



# MEDICAL ASSOCIATION OF THE STATE OF ALABAMA®

## *What if No One was On Call?*

### **2020 Legislative Recap**

*Over the past few months, “unprecedented” has become an oft-used term. Though the outbreak of infectious disease has been seen throughout history, the COVID-19 pandemic halted nearly all aspects of normal life, sparing not even the 2020 Regular Session of the Alabama Legislature.*

*When it was all said and done, only a handful of bills were passed by each Chamber, with most left hanging in the balance. However, that’s not to say the 2020 Session was without action on important health-related items; in fact; negotiations persisted well through the shutdown.*

*Had the Medical Association not been “on call” during these times, the health and welfare of physicians, patients and practices could have been in jeopardy.*

#### **Overview of 2020 Legislation**

Bills Introduced:	856
Bills Passed:	151
Bills & Resolutions Affecting Medicine:	140



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## COVID-19 Related Items

*If no one was on call . . .* **physicians, their staff, and their practices could have no protection from COVID-19 frivolous lawsuits.** The Association worked with both Sen. Arthur Orr (R-Decatur) on legislation ([SB330](#)) as well as the Ivey Administration on an [executive order](#) along with other health and business organizations. While time ran out on the legislation during the 2020 Session, the efforts with the Governor's office were successful and on May 8, Gov. Ivey issued an [executive order](#) providing liability protection to physicians for care whose provision to patients was negatively affected or impacted by COVID-19 and/or the state's response to the pandemic. A summary of the executive order is available [here](#). Despite the issuance of this order however, the Association will continue advocating for passage of Sen. Orr's legislation, whether in a subsequent special session in 2020 or later.

*If no one was on call . . .* **executive orders could have been issued giving out-of-state telehealth corporations unfair business advantages over Alabama medical practices.** Instead, out-of-state physicians providing telehealth to Alabama patients didn't get special treatment and had to follow the same rules as physicians living, working and paying taxes in Alabama.

*If no one was on call . . .* **executive orders could have been issued allowing far-reaching, unnecessary and dangerous scope of practice expansions.** When the pandemic hit, a countrywide effort ensued from national non-physician associations seeking to advance their own specific scope-expansion agendas. These groups urged their state-level counterpart organizations to push governors to broadly expand scopes of practice in response to COVID-19, but despite this, the Ivey Administration wisely maintained physician-led, team-based care as the standard for Alabama.

*If no one was on call . . .* **parity in payments for telehealth services may not have occurred.** Parity in reimbursements for the same care provided in-person and via telehealth (especially telephonically) has long been an advocacy priority for the Association. The Association applauded the Blue Cross Blue Shield of Alabama decision to temporarily cover telephonic services by physicians beginning mid-March. Alabama Medicaid followed suit, and finally, after weeks of the Association and other allied groups petitioning Congress and Medicare regarding coverage for telephonic-only visits for seniors, CMS also agreed to cover telephonic-only telehealth. Moving forward, the Association supports making permanent these improvements in coverage of telehealth services if insurers do so voluntarily, legislation may not be ultimately necessary.



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## **Moving Medicine Forward in 2020**

*For many organizations, major policy proposals and legislative initiatives fell by the wayside during the 2020 Session. However, the Medical Association saw achievement of two top priority funding requests (MMRC and BMSA) that were put into place this session.*

*If no one was on call . . . **the Maternal Mortality Review Committee (MMRC) could not have received vital funding.*** The Association [spearheaded a coalition of stakeholders](#) – which included March of Dimes, the American College of Obstetricians and Gynecologists, the American Academy of Pediatrics, and Johnson & Johnson – to bring awareness to the issue of increasing maternal mortality rates in Alabama and spotlight the impact this committee could have to reverse that trend if properly staffed and resourced. Gov. Ivey included funding for the MMRC in her initial budget request, and legislators maintained the funding in the final budget.

*If no one was on call . . . **the Board of Medical Scholarship Awards could not have received a significant funding increase.*** The Association worked with BMSA and the [Alabama Academy of Family Physicians \(AAFP\)](#) to explain how additional funding would expand the impact of this already highly successful program which awards scholarships to physicians and in turn they agree to practice in an underserved area. Gov. Ivey agreed, and the final budget included a \$500,000 increase for the BMSA.

*If no one was on call . . . **support could not have grown for improving the existing rural physician tax credit.*** [SB195](#), supported by the Association, would have amended the out-of-date definition of “rural” and strengthened the current residency requirement. The bill was passed by the Senate Committee, but died as a result of the session being cut short. This tax credit is a significant tool for attracting and retaining physicians for rural Alabama communities.

*If no one was on call . . . **support for strengthening Alabama’s athletic trainer statute as it relates to physician supervision and care continuity could not have grown.*** Prior to the session, the Association worked closely with the Athletic Trainers Association in drafting [SB93](#) to better define the practice of athletic training, ensure appropriate physician supervision and allow joint-promulgation of athletic trainer rules. The bill passed the Senate but stalled in the House due to the shortened session.



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## **Scope Creep – Replacing Education with Legislation**

*Many people would like to be a physician, but few are willing to endure medical school, residency, and all the other various education and training requirements to become an M.D. or D.O. Instead of pursuing higher education, non-physicians are pursuing legislative changes as an end-around-means to practice medicine. The Association opposes any scope of practice expansions that could endanger quality care for patients.*

*If no one was on call . . . **the physician referral requirement for physical therapy could have been abolished.*** As introduced, [SB104](#) & [HB145](#) would have abolished the need for a medical diagnosis before a physical therapist could begin providing therapy to a patient. After consultation with many of our specialties most-involved with issuing PT referrals, the Association led negotiations to firmly maintain the importance of a medical diagnosis but to also: (1) extend the current timeframe for which a referral is good from 90 to 120 days; (2) allow therapy without referral for patients with a diagnosed chronic condition for which therapy is appropriate and who are under physician management for the condition; and, (3) allow therapy for without referral for restorative exercises so long as the patient does not initially present with new on-set pain, illness, or injury. The bill did not pass, but will return.

*If no one was on call . . . **standards for true collaboration within practice agreements could have been abolished.*** While [SB114](#) originally would have allowed an "unlimited" number of nurse practitioners a physician could supervise, the Association, understanding that one-size-doesn't fit all when it comes to practicing medicine, negotiated a more prudent ratio of 9-to-1 of nurse practitioners, physician assistants or nurse midwives for each collaborating or supervising physician while also preserving that physician's autonomy and authority regarding patient care decisions within each arrangement. The bill did not pass but will return.

*If no one was on call . . . **optometrists could have begun performing eye surgeries using scalpels and lasers as well as eye injections.*** [SB66](#) would have allowed optometrists, who do not undergo any surgical residencies anywhere in the U.S., to perform surgeries and injections on the eye and would also have given the Alabama Board of Optometry the sole power to define and regulate what is considered to be the practice of optometry, taking all authority away from the Legislature to define it. The bill was unfortunately rammed through the Senate Health Committee by its chairman, Jim McClendon, an optometrist himself ([watch this video](#)). The bill did not pass, but will return.

*If no one was on call . . . **a newly-created state board could have unilaterally set the scope of practice for imaging technologists and potentially increased costs to medical practices utilizing medical imaging.*** Among other things, [SB171](#) provided for the licensing and regulation of health care personnel performing radiologic imaging or radiation therapy for diagnostic or therapeutic purposes. While this is not problematic on its face, the bill could have increased costs for medical practices and dangerously expanded the scopes of practice for non-physicians. While the bill did not receive a vote in committee, it is expected to return.



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*If no one was on call . . .* **podiatrists could have been granted the ability to perform surgery on the ankle and lower leg.** [HB198](#) would have allowed podiatrists who have completed as few as 2-years of podiatry residency (significantly less than either a general orthopaedist or an orthopaedic surgeon specializing in the ankle) to perform ankle surgery. The legislation failed to receive a vote in committee, but will return.

## **Beating Back the Lawsuit Industry**

*Plaintiff trial lawyers are constantly seeking new opportunities to sue doctors. Alabama's medical liability laws have long been recognized for ensuring a stable legal climate and fostering fairness in the courtroom. Yet, year after year, personal injury lawyers seek to undo those laws and allow more frivolous lawsuits to be filed against physicians.*

*If no one was on call . . .* **physicians could have been held liable for emergency medical treatment decisions of individuals believed to be a threat to themselves or others.** Instead, physicians were protected in a revised version of the legislation, which aimed to create a process for immediate treatment of individuals believed to need mental health care. The bill did not pass but will return.

*If no one was on call . . .* **physicians participating in a pilot project "needle exchange" program could have been held liable for helping program enrollees.** Instead, revisions allowed physicians referring patients to the program and being referred patients from the program to be protected if following certain rules.

*If no one was on call . . .* **athletic trainers and possibly other health professionals could have lost existing legal protections they currently enjoy under one proposed change to the athletic training legislation.** Instead, an amendment to the legislation allows athletic trainers and other health professionals to maintain the same level of liability protection they have at present.

*If no one was on call . . .* **physicians could have been held liable for the health of patients under their care who chose to use cannabis for medicinal use in the proposed medical cannabis bill.** Instead, an amendment was adopted removing this language. The bill did not pass but will return.

*If no one was on call . . .* **physicians could have been held liable for school system employees' decisions regarding following portable DNR orders for minor students.** Instead, an agreement was reached to ensure physicians cannot be held liable for actions of those not under their supervision or authority in carrying out DNR orders. The bill did not pass but will return.

*If no one was on call . . .* **physicians could have been held liable for the actions of school system employees if the physician helped create a "seizure action plan" for a minor child with a seizure disorder.** Instead, physicians were protected for helping create plans for school employees to follow for children with seizure disorders. The bill did not pass but will return.



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## Other Legislation of Interest

**Medical Cannabis.** . . This much-discussed legislation, (SB165) sponsored by Sen. Tim Melson (R-Florence), an anesthesiologist, would provide for the regulation by the state, from "seed to sale", of cannabis for medicinal use. After surveying its members, the Association found Alabama physicians believe if cannabis for medicinal use is legalized, then the growth, cultivation and sale of cannabis should be highly regulated by the state, and any physician involvement should be regulated not by some new state agency, but by the Board of Medical Examiners. As a direct result of Alabama physicians' survey responses, the Association worked to bring the legislation in line with the areas of broad medical agreement on the topic. The bill passed the Senate but stalled when it reached the House. It will return.

*If no one was on call . . .* **various bills establishing standards of care in the law for physicians to follow or be penalized could have become law.** Instead, no such legislation passed, but the Association works on bills of this type every time the legislature comes into session.

*If no one was on call . . .* **physicians could have been charged with manslaughter or murder if a patient experiences a deadly overdose that involved a drug the physician prescribed.** The legislation, intended to target drug dealers, was revised to protect physicians.