

Date: April 9, 2025  
To: Hospital Chief Financial Officers  
From: Jon Kromm, Executive Director  
Re: Guidance for HSCRC Regulated Outpatient Telehealth Services

It has been brought to the attention of staff that there is confusion about how telehealth services are determined to be hospital outpatient services, and therefore subject to HSCRC rate regulation. This notice clarifies the staff's current position on the matter, as well as the next steps.

In March 2020, HSCRC issued guidance for temporary reporting and charging procedures of telehealth services during the COVID-19 State of Emergency. This guidance was subsequently continued by HSCRC during the Maryland State of Emergency (SoE), the federal Public Health Emergency (PHE), and with Congressional action extending Medicare telehealth flexibilities.

Separately, in November of 2021 the Commission revised COMAR 10.37.10.07-1 to expand the definition of "at-the-hospital" services to include "the delivery of health care services provided through the use of interactive audio, video, or other telecommunications or electronic technology by a health care provider **at a hospital to a patient at a location other than at the hospital, or to a patient at the hospital where the provider is at a location other than the hospital**, which enables the patient to interact with the health care provider at the time the health care services are provided." This change was scheduled to go into effect in December, 2021; however, HSCRC also elected to suspend implementation during the Maryland SoE, the federal Public Health Emergency (PHE), and with Congressional action extending Medicare telehealth flexibilities.

Over the same time period, federal legislation established and subsequently extended many telehealth flexibilities for services covered by Medicare, and the Consolidated Appropriations Act of 2021 permanently established telehealth as a method of delivery for behavioral health services provided to Medicare beneficiaries.

Under Maryland law, HSCRC only has authority to set rates for hospital outpatient services that are "at the hospital" (Health General §19-201, Maryland Code). **A telehealth service delivered by a provider who is not at the hospital, to a patient who is not at the hospital, may not be considered a regulated service. As such, billing a hospital facility fee for such services would not be compliant with Maryland law.** Additionally, a separate hospital facility fee should not be charged when the health care provider who provided telehealth services is authorized to bill independently for the professional services rendered.

HSCRC's policies only apply when HSCRC-regulated rates may be charged. Telehealth that is not regulated by the HSCRC may be reimbursable based on the policies of each payer.

On March 11, 2025, staff notified hospitals that the revised definition of "at-the-hospital" services in COMAR

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10.37.10.07-1 would go into effect on March 31, 2025. Since the SoE and PHE have passed, there is no longer a basis to divert from our existing regulations. Therefore, the Commission is requiring hospitals to comply with state law as described below. In response to the March notification, staff have received feedback from several hospitals expressing concerns regarding the operational burden of transitioning remote providers back into the regulated hospital space in a short timeframe. **In response, staff has decided to hold hospitals harmless between now and September 30, 2025, at which time, hospitals will be expected to comply with the regulation. If a hospital fails to comply with the regulations on or after October 1, staff may adjust the hospital's revenue for the period of non-compliance and implement penalties as provided for in Commission regulation.**

In the interim, staff are requesting that hospitals submit a letter of attestation as to whether they are in or out of compliance with the regulation. If your hospital is out of compliance, please submit a corrective action plan, and include the following information:

- The number of annual visits,
- The number of providers that will be impacted,
- The type of providers who will be impacted,
- The total amount of revenue at risk
- How long it will take for your hospital to comply, and
- Justification for the timeline.

We encourage hospitals to reach out directly to me at [jon.kromm@maryland.gov](mailto:jon.kromm@maryland.gov) or Claudine Williams at [claudine.williams@maryland.gov](mailto:claudine.williams@maryland.gov) if you have questions or concerns about the transition to the current regulation.