

New Mexico Health Care Association/ New Mexico Center for Assisted Living

Your Association ... Your Decisions ... Your Directions



2021 Leadership Symposium: Legislative Update

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Fiscal Year 2022 Medicaid Budget

- Human Services Department (HSD) requested an increase of \$47 million
- Legislative Finance Committee \$68 million increase
- HSD estimates that even with requested increase there is still \$165 million Medicaid deficit
- \$165 million deficit threatens Medicaid rates
- Federal Public Health Emergency (PHE) extension
 - PHE extended through June 30
 - Biden administration has indicated the PHE through the end of 2021
 - PHE includes 6.2% increase to Federal Medical Assistance Percentages (FMAP)
 - FMAP increase=\$75 million per calendar quarter for New Mexico
 - Maintenance of Effort (MOE) limits maximization of FMAP funding
- \$46 million estimated in non-reverting funds for FY2021
- \$60-\$80 million in unused FY2022 funding by the Executive and LFC used it for compensation
- House Bill 2 FY2022 State Budget
 - Medicaid and Long Term Support Services funding included
 - House Appropriations and Finance Committee still considering
 - Should pass the House by late February and Senate in mid-March, then to Governor for approval
 - Effective July 1, 2021

HLVM Committee Substitute for House Bill (HB) 20ec

Healthy Workplaces Act

- Combined House Bill 20 and House Bill 37
- Emergency Clause: 28 Senate and 46 House
- Employer includes individual, partnership, association, etc. employing one or more employees
- Minimum 1 hour of earned sick leave for every 30 hours worked
- Maximum 64 hours within 12-month period
 - Unused time can be rolled over but limited to 64 hours in a 12-month period
- Use of sick leave includes: mental or physical illness, medical diagnosis, care of a family member, school meetings; absence due to domestic violence, sexual assault, or stalking of the employee or family member
- Family member includes: minor child, spouse, parent, grandparent, grandchild, sibling, blood or affinity whose close relationship is equivalent of a family relationship
- Documentation not needed for less than three consecutive days of sick leave
- Prohibits: retaliation or discipline for use of sick leave and employee contracts cannot abrogate right to sick leave
- Complaint can be filed with Department of Workforce Solutions or seek civil action without filing a complaint
- Damages include three times wage

House Bill 38

Paid Family and Medical Leave Act

- Enacts the Paid Family and Medical Leave Act (Act) to create a new, nonreverting “family and medical leave trust fund.” administered by the Workforce Solutions Department
- Employees covered by the Act would be able to take 12 weeks of leave within a 12-month period to deal with medical issues of employee or a family member, birth of a child within a family, adoption or fostering of a family child
- Allows for the designation of an additional person, not included in the definition of a family member, for whom the covered employee could take leave for if needed to care of a serious medical problem
- Family member includes: child regardless of age, parent or legal guardian, domestic partner or spouse, grandparent, grandchild, sibling, individual related by blood or affinity whose close association with employee or employees spouse is equivalent of a family relationship.
- Starting July 1, 2023 employees can choose to contribute .5% of their salary every calendar quarter
- Employer would be assessed .4% of earning of participating employee
- Employers with an equal or more generous paid family leave program can apply for a waiver from the program

House Bill 220

Hospital Care Facilities Contract Definition

- Amends Hospital Funding Act definition of “health care facilities contract“ to include agreement between skilled nursing facility and county(s) or another political subdivision
- County(s) or political subdivision can pay for all or a portion of mill levy proceeds to SNFs in exchange for funds to be used for nonsectarian purposes and for the availability of:
 - Facilities that admit and treat patients without regard to race, sex, religion, or national origin
 - Adequate emergency equipment and personnel, including standby emergency power
 - At least one person capable and authorized to initiate immediate lifesaving measures
 - Procedures and policies for prevention, control, and reporting of cases of suspected communicable diseases and arrangements for immediate hospital transfer
 - Personnel, equipment, and procedures for SNF care or treatment; including bed and board, PT, OT, speech therapy, social services, medications and supplies necessary for patient rehabilitation

House Bill 250

Long Term Care Dementia Training Requirements

- Establishing long-term care facility staff dementia training requirements and certificates
- Facilities impacted SNF, ICF/IID, CCRC, and ALF
- Facilities shall provide Alzheimer's disease and dementia training and continuing education to administrative staff and direct care staff
- Training maybe in-person or online
- Existing staff, who have not completed training prior to January 1, 2022, have 60 days to complete training
- After January 1, 2022 new staff must complete training with in 60 days of start of employment

House Bill 259

Contractor and Subcontractor Reimbursement

- Requires that public contracts provide for increased contractor and subcontractor reimbursement and worker wage increases in accordance with and concurrent with state minimum wage increases

Medical Malpractice Act (MMA) and Patient Compensation Fund (PCF)

- PCF established by the MMA
- PCF is funded by surcharges paid statutorily authorized members (Qualified Healthcare Providers)
- PFC funds on the following
 - Compensation to patients injured by an act of medical malpractice by a Qualified Healthcare Provider (QHP)
 - Past and future medical care related to the malpractice injury
- QHP are afforded a \$600,000 annual cap on medical malpractice claims
 - PCF provides QHP's medical professional liability occurrence coverage of up to \$400,000
 - QHP's also purchase their own \$200,000 malpractice occurrence policy
- Existing law does not include Long Term Care facilities as eligible QHP's
- NMHCA/NMCAL has been advocating for inclusion in the PCF but it is difficult
- Currently Hospitals are considered QHP's but there is legislation (HB75) to strip them of this opportunity
- HB 75 will be heard on the House Floor
- SB 239 is compromise legislation
 - Increases total medical malpractice cap to \$750,000
 - QHP's would have to purchase a \$250,000 malpractice occurrence policy

Other Legislation of Interest

Senate Bill 152: Continuing Care Aging Contracts

- Amends the Continuing Care Act to require comprehensive actuarial analysis for type A and type B agreements
- Requires CCRC contracts to include provision describing the community's plan for resident relocation upon closure or circumstances that necessitate relocation
- Requires annual submission of the disclosure statement to the Aging and Long-Term Services Department (ALTSD)
- Requires ALTSD review disclosure statements for compliance with the Continuing Care Act
- Allows any person to report violations of the Act to the New Mexico Attorney General's office or ALTSD

Senate Memorial 6: Long Term Care Task Force (LTCTF)

- Requests ALTSD to establish LTCTF to ensure facilities are adequately prepared for future emergencies
 - Membership includes: DOH, HSD, Ombudsman, AARP, LGBTQ community, nursing home organization (NMHCA/NMCAL)
- Optimize balance of long-term care services with the expansion of home and community based services
- Examine new care models, staffing and clinical needs, and identify capital investment needs to support physical plant improvements, and technology and workforce
- Establishment of acuity adjustments for Medicaid managed care payments
- Policy recommendations to specifically address LGBTQ, Alzheimer, and Dementia issues

Other Legislation of Interest

House Bill 110: Phased Minimum Wage Increases

- Revises statutorily scheduled increases to the minimum wage that were passed in 2019 so increases continue through January 1, 2024, eventually bringing statewide minimum wage to \$15 an hour.
 - January 1, 2022 minimum wage would rise to \$12.00 per hour
 - January 1, 2024 minimum wage would rise to \$15.00 per hour
 - January 1, 2025 minimum wage would increase annually based on cost of living increase

2021 SESSION DATES

January 4, 2021 - January 15 Legislation may be prefiled

January 19: Opening day (noon)

February 18: Deadline for introduction

March 20: Session ends (noon)

April 9: Legislation not acted upon by governor is pocket vetoed

June 18: Effective date of legislation not a general appropriation bill or a bill carrying an emergency clause or other specified date