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TO: The Honorable Peter A. Hammen, Chairman
Members, House Health & Government Operations Committee

FROM: Joseph A. Schwartz, III
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DATE: March 17, 2015

RE: **OPPOSE** – House Bill 1101 – *Department of Health and Mental Hygiene – Health Program Integrity and Recovery Activities*

LifeSpan Network, a senior care provider association representing nursing facilities, assisted living providers, continuing care retirement communities, medical adult day care centers and senior housing communities; the Maryland Association of Adult Day Services (MAADS), an association representing medical adult day care centers; and the Maryland State Medical Society (MedChi), which represents more than 8,000 Maryland physicians and their patients respectively oppose House Bill 1101.

Bill Summary

House Bill 1101 contains three major provisions:

1. Authorizes the Inspector General **or a contractor or an agent acting on behalf of DHMH** to use extrapolation to determine the rate of error or overpayment under certain but ambiguous circumstances;
2. Authorizes the Inspector General to impose a civil money penalty against a provider for which the provider submitted a claim and received payment; and
3. Allows the Department of Health and Mental Hygiene (DHMH) to require a Medicaid provider or Medicaid provider applicant to provide DHMH with a surety bond in an amount determined by DHMH, not to exceed \$50,000 per provider location or conform to any requirement for a surety bond under Medicare.

Position Rationale

For the reasons outlined below, we request an unfavorable vote.

Extrapolation: As drafted, House Bill 1101 contains zero criteria on how extrapolation should or could be used in determining the rate of error or overpayment to a provider. This lack of

guidance is particularly troubling given that extrapolation can be used by a contractor, such as a Managed Care Organization, against a health care provider. Questions raised but left unanswered by the legislation include:

1. The means DHMH will use to establish a “high level of payment error;”
2. The methods of extrapolation to be used, including means to assure a statistically significant and representative sample and the appropriate selection period for review;
3. The appropriate confidence level applied to the sampling methodology to determine the amounts owed;
4. The level of expertise required for the individuals who will devise, apply, and review the methodology and sampling process;
5. Documentation requirements for the sampling process, so that the sampling methodology may be recreated, if challenged;
6. An opportunity, in advance of any assessment or penalty, for the provider to present additional documentation related to claims;
7. Any other notice and procedural requirements for the review and results of the review; and
8. The means of assuring that contractors or agents of DHMH are adhering to the regulation’s standards for extrapolation, including periodic review or audit of the agents or contractors by DHMH.

Civil Money Penalties: Section 2-602 of the Maryland Health Care False Claims Act already authorizes the State to impose a civil money penalty on providers for actions related to fraud, abuse or waste in the Medicaid program and other state health programs. It is unclear how this penalty section differs from the penalties under the Maryland Health Care False Claims Act. In addition, the penalties in House Bill 1101 do not take into account the factors contained in Section 2-602, which include the degree of loss suffered by the State health program, whether the person had self-reported, the extent to which the violation caused harm or detriment to patients or consumers, *etc.*

Surety Bond: The provision in House Bill 1101 regarding surety bonds is much too vague and would subject any and all Medicaid providers or applicants to obtain a surety bond. House Bill 1101 fails to specify the type of provider or the amount but rather leaves it to the discretion of the Department in regulations. The only clear guidance is that the surety bond may not exceed \$50,000 per provider locations or be equal to the amount required by Medicare (if the provider is required to obtain a surety bond under Medicare – durable medical equipment, prosthetics, orthotics and supplies and home health agencies). Surety bond cost is generally related to individual factors relating to the bondholder's risk, such as credit rating, length of time in business, or prior adverse actions, so bond prices would vary depending on the buyer and the amount of the bond required. As such, prices could be as low as \$300 per year or as high as

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\$2,500-\$10,000 depending on these factors. Many providers, such as medical adult day centers and small assisted living providers who participate in the State's Community Options program are already underfunded. In addition, the State has been taking steps to encourage physician participation in the Medicaid program. However, the provisions in this bill fairly articulate the purpose of why these changes are needed. Further adding to the operating costs of providers without a clear justification is simply unwarranted.

House Bill 1101 is an overreaching bill that fails to provide any details or guidance as to process and affected entities. For these reasons, we request an unfavorable vote.

For more information call:

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