



2022 Bill Wrap-Up

During the 2022 General Assembly session VHCA-VCAL's advocacy work largely focused on Medicaid funding and workforce issues. VHCA-VCAL also tracked bills affecting health care practitioner licensing, and workforce and employment issues.

Budget Funds Medicaid Forecast and Boosts VPB Program Funding

The state budget for fiscal years (2023 and 2024) includes good news for VHCA-VCAL members. First, the budget funds the Medicaid forecasts, which includes the regulation-driven inflationary adjustment for Medicaid nursing center services. Second, it provides additional funding for the Medicaid Value-Based Purchasing (VBP) Program starting on July 1.

Inflation

DMAS has announced that the inflation factor to be applied on July 1 to the FY 2023 rates is 14.74 percent.

VBP Funding

The VBP Program funding is intended to replace the value of the Medicaid add-ons provided during the pandemic. The budget includes \$25.1 million in funding for the VBP the program for the first year (FY 2023) and \$50.7 million for the second year (FY 2024). This is in addition to \$93.5 million authorized when the program was created last year.

The final language mirrors VHCA-VCAL's preferred wording in the House of Delegates budget without referencing a staffing ratio. Further, the language specifies that the non-metric-based portion of the funding will be accomplished as a rate add-on instead of as a lump sum as proposed by DMAS. VHCA-VCAL advocated for this approach. This means that instead of waiting until December for payment, payment will occur with claims for dates of service beginning July 1, easing the transition from the full \$15 add-on currently included in the rate.

It appears that the additional VBP Program funds will be included in the split between metric and non-metric-based payments. As such, what was projected to be approximately \$7.50 per resident per day as of July 1, 2022, should be closer to \$9.50; the projected \$3.75 per resident per day for July 1, 2023, should be closer to \$5.80. (DMAS will determine the actual amounts; the above should only be considered estimates). Additionally, all the per diems associated with the actual metric performance will be increasing as well. We will provide final updates once we receive them from DMAS.

Other Budget Items

Other provisions of interest to VHCA-VCAL members in both the House and Senate budgets include:

- \$1 million per year for nurse scholarships / loan repayment, including a specific set-aside for LTC nurses
- Review of nursing education / staffing shortages
- Specialized care rate rebasing deferral for one additional year (rates will just be inflated)
- Development of a nursing facility Quality Improvement Program funded with civil monetary penalty funds
- ARPA funding for local government affiliated nursing facilities and additional funding for The Virginia Home

Budget amendments were introduced in both the House (\$34 million) and Senate (\$5 million) to enhance the auxiliary grant (AG) rate, but neither chamber's budget included additional funding in their respective budgets.

Temporary Nurse Aides

Gov. Glenn Youngkin sent the General Assembly a budget amendment to allow Temporary Nurse Aides (TNAs) who worked under the CMS 1135 federal blanket waiver, regardless of the number of hours worked during that time, to have the full four-month period from the end of the waiver to complete training and certification requirements. VHCA-VCAL requested that the governor offer this amendment, which was necessary because the Virginia Board of Nursing determined that with the expiration of the CMS waiver provision for the employment of TNAs on June 6, 2022, TNAs are no longer eligible to apply to take the national nurse aide assessment program examination through the Temporary Nurse Aide to Certified Nurse Aide (TNA2CNA) pathway. The amendment was adopted unanimously in the final budget.

Nursing Facility Bills

Minimum Staffing in Nursing Facilities – Bills to set either an acuity-based minimum staffing standard or a minimum direct care requirement for nursing homes did not pass this session. *SB 406* failed to report in the Senate Education and Health Committee. *HB 330* and *HB 646*, were continued to the next session with a commitment by the Health, Welfare and Institutions (HWI) Committee chairman to hold hearings on the topic before the next session.

SB 406 and *HB 330* would have required nursing homes to meet a baseline staffing level based on resident acuity in alignment with the CMS staffing level recommendations and established administrative sanctions for noncompliance. *HB 646* would have required nursing homes to provide a minimum of direct care services to each resident per 24-hour. The bill also included requirements for quarterly nursing home staff training on first aid, medication administration, and compliance with nursing home policies and procedures.

To respond to these bills, VHCA-VCAL highlighted the severe staffing crisis and the impact of chronic Medicaid underfunding of nursing facilities. VHCA-VCAL also emphasized that the Medicaid Nursing Facility Value Based-Purchasing (VBP) Program is set to begin on July 1, 2022. The VBP Program incentivizes increased nursing facility staffing. Forty percent of the funding in the VBP Program is directly related to two clinical staffing metrics, with the other 60 percent for quality improvement metrics.

Medical Malpractice Cap Limitation on Recovery: The Senate Judiciary Committee voted 12-3 to “pass by indefinitely” *SB 599*, which would have amended the medical malpractice cap statute so that if an individual is determined to have permanent loss or impairment of a bodily function or permanent brain injury, the cap shall not apply regardless of the limit in effect at the time of the verdict or judgement. VHCA-VCAL and a coalition of health care providers opposed the bill.

Electronic Monitoring – Upon learning from VHCA-VCAL that the provisions of *HB 97* to prohibit a nursing home from refusing to admit, transfer, or discharge a patient who implemented or requested electronic monitoring were already included in the regulations, the patron had the bill stricken.

Protocols for Patients Receiving Rehabilitation Services – *HB 235* directs the Board of Health to convene a work group to provide recommendations for regulations requiring hospitals to develop protocols for connecting patients receiving rehabilitation services to necessary follow-up care. The study is due by October 1, 2022.

COPN Charity Care Provisions – The patrons of *HB 861* and *SB 336* requested that their bills be stricken from the docket since budget language was introduced to exempt nursing facilities from the charity care provisions required in the COPN statute because of their unique patient mix. VHCA-VCAL supported the bills and budget language.

Assisted Living Bills

ALF Involuntary Discharge – *SB 40* adds requirements around the involuntary discharge process including a description of the reasons for which a resident may be involuntarily discharged, certain notice requirements, a requirement that the facility make reasonable efforts to resolve any issues upon which the discharge is based, and the provision of information regarding the resident’s right to appeal the facility’s decision to discharge the resident. VHCA-VCAL worked with the bill patron on amendments to the bill.

COVID-19 Liability Protections – VHCA-VCAL supported *SB 148* to codify the immunity protections for ALFs and other providers established in 2020 during Virginia’s COVID-19 state of emergency. The liability protections addressed in the bill are specific to the coronavirus pandemic and do not provide immunity for gross negligence or willful misconduct. The association opposed *HB 569* to repeal those liability. It was stricken from the docket by the House Courts of Justice Committee at the request of the patron.

SHHR to Study Current Oversight/ Regulation – *HB 234* directs the Secretary of Health and Human Resources (SHHR) to study the current oversight and regulation of nursing homes, ALFs, and other congregate living settings to improve efficiency and effectiveness of regulation and oversight, provide better transparency for the public, and better protect the health and safety of the public. The study’s recommendations are due by October 1. VHCA-VCAL has requested that the association be named by the secretary as a stakeholder in this assessment.

Licensure Issues

Out-of-State Licensees – [SB 317](#) and [HB 1187](#) will allow health care practitioners licensed in another state or DC who has submitted an application for licensure to the appropriate health regulatory board to temporarily practice for a period of 90 days pending licensure, provided that certain conditions are met. VHCA-VCAL supported the bills.

Deemed Licensure for Out-of-State Licensees during Public Health Emergencies – Among their provisions, [HB 264](#) and [SB 369](#) provides that when the Board of Health has issued an emergency order, the Boards of Medicine and Nursing may waive (a) the requirement for submission of a fee for renewal or reinstatement of a license to practice medicine or as a PA or NP and (b) the requirement for submission of evidence that a practitioner whose license was allowed to lapse for failure to meet professional activity requirements has satisfied such requirements and is prepared to resume practice in a competent manner for any person who held a valid, unrestricted, active license within the four-year period immediately prior to the application for renewal or reinstatement of such license.

NPs Authorized to Declare Death and Cause of Death – [HB 286](#), will allow autonomous NPs to declare death and determine cause of death; NPs who are not autonomous can pronounce the death of a patient in certain circumstances. The bill also eliminates the requirement for a valid Do Not Resuscitate (DNR) Order for the deceased patient for declaration of death by an RN, PA, or NP who is not an autonomous NP. VHCA-VCAL supported the bill.

LPNs Authorized to Pronounce Death for a Patient in Hospice – [SB 169](#) will provide LPNs the authority to pronounce the death of a hospice patient with a valid DNR. VHCA-VCAL worked with the bill patron on amendments to the bill and supported the measure.

Workforce and Employment Bills

Special Advisor on Health Workforce Development – [HB 191](#) would create a role for a special advisor to the governor for health workforce development and the Virginia Health Workforce Development Fund. The fund is meant to provide incentives for to remove barriers to educating and training health workforce professionals; incentivize the production of health workforce credentials, degrees, and licensures; address regulatory barriers to entering into and staying in health professions; and provide education and training for health and health science professionals to align education and training initiatives with existing and evolving health workforce needs. The bill also requires the special advisor to review and evaluate the structure and organization of the Virginia Health Workforce Development Authority. VHCA-VCAL supported the bill, ultimately did not pass since the House and Senate passed different versions of the measure.

Paid Family and Medical Leave – The Senate Education and Health Committee voted unanimously to continue [SB 1](#) to the 2023 session. It would have required the Virginia Employment Commission to establish and administer a paid family and medical leave program with benefits beginning January 1, 2025. [HB 851](#), which would have required employers to provide 40 hours of paid sick leave to employees (prorated to reflect the average number of hours worked per week by each employee), was tabled in the House Commerce and Energy Committee. That committee took similar action on [HB 1160](#), which would have required paid sick leave to health care providers and other specified workers. The Senate passed [SB 352](#) requiring paid sick leave, but it was left in committee in the House. VHCA-VCAL opposed all these bills.

Minimum Wage – The General Assembly considered and then ultimately defeated bills to halt the scheduled increase in the minimum wage. The House passed [HB 320](#) on a 51-48 vote to do that. The Senate Commerce and Labor Committee defeated the measure, as it had likewise voted down a similar bill, [SB 173](#). The House passed [HB 296](#), which would have amended the definition of “wages” to include a payment to healthcare benefits on behalf of an employee. That bill was passed by indefinitely in the Senate Commerce and Labor Committee.

Barrier Crimes – The Senate passed [SB 425](#) to eliminate certain crimes from the definition of “barrier crime” and require specified state boards, including the Board of Health and the Board of Social Services to adopt regulations to develop and implement a waiver process to individuals who have been convicted of a barrier crime and who serve in a position or seek to serve in a position with any qualified entity subject to the regulations of the board. The House considered a similar bill, [HB 805](#), and left it in committee; it took the same action on SB 425.