

Government Relations Update – July 27, 2021

Pennsylvania Issues

Legislation

- **HR 106/HB 854:** Termination of Disaster Emergency. During the COVID-19 pandemic, Governor Tom Wolf (D) has renewed his emergency declaration several times since the first one was issued on March 6, 2020. Emergency declarations provide important waivers and extensions for hospitals and healthcare facilities, including expanding Medicaid coverage of telemedicine. Emergency declarations also provide authorization for state agencies to use emergency funding, resources and personnel and initiate consumer protections against price gouging. Emergency declarations do not allow the Governor to shut down businesses or prohibit elective medical procedures. Those powers are granted to the Pennsylvania Secretary of Health under different statutes.

As previously reported, on January 11, 2021, Representative Seth Grove (R-York) introduced an amendment to the Pennsylvania Constitution to limit the power of the Governor when declaring a disaster to 21 days and to require approval of the General Assembly to renew an emergency declaration thereafter. The House and Senate approved the bills on January 26, 2021 and January 27, 2021, respectively, largely along party lines with the Republicans voting in the affirmative. An amendment to the Pennsylvania Constitution requires the same bill to pass both chambers in consecutive sessions, followed by a referendum approved by the voters. Identical legislation passed both chambers last session, and, on May 18, 2021, voters approved the referendum as part of the primary election. The Pennsylvania Constitution has now been amended, and, on June 21, 2021, the General Assembly approved a resolution ending the latest emergency declaration.

In response, St. Luke's University Health Network and The Hospital and Healthsystem Association of Pennsylvania (HAP) advocated for legislation to be passed consecutively with HR 106 to preserve the healthcare related waivers and flexibilities under the emergency declarations. On June 9, 2021, HB 854 was amended to include these waivers until September 30, 2021, and it was passed by the House and Senate and signed into law by Governor Wolf. St. Luke's and HAP are now advocating for partial or permanent extensions to some of these waivers.

- **SB 425:** Informed Consent. As previously reported, on March 15, 2021, Senator John Gordner (R-Luzerne) reintroduced legislation to address the flawed Pennsylvania Supreme Court decision (Shinal v. Toms) from 2017 limiting the authority of a physician to delegate the task of obtaining a patient's informed consent to another practitioner. The bill clarifies that while physicians remain responsible for the overall care of their patients, the task of obtaining a patient's informed consent may be delegated by a physician to a qualified practitioner. The bill was passed by the House and Senate, and, on June 30, 2021, it was signed into law by Governor Wolf. The legislation goes into effect immediately. HAP and St. Luke's supported this legislation.
- **SB 115:** Nurse Licensure Compact. As previously reported, on March 22, 2021, Senator Lisa Boscola (D-Northampton) introduced legislation for Pennsylvania to join 34 other states in the Nurse Licensure Compact, which makes the nurse licensing process simpler. The bill was passed by the House and Senate, and it was signed into law by Governor Wolf on July 1, 2021. The legislation goes into effect immediately. HAP and St. Luke's supported this legislation.
- **SB 398/397:** Physician Assistants Modernization of Practice. On March 11, 2021, Senator Joe Pittman (R-Armstrong) introduced two bills intended to enhance the practice of physician assistants by: (1) removing the requirement of a physician countersignature on patient files; (2) allowing a written agreement to be "filed" instead of "approved" by the state medical boards, which would permit physician assistants to begin working immediately; and (3) reducing in person supervision requirements by physicians. The bills were passed by the House on June 25, 2021 and referred to the Senate Professional Licensure Committee. HAP and St. Luke's support these bills.

- **SB 25:** Modernization of the Professional Nursing Law. On February 22, 2021, Senator Camera Bartolotta (R-Beaver) introduced legislation requiring the State Board of Nursing to establish an Advanced Practice Registered Nurse-Certified Nurse Practitioner (APRN-CNP) license. After meeting a three-year, 3,600-hour physician collaboration requirement, APRN-CNPs would be permitted to practice without the requirement of a formal collaborative agreement currently needed to practice and write prescriptions. The bill was reported out of the Senate Professional Licensure Committee on June 16, 2021 and is currently waiting for consideration on the Senate Floor. HAP and St. Luke’s support this legislation.

Federal Issues

Legislation

- **American Infrastructure Plan:** On June 24, 2021, President Joe Biden (D) announced bipartisan agreement on a \$1.2 trillion infrastructure package, but the President is seeking a separate spending bill to fund his education and health care initiatives, including additional premium subsidies for Affordable Care Act state exchange plans and funding for Medicaid expansion of home and community-based services. Health care trade groups, including the American Hospital Association, fear that the bills will be funded in part through \$24 billion of unspent COVID-19 relief funds, and the groups have sent letters to House and Senate leaders opposing use of these funds. St. Luke’s is closely following this legislation.

Miscellaneous

- **Executive Order Promoting Competition in the American Economy:** On July 9, 2021, President Biden signed an Executive Order addressing, among other topics, hospital consolidation and non-compete agreements. The order encourages the Justice Department and the Federal Trade Commission (FTC) to review and revise hospital merger guidelines to ensure patients are not harmed by consolidations. The order also encourages the FTC to adopt rules banning or limiting non-compete clauses that unfairly limit worker mobility. St. Luke’s will be following the implementation of the order and will submit comments as necessary during any rulemaking processes.
- **Surprise Balance Billing Regulations:** The No Surprises Act, a bipartisan bill passed as part of a massive funding package in the final days of 2020, seeks to protect patients against excessive out-of-pocket costs from surprise and balance billing. On July 1, 2021, the United States Departments of Treasury, Labor, and Health and Human Services, along with the Office of Personnel Management, issued the first interim rule implementing the No Surprises Act.

The interim rule mandates the following: (1) emergency services, regardless of where they are provided, must be covered on an in-network basis, including the calculation of copayments, coinsurance, and deductibles, without requirements for prior authorization; (2) out-of-network balance billing and/or increased patient financial responsibility (e.g., higher copayment) for ancillary care (such as care rendered by an anesthesiologist) at an in-network facility will be prohibited in all circumstances; and (3) health care providers must provide patients with a plain-language consumer notice explaining that patient consent is required to receive care on an out-of-network basis before that provider can bill at a higher out-of-network rate.

For emergency services furnished by a nonparticipating emergency facility, and for nonemergency services furnished by nonparticipating providers in a participating healthcare facility, participant cost-sharing amounts will be calculated based on either an applicable All-Payer Model Agreement, as specified by state law, or if there is no applicable All-Payer Model Agreement or specified state law, then the lesser of (1) the amount billed by the provider or facility and (2) the median of the contracted rates for the item or service in the geographic region, referred to as the “qualifying payment amount.” Regulations regarding other elements of the No Surprises Act provisions, including the dispute resolution process, consumer protections, transparency, and price comparison tools, are forthcoming. St. Luke’s is closely following the release of the of these rules.