

**Executive Session Minutes  
Of the  
Health Services Cost Review Commission**

**May 2, 2012**

Upon motion made, Chairman Colmers called the meeting to order at 12:31 p.m.

The meeting was held under the authority of Section 10-508 of the State-Government Article.

In attendance, in addition to Chairman Colmers, were Commissioners Antos, Bone, Keane, Loftus, Mullen, and Wong.

Patrick Redmon, Steve Ports, Jerry Schmith, Mary Beth Pohl, and Dennis Phelps attended representing staff.

Also attending were Stan Lustman and Leslie Schulman Commission Counsel.

**Item One**

Various personnel issues were discussed.

**Item Two**

Steve Ports and Dennis Phelps updated the Commissioners on the preliminary Legislative Auditors Report.

**Item Three**

The Executive Director updated the Commissioners and the Commissioners discussed the progress of the waiver test modernization process.

The Executive Session was adjourned at 12:54 p.m.

**MINUTES OF THE**  
**488th MEETING OF THE**  
**HEALTH SERVICES COST REVIEW COMMISSION**

**May 2, 2012**

Chairman John Colmers called the meeting to order at 1:02 p.m. Commissioners Joseph R. Antos, Ph.D., George H. Bone, M.D., Jack C. Keane, Bernadette C. Loftus, M.D., Thomas R. Mullen, and Herbert S. Wong, Ph.D. were also present.

**REPORT OF THE EXECUTIVE SESSION OF MAY 2, 2012**

Dennis N. Phelps, Associate Director-Audit & Compliance, summarized the minutes of the May 2, 2012 Executive Session.

**ITEM I**  
**EXECUTIVE AND PUBLIC SESSIONS OF APRIL 11, 2012**

The Commission voted unanimously to approve the minutes of the April 11, 2012 Executive and Public Sessions.

**ITEM II**  
**EXECUTIVE DIRECTOR'S REPORT**

Patrick Redmon, Ph.D., Executive Director, reported that Monitoring Maryland Performance (MMP) indicated that the rate of growth in charge per case increased by 8.69% for the year ended February 2012 compared to the year ended February 2011. Dr. Redmon noted that for that same period, the number of inpatient cases declined by 4.12%; inpatient revenue increased by 4.12%; outpatient revenue increased by 11.56%; and total revenue increased by 6.73%. In addition, Dr. Redmon stated that average operating profits for the period July 1, 2011- March 2012 were 2.72%, up from 2.09% and 2.59% for the periods ended January and February 2012.

Dr Redmon also updated the status of: 1) the Community Benefits Report workgroup; 2) the staff recommendation to continue the Nurse Support Program I; and 3) the competitive institutional grants to schools of nursing from the Nurse Support II Program.

**ITEM III**  
**DOCKET STATUS CASES CLOSED**

**ITEM IV**  
**DOCKET STATUS CASES OPEN**

**Thirty Day Extensions**

Staff recommended that the Commission grant a 30 day extension of the time for review of proceeding 2157N Levindale Hospital.

The Commission voted to approve staff's recommendation.

**ITEM V**  
**FINAL RECOMMENDATIONS ON THE FY 2013 UPDATE FACTOR AND WAIVER**  
**TREND MITIGATION**

Dr. Redmon summarized staff's final recommendation for the FY 2013 update factor and waiver mitigation (See "Update Factor Recommendation for FY 2013" on the HSCRC website). The recommendations include: 1) an update factor for hospital inpatient rates to be applied as -1.25%, to include a case mix allowance of 0.25% to recognize case mix growth for a net of -1%; 2) an update factor of 1.75% for outpatient rates; 3) not granting additional Admission Readmission Policy (ARR) seed funding; 4) streamlining system controls by implementing a 6 month lag in the data used to produce unit rates, Charge per Case (CPC) and Charge per Episode (CPE) targets, and case mix weights to better monitor the system and facilitate a quicker response to system changes; 5) establishing a policy for meeting the legislative requirements for the Medicaid assessment and savings; 6) revisiting the Update Factor in January 2013 to determine the validity of the assumptions on which the Update Factor was developed; 7) an update factor of 1.59% for non-waiver hospitals; 8) continuing the re-allocation of revenue from inpatient to outpatient for FY 2013; 9) suspending Reasonableness of Charges (ROC) scaling for the current year; 10) making no change in the Volume Adjustment for FY 2013; and 11) making no change in the Medicare Differential for FY 2013.

Commissioner Mullen asked what the overall effect was of staff's proposed outpatient update of 1.75%.

Dr. Redmon stated that because ancillary centers get a blended update factor, you do not get the full impact of inpatient and outpatient update factors on inpatient and outpatient revenue. Consequently, the effect on inpatient revenue would be -0.36%, and the effect on outpatient revenue would be + 0.6%.

Commissioner Mullen noted that the cost of the Productivity Adjustment proposed by staff (2.59%) would be approximately \$350 million.

The Chairman asked Dr. Redmon to describe the rationale for the approach that staff utilized to decide what the inpatient and outpatient updates should be.

Dr. Redmon stated that while there were other approaches, staff believed that there was cost

rationale for the update factors recommended. In addition, staff considered the issue of affordability.

Commissioner Bone inquired as to the source data used by staff to project the Maryland payments in the waiver test model.

According to Dr. Redmon, staff used the latest Monitoring Maryland Performance data.

Commissioner Mullen asked Dr. Redmon what staff ascertained were the biggest contributors to the decline in the waiver cushion.

Dr. Redmon stated that staff believed that the ODS cases and CPC growth were the major factors in reducing the waiver cushion.

Dr. David Sharfstein, CEO of the Sheppard Pratt Health System, requested that non-waiver hospitals be granted an update factor of 2.29% (factor inflation less a 0.3% productivity adjustment), plus an additional 0.5% for capital funding.

Gary Simmons, Regional Vice President of United Healthcare, expressed support for staff's recommendation. Mr. Simmons also urged the Commission to move towards standardizing pricing in Maryland hospitals to increase transparency and improve efficiency.

A panel consisting of Carmela Coyle, President of the Maryland Hospital Association (MHA), Michael Robbins, Senior Vice President-Financial Policy of MHA, Robert Chrencik, President & CEO of the University of Maryland Medical System, Carl Schindelar, Executive Vice President-Operations of MedStar, and Thomas A. Kleinhanzl, President & CEO of Frederick Memorial Hospital, presented comments on staff's recommendations.

Ms. Coyle reported that MHA recommends that the Commission approve a -1% update for inpatient revenue and a 2.59% update for outpatient revenue. The result of the bifurcated update factor would be a net increase in total revenue of 0.3%. Ms. Coyle stated that hospitals are willing to suffer losses on inpatient services, if they are able to obtain a reasonable outpatient revenue increase.

According to Ms. Coyle, the current waiver test has been obsolete, and that we must transition to a new test. The worst outcome would be to overcorrect - - that is, adopting update factors that were too low in an attempt to meet the current waiver test.

Ms. Coyle asserted that a 2.59% update on outpatient services is reasonable and will safeguard hospital financial stability.

Mr. Robbins stated that rather than repeating all the issues discussed in MHA's letter to the

Chairman, he wanted to remind the Commission of several issues contained in the letter (see MHA's letter to the Chairman on HSCRC's website). The first is to restore balance in the system by providing hospitals a small overall revenue increase of 0.3% by approving a -1% inpatient update and a 2.59% outpatient update. According to Mr. Robbins, this small revenue increase: 1) is affordable and would result in little increase in health insurance premiums; 2) it will continue to encourage greater hospital productivity in the face of the largest productivity adjustment ever; 3) it yields a positive waiver cushion; and 4) is the minimum needed to address hospitals' declining financial position.

Mr. Robbins stated that MHA also opposes the removal of ARR seed funding in FY 2013, which the hospitals believe violates the agreements signed less than a year ago.

Mr. Robbins urged the Commission approve MHA's recommendation for a -1% update for inpatient services and a 2.59% update for outpatient services.

Mr. Chrencik expressed the University of Maryland Medical System's support for the all-payer system. Mr. Chrencik stated that keeping the all-payer system, which provides equity in payment and access to care, is crucial. However, he noted that this was the fourth year in a row the update was below cost inflation. As a result, Maryland hospitals have to find the resources to fund four major cash requirements: 1) cost inflation; 2) investment in information technology; 3) the ability to access capital markets in order to replace obsolete buildings; 4) payment for under reimbursed hospital based physicians; and 5) funding of graduate medical education for the two major academic teaching institutions.

Mr. Chrencik requested that the Commission approve full inflation on outpatient rates, monitor the status of the waiver test, and conduct a mid-year review with the option of adjusting rates based on the status of the waiver test.

Mr. Schindelar detailed the efficiencies implemented by MedStar to increase productivity in the years of low updates. Mr. Schindelar expressed MedStar's support to preserve the waiver by approving the -1% inpatient update; however, he recommended that the Commission approve a 2.59% update on outpatient revenue.

Mr. Kleinhanzl recounted the cost cutting undertaken by Frederick Memorial Hospital. Mr. Kleinhanzl expressed opposition to the elimination of seed funding for ARR in FY 2013 and urged the Commission to adopt MHA's update recommendation.

Bruce Edwards, Senior Vice President for Networks of CareFirst of Maryland, and Jack Cook, Ph.D., Consultant, presented comments on staff's recommendation. Mr. Edwards expressed CareFirst's support for staff's recommendation.

Mr. Edwards stated that CareFirst supports staff's recommendations with two exceptions: 1) the Commission should approve a zero update factor for outpatient revenue and 2) the Commission should immediately eliminate its One Day Stay (ODS) Policy.

Dr. Cook made a presentation advocating the elimination of the Commission's ODS policy

effective July 1, 2012 (see “A Discussion of the HSCRC’s One Day Stay (ODS) Policy” on HSCRC’s website). According to Dr. Cook, the ODS policy: 1) has no demonstrable Benefit to patients; 2) provides no cost savings for self-responsible patients or payers; 3) substantially erodes the Medicare waiver margin; 4) inappropriately insulates Maryland hospitals from the effects of the Centers for Medicare and Medicaid Services’ Recovery Audit Contract (RAC) audits; and will necessitate unsustainable or illegal HSCRC policies to offset its effects on the Medicare waiver margin. Dr. Cook contended that the prompt elimination of the ODS policy will substantially improve the State’s position on the Medicare waiver test through FY 2013. Dr. Cook asserted that if the ODS continues, it will detract from Maryland’s application for a new waiver because it has no demonstrable patient benefit, no cost containment effect, and in addition, it will make hospital compliance calculations extraordinarily complicated.

Commissioner Bone asked Dr. Cook how his recommendation would affect the hospital system if it were approved.

Dr. Cook stated that it would be revenue neutral in the long run to the system.

Dr. Redmon noted that the rate capacity associated with ODS cases can be removed by either including ODS cases in the CPC and removing the rate capacity when the cases are moved to observation, or through lower update factors in the future.

Dr. Redmon stated that a complicating factor in eliminating the ODS policy immediately relates to the unintended consequences associated with the ARR program, because some of the ODS cases are readmissions.

Chairman Colmers asked Mr. Edwards and Dr. Cook whether CareFirst raised this issue in this detail at the update workgroup discussions.

Dr. Cook replied that it was raised by not at this level of detail.

Chairman Colmers noted that it would be prudent for the Commission to also have the opportunity to hear from opponents to the elimination of the ODS policy before taking action.

Dr. Redmon pointed out that this issue is not a part of staff’s recommendation and could be handled by the Commission at a later date.

Dr. Cook agreed with Dr. Redmon but urged the Commission to take act on this policy before July 1, 1012.

Raymond Grahe, Vice President, Finance of Meritus Health, commented on staff’s recommendation on behalf of the Total Patient Revenue Hospitals (TPR). Mr. Grahe requested that the 0.25% provision for case mix growth in the update factor not be applied to TPR hospitals. In addition, he requested that TPR hospitals be granted a 2.59% update on outpatient revenue. Mr. Grahe stated that the waiver must be revised to align incentives and should extend beyond an inpatient test.

## Commission Action

A motion was made and seconded, the Commission voted unanimously to approve staff's recommendations #4, #5, #6, #8, #9, #10, and #11.

## Recommendation #7

Commissioner Keane made a motion to amend staff's recommendation by reducing the productivity adjustment applied to the 2.59%, full market basket cost inflation, from 1% to 0.5% for non-Waiver hospitals, resulting in an update factor of 2.09% for FY 2013.

The Commission voted 4 to 3 to approve the amended staff recommendation. The Chairman cast the deciding vote.

Recommendation #1 – Commissioner Mullen made a motion to amend staff's recommendation #1 severing the portion concerning the adjustment for case mix growth and to approve an update factor that has a negative effect of -1% on Charge-per-Case revenue. This action will provide the outpatient update approved to all ancillary and ambulatory revenue while applying a negative update factor to routine patient care and admission revenue necessary to achieve a -1% impact on CPC revenue. The motion was seconded.

The Commission voted unanimously to approve the amended recommendation.

Recommendation on Adjustment for Case Mix Growth – A motion was made by Commissioner Mullen, and seconded, to grant 0.25% for case mix growth and to apply it as detailed in staff's recommendation #1. That is that the inpatient update factor be applied as a -1.25% update with an allowance for 0.25% of case mix growth, applied by the governor policy used in the past.

The Commission voted unanimously to approve Commissioner Mullen's motion.

Recommendation #3 – The Commission voted unanimously to approve staff's recommendation to suspend the allocation of additional ARR seed funding in FY 2013.

Commissioner Mullen noted that the 2.59% outpatient update factor would provided hospitals with approximately \$40 million in revenue and would only increase total revenue by 0.3%. According to Commissioner Mullen, the differential update factors for inpatient and outpatient revenue could be construed as differential productivity adjustments.

Recommendation #2 – A motion was made by Commissioner Mullen to support MHA's proposal for an outpatient update factor of 2.59%. This will result in an update factor of 2.59% being applied to all ancillary revenue and to all outpatient ambulatory revenue. The motion was

seconded.

Commissioner Keane observed that in addition to the approved outpatient update factor, hospitals would also be receiving the marginal profitability of outpatient volume growth - - the difference between actual variable costs and the 85% variable cost factor provided by the volume adjustment. This would compensate for the difference between the 1.75% outpatient update factor proposed by staff and MHA's proposal of 2.59%.

Commissioner Loftus also noted that outpatient volumes increases remain ungoverned.

The Commission voted 4 to 3 to approve the Commissioner Mullen's motion. The Chairman cast the deciding vote.

The Commission decided to take no action on the ODS proposal from CareFirst.

**ITEM VI**  
**FINAL RECOMMENDATION ON CONTINUED FUNDING SUPPORT FOR THE**  
**MARYLAND PATIENT SAFETY CENTER**

Dianne Feeny, Associate Director-Quality Initiative, summarized staff's Final Recommendations on Funding Support for the Maryland Patient Safety Center (the "Center")(see Staff Recommendation on the HSCRC website). Ms. Feeny also described some of the Center's initiatives and the results of those initiatives.

Staff's recommendations include: 1) that funding for FY 2013 in the amount of \$1,225,637 be provided through hospital rates (a 7% reduction from FY 2012); 2) removing the requirement of reducing the support by half of any carry-over; 3) undertaking an analysis and report the findings by October 1, 2012, of the level of participation of hospitals and other provider settings in the Center's projects and next steps to improve participation and the standardization of data collection; 4) holding in abeyance \$100,000 of funding, pending the submission of a feasibility study for relocating the Center in a physical location other than at the Maryland Hospital Association (MHA); 5) that staff consider the Center's funding request on an annual basis; and 6) that the Center continue to aggressively pursue other sources of revenue, including from other provider groups that benefit from the programs of the Center.

Robert Imhoff, President and CEO of the Center, thanked the Commission for its support of the Center and expressed his agreement with the staff's recommendations.

The Commission voted unanimously to approve staff's recommendation.

**ITEM VII**  
**DRAFT RECOMMENDATION ON VARIABLES FOR THE UNCOMPENSATED CARE**  
**CALCULATION**

Andy Udom, Associate Director-Research and Methodology, presented staff's draft recommendation on changes to the Uncompensated Care Regression Model Outpatient Variables (See staff's draft recommendation on the HSCRC's website).

The draft recommendation proposed that the current outpatient variables be replaced with: 1) the proportion of a hospital's total charges from outpatient non-Medicare emergency department charges; and 2) the proportion of a hospital's total charges from outpatient Medicaid, self-pay, and charity care visits.

No Commission action was required.

**ITEM VIII**  
**HEARING AND MEETING SCHEDULE**

June 6, 2012	1:00 p.m., 4160 Patterson Avenue, HSCRC Conference Room
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July 11, 2012	Time to be determined, 4160 Patterson Avenue, HSCRC Conference Room
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There being no further business, the meeting was adjourned at 4:41 p.m.