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## GPNN Public Policy Summary August 3, 2017

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Below is a summary of key public policy issues impacting the Pittsburgh region's nonprofit sector. Key stories include:

### FEDERAL NEWS

#### Tax Reform

On Tuesday, July 25th, House Speaker Paul Ryan announced that the "Big 6" taxreform group [intended to release a set of principles](#) that would outline the GOP approach to tax reform. The group — which includes Speaker Ryan, House Ways and Means Chairman Kevin Brady (R-TX), Senate Majority Leader McConnell, Senate Finance Committee Chairman Orrin Hatch (R-UT), U.S. Treasury Secretary Steven Mnuchin, and White House National Economic Director Gary Cohn — hopes that releasing this messaging document just before the August recess will help build and maintain momentum on tax reform until Congress reconvenes in September.

Source: *Council on Foundations*

- ["What we know and don't know about the GOP tax-reform plan," The Hill, 8/2/17](#)
- ["How To Know When The GOP Is Serious About Tax Reform," FiveThirtyEight, 8/2/17](#)
- ["Dems express interest in working with GOP on bipartisan taxreform," The Hill, 8/1/17](#)
- ["Battle lines in tax reform fight: Democrats lay out demands," CNN Money, 8/1/17](#)
- ["Outside groups prop up White House's tax reform efforts," Politico, 8/1/17](#)

#### Health Care

- ["Senator announces bipartisan health care hearing on Obamacare," CNN Politics, 8/2/17](#)
- ["Trump Threatens Congress' Health Care; Senate Republicans Don't Seem Too Worried," NPR, 8/2/17](#)
- ["The Health 202: GOP's next health care fight? Whether to hold hostage Obamacare subsidies," The Washington Post, 8/2/17](#)

#### Opioid Epidemic

- ["Trump's opioid commission's recommendations fly in the face of Republicans' healthcare overhaul plans," Business Insider, 8/1/17](#)

### Spotlight Analysis: The Human Services Code

by Donna Malpezi of DMM Consulting and Brian Baxter

## Analysis of the FY 2017-2018 Human Services Code Amendments (7/31/17)

**Overview.** The Human Services Code language contained in HB59 (Moul) was amended on concurrence by the Senate Rules and Executive Nominations Committee on July 26th, and passed by the full Senate on a vote of 35 to 15 on July 27th. Several (but not all) Senate Democrats voted in the negative, along with Republican Senators McLhinney and Wagner.

HB59 is part of Fiscal Year 2017-2018 budget implementation, as the General Assembly continues to grapple with the impact of Medical Assistance (MA) costs on the overall state budget. Using the calculated federal Medical Assistance percentage (FMAP) rate for Pennsylvania of 51.82 percent (October 1, 2017 through September 30, 2018), Pennsylvania state taxpayers foot slightly less than half of MA costs, not counting the enhanced FMAP or the enhanced Affordable Care Act-based FMAP. In FY 2015-16, this accounted for 29 percent of all state General Fund spending.

Statements from Majority Leaders Corman in the Senate and Reed in the House have called for “smarter” and less costly ways of delivering state services. These amendments are arguably aimed at improving and tightening the state’s operation of the MA program.

Governor Wolf has **not** agreed to all of these changes, specifically expressing strong opposition to the MA work requirements. It is unclear what, if any, changes future negotiations will bring.

Below is an analysis of HB59, developed in conjunction with Brian Baxter.

### WAIVER REQUESTS

Requests for Section 1115 Waivers submitted by the PA Department of Human Services to the federal Centers for Medicare and Medicaid Services have historically been viewed as a matter to be handled exclusively by the Administration. However, HB59 directs DHS to submit **four** different 1115 waiver requests to CMS in the next fiscal year:

**1. Work requirements for Medicaid recipients.** A request to establish “reasonable employment or job search requirements for non-disabled, non-pregnant, non-elderly Medicaid eligible adults, as well as appropriate limits on nonessential benefits.”

- If adopted, the Wolf Administration would have significant flexibility in developing the detailed standards for defining “reasonable” job requirements and affected recipients;
- Precedent for such standards already exists in the Department’s definition of “Temporarily Needy” and “Chronically Needy” for cash assistance, as well as the federal food stamp program;
- Many Medicaid recipients, especially those in the ACA expansion cohort, are already working;
- Anyone needing treatment for drug and/or alcohol abuse will likely be exempt;
- It may take several months for the Administration to develop this waiver request, several additional months for CMS to approve it, and several months for DHS to implement such a requirement;
- Neither the costs of staff and services needed to implement this new requirement, nor any resulting savings, have yet been determined;
- It is likely the Trump Administration would approve Pennsylvania’s waiver request;

**2. Drug Treatment in State Mental Hospitals.** A request to authorize DHS to assess patients at State Mental Hospitals for opioid addiction and provide necessary treatment.

- Since the federal prohibition against using Medicaid funding for “Institutions for Mental Diseases” (IMDs) has historically been quite dear, any state’s request for a “waiver” of this federally-imposed statutory policy is likely to pose problems;
- Legal challenges based on the constitutionality of any system of forced treatment are also highly likely, however desirable such treatment may be;
- The Legislature did not provide any funding for the costs of such treatment;
- The prevalence of drug abuse in the Commonwealth’s State Mental Hospitals has not been documented (as far as we know).

**3. Cost-Reduction Medicaid Waiver.** A request to “reduce the costs” of the MA program prior to any departmental requests for supplemental MA appropriations in FY 2017-2018.

- This provision appears to be some kind of bureaucratic incentive for the Administration to do everything possible to avoid a supplemental appropriation for the Medicaid program in the next fiscal year, which has previously been a regular practice;
- This provision only requires the submission of a waiver request prior to a supplemental appropriation, not the approval and implementation of a waiver;
- It is very unclear what changes in policy or program would be entailed in such a waiver request.

**4. Total Population Coordinated Care Management.** A request to establish a pilot program focused on the use of evidence-based medicine and technology that departs from PA's current practice of carving out behavioral health care from physical health care. The combined care pilot would be tested in one Medicaid managed care region of the state, using one offeror of care.

- Includes a wide range of specific programmatic requirements that have been drawn from experience in the state of Alaska, which has used the program successfully to reduce its costs;
- The provision may represent the beginning of the end for the Commonwealth's successful system of Behavioral Health Managed Care that has been carefully separated (carved-out) from the managed care system for acute physical healthcare;
- This pilot program represents a major legislative foray into detailed programmatic design for the administration of the state's Medicaid program.

### **Additional MA Policy Changes Designed To Save Money and/or Reduce Fraud**

**1. An "Electronic Asset Verification" program** to automate the existing paper collection of asset data from banks in Pennsylvania to determine benefit eligibility.

- This provision appears to have been discussed with the banking industry;
- Automating any paper process at the County Assistance Offices reduces unnecessary administrative costs and helps recipients by shortening the eligibility determination process.

**2. Ambulatory Care Surgical Center Data Collection.** Requires ambulatory surgical centers and ambulatory surgical facilities to submit annual financial data reports to the PA Health Care Cost Containment Council. The reports would consist of financial, utilization and payor data.

- Hospitals have long claimed that independent (often physician-owned) Ambulatory Surgical Centers were unfair competition (lower, less costly standards) that "skimmed the cream" of patients needing surgery, leaving hospitals to provide care for more expensive, complicated cases, and leading to very substantial profits at such Centers;
- Authorizing the Pennsylvania Health Care Cost Containment Council to collect this data provides a safe, competent, and accepted mechanism for getting to the bottom of this decades-long controversy;
- This data collection has the potential for developing significant Medicaid cost savings in future budgets.

**Anti-Fraud Software Efficiency Study** to evaluate the efficiency and efficacy of software used by DHS to detect fraud and abuse in the cash assistance, food stamp, and Medicaid programs.

- DHS must issue an RFP and select three or more expert firms to participate voluntarily in an efficiency evaluation. The participants must use a test data set provided by DHS to identify and report on potentially fraudulent, incorrect and duplicative payments. DHS must then submit its report to the General Assembly no later than March 15, 2018;
- The language appears to envision both recipient and provider payments;
- The study is designed to develop cost-savings initiatives for the FY 2018-2019 budget;
- It will either show that existing computerized controls on fraud are solid, or point to opportunities for future budgetary savings through improved computer systems.
- The study may actually help determine an upper limit on the usefulness of "fraud and abuse" for balancing the state budget.

## **PA STATE POLICY NEWS**

### **State Budget 2017-2018**

#### **PA Senate sends its budget package to state House**

A package of five code bills to nearly finish the 2017-18 state budget, including \$1.8 billion in revenues that barely won approval, was sent to the state House of Representatives by the Senate July 27th. House Republicans stated they were not party to the package produced and approved by the Senate. House GOP leaders also indicated they would be reviewing the package and determining their response during the next few weeks, with a return to session sometime before the end of August – and that's as detailed as they got with the timing. There's also the narrow 26-24 approval of the majority of the Senate's revenue package by that chamber, and whether the issues raised by some in the Senate will make it more difficult to find 102 votes in a 203-member House. Senate leaders in both parties – but more so the GOP than the Democrats – were visibly unhappy with the argument made by some (along with their negative votes) that without addressing the community impacts by natural gas pipeline construction, the revenue package including plenty of natural gas taxes doesn't do enough to help those communities (with the indication those communities desire some form of impact fee payment similar to the compensation other communities receive for drilling activity impacts).

- *Source: Under The Dome*

#### **Legislature's proposed \$200 million 'transfer' to balance state budget still improper effort to 'seize' funds, says nonprofit insurance provider**

Pennsylvania's 2016-17 state budget ended \$1.5 billion in the red, and \$200 million of that was due to a failed attempt to move money lawmakers argue is theirs to transfer. Current plans to balance the 2017-18 state

budget – projected to be at least \$2.2 billion in the red, primarily because that \$1.5 billion from Fiscal Year 2016-17 wasn't dealt with during that fiscal year and rolled into FY2017-18 – also involve transferring that same \$200 million, as part of [House Bill 118](#), the FY2017-18 state budget's proposed Administrative Code. Just like FY2016-17, the nonprofit Pennsylvania Professional Liability Joint Underwriting Association (JUA), which was created by the General Assembly to provide insurance to healthcare providers, claims those funds do not belong to the Commonwealth.

During the recently completed FY2016-17, when the General Assembly and Gov. Wolf enacted legislation to transfer \$200 million from the JUA, the JUA filed a federal lawsuit – still to be resolved in court – which effectively prevented that particular component of Act 85 of 2016 from being implemented. At that time, the \$200 million was more of a loan, to be repaid during the next five years. This time around, if the JUA declines to transfer the \$200 million to the state Treasury (and it's not a loan to be repaid in this iteration), lawmakers believe they have come up with a solution to the legal hurdle they experienced during FY2016-17: abolish the JUA if the organization refuses to turn over its assets.

HB118 states that in the event the \$200 million is not transferred by Nov. 1, 2017, "the joint underwriting association shall be abolished and the money in the possession or control of the joint underwriting association" will be transferred to the state Insurance Commissioner, who will deposit it in a fund created within the Insurance Department. From that fund, \$200 million will be transferred to the state Treasury. The legislation also seeks to prevent another lawsuit by the JUA in federal court, giving the state Supreme Court jurisdiction over this matter; legal action by the JUA against the Commonwealth should HB118 be enacted has been guaranteed by their president and legal counsel.

- *Source: Capitolwire: "Legislature's proposed \$200 million 'transfer' to balance state budget still improper effort to 'seize' funds, says nonprofit insurance provider," by Chris Comisac*

### Revenue

Revenues for start of FY2017-18 come in \$112.8 million better than the start of FY2016-17. For the first month of FY2017-18, the state collected \$2.1 billion in General Fund revenue. Without a budget, there are no revenue estimate targets by which to compare that collection figure, but in comparison to last year's July collections, the total for July 2017 represents an improvement of \$112.8 million, or 5.7 percent. That improvement was largely driven by the state's Personal Income Tax (PIT) and Sale and Use Tax (SUT) generating revenues in excess of their July 2016 totals, by \$67 million (an 8.8-percent improvement) and \$21 million (a 2.3-percent improvement) respectively. Additionally, the Pennsylvania's tobacco tax changes last year, implemented for only a portion of FY2016-17, helped to generate \$25 million more in revenue than was produced in July of last year. Those improvements, and slight upticks – or at least no declines – in the state's other tax collections (which compared to last year, were, in total, up by 6.7 percent), helped to offset July 2017 non-tax revenue that was \$16 million (or 42.4 percent) less than it was for July 2016.

- *Source: Under The Dome*

## LEGISLATION

- [SB 834: Act re naturopathic doctors](#)
- [SB 836: Amends Title 35 re rescue animals & body armor](#)

## REGIONAL / LOCAL NEWS

- ["Pa. has a good Obamacare market – but not if Trump follows through on threats," Penn Live, 8/2/17](#)
- ["Cheyney University Alumni Call On Tom Wolf For Support," CBS Local, 8/1/17](#)
- ["Why Pittsburgh Is Still The Center Of Self-Driving Car Technology," WESA, 8/1/2017](#)
- ["Marcellus shale puts Pennsylvania in top tier of states that export energy," Trib Live, 7/31/17](#)
- ["Warden: More than 70 percent of new inmates in Westmoreland jail addicted to drugs," Trib Live, 7/31/17](#)

Public Policy Summary written by



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