

Government Relations Update – January 24, 2023

Pennsylvania Issues

- **Pennsylvania House of Representatives:** In advance of the midterm elections, Republicans held a 113 to 90 seat majority in the Pennsylvania House of Representatives. On November 8, 2022, Democrats won 12 additional seats to obtain a one seat majority, which marks the first time the Democrats control the House in 12 years. However, three seats held by Democrats have been vacated and are pending special elections. On January 3, 2023, with the majority party of the House in question, the House elected Representative Mark Rozzi (D-Berks) as Speaker. On January 12, 2023, Speaker Rozzi named a six-member bipartisan working group to determine operating rules for the current legislative session. Representative Pete Schweyer (D-Lehigh) is a member of the group. A special election to fill the vacant seats will be held on February 7, 2023, and the Democrats are expected to fill those seats and retain the majority.
- **Cabinet Appointments:** On January 11, 2023, Governor Josh Shapiro (D) announced the nominations for five key health leadership positions. Montgomery County Commissioner Dr. Valerie Arkoosh has been nominated as Secretary of the Department of Human Services, Allegheny County Health Department Director Dr. Debra Bogen has been nominated as Secretary of the Department of Health (DOH), Highmark Senior Director of Behavioral Health Dr. Latika Davis-Jones has been nominated as Secretary of the Department of Drugs and Alcohol, Lackawanna County Agency on Aging Director Jason Kavulich has been nominated as Secretary of the Department of Aging, and current acting Insurance Commissioner Mike Humphreys has been nominated as Commissioner of the Insurance Department.
- **Open Medical Staff:** On January 4, 2023, Representative Robert Freeman (D-Northampton) circulated a co-sponsorship memorandum announcing his intention to introduce legislation amending the Health Care Facilities Act to ensure that physicians have greater access to hospital medical staff membership. St. Luke's shared its concerns with the memorandum with Representative Freeman and suggested changes to his proposed bill. St. Luke's will continue to follow the proposal.
- **New Telemedicine Guidance:** On January 12, 2023, the Pennsylvania DOH released new telemedicine guidance for hospitals, repealing the 2016 guidelines previously in effect. The new guidance expands the definition of telemedicine to include both synchronous and asynchronous interactions and remote patient monitoring. The guidance requires hospitals to provide notice to the DOH when a telemedicine service is added or expanded and when telemedicine equipment is added or replaced. The guidance notes that hospital policies must be created or updated to ensure they address obtaining and documenting consent, the establishment of the practitioner-provider relationship, verification of certain patient-related information, medical record storage, documentation, preservation, and patient privacy. St. Luke's is reviewing the guidelines to confirm compliance.
- **SB 696:** Update to the Breach of Personal Information Notification Act. On May 19, 2021, Senator Daniel Laughlin (R-Erie) introduced legislation to amend the Breach of Personal Information Notification Act. Since June 2006, the Act has required entities, following the discovery of a data breach, to notify Pennsylvania residents if specific types of their personal information were potentially accessed or acquired by an unauthorized person. The amendment expands this list to include medical information, health insurance information, and/or a username or e-mail address in combination with a password or security question and answer that would permit access to an online account. On November 3, 2022, the bill was signed into law by former Governor Tom Wolf (D). The amendment becomes effective on May 2, 2023.

New Jersey Issues

- **Senate Appointment:** On November 8, 2022, Senator Michael Doherty (R-Hunterdon; Warren) was elected to a five-year term as the judicial officer overseeing civil matters in Warren County and resigned from the New Jersey Senate two weeks later. On December 10, 2022, Warren County Republican Committee Chairman Doug Steinhart (R) was appointed to complete the senatorial term. On January 5, 2023, Senator Steinhart visited St. Luke’s Hospital – Warren Campus for a meeting with hospital leadership.

Federal Issues

- **Omnibus Appropriations Bill:** On December 23, 2022, President Joe Biden (D) signed into law a \$1.7 billion omnibus appropriations bill for federal fiscal year 2023, which includes many important provisions for hospitals. The legislation extends telehealth flexibilities first permitted during the Covid pandemic through 2024 and expands the list of eligible telehealth practitioners to include occupational and physical therapists, speech-language pathologists, and audiologists. The bill limits the planned 4.5% reduction in the Medicare physician fee schedule to 2% for 2023 and 3% for 2024. Additionally, the bill delays the scheduled 4% Medicare spending reduction adopted under the Pay-As-You-Go Act of 2010 until December 31, 2024.

Approximately 120 hospital-based nursing schools throughout the United States receive collectively about \$108 million annually in Medicare pass-through funds to support their nursing education programs. On August 21, 2020, the Centers for Medicare & Medicaid Services (CMS) announced that a payment error occurred from 2002 through 2018, necessitating a recoupment of \$307 million from sponsoring hospitals. St. Luke’s School of Nursing is one of 15 hospital-based nursing programs in Pennsylvania. As part of the omnibus bill, the amounts owed by hospital-based nursing schools were forgiven. If CMS had recouped the funds, St. Luke’s would have owed \$7,768,283.

The bill also extended the Medicare-dependent, Small Rural Hospital (MDH) program through 2025. St. Luke’s Hospital – Miners Campus, St. Luke’s Hospital – Upper Bucks Campus, St. Luke’s Hospital – Easton Campus, and St. Luke’s Hospital – Warren Campus are among the 160 hospitals in 32 states benefiting from the MDH program. Statutory authority for the MDH program was set to expire on September 30, 2022. If the MDH program had expired, St. Luke’s would have forfeited approximately \$8 million in annual reimbursements.

Finally, the legislation provides funding for several programs addressing mental illness, substance use disorder, and crisis response, expands Medicare coverage for intensive outpatient programs and services furnished by marriage and family therapists and mental health counselors, and increases payments for inpatient psychiatric facility services. These provisions were viewed as a significant benefit for substance abuse, mental illness, and pain management providers.

- **Proposed Non-Compete Clause Rule:** On January 5, 2023, the Federal Trade Commission (FTC) released a proposed rule to prevent employers from entering into most forms of non-compete clauses with workers. According to the FTC, it would constitute an “unfair method of competition” for an employer to: (i) enter into, or attempt to enter into, a non-compete clause with a worker; (ii) maintain with a worker a non-compete clause; or (iii) represent to a worker that the worker is subject to a non-compete clause where the employer has no good faith basis to believe that the worker is subject to an enforceable non-compete clause. The rule would also require employers to rescind existing non-compete clauses. The rule appears limited to for-profit entities, but St. Luke’s will monitor the issue.