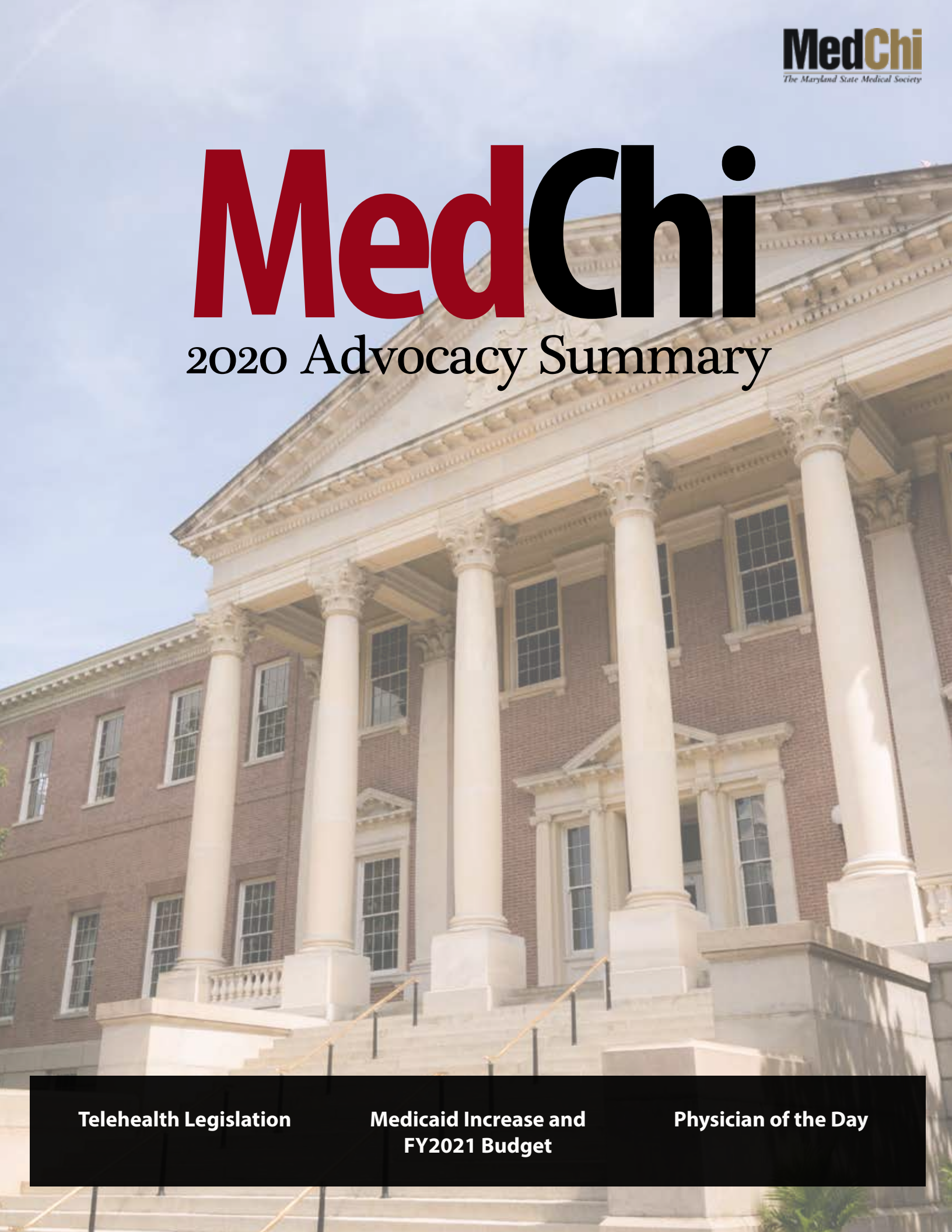
MedChi
The Maryland State Medical Society

MedChi

2020 Advocacy Summary



Telehealth Legislation

Medicaid Increase and FY2021 Budget

Physician of the Day

MedChi 2020 Advocacy Summary

TELEHEALTH LEGISLATION

Pamela Metz Kasemeyer, Schwartz, Metz & Wise, P.A.

The passage of two bills that dramatically altered the statutory framework for telehealth services is an example of how changing circumstances can rapidly impact the path of legislation. When first introduced, **HB 448/SB 402: Health Care Practitioners – Telehealth and Shortage** (passed) was opposed by MedChi and other stakeholders who were concerned that an in-person visit would no longer be required to allow asynchronous interaction. MedChi expressed caution about moving too quickly in allowing medicine to be practiced solely using apps and other electronic means. However, with the onset of COVID–19, the use of telehealth became more urgent and the concerns regarding asynchronous communications were diminished as a result. As enacted, the bill authorizes a health care practitioner to establish a practitioner–patient relationship through either a synchronous or asynchronous interaction. A health care practitioner must perform a clinical evaluation before providing treatment or issuing a prescription. A health care practitioner who prescribes a controlled dangerous substance (CDS) through telehealth is subject to all federal and state law relating to the prescription of CDS. The bill was amended, however, to prohibit the use of telehealth in prescribing a Schedule II opiate unless there is a declared catastrophic emergency or the individual who is prescribed the opiate is a patient in a certain health care facility. The legislation prohibits a health occupations board from establishing a separate standard of care for telehealth. The General Assembly not only passed the bill but made it an emergency bill, which is now in effect having been signed by the Governor.

Also enacted as emergency legislation and signed into law by the Governor was **SB 502/HB 1208: Telehealth – Mental Health and Chronic Condition Management Services – Coverage and Pilot Program** (passed), which requires Medicaid, subject to the limitations of the state budget, to provide mental health services appropriately delivered through telehealth to a patient in the patient's home setting. The bill also expands the definition of "telehealth" for purposes of private insurance coverage to include the delivery of mental health care services to a patient in the patient's home. By December 1, 2020, MDH must apply for a §1115 waiver to implement a telehealth pilot program for the provision of services in the home setting. MDH must also study and report by December 1, 2021, on whether substance use disorder services may be appropriately provided through telehealth to a patient in the patient's home setting. The pilot program and study provisions of the bill terminate June 30, 2025.

MEDICAID INCREASE AND FY 2021 BUDGET

Danna L. Kauffman, Schwartz, Metz & Wise, P.A.

Despite extreme pressure from other budgetary demands, such as education (Kirwan) funding, the projected structural deficit and preliminary expenses allocated for the COVID-19 pandemic, MedChi successfully secured an additional $4 million in funding to maintain E&M Codes at the current level of 93 percent of Medicare. This success is particularly notable given that the General Assembly eliminated any further reductions to the hospital Medicaid Deficit Assessment after Fiscal Year 2021, setting it at $294,825,000 for this fiscal year and each year moving forward. Previously, the agreement was to phase-out the Assessment by $25 million each fiscal year. Other notable funding was the restoration of the Community Health Resources Commission (CHRC) budget. The CHRC currently is funded at $8 million. The Administration proposed to reduce that amount to $4 million in HB 152/SB 192: The Budget Reconciliation and Financing Act (passed). The General Assembly rejected the reduction and restored the amount to the original $8 million but requires that $1 million be used to support Local Health Improvement Coalitions.

Several reporting requirements were included in the FY2021 budget, including requiring the Health Services Cost Review Commission to report on the following: (1) the effectiveness of the Maryland Primary Care Program; (2) how it intends to manage hospitals that are generating excessive operating profits under regulated rates under the Total Cost of Care Model; and (3) the State's hospital medical liability market through the funding of an independent actuarial analysis. The General Assembly is also requiring the University of Maryland Medical System to submit a report detailing specific responses to findings and recommendations contained in the March 2020 Office of Legislative Audits Special Review of Board of Directors Activities and the December 2019 Special Committee of the Board of the University of Maryland Medical System internal forensic audit report undertaken with advice by Latham and Watkins, LLP.

Given the additional expenses incurred by the State as a result of the COVID-19 pandemic and the loss of State revenues, it can be expected that reductions will need to be made to the State budget for both Fiscal Year 2020 and the upcoming Fiscal Year 2021. As always, MedChi will stay vigilant to continue to protect physician funding.

TORT ISSUES STILL A HOT TOPIC IN ANNAPOLIS

Steve Wise, Schwartz, Metz & Wise, P.A.

While there were many unusual things about the 2020 Session, one thing remained constant: physicians and hospitals battling the trial lawyers on tort matters. This year, three main bills occupied the field. First, **HB 1037: Civil Actions – Noneconomic Damages – Personal Injury or Wrongful Death** would have lifted the limit on non-economic damages if the plaintiff proved that damages resulted from "willful, wanton, malicious, reckless or grossly negligent acts or omissions." MedChi, MHA, and other groups opposed the bill, which died in committee, because these standards would be unclear to juries and result in "limitless" avoidance of the cap. The cap was put in place to ensure liability insurance remains affordable and that patients have access to care, and the bill undermined those goals.

Second, **SB 879/HB1563: Maryland Infant Lifetime Care Trust** was an initiative by Maryland hospitals to address the $200 million plus malpractice award against Johns Hopkins. It was a variation of the birth injury fund bills that had been introduced in prior sessions. The bill provided for attorney's fees and addressed other issues raised by the trial bar with respect to prior birth injury fund legislation. Despite these new provisions, the trial bar vigorously opposed the legislation and it failed.

Finally, **HB 684 and SB187: Civil Actions – Health Care Malpractice Claims** was introduced by the MHA and supported by MedChi. This legislation would have adopted the Daubert standard for expert witness testimony, which is followed by federal courts and is generally regarded as providing a sounder and more reliable basis for expert testimony than the current Frye/Reed standard used in Maryland. The Daubert standard requires that parties and experts work harder to ensure that expert opinions are grounded in reliable science or demonstrable relevant experience. Both bills failed.

BOARD OF PHYSICIANS TASK FORCE MAKES PROGRESS

Steve Wise , Schwartz, Metz & Wise, P.A.

In 2018 MedChi established a Board of Physicians Task Force to address issues that members had raised with the Board's disciplinary processes. Working through the Board of Trustees and the Legislative Council, MedChi was able to use legislation introduced earlier this year to address two of the issues identified by the Task Force.

HB 560/SB 395: State Board of Physicians and Allied Health Advisory Committees – Sunset Extension and Program Evaluation, which passed, were the culmination of a legislative review and re-authorization of the Board. This process was used to reach agreement with Board leadership to evaluate an expungement program in coordination with MedChi for physicians with minor infractions. This will take place over the 2020 interim. Second, the Board is required to evaluate and report back to the General Assembly on the use of a third peer reviewer in instances when the initial two reviewers do not agree. The Task Force had concerns about how disagreements are resolved in this scenario.

Working with the Board, MedChi was also able to resolve a longstanding issue involving the discipline of integrative medicine physicians. This group had complained of disparate treatment by the Board in its handling of standard of care cases involving Lyme Disease. **HB 259/SB 103** originally established a separate disciplinary process for integrative medicine, but that process was full of holes through which potentially bad actors could escape. Amendments were agreed to that simplified the bill, so that now a professional board cannot act against a practitioner "solely" because he or she uses integrative methods, and that the standard of care must still be observed.

HB 937 - Naturopathic Doctors – Formulary Content, and Scope of Practice died in the HGO Committee. MedChi opposed this legislation and argued that naturopaths with no residency and limited pharmacology background should not be prescribing drugs, and that prescription drugs would be a "loose cannon" for their scope of practice.

PODIATRISTS ARGUE FOR EQUAL FOOTING

Steve Wise, Schwartz, Metz & Wise, P.A.

The Maryland Podiatric Medical Society had legislation introduced, **HB 428 - Health Occupations – Podiatric Physicians**, that would have allowed podiatrists to use the term "podiatric physician," which they argue is already permitted in thirty-six other states. The podiatrists maintain that their academic training is on par with MDs and DOs, in that they are now required to complete a residency, and that this new title would not be misleading as the term "physician" is modified by "podiatric."

MedChi opposed this bill and argued that the term "physician" should be reserved for MDs and DOs, as it has been under Maryland law. In a similar vein, naturopathic doctors also sought to be called "physicians" when they were first licensed years ago, but this was not authorized by the General Assembly. HB 428 was not voted on by the Health & Government Operations Committee during the shortened Session, but MedChi did receive a letter from Chairman Shane Pendergrass, who made it clear that the bill would likely pass the House in 2021 barring new or additional information that would weigh against its passing. If the legislation is defeated it will require a concerted, well-planned, and meritorious effort leading into the next session.

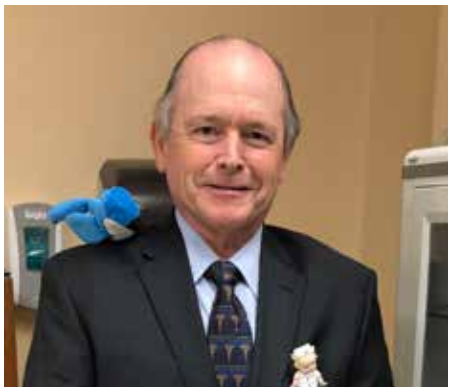
STATE HOUSE FIRST AID ROOM
PHYSICIAN OF THE DAY

MedChi works with the Maryland General Assembly each legislative session to provide volunteer physicians who serve the medical needs of lawmakers and their staff. Volunteer physicians spend the day in Annapolis and have the unique opportunity to interact with legislators on the House and Senate floors, attend committee meetings, and get a firsthand look at the legislative process, while giving back to the public servants who support physicians' issues.

Pictured, this page, left to right: Mozella Williams, MD; Gary Sprouse, MD; J. Ramsey Farah, MD; Walter Giblin, MD; George Malouf, MD; Gene Ransom and Loralie Ma, MD; Laura Kaplan-Weisman, MD; Padmini Ranasinghe, MD. Pictured, following page, left to right: Carolyn O'Conor, MD, Steve Rockower, MD, and Larry Green, MD; Francisco Ward, MD, and Sen. Mike Miller; Tyler Cymet, DO; James Williams, MD, and Sen. Chris West; Ben Lowentritt, MD, and Gene Ransom; Renee Bovelle, MD; Paul Quesenberry, MD (left), Algernon Prioleau, MD (center), and Delegate Paul Corderman (right); Russell Wright, MD, and John Gordon, MD.

Volunteers must have an active, unrestricted medical license and be a current MedChi member to participate. If you are interested in serving as MedChi's Physician of the Day in the Maryland State House's First Aid Room for the 2021 legislative session in Annapolis, contact Chip O'Neil at coneil@medchi.org or 410.539.0872, ext. 6001.








THE STATE HOUSE
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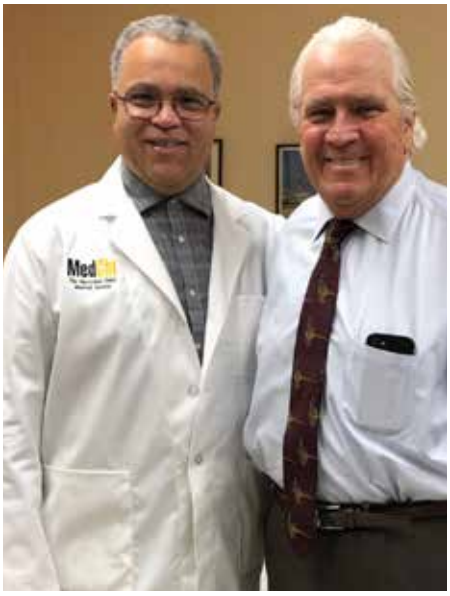

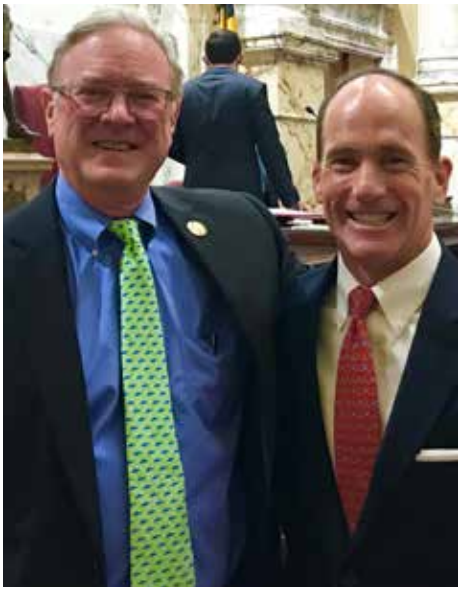

Isn't It Time You Joined MedChi?

So many things outside your practice environment directly affect your work and livelihood as a physician. If you want a say in what is happening to your profession today and how it will look tomorrow, then you need to join with other physicians in a strong, unified voice.

MEDCHI is that voice.

MedChi is the only organization representing all Maryland physicians, and the only organization with the clout to successfully influence laws, rules and regulations that determine how health care is delivered in Maryland.
Not only that, but MedChi membership can also help you directly in various ways:

- Get paid for your hard work
- Be a human resources expert
- Get answers to all your practice questions
- Take your business skills to the next level
- Expand your leadership skills and network
- Participate in local community health events
- Connect with your peers
- Advocate for the future of medicine
- Receive discounts and subscription benefits with our preferred vendors

MedChi is the only society representing all physicians in Maryland. Maryland's medical association is comprised of health practitioners from more than fifty medical specialties and continues to grow with more than 8,000 members, including private practitioners, academic physicians, retired physicians, residents, and medical students. Sixty percent of your dues are tax deductible and include membership in your local society.

Click here to join MedChi or renew your membership online: https://www.medchi.org/Get-Involved.
Current members may contact members@medchi.org or 410.539.0872, ext. 3301 for questions about your membership.