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## Final 2017 Session Report

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*This report is prepared for the Hospice & Palliative Care Network of Maryland. All bills can be reviewed in their entirety at [www.mgaleg.maryland.gov](http://www.mgaleg.maryland.gov) by inserting the bill number and under "Documents" reviewing either the third reader or enrolled version.*

The 437<sup>th</sup> Session of the Maryland General Assembly began on Wednesday, January 11<sup>th</sup> and concluded at midnight on Monday, April 10<sup>th</sup> when it adjourned "Sine Die" with the traditional confetti release in both the Senate and House chambers. During this Session, 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 character, this Session was strongly influenced by the election of President Trump and the Republican Congress, which was evident by the number of bills and/or resolutions introduced that sought to address several actions taken earlier this year. While the GOP withdrew the proposal to change the Affordable Care Act (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 does contain a provision for the Commission to solicit input from stakeholders, including holding public meetings. The Governor has already signed this bill into law – Chapter 17.

Below is a summary of the key issues affecting hospice and palliative care services this Session.

### Health Bills

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 and the Department of Health and Mental Hygiene (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. Amendments were added 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.

Despite opposition from the hospital industry, **House Bill 584: *Investigational Drugs, Biological Products and Devices – Right to Try Act***, a reintroduction from last Session, passed and authorizes a manufacturer of an investigational drug, biological product or device to provide it to an eligible patient without compensation or require the patient to pay the costs of or the costs associated with the manufacturer of the drug.

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***. While this bill does not directly impact hospice and palliative care organizations, it does apply to the professions, such as nursing, that are regulated by a board. This bill was the result of a U.S. Supreme Court case on a North Carolina Dental Board case where the court ruled that, if a board’s composition includes the majority of the profession it regulates, there could be anti-trust issues. Consequently, there needs to be third-party oversight. Therefore, 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.

Two other bills that affect nursing practice include **House Bill 253: *State Board of Nursing – Registered Nurses and Licensed Practical Nurses – Renewal of Licenses – Continuing Education Units*** which allows an LPN and RN to use the completion of continuing education units towards license renewal requirements and **Senate Bill 41: *State Board of Nursing – Nurse Licensure Compact – Revisions*** which amends the statute to conform the existing Nurse Multistate Licensure Compact to the new and enhanced Nurse Licensure Compact adopted by the National Council of State Boards of Nursing.

**House Bill 403/Senate Bill 369: *Maryland Patient Referral Law – Compensation Arrangements Under Federally Approved Programs and Models*** passed with strong support from the Health Services Cost Review Commission (HSCRC), the hospitals, and the physician community. This bill 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 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.

Beginning July 1, 2017, DHMH will be named the Department of Health (**Senate Bill 82**) and the Department of Human Resources 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.

The fight against Maryland's opioid crisis was a top priority this Session. Over forty bills were introduced, ranging from limitations on prescribing, education in schools, access to community supports, and removing restrictions on insurance. Consequently, three major bills passed. **House Bill 1432: Health Care Providers – Prescription Opioids – Limits on Prescribing (The Prescriber Limits Act of 2017)**, as introduced, would have limited an initial prescription of an opioid to seven days. MedChi successfully negotiated with DHMH to require a health care provider, based on his/her clinical judgment, to prescribe the lowest effective dose of an opioid and a quantity that is no greater than the quantity needed for the expected duration of pain based on evidence-based clinical guidelines that is appropriate for the health care service delivery setting for the patient, the type of health care services required by the patient, and the age and health status of the patient. The Network also successfully worked with MedChi to maintain similar exemptions contained in the query requirement for the Prescription Drug Monitoring Program. Consequently, this does not apply to an opioid being prescribed for a substance-related disorder, pain associated with a cancer diagnosis, pain experienced while the patient is receiving end-of-life, hospice or palliative care services, or chronic pain. Two other bills passed – **Senate Bill 967/House Bill 1329: Heroin and Opioid Prevention Effort (HOPE) and Treatment Act of 2017** focuses on expanding treatment options and **Senate Bill 1060/House Bill 1082: Heroin and Opioid Education and Community Action Act of 2017 (Start Talking Maryland Act)** focuses on education initiatives.

Bills that were considered but **failed** include:

- **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.
- **Senate Bill 240: Department of Health and Mental Hygiene – Abuser Registry Workgroup Recommendations – 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 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.

- **House Bill 1443: *Natalie M. LaPrade Medical Cannabis Commission Reform Act (failed)*** would have reconstituted the Commission and would have awarded additional grower licenses pending the results of a disparity study. The main issue being decided in this bill was whether to automatically grant the two grower applicants who were displaced from the rankings a license or whether additional licenses should only go to minority businesses. After a few contentious days with the Senate wanting to give the two grower applicants' licenses and the House wanting the licenses reserved for minority businesses, the House receded from its' position in favor of the Senate position. **HOWEVER**, the final vote was not taken and the bill **FAILED** in the last few minutes before Sine Die.
- **Medical Liability Legislation:** All bills introduced affecting Maryland's medical liability environment, including those that would have increased the cap on non-economic damages in wrongful death cases or that would have required a venue to be filed in the jurisdiction where the alleged negligent act took place, failed.

### Labor and Employment

While the Network did not take an active position on labor and employment issues, the Network did monitor the legislation. The most notable bill relating to labor and employment this Session was **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. 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 business, 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. It is expected that this bill will be introduced next Session and will be seriously considered by the General Assembly.

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 sets 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 that 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.

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.