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2019 LEGISLATIVE WRAP-UP

The 439th legislative session of the Maryland General Assembly drew to a close at midnight on April 8. The first year in a new term, the 2019 session began with the seating of 17 freshman senators, 44 new delegates and the second inauguration of Larry Hogan as Governor of Maryland. Coming off a resoundingly successful 2018 campaign, MHAMD and the Maryland Behavioral Health Coalition rallied once again around an ambitious agenda aimed at increasing access to mental health and substance use disorder services. Additionally, the MHAMD public policy team prevented a disruption in service delivery for 300,000 individuals who depend on Maryland's public behavioral health system and advocated successfully to implement progressive reforms for Marylanders of all ages with behavioral health needs.

KEEP THE DOOR OPEN MD
Behavioral Health Coalition

MARYLAND BEHAVIORAL HEALTH COALITION

Maryland has taken several critical steps in recent years to address longstanding and pervasive barriers to treatment for children and adults with mental health and substance use disorders. The General Assembly has adopted and enacted Maryland Behavioral Health Coalition priorities to boost funding for community behavioral health services, expand local crisis response programs, improve access to treatment with telehealth, and improve service outcomes and accountability through increased data reporting and implementation of measurement-based care.

But the work is far from complete. Maryland overdose deaths increased in 2017 for the seventh year in a row to an all-time high of 2,282. Opioid-related deaths rose again over the first nine months of 2018, increasing eight percent from the year before to 1,848. The suicide rate in Maryland is now 8.5 percent higher than it was in 1999, and demand for community mental health and substance use treatment has increased dramatically since 2008, with over 300,000 children and adults now using and depending on the state's public behavioral health system.

Not surprisingly, given the severity of this situation, it is increasingly difficult for Marylanders to access affordable and efficient mental health and substance use disorder services when and where needed. Accordingly, MHAMD and the Maryland Behavioral Health Coalition sought to build on a successful 2018 session by once again asking legislators to 'Keep the Door Open' for the one in four Marylanders with behavioral health needs.

Protect and Increase Funding for Community Behavioral Health Services

➢ Prior Budget Commitments

When the Maryland General Assembly passed the HOPE Act in 2017, it included a long-overdue, multi-year funding increase for community behavioral health services. In 2018, the legislature enacted Behavioral Health Coalition priority initiatives to expand crisis response services and improve the delivery of behavioral health care in primary care settings. Protecting this funding in the fiscal year 2020 budget was a main priority for the Coalition this year.

Fortunately, Governor Hogan proposed an FY20 budget that included full funding for these prior commitments – including a 3.5 percent increase in funding for community behavioral health services – meaning those particular appropriations were never in any real doubt. However, another high profile legislative effort threatened to undo all the progress made in recent years to stabilize the community behavioral health system.

➢ Minimum Wage

SB 280 | HB 166 (passed) was introduced to increase Maryland's minimum wage over a period of years. As drafted, the bill included language increasing reimbursement for certain health service providers to offset costs incurred when implementing the minimum wage, but it did not include similar language for mental health and substance use treatment providers. Community behavioral health provider rates are set by the state and rarely increased even to keep pace with inflation, meaning any unfunded increase in staffing costs would negatively impact service delivery.

The Coalition responded by issuing a statement supporting a minimum wage increase but calling for an amendment to provide a commensurate boost in funding for community behavioral health resources. In the end, following a sustained grassroots advocacy campaign, the legislature passed a version of the bill that increases funding for community mental health and substance use treatment by nearly 22 percent over the six year minimum wage implementation period. Specific year-to-year increases are as follows:

FY 2021 – 4.0%	FY 2024 – 3.0%
FY 2022 – 3.5%	FY 2025 – 4.0%
FY 2023 – 3.25%	FY 2026 – 4.0%

Increase School Behavioral Health Supports to Improve Student Outcomes

Chaired by MHAMD, the Maryland Children's Behavioral Health Coalition (CBHC) has worked over the past year to inform the efforts of the Commission on Innovation and Excellence in Education. Better known as the Kirwan Commission, the group is charged with reviewing current education funding formulas and issuing recommendations on new policies and procedures to govern education funding in future years.

CBHC developed and presented the Commission with a set of recommendations highlighting the connection between increased school behavioral health supports and improved student outcomes, nearly all of which were adopted and included in a January 2019 Interim Report. These recommendations include increased training for school personnel, the scaling of school behavioral health services in all jurisdictions, systematic screening and identification of student needs, and a statewide system of accountability and outcome measurement.

The Kirwan recommendations were expected to be a major source of debate during the 2019 session. However, any significant action was delayed when the Senate President and Speaker of the House penned a joint letter in late December suggesting the Commission continue working for another year to develop funding formulas for the recommendations. Still, legislation was introduced late in the session to implement some of the Kirwan proposals as a bridge toward full implementation in future years.

SB 1030 (passed) mandates funding in fiscal 2020 and 2021 for a number of Commission priorities, including several behavioral health-related reforms. The bill provides $83,333 per year to each local school system ($2 million total each year) to fund dedicated mental health services coordinators in each district. It also creates a Concentration of Poverty School Grant Program to provide increased resources to schools in which at least 80 percent of the students are eligible for free and reduced-price meals. Schools receiving Program funding are considered 'community schools' and are required to employ a dedicated staff member to coordinate a number of specified wraparound services, including enhanced access to behavioral health resources and mental health practitioners, and the provision of trauma-informed professional development for school staff.

Promote Medication-Assisted Treatment for Substance Use Disorders

The public health and safety threat from opioids continues to grow. Americans are now more likely to die from opioid overdoses than car crashes. As noted above, Maryland has made progress in recent years to address the opioid epidemic, but we are still in the midst of a crisis that is devastating families across the state.

Medication-assisted treatment (MAT) is an evidence-based practice that combines behavioral therapy and medication to treat opioid addiction and other substance use disorders. Although it is increasingly considered the gold standard for treating opioid use disorder (OUD), MAT is woefully underutilized, particularly in places where it can have the biggest impact. This year, MHAMD and

the Maryland Behavioral Health Coalition took steps to increase the availability of MAT where it is needed most – jails and prisons.

People with OUD leaving correctional facilities face incredibly high risks for overdose death because their tolerance level has dropped, making any relapse considerably more deadly. Studies have shown that in the first two weeks following release from incarceration former inmates are 40 times more likely to die from an opioid overdose than someone in the general population.

HB 116 (passed) requires that individuals entering local correctional facilities be assessed for OUD and that MAT be available as appropriate. Inmates diagnosed with OUD must be provided with behavioral health counseling, access to peer recovery specialists and comprehensive reentry plans. As passed, the bill applies initially to four specific counties (Howard, Montgomery, Prince George's and St. Mary's) with a gradual expansion to the remaining jurisdictions by January 2023. It also establishes a MAT pilot program in the Baltimore City pre-trial complex and includes strong data collection requirements. The legislation is modeled after a Rhode Island program associated with a 61 percent decrease in post-incarceration overdose deaths and a corresponding 12 percent reduction in overdose deaths statewide.

Divert Behavioral Health Patients from Emergency Departments

Difficulty accessing community behavioral health services has forced more Marylanders to seek care in costlier emergency departments. Accordingly, MHAMD and the Maryland Behavioral Health Coalition worked this session to ensure the appropriate enforcement of existing laws and the expansion of promising programs designed to improve access to and delivery of mental health and substance use disorder treatment in the community.

➢ Outpatient Civil Commitment

Outpatient civil commitment (OCC) is a service delivery model that targets resources to hard-to-engage individuals with serious mental illness. An OCC pilot operating in Baltimore City offers a range of community-based and client-centered services and supports to individuals committed involuntarily to an inpatient psychiatric hospital, either through voluntary engagement or as a condition of release. The initiative addresses a variety of outreach and engagement gaps that prevent the successful delivery of community care to a small number of high-cost consumers who access the system disproportionately through repeat hospitalizations.

SB 403 | HB 427 (passed) was introduced to expand the Baltimore City pilot by allowing other jurisdictions to establish OCC programs within the framework that has been developed. Legislators voiced support for the pilot, but also expressed hesitation at expanding it too widely at this time. While individuals are being effectively engaged and have experienced positive results, the program began receiving referrals just over a year ago, so participation has been limited. As amended, the bill makes slight modifications to the program's referral process – allowing family members of

eligible individuals to refer directly to the state for admission into the program – in an effort to gradually increase enrollment.

➢ Parity Compliance and Reporting

Under federal and state parity laws, Marylanders are entitled to receive mental health and substance use disorder benefits at the same level as other medical benefits. Unfortunately, many commercially-insured Marylanders face barriers to accessing behavioral health services that they do not face when accessing medical and surgical services. Over the past several years, the Maryland Insurance Administration (MIA) has identified significant behavioral health provider network and credentialing violations that limit access to treatment. These violations have resulted in numerous enforcement orders involving most commercial insurance carriers in the state. Nevertheless, the barriers persist.

As introduced, SB 631 | HB 599 (passed) would have required carriers to submit annual parity compliance reports modeled on the U.S. Department of Labor's Parity Act Self-Compliance Tool. It would have required that MIA review the reports, quickly impose any necessary remedial measures and make summary reports available to the public. Unfortunately, strong opposition from insurers and the MIA resulted in passage of a heavily amended bill that does not include any of these reporting provisions. However, the bill does take a positive step by requiring carriers to use American Society of Addiction Medicine (ASAM) criteria when making medical necessity determinations for substance use disorder treatment.

Further, we anticipate a letter from legislative leadership to the Maryland Insurance Commissioner requesting an update on enforcement activities the MIA has indicated it will be conducting. These include onsite carrier audits related to utilization review standards, medical necessity criteria, the frequency of continuing care reviews, network adequacy and reimbursement rates.

➢ Network Adequacy and Balance Billing

The General Assembly and the MIA have taken steps recently to address network adequacy concerns and improve access to treatment for individuals with mental health and substance use disorders. Unfortunately, these efforts have yet to ensure that Marylanders with commercial insurance can access in-network behavioral health care when needed.

An independent national report published in late 2017 showed that Marylanders are forced to go out-of-network for behavioral health care at a rate nearly twice the national average and third worst in the nation. New regulations enacted in early 2018 require that Maryland insurers meet strict wait time and distance standards for behavioral health appointments, yet recent filings demonstrate only 3 of 15 carriers are meeting their new obligations.

These network adequacy failures limit access to care and result in higher out-of-pocket costs that can make treatment unaffordable, even for those with insurance. Maryland law requires carriers

to approve the delivery of behavioral health services through a non-network provider if there is no in-network provider that can deliver the service without unreasonable delay or travel. But because the provider is allowed to bill the patient for any charges not reimbursed by the plan, carriers are in effect shifting the cost of covered mental health and substance use treatment onto the consumer when they have inadequate provider networks.

SB 761 | HB 837 (failed) was introduced to prevent this 'balance billing' of commercially-insured Marylanders who are forced to go out-of-network for mental health and substance use treatment. It would have required insurers to pay increased reimbursement rates to non-network providers who agree to treat their consumers, and it would have prohibited the provider from billing the consumer for any cost above the carrier's payment. Legislators voiced frustration at the situation, but they were ultimately persuaded by carrier arguments that the bill would undermine efforts to recruit providers to join their networks.

In addition to the letter mentioned in the section above requesting an update on parity enforcement efforts at the MIA, we anticipate that a separate letter will request information on steps taken to improve carrier compliance with the new network adequacy regulations.

MARYLAND'S PUBLIC BEHAVIORAL HEALTH SYSTEM

Legislators were faced this year with competing visions for how public mental health and substance use disorder services should be delivered, placing MHAMD and partners at the center of an intense debate regarding the future of Maryland's public behavioral health system (PBHS).

Developed over several decades, the PBHS has a number of strengths and core components that are critically important to the 300,000 children and adults who depend on these services:

- In addition to the Medicaid population, it covers uninsured and underinsured individuals, Marylanders 65 and older, and those who are dually insured by Medicare and Medicaid
- It coordinates effectively with other public service systems, including the criminal justice system and systems that provide housing, public education and employment services
- It provides a single point of contact and uniform processes for community mental health and substance use treatment providers, reducing administrative burden so that more resources can be used for direct service delivery
- It is cost-effective and provides a strong array of services, and
- It has a strong local management component to address different needs in different communities

SB 482 | HB 846 (withdrawn) presented a serious threat to all of this. The legislation would have shifted responsibility for the delivery of public behavioral health services to multiple for-profit managed care organizations (MCOs), jeopardizing services for Marylanders who are not in Medicaid, threatening care coordination for high-risk populations, and diverting provider resources away from treatment. Other states that have moved in this direction have seen patients

struggling to get their medications, being discharged prematurely from crisis facilities and hospitals, and getting less individualized care.

In response, MHAMD and partners introduced a package of bills to improve and modernize the delivery of public mental health and substance use disorder services by building on the strengths and essential elements of the existing PBHS. SB 975 | HB 938 (withdrawn) would have required greater budget predictability, increased measurement of outcomes at all levels, greater access to data, and value-based payments for providers. SB 976 | HB 941 (withdrawn) would have required the uniform and system-wide adoption of measurement-based care for behavioral health services delivered across the PBHS. Together, these bills would have increased system accountability, enhanced quality of care and improved patient outcomes.

After a lengthy hearing at which more than 35 witnesses presented testimony for and against the various proposals, and a grassroots effort that resulted in nearly 1,700 emails to Governor Hogan and state legislators voicing opposition to the MCO plan, all of the bills were withdrawn from consideration. Instead, we anticipate that the chairs of the Senate Finance Committee and the House Health and Government Operations Committee will send a letter to the Secretary of Health indicating that any changes to the PBHS must be the result of a comprehensive stakeholder process in which all options are on the table.

COMMISSION TO STUDY MENTAL AND BEHAVIORAL HEALTH IN MARYLAND

In early January, Governor Hogan signed Executive Order 01.01.2019.02, establishing the *Commission to Study Mental and Behavioral Health in Maryland*. Chaired by Lt. Governor Boyd Rutherford, the Commission is charged primarily with "advising and assisting the Governor in improving access to a continuum of mental health services across the state." Members include representatives from each branch of state government, a variety of state departments, and several members of the public.

Commission subcommittees have been established to address specific topics, including financing and funding, youth and families, crisis services, and criminal justice. Testimony and public comments will be taken at a series of regional meetings in Western, Eastern, Southern and Central Maryland. The group is expected to issue an interim report in July and a final report in December. More information is available here.

FISCAL YEAR 2020 BUDGET

For the third year in a row, budget negotiations were relatively free from contention. The legislature gave bipartisan approval to the $46.6 billion state budget nearly two full two weeks before the General Assembly adjourned. As noted above, Governor Hogan's budget proposal held

firm on HOPE Act and Keep the Door Open commitments to increase funding in FY 2020 for community mental health and substance use disorder services, making budget-specific advocacy less of a concern. Nevertheless, the budget does include several items of note to the behavioral health community. Specific language and narrative in the FY20 appropriation requires the Behavioral Health Administration and other agencies to report on the following:

- Establishment of staffing committees and staffing plans at each state-run psychiatric facility
- Development of a statewide bed registry system to provide up-to-date information on total, operational, and vacant inpatient psychiatric beds in all state-run psychiatric facilities, acute general hospitals, and private psychiatric facilities
- Individuals in the public behavioral health system (PBHS) with serious and persistent mental illnesses (SPMI), including expenses related to treating this population, impact on expenditures due to nonadherence to medication, and potential patient benefits and cost savings from use of advanced medication adherence technology for the SPMI population
- Availability of and reimbursement for occupational therapy in the PBHS
- Progress of the two Maryland providers awarded federal grants to establish Certified Community Behavioral Health Clinics (CCBHCs) and the potential for broad implementation of the model across the state
- Development of a program that educates Maryland's rural and school-based clinicians in identification and management of childhood neurodevelopmental and mental health disorders through an integrated tele-education model
- Availability of family-centered substance use disorder residential treatment for women with children in which the child may stay with the mother during treatment
- Potential expansion of the Baltimore City capitation project for individuals with serious mental illness
- Efforts to meet increased demand for mental health services at colleges and universities

OTHER LEGISLATION

Workforce and Technology

A persistent workforce shortage is exacerbating the increased demand for behavioral health services and challenging Maryland's ability to address the unmet need effectively in the community. As noted above, this is forcing many to seek mental health and substance use treatment in hospital emergency departments when community care would be more efficient and cost-effective. As such, MHAMD supported legislation this year to eliminate unnecessary service and provider restrictions that prevent the broad delivery of care to those in need.

Existing law requires outpatient mental health centers to have a medical director who is a psychiatrist that is onsite for at least 20 hours per week. Due to the shortage of psychiatrists, especially in rural areas of the state, some facilities have experienced great difficulty recruiting and retaining medical directors, whose duties are primarily administrative in nature. SB 178 |HB 570

(passed) allows for psychiatrists to satisfy the onsite requirement remotely using telehealth. Additionally, SB 944 | HB 1122 (passed) expands the pool of potential medical directors by allowing psychiatric nurse practitioners to serve in that role, either onsite or via telehealth.

SB 524 | HB 605 (passed) further removes barriers to the provision and receipt of telehealth by allowing psychiatric nurse practitioners to participate remotely in Assertive Community Treatment (ACT). ACT is an evidence-based practice that improves outcomes for people with serious mental illness who are at risk of psychiatric crisis and hospitalization, and this new policy will increase its availability across the state.

Lastly, HB 829 (passed) will improve access to care by eliminating a barrier that prevents certain behavioral health providers from serving on commercial insurance panels. The bill prohibits insurance carriers from rejecting accredited behavioral health clinicians solely because they are graduate providers, including, among others, licensed graduate social workers (LGSW), licensed master social workers (LMSW), or licensed graduate professional counselors (LGPC).

Older Adults

As chair of the Maryland Coalition on Mental Health and Aging, MHAMD worked actively this session to improve the system of care for older adults with behavioral health needs and their caregivers. The organization supported legislative efforts to address a growing population of Marylanders living with progressive dementia, and to ensure access to services and supports that provide individuals with long-term care in the community rather than institutional settings.

SB 522 | HB 571 (passed) alters the membership of the Virginia I. Jones Alzheimer's Disease and Related Disorders Council and requires development of a new state plan and strategies for addressing these illnesses. With 130,000 Marylanders expected to have Alzheimer's disease or related dementia by 2025, the work of the council is more important than ever.

Medicaid waiver programs that provide home- and community-based services (HCBS) to individuals in need of long term care are essential to ensuring that Marylanders in need of these services receive them in the least restrictive environment. SB 699 (passed) closes a loophole that dis-enrolls individuals from one particular HCBS program (Community First Choice) when they become eligible for Medicare benefits.

Children and Youth

Preconception and the first three years of a child's life are extremely important for growth and brain development. Children conceived and born into poverty and other traumatic experiences face adversity which can be difficult to overcome. About 50 percent of children are exposed to a traumatic event, and as many as 67 percent of trauma survivors experience lasting psychosocial impairment. Trauma can affect a child's brain and delay certain development which can make it harder for the child to concentrate and study.

The Maryland Prenatal and Infant Care Coordination Services Grant Program Fund provides grants to local jurisdictions for care coordination services to low-income pregnant and postpartum women and to children from birth to age three. MHAMD supported SB 406 | HB 520 (passed) to increase funding for the program from $50,000 to $100,000 per year. The bill also establishes the Maryland Task Force on Maternal and Child Health to study and make recommendations on ways to incentivize early intervention and prevention of key adverse health outcomes, such as trauma, asthma, adverse birth outcomes, sickle cell crisis, and mental health crises.

General Behavioral Health and Disability

As behavioral health consumers are increasingly forced to access care in emergency rooms and general hospitals, it is essential that patients understand their rights in these settings and their recourse if they feel these rights have been violated. In its fourth year of introduction, the Maryland General Assembly passed SB 301 | HB 145, requiring hospitals to provide each patient with a written copy of a Patient's Bill of Rights specifying the treatment they have a right to expect. When hospital patients know their rights, are treated as full members of their care team and understand there is no repercussion for questioning their treatment, they are more likely to engage with their provider and actively participate in their care.

Too often the criminal justice system is used as a way of providing mental health treatment for individuals in crisis. The criminalization of attempted suicide takes this practice to the extreme. The common law offense of attempted suicide has been charged 10 times over the past five years in Maryland courts. Individuals with thoughts of suicide should be re-directed to treatment and services, not charged with a crime. HB 77 (passed) decriminalizes attempted suicide.

According to the Substance Abuse and Mental Health Services Administration, approximately 18.5 percent of service members returning from Iraq or Afghanistan have post-traumatic stress or depression, and 19.5 percent report experiencing a traumatic brain injury during deployment. An average of 20 Unites States veterans die by suicide every day, a rate that is twice that of civilian adults. Given these numbers, MHAMD supported SB 521 (passed), requiring the Maryland Department of Health to develop an action plan to decrease veteran suicides. The plan must identify opportunities to increase access to veteran mental health services, improve peer-to-peer service coordination, and raise awareness among veterans about available resources.

Unexpected formulary changes may prove considerably detrimental to patients, particularly those living with a mental illness. It can take years for mental health consumers and others with chronic and complex conditions to find a treatment regimen that effectively manages their illness with minimal side effects. A formulary change that prevents access to one or more of their medications could result in serious and profound repercussions, setting recovery back months or longer. SB 405 | HB 435 (passed) requires insurance carriers to notify consumers at least 30 days before removing prescription drugs from their formulary or shifting medications to higher-cost tiers. Carriers must also establish a process that allows consumers to receive a medication that has been removed or continue the same cost-sharing requirements for medications moved to a higher tier.

The Community Health Facilities Grant Program (CHFGP) is considered an integral part of the state's efforts to facilitate the deinstitutionalization of individuals with mental health and substance use disorders. CHFGP assists in the construction and renovation of residential behavioral health treatment facilities in communities with limited resources. Given the access-to-care challenges highlighted throughout this report, MHAMD supported SB 164 | HB 155 (passed), which increases state funding allowances for the program.