**Nursing Facility Task Force**

Meeting Minutes

January 31, 2020

2:30-4:30 pm

Date of meeting: January 31st, 2020

Start time: 2:35

End time: 4:05

Location: One Ashburton, 21st floor, CR 1 &2, Boston, MA 02109

Members present:

* Secretary Sudders – Executive Office of Health and Human Services
* Ruth B. Balser – Mass. House of Representatives
* Elizabeth Chen – Executive Office of Elder Affairs
* Tim Foley – 1199SEIU
* Tara M. Gregorio – Massachusetts Senior Care Association
* Elizabeth Kelley – Department of Public Health
* Patricia D. Jehlen – Mass. Senate
* Barbara Mann – Massachusetts Senior Action Council
* Mathew J. Muratore – Mass. House of Representatives
* Patrick Stapleton – Sherrill House
* Daniel Tsai – MassHealth
* Naomi Prendergast – D’Youville Life and Wellness Community
* Rebecca Annis – Pond Home

Members absent:

* Secretary Acosta – Executive Office of Labor and Workforce Development
* Richard Bane – Massachusetts Senior Care Association

**Proceedings:**

Secretary Sudders called the meeting to order at 2:35 PM and welcomed everyone to the 6th and final meeting of the Task Force.

**Vote 1 to approve meeting minutes from the previous Task Force meeting**: Secretary Sudders requested a motion to approve the [January 10, 2020 meeting minutes](https://www.mass.gov/doc/january-10-2020-meeting-minutes/download). Rep. Muratore introduced the motion which was seconded by Ms. Prendergast and approved unanimously.

Secretary Sudders thanked Jeremy Rubel and Amy Bianco for their help on the Task Force.

Secretary Sudders continued, saying that the Task Force had received three letters on behalf of various advocacy groups. She noted that members of the Task Force had received copies of these letters in advance of the meeting. Secretary Sudders requested that these letters be entered into the official record.

The first letter was sent on behalf of a group of [Disability Advocates](https://www.mass.gov/doc/letter-to-secretary-sudders-sent-on-behalf-of-disability-advocates/download) including Mr. Paul Spooner, Mr. Dennis Heaphy, Ms. Millie Hernandez as a follow up to their presentation at the January 10th Task Force meeting. The letter emphasized the importance of oversight mechanisms and maintaining community-based options for people with disabilities.

The second letter was sent on behalf of the three co-chairs of the [One Care Implementation Council](https://www.mass.gov/doc/letter-to-secretary-sudders-sent-on-behalf-of-the-onecare-implementation-council/download). The letter emphasized the importance of quality improvement and the lack of representation from the disability community on the Task Force. Secretary Sudders noted that members from the community were invited to present at the meeting on January 10th and that she believes their voice is critically important.

The third letter was sent on behalf of the [Aging Life Care Association-New England Chapter, Greater Boston Legal Services and Massachusetts Advocates for Nursing Home Reform](https://www.mass.gov/doc/letter-to-secretary-sudders-sent-on-behalf-of-aging-life-care-association-greater-boston-legal/download). Writing as advocates of nursing facility residents, they wished to express their strong support for performing an independent audit of cost reports and a medical loss ratio for nursing facilities.

Senator Jehlen said that she believed some of the Task Force’s recommendations addressed the letters’ proposals, including strengthening the overall continuum and improving the quality of care. Representative Balser asked if the letters will be added as appendices to the report. Secretary Sudders said yes.

Secretary Sudders noted that Ms. Annis had requested to submit a letter to the Task Force, as a follow up to questions posed in response to her presentation on rest homes at the previous meeting on January 10th. Secretary Sudders requested that Ms. Annis’ [clarification letter](https://www.mass.gov/doc/letter-providing-clarification-on-rest-home-presentation/download) be attached to the Rest Home presentation and included in the final report.

Secretary Sudders then directed the Task Force to the [final report](https://www.mass.gov/doc/nursing-facility-task-force-final-report/download). She said that the meeting will conclude with a vote to submit the report to the legislature. She said a vote to approve the report does not represent endorsement of every policy option or point in the report, but instead represents agreement that the report should be sent to the legislature.

Secretary Sudders began to present the report, beginning with an overview of the Task Force’s charge and the list of member names. For the record, Secretary Sudders, noted that Secretary Acosta and Rich Bane were unable to be present at today’s meeting.

Secretary Sudders continued with the presentation, proceeding through the slides that presented context on the nursing facility industry. The members of the Task Force did not comment on these slides, signaling their agreement.

Secretary Sudders continued to the next section of the presentation, asking members if they had comments on the Points of Agreement.

Representative Balser commented on the point “need to reduce excess based capacity in the system, directing funding spent on empty beds to support the expansion of other community based services.” Representative Balser noted that she would like to edit the point to add “support the expansion of support of direct care workers.” Ms. Annis said that she agreed. Senator Jehlen expressed that she wants to support the workforce in both nursing facilities and in community-based settings. Representative Balser said that if some low occupancy, low quality facilities were to close, additional funding would be available to support workforce needs. She continued stating that she would like to ensure that the workers in the facilities that do close are fairly paid.

Secretary Sudders suggested that we revise the point to read “need to reduce excess bed capacity in the system, directing funding spent on empty beds to support the direct care workforce in remaining facilities and the expansion of community based services.” Mr. Foley stated that he agreed with that phrasing.

Ms. Annis commented on the point “consider how to apply the principles of a new and simplified rate restructure to rest homes” and said that she does not know how to interpret the phrase “consider how to apply.” Several members of the Task Force suggested that the point be revised to read “apply the principles of a new and simplified rate restructure to rest homes.” Secretary Sudders asked Assistant Secretary Tsai to explain the difference between rest home and nursing facility payments. Assistant Secretary Tsai noted the differences, saying that rest homes are not reimbursed by Medicaid nor do they use the MMQ or MDS assessment to calculate rates. He explained that because of these substantial differences, the point reads “consider how to apply.”

Representative Balser said she would like to clarify the point “it is important to support nursing facility and rest home direct care staff” by adding the word “salary.” Secretary Chen noted that there is labor market competition between community-based and nursing facility direct care workers. Mr. Foley offered that the point could use the phrase “adequately pay” instead of “support.” Secretary Sudders asked if we should add “community-based workers” to the point. Mr. Foley said that he wanted the point of agreement to focus on nursing facilities for the purposes of this being the Nursing Facility Task Force.

Ms. Prendergast noted that it is the nursing facility operators who pay the workers and therefore requested to tie the concept of adequate payment to nursing facility reimbursement. Secretary Sudders said that EOHHS staff would incorporate this feedback into a revised phrasing of the point. She added that the Task Force would return to the point later in the meeting.

Secretary Sudders continued with the presentation, saying that the points of agreement led to the identification of four goals. She then proceeded to the policy proposals section of the report and thanked members of the Task Force for offering comments.

Ms. Annis requested that the policy proposals focused on the “development of affordable assisted living” be revised to include rest homes. Senator Jehlen asked if there was a specific policy proposal included in the report focused on supporting rest homes. Assistant Secretary Tsai said that slide 24 included policies to reform the rate structure for both “Nursing Facilities and Rest Homes.”

Representative Balser asked which of the proposals included in the final report required statutory authority. Ms. Kelley said that DPH could revoke the DPH licenses of chronic underperformers in quality and occupancy under state licensure authority. Ms. Gregorio asked how this proposal would be implemented. Ms. Kelley said that the details of the policy would need to be determined, but it is possible under state licensure authority. Representative Muratore asked if the state would need CMS approval to implement this proposal. Ms. Kelley said that she would want to confirm with CMS before answering definitively. Assistant Secretary Tsai said that there is usually a path forward to work collaboratively with CMS.

Mr. Foley noted that the proposals related to “right sizing the industry” would impact the workers in the facilities that close. Mr. Foley said that there needs to be a plan to ensure that the workers in those facilities have an opportunity to transition to other positions. Secretary Sudders suggested the addition of a sub-bullet under “support and facilitate structural changes to the nursing and rest home industry” that speaks to Mr. Foley’s concern.

Representative Balser asked for clarification on the proposal “establish incentives for high occupancy and high quality facilities that result in the closure or repurposing of chronically low occupancy and low quality nursing facilities”. Assistant Secretary Tsai said that Medicaid payments could incentivize higher occupancy facilities. Representative Balser asked if the proposal included in the report could note the authorities needed, either legislative or regulatory, to operationalize some of these policy proposals. Secretary Sudders said that EOHHS staff could submit a memo to both Task Force members as well as the legislature that notes how to operationalize all the policy proposals whether through statute, regulation change, or other policy making means. Secretary Sudders also added that MassHealth staff will clarify what “establish incentives” means.

Secretary Sudders suggested that we could add a page to the report that notes that the Task Force met on specified dates, noting that the report was submitted to the legislature.

Ms. Prendergast said that we should include the word “affordable” before “supportive housing.”

Representative Balser asked again how to operationalize “establish one integrated rate structure.” Assistant Secretary Tsai said that generally, that policy could be promulgated through a regulation. Representative Balser asked if MassHealth could start tomorrow. Assistant Secretary Tsai said that certain add-ons and components of the rate were created through legislative earmarks. Assistant Secretary Tsai noted that, in the appendix, slides 33-34 provide detail about a new MassHealth rate structure.

Ms. Annis commented that “consider how to apply these principles to Rest Home rates” is vague and asked to make the proposal more action-oriented. Secretary Sudders said that rest homes have a different financing structure. Assistant Secretary Tsai suggested that the point be revised to read “review rest home rates and consider how to apply these principles to Rest Home rates”

Ms. Annis commented that she wants to revise the proposal “update base year costs regularly” to include the word “annually.” Assistant Secretary Tsai expressed his preference for the term “regularly” noting that there are various ways to update nursing facility rates, including the addition of inflation factors. He added that overall, the goal is to use more recent data that is updated regularly.

Representative Muratore asked if “update base year costs” is a statutory or regulatory authority. Assistant Secretary Tsai said that his answer is similar to his answer from before; rates are defined through regulation, but certain elements are required statutorily.

Ms. Prendergast requested that the proposal note that rates should reflect current costs. Assistant Secretary Tsai suggested “update base year costs regularly to ensure that rates are reflective of current costs.”

Secretary Sudders advanced to slide 25. The Secretary suggested that they replace the phrase “utilize the DPH performance too” with the phrase “prioritize the DPH performance tool.” Members agreed that this proposal should be updated to note that the Task Force prioritizes the DPH tool over the CMS 5-Star Survey tool.

Mr. Foley noted the proposal regarding the implementation of a patient experience survey and said that this survey should be offered in multiple languages. Mr. Foley also emphasized that there should be a survey of workers. Ms. Gregorio noted her agreement of this proposal.

Ms. Prendergast asked for clarification on the phrase “promote and incorporate” as it is unclear what is being incorporated. Secretary Sudders said that we should implement the survey as a measure of quality and that the proposal should be clarified.

Ms. Annis noted that the proposals “invest in rest homes” had been removed in comparison to earlier drafts of the report. She requested that the proposal “invest in nursing homes and rest homes” be added. Representative Balser asked if Ms. Annis was requesting to add an additional proposal. Ms. Annis clarified that that was her request. Representative Balser said that she does not want to add the proposal if it is implied that we are not valuing the rest of the continuum.

Senator Jehlen suggested that rest homes could be added to the first point of agreement to read “It is important to have quality nursing facilities and rest homes available for those who need this level of care.”

Secretary Sudders said that this is the last meeting and that the points of agreement were items that members had already agreed to. She continued to say that she did not want to reopen conversations from previous meetings.

Ms. Gregorio said that she agrees with Senator Jehlen and notes the purpose of the Task Force was created because of a commitment to the importance of nursing facilities and rest homes.

Mr. Foley referenced slide 23 and requested that the Task Force add a policy proposal around supporting the work force in the event of a closure.

Ms. Annis asked for clarification on the proposal, “Examine the feasibility of developing requirements to move from per diem wages to salaries for direct care staff.” Secretary Chen offered an explanation and said that staff may benefit from a salary, where an income is more predictable, than with a per diem. Ms. Annis noted that workers in her facility do have predictable schedules. Secretary Chen suggested that the proposal be revised to emphasize the importance of regular schedules for workers. Secretary Chen continued to say that across the continuum, it is rare that patients know advance what care worker will be caring for them on any given day. Secretary Sudders suggested that the proposal be revised to read “Examine the utilization rate and impact of per diem wages on direct care staff.”

Senator Jehlen noted that the occurrence of an information hearing on Tuesday, February 4th at 1PM in A-1 of the State House regarding the ***“Crisis Facing the Direct Care Workforce in Elder Services.”***

Ms. Gregorio suggested the addition of language emphasizing the importance of the employee survey.

Secretary Sudders requested that EOHHS staff present a revised version of the report, inclusive of member suggestions made throughout the meeting.

Secretary Sudders noted that an additional section, Appendix E will be added to include the letters sent to the Task Force, and referenced at the beginning of the meeting.

Secretary Sudders invited Undersecretary Lauren Peters to present a revised version of the presentation based on the feedback received from members throughout the meeting. Undersecretary Peters presented the revised version and the members of the Task Force silently noted their agreement.

Ms. Gregorio said that the workforce survey has not yet been developed and suggested that the proposal be revised to read “conduct a workforce satisfaction survey.”

Secretary Sudders said that we will add a slide to the beginning that includes a list of the meeting dates.

Representative Balser asked if the report will be made available to the public. Secretary Sudders said yes, and noted that the report will be made available online.

**Vote 2 to approve the Report:** Secretary Sudders request a motion to approve and submit the report to the legislature. Ms. Gregorio introduced the motion which was seconded by Mr. Stapleton. The motion was approved unanimously.

Secretary Sudders noted that Mr. Bane was unable to attend the meeting but had emailed in advance to express his support of the report and the overall work of the Task Force.

Ms. Gregorio thanked Secretary Sudders for chairing the Task Force and said that she looked forward to continuing the discussion through other forums. Representative Muratore also thanked the Secretary and reminded the Task Force that nursing homes are part of a continuum of care. Ms. Annis also offered her thanks to the Secretary and her staff.

Secretary Sudders again thanked the EOHHS staff for supporting the work of the Task Force.

**Vote 3 to adjourn:** Secretary Sudders requested a motion to adjourn. Representative Muratore offered the motion and Ms. Prendergast seconded. The motion was approved unanimously.