Thursday, November 16, 2023

MINUTES

Chairman Sergent called the meeting to order at 1:05 p.m.

Commissioners present via telephone and in person: Bhandari, Blake, Boyle, Buczynski, Douglas, Gilmore, Jensen, Ojikutu, Spinner, Stroughton-Duncan and Wang.

AGENDA ITEM 1.

Approval of the Minutes

Commissioner Buczynski made a motion to approve the minutes of the October 19, 2023, public meeting of the Maryland Health Care Commission (Commission or MHCC), which was held by teleconference hybrid. The motion was seconded by Commissioner Douglas and unanimously approved.

AGENDA ITEM 2.

Jeanne Marie Gawel, Acting CON Chief, introduced a new employee Dr. Rachel Bervell, to the Commission. Dr. Bervell attended Harvard University, where she concentrated on Social & Cognitive Neuroscience and received a secondary degree in Health Policy & Global Health. Before medical school, Dr. Bervell studied at Georgetown University and graduated from the Johns Hopkins Bloomberg School of Public Health.

Ben Steffen, Executive Director, gave an update on ambulatory surgery facilities (ASFs) in Maryland. Mr. Steffen gave a few key takeaways:

1) Maryland has the most ambulatory operating rooms (ORs) per capita, with 14.53 ORs per 100,000.
2) Maryland has the most ASFs per capita in the country, with 5.66 facilities per 100,000.
3) Maryland has the most ASFs with two or fewer operating rooms, with 3.64 facilities per 100,00. The next highest state is Georgia, with 2.93 ASFs with two or less operating rooms. This may be related to the 2019 updated Certificate of Need (CON) program requirements.
4) Maryland has the most ASFs that provide pain surgery, with 1.69 facilities per 100,000.
5) CMS operates the Ambulatory Surgical Center Quality Reporting (ASCQR) program, a voluntary pay-for-reporting federal program that determines reimbursement

rates. There are currently eight measures within the program, with only the included COVID-19 Vaccination Coverage Among Health Care Personnel reported for Q3 of 2022 that is not tied to a specific service specialty. Based on 2021 ASCQR data, Maryland is aligned with or better than the national average on measures specific to gastroenterology, urology, and orthopedics.

Mr. Steffen thanked Theressa Lee, Teressa Brown, and Mariama Simmons for their continued work on ASF operations.

Mr. Steffen spoke about the change in MHCC policy regarding access to the APCD data. The MHCC examined vehicles to provide access to APCD Data to certain state partners.

Next, Mr. Steffen talked about the Workgroups convened by MHCC:

Nursing Home Acquisitions:

- Plans to present to the Commission in December with nine recommendations.
- Three recommendations address pre-acquisition activities.
- Six recommendations address post-acquisition activities.

Small Assisted Living

- The workgroup plans to present eleven recommendations, including the definition of small assisted living, home and community based waivers, and training. A challenge presented is that 1,700 ALFs are in Maryland and 1,200 of the are under 10 beds.

Commission on Trauma Funding

- Next meeting, which will be held on November 21st and members have been asked to submit recommendations.

Commission on Behavioral Health Care Treatment and Access (MHCC is a member) held its first organizational meeting. Four workgroups are being organized:

- geriatric behavioral health,
- youth behavioral health and individuals with developmental disabilities,
- criminal justice-involved behavioral health, and
- behavioral health work force development, infrastructure, coordination, and financing

AGENDA ITEM 3.

ACTION: Baltimore Detox Center-Request for Project Change (Docket No. 18-03-2419)

Moira Lawson, Program Manager, presented the Baltimore Detox Center Project Change request after CON Approval to increase the costs associated with the establishment of a new 24-bed Intermediate Care facility (ICF) in Baltimore County. Ms. Lawson stated that the capital project cost has increased to $959,556, a change of $683,574. The project cost increase is due to delays that occurred due to the COVID-19 pandemic, complications with contractors, and unanticipated renovation costs not included in the original budget. Design changes include

a 4,064 SF (77%) increase in the ICF's square footage, and a revised floor plan with 15 additional beds. The increased cost will be paid for in cash.

A motion to approve the Request for Project Change was made with the following conditions:

1. Baltimore Detox Center shall provide a minimum of 15 percent of patient days of care to indigent and gray area patients, as defined at COMAR 10.24.14.08B(9) & (11) and shall document the provision of such charity care by submitting annual reports auditing its total days of care and the provision of days of care to indigent and gray area patients as a percentage of total days of care. Such audit reports shall be submitted to the Commission following each BDC fiscal year, from the project's inception and continuing for five years thereafter.

2. Baltimore Detox Center shall address its non-compliance with its March 2020 CON should Baltimore Detox Center or an affiliated entity seek approval from the Commission for a future project.

3. If Baltimore Detox Center seeks to add additional intermediate care beds to its facility, it shall provide the Commission with evidence that it has appropriate staffing levels and bed and bathroom configurations that afford patient privacy and safety.

Commissioner Jensen moved to approve the Certificate of Need- Baltimore Detox Center- Request for Project Change, which was seconded by Commissioner Buczynski and, after discussion, unanimously approved.

ACTION: Motion to APPROVE the Certificate of Need Project Change for Baltimore Detox Center is hereby APPROVED.

AGENDA ITEM 4.

ACTION: Mandated Health Insurance Services Evaluation: Health Insurance - Annual Behavioral Health Wellness Visits – Required Coverage and Reimbursement - Senate Bill 108

Mr. Greg Fann and Ms. Joan Barret, consulting actuaries with Axene Health Partners (Axene), presented the evaluation findings to the Commissioners. Mr. Fann started by giving a brief background of the legislation (SB 108) that did not pass during the 2023 legislative session and that MHCC retained Axene to assess the fiscal, medical, and social impact of the legislation, which would have required health insurance carriers to provide coverage (no cost sharing) to treat behavioral health wellness visits the same as somatic wellness visits. Mr. Fann discussed the study's critical points, citing that behavioral health is a current crisis in the United

States and that one potential solution to the problem is integrating behavioral health with primary care. Ms. Barrett focused on the financial impact of the legislation and cited that behavioral health without the legislation is about 0.2 percent of the total cost of care relative to health insurance. However, if the legislation is passed, more people will seek and receive care, which will cause an increase in the total cost of care relative to insurance in the first year of the legislation and a decrease in subsequent years. To be specific, Ms. Barret said that the total cost of care will increase by about 0.9 percent and then show savings (decreases) of about 0.2 percent per year after that through 2028, at which point there would be further savings (decreases) of about 0.3 percent in the total cost of care relative to insurance. Mr. Fann then concluded the presentation by discussing some administrative issues cited by the five health insurance carriers surveyed — most carriers cover behavioral health wellness visits with cost-share. If a behavioral health visit is recorded as preventive, it may be covered without cost-share, and some carriers have a preventive coverage policy.

There were some health insurance carriers who recommended an integrated behavioral health approach to remove silos and foster more collaboration between providers in care delivery. The overall feedback from Commissioners was that the study needed to be easier to follow. They could not identify the assumptions used in the study to portray the purpose of the study. Commissioners recommended that Axene reformat the report so that it is more consistent with other reports presented to the Commission for a better understanding of the assumptions that support changes in care delivery and their subsequent cost to insureds in terms of per-member per month results. Lastly, Mr. Steffen, said that defrayals had recently come up for mandates not included in the essential health benefits (EHB) and asked for Axene's opinion. Specifically, Mr. Steffen asked Axene to provide an opinion in the report regarding the EHB rules regarding expanding health benefits beyond the EHBs. The MHCC staff will work with Axene to get the report to meet the Commissioner's expectations.

ACTION: NOT VOTED ON.

AGENDA ITEM 5.

ACTION: 2024 MCDB Data Submission Manual

Mr. Shankar Mesta, Chief, Cost and Quality of the Center for Analysis and Information Systems, presented the latest 2024 MCDB Data Submission Manual updates. The presentation briefly covered the changes that will be part of the new manual. Mr. Mesta said the new manual contained only minor updates to the length of fields based on the waiver request received from the payors. He noted that these updates will not impact Maryland's reporting requirements. Mr. Mesta mentioned that the new manual contained a quality assurance memo template and a frequently asked questions section for alternative payment model (APM) data submission. This would help the payor's technical team submit APM data in a standard format.

Chairman Randolph Sergent enquired about the staff plan to calculate the full spectrum of quality payments within the APCD for different payors. He noted that individual payors have different ways of defining and calculating quality-based payments depending on the type of program. For example, the PCMH programs have a different payment system than ACO

programs in a hospital system. He asked how we can capture different slices of value-based payments in the APCD, which collects claims data for the insured population of Maryland. Mr. Mesta agreed that collecting quality data in a standard format from different payors would be a complicated process. He explained that during initial meetings with payors regarding APM data collection, a set of quality measures was shared to learn about the challenges of submitting quality data. He said that based on the feedback from the payors, it was found that collecting quality data was not easy. Therefore, this requirement was removed from the scope of the APM data collection for the initial years of data collection.

Mr. Steffan responded that the Health Care Payments Learning and Action Network (HCP-LAN) is a collaboration of payors, providers, and health policy experts who work together to categorize the healthcare system's transition. They developed a methodology that would categorize value-based programs into four categories, which is currently the primary way of categorizing value-based products. He cautioned that this methodology is not practical in capturing quality. He explained that APM data collection is done at aggregate once a year, unlike claims submitted to contractors quarterly. Aggregate payments are calculated six months after the closeout of a calendar year. Mr. Steffen noted that value-based programs are not currently equipped to portion out quality payments. He added that each payor might have different definitions for a given HCP LAN category. However, the legislation aims to see how these programs take root in Maryland and whether there are benefits to all participants or only to a set of providers.

Commissioner Stroughton-Duncan moved to APPROVE the Mandated Health Insurance Services Evaluation: Health Insurance- Annual Behavioral Health Wellness Visits – Required Coverage and Reimbursement - Senate Bill 108, which was seconded by Commissioner Douglas and, after discussion, unanimously approved.

ACTION: Motion to APPROVE the 2024 MCDB Data Submission Manual is hereby APPROVED.

AGENDA ITEM 6.

ACTION: COMAR 10.25.18, Health Information Exchanges: Privacy and Security of Protected Health Information, and COMAR 10.25.07, Certification of Electronic Health Networks and Medical Care Electronic Claims Clearinghouses - proposed and emergency regulations.

David Sharp, Director of the Center for Health Information Technology and Innovative Care Delivery, presented the need to consider additional amendments to the regulations to support the implementation of House Bill 812, *Health – Reproductive Health Services – Protected Information and Insurance Requirements* (the law). Anna Gribble, Program Manager in the Health Information Technology Division, overviewed newly proposed amendments to COMAR 10.25.18 and COMAR 10.25.07.

Commissioner Jensen made a Motion to ADOPT COMAR 10.25.18, Health Information Exchanges: Privacy and Security of Protected Health Information, and COMAR

10.25.07, Certification of Electronic Health Networks and Medical Care Electronic Claims Clearinghouses emergency regulations, which was seconded by Commissioner Douglas and after discussion, unanimously approved.

Commissioner Buczynski opposed this action item.

ACTION: COMAR 10.25.18, Health Information Exchanges: Privacy and Security of Protected Health Information, and COMAR 10.25.07, Certification of Electronic Health Networks and Medical Care Electronic Claims Clearinghouses emergency regulations are hereby ADOPTED.

Commissioner Douglas has made a Motion to APPROVE COMAR 10.25.18, Health Information Exchanges: Privacy and Security of Protected Health Information and COMAR 10.25.07, Certification of Electronic Health Networks and Medical Care Electronic Claims Clearinghouses proposed regulations, which was seconded by Commissioner Gilmore and after discussion, unanimously approved.

Commissioner Buczynski opposed this action item.

ACTION: COMAR 10.25.18, Health Information Exchanges: Privacy and Security of Protected Health Information and COMAR 10.25.07, Certification of Electronic Health Networks and Medical Care Electronic Claims Clearinghouses proposed regulations are hereby APPROVED.

AGENDA ITEM 7.

PRESENTATION: MHCC's Facility Planning Authority: Using Existing Law to Address Health Equity

Ms. Wynee Hawk, Director of the Center for Health Care Facilities Planning and Development, presented a review of the Commission's existing statutory and regulatory authority in Health Equity. Ms. Hawk reviewed MHCC's 2023-2026 strategic priorities that include an increased focus on health equity in the Commission's programs and services and using its health care regulatory authority to enhance health equity. Further, Ms. Hawk reviewed the new criteria for CON review that will include a health equity review criterion for all applications filed subsequent to the December 1, 2023 effective date. Lastly, Ms. Hawk highlighted the key statutory and regulatory provisions that currently address health equity factors in the various State Health Plan Chapters. Standards include charity care, financial assistance and access, Medicaid inclusion, geographic and non-geographic barriers to access, public education programs, meeting special needs, and finally the use of other tools, such as surveys to gather data and the conditions on CON approvals. Ms. Hawk concluded by stating there will be future work to develop how the Commission will measure compliance with this criterion.

ACTION: NONE

AGENDA ITEM 8.

OVERVIEW OF UPCOMING ACTIVITIES

Mr. Steffen briefly spoke about December's Commission meeting. He stated that there will be an important CON application, Luminis Health, 2024 All Claim Database, and several other agenda items.

AGENDA ITEM 9.

ADJOURNMENT

Chairman Sergent asked for a motion to adjourn the meeting. After there being no further business, the meeting was adjourned at 4:17 p.m. upon the motion of Commissioner Douglas, which Commissioner Buczynski seconded.

ACTION: NONE