Andrew N. Pollak, M.D.
CHAIR

Ben Steffen
EXECUTIVE DIRECTOR

# MARYLAND HEALTH CARE COMMISSION

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**Thursday, May 21, 2020**

**Minutes**

Chairman Pollak called the meeting to order at 1:00 p.m.

**Commissioners present via telephone:** Bhandari, Boyer, Boyle, Doordan, Hammersla, McCarthy, Metz, O'Connor, O'Grady, Rymer, Sergent, Thomas, and Wang.

## AGENDA ITEM 1.

### Approval of the Minutes

Commissioner Sergent made a motion to approve the minutes of the April 16, 2020 public meeting by teleconference of the Commission. The motion was seconded by Commissioner O'Connor and unanimously approved.

## AGENDA ITEM 2.

### Update of Activities

Ben Steffen, Executive Director, stated that the work at the Maryland Health Care Commission (MHCC or Commission) work on hospital Emergency CONs was nearly finished. He noted that he had approved only one Emergency CON. He reported that the State continued to focus on adding more field hospitals, also called advanced medical, on hospital campuses particularly in hard-hit Prince George's and Montgomery counties. Mr. Steffen said that several nursing homes were also in the process of adding capacity to create COVID-19 only or quarantine wings in existing facilities.

Mr. Steffen reported that he had not received any specific information from the Maryland Department of Health regarding reopening. He noted that because the MHCC operates in a satellite site, the organization would have greater responsibility to plan its own reopening once Governor Hogan issued a return to work order. He added that he had some initial discussions about developing a common reopening strategy with HSCRC. Collaboration between the two organizations would be key because the public conference room, the kitchen, and the restrooms are shared between the two organizations.

Commissioner Boyle asked if all hospitals that had been issued Emergency CONs had brought the new capacity into operation. Mr. Steffen responded that during March and early April hospitals added capacity on the assumption that Maryland would experience an outbreak similar to that occurring in New York. As the scale of the pandemic changed, some hospitals decided that the capacity was not needed. Over the next several weeks, MHCC will survey hospitals that received Emergency CONs on the status of the projects. Mr. Steffen noted that Emergency CONs are valid for a maximum of 165 days or until 30 days after the termination of the state of emergency declared by the Governor. Mr. Steffen explained that as some experts fear a second surge in the fall, a hospital might activate a valid Emergency CON during that period assuming the Governor's state of emergency had not been revoked.

Richard Proctor, Chief Operating Officer, presented a brief Fiscal Year 2021 Budget Allowance Overview and highlighted funded programs and sources of funding. Mr. Proctor stated the total Special Fund Allowance was $33,473,132, which consists of funds for the Operation of the Commission Program ($16,723,132); Maryland Trauma Physicians Fund ($12,000,000); Maryland Emergency Medical System Operations Fund for the R. Adams Cowley Shock Trauma Center ($3,500,000); Integrated Care Network ($500,000); and Prescription Drug Affordability Board ($750,000). Mr. Proctor further reported that the Reimbursable Fund Allowance for the Maryland Department of Health Prevention and Health Promotion Fund is $400,000, for a total Budget Allowance of $33,873,132.

Mr. Proctor further reported that the source of funding for the Operation of the Commission is through annual assessments on the Health Insurance Carriers not to exceed 26% of the total budget; Hospitals not to exceed 39% of the total budget; Nursing Homes not exceed 19% of the total budget; and Health Occupation Boards not to exceed 16% of the total budget. He then stated that a Maryland Motor Vehicle License and Registration surcharge is the source of funding for the Maryland Trauma Physicians Services Fund; and a Motor Vehicle Administration surcharge on License Registration and a Judiciary surcharge on certain moving violations is the source of funding for the Maryland Emergency Medical System Fund. Lastly, Mr. Proctor noted that the Commission has agreed to assist the establishment and implementation of the Prescription Drug Affordability Board.

Megan Renfrew, Chief, Government Relations and Special Projects, presented a brief legislative overview. Ms. Renfrew stated that the Governor took final action on bills passed during the last legislative session. Most importantly for MHCC's budget, the funding bill for the Prescription Drug Affordability Board (PDAB) was vetoed by the governor who vetoed most spending and tax bills this year, given concerns about the impact of the coronavirus pandemic on the state economy. The MHCC has been providing funding for the PDAB, and this bill would have allowed the PDAB to reimburse MHCC for these expenses. Ms. Renfrew reported that it is not clear at this time if the legislature will attempt to override this veto.

A number of other bills that MHCC has been tracking will become law as follows:

- The bill changing regulations related to anesthesia use in ambulatory surgery centers will become effective in October (HB 935 / SB 728).
- Electronic prescriptions will be required for controlled dangerous substances in 2022. This State requirement aligns with Medicare requirements that become effective next year. (HB 512 / SB 166 ).

- A bill requiring hospitals to provide patients with notice of outpatient facility fees will become law in 2021 (HB 915 / SB 632 )
- Three bills related to telehealth were signed into law. These bills will allow the use of asynchronous telehealth technology, as well as establishing Medicaid payment for telehealth delivered at home for mental health conditions, and a pilot to use telehealth for chronic disease management. (HB 1208 ; SB 502; HB 448/ SB 402 )
- Three bills related to health insurance mandates will become law, including coverage of cost sharing for prostate cancer screening ( HB 852/ SB 661 ), expanded coverage of in vitro fertilization ( HB 781/ SB 988 ), and coverage related to pediatric autoimmune neuropsychiatric disorders ( HB 447 / SB 475 )

## AGENDA ITEM 3.

**ACTION: Confirmation Docket – Emergency Certificates of Need (TBD)**

**A**. Confirmation of approved Emergency Certificate of Need - Doctors Community Hospital - Establishment of 51 Additional Inpatient Beds at Former Magnolia Gardens Nursing Home (Docket No. EM-H20-16-022)

**B.** Confirmation of approved Emergency Certificate of Need – Doctors Community Hospital-Establishment of 62 Additional Inpatient Beds in the Hospital's North Building (Docket No. EM-H20-16-023)

**C.** Confirmation of approved Emergency Certificate of Need - Doctors Community Hospital - Establishment of 15 Additional Inpatient Beds in the Hospital's Patient Tower (Docket No. EM-H20-16-024)

**D.** Confirmation of approved Emergency Certificate of Need - Atlantic General Hospital - Establishment of Up To 16 Additional Inpatient Beds at Berlin Nursing & Rehabilitation Center (Docket No. EM-H20-23-025)

**E.** Confirmation of approved Emergency Certificate of Need - Anne Arundel Medical Center - Establishment of 15 Additional Inpatient Beds at the Clatanoff Pavilion (Docket No. EM-H20-02-026)

**F.** Confirmation of approved Emergency Certificate of Need - Anne Arundel Medical Center - Establishment of 147 Inpatient Beds at the Belcher Pavilion (Docket No. EM-H20-02-027)

**G.** Confirmation of approved Emergency Certificate of Need - Establishment of a Temporary Acute General Hospital with 250 Inpatient Beds at the Baltimore Convention Center Alternate Care Site (Docket No. EM-H20-24-028)

**H.** Confirmation of approved Emergency Certificate of Need - Crescent Cities Nursing and Rehabilitation Center - Establishment of Eight Additional Comprehensive Care Facility Beds Docket No. EM-NH20-16-003)

**I.** Confirmation of approved Emergency Certificate of Need - Adventist HealthCare, Inc. d/b/a Adventist HealthCare Fort Washington Medical Center - Establishment of 16 Intensive Care Unit Beds In Two Modular Units (Docket No. EM-H20-16-029)

**J.** Confirmation of approved Emergency Certificate of Need - LifeBridge Northwest Hospital Center - Establishment of 34 Inpatient Beds (Docket No. EM-H20-03-030)

**K.** Confirmation of approved Emergency Certificate of Need - LifeBridge Carroll Hospital - Establishment of 52 Inpatient Beds (Docket No. EM-H20-06-031)

**L.** Confirmation of approved Emergency Certificate of Need - Dimensions Health Corporation d/b/a UM Prince George's Hospital Center - Establishment of 16 Intensive Care Unit Beds In Two Modular Units (Docket No. EM-H20-16-032)

**M.** Confirmation of approved Emergency Certificate of Need - UM Harford Memorial Hospital – Establishment of 20 Inpatient Beds (EM-H20-12-033)

**N**. Confirmation of approved Emergency Certificate of Need - UM Upper Chesapeake Medical Center – Establishment of 61 Inpatient Beds (EM-H20-12-034)

**O.** Confirmation of approved Emergency Certificate of Need - LifeBridge Sinai Hospital of Baltimore, Inc. – Establishment of Two Inpatient Beds (EM-H20-24-035)

**P.** Confirmation of approved Emergency Certificate of Need - Stella Maris, Inc. - Establishment of 11 Comprehensive Care Facility Beds in a COVID-19 Unit (EM-NH20-03-004)

**Q.** Confirmation of approved Emergency Certificate of Need – Layhill Health and Rehabilitation Center - Establishment of Seven Additional Comprehensive Care Facility Beds (EM-NH20-15-005)

Commissioner Hammersla made a motion to confirm the 17 emergency CON's, which was seconded by Commissioner Thomas and unanimously approved.

**ACTION: Confirmation of approved seventeen Emergency Certificates of Need - is hereby APPROVED.**

**AGENDA ITEM 4**

**ACTION: Certificate of Need - Reviewer's Recommended Decision - Encompass Health Rehabilitation Hospital of Southern Maryland, LLC - Establishment of a Special Rehabilitation Hospital in Prince George's County (Docket No. 18-16-2423)**

Chairman Pollak recused himself from this Agenda item, which was then chaired by Vice Chairman Sergent.

Commissioner Doordan served as the Reviewer for the Certificate of Need (CON) application submitted by Encompass Health Rehabilitation Hospital of Southern Maryland to establish a special rehabilitation hospital at a site in Bowie in eastern Prince George's County. While MedStar National Rehabilitation Hospital was qualified in this review as an interested party, it did not file exceptions to the Recommended Decision.

Commissioner Doordan, presented his findings in the Recommended Decision that the proposed special rehabilitation hospital project is in the public's best interest, is consistent with CON review criteria and standards, and will result in the delivery of more efficient and effective health care services. He recommended that the Commission approve the application for a CON to establish a Rehabilitation Hospital in Prince George's County with three conditions.

Commissioner O'Connor made a motion to adopt Commissioner Doordan's Recommended Decision and approve the Applicant's Certificate of Need Application with three conditions. The motion was seconded by Commissioner Boyle and unanimously approved.

**ACTION: Certificate of Need Application - Encompass Health Rehabilitation Hospital of Southern Maryland, LLC - Establishment of a Special Rehabilitation Hospital in Prince George's County – is hereby APPROVED, with three conditions.**

## AGENDA ITEM 5.

**ACTION: Extension of Deadline for the University of Maryland Shore Medical Center at Easton to File an Application for Certificate of Ongoing Performance**

Chairman Pollak and Commissioner O'Connor recused themselves from this Agenda item, which was then chaired by Vice Chairman Sergent.

Ben Steffen, Executive Director of the Maryland Health Care Commission, gave an overview of the University of Maryland Shore Medical Center at Easton's percutaneous coronary intervention (PCI) program. In 2016, MHCC issued a Certificate of Conformance, which authorized the development of a percutaneous coronary intervention (PCI) program at the University of Maryland Shore Medical Center at Easton (Shore Easton). One of the conditions placed on the Certificate of Conformance issued to Shore Easton was that it file, on or before June 30, 2020, an application for a Certificate of Ongoing Performance demonstrating the new program's compliance with the performance standards for primary and elective PCI services.

Shore Easton has requested an extension of approximately 60 days beyond the June 30, 2020 deadline, until August 31, 2020, to file the application because of the current state of emergency in Maryland and the demands that have been placed on the hospital's administrative teams. Based on MHCC staff recommendations, Mr. Steffen recommended that the Commission approve Shore Easton's request for an extension of the deadline for filing an application for a Certificate of Ongoing Performance.
Commissioner Bhandari made a motion to approve the Extension of Deadline to File an Application for the Certificate of Ongoing Performance until August 31, 2020, which was seconded by Commissioner O'Grady and unanimously approved.

**ACTION: Extension of Deadline for the University of Maryland Shore Medical Center at Easton to File an Application for Certificate of Ongoing Performance until August 31, 2020 is hereby APPROVED.**

## AGENDA ITEM 6.

**ACTION:** Certificate of Ongoing Performance – Percutaneous Coronary Intervention Services - University of Maryland Upper Chesapeake Medical Center (Harford County) (Docket No. 19-12-CP017)

Chairman Pollak recused himself from this Agenda item, which was then chaired by Vice Chairman Sergent.

Jessica Raisanen, Program Manager, Acute Care Policy and Planning, reviewed the proposal by University of Maryland Upper Chesapeake Medical Center (UCMC) to continue primary and elective percutaneous coronary intervention (PCI) services. The hospital began providing primary PCI services in April 2008 under the Commission's waiver program that granted hospitals the opportunity to provide these services without on-site cardiac surgery, provided that certain conditions continued to be met. This waiver program ended in 2012, and has been replaced by the Certificate of Ongoing Performance review process. UCMC began providing elective PCI services in December 2014. In its review of the Certificate of Ongoing Performance request by UCMC, staff concluded that the hospital had met the applicable standards. As outlined in the report provided to the Commissioners, UCMC has maintained around-the-clock availability of primary PCI services from 2015 to present. The hospital is committed to meeting the door-to-balloon time standard. UCMC's PCI program performed well above the minimum number of cases required, and physicians performing PCI at UCMC also met the applicable case volume minimums for performing primary PCI at a program without on-site cardiac surgery. As noted in the corrected report, the risk-adjusted mortality rate for STEMI and NON-STEMI cases met the current performance standard, which became effective on January 14, 2019. Finally, staff found that UCMC has established quality assurance program elements and practices consistent with MHCC standards and has engaged in the required levels of internal peer review and external review. Staff found that UCMC's program provides appropriate services and has demonstrated that it strives to improve quality of care on a continuous basis. Ms. Raisanen recommended that the Commission approve the Certificate of Ongoing Performance for a period of four years.

Commissioner Boyle made a motion to approve the Certificate of Ongoing Performance, which was seconded by Commissioner Doordan and unanimously approved.

**ACTION: Certificate of Ongoing Performance for Primary and Elective Percutaneous Coronary Intervention Services Cardiac Surgery Services to University of Maryland Upper Chesapeake Medical Center for Four Years is hereby APPROVED.**

## AGENDA ITEM 7.

**PRESENTATION: Spending on the Privately Insured**

Kenneth Yeates-Trotman, Director, Center for Analysis and Information Systems, Shankar Mesta, Chief of the Cost and Quality, and Oseizame Emasealu, Methodologist, presented the results of the annual report on health care spending and utilization patterns for Maryland's privately-insured members from 2016 through 2018, using information from the Maryland Medical Care Data Base (MCDB). Mr. Yeates-Trotman described the background and purpose of the report. He noted that in the 2018 report, staff changed the spending metrics in terms of annual per member, instead of per

member per month (PMPM) spending. This year's report also added primacy care spending and spending on the most expensive prescription drugs among Maryland's privately insured residents. He apprised the Commission on the impact of key challenges on MCDB data completeness as a result of policy actions such as the *Gobielle v. Liberty Mutual* Supreme Court ruling affecting ERISA data and the federal Office of Personnel Management (OPM) decision affecting the submission of Federal Employee Health Benefit (FEHB) Program PPO data.

Mr. Mesta provided an overview of membership enrollment in all markets from 2016 through 2018, noting that overall enrollment remained stable between 2017 and 2018 compared to a 4% decrease between 2016 and 2017. He then noted that the illness burden only increased marginally to 1.42 in 2018 for all markets combined. He explained that the individual market's 50% higher risk score compared to the national average in 2018 was primarily due to healthier members exiting this market. He informed the Commission that next year, staff will revisit this data to analyze how the State Reinsurance Program, supported through a Section 1332 State Innovation Waiver, would impact both enrollment and illness burden in the individual market.

Mr. Mesta reported per member spending by individual service categories and explained about cost drivers for each of these categories. He highlighted that the 6.2% increase of inpatient hospital facility services was the main contributor to the 2.9% overall spending increase across all markets in 2018. He added that an increase in the inpatient hospital facility cost per inpatient day of 5.2% was the main driver of increased spending in inpatient hospital facility services. Mr. Mesta concluded that the difference in unit cost rate compared to HSCRC global budget revenue rates for 2018 was due to the intensity of services.

Also, Mr. Emasealu reported primary care spending among the privately insured as a percentage of overall outpatient medical spending, based on the primary care specialty definition from a recent report published by the Milbank Memorial Fund (MMF). He noted that primary care alone constituted an average of 4.7% of all medical and prescription drug spending in 2018, which was comparable to national benchmark percentages calculated by the MMF. He also compared Maryland's primary care spending rates with other All-Payer Claims Database (APCD) states, such as Washington, Connecticut, and Maine, and concluded that these states had comparable average spending rates.

Mr. Mesta noted that brand name drugs continue to contribute to the majority of per member spending in prescription drugs. He reported on the most expensive drugs in the privately insured population during 2018. Mr. Mesta highlighted that, in addition to reporting this drug information for each market segment, staff included data specific to state employees enrolled in private insurance, as this is an area of focus for the newly formed Prescription Drug Affordability Board. He pointed out that the top 25 most expensive drugs comprised 8% of total prescriptions but contributed to 37% ($0.8 billion) of the total prescription drugs spending ($2.1 billion). He added that state employees comprised 8% of the total private insured population in 2018, and per member prescription drug spending among state employees was approximately $1 billion (47%), compared to an overall $2.1 billion in total prescription drug spending in 2018.

Lastly, Mr. Yeates-Trotman then discussed two use cases regarding how MCDB could be used in COVID-19 analysis. He described that staff used ACG software version 11.1 to identify members at higher risk from COVID-19 using MCDB 2019 data. He pointed out that the top five vulnerable regions identified in the heat map based on MCDB data were comparable to the Maryland COVID-19 dashboard displayed in the Maryland Emergency Management Agency. He noted that staff

provided the number of privately insured patients diagnosed with certain mental health disorders to the Behavioral Health Administration to meet requests from Deputy Secretary who was interested to know counts of all Maryland residents who are receiving services for anxiety, depression, and PTSD statewide. He noted that in future reporting, the staff will analyze MCDB data to identify COVID-19 cases based on certain ICD 10 codes, as well as report on telehealth utilization over time to see how it impacts healthcare spending for professional services.

Mr.Yeates-Trotman explained that irrespective of challenges in MCDB data collection, the MCDB remains the best source of data to monitor the performance of Maryland insurance markets in collaborations with MHBE and the MIA. The MCDB is also a significant resource for quality and cost transparency work. In response to a question, Chairman Pollak responded that this information is used to guide health policy planning efforts and benchmark spending in the private sector. Mr. Steffen added that the MCDB supports analysis for other MHCC Centers such as reports on proposed mandated health insurance services. Commissioner O'Grady inquired about measures undertaken to resume ERISA and FEHB data reporting, and Mr. Steffen replied that staff will continue efforts to persuade OPM to allow for future submission of FEHB data.

**ACTION: NO ACTION REQUIRED**

**AGENDA ITEM 8.**

**PRESENTATION: The Colors of COVID-19: Confronting Health Disparities in a Global Pandemic**

Dr. Thomas, Commissioner of MHCC, has been a leading national spokesman on the disparate impact of COVID-19 on African American and Hispanic communities. He has been an impassioned advocate for greater funding for health disparities research and for the development of new programs that will reduce those disparities. He has been instrumental in raising awareness of prostate cancer and providing access to dental services to vulnerable populations in the National Capital Region.

Dr. Thomas gave a brief overview of the grant that he and his team applied for at The Office of Minority Health (OMH) at the United States Department of Health and Human Services to support projects that implement National Infrastructure for Mitigating the Impact of COVID-19 within Racial and Ethnic Minority Communities, a major national effort aimed at reducing the prevalence of COVID-19. The grant is for improving racial and ethnic disparities in COVID-19 health outcomes by building a network of national, state/territorial/tribal and local organizations to mitigate the impact of COVID-19 on racial and ethnic minority, rural and socially vulnerable populations.

Dr. Thomas discussed two tasks that this grant would fulfill. The first would be a Partnership and collaboration by establishing a national strategic information dissemination network of national, state/territorial/tribal and local organizations. This would consist of partner alignment to activities; partner training (CC-19 Learning Community); partner tracking; and partner engagement (Partner Portal). The second would be Information Development and Dissemination. The grant would help with printed materials to be used by CBOs, churches, health centers and other providers; create social media strategies; develop Internal/External Website with online portal for CBOs to retrieve

information; offer Virtual Outreach Forums/Townhalls/Roadshows with expert panel and community participants; and paid/earned media products.

Lastly, Dr. Thomas spoke about black deaths due to COVID-19, and where they have been highly impacted by geographic area, racial and ethnic minority, social and vulnerable populations. He also stated that the pandemic poses a greater risk for geographic areas with minorities. This grant will help to reduce the spread of COVID-19 by building a network of national, state, and local organizations to mitigate the impact of COVID-19 on racial and ethnic minority, rural and socially vulnerable populations.

**ACTION: NO ACTION REQUIRED**

## AGENDA ITEM 9.

**Overview of Upcoming Activities**

Mr. Steffen stated that the June Commission meeting would include several PCI Performance Reviews, at least one Certificate of Need, and the plan for reopening MHCC offices. The Commission will also have a planning meeting for the 2021 legislative session in June.

## AGENDA ITEM 10.

**ADJOURNMENT**

There being no further business, the meeting was adjourned at 3:40 p.m. upon motion of Commissioner Thomas, which was seconded by Commissioner Boyer and unanimously approved.