

Title 10 DEPARTMENT OF HEALTH AND MENTAL HYGIENE**Subtitle 37 HEALTH SERVICES COST REVIEW COMMISSION****Chapter 12 Cross-Subsidization**

**Authority: Health-General Article, §§ 19-207, 19-210, and 19-216
Annotated Code of Maryland**

.01 Definitions.

- A. In this chapter, the following terms have the meanings indicated.
- B. Terms Defined.
- (1) “Cross-subsidization” means the practice of charging a purchaser or class of purchaser more than the cost of care for a service with the result that another purchaser or class of purchaser is charged less than the cost of care for the same service.
- (2) “Discount” means a reduction to Commission-approved rates.
- (3) “Fixed-price contract” means an agreement or contract, written or oral, that sets forth a preestablished price for the provision of hospital services, or for the provision of hospital services in combination with physician or other services, that differs from Commission-approved rates.
- (4) Related Entity.
- (a) “Related entity” means an entity that is entering into at-risk arrangements for hospital-provided services and which is either subject to the exercise of control or significant influence by the management or operating policies of a hospital or exercises control over the management or operating policies of a hospital. In either event, one of the entities is, or may be, prevented from fully pursuing its own separate interests by virtue of its relationship with the other entity.
- (b) Examples of “related entity” transactions include transactions between:
- (i) A parent and its subsidiaries;
- (ii) Subsidiaries of a common parent;
- (iii) An entity and trusts for the benefit of employees that are managed by or under the trusteeship of the entities’ management;

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(iv) An entity and its principal owners, management, or members of their immediate families;

(v) Affiliates (an entity that, directly or indirectly through one or more intermediaries, controls, is controlled by, or is under common control of another entity);

(vi) An entity and a joint venture whose participants include the entity or a related entity; and

(vii) Two entities, both of which are related, directly or indirectly, to a common entity.

.02 Hospital Charges to Purchasers or Classes of Purchasers.

A. In order to assure purchasers of health care hospital services that rates are set equitably among all purchasers of services without undue discrimination, a hospital may not intentionally or otherwise engage in cross-subsidization without approval by the Commission. A hospital may grant a discount only as provided for in COMAR 10.37.10.26.

B. Without the prior approval of the Commission, neither a hospital, a related entity, nor any entity or person acting on behalf of or in concert with a hospital shall enter into a fixed-price contract, or knowingly participate in or receive the benefit of any arrangement, directly or indirectly, pertaining to the delivery of hospital services. A hospital that has knowledge of such an arrangement shall promptly notify the Commission in accordance with this section in order that the Commission may determine whether the arrangement constitutes an unapproved discount. In order to obtain prior approval of the Commission, the hospital shall file a written application in accordance with COMAR 10.37.10.06. The filing of this application constitutes the filing of a required report under Commission law and regulation. Failure to file an application before the date on which a fixed-price contract is entered into, or the hospital or related entity knowingly participates in or received benefit of such an arrangement, may subject the organization or organizations to fines up to \$250 per day for each day the arrangement exists without prior approval.

C. **Factors to Consider When Reviewing a Proposed Arrangement.**

(1) In reviewing a proposed arrangement under this regulation, the Commission shall consider the following factors:

(a) Whether the hospital is charging Commission-approved rates and whether payment for hospital services provided is made on the basis of Commission-approved rates;

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(b) Whether any proposed deviation from Commission-approved rates is cost justified and does not result in any form of cross-subsidization;

(c) Whether payment at Commission-approved rates is made by an entity not related to the hospital;

(d) The term of the agreement and the termination provisions;

(e) The items or services to be furnished under the proposed agreement, including but not limited to hospital services, and the methodology for computing the payment for these services; and

(f) The proposed sources of funding for the arrangement, including the source of funds to cover any anticipated or unexpected losses under the arrangement.

(2) An agreement may not be reviewed for reasonableness unless the agreement is reduced to writing and specifies in advance the items or services to be furnished as well as the fixed price or methodology used to compute payment.

(3) The risk of substantial loss associated with any arrangement may not be borne by the hospital, either directly or indirectly.

(D) For a period beginning with the effective date of this regulation and for a period of 6 months after that, the Commission shall offer an amnesty period. Any hospital which brings to the Commission's attention within the 6-month amnesty period any arrangement to which it is, directly or indirectly, a party shall have any price or compliance penalties which might otherwise have been imposed against it in connection with the arrangement, as set forth in Regulation .03 of this chapter, waived. The waiver shall expire at the later of the end of the 6-month amnesty period or the consideration of the Commission of the approval of the arrangement.

.03 Penalties.

A. The Commission may impose penalties of up to \$250 per day, which shall be instead of the \$100 per day penalty for failing to file reports as set forth in COMAR 10.37.01.03N, for a required report submitted by a hospital that includes information which has the effect of violating Regulation .02 of this chapter. The report shall be considered substantially inaccurate and untimely.

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B. A hospital that violates the provisions of Regulation .02 of this chapter shall, in addition to any penalties imposed under § A of this regulation, be subject to the overcharge and undercharge penalties contained in COMAR 10.37.03.05, which shall be applied to the difference between what was actually charged by the hospital and what the hospital would have been required to charge under a valid Commission rate order based on accurate information filed. In addition, the Commission may revoke any discount previously granted under COMAR 10.37.10.26 to a third party that participates in an arrangement determined by the Commission to constitute an unapproved discount or otherwise violates the provisions of Regulation .02 of this chapter.