maryland
health services
cost review commission

February 16, 2021

The Honorable Shane E. Pendergrass
Chair, House Health and Government Operations Committee
Room 241, House Office Building
Annapolis, MD 21401

RE: House Bill 565 – Health Facilities – Hospitals – Medical Debt Protection – Letter of Information with Amendments

Dear Chair Pendergrass:

The Health Services Cost Review Commission (HSCRC) submits this letter of information with amendments for House Bill 565 (HB 565) titled, "Health Facilities - Hospitals - Medical Debt Protection." The HSCRC supports protecting consumers from unnecessary financial hardship through the Commission's financial assistance and uncompensated care policies.

Uncompensated Care (UCC) Fund Sustainability
The HSCRC has worked hard to develop policies to ensure the long-term sustainability of hospital UCC funding. UCC is care that is provided by the hospital for which no compensation is received. The Maryland Health Model's unique hospital payment system ensures equitable funding for uncompensated care by payer type and equitable funding between hospitals for UCC. Equitable distribution of UCC funding is important because some hospitals face larger volumes of uncompensated care than other hospitals. The HSCRC's policies ensure all payers share the cost of uncompensated care and hospitals with high volumes of low-income patients are not at a financial disadvantage.

In developing UCC funding policies, HSCRC carefully balances policies to ensure that hospitals provide financial assistance to patients who need it while limiting incentives for hospitals to charge the UCC fund for care provided to patients who can reasonably pay for those services.[1] HSCRC's financial assistance policies require hospitals to provide free and reduced care to certain patients. At the same time, hospitals are required to make a "reasonable collection effort" before determining that charges that are unpaid by a patient who does not qualify for financial assistance are bad debt that can qualify for UCC funding.[2] The goal of this policy is to ensure that UCC funding is sustainable.

[1] Other states have struggled to maintain sustainable uncompensated care funds. One example is New Jersey. H S Berliner, S Delgado, "The rise and fall of New Jersey's uncompensated care fund", J Am Health Policy. Sep-Oct 1991;1(2):47-50. https://pubmed.ncbi.nlm.nih.gov/10112731/. To achieve the balance described above, HSCRC blends "actual" UCC and "predicted" UCC to calculate hospital UCC rates. HSCRC Accounting and Budget Manual Section 100, page 39.
[2] HSCRC Accounting and Budget Manual Section 100, page 39.

HB 565 restricts hospitals from filing an action to collect debts less than $1,000 and debts owed by patients that were uninsured at the time services were provided. Similarly, the bill does not allow hospitals to "file an action to collect a debt owed on a hospital bill by a patient until the hospital determines whether the patient is eligible for free or reduced–cost care." HSCRC agrees that patients who do not have insurance and cannot afford to pay their hospital bills should be protected from extended bill collection efforts. However, these provisions, as currently drafted, potentially restrict hospitals' ability to collect bills owed by patients who are not eligible for financial assistance or who do not respond to the hospital's attempts to determine the patient's eligibility for financial assistance. HSCRC believes it is important that hospitals engage in "reasonable collection efforts" to support the sustainability of the UCC fund by minimizing total UCC.[3] HSCRC does not have data to evaluate the possible impact of these provisions of HB 565 on the sustainability of the UCC fund. Without data to evaluate how much additional bad debt will be charged to the UCC fund because of these policies, HSCRC cannot evaluate whether these policies will impact the sustainability of the fund.

Cost and Charges

HB 565 prohibits hospitals from "collecting additional fees in an amount that exceeds the *cost* of the hospital services for which the medical debt is owed in a bill for a patient who is eligible for free or reduced-cost care." The use of the word "cost" in this provision of the bill does not reflect the requirements of the hospital all-payer rate setting system in Maryland. Acute general hospitals in Maryland must charge patients (and insurers) the rate set by the HSCRC. Health General § 19-212 states that aggregate rates set by the HSCRC for a facility must be reasonably related to the aggregate costs of the facility. Under Maryland's rate setting system, hospital rates are the same for all payers, including Medicare, Medicaid, private insurance, and uninsured patients.[4] The HSCRC requests that the Committee amend this bill to replace the reference to "cost of the hospital service" with a reference to the HSCRC approved charge (see AMENDMENT 1 below). This amendment eliminates any interpretation that this bill allows hospitals to charge amounts that are different than the rates set through Maryland's unique all-payer rate system.

Similarly, this bill requires hospitals to report on the cost of hospital services "provided to patients but not collected by the hospital for patients covered by insurance and patients without insurance". The HSCRC collects the amount of unreimbursed charges, not costs, for services to HSCRC, broken out by insured and uninsured patients. As noted above, under the Maryland Health Model, the HSCRC sets the charges for services at all hospitals for all payers, including self-pay and uninsured individuals. HSCRC urges the Committee to adopt an amendment to align this reporting requirement with Maryland's All-Payer rate setting system by requiring the collection of data on charges, rather than costs. AMENDMENT NO. 2, provided below, adjusts that reporting requirement for hospitals to collect data on charges.

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[3] It is reasonable to assume that many individuals who are uninsured may not be able to afford certain health care services. However, this bill does not distinguish between people who are uninsured because they cannot afford insurance (or, in the case of certain immigrant populations, do not qualify for affordable coverage options) and individuals who are self-insured (i.e., have the wealth to not require insurance from a third party).

[4] Other States have large differentials between payers. For example, a 2019 study found that relative prices for private insurance may be 150 percent to 400 percent higher than Medicare rates in 25 states (not including Maryland). White, C., Whaley, C. "Prices Paid to Hospitals by Private Health Plans Are High Relative to Medicare and Vary Widely Findings from an Employer-Led Transparency Initiative." Rand, 2019. Available at https://www.rand.org/content/dam/rand/pubs/research_reports/RR3000/RR3033/RAND_RR3033.pdf. Rates charged to uninsured patients may be even higher. See Sherry A. Glied, Benjamin Zhu, Ougni Chakraborty, and Aggie Tang, "Who Will Pay for COVID-19 Hospital Care: Looking at Payers Across States", The Commonwealth Fund, August 18, 2020. Available at: https://www.commonwealthfund.org/blog/2020/who-will-pay-covid-19-hospital-care-looking-payers-across-states

Alternative income determination regulations.
HB 565 requires HSCRC to develop regulations that contain standards for determining patient income for patients applying for free or reduced care who do not submit tax documentation to hospitals. The HSCRC agrees that patients should have alternatives for verifying their income. However, the HSCRC does not have expertise in income-based eligibility determination processes and practices. If this bill passes as written, HSCRC plans to contract with an expert to support the Commission in drafting these regulations. This contract is the reason for HSCRC's $50,000 fiscal note for this bill. The HSCRC proposes AMENDMENT NO. 3 to remove the language that assigns this role to HSCRC. Adopting this amendment would reduce HSCRC's fiscal note to zero.

HSCRC reporting
The bill as currently drafted requires HSCRC to submit an annual medical debt collection report to the legislature "based on special audit procedure requirements for hospitals related to medical debt". HSCRC requests flexibility to use data collected through other processes for this report, including processes that would allow HSCRC to report data more promptly than would be possible using the special audit procedures process. AMENDMENT NO. 4 is offered to allow for this flexibility.

The Commission urges the Committee to consider the amendments suggested in this letter when considering this consumer protection bill. If you have any questions or if we may provide you with any further information, please do not hesitate to contact me at 443.462.8632 or tequila.terry1@maryland.gov or Megan Renfrew, Associate Director of External Affairs, at 410-382-3855 or megan.renfrew1@maryland.gov.

Sincerely,

Tequila Terry
Principal Deputy Director

HSCRC Proposed Amendments to HB 565

AMENDMENT NO. 1

On page 4, in line 32, strike "cost of the hospital service" and substitute "**APPROVED CHARGE FOR THE HOSPITAL SERVICE AS ESTABLISHED BY THE COMMISSION**".

AMENDMENT NO. 2

On page 3, in line 24, strike "costs of" and substitute "**CHARGES FOR**"

AMENDMENT NO. 3

On page 6, strike beginning with “determine” in line 14 down through “regulations” in line 17 and substitute “**CONSIDER OTHER CREDIBLE AND VERIFIABLE DOCUMENTATION PROVIDED BY THE PATIENT TO DETERMINE THAT PATIENT’S ADJUSTED GROSS MONTHLY INCOME**”.

AMENDMENT NO. 4

On page 13, strike beginning with “that” in line 10 down through “debt” in line 11.