



LEGISLATIVE UPDATE

by James Cavanagh, JD

OVERVIEW

The Michigan Legislature adjourned sine die on December 23, 2020. All bills that were not passed died and will have to be reintroduced in the next session. The next Legislative Session officially begins on January 13, 2021. The Republicans continue to hold the majority in both Houses. Due to term limits there will, however, be a new Speaker of the House in Jason Wentworth (R-Farwell). His leadership team will be Ben Frederick (R-Owosso) as Majority Floor Leader, Pam Hornberger (R-Chesterfield Twp.) as Speaker Pro Tempore and Thomas Alberts (R-Lowell) as Chair of the full House Appropriations Committee. The House Democratic Leader will be Donna Lasinski (D-Ann Arbor). With the election of two incumbent Republican senators to local offices, the GOP majority in that Chamber has been trimmed to 20-16. The Governor will call a special election later this year to fill those two vacancies. Mike Shirkey (R-Clarklake) continues to serve as Senate Majority Leader. Due to the election of Peter MacGregor as Kent County Treasurer, the new Senate Majority Floor Leader will be Dan Lauwers (R-Brockway). The Governor is expected to deliver her third State of the State Address later this month. It is anticipated she will present her Executive Budget recommendations for FY 2021-2022 in mid-February.

Perhaps the biggest development during the lame duck session was the passage of a COVID specific supplemental appropriation which then received 11 line-item vetoes from the Governor. The vetoes reduced the appropriation from \$465 million to \$106 million. In addition, the Governor vetoed an interstate nursing licensure compact bill which would have allowed out of state nurses who were from states that are part of the compact to practice in Michigan under certain circumstances. Other legislation of note that did not become law included SB 612 establishing protocols and procedures for prior authorization, legislation granting health care professionals immunity from civil liability during a pandemic, and drug pricing transparency legislation. The Governor allowed for a "pocket veto" of a series of bills easing Certificate of Need (CON) restrictions on hospitals in rural counties. Normally, the "pocket veto" is not allowed under Michigan law. However, when the Legislature has adjourned, as it has now, a bill will not become law unless the Governor signs it. Failure to sign amounts to what is known as a "pocket veto."

LEGISLATION

After Substantial Change, Prior Authorization Legislation Dies: SB 612, sponsored by Sen. Curt VanderWall (R-Ludington), was introduced last year to establish protocols and procedures in order to use prior authorization. After months of negotiation, the bill began to move through the Senate in the waning days of session. In the final days of lame duck session, the bill was drastically altered, especially with regard to the turnaround time insurers had to respond to a request from a provider. In fact, the Michigan State Medical Society (MSMS) strongly opposed this new version of the bill, a bill it had originally initiated with the "Health Can't Wait" Coalition. SB 612 passed the Senate by a vote of 30-8 with Sen. John Bizon, M.D., (R-Battle Creek), the only physician in the Legislature, voting "no." The bill moved to the House where it ultimately died. MSMS and members of the "Health Can't Wait" Coalition, which includes MRS, plan on getting the bill reintroduced this upcoming session.

Governor Vetoes Civil Immunity Legislation: Governor Whitmer vetoed legislation calling for civil liability protection for health care professionals treating COVID-19 patients in the event the patient was injured or died as a result of that treatment. The Governor said she had previously signed legislation that offered similar protection.

Governor Vetoes Nursing and Psychiatry Compact: Legislation that would have enrolled Michigan into interstate licensure compacts for nurses and psychiatrists licensed in Michigan to practice in other states and vice versa was vetoed by the Governor. In her veto message the Governor said the legislation would undermine the authority of the State licensing boards.

Drug Pricing Transparency Package Dies: A series of bills requiring pharmaceutical manufacturers to make available all expenditures made in bringing a drug to the market, including advertising and marketing costs, died in House Committee. The 9 bill package would have also regulated pharmacy benefit managers and would have established "fair dealing" practices between them and pharmacies. The comprehensive package affected so many competing interests that it was difficult for legislators to strike a balance. Look for a reintroduction of this or a similar package of bills in the upcoming session.

Governor Issues Pocket Veto of Certificate of Need: A series of bills meant to ease CON requirements for health facilities in rural areas did not receive the Governor's signature within 14 days of official presentment and were thus, pocket vetoed. SBs 669, 671 and 672 eased CON requirements for psychiatric hospital expansion in counties having a population of 40,000 or less. While this issue does not directly involve the practice of radiology or medicine, it does give some indication of the Governor's position on easing CON standards generally.

OTHER

Surprise Billing: With the passage of the federal legislation regarding out-of-network billing, otherwise known as "surprise billing," many questions have been asked as to whether Michigan law is preempted. The answer is, it appears "no." However, depending upon the circumstances, it is wise to check with your hospital's legal office.

Federal COVID Relief for Radiologists: The federal COVID relief bill signed by President Trump, provided a one-year infusion of \$3 billion dollars in the Medicare fee schedule and GPCIx was delayed by three years. ACR estimates that these changes will result in a 4% decrease for radiology as opposed to a 10% decrease in 2021.