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TO: MDACEP Public Policy Committee
FROM: Danna Kauffman
DATE: April 13, 2021
RE: Final 2021 End-of-Session Report

The 442nd Session of the Maryland General Assembly began at noon on Wednesday, January 10th and concluded at midnight on Monday, April 12th. As expected, this was an unprecedented Session, conducted entirely virtual via YouTube. This format created many challenges but also provided opportunities. The main challenge was the lack of face-to-face discussions with legislators and colleagues. One legislator described this as “the lack of curbside chats.” The main opportunity was the ability to watch all voting sessions.

Despite this being a virtual Session and a Session operating during a catastrophic health emergency, the number of bills introduced was higher than in previous sessions. For example, this Session, the General Assembly considered 2,788 bills and resolutions. As a comparison, the General Assembly considered approximately 2,499 bills and resolutions during the 2019 Session. Another stark difference this Session was that approximately 783 bills were pre-filed and introduced on the first day of Session, a record-breaking number.

Below is an overview of the Fiscal Year 2022 budget and bills of interest to MDACEP divided into subject categories.

Fiscal Year 2022 Budget

With the inclusion of an additional \$92 million, E&M codes will be at 93% of Medicare under the Maryland Medicaid program. The budget committees are also requiring several reports to be completed by State agencies. One notable report is the requirement that the Maryland Department of Human Services report on youth remaining in emergency rooms or inpatient hospital settings longer than is medically necessary. The report is due by November 30, 2021. The Behavioral Health Administration is also required to report by October 1, 2021 on the new, nationwide, three-digit phone number for Americans in crisis to connect with suicide prevention and mental health counselors adopted by the Federal Communications Commission (9-8-8 number).

Immunity Bills

Despite the heroic efforts by our health care workers during this past year, the General Assembly failed to pass legislation to extend immunity protections. Maryland's current law states that "a health care provider is immune from civil and criminal liability if the health care provider acts in good faith and under a catastrophic health emergency proclamation."¹ This law was originally passed following the attacks on September 11, 2001. Knowing what we know now regarding catastrophic health emergencies caused by a communicable disease, the medical community sought to expand the protections. ***Senate Bill 311/House Bill 25: Catastrophic Health Emergency – Health Care Providers – Definition and Immunity (Maryland Health Care Heroes Protection Act) (failed)*** would have expanded the definition of health care provider to include an employee, agent or contractor of a health care facility who provides or assists with the delivery of health care and would have applied the protections to acts directly or indirectly related to the Governor's proclamation, an important distinction given the prohibition on procedures and the lack of standards of care for responding to the virus. Considering that this General Assembly has repeatedly tried to weaken Maryland's current medical malpractice laws, the General Assembly took the stance that Maryland's law was adequate and that an expansion would somehow erode the standard of care within the medical community.

Similar bills such as ***Senate Bill 210/House Bill 508: COVID-19 Claim – Civil Immunity (failed)*** also did not pass. This bill would have extended broad immunity protections for claims arising out of COVID-19 to all businesses, not just health care facilities and providers.

An immunity bill unrelated to COVID-19 again failed to pass. ***House Bill 212: Criminal Procedure – Medical Emergency – Immunity (failed)*** would have established that a person who seeks, provides, or assists with the provision of medical assistance (or who is experiencing a medical emergency) in accordance with statute may not be detained or prosecuted in connection with an outstanding warrant for another nonviolent crime if the contact with the subject of the warrant was obtained solely because of the person seeking, providing, assisting with, or receiving the provision of medical assistance.

Licensure Bills/Scope

Senate Bill 5/House Bill 28: Public Health – Implicit Bias Training and the Office of Minority Health and Health Disparities (passed) requires applicants for licensure or certification of a health occupation (designated by a Board) to attest in their renewal application that the applicant has implicit bias training. This is a one-time training for the first renewal or initial licensure after April 1, 2022.

Senate Bill 3/House Bill 123: Preserve Telehealth Access Act of 2021 (passed) codifies the use of telehealth that occurred during the COVID-19 pandemic. It allows for audio-only and payment parity between in-person and telehealth visits. It also extends the protections to Medicaid but provides flexibility to implement in regulations. The bill's provisions are effective between July 1, 2021 through June 30, 2023. During that time, the Maryland Health Care Commission is required to study the provision of telehealth and issue a report with

¹ Section 14-3A-06 of the Public Safety Article

recommendations to the General Assembly on or before December 1, 2022. This timeline provides the General Assembly the opportunity to make changes to the law during the 2023 Session (prior to the termination of the provisions on June 30, 2023). **House Bill 732/Senate Bill 568: Health Care Practitioners - Telehealth - Out-of-State Health Care Practitioners (failed)** that would have authorized an “out-of-state health care practitioner” to provide telehealth services to a patient in Maryland failed.

Senate Bill 78: Maryland Institute for Emergency Medical Services Systems - Administration of Ketamine - Data Collection (passed) requires the Maryland Institute for Emergency Medical Services Systems (MIEMSS) to report on the use of ketamine. The report must include: (1) whether the administration of ketamine to each individual by an emergency medical services provider was directed or requested by a law enforcement officer; (2) the dosage of ketamine administered to each individual by an emergency medical services provider; (3) if known, the height, weight, age, gender, and race of each individual administered ketamine by an emergency medical services provider; and (4) the diagnosis for which ketamine was administered by an emergency medical services provider. As introduced, this bill was opposed by MDACEP because it would have prohibited a law enforcement officer from instructing an EMS provider from administering ketamine and would have prohibited an officer from being able to administer it. MDACEP opposed the bill because MIEMSS adopted a written protocol on the use of ketamine in the Fall of 2020, which Senate Bill 78 was attempting to codify. MDACEP took the position that, like clinical standards, MIEMSS protocols should not be codified.

Unlike in previous sessions, only one bill was introduced regarding the Prescription Drug Monitoring Program (PDMP) and opioids. **House Bill 1125: Prescription Drug Monitoring Program – Prescribers of Opioids – Notification Requirement (failed)** would have required a prescriber who prescribes or dispenses an opioid dosage of 50 morphine milligram equivalents or more to notify the PDMP as to whether the prescriber (1) has received education on the risks associated with opioid use; (2) is aware that an opioid overdose reversal drug is available; and (3) has prescribed or dispensed an opioid overdose reversal drug.

Behavioral Health Issues

Several bills seeking to better address behavioral health did pass this year. Given the COVID-19 pandemic, it is anticipated that behavioral health issues will remain on the forefront in future sessions.

Senate Bill 286/House Bill 108: Behavioral Health Crisis Response Services – Modifications (passed) alters the requirements for grant proposals and for awarding grants under the Behavioral Health Crisis Response Grant Program. Under the changes, an application must be able to serve all members of the immediate community with cultural competency and appropriate language access, commit to gathering feedback from the community on an ongoing basis and improving service delivery continually based on this feedback, demonstrate strong partnerships with community services that include family member and consumer advocacy organizations and regional stakeholders, and show a plan linking individuals in crisis to peer support and family support services after stabilization. The House did remove the requirement

for “minimizing law enforcement interaction” in each grant and level funded the Program at \$5 million for the next few years.

Senate Bill 164/House Bill 605: Veterans – Behavioral Health Services – Mental Health First Aid (passed) requires the Maryland Department of Health (MDH) to include mental health first aid among the behavioral health services for which MDH provides service coordination for eligible veterans.

Senate Bill 41/House Bill 132: Health - Mental and Emotional Disorders - Consent (Mental Health Access Initiative) (passed) lowered the age for when a youth can seek mental health treatment from 16 years old to 12 years old. Specifically, the bill establishes that a minor who is at least age 12 and is determined by a health care provider to be mature and capable of giving informed consent has the same capacity as an adult to consent to consultation, diagnosis, and treatment of a mental or emotional disorder by the health care provider or a clinic. The capacity of any minor to refuse consultation, diagnosis, treatment for a mental or emotional disorder for which a parent, guardian, or custodian of the minor has given consent remains unchanged. A minor younger than age 16 may not consent to the use of prescription medications to treat a mental or emotional disorder. The bill also authorizes a health care provider to decide to provide specified information to a parent, guardian, or custodian of a minor unless the health care provider believes that the disclosure will lead to harm to the minor or deter the minor from seeking care.

Senate Bill 299/House Bill 548: Human Services - Trauma-Informed Care - Commission and Training (Healing Maryland's Trauma Act (passed) establishes the Commission on Trauma-Informed Care as an independent commission in the Department of Human Services to coordinate a statewide initiative to prioritize the trauma-responsive and trauma-informed delivery of State services that affect children, youth, families, and older adults. The Governor’s Office of Crime Prevention, Youth, and Victim Services must provide staff to the commission. The bill requires each commission member to participate in training approved by U.S. Department of Health and Human Services or MDH.

House Bill 377: Commission on Student Behavioral Health and Mental Health Treatment (failed) would have established the Commission on Student Behavioral Health and Mental Health Treatment to study, evaluate, and revise guidelines for student behavioral health and mental health treatment and practices, including school-based health centers.

Senate Bill 168/House Bill 209: Public Health - Maryland Suicide Fatality Review Committee (failed) would have established the Maryland Suicide Fatality Review Committee (State team) to identify and address the factors contributing to suicide deaths and facilitate system changes in the State to prevent suicide deaths.

Bills that failed include:

House Bill 244/Senate Bill 161: Task Force to Study Access to Mental Health Care in Higher Education (failed) would have created a Task Force to, among other provisions, study

the policies and procedures adopted by institutions of higher education in the State regarding access to mental health care and the prevention and treatment of mental illness in students.

House Bill 29: Health – Standards for Involuntary Admissions and Petitions for Emergency Evaluation – Substance Use Disorders (failed) would have added substance use disorder (currently only uses mental disorder) to the conditions for granting a certification for involuntary admission of an individual for admittance to a VA hospital or other facility under certain circumstances.

House Bill 537/Senate Bill 398: Mental Health Law - Petitions for Emergency Evaluation – Procedures (failed) would have allowed health care practitioners to bring an evaluatee under emergency petition to a health care facility rather than a peace officer. Legislators expressed concern for the safety of hospital employees if a peace officer was not present.

COVID-19/Essential Workers

Several bills were introduced this Session related to essential workers and the COVID-19 pandemic. However, in the end, only one bill passed - **House Bill 581/Senate Bill 486: Maryland Essential Workers' Protection Act**. As introduced, the bill would have required, among other provisions, for employers to pay essential workers \$3/hour hazard pay; 14 days paid sick leave; and any unreimbursed health care costs, including travel to medical appointments under an “emergency.” The term “emergency” was broadly defined and could have encompassed a weather event, such as a snowstorm or a flood. The bill would also have allowed workers to leave a work site if the worker believed that the site was unsafe and would have required an employer to evacuate and sanitize a work site if a worker contracted an infectious disease. After many weeks of debate, the bill was amended to limit an emergency to a proclamation by the Governor of a catastrophic health emergency caused by a communicable disease. The bill also removes the requirement for hazard pay, requires paid sick leave to be granted only if State or federal funds are available to the employer to cover the costs, and requires the employer to only pay for the cost of testing if it is not covered by insurance or obtained free of charge. The bill also clarifies that Maryland Occupational Safety and Health Division standards apply for when a worker can leave work for an unsafe working condition and eliminates the requirement for evacuation of a work site in lieu of requiring an employer to implement mitigation strategies.

House Bill 581 also incorporated several requirements/amendments offered in other bills. For example, as introduced, **House Bill 124: Occupational Safety and Health Standards to Protect Employees – Aerosol Transmissible Diseases – COVID-19** contained very specific requirements on how employers must respond to aerosol transmissible diseases. Rather than pass House Bill 124, the General Assembly incorporated into House Bill 581 amendments that had been offered on House Bill 124. Consequently, House Bill 581 also requires the Commissioner of Labor, within two weeks of the passage of the legislation, to adopt an emergency temporary standard related to COVID-19 unless the federal government already has adopted a standard. By July 1st, MDH and Department of Labor must create a template for employers to use in responding to a catastrophic health emergency.

Likewise, ***Senate Bill 727/House Bill 1326: Maryland Healthy Working Families Act - Revisions and Public Health Emergency Leave***, which would have required employers to provide additional paid sick leave during a public health emergency failed to pass because House Bill 581 addressed the issue.

Other bills that failed to pass and were not included in House Bill 581 were bills that would have created a presumption for COVID-19 under worker's compensation laws – ***House Bill 1247/Senate Bill 725; Senate Bill 756; Senate Bill 812; House Bill 1199/Senate Bill 813***.

Lastly, ***Senate Bill 728/House Bill 923: Labor and Employment - Worker Safety and Health - Injury and Illness Prevention Program***, which would have required an employer to implement both an Injury and Illness Prevention Program and Committee also failed.

Public Health/Public Safety

Senate Bill 105/House Bill 289: Peace Orders – Workplace Violence (passed) authorizes an employer to file a petition for a peace order that alleges the commission of specified acts against the petitioner's employee at the employee's workplace. The employer must notify the employee before filing for the peace order. It extends existing statutory provisions relating to the filing, issuance, and modification of peace orders, as well as the shielding of related court records, to peace orders filed by employers on this basis. An employer is immune from any civil liability that may result from the failure of the employer to file a petition for a peace order on behalf of an employee. An employer may not retaliate against an employee who does not provide information for or testify at a peace order proceeding. Originally, the Senate removed the immunity clause if an employer did not file a peace order. The House rejected it and the compromise is that the immunity clause will be part of the original bill but will "sunset" or be removed after October 1, 2023.

Senate Bill 279/House Bill 396: Public Health – Overdoses and Infectious Disease Prevention Services Program (failed) would have established what has been known as a "safe injection sites" by authorizing a "community-based organization" to establish an Overdose and Infectious Disease Prevention Services Program to provide a supervised location where drug users can consume pre-obtained drugs, as well as receive other services, education, and referrals. This bill has been introduced for several years.

Senate Bill 712: Vehicle Laws - Protective Headgear Requirement for Motorcycle Riders – Exception (failed) would have removed the prohibition against operating or riding on a motorcycle without protective headgear for those at least 21 years old.

House Bill 1110: Criminal Law - Felony Second-Degree Assault - Emergency Medical Care Workers (failed) would have expanded the crime of felony second-degree assault to include the intentional causing of physical injury to another person by a person who knows or has reason to know that the victim is a worker who is providing emergency and related services in an emergency department at a hospital or a freestanding medical facility. This bill has been introduced for several years. Members of the respective committees have expressed concern regarding the elevation of crimes to felonies.

Health Insurance/Miscellaneous

Prior to the bill hearing, ***House Bill 1021/Senate Bill 758: Health Insurance - Incentive Arrangements – Authorization (failed)*** was withdrawn at the request of MedChi, the Maryland Hospital Association and CareFirst. The bill would have authorized insurers to enter into downstream risk arrangements with physicians and other entities, an arrangement which is currently prohibited under Maryland law. Given the complexity of this issue and the concerns raised by physicians, the sponsors agreed to withdraw the bill but requested that the three groups work over the interim to develop legislation for the 2022 Session that will both allow for these arrangements but provide physicians and others with necessary protections. To speak with one voice, MedChi is forming a Physician Advisory Group for this issue. Drs. Linton, Silverman and Tassey will be representing MDACEP on this Group.

While MDACEP did not track this bill, ***House Bill 565/Senate Bill 514: Health Facilities - Hospitals - Medical Debt Protection*** did pass and outlines requirements relating to hospital debt collection policies and payment plans and prohibits a hospital from taking certain actions when collecting debt. A hospital must annually submit its policy on the collection of debts owed by patients as well as a specified report to the Health Services Cost Review Commission (HSCRC), which HSCRC must compile into an annual medical debt collection report. The Maryland Hospital Association opposed the bill as introduced but worked with the legislators to adopt amendments to make the provisions more feasible for operations.

From the beginning of Session, legislators openly critiqued the Administration's responses to the COVID-19 pandemic, including the vaccination roll-out. Consequently, ***House Bill 836/Senate Bill 741: COVID-19 Testing, Contact Tracing, and Vaccination Act of 2021*** was introduced to require MDH, in collaboration with local health departments, to adopt and implement a two-year plan to respond to COVID-19 by June 1, 2021 that includes testing, contact tracing and vaccination protocols. Monies expended for these purposes must only be from federal funds and not State funds. The FY2022 budget contains \$572 million of federal funding for testing, contract tracing, and vaccinations.