

**Dirigo Health Agency
Board of Trustees
Minutes of Meeting
Monday, November 17, 2008**

The Dirigo Health Agency Board of Trustees held a meeting on Monday, November 17, 2008.

Dr. Robert McAfee convened the meeting at 1:02 PM in the Dirigo Health Agency Boardroom located at 211 Water Street in Augusta.

Other Board members in attendance: Jonathan Beal, Edward David, Trish Riley, Mary Anne Turowski, Mary McAleney, Joseph Bruno, Sara Gagne Holmes, Marianne Ringel, David Lemoine, Anne Head, and Ellen Schneider. Also in attendance: Karynlee Harrington, Executive Director of the Dirigo Health Agency, William Kilbreth, Deputy Director of the Dirigo Health Agency, and Dr. Josh Cutler, Director of the Maine Quality Forum.

The Board unanimously approved the minutes from the September 15, 2008 meeting.

Governor's Office of Health Policy and Finance Update - Trish Riley

Ms. Riley provided updates from the Governor's Office:

In terms of Agency financing:

- The Governor was disappointed with the results of the People's Veto, overturning the Legislature's efforts to provide alternative financing for the Dirigo programs.
- However, the Governor re-affirmed his commitment to the program, and was hopeful that the new Obama administration would be able to provide support for programs such as Dirigo. The Governor's Office has already begun conversations with the Obama transition team.
- Correcting a recent press release, Ms. Riley noted that the Governor's Office has not filed an application for a Medicaid waiver
- The Governor is developing a strategy for the coming session.

The Advisory Council on Health Systems Development has provided a two year snapshot of hospital financial data as part of the Dirigo reform. The report is available at the Maine Health Data Organization website.

The report shows that, industry wide, hospital operating margins are about 3.4%. The report indicates that hospitals are complying with the voluntary targets set forth in the Dirigo reform.

The other preliminary indication from these data is that there is not a strong relationship between payer mix and operating margin: some hospitals with a high concentration of public paid services have high operating margins, some have low operating margins.

Ms. Riley stressed that the report represented a beginning of an effort to bring transparency to hospital financials, and that it was early to draw too many significant conclusions.

The McKinsey Global Study made a presentation to the ACHSD on November 14, 2008. Ms. Riley made note of several points from the presentation:

- Most developed nations are able to cover everyone at half of the US costs with outcomes equal to or better than ours.
- It is unclear to McKinsey that investment in Health IT is worthwhile.
- It is also unclear that Primary Care Medical Homes save costs: to make them work they need to be done on a capitation model.

Ms. Riley reported that the Maine Health Policy Center has achieved 200,000 signatures to advance three citizens' initiatives. One of the initiatives is on comprehensive health reform. This initiative would:

- Significantly reduce the consumer protections that are now available in Maine's insurance rules
- Allow Mainers to purchase plans from other states
- Create a high risk pool
- Eliminate community ratings,
- Eliminate rate reviews for certain health insurers under certain conditions
- Eliminate community rating
- Repeal the Savings Offset Payment, Certificate of Need process, the Capital Investment Fund, and hospital taxes
- Eliminate the premium tax on insurance companies
- Require DHHS to make all MaineCare hospital settlements through calendar 2007 by October 15, 2010
- Place a moratorium on mandated benefits
- Require to offer employers to offer 125 plans for pre-tax coverage

Ms. Riley discussed with the Board how much Medicaid money might be available and what possibilities existed under the new Obama administration.

Board member asked to be informed as early as possible of Governor's press releases going forward.

Maine Quality Forum Update - Dr. Josh Cutler

Dr. Cutler updated the Board on four projects the Maine Quality Forum is currently working on:

- Health Information Technology
 - HealthInfoNet brings together the four large health systems in Maine along with Martin's Point, Maine CDC, Franklin County in developing a small database of patient information to see if this information can be shared effectively. MQF is helping to examine how this pilot will be funded and how the ongoing operating costs of HealthInfoNet will be funded.
 - Medicare has designated Maine as a demonstration site in a project to promote and study the use of electronic medical records in small physician practices. This project will be starting in earnest in the middle of 2009.
- Studies of Patient Centered Medical Home: MQF is putting together pilot with the Coalition to Advance Primary Care and twenty practices to examine if medical homes drive cost savings.
- Efforts to reduce healthcare associated infections

- MQF has collected data and has published some of these data on its website. MQF is reviewing other data with the hospital.
- MQF is working with the Maine Infection Control Collaborative (a body including all acute care hospital in Maine) to share data within the group, to develop and use a tool to measure performance in this area, and to report on the progress of the Collaborative.
- Collection and analysis of variation data: MQF has collected the Chapter 270 data, the discharge data sets and claims data through 2007.

Dirigo Health Agency Update - Karynlee Harrington

Ms. Harrington reminded the Board of the Agency's current cash flow situation: because the SOP is assessed on plan years the Agency collects one SOP cycle over a 27 month period.

The Legislature passed PL 2007 Chapter 629 to address the cash flow issue. With the success of the People's Veto the Agency faces some serious challenges.

Ms. Harrington noted that the Appropriations Committee had invited her to speak in late September about the Agency's cash flow situation. She was joined at that meeting by Ed Karass, the State Controller.

At that meeting Ms. Harrington presented two documents:

- One demonstrating the Agency's cash flow if the SOP continued and
- One demonstrating the Agency's cash flow if the People's Veto was unsuccessful.

Ms. Harrington had discussed with the Committee the fact that if the People's Veto was successful the Agency and the Administration would need to work with the Legislature to resolve the cash flow problem. The Agency and the Controller's Office understood that borrowing funds from the State's cash pool was a temporary solution. Refer to SFY2009 DHA Monthly Cash Flow handout.

Ms. Harrington added that PL 2007 Chapter 629 did establish some additional revenue for the Agency: \$5 million from HealthyME and a \$3.6 million cash advance. The Agency must return the cash advance by the end of FY09. This revenue establishment was not repealed in the People's Veto.

There was a subsequent discussion with the Appropriations Committee, Chief Deputy Attorney General, the State Treasurer, and the State Controller. The Deputy AG made it clear that the Constitution requires that the State's overall budget must be balanced but that specific funds do not have to balance. Therefore, it is not unconstitutional if the Agency's fund is not balanced.

Ms. Harrington has been working with Ms. Riley and the Governor's Office to resolve cash flow issues. She emphasized that the Agency understands that the funds from the State's cash pool are a temporary loan. The Agency would not have this cash flow issue if not for the SOP. The Agency plans to end the fiscal year in a financial position acceptable to the Legislature.

In response to a request from a Board member, Ms. Harrington further discussed the constitutional issues the Agency's cash position raises.

Dr. McAfee asked that the record reflect that Treasurer Lemoine and Commissioner Head are in agreement with Deputy AG's statement on the constitutional issues relating to the Agency's cash position.

The Board discussed the financial situation. Board members asked how the Agency plans to pay back the State.

Ms. Harrington responded that the money comes from SOP collections in FY 2010. 90% of the debt should be paid off by December 2010, and the remainder should be paid off by March 2010.

A Board member asked if the employer and employee contributions drop by 30% in the course of the year, does that mean the number of Dirigo participants will drop by 30%.

Ms. Harrington responded that the Agency anticipates, given the cap on the program and the result of the People's Veto, that it cannot lift the cap. The Agency expects enrollment of 7,500 DirigoChoice members as of June 30th 2009.

A Board member asked how often member assets are reviewed.

Ms. Harrington responded that member's income determinations are done every 12 months. The current test is income based and does not include assets.

Ms. Harrington discussed the pending litigation relating to the Year 4 SOP. The four petitioners are asking the courts to throw out the decision of the Superintendent of Insurance. The petitioners are challenging the constitutionality of the SOP. Ms. Harrington noted that the petitioners had raised some of these constitutional issues in their Year 1 suits, the Superior Court had rejected those arguments, and the interveners had not pursued the issues to the Law Court at that time.

Ms. Harrington suggested that the Board move into executive session during the December meeting with Counsel to discuss the legal issues concerning the SOP appeals.

The schedule for the appeal is:

- The Superintendent of Insurance must file the record (the Agency believes this action will occur in November or early December).
- The petitioners have 45 days from that date to file their briefs.
- The Agency and the Bureau of Insurance have 30 days from that date to file their briefs.
- The petitioners then have 14 days to file reply briefs.

Based on this schedule, Agency's Counsel believes the hearing will take place in March or April.

Ms. Harrington noted that the Agency now needed to initiate the AMCS process for Year 5. The Agency is discussing the possibility of rulemaking for the AMCS process with Counsel.

Ms. Harrington stated that she plans to submit a RFP to bid to secure consulting services for AMCS Year 5.

A Board member asked what the timeframe would be for the RFP.

Ms. Harrington responded the Agency needed to start the process immediately to explore the options and give all parties an opportunity to react to the Year 5 measure.

HPHC has requested that the Agency certify in writing by December 1, 2008 that the Agency has financing for the program for all of calendar year 2009. HPHC has stated that it requires this certification in order to agree to continue the contract for the last 6 months of 2009.

Ms. Harrington stated that the financing mechanism, at this point, is the Savings Offset Payment. She commented that her feeling is that HPHC wants to find a way to work with Dirigo but that they are concerned about the continuing litigation against the SOP.

The Board discussed the content of the proposed certification.

A Board member asked when the last payment of SOP Year 3, what the total amount of SOP 3 was, and when SOP 4 began.

Ms. Harrington responded that the last payment for SOP 3 is due March 2010, that the total amount of SOP 3 was \$32.8 million and that SOP 4 is scheduled to begin in July 2009 (the first payment will come in December 2009).

The Board discussed the status of SOP 4 while lawsuits were pending and the timing of the various SOP payments.

A Board member asked why the Agency is considering rulemaking.

Ms. Harrington answered that the Agency is looking at rulemaking to specify the initiatives used to determine the AMCS and the methodologies used to measure those initiatives.

A Board member asked if it would make sense to discuss with the Legislature passing a law to solidify the AMCS initiatives and methodologies instead of going through the rulemaking process given that the Legislature would probably wish to review the rules.

Ms. Harrington clarified that the Agency's governing legislation specifies that Agency rulemaking is routine technical not major substantive, so that the Agency would not be required to take the rules to the Legislature as a matter of law, but acknowledged that the Legislature would want to review any rules pertaining to AMCS.

Ms. Harrington discussed potential program design changes. The Agency has drafted six or seven ideas and plans to hire an actuarial consultant to work through these options. The Agency plans to bring proposals to the Board in early 2009. The Agency needs to issue a RFP in March or April of 2009 for an effective date of January 1, 2010.

Ms. Harrington reminded the Board that that the law requires them to determine SOP no later than December 31st. Therefore, in December Ms. Harrington will present the Agency's recommendation for amount for SOP Year 4. The Agency will send the required reports to the Board for review prior to their determination.

A Board member asked if Ms. Harrington will make a presentation to the Board regarding how much of the AMCS will be assessed.

Ms. Harrington responded that she would make a presentation on how much of the \$48.7 million to assess.

Next Board Meeting

The next board meeting will be held on Wednesday, December 17, 2008 beginning at 9:00 AM.

Public Comments

There were no public comments.