

**460th MEETING OF THE**  
**HEALTH SERVICES COST REVIEW COMMISSION**

**SEPTEMBER 2, 2009**

Chairman Young called the meeting to order at 9:36 a.m. Commissioners Joseph R. Antos, Ph.D., Trudy R. Hall, M.D., 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 AUGUST 5, 2009**

The Commission voted unanimously to approve the minutes of the August 5, 2009 Executive and Public Meetings.

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

Robert Murray, Executive Director, updated the Commission on the current major initiatives and issues. They include: 1) continued participation in clinical workshops and payment workgroups with the industry on Acquired Conditions (MHAC) policy issues and clinical vetting; 2) meeting with representatives of the Medicaid Program and the industry to quantify the actual averted bad debt experienced by hospitals associated with Medicaid expansion; 3) completing the analysis to identify the factors that must be adjusted for in a Potentially Preventable Admissions (PPA) policy; 4) continuing to explore potential Credit and Collection policy changes and best practices, as well as inclusion of charity care incentives in the uncompensated care policy report due to the Governor on October 1, 2009; 5) continuing to evaluate criteria for benchmarking Community Benefit Reports; 6) meeting with CMS and Maryland Hospital Association (MHA) concerning Recovery Audit Contractor (RAC) program with focus on 1 day length of stay cases; 7) begin discussions on changes to the Reasonableness of Charges (ROC) methodology; 8) meet with CMS to finalize technical adjustments to the waiver test calculation; 9) meet with MHA to modify the Financial Condition Report to produce a more holistic view, i.e., include data for hospital systems of the Maryland hospital industry; and 10) convene a workgroup to begin discussions on the new payment arrangement for 2011 and beyond.

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

2031R – Garrett County Memorial Hospital                  2033N – Baltimore Washington Medical Center  
2034A – University of Maryland Medical Center        2035R – Carroll Hospital Center

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

**Howard County General Hospital – 2036R**

On August 4, 2009, Howard County General Hospital submitted an application requesting that its Medical/Surgical Acute (MSG) and Definitive Observation (DEF) rates be revenue neutrally combined effective July 1, 2009.

After review of the Hospital's application and analysis, staff recommended that the Hospital's request to combine its MSG and DEF rates be granted effective August 1, 2009.

The Commission voted unanimously to approve staff's recommendation.

**Johns Hopkins Health System – 2037A**

On August 5, 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 to continue to participate in a global rate arrangement for cardiovascular services with Global Excel Management, Inc. for an additional year beginning August 1, 2009.

Staff recommended that the System's request be approved for a period of one year beginning August 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 – 2038A**

On August 5, 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 to continue to participate in a global rate arrangement for

cardiovascular services with the Canadian Medical Network for an additional 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.

**Johns Hopkins Health System – 2039A**

On August 17, 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 to continue to participate in an amended global rate arrangement for solid organ and bone marrow transplant services with the United Resources Network for a period of 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.

**MedStar Health – 2040A**

On August 17, 2009, MedStar Health filed an application, on behalf of Union Memorial Hospital and Good Samaritan Hospital requesting approval from the Commission to continue to participate in a global rate arrangement for cardiovascular services with the Kaiser Foundation Health Plan of the Mid-Atlantic, Inc. for an additional year beginning August 1, 2009.

Staff recommended that the MedStar's request be approved for a period of one year beginning August 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.

**MedStar Health – 2042A**

On August 17, 2009, MedStar Health filed an application, on behalf of Union Memorial Hospital and Good Samaritan Hospital requesting approval from the Commission to continue to participate in a global rate arrangement for orthopedic services with MAMSI for an additional year beginning September 1, 2009.

Staff recommended that the MedStar'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 Center – 2043A**

On August 17, 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 to continue to participate in an amended global rate arrangement for solid organ and bone marrow transplant services with Preferred Health Care LLC and PHC for a period of 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 – 2044A**

On August 17, 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 to continue to participate in an amended global rate arrangement for solid organ and bone marrow transplant services with Life TracPreferred Health Care LLC and PHC for a period of 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.

### **Medicaid Health Choice Program**

Steve Ports, Principal Deputy Director-Policy & Operations, summarized the staff's draft recommendations for the applications of: the MedStar Health System on behalf of MedStar Family Choice; Maryland General Hospital, St. Agnes Health System, Western Maryland Health System, and Washington County Hospital on behalf of Maryland Physicians Care; and the Johns Hopkins Health System on behalf of Priority Partners, Inc. for continued participation in the Medicaid Health Choice Program for a one year period beginning January 1, 2010.

Mr. Ports announced that the final recommendations will be presented at the October 14, 2009 public meeting.

### **ITEM V**

#### **FINAL STAFF RECOMMENDATION ON THE UNIVERSITY OF MARYLAND – BALTIMORE'S CENTER FOR TRAUMA AND EMS REQUEST TO ACCESS THE HSCRC CONFIDENTIAL PATIENT LEVEL DATA**

The University of Maryland School of Medicine – Baltimore's National Study Center for Trauma and EMS (UM – NSC) requested approval to access the HSCRC's inpatient and outpatient Confidential Data. The purpose of the data request is to use the data in the Crash Outcome Data Evaluation Systems project funded by the National Highway Safety Administration in its analysis of traffic safety and injury.

In accordance with HSCRC policy, the request was reviewed by the Confidential Review Committee to ensure it met all of the requirements for access to Confidential Data. The Committee unanimously recommended that the request be approved, and staff concurred in the recommendation.

The Commission voted unanimously to approve the request of the UM - NSC for access to the HSCRC's Confidential Data.

### **ITEM VI**

#### **FINAL RECOMMENDATION ON HOSPITAL ASSESSMENT IN LIEU OF MEDICAID DAY LIMITS FROM THE BOARD OF PUBLIC WORKS' APPROVED BUDGET REDUCTIONS**

Steve Ports, Principal Deputy Director-Policy & Operations, reported that the Maryland Board of Public Works (BPW) at its July 22, 2009 meeting approved a measure to offset budget reductions of \$24.1 million through the re-imposition of Medicaid Day Limits (MDL) or through an

alternative approach to be determined by the HSCRC. Mr. Ports stated that this recommendation relates specifically to the July 22<sup>nd</sup> action of the BPW only and advocates the use of an alternative method, i.e., the imposition of a broad-based and uniform assessment on all hospital rates, for financing those budget reductions in lieu of MDL.

Mr. Ports noted that in August 2009 the BPW approved additional budget reductions of \$11.8 to be achieved through the imposition of expanded MDL. Staff is concerned that because the budget situation may well continue to deteriorate, there is a danger that additional MDL will be imposed in the future. Mr. Ports stated that the continued use of MDL to achieve budget savings is inconsistent with the Commission's mandate that aggregate rates be related to aggregate costs. Experience has shown that once implemented as a budget cutting strategy, MDL are very difficult to remove. Past Commission policies of "back-filling," ensuring that hospitals are not adversely affected by providing cash-flow, or using the uniform assessment methodology and the rate setting system as a taxing mechanism, encourages the implementation of increasingly more onerous MDL. Staff believes that both providers and payers should share in the burden of MDL; however, when hospitals do not feel the impact of MDL, they have no incentive to oppose them. Most importantly, CMS has indicated to staff their opposition to the MDL and back-filling methodology, as well as the assessment alternative.

Therefore, staff recommended: 1) the imposition of a one-year, broad-based, and uniformed hospital assessment in FY 2010 in the amount of \$8,897,720, conducted in the same manner as the \$19 million assessment that was imposed in FY 2009 in lieu of MDL; 2) that hospitals be instructed to remit their calculated portion of the assessment to Medicaid beginning January 1, 2010 with the last remittance in June 2010; and 3) its opposition to any further use of this method to achieve savings through budget actions that are adopted by the General Assembly, the Governor, or the BPW subsequent to those adopted by the BPW on July 22, 2009.

A MHA panel consisting of Samuel L. Ross, M.D., Chief Executive Officer of Bon Secours Hospital; Thomas R. Mullen, President & Chief Executive Officer of Mercy Medical Center; Robert A. Chrencik, President & Chief Executive Officer of the University of Maryland Medical System; and Carmela Coyle, President of MHA expressed its opposition the imposition of MDL and its support for staff's recommendation to implement the broad-based uniform assessment. However, the panel asked that the Commission also reconsider the use of the assessment to handle the more recent BPW budget cut of \$4.5 million.

The panel expressed the view that the broad-based uniform assessment method is the most efficient way to handle Medicaid budget cuts because: 1) it is not an open-ended taxing authority in that the legislature capped the use of the assessment mechanism at 3% of net patient revenue; 2) MDL are a very imprecise cost cutting tool and are an administrative burden to both the Commission's staff and hospitals (incremental costs to hospitals could be \$500,000); 3) the impact of MDL is inequitable - urban hospitals are disproportionately harmed; and 4) Medicaid does not receive the federal matching funds for MDL.

The panel also suggested that the Commission reconsider the broad-based uniform assessment as

an alternative to the use of MDL to handle the subsequent \$11.8 million in BPW Medicaid budget cuts rather than MDL because it is predictable, minimizes unintended consequences, and does the least harm to the patients, hospitals, and to the waiver.

Commissioner Sexton asked what the rationale was for letting MDL be imposed rather than utilizing the assessment alternative for the second budget cuts.

Mr. Murray stated that with regard to MDL for the second budget cut, staff is recommending that the Commission not take any action. That is, that the Commission not default to its prior policy of back-filling for cash-flow and allowing MDL to flow through as uncompensated care, but to let the full effect of the \$11.8 in MDL fall directly on the hospitals rather than pass it on to the patients who pay the medical bills. Staff feels that this will provide the hospital industry with the incentive and motivation to push back against future MDL, and it also sends the message that this is as far as the rate setting system is willing to go in passing on Medicaid budget cuts as an assessment to those paying the bills.

Ms. Coyle asserted that the hospital industry has been very active in opposing MDL and was instrumental in eliminating MDL, albeit temporarily.

Hal Cohen, PhD., representing CareFirst of Maryland and Kaiser Permanente, expressed support for staff's recommendation. Dr. Cohen agreed with the panel that there was more equity in the assessment alternative than in MDL; however, there is no real equity within the entire population because people who have the resources but choose not to purchase health insurance do not contribute to what is clearly a social problem. Dr. Cohen agreed with Mr. Murray that it was appropriate for the HSCRC to stop acting as a taxing authority. Dr. Cohen suggested that the Commission postpone discussion of the August BPW budget until the November public meeting.

Commissioner Larsen proposed an amendment to staff's recommendation. Commissioner Larsen would add a provision that there be further discussions that would encompass not only the narrow issue of the use of the assessment alternative for the second budget cuts, but also the broader issue of the use of MDL to off-set Medicaid budget cuts.

The Commission voted unanimously to approve the amended staff recommendation.

**ITEM VII**  
**DRAFT RECOMMENDATION ON HANDLING CHARITY CARE IN THE**  
**UNCOMPENSATED CARE POLICY**

Andy Udum, Associate Director- Research & Methodology, presented a draft recommendation to modify the Commission's Uncompensated Care (UCC) policy to incentivize Maryland hospitals to provide more charity care. Staff recommended that the UCC policy be modified 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 also recommended that the new methodology be effective July 1, 2010 utilizing data submitted for FY 2009.

Since this was a draft recommendation, no Commission action was required. Final action will be taken at the October 14<sup>th</sup> public meeting

**ITEM VIII**  
**UPDATE ON TRANSACTIONS WITH RELATED ENTITIES**

Presentation of this report was postponed until the October 14, 2009 public meeting.

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

**Regulations**

**Final Adoption**

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

The purpose of this action is to require hospitals to file with the Commission their most recent Form 990 filed with the Internal Revenue Service in compliance with recently enacted legislation.

The Commission voted unanimously to approve the final adoption of this amended regulation.

Rate Application and Approval Procedures – COMAR 10.37.10.03

The purpose of this action is to assure that the State's Medicare waiver is not jeopardized, and that any potential action taken by the Commission in response to the establishment of Medicaid hospital day limits is in the public interest.

The Commission voted unanimously to approve the adoption of this amended regulation.

Rate Application and Approval Procedures – COMAR 10.37.10.26

The purpose of this action is to comply with the recently enacted legislation. These regulatory amendments change the interest or late payment charges that a hospital may add to its self-pay patients; set forth the minimum provisions required in hospital financial assistance policies;

require hospitals to develop an information sheet; and set forth those requirements to be included in hospital credit and collection policies.

The Commission voted unanimously to approve the adoption of this amended regulation.

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

October 14, 2009	Time to be determined, 4160 Patterson Avenue, HSCRC Conference Room
November 4, 2009	Time to be determined, 4160 Patterson Avenue, HSCRC Conference Room

There being no further business, the meeting was adjourned at 11:24 a.m.