State of Maryland
Department of Health

Adam Kane
Chairman

Joseph Antos, PhD
Vice-Chairman

Victoria W. Bayless

Stacia Cohen

John M. Colmers

James N. Elliott, M.D.

Health Services Cost Review Commission
4160 Patterson Avenue, Baltimore, Maryland 21215
Phone: 410-764-2605 · Fax: 410-358-6217
Toll Free: 1-888-287-3229
hscrc.maryland.gov

Katie Wunderlich
Executive Director

Allan Pack, Director
Population Based
Methodologies

Chris Peterson, Director
Payment Reform &
Provider Alignment

Gerard J. Schmith, Director
Revenue & Regulation
Compliance

William Henderson, Director
Medical Economics &
Data Analytics

April 23, 2020

Dear Colleagues,

The Health Services Cost Review Commission ("Commission") remains committed to helping hospitals obtain the financial resources they need to combat the COVID-19 virus. We understand that hospitals, their employees, and their physician partners in the community are on the front lines every day treating Marylanders affected by the virus and are also preparing for the possibility of a surge in additional cases. We would like to personally thank you and your staff for your ongoing work on behalf of all Marylanders.

This letter serves as a follow-up to the report given during the April 16 Commission meeting to communicate the actions the Commission has taken to respond to the unique challenges posed by the response to COVID-19 in order to ensure that Maryland's hospitals have the resources needed to expand capacity related to the immediate public health crisis, both for supplies and operating equipment needed for surge readiness as well as physical space available for a surge. Equally as important, we want to ensure hospitals are financially stable in order to address the long term health needs of Marylanders. To achieve these goals, the Commission has taken action in a number of areas to fortify hospitals as Maryland plans for the trough, surge, and post-crisis patient volumes. We believe all of these actions collectively will best position hospitals to treat patients affected by the virus. Fortunately in Maryland, the population-based revenue model provides flexibility to hospitals through their Global Budget Revenues (GBRs) to adjust charges to account for emergency situations such as this one.

Throughout this emergency, the Commission has worked to waive, adjust, or create policies in order to ensure Maryland hospitals have appropriate financial resources to prepare for a potential surge and to address ongoing operations of the hospital for patients with non-COVID-related care. As we do so, we are also mindful of the impact that our policy actions can have on consumers and have worked to protect them from overly high charges. We understand that COVID-19 presents both short-term and long-term financial implications for hospitals and as a result have developed a comprehensive action plan intended to support hospitals as they prepare additional beds, hire staff, and procure necessary equipment. We have broken down our action plan into five sections: Aligning the State with Federal Partners and Federal Aid, Addressing Regulatory & Policy Barriers, Ensuring Hospital Financial Stability, Supporting State Capacity Planning, and Communicating Broadly.

1. Align the State with Federal Partners and Federal Aid

TCOC Contract - Commission staff has been in close communication with the Maryland Model team at the Centers for Medicare and Medicaid Services (CMS) to ensure that the State is able to take the proactive steps necessary to respond to this emergency while still maintaining compliance with the TCOC contract or obtaining waivers as necessary. On April 9, CMS confirmed that Maryland hospitals can submit late or forgo submission of CMS quality data for October 2019 to June 2020, and that the State can suspend the use of data from January 2020 to June 2020 for all quality revenue adjustments. A copy of the CMS memo is on the Commission COVID-19 webpage.

Federal Relief Funding - As the COVID-19 pandemic has continued, the federal government has created several relief funding programs that Maryland hospitals are eligible to participate in. Both the CARES Act and the recently announced CMS advance payment program for Medicare offer hospitals access to funding for emergency capital costs and increased cash flow. The Commission encourages hospitals to pursue funding from these and any other sources that may be appropriate. We will consider all available funding from these federal programs before determining eligibility for additional GBR funding to cover preparedness costs and lost revenue/undercharges.

Medicare Advance Payment Program
This CMS program provides up to 6 months of advance payments to any Medicare provider/supplier who submits a request to the appropriate Medicare Administrative Contractor (MAC). While this funding has to be repaid, payment does not begin until 120 days after the date of issuance of the payment, and acute care hospitals have up to one year from the date the advance payment was made to repay the balance. Interest is charged only if balances remain unpaid after the one-year period. In order to assure repayment and avoid potential interest penalties, the Commission will consider expanded corridor relief for hospitals that participate in the Medicare Advance Payment Program. https://www.cms.gov/files/document/Accelerated-and-Advanced-Payments-Fact-Sheet.pdf

FEMA Funding
The CARES Act includes $25 billion appropriated to the Federal Emergency Management Agency (FEMA) for major disaster declarations such as the one Maryland declared on March 26, 2020. Information on eligible activities and costs as well as the process to submit a Request for Public Assistance is located on the Maryland Emergency Management Agency's website at: https://mema.maryland.gov/community/Pages/Public-Assistance-Program-Coronavirus-Info.aspx.

CARES Provider Relief Fund
Out of a $100 billion appropriation for the CARES Provider Relief Fund, the U.S. Department of Health & Human Services (HHS) has already made payments of $30 billion to hospitals, facilities, and healthcare providers nationally. Of that $30 billion, HSCRC estimates that Maryland hospitals have received at least $330 million. This

funding is a grant and does not need to be repaid. Hospitals and other providers who receive this funding must sign an attestation confirming receipt of the funds and agree to the terms and conditions within 30 days of payment. Furthermore, Congress and HHS are also preparing additional tranches of relief funding for hospitals and other providers. The portal for the attestation is available at the following website:
https://www.hhs.gov/provider-relief/index.html

Please also note that hospitals should have received notification from the HHS Office of the Secretary, Intergovernmental and External Affairs about data needed to qualify for CARES Act funding. For each facility with a Medicare Tax Identification Number (TIN), HHS is requesting that the following information be deliver the following information by **11:59 p.m. PT, Thursday April 23**:

- Total number of Intensive Care Unit beds as of April 10, 2020
- Total number of admissions with a positive diagnosis for COVID-19 from January 1, 2020 to April 10, 2020
- National Provider Identifier

Hospitals are being asked to provide this information through an authentication portal established by an HHS vendor, TeleTracking. If it is not clear who within your organization received the HHS notification, or if you have questions about the registration process, please contact TeleTracking Technical Support at 877-570-6903.

2. ***Address Regulatory & Policy Barriers***

The Commission has worked quickly to relieve hospitals of regulatory constraints that would impede care delivery during the crisis and to leverage flexibilities provided by the federal government at this time. Hospitals are now able to move regulated services out of the hospital to alternative care sites in order to make room for COVID-19 inpatient expansion. The Commission also approved a telehealth policy to enable hospitals to continue critical services in a manner that would keep both hospital staff and patients safe. Finally, in an effort to support hospitals as they focused on the crisis, the Commission took action to modify or suspend non-critical GBR adjustments, quality programs, data collection, and reporting requirements.

3. ***Ensure Hospital Financial Stability***

As the Commission considered actions to ensure the financial stability of hospitals, we first performed an assessment of hospitals' cash positions to ensure there was sufficient short term operating funds. With a few exceptions, we believe hospitals have sufficient cash available to continue to operate uninterrupted in the short term. For hospitals that begin to have low operating cash, the Commission will provide assistance on a case-by-case basis.

Stage 1 - Preparedness and Surge Capacity

- **Surge Readiness -** Over the last 5 weeks, hospitals have been preparing for a surge in COVID-19 cases by identifying necessary supplies, equipment, and care transformation that could be necessitated by a surge. The Commission encourages hospitals to document

any costs related to COVID-19 resources that would not have been purchased otherwise. This can include larger than usual orders of PPE and other supplies and equipment, sanitization procedures (for this event specifically) that have been approved as a reimbursable cost, temporary hires brought on because of the COVID-19 response, and other items. Hospitals should also separate costs related to COVID-19 from daily tasks, equipment or material that are unrelated to COVID-19, but should make sure to document all costs incurred due to COVID-19, even those that may not be eligible for reimbursement from particular sources. Finally, hospitals should document labor hours in both regular time and overtime and separate them as either COVID-19 response or non COVID-19 response, as these factors may affect eligibility. This information will be critical in understanding potential funding support from FEMA and other sources as well as potentially the HSCRC.

- **Surge Capacity** - As hospitals invest in expanded capacity on an emergency basis due to COVID-19, the Commission is exploring an emergency funding mechanism through bond financing issued by the Maryland Health and Higher Educational Facilities Authority (MHHEFA). The bonds would ensure capital is available to fund the expansion of existing or new hospital care sites associated with COVID-19 that receive an Emergency Certificate of Need designation.

Stage 2 - Stabilizing Revenue through Volume Trough
As hospitals have experienced a precipitous decline in patient volumes during the COVID-19 quarantine, the Commission has allowed for an across-the-board temporary increase in hospital charging corridors of "+5" percent, which on a statewide basis gives hospitals an additional $300 million dollars of rate authority beyond previously approved corridors for the final 4 months of the fiscal year. In addition, the HSCRC has waived undercharge penalties related to FY 2020. For hospitals that believe they still require additional rate capacity, the Commission will consider additional corridor expansion on a case-by-case basis. In order to determine hospital eligibility for additional corridor expansion, the Commission will evaluate the hospital's cash on hand projections, participation in Medicare Advance Payment Program and other key financial criteria. Additional information on this will be forthcoming at a future Payment Models Workgroup meeting.

For Stage 1 and Stage 2 rate funding, hospitals must demonstrate that all other available funding mechanisms have been exhausted before the Commission will consider additional corridor expansion.

The Commission will develop guidance to hospitals on the mechanism to carryover the COVID-19 related undercharge from FY 2020 to FY 2021. It may be necessary to continue the expanded corridor of "+5" percent into FY 2021 in order for hospitals to be able to recover their undercharge, however the Commission will make determinations on rate corridors for FY 2021 after receiving more data on the length and duration of the volume trough. Depending on how large the undercharge totals are at the end of the year, it may also be necessary to spread the undercharge over as one-time adjustments in FY 21 and FY22. As we consider approaches to address the COVID-19 undercharge, we will also consider federal relief funding available to hospitals and this will be factored into the undercharge guidance that the Commission develops.

Stage 3 COVID Surge Policy
Finally, we are developing a methodology that ensures additional revenue is added to the hospital's GBR to treat the surge in COVID cases, if it is needed. A draft staff recommendation was presented to the Commission in public session on April 16. Public comments will be accepted through Friday, April 24 in advance of the final recommendation, which will be presented to the Commission on April 30.

4. ***Support State Capacity Planning***

The Commission has been an active participant in the State task force on surge planning and is providing subject matter expertise about the rate setting system and implications for federal relief funding. We are working closely with the Maryland Department of Budget Management and the Maryland Department of Health to identify federal funding that is available and have also been working to develop an approach for funding both hospital and State-coordinated hospital services.

5. ***Communicate Broadly***

Throughout the COVID-19 emergency period, we have prioritized keeping hospitals and other key stakeholders, including State legislators and partner State agencies, informed about steps we are taking. For policy guidance to hospitals, we have sent numerous memos and updates on our activities directly to hospital contacts. Detailed policy memos and other information about the Commission action plan can be found on our COVID-19 webpage.
https://hscrc.maryland.gov/Pages/COVID-19.aspx

In an effort to assist in stabilizing the healthcare market and to reduce perceived financial risk levels of Maryland hospitals due to COVID-19, the Commission staff has met with the national rating agencies to discuss the steps we are taking to fortify the financial position of hospitals. In our discussions, the Commission staff explained Maryland's unique hospital finance model, global budgets, and policies being put in place to provide capital and operating funding for hospitals. The rating agency feedback has been very positive. The agencies expressed little concern about the potential for hospital missed covenants and instead noted they will look at pre-COVID performance and financial health to assess creditworthiness.

Additional Actions: Supporting Physician Practices

In addition to our concerns about hospital financial stability, the Commission is also concerned with the financial state of physician practices that have lost volume during the quarantine phase of COVID-19. Physicians are an important component of Maryland's healthcare system, and relief efforts should consider physician needs. The Commission does not have rate-setting authority for physicians and in fact the TCOC contract prohibits us from directly regulating or mandatorily approving any rates or bundles for physicians. Although the TCOC contract allows for voluntary physician programs that are approved by CMS, it would not be possible to establish a new program quickly enough during the emergency. Notwithstanding these factors, the Commission has advocated for payer-led programs to provide financial support to physicians. Additionally, we encourage hospitals to partner with and support physician practices (both

owned and community-based practices). To the extent that our regulatory and statutory authority allows, the Commission will work with hospitals to account for and support physician and provider based services that are necessary to respond to the COVID-19 crisis.

We remain committed to ensuring Maryland's healthcare ecosystem is strong during this unparalleled time in our State. We would like to thank the industry for the important work you all are doing to fight this pandemic. Your efforts are invaluable to the lives and well-being of all Marylanders, and we wholeheartedly support and thank you and your staff.

Sincerely,

Adam Kane
Chairman

Katie Wunderlich
Executive Director