Special Session 2020 – End of Session Report

May 26, 2020

Legislators officially convened their 2020 spring session and the second year of the 101st General Assembly on January 28, but they spent only fifteen days in Springfield before the COVID-19 public health emergency disrupted the normal session calendar.

When lawmakers returned to Springfield for special session on May 20, the environment and conditions under which they made their return had drastically changed: the House convened in a downtown convention center to accommodate social distancing; face masks were required on both the House and Senate floors; lobbyists and advocacy groups were not allowed to interact with lawmakers in-person; and public access to both buildings was granted under limited terms.

Additionally, the process by which lawmakers developed the policy issues to be tackled during the limited special session did not follow the normal committee process. Neither the House nor the Senate had convened a traditional committee meeting since early March and instead resorted to legislative working groups – 18 total in the House and 17 in the Senate – that met virtually, but were closed to public input.

All of this culminated into a three-day special session that was extended an additional day so that lawmakers could complete work on an ambitious policy agenda that targeted passage of a new budget and borrowing authority, COVID-19 response packages for health care, economic and essential worker relief, as well as addressing continuity of government operations and voting procedures for the November election, among other items.

Lawmakers concluded their work in the early morning hours of May 24 after passing 22 bills in total – all of which are expected to be signed by Governor Pritzker in the coming weeks.

Below is a summary of action on key issues in which ILHIC engaged and/or monitored over the course of this special session.

<u>Health Care COVID-19 Response: Telehealth Coverage and Affordability Study</u>

After several health care-related working groups in the House released a broad list of policy items (including non-COVID-related items) for possible consideration early in the week ahead of the start of the special session, lawmakers had narrowed that list to focus in on telehealth coverage changes and the affordability of health insurance by the start of the session on May 20.

Telehealth coverage, however, quickly became a tale of two approaches with the House moving towards codifying the Governor's telehealth EO 2020-09 with opposition from ILHIC and the health insurance industry, including the Department of Insurance, while the Senate, under the leadership of Senate Insurance Chairman Napoleon Harris, worked to broker a compromise between providers and ILHIC.

The House filed House Amendment #5 to SB 1864 (Harris) late on May 21 containing the omnibus health care package, including codification of the Governor's EO 2020-09 (and related insurance guidance (DOI Bulletin 2020-04) and the HFS telehealth emergency rule) through May 1, 2021. The proposed changes did not include any of the suggested language ILHIC provided and the provisions proposed would have required insurers to keep reimbursement parity and removal of cost-sharing for telehealth services through that period of time, but benefits for individual and small group marketplace plans would have removed cost-sharing for telehealth services for the full 2021 benefit policy year.

After ILHIC and the health insurance industry objected to the inclusion of the telehealth provisions in the omnibus package, the bill's sponsor – Democrat Majority Leader Greg Harris – agreed to remove those provisions under House Amendment #6 to SB 1864 on May 23.

Democrat Representative Deb Conroy would later file House Amendment #2 to SB 671 that same day to codify the Governor's EO 2020-09 through the end of the year – again without any suggested changes from ILHIC that included underlying changes to the existing telehealth coverage statute guaranteeing that provider reimbursement arrangements for telehealth were subject to contractual provisions rather than statutory requirements. The language also extended emergency rulemaking authority to the Department of Insurance to implement COVID-19 related telehealth changes through January 1, 2026, but that provision was later removed in House Amendment #3.

In the meantime, ILHIC continued to work with Senate Insurance Chairman Harris on telehealth language that would memorialize an agreement between the insurance industry and the proponents of SB 2561 (Fine) to replace the underlying provisions, as introduced, requiring reimbursement parity with in-person visits and a minimum facility fee with provisions prohibiting insurers from denying medically necessary services simply because they were delivered via telehealth. The language also removed reimbursement parity and facility fee payment requirements and replaced it with provisions acknowledging those arrangements are to be a part of the contractual process.

The industry was also willing to make concessions to extend payment parity and removal of cost-sharing for COVID-19 specific telehealth services only; however, given the direction in which the House was rapidly moving, ILHIC later agreed to codify extension of EO 2020-09 through the end of the year, but only with inclusion of those aforementioned compromise provisions.

Shortly after the House unanimously approved SB 671 (Bennett/Conroy), as amended, over the objections of the industry, Chairman Harris filed Senate Amendment #2 to HB 823 (Willis/Harris N.) containing the ILHIC compromise. The Senate unanimously adopted the amendment late on May 23, but did not concur on SB 671 sent over by the House, so telehealth coverage changes ended in an impasse.

ILHIC's position from the beginning had been to defer to the existing EO 2020-09 that will likely be extended for at least another 30 days when the Governor extends the public health emergency declaration at the end of the month, and allow more time to negotiate comprehensive changes to telehealth coverage and delivery laws and regulations through a process that is more transparent, inclusive, and less rushed.

Lawmakers will most assuredly revisit this issue later this year and/or next year and ILHIC anticipates discussions on telehealth to continue through the summer and early fall.

As noted previously, after telehealth provisions were stripped from the larger health care omnibus package - SB 1864 (Hunter/Harris G.) – the bill was cleared to pass both chambers and includes the following:

- A health coverage affordability study that was first proposed under House Amendment #1 to HB 5442 (Harris G.) directing the Departments of Insurance and Healthcare and Family Services to conduct a study of the private and public health insurance market to explore options to make health insurance more affordable for low- and middle-income Illinoisans. The language also calls for the study to make policy recommendations, by February 28, 2021, about expanding coverage options moving forward.
- Medicaid changes, including the relaxation of certain regulations during the COVID-19 public health emergency that will make it easer for individuals to prove eligibility for the federal Children's Health Insurance Program (CHIP) and the similar state program, All Kids. It also allows applicants to submit applications over the phone in lieu of a physical signature.
- The provisions also establish a state task force on kidney disease prevention that will develop a plan by the end of next year to raise awareness about early detection, promote health equity, and reduce the burden of kidney disease through the state.

Finally, lawmakers also approved SB 2541 (Steans/Harris G.) codifying changes to the hospital assessment program for Medicaid funding through December 31, 2022, subject to federal approval. The provisions raise the existing hospital tax by $146 million to bring an additional $242 million to Illinois hospitals and represents substantial total Medicaid funding stream of approximately $3.8 billion.

Workers' Compensation Changes

Following the Illinois Workers' Compensation Commission's withdrawal of controversial emergency rules to presumptively assume essential workers contracted COVID-19 while on the job, business interests and organized labor negotiated an agreement memorialized under HB 2455 (Hoffman/Holmes). Under HB 2455, essential workers in Illinois will qualify for workers' compensation if they contract COVID-19 on the job.

However, business groups were able to preserve current rebuttable presumption standards set forth in the *Johnson vs. IWCC* appellate court decision and follow existing public health guidance, including a positive test or diagnosis to meet the presumption requirements. The agreed legislation also defines to whom the provisions apply, including front-line providers/essential workers and first responders, and excludes those who may work from home from eligibility.

SB 2455 also included changes to the state's unemployment insurance benefits in line with changes made by the federal CARES Act, including extending benefits for 20 weeks.

Paid sick leave was not included in the agreed final version.

Additionally, lawmakers did **NOT** address any provisions that would have created a new cause of action for essential employers to provide personal protective equipment to their employees and any independent contractors located within Illinois. Such provisions were introduced earlier this month under HB 5769 (Thapedi), but due to heavy opposition and concerns from the business community, the provisions were never considered in any of the legislative packages put forward during the special session.

State Budget and Borrowing Authority

Lawmakers in both chambers spent the final hours of the special session approving a new spending plan for the new 2021 fiscal year, scheduled to begin on July 1. With only Democrat support, lawmakers passed a budget package - SB 264 (Harmon/Harris G.) and the corresponding budget implementation bill SB 357 (Harmon/Harris

G.)- authorizing $40 billion in general revenue spending for FY 2021 that holds spending essentially level with the current 2020 fiscal year budget.

Much of the spending, however, remains tentative depending on the progression of the COVID-19 pandemic and potential congressional action that could send more financial aid to states. Lawmakers crafted the budget with a lot of unknowns, such as the depth of the economic hit from the virus (the Governor had not updated revenue projections in over a month); how much more the state will need to spend to respond to the virus; whether voters will approve a graduated income tax in November; and if the state will receive additional support from the federal government.

Unlike the Governor's introduced budget in February, this budget does not presume the graduated income tax amendment will be approved by voters in November. The state is also projecting a $2.7 billion shortfall for the current fiscal year, ending June 30, and a $6.2 billion hole for FY 2021, even with approval of the graduated income tax.

One key component of the budget package is a plan to authorize up to $5 billion in borrowing from the Federal Reserve's Municipal Liquidity Facility program as authorized under the new Coronavirus Urgent Remediation Emergency (CURE) Borrowing Act - SB 2099 (Harmon/Zalewski). The federal RMLF program allows the central bank to purchase certain short-term debt from states to help them make up for the loss of revenue due to the pandemic. This will serve as a "bridge loan" until the state receives direct support in the next stimulus package from the federal government.

Congress, however, has not yet authorized such a package and there is sharp disagreement between congressional Republicans and Democrats over what that plan should look like. The General Assembly has also given the governor discretionary authority to set aside up to 15% of any line item or lump sum and 8% transferability between operational lines.

In sum, the state's financial situation - should the state's existing revenues continue decline, the federal funding and borrowing contemplated in the new FY 2021 budget fail to materialize and/or voters reject changes to the state's income tax structure in November – will prove to be a substantial policy issue later this year (and next) that will likely force lawmakers to look at revenue sources that could have a significant impact on our members.

Some additional highlights of the state's spending plan are as follows:

- A few state agencies are slated for increases in the new budget, including the Illinois Department of Public Health, the agency coordinating much of the state's response to the COVID-19 pandemic. The agency's total budget, including federal funds, is slated to grow 144%, to more than $1.6 billion, which includes an additional $416 million in federal funds for testing and services provided by local health departments.
- The package also sets up a special fund to receive and disburse money from the federal CARES Act, a $2.2 trillion federal relief program that Congress approved earlier this year. Illinois expects to receive about $2.8 billion for the current fiscal year and $3.8 billion for FY 2021. This money is earmarked for direct aid to the state's health care industry to help hospitals, nursing homes, mental health centers and other care providers to help them absorb the cost they have incurred for dealing with the pandemic. The funds will also be used for testing and contact tracing, education, affordable housing grants, airports, and small business grants. The budget also allows for $3.7 billion in supplemental appropriations for the current fiscal year that is tied to authorization of spending of the incoming federal CARES Act dollars.
- An additional $1.8 billion was earmarked for the Illinois Emergency Management Agency and while the package gives the Governor wide authority over how to distribute those funds, the additional dollars, which come from federal COVID-19 relief sources, dictate specific ways in which the states can distribute and purpose those funds.

<u>Executive Authority, Government Operations & the 2020 Election</u>

Since the start of the public health emergency, Governor Pritzker has issued 37 Executive Orders (with more expected in the coming weeks and months). In the days and weeks leading up to the special session, the Governor's executive authority had become an increasing focus of lawmakers – particularly Republicans – who believed that the Legislature's continued hiatus allowed the Executive Branch to continue making important policy decisions without appropriate legislative input.

The Governor's executive authority has also become the source of an increasing number of lawsuits filed challenging his authority – many of which are still pending – but as lawmakers returned to Springfield, it was expected that his authority, including his plans to reopen the state under the Restore Illinois plan, would be a focus of legislative activity.

While the General Assembly did not take any sweeping action to formally solidify the Governor's emergency authority powers, including the ability to issue multiple emergency declarations after the initial 30 days, nor did they make any statutory changes to the Governor's reopening plan, the Legislature did pass an omnibus bill that included authorization of limited oversight over the plan.

SB 2135 (Sims/Burke), as amended, contained a number of provisions of note summarized below, but it was only able to pass out of the General Assembly after the House removed two controversial provisions that would have allowed the Legislature to convene and vote remotely, as well as allowed for the temporary delay of Freedom of Information Act (FOIA) requirements.

As passed, the legislative package includes the following key provisions:

- A new Restore Illinois Collaborative Commission to "participate in and provide input on plans to revive the various sectors of the state's economy in the wake of the COIVD-19 pandemic." The commission will consist of 14 appointed lawmakers (8 Democrats and 6 Republicans) in collaboration with the Department of Commerce and Economic Opportunity (DCEO). Meetings may be convened to address revitalization efforts for the various sectors of the state's economy. DCEO will be required to provide monthly reports to the General Assembly regarding "current and proposed" revitalization efforts. The first report is due July 1.
    - (*Of note, the Governor's Office released detailed guidance regarding how businesses should open and function in Phase 3 of the re-opening plan shortly after the General Assembly adjourned their session on May 24. Phase 3 Guidance is available HERE.*)
- Creation of a 10-person task force of members representing the Department of Insurance and the insurance industry to ***study business interruption insurance policies*** and any need for changes based on the impacts of the COVID-19 pandemic on businesses. There will also be a study of broadband access for Illinois residents, with a goal of expanding the state broadband competitive matching grant program and increasing affordable access, which may also play into ongoing discussion about telehealth.
- ***Codification of EO 2020-14 allowing remote notarization until 30 days after the governor's disaster declaration has ended.***

The General Assembly also passed changes targeting the upcoming 2020 November election, including legislation - SB 1863 (Morrison/Burke) and HB 2238 (Burke/Morrison) (clean-up to SB 1863) – to expand the state's current vote-by-mail program amid public health concerns over voting and elections during the COVID-19 pandemic. Under the changes, any person who has voted in the past two years (2018 General Election, 2019 Consolidated Election, or 2020 Primary Election) will receive an application for a ballot in their mailbox.

General Election Day, November 3, 2020, will be a state holiday for schools and state offices so that those facilities can be used as polling places (to replace nursing home polling places). In-person voting, either early or on Election Day, is still allowed, but local election authorities can set up drop-boxes for depositing ballots and can also develop curb-side voting.

The expanded vote-by-mail program only applies to the 2020 General Election.

Lawmakers also approved Senate Joint Resolution 1, which contains the wording for a graduated income tax ballot question that will also be mailed to voters ahead of the November election. Per the resolution, the language will include a background explanation to voters, along with presentations of the arguments for and against the proposed constitutional change.

Looking Ahead – Fall Veto Session

As noted above, lawmakers did not approve legislation with a provision that would have allowed them to convene virtually in the fall veto session, so as such, they are scheduled to return in-person for the two-week veto session on November 17 – 19 and December 1 – 3. The Senate, however, did approve a rule change (Senate Resolution 1201) to enable Senate leadership to establish a process for remote committee work, and to allow a member to participate remotely "in times of pestilence or public danger" so long as a quorum of members is physically present.

The House did not approve a similar rule change, so it remains to be seen how both chambers will transition their previous working group process into a remote committee process that will allow for stakeholder and public input.

The environment in which lawmakers are scheduled to return for the fall veto session is also far from certain given the series of unknowns about how the budget, the state's finances, the November election, and the public health emergency will unfold in the weeks and months to come.

Given the intensely compressed time frame in which lawmakers met to tackle policy issues they deemed to be a priority during this special session, a number of key policy issues that may have otherwise been the focus of legislative activity this spring were sidelined – including data privacy and paid leave, and other health insurance-related issues beyond telehealth such as rate regulation, new coverage mandates, and prescription drug affordability measures.

While there is speculation that the policy agenda may be exceptionally heavy for the short fall veto session, that speculation is also very much dependent on how the series of unknowns play out.