

2005 TMA Legislative Wrap-up

The first year of the 104th General Assembly adjourned on Saturday, May 28, a year marked by ethics reform ending with a stormy last three days. Despite the federal indictment and arrest of four sitting legislators, the General Assembly completed important work on the Administration's Appropriations bill and TennCare safety net. Assuming relief from the Grier Consent Decree and modifications in the pharmacy benefit package for those adults remaining on TennCare, health coverage for 97,000 "medically needy" TennCare enrollees would be preserved. Efforts to preserve coverage for approximately 230,000 others were not successful. Funding will be available to continue providing some pharmacy benefits for severely and persistently mentally ill (SPMI) enrollees who are disenrolled and for local health clinics and community mental health centers preparing to serve TennCare enrollees losing coverage. Additionally, nonrecurring funds will be available to "dual eligibles" to provide some "bridge" pharmacy coverage for Medicare-eligible enrollees until the federal prescription-drug benefit takes effect in January. A statewide drug discount card program for uninsured persons will be developed to assist them in enrolling in various pharmaceutical discount programs. Finally, the safety net provisions include \$10 million for essential providers, including physicians.

Even though TMA's comprehensive legislation (**SB2178 by Norris/HB2122 by Overbey**) on medical malpractice reform did not move, there were some positive developments. Nearly 30 legislators from both parties signed on as sponsors. Doctors' Day on the Hill left a resounding memory with legislators about the commitment and vital importance of this initiative to organized medicine. An informal hearing organized by our sponsors gave us an opportunity to hear firsthand the concerns of trial lawyers and will allow us to respond accordingly.

Overall, we believe TMA's legislative session was a success. The General Assembly enacted five of the bills in TMA's legislative package and two others were achieved through changes in department rules. In addition, a number of legislative items that would have adversely affected organized medicine and patient safety were either defeated, taken off notice, rolled to 2006 or compromise amendments agreed upon that turned problematic bills into ones that were at least acceptable. Of more than 2300 bills filed during the first year of the session, TMA identified 375 that we actively supported, opposed, or watched. Bills on the watch list were of concern primarily because they were drafted broad enough to be amended to address an issue important to medicine. The following is an overview of the most important bills to TMA this year.

MEDICAL LIABILITY REFORM

Comprehensive Medical Liability Reform: (SB2178 by Norris/HB2122 by Overbey)

ACTION: Never placed on Calendar

This TMA legislation adds a provision for non-economic damages in medical malpractice actions. It prohibits subrogation of plaintiff's rights to recovery against a defendant from the source of any collateral benefits, sets a \$250,000 recovery cap on such damages, permits awards exceeding \$75,000 to be made in periodic payments and establishes a scale for percentage of judgment that can go to attorney fees. It would also require a pre-certification filing by an expert witness. The sponsors and TMA were hoping to have the bill heard in Senate Judiciary Committee before the end of the session but, due to a rules technicality, the bill was moved over to 2006.

Limited Liability for Volunteer Health Care Providers: (SB 212 by Southerland/HB 326 by Newton)

ACTION: Passed

This bill, as amended, provides liability protection, except for gross negligence or willful misconduct, to health care providers who serve persons seen in free health clinics where no compensation is received. Specialists who provide care to persons referred from these clinics would be afforded the same protection so long as the services are provided at no charge.

INSURANCE

Uniform Credentialing Application: (SB240 by Kurita/HB1555 by Hargrove)

ACTION: Passed

This TMA legislation was enacted as Public Chapter 167 on 5/23/05. As amended, a health insurance entity operating in Tennessee that credentials or recredentials the providers in its networks must accept its own application or the credentialing and recredentialing applications from the Council on Affordable Quality Healthcare. (CAQH is a free credentialing service to healthcare providers that allows information to be submitted into an online database, permitting one application to be submitted to multiple providers.) In effect, passage of this law will allow a health care provider to use one credentialing and recredentialing application for all health insurance companies, thereby streamlining the credentialing process for practices.

State Action Doctrine: (SB684 by Cooper/HB386 by Briley)

ACTION: Taken off Notice

This bill authorizes independent health care providers to jointly negotiate with a health care insurer and engage in related joint activity regarding non-fee-related matters that affect patient care. In areas insurers have substantial market power over independent health care providers, providers could jointly negotiate fees and related issues. This legislation carried a fiscal note of more than \$300,000 and did not move during this legislative session.

Insurance Equality Act of 2005: (SB1182 by Cooper/HB0131 by M. Turner)

ACTION: Taken off notice

The bill, brought by the chiropractors, requires equivalent compensation for covered services to certain health care providers within a class of providers equal to the amount paid to physicians. The bill also established an "any willing provider" clause and required that the insurance plan contain a provision that enrollees could have direct access to a participating provider without prior referral. This bill was fought by both TMA and the insurance industry which in effect convinced the sponsors not to move the legislation this session.

SCOPE OF PRACTICE

Complementary and Alternative Therapy: (SB 0237 by Miller/HN0174 by McKee)

ACTION: Moved to 2006

As originally written, this bill would have allowed health care providers to offer all complementary and alternative therapy treatments to patients as a choice of care. The bill specifically allowed the provider to recommend any mode of treatment that, in the provider's judgment, is in the best interests of the patient. Even though the House sponsor attempted to amend the bill to just allow chelation therapy, TMA worked hard to kill this bill which was rolled numerous times after having been placed on calendar. In the end, the House subcommittee hearing the bill voted to move the bill over to 2006.

Direct Access to Physical Therapists: (SB0533 by McNally/HB1892 by McDaniel)

ACTION: Taken off Notice

As drafted, the bill would delete the requirement in the PTs' scope of practice that services be provided under a written or oral referral from an MD, chiropractor, dentist or podiatrist. It would allow PTs to evaluate, diagnose and initiate rehabilitation services without the required involvement of one of the providers listed above. Orthopedists and other physicians were concerned that PTs also wanted to eliminate the ability of physician practices to employ PTs, an initiative being promoted heavily by the American Physical Therapy Association. The bill was placed on calendar and amendatory language was discussed to ensure that patient safety concerns were met while at the same time making certain that physicians could still employ PTs. This compromise was turned down by the physical therapists and, after significant lobbying efforts by the physician community, the bill was taken off notice by the sponsors.

Prescriptive Authority for Psychologists: (SB0723 by Cooper/HB0749 by Odom)

ACTION: Taken off notice

This bill opens the psychologists' scope of practice act to allow these providers to prescribe psychotropic medications, write orders for a drug, laboratory tests or any medicines, devices or treatments related to the practice of psychology. The psychologist would have to complete a 450-hour didactic educational instruction. TMA and the Tennessee Psychiatric Association worked hard to kill the bill. The legislation, which made it out of a House subcommittee, did not have the votes to pass the bill out of either House Health or Senate General Welfare Committees. The sponsors chose to take the bill off notice but only after rolling the bill for several months.

Administration of Anesthesia: (SB1709 by Person/HB2036 by S. Jones)

Action: Moved to 2006

This bill establishes a new requirement in the nursing scope of practice that mandates that no licensed RN will administer general anesthesia unless the licensee is a CRNA. TMA, TDA and the THA fought hard against this legislation. The House established a summer study committee on the issue.

Nursing Practice: (SB2124 Black/HB1904 by Odom)

ACTION: Passed

This bill is the clean-up bill for the nurse practice act. Among the changes made are elimination of the certificate of fitness for prescriptive authority and replacing it with the Board of Nursing being able to grant licenses for prescriptive authority. Nurse practitioner terminology is changed to Advanced Practice Nurse. It keeps the same requirements of supervision, a formulary etc concerning writing prescription as in current law and maintains the dual board authority to regulate APNs. TNA had wanted to amend the bill to revise the MD/APN relationship to a collaborative arrangement. Because TMA and representatives of other physician groups opposed this change, the Senate sponsor was not willing to place the amendment on the bill.

TENNCARE

Appropriations Bill: (SB2315 Kyle/HB2331 by McMillan)

ACTION: Passed

The TennCare provision in the State Appropriation bill includes funds to preserve health coverage for the 97,000 "medically needy" TennCare enrollees. It provides for recurring funds to continue providing pharmacy benefits for severely and persistently mentally ill (SPMI) enrollees and new resources for local health clinics and community mental health centers preparing to serve TennCare enrollees losing coverage. Additionally, the amendment includes nonrecurring funds to "bridge" pharmacy coverage for Medicare-eligible enrollees until the federal prescription-drug benefit takes effect in January.

TennCare Safety Net Legislation: (SB2300 by Kyle/HB2321 by McMillan)

ACTION: Passed

Governor Bredesen's Administration presented the House and Senate with a \$103 million plan for a Safety Net program that would provide expanded access to community health care services for those who will be disenrolled in the coming months. Features of the plan include a drug benefit for mentally ill enrollees, a drug discount card for those disenrolled, funding to bolster the efforts of local health clinics and community mental health centers, a nurse's help-line and a \$10 million fund for essential providers, including physicians.

PRACTICE

Redefinition of Outpatient Diagnostic Centers: (SB795 by Burchett/HB 1635 by McMillan)

ACTION: Passed

This bill, brought by the hospital association, would have required most practices that have a CT, MRI, or PET to be licensed as an outpatient diagnostic center. After seeing organized medicine's displeasure with the legislation, the House bill sponsor requested that organized medicine and THA see if they could come

to a compromise. Physician practices agreed to new data reporting requirements and THA agreed to a definition of ODC that does not expand the licensure requirement.

Professional Privilege Tax Exemptions: (SB1836 by Herron/HB 288 by Hargett)

ACTION: Passed

As amended, this TMA bill exempts any person, including physicians, who serves on active military duty for 180 days or more during the fiscal year from payment of the professional privilege tax.

Medication Error Reduction Act: (SB470 by Finney/HB801 by Armstrong)

ACTION: Passed

This TMA bill clarifies the actions taken during the 2004 legislative session on completion of prescriptions. It reconfirms that handwritten prescriptions be legible but not necessarily printed, makes changes in the information that must be included in computer-generated prescriptions and allows facilities and local health departments to pre-sign standing orders and prescriptions, respectively.

Tennessee Affordable Drug Act: (SB1360 by Henry/HB1410 by Shepard)

ACTION: Passed

As amended, this bill requires pharmacists to supply generic substitutions unless the prescriber has documented on the prescription the need for a brand name drug. Documentation would include any notation or language on the prescription, as long as it is not preprinted (and must be more than just signing on a "Dispense As Written" line) that informs the pharmacist that the brand name drug should be dispensed. The possibility of making therapeutic substitutions from a drug formulary, which generated much discussion, was ultimately amended out of the bill. TMA staff worked hard with the House sponsor and the Comptroller to assure the bill would not be onerous to prescribers.

Provider Titles: (SB1716 by Person/HB1265 by Hensley)

ACTION: Passed

This TMA bill, as amended, requires all boards responsible for licensing health care professionals to promulgate rules as to how a health care provider can and must advertise. At a minimum, any advertisement that uses the names of the healthcare provider must include the use of either their professional abbreviation or professional designation in all signs, stationary, prescription pads, and announcements.

Cosmetic Surgery Sales Tax: (SB1837 by Herron/HB1668 by Fitzhugh)

ACTION: Taken off Notice

This legislation added a 7 percent sales tax on cosmetic surgery and botox injections for cosmetic purposes. Numerous calls and letters were made to the sponsors suggesting that the bill was inappropriate and bad for health care. Although the bill was placed on the Senate Finance calendars on a couple of occasions, the Senate sponsor chose not to move the legislation.

Clarification of Live Birth: (SB2200 by Ford/HB2131 by J. DeBerry)

ACTION: Passed

This bill makes a change in the definition of live births by excluding a fetus which takes only a single gasp or transient cardiac contraction. This bill puts Tennessee in line with many other states in defining a live birth.

Controlled Substance Database: (SB 528 by McNally/HB 1889 by Shepard)

ACTION: Taken off Notice

This bill was amended by the Governor's Office to make a variety of changes to the Controlled Substance Monitoring Act of 2002. The bill would have changed the makeup of the 15-member advisory committee by deleting some provider representation and adding representation from the TennCare Office of the Inspector General and the District Attorney Generals Conference. TMA and others voiced concerns to the sponsors of the legislation as well as the Governor's Office that each licensing board needed representation on the committee if their peers were to be reviewed or investigated. While the Governor's Office offered to satisfy the TMA's issues, they were not willing to add the other professions' members back to the committee. Unable to reach consensus, the Administration withdrew the legislation.

Child Abuse during Pregnancy: (SB 799 by Burchett/HB 994 by Vaughn)

ACTION: Moved to 2006 in the Senate, Died for a Lack of a Motion in House Budget Subcommittee

This bill would have created a Class D felony offense for any woman who is pregnant and knowingly ingests any illegal substance or controlled substance not prescribed by a physician. The House and Senate Judiciary Committees amended the bill say that the pregnant individual must know she is expecting, lowered the felony charges to a Class B misdemeanor, and specified that the judge has the discretion to order drug treatment at defendant's expense in lieu of jail time. TMA and the Department of Health explained to the sponsors and key legislators that, even with the amendment, it may cause a pregnant woman to forgo prenatal treatment or not confide in her health care provider of her use of illegal drugs which could end up harming the unborn child.

Testing Of Oxygen Saturation Level Of Newborns: (SB 2208 by McNally/HB 2005 by Overbey)

ACTION: Taken off Notice

This bill would mandate testing the oxygen saturation level tested by pulse oximetry testing of a newborn before he/she leaves the hospital. The reading must be taken on the finger & toe. If the oxygen saturation level is below 92%, the infant would have to be referred for further cardiac evaluation. There is an exemption for religious beliefs. There were many parties concerned with this legislation since there is no current standard of care that addresses universal testing. In addition, the bill had a large fiscal note.

Accessibility to Patient's Medical Records: (SB 2311 by Kyle/HB 2296 by McMillan)

ACTION: Passed

Under present law and pursuant to a complaint investigation, the records of all health care providers are to be made available for inspection and copying upon presentation of an authorization for release signed by the patient or the patient's legal representative or, without an authorization for release, when a written request meets certain conditions. This bill adds new requirements when an authorization is not available to also contain notice to the health care provider of the statutory and/or regulatory grounds that may have been violated based on information from the complaint or upon which the investigation is being conducted and the written request must contain the specific date by which production of the records is required. A provision is added that gives the State the right to compel production of the records in Chancery Court if the provider refuses and gives the health care provider who refuses to release the records a right to a hearing.

Meth-Free Tennessee Act of 2005: (SB2318 by Kyle/HB 2334 by McMillan)

ACTION: Passed

The bill requires that any non-exempt product that contains a methamphetamine precursor can only be dispensed by a licensed pharmacist and maintained behind the pharmacy counter. Limits are established on the amounts of product that can be purchased in a single transaction. Any person purchasing a non-exempt product must provide to the pharmacy a valid ID and the pharmacy must maintain a record of the sale. Healthcare providers are required to report to law enforcement any injury caused by meth labs (fire, explosion, chemical release), similar to mandatory reporting of gunshot wounds.

PUBLIC HEALTH

Tobacco Preemption/Clean Indoor Air Act: (SB44 by Cohen/HB1693 by Stanley, SB45 by Cohen/HB 1686 by Sontany, SB46 by Cohen/HB1692 by Stanley, SB773 by Hensley/HB1790 by Burchett, SB1594 by Black/SB 198 by Todd, SB 2188 by Miller/HB2138 by Hood)

A number of bills were introduced that range from eliminating the preemption clause that now prohibits local governments from regulating smoking in public places to bills that would establish a statewide ban on smoking in restaurants. Most of the legislation was unable to get sufficient support to pass out of subcommittee. However, Sen. Tim Burchett and Rep. Joey Hensley, a TMA member, were able to pass SB757/HB1791 allowing the University of Tennessee and the Tennessee Board of Regents to set smoking policy for their campuses.

Motorcycle Helmet Usage by Adults: (SB 807 by Burchett/HB 456 by Davidson, HB 810 by Burchett/HB 924 by Tindell, SB 928 by Southerland/HB 1840 by Tidwell, SB 1324 by Burchett/HB 1213 by Davidson, SB 1325 by Burchett/HB 1215 by Davidson)

Multiple bills were introduced weakening motorcycle helmet laws. TMA continued to oppose these bills this legislative session. The only bills that passed were one that allowed motorcycle riders to wear helmets that contained small holes for heat ventilation and another that permitted motorcyclists 18 and older not go without a helmet when riding in a parade under 30 mph. The remaining bills were either taken off notice or moved to 2006.

Youth Tobacco Prevention, Education and Cessation Program: (SB1891 by Herron/HB388 by Armstrong, SB 193 by Hagood/HB 1404 by Tindell)

SB1891/HB388, a TMA bill, would have redirected \$2.5 million next year and \$5 million in subsequent years from the proceeds of the Master Settlement Agreement into local community and school-based efforts to address child and adolescent use of tobacco products. Given the cost of the program, passage of the bill was unlikely. However, SB193/HB1404 was enacted, creating a grant program operated by the Department of Health that attempts to reduce consumption of alcohol, tobacco and drugs among youth. The Appropriations bill was amended to include \$95,000 for this effort.

Increases in the Tobacco Excise Tax: (SB 13 by Kurita/HB 690 by Hensley, SB 54 by Cohen/HB 703 by Bowers, SB 2100 by Norris/HB 1944 by Borchert, SB 2002 by Kyle/HB 1886 by McMillan)

There were a number of bills filed to increase the tobacco excise tax or ensure that all companies were paying the tobacco excise tax. SB2002/HB1886 was passed which applied a 50 cent equity assessment on tobacco companies not participating in the Tobacco Master Settlement agreement. All of the remaining tobacco tax bill either were taken off notice or failed in committee.

Mercury-Based Preservatives In Vaccinations: (SB 1616 by Black/HB 956 by Lynn)

ACTION: Passed Senate, Placed in Study Committee in House

As amended, this bill would require that no child less than 8 years of age receive an immunization that contains mercury. If the FDA designates that the product is thimerosal free or trace free then the vaccine may be used. Exceptions would be made if there is an outbreak or there is an insufficient supply of thimerosal free or trace free vaccine. The bill would exempt influenza vaccines and vaccines that are not included on the most current ACIP Recommended Childhood Immunization Schedule. The bill specified that women who are pregnant may only use vaccinations with no or trace amounts of mercury. Hearing concerns from representatives of pharmaceutical companies and pediatric providers, the House Commerce Committee placed the bill in a summer study committee.

WORKERS' COMPENSATION

Pay for Initial Evaluation: (SB1581 by Norris/HB732 by Harrison)

ACTION: Not placed on calendar

This TMA bill provides that, except in certain situations, payments to providers for initial examinations and treatment that are authorized by the carrier or self-insured employer must be paid by that carrier or self-employer and may not later be subject to reimbursement, even if the injury or condition for which employee was sent to the provider is later determined non-compensable. *After speaking with the staff at the Department of Labor and Workforce Development, the intent of the new Workers' Compensation Medical Fee Schedule Rules which become effective 7/1/05 adress this issue. Therefore, legislation was not needed.*

Prompt Payment of Workers' Compensation Claims to Providers: (SB 981 by Bryson/HB 676 by Maddox)

ACTION: Not Placed on Calendar

This TMA bill requires the Commissioner of Labor and Workforce Development to set standards by rule governing prompt payment of workers' compensation health claims by insurance carriers and self-insured employers. The bill would permit the Commissioner to set rules in order to assess civil penalties equal to 25% of unpaid or untimely paid benefits owed to health care provider under Workers' Compensation Law when the Commissioner determines that unpaid or untimely paid benefits were appropriately owed to

health care provider but either not paid or paid late. *While the bill did not pass, the Department added a similar provision allowing assessment of a civil penalty at a 25% APR in the new Workers' Compensation Medical Fee Schedule Rules.*

EDUCATION

Student BMI Testing and School Health Report Card: (SB0247 by Finney/HB0445 by Turner, L., Fowlkes)

ACTION: Passed

As amended, this TMA bill allows each LEAs to test student's BMI unless a parent or guardian has requested not to have their child tested. The LEA then would complete a confidential health report card on each child that is to be sent home to the parent or guardian. The bill also requires the Department of Health to prepare a guide for LEAs to use when implementing the program. If public or private funding becomes available, the Department will also collect the information in order to produce aggregate data. (This bill was combined with a second bill by Rep. L. Turner/Senator Ford, HB1719/SB 949, which was an initiative of the Legislative Black Caucus.)

Tennessee Student Health Act: (SB1231 by Ketron/HB1408 by Baird)

ACTION: Passed the Senate, Moved to a study committee in the House

The bill requires each Local Education Agency to establish a student health advisory council. LEAs are encouraged to devise and implement a plan that would ensure that every public school student, K- 8th grade, would have to participate in physical education. In addition, the bill created a Physical Education Director at the State Department of Education to help LEAs implement the legislation. The bill passed unanimously in the Senate but was moved to a summer study committee which is to report back to the House Education Committee next year.