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2015 LEGISLATIVE WRAP-UP

The 435th legislative session of the Maryland General Assembly drew to a close at midnight on April 13. The first in a new term, the 2015 session began with the swearing-in of nearly seventy new legislators and the inauguration of incoming governor Larry Hogan. MHAMD spent the 90-day session raising awareness about the difficulties Marylanders face in accessing essential mental health and substance use disorder services. Though a disheartening budget battle overshadowed much of the positive notes, the public policy team worked effectively to highlight gaps in the private system and the need for stronger regulatory oversight of federal parity laws, begin a process to expand crisis services throughout the state, and advocate successfully on a range of issues in support of our friends and family members living with behavioral health needs.

KEEP THE DOOR OPEN MD
AND THE FISCAL YEAR 2016 BUDGET

The session began on a sour note following a pair of cuts in early January to the FY15 behavioral health budget recommended by outgoing governor Martin O'Malley and approved by the Board of Public Works. The news worsened with the introduction of the FY16 budget proposal, which further cut mental health provider reimbursement rates back to FY14 levels. Taken together, the cuts totaled over $20 million in total funding for services that benefit the more than 160,000 children and adults that use and depend on the public behavioral health system.

In an effort to reverse the cuts, the Maryland Behavioral Health Coalition sprang into action. Led by MHAMD, the Coalition launched a campaign urging officials in Annapolis to "Keep the Door Open" for those with behavioral health needs. Hundreds gathered in Annapolis to rally for restoration of the mental health cuts and an expansion of funding for substance use disorder services. The rally drew media coverage from around the state, raising awareness about the issues and highlighting the devastating nature of the proposed reductions. Direct advocacy to legislators, a strong social media presence, and a petition drive directed at Governor Hogan rounded out the campaign.

In the end, the legislature passed a budget that fenced off over $200 million for various priorities, including $6.5 million to return community mental health provider rates to FY15 levels; over $1 million to restore psychiatrist evaluation and management rate cuts; and $2 million in new state general funding to expand substance use disorder treatment targeted at individuals with heroin addiction. Unfortunately, Governor Hogan chose not to appropriate the funding for these purposes, returning the money to the general fund instead. However, the action taken by the legislature prevents that money from being used for other causes, so MHAMD will continue working with Coalition partners in an effort to restore the funding in the coming months.

Provider Rates Budget Language – Although the General Assembly passed legislation in 2010 that was intended to require annual inflationary rate adjustments for community providers, no regular adjustments have been forthcoming. Voicing a concern that the lack of regular rate increases is undermining the long term vitality and viability of Maryland's behavioral health system, narrative was added to the FY16 budget calling on the administration to include regular inflationary adjustments for community providers in future budgets.

Additional budget language requires the Department of Health and Mental Hygiene (DHMH) to report on the following:

- Breakdown of users within the public behavioral health system based on how those users qualify for Medicaid (i.e. whether qualification stems from Medicaid expansion under the federal Affordable Care or under traditional eligibility criteria)
- Coordination of care and information sharing between the behavioral health administrative service organization (ASO) and the Medicaid managed care organizations (MCOs)
- Outcomes for health home participants
- Implementation of the Community First Choice (CFC) Program and the consolidated Community Options (CO) waiver

NETWORK ADEQUACY AND PARITY COMPLIANCE

Issues of access to needed mental health and substance use disorder services are not restricted to the state budget concerns of those receiving treatment through the public behavioral health system. MHAMD sparked a firestorm of debate early in the session with the release of a report assessing the accuracy and adequacy of the psychiatric networks of commercial insurers. The report – which found that only fourteen percent of the 1,154 psychiatrists listed on the Qualified Health Plan networks sold through the Maryland Health Benefit Exchange were accepting new patients and available for an appointment within 45 days – was referenced numerous times throughout the session by advocates and legislators alike to highlight the difficulties Marylanders face in accessing critical mental health care.

The report buttressed ongoing efforts to ensure the appropriate implementation of the federal Mental Health Parity and Addiction Equity Act. Working again with partners from the Maryland Chapter of the National Council on Alcoholism and Drug Dependence and the University of Maryland School of Law Drug Policy Clinic, MHAMD advocated for legislation requiring that insurance carriers submit annual reports certifying and outlining how their plans comply with federal and state parity laws (SB 586 / HB 1010). Continued opposition from insurance carriers and the Maryland Insurance Administration (MIA) prevented passage of the bills. However, the chairman of the Senate Finance Committee requested in a letter to the insurance commissioner that MIA conduct market conduct surveys over the next three years to verify compliance, provide the committee with a summary of the analysis each year, and look at the feasibility of doing a more prospective review, as is being done in California.

MARYLAND CRISIS RESPONSE SYSTEM

When all else fails, and people are unable to access behavioral health services via their commercial insurance or the public system, many are thrown into crisis and must turn to the Maryland Crisis Response System (CRS). While all jurisdictions currently have one or more components of a comprehensive crisis system, none has an adequate continuum. As a result, many individuals have no alternative to expensive inpatient treatment in situations where they could be more effectively served with a local mobile crisis team, non-inpatient crisis bed, or readily available urgent care.

Long a priority for the Behavioral Health Coalition, and a central component to the Safety Net Act legislation in each of the past two years, the full implementation of a comprehensive statewide CRS was again raised as an issue in 2015. SB 469 / HB 367 (passed) was introduced to modernize the CRS and ensure that a full array of services is available around the clock in every jurisdiction. While that remains the ultimate goal, full implementation in one fell swoop is cost prohibitive. Accordingly, the bills were amended to remove obsolete provisions, clean up statutory language, and establish a framework that advocates can work from in the coming years to make incremental improvements to the system.

MATERNAL MENTAL HEALTH

Perinatal mood and anxiety disorders affect between 10% and 25% of all pregnant women and new mothers, and although these issues are treatable once recognized, 50% of all mothers who experience these disorders are never identified. With more than 400,000 infants every year born to mothers who are depressed, perinatal depression is the most underdiagnosed and untreated obstetric complication in the United States.

Legislation introduced at the request of MHAMD will begin addressing this issue in a coordinated and comprehensive manner. SB 74 / HB 739 (passed) establishes a task force to study issues related to maternal mental health disorders and to make budgetary and policy recommendations to address the unmet need in Maryland. With a broad range of stakeholder participation, the task force will ensure a diversity of opinions and perspectives as it works to develop a plan for improving identification and treatment of these issues in a way that works best for our state.

OTHER LEGISLATION

Behavioral Health Integration

Efforts continue to integrate the delivery of services for individuals with mental health and substance use disorders. Following the 2014 merger of the Mental Hygiene Administration and the Alcohol and Drug Abuse Administration, and the implementation on January 1 of a new combined behavioral health carve-out, legislation was introduced in 2015 to integrate statutory provisions and advisory functions at the Behavioral Health Administration.

After a lengthy statutory review process, in which MHAMD played an active role, HB 1109 (passed) was introduced to eliminate inconsistencies in code provisions related to mental health and substance use disorders, repeal antiquated language, and strengthen prohibitions preventing a denial of services or discrimination based solely on an individual's behavioral health disorder.

SB 174 (passed) merges the Maryland Advisory Council on Mental Hygiene and the State Drug and Alcohol Abuse Council into a more inclusive Behavioral Health Advisory Council. MHAMD holds a permanent seat on the new body, which is charged with promoting and advocating for a quality, coordinated system of care and the enhancement of behavioral health services across the state.

Substance Use Disorders

As the rest of the state moves to address behavioral health in an integrated fashion, so too has MHAMD expanded its scope of advocacy to include more policy measures related primarily to substance use disorders. SB 516 / HB 745 (passed) will begin to reverse the steadily climbing rate of opioid deaths in Maryland. It expands overdose response training, increases access to the life-saving medication naloxone, encourages more practitioners to prescribe the drug for third-party administration by extending civil immunity protection to prescribers, and clarifies that existing laws provide civil immunity to laypersons acting in an emergency.

MHAMD also supported SB 654 / HB 1009 (passed), expanding Maryland's Good Samaritan law to provide greater encouragement for people to call 911 when witnessing an overdose. By extending immunity from prosecution for several minor drug and alcohol offenses to include immunity from being arrested and charged as well, individuals are more likely to make a call that could save a life.

Community opioid maintenance programs are key components in a comprehensive strategy to increase access to substance use disorder treatment. MHAMD opposed SB 199 / HB 1134 (failed), which would have made timely and effective treatment less accessible by making it more difficult to open one of these critical programs.

Healthcare Reform and Insurance

Introduced primarily to conform various provisions of Maryland law to the federal Affordable Care Act (ACA) and Mental Health Parity and Addiction Equity Act (MHPAEA), SB 556 (passed) was chosen as a vehicle to address how Maryland will select a new Essential Health Benefit (EHB) for Qualified Health Plans (QHP) offered on the Maryland Health Benefit Exchange (MHBE) in the 2017 plan year. In collaboration with other consumer advocates, MHAMD advocated successfully to ensure that the selection will be made by MIA in consultation with MHBE only after a public comment period; that it will be effectively limited to the current EHB with all of its mandates and robust mental health and substance use disorder benefits; and that it will affect only 2017 plans, with any further EHB selections requiring additional legislation, providing advocates an opportunity for greater input into how this decision should be made in the future.

Criminal Justice

As chair of the Mental Health and Criminal Justice Partnership, MHAMD supports all efforts to prevent recidivism and promote the successful reentry of ex-offenders. In its fourth year before the legislature, the Maryland Second Chance Act (HB 244) passed in 2015, allowing individuals to request that records related to certain nonviolent misdemeanors be shielded from public view three years after completion of their sentence. Shielding nonviolent convictions after a defined period of time increases employment opportunities for ex-offenders, thereby lowering recidivism and increasing public safety.

SB 321 requires, to the extent practicable, the creation of behavioral health units in both the Baltimore City and Baltimore County police departments. These units will complement Crisis Intervention Team programs already active in those jurisdictions, furthering efforts to divert individuals with behavioral health disorders away from the criminal justice system, and prevent and reduce unnecessary use of force and loss of life.

Mental Health and Disability

Mental Health Advance Directives (MHADs) are important tools to assist individuals living with mental illness by allowing them to document their preferences regarding future psychiatric treatment. Maryland law allows for the revocation of those instructions at any time, even during a crisis that was anticipated when the MHAD was drafted. SB 90 / HB 293 (passed) was introduced to prevent such a revocation until 72 hours after the request was made. Worried that such a restriction would discourage the use of these valuable tools, MHAMD worked with the bill sponsors and proponents to craft a provision that will instead allow an individual to elect, when making an MHAD, to waive their right to revoke during periods of incapacity.

Issues of access extend to the ability of minors aged sixteen and seventeen to consent to their own mental health treatment. Though current law allows these individuals to consent to services from a psychiatrist or at a clinic, a majority of the mental health care delivered today is provided via other licensed professionals. MHAMD supported SB 157 / HB 662 (passed), which will increase access and remove barriers to care by allowing sixteen and seventeen year olds to consent to treatment with any health care provider who is licensed and certified to diagnose and treat mental and emotional disorders.

Other efforts supported by MHAMD to increase the availability of behavioral health services were successful absent a legislative mandate. SB 318 / HB 1026 sought to allow nurse practitioners to provide and receive treatment for telemental health services. SB 807 / HB 1173 was introduced to require that the state apply for a federal grant necessary to have Maryland selected as a demonstration state for the establishment of certified behavioral health clinics. The bills were withdrawn after DHMH committed to implementing the various provisions without the legislation.

Given the creation early this year of the Governor's Heroin and Opioid Emergency Task Force, the ongoing efforts to integrate the delivery of mental health and substance use disorder services, and the sheer volume of behavioral health-related bills in 2015, it was determined by the General Assembly that a focus on these issues should extend beyond the 90-day legislative session. SB 607 / HB 896 (passed) establishes a joint legislative committee to monitor, among other things, the effectiveness of the state's behavioral health system and the extent to which health insurance carriers are complying with federal and state parity laws.