



## **2020 Virginia General Assembly Reconvened Session Healthcare Legislation and Budget Overview**

Virginia's General Assembly met on April 22, 2020 for "Reconvened Session" to vote on the Governor's actions on bills, including the state budget. The regular session had adjourned on March 12 after a historic election and heavy legislative workload with Democrats in control of Virginia's government for the first time in almost 25 years.

This year's Reconvened Session was unprecedented in its own way, as the General Assembly met amid the COVID-19 pandemic to deal with the tough policy and budgetary decisions that the crisis has made necessary. The Governor proposed a package of legislative amendments to address public health, freeze new state spending, push back May local elections, delay the implementation of certain labor reforms, and grant the Governor more authority over certain spending while the economic impact of, and recovery from, COVID-19 plays out.

To ensure the safety of its members, the General Assembly abandoned the interior of the state capitol building to meet in alternative locations. The House of Delegates erected a large outdoor tent on capitol grounds, while the Senate met in an indoor event space at the Science Museum of Virginia a few miles away. Legislators sat at least 6 feet apart and often wore masks and gloves. While some glitches and snafus delayed the work of the House of Delegates, both chambers were able to conclude their business by day's end. The Governor will likely call the General Assembly back into a special session in the summer to further address the budget after new revenue forecasts are available that accurately reflect the economic and fiscal impacts of the pandemic.

### **Reconvened Session Recap**

Below is a recap of the General Assembly's actions on major public health decisions that affect providers and patients, as well as the main healthcare issues we engaged in this session with legislation that was addressed during Reconvened Session.

#### **Budget**

The General Assembly for the most part accepted the Governor's proposed \$2 billion spending freeze that temporarily pauses additional discretionary spending until the state can determine revenues. This includes a pause on further expansion of Medicaid enrollment, provider rate increases, and other spending that the legislature had invested in current and new programs at state health agencies before the pandemic, such as the Department of Medical Assistance Services (DMAS/Medicaid), Department of Health, Department of Behavioral Health and Developmental Services, and Department of Social Services.

However, the General Assembly approved an increase in per diem rates for nursing homes and specialized care, and granted increased flexibility to a number of state agencies, including DMAS, in order to respond to the pandemic and take advantage of federal relief funds.

## **Pharmacy Benefit Managers**

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

The Governor proposed an amendment to the Senate bill that pharmacists and pro-reform advocates believe would have limited network adequacy and benefited PBMs and insurance carriers. The Senate narrowly rejected the amendment. The Governor had previously signed HB 1290 which was identical to the Senate bill previous to the Governor's amendment. This means that regardless of future action taken by the Governor on the Senate bill, the provisions of HB 1290 will become law.

## **Certificate of Public Need**

While major COPN reform was a hotly debated issue this year, no consensus could be reached among stakeholders. The General Assembly passed a hospital association backed bill, SB 764 (Barker), that contains process and administrative reforms. The Governor proposed minor amendments in regard to individuals with intellectual disabilities and pushing back certain effective dates. The General Assembly concurred with the Governor's amendments.

## **Immunizations**

HB 1090 (Hope) ensures that the list of mandated vaccinations for school entry is science-based. 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. The legislature accepted amendments by the Governor regarding HPV vaccine doses and delaying implementation until July 1, 2021.

## **Other Legislation**

Below are updates on other priority legislation this session that had already been acted upon by the Governor before the Reconvened Session.

## **Surprise Billing**

You will recall that surprise billing was a top priority for physicians and other healthcare stakeholders this year. Legislators were determined to resolve the issue for patients who go to an in-network hospital but receive care from an out-of-network provider.

After much negotiation and legislative maneuvering, the final bills – HB 1251 (Torian) and SB 172 (Favola) – are based on the Washington State model, which applies to emergency and non-emergency services at an in-network hospital, if the services involve surgical or ancillary care and are provided by an out-of-network provider. The bill includes “baseball style” independent dispute resolution, takes patients out of the middle of the billing process, does not include a rate benchmark in the Code, and allows the arbiter to consider physician charges when determining a fair payment. Other components of the bills include:

- Payment to providers of 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 General Assembly passed the legislation unanimously and the Governor signed it into law.

### **Scope of Practice**

You will recall the multiple bills this year regarding the scope of practice of other health care professionals:

#### ***Pharmacists***

HB 1506 (Sickles) and SB 1026 (Dunnivant) 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. The final bill is more limited and incremental, calling for a stakeholder work group to study and issue recommendations on whether pharmacist scope should be further expanded. The Governor has signed the legislation.

#### ***Certified Registered Nurse Anesthetists***

SB 264 (Bell) and HB 1059 (D. Adams) would have provided prescriptive authority to CRNAs as originally introduced. The physician community worked with the Virginia Association of Nurse Anesthetists to limit the bill to only apply as part of the periprocedural care of a patient. The bill also maintains physician supervision of CRNAs. The legislation passed both houses and has already been signed into law by the Governor.

#### **Physician Wellness**

The Medical Society of Virginia (MSV) made physician wellness one of their priority issues this session. Their legislation passed quickly and unanimously, including amendments from the Governor during session that address the civil liability and financial interest of those involved in the professional programs under the legislation. HB 115 (Hope) and SB 120 (Barker) will help address the physician burnout crisis by allowing the creation of a peer-to-peer wellness program among health care providers. The programs seek to remove current roadblocks and focus on early intervention through confidential support services. The program is modeled after Lawyers Helping Lawyers. MSV 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.