



Thursday, November 17, 2022

MINUTES

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

Commissioners present via telephone and in person: Bhandari, Boyle, Buczynski, Doordan, Metz, O’Grady, Ojikutu, Wang and Wood.

AGENDA ITEM 1.

Approval of the Minutes

Commissioner Buczynski made a motion to approve the minutes of the September 15, 2022, public meeting of the Maryland Health Care Commission (Commission or MHCC), which was held by teleconference hybrid. The motion was seconded by Commissioner Boyle and unanimously approved.

AGENDA ITEM 2.

Update of Activities

Commissioner Boyle voiced concerns about recent nursing home acquisitions from out of state purchasers with very low star ratings. Ben Steffen, Executive Director of the Commission, responded that MHCC has recently revised the nursing home application to include information about the purchaser and previous experiences, however MHCC is limited in its authority to regulate nursing home acquisitions. Chairman Sergent suggested the Commissioners create a workgroup to determine options to address this issue.

Mr. Steffen provided an update on several reports including the Telehealth Recommendations and the Mandated Benefit Study. MHCC will add comments to the report’s appendix which will be accepted through November 27, 2022.

Next, Mr. Steffen updated the Commission on the Workplace Violence workgroup. The three workgroup meetings have concluded, and members agreed to a campaign for a funding level of two million dollars.

Mr. Steffen followed with a brief update on the Workgroup on Oversight of Assisted Living Facilities with less than 10 beds. The next meeting will be held on December 5, 2022, which will consist of a Small Assisted Living Programs Workgroup. The agenda will include a discussion of OHCQ’s oversight of small facilities, and the Department of Aging will discuss

the role of the Long- Term Care Ombudsman Program in Monitoring Assisted Living Performance.

Next, Mr. Steffen talked about the Palliative Care Workgroup. This workgroup will focus on the provision of palliative care services including a focus on delivering services and reimbursements. Palliative care is specialized medical care for people living with serious illnesses. This type of care is focused on providing relief from the symptoms and stress of the illness. Palliative care is based on the needs of the patient, not on the patient's prognosis. It is appropriate at any age and at any stage of a serious illness and can be provided along with curative treatment. The workgroup next steps are to identify a scope of coverage and a short survey of organizations engaged in the delivery of palliative care services. The MHCC anticipates awarding a contract to a consultant that can assist with the survey.

Mr. Steffen followed up with an update on the Primary Care Workgroup (PCW Workgroup). The initial PCW Workgroup meeting was held on November 10, 2022. Contractor Freedman HealthCare is assisting MHCC's staff in organizing meeting and developing meetings. Freedman HealthCare was selected because of its previous experience in assisting other states in implementing primary care investment initiatives. The next PCW Workgroup meeting is scheduled on January 23, 2023.

Next, Mr. Steffen stated that the MDPCP Advisory Council is scheduled to meet on January 10, 2023. Approximately 115 practices have applied for Track 3.

Mr. Steffen also spoke about the Noncontrolled Prescription Drugs Technical Workgroup (Non-CDS Workgroup). Dispensers were identified to participate in a technical discussion regarding data submission standards. The Non-CDS Workgroup is scheduled on December 12, 2022, and will be open to its participants. Development activities are advancing with CRISP's Request for Proposal (RFP) to competitively select a vendor to support the requirements in Chapter 296/House Bill 1127 Public Health – State Designated Exchange – Health Data Utility (2022). The law requires dispensers to report information on noncontrolled prescription drugs to CRISP after dispensing. CRISP plans to release the RFP before the end of the year.

Also, an Electronic Advance Directives informational flyer was developed and shared; and there will be a meeting with Carriers on their requirements.

Finally, Mr. Steffen gave an update on the Legislative Study of Financial Requirements for Access to Organ Transplants. The budget committees are concerned that transplant hospitals have implemented policies that place financial restrictions on individuals eligible for receiving organ donations. Specifically, the committees are concerned with how the consideration of the means to cover aftercare impacts an individual's ability to receive an organ donation and/or undergo a transplant procedure. The committees request that MHCC submit a report that reviews the existing policies governing the eligibility for receiving an organ donation,

identifies reasons for denial of organ transplantation, and the number of individuals who had organ transplant needs denied or deferred under each reason since calendar year 2018. This report should specifically consider the financial requirements that may be a cause of the denial or deferral of care in the State. The MHCC staff met with representatives of the University of Maryland and Johns Hopkins to follow-up on a request for additional information on how these providers of organ transplantation services qualify persons as potential recipients of organ transplantation based on income or other means of paying for services. The MHCC staff plans to complete its report sometime in November.

AGENDA ITEM 3.

ACTION: Approval of COMAR 10.25.17 Benchmarks for Preauthorization of Health Care Services

Justine Springer, Program Manager, Health Information Technology presented proposed amendments to COMAR 10.25.17, Benchmarks for Preauthorization of Health Care Services, for final action. The amendments clarify processes for the notification and withdrawal of a benchmark waiver, among other miscellaneous technical changes. Ms. Springer noted that the proposed regulations originally presented to the Commission had extended the benchmark waiver period from two years to XXX years. Based on stakeholder comments, that change was removed from the regulations being now presented to the Commission for final action. that request the benchmark waiver period remain at two years.

Commissioner Buczynski moved to adopt COMAR 10.25.17 Benchmarks for Preauthorization of Health Care Services as final regulations of the Commission, which was seconded by Commissioner Wang and, after discussion, was unanimously approved.

ACTION: COMAR 10.25.17 Benchmarks for Preauthorization of Health Care Services is hereby ADOPTED as final regulations.

AGENDA ITEM 4.

ACTION: Certificate of Need - DWI Services Inc. d/b/a Avenues Recovery Center of Maryland (Calvert County) – Establish an Alcoholism and Drug Abuse Intermediate Care Facility (Docket No. 22-04-2455)

Commissioner Wood recused herself from this agenda item.

Avenues Recovery Center of Maryland proposes to establish a 20-bed Track One intermediate care facility (ICF) with American Society of Addition Medicine (ASAM) level 3.7 and 3.7WM services for adults in an existing facility located at 125 Fairground Road in Prince Frederick,

Calvert County. The applicant currently operates as a 93-bed alcoholism and drug abuse program. The total cost for the proposed project is \$55,000, which it will fund with cash.

William Chan, Program Manager and CON Analyst, presented the staff recommendation. In reviewing the application against the State Health Plan chapter's standards and review criteria, Mr. Chan stated that the review of the State Health Plan includes a methodology for projecting Track One ICF bed need. However, Mr. Chan recommended the Commission find this need standard to be inapplicable due to a statutory change in 2019 which now makes this standard obsolete. With this change, existing programs can add any number of beds without the need for Commission approval. Mr. Chan noted that the proposed Track One ICF would serve a large proportion of low-income individuals including Medicaid patients in addition to patients using private third-party payers. The proposed project will improve the availability and access to ICF services for all patients and not have an appreciable impact on costs or charges for substance use disorder treatments services. The project will not adversely impact other existing ICFs in Southern Maryland.

Staff recommended approval of the project with the following conditions:

1. Avenues Recovery Center of Maryland shall document the provision of a minimum of 15% of patient days to indigent and gray area patients, as defined at COMAR 10.24.14.08B(9) and (11), by submitting annual reports auditing its total days and the provision of days to indigent and gray area patients as a percentage of total days. Such audit reports shall be submitted to the Commission following each fiscal year, from the project's inception and continuing for five years thereafter.
2. Avenues Recovery Center of Maryland must receive preliminary accreditation for the Level 3.7 services it will provide, including withdrawal management and post-withdrawal treatment programming, by The Joint Commission (TJC) or another accrediting body approved by the Maryland Department of Health prior to First Use approval by the Commission, and must timely receive final accreditation by TJC or another approved accrediting body. [COMAR 10.24.14.05H]
3. Avenues Recovery of Maryland shall notify the Commission and the Behavioral Health Administration, in writing, within 15 days after it receives notice that its accreditation has been revoked or suspended or should it lose its State license. If its accreditation has been revoked or suspended for reasons related to health or safety or it loses its State license, Avenues Recovery of Maryland shall cease operation until the Behavioral Health Administration notifies the Commission that the deficiencies have been corrected. [COMAR 10.24.14.05H]

Commissioner Doordan moved to approve the Certificate of Need (CON) in the Matter of the Establishment of an Alcoholism and Drug Abuse Intermediate Care Facility DWI Services Inc.

d/b/a Avenues Recovery Center of Maryland (Calvert County) which was seconded by Commissioner Wang and, after discussion, was unanimously approved.

ACTION: Certificate of Need - DWI Services Inc. d/b/a Avenues Recovery Center of Maryland (Calvert County) – Establish an Alcoholism and Drug Abuse Intermediate Care Facility is hereby APPROVED.

AGENDA ITEM 5.

Certificate of Ongoing Performance for Cardiac Surgery Services at UPMC Western Maryland (Allegany County) (Docket No. 22-01-CP034)

Olubukola (Buki) Alonge, Program Manager, Acute Care Policy and Planning team presented the staff report and recommendation for UPMC Western Maryland’s application for a renewal of a Certificate of Ongoing Performance for cardiac surgery services. She provided an overview of the relevant regulations, COMAR 10.24.17, and the standards for approving a Certificate of Ongoing Performance for cardiac surgery services in Maryland. Thereafter, she shared information that showed the hospital was in compliance with all the required standards except for the standard which required the program to maintain an annual volume of 200 or more cases. Though the hospital was not in compliance with this standard, it did not meet a threshold of 100 or less cases for two consecutive years which would require a focused review, and available data showed that UPMC Western Maryland continued to provide safe and high-quality care.

Ms. Alonge stated that the Executive Director recommends that the Commission issue a Certificate of Ongoing Performance that permits UPMC Western Maryland to continue providing cardiac surgery services for the next four years. Ms. Alonge introduced one of the hospital representatives who attended the meeting virtually and thanked the Commission for the consideration of the application. There were questions about the threshold for conducting focused reviews which were answered.

Commissioner Boyle moved to approve the Certificate of Ongoing Performance for Cardiac Surgery Services at UPMC Western Maryland (Allegany County), which was seconded by Commissioner Buczynski and after discussion, unanimously approved.

ACTION: Certificate of Ongoing Performance for Cardiac Surgery Services at UPMC Western Maryland (Allegany County) is hereby APPROVED.

AGENDA ITEM 6.

ACTION: Approval - Final Report: Preserve Telehealth Access Act of 2021

David Sharp, Director of the Center for Health Information Technology and Innovative Care Delivery; Nikki Majewski, Chief, Health Information Technology; Alana Knudson, Director at NORC Walsh Center for Rural Health Analysis; and David Cooney, Associate Commissioner, Life and Health at the Maryland Insurance Administration presented findings from a telehealth study required by the *Preserve Telehealth Access Act of 2021*, as well as recommendations from the Commission and the Maryland Insurance Administration. These recommendations will provide a framework for future legislation. Staff invited the public to submit comments that will be included in the recommendations report, which is due to the Senate Finance Committee and House Health and Government Operations Committee by December 1, 2022.

Commissioner Wang moved to approve the Final Report: Preserve Telehealth Access Act of 2021, which was seconded by Commissioner Boyle. Commissioner Buczynski moved to amend the motion to approve the report by changing the Commission’s recommendation #2 in the Final Report: Preserve Telehealth Access Act of 2021 to allow unrestricted use of audio-only telehealth for both somatic and behavioral health care, which was seconded by Commissioner Bhandari. After discussion, a majority of the Commissioners voted against the motion to amend.

Subsequently the Commission voted to approve the Final Report, with one abstention.

ACTION: Final Report: Preserve Telehealth Access Act of 2021 is hereby APPROVED.

AGENDA ITEM 7.

ACTION: Mandated Health Insurance Services Evaluation: Health Insurance Cost Sharing – Physical Therapy Parity with Primary Care Services – House Bill 974 and Senate Bill 725

The MHCC staff contracted with BerryDunn, an actuarial consulting firm, to evaluate the considerations of HB 974/SB 725 prohibiting commercial health insurers from imposing cost sharing for physical therapy (PT) services that is greater than the cost sharing for primary care services. Tyler Brannen from BerryDunn presented his findings on this study and staff requested that the Commission approve this report for submission to the General Assembly by December 1, 2022.

Under Insurance Article §15–1501, Annotated Code of Maryland, requires the Commission to evaluate the medical, social, and financial impact of proposed mandated health insurance services that failed to pass during the preceding legislative session. Staff received a formal letter of request from the House Health and Government Operations (HGO) Committee to

evaluate legislation that was introduced as House Bill 974 and companion bill Senate Bill 725 during the 2022 session but failed to pass. Consistent with Insurance Article §15-1501, it is the HGOs practice to have MHCC assess such proposed mandates before considering the adoption of a new mandated service or coverage if introduced in a subsequent session.

Mr. Brannen stated that under the Medical and Social Evaluation, PT was recognized by the medical community and the public as being effective in the treatment of medical conditions; decreased risk of advanced imaging, additional physician visits, injections, and opioid medications. Additionally, satisfaction rates were higher. The demand for PT services was expected to be driven by large numbers of people with disabilities, age-related issues, cardiovascular diseases, and post-COVID-19 treatment needs. In their 2017 study, it concluded that PT is underutilized in part due to copays imposed per visit.

PT is a covered benefit, but copayments were often twice the amount for primary care services. Carriers used prior authorizations, select networks, limits were placed on number of PT visits, and medical necessity criteria to limit PT costs. Premiums reflected an array of specific benefit decisions. There was an increase in benefit richness for PT services, which may be offset by weaker benefits elsewhere, and substantial administrative costs can be avoided by aligning any proposed mandate effective dates with plan renewals.

A few Commissioners voiced concerns that mandated cost sharing for physical therapy may have negative consequences on cost sharing for primary care or other services. Mr. Steffen explained that the MHCC always sends a cover letter with mandated reports highlighting any questions or views raised by the Commissioners.

Commissioner Wang moved to approve the Mandated Health Insurance Services Evaluation: Health Insurance Cost Sharing – Physical Therapy Parity with Primary Care Services – House Bill 974 and Senate Bill 725 with a cover letter expressing the Commissioner’s views, which was seconded by Commissioner Doordan and, after discussion, was unanimously approved.

ACTION: Mandated Health Insurance Services Evaluation: Health Insurance Cost Sharing – Physical Therapy Parity with Primary Care Services – House Bill 974 and Senate Bill 725 is hereby APPROVED.

AGENDA ITEM 8.

ACTION: 2023 MCDB Data Submission Manual

Mr. Kenneth Yeates-Trotman, Director of the Center for Analysis and Information Systems, presented to Commissioners updates on the 2023 Medical Care Data Base (MCDB) data Submission Manual (Manual).

Mr. Yeates-Trotman said that MHCC is required to make the Manual available to Payors on or before November 21st yearly according to the regulation COMAR 10.25.06.15. Payors will use the Manual to guide their data submission in the upcoming subsequent periods in 2023 and the Manual will be displayed on the Commission website yearly. Mr. Yeates-Trotman then gave a brief overview of the MCDB, which includes Commercial Data from reporting entities with at least 1,000 total covered insured lives. The reporting entities consist of Life and Health Insurance Carriers, HMOs, TPAs, PMMs, and Behavioral Health Administrators. Qualified Health and Dental Plans are also included; however, these plans are not subjected to the at least 1,000 total covered insured criteria. The data submitted to the MCDB by Commercial payors consists of eligibility and claims (professional, institutional, pharmacy, and dental) files and a Provider file. The MCDB also consists of Medicaid and Medicare data.

Mr. Yeates-Trotman described the changes in the MCDB to include splitting the Coinsurance/Copayment field into two separate fields: Coinsurance and Copayment fields. For institutional services, MHCC will revert to the 2019 and prior requirements to include secondary ICD10 procedure codes. With the MHCC contractor, the Commission will collect the secondary ICD-10 codes again starting in 2023.

Lastly, MHCC will begin non-fee-for-service (value-based care) data collection in 2023. To aid this value-based care data collection, MHCC has created an Alternative Payment Model (APM) data submission format with input from payors. The MHCC will use the data collected from the APM model to assess the quality and cost-effectiveness of value-based arrangements and provide the results in a report to the Senate and Finance Committee and the House Health and Government Operations Committee beginning December 31, 2023, and continuing every year-end through 2032. Mr. Yeates-Trotman briefly described the APM model template to Commissioners and shared some payor comments on the overall data APM model data collection. Mr. Yeates-Trotman pointed out that despite payor concerns about the complexity of the value-based arrangements template, the template was very similar to what other states are doing. The only deviation in the value-based data collection from other states was in the quality of the value-based arrangements. Maryland is the only state requiring collection on the value-based arrangements' quality. Mr. Yeates-Trotman also mentioned that MHCC had made several changes to the template based on payor feedback.

Mr. Yeates-Trotman concluded his presentation by reminding Commissioners that MHCC is required by Maryland law (HB 1148) to collect APM data to access the Quality outcomes of value-based arrangements and that the notion that the data collection population is beyond the scope of MHCC's authority is mistaken — collection on self-insured is optional. Also, except for the Quality measures, the APM data collection is consistent with other states, and MHCC will show flexibility in the APM data collection in the first year.

Chairman Sergent questioned MHCC's authority in the APM data collection of quality outcomes for value-based arrangements based on the uncodified section of Chapter 297 of the 2022 laws of Maryland which directs MHCC to aggregate information regarding the cost effectiveness and quality outcomes of APMs. Chairman Sergent also asked why MHCC needed to start the collection for 2022 and not 2023. Mr. Ben Steffen said that they need a

baseline data for 2022 because the legislature will likely want a report in 2023 and we need to use this year to work out any issues.

The Commissioners voted to approve the 2023 Data Submission Manual with the order for MHCC staff to provide flexibility to payors in the collection of the value-based data during the first year of data collection.

Commissioner Buczynski moved to approve the 2023 MCDB Data Submission Manual which was seconded by Commissioner Wang and after discussion, approved with one abstention.

ACTION: 2023 Data Submission Manual with the order for MHCC staff to provide flexibility to payors in the collection of the values-based data during the first year of data collection are hereby APPROVED.

AGENDA ITEM 9.

Overview of Upcoming Activities

Mr. Steffen stated that the December Commission meeting agenda will include mandated studies of sexually transmitted infections test kits, expanding the invitro fertilization benefit, and at least one CON.

AGENDA ITEM 10.

ADJOURNMENT

There being no further business, the meeting was adjourned at 5:20 p.m. upon motion of Commissioner Buczynski, which was seconded by Commissioner Wang.