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MARYLAND HEALTH CARE COMMISSION

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December 1, 2015

The Honorable Peter Hammen
241 House Office Building
6 Bladen Street
Annapolis, MD 21401

Dear Chairman Hammen:

The Maryland Health Care Commission (MHCC) is submitting the Maryland Provider-Carrier Workgroup (Workgroup) - Study on Maryland's Self-Referral Statute that you requested on behalf of the Health and Government Operations Committee at the conclusion of the 2015 legislative session. The Health Care Provider-Carrier Workgroup was charged with developing recommendations on possible modifications to the Maryland Patient Referral Law (MPRL). The MPRL prohibits a health care practitioner from referring a patient, or directing an employee or a person under contract with the health care practitioner, from referring a patient to a health care entity in which the health care practitioner has a beneficial interest or a compensation arrangement, unless certain exemptions apply.

The MPRL has been controversial since passage in 1993. The MHCC staff recognized that any agreement would be difficult as both supporters and opponents held strong positions. The MHCC began its work cautiously, hopeful that interest in collaborative care and value-based payment arrangements would incentivize stakeholders to strive for consensus on the MPRL. To ensure that all views were represented, MHCC expanded the Workgroup to 31 members, including physicians from the affected specialties, multiple hospital representatives, the Maryland Board of Physicians, MHA, MedCHI, the Office of the Attorney General, HSCRC, payors' representatives and a consumer advocate.

The Workgroup focused on the Workgroup's charge, although some stakeholders had a broader range of concerns. Several stakeholders warned that the innovative payment arrangements designed to foster coordinated care would run afoul of federal or Maryland anti-kickback laws. Anesthesiologists argued that the Workgroup should reject payment models that allowed one specialty to control reimbursement for another specialty. These fee splitting schemes are already a subject of controversy among specialists; therefore, anesthesiologists argued that these arrangements should be better regulated as global and value-based payments become more widespread in the State. The MHCC recognizes that distribution of dollars under bundled and episode payment models will require careful evaluation of different providers'

contributions to the value of that care. Addressing this issue, while important, is beyond the charge of Workgroup.

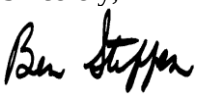
The group met five times throughout the summer and early fall. Of particular note, at the second meeting, MHCC staff asked the Workgroup to consider reforms that would allow greater flexibility and clarity in forming financial arrangements if providers committed to taking greater accountability for delivering high value, high quality care. In the third and fourth meetings, Workgroup members offered cautious-to-ambitious proposals for modernization. No proposal generated broad consensus, but the various proposals demonstrated widespread interest in modernizing the MPRL.

At the fifth meeting, the Workgroup agreed that the MPRL needed modernization for new value-based care models to advance. The Workgroup reached consensus on eight general principles that could provide the framework for specific changes to the MPRL. The eight general principles reflect the Workgroup's agreement that greater clarity is needed to promote innovation and experimentation around the new payment models. These principles affirm the importance of modernizing the MPRL within the framework of the current law, while aligning the statute with new value-based payment models and risk-sharing arrangements that are fostered under the Affordable Care Act and the new hospital payment model. When appropriate, Maryland may wish to incorporate exemptions in the MPRL that have been already implemented as "Stark" waivers.

The Workgroup's efforts provide a potential roadmap for changes in the law. The MHCC and Workgroup members recognize that specific changes to the MPRL will be difficult. As the Committees evaluate specific proposals, members may wish to consider if a proposal aligns with the consensus principles that the Workgroup worked hard to produce. The MHCC and staff commend the Workgroup members for their efforts to reach consensus on changes to the MPRL.

Please contact me at 410-764-3566 if you have any questions.

Sincerely,



Ben Steffen
Executive Director

Enclosure

cc: Joan Carter Conway, Chair, Senate Education, Health and Environmental Affairs
Van T. Mitchell, Secretary, Department of Health and Mental Hygiene