Maryland
Hospital Association

September 27, 2017

Nelson J. Sabatini
Chairman, Health Services Cost Review Commission
4160 Patterson Avenue
Baltimore, MD 21215

Dear Chairman Sabatini:

On behalf of the Maryland Hospital Association's 64 member hospitals and health systems, I am writing to comment on Health Services Cost Review Commission (HSCRC) regulation 10.37.10 – Rate Application and Approval Procedures. The commission approved emergency promulgation of this regulation at its September public meeting.

Background
A regular or "full" rate application is a structured administrative proceeding that allows Maryland's hospitals to seek rate relief from the commission. It is hospitals' only recourse to question rates and revenues they believe are unreasonable. A full rate application allows for the complete, open and transparent review of hospital rates and revenues by the commission, which means more than changing the global budget revenue cap. The process begins with application filing and HSCRC staff review, commission action, and if necessary, allows for a public hearing and judicial appeal. Maryland's hospitals have been prohibited from filing a full rate application since December 2015, even though the full rate application is a critical administrative proceeding under HSCRC regulation.

A rate efficiency methodology has not been proposed by HSCRC staff
Our most serious concern with adopting the regulation on an emergency basis is that the hospital comparison methodology is not yet complete. The moratorium on rate applications was to last until the commission adopted a rate efficiency, or Inter-hospital Cost Comparison measure, consistent with the All-Payer Model. The rate efficiency measure was originally scheduled to be in place on or about July 1, 2016, with the deadline further extended until October 31, 2017.

We appreciate HSCRC's efforts to meet the moratorium deadline, but are concerned about advancing regulations supported by a critical methodology that is not yet in place. Commission staff stated that the cost comparison methodology will be proposed at the October public meeting, just 22 days before the end of the moratorium. Following its proposal, HSCRC staff should immediately convene a work group to discuss the proposed methodology. Open communication and fair consideration of feedback from Maryland's hospitals will be crucial to creating an effective comparison methodology.

Section 10.37.10.04-1 describes using a rate efficiency methodology "with the appropriate adjustments to reflect changes in the hospital volume since the beginning of the new All-Payer Model agreement and the inception of (global budget revenue) agreements." We note that section 10.37.10.04-2(A) changes "reasonable rates" to "reasonable revenues." Though subtle, this change implies that revenue levels are affected by both price (rates), and service use (volume). The All-Payer Model reflects per capita revenue incentives. Maryland's hospitals will work with HSCRC staff to ensure that a new efficiency measure will align with the All-Payer Model's incentives.

Proposal Increases information required to submit application
Section 10.37.03.B reflects the information required to submit a full rate application, including many items already submitted by hospitals to HSCRC. These include Medicare's Interns and Residents Information System report files, lists of expensive outpatient drugs, and transactions with related entities. The proposed regulations require resubmitting the reconciliations of HSCRC abstract volumes to the monthly departmental revenues and statistics *for the last three years*. This level of detail is not necessary because commission staff can review the prior hospital submissions as needed.

Rate applications by hospitals in a system
Section 10.37.10.04-1.C proposes that the commission may take into account the financial situation of other Maryland hospitals if they are part of the same health system as the requesting hospital. Each Maryland hospital is allowed reasonable rates to provide efficient and effective services. Economies of scale and cost saving efforts lead to resource sharing among hospitals in a system. Should HSCRC staff and the commission choose to consider volumes and costs within a system, HSCRC staff and the commission should consider granting explicit, greater flexibility to share global budget revenue limits among the same hospitals.

References to global budget revenue methodology
We support the proposed updates to outdated references to charge-per-case target methodology. Many of the references in this regulation have been outdated since adoption of the All-Payer Model in 2014.

Alternative to evidentiary hearing
Section 10.37.10.11 proposes that the commission may allow written submissions to support an application in lieu of a public hearing. A hospital that chooses this process therefore waives its right to a hearing, though it retains its right to a judicial review of a final commission decision. A hospital may also choose to enter into a binding arbitration process as prescribed by the commission. These appear to be reasonable alternatives to a public hearing, giving each hospital the flexibility to appropriately address its issues.

Thank you for your consideration of these important matters. MHA and Maryland's hospitals look forward to working with HSCRC staff on the proposed regulations, and on a collaborative process to implement the new hospital comparison methodology in a timely fashion. Should you have any questions, please call (410) 540 5060, or email bmccone@mhaonline.org.

Sincerely,

Brett McCone
Vice President

cc: Joseph Antos, Ph.D., Vice Chairman
Victoria W. Bayless
George H. Bone, M.D.
John M. Colmers
Adam Kane
Jack C. Keane
Donna Kinzer, Executive Director
Allan Pack, Director, Population Based Methodologies
Jerry Schmith, Director, Revenue and Compliance