

**MEETING MINUTES:
MARKET OVERSIGHT AND TRANSPARENCY COMMITTEE**

Meeting of February 27, 2019

MASSACHUSETTS HEALTH POLICY COMMISSION

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

Docket: Wednesday, February 27, 9:30 AM

PROCEEDINGS

The Massachusetts Health Policy Commission's (HPC) Market Oversight and Transparency (MOAT) Committee held a meeting on Wednesday, February 27, 9:30 AM, at the HPC's offices, 50 Milk Street, 8th Floor, Boston, MA.

Members present included Dr. David Cutler (Chair); Mr. Richard Lord; and Ms. Elizabeth Denniston, designee for Secretary of Administration and Finance Michael Heffernan. Ms. Barbara Blakeney, was also in attendance. Mr. Ron Mastrogiovanni participated over the phone.

The meeting notice and agenda can be found [here](#).
The presentation from the meeting can be found [here](#).
A video of the meeting can be seen [here](#).

Dr. Cutler called the meeting to order at 9:33 AM. He welcomed members of the public to the meeting.

ITEM 1: APPROVAL OF MINUTES FROM THE NOVEMBER 28, 2018 MEETING

In order to ensure a quorum, Dr. Cutler opted to postpone the vote on the minutes until Mr. Lord's arrival.

Dr. Cutler provided a brief outline of the day's agenda.

ITEM 2: OUT OF NETWORK BILLING

Ms. Lois Johnson, General Counsel, and Ms. Katherine McCann, Assistant General Counsel, provided an update on the HPC's out-of-network (OON) billing research. For more information, see slides 7-14.

Dr. Cutler noted that, since many OON billing issues are the result of emergency department (ED) care, one solution to OON issues proposed by economists is to bundle the fees for the facility and the services together. He said this solution would address the entire spectrum of emergency services with the exception of ambulances, as ambulance service is not generally associated with the institution providing care. Ms. Denniston asked whether this would be a payer-instituted reform or something that would need to be dictated statutorily. Dr. Cutler said that there was nothing preventing payers from doing this on their own, but added that the state could also play a role in encouraging this behavior. Ms. Johnson agreed with Dr. Cutler and noted that the categories of solutions on slide 10 are based on solutions that have actually been implemented. She added that a complicating factor with the solution Dr. Cutler proposed was that emergency, radiology, anesthesiology, and pathology (ERAP) providers were not always employed by the institution at which care was being delivered. Dr. Cutler said that there could be a contractual solution to that issue.

Ms. Denniston noted that the governor's budget included a proposal to extend balanced billing protections to other Group Insurance Commission (GIC) plans, rather than just indemnity plans as they currently apply to.

Mr. Lord said that, should there be a new health care bill in the legislature, he hoped that the HPC would be able to help clarify some of the more technical portions of any OON billing proposal. Mr. Seltz noted that the recommendations in the HPC's 2018 Cost Trends Report lay out the OON billing areas that the HPC believes should be addressed, but do not enumerate specific policy proposals.

Ms. Denniston asked if staff knew whether anyone in New Jersey had taken advantage of the opt-in for self-insured plans. Ms. McCann said the OON law in New Jersey was still fairly new and she did not know the specifics of the implementation at this point.

Dr. Cutler asked what had been included in the draft 2018 health care bills in Massachusetts regarding the OON issue. Ms. McCann said that both the House and Senate bills took a multi-faceted approach that included enhanced transparency requirements, the extent and details of which varied. She noted that both bills prohibited balance billing and held consumer cost sharing to in-network levels. She said the major difference between the two was in the realm of provider payment: the Senate bill would have established a non-contracted commercial rate for emergency and non-emergency services that differed based on the contracting status of the OON provider with a particular health plan, while the House bill did not distinguish between the OON provider's contracting status for non-emergency services. Dr. Cutler asked whether those bills would have applied to the self-insured market as well. Ms. McCann said that they would not have. Dr. Cutler asked if there was action that HPC could recommend the state take regarding the population enrolled in self-insured health plans. Ms. Johnson said that the prohibition on balance billing could also apply to the providers, but that the Employee Retirement Income Security Act (ERISA) preemption presented a barrier when it came to mandating payment on the health plan side. Ms. Denniston asked if this meant that balance billing protections could be dictated but that a default payment amount could not be dictated. Ms. Johnson said that this was true unless there was an opt-in/out built in to a bill or law.

Dr. Cutler asked if information regarding which institutions outsource provider staffing for ED services was available. Ms. McCann said that she believed the answer was yes. She noted that in 2017, HPC staff had presented OON billing research from the All-Payer Claims Database (APCD). The presentation cited a national study indicating that ED services were, on average, outsourced in approximately two-thirds of hospitals, and that the HPC's Registration of Provider Organizations (RPO) data showed that in Massachusetts, one-third of hospitals substantially outsource ED staffing. Dr. Cutler asked whether the names of these institutions could be publicized. Mr. David Seltz, Executive Director, noted that there are circumstances in which hospitals have to rely on contracted emergency physicians in order to staff their EDs. Dr. Cutler said that many of the companies that staff ED physicians choose to be exclusively OON and that the names of the hospitals that chose to staff through these companies should be publicized. Mr. Seltz said that the HPC could potentially publish these names. He noted that the data analysis conducted by the HPC indicated that, in many cases, health plans were paying for the OON bills and holding their members harmless which, while good from the individual consumer's perspective, leads to higher premiums across the board. Mr. Seltz noted that, to Ms. Denniston's point, the issue of establishing a default payment rate was difficult.

Mr. Seltz asked Ms. McCann if she had any information about how these laws in other states were working, including, for example, how often the arbitration process established in certain states is being used. Ms. McCann said that Texas' mediation program had seen increasing use in its 10 years in existence and had been successful at protecting patients, but did require that consumers know about the process and how to avail themselves of it. She said there were still efforts in Texas to prohibit

balance billing and remove the consumer from the process entirely. She noted that New York's law included an arbitration process that seems to be working by-and-large from the patient's perspective. She said that California's law sets the payment rate at the greater of the average contracted rate or 125 percent of Medicare. She said that some recent Rand Corporation research on California's law indicated that, while the law is protecting consumers, it may have shifted the balance of power to the insurers who are using the rate prescribed by the law as leverage in contract negotiations, which could eventually lead to access issues if providers are forced to consolidate or cease providing services. She noted that these examples were anecdotal and that these laws were in their early stages.

Ms. Denniston suggested that a limitation of state regulation worth highlighting was that it only applied to in-state providers and that balance billing protections do not apply when exporting services to out-of-state providers. She asked whether default provider rates or arbitration mechanisms provided better protection for consumers. Ms. McCann said that there was not a clear answer as both had advantages and disadvantages as well as potential unintended consequences.

Mr. Lord asked if it made sense for the HPC to come up with a specific policy recommendation rather than see what ended up in a potential health care bill. Mr. Seltz said that he looked forward to working with the new Chairs of the Joint Committee on Health Care Financing and that this issue would require a comprehensive solution. He said that the default payment question presented a major challenge as it was difficult to determine what an appropriate payment level might be. He said that the best method for addressing OON billing was an open question for the HPC, and that the agency is prepared to provide as much information as it could to the policy makers considering how to address the issue.

Ms. Blakeney noted that the discussion reinforced the fact that there is a great deal of complexity in the system making it difficult for both consumers and providers. She added that simplifying this process from the perspective of the consumer was extremely important.

With a quorum now present, Dr. Cutler called for a motion to approve the minutes from the November 28, 2018 meeting. Mr. Lord motioned to approve the minutes. Ms. Denniston seconded the motion. The minutes were approved unanimously.

ITEM 3: WHITE AND BROWN BAGGING

Mr. Seltz introduced the presentation on white and brown bagging. Ms. Sara Sadownik, Deputy Director, Research and Cost Trends, provided a preview of the HPC's white and brown bagging research. For more information, see slides 16-42.

Mr. Lord asked if "home infusion" referred to the provider going into a patient's home to administer a drug. Ms. Sadownik confirmed that this was the case.

Ms. Blakeney asked if there were rules governing how medications were transported from the pharmacy to a patient's home. Ms. Sadownik said that she did not have that information. Ms. Blakeney asked how drugs administered in the home by the patient or family members related to this process. Ms. Sadownik said that this was related to the differences in patient preferences for home infusion on slide 33.

Dr. Cutler said that it might be interesting to see a year's worth of billing for the patient. Ms. Sadownik said that this was a good point and would highlight the fact that the impact of cost sharing adds up over time.

Ms. Denniston said that the table on slide 27 seemed to indicate that there was higher cost-sharing for white bagging versus buy-and-bill. Ms. Sadownik clarified that the average cost sharing was higher with white bagging but that a small percentage of buy-and-bill patients have very high cost sharing. Mr. Seltz said that cost sharing can change for patients based on what channel the drugs are going through and that the co-pay per unit on a pharmacy benefit may be different than the co-pay per unit on a medical benefit.

Regarding the brown bagging issues outlined on slide 32, Dr. Cutler said that the issue was not specialty pharmacies' ability to transport the drug, but rather the handling of the drug once it was in a patient's possession. Ms. Sadownik confirmed that was the case. Mr. Seltz added that once the patient brings that drug to a provider to be administered, the provider might not be in a position to know if it had been safely handled or stored.

Ms. Blakeney said that, if a provider was not administering the drugs in the home, it was a question as to how a patient or caregiver developed the expertise to safely administer a drug and deal with any issues that may arise. Ms. Sadownik said that this was a very helpful perspective.

Ms. Blakeney asked what the definition of "specialty pharmacy" was in this research. Ms. Sadownik said that she understood that specialty pharmacies were distinguished from regular retail pharmacies by their capacity to provide storage and handling of sensitive drugs.

Dr. Cutler asked how the government could evaluate the legitimacy of provider concerns over safety issues, particularly with regard to more technical topics. Ms. Sadownik said that recommendations should focus on principles and safeguards that are broadly applicable. Dr. Cutler asked if there was anywhere in state government that an in-depth level of analysis of these questions was conducted. Ms. Denniston said that the Prescription Monitoring program may fall into this category. Ms. Sadownik noted that there were some parallels to the discussion of OON billing in that there were opportunities with white and brown bagging to outline some broad frameworks for solutions. Mr. Seltz added that there were circumstances in which there would be a legislative mandate to promulgate regulations pursuant to these frameworks and that the specifics of those regulations would be contemplated by the agency charged with drafting them.

The RPO presentation was tabled for a later meeting due to time constraints.

ITEM 4: ADJOURNMENT

Mr. Seltz noted that the next meeting would be the public hearing on the health care cost growth benchmark scheduled for March 13 at the Massachusetts State House. Dr. Cutler thanked the Committee and the staff. The meeting adjourned at 11:06 AM.