Keeping the Wolves at Bay: 2016 Maryland Legislative Roundup

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Objectives:

- Understand significant changes in Maryland law affecting physician practices;
- Learn the impact of these laws; and
- Find out about necessary compliance actions.

FIRST, THE LEGISLATION THAT SUCCEEDED…

HB 185 – Continuing Education for Physicians

- Prohibits the Board of Physicians from establishing a continuing education requirement for every licensed physician to complete a specific course or program as a condition of license renewal.

HB 1318/SB 929 – Network Access Standards and Provider Directories

- Maryland Insurance Administration will develop network adequacy regulations.
- Insurers will be responsible for meeting network adequacy standards and maintaining accurate provider directories.

New Network Access Standards May Address:

- Geographic accessibility;
- Waiting times for an appointment;
- Provider-to-enrollee ratios;
- Geographic variation and population dispersion;
- Hours of operation;
- Needs of enrollees that are low-income, have disabilities, have limited English proficiency, or illiteracy;
- Telemedicine; and
- Specialty and technological services available.

Insurers' New Provider Directory Obligations:

- Periodically audit provider directories for accuracy;
- Contact providers who have not submitted a claim in the past 6 months to see if they plan on remaining in the network;
- Include new information about providers (gender, languages spoken, and whether new patients are being accepted);
- Provide members with electronic means to notify insurer of directory errors (and insurer must investigate and resolve those errors within 45 days);
- Provide members with information on how to seek out-of-network referrals at in-network cost sharing rates when the network is inadequate; and
- Make the provider directory available online and in print to prospective enrollees.

HB 437/SB 537 – Prescription Drug Monitoring Program Obligations for Prescribers

- Physicians, physician assistants, nurses, dentists, podiatrists, and veterinarians authorized to prescribe controlled substances must register with the PDMP prior to obtaining a new or renewal state CDS registration (or by July 1, 2017, whichever is earlier).
- Places new obligations on prescribers and pharmacists to enter, review, and monitor PDMP data.
- Limited exceptions on when PDMP queries don't need to made in advance of a prescription.

New Pharmacist and Prescriber PDMP Obligations – Starting July 1, 2018

- Prescribers must review patients' PDMP data before prescribing an opioid or benzodiazepine and at least every 90 days thereafter.
- Prescribers may delegate this obligation to their health care staff.
- Prescribers are subject to disciplinary action by their licensing boards for failure to comply with PDMP obligations, including the PDMP monitoring prescribers' PDMP use and reporting it to prescribers' licensing boards if there is evidence of inappropriate prescribing.

HB 104 – Certifying Providers for Medical Cannabis

- Effective June 1, 2017, in addition to physicians, dentists, podiatrists, nurse midwives, and nurse practitioners may now issue written certifications to qualifying patients for Maryland's medical cannabis program.

SB 450/HB 1487 – Malpractice Insurance Scope of Coverage

- In the past, policies that insure providers against damages due to medical injury arising from providing/failing to provide health care had to be separate from those providing coverage for a provider's defense in a disciplinary hearing.

- Now, they can be included in the same insurance policy, but must be itemized in the provider's billing statement.

SB 887/HB 1150 – Consumer Health Claim Filing Fairness

- Insurers will now be required to allow members a minimum of one year after the date of service to submit a claim for the service.
- Exceptions to the one year limit for legal incapacitation or if not reasonably possible to submit the claim within one year.
- This should help to resolve a large inconvenience for consumers that access out-of-network services and often compile multiple claims before submitting them.

SB 242/HB 886 – Medical Assistance & Telemedicine

- Requires that if Maryland Medical Assistance limits those providers eligible for reimbursement for telemedicine, then primary care providers must be included in those permitted providers.

SB 462/HB 724 – Fees for Copies of Medical Records

- Ties into HIPAA requirements for providing records to a "person in interest", so the preparation fee is limited to the *actual labor costs*.
- Record preparation fee maximum is updated to $22.88 for a paper or electronic record.
- Paper record copying fee is updated to 76¢ per page.
- Electronic records fees (for preparation and cost of media) cannot exceed 75% of the per page fee for paper record and cannot exceed $80 total (typically the fee for this will be *much* lower).
- Note: Board of Physicians takes the position that HIPAA does not permit a provider to charge a preparation fee for records provided directly to the patient.

SB 647/HB 752 – Prescriptions Written by Physician Assistants and Nurse Practitioners

- Formally clarifies that a licensed physician is permitted to prepare or dispense a prescription written by a PA (in accordance with a delegation agreement) or NP (who is authorized to prescribe) working in the same office setting as the physician.

HB 998/SB 1020 – Reciprocity for Physicians Licensed in Another State

- Physicians licensed in other states may now be licensed by reciprocity in Maryland, so long as:
  - The other state grants Maryland physicians similar reciprocity;
  - The other state's licensure requirements are substantially equivalent to those of Maryland;
  - The physician is in good standing in the other state; and
  - The physician submits the required form and fee.

HB 1220 – DHMH Integrity and Recovery Activities

- Grants the DHMH Inspector General subpoena power to investigate fraud, waste, or abuse of DHMH funds.
- Sets out the terms for imposition of civil monetary penalties instead of payment of the full claims (with numerous conditions and exceptions).
- Details the extrapolation methodology to be used in audits, along with providers' rights to challenge and appeal IG findings and conclusions.
- Overall this bill has such numerous caveats and limitations, that it may be limited in its actual effects on providers.

AND NOW, THE LEGISLATION THAT FAILED…

FAILED – SB 479/HB 869 – Civil Actions Damages for Catastrophic Injury

- Proposal would have tripled the cap on non-economic damages in medical malpractice cases where *catastrophic injury* occurred due to a provider's negligence or other wrongful conduct.
  - E.g., death or permanent impairment (spinal cord injuries, limb amputation, brain injury, blindness, reproductive injury, or major burns).

- Current cap for medical malpractice actions in 2016 is $770,000 in aggregate for all claims for personal injury or wrongful death arising from the same medical injury; or $962,500 for a wrongful death action with two or more claimants/beneficiaries.

FAILED – SB 1032/HB 929 – Exception to Prohibited Patient Referrals

- Would have provided an exception the definition of a "referral" and provided exceptions to certain beneficial interest and compensation arrangements.
- Would have harmonized portions of the Maryland law with the Federal "Stark Law" exceptions.
- Maryland's current self-referral law is must stricter than federal law and this would have loosened up Maryland's self-referral restrictions:
  - E.g., would have included an exception for a "referral" for personally performed services by a physician.

FAILED – HB 1114 – Physician License Renewal – No Grace Period

- Would have established a 60-day grace period for physician license renewals, along with renewal and reinstatement fees.
- Currently there is no grace period for a physician who forgets to renew his/her license on time and this can result in severe consequences (BOP discipline for unauthorized practice, payor refunds, termination of employment, staff privileges, payor participation status, etc.).

FAILED – HB 1160/SB 441 – Admissibility of Board of Physicians Records

- Would have provided an exception to the current prohibition on the discoverability and admission into evidence of BOP proceedings, records, files, and orders for a party to introduce a physician's licensing records with the BOP for Workers' Compensation Commission proceedings.

FAILED – SB 981 – Patient Right to a Free Copy of Medical Record

- Would have allowed patients one free copy of their medical record (or to direct their free copy to the patient's attorney or authorized person).
- Would have capped costs for subsequent copies of medical records at $15 for retrieval, postage, and handling, and 50¢ per page copied.
- For now low-cost medical records access is only guaranteed Medical Assistance patients (who have their own fee limitation).

FAILED – SB 857/HB 1267 – Reports of Anything of Value Received from a Pharmaceutical Company

- Would have required reporting of even the most de minimis financial arrangements between hospitals or physicians and pharmaceutical companies.
- Would have required hospitals & physicians to file a disclosure form within 90 days of entering into financial arrangement and this would then be included in a database.
- Definition of "financial arrangement" was extremely broad: the provision or payment of *anything* of value in exchange for promotion or purchase of items or services (e.g., speaking, consulting, conference attendance, etc.)

FAILED – SB 418/HB 404 – Richard E. Israel and Roger "Pip" Moyer End-of-Life Option Act

- Would have allowed a physician to follow specific procedural safeguards to prescribe self-administered medication to a qualified individual to bring about the individual's death.
- Included limitations on what kind of patient is "qualified" (e.g., terminally ill, but mentally competent Maryland residents).
- Included numerous safeguards requiring both oral and written requests by the patient, review by a consulting physician, and a mental health assessment of the patient.