



## MARYLAND HEALTH CARE COMMISSION

4160 PATTERSON AVENUE – BALTIMORE, MARYLAND 21215  
TELEPHONE: 410-764-3460 FAX: 410-358-1236

### Legislative Policy Conference Call Friday, February 28, 2020, 8:00 AM – 9:00 AM

#### Meeting Summary

Ben Steffen, Executive Director, started the meeting at 8:00 a.m.

#### AGENDA ITEM 1.

##### Welcome and Roll Call

Mr. Steffen welcomed Commissioners to the meeting and took roll call of Commissioners and Commission staff joining the conference call.

#### AGENDA ITEM 2.

##### Meeting Summary

Ms. Megan Renfrew, Chief of Government Affairs and Special Projects, noted that a draft version of the meeting summary from the February 7<sup>th</sup> and February 14<sup>th</sup>, 2020 legislative policy conference calls had been shared with Commissioners. She asked for feedback by Friday, March 6<sup>th</sup> before she posts the summary publically.

#### AGENDA ITEM 3.

##### Update of Activities

Ms. Renfrew provided an update on bills that had hearings on February 20<sup>th</sup>, including [HB 632](#) (Vehicle Laws - Registration - Renewal), [HB 196](#) (Maryland Health Benefit Exchange - Establishment of a State-Based Health Insurance Subsidies Program), [HB 1329](#) Maryland Health Benefit Exchange - Establishment of Small Business Health Insurance Subsidies Program, and [HB 970](#) Health Insurance - Reimbursement of Primary Care Providers - Bonus Payments - Applicability. None of these four bills had moved out of committee as of Thursday, February 27<sup>th</sup>.

This week, in the hearing on [SB 661](#) (Health Insurance - Prostate Cancer Screening - Prohibiting Cost-Sharing), the subcommittee hearing lead to consensus amendments, which allowed the bill to move through full committee smoothly. Similarly, [SB 988](#) (Health Insurance - In Vitro Fertilization – Revisions) moved through full committee smoothly.

Senate Committee members had a number of questions about [SB 600](#) (Health Insurance - Reimbursement of Primary Care Providers - Bonus Payments – Applicability). It appears that bonus payments for primary care extended hours are already required in law, and that this bill is really about expanding the reach to urgent care. It is not clear how the Committee will handle this bill.

The bill hearing for [SB 896](#) (Commission on Student Behavioral Health and Mental Health Treatment), which we discussed last week, was postponed until March 10<sup>th</sup>. MHCC plans to submit a letter of information.

One other bill discussed last week has a hearing later today. Ms. Renfrew will provide that update next week.

Commission staff have also meet with a number of legislators this week, including conversations about the non-controlled substance electronic prescription record bill in the House, and local issues in Prince George’s County.

#### **AGENDA ITEM 4.**

##### **Vote on Staff Recommended Positions on Bills with Hearings Next Week**

This week the bills are divided into three categories: high priority, new discussions, and previously discussed bills.

##### **High Priority**

Ms. Renfrew introduced [HB 1486](#) / [SB 752](#) – Public Health – Non–Controlled Substance Prescription Record System Program. Dr. David Sharp, the Center Director for HIT and Innovative Care Delivery explained that in a prior year House Bill 1115 led to a workgroup focused on the idea of a central repository that was like the PDMP but for non-controlled dangerous substances. The purpose of this repository was to improve patient safety and care delivery efficiency by providing access to a complete prescription history. This goal must be balanced with privacy protections (e.g. a consumer opt-out, no requirement of reporting from certain provider types, and an advisory committee). The pharmacists and dentists would like to be included on the advisory committee. We are asking for alignment with the Senate bill. We also need to amend a definition. Staff recommend a support with amendment position. The Chair agreed.

##### **[HB 935](#) Health Facilities - Freestanding Ambulatory Care Facilities - Administration of Anesthesia - *Support with Amendment***

This bill amends OHCQ’s statute related to the regulation of ambulatory surgery facilities to add language to make sure that practitioners administering anesthesia have access to all medical resources to safely care for their patients. The bill was prompted by anesthesiologists who want access to anesthesia machines in procedure rooms in ASFs.

Mr. Steffen stated that he had talked to the anesthesiologists supporting the bill, as well as the association representing ambulatory surgery facilities (MASA), and MedChi. The drafting is vague and broad. The bill could be tightened up to meet the needs of anesthesiologists without blurring the distinction between procedure rooms and operating rooms.

Mr. Parker noted that there are two boundary lines in our regulatory scheme, between ASFs with 3 or more operating rooms (ORs) and ASFs with fewer ORs, and then between ORs and

procedure rooms within facilities. Mr. Steffen noted that the sponsors are interested in working out a compromise and have asked for a meeting with MASA. Mr. Parker noted that procedure rooms are not sterile. MHCC only allows minimal sedation in those rooms. Over time more and more procedures are done in those rooms. Some procedure rooms are also more advanced (larger, better air handling), that that is not the majority of procedure rooms. All facilities are licensed whether they were subject to a CON or a MHCC determination of coverage.

The assistant attorney general noted that the staff need to be able to decide if a determination of coverage or a Certificate of Need is appropriate.

The Commissioners expressed that the priority should be patient safety, reducing health care costs, and supporting innovation, not regulatory concerns. FGI guidelines define the difference between procedure and operations rooms and do so based on safety. Some Commissioners expressed concerns that this bill would open the door for procedures to be done in procedure rooms that shouldn't be. A Commissioner noted that the distinction related to the level of anesthesia was important 10 years ago, but no longer is. The Commissioners agreed that the State should not be in the business of dictating medical decisions or preventing innovation. But we need to be concerned that the incentives to use procedure rooms are balanced with protecting the patient.

A Commissioner asked if the statute could include examples of procedures allowed in each type of room. Mr. Steffen noted that the Medicare ambulatory fee schedule includes 2500 procedures that are allowed in ASFs. Private payers tend to follow this list, which does not distinguish between the procedure room and the OR.

### **Other New discussions**

[Ms. Renfrew explained that HB 915 / SB 632](#) Health Facilities - Hospitals - Disclosure of Outpatient Facility Fees (Facility Fee Right-to-Know Act) requires hospitals to provide patients with written, oral, or electronic notices of outpatient facility fee at the time appointments are made, and the patient must acknowledge this information before the appointment. Billing for the facility fee is not allowed unless the notice is made. The notice may provide the actual expected fee or a range of possible fees for the appointment and HSCRC is tasked on working with MHA and stakeholders to develop the process for setting that range of fees. This bill is co-sponsored by more than half of the members of the HGO committee in the House and the Finance Committee in the Senate. Staff recommend that the Commission either take no position on this bill, as it does not impact MHCC directly, or offer a letter of information.

Mr. Steffen noted that transparency is a priority for the Commission, but this bill is operationally complicated. A letter of information would explain MHCC's price transparency projects.

Commissioners asked if the notice provides the consumer cost sharing for the facility fee and whether the notice requirement applies to the emergency department. Ms. Renfrew noted that the notice (which is in the bill text) provides the full fee, not the patient cost sharing, and that the emergency department is not mentioned.

Commissioners noted that this bill is aligned with the Commission's priority on transparency, but expressed that a more streamlined process might have fewer operational difficulties. There was discussion of whether this notice leads to a preauthorization process to get insurance estimates, and whether this adds significant administrative burden, personnel, and cost to hospitals. Commissioners believe that it is important to express our commitment to transparency and our willingness to work with others to achieve a better outcome.

Commissioners also discussed the facility fees and whether this problem could partly be solved by HSCRC making changes to the facility fee rate setting. For example, if the facility fee was flat, rather than based on the delivered services, it would be easier to disclose. HSCRC is working with hospitals on potentially changing facility fees.

[HB 926](#) – Hospitals and Freestanding Medical Facilities – Closing or Partial Closing – Public Notice - *Letter of Information*

This bill expands the required notice that MHCC must provide to the public and elected officials when a hospital or free standing medical facility plan to close or partially close. Under the bill MHCC must publish a notice within 15 days of receiving notice from a hospital or FMF of a planned closure. MHCC is required to provide copies of the notice to the local government and the members of the General Assembly for that district. The notice must be published in the local paper and posted at the hospital.

This bill has been introduced in various forms each of the last 3 years. MHCC has traditionally provided a letter of information that suggests some changes to the bill, but does not formally offer amendments. The Commissions agreed that a letter of information was appropriate.

[HB 1291](#) – Health Facilities - Certificate of Need - Exemption for Hospitals Providing Hospice Program Services. Ms. Renfrew noted that the hearing for this bill has been cancelled and this bill was not further discussed.

[SB 669/ HB 1095](#) Public Health - Prescription Drug Affordability Board and Fund - *Support*

This bill establishes an annual assessment on prescription drug manufacturers, pharmacy benefit managers, carriers, and wholesale distributors to fund the Prescription Drug Affordability Board (PDAB). MHCC staff recommend that we support this bill. MHCC has been funding this Board since its founding through a loan, and this bill will allow the PDAB to pay MHCC back. Commissioners agreed with this approach as long as the testimony is clear about MHCC's interest in being reimbursed.

[SB 690](#) Public Health - Long-Term Care Planning-*Information*

This bill requires the Maryland Department of Health to develop and publish materials to assist State residents with long-term care family planning, including financial planning. MHCC staff are willing to post some of these materials on the popular Long Term Care Consumer Guide website, which MHCC maintains. Staff recommend submitting a letter of information about the existing long term care consumer guide and our willingness to add materials. Commissioners agreed.

### **Previously discussed positions**

[HB 1208](#) Maryland Medical Assistance Program - Telehealth - Pilot Program- *Information*

Recently we discussed SB 502, which sets up a permanent program for mental health related telehealth in homes paid through Medicaid. We suggested that a pilot would be more appropriate. HB 1208 proposes a pilot program. Medicaid will be introducing amendments to further narrow the scope. We will support Medicaid through a letter of information.

[SB 875 / HB 1420](#) - Hospitals - Financial Assistance Policies and Bill Collections – *Letter of Information*

This week we submitted a letter of information on the cross-filed bill (SB 875) on the role that charity care policies play in CON review. We plan to do the same for this bill

[HB 1443](#) Commission on Student Behavioral Health and Mental Health Treatment - *Information*

MHCC staff submitted a letter of information on the cross file bill (SB 896). The letter discussed the importance of telehealth in student behavioral health. Staff plan to submit a similar letter for the HB 1443.

### **AGENDA ITEM 5.**

#### **Overview of Upcoming Activities**

There are no upcoming activities that needed discussion.

### **AGENDA ITEM 6.**

#### **Adjournment**

Ms. Renfrew brought the meeting to an end at approximately 9:01 a.m.