Legislative Review

Missouri State Medical Association 2023

2023 OVERVIEW

Every legislative session is unique, and 2023 was no exception. A large contingent of new representatives and senators meant there would be a learning curve for both elected officials and lobbyists. The Republicans maintained their supermajority and did their best to push through the issues that were important to their base voters. There was also significant discontent within their ranks, as we have seen in years past. We expect this strange intra-party dynamic to continue into 2024.

It was also the first session since 2020 that wasn't overly affected by the pandemic. That same pandemic gifted Missouri a large bucket of federal funds that needed to be spent on various projects. That resulted in the largest budget in the state's history. A number of infrastructure projects that were sorely needed have now been funded.

As for the Missouri State Medical Association, the session was a frustrating one. There was not a physician in the Senate for the first time in 12 years. Other groups noticed, and introduced a record number of scope-of-practice bills. Some of those passed. On the other hand, it was a good year for some public health initiatives that we have pursued for years.

In the end, only 41 bills passed this year out of the 2,100 or so that were introduced, excluding the 19 budget bills. Although few bills passed, the ones that did were thick, omnibus bills. You will notice their bill numbers multiple times within this *Review*. Following is a short summary of some of the issues that occupied much of our time throughout the session.

BILLS THAT PASSED

ADVANCED PRACTICE REGISTERED NURSES (APRNs)

By amendment to HB 402
Rep. Alex Riley & Sen. Nick Schroer

The language of this amendment was two-pronged: it provided a new licensure category for APRNs, and it made significant changes to the state's collaborative agreement law. APRNs have been seeking these changes for years. Currently, they receive a certificate to practice instead of a license. Their language during past sessions when trying to create a license was chock full of scope expansions. This year's effort was more straightforward. And we've always thought it was opaque for APRNs to be disciplined on their RN licenses. Having a separate license allows everyone to track their discipline more closely. The changes to collaborative practice were more troubling. A new waiver process has been established for APRNs and collaborating physicians who desire to practice outside the current 75-mile proximity rule. This waiver requires the Board of Nursing and Board of Healing Arts to determine if adequate supervision exists outside that mileage limitation. If so, the waiver is to be approved. The boards have only 45 days to make a decision or they are deemed approved. It also further clarifies the proximity exemption for APRNs who utilize telehealth. The familiarity rule, which requires APRNs to practice in the presence of their collaborating physician, was also changed so that primary care and behavioral health APRNs could continue to treat their distant patients upon the arrival of a new collaborating physician. The final major change to collaborative practice is the ability of APRNs to administer, dispense, and prescribe Schedule II controlled substances to hospice patients. This only applies to APRNs who are employees of certified hospice providers. This language represents the largest APRN scope expansion since collaborative practice was enacted in 1993. Still, they came into session demanding a total repeal of collaborative practice. Then they wanted a transition-to-practice model, where they could practice independently after five years of collaboration with a physician. They also sought prescribing rights to all Schedule II drugs, for all patients. We were able to push back and defeat these efforts. Because they got such a big bite at the apple this year, we are hopeful 2024 will be quieter on the APRN front. We'll see.

BILLS THAT PASSED

INCARCERATED PATIENTS (APRNs)

SB 157
Rep. Chris Dinkins & Sen. Rusty Black

This language efforted to make a single change to collaborative practice: an extension of the proximity rule to 200 miles for APRNs that treat patients in a correctional facility. The state's correctional healthcare contractor changed during the pandemic, so they started off with no proximity rule during the state of emergency. That was pretty convenient for them. So convenient, in fact, that they decided it was better/easier/cheaper to try to change the law permanently than to hire the physicians necessary to be legally compliant. We objected, of course, and made sure they knew that this change violates the Eighth Amendment's community standard test, which mandates incarcerated patients receive care similar to those in the community. Despite that, it was too much for us to overcome. We were able to attach a two-year sunset to the language, but it was eventually combined with the larger APRN bill and passed.

DIRECT-ACCESS PHYSICAL THERAPY

SB 51
Rep. Brenda Shields & Sen. Karla Eslinger

After a couple of decades of trying, the physical therapists (PTs) were able to get their direct-access bill across the finish line. The bill expands the types of services PTs can provide to patients without the referral of a physician. They will be able to treat patients directly for 10 visits or 30 days before an initial consultation with a physician. If a patient presents with issues beyond the scope of a PT, that patient must be referred immediately. As do patients that do not show functional improvement after the 10-visit/30-day limit. Even if a patient is improving, the PT must consult with a physician after every 10-visit/30-day period before continuing treatment. This consultation must include certain information regarding the patient and treatment. This bill was signed by the Governor before the session adjourned.

PHARMACIST PRACTICE ACT

By amendment to SB 157
Rep. Benny Cook & Sen. Holly Thompson-Rehder

The pharmacists demanded a number of changes to their practice act this year, including expanded vaccine authorities and "test-and-treat" privileges. They asked for access to all FDA-approved vaccines for persons at least seven years of age, and included language that would allow them to administer all future FDA-approved vaccines. That was not possible, so we created a list of vaccines they were not allowed to administer and included all future vaccines. New vaccines will need to be approved for pharmacist administration on a one-by-one basis. They were successful in expanding the definition of "therapeutic plan" so that they no longer need to be patient-specific. Physicians will be able to enter into these agreements with pharmacists to manage multiple patients under a single plan. The most disappointing section of the bill allows pharmacists to "test-and-treat" for strep, COVID, and the flu, under a written protocol by the director or chief medical officer of the Department of Health and Senior Services (DHSS).

STATE-FUNDED GME

By amendment to SB 106
Rep. Kent Haden

Missouri is a pioneer when it comes to exporting medical students to other states. This bill (and its corresponding budget bill) establishes and funds a number of new residency positions in the state. These grants are available to any entity that is accredited by ACGME and operates a residency program in family medicine, internal medicine, pediatrics, obstetrics/gynecology, or psychiatry. The legislature set aside $2.3 million in funding to get this program off the ground, with a maximum earmark of $100,000 per new residency position. The program is currently scheduled to last 10 years, and DHSS must submit an annual report on the program. Missouri follows a handful of other states in supplementing CME post-graduate funding.

DISTRACTED DRIVING

By amendment to SB 398
Sen. Jason Bean

When 2023 began, Missouri and Montana were the only states without a comprehensive texting-while-driving law. Missouri's law has been on the books for over 10 years, but it only applies to drivers under the age of 21. There have been efforts to extend the law every year, but they continually failed for various reasons. This year, Missouri left Montana in the dust. The new law prohibits drivers from using a number of devices, including phones, tablets, and laptops. Banned activities include texting, using

social media, data retrieval, watching or recording video, and making a phone call, among other things. Hands-free communications are excepted. This law makes texting-and-driving a secondary offense, so drivers can't get pulled over based solely on a violation. In addition, law enforcement can only issue warnings until January 1, 2025, after which they can write a citation.

INTERSTATE MEDICAL COMPACT

By amendment to SB 70
Rep. Jeff Coleman & Sen. Mike Bernskoetter

Ever since the pandemic loosened various licensure requirements, certain interest groups have been pushing for a statutory solution for reciprocity. Enter the Interstate Medical Licensure Compact, which creates an easier pathway for physicians to carry licenses in multiple states. Missouri becomes the thirty-eighth state to enter the Compact, which was established in 2017. All of our bordering states are members, except Arkansas. Physicians who participate in the Compact can receive an expedited license from another Compact state. They will continue to be subject to discipline by their state of principle residence (Missouri). Participation in the Compact is not compulsory. Physicians who wish to continue to receive only a Missouri license can continue to do so through the state Board of Healing Arts.

TRANSGENDER HEALTHCARE

SB 49
Rep. Brad Hudson & Sen. Mike Moon

This was one of the most contentious issues of the session. The Governor and leadership made it a priority, while the minority party did its best to slow it down and make amendments. It was the only issue that had to endure an all-night filibuster this year. The final language allows physicians to provide gender transition surgeries for adults, but not for minors. Administration and prescription of hormones or puberty-blockers to a minor are also prohibited, unless that person was already receiving such treatment prior to August 28, 2023. The prohibition on puberty-blockers and cross-sex hormones sunsets in 2027 (so expect another discussion on this topic by that time). There are certain exceptions for minors with verifiable disorders of sexual development, as well as a few others. Violations can result in professional discipline…but more importantly, violations are not covered under the state's tort reform caps.

POSTPARTUM MO HEALTHNET BENEFITS

By amendment to SB 106
Rep. Jon Patterson & Sen. Tracy McCreery

Current law affords MO HealthNet coverage for moms throughout pregnancy and for 60 days following the end of pregnancy. Under this language, MO HealthNet coverage for these low-income women will be extended to one-year postpartum. This was one of leadership's priorities this year. Missouri currently ranks forty-second in maternal mortality, and this law will help an estimated 4,600 women per year with pregnancy-related healthcare coverage. The law will remain in effect until the federal funding that pays for it runs out, currently five years from now (under the American Rescue Plan of 2021). We expect the federal government will extend funding in the future.

UNCONSCIOUS PATIENT EXAMS

SB 106
Rep. Hannah Kelly & Sen. Lauren Arthur

Under this new law, a physician (or any student or trainee under that physician's supervision) cannot perform a prostate, anal, or pelvic examination on an anesthetized or unconscious patient unless an exception has been met. The exceptions are: (1) the patient gave consent, (2) the examination is necessary for diagnostic or treatment reasons, (3) it involves the collection of forensic evidence, or (4) the elements meeting emergency implied consent are present. Laws to prohibit this practice had been gaining steam in other states, so we weren't terribly surprised to see it reach Missouri. Physicians (and other healthcare professionals) who fail to follow these rules could have their license disciplined by the Board of Healing Arts.

FENTANYL STRIPS

By amendment to SB 70
Rep. Ashley Aune & Sen. Holly Thompson-Rehder

Where prescription drugs were a significant factor in overdoses, now most overdoses are a result of synthetic opioids like fentanyl. This bill removes fentanyl testing strips from the criminal definition of drug paraphernalia. These strips are used to detect fentanyl in all different kinds of drugs, including cocaine, methamphetamine, and heroin. The Centers for Disease Control and Prevention

BILLS THAT PASSED

have declared fentanyl strips to be an effective harm reduction strategy. Proponents are hopeful public organizations will now be able to distribute these testing strips and avoid unintentional overdoses.

BREAST RADIOLOGY

By amendment to SB 106
Rep. Brenda Shields & Sen. Elaine Gannon

This law will prohibit certain mammography facilities from requiring a referral for a screening mammogram that is consistent with the American College of Radiology recommendations. It also bans certain cost-sharing requirements for diagnostic and supplemental breast examinations, and low-dose mammography screenings. In addition, insurers will be prohibited from requiring a primary care referral for low-dose mammography screenings.

NON-OPIOID DIRECTIVE FORM

By amendment to SB 402
Repealed & replaced in SB 70
Rep. Mike Stephens

This language required physicians to personally sign directives from patients who asked not to receive opioid treatments. The patient would have been able to revoke the directive at any time, which seems to limit its effectiveness. Physicians were granted immunity for not prescribing opioids when a directive was on file. However, there was no good faith immunity, leaving prescribers open to liability for small mistakes. In the end, it was just another form of which physicians' offices needed to keep track. More administrative paperwork. The language passed late in session on an omnibus bill, but we were able to pass a "fix" before final adjournment that simply includes opioids on an already existing directive from DHSS.

BILLS MSMA HELPED DEFEAT

MIDWIVES AND DOULAS

HB 1148, HB 900 & HB 612
Rep. Mark Matthiesen, Rep. Jamie Johnson & Rep. Sarah Unsicker

House Bills 1148 and 900 would have required insurers to reimburse services provided by certified midwives, and prohibited an insurer's ability to differentiate between the services provided by midwives and those provided by physicians with respect to cost-sharing. The bill also sought to create a doula registration system under DHSS that would allow for doula reimbursement. We thought the insurers would clobber this bill, but they were fairly passive in their opposition as long as the bill didn't require payments to doulas. House Bill 612 provided a framework for any-willing-midwife, meaning insurers would have to reimburse any midwife in that plan's geographic coverage area who agreed to the plan's terms and conditions for providers. This bill never received a hearing. The doula bills did receive a hearing in late April, too close to the end of session to make further progress.

CERTIFIED REGISTERED NURSE ANESTHETISTS (CRNAs)

HB 329 & SB 27
Rep. Benny Cook & Sen. Justin Brown

This bill would have granted a significant scope-of-practice expansion to CRNAs. It purported to remove the physician supervision requirement, which would have allowed them to practice without any physician involvement (they are not subject to collaborative practice because of the supervision requirement). They also sought to remove the requirement that they receive a certificate of controlled substance authority from the Board of Nursing. CRNAs would be allowed to develop their own anesthesia care plans, provide pre- and post-care assessments, order and administer anesthesia, oversee the anesthesia care team, order tests, and interpret diagnostic procedures. In essence, it would have allowed for independent CRNA practice. These bills received hearings too late in the process to gather steam. They died in committee.

BILLS MSMA HELPED DEFEAT

NATUROPATHIC MEDICINE

HB SB 322
Sen. Angela Mosley

We had not seen a bill to recognize naturopaths since 2006, but they have sought licensure for the past two years now, which means they are probably going to stick around for a while. The bill would have established a naturopath advisory committee under the Board of Healing Arts to advise the Board on licensure, education, and training of naturopathic physicians. As you can imagine, their proposed scope-of-practice was broad—physical examinations, ordering imaging, interpreting imaging, prescribing Schedule III-V controlled substances and legend drugs, using naturopathic therapies (including hypnosis), giving various kinds of injections, and providing minor office procedures (in-office surgeries). This bill was referred in the Senate but never got a hearing. The sponsor tried to amend it onto another Senate bill in late March, but it was defeated by a voice vote.

TELEMEDICINE ADAPTIVE QUESTIONNAIRES

HB 710 & SB 418
Rep. Cyndi Buchheit-Courtway & Sen. Justin Brown

Back in 2014 when we were working on the telemedicine laws, we specifically excluded internet questionnaires as a way to establish the physician-patient relationship. That decision was not a problem until the pandemic arrived and laws were relaxed in an effort to bolster healthcare access. This is one of those pandemic "hangover" issues. The bills would have allowed the use of adaptive online questionnaires to establish the required physician-patient relationship. We had meetings with the proponents and their product was impressive, but we felt it still did not meet the standard of care on a number of issues. This is likely to become inevitable as health systems, large retailers, and insurers begin practicing medicine—technology is difficult to slow. The Senate bill received a hearing in April, but the House version never did.

TOBACCO PREEMPTION

HB 1039 & SB 522
Rep. Brad Christ & Sen. Ben Brown

These bills have been around for a while, although they are usually dropped as surprise amendments late in session instead of introduced as stand-alone bills. They would allow the state to preempt any local law, ordinance, order, rule, or regulation enacted by a local government that regulates tobacco, vapor products, or alternative nicotine products. It also made it easier for businesses to get new tobacco retailer licenses. State preemption of tobacco laws is bad because most good regulation happens on the local level. That's where many of the current smoking/tobacco laws we are accustomed to today took hold, including age restrictions to purchase tobacco, indoor smoking bans, etc.

DENTIST VACCINES

HB 249 & SB 270
Rep. Danny Busick & Sen. Steve Roberts

This is another pandemic "hangover" bill. It would have expanded the practice of dentistry to include the prescription and administration of vaccines for diseases related to dentistry, as well as all vaccines during a state of emergency. For good measure, dentists would have to take a vaccine class and check ShowMeVax for any vaccination information related to the patient. They would have also been required to use ShowMeVax after administering a vaccine. The main problem was that we were never informed which diseases were "related to dentistry," so we never were clear on which vaccines they could give. Regardless, having a discussion about HPV should probably occur in the pediatrician's office rather than the dentist's chair. These bills received hearings, but did not cross to the other chamber. Of course, their proponents tried to add the language to bigger, moving bills as session wound down, but they were unsuccessful.

GOOD BILLS THAT DIED

PHYSICIAN TITLE PROTECTION

By amendment to SB 157

This language would have reserved a number of titles for physicians, including numerous physician specialty designations, so there would be no room for "Nurse Anesthesiologists" and such Jabberwocky. It was included in a larger truth-in-advertising amendment that proponents attempted to attach to the APRN/pharmacist/PT scope expansion bill(s). It got stuck in molasses once the opposition found out about it (CRNAs and chiropractors, mostly), and there wasn't enough time to make its case in a manner that would allow it to move forward. It was not introduced as a separate bill, which made it very difficult to push… but, it will be next year.

PRIOR AUTHORIZATION REFORM

HB 1045 & SB 576

Rep. Melanie Stinnett & Sen. Nick Schroer

We had high hopes for these prior authorization bills, but they ended up not getting much attention in either chamber as other healthcare issues took center stage. The language would have enacted a prior authorization "Gold Carding" system. Physicians who had a history of approvals (greater than 90%) would have their requests deemed approved for a time certain, until new data needed to be gathered. It also would have banned denials or reduced payments to physicians who had a prior authorization, unless there was a material misrepresentation or the service was not performed. It also would have required insurers to maintain an online provider portal so physicians could access their prior authorization information. The House held a hearing in early April; the Senate version was referred, but never heard.

CO-PAY ACCUMULATORS

HB 442 & SB 269

Rep. Dale Wright & Sen. Doug Beck

This bill seemed very simple, but it quickly caught the attention of the insurers, who applied the brakes. The language provided that when calculating a patient's overall contribution to their out-of-pocket maximum or other cost-sharing requirement, insurers and PBMs would have to include payments made on behalf of an enrollee. This often arises with the use of pharmaceutical coupons, and allows the value of the coupon to be applied to cost-sharing, thereby reducing the patient's out-of-pocket costs. This would reduce financial barriers to high-cost drugs for rare and chronic conditions. Current law allows insurers to not apply such discounts to cost-sharing, which benefits them greatly.

TOBACCO T21

HB 124

Rep. Maggie Nurrenbern

This bill would have increased the age to purchase tobacco products to 21, as many other states and local governments have done. It would have placed further restrictions on tobacco vending machines and the sale of individual cigarettes. It also dictated new licensure and retail tax hoops that sellers would need to jump through in order to sell tobacco and vapor products. This particular bill died in committee, but as session rolled along, these initiatives got thrown in the dryer with the preemption language. What came out was an amalgam of both bills, and the final language wasn't good enough for us to get excited about.

COLLATERAL SOURCE RULE

HB 273

Rep. Alex Riley

This tort issue has been long-standing. The bill would have prohibited the use of evidence of the amount billed for medical treatment if that amount has been discounted, written-off, or otherwise satisfied. In other words, only the amounts actually paid by the plaintiff should be used to determine economic damages at trial. Potential discounts would still be relevant to determining potential costs of future care. This bill was on the House calendar but didn't get a chance for any floor debate.

LOOKING TOWARD 2024

We are already two months into the interim. Many of the bills that didn't cross the finish line this year will be re-introduced in December. So, we're already working hard on our messaging as the 2024 session quickly approaches.

You can help. Now is a great time to get to know your legislators since they're back in their districts. Invite them out for a coffee and discuss physician issues with them. Offer to be a sounding board for them when healthcare issues cross their desk. You may even decide to contribute to their campaigns.

We encourage MSMA members to attend campaign events when convenient, as MSMA is publicizing fundraisers via email throughout this season. Be on the watch for them and attend if you can!

You can also donate to the Missouri Medical Political Action Committee (MMPAC). Our visibility and political muscle are directly related to the strength of MMPAC. MMPAC makes campaign contributions to legislators who are in positions to assist us in our advocacy efforts. You can donate to MMPAC by visiting msma.org/mmpac or scan the QR code above.

Contribute at msma.org/mmpac
MMPAC
Missouri Medical Political Action Committee

We want to thank you for your input during session. Thanks for the advocacy work you're already providing. Thanks for reading the weekly *Legislative Report* and staying on top of the issues. We take tremendous pride in representing Missouri's physicians in Jefferson City. We are honored to speak on your behalf and advocate for your professional interests.

BRING ON 2024!

ON THE COVER

Storms loom over the current (1913-1917) Capitol, which stands upon the same spot as its predecessor that burned in 1911, high atop a bluff overlooking the Missouri River. The structure, covering nearly three acres, is a symmetrical building of the Roman renaissance style, surmounted by a dome. Atop the lantern of the capitol dome, 260 feet above the ground, is a classic bronze figure of Ceres, goddess of grain, chosen to symbolize the state's great agricultural heritage. The entire Capitol stands upon 285 concrete piers which extend to solid rock at depths from 20-50 feet. The building is 437 feet long by 200 feet wide at the wings. The exterior is of Carthage, Missouri limestone marble, as are the floors of all the corridors, the rotundas, and the treads of the stairways. There are 134 columns in the building—one-fourth of the stone used in the entire structure.

Photo by Lizabeth Fleenor, MSMA Director of Communications

PHYSICIANS

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