

2018 Regular Session Recap

The 2018 Session began on Wednesday, January 10th and immediately started off with a bang – the swearing in of 19 freshman delegates and the inauguration of Governor Ralph Northam. Of the 19 new delegates, 15 are Democrats, shrinking the longstanding Republican majority in the House to the narrowest of margins (51R – 49D). The Senate, which holds elections next year, remains narrowly split as well (21R – 19D). With a Democrat in the Governor’s mansion and in the Lieutenant Governor’s seat, the tone of this Session was markedly different than in years past.

As in every even-numbered year, this was a “long” 60-day Session where the main focus was the creation of a new biennial budget. As of the writing of this update, however, the legislature has not yet been able to agree on a budget plan and has adjourned to reconvene in a few weeks to finish this important task. At issue is a difference of almost \$600 million between the House and Senate budgets. The House plan includes a modified form of Medicaid expansion, including a work requirement and a provider tax. The Senate, however, remains adamantly opposed to any form of expansion.

The political shift in the House played a large role in the budget debate over expanding Medicaid. House Republicans had prevented any discussion of expansion during Governor McAuliffe’s administration under former Speaker Bill Howell, R-Stafford, who ruled with a two-thirds majority that staunchly opposed expanding Medicaid. The Senate, by comparison, has only narrowly opposed expansion, with Sen. Emmett Hanger, R-Augusta (co-Chairman of the Senate Finance committee and budget conferee), supporting expansion under certain circumstances.

The Governor, a longtime proponent of traditional Medicaid expansion, has made clear that he will introduce a new budget in the upcoming special Session that will mirror that of his predecessor, Governor McAuliffe. This will likely be something more akin to traditional “Obamacare”-style expansion, without any of the elements that make expansion more politically palatable in the House.

Despite the uncertainty around the budget, the legislature managed to consider over 3,700 new bills this Session, a record-breaking number for a long Session. As of the last day of Session, about 1,800 of these bills have been passed by both the House and Senate and sent on to the Governor for his signature, amendment or veto. Some of the most controversial bills this year dealt with funding for Northern Virginia’s Metro system, a repeal of the 2015 “rate-freeze” bill for Dominion and APCo and raising the state’s felony threshold to \$500 from \$200.

Of interest to the VSA were several healthcare bills, summarized below:

- **HB 139: Health insurance; physician reimbursements, credentialing**
 - Status: This bill is on its way to the Governor's desk now.
 - Link to the bill: <http://lis.virginia.gov/cgi-bin/legp604.exe?181+ful+HB139ER+hil>
 - Summary: Requires health insurers and other carriers that credential the physicians in their provider networks to establish protocols and procedures for reimbursing physicians for health care services that are provided to covered persons during the period in which a physician's credentialing application is

pending. NOTE: The bill requires that written notification be provided to patients prior to providing a service.

- **HB 793: Nurse practitioners; practice agreements**
 - Status: The amended NP bill is on the Governor's desk. He has until April 9th to sign/amend/veto.
 - Link to the bill: <http://lis.virginia.gov/cgi-bin/legp604.exe?181+ful+HB793ER+hil>
 - Summary: Eliminates the requirement for a practice agreement with a patient care team physician for a licensed nurse practitioner (**NOT a CRNA**) who has completed the equivalent of at least five years of full-time clinical experience and submitted an attestation from his patient care team physician stating (i) that the patient care team physician has served as a patient care team physician on a patient care team with the nurse practitioner pursuant to a practice agreement; (ii) that while a party to such practice agreement, the patient care team physician routinely practiced with a patient population and in a practice area included within the category for which the nurse practitioner was certified and licensed; and (iii) the period of time for which the patient care team physician practiced with the nurse practitioner under such a practice agreement. The bill requires that a nurse practitioner authorized to practice without a practice agreement (a) only practice within the scope of his clinical and professional training and limits of his knowledge and experience and consistent with the applicable standards of care, (b) consult and collaborate with other health care providers based on the clinical conditions of the patient to whom health care is provided, and (c) establish a plan for referral of complex medical cases and emergencies to physicians or other appropriate health care providers. The bill requires (1) the Boards of Medicine and Nursing to jointly promulgate regulations governing the practice of nurse practitioners without a practice agreement; (2) the Department of Health Professions, by November 1, 2020, to report to the General Assembly a process by which nurse practitioners who practice without a practice agreement may be included in the online Practitioner Profile maintained by the Department of Health Professions; and (3) the Boards of Medicine and Nursing to report information related to the practice of nurse practitioners without a practice agreement that includes certain data, complaints and disciplinary actions, and recommended modifications to the provisions of this bill to the Chairmen of the House Committee on Health, Welfare and Institutions and the Senate Committee on Education and Health and the Chairman of the Joint Commission on Health Care by November 1, 2021.
- **HB 1584: Balance billing**
 - Status: This bill was carried over to 2019 (died for this Session), with a recommendation to convene a workgroup over the summer.
 - Link to the bill: <http://lis.virginia.gov/cgi-bin/legp604.exe?181+ful+HB1584+hil>
 - Summary: Prohibits an out-of-network health care provider from charging a covered person who is insured through a health benefit plan an amount for ancillary services that is greater than the allowed amount the carrier is obligated to pay to the covered person. The measure defines "ancillary services" as screening, diagnostic, or laboratory services provided in connection with or arising out of other health care services that the covered person receives from or at an in-network provider. The measure requires an in-network provider to provide certain notices regarding the provision of ancillary services by an out-of-network provider. The measure has a delayed effective date of January 1, 2019.
- **SB505: Doctor of Medical Science, licensure & practice**
 - Status: This bill was carried over to 2019 (died for this Session).

- Link to the bill: <http://lis.virginia.gov/cgi-bin/legp604.exe?181+ful+SB505+hil>
- Summary: Establishes requirements for licensure and practice as a doctorate of medical science. The bill provides that it is unlawful to practice as a doctorate of medical science unless licensed by the Board of Medicine (Board) and requires that an applicant for licensure, among other requirements, (i) hold an active unrestricted license to practice as a physician assistant in the Commonwealth or another jurisdiction and be able to demonstrate engagement in active clinical practice as a physician assistant under physician supervision for at least three years and (ii) be a graduate of at least a two-year doctor of medical science program or an equivalent program that is accredited by a regional body under the U.S Department of Education and an accrediting body approved by the Board. The bill provides that doctorates of medical science can practice only as part of a patient care team at a hospital or group medical practice engaged in primary care and are required to maintain appropriate collaboration and consultation, as evidenced in a written or electronic practice agreement, with at least one patient care team physician. The bill requires the Board to establish the scope of practice for doctorates of medical science and to promulgate regulations regarding collaboration and consultation among a patient care team and requirements for the practice agreement. The bill outlines the prescriptive authority of doctorates of medical science. The bill also authorizes various powers and requires various duties of a doctorate of medical science where such powers and duties are, under current law, given to and required of physician assistants and nurse practitioners.
- **SB 632: Controlled substances; limits on prescriptions containing opioids**
 - Status: Signed by the Governor and goes into effect July 1.
 - Link to the bill: <http://lis.virginia.gov/cgi-bin/legp604.exe?181+ful+SB632ER+hil>
 - Summary: Limits on prescription of controlled substances containing opioids. Eliminates the surgical or invasive procedure treatment exception to the requirement that a prescriber request certain information from the Prescription Monitoring Program (PMP) when initiating a new course of treatment that includes prescribing opioids for a human patient to last more than seven days. Under current law, a prescriber is not required to request certain information from the PMP for opioid prescriptions of up to 14 days to a patient as part of treatment for a surgical or invasive procedure.
- **SB 779: Competition covenants for physicians**
 - Status: Failed to report (died).
 - Link to the bill: <http://lis.virginia.gov/cgi-bin/legp604.exe?181+ful+SB779S1+hil>
 - Summary: Declares that any covenant not to compete that restricts the right of a physician to practice medicine upon the termination of an employment contract is void. A similar prohibition applies to noncompetition provisions triggered by a physician's dissociation from, or the termination or dissolution of, a business entity. The measure provides that all other provisions of the employment contract or other agreement are enforceable, including provisions that require the payment of damages in an amount that is reasonably related to the injury suffered by reason of termination of the employment contract or the dissociation from or the termination or dissolution of a business entity.
- **SJ 57: Out of network balance billing study**
 - Status: Passed by indefinitely (died).
 - Link to the bill: <http://lis.virginia.gov/cgi-bin/legp604.exe?181+ful+SJ57+hil>
 - Summary: Directs the Joint Legislative Audit and Review Commission (JLARC) to study balance billing by out-of-network health care providers. The resolution

directs JLARC to (i) examine the practice by hospitals of independently contracting with out-of-network physicians to provide emergency care; (ii) identify the costs of balance billing in circumstances when consumers receive health care services at an in-network hospital's emergency care department network from an out-of-network provider; and (iii) identify ways to protect covered patients from balance billing in situations where a patient is not able to select the provider on the basis of whether the provider is in his plan's network.