

Government Relations Update – October 6, 2020

Pennsylvania Issues

Legislation

- **HB 2352**: State False Claims Act. As previously reported, Senator Lindsey M. Williams (D – Allegheny), Representative Seth Grove (R–York) and Pennsylvania Attorney General Josh Shapiro (D) joined a bipartisan group of state legislators on January 14, 2020 for a press conference to announce their support for the enactment of a State False Claims Act. Curt Schroder, Director of the Pennsylvania Coalition for Civil Justice Reform (PCCJR), immediately issued a statement opposing the initiative.

The Federal False Claims Act (FCA) has been in existence since the Civil War to penalize vendors seeking to defraud the federal government, but it does not apply well in healthcare. The FCA includes a penalty of up to three times the government's damages and civil penalties ranging from \$10,957 to \$21,916 per false claim, as well as interest. The federal government, private whistleblowers and plaintiffs lawyers use this potential penalty to extort major settlements from hospitals when they have merely made innocent billing mistakes. It is important to note that the FCA applies to all “false” or “incorrect” claims, not just fraudulent claims. A State False Claims Act would expand the bounty payable to whistleblowers and trial lawyers. As a result, The Hospital and Healthsystem Association of Pennsylvania (HAP) and St. Luke's University Health Network have been advocating against the legislation.

On March 21, 2020, Representative Grove introduced the bill, with Representative Jack Rader (R – Monroe) serving as a cosponsor. On September 30, 2020, in an attempt to gain support from the hospital community, the legislation was amended to include immunity for healthcare providers and healthcare facilities for services provided in response to the COVID pandemic. The amendment is not retroactive to March 6, 2020, when Governor Tom Wolf (D–PA) issued his Declaration of Emergency. The bill was immediately passed by the State Government Committee along party lines, with the Republican majority voting in the affirmative. The bill is currently waiting for consideration in the House. HAP, PCCJR and St. Luke's remain opposed to the legislation.

- **HB 2103**: Patient Test Result Information Act. On December 2, 2019, Representative Barry Jozwiak (R – Berks) introduced legislation requiring written notification be provided to diagnostic imaging patients at the time of service instructing patients to follow up with the ordering physician for test results. Representative Mike Schlossberg (D – Lehigh) and Representative Rader served as co-sponsors to the legislation. On September 16, 2020, the bill was amended to require that patients receive written notification when test results are sent to the ordering physician. On September 30, 2020, the amended legislation passed the House. HAP and St. Luke's are opposed to the legislation, since the amendment would make it extremely difficult to comply. HAP and St. Luke's will be advocating for the original language to be restored in the Senate.
- **HB 2546**: COVID-19 Good Samaritan Emergency Liability Waiver. On May 26, 2020, Representative Grove introduced legislation offering immunity for healthcare providers and healthcare facilities for services provided in response to the COVID pandemic. The bill would not be retroactive, as requested by the hospital community. On September 30, 2020, the bill was passed by the State Government Committee and is currently awaiting consideration in the House. St. Luke's is neutral on this legislation, since it is not retroactive.

- **HB2476:** Improving Healthcare Outcomes. On April 30, 2020, Representative Grove introduced legislation to create financial incentives and penalties for providers enrolled in Medicaid, which Representative Grove estimates would save the program \$40 million per year based on reducing readmissions and complications. St. Luke’s already participates in similar programs with a number of payers. However, since the stated goal is to cut payments to providers, HAP and St. Luke’s are opposed to the legislation.

New Jersey Issues

Legislation

- **A1135:** Hospital Bed Tax. On June 25, 2015, the Tax Court of New Jersey held that Morristown Memorial Hospital, a federally tax exempt organization formed as a not-for-profit corporation under New Jersey law, had failed to satisfy the criteria for exemption from state real estate taxes. As a result, the tax court denied the hospital’s claim for property tax exemption. Since the issuance of the ruling, more than 40 lawsuits have been filed by New Jersey municipalities challenging the real estate tax exemption status of not-for-profit hospitals.

On January 14, 2020, Assemblyman Craig Coughlin (D – Middlesex) introduced legislation in response to these lawsuits requiring that not-for-profit hospitals pay an annual community service fee of \$2.50 per day per licensed bed to host municipalities to offset the cost of public safety services in lieu of real estate taxes. The bill specifies that if a hospital and a municipality have entered into a payment in lieu of taxes (PILOT) agreement prior to the enactment of the bill, the hospital would pay the greater of the community service fee or the PILOT for the duration of the agreement.

On September 24, 2020, this legislation was passed by the Assembly and sent to the Senate for consideration. Assemblyman Erik Peterson (R – Warren) and Assemblyman John DiMaio (R – Warren) both voted against the legislation. New Jersey Hospital Association is in favor of the legislation, since it would settle the outstanding property tax lawsuits. St. Luke’s opposes the bill, since New Jersey law supports tax exemption when real property is owned by a not-for-profit organization and used exclusively for charitable purposes.

Federal Issues

Legislation

- **CARES Act:** The Coronavirus Aid, Relief and Economic Security (CARES) Act was passed by Congress and signed into law by President Donald Trump (R) on March 27, 2020. The CARES Act included \$175 billion in funding for hospitals and healthcare providers. There were two phases of general distributions in the aggregate amount of \$68 billion to providers followed by several phases of targeted distributions in the aggregate amount of \$55 billion to skilled nursing facilities, rural hospitals, safety net hospitals and hospitals that treated a high number of COVID patients. Another \$20 billion became available for distribution on October 5, 2020.

St. Luke’s experienced lost revenues due to government mandated cancellation of elective procedures and services, fewer outpatient visits and increased uncompensated care. Hospitals across the country relied on these funds to maintain healthcare delivery capacity amidst the pandemic. The United States Department of Health and Human Services (HHS) issued guidance pertaining to the use of the funding on June 19, 2020. However, on September 19, 2020, HHS changed its reporting requirements, potentially reducing amounts previously awarded to providers. St. Luke’s has joined HAP and the American Hospital Association to advocate for HHS to reinstate its original requirements.