

MINUTES OF THE HEALTH POLICY COMMISSION

Meeting of January 3, 2018

MASSACHUSETTS HEALTH POLICY COMMISSION

Date of Meeting: Wednesday, January 3, 2018

Start Time: 10:07 AM

End Time: 11:30 AM

	Present?	ITEM 1: Approval of Minutes	ITEM 2: Care Delivery Investments	ITEM 3: Final CMIR Report	ITEM 5: Executive Session
Stuart Altman*	X	X	X	X	X
Don Berwick	X	X	X	2nd	2nd
Martin Cohen	X	2nd	M	X	X
David Cutler	X	X	X	M	X
Wendy Everett	A	A	A	A	A
Timothy Foley	X	X	X	X	X
Rick Lord	A	A	A	A	A
Ron Mastrogiovanni	X	X	X	ab	X
Sec. Marylou Sudders	X	M	2 nd	X	M
Sec. Michael Heffernan	X	X	X	X	X
Summary	8 Members Attended	Approved with 8 votes in the affirmative	Approved with 8 votes in the affirmative	Approved with 7 votes in the affirmative	Approved with 8 votes in the affirmative

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

*Chairman

(M): Made motion; (2nd): Seconded motion; (ab): Abstained from Vote; (A): Absent from Meeting

Proceedings

A regular meeting of the Massachusetts Health Policy Commission was held on Wednesday, January 3, 2018.

A full recording of the meeting is available [here](#).

Commissioners present included Dr. Stuart Altman (Chair); Dr. Don Berwick; Mr. Martin Cohen; Dr. David Cutler; Mr. Ron Mastrogiovanni; Mr. Timothy Foley; Secretary Marylou Sudders, Executive Office of Health and Human Services; and Ms. Elizabeth Denniston, designee for Secretary Michael Heffernan, Executive Office of Administration and Finance.

Dr. Altman called the meeting to order at 10:07 AM and welcomed those present.

ITEM 1: Approval of Minutes from December 12, 2017

Dr. Altman solicited comments on the minutes from December 12, 2017. Seeing none, he called for a motion to approve the minutes. **Secretary Sudders** made a motion to approve the minutes. **Mr. Cohen** seconded. The minutes were unanimously approved.

Mr. David Seltz, Executive Director, provided an overview of the day's agenda. He noted that, following the formal agenda, the Board would move into an executive session to discuss performance improvement plans (PIPs). He stated that the Board would provide an update on the results of the executive session at the next meeting.

ITEM 2: Care Delivery Investment Opportunity

Mr. Seltz presented on the HPC's proposed care delivery investment opportunity. He noted that much of this presentation was provided at the December 12, 2017 Board meeting. For more information, see slides 8-9.

Mr. Seltz noted that, since the last Board meeting, the HPC had worked with other state agencies to ensure that this new investment program aligned with but did not duplicate existing programs. For more information, see slide 10.

Dr. Altman asked for clarification on how this investment program fits into previous HPC investments. Mr. Seltz said that it builds on the HPC's knowledge from the Community Hospital Acceleration, Revitalization, and Transformation (CHART) and Health Care Innovation Investment (HCII) programs. He stated that this new investment program seeks to fund strong, competitive applications focused on the outlined areas of care delivery transformation and that the HPC hopes to continue to build the evidence base in this area.

Mr. Cohen asked for clarification on the applicant pool for each track. Mr. Seltz responded that this was an area of conversation and that staff propose that all providers be eligible to apply for the funding, but that HPC-certified accountable care organizations (ACOs), their participants, and CHART hospitals receive a competitive advantage. He noted that the Commonwealth is trying to move the health care system into an ACO model and that this investment program seeks to align the incentives to do so.

Mr. Foley asked for clarification on which types of projects Delivery System Reform Incentive Payment (DSRIP) hospitals will be able to use HPC funds for. Mr. Seltz responded that,

depending on the track of this investment program, applicant hospitals that are ACO participants can generally use HPC funds for patient populations not covered by the MassHealth ACO program.

Mr. Foley asked whether hospitals can use DSRIP funds to continue their CHART programs once Phase 2 ends. Mr. Seltz said that the HPC hopes these hospitals will see the benefits of the projects and continue to fund them.

Secretary Sudders noted her appreciation for the HPC's further work on this investment program. She said that the provisions on slide 10 strengthen the overall investment program.

Dr. Berwick asked how specific the HPC will be in defining health-related social needs. Mr. Seltz responded that the HPC is not being prescriptive. Instead, the HPC hopes that the applicants will be innovative. Secretary Sudders added that this is a great opportunity since the Commonwealth's waiver is narrow in this area.

Dr. Altman asked for a motion to endorse the proposal for the investment program. **Dr. Cutler** made the motion. **Secretary Sudders** seconded. The motion was unanimously approved.

Dr. Altman noted that the positive pressure on evaluation is very important for the HPC and other organizations around the country.

ITEM 3: Market Performance Update

Mr. Seltz provided a brief overview of the presentation.

ITEM 3A: Notices of Material Change

Ms. Megan Wulff, Deputy Director, Market Performance, provided a brief overview of the material change notices received to date. For more information, see slides 14-17.

ITEM 3B: Final Cost and Market Impact Review (CMIR)

Ms. Kate Mills, Policy Director, Market Performance, provided a brief overview of the cost and market impact review (CMIR) process. For more information, see slide 19.

Ms. Mills discussed the parties' responses and HPC analyses relative to the proposed transaction between Partners HealthCare System (Partners) and Mass Eye and Ear Infirmary (MEEI). Ms. Mills reviewed findings related to rate increases. For more information, see slide 20.

Dr. Altman noted that the parties indicated that there would be rate increases. He asked for clarification on these increases. Ms. Mills responded that the parties initially projected market competitive rate increases in their first filing. She stated that the parties did not provide an estimate of the magnitude of these increases prior to their response to the HPC's preliminary report.

Dr. Altman asked for clarification on whether the parties made a commitment to keep rate increases to a certain level. Ms. Mills responded that the parties provided an estimate, but no commitment to the magnitude of the rate increases. She stated that the parties could elect to exceed their stated projections.

Mr. Mastrogiovanni asked whether the HPC had asked the parties to make a commitment on the rate increases. Ms. Mills responded that the preliminary report issued by the HPC invited the parties to make a commitment. She stated that they did not do so in their response, but that they might do so in the context of review by other state agencies.

Ms. Mills provided an overview of new information from the parties on the financial condition of MEEI. For more information, see slide 21.

Dr. Altman noted the importance of emphasizing that, when reviewing these transactions, the HPC habitually hears that transactions will result in efficiencies and savings. He noted that these transactions rarely outline how these savings will help reduce costs for consumers. He noted that, in this case, MEEI may need to see improvement in its financial condition, but this would not necessarily require price increases if this transaction could lead to operational efficiencies.

Mr. Mastrogiovanni noted that, in his experience, savings from operational efficiencies are rarely realized and, in fact, there is often an increase in operational expenses. He asked whether the HPC has reviewed changes in operational spending pre- and post-transaction. Mr. Seltz responded that this had not been a primary focus of post-transaction review in the past.

Mr. Seltz stated that the final report provides details in this area. Ms. Mills provided a brief overview on the ways in which the parties expect to achieve operational efficiencies through this transaction.

Mr. Foley asked whether there was a stated goal—either of revenues or savings—that the parties needed to stay financially sound. Ms. Mills responded that the parties did not state a goal. She said that the HPC modeled confidential information that demonstrated that the projected operational efficiencies could go a long way to stabilizing MEEI's finances if realized.

Referencing slide 20, Mr. Foley asked how the parties arrived at the estimate of \$10 million in spending increases. Ms. Mills responded that the parties did not provide any rationale or data to support this number.

Secretary Sudders asked from whom the response came. Ms. Mills responded that it was a joint response from the parties.

Ms. Mills provided an overview of key findings related to access and quality. For more information, see slide 22.

Dr. Altman noted that the parties stated that access would not change as a result of the transaction. He said that, if the transaction results in increased prices, there could be a situation in which payers are not able to afford to keep MEEI in network. Ms. Mills responded that the parties did not make a formal commitment with respect to contracting with commercial tiered or limited networks.

Dr. Altman asked for clarification on how Partners negotiates contracts. Specifically, he asked whether Partners mandates that all of their facilities be in-network in order for any one of its hospitals to participate in a network. Ms. Mills responded that the final CMIR report highlights that Partners general acute care hospitals are generally not in limited network products, although their non-acute hospitals participate more frequently. She stated that Partners' hospital

tiering varies for tiered products based on the insurance. She noted that academic medical centers (AMCs) are generally in higher price tiers for all of the network products, while different payers treat community hospitals differently.

Dr. Altman asked whether it was fair to say that MEEI could be in-network for certain contracts, while other Partners hospitals are not. Ms. Mills responded that this would depend on negotiations with payers, and on whether Partners treated MEEI more like its general acute care hospitals or more like its non-acute hospitals.

Referencing page 34 of the report, Secretary Sudders noted that, were the transaction to go through, there would be obvious results in the coming years as to whether MEEI goes from most-efficient to least-efficient payer in-network tiers as a result of price increases. She clarified that this discussion of potential contract arrangements is based on speculation. She stated that the HPC should continue to focus on facts and reasonable assumptions.

Dr. Altman stated that the HPC should seek to be transparent and provide the public with as much information as possible. He expressed concern that the transaction would force payers to make adjustments to the tiering of MEEI to account for potential higher rates.

Dr. Berwick asked whether staff had assessed the parties' claims about being unable to provide information that would help in evaluating quality impacts. Ms. Mills stated that staff flagged this issue. She noted that clinical quality is under review by the Department of Public Health (DPH). Mr. Seltz stated that the HPC did not assess whether the parties' claim was right or wrong, but did include it verbatim in the final report.

Mr. Mastrogiovanni asked whether the HPC could ask the parties for additional clarification in certain areas given the large number of unknowns. Dr. Altman responded that the HPC had already done so. Ms. Mills added that the HPC sent the parties a comprehensive list of information requests and provided the opportunity for feedback on the preliminary report. She stated that the HPC does not expect the parties to provide any further information at this time.

Mr. Seltz stated that the day's presentation provides transparency on the transaction and is intended to be the end of the process. He noted that there may be areas in which there are not clear answers, but that people will have to weigh the facts in these areas and come to reasonable conclusions.

Ms. Mills reviewed a summary of the findings from the final CMIR report. For more information, see slide 23.

Dr. Altman provided a brief summary of the report. He stated that MEEI is a high-quality clinical institution that is facing financial problems. He added that the proposed transaction would potentially result in real and translatable savings from operational efficiencies outlined in the report. He noted the HPC's concern is that this transaction would lead to a price increase of an uncertain amount, which could impact the inclusion of MEEI in certain insurance products.

Dr. Cutler stated that the question is how much the prices will increase and to what extent the savings will be realized. He said that the parties view the financial situation of MEEI as more precarious than the HPC reports and that it is typical for an organization to be concerned with its financial situation.

Dr. Cutler stated that it is implicit in the parties' statements that MEEI needs to raise prices to maintain and/or improve the quality of medical care. He noted, however, that the parties did not provide information on the quality impact of the transaction. He stated that it is not the role of the HPC to decide if the cost impact is outweighed by that of quality.

Dr. Altman said he had a differing view of the situation, that, if the transaction is completed, then there is no more MEEI; it is part of Partners. Therefore, the financial and quality performance of MEEI is just that of Partners.

Dr. Altman added that, to the extent that Partners is looking for a return on investment, they may need to increase the rates at MEEI to justify the purchase. He noted that the HPC reviewed a similar situation with the proposed acquisitions of South Shore Hospital and Hallmark. He asserted that this was the focus of the question, since it would be unlikely for Partners to allow a decrease in quality for MEEI were the transaction to go forward regardless of whether Partners achieved rate increases for MEEI.

Dr. Cutler asked which state agency would be responsible for measuring the potential quality impacts of the proposed transaction and weighing them against the proposed costs. Mr. Cohen added that, on page 20 of the report, the parties had declined to offer an unequivocal, measurable commitment to limit price increases. He asked whether the HPC was the organization to which the parties had declined to offer this commitment.

Secretary Sudders noted the importance of understanding the role of the HPC, DPH, and Attorney General's Office. She stated that this transaction is also under review at DPH as part of the determination of need (DoN) process and, if the report is issued, will be referred to the Attorney General and submitted to the DoN program for future potential deliberations.

Dr. Altman stated that it is the HPC's responsibility to present the facts in this report. He noted that the HPC can make assumptions, but the final decision on the transaction rests with other organizations.

Secretary Sudders asked for clarification on a portion of the report, referencing the below quote from page 14.

"Nonetheless, the parties have stated that MEE 'will soon find it difficult to maintain all aspects of its clinical, research and teaching missions' due to a variety of financial pressures, including rising labor and pharmaceutical costs and reductions in federal funding for research and medical education."

Secretary Sudders clarified that while quality is extremely important, the HPC's report notes that the parties state that their financial pressures are based on more than just maintaining quality.

Secretary Sudders sought clarification on slide 21, asking this information referenced in the below quote was stated in the final report.

"The Final Report also notes that even while the parties claim that the transaction is necessary to ensure for MEE's long-term financial health, they concede that significant rate increases are not necessary. Achieving the parties' projected operating efficiencies would substantially improve MEE's financial performance."

Mr. Seltz responded that staff could provide clarity on where this information was located after the meeting. To the first question, he stated that the parties made claims about potential quality improvements from the transaction. In terms of a counterfactual, however, he noted that the parties stated that without the transaction there would be further degradations in quality, clinical mission, etc.

Mr. Seltz reviewed the proposed referral of the approved report to other agencies within the Commonwealth. For more information, see slide 24.

Dr. Altman asked for a motion to issue the final CMIR report. **Dr. Cutler** made a motion to issue the report. **Dr. Berwick** seconded. Mr. Mastrogiovanni abstained from the vote. The motion was approved with seven votes in the affirmative.

Dr. Berwick noted that the work of the HPC is an exercise of prediction. He stated that the HPC needs to know much more about the accuracy of its predictions and outcomes of the transactions. He suggested that the HPC launch a retrospective and disciplined review on the validity of the agency's predictions and outcome of various commitments over the years.

Dr. Altman stated that there are two different sets of estimates: those based on historic outcomes and those concerning market power. He noted that the HPC has demonstrable proof of what happens when an organization joins Partners: there is an immediate rate increase. Dr. Altman stated that this is not a guess, but rather information based prior transactions. He noted that predictions concerning changes in market power by virtue of an acquisition are somewhat murkier.

As an example, Ms. Mills stated that the final report assumes that the physicians at MEEI will join existing Partners contracts. She stated that the parties did not contest that this would result in \$6 million in increases. She added that, on the hospital side, the HPC provides a range of cost impacts based on how Partners has treated its hospitals in the past.

Dr. Cutler stated that it is incumbent upon the HPC to review the results of past transactions involving Lahey Health System, Beth Israel Deaconess Medical Center, and their affiliated entities when it conducts a CMIR of their proposed merger.

Secretary Sudders stated that, if this transaction is approved, then staff at the Attorney General's Office as well as the DPH and Public Health Council will use the HPC's information as part of their processes. She noted that the Public Health Council could potentially approve the transaction subject to certain public conditions. Secretary Sudders stated that any such conditions would result in public reporting to DPH, that the HPC could use the Cost Trends Hearing to request additional information, under oath, related to these public conditions, and that the HPC and Public Health Council could use this information to hold the parties to account in the future.

ITEM 4: Schedule of Next Meeting

This section of the meeting was tabled due to time constraints.

ITEM 5: Executive Session

Ms. Lois Johnson, General Counsel, provided an overview of the legal requirements around entering into executive session.

Dr. Altman asked for a motion to enter into executive session to discuss confidential information related to performance improvement plans. **Secretary Sudders** made a motion to move into executive session. **Dr. Berwick** seconded. As is required by statute, Dr. Altman conducted a roll call vote.

Ms. Elizabeth Denniston- Aye
Mr. Tim Foley - Aye
Secretary Marylou Sudders - Aye
Mr. Martin Cohen - Aye
Dr. Stuart Altman - Aye
Dr. David Cutler - Aye
Dr. Don Berwick - Aye
Mr. Ron Mastrogiovanni - Aye

The motion was approved with eight votes in the affirmative.

Mr. Seltz thanked the public for their attendance at the meeting. Dr. Altman adjourned the public meeting at 11:30AM.