

**455th MEETING OF THE**  
**HEALTH SERVICES COST REVIEW COMMISSION**

**APRIL 15, 2009**

Vice Chairman Sexton called the meeting to order at 8:58 a.m. Commissioners Joseph R. Antos, Ph.D., Raymond J. Brusca, J.D., and Herbert S. Wong, Ph.D. were also present.

**ITEM I**  
**REVIEW OF THE MINUTES OF THE PUBLIC SESSION**  
**OF MARCH 4, 2009**

The Commission voted unanimously to approve the minutes of the March 4, 2009 Public Meeting.

**CLARIFICATION OF THE MOTION AT THE MARCH 4, 2009 PUBLIC SESSION**

Commissioner Wong clarified one aspect of the motion that he made at the March 4, 2009 public meeting. Dr Wong observed although the motion stated that “ ... staff and industry should work out the details of the policy and consider whether or not other conditions should be added to or deleted from the current list of PPC,” that given the methodology presented by staff, he did not anticipate major changes to the PPC list for 2009.

**ITEM II**  
**EXECUTIVE DIRECTOR’S REPORT**

Robert Murray, Executive Director, summarized some of the major initiatives and issues currently being addressed. The principal activities include: 1) Annual Update discussions; 2) continued discussion and review of Maryland Hospital Acquired Conditions; 3) developing new instructions for the Community Benefit Report to allow the staff to evaluate hospital performance and provide feedback to hospitals; 4) evaluating the Uncompensated Care Policy focusing on encouraging charity care; 5) examining the financial assistance guidelines, patient information disclosure sheet, and convening a workgroup to develop “best practice” hospital credit and collection policies; 6) reviewing one-day length of stay admissions and the utilization and coding of Observation services; 7) enhancing the Quality Based Reimbursement (QBR) system by adding additional measures such as patient satisfaction; 8) considering the addition of Potentially Preventable Readmissions to the MHAC methodology; 9) preparing to expand the Charge-per-Visit methodology to include referred ancillary services in 2010; and 10) reviewing

the 2010 Reasonableness of Charges (ROC) methodology focusing on peer groups and outlier payments.

### **THE DEPARTURE OF JOHN O'BRIEN**

Mr. Murray announced that John O' Brien, Deputy Director-Research and Methodology was leaving the Commission's staff to serve in the Federal Office of Personnel Management as Director of Federal Employees Health Benefit Plan. This organization secures the health benefits of over 9 million federal employees, the largest purchaser of health care benefits in the nation.

Mr. Murray expressed his admiration at John's ability to jump right in and understand conceptually what the Commission was doing. Mr. Murray praised John for his energy, focus, and diligence and noted that a testament to John's value to the Commission was that while being energetic and getting things done, he also gained the respect of the industry for his equanimity and balance in how he approached issues. On behalf of staff, Mr. Murray thanked John for his service and wished him well in his new position.

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

2015R – Greater Baltimore Medical Center

2016A – Johns Hopkins Health System

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

#### **Johns Hopkins Health System – 2014A**

Johns Hopkins Health System filed an application on January 20, 2009 on behalf of its member hospitals, Johns Hopkins Hospital, Johns Hopkins Bayview Medical Center, and Howard County General Hospital for approval to participate in a global rate arrangement for cardiovascular services with Coventry Health Care of Delaware for international patients only. The requested approval is for a period of three years.

After review of the data utilized to calculate the case rates, staff recommended that the Commission approve the Hospitals' application for a period of one year retroactive to February 1, 2009 with the approval contingent on the execution of the standard Memorandum of Understanding.

The Commission voted unanimously to approve staff's recommendation.

#### **University of Maryland Medical Center – 2017A**

On February 26, 2009, the University of Maryland Medical Center filed an application requesting

approval to participate in a global arrangement for solid organ and blood and bone marrow transplant services with LifeTrac, Inc. transplant network for a three year period commencing April 1, 2009.

After review of the data utilized to calculate the case rates and other provisions of the arrangement, staff recommended that the Commission approve the Hospital's request for a period of one year beginning April 1, 2009, and that the approval be contingent on the execution of the standard Memorandum of Understanding.

The Commission voted unanimously to approve staff's recommendation.

### **University Specialty Hospital – 2018R**

On February 27, 2009, University Specialty Hospital, a 180 bed chronic care facility, submitted a full rate application requesting a permanent rate increase of 8.2%. Due to the nature of the patients treated by the Hospital, it is not subject to the Charge-per-Case revenue constraint system, nor is it assigned to a peer group for rate review purposes.

After review of the application and analysis, staff recommended:

- 1) That the permanent inpatient and outpatient unit rates be uniformly increased by 2.97%;
- 2) That the rates be adjusted by the overall update factor provided to other hospitals at July 1, 2009;
- 3) That the Hospital and staff, in conjunction with representative from the Medical Assistance Program, immediately enter into discussions on how rates should be re-aligned at July 1, 2009;
- 4) That the Uncompensated Care (UCC) provision remain in rates for 12 months; and
- 5) That the change to rates be made effective April 1, 2009.

The Commission voted unanimously to approve staff's recommendation.

### **Garrett County Memorial Hospital – 2019N**

On March 11, 2009, Garrett County Memorial Hospital submitted a partial rate application requesting a new rate for Operating Room Clinic (ORC) to facilitate the provision of Wound Care services. The Hospital requested that the state-wide median rate for ORC be approved effective April 1, 2009, and that its Total Patient Revenue (TPR) cap be increased by \$750,985 for ORC services.

After reviewing the Hospital's application, staff recommended:

- 1) That COMAR 10.37.10.07, requiring that rate applications be made 60 days prior to the opening of a new service, be waived;
- 2) That the ORC rate of \$9.72 be approved effective April 1, 2009;
- 3) That the ORC rate not be rate realigned until a full year's cost experience data have been reported to the Commission; and
- 4) That the Hospital be held harmless for the revenue associated with the new Wound Care service in its TPR comparison in RY 2009. Once a full year's Wound Care experience data for RY 2010 is submitted, staff will determine the appropriate permanent increase to the Hospital's TPR cap.

The Commission voted unanimously to approve staff's recommendation.

### **Franklin Square Hospital – 2020R**

On March 16, 2009, Franklin Square Hospital submitted a partial rate application requesting the state-wide median rate for MRI services to be provided in-house beginning April 1, 2009. The Hospital currently has a rebundled MRI rate.

After reviewing the Hospital's application, staff recommended:

- 1) That COMAR 10.37.10.07, requiring that rate applications be made 60 days prior to the opening of the new service be waived;
- 2) That an MRI rate of \$28.82 per RVU be approved effective April 1, 2009;
- 3) That no change be made to the Hospital's charge-per-case standard for MRI services; and
- 4) That the MRI rate not be rate realigned until a full year's experience data have been reported to the Commission.

The Commission voted unanimously to approve staff's recommendation.

### **University of Maryland Medical Center – 2024A**

On April 26, 2009, the University of Maryland filed an application requesting approval to continue to participate in a global arrangement with the Gift of Life Foundation (GOL) for the collection, on an outpatient basis, of bone marrow and peripheral blood stem cells from GOL donors. The purpose is to facilitate Hematopoietic Stem Cell transplants to unrelated GOL recipients, for a one year period beginning May 1, 2009.

Because of favorable performance over the last year, staff recommended that the Hospital's request be approved, and that the approval be contingent upon the execution of the standard Memorandum of Understanding.

The Commission voted unanimously to approve staff's recommendation.

**Extensions:**

Staff requested a 30 day extension for review of the application of the Civista Medical Center, Proceeding 2022R.

The Commission voted unanimously to approve staff's request.

**ITEM V**  
**DRAFT RECOMMENDATIONS FROM THE DELIBERATIONS OF THE PAYMENT**  
**WORK GROUP**

Robert Murray, Executive Director, reported that in November of 2008, a workgroup consisting of staff, the hospital industry, and payers was assembled to develop a draft recommendation for the inflation update to hospitals' rates for FY 2010. Although a three-year arrangement is typically negotiated, because of the uncertainty associated with the economy and financial markets, the workgroup decided to focus on FY 2010. The discussion produced proposals from staff, the Maryland Hospital Association (MHA), representing the hospitals, as well as from the payers.

In developing its draft recommendation (attachment A), staff considered; 1) hospital financial performance; 2) the severe constriction in the national economy; 3) trends in hospital cost inflation; 4) the magnitude of State budgetary shortfalls; and 5) waiver test issues.

Mr. Murray summarized the three proposals, noting that staff's proposal recommended a 1.19% revenue per case increase, the payers proposed a 0.80% increase; and MHA 3.75% revenue per case increase; and a 4.05% outpatient revenue increase.

John O'Brien, Deputy Director, Research and Methodology, described staff's proposed scaling methodology. The methodology is based on hospitals' 2009 ROC positions and QBR system scores. In the proposed ROC scaling, hospitals in the top and bottom deciles would have their update factor adjusted up or down by 0.75% and hospitals between the 75<sup>th</sup> and 90<sup>th</sup> percentile would be continuously scaled by 0.75%, based on their position relative to their peer group mean. Total Patient Revenue hospitals would be excluded from scaling. Hospitals not subject to scaling would receive an update factor of 0.50% or the final approved update factor. The QBR adjustment of 0.5% will be based on the variance of a hospital's quality score from 0.5%.

Mr. Murray stated that staff's proposal also recommends the retention of the 15% volume adjustment and a provision that should the waiver cushion fall below 7% the Commission would be free to take immediate action to restore the cushion to more acceptable levels.

## Comments

Hal Cohen, Ph.D., representing CareFirst of Maryland and Kaiser Permanente, expressed support for the basic idea of staff's recommendation, i.e., that now is the time to be conservative with the update factor. Dr. Cohen stated that the rate structure is what drives behavior, and he proposed the following incentives for hospitals to reduce volumes: First, that in FY 2011 the volume adjustment be increased to 25%, and that if state-wide volumes decrease, the Case Mix Cap be increased to 1.25%. Second, Dr. Cohen recommended that the Working Capital component provided in rates in the system be reduced from 1% a month to something less to reflect current lower interest rates.

Barry Rosen, representing United Healthcare, urged the Commission to look at the larger picture, the unsustainable federal budget deficit. After the recession, the Administration will have to attack the deficit, and Medicare payments will be lowered. With the waiver cushion at an all time low, less than 7%, Maryland must beat the nation now in order to bolster the waiver cushion in anticipation of future Medicare cuts. Now is the time for a zero or a modest hospital rate increase to maintain the waiver.

John Folkemer, Deputy Secretary for Health Care Finance and Medicaid Director, expressed support for staff's recommendation and reiterated that Medicaid had not given increases to most non-hospital providers. Mr. Folkemer explained that Medicaid rolls continue to increase. Mr. Folkemer noted that the money from the federal stimulus package is not available to help Medicaid's budget situation. Mr. Folkemer observed that this is not the time for normal formula increases; rather, there should be modest or no hospital rate increase for FY 2010.

A panel consisting of Thomas Mullen, President and CEO of Mercy Medical Center, Robert A. Chrencik, President and CEO of the University of Maryland Medical System, Carmela Coyle, President of MHA, Raymond Grahe, CFO of Washington County Health System, and Donald Moran, Consultant, presented the hospital industry's comments on staff's recommendation.

Ms. Coyle suggested that all parties continue with negotiations to attempt to reach a compromise rather than have the Commission impose a solution.

Mr. Moran reported on the results of certain ad hoc hospital surveys. Mr. Moran stated that the hospital industry's cash supply has been materially affected by the events of the last 9 months. Hospitals have universally experienced negative total margins in 2008; reported days of cash on hand have declined by about 20 days, or approximately \$500 to \$600 million. Mr. Moran noted that these data do not show the effect of pension contributions or self-insurance pools. Underlying market basket detail suggests that the anticipated inflation rate is trending upward and will be positive by the end of 2010. In addition, Mr. Moran observed that the impact of the economic stimulus package will likely lead to much higher hospital market basket inflation. According to Mr. Moran, the key finding in from the surveys is that there is substantial uncertainty expressed by hospitals about what their financial posture will be entering 2010. Mr. Moran stated that with an update factor approaching zero, there is no prospect for the hospital industry getting through this period without very substantial adverse consequences.

Ms. Coyle stated that adopting either the payers' or staff's proposal would produce negative operating margins, while MHA's would produce operating margins of under 2%, well below the Commission's target. Ms. Coyle noted that actuarial adjustments to the waiver test have been estimated to add as much as 2% to the waiver cushion. In addition, Ms. Coyle reported that a survey of 24 Maryland hospitals shows that hospitals have already taken significant actions to control costs.

The hospital representatives of the panel, Messrs. Mullen, Chrencik, Grahe, and Ms. Coyle detailed hospital cost cutting actions that have already been made and those that hospitals will in all likelihood be required to make in 2010. These actions include: layoffs, hiring freezes, pay freezes, canceling technology modernization acquisitions, canceling or postponing of scheduled renovation and maintenance expenditures, and canceling major capital projects. It was noted that the hospital industry was also facing significant pension funding and self-insured malpractice insurance liabilities in 2010 and 2011. The panel stated that funding for Information Technology (IT) was critical and necessary in order to improve productivity, and that the funding for IT is cash flow. The panel reminded the Commission that there were a significant number of capital projects in the pipeline that need cash flow from operations. According to the panel, the Bond Rating Agencies are concerned with the declines in cash-on-hand and Total Margins of Maryland hospitals. In addition, it was asserted that cuts by the legislature in payments to physicians would ultimately be absorbed by hospitals while cuts in nursing home reimbursement will result in longer hospital stays because fewer nursing home beds will be available.

Mr. Grahe urged the Commission to get the most current information on the waiver test and the potential adjustment so that we all know where we stand on the waiver cushion issue.

In regard to future access to capital, Mr. Chrencik encouraged the Commission to think beyond 2010. Mr. Chrencik observed that because we in Maryland do not need to overreact to national or regional economic problems, we should be careful not to cause long term ramifications by taking precipitous action to lower operating revenue now.

Ms. Coyle stated that hospitals are not asking to be made whole but are concerned about issues of solvency and access. The watch word is uncertainty. The hospital industry is looking forward to continuing to negotiate and work out an agreeable solution.

Mr. Murray stated it is the intent of staff to present a final recommendation at the May public meeting.

**ITEM VI**  
**DRAFT RECOMMENDATIONS FOR CHANGES TO THE QUALITY-BASED**  
**REIMBURSEMENT PROJECT**

Diane Feeney, Associate Director-Quality Initiative, presented several proposed changes to the Quality-based Reimbursement (QBR) Initiative for the years after FY 2010 (attachment B). The

changes include: 1) modifications of QBR measures; 2) expansion of certain surgical care measures; 3) the addition of new process measures; 4) adopt a hybrid of the Opportunity and Appropriateness measures to mitigate the effects of topped-off measures; 5) change the definition of topped-off measures; and 6) allow the option of including patient experience of care to quality measures.

Ms. Feeney announced that comments on the proposed changes should be received in the Commission's office on or before May 6, 2009, and that a final recommendation will be presented at the May public meeting.

#### **ITEM VII** **UPDATE ON REASONABLENESS OF CHARGES METHODOLOGY**

John O'Brien, Deputy Director-Research and Methodology, reported that several outstanding ROC issues, concerning how the methodology approved at the March public meeting would be applied have been resolved at the ROC/ICC meeting. The issues included: 1) how the strip for Direct Medical Education will be calculated; 2) that a variation from the mean approach will be used to calculate the adjustment for Indirect Medical Education (IME) and Disproportionate Share Hospitals (DSH); 3) that profit will be removed from the IME and DHS regression; and 4) that a compromise factor would no longer be used to adjust the IME result for non-teaching hospitals.

#### **ITEM VIII** **LEGISLATIVE REPORT**

Steve Ports, Principal Deputy Director-Policy and Operations, presented an update on legislation of interest to the HSCRC which was passed by the General Assembly. The most significant health care legislation is HB 1069/SB 776 Financial Assistance and Debt Collection Policies, which mandates a minimal hospital financial assistance policy of 150% of the Federal Poverty Level (FPL) and requires hospitals to: 1) include an information sheet with hospital bills and, upon request, include certain financial information; 2) make hospital staff available to assist patients and their families in understanding the hospital bills, and how to apply for other health care programs; 3) submit to the HSCRC their policy on the collection of debts owed by patients; and 4) refrain from selling patient debt, issuing liens on primary residences, and charging prejudgment interest for self-pay patients. The legislation also imposes fines of up to \$50,000 per violation; requires the HSCRC to establish uniform requirements for the financial assistance information sheet; review the implementation of and compliance relative to the information sheet and hospital collection policies; and establish work groups to consider further changes necessary relative to hospital financial assistance and debt collection policies. Finally, the legislation calls for the HSCRC to review its uncompensated care policy to see if incentives can be created to provide more free or reduced-price care to the poor.

Other bills of interest include: 1) SB 231/HB 487 – Annual Reports of Compensation, which

would require hospitals to submit to the HSCRC IRS Form 990, which delineates the annual compensation of their officers and expenditures for lobbyists; 2) the Budget Reconciliation and Financing Act, which would reduce hospital rates for averted bad debt resulting from the FY2009 Medicaid expansion from 25% to 10%, and require certain Medicaid-eligible beneficiaries of the MHIP program to enroll in Medicaid in order to access federal matching funds; 3) HB 706 – Electronic Health Records – which requires the Maryland Health Care Commission and the HSCRC to designate a health information exchange by October 1, 2009. This bill also facilitates the receipt of incentive payments and reflects penalties from Medicare to Maryland hospitals resulting from the electronic health provisions of the Federal American Recovery and Reinvestment Act of 2009 for all payers; 4) HB 714/SB 627- Loan Assistance Program – Creates a State-only loan assistance repayment and practice assistance program designed chiefly for primary care physicians in rural or underserved areas; and 6) HB 1486/SB 1039 - Prince George’s Hospital Authority - introduced. This bill extends the time for the bidding process to May 22, 2010 and provides financial support for the facilities through 2015 of \$75 million in operating funds (to be matched by Prince George’s County), and \$24 million in capital funding.

Mr. Ports reported that in addition, Supplemental Budget #2 imposes a Medicaid Day Limit of \$20 million in FY 2010 only, and that a \$5 million operating grant was made available to Bon Secours Hospital contingent on the submission of a report providing a long-term, comprehensive, and sustainable solution to the hospital’s financial issues.

## **ITEM IX** **LEGAL REPORT**

### **Regulations**

#### **Final Adoption**

#### **Uniform Accounting and Reporting System for Hospitals and Related Institutions – COMAR 10.37.01.02**

The purpose of this regulation is to update the Commission’s Manual entitled “Accounting and Budget Manual for Fiscal and Operating Management” (August 1987), which has been incorporated by reference.

The Commission voted unanimously to adopt the amended regulation.

## **ITEM X** **HEARING AND MEETING SCHEDULE**

May 13, 2009

Time to be determined, 4160 Patterson Avenue, HSCRC  
Conference Room

June 3, 2009

Time to be determined, 4160 Patterson Avenue, HSCRC  
Conference Room

There being no further business, the meeting was adjourned at 11:23 a.m.