



Prepared by Danna Kauffman  
Schwartz, Metz and Wise, PA  
410-294-7759  
[dkauffman@smwpa.com](mailto:dkauffman@smwpa.com)

## UPDATES FOR THE WEEK ENDING FEBRUARY 7, 2020

Both the House and Senate bill introduction dates have passed. So far, legislators have introduced 2,674 bills, with 2/3 being introduced this week. Attached is the bill chart and below are corresponding summaries.

### ON BILL CHART:

**House Bill 448/Senate Bill 402: Health Care Practitioners – Telehealth.** This bill authorizes a health care practitioner may establish a practitioner–patient relationship through either a synchronous telehealth interaction or an asynchronous telehealth interaction under certain circumstances (more information to follow).

**House Bill 880: Maryland Healthy Working Families Act – Family Member – Definition.** This bill adds to the definition of family member the legal ward of the employee or the employee’s spouse, which aligns with federal law.

**Senate Bill 862/House Bill 965: Labor and Employment – Minimum Wage – Allegany County and Garrett County.** This bill extends the full increase of \$15 to January 1, 2028, with \$.50 increases beginning January 1, 2021.

**House Bill 977/Senate Bill 981: Workgroup to Study Long-Term Care Medicaid Eligibility and Payments to Providers.** This bill sets up another workgroup to look at Medicaid eligibility for nursing facilities.

**House Bill 1010: Health Care Facilities – Discrimination (LGBTQ Senior Bill of Rights).** This bill adds to the Patient Bill of Rights for comprehensive care facilities but specifically the rights of the LGBTQ community.

**Senate Bill 738/House Bill 1120: Health Care Providers and Health Benefit Plans – Discrimination in Provision of Services.** This bill states that a hospital or related institution may not refuse, withhold from, or deny to any individual medical services or otherwise 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, genetic information, or disability of the individual. This bill also states that a person who is regulated by a health occupation board may not refuse, withhold from, or deny any person any services of the licensed or regulated person or otherwise discriminate against any person because of the person’s

race, color, religion, sex, age, national origin, marital status, sexual orientation, gender identity, genetic information, or disability. For the latter, it does state that a person who is regulated by a health occupation board may refuse, withhold, or deny any person services if providing the service would cause the person not to be able to conform to the usual and regular requirements, standards, and regulations imposed on the licensed or regulated person. A similar provision applies to insurance carriers and HMOs.

**Senate Bill 969/House Bill 1063: Health Care Facilities – Assisted Living Programs – Regulations, Staffing and Training.** This bill states that the regulations on ALP must:

- Require the completion of the RAT within 7 days after preadmission OR within 48 hours after admission;
- Require managers to invite family members and representatives in the RAT process and participate in any ongoing RAT process;
- Require 1 direct care staff for every 12 residents and one awake staff for every 24 residents on each wing or floor at night;
- Require for Level 2 and Level 3, one RN on site during day shift (7 am – 7 pm) and 1 certified medical assistant at night during the night shift;
- Require for Alzheimer’s or memory care units, a ratio of 1 to 8 direct care staff;
- Require for ALP with five or more residents to have direct care staff –
  - 8 hours of initial on-site training before beginning employment;
  - Within 60 days, complete 40 hours approved by MDH, which includes an exam and then annually complete 6 hours of ongoing training.
  - Current employees of one year before 10/1/20 are grandfathered in.
  - MDH would need to certify all the trainings.

**Senate Bill 863/House Bill 1091: Maryland Medical Assistance Program – Long-Term Care Services and Supports – Personal Needs Allowance.** This bill states that when determining the available income of a recipient who is an aged, blind, or disabled person, the Department of Health must establish a personal needs allowance of not less than: (1) \$450 per month; or (2) \$5,400 per year.

**Senate Bill 449: Labor and Employment – Direct Care Workforce Innovation Program.** The purpose of the bill is to develop a program to provide matching grants to eligible entities (includes 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. The goal of the program is to ensure the availability of trained direct care workers across the state. Direct care workers include home health aides, certified nursing assistants, personal aide, and psychiatric aide.

**Senate Bill 494: Health Care Facilities – Dialysis Treatment Services – Training (Dialysis Parity Act).** This bill applies to home health, hospice and nursing facilities. A health care facility may not provide peritoneal dialysis or hemodialysis treatment services unless the individual performing the dialysis procedure has received training in the peritoneal dialysis or hemodialysis technique being performed. The Department must adopt regulations to carry out this section.

**Senate Bill 642/House Bill 1163: Home- and Community-Based Waiver Services – Alterations and Task Force.** The bill contains language to emphasize the need to have 7500 individuals on the waiver. The Department shall send monthly waiver notice letters to individuals

who are eligible or likely to be eligible for waiver participation. Waiver letters sent shall be sent in sufficient quantity to allow for at least 7,500 individuals to participate in the waiver each fiscal year. If the Department determines individuals are eligible and authorizes waiver services, it must ensure that the individual receives waiver services within 30 days after the determination of eligibility was made. The bill also creates a Task Force for streamlining and implementing waiver services.

**Senate Bill 690: Public Health – Long Term Care Planning.** On or before January 1, 2021, the Department shall develop and publish materials to assist Maryland residents with long-term care family planning. The materials developed must be based on the Governor’s Task Force on Long-Term Care Planning (2018).

**House Bill 1168/Senate Bill 897: Maryland Department of Health – Residential Service Agencies – Training Requirements.** This bill requires RSA to have six hours of annual and 4 hours of training for Alzheimer’s and dementia for direct care staff; and also requires training for supervisory staff.

**Senate Bill 938/House Bill 1571: Hospitals – Change in Status – Hospital Employee Retraining and Placement.** This bill revises the current hospital retraining program. The bill states that, on July 1 each year, each hospital shall pay directly to the Maryland Department of Labor (MDOL) a fee equal to 0.006% of the total gross patient revenue approved by the HSCRC for the hospital for the immediately preceding year, which will be paid into a special fund. Each hospital must submit an annual report to the health services cost review commission and the MDOL on: (1) the number of hospital employees displaced due to layoffs; (2) the categories of hospital employees displaced due to layoffs; and (3) the number of hospital employees to whom hospitals directly provided funding for retraining purposes. The fund will be used by MDOL for the retraining of, and job-seeking assistance for, hospital employees who are nonexecutive employees, who are not licensed physicians or physical assistants, and 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.

**Senate Bill 966: Health Facilities – Assisted Living Programs – Referrals and Licenses.** This bill:

1) for those operating without a license – if a person is caught operating without a license for a third time, the Office of the Attorney General (OAG) may seek appropriate injunctive or other relief to prevent the person from continuing to operate, maintain, or own an assisted living program without a license, including injunctive relief that requires the person to immediately cease operating the assisted living program; and prohibits the person from operating, maintaining, or owning an assisted living program in the future.

2) for referring an individual – a person may not willfully and knowingly refer another person to an assisted living program that is operating without a license. A person who violates this requirement is subject to the following civil penalties: (1) for a first offense, a civil penalty not exceeding \$1,000; (ii) for a second offense, a civil penalty not exceeding \$2,000; or (iii) for a third or subsequent offense, a civil penalty not exceeding \$3,000. Penalties received go to enforcement by OHCQ to enforce “assisted living referrers”.

3) agencies that refer “a place like mom’s” – this bill is seeking to ensure that entities in the business of referring are only referring to licensed assisted living programs. The bill seeks to do this by defining “assisted living referrer” as an individual or agency that makes referrals to assisted living programs without cost to the person receiving the referral; is compensated by an assisted living program or other third party for referring individuals to a licensed assisted living program; and makes referrals only to licensed assisted living programs for which the referrer receives compensation. Each assisted living referrer must register with OHCQ; must disclose to a client or potential client of the all financial relationships the assisted living referrer has with assisted living programs; if referring a client or potential client to an assisted living program, must affirm that the assisted living program is licensed and only refer to licensed programs. An assisted living referrer must notify OHCQ immediately upon learning that a program is operating without a license. An assisted living referrer may not receive funding from the Department if the assisted living referrer is in violation of this subtitle. If requested by any person or on its own initiative, the OAG may investigate whether an assisted living referrer violated this requirement and may seek appropriate relief.

**\*\* Not on Chart - Senate Bill 519: Public Health – Behavioral Health Programs and Health Care Facilities – Safety Plan.** This bill requires the Department, before approving a license for a health care facility licensed under Title 19 (home health, hospice, nursing facilities, assisted living, medical adult day care, etc) to have a safety plan for the safety of those served by it and the surrounding communities.

#### **FOR YOUR INFORMATION LEGISLATION:**

**Senate Bill 774: Hospital – Community Benefits.** This bill specifies that a community health benefit is not just health services but non-reimbursable services. This bill also established a Workgroup that requires hospitals to hold public meetings and convene with non-hospital providers and community groups on community needs.

**Senate Bill 786/House Bill 1365: Income Tax – Credit for Long Term Care Premiums.** This bill alters the existing one-time long-term care insurance premiums income tax credit by allowing the credit to be claimed for every year a policy is in force. In tax years 2021 and 2022, individuals can claim a maximum credit of \$250 for each year the policy is in effect; the maximum credit that can be claimed is increased to \$500 beginning in tax year 2023.

#### **NOT ON BILL CHART - FYI:**

**House Bill 1291: Health Facilities – Certificate of Need – Exemption for Hospitals Providing Hospice Program Services.** This bill exempts from the CON process a hospital who wants to provide hospice services.

**House Bill 1415: Health Facilities – Residential Service Agencies – Compliance with State Labor Laws.** This bill focuses on the classifications of employee versus independent contractor in residential service agencies. The bill requires, on or before December 30, 2020, the MDH in consultation with the Maryland Department of Labor (MDL) and the Office of the Attorney General (OAG), to produce a guidance document concerning the application of employee protection laws, to the employment of personal care aides employed by residential service agencies. “Personal care” means a service that an individual normally would perform personally,

but for which the individual needs help from another because of advanced age, infirmity, or physical or mental limitation. “Personal care” include help in walking; in getting in and out of bed; in bathing; in dressing; in feeding; and in general supervision and help in daily living. As a condition of licensure, each RSA every year must certify and recertify to MDH that through the signature of an individual with authority over the residential service agency’s pay practices, that: (i) the individual has read and understood the most current version of the guidance document; and (ii) to the best of that individual’s knowledge, the residential service agency’s pay practices comply with the state’s labor and employment laws. each residential service agency receiving Medicaid reimbursement must report to the MDH the following: (1) whether the residential service agency has classified each worker as an employee or as an independent contractor; (2) the average regular hourly pay rate of each employee calculated on a weekly basis; and (3) whether the residential service agency paid each employee an overtime rate of 1.5 times the employee’s regular hourly pay rate per hour for each hour the employee worked more than 40 hours in any given week.

**House Bill 1418: Commissioner of Labor and Industry – Classification of Employees and Independent Contractors – Guidelines.** This bill requires that the Labor Commissioner, in consultation with the OAG to develop written guidelines that explain, in plain language: (1) the meanings of the terms “employ”, “employee”, “employer”, and “independent contractor”; the legal, tax, and financial consequences of misclassifying and treating an employee as an independent contractor, including monetary damages to workers and liability for taxes to state and federal tax authorities; and (3) steps that an employer may take to ensure compliance with the law. The guidelines must not be longer than five pages of text; provided in writing on request of an individual; and made available on the MDL’s website. The Commissioner, in consultation with the OAG, shall revise and update the guidelines on an annual basis. The bill also states that the personal property form submitted by businesses must include a certification that: (i) the individual filing the report has knowledge and authority over the pay practices of the entity for which the individual is filing the report; (ii) the individual filing the report has read the most current guidelines on the classification and treatment of employees and independent contractors developed by the commissioner of labor and industry; and (iii) to the best of the knowledge of the individual filing the report, the pay practices of the entity for which the individual is filing the report comply with the requirements of the law relating to employees and independent contractors. An entity that does not make the certification required may not be considered in good standing with MDL.

**Senate Bill 834: Maryland Medical Assistance Program – Provision of Residential Service Agency Services.** This bill requires that, for the Medicaid program to contract with a RSA, it has to be licensed and accredited by the Joint Commission on Home Care.

**House Bill 1168/Senate Bill 897: Maryland Department of Health – Residential Service Agencies – Training Requirements.** This bill requires RSA to have six hours of annual and 4 hours of training for Alzheimer’s and dementia for direct care staff and requires training for supervisory staff.