

Government Relations Update – December 14, 2021

Pennsylvania Issues

Legislation

- **HB 1741:** Coronavirus Infection Medication Act. On July 30, 2021, Representative Dawn Keefer (R-York) introduced legislation to prohibit Pennsylvania licensing boards from disciplining a provider who offers medication for off-label use for treatment of Covid-19, including hydroxychloroquine sulfate or ivermectin. Neither exposure to Covid-19, nor testing for infection, would be required. The House Health Committee held a public hearing on December 13, 2021 to discuss the merits of the bill, and Dr. Jahre submitted testimony in opposition. If the legislature passes the bill, Governor Tom Wolf (D) is expected to veto it.
- **HBs 1561 and 1563:** Mental Health Legislative Package. As previously reported, on June 7, 2021, Speaker Brian Cutler (R-Lancaster), Representative Frank Farry (R-Bucks), and Representative Mike Schlossberg (D-Lehigh) introduced a package of bills intended to modernize Pennsylvania’s mental health and substance use disorder laws (i.e., the Mental Health Procedures Act (MHPA) and the Drug and Alcohol Abuse Control Act (DAACA)) to promote “whole person” health care initiatives. The MHPA and the DAACA were originally enacted in 1970 and 1972, respectively, and contain confidentiality provisions that are more restrictive than Health Insurance Portability and Accountability Act of 1996 (HIPAA) standards.

The legislation would also permit targeted data sharing between the Commonwealth’s Prescription Drug Monitoring Program and providers, facilities, and health plans to better identify gaps in care and provide improved outreach, education, and support. On November 9, 2021, the bills were approved by the House, and they now reside in the Senate Health and Human Services Committee. St. Luke’s University Health Network (St. Luke’s) and the Hospital and Healthsystem Association of Pennsylvania (HAP) support this legislation and are advocating for passage before the end of 2021.

Miscellaneous

- **Nurse Staffing Agency Price Gouging:** On February 4, 2021, the American Hospital Association wrote a letter asking the Federal Trade Commission to investigate reports of anticompetitive pricing by nurse staffing agencies. St. Luke’s shared the letter with state and federal legislators in Pennsylvania and New Jersey. At St. Luke’s request, on November 12, 2021, HAP sent a letter to Pennsylvania Attorney General Josh Shapiro (D) asking his office to investigate price gouging by nurse staffing agencies. HAP and St. Luke’s believe that Pennsylvania’s price gouging statute, which prohibits the sale of goods or services for an unconscionably excessive price, can be applied to address these practices.
- **Behavioral Health Observation Requirements:** According to the Kaiser Family Foundation, about 40% of American adults are currently reporting symptoms of anxiety or depression, compared to approximately 10% in 2019, resulting in significant increases in emergency room visits for behavioral health issues. State and federal regulations require one-on-one supervision of behavioral health patients in emergency rooms, and remote observation is prohibited. Given the current staffing crisis, St. Luke’s has asked state and federal legislators to consider changes to these regulations to permit alternate options for patient observation.

New Jersey

- **Angioplasty and Catheterization Services:** As previously reported, on January 14, 2020, Assemblyman Andrew Zwicker (D-Hunterdon) introduced legislation requiring the New Jersey Department of Health (DOH) to license certain qualifying hospitals to provide full-service diagnostic cardiac catheterization, primary angioplasty, and elective angioplasty services. On December 17, 2020, the bill passed both chambers, and, on February 22, 2021, it was signed into law by Governor Phil Murphy (D).

The bill allows New Jersey hospitals to apply to the DOH Commissioner for a license to provide acute or emergent primary angioplasty services if the hospital: (1) has been licensed for at least six months to provide full-service adult diagnostic catheterization services; and (2) performs a minimum of 250 diagnostic procedures per year, with each interventional cardiologist performing at least 50 procedures per year. New Jersey hospitals may also apply to the DOH Commissioner for a license to provide elective angioplasty services if the hospital is: (1) already licensed by the DOH to provide primary angioplasty services; and (2) prepared to perform a minimum of 200 angioplasty procedures per year, with each interventional cardiologist performing at least 50 procedures per year by the second year of licensure.

Prior to the enactment of this legislation, St. Luke's Hospital – Warren Campus was licensed to provide low risk diagnostic catheterization services. On December 2, 2021, St. Luke's Hospital – Warren Campus received DOH approval to provide full-service adult diagnostic catheterization services, which allows the campus to pursue approval for angioplasty services if it meets the new licensing requirements.

- **S.2559**: Telehealth Insurance Requirements. On June 8, 2020, Senator Vin Gopal (D-Monmouth) introduced legislation to require reimbursement of telehealth services at the same rate as in-person services. On June 30, 2021, the bill passed the Assembly and Senate. On November 8, 2021, Governor Murphy conditionally vetoed the bill, requesting that payment parity be allowed only until December 31, 2023, so that the DOH can review the costs and benefits and make a recommendation. On December 2, 2021, the Senate voted to concur with the Governor's recommendations, and the Governor is expected to sign the bill. St. Luke's and the New Jersey Hospital Association support the legislation.

Federal Issues

- **S.610**: Medicare Payment Cuts. On March 4, 2021, Senator Tim Kaine (D-VA) introduced legislation to delay scheduled payment cuts to physicians, therapists, and health care professionals, including the 2% Medicare sequester, the 4% reduction to providers under the Pay-As-You-Go Act of 2010 (PAYGO), and the expiration of the 3.75% payment increase for physicians set to take place on January 1, 2022. On December 3, 2021, Congress passed, and the President signed, a Continuing Resolution (CR) to fund the government through February 18, 2022. The hospital community and a bipartisan group of legislators pushed for S.610 to be included in the CR, but it was not included in the final bill package.

On December 7, 2021, Congresswoman Susan Wild (D-PA), along with other members of Congress, sent a letter to President Biden (D) and leadership in the House and Senate urging action to prevent these payment reductions. On the same day, the House passed an amended version of S.610 that provides a three-month extension of the moratorium on the Medicare sequester payment reductions, delays the PAYGO reduction until 2023, and reduces the scheduled 3.75% payment cut to physicians to 3% until March 31, 2022. On December 9, 2021, the Senate passed the bill, and it is expected to be signed by President Biden.

- **CMS/CDC Vaccine Requirements**: On November 4, 2021, the Centers for Medicare & Medicaid Services (CMS) published a rule requiring that healthcare workers at facilities participating in Medicare and Medicaid be fully vaccinated by January 4, 2022. On November 30, 2021, United States District Judge Terry Doughty of the Western District of Louisiana issued a preliminary injunction preventing enforcement of the rule. On December 2, 2021, CMS announced that it would comply with the injunction while it appeals the ruling.
- **H.R. 5376**: Build Back Better Act. On September 27, 2021, Representative John Yarmuth (D-KY) introduced the Build Back Better Act created by President Biden. On November 19, 2021, the House passed the \$1.9 trillion bill by a vote of 220 to 213. Material provisions of the bill impacting healthcare include extending through 2025 the expanded premium tax credits created under the American Rescue Plan Act, increasing cost-sharing reductions for Medicaid beneficiaries, investments in maternal health, funding for universal pre-kindergarten programs and enhanced childcare credits, and funding for graduate medical education. The bill is expected to be amended in the Senate before being considered for a vote.