

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

Meeting of February 15, 2024

MASSACHUSETTS HEALTH POLICY COMMISSION

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

Docket: Thursday, February 15, 2024, 12:00 PM

PROCEEDINGS

The Massachusetts Health Policy Commission's (HPC) Market Oversight and Transparency (MOAT) Committee held a virtual meeting on Thursday, February 15, 2024, at 12:00 PM

Members attending remotely included Dr. David Cutler (Chair), Ms. Patty Houpt, Mr. Ron Mastrogiovanni, and Ms. Martha Kwasnik, designee for Secretary Gorzkowicz, Executive Office of Administration and Finance.

Ms. Deborah Devaux (HPC Chair), Mr. Martin Cohen (HPC Vice Chair), Ms. Barbara Blakeney (Chair, Care Delivery Transformation), and Dr. Matilde Castiel were also in attendance, virtually.

The [meeting notice and agenda](#) and the [presentation](#) from the meeting can be found on the [HPC's website](#). A recording of the meeting can be found on the [HPC's YouTube Channel](#).

ITEM 1: Approval of Minutes

Dr. Cutler called for a motion to approve the minutes from the October 24, 2023 meeting. Ms. Kwasnik made the motion to approve, and Ms. Houpt seconded. The vote was by roll call. The motion was approved with four votes in the affirmative.

Dr. Cutler turned the presentation over to Ms. Coleen Elstermeyer, Deputy Executive Director, who welcomed commissioners and provided a brief overview of the agenda topics.

ITEM 2: DataPoints Issue #26: Landscape and Utilization of Ambulatory Surgical Centers in Massachusetts

Ms. Elstermeyer introduced the HPC's DataPoints series and the presentation of [DataPoints Issue #26: Trends in Ambulatory Surgical Centers in Massachusetts](#). Ms. Sara Sadownik, Deputy Director, Research and Cost Trends, presented the background on the upcoming DataPoints issue.

Mr. Mastrogiovanni asked if the for-profit entities that own ambulatory surgical centers (ASCs) in Massachusetts were C-corporations or S-corporations, noting that the different benefits for corporations depending on how they are registered. Ms. Lois Johnson, General Counsel, said that the agency would look further into how ASCs are corporately organized.

Dr. Cutler asked about the numbers of ASCs in Massachusetts compared to the number of ASCs nationally and if Massachusetts had the national average of ASCs in the state, there would be twice as many. Ms. Sadownik confirmed that Massachusetts would have more than twice the number of ASCs if the state met the national average. Dr. Cutler then asked if there had been any research done on the states with higher numbers of ASCs and if those states had fewer inpatient hospital beds or facilities since they may not have enough patient volume to keep those facilities open and possibly close as a result. Ms. Sadownik said that she was not aware of the impact of the number of ASCs on inpatient facilities since ASCs are often used for low-risk, outpatient procedures, but noted an increase in total services, due to potential supply induced demand, has generally not been found in other states. Rather, ASCs are often used in substitution to other health care settings. Dr. Cutler said it would be interesting to find more literature on the impact of having more ASCs in a state.

Mr. Mastrogiovanni stated his concern about the regulation where ASCs have to be approved by a competitor and how that would become difficult for the ASCs and the services could be offered there. He also said that when looking at ownership of an ASC, whether they are fully or partially owned by physicians, it could be helpful to know if the

physician has a majority or minority position within the ASCs. He agreed with Dr. Cutler's comments and said that given the number of ASCs in Massachusetts, it would be valuable to look into how access would be improved if the state had more ASCs and the impact of current regulations on establishing more within the state.

Dr. Castiel agreed and said she would also be interested to know if the cost of health care could be reduced if there were more ASCs in the state. Ms. Elstermeyer said in response to Mr. Mastrogiovanni's comments that the HPC is aware of some potential changes to the Determination of Need (DoN) process that the Department of Public Health is looking into now and that the legislature is looking into making changes to the DoN process. She noted that a bill filed this session with some proposed changes to the DoN process has support from leadership in the legislature. Ms. Sadownik responded to Dr. Castiel's comment regarding the impact on health care spending and the utilization of ASCs and said those findings would be discussed further in the presentation.

Dr. Katya Fonkych, Senior Manager, Research and Cost Trends, presented the findings on trends in ASCs in Massachusetts.

Mr. Cohen asked if there was information about the payer side of ASCs, particularly around tiered networks and if those payers are more inclined to move towards ASCs as a site of care. Ms. Sadownik said that the agency has heard from the ASC perspective that tiered networks have been a barrier to increasing patient volume, but more research would need to be done to see the extent of how widespread that issue is.

Mr. Mastrogiovanni said that when looking into the cost disparity between ASCs and hospital outpatient departments (HOPDs) it could be valuable if the agency could also measure quality of care and results that come from ASCs to help move forward to changes in regulations. Ms. Sadownik said that the literature that was reviewed by the agency regarding ASCs was mostly based on national studies, so Massachusetts specific data has not been reviewed but she agreed that trends in Massachusetts are not likely different from trends on a national basis.

Dr. Cutler asked if any ASCs in Massachusetts did not take MassHealth insurance. Ms. Sadownik said that when looking at the various health plans accepted at ASCs there was no evidence to suggest that MassHealth was not accepted by them, but this could not be evaluated systematically. Ms. Fonkych said that is also dependent on MassHealth's managed care organization and where they have signed contracts with specific ASCs. She said that when staff spoke with the ASC Association, they noted that is a factor in patients receiving care.

Chair Devaux said that it could be beneficial for staff to look into whether the same physician has equal utilization in referring patients to an ASC care setting versus a HOPD for the same type of procedure. Specifically, if there is a higher rate of referring commercial patients than MassHealth patients to an ASC than to a HOPD. Dr. Fonkych responded that unfortunately the HPC only has indirect evidence of whether a patient was referred based on who the primary physician was, if the patient was referred to a surgeon, and then based on the surgeon, staff could see if the patient was treated in a HOPD or at an ASC. She noted that many surgeons perform surgeries in both care settings. She said it may be possible to see if the same surgeon takes a majority of commercial patients in an ASC setting and a minority of MassHealth patients in an ASC setting.

ITEM 3: Federal Regulatory Update: Automation of Prior Authorization

Ms. Kara Vidal, Director, Health System Planning and Performance, provided an update on the federal regulation regarding automation of prior authorization and the details of CMS's final rule language. For more information, see slides 18-23.

Mr. Mastrogiovanni asked about the number of APIs, the need for payers to build software once they accept the API, and if the need to develop software is why the effective date of the regulation is several years in the future. Ms. Vidal said that CMS's decision to delay implementation to 2027 is likely to give payers time for the technical implementation of the rule.

Dr. Cutler reiterated that private payers are not covered by the final rule and only public plans are required to automate the prior authorization processes. Ms. Vidal noted that almost all of the state's commercial payers also have either Medicare Advantage or Medicaid Managed Care business, but they would not be required to automate prior authorization for their commercial plans under the final rule. Dr. Cutler asked if there would be additional costs

to extending the rule to commercial plans. Ms. Vidal said that it is likely dependent on the data systems of the individual payers and that if payers are not utilizing the same data systems or platforms across their lines of business, there might be an additional cost. Dr. Cutler said legislation at the state level may be required to ensure the harmonization for payers utilizing different data systems for different lines of business.

Ms. Kwasnik asked if there have been any studies on defaults that could be programmed into automation, such as mental health parity, and if certain presets could be baked into the automation depending on what is being fed into the algorithm. Ms. Vidal said that the biggest piece of work in the implementation process is the digitization of the rules that payers use to determine whether to approve a prior authorization request. She said that the current systems used for prior authorization can be complex, and payers will now have to translate those rules into algorithms so that the systems can assess whether to approve prior authorization requests. Ms. Vidal said that these changes could be an opportunity to develop a uniform set of rules used by all payers and to identify and establish certain standards (like mental health parity) that could be built into the framework of the decision algorithm. Ms. Kwasnik said that the regulating agency charged with reviewing the implementation process should have the right expertise to recognize and read the algorithms in the automation process, noting that the role of the regulator in this situation is integral when moving forward.

ITEM 4: Federal Regulatory Update: Department of Justice/Federal Trade Commission Merger Guidelines

Ms. Elstermeyer noted that due to time constraints the Federal Regulatory Update on the Department of Justice/Federal Trade Commission Merger Guidelines would be deferred and a memo on the merger guidelines would be shared with commissioners.

ITEM 5: ADJOURNMENT

Ms. Elstermeyer adjourned the MOAT meeting at 1:00 PM and introduced the guest presentation from the Executive Office of Health and Human Services.

Guest Presentation: Executive Office of Health and Human Services Inter-Agency Health Equity Taskforce, Karen Tseng, Senior Advisor for Health Policy, EHS

Commissioners heard a guest presentation from Ms. Karen Tseng, Senior Advisor for Health Policy, Executive Office of Health and Human Services, which focused on the Inter-Agency Health Equity Taskforce and the taskforce's current priorities.

The [guest presentation](#) can be found the HPC's [website](#) and a recording of the presentation is available on the HPC's [YouTube channel](#).