HEALTHCARE AND THE 81ST LEGISLATIVE SESSION

OUTCOMES FOR NEVADA HOSPITALS

Nevada Hospital Association

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President's Message

The 81ST Legislative Session began during one of the worst pandemics in recent history. The state buildings were closed. Hearings were conducted via Zoom, and there was limited access, if any, to legislators. The political processes put in place in Nevada simply didn't translate to the virtual world as was evidenced during the 32ND Special Session in the summer of 2020. We knew our focus this session would be on Medicaid rate restoration, and we were aware of challenges facing us regarding rate controls and data reporting. But there was a great deal of unknown facing the hospital industry. We were hopeful that the life-saving measures put in place by health care professionals and hospitals during COVID-19 would be remembered by legislators when thinking about the direction and intent of bills. That simply wasn't the case. Legislators placed expectations on hospitals that were and are unrealistic and threaten the existence of some services. While the 81ST Legislative Session was challenging, it was by far the most disappointing one I have experienced in my time at the Nevada Hospital Association (NHA).

A great deal of work was done behind the scenes throughout the session. We developed and strengthened coalitions with the Nevada State Medical Association, the Nevada Association of Health Plans, the Las Vegas Chamber, the Reno + Sparks Chamber and others. There were ongoing, intense negotiations, and we were able to provide amendments on many bills that were acceptable to our industry. Undoubtedly, there were some bills where legislators had their own agendas and were not interested in any amendments.

Healthcare and the 81ST Legislative Session, Outcomes for Nevada Hospitals will provide you with an overview of key legislation that the NHA tracked or was involved with during the session. We will provide follow-up information to members in the form of legislative checklists and a consent manual.

Bills We Support

There were bills that came of out the Patient Protection Commission, and we are pleased that telehealth passed. We also supported several bills on behavioral health and patients with disabilities.

2021 Legislative Session by the Numbers

Total bills tracked: 97
- As: 54
- Bs: 22
- Cs: 21

Weekly lobbyist calls: 17
Weekly legislative updates: 16

Bills We Oppose

The NHA was opposed (or neutral) on more bills than we were able to support this session. Bills on rate commission, employment issues and revising the composition of the Patient Protection Commission resonate. And while the impact of the Public Option is yet to be determined, we anticipate dire impacts to our industry. In the final days, bills were heard not being on the agenda and legislators postponed or cancelled meetings to discuss amendments. It was clear that some legislators were not interested in working together on bills, and we had to stand in opposition.

Budget

In 2020, the 32ND Special Session of the Nevada Legislature addressed the historic $1.2 billion budget shortfall caused by the COVID-19 pandemic and the outcome was not favorable for hospitals. Assembly

Bill 3 implemented many of the budget changes impacting healthcare including a 6 percent across the board rate cut to Medicaid providers and a roll-back of rate increases from the 2019 Legislative Session.

At the Medicaid budget hearing in May of this year, the State Plan Amendment requesting the Centers for Medicare and Medicaid Services authority to reduce Medicaid provider reimbursements was withdrawn and an amendment was provided to restore Medicaid cuts retroactive to August 15, 2020. This was great news as this will be instrumental in safeguarding health care available to many Nevadans. While there is still a great deal of work to be done on Medicaid reimbursement, this is a step in the right direction.

We continue to work through any details of Medicaid restoration with involved parties and will update members on these efforts.

As I conclude my final Legislative Session as the President & CEO of the NHA, I want to extend my sincere gratitude to the lobbyists of the NHA Government Affairs Committee for their hard work and diligence. We stand taller when we all work together. I would also like thank our legal counsel of Jim Wadhams and Jesse Wadhams whose expertise was invaluable this session. And finally, I want to thank my team at the NHA whose dedication and support for members is unwavering.

Bill M. Welch
President & CEO

Key Bills for the Nevada Hospital Association (NHA)

SB5 – Telehealth
(Effective: Sections 1 to 4, inclusive, 5 to 9, inclusive, 10, 11, 12, 13, 14, 15, 16 and 16.5 become effective upon passage and approval for the purpose of performing any preparatory administrative tasks that are necessary to carry out the provisions of this act. On October 1, 2021, for all other purposes. Sections 4.3, 9.3, 10.3, 11.3, 12.3, 13.3, 14.3 and 16.1 become effective one year after the date on which the Governor terminates the emergency described in the Declaration of Emergency for COVID-19 issued on March 12, 2020, only if the Governor terminates that emergency before July 1, 2022. Sections 4.6, 9.6, 10.6, 11.6, 12.6, 13.6, 14.6 and 16.2 become effective on July 1, 2023, only if the Governor terminates the emergency described in the Declaration of Emergency for COVID-19 issued on March 12, 2020, before July 1, 2022. Sections 4.9, 9.9, 10.9, 11.9, 12.9, 13.9, 14.9 and 16.3 become effective on June 30, 2023, only if the Governor terminates the emergency described in the Declaration of Emergency for COVID-19 issued on March 12, 2020,on or after July 1, 2022. Section 15.5 becomes effective on June 30, 2023, or one year after the date on which the Governor terminates the emergency described in the Declaration of Emergency for COVID-19 issued on March 12, 2020, whichever is earlier.) – **PASSED**
Bill Sponsor(s) – Senate Committee on Health and Human Services

This bill is one of two bills submitted by the Patient Protection Commission. Nevada has existing law for telehealth, and COVID-19 brought with it an increase in telehealth services. Senate Bill 5:

- Outlines data collection and the implementation of a dashboard, and,
- Clarifies uses for telehealth while outlining payment for services in Nevada.

The NHA was in support of this bill from the beginning. The implementation of data collection and a dashboard will allow the State to analyze the use of telehealth by different groups and populations. Furthermore, including payment parity for services provided, with the exception of audio-only services, is greatly needed. One thing to note is that the payers negotiated an amendment that payment parity will sunset on June 30, 2023.

NHA Position – SUPPORT

SB40 – All Payer Claims Database (APCD)
(Effective: Sections 1, 18 and 19.7 to 22, inclusive, become effective on July 1, 2021. Sections 2 to 17, inclusive, 19 and 19.5 become effective upon passage and approval for the purpose of adopting any regulations and performing any other preparatory administrative tasks that are necessary to carry out the provisions of this act. On January 1, 2022, for all other purposes.) - **PASSED**
Bill Sponsor(s) – Senate Committee on Health and Human Services

This bill is the second bill submitted by the Patient Protection Commission and requires:

- The Department of Health and Human Services to establish an all payer claims database containing information relating to health insurance claims for benefits provided in Nevada.
- Requires certain insurers to submit data to the database and authorizes additional insurers to submit data to the database.
- Provides for the release and use of data in the database.

- Requires the Department to publish a report on the quality and cost of health care using data from the database.
- Requires the Department to submit certain other reports concerning the database to the Legislature.
- Outlines immunity from civil and criminal liability and authorizes the imposition of administrative penalties and other administrative sanctions for violations of certain requirements concerning the database.
- Requires the Department to compile a report containing an inventory of certain data.

A great deal of work was done on this issue prior to the session. It was prefiled in November 2020. The NHA put together a working group to address some concerns early on and began working with three additional interested parties – the Nevada Association of Health Plans, the Nevada State Medical Association and the Pharmaceutical Care Management Association.

All four associations agreed on a proposed amendment on February 5 that was sent to the executive director and chair of the PPC, along with other stakeholders. Early on, the executive director of the PPC was hesitant to discuss the bill with little input from Commissioners or interested stakeholders.

On several occasions, we attempted to get a modest amendment to the bill that would clarify that providers who provided data would also have access to data. That didn't not occur. Since there was some confusion on buy-in on this bill from the beginning and significant time was spent working this bill, Senator Ratti was hesitant to discuss any further amendments, and no additional amendments occurred in Committee. While we were not able to secure an amendment to access submitted data, we believe that there are ways that we can access data down the road.

NHA Position – OPPOSED AS INTRODUCED; SUPPORT AS AMENDED.

SB329 – Mergers and Acquisitions
(Effective: Upon passage and approval for the purpose of adopting any regulations and performing any other preparatory administrative tasks that are necessary to carry out the provisions of this act. October 1, 2021, for all other purposes.) **– PASSED**
Bill Sponsor(s) – Senators Roberta Lange and Fabian Donate

This bill emerged in March and seemed to mirror AB47. It was aimed at hospitals and physician group practices concerning mergers, acquisitions and joint ventures. While it focused on physician group practices, it specifically requires hospitals to notify the Department of Health and Human Services of any merger, acquisition or joint venture with any entity, including, without limitation, a physician group practice, to which the hospital is a party or any contract for the management of the hospital not later than 60 days after the finalization of the transaction or execution of the contract.

While we successfully worked with the Attorney General's office on AB47, this bill seemed to appear out of nowhere and add back in elements that were successfully ***removed*** from AB47. It also appeared to apply to ERISA plans, and constitutionally, that won't work. We worked with the bill sponsor and proponents throughout the session to no avail.

A veto letter was sent o Governor Sisolak on May 30 and outlined our concerns:

- Section 1 while similar to AB47 is not identical. This will create confusion and inadvertent violations due to the different reporting requirements.
- Section 20.9 creates prohibitions on one party to the negotiation of a contract. Those prohibitions are not only criminal violations, but they are also subject to a private right of action, treble damages and attorneys' fees. All in a statute under the jurisdiction of the Attorney General. The NHA believes this multifaceted risk will chill negotiations on business arrangements and result in contracts that are less beneficial to the contracting parties and the health insurance consumers who benefit from these contracts.
- SB329 is ambiguous. The prohibitions on pre-contract negotiations could be argued to apply to post agreement actions to allow one party a unilateral right to amend contracts and undermine the benefit of the bargain.
- Payers are permitted to pick apart integrated health care delivery systems. Accountable care organizations designed to provide the patient with seamless, convenient, one-stop care could be at risk.
- Payers are allowed to make subsequent assignments to tiers that materially affect patient volume that was anticipated in the original negotiations.

While some improvement to the bill was gained through nominal amendments, it continues to present significant challenge to the hospital community. We are making a major push with Governor Sisolak to veto the bill. We appreciate those who have also submitted request for a veto. This is labor union bill and chances of a veto are not great. We want to make sure that our message of concern is still reflected on the record with the Governor's office.

NHA POSITION – OPPOSED

SB391 – List of Dental Providers Provided by Hospitals
(Effective: Sections 1, 1.3, 27.5, 39.5, 40.5 and 41.5 become effective upon passage and approval and apply retroactively on and after March 1, 2021. Sections 1.7 to 27, 28 to 39, inclusive,40, 41 and 42 to 47, inclusive, become effective upon passage and approval for the purpose of adopting regulations, hiring staff and performing any other preparatory administrative tasks that are necessary to carry out the provisions of this act. On January 1, 2022, for all other purposes.) - **PASSED**
Bill Sponsor(s) – Senate Committee on Health and Human Services

As introduced, SB391 mandated that a hospital with an emergency room that treats patients who present with non-traumatic dental injuries must provide those patients with a list of in-network Medicaid Managed Care Organization (MCO) teledentists. Hospitals were immediately heighted to this measure as this is not information that is readily available in the hospital setting and it is not the responsibility of any hospital to have provider lists for payers.

Ultimately the bill was amended with list maintenance handled by the MCO and distribution, as needed, by a hospital:

- A health maintenance organization that provides dental services to recipients of Medicaid under the State Plan for Medicaid or the Children's Health Insurance Program pursuant to a contract with the Division of Health Care Financing and Policy of the Department of Health and Human

Services shall: (a) Maintain a list of providers of dental services included in the network of the health maintenance organization who offer services through teledentistry; (b) At least quarterly, update the list and submit a copy of the updated list to the emergency department of each hospital located in this State

NHA Position – OPPOSED AS INTRODUCED; NEUTRAL AS AMENDED

SB420 – Public Option
(Effective: Sections 1 to 14, inclusive, 16, 19, 20, 21, 22, 29 to 32, inclusive, and 34 to 37, inclusive, become effective upon passage and approval for the purposes of procurement and any other preparatory administrative tasks necessary to carry out the provisions of those sections. On January 1, 2026, for all other purposes. Sections 15, 16.35 to 16.47, inclusive, 20.5, 38.3 and 38.6 become effective on July 1, 2021. Sections 17, 18, 23to 28, inclusive, 33 and 38.8 become effective on January 1, 2022. Section 38 becomes effective on January 1, 2030.) - **PASSED**
Bill Sponsor(s) – Senator Nicole Cannizzaro

In late May, we saw SB420 drop, a bill creating a public option. While the intention is well placed, the proposal contained significant flaws that will not meaningfully address Nevada's uninsured population, will damage the health insurance market, and undercut Nevada's Medicaid safety net. The bill will do nothing to increase the number of providers in urban or rural Nevada, potentially making it more difficult for individuals to receive medical care and will ultimately result in an increase in premiums in urban areas.

SB420 requires the Director of Department of Health and Human Services, in consultation with the Executive Director of the Silver State Health Insurance Exchange and the Commissioner of Insurance, to design, establish, and operate a Public Option. The bill also expands coverage for certain Medicaid services to the extent that money is available. On May 25, the NHA, along with the Nevada State Medical Association and the Nevada Association of Health Plans, offered an amendment on this bill that would:

1. *Require that the Interim Legislative Committee on Health Care evaluate ideas of getting those currently eligible, but not enrolled, in subsidized coverage or Medicaid in already available coverage options.*
2. *Require the State to Contract for an Actuarial Analysis of the Public Option as Presented in SB420 modified to focus on individuals who have been uninsured for at least 6 months who are not eligible for Medicaid or subsidies on the exchange.*
3. *Appropriate the funding necessary to conduct the actuarial analysis in the 2021-22 interim.*

That amendment was not accepted.

As enrolled, the bill requires insurers that bid to provide coverage to Nevada's Medicaid population to also offer a public option plan. Plans will resemble existing certified plans on the Silver State Health Insurance Exchange, but they must be offered at less than 5 percent, with a goal of reducing average premium costs by 15 percent over the next four years. The public option would be available for purchase starting in plan year 2026. The bill requires an actuarial study to be conducted ***before*** the bill takes effect.

A veto letter was sent to Governor Sisolak on May 31 and outlined our concerns. As of this writing, Governor Sisolak has not taken a public position on the legislation, though it would be unlikely for the Democratic governor to veto the bill.

NHA Position – Opposed

AB47 – Mergers and Acquisitions
(Effective October 1, 2021) - **PASSED**
Bill Sponsor(s) – Assembly Committee on Commerce and Labor

The Attorney General's (AG) office came out of the gate quickly on AB47 prefiling the bill in November 2020. We created an internal stakeholder group and worked with the bill sponsor and members from the AGs office immediately and provided information on non-competes and health care transactions. From the get-go, there were a number of items in the bill that were problematic including transactions being submitted prior to approval and exactly who this bill applied to, to name a few.

The NHA legal counsel continued to work throughout the session and met with the AGs office to address our concerns around reporting of names and specialties, the use of affiliation language, clarifying reportable transactions and contract renewals. Progress was made, but there were still points to resolve.

A duplicative bill, SB329, was introduced in March, but it was much worse. By this time, AB47 had seen six amendments. This bill was heard in early May in Senate Commerce and Labor, and with Legislative Counsel Bureau amendments, it was presented straightforward. While we do not like this bill, it is now operational. The Nevada Association of Health Plans and Nevada State Medical Association stand with us in opposition.

Key points include:

- A "reportable health care or health carrier transaction" means any transaction that results in a material change to the business or corporate structure of a group practice or health carrier; and as a result of the transaction, would cause a group practice or health carrier to provide within a geographic market 50 percent or more of any health care service, including, without limitation, a health care service involving a specialty, or any health carrier service.
- Any person conducting business in this State who is a party to a reportable health care or health carrier transaction shall, at least 30 days before the consummation of the reportable health care or health carrier transaction, submit to the Attorney General a notification on a form prescribed by the Attorney General.

NHA Position – OPPOSED

AB222 – Employer Retaliation for Whistleblowers
(Effective upon passage and approval) – **PASSED**
Bill Sponsor(s) – Assemblywoman Selena Torres

This bill makes it an unlawful employment practice for an employer to take certain actions against an employee who reports, requests the correction of or refuses to engage in certain conduct while working. It also establishes procedures for certain civil actions concerning unlawful employment practices.

Initially, the concern with this bill was that it appeared an employee could decline an assignment. We don't believe that this bill will be an issue for members. Small businesses who employ less than 30 employees and casinos are exempt from this legislation. Those employers who fall within the 31 – 50 employee size may evaluate the impact of this bill more closely than others.

NHA Position – OPPOSED

AB347 – Rate Commission
DIED
Bill Sponsor(s): Assemblyman David Orentlicher

Prior to the start of the 81ST Legislative Session, we heard rumblings of interest in establishing a rate commission. Assembly David Orentlicher, a freshman Assemblyman to Nevada but no stranger to politics, reached out to interested parties on what needed to be included in this type of legislation.

BDR 541 emerged, and the NHA established a small working group of CFOs and government affairs committee members to provide input and comments. When the bill finally came out, it was split into two bills, AB346 & AB347, one on provider tax and one on rate commission, respectively.

There were many meetings on AB347 with Assemblyman Orentlicher, who we commend for actively engaging stakeholders throughout the process. While there were many questions from us and challenges put before the Assemblyman on the bill, few answers or resolutions were provided by him. The payers and the Nevada State Medical Association stood with us in opposition to this bill.

In April, Assemblyman Orentlicher deleted the bill as written and amended it to a study bill requiring that during the 2021-2023 legislative interim, the Legislative Committee on Health Care will study:

- The economics of the system of setting reimbursement rates for healthcare services by private and public health insurers without limitation, Medicaid, and a comparison of that system with such systems in other states.
- The impact of current reimbursement rates paid by insurers for health care services on patients.
- Opportunities and options to set rates charged for health care services at a level to allow providers of health care, including health care institutions, to cover and reduce costs and make a reasonable profit and reduce administrative costs relating to billing for health care.
- Incentives for providers of health care to provide services to recipients of Medicaid which may include:
    - Increasing reimbursement rates for Medicaid by imposing assessments on certain groups of providers of health care.
    - Reducing administrative burdens.

NHA Position – OPPOSED

AB348 – Revisions to the Patient Protection Commission
(Effective: Sections 24 and 29 of this act effective May 27, 2021. Sections 1 to 23, inclusive, and 25 to 28, inclusive, effective: (a) May 27, 2021, for the purpose of performing any preparatory administrative tasks that are necessary to carry out the provisions of this act. On July 1, 2021, for all other purposes.) - **PASSED**
Bill Sponsor(s): Assemblywoman Maggie Carlton

In March, AB348 was introduced essentially gutting the Patient Protection Commission (PPC). The PPC was originally established by Governor Sisolak in 2019 and was touted as his 'top priority' and he described its membership as "a highly respected, multi-faceted team of health care experts, advocates, providers, and industry professionals." Unfortunately, he was silent on this bill from its introduction to its signing.

This bill not only changes the commissioner makeup, but it also changes the reporting structure of the commission. We were told that Assemblywoman Carlton was not pleased with the way that the bill emerged from the Legislative Counsel Bureau. So, we worked diligently with her on conceptual amendments that included maintaining the existing PPC commissioners and adding more patient-focused commissions. Members of our small working group reached out to her. But in the end, although we were led to believe she would include additional hospital representatives, she didn't budge. The Assemblywoman believes that commissioners should be those that serve the indigent and underserved populations not those that represent health care-related industries. We were also told that several legislators feel that Commissioners appointed by the Governor were not effective in their roles.

Based on the bill, the new commission makeup is:

- Two members who are persons with expertise and experience in advocating on behalf of patients.
- One member who is a provider of health care who operates a for-profit business to provide health care.
- One member who is a registered nurse who practices primarily at a nonprofit hospital.
- One member who is a physician or registered nurse who practices primarily at a federally-qualified health center.
- One member who is a pharmacist at a pharmacy not affiliated with any chain of pharmacies or a person who has expertise and experience in advocating on behalf of patients.
- One member who represents a nonprofit public hospital that is in the county of this State that spends the largest amount of money on hospital care for indigent persons pursuant to chapter 428 of NRS.
- One member who represents the private nonprofit health insurer with the highest percentage of insureds in this State who are adversely impacted by social determinants of health.
- One member who has expertise and experience in advocating for persons who are not covered by a policy of health insurance.
- One member who has expertise and experience in advocating for persons with special health care needs and has education and experience in health care.
- One member who is an employee or a consultant of the Department with expertise in health information technology and patient access to medical records.
- One member who is a representative of the general public.

- The Director of the Department, the Commissioner of Insurance, the Executive Director of the Silver State Health Insurance Exchange and the Executive Officer of the Public Employees' Benefits Program or his or her designee as ex officio, nonvoting members.

NHA Position – OPPOSED

Significant Legislation Supported by the Nevada Hospital Association

AB142 – Nursing Compact – DIED
This bill would have allowed a licensed nurse in a state that is a party of the Compact to obtain a multistate license to practice as a nurse in other states that are parties to the Compact.

SB156 – Crisis Stabilization Centers – PASSED
This bill expands the type of hospital that can be endorsed as a crisis stabilization center by meeting certain State requirements.

Significant Legislation Opposed by the Nevada Hospital Association

SB107 – Wrongful Termination Lawsuits – PASSED
This bill clarified that a lawsuit for common-law wrongful termination of employment must commence within two years after the date of termination of employment.

SB240 – Price Transparency – DIED
This bill applied to hospital price transparency and data reporting and aimed to codify federal reporting laws. At this time, the American Hospital Association and other national health care associations are diligently trying to overturn regulation at the federal level.

AB174 – Healthcare Caregiver Designation; Caregiver Access to Medical Facility – DIED
This bill would have established who can provide consent for healthcare on behalf of a patient and prohibit a medical facility from refusing to allow this caregiver or guardian access inside the facility solely because circumstances exist that the public is prohibited from entering the facility.

AB303 – Paid Leave for Employees – DIED
This bill addressed paid time off, specifically if a company has a paid holiday and the employee is off on that day, he or she should not have that time deducted from a bank of time (paid time off).

Significant Legislation Neutral by the Nevada Hospital Association

SB154 – IMD Waiver – PASSED
This bill allows the Department of Health and Human Services to apply for a waiver to receive federal funding to include in the State Plan for Medicaid coverage for the treatment of a substance use disorder of a person who is in an institution for mental diseases.

SB248 – Debt Collection – PASSED
This bill addresses medical debt collection.

SB364 – Emergency Contraception – PASSED
This bill requires that certain medical facilities provide training to employees related to caring for victims of sexual assault and attempted sexual assault and requires that emergency contraception be provided to victims upon request.

AB119 – Infant Mortality – PASSED
This bill requires the Maternal Mortality Review Committee to identify and review disparities in the incidence of maternal mortality in Nevada and include a summary of those disparities in the report required by existing law to be submitted to the Director of the Legislative Counsel Bureau.

AB181 – Hospital Reporting of Suicide – PASSED
This bill requires the reporting of attempted suicide by hospitals.

AB192 – STD Testing of Pregnant Women – PASSED
This bill requires that a pregnant woman presenting to a hospital as a direct admission or through the ER be asked a series of questions to determine if she has received a syphilis test as part of their prenatal care.

AB217 – Training for Unlicensed Caregivers – PASSED
This bill outlines that hospitals must provide training to an unlicensed caregiver designated by the patient prior to discharge to provide care AFTER discharge.