

**Marilyn Moon, Ph.D.**  
CHAIR



**Rex W. Cowdry, M.D.**  
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**MARYLAND HEALTH CARE COMMISSION**

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**MARYLAND HEALTH CARE COMMISSION**

**Thursday, February 18, 2010**

**Minutes**

Chair Moon called the public meeting to order at 1:10 p.m.

Commissioners present: Conway, Falcone, Krumm, Lyles, McLean, Moore, Olsen, Ontaneda-Bernales, and Worthington. Commissioner Petty participated via teleconference.

**ITEM 1.**

**Approval of the Minutes**

Commissioner Moore made a motion to approve the minutes of the January 21, 2010 meeting of the Commission, which was seconded by Commissioner Conway. Commissioner McLean asked that the minutes be edited, noting that she asked the Commission to revisit the upcoming change in law in the small group market that will allow carriers to use health status as a rating factor and requested that staff provide the Commission with recommendations for its consideration at the February 2010 public meeting; with that change, the minutes were unanimously approved.

**ITEM 2.**

**Update of Activities**

Pamela Barclay, Director of the Center for Hospital Services, introduced and welcomed Mohamed Badawi to the Commission staff. Dr. Badawi will serve as a Health Policy Analyst for the Hospital Quality Initiatives Program within the Center for Hospital Services.

Ms. Barclay noted that the third quarter survey results regarding the collection of data on Active Surveillance Testing for MRSA in all ICUs have been included, for the first time, in the January 2010 update of the Hospital Guide.

### ITEM 3.

#### **ACTION: LEGISLATIVE UPDATE**

Rex Cowdry, Executive Director, and Rebecca Perry, Chief, Government Relations and Special Projects, provided an update on the 2010 legislative session and proposed staff recommendations on specific bills for action.

- **SB 625 – Health Insurance - Payment and Fee Disclosure**

Dr. Cowdry said that SB 625 would require carriers to more explicitly share with patients the costs that could be incurred for certain procedures, and would require providers to give patients a list of fees for services that can be rendered. Staff recommended either supporting the bill or supporting the bill with amendments. Commissioner Moore made a motion to support the bill with amendments to point out some implementation challenges that should be anticipated and some modifications that might be considered. The motion was seconded by Commissioner McLean and unanimously approved.

**ACTION: SB 625 - Health Insurance – Payment and Fee Disclosure – Support with Amendment, is hereby APPROVED.**

- **SB 634 – Transportation – Maryland Emergency Medical System Operations Fund – Transport by Privately Owned Helicopter**

This bill allows private helicopter companies to receive reimbursement from the Maryland Emergency Medical System Operations Fund for patient emergency medical transport. Ms. Perry said that staff recommended supporting SB 634. Commissioner Krumm made a motion to accept the staff recommendation, which was seconded by Commissioner Moore and unanimously approved.

**ACTION: SB 634 – Transportation – Maryland Emergency Medical System Operations Fund – Transport by Privately Owned Helicopter - Support, is hereby APPROVED.**

- **SB 700 - Health Insurance – Child Wellness Benefits**

Ms. Perry noted that this bill extends the State’s child wellness mandate to include reimbursement for obesity evaluation and treatment, all visits, and costs of developmental testing, as recommended by the American Academy of Pediatrics. Ms. Perry said that staff recommended submitting a letter of concern highlighting problems with controlling utilization and the lack of a mandate impact assessment conducted by the Commission. Commissioner Moore made a motion to accept the staff recommendation, which was seconded by Commissioner Ontaneda-Bernales and unanimously approved.

**ACTION: SB 700 – Health Insurance – Child Wellness Benefits – Letter of Concern, is hereby APPROVED.**

- **SB 723 - Health Insurance – Clinically Integrated Organizations**

Dr. Cowdry said that SB 723 would authorize certain carriers to pay certain incentives to clinically integrated organizations that may currently be prohibited by law, and would also require carriers to share certain claims data with clinically integrated organizations. Staff recommended supporting this legislation with amendments. The amendments would establish a process to evaluate and approve a carrier’s plan to pay incentives to providers based on cost savings without regard to medical necessity. Specific measures must be proposed to assure that such incentives are consistent with continuing high quality, appropriate care and to require disclosure and consent on first joining the clinically integrated. Commissioner Falcone made a motion to accept the staff recommendation, which was seconded by Commissioner Olsen and unanimously approved.

**ACTION: SB 723 - Health Insurance – Clinically Integrated Organizations – Support with Amendments, is hereby APPROVED.**

- **SB 745 - Health Insurance - Ambulance Service Providers - Direct Reimburse**

This bill would require carriers to reimburse ambulance service providers directly for covered services regardless of whether the provider is in-network or out-of-network. Ms. Perry said that staff recommended supporting this bill with amendments. After discussion, the Commission members reached a consensus that they would not take a position until the receipt of research on this issue.

- **SB 812 - End of Life Health Care Disclosure Act**

Dr. Cowdry said this legislation would require that certain health care facilities provide information related to advanced directives for admitted individuals who are capable of making an informed decision and would also required the Maryland Health Care Commission to post each Nursing Home’s advance directive policy on its website. Dr. Cowdry noted that the Commission did not take a position on this legislation last year; therefore, staff recommended no position. After discussion, Commissioner Falcone made a motion to support this legislation with amendments, which was seconded by Commissioner Moore and unanimously approved.

**ACTION: SB 812 – End of Life Health Care Disclosure Act – Support with Amendments, is hereby APPROVED.**

- **SB 855 - Patient Centered Medical Home Program**

This bill would allow the Maryland Health Care Commission to establish a Patient Centered Medical Home pilot. After discussion, Commissioner Krumm made a motion to support this legislation with the amendments offered by the Department, which was seconded by Commissioner Falcone and unanimously approved.

**ACTION: SB 855 - Patient Centered Medical Home Program – Support, is hereby APPROVED.**

- **HB 803 – High Deductible Plans and Limited Benefit Plans for Uninsured Individuals**

This bill would authorize a nonprofit health service plan to issue high deductible and limited benefit plans to individuals who were uninsured for the previous twelve months. The bill would require coverage of some, but not all mandated services. The Commission had strong reservations about the appropriateness of marketing such products to individuals with limited discretionary income who are likely to be vulnerable to the very attractive low premium, but who could subsequently find themselves in financial jeopardy during an acute illness, as the high deductible may exceed their ability to pay. Commissioner Worthington made a motion to oppose HB 855, which was seconded by Commissioner Krumm and unanimously approved.

**ACTION: HB 803 – High Deductible Plans and Limited Benefit Plans for Uninsured Individuals – Oppose, is hereby APPROVED.**

- **HB 918 – Prescription Drug Monitoring Program**

Bruce Kozlowski said this bill would establish the Prescription Drug Monitoring Program within the Department of Health and Mental Hygiene. Mr. Kozlowski provided the Commission with details regarding HB 918. After discussion regarding the cost of implementation of the program, the ability to access sensitive prescribing data, and the penalties for the release of information obtained from the Prescription Drug Monitoring Program, the Commission agreed to oppose HB 918. Commissioner Lyles made a motion to oppose the bill, which was seconded by Commissioner McLean and unanimously approved.

**ACTION: HB 918 – Prescription Drug Monitoring Program – Oppose, is hereby APPROVED.**

#### **ITEM 4.**

**ACTION: Certificate of Need – Modification - Lorien LifeCenter – Howard County (Docket No. 08-13-2246)**

Lorien LifeCenter – Howard County applied for a modification to its existing Certificate of Need. Paul Parker, Chief, Certificate of Need, said that Lorien LifeCenter received two Certificates of Need between September 2007 and February 2009 to establish a 64-bed comprehensive care facility (CCF) in eastern Howard County. Mr. Parker said that, due to a concern that instability in the housing market may persist for some time, Lorien proposed the development of a freestanding CCF, with assisted living facilities to be built later in subsequent phases of site development. He said the modified project is estimated to cost \$9,735,958, which is an increase of 24.4% over the last cost estimate in February 2009. Mr. Parker said Lorien proposed to increase its borrowing for this project by only \$200,000, funding the bulk of the cost increase with a larger cash contribution. Staff recommended that the Commission approve the modification to this project, subject to conditions currently attached to the original Certificates of

Need. Commissioners Conway made a motion to approve the staff recommendation, which was seconded by Commissioner Krumm and unanimously approved.

**ACTION: Certificate of Need – Modification – Lorien LifeCenter – Howard County II is hereby APPROVED.**

#### **ITEM 5.**

**ACTION: Certificate of Need – A.F. Whitsitt Center (Docket No. 08-13-2256)**

The A.F. Whitsitt Center applied for a Certificate of Need to increase its intermediate care facility beds. Mr. Parker said that A.F. Whitsitt Center is a 24-bed intermediate care facility for the treatment of alcohol and/or drug abusing adults in Chestertown, Maryland. He said the facility is currently owned by and primarily funded through the Department of Health and Mental Hygiene (DHMH) and operated by the Kent County Department of Health. Mr. Parker said that the Center shares a campus with the Upper Shore Community Mental Health Center (“Upper Shore”). He said that acute psychiatric hospital services are being eliminated at Upper Shore, including a program that has specialized in treating patients with co-occurring substance use disorders and moderate mental health disorders. DHMH proposed to expand Whitsitt to incorporate the facilities of that program into the Whitsitt ICF treatment model. He said that the facility will add sixteen beds and staffing will increase to provide this enhanced level of care. Whitsitt projects that approximately 80 percent of the patients historically served in the Upper Shore hospital unit can be appropriately served in the ICF setting of the Center. Staff recommended that the Commission approve the proposed project with two conditions. Commissioner Falcone made a motion to approve the staff recommendation, which was seconded by Commissioner Olsen and unanimously approved.

**ACTION: Certificate of Need – A.F. Whitsitt Center (Docket No. 08-13-2256), is hereby APPROVED.**

#### **ITEM 6.**

**PRESENTATION:** Report on the Operations, Utilization, and Financing of Freestanding Medical Facilities – Required Under House Bill 426 (Chapter 549 and 550, Acts 2005) – Freestanding Medical Facilities – Licensing and Pilot Project

Pam Barclay noted that the *Freestanding Medical Facilities—Licensing and Pilot Project* law adopted in 2005 required the Commission, in consultation with the Health Services Cost Review Commission (HSCRC), to conduct a study of the operations, utilization, and financing of freestanding medical facilities, using information collected from the pilot project sites. The findings of this study are to be reported to the Senate Finance Committee and the House Health and Government Operations Committee. She reviewed key findings from the report, including:

- A substantially higher proportion of the visits at GEC were low acuity (Level 1 or 2, minor to low-medium acuity) – 63% at GEC, 45% at Shady Grove Adventist Hospital ED, 30% state-wide.
- A higher proportion of visits were classified as non-emergent or emergent but primary care treatable using the NYU classification algorithm – 40% at GEC, 31% at SGAH ED, 35% state-wide.
- The rate of inpatient admissions from GEC (5%) was lower than from the SGAH ED (17%) or from EDs statewide (18%)
- Relatively few visits (11.7%) occur between the hours of midnight and 8 AM.
- Injuries accounted for 33% of GEC visits, compared with 21% statewide. A much higher proportion of patients served by GEC are children and adolescents – about 29 % of all discharged visits as compared to about 20% statewide.
- Like all hospital emergency departments, the Medicaid program was the second most frequent payment source at the Germantown Emergency Center, accounting for 20.5 % of all visits in fiscal year 2009.
- Opening the GEC did reduce the number of visits to the SGAH ED, but the average annual growth in visits to the two facilities combined was well above the trend of the previous 5 years at SGAH.
- Operating losses in 2008 were \$847,300, 8.2 % of net revenue. Those losses were at least partially offset by admissions to SGAH that were generated by Germantown. In fiscal year 2008, there were about 1,500 admissions from Germantown to SGAH—that increased to 1,700 in fiscal year 2009

- **HB 918 – Freestanding Medical Facilities - Rates**

Dr. Cowdry turned to current legislation pertaining to rates for services provided at Freestanding Medical Facilities. He said that SB 593 would require the Health Services Cost Review Commission (HSCRC) to set rates for freestanding medical facilities and would require all payers to reimburse according to those rates. After discussion, because of the immediate effect that all-payer rate-setting for these facilities is likely to have on health care costs, Medicaid payments, and adverse long-term effects that a proliferation of freestanding medical facilities would have on efforts to create a higher quality, more cost-effective health care system, Commission staff recommended opposing SB 593. Commissioner Worthington made a motion to oppose SB 593, which was seconded by Commissioner Moore and unanimously approved. Commissioners McLean and Ontaneda-Bernales recused themselves from this matter.

**ACTION: Health Facilities - Freestanding Medical Facilities – Rates – Oppose, is hereby APPROVED.**

**ITEM 7.**

**Update and Policy Discussion: Small Group Market Modifications in SB 637/HB 674 of 2009**

Rex Cowdry asked that the above item be postponed until the March meeting of the Commission due to time constraints.

**ITEM 8.**

**MOTION TO ADJOURN TO CLOSED SESSION TO CONSULT WITH COUNSEL**

Commissioner Falcone made a motion to adjourn to closed session to consult with counsel regarding potential litigation, which was seconded by Commissioner Ontaneda-Bernales and unanimously approved. The statutory authority for closing the session is State Government Article §10-508(a)(7), which provides that a session may be closed to consult with counsel to obtain legal advice. Commissioners Conway, Falcone, Krumm, Lyles, Moore, Olsen, Ontaneda-Bernales, and Worthington, and Chairman Moon voted in favor of going into closed session. The meeting was then closed to the public at 3:45 p.m. Commissioner McLean recused herself from consideration of the motion and did not participate in the closed session.

**ITEM 9.**

**ADJOURNMENT**

After returning from closed session at 4:15 p.m., and there being no further business, the meeting was adjourned at 4:16 p.m., upon motion of Commissioner Krumm, which was seconded by Commissioner Conway and unanimously approved.