



2020 Virginia General Assembly Session Health Care Legislation Overview

The 2020 Virginia legislative session adjourned on Thursday, March 12. This was five days past the originally scheduled adjournment date. The delay was mainly due to the large numbers of bills filed this year, the nature of those bills, and the budget. Without a doubt, this was a historic legislative session in Virginia.

After the November election, the Democrats now have the majority of both the House of Delegates and Senate. Democratic leadership was clear that they were going to pursue their top policy priorities right away. And they did exactly that- with the legislature passing bills bringing sweeping reform and a change in policy to most issues. These include independent redistricting, gun safety measures, increasing the minimum wage, allowing collective bargaining for state employees, marijuana decriminalization, passing the Equal Rights Amendment, rolling back restrictions on reproductive health care services, driving privilege cards for undocumented immigrants, no-excuse absentee voting, and many more. Even with all of these issues being debated this year, health care was still a priority. Read below for an update on health-care related bills.

Surprise Billing

Legislators were determined this year to resolve the issue of “surprise billing” for patients who go to an in-network hospital but receive care from an out-of-network provider. The physician community introduced bills sponsored by Delegate Luke Torian and Senator Barbara Favola that were identical to the proposal we had last year and would only apply to emergency services. The health plans had bills that would have implemented a fee schedule based on the health plans’ in-network rate or 125% of Medicare (whichever is lower) for both emergency AND non-emergency services. We were able to successfully defeat the health plans’ fee schedule, but legislators and the patient advocates insisted we address both emergencies and non-emergencies.

A proposal was then offered based on the Washington State model, which applies to emergencies and non-emergencies services at an in-network hospital IF the services involve surgical or ancillary services and are provided by an out-of-network provider. After researching this proposal and discussing with our physician colleagues in Washington, we determined that this was a good option for physicians and certainly better than any of the other proposals on the table. The physician community supported this new bill and were pleased when the legislature passed it unanimously. The bill contains the following components:

- Pays providers a “commercially reasonable amount” that is undefined so there is no benchmark that can then impact in-network payments.

- For the purposes of arbitration and for determining the “best offers” for the baseball style arbitration, a data set will be created based on commercial health insurance claims (excluding Medicaid and Medicare) and will be prepared using the All Payer Claims Database, in collaboration with providers and health insurers, for use by providers, facilities, insurers, and arbitrators. The data set will include
 - Median in-network allowed amount
 - Median OON allowed amount
 - Median billed charges

The bill includes “baseball style” independent dispute resolution and takes patients out of the middle of the billing process. It is also a huge win for us that it doesn’t put a benchmark in the Code and allows the arbiter to consider physician charges when determining a fair payment.

Pharmacy Benefit Managers

The General Assembly passed legislation this year, that has already been signed into law by the Governor, that will require licensure for Pharmacy Benefit Managers (PBMs) under the Bureau of Insurance. SB 251 (Edwards) and HB 1290 (Hodges) will regulate the PBMs and provide more oversight into their business practices.

Certificate of Public Need

COPN reform continues to be a hotly debated issue at the General Assembly. The Governor and Secretary of Health and Human Resources had convened a workgroup over the summer and fall to try and find consensus on this issue between the different stakeholders. They were unable to come up with consensus legislation. However, some of the stakeholders involved introduced their own bills- including physicians. Senator Petersen introduced this legislation, SB 503, that was based on a compromise proposal discussed during the Governor’s COPN work group. This would have created an expedited review process for specific projects and amended the charity care conditions to require certificate holders accept some type of mix of Medicaid, Medicare or Tricare patients. Not surprising, the hospitals opposed this and it died in the Senate. The hospital association introduced their own bill, that is a lot of process and administrative reforms. This bill is headed to the Governor’s desk where he will have the opportunity to sign, veto or make amendments to the bill.

Physician Wellness

Recognizing the importance of promoting physician wellness, the Medical Society of Virginia (MSV) made it one of their priority issues during the 2020 Virginia General Assembly Session. We are pleased that their legislation passed unanimously and will next go to the Governor for his signature. HB 115, carried by Delegate Patrick Hope, and SB 120, carried by Senator George Barker, will help address the physician burnout crisis by allowing for the creation of a peer-to-peer wellness program amongst health care providers. Many physicians in Virginia fear seeking help because if a physician has disclosed personal mental health concerns their coworker or employer is legally required to report the physician to the Board of Medicine.

This new legislation will remove these roadblocks to instead allow for early intervention. The wellness program will provide confidential support services where physicians can receive 24/7 counseling from peers and behavioral health professionals. The program is modeled after

Lawyers Helping Lawyers. The Medical Society of Virginia worked with the Virginia Trial Lawyers Association to ensure the bill does not jeopardize the state's existing disciplinary process, but rather allows physicians to receive the support they need, when they need it.

Scope of Practice

As usual, there were multiple bills this year regarding the scope of practice of other health care professionals:

Pharmacists

Legislation was introduced this year that would have expanded the scope of practice for pharmacists and naturopathic providers. HB 1506 (Del. Sickles) and SB 1026 (Sen. Dunnavant), as originally introduced, would have greatly expanded pharmacists' scope of practice and allowed them to provide vaccinations, test for the flu, strep and UTIs and many other services they are not qualified to do. The physician community strongly opposed the bills in that form due to significant patient safety concerns. The patrons worked with the House of Medicine to come up with a compromise that does not threaten patient safety. The bill has been sent to the Governor for his signature.

Certified Registered Nurse Anesthetists

Senator John Bell and Delegate Dawn Adams introduced legislation this year (SB 264 and HB 1059) that would have provided prescriptive authority to CRNAs. The physician community opposed the original form of this bill, but there was overwhelming support amongst legislators. After working with the patrons and the Virginia Association of Nurse Anesthetists, we were able to successfully limit the bill to only apply as part of the periprocedural care of a patient. The bill also maintained physician supervision of CRNAs, so a supervising physician could simply not allow the CRNA to have prescriptive authority. Once the bill was amended, the physician community took a neutral stance. The legislation passed both houses and has already been signed into law by Governor Northam.

Naturopaths

HB 1040 (Del. Rasoul) and SB 858 (Sen. Petersen) would have given naturopathic providers licensure and allowed them to call themselves "naturopathic doctors." These bills were defeated and instead, the Department of Health Professions will conduct a study on whether licensure is needed for this profession.

Immunizations

The physician community had a big victory this session with the passage of HB 1090, carried by Delegate Hope. This bill will ensure that the list of mandated vaccinations for school entry is science-based and not subject to politics. It brings Virginia's list in line with the current ACIP recommendations by adding vaccines for Rotavirus, Meningitis, Hepatitis A and HPV for boys. The most important component of the bill is that it allows the Department of Health to add future vaccinations to the list without getting approval from the General Assembly.