

# MedChi, The Maryland State Medical Society Final Report

April 10, 2007

The 423<sup>rd</sup> Session of the General Assembly adjourned *Sine Die* on Monday, April 9<sup>th</sup> at midnight. The first year of the O'Malley/Brown Administration brought few surprises but a marked decline in the partisan wrangling which had characterized the previous four year term. It is widely expected that the next General Assembly will confront the most contentious issues such as those dealing with taxes and the need to resolve the \$1.5 billion plus structural deficit in the state budget.

The MedChi 2007 agenda focused on four major subject areas: (1) Issues concerning the regulation of physicians raised by the Sunset Review legislation related to the Board of Physicians; (2) reimbursement reform for doctors; (3) malpractice reform; and (4) public health issues including tobacco control. Additionally, the MedChi Legislative Committee reviewed 296 bills at its regular Monday meetings, taking positions on many of these.

## **Board of Physicians**

The final Board of Physicians' legislation (Senate Bill 255/House Bill 288) was almost entirely consistent with recommendations made by a MedChi Task Force convened by President Scott Hagaman, M.D. to deal with the Board of Physicians legislation.

Many of the initial proposals from the Sunset Review team were very adverse to the doctors. They included the following:

- The fingerprinting of all doctors;
- Criminal background checks for all doctors;
- Clinical competency programs to be developed by the Board to evaluate doctors;
- Open public hearings on all charges against doctors.

MedChi's objections to each of these was sustained. Moreover, the legislation was amended to accomplish the following objectives:

- The diversion of 14% of physician licensing fees to unrelated programs was reduced to 12% (originally this diversion was 20% but now has been reduced to 12% and MedChi's ultimate goal is to eliminate it entirely.)
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- Malpractice case settlement information will be removed from the Board's website. Certain malpractice information, which everyone agrees is incomplete, has been on the Board's website for a number of years. This incomplete information will now be removed.
- The legislation also required physician rehab services to be bid to a "non profit" entity which will benefit MedChi's existing Physician Rehabilitation Program for physicians with drug and alcohol dependencies.

Moreover, MedChi's insistence that Board peer reviewers be both Maryland licensed and engaged in the practice of medicine in Maryland was accepted.

## **Reimbursement Reform**

On the plus side of the MedChi ledger was the passage of House Bill 138/Senate Bill 107 (Task Force on Health Care Access and Reimbursement). This was a Gubernatorial Proposal which was

suggested by MedChi and which creates a Task Force to study issues relating to health care access and physician reimbursement in the state. When signed by the Governor, it will create a 14 member Task Force to study issues relating to declining physician reimbursement and prepare a report for remedial action by December 2007. This proposal was a principal MedChi objective and will hopefully provide a blueprint for reimbursement legislation in 2008.

One of MedChi's attempts to make an incremental change to an existing contractual law regulating HMOs was unsuccessful, principally because the General Assembly decided that the Gubernatorial Task Force should be the vehicle to make a comprehensive examination of reimbursement issues. The attempt to refine the statutory reimbursement formula for non-participating physicians with HMOs (Senate Bill 323/House Bill 330) was unsuccessful because the Maryland Health Care Commission questioned the use of its database for the new statutory formula. The net result is that the Task Force will consider this issue as well and the present statutory formula which was created in 2002 will remain in effect. The present statutory formula requires an HMO to pay a non-participating doctor 125% of the amount paid to participating doctors.

Senate Bill 749 (Health Insurance – Provider Contracts – Conditions of Participation of Carriers) passed the Senate unanimously, and was passed by the House of Delegates on the last day due to the efforts of House Speaker Michael E. Busch. Despite the efforts of Senator Thomas "Mac" Middleton to have the Senate concur at one minute before midnight, Senate Bill 749 did not receive a simple concurring vote before adjournment. The provisions of the bill were "folded" into the Task Force bill as a study item. Senate Bill 749/House Bill 1054, which were sponsored respectively by Senator E.J. Pipkin and Delegate Wade Kach, would have ended the practice of insurance carriers forcing doctors to participate in multiple products in order to participate with any product.

On the plus side, Medicaid HMOs (MCOs) will now be required to follow the retroactive reimbursement rules followed by commercial HMOs in Maryland (House Bill 1082 sponsored by Delegate James Hubbard). Passage of this legislation will also assure the coordination of benefits between MCOs and commercial carriers which had not been occurring because of the failure of commercial payers to recognize MCOs.

Moreover, the General Assembly enacted Senate Bill 601 (Senator Kittleman) and House Bill 947 (Delegate Kach) which stops health insurance companies from declaring a doctor a participating provider in his or her private practice because of work performed in a contracting clinic or emergency department.

Finally, Senate Bill 105/House Bill 140 (Statewide Advisory Commission on Immunization – Duties and Sunset Extension) was a Gubernatorial Initiative advanced on behalf of the Academy of Pediatrics and supported by MedChi. It requires the Statewide Advisory Commission on Immunizations to study the adoption of a universal purchase program for vaccines in the State or other mechanisms designed to increase reimbursement for vaccines.

### **Malpractice Reform**

In this area there was both good news and bad news. Efforts to create health courts or different mechanisms for medical malpractice claims (House Bill 48, House Bill 338, House Bill 779, Senate Bill 508 and Senate Bill 881) were turned down as well as an attempt to enact an improved apology law in Maryland (Senate Bill 84/House Bill 147). However, the onslaught of the Maryland Trial Lawyers Association was stopped when the comparative negligence (House Bill 110/Senate Bill 267) legislation was defeated.

The most significant victory however was the 63-71 vote on the floor of the House of Delegates which rejected House Bill 495. This was the **only bill defeated on the floor of the House of Delegates this Session** and was a classic doctors vs. lawyers fight. House Bill 495 would have repealed the requirement that an expert's detailed report be attached with every malpractice case filed. It was a principal objective of the Maryland Trial Lawyers Association and had been reported favorably by the

House Judiciary Committee by a vote of 13-7. The result on the House floor was significantly different where, after an hour long plus debate, a majority sided with the medical community.

It appears that, on malpractice reform issues, there will be little appetite for further reform but, at the same time, little appetite to roll back previously enacted reforms. This is particularly important since certain malpractice reforms (created in House Bill 2 in early 2005) will expire next year. Hence it will be necessary to continue those reforms particularly as the state's subsidy for malpractice premiums continues to decline.

It appears that the malpractice insurance crisis has eased in the last number of years and premiums have receded somewhat. It is hoped that premiums will drop again as the result of diminished case filings. MedMutual has reported that there are less cases being filed although the individual cases tend to be more severe in terms of financial consequence than before.

### **Public Health Issues**

Perhaps one of the most unexpected victories for MedChi was the passage of the Clean Indoor Act (Senate Bill 91/House Bill 359) which will forbid smoking in bars and restaurants as of February 1, 2008. At the beginning of the General Assembly Session, it was expected that this legislation would die but it was jump started by the actions of the Baltimore City Council in enacting a local ordinance in Baltimore. Once Baltimore enacted the legislation, the momentum for a statewide ban became palpable. After many years of trying, smoke free advocates were finally successful and achieved a well deserved victory.

Meanwhile, efforts to expand health care to the uninsured funded by \$1 tax increase per pack of cigarettes was successful in the House of Delegates (House Bill 754) but died in the Senate solely because Senate Leadership was not interested in passing a tax increase until next year when all budget issues were on the table. While this was a disappointment to those at MedChi who were interested both in curbing tobacco use and funding health insurance for the uninsured, it is really a question of "when" this proposal will be enacted. Assuming that the structural budget crunch can be resolved next year, it is clear that there is a substantial appetite in the General Assembly to reduce the ranks of the uninsured in Maryland.

#### **Other Bills of Interest:**

- Senate Bill 987/House Bill 1270 (Maryland HIV/AIDS Reporting Act) which transitioned Maryland from a unique identifier system of HIV reporting to a name based system passed. This change was necessary to maintain federal Ryan White program funding. Senate Bill 746/House Bill 781 (Human Immunodeficiency Virus – Test Counseling and Informed Consent – Review) was also enacted. It requires the AIDS Administration to convene relevant stakeholders to review and evaluate new CDC guidelines on HIV testing with recommendations for statutory changes due to the General Assembly before the 2008 Session.
- Senate Bill 181/House Bill 30 (Oral Health Safety Net Program) establishes an Office of Oral Health within DHMH, provides for a Dentist to be hired and creates a grant program for community based initiatives that enhance access to needed dental services.
- House Bill 524 (Workgroup on Cultural Competency and Workforce Development for Mental Health Professionals) creates a workgroup in the Office of Minority Health to look at mechanisms for addressing cultural competency and workforce shortage issues in the mental health area. The bill was amended to address MedChi's concerns that mandatory CME requirements not be considered a mechanism for addressing cultural competency.
- House Bill 979 (Health Information Exchange Pilot Program) was amended to establish a pilot project for developing a health information exchange where doctors could review electronic medical records relating to a patient.

- House Bill 1283 (Maryland Health Insurance Plan - Authority) was enacted which established the independence of the Maryland Health Insurance Plan (MHIP) which has been a part of the Maryland Insurance Administration. Prior to enactment, a MedChi supported amendment was accepted to strike provisions of the bill which required any doctor (participating or not) to seek reimbursement only from MHIP and to accept whatever MHIP offered.
- Senate Bill 258/House Bill 361 (State Board of Physicians – Subpoenas – Medical Records for Mental Health Services) which would help to ensure that patients’ mental health records could not be subpoenaed by the Board of Physicians without notice to the patient passed the Senate but was never brought up for a vote in the House. This was popularly known as the “Eist” bill since it was the result of a dispute between Dr. Harold Eist and the Maryland Board of Physicians.
- Maryland Uniform Credentialing Law was improved by the passage of Senate Bill 557/House Bill 515 which allows certain electronic credentialing be available to physicians in seeking recognition by a health insurance carrier.
- Senate Bill 851(Physicians--Unauthorized Practice of Medicine--Penalty) would have made practicing medicine without a license a felony as opposed to a misdemeanor, which it currently is. This stronger penalty would have captured even those physicians who failed to renew their license more than 30 days after its expiration, a penalty MedChi believed far too onerous. The Senate amended the bill to address this concern, making the legislation acceptable to MedChi. The bill nevertheless failed in the House Committee.
- A number of “scope of practice” bills were killed including:
  - Attempts by dental hygienists to administer anesthesia (Senate Bill 531/House Bill 474);
  - Attempts by physician assistants to lessen the present physician supervision requirements (House Bill 1265);
  - Senate Bill 340/House Bill 326 dealing with audiologists and speech therapists was enacted but only after all provisions which weakened existing requirements for physician supervision were removed.