



# MEDICAL ASSOCIATION OF THE STATE OF ALABAMA®

## 2022 Legislative Recap

*The last regular session of a quadrennium (four year election cycle) is historically a non-controversial session. The 2022 Regular Session, however, was anything but quiet for medicine. Coming out of pandemic- related restrictions at the State House, the Association again saw roughly 20 percent of bills and resolutions filed during the 2022 Regular Session relating to health care.*

*Without the Medical Association's work during the 2022 Session, none of the progress seen in medicine this year would have occurred and many problematic bills for physicians and bills dangerous to patients could have become law.*

## Moving Medicine Forward in 2022

*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 2022 session saw big wins for the Association in extending Medicaid postpartum coverage to one-year and enacting telehealth legislation, as well as beginning conversations in updating Alabama's rural physician tax credit to further expand access to physician-led, team-based care for patients in Alabama.*

*Without the Medical Association . . . **telehealth legislation with strong patient protections and establishing a framework for telehealth regulation would not have become law.*** One of the Association's top priorities for 2022, MASA worked with Blue Cross Blue Shield of Alabama, community mental health advocates, hospitals, urgent cares and others to establish guardrails and a framework to allow telemedicine to continue to grow and adapt to physicians' and patients' needs. The law requires that – after 4 telehealth visits with the same physician for the same condition without resolution - a patient would need to be either seen in person or referred for an in-person visit within 12 months (with the ability for some exceptions to be made by rule). As well, the new law puts safeguards around prescribing, prohibits “cold calling” of patients, and requires that virtual care be patient-initiated. As well, telepsychiatry visits would be excluded from the in-person requirements.

*Without the Medical Association . . . **extending postpartum coverage for women on Medicaid from 60 days to 12 months could not have become a reality.*** One of the Association's top priorities for 2022, MASA worked closely with the Ivey Administration, legislators, the Alabama Medicaid Agency and the Cover Alabama Coalition to establish a 12-month Medicaid postpartum pilot program. The Association partnered with a coalition of stakeholders – including March of Dimes, the American College of Obstetricians and Gynecologists, and the American Academy of Pediatrics – and highlighted the findings from the Maternal Mortality Review Committee (MMRC) that funds allocated to extend postpartum coverage could positively impact 30,000 women and improve maternal health outcomes in Alabama.

*Without the Medical Association . . . **the Maternal Mortality Review Committee (MMRC) may not have received vital funding for the third 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 2021, Gov. Ivey again supported

funding for the MMRC in her initial 2023 budget request and legislators maintained that funding in the final budget. Continued funding for this committee is critical to identifying causes for high maternal mortality and crafting solutions.

*Without the Medical Association . . .* **the crafting of what could be a legislative model for other rural states relating to anesthesia care provided by CRNA’s would not have become law.** The Association partnered with the Alabama State Society of Anesthesiologists and jointly worked with the CRNA association to formulate a mutually-agreed upon bill. This new law appropriately maintains a CRNA functions under the direction of a physician who is immediately available when that physician is an anesthesiologist. The new law also states that in the absence of an anesthesiologist, a CRNA would work “in coordination” with another physician (like a surgeon) who must also be immediately available. While the Association remains committed to increasing access to care, it is equally committed to ensuring that care is of the highest quality and maintains strong patient safety protocols in both urban and rural locations. This legislation achieves both goals.

*Without the Medical Association . . .* **discussions surrounding a long-overdue update to the existing rural physician tax credit would not have moved forward.** In 1993, a law was passed with the intention of making rural areas of Alabama more competitive in the recruitment and retention of physicians to rural, underserved communities. Since then, many things have changed in rural Alabama and most agree the eligibility requirements in the current law are cumbersome and outdated. The Association worked with the bill sponsor, the Alabama Department of Revenue and the Alabama Academy of Family Physicians on the bill. It did not pass, but much progress was made toward addressing this legislation in a future session.

*Without the Medical Association . . .* **the Board of Medical Scholarship Awards may not have maintained its funding.** Gov. Ivey again recommended maintaining the additional \$500,000 increase for the BMSA initially put in place in 2021. The Legislature agreed, and the total amount for physician-student-loans for 2023 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, physician-led care.

*Without the Medical Association . . .* **the needs of physicians and patients as it relates to expanding broadband in Alabama and the impact on telehealth** would not have been heard. A Special Session was called in January 2022 to focus on the allocation of American Rescue Plan Act (ARPA) funds. Broadband expansion was a top priority and \$277 million was allocated in support of expanding broadband in all 67 counties in Alabama.

*Without the Medical Association . . .* **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.*

*Without the Medical Association . . .* **home-birth VBACs attended by non-nurse midwives could have been authorized.** The Association spearheaded a coalition of partners to oppose home-birth VBACs and

instead support the high national standards in place for VBACs that ensure the safety of pregnant women and their children in utero. The bill failed in committee.

*Without the Medical Association . . .* **pharmacists could have been granted the ability to begin prescribing.** Under current law, pharmacists may administer any vaccinations, but may not prescribe them. The proposed legislation would have allowed pharmacists to prescribe essentially any vaccine, clearly a slippery slope that blurs the lines between medicine and pharmacy. The Association worked with the Alabama Chapter of the American Academy of Pediatrics, the Alabama Academy of Family Physicians and the Alabama Chapter of the American College of Physicians on the legislation. Pharmacy interests bringing the bill stated the goal of the legislation was to increase access to vaccines. Working toward that goal, medicine offered several alternatives to the original bill language which would have met that goal but all of those were rejected by pharmacy interests. The bill was “passed” out of the Senate Healthcare Committee on a voice vote called by Sen. Jim McClendon, despite the absence of a quorum. It ultimately failed to make it to the floor.

*Without the Medical Association . . .* **optometrists could have begun performing eye surgeries using scalpels and lasers as well as performing eye injections.** The legislation pushed by Sen. Jim McClendon (an optometrist himself) would have allowed optometrists, who are not trained surgeons, 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. In the Senate, the bill was “passed” out of committee on a voice vote called by Sen. Jim McClendon despite vocal opposition from other senators on the Senate Health Committee. Both a public hearing on the bill and a roll call vote were also denied by Sen. McClendon. Ultimately, the bill failed when it made it to the House committee.

*Without the Medical Association . . .* **podiatrists could have been granted the ability to perform surgery on the ankle.** The legislation would have allowed podiatrists who have completed as few as 3-years of podiatry residency (significantly less than either a general orthopaedist or an orthopaedic surgeon specializing in the ankle) to perform ankle surgery. The bill was “passed” out of the Senate Health Committee on a voice vote which was called by the Chairman of the Healthcare Committee, Sen. Jim McClendon. The bill failed on the Senate floor.

*Without the Medical Association . . .* **a new 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 to put standards in place for medical imaging. The bill did not come up for a vote this session.

*Without the Medical Association . . .* **various “interstate compacts” for non-physicians could have enabled “scope creep” far beyond what Alabama law allows.** Working with bill proponents, the Association was able to ensure that expedited licensure laws for various professions did not also water down patient safety laws in Alabama.

## **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, as well as being a tool (like cost of living and quality of life metrics) for recruiting physicians to Alabama. But those laws come in jeopardy every session and the Association must defend against allowing more frivolous lawsuits to be filed against physicians.*

*Without the Medical Association . . .* **new vaccine-related lawsuits against physician-employers and medical practices** could have become law. None of these bills passed.

*Without the Medical Association . . .* **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 sponsors to remove the problematic language. The bill became law.

*Without the Medical Association . . .* **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. The bill did not pass.

*Without the Medical Association . . .* **new lawsuit opportunities against OBGYNs for treating ectopic pregnancies and maternal medical emergencies and also performing IVF services could have become law.** The Association worked with the bill sponsor to ensure routine medical treatments like those for ectopic pregnancies, non-uterine implantations, emergency treatments and performance of in vitro fertilization (IVF) were not considered “abortions” under the bill and therefore physicians performing them could not be exposed to new liability. The bill did not pass.

## **Other Health-Related Legislation of Interest**

***Prior authorizations.*** The bill would have required a health insurer to communicate to a physician or other health care professional with authority to prescribe drugs within a certain time frame whether the medicine would be covered or not and why. The bill did not pass. However, the Association undertook a survey of physicians in the state earlier this year on prior authorizations across the entire testing and treatment spectrum, not just prescriptions. The Association is also establishing a workgroup to examine the findings of that survey and discuss solutions to removing barriers to patient care.

***Legislation was passed to ban transgender therapy and surgery on minors.*** The legislation criminalizes prescribing puberty blockers and performing surgery if the intent is to assist and/or affirm in transitioning a minor patient to a gender different than the one listed on the patient’s birth certificate. The bill is now law and legal challenges to it are expected.

***COVID-19 related legislation was filed regarding the powers of health officers, masking in schools, age of consent related to vaccinations, and exemptions for vaccinations.*** Bills were filed which (1) would have prohibited a statewide public health order from the state health officer from going into effect unless the Governor signs the order; (2) would have prohibited a county health officer from issuing an order that relates to a pandemic or outbreak unless it was approved by the state health officer; (3) would have reduced school funding if mask mandates were put in place; (4) would have created a right of a parent to determine if a child wears a mask to a public school which has ordered masks be worn; (5) changed the age of medical consent for minors’ vaccinations; and, (6) created exemptions to workplace vaccination requirements. None of these bills passed.

***COVID-19 alternate treatments.*** The legislation would have prohibited an occupational licensing board from taking adverse action against a physician who recommends a COVID-19 treatment that is FDA approved but which is prescribed off label and would also have required a pharmacist to fill such a prescription. The legislation would also create a list of patients’ rights toward access to such treatments in the inpatient setting and would create some new causes of action against health care facilities and potentially health care personnel. The bill was “passed” out of the Senate Healthcare Committee on a voice vote called by Sen. Jim McClendon, despite the absence of a quorum. The bills did not become law.

**Multiple pieces of legislation were filed related to abortion.** These bills ranged in focus from (1) legislation modeled after the “Texas-style” abortion ban that utilizes civil actions by citizens for enforcement; to (2) legislation banning certain abortifacients from being prescribed for any purpose; to (3) requiring additional information and counseling be provided to patients before an abortion; to (4) banning use of state funds for abortions. None of these bills passed.

**Mental health “crisis center” facilities expanding.** Gov. Ivey recommended in her budget and the Legislature concurred, for additional funding for two new mental health crisis centers for the state. This marks the second time in three years the state has invested heavily in mental health care infrastructure, as the construction of four other “crisis centers” was funded in the 2020 budget.

**Mental health services coordinators in public schools.** Legislation was filed to require each local board of education and independent school system in the state, subject to appropriations by the Legislature, to employ a mental health service coordinator. The bill became law.

**End-of-life care decisions by surrogates.** The legislation provides further for the certification of a surrogate designated to make end-of-life decisions for a terminally ill patient and removes the need for notarization, replacing it instead with attestation by two adult witnesses. Neither witness may be a physician or health care provider or an employee of either of the aforementioned unless he or she is a relative of the patient. The bill became law.

**Use of restraints on pregnant inmates.** The legislation prohibits the use of restraints on pregnant inmates except restraints utilized by a health care professional for the safety of the pregnant woman. The bill became law.

**Certificate of Need adjustments and repeal.** Multiple bills were filed to modify or repeal entirely the state’s Certificate of Need laws related to construction of facilities and provision of certain health care services. None of these bills passed.

**Tax credits for physicians, others serving as preceptors.** The bill would have established the Preceptor Tax Incentive Program to provide an opportunity for students enrolled in certain health professions training programs to train in rural and underserved counties in the state. The bill would have provided an income tax credit incentive of \$500 for each 160 hour clinical preceptorship rotation per calendar year for an otherwise unpaid community-based faculty preceptor physician for either allopathic or osteopathic medical students. The bill would also provide an income tax credit incentive of \$425 for each 160 hour clinical preceptorship rotation per calendar year for an otherwise unpaid community-based certified registered nurse practitioner, certified nurse midwife, certified registered nurse anesthetist, or physician assistant. The bill did not pass.