461st MEETING OF THE
HEALTH SERVICES COST REVIEW COMMISSION

OCTOBER 14, 2009

Chairman Young called the meeting to order at 9:05 a.m. Commissioners Trudy R. Hall, M.D., Steven B. Larsen, C. James Lowthers, Kevin J. Sexton, and Herbert S. Wong, Ph.D. were also present.

ITEM I
REVIEW OF THE MINUTES OF THE EXECUTIVE AND PUBLIC SESSIONS OF SEPTEMBER 2, 2009

The Commission voted unanimously to approve the minutes of the September 2, 2009 Executive and Public Meetings.

ITEM II
EXECUTIVE DIRECTOR'S REPORT

Robert Murray, Executive Director, updated the Commission on the progress of current high priority initiatives and projects. They include: 1) Maryland Hospital Acquired Conditions (MHAC) clinical workshop review of a data tool to analyze cases of Potentially Preventable Conditions; 2) reconciliation of expected and actual averted bad debt experienced by hospitals associated with Medicaid expansion; 3) working with the Delmarva Foundation to develop a methodology to assist hospitals in reducing Potentially Preventable Readmissions: 4) beginning discussions on changes to the Inter-hospital Cost Comparison (ICC) and Reasonableness of Charges (ROC) methodologies; 5) meeting with representatives of the Centers for Medicare and Medicaid Services (CMS) to address a technical adjustment to the waiver test calculation which is expected to increase the waiver test cushion by 1.2% to 1.4%; and 6) initiation of discussions on the new payment update for 2011.

Mr. Murray also announced that because of technical issues, the implementation of the Charge-per-Visit methodology will be delayed until 2011. There will be no rewards or penalties for FY 2009.

In addition, Mr. Murray presented an overview of the one day length of stay (LOS) issue. Mr. Murray noted that over the last six months, there has been an increased focus on Maryland hospitals' performance on 1 day LOS cases by the Commission's staff. This interest is a result of the imminent onset of CMS's Recovery Audit Contractor Program (RAC) in Maryland, which will address issues related to one day LOS cases in addition to concern expressed by private

payers that hospitals were reluctant to use outpatient observation services instead of admitting patients.

Analyses performed by staff showed that Maryland hospitals' proportion of one day LOS was higher that the national average and higher than that of surrounding states. These results revealed what appeared to be a tendency for Maryland hospitals to admit patients rather than to observe them on an outpatient basis prior to making the decision on whether or not to admit. Mr. Murray stated that there were strong financial incentives to treat short term patients on an inpatient rather than an outpatient basis both in billed charges and in rate capacity, i.e., provide the hospital with the ability to generate rate capacity equal to the full average charge for the case and to recover that revenue over its other cases in the Commission's Charge per Case (CPC) system. In addition, Mr. Murray stated that the CPC system also inappropriately provided rate capacity for admissions denied because of medical necessity.

It appears that the incentive to treat short stay-patients on an inpatient basis has been too strong in Maryland and must be corrected. Even though reducing the number of short stay cases by moving them to an outpatient setting will negatively affect the Medicare wavier test, it will also reduce the overall cost of hospital care to the public. Staff believes that when the reduction of one day LOS cases occurs, there should be a transition period with adjustments to the rate setting system to mitigate the financial impact on hospitals.

ITEM III
DOCKET STATUS CASES CLOSED

2036R – Howard County General Hospital
2037A – Johns Hopkins Health System
2038A – Johns Hopkins Health
2039A – Johns Hopkins Health
2040A – MedStar Health
2042A – MedStar Health
2043A – Johns Hopkins Health
2044A – Johns Hopkins Health

ITEM IV
DOCKET STATUS CASES OPEN

Johns Hopkins Health System – 2041A

On August 13, 2009, Johns Hopkins Health System filed an application on behalf of its member hospitals, Johns Hopkins Hospital, Johns Hopkins Bayview Medical Center, and Howard County General Hospital requesting approval for the continued participation of Priority Partners, Inc. in the Medicaid Health Choice program. Priority Partners, Inc. is the entity that assumes the risk under the arrangement. The Hospitals requested that the arrangement be approved for an additional year beginning January 1, 2010.

Staff recommended that the Hospitals' request be approved for a period of one year beginning January 1, 2010 based on favorable performance in CY 2008 and expected favorable

performance in CY 2009 under this arrangement. In addition, staff recommended that the approval be contingent on the execution of the standard Memorandum of Understanding.

The Commission voted to approve staff's recommendation; Commissioner Larsen recused himself from the vote.

MedStar Health – 2045A

On August 24, 2009, MedStar Health System filed an application on behalf of Franklin Square Hospital, Good Samaritan Hospital, Harbor Hospital and Union Memorial Hospital requesting approval for the continued participation of MedStar Family Choice in the Medicaid Health Choice program. MedStar Family Choice is the entity that assumes the risk under the arrangement. The Hospitals requested that the arrangement be approved for an additional year beginning January 1, 2010.

Staff found that the experience under this arrangement in CY 2008 was favorable; however, estimates of CY 2009 performance are negative. Nevertheless, staff believes that the proposed renewal is acceptable under Commission policy and recommended that the request for renewal of this arrangement for one year, beginning January 1, 2010, be approved. In addition, staff recommended that the approval be contingent on the execution of the standard Memorandum of Understanding.

The Commission voted to approve staff's recommendation; Commissioner Larsen recused himself from the vote.

Maryland General Hospital, St. Agnes Hospital, Western Maryland Health System, and Washington County Hospital – 2046A

On August 25, 2009, Maryland General Hospital, St. Agnes Hospital, Western Maryland Health System, and Washington County Hospital filed an application seeking approval for the continued participation of Maryland Physicians Care in the Medicaid Health Choice program. Maryland Physicians Care is the entity that assumes the risk under the arrangement. The Hospitals requested that the arrangement be approved for an additional year beginning January 1, 2010.

Staff found that historical performance under this arrangement has been favorable. Although, the experience in CY 2008 was marginally negative, estimates for CY 2009 show significant improvement. Based on the Hospitals' historical performance and favorable estimates for CY 2009, staff recommended that the Hospitals' request be approved for a period of one year beginning January 1, 2010. In addition, staff recommended that the approval be contingent on the execution of the standard Memorandum of Understanding.

The Commission voted to approve staff's recommendation; Commissioner Larsen recused himself from the vote.

University of Maryland Medical Center – 2047A

On September 3, 2009, the University of Maryland Medical Center submitted an application requesting approval to continue to participate in a global rate arrangement for blood and bone marrow transplants with the Blue Cross Blue Shield Association Quality Centers for Transplant for one year beginning September 1, 2009.

Staff recommended that the Hospital's request be approved for a period of one year beginning September 1, 2009 based on historically favorable performance under this arrangement. In addition, staff recommended that the approval be contingent on the execution of the standard Memorandum of Understanding.

The Commission voted unanimously to approve staff's recommendation.

University of Maryland Medical Center – 2048AR

On September 11, 2009, the University of Maryland Medical Center submitted an application requesting approval to continue to participate in a global rate arrangement for solid organ and blood and bone marrow transplants with Maryland Physicians Care for one year beginning September 1, 2009.

Staff recommended that the Hospital's request be approved for a period of one year beginning September 1, 2009 based on historically favorable performance under this arrangement. In addition, staff recommended that the approval be contingent on the execution of the standard Memorandum of Understanding.

The Commission voted unanimously to approve staff's recommendation.

Johns Hopkins Health System – 2049A

On September 22, 2009, Johns Hopkins Health System filed an application on behalf of Johns Hopkins Bayview Medical Center requesting approval to continue to participate in a capitation arrangement among the System, the Department of Health and Mental Hygiene, and the Centers for Medicare and Medicaid. Johns Hopkins Bayview Medical Center, doing business as Hopkins Elder Plus (HEP), serves as a provider in the federal PACE Program (Program of All-inclusive Care for the Elderly). Under this program HEP provides services for a Medicare and Medicaid dually eligible population of the frail elderly. The approval was requested for one year beginning September 1, 2009.

Staff recommended that the System's request be approved for a period of one year beginning September 1, 2009 based on historically favorable performance under this arrangement. In addition, staff recommended that the approval be contingent on the execution of the standard

Memorandum of Understanding.

The Commission voted unanimously to approve staff's recommendation.

ITEM V
FINAL STAFF RECOMMENDATION REGARDING OPTIONS FOR METHODS OF FINANCING BOARD OF PUBLIC WORKS BUDGET CUTS

Steve Ports, Principal Deputy Director-Policy & Operations, reported that in July 2009, the Maryland Board of Public Works (BPW) imposed budgetary cuts that would result in $8.9 million in State General Fund Savings to be attainted through either the re-implementation of Medicaid Day Limits (MDL), or through an alternative approach to be determined by the HSCRC to generate the same savings. In August 2009, the BPW imposed additional cuts resulting in $4.5 million in State General Fund Savings also to be attainted through MDL or an alternative approach to be determined by the HSCRC.

Mr. Ports summarized the funding options for the July and August 2009 cuts: 1) Medicaid Day Limits; 2) the alternative assessment/remittance approach to be funded 100% by the payers; 3) the assessment/remittance approach with hospitals and payers sharing the funding 50%/50%; and 4) the assessment/remittance approach funding the July cuts, $8.9 million, 100% funded by the payers, but require hospitals to fund 100% of the August cuts ($4.5 million).

Mr. Ports stated that after analysis of the options, staff recommended Option #4 be approved for the funding of the July and August BPW cuts and potential future budget cuts during the course of FY 2010. Under this approval, and consistent with the Commission's September action, the Commission would impose a uniform assessment on hospital rates of $8.9 million associated with the July BPW approved budget cut for FY 2010, but require that Maryland hospitals remit a total of $13.4 million to the State Medicaid program (associated with both the July and August BPW cuts). This results in a 66%/44% split in the sharing of this burden between payers ($8.9 million funded through the assessment) and hospitals (4$.5 million funded directly by hospitals).

Michael Robbins, Vice President –Finance of the Maryland Hospital Association (MHA), expressed MHA's support for the recommendation.

Hal Cohen, PhD., representing CareFirst of Maryland and Kaiser Permanente, expressed support for staff's recommendation.

The Commission voted unanimously to approve staff's recommendation.

ITEM VI
DRAFT RECOMMENDATIONS ON THE ESTABLISHMENT OF GUIDELINES FOR THE NURSE SUPPORT PROGRAM II

Steve Ports summarized the draft recommendation on the establishment of guidelines for the Nurse Support Program II (Attachment #1). It is anticipated that the final recommendation will be presented at the Commission's November 4, 2009 public meeting.

Since this was a draft recommendation, no Commission action was required.

ITEM VII
UPDATE ON TRANSACTIONS WITH RELATED ENTITIES

Dennis N. Phelps, Associate Director-Audit & Compliance, presented a report containing a three year analysis of the transactions between hospitals and related entities. Mr. Phelps explained that the purpose of reporting these transactions was to ascertain whether less funds would be available to hospitals as a result of corporate reorganization of hospitals.

Staff concluded that it appeared that corporate reorganization has not resulted in fewer funds being available to hospitals.

ITEM VIII
FINAL RECOMMENDATION ON THE HANDLING OF CHARITY CARE IN THE UNCOMPENSATED CARE PROVISION

Andy Udum, Associate Director-Research & Methodology, presented staff's recommendation to modify the Commission's Uncompensated Care (UCC) policy to incentivize Maryland hospitals to provide more charity care. This would be done by making a positive adjustment to the UCC provision of those hospitals whose ratio of charity care to current UCC results exceeds the statewide average, and to make a negative adjustment to the UCC provision of those hospitals whose ratio of charity care to current policy results is less than the statewide average.

Staff recommended that the Commission change its method for calculating prospective levels of UCC for Maryland hospitals by adding charity care adjustments to the existing methodology. The new method would be effective July 1, 2011 (rate year 2012) and would use data submitted for fiscal year 2010.

Robert Vovak, Senior Vice President-Finance of MHA, thanked the Commission for delaying the implementation so that the methodology could be vetted.

Hal Cohen, representing CareFirst of Maryland and Kaiser Permanente, expressed support for staff's recommendation.

ITEM IX
UPDATE ON HSCRC WORK GROUP ON PATIENT FINANCIAL ASSISTANCE AND DEBT COLLECTION AND RELATED COMMISSION ACTIVITY

Steve Ports summarized the report to the Governor of the HSCRC Work Group on Financial Assistance and Debt Collection. The Report addressed the need for uniform policies among hospitals relating to patient financial assistance and debt collection. Uniform policies were considered for: 1) income thresholds; 2) asset thresholds; 3) use of liens; 4)collection procedures; 5) establishment of guardianship; 5) use of judgments; and 6) patient education and outreach to inform patients of financial assistance polices. In addition, the Work Group addressed the issue of whether uniform policies should apply to psychiatric and chronic hospitals, and whether the legal rate of interest on a judgment to collect hospital debt should be changed. In addition, the Report presented the Commission's findings on its study of the creation of incentives to provide free or reduced-cost care to patients without the means to pay their bills. The conclusions of the Work Group were that there was a need for reasonable uniform standards of best practice, but that the standards should not discourage flexibility.

Mr. Ports pointed out some of the most significant recommendations: 1) to increase the free care threshold from 150% of the federal poverty level (FPL) to 200%, and the reduced care threshold to between 200% and 300% of the FPL; 2) that patients enrolled in means-tested programs be deemed to be presumptively eligible for free care; 3) medical hardship limits, i.e., that medical debt over a 12 month period not exceed 25% of the household income; 4) that certain assets be excluded from asset tests; 5) that patients be informed of their responsibility to pay their hospital bills in good faith and to provide information necessary to determine financial eligibility; 6) collection issues, e.g., hospital collection policies should include requirements for when a patient's debt may be reported to a credit reporting agency and when legal action may be taken; 7) that the recommendations in the report apply to chronic hospitals, but that application to psychiatric hospitals be deferred; and 8) that there were no changes recommended for post judgment interest. (A summary of the recommendations is attached as Exhibit A.)

Charles J. Milligan, Jr., Executive Director of the Hilltop Institute, consultants to the Work Group, stated that Maryland is ahead of its peer states in taking a much more focused view of the proper balance between financial assistance and credit and collection polices. Mr. Milligan reported that the trend nationally is toward increasing patient protections by mandating the development of, and the regulatory enforcement of, appropriate financial assistance and credit and collection policies.

Commissioner Sexton expressed concern with two of the recommendations: 1) that any patient's debt items be removed from credit reports when a bill is paid in full; and 2) that in determining the eligibility for financial assistance, a home-owner's assets are given more consideration than a non-homeowner's assets.

Mr. Murray suggested that a letter be sent to the Governor and the legislative leaders outlining

the substance of the Commission's concerns on these issues.

Ms. Louise M. Carwell, Senior Staff Attorney of the Consumer Law of the Legal Aid Bureau, Inc., and a member of the Work Group, commented on the difficulty of removing hospital bad debts from credit reports, which should not have been reported and on the consistency of the asset based eligibility criteria across hospitals.

Peter Beilenson, Howard County Health Officer, commented on the importance of recommended increasing the threshold for free care to 200% of FPL.

Hal Cohen, representing CareFirst of Maryland and Kaiser Permanente, expressed support for the increase in the thresholds for free and reduced-cost care. Dr. Cohen urged the Commission not to go further than is necessary to accomplish the policy aims.

Ms. Ellen Kuhn, the Health Education and Advocacy Director of the Maryland Office of the Attorney General, encouraged the Commission to think about patients in an empathic light. The Commission should realize that hospital debt was incurred because of a need and not by design. Most people want to pay these debts and to do the right thing.

Michael Robbins of MHA stated that the comments today underlined the concern of everyone that we have as much flexibility in the process to account for the differences and unique circumstances that patients have. What works in one county or for one hospital may not work or make sense in another community, particularly when there are counties where the median income is below the 200% of FPL threshold for financial assistance. Mr. Robbins noted that MHA's comments reflect the concern with the increase in the threshold (see attachment B). Mr. Robbins expressed the hope that the Commission will build in as much flexibility as possible in finalizing regulations.

ITEM X
LEGAL REPORT

Regulations

Proposed

Uniform Accounting and Reporting System for Hospitals and Related Institutions – COMAR 10.37.01.03

The purpose of this action 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 forward the proposed regulations to the AELR Committee for review and publication in the Maryland Register.

Rate Application and Approval Procedures – COMAR 10.37.10.26B

The purpose of this action is to raise the current income threshold for receiving free or reduced medically necessary hospital care unless such increase would yield undue financial hardship to a hospital.

The Commission voted unanimously to forward the proposed regulations to the AELR Committee for review and publication in the Maryland Register.

ITEM XI
HEARING AND MEETING SCHEDULE

November 4, 2009	Time to be determined, 4160 Patterson Avenue, HSCRC Conference Room
December 9, 2009	Time to be determined, 4160 Patterson Avenue, HSCRC Conference Room

There being no further business, the meeting was adjourned at 11:01 a.m.