

Legislative Report: 2005

The 2005 General Assembly adjourned *sine die* at midnight on April 11th. Between the regular session and the Special Session called by Governor Ehrlich to deal with the medical malpractice crisis, Maryland has seen some tort reform enacted as well as the promise of rate relief. While not nearly enough malpractice reform, the following were adopted:

- A four-year “freeze” on the Maryland non-economic damages cap of \$650,000 and a cap in wrongful death cases of \$812,000;
- Expert witnesses in malpractice cases must now be board certified in the same specialty as the defendant;
- A physician’s benevolent gesture or apology cannot be used in court;
- Mandatory mediation will take place prior to trial; and
- Physicians should see an increase in Medicaid reimbursements over the next four years.

The Regular Session saw the passage of provisions correcting the problems seen in HB 2 by the malpractice insurers. MedChi convened a weekly series of meetings involving all major players (all malpractice insurance companies, physicians’ groups, insurance agents) to develop the corrective provisions embodied in Senate Bill 836/House Bill 1359.

The House of Delegates passed House Bill 114 sponsored by Delegates Zirkin, Morhaim, etc. containing a mandatory remittitur provision for past medical expenses, use of a “neutral” expert appointed by the Court to assess future economic damages, and the creation of a legislative task force to propose future legislation. However, the Senate leadership did not allow a hearing to take place.

A major disappointment was the failure of House Bill 452, which passed the House of Delegates 133-2. It was scheduled for a hearing on March 30, but the hearing was cancelled and never rescheduled. It would have frozen HMO reimbursement rates for four years. The bill was sponsored by Delegate Peter Hammen in response to HMOs that cut reimbursements in answer to HMO tax. House Bill 452, like the malpractice reform legislation, did not receive a hearing in the Senate.

The law mandating that out-of-network providers be paid 125% of the HMO network rate was made permanent by HB 294.

The Community Health Care Access and Safety Net Act of 2005 (House Bill 627/Senate Bill 716), sponsored by Delegate John Hurson in the House and Senator Thomas “Mac” Middleton in the Senate, establishes a number of important initiatives to support Maryland’s community safety net providers and local nonprofit health care programs, such as the Anne Arundel County REACH program. The Act creates a Community Health Resource Commission under the Department of Health and Mental Hygiene that will be in existence for five years. The Commission is charged with creating and operating a grant program to provide revenues for community health resources. Funding for the Commission comes primarily from a reallocation of revenues now paid by CareFirst for the Senior Prescription Drug Program that will no longer be required after the implementation of the Medicare Prescription Drug Plan.

The legislation also includes provisions directly applicable to the reimbursement of physicians and the provision of specialty care to low-income uninsured. The Commission is also required to evaluate extending coverage under Maryland’s Tort Claim act to providers who contract with Maryland qualified health centers and school-based health centers. The Maryland Health Care Commission and Health

Services Cost Review Commission will assess the level and underlying causes of uncompensated/undercompensated care provided by physicians.

Passage of SB 718/HB 827 allows testing of patient blood samples for HIV without consent if the sample has already been obtained.

On the scope of practice front, the only real controversy was between the optometrists and the ophthalmologists and was resolved by compromise. Under the compromise, the optometrists withdrew their request to prescribe antivirals, to order laboratory tests and to use the so-called Alger brush in exchange for being allowed to use topical steroids. However, topical steroid use is conditioned upon the approval of a protocol by the Board of Physicians that the ophthalmologists believe will ultimately require a referral to an ophthalmologist at the time the topical steroids are applied. The ophthalmologists viewed the compromise as appropriate because it establishes the precedent of collaborative practice protocol with physician control. Moreover, the optometrists agreed not to file any further scope of practice bills until at least 2009.

The Workers' Compensation Commission attempted to issue regulations requiring the use of a specific panel of physicians by injured employees, however the Attorney General issued a letter of advice ruling that the Workers' Compensation Commission lacks the authority to adopt such regulations.

Legislation to exempt atypical antipsychotic medications from the Medicaid preferred drug list and prior authorization requirements passed with a two-year sunset provision.

Several studies regarding health care will take place, including a study of the Maryland Small Group Insurance Market (2-50 employees), a study of prescription costs, including the role of mail order pharmacies, and a study of the feasibility of establishing a prescription drug repository program for the donation of unused drugs in their original dosage packaging.