Final Legislative Report for the 2016 Session

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The 436th Session of the Maryland General Assembly concluded at midnight on Monday, April 11th when it adjourned "Sine Die" with the traditional confetti release in both the Senate and House chambers. In this Session, the General Assembly considered 2,832 legislative bills and resolutions plus the proposed Fiscal Year 2017 budget, 584 more bills than last Session. LifeSpan's Policy Committee reviewed approximately 40 bills, taking positions on many of these. **A special thanks to those who participated on LifeSpan's Policy Committee this Session for their dedication to weekly conference calls and their thoughtful consideration of the bills.** Below is an overview of the legislation considered during the 2016 Session and how it may affect your organization.

Fiscal Year 2017 Budget

Unlike in past years when providers were fighting rate reductions, this Session the Fiscal Year 2017 budget, as introduced, included a two percent rate increase for nursing facilities, medical adult day care providers and private duty nurses under the Medicaid program. Other waiver programs received a 1.1% increase. The General Assembly fully supported the rate increases, which will go into effect on July 1st.

- For nursing facilities, this increase equates to an **average** of $4 per patient/per day. However, the rate system does vary among facilities, meaning that some facilities may receive more than $4 while others receive less. It is also important to note that Maryland is moving into the third phase of the prospective payment system. Beginning July 1, 2016, nursing facilities will be reimbursed 75% under the new system and 25% under the current system.

- For medical adult day care providers, the two percent rate increase equates to a $1.49 per day per client increase.

The budget bill contains two notable reports. The first report (due by December 15, 2016) requires the Department of Budget and Management to contract with an entity to conduct

an independent review of eligibility determination entry points for health and social services in other states to serve as a potential model for Maryland in order to (1) maximize access to those services; (2) reduce duplication, inefficiency, and costs; and (3) maximize federal fund participation. To assist in the review, on request of the independent reviewer, State agencies that currently serve as an entry point for health and social services must submit how many individuals they currently enroll or reenroll, the mechanism by which those individuals enroll or reenroll, outreach and enrollment strategies, the number of personnel directly involved in enrollment or reenrollment activities, funding to support those personnel or any other contract related to enrollment or reenrollment activities, and any other relevant requested information.

The second report is connected to a $13,784,449 appropriation to begin upgrading the eligibility and other functions under the Department of Human Resources (DHR), a much needed and overdue expenditure. Prior to being able to spend this amount, the Department of Information Technology and DHR must submit a report to the budget committees on the project and address (1) State and federal costs of the project, including an approved Advanced Planning Document; (2) the project timeline, including subsequent components such as the replacement of DHR's information technology systems; (3) procurement process; (4) agencies involved in the project, including the role of each agency and the funding provided by each agency; and (5) project governance.

Overview of Priority Legislation

With regard to legislation, while LifeSpan reviewed many bills, I am pleased to report that the bills that passed will not have an onerous effect on senior care providers. Once again, LifeSpan successfully defeated House Bill 588 (*Continuing Care Retirement Communities – Continuing Care Agreements – Actuarial Studies*) which would have required continuing care retirement communities offering Type C contracts from conducting an actuarial study. LifeSpan also defeated House Bill 265 (*DHMH – Health Care Facilities – Abuser Registry*) which would have placed a mandatory reporting requirement on adult dependent care programs (*i.e.*, adult day, assisted living, nursing homes, residential service agencies, hospice and home health agencies) to submit names of employees who had been terminated from employment because the employee was convicted of a crime to an Abuser Registry developed by the Department of Health and Mental Hygiene.

By engaging Delegate Will Smith early in Session, LifeSpan successfully had Delegate Smith withdraw House Bill 244 (*Assisted Living Program – Closure or Change of Location or Ownership – Resident ad Resident Representative Notification*) which would have required an assisted living program to provide written notification to residents and resident representatives of an action that will result in the closure, change of ownership, change in location or sale of a program at least 180 days before the date of the proposed action as opposed to the current regulation of 45 days. Working with the Office of Health Care Quality, LifeSpan negotiated for the issue to be incorporated into the assisted living regulations and be limited to closures with notice being provided to residents and their representatives at least 90 days for communities with more than 100 beds and 60 days for communities with less than 100 beds. LifeSpan thanks Karin

Lakin for meeting with Delegate Smith to explain the operational challenges that would have been caused by his original bill.

While LifeSpan did monitor several labor and employment bills, LifeSpan actively opposed at the hearing House Bill 1175/Senate Bill 664 (*Fair Scheduling, Wages and Benefits Act*), which was subsequently withdrawn due to wide spread opposition from the business community. This legislation would have required an employer to provide each employee with an initial work schedule at least 21 days before the first day the employee was scheduled to work and would have required consent from the employee to change the schedule, an impossible threshold in the delivery of essential health care services.

Other Health Legislation

Senate Bill 109 (*Health Occupations Boards – Criminal History Records Checks – Required)* (passed) requires nursing home administrators to submit to a criminal history records check (CHRC). On a practical basis, on October 1, 2016, the Board of Examiners for Nursing Home Administrators will be requiring all current licensees to submit to a State and National CHRC upon license renewal. However, this check will not need to occur during subsequent renewals. The cost for both the State and National CHRC is $52.75. The bill also applies to audiologists, occupational therapists and podiatrists. Currently, chiropractors, nurses, morticians, pharmacists, physical therapists, counselors, psychologists, social workers, child care residential agencies and physicians are required to submit to a CHRC.

House Bill 91/Senate Bill 442 (*General Provisions – Commemorative Days – National Healthcare Decisions Day)* (passed) requires that April 16th be designated as National Healthcare Decisions Day. While seemingly a benign bill, it has taken three years for this bill to pass, demonstrating that persistence pays off.

Senate Bill 549/House Bill 730 (*Virginia I. Jones Alzheimer's Disease and Related Disorders Council – Membership and Extension of Termination Date)* (passed) extends this Council through 2019.

House Bill 1385 (*Public Health – Electronic Advance Directives – Witness Requirements, Information Sheet and Repository Services)* (passed) makes several notable changes to the electronic advance directives law. The bill states that, in the absence of a validly executed or witnessed advance directive, any authentic expression made by an individual, while competent, of the individual's wishes regarding his or her own health care, must be considered. A witness *is not required* for an electronic advance directive if the declarant's identity has been established in accordance with the National Institute of Standards and Technology Special Publication 800-63-2 Electronic Authentication Guideline. The bill also appears to transfer the Advance Directive Registry from DHMH to an electronic advance directives service recognized by MHCC. The bill places additional requirements on DHMH by requiring DHMH to add new information to the current advance directive information sheet and implement a plan to make it widely available as well as make it available in a conspicuous location within local health departments, local departments of social services, and community health centers. The bill also requires DHMH to engage in efforts to encourage the use of electronic advance directives, including others to

engage in the outreach effort. Among others, this includes senior living facilities. Lastly, the bill requires DHMH to contract with an electronic advance directives service to connect with health care providers at the point of care through CRISP to facilitate the use of cloud-based technology for electronic advance directives.

House Bill 1181/Senate Bill 939 (*Maryland Medical Assistance Program - Determinations of Eligibility for Long-Term Care Services - Reports and Meetings*) took an interesting turn mid-way through Session. Initially, the bill would have required DHMH to make advance payments to nursing facilities when Medicaid eligibility applications were pending more than 90 days. While DHMH did not testify at the hearing on the bill, it later stated that the bill would be an unfunded mandate and would require nursing facility rates to be reduced by $6 million General Funds (meaning $12 million removed from the rates). At that point, it was determined that the bill could not go forward as introduced and alternative language was drafted to require DHMH to report quarterly to the legislature on the progress being made to ensure that applications are approved within the 30 day required timeframe.

House Bill 1542/Senate Bill 1092 (*Nursing Facilities - Quality Assessment – Modification)* (failed) would have increased the number of beds that are required to pay the provider tax from those with more than 45 beds to those with more than 70 beds. While the Senate Budget and Taxation Committee held a hearing on the Senate bill, the House bill was a late introduction and stayed in the House Rules Committee. Given the fiscal note, the Senate took no action on the bill.

Other Business Legislation

Apart from *Fair Scheduling*, there were many other labor and employment bills introduced this Session. Most notable was House Bill 580/Senate Bill 472 (*Labor and Employment – Maryland Healthy Working Families*) (failed), which became a wild ride on the last day of Session. As amended by the House, the bill would have mandated paid and safe sick leave for those employers with more than 15 employees. Those with fewer employees would need to offer unpaid sick and safe leave.

While the bill ultimately did not pass, the House of Delegates did vote it favorable (84-54), with the vote mainly down party lines with some Democrats voting with the Republicans against it. Up until *Sine Die*, the "word on the street" was that the Senate was not going to consider the bill. However, nothing is ever set in stone and to the surprise of the masses, the Senate Rules Committee voted the bill and referred it to the Senate Finance Committee where a hearing was held in the afternoon on *Sine Die*. The Committee then came back later that afternoon with orders to "vote it," which ultimately did not occur but caused much heartburn on the last day. The lesson to be learned is, while LifeSpan took a "monitor" position this Session, it will be important to review the bill over the interim to ensure that it is operationally manageable and request any necessary changes to it. Without a doubt, it will be an issue in the 2017 Session.

Other labor and employment bills that passed include House Bill 740/Senate Bill 485 (*Task Force to Study Family and Medical Leave Insurance)* (passed), which as the name indicates, sets up a Task Force, in consultation with appropriate State and local agencies and community

organizations, to study existing FAMLI programs in other states and the District of Columbia, review specified FAMLI implementation studies and a report, and receive public testimony from relevant stakeholders. The Task Force must report by December 1, 2017 on its findings and recommendations.

House Bill 1003 (*Labor and Employment – Equal Pay for Equal Work)* (passed) expands the Equal Pay for Equal Work law to prohibit wage discrimination based on gender identity, among other provisions relating to the Equal Pay for Equal Work law. Additionally, an employer may not provide less favorable employment opportunities based on sex or gender identity. Moreover, an employer may not prohibit an employee from inquiring about, discussing, or disclosing the wages of the employee or another employee or requesting that the employer provide a reason for why the employee's wages are a condition of employment.

Several bills were introduced this Session aimed at actions taken by hospitals to close or alter services -- hospitals have contended that the new Hospital Waiver requires hospitals to adjust their level of services to account for declining hospital inpatient stays. However, individuals (both consumers and providers) in the affected communities have expressed concern over patient safety and access to care. While the bills have statewide impact, the issues were mainly highlighted this Session when the University of Maryland Shore Regional Health and Laurel Regional Hospital announced they would be closing inpatient services. As a result, bills were introduced by legislators to address these issues and to allow for greater community involvement.

- House Bill 1121/Senate Bill 12 (*Health Care Facilities – Closures or Partial Closures of Hospitals – County Board of Health Approval*) (failed) would have prohibited an entity from closing or partially closing a hospital that receives State and county funding unless (1) the person notifies the county board of health in which the hospital is located at least 90 days prior to the proposed date of closure or partial closure and (2) the county board of health approves the closure or partial closure.

- Senate Bill 707 (*Freestanding Medical Facilities – Certificate of Need, Rates, and Definition)* (passed) exempts the conversion of a licensed general hospital to a freestanding medical facility (and any related capital expenditure) from the requirement to obtain a certificate of need (CON) and establishes the procedures for obtaining the exemption from the Maryland Health Care Commission. In direct response to the issue at Chester River Hospital, the bills prohibit a licensed general hospital located in Kent County from converting before July 1, 2020, and create a workgroup on rural health care delivery.

- Senate Bill 352 (*Maryland Health Care Commission – Certificate of Need Review – Interested Party*) (passed) allows a jurisdiction affected by a change in the CON to be considered an "interested party" in the review of a replacement acute general hospital project proposed by or on behalf of a regional health system that serves multiple contiguous jurisdictions within the region served by the regional health system, when the jurisdiction does not contain the proposed replacement acute general hospital project.

Interim Activities

Join LifeSpan for the 2016 Public Policy Update Free Peer-to-Peer Seminars for additional details on the 2016 Legislative Session and what to expect this interim with regards to fiscal and policy initiatives. Dates include May 5th, May 11th and May 16th. While free, registration is still necessary. Check it out under Meetings and Events. http://www.lifespan-network.org/

A few issues that will be discussed include:

Regulatory Review: The Office of Health Care Quality will be finalizing the nursing facility licensure regulations and will resume the discussions on the assisted living revisions.

Implementation of the HCBS Final Rule: DHMH will be holding meetings on this issue to discussion implementation. As previously reported, this Final Rule applies to those Medicaid providers that provide waiver services and mandates that certain operational and structural requirements be satisfied in order for Medicaid payments to be received.

Dual Eligibles Care Delivery Strategy: Through a Round Two State Innovation Model grant from the Center for Medicare and Medicaid Innovation, Maryland is developing a strategy to integrate care delivery for individuals who are dually-eligible for both the Medicaid and Medicare health care programs. DHMH has convened a workgroup on the development of the strategy. Danna Kauffman is a member of this workgroup. While several strategies are being discussed, the focus appears to be heading towards the establishment of a provider-sponsored ACO network that covers part or all of Maryland and that has resources to deliver primary care medical home services to attributed dual eligibles and coordinate care for dual eligibles spanning acute care, behavioral health care and long-term services and supports as well as linking to social services. Workgroup meetings continue on a monthly basis. Additional information can be found at Dual Eligibles Care Delivery Strategy.

All Payer Hospital System Modernization: Maryland is now in Year 3 of the revised All Payer Hospital System Modernization. The Advisory Council has been expanded to include broader representation, including Izzy Firth, LifeSpan's President. Recently, the Health Services Cost Review Commission (HSCRC) submitted a plan amendment to CMS for a Care Redesign component that will move the State to greater incentives for alignment between hospitals and post acute care providers and shared resources and data for hospital and non-hospital providers to increase coordinated care and quality while focusing on reducing avoidable utilization. This new care redesign will focus on a new Internal Cost Saving Program (Gainsharing) between hospitals and physicians and a new Pay for Outcomes Program between hospitals and community based providers, including primary care providers, long term care and post-acute care facilities and other community based providers. LifeSpan is actively involved in the discussions on how to operate these programs and continues to provide information and feedback to the Advisory Council and the HSCRC. Additional information can be found on the HSCRC website.

Impact of Changing Fiscal Initiatives: Beginning July 1st, Medicaid will transition nursing facilities into the third phase (75% new system PPS and 25% old system). This transition will bring new challenges to many providers. LifeSpan continues to work with our members to assist in this transition and to advocate for a fair and equitable system. In addition to this transition to a full PPS, the Maryland Pay-for-Performance Program will require modifications because of the new PPS system, which will also affect providers. If this is not enough, the new Medicare Payroll Based Reporting is about to start. Again, LifeSpan is working with our members to educate them on this new requirement.