**Nursing Facility Task Force**

Meeting Minutes

October 18, 2019

2:30-4:30 pm

Date of meeting: October 18, 2019

Start time: 2:35 pm

End time: 4:30 pm

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

Members present:

* Lauren Peters – Executive Office of Health and Human Services (Designee of Secretary Sudders; Chair)
* Jennifer James – 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
* 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

**Proceedings**

Undersecretary Peters called the meeting to order at 2:35 pm. She welcomed the two new Task Force members and reviewed the agenda for the meeting.

Ms. Annis introduced herself as the administrator of Pond Home and as a representative of the Massachusetts Association of Residential Care Homes (MARCH). She proceeded to provide the Task Force with background on Pond Home as well as MARCH, describing the services that Residential Care Homes provide to more than 2,500 residents. Ms. Annis continued to share her prepared testimony as follows:

“We, the Residential Care industry share the financial and work force challenges presented by the Nursing Facility industry. Just like I am alarmed by the number of nursing home closings, I am equally concerned by the number of rest homes that have closed. Since 1998, 101 Rest Homes have closed in the Commonwealth, primarily for financial reasons. These closures have displaced over 4,000 aged residents and subjecting them to the trauma associated with involuntary transfers. I am here today and, on this task force, based on the efforts of Senator Anne Gobi, a staunch advocate for Rest Homes who understands the important role they play on the Massachusetts Healthcare continuum.  Through her efforts in filing an amendment to the budget, MARCH was provided a seat on the task force. I intend to honor her mandate to bring to the task force an understanding of the important role rest homes play, the financial challenges facing all remaining Rest Homes in the Commonwealth and to propose changes to the current reimbursement formulas.   MARCH has put together a paper on Rest Homes and the value they bring to the continuum of care, along with proposed policy changes we wish to share with the committee. I saw in the minutes from the September meeting people were asked to share their goals. Mine would be for the commonwealth to recognize the value of rest homes and nursing homes in meeting the care needs of elders and the other special groups we serve. I know it was mentioned more than once in the first meeting of this task force that improved reimbursement is not the total fix for the industry, but paying providers current costs to care for residents, and guaranteeing that costs would go up routinely as expenses and level of care needs escalate, would go a long way to help provide the excellent care our residents need and our employees want to provide. MARCH works cooperatively with Leading Age Massachusetts and Mass Senior Care Association, as our members have many of the same challenges as their members. MARCH supports and endorses Mass Senior Care Associations' efforts related to fair and adequate reimbursement for providing care. I do believe rest homes and nursing homes will always be needed to provide care to our most frail elders. One area that was not listed in the minutes from your first meeting, is the impact the prevalence of assisted living facilities have had on the long term care continuum in the Commonwealth. I think it would be helpful for this task force to review this topic.”

Ms. Annis then thanked Senator Gobi for providing MARCH a seat on the Task Force and said she was honored to represent them and work with the other members.

Ms. Prendergast, who was attending for the first time as a member of the Task Force, introduced herself as the President of D’Youville Life and Wellness Community, which includes a PACE center and over 200 nursing facility beds.

**Vote 1 to approve meeting minutes from the 1st Task Force meeting:** Undersecretary Peters requested a motion to approve the [September 20th, 2019 Meeting Minutes](https://www.mass.gov/doc/september-20-2019-meeting-minutes/download). A motion was introduced, seconded and approved by a majority voice vote. Ms. Gregorio abstained from approving the meeting minutes. She said that she believed that the meeting minutes did not include all of the topics discussed at the September meeting, including discussion of governance issues, quality issues, and closures. Senator Jehlen suggested that Ms. Gregorio could provide an addendum to the meeting minutes with any corrections she suggests. Ms. Annis and Ms. Prendergast also abstained from approving the minutes because they were not present at the first meeting.

Undersecretary Peters said the first item on the agenda was Assistant Secretary Tsai’s [presentation on MassHealth Rates](https://www.mass.gov/doc/october-18-2019-presentation-masshealth/download) available on the [Nursing Facility Task Force website](https://www.mass.gov/orgs/nursing-facility-task-force).

Assistant Secretary Tsai began his presentation, saying that his goal was to provide an overview of MassHealth’s nursing facility rates. He said he would briefly discuss suggested reforms, but he would leave additional discussion to future meetings. Assistant Secretary Tsai said that MassHealth has increased spend on Home and Community-Based Services (HCBS) in conjunction with federal programs. Nonetheless, nursing facilities are an important part of the continuum of Long Term Services and Supports (LTSS). Furthermore, HCBS waivers play an important role in supporting individuals at nursing facility level of care in the community.

Representative Balser asked Assistant Secretary Tsai to clarify the meaning of ‘nursing home level of care’. Assistant Secretary Tsai clarified that ‘nursing home level of care’ means that an individual meets the clinical eligibility criteria to receive care in a nursing facility.

Mr. Bane asked if the number of utilizers displayed on slide 3 of Assistant Secretary Tsai’s presentation represents unique utilizers. Assistant Secretary Tsai they are not unique utilizers; an individual can use more than one HCBS service. Mr. Bane continued that the purpose of his question was to better understand if HCBS services are really cost effective relative to nursing facilities. Assistant Secretary Tsai said that the slide is not structured to answer that question.

Assistant Secretary Tsai continued with his presentation. He said that there are both structural challenges and rate challenges associated with the nursing facility industry. It is difficult to have a sustainable nursing facility industry if occupancy rates are low. In addition, he said, rate challenges include how total spend is allocated. Currently, the rate system is overly complex and leads to administrative burden.

Ms. Gregorio asked a question about slide 10 of the presentation, which presents a list of nursing facilities in Barnstable country. She said each facility has its own context; furthermore, she said the numbers are out of date and that it is not helpful to look at the operating margins for a single year. Senator Jehlen pointed out that, on the slide, there are 2 nursing homes with over 80% occupancy rates and with over 60% Medicaid occupancy, but one has a very positive margin and the other has a very negative margin. She said this potentially did not make sense. Ms. Prendergast answered saying that occupancy rates alone do not explain margin; other factors are important to a nursing facility’s margin, including payer mix and patient churn. Representative Muratore said that he was surprised that Cape Regency and Cape Heritage have less than 5% Medicaid occupancy rates.

Assistant Secretary Tsai continued with his presentation, saying that, for historical reasons, nursing facility rates are extremely complicated. The regulations are difficult to understand and to administer. The clinical assessment of members is based on a state specific measure of quality, rather than Medicare’s national measure.

Ms. Gregorio said that she believes that the occupancy rate penalty is not appropriate, does not track national standards, and leads to a large reduction in payments to nursing facilities. She believes it is one of the key issues in addition to what is listed on slide 7.

Assistant Secretary Tsai continued with his presentation, saying that over the past 20 years various add-ons have been created, rebased and eliminated dozens of times. This is one reason rates are overly complex. He said that regardless of the total number of dollars in the system, he said that he believes everyone can agree that the way payments are allocated should be reformed. He emphasized that MassHealth wants to modernize the way nursing facilities are reimbursed better accounting for the acuity of their members.

Assistant Secretary Tsai said that on 11/01 MassHealth plans to publish regulations that make a $56M investment in the industry. The capital component of the rate will be simplified by creating class-based rates. This reform will make rates less regressive; currently higher rates are paid to facilities with a lower MassHealth occupancy rate. He acknowledged that there are ongoing conversations with the industry about what the appropriate level of ‘hold harmless’ for the capital component of the rate should be.

Assistant Secretary Tsai said that MassHealth currently invests over $15M annually in special populations. Additional targeted payment methodologies are under consideration, including for members with behavioral health conditions, members with intellectual disabilities and other special populations. In addition, only ~1% of total nursing facility spend is allocated to quality. Policies are under consideration to increase the share of spend allocated to quality.

Undersecretary Peters invited members of the Task Force to ask questions on the presentation or about MassHealth Rates. Mr. Bane reemphasized Ms. Gregorio’s comment that the occupancy adjustment in the nursing facility payment methodology is a key concern for the industry. Assistant Secretary Tsai said that the occupancy standard in the rate formula is 94% and 96%. He said if this formula is changed, that would require a substantial investment that could otherwise be used to invest in other policy reforms or in HCBS services.

Ms. Gregorio asked what the ideal occupancy rate is, according to MassHealth. She also said that the long term demand should be considered. She presented evidence from a [2019 LeadingAge survey of older baby boomers](https://www.mass.gov/files/documents/2019/10/21/NH%20Task%20Force%20-%20Tara%20handout_0.pdf) available on the [Nursing Facility Task Force website](https://www.mass.gov/orgs/nursing-facility-task-force). The survey shows that when individuals are asked in what setting they would want to receive help with daily activities if they had a cognitive disability, individuals say they prefer nursing facilities. She said that she believes that a better occupancy rate would be 92% to allow for consumer choice, but that there needs to be an appropriate solution for various communities across the state. She said the industry is receiving $150M less than they otherwise would because of the occupancy standard. Mr. Stapleton said that his nursing facility has experience a decrease in its occupancy rate recently, but that total revenue has increased because the payer mix has shifted. Ms. Gregorio also pointed out that nursing facilities need available occupancy to allow for new admissions and to ensure access.

Mr. Bane said, that although 1/6th of facilities have less than an 80% occupancy rate, 5/6th of facilities have high occupancy. The facilities with low occupancy rates might have a unique story. Assistant Secretary Tsai said that occupancy rates are a key structural issue. Ms. Gregorio emphasized that we cannot only focus on the occupancy rate. She said if rates are not based on current cost reports, with a reasonable occupancy standard, then it will be very difficult for any facilities to stay in business, even if the facilities have high occupancy rates.

Ms. Gregorio asked when the Task Force will focus on proposed reforms. Undersecretary Peters said that the planned agenda for the next meeting is to focus on quality and on excess capacity in the system.

Undersecretary Peters invited Ms. Gregorio to make her [presentation on the nursing facility work force](https://www.mass.gov/files/documents/2019/10/21/FINAL%20DRAFT%20-%20NF%20Task%20Force%20PPT%20Oct%2018%202019%20.pdf) available on the [Nursing Facility Task Force website](https://www.mass.gov/orgs/nursing-facility-task-force).

Ms. Gregorio said that the nursing facility industry cares for 40,000 residents daily and employs 73,000 total employees. Nursing facility margins, on average in 2017, are -1.6%. Nursing facilities with higher MassHealth occupancy rates have a more negative margin, on average. She said that the goal is to ensure quality care, especially for members with higher acuity who are recommended to receive care in a facility setting. Average acuity has increased over time; the percentage of residents with severe cognitive impairments increased from 15% in 2002 to 40% in 2014. 45,000 direct care staff are employed by the industry. The starting wage of Certified Nursing Aides (CNA) is about $13. She said that CNAs are the backbone of the nursing facility industry. They have completed a robust set of trainings and are critical to providing care to members. Many work multiple jobs and may be dependent on public assistance. There is a 17% CNA vacancy rate. There are also vacancies for other direct care staff workers. Ms. Gregorio said that nursing facilities are implementing a number of innovative tactics to manage the work force, but it is still very difficult to maintain adequate staffing levels. She cited that 81% of facility staff are or have experience burnout or job stress and 23% of facilities in 2019 have limited or considered limiting admissions due to a lack of staff.

Representative Balser asked if immigration policy has an impact on staffing. Ms. Gregorio said immigration has an important impact on facilities’ ability to staff and 1,500 CNAs are impacted by Temporary Protected Status (TPS) today.

Representative Muratore asked what the appropriate starting salary for CNAs is relative to the minimum wage. He pointed out that the minimum wage is slated to go up soon. Ms. Gregorio responded to Representative Muratore that a recent Mass Senior Care Membership survey indicated that an ideal CNA starting wage would be $15. Ms. Gregorio continued with her presentation, saying the CNA wages are below PCA wages. But the employment situation for nursing facilities will become even more challenging going forward because the minimum wage will increase, adding additional pressures to staffing. The premium between the CNA starting wage and the minimum wage has declined over time from 30% in 2014 to 10% in 2017. She said that facilities are struggling to increase direct care spending while Medicaid rates have not kept pace.

Ms. Gregorio said that, according to CMS, in 2017 Massachusetts provided 4.08 hours of care per resident on average per day, below the national average. Ms. Gregorio said one reason for this is the Medicaid shortfall. Secretary Chen asked Ms. Gregorio to clarify what she means by a ‘Medicaid shortfall’. Ms. Gregorio answered that the Medicaid shortfall is the difference between the actual cost to take care of a member and the MassHealth rate.

Ms. Prendergast said that slide 15, which displays the average hours of direct care staffing per a nursing facility resident, is tied to a nursing home’s decision to have to provide fewer staff per member because of their tight budgets. Nursing homes want to be able to provide more care per member. Ms. Prendergast says that potential recruits often ask what the staffing model is in the facility because they are concerned about how much care is provided to members.

Ms. Gregorio continued with her presentation, saying that the nursing home CNA average wage is $15.36, lower what CNAs can receive in a hospital. This gap is tied to the Medicaid share of payments. Ms. Gregorio said that facilities with lower Medicaid occupancy rates have higher quality on average than those with higher Medicaid occupancy rates. Massachusetts is falling behind the national average in terms of the percentage of facilities that are free of deficiencies.

Ms. Gregorio concluded by turning to workforce solutions. She said that the work force issues cannot be solved without increases to MassHealth rates. In particular, she reemphasized the importance of basing rates on 2017 cost reports and using actual days instead of an occupancy standard that imputes the number of days. Ms. Gregorio said she supports the passage for the Quality Jobs Initiative. In addition, she said she supports the Healthcare Collaborative’s recommendations.

Undersecretary Peters thanked Ms. Gregorio for her remarks and invited Undersecretary James to give her [presentation on the Massachusetts Healthcare Collaborative](https://www.mass.gov/doc/october-18-2019-presentation-eolwd/download) posted on the [Nursing Facility Task Force website](https://www.mass.gov/orgs/nursing-facility-task-force).

Undersecretary James said that the Healthcare Collaborative is working to propose solutions to Massachusetts’s growing healthcare labor shortage.Massachusetts’s healthcare labor shortage is expected to double in the next 5 years to 43,000. Workforce issues are dependent on quality, access, and payment rates. The Collaborative is a private sector led initiative that is providing recommendations to improve workforce issues across the industry. The Collaborative is chaired by EOLWD Secretary Acosta and Dr. Mark Keroack, CEO of Baystate Health. The Collaborative brings together a diverse set of stakeholders, including government, educational institutions, industry, and public organizations. The Collaborative identified 3 priority job groups to focus on: registered nurses, direct care workers, and behavioral health workers. The Collaborative recommended 6 main ideas. Undersecretary James emphasized 2 main ideas related to the nursing facility industry. First, we should evaluate the CNA certification process to increase graduation rates while exploring regulatory implications for clinical training locations and teaching qualifications. Second, we should identify areas for direct care workers to take on higher level skills and increase their upward mobility via a career ladder. She said one problem with the career ladder today is that there is a big jump between CNA and RN.

Undersecretary Peters thanked Undersecretary James for her remarks and suggested that the remainder of the meeting time focus on an open discussion to the topics discussed today.

Ms. Gregorio spoke of her recent attendance at a Congressional hearing recent federal immigration policies and their impacts on the direct care workforce were discussed. Representative Balser asked whether the White House’s policies are having a negative impact on the nursing facility industry and indicated that we need more workers, not fewer. Representative Balser requested that the record reflect that the White House policies are having a negative impact on staffing. Ms. Gregorio said that the room was full of nodding heads in agreement and asked that this agreement be reflected in the record.

Representative Balser continued, asking about the occupancy rate. She asked ‘is there a hypothesis, if we consolidated, would there be enough revenue to pay for the workforce and for residents’? Assistant Secretary Tsai said that his point is not about changes to the size of the pie, but instead that the Commonwealth should focus its investments broadly across the entire continuum of care. Representative Balser said that she believed the direct care workforce is not being paid adequately and that she was aware of the shift to HCBS because the legislature played an important role in that shift. She repeated her question, asking if there a relationship between the occupancy rate and payments to workers. Assistant Secretary Tsai said one can run the math, but the picture is complicated. He said that he thinks we need to consider both the total payments and how those payments are allocated.

Mr. Foley asked if the members of the Task Force have a common understanding of the needs of the future. He asked, what are the needs of the nursing facility industry in the future and how can we ensure that workers are receiving adequate wages? Mr. Foley said, emphasizing a point he drew from Ms. Gregorio’s presentation, the starting wage of nursing facility workers is too low. Mr. Foley emphasized that CNAs care about the purpose and meaning of their jobs, not just the salary they receive. He said CNAs want to be able to deliver care to workers. Mr. Foley said that he is supportive of the shift to HCBS, but that workers are underpaid in both the nursing facility industry and in the HCBS LTC industry.

Senator Jehlen continued on the theme of Mr. Foley’s comments, saying that work force issues are critical. She said that if there are no workers, then residents cannot receive care.

Mr. Foley asked Assistant Secretary Tsai to respond to Ms. Gregorio’s presentation. Assistant Secretary Tsai said multiple things can be true all at the same time. He said that he agrees that nursing facility quality and sustainability are important issues. There are real fiscal challenges, he said, but the set of solutions is broader than just the total payments. He said that the answer is not to do nothing, but to think creatively across the entire continuum.

Ms. Prendergast said, citing the [September 20, 2019 Nursing Facility Task Force minutes](https://www.mass.gov/doc/september-20-2019-meeting-minutes/download), that Mr. Bane said that no one chooses to receive care in a nursing facility; instead individuals receive care in nursing facilities because they provide the level of care that the individuals need. She said that nursing homes play a critical role in providing care for the highest acuity members.

Assistant Secretary Tsai said that we need both a robust continuum of LTSS and also a robust workforce for nursing facilities.

Representative Muratore agreed with Ms. Prendergast that ‘no one chooses to go to a nursing facility,’ but that they provide needed care to the most acute individuals. He said that nursing homes play an important role in more quickly rehabilitating individuals after discharge from a hospital; the rate of recovery is much quicker in a nursing home than at home. He also said that there are opportunities to convert empty nursing facilities to other opportunities.

Secretary Chen said that she believes there is a gap in available services for middle income individuals to remain in the community. She is concerned about middle income people who neither receive public financing nor have the income to afford quality care on their own. Secretary Chen indicated that turning excess capacity into housing with services and supports would be a welcomed solution to address needs.

Undersecretary Peters said that we need to come up with innovative solutions to the issues discussed today because there is not an unlimited pool of money to increase MassHealth funding. She said the discussion would continue at the next meeting on November 22, 2019.

Mr. Bane volunteered to discuss quality of care and patient experience at a later meeting. Undersecretary Peters agreed.

Representative Muratore suggested that the Task Force consider adding additional meetings to its schedule. Undersecretary Peters said that after today’s meeting, the Task Force can coordinate on proposed solutions and do its ‘homework’ to make sure the remaining meetings are productive. In addition, she said meeting minutes will be circulated with enough time before the next meeting to allow for potential edits.

**Vote 2 to adjourn:** Undersecretary Peters requested a motion to adjourn. A motion was introduced, then seconded and approved unanimously.