



MARYLAND HEALTH CARE COMMISSION

4160 PATTERSON AVENUE – BALTIMORE, MARYLAND 21215
TELEPHONE: 410-764-3460 FAX: 410-358-1236

Thursday, February 18, 2021

Minutes

Chairman Pollak called the meeting to order at 1:08 p.m.

Commissioners present via telephone: Akintade, Bhandari, Boyer, Boyle, Brahmhatt, Doordan, O’Connor, O’Grady, Rymer, Sergent, and Wang

AGENDA ITEM 1.

Approval of the Minutes

Commissioner Boyle made a motion to approve the minutes of the January 21, 2021 public meeting by teleconference of the Commission. The motion was seconded by Commissioner Bhandari and unanimously approved.

Commissioner Sergent made a motion to approve the minutes of the January 29, 2021 public Legislative Policy meeting by teleconference of the Commission. The motion was seconded by Commissioner Doordan and unanimously approved.

Commissioner Bhandari made a motion to approve the minutes of the February 5, 2021 public Legislative Policy meeting by teleconference of the Commission. The motion was seconded by Commissioner Doordan and unanimously approved.

AGENDA ITEM 2.

Update of Activities

Chairman Pollak shared a COVID-19 update that was taken from the Maryland Department of Health’s (MDH) website. He reported that hospitalization is at 1,048 and the positivity rate is about 4 percent with most jurisdictions under 6 percent and is looking very positive. He commented that these rates take the burden off hospital systems, which means the number of persons getting sick is decreasing. Chairman Pollak further commented that Maryland was able to get through the spikes from the Thanksgiving, Christmas, and New Year’s holidays, and was

able to avoid a substantial Super Bowl spike. Chairman Pollak asked that everyone continue with social distancing and masking to get through the next phase of getting everyone vaccinated. Chairman Pollak further commented that he believes strides are being made in administering the vaccine to the elderly population and that access to the Covid vaccine is driven by patient access to care or the availability of the vaccine.

Ben Steffen, Executive Director, added to Chairman Pollak's view on COVID-19 stating that the outlook is promising, and that the hospital cases are going down. Mr. Steffen also noted that Governor Hogan announced that the Brazilian strain of COVID-19 had been found in Maryland; and that the Maryland Department of Health is working on contact tracing to help with the spread of the virus. Maryland is opportunistically testing for variants given the limited genomic sequencing capabilities. The limited sequencing makes it impossible for the State to estimate the prevalence of the variants, which are more transmissible in cases of the South African and Brazilian variants and somewhat resistant to the current crop of vaccines. To date there are 47 cases of the English variant (B.1.1.7), eight cases of the South African variant (B.1.351), and one case of the Brazilian variant (P.1). Maryland is purchasing more sequencing capability, and it will be sometime before the State can estimate the prevalence of such variants.

Mr. Steffen further reported that the Maryland Health Care Commission (MHCC or Commission) was delaying the update of the formula for assessing industries. He noted that MHCC is funded by assessing insurance carriers and payors, hospitals, nursing homes, and certain health occupations. The assessment is memorialized in Health General §19.111 and operationalized in regulations at COMAR 10.25.02 and COMAR 10.25.03. These regulations describe the process for calculating the user fee assessment and the share of the Commission budget that payors, hospitals, nursing homes, and health care practitioners must contribute. COMAR 10.25.02 and 10.25.03 require a new calculation of user fees among hospitals, nursing homes, payors, and regulated health care practitioners that would become effective on July 1, 2021 and be effective for four years.

Mr. Steffen noted that the shares for the respective industries are based on a study of the Commission's future workload. He further stated that MHCC would delay the workload study and new calculation and the adoption of the revised regulations under Governor Hogan's proclamation of a state of emergency on March 5, 2020 and his June 19, 2020 Order entitled *Extending Certain Licenses, Permits, Registrations, and Other Governmental Authorizations, and Authorizing Suspension of Legal Time Requirements*. Also, based on the Governor's Order as permitted by the Public Health Emergency (PHE), the current COMAR 10.25.02 and 10.25.03 regulations calling for hospitals to pay (39%), payors (26%), nursing homes (19%), and health care practitioners (16%) of the Commission's \$16 million budget would continue until 2022.

Mr. Steffen stated that he believes it is in the public interest to suspend the workload study, update the user fee formula, and the effective date of new calculations. Given the existing state of emergency and catastrophic health emergency, the Commission believes it is appropriate to avoid distraction among the health care practitioners, the health occupation boards, hospitals, and nursing homes during this already stressful time. Mr. Steffen confirmed that the Commission has not received any complaints regarding the current assessment levels in several years, and that he expects that there would not be questions received if the current stable percentages are

maintained. Lastly, Mr. Steffen stated that the industries would receive a Notice, as the Commission is modifying the time frame for recalculation of user fee assessments so that a new four-year assessment allocation period will become effective on July 1, 2022 rather than on July 1, 2021. This Notice is effective on March 1, 2021 and shall remain in effect until 30 days after the state of emergency has been terminated and the proclamation of the catastrophic health emergency has been rescinded.

AGENDA ITEM 3.

ACTION: COMAR 10.24.21 – State Health Plan for Facilities and Services: Acute Psychiatric Services – Proposed Permanent Regulations

Eileen Fleck, Chief of Acute Care Policy and Planning, stated that she would explain the draft regulations for acute psychiatric services developed by Commission staff, summarize the informal comments received, and present the recommendations of staff. Ms. Fleck noted that the current State Health Plan chapter for acute psychiatric services, COMAR 10.24.07, also includes regulations for residential treatment services and emergency medical services. She noted that the regulations for residential treatment services will remain in COMAR 10.24.07, and the regulations for emergency medical services will be deleted because those regulations are not applicable to Certificate of Need (CON) reviews. She also stated that Commission staff would request that the Commission adopt the draft acute psychiatric services regulations as proposed permanent regulations in a new chapter of the State Health Plan, COMAR 10.24.21 (Acute Psychiatric Services Chapter).

Ms. Fleck next reviewed each section of the draft Acute Psychiatric Services Chapter, covering its applicability, as well as the standards for CON reviews and requests for exemption from CON review. When Ms. Fleck reviewed the impact standard, there was a discussion as to whether existing providers should be protected from adverse impacts. After discussion, the Commissioners agreed that that language in Paragraph .05B(9)(b) should be deleted, and later there was a motion, as noted below, to adopt the draft regulations for acute psychiatric services with that text removed. Other concerns raised by Commissioners included whether the needs determination for special populations could present a barrier to approval of a project, with Ms. Fleck responding that it would not be a barrier. Another question raised was whether the regulations would require a hospital to establish acute psychiatric services. Ms. Fleck responded that they do not.

Chairman Pollak requested a motion to adopt the draft Psychiatric Services Chapter as proposed permanent regulations at COMAR 10.24.21 with the language in .05B(9)(b) removed, and, contingent on the adoption of the Chapter as final regulations, repeal the regulations in COMAR 10.24.07 that address only acute psychiatric services, with regulations regarding residential treatment centers to remain in COMAR 10.24.07.

Commissioner Boyer made a motion to adopt COMAR 10.24.21 with the removal of the draft language in Paragraph .05B(9)(b), which stated that “[a]project involving acute psychiatric services shall not have unwarranted adverse impact on existing providers of acute psychiatric services. An unwarranted adverse impact is one that jeopardizes the financial viability of an

existing provider.” The motion was seconded by Commissioner Sergent and unanimously approved.

ACTION: COMAR 10.24.21 – State Health Plan for Facilities and Services: Acute Psychiatric Services, with Draft COMAR .05B(9)(b) Removed, is hereby ADOPTED as Proposed Permanent Regulations.

AGENDA ITEM 4.

PRESENTATION: Update on COMAR 10.24.11 - State Health Plan for Facilities and Services: General Surgical Services

Paul Parker, Director of the Center for Health Care Facilities Planning and Development, updated the Commissioners on the status of the State Health Plan regulations for general surgical services (Surgical Services Chapter). He noted that MHCC staff had posted a draft update to COMAR 10.24.11 in the fall of 2020 for informal review and comment and had outlined the key changes being proposed to the regulations at that time, but the posting had been delayed until February 2021. The delay allowed further review and improvement of the draft. Mr. Parker briefly reviewed the key changes, most of which derive from changes in the Commission’s statute that became effective in 2019 and 2020. These changes contracted the scope of CON regulation, allowing ambulatory surgical centers with up to two operating rooms to be developed without CON approval, and place hospitals on a more “level playing field” in development of these types of centers. The MHCC will accept informal comments on the posted draft through March 8, 2021, which staff will consider in developing a revised draft Surgical Services Chapter for the Commission to consider adopting as proposed permanent regulations.

The discussion touched on two of the draft policy statements in the draft Surgical Services Chapter. Chairman Pollak stated that he disagreed with draft Policy 3, which states that “[t]he efficient use of resources for performing surgical services should be promoted and under-utilization of surgical capacity should be discouraged in MHCC’s regulatory oversight.” In his view, a physician or a physician group should be allowed to operate a freestanding surgical center using operational parameters tailored to achieving their best surgical outcomes and economic performance objectives, even if those may differ from the service capacity assumptions and efficiency metrics outlined in the regulations.

Mr. Parker acknowledged Dr. Pollak’s comment and stated that it will be considered in further development of the updated regulations. He noted that the last iteration of these regulations included changes allowing surgical facilities to offer alternative definitions of “full” and “optimal capacity use” of operating rooms, based on the specific characteristics of their facilities and services and that these features have been retained in the draft update. Commissioner Doordan expressed concern with the second part of draft Policy 2, which provides that “[o]utpatient surgical services should be performed, whenever they can be safely performed, in lower charge outpatient surgical center settings.” He stated that his concern lies with the potential impact that pursuit of such a policy could ultimately have on the hospital setting, and the impact on costs and profitability

of hospitals if increasingly more of their surgical work is limited to more complex and expensive inpatient surgery.

ACTION: NO ACTION REQUIRED

AGENDA ITEM 5

PRESENTATION: Legislative Update

Tracey DeShields, Director of Policy Development in the Executive Office provided an update on the 2021 legislative session. Ms. DeShields gave an overview on the legislative session to date. She noted that 53 days remain in the 90-day session; between the House and Senate, there have been approximately 2,700 bills introduced. The MHCC staff is tracking roughly 160 bills and have taken positions on 14 of the 160. Ms. DeShields discussed bill hearing dates that occurred prior to the Commission meeting.

Ms. DeShields noted bill hearings focused on reducing health disparities and expanding telehealth, with a comment that the House and Senate will likely pass at least two bills related to health disparities. The Health and Government Operations (HGO) Public Health and Minority Health Disparities Subcommittee voted favorably on the three health disparities bills (HB 28, HB 78, and HB 309). All three health disparities bills will be voted on by the full committee.

Additionally, Ms. DeShields provided an update on the telehealth bills. She noted that five telehealth bills had been introduced, including bills created by the administration in the Governor's Office. The House and Senate are looking to move one bill each and are working to consolidate the other telehealth bills into one bill. The HGO Insurance and Pharmaceuticals Subcommittee met to work on telehealth bills and to get feedback from stakeholders on proposed amendments.

Earlier in the week, MHCC and the Health Services Cost Review Commission had a budget hearing. Ms. DeShields noted that the Budget Subcommittee did not have questions or issues with respect to MHCC. She also mentioned that the Commission weighed in on two bills, and that any additional details presented were for informational purposes.

Ms. DeShields reviewed five new bills related to the Commission's priorities and positions the Commission could take on each bill. The bills reviewed and the recommended positions were:

- 1) MHCC - Departmental Bill - Health Information Exchange - Definition and Consent Management - Position – Support – HGO - Bill Hearing TBD
- 2) HB 1022/SB 748 - Health Information Exchange Infrastructure for Public Health
Position – Support – HGO - Bill Hearings 3/2 and 3/3
- 3) SB 796 Maryland Office of Minority Health and Health Disparities and Maryland Health Care Commission – Reporting Requirements - Position – Support – Finance – Bill Hearing 3/3
- 4) HB 936 Hospitals and Freestanding Medical Facilities - Closing or Partial Closing - Public Notice - Position – Letter of Information – Finance – Bill Hearing 3/9

- 5) SB 837 Health - Advance Care Planning and Advance Directives - Position – Letter of Information – Finance – Bill Hearing 3/11.

The Commissioners accepted the recommendations on the positions to take on the bills without discussion. It was noted that the Legislative Policy call scheduled for Friday was cancelled since this presentation covered all related topics.

ACTION: NO ACTION REQUIRED

AGENDA ITEM 6.

Overview of Upcoming Activities

Mr. Steffen stated that the March Commission meeting may include review of applications for Certificates of Ongoing Performances, applications for Certificates of Need, the Privately Insured Report for 2019, and a presentation on the new Quality Performance website.

AGENDA ITEM 7.

ADJOURNMENT

There being no further business, the meeting was adjourned at 3:56 p.m. upon motion of Commissioner Boyer, which was seconded by Commissioner Bhandari and unanimously approved.