt final regulations for the administration of a provider organization registration program
- Analyze data and information in preparation for the annual cost trends report
- Begin development of a certification program for ACOs
- Begin development of a model payment system for PCMHs
- Establish a system for collecting data on external reviews and analyzing trends in patient access to care through the Office of Patient Protection
- Hold the third quarterly meeting of the Advisory Council
- Propose regulations on a certification program for PCMHs beginning January 1, 2014
- Propose regulations on notices of material change
- Propose regulations on the competitive grant program for distressed hospitals
- Review and deliberate on the recommendations of the Behavioral Health Task Force established in c. 224 (Report due July 1, 2013)

Fourth quarter (Oct – Dec)

- Adopt final regulations on a certification program for PCMHs beginning January 1, 2014
- Administer the provider organization registration program
- Begin development of an innovative grant program funded by the Health Care Payment Reform Fund
- Finalize regulations on a competitive grant program for certain community hospitals and begin to accept applications
- Develop internal and external review processes for the review of grievances submitted by patients of risk-bearing provider organizations and ACOs
- Distribute the first round of grants to distressed hospitals
- Hold, in collaboration with the Center for Health Information and Analysis and the Office of the Attorney General, the annual cost trends hearings
- Hold the fourth quarterly meeting of the Advisory Council
- Finalize regulations on a certification program PCMHs
- Issue the Commission's annual report on cost trends and underlying factors with recommendations for strategies to increase the efficiency of the health care system
- Monitor the launch of consumer cost-sharing transparency tools by the health plans
- Propose regulations for a certification program for ACOs
- Review information provided DPH about the incidence, prevalence, and circumstances surrounding orders of mandatory overtime for nurses

Staff update



Vote E: Policy on the reimbursement of commissioner expenses

Topic

- Approving the policy on the reimbursement of commissioner expenses

Language

- That the Commission hereby accepts and approves the attached Policy on the Reimbursement of Commissioner Expenses, in substantially the form attached hereto, and authorizes the Executive Director to do all acts and things necessary or desirable to implement this Policy and make reimbursements consistent with the terms of this Policy

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Contact information

For more information about the Health Policy Commission:

- Visit us: <http://www.mass.gov/hpc>
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