HIGHLIGHTS OF THE 2005 LEGISLATIVE SESSION

The General Assembly adjourned on April 11, 2005 and the Session actively concluded when the Governor enacted legislation into State law during four separate signing ceremonies on April 12, April 26, May 10 and May 26, 2005.

This Annual publication is prepared for our clients and friends in health care and health care related industries. This year, as has been the case for the past several years, the Maryland Legislature was particularly active in the health care arena. The Legislature passed, and the Governor signed, a substantial number of important health care laws. So that we might better serve you, our health care client, Whiteford, Taylor & Preston L.L.P. is again providing this separate legislative update, in addition to our general legislative update, focusing solely on health care and health care related legislation. This Health Care Legislative Update is intended to provide you with a broader overview of the health care legislation that has been signed by the Governor and which impacts you, our health care client.

• Maryland Patients’ Access to Quality Health Care Act of 2004 (SB 836) (1/01/05)

The Maryland Patients’ Access to Quality Health Care Act of 2004 became law without the Governor’s signature. The Bill enacted two patient safety initiatives that relate directly to the Maryland Board of Physicians (MBP). Specifically, the Bill lowers the standard of review for factual findings in a disciplinary proceeding against a physician from being supported by “clear and convincing evidence” – highly probable – to being supported by a “preponderance of the evidence” – more probable than not. The Bill authorizes the MBP to directly impose a civil penalty of up to $5,000 against a hospital or a related institution for failing to report a disciplinary action against a licensed physician rather than requiring that this penalty be judicially imposed.

Additionally, the Bill implements certain corrective changes to the Medical Malpractice Reform Bill by repealing a provision that provides the Insurance Commissioner with the authority to deny, refuse to renew, suspend, or revoke a certificate of authority if an insurer fails to pay a certain assessment by the People’s Insurance Counsel and provides that participation in the Medical Health Care Provider Rate Stabilization Fund is voluntary. It also imposes a civil penalty of up to $5,000 on insurers providing professional liability insurance to a health care provider which fails to report certain information required by
law, eliminates a definition of “increased rate factor” and adds a definition of “subsidy factor” for medical liability insurance policies. Furthermore, the Bill increases from $150,000 to $350,000 the annual subsidy to the Insurance Commissioner to administer the Medical Health Care Provider Rate Stabilization Fund.

• Medical Records – Authorized Disclosures – Compulsory Process (SB 690) (7/01/05)
This Bill alters the existing requirements for disclosures of medical records by health care providers when the health care provider receives a subpoena, summons, warrant or court order for those records. The health care provider must receive a written assurance from the party seeking the medical records that the patient has not objected to the disclosure of the medical record in the 30 days since the notice was sent to them, or a written assurance that the objections of the patient have been resolved and the request is in accordance with the resolution. The health care provider must also receive proof of service of process or a court order waiving service of process, or a copy of the court order expressly authorizing disclosure of the requested medical record. The request for disclosure of the medical record must be accompanied by the subpoena, summons, warrant or court order seeking the disclosure, a copy of Health-General §4-306, and a copy of the notice sent to the patient whose records are being disclosed. The form of the notice is also specified in the Bill.

• Refusal of Psychiatric Medication – Clinical Review Panel (SB 163) (6/01/05)
The current law was set to automatically terminate on June 1, 2005, and this Bill extends the life of the law indefinitely. The statutes govern the forcible administration of antipsychotic medication in non-emergency situations to involuntarily committed patients with mental disorders. A clinical review panel determines whether the medication should be administered to the patient. Procedural due process protections are provided giving the patient the right to attend the review panel and appeal its decision.

• State Board of Physical Therapy Examiners – Physical Therapists and Assistants – Qualifications and Scope of License (HB 926) (10/01/05)
Under current law, where an applicant for a physical therapy license is currently licensed in another State, the Board of Physical Therapy Examiners is authorized to waive the receptorship requirement for licensure. This Bill repeals that authorization. Also under current law, a licensed physical therapist assistant may practice limited physical therapy only under the direction of a licensed physical therapist who gives ongoing onsite supervision and instruction. This Bill eliminates the requirement that the supervision and instruction be onsite.

• Benefits and Services for Individuals Who Are Incarcerated or Institutionalized (HB 990) (7/01/05)
This Bill suspends (rather than terminates) Maryland Medical Assistance Program benefits for incarcerated individuals between ages 21 and 65, contingent upon the Department of Health and Mental Hygiene (“DHMH”) receiving funding for the development of a new Medical Assistance Program computer system, and that system being implemented. This Bill also provides for the formation of a workgroup of interested stakeholders to make recommendations on how to break the cycle of
rearrest and reincarceration of the mentally ill who become involved in the criminal justice system, with a report due by December 1, 2005.

• **Howard County – Health Facilities – Notification of County Health Officer and County Council of Howard County (HB 928)** (10/01/05)
This Bill requires the Secretary of Health and Mental Hygiene to notify the Howard County Health Officer of applications for licensure or certification for a health facility or program that will service 16 or more individuals, and requires the County Health Officer to notify the Howard County Council.

• **Controlled Dangerous Substances, Prescriptions, and Other Substances – Registration of Manufacturers, Distributors, and Dispensers (HB 1318)** (7/01/05)
Under current law, certain registrations to manufacture, distribute or dispense controlled dangerous substances expire two years after their effective date. This Bill provides for one two-year renewal registration period.

• **Public Health – Legibility of Prescriptions Workgroup – Reports (HB 233)** (6/01/05)
This Bill requires the Secretary of State, the Maryland Health Care Commission, the Board of Physicians and the Board of Pharmacy to convene a workgroup to study the legibility of prescriptions and make recommendations for reforms to enhance patient safety. The Workgroup’s final report is due by August 15, 2005.

• **Health Care Decision Making Forms – Health Insurance Portability and Accountability Act – Personal Representatives (SB 247)** (10/01/05)
To bring current law into accordance with the federal Health Insurance Portability and Accountability Act, this Bill clarifies that a health care agent is a personal representative in order to receive protected health information and to make certain health care decisions on behalf of another person.

• **Health Insurance – Substance Abuse Treatment – Copayments (SB 772)** (4/26/05)
This emergency measure prohibits an insurer, nonprofit health service plan, or health maintenance organization from charging a copayment that is more than 50% of the daily cost for methadone maintenance treatment.

• **State Board of Nursing – Miscellaneous Provisions (HB 399)** (4/26/05)
This emergency measure lengthens the term for the president and secretary of the Board of Nursing from one year to two years. It also authorizes the Board to issue temporary practice letters to certain nurse practitioners and nurse midwives who have been issued a temporary license, have submitted a written agreement to the Board for formal approval, and are changing practices or locations and meet certain other requirements. HB 399 also authorizes the Board to issue temporary 60-day practice certificates to applicants who don’t have criminal records or pending criminal charges, have not been subject to health professional disciplinary action or have such action pending. The Bill further requires Board certification to practice as a certified nursing assistant, certified nursing
assistant in a specific category, certified medication technician or certified medicine aide. HB 399 also prohibits a person from knowingly employing those to practice who are not certified in these categories to do so.

- **Maryland Medical Assistance Program – Medical Loss Ratio and Quality of Care (HB 85) (6/01/05)**
  This Bill authorizes a managed care organization or a certified health maintenance organization to appeal to a board of review a decision of the Secretary of DHMH to adjust capitation payments if the organization’s loss ratio is less than 85% in a calendar year, and to further appeal as allowed by the Administrative Procedure Act. This Bill also requires the Secretary of DHMH to adopt regulations that: establish a definition of “loss ratio” that applies uniformly to all managed care organizations; establish standard data collection and reporting requirements for all managed care organizations; establish procedures for consideration of the financial performance of a managed care organization in prior periods; establish an appeals process for appealing adjustments to capitation payments; establish a mechanism for, and conditions under which capitation rate adjustments are made. The Bill authorizes the Department to make changes to the Value Based Purchasing Initiative under certain circumstances, provided that performance measures for calendar year 2005 are calculated as set forth in the existing Value Based Purchasing Initiative.

- **State Board of Examiners of Nursing Home Administrators – Inactive Status – Penalties and Disciplinary Action (HB 873) (10/01/05)**
  This Bill requires owners of nursing homes or other appropriate nursing home authorities to provide notice of the designated licensed nursing home administrator’s name to the State Board of Nursing Home Administration. It also authorizes the Board to place active licensees on inactive status for two years with an additional two–year renewal, upon application and payment of a fee. The Bill prohibits a licensee on inactive status from practicing as a nursing home administrator in Maryland and requires the Board to provide written notification of the expiration date of inactive status and the consequences of non-renewal of inactive status or non-resumption of active status. The Bill specifies the process for issuing a license to a licensee who is on inactive status, including meeting the continuing education requirements and completion of Board-approved one-month administrator refresher program. This Bill provides for a civil fine up to $1,000 for a first violation and $5,000 for subsequent violations if the Board finds grounds to reprimand, place on probation, suspend or revoke the license of a licensee if the licensee fails to meet certain standards of the Board.

- **Health – Hospital Summary Financial Statement – Physician Charges (HB 345) (10/01/05)**
  This Bill requires a hospital to include a mandatory statement in the summary of charges sent to hospital patients within 30 days of discharge, to the effect that “charges for services provided by a physician are not included in the total hospital charges and are billed separately.”

- **Health General – Diseases Required to be Reported by Medical Laboratories – Creutzfeldt-Jakob Disease (HB 434) (10/01/05)**
  This Bill adds Creutzfeldt-Jakob Disease to a list of diseases and conditions required to be reported by medical
laboratory directors to the health officer for the county where the laboratory is located, or to the Secretary of the DHMH if the medical laboratory is outside of Maryland and the specimen comes from someone in the state.

• **State Board of Morticians – Authority to Conduct Audits (HB 573) (10/01/05)**

HB 573 authorizes the State Board of Morticians to conduct audits of licensees who receive pre-need funds, place pre-need funds in a trust, or enter into pre-need contracts. The Bill also authorizes the Board to issue subpoenas and administer oaths in connection with those audits.

• **Nursing Homes – Family Council Administrative Functions (HB 688) (7/01/05)**

HB 688 allows a family council to receive assistance from a nursing home in the administrative functions of operating the family council in a mutually agreed upon manner, provided that the family council submits a written request to the nursing home for assistance.

• **Health Insurance – Payment of Claims for Reimbursement – Erroneous Denial of Provider’s Claims (HB 1597) (10/01/05)**

This Bill requires that a claim submitted by a provider to an insurer, nonprofit health service plan or health maintenance organization that is denied because of a claims processing error must be reprocessed by the payor without resubmission of the claim and without regard to the timely submission deadlines, if the provider notifies payor that the claim was potentially erroneous, provided that the notification comes within one year of the erroneous denial.

• **Aging – Congregate Housing – Civil Money Penalties (SB 80) (10/01/05)**

The current law allows the Secretary of the DHMH or the Secretary’s designee to impose civil money penalties against providers of congregate housing for certain violations. This Bill amends the law to permit only the Secretary to impose such penalties.

• **Hospitals – HIV Testing – Consent and Public Safety Workers (SB 718) (10/01/05)**

This Bill requires the infectious disease/ communicable disease officer in a hospital to order HIV tests on a blood sample already obtained from a patient when there has been an exposure between a patient and a public safety worker that would warrant chemoprophylaxis treatment for the public safety worker, when informed consent, or substitute consent, as required, was sought and the patient refused, and when the patient has been informed of the provisions of the requirements of the laws allowing the hospital to order the test, and to notify a patient of the results of the HIV test. The Bill also requires the DHMH and the Maryland Institute for Emergency Medical Services Systems to adopt regulations to establish information collection procedures on exposures and refusals to consent to an HIV test by a patient, and to report to the General Assembly annually on the collected information.

• **Hospitals – HIV Testing – Public Safety Worker (SB 321) (10/01/05)**

This Bill expands the provisions of Health-General §18-338.3 relating to mandatory HIV testing due to exposure of first responders to include exposure between hospital patients and public safety workers. The Bill defines public
safety worker as any career or volunteer member of a fire, rescue or EMS department, any law enforcement officer or the state fire marshal or sworn member of the State fire marshal’s office.

- **Maryland Health Care Commission Membership (SB 269) (10/01/05)**

  SB 269 increases the number of members on the Maryland Health Care Commission from 13 to 15; alters the qualifications for Commission membership to include one Maryland nursing home administrator and one nonphysician health care practitioner; and establishes that the Commission members must include at least one resident from each of the Eastern Shore, certain Western Maryland counties, and Southern Maryland, and at least five members of different counties with a population of 300,000 or more.

- **The Sara Hohne Patient Protection Act (SB 303) (10/01/05)**

  This Act allows a hospital to discharge a patient entirely, to another level of care, treatment or services, to different health professionals or to settings for continued services based on the patient’s assessed needs. The Act requires the hospital to give the patient or caregiver written discharge instructions and assistance to ensure that continuity of care is maintained. The Act also permits the DHMH to impose a civil money penalty on hospitals in amounts up to $10,000 for each failure to comply with the Act.

- **Task Force on the Establishment Prescription Drug Repository Program (SB 441) (7/01/05)**

  This Bill provides for a Task Force on the Establishment of a Prescription Drug Repository Program to be staffed by the DHMH. The Task Force shall consist of two members each of the Maryland Senate and House of Delegates, a representative each from the Board of Directors of the Maryland Health Insurance Plan, State Board of Pharmacy, Maryland Medical Assistance Program and the Office of Health Care Quality and eight other specified members. The Task Force will study and make recommendations concerning the establishment of a Prescription Drug Repository Program and will report its findings and recommendations to the Governor by January 1, 2006. The Act will expire on June 30, 2006.

- **Health Insurance – Mothers and Newborn Child Coverage – High Deductible Health Plans (SB 521) (5/10/05)**

  This Bill provides for an exception to a prohibition against health insurance carriers imposing a deductible for certain health insurance coverage provided to mothers and newborn children. The Bill authorizes carriers (an insurer or nonprofit health service plan that provides inpatient hospitalization coverage on an expense-incurred basis or an HMO that provides inpatient hospitalization coverage under contracts) to require that certain home visit covered services pertaining to a mother and newborn child be subject to the deductible of a high-deductible health plan.

- **Nursing Homes and Assisted Living Facilities – Quality of Care Oversight (HB 893) (10/01/05)**

  This Bill changes the name of the Oversight Committee on Quality of Care in Nursing Homes to that of the Oversight Committee on Quality of Care in Nursing Homes and Assisted Living Facilities. The Bill also alters the
membership of the Oversight Committee to include one representative from the DHMH, the Secretary of the DHMH or the Secretary’s designee, one member of a local long-term care ombudsman program, one representative each from the Maryland chapter of AARP, United Seniors of Maryland and Voices for Quality Care, Greater Maryland Chapter of the Alzheimer’s Association and the Mental Health Association, who is knowledgeable in elderly issues, three representatives from the assisted living industry, and three consumer members, one of whom shall be a consumer living in an assisted living facility. The Bill expands the duties of the Oversight Committee to include the evaluation of the progress in improving assisted living facility quality, including consideration of standards for the identification of the onset of dementia and Alzheimer’s disease, the identification of conditions appropriate for hospice service, and the provision and quality of mental and behavioral health care services to meet the needs of the nursing home and assisted living facility residents. The Bill requires the Department of Human Resources to provide staff support to the Oversight Committee and repeal the December 31, 2005 termination provision.

- **Assisted Living Programs – Criteria for Requiring Manager Training (SB 265) (10/01/05)**
  This Bill requires assisted living managers of programs with five or more beds to complete by January 1, 2006, an approved manager training course of at least 80 hours, and to complete 20 hours of continuing education every two years.

- **Insurance – Fraud Reporting and Prevention – Expansion (HB 348) (10/01/05)**
  This Bill requires health maintenance organizations to comply with insurance fraud reporting and prevention laws; extends the application of the Fraudulent Insurance Act to the State, including the Uninsured Employers’ Fund and specified self-insurers; requires registered premium finance companies to comply with specified insurance fraud reporting requirements; etc.

- **Hospitals – Bone Marrow Donation (HB 565) (10/01/05)**
  This Bill requires a hospital that offers bone marrow transplant services to allow an individual to donate bone marrow to any individual, if, in a physician’s medical judgment, the donation is in the best interest of the donee and there is no substantial risk of medical injury to the donor.

- **Community Health Care Access and Safety Net Act of 2005 (HB 627) (7/01/05)**
  This Bill alters the eligibility requirements of the Maryland Pharmacy Discount Program to provide for coverage of individuals who are not Medicare beneficiaries, who lack other public or private prescription drug coverage, and who have a specified annual household income, and to exclude Medicare beneficiaries. The Bill also requires hospitals to develop financial assistance policies to provide free and reduced-cost care to certain patients; requires the Health Services Cost Review Commission to develop a uniform financial assistance application; establishes the 11-member Maryland Community Health Resources Commission within the DHMH to increase access to health care through community health resources including school-
requires the Maryland Rx Program to seek savings through specified means; etc.

- Education – Public Schools – Use of Asthma Drugs and Related Medication (HB 143) (10/1/05)
This Bill requires all public school systems to adopt a policy authorizing a student to possess and self-administer specified medication pertaining to the student’s asthma or other airway-constricting disease while in school, at school-sponsored activities, or on school property. The Bill also requires prior written orders from the student’s health care provider, parent or guardian, and verification before a student can self-administer medication. In addition, the Bill requires the school nurse to conduct a specified assessment.

- State Commission on Kidney Disease – Membership (HB 1416) (10/01/05)
This Bill alters the membership of the State Commission on Kidney Disease to include a renal social worker nominated by the Maryland or National Capital Area Chapter of the Council of Nephrology Social Workers.

- Statewide Advisory Commission on Immunizations (HB 267) (6/01/05)
This Bill extends the termination provision for the Statewide Advisory Commission on Immunizations to May 31, 2008.

- Health Insurance – Prohibition Against Underwriting (HB 1091) (5/10/05)
This emergency measure prohibits health insurers, HMOs, and nonprofit health service plans from underwriting

Based health resources, and establishes the Community Health Resources Commission Fund; establishes a Federally Qualified Health Centers Grant Program; and authorizes the Board of Public works to provide grants under the Program to convert public buildings or to acquire or renovate existing buildings for use as Federally Qualified Health Centers; requires nonprofit health service plans that offer comprehensive health care benefits to support the costs of the Maryland Community Health Resources Commission and subsidize the Maryland Pharmacy Discount Program.

The Bill requires certain insurance carriers, HMOs and nonprofit health service plans to reimburse community health resource providers for services to the extent required under federal law; requires HMOs to reimburse community health resources for covered services; provides that non-profit HMOs are not subject to the insurance premium tax; requires the development of a specialty care network for certain individuals; establishes a Joint Legislative Task Force on Universal Access to Quality and Affordable Health Care to study and make recommendations on how to make quality, affordable health care accessible to all citizens of Maryland; and analyzes the feasibility and desirability of implementing aspects of the “Dirigo Health Plan,” the California employer mandate.

- Maryland Rx Program (HB 1287) (7/01/05)
This Bill requires the Department of Budget and Management to establish a Maryland Rx Program, a purchasing pool for pharmacy benefits, to achieve savings on the cost of prescription drugs for the State Employee and Retiree Health and Welfare Benefits Program, local governments, and other specified entities. The Bill also
individuals for health coverage under individual contracts after the contracts have been issued by reevaluating any health status-related factor, occupation, hobby, or activity of an individual for the purpose of terminating the individual’s health coverage or moving the individual from a more favorable rate class to a less favorable rate class.

• **Department of Human Resources – Disclosure of Information – Hospitals and Birthing Centers (HB 254)** (7/01/05)
This Bill permits disclosure of information contained in child abuse or neglect reports or records, that are in the possession of the State, a county or city, to a licensed practitioner of a hospital or birthing center for making discharge decisions concerning a child when the practitioner suspects that the child may be in danger after discharge. The information that may be disclosed is limited to (1) whether there is a prior finding of indicated child abuse or neglect by either parent, and (2) whether there is an open investigation of child abuse or neglect pending against either parent. The Bill also requires the Department of Human Resources to report to the General Assembly by October 1, 2005 on the feasibility of offering family counseling services to individuals who have had a finding of indicated child abuse or neglect.

• **Health Insurance – Mandated Benefits – Smoking Cessation Treatment (HB 303)** (10/01/05)
HB 303 requires insurers, HMOs and nonprofit health service plans that provide prescription drug coverage to provide, without any increase in copayment or coinsurance, any drug approved by the FDA for use in smoking cessation and two 90-day courses of nicotine replacement therapy per year. The Bill excludes drugs that may be obtained without a prescription.

• **Insurance – Fraud Reporting and Prevention – Expansion (HB 348)** (10/01/05)
This Bill adds Uninsured Employer’s Funds and specified self-insurers to those that must comply with the insurance fraud reporting and prevention laws. The Bill also requires registered premium finance companies to report suspected insurance fraud and provides that certain information provided by independent insurance producers and registered premium finance companies are not subject to public inspection under certain circumstances.

• **Maryland Pharmacy Discount Program – State Discount Eligibility (HB 1143)** (6/01/05)
This Bill alters the eligibility requirements of the Maryland Pharmacy Discount Program to provide coverage for individuals who are not Medicare beneficiaries, lack other public or private prescription drug coverage and have an annual household income below 200% of the federal poverty level guidelines. This Bill also authorizes enrollees in the Program to receive a discount subsidized by the DHMH for certain prescription drugs and alters the price at which an enrollee may purchase certain prescription drugs by reducing the price by any state contribution amount.

• **Maryland Medbank Program – Special Fund (HB 1263)** (7/01/05)
This Bill requires that the Maryland Medbank Program, the purpose of which is to improve the health status of individuals throughout Maryland who lack prescription drug coverage, by providing access to medically necessary
prescription drugs through patient assistance programs sponsored by pharmaceutical drug manufacturers, be funded through the special, nonlapsing Maryland Medbank Program Fund. The Bill provides for the establishment of the Fund which shall be administered by the DHMH. The Fund is to be used only for the operation of the Program and funded through revenue received by the State that is provided to employers as a result of the federal Medicare Drug Improvement and Modernization Act of 2003.

- **Health Insurance – Pharmacies – Electronic Reimbursement (HB 316) (10/01/05)**
  This Bill requires, by October 1, 2006, HMOs, nonprofit health service plans and insurers that provide coverage for prescription drugs under health insurance polices or contracts to reimburse a pharmacy electronically and provide payment data electronically, if the pharmacy is required to submit requests for payment electronically.

- **Mental Health Advisory Committees (HB 459) (7/01/05)**
  HB 459 authorizes the governing body of Baltimore City to designate Baltimore Mental Health Systems, Inc. as the mental health advisory committee for Baltimore City and provides that if Baltimore Mental Health Systems, Inc. is designated as core service agency for Baltimore City, the mental health advisory committee in Baltimore City will consist of the governing body of that agency.

- **Task Force on the Needs of Persons with Co-Occurring Mental Health and Substance Use Disorders – Termination Date Extension and Modification (HB 1273) (7/01/05)**
  This Bill renames the Task Force to the above captioned name and alters the composition of the Task Force by eliminating the representative who is a consumer of co-occurring disorder services or a family member who uses such services, and by adding one consumer and 14 other specified members, including one member each of the House of Delegates and Senate.

- **Health Occupations – State Board of Examiners in Optometry – Scope of Practice (HB 719) (7/01/05)**
  This Bill requires the completion of an 8-hour course in the management of topical steroids in order for a licensed optometrist to be allowed to administer or prescribe therapeutic pharmaceutical agents or remove superficial foreign bodies from a human eye, adnexa, or lacrimal system. The Bills also allow a therapeutically certified optometrist to administer or prescribe topical steroids according to Board protocols. The Bill also requires the Board of Examiners in Optometry to adopt practice protocols for such administration and prescription by November 30, 2005 and report by June 1, 2008 to the Senate with suggested changes to improve the quality and access to care or to enhance the scope of practice of optometry in Maryland.

- **Health Insurance – Coverage for Psychological and Neuropsychological Testing (HB 458) (10/01/05)**
  This Bill provides that health insurance outpatient coverage, including HMO outpatient coverage, cannot discriminate in services provided to treat mental illnesses, emotional disorders, drug abuse or alcohol abuse, and provides that benefits must include psychological and neuropsychological testing for diagnostic purposes.
• State Board of Dental Examiners – Sunset Extension and Program Evaluation (HB 420) (10/01/05)
This Bill increases from 15 to 16 the number of members of the State Board of Dental Examiner while reducing the number of licensed dentists and increasing the number of licensed dental hygienists on the Board. The Bill also extends the Board’s regulatory and statutory authority through July 1, 2011.

• Integration of Child Welfare and Substance Abuse Treatment Services (HB 839) (6/01/05)
This Bill permits confidential government records and reports concerning child abuse or neglect to be disclosed upon request to addiction specialists who are investigating a report of known or suspected child abuse or neglect or who are providing services or assessing a child or family that is the subject of the report.

• Joint Legislative Task Force on Small Group Market Health Insurance (HB 1017) (7/01/05)
This Bill establishes a Joint Legislative Task Force on Small Group Market Health Insurance to study and make recommendations regarding the small group market relating to rate adjustments, range of products offered, medical loss ratios, association plans, and any other issue the task force deems important. A report on the findings and recommendations is due to specified committees by January 1, 2006.

• Automated External Defibrillator Program (HB 1054) (7/01/05)
HB 1054 alters the requirements for a facility to make automated external defibrillation (“AED”) available by requiring either medical direction through a sponsoring physician or the regional council AED Committee. The Bill also eliminates the age restriction on those who may be authorized to operate an AED, provided the person has successfully completed an educational training course and any required refresher training.

• Task Force to Study the Impact of Autoimmune Disease in Maryland (HB 1494) (7/01/05)
This Bill establishes the Task Force to Study the Impact of Autoimmune Disease in Maryland. The Task Force must study various aspects of autoimmune disease, including costs, research, services and service gaps, training needs, and public awareness campaigns. The Bills provide for the composition of the 17-member Task Force. The DHMH is required to report its findings and recommendations to the Governor by December 1 of 2005 and 2006. The Act expires at the end of 2006.

• Department of Health and Mental Hygiene– Federally Qualified Health Centers Grant Program (SB 210) (7/01/05)
This Bill creates the Federally Qualified Health Centers Grant Program under which the Department of Public Works will provide grants to counties, municipal corporations, and nonprofit corporations to convert existing public buildings, or acquire, renovate and construct buildings for use as federally qualified health centers facilities. The Bill also requires the Governor to include funding in the capital budget for the Program, and the Governor’s proposed FY 2006 capital budget includes $2.4 million in general obligation bonds to provide funding for seven projects.
• **Maryland Quality Home Care Services Act (HB 1542)** (7/01/05)

This Bill transfers the Office of Personal Assistance Services and the Attendant Care Program of the Office from the Department of Human Resources to the Department of Disabilities. The Act also establishes a 21-member Personal Assistance Services Advisory Committee to provide guidance to the Department on personal care, attendant care, and home care services.

• **Maryland Pharmacy Programs - Modifications and Subsidies for Medicare Drug Benefits (SB 282)/(HB 324)** (7/01/05)

The Medicare Modernization Act provides Medicare-eligible individuals with a prescription drug benefit beginning in January, 2006. The Bills modify a variety of Maryland pharmacy assistance programs in order to continue to provide pharmacy assistance to low-income individuals and maximize State savings that result from the new drug benefit. The Bills change the eligibility requirements and benefits of the Senior Prescription Drug Program and rename it as the Senior Prescription Drug Assistance Program to subsidize part of beneficiary’s Medicare Part D premiums and deductibles. The Bills exclude Medicare-eligible individuals from coverage under the Maryland Pharmacy Assistance Program, and abolish the Maryland Pharmacy Discount Program, while creating a Medicare Option Prescription Drug Program within Medicaid. This Program will provide low-income Medicare beneficiaries with a coordinated prescription drug plan and will permit the DHMH to contract with prescription drug plans to coordinate drug benefits. The Bills also rename the Senior Prescription Drug Program to that of the Senior Prescription Drug Assistance program and alter the eligibility requirements for the Program. The Program is also required to provide a State subsidy for the cost of some of Medicare Part D or Medicare Advantage Plan premiums and deductibles. In addition, the Bills require the Board of Directors of the Maryland Health Insurance Plan to contract with a third party to administer the Program, and require an enrolled in the Program to pay a co-payment or co-insurance.

• **Medicare Supplement Plan A Policies – Individuals with a Disability – Rates (SB 191)** (1/01/06)

This Bill alters current law to provide that a carrier who offers Medicare Supplement Plan A Policies in Maryland cannot charge individuals who are under age 65 and eligible for Medicare due to a disability a higher rate for the Plan A Policy than the rate charged to like individuals who are eligible for Medicare due to age. The Bill also requires the Maryland Insurance Administration to study the impact of this mandate and report its findings to the Senate Finance Committee and the House Health and Government Operation Committee. The Bill expires on June 30, 2008.

• **Reimbursement of Health Care Providers – Sunset Repeal (SB 300)** (6/01/05)

SB 300 repeals the termination provisions of Chapter 275 of the Acts of 2000, relating to the reimbursement of health care providers by HMOs.

• **Task Force to Study Electronic Health Records (SB 251)** (7/01/05)

SB 251 creates the Task Force to Study Electronic Health
Records. The Task Force, staffed by the DHMH, will study electronic health records and the current and potential expansion of electronic health record utilization in Maryland, including electronic transfer, electronic prescribing, computerized physician order entry, and the cost of implementing these functions. The Task Force must report its findings to the Governor and the General Assembly by December 31, 2007, at which time the Task Force will terminate.

- **Health Occupations – Podiatrists – Scope of Practice (SB 304) (10/01/05)**

Amends current law to allow all osseous surgical procedures of the ankle, arthrodesis of two or more tarsal bones, and complete tarsal osteotomies performed by licensed podiatrists to be performed in an ambulatory surgical center. The Bill also requires licensed podiatrists who perform such procedures to have current surgical privileges at a licensed hospital for that procedure and meet the requirements of the ambulatory surgical center.

- **Health Insurance – Treatment of Morbid Obesity (SB 333) (6/01/05)**

This Bill alters the duties of the Task Force to Study Utilization Review of the Surgical Treatment of Morbid Obesity to include review of literature on the surgical treatment of morbid obesity but to exclude the review of utilization review procedures currently used by health insurance carriers that provide surgical treatment for morbid obesity. The Bill also provides for DHMH staffing for the Task Force and extends the deadline for reporting its findings to December 1, 2007.

- **State Traumatic Brain Injury Advisory Board (SB 395) (10/01/05)**

This Bill establishes a 36-member State Traumatic Brain Injury Advisory Board to investigate the needs of citizens with traumatic brain injuries and identify gaps in their services; to facilitate collaboration among state agencies that provide services to these individuals and among organizations and entities that provide services to these individuals; and to encourage and facilitate community participation in program implementation. Also, requires the Board to issue an annual report to the Governor by November 30, 2005 and annually thereafter summarizing the actions of the Board and making certain recommendations.

- **Student Health Promotion Act of 2005 (SB 473) (10/01/05)**

This Act requires county boards of education, with assistance from the county health department, to provide instruction in health education that includes the importance of physical activity in maintaining good health. The Act also requires each county board of education to establish a nutrition policy by January 31, 2006 that applies to all foods and beverages that are available to students during the school day, by the first day of the 2006-2007 school year. The Act further requires that by August 1, 2006, all school vending machines shall have and use a timing device to automatically prohibit or allow access to the machines in accordance with the Board of Education’s nutrition policy.
• Joint Committee on Access to Mental Health Services – Establishment, Membership, and Duties (SB 544) (6/01/05)
This Bill establishes the Joint Committee on Access to Mental Health Services. The 8-member Committee is to be staffed by the Department of Legislative Services for the purpose of monitoring access to public mental health services for eligible individuals and medically necessary mental health services for individuals covered by insurance. The Committee shall submit an annual report to the Governor and General Assembly regarding systemic barriers to access to mental health services and make recommendations to mitigate these barriers.

• Department of Health and Mental Hygiene – Medical Laboratories – Retests and Public Notification (SB 621) (7/01/05)
SB 621 provides that if a medical laboratory has provided erroneous or questionable test results that pose a threat to the health and safety of patients, the Secretary of the DHMH may order the laboratory to: (1) notify physicians or other individuals who ordered the tests of the erroneous or questionable test results; and (2) take any additional measures necessary to reduce or eliminate the threat to the health and safety of patients, including notifying patients and offering retests. Non-compliant medical laboratories may be subject to civil penalties of up to $1,000 for each day of noncompliance after July 1, 2005 (up to a maximum of $50,000 in total penalties).

• Health Insurance – Human Papillomavirus Screening Test – Coverage (SB 779) (10/01/05)
This Bill requires insurers and nonprofit health service plans that provide hospital, medical, or surgical benefits to individuals or groups on an expense-incurred basis, or HMOs that provide hospital, medical or surgical benefits to individuals or groups under contracts to provide coverage for a human papillomavirus screening. Testing intervals shall be as outlined in the recommendations for cervical cytology screening developed by the American College of Obstetricians and Gynecologists.

• Department of Health and Mental Hygiene – Licenses and Eligibility for State Funding – Minimum Standards (SB 831) (7/01/05)
This Bill specifies eligibility requirements for licensure or State funding for an entity that provides either developmental disability services or mental health services. The Bill also specifies residency requirements for the governing bodies of providers and requires a provider to submit a detailed business plan to the DHMH demonstrating the provider’s ability to provide services and its experience in the field. The Developmental Disabilities Administration is in the process of promulgating regulations that require prospective programs to provide the DHMH with substantially similar information as required by the Bill.

• Public Health – Children – Notice of Drinking Water Contamination (SB 351)/(HB 1375) (10/01/05)
These Bills require public water systems that supply water to non-collegiate schools, child care centers and family day care homes to notify these institutions of certain drinking water contamination and also require those institutions that have received notice of contamination to provide notice to the parent or legal guardian of each child at one of those institutions. The notice from the institution must identify the
contaminants, their levels and describe the institution’s plan for dealing with the problem.

- **Public Health – Child Abuse and Neglect Centers of Excellence Initiative (SB 782)** (10/01/05)

This Bill creates a Child Abuse and Neglect Centers of Excellence Initiative within the DHMH. The purposes of the Initiative are to: (1) improve the protection of children in Maryland; (2) recruit local physicians to gain clinical expertise in the diagnosis and treatment of child abuse and neglect; (3) develop and guide the practice of local or regional multidisciplinary teams to improve the assessment and treatment of children who are the subject of a child abuse or neglect investigation or a child in need of assistance (“CINA”); (4) facilitate the appropriate prosecution of criminal child abuse and neglect; and (5) provide expert consultation and training to local or regional multidisciplinary teams in the diagnosis and treatment of physical child abuse and neglect and sexual abuse through teleconferencing and onsite services.

“Centers of excellence faculty” must: (1) assist local and regional jurisdictions to develop standards and protocols for the composition and operation of local or regional centers of excellence; (2) provide training and consultation to local or regional centers of excellence in the diagnosis and treatment of child abuse and neglect; (3) inventory existing academic and emergency resources available for teleconferencing and facilitate the use of these resources for child abuse and neglect investigations and treatment plans; and (4) provide financial support to part-time local and regional expert clinic staff for the diagnosis and treatment of child abuse or neglect. The DHMH must designate the participants in the centers of excellence faculty.

A center of excellence may receive information from the DHMH and may consult with the DHMH on any case: (1) referred from the CINA program; (2) concerning a child committed to the DHMH or a local department of social services; or (3) concerning a child who is the subject of a child abuse or neglect investigation.

The Secretary of DHMH must appoint and convene an expert panel on child abuse and neglect relating to research and data collection at least once each year. By December 1 annually, the panel must submit a report to the General Assembly on the data collected on child abuse and neglect diagnosis and treatment and the activities of the initiative.

- **Maintenance Drug Prescriptions – Mail Order Purchase (SB 885)** (7/01/05)

SB 885 requires the Maryland Insurance Administration and the Maryland Health Care Commission, in consultation with the Maryland Board of Pharmacy, to study the utilization impact, cost savings, financial impact on retail pharmacies, and convenience of mail order service for the purchase of maintenance prescription drugs. The Bill also requires a report on the findings of the study to be issued to the Governor and General Assembly by December 31, 2005.

- **Department of Health and Mental Hygiene – Maryland Health Insurance Plan – Computerized Eligibility System (SB 895)** (7/01/05)

This Bill provides for the Maryland Health Insurance Plan Board to authorize the transfer of not more than $15 million in funds in FY 2006 from the Maryland Health Insurance Plan Fund to the Major Information Technology Development Project Fund to design and develop a
computerized eligibility system for the Medicaid Program. The $15 million would then be eligible for a federal match. The Bill also provides for unused money that is transferred to be redistributed to the Maryland Health Insurance Plan. The Bill is contingent on CMS approval to use MHIP funds for this purpose.

• Health Insurance – Small Group Market – Self-Employed Individuals – Transfer to Maryland Health Insurance Plan (SB 1014) (10/01/05)

This Bill prohibits self-employed individuals and sole proprietors from obtaining health insurance in the small group market. However, an exception is made for those self-employed individuals or sole proprietors who already hold small group policies on September 30, 2005, as long as they maintain their self-employed or sole proprietor status. The Bill also requires the Maryland Insurance Administration and Maryland Health Insurance Plan to study the effect of this exclusion on small group market premiums.

• Community Services Reimbursement Rate Commission – Termination Date Extension and Modifications (SB 577) (7/01/05)

This Bill extends the termination date for the Community Services Reimbursement Rate Commission and allows the Governor to extend the terms of up to three members to a fourth consecutive 3-year term. The Bill also requires the Commission, with respect to the DDA, to study transportation issues, and with respect to DHMH, to review changes in payment for and utilization of psychiatric rehabilitation services.

• Pilot Program to Study and Improve Screening Practices for Autism Spectrum Disorders (SB 834) (7/01/05)

This Bill establishes a Department of Education pilot program for the study and improvement of autism spectrum disorders screening practices, and requires the Department of Education to collaborate with DHMH to select providers to participate in the pilot program, assess screening instruments, develop training materials, distribute information, collect baseline data, conduct tests for participating providers, training for providers, and provide services for children who are eligible for the Infants and Toddlers Program and who are referred to that Program. Beginning July 1, 2007 the Department of Education is to develop an improved referral system between pediatricians and the Infants and Toddlers Program, and monitor the system. The Department will also report by October 1 of each year to the Senate and House on the implementation of the pilot program.

• Developmental Disability – Written Plan of Habilitation – State Residential Centers (HB 794) (7/01/05)

This Bill requires the individual, along with a treating professional and a resource coordinator, as defined by the Bill, to develop a written plan of habilitation for individuals in State residential centers, and requiring the Developmental Disabilities Administration to develop a planning protocol and format for the plans to be used in the centers. The written plans must include recommendations of the treating professional and resource coordinator, descriptions of services and supports, barriers to community services and annual updates on the status and progress toward addressing and resolving barriers. Treating professionals and resource coordinators are
required to identify and report rights violations. The Act also requires treating professionals and resource coordinators to discuss service needs with the centers’ residents annually and on request of the resident. The Developmental Disabilities Administration and the Department of Disabilities must report annually to the General Assembly, and the data provided must be incorporated into the State’s Olmstead Plan, with recommendations to address the barriers that prevent individuals from living in the most integrated setting appropriate for their needs.

- Community Services Reimbursement Rate Commission – Termination Date Extension and Modifications (HB 896) (7/01/05)
  This Bill extends the termination date of the Community Services Reimbursement Rate Commission and authorizes the Governor to appoint some members for a fourth consecutive term. The Bill also requires the Commission to study the variation in transportation costs among service providers and recommend whether the rates should be adjusted for such costs. With respect to the Mental Hygiene Administration, the Commission must review the changes in the payments for and utilization of psychiatric rehabilitation services associated with the shift to paying for these services by case rates.

- Freestanding Medical Facilities – Licensing and Pilot Project (SB 231)(HB 426) (6/01/05)
  This Act creates a licensure category for satellite emergency departments that are affiliated with a hospital, open twenty-four hours a day, seven days a week, capable of taking ambulance traffic, and willing to take all patients regardless of ability to pay. It requires the MHCC to establish regulations by July 1, 2008 for the licensure application processes and criteria. It establishes a freestanding medical facility pilot project to be established for the Adventist project in Germantown, Montgomery County by July 1, 2006. For commercial insurers, the pilot project is to be reimbursed at the rate it negotiates with the insurer.

- Department of Health and Mental Hygiene – Federal Waivers – Waiver for Older Adults and Medicaid Managed Care Pilot Program (SB 819) (6/01/04)
  This Bill, vetoed by Governor Ehrlich last term and subsequently overridden by the General Assembly, requires the DHMH to apply to the federal Centers for Medicare and Medicaid Services (CMS) for a waiver to establish the Community Choice Program (“Program”), a managed care system that will operate in two areas of the State and provide long-term care services to eligible Medicaid enrollees. Prior to submitting the waiver to CMS, DHMH must submit the proposed waiver to the Legislative Policy Committee for its review and comment.

  Individuals eligible for the Program include (1) adults who are dually-eligible for Medicare and Medicaid; (2) adult Medicaid recipients who meet the nursing home level-of-care standard; and (3) Medicaid recipients over 65 years of age.

  Program recipients are required to enroll in a community care organization (“CCO”), which promotes the delivery of services in the most appropriate, cost-effective setting, including nursing facilities and community-based services.

  If an enrollee requires nursing home level of care, the enrollee may choose to receive services in a nursing home or in the community if community placement is cost effective. In addition, the DHMH must make capit...
payments to each CCO at a level that is actuarially adjusted for the benefits provided. DHMH must use the savings realized under the Program to increase reimbursement rates to community providers and develop a statewide single point-of-entry system to accept applications, make eligibility determinations, enroll individuals, and provide coordinated services. The Program terminates in May 2008. The Bill also requires the DHMH to seek permission from CMS to alter the level-of-care standard for individuals to be medically eligible to receive services through the Waiver for Older Adults. An individual will be medically eligible if the individual requires: (1) skilled nursing facility care or other related services; (2) rehabilitation services; or (3) health-related services above the level of room and board that are available only through nursing facilities, including individuals who have severe cognitive impairments.

**Nursing Facility Conversion Grant Program (HB 1047) (7/01/05)**

This Bill establishes a Nursing Facility Grant Program and authorizes the Maryland Board of Public Works, on the recommendation of the Secretary of DHMH, to provide grants under the Program to counties, municipal corporations, and nonprofit organizations to convert nursing facility beds to other health care services that DHMH deems appropriate. The Bill allows for temporary de-licensure of licensed bed capacity of a facility without a certificate of need review, and requires the Maryland Health Care Commission to retain the bed capacity of a facility on its inventory for up to two years if the owner or licensed operator provides at least 30 days’ written notice to the Commission of the proposed temporary de-licensure.

**Consumer Protection – Hearing Aids – Cancellation (SB 576) (10/01/05)**

This Bill requires a seller of hearing aids to bill fees for diagnostic tests separately from the purchase and fitting of a hearing aid. The separately-billed fee for a diagnostic test would not be subject to a refund. The Bill also authorizes the seller to deduct payments made for diagnostic tests from a refund otherwise owing to a purchaser after cancellation of a hearing aid purchase.

**Criminal Procedure – HIV Testing – Time Limits (HB 944) (10/1/05)**

This Bill establishes that, except for good cause, a court has thirty days to hold a hearing after the court is presented with a victim’s request for a hearing on whether a person charged with a crime or delinquent act that may have caused or resulted in exposure of the victim to HIV must be tested for HIV. Also establishes that the court, except for good cause, must issue an order granting or denying the request within three days after the conclusion of the hearing. The Bill further establishes that the State’s Attorney has three days to notify a local health officer of the written request by the victim or the victim’s representative for testing, and that the local health officer or the local health officer’s designee has seven days to collect the blood sample from the person who is charged with, convicted of, or found to have committed a prohibited exposure.

**Fair Share Health Care Fund Act (SB 790)/ (HB 1284) (1/01/07) Vetoed**

SB 790 and HB 1284 were passed by the Legislature but were subsequently vetoed by Governor Ehrlich. The Bills would have required any employer, other than a
government entity, with 10,000 or more employees that does not spend at least 6% of total wages for a nonprofit employer, or 8% of total wages for a for-profit employer on health costs to pay an amount equal to the difference between what the employer spends on health insurance and the required percentage of total wages paid. Employers would have had to submit annual reports beginning January 1, 2007, to the Dept. of Labor, Licensing and Regulation beginning January 1, 2007 stating how many employees they have and how much of their payroll was spent on health insurance costs. Funds collected under this Act would be dedicated to the Fair Share Health Care Fund to have only been used in support of Medicaid program operations.

**Medical Decision Making Act of 2005 (SB 796) (10/01/05)**

Vetoed

SB 796 was passed by the Legislature and subsequently vetoed by Governor Ehrlich. SB 796 would have provided for the establishment of life partnerships in the State. The Bill required individuals to register with the DHMH in order to enter into a life partnership; required the Secretary of the DHMH to develop “Declarations of Life Partnership” and “Notices of Termination of Life Partnership” forms and made those forms available on the DHMH website and through county clerks. The Bill also would have established procedures for applying for and obtaining a “certificate of life partnership”; required the Secretary to set specified fees; provided procedures to terminate a life partnership; required a life partner who qualified for and claimed third party benefits of a life partner to provide notice to the third party upon the termination of the life partnership; and required the DHMH to keep records of life partnerships.

This Bill also provided for certain rights for life partners, including:

- The right to visit a life partner in hospitals and certain other health care facilities, with certain limitations;
- The right to be treated as life partners in medical emergencies, if one adult in good faith tells emergency medical providers or hospital personnel that they are life partners, in order to accompany the life partner to the hospital and stay with the life partner admitted on an emergency basis;
- The right to permit a disinterment or reinterment of a life partner’s body;
- The right to give consent to conduct an autopsy, and arrange for final disposition of a life partner’s body, and hold an interest in the property of a burial site;
- The right to make health care decisions;
- The right to petition a court to enjoin the actions of certain health care providers;
- The right to accompany a life partner being transported from one health care facility to another;
- The right to authorize a deceased life partner human organ donation and not be billed by the hospital for the cost, and to be next of kin for purposes of making an anatomical give of a deceased life partner; and
- The right to share a room, or the right to have privacy during a visit by a life partner, in a comprehensive care or extended care facility.
This Legislative Update is produced for clients and friends of Whiteford, Taylor & Preston L.L.P., and is designed to provide general information. It is not intended to provide legal advice or opinion. Such advice may be given only when related to specific factual situations. The following contact list is provided for your convenience should you have any questions or would like to discuss a particular matter.

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