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## **SINE DIE REPORT**

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The 438<sup>th</sup> Session of the Maryland General Assembly began at noon on Wednesday, January 10<sup>th</sup> and concluded at midnight on Monday, April 9<sup>th</sup> when it adjourned “Sine Die” with the traditional confetti release in both the Senate and House chambers. In between, the General Assembly considered approximately 3,127 bills and resolutions. As a comparison, the General Assembly considered 2,876 bills and resolutions in 2017 and 2,832 bills and resolutions in 2016. Why the sharp increase? Simply stated, 2018 is an election year and an election year equals more bills to respond to constituent issues.

Consequently, it was an extremely busy but successful Session for LifeSpan. LifeSpan is proud to report that, through strong advocacy, we defeated ten (10) bills that negatively targeted senior care providers. In addition, LifeSpan advocated on an additional 25 bills and monitored 38 bills, for a total of 73 bills – 26 more than in 2017.

**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, and eligibility.

### **Fiscal Year 2019 Budget**

Great News! While the Governor’s proposed Fiscal Year 2019 budget contained a 1% increase in reimbursement rates for nursing homes and home- and community-based providers under the Medicaid program, the General Assembly increased it to 3%. However, for the 3% to go into effect, the Governor must approve the increase. Within the next few weeks, LifeSpan will launch a grassroots campaign among the membership to urge the Governor to approve the 3%. This will be an “all hands-on deck” approach, with providers needing to engage their staff, residents/clients and family members. Stay tuned for further instructions.

Because of the increase in the Fiscal Year 2019 budget, the General Assembly did not pass ***House Bill 851: Medicaid and the Maryland Children’s Health Program – Home- and Community-Based Providers – Funding*** which would have required a 3.5% rate increase for Fiscal Year 2020 and for each year thereafter for home- and community-based providers. However, the General Assembly did amend ***House Bill 1696: Task Force to Study Access to Home Health Care for Children and Adults with Medical Disabilities and Report on Home- and Community-Based Services*** to require the Maryland Department of Health (MDH) to conduct a study, in consultation with stakeholders, to examine the cost to provide care as compared to the rate of reimbursement provided to home- and community-based service providers. MDH is required to report to the General Assembly by the end of the year. LifeSpan

requested and supported this additional language due to the failure of MDH to consider costs in the budget reimbursement process. This is particularly important given the minimum wage increases enacted in certain counties and the likelihood of a bill increasing minimum wage passing Statewide in the upcoming years.

Other bills that failed because of a high fiscal note included ***House Bill 1618/Senate Bill 939: Community-Based Services Waivers and State Disabilities Plan – Alterations (Maryland Disabilities Act)*** which would have required at least half the waiver participants to live in community-based housing immediately before the participant receives waiver services. The bill also would have required MDH to develop a “true” waiting list for these services rather than an “interest registry.” The fiscal note was \$4.54 million. ***House Bill 1064/Senate Bill 937: Maryland Medical Assistance Program – Home and Community Based Waiver Services – Prohibition on Denial*** would have provided that MDH cannot deny an individual access to home- and community-based services due to a lack of funding if the individual is discharged from a hospital directly to the individual’s home and waiver services for the individual are eligible to be paid for by the Medical Assistance Program within 45 days after the discharge OR the individual is discharged from a skilled nursing facility or rehabilitation facility directly to the individual’s home and waiver services for the individual are eligible to be paid for by the Program within 45 days after the discharge. The fiscal note was \$46.8 million.

**Failed Health Bills**

LifeSpan successfully opposed the following bills that would have negatively impacted the operations of senior care providers.

	<b><i>Senate Bill 16: Health Care Facilities – Nursing Homes – Limit on Residents per Multiple Occupancy Bedroom</i></b> would have prohibited a nursing home constructed after October 1, 2018 from allowing more than two residents to occupy a multiple occupancy bedroom. This bill was withdrawn without a hearing after we informed the sponsor that it was already federal law.
	<b><i>House Bill 375: Continuing Care Retirement Communities – Continuing Care Agreements – Actuarial Studies</i></b> would have required Type Cs to conduct, every five years, an actuarial study. This is the fifth Session where LifeSpan has successfully opposed this bill.
	<b><i>House Bill 861: Nursing Homes and Assisted Living Facilities – Sex Offenders</i></b> would have required a nursing home or assisted living to check the sex offender registry for each resident upon admission and provide a notice to new residents of the availability of the registry.
	<b><i>House Bill 455/Senate Bill 694: Assisted Living Education on Influenza</i></b> would have required assisted living communities to provide information on the flu and the need to be vaccinated to each resident.
	<b><i>House Bill 482: Public Health – Assisted Living Programs – Educational Material on Influenza Virus</i></b> would have also required assisted living communities to provide information on the flu and the need to be vaccinated to each resident but did not contain a provision regarding the assisted living program not having to pay for the vaccine.
	<b><i>House Bill 1299: Nursing Facilities: Discharge Plans –Review and Signature Requirement</i></b> would have required discharge papers from a nursing facility be signed by a social worker, nurse, nurse practitioner, physician or physician’s assistant. This bill was withdrawn without a hearing after we informed the sponsor that federal law already addresses discharge planning in detail.

	<b>Senate Bill 325: Nursing Home – Provision of Beds With Bed Rails</b> would have required a nursing home to provide notice to a resident and/or the resident's representative of the availability of bed rails and provide for it upon request, as allowed under federal law.
	<b>House Bill 344/Senate Bill 425: Continuing Care Agreements – Notice and Contractual Entrance Fee Refunds</b> would have mandated that entrance fees be refunded within 30 days.

Other bills that failed included **House Bill 601/Senate Bill 1255: Public Health – Opioids – Dispensing Requirement** which would have required any opioid provided to be dispensed with a chemical substance to deactivate the opioid and **House Bill 1416: Drugs and Devices – Electronic Prescriptions – Requirements** which would have required prescriptions to be issued electronically. LifeSpan opposed these bills because it was unclear the affect the bills would have on institutional pharmacies used by our membership.

Unfortunately, **Senate Bill 923: Maryland All-Payer Model Agreement – Medicare Skilled Nursing Facility 3-Day Rule – Waiver** failed. This bill would have required MDH, by September 1, 2018, to request federal approval of a waiver of the Medicare Skilled Nursing Facility 3-Day Rule (SNF 3-Day Rule) and its applicability to Maryland Medicare beneficiaries. Given that the federal government has only extended Maryland’s current All-Payer Contract and has not yet provided final approval, the Senate Finance Committee was reluctant to impose this requirement on the State. However, there is a provision in the new term sheet which will allow the State to seek certain waivers, including the SNF 3-Day Rule, but it is within an alternative payment model.

### **Passed Health Bills**

Two bills passed that reduce administrative burdens on providers. LifeSpan successfully advocated for passage of **Senate Bill 108 – Regulation of Health Care Programs, Medical Laboratories, Tissue Banks, and Health Care Facilities – Revisions**, which eliminates the need to renew a license from the Office of Health Care Quality (OHCQ). Instead, the initial license will now be “on-going.” For residential service agencies, the bill also repeals the licensure fee requirement. This bill will take effect on July 1, 2018, upon which OHCQ will send providers a new license without an expiration date. **Senate Bill 8: State Board of Nursing – Maryland Nurse Practice Act – Revisions**, among other provisions, repeals a requirement that an employer periodically report to the Maryland Board of Nursing the name and license number of each licensee employed or placed to practice registered nursing or licensed practical nursing. Instead, the bill requires an employer to provide such information only on the request of the Board. The Board advised that the periodic reporting requirement has not been enforced for several years and has caused confusion with employers attempting to determine when the reports were due.

Other bills that passed specific to regulatory requirements include **Senate Bill 230: Disclosure of Medical Records – Compulsory Process – Timeline** requires a health care provider to disclose a medical record in accordance with compulsory process not later than 30 days after receiving: (1) the required documentation; and (2) any fees relating to the provision of the medical record, as specified, that are owed to the health care provider by the party or the attorney representing the party seeking the medical record. A health care provider may request up to 30 additional days to disclose a medical record on a showing of good cause. In addition, **Senate Bill 711: Health Occupations – Applications for Renewal of Licenses, Permits, Certifications, or Registrations – Available by Mail** allows a practitioner licensee to receive renewal applications by mail. Senate Bill 711 requires a health occupations board to send, by first-class mail, a renewal application at the request of a licensee, permit holder, certificate holder, or

registrant, if the board otherwise sends renewal notices or other specified documents exclusively by email.

Three other bills passed affecting nursing homes and assisting living communities: ***Senate Bill 386: Maryland Nursing Home Resident Protection Act of 2018***; ***Senate Bill 4: Oversight Committee on Quality of Care in Nursing Homes and Assisted Living Facilities – Revisions***; and ***House Bill 1215/Senate Bill 630: Nursing Homes – Partial Payment for Services Provided***.

- **Senate Bill 386**, because of a recent federal audit, inserts federal timeframes for the OHCQ inspections into Maryland law. The bill also requires OHCQ to complete a dashboard with information on the number of surveyors. Originally, the bill required OHCQ to post, every two weeks, the number of complaints it received on nursing homes on its website and on the Department of Legislative Services website. LifeSpan opposed this provision and it was subsequently removed.
- **Senate Bill 4** was originally introduced as a study on the quality of care in nursing homes. It was subsequently amended to change the composition of the Oversight Committee on Quality of Care in Assisted Living and Nursing Homes and to provide them with the authority to review legislation and regulation. LifeSpan is looking for interested individuals from both the nursing home industry and the assisted living industry to serve on this Committee. Please contact Danna Kauffman at [dkauffman@smwpa.com](mailto:dkauffman@smwpa.com) if interested.
- **House Bill 1215/Senate Bill 630** requires, at the request of the nursing home, that MDH issue a partial payment in the amount of 50% to the nursing home if an eligibility determination is not made within 90 days. If an individual is not deemed eligible, the nursing home must repay the advance payment. The bill will sunset in two years. MDH will need to develop a process for issuing the advance payment. The bill takes effect on July 1, 2018.

Other bills that passed were:

- ***House Bill 1483: Duties of a Guardian of the Person – Visitation***, which originally established a process through the courts when a family member is being denied visitation or information by another family member. The bill was drastically amended to only specify that a court can grant a guardian the authority to, 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 by telephone calls, personal mail, and electronic communications.
- ***Senate Bill 284: Maryland Medical Assistance Program – Dental Coverage for Adults – Pilot Program***, which requires MDH, by September 1, 2018, to apply to the federal Centers for Medicare and Medicaid Services (CMS) for an amendment to the State’s § 1115 HealthChoice Demonstration Waiver to implement a pilot program to provide limited dental coverage for adult Medicaid recipients. If approved, MDH must administer the pilot program. MDH may limit the pilot program, per age, geographical location or dually eligibles. MDH must meet with interested stakeholders to obtain input on the design of the waiver application. By December 1, 2018, MDH must report to the Governor and the General Assembly on the status of the waiver application.
- For those practitioners working in senior care community who prescribe controlled dangerous substances, the General Assembly passed ***Senate Bill 1223/House Bill 1452: Controlled Dangerous Substances Registration – Authorized Providers – Continuing Education***, which

places an additional requirement on a provider. Under the bill, a prescriber must attest to having taken 2 hours of continuing education related to prescribing or dispensing opioids at the time a provider registers for a Controlled Dangerous Substance (CDS) certificate or at the first renewal of the registration after the implementation of the law (effective October 1, 2018). It is a one-time requirement that is linked to the provider's CDS registration and not their license. This bill will affect the medical directors employed by nursing homes or by other senior care providers.

## **Labor and Employment**

- **Minimum Wage**

LifeSpan strongly advocated against increasing the State's minimum wage to \$15/hour and was the voice of long-term care on this issue. Three bills were introduced and all failed - *Senate Bill 235*, *Senate Bill 368* and *Senate Bill 543/House Bill 664*. In opposing the bills, LifeSpan advocated that if the State were to increase the minimum wage, then the State must also provide an increase in Medicaid rates equivalent to the increased wage. **This will be an issue for next term and providers need to engage their legislators this interim. More details to follow.**

- **Paid Sick Leave**

Unfortunately, *Senate Bill 304: Maryland Healthy Working Families Act – Delay of Effective Date*, which would have delayed the effective date of the Paid Sick Leave Act until July 1<sup>st</sup> failed and the Act went into effect on February 11<sup>th</sup>. All bills that would have altered the Act were either not acted upon or received an unfavorable vote. However, *Senate Bill 134: Small Business Tax Credit* did pass which provides a tax credit for businesses that employ 14 or less employees. The Department of Licensing, Labor and Regulation has issued a Frequently Asked Questions, a compliance poster and model policies, which can be accessed at <https://www.dlrr.state.md.us/paidleave/>.

- **Other Labor and Employment Bills**

*House Bill 1596/Senate Bill 1010: Disclosing Sexual Harassment in the Workplace Act of 2018* passed this Session and establishes that a provision in an employment contract, policy, or agreement that waives any substantive or procedural right or remedy to a claim that accrues in the future of sexual harassment, discrimination, or retaliation is null and void as being against the public policy of the State. An employer is prohibited from taking adverse actions against an employee who fails or refuses to enter into an agreement that contains a void waiver. Adverse actions include discharge, suspension, demotion, discrimination and any other retaliatory action. On or before July 1, 2020, and on or before July 1, 2022, an employer with 50 or more employees shall submit a short survey to the Maryland Commission on Civil Rights on: (i) the number of settlements made by or on behalf of the employer after an allegation of sexual harassment by an employee; (ii) the number of times the employer has paid a settlement to resolve a sexual harassment allegation against the same employee over the past 10 years of employment; and (iii) the number of settlements made after an allegation of sexual harassment that included a provision requiring both parties to keep the terms of the settlement confidential. An employer must submit the survey electronically and the Commission must include in the survey a space for an employer to report whether the employer took personnel action against an employee who was the subject of a settlement included in the survey

However, several other labor and employment bills failed.

- ***House Bill 541: Labor and Employment – Criminal Record Screening Practices (Ban the Box)*** would have prohibited an employer with 15 or more full-time employees from conducting a criminal history records check on an applicant or requiring an applicant to disclose, or otherwise inquire from the applicant or others about, whether the applicant has a criminal record or has had criminal accusations brought against the applicant before a conditional offer of employment has been extended.
- ***House Bill 974: 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.
- ***House Bill 512: Labor and Employment – Wage History Information*** would have required that an employer that employs more than 15 employees could not seek orally, in writing, or through an employee or an agent wage history information, including compensation and benefits, for an employee; or screen an applicant for employment based on the applicant’s wage history.

### **Medical Liability**

Three bills were introduced this Session to weaken Maryland’s medical liability laws. In an awesome upset, ***Senate Bill 30: Health Care Malpractice Qualified Expert – Limitation on Testimony in Personal Injury Claims – Repeal*** failed on the House floor in the final 10 minutes of the 2018 Session. Originally, the Senate passed the bill with a complete repeal of the “20% Rule”, which would have paved the way for professional witnesses as opposed to the current law that states that an expert witness certifying the standard of care may not devote more than 20% of their time testifying in court or related to court activities. While this version passed the Senate, the medical community, including LifeSpan, successfully had the House amend the bill to maintain the “20% Rule” but addressed a concern raised by the plaintiff’s attorney regarding the disqualification of a current witness during the trial. Because the two versions were different, the bill went to conference committee where the conferees agreed again to a full repeal. On the final day of Session, the Senate passed the measure 24-21. However, with only 10 minutes to go, the House took up the measure and defeated it (41-89). It was a tremendous victory for the medical provider community!

The other two bills, which both failed, were ***Senate Bill 36/House Bill 289: Civil Actions – Noneconomic Damages***, which would have tripled the non-economic damage cap in medical malpractice cases and ***Senate Bill 5: Civil Actions – Punitive Damage Awards***, which would have revised the standards for how punitive damages may be applied and in what type of cases, which may include medical malpractice causes.

### **Health Insurance**

Because of the reliance on the small group insurance market among the LifeSpan membership, LifeSpan monitored several bills on this topic. These bills, which passed, are detailed below and include ensuring that health savings accounts can continue to be utilized in Maryland and that the small group market was not negatively impacted in the stabilization of the individual health insurance market.

**Senate Bill 137/House Bill 135: Health Insurance – Coverage for Male Sterilization – High Deductible Health Plans** is an emergency bill that authorizes a high-deductible health (HDHP) plan to apply a deductible to coverage for male sterilization. The passage of this bill ensures that health savings account connected with a HDHP can continue to be utilized in Maryland. The concern arose because on January 1, 2018, Maryland implemented the Contraceptive Equity Act, which prohibited an insurer from imposing a copay or a deductible on vasectomies. Unfortunately, the IRS does not allow the waiver of deductibles under the Affordable Care Act on services that are not preventive. On March 5, 2018, the IRS provided further guidance on this issue by promulgating Notice 2018-12, which stated that a health plan that provides benefits for male sterilization before satisfying the minimum deductible for an HDHP does not constitute an HDHP, regardless of whether such coverage is required by state law. However, the notice provides transitional relief until calendar 2020. Thus, together with Senate Bill 137/House Bill 135 and Notice 2018-12, the use of health savings accounts continue to be permissible in Maryland.

**House Bill 1782/Senate Bill 387: Individual Market Stabilization (Maryland Health Care Access Act of 2018)** and **House Bill 1795/Senate Bill 1267: Maryland Health Benefit Exchange – Establishment of a Reinsurance Program** seek to stabilize the individual health insurance market. The bills authorize the State to apply to the federal government to develop a Section 1332 reinsurance program under the Affordable Care Act, which would be primarily funded through the recoupment of the 2.75% health insurance provider fee that would have otherwise been assessed under the ACA but was suspended earlier this year, which is estimated to be approximately \$375 million. Additional monies will be available from the federal government under an approved 1332 waiver program. The bills also will require the current Maryland Health Insurance Coverage Protection Commission to study and make recommendations for individual and group health insurance market stability, including **whether to merge the individual and small group health insurance markets for rating purposes**. LifeSpan will continue to monitor this Commission, especially the provision to study the merger of the individual and small group health insurance market.

One interesting bill that also passed was **House Bill 1400: State Employee and Retiree Health and Welfare Benefits Program - Employees of County Boards (passed)**. This bill authorizes local boards of education, including the Baltimore City Board of School Commissioners, to participate as satellite organizations in the State Employee and Retiree Health and Welfare Benefits Program (the State health plan). However, the bill also establishes a Task Force to Study Cooperative Purchasing for Health Insurance. The Task Force is charged with: (1) studying models of cooperative purchasing of health insurance; and (2) recommending the health insurance benefit options that should be offered to: (i) nonprofit organizations that qualify and elect to participate in the State health plan; (ii) county, municipal corporation, and county board employees; (iii) a surviving spouse, child, or dependent parent of a county, municipal corporation, or county board employee who died while employed by the State; and (iv) a retired county, municipal corporation, or county board employee. A report is due back in 2020 to the General Assembly.

### **Action Items**

- Be on the Lookout for:
  - ✓ A grassroots campaign alert from LifeSpan to urge Governor Hogan to approve the 3% rate increase for nursing homes and home- and community-based providers in the Medicaid program.

- ✓ A new license from OHCQ without an expiration date (to be received after July 1, 2018 per Senate Bill 108).
- ✓ The process developed by each health occupation board to receive a renewal licensee by mail, if requested (effective October 1, 2018 – Senate Bill 711).
- ✓ Information from MDH if your nursing home would like to receive an advance payment (effective July 1, 2018 – House Bill 1215/Senate Bill 630).
- ✓ Information from LifeSpan on engaging those individuals running for elected office to discuss issues pertinent to senior care, such as minimum wage, reimbursement, etc.
- Contact Danna Kauffman at [dkauffman@smwpa.com](mailto:dkauffman@smwpa.com) if you would like to serve on the Oversight Committee for the Quality of Care in Nursing Homes and Assisted Living (Senate Bill 4).
- Review the Department of Labor, Licensing and Regulation webpage to ensure that your community complies with the Paid Sick Leave Act.