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Health Services Cost Review Commission

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March 27, 2020

Dear Colleagues,

The Health Services Cost Review Commission (“Commission”) continues to be engaged in State and federal efforts to support Maryland’s hospitals as the industry prepares for the anticipated surge of COVID-19 affected patients. We are writing to convey information about important policy changes and additional actions we have taken to aid hospitals in planning for the expected outbreak. As the situation on the ground evolves, so too will the Commission’s thinking and planning in order to best respond to the challenges presented by COVID-19.

As previously noted, during this State of Emergency, the Commission will take all necessary actions to ensure hospitals are appropriately funded and ease regulatory burdens that could prevent hospitals, providers, and public health officials from combating the virus to the fullest extent possible. We will continue to use our authority to leverage the flexibility of the rate setting system in order to support rapid solutions to this public health crisis. The purpose of this letter is to provide hospitals with a summary of guidance that has been issued on key policy areas.

“At the Hospital” Designation

As hospitals prepare to add beds, increase staff resources, and enhance ICU capacity, it may be necessary to both repurpose excess capacity and expand to alternative sites in order to provide sufficient emergency and ICU services across the State. Given this, at the Commission’s Closed Session on March 19, 2020, the Commission voted to waive COMAR 10.37.10.07-01 in order to allow hospitals to operate outpatient services, including laboratory testing, at locations not “at the hospital” and to charge HSCRC-approved rates. The Commission also waived the “no-mix” provisions of the aforementioned regulation to remove further barriers to hospitals providing services where they are needed.

Additionally, the Commission aligned its rate setting jurisdiction with the Office of Health Care Quality (OHCQ) actions to license facilities as part of a regulated hospital. Given this, OHCQ will notify the Commission of changes in hospital facilities that require OHCQ licensure action and hospitals will be expected to report revenue and volume for those services. The Commission also affirmed that if an alternative site is used for inpatient or outpatient services and is approved by OHCQ as part of a currently regulated hospital, the alternative site will charge the rates of the currently regulated hospital.

Emergency CON Process

Hospitals should submit Emergency CONs to the Maryland Health Care Commission (MHCC). An Emergency CON is not needed to temporarily convert existing physical bed space (with headwalls). OHCQ will be able to approve increases in a hospital's capacity through relicensing of existing beds up until 30 days after Governor Hogan's terminates the State of Emergency. All approved Emergency CONs are posted on the MHCC website within 24 hours of receipt. https://mhcc.maryland.gov/mhcc/pages/hcfs/hcfs_con/hcfs_con_emergency.aspx

For more in depth instructions on the Emergency CON process, please reference the letter MHCC sent out on March 21, 2020, titled "MHCC Regulatory Guidance 001". This letter also contains information related to MHCC's position on pending CON Reviews, the current review schedule, performance requirements, and quarterly status reports during the COVID-19 pandemic.

Lab Fees for COVID-19 Testing

As the COVID-19 pandemic continues, testing patients for the virus becomes more critical. Temporarily, for the duration of the COVID-19 State of Emergency, the Commission is implementing a statewide standardized tiered charge for COVID-19 testing based on Medicare Administrative Contractor guidance and American Medical Association coding. For the duration of the emergency period, the COVID-19 testing LAB charge at all hospitals is \$51.31. Hospitals are to adjust the charge per RVU on all other LAB tests to maintain unit rate compliance. A memorandum has been posted on the Commission's COVID-19 website to detail this policy and provide charge instructions.

Quality Programs

CMS provided initial guidance on 3/22/2020 regarding data submissions and reporting for pay-for-performance programs.¹ This CMS guidance extends data submission deadlines, and makes the submission of October 2019 to June 2020 data optional. On 3/23/2020 HSCRC sent an email to hospital quality contacts to clarify that Maryland hospitals should follow the CMS guidelines for submission of CMS quality data (e.g., HCAHPS, etc). Additionally staff have sent a memo to CMMI to confirm that Maryland can also suspend the use of data from January 2020 to June 2020 for all quality revenue adjustments. This was supported by Commissioners during the closed commission meeting on 3/27/2020 pending CMMI confirmation. Staff will send CMMI confirmation as soon as it is received.

Telehealth Policy

Telehealth is a safe way for hospitals to provide services without exposing patients to COVID-19 as Maryland takes steps to reduce community spread of the virus. During the Commission's Public Session on March 27, 2020, the Commission voted on a policy to allow hospitals to provide telehealth visits and corresponding reporting and charging instructions in effect only for the duration of the State of Emergency. The policy is intended to allow patients to access

¹ [CMS Announces Relief for Clinicians, Providers, Hospitals and Facilities Participating in Quality Reporting Programs in Response to COVID-19](#)

telehealth services and also protect against unnecessary or duplicative billing. During the COVID-19 State of Emergency, hospitals shall not charge a clinic fee to patients who receive telehealth services from physicians or other healthcare providers who can bill for their professional services. Hospitals may only charge a clinic fee for telehealth services when they are rendered by non-physician providers that cannot bill for their services. An addendum to the Accounting and Budget Manual's Clinic Standard Units of Measure References, Appendix D, has been created to reflect this decision. Additionally, a memorandum has been posted on the Commission's COVID-19 website that provides details on the appropriate handling of telehealth billing.

To access telehealth best practices and tools, hospitals can visit the Maryland Health Care Commission's website at:

https://mhcc.maryland.gov/mhcc/pages/hit/hit_telemedicine/hit_telemedicine.aspx

Outreach to Congress

The COVID-19 pandemic creates an unprecedented need to align federal and State resources. To support hospitals activities at the State level, the Commission has urged the Maryland federal delegation to use its considerable influence to bring federal resources to our State and remove barriers to care for our citizens. The Commission is collaborating with the delegation to ensure that our federal waiver will be considered as relief funding for hospitals is developed. The *Coronavirus Preparedness and Response Supplemental Appropriations Act*, now includes language intended to ensure Maryland's unique rate setting system does not preclude access to federal assistance. We recognize that it will be important for Maryland hospitals to obtain any federal emergency assistance funding that becomes available.

HSCRC COVID-19 Webpage

The Commission will regularly communicate with hospitals via email to ensure critical policy information is shared. Additionally, the Commission will also post key policy information on our website. A newly established webpage has been created specifically for COVID-19. This page will be used to house information on all policy decisions, answers to frequently asked questions, and copies of letters sent to hospitals. Please be sure to visit the page regularly for the most up-to-date information about the Commission's guidance on COVID-19 to hospitals.

<https://hscrc.maryland.gov/Pages/COVID-19.aspx>

Next Steps

In the coming days, the Commission will be making additional policy decisions related to the COVID-19 pandemic. Staff will be reviewing policies related to global budgets, quality, and reporting requirements to potentially suspend or modify areas in light of the COVID-19 crisis. The Commission will release official guidance on this no later than April 1, 2020. Guidance may change as the crisis abates but all policies and reporting requirements that are recommended for suspension will remain so during the emergency period.

Furthermore, the Commission recognizes that some hospitals may need upfront capital to support expansion efforts underway to prepare for the anticipated surge of patients. Given the current patient volume fluctuations, we understand that global budgets may not provide the short term

funding needed to cover the cost of beds, staffing, medical equipment, or other emergency costs. To address this concern, the Commission is exploring multiple options outside of the global budgets including federal relief funding and other sources of funding that could be used to address capital needs during the emergency period. The Commission will be releasing information on this emergency funding mechanism as quickly as possible.

We thank Maryland's hospitals for their leadership in responding to this emergency public health crisis. Hospitals will continue to be a critical part of the State's approach to care for patients impacted by COVID-19. Your commitment to Maryland is invaluable in these extraordinary times.

Sincerely,

Handwritten signature of Adam Kane in black ink, with the initials 'AKW' written in a smaller font to the right of the name.

Adam Kane
Chairman

Handwritten signature of Katie Wunderlich in blue ink, featuring a long horizontal flourish at the end.

Katie Wunderlich
Executive Director