



## *Weekly Policy Highlights*

For week ending January 29, 2010

### **Key Committee Codes:**

B&T = Senate Budget and Taxation

EHEA = Senate Education, Health & Environmental Affairs

FIN = Senate Finance Committee

JPR = Senate Judicial Proceedings Committee

APR = House Appropriations

ECM = House Economic Matters

ENV = House Environmental Matters

HGO = House Health & Government Operations

JUD = House Judiciary Committee

All bills can be reviewed under the General Assembly Website at [www.mlis.state.md.us](http://www.mlis.state.md.us) by clicking "Bill Information and Status". Type the bill number by SB or HB plus the bill number (e.g., SB101 or HB9).

### ***2010 GENERAL ASSEMBLY SESSION NEWS --***

#### **1. BUDGET NEWS –**

LifeSpan's Reimbursement Committee has decided to oppose the increase in the provider tax on nursing facilities. The proposal permanently increases the tax from two percent to four percent and states that at least 65% must go back into the nursing facility reimbursement system rather than the full 100%. The proposed FY2011 budget estimates that \$17 million of the monies generated would go into the General Fund prior to any reimbursement back to nursing facilities.

The budgets of the Office of Health Care Quality and the Department of Aging will both be heard this week. LifeSpan will testify on both budgets. For the Department of Aging's budget, LifeSpan will highlight the Congregate Housing Services budget.

#### **2. BRIEFINGS/MEETING HELD LAST WEEK -**

LifeSpan testified at the Senate Finance Committee briefing on the eligibility process for nursing facilities, pay-for-performance and the fiscal outlook of nursing facilities. LifeSpan highlighted the need for the legislature not only to look at the effects of Medicaid budget cuts but on ALL the fiscal

challenges facing nursing facilities – Medicaid, Medicare, cash flow because of eligibility delays, training/administrative costs because of new program implementations, such as QIS, MDS 3.0 upgrade, etc. as well as additional business costs such as unemployment insurance tax increases. In our written testimony, we also discussed the dangers of increasing the provider tax on nursing facilities.

On Wednesday, January 27, 2010, LifeSpan representatives (Warren Slavin, Chair, LifeSpan, and Danna Kauffman) and HFAM representatives met with Doug Gansler, Attorney General, to discuss the need for the Attorney General to enforce and prosecute those individuals who either fail to pay the nursing facility the allowable amount determined to be available by DHR or those who fail to apply for Medicaid or cooperate with the eligibility process. Attorney General Gansler stated that, because of budget cuts and staffing issues, his department is unable to prosecute those individuals. However, he did state that his office would support amending the law to allow the courts to issue an individual a civil penalty in these cases if the individual fails to comply with the court order. LifeSpan and HFAM have drafted legislature to accomplish this change and Delegate James Hubbard and Senator Thomas Middleton have agreed to sponsor it.

On Friday, January 29, 2010, there was also a meeting with Secretary Colmers and staff members at DHMH to begin discussion on how to revamp the delivery of long-term care services. The emphasis was on greater utilization of home-and-community based services and how nursing facilities can redesign their systems to meet this evolving need. There was discussion on how the federal Medicare regulations make it difficult to offer home health services, etc. Secretary Colmers stated that he wants to continue discussions and would be interested in approving small, pilot programs if the State was not able to design a system State-wide. This meeting was a precursor to the larger workgroup that is being formed to examine the restructuring of the long-term care delivery system.

### **3. BRIEFINGS SCHEDULED FOR THIS WEEK –**

The Department of Aging and the Office of Health Care Quality will hold their budget hearings this week. There will also be a meeting on electronic monitoring in Chairman Peter Hammen's office. Delegate Hecht plans to reintroduce her bill, which allows a resident to have electronic monitoring in the resident's room (nursing facilities and assisted living communities) if the resident pays for the equipment and other qualifications are satisfied. The OHCQ is working with residents and facilities who may be interested in this type of monitoring.

In addition, there will be a fiscal briefing in HGO on the DHMH budget as well as a briefing by the Maryland Health Care Commission in Senate Finance on the status of electronic health records.

#### 4. INTRODUCED BILLS:

Affected Industry	Business Bills	Comments
All	<p><b>SB106/HB92 Labor and Employment – Job Creation and Recovery Tax Credit.</b> This is an emergency bill by the Governor to create a \$20 million program that allows a qualified employer who hires a qualified employee between January 1, 2010 – December 31, 2010 to obtain a \$3000 tax credit per employee, not to exceed \$250,000 per employer. Bill defines qualified employee and qualified employer.</p>	Monitor
All – reviewed 1/15/10 by LPC	<p><b>SB107/HB91 Labor and Employment – Unemployment Insurance – Modernization and Tax Relief Act.</b> <u>Hearing Date: 1/26 3:00 FIN.</u> This is a Governor’s emergency bill. The preamble of the bill states that the Fund’s solvency is at risk through 2010. \$126.8 million is available from the federal government if Maryland meets certain modernization incentives by September 30, 2011. This bill adopts an alternative base period, adjusting how the state determines a claimant’s monetary eligibility and employer charges. Base period would include the 4 most recently completed calendar quarters immediately preceding the start of the benefit year only if the individual applying doesn’t qualify under existing benefits. The bill also makes alterations to the definition of part-time worker that passed last Session; authorizes a one-year shift from Table F to Table E; reduces the interest rate of 1.5% to 1% per month or part of the month from the date a contribution or reimbursement payment is due and unpaid; and extends benefits for 26-weeks for individuals enrolled in training programs if the individual is separated from employment in a “declining” occupation and being trained in a “demand” occupation. <b>NOTE:</b> The Maryland Chamber of Commerce opposes this bill on the basis that the short-term relief is outweighed by the long-term liabilities.</p>	Monitor
All	<p><b>SB110 Labor and Employment – Job and Financial Privacy Protection Act.</b> This bill states that an employer may not request a credit report from an applicant for employment or an employee unless: (1) the request has a bona fide work-related purpose; or (2) the employer is required to request the credit report under federal or state law.</p> <p>The Commissioner (Department of Labor, Licensing and Regulation must adopt regulations specifying what is a bona fide work-related purpose. If an employer denies employment to an applicant or discharges an employee because of a credit report received by the employer the applicant or employee may bring an action for injunctive relief, damages, or other relief.</p>	Monitor
All	<p><b>SB300: Unemployment Insurance – Contributions – Installment Payment Options.</b> This is an</p>	

	emergency bill. This bill allows an employer to pay unemployment insurance contributions for the calendar year 2010 in monthly or quarterly installments. Within 20 days of enactment, the Secretary of Labor must notify employing units of this option.	
<b>All</b>	<b>SB312: Labor and Employment – Credit Reports and Credit Histories of Applicants and Employees – Limitations on Use by Employers.</b> This bill states that an employer may not use an applicant’s or employee’s credit report or credit history in determining whether to deny employment, discharge employment or determine compensation. The employer may consider the applicant’s credit report or history if the applicant has received an employment offer and the history or report is for a reason other than those already prohibited or for a bona fide work related purpose. If an employer violates this section, the applicant or employee may bring an action for injunctive relief, damages or other relief.	<b>Monitor</b>
<b>All</b>	<b>HB214: Labor and Employment – Wage Payment and Collection Law – Definition of Wage:</b> This bill amends the Wage laws to state that “wage” includes “overtime wages.”	
<b>All</b>	<b>HB175: Labor and Employment - Credit Reports and Credit Histories of Applicants and Employees – Limitations on Use by Employers.</b> This bill does not apply to an employer that is required to inquire into an applicant’s or employee’s credit report or credit history under federal law or any provision of state law for the purpose of employment; or a financial institution where deposits are insured by a federal agency that has jurisdiction over the financial institution. An employer may not use an applicant’s or employee’s credit report or credit history in determining whether to: (1) deny employment to the applicant; (2) discharge the employee; or (3) determine compensation or the terms, conditions, or privileges of employment. An employer may request or consider an applicant’s credit report or credit history if: (i) 1. The applicant has received an offer of employment; and 2. The credit report or credit history will be used for a purpose other than those prohibited by subsection (b) of this section; or (ii) the request has a bona fide work–related purpose. If an employer violates this section, the applicant or employee may bring an action for injunctive relief, damages, or other relief.	<b>Monitor</b>
<b>All</b>	<b>HB300: Labor and Employment – Payment of Wages.</b> This bill stipulates that each employer must pay each employee at least once in every two weeks or twice in each month the regular full wage earned for each pay period on all paydays that fall within any given year.	
<b>All</b>	<b>HB381: Workplace Religious Freedom Act.</b> This bill is a reintroduction of last Session. This bill prohibits an employer from prohibiting an employee from using leave to observe a Sabbath or other holy day in accordance with a sincerely held religious belief. An employer that can demonstrate to the Commission of Labor that reasonable accommodations to comply with the requirements of this section would cause an undue hardship is exempt from this Section.	

Affected Industry	Health Care Bills	Comments
All	<p><b>SB9 – Health – Duty to Report Death – Requirement and Penalties.</b> This bill would apply only to an individual who: (1) has permanent or temporary custody or responsibility for the supervision or care of the individual who is the deceased; (2) is a spouse, parent, or adult child of the deceased; or (3) is a member of the household of the deceased. An individual who has personal knowledge of the death of another individual or who has personally discovered the body of another individual shall provide, in person or by telephone, notice of the death within 24 hours after acquiring personal knowledge or discovery of the death to: (1) a law enforcement officer as defined in § 3–101 of 15 the public safety article; (2) a physician who has provided medical treatment to the deceased individual within 30 days prior to the knowledge or discovery of the death; (3) a 9–1–1 system or public safety answering point as those terms are defined in § 1–301 of the public safety article; or (4) a medical examiner.</p>	No Position
Nursing Facilities	<p><b>SB141/HB151: Budget Reconciliation and Financing Act of 2010.</b> This bill contains the increase to the Nursing Facility Quality Assessment Program has described above in the “Budget News.”</p>	Oppose Provider Tax Increase
Nursing Facilities	<p><b>SB144/HB137: State Board of Examinations of Nursing Home Administrators – Sunset Review and Evaluation.</b> This bill extends the Board from 2013 to 2017.</p>	No Position
All Medicaid Providers	<p><b>SB 187: Maryland False Claims Act.</b> The Governor will be releasing a bill to create a Maryland False Claims Act.</p> <p><b>SB279: Maryland False Claims Act of 2010.</b> This is the Governor’s bill. For the last two years, this bill has died on the Senate floor. Meetings have been occurring on this bill since the beginning of Session, invitation only. The two main provisions that health care providers have expressed concern over include: (1) the definition of “knowing or knowingly” because it states that a provider does not need to have the specific intent to defraud but only an actual knowledge of the information, acts in deliberate ignorance of the truth or falsity of the information or acts in reckless disregard of the truth or falsity of the information; and (2) “qui tam” provision that allows an individual to bring a private cause of action even if the government does not pursue an action.</p>	
Housing	<p><b>SB263: Creation of State Debt – Maryland Affordable Housing Trust.</b> This bill authorizes a \$2 million State loan to the Maryland Affordable Housing Trust.</p>	
Assisted Living	<p><b>SB265: Assisted Living Programs – Elevator Installation – Exemption.</b> This bill is a reintroduction from last Session. This bill exempts an assisted living program with five or fewer beds that is licensed by the Department of Health and Mental Hygiene from the registration and inspection requirements for</p>	

	installing an elevator. The Commissioner of Labor and Industry may adopt regulations to enhance the safety of elevator units in these facilities.	
<b>All</b>	<p><b>SB266/HB302: State Board of Nursing – Membership – Nominations for Vacancies.</b></p> <ul style="list-style-type: none"> <li>• This bill increases the membership to include one more registered nurse. The composition would now be 8 RNs, 3 LPNs and 2 consumers. Currently, of the RNs, one must be in an advanced practice nursing specialty, one must be a baccalaureate nursing educator with, at least, a master’s in nursing or education, one must be a practical nursing educator with, at least, a bachelor’s degree in nursing or education, one must be a nurse administrator with, at least, a master’s degree in nursing administration, education or public health and 2 shall be nurse clinicians with at least a master’s in nursing or public health.</li> <li>• As far as the education requirements, this bill would allow the nurse administrator slot to have a master’s degree also in business administration or business management. It would also add the requirement that one should be a currently practicing nurse who has practiced acute care for at least 5 years with a bachelor’s in nursing.</li> <li>• The bill also requires that for the RN certified in an advance practice nursing specialty, the vacancy should rotate between nurse anesthetist, nurse practitioner, nurse midwife and nurse psychotherapist.</li> <li>• The bill also expands the organizations that can submit numbers to the Governor to include not only the Maryland Nurses Association but any other professional nursing organization that represents at least 25 licensed registered nurses or a valid petition submitted to the Secretary and the Governor by an RN with an active license. The same provision applies for the licensed practical nurses, except the organization must have at least 25 licensed practical nurses.</li> <li>• Any petition submitted must have at least 25 signatures of support from nurses with active licenses in the State.</li> <li>• Lastly, the bill states that a member who is appointed after a term has begun may serve an additional two consecutive full terms rather than the current requirement that the member only serves for the rest of the term and until a successor is appointed and qualifies.</li> </ul>	
<b>All Medicaid Providers</b>	<p><b>SB429/HB278: Maryland Medical Assistance Program – Medical Eligibility for Nursing Facility Level of Care.</b> This bill requires DHMH to determine that an individual is medically eligible for nursing facility services or for a nursing facility level of care under the Program if the individual requires, on a regular basis, health-related services above the level of room and board. If an individual does not demonstrate the clinical need for health-related services above the level of room and board on a regular basis, DHMH must permit the individual to submit additional information for clinical review to demonstrate eligibility under applicable federal or State regulations. Definitions include:</p> <ul style="list-style-type: none"> <li>• ADL = bathing, dressing, mobility, transfer, toileting or continence and eating;</li> <li>• Health-Related Services Above the Level of Room and Board = Care of an individual who</li> </ul>	



<b>HB382: Income Tax – Credit for LTC Premium.</b> This bill is the same as SB320 but it does not allow the \$500 credit to be claims with respect to an insured individual if the insured was covered by a long-term care insurance at any time before July 1, 2000. The \$150 credit cannot be used if the insured was covered at any time before January 1, 2012.	
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Questions regarding information contained in this document should be directed to Danna Kauffman, Sr. Vice President of Public Policy, Lifespan Network at [dkauffman@lifespan-network.org](mailto:dkauffman@lifespan-network.org).