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Memorandum

To: Iowa Academy of Family Physicians

From: Cornerstone Government Affairs

Date: April 24, 2017

Re: 2017 Legislative Session

The 2017 legislative session kicked off with a political landscape Iowa hadn't seen since 1998—it was the first year since 1998 that Republicans had control in both chambers as well as the Governor's office. Once the dust had settled after the November elections, Republicans crafted a legislative agenda which included many Republican-priority initiatives that had been unable to make headway in a split-party environment. This agenda included reforms to collective bargaining, robust business agenda, medical malpractice, 2nd amendment and election overhauls, minimum wage preemption, and started a conversation on reforms to Iowa's tax law and tax credits.

2017 State of Iowa Budget

The revenue outlook for the session was bleak when the December Revenue Estimating Committee (REC) reported the Legislature must cut \$100 million out of the current fiscal year (ending June 30, 2017); a task legislators were forced to tackle within the first several weeks of session. Several programs and departments were cut during this first round of deappropriations, including \$18 million cut to Regents universities, community colleges reduction by \$3 million, \$6.1 million from Iowa's cultural trust fund, \$5.5 million to the Department of Corrections, \$3 million to the judicial branch, and \$1 million to the Department of Public Safety. No reductions were made to K-12 public education, the state's Medicaid program or funding for property tax credits during this first round of cuts.

Revenues were again downgraded by the REC again at its March 2017 meeting. The shortfall was larger than the December meeting and amounted to a \$130 million cut to the current fiscal year. Legislators dealt with the blow differently than the first round, using "rainy day" funds to cover some of the current fiscal year woes. Legislators committed to pay back these rainy day funds over a two year period; a process which impacted the FY 18 budget year. For FY18, the legislature paid back approximately \$30 million, leaving almost \$100 million to be paid back in FY19's budget.

Looking ahead to next session, key legislators have expressed a keen interest to take a serious look at tax credits, stating their desire to modify or eliminate tax credits that "aren't working" for their intended use and purpose. Additionally, legislators are anxious to reform Iowa's tax law to lower Iowa's income tax. Senate President Jack Whitver stated the lack of reform to Iowa's tax law was this session's biggest disappointment for him. Depending on the state's receipts over the next several months will be a key factor in the Legislature's ability to move forward these ideas.

Medical Malpractice

The legislature passed [SF 465](#), a bill that reforms Iowa's medical malpractice laws. Iowa's medical malpractice insurance rates are unfavorable compared to most surrounding states as well as states throughout the country. This bill reforms Iowa's medical malpractice law by enacting the following provisions:

- *\$250,000 Cap on Noneconomic Damages* - The legislation caps noneconomic damages – awards meant to compensate for intangible damages like pain and suffering – at no more than \$250,000. The cap does not affect economic damages, which compensate for tangible losses like lost wages and the costs of medical care, as well as punitive damages that penalize egregious behavior. The cap on noneconomic damages does not apply in cases where



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a jury determines that the care in question resulted in a substantial or permanent loss or impairment of a bodily function, substantial disfigurement, or death.

- *Expanded CANDOR Protections* - Enacted in 2015, Iowa's Candor statute allows physicians to engage their patients in frank and confidential discussions following an adverse outcome, without concern that the information shared in these discussions might later be used against the physician in court. Under current law, only cases of death or serious physical injury qualify for the Candor protections. SF 465 lowers that threshold so any cases of physical injury would qualify. It also expands the list of providers able to initiate a Candor discussion from just physicians, ARNPs, physician assistants, and podiatrists, to include all members of the healthcare team.
- *Strengthened Expert Witness Standards* – The bill strengthens expert witness standards by requiring the expert to be licensed and in good standing in the same or similar field as the defendant and have practiced within 5 years preceding the incident in question. If the defendant is board certified, the expert must also be board certified; this applies for a physician defendant to a physician expert.
- *Certificate of Merit* – The bill requires plaintiffs to file a certificate of merit by an expert witness who certifies that the standard of care was breached and how it was breached; this must be filed within 60 days of the defendant's response to the initial notice that has suit has been initiated.

Contingent upon the Governor's signature, the bill goes into effect July 1, 2017. The governor has indicated his support of the legislation and will be signing the bill in the next couple of weeks.

Step Therapy Protocols

The Legislature enacted [HF 233](#), a bill that requires health insurance companies to make changes to their step therapy protocols. Under current law, a patient may be required to try, and then fail on lower-cost or older drugs selected by their health plan before coverage is granted for the drug prescribed by the patient's health care provider. These policies can vary widely based on the prescription and the insurance company's policy. These protocols limit a health care provider's ability to tailor care to individual patient needs. For patients living with serious or chronic illnesses, prolonging ineffective treatment may result in possible irreversible progression of disease, loss of function, and adverse effects. This may ultimately lead to increases in unnecessary health care costs associated with additional provider visits, ER visits, hospitalizations and other costs.

The bill requires the protocols are based on widely-accepted clinical guidelines; the exceptions process is transparent and accessible to patients and health care providers; provisions that enable health care providers and patients to override a health plan's protocols when it is medically appropriate for a patient. The bill gives greater power to physicians and patients who are trying to gain access to certain procedures and/or pharmacy benefits. The Bill provides that when a step therapy protocol is in use, the person participating in a health benefit plan or the person's prescribing health care professional must have access to a clear, readily accessible "step therapy override exception," which authorizes the expedited coverage of a prescription drug selected by the prescribing health care professional, based on the review of the exception request along with supporting rationale and documentation. It is important to note that the bill specifically excludes the three major managed care organizations that are contracted with the state of Iowa to provide Medicaid-related services. The bill is effective January 1, 2018 contingent upon the Governor's signature.

Biologic Products

The state has enacted [HF 305](#) a bill that allows Iowa pharmacists the ability to dispense safe and potentially less expensive biologic medication to patients by substituting an FDA approved interchangeable biologic for a prescribed biologic product.

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A biological product is a medical product, often made from a variety of natural sources, used for a broad range of diseases or conditions. The bill provides that a physician writing a prescription can expressly indicate no biological substitute be allowed. The bill gives some flexibility to pharmacists and helps reduce health care costs. The bill is effective July 1, 2017.

Physician Assistant Supervision

[HF 591](#) is a bill that puts to bed a two year battle between the Board of Medicine and the Board of Physician Assistants regarding physician assistant supervision at remote sites. The bill requires that any rule dealing with the supervision of physician assistants must be agreed to by the Board of Medicine before put forth into the administrative rule process. The bill rescinds proposed rules by the Physician Assistant Board that would remove the requirement that a supervising physician visit a remote site at least once every two weeks.

Prescription Monitoring Program

[HF 524](#) is a bill that makes changes to Iowa's law regarding prescription monitoring program. The prescription monitoring program (PMP) is a health care tool for practitioners to assist in identifying potential diversion, misuse, or abuse of controlled substances by their patients while facilitating the most appropriate and effective medical use of those substances. The changes in HF 524 allows Iowa to become connected nationally to other states utilizing the prescription monitoring program.

Medicinal Cannabis

In the final hours of the 87th General Assembly, the House and Senate passed [HF 524](#), a bill that would allow growing, manufacturing and distributing of medical cannabidiol in the State of Iowa. The cannabidiol is defined as cannabis oil that has 3% or less THC, the component of the marijuana plant that gives users a "high". Iowa currently allows for the use of this product for only epilepsy and users must travel out of state to get the product, which requires them to break Federal law when crossing state lines with the product.

HF 524 expands the use of the product to people with cancer, multiple sclerosis with severe and persistent muscle spasms, seizures, AIDS, Crohn's disease, Amyotrophic lateral sclerosis, any terminal illness, Parkinson's disease, or untreatable pain. To be able to purchase the product, a health care provider must diagnose and certify the patient suffers from one of the enumerated illnesses and provide explanatory information provided by the Department of Public Health to the patient. The provider is under no obligation to provide the certification. Each illness must be recertified on an annual basis. The patient then registers with the Department of Public Health and gets a registration card.

The bill establishes a Medical Cannabidiol Board that can make changes to the diseases that can be treated by the use of cannabidiol, as well as make recommendations to the General Assembly on increases to the level of THC (bill caps percentage at 3%) used for medical treatment.

The bill also allows for reciprocity with the state of Minnesota for Iowa's registered users, allowing them to dual-enroll with the state of Minnesota. Moreover, the bill grants up to two out-of-state dispensaries to become a registered dispensary for Iowans to purchase cannabidiol from. The bill takes effect upon enactment.

Interim Workgroup on Opioid Abuse

Included in the Health and Human Services appropriations bill, an interim workgroup was created to review the state's protocols and practices relating to the prescribing of opioid medications and the treatment options available for opioid abuse.

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This is in response to the opioid abuse epidemic found across the state. The workgroup is tasked with submitting a report by November 15, 2017 to the Legislature.

Telehealth Parity Interim Workgroup

The Health and Human Services budget also included language establishing a legislative interim committee for telehealth parity. The language directs the Legislative Council to establish an Interim Study Committee to examine issues relating to telehealth parity for private insurance and State employee health plans. The Division specifies duties and membership of the Interim Committee and requires a report to be submitted to the General Assembly by December 15, 2017, for consideration during the 2018 Legislative Session.

Mental Health Levy Recalibration

Mental Health Levy Recalibration bill, [SF 504](#). The bill allows counties to recalibrate their levies based on a population formula that is compared to other counties in their region. The bill still places the mental health levy cap at \$47.28 but allows recalibration so each county in each region pays “their fair share” based on the county’s population size. Early versions of the bill included an inflator that would have allowed counties to automatically increase their levy by a percent or two; this was struck over concerns that the inflator would have increased property taxes throughout the states. Many regions are concerned they will still be underfunded when providing for the core services DHS requires them to provide for their regional population with mental health needs.

The bill also requires counties to spend down fund balances in excess of 25.0%. Beginning in FY 2018, counties have three years to spend down fund balances on services required in their regional management plans. Beginning in FY 2022, counties are limited to a fund balance reserved for cash flow of 20.0% of gross expenditures if the region has a population equal to or greater than 100,000, or 25.0% of gross expenditures if the region has a population of fewer than 100,000. Counties will be required to reduce their levies by any dollar amount in excess of the cash flow amount. For FY 2018 through FY 2020, the Bill requires the Broadlawns Medical Center Board of Trustees to transfer \$2.8 million to the Polk County Board of Supervisors to deposit in the county MHDS fund. In addition, Broadlawns Medical Center is required to donate \$3.5 million worth of services to Polk County MHDS.

The bill requests that the Legislative Council authorize a study committee to analyze the viability of the levy caps in this bill. The study committee is to meet during the 2018 Legislative Interim and submit a report to the General Assembly by January 15, 2019.

The bill requires the Department of Human Services (DHS) to convene a stakeholder workgroup to make recommendations relating to the delivery of, access to, and coordination and continuity of mental health, disability, and substance use disorder services. The workgroup is required to submit a report with recommendations to the Governor and General Assembly by December 15, 2017. In addition, the Bill requires the regional administrators for the MHDS regions to convene a stakeholder workgroup to create collaborative policies and processes relating to the delivery of, access to, and continuity of services for individuals with complex mental health, disability, and substance use disorder needs

Mental Health Professional Expansion of Scope

The states passed [HF 593](#), a bill that allows mental health professionals to perform certain examinations, treat and prescribe treatment or medication (if otherwise authorized to do so), and submit written statements and reports as required by the Judicial branch when a patient is between voluntarily or involuntarily hospitalized or committed. This is an expansion to current Iowa Code, which only allows physicians to perform some of these commitment examinations. A mental health



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professional is defined in Iowa Code as an individual who either holds at least a master's degree in a mental health field, a current license in this state if practicing a licensed profession, and has at least two years of post-degree clinical experience under the supervision of another mental health professional. Other professions included are psychiatrists, physicians, ARNPs holding a national certification in psychiatric mental health care, a PA practicing under the supervision of a psychiatrist, or a psychologist.

Online Tobacco and Vaping Products Subject to Sales Tax

The last appropriations bill of the year, [SF 516](#), more commonly referred to as the "standings bill," included language that subjects alternative nicotine product and vapor sales made online to be subject to Iowa's sales and use tax. This tax rate is 65 with 1% of that going to local school's infrastructure funding and the remaining 5% of the tax going to the General fund. This change will positively impact the state's revenues on average \$1 million per year and is thought to serve as a deterrent for citizens to use these products due to their increased cost.

Enhanced Nurse Licensure Compact

The state enacted the enhanced nurse compact, [SF 419](#). the bill is an updated (enhanced) version of the Nurse Licensure Compact with the goal to have all 50 states become members of the compact. Iowa was a member of the previous nurse compact but this new enhanced compact provides more benefit to nurses who are licensed in compact-member states. There are uniformed licensure requirements for all nurses to be issued a multistate license in all member states which includes 1) Meet the home state's qualifications, 2) Graduate from a qualifying education program, 3) Pass the national licensure exam, 4) Have no active discipline on a license, 5) Submit to a criminal background check and have no prior state or federal felony convictions, 6) Not be currently enrolled in an alternative program and 7) Have a valid U.S. Social Security number. There are multiple advantages of being a member of the Compact: Nurses have the ability to practice in multiple states with one license, there is an increase to access to care while public protection is maintained, a nurse has the authority to practice in multiple states via telehealth and the burdensome expense for both nurses and the organizations that employ them is removed. The "Enhanced" Nurse Licensure Compact will go into effect when 26 states have joined or the date of December 31, 2018. 14 states have enacted the legislation and as of 4/19/2017, 16 states have the legislation pending.

Workers Compensation System Reform

The state enacted [HF 518](#), a bill that makes changes to Iowa's workers compensation laws. The changes include:

- Shifting the burden to the employee when an injury may be due to intoxication, which helps protect workers
- Clarifying the code after years of confusing case law that the date of injury must be reported within 90 days of the employee realizing the injury is work related
- Ensuring employer light duty programs can continue
- Making the shoulder a scheduled member
- Ensuring that AMA guidelines for scheduled member injuries are adhered to by workers' compensation deputy commissioners
- Prohibits double recovery of permanent total disability benefits
- Provides for credit for overpayments to workers
- Requires that commutations can no longer be unilaterally requested by the plaintiff, but must be agreed upon by all parties
- Ensures jurisdiction is clarified to prevent benefits shopping for higher Iowa benefits

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- Prevents attorneys from taking advantage of injured workers by taking fees on voluntary payments by an employer to an employee
- Significantly reduces the interest rates on workers' compensation judgements

Mammography Notification

The Legislature tackled the breast density battle that has been waging at the statehouse for a number of years by adopting [SF 250](#). The bill directs rules to be adopted by January 1, 2018, that directs a facility performing mammograms to include information on breast density in mammogram reports sent to patients. These reports will include information on the patient's breast density, their category of density, and if they are categorized as having heterogeneously dense breasts or extremely dense breasts, the report will include evidence-based information on dense breast tissue, increased risks associated with having dense breast tissues and the effects of dense breast tissue. The rules process will likely begin fairly quickly as rules must be in place by January 1, 2018.

Intergovernmental Transfers for Nursing Homes and County/City Hospitals

Through language amended into the Health and Human Services budget bill, the state is tasked with filing a state plan amendment that would allow for intergovernmental transfers which would allow nursing homes and hospitals to partner to draw down increased Federal funding through an arrangement with the nursing home and hospital. County/city hospitals would be able to assume a nursing facility's license and draw down additional funds through an intergovernmental transfer to maximize reimbursement to up the Federal upper Payment Limit.

Hospital Provider Assessment

The Hospital Provider Tax was scheduled to sunset this July 1st; language included in the HHS budget pushed the sunset out to July 1, 2019. The provider tax allows participating hospitals to "pay in" a tax that the Federal government matches. This provides for enhanced hospital rates for these participating hospitals. Hospitals throughout Iowa pay in approximately \$34million, which draws down from the Federal government approximately \$35million.

Public Health bill

HF 393 is the Iowa Department of Public Health policy bill. The bill provides some flexibility to IDPH with substance abuse funding that is not used and returned by counties. The funds will be used for other substance abuse programs. Updates are made to the Medical Home & Patient Centered Health Council to reflect current duties and responsibilities. It updates Code language for various workforce programs. It complements IDPH activities around review and evaluation of current workforce programming. The bill removes unfunded and outdated programs, and makes conforming changes to the Code.

Health and Human Services Appropriations Summary

Like virtually every other budget, the Health and Human Services Appropriations budget for FY 18, HF 653, was substantially less than the previous fiscal year. The net FY 2017, which had been cut around \$20 million in January, had a net appropriation of \$1.794 billion. The budget target agreed to by the House and Senate set this budget at \$1.766 billion, almost \$30 million less than the previous fiscal year. Additionally, the legislative target was an additional \$10 million less than the Governor's recommendation. Hospitals and providers were dealt a blow when several previously-attempted cost containment measures were accepted by the legislature who cited "no other option" due to the fiscal woes of the state's budget. These containments include:

- An increase of \$36,405,674 to fund Medicaid at the Governor's recommended funding level.

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- An increase of \$2,500,000 to rebase nursing facilities.
- A decrease of \$500,000 to implement the cost containment strategy eliminating consultation codes.
- A decrease of \$1,200,000 due to greater than anticipated prescription drug rebates.
- A decrease of \$1,708,857 due to process improvement changes by the DHS.
- A decrease of \$2,000,000 to implement the site-of-service cost containment strategy.
- A decrease of \$3,100,000 due to the cost containment strategy aligning anesthesiologist payments with Medicare.
- A decrease of \$4,281,814 to implement the cost containment strategy eliminating three-month retroactive eligibility.
- A decrease of \$5,000,000 to eliminate enhanced payments for primary care physicians originally implemented under the Federal Affordable Care Act
- A decrease of \$7,700,000 to implement the cost containment strategy related to crossover claims.
- A decrease of \$9,500,000 due to the managed care organizations (MCOs) not earning the 2.00% incentive payment in FY 2017. These funds will be carried forward to fund Medicaid in FY 2018.
- A decrease of \$10,000,000 to implement the cost containment strategy related to the diagnostic related group (DRG) cost threshold formula.
- A decrease of \$12,500,000 due to a reduction in the amount estimated the MCOs will earn from the 2.00% incentive payment in FY 2018.
- Rural Iowa Primary Care Loan Repayment Program - This is a decrease of \$84,514

Department on Aging: Appropriates \$11M and 27.0 FTE positions. This is a decrease of \$1 million and no change in FTE positions compared to estimated net FY 2017. Appropriates \$1.2 million and 16.0 FTE positions. This is a

Office of Long-Term Care Ombudsman: Appropriates \$1.2 million and 16.0 FTE positions. This is a net decrease of \$164,000 and no change in FTE positions compared to estimated net FY 2017.

State Family Planning Program: eligibility requirements and other provisions included in the Medicaid Family Planning Network Waiver. The Program funds are to be distributed in a manner that continues access to family planning services, but are not to be distributed to any entity that performs abortions or maintains or operates a facility where abortions are performed, or for direct or indirect costs related to providing abortions.

Home and Community-Based Services (HCBS) Rate Methodology: using the cost settlement methodology and begin using a tiered rate methodology for providers of supported community living, day habilitation, and adult day services for persons with intellectual disabilities under the HCBS waiver program.

Department of Public Health: of \$5.8 million and no change in FTE positions compared to estimated net FY 2017. The significant changes include:

- A decrease of \$1.3 million to the Addictive Disorders appropriation.
- A decrease of \$112,000 to the Healthy Children and Families appropriation.
- A net decrease of \$658,000 to the Chronic Conditions appropriation.
- A net decrease of \$4.0 million to the Community Capacity appropriation.
- An increase of \$1.1 million to the Essential Public Health Services appropriation.
- A net increase of \$398,000 to the Infectious Diseases appropriation.
- A net decrease of \$52,000 to the Public Protection appropriation.
- A decrease of \$1.3 million to be spread across all Department appropriations.
- Appropriates \$11.3 million and 15.0 FTE

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Department of Human Services: Appropriates \$51.2 million and 186.0 FTE positions. This is a net decrease of \$20.3 million and 1.2 FTE positions compared to estimated net FY 2017. Significant changes include:

- A net increase of \$6.8 million for the Family Investment Program/PROMISE JOBS appropriation.
- A net decrease of \$2.1 million for the Child Support Recovery Unit appropriation.
- A net decrease of \$18.6 million for the Medicaid appropriation.
- A net increase of \$581,000 for the Medical Contracts appropriation.
- A decrease of \$349,000 for the State Supplementary Assistance appropriation.
- A net decrease of \$917,000 for the State Children's Health Insurance Program (hawk-i Program) appropriation.
- A net increase of \$7.6 million for the Child Care Assistance appropriation.
- A decrease of \$883,000 for the State Training School at Eldora appropriation.
- A net increase of \$3.5 million for the Child and Family Services appropriation.
- A decrease of \$1.9 million for the Adoption Subsidy appropriation.
- A net increase of \$297,000 for the Family Support Subsidy appropriation.
- A combined decrease of \$1.7 million for the two Mental Health Institute (MHI) appropriations.
- A combined decrease of \$4.5 million for the two State Resource Center appropriations.
- A decrease of \$1.2 million for the Civil Commitment Unit for Sexual Offenders appropriation.
- A decrease of \$886,000 for the Field Operations appropriation.
- A decrease of \$1.6 million for the General Administration appropriation.
- A decrease of \$3.0 million for the Regional Mental Health Grants appropriation.
- A decrease of \$1.5 million to be spread across all Department appropriations.

Status quo appropriation for Iowa's 1st Five Healthy Mental Development Initiative programs. The Program is a public-private Mental Development Initiative that partners primary care and public health services in Iowa to enhance high-quality well-child care. The 1st Five Model supports health providers in the earlier detection of socioemotional delays, developmental delays, and family risk-related factors in children birth to age five that then coordinates referrals, interventions, and follow-up.

ACES program has status quo funding. This addresses the study of children who experience adverse childhood experiences (ACEs). \$40,511

Suspension of the Medical Residency Program. Suspend for one year before reappropriating at least \$2M next year.

Allocates up to \$575,627 for the State Poison Control Center. This is no change compared to the estimated net FY 2017 allocation. The Center is allowed to transfer as much funding as needed for the purpose of receiving matching federal funds.

Psychiatric Bed Tracking System. Requires DHS to adopt new rules to require the State MHIs and hospitals with inpatient psychiatric treatment to update the psychiatric bed tracking system, at minimum, two times daily.

Bills that Died

This year, several bills that were introduced were defeated due to session timelines, lack of legislative interest or approval, and lobbying efforts from various interest groups. Some of the health care related bills that died this year were the following:



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- Optometrists' ability to perform injections performed by ophthalmologists. The bill died this year but legislation was introduced in both chambers that would have allowed for optometrists to have an increased scope.
- Genetic Counselors licensure. The bill died this year but would have granted licensure for genetic counselors practicing in Iowa.
- Telehealth payment parity for insurance companies. A legislative interim parity workgroup was passed as a placeholder for this topic.
- Personal Exemption for vaccinations. Would have added a philosophical exception to vaccination schedules.
- Tanning ban for minors 17 years and under.

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