

Government Relations Update – October 9, 2018

Pennsylvania Issues

Legislation

- **SB 780**: Telemedicine Act. As previously reported, on June 22, 2017, Senator Elder Vogel (R-Beaver) introduced legislation to define key components of telemedicine, set telemedicine licensing requirements and require that insurers pay for telemedicine services if they cover the same service provided in person. The bill was referred to the Banking and Insurance Committee for consideration. Senators Bob Mench (R-Bucks), Lisa Baker (R-Pike), David Argall (R-Schuylkill) and Pat Browne (R-Lehigh) served as co-sponsors of the bill. HAP supports the expanded use of telemedicine, since it will assist with physician shortages in rural communities. Pennsylvania has the third largest rural population in the country, with approximately 27% of the population living in rural areas and 70% of all counties considered rural. 30 states, including New York, Maryland and Virginia, have enacted similar telemedicine legislation.

Unfortunately, the payment parity provisions were stricken from the bill before it was passed by the Senate on June 19, 2018. It was sent to the House Professional Licensure Committee, which passed the bill with minor amendments on September 24, 2018. If the bill passes the House, it must be sent back to the Senate to approve the amended bill before going to the Governor for signature. There are only five House session days and three Senate session days scheduled before the November election. Any bills not approved by November 6, 2018 will have to be reintroduced when the 2019-2020 session convenes in January.

- **SB 180**: Donate PA Life Act. On May 26, 2017, Senator Stewart Greenleaf (R-Bucks) introduced legislation which would establish a comprehensive framework for public education about organ and tissue donations; clarify the methods for making anatomical donations; and update the law to reflect the best clinical practices to support anatomical donations for transplantations. The bill passed the Senate on June 20, 2017 and was amended in the House on April 30, 2018. The bill now awaits movement in the Senate.
- **SB 479**: Pennsylvania Family and Medical Leave Act. On March 1, 2017, Senator Dinniman (D-Chester) introduced the Pennsylvania Family and Medical Leave Act, which would provide up to six weeks of protected, unpaid leave for an employee to care for a sibling, grandparent or grandchild with a serious health condition if such sibling, grandparent or grandchild has no living spouse, child over 17 years of age or parent under 65 years of age. The bill would cover more situations than the Federal law, but it would be limited to one half of the time allotted. The bill is being considered by the Senate Labor and Industry Committee.
- **SB 655**: Amending the Controlled Substance, Drug, Device and Cosmetic Act. On May 2, 2017, Senator Gene Yaw (R-Bradford) introduced a bill which would require mandatory implementation of opioid prescribing guidelines developed by the Pennsylvania Safe and Effective Prescribing Practices Task Force. Convened by the Department of Health and the Department of Drug and Alcohol Programs, the task force developed and approved guidelines, which have been all or in part independently adopted by the Board of Medicine, the Board of Pharmacy and Board of Dentistry. Senator Yaw notes that the proposed legislation is part of a comprehensive approach to fighting the ongoing heroin and opioid addiction crisis in Pennsylvania. The bill passed the Senate and was referred to the House Health Committee on June 14, 2018.
- **HB 2552**: Prohibiting Health Insurers from Denying or Excluding Coverage Based on a Pre-Existing Condition. On June 19, 2018, Representative Peter Schweyer (D-Lehigh) introduced a bill which would prohibit health insurers from using an individual's pre-existing medical condition to deny or exclude coverage under a health insurance policy. The bill was introduced in response to lawsuits filed by 20 states earlier this year seeking to invalidate the Affordable Care Act as unconstitutional. A hearing was held by the House Democratic Policy Committee on July 25, 2018, and Dr. Ken Bertka of St. Luke's Care Network was one of the experts testifying on the potential impact of the bill, which is being considered by the House Insurance Committee.

- **HB 1987:** Amending the Controlled Substance, Drug, Device and Cosmetic Act. On December 22, 2017, Representative Brian Barbin (D-Cambria) introduced a bill that would prohibit for two years the dispensing of fentanyl except during surgery or to hospice patients. The bill passed the House and was assigned to the Senate Health and Human Services Committee on June 15, 2018.

New Jersey Issues

Legislation

- **SB 2427/A3769:** Angioplasty Bill. On April 5, 2018, Senator Joseph Vitale (D-Middlesex) introduced a bill that would require the New Jersey Department of Health to license certain qualifying hospitals to provide full service diagnostic cardiac catheterization, primary angioplasty and elective angioplasty services. A companion bill was introduced in the Assembly by Assemblyman Andrew Zwicker (D-Hunterdon). Committee hearings have been scheduled for October 15, 2018.

Advocacy

- **Legislative Visits:** On August 17, 2018, New Jersey Assemblyman Erik Peterson (R- Somerset, Hunterdon and Warren) visited St. Luke’s Hospital – Warren Campus to discuss the hospital’s top priorities. Separate meetings were also held with Warren County Freeholders Ed Smith (R-Asbury), Rick Gardner (R-Asbury), and Jason Sarnosky (R-Hackettstown).

Federal Issues

Legislation

- **CHRONIC Care Act:** The Creating High-Quality Results and Outcomes Necessary to Improve Chronic (CHRONIC) Care Act was enacted in February 2018. The Act, which was sponsored by Senators Ron Wyden (D-Oregon), Mark Warner (D-Virginia) and Johnny Isakson (R-Georgia), allows Medicare to pay providers for more telemedicine services for Medicare Advantage enrollees who have chronic medical conditions. About one third of Medicare beneficiaries, or 19 million people, participate in these managed care plans. Medicare officials are allowed to decide which services it will cover. There is an open comment period for stakeholders through November 30, 2018. Another provision of the Act requires Medicare to pay for telestroke sessions beginning in January regardless of whether the care is provided in a rural facility.

Miscellaneous

- **RAC Audits:** CMS uses Recovery Audit Contractors (RACs) to verify that claims are paid based on Medicare requirements. A RACs primary task is to review Medicare claims data and supporting medical documentation to determine if a claim was appropriately paid. RACs recovered more than \$214 million from hospitals and healthcare systems in federal fiscal year 2016, according to the latest report issued by CMS in September 2018. The total amount recovered for the Medicare program is up 50% from the \$141.87 million recovered in federal fiscal year 2015. Altogether, \$404.46 million in overpayments were clawed back, and \$69.46 million in underpayments were sent to providers from the Medicare program.

RACs retain a contingency fee from amounts recovered from hospitals ranging from 10.4% to 14.4%. Hospital lobbying groups have regularly complained that the RACs have overreached based on the contingency fee payment mechanism. Hospitals regularly appeal RAC claw backs as a result, clogging up the administrative law courts that handle Medicare cases. The Office of Medicare Hearings and Appeals, which handles RAC cases, received an additional \$182.3 million in funding earlier this year to resolve the backlog. The U.S. Department of Health and Human Services hopes to have the RAC appeals backlog cleared by federal fiscal year 2022.