

BARBARA MARX BROCATO & ASSOCIATES

MaCCRA 2020 Session Report – May 2020

We hope this report finds you well! The daily landscape in Maryland has certainly changed over the last few months. As the State moves forward in responding to the unique circumstances of the virus, we are regularly reviewing the daily feed of State and federal orders, directives and guidance with respect to the Covid pandemic.

We are in regular contact with MaCCRA President Ann MacKay and leadership to share information and identify concerns or issues that need to be elevated to key legislators, regulators and officials. We have been involved in discussions at multiple levels with the Administration and State Agencies on fundamental aspects of the State's response from financial relief for Maryland business to health care delivery to providing input to plans to reopen certain industries and sectors of the Maryland economy.

In response to the growing impact of the novel COVID virus, the Maryland General Assembly adjourned early for the first time in Maryland's modern history. Instead of the usual 90-day Session, the Session adjourned on day 71. In the final days of the Session the Legislature moved quickly to pass legislation granting emergency authority to the Governor to respond to the growing crisis as needed. In the end the Legislature passed 681 bills during this abbreviated Session, out of 3,232 total bills introduced! Over the last three Sessions on average 898 bills pass each year.

We note the following emergency bills below as they form the basis of some of the emergency actions the Governor has taken with respect to the economy and healthcare. The telehealth bills are noted as much of the routine checkup and healthcare visits have moved to online and virtual platforms. These Bills are detailed below:

[Senate Bill 1080](#)/ [House Bill 1663](#) – “State Government – State of Emergency and Catastrophic Health Emergency – Authority of Governor and Unemployment Insurance Benefits (COVID-19 Public Health Emergency Protection Act of 2020)” ***[Passed, signed into law]***

These emergency bills “authorizes the Governor, for the duration of the emergency, to take specified actions relating to health insurance, Medicaid, retailer profits, employer actions, and personnel at State health care facilities as a result of the March 5, 2020 proclamation declaring a state of emergency and the existence of a catastrophic health emergency (or any other specified proclamation related to the outbreak of “COVID-19”). The bill also authorizes the Secretary of Labor to determine that an individual is eligible for unemployment insurance (UI) benefits under specified circumstances due to COVID-19. The bill terminates April 30, 2021.”

Additionally, two other bills that expand the function and capabilities of telehealth, including allowing the establishment of a patient provider relationship via asynchronous communication (non face-to-face) passed and have been signed into law:

- [House Bill 0448/Senate Bill 0402](#) Health Care Practitioners – Telehealth and Shortage
- [House Bill 1208/Senate Bill 0502](#) Telehealth – Mental Health and Chronic Condition Management Services – Coverage and Pilot Program
[Both Passed and signed into law]

As of this writing the Governor has yet to take action on the remainder of the bills that passed. He has announced that because of the economic impact of the crisis and growing costs to the State, a freeze on the State operating budget, asked Agencies to identify areas for cuts, and stated that he will not sign into law any bills that create a cost to the state.

What follows is a summary of MaCCRA supported bills, and other bills of note. Updates to the this report will be posted on the legislative profile page which can be accessed through the MaCCRA state website.

MaCCRA Supported Bills:

MaCCRA did not seek introduction of legislation this Session, however, Legislators reached out to MaCCRA asking for support of their legislation. Here are four bills that MaCCRA supported:

[House Bill 1107](#) (Delegate Mangione, et al)/ [Senate Bill 22](#) (Senator West)—Election Law-Polling Places at Continuing Care Retirement Communities (*Unfavorable Report by Senate; No action in the House after bill hearing*)

MaCCRA testified in Support

The bill would have required a local board of elections to establish a separate precinct in a continuing care retirement community specifically to serve at least the residents of the retirement community if the continuing care retirement community requests that a polling place be established on the community premises. If a polling place was to be established at a continuing care retirement community, the continuing care retirement community must (1) provide without charge to the local board of elections a facility for use as a polling place that meets all applicable requirements under State election law and as established by the State Board of Elections (SBE) and (2) provide assistance to the local board of elections in recruiting election judges from among the residents of the continuing care retirement community to staff the polling place. The Senate bill received an unfavorable report by the Education, Health, and Environmental Affairs committee, and no action was taken on the House bill after its Committee hearing.

[Senate Bill 40](#) (Senator Lam)-Sales and Use Tax-Diapers–Exemption (*No further Senate action taken after bill hearing*)

MaCCRA submitted testimony in Support

This bill would have exempted the sale of diapers from the State sales and use tax. This exemption would have specifically noted adult diapers as also being exempt. There is some confusion under current law if adult diapers are already tax exempt, and this bill would have helped to clarify their status. The bill was heard by the Senate Budget and Taxation committee, but no further action was taken

[Senate Bill 628](#) (Senator Kagan) - Utilities – Surviving Spouse of Account Holder – Protections (PASSED)

MaCCRA submitted testimony in Support

This bill generally requires a “utility,” as defined, in the event of an account owner’s death, to provide specified assistance to a surviving spouse related to the administration of the utility account. Upon receipt of specified proof of the relevant circumstances from the surviving spouse, a utility must either (1) keep the deceased’s account open for at least six months with the surviving spouse as a joint account holder or (2) transfer the account to the surviving spouse. Generally, the utility must complete the entire process without requiring any further information, other than updated contact information, or imposing any fee or penalty; however, a utility may impose a fee or penalty or terminate an account for nonpayment. The utility may also close the account at the request of the surviving spouse.

[House Bill 498](#) (Delegate Hill, et al) - Department of Aging – Grants for Aging-in-Place Programs – Funding (PASSED)

MaCCRA submitted testimony in Support

This bill authorizes grants provided by the Maryland Department of Aging (MDOA) to nonprofit organizations and area agencies on aging (AAAs) for aging-in-place programs to also be used to provide seniors the opportunity to live in a “senior village.” The bill repeals the requirement that funding for such grants be as provided in the State budget; instead, the Governor must include at least \$100,000 in the annual budget for the purpose of making the grants. At least 20% of funding must be used to support senior villages. The bill takes effect June 1, 2020.

OTHER BILLS OF INTEREST:

[House Bill 1163](#) (Delegate Cullison)/[Senate Bill 642](#) (Senator Kelley) -- Home- and Community-Based Waiver Services – Study and Task Force [Bills failed to pass; study language included in the State Operating Budget]

This bill requires that the Maryland Department of Health, in consultation with the Hilltop Institute at the University of Maryland Baltimore County, conduct a cost-benefit analysis study including: (1) a comparison of all health care costs incurred by individuals – by different levels of acuity – who have moved into waiver services and those who remain on the waiting list for waiver services; (2) the extent practicable, comparison data for a five-year period; (3) how to capture savings from the provision of waiver services through Medicaid that accrues to Medicare for the benefit of Medicaid; (4) the extent to which the provider community can accommodate additional individuals served through the waiver and similar Medicaid services; and (5) any other information that is necessary to adequately capture the full extent of incurred cost and cost avoidance from more fully using waiver services. The findings must be submitted to the Governor and General Assembly by December 1, 2020. The Senate bill passed the Senate and was referred to a committee in the House but was not acted on beyond that.

In response to this important issue and longstanding concern regarding access to services Legislative leaders in the House and Senate included the following language in the State Operating Budget. Budget language has the force of law and remains in effect for 1 year.

“, provided that \$100,000 of this appropriation intended for administration may not be expended until the Maryland Department of Health and the Hilltop Institute at the University of Maryland, Baltimore County, in consultation with other stakeholders, submit a report to the budget committees that provides a cost-benefit analysis of expanding access to long-term care services through home- and community-based waivers. The analysis should include: (1) a comparison of all health care costs incurred by individuals by different levels of acuity who have moved into waiver services and those who remain on the waiting list for waiver services; (2) to the extent practical, comparison data for a five-year period; (3) how to capture savings from provision of waiver services through Medicaid that accrues to Medicare for the benefit of the Medicaid program; (4) the extent to which the provider community can accommodate additional individuals served through waiver and similar Medicaid services; and (5) any other information that is necessary to adequately capture the full extent of incurred cost and cost avoidance from more fully utilizing waiver services. The report shall be submitted by December 1, 2020 and the committees shall have 45 days from the date of the receipt of the report to review and comment. Funds restricted pending the receipt of the report may not be transferred by budget amendment or otherwise to any other purpose and shall revert to the General Fund if the report is not submitted.”

Explanation: This language restricts funds pending the receipt of a report providing a longitudinal cost-benefit analysis, including all health care costs, of expanding home- and community-based waiver services including proposals to accrue savings realized by Medicare for the benefit of the Medicaid program.

[House Bill 915](#) (Delegate R. Lewis)/ [Senate Bill 632](#) (Senator Kelley) -- Facility Fee Right-to-Know Act [PASSED]

This bill requires certain hospitals to provide each patient with a written notice of fees related to services at outpatient facilities. It establishes the format of the notice that hospitals that charge outpatient facility fees are required to present to patients, as well as a requirement to disclose physicians whom the patients could see without being charged a fee. The hospital is the entity responsible for determining its fees and estimates as well as providing them to the patient via the notice.

[House Bill 643](#) (Delegate Pendergrass, et al)/ [Senate Bill 701](#) (Senator Waldstreicher, et al) - End-of-Life Option Act (Richard E. Israel and Roger "Pip" Moyer Act) [No action taken in either house after their respective bill hearings]

These bills would have created a process by which an individual may request and receive aid in dying from the individual's attending physician. The bills would have exempted, from civil or criminal liability, State-licensed physicians who, in compliance with specified safeguards, dispense or prescribe a lethal dose of medication following a request made by a qualified

individual. Criminal penalties would have been established for violating specified provisions of the bill.

For a detailed summary of the specific provisions and operational aspects of the proposal go to: http://mgaleg.maryland.gov/2020RS/fnotes/bil_0001/sb0701.pdf

LOOKING AHEAD

Over the coming weeks we will continue to stay in contact with any breaking alerts and updates as it relates to Covid-19 and the State's response and prospects of re-opening the State. There was talk early on about the Legislature coming back in for a Special Session this Summer. At this time the Senate President and Speaker of the House have announced those plans are on hold pending any emergent need to address issues related to the Covid response and State economy.

Do not hesitate to reach out with concerns and questions. We are here to be a resource to you and your MaCCRA chapters as you navigate these uncertain times. Be safe and be well!

Sincerely,

Barbara Brocato and Dan Shattuck