



Governmental Policy Committee
February 20, 2020

Governmental Policy Council Present

Amy Goeglein, Western Hills Health Care Center
Melissa Latham, District V Chairman
Dana Runager, Genesis
Michael Schmitt, Professional Risk
Sunshine Byars, Colonial Columns
Mark Bedinger, Colavria
Mariah Linton-Cook, Sewald Hanfling
Kevin Putnam, WellAge Senior Communities
Paula Mitchell, Vista Grande Inn
Paul Laundry, LCCA
Beth Williams, LCCA

Chrissy Swanson, Colonial Columns
Courtney Petek, PharmCare USA
Joyce Humiston, C & G Healthcare
Mike Schmitt, Professional Risk
Autumn Lee, PharmCare USA
Fred Miles, Greenberg Traurig
Debra Welker, Pikes Peak Center
Jerusha Slegel Accel at Longmont
Jay Moskowitz, Vivage
Janey Snipes, Holly Heights
Melissa Latham, Larchwood Inn

Governmental Policy Council Members Via Webinar/Phone

Dusty Dodson, Palisades Living Center
Kenda Spaulding, E. Dene Moore Care Center

Sarah Schumann, Brookside Inn

Staff/Consultants Present

John Kunkle, Lobbyist
Josh Fant, Director of Finance
Ann Kokish, Director of Quality & Regulatory Affairs

Arlene Miles, Legislative Consultant
Colleen Olsen, Exec. Admin. Assist

Call to Order

The February Governmental Policy Meeting was called to order 12:31 p.m.

Approval of Minutes

The January minutes were approved at 12:33 p.m.

Legislative Report

HB20-1020: Long-term Lodging Sales Tax Exemption.

The long-term lodging and sales tax exemption concerns the repeal of the state sales tax exemption for long term care. Under current law, the sales tax exemption for long-term lodging exempts stays of 30 days or more at hotels, apartment hotels, lodging houses, motor hotels, guesthouses, guest ranches, trailer coaches, mobile homes, auto camps, or trailer courts and parks from the state sales tax on lodgings. The bill limits this exemption, so it only applies to natural persons. Currently CHCA is seeking to have the bill amended and is watching for

unintended consequences of the bill.

HB20-1083: Nursing Home Definition for Residential Property Tax

CHCA strongly supports the Nursing Home Definition for Residential Property Tax bill, which concerns the definition of a nursing home for the purposes of the real property classification. The bill states that facilities that provide long-term nursing, rest, and assisted living services, where residents reside for more than 30 days, are classified as residential properties. However, facilities that provide short-term convalescent care and rehabilitation services, where patrons visit the facility periodically or temporarily reside there for less than 30 days, are valued and classified according to the procedures for nonresidential property. The bill defines a nursing home to include, among other things, a nursing home that provides convalescent care and rehabilitation services. The bill specifies that land on which a nursing home is situated, and any improvements affixed to that land is classified and assessed as residential real property, regardless of a resident's length of stay.

There are currently 15 facilities that are being assessed in Colorado at a commercial rate. The difference between a residential assessment and commercial is 7% to 29% (this has resulted in some facilities paying taxes near 2 million). Most facilities are high Medicare utilization resulting in more short-term stays. Since a Nursing Facility is considered a resident's home, it should be taxed as residential, and it should not be considered residential regardless of the length of the residents stay. Facilities are being penalized for the change in healthcare resulting in a shorter stay and better care.

This bill has been drafted, introduced and sponsored; the bill will be proposed on Tuesday. One point of contention is that the bill would reduce the income to the counties, such as Adams County, where it has already been applied. Since approximately 50% of property tax goes toward school funding, this would reduce student funding in public schools. It would require the state to fund the difference of 1.38 million to the school districts. This would result in a fiscal note on this bill. The current sponsor is nervous to commit state funds.

CHCA is considering several avenues regarding this bill and addressing the fiscal note. It will address whether it is possible to go into the negative factor and backfill the lost funds, seeking to see how the fiscal note could be mitigated in the first year, as well as meeting with a financial analyst to consider if sponsors and the budget committee would agree to backfill half of the million dollars from general funds with money from the marijuana tax funds the first year. Another idea being considered is whether an amendment may be added to the bill from this date forward prohibiting additional facilities from being subjected to it. Then the facilities currently being affected could be addressed.

HB20-1093: County Authority License and Regulate Business

The County Authority License and Regulate Business bill is presently being monitored by the Colorado Health Care Association. The bill grants a board of county commissioners the authority to license and regulate any business located or business activity occurring within the county, including short-term lodging rentals or advertising for such rentals, and to fix the fees, terms, and manner for issuing and revoking licenses issued therefor.

HB20-1101: Assisted Living Residence Referrals

CHCA is currently monitoring the Assisted Living Residence Referrals bill, which concerns the referral of a prospective resident to an assisted living residence by an assisted living residence referral agency.

This bill would require an agreement between an assisted living residence referral agency and a prospective resident of an assisted living residence to be in writing. It would be required that it include the right of the prospective resident or representative of the prospective resident to terminate the referral agency's services for any reason at any time; and a requirement that the referral agency communicate the cancellation of the agreement

to all assisted living residences to which the prospective resident has been referred.

The bill would prohibit an assisted living residence from paying a referral fee to a referral agency if the agreement between the referral agency and the prospective resident has been terminated; and selling the prospective resident's or prospective resident's representative's contact information without written consent.

The bill would also expand the definition of "assisted living residence" to include facilities with individuals who have intellectual and developmental disabilities.

HB20-1140: Direct Primary Care Services for Medicaid Recipients

Another bill being monitored by CHCA is the Direct Primary Care Services for Medicaid Recipients, which concerns access to direct primary care services for Colorado Medicaid recipients. During the last action on January 16th, 2020- the bill was introduced to the house and assigned to health and insurance. The bill will prohibit the department of health care policy and financing from denying Medicaid recipients the right to purchase direct primary care services or enter into a direct primary care agreement.

HB20-1154: Workers' Compensation

The Workers Compensation bill concerns the "Workers' Compensation Act of Colorado", and, in connection therewith, making changes that affect: the timely payment of benefits, guardian and conservator services, offsets related to the receipt of federal disability or retirement benefits the apportionment of benefits, the selection of independent medical examiners, limits on temporary disability payments, the withdraw of admissions of liability, mileage expense reimbursement, the authority of prehearing administrative law judges, petitions to review, the reopening of permanent total disability awards, and appeals to the court of appeals. This bill has no negative impact on businesses or facilities and has a bipartisan sponsorship.

HB20-1183: Sunset Continue Certification of Nurse Aides

CHCA is monitoring the Sunset Continue Certification of Nurse Aides bill, which relates to the continuation of the certification of nurse aids by the state board of nursing, and, in connection therewith, implementing the recommendations contained in the 2019 sunset report by the department of regulatory agencies. An amendment was provided to committee that will allow CNA's to administer oxygen and ostomy bags under the practice; this will be put into regulation.

HB20-1216: Sunset Continue Nurse Practice Act

Additionally, CHCA is monitoring the Sunset Continue Nurse Practice Act concerning the continuation of the state board of nursing, and in connection therewith, implementing the recommendations contained in the 2019 sunset report by the department of regulatory agencies. The bill will allow LPN's to complete assessments that they have demonstrated qualification for. This will assist with patients on the floor, no longer requiring an RN to be at the site in order to assist the resident. The LPN must be determined competent prior to proceeding with the assessments, in the event the LPN does something incorrect they will be held liable. The Nurses association and the Assisted Living Association both support this bill.

HB20-1220: Veterans Community Living Center Services Assessment

The Veterans Community Living Center Services Assessment bill will address a statewide needs assessment of services provided by Veterans Community Living Centers. The bill will allow them to see if they would like to expand on home care programs, and may offer additional services, not currently provided under the VA. CHCA is monitoring this bill.

HB20-1291: Uniform Collaborative Law Act

The bill, that CHCA is monitoring, authorizes a collaborative law process whereby disputes are resolved without intervention by a court or other tribunal. It specifies:

Requirements for a collaborative law participation agreement including both sides be represented and advised by collaborative law lawyers; and that communication made during the collaborative law process are confidential and may not be used later in proceedings except in specified situations. These means that if litigation is pending, it outs the litigation on hold, if an agreement is reached it is enforceable.

HB20-1302: CAPS Check Program Changes

The bill states that if an employer receives a CAPS check on a person and does not hire the person at the time of receiving the check but wants to hire the person at a subsequent time, the employer shall request a new CAPS check prior to hiring the person. The bill requires that if the employer is also an employee, the employer and employer's parent or oversight agency would get the results if the employer was a substantiated perpetrator. The bill prohibits using a CAPS check request for a person who is not going to be an employee. The bill prohibits an employee or volunteers from knowingly providing inaccurate information for a CAPS check or an employer or other person or entity conducting an employee screening on behalf of the employer from knowingly providing inaccurate information in the request for a CAPS check.

The bill requires entities that care for at-risk adults to cooperate with a county or district department of human or social services in investigations into allegations of mistreatment at the entities' facilities.

This bill will provide APS with access to residents, as well as unlimited, unfettered access Nursing Home Facilities (Assisted living facilities will have additional protection. It is beneficial to investigate your facilities negative outcomes and take remedial action, rather than having the federal agency review the negative actions. This bill would result in it being a misdemeanor for you to deny APS access. The bill is currently at the attorney general's office and is expected to drop soon. Comments regarding the bill were provided to APS, however, the draft of the bill did not include the comments provided. If the bill is passed it will end up in court, this bill is receiving significant opposition. Some concern regarding the bill are investigators threatening administrators and APS being given more enforcement authority than a police officer.

SB20-022: Increase Medical Providers for Senior Citizens

CHCA is monitoring the Increase Medical Providers for Senior Citizens addresses modifications to the Colorado health service corps program administered by the department of public health and environment to expand the availability of geriatric care providers in shortage areas in the state. This bill will allow advanced practice nurses and physicians assistants to participate in the loan repayment program on the condition committing to provide geriatric care to older adults in health professional shortage areas for a specified period, as well as requiring general assembly to annually and continually appropriate money from the general fund to help repay loans for geriatric advanced practice providers.

SB20-080: Consumer Protection Act Damages

The Consumer Protection Act Damages will be monitored by CHCA; the bill us concerning amending the "Colorado Consumer Protection Act" to increase the damages for which a plaintiff is eligible. The plaintiff in an individual action may be awarded \$500 per violation; the bill also amends that a class action may be brought, and damages may be awarded to the class. This bill would increase risk and controversy. It would authorize class action lawsuits with respect to the private litigation, which would cause a huge risk to potential recovery. The Cross Disability Coalition is the only one supporting this bill.

SB20-093: Consumer and Employee Dispute Resolution Fairness

CHCA is seeking to amend the Consumer and Employee Dispute Resolution Fairness bill. This bill concerns protections related to mandatory agreement provisions, and, in connection therewith, enacting the “Consumer and Employee Dispute Resolution Fairness Act”. This bill attempts to remove arbitration agreements, including the 90 day opt out provision. The bill would require the documents to adhere to specific regulations, including items such as: font size, how large a notice must be, and that it must be provided separate to the admissions agreement for residents and family. Counsel, Fred Miles, has composed talking points for legislators to address why this does not apply to Nursing Homes.

SB20-102: Provider Disclose Discipline Convict Sex Offense

The Provider Disclose Discipline Convict Sex Offense bill is currently being monitored by CHCA. It concerns the required disclosure to patients regarding formal actions based on sexual misconduct. This means that if you have an employee who has been convicted of a sex crime that you must disclose this to all residents. Residents on sex registry may be brought up in future discussions. It is possible to utilize online systems to check for sex offenders as it related to residents. It is an issue that criminal background checks are not being completed by APS.

Counsel, Fred Miles will review how facilities should proceed if the employee is hired with a case pending, and they are convicted after being hired; and the information wasn't disclosed.

SB20-113: Colorado Department of Public Health and Environment Health Facility License Requirements

CHCA is monitoring the Colorado Department of Public Health and Environment Health Facility License Requirements, which relates to the mandatory contents of each license issued to a health facility by the department of public health and environment. The bill repeals language requiring each health facility license issued by the department of public health and environment to include the signature of the president of the state board of health (state board), the attestation of the secretary of the state board, and the state board's seal.

SB 19-188: Family and Medical Leave Insurance Program

Program implementation began on July 1, 2020 with benefits becoming available to eligible employees on January 1, 2022. The new Department of Labor and Employment agency, the Division of Family and Medical Leave Insurance, would administer the program, collect contributions and pay benefits.

This bill may be funded through a self-funded plan, or Family Medical Leave may be paid through insurer. It would be made available for employees that leave for serious illness, a new child, and to provide care for family members; it would also provide job protection to for employees. State employers may opt out, as well as some facilities based on the size of their company and number of employees.

SB20-173: Reimbursement Rates Alternative Care Facilities

The bill requires the state board of medical services to adopt rules creating an enhanced or tiered reimbursement rate or rates for secure alternative care facilities that have higher staffing ratios due to providing services to persons with dementia or other conditions.

A concern regarding this bill that is being addressed is whether this will affect funds provided to SNF facilities to provide more funding to Assisted Living secured facilities. This bill will create a fiscal note because the department will require funds to design the system.

Legal Report

Update on AHCA Amicus cases

Ruck Case. 11th circuit: False Claims Act.

There is currently no progress regarding this case. If the government was aware of what was going on with therapy and continued to reimburse, then the court should dismiss the case.

Winter Case. 9th circuit. False Claims Act.

This case addresses that medical necessity issues must be based upon objective falsity. Additional evidence in medical records is required to prove that it was intentionally false. The outlook on this case is not optimistic.

Avon Case; 2nd Circuit

This case addresses whether Compliant investigations are required to have a registered nurse on the survey team. CMS stated that it was not a requirement, years ago, so the question that is being broached is whether statute trumps regulations. This is a jurisdictional issue.

Five Star and “Red Hand” cases being monitored by AHCA Legal Committee:

AHCA legal committee is now monitoring two cases regarding the Five Star and “Red Hand”; this includes reductions in five-star rankings in IJ findings and abuse cases. The first case is taking place in Wisconsin. The facility was surveyed, there were no abuse findings, however and IJ was imposed; based on strict liability of the Nursing Facility, which was not culpable for what happened. The case is currently in the IDR process, and it may be appealed to the DAB. It will not reach judicial determination in the near future.

It is believed by David Wright that CMS should recognize when facilities have good systems in place. Suggested alternatives to strict liability are to revise interpretive guidance, if the facility did everything to adhere to regulations, identify, investigate, and correct the issues. It has been discussed that a D level should not be cited and should not be put into a red hand.

The second case is in Illinois. In Elmwood vs Ezek the Nursing Facility is claiming that the application of the five star ranking systems as a survey result with no right to challenge the change of rankings is a violation of due process of law. Based on a case from 1983, the federal constitution states it cannot violate due process of law. A law firm in Pennsylvania is pursuing the case.

ALR California litigation:

There are cases in California that have been brought against ALR based on a staffing level theory. It addresses the residency agreement and requires a change in staffing as necessary based on assessments. If staffing is static or predetermined based on budgets it states that residents could be harmed. It would require all assessments and agreements to be reviewed, and ensure staffing levels reflect those reviews.

Colorado has mandated staffing requirements for ALRs’

AHCA Comments on Medicaid Fiscal Accountability Proposed Regulation

The Medicaid Fiscal Accountability Regulation addresses provider fees and supplemental payments. Health Care Policy and Financing believes that the proposed rule will not dramatically affect Colorado. Fred Miles disagrees, since the regulation would require states to reassess every three years with respect to the access issue. It would affect funding, budgets, and what is taking place in the moment. It would the state to consider what the entire medical reimbursement rate is doing for facilities, not just supplemental payments. It would require studying the data and making access determinations under Section 30 Title 19. This has the potential to be catastrophic for states if adopted.

A concern is that Colorado's state plan would not be considered valid because of hold harmless provisions, and this regulation would allow the hold harmless provisions to be reviewed and see how they are applied. Under the proposed regulation the entire rate design would be reviewed every three years. As an example, it would allow CMS to decide that facilities would receive no supplemental payments above a certain rate or percentage.

Bed Need Legislation

The bill will be introduced next week that will allow facilities to have five Medicaid beds and to be reimbursed outside the current reimbursement structure. This would allow HCPF to lay the framework to write rule to allow provide reimbursement outside of the InterChange system.

Department of Health Care Policy & Finance

Provider Fee Advisory Board (PFAB) Report

HCPF presented a proposed definition of the term "adjacent local government" as it pertains to the legislative bill allowing increased reimbursement to SNFs that are located within a local government or adjacent to a local government that raises their minimum wage higher than the state-wide minimum wage. A data collection template to facilitate the payment of this increased reimbursement was also presented.

Nursing Facility Advisory Committee (NFAC) Report

2020 Cost of Living Increase 5615 processes were shared with the group and feedback was taken by the county liaison. Reminder that the Supplemental Behavioral Supports submission deadline was communicated as it was extended by a month to 5/31/2020.

Other business:

There was no other business at this time.

Adjourned

The meeting was adjourned at 2:39 p.m.
