

**MINUTES OF THE HEALTH POLICY COMMISSION**

**Meeting of June 24, 2021**

**MASSACHUSETTS HEALTH POLICY COMMISSION**

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**Date of Meeting:** June 24, 2021

**Start Time:** 3:00 PM

**End Time:** 4:42 PM

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	<b>Present?</b>	<b>ITEM 1: Approval of Minutes</b>
Stuart Altman*	X	X
Don Berwick	X	X
Barbara Blakeney	X	X
Martin Cohen	X	M
David Cutler	X	2nd
Timothy Foley	X	X
Patty Houpt	X	abs.
Chris Kryder	X	X
Ron Mastrogiovanni	X	X
Sec. Marylou Sudders	X	X
Sec. Michael Heffernan	X	X
<b>Summary</b>	<b>11 Members Attended</b>	<b>Approved with 10 votes in the affirmative</b>

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 virtual meeting of the Health Policy Commission (HPC) was held on June 24, 2021, at 3:00 PM. A recording of the meeting is available [here](#). Meeting materials are available on the Board meetings page [here](#).

Participating commissioners included: Dr. Stuart Altman (Chair), Mr. Martin Cohen (Vice Chair); Dr. Donald Berwick; Ms. Barbara Blakeney; Dr. David Cutler; Mr. Timothy Foley; Ms. Patricia Houpt; Dr. John Christian “Chris” Kryder; Mr. Ron Mastrogiovanni; Undersecretary Lauren Peters, designee for Secretary Marylou Sudders, Executive Office of Health and Human Services; and Ms. Cassandra Roeder, designee for Secretary Michael Heffernan, Executive Office of Administration and Finance.

Dr. Altman began the meeting at 3:00 PM and welcomed the commissioners, staff, and members of the public viewing the meeting live on the HPC’s YouTube channel.

### ITEM 1: Approval of Minutes

Dr. Altman called for a vote to approve the minutes from the May 19, 2021, Board meeting. Mr. Cohen made the motion to approve the minutes. Dr. Cutler seconded it. The vote was taken by roll call. The motion was approved with 10 votes in the affirmative and one abstention.

### ITEM 2: Market Oversight and Transparency

Dr. Altman turned the presentation over to Mr. David Seltz, Executive Director, who outlined the day’s agenda.

#### ITEM 2a: Recent Market Transactions

Mr. Seltz turned the presentation over to Ms. Katherine Mills, Senior Director, Market Oversight and Transparency (MOAT), who presented on recent transactions in the Massachusetts health care market. For more information, see slides 7-9. The market transaction portion of the meeting can be viewed [here](#).

#### ITEM 2b: Atrius-Optum Transaction

Ms. Mills turned the presentation over to Mr. Sasha Hayes-Rusnov, Senior Manager, MOAT, who presented on the HPC’s analysis of the Atrius-Optum transaction. For more information, see slides 11-18. The Atrius-Optum transaction portion of the meeting can be viewed [here](#).

Dr. Kryder asked how it was determined in the analysis that Atrius’s incentive to raise rates on payers other than United would be limited. Mr. Hayes-Rusnov said that United’s relatively limited share of the payer market in the Commonwealth made this unlikely. Dr. Berwick asked what aspects of the Optum’s acquisition of Reliant were examined in the analysis. Mr. Hayes-Rusnov said that staff examined available total medical expenditure (TME) data pre- and post-transaction.

Dr. Altman asked if staff learned anything from groups acquired by Optum in other states. Mr. Hayes-Rusnov said that these conversations had been limited to market participants in Massachusetts.

Regarding United's place in the payer market, Dr. Kryder asked at what theoretical threshold would staff be concerned about the potential for the diversion of patients post-transaction. Mr. Hayes-Rusnov clarified that it was a question of United's relative position in the market rather than a specific threshold and that the size of United compared to the larger payers in Massachusetts limited the incentive for Atrius to contract exclusively with United.

Mr. Cohen asked whether there had been patient diversion in other markets where Optum had acquired providers. Mr. Hayes-Rusnov said that there is limited information on pricing and membership impacts in other markets.

Dr. Altman said that it appeared that the transaction would not put Atrius in a position to make demands on the market without larger payers pushing back. Mr. Hayes-Rusnov said that this was correct and that the acquisition would not put Optum in a position such that it had significantly greater bargaining leverage in Massachusetts.

Dr. Cutler asked whether there might be potential for Atrius to set up a new narrow-network policy with United which might be beneficial to consumers. Mr. Hayes-Rusnov said that a limited network was possible. Dr. Cutler noted that Atrius was aiming to provide more outpatient care and asked what the outpatient landscape in Massachusetts looked like at this time and whether there is actually a need for additional outpatient capacity. Mr. Hayes-Rusnov said that many providers have been making investments in this space and the HPC is monitoring the trend closely for alignment of investments with identified health needs.

Dr. Berwick asked whether there was information on Reliant's risk-coding behavior subsequent to its acquisition by Optum. Mr. Hayes-Rusnov said that staff had reviewed available information and that the HPC is closely monitoring risk coding behavior for all market participants.

Mr. Hayes-Rusnov presented on the conclusions of the review from the Atrius-Optum transaction. For more information, see slides 19-21.

Mr. Foley asked what the potential impact of the transaction could be on Atrius' workforce. Mr. Hayes-Rusnov said that licensed clinicians would be remaining with the Atrius entity, while non-clinical staff would be moving to Optum, noting that the majority of Atrius' employees were non-clinical.

Mr. Cohen asked if staff had received any input on the transaction from patients. Mr. Hayes-Rusnov said that the HPC had not heard directly from patients. Mr. Seltz added that he had received unsolicited correspondence from some Atrius physicians concerned about the transaction.

Ms. Blakeney said that there may be opportunities moving forward to include in the review process a requirement that parties to address equity issues in staffing and the delivery of care.

Dr. Berwick said that he disagreed with the decision to close the review. He said that the transaction represented a large and consequential change to the structure of the outpatient market in Massachusetts. He said that he was concerned that Optum's business model was predicated on aggressively upcoding patient populations after acquiring physician groups around the country and that the HPC should be devoting resources to a cost and market impact review (CMIR) in order to conduct an inquiry into the impact of Optum's acquisitions nationwide. Dr. Altman said that there would be continued monitoring of the organization post-transaction. He noted that the HPC was limited both by its authority and by the data available. Dr. Berwick asked whether staff might be able to survey insurance commissioners and others around the country on the impact of Optum acquisitions in their states. Mr. Seltz said that the preliminary review had been extensive and that, given the evidence, conducting a CMIR in this transaction would not be consistent with past practice.

Dr. Kryder asked if there was any statutory constraint that would prevent the HPC from conducting a more limited CMIR in a timespan shorter than six months. Mr. Seltz said that there was no set time requirement in the statute or regulation governing how long a CMIR should take but that it was generally a six-to-eight-month process based on past reviews. Dr. Altman said that it was important for the HPC to examine transactions like this one closely but noted that the agency had limited authority and that its primary responsibility was to single out activities that would substantially increase spending or negatively impact quality or access in the Commonwealth. He said that the evidence suggested the likelihood of this transaction substantially impacting TME in the state was small.

Dr. Cutler noted that the performance improvement plan (PIP) process was an additional option for holding the parties accountable moving forward. Mr. Seltz said that, while the identities of entities on the PIPs list were confidential, the process did provide a potential tool to the HPC for ongoing monitoring both of Atrius and of United.

Ms. Blakeney asked whether the HPC could collect coding data on merging entities and compare it both pre- and post-transaction. Dr. Altman said that the HPC could and would monitor these data moving forward.

Mr. Cohen noted that the transaction would require approval from the Attorney General's Office (AGO) and from the Supreme Judicial Court (SJC). He said that it may be useful to make a recommendation to the AGO on what should be monitored post-transaction. Mr. Seltz said that adding workforce concerns to the bullets on slide 20 would provide a comprehensive list of items to monitor post-transaction.

Dr. Berwick said that the CMIR threshold the HPC was operating with appeared to be higher bar than what had been his previous understanding. He said that he did not believe what he was asking for represented a six-month process but a shorter-duration survey of what had happened in other states following Optum acquisitions. Mr. Seltz said that he agreed that the transaction was significant but reiterated that the review did not find sufficient evidence to warrant a CMIR. Dr. Berwick said that he believed there were still areas of opportunity to collect additional evidence.

Mr. Matrogiovanni asked whether it was worth considering a limited CMIR given Dr. Berwick's concerns and the potential future impact of the transaction. Dr. Altman said that additional data would likely be difficult to obtain and that staff had largely exhausted the sources of data available in the initial review. Dr. Kryder said that he understood that an analysis of upcoding might be complex but said that there may be data available on Optum acquisitions in other markets that would be relatively easy to obtain. Mr. Seltz noted that staff had sought data in other markets where Optum had made acquisitions and that this data was often limited or from states with markets dramatically different from Massachusetts'. Dr. Altman said that he disagreed with Dr. Kryder regarding the availability of the data.

Dr. Altman noted that the choices on the table were to close the review or proceed to a full CMIR. Ms. Lois Johnson, General Counsel, said this was correct and that HPC policy delegated to the Executive Director the decision whether or not to initiate a CMIR. Mr. Seltz said that this meeting was an opportunity to seek input from the Board before making a final decision whether to proceed to a CMIR. He noted that the HPC was at the stage in the process at which it needed to notify the parties whether it was closing the review or initiating a CMIR.

Dr. Cutler noted that nothing precluded the HPC from outlining concerns to the AGO regarding the transaction. Mr. Seltz said that this was an option on the table. He said that a statement outlining concerns with the transaction could be brought back to the Board for its review.

Mr. Foley said that he was in favor of offering some kind of comment to the AGO that addressed the concerns raised by other commissioners. He said that it would be useful to have a future discussion about what changes to the CMIR process the Board would like to see.

Dr. Berwick said that he was still in favor of a modified CMIR to obtain additional data and highlight concerns for the AGO. He noted that the HPC had greater capacity to collect some of this data than the AGO. Dr. Altman noted that closing the review did not preclude the HPC from assisting the AGO by advising on this transaction. Dr. Berwick said he would be open to closing the preliminary review and then engaging in several months of information gathering to review at a later meeting ahead of advising the AGO. He added that his hope was to use a modified CMIR process to get more information on all of the items outlined on slide 20 and not just coding.

Dr. Kryder said that he was not prejudging the transaction and felt that it might be beneficial to the New England health care market. He said that he still felt that it would be useful to have additional information.

Mr. Seltz thanked commissioners for their input. He suggested postponing the scheduled executive session to later date. Dr. Altman concurred with this recommendation. The meeting adjourned at 4:42 PM.