



2020 Special Session Recap and Healthcare Summary

The General Assembly effectively completed its special session on October 16, having adopted a revised biennial state budget and taken substantial legislative action to address criminal justice and policing reform, election security, and the ongoing COVID-19 pandemic. The legislature recessed, rather than adjourned, to provide greater flexibility to adopt enabling budget language that will be needed if the bipartisan redistricting commission amendment is approved in the November 3 elections.

Unless otherwise noted, all legislation passed during the 2020 Special Session will go into effect in March 2021 and the budget will become effective once signed by Governor Northam (expected mid-November). As a reminder, Governor Northam will be submitting his revised biennial budget proposal to the General Assembly in December, per normal process, ahead of the January 2021 regular session.

State Budget

The revised \$141 billion state budget includes approximately \$23 million for criminal justice and policing reforms, preserves nearly \$100 million in funding for state employee, adjunct college faculty and state-supported local employee bonuses, contingent on sufficient revenues, and restores \$2 billion in new spending originally approved during the regular session but cut by Governor Northam at the onset of the economic recession. The spending plan also includes a \$300 million “cushion” of unallocated funding – a priority of the Northam Administration – to guard against unanticipated pandemic-related budget impacts. The budget outlines funding priorities for the remainder of the unspent \$3.1 billion in federal Coronavirus Relief Funds allocated to the Commonwealth and directs those funds to be spent by the end of this calendar year. Local government assistance, K-12 school reopening, and unemployment assistance rank among the top spending priorities for these federal funds, followed by PPE, mortgage and rent relief, utility disconnection assistance, and testing and contact tracing.

Healthcare Spending. On healthcare, over \$208 million was restored to Health and Human Resources agencies that was unallotted (frozen) this spring. The revised budget makes investments in high-need populations, behavioral health, and further COVID-19 response. It fully funds forecasted Medicaid costs, enhances certain provider rates, adds developmental disability waiver slots and support, and expands permanent supportive housing. The budget also focuses on community-based behavioral health services and efforts to reduce overcrowding at Virginia’s state mental hospitals.

Funding is included for a new statewide Marcus Alert system for law enforcement and mental health provider response to individuals experiencing a mental crisis or who have a developmental disability (see more detail below), and partial funding for a new Medicaid adult dental benefit. Budget language that would have allowed nurse practitioners to practice autonomously after two rather than five years was not included in the final budget report.

Criminal Justice and Policing Reform

The General Assembly planned to return to Richmond for a special session to address the pandemic and impacts to the state budget well before events over the summer prompted strong public outcries for criminal justice and policing reform. Several major initiatives that were proposed by the House and Senate, including civilian review boards and a mental health crisis response program, advanced after considerable back-and-forth and eventual compromise between the two bodies, while others, such as eliminating qualified immunity and reducing the penalty for assaulting law enforcement officers failed. Some of the more notable criminal justice and policing reform actions are included below:

- **Civilian Review Boards.** The General Assembly granted localities the option to create Civilian Review Boards that would have the authority to investigate civilian complaints against law enforcement conduct.
- **Comprehensive law enforcement reform.** A comprehensive reform bill proposed by Senator Locke establishes a method for decertifying law enforcement officers for misconduct; limits the ability of law enforcement agencies to procure military-grade equipment and vehicles; requires enhanced law enforcement training on racial bias policing, crisis intervention, and lawful use of force; and creates a statewide code of standards governing the conduct of law enforcement officers during an arrest or detention.

Voting and Elections Security

The House and Senate acted quickly in the first weeks of the Special Session to pass legislation introduced by Governor Northam aimed at improving access to voting and elections security in the midst of the current Covid-19 pandemic. This legislation, which has already been signed into law:

- Eliminates the requirement for a witness signature on a mail-in ballot.
- Provides \$2 million to the Department of Elections to provide prepaid postage for the return of absentee ballots.
- Allows absentee ballots to be returned by mail, or in-person, to local registrar offices or to designated drop-off locations, such as ballot drop boxes.
- Requires registrars to examine ballot envelopes for ballots received before October 31, 2020 and notify voters of any errors within three days.

Healthcare and COVID-19 Legislation

Below are descriptions of major healthcare legislation that have advanced out of the Special Session and is on the Governor's desk or has been signed.

Telemedicine. HB 5046 (D. Adams) and SB 5080 (Barker) are now identical telemedicine bills led by the Medical Society of Virginia. The legislation directs Virginia's Medicaid program, insurers and employers who offer accident and sickness subscription contracts, and HMOs to provide payment or coverage for telemedicine services, regardless of the originating site of the patient or whether the patient is accompanied by a health care provider at the time such services are provided. "Originating site" is defined in the bill as any location where the patient is located. The legislation bans health care providers from being required to use proprietary technology or

applications to be reimbursed for providing telemedicine services. Lastly, the legislation requires Medicaid to continue to reimburse health care providers for Medicaid-covered services delivered via audio-only equipment and by telemedicine services until July 1, 2021.

The bill as introduced had originally contained a provision that would have included audio-only telephone services in the definition of telemedicine but was removed after opposition from the health plans and the Virginia Telehealth Network.

Anti-Price Gouging. HB 5047 (Murphy) is a PPE anti-gouging bill spearheaded by the Attorney General to help protect practices (as purchasers) rather than just individual consumers. It prohibits any manufacturer or distributor from selling necessary goods or services at an unconscionable price during a declared state of emergency. Under current law, the prohibition does not apply to a manufacturer or distributor unless it advertises its goods or services to consumers.

Healthcare Provider Immunity. HB 5059 (Willett) and SB 5081 (Marsden) provide that a licensed hospice, home care organization, private provider, assisted living facility, or adult day care center that delivers care to or withholds care from a patient, resident, or person receiving services who is diagnosed as being or is believed to be infected with the COVID-19 virus shall not be liable for any injury or wrongful death of such patient, resident, or person receiving services arising from the delivery or withholding of care when the emergency and subsequent conditions caused by the emergency result in a lack of resources, attributable to the disaster, that render such hospice, home care organization, private provider, assisted living facility, or adult day care center unable to provide the level or manner of care that otherwise would have been required in the absence of the emergency and that resulted in the injury or wrongful death at issue. The bill contains an emergency clause making it effecting immediately.

Purchase of PPE during a public health emergency. HB 5050 (Helmer) makes it easier for the Governor to purchase and distribute PPE during a public health emergency. It grants the Governor authority during a disaster caused by a communicable disease of public health threat for which a state of emergency has been declared to establish a program through which the Governor may purchase personal protective equipment (PPE) for private, nongovernmental entities and distribute the PPE to such private, nongovernmental entities. The bill exempts the Governor's procurement of such PPE from the provisions of the Virginia Public Procurement Act, but requires the Governor to provide for competition where practicable and include a written statement regarding the basis for awarding any contract. The bill also requires the Department of Emergency Management to consult with and survey private, nongovernmental entities prior to implementing any such program in order to assess demand for participation in the program, as well as the quantity and types of personal protective equipment such entities would like to procure.

Visitation to nursing homes and hospices during public health emergency. HB 5041 (Head) requires visitation at nursing homes and hospices during the current pandemic according to state protocols and CDC guidelines. The bill requires the Board of Health to amend regulations governing nursing homes, certified nursing facilities, and hospices to require that, during a public health emergency related to COVID-19, each nursing home, certified nursing facility, and

hospice establish a protocol to allow each patient to receive visits, consistent with guidance from the Centers for Disease Control and Prevention and as directed by the Centers for Medicare and Medicaid Services and the Board of Health. The bill contains an emergency clause and requires the Department of Health to promulgate regulations to implement the provisions of the act to be effective within 280 days of its enactment.

Access to public health information. HB 5048 (Sickles) and SB 5081 (Barker) clarify state law on the release of certain public health information, given the controversy surrounding the Virginia Department of Health's (VDH) inconsistency in the release of COVID-19 outbreak data from nursing homes and other congregate settings. Such information shall include the name of the place at which the outbreak has occurred and the number of confirmed cases of and deaths resulting from such communicable disease reported by each such place. The bills contain an emergency clause.

Public health information to be posted on website. SB 5090 (Dunnavant) addresses how certain public health information should be made available to the public online by the Virginia Department of Health. It requires that for the duration of the emergency declared by the Governor in response to COVID-19, the Commissioner of Health shall make available to the public on a website maintained by the Department of Health information about confirmed cases of COVID-19 in the Commonwealth, by week and by health district, including (i) the total number of confirmed cases of COVID-19; (ii) the number of confirmed cases by age group and by race and ethnicity; and (iii) the percentage of cases that are known to be associated with a nursing home, assisted living facility, or correctional facility. The bill also requires the Commissioner to make available to the public on a website maintained by the Department of Health information about and analyses of such data and to develop and publish COVID-19 indicators with thresholds to include case incidence rate, percentage of polymerase chain reaction (PCR) tests that are positive, rate of COVID-like illness visits to emergency departments, rate of current confirmed COVID-19 intensive care unit hospitalizations, and percentage of hospital beds that are currently occupied.

Marcus Alert. The General Assembly was able to reconcile the House and Senate versions and pass final legislation establishing the "Marcus alert" system. "Marcus" stands for mental health awareness response and community understanding services. HB 5043 (Bourne) and SB 5038 (McPike) requires the Department of Behavioral Health and Developmental Services (DBHDS) and Department of Criminal Justice Services (DCJS) to develop a plan and protocols for establishment of the Marcus Alert or similar mobile crisis systems or teams, in collaboration with localities and CSBs, according to goals set by the General Assembly. The bill requires the agencies to establish a system and database to support Marcus Alert systems, and requires the establishment of Marcus Alert protocols and systems in regions throughout the state in phases, with all systems established by 2026. Regional networks of mobile crisis units and crisis stabilization centers will offer short-term care to avoid negative interactions with law enforcement. The bill requires the agencies to report to the Joint Commission on Health Care to assess the progress of the legislation's goals and requirements.

Bills of Interest that Did Not Advance

Nurse Practitioners. SB 5070 (Kiggans) would have reduced the number of years of full-time clinical experience a nurse practitioner must have to be eligible to practice without a written or electronic practice agreement from five years to two years. This bill was expected after the Governor's executive order expanding the healthcare workforce that contains the same provision, effective only during the current public health emergency. MSV opposed the bill and it was voted down overwhelmingly in subcommittee. We would expect similar legislation to be introduced in future sessions.

Workers' compensation. HB 5028 (Jones) would have established a presumption that COVID-19 causing the death or disability of firefighters, emergency medical services personnel, law-enforcement officers, first responders, health care providers, and school board employees is an occupational disease compensable under the Workers Compensation Act. The bill passed the House of Delegates but died in the Senate Finance and Appropriations Committee.

Health care provider immunity. HB 5073 (Head) and (Norment) would have expanded application of existing immunity for health care providers during a declared public health disaster to ambulatory surgical centers, free standing emergency departments; endoscopy; physician dental, orthodontic and endodontic offices; hospice, home care, assisted living facilities, adult day care, and alternate treatment sites and clarifies application of existing immunity for health care providers during the declared disaster.

The bills have not been heard in committee which means at this point they are effectively dead.

Administration of Influenza Vaccine by Dentists. Delegate Mark Sickles introduced a budget amendment to allow dentists to administer the flu vaccine. MSV opposed this amendment on the grounds that it disregards the numerous patient safety concerns that need to be addressed prior to expanding the medical authority of a healthcare provider. The patron withdrew the budget amendment, and it will no longer be considered this session.

Rapid diagnostic testing for essential workers. SB 5095 (Dunnavant) would have prioritized essential workers for COVID-19 rapid diagnostic testing, including health care providers; law-enforcement officers; emergency medical services personnel and emergency medical services providers; firefighters; employees of nursing homes and adult day care centers and assisted living facilities; public and private elementary and secondary schools in the Commonwealth; public institutions of higher education and private institutions of higher education; private providers licensed by the Department of Behavioral Health and Developmental Services; and employees at child day centers, family day homes, and early childhood care and education entities. The bill would have gone into effect immediately but was killed in the House Health, Welfare and Institutions (HWI) Committee. Objectors stated that it would be difficult to implement and impractical to define essential workers.

COVID-19 testing priority for nursing home/assisted living facility employees/residents. SB 5109 (Chafin) provided that the Commissioner of Health shall ensure that residents and employees of any nursing home or assisted living facility receive first priority for COVID-19 testing. It also died in the House HWI Committee.

Duration of emergency orders and regulations adopted by the Board and Commissioner of Health. SB 5025 (Newman) would have limited any emergency order or regulation adopted by the Board of Health to 30 days with the option of 30 day extensions, but cannot be in effect for more than 18 months from the initial order or regulation. The bill also provided that emergency orders of the Commissioner of Health could be valid for no more than 30 days unless the Board of Health adopts the same order or regulation.

2021 Outlook

In light of the ongoing pandemic, we expect the state budget and COVID-19 to remain the top issues for the 2021 Regular Session. Legislation that was deferred from the current Special Session will likely be taken up again next year, in addition to other introduced bills. Depending on the fall revenue forecast, there will likely be an opportunity to advocate for healthcare funding, including items unallotted or ultimately removed from the state budget due to the pandemic.

One factor that is unknown at this time is how the General Assembly's 2021 Regular Session will be conducted in full. The Senate has announced it will again meet in person with electronic participation options for the general public. The House, which has been meeting virtually, has not publicly announced its intentions for 2021. Adopting the rules by which each chamber operates during the Special Session was contentious. Each chamber is operating differently and it is not clear how they will reach the end of the Special Session in order to finalize all legislation and the budget. Technical glitches are common. While each legislator was limited to introducing three bills for the Special Session, a Regular Session commonly sees thousands of bills introduced.

Lastly, 2021 is a major election year in Virginia. The statewide offices of Governor, Lieutenant Governor and Attorney General, and all 100 seats in the House of Delegates, will be on the ballot. Election year politics often spill over in the legislative session.