



March 2, 2022

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

RE: HB 694 – Hospitals – Financial Assistance – Medical Bill Reimbursement – Letter of Information

Dear Chair Pendergrass and Committee Members:

The Health Services Cost Review Commission (HSCRC)¹ submits this letter of information for House Bill 694 (HB 694) titled, "Hospitals – Financial Assistance – Medical Bill Reimbursement- Letter of Information." This bill requires HSCRC, the Office of the Comptroller, and the Department of Human Services (DHS) to provide information to patients on their likely eligibility for refunds from hospitals for care provided in 2017 through 2021. The project envisioned in HB 694 relies on a data set that HSCRC developed to estimate the impact of future policy changes, not to provide individual refunds to patients. Using this data set to provide refunds to patients is complex, raising issues about data assumptions, data sharing, and data privacy. This bill, as written, poses a number of significant operational and analytical challenges that may prohibit implementation if passed. In this letter, HSCRC seeks to share information for consideration by the Committee related to the data that would be used for this bill and other operational issues of concern.

Maryland Code, Health General § 19-214.1 requires each HSCRC-regulated hospital to have a financial assistance policy. Each hospital's financial assistance policy must provide free care to patients with incomes 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. HSCRC builds funding for this uncompensated care into the rates it sets for hospitals across the State. HSCRC believes that access to hospital services for low income patients provided by these requirements is a key benefit of the Maryland Health Model,² and hospitals should be proactive to ensure that patients who are eligible for free or reduced cost care have access to that support.

Use of Data for Estimating Future Policy Impact versus Refunds to Patients

HB 694 was prompted, in part, by the findings of a report required by section 2 of Ch. 470 (2020).³ Chapter 470 of 2020 required the HSCRC to evaluate the impact of proposed

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. The HSCRC establishes rates for all hospital services and helps develop the State's innovative efforts to transform the delivery system and achieve goals under the unique Maryland Health Model. The mission of HSCRC's work is to enhance the quality of healthcare and patient experience, improve population health and health outcomes, and reduce the total cost of care for Marylanders.

² HSCRC provides financial support to hospitals for free and reduced cost care through the rate setting process and the Uncompensated Care fund (UCC). The UCC fund is used to redistribute funds between hospitals, so that hospitals which serve a larger proportion of patients who receive charity care are not financially hurt by providing this important access to care to patients.

³ HSCRC, "Analysis of the impact of hospital financial assistance policy options on uncompensated care and costs to payers", February 2021. Available at:

[http://dlslibrary.state.md.us/publications/Exec/MDH/HSCRC/HB1420Ch470\(2\)\(2020\).pdf](http://dlslibrary.state.md.us/publications/Exec/MDH/HSCRC/HB1420Ch470(2)(2020).pdf)

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policy changes on uncompensated care costs in the State and on payers. To complete this report, HSCRC designed a data analysis and modeling approach that looked at the potential impact of proposed statewide policies outlined in Chapter 470 (2020). HSCRC modeled the performance of hospitals in providing free care, using data from 2017-2018, as a basis for this analysis and found that approximately 1% of total hospital charges were paid by individuals who likely qualified for free care (this amounted to approximately \$60 million statewide for each year).

HSCRC does not have any evidence that the \$60 million in charges represents intentional or negligent actions by hospitals. Hospitals may encounter challenges determining the eligibility of patients for financial assistance. Common challenges include:

1. **Patient awareness of financial assistance:** Under Maryland law, hospitals are required to post notices throughout the hospital informing patients of their right to apply for financial assistance. Hospitals must also inform patients how to apply for free and reduced-cost care through an information sheet that is provided to the patient or representative before the patient receives scheduled medical services; before discharge; with the hospital bill; on request; and in each written communication to the patient regarding collection of the hospital bill. Despite all of this information, some patients may not realize that financial assistance is available to them.
2. **Applications and documentation demonstrating eligibility for financial assistance:** Patients must inform a hospital that they want financial assistance. If a patient does not take action to tell the hospital that they want to be considered for financial assistance and provide requested information to the hospital, the hospital may not have the information necessary to determine if the patient is qualified. Hospitals do not have access to data on the patients' incomes for the purpose of determining patient eligibility for financial assistance unless the patient provides that information to the hospital.⁴ Hospitals rely on patients to provide information to demonstrate that the patient is eligible for free and reduced-cost care. If a patient does not provide this documentation, the hospital may not be able to make a determination of eligibility. Hospitals do use commercially available data sets to find information about public program enrollment which can help the hospital determine if a patient is presumptively eligible for free care without documentation from the patient.

These challenges may impact hospitals' ability to identify and provide free care to all patients that qualify for it.

HSCRC would have structured the data set and analysis differently if the original purpose of the data had been to retrospectively hold hospitals accountable on a patient-by-patient basis. As indicated in the letter, HSCRC believes that there are likely fewer charges that would be refunded to individuals under HB 694 than the \$60 million per year stated in the report under Chapter 470 (2020).

Income Data

HSCRC's modeling for the report under Chapter 470 (2020) relied on HSCRC's ability to determine the percent of the patients who likely paid for hospital visits in a year that they were eligible for free hospital care (i.e., under 200% FPL). HSCRC was able to verify federal poverty levels ranges for some patients using income range (tax) data from the Comptroller's Office. For patients that did not have matching data from the Comptroller's Office, HSCRC made a number of assumptions related to patient income to complete the modeling.

Patients with Known Incomes

For about 45% of patient visits to hospitals in 2017-2018, we know that these patients had income under 200% FPL for the year because HSCRC was able to match income ranges provided by the Comptroller's Office to the patients in HSCRC's casemix data for the year. State law in 2017 and 2018 did not have a specified period during which financial assistance eligibility could be calculated, but federal regulations provided for a 240-day period to apply for

⁴ In other words, hospitals do not have access to the income data from the Comptroller's Office that was used for modeling hospital performance in providing financial assistance under Chapter 470 (2020).

financial assistance.⁵ Data from the Comptroller's office provided HSCRC with an FPL statistic for the year, rather than indicating a patient's income at any point in time during that year. HSCRC recommends that HB 694 state clearly that the patient's annual income, if known from tax data, is treated as the patient's income for the purposes of determining whether the patient was eligible for free care for that year under this bill.

Patients with Known Incomes in a different year than the patient visit.

Approximately 13% of patient visits had income data from either 2017 or 2018, but not both years. For the report under Chapter 470 (2020), HSCRC staff assumed that a patient's income data from one year applied to both years. This may not be an accurate reflection of the patient's income in the year with the missing income data; the individual's financial status may have changed during that time period such that the patient was no longer eligible for free care. It is important to clarify how individuals with income data in some, but not all, years should be treated for the purpose of potential hospital refunds under this bill.

Patients with Imputed Incomes

43% percent of the patient visits that HSCRC modeled as being eligible for free care for purposes of the report under Chapter 470 (2020) do not have income data from the Comptroller's Office for either 2017 or 2018. For these patients, HSCRC made assumptions about a patient's likely income for purposes of generating reasonable population-wide results. HSCRC urges the Committee to use caution when applying these assumptions, which are outlined below, when determining whether and how the data used in HSCRC's analysis should be used to target individuals with imputed incomes under HB 694.

Most of these patients were enrolled in Medicare. National statistics from the Kaiser Family Foundation demonstrate that about 20% of Medicare beneficiaries have incomes below 200% FPL. For purposes of the analysis under Chapter 470 (2020), staff randomly assigned an income of under 200% FPL to 20% of the Medicare population with no known income. This approach made sense for the purposes of population-level modeling of future policies required under Chapter 470 (2020). On the individual level, HSCRC staff do not know which patients in this population had incomes under 200% FPL. HSCRC also made assumptions about the income distribution of commercially insured individuals (4% - 5% of patient visits), and the homeless population (0.28% of the patient visits).

HB 694 should state clearly how HSCRC and DHS should treat the population who likely paid a hospital bill and who have no income data. Without income data, the only way for state agencies to identify if these people may have been eligible for financial assistance would be to match their data with data from the DHS, as individuals who are enrolled in certain social services programs are presumptively eligible for free care. HSCRC does not have information on enrollment in these programs. Because this population does not have a known income, the Comptroller likely does not have address information for these patients in their data set for the purpose of sending postcards. HSCRC also does not have address information (or other identifiable information) for these patients. In order to provide a usable data set to DHS, HSCRC would need to share its data with the State-designated Health Information Exchange (HIE). The HIE would need to be reimbursed for their work, adding potential cost to this bill. This cost was not included in HSCRC's fiscal impact statement for the bill because the HIE is not included in the current bill language.

Average Estimated Out-of-Pocket Cost Per Patient

HSCRC does not know the exact amount that each patient paid for hospital visits in 2017 or 2018. HSCRC estimated likely out-of-pocket costs for the report under Chapter 470 (2020) using population-level data. These estimates were used to construct the \$60 million figure. The estimated out-of-pocket costs for individuals with known incomes are higher than the estimated out-of-pocket costs for individuals with imputed incomes, which means the potential impact of this bill on these two populations is different.

⁵ The federal regulations were final in 2014. HB 565 (2021) added a 240-day period for determining a patient's eligibility for financial assistance beginning in 2022.

Determinations of Eligibility require Hospital Information

On page 3, lines 13-14, the bill reads, “The Commission, the Office, and the Department of Human Services shall make a determination that the patient was eligible for free care at the time of service”. The state agencies do not have information on insurance denials or patient assets (see below). Without this information, state agencies cannot make a conclusive determination of eligibility. Hospitals would need to check their records to determine if free care was not provided due to circumstances that were not evident in data available to the state agencies.

Insurance Denials

For any patient, regardless of whether their income is known or imputed, HSCRC’s data does not show whether an insurance denial occurred. Insurance denials result in no cost sharing for the patient. In HSCRC’s data set, insurance denials look like paid claims. Thus, even for patients with known income, HSCRC cannot definitively say if the patient is entitled to a refund under HB 694. Patients who did not make a payment, because no payment was due as a result of an insurance denial, should not receive a “refund.” Hospitals will need to review their records to determine if a patient actually paid for the service before issuing a refund. This is an administrative cost for hospitals, and it is unknown if hospitals have retained these records for 2017 through 2021.

Assets, Asset Tests, and “Determination” of Eligibility for Free Care

For any patient, regardless of whether their income is known or unknown, HSCRC does not know the value of the patient’s assets. Some hospitals consider assets when determining eligibility for financial assistance.⁶ If a patient was denied financial assistance due to the legitimate application of an asset test by a hospital, no refund is due to the patient. Hospitals with financial assistance policies that allowed for asset tests between 2017 and 2021 would need to review their records to see if the patient was reviewed for financial assistance and denied based on assets. HSCRC does not know if hospitals have retained these records for 2017 through 2021.

Privacy Concerns

Amendment to HG §19-214.1(b)(1)

For the proposed amendment to Health-General §19-214.1(b)(1), it is not clear with whom the Comptroller is sharing the data, or how it would be used. HSCRC urges the Committee to clarify this language. Currently, hospitals do not have access to income data from the Comptroller’s Office, and it is not clear if the intent of this language is to share this sensitive data with hospitals.

HIE Data Sharing

If the HIE is written into this bill, please consider that the State-designated HIE is subject to specific privacy requirements (Health-General §4-302.2; COMAR 10.25.18). These privacy rules should be considered to ensure there is no conflict with the requirements of HB 694. The Maryland Health Care Commission (MHCC) regulates the HIE and is most familiar with those privacy requirements.

Postcard Text

HSCRC believes it would be preferable not to specify the text of the postcard in statute. This would allow the state agencies listed in HB 694 to work together to determine the best language. DHS and the Comptroller’s Office have deep expertise in designing understandable materials for consumers.

Hospital Reimbursement of State Agencies

⁶ Health-General 214.1(b)(8) permits, but does not require, hospitals to use asset tests in determining eligibility for free and reduced-cost care. Some hospitals use asset tests while others do not.

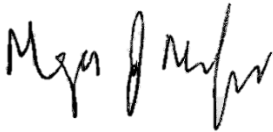
Page 5, lines 23-24 currently refers to “the number of patients in the designated year that were billed by the hospital” in the determination of how much hospitals would reimburse the HSCRC, Comptroller’s Office, and DHS. This number is unrelated to a hospital’s performance in providing free care and instead is just a measure of the number of patients a hospital sees in a year.

Triggering Condition for 2019 through 2021

The triggering condition for the 2019 through 2021 postcards is currently the number of patients that contacted the hospital. HSCRC believes that it would be more meaningful to track the number of patients who actually received a refund for hospital visits in 2017 or 2018. In addition, it is not clear how the minimum 5% figure was selected. Under the current bill language, there is also no requirement that hospitals report the information to HSCRC that would be necessary for HSCRC to determine if this condition was met. HSCRC is also concerned that the July 1, 2023 date in HB 694 may not be feasible, particularly if implementing any portion of this legislation requires external assistance through the procurement process.

The HSCRC remains committed to ensuring that all patients in Maryland have access to all hospitals in the State. Thank you for your consideration of the information 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 410-382-3855 or at megan.renfrew1@maryland.gov.

Sincerely,



Megan Renfrew
Associate Director of External Affairs