

From the Capitol

8/11/2011 James G. Cavanagh

“The Calm Before The Storm”

Even though the Legislature has virtually taken the summer off, there is still plenty of activity going on, most of which is political rather than policy in nature. There is, however, some policy being formulated. For instance, both sides are preparing for possible legislative action on the New International Trade Crossing (**NITC**), social conservatives are lining up their forces for a vote on a ban on **partial birth abortions** and pro business groups are organizing for an all out push to enact **right to work** legislation and revision of the **personal property tax**.

The last three months of the year will be very busy with a number of highly charged issues on the table. Besides the issues mentioned, such matters as implementation of health care reform (see below), integration of “dual eligibles” into managed care and directing more funding toward roads also loom.

HEALTH CARE:

Implementing the Affordable Care Act

The Snyder Administration has been telling the legislature and the public at large that it intends to implement the mandates of the Affordable Care Act (**ACA**). This is true even though most if not all members of the Governor’s Republican Party are opposed to the ACA and hope it is either overturned by the United States Supreme Court or repealed by Congress. Barring either one of these events occurring, the Act requires each state to implement a **healthcare insurance exchange**. The Exchange is a marketplace of competing healthcare insurance alternatives from which the consumer can choose. The Snyder Administration and even most GOP lawmakers would just as soon have the state implement its own form of the Exchange because the alternative, a federally designed and operated Exchange, is much less desirable.

Neither is another recently offered alternative likely to receive traction. At a recent meeting of the **National Council of State Legislatures**, the United States Department of Health and Human Services offered a **hybrid state/federal Exchange** solution which would allow a state to operate it while still having the federal government involved.

Accordingly, the Governor has asked the Departments of Community Health (DCH) and Human Services (DHS) to develop a plan using at least some of the recommendations of the Healthcare

Insurance Exchange working groups that met on several occasions earlier this year. Based on the approved recommendations and the joint DCH – DHS plan for implementation, the Governor is expected to put forward his proposals by way of legislation in September.

What may be expected is legislation calling for **regional Exchanges**, perhaps as many as 4 in the state, offering the consumer at least the choices called for in the ACA with even some variation. Moreover, it is expected that since at least initially the Exchange is aimed at serving an underprivileged population, access through the social media and the internet should be made as convenient as possible. Look for the debate on implementation, especially between **mainstream Republican** and **Tea Partiers** to heat up by late September.

Claims Tax

After being reported from the House Appropriations Committee in substitute form, there is now every indication that a **1% tax** on paid healthcare claims will be placed before the full House for its consideration on **August 24**. Senate Bills 347 and 348 sponsored by Sen. Roger Kahn (R-Saginaw) repeal the current 6% use tax imposed on Medicaid health plans, hospitals and nursing homes used as the state's match to draw down federal Medicaid dollars. In its stead a 1% fee or tax (take your pick) would be imposed on all paid healthcare claims. With the federal government giving every sign that it will no longer accept the use tax as a vehicle for draw down money, passage of the 1% tax is critical toward maintaining Medicaid provider rates and the **\$1.2 billion** it means to the state budget. It does, however, also impose a 1% tax on self insureds who have heretofore not had such an obligation.

Attempts to Loosen Auto Insurance Personal Injury Protection (PIP)

Under the current Michigan automobile no fault insurance law, there is no limitation on the amount of medical benefits insurers have to pay healthcare providers as a result of an injury incurred in an automobile accident. Michigan's auto insurers want to change that by either having the legislature amend the law placing a **cap** on personal injury protection (**PIP**) insurance benefits, or allowing the insurer to offer options to the current unlimited PIP coverage at a reduced premium.

If enacted, the big question would be who picks up the cost of care once the benefits are exhausted? First would come the injured person or his/her family. Next, probably Medicaid. That is precisely the argument being made against the initiative – that in the event PIP benefits are exhausted, society, especially the taxpayers, will pick up the cost. Stay tuned.

Scope of Practice

With passage of the ACA several groups and, in particular, **nurse practitioners** advocate filling in the access gap to primary care physicians by expanding their own scope of practice to do much of what a

physician does, including **prescribing authority** and the ability to order, conduct and interpret **diagnostic tests**. The key toward convincing legislators to agree to such an increase in scope is whether the case can be made that affected nurses would locate in under-served areas of the state, or concentrate in suburban southeast Michigan or Kent County where the money is.

TAXATION:

What About PPT?

One of the legislative priorities for the Majority Senate Republican Caucus yet this session is finding the right combination or compromise to repeal or at least drastically reduce the **personal property tax** business now pays. The problem is the operating budget of local governments is **heavily dependent** upon personal property tax collections. What with significant cuts to statutory revenue sharing already made, slicing this mainstay of local funding will lead to a battle royal in Lansing.

Taxing E-Commerce?

Could a tax on e-commerce be far off? Currently, Michigan sales tax called a “use tax” on a filer’s state tax return is collected on telephone, catalog and on-line transactions when the goods are purchased by a Michigan taxpayer. The problem is those payments are made on an **honor system basis** with Michigan taxpayers making the declaration on their state income tax return. Collections only amounted to somewhat over **\$5 million** in tax revenue for 2010 according to the Michigan Department of Treasury. For years, Michigan lawmakers have been saying they wanted to capture all of the tax revenue that goes unpaid due to, most notably, on-line purchases. In fact, Michigan is a signatory on a compact among several states to cooperatively collect sales tax revenue incurred electronically. Again, the problem is not every state belongs and it is estimated that tax collections are merely a fraction of what they should be. In fact, the National Council of State Legislatures estimates states will lose over **\$11 billion** in uncollected sales tax on e-commerce next year. Moreover, it is argued the **“free ride”** from aggressive collection of sales tax places traditional retail establishments at a distinct competitive disadvantage.

Michigan is now one of several states being targeted by an employer organization calling itself **Alliance for Main Street Fairness** which seeks legislation to aggressively collect the tax. One such approach is requiring sales tax collections from on-line retailers having subsidiaries in the state. This was the Texas solution which was signed into law just last month by **Governor Rick Perry**.

While nothing yet has been drafted in Michigan, the legislature will be taking a look at the issue, an issue that will pit retailer against retailer.

REGULATION:

Take a Look At It All

By way of Executive Order (**EO 2011 – 5**), Governor Snyder created the Office of **Regulatory Reform and Reinvention**. The initial mission of the ORR was to conduct a “systematic review,” evaluate and make recommendations regarding Michigan’s approximately **18,000** rules and regulations.

One of the first sets of rules to receive scrutiny are those affecting the Michigan Liquor Control Commission (**MLCC**). The nineteen member working group consists of businesses or business associations that are directly impacted by MLCC’s rules, policies and regulations. This work group is chaired by **Mike Zimmer**, Deputy Director of the Department of Licensing and Regulatory Affairs. Other work groups such as the one on occupational licensing will soon be beginning their review. Warner attorney/lobbyists have a number of ideas to streamline the permitting and licensing process. We invite the input of our clients to make the most of this **reform opportunity**.

LABOR AND HUMAN RESOURCES:

Cap On Benefits

In our last report we anticipated the Senate to concur with the House Substitute for SB 7. As you recall, SB 7 as introduced prohibits a public employer from paying over **80%** of a public employee’s benefit package. The House Substitute added a provision placing **actual dollar caps** on the amount the public employer could pay and then giving the employee the **choice** of using the percentage method or the actual dollar cap method of calculating the benefit contribution. While we were right last month in predicting the Senate would eventually “buy into” the House version, it is taking a little longer than originally anticipated. On the last day of session prior to the summer break, the Senate rejected the House version in order to place the bill before a **conference committee**. The senate and house chairs are in agreement that public employers should have both the percentage and hard cap option. There remain a few issues, however, such as VEBA issues that need to be ironed out. Look for both houses to concur in a conference report on August 24.

OTHER ISSUES:

A very conservative majority Republican Caucus in both Houses has been **biding its time** on social and other issues on the agenda. Those conservatives agreed out of deference to the new Governor to work on tax and budget issues first. Those issues have now been almost completely dealt with. It’s time for social and economic conservatives to have their day and they intend to begin that quest this fall. Following are two key issues which will in all likelihood be considered.

Partial Birth Abortion Ban

Michigan Right to Life continues to lobby legislators for enactment of a law banning **partial birth abortion procedures**. While a federal ban already exists, **House Bills 4109** and **4110** and **Senate Bills 160** and **161** are now on the floor of their chambers. Advocates believe a state ban would compliment the federal ban. Opponents of the legislation say it's not necessary as the federal ban supersedes anything the state would do. Nevertheless, look for passage of a ban this fall.

Right To Work

An issue that has been pent up for years among Republicans is “**right to work.**” The notion of requiring someone to be a member of a union is an anathema to conservatives as it resembles “the collective” as opposed to liberty. Consequently, conservative Republicans will be pushing legislation that would allow local governments to create “**right to work zones.**” This alternative will probably be more acceptable to a Governor who would just as soon avoid yet another knock-down drag-out fight with organized labor.

POLITICS:

The Recalls Go On

To date, 24 Republican lawmakers have had recall language filed against them. The 24 different legislators are at various stages in the process. However, as of this date only one, **Rep. Paul Scott (R-Grand Blanc)** is actually facing a recall election as it would appear a sufficient number of petition signatures were submitted to the Secretary of State.

Petition signatures submitted after **August 5** would require a recall election to be held in February, the same day as the **Republican Presidential Primary**. As for Rep. Scott, it appears there will be well over 10,000 valid signatures obtained, which is enough to place the matter on the ballot in November. The driving and organizing force behind this effort, at least for the past month, has been the **Michigan Education Association (MEA)** whose membership is still smarting from enactment of significant changes to Michigan's teacher tenure law which Scott helped shepherd through the legislature. Other Republican lawmakers are feeling the wrath of public employee unions, and in particular police and firefighters who are outraged regarding concessions they were required to make and which Republicans supported.

One recall effort offered high drama on Friday, August 5. Those seeking the recall of **Rep. Nancy Jenkins (R-Clayton)** were said to have sufficient petition signatures to call for her recall election. As one of the organizers of the effort set out for Lansing to file the petitions with the Secretary of State, he received a call saying a close relative had been involved in a serious automobile accident. The

organizer turned his car around and headed for a Toledo, Ohio hospital where his relative was being treated. The petitions stayed in the car and were not filed with the Secretary of State by the end of the day on August 5, thus **not qualifying** to have the recall election in November. Tragically, the organizer's relative died from injuries sustained in the accident.

The effort to recall **Governor Snyder** and Republican legislators appears to be an exercise with **no credible end game** other than to require Republicans to spend resources to defend themselves. Unlike the recall effort in Wisconsin which eventually failed to give the Democrats a majority in the state senate, Michigan Democrats have no practical hope of taking the majority in either House even if many of the recalls are successful and even if a Democrat replaces the Republican. In the state senate, **8** GOP senators would have to be replaced by Democrats. In the House, **9** GOP members would have to be replaced by Democrats. This scenario is highly unlikely. There isn't the time, money or organization to seriously make such an effort. So why the exercise? One theory is it keeps the Democratic Party's base riled up for the 2012 election. Another possibility is the Democrats and organized labor might just be successful in recalling 2 or 3 Republican incumbents, thus having a chilling effect on the remaining Republicans when they consider legislation to, for instance, make Michigan a right to work state. Stay tuned.

On the Horizon

- The Department of Community Health will continue to seek health plan participants for its **Michigan Primary Care Transformation Project**. The project focuses on advanced primary care practice under the **patient centered medical home model**. The federal government expects implementation in September.
- With the Senate Majority Leader **nixing** any proposals to increase the **gasoline tax**, look for a full fledged effort toward **re-directing sales tax** revenue derived from fuel toward the state trunk lines.
- On the heels of learning that nearly **30,000** college students were also collecting food stamps, look for intensified efforts within the Department of Human Services aimed at fraud and abuse.
- Look for a fight over **prior authorization** restrictions regarding certain narrow therapeutic index drugs such as those used for the treatment of epilepsy. State budget analysts say Michigan can save millions by losing the restrictions on prior authorization.
- The Michigan GOP will shape the future of federal budget talks as **Rep. Dave Camp** of Midland, Chair of the House Ways and Means Committee and **Rep. Fred Upton** of St. Joseph, Chair of the Energy and Commerce Committee were named to the Joint House and Senate "supercommittee" on deficit reduction.

- Already either cutting staff or scaling back on contributions toward employee health care benefits, look for **further cost cutting** within the legislature by House and Senate leaders, including elimination or drastic reduction of the lawmaker's very own **retirement benefits**.