**Nursing Facility Task Force**

Meeting Minutes

November 22, 2019

2:30-4:30 pm

Date of meeting: November 22, 2019

Start time: 2:35

End time: 4:30

Location: McCormack Building, One Ashburton Place, 21st floor, Boston, MA 02108

Members present:

* Secretary Sudders – Executive Office of Health and Human Services
* Secretary Acosta – Executive Office of Labor and Workforce Development
* Ruth B. Balser – Mass. House of Representatives
* Richard Bane – Massachusetts Senior Care Association
* Elizabeth Chen – Executive Office of Elder Affairs
* Tim Foley – 1199SEIU
* Ms. Gregorio 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

**Proceedings:**

Secretary Sudders called the meeting to order at 2:35 pm. Secretary Sudders noted that the meeting would be recorded to ensure the accuracy of the meeting minutes.

**Vote 1 to approve meeting minutes from the 2nd Task Force meeting:** Secretary Sudders requested a motion to approve the [October 18th, 2019 Meeting Minutes](https://www.mass.gov/doc/october-18-2019-meeting-minutes/download). Mr. Stapleton introduced the motion, which was seconded by Assistant Secretary Tsai and approved unanimously. Secretary Sudders and Secretary Acosta abstained from the vote because they were absent from the previous meeting.

Secretary Sudders introduced Ray Campbell, the executive director of the Center for Health Information and Analysis (CHIA) to present the [Baseline Report](http://www.chiamass.gov/assets/docs/r/pubs/19/Nursing-Facility-Report.pdf) on the Massachusetts Nursing Facility Industry: An Overview. Mr. Campbell first gave an introduction of CHIA’s mission. He explained that [CHIA](http://www.chiamass.gov/about-chia/) is an independent state agency that provides information and analysis about the Massachusetts health care system.

Next, Mr. Campbell introduced his colleague Caitlin Sullivan, director of policy at CHIA. Ms. Sullivan began her presentation by explaining that this is CHIA’s first report on nursing facilities in Massachusetts. She noted that the report and supporting materials will be [available on the CHIA website.](http://www.chiamass.gov/massachusetts-nursing-facilities/) The objective of the report, Ms. Sullivan said, is to advance transparency about the role of nursing facilities in the long-term care continuum and to inform data-driven policy discussions. The data is sourced from cost reports filed with CHIA annually. The data period is calendar years 2013 through 2017. The 2017 data is the latest year of available, but 2018 data will be available in the next few months, after which CHIA will update its report. Ms. Sullivan explains that the report starts with a narrative that explains the goals of the nursing facility industry, and includes a chartbook, an interactive dashboard, a databook, and a technical appendix. The report presents information across 3 major themes, including utilization, financial performance and quality measures. Certain facilities were excluded from the report, including those that serve special populations or those that don’t receive public funding.

Ms. Sullivan introduced a chart that shows total resident days from 2013 to 2017, segmented by major payers. The graph shows that there were 14M resident days in 2017. Resident days declined by 5.4% from 2013 to 2017 with the steepest decline from 2016 to 2017. The 3 biggest payers are Medicaid, Medicare, and Self Pay (i.e., the resident pays for the full amount of the stay). Medicaid is the payer for about 69% of days.

Representative Muratore asked if private insurance was included. Ms. Sullivan answered that the chart labels private insurance as “Commercial”.

Ms. Sullivan continued, saying that among the largest payers, Medicare days experienced the steepest decline, with a 14.8% decline from 2013 to 2017. In comparison, Medicaid days declined by 3.4%.

Mr. Bane said that this chart provides a good indication of the “plight of the provider”. He said that everyone because he believes Medicaid does not cover costs, and as Medicare days have steeply declined, provider struggle to offer quality service to Medicaid members.

Secretary Sudders says that this chart also shows significant changes in Medicare policy.

Ms. Sullivan clarified that Medicare days declined by 14.8% in comparison to Medicaid days decreasing by 3.4%. Ms. Sullivan clarified that, on the chart, “Medicaid” is denoted separately from “Non-MA Medicaid”.

Mr. Bane said again that this chart highlights the “plight of the provider” explaining that as Medicare days have decreased, providers struggle to offset losses associated with Medicaid days.

Secretary Sudders said that the Task Force should not conflate the patient populations cared for by Medicare and Medicaid as they are different.

Assistant Secretary Tsai responded to Mr. Bane, saying that the chart shows that individuals have altered their preferences over time to increasingly receive care in the community. Assistant Secretary Tsai said that he recently attended a conference in DC with other Medicaid Directors where his main takeaway was that Medicaid members’ preferences have changed over time, but the nursing facility industry has not evolved appropriately to react to this trend. He said that the Task Force needs to make sure the industry is adapting to changing preferences. Mr. Bane said that he doesn’t disagree.

Ms. Sullivan continued with her presentation. The next slide shows that system wide occupancy, defined as the percentage of operational beds that were filled throughout the year. Occupancy declined by 1.4% from 2013 to 2017; at the same time, Ms. Sullivan noted, there was a decline in the number of facilities. Ms. Sullivan said that CHIA’s report also highlights trends by county, and on a median basis, occupancy was slightly higher at 88.6% in 2017.

Ms. Sullivan presented the next slide, showing median total margin of all nursing facilities from 2013 to 2017. Median total margins declined every year and have been negative since 2014. She noted that the gap between the 25th and 75th percentile has widened from 2013 to 2017.

Secretary Chen asked if the margin on the chart includes non-cash items. Ms. Sullivan answered in the affirmative, clarifying that this chart includes depreciation. Secretary Chen noted that if a facility has high depreciation, then it will have a more negative margin. Ms. Sullivan agreed, and said that all facilities have fixed costs like real estate and equipment.

Representative Balser asked Ms. Sullivan to explain what depreciation means for a facility. Ms. Sullivan elaborated stating that fixed costs are a portion of expenses that all facilities incur related to the building. Mr. Bane added to this explanation and explained that depreciation is the annual allocation of expense associated with capital equipment or buildings aging. Secretary Sudders says that a good analogy to explain depreciation is a used car that loses value over time.

Mr. Bane said that the slide depicting median margins should be startling because it shows how challenging of a business environment providers face. Mr. Bane said it is tough for nursing facilities to innovate when the providers are just trying to stay in business.

Representative Balser asked to better understand an example of a depreciation. Mr. Bane said that depreciation is not a big component of the cost. Ms. Sullivan said that there is a subsequent slide that might clarify the Task Force’s questions about depreciation.

Senator Jehlen asked if the facilities in the bottom 25th percentile by margin are the same year over year, then how are they able to stay in business? Secretary Sudders said these facilities do not necessarily experience a cash-loss because margin includes non-cash expenses.

Assistant Secretary Tsai asked the Task Force if average EBITDA is trending down. Ms. Gregorio said that she has the data. Assistant Secretary Tsai, reading off Ms. Gregorio’s data, said that the average margin is ~5%. Assistant Secretary Tsai said that annual cash flow for facilities is positive and EBITDA may be a more appropriate financial measure if you are trying to understand cash flow. However, he said that all measures or margin are relevant to understand the financial picture of nursing facilities.

Mr. Bane answered Senator Jehlen’s question, saying that a single facility cannot stay in business with consistently negative margins over time, but perhaps a highly unprofitable facility is subsidized by a facility with a higher profit margin in the same operating group, just as Medicare subsidizes Medicaid.

Ms. Gregorio says that her point in sharing the EBITDA data is that EBITDA is trending downward over time. Assistant Secretary Tsai noted that average EBITDA is positive. Secretary Sudders suggested that the slide depicting the EBITDA data be introduced to the minutes as it is part of the discussion.

Ms. Sullivan continued with her presentation. The next slide shows median operating margins declining from 2013 to 2017. Ms. Sullivan said that the decline is explained by faster increases in operating expenses relative to revenue growth.

Secretary Chen said that it would be very interesting to look at the correlation between unprofitable facilities and quality. She posed the question that perhaps individuals choose to not receive care in low quality facilities and therefore these facilities lose money over time. ? Ms. Sullivan said that CHIA has released data that could support that analysis. Mr. Foley asked if one could look at the trend over time to help answer Secretary Chen’s question. Ms. Sullivan said that the data book has the information.

Secretary Acosta said that there is a steep decline in operating margins from 2015 to 2017. Mr. Bane said that nursing facilities have experienced accelerating expenses relative to revenue growth.

Ms. Sullivan says that the next slide shows operating expenses by category. The costs are depicted on a per resident day basis. Types of costs include nursing, variable, admin and general, fixed, and other. Nursing expenses have increased faster than other types of costs, 8.5% from 2013 to 2017.

Ms. Sullivan continued, showing a chart that shows the median nursing expense per day from 2013 to 2017. Ms. Sullivan says that compensation for CNAs and LPNs is driving an increase in expenses. The next slide shows resident hours per day by RN, LPN, and CNAs. Ms. Sullivan noted that her takeaway from this slide is that Massachusetts has more nursing hours per resident day than the national average and that nursing hours have not changed. However, she noted that national recommendations are for 4.1 hours per resident day; at 4.0 hours in 2017, Massachusetts is slightly below recommended hours.

Mr. Bane said that the chart also shows that nursing hours have not changed while providers are losing money. Secretary Sudders said that wages have increased.

Ms. Sullivan continued, presenting the next slide that shows the distribution of resident days by CMS Quality Ratings in 2017. The plurality of resident days were at facilities that received 3 stars. She further explained that 2/3rd of resident days were at facilities that received 3, 4, or 5 stars while the remaining1/3rd of resident days were at facilities that received 1 or 2 stars. Next, Ms. Sullivan presented the [interactive dashboard available on the CHIA website](http://www.chiamass.gov/massachusetts-nursing-facilities/).

Mr. Bane asked if the 2018 data will be uploaded to the dashboard when that data is available. Ms. Sullivan said yes.

Senator Jehlen said that the decline in Medicare days shows that there’s probably excess capacity, but that she wants to better understand the relationship between the bottom 25th percentile by margin, quality, and regionality. Ms. Sullivan said that she can help compile that information. Senator Jehlen said that counties might not be the appropriate measure of regionality. Ms. Sullivan said that they could present information in a variety of formats, if needed.

Senator Jehlen said that if nursing homes are disappearing, then we want the best nursing homes to not disappear. She said that is important that we preserve quality and regional access. Senator Jehlen said one potential outcome of this Task Force should be to provide recommendations on how to change the industry in order to fit the new reality. She noted that regionality is really important, as is quality.

Secretary Sudders suggested that Ms. Sullivan start with a county-based analysis, refining if finer granularity is needed.. Ms. Sullivan agreed.

Mr. Stapleton says that it is important for individuals to be close to their community.

Ms. Prendergast said that the Task Force should tie the decline in the Medicare days to the decline in the average length of stay. She said that on her campus, the average length of stay is now only about 11 days. She noted that her company only gets paid for the days a resident occupies a bed. Mr. Stapleton agreed that churn has increased, noting that his facilities have increasing admissions but decreasing occupancy.

Representative Balser said that if a facility was virtually full, then there should not be so many days of unoccupied beds between admissions. Ms. Prendergast responded, saying that if someone is discharged at 3pm, then that day does not count as occupied. Occupancy is counted at midnight. As a result, she said, there is usually a day in between discharge and admission when a bed is unfilled.

Ms. Annis said that the decrease in the average length of stay is tied to Medicare Advantage. Ms. Prendergast and Mr. Bane said that ACOs and treatment plans are also a factor.

Secretary Chen said that the Task Force should examine short and long stay separately. She said the industry is asking MassHealth to make up its problems with short stay residents. She asked if CHIA can parse its data by short stay vs. long stay.

Mr. Muratore says that the funding issue for MassHealth has long been an issue and that the short fall has been made up by Medicare historically, but as Medicare days have declined, then the MassHealth funding issue has become an even greater problem. At the same time, costs have gone up. He said we need to separate the issues and focus on the cost of MassHealth for long term residents.

Secretary Sudders asked Ms. Sullivan if she wanted to clarify what data CHIA has available. Ms. Sullivan said that they are unable to separate short and long term stays, but that CHIA is in the process of redesigning its cost reports to better answer these questions.

Representative Balser said the nursing facilities provide two very different kinds of services. For any given facility, she wondered if the Task Force can know how many beds are dedicated to short vs. long term stays. She said that, given all the discussion around converting nursing facilities to new kinds of LTSS services, we should track the two kinds of services that are provided today.

Representative Muratore said that any nursing facility would focus on the short term business if they could but that’s not possible because patients have choice about where they go. It’s very difficult to change the model of a nursing facility because the license does not allow it.

Secretary Sudders responded stating that at the request of the industry, DPH expanded what is allowed under the license to include other kinds of services. She said it was a high priority of the industry at the time, however only one facility has pursued such a license and expanded set of services.

Ms. Annis said that she would like to see more data on Rest Homes. Secretary Chen noted that MassHealth does not reimburse for Rest Homes; instead, they are covered by DTA. Secretary Sudders said Rest Homes are also referred to as a Level 4 bed.

Secretary Sudders said that MA is a community-first state. She continued explaining that over the last few years, assisted living facilities have expanded and that Massachusetts supports individuals to make choices, including the choice to receive care in their own home. Secretary Sudders said that we do need to separate the conversation around Medicare and Medicaid. The industry dislikes the changes in Medicare policy, but Massachusetts has no control over those changes as Medicaid is its own animal. She also said that none of us would want our family members in a 1 or 2 Star nursing facility. Representative Muratore says that no one, us included, would want to go into a low quality facility. He continued saying that we might prefer home-based care, but MassHealth funding is still an issue. He said that the Task Force should ask what is the appropriate number of nursing homes both in the Commonwealth and regionally.

Secretary Sudders said that is a great segue to the planned discussion. Secretary Sudders thanked CHIA for its presentation. Next, Secretary Sudders asked the Task Force to propose ideas to decrease excess capacity.

Ms. Annis said that she believed that not everyone should receive care at home. She said that Ms. Gregorio shared a [LeadingAge survey](https://www.mass.gov/lists/nursing-facility-task-force-meeting-materials) that showed that individuals preferred nursing facilities when they were asked where they would want to receive care if they had a cognitive disability. She noted that socialization is really important for older adults as with home-based care your only relationship may be with a caregiver you employ. Secretary Sudders said that she believes choice is important.

Representative Balser said that is difficult to discuss removing excess capacity because we are talking about a market. She said that government policy makers likely cannot shut down facilities.

Assistant Secretary Tsai asked if the industry has a point of view on restructuring. He said that there is a cohort of facilities with low occupancy, with about half of facilities operating below 86% occupancy. Assistant Secretary Tsai then stated, excess beds lead to unnecessary costs.

Mr. Bane said that decreasing excess capacity can drive improvements in care, but the Task Force should consider future growth in demand. Assistant Secretary Tsai said undue focus on future growth in demand is misplaced because Massachusetts has a problem right now. He said that if MassHealth pays for empty beds then those payments are not directed towards other kinds of services. He continued that future demand will impact the continuum of LTSS. A smaller number of people receive care in nursing facilities, so future growth will prompt a larger discussion around maintain services in the community.

Ms. Prendergast said that the question was asked how long it would take a nursing facility to convert to another kind of service. She said realistically it takes a long time, likely over two years.

Senator Jehlen said that not every building has to stay in service, but that there should be more models of care. She said socialization and supportive housing are important. Senator Jehlen continued, saying that she had the impression that the lowest occupancy facilities are low quality. She said she does not think we should try to keep low quality, low occupancy facilities in business for a potential surge in future demand. Alternatively, the Task Force should work on a strategy to ensure that high quality, high occupancy facilities stay in business. Senator Jehlen concluded saying that incentives may not be enough and that we may need some “hammers”.

Mr. Bane said that he is closing a building right now that has no deficiencies and has good quality.

Representative Muratore said that the Task Force should study low quality, low occupancy facilities by region. He said there may be some facilities in a region with access challenges. Secretary Sudders said that the Task Force can provide data on these facilities.

Assistant Secretary Tsai said that if MassHealth’s payment system were designed from scratch today to support the workforce and to support resident care, we would have a very different payment system. He outlined that an ideal payment system would rely on different assessment tools, increase payments for high acuity patients and increase the share of payments directed towards quality. He said we only pay 1% for quality today but suggested that it should be 10%. He said that when we discuss payment changes, we always get into this discussion of winners and losers; in the past, when we have tried to do reforms, we have reached a stalemate.

Secretary Sudders said that MassHealth was happy to convert the MassHealth assessment to Medicare’s assessments tools, however the industry’s response was that we need to hold everyone harmless, and that would cost ~$25M. She said we do not want to have high quality facilities go out of business, but that right now we likely do not pay enough for high acuity and high quality.

Senator Jehlen said that she wants to know where the low quality and low occupancy facilities are located.

Assistant Secretary Tsai said that, for context, MassHealth has invested $100-120M into nursing facility rates over the last 3 years. He said the he believes that it does not make sense to invest another $120M into the industry without reforms as this will merely sustain the facilities with low occupancy. Assistant Secretary Tsai noted that the entire Adult Day Health program is $100M, which in total is less than the rate increases the Nursing Facility industry has received over the last 3 years. He said that we need to make sure we receive benefits from a potential $100M investment.

Mr. Bane said that he is unhappy that he is closing a high quality facility at his own cost while other low occupancy, low quality facilities are staying open. Assistant Secretary Tsai responded by asking the industry what they think should be done about this.

Representative Balser focused the discussion again on a reformed payment system. Ms. Gregorio said that she is hearing two different discussions; one being that we need to shrink the system and two that we need to create a payment reimbursement system that focuses on occupancy, quality and workforce. She continued saying that in order to incentivize quality and workforce, we need to invest money into the system if we want fundamental change. She said there needs to be incentives for improvements as well and thanked the administration for their work in this area. She said that she believes that there are high Medicaid occupancy facilities in the low quality cohort and that we should invest in improving their quality. She said we can absolutely talk about reconfiguring or consolidation low occupancy facilities but we need to address the technical barriers in the way. Ms. Gregorio referenced Representative Mariano’s bill that provides low interest loans to facilities to reconfigure or repurpose their buildings for alternative services.

Secretary Chen said that each nursing facility should operate as an individual businesses. The state already responded to the licensure issue to allow for more flexibility. She said that to answer the question about what the Commonwealth wants nursing facilities to do, she believes the industry should shift its business model either up or down in acuity or otherwise change its business model. Directing her question to the nursing facility owners, Secretary Chen asked, as taxpayers, should the Commonwealth be funding empty beds.

Ms. Gregorio asked Secretary Chen if she just wanted nursing facilities to close. Secretary Chen says that she did not say that. Instead, she said that nursing facilities can repurpose or change their model.

Ms. Prendergast said that to shift the discussion back to regionality, the Task Force should look to see where in the state there excess capacity is and help direct providers to where they should be located. She noted that most facilities have Medicaid contracts with the state.

Secretary Acosta said that it is important to have a geographic lens. She said that some facilities that are not doing well are located in gateway cities and that there needs to be an alternate strategy for facilities in isolated areas.

Representative Balser asked if a facility is low quality, low occupancy, and has other nearby facilities, can MassHealth or DPH just close them. Assistant Secretary Tsai said that MassHealth follows federal rules called ‘any willing provider’ regulations. MassHealth creates program regulations and any provider that meets those regulations can receive MassHealth payments.

Ms. Gregorio said that when you look at low occupancy facilities, it is important to look at the diagnoses and the MMQ scores. She notes that those facilities often serve difficult-to-place residents and that we need to work with DPH to support facilities in need of quality improvement. Ms. Gregorio continued stating that it is important to look at regions. There are 20 sub-HSAs in which if one facility were to close, then the sub-HSA would be at maximum capacity. She continued, noting that there is a report coming out from Avalere, a consulting firm, to look at states where there have been many closures. The study shows, under a conservative scenario, Massachusetts nursing facilities will reach capacity by 2023. Ms. Gregorio said that a [recent study by UMass](https://scholarworks.umb.edu/cgi/viewcontent.cgi?article=1039&context=demographyofaging) ranked Massachusetts as first in the nation in terms of single elders living below their cost index. She said Massachusetts has a lot of poor, older adults.

Secretary Sudders said that the report is about the high cost of housing and is therefore not necessarily relevant to the discussion about nursing facilities. Secretary Sudders asked if the Avalere report accounts for individual preferences restating that Massachusetts is a community-first state with a full continuum of services that meet the needs of individuals. Secretary Sudders said that we should change the payment system to pay based on quality and acuity. She said that if we want to deal with this problem, we cannot hold anyone harmless. We should strive to have a well-sized industry where all facilities are 3+ Stars. She said that we have invested $100M over the last several years and that no one should be proud of the many troubling trends we have discussed today.

Representative Muratore believed he heard consensus between the comments of Secretary Sudders’ and the industry. Secretary Sudders said that she believes facilities should not be held harmless. She said we should increase rates, but that we cannot simply put a band-aid on the problems.

Representative Balser asked Assistant Secretary Tsai to present on his ideal rate system.

Representative Balser said that she has heard a lot of concerns on both the number of closures as well as the amount of money invested. She believes there is a deep wish to understand the problem and come up with a solution for the Commonwealth.

Mr. Foley said that the Task Force needs to determine where we have consensus. He noted that there are only two meetings remaining. Secretary Sudders said that at the next meeting we can go around the room and start with points of consensus.

Mr. Bane asked if it is possible to extend the life of this Task Force. He noted that the Task Force’s deadline of February 1 is quickly approaching. Representative Balser said that the Task Force was created by the legislature and it could be extended, but that the February 1 was designed to support recommendations for the FY21 budget.

Representative Muratore asked if it is possible to schedule an extra meeting or two. Secretary Sudders said that the Task Force should think about adding an extra meeting and can align on schedules at the next meeting.

Secretary Sudders said that the members of the Task Force should communicate data requests they would like answered for next month’s meeting.

**Vote 2 to adjourn**: Secretary Sudders requested a motion to adjourn. Ms. Gregorio introduced the motion and Secretary Chen seconded the motion. The motion was unanimously approved.