2020 LEGISLATIVE REPORT

Update on ISMS Legislative Activity in the Illinois General Assembly

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Dear Colleague,

The 2020 spring legislative session came to an early halt in March after Governor Pritzker declared a State of Emergency due to COVID-19 and issued his first Executive Order calling on everyone to shelter at home. Instead of spending the Legislative Spring Session advocating for or against legislation, ISMS worked with the governor’s office in the drafting of many important Executive Orders. ISMS also successfully communicated our concerns with the Illinois Department of Financial and Professional Regulation (IDFPR) on efforts by allied health care professionals to inappropriately expand their scope of practice during the pandemic, and we worked tirelessly to help our physicians and group members secure personal protective equipment.

The Illinois General Assembly did convene in late May for a four-day special session to pass a budget for FY21, and codify the Illinois Hospital Assessment Program. Legislators also passed an omnibus health care package and a bill expanding Illinois’ vote-by-mail program for the upcoming General Election.

The legislature approved additional protections in the workplace for both employee and employer. Changes were made to the unemployment insurance program whereby employers will not be charged for unemployment benefits issued between March 15, 2020 and December 31, 2020 that were paid to those out of work due to COVID-19. The Workers’ Compensation Program was changed to create a rebuttable presumption that first-responders who contract COVID-19 did so in the course of their employment. Employers, however, do have avenues to rebut the workers’ claims.

During the special session, ISMS and other advocates supported legislation codifying Governor Pritzker’s Executive Order on telehealth through the end of the year. While this bill did pass the House, it was held in the Senate due to opposition from the insurance industry. ISMS was successful, however, in preventing a bill supported by the insurance industry from passing the Senate. That bill, while providing for coverage parity, did not provide for fair reimbursement to physicians and other health care professionals and facilities. Negotiations on telehealth will likely restart this summer and continue into the fall.

ISMS’ work to effectuate positive changes for our practices and our patients continues as we prepare for the fall veto session and the 2021 spring legislative session. Not only will we continue to push for changes to prior authorization processes, but we will oppose a number of bills expected to be introduced in 2021 that would make it more difficult to practice medicine in Illinois.

On behalf of the Board of Trustees, I would like to thank every physician member who makes ISMS’ advocacy efforts possible.

Sincerely,

Robert W. Panton, MD
President, Illinois State Medical Society
EXECUTIVE ORDERS

Telehealth – Executive Order 2020-09, which was issued on March 19, requires all insurance plans regulated by the Department of Insurance and the Department of Health and Family Services (HFS) to cover all clinically appropriate, medically necessary covered services delivered via telehealth by in-network providers and requires parity in payments made to health care professionals for their services delivered via telehealth. It also prohibits the use of prior authorization requirements for these services, and waives patient cost-sharing in most cases. This Executive Order was reissued and extended multiple times. Health care professionals and facilities are hopeful that Governor Pritzker will continue to re-issue this Executive Order through the end of the year.

Immunity from Civil Liability – Executive Orders 19, 37, and 39

- Executive Order 19 was issued on April 1 and extended immunity protections to health care facilities, health care professionals, and health care volunteers for any injury or death alleged to have been caused by an act or omission by the facility, professional, or volunteer which occurred at a time when the facility, professional, or volunteer was engaged in the course of “rendering assistance” to the State in response to the COVID-19 outbreak, unless the injury was caused by gross negligence or willful misconduct. This Executive Order was reissued and remained in effect from April 1 thru May 29.

- Executive Order 37 was issued on May 13 and includes four protections:
  - Hospitals that continue to cancel or postpone all elective surgeries or procedures in order to respond to COVID-19, or health care professionals providing services in such hospitals, shall be immune from civil liability for any injury or death alleged to have been caused by an act or omission by the hospital or professional, which injury or death occurred at a time when the hospital or professional was rendering assistance to the State in response to the COVID-19 outbreak by providing health care services consistent with current guidance established by the Illinois Department of Public Health (IDPH), except where the injury or death was caused by gross negligence or willful misconduct.
  - Hospitals that conduct elective surgeries or procedures beginning on or after May 11, or health care professionals who are providing services in such a hospital, shall be immune from civil liability for any injury or death relating to the diagnosis, transmission, or treatment of COVID-19 alleged to have been caused by an act or omission by the hospital or professional, which injury or death occurred at a time when the hospital or professional was rendering assistance to the State in response to the COVID-19 outbreak by providing health care services consistent with current guidance established by IDPH, except where the injury or death was caused by gross negligence or willful misconduct.
Health care facilities or health care professionals providing services in a health care facility shall be immune from civil liability for any injury or death relating to the diagnosis, transmission, or treatment of COVID-19 alleged to have been caused by an act or omission by the facility or professional, which injury occurred at a time when a facility or professional was rendering assistance to the State in response to the COVID-19 pandemic by providing health care services consistent with current guidance issued by IDPH, except where the injury or death was caused by gross negligence or willful misconduct.

Health care volunteers are immune from civil liability for any injury or death caused by their act or omission which occurred at a time when the volunteer was rendering assistance by providing services, assistance, or support consistent with current guidance issued by IDPH, except where the injury was caused by willful misconduct.

- Executive Order 39, which was issued on May 29, extended Executive Order 37 through June 27.

**SPECIAL LEGISLATIVE SESSION**

The General Assembly convened a special session May 14-17. The agenda was primarily limited to passing a budget, the hospital assessment program, and other bills that were COVID-19 related.

**FY21 STATE BUDGET**

The General Assembly passed a budget for FY21, which Governor Pritzker has signed. The FY21 budget appropriates $39.9 billion in general revenue funds and $57.7 billion in federal and other state funds. The General Revenue Fund (GRF) portion is 6.8 percent higher than spending this year. The related budget bills also give extraordinary authority to Governor Pritzker to manage the budget during this time of pandemic and fiscal emergency.

The budget does not presume that the graduated income tax amendment will pass in November. The state expected to receive $1.4 billion in new revenues for FY21 and then $3.6 billion for the full year in FY22, based on the pre-COVID economy, with approval of the constitutional amendment. Earlier this year, the Governor projected a $2.7 billion shortfall for the current FY20, ending June 30, and a $6.2 billion hole in FY21, even with approval of the graduated income tax. Needless to say, with the fiscal challenges already facing the Illinois budget, including a $6 billion unpaid bill backlog and a large unfunded pension deficit, and adding the huge and unknown economic losses plus additional state expenditures due to the pandemic, the state budget is in a deep crisis. The budget allows the state to borrow $5 billion from a special Federal Reserve program as a “bridge loan” to cover state cash needs until there is direct aid from the federal government or the graduated income tax is implemented. The General Assembly is also giving the Governor discretionary authority to set aside up to 15 percent of any line item or lump sum.
**COVID Relief CARES/CURES Funding**
The FY21 budget includes $3.7 billion in federal pass-through Coronavirus Aid, Relief, and Economic Security Act (CARES Act) funding. There are several new programs to support healthcare professionals, homeowners, small businesses and renters. Various state agencies are working on developing eligibility criteria for these programs that will be made public sometime after the fiscal year begins on July 1, 2020.

**Medicaid Budget**
The total budget for HFS in FY21 is $29 billion, a 12% increase over FY20. GRF funding accounts for $7.89 billion, of which $6.7 billion is allocated to Medicaid and over $1 billion deposited into the Healthcare Provider Relief Fund for Medicaid. HFS anticipates an increase in Medicaid liability due to the large number of Illinoisans becoming eligible for the program as a result of higher unemployment. HFS estimates that 1 million persons could become newly eligible for Medicaid as a result of losing private health insurance due to becoming unemployed.

Beyond an increase in enrollees, the following programmatic changes also increase Medicaid’s liability:

- New coverage for residents 60 years old and older who would be eligible for Medicaid but for their immigration status;
- $25 million for base rate adjustments for Federally Qualified Health Care Centers (FQHCs);
- Annualization of expanded Medicaid coverage for pregnant women from 60 days postpartum to a year, which was effective January 1, 2020;
- Annualization of rate increases for community-based health care centers for children with medically complex needs, which was effective January 1, 2020.

The FY21 budget authorizes HFS to develop a process to distribute pandemic-related stability payments from federal sources to medical professionals and other providers through the managed care organizations.

**Medicaid Physician Rate Increases Passed in Hospital Assessment Extension**
In conjunction with the FY21 budget, a new Hospital Assessment Program (SB 2541; Sen. Steans/Rep. Harris) was passed into law that provides $150 million for physician rate increases within the Medicaid program. The exact details of how this increase will be distributed will be determined during the traditional rulemaking process by HFS.

Other key provisions of the Hospital Assessment Program include:

- Codifying the Hospital Assessment Program for Medicaid funding through December 31, 2022;
- Raising the hospital tax by $146 million to bring an additional $242 million to Illinois hospitals.
These provisions bring the total value of the program to $3.8 billion, which includes $1.65 billion in payments from hospitals.

**Omnibus Health Care Package**

Senate Bill 1864 (Rep. Harris/Sen. Hunter) is a health care omnibus package that passed during the special session in May and has been signed into law. The new law covers a variety of issues, including requiring the Illinois Department of Insurance and HFS to study how state government can help people who lack health insurance, including the creation of a public option, an idea that Governor Pritzker campaigned on. The bill also creates a task force on kidney disease prevention, temporarily expands access to Medicaid for individuals who have suffered job loss due to COVID-19, and requires Medicaid coverage for clinical trials and in-vitro fertilization services.

**2020 General Election Voting Changes**

Due to the low voter turnout in the Spring 2020 Primary Election, and to ensure the safety of the voters moving forward, the Illinois General Assembly passed Senate Bill 1863 (Sen. Morrison/Rep. Burke), which will make it easier for people to vote by mail in the 2020 General Election on November 3.

Anyone who applied to vote in 2018, 2019 or the 2020 municipal elections will automatically receive a vote-by-mail application through the mail or email. Voters will receive their **official ballot no later than October 6**. Ballots can be mailed back or turned in at a local collection site.

Voters will still be able vote in person. Election officials can establish curbside voting, where Democratic and Republican election judges will assist voters in casting ballots from their cars. Election officials can also establish special early voting hours dedicated to people who are more vulnerable to COVID-19.

The bill makes Election Day a state holiday. Schools and government offices will be closed, with the exception of election authorities. Governor Pritzker signed the bill into law in June as Public Act 101-0642.

**WHAT TO EXPECT IN THE UPCOMING FALL VETO SESSION AND IN 2021**

Many initiatives from 2020 will be reintroduced next year. Our priority remains passing the **Prior Authorization Reform Act**.

ISMS organized the **Your Care Can’t Wait Coalition** composed of not only ISMS, but also the Illinois Health and Hospital Association, several physician specialty societies, allied healthcare organizations and patient advocate groups. After several stakeholder meetings with members of the coalition, it was time to take action. This last session, ISMS introduced Senate Bill 3822 (Sen. Holmes) and House Bill 5510 (Rep. Harris), both designed to streamline and reform prior authorization processes instituted by both public and private payers by:
Increasing transparency by requiring payers to maintain and publically post a list of services for which prior authorization is required;

Establishing maximum wait timelines on urgent and non-urgent requests. Currently there are no standard timelines, forcing patients to wait an excess amount of time;

Ensuring that if prior authorization is required for medical services, the payer requesting prior authorization must be using appropriate medically accepted, clinically valid, evidence-based criteria;

Providing for continuity of care that requires prior authorization approvals to remain in effect for the duration of the course of treatment; and

Reducing the number of medically necessary services that are subjected to prior authorization requirements.

Momentum was building in favor of reforming this broken system; the bills garnered bi-partisan support among the General Assembly, with 43 House sponsors and 13 Senate sponsors. Unfortunately, the bill stalled when Governor Pritzker announced a State of Emergency. ISMS will continue the fight for fairness in the fall veto session and the 2021 legislative session.

For more information or to join the Your Care Can’t Wait Coalition, please visit www.YourCareCantWait.com.

As is typical every year, there are many bills introduced that ISMS opposes. We anticipate that the following bills introduced earlier this year could be called during the fall veto session or reintroduced next year.

**Alzheimer’s CME Mandate** – House Bill 4725/Senate Bill 3186 (Rep. Willis/Sen. Villivalam) would mandate that physicians take an initial six hours of continuing medical education (CME) on dementia related conditions, including Alzheimer’s, and then two hours every licensure cycle thereafter. While the intent of this bill is commendable, it will not eradicate Alzheimer’s nor will it foster the collaboration and partnership among facets of the medical community necessary to accomplish that goal.

**Venue Shopping** – House Bill 5044 (Rep. Hoffman) repeals the long-standing doctrine of “forum non conveniens” that ensures fundamental fairness in civil cases when a plaintiff’s choice of where the case is to be tried is without merit, leaving defendants without recourse. This is an initiative of the Illinois Trial Lawyers Association. House Bill 5044 would allow medical liability cases to be tried almost anywhere, regardless of where the medical care was delivered.
**Naloxone Mandate** – Senate Bill 3659 (Sen. Bush) would mandate that physicians offer a prescription for naloxone under certain circumstances, and require physicians to have specific conversations with not only the patient, but one or more individuals designated by the patient, about addiction. This is an initiative of a drug company that manufactures naloxone. It is dangerous precedent to allow drug companies to pass laws that mandate how physicians treat their patients.

**Medical Implicit Bias Training** – House Bill 5522 (Rep. Welch) amends the Medical Practice Act, the Nurse Practice Act, and the Physician Assistant Practice Act and provides that on and after January 1, 2022, all continuing education courses for persons licensed under the Acts contain curriculum that includes the understanding of implicit bias in their practices. This would force all of the available CME to be rewritten and could jeopardize physicians’ compliance with state law, by no fault of their own. For that reason ISMS opposed the bill as written, but is open to negotiating the issue.

It is important to note, the issue of implicit bias training for health care professionals as well as other professionals will be a likely be priority for the legislature this fall. COVID-19 brought new attention to existing health care disparities and the tragic death of George Floyd and the events surrounding his death have mobilized the Legislative Black Caucus (the Caucus). It is expected that the Caucus will introduce a package of reforms this fall that will seek to reduce/eliminate disparities and racial biases existing in all segments of society, and that such a package will receive the endorsement of the governor and a majority of legislators.

**Psychologist Prescriptive Authority** – House Bill 4578 (Rep. Moeller) would remove current restrictions on to whom psychologists can prescribe and what they can prescribe. Currently, psychologists are only allowed to prescribe anti-depressants to healthy adults. They cannot prescribe to minors, pregnant women, individuals with underlying health conditions or seniors.

**Nurse Practice Anesthesia** – House Bill 4579 (Rep. Moeller) removes the requirement that anesthesiologists be personally present during the delivery of anesthesia services by a certified registered nurse anesthetist.

**Physician Assistants** – House Bill 4692/Senate Bill 2758 (Rep. Willis/Sen. Murphy) would provide physician assistants with independent practice. It also defines physician assistants as engaging in "practice of medicine," and removes language referring to a physician’s "delegation" of duties. Before session halted we were in discussions with the sponsors, who agreed with our position against independent practice.

**Controlled Substances: Opioids and Minors** – House Bill 4997/Senate Bill 2340 (Rep. Meier/Sen. Fine) amends the Illinois Controlled Substances Act and provides that a prescriber who is licensed to prescribe controlled substances shall, prior to issuing a prescription for an Schedule II opioid to a minor, discuss with the minor the risks of developing a physical or psychological dependence on the opioid. If the prescriber deems it appropriate, he or she must discuss any alternative treatments available. Prior the State of Emergency, ISMS was in discussions with the sponsor on alternative proposals.
**Controlled Substances: Opioids** – House Bill 4998 (Rep. Meier) amends the Illinois Controlled Substances Act and provides that an initial prescription for an opioid may only be issued for a seven-day supply.

**Dentist Vaccine Administration** – Senate Bill 2965 (Sen. Crowe) allows dentists to administer vaccinations “if it is a general policy or recommendation published by the Center for Disease Control (CDC) or Director of Public Health.” While dentists can already administer the flu vaccination when prescribed by a physician, this bill could open the door to administering any vaccination recommended by the CDC or called for by the Director of IDPH.