MINUTES OF THE HEALTH POLICY COMMISSION

Meeting of March 29, 2017

MASSACHUSETTS HEALTH POLICY COMMISSION

Date of Meeting: Wednesday, March 29, 2017
Start Time: 12:00 PM
End Time: 2:30 PM

	Present?	ITEM 1: Approval of Minutes	ITEM 2: Vice Chair Appointment	ITEM 3: 2018 Health Care Cost Growth Benchmark	ITEM 4: Final Regulation Governing PIPs	ITEM 4: Process Governing PIPs
Carole Allen	X	X	X	X	X	X
Stuart Altman*	X	X	M	X	X	X
Don Berwick	X	X	X	2nd	X	X
Martin Cohen	X	X	X	X	X	X
David Cutler	X	2nd	X	X	2nd	2nd
Wendy Everett	X	M	X	X	M	M
Rick Lord	X	X	X	X	X	X
Ron Mastrogiovanni	X	X	2nd	X	X	X
Marylou Sudders	X	A	A	M	X	X
Kristen Lepore	X	X	X	X	X	X
Timothy Foley	X	X	X	X	X	X
Summary	**11 Members Attended**	**Approved with 10 votes in the affirmative**	**Approved with 10 votes in the affirmative**	**Approved with 11 votes in the affirmative**	**Approved with 11 votes in the affirmative**	**Approved with 11 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, March 29, 2017.

Commissioners present included Dr. Stuart Altman (Chair); Dr. Wendy Everett (Vice Chair); Dr. Carole Allen; Mr. Martin Cohen; Dr. David Cutler; Mr. Ron Mastrogiovanni; Mr. Rick Lord; Mr. Timothy Foley; Dr. Donald Berwick; and Ms. Lauren Peters, designee for Secretary Kristen Lepore, Executive Office of Administration and Finance.

Secretary Marylou Sudders, Executive Office of Health and Human Services, joined the meeting at 12:06 PM. Undersecretary Alice Moore, designee for Secretary Marylou Sudders, Executive Office of Health and Human Services, joined the meeting at 1:48 PM.

Dr. Altman called the meeting to order at 12:00 PM and welcomed those present.

ITEM 1: Approval of Minutes from February 8, 2017

Dr. Altman solicited comments on the minutes from February 8, 2017. Seeing none, he called for a motion to approve the minutes. **Dr. Everett** made a motion to approve the minutes. **Dr. Cutler** seconded. The minutes were unanimously approved.

ITEM 2: Commissioner Updates

Dr. Altman announced that Mr. David Seltz, Executive Director, had agreed to a new three-year contract. He thanked Mr. Seltz for his work.

Dr. Altman said that he had spoken with Mr. Seltz about the possibility of reorganizing the HPC's committee structure and that further information on this topic would be forthcoming.

Dr. Altman thanked Dr. Everett for her work as Vice Chair of the HPC's Board. **Dr. Altman** made a motion to re-appoint Dr. Everett to a one-year term as Vice Chair of the HPC. **Mr. Mastrogiovanni** seconded. The motion was unanimously approved.

ITEM 3: 2018 Health Care Cost Growth Benchmark

Dr. Cutler introduced the process for modifying the 2018 health care cost growth benchmark. He thanked staff for conducting a highly informative public hearing on the topic.

Mr. Seltz provided an overview of the benchmark modification process. For more information, see slides 10-17.

Ms. Lois Johnson, HPC General Counsel, provided an overview of the key takeaways from testimony and presentations on the potential modification of the benchmark. For more information, see slides 18-23.

Dr. Cutler asked the Board members for comments on the modification of the 2018 health care cost growth benchmark.

Mr. Cohen said that the most powerful presentation from the benchmark hearing was from Dr. David Auerbach, HPC Director of Research and Cost Trends. He noted that Dr. Auerbach's presentation outlined opportunities for savings in the market. He stated that, given these potential savings, the HPC should allow the benchmark to fall to 3.1% to push the market to implement changes.

Secretary Sudders said that Massachusetts has an obligation to its citizens to do everything possible to continue to curtail spending growth in order to allow this spending to go to other things in the economy. She said that it was important that the HPC establish a benchmark of 3.1% in keeping with the intent of Chapter 224. She noted that the HPC should use the Cost Trends Hearings to have conversations targeted at the high-cost areas of the state's health care system.

Secretary Sudders added that her endorsement of the lower benchmark came with the understanding that benchmarks are not always met and that parts of the health care system might be above that threshold while others might be below it.

Ms. Peters echoed Mr. Cohen and Secretary Sudders. She said that now was not the time to accept the status quo in the health care market. She noted that it is important to signal to the market that more aggressive steps towards cost reduction are necessary. She said that, for these reasons, she was also very much in support of the 3.1% benchmark.

Dr. Berwick noted his support for the 3.1% benchmark. He said that Massachusetts should be a proud leader in the field of cost reduction and that the 3.1% benchmark would be an important step towards this goal. He said that he was encouraged that the vast majority of testimony at the benchmark hearing had been in favor of the lower benchmark. He said that he believed that the 3.1% benchmark could be achieved without harming care. Dr. Berwick added that the HPC should be collaborating with those who deliver care to achieve the lower benchmark. He said that he was interested in learning more about pharmaceutical spending.

Mr. Lord said that the Associated Industries of Massachusetts (AIM) had always supported an aggressive target regarding cost growth. He said that Massachusetts has always been ambitious in the realm of health care. He noted that, with Chapter 58, Massachusetts became the first in the nation to mandate universal coverage. He said that Chapter 224 had been similarly ambitious with the creation of the HPC.

Mr. Lord said that the HPC had identified opportunities for savings that would take inappropriate and wasteful spending out of the system without harming quality and it was time to take steps to address these issues. He said that he was prepared to meet with his fellow business organizations to support an effort to advance these cost containment efforts. He stated that the aggressive

benchmark provided a great opportunity for the business community to work together and rein in wasteful spending.

Dr. Allen noted that the physician community had been somewhat more in favor of sticking with a 3.6 percent benchmark. She noted that this was rooted in a fear that the burden might fall disproportionately on providers or physicians. She said that, in spite of this opposition, she was in favor of the 3.1 percent benchmark.

Dr. Allen stated that the preponderance of the testimony supported the more aggressive target and that the intent of the law was to push for both a lower benchmark and for alternative payment methods.

Dr. Allen added that having a benchmark has made a difference over the past four years. She stated that a lower benchmark would force the system to look at cost drivers and innovatively address them. Dr. Allen noted that Massachusetts will need to continue to be a leader in health care cost containment, especially in light of potential changes at the national policy level. She also added that certain types of providers would be reasonably expected to exceed the benchmark. She noted that it was important that the Board recognize some of the caveats raised in the testimony. She said that, for all of these reasons, she endorsed the 3.1 percent benchmark.

Mr. Foley said that he agreed with much of what was said by the rest of the Board. He said that it is important for the HPC to keep its foot on the gas regarding cost containment. Mr. Foley noted his amazement at the consensus to hold the market accountable to the lower benchmark at the hearing. He said that he was also surprised by the number of caveats that were given. He echoed Secretary Sudders' point about the Cost Trends Hearings.

Mr. Foley noted that some of the underlying issues in the system had not been addressed, as outlined by the recent Provider Price Variation (PPV) Commission report. He said that the HPC will need to determine what its role in this conversation will be. He added that it was important that cost savings not come at the expense of quality.

Mr. Foley asked Board members to consider the important role that health care workers play in the Massachusetts economy and the impact of changes on the workforce as well as low-cost, safety net community hospitals. Mr. Foley also noted that, if savings were achieved at the lowest levels outlined on slide 17 that would offset the growth in spending. He said that he supported the 3.1 percent benchmark.

Secretary Sudders said that Mr. Foley's point about the health care workforce was an important one and that often staff lay-offs seem like an easy solution to control costs. She said that it was important for institutions to think about how to re-engineer their work and processes rather than go immediately to workforce reductions.

Dr. Everett added that at the hearing she had expressed some concern about setting a more aggressive target and, echoing points made by Secretary Sudders, Mr. Foley, and Dr. Berwick, if the Board set the more aggressive benchmark, in light of an aging population, and also wanted to

avoid major disruptions to the workforce, the role of the HPC may be drastically changed. She said that this was a discussion the Board had yet to have other than beginning to identify pain points and areas in which Board members believed that change could happen. She said that, thus far, progress had not been made in these areas and that if the HPC wanted to maintain credibility and effectiveness and to avoid merely setting an artificial number it would have to be innovative. She said that she feared that otherwise the agency would lose its credibility and effectiveness.

Dr. Berwick said that the most effective route to cost reduction was quality improvement and that providing patients with the care they need was the best way to reduce spending.

Mr. Mastrogiovanni said that he was concerned that a more aggressive benchmark would have a potential impact on quality and smaller providers. He noted that meeting a more aggressive benchmark may not be feasible given the combination of Massachusetts' aging population, already high premiums, and drug costs. He added, however, that cost growth in the state needed to be reined in and that the market needed to be pushed toward innovation in order to maintain quality while reducing costs. He said that, given their expertise, his fellow Board members were making him feel more comfortable with the 3.1 percent benchmark. He noted that the aggressive benchmark could help Massachusetts lead the nation in health care cost containment efforts.

Dr. Cutler said that he agreed very strongly with the consensus of his fellow Board members that the 3.1 percent benchmark would be appropriate. He added that there were action steps that the Commonwealth and the HPC would need to take to make that happen. He encouraged the Board to be as tough on itself as it was preparing to be on the market. He said that the Board would need to put aggressive timelines in place and honestly evaluate its performance.

Mr. Mastrogiovanni said that he believed there might be a general increase in inflation nationally and that health care costs had traditionally been a multiple of this rate. He said that this only increased the degree to which the Board would need to stay focused on these issues and strategies for cost reduction. He stated that the Board would need to devise specific actions to help organizations to meet the 3.1 percent goal.

Dr. Altman said that he appreciated the conversation and the input of all of the Board members. He said that he felt honored to be a member of the group and that he agreed completely with the sentiment of the other Board members. He echoed Mr. Lord's point about the Commonwealth's history of taking ambitious steps in health care as well as others' points about the benchmark being a growth metric and not overall cost.

Dr. Altman said that, over the past four years, certain areas - such as premium growth - had been significantly under the benchmark. He noted that much of the increase in health care costs had been for highly necessary services that resulted from the passage of the Affordable Care Act (ACA). He said that the fact that MassHealth had increased its spending should not necessarily be viewed as a negative since important services were provided to that population. He said that the Board should not lose sight of the sub-components of total medical expenditures (TME) and the fact that many major providers, insurers, and consumers had beaten the benchmark.

Dr. Altman added, however, that health care cost containment was going to become more difficult and that the 3.1 percent benchmark would be a difficult target. He added that he does not believe in the idea of pass-throughs and that, while pharmaceutical prices were a cost driver, they should not be a complete pass-through as appropriate use of pharmaceuticals could lead to higher quality and lower spending. He said that the same was true of labor costs. He said that he was not picking on any one component of the system but that it was important that the system use its resources in a positive way. He pointed out that HPC would have to be part of a larger process to reach this goal. He reiterated his support for the 3.1 percent benchmark and his appreciation of the inputs of the Board.

Dr. Altman asked if there were further comments.

Mr. Foley asked how the result of the vote would be communicated to the legislature and the public. Mr. Seltz responded that the statutory requirement was that the result be posted on the HPC website but, given the participation of the Joint Committee on Health Care Financing in the public hearing process, the agency planned to notify its members via a letter.

Mr. Foley suggested that the sentiment of the conversation held at the Board meeting be captured in the letter and website posting. Mr. Seltz said that the HPC could provide meeting minutes reflecting the conversation.

Dr. Altman asked if there were any further comments. None were heard. He called for a motion to establish the health care cost growth benchmark for 2018 as 3.1 percent. **Secretary Sudders** made the motion. **Dr. Berwick** seconded it. The motion passed unanimously.

ITEM 4: Cost Trends and Market Performance

Dr. Cutler provided a brief introduction to the Cost Trends and Market Performance section of the meeting.

ITEM 4a: Update on Notices of Material Change

Ms. Megan Wulff, Deputy Policy Director for Market Performance, provided an update on notices of material change (MCNs) received since the last Board meeting. For more information, see slides 27-29.

Dr. Cutler asked whether the HPC had received an MCN from Beth Israel Deaconess Care Organization (BIDCO) and Lahey. Ms. Wulff responded that the HPC had not received this MCN.

Dr. Berwick asked whether the HPC was going to conduct a review of historic transactions to assess their impact. Ms. Wulff responded that staff anticipated looking back at many of the transactions that had come before the HPC.

Dr. Altman said that the evaluation of past transactions was an important and difficult area as it was easy for an organization to change course from its stated actions. He suggested putting all organizations on notice that they would be held accountable to the commitments made during the MCN process.

Dr. Berwick suggested that staff formalize the review of past transactions and dedicate a portion of a meeting to reviewing results. Ms. Wulff said that this might also be a part of a future Cost Trends Hearing.

Dr. Cutler said that there might be value in having this discussion prior to the Cost Trends Hearing so that the HPC could use the Hearing as a venue to react to the results of these transactions.

Mr. Mastrogiovanni said that examining the impact of these transactions on the entire marketplace would be critically important for the HPC. Ms. Wulff agreed and said that since the agency had been reviewing transactions for almost four years the data was now available to finally take a look at some of the earlier transactions.

Dr. Altman asked whether there were further comments on the MCN update. None were heard.

ITEM 4b: Final Regulation and Process Governing Performance Improvement Plans

Mr. Seltz stated that performance improvement plans (PIPs) are a key function of the HPC and would be a critical component of its mission moving forward.

Dr. Altman echoed Mr. Seltz's comments and said that this could be particularly true given the institution of a more aggressive benchmark.

Ms. Kara Vidal, Senior Manager for Market Performance, provided an overview of the final regulation governing performance improvement plans (PIPs). For more information, see slides 31-35.

Dr. Altman, referencing slide 35, asked Ms. Vidal to clarify the distinction made between a PIP and Cost and Market Impact Review (CMIR). Ms. Vidal said that a CMIR resulted from an MCN while PIPs represent a separate authority that the Board has when the state as a whole exceeds the benchmark.

Ms. Johnson provided an overview of the process governing PIPs. For more information, see slides 36-41.

Dr. Altman asked whether a list of entities that had exceeded the benchmark would be provided individually to Board members even though these names were confidential. Ms. Johnson responded in the affirmative.

Dr. Altman asked whether the other information provided by CHIA was also confidential or whether some of it might be public. Ms. Johnson said that the list provided by CHIA was confidential.

Dr. Altman asked whether Board members could discuss individual organizations under consideration for a PIP. Ms. Johnson said that if Board members wanted to discuss the list and go into the technicalities of why entities were on that list that could be done in executive session.

Secretary Sudders clarified that the names of the entities would be known to Board members prior to deciding to go into executive session but would not be public. She said that executive session was a useful tool for the Board as it allowed members to deliberate. She said that this model respected the intent of Chapter 224. She added that where the Board would have to exercise caution was to keep any executive session conversation to the confidential data and away from other topics that might be subject to open meeting law.

Dr. Altman said that the Board could then vote in executive session to require a PIP but would then have to bring it back into public session to acknowledge that vote. Ms. Johnson said that the Board could vote in executive session by roll call. Secretary Sudders added that the public has a right to know the results of the roll call in executive session.

Dr. Berwick asked if the identity of the entity remained confidential if the Board voted not to require a PIP. Ms. Johnson said that the name of the entity would be redacted. Mr. Seltz said only at the point of a decision to require a PIP would the entity be made public.

Dr. Altman asked Ms. Johnson to go into more detail on the process for an entity to request a PIP waiver. Ms. Johnson said that a waiver could be granted on the basis of new information the entity might submit that the HPC had not considered. She said that the process was designed such that staff hopes never to come to the point of a waiver as the information gathering ahead of any PIP recommendation should be robust enough to avoid this circumstance. She said that the plan was for the HPC to have already considered any mitigating factors but that the waiver process was required by statute.

Dr. Altman asked if this could be conducted in executive session or whether it would take place in public. Ms. Johnson said that a waiver would require a Board vote. She said that the name of the entity would be public at this point and it may not be necessary to discuss confidential information, in which case the business could be conducted in a public meeting.

Dr. Altman said that it would be hard to imagine not going into executive session and discussing the confidential information in a waiver consideration. Ms. Johnson said that all of the information would be provided to the Board ahead of any meeting but discussing confidential information in detail would need to take place in executive session.

Mr. Foley asked if there was a timeline for the entity to file an extension or a waiver request for a PIP. Ms. Vidal clarified that the entity would be required to file a PIP, extension request, or waiver request within 45 days. She said that an entity could apply for a waiver and, if denied, file for an extension but could not file for an extension and then a waiver.

Secretary Sudders asked whether an entity could potentially apply for an extension on day 44 thus allowing for 89 days. Ms. Vidal said that this was correct.

Secretary Sudders asked, regarding step three on slide 38, whether it was the Executive Director or Board that granted the 45-day extension. Ms. Johnson responded that extensions up to 45 days were an administrative decision and could be granted by the Executive Director. She noted that longer extensions would be at the Board's discretion.

Dr. Cutler said that there were two votes required by the Board: one to approve the final regulation governing PIPs and one to approve the PIPs process document.

Dr. Altman asked whether the sub-committee had approved both of these. Dr. Cutler said that it had unanimously.

Secretary Sudders asked whether information about the confidential discussion occurring in executive session was included in the regulation. Ms. Johnson said that the policy did not address this as it would a case-by-case decision but that the law allows for executive session. Ms. Johnson said that it could be added to the policy document if the Board desired.

Dr. Altman called for a motion to approve the final regulation on PIPs. **Dr. Everett** made the motion. **Dr. Cutler** seconded it. The motion passed unanimously.

Dr. Altman called for a motion to approve the policy on process for PIPs. **Dr. Everett** made the motion. **Dr. Cutler** seconded it. The motion passed unanimously.

Mr. Seltz noted that the policy on process for PIPs would be subject to some additional language that would be circulated to Board members.

ITEM 5: Executive Director's Report

Mr. Seltz thanked the Board for their thoughtful discussion of the benchmark earlier in the meeting.

ITEM 5a: Strategic Priorities 2017-2018

Mr. Seltz provided a brief presentation to frame the HPC's strategic priorities. For more information, see slides 46-51.

Dr. Altman said that he would like to add a general reduction of spending in health care. He said that an important reason for the size of spending was the open-ended nature of the money in the system.

Dr. Berwick said that a reduction in administrative costs was another opportunity for savings. He said that the HPC could set a series of goals on behalf of the Commonwealth on any of larger spending areas such as administrative costs or readmission rates and then align the work of the agency to those goals.

Dr. Cutler emphasized that there was a great sense of urgency with the agency's work and that moving expeditiously with these discussions and tackling these goals would be important.

Mr. Seltz agreed and said that this conversation would be continued at the next Board meeting.

ITEM 5b: Office of Patient Protection

Ms. Johnson and Mr. Steven Belec, Director, Office of Patient Protection (OPP) reviewed the OPP external review process in response to a *Boston Globe* article earlier in the week. For more information, see slide 53.

Dr. Altman asked whether the "fully-insured" qualifier on slide 53 also included health maintenance organizations (HMOs). Mr. Belec said that it did.

Dr. Altman asked if it was correct that it did not include individuals who were self-insured through an employer. Mr. Belec said that this was correct due to preemption by the Employee Retirement Income Security Act (ERISA).

Dr. Altman asked what percentage of Massachusetts' insured fell into this category. Mr. Belec said that it was approximately 42 percent.

Mr. Cohen said that his reading of the *Boston Globe* article was that the decisions made by OPP were individual and not precedent setting. He asked if Ms. Johnson could speak to that point briefly.

Ms. Johnson said that this was correct. She said OPP received individual requests from individual patients and health plans. This information is then provided to an external review agency, which issues a determination applying only to that specific case. She added, however, that health plans pay attention to these decisions and decisions may sometimes influence behavior.

Dr. Altman asked for clarification on the external review agency. Mr. Belec said that these agencies contract with licensed medical professionals and send the case to an appropriate reviewer licensed in a same, or similar specialty, involved in the denial.

Dr. Altman asked what happened following that step. Mr. Belec said that the determination was then written up, returned to the entity, and then the entity would return that decision to the HPC.

Dr. Altman asked whether the contracting entities ever subjected the reviewers to reviews. Mr. Belec clarified that experimental cases required three reviewers.

Dr. Altman clarified his question asking whether the HPC conducted a review when the decision was returned.

Ms. Johnson said that the HPC entered into contracts with these agencies and was required by statute to ensure that they were accredited. She said that this accreditation ensured that their reviewers met certain requirements, such as sufficient expertise and lack of conflicts of interest. She said that there was no overriding mechanism at the agency level.

Dr. Altman noted that this was a unique process as staff and Board members had no input into these decisions. Ms. Johnson said that, in the regulations, the HPC does not have the authority to provide input on these decisions. She said that in very limited circumstances in which there was a clear factual or procedural error on the face of the decision, the decision could be reviewed.

Mr. Belec said that the OPP's process was similar to the organizations in other states that had the same purpose.

Dr. Altman said that it seemed important to him to get on the record that the HPC itself was not making these determinations.

Mr. Seltz said that, with new drugs and other medical breakthroughs with significant cost attached to them, the HPC may see more requests for review from OPP. He said that it was important to highlight that HPC staff and Board members were not making these decisions.

Mr. Mastrogiovanni asked what percentage of cases is resolved in favor of the consumer. Mr. Belec advised Mr. Mastrogiovanni to consult the OPP report presented at the last Board meeting for a more precise breakdown, but said that it was somewhere in realm of 45 percent of cases referred for external review that were overturned. He said that this was consistent with prior years.

Dr. Allen asked what the role of the OPP was with regard to the health insurance waiver process. Mr. Belec said that OPP had the authority to issue a waiver for an individual or family to purchase insurance outside of the open enrollment period provided that they had not intentionally forgone insurance during the period.

Dr. Allen asked if this could include adding someone to an existing plan. Mr. Belec said that technically these individuals should be able to be added to an existing plan due to a qualifying event.

Dr. Allen said that she had heard of cases of newborns not being automatically enrolled onto their family's health insurance. She asked if this was something that OPP address. Mr. Belec said that this went to some of the ancillary services provided by the OPP, such as properly advising someone of his or her resources and helping to connect people to the right folks for escalating appropriate issues.

ITEM 5c: Care Delivery Certification Programs

Mr. Seltz provided an update on the HPC's care delivery certification programs. For more information, see slides 55-57.

Dr. Altman asked whether there was a list of patient centered medical home (PCMH) PRIME participants that could be included in the slides. Mr. Seltz said that the list would be included at the next Board meeting. He also noted that it is available on the HPC website.

ITEM 6: Schedule of Next Meeting

Dr. Altman adjourned the meeting 2:17 PM and announced that the next Board meeting is scheduled for June 14, 2017.