MEETING MINUTES:

MARKET OVERSIGHT AND TRANSPARENCY COMMITTEE

Meeting of October 3, 2018

MASSACHUSETTS HEALTH POLICY COMMISSION

Market Oversight and Transparency Committee
Health Policy Commission
50 Milk Street, 8th Floor
Boston, MA

Docket: Wednesday, October 3, 2018, 9:30 AM

PROCEEDINGS
The Massachusetts Health Policy Commission's (HPC) Market Oversight and Transparency (MOAT) Committee held a meeting on Wednesday, October 3, 2018, at the HPC's offices, 50 Milk Street, 8th Floor, Boston, MA.

Members present included Dr. David Cutler (Chair); Dr. Wendy Everett; Mr. Richard Lord; Mr. Renato Mastrogiovanni; and Ms. Elizabeth Denniston, designee for Secretary Michael Heffernan, Executive Office of Administration and Finance. Dr. Stuart Altman, Mr. Timothy Foley, and Undersecretary Lauren Peters, designee for Secretary Marylou Sudders, Executive Office of Health and Human Services, were also in attendance.

The meeting notice and agenda can be found here.
The presentation from the meeting can be found here.
A recording of the meeting can be found here.

Dr. Cutler called the meeting to order at 9:34 AM. He welcomed members of the public to the meeting.

ITEM 1: APPROVAL OF MINUTES FROM JUNE 13, 2018 MEETING
Dr. Cutler asked for a motion to approve the minutes from the MOAT Committee meeting held on June 13, 2018. Ms. Denniston motioned to approve the minutes. Mr. Mastrogiovanni seconded. Three Committee members voted to approve the minutes, as presented. Dr. Everett abstained due to her absence at the June 13 meeting.

Dr. Cutler outlined the day's agenda.

ITEM 2: MA-RPO PROGRAM UPDATE
Mr. David Seltz, Executive Director, provided an update on the Registration of Provider Organizations (RPO) Program. For more information, see slide 7.

ITEM 3: HEALTH CARE COST TRENDS HEARING
Mr. Seltz and Ms. Coleen Elstermeyer, Deputy Executive Director, provided an overview of the upcoming 2018 Health Care Cost Trends Hearing including the planned agenda, themes, witnesses, and summary of pre-filed testimony. For more information see slides 9-11.

Dr. Altman noted that having Dr. Ashish Jha as the keynote speaker at the cost trends hearing would provide a valuable national perspective.

ITEM 4: ANALYSIS OF OPPORTUNITIES FOR ENHANCED TRANSPARENCY AND CONSUMER SHOPPING OF COMMON DRUGS IN MASSACHUSETTS
Mr. Seltz introduced Ms. Sara Sadownik, Deputy Director, and Ms. Yue Huang, Research Associate, Research and Cost Trends, who presented on the HPC's Analysis of Opportunities for Enhanced

Transparency and Consumer Shopping of Common Drugs in Massachusetts. For more information, see slides 14-23.

Mr. Lord asked whether the congressional bills addressing gag clauses referenced on slide 15 applied to Medicaid or were targeted only at private insurance and Medicare. Ms. Sadownik said they were targeted at private insurance and Medicare but that the issue is less relevant to Medicaid as cost sharing in Medicaid is significantly lower.

Mr. Mastrogiovanni asked how pharmaceutical companies could defend the practice of using gag clauses. Ms. Sadownik said that manufacturers often cited practices from pharmacy benefit managers (PBMs) that keep prices higher for consumers. Mr. Seltz said that there had been cases of manufacturers criticizing these practices because they interfere with the discounts being offered by the manufacturers making it into the hands of consumers as those discounts are retained as additional revenue by the PBM companies. Dr. Cutler added that these were sometimes used as tools by PBMs to steer consumers in the direction of specific drugs.

Dr. Everett asked Mr. Mastrogiovanni if he was also inquiring as to how PBMs justify the practice. Mr. Mastrogiovanni said that he was. Ms. Sadownik said that PBMs had stated that the practice of using gag clauses is rare. She said that PBMs have asserted that key to negotiating drug prices is the ability to steer consumers towards certain drugs and that gag clauses allow them to do so.

Dr. Altman noted that Massachusetts has very strong price transparency and consumer protection laws regarding other products and asked whether other states had considered legislation that would require drug prices to be clearly marked for consumers. Ms. Sadownik noted that Florida requires proactive disclosure of some details regarding drug prices. Dr. Altman said that it would be interesting to hear what other states were doing as well.

Dr. Everett asked what the time frame was of the overpayments graphed on slide 21. Ms. Huang clarified that those numbers were over one year.

Dr. Cutler noted that across the suppliers listed on slide 21, cost was not the only difference among them. He said that it was possible that people might see paying more for convenience as reasonable in some cases. He suggested that the information presented might be most useful to insurers or PBMs to better inform consumers of the options available. Ms. Sadownik said that the numbers on the slide actually represented the best cash price without insurance and are cases in which the cost sharing with insurance was higher than not using insurance at all. Dr. Cutler noted that this increased the incentive for insurers to share that information with consumers.

Ms. Denniston noted that slide 19 showed a great deal of variation. She asked whether there was insight into what that variation was due to. Ms. Huang said that for most of the drugs examined, staff had looked at the most common versions which are often discounted. She suggested that the percent of claims in which people overpaid might be lower with less commonly used drugs. Mr. Seltz said that moving forward it might be instructive to look at the data by health plan.

Dr. Cutler said that if Commissioners or members of the public saw specific aspects of this research that they would like to see highlighted at the cost trends hearing, they should let staff know. Mr. Seltz agreed.

Dr. Everett said that this research underscored the importance of drug pricing transparency for consumers.

Mr. Seltz thanked the Commissioners for their questions and feedback.

ITEM 5: ANALYSIS OF POTENTIAL COST IMPACT OF MANDATED NURSE-TO-PATIENT STAFFING RATIOS

Mr. Seltz introduced Ms. Lois Johnson, General Counsel, Dr. David Auerbach, Director, Research and Cost Trends, Ms. Katherine McCann, Assistant General Counsel, and Ms. Hannah James, Research Associate, Research and Cost Trends, to present on the HPC's Analysis of Potential Cost Impact of Mandated Nurse-to-Patient Staffing Ratios. Dr. Joanne Spetz, Professor, Institute for Health Studies at the University of California, joined the team over the phone. For more information, see slides 25-63.

Dr. Cutler asked whether there had been any analysis of the impact of the intensive care unit nurse staffing requirements in Massachusetts. Mr. Seltz said that staff had looked at this but found that the implementation timeline made it difficult to analyze. He added that there was a study from a group of researchers affiliated with Beth Israel Deaconess Medical Center and that HPC staff would be happy to share it with Commissioners.

Dr. Everett noted that Dr. Spetz had said that some hospitals in California had changed their staffing ratios on a voluntary basis and some had made changes to comply with the mandate. Referencing bullet point number 3 on slide 36, Dr. Everett asked whether research had been done to examine the differences between those two classes of hospitals. She said it would be interesting to understand whether the cultures in those hospitals affected the outcomes or not. Dr. Spetz said that she did not believe that this research had been done explicitly.

Dr. Cutler asked how California compared to Massachusetts in terms of the percentage of the nursing workforce that was unionized. He also asked whether Dr. Spetz had a sense of how California hospitals had dealt with the increased labor cost post-implementation. Dr. Spetz said that, like Massachusetts, California has a fairly highly unionized nursing workforce. She said that, while there had not been specific research on this, her sense was that for hospitals with collective bargaining agreements, the unions played a role in enforcing the ratios. Regarding Dr. Cutler's second question, Dr. Spetz said that from interviews conducted with hospital executives, researchers learned that many hospitals used the higher staffing ratios in negotiations with insurance companies to justify higher reimbursement rates. Anecdotally, she said that she had also heard from executives that they were laying off or not replacing some personnel but that her sense was that this had not been a systematic trend.

Mr. Mastrogiovanni asked what percentage of institutions were already meeting the prescribed ratios prior to the implementation of the mandate in California and whether there was a disparity in outcomes between institutions already at the required staffing levels and those that were not. Dr. Spetz said that the nature of the data available in California did not allow researchers to determine how many hospitals were meeting the ratios prior to the mandate. She said that researchers did not find, however, that the changes in staffing were associated with systematic improvements in patient outcomes.

Undersecretary Peters asked whether the data on slides 37 and 38 was post-implementation of the California mandate. Dr. Auerbach confirmed that it was.

Dr. Cutler asked if there was a way to include emergency departments (EDs) in the analysis before the cost trends hearing. Dr. Auerbach said that staff could try to include more about the anticipated impact

on EDs. Dr. Everett asked if the exclusion of EDs was related to time constraints or data constraints. Dr. Auerbach said that it was due to a lack of data. Mr. Seltz said that staff recognized that this was a gap in the analysis and suggested that the team would do its best to extrapolate on what was known to give a clearer picture of what the impact might be.

Dr. Cutler thanked the team and suggested that the Committee would have to think about what this data might mean in Massachusetts. Dr. Cutler left the meeting at this time.

Undersecretary Peters asked if there were specific hospital types that were excluded from the research. Referencing slide 51, Dr. Auerbach noted that there was a degree of uncertainty in the proposed ballot initiative regarding its application to certain types of facilities, such as non-acute hospitals and long-term care facilities.

Dr. Altman said that the Commission should not lose sight of the fact that the ballot question being proposed in Massachusetts is very different from the law that was implemented in California.

Dr. Everett asked whether the savings listed on slide 53 were on a per-year basis. Dr. Auerbach said that number represented a one-time savings estimate.

Mr. Lord said that he was very concerned about the impact that mandated nurse staffing ratios might have on community hospitals. He noted that these institutions already have difficulty filling positions. He added that he was concerned about the ballot question's stipulation that these staffing ratios be in place at all times, especially in the ED. He asked whether staff had looked at the feasibility of the short implementation period outlined in the ballot question. Mr. Seltz said that staff had not looked at the implementation period as a factor in the analysis but suggested that this may be a viable topic of conversation at the cost trends hearing. Dr. Everett clarified that, while questions of practicality were important, this study was mainly focused on the cost of the proposed staffing ratios as written in the proposed ballot initiative. Dr. Auerbach clarified that most hospitals do have staffing mechanisms in place to deal with surges in demand, but the analysis already accounted for those instances, and represented what would be required above and beyond existing staffing capabilities.

Mr. Foley said that there were a lot of questions that remained in terms of the overall impact of the ballot question. He said that this conversation was a valuable one and commended the staff for releasing these findings well in advance of the cost trends hearing. He noted that there were vast differences in rates of compensation among institutions and pointed out that the ballot question was written to prevent institutions from reducing their health care workforce to comply with the mandate. Mr. Seltz clarified that slide 57 had referred specifically to reductions in non-health care workforce as a potential implication.

Dr. Altman noted that institutions may seek to meet the mandate by closing units and said that low-margin services such as behavioral health would likely be the most likely targets for closure. He added that this could indirectly impact health care workforce employment.

Dr. Everett thanked the staff and Dr. Spetz for the hard work on the report.

Mr. Seltz said that the report was available on the HPC's website and encouraged the public to provide feedback.

ITEM 6: ADJOURNMENT

The meeting adjourned at 11:37 AM.