

March 13, 2026

The Honorable Heather Bagnall
Chair, House Health and Government Operations Committee
Room 241, House Office Building
Annapolis, MD 21401

RE: House Bill 1597 - Health - Unregulated Space in Hospital Operating Suites - Pilot Project - Letter of Information

Dear Chair Bagnall and Committee Members:

The Health Services Cost Review Commission (HSCRC) respectfully submits this Letter of Information for House Bill (HB) 1597 - Health - Unregulated Space in Hospital Operating Suite - Pilot Project.

HB 1597 would require HSCRC to design and administer a pilot project to study the use of unregulated space in hospital operating suites. The proposed pilot would include establishing an alternative method of rate determination, developing an exemption from rates to allow unregulated operating room (OR) space to be physically located in a regulated facility, and developing criteria for charity care services, service billing limitations, and consumer education. In addition, the HSCRC would be required to evaluate and report on the procedures that occurred under the pilot, whether the procedures were appropriately performed in unregulated space, the costs of hospital participation in the pilot and the effects of the pilot project on the Achieving Healthcare Efficiency Through Accountable Design (AHEAD) model. Finally, the bill requires ambulatory and freestanding surgical centers associated with participating hospitals to provide HSCRC with necessary information to complete the report referenced above.

Historical Background

During the 2019 and 2020 Legislative Sessions, similar bills were introduced. In response to a request from then Health and Government Operations Committee Chair Shane Pendergrass, HSCRC convened a workgroup in August 2019 made up of representatives from across the industry, including the Maryland Health Care Commission (MHCC), hospitals, payers, and other healthcare experts. The workgroup's charge was to explore options and identify considerations for a pilot project on unregulated space in a hospital OR suite for higher risk patients who might need immediate post-surgical care following elective services.

The workgroup met multiple times and discussed several options, one of which is similar to the pilot project proposed in HB 1597. This option included a partial deregulation of OR space and related specific payment arrangements. The group agreed that this option would likely require

major statutory and regulatory changes, and had the potential to impact the Total Cost of Care contract with the Centers for Medicare and Medicaid Services (CMS). As such, it was not considered to be feasible.

Statutory and Regulatory Considerations

Currently, the HSCRC's jurisdiction over outpatient hospital services is limited to outpatient services provided "at the hospital" (Health-General § 19-201). In addition, Code of Maryland Regulations (COMAR) 10.37.10.07-1 states that the term "at the hospital" means "a service provided in a building on the campus of a hospital in which hospital services are provided," and that "A service at the hospital is: (1) Presumed to be an outpatient service; and (2) Subject to rate regulation." This language mandates that hospital operating room services, including those provided to elective, self-paying patients, are regulated.

In some cases, hospitals may provide unregulated outpatient services in areas that are nearby or even adjacent to regulated areas. In these circumstances, hospitals and providers are required to clearly indicate regulated/unregulated space through signage, documentation, and other means. Mixing unregulated and regulated space risks significant patient confusion and does not align with current COMAR regulation.

Exemptions to these requirements would require extensive changes, including HSCRC commissioner-approved changes to COMAR regulations to implement a new method of determining global budgets and billing for services, re-examining quality measures, adjusting charity care policies and new procedures/materials for both signage and patient notification requirements. Changes would also be needed to the existing Statute, Health-General § 19-201, to reflect regulatory updates.

Scope of HSCRC Expertise

HSCRC is an independent state agency that regulates hospital rates, ensures financial stability for hospitals, and promotes quality care and cost containment. As such, the HSCRC's expertise broadly includes related areas such as data analytics and reporting, hospital rate setting and financial regulation, developing and implementing performance-based reimbursement programs, and developing policies that support innovative strategies to improve population health.

The proposed pilot within HB 1597 would require clinical expertise that is beyond the HSCRC's scope, including the capacity to determine whether a given procedure was or was not appropriately performed in unregulated operating room space. This type of determination typically involves a thorough retrospective review by a panel of experienced clinicians familiar with both the procedure in question and the various options available to complete the procedure, as well as detailed review of clinical notes and decisions. While HSCRC's current data may inform such a review, clinical participation would still be needed for a final determination.

HSCRC recognizes the importance of ensuring equitable access to high quality, safe and affordable elective services, and will continue to explore alternatives and potential solutions

with Delegate Hill as well as other interested parties. Thank you for the opportunity to provide additional information and context as the Committee considers HB1597. If there are any additional questions, please feel free to contact me at jon.kromm@maryland.

Sincerely,



Jon Kromm,
Executive Director