



Capitol Strategies, Inc.

2018 Session Wrap-Up

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Prepared by:  
**Tim Wilkin**  
Capitol Strategies, Inc.  
612-554-7273  
[twilkin@capitolstrategiesmn.com](mailto:twilkin@capitolstrategiesmn.com)

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Disclaimer: The following is provided for summary purposes only and does not constitute legal advice. It is recommended that you consult your attorney with specific questions on compliance.

## General Summary

This year marked an abbreviated legislative session that did not start until February 20th. You may recall last year's acrimony between Governor Dayton and the Republican controlled legislature. Governor Dayton initially agreed to support the Tax bill and signed it into law, but then line-item vetoed the legislature's own budget to get leverage over them to repeal several items he did not like. This led to litigation over the interim, but ultimately resulted in the Governor signing a bill to fund the legislature early this session without any tax concessions by the legislature.

The session was made much more important when the federal government passed tax reform. In a year that otherwise seemed unlikely to entertain a tax bill at all, the federal reform made this a critical topic since Minnesota bases its income tax system on the federal system.

Minnesota legislators introduced 8,658 bills in the 2017-2018 legislative period, most of which went nowhere. 214 bills were sent to the Governor for consideration. They included many of the other bills, packaged into Omnibus bills.

Last year's session focused much attention on fixing the individual market, including a one-year fix of \$311 million toward a 25% premium rebate. The legislature also created and funded a reinsurance program for 2018 and 2019 with funding of \$271 million per year. With such a heavy focus on health insurance last session, the issue was overshadowed this session by the urgency of bills on taxes, supplemental spending, and bonding.

They did, however, attempt to improve transparency in the Minnesota healthcare marketplace. After having been an early leader on price transparency, Minnesota has fallen behind other states. One organization gave Minnesota an "F" for its current price transparency statutes. You can read their report [here](#). Increased transparency was a MAHU priority this session.

MAHU monitored almost 200 bills that were introduced regarding healthcare and employee benefits, as well as 58 other bills that have a general impact on business. While those bills didn't all receive hearings, MAHU was there to represent your interests for the many bills that were heard.

## **DFL Promotes Government Run Health Care**

### **MNCare Buy-In Program**

This program was heavily promoted by Gov Dayton and many of the DFL Gubernatorial candidates and legislators. It was included in the Governor's Health & Human Services Supplemental Budget bill [HF4451](#) Murphy, E (DFL-St. Paul). The program:

- Allows anyone in the individual market to buy what advocates call MNCare. However, it isn't really MNCare since it will be a silver or bronze plan with much higher cost sharing than the real MNCare. It simply has the same benefit set and provider network.
- This session Gov. Dayton changed it from Medicaid reimbursement rates to Medicare reimbursement rates as a way to get support from the doctors. The projected premiums went from \$451 per month last year to \$659 per month - a 46% increase since the original proposal. This would hurt many providers, particularly in rural Minnesota who could not afford the rate cut from commercial rates to Medicare rates.
- This would clearly kill the individual market since private carriers could not compete by paying commercial rates vs the Medicare rates.
- It would eventually kill the small group market since they are not required to carry coverage, meaning they could point their employees toward MNCare and unload the employer's ever-increasing cost to provide the employer match.

Legislative Republicans are dead set against the plan, so it did not get a hearing. The Fall elections could change this if the DFL retains the Governor's office and picks up majorities in the House and Senate. The plan is an existential threat to the individual and small group markets. That is why MAHU has published this analysis of the MNCare Buy-In plan that can be read [here](#).

Other ideas for government run healthcare from the DFL include:

- Increasing the Basic Health Program (MNCare) limit from 200% of Federal Poverty Guidelines to 275% [HF419](#) Schultz (DFL – Duluth)
- Minnesota Health Plan – straight-up single-payer, eliminating all private coverage [HF219](#) Marty (DFL-Roseville)
- Allow anyone to buy into the state employee plan (SEGIP) [HF496](#) Schultz (DFL-Duluth)

Fortunately, none of those proposals were heard by the Republican controlled legislature. However, they will be major topics of discussion during the upcoming election and may become top agenda items if the DFL is able to take over the House and/or the Senate or retain the Governor's Office.

## Bills of Interest to MAHU Members

### Transparency Bills

Improved transparency was one of MAHU's top priorities this session. The first bill below was successfully passed into law. Several of the other bills below were included in the Omnibus Supplemental budget bill that was vetoed by Governor Dayton.

[HF3893 Anderson, S \(R-Plymouth\) / SF3480 Draheim \(R-Madison Lake\)](#) – This bill was **passed** and was signed into law by Governor Dayton. It adds to current law a requirement that a provider must also provide the consumer with information regarding other types of fees or charges that the consumer may be required to pay in conjunction with a visit to the provider, including but not limited to any applicable facility fees. It must be provided to a consumer within ten business days from the day a complete request was received.

The new law also prohibits any contract between a health plan company and provider that prohibits the provider from disclosing this information.

Another section of this new law requires providers to maintain a list of services over \$25 that correspond to the provider's 25 most frequently billed current procedural terminology (CPT) codes and the provider's 10 most frequently billed CPT codes for preventive services. For each of these services the provider shall disclose the provider's charge, the average reimbursement rate received for the service from the provider's commercial health plan payers and, if applicable, the Medicare allowable payment rate and the medical assistance fee-for-service payment rate. This list must be updated annually and posted in the reception area of the provider and on their website. It is applicable to any clinic that specializes in family medicine, general internal medicine, gynecology, or general pediatrics. It is not effective until July 1, 2019.

[HF2464 Loonan \(R-Shakopee\)](#) - requires providers to provide patients with a written estimate of charges. No hearing, did not pass.

[HF3012 Peterson, R \(R-Lakeville\) / SF2596 Jensen \(R-Watertown\)](#) – Prohibits a health plan company or a pharmacy benefits manager from requiring an individual to pay, for a covered prescription medication at the point of sale, an amount greater than the lowest of: (1) the applicable copayment; (2) the allowable claim amount; or (3) the cost of the medication if purchased without using a health plan benefit. There were several other bills introduced on this same topic. Did not pass.

[HF3396 Munson \(R-Lake Crystal\) / SF3033 Jensen \(R-Watertown\)](#) - establishes new requirements for providers and health plan companies to disclose charges and

estimated payments. Requires a health care provider to disclose the following information for the provider's 25 most frequently billed current procedural terminology (CPT) codes that are billed for over \$25, and the provider's ten most frequently billed CPT codes for preventive services:

- the provider's charge;
- the reimbursement rate that the provider receives from the provider's highest volume payer in the commercial market; and
- if applicable, the Medicare allowable payment rate and the MA fee-for-service payment rate.

Requires the list to be updated annually, posted in the provider's reception area, and made available on the provider's Web site. Much of this bill was included in HF3893 above, which was signed into law.

[HF3539 McDonald \(R-Delano\) / SF2746 Draheim \(R-Madison Lake\)](#) - requires a provider-based clinic that charges a facility fee to provide notice to a patient that states that the clinic is a part of a hospital and the patient might receive a separate charge or billing for the facility component which may result in a higher out-of-pocket expense. A version of this requirement was included in HF3893 above, which was signed into law.

### **MNSure Bills**

Many bills were introduced to reform MNSure or fix some aspect of MNSure. However, none passed into law due to opposition from Gov. Dayton. Here are a few bills that legislators considered:

[HF 2725 Dean \(R-Dellwood\)](#) - replaces the MNSure eligibility system for determinations of public program and tax credit eligibility. This was in response to the many problems that continue to be experienced with the MNSure system by county social workers.

[HF2761 Albright \(R-Prior Lake\)](#) - Requires the DHS to reconcile MNCare premiums by a specific date or lose administrative funding. It also prohibits DHS from working on the MNCare Buy-In program until they can reconcile MNCare premiums. This bill was included in the budget bill that was vetoed by Governor Dayton.

[HF3543 Davids \(R-Preston\) / SF3392 Chamberlain \(R-Lino Lakes\)](#) – Reduces the MNSure premium withholding from 3.5% to 2%. Strikes language allowing the MNSure board to add additional criteria for the approval of QHPs. Limits risk-bearing by DHS & MNSure to prohibit them from offering the MNCare Buy-In program. Requires the Department of Commerce to pursue a waiver to allow individuals to purchase plans outside of MNSure with tax credits and that the waiver be submitted by

7/1/2018. This language was included in the Omnibus Tax bill, but was ultimately removed at the request of Governor Dayton.

### **Other Legislation that Passed**

[HF 3196](#) Fenton (R-Woodbury) / SF 2897 Utke (R-Park Rapids) - Under this bill, physicians and prescribers will be able to seek an override of a health plan's step therapy requirement for a patient if they meet certain conditions. Among those criteria are a demonstrated pattern of failure for a therapy the patient had previously tried, or if the patient is currently receiving a positive therapeutic outcome on a prescription. This bill was passed stand-alone and signed into law by Governor Dayton.

[HF2391](#) Franson (R-Alexandria) / SF2556 Chamberlain (R-Lino Lakes) – States that up to \$25,000 in a health savings account and/or medical savings account is protected from creditors who attempt to garnish, levy, or attach to the account. This exemption is not applicable to debts that come from the division of marital assets, benefits, or support orders. This bill was passed and signed into law by Governor Dayton. It becomes effective August 1, 2018.

[HF3833 Schomacker \(R-Luverne\) / SF919 Housley \(R-St. Marys Point\)](#) - This bill creates financial exploitation protections for adults aged 65 or older and vulnerable adults by permitting broker-dealers and investment advisors, under limited circumstances in which financial exploitation is suspected, to disclose information and delay disbursements or transactions. This bill was signed into law by Governor Dayton.

### **Other Bills – These bills did not advance**

[HF3452](#) Gruenhagen (R-Glencoe) / SF3601 Abeler (R-Anoka) – this was the Republican Healthcare Task Force bill. The bill did the following:

- Change stop-loss attachment points for self-insured groups 50-100
- Establish premium rate bands for groups 50-100, limiting increases to 15% plus trend
- Establish rate bands for the individual market
- Allow pre-existing condition limitations during the first 12 months for conditions diagnosed and treated in the six months prior to applying for coverage
- Provide a new pre-ex period can be used if there is a gap in coverage of 63 days or more
- Establish a high-risk pool

It includes many other provisions that are summarized [here](#).

[HF2949](#) Schultz (DFL-Duluth) / [SF2877](#) Hayden (DFL-Minneapolis) - this bill would have extended the premium subsidy program the state ran in 2017 and repeal the current reinsurance program. DFLers dislike the reinsurance program since the lower premiums it creates in the individual market lead to lower federal subsidies for the state's Basic Health Program. This, combined with the imminent sunset of the provider tax, means that the MinnesotaCare program may run out of funding by 2021, which is of grave concern to them.

[HF4280](#) Gruenhagen (R-Glencoe) – This bill made changes to Minnesota's short-term coverage statute based on proposed changes to federal law for short-term plans. It lengthens the maximum coverage period from 185 to 365 days and makes the policy renewable. The bill also limits preexisting condition exclusions to six months. This language was initially included in the Omnibus Budget bill, but was removed due to opposition by the Dayton Administration.

### **Mandates**

Legislators often introduce new mandates for benefits and providers. MAHU's position is that these mandates only serve to increase costs and reduce options for consumers in the fully-insured market, which is now just 21% of Minnesotans. In the last two years, legislators have introduced no less than 16 new mandates. While well intended, they make coverage more unaffordable and increase the disparity in costs between fully insured and self-insured plan options. Because of this, MAHU has released a standing statement on mandates to encourage legislators not to introduce or advance these mandates. You can read the statement [here](#).

### **Supplemental State Budget Bill – Vetoed by Governor Dayton**

The legislature passed a supplemental budget bill, as is now common in a non-budget years. This year's budget bill was a fusion of all budget areas and many policy provisions. Governor Dayton made a list of 117 items he objected to in the bill. Republican legislators amended or deleted 60% of those items, but Governor Dayton still vetoed the bill.

### **Healthcare Program Provisions**

Minnesota Health Policy Commission [HF3823](#) Shomacker (R-Luverne) / [SF3417](#) Benson (R-Ham Lake) - This bill would have established a Minnesota Health Policy

Commission to develop recommendations to improve health care and health outcomes at lower cost. The duties of the commission include:

- comparing health care costs and public health care program spending to that of other states, and to costs and spending in previous years;
- identifying factors that contribute to Minnesota's health care costs and public health care program spending;
- monitoring efforts to reform the health care delivery and payment system; and
- recommending reforms to the health care system.

Eligibility Verification Required [HF2761 Albright \(R-Prior Lake\)](#) - This bill would have required the commissioner of human services to reconcile MinnesotaCare premiums for the period January 1, 2014 through December 31, 2017, by July 1, 2018. The bill also would have required the commissioner of management and budget to transfer \$10,000 from the DHS central office operations account to the premium security plan account for each business day of noncompliance.

### **Commercial Health Coverage Provisions**

[HF3204 Peterson \(R-Lakeville\) / SF2973 Benson \(R-Ham Lake\)](#) – 3D Mamography mandate - This bill was a mandate that sought to clarify the circumstances under which an annual mammogram, which is currently required to be covered by health insurance, may include coverage of digital breast tomosynthesis.

### **Transparency Provisions**

Facility Fees – Any provider-based clinic that charges a facility fee separate from the provider visit fee shall provide notice to its patients stating that the clinic is part of a hospital and the patient may receive a separate charge or billing for the facility component, which may result in a higher out-of-pocket expense. These facilities must post such a warning on their premises in view of the patients as well as on their website.

Pharmacy Point of Sale Allowable Costs – This provision states that no health plan company or pharmacy benefits manager shall a) require an enrollee to make a payment at the point of sale for a prescription drug that is covered under the enrollee's health plan in an amount greater than the allowable cost to consumers (allowable cost is the lowest of the applicable co-payment for the prescription drug under the enrollee's health plan or the amount the individual would pay for the prescription drug if the individual purchased the drug without using a health plan benefit) or b) prohibits a pharmacist from informing a patient when the amount the patient is required to pay under the patient's health plan for a particular drug is greater than the amount the patient would be required to pay for the same drug if purchased out-of-pocket at the pharmacy's usual and customary price.

### Other Health Insurance Provisions

Study & Report on the Disparities between Geographic Rating Areas in Individual & Small Group Market Health Insurance Rates – this bill, [HF3198](#) Haley (R-Red Wing) would require a study be done by the Office of the Legislative Auditor, which is a non-partisan office that audits various government programs, to assess causes of the rate disparity in Southeast Minnesota. It has some specific requirements for what would be studied and a mandate for the OLA to provide three options for redrawing Minnesota’s geographic rating areas.

Mental Health & Substance Use Disorder Parity Work Group – this bill was the fall-back position of an earlier effort to enact a more robust mandate for parity in coverage for mental health and substance abuse treatment. The group would have been made up of providers, health plan representatives, employers, consumers, and government officials. They were to have reported back to the legislature by February 15, of 2019.

Since all the above items were in the Omnibus Supplemental Budget bill, they were vetoed by Governor Dayton.

### Taxes

Federal tax conformity was a top priority for the business community. The passage of the Tax Cuts and Jobs Act (TCJA) by Congress created an opportunity for Minnesota to conform to those changes. Conforming to federal changes means simplicity in filing for Minnesota individuals and businesses, lowering tax rates for them, and opportunity for Minnesota to adopt pro-growth tax provisions. However, it also means increased taxes for both individuals and businesses unless offset by corresponding rate cuts.

Legislative proposals cut individual rates enough to offset any increase, but their proposals and the Governor’s would have increased corporate taxes – the Governor’s by a lot and legislature’s by a little.

The tax conference committee passed two compromise pieces of conformity legislation, and ultimately both were vetoed by the Governor. The proposals sent to the Governor hold 99% of Minnesotans harmless from any tax increase and 82% of Minnesotans would see a tax decrease. Gov. Dayton stated he would not sign a tax bill until he receives \$138 million in “emergency” school funding. In response, the legislature put a package together that would make \$225 million available for schools and combined it with their tax proposal. Still, the governor vetoed it.

Other important provisions of the tax bill include:

- Conforming to Section 179 - Minnesota is one of the few states that does not conform to federal equipment expensing provisions. This portion of federal law allows businesses to deduct from their taxable income purchases of equipment, software, and many other items for the use of their operations in that taxable year. The previous federal allowance was \$500K dollars. Under the new tax law, that allowance is \$1M dollars. Under Minnesota current law, that limit is \$25K dollars. What this means is that a business can purchase a piece of equipment, deduct it immediately on their federal tax return, but then add that amount back to their income before filing their Minnesota taxes. Equipment purchasers are more likely to invest in their farms and businesses when they can take a full deduction immediately.
- Individual income tax rate cut for the state's second lowest bracket would be reduced from 7.05% to 6.85% by 2020
- Individual income tax rate cut for the state's lowest bracket would be reduced from 5.35% to 5.25% by 2020
- Corporate tax rate cut from current 9.8% to 9.1% by 2020
- Repeals the corporate alternative minimum tax

Unfortunately, Gov. Dayton's veto means none of this went into law.

### **Labor Law Proposals**

#### Sexual Harassment Legislation

[HF4459](#) Rep. Joyce Peppin, (R –Rogers) / SF4031 Sen. Karin Housley (R –St. Mary's Point) is a legislative response to workplace sexual harassment after two sitting lawmakers, former Sen. Dan Schoen (DFL-Cottage Grove) and former Rep. Tony Cornish (R-Vernon Center) both resigned in the wake of the allegations, some of which had been known by legislative leadership prior to the complaints being made public.

Peppin, the House Majority Leader, formed a subcommittee to study the issues and the best possible solutions. Late in the session, this bill to change the standard of what constitutes sexual harassment was introduced. The bill added language to Minnesota's prohibition on sexual harassment to state that 'an intimidating, hostile, or offensive environment...does not require the harassing conduct or communication to be severe or pervasive.' This language overturns long standing case law that requires as a standard that claims of sexual harassment must be 'severe or pervasive.' Advocates of tougher standards claim that the current case law is so strict that few cases are brought forward.

The bill was opposed by the business community and local units of government alike since it could have led to many more lawsuits and did not create a new standard but left it up to the judiciary to create one. Ultimately opposition killed this bill and it did not advance.

### Workers Compensation

[HF3873](#) Rep. Tony Albright (R -Prior Lake) / SF 3420 Sen. Paul Utke (R-Park Rapids) In a deal out of the Workers' Compensation Advisory Council, a group that includes the business community, led by the Chamber, AFL-CIO, medical providers, insurers, first responders, and their municipal employers, the legislature passed a money saving workers compensation reform bill. The agreement:

- Streamlines provision of care in the workers' compensation system by implementing fee schedules pegged to Medicare reimbursement rates
- Provides increased benefits to injured workers
- Achieves significant cost-savings for employers by moving from typical medical-price inflation to the Medicare rate of inflation, which significantly reduces the inflation rate of these claims
- Reduces administrative paperwork for ambulatory surgical centers, hospitals and insurers

This agreement should translate into lower workers compensation premiums over time. Governor Dayton did sign this bill into law.

### Uniform State Labor Standards –a/k/a Explicit Preemption

In 2017, a preemption bill was passed by the House and Senate but Gov. Dayton vetoed it. In 2018, Gov. Dayton said he would agree to preemption of local mandates only in exchange for a state mandate of benefits. The business community did not support this trade-off so the legislation did not advance this year.

### Litigation Update

The Minnesota Chamber and a coalition of business groups challenged Minneapolis paid sick and safe time and minimum wage ordinances. The court has upheld the City of Minneapolis' ability to impose the sick time ordinance on businesses "resident" in Minneapolis, but the court struck down application of the sick time ordinance to businesses resident outside Minneapolis. The city has appealed, and the appeal is currently pending.

### Duluth Sick & Safe Leave

On May 29<sup>th</sup>, the City of Duluth adopted an ordinance mandating that employers provide sick & safe leave. The ordinance was amended from an accrual rate of 1 hour of sick time for every 30 hours worked to a 1:50 accrual and an exemption was added

for seasonal employees working 120 days or less. Employees would be able to bank up to 40 hours of time off in a year and carry the unused balance into the next year. It will go into effect January 1st of 2020.

## Elections

The entire Minnesota House of Representatives is up for election this year. The State Senate is not up for election until 2020 with the exception of the Fischbach seat mentioned below. While the Fischbach seat is considered safe, an upset with a DFL win would change the one-seat Republican majority in the Senate to a one-seat DFL majority. Here is the list of House members who have opted to retire or are seeking other offices.

### Retirements

- [Rep. Peggy Flanagan](#) (DFL-St. Louis Park) – running for Lt. Gov. on Tim Walz ticket
- [Rep. Jon Applebaum](#) (DFL-Minnetonka)
- [Rep. Erin Maye Quade](#) (DFL-Apple Valley) – left at last minute to be Lt. Gov. candidate with Erin Murphy
- [Rep. Abigail Whelan](#) (R-Ramsey)
- [Rep. Clark Johnson](#) (DFL-North Mankato)
- [Rep. JoAnn Ward](#) (DFL-Woodbury)
- [Rep. Susan Allen](#) (DFL-Mpls)
- [Rep. Mark Uglem](#) (R-Champlin)
- [Rep. Jim Newberger](#) (R-Becker) – running for U.S. Senate against Amy Klobuchar
- [Rep. David Bly](#) (DFL-Northfield)
- [Rep. Linda Slocum](#) (DFL-Richfield)
- [Rep. Matt Dean](#) (R-Dellwood)
- [Rep. Karen Clark](#) (DFL-Mpls)
- [Rep. Sheldon Johnson](#) (DFL-St. Paul)
- [Rep. Paul Thissen](#) (DFL-Mpls) resigned April 20 after being named to the Minnesota Supreme Court.
- [Rep. Joyce Peppin](#) (R-Maple Grove) – House Majority Leader
- [Rep. Joe Hoppe](#) (R-Chaska) – Rep. Hoppe was the Chair of the House Commerce Committee
- [Rep. Paul Rosenthal](#) (DFL – Bloomington)
- [Rep. Jeff Howe](#) (R-Rockville) – running for the open Fischbach State Senate seat
- [Sen. Michelle Fischbach](#) (R-Paynesville) – Was elevated to Lt. Governor automatically when Gov. Dayton appointed Tina Smith to the open U.S. Senate seat due to her position as President of the Senate. She was sworn in as Lt. Governor after the legislative session ended and resigned her Senate seat. This creates a

special election that will run at the same time as the General Election. She was recently chosen to be the candidate for Lt. Governor for Tim Pawlenty's ticket.

Also, Minnesota has two U.S. Senate seats up for election due to the special election for the Franken seat (which will be up again in 2020) and Sen. Klobuchar, who is up for re-election. All eight congressional seats are up for election, with open seats in the 1<sup>st</sup> (Congressman Walz is running for Governor) and 8<sup>th</sup> (Congressman Nolan is retiring) districts. In addition to the two open seats, Congressmen Paulsen and Congressman Lewis are expected to have competitive races. All this will add up to record spending on elections this year.