

North Dakota 66th Legislative Assembly Wrap Up

May 6, 2019

Medicaid Funding

- **SB 2012.** The North Dakota Department of Human Services (Department) appropriation bill included Medicaid inflationary increases and reauthorization of the Medicaid Expansion program for another two years at current rates.
 - **Inflationary increases.** Health care providers will receive inflationary increases of 2% beginning July 2019 and 2.5% beginning July 2020 - an increase of **\$12 million**.
 - **Current administration and rates maintained.** An amendment that would have moved administration of Medicaid Expansion from a third-party to the Department and reduced rates to traditional Medicaid rates – a cut to providers of **\$220 million** - was defeated. Retail pharmacy claims will be administered by the Department rather than through the third party administrator, rates are not expected to change.
 - **Provider tax defeated.** An amendment that would have taxed PPS hospitals **\$10 million** was defeated.
 - **Medicaid Expansion Rate Equalization.** Providers within the same provider type will be paid at consistent levels and with consistent methodology. Overall, Medicaid Expansion dollars will remain budget neutral, but dollars could be redistributed among providers. The reimbursement methodology has not yet been determined.

Medicaid

- **HB 1115. Medicaid provider appeals.** The Department must issue its final decision on provider appeals within 75 days of receipt of the notice for review of a claim denial or reduction in the level of service payment. In the case of appeals of recouped or adjusted claims following an audit, the Department shall make and issue a final decision within 75 days or as soon thereafter as possible.
- **HB 1374. Medicaid pharmacy management program.** The Department must establish a pharmacy management program for Medicaid Expansion prescription drug coverage to include processing claims through the Department's existing pharmacy claims system and Medicaid management information system (MMIS).
- **HB 1515. Medicaid coverage for pregnant women.** Medicaid eligibility for pregnant women is increased from 152 to 162 percent of the federal poverty level.

- **SB 2243. Medicaid prior authorization.** Medicaid may require prior authorization of stimulant medication used for the treatment of attention deficit disorder and attention deficit hyperactivity disorder if the prescriber prescribes these medications at a rate two times higher than the rate of the top ten prescribers excluding the top prescriber.
- **SB 2347. Medicaid fraud control unit, liability for false claims.** A Medicaid fraud control unit is created in the Attorney General's office to investigate and prosecute provider fraud in Medicaid. Civil and criminal penalties are established.
- **HB 1194. Tribal care coordination agreements.** The Department must facilitate care coordination agreements between health care providers and tribal health care organizations which will result in 100 percent federal funding for eligible Medicaid services provided to American Indians. Sixty percent of the excess federal funding may be distributed to participating tribal governments for tribal health care purposes and the remaining 40 percent must be deposited in the general fund.

Marijuana

- **HB 1119. Medical marijuana confidentiality.** Information kept by the Department of Health for applications and supporting information from a medical marijuana user, health care provider, caregiver, and compassion center is confidential.
- **HB 1283. Medical marijuana.** The bill removes the requirement for a health care provider to certify that the patient is likely to receive therapeutic or palliative benefit from medical marijuana use. In lieu of certification, veterans may submit a copy of their VA medical records. Physician assistants were added to the health care providers who may certify the debilitating medical conditions.
- **HB 1417. Medical marijuana.** Certain patients are authorized to buy dried leaves/flowers without health care provider authorization and cancer patients are allowed to possess additional quantities. Health care providers may notify the Department of Health if a patient no longer has a debilitating medical condition, if the provider no longer believes the patient will receive therapeutic benefit from marijuana, or if a bona fide provider-patient relationship ceases.
- **HB 1519. Medical marijuana debilitating conditions.** Twelve conditions were added to the list of debilitating medical conditions.
- **SB 2210. Medical marijuana manufacturing facility.** A manufacturing facility may grow more than 1,000 plants to sufficiently meet patient demand.
- **HB 1050. Criminal penalties for marijuana possession.** The bill reduces the penalty from a misdemeanor to an infraction for marijuana possession of 1.5 oz. or less. The legislature may study the implications of a recreational marijuana initiated measure.

Physicians

- **HB 1433. Maintenance of certification for physicians.** A physician may not be denied staff privileges or employment based solely on the physician's decision not to participate in maintenance of certification, however, a facility may differentiate between physicians based on maintenance of certification if the facility's designation, certification, or accreditation is contingent on it or the voting physician members of the facility's organized medical staff and governing body voted to authorize the differentiation.
- **SB 2173. Interstate Medical Licensing Compact.** This bill provides expedited licensing of physicians to permit them to practice in all compact states.
- **SB 2094. Telemedicine.** A physician/PA who practices telemedicine on a patient here must be licensed in North Dakota and establish a bona fide relationship with the patient before diagnosis or treatment. An examination or evaluation may be performed entirely through telemedicine if equivalent to an in-person examination, including using secure videoconferencing or store-and-forward technology or if conducted with an appropriately licensed intervening health care provider.

Behavioral Health

- **SB 2012. Behavioral health programs.** There were many separate bills dealing with mental health and substance use disorder treatment, most of which were defeated but their provisions were transferred to the Department's appropriation (SB 2012), including establishment of a community behavioral health program to provide comprehensive community-based services for individuals who have serious behavioral health conditions. The Department is also required to develop a statewide plan to address acute psychiatric and residential care needs including review of the size and use of the state hospital, the potential to expand private providers' acute psychiatric care and residential care services, the impact of adjustments to crisis services and other behavioral health services provided by the regional human service centers, and the potential use of available Medicaid waivers or plan amendments.

Pharmacy

- **HB 1382. Pharmacy mail order and home delivery.** If a pharmacy offers home delivery or mail order, it may not initiate delivery of a refill unless it obtains prior consent from the patient or provides the patient with notice of the upcoming delivery through more than one communication attempt, by different means, and the patient does not respond indicating the patient does not want the refill.
- **HB 1469. PBM step therapy protocols.** A pharmacy benefits manager or health plan may not require step therapy protocol for a prescription drug for metastatic cancer if the use is consistent with FDA approved indications or is supported by peer-reviewed medical literature.

- **HB 1498. Pharmacist administration of drugs.** This bill made changes to the requirements for a pharmacist to administer drugs by injection.
- **SB 2155. Exemption from the practice of pharmacy.** A licensed registered nurse working in a Title X clinic may dispense oral contraceptive pills, transdermal contraceptive patches, and vaginal contraceptive rings under order of an authorized prescriber.
- **SB 2231. Pharmacists limited prescriptive practices.** A pharmacist has limited prescriptive practices to initiate or modify drug therapy following diagnosis or established protocols through a collaborative agreement with a physician or APRN. The collaborative agreement need only be updated when the pharmacist's scope is modified and the agreement is effective when approved by the North Dakota Board of Medicine or Board of Nursing and Board of Pharmacy.

Workforce

- **HB 1018. Nonresident nurse incentive program.** This bill provides up to \$4,000 in incentives from the Department of Commerce for each nonresident licensed nurse who signs a written agreement to work at least four years in a North Dakota health care facility if the facility provides two dollars of matching funds for each dollar provided.
- **HB 1175. Regulation of physician assistants.** Physician assistants (PA) may, in certain circumstances, practice independently without the supervision of a physician. A PA, however, must collaborate with, consult with, or refer to the appropriate member of the health care team as indicated by the condition of the patient, the education, experience, and the PA's competence, and the standard of care. A PA with less than 4,000 hours of practice must execute a written collaborative agreement with a physician.
- **HB 1337. EMS personnel interstate licensure compact.** North Dakota joined the interstate commission for emergency medical services personnel practice.
- **SB 2125. Physical therapy licensure.** This bill made changes to the makeup of the board of physical therapy and physical therapy licensure.
- **SB 2143 Health care professional student loan repayment program.** This bill clarified the language of the health care professional student loan repayment program.
- **SB 2170. Clinical laboratory personnel exemptions.** The clinical laboratory scientist or clinical laboratory technician licensing requirements do not apply to an individual performing exempt tests identified by the North Dakota board of clinical laboratory practice if the individual is supervised by someone who is licensed by the board and who performs tests and uses, a physician licensed by the board of medicine, an advanced practice registered nurse licensed by the board of nursing, or other categories of individuals approved by the board by rule.

- **SB 2306. Occupational licensure of military members and spouses.** This bill allows various professional licensing boards to issue to a military member or spouse a provisional license or temporary permit on a case-by-case basis exception to licensing standards and waives certain licensing fees.

Miscellaneous

- **HB 1336, HB 1546. Abortion.** Physicians are required to inform a woman at least 24 hours before an abortion that it may be possible to reverse the effects of an abortion-inducing drug but time is of the essence and information and assistance with reversing the effects of an abortion-inducing drug are available in the printed materials given to her. (HB 1336). Human dismemberment abortions are prohibited (HB 1546).
- **SB 2106. CHIP in-house administration.** The Children's Health Insurance Program (CHIP) will be administered by the Department of Human Services rather than through a private carrier and must be consistent with Medicaid coverage.
- **SB 2196. Drug fatalities review panel.** This bill creates a drug fatalities review panel to review the deaths of individuals which are identified as prescription drug, illicit drug, or alcohol overdoses or which pertain to a trend or pattern of overdose deaths.
- **SB 2317. Health care facility construction review.** The Department of Health is required to make a determination on health care facility construction/renovation projects of \$1 million or less within 60 days and approve a waiver of license standards as long as it does not adversely affect health or safety. (HB 1004, the Department's appropriation, provides that the minimum fee for life safety small construction or renovation plan reviews be reduced from \$750 to \$500 and one temporary FTE for construction review was added.)
- **SB 2154. Hospital Discharge Policies.** Hospitals must maintain written discharge planning policies, identify patients who are likely to suffer adverse health consequences without adequate discharge planning, and involve the patient and, as appropriate, informal caregiver or legal representative. As appropriate, the hospital shall communicate the plan to the patient, informal caregiver, or the patient's representative, document the discharge planning arrangements in the medical record, and educate or train a patient, informal caregiver, or the patient's representative for post-hospital care.
- **HB 1378. Supported decision making.** This bill provides competent individuals with decision making support that is less restrictive than guardianship by allowing the individual to name a supporter to help identify, collect, and organize documents and information that may be helpful when making decisions, help the individual understand documents, identify choices available, and communicate a decision to others.