Hospice & Palliative Care Network
OF MARYLAND

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"Sine Die" Report
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The 438th Session of the Maryland General Assembly began at noon on Wednesday, January 10th and concluded at midnight on Monday, April 9th 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, in 2017, the General Assembly considered 2,876 bills and resolutions: in 2016 – 2,832 bills and resolutions were considered. Why the sharp increase? Simply stated, 2018 is an election year and election year equals more bills to respond to constituent issues.

A special thanks to Alane Capen for chairing the Public Policy Committee, Executive Director Peggy Funk for her leadership and to those members who participated on the weekly conference calls for their thoughtful consideration of the bills.

Hospice Legislation

It was a very good Session for the Network. At the request of the Network, Delegate Bonnie Cullison and Senator Brian Feldman introduced ***House Bill 407/Senate Bill 232: Public Health – General Hospice Care Programs – Collection and Disposal of Unused Prescription Medication*** to address the disposal of unused prescription medication in home hospice settings. Public Policy Committee Chair Alane Capen and Deborah Hamilton, hospice nurse, testified in support of the bills at the hearings. Executive Director Peggy Funk and former Public Policy Committee Chair Ann Mitchell also attended the hearings. Both the House Health and Government Operations Committee and the Senate Finance Committee were extremely supportive of the legislation and appreciated that the Network recognized an area that needed to be addressed in the opioid crisis. The bills passed the General Assembly unanimously and will take effect on October 1, 2018. The Governor has not yet released the bill signing date but it is open to the public.

To recap, the bills require a general hospice care program to establish a written policy for the collection and disposal of unused prescription medication. It also requires a program employee, under specified circumstances, to collect and dispose of a patient's unused medication on the death of the patient or the termination of a prescription by the patient's prescriber.

<u>Opioid Legislation</u>

For the third, consecutive Session, the General Assembly debated several bills to stem the tide of opioid abuse and death. Below is a summary of the main bills.

The most contentious bill this Session for the medical community related to opioids was ***House Bill 88/Senate Bill 1083: Public Health – Prescription Drug Monitoring Program – Revisions***. In a surprise turn of events, the bills **<u>failed</u>** in the last few remaining hours of Session. Initially, the contentious provision was allowing direct referral from the Prescription Drug Monitoring Program (PDMP) to law enforcement and to the health occupation boards. Early on, referral to law enforcement was removed but the issue became that the House wanting direct referral to the Office of Controlled Substance Administration whereas the Senate agreed with the medical community to allow referral to the health occupation boards only upon the recommendation of the Technical Advisory Committee and not OCSA. Throughout the process, amendments/bills were offered that would have allowed local health departments access to the PDMP as well as insurance carriers (***House Bill 1716: Prescription Drug Monitoring Program – Prescription Monitoring Data – Insurance Carriers).*** This Session has shown that there will continue to be efforts to transform the PDMP from the original intent of a prescriber's tool to an investigatory tool.

Other bills that did pass include:

- ***House Bill 653/Senate Bill 522: Health Care Providers – Opioid Prescriptions – Discussion of Information and Risks*** states that when a patient is prescribed an opioid the patient must be advised of the benefits and risks associated with the opioid. In addition, when a patient is co–prescribed a benzodiazepine with an opioid, the patient shall be advised of the benefits and risks associated with the benzodiazepine and the co–prescription of the benzodiazepine. The bills originally would have required a health care provider to discuss the risks of opioid and treatment alternatives with patients, would require a signed, patient acknowledgment and would have allowed referral to the appropriate health occupation board for discipline if the conditions were not satisfied. Prescriptions for the treatment of hospice and palliative care remain exempt from this requirement, similarly to the exemption to query the PDMP and for adhere to prescribing guidelines.

- ***House Bill 1452/Senate Bill 1223: Controlled Dangerous Substances Registration – Authorized Providers – Continuing Education*** will require two CMEs related to opioid dispensing for the renewal of a CDS registration. The requirement only applies on the initial registration or first renewal after the bill's effective date of October 1, 2018. It is anticipated that OCSA will send additional information regarding compliance as the effective date draws closer.

- ***House Bill 115/Senate Bill 13: Maryland Health Care Commission – Electronic Prescription Record System – Assessment and Report*** requires the Maryland Health Care Commission, with affected stakeholders, to study the feasibility of creating a database of all patient prescriptions that can be assessed by prescribers. These bills originally would have required that a health care practitioner submit all non-CDS prescriptions to the PDMP to create a prescription data record through PDMP/CRISP. The medical community expressed concern that it was too soon to be making changes to the PDMP given that the July 1, 2018 mandatory query requirement had not yet gone into effect. The workgroup must report to the General Assembly on its findings on or January of 2020.

Other bills that failed included:

- ***House Bill 601/Senate Bill 1255: Public Health – Opioids – Dispensing Requirement*** which would have required any opioid dispensed to be dispensed with a chemical substance to deactivate the opioids.

- ***House Bill 1416: Drugs and Devices – Electronic Prescriptions – Requirements*** which would have required prescriptions to be issued electronically.

- ***House Bill 1194/Senate Bill 1023: Health – Drug Cost Review Commission*** which would have, among other things, established a Commission to conduct a review of certain drug costs, and in some circumstances been authorized to set reimbursement levels. The Attorney General would have been authorized to act against manufacturers who failed to comply with those levels. MedChi sent a letter of information stating support for transparency but expressed concern regarding how the measure interacted with Maryland's unique All Payer Model. As amended by the House, the bill still established a Commission, but its role was limited to accessing public data on pharmaceutical pricing or accessing public and non-public data through memoranda of understanding with other states which already review pricing information. The bill died in the waning hours of Session when the full Senate failed to act on it.

Regulatory Legislation

Two departmental bills passed that reduce administrative burdens on providers. ***Senate Bill 108 – Regulation of Health Care Programs, Medical Laboratories, Tissue Banks, and Health Care Facilities – Revisions*** eliminates the need to renew a license from the Office of Health Care Quality (OHCQ). Instead, the initial license will now be "on-going." 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 include ***Senate Bill 230: Disclosure of Medical Records – Compulsory Process – Timeline*** which requires a health care provider to disclose a medical record in accordance with compulsory process no 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.

Senate Bill 711: Health Occupations – Applications for Renewal of Licenses, Permits, Certifications, or Registrations – Available by Mail also passed and 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

Stabilizing the Individual Health Insurance Market (Effect on Small Group)

Due to double digit increases in premiums and the reluctance of insurers to continue to participate in the marketplace, the General Assembly spent considerable time developing a plan to stabilize the individual health insurance market. The Network monitored these bills because of the potential effect the bills could have on the small group market, often utilized by Network members. These bills, which passed, are detailed below.

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 plan (HDHP) to apply a deductible to coverage for male sterilization. The passage of this bill ensures that health savings accounts 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 (ACA) on services that are not preventive, such as vasectomies. 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 only until calendar 2020. Thus, together with Senate Bill 137/House Bill 135 and Notice 2018-12, the use of health savings accounts continues to be permissible in Maryland.

House Bill 1782/Senate Bill 387: Health Insurance – 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 ACA, 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**. The Network will continue to monitor this Commission.

Labor and Employment

- **Minimum Wage**

Three bills were introduced to increase the State's minimum wage up to $15/hour. All failed - ***Senate Bill 235, Senate Bill 368 and Senate Bill 543/House Bill 664***. This issue will most likely be reintroduced during the next legislative term.

- **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 1st, failed and the Act went into effect on February 11th. All bills that would have altered the Act were either not acted upon or received an unfavorable vote. 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.dllr.state.md.us/paidleave/.

- **Sexual Harassment Policy**

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

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 inquiring 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.