

MINUTES OF THE HEALTH POLICY COMMISSION

Meeting of January 16, 2013

MASSACHUSETTS HEALTH POLICY COMMISSION

**THE HEALTH POLICY COMMISSION OPEN PUBLIC MEETING
McCormack Building
One Ashburton Place, 21st Floor
Boston, MA 02108**

Docket: Wednesday, January 16, 2013, 9:30am

- 1. Adoption of the Minutes 12/18/2012 Meeting (APPROVED)**
- 2. Report of the Committees**
- 3. REGULATION**
One-Time Assessment Regulation
958 CMR 2.00-DRAFT
Request approval of proposed regulation **958 CMR 2.00**, relating to a one-time assessment on certain qualifying hospitals and qualifying surcharge payors, and a motion to file the regulation with the Secretary of State to begin the regulatory process **(APPROVED)**
- 4. Cost and Market Impact Review Discussion**
- 5. Projected Economic Growth Benchmark for 2014**
- 6. Executive Director Report**
 - a. Staffing Update**
 - b. Office of Patient Protection Update**
 - c. FY13 Budget Presentation (APPROVED)**
 - d. Establishment of ANF Committee (APPROVED) and Membership (APPROVED)**
- 7. Public Discussion**

Health Policy Commission

Presented below is a summary of the meeting, including time-keeping, attendance, and votes.

Date of Meeting: Wednesday, January 16, 2013

Beginning Time: 9:34 AM

End Time: 11:50 AM

Member	Attended	Item 1	Item 3	Item 6c	Item 6d	Item 6d
		Adoption of the Minutes 12/18 Meeting	Proposed One-Time Assessment Regulation (958 CMR 2.00)	FY13 Budget Proposal	Establishment of ANF Committee	Approval of Appointment of ANF Committee Membership
Stuart Altman	Yes	Yes (M)	Yes	Yes	Yes (M)	Yes (M)
Carole Allen	Yes	Yes (2nd)	Yes	Yes (M)	Yes (2nd)	Yes
JudyAnn Bigby	Yes	Yes	Yes (M)	Yes	Yes	Yes
David Cutler	Yes	Yes	Yes	Yes	Yes	Yes
Wendy Everett	Yes	Yes	Yes	Yes (2nd)	Yes	Yes (2nd)
Paul Hattis	Yes	Yes	Yes (2nd)	Yes	Yes	Yes
Rick Lord	Yes	Yes	Yes	Yes	Yes	Yes
Glen Shor	Yes	Yes	Yes	Yes	Yes	Yes
Marylou Sudders	Yes	Yes	Yes	Yes	Yes	Yes
Veronica Turner	Yes	Yes	Yes	Yes	Yes	Yes
Jean Yang	Yes	Yes	Yes	Yes	Yes	Yes
Summary	11 members attended (all)	Approved with 11 votes	Approved with 11 votes	Approved with 11 votes	Approved with 11 votes	Approved with 11 votes

(M): Made motion; (2nd): Seconded motion

PROCEEDINGS

A regular meeting of the Massachusetts Health Policy Commission was held on Wednesday, January 16, 2013, at the McCormack Building, One Ashburton, 21st Floor, Boston, Massachusetts 02108.

Commissioners present included Chair Stuart Altman; Dr. Carole Allen; Dr. JudyAnn Bigby, Secretary, Executive Office of Health and Human Services; Dr. David Cutler; Dr. Wendy Everett; Dr. Paul Hattis; Mr. Rick Lord; Mr. Glen Shor, Secretary, Executive Office of Administration & Finance; Ms. Marylou Sudders; Ms. Veronica Turner; and Ms. Jean Yang.

No commissioners were absent from the meeting.

Chair Altman called the meeting to order at 9:34 AM and reviewed the agenda.

ITEM 1: Adoption of the Minutes 12/18/2012 Meeting

Chair Stuart Altman solicited additions or corrections to the minutes of the meeting of the Health Policy Commission on December 18, 2012. No changes were recommended. **Chair Altman** made the motion to approve the minutes of December 18, 2012. After consideration, upon motion made and duly seconded by **Dr. Carole Allen**, it was voted unanimously to approve the minutes as presented.

Voting in the affirmative were all 11 present **members**. There were no abstentions and no votes in opposition.

ITEM 2: Report of **Committees**

Cost Trends and Market Performance Committee Report

Dr. David Cutler reported on the activities of the Cost Trends and Market Performance Committee. He acknowledged a recent call with Commission staff, during which he addressed organizational and administrative issues as well as a review of the **committee's** duties. Dr. Cutler reviewed upcoming issues the committee would be addressing, including: the structure and regulations involved in an assessment on hospitals and health plans, and issues associated with measuring cost trends within the health care industry.

Quality Improvement and Patient Protection Committee Report

Dr. Carole Allen reported on the activities of the Quality Improvement and Patient Protection Committee. She noted efforts by the committee members to meet with staff via phone prior to the January 16, 2013, Commission meeting, after which an initial in-person meeting had been scheduled. Dr. Allen announced the first in-person and public meeting of the committee, which was to occur at 12:15pm on January 16, 2013, following the adjournment of the Health Policy Commission meeting.

Dr. Allen then reported on issues upcoming for the committee to address which would include accounting for duties and tasks to accomplish, and making connections in order to accomplish those tasks which were allotted to the committee.

Care Delivery and Payment System Reform Committee Report

Ms. Marylou Sudders reported on the activities of the Care Delivery and Payment System Reform Committee. Ms. Sudders first announced that members of the committee had arranged for a first public meeting to occur on January 30, 2013, from 9 AM to 10:30 AM at Two Boylston Street, 5th Floor, Boston, Massachusetts 02130.

Ms. Sudders reported issues upcoming for the committee to address. She noted that committee members would prioritize the tasks charged to their group, including administering a competitive grant program; developing regulations and standards for the creation of patient-centered medical homes (PCMHs) and accountable care organizations (ACOs); and working with the Division of Insurance to register ACOs and PCMHs.

Community Health Care Investment and Community Involvement Committee Report

Dr. Paul Hattis reported on the activities of the Community Health Care Investment and Community Involvement Committee. Dr. Hattis first announced that committee members would be holding a first public meeting on February 6, 2013, from 9 AM to 11 AM at a location to be determined.

Dr. Hattis reported on issues upcoming for the committee to address, including the selection of a chairperson; the meeting of an April 2013 reporting deadline to conduct an investigation and to make legislative recommendations regarding the increased adoption of flexible spending accounts, health reimbursement arrangements, and health savings accounts; the coordination of a consistent meeting date and time by committee members in order to facilitate regular public attendance at meetings; and the anticipation of connection between committee members and multiple community voices as part of the committee's work.

Chair Stuart Altman concluded Item 2 with the addition of summarizing comments, noting that all committees had by January 16, 2013 completed initial calls; that all committees had by January 16, 2013, established dates for initial in-person, public meetings; that public participation would be encouraged in relation to the operation of all committees; and that the commission members would anticipate hiring staff members to support the work of committees.

ITEM 3: One-Time Assessment Regulations

Executive Director David Seltz discussed the logistics and regulations associated with a one-time, \$225 million assessment on payors and hospitals to be levied by the Health Policy Commission. He noted details of the assessment, including the ratio of \$165 million

collected from payors to \$60 million collected from hospitals. He referenced the prior Health Policy Commission meeting's discussion of the means of the assessment. He reviewed the purpose of the assessment as well as the allocation of the assessment funds towards entities including distressed hospitals, and the development and implementation of electronic medical records (EMRs) and health information technology (HIT).

He noted that on December 31, 2012, he had posted proposed regulations (958 CMR 2.00) to the Health Policy Commission website. These proposed regulations were publicly disseminated in addition to information regarding the assessment.

He reviewed the upcoming process for initiating the assessment, including the filing of proposed regulations with the Secretary of State; a posting of the regulations; a 21-day period for public comment; and a public hearing for which date would be determined by the Health Policy Commission.

Chair Stuart Altman added summarizing comments, reiterating that the purpose of the assessment is to maintain a "vibrant" health care system. He emphasized that strict criteria must be adhered to in conjunction with attention to public commentary regarding the investment and allocation of funds collected.

The commissioners initiated a period of discussion.

Dr. David Cutler asked about information regarding surcharges as well as its dissemination, and Mr. Seltz discussed criteria for payor and hospital surcharges, reiterating that individual acute hospitals would be responsible for their respective surcharges. He noted that he intended to create an application form for the mitigation of assessments.

Dr. Paul Hattis noted that the deadline for mitigation form receipt is April 1, 2013.

Ms. Jean Yang commented that commissioners have heard from CareGroup and from payors, that public comment would be important and solicited, and she reiterated that while there are statutory regulations in Chapter 224, commissioners also need to acknowledge the financial implications of surcharges.

Chair Altman reiterated the importance of funds from the assessment and the specificity of the Chapter 224 legislation, as well as the gravity of the assessment.

Mr. Seltz noted that the surcharge payment could not be passed along to consumers by payors or hospitals.

Secretary JudyAnn Bigby made a motion to pass proposed regulations **958 CMR 2.00** and to file them with the Secretary of State. After consideration, upon motion made and duly seconded by **Dr. Paul Hattis**, it was voted unanimously to approve the application as presented.

Voting in the affirmative were all 11 present members. There were no abstentions and no votes in opposition.

ITEM 4: Cost and Market Impact Review Discussion

Executive Director David Seltz discussed the statute as it relates to Cost and Market Impact Reviews.

The Health Policy Commission is charged with evaluating material changes by providers and provider organizations based upon the manner in which those changes affect cost, access, quality, and market competition. Cost and market impact reviews are intended to be a tool and to generate a transparent forum within which changes to the market may be evaluated. Cost and market impact reviews will include factual findings, a public report, and a potential report to the Attorney General's Office, depending upon the commission's findings.

Providers and provider organizations must submit notice of any material change, which within the legislation includes: corporate mergers, acquisitions, and any material changes which give a dominant share of the market, which increase prices, or which increase total medical expenditures higher than those of comparable providers or provider organizations.

Provider organizations would have an opportunity to respond to the cost and market impact review issued, and the commission must adopt definitions for terms as necessary, including "material change," and "non-material change."

The commissioners initiated a period of discussion.

Dr. Paul Hattis noted that Chapter 224 indicates that a material change is defined, but not limited to, the items that had been listed (i.e. corporate mergers, acquisitions, changes which give a dominant share, etc.).

Chair Stuart Altman noted that although the Cost Trends and Market Performance Committee had been charged with the task of developing the process surrounding cost and market impact reviews, they are ultimately the responsibility of the full Commission.

Secretary JudyAnn Bigby noted that in light of similar reviews and reports conducted in other states and nationally, she would find a summary of Cost and Market Impact work helpful.

Ms. Marylou Sudders emphasized behavioral health as a variable to be evaluated during cost and market impacts reviews, and noted that a material change is not limited to changes regarding cost trends.

Dr. David Cutler noted that Chapter 224 indicates that cost and market impact reviews were not written as antitrust reviews, but rather as broader reviews regarding changes which impact consumers.

Dr. Hattis noted that the initial regulations regarding cost and market impact reviews went into effect on January 1, 2013. He also asked questions regarding how a material change would be defined, and regarding the level at which the Attorney General's Office would have involvement in a cost and market impact review. In response, Mr. Seltz noted that initial notices of changes were required of providers and provider organizations and need to be submitted to the Health Policy Commission, to the Center for Health Information and Analysis (CHIA), and to the Attorney General's Office. Mr. Seltz also noted that he planned to provide guidance regarding the content of notices for providers and provider organizations, and that the definition of logistics would be addressed upcoming.

Secretary Bigby emphasized the importance of sharing notices among agencies.

Dr. Wendy Everett recognized the ambiguity of the law in respect to certain definitions and terms.

Chair Altman requested that in order to decrease administrative burdens on providers and provider organizations as well as redundancies, that every effort be made to coordinate the work of agencies and to create integration and consistency among state agencies.

ITEM 5: Projected Economic Growth Benchmark for 2014

Dr. David Cutler made a presentation regarding the specific technicalities and some definitions of the economic growth benchmark as outlined in Chapter 224.

He reviewed the restraint of health care expenditures by a growth target and listed specific target numbers for upcoming years. He noted the important definitions involved with the benchmark, including Total Healthcare Expenditures and its component parts, and Potential Gross State Product (PGSP) growth. He explained the rationale behind the use of PGSP in Chapter 224. He discussed the timing of the growth rate determination and benchmark. He defined Gross State Product (GSP) as well as its component parts (real growth and inflation).

Mr. Greg Mennis, Assistant Secretary for Fiscal Policy, Executive Office of Administration & Finance, made a presentation regarding the benchmarks established by the Chapter 224 legislation.

After summarizing the legislation, Assistant Secretary Mennis discussed the consensus tax and revenue process inherent in the setting of the benchmark. He reviewed the definition of PGSP. He discussed the stakeholders involved in the legislative drafting process and of setting the initial benchmarks, as well as their contributions to the process. He emphasized that the development process for the benchmarks was intended to be stable and consensus-building. He emphasized that the intention, in creating both definitions and benchmarks, was to develop numbers that were representative of long-term economic growth in Massachusetts.

Assistant Secretary Mennis reviewed how consensus was established for inflation, real growth, and PGSP numbers. He summarized his presentation by discussing issues that would need to be addressed moving forward with the setting of benchmarks, including: the monitoring of actual estimates of real growth and inflation; the accounting for differences in population versus workforce growth; and the maintenance of alignment with other processes in the forecasting of estimates.

The commissioners initiated a period of discussion.

Chair Stuart Altman discussed anticipated differences in growth rates among different economic sectors.

Dr. Carole Allen asked questions regarding whether decreasing PGSP would be economically detrimental to the health care service industry, and regarding the Total Medical Health Expenditures measure. Dr. Cutler responded that it is anticipated that industries will naturally equilibrate by shifting any workers released from the health care industry due to market changes. Dr. Wendy Everett responded that Chapter 224 seeks to slow growth but not to “eviscerate” it, and that some employees may move into other fields which are also drivers of health status. Dr. Cutler also noted that in relation to the monitoring of Total Medical Health Expenditures, the most difficult aspect to measure would be expenditures by consumers which are not reimbursed.

Ms. Veronica Turner raised concerns regarding health care workers and their job security, and raised concern about the reallocation of state government resources from certain industries to others. Secretary Glen Shor asked that the latter issue be deferred as the allocation of government resources was a distinct issue. Assistant Secretary Mennis then reiterated that a decrease in expenditures does not represent a “shrinking” in the overall workforce but rather a reallocation of workers.

ITEM 6: Executive Director Report

ITEM 6a: Staffing Update

Executive Director David Seltz reported that he had publicly posted positions for employment with the Health Policy Commission online and would be receiving applications through January 25, 2013. Mr. Seltz noted that the first phase of hiring for the Health Policy Commission was a reflection of the current interim budget of the Health Policy Commission. He also noted that staffing would be funded by five percent of the \$225 million assessment on payors and hospitals dedicated to operating expenses.

ITEM 6b: Office of Patient Protection Update

Executive Director David Seltz reviewed that the Office of Patient Protection, currently seated within the Department of Public Health (DPH), would be moved under the control of the Health Policy Commission per Chapter 224. Mr. Seltz noted that as of January 16, 2013, work remained to be completed before the Commission could fully accept the

responsibility of the Office of Patient Protection, and that eventually staff would be hired to oversee the Office of Patient Protection. Mr. Seltz reported that he was in discussions with DPH to extend the agreement between that agency and the Health Policy Commission in order to delay a transfer of the Office of Patient Protection which had been approved at the first meeting of the Health Policy Commission on November 16, 2012.

Mr. Seltz reported that he was currently working with Secretary JudyAnn Bigby and her staff to propose changes to the state legislature which might allow the Office of Patient Protection to comply with federal regulations and new regulations outlined in the Patient Protection and Affordable Care Act (2010).

ITEM 6c: FY13 Budget Presentation

Executive Director David Seltz presented a proposal for an interim FY13 budget and a report on its funding through 2017. Mr. Seltz discussed the expected revenues for FY13, which would be collected from a one-time assessment on payors and hospitals, and from gaming licensing fees to be approved by the state legislature. Mr. Seltz emphasized the budgetary challenge of the timing of the revenue collections, which the bill did not identify. Mr. Seltz discussed the obtaining of interim funding from a Health Policy Commission reserve fund, and from CHIA and the Executive Office of Administration & Finance.

As part of the budget discussion, Mr. Seltz reported on current office space accommodations for the Health Policy Commission, as well as his plan to obtain funding to establish a staff of eight to ten senior managers and health policy experts. Mr. Seltz noted that the proposed budget would apply through June 30, 2013.

Dr. Carole Allen made a motion to approve Mr. Seltz's proposed interim FY13 budget. After consideration, upon motion made and duly seconded by **Dr. Wendy Everett**, it was voted unanimously to approve the budget as presented.

Voting in the affirmative were all 11 present members. There were no abstentions and no votes in opposition.

ITEM 6d: Establishment of Administration & Finance Committee

Executive Director David Seltz proposed a new ANF Committee which would address budgetary and staffing issues. The purpose of the committee would be to assist the commission in its responsibilities in relation to the administration and fiscal management of the Health Policy Commission. In furtherance thereof the committee would recommend to the full Commission for approval an annual operating budget, conduct annual reviews of the commission's finances, oversee an independent audit of the Health Policy Commission, and oversee salaries for the executive director of the commission and for senior management staff. Mr. Seltz noted that the ANF Committee would be based upon an ANF Committee already in existence at the Massachusetts Health Connector Authority. Mr. Seltz requested that Chair Stuart Altman approve the establishment of the proposed ANF Committee.

Chair Stuart Altman made a motion to approve Mr. Seltz's proposed Administration & Finance Committee. After consideration, upon motion made and duly seconded by **Dr. Carole Allen**, it was voted unanimously to approve the creation of an ANF Committee for the Health Policy Commission.

Voting in the affirmative were all 11 present members. There were no abstentions and no votes in opposition.

Chair Stuart Altman made a motion to appoint himself the chairman of the newly established ANF Committee, with commissioners Ms. Veronica Turner, Ms. Jean Yang, and Mr. Rick Lord as members. After consideration, upon motion made and duly seconded by **Dr. Wendy Everett**, it was voted unanimously to approve the appointment of the membership of the ANF Committee of the Health Policy Commission.

Voting in the affirmative were all 11 present members. There were no abstentions and no votes in opposition.

ITEM 7: Public Comment

Several members of the public audience contributed to commentary following the completion of agenda items for the general board meeting.

- a. Celia Wcislo, SEIU Local 285/220
- b. Don Thieme, The Massachusetts Council of Community Hospitals
- c. Josh Archambault, The Pioneer Institute
- d. Gloria Craven, Policy Strategists, Craven & Ober, LLC
- e. Steven Bradley, Bay State Health and Mass Public Health Association

LIST OF DOCUMENTS PRESENTED AT AND POSTED AFTER THE MEETING

1. Docket of the meeting (Health Policy Commission – Agenda)
2. Proposed Regulations of December 31, 2012: 958 CMR 2.00-DRAFT, related to a One-Time Assessment on Certain Qualifying Hospitals and Qualifying Surcharge Payors
3. FY13 Interim Budget, a Presentation to the Health Policy Commission Board by Executive Director David Seltz
4. Chapter 224 and the Spending Target, a Presentation to the Health Policy Commission Board by Dr. David Cutler
5. Setting the PGSP Target, a Presentation to the Health Policy Commission Board by Assistant Secretary Greg Mennis, Executive Office of Administration & Finance