SINE DIE REPORT – 2020 Session  
(March 18, 2020)

Amidst the COVID–19 pandemic, the General Assembly adjourned on Wednesday, March 18th, three weeks earlier than the April 6th date. At this time, a Special Session is tentatively scheduled for the last week of May to address remaining “critical issues,” which have not been identified. Before providing the specifics of this Session, LifeSpan thanks its members for their grassroots efforts this Session in contacting legislators when requested. As we are all reminded, LifeSpan is only as strong as each of our members. A special thanks to those members who participated on LifeSpan’s weekly policy calls for their guidance and information. I personally thank you for your time and dedication to the senior care industry.

Below is an overview of the issues in what can only be referred to as this unprecedented Session.

**COVID–19 Action and Funding**

In the final days, several actions were taken to assist the Governor and his Administration in addressing the pandemic. The Governor’s FY2021 budget contains $10 million for the pandemic and the General Assembly passed and the Governor already signed *Senate Bill 1079 (Chapter 12): State Budget – Revenue Stabilization Account Transfers – Coronavirus (passed)*, which allocates an additional $50 million from the Rainy Day Fund to assist in the fight against the virus. In the final day, the General Assembly also allocated an additional $100 million in reserves that the Governor could use to fight the pandemic, for a total of $1.4 billion in the Rainy Day Fund.

In addition, the General Assembly passed *Senate Bill 1080/House Bill 1663: State Government – State of Emergency and Catastrophic Health Emergency – Authority of Governor and Unemployment Insurance Benefits (COVID–19 Public Health Emergency Protection Act of 2020) (passed)*, which is an emergency bill that authorizes the Governor, for the duration of the emergency, to take specified actions, including:

- Prohibiting cost-sharing by carriers for COVID–19 testing (and associated costs) conducted based on testing protocols recommended by the Secretary of Health.

- Ordering the Maryland Department of Health (MDH) to cover the cost of COVID–19 testing and associated costs if the costs would not otherwise be paid for by a carrier or another third-party.

- Requiring carriers and Medicaid to cover a COVID–19 immunization (should one be determined to prevent the disease) and any associated costs, without cost-sharing, if the patient belongs to a category of individuals to whom MDH has determined cost-sharing should not apply.

- Establishing or waiving telehealth protocols for COVID–19, including authorizing health care professionals licensed out-of-state to provide telehealth to patients in the State.
• Ordering MDH to reimburse synchronous and asynchronous telehealth services for COVID–19 provided to a patient, without regard to whether the patient is at a clinical site, if the service is covered by Medicaid, provided by a participating Medicaid provider, and authorized under the health care provider’s scope of practice.

• Consulting, as appropriate, with MDH, the Maryland Insurance Commissioner, and the Maryland Health Benefit Exchange (MHBE) to develop and implement orders relating to COVID–19 to minimize disruption in enrollment in health insurance and Medicaid, facilitate reimbursement by carriers of telehealth services provided to patients in the State, and facilitate reimbursement of essential services to minimize the risk to public health.

• Prohibiting a retailer from increasing the sale or rental price of any good or service to a price that increases the retailer’s value of profit by more than 10%, including food, fuel, water and ice, medicine, medical supplies and equipment, cleaning products, building supplies and equipment, energy sources, and storage space (will be prosecuted as an unfair, abusive and deceptive trade practice).

• Prohibiting an employer from terminating an employee solely on the basis that the employee has been required to be isolated or quarantined.

• Ordering the MDH to authorize an alternative work week for an employee of a health care facility that is owned or operated by the MDH and open 24 hours a day and 7 days a week or is subject to the Memorandum of Understanding with the American Federation of Teachers. If the Governor orders MDH to authorize an alternative work week the alternative work week may allow the employee to work hours or shifts that are not typical for State employees and work less than 40 hours in a week. An employee who is authorized to work an alternative work week is considered a full–time employee of the State, notwithstanding any other provision of law and is entitled to compensation for overtime work. The time worked by an employee who is authorized to work an alternative work week includes only the hours worked and does not include paid leave hours taken by the employee during the work week.

In addition, the bill states that the Secretary of Labor may determine that an individual is eligible for benefits, even if the individual has not separated from his/her employment, if: (1) the individual’s employer temporarily ceases operations due to COVID–19, preventing employees from coming to work; (2) the individual is quarantined due to COVID–19 with the expectation of returning to work after the quarantine is over; or (3) the individual leaves employment due to a risk of exposure or infection of COVID–19 or to care for a family member due to COVID–19.

The General Assembly also passed House Bill 448/Senate Bill 402: Health Care Practitioners – Telehealth and Shortage (passed). While initially introduced simply to expand the use of telehealth, this bill ultimately became recognized as a tool in the COVID–19 fight. The General Assembly not only passed the bill but made it an emergency bill, which will go into effect upon the Governor’s signature. The bill was amended, however, to prohibit the use of telehealth in prescribing a Schedule II opiate unless there is a declared catastrophic emergency or the individual who is prescribed the opiate is a patient in a certain health care facility, which would include a nursing facility, assisted living program, hospital or home health agency.
Fiscal Year 2021 Budget

Perhaps the greatest accomplishment this Session, especially given the fiscal challenges currently facing our membership, was the restoration of the full rate increase. LifeSpan successfully advocated to restore the 4% reimbursement rate increase, which was initially reduced to 2% by the Governor in House Bill 152/Senate Bill 192: Budget Reconciliation and Financing Act. The rate increase will go into effect July 1, 2020. This is a big and much needed “win” given the funding issues facing the State with COVID–19, the structural deficit in future years and the desire to fund the recommendations in the Kirwan Commission (education).

In addition to the rate restoration, the General Assembly passed budget narratives requiring varying State agencies to either study or report on differing issues, ranging from expanding access to long-term care services through home-and-community based waivers to hospital profitability. To review the budget language, please refer to the end of this report in Appendix A.

Status of Health Legislation

Several bills rose to the level of “priority legislation” this Session. Many of these bills were designated as “game changers” and would have significantly altered the affected industry. These included Senate Bill 969/House Bill 1063: Health Care Facilities – Assisted Living Programs – Regulations, Staffing, and Training (failed), which would have altered staffing levels and imposed 48-hours of mandatory training for all individuals employed in programs with more than 5 beds and House Bill 707/Senate Bill 480: State Board of Examiners of Nursing Home Administrators – Renaming and Licensure of Assisted Living Managers (failed), which would have required all assisted living managers to be licensed by the State Board of Nursing Home Administrators by October 1, 2022. LifeSpan immediately initiated a grassroots strategy and was successful in having both bills withdrawn before their hearing dates. LifeSpan is scheduled to have a membership meeting on April 30th to discuss strategy for revising the assisted living regulations this interim.

Other bills that LifeSpan opposed and were withdrawn before their hearing date were House Bill 639: Public Health – Health Care Professionals – Cultural Competency Coursework or Training (failed), which would have prohibited related institutions and hospitals from hiring or contracting with a health care professional who had not taken coursework in cultural competency and House Bill 1256: Nursing Home Administrators – License Requirements (failed), which would have lessened the standards for nursing home administrator applicants. It is anticipated that this issue will generate further discussion during the interim.

While heard, Senate Bill 106: Health Care Facilities – Certificate of Need – Exception for State-Owned Facilities (failed), was voted unfavorable by the Senate Finance Committee the same week it was heard. LifeSpan and other stakeholders opposed the bill. The Committee did not see value in allowing the State to have this exemption.

Bills supported by LifeSpan, which passed included Senate Bill 576/House Bill 691: Health Occupations – Nurse Practitioners – Certifications of Competency and Incapacity (passed), which allows a nurse practitioner, in addition to a physician, to determine competency for appointment of the “guardian of the person of a disabled person” and for the providing, withholding or withdrawing of medical treatment. Another bill that passed focused on workforce development. Senate Bill 938/House Bill 1571: Hospitals – Change in Status – Hospital Employee Retraining and Placement (passed) revises the current hospital retraining program to be used by the Maryland Department of Labor (MDOL)
for the retraining of, and job-seeking assistance for, hospital employees who are unemployed or who may become unemployed as a result of the closing, partial closure, delicensing, downsizing, or acquisition of a hospital or the merging of hospitals. LifeSpan supported this bill because this program could be used to develop workers for the post-acute provider workforce. Unfortunately, Senate Bill 449: Labor and Employment – Direct Care Workforce Innovation Program (failed) which would have developed a program to provide matching grants to eligible entities (including non-profit associations) to create and expand on successful recruitment and retention strategies that address the range of potential barriers to increasing the number of direct care workers. LifeSpan had language added to ensure the inclusion of geriatric nursing assistants. The quick end to Session prevented this bill from passing.

LifeSpan also supported Senate Bill 966: Health Facilities – Assisted Living Programs – Referrals and Licenses (passed). Karin Lakin, LifeSpan’s Policy Committee Chair, which imposes additional penalties for operating without an assisted living program license and for referring an individual (willfully and knowingly) to an assisted living program operating without a license. The bill also regulates agencies by the Office of Health Care Quality (OHCQ) that refer individuals to assisted living programs. LifeSpan believed that this bill would assist in eliminating bad actors and remove unscrupulous players from the field of referrals.

LifeSpan successfully advocated to have nursing facilities and assisted living programs exempted from House Bill 512/Senate Bill 166: Drugs and Devices – Electronic Prescriptions, which will require all controlled dangerous substance prescriptions to be e-prescribed beginning January 1, 2022.

This Session, several bills were introduced regarding the prohibition of discriminatory acts. Senate Bill 738/House Bill 1120: Health Care Providers – Discrimination in Provision of Services (passed) states that, among others, a related institution (nursing facility and assisted living program) cannot discriminate against any individual with respect to the individual’s medical care because of the race, color, religion, sex, age, national origin, marital status, sexual orientation, gender identity, or disability of the individual. LifeSpan worked to ensure language was added and ensures that providers would not be penalized for actions taken that were necessary to comply with rules and regulations. In supporting this bill, LifeSpan successfully advocated against passage of House Bill 1010: Health Care Facilities – Discrimination (LGBTQ Senior Bill of Rights (failed), which would have required a separate Patient Bill of Rights for the LGBTQ community in comprehensive care facilities.

LifeSpan successfully advocated to have the timeframe for a provisional license maintained at 90 days in House Bill 631/Senate Bill 444: State Board of Examiners of Nursing Home Administrators – Board Membership (passed). As introduced, the bill would have made changes to the Board membership and would have removed the 90-day timeframe for granting a provisional license for a non-licensed individual. LifeSpan requested that the 90-day timeframe remain, and the General Assembly agreed. LifeSpan did not raise issues with the changes to Board membership.

Unfortunately, several good bills failed to pass due to fiscal implications.

- House Bill 564/Senate Bill 670: Department of Aging – Assisted Living Program Subsidies – Determinations (failed) would have required the Secretary of Aging to provide a subsidy of $1,000 for each qualified, low-income senior to reside in an assisted living program under the Senior Assisted Living Group Home Subsidy program.
- House Bill 584/Senate Bill 965: Day Care Centers for the Elderly and Day Care Centers for Adults – Reimbursement (failed) would have required MDH to provide reimbursement to adult
day centers for weather-related closures or when a client left the center early due to a health emergency, failed to move forward.

- **House Bill 1163/Senate Bill 642: Home- and Community-Based Waiver Services – Alterations and Task Force (failed)** would have required MDH to include a plan for waiver participation of not fewer than 7,500 individuals in the Medicaid Home and Community-Based Options Waiver.

  **NOTE:** While this bill did not pass, budget language was included for how the State could expand home-and-community-based services. See **Appendix A**.

Supported by LifeSpan **House Bill 364: Hospital and Nursing Facility Workers and Health Care Practitioners – Identification Tags and Badges – Name Requirement (passed)** alters how a name can be displayed on a name tag by allowing it to be the first name, nickname, last name or full name of the individual. The purpose is to shield the health care worker from potential violence or retaliation from an individual.

LifeSpan originally opposed **Senate Bill 863/House Bill 1091: Maryland Medical Assistance Program – Long-Term Care Services and Supports – Personal Needs Allowance (failed)**, which would have increased the personal needs allowance of a recipient who is an aged, blind, or disabled person to $450 per month. Our opposition was grounded in the concern that it would cause residents to lose Medicaid eligibility. The bill also had a $45 million fiscal note. The sponsors amended the bill to apply only to recipients in medical adult day centers and the sponsors requested a new fiscal note, but the bill still failed to move.

After the appointment of a new committee Chair, many believed that Maryland would finally pass the End of Life Option. However, this was not the case. **House Bill 643/Senate Bill 701: End-of-Life Option Act (Richard E. Israel and Roger “Pip” Moyer Act) (failed)** would have created a process by which an individual may request and receive aid in dying from the individual’s attending physician. This Session the House waited for action by the Senate. The Senate Judicial Proceedings Committee failed to act on the bill.

**Status of Labor Legislation**

While not as dominate as in previous Sessions, several bills were introduced affecting labor and employment operations or benefits. **House Bill 712/Senate Bill 260: Labor and Employment – Leave with Pay – Bereavement Leave (Family Bereavement Act) (failed)** would have expanded Maryland’s Flexible Leave Act by authorizing employees (those working with at least 15 employees) to use earned paid leave for bereavement leave for the death of the employee’s immediate family member and a pet. As introduced, LifeSpan opposed based on the inclusion of the pet. The House Economics Matter Committee removed referenced to the pet and passed the bill. The Senate Finance Committee failed to act on the bill.

Given the backdrop of the minimum wage increase and paid sick leave, **House Bill 839/Senate Bill 539: Labor and Employment – Family and Medical Leave Insurance Program – Establishment (failed)** never gained momentum this Session. For those reasons, LifeSpan opposed the bill, which would have established a Family and Medical Leave Insurance Program that will be funded through an employee and employer payroll tax.

Two other notable labor bills which passed are **House Bill 14: Equal Pay for Equal Work – Inquiring About Wages – Prohibition on Adverse Action (passed)**, which prohibits an employer from taking any adverse employment action against an employee for inquiring about the employee’s own wages. Under Maryland’s Equal Pay for Equal Work law, an employer already 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. *House Bill 123/Senate Bill 217: Labor and Employment – Wage History and Wage Range (passed)* requires an employer to provide, on request by an applicant for employment, the wage range for the position for which the applicant applied. The bill prohibits an employer from seeking wage history information for an applicant, or from screening or considering an applicant for employment or determining an applicant’s wages based on the applicant’s wage history. However, an applicant is not prohibited from voluntarily sharing wage history information with an employer.

**NOTE:** During Session, the General Assembly overrode the Governor’s veto of the “Ban the Box” bill that passed in the 2019 Session. This legislation bans the use of “boxes” where an applicant must check if the applicant has a criminal record. This bill applies to employers with 15 or more employees to give applicants an opportunity to get an interview rather than an immediate disqualification. During the interview, the employer may require the applicant to disclose the information. The bill does exempt employers that provide programs, services or direct care to minors or vulnerable adults. However, the bill did not qualify this exemption. As a result, it has been requested that Schwartz, Metz and Wise, P.A. send a letter to MDOL seeking clarification.

**Other Notable Legislation**

- **House Bill 1169/Senate Bill 774: Health Services Cost Review Commission – Community Benefits – Reporting (passed)** requires the Health Services Cost Review Commission to develop a Community Benefit Reporting Workgroup to make recommendations for the development of regulations on community benefit reporting. The bills also define “community benefit.”

- **House Bill 1415: Health Facilities – Residential Service Agencies – Compliance with State Labor Laws (failed)** would have required residential service agencies (RSA) to provide a guidance document concerning the application of employee protection laws to those working for an RSA and submit certain information to Medicaid regarding wages.

- **House Bill 1448: Commissioner of Labor and Industry – Classification of Employees and Independent Contractors – Guidelines (failed)** would have had broader application but still would have required all employers to attest that they are in compliance with employee classification through an attestation on the personal property tax form.

- **Senate Bill 733: Public Health – Care of Medically Fragile Individuals (Channing’s Law) (failed)** would have required OHCQ to establish a training program and a skills review and check for nurses who care for medically fragile individuals in the homes of the medically fragile individuals.

- **House Bill 1291: Health Facilities – Certificate of Need – Exemption for Hospitals Providing Hospice Program Services (failed)** would have allowed a hospital to provide hospice services without first obtaining a CON.

- **House Bill 1168/Senate Bill 897: Maryland Department of Health – Residential Service Agencies – Training Requirements (failed)** would have required residential service agencies to have a certain number of hours of training initially and annually for Alzheimer’s disease and dementia.
And Just Because ….

Over the final weekend of Session, the General Assembly passed landmark legislation on *House Bill 1300: Blueprint for Maryland’s Future – Implementation (passed)*. The legislation implements the recommendations of the Kirwan Commission to enhance education in Maryland and is a $4 billion overhaul of Maryland’s public-school system. Due to increasing concerns of the fiscal implications of COVID–19, the General Assembly added an amendment that if State revenues drop by 7.5% in any given year, the Kirwan plans would be halted and the funding level would be limited to the rate of inflation.

The issue of how to pay for Kirwan became a central issue this Session. Several bills were introduced to increase revenues. *House Bill 1628: Sales and Use Tax – Rate Reduction and Services (failed)* would have extended the State’s sales tax to services (albeit health and human services and others). LifeSpan submitted opposition to this legislation given that senior care communities would have been required to pay the tax on procured services, which would have decreased any increase to Medicaid rates and potentially increased costs to seniors. The Committee voted the bill unfavorable. Another bill that would have taxed “luxury service items” – *House Bill 1354: Sales and Use Tax and Personal Property Tax – Services, Aircraft Parts and Equipment, and Data Centers (failed)* also failed to move forward.

Other bills considered for generating revenue included *House Bill 295: Corporate Income Tax – Combined Reporting (failed)*, which would have required affiliated corporations to compute Maryland taxable income using combined reporting and *House Bill 473: Income Tax – Pass–Through Entities, Throwback Rule, and Combined Reporting (failed)*, which would apply a “throwback” rule in determining whether sales are considered in the State for purposes of the State’s corporate income tax apportionment formula.

In the end, the General Assembly passed two tax bills. *House Bill 732: Taxation – Tobacco Tax, Sales and Use Tax, and Digital Advertising Gross Revenues Tax (passed)* establishes a 12% sales and use tax rate on open electronic smoking devices and a 60% sales and use tax on vaping liquid sold in a container that contains 5 milliliters or less. It also creates a 30% tax rate for pipe tobacco and raises the taxes to $3.75 for every package of 20 cigarettes and provides that the tax rate for other tobacco products is 53% of the wholesale price. This bill also imposes a tax on the annual gross revenues of a person derived from digital advertising services in the State, which was originally the focus of Senate Bill 2. *House Bill 932: 21st–Century Economy Fairness Act (passed)* imposes the State sales and use tax on specified digital products, codes, and services.

On a positive tax note – *Senate Bill 523: Income Tax – Pass-Through Entities and Corporations (passed)* was necessary because the federal “Tax Cuts and Jobs Act of 2017” imposed a new $10,000 limitation on the deductible amount of state and local taxes paid by an individual, resulting in individuals who are small business owners paying more than $10,000 per year in combination of state income tax, property tax and other related taxes having a federal income tax payment higher than in prior years when these taxes were fully deductible on the federal return. This legislation essentially restores the federal tax deduction that previously existed, a tremendous benefit to many businesses.
APPENDIX A: REQUIRED BUDGET REPORTS

- Requiring the Maryland Total Human-Services Integrated Network (MD THINK) to report to the General Assembly on the total estimated cost of MD THINK as required by year and for the future – Due by September 4, 2020.

- Requiring the Hilltop Institute at UMBC, in consultation with other stakeholders, submit a report to the budget committees that provides a cost-benefit analysis of expanding access to long-term care services through home- and community-based waivers. The analysis should include: (1) a comparison of all health care costs incurred by individuals by different levels of acuity who have moved into waiver services and those who remain on the waiting list for waiver services; (2) to the extent practical, comparison data for a five-year period; (3) how to capture savings from provision of waiver services through Medicaid that accrues to Medicare for the benefit of the Medicaid program; (4) the extent to which the provider community can accommodate additional individuals served though waiver and similar Medicaid services; and (5) any other information that is necessary to adequately capture the full extent of incurred cost and cost avoidance from more fully utilizing waiver services – Due by December 1, 2020.

- Requiring the State Advisory Council on Quality Care at the End of Life and the Office of the Attorney General (OAG) prepare a report on policy options that might increase the number of residents taking action to register their advance directives online. The council should assess the potential efficacy of policies including, but not limited to, inviting residents to either designate or decline naming a health care agent when registering their vehicle(s) or renewing their drivers’ license with the Motor Vehicle Administration, when obtaining auto or health insurance with their insurance carrier(s), and/or when submitting their State taxes (i.e., similar to the program described in the Insurance Article § 31-201) – Due by December 1, 2020.

- Requiring the Maryland Department of Aging (MDOA) to submit a report analyzing the current administration and utilization of the Community for Life (CFL) program. The report shall include the following: (1) data about each grantee of the program since its inception, including the membership capacity of each CFL, the amount of funding each CFL was originally granted, the amount each CFL has expended, the amount of the State grant that the CFL intends to encumber, and the amount of funding, by source, that each grantee receives from other sources to support operating expenses of the CFL program; (2) fiscal 2020 actual data about members’ utilization of the core CFL services, which include transportation, service navigator assistance, and home repair and maintenance; (3) membership totals for each CFL as of July 1, 2020; (4) the number of members that benefit from a scholarship as of July 1, 2020; and (5) a list of engagement events, informational publications, and other outreach efforts hosted by CFLs and MDOA throughout fiscal 2020 to increase awareness of the program throughout the State, and outreach efforts planned for fiscal 2021 – Due September 1, 2020.

- Require MDH to submit a quarterly report on spending in the Community First Choice program (expected to approach $400 in fiscal 2021), including monthly enrollment, utilization, and cost data that can be used to support actual budget expenditures under the program – Quarterly beginning August 1, 2020.

- Require MDH to report on what programs are being utilized by the HSCRC under the Total Cost of Care model that can benefit Medicaid spending on the duals – Due November 15, 2020.