WVHA LEGISLATIVE UPDATE

December 14, 2023

Legislative Wrap-Up of December Interim Meetings

Another round of interims wrapped up this week at the State Capitol and there was some key health care action coming out of several meetings. Below is a summary.

DHHR Reorg, Foster Care Managed Care, and more

Members of the Legislative Oversight Health Commission on Health and Human Resources Accountability heard a status update from interim DHHR Secretary Dr. Sherri Young, regarding DHHR reorganization – effective Jan. 1. The DHHR is the state's largest agency with a $7.5 billion budget and close to 5,000 full-time employees.

Staffing continues to be a challenge for DHHR, and it was noted that between Nov. 1, 2022, and Oct. 31, 2023, the department identified 133 employees who became eligible for retirement. Of those, 26 left within six months of becoming eligible. This is concerning because, within the next five years, a sizable percentage of employees will be eligible to retire.

The Office of Shared Administration *(part of the reorganization* is also receiving some legislative attention. The plan is for the Office to work with all three new departments, and potential duplication of services is a major concern for lawmakers. Lawmakers believe the Office creates a "top-heavy" bureaucracy which will contribute to a lack of action on issues such as child welfare and behavioral health services, to name a few areas. The office will include the Office of Finance, the Office of Human Resources Management, the Office of Constituents, the Office of Communications, the Office of Operations, the Office of Information Services, and a Liaison to Boards and Commissions, each branching into the three new agencies in several ways.

The Commission also heard from *Aetna*, which manages the DHHR's Mountain Health Promise (MHP) waiver. MPH serves specialized managed care for children and youth and assists children in foster care, kinship care and adoptive care. *Aetna* is the sole MCO for MHP, with approximately 23,574 children enrolled. One of the areas discussed was access to pediatric psychiatry. There is a $1.5 million collaboration between Community Care of WV and *Aetna* to combat the pressing issue of limited access to child and adolescent psychiatry services in the state. Together, they developed the "Critical Access to Pediatric Psychiatry Program (CAPP WV)," an initiative aimed at providing rapid access to specialized child psychiatry services for at-risk populations throughout West Virginia.

Other items discussed by the Commission: a status update on the state's Medical Examiner's Office; a review of preliminary findings and recommendations from the Recovery Residence Taskforce; and a review of costs and rates for Intellectual/Development Disabilities Services.

The Commission concluded its meeting by considering four bills for introduction in the 2024 Regular Session: 1) renaming of DHHR; 2) reorganization of the Office of Inspector General; 3) removing extended managed care in foster care, and 4) expanding the powers of LOCHHRA.

Joint Committee on Health discusses CON, other proposed legislation for 2024

The Joint Committee on Health covered several topics ranging from behavioral health workforce and discharge planning challenges in state hospitals to the State's tobacco cessation plans, among other issues. The Committee also received an update on the controlled substance monitoring database (CSMP). Controlled substances dispensed are declining across the state in most drug types, however buprenorphine and some stimulants are increasing. All opioid dispensing has declined. The utilization of the CSMP remains high; 15 million queries or more a month.

One of the primary items coming out of the Committee was the approval of three bills for introduction during the 2024 Session:

- Legislation relating to CON mobile exemption – this bill would add the acquisition and utilization of a mobile facility which performs mammography or low-density computerized tomography to the list of exemptions under CON review. The WVHA Legislative Committee along with staff continue to evaluate the legislation.
- Other bills expected to be introduced: 1) a bill to decriminalize all drug test strips like what the legislature did a few years ago to decriminalize Fentanyl test strips; 2) and the establishment of a psychiatric residency grant program at Marshall University.

Re: the behavioral health workforce at state hospitals: staffing positions in professional and direct services are difficult to fill because of a lack of professionals trained in applied behavioral analysis and positive behavior support. The Bureau had several recommendations and among them: the agency recommends hiring and training a qualified individual to serve as the director for IDD services to develop a strategic plan.

Re: discharge planning: community providers are less involved in the discharge process now and they frequently decline to serve people once committed through the state mental hygiene process. Individuals who do not qualify for waiver are more difficult to discharge to the community without proper funding. Also, DHHR has no power to relocate or reallocate beds, even though about 10% of licensed ICF beds are unavailable due to workforce availability.

There were some policy recommendations from the Bureau that may lead to legislation in 2024: 1) a peer review of the civil commitment process; 2) modifying Chapter 27 of *WV Code* to allow community providers to service people with challenging behaviors where state hospitals can still be the backup for crisis services; and 3) a process to assure unused intermediate care facility beds are available to clients.

Projected Medicaid Budget Shortfall of $114 million

We've been hearing a lot about the Medicaid Budget shortfall and this week, Cindy Beane Commissioner for the Bureau for Medical Services (BMS) was asked by the Joint Committee on Government and Finance to share more about the numbers. Her presentation is available here but here are some key points:

- There is a projected $114 million shortfall for the state's next Fiscal Year 2025 *(beginning July 1, 2024)*. Medicaid makes up the largest portion of DHHR's budget, with approximately 36% of West Virginia residents receiving their health coverage from the program.

- There are some budgetary drivers contributing to the shortfall with the underlying issue being the end of increased federal funds to the state for the COVID public health emergency (PHE). At the start of the pandemic, Congress increased the federal Medicaid match by 6.2 percentage points to help states navigate the PHE. For every $1 spent by West Virginia Medicaid, prior to the pandemic Congress provided $0.75 but increased federal funds to $0.81. These increased federal funds were used for a variety of efforts in Medicaid that were not covered before the PHE and freed up state dollars to be used in other areas. Just like the various COVID related increases providers realized, such as Medicare payments for COVID patients and Medicaid swing bed waivers, all these COVID related waivers ended with the PHE in May 2023.

- In addition, the shortfall also can be attributed to the Medicaid "unwinding" process - as to qualify for the increased federal funds, states committed to maintaining Medicaid eligibility for the duration of the PHE. Now all states are reviewing Medicaid eligibility and West Virginia, like other states, is seeing its Medicaid rolls decline significantly. For three years, the feds gave states enhanced Medicaid funding to not remove people from the program during the pandemic. West Virginia's Medicaid numbers swelled from 504,760 people in March 2020 to 667,471 people at its highest during COVID. Beginning in April, West Virginia started the "unwinding" process of removing people from the program who no longer qualified for the program and those who did not fill out paperwork to renew their coverage. Medicaid enrollment is now at about 539,250.

- Beane also noted: rising prescription drug costs, policy decisions to increase payments to providers, lawsuits, and court orders to expand benefits and payments, and other factors.

Beane cited some policy recommendations to address the shortfall including increasing the MCO tax to a maximum of 6%. She said, "that can conceivably raise a little over $100 million in order to fill the current deficit that the Medicaid programs have." The tax is "not a typical tax" in that it's folded back into the rates that managed care organizations charge. If the tax is not increased, other cost containment measures she suggested are provider rate cuts, rate freezes, eliminating optional benefits and delaying the implementation of Certified Community Behavioral Health Centers and mobile crisis intervention services. The state may also delay payments to the next fiscal year.

We will continue to closely follow Medicaid Budget discussions to ensure no provider cuts are on the table as the Legislature delves further into the numbers.

In other interim news:

The Joint Standing Committee on Insurance and PEIA heard updates regarding PEIA's (Public Employees Insurance Agency) financial plan, along with its on-going drug rate study. The updates were provided by PEIA Director Brian Cunningham. Most of the discussion focused on the drug rate study: PEIA is exploring a relationship with *Quantified Health* – an organization which performs forensic analysis of high-cost claims. The focus is on reducing costs and driving accountability.

Re: the financial plan – Cunningham addressed the Finance Board's approval last week of state employee premium increases which will go into effect July 1. This is already receiving attention from teacher's unions, and it will certainly be a topic of discussion by legislators this upcoming session:

- 10.5% premium increases and no benefits changes for state employees;
- 14% premium increases for employees of local governments that opt into PEIA;
- 10% premium increases and no changes in benefits for people who are old enough to have retired but not old enough to be eligible for Medicare.

The next round of interim meetings is Jan. 7 - 9 in Charleston at the Capitol, with the start of the 2024 Regular Session on Wed., Jan. 10 at Noon. If you have any questions regarding this month's meetings, please contact me at tgregory@wvha.org or 304-545-0128.

Tony