2021 Legislative Session: Final Legislative Impact

Contents

Compliance Report

This document is not, nor should it replace, appropriate legal advice from a licensed attorney. It is recommended that individuals read the full legislation prior to making final decisions regarding implementation of statutes.

This document outlines all legislation passed during the 2021 Legislative Session which may necessitate a change to business operations and/or practice. It is meant to provide guidance to individuals so they may:

- be knowledgeable about the changing policy landscape in the State of New Mexico;
- discuss legislative issues with appropriate staff, partners, and stakeholders; and
- develop a plan for adoption of new and/or amended practices.

Each piece of legislation is listed separately. A summary of the legislation is provided in addition to some high level guidance as to next steps leaders may take when incorporating the legislation in their operations.

House Bill 2: 2021 General Appropriation Act

Sponsor: Representative Patricia Lundstrom
Statute Amended: Budget Bill
Effective Date: July 1, 2021
Summary: A summary of the Human Services Department and Department of Health budgets for FY2021 follow.

Human Services Department/Medicaid

The Legislative Finance Committee (LFC) recommended a total Medicaid budget of $1.08 billion for FY2022. Executive recommended a total Medicaid budget of $1.01 billion for FY2022, which was $68 million lower than the LFC recommendation. HAFC established an ad hoc committee to determine the appropriate funding amount for the Medicaid budget due to the stark differences between the recommendations.

HB2 adopted the Executive base budget recommendation for Medicaid but added $20 million to that budget. That means the Medicaid budget will see an overall increase in state dollars in FY2022, however the increase is lower than originally proposed by LFC. HAFC noted several important components of its recommendation:

- Hospital and Provider rates remain “flat funded” from FY2021 to FY22.
- The HAFC has targeted reductions in managed care rates that the committee believes the MCOs can realize through efficiency savings. Additionally, there is a 2.5% profit margin worked in the MCO rates and the committee believes that profit may be too high.

- The state will receive an additional $155 million for Medicaid due to the Q1 and Q2 increased FMAP at 6.2%. There is also a significant possibility of the FMAP extension into Q3 and Q4 of FY2022.

HB4: Civil Rights Act

Sponsor: Representative Georgene Louis, Representative Brian Egolf, Senator Joseph Cervantes
Statute Amended: New Statute – New Mexico Civil Rights Act
Effective Date: July 1, 2021
Summary: The act allows a person who claims a deprivation of any "rights, privileges or immunities" secured by the bill of rights of the New Mexico Constitution to bring a lawsuit in state district court and recover actual damages and injunctive relief. A lawsuit under the act may only be brought against a public body, which is held liable for the conduct of its employees or other individuals acting on behalf of or within the authority of the public body.

For purposes of the act, a "public body" means a state or local government, an advisory board, a commission, an agency or an entity created by the constitution of New Mexico or any branch of government that receives public funding, including political subdivisions, special tax districts, school districts and institutions of higher education.

The act prohibits a person employed by a public body from pursuing a claim related to the person's employment under the act.

The act prohibits the use of qualified immunity as a defense.

A public body is required to pay a judgment awarded against and litigation costs of an employee or other person acting on behalf of or within the authority of the public body. The act limits damages recoverable against a public body to $2 million per claimant, including court costs and reasonable attorney fees. The maximum recovery limit is increased annually for the cost of living, as measured by the consumer price index. The act provides that the maximum recovery limit shall not be adjusted downward.

Next Steps: None.

HB20: Healthy Workplaces Act

Sponsor: Representative Christine Chandler, Representative Angelica Rubio, Senator Mimi Stewart
Statute Amended: New Statute – Healthy Workplaces Act
Effective Date: July 1, 2022
Summary: House Bill 20 creates a right to paid sick leave for all New Mexico private workers.

Important definitions:

- "employee" means an individual employed by an employer for remuneration, including an individual employed on a part-time, seasonal or temporary basis;
- "employer" means an individual, partnership, association, corporation, business trust, legal representative or any organized group of persons employing one or more employees at any one time, acting in the interest of an employer in relation to an employee, but shall not include the United States, the state or any political subdivision of the state;

- "family member" means an employee's spouse or domestic partner or a person related to an employee or an employee's spouse or domestic partner as: (1) a biological, adopted or foster child, a stepchild or legal ward, or a child to whom the employee stands in loco parentis; (2) a biological, foster, step or adoptive parent or legal guardian, or a person who stood in loco parentis when the employee was a minor child; (3) a grandparent; (4) a grandchild; (5) a biological, foster, step or adopted sibling; (6) a spouse or domestic partner of a family member; or (7) an individual whose close association with the employee or the employee's spouse or domestic partner is the equivalent of a family relationship;
- "health care professional" means a person licensed pursuant to federal or state law to provide health care services, including nurses, nurse practitioners, physician assistants, doctors and emergency room personnel

HB20 mandates that all employers allow their employees to earn paid sick leave. Employees shall accrue a minimum of one hour of earned sick leave for every thirty hours worked. Employers may grant more sick leave than what is mandated in the legislation. Employers may grant 64 total hours of sick leave on January 1 of each year for the upcoming year. Employers may grant sick leave for employees employed after January 1 of a year using a pro rata portion of the sixty-four hours for use in the remainder of that year.

Employers may use existing paid time off to comply with the mandates of the Healthy Workplaces Act, so long as those paid time off policies permit an employee to use the time under the same conditions as those outlined in the legislation.

The legislation mandates that employees shall not be entitled to use more than sixty-four hours of earned sick leave per twelve-month period – but employers may be more generous with leave policies if determined by the employer. Accrued unused sick leave shall carry from year to year, but employees are still not entitled to use more than sixty-four hours in twelve-month period.

An employee that will require more than two consecutive days of sick leave may be required to obtain proof of illness from a healthcare provider.

The purposes for and conditions under which sick leave may be taken are outlined in the legislation. Employers cannot require that employees find coverage for a shift if the employee needs to use paid sick leave.

Next Steps: Revise human resource policies to provide for paid sick leave if employer does not currently offer more generous paid time off.

HB23: Medical School Licensure Requirements

Sponsor: Representative Doreen Gallegos
Statute Amended: New Statute
Effective Date: May 18, 2021
Summary: This bill adds requirements to the credentialing or recredentialing of medical schools in New Mexico. The two currently credentialed medical schools in the state, the University of New Mexico

School of Medicine (allopathic) and the Burrell College of Osteopathic Medicine would be covered by these requirements, in addition to any future schools.

HB23 aims to increase affiliations between medical schools with larger hospitals around the state, requiring each medical school to execute an agreement with at least four hospitals.

"For the purpose of building new graduate medical training programs…" medical schools must demonstrate the creation of one graduate training position for every ten students in the school's first class, with a preference for primary care programs in urban, rural, and frontier areas.

Next Steps: None at this time.

HB47: Elizabeth Whitefield End-of-Life Options Act – Engaged Neutrality

Sponsor: Representative Deborah Armstrong, Senator Liz Stefanics
Statute Amended: New Statute
Effective Date: May 18, 2021
Summary: HB47 would provide terminally ill but still mentally competent adults the option of having medical assistance in bringing about their own death. Currently it is illegal for a medical practitioner to provide a prescription that a patient might take to end his/her life; this bill would sanction that practice, with multiple safeguards.

The bill permits a health care provider (defined as a licensed physician, osteopathic physician, advanced practice nurse or physician assistant) to provide a prescription for the medical aid in dying medication to an individual only after the prescribing health care provider has:

- Determined that the individual has (1) capacity; (2) a terminal illness (voluntarily made the request for medical aid in dying); and (3) the ability to self-administer the medical aid in dying medication.
- Provided medical care to the individual;
- Determined that the individual is making an informed decision;
- Determined in good faith that the individual's request does not arise from coercion or undue influence by another person;
- Confirmed in the individual's health record that at least one physician or osteopathic physician licensed pursuant to the Medical Practice Act or the Osteopathic Medicine Act has determined, after conducting an appropriate examination, that the individual has capacity, a terminal illness and the ability to self-administer the medical aid in dying medication;
- Affirmed that the individual is (1) enrolled in a Medicare-certified hospice program; or (2) eligible to receive medical aid in dying after the prescribing health care provider has referred the individual to a consulting health care provider, who has experience with the underlying condition rendering the qualified individual terminally ill, and the consulting health care provider has: examined the individual, reviewed the individual's relevant medical records, and confirmed in writing the prescribing health care provider's prognosis that the individual is suffering from a terminal illness; and
- Provided substantially the statutorily created form to the individual and enters the form into the individual's health record after the form has been completed with all of the required signatures and initials.

A prescription shall not be filled until 48 hours after the prescription for medical aid in dying medication has been written unless the qualified individual may, within reasonable medical judgement, die before the expiration of the waiting period identified.

NMMS has a position of engaged neutrality on HB47. Carefully crafted language in the legislation related to criminalization of assisting in a suicide remains intact. This language states that:

> Assisting suicide consists of deliberately aiding another in the taking of [~~his~~] the person's own life, [~~Whoever~~] unless the person aiding another in the taking of the person's own life is a person acting in accordance with the provisions of the Elizabeth Whitefield End-of-Life Options Act.

Additionally, other provisions important in NMMS neutral position continue to be in the bill. As the Fiscal Impact Report states:

> *Provisions in the bill expressly prohibit physicians from giving lethal injections or practicing "mercy killing" or "euthanasia." The bill also states that the action of writing a prescription pursuant to this act does not constitute suicide, assisted suicide, euthanasia, mercy killing, homicide or adult abuse under the law.*
>
> *Legal immunity and immunity from licensure actions and from sanctions from health care entities (unless the entity had provided written notice of its unwillingness to provide this service and has acted "reasonably" and not capriciously) are given to health care providers, the patient's caregivers and any other person that "acts to assist the attending health care provider or patient" who acts in good faith to comply with the provisions of the bill; applying neglect or adult abuse sanctions is expressly prohibited. On the other hand, medical care providers would incur no liability for being unwilling to participate in prescribing lethal medication, if a referral were made to another provider for that purpose. The patient's records must then be provided to the new health care provider.*
>
> Microsoft Word - HB0047.doc (nmlegis.gov)

The bill requires reporting by the Department of Health related to the Act.

HB67: Primary Care Council Act

Sponsor: Representative Deborah Armstrong, Representative Patricia Roybal Caballero
Statute Amended: New Statute – Primary Care Council Act
Effective Date: Council shall hold its first meeting no later than October 1, 2021
Summary: House Bill 67 establishes an unpaid primary care council to advise state government and especially the Department of Human Services in finding means to increase New Mexicans' access to health care while improving their health and controlling the costs of health care.

The primary care council shall include nine voting members and thirteen advisory members, appointed by the secretary, and shall consist of: (1) one member from the department of health and human services; (2) one member from the department of health; (3) one member from the office of superintendent of insurance; (4) one member from a statewide organization representing federally qualified health centers in New Mexico; (5) five members from statewide organizations representing

primary care providers or statewide health professional societies or associations; and (6) thirteen nonvoting members representing health care and other stakeholders, in an advisory capacity.

Next Steps: New Mexico Medical Society may recommend voting members for the Primary Care Council to the Secretary of HSD.

HB75: Medical Malpractice Definitions

Sponsor: Representative Daymon Ely
Statute Amended: §41-5-1 et seq NMSA 1978
Effective Date: Section 7, 13 and 14 is July 1, 2021 – Sections 1-6, 8-12 and 15-17 is January 1, 2022
Summary: HB75 modernizes and enacts new provisions to the Medical Malpractice Act. Key elements of the legislation are outlined below.

Expansion of Health Care Provider Definition: In addition to the currently eligible doctors, hospitals and outpatient health care facilities, HB75 expands the list of qualified health care providers (QHP) eligible to be covered by the MMA to include certified nurse practitioners, clinical nurse specialists, certified nurse midwives and health care business entities.

Patient's Compensation Fund Oversight

- Establishment of a PCF Advisory Board by July 1, 2021
    - Nine members, chosen annually by their respective professional organizations
        - Two members each representing: New Mexico Medical Society, New Mexico Hospital Association, New Mexico Trial Lawyers Association, and patient advocates
        - One member representing certified nurse practitioners
    - This committee will review all processes and data associated with the administration of the PCF, advise the superintendent of insurance and report annually to the legislature
- The superintendent of insurance will contract with a licensed third-party administrator to administer the fund and provide an annual audit of the PCF

Patient's Compensation Fund Debt Obligation

- Annual surcharges for participating in the PCF will be set with the intention of bringing the fund to solvency – with no projected deficit – by December 31, 2026
- All qualified and participating hospitals and outpatient health care facilities will be responsible for eliminating any portion of the fund deficit attributable to them by December 31, 2026
- Beginning in 2027, hospitals and outpatient facilities will not be eligible for participation in the PCF

Malpractice Caps

- Base coverage for all QHPs increases from $200,000 to $250,000 (most commonly this is through underlying insurance carried by the QHP)
- All independent providers are covered by the PCF from the base level to the new individual cap on non-economic damages of $750,000 (with an annual Consumer Price Index (CPI) adjustment beginning in 2023)

- Hospitals and outpatient facilities will also be covered by the PCF through 2026 and will have an additional threshold of liability on compensatory damages of $4m in 2022 and rising annually in $500,000 increments to $6m in 2026 with an annual adjustment according to the CPI going forward

Next Steps: NMMS will create a process with appropriate criteria included to appoint members to the advisory committee. NMMS will work with the Superintendent of Insurance, hospitals, nursing associations and insurers in the implementation of HB75.

HB98: Omnibus Tax Bill

Sponsor: Representative Javier Martinez and Representative Jason Harper
Statute Amended: Multiple Statutes in the Tax Code
Effective Date: July 1, 2021
Summary: HB98 amends Sections 7-9-77.1, 7-9-93, and 7-9-96.2 NMSA 1978 to clarify that physician practice groups are eligible to claim the GRT deduction provisions contained in those sections.

Next Steps: None. Practices will continue to receive the benefit of the GRT deduction as they have previously based on the clarified language in this bill.

HB112: Health Benefits for Certain Non-Citizens

Sponsor: Representative Javier Martinez
Statute Amended: New Statute
Effective Date: May 18, 2021
Summary: A state or local health benefit shall be provided to all non-citizens regardless of immigration status if they meet all other qualifying criteria for such benefit.

A "state or local health benefit" means any health benefit for which payments, assistance or health care services are provided to an individual, household or family eligibility unit by an agency of the state, a county, a local government or a state educational institution named in Article 12, Section 11 of the Constitution of New Mexico or by appropriated funds of the state, a county, a local government or a state educational institution named in Article 12, Section 11 of the Constitution of New Mexico, as permitted by federal law. “State or local health benefit" includes care or services for indigent persons or patients provided or funded pursuant to the Hospital Funding Act or the Indigent Hospital and County Health Care Act.

Next Steps: Provisions of this bill apply more to insurance sponsors and the provision of care at hospitals. Health care services, even those that are non-emergent, must be covered by public sponsored health insurance plan if the non-citizen would meet all qualifying criteria for the benefit. Hospitals must provide care through indigent care funds to non-citizens if those individuals would meet all qualifying criteria for the benefit.

HB125: Behavioral Health Practitioner Changes

Sponsor: Representative Dayan Hochman-Vigil and Representative Gail Armstrong
Statute Amended: §61-9-1 et seq NMSA 1978
Effective Date: May 18, 2021

Summary: House Bill 125 makes changes to the Professional Psychology Act (Section 61-9 NMSA 1978), the Counseling and Therapy Act (Section 61-9A) and the Social Work Practice Act (Section 61-31).

Clarifying wording and grammar changes are included throughout these amended statutes. The effect of the changes in the bill includes several principles:

- Licenses are automatically extended throughout a public health emergency and for six months thereafter.
- Technology can be used for supervision of trainees in these fields, replacing the requirement for face-to-face supervision.
- A requirement for board licenses in each area has been changed from "being of good moral character" to "observing the code of ethics."

Next Steps: None.

HB178: Counseling and Therapy Licensure

Sponsor: Representative Wonda Johnson
Statute Amended: §61-9-1 et seq NMSA 1978
Effective Date: May 18, 2021
Summary: House Bill 178 amends the Counseling and Therapy Practice Act (Act), Section 61-9A-3 NMSA 1978, under the definitions section to include "appropriate clinical supervision" to clarify that a licensed alcohol and drug abuse counselor must have three years of related work experience in the field, as well as "counseling-related field" and "substance abuse-related field," by adding the terms human services and family services to the list of degree types that qualify for inclusion in the field.

HB178 also delays the repeal of the Counseling and Therapy Practice Board to July 1, 2027, pursuant to the Sunset Act, and the Counseling and Therapy Practice Act, to July 1, 2028.

Next Steps: None.

HB235: Insurance Code Changes

Sponsor: Representative Tara Lujan
Statute Amended: Numerous Statutes in the Insurance Code
Effective Date: July 1, 2021
Summary: House Bill 235 (HB235/HJCS) proposes numerous changes to the New Mexico Insurance Code, including clean-up of language. HB235/HJCS also proposes changes to the Insurance Code to increase the duties of the Superintendent of Insurance during certain states of emergency declared by the governor, including the ability to take action to ensure citizens have access to insurance and healthcare and other insurance-related needs during a declared state of emergency.

This bill attempts to codify efforts made by OSI during the COVID-19 pandemic due to federal statutes implemented.

Next Steps: None.

HB250: Long-Term Care Dementia Training Requirements

Sponsor: Representative Linda Serrato, Representative Roger Montoya, Representative Marian Matthews, and Representative Deborah Armstrong
Statute Amended: New Statute – Long-Term Care Facility Dementia Training Act
Effective Date: May 18, 2021 - Training must be completed within 60 days of January 1, 2022 for those hired prior to January 1, 2022.
Summary: House Bill 250 creates requirements in long-term care facilities for training related to identification of dementia in residents. The requirements apply to all direct care service staff members which means a person: (1) employed by or contracted with a long-term care facility, either directly or through a third-party agreement, to provide in-person direct care services to long-term care facility residents; or (2) contracted with a long-term care facility, either directly or through a third-party agreement, to provide at least ten hours per week in direct care services by video, audio or telephonic means.

The training curriculum shall include standards approved by the department of health for recognizing and treating Alzheimer's disease and dementia, person-centered care, activities of daily living and any other subjects identified by the department. The training may be online or in-person and shall be a program of at least four hours.

The bill outlines requirements for who may conduct the training. The Department of Health will approve trainings and publish a list of those trainings. Certificates of completion of training will require continuing education.

Next Steps: The Department of Health, in collaboration with the Aging and Long Term Services Department, will promulgate rules related to implementation of the act and requirements of training. The Department of Health has committed to work with medical directors of long-term care facilities in development of the rules. NMMS will monitor the rule making process for collaboration.

HB269: Medical Record Disclosure

Sponsor: Representative Zachary Cook
Statute Amended: §24-14B-6 NMSA 1978
Effective Date: July 1, 2021
Summary: HSD states that, in April 2020, it was approved to "receive $31 million from the Center for Medicare and Medicaid Services (CMS) with Health Information Technology for Economic and Clinical Health (HITECH) and Support Act funding. This funding was awarded with the goal of further streamlining and enhancing the State's designated Health Information Exchange (HIE). This revision to the Electronic Medical Records Act (EMRA) will support that goal."

It continues: The current law allows an individual's identifiable health information (including Specially Protected Information) to be placed into the HIE, but not disclosed to healthcare providers using the HIE to view health information for the treatment, payment or operations as allowed by HIPAA, without a patient's consent, except for life threatening care.

The proposed addition of subsection (3) to 24-14B-6(G) would add a third situation in which the prohibitions on disclosure of an individual's electronic health information (including Specially Protected Information) would be allowed, specifically if the disclosure is made to a provider, health care

institution, or health care group purchaser for HIPAA treatment, payment, or operations; thus, aligning the state privacy rules with the federal privacy rules. This would mean one set of privacy criteria for healthcare providers in our state, thereby reducing their administrative burden.

Next Steps: None for practices. This legislation will be implemented by the Health Insurance Exchange and the electronic records that comply with the HIE.

SB10: Repeal Abortion Ban

Sponsor: Senator Linda Lopez and Senator Peter Wirth
Statute Amended: §30-5-1 through 30-5-3 NMSA 1978
Effective Date: May 18, 2021
Summary: Senate Bill 10 repeals the provisions in statute, Sections 30-5-1 through 30-5-3 NMSA 1978, which made abortiona felony crime except in the circumstances of rape or when apregnant person's life was threatened. These provisions have been considered inoperable following the 1973 US Supreme Court decision in Roe v. Wade.

Passage of Senate Bill 10 would thus not have immediate effect, but removal of the three sections currently in statute would have effect if the US Supreme Court reverses its decision in Roe v. Wade.

Next Steps: None.

SB71: Patient's Debt Collection Protection Act

Sponsor: Senator Katy Duhigg, Senator Martin Hickey, Representative Deborah Armstrong
Statute Amended: New Section of Chapter 57 – Patients Debt Collection Protection Act
Effective Date: July 1, 2021
Summary: Senate Bill 71 establishes requirements for screening patients for indigency prior to seeking payment for health care services and creates parameters for the collection of medical debt of indigent patients. The bill also establishes new requirements for transparency in health care billing.

Definitions
For purposes of this act:

- "collection action" means any of the following: (1) **selling a person's medical debt to another party**, including a medical debt collector, but not including medical debt as part of the assets and liabilities when selling a health care facility or third-party health care provider; or (2) actions that require a legal or judicial process, including: (a) placing a lien on a person's property; (b) attaching or seizing a person's bank account or any other personal property; (c) commencing a civil action against a person; or (d) garnishing a person's wages.
- "health care facility" means: (1) a health facility **required to be licensed by the department of healt**h, except for: (a) an adult day care facility; (b) a boarding home not under the control of an institution of higher learning; (c) a child care center; and (d) a shelter care home; or (2) a health facility that is an urgent care center or freestanding emergency room that is required to be licensed by the regulation and licensing department.
- "indigent patient" means a patient with a household income that does not exceed two hundred percent of the federal poverty level.

- "third-party health care provider" means a licensed health care professional or an entity with revenues of at least twenty million dollars ($20,000,000) annually, when billing patients independently for health care services provided in a health care facility

Screening Requirements

Prior to seeking payment for emergency or medically necessary care, a **health care facility** shall:

- Offer to and, if requested, verify whether a patient has any health insurance;
- if the patient is uninsured, offer information about, offer to screen the patient for and, if requested, screen the patient for:
    - all available public insurance;
    - any other public programs that may assist with health care costs; and
    - any financial assistance offered by the health care facility;
- offer to and, if requested, provide assistance with the application process for programs identified during the screening; and
- if a third-party health care provider will bill the patient, send the information gathered during the steps required pursuant to this subsection to the third-party health care provider.

A **third-party health care provider** shall not seek payment for emergency or medically necessary care until the third-party health care provider receives the information required pursuant to the requirements outlined above for health care facilities.

The superintendent of insurance is directed to promulgate rules related to requirements for screening and application assistance that must consider the size and type of a health care facilities and third-party providers.

Collections Prohibitions

The bill prohibits the pursuit of collections actions for charges for health care services and medical debt against patients who are determined to be indigent. The superintendent of insurance is directed to promulgate rules to establish the process by which a patient is determined to be indigent.

The bill directs HSD to provide health care facilities and third-party health care providers with guidance on accessing available sources of funding for care.

Billing and Receipts Requirements

All bills sent from a health care facility, third-party health care provider or medical creditor to a patient shall include a complete and plain-language description of the date, amount and nature of all charges; if the patient is verified as having health insurance; if the health care facility screened the patient for programs that assist with health care costs; and if the health care facility or third-party health care provider has billed or will bill insurance or public programs that may assist with health care costs for the services provided. Prior to initiating communication with a consumer or a collection action over medical debt, a medical debt collector shall have all billing information required in this subsection as allowed under the provisions of the federal Health Insurance Portability and Accountability Act of 1996.

Within thirty business days of receipt of a payment on a medical debt, the health care facility, third-party health care provider, medical creditor, medical debt collector or their agents receiving the payment shall send a receipt to the person who made the payment.

Reporting Requirements

Annually, health care facilities and third-party health care providers must report to the department how specific funds – indigent car and, safety net care pool funds – pay contracting hospitals in accordance with health care facilities contracts. This funding is outlined in the Hospital Funding Act.

The report will also include:

- The number of indigent patients who health care costs were paid directly from the funds listed above; and
- The health care facilities' estimated annual amount and percentage of the health care facilities' bad debt expense attributable to patients eligible under the health care facility's financial assistance policy and an explanation of the methodology used by the health care facility to estimate this amount and percentage.

This report must be made public on the health care facility or third-party provider's website.

Next Steps: NMMS has requested to be involved in a group of stakeholders convened by the Superintendent of Insurance to promulgate rules related to implementation of the Act. Once rules are adopted, practices that meet the definition of health care facility or third-party health care provider must implement screening provisions as outlined in those rules. Covered practices must comply with the collection of medical debt provisions but should pay close attention to how collection actions are defined.

SB96: Maternal Mortality Case Reviews

Sponsor: Senator Nancy Rodriguez
Statute Amended: §24-32-1 et seq NMSA 1978
Effective Date: Rules for implementation must be adopted no later than December 31, 2021
Summary: Senate Bill 96 would make changes to the structure of the Maternal Mortality Review and Severe Maternal Morbidity Committee established within the Department of Health. It provides for co-chairs, one clinical and the other administrative, enlarges the maximum size of the body from 25 to 30 members, establishes their terms as three years, allows for the attendance at meetings of operational staff and qualified guests, and provides for the establishment of an executive committee. The committee would convene at the call of the co-chairs.

The bill renames the committee from that above to "Maternal Mortality Review Committee," reflecting the department's desire to concentrate on maternal mortality and not require consideration of all cases of severe maternal mortality.

The bill elevates the importance, on the Maternal Mortality Review Committee of groups disproportionately affected by high maternal mortality, specifically Native Americans and African-Americans. The bill requires that two each of the thirty board members would be nominated by the

secretary of the Indian Affairs Department and by the director of the Office on African-American Affairs. In addition, committee members are to be trained in the effects of trauma and the trauma of racism.

Next Steps: NMMS will monitor rule promulgation for the new make up of the Review Committee and forward information to interested members.

SB122: Non-Pharmacist Use of Insignias

Sponsor: Senator Gerald Ortiz y Pino
Statute Amended: §59A-16-21.1 NMSA 1978
Effective Date: July 1, 2021
Summary: Senate Bill 122 removes the prohibition of establishments not licensed as a pharmacy to use the words "apothecary, apothecary shop" or "any other words of similar import or by an insignia or device."

Next Steps: None.

SB124: Pharmacy Claim Insurance Payment and Process

Sponsor: Senator Bill Tallman, Senator Steven Neville
Statute Amended: §61-11-21 NMSA 1978
Effective Date: July 1, 2021
Summary: Senate Bill 124 would shorten the time allowed for health plans to adjudicate and pay claims from pharmacies on "clean claims." Current law allows health plans 30 days in the case of an electronically submitted claim and 45 days for a claim submitted manually, regardless of the provider submitting the claim. This bill would revise those limits to 14 days after receipt of the claim related to prescription drugs and fees associated with dispensing those drugs for pharmacies submitting claims electronically.

Timelines for submission and payment for submissions, whether those submissions are manual or electronic. From all other providers who are not pharmacies are not changed by the bill.

Interest of 1.5% on claims to an insurer or health plan older than these limits would be payable to the billing pharmacy or other provider.

Next Steps: None.

SB200: Teledentistry Definition

Sponsor: Senator Gerald Ortiz y Pino
Statute Amended: §61-5A-3 NMSA 1978 and §61-%a-21 NMSA 1978
Effective Date: May 18, 2021
Summary: The bill updates the definition of teledentistry to include a dentist, dental hygienist, or dental therapist as part of the definition (current law only includes dentists). The update to the definition reads:

> "a dentist's, dental hygienist's or dental therapist's use of electronic information, imaging and communication technologies, including interactive audio, video and data communications as

well as store-and-forward technologies, to provide and support dental health care delivery, diagnosis, consultation, treatment, transfer of dental data and education."

The bill also clarifies that a dentist, dental hygienist or dental therapist practicing teledentistry is subject to disciplinary proceedings pertaining to licensure.

Next Steps: None.

SB222: Health Information System Definitions

Sponsor: Senator Martin Hickey
Statute Amended: §24-14A-2 NMSA 1978
Effective Date: May 18, 2021
Summary: Senate Bill 222 (SB222) amends the definitions in the Health Information System Act (HISA) for aggregate data to remove the word "provider" and amends the definition of record-level data to remove the word "hospital" from the Act.

In 2015, HISA was amended to allow the Department of Health (DOH) to release data that is aggregated (grouped) by specific healthcare providers or hospitals. However, the current HISA definitions for "aggregate data" and "record-level data" conflict with that intent.

First, the current definition for "aggregate data" prevents DOH from identifying a provider (which includes hospitals). DOH releases health data aggregated by geographic area (county) and other factors such as sex and race/ethnicity, but it is also important to have health data grouped by individual hospitals. HISA was amended in 2015 to reflect this intent.

Second, the current definition of "record-level data" includes "provider or hospital" as a criterion. Record-level data identifying an individual patient or practitioner are never released by DOH, but the current definition also prevents DOH from identifying a "provider or hospital." As an example, under the current HISA definitions, DOH would not be able to release the number of diabetes hospitalizations aggregated by each hospital because identifying a hospital by name qualifies as a release of record-level data.

SB222 proposes a solution by removing the words "provider" or "hospital" as criteria in both definitions, and thus brings the two definitions into agreement with the intent of the 2015 amendment.

Next Steps: None.

SB279: Osteopathic Medicine Changes

Sponsor: Senator Bill O'Neill
Statute Amended: Multiple Statutes
Effective Date: May 18, 2021
Summary: Senate Bill 279 repeals the Osteopathic Medicine Act and amend the Medical Practice Act to authorize the New Mexico Medical Board (Board or NMMB) to license and regulate the practice of osteopathic medicine. The bill also amends Section 7-9-77.1 NMSA 1978 related to deductions from gross receipts for certain practitioners to replace the term Osteopathic Medicine Act with Medical Practice Act. The bill takes similar action in other statutes where the term Osteopathic Medicine Act must be replaced with the Medical Practice Act.

The bill also increases NMMB by two physicians to 10 physicians, two that must be medical physicians and two osteopathic physicians appointed by the governor from a list of five names submitted by the Osteopathic Medical Association or similar body. The bill increases regulatory fees used by the NMMB to carry out its duties and powers, which include establishing penalties for licensees who fail to comply with continuing medical education requirements.

Next Steps: NMMS will work with the Medical Board in merging of the two boards.

SB317: No Behavior Health Cost Sharing & Insurance Premium Surtax

Sponsor: Senator Martin Hickey and Senator Jeff Steinborn
Statute Amended: Multiple New Sections
Effective Date: January 1, 2022
Summary:

Behavioral Health Cost Sharing

The original bill created a five year "pilot" would add new sections to the Health Care Purchasing Act and to the Insurance Code to prohibit the imposition of cost-sharing by health insurers on behavioral health services covered by an individual or group health insurance policy, health care plan, or certificate of health insurance.

The bill defines "behavioral health services" to include inpatient hospitalizations, partial hospitalizations, residential treatment, detoxification, treatment of substance use disorder, intensive outpatient therapy, outpatient treatment and all medications; essentially, the full array of behavioral health services currently delivered in the health system.

The bill defines cost-sharing as deductibles, coinsurance and copayments.

The bill would require the Office of the Superintendent of Insurance (OSI) to collect data regarding the elimination of cost-sharing for behavioral health services. The bill would require OSI to report this data along with the effects of eliminating cost-sharing on both providers and patients in terms of the costs of behavioral health services, and the effects on patients in terms of health and social outcomes using health quality performance measurement tools developed by a nationally recognized organization. OSI would be required to report this information annually by November 1 to the Legislative Finance Committee and Legislative Health and Human Services Committee.

The cost-sharing prohibition would end on December 31, 2026 unless the legislature chooses to extend the prohibition.

Insurance Premium Surtax

The House Floor amended the legislation on the last night of the Session to amend the contents of HB122 into this legislation. HB122 establishes a "health care affordability fund" and raises the health insurance premium surtax by 2.7%.

House Bill 122's proposed health care affordability fund would be funded with a 55% distribution of revenues from the health insurance premium surtax, which the amendment proposes to raise from 1% to 3.7%. The health care affordability fund would be used to reduce healthcare premiums and cost-

sharing for New Mexico residents who purchase health insurance through the state's health insurance exchange, provide resources for the development and implementation of healthcare initiatives for uninsured New Mexico residents, reduce premiums for small businesses and their employees purchasing healthcare coverage in the fully insured small group market, and provide resources for the administration of healthcare initiatives for uninsured New Mexico residents. The healthcare affordability fund could also be used to maintain health insurance coverage for New Mexico residents with incomes below 200% of the federal poverty level in the event the federal Patient Protection and Affordable Care Act is repealed or struck down.

The increase to the health insurance premium surtax included in the amendment begins January 1, 2022. The new fund would receive a 52% distribution of surtax revenue from January 1, 2022, to June 30, 2022, 55% from July 1, 2022 through July 1, 2024, and 30% from July 1, 2024 onward.

Next Steps: None.

SB377: General Appropriations and Expenditures – Health Security Planning and Design Board Funding

Sponsor: Senator George Munoz
Statute Amended: Appropriations Bill
Effective Date: July 1, 2021
Summary: Senate Bill 377 is a bill that includes all appropriations from individual legislator funds and appropriates money to different programs statewide. Particularly, an appropriation of $575,000 to operate the Health Security Planning and Design Board was included in this bill. This funding is meant to implement HB203 outlined below.

House Bill 203 would create an 11-member Health Security Planning and Design Board administratively attached to the Office of the Superintendent of Insurance. The Board would be charged with the responsibility of making recommendations for a health security plan or program that would automatically provide guaranteed comprehensive health care coverage, including behavioral health, but omitting long-term care, to all New Mexico residents not exempted under federal law, and without regard to health, income level, or employment status.

The Board is directed to provide recommendations for the design of a health security plan that addresses: 1) provider payment systems; 2) global budgets for health care facilities; 3) bulk purchases of drugs, medical supplies, and equipment; 4) information technology system requirements; 5) waiver and agreement options for federal programs, including Medicaid and Medicare; 6) financing options; 7) supplemental health coverage; and 8) any other components deemed appropriate by the Board.

The Superintendent of Insurance is directed to convene the first meeting of the board no later than September 1, 2021. No later than September 1, 2022, the board shall present a status report to the legislative finance committee, the interim legislative health and human services committee and the governor. By September 1, 2023, the board shall present a final report to the legislative finance committee, the interim legislative health and human services committee and the governor that provides recommendations regarding design elements of the health security plan and proposed enabling legislation that would facilitate the establishment of such a plan.

Next Steps: NMMS continues to monitor the feasibility of the Health Security Act and will be actively engaged in the work of this commission. NMMS may recommend members for the Board.