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2019 IHCA End of Session Report

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Session Overview

This legislative session began with a new Democratic Governor, J.B. Pritzker, who ran on increasing the minimum wage to $15 and working toward a progressive income tax. The administration seemed to drag their feet naming names for directors of agencies and gathering together a legislative team. The administration, Senate and House were back to being in Democratic control and surprisingly the republicans saw hope in working together after years of stalemate. One thing was true between the legislature and the administration—the unions were going to be more empowered than in any other previous session.

Right out of the gate the Governor started working on the passage of increasing the minimum wage. The proposal increased the current $8.25 an hour by $1 in January 2020, followed by a $0.75 jump to $10 in July 2020, then an annual rise of $1 until reaching $15 on January 1, 2025. The Governor made it clear that he wanted to get it passed and sent to his desk before the budget address and everything moved surprisingly fast. IHCA was quick to educate legislators of the impact it would have to the profession with no assurances from the Democrats or the Department that the budget would include money to address the increases. The initiative passed just under the wire before the Governor's Budget Address.

After its passage, things slowed down and it seemed as though the General Assembly was moving through the motions, passing mostly non-controversial bills and cancelling session days. After the legislative spring break things turned the corner and May became crunch time for all of the Governor's top priorities. Legalized Marijuana, health insurance assessment, the broadening of abortion rights, gambling expansion, capital, progressive income tax and the budget were all big issues that were heard within the last week of session, many in the final day(s).

FY20 Budget

Governor Pritzker followed up his win on the passage of minimum wage increase with his budget address to the General Assembly. Included in the proposal was $1.1 billion in revenue to try to address the $3.2 billion hole with an alternative budget that included 4 percent across the board cuts. The revenue proposal included the progressive income tax (revenue that will not be realized for another couple of years), legalizing recreational marijuana, an e-cigarette tax, increasing gambling and a new tax on health insurance companies. Adjusting the pension ramp and moving around GRF money while accounting for the insurance assessment resulted in the final $2 billion in savings towards filling the budget hole. All of this seemed like a hefty lift for the General Assembly, but it was important to remember the that Governor, who is a Democrat, had a Democrat controlled General Assembly, in stark contrast to the political landscape of the last 4 years.

Governor Pritzker unveiled details to his proposed progressive income tax deal in early April, well in advance of the budget discussions that didn't begin until the beginning of May. Some believed he should have kept the details to himself and others applauded his plan. The Senate was first to pass the proposal during the first week of May to place the question on the ballot (SJRCA 1) and to pass a separate bill that included basic parameters of what the rate structure would look like. The House took their time but soon followed the Senate's lead in passing both proposals. Other proposals passed to address revenue were the legalization of recreational marijuana and a capital bill that included a number of taxes. The health insurance assessment was also included in the final revenue package.

What looked like a year that the majority party might include the Republicans in the budget negotiations seemed not to be coming to fruition as the clock wound down. Republicans were left in the dark until a few hours before the bill was called in committee. They were left scrambling to try to figure out what was included in both the budget and the budget implementation bill. Meanwhile, the Speaker put pressure on legislators by sending out a House bulletin that extended session by two days due to the work load that needed finished. In the final hectic hours of Friday, House Republican Leader Jim Durkin was able to negotiate the inclusion of various business reforms in the package in exchange for bipartisan support of the package.

Ultimately, the legislature did not finish their business by the scheduled adjournment date of May 31, but the package has finally been completed. As of this writing, the House is finishing their role in the process and the Senate is slated to return to town June 2 to take their final votes on the package, which will then go to the Governor for his signature.

Skilled Nursing Funding

In the beginning of January, the provider associations sat down to agree on funding for the sector. With Madigan's past behavior of giving new Governors most of what they want in the first year of office, the push for additional money into the system could have been achievable. Even though cost coverage and reports showed that to make the sector whole would take up to 600 million additional dollars, $200 million was agreed to be the mark in order to actually obtain the funding and not be discarded in budget discussions.

With unions being given greater power under the Pritzker administration and the introduction of SB1510 that addressed staffing minimum penalties, the sector was told funding would be blocked by SEIU until there was something on addressing compliance with staffing minimums. (To read more about SB1510 see the opposition piece to this report.)

Additional money being infused into the system was top priority this year for IHCA and as such we quickly began to negotiate SB1510 in order to continue discussions on the budget and lobby for the $200 million to be placed into the system. The initial agreement between all three associations was for a separate pursuit of $25 million in property taxes passed through separate from the $200 million. The remainder would be divided between an adjustment of the wage adjuster disparity in the skilled nursing rate, accounting for approximately $60 million, with the balance of $140 million going to the support. Political alliances and back door deals and maneuverings quickly moved some of those working on this deal to one which favored their providers more, and the sector's budget ask, as well as its viability, varied over the course of the final weeks of session.

With the involvement of SEIU in the budget and numbers coming out on the MCO assessment, the number for long term care increased to $240 million with $70 million of that to be used for staffing. With many moving pieces and assurances to keep the money within the budget proposal for long term care, an agreement was made so that the profession could move forward with one message in order to secure funding. A total of $240 million funding increase was placed into the system with $70 million based off Medicaid bed days with a department approved staffing plan and $170 directed towards the support rate with 80 percent based off of cost reports and 20 percent used to make any who lose under the structure whole and across the board support rate increase. Under this infusion of dollars, IHCA saw the greatest across the board cost coverage increase for their members and long term care overall saw the greatest rate increase out of Medicaid dollars.

Supportive living also saw an increase in in their rate by successfully re-linking the supportive living rate to the skilled nursing rate at 54.3 percent resulting in nearly $50 million new dollars into the system. IHCA continued throughout session to be supportive of this initiative.

Lastly, $38.2 million was included in the budget to address the first year minimum wage increase across all Medicaid providers groups with an estimate of $8 million set aside for skilled nursing centers.

Medicaid Working Group

Over the past 5 or so years the General Assembly has taken a different approach to legislation pertaining to Medicaid. Once all legislation is filed, substantive bills that proposed meaningful change to the Medicaid program would be assigned to the House Human Services Appropriations Committee and would be discussed by a bipartisan group of legislators throughout session to craft a Medicaid omnibus bill. This year was no different. With new committee leadership on both sides of the aisle, the group began meeting with providers and the Departments on a weekly basis to discuss issues.

Many bills proposed this year focused on two main areas within the Medicaid program; managed care and Medicaid eligibility determinations. Managed care issues pertained to accountability, timely payment, transparency and higher quality care coordination. Medicaid eligibility included community and LTC applicants not receiving timely approvals of applications, with LTC approvals continuing to be the largest group with pending applications.

All LTC provider groups were called in to address the issues they were experiencing with the working group and the Departments of Healthcare and Family Services and Human Services. IHCA strongly proposed that the best way to avoid the many managed care issues we have seen was through a delay of any expansion to the program until some of the issues were adequately addressed, as well as application of some level of transparency and accountability for the plans. Actual language to delay until the state was in compliance with the federal 45-day Medicaid determination time frame was also proposed. The Department of Healthcare and Family Services made it very clear that this was not something they would negotiate; they later made their point again when they sent out a provider notice 3 weeks before the end of session, before legislation could be passed, expanding HealthChoice Illinois on July 1, 2019. Legislators on both sides within the working group heard our concerns but did not have the appetite to place a delay into statute. What the profession did get out of these discussions is an open line of communication that included MCOs and the Department in bi-weekly meetings to address issues between providers and Managed Care. IHCA has continuously submitted feedback and issues to this group and will remain to do so through the expansion process.

The long term care profession has worked in solidarity over the last few years to address the failure on the part of the state to deem individuals eligible for Medicaid services in accordance with federal guidelines. All three associations stood before the working group reiterating that there are over 15,000 individuals who are uncertain about how their needed services will be paid for because of the state's failings, and those who provide their care have no guarantee they will ever be paid for those services. It was also noted that the package of legislation passed last year to address this has not been fully implemented by the state. Communication with the Departments and the HUBs, lack of accountability, and inconsistent handling of applications continued to be a problem and the only

relief providers were seeing was the slow but steady flow of provisional eligibility payments being made.

In the last few weeks of May the working group started to release what legislation would be in the Medicaid Omnibus bill. It was apparent the group decided to place new hope in the Department of Healthcare and Family Services and the Department of Human Services. Being a new administration with different leadership, the working group quickly took the proposed language of the Departments and their plans for timely determinations with little input from providers. Instead of placing language into statute, both Departments created a detailed timeline on how the back log of applications would be addressed. To see that timeline, click here. Although IHCA was pleased to see thought was put into this area, we still are disappointed and skeptical that these timelines will be met.

Another area proposed by the Department of Health Care and Family Services was to completely do away with provisional eligibility payments. Of course, the working group received great backlash from IHCA regarding this idea. In the final draft provisional eligibility was removed once the state determined the applicant ineligible for services. Even with this change, IHCA had to remain opposed.

In the final week of session final Medicaid omnibus bill was drafted onto Sb1321. With the changes outlined above, IHCA had to remain opposed to the legislation. The bill was the product of the bi-partisan working group and was clearly moving ahead full force. SB1321 passed both chambers unanimously and will be sent to the Governor.

IHCA Legislative Initiatives

SB1696 (Steans/Kalish)- Creates an advisory group to discuss the pertinent changes that PDPM will create when developing skilled nursing rates in the state. The group is charged with taking transparency, accountability, actual staffing as reported under the federally required Payroll Based Journal system, changes to the minimum wage and adequacy in coverage of the cost of care into account. A focus on a quality component that rewards quality improvements must also be considered. This bill passed out of both chambers unanimously and will be sent to the Governor. This discussion has already began with the Department of Health Care and Family services and IHCA remains positive that a number of top priorities like wage disparity will be address in these conversations.

HB2659 (Hammond/Mulroe)- This language was simply a cleanup bill of duplicative language within the statute however, if we needed legislation on pendings this year, this bill would have been the vehicle to amend with additional language. As the Medicaid working group progressed this bill also moved through the process and was passed unanimously by both chambers.

HB3710 (Conroy)- This was IHCA's fix to the distressed facilities statute and proposed rule making. It provided that the Department of Public Health adopt the CMS Special Focus list to allow the department to promulgate rules in a quicker manner and narrow the list of distressed facilities to the ones that are truly distressed in order to address this issue in a more focused manner. IHCA's policy and regulatory team continued negotiations right up until committee deadline week in order to get something done on this bill. Opponents were SEIU and Citizens for Better Care, who wanted

not only to keep the current statute but possibly expand the bill with additional reporting. The bill was held in committee without a vote and did not progress forward in the process.

HB3267 (Feigenholtz) - Prohibits the Department of Healthcare and Family Services from expanding managed care beyond what is currently in place. IHCA's policy team understood that managed care was not going to be completely removed from Illinois' Medicaid Program. Especially after meeting early on with the new Director of Health Care and Family Services (HFS) and the Medicaid Director (who was formerly employed by Cook County managed care company). The most reasonable approach was to hold off expanding Managed Care into the counties that have been delayed the past year and a half, under HealthChoice Illinois, until MCOs and provider groups could work out issues such as billing codes, continuity of care, transportation, and care coordination. Although this bill was placed into the Medicaid working group previously discussed, IHCA was able to have a subject matter hearing in front of the House Human Services Appropriations committee to speak on the issues. In the meantime, the working group was discussing the MCO assessment and saw the delay of managed care in detriment to the assessment discussion and quickly took it off the table. The group was able to point to the progress that HFS was having with providers in the new bi-weekly meetings between providers, the department and MCOs. The bill was held, however, discussions with the Department and MCOs have been beneficial to opening the lines of communication on Health Choice Illinois.

Opposition Legislation

SB 1510 (Collins/Moeller) - This bill was crafted by SEUI and AARP to address informed consent when administering psychotropic medication and implemented overreaching penalties on the current staffing requirements put in place in 2010. The bill required facilities to adopt policies and procedures on informed consent for the use of psychotropic medications and submit them to IDPH for review and approval. Failure to submit was grounds for review under the licensure and survey process. Other penalties and violations on informed consent in the bill were as follows:

- A violation of the informed consent provisions would be at minimum a Type A violation.
- Would be able to serve as prima facie evidence of abuse or criminal neglect.
- The bill separated lawsuits for informed consent and negligence so providers could potentially be sued twice.
- Liable for damages up to $500 for each day the facility or person violates the informed consent section as well as costs and attorney's fees.

The bill also attempted to change the make-up of the LTC Advisory Board and later on the wanted to remove the ability to review rules before JCAR.

It became clear that the informed consent piece was spearheaded by AARP and SEIU was driving the staffing piece. In the bill the staffing piece penalized those understaffed with a formula of wages and benefits missed for missing staff, then doubled the total. It added a Type B violation automatically if the minimum staffing was not met and required facilities to post a notice for 3 months in all exterior and interior entryways into the facility stating the facility did not meet staffing requirements for the previous survey period.

As mentioned in the Budget piece, it was made clear that there would be no movement in funding for the long term care sector until SEIU received something on staffing. With this in mind, knowing

that funding was IHCA's top priority this year, the IHCA policy team decided to sit down and negotiate to make a horrible bill much more palatable with our main funding goal in mind. We were able to remove prima facie evidence, double fines, separate lawsuits, inserted language that gave IDPH the ability to determine the gravity of any violation within informed consent and staffing, placed a 5 percent buffer of minimum staffing to allow for the ebb and flow of staff in buildings, reduced the wage fine from double to one and one half and agreed to only posting the notice during the period of time the facility is out of compliance. The changes to the LTC Advisory board were completely negotiated out of the bill and the board remains the same.

Due to SB1510 being contingent on funding for long term care, the language was place into the Budget Implementation Bill that passed the same day as the Budget. It is expected that this language will be approved by the Governor.

HB3521 (Welch) - This bill was introduced the last three years on behalf of SEIU and disguised as an Alzheimer's Association bill. The language did not change from last session. It included:

- The removal of the 30 waiver in emergency Involuntary discharges.
- IDPH must offer assistance to resident in relocation plans.
- Does not allow an IVD if the resident's physician states that the resident would not cause harm or danger in returning to the facility.
- IDPH can order readmittance and make an onsite inspection within 3 days to order compliance. If facility does not comply, a $1,250 daily fine imposed until resolved.
- A Type 1 violation is imposed if improperly terminated. Type A violation for SNFs.
- High Risk designation if found improperly discharged.
- Resident refusal of treatment is not grounds for discharge if it does not endanger others.
- In emergency IVDs physician must make an in-person assessment before initiating the IVD.
- Allows ombudsman to request hearing without resident's request.

Once the legislation was filed, IHCA met with the sponsor to remind him of our concerns.

Opposition was clearly voiced continuously on this bill and the sponsor decided not to move it forward.

HB3468 (Bristow) - Closed Captioning. Required LTC facilities to have the closed captioning option on default for all TVs owned within the facility at all times. It may be turned off at request of a resident. IHCA voiced our concerns of making reasonable efforts to keep the closed captioned on and discussed clarity around the violation of this Act. The final bill clarifies that the facility must make a "reasonable effort" to keep closed captioning on and that the facility is not in violation if a staffer or resident enables the feature upon request. This bill passed both chambers and is awaiting the Governor's signature.

HB3361 (Crespo) - Nurse Reporting Pay. A nurse required to report to work, but not tasked to work or who is provided less than one-half the of the nurse's usual or scheduled day's work shall be paid for a minimum of 4 hours at the nurse's regular rate of pay. IHCA spoke to the sponsor to be sure that Long Term Care Facilities were not included in the legislation. The bill was later held in committee and did not move forward.