

LOUISIANA STATE MEDICAL SOCIETY



LEGISLATIVE SESSION SUMMARY 2016

The 2016 Regular Session of the Louisiana Legislature adjourned sine die at 6:00 pm on June 6th. As expected, it was a tumultuous 12 weeks, complete with unprecedented scope of practice battles, ill-fated attempts to tax and impose new and higher fees on physicians, and a serious budget crisis looming over the discussion of every legislative instrument. Ultimately, the LSMS had some great wins this session. With a bleak budget that left gaping holes in TOPS and the safety-net hospital system, we won't know the final budget result until the end of the 2nd Special Session which Governor John Bel Edwards called to attempt to raise additional revenues. It began at 6:30 pm on June 6th and ends at midnight on June 23rd.

This year, the LSMS Governmental Affairs staff tracked a total of 157 pieces of legislation. The Council on Legislation took a support position on 28 bills, an oppose position on 38 bills, and a monitor/neutral position on 91 bills. The remainder of this report will highlight some of the notable pieces of legislation that were debated this session.

Budget

Even after the measures passed during the very contentious 1st Special Session, the budget for the 2016/17 fiscal year remained \$600 million short as we entered the Regular Session – which was a non-fiscal session, not allowing for any additional revenue-raising measures. The legislature will have 17 days to work their way through an extensive list of 48 items the governor has requested be addressed related to raising the income tax and reducing existing tax deductions during the 2nd Special Session. 33 of the 48 items in the governor's call are clean-up measures associated with the last minute scrambling from the 1st Special Session – such as reinstating an exemption from the state sales tax for Girl Scout cookies.

House Bill 1 by Rep. Cameron Henry (R-Metairie) the continues over whether taking money from the state's safety-net hospitals to pay for the state's popular TOPS college scholarship program will be the only option with the limited remaining undedicated dollars in the budget. The budget shortfall that remains will be thrust upon either of those entities in the final hours of the 2016 fiscal year. Either option will significantly affect the operation and solvency of the statewide programs. The final budget passed on at the end of the Regular Session leaves significant cuts for the both the hospitals and TOPS. At this moment, it is entirely too soon to know for sure what the budget will look like until June 23rd.

Final Action: Pending Gubernatorial Action – but true final budget will not be revealed until after June 24th.

LSMS Legislative Package:

House Bill 1140 by Rep. Chris Broadwater (R-Hammond) is LSMS requested legislation which protects a physician's right to decide the health insurance products and plans that are included in their contracts by prohibiting the use of all products clauses. All products clauses do not allow the physician to select or negotiate the products or plans with which it will participate. This bill sailed through both the Senate and House committees and their respective chambers without opposition. It was then signed into law by the governor. This is a tremendous win for the physicians of Louisiana, insuring their ability to independently manage their own businesses.

Final Action: Signed by the Governor (Act 265)

Scope of Practice:

As expected, this session included an unprecedented number of bills seeking to erode the physician scope of practice. The LSMS always advocates for physician-led medicine and that education, and not legislation, is the only way of increasing healthcare providers' scope of practice.

Senate Bill 187 by Sen. Regina Barrow (D-Baton Rouge) was yet another attempt to expand the Advanced Practice Registered Nurses' (APRN) scope of practice and remove the requirement to maintain a collaborative practice agreement with a physician. This is Senator Barrow's second attempt at such legislation.

This newest iteration would have created an exemption from collaborative practice agreement for APRN's who serve in a medically underserved population or HIPSA. However, it is important to note that more than 90% of the state of Louisiana is HIPSA and therefore would be eligible for the exemption.

This bill proved to be the most challenging fight we had all session long when it was passed out of both the Senate and House Health and Welfare committees with close margins. We had a record response from our members to our calls to action, who sent well over 2000 emails over the course of the legislative session on this bill. Our success is directly related to our members' continuing communication opposing this bill.

Notwithstanding several stalling tactics and delays until the very last day of session, physicians and most importantly Louisiana patients, were victorious over this dangerous legislation. This yet again proves that when the physician voice is united, nothing can stop us.

Final Action: Awaiting Action on the House Floor – Not brought up for vote

Senate Bill 291 by Sen. Fred Mills (R-Parks) which expands the physical therapists' scope of practice, allowing patients' direct access without a physician referral, has been sent to the Governor for action, or inaction, despite significant opposition from the physician community. It is the policy of the Louisiana State Medical Society to follow the lead of a specialty society when the legislation specifically impacts a particular specialty. Many physician groups, including the LSMS, worked closely with the Louisiana Orthopaedic Association to educate legislators on this obvious scope of practice expansion.

Some provisions of the legislation include requiring patients to be referred to a physician if no improvement is made within 30 calendar days of a physical therapist initiating treatment, and mandating physical therapists have either a doctorate degree or five years of clinical practice experience to accept patients without a referral. After the Senate ratified the House amendments, the bill has been sent to the governor and awaits his final action or inaction. The LSMS stands with our physician partners in asking Governor Edwards to put patient safety first, and veto this bill.

Final Action: Signed by the Governor (Act 396)

House Bill 579 by Rep. Robert Johnson (D-Marksville) allows dieticians in a hospital setting to order laboratory tests and nutrition plans. The original bill afforded all dieticians to independently order tests and plans. After working with the bill author, amendments were added to limit those duties only to dieticians who have direct physician supervision in a hospital setting with those specific privileges from the hospital.

Final Action: Signed by the Governor (Act 415)

House Concurrent Resolution 86 by Rep. Frank Hoffman (R-West Monroe) proposed the creation of a study committee to consider the establishment of an independent health professional scope of practice review committee. As seen in a few surrounding states, this committee would create a committee to review legislation concerning the scope of practice of physicians and allied health professions. To be clear, House Health & Welfare Committee Chairman Hoffman's legislation sought to put together a committee to determine if such a board was created, what representatives should be seated, not establish the committee itself. After passing out of House Health and Welfare committee and off of the House floor with no opposition, it failed to pass out of the Senate Health and Welfare committee due to concerns about limiting legislative oversight.

Final Action: Failed to Pass Senate Health and Welfare Committee

Co-Pays/ Assessments

One of the most controversial ideas debated this session was the implementation of Medicaid co-pays. More than 10 separate pieces of legislation were filed in both the House and Senate seeking to institute co-pays on everything from emergency room visits, to prescriptions and office visits. However, *per federal law*, all state co-pay programs result in a direct rate cut to physicians, facilities, and all healthcare providers who see Medicaid patients. Unlike private insurance co-pay programs, Medicaid co-pays are uncollectable, but the state *is required* to cut the rate of the provider by the amount of the co-pay, as if the co-pay was collected. Of all the bills filed, only **House Bill 492 by Rep. Jack McFarland (R-Jonesboro)** was heard by the House Health and Welfare Committee. After brief comments on the unintended consequences, Rep. McFarland voluntarily deferred his legislation, meaning he did not even ask for a vote on the legislation.

Along the same line of argument, a few pieces of legislation were filed which would assess all physicians in order to draw down additional federal Medicaid dollars. This is similar to what many of the hospitals have voluntarily agreed to do. The huge difference is that all hospitals are federally mandated to accept Medicaid patients if they show up in their emergency room. Conversely, physicians are not required to accept Medicaid patients. If such an assessment were to be levied against all physicians, the result would be a blatantly unfair tax on all physicians in order to pay a few. No other state in the country has implemented this tax, or even attempted to implement this tax.

Your LSMS team did an exhaustive job of educating legislators on the actual consequences of implementing these further rate cuts on physicians who, as Department of Health Secretary Dr. Rebekah Gee testified in committee, are already paid the lowest amount allowed by CMS. Physicians who provide care to Louisiana's neediest patients simply cannot afford any further reductions in payment, especially at a time when the state is attempting to attract more of them into the Medicaid program while putting more lives into the program through Medicaid expansion.

Final Action: All Voluntarily Deferred in House Health and Welfare Committee & Appropriations Committee

Fees

House Bill 1158 by Rep. Julie Stokes (R-Kenner), a DHH proposed fee bill, which would have quadrupled annual inspection fees on facilities and healthcare providers, was defeated on the House floor 50-22, 20 votes short of those needed for passage. Your LSMS team spent a great deal of time educating legislators on the significant impact increasing any fees would have on providers. With reimbursements at record lows, now is not the time to be balancing the Department of Health's Office of Public Health's budget on the back of physicians. *See comments above!*

Final Action: Failed to Pass on House Floor

Balance Billing

Legislation appeared again which would prohibit physicians from seeking reimbursement from patients for the difference between the billed charges and what the insurance plan reimbursed the physician when the physician is a non-contracted, or “out-of network” physician. After conversation with the LSMS, Medicine Louisiana and the bill authors, both bills were scheduled but not heard in committee.

Senate Bill 316 by Sen. Jack Donahue (R-Mandeville) would have limited the reimbursements rates for out-of-network providers in an emergency department as the median of the contracted and non-contracted rates for the service provided. Additionally, it would have limited the billable amounts that could be sent to collections for non-payment to the contractual in-network rates. Both components of the bill would have significantly limited physicians from seeking appropriate reimbursement for services already provided in an emergency situation.

Final Action: Scheduled but not heard in Committee

House Bill 412 by Rep. Major Thibaut (D-New Roads) is very similar in action to SB 316 in that it precludes billing a patient for services rendered in an emergency room beyond the in-network contractual rate and sets a maximum rate in statute that can be charged as the median of the in-network and out-of-network contractual rate.

Final Action: Scheduled but not heard in Committee

Telemedicine

Telemedicine was yet another hot topic this legislative session as three bills were filed to further clarify a physician’s scope of practice when practicing telemedicine, as well as the technology method with which they interact with patients.

House Bill 480 by Rep. Katrina Jackson (D –Monroe) codifies an exemption guaranteed under the Federal Ryan Haight Act into Louisiana law, which allows physicians to prescribe Schedule II medication by telemedicine, as long as the patient is in a licensed health care facility. This clarifies an ongoing issue with the Louisiana State Board of Medical Examiners which currently has rules precluding a physician from prescribing a controlled substance, unless they have had at least one in-person visit within the state in the last calendar year. The LSMS supported this important legislation which continues to allow physicians to practice telemedicine in the state. After sailing through both the Senate and House Health committees and their respective chambers unopposed, the bill was signed by the Governor.

Final Action: Signed by the Governor (Act 252)

House Bill 570 by Rep. John Schroder (R-Covington), and its companion bill, **(Senate Bill 328) by Sen. Dan Claitor (R-Baton Rouge)**, were slightly more controversial. This bill, requested by the national telemedicine provider Teladoc, seeks to (1) remove the requirement that physicians practicing telemedicine must maintain a physical office in the state, or a relationship with a physician who maintains an office in the state and (2) remove the requirement that telemedicine utilize “synchronous interaction” via two-way video and audio transmission. Amendments added language requiring (1) in lieu of maintaining a physical location, the ability to refer to an in-state physician for follow up care, (2) a medical record must be made available in-state to the Louisiana State Board of Medical Examiners upon request, and (3) audio-only interaction is only allowed when the physician determines, after reviewing the medical records, if he or she is able to meet the same standard of care as in-person. Also, the venue for any lawsuit involved with care provided over telemedicine, is the home parish of where the patient resides. Despite the numerous amendments and discussion, both bills sailed through their respective committee and chambers unopposed. The final version of the bill has been sent to the Governor for final action.

Final Action: Signed by the Governor (Act 630)

Malpractice

Freshman **Senator Ryan Gatti (R-Bossier City)** spent a significant portion of his inaugural year presenting legislation related to increasing the medical malpractice cap. In coordination with the Patients’ Compensation Fund, LAMMICO, and other physician groups the LSMS took the lead in opposing both pieces of legislation.

Senate Bill 36 sought to exempt physicians from the cap who "misrepresent their education, training, or experience". **Senate Bill 78** would have raised the medical malpractice cap to \$5 million for brain injuries caused in children.

After several emotional committee hearings where Senator Gatti and his wife testified alongside their 10-year-old daughter, who was injured during childbirth, Senator Gatti made a commitment to his colleagues to not advance the bills any further than the Senate floor this session, and instead covert them to study resolutions. The author said he planned to introduce the study resolutions during the 2nd Special Session.

Final Action: Gatti filed SR 12 during the 2nd Special Session

<http://www.legis.la.gov/legis/ViewDocument.aspx?d=1012332>

Pharmaceuticals

Opioid abuse continues to be an often mentioned topic at the legislature. Several bills were introduced to continue to find ways of both preventing and treating opioid abuse. Additionally, the legislature revisited the controversial topic of medical marijuana.

House Bill 1007 by Rep. Helena Moreno (D-New Orleans), is an expansion of her previous legislation from the 2015 Regular Session, supported by the LSMS. Last year's legislation authorized a licensed medical practitioner to dispense naloxone to a third party, family or friend, of someone who is at risk of opioid overdose. HB 1007 further expands the availability of naloxone by allowing it to be accessed at pharmacies as an over-the-counter medication. Louisiana joins 35 other states and the District of Columbia in offering this life saving medication in pharmacies without a prescription. The bill sailed through both Health committees and their respective chambers without opposition and awaits final action, or inaction, by the governor.

Final Action: Signed by the Governor (Act 370)

House Concurrent Resolution 113 by Rep. Bernard LeBas (D-Ville Platte) establishes the Louisiana Commission on Preventing Opioid Abuse at the request of the Workforce Commission to yet again study and make recommendations regarding both short-term and long-term measures that can be taken to tackle prescription opioid and heroin abuse and addiction in Louisiana. This resolution comes despite the studies by the Health committees two years ago that were completed and resulted in legislation that was enacted following the 2014 Regular Session. Almost 40 committee members, including the Louisiana State Medical Society, are required to produce a report including recommendations to the governor and the legislature no later than February 1, 2017.

Final Action: Enrolled

Senate Bill 189 by Sen. Ronnie Johns (R-Lake Charles) corrects an unintended consequence that resulted from 2014 legislation concerning patients from Louisiana that are being treated at M.D. Anderson. Prior law that resulted from the studies mentioned above, provided that the only exception to dispensing restrictions is if the prescription monitoring information from the state of the prescriber may be viewed by the dispensing pharmacist. That requirement prevented prescriptions for Louisiana patients from M.D. Anderson from being filled by Louisiana pharmacies because Louisiana is not yet connected with the Texas PMP. New law provides that an additional exception will be if the prescriber includes on the prescription that it is for a patient with a diagnosis of cancer or terminal illness

Final Action: Signed by the Governor (Act 192)

Senate Bill 271 by Sen. Fred Mills (R-Parks) seeks to clean up and add additional provisions to the laws providing for medical marijuana. Louisiana has legally allowed medical marijuana for the past 24 years but its use has been stymied by a lack of rules and regulations. Last year after a comprehensive effort to work with all interested parties including law enforcement, public health officials and providers, a poison pill amendment was added in the final hours of the session making the bill unworkable by stripping an amendment that allowed a physician to “recommend” instead of “prescribe” marijuana treatment. Federal law provides that a physician who prescribes marijuana or other Schedule I drugs to a patient may be stripped of their DEA license and prosecuted. Other states have skirted this issue by allowing physicians to make a “recommendation” for marijuana treatment or simply writing a letter that the patient complies with the requirements for receiving medical marijuana as required by the laws of the state. SB 271 repairs this issue by allowing a physician to “recommend” medical marijuana. Additionally, the existing state law limited the use of marijuana to the medical treatment of spastic quadriplegia, glaucoma and for those undergoing chemotherapy treatments for cancer. SB 271 expands that definition to include several additional debilitating medical conditions (cancer, positive status for human immunodeficiency virus, acquired immune deficiency syndrome, cachexia or wasting syndrome, seizure disorders, epilepsy, spasticity, Crohn's disease, muscular dystrophy, or multiple sclerosis.) After impassioned testimony by patients, proponents and opponents, the House and Senate ultimately approved the bill and it was signed by Governor Edwards, who was quoted as saying that it was his wife that ultimately convinced him to sign the legislation.

Final Action: Signed by the Governor (Act 96)

Medicaid

House Bill 790 by Rep. Walt Leger, III (D-New Orleans) sought to move health care for the elderly from the current fee-for-service nursing home model to a private flat per member per month (PMPM) managed care model. It is commonly known that a disproportionate share of our public health care dollars are spent every year caring for the elderly in the last years of their life, compared to what we spend on younger and healthier populations. This legislation would have transferred the system from the current fee-for-service to managed care model – Healthy Louisiana. DHH has reportedly been considering such a move for several years but has yet to move forward with the transition, largely due to significant opposition from the nursing home community. The bill was voluntarily deferred by Speaker Pro Tem Leger after strong testimony from the opposition.

Final Action: Voluntary Deferred in House Health and Welfare

Senate Bill 117 by Sen. Fred Mills (R-Parks) makes both technical and substantive changes to the Medicaid Pharmaceutical and Therapeutics Committee which reviews and oversees the formulary and preferred drug lists for the Medicaid program. Most importantly, as new drugs are approved by the FDA and added to the Federal Medicaid Drug Rebate Program the department is now required to consider adding that drug to the formulary at the next scheduled meeting of the P&T committee. The LSMS closely monitors all aspects of the Medicaid formulary due to the overwhelming number of issues providers experience related to the insufficient Medicaid formulary.

Final Action: Signed by the Governor (Act 339)

Senate Bill 473 by Sen. Ronnie Johns (R-Lake Charles) seeks to reinstitute the Louisiana Health Insurance Premium Payment (LaHIPP) program which was phased out purportedly due to cost containment measures by the Department of Health late last year. The LaHIPP program covers the cost of an individual's private or employer-sponsored insurance, rather than letting the individual fall off the private insurance and into Medicaid program due to nonpayment. Amendments from both the House and Senate require the Department of Health to promulgate administrative rules to ensure cost effectiveness prior to implementation. Additionally, the rules will help guide the department's decision on whether or not to pay the individual's private insurance or transfer that individual over to Medicaid based on cost effectiveness. Both the House and Senate proposed substantive amendments, therefore the bill was sent to a conference committee to determine the final language of the bill. Pending final action, both chambers must ratify the bill in its final posture.

Final Action: Pending Conference Committee Report - Ran out of time

Louisiana State Board of Medical Examiners

Senate Bill 429 by Sen. Regina Barrow (D-Baton Rouge) changes the composition of the Louisiana State Board of Medical Examiners. The new make-up of the board, effective January 1, 2017, will be: two members from a list of names submitted by the Louisiana State Medical Society - one of the members appointed shall practice in a parish or municipality with a population of less than 20,000 people. One member from a list of names submitted by the Louisiana State University Health Sciences Center at New Orleans and the Louisiana State University Health Sciences Center at Shreveport. One member from a list of names submitted by the Tulane University Medical School. Two members from a list submitted by the Louisiana Medical Association. One member from a list submitted by the Louisiana Academy of Family Practice Physicians.

Final Action: Signed by the Governor (Act 584)

House Bill 946 by Rep. Patrick Connick (R-Marrero) sought to make the physician due process rights afforded by LSMS's signature legislation from the 2015 legislative session, Act 441, retroactive to any pending investigations. After passing House Health and Welfare Committee and the House floor 88-2, the bill was deferred in the Senate Committee on Commerce.

Final Action: Failed to Pass in Senate Commerce Committee