



MEDICAL ASSOCIATION OF THE STATE OF ALABAMA®

2021 Legislative Recap

After the 2020 Session was cut short by the COVID-19 pandemic, it was widely expected that health care would be a hot topic for the 2021 Session. Those forecasts proved to be true, with roughly 20 percent of bills and resolutions filed during the 2021 Session relating to health care!

Had the Medical Association not been “on call” during the 2021 Session, problematic bills for physicians and bills dangerous to patients could have become law.

Moving Medicine Forward in 2021

While preventing dangerous and problematic proposals from becoming law consumes much of the Association’s advocacy efforts, at the same time the Association is trying to move medicine forward each session. The 2021 Session saw continued success for the Association in two top-priority funding requests (MMRC and BMSA) as well as the enactment of legislation to further access to physician-led, team-based care for patients in Alabama.

*If no one was on call . . . **physicians, their staff, and their practices would have no protection from COVID-19 frivolous lawsuits.*** The Association worked with both Sen. Arthur Orr (R-Decatur) and a coalition of other organizations on legislation providing liability protection to businesses but also to physicians for care whose provision to patients was affected or impacted by COVID-19 and/or the state’s response to the pandemic. This bill was one of the first to become law in 2021.

*If no one was on call . . . **the Maternal Mortality Review Committee (MMRC) could not have received vital funding for the second year in a row.*** In 2019, 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. As she did in 2020, Gov. Ivey again supported funding for the MMRC in her initial 2022 budget request and legislators maintained that funding in the final budget.

*If no one was on call . . . **the MMRC’s inaugural report outlining its findings and initial recommendations would not have been recognized.*** To raise awareness of this important work, the Association worked with Sen. Linda Coleman-Madison on a legislative resolution (SJR 106) and joined several legislators at a press conference event in April.

*If no one was on call . . . **the Board of Medical Scholarship Awards could not have maintained its significant funding increase in the coming fiscal year.*** As she did in 2020, Gov. Ivey recommended maintaining the additional \$500,000 increase for the BMSA. The legislature agreed, and the total amount for physician-student-loans for 2022 remains at \$1.9 million, allowing roughly 10 medical school tuition loans to be granted annually to physicians willing to set up practice in medically underserved areas of Alabama. This program remains one of the best mechanisms for expanding access to quality care.

*If no one was on call . . . **necessary physician-supported updates to Alabama’s athletic trainer statute as it relates to supervision and care continuity*** would not have become law. The Association worked closely with the Athletic Trainers Association and several medical specialty societies in drafting legislation to better define the practice of athletic training, ensure appropriate physician supervision, and allow joint-promulgation of athletic trainer rules between the professions’ respective licensure boards.

If no one was on call . . . **the creation of a new physician-led program to utilize paramedics to reach at-risk patients in communities across the state** would not have become law. The Association worked closely with the Alabama Chapter of the American College of Emergency Physicians on the legislation.

If no one was on call . . . **the medical community's voice and needs of physicians as it relates to expanding broadband in Alabama** would not have been heard. The legislation that passed creates a digital expansion authority to expand access to the internet in all 67 counties and will undoubtedly help patients connect with their physicians via telehealth.

If no one was on call . . . **awareness of the need to expand Medicaid** would not have grown as much as it did. The Association, as part of Cover Alabama - a coalition of more than 100 organizations supporting Medicaid expansion – continues to advocate for those caught in the coverage gap.

Fighting “Scope Creep” (the Replacing of 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, some non-physician organizations pursue legislative changes as an end-around-means to practice medicine, endangering quality care for patients.

If no one was on call . . . **the physician referral requirement for physical therapy could have been abolished.** As introduced, the legislation (sponsored by Sen. Jim McClendon) would have abolished the need for a medical diagnosis before a physical therapist could begin providing therapy to a patient.

If no one was on call . . . **podiatrists could have been granted the ability to perform surgery on the ankle and lower leg.** The legislation (co-sponsored by Sen. Jim McClendon) 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.

If no one was on call . . . **optometrists could have begun performing eye surgeries using scalpels and lasers as well as eye injections.** The legislation (pushed by Sen. Jim McClendon) 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.

If no one was on call . . . **a newly-created state board could have unilaterally set the scope of practice for imaging technologists and significantly increased costs to medical practices utilizing medical imaging.** Working with the Alabama Academy of Radiology, the Alabama Academy of Family Physicians and other medical specialty societies, the Association was able to reach a consensus with the technologists on their legislation.

If no one was on call . . . **the State Board of Nursing could have gained jurisdiction over, along with the ability to charge licensure fees to, medical assistants working in physician offices.** Working with a coalition of partners, the problems with the legislation were resolved.

If no one was on call . . . **various “interstate compacts” for non-physicians could have enabled “scope creep” far beyond what Alabama law allows.**

Beating Back the Lawsuit Industry

Plaintiff lawyers are constantly seeking new opportunities to sue physicians. Alabama's medical liability laws have long been recognized for ensuring a stable legal climate and fostering fairness in the courtroom. But those laws come in jeopardy every session and the Association must defend against allowing more frivolous lawsuits to be filed against physicians.

If no one was on call . . . **new vaccine-related lawsuits against physician-employers and medical practices** could have become law.

If no one was on call . . . **physicians accepting Medicaid could have been subject to whistleblower lawsuits for honest billing mistakes, costing \$5,500-\$11,000 per billing mistake plus triple damages** under a Medicaid fraud bill (sponsored by Sen. Jim McClendon). The Association, along with a coalition of health care associations, offered a substitute bill the sponsor rejected.

If no one was on call . . . **physicians treating prisoners who are pregnant could have been exposed to new liability for others' actions.** The Association worked with the bill sponsor to remove the problematic language.

If no one was on call . . . **physicians treating survivors of sexual assaults could have been exposed to new liability and requirements for new statutory standards of care.** The Association worked with the bill sponsor to remove the problematic language.

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.** The Association worked with the bill sponsor to remove the problematic language.

If no one was on call . . . **physicians could have been held liable for school system employees' deviations from DNR orders made portable for minors in schools.** The Association worked with the bill sponsor and bill proponents to remove the problematic language.

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 his or her minor child patient with a seizure disorder.** The Association worked with the bill sponsor to remove the problematic language.

If no one was on call . . . **legislation to criminalize female genital mutilation could have unintentionally created new liability issues for physicians.** The Association worked with the bill sponsor and the Alabama Section of the American College of Obstetricians and Gynecologists to ensure the bill adhered to ACOG guidelines and that no new physician liability was created.

Other Health-Related Legislation of Interest

If no one was on call . . . **the Board of Medical Examiners and Medical Licensure Commission would have been abolished.** The legislation (sponsored by Sen. Jim McClendon) would have banned physicians who were members of county, state or national medical and specialty societies from participating in regulating their profession. The proposed structure in the legislation would also have ensured little diversity amongst the physicians serving on the reconstituted BME and would likely have prevented rural physicians from being represented as well.

If no one was on call . . . **the State Health Officer and the State Committee of Public Health would have been abolished.** The legislation (sponsored by Sen. Jim McClendon) would have allowed for a non-physician to head the Health Department and would have replaced most of the physicians on the committee with an optometrist and other non-physicians. Instead of making drastic changes to ADPH midstream, the legislature and the governor agreed to a full-spectrum study of the state's COVID-19 response efforts between now and the beginning of the 2022 Session to identify areas for improvement moving forward.

Legislation was enacted to enable cannabis for medicinal use if approved by a physician certified by the state to recommend it to patients. The bill provides for the regulation by the state, from "seed to sale", of cannabis for medicinal use and creates a new commission to oversee all aspects (other than physician regulation) of cannabis. The new law allows physicians to become "certifying physicians" and allows patients who are approved by a certifying physician to access medical cannabis at a state approved dispensary. In 2019, the Medical Association did an in-depth survey of its members to gauge Alabama physicians' opinions on the topic. While opinions amongst individual physicians on cannabis for medicinal use differed then and still do, there was broad support amongst physicians for - IF cannabis for medicinal use were legalized in Alabama - that the state would regulate and inspect the products. As well, there was also broad support for keeping all regulation of physicians who choose to recommend cannabis to patients under the Board of Medical Examiners and not moved under the purview of the new Cannabis Commission or the Agriculture Department. Those areas and others of strong support identified via the 2019 survey, as well as several others, became the basis for the Association's advocacy efforts on the legislation. As a result, those areas of broad agreement were included in the final bill that passed.

*Legislation was enacted that **would prevent practices of pharmacy benefit managers** relating to patient steering to use mail-order pharmacies and would prevent price discrimination. It would also require the PBM to act as a fiduciary to clients and would prevent them from stopping pharmacists from disclosing prices.*

*A resolution was enacted to **establish the chronic weight management and type 2 diabetes task force**. The task force will study the health implications of chronic weight management and type 2 diabetes, the costs associated with the diseases, and the various health treatments available to reduce the epidemic in this state caused by those diseases. The task force is also tasked with making recommendations for improving the health of Alabamians. The Association has an appointment to the task force.*

*Legislation was filed to require all **vaccine providers to check the state vaccine registry** (ImmPrint) before administering a vaccine and also to input vaccine-recipient information into the database. The legislation was amended to exclude flu shots for those 19 and older from falling under the legislation. The bill did not pass.*

*Legislation was filed to **ban transgender therapy**. It would have criminalized counseling, prescribing and performing surgery if the intent of any of the preceding was to assist and/or affirm in transitioning a patient to a gender different than the one listed on the patient's birth certificate. The legislation was amended to remove "counseling" from the list of banned therapies for treating transgender patients. The bill did not pass.*

*Legislation was filed to **change the way county health officers issued countywide public health orders**. Various bills were filed related to county health orders. Some would have established an advisory panel to weigh in on countywide health orders before implementation while others would have prohibited a county health officer from issuing an order that relates to pandemic or outbreak unless it was approved by the State Health Officer. These bills did not pass.*

*Legislation was filed to **change how statewide public health orders are issued and also to curtail the emergency declaration powers of the governor**. These bills did not pass.*

*Multiple pieces of legislation were filed related to **abortion**. The topics ranged in focus from requiring information be provided to patients about possible reversal of chemical abortion medications, to banning chemical abortions altogether, to banning the public funding of abortions, to requiring that babies born alive after an abortion in a reproductive health center be provided the same life-sustaining treatment than if the baby were born elsewhere. Of these, the "born alive" bill passed in the final legislative day.*

*Multiple pieces of legislation were filed related to **banning vaccine passports**. The bill that passed on the final legislative day leaves in place existing immunization requirements for students (and also allows exceptions for religious or medical reasons) but bans the issuance of vaccine passports in Alabama by the state or any other governmental body. It also prevents businesses from being able to require proof of vaccination for entry into a business or as a condition for provision of a good or service to a customer.*