Chairman Pollak called the meeting to order at 1:03 p.m.

Commissioners present via telephone: Akintade, Bhandari, Boyer, Boyle, Cheatham, Doordan, Metz, O'Connor, Sergent, Thomas and Wang

AGENDA ITEM 1.

Approval of the Minutes

Commissioner Bhandari made a motion to approve the minutes of the July 15, 2021, public meeting by teleconference of the Commission. The motion was seconded by Commissioner Thomas and unanimously approved.

AGENDA ITEM 2.

Update of Activities

Chairman Pollak stated that this is Commissioner Thomas' last Commission meeting, and he thanked him for his dedication and understanding on Health Care Dipartites. Dr. Thomas assisted the Commission in understanding the importance of addressing health care disparities and helping those who do not receive equal access to care. Commissioner Thomas also assisted the Commission in understanding the Commission's responsibility to ensure that each person receives access to health care regardless of ethnicity or social economic background. Chairman Pollak emphasized that this effort must continue after Commissioner Thomas' service as a Commissioner concludes.

Commissioner Thomas stated that he is mostly proud of his initiatives of spending time in the barber shops to help reach minorities and help them gain access to health care. He noted that the White House used this same initiative during the pandemic to help reach vulnerable populations and assist them in with gaining access to health care.

Ben Steffen, Executive Director, presented Commissioner Thomas with two Governor's Citations, one for his eight years of his dedication to the Commission and the other for his dedication to health access and helping in reducing health care disparities.

Ben Steffen introduced a new employee Zoram Kaul who joined the Center for Health Planning and Development. Zoram Kaul holds a Ph.D., and a master's degree in Public Policy with a focus in health care policies, labor markets, and education from Arizona State University. Prior to MHCC, Dr. Kaul worked at CMS/CMMI as an analyst on evaluations of alternative payment models in Medicare and Medicaid. Dr. Kaul completed a Research Fellowship at the University of Pennsylvania, and he also holds a B.A in Economics from the University of Massachusetts.

Mr. Steffen gave a brief update on the upcoming 2022 Legislative Session. Mr. Steffen also reported that as a result of the passage of HB 123/SB 3, the Preserve Telehealth Access Act of 2021, the Maryland Health Care Commission (MHCC) issued an emergency RFP in the summer to identify a vendor to assist the MHCC in the study of telehealth. He added that the landscape of telehealth has changed since the 2022 legislative session. CMS has extended broadened use of telehealth and there is a growing body of literature on the effectiveness of telehealth and audio-only telehealth for treatment.

Next, Mr. Steffen, stated that although the Advance Directives Bill 837 – Health – Advance Care Planning and Advance Directives did not pass, the Health and Government Operations (HGO) Committee requested MHCC to convene a workgroup to develop recommendations for consideration during the 2022 legislative session. The workgroup reached consensus that stakeholders would consistently collect advance directives at the time of patient admission and at enrollment in health insurance plans. Also, the Horizon Foundation proposed a compromise first step for expanding advanced care planning of asking patients to identify a health care agent, who is an individual that can speak on behalf of the patient. The workgroup agreed to create two subgroups to identify technical access and policy challenges and recommend any needed legislation.

Mr. Steffen reported on HB 309/SB 565 Public Health - Data - Race and Ethnicity Information. He noted that this law requires the Office of Minority Health and Health Disparities (OMHHD), in coordination with MHCC and the Maryland Department of Health (MDH) to develop and submit to the General Assembly a report that summarizes the State's current goals and activities designed to address health disparities and a plan to eliminate minority health disparities going forward by December 31, 2021. Mr. Steffen further noted that MHCC received responses from 140 individuals on information.

Next, Mr. Steffen discussed HB 1022-Public Health -State Designated Exchange -Clinical Information bill, which requires a nursing home and electronic health networks to electronically submit clinical information to the State-designated Health Information Exchange (HIE). The HIE must develop and implement policies and procedures that are consistent with regulations adopted by MHCC. The adopted regulations also must provide for a uniform, gradual implementation of the exchange of clinical information. The MHCC met with two major Electronic Health Records (EHR) vendors that serve the nursing home industry

and Electronic Health Networks (EHNs). Data from EHNs must: (1) limit redisclosure of financial information, including billed or paid amounts available in electronic claims transactions; (2) restrict data of patients who have opted out of records sharing through the exchange or an HIE authorized by MHCC; and (3) restrict data from health care providers that possess sensitive health care information.

Mr. Steffen then spoke about the costs and benefits on prohibiting pre-authorization for Bio-Marker Lab Tests. The MHCC received a request from the Vice-Chair of the Health and Government Operations Committee to examine the impact of pre-authorization for administration of bio-marker lab tests. Biomarkers for precision medicine are a part of a relatively new clinical treatment toolset. In the cases of late-stage metastatic colorectal cancer and breast cancer (mCRC), biomarkers can be used to better determine a precise treatment that would have a higher likelihood for success. In addition to the normal costs versus benefits of requiring access, the Vice-Chair also asked MHCC to determine if pre-authorization requirements adversely impacted vulnerable populations access to advanced cancer treatment.

Lastly, Mr. Steffen stated that the All-Payer Claims Database (APCD) Award RFP for Data Management Contractor for the Medical Care Data Base released a Request for Proposal (RFP) that was issued and posted on both the eMaryland Marketplace Advantage and MHCC's website in early May 2021 to continue the services of a Data Management vendor through a new competitively-bid procurement. Staff issued this solicitation to select a Contractor that can provide proficient services to sustain and enhance the Maryland Medical Care Data Base (MCDB) infrastructure, capability, and functionality. Staff held a largely attended virtual preproposal conference on May 25th. An Evaluation Committee met several times over the past month to review/discuss/score the six proposals submitted by potential vendors. The review process is in its final stages, now that Best and Final Offers (BAFOs) have been requested and oral presentations by each bidder have been completed. The Evaluation Committee plans to select the successful Offeror before the end of September and request approval at an October Board of Public Works meeting, so that the successful bidder's new contract can commence before the start of 2022.

AGENDA ITEM 3.

ACTION: Certificate of Need - Luminis Health - Doctors Community Medical Center - Establish Acute Psychiatric Services (Docket No. 21-16-2448)

Commissioner Doordan and Thomas recused themselves from this Agenda item.

Moira Lawson, Program Manager, stated that Luminis Health Doctors Community Medical Center (Doctors) requested a Certificate of Need ("CON") to establish a 16-bed acute adult inpatient psychiatric unit adjacent to the hospital Emergency Department. The floor below the

proposed unit will house outpatient psychiatric services. The proposed 12,008 square foot (SF) unit will be renovated to accommodate sixteen (16) single occupancy rooms. Ms. Lawson stated that the cost of the renovation is estimated at $7.8 million, with project expenses funded with $2,750,000 in cash and a $5,037,303 grant from Prince George's County.

Staff recommended approval of the project as it complies with the applicable State Health Plan standards and demonstrates that additional acute psychiatric beds are needed in Prince George's County. The project will be viable and have a positive impact on the accessibility of psychiatric hospital services for the service area population of Doctors. For these reasons, staff recommended that the Commission approve Doctors application for a Certificate of Need to establish a 16-bed adult inpatient psychiatric unit, with the following condition:

Luminis Health Doctors Community Medical Center, Inc. shall assure that, at the time of first use of its inpatient psychiatric services, the hospital has been designated by MDH to perform evaluations of persons believed to have a mental disorder and brought to the hospital on emergency petition.

Commissioner Boyle made a motion to approve the Certificate of Need for Luminis Health-Doctors Community Medical Center to establish Acute Psychiatric Services, which was seconded by Commissioner Bhandari and unanimously approved.

ACTION: Certificate of Need - Luminis Health - Doctors Community Medical Center to Establish Acute Psychiatric Services - Addition of Beds is hereby APPROVED.

AGENDA ITEM 4.

ACTION: Change in an Approved Exemption from Certificate of Need Review – LifeBridge Health - Northwest Hospital (Docket # 19-24-EX011)

Moira Lawson, Program Manager, in the Center for Health Care Facilities Planning and Development, stated that LifeBridge Health, Inc. (LBH) requested a change in an approved exemption from Certificate of Need ("CON") review to consolidate the acute psychiatric bed capacity and psychiatric inpatient services at Grace Medical Center in Baltimore City to Northwest Hospital in Randallstown (Baltimore County). LBH requests that the Commission approve a $200,000 increase (10 percent) in the Northwest project, bringing the total cost estimate to $2,200,000. LBH proposes to change the location of the new behavioral health beds from unit 4D, the original proposed location, to unit 4A. This will allow the continued use of unit 4D to treat COVID-19-positive patients. The unit was converted to negative pressure rooms as a response to the pandemic. The new location encompasses the same square footage (6,500 SF) as the original location and includes the original 12 beds in 12 private rooms. The project funding source, cash, remains unchanged.

Commissioner O'Connor made a motion to approve the Change in an Approved Exemption from Certificate of Need Review – LifeBridge Health - Northwest Hospital which was seconded by Commissioner Bhandari and unanimously approved.

ACTION: Change in an Approved Exemption from Certificate of Need Review – LifeBridge Health - Northwest Hospital is hereby APPROVED.

AGENDA ITEM 5.

ACTION: Quality Measures and Performance Levels for Home Health Agency Certificate of Need Review

Cathy Weiss, Program Manager, in the Center for Health Care Facilities Planning and Development, presented staff's final recommendations on the quality measures and performance levels for the upcoming CON review cycle for home health agency (HHA) projects. Ms. Weiss noted that the HHA Chapter of the State Health Plan (COMAR 10.24.16) regulates the development and expansion of HHA services based on the determination that consumers require a choice of high-quality providers. It was further noted that the HHA Chapter is designed to allow the Commission to update the quality metrics outside of the promulgation process, although within the HHA Chapter's regulatory framework. An overview of the staff recommended quality measures and performance levels for each type of applicant was presented. As illustrated in the slide presentation, staff recommends using Maryland State averages of actual performance scores on the available Overall CMS Patient Care and Experience of Care Star Ratings. Ms. Weiss provided a summary of staff's responses to the comments received on the public notice by the Maryland National Capital Homecare Association (MNCHA) and Lorien Health Services, proposing that no changes be made to the staff recommended performance-related metrics.

Ms. Weiss further noted that, in accordance with the HHA Chapter and as described in the public notice, five jurisdictions qualify for additional needed HHA services: Carroll, Dorchester, Somerset, Wicomico and Worcester Counties. For purposes of establishing a CON review schedule, one multi-jurisdiction region for the Lower Eastern Shore Region that includes Dorchester, Somerset, Wicomico and Worcester Counties, as well as the single jurisdiction of Carroll County, are to be used in the upcoming review of HHA CON projects.

During the discussion, Commissioner Metz provided general comments on CMS' Patient Care Star Ratings for nursing homes noting that its process for evaluating a nursing home's performance may be based on the subjective judgment of the surveyor. Commissioner Metz further noted that the facility's population impacts the quality metric for which the nursing home has no control. While the CMS Star Ratings may be an imperfect model, Commissioner

Metz described the nursing home resident satisfaction or Experience of Care survey to be a great measure of performance. Commissioner Metz concluded his comments with supporting staff's recommendations as there needs to be some method of quality assessment to be used to qualify a nursing home as an HHA CON applicant. Commissioner Pollak noted his overall concern with CMS' Star Rating system as highly flawed; yet there is no good substitute for it.

Commissioner Doordan made a motion to approve the Quality Measures and Performance Levels for Home Health Agency Certificate of Need Review, which was seconded by Commissioner Boyle and unanimously approved.

ACTION: Quality Measures and Performance Levels for Home Health Agency Certificate of Need Review is hereby APPROVED.

AGENDA ITEM 6.

ACTION: COMAR 10.24.11 Final Permanent Regulations for General Surgical Services

Eileen Fleck, Chief, of Acute Care Policy and Planning, in the Center for Health Care Facilities Planning and Development, summarized the formal comments received on the proposed State Health Plan (SHP) chapter for general surgical services, COMAR 10.24.11. Only two organization commented. The Maryland Society of Anesthesiologists expressed support for the definition of procedure room and did not propose any changes. The Johns Hopkins Health System (JHHS) partially supported the requirements pertaining to network participation in COMAR 10.24.11.05B(1). However, JHHS requested that COMAR 10.24.11.05B(1)(c) be deleted because the standard was potentially excessively burdensome for ambulatory surgery centers (ASCs). Staff recommended no change in response to the comments of JHHS because staff concluded that ASCs likely can adapt their information systems and processes to mitigate this burden. Staff also concluded that the benefits for consumers outweigh the added burden for ASCs. There were no questions from Commissioners prior to the Commission voting to adopt final permanent regulations for COMAR 10.24.11.

Commissioner Bhandari made a motion to Adopt COMAR 10.24.11 for General Surgical Services as Final Regulations, which was seconded by Commissioner Metz and unanimously approved.

ACTION: COMAR 10.24.11 - General Surgical Services - is hereby ADOPTED as Final Regulations.

AGENDA ITEM 7.

ACTION: COMAR 10.25.06 — Maryland Medical Care Data Base and Data Collection – Final Permanent Regulations

Mr. Kenneth Yeates-Trotman, Director of the Center for Analysis and Information Systems, requested that the Commission adopt the proposed COMAR 10.25.06 regulations, which governs the Maryland Medical Care Data Base and its Data Collection process, as final regulations, based on changes staff considered and the Commission adopted as proposed regulations at the May Commission meeting. Since then, these proposed permanent regulations were published in the Maryland Register in July for formal public comments. Upon the conclusion of the publication period, staff did not receive any comments on the proposed regulations. Therefore, staff recommends that the Commission adopt the proposed regulations as final regulations with no additional changes.

After Mr. Yeates-Trotman's presentation, Dr. Pollack asked the Commissioners if they had any comments. Vice-Chair Sergent commented that although the regulations do not mention value-based payments, they give staff the power to adopt rules for collecting information for value-based contracting. Mr. Yeates-Trotman affirmed this and said that the Commission expanded the non-fee-for-service regulation to include value-based payments as well. Vice-Chair Sergent expressed concern that the Commission has not specify how to collect such data and asked what recourse exists for the payer industry if value-based MCDB data collection is unduly burdensome, unworkable, or not practically implemented. He further stated that if these regulations become final now, the eventual outcome may not work for the payer industry because they will not have the data that they will be asked to provide to the MCDB. Mr. Steffen responded that the Vice-Chair is correct that the Commission has not yet spelled out a format, but that the Commission staff would only consider a format in consultation with payers. Mr. Steffen further noted that Maryland is behind a few states that have moved forward with this initiative and emphasized that any future initiative will be a collaborative process with payers and that the Commission will only move forward with full engagement from the payers on what a standard value-based alternative payment model would look like.

The Vice-Chair Sergent asked if there will be any recourse to challenge any future data collection initiatives. Mr. Steffen responded that the Commission would address such challenges if and when they occur in the future, rather than to address the unknown in these regulations. Mr. Steffen added that any new Commission data collection initiatives in the future would be preceded by considerable discussion and collaborative efforts with payers before any new data collection initiative would be launched. Mr. Steffen asked for an affirmation from Mr. Yeates-Trotman, who concurred. Mr. Steffen reminded Chairman Pollak and Vice-Chair Sergent that the Commission's regulations require that MHCC staff bring proposed data collection formats to the Commission annually for a vote each year in November prior to implementation the following year. Mr. Steffen emphasized if there is to be an alternate

payment model data collection format in the future, MHCC staff will present the any new data collection requirements as a proposal to the Commissioner for a vote, and the Commissioners will have the opportunity to vote to reject any new proposed data collection format at that time. Mr. Steffen added that the payers will have seen such a format in advance before it is brought to the Commission in November. He concluded by saying that this required approval process for new data collection initiatives is the recourse available to the Commissioners.

Commissioner Akintade made a motion to Adopt COMAR 10.25.06 Maryland Medical Care Data Base and Data Collection as Final Regulations, which was seconded by Commissioner O'Connor and unanimously approved.

ACTION: COMAR 10.25.06 -Maryland Medical Care Data Base and Data Collection – is hereby ADOPTED as Final Regulations.

AGENDA ITEM 8.

ACTION: MDPCP Advisory Council Nomination

Anene Onyeabo, Program Manager, Innovative Care Delivery, presented the nomination of Allan S. Field to the Maryland Primary Care Program (MDPCP) Advisory Council (Council). The Council provides stakeholder input on operations of the MDPCP and serves a consultative and advisory role to the Secretary of the Maryland Department of Health and the MDPCP Program Management Office. Ms. Onyeabo stated that Allan S. Field has more than 20 years of experience as a health care executive and has successfully developed financial and clinical integration programs for physicians and hospitals.

Commissioner Doordan made a motion to approve the MDPCP Advisory Council Nomination, which was seconded by Commissioner O'Connor and unanimously approved.

ACTION: MDPCP Advisory Council Nomination is hereby APPROVED.

AGENDA ITEM 9.

ACTION: MCDB Data Release to AHRQ for its Project to Create a Physician and Physician Practice Research Database

Ms. Mahlet ("Mahi") Nigatu, Chief of APCD Public Reporting and Data Release, presented the application submitted by the AGENCY FOR HEALTHCARE RESEARCH AND QUALITY (AHRQ) requesting Maryland Medical Care Data Base (MCDB) data for a project that aims to create a prototype database that contains information on active physicians and physician practices within 13 states, including Maryland, to address current data gaps in health services research.

Ms. Nigatu presented the project purpose, which entails determining the proportion of licensed physicians within the state of Maryland providing medical services to a patient population based on the presence of billed health care claims data. It will also determine the practice associations between physicians and their practices. The project will use Maryland Medicaid Management Information System (MMIS2) data; Maryland Medical Care Database (MCDB) data; and Medicare fee-for-service (FFS) data. Ms. Nigatu reported that the project will be funded internally.

Staff recommended that the Commission vote on the MCDB Data Request Application submitted by the Applicant, AHRQ, and provide access to the requested data. Staff also recommended the Commission approve the Applicant's request for use of the requested data for a two-year period, contingent on the data use agreement that AHRQ is required to enter into with the Commission before receiving the requested data and grant the Applicant's fee waiver request.

Commissioner Boyer made a motion to approve AHRQ's request for MCDB data for its project to create a prototype Physician and Physician Practice Research Database and grant AHRQ's request for a fee waiver, which was seconded by Commissioner Bhandari and unanimously approved.

ACTION: AHRQ's Request for MCDB Data for its Project to Create a Prototype Physician and Physician Practice Research Database and AHRQ's Request for a Fee Waiver are hereby APPROVED.

AGENDA ITEM 10.

PRESENTATION: Health Care Data Breaches

Nikki Majewski, Chief, Health Information Technology, and Eva Lenoir, Program Manager, Health Information Technology, presented highlights from the insights brief, *Health Care Data Breaches: Perspectives on Breach Trends in Maryland and Comparative States*. Ms. Lenoir overviewed findings from an analysis of breaches affecting 500 or more individuals from January 1, 2018, to December 31, 2020. Ms. Majewski discussed privacy and security

concerns pertaining to the collection, transmission, and storage of patient generated health data (PGHD). Ms. Majewski noted that staff plans to explore what other states are doing to increase PGHD protections. Ms. Majewski described several upcoming staff cybersecurity initiatives aimed at building stakeholder awareness.

ACTION: NO ACTION REQUIRED

AGENDA ITEM 11.

PRESENTATION: Spending and Use Among Maryland's Privately Insured: An Early Look at the Individual Market 2020

Shankar Mesta, Chief of Cost and Quality, in the Center for Analysis and Information Systems, presented the results from an early update on 2020 health care spending and utilization patterns for Maryland's privately insured members enrolled in the individual market. This update used data from the Medical Care Data Base (MCDB) for 2018 through 2020.

Mr. Mesta described the background and purpose of the report. He apprised Commissioners about the two new updates: (1) individual market enrollees COVID-19 snapshot; and (2) telehealth visits trend in the individual market.

Mr. Mesta provided an overview of membership enrollment in the individual market from 2018 through 2020. He reported that member enrollment as of (01/31) increased 6% on the Maryland Health Benefit Exchange (MHBE) from 2019 to 2020. Among the large payors, Carefirst reported growth in membership from 2019 to 2020. In contrast, Kaiser saw a decrease in membership from 2019 to 2020. The MHBE put in place special enrollment period and early enrollment programs to encourage health insurance enrollment during the pandemic. Overall enrollment at the end of December between 2019 and 2020 increased by 9 percent, and this result was comparable to Maryland Insurance Administration reference data for a similar period. Then, he provided a quick overview of the illness burden among the individual market population during the analysis period. Mr. Mesta noted that the illness burden increased marginally in the individual market in 2020 compared to 2019.

Mr. Mesta reported per member spending by individual service categories and explained cost drivers for each type. He noted a decrease in health care utilization such as non-urgent care during the COVID-19 pandemic. The Health Services Cost Review Commission (HSCRC) allowed Maryland hospitals to increase their unit costs to mitigate the financial loss due to low volumes, which resulted in overall 2020 spending in all services combined to remain the same as that of 2019.

Mr. Mesta described about COVID-19 prevalence among individual market members. He explained that to conduct this analysis, approximately 1.9 million individual market claims available in the 2020 MCDB database were examined. He noted that CDC guidelines for ICD-10 coding of COVID-19 identification was applied. He reported that there was a total of 5,785 patients with COVID-19 diagnosis with a case rate of 274 per 10,000 enrollees, and females had a slightly higher case rate than males. He informed that other studies had shown no gender difference in COVID-19 occurrence; however, males were more at risk for worse outcomes and death. He concluded that the disease affected almost all age groups and on-exchange members had a greater case rate than off-exchange members.

Mr. Mesta stated that there was a total of 761 COVID-19 related hospitalizations with a rate of 36 hospitalizations per 10,000 enrollees. He noted that on-exchange members had a greater rate of hospitalization than off-exchange members. He highlighted that in the overall hospitalization distribution by age, the 65-age group and above showed the highest hospitalization rate indicating that the disease severely impacted elder age groups. He concluded that 66 percent of COVID-19 related hospitalization lasted for (1-7) days.

Mr. Mesta added that the COVID-19 pandemic led to the temporary shutting down of many health care settings, and a rapid switch to telehealth strategies for patient care. He reported that within the individual market, telehealth claims grew at a very slow rate before March 2020. He noted that with the onset of the pandemic, there was an abrupt spike in telehealth claims in the spring of 2020, reaching about 40 percent of total visits. After that, it started to decline and then leveled off around approximately 20 percent from summer 2020 onwards. He highlighted that mental health disorders were the leading diagnosis for telehealth visits before and during the pandemic.

Commission Chairman Dr. Pollack asked what would have been a financial burden on Maryland hospitals if HSCRC had not intervened to increase the unit cost. Mr. Mesta responded that, as per a recent study published in the JAMA article, Maryland hospitals would have lost approximately $300 million in inpatient revenues and $151 million in outpatient revenues if HSCRC intervention had not occurred. Dr. Pollack noted that it is crucial to recognize all the pieces of a highly regulated system, which protects Maryland hospitals from economic tumult due to the COVID-19 pandemic. However, this protection was not the experience of hospitals in other states.

ACTION: NO ACTION REQUIRED

AGENDA ITEM 12.

Overview of Upcoming Activities

Mr. Steffen stated that the October Commission meeting may include: a couple of certificates of ongoing performance for percutaneous coronary intervention services (PCI), a couple of CON's, an update on Wear the Costs, an update on the Maryland Primary Care Model, and an update on some of the Commission's regulations.

AGENDA ITEM 13.

ADJOURNMENT

There being no further business, the meeting was adjourned at 3:19 p.m. upon motion of Commissioner Akintade, which was seconded by Commissioner Boyle and unanimously approved.