

Government Relations Update – October 5, 2021

Pennsylvania Issues

Legislation

- **HB 1861:** Temporary Regulatory Flexibility. As previously reported, during the COVID-19 pandemic, Governor Tom Wolf (D) renewed his emergency declaration several times since issuing the first one 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 for the Governor to shut down businesses or prohibit elective medical procedures. Those powers are granted to the Pennsylvania Secretary of Health under different statutes.

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 the 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 concurrently with the primary election. The Pennsylvania Constitution was then 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 preserve the healthcare related waivers and flexibilities under the emergency declarations. On June 9, 2021, legislation including these waivers until September 30, 2021 was passed by the House and Senate and signed into law by Governor Wolf. On September 14, 2021, Representative Andrew Lewis (R-Dauphin) introduced legislation to further extend the waivers until March 31, 2022. The bill passed the House and Senate on September 22, 2021 and September 29, 2021, respectively, and it was signed into law by the Governor on September 30, 2021.

- **HB 245:** Update to International Graduation Requirements. Graduates of U.S. and Canadian medical schools must successfully complete two years of training through an approved medical residency program to apply for a medical license in Pennsylvania, while International Medical Graduates (IMGs) must complete an additional year, for a total of three years of residency training, before they can apply for the same license. On January 25, 2021, Representative Aaron Kaufer (R-Luzerne) introduced legislation to eliminate the third year training requirement for IMGs. The Pennsylvania Medical Society, HAP, and St. Luke's support this effort.
- **SB 818:** Aligning Pennsylvania's Ambulatory Surgery Centers (ASCs) Procedures with CMS. Medicare publishes a list of procedures approved to be performed in ASCs. Based on Pennsylvania regulations adopted in the 1990s, many of these procedures cannot be performed in Pennsylvania ASCs without an exception, which is time consuming and burdensome. On July 26, 2021, Senator Judy Ward (R-Blair) introduced legislation to permit ASC procedures approved by CMS to be performed in Pennsylvania ASCs. On September 28, 2021, the bill was voted out of the Senate Health and Human Services Committee and now resides with the Appropriations Committee. St. Luke's and HAP support 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 all 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 rather than waiting months for approval; and (3) reducing in person supervision requirements by physicians. The bills were passed by the House and Senate on September 29, 2021, respectively, and are expected to be signed into law by the Governor.

Federal Issues

- **Office of Climate Change and Health Equity:** On January 27, 2021, President Joe Biden (D) signed an “Executive Order on Tackling the Climate Crisis at Home and Abroad.” Among other initiatives, the Order directs the U.S. Secretary of Health and Human Services (HHS) to establish an Office of Climate Change and Health Equity (OCCHE), which is expected to address the impact of climate change on the health of the American people. In particular, OCCHE will be responsible for (1) identifying communities with disproportionate exposures to climate hazards and vulnerable populations; (2) addressing health disparities exacerbated by climate impacts to enhance community health resilience; (3) promoting and translating research on public health benefits of multi-sectoral climate actions; (4) assisting with regulatory efforts to reduce greenhouse gas emissions and criteria air pollution throughout the health care sector, including participating suppliers and providers; (5) fostering innovation in climate adaptation and resilience for disadvantaged communities and vulnerable populations; (6) providing expertise and coordination to the White House, the Secretary of HHS and federal agencies related to climate change and health equity deliverables and activities, including executive order implementation; (7) promoting training opportunities to build the climate and health workforce and empower communities; and (8) exploring opportunities to partner with the philanthropic and private sectors to support innovative programming to address disparities and health sector transformation. The OCCHE is expected to issue regulations implementing its core mission.
- **Price Transparency:** As previously reported, on June 24, 2019, President Donald Trump (R) signed an executive order on price and quality transparency in health care that aims to lower rising health care costs. On November 15, 2019, the Trump Administration released a final rule requiring hospitals to make “standard charge” information available online, to post this data for a limited set of “shoppable services” in a “consumer-friendly” manner and form, and to disclose contract rates with health plans.

Hospitals will be required to make a list of standard charges for these items and services available online in a single, machine-readable digital file. The information must be free of charge, available to view without registering or establishing an account, searchable by service description, billing code and payer, and displayed in a prominent manner that also identifies a hospital’s location associated with the standard charges. Hospitals are required to post this information for at least 300 shoppable services, defined as a service that can be scheduled by a healthcare consumer in advance, including 70 CMS-selected shoppable services and 230 additional hospital-selected shoppable services. CMS categorizes the 70 CMS-selected shoppable services as evaluation and management services, laboratory and pathology services, radiology services and medicine and surgery services. As for the 230 hospital-selected shoppable services, hospitals may select these services based on the utilization or billing rate of the services in the last year. Standard charge information must be updated at least annually with the date of the last update clearly indicated. Hospitals face a fine of \$300 per day for failure to comply.

The American Hospital Association (AHA), HAP, the insurance industry and others specifically objected to the requirement to disclose confidential payer rates. On November 18, 2019, the AHA announced its plan to sue the federal government to prevent implementation of the final rule. The Association of American Medical Colleges, the Children’s Hospital Association, the Federation of American Hospitals and others joined the challenge. On December 29, 2020, the U.S. Court of Appeals for the District of Columbia upheld the regulation, determining that the relevant statute authorized the scope of the regulation and that it did not run afoul of the Constitution.

On August 10, 2021, the United States Chamber of Commerce and the Tyler Area Chamber of Commerce filed a separate lawsuit against the federal government in the Eastern District of Texas. The lawsuit asserts that the disclosure of prices for healthcare services and drugs in machine-readable files goes beyond federal authority and could raise healthcare costs. On August 26, 2021, the two chambers of commerce withdrew the filing after an August 20, 2021 announcement from the Biden Administration delaying the enforcement of some rule provisions from January 1, 2022 to July 1, 2022. St. Luke’s will continue monitoring the implementation of this regulation.