



## **2005 LEGISLATIVE REPORT**

### **September 2005**

The following is a summary of the key issues that affected NHHA members at the Legislature. If you would like to check on a specific bill, please go to <http://www.gencourt.state.nh.us/ie/billstatus/quickbill.html>.

Much was at stake for hospitals during the 2005 legislative session of the New Hampshire General Court. Early in the session, with the State facing a projected \$300 million budget shortfall, hospitals were targeted for a \$38 million reduction in **Medicaid payments** over the biennium, the biggest hit to any sector. Lawmakers restored \$31.5 million of the proposed cuts, while cutting in half the \$26 million reduction in outpatient hospital payments. Including forfeited federal matching funds, the impact on hospitals will be \$13 million during SFY 2006 and 2007.

Policy successes include the enactment of medical liability reform, small group insurance reform, and prompt pay relief. Chief among these victories was the passage and signing of the **pretrial screening panel law** that will encourage quicker settlements in medical liability cases. Three years in the making, the pretrial panel law is expected to lower legal and administrative costs.

The passage of **small group insurance reform** was a major victory for hospitals, small businesses, and Governor John Lynch. By repealing the medical underwriting and geographic rating provisions of Senate Bill 110, insurance companies will no longer be able to charge higher insurance premiums to small businesses with sicker employees and small businesses located in certain areas of the state.

Insurance statutes were tightened with the passage of the **prompt pay** bill, which requires insurers to act on denied and pended claims within specific timeframes and mandates automatic interest payments on overdue claims.

## **Highlights**

### **Medicaid Budget**

Hospitals worked hard to defeat persistent attempts to slash Medicaid payments to hospitals. Faced with \$38 million in proposed reductions in hospital payments, hospitals convinced lawmakers to:

- restore funding for Catastrophic Payments - \$ 5 million
- restore Indirect Medical Education - \$6 million
- restore Direct Medical Education - \$1.7 million
- restore Outpatient Hospital Payments - \$13 million.

Hospitals were initially targeted for a \$26 million reduction in outpatient payments, which legislators cut in half for a two-year reduction of \$13 million. New Hampshire's thirteen Critical Access Hospitals (CAH) are exempt from the outpatient cuts. This action has resulted in a reduction in outpatient hospital rates for all non-CAH hospitals from 91.27% of allowable costs to 81.24% effective August 1, 2005.

The Legislature created an oversight committee to study Medicaid outpatient hospital payments. We expect the committee to examine alternative methods of reimbursement with recommendations, if any, to be made by 2007. Hospitals are invited to address questions and concerns of the committee related to Medicaid outpatient reimbursement such as interim rates, cost settlement, trends in enrollment and service use, planning for the implementation of APCs, and the Department's implementation of care management and prior authorization initiatives.

### **Medicaid Reform/GraniteCare**

The Legislature enacted changes to New Hampshire's Medicaid program, significantly scaling back the Department of Health & Human Services' efforts to overhaul Medicaid. Pending federal approval, the State would close financial loopholes that allow seniors to make themselves eligible for Medicaid-covered nursing home care by disposing of their assets for less than fair market value. In addition, the State plans to divert patients seeking nursing home care to less costly community-based services by conducting in-depth assessments using stricter admission criteria.

### **Medical Liability Reform**

The need for tort reform has been increasing as physicians in high-risk specialties and within certain geographic regions find they can no longer afford to pay skyrocketing malpractice insurance premiums. Recruitment of new physicians to New Hampshire is a problem, taking a year or more to recruit physicians to many specialty practices. These problems prompted a legislative commission to recommend legislation requiring pretrial panels to review medical liability cases. In order to accomplish meaningful reform in 2005, hospitals supported Senate Bill 214, modeled after Maine's effective panel law, but with added improvements that protect the rights of injured parties while encouraging early settlements to reduce administrative costs.

The passage of the pretrial screening panel bill was a huge victory for hospitals and physicians. Effective August 29, 2005, the new law includes three fundamental provisions:

- pretrial panels are mandatory,
- an appropriate standard of proof must be met by the plaintiff, and
- unanimous panel findings are admissible at trial.

Under the new law, parties to a malpractice claim must go before a panel consisting of a retired judge, an attorney and a physician. The panel will conduct a hearing and decide on the merits of the case. Cases may proceed to trial if parties are unable to settle. This process is intended to encourage quicker settlements, thereby lowering the steep legal costs to prepare cases that contribute to soaring malpractice premiums.

SB 214 also establishes a committee to study medical malpractice insurance rates and the effectiveness of the mandatory panel process. The committee's final report must be completed before December 1, 2010.

### **Small Group Health Insurance Reform**

A major victory for hospitals, businesses and Governor John Lynch, Senate Bill 125 was enacted to remedy problems created by the 2003 legislation, Senate Bill 110, which resulted in sharp increases in the cost of health insurance for many of the state's small businesses. The new law strips away workers' health status and geography from the rate setting calculation for small groups, thus paving the way to provide relief for small employers, especially those located in the North Country and the Seacoast.

The new law also places restrictions on rate increases, limiting the highest premium charged to no more than 3.5 times more than the lowest premium. A major feature of the law is the creation of a high-risk reinsurance pool in order to spread the cost for insuring individuals with catastrophic health conditions. Insurance companies will therefore be allowed to shift high-risk employees into the pool *after* premiums are set, thus removing the possibility of discrimination against less healthy employees. The new law goes into effect January 1, 2006.

### **Prompt Pay Reform**

The passage of a new law to ensure prompt claims payments was a victory for hospitals and physicians. Senate Bill 78 addresses loopholes that have allowed insurers to delay payments. Effective September 19, 2005, insurers are required to act on denied and pended claims within specific timeframes (30 days for paper claims and 15 days for electronic claims). The new law remedies the burden of providers deciphering each insurer's interpretation of a "clean claim". Finally, the law mandates automatic interest payments on overdue claims. A key provision subjects insurers to prompt pay requirements for *pended* claims as well as well as new claims.

### **Health Care Quality**

The Legislature created the New Hampshire Health Care Quality Assurance Commission responsible for the collection, analysis and dissemination of quality assurance

information statewide. NHA believes this is a significant step toward reducing medical errors because, for the first time in New Hampshire, medical practitioners will be allowed to share data among hospitals statewide. Quality of care issues to be reviewed include medical errors, unexpected adverse outcomes and near misses, and proposed changes to improve health care.

Every acute care hospital and ambulatory surgical center is represented on the Commission. The functions of data collection and analysis will be delegated to the Foundation for Healthy Communities. The Commission's work begins in September, 2005.

### **Nurse Practice Act Overhauled**

The Legislature rewrote the Nurse Practice Act, the first major revision in decades. The Act clarifies the parameters of the scope of practice for all nurses and spells out the difference between various Advanced Registered Nurse Practitioner (ARNP) categories. The legislation also addresses the issue of how ARNP specialty categories are created through national accrediting bodies approved by the New Hampshire Board of Nursing. The new law includes continuing competence requirements, and while it retains the requirement of criminal background checks for New Hampshire nurses, it does not require background checks for interstate compact nurses. This differentiation is necessary for New Hampshire to participate in the multi-state nursing compact. Also included are duty to warn and privileged communication requirements for all licensees.

### **Newborn Screening**

Senate Bill 108 was passed by the Legislature to streamline the process for adding new tests for newborn screening for certain diseases. Recommendations to expand the number of tests to screen for preventable and treatable diseases will continue to be made by the state's Newborn Screening Advisory Committee. However, the legislation requires the advisory committee to hold public hearings when a new test is proposed to be added to the panel of tests. At present, the advisory committee is proposing an additional four tests to increase New Hampshire's newborn screening tests to a total of ten. If approved, the cost to hospitals is estimated to increase from \$18 to \$35.

### **End of Life Care**

The Legislature has held on to a bill that would update the state's laws related to a Living Will and Durable Power of Attorney for Healthcare. In the midst of the hearings on House Bill 656, the publicity of the Terry Schiavo case made it difficult to move the bill forward. Rather, a House Judiciary subcommittee will further study healthcare decisionmaking, including advanced directives, guardianship and do not resuscitate orders.