



410-244-7000

20 West Street
Annapolis, Maryland 21401

smwpa.com

MedChi Monthly Report September 2023

This monthly report is prepared by Schwartz, Metz, Wise and Kauffman (Pam Kasemeyer, Steve Wise, Danna Kauffman, Drew Vetter, and Christine Krone) and is sent to designated leaders at MedChi, all of whom have signed a Conflict of Interest statement and have agreed to keep matters – such as those contained in this Report – confidential.

With the 2023 Session behind us and the 2024 Session fast approaching, this is the first monthly memo of the 2023 Interim. This memo will encompass the activities/issues that have occurred since the conclusion of the 2023 Session. Moving forward, the memo will summarize the activities for the previous month.

Insurance/Payment Issues

After Session, the Chairs of the Senate Finance Committee and the House Health and Government Operations Committee sent a letter to CEO Gene Ransom requesting that MedChi convene a stakeholder workgroup to examine the utilization review (prior authorization) process. Gene Ransom and Danna Kauffman met on June 18th to discuss how to proceed with the issue. As such, Danna has convened a stakeholder group comprising of physicians, other practitioners, insurers, pharmacy benefit managers (PBMs), and other interest groups. Two meetings were held this summer (July 25th and August 23rd) and three more are scheduled each month through November. In addition, a physician/practitioner Advisory Committee has been formed to advise on these issues. From this workgroup, a smaller group will be meeting with medical/operational directors from the insurers/PBMs to discuss and focus on determining meaningful solutions to reduce the administrative burdens on practitioners and design legislation for the upcoming 2024 Session. At least two of these meetings have been scheduled for September. Lastly, Danna Kauffman worked with MedChi staff to design a webpage – [Take Back Healthcare \(canva.site\)](#).

On June 27th, Danna, along with Dr. Gary Pushkin, met with Chair Quinn from the Maryland Workers' Compensation Commission. The purpose of the meeting was to follow up on a letter sent to the Commission by MedChi requesting that the Commission adopt the newest edition of the AMA Guide for Evaluating Permanent Impairment. Dr. Quinn was receptive but stated that she wanted MedChi to work with the plaintiff's attorneys on the issue and did not want to pursue an item that would not have consensus. Chair Quinn also stated that the Medical Fee Guide Committee would be looking at prescription issues and whether a formulary should be considered. The first meeting of the Committee occurred on August 10th. The second meeting is scheduled for September 21st.

On July 12th, members of the Firm joined Gene Ransom in a meeting with Anthony Brown, Maryland's Attorney General (AG), and his staff to discuss a variety of issues, including the need for

MedChi and the AG's Office to partner to reform prior authorization (similar to efforts from a few years ago). Other issues discussed were the need for the AG to examine the monopoly power in Maryland regarding health insurance and whether it is contributing to Maryland's low payment in the commercial health insurance market. The meeting was productive with AG Brown agreeing to work with MedChi and continue discussions.

Public Health Initiatives/Issues

MedChi's Children's Behavioral Health Task Force was formed under the leadership of MedChi's President Dr. James York who chairs the Task Force. Pam Kasemeyer and Christine Krone have attended monthly meetings on February 9th, March 23rd, April 17th, May 8th, June 26th, July 24th, and August 28th. Pam and Christine have provided the Task Force with information on various initiatives and dialogues taking place relative to children's behavioral health, such as the Consortium on Community Supports. One focus of the Task Force is to advance the adoption of the Adolescent Depression Awareness Program (ADAP), which was created by Dr. Karen Swartz from Johns Hopkins. ADAP is a free curriculum aimed at improving student learning in depression knowledge. On August 25th, the Task Force met with the Anne Arundel County Superintendent and other District leaders to discuss adoption of the program. The County leadership voiced interest in pursuing a pilot program in a few schools initially and eventually implementing the program county-wide. The Task Force will continue to work to advance the adoption of the program.

Pam and Christine have participated on behalf of MedChi in several coalitions relative to behavioral health, including the Children's Behavioral Health Coalition and the Behavioral Health Coalition of the Mental Health Association. The Behavioral Health Coalition addresses a full range of policies and issues, not just those related to Children. Pam and Christine also participated in the Parity Coalition, which is focused on policy related to insurance parity for behavioral health with that of somatic health and State compliance with federal parity requirements. All of these coalitions meet on a regular basis throughout the year and have spent the interim focusing on both the implementation of initiatives enacted in the 2023 Session and the identification of priorities that should be addressed in 2024.

Relative to Medicaid, there have been a number of relevant issues that are a priority for MedChi, which Pam has worked on with the Maryland Department of Health (MDH) during the interim. The Healthy Babies Act, which expands Medicaid coverage for pregnant women regardless of their immigration status, was implemented in July. Pam has also been working with MDH to identify billing codes for certain immunizations and other services that are not on the Medicare fee schedule and therefore are not regularly updated when MDH does its annual fee schedule adjustments. It is anticipated that a process for ensuring all codes are updated annually and should be finalized by the end of the year. Pam and Christine also attended all monthly Medicaid Advisory Committee meetings and are in regular communication with MDH and Committee members on issues of importance to MedChi. Most recently, work necessary to implement the Express Eligibility Lane for Medicaid enrollment, as well as address the current reenrollment challenges that have resulted from the termination of the federal public health emergency related to COVID-19 have been the primary focus of the Medicaid program to ensure eligible individuals do not lose their coverage. During the public health emergency, recipients were guaranteed continuous eligibility and were not required to renew the eligibility. Pam has been in regular communication with MDH to ensure that MedChi could provide assistance and/or input on these efforts as requested.

The Prescription Drug Advisory Board, which is charged with establishing a regulatory structure to implement upper payment limits for selected drugs, has met monthly throughout the year. Drew Vetter and Pam have actively monitored their work. Dr. Renee Bovell was recently appointed as the physician member of the Prescription Drug Stakeholder Advisory Committee. Draft regulations have been circulated to stakeholders for feedback and it is anticipated the Board will move forward with proposed regulations in the coming months. The Firm will continue to monitor the work of the Board and its Stakeholder Advisory Committee and support Dr. Bovell as the physician representative.

The implementation of the various reproductive rights initiatives that were enacted in the 2023 Session have also been a focus of attention. Of specific note are the issues relative to the protected health Commission and MDH are involved in addressing these issues. A specific Commission charged with addressing this issue is to be appointed. While the Commission appointments have not yet been made, it is anticipated they will be made soon, and the Commission will promptly begin its deliberations. The work on this issue will undoubtedly extend through the balance of the year into 2024.

Scope of Practice Issues

Legislation that would have made significant changes to the Physician Assistant (PA) law in Maryland was introduced again during the 2023 General Assembly Session, as it was in 2022. Both years the bill failed, but throughout both sessions and the interim in between, MedChi President Jim York, CEO Gene Ransom and lobbyist Steve Wise have continued negotiations with the PAs at the urging of legislative leaders, with many issues being resolved, at least in concept. These negotiations have continued during the summer of 2023 as well.

Throughout this process, a workgroup of physicians has been involved to guide the negotiations, including physicians representing family physicians, emergency physicians, orthopedists, radiologists and more. We recently learned that the PAs are changing lobbying firms, so this will cause a pause in the negotiations but hopefully not disrupt them. In the end, there may be issues where we cannot agree, but the goal is to amicably resolve as many as possible before the 2024 Session.

Board of Physician Issues

For nearly 3 years, MedChi has worked with the Board of Physicians to develop regulations that would allow certain minor disciplinary actions to be expunged from a physician's record. This began during the Hogan Administration, and the Board submitted regulations for adoption, but these were never formally proposed. At the conclusion of the 2023 Session, and as the Moore Administration began to fully take shape, MedChi renewed its efforts to have these regulations adopted, most recently by sending a letter to the new Health Secretary urging adoption.

In June, Steve was contacted by Board staff about potentially forthcoming draft regulations related to continuing medical education. Under consideration were regulations that would allow Category 2 CMEs to count toward the 50 CME requirement, and to allow credit for board certification hours. Steve organized a meeting with MedChi staff to discuss issues related to these changes, which was helpful both to MedChi and Board staff. The regulations are still being worked.

Also in June, in response to media reports and inquiries from members, Steve prepared a memo outlining existing law on the use of the terms 'physician' and 'doctor'. The 4-page memo discusses what

limitations there are under existing law, suggests obtaining legal advice from the AG (which was later obtained), and discusses some considerations related to introducing legislation on this issue.

Tort Issues

The legal liability climate in Maryland has remained relatively stable for nearly 20 years, following the medical malpractice crisis in the early 2000's. Hospitals have encountered recent issues obtaining re-insurance, a result of several large verdicts in the State, but otherwise the markets have been calm. The unfortunate downside to this is that newer legislators have not had reason to learn the history of this complicated issue.

However, during the 2023 Session, legislation was introduced that would have repealed entirely the non-economic damage cap that applies to cases other than healthcare claims. The discussion made clear that MedChi, Med Mutual, and the Maryland Hospital Association (MHA) need to take steps to educate legislators on the importance of these caps and other tort laws that have resulted in this stable market. While we do not know what the plaintiff's bar has in store for the 2024 Session, we know we need to begin an educational effort for whenever bills are proposed that attack the current system, and we will begin this effort this fall.

Key Appointment

Governor Moore appointed MedChi member Dr. Deondra D. Asike, clinical associate in the Department of Anesthesiology and Critical Care Medicine, Johns Hopkins Medicine, to the newly created Cannabis Public Advisory Council. The Council was established to study and provide input into the public health impacts of cannabis use in Maryland. The Council is also responsible for making recommendations to mitigate misuse, addition, and access by persons under 21 years of age.

Capital Budget – MedChi Museum

As a reminder, MedChi was awarded \$630,000 in Capital funding during the 2023 Session to make critical upgrades to the MedChi Museum facility in Baltimore. Notably, the funding will be used to install an elevator and complete other upgrades necessary to make the facility ADA-compliant, allowing for public access. MedChi is in the process of working through the State's process to receive the funding.

Other Issues

The Maryland Health Care Commission (MHCC) released draft regulations this interim on health information exchanges. As part of this draft regulation, a section was added regarding dispensers reporting non-controlled medications to CRISP. This is a result of legislation that was supported by MedChi in order to ensure a full record of medications, rather than simply controlled substances, through the Prescription Drug Monitoring Program. Danna drafted a letter, which MedChi sent, commenting on the draft, given that it would require additional reporting from dispensing physicians. Most comments were technical with the emphasis being that any reporting needed to be simplified and ideally use the same process that is used for reporting controlled substances. These draft regulations have been temporarily placed on hold while the MHCC completes regulations regarding reproductive rights and privacy.

Danna participated in the MHCC's monthly meetings on June 15th and July 20th. Meeting materials can be found at [Agenda Minutes and Updates \(maryland.gov\)](https://www.maryland.gov/agenda/minutes-and-updates).

Danna has been participating in the newly formed Hospital Throughput Workgroup. The workgroup is chaired by Dr. Ted Delbridge, the Executive Director of the Maryland Institute for Emergency Medical Services Systems, and Erin Dorrien from the MHA. Approximately, 24 individuals are serving on the Workgroup, including representatives from State agencies (e.g., MDH, the Maryland Health Services Cost Review Commission, and MHCC) as well as emergency physicians, hospital administrators, representatives from behavioral health, nursing homes, patient groups, and unions. Two meetings have occurred this summer with three more planned for this fall. A report with recommendations is required prior to the 2024 legislative session.

Danna participated in a meeting between Gene Ransom and representatives from the Maryland Chapter of the American College of Emergency Physicians. The purpose of the meeting was to discuss a proposal for value-based care for emergency physicians. This meeting has led to greater collaboration between the two organizations with quarterly meetings scheduled between the two organizations.

On June 9th, Danna participated in a meeting convened by the Maryland Board of Physicians to discuss physician dispensing, specifically legislation that has been introduced during the last two Sessions to transfer regulatory oversight for inspections from the Maryland Office of Controlled Substance Administration to the Board. Participating in this meeting were representatives from the AG's Office, the Maryland Pharmacist Association, and administrative prosecutors. During the debate on the legislation, the AG's Office requested modifications to § 14-410 of the Health Occupations Article regarding Board records. MedChi, the Board, and the administrative prosecutors opposed any changes to this section due to concerns that changes (i.e., disclosures to the AG's Office) could have far-reaching implications with regard to the Board's ability to enter into consent orders with its licensees.

Steve was asked by the MedChi Gender Pay Equity Subcommittee for advice on a potential resolution that would put into law a safe harbor provision for employers that proactively engage in an analysis of their pay practices. A memo discussing other state laws providing this safe harbor and the likely reaction of the Maryland General Assembly to such a proposal was provided to the Subcommittee for further discussion of the issue.

Fundraisers

On behalf of MedChi, the Firm attended the following fundraisers: Treasurer Derek Davis, Senator Melony Griffith, Senator Pam Beidle, Senator Michael Jackson, Senator Corey McCray, Senator Johnny Mautz, Senator Brian Feldman, Senator Antonio Hayes, Senator Arthur Ellis, Senator Dawn Gile, Delegate Jazz Lewis, Delegate Nick Kipke, Delegate Ben Barnes, Delegate Terri Hill, Delegate Tiffany Alston, Delegate Luke Clippinger, Delegate Regina Boyce, Delegate Charles Sydnor, Delegate Pam Guzzone, and Delegate Stephanie Smith.

ADDENDUM: Bills Effective October 1, 2023, and/or January 1, 2024
(Please review to the Sine Die report for further information on bills)

Bills Effective October 1, 2023

BOARDS AND COMMISSIONS

Senate Bill 213/House Bill 278: Health Occupations – Clinical Nurse Specialists – Prescribing allows Clinical Nurse Specialists to prescribe.

Senate Bill 375/House Bill 453: State Board of Physicians – Inactive and Emeritus Status allows certain physicians who no longer actively practice to be recognized by the Board as “Emeritus” rather than “inactive” when certain qualifications are satisfied.

Senate Bill 258/House Bill 633: Hospital Credentialing – Reappointment Process for Physician Staff – Modifications removes an outdated statutory requirement for hospitals to re-credential physicians every 2 years and allows re-credentialing to occur every 3 years, consistent with the interval for hospital accreditation.

House Bill 1156: Pharmacists – Therapy Management Contract – Form allows these contracts to be entered into electronically, or orally provided that any initial oral agreement must be reduced to writing (or recorded electronically) within 30 days.

Senate Bill 187/House Bill 454: Health Occupations – Licenses, Certificates, and Registrations – Lawful Presence and Identification Numbers prohibits a health occupations board from requiring that an applicant provide proof that they are lawfully present in the United States or have a Social Security number or Individual Taxpayer Identification Number as a condition for licensure, certification, or registration.

HEALTH INSURANCE

Senate Bill 678/House Bill 1151: Health Insurance – Reimbursement for Services Rendered by a Pharmacist requires that Medicaid, the Maryland Children’s Health Program, and commercial health insurance carriers provide coverage for services rendered by a licensed pharmacist acting within the pharmacist’s scope of practice to the same extent as services rendered by any other licensed health care providers. **** Note: Commercial insurance changes take effect January 1, 2024.**

Senate Bill 724: Health Insurance Carriers – Requirements for Internal Grievance Process – Modification requires a carrier to inform either orally by telephone (as under current law) or – with the recipient’s consent – by text, facsimile, electronic mail, online portal, or other expedited means a denial. A written follow-up must still be sent within five days.

PUBLIC HEALTH

Senate Bill 101/House Bill 48: Maryland Medical Assistance Program – Collaborative Care Model Services – Implementation and Reimbursement Expansion requires Medicaid reimbursement for behavioral health services delivered in primary care settings through the Collaborative Care Model.

Senate Bill 581: Behavioral Health Care Coordination Value-Based Purchasing Pilot Program establishes the Behavioral Health Value-Based Purchasing Pilot Program to provide person-centered, team-based services designed to assess and meet the needs of an individual with a behavioral health condition and help the individual navigate the healthcare system.

Senate Bill 582/House Bill 1148: Behavioral Health Care – Treatment and Access (Behavioral Health Model for Maryland) is an omnibus bill and as amended, (1) establishes a Commission on Behavioral Health Care Treatment and Access; (2) creates a Behavioral Health Care Coordination Value-Based Purchasing Pilot Program; (3) extends for two years provisions relating to telehealth services; (4) requires MHCC to study and make recommendations regarding telehealth; and (5) requires MDH to apply for federal grant funds and inclusion in the state certified community behavioral health clinic demonstration program.

Senate Bill 460/House Bill 283: Maryland Medical Assistance Program – Gender-Affirming Treatment (Trans Health Equity Act) addresses the Medicaid program gender-affirming treatment. By prohibiting Medicaid from excluding gender-affirming treatment on the basis that the treatment is a cosmetic service and could not issue an adverse benefit determination denying or limiting access to gender-affirming treatment unless a health care provider with experience prescribing or delivering gender-affirming treatment had reviewed and confirmed the appropriateness of the adverse benefit determination.

Senate Bill 26/House Bill 111: Maryland Medical Assistance Program, Maryland Children's Health Program, and Workgroup on Low-Income Utility Assistance requires MDH, by January 1, 2025, to establish an express lane eligibility program to enroll individuals in Medicaid and the Maryland Children's Health Program based on eligibility findings by the Supplemental Nutrition Assistance Program.

Senate Bill 188/House Bill 302: Public Health – Rare Disease Advisory Council establishes a Rare Disease Advisory Council to enhance research and provide policy recommendations on matters related to individuals living with rare diseases in the State.

Senate Bill 644: Maternal Mortality Review Program – Local Teams – Access to Information and Records provides Baltimore City direct access to records within certain requirements.

Bills Effective January 1, 2024

HEALTH INSURANCE

Senate Bill 515/House Bill 785: Health Insurance – Step Therapy or Fail-First Protocol and Prior Authorization – Revisions (passed) requires health insurance carriers to adopt a policy to approve a step therapy exception request if, based on the professional judgment of the prescriber, the step therapy drug is detrimental to the patient as specified in the legislation.

Senate Bill 184/House Bill 376: Health Insurance – Diagnostic and Supplemental Examinations and Biopsies for Breast Cancer – Cost-Sharing requires commercial health insurance carriers that provide coverage for a “diagnostic breast examination” or a “supplemental breast examination” from imposing a copayment, coinsurance, or deductible requirement for such examinations.

Senate Bill 965/House Bill 815: Cancer Screening – Health Insurance and Assessment of Outreach, Education, and Health Disparities requires a health insurance carrier to provide coverage for a recommended follow-up of diagnostic imaging to assist in the diagnosis of lung cancer as recommended by the U.S. Preventative Services Task Force, including diagnostic ultrasound, magnetic resonance imaging, computed tomography, and image-guided biopsy.

Senate Bill 805/House Bill 1217: Maryland Medical Assistance Program and Health Insurance – Required Coverage for Biomarker Testing requires commercial health insurance carriers, to provide coverage for biomarker testing for the purpose of diagnosis, treatment, appropriate management, or ongoing monitoring of a disease or condition that is supported by medical and scientific evidence. Beginning July 1, 2025, the Maryland Medical Assistance Program must provide similar coverage.

House Bill 374: Health Insurance – Pharmacy Benefits Managers – Audits of Pharmacies and Pharmacists expands the applicability of specified requirements governing pharmacy audits to all PBMs, including those used by Medicaid managed care organizations; (2) authorizes PBMs to conduct an audit through an auditing entity; and (3) imposes additional requirements and restrictions on PBMs during the audit process.