LEGAL HEALTH UPDATE

Georgia General Assembly Update for 2009 Session

BY RICH SANDERS

Although the 2009 Session has only just begun, the General Assembly has been busy discussing the much-anticipated budget for 2009, some healthcare holdovers from the Legislature's 2008 session and measures aimed at healthcare reform. Because of the State's budget shortfall in excess of $2 billion, the Budget has taken center-stage in the first month of this session. The deficit for Medicaid is regularly cited as $208 million.

The most controversial aspect of the Governor's proposed budget is the provider tax. While a 3% tax on commercial HMOs was originally discussed last Fall, the Governor revised his proposal in the 2009 budget. In his State of the State Address on January 14th, Gov. Perdue blamed the crisis in part, on a change in federal law:

"The federal government has told states that we can no longer fund Medicaid as we have since 2006. That decision could not have come at a worse time. Washington, in its infinite wisdom, has decided that if we assess a fee against our Care Management Organizations as we currently do, we must impose it on all commercial health plans."

The Governor outlined three options:

1) to eliminate discretionary Medicaid programs – the ones that the federal government does not require Georgia to fund;

2) cut reimbursements to Medicaid providers by $208 million; or

3) to impose the same 4.5 percent fee on commercial and Medicaid managed care and preferred provider plans that the State currently imposes only on CMOs.

Instead of placing the burden solely on health plans, the Governor chose to "spread" the burden: "I chose to ask those who receive Medicaid payments to help fund the system. This proposal takes advantage of the fact that every dollar we send to Washington for Medicaid draws down almost two additional dollars.

So, my budget will reflect, and an accompanying bill will propose, a 1.6 percent fee on hospitals and health insurance plans to fill the hole in Medicaid, and to do what the healthcare community has asked of us for so long: one, to significantly raise reimbursement rates for providers, particularly for hospitals; and two, in conjunction with Super-Speeder legislation, provide $60 million to sustain and expand the state's trauma network."

House Bill 307 is a calculation of what will be assessed or "taxed" to hospitals under the Bill. The tax is referred to in the Bill as a "provider fee" defined as the fee imposed pursuant to this article for the privilege of operating a hospital. The Bill states that:

Each hospital shall be assessed a provider fee, assessed uniformly upon all hospitals, in the amount of the lesser of 1.6 percent of the net patient revenue of the hospital or the maximum amount that may be assessed pursuant to the percentage limitation of the first prong of the test for an indirect guarantee set out in [federal regulations]. The federal rules affectively cap the provider fee at 6% of a hospital's revenue.

The provider fee shall be paid quarterly by each hospital to the State. The assessment shall be based on the most recent completed annual financial report prepared by the Department of Community Health.

While this "provider fee" may not ultimately become law, it will certainly cause many hospital administrators to lose sleep in the meantime.

The Georgia Hospital Association estimates that in 2010, without a rate increase, hospitals will be paid approximately 79 percent of costs for inpatient services (a loss of $356 million) and 81 percent of costs for outpatient services (a loss of $139 million). For hospitals to break even on Medicaid services in 2010, state funds of $173 million are required to draw down vital federal matching dollars.

Rich Sanders directs the Health Law Practice Group in the Atlanta office of Balch & Bingham, LLP.
He can be reached at (404) 261-6020 and rsanders@balch.com.