MDAAP Final Report

April 9, 2013

The 431st Session of the Maryland General Assembly concluded at midnight on Monday, April 8th with its usual fanfare. In this Session, the General Assembly considered 2,619 legislative bills and resolutions. It was a particularly notable Session for Governor O'Malley who saw repeated successes in enacting controversial proposals including passage of major gun control legislation, the repeal of the death penalty and an increase in the gasoline tax. This report summarizes the major issues of interest to MDAAP. A full list of bills identified by MDAAP and monitored throughout the Session is provided as a separate attachment. Further information can be provided on any of the bills tracked on MDAAP's behalf if requested.

Health Reform:

The Administration successfully spearheaded passage of Senate Bill 274/House Bill 228 (*Maryland Health Progress Act of 2013*). This legislation was the third and final legislative step in implementing the Affordable Care Act and provided multiple details relating to the new Exchange (the Maryland Health Connection) which will be the "marketplace" for uninsured individuals to obtain coverage. Of particular interest in this legislation was the "continuity of care" provisions which provided that a patient shifting from one insurance product to another would be allowed to continue to see his or her doctor for up to 90-days with the new insurance company being responsible for compensating the doctor. An amendment, offered by MedChi, was added to this legislation specifying that Maryland's "Assignment of Benefits" law would apply even after the 90-days meaning that, in certain circumstances, the patient could continue with his or traditional doctor by "assigning" the new insurance benefits. MDAAP will continue to monitor the implementation of the ACA. Enrollment through the Exchange is to begin in October of this year with an effective date of January 1, 2014.

Insurance Reform:

Step Therapy: Senate Bill 746/House Bill 1015 (*Health Insurance – Step Therapy – Fail-First Protocol*) did not get a vote in either the Senate Finance Committee or the House Health & Government Operations Committee. This legislation addressed the growing use of "fail first" policies and other barriers to access imposed on subscribers. Step therapy erodes the effective control of patient care by second guessing recommendations for treatment and medication. Leadership in the House HGO Committee decided not to bring it up for a vote. Consequently, the Senate Finance Committee did not vote on the bill. However, there may be light at the end of the tunnel. In the last few days, MedChi was successful in persuading the Presiding Officers (Senate President Thomas V. "Mike" Miller, House Speaker Michael E. Busch, Senate Finance Chair Thomas "Mac" Middleton and House HGO Chair Peter A. Hammen) to direct a letter to the Maryland Health Care Commission asking them to convene a meeting of stakeholders to consider the Step Therapy issue and to recommend a solution to the General Assembly by December 15, 2013. Hence, while the bill did not receive a vote, the issue is moving forward. This is important legislation will be back in 2014 as it is important to establish that a physician's

clinical judgment needs to override insurance protocols when necessary for a patient's clinical improvement.

Mental Health Parity: The mental health community was successful in enacting Senate Bill 581/House Bill 1216 (*Health Insurance – Federal Mental Health Parity and Addiction Equity Act – Notice and Authorization Forms*) and Senate Bill 582/House Bill1252 (*Health Insurance – Federal Mental Health Parity and Addiction Equity Act – Utilization Review Criteria and Standards*). This legislation was critical to the proper enforcement of the Federal Mental Health Parity and Addictions Equity Act (the Parity Law). The Parity Law will apply to all policies issued in Maryland by January 1, 2014.

Senate Bill 581/House Bill 1216 will require insurance entities to advise their enrollees of the existence of the Parity Law with information about the law. Senate Bill 582/House Bill will require private review agents, which are regulated by the Maryland Insurance Administration, to ensure that the criteria and standards used for Maryland policies are in compliance with the Parity Law.

Scope of Practice:

Naturopaths: For the third year, the effort to defeat the initiative of so called "naturopathic" doctors was successful. Senate Bill 783/House Bill 1029 (*State Board of Physicians − Naturopathic Doctors*) did not receive a favorable vote and, indeed, the Senate Bill was withdrawn on the day of its hearing given the effectiveness of the opposition. MedChi had offered to support the legislation provided that a physician would be the "collaborator" with any "naturopathic" doctor. The naturopaths do not want physician involvement and this refusal once again doomed their legislative proposal. It will undoubtedly return next Session.

Pharmacists: Senate Bill 401/House Bill 179 (*Pharmacists – Administration of Vaccinations – Expanded Authority and Reporting Requirements*) was successfully enacted but with important reporting requirements requested by the physician community. The legislation does not expand authority for pharmacists to administer vaccines to children under the age of 11. It does authorize pharmacists to administer CDC recommended vaccines to adolescents from age 11 to 18 but only with a physician's prescription. They are also authorized to administer CDC recommended vaccines and international travel vaccines to adults pursuant to vaccine specific protocols to be developed in regulation. Pharmacists that administer a vaccine are required to report the administration to the prescribing physician or, if there is not a prescribing physician, to the patient's primary care physician or facility where the patient receives regular medical care. The pharmacist is also required to report the administration to the Immunet registry. Study language directs DHMH to study whether all prescribers should be mandated to report vaccine administration to Immunet. Mandatory reporting will be an issue that arises in future sessions.

Nurse Practitioners and P.A.s: House Bill 630 (*Rules of Interpretations – Interpretation of 'Physician' – Inclusion of Advanced Practice Nurse and Physician Assistant*) was given an unfavorable report by the House HGO Committee. This bill was remarkable in that it sought to have the word "physician" interpreted to mean advanced practice nurses and physician assistants in any reference in the Annotated Code of Maryland. This "across the board" approach did not receive serious consideration.

Midwives: Lay midwife and home birth related issues are likely to become the next major scope of practice issue for the physician community. There is a strong and growing "grassroots" demand for home births by a small but well-educated and vocal group of Maryland women and their families. The demand for accessible home birth options is further exacerbated by Maryland's large Amish population which relies on home birth. 2011 legislation resulted in a DHMH workgroup that met extensively over the interim. The workgroup did not reach consensus on a single issue and its report was essentially an outline of options. Absent policy direction from the workgroup, several bills related to certified nurse midwives (CNM) and "lay midwives" were introduced this year. Senate Bill 760/House Bill 1151 (*State Board of Nursing – Certified Nurse Midwives – Standards and Practice Guidelines*) eliminated the requirement for CNMs to file collaborative plans that include an attestation identifying a physician with whom they collaborate. Senate Bill 1293/House Bill 647 (*Higher Education and Health Occupations – Nurse Midwifery Program – Study*) required a study of barriers to nurse midwifery training programs and options to expand training in the State. House Bill 1202 (*Health Occupations – Certified Professional Midwives – Pilot Program*) proposed a two year pilot program that would have enabled lay midwives to practice under a loose regulatory structure prior to determining if they should be permanently authorized to practice. All three proposals were withdrawn by their sponsors at the request of House and Senate Committee leadership. However, the House Health and Government Operations Committee has requested DHMH to convene two separate interim workgroups to look at (1) certified midwifery practice and (2) home birth options and the regulation of lay midwives. These issues will return in 2014.

Truth in Advertising: House Bill 1356/Senate Bill 512 (*Health Care Practitioners-Identification Badge*) was also passed. This was a MedChi initiative that began in 2012 as part of the "Truth in Advertising" legislation. The bill requires that licensed practitioners wear badges displaying their name and license in medical offices (but not in solo practices), ambulatory care and urgent care facilities. The Boards governing the practitioners can carve out situations where provider safety or the need for a sterile environment weighs against requiring display of a name badge.

Child Maltreatment:

There were a plethora of bills that addressed issues relative to child maltreatment. Probably the most significant successful initiative was the passage of House Bill 245 (*Family Law – Substance-Exposed Newborns*) which establishes reporting requirements for substance exposed newborns and those showing symptoms of fetal alcohol syndrome identified at the time of delivery or within the first 30 days. The legislation was the result of a collaborative effort by the Department of Human Resources and affected stakeholders to craft an approach to these reporting requirements that enabled the State to be in compliance with the federal CAPTA (Child Abuse Prevention and Treatment Act) law without creating unintended consequences such as disincentives for pregnant women to access care. The bill, as enacted, creates a new section of law and therefore is treated differently from the balance of the child abuse and neglect reporting requirements. For instance, there is no involvement by law enforcement. It is anticipated that reports made pursuant to this section will be handled through the alternative response mechanism DHR is in the process of implementing.

The General Assembly also passed Senate Bill 86 (*Voluntary Placement for Former Children in Need of Assistance*) that enables the court to continue the voluntary placement of CINA children between the ages 18 and 21. It will allow these children who are aging out of the system to voluntarily remain connected with their foster families. It will provide an excellent mechanism for transition for some children.

There were numerous efforts to address concerns about the perceived failure of health care providers to comply with mandatory reporting requirements. None of these initiatives were successful including an effort to establish a comprehensive task force to look at the issue of child abuse and reporting more comprehensively. It remains a subject where there is little concurrence on the appropriate approach.

One final initiative that received significant attention was an effort to close existing loopholes in the sexual abuse statutes relative to school employees. House Bill 14 (*Criminal Law – Part-Time School Employees, Contractors, and Coaches – Sexual Contact with Minors*) and Senate Bill 105 (*Criminal Law – Sexual Contact with Minors – School Employees*) were passed by their respective chambers in different versions but the two chambers were unable to reach concurrence before the General Assembly adjourned. This initiative will undoubtedly be revisited next year.

Public Health Issues:

Firearm Safety: The Governor's effort to enact comprehensive gun control reform was ultimately successful despite several weeks of challenging discussions regarding the intersection of gun control and mental illness. Senate Bill 281 (*Firearm Safety Act of 2013*) initially passed the Senate with a controversial amendment that mandated certain reporting requirements to the National Instant Criminal Background Check (NICS) as well as procedural requirements for restoration of the right to possess a firearm. The Senate provisions created significant disincentives for individuals to seek care as well as impractical and unrealistic requirements for physicians and health care facilities relative to certification of individuals as "safe" to possess firearms. The House Health and Government Operations Committee spent significant time parsing through the complex issues raised by the intersection of mental illness, public safety, the health care delivery system and gun ownership. The final product, passed by both the House and Senate, balances those interests in a manner that enhances public safety, will not create unrealistic and unnecessary burdens for health care providers, particularly emergency department personnel, and will not create perceived disincentives to access care. The legislation's ultimate passage was a hallmark initiative of the Governor.

Pesticide Use Reporting: The creation of a database to track the use of pesticides in the State was a priority for the environmental community and supported by MedChi. Senate Bill 675/House Bill 775 (*Maryland Pesticide Reporting and Information Workgroup*) creates a stakeholder workgroup comprised of relevant agency representatives and stakeholders to comprehensively evaluate pesticide use reporting and data collection. The charge of the workgroup includes consideration of the public health aspects of pesticide, data collection and reporting.

Lead Testing: House Bill 303 (*Task Force to Study Point-Of-Care Testing for Lead Poisoning*) was successfully enacted. This Task Force will study and make recommendations regarding the use of and reimbursement for point–of–care testing to screen and identify children with elevated blood–lead levels. The composition of the Task Force includes a representative from the Chapter.

Epinephrine: Senate Bill 815/House Bill 1014 (*Public and Nonpublic Schools – Epinephrine Availability and Use – Policy*) expands the authorized use and availability of epinephrine enacted in 2012 for public schools to non-public schools. It also enhances the safety and training protections of the program for both public school and private schools.

Tanning: Senate Bill 488 (*Tanning Devices – Use by Minors − Prohibition*) was unsuccessful in the Senate Finance Committee by a vote of 7-4.

Tobacco Taxes: Senate Bill 700/House Bill 683 (*Tobacco Taxes – Health Maryland Initiative*) would have significantly increased Maryland's tobacco taxes. It was not surprising that this initiative was unsuccessful as it has always been conceived to be a multi-year effort and would probably be enacted after the next election. It is expected that candidates will "pledge" to raise tobacco taxes in the 2014 election and that those pledges will be collected in the next 4-year cycle of the General Assembly.

Synthetic Cannabinoids: House Bill 1/Senate Bill 109 (*Criminal Law- Cannabimimetic Agents – Prohibition*) was successfully enacted. It codifies "cannabimimetic agents" to the State's Schedule I controlled dangerous substances and adds several specific chemical substances that are considered cannabimimetic agents. In July 2012 the "Synthetic Drug Abuse Prevention Act of 2012" (SDAPA) was signed into law. SDAPA placed 26 substances on the federal list of Schedule I controlled dangerous substances, including all of the substances specified in this legislation. SDAPA also created a new definition of "cannabimimetic agents" with criteria by which similar chemical compounds are controlled. The SDAPA definition is identical to the one included in this bill.

Safe Driving: Senate Bill 87 (*Vehicle Laws – Seat Belts and Child Safety Seats)* was successfully enacted. An initiative by the Department of Transportation, the legislation requires all passengers, in both the front and back seats, to wear seatbelts. More important, it eliminates an exception in the law that waived the child safety seat requirements if there were more children than there were seats where a child could be properly secured. The bill also increases the fine to $50 for failure to comply with the child safety seat requirements. Senate Bill 339/House Bill 753 (*Motor Vehicles – Use of Wireless Communication Device – Prohibited Acts – Enforcement, Penalties*) was enacted on the last day as the result of a Conference Committee agreement between the House and the Senate. As enacted, the bill makes it a "primary" offense to use a hand held cell phone to call or text while driving.

School Health and Safety: There were various initiatives that addressed health and safety issues in the education setting. These included House Bill 1462 (*Task Force to Study a Later Starting Time for Maryland Schools*); House Bill 1417/Senate Bill 929 (*Public Schools –*

Cardiopulmonary Resuscitation and Automated External Defibrillator Instruction – Graduation Requirement); House Bill 855 (*Student Health and Fitness Act*) which established mandatory requirements for physical activity and physical education in elementary schools; and House Bill 453 (*Education – Maryland Center for School Safety*). Of these initiatives, only the creation of a Maryland school safety center was successful. The Center will be located at Bowie State University and has a comprehensive list of charges related to school safety issues.

Food Allergy Awareness: House Bill 9/Senate Bill 390 (*Health – Food Allergy Awareness, Food Safety and Food Service Facility Letter Grading – Posting Requirement and Task Force*) was enacted in a very different posture than introduced. As enacted, the legislation requires food establishments to display a poster to be developed by DHMH regarding food allergy awareness and the risks of allergic reaction. In addition, a task force was created to look at a comprehensive range of issues relative to food establishments, food allergies, staff training, food contamination and other related matters. The task force is to report its findings and recommendations by January 1, 2014.

Telemedicine

The Legislature made additional changes to the laws related to telemedicine, the most significant being Senate Bill 798/House Bill 1042 (*Hospitals – Credentialing and Privileging Process - Telemedicine*). This legislation deleted the requirement of "primary source" verification of a telemedicine consultant who was providing services at a hospital. Maryland law requires "primary source" verification which is an extremely time-consuming process. While primary source verification is appropriate for medical staff decisions at a hospital, such a requirement would impede the development of telemedicine where, for example, a specialist in Baltimore was consulted, via telemedicine with respect to a patient at a rural hospital. The legislation deleted the primary source verification and allowed a hospital to rely upon credentialing and privileging decisions already made by the distant site facility. However, the telemedicine consultant must hold a Maryland license to practice medicine and, second, the credentialing and privileging decisions must be approved by the medical staff of the hospital.

In addition, Senate Bill 496/House Bill 931 (*Maryland Medical Assistance Program – Telemedicine*) was enacted. This legislation applied to the Medicaid program the current Maryland rule applicable to commercial insurers which requires the reimbursement for telemedicine services. As amended, the Maryland Medicaid Program will be required to reimburse telemedicine. Maryland Medicaid opposed the bill in its original form although it indicated that it thought telemedicine was appropriate for use in rural settings. As amended by the House of Delegates on the last day, in addition to rural setting, telemedicine reimbursement by Medicaid will be also required in any setting if it is deemed to be medically necessary, for the treatment of cardiovascular disease or stroke in an emergency department and where an appropriate specialist is not otherwise available**.**