



MARYLAND HEALTH CARE COMMISSION
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Thursday, April 21, 2011

Minutes

Chair Moon called the public meeting to order, via conference call, at 12:30 p.m. A motion was made, seconded, and carried to adjourn into closed session to discuss a personnel matter. Present at the closed session were Commissioners Conway, Falcone, Fleig, Kan, Krumm, Lyles, Mawakana, McLean, Olsen, Petty, and Worthington. Commissioner Weinstein was present for part of the closed session, as was Suellen Wideman, Assistant Attorney General, counsel to the Commission. The closed session ended at 12:50 p.m. and the Commissioners resumed open session at 1:00 p.m.

Commissioners present: Conway, Falcone, Fleig, Kan, Krumm, Lyles, Mawakana, McLean, Olsen, Petty, Weinstein, and Worthington.

Chair Moon announced that Rex Cowdry, the Commission's Executive Director since June 2005, resigned to assume a position in the federal government working with the team at CMS/CCIIO to create the SHOP health benefits exchange. She also announced that Ben Steffen, Director of the Center for Information Services and Analysis, had been named Acting Executive Director.

ITEM 1.

Approval of the Minutes

Commissioner Falcone made a motion to approve the minutes of the March 14, 2011 public meeting, which was seconded by Commissioner Krumm and unanimously approved. Commissioner Fleig made a motion to approve the minutes of the March 17, 2011 public meeting held via conference call, which was seconded by Commissioner Mawakana and unanimously approved.

ITEM 2.

Update of Activities

Suellen Wideman, Assistant Attorney General, welcomed Sondra McLemore, Assistant Attorney General, to the Commission. Ms. Wideman noted that Ms. McLemore came to the Commission directly from the Mississippi Office of the Attorney General, where she had experience in antitrust, consumer protection, and Certificate of Need matters. She noted that, in the 1990's, Ms. McLemore

previously worked with the Maryland Attorney General's Office. Ms. McLemore received her J.D. from the University of Mississippi College of Law and an LL.M. from George Washington University.

Paul Parker, Chief, Certificate of Need, introduced and welcomed Hussein Ziad to the Center for Hospital Services, Certificate of Need division. Mr. Ziad began work as a Fiscal Services Analyst with the Hospital Planning & Policy, Certificate of Need unit of the Center for Hospital Services. Most recently, he worked as a lead auditor and team leader for the Program Integrity Unit of the DHMH Office of the Inspector General. Mr. Ziad earned a bachelor's degree in International Economics from the American University of Paris.

ITEM 3.

UPDATE: Search Committee

Dr. Moon announced that a search committee for the Executive Director position has been formed and will be chaired by the Commission's Vice-Chair, Garret Falcone. Dr. Moon said Commissioners Conway, McLean, Weinstein, and Worthington agreed to serve on the Committee. Patricia Brown, President of Johns Hopkins Health Care, and Enrique Martinez-Vidal, Vice President of Academy Health, will also serve as members of the Committee.

ITEM 4.

FINAL ACTION: COMAR 10.25.16 – Electronic Health Record Incentives – Action on Final Regulations

David Sharp, Director of the Center for Health Information Technology, presented for final action proposed regulations that would require State-regulated payers to provide primary care practices with an incentive to adopt electronic health records. These regulations are required under House Bill 706, *Electronic Health Records – Regulation and Reimbursement*, which passed during the 2009 legislative session. The proposed regulations were adopted by the Commission as proposed permanent regulations on June 17, 2010, and published in the *Maryland Register* on July 30, 2010. Staff recommended that the Commission adopt these proposed regulations as final. Commissioner Mawakana made a motion to adopt the final regulations, which was seconded by Commissioner Lyles and unanimously approved.

ACTION: COMAR 10.25.16 – Electronic Health Record Incentives –are hereby ADOPTED as Final Regulations.

ITEM 5.

PROPOSED ACTION: COMAR 10.25.11 – Institutional Review Board – Action on Proposed Regulations

David Sharp, Director of the Center for Health Information Technology, presented as proposed permanent regulations revisions to the existing Institutional Review Board regulations that will allow the Commission to have more flexibility in considering data requests that require review by an Institutional Review Board (IRB). Under the current regulations, requests for MHCC-maintained data,

including the Medical Care Data Base, that contain patient level information must be reviewed by an IRB convened by the MHCC. The proposed change to the regulations would allow the MHCC to use other recognized and appropriate IRBs that frequently handle such requests as an alternative to an MHCC-convened IRB. Staff recommended adopting the revisions to the existing regulation. Commissioner Worthington made a motion to adopt the revisions as proposed regulations, which was seconded by Commission Fleig and unanimously approved.

ACTION: COMAR 10.25.11 – Institutional Review Board – Action on Proposed Regulations, are hereby ADOPTED.

ITEM 6.

PRESENTATION: Legislative Wrap-Up

Bruce Kozlowski, Director of the Center for Health Care Financing and Health Policy, provided a final status report on the 2011 legislative session. Mr. Kozlowski said that, based on the consensus of the Commission, staff submitted letters of information on all proposed mandated benefit bills which included noteworthy conclusions from the 2010 Mercer report and recommended that the Legislature consider whether the mandated service is likely to be part of the federally defined essential benefits package since ACA requires each state to pay for additional mandated benefits purchased through the exchange. Each proposed mandate either received an unfavorable report or was withdrawn by the sponsor.

Mr. Kozlowski said the Commission supported the following legislation, which was enacted:

- SB 56 – Health Insurance – Evaluations of Quality of Care and Performance of Health Benefit Plans – This legislation expands the state’s current requirements for health care quality and performance reporting to PPOs and other plan designs entering the market – currently only HMOs are required to report. It requires MHCC to establish and implement a system that comparatively evaluates the quality of care and performance of specified health benefit plans for the purpose of assisting specified health insurance carriers to improve care and assist consumers in health plan choices.
- SB 57 – MHCC – Certificate of Need Requirements – This legislation aligns closure requirements for other health care facilities with those of a hospital. The certificate of need process originally set forth in statute required a certificate of need not only to establish a health care facility but also to close a facility. SB 57 will align CON closure requirements for other health care facilities with those of a hospital that have been in effect since 2006. It also authorizes the MHCC to require these health care facilities to hold public information hearings in the counties where the facilities are located, in consultation with the MHCC and within specified time periods.
- HB 156 – Health Insurance – Small Group Market – Self-Employed Individuals – Sunset Extension – This legislation extends the sunset provision to continue prohibiting self-employed individuals from obtaining coverage in the small group market. The sunset extends until year end 2013, since individual and SHOP exchanges will be available through ACA beginning January 1, 2014.

- SB 182 – Maryland Health Benefit Exchange Act of 2011 – This legislation, as amended, establishes the Maryland Health Benefit Exchange as a public corporation and an independent unit of State government. It establishes the purpose of the Exchange, the Board of Trustees of the Exchange, including rules, powers, and duties of the Board.
- HB 1182 – CON – PCI – This legislation prohibits a hospital from establishing a non-primary PCI program unless the hospital was operating a non-primary PCI program on January 1, 2011 with either a CON for a cardiac surgery program or a non-primary PCI waiver in good standing issued by the MHCC. The bill requires the MHCC to develop recommendations on or before December 31, 2011 for statutory changes needed to provide appropriate oversight of PCI services.

David Sharp, Director of the Center for Health Information Technology, discussed the following legislation that was supported by the Commission, which was enacted:

- SB 722 – Electronic Health Records – Incentives for Health Care Providers – Regulations – This legislation requires that all providers receive incentive payments from state-regulated payers, removes group model HMOs from participation in the incentive program, permits health care providers to specify to a state-regulated payor the form of incentive the health care provider will receive for the adoption and meaningful use of electronic health records (EHRs), and allows the provider to limit the incentive to a monetary payment. The Commission opposed expanding the EHR adoption incentive requirements to include all providers and the total exclusion of group model HMOs from the incentives. The Commission supported clarifying language making clear that the provider would be paid in cash if there is not mutual agreement between providers and payors regarding an alternative incentive of equivalent value. SB 722 passed with the Commission’s suggested amendments.
- SB 723 – Medical Records – Health Information Exchanges – This legislation requires the Commission to adopt regulations for the privacy and security of protected health information obtained or released through a health information exchange; requires that an insurer that releases personal health information to certain providers will make it available to the state-designated exchange; and establishes liability protections under certain circumstances for an HIE and a health care provider. The Commission suggested the following amendment: to allow a patient or an agent authorized by the patient to gather, store, or release the patient’s personal health information. SB 723 passed, as amended.
- HB 1146 – Electronic Health Records – Definition of State-Regulated Payor – State Employee and Retiree Health and Welfare Benefits Program – This legislation excludes the State Employee and Retiree Health and Welfare Benefits Program (SERHWBP) from regulations relating to electronic health records. Although SERHWBP will no longer pay HER adoption incentives to primary care practices, it has agreed to participate voluntarily in the Maryland Multipayer Patient-Centered Medical Home (MMPCMH) Program, and the MMPCMH Program itself rewards EHR adoption by the participating primary care practices.

Mr. Kozlowski concluded his presentation by noting that HB 1229 – Prescription Drug Monitoring Program (PDMP) also passed. He said this legislation requires the establishment of a Prescription Drug Monitoring Program within the Department of Health and Mental Hygiene and requires the reporting of all Schedule II through V drugs. DHMH is required to consult with the Commission to

determine the appropriate technology to support the PDMP and to provide for future merging into the HIE. The PDMP must be supported without fees or assessments and have restricted disclosure of information for cause. The Multi-Specialty Advisory Board will review all data requests.

ITEM 7.

PRESENTATION: 2010 Nursing Home Experience of Care Survey Results

Carol Christmyer, Chief, Long Term Care and Quality Initiative, presented the 2010 Nursing Home Experience of Care Survey Results. Ms. Christmyer reviewed the goals of Maryland Nursing Home Surveys are subjective measurement of nursing home care and quality of life for public reporting. She said the survey provides comparative performance information for consumers engaged in a due diligence review and identifies facilities exhibiting good performance. It also identifies facility-specific opportunities for improvement. Ms. Christmyer discussed the family survey statewide results, as well as domain ratings by facility size. Eighty-three percent of respondents to the short stay resident survey reported that they would recommend their nursing facility, while ninety percent of family respondents would recommend the nursing facility. The average overall rating was 7.8 out of a possible 10, and the average rating for care received by the nursing facility's staff was 8 out of 10. Ms. Christmyer said the results of the 2010 Maryland Nursing Home Experience of Care Surveys are available on the MHCC website.

ITEM 8.

ADJOURNMENT

There being no further business, the meeting was adjourned at 1:55 p.m., upon motion of Commissioner Mawakana, which was seconded by Commissioner Olsen and unanimously approved.