

MINUTES OF THE HEALTH POLICY COMMISSION

Meeting of September 27, 2018

MASSACHUSETTS HEALTH POLICY COMMISSION

Date of Meeting: September 27, 2018

Start Time: 11:06 AM

End Time: 12:41 PM

	Present?	ITEM 1: Approval of Minutes	ITEM 2: Acceptance of the BILH CMIR report	ITEM 3: Issuance of the BILH CMIR report	ITEM 4: Moving to Executive Session.
Stuart Altman*	X	X	X	X	X
Don Berwick	X	X	2nd	X	X
Martin Cohen	X	2nd	X	M	X
David Cutler	X	X	X	2nd	X
Wendy Everett	A	A	A	A	A
Timothy Foley	X	X	X	X	X
Chris Kryder	X	X	M	X	X
Rick Lord	X	X	X	X	X
Ron Mastrogiovanni	X	X	X	X	X
Sec. Marylou Sudders	X	M	X	X	X
Sec. Michael Heffernan	X	X	X	X	X
Summary	10 Members Attended	Approved with 10 votes in the affirmative	Approved with 10 votes in the affirmative	Approved with 10 votes in the affirmative	Approved with 10 votes in the affirmative

Presented below is a summary of the meeting, including time-keeping, attendance, and votes.

*Chairman

(M): Made motion; (2nd): Seconded motion; (ab): Abstained from Vote; (A): Absent from Meeting

Proceedings

A regular meeting of the Health Policy Commission was held on September 27, 2018 at 11:00AM. A recording of the meeting is available [here](#). Meeting materials are available on the Board meetings page [here](#).

Commissioners present included Dr. Stuart Altman; Dr. Donald Berwick; Mr. Martin Cohen; Dr. John Christian Kryder; Mr. Richard Lord; Mr. Ron Mastrogiovanni; Mr. Tim Foley; Dr. David Cutler; Secretary Marylou Sudders; and Ms. Elizabeth Denniston, designee for Secretary Michael Heffernan, Executive Office of Administration and Finance.

Dr. Altman called the meeting to order at 11:06 AM and welcomed those present.

ITEM 1: Approval of Minutes from September 12, 2018

Dr. Altman provided a brief overview of the day's meeting. Dr. Altman called for a motion to approve the minutes from September 12, 2018. Sec. Sudders made the motion to approve the minutes. Mr. Cohen seconded. The motion was unanimously approved.

ITEM 2: Market Oversight and Transparency

Dr. Altman provided a brief overview of the BILH CMIR process, and an overview of the process for discussing, making changes to, and voting to accept the report and any referrals to other state agencies. Dr. Altman introduced Mr. David Seltz, Executive Director.

Item 2a: Update on Notices of Material Change

Mr. Seltz introduced Kate Mills, Policy Director of Market Performance, and Megan Wulff, Deputy Policy Director of Market Performance.

Ms. Wulff provided details on Notices of Material Change received since the last Board meeting. For more information, see slides 8-10.

Mr. Seltz asked for any questions on the MCNs. None were heard.

Item 2b: Final Report on the Cost and Market Impact Review (CMIR) on the proposed Beth Israel Lahey Health (BILH) transaction

Mr. Seltz turned the presentation over to Ms. Kate Mills.

Ms. Kate Mills reviewed the historical timeline for the cost and market review (CMIR) of the proposed merger of Lahey Health System; CareGroup and its Component Parts, Beth Israel Deaconess Medical Center, New England Baptist Hospital, and Mount Auburn Hospital; Seacoast Regional Health Systems; and each of their Corporate Subsidiaries into Beth Israel

Lahey Health; AND the Acquisition of the Beth Israel Deaconess Care Organization by Beth Israel Lahey Health; AND the Contracting Affiliation Between Beth Israel Lahey Health and Mount Auburn Cambridge Independent Practice Association. She noted that the HPC received responses to the CMIR Preliminary Report from the parties as well as a number of other interested stakeholders. For more information, see slide 12.

Ms. Mills reviewed the process for accepting the final CMIR on the Beth Israel Lahey Health (BILH) transaction, the votes on the referrals, and the current status of the BILH transaction. Ms. Mills summarized the findings from the BILH CMIR preliminary report and reviewed the Board's discussion of the preliminary report, including questions for the parties raised by the Board. For more information, see slide 13.

Ms. Mills introduced Sasha Hayes-Rusnov, Senior Manager, Market Performance.

Mr. Hayes-Rusnov reviewed new information received from the parties' response to the preliminary CMIR report, including their goals and plans for care delivery initiatives. For more information, see slide 14.

Mr. Hayes-Rusnov reviewed the BILH parties' newly estimated annual efficiencies and savings to the public from the proposed transaction. For more information, see slide 15. Mr. Hayes-Rusnov turned the presentation over to Ms. Wulff.

Ms. Wulff discussed the parties' response to HPC's projected price and spending increases, discussing the fact that the parties' response did not include information that changed the HPC's projected price increases as a result of the proposed transaction. She reviewed the projected price increases and impacts on competition likely to result from the merger. For more information, see slides 16-17.

Ms. Mills reviewed the parties responses relating to their Medicaid mix, support for their community hospitals, and financial performance. For more information, see slide 18.

Ms. Mills reviewed the final report's inclusion of updated analyses and technical adjustments. For more information, see slide 19.

Ms. Mills summarized the key findings of the final report, including increases in the parties' bargaining leverage and ability to obtain higher prices, projected spending increases, some potential for quality improvement from specific initiatives; and some potential for improvement in access to behavioral health, although the parties declined to offer commitments to expand access for Medicaid patients.. For more information, see slide 20-21.

Dr. Berwick asked about the parties' response to the willingness-to-pay (WTP) model and staff's thoughts on the parties' analysis of past transactions. Ms. Mills responded that the team sought to replicate the parties' analysis, but only achieved the same results by making certain methodological errors. Ms. Mills explained that the team found much smaller projected WTP and price increases for the past transactions when they adjusted for these errors. Ms. Mills also advised that using the WTP model to analyze the past transactions resulted in WTP increases below a 6% threshold, below which research literature suggests WTP projections become less

reliable; however the projected WTP increase for the BILH transaction was well above the 6% threshold. Dr. Altman reiterated that, as described by Ms. Mills, that the literature indicates that you need to pass a certain threshold for any model.

Dr. Altman asked for any additional questions and comments. Hearing none, he said that before discussing the referral language, each Commissioner had the opportunity to make any statements.

Dr. Kryder recognized the hard work to conduct the analyses, and the petitioners' current extraordinary level of care. He commented that this merger is part of an old playbook that has played out in Massachusetts and around the country, which is to get bigger in order to gain leverage and obtain higher prices. He recommended that the HPC refer the report, and also that strong language be used regarding the need for a new playbook. He noted that there are examples in other places in the country where prices are going down, providers are lowering prices to attract consumers and employers, and people are moving towards value-based care. He commented that he thinks we can and need to do better in Massachusetts and that he wished that more detail had been provided by the parties regarding their plans.

Ms. Denniston expressed gratitude to the HPC team for the outstanding work and to the parties for their cooperation and efforts. She noted that the response included encouraging detail about innovative ways to improve care, but that the WTP model is the best we currently have to assess potential price increases. She said that this is an opportunity to transform care in Massachusetts and to inject more competition, but that there need to be guard rails and referral is appropriate.

Mr. Mastrogiovanni expressed gratitude to the HPC staff and the parties. He said we have an opportunity as a state to review a merger that can be helpful and improve quality while also restraining price increases and moving towards innovation. He advised that the HPC refer the report, but also work together to manage price increases, provide quality care and access, and focus on innovation. But he cautioned that this can't be done in the way that it has been historically, and that in future it must be managed in a way that the market becomes more competitive.

Mr. Foley focused comments on considering the transaction from the patient perspective, and thinking about the potentially significant impacts of the transaction on lower cost/high value hospitals in the parties' service areas. He expressed support for referral and conditions, and explained it will be important to track the conditions in real time, especially those implications for community providers and the patient population. He expressed concern with the potential price increases and the need to control those increases. He said it is important to consider individual hospital financial status and prices paid to those hospitals, and ways to control prices without negatively impacting both affiliated and non-affiliated community hospitals. He recognized the efforts of providers and the state to improve access to Medicaid patients, and highlighted the need to ensure the BILH system is supporting and investing in care that is being delivered to the Medicaid patient population. He reiterated that he supported the referral to the Attorney General's Office, and looked forward to discussing how to support the positive effects and to mitigate the negative effects of the transaction.

Mr. Lord expressed thanks to the HPC for its work. He noted an interest in understanding BILH's impact based on the current state of the care delivery system wherein small and medium size employers pay rate increases even though total medical spending is below the benchmark. He noted the potential positives of lower-priced, high-quality providers joining together, but said the HPC found legitimate concerns about the impact on prices and access, especially for MassHealth patients. He indicated support for referral to the Attorney General's Office and explained that he looks forward to working on guardrails and conditions that will address the legitimate concerns the HPC found but will provide an alternative system for citizens and employers.

Secretary Sudders expressed support for the referrals to the Department of Public Health (DPH) and the Attorney General's Office, considering the size of the transaction and the parties' lack of response on certain concerns. She noted the need to ensure that the contracting affiliates of BILH were not unduly harmed by any conditions placed on the transaction. She said, depending on the vote of the Board, she would formally ask the DPH Commissioner to bring the BILH Determination of Need (DoN) to the Public Health Council for review and modifications. She mentioned that the Public Health Council would be taking the transaction up at their next meeting. She said in revisiting the preliminary DoN and conditions, DPH staff will be looking at issues such as access, payer mix, behavioral health, and cost controls and care at the right level. She explained that DPH could consider extending the conditions beyond five years, and that approval of any future DoN projects would be based in part on compliance with the conditions of the BILH DoN. She also said failure to satisfy the conditions could result in proposing a revocation of the deal. She also stated it was possible the HPC could conduct another CMIR on the transaction in the future, and include this topic at a future Cost Trends Hearing.

Mr. Cohen said the breadth and scope of this merger was unlike anything the HPC had reviewed in its history, and he acknowledged the work of Ms. Mills and the HPC staff. He said that he believes the conclusions with regard to costs speak for themselves. He said he was heartened by the parties' careful consideration of the behavioral health implications of the merger, and that there were opportunities to replicate and expand the parties' robust behavioral health services to the rest of their network. He expressed satisfaction with the final report and recommendations for referral, but expressed a real concern about the long term viability of community hospitals, and that mergers into larger systems should not be the only vehicle to these hospitals to remain part of the Commonwealth's health care system. He endorsed an update of the HPC's work reviewing the community hospital system.

Dr. Cutler expressed gratitude to the staff and the parties. He explained that one of the objectives of the CMIR process was to shed light on consolidation of medical care, and for this particular transaction the process has resulted in 200 pages by which the citizens of Massachusetts can understand what's going on. Noting that the range of potential outcomes is greater than any other transaction the HPC has dealt with, with great potential benefits and drawbacks. He explained this necessitates some process for continuous monitoring and corrections if and when the merger is finalized. This would be enabled by referral. He laid out three needs for future monitoring: 1) savings for consumers; 2) a more competitive market; and 3) preventing harms for institutions

that are less fortunate, particularly those that serve the neediest populations. He indicated that if these benefits do not occur, the Commonwealth must have the ability to act in real time to correct the situation.

Dr. Berwick echoed the previous comments, and expressed gratitude for the staff's work and a respect for the parties. He stated that there is not yet a picture showing the Commonwealth will benefit as a whole from the merger. He said that the parties are capable of delivering the desired transformations, but that they had not yet guaranteed it. He expressed support for a referral, and that the best way forward was to work with the parties to come to good solutions. Based on the parties' response, he said he would be specifically monitoring the integrity of the safety net in Massachusetts, noting the parties have a duty to serve this population but that they have not yet offered an assurance that they would do so. He also raised concern for transformative care redesign, highlighting a lack of detail about what truly transformational care would emerge from this merger. He also expressed concern regarding the protection of the parties' community affiliates, and also concern that promises on pricing were absent from the BILH response. He stated that he supported the referral and increased monitoring, and expressed interest in the enforceability of the conditions, as the good faith of the parties alone is insufficient.

Dr. Altman said he appreciated the response from the parties. He emphasized that the willingness-to-pay model is the best model which has been cited in numerous judicial findings and supported in the literature. He explained that the model is an estimate, but, if anything, the results are conservative. He expressed some disappointment that the parties' response did not respond to some of the commissioners' comments. Rejecting the view that the only way to mitigate the negative effects is to reject the merger, he said there are meaningful and enforceable mechanisms in Massachusetts to enable a win-win situation. He expressed full support for the report, hope for the work of the Attorney General and DPH, and respect for the parties.

Dr. Altman requested that Mr. Seltz read the findings and referral language. Mr. Seltz read the referral language.

Dr. Altman asked for a motion to include referral language in the final CMIR report. Dr. Kryder made the motion, and Dr. Berwick seconded the motion. The vote was unanimous.

Dr. Altman requested a motion on the issuance of the report on the BILH Cost and Market Impact Review. Mr. Cohen made the motion, and Dr. Cutler seconded the motion. Dr. Altman asked for any changes or discussion. Hearing none, Dr. Altman asked for a vote. The vote was unanimous.

ITEM 3: Executive Session

Item 3a: Performance Improvement Plans

The Board then took steps to enter into an executive session to discuss confidential named providers and payers on the performance improvement plans list. Dr. Altman asked for a roll call vote to move into executive session. The vote was unanimous. Dr. Altman adjourned the public meeting at 12:41 PM.

