# MINUTES
# SPECIAL SESSION OF THE
# THE HEALTH SERVICES COST REVIEW COMMISSION

## APRIL 6, 2010

Chairman Young called the session to order at 9:03 a.m. Commissioners Joseph R. Antos, Ph.D., Steven B. Larsen, J.D., Kevin J. Sexton, and Herbert S. Wong, Ph.D. were also present.

## OVERVIEW AND BACKGROUND BY COMMISSION STAFF

Robert Murray, Executive Director, announced that the Chairman had received a letter this morning from John Colmers, Secretary of Health and Mental Hygiene, in which Mr. Colmers modified his position of support for a 50/50 split between hospitals and payers and instead recommended that the Commission substitute a 75/25 payer/hospital split.

Mr. Murray stated that the State budget situation in FY 2010 and FY 2011 resulted in the need to reduce Medicaid expenditures to acute care hospitals. There have also been significant payment cuts to Medicaid Managed Care organizations and other Medicaid providers. In addition, there have been assessments to all acute hospital payers through an increased uncompensated care (UCC) provision in hospital rates resulting from Medicaid Day Limits (Day Limits) payment cuts. The implementation of Day Limits proved to be very costly (due to the loss of federal matching funds for the payment reductions) and also very inequitable because Day Limits concentrated the increases in the UCC provision in rates in hospitals with the most Medicaid patients.

In FY 2010, the HSCRC was permitted by the legislature to develop "an alternative" to the imposition of Day Limits to address Medicaid budget cuts. Staff devised a system of broad-based uniform assessments to hospital rates and remittances by hospitals that allowed for a 50/50 sharing of the burden of funding the proposed Medicaid budget shortfalls between the payers and the hospitals.

Subsequently, when additional Medicaid budget cuts of $35 million for FY 2010 were made by the Board of Public Works, the HSCRC again utilized a broad-based uniform assessment of $17.5 million and remittances from hospitals of $17.5 million to fund the Medicaid budget cuts. In addition, a Supplemental Medicaid Budget Cut of $10 million associated with the failure of the False Claims Act to pass in FY 2009 was funded from through remittances from hospitals. The net result was that over the second half of FY 2010, hospitals will experience a $27.5 million reduction to profits, and payers will experience increases in hospital rates of $17.5 million.

The Governor's FY 2011 budget reflects additional cuts to Medicaid hospital expenditures of $123 million. If these payment cuts were achieved through the imposition of Day Limits, Medicaid would have to reduce payments to hospitals by approximately $320 million because of the loss of federal matching funds. Budget Committees of both the House and the Senate requested that the HSCRC provide clarity on how these additional budget cuts would be financed. As a result, at their March 3, 2010 public meeting, the Commission approved a policy of sharing Medicaid payment cuts 50% by payers through a

broad-based assessment to hospital rates and 50% funded by direct hospital remittances. This 50/50 sharing would also include the $10 million associated with False Claims Act.

Subsequently, the hospital industry raised concern about its ability to fund half of the $123 million Medicaid shortfall given their other financial challenges. The Commission decided to hold this Special Session to address that concern.

Mr. Murray stated that there were many issues impacting the Commission's decision on allocating the funding of the FY 2011 Medicaid budget cuts. While hospital costs are probably higher than they should be, hospitals are facing the challenges of: 1) a low update factor (1.77%); 2) the burden of funding $27.5 million of the FY 2010 Medicaid shortfall 3) the impact of the blizzards; 4) the funding of averted bad debts; 5) increasing UCC because of the poor economic conditions; and 6) the effect of large increases in subsidies to physicians on their financial condition.

Jerry Schmith, Deputy Director-Hospital Rate Setting, presented an analysis of the hospital industry's operating margins from FY 2007 through FY 2009. Regulated margins showed healthy profits, however, unregulated operating margins showed significant decreases, with the net result being lower total operating margins. In addition, because of the factors detailed by Mr. Murray, hospitals' total operating margins are projected to be trending lower for FY 2010.

Mr. Murray presented staff's answers to discussion questions from Commissioner Hall (attachment A). The questions dealt with: 1) the profitability of the top five commercial insurance companies doing business in Maryland; 2) the increases in premiums of those companies for the last three years; 3) the impact of funding the entire $123 million in Medicaid budget cuts through increases in hospital rates on; insurance premiums, insurance companies profits, jobs in Maryland, and the Medicare waiver; 4) the cash flow impact of funding the budget cuts through direct hospital remittances on hospital profit margins; 5) hospital losses due to the snow storms and the possibility of recovery of these losses; and 6) whether or not insurance companies were denying claims for medical necessity for patients unable to be discharged because of the storms.

Mr. Murray presented a table which showed the estimated impact of Medicaid budget cuts on selected providers. The data indicated that of the providers, physicians and hospitals had suffered the smallest cuts as a percentage of their total revenue.

Mr. Murray summarized an exhibit of the five options for allocating the $123 million Medicaid budget assessment (attachment B). This exhibit compared the estimated impact to: the waiver cushion; the payers because of assessment rate increases; and hospital profits because of direct remittances. The options ranged from the hospitals' proposal of 100% assumed by the payers, to that proposed by Health Care for All of 60% assumed by the hospitals and 40% assumed by the payers.

## TESTIMONY IN FAVOR OF CURRENT COMMISSION POLICY FOR FUNDING OF $123 MILLION IN PROPOSED MEDICAID REDUCTIONS

Marvin Salkin, representing American Association of Retired Persons (AARP), asserted that it was unreasonable to ask patients and their families to shoulder the full burden of funding Medicaid budget cuts through a "hidden tax." Mr. Salkin stated that the AARP supports the Commission's decision that

any reductions in hospital reimbursement resulting from Medicaid budget cuts in FY 2011 be funded by a uniform broad-based assessment to be shared equally between hospitals and payers.

Glenn Schneider, Member-Board of Directors of Health Care for All, noted that in order to preserve both the quality and affordability of the health care system, sharing costs 50/50 with hospitals is likely the best approach. However, if the Commission should determine that hospitals could absorb more of the burden without impacting the quality of care provided, appropriate staffing, and financial stability of the hospital system, Health Care for All could support a 60/40 or some other split that where hospitals take on more of the burden than patients.

Peter Beilenson, representing Healthy Howard Health Plan, expressed his organization's strong support of the Commission's policy for a 50/50 split because of its fairness and because there was a precedent for sharing the burden of such budget cuts equally between the payers and the hospitals.

Hal Cohen, Ph.D., representing CareFirst of Maryland and Kaiser Permanente, stated that it is not appropriate for the Commission to compromise between the payers' position and the hospitals position since the 50/50 split was itself a compromise. The Commission should do what it thinks is reasonable.

Commissioner Larsen asked Dr. Cohen whether insurers could pass on to their members these rate increases in premiums, and what would be the effect on profits of absorbing the full assessment of budget cuts.

Dr. Cohen stated that for CareFirst, 55% of their business is ASO, Administrative Services Only, and rate increases are automatically passed through. However, for the remainder, "risk" business, premiums are set in advance in the first year they get absorbed, but eventually they get passed on. Since CareFirst and Kaiser are losing money on their risk business any additional costs would only add to those losses.

Commissioner Larsen asked Dr. Cohen's comments on Secretary Colmer's letter supporting a 25% hospitals 75% payers split.

Dr. Cohen stated that he did not agree with the Secretary's position and believed that the more "skin" that the hospitals had in the game, i.e., the more of the burden that the hospitals assumed the more likely it would be that handling Medicaid budget cuts through reducing hospital payments will be a short term solution.

Kevin Criswell, Assistant Vice President-Finance of Amerigroup, expressed support of the 50/50 split as a matter of fairness in sharing the budget cut burden between the hospitals and other Medicaid providers. Mr. Criswell noted that Medicaid budget deficits may be with us into the future, therefore, the Commission's decision today will likely have an impact on how future budget deficits are handled.

Commissioner Larsen asked Mr. Folkemer whether there was any particular factor that drove the Secretary of Health to reconsider his recommendation on the split from 50/50 to 75/25.

John Folkemer, Deputy Secretary for Health Care Finance and Medicaid Director, stated that there was no one factor but an accumulation of things that were outside the control of the hospitals, as delineated by Mr. Murray which prompted the Secretary to suggest a 75/25 spilt for one year.

**TESTIMONY PROPOSING AN ALTERNATIVE ALLOCATION OF FUNDING OF $123 MILLION IN PROPOSED MEDICAID REDUCTIONS**

An MHA panel consisting of Ms. Carmela Coyle, President of the Maryland Hospital Association (MHA), Ronald R. Peterson, President of the Johns Hopkins Health System, Robert A. Chrencik, President and CEO of the University of Maryland Medical System, Michael J. Curran, Executive Vice President & CFO of MedStar Health, and Michael Robbins, Senior Vice President of MHA, addressed the Commission.

Ms. Coyle presented an overview of the hospital industry's views on the issue of sharing the Medicaid budget cuts. Ms. Coyle stated that MHA's recommendation is that for this year the entire $123 million Medicaid Budget shortfall should be built into hospital rates.

Mr. Chrencik stated that if the Medicaid shortfall is distributed 50/50, $61.5 million will directly hit hospitals' bottom lines. Mr. Chrencik reported that because very aggressive cuts have already been made to all non- salary expenses, the next reductions will be job cuts.

Mr. Peterson noted that in this recession cycle, the health care sector has been one of the few sectors that has not shed jobs but has had modest growth. However, if the already weak hospital industry is burdened with this $61.5 million payment cut, hospitals will be forced to shed jobs of people who are the lower end of the socio-economic ladder.

Mr. Curran discussed the financial condition of the three largest hospital systems in Maryland, MedStar, Johns Hopkins Health System, and the University of Maryland Medical System. Mr. Curran noted that the systems' operating margins were approximately 1%, and that the 1% was achieved only after significant cost cutting initiatives. Mr. Curran stated that the Commission's action today will also have an impact on hospitals' ability to obtain capital.

Mr. Chrencik observed that unlike Maryland hospitals, the operating margins of three of the for profit health insurers doing business in Maryland, Aetna, Cigna, and United Healthcare, exceeded 7% over the last three years.

Mr. Chrencik also asked for the Commission's help in opposing the denials of payment for medical necessity for patients not able to be discharged because of the snowstorms.

Mr. Peterson and Mr. Curran reported that their systems incurred significant declines in admissions and millions of dollars in storm related costs for their systems in the month of February.

Ms. Coyle noted that MHA estimates indicate that the cost of the snowstorms to Maryland hospitals, excluding elective procedures, was approximately $69 million.

Mr. Chrencik and Mr. Curran noted that it is common practice in other states to pass Medicaid shortfalls to other payers and to use assessments to maximize federal reimbursement.

Mr. Chrencik noted that the hospital industry is concerned that another assessment on hospitals will cause additional stress on some of the most financially vulnerable hospitals in the State, especially the Dimensions Healthcare System. The ripple effect if Dimensions should in some way be compromised would be significant in the debt markets and in the state-wide health delivery system.

According to Mr. Chrencik the hospital industry recommends that 100% of the Medicaid budget cuts be funded in hospital rates as a temporary measure while hospitals battle through these tough economic times.

## DISCUSSION AND CONSIDERATION OF OPTIONS

Mr. Murray presented staff's recommendation which included: 1) a 30/70 hospital/payer split for the FY 2011 $123 million budget cuts; 2) a change to the previous policy related to the $10 million in costs resulting from the failure of the Maryland False Claims Act in FY 2010 previously fully funded by hospitals; 3) consider hospital-specific rate relief related to snow storms; 4) consulting with the Maryland Insurance Administration regarding the reasonableness of potential denials related to extended hospitals stays during the February snow storms; 5) working with the State to avoid the need for future Medicaid budget cuts.

Mr. Wong stated that he thought Mr. Schneider was correct in stating that we all want a strong financially stable hospital industry that provides care of a high quality. However, we all want to make sure that people have access to that care, and that we must find a way to balance these goals.

Commissioner Antos asked whether staff's recommendation included a provision that after FY 2011, if it is necessary to apportion Medicaid budget cuts, that the split be 50/50.

Mr. Murray replied that although he believed that the best way to approach this issue was through a policy of 50/50 sharing, staff's recommendation did not include such a provision.

Commissioner Antos suggested that the staff recommendation be amended to state that the Commission would return to its 50/50 policy after FY 2011.

Chairman Young reported that Commissioner Lowthers indicated in a telephone conversation that he preferred either a 30/70 or 40/60 hospital payer split.

Commissioner Sexton stated that the options before the Commission are not good. Basically, the choices are who is going to be hurt and how much. However, the movement to a higher percentage of the budget cuts in rates means that the burden will be spread over more people than hospital staff. In addition, because Medicare and Medicaid pay almost half of hospital charges in Maryland, half of the burden in rates will be spread over the rest of the country. Placing more of the budget cuts in rates is better for Maryland in the short run. Commissioner Sexton stated that we should be against the idea of taking Medicaid out of the all-payer system. Commissioner Sexton noted that the effort to make changes to the system by using incentives to lower preventable complications and preventable readmissions is what we need to be doing.

## COMMISSION ACTION

The Commission voted unanimously to approve staff's recommendation to share the $123 million Medicaid cuts between hospitals and payers from a 50/50 sharing between hospitals and the paying public to a 30%/70% sharing between hospitals/payers with Commissioner Antos' modification that if future Medicaid cuts require Commission assessments, that the standard 50/50 sharing policy would apply.

There being no further business, the special session was adjourned at 10:56 a.m.