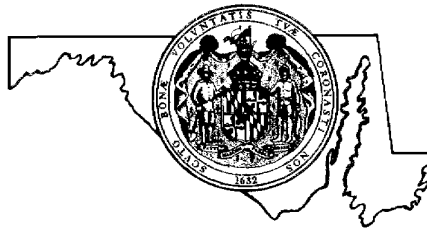


STATE OF MARYLAND

Craig P. Tanio, M.D.  
CHAIR



Ben Steffen  
EXECUTIVE DIRECTOR

**MARYLAND HEALTH CARE COMMISSION**

4160 PATTERSON AVENUE – BALTIMORE, MARYLAND 21215  
TELEPHONE: 410-764-3460 FAX: 410-358-1236

January 25, 2017

By E-Mail and USPS

Thomas C. Dame, Esquire  
Ella R. Aiken, Esquire  
Gallagher, Evelius & Jones LLP  
218 North Charles Street, Suite 400  
Baltimore, Maryland 21201

Re: Request Regarding Filing of Comments  
Baltimore Upper Shore Cardiac Surgery Review  
Anne Arundel Medical Center (Docket No. 15-02-2360)  
University of Maryland Baltimore Washington Medical Center  
(Docket No. 15-02-2361)

Dear Mr. Dame and Ms. Aiken:

On January 24, 2016, the University of Maryland Baltimore Washington Medical Center (“BWMC”) requested that it be given until February 15, 2016 by which to file comments on the small amount of additional data that was entered into the record of this review on January 23, 2017. (BWMC 1/24/17 request, p. 1). In my January 23, 2017 ruling, I stated that I viewed February 1 as an appropriate date by which the parties could file comments, given the small amount of data that is involved. I stated that “[a]ny party that requires additional time should so advise me .... on Tuesday, January 24, 2017, setting forth details of why additional time is required.” (Jan. 23, 2017 Ruling, p. 5). None of the seven other parties<sup>1</sup> in this review stated that it was unable to meet my suggested February 1, 2017 date for filing comments.

In its letter, BWMC states that it “did not anticipate” that the District of Columbia (“D.C.”) Discharge Database would be used in this review, particularly that it would be used to (what it incorrectly characterizes as) “develop a new minimum volume forecast model ....” (BWMC 1/24/17 request, p. 1). I find it both surprising and disappointing that BWMC ignored or disregarded the notice I gave on October 5, 2016 that I intended to use information from the

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<sup>1</sup> Interested parties in the review are: Anne Arundel County Health Department; Anne Arundel Medical Center (also an applicant); Dimensions Health Corporation d/b/a Prince George’s Hospital Center; LifeBridge Health, Inc. (Sinai Hospital of Baltimore); MedStar Union Memorial Hospital; MedStar Washington Hospital Center. Anne Arundel County is a participating entity in the review.

HSCRC and DC discharge databases in this review. Regarding the D.C. Discharge Database, the parties were advised as follows:

I intend to use information beginning with Calendar Year 2009 to the most recent quarter of information available from the ... District of Columbia Database in this review. ... **If you do not have access to the District of Columbia Discharge Database for this time period, you should obtain access by following the application procedure at:**

[http://mhcc.maryland.gov/mhcc/pages/apcd/apcd\\_data\\_release/apcd\\_data\\_release\\_dcdischarge.aspx](http://mhcc.maryland.gov/mhcc/pages/apcd/apcd_data_release/apcd_data_release_dcdischarge.aspx).

(Docket Item #74GF, p. 4) (emphasis in original). I note that neither BWMC nor any other party objected to my notice that I would use the HSCRC and D.C. discharge databases in this review. I consider this data to have been entered into the record as a result of my October 5, 2016 notice to the parties, but will formally place copies of the discharge databases for CY 2009-2014 on one or more CDs that will remain under seal in this review.

BWMC states that it will object to the entry of discharge data into the record on relevance grounds because, in its view, “the data ... do not support an analysis that has a tendency to make the findings of compliance with the minimum volume standard more or less probable.” (BWMC 1/24/17 request, pp. 1-2). I first point out that, despite its statement about supposed irrelevance, BWMC actually used the D.C. Discharge Database in development of its case volume projections, as would be expected. (DI #2BW, Exh. 23). Use of the D.C. Discharge Database by applicants in this review is expected because it is necessary, given the location of these hospitals and the Need standard in the Cardiac Surgery Chapter, which provides that:

[a]n applicant shall demonstrate that a new or relocated program can generate at least 200 cardiac surgery cases per year *based on projected demand for cardiac surgery by the population in its proposed service area and an analysis of the market share that the applicant expects to capture for each zip code area in the proposed service area*. An applicant shall demonstrate the reasonableness of the assumptions relied upon in defining its proposed service area.  
(COMAR 10.24.17.05A(6)(a))(emphasis added).

If BWMC or another party actually files the application needed for access to the D.C. Discharge Database, MHCC staff will promptly send the database to the party.<sup>2</sup> Each party that files an application and receives the D.C. Discharge Database will be required to execute a post-

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<sup>2</sup> Each party requesting access to the D.C. Discharge Database must file a complete application. To receive the data, the requesting party must also provide the name and email address of the person who will take receipt of the physical data and either: supply the requesting party’s credentials and sFTP address to which MHCC staff can upload the file; or, download the file from an sFTP location provided by MHCC staff to the requesting party. Alternatively, once the required application is filed, a party may pick up an encrypted CD with the D.C. discharge data at the Commission’s offices.

Thomas C. Dame, Esquire  
Ella R. Aiken, Esquire  
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release data use agreement (“DUA”). Commission staff will not delay release of the database to a party pending execution of the DUA. However, as of the sending of this letter, no party has filed an application seeking the data.

Given that BWMC can obtain the D.C. Discharge Database almost immediately after it completes an application, I suggest that all parties file their comments by 4:30 p.m. on Friday, February 3, 2017 regarding: the Virginia cardiac surgery cases from the VHI data set that were entered into the record of this review on January 23, 2017; and the previously furnished 2020 population projections in light of the attached record layout entered in the record on the same date.

I remind the parties that the ex parte prohibitions in the Administrative Procedure Act, Maryland Code Ann., State Gov’t §10-219, apply to this proceeding until the Commission issues a final decision.

Sincerely,

A handwritten signature in black ink, appearing to read 'Craig Tanio', with a stylized flourish at the end.

Craig Tanio, M.D.  
Chair/Reviewer

cc: Jonathan Montgomery, Esquire  
M. Natalie McSherry, Esquire  
Christopher C. Jeffries, Esquire  
Joel L. Suldan, Esquire  
John T. Brennan, Esquire  
Stephanie Willis, Esquire  
Jinlene Chan, MD, MPH, Anne Arundel County Health Officer  
Leana S. Wen, M.D., Baltimore City Health Commissioner  
Gregory Wm. Branch, M.D., Baltimore County Health Officer  
Leland Spencer, M.D., Caroline and Kent County Health Officer  
Edwin F. Singer, L.E.H.S., Carroll County Health Officer  
Stephanie Garrity, M.S., Cecil County Health Officer  
Susan C. Kelly, R.S., Harford County Health Officer  
Maura J. Rossman, M.D., Howard County Health Officer  
Joseph A. Ciotola, M.D., Queen Anne’s County Health Officer  
Fredia Wadley, M.D., Talbot County Health Officer  
Steven R. Schuh, Executive, Anne Arundel County  
Paul Parker  
Kevin McDonald  
Suellen Wideman, AAG  
Siobhan Madison, AAG