



Weekly Policy Highlights

For week ending February 19, 2011

Key Committee Codes:

B&T = Senate Budget and Taxation

EHEA = Senate Education, Health & Environmental Affairs

FIN = Senate Finance Committee

JPR = Senate Judicial Proceedings Committee

APR = House Appropriations

ECM = House Economic Matters

ENV = House Environmental Matters

HGO = House Health & Government Operations

JUD = House Judiciary Committee

All bills can be reviewed under the General Assembly Website at www.mlis.state.md.us by clicking "Bill Information and Status". Type the bill number by SB or HB plus the bill number (e.g., SB101 or HB9).

2011 GENERAL ASSEMBLY SESSION NEWS --

This week we had a very good hearing on HB387 (CMT extension). The Board supported our amendment to make it an emergency bill and to include clarifying language that the extension applies to both initial and renewals. There had been some interpretation that it did not apply to renewals. A few new bills will introduced and are listed below. The CCRC bills still have not been introduced yet. We continue to work on the nursing home eligibility issues and an alert will be going out to the members in the upcoming week to call their legislators. Two bills have now been introduced on the issue and the House HGO has sent a letter to the departments requesting a follow-up hearing the first week of March to check on the progress of the departments in implementing new policy changes to address the backlog as well as the process moving forward.

The following budget hearings have been scheduled. This Session, the House will first approve the budget and then send it to the Senate for approval or modification. The budget will then go to conference committee for final resolution.

1. Medicaid: March 3rd House and March 7th Senate
2. Office of Health Care Quality: February 17th senate and February 23rd House

BUDGET BILLS:

- ✓ **SB85/HB70:** Budget Bill
- ✓ **SB87/HB72:** BRFA of 2011 – page 22 increases the provider tax from 4% to 5.5% and continues to allow 35% of the revenues to go to the State General Fund. Page 58 removes the sunset to make it continuous. Based on information from DHMH, LifeSpan is analyzing the model and LifeSpan’s Reimbursement Committee will discuss the impact and our position.
- ✓ **Medical Adult Day Care Budget:** 1% cut in provider rates; reduction in medical adult day care program of approximately \$366K. MAADS has requested additional information on the grant cut – what is it, how many participates, number of providers, overall budget, etc.
- ✓ **Other Home and Community Based Services** – 1% cut in provider rates (Older Adults Waiver)

INTRODUCED BILLS:

Affected Industry	Business Bills	Hearing	Position
ALL	SB1/HB40: Joint Committee on Worker’s Compensation Benefit and Insurance Oversight – Membership (Middleton/Feldman): Adds a self-insured local gov’t entity to the membership. Currently, the membership consists of legislators and representatives from the business community, labor organizations, the public, Med-Chi (physicians association), worker’s compensation rate organization, Maryland rehabilitation service provider and the Bar of the Court of Appeals of Maryland.		No Position
ALL	SB132/HB87 Job Fairness Act (Pugh/Reznick): An employer may not use an applicant’s or employee’s credit report or credit history in determining whether to: (1) deny employment to the applicant; (2) discharge the employee; or (3) determine compensation or the terms, conditions, or privileges of employment. An employer may request or consider an applicant’s or employee’s credit report or credit history if: (1) (i) the applicant has received an offer of employment; and (ii) the credit report or credit history will be used for a purpose other than a purpose prohibited by subsection (b) of this section; or (2) the employer has a bona fide purpose for obtaining or using information in the credit report or credit history that is: (i) substantially job-related; and (ii) disclosed in writing to the employee or applicant. If an employer violates of this section, the applicant or employee may bring an action for injunctive relief, damages, or other relief. This section may not be construed to prohibit an employer from performing an employment-related background investigation that: (1) includes use of a consumer report or investigative consumer report; (2) is authorized under the federal fair credit reporting act; and (3) does not involve investigation of credit information.		No Position
ALL	SB182/HB166: Maryland Health Benefit Exchange Program of 2011 (Governor): This creates a Maryland Health Benefit Exchange Program. The purposes of the exchange are to: (1) reduce the number of uninsured in the state; (2) facilitate the purchase and sale of qualified health plans in the individual market in the state by providing a		No Position

	transparent marketplace; (3) assist qualified employers in the state in facilitating the enrollment of their employees in qualified health plans in the small group market in the state and in accessing small business tax credits; and(4) assist individuals in accessing public programs, premium tax credits, and cost-sharing reductions. NOTE: Please have your HR Department review this bill at http://mlis.state.md.us/2011rs/bills/sb/sb0182f.pdf .		
	SB175/165: Maryland Health Care Quality and Cost Council (Governor): This creates a council consisting of insurers, providers, consumers and experts in quality and cost control. The purposes of the council are to: (1) coordinate and facilitate collaboration on health care quality improvement and cost containment initiatives among: (i) medical groups, hospitals, and other health care providers; (ii) health insurance carriers and other health care purchasers; (iii) units of state and local government; (iv) health care professional boards; and (v) academic experts in health care. The council is to make recommendations on health care quality and cost containment priorities and initiatives to: (i) the Governor and General Assembly; (ii) other units of state and local government, independent commissions, and policymakers; (iii) health care professional boards; (iv) the Maryland Patient Safety Center; (v) health care industry groups; (vi) health care consumers; and (vii) other public and private stakeholders. The council is to develop strategies to improve the quality and cost-effectiveness of care for individuals with chronic illness or at risk of chronic illness; support ongoing efforts to expand the use of health information technology in health care systems; explore strategies, including financial, performance-based incentives, to reduce and eliminate health disparities, and make recommendations regarding the development and implementation of those strategies; seek to leverage opportunities for demonstration projects, federal grant funding, and other initiatives to improve quality and contain costs made available by the affordable care act; assess options and make recommendations regarding strategies for collecting and disseminating patient-centered outcomes research to promote evidence-based practices among health care providers in the state; and examine and make recommendations on other issues relating generally to the mission of the council to improve health care quality and contain health care costs.	This is already in existence by Executive Order and is now being created by Statute.	No Position
ALL	SB600: Labor and Employment – Abusive Work Environment – Employee Remedies (Raskin): Creates a private cause of action against an employer or employee for creating an abusive work environment which results in actual impairment in physical or mental health. It is an affirmative defense that the employer exercised reasonable care to prevent and correct promptly any violations by an employee, the employee that filed the action failed to take advantage of appropriate preventive or corrective opportunities by the employer, the employee who the action was filed against committed the conduct under threat of adverse employment action or the action was the result of an employment action reasonably made for poor performance, misconduct, etc.	3/3/ FIN	HOLD
ALL	SB750/HB1002: Religious Observance Accommodations Act (Manno): This bill is a reintroduction. Prohibits an employer from prohibiting an employee from using leave to observe a Sabbath or other holy day in accordance with a sincerely held religious belief. An employer that can demonstrate to the Commission of Labor that reasonable accommodations to comply with the requirements of this section would cause an undue hardship is exempt from this Section. ** NOTE: Last year, LifeSpan opposed. We also offered an amendment that would exempt out health care facilities.	3/3/ FIN 3/9 ECM	Oppose

<p>ALL</p>	<p>SB309/HB442: Consumer Protection – Transparency in Consumer Arbitration Act (Kelley/Rosenberg): Consumer arbitration agreement” means a standardized contract that is between a consumer and another person who is not a consumer and provides for the sale or lease of any goods, services, real property, or credit primarily for personal, family, or household purposes and requires that disputes arising under the contract be submitted to binding arbitration. It does not include arbitration agreements for property, casualty or surety insurance or involving collective bargaining agreements.</p> <p>An arbitration organization (arbitration organization that performs an arbitration activity related to 50 or more consumer arbitrations during a 5–year period) shall collect, publish, and make available to the public the following information regarding each consumer arbitration for which it performed an arbitration activity during the preceding 5–year period: (1) if the nonconsumer party is a corporation or other business entity, the name of that party; (2) whether the dispute involved goods, services, real property, or credit; (3) the type of claim or cause of action alleged; (4) whether the consumer or nonconsumer party was the prevailing party; (5) the number of times during the reporting period that the nonconsumer party has been a party in a consumer arbitration for which the arbitration organization performed an arbitration activity; (6) whether the consumer party was represented by an attorney and, if so, the name of the attorney; (7) the date the arbitration organization received the demand for the consumer arbitration, the date the arbitrator was appointed, and the date of disposition by the arbitrator or arbitration organization; (8) if known, the type of disposition of the dispute, including withdrawal, abandonment, settlement, award after hearing, award without hearing, default, or dismissal without hearing; (9) the amount of the claim, the amount of the award, and any other relief granted; (10) the name of the arbitrator, the arbitrator’s total fee for conducting the consumer arbitration, and the percentage of the arbitrator’s fee allocated to each party; and (11) the address of the premises where the consumer arbitration was conducted.</p> <p>The information shall be reported beginning on the first day of the month immediately following the month an arbitration organization becomes subject to this subtitle; and shall be updated at least quarterly thereafter. An arbitration organization that becomes subject to this subtitle before July 1, 2016, shall report the information required to the extent it is available. The information shall be made available to the public: (1) in a computer–searchable format that is accessible at the internet web site of the arbitration organization; and may be downloaded without a fee; and (2) in writing on request; and at a fee that does not exceed the actual cost to the arbitration organization of copying the information.</p> <p>The information provided by an arbitration organization may be considered in determining whether a consumer arbitration agreement is unconscionable or otherwise unenforceable under law. An arbitration organization is not liable for collecting, publishing, or distributing the information required. Failure to comply may not be the sole reason to refuse to enforce an award made in a consumer arbitration; and may be considered as a factor in determining whether a consumer arbitration agreement is unconscionable or otherwise unenforceable under law.</p>	<p>2/23 FIN 2/17 ECM</p>	<p>Monitor</p>
-------------------	--	------------------------------	----------------

	A consumer or the attorney general may seek an injunction to prohibit an arbitration organization that has engaged in or is engaging in a violation of this subtitle from continuing or engaging in the violation. The arbitration organization is liable to the person bringing the action for an injunction for the person's reasonable attorney's fees and costs if: the court issues the injunction; or the arbitration organization voluntarily complies with this subtitle after the action is filed.		
	SB882 Unemployment Insurance – Federal Extended Benefits for the Long-Term Unemployed (Administration) NOT YET AVAILABLE	Rules	
Affected Industry	Long Term Care Bills		
ALL	HB3/SB577: Pharmacies – Taking Back and Disposing of Unused Drugs (Valderrama): Requires pharmacies to take back and dispose of unused prescription and nonprescription drugs in accordance with guidelines by the United States FDA. NOTE: It is unclear how this would be implemented. No details are in the bill and there is no language regarding how and under what circumstances a pharmacy would “take back” drugs. The FDA has a consumer policy for disposal at http://www.fda.gov/ForConsumers/ConsumerUpdates/ucm101653.htm and the federal guidelines are http://www.whitehousedrugpolicy.gov/publications/pdf/prescrip_disposal.pdf . It appears that this bill may be trying to give pharmacies the authorization to develop “take back” programs but it is very vague and unclear.	2/22 HGO 3/9 EHEA	Letter of Concern regarding ambiguities in the legislation – how, when, who, etc.
NF	SB57: Maryland Health Care Commission – Certificate of Need Requirements (DHMH – MHCC): Expands the CON exemption for closures to other health care facilities. The legislation would state that a CON is not required to close any health care facility or part of a health care facility as long as certain procedures are followed. Currently, this law only applies to hospitals. The legislation would authorize the MHCC to require a health care facility other than a hospital to hold a public informational hearing within 30 days after filing a notice of its proposed closure or partial closure with the Commission.	1/25 FIN Passed Senate	Support
NF	SB93/HB64: Board of Examiners for Nursing Home Administrators – Sunset Extension (DHMH): This bill extends the BENHA to July 1, 2017. On or before October 1, 2011, the Board must submit a report to the General Assembly on: (1) a plan to improve the timeliness and functioning of its disciplinary process, including the complaint investigation process; (2) a jointly developed plan to improve communication between the Board and the Department of Aging's Long Term Care Ombudsman Program; (3) a review of trends in licensing, with a focus on new licenses issued, the stability of renewal of licenses, and	2/1 FIN 2/2 HGO Passed Senate with amendment to add LTC Ombudsman	No Position but support the extension (required by federal law)

	<p>licensees on inactive status;</p> <p>(4) implementation of an online renewal process;</p> <p>(5) implementation of the planned database to track deficiency survey reports;</p> <p>(6) implementation of new and revised regulations proposed through the Regulatory Review and Evaluation Process in 2009, including those relating to the Administrator-in-Training program, the disciplinary process, and new causes for disciplinary action; and</p> <p>(7) the additional revenue generated from alterations to the fee structure through proposed regulatory changes.</p>		
NH and ALFs	<p>SB203/HB82: Health Care Decisions Act: Medical Orders Life Sustaining Treatment Form (Montgomery/Morhaim and Kipke). This is a bill being put forth by OHCQ, MIEMSS, MEMA and other state agencies. Meetings were held during the summer on the topic, which LifeSpan representatives participated in. The legislation mandates the development of a medical order life sustaining treatment form and instructions for completing and using the form. It must be used in health care facilities, including ALFs and NHs. It is not an advance directive. Upon admission, a health care facility must complete it or ask for a completed one upon admission. The health care facility must update per the instructions and offer a patient, agent or surrogate decision maker the opportunity to participate in the completion and document if the person declines to participate. It must include the known decisions of the patient or decision maker and any known advance directive if the person is not competent. Other health care providers can use the form but must also allow a patient to participate in the completion of it.</p> <p>The MOLST form must be kept in the patient’s medical record, physically accompany the patient or be transmitted electronically or by fax when the person transfers to a health care facility, and be given to the patient, health care agent or surrogate if the patient residents at home or is discharged from the health care facility to home.</p> <p>A health care facility must comply with all medical orders in the MOLST form, regardless of whether the signing physician or nurse practitioner has admitting privileges at the facility. The most recent MOLST form controls if there are conflicts between MOLST forms. A health care provider may rely in good faith in the presumed validity of the form.</p> <p>*** The form takes effect October 1, 2011 but states that by February 1, 2012, a health care facility (NF and ALF) must complete a MOLST form for each patient who was admitted to the health care facility BEFORE October 1, 2011 and offers the patient, agent or surrogate decision maker the opportunity to participate.</p> <p>The DRAFT form, guide and instructions can be found on the OHCQ website at http://dhmh.maryland.gov/ohcq/news_media/molst.htm</p>	<p>2/8 HGO 2/9 FIN</p> <p>**Workgroup in Senate this week</p>	<p>FWA – Amendments extended time frame for completion from three months to six months</p>
AL	HB378: Maryland State Board of Nursing – Medication Technician Graduates (Nathan-Pulliam): Extends the	2/16 HGO	FWA – will

(maybe adult day)	practice timeframe from 90 days to 180 days. This is a LifeSpan initiative.		make it an emergency bill and clarify that it is for initial and renewals
FYI	HB265: Developmental Disability Administration – Inspection of Licensees (Robinson): Requires DDA to ensure that surveyors who carry out inspections interpret and apply licensing requirements consistently and uniformly and DDA must evaluate periodically the performance of surveyors who carry out inspections to ensure the consistent and uniform interpretations and application of the licensee requirements.	HGO 2/10	No Position
NH, Adult Day Care, Older Adults Waiver	SB510: Maryland Medical Assistance Recovery Audits (Shank): Requires the Department to enter into contracts with private consultants to conduct periodic recovery audits of payments made by the Medicaid program. The consultant can pursue a judicial action to recover overpayments paid by the program.	FIN 3/2	HOLD
NH	SB726: Hospitalized Adults Disabled Persons – Appointment of Temporary Limited Guardians (Robey): Creates a temporary limited guardianship. Requires the court to hear and rule (within 14 days from filing) for emergency protective serves for the temporary and limited purpose of authorizing consent to discharge for a hospital to a long-term care or less restrictive rehabilitation care facility. The court can appoint an interested person, the Director, the Secretary of Aging or the Director of a local agency on aging. Limited guardianship expires after 60 days or whenever a guardian is appointed.	JPR 3/2	HOLD
ALL	SB770/HB460: Prescription Drug Repository Program – Disposal of Prescription Drugs and Medical Supplies (Conway/Murphy): Amends the Prescription Drug Repository Program to allow a pharmacy approved as a repository program to be able to accept prescriptions and medical supplies that cannot be used for needy individuals for proper disposal.	3/3 FIN and EHEA HGO 2/22	HOLD: This is a Board of Pharmacy Bill.
ALL	SB822/HB1188: Maryland Communities for Lifetime Act (Middleton/Hubbard and James): The purpose of this legislation is to: (1) establish a comprehensive, strategic state plan to address the aging-in-place preference of current and future seniors; (2) direct financial and regulatory incentives to local communities to enhance aging-in-place services and facilitate the independence of older adults; and (3) promote a state aging-in-place program that overcomes barriers in housing, transportation, health care, employment, and social and civic engagement. The Department shall, in consultation with area agencies and the interagency committee, establish, oversee, and coordinate the program. The Department shall establish a process to certify communities as Communities for a Lifetime under the program. The department shall include the following criteria in its certification process for	FIN House Rules	HOLD

	communities for a lifetime: (1) the extent to which a community has sought and plans to expand public health, prevention, and wellness programs that serve older adults; (2) the extent to which a community has sought and plans to expand affordable transportation options; (3) the extent to which a community has sought and plans to expand affordable rental housing and the ability to own affordable homes; (4) the extent to which a community has sought and plans to expand employment, civic engagement, recreation, and leisure options for older adults; and (5) the extent to which a community has sought and plans to expand other initiatives that boost the abilities of older adults to age in place. A community for a lifetime shall submit to the Department on or before September 1 each year a progress report on the community's efforts to enable aging in place and a report on the community's plans to enable aging in place in the future.		
NF	HB575: Medicaid – Redeterminations of Eligibility for Program Recipients in NFs (McConkey): On or before October 1, 2011, the Department of Health and Mental Hygiene shall develop and implement a streamlined process for the annual redetermination of eligibility under the Maryland Medical Assistance Program of Program recipients who require a nursing facility level of care. On or before December 1, 2011, the Department of Health and Mental Hygiene shall report on the development and implementation of the streamlined process for the redetermination of eligibility to the Senate Budget and Taxation Committee, the Senate Finance Committee, the House Appropriations Committee, and the House Health and Government Operations Committee. NOTE: This bill is well-intentioned but it does not include the initial applications. In addition, the reporting dates are actually longer than currently in the DHR/DHMH workplan, which has the dates of September 1, 2011 for streamlining the redetermination process.	3/1 HGO	Support the bill but dates need to be accelerated. We need to demand CHANGES NOW.
	HB924: Commission on State Administered Medical Malpractice Liability Insurance (Mizeur): Creates a 20-member Commission on State Administered Medical Malpractice Liability Insurance. The Commission shall examine the innovative and cost-effective federal model for insuring physicians under the Federal Tort Claims Act and shall consider and recommend workable measures to provide affordable insurance to physicians who practice medicine in the State under the Maryland Tort Claims Act. In working to design an effective State-administered medical malpractice insurance program, the Commission shall also consider ways to incentivize beneficial physician practices through this program, such as delivery of error-free medical care, use of electronic medical records, treatment of patients in designated underserved areas, and treatment of all patient types, including patients covered through Medicare, Medicaid, and the Maryland Children's Health Program. NOTE: There is no representative from long-term care on the Commission – do we want to add one?	3/2 ECM	Monitor the Commission if passed.
	SB700/HB1149: Pharmacies – Delivery of a Controlled Dangerous Substance (Klausmeier/Costa): With regard to mail order prescriptions not delivered directly to the patient, it requires an adult to sign for the delivery of a prescription drug or substance that is listed in Schedule II as a controlled dangerous substance to a residence. The Board shall waive the requirements for a pharmacy SERVICING A NURSING FACILITY OR owned and operated by a hospital, nursing facility, or clinic to which the public does not have access to purchase pharmaceuticals on a retail basis. NOTE: Does this affect AL or other industries?	3/9 EHEA House Rules	No Position
NF	SB843: Maryland Medical Assistance Program – Eligibility Determinations (Kelley): This bill is in two parts: The	FIN	

	<p>first part requires an applicant to be able to request a hearing for unreasonable delay if an eligibility determination is not made within 30 days. The Department is required to issue a decision at the hearing. If the Department cannot issue a decision because more information is needed, then the Department must give the individual at the hearing a list of the information needed and the information has 30 days to comply. Within 30 days of receiving the information from the individual, the Department must issue a determination. The second part requires the departments to provide budget estimates for complying with the 30 day requirement and to submit monthly reports to the General Assembly on number of cases pending, denied, reasons for denial, backlog, steps being taken on the streamline the process and address the backlog</p>		
	<p>SB883 Prescription Drug Monitoring Program (Administration) NOT YET AVAILABLE</p>	<p>Rules</p>	
	<p>SB884 Prescription Drugs – Dispensing Permits (Montgomery)</p>	<p>Rules</p>	
	<p>FYI – Other Health Care Bills Unrelated to LTC Per Se</p>		
	<p>SB44/HB266: Insurance – Qualified State LTC Insurance Partnership Program – Reporting (Middleton): Clarifies that the annual report on the program only includes information on the number of LTC policies offered in the State under this program rather than all LTC policies in the State.</p>	<p>SB44 FWA (technical)</p>	
	<p>SB56: Health Insurance – Evaluation of Quality of Care and Performance of Health Benefit Plans (DHMH): Expands the HMO Report Card to other health insurers and nonprofit health service plans.</p>	<p>1/25</p>	

Questions regarding information contained in this document should be directed to Danna Kauffman, Vice President of Public Policy, Lifespan Network at dkauffman@lifespan-network.org.