



March 2, 2022

The Honorable Delores G. Kelley
Chair, Senate Finance Committee
3 East, Miller Senate Office Building
Annapolis, MD 21401

RE: Senate Bill 840 – COVID-19 Response Act of 2022 – Letter of Information with Amendments

Dear Chair Kelley and Committee Members:

The Health Services Cost Review Commission (HSCRC)¹ submits this letter of information with amendment for Senate Bill 840 (SB 840) titled, “COVID-19 Response Act of 2022.” HSCRC applauds the General Assembly’s focus on COVID-19. HSCRC has been working closely with our colleagues in the Maryland Department of Health and other State Agencies during this crisis to support hospitals, improve infection control in long term care facilities, and support vaccine clinics in underserved communities throughout the State.

This letter focuses on changes to Maryland Code, Health General §19–211.1 on pages 10 to 11 of SB 840, which allow for the operation of a “Hospital-Adjacent Urgent Care Center” adjacent to a hospital facility. HSCRC supports the movement of appropriate services from high cost settings of care to lower cost settings of care. HSCRC also supports efforts to reduce emergency department (ED) overcrowding and ED wait times.² The HSCRC respectfully suggests a small change to the definition of “hospital-adjacent urgent care center” (see attached). This definition, as currently drafted, could be interpreted as de-regulating a broad set of hospital services. This change will clarify the scope of the urgent care provision to ensure that it does not inadvertently impact services outside of an urgent care center and aligns with the existing definition of urgent care center in COMAR 10.09.77.01. HSCRC has also attached an appendix describing current law on this issue and considerations for hospitals with adjacent urgent care centers

HSCRC is committed to working with hospitals and other providers throughout the State to continue to control health care costs, improve patient access to appropriate care, and improve healthcare quality and population health. HSCRC thanks the Committee for your consideration of the issues raised in this letter. If you have any questions or if we may provide you with any further information, please do not hesitate to contact me at megan.renfrew1@maryland.gov.

Sincerely,

A handwritten signature in black ink, appearing to read "Megan Renfrew". The signature is fluid and cursive.

Megan Renfrew
Associate Director of External Affairs

¹ The HSCRC is an independent state agency responsible for regulating the quality and cost of hospital services to ensure all Marylanders have access to high value healthcare.

² Extensive ED wait times have been a long-standing issue in Maryland. Maryland Institute for Emergency Medical Services Systems, Joint Chairmen’s Report on Emergency Department Overcrowding, December 2017. Full report here: http://dlslibrary.state.md.us/publications/JCR/2017/2017_29a.pdf

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HSCRC Proposed Amendments to Senate Bill 840
(First Reading File Bill)

On page 10, line 28, strike “**ANY CENTER, SERVICE, OFFICE FACILITY, OR OTHER**” and insert “A NON-HOSPITAL ENTITY”

On page 10, line 31, strike “; and” and insert a semicolon

On page 11, line 2, strike the period at the end and insert a semicolon

On page 11, after line 2, insert “**(3) IS DEDICATED TO THE DELIVERY OF UNSCHEDULED, WALK-IN CARE OUTSIDE OF A HOSPITAL EMERGENCY DEPARTMENT, A FREESTANDING CLINIC, OR A PHYSICIAN’S OFFICE; AND (4) IS CLEARLY IDENTIFIED AS AN UNREGULATED URGENT CARE CENTER, SEPARATE FROM THE REGULATED HOSPITAL FACILITY.**”

Appendix: Current Law and Considerations for Hospitals with Adjacent Urgent Care Centers

Current Law

Under current law and regulation, Maryland hospitals can operate an unregulated physician or urgent care center adjacent to a regulated hospital facility if it meets the proper requirements for signage and entrances to distinguish it from the regulated hospital facility. HSCRC allows hospitals that wish to provide unregulated services in buildings that are adjacent to HSCRC regulated space to apply to HSCRC for a determination as to whether the services are or will be subject to HSCRC rate regulation under COMAR 10.37.10.07 -1.³ HSCRC provided such a determination to Sinai Hospital for an urgent care center on the Sinai's campus in 2016.

Considerations for Hospitals with Adjacent Urgent Care Centers

Although SB 840 does not require hospitals to place urgent care centers on hospital campuses, the following are considerations for hospitals with hospital-adjacent urgent care centers.

Diversion and EMTALA

The Federal Emergency Medical Treatment and Labor Act (EMTALA) requires hospitals to “provide an appropriate medical screening examination...to determine whether or not an emergency medical condition...exists” to “any individual...comes to the emergency department and a request is made on the individual's behalf for examination or treatment for a medical condition.”⁴ If a patient comes to a hospital's emergency department and requests to be seen, that hospital may run the risk of violating EMTALA requirements if the hospital directs that patient to an urgent care center before screening the patient and determining that the patient is stable.⁵

Financial Assistance, Medical Debt, and Uncompensated Care

Maryland law requires that hospitals provide financial assistance to lower-income patients, regardless of insurance status.⁶ Settings that are not rate-regulated by the HSCRC are not required to provide financial assistance to low-income patients. If a lower-income patient went to an urgent care center instead of a hospital, that patient would not have access to the financial support that would have been available to that patient in the hospital.

Maryland law also has protections related to hospital medical debt.⁷ For example, hospitals are required to offer payment plans to all patients and limit the actions that hospitals can take to collect medical debt to protect consumers. These protections do not apply to unregulated facilities, such as urgent care centers.

³ In making this determination, HSCRC considers factors such as the location of the entrances, parking, and registration, changing, and waiting areas, as well as whether there is any duplication of unregulated services within the hospital in order to avoid inappropriate patient steering.

⁴ §1867.(a) of the Social Security Act

⁵ EMTALA violations can result in potential termination of the hospital or physician's Medicare provider agreement (so that the hospital could not be paid by Medicare), hospital fines up to \$104,826 per violation (\$25,000 for a hospital with fewer than 100 beds), and the hospital may be sued for personal injury in civil court under a private cause of action. These penalties arise whether or not the patient was harmed by the EMTALA violation.

<https://www.acep.org/life-as-a-physician/ethics--legal/emtala/emtala-fact-sheet/>

⁶ Hospitals in Maryland are required to provide free care to patients with income at or below 200% of the federal poverty level (FPL) and provide reduced-cost care to patients with income between 200% and 300% of FPL. Reduced-cost care is also available to patients with income below 500% of FPL who have a substantial amount of medical debt. Health General §19-214.1

⁷ Health General §19-214.2

Rates in HSCRC rate-regulated settings are the same for all payers and include some support for uncompensated care (including the required financial assistance provided to patients). Rates in unregulated settings, such as urgent care centers, differ by payer. Unregulated settings also do not receive support for uncompensated care in rates.

