

NORTH CAROLINA ASHRM LEGISLATIVE COMMITTEE REPORT

Healthcare Legislation Summary/Update

Spring Meeting April 24 – 26, 2019

The North Carolina General Assembly opened its long session January 9, 2019 with Republicans still holding the majority, but with Democrats gaining enough seats in the November election to allow them, and the Governor, more advantage at the policy table. This also will allow Democrats the power to break the Republican “veto-proof” supermajorities in both chambers. This greater bipartisan makeup of both chambers from the past session can either be an opportunity for successful compromise and progress among lawmakers or increase grid-lock between parties, allowing little to be accomplished. Senate Leader Phil Berger and the Speaker of the House Tim Moore are both calling on the Governor and the Democrats to work with Republicans for a successful session. Health care appears to be on everyone’s mind this long session, with many bills being introduced that would greatly impact this state’s health care systems, professionals, and patients.

North Carolina Healthcare (NCHA) State Legislative Priorities as of Jan. 1, 2019

Preserving the Safety Net North Carolina’s hospitals and health systems support a legislative approach that ensures federal funds received through payment programs and hospital taxes support hospital-based care for the uninsured. Hospitals and health systems oppose distributing those funds to entities that do not contribute to the tax or treat patients.

Certificate of Need Preservation North Carolina’s hospitals and health systems support the current Certificate of Need law and urge our legislators to protect the law, thereby protecting access to care for our communities.

Increased Access to Health Insurance North Carolina hospitals and health systems support increased access to affordable health insurance coverage for all North Carolinians and urge the General Assembly to close the coverage gap.

Tax Treatment Preservation North Carolina’s hospitals and health systems support the current non-profit sales and property tax laws.

Behavioral Health Reform North Carolina hospitals and health systems support increased access to resources for our behavioral health patients to ensure that they receive the right care at the right time in the right place.

Telehealth Expansion North Carolina hospitals and health systems support a legislative and regulatory solution, as well as reimbursement policies, that promote access to telehealth services for every North Carolinian in every part of the state.

Graduate Medical Education North Carolina’s hospitals and health systems support measures to address our state's current provider shortage through maintaining current medical education programs and expanding access to additional GME funds in more areas of the state.

State Health Plan The North Carolina State Health Plan should adopt proven methods to provide and coordinate quality driven care to improve the lives of state employees and retirees, while achieving efficiencies in cost for both the plan and taxpayers.

Honoring Assignment of Benefits North Carolina’s hospitals and health systems support measures to ensure providers are reimbursed for care provided to patients who have insurance coverage.

Workforce Development Language TBD Uniting hospitals, health systems and care providers for healthier communities 2 Updated Position Statements for Federal Legislative Priorities As of Jan. 1, 2019

ACA Repeal/Reform North Carolina hospitals and health systems oppose any action that destabilizes the insurance market, and supports a replacement plan that sustains insurance coverage gains in North Carolina.

Medicaid DSH Reductions North Carolina hospitals and health systems support the disproportionate share hospital (DSH) programs and oppose any attempts to reduce funding for our most vulnerable. Further, we feel cuts to the DSH program should be restored.

340 Drug Discount Program North Carolina’s hospitals and health systems support the 340B drug pricing program as it ensures adequate resources to provide needed services to our most vulnerable communities. We look forward to working with our elected leaders to ensure the program remains intact and transparent.

EMTALA Reform North Carolina hospitals and health systems urge Congress to modernize the Emergency Treatment and Active Labor Act to provide avenues for providers to get patients to the right care at the right place.

Area Wage Index Repeal North Carolina hospitals and health systems urge Congress to repeal the Area Wage Index amendment to the Affordable Care Act, as it unfairly subsidizes a few districts at the expense of everyone else.

MDH/LVH North Carolina hospitals and health systems support Medicare Extenders — such as the payments for Medicare-dependent, hospitals (MDH) and those hospitals with lower volumes (LVH) — and urge Congress to approve a clean extension so those most vulnerable hospitals can meet their community needs.

North Carolina Nurses Association Priorities

The SAVE Act – SB 143/HB 185 The SAVE Act would grant full practice authority to all Advanced Practice Registered Nurses, and it has received great support so far. NCNA continues our efforts to rally even more support for this important piece of legislation. More legislators (61!) signed on to sponsor or co-sponsor the SAVE Act than any previous version of the bill.

Medicaid Expansion Medicaid expansion has become a key issue for this year's legislative session, especially with Gov. Roy Cooper focus on the issue. With the legislature's new political balance this session, a veto from the Governor could have a more substantial impact. The bill sponsors have been cautious to distance their plan from traditional expansion, calling it instead "NC Health Care for Working Families." House Bill 655 would help to ensure coverage for people who do not otherwise qualify for Medicaid because they earn enough to purchase subsidized health insurance on the online marketplace created by the Affordable Care Act. NCNA has endorsed the bill and has been hard at work letting nurses know about the plan and advocating for its passage. It is estimated that 543,000 people, ranging from 19 to 64 years old and making slightly above the federal poverty level, would gain coverage through this proposal because over half of these individuals are currently going without any health.

HB 655 differs in that it includes a requirement to work for many of the recipients. Work requirement exclusions would be made for people caring for children, someone with a disability or a disabled parent, people determined to be "medically frail," pregnant and post-partum women, people engaged in substance abuse treatment programs and Indian Health Services beneficiaries.

Additionally, HB 655 would create a rural health grant program that would set aside millions of dollars annually towards recruiting and retaining providers and expanding telemedicine and mental health services in rural areas. The annual revenue from a new tax on managed-care groups who will be caring for most of the state's Medicaid patients would fund the grant program. Currently a majority of Republicans remain hesitant, if not strongly opposed, to Medicaid expansion

School Nurse Funding A bill by all three NCNA members in the house, Rep. Donna White, Rep. Adcock and Rep. Carla Cunningham, along with House Education Committee Chair Rep. Craig Horn, was filed to increase funding for School Nurses. House Bill 524 would provide over \$60 million in additional funding over the next three years and over \$30 million per year thereafter. Districts that (1) have a ratio of school nurses to students in the unit that is lower than the average ratio of school nurses to students in the State or (2) have a student population in the unit that is growing at a rate above the average rate of student population growth in the State, will receive prioritized funding.

State Health Plan Bill A bill that would delay efforts to move the state health plan to a reference-based reimbursement rate tied to a percentage of the Medicare fee schedule cleared the House on a bipartisan vote. House Bill 184 would create a multidisciplinary study committee to look at ways to manage and control costs in the State Health Plan. This plan covers roughly 726,000 state employees, retirees, and their family members.

The State Employees Association of North Carolina are in opposition of this bill, believing that the Treasurer's plan would prevent future premium increases. Thirty-six members of the House, from both parties, voted against the bill. Those in opposition claimed that the State is overpaying for services, that we need price transparency, and that this bill would have a great impact the budget.

Providers caution that cutting the reimbursement could bankrupt facilities and force them to shut down, especially in rural areas. The bill sponsors echoed these concerns and warned that the State Health Plan could have many unintended consequences, so the state should tread carefully. "We're genuinely, in the end, concerned about health care in rural areas of the state and in all areas of the state," said bill sponsor, Rep. Josh Dobson.

Funding for nurse educators at community colleges around the state is another issue that NCNA is monitoring. NCNA is strongly support the idea of improving the pipeline to help alleviate the impending nursing shortage, but it is unclear if the General Assembly will take up the issue at this time.

DHHS Issues Medicaid Transformation Seven-Year Forecast Legislative Report

The NC Department of Health and Human Services submitted a detailed seven-year forecast for Medicaid Transformation provided by a contracted actuarial firm, Mercer Government Human Services Consulting, to the Joint Legislative Oversight Committee on

Medicaid, on April 9, 2019. The forecast is the product of NC Medicaid's existing financial model, including data and analysis. Highlights include:

- Managed Care is anticipated to reduce expenditures for health care over time. Those reductions will almost completely offset the added cost to the State of Prepaid Health Plan administration (including profit), after the first contract year.
- Premium Tax is net neutral to the Prepaid Health Plans and produces a net gain for the State. From year one forward, the Tax receipts will enable the State to realize overall net savings from managed care.

The complete Legislative Report is located at <https://files.nc.gov/ncdma/NCGA-Report-7Year-Forecast-Final-20190409.pdf>

Two recent NC Court of Appeals cases worthy of mention

- Fairfield v. Wake Med: In this opinion (filed 10/1/18), the NC Court of Appeals again ruled the requirements of Rule 9(j) must be strictly complied with. Rule 9(j) is the rule of civil procedure in NC requiring that the plaintiff certify in the complaint that a physician has reviewed all of the relevant medical records prior to the filing of the complaint, and that the physician is expected to testify as an expert witness at trial. In this case, the plaintiff's Rule 9(j) certification stated that "certain medical records" had been reviewed by a physician who was expected to testify at trial as an expert. The Court of Appeals ruled that the plaintiff failed to comply with the requirements of Rule 9(j) and upheld the trial court's dismissal of plaintiff's complaint. The court held a certification stating that "certain medical records" instead of "all medical records" had been reviewed by plaintiff's expert was insufficient to meet the Rule 9 (j) pleading requirements
- Estate of Savino v. CMHA: This is an important case decided by the NC Court of Appeals in December of 2018. This is the first appellate ruling in NC on the pleading requirements for "administrative negligence" constituting medical malpractice since the enactment of Tort reform in NC effective 10/1/2011. The 2011 tort reform amendments to G.S. section 90-21.11 apply to "medical malpractice actions." The tort reform amendments define "medical malpractice actions" as 1) allegations of medical negligence by a healthcare provider, and 2) where a hospital or other entity is alleged to have breached its administrative or corporate duties to the plaintiff. "Administrative duties" include negligent credentialing, negligent monitoring and supervision allegations when these allegations against the hospital arise from the same circumstances giving rise to the claims against the healthcare provider(s).

The court in Savino made clear that the enhanced pleading requirements set out in the 2011 tort reform rules apply to administrative negligence claims as well as medical malpractice claims. In this case, plaintiff sufficiently alleged medical malpractice claims against individual healthcare providers, but did not adequately alleged administrative negligence claims against the hospital. Over defendant's objections, the plaintiff offered evidence at trial that the hospital failed (among other things) to adhere to protocols applicable to the hospital as a certified "Chest Pain Center." Since the plaintiff's complaint contained no allegations of administrative negligence against the hospital, the Court of Appeals ruled the trial court erred in allowing plaintiff to present evidence at trial of administrative negligence on the part of the hospital.

Respectfully submitted by Gayle Snyder, Legislative Committee Chairperson

Committee Members:

Erin Young, Megan Stanley, Dawn Ciokan, Allan Tarleton, Jason Newton, Carolyn Barnette, Shep Tapasak, Ryan Shuirman, John Holton, Michael Rothrock, Kristin White, Anita Baldwin, Sandy Williams, Carolyn Barnette, and Larry Jones

Special Assistance from James King, CHS Law (additional detailed report attached)