WVHA LEGISLATIVE UPDATE

January 20, 2023

Today is Day 10 of the 2023 Regular Session and more than 1200 bills have already been introduced in the Legislature. The WVHA Legislative Team is following the action on several bills that impact hospitals on the financial, clinical, regulatory, and operational level. Below is a brief rundown of key hospital/health care bills of interest. If you have a question about bills featured below or bills introduced, please contact me.

PEIA Update

SB 127: As we reported last week, the Senate moved swiftly to pass SB 127 to increase PEIA inpatient rates to hospitals to 110% of Medicare - effective July 1, 2023. The bill was passed by the Senate unanimously and is now in the House Banking and Insurance Committee for further consideration. The Committee is chaired by Delegate Steve Westfall, R-Jackson. Please take a moment to review the Committee membership and reach out to your local delegates in support of this bill. The House Finance Committee will still need to consider the bill as well. A couple of additional footnotes. As SB 127 currently stands, it includes all hospitals not just PPS. We know this would result in a payment reduction for Critical Access Hospitals (CAHs) because of being paid at the Medicare Per Diem Rate. We're working collaboratively with key legislators and staff to clarify that CAHs are to be paid at 110% of the Medicare Per Diem rate, which will result in a PEIA reimbursement increase for all hospitals.

HB 2534: There are other PEIA related bills introduced in the Legislature, including HB 2534. This bill also sits in the House Banking and Insurance Committee with a second reference to the House Finance Committee. This bill differs from SB 127 in that it takes a more comprehensive approach to reforming PEIA operations. A similar bill is introduced in the Senate as SB 268. Most notably, both bills include a provision that broadly sets the "floor" for reimbursement at 110% of the Medicare amount. Other provisions:

- Allow PEIA to increase a member's cost share for services provided in a contiguous bordering county;
- Remove several required benefits from code and gives the PEIA director discretion to design the plan/coverage of services;
- Address spousal support by providing that if an employee's spouse has health insurance available through an employer, then the employer (state) may not cover any portion of premiums for the employee's spouse coverage, but that the employee may add his or her spouse to his or her coverage by paying the full spousal premium at an amount determined to represent the FMV of a comparable policy offered by a private health insurance company; and
- Deal with PEIA long-term solvency.

Governor's Budget: In his Budget, the Governor allocated $40 million to PEIA to increase reimbursement rates to hospitals. This allocation essentially accounts for funding the provisions of SB 127. From what we understand, the $40 million is built into the general revenue base budget to deal with the reimbursement issue – at the 110% calculation based on Medicare. In budget presentations this week, it was reaffirmed that PEIA is fully funded with no premium increases, and that supplemental appropriations from surplus provide an additional $100 million to the PEIA Rainy Day Fund to offset premium increases.

Senate Finance Subcommittee B: A subcommittee of the Senate Finance Committee has been formed to review budgetary and other operational matters pertaining to PEIA: Subcommittee B members include: Senator Ben Queen (chair); and Senators Donna Boley, Charles Clements, Randy Smith and Bob Plymale.

Physician Payment Improvement Program

HB 2759: The House Health Committee this week advanced a WVHA priority bill - HB 2759 to expand the eligible physicians that can participate in Physician Payment Improvement Program. The existing "Physician Payment Improvement Program" was approved by the Centers for Medicare and Medicaid Services (CMS) effective State Fiscal Year 2021. The Program brings Medicaid payment for hospital and health system affiliated physicians closer to the Medicare payment level. Currently only employed "W-2" employees are eligible to receive benefit from the program. This bill would expand eligible providers to include those who are contracted by the hospital, but for who the hospital bills and collects for. The bill was advanced to the House Finance Committee for further consideration.

Prior Authorization

SB 267 and HB 2535: A priority topic for the Legislature, which is also a legislative priority of the WVHA - is to streamline the prior authorization process under managed care. The bills gaining the most traction are: SB 267 and HB 2535. We're working collaboratively with Senate and House leaders, along with stakeholders including representatives of the MCOs and commercial insurers to address several issues in the bill including: the submission of prior authorization forms and any related communications, electronically; and time frames for the insurance provider to respond to prior authorization requests, among other changes. Our discussions focus on making sure this bill is operational and that it streamlines and modernizes the prior authorization process for hospitals and the patients we serve.

DHHR Reorganization

HB 2006: The Senate moved swiftly last week to pass SB 126 which splits the state DHHR into 3 separate entities. The bill was referred to the House Health Committee but they chose instead to consider and advance to the House Finance Committee: HB 2006. Both bills contemplate splitting the DHHR into 3 Departments: 1) Department of Health; 3) Department of Health Facilities; and 3) Department of Human Services –each with a Secretary. Under the bills, all departments are to be overseen by a Chief Operating Officer who will manage the administrative functions of each. The House bill however significantly empowers the Office of Inspector General in the newly established Department of Health. It's also noteworthy that the Senate Finance Committee formed Subcommittee A to review DHHR budgetary matters and specific line items dedicated to the functions of the department. Subcommittee A members include: Senator Jason Barret (chair) and Senators Mike Maroney, Eric Nelson, Rollan Roberts and Bob Plymale.

Nurse Staffing Related Bills

We're following a few nurse staffing related bills including: HB 2436 – which deals with the implementation of an acuity-based patient classification system for nursing care. This is a reintroduced bill from last session, and we worked with key sponsors to minimize burden on hospitals. It's currently in the House Health Committee for consideration but we don't yet know when it will be considered. One other bill already moving is SB 89 which, as originally introduced, would have required hospitals to staff qualified personnel to perform sexual assault forensic exams. Following advocacy by the WVHA, the bill was modified by the Senate Health Committee to replace the words: "shall staff" with "shall have on-call and available". This is meant to allow for the sharing of these health care professionals between hospitals, as opposed to mandating each hospital employee a SANE nurse. The second change is the addition of an internal effective date of July 1, 2024. The delay is to allow more opportunities to get health care professionals certified. More changes are expected as all stakeholders want to ensure the bill is fully operational and that appropriate staff are available to provide service. Reimbursement provisions are not included in the current version of the bill but there will likely be more discussions on this topic in the House.

Immunization legislation

At this time, we're tracking several immunization bills that have been introduced to date including:

- SB 2 and SB 230: Remove immunization requirements for private schools.
- HB 2036: Allows nonmedical exemptions for immunization requirements for employees under Dept of Administration; removes medical exemption review process in school/childcare immunization requirements and allows nonmedical exemptions to these requirements; allows nonmedical exemptions to higher education immunization requirements.
- HB 2124: Removes Hepatitis B vaccine from the list of required vaccinations.
- HB 2217: Establishes natural immunity as an equal or preferred treatment method to vaccine immunization (this pertains to all vaccine and VPDs).
- HB 2367: Removes immunization requirements for childcare facilities and schools; adds medical and nonmedical exemptions for higher education and employer immunization requirements; and bans mask requirements.
- HB 2536 and HB 2046: Removes the medical exemption review process in school immunization requirements.
- HB 2558: Allows nonmedical exemption for childcare and school immunization requirements.
- HB 2603: Removes immunization requirements entirely for childcare facilities, schools, higher education, and employees; prohibits quarantine for unvaccinated; prohibits mask requirements in all schools and childcare facilities.

There is a growing number of immunization-related bills each day and there seems to be greater support among legislators for bills that would weaken West Virginia's school and childcare immunization requirements. Given how quickly bills are advancing through the legislature this year, we ask that you reach out to legislators to voice your support for West Virginia's current school immunization requirements.

If you have any questions about bills featured in this Report or bills introduced, please feel free to contact me, Jim Kaufman or Brandon Hatfield. Thanks.

Tony

Tony Gregory | Vice President, Legislative Affairs
West Virginia Hospital Association
100 Association Drive Charleston, West Virginia 25311
tgregory@wvha.org | 304.353.9719 | www.wvha.org