

July 28, 2020

IHA Overview of General Assembly's Spring 2020 Session

The Illinois General Assembly's spring 2020 session was unprecedented. Because of the COVID-19 pandemic, starting in mid-March, legislators paused the session for two months. Then in May, the General Assembly reconvened for an extraordinary special session, compressing a five-month session into four days.

Considering the challenging environment and circumstances, this was a successful spring session for the hospital community. Among the key achievements were: reauthorization of the \$3.8 billion Hospital Assessment Program, including a net annual gain of nearly \$450 million for hospitals and health systems; a new state budget for FY2021 that does not include any Medicaid cuts and establishes the Coronavirus Urgent Remediation Emergency (CURE) fund that serves as the repository of billions of dollars of federal COVID aid to the state; and bi-partisan agreements on workers' compensation and unemployment insurance.

Beyond these important, high-profile issues, IHA worked on your behalf to closely track and influence hundreds of other bills and issues – successfully blocking bills that would have imposed unnecessary or onerous burdens or requirements on hospitals and health systems. We greatly appreciate the strong support and advocacy of our members and the leadership of the IHA Board of Trustees that enabled IHA and the hospital community to work together during this historic and unusual legislative session.

We are pleased to provide this detailed overview of the key bills that IHA worked on to ensure the best possible outcomes for the hospital community.

Hospital Assessment Program

[SB2541](#) – (Sen Heather Steans/Rep. Greg Harris)

Medical Assistance (Reauthorization of Hospital Assessment Program)

[Public Act 101-0650](#)

This legislation reauthorizes the Hospital Assessment Program under the Phase II model agreed to in April by IHA, the Department of Healthcare and Family Services (HFS) and the Legislative Medicaid Work Group. HFS is already seeking federal CMS approval of the \$3.8 billion plan to go into effect July 1, 2020.

Key components and impacts of the legislation include:

- A \$449 million estimated, annual net gain in payments for Illinois hospitals, including:
 - \$249 million increase in Assessment and NIPS payments (13% increase);
 - \$150 million for hospital transformation; and
 - \$50 million for hospital affiliated physician rate increases.
- Financing includes approximately \$103 million in new General Revenue Funds (GRF);

- Nearly all health systems and independent hospitals have a projected net benefit under the Assessment Phase II model and NIPS payment conversion;
- More of the Assessment funds are allocated based on current utilization and, over the next seven years, the funds will increasingly “follow the patient”;
- The needs of safety net hospitals, critical access hospitals and high Medicaid hospitals receive added consideration;
- Converts the outdated Non-institutional Provider Services (NIPS) payment system to the hospital outpatient system (EAPG);
- A new hospital and healthcare transformation program is established; however, agreement could not be reached on the criteria and process for allocating the \$150 million in transformation funds so discussions on the details of the program will continue over the summer, as the bill requires the General Assembly to authorize the criteria that HFS will use to allocate the funding;
- Requires the Medicaid physician rates to be increased to approximately 60% of the Medicare rates – a \$150 million increase in spending;
- Codifies the Assessment tax and payment methodologies, including:
 - Provides that the tax will be adjusted to reflect actual payments that are paid to prevent the tax from “over-financing” the program; and
 - Permits HFS to adjust the rates used in the fixed rate directed payments if the volume of paid claims is less than expected (e.g., as they have done this quarter due to the COVID-19 pandemic) so that the anticipated total spending level is achieved.
- Requires the State and MCOs to make timely payment of directed and pass-through payments;
- Continues the current “Maintenance of Effort” protection so that the Assessment tax and payments terminate if hospital base payments are reduced below the current level;
- Sunsets the assessment tax and payments on December 31, 2022.

Hospital Closure Provisions in Assessment Legislation

- Prior Notice: Section 8.7 of the Health Facilities Planning Act is amended to require a hospital to provide a written notice to its local officials at least 30 days before it files a CON application to close the hospital.
- Recovery of payments: If a non-profit hospital is acquired by an investor owned organization and then closes within 12 months of the change of ownership, certain hospital assessment payments are subject to recovery. The penalty would be equal to the hospital’s fee for service supplemental payments and pass-through payments for each month from its change of ownership to its closure. This provision sunsets on July 1, 2021.

FY2021 State Budget

[SB264](#) – (Sen. President Don Harmon/Rep. Greg Harris)

Appropriation (State Budget)

[Public Act 101-0637](#)

The approved budget of approximately \$42 billion – with no Medicaid cuts – includes a new Coronavirus Urgent Remediation Emergency (CURE) fund in response to the likely ongoing expenses associated with the COVID-19 pandemic, appropriating \$1.5 billion to a number of agencies. The Department of Healthcare and Family Services (HFS) received approximately \$830 million in appropriation authority from the fund to reimburse expenses incurred by providers during the crisis. The legislation notes that

there are disproportionately impacted areas of the state, based on COVID-19 cases, and these areas will receive special consideration in allocations from the fund. The CURE funding is in addition to HFS' standard operating budget, which was slightly increased by approximately \$430 million over last year's General Revenue Fund budget and contains no eligibility, service or rate reductions.

Senate Bill 264 also contains several notable supplemental appropriations by either increasing or creating appropriation authority in the current fiscal year to numerous agencies in response to the COVID-19 pandemic, including:

- Additional funding for the Department on Aging for home services and meals, and for relief funding for schools;
- The Department of Public Health received more than \$277 million in additional FY2020 appropriation for expenses related to testing and other services performed by local health providers, as well as \$200 million to develop contact tracing and testing; and
- HFS received a \$382 million increase in its FY 2020 budget.

SB2099 (Sen. President Don Harmon/Rep. Mike Zalewski)
Coronavirus Urgent Remediation Emergency (CURE) Borrowing Act
Public Act 101-0630

This legislation authorizes the State to borrow up to \$5 billion from the Federal Reserve Bank's recently created Municipal Liquidity Facility. Access to these loans is intended to assist state and large local governments to deal with temporary cash flow problems generated by the negative impact of the COVID-19 pandemic on government revenues.

The Federal Reserve Bank of New York will lend funds to a special purpose vehicle (SPV) until December 31, 2020. The SPV is authorized to purchase up to \$500 billion of tax anticipation notes, tax and revenue anticipation notes, bond anticipation notes and other short-term notes as long as these notes mature no later than 36 months from the date they were issued. The \$500 billion figure represents approximately 20% of state and local governments' own source general and utility revenues of \$2.4 trillion in 2017 and over ten times as much as the \$40 billion that these governments borrowed in short-term instruments in 2019.

Illinois can borrow up to \$9.7 billion from the Municipal Liquidity Facility, based on an estimated total of \$48.4 billion in own source general and utility revenues. The City of Chicago could borrow up to \$1.4 billion, based on own source general and utility revenues of \$2.7 billion. Illinois' constitutional and statutory short-term debt limitations may limit the amount of funding that the State can access from the Municipal Liquidity Facility. The state may only borrow funds in an amount that is up to 15% of fiscal year appropriations to deal with emergencies or failures of revenues. It may only borrow for cash flow purposes in an amount up to 5% of fiscal appropriations.

HB357 (Rep. Greg Harris/Sen. President Don Harmon)
Budget Implementation - Key Healthcare Related Provisions
Public Act 101-0636

Pandemic Related Stability Payments for Healthcare Providers

- New Section 5-5.7a of the Public Aid Code requires the Department of Healthcare and Family Services, in accordance with the Illinois Emergency Management Agency, to develop a process and basis to distribute pandemic related stability payments, from

federal sources dedicated for such purposes, to health care providers that are providing care to Medicaid beneficiaries.

- Federal sources dedicated to pandemic related payments include, but are not limited to, funds distributed to Illinois from the Coronavirus Relief Fund pursuant to the Coronavirus Aid, Relief, and Economic Security Act ("CARES Act").
- Pandemic related stability payments for these providers shall be separate and apart from any other Medicaid rate methodology.
- Payments shall be exclusively used for expenses related to the COVID-19 pandemic.
- Pandemic related stability payments will be distributed based on a schedule and framework to be established by the Department with recognition of the pandemic related acuity of the situation for each provider, taking into account factors including, but not limited to, the impact on patients and staff, shortages of PPE, a high number of patients or staff with COVID-19, increased staffing and equipment costs and reductions in revenue.
- Of the payments provided for by this section, a minimum of 30% shall be allotted for health care providers that serve the ZIP codes located in the most disproportionately impacted areas of Illinois, based on positive COVID-19 cases based on data collected by the Illinois Department of Public Health.

Medicaid Coverage for Low-income, Undocumented Persons over Age 65

- HFS may expand Medicaid eligibility to noncitizens over the age of 65 whose income is at or below 100% of the federal poverty level, after deducting the costs of medical or other remedial care, and who would otherwise meet the eligibility requirements in Section 5-2 of the Public Aid Code.
- HFS shall define by the rule the medical services available, standards for eligibility, and other conditions of participation for these individuals.

Federally Qualified Health Center PPS Rate Increase

- Effective January 1, 2021, based on the funds that are specifically appropriated, the Prospective Payment System (PPS) rates for FQHCs shall be increased based on the cost principles found at 45 Code of Federal Regulations Part 75.
- Such rates shall be increased by using any of the following methods: reducing the current minimum productivity and efficiency standards no lower than 3500 encounters per FTE physician; increasing the statewide median cost cap from 105% to 120%; or a one-time re-basing of rates utilizing 2018 FQHC cost reports.
- \$25 million is appropriated in State fiscal year 2021 for updating the FQHC PPS rates.

HB64 (Rep. Jay Hoffman/Sen. President Don Harmon)

Capital Plan Appropriations

Public Act 101-0638

Under House Bill 64, \$200 million is reappropriated for the Hospital & Healthcare Transformation Capital Investment Program. Also, various hospital specific grants are appropriated and reappropriated from last year's capital bill.

COVID-19 Response Measures

[SB1864](#) (Sen. Mattie Hunter/Rep. Greg Harris)

[SB671](#) (Sen. Scott Bennett/Rep. Deb Conroy)

Telehealth

[Public Act 101-0649](#)

SB671 Senate Concurrence Calendar

IHA's legislative request on telehealth included codifying and extending both the Governor's Executive Order (EO 2020-09) requiring commercial payers to provide telehealth benefits and HFS' emergency rules expanding coverage of telehealth services (89 Ill. Adm. Code 140.403(e)) for one year after the end of the COVID-19 public health emergency.

The final disposition of telehealth-related legislation included a provision in the COVID-19 health care package (SB1864) that permits the Department of Healthcare and Family Services to continue to pay for additional telehealth services, such as those outlined in the emergency rules, for up to 12 months after the emergency period ends. The commercial payer telehealth mandates in EO 2020-09 were included in SB671, which passed the House by a vote of 113-0, but subsequently stalled in the Senate due to strong objections from insurance carriers.

As it stands today, the Governor's telehealth EO is in place until May 29. If the Governor does not extend his emergency proclamation, then the commercial insurance telehealth coverage and benefit requirements will cease; however, the Medicaid telehealth rules will continue, subject to the discretion and authorization of HFS.

[HB2455](#) – (Rep. Jay Hoffman/Sen. Linda Holmes)

Workers' Compensation and Unemployment Insurance

[Public Act 101-0633](#)

House Bill 2455, as amended, represents an agreed bill negotiated by members of all four caucuses in the General Assembly and representatives of Business and Organized Labor. The Workers' Compensation changes allow for an employer to rebut a claim if the employee was at home or on leave from employment for 14 days prior to exposure, the employer defined and practiced industry specific workplace safety guidelines and PPE, or the employee was exposed to COVID-19 from an alternate source.

The adoption of the Unemployment Insurance provisions of the legislation will result in an additional \$21 million in administrative assistance to the Illinois Department of Employment Security, federal coverage of the first week of unemployment insurance benefits for all claimants, and roughly \$2.2 billion in relief to the Unemployment Insurance Trust Fund through reimbursements and offsets. For non-profit hospitals that are unemployment insurance reimbursable employers, this legislation authorizes 50% reimbursement for unemployment charges from March 15 to December 31 for direct or indirect COVID triggered unemployment.

[SB557](#) (Sen. Melinda Bush/Rep. Kelly Cassidy)

Temporary FQHC Services under SASETA

[Public Act 101-0634](#)

An initiative of the Cook County States' Attorney, Senate Bill 557 House Amendment 2 temporarily adds approved federally qualified health centers (FQHCs) to the Sexual Assault Survivors Emergency Treatment Act (SASETA). Under the legislation, FQHCs can submit a sexual assault treatment plan for Illinois Department of Public Health (IDPH) approval to provide medical forensic services to sexual

assault survivors 13 years old or older during, and 90 days after, a Governor-proclaimed disaster issued in response to a public health emergency. FQHCs will be subject to the same requirements as hospitals and approved pediatric healthcare facilities, with a key difference: qualified medical providers, physicians, physician assistants and advance practice registered nurses at the FQHC must complete 10 hours of sexual assault training prior to providing medical forensic exams and evidence collection. The changes to SASETA advanced under this legislation will be automatically repealed on June 30, 2021.

Hospital Workforce

HB 2604/HA2 (Crespo)

Nurse Staffing Ratios

Placed on Calendar 2nd Reading

This significant and controversial issue has been under discussion and before the General Assembly for many years. With the Legislature's truncated session concluding in late May, most issues not receiving strong bipartisan support did not advance. With workforce issues front and center throughout COVID-19 we know unions will continue to pursue nurse staffing ratios next session.

HB3081 (Rep. Camille Lilly)

Hospital Workforce Insurance

Placed on Calendar 2nd Reading

This bill would have required hospitals to provide health insurance coverage to their entire workforce, regardless of whether the employee already has, or has to access to, insurance through a spouse, a parent, another employer, or other resource. The bill also required the Department of Insurance (DOI) to conduct a study of the insurance status of Illinois residents to better understand gaps in coverage. For the uninsured, the study would focus on whether "part-time or full-time working status" is a reason for being uninsured. For the insured, the study must identify whether insurance is employer- or marketplace-based. DOI would be required to submit its findings to the General Assembly within a year of the effective date of the legislation. Due to the COVID-19 shortened Session, this bill did not advance.

HB3088 (Rep. Camille Lilly)

Hospital Bonus Prohibition

Postponed Consideration

The legislation creates the State Agency and Grantee Bonus Prohibition Act. Under the Act, non-union state agency employees and hospital employees would be prohibited from receiving a compensation bonus from state funds that came in the form of a grant for either the operational expenses or capital projects.

We question why hospitals are singled out with state agencies. If state funds shouldn't be used in this capacity, then this restriction shouldn't be limited to hospitals and state agencies, but applicable to all state grant recipients.

HB3361 HCA3 (Rep. Fred Crespo)

Nurse Reporting Time Pay

Labor and Commerce Committee

The bill and subsequent amendments would require nurses be paid for up to half of their scheduled time at their normal rate of pay if they are called off from the previous schedule. Scheduling needs are contingent on patients. Patient needs and changing patient census must be balanced with available staff and finite resources. Paying staff when they are not working diverts finite

resources away from incentive pay offered when additional staff are needed due to high census and patient care needs. The effects and impacts of COVID-19 highlight the volatility regarding the need to be flexible. We anticipate this issue will be brought forward again next year.

HB4699 (Rep. Edgar Gonzales)

Covenants Not to Compete

Labor and Commerce Committee

This bill would prohibit non-competes for all workers—not just low wage workers. This would negatively impact hospitals that expend considerable sums to recruit physicians. Restrictive covenants are a necessary and reasonable mechanism for protecting such hospitals legitimate business expenses. Due to the COVID-19 shortened Session, this bill did not advance.

SB2397 SA1 (Sen. Laura Fine)

Infection Preventionist

Referred to Assignments

In response to the COVID-19 crisis, this amendment proposed adding additional requirements for hiring of infection prevention staff. However, based on the substantive provisions of the bill there was nothing that would have required immediate passage to assist in combating the current spread of COVID-19. In fact, with a January 1, 2021 effective date, hospitals and infection preventionists would have been distracted by additional compliance regulations at a time when they were laser focused on preparing for and responding to a global health care crisis. IHA supported holding the legislation until we are on the other side of the pandemic, when the practical lessons learned can be used to make educated, experience-based improvements to health care.

SB3430 (Sen. Heather Steans)

Freedom to Work

Referred to Assignments

This bill would have amended the Illinois Freedom to Work Act by extending the applicability of the Act to all employees. Specifically, it would have provided that a covenant not to compete is illegal and void if the employee does not receive adequate consideration and the covenant is ancillary to a valid employment relationship. It would have required that covenants not to compete to be no more expansive than required for the protection of legitimate business interests, to not impose undue hardship on the employee, and to not be injurious to the public. It would have required notice and an opportunity for review to be given to the employee, as well as authorized employees to recover costs and attorney's fees.

SB3636 (Sen. Kimberly Lightford)

Nurse Staffing Improvement Act

Referred to Assignments

The American Nurses Association-Illinois (ANA-IL) and IHA agreed on The Nurse Staffing Improvement Act of 2020 that provides a meaningful opportunity to improve quality and patient safety by advancing the partnership between direct care nurses and the hospital community and giving nurses a voice in determining appropriate staffing levels at hospitals, based on the conditions and care needs (acuity) of their patients. Due to the COVID-19 shortened session, this bill did not advance.

Liability

HB4774 (Rep. Curtis Tarver)

Gov Liability - Fail to Diagnose

Civil Procedure Subcommittee

This bill proposes to delete the existing immunity provisions for governmental hospitals for failure to diagnose. At a time when hospitals have been ordered, by the Governor's Executive Order 19, to render assistance to aid the state's response to the COVID-19 pandemic by cancelling elective procedures, the likelihood that a diagnosis could be missed is greater than ever. Hospitals should not be penalized for responding to the Governor's request by exposing themselves to increased liability concerns. Due to the COVID-19 shortened Session, this bill did not advance.

HB5044 (Rep. Jay Hoffman)

Civ Pro-Forum Non Conveniens

Civil Procedure Subcommittee

This bill proposes to remove the forum non-conveniens provisions at a time when the COVID-19 pandemic could potentially spawn countless lawsuits. Hospitals should not be penalized for responding to the Governor's request by exposing themselves to increased liability concerns.

HB5769 (Rep. André Thapedi)

Personal Protective Equipment Responsibility Act

Referred to Rules Committee

This bill would have created the Personal Protective Equipment Responsibility Act which would have required an employer, designated as an essential employer under a disaster proclamation issued pursuant to the Illinois Emergency Management Act or an executive order issued pursuant to the disaster proclamation, to provide personal protective equipment to independent contractors and to all employees during the duration of the disaster proclamation or executive order. Failure to comply would have resulted in the recovery of damages, including punitive damages, and attorney's fees. While this bill was not advanced during the 2020 COVID-19 shortened session, we expect this and similar bills in the future.

SB3148 (Sen. Bill Brady)

Civ Pro-Instruction-Liability

Referred to Assignments

This bill proposes to change the joint and several liability provisions in existing law at a time when the COVID-19 pandemic could potentially spawn countless lawsuits. Hospitals should not be penalized for responding to the Governor's request by exposing themselves to increased liability concerns.

SB3851 (Sen. Iris Martinez) HB5629 (Rep. Robyn Gabel)

Midwives Practice Act

SB 3851 Re-referred to Assignments

HB5629 Approp Human Services

The liability provisions contain in this bill expose hospitals to fully liability when they have no control over the actions of people not on their medical staff and who are delivering care outside of their facility. Supporters of this legislation attempted to leverage the COVID-19 pandemic to allow for lay midwife licensure reciprocity. Since Illinois does not currently licenses midwives, reciprocity was not possible. IHA and our members strongly oppose current liability provisions in the legislation. Furthermore, at a time when hospitals are stepping up during COVID-19, they should not be further exposed to increased liability.

Insurance

HB4633 (Rep. Lindsey LaPointe) SB2740 (Sen. Laura Fine)

Commercial Payer Behavioral Health Service Protections

HB4633 Assigned to Insurance Committee

SB2740 Referred to Assignments

These bills sought to impose more stringent network adequacy standards, requiring insurers to ensure beneficiaries receive more timely and proximate access to treatment for mental, emotional, nervous or substance use disorders or conditions. Specifically, the legislation establishes limits on how long beneficiaries can travel to receive behavioral health treatment, as well as restrictions placing limits on the amount of time between appointments. Additionally, if it is determined there is no in-network facility or provider available to ensure a beneficiary receives timely and proximate access to treatment within the minimum network adequacy standards, the payer must provide necessary exceptions to its network to ensure admission and treatment with a provider or at a treatment facility in accordance with those network adequacy standards. Due to the COVID-19 shortened Session, this bill did not advance.

HB5498/SB3678 (Rep. Deb Conroy/Sen. Laura Fine)

Insurance Medical Necessity Determinations

HB5498 Assigned to Mental Health Committee

SB3678 Referred to Assignments

This IHA-supported legislation would have required health insurers to ensure medical necessity determinations concerning mental health and substance use disorder services are fully consistent with generally accepted standards of behavioral health care as well as permit the Illinois Department of Insurance to impose monetary penalties for noncompliance with these requirements. Due to the COVID-19 shortened Session, this bill did not advance.

HB5510 (Rep. Greg Harris) SB3822 (Sen. Linda Holmes)

Prior Authorization Reform

Referred to Assignments

IHA strongly supported this legislation, which would have reformed what has become a very broken system by requiring transparency, appropriate peer-to-peer review, medically appropriate timelines for both urgent and non-urgent care, and continuity of care regarding prior authorization. Due to the COVID-19 shortened Session, this bill did not advance.

Regulation

HB3090 HA2/HB4590 (Rep. Camille Lilly)

Reporting Deaths in Custody

HB3090 Placed on Calendar 2nd Reading

HB4590 Assigned to Judiciary – Criminal Committee

This legislation required the investigation and public reporting of a death occurring while a person is in custody of a peace officer. However, when a hospital treats inmates, detainees or arrestees, they are all “in custody of a peace officer.” As recently demonstrated during the COVID-19 crisis, when correctional facility inmates remained in custody while receiving medical treatment at the hospital, this bill should be revisited with that issue in mind.

HB3662 (Rep. Mary Flowers)

IDPH - Diagnostic Algorithm

Assigned to Human Services Committee

This legislation would have required the Illinois Department of Public Health (IDPH) and the Department of Innovation and Technology (DoIT) to certify any diagnostic algorithm for diagnosing a patient prior to its use in addition to requiring the hospital to notify the patient of the use of diagnostic algorithms and given the option to be treated without their use. We believe all tools should be available to practitioners both pre- and post-COVID-19 as they strive to deliver the best outcomes. Due to the COVID-19 shortened Session, this bill did not advance.

HB 3684 (Rep. Aaron Ortiz)

Hospitals - Language Services

Health Care Licenses Committee

Removal of a hospital license is a very steep penalty for failure to comply with the Language Assistance Services Act. There are many components to the existing Language Assistance Services Act including, including penalties. Due to the COVID-19 shortened Session, this bill did not advance.

HB4380 (Rep. Marcus C. Evans, Jr.) SB2563 (Sen. Cristina Castro)

Fire/Smoke Damper Inspection

HB4380 Assigned to Labor & Commerce Committee

SB2563 Referred to Assignments

This legislation would have created the Fire and Smoke Damper Inspection Act, requiring hospitals with fire and smoke dampers to be inspected at least once every 6 years and be certified to be in compliance with the 2012 International Building Code which sets up conflicting compliance issues. Due to the COVID-19 shortened Session, this bill did not advance.

HB4474 (Rep. Karina Villa)

Marlen's Law | Identification of parents or guardians of infant in emergency department

Referred to Rules Committee

If an infant 3 months old or younger is admitted to the hospital with visible signs of abuse or neglect, this legislation would have required the hospital to verify any person individual accompanying the infant is the parent/guardian, or is permitted by the infant/guardian to accompany the infant. If the hospital is unable to do so, the person would be required to provide a DNA. There are significant practical and legal challenges to implementing this legislation. Due to the COVID-19 shortened Session, this bill did not advance.

HB4769 (Rep. Deanne Mazzochi)

Parent Abuse/Neglect for Vitamin K Shots

Assigned to Adoption & Child Welfare Committee

This legislation would have removed several medical care items as the sole purpose for a healthcare provider to report a child as neglected, including a refusal of Vitamin K at birth. Due to the COVID-19 shortened Session, this bill did not advance.

HB4842 (Rep. Lindsey LaPointe)

Supported Decision-Making Agreements

Assigned to Judiciary - Civil Committee

This bill authorized the creation of supported decision-making agreements, which would have allowed a supporter to assist a principal in accessing, collecting or obtaining information relevant to a decision authorized under the agreement. This could include helping the principal understand available options, making appointments, ascertaining wishes and decisions, and assisting in making those decisions, among other responsibilities. Due to the COVID-19 shortened Session, this bill did not advance.

HB5164 (Rep. Sue Scherer)

Record Copy Fees-Elimination

Assigned to Health Care Licenses Committee

This legislation eliminated the ability of hospitals to charge a fee for patient records. Strongly oppose by IHA and other organizations, as HIPAA generally limits the cost of copies to a patient, or their personal representative, for health care purposes, to a reasonable, cost-based fee and Illinois law already allows for many free record requests (e.g., federal veterans' disability benefits, subpoenas). Outside of federal or state law, Managed Care Organizations often receive copies for free or at discount. This bill did not advance.

HB5233 (Rep. Grant Wehrli)

Intellectual Disability/Developmental Disability Patient Outreach Requirement

Assigned to Human Services Committee

This legislation would have required a hospital to notify a parent or guardian of an adult patient diagnosed with an intellectual or developmental disability before the patient was discharged and transferred to a mental health facility. This legislation created an additional burden on hospitals, which already struggle to discharge and place ID/DD patients. The bill did not advance due to the COVID-19 shortened session.

HB5257 (Rep. Lamont Robinson)

Hospital – Nursing Home Legionnaires

Referred to Human Services Committee

IHA has been working with IPDH on their comprehensive water quality legislation (**SB3390/HB4851**) and prefer continuing to work with IDPH and other stakeholders to address water quality regulation.

SB2309 (Sen. Patricia Van Pelt)

Unidentified Patient

Referred to Assignments

Pre-COVID-19 Sen. Van Pelt organized key stakeholders to address concerns with her original bill, while working to reach compromise. We anticipate an amendment will be forthcoming, however due to the COVID-19 shortened Session, this bill did not advance.

SB3266 (Sen. Laura Fine)

Facility Provided Medications

Referred to Assignments

While an idea with merit, implementing such legislation would require additional staff and resources which are not available under normal circumstances and would be particularly difficult to maintain during a pandemic. IHA worked with ISMS and the Illinois Association of Health System Pharmacists on an amendment. Due to the COVID-19 shortened Session, this bill did not advance however we anticipate additional discussions.

SB3390 (Sen. Lauran Ellman) HB4851 (Rep. Natalie A. Manley)

Water Quality Assurance

SB3390 Referred to Assignments

HB4851 Referred to Rules Committee

An initiative of The Illinois Department of Public Health in response to numerous legionella outbreaks, IHA discussed member concerns with IDPH several times prior to and at the beginning of the COVID-19 pandemic. While this bill ultimately did not advance due to the COVID-19 shortened session, we expect the legislation to return. IHA will engage with IDPH in an effort to seek needed policy and compliance changes.

SB3419 (Sen. Patricia Van Pelt)

Non-Transplant Organ Donation Regulation

Referred to Assignments

This legislation attempted to regulate non-transplant tissue. Concerns were raised surrounding conflicts that appeared to exist with provisions of the Illinois Anatomical Gift Act, HIPAA, and CLIA. IHA supports amending the bill to require a study of this complex issue by IHA and other pertinent stakeholders.

SB3753 (Sen. Julie Morrison)

Surgical Smoke Elimination

Referred to Assignments

This legislation required hospitals to develop a policy to ensure the elimination of surgical smoke by use of a surgical smoke evacuation system for each procedure that generates surgical smoke from the use of energy-based devices, such as electro surgery and lasers. Hospitals would have been required to report their policy to IDPH within 90 days of enactment of the legislation. Due to the COVID-19 shortened Session, this bill did not advance.

SB3778 (Sen. Bill Cunningham)

Legionella Control System

Referred to Assignments

IHA has been working with IDPH on their comprehensive water quality legislation (**SB3390/HB4851**) and prefer continuing to work with IDPH and other stakeholders to address water quality regulation.

Behavioral Health/Substance Use Disorders

HB3840 (Rep. La Shawn Ford/Sen. Mattie Hunter)

Free Opioid Antagonists in Hospitals

Re-referred to Assignments Committee

This bill sought to require hospitals to send an opioid overdose survivor home from the hospital with either one dose of an opioid antagonist (e.g., naloxone) or a prescription—at no charge. As drafted, the bill was not operationally, clinically or fiscally sound. For example, “hospitals” were directed to write prescriptions; however, hospitals are not prescribers. Additionally, practically speaking, when responding to a fentanyl overdose, one dose of an opioid antagonist won’t typically address an overdose. At approximately \$150 per dose, most survivors won’t be able to pay for the antagonist and, as drafted, the legislation would prohibit hospitals from accessing Medicaid or private insurance for any reimbursement. Finally, there is nothing in the bill to prohibit drug manufacturers from raising the price to capitalize on this new mandate.

HB3889 (Rep. La Shawn Ford)

Prescription Monitoring Program Requirements for Opioid Treatment Programs

Assigned to Human Services Committee

The legislation amended the Illinois Controlled Substances Act to require opioid treatment programs (OTPs) that prescribe Schedule II, III, IV or V controlled substances for the treatment of opioid use disorder to report daily to the Illinois Prescription Monitoring Program (ILPMP). OTPs are programs that provide medication-assisted treatment for people diagnosed with an opioid-use disorder (what is frequently thought of as a methadone clinic). No OTPs are currently known to operate out of an Illinois hospital. OTPs are not currently defined in the Illinois Controlled Substances Act, and an amendment to this bill may be necessary to define OTPs in order to ensure they are not excluded in future IDHS rules.

HB3969 (Rep. Sue Scherer) HB4880 (Rep. Stephanie A. Kifowit) SB2757 (Sen. Sara Feigenholtz)
DCFS-Mechanical Restraints

HB3969 Assigned to Special Issues (ACSI) Committee

HB4880 Adoption and Child Welfare Committee

SB2757 Referred to Assignments

These measures were introduced in response to reports that DCFS transport contractors were using mechanical restraints on children. Implementation concerns and inappropriate delays in care were raised as further issues that needed to be addressed. Due to the COVID-19 shortened Session, none of these bills advanced.

HB4785 (Rep. Mary Edly-Allen)

Opioid Prescribing Education Requirement

Assigned to Health Care Licenses Committee

This legislation required that when a practitioner dispenses any controlled substance that is an opioid, the cap or dispenser must be marked clearly with an orange “opioid” sticker and a warning label stating “Risk of addiction and overdose.” The practitioner would also be required to provide each person with a Department of Human Services-developed and approved pamphlet that includes guidance on the risks associated with opioid use and how to mitigate them, and must include the Illinois Helpline for Opioids and Other Substances helpline number.

HB4841 & HB5113 (Rep. Deb Conroy)

SB3760 (Sen. Ram Villivalam)

State-operated Mental Health Facilities Patient Early Release

HB4841 & HB5113 Assigned to Mental Health Committee

Referred to Assignments

These bills would have had significant indirect impact on Illinois hospitals by allowing for the early release of patients from State-operated mental health facilities (SOHs) to community-based treatment when certain conditions are met. This would include a determination that the patient is no longer, due to mental illness, expected to inflict serious physical harm upon themselves or others, or when they may be safely restored to fitness to stand trial and can receive treatment on an outpatient basis. No language was included in the legislation to encourage these patients to be transferred or admitted to SOH civil beds, if necessary, which should be encouraged before moving forward with a system dependent on a forensic patient re-admitting to a private hospital after release. This legislation was opposed due to concerns about the lack of resources and environment requirements that would be necessary to ensure the safety of the SOH patients, other hospital patients and hospital staff.

HB4997 (Rep. Charlie Meier) SB2340 (Sen. Laura Fine)

Controlled Sub-Opioid<18

Health Care Licenses

Senate Assignments

Proponents organized stakeholders to discuss the bill with IHA, ISMS, and the American Academy of Pediatrics. After productive discussions an amendment was proposed. Due to COVID-19, no further action was taken this session.

SB3449 (Sen. Robert Peters) HB5009 (Rep. Kelly Cassidy)

Emergency Mental Health Care

SB3449 Re-referred to Assignments

HB5009 Mental Health Committee

This bill sought to establish a separate behavioral health emergency response system yet without funding or training. While this bill seems to further fragment an already fragmented system, we expect more conversation to occur. Due to the COVID-19 shortened Session, this bill did not advance.

Patient Billing, Pricing and Prompt Pay

HB4458 (Rep. Allen Skillicorn) SB2057 (Sen. Laura M. Murphy)

Prompt Payment Act

HB4458 Referred to Rules Committee

SB2057 Referred to Assignments

Strongly opposed by IHA, as these bill further incentivized using service providers as a financing mechanism for the State. Establishing bill payment delays as a very low cost financing option provides a financial incentive for policymakers to extend the backlog of bills—now approaching \$6.5 billion—advancing a practice that effectively turns service providers into involuntary lenders. The Prompt Payment Act was established to enforce an interest rate penalty intended to discourage the practice of pushing bills off and creating backlogs of bills to providers. 2019 survey data collected by the Illinois Health and Hospital Association found that on average: State employee health insurance claims payments are 167 days late; Medicaid fee-for-service claims payments are 255 days late; and Medicaid MCOs claims payments are 181 days late. These bills provided that if payment is not issued to the payee within a 90-day period, an interest penalty of 0.3% (HB 4458) and 0.25% (SB 2057) would be incurred. The current prompt payment rate is 1% of any amount approved and unpaid for each month, or 0.033% of any amount approved and unpaid for each day, after the end of the 90-day period, until final payment is made. Hospitals and other healthcare providers could not borrow funds at the rate proposed by these bills. No legislation this year advanced that would alter current prompt pay provisions.

HB4655 (Rep. Deanne M. Mazzochi)

Patient Billing

Referred to Rules Committee

This bill would have required hospitals, in *all* cases in which an amount billed exceeded \$50,000 over a 72 hour period, to provide a copy of all “electronic records” used to generate the charges to the patient or family, within 5 days of billing or the date of the request, whichever is later. There is currently a process in which a patient, who believes there is an inaccuracy on their hospital bill, can request an audit. During this process, the medical record would be compared to the itemized hospital bill to ensure everything was billed correctly. Any discrepancies would be adjusted and a new bill issued.

HB4995 (Rep. Charles Meier)

Urgent Care Price Posting

Referred to Rules Committee

This legislation would have required an urgent care facility to post and make available the prices for the top 10 procedures or treatments the facility regularly performs. The Illinois Health Finance Reform Act Sec. 4-4 (Reform Act) already requires hospitals to publicly display charges for certain services, and hospitals are currently subject to a CMS rule that requires them to post on their website a list of gross charges for all items and services.

HB5086 (Rep. LaToya Greenwood)

Hospital Postings

Assigned to Human Services Committee

The bill would have required hospitals with property tax exemptions to post the hospital’s charity policy and financial counselor contact information in the emergency room. Under both Federal and State law,

including the Illinois Fair Patient Billing Act, the Illinois Hospital Uninsured Patient Discount Act and Section 501(r) of the Internal Revenue Code, hospitals currently comply with a bevy of notices, brochures, and community notifications that include required emergency rooms displays about the hospital's financial assistance plan and how to access those plans. Due to the COVID-19 shortened Session, this bill did not advance.

HB5132 (Rep. Aaron M. Ortiz)

Hospitals - Executive Salaries

Assigned to Human Services Committee

This bill would have required that hospitals with property tax exemptions prove that the amount of executive salary increases in a year was equivalent to the amount spent on Medicaid and charity patients. Illinois hospitals meet stringent criteria for property tax exemption within the Illinois constitution and statute. This includes providing much needed charity care, incurring Medicaid losses and offering other services that benefit low-income and underserved residents in their communities. Due to the COVID-19 shortened Session, this bill did not advance.

HB5347 (Rep. Jawaharlal Williams)

Hospitals - Financial Counselor

Assigned to Human Services Committee

This bill would have required a hospital that has a Section 15-86 property tax exemption to refer patients who receive treatment in the emergency department to a financial counselor prior to discharge. Hospitals already help and guide patients with financial assistance, as current laws already require extensive information about the availability of financial assistance and financial counselors. In addition, EMTALA requires that treatment cannot be delayed in order to inquire about method of payment or insurance status. As a result, hospitals discuss the patient's health coverage at an appropriate time and prior to leaving the emergency department. Hospitals use patient input to determine if the patient could qualify for Medicaid and inform them about the availability of financial assistance. Due to the COVID-19 shortened Session, this bill did not advance.

HB5503 (Rep. Jaime M. Andrade, Jr.)

Medical Debt- Prohibited Auto Pay

Health Care Licenses Committee

This bill would have amended the Consumer Fraud and Deceptive Business Practices Act by providing that a person may not require a debtor to establish an automatic payment from a bank account, credit card, debit card, or other form of automatic payment as a condition of entering into a payment plan with respect to a medical bill. Due to the COVID-19 shortened session this bill did not advance.

HB5645 (Rep. Mary E. Flowers)

Patient Care Billing/Collections

Referred to Rules Committee

This bill would have prohibited a hospital from pursuing debt collection against a patient with an annual household income of \$51,000 or less by garnishing wages, seizing moneys from tax returns or through action that may result in foreclosure of the patient's home. Illinois laws already protect patients from aggressive collection actions. Hospitals cannot pursue legal action against an uninsured patient who has demonstrated they cannot meet their financial obligation. Not only would a hospital not take aggressive debt collection against uninsured patients at this income level, many would write off the entire bill since the Illinois Hospital Uninsured Patient Discount Act requires hospitals in urban areas to provide a 100% discount to uninsured patients up to 200% of the federal poverty level (FPL), which is \$52,400 for a family of four. Due to the COVID-19 shortened Session, this bill did not advance.

[SB1421](#) (Sen. Laura M. Murphy)

Patient Billing

Referred to Assignments

Senate Bill 1421 would have required hospitals prior to pursuing collection action to provide another notice to insured patients inquiring whether they have Medicare supplemental or secondary insurance. Hospitals already observe a process offering support and communication with every patient during the registration and billing process regarding any available healthcare coverage, and Medicare requires hospitals to ask beneficiaries about all insurance that may be available to determine whether Medicare is primary or secondary payor in order to bill accordingly.

[SB2286](#) (Sen. Sue Rezin)

Air Ambulance Cap

Referred to Assignments

Senate Bill 2286 would have required that air ambulances not charge more than 125% of Medicare for an out-of-network insured patient. Air ambulances are subject to the federal Airline Deregulation Act which prohibits states from regulating the price, route or service of air ambulances. The Federal Aviation Administration Reauthorization Act of 2018 created the Air Ambulance and Patient Billing Advisory Committee to review options to improve the disclosure of charges and fees for air medical services, better inform consumers of insurance options for such services, and protect consumers from balance billing with recommendations from this committee expected late in 2020.

[SB2983](#) (Rep. Celina Villanueva)

Patient Finances

Referred to Assignments

This bill would have prohibited hospitals from inquiring about a patient's financial status, except for billing purposes. IHA explained that discussing a patient's financial status for non-emergency treatment can benefit the patient by gathering information to help the patient obtain health coverage, such as enrolling in Medicaid or the Marketplace products, since coverage and premium support is predicated on the patient's income. Financial conversations may also help the patient in obtaining financial assistance under the Hospital Uninsured Patient Discount Act, which provides for free or discounted care to uninsured patients, and eligibility is determined by the family's income.

Privacy Protection

[HB5204](#) (Rep. Keith R. Wheeler)

Cybersecurity Compliance Act

Commercial Law Subcommittee

This bill would have created the Cybersecurity Compliance Act. Specifically, and established an affirmative defense for every covered entity that creates, maintains, and complies with a written cybersecurity program that contains administrative, technical, and physical safeguards for the protection of either personal information or both personal information and restricted information and that reasonably conforms to an industry-recognized cybersecurity framework. Due to the COVID-19 shortened session this bill did not advance.

[HB5497](#) (Rep. Ann M. Williams)

Geolocation Privacy Act

Cybersecurity, Data Analytics, & IT Committee

This bill would have created the Geolocation Privacy Protection Act by providing that a private entity that owns, operates, or controls a location-based application on a user's device may not disclose

geolocation information from a location-based application to a third party unless the private entity first receives the user's affirmative express consent after providing a specified notice to the user. A violation of the Act would have constituted an unlawful practice for which the Attorney General could take appropriate action under the Consumer Fraud and Deceptive Business Practices Act. There was an exception for hospitals so it would not have applied. Due to the COVID-19 shortened session this bill did not advance.

SB2900 (Sen. Julie A. Morrison)

Medical Patient Rights

Referred to Assignments

This bill would have amended the Medical Patient Rights Act by providing that if a covered entity under HIPAA intends to use or disclose an individual's protected and individually identifiable health information to engage in fundraising communications or communications for marketing purposes, the covered entity must, prior to the use or disclosure, obtain valid authorization from the individual who is the subject of the protected and individually identifiable health information. After IHA discussions with the sponsor, she agreed the bill was not necessary at this time.

SB3776 (Sen. Bill Cunningham)

BIPA-Right of Action Recovery

Referred to Assignments

This bill would have amended the Biometric Information Privacy Act by providing that: (i) a prevailing party may only recover liquidated damages of \$1,000 or actual damages, whichever is greater, for negligent violation of the Act against a private entity offending party that is not a current or former employer of the prevailing party, and (ii) a prevailing party may only recover actual damages against a private entity offending party that is the current or former employer of the prevailing party and that negligently violates the Act. Due to the COVID-19 shortened session this bill did not advance.

SB3591 (Sen. Jason Barickman)

BIPA Negligent Violation

Referred to Assignments

This bill would have amended the Biometric Information Privacy Act by deleting language that a prevailing party may recover damages against a private entity that negligently violates the Act for each violation of the Act. Instead it would have held that a prevailing party may recover liquidated damages of \$1,000 or actual damages, whichever is greater, and that such damages for a negligent violation by a private entity shall be recovered only for a single collection of each aggrieved party's biometric identifier or biometric information. Due to the COVID-19 shortened session this bill did not advance.

SB3593 (Sen. Jason Barickman)

BIPA-Limit Damagers

Referred to Assignments

This bill would have amended the Biometric Information Privacy Act by changing, among other things: (i) a "written release" to a "written consent", (ii) that the written policy that is developed by a private entity in possession of biometric identifiers shall be made available to the person from whom biometric information is to be collected or was collected (rather than to the public), (iii) that an action brought under the Act shall be commenced within one year after the cause of action accrued if, prior to initiating any action against a private entity, the aggrieved person provides a private entity 30 days' written notice identifying the specific provisions the aggrieved person alleges have been or are being violated, (iv) that if within the 30 days the private entity actually cures the noticed violation and provides the aggrieved person an express written statement that the violation has been cured and that no further violations shall occur, no action for individual statutory damages or class-wide statutory damages may be initiated

against the private entity. Provides that if a private entity continues to violate the Act in breach of the express written statement, the aggrieved person may initiate an action against the private entity to enforce the written statement and may pursue statutory damages for each breach of the express written statement and any other violation that postdates the written statement. Provides that a prevailing party may recover: against a private entity that negligently violates the Act, actual damages (rather than liquidated damages of \$1,000 or actual damages, whichever is greater); or against a private entity that willfully (rather than intentionally or recklessly) violates the Act, actual damages plus liquidated damages up to the amount of actual damages (rather than liquidated damages of \$5,000 or actual damages, whichever is greater). Provides that the Act does not apply to a private entity if the private entity's employees are covered by a collective bargaining agreement that provides for different policies regarding the retention, collection, disclosure, and destruction of biometric information. Due to the COVID-19 shortened session this bill did not advance.