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## UPDATES FOR THE WEEK ENDING MARCH 23, 2018

### SESSION OVERVIEW:

We are in the final two weeks of Session. Session ends on April 9<sup>th</sup>.

### BUDGET:

The Senate and the House agreed to increase nursing homes and home-and-community based provider rates from 1% to 3% for FY19. The budget is now in conference committee. As soon as conference ends and the rate increase is confirmed, LifeSpan will send an alert to the membership requesting that they contact the Governor to request approval of the 3% rate increase. It is important to note that another bill - **House Bill 851: Medicaid and the Maryland Children's Health Program – Home and Community-Based Providers – Funding** which would have required a 3.5% rate increase for fiscal year 2020 and for each year thereafter for home-and-community based providers remains in Committee given the increase allocated in the budget to 3%. However, another bill (Senate Bill 1071) has been amended to require the Maryland Department of Health to examine (with stakeholders) the rate of reimbursement given to home-and-community based providers compared to the actual costs to provide care. A report is due to the General Assembly in December 2018.

### BILL UPDATES:

So far, the following bills that LifeSpan opposed have been voted unfavorable (withdrawn):

**House Bill 375: Continuing Care Retirement Communities - Continuing Care Agreements - Actuarial Studies** would have required Type Cs to conduct an actuarial study every five years. An actuarial study is not an appropriate tool for Type Cs and would not provide the level of financial security like a study on Type A contracts.

**House Bill 861: Nursing Homes and Assisted Living - Sex Offenders** would have required a nursing home or assisted living to check the sex offender registry for each resident upon admission and provide a notice to new residents of the availability of the registry.

**House Bill 455: Public Health - Assisted Living Programs - Educational Materials on Influenza Virus** would have required assisted living communities to provide information on the flu and the need to be vaccinated to each resident. Assisted living communities already provide this information to residents and their families. In addition, assisted living communities are voluntarily conducting flu clinics for employees and residents. A mandate is not necessary.

**House Bill 1299: Nursing Facilities: Discharge Plans -Review and Signature Requirement:** This bill requires that discharge papers from a nursing facility be signed by a social worker, nurse, nurse practitioner, physician or physician’s assistant. The bill does not differentiate between involuntary and voluntary discharge.

Four bills have received preliminary approval from at least one chamber:

This week **Senate Bill 108 – Regulation of Health Care Programs, Medical Laboratories, Tissue Banks, and Health Care Facilities – Revisions** – will be heard in the House Health and Government Operations Committee on March 27th. This bill, introduced by the Maryland Department of Health, eliminates the need to renew a license from the Office of Health Care Quality. Instead, the initial license will now be “on-going.” For residential service agencies, the bill also repeals the licensure fee requirement.

**Senate Bill 386: Maryland Nursing Home Resident Protection Act of 2018** inserts federal timeframes for OHCQ inspections into Maryland law. The bill also requires OHCQ to complete a dashboard with information on the number of surveyors. Originally, the bill required OHCQ to post the number of complaints received every two weeks on nursing homes on its website and on the Department of Legislative Services website and LifeSpan opposed including complaint information on the dashboard. The provision was subsequently removed. The House Health and Government Operations Committee will hear the bill on March 27<sup>th</sup>.

**Senate Bill 4: Department of Aging - Study of Nursing Home Quality of Care** has been amended to change the composition of the Oversight Committee on Quality of Care in Assisted Living and Nursing Homes rather than requiring the Department of Aging to conduct a study. As long as the Oversight Committee functions only as an advisory committee, LifeSpan will not oppose making changes to the membership or composition. The Senate has passed the bill and the House Health and Government Operations Committee will hold a hearing on it, but it has not yet been scheduled.

**House Bill 1483: Duties of a Guardian of the Person – Petition for Visitation** establishes a process through the courts when a family member is being denied visitation or information by another family member. The hearing in the Senate is March 28<sup>th</sup>.

**Senate Bill 30/House Bill 1581.** Despite opposition from various health care associations, the Senate passed this bill with a vote of 28-16 (supported by plaintiff’s attorneys). The bill eliminates the 20% rule for expert witnesses and paves the way for “professional witnesses”. The current law precludes as an expert a person who devotes annually more than 20 percent of their professional activities to testifying in personal injury cases. Luckily, the House Judiciary Committee, through strong advocacy efforts, amended the bill to address expert witnesses who later become disqualified through retirement or other circumstances while still maintaining the 20% rule. If the Senate does not concur, the bills will end up in conference committee.

**OUTSTANDING HEALTH BILLS (bills that have not received a vote in either chamber; red indicates LifeSpan position):**

**SUPPORT:** **Senate Bill 923: Maryland All-Payer Model Agreement – Medicare Skilled Nursing Facility – 3 Day Rule – Waiver** requires the Maryland Department of Health to include in the All-Payer Contract a request to waive the 3-day rule for those individuals seeking nursing home post care.

**SUPPORT:** **House Bill 1618/Senate Bill 939: Community-Based Services Waivers and State Disabilities Plan – Alterations (Maryland Disabilities Act)** seeks to address the policy that an individual first must be admitted to a nursing facility for 30 days to be eligible for waiver serves under the Community Options Waiver by stating that at least half the waiver participants must live in community-based housing immediately before the participant receives waiver services. The bill also requires the Department to develop a “true” waiting list for these services rather than an “interest registry.”

**SUPPORT:** *House Bill 1064/Senate Bill 937: Maryland Medical Assistance Program – Home and Community Based Waiver Services – Prohibition on Denial* provides that the Department of Health cannot deny an individual access to HCBS due to a lack of funding if the individual is discharged from a hospital directly to the individual's home and waiver services for the individual are eligible to be paid for by the Medical Assistance Program within 45 days after the discharge OR the individual is discharged from a SNF or rehabilitation facility directly to the individual's home and waiver services for the individual are eligible to be paid for by the Program within 45 days after the discharge.

**SUPPORT:** *House Bill 1215/Senate Bill 630: Nursing Homes - Partial Payment for Services Provided* requests, at the request of the nursing home, that the Department of Health issue a partial payment to nursing homes if an eligibility determination is not made within 90 days.

**OPPOSE:** *House Bill 344/Senate Bill 425: Continuing Care Agreements - Notice and Contractual Entrance Fee Refunds* mandates that entrance fees be refunded within 30 days. Maryland law addressed the issue in 2012 by increasing CCRC entrance fee refunds disclosure and transparency requirements. Mandating a return within 30 days would destabilize the communities and financially harm current residents.

**OPPOSE:** *Senate Bill 325: Nursing Home - Provision of Beds and Bed Rails* requires a nursing home to provide notice to a resident and/or the resident's representative of the availability of bed rails and provide for it upon request, as allowed under federal law. This notice provides an unreasonable expectation on residents and their families given how strictly the federal government regulates the use of bed rails.

**OPPOSE:** *Senate Bill 235, Senate Bill 368 and Senate Bill 543/House Bill 664:* All three bills seek to increase the State's minimum wage through a phase-up to \$15/hour. This will be particularly difficult for senior care providers, especially given that providers either receive reimbursement from State and/or federal programs or from clients/residents who are on fixed incomes. At the very least, the legislation should mandate a funding increase for Medicaid providers like the increase provided to developmental disability (DD) providers. The State should not choose one provider group over another when both provide care to vulnerable populations. LifeSpan put forth amendments to at least pay an increase, similar to DD, to Medicaid providers.

**OPPOSE:** *House Bill 601: Public Health – Opioids – Dispensing Requirement* requires that any opioid dispensed be also dispensed with a chemical substance to deactivate the opioids. Unclear how institutional pharmacies would be affected.

**OPPOSE:** Other Medical malpractice bills –

- **Senate Bill 36/House Bill 289:** Triples the non-economic damage cap in medical malpractice cases. Maryland's cap remains one of the most liberal in the nation and increases each year by \$15,000. For causes of action arising in 2018, the cap is \$800,000.
- **Senate Bill 5:** Revises the standards for how punitive damages may be applied and in what type of cases, which may include medical malpractice causes.

**LETTER OF CONCERN:** *Senate Bill 757: Nursing Facilities – Quality Assessment – Exemption for State Veterans Home* exempts a State-owned nursing facility for veterans.

### **LABOR AND EMPLOYMENT BILLS:**

So far, the bills to increase minimum wage have not moved from either the House or Senate committee – (*Senate Bill 235: Labor and Employment – Minimum Wage – Indexing; Senate Bill 543/House Bill: 664: Labor and Employment - Payment of the Minimum Wage Required (Fight for Fifteen); and Senate Bill 1019: Labor and Employment – State Minimum Wage Rate – Increase*).

All bills that would have altered the Healthy Working Families Act (Paid Sick Leave) have either not been acted upon or have received an unfavorable vote.

**House Bill 541: “Ban the Box”**, which 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 received an unfavorable in the House Economic Matters Committee. The House Economic Matters Committee also voted unfavorable **House Bill 974: Labor and Employment - Exemptions from Overtime Pay - Administrative, Executive, or Professional Capacity**.

But, the House Economic Matters Committee did vote **House Bill 512: Labor and Employment – Wage History Information** favorable. The original bill was heavily amended. The Senate Finance Committee has scheduled a hearing on the bill for March 29th. The bill now states that an employer that employs more than 15 employees may 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 by:

1. requiring that the applicant’s wage history, including compensation and benefits, satisfy minimum or maximum criteria; or
2. seeking orally, in writing, or through an employee or an agent wage history information, including compensation and benefits, for the applicant, including by requesting or requiring that the applicant provide wage history information as a condition of being interviewed, continuing to be considered for an offer of employment, an offer of employment; or an offer of compensation.

An employee may voluntarily share wage history with an employer. The Department of Labor, Licensing and Regulation may issue a civil money penalty for violations.

**House Bill 1596/Senate Bill 1101: Disclosing Sexual Harassment in the Workplace Act of 2018** was a late file bill that has passed in each respective committee in different forms. Both bills establish that a provision in an employment contract, policy, or agreement that waives any future substantive or procedural right or remedy to a claim 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. The Senate bill also lists failure to hire as an adverse action. The Senate bill requires an employer with 50 or more employees to submit a report to the Maryland Commission on Civil Rights (MCCR) on sexual harassment settlements, and MCCR must publish these reports, making them accessible on its website. The House eliminated this reporting requirement. Because these bills are different, they will most likely be resolved in a conference committee.