



Final 2017 Session Report

April 10, 2017

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The 437th Session of the Maryland General Assembly began at noon on Wednesday, January 11th and concluded at midnight on Monday, April 10th when it adjourned “Sine Die” with the traditional confetti release in both the Senate and House chambers. In between, the General Assembly considered 2,876 legislative bills and resolutions plus the proposed Fiscal Year 2018 budget, 44 more bills than last Session.

While each session has its own rhythm and tempo, this Session was strongly influenced by the election of President Trump and the Republican Congress. This was evident in the introduction of many bills and/or resolutions that sought to address actions taken on the federal level. There was also marked tension between the Governor and the General Assembly. The General Assembly sent twenty-seven bills to the Governor’s desk, early enough to require the Governor to either veto, sign or allow the bill to go into effect without his signature. In the end, the Governor only vetoed one education bill, which was promptly overridden by the General Assembly.

Despite these political issues, policy work still managed to be accomplished. LifeSpan’s Legislative Committee held weekly conference calls and considered approximately 50 bills, taking positions on many of them. **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.** The bills reviewed focused on health care facility oversight, medical liability reform, labor and employment issues, advance directives, and eligibility.

Overall, this was a very successful Session for LifeSpan members. Below is a summary of the key legislation we worked on this Session.

Fiscal Year 2018 Budget

Beginning July 1, 2017, Medicaid providers will receive a two percent rate increase. This includes nursing facilities, medical adult day centers, private duty nurses, and all providers within the Medicaid waiver programs. LifeSpan advocated for this increase, which was maintained by the Governor and the General Assembly despite a report by the Department of Legislative Services

that Medicaid is underfunded by \$100.6 million for FY2018, which is not addressed in this budget and is a point of concern moving forward this fiscal year. Complicating this issue remains the uncertainty of the State budget due to potential federal action. Federal funding provided under the Affordable Care Act (ACA) supports over \$1.4 billion in services in the FY2018 budget, and the State anticipates over \$7.7 billion in ACA funding through FY2022. Outside of the direct budget connections between Maryland and the ACA, Maryland's health care policy is supported by other provisions allowed under the ACA. Most notably is the fact that Maryland's All-Payer Model Contract was approved through a federal agency established by the ACA. Negotiations with the Centers for Medicare and Medicaid Innovation continue on the Model Contract.

While the GOP withdrew the proposal to change the ACA, there is still strong speculation that changes may still occur in the future. It is for this reason that the General Assembly passed **Senate Bill 571: Maryland Health Insurance Coverage Protection Act**, which creates a Maryland Health Insurance Coverage Protection Commission to examine the affect that changes on the federal level to the ACA, Medicare, Medicaid or the All-Payer Waiver could have on the State. The bill specifies a nursing home provider as a member of this Commission in addition to a representative from the Maryland Hospital Association, MedChi (Maryland's Medical Society), an insurer, a managed care organization, an employer and a behavioral health representative. There is also two members of the public that will be appointed to the Commission. The Governor already signed the bill into law – Chapter 17.

The General Assembly also added several reports to the budget bill, including:

- Requiring the Department of Human Resources (DHR) and the Department of Information Technology to submit quarterly progress reports (beginning August 15, 2017 and ending May 15, 2018) on the Maryland Total Human Services Information Network (MD THINK). DHR recently received over \$195 million in federal funding to build a new technology platform to assist the State's ability to deliver vital human services to Marylanders. MD THINK, is a cloud-based data repository that is focusing on breaking down traditional silos and data barriers between State agencies and provide integrated access to programs administered by agencies including DHR, the Department of Health and Mental Hygiene (DHMH), the Department of Juvenile Services and the Department of Labor, Licensing, and Regulation. The Administration dedicated nearly \$14 million in funding for this effort in the FY2017 budget. When fully implemented, this system will replace both CARES and MMIS.
- Requiring the Department of Aging to provide a report that details ongoing and planned pilot programs intended to address various needs of the senior community. The report must detail target population, program location, partnerships, and structure of each program. The report is due by December 1, 2017.
- Requiring the Maryland Insurance Administration to report to the General Assembly by October 1, 2017, on potential inflation protection options for long-term care insurance and the possible effect that the protections would have on the current market. The report should also include the feasibility of a two or five-year moratorium on rate increases and the effect a moratorium would have on the current market.
- Requiring the Office of Health Care Quality (OHCQ) to report to the General Assembly by October 1, 2017, on a three-year plan outlining how DHMH will fully staff the OHCQ. The report should include: (1) analysis of appropriate compensation for recruitment and retention

of nurse surveyors; and (2) an assessment of strategies other than salary that the federal government and other states use to retain nurse surveyors.

Health Bills

Ironically, for senior care providers, there was more action occurring on labor and employment bills (discussed below) than on health bills. Only a few bills affecting senior care providers passed this Session. LifeSpan successfully advocated for **House Bill 443: *Assisted Living Program – Licensure Fees***, which allows DHMH to eliminate the licensure fees for assisted living programs. In August 2016, DHMH eliminated licensure fees for twelve health care facilities within the oversight of OHCQ. Unfortunately, the Attorney General’s Office opined that DHMH could not eliminate the assisted living licensure fee because the statutory language required that the fee cover the direct and indirect costs of OHCQ. As such, House Bill 443 modified the fee language in the statute to conform to the fee language used in other statutes for nursing facilities, medical adult day care, etc. After the bill goes into effect July 1, 2017, LifeSpan will request the elimination of the fee.

Two bills passed affecting advance directives. **House Bill 188: *Public Health – Advance Directives – Witness Requirements, Advance Directives Services, and Fund*** builds on a bill that passed last Session allowing for electronic advanced directives to be made without a witness signature. House Bill 188 clarifies the definition of advance directive to recognize a non-witnessed electronic advance directive; requires the Maryland Health Care Commission (MHCC) and DHMH to approve cloud-based advance directive service providers that only meet the guidelines established by the National Institute of Standards; removes the provision that DHMH would have to review and approve the advance directive prior to submission into the electronic advance directive services registry; and establishes the Advance Directive Program Fund to be mainly funded by a transfer of \$500,000 each year from the insurer tax. The second bill, **House Bill 498/Senate Bill 562: *Health Care Decisions Act – Advance Directives and Surrogate Decision Making – Disqualified Individuals*** prohibits an individual from serving as either a health care agent or surrogate decision maker for a declarant if the individual is either: (1) the subject of an interim, temporary, or final protective order; or (2) the spouse of the declarant and there is a separation agreement or an application for divorce. LifeSpan worked with the advocates for the bill and with HFAM to add language to state that an individual may serve as a health care agent for a declarant after the date of the execution of a separation agreement or the filing of an application for divorce if the declarant: (1) is able to make a decision about the individual’s appointment as the declarant’s health care agent or (2) has otherwise indicated an intent to have the individual serve as the declarant’s health care agent. In addition, the General Assembly added language to require a person who obtains new information that would prohibit an individual from serving as a declarant’s health care agent to provide the information to any health care provider or health care facility.

Senate Bill 671/House Bill 752: *Department of Human Resources – Public Assistance Eligibility – Financial Records* seeks to address issues regarding obtaining long-term care eligibility. This bill requires DHR, on a showing that an applicant for long-term care Medicaid benefits has been unable to obtain the financial records related to financial and real property assets necessary to establish eligibility or ineligibility for Medicaid benefits, to request any necessary

records from a fiduciary institution doing business in the State. DHR must state in regulations the requirements that an applicant must satisfy for DHR to request such financial records. Please note that DHR is in the process of establishing an Asset Verification System to also assist with procuring the necessary information needed for determining financial eligibility.

Following two years of debate that resulted from a North Carolina dental case and a decision by the United States Supreme Court, the General Assembly passed **House Bill 628/Senate Bill 517: *Secretaries of Principal Departments – Supervision and Review of Decisions and Actions by Units Within Departments***. In general, this bill requires that the Secretary of each principal department to supervise the boards and commissions within that department to prevent unreasonable anticompetitive actions by the unit. For the boards and commissions within DHMH, the Office of Administrative Hearings (OAH) must review a decision or action, in accordance with regulations adopted by DHMH. DHMH and OAH must convene at least two stakeholder meetings at least six-months before proposing the required regulations and must submit the proposed regulations by June 1, 2018.

At the request of the Health Services Cost Review Commission (HSCRC), LifeSpan supported **House Bill 403/Senate Bill 369: *Maryland Patient Referral Law – Compensation Arrangements Under Federally Approved Programs and Models*** which exempts a health care practitioner who has a compensation arrangement with a health care entity from Maryland's current self-referral law if the compensation arrangement is funded by or paid for under certain federal programs or initiatives. With the passage of this legislation, Maryland's All-Payer Waiver will be able to more easily advance to the second phase which focuses on gainsharing opportunities between hospitals and physicians. The Commission has stated that it would also like to begin discussions to expand many of these gainsharing programs to other post-acute care providers, such as nursing facilities.

Several bills were introduced regarding teletherapy services. **Senate Bill 570/House Bill 658: *Maryland Medical Assistance Program – Telehealth – Requirements*** would have removed the service and provider restrictions in the Medicaid telehealth program. Rather than pass the bill, Chairman Middleton and Chairwoman Pendergrass sent a joint letter to Secretary Schrader of DHMH requesting a commitment by DHMH to undertake certain actions to expand the telehealth program. The Secretary responded shortly thereafter highlighting current and planned expansion efforts. While DHMH's response does not reflect as vibrant a telehealth program as anticipated in the original legislation, the effort is moving forward. There will be continued opportunity to urge expansion of telehealth during the interim as some of DHMH's identified initiatives for expansion will require the development of regulations that will include stakeholder input. Another bill, **House Bill 352/Senate Bill 1106: *Health Care Practitioners – Use of Teletherapy***, related to teletherapy did pass. This bill authorizes health care practitioners who provide behavioral health services and are licensed by the State boards of Nursing, Physicians, Professional Counselors and Therapists, Psychologists, and Social Workers to use teletherapy if they comply with specified requirements. By April 1, 2018, the boards must adopt regulations that, to the extent practicable, are uniform and nonclinical, for the use of teletherapy by health care practitioners in accordance with the bill. LifeSpan will be monitoring the development of regulations and the expansion of teletherapy services for the Medicaid population to determine how it can better be used in senior care settings.

House Bill 764/Senate Bill 676: *Requirements for Filial Support – Repeal* removes the requirement that an adult child be responsible for the care of indigent parents. The laws, which generally predate Medicare, Medicaid, and Social Security, are rarely enforced in most states. However, a Pennsylvania court in 2012 ordered a son to reimburse a facility for more than \$90,000 in medical costs incurred while his mother recovered from an accident.

Two other bills that passed were departmental bills. **Senate Bill 47: *Reporting Abuse to the Long-Term Care Ombudsman Program and the Office of Health Care Quality***, introduced by the Department of Aging, requires the ombudsman to first seek the consent of the vulnerable adult or representative before making a report of abuse. **House Bill 145: *Board of Examiners of Nursing Home Administrators – Nonlicensed Persons – Provisional Licensure***, introduced by the Board of Examiners of Nursing Home Administrators, requires the owner or other appropriate nursing home authority to immediately appoint a nonlicensed person to service as the interim NHA and file an application with the Board for a provisional license for a period of 90-days, which can be extended. While the Board currently does have a process to address these situations, this bill places Maryland in greater compliance with federal law.

Please note that, beginning July 1, 2017, DHMH will be named the Department of Health (**Senate Bill 82**) and DHR will now be named the Department of Human Services (**House Bill 103**). However, no new stationary or other items can be ordered to reflect the new names until all the current supply is used.

Other bills that were considered but **failed** include:

- **House Bill 387: *Assisted Living Program Transparency Act*** would have required an assisted living (that has a website) to post the most recent services disclosure statement. The bill was withdrawn and will be addressed in regulations. This bill originally was proposed to also require nursing facilities to post ALL resident care policies and procedures as well as requiring assisted living communities to also post their sample resident agreement. Upon discussions with the sponsor, he agreed to remove these provisions.
- **Senate Bill 240: *Department of Health and Mental Hygiene – Abuser Registry Workgroup Recommendation – Report*** would have required DHMH to provide a progress report on the status of the implementation of the recommendations of the Abuser Registry Workgroup. This bill also failed last Session. It appears that the General Assembly believes that no further reports are necessary.
- **Senate Bill 408: *Senior Apartment Facilities – Limitation on Occupancy by Person Convicted of Crime of Violence*** would have prohibited a landlord from renting a unit to an individual or allowing an individual to reside in a senior apartment facility in a unit that is located on the same floor on which a vulnerable adult resides if: (1) the individual has been convicted of a crime of violence within the previous 5-years; and (2) the landlord fails to provide a designated person on duty at all times on the premises of the facility whom the vulnerable adult may contact for assistance if needed.
- **Senate Bill 1020: *Maryland Health Care Regulatory Reform Act of 2017*** would have merged the MHCC and the HSCRC in one committee and would have required recommendations from the newly formed Commission on a streamlined CON process, including a list of health care

facilities and services that currently have a CON but would be suitable to remove from the CON requirement by January 1, 2018.

- **Senate Bill 876/House Bill 1613: *Individuals with Disabilities – Establishing Community-Based Long-Term Services and Supports (Maryland Disability Integration Act)*** would have required the Department of Disabilities to develop a comprehensive plan to provide community-based long-term services and supports for individuals who require long-term services and supports. The bill also would have required the Department to implement a waiting list for individuals who are seeking community-based long term services and supports.
- **House Bill 1599/Senate Bill 1109: *Nursing Homes – Partial Payment for Services Provided*** would have required DHMH to pay a 50% payment to the nursing home pending Medicaid eligibility if an eligibility decision has not been made within 90-days of submitting a completed application. The bill was voted by the Senate and amended to require payments if DHMH did not meet a certain threshold for approvals after the implementation of the new Asset Verification System. However, it failed to advance in the House.
- **House Bill 1647: *Nursing Homes – Lifting of Immobile Patients – Requirements*** also never made it out of House Rules but would have required two persons to lift an immobile resident.
- **Senate Bill 354/House Bill 370: *Richard E. Israel and Roger “Pip” Moyer End-of-Life Option Act*** would have created a process by which an individual may request and receive “aid in dying” from the individual’s attending physician.
- **House Bill 1233/Senate Bill 984: *Maryland Medical Assistance Program – Enhanced Security Compassionate Release Program*** would have established an Enhanced Security Compassionate Release Program in DHMH to provide Medicaid services to specified former inmates of a State correctional facility. By October 1, 2017, DHMH must apply to the federal Centers for Medicare and Medicaid Services for a waiver to establish the program. The program must include an initial cap on waiver participation at 500 individuals
- **House Bill 1165: *Estates – Duties of Guardian of the Person – Fostering and Preserving Family Relationships*** known in other states as the “Casey Kasem” bill, would have expanded the duties that a court may confer on a guardian of the person of a disabled person to include, if it is in the best interest of the disabled person, the duty to foster and preserve family relationships including, as appropriate, assisting to arrange visitation and communication through telephone calls, personal mail, and electronic communications.

Labor and Employment

For LifeSpan, labor and employment bills dominated our agenda, with the most notable being **House Bill 1: *Labor and Employment – Maryland Healthy Working Families Act***. This bill requires an employer that employs 15 or more employees to provide paid earned sick and safe leave to employees. Employers that employ less than 15 employees must provide unpaid earned sick and safe leave to employees. Realizing early on that this bill was going to pass, LifeSpan successfully advocated for several amendments to make the bill more manageable to implement. The amendments include language to exempt “on-call” or PRN staff and those who work less than 12-hours a week. LifeSpan also supported amendments to reduce the number of hours that can be earned or carried over from 56-hours (7-days) to 40-hours (5-days). A detailed overview of the legislation is attached. The Governor has already vowed to veto the legislation which, as passed, is scheduled to take effect January 1, 2018. If the Governor vetoes the measure, the General Assembly has already committed to overriding the veto as the first order of business in the 2018

Session. While votes can change, the legislation passed the General Assembly with enough votes to override a Governor's veto.

It is important to note that the Governor did introduce his own measure (**House Bill 382/Senate Bill 305: *Commonsense Paid Leave Act***) which would have required businesses with more than 50 employees to offer paid time off to employees who work more than 30 hours per week. However, the General Assembly had very little discussion on the Governor's bill and, instead, opted to work on and advance the bills introduced by members of the General Assembly.

Because of the passage of the paid sick leave bill, the General Assembly did not advance other labor and employment bills that were opposed by businesses, which included bills that would have increased the State's minimum wage. **House Bill 1305: *Labor and Employment – Payment of Wages – Minimum Wage***, would have increased the State's minimum wage to \$12.50 beginning July 1, 2019. **Senate Bill 962/House Bill 1416: *Labor and Employment – Payment of Minimum Wage Required (Fight for Fifteen)***, would have phased-in an increase to \$15.00 beginning either in 2022 or 2023 depending on the number of employees. LifeSpan testified in opposition to the bills at the hearing, mainly on the basis that if the State is going to increase costs for Medicaid providers, it must reflect that increase in our rates. It is expected that this bill will be introduced next Session and will be seriously considered by the General Assembly. This will be a high priority issue for LifeSpan this interim.

Other labor and employment bills considered but **failed** included:

- **House Bill 317: *Labor and Employment – Wages and Benefits – Preemption of Local Authority*** aimed, for the most part, at Montgomery County, this bill would have prohibited a county or municipality from enacting a law that regulates the wages or benefits provided by an employer other than the county or municipality. In October 2016, the Montgomery County Council enacted its own paid earned sick leave bill. With passage of House Bill 1, businesses that operate in Montgomery County and other jurisdictions will now have to comply with two different set of rules.
- **House Bill 398/Senate Bill 404: *Labor and Employment – Salary History Information Disclosures*** would have required employers to post certain information on a job announcement notice and would have prohibited employers from seeking salary information from an applicant.
- **House Bill 506/Senate Bill 468: *Labor and Employment – Noncompete and Conflict of Interest Clauses*** would have established a noncompete or conflict of interest provision in an employment contract or similar document or agreement that restricts the ability of an employee who earns \$15 per hour or less or \$31,200 or less annually to enter into employment with a new employer or become self-employed in the same or similar business or trade is null and void.
- **House Bill 665/Senate Bill 607: *Labor and Employment – Exemptions from Overtime Pay – Administrative, Executive, or Professional Capacity*** would have altered an exemption for specified executive, administrative, or professional employees from the Maryland Wage and Hour Law, resulting in more workers being eligible for overtime pay, which was the subject of an Executive Order by President Obama.

- **House Bill 1143: *Maryland Pay Stub Transparency Act of 2017*** would have expanded the contents of the initial wage notice that an employer must provide to employees and modifies the timeframe for doing so.
- **Senate Bill 1192: *Labor and Employment – Unemployment Insurance – Independent Contractors and Severance Pay*** would have changed the “ABC” test under Maryland for determining when a worker qualifies as an independent contractor for purposes of unemployment insurance.

Medical Liability Reform Legislation

As expected, all legislation failed that would have altered Maryland’s medical liability environment. One thing is certain – the lines are clearly drawn and we can expect these bills to surface again next Session.

The trial bar requested introduction of several bills that would have had a negative effect on providers. **Senate Bill 225: *Civil Actions – Noneconomic Damages – Catastrophic Injury***, which would have increased the cap for catastrophic injuries, was withdrawn and **Senate Bill 682: *Civil Actions – Noneconomic Damages*** took its place which would have raised the cap for non-economic damages in wrongful death cases from 150% to 450%. **Senate Bill 836: *Civil Actions – Punitive Damage Awards*** would have lowered the standard for awarding punitive damages from “actual malice” to “reckless indifference.” Lastly, **Senate Bill 1037: *Health Care Malpractice Qualified Expert – Limitation on Testimony in Personal Injury Claims – Repeal*** would have repealed the “20 Percent Rule” related to expert witnesses which states that no more than 20% of an expert’s time can be dedicated to providing medical testimony in personal injury claims.

For the providers, two bills were introduced. **House Bill 604: *Courts and Judicial Proceedings – Venue – Health Care*** would have required that the venue for specified health care proceedings is in the county where an alleged negligent act or omission occurred. This bill was essentially trying to prohibit “forum shopping” by plaintiff’s attorneys. For the first time, the Senate Judicial Proceedings Committee voted **House Bill 777: *Patient Early Intervention Programs***, which would have authorized a hospital or a nursing facility to implement a patient early intervention program, favorable with amendments, but it was recommitted from the Senate floor at the request of a certain influential Senator.

Please let me know if you have any questions regarding the material contained in this report. It has been my pleasure to work with you this Session, and I look forward to continuing our working relationship this interim.