

# Tennessee Medical Association

## 2006 Legislative Wrap-up

The second year of the 104<sup>th</sup> General Assembly adjourned on May 27. Immediately after opening on January 10, 2006, the Governor called the legislature into special session to address ethics reform. The announcement was in response to the Tennessee Waltz sting by the FBI. Once the special session concluded more than a month after it began, members seemed hesitant to address real serious matters during the regular session. However, issues designed for political gain in an election year did receive quite a bit of attention, such as Cover Tennessee, raising the minimum wage, eminent domain and a constitutional amendment on abortion. In addition, a significant number of sitting legislators, including many in positions of leadership, announced during session that they would not be running for reelection.

Medical Liability Reform represented TMA's primary objective during the session. Much effort went into development of a coalition of over 50 statewide organizations which included associations representing medical, dental, pharmacy and other allied health providers, hospitals, nursing homes, pharmaceutical companies, and business interests. The coalition was instrumental in raising awareness of the liability crisis situation in Tennessee. AMA recognized the deteriorating situation then designated Tennessee as its 21<sup>st</sup> "crisis" state. TMA implemented a new program called "Physician Tuesdays on the Hill" which brought dozens of physicians, spouses and group practice managers each week to the plaza on the day that both Judiciary Committees met. Legislators were very cognizant of their presence and their commitment to the cause of MLR. In spite of a number of recent large jury awards for medical malpractice that highlighted the problem, the legislation, which was assigned to a subcommittee in the House controlled by the Democratic leadership, was voted down by a 3-2 vote.

Despite the setback, much progress was made during the year. There was bipartisan support of the legislation and, significantly, four House Democratic committee chairmen, including the head of health, signed on as co-sponsors. Senate Republicans attempted unsuccessfully to attach an amendment establishing caps on non-economic damages to the Administration's most important legislative initiative of the year, Cover Tennessee. No legislator left the Plaza by the end of the year with at least the knowledge that a widespread group of health care providers and facilities in this state believe there is a serious malpractice crisis and that we are committed long-term to make effective and necessary changes. Given the work that went into this year's session, the coalition's position should be even stronger as we move into 2007.

### 2006 Successes

**With the obvious exception of our primary legislation, TMA's legislative session was generally successful. The General Assembly enacted seven of TMA's legislative priorities this session.** In addition to the TMA's legislative package, a number of legislative items that would have adversely affected organized medicine and patient safety were either defeated or taken off notice. Many bills were amended to eliminate problematic issues and enacted with acceptable changes. In all, an additional 1700+ bills were filed this session, bringing the total to more than 4000 bills filed over the entire two-year period of the 104<sup>th</sup> General Assembly, a record in this state. TMA actively supported, opposed or monitored 511 of these pieces of legislation.

### TMA's Medical Liability Reform

On March 28<sup>th</sup> in a 3-2 vote, the House Civil Practice Subcommittee defeated Medical Liability Reform for 2006 during an early rush to finish the work of the subcommittee for the year. In spite of the House sponsor passionately listing the reasons the committee should pass the legislation, it voted NOT to move the Medical Liability Reform bill on to the full committee. In a roll call vote, Rep. Rob Briley (D-Nashville), Rep. Kim McMillan (D-Clarksville) and Rep. Henri Brooks (D-Memphis) voted against

passage. Rep. Jerome Cochran (R-Elizabethton) and Rep. Brian Kelsey (R-Memphis) voted in favor of the legislation.

While certainly a defeat, in some respects calling for the vote in subcommittee could be viewed as a success. House leadership had hoped that the bill would not have to be voted on at all this session. However, due to the bipartisan support of 16 Senate co-sponsors and 28 House co-sponsors (including the four democratic committee chairmen), the issue received enough attention that leadership was unable to bury the issue again this year. In addition, the Republican Caucus made medical liability reform one of its main priorities this session and forced a vote on malpractice caps on the floor of the Senate.

## Cover Tennessee

Cover Tennessee, the Administration's primary health care initiative in 2006, was debated at length in both the Senate and the House. Coupled with SCHIP (CoverKids for kids and pregnant mothers), TCHIP (AccessTN for the uninsurable) and a new (and funded) emphasis on the Coordinated School Health program, CoverTN is the newly created program to encourage small businesses to help working Tennesseans who are uninsured to purchase a limited but portable health insurance policy at premiums averaging \$150/month. Premiums would be adjusted for age, tobacco use and obesity. TMA will have a representative on the work group that designs the state's request-for-proposal to be used to identify participating insurance carriers and the plans' benefit packages. One of the most hotly debated issues ended with the consensus that the carriers, not the government, would assume full risk no later than 2010.

One interesting aspect that did develop around the legislation was an attempt by Senate Republicans to place an amendment on the legislation that would establish medical malpractice caps on non-economic damages. In addition, the House Republicans filed similar amendments as well. The trial lawyers, many Democrats and the Administration originally and wrongly believed that TMA was working behind the scenes to place the MLR issue before the House and Senate. TMA and its coalition partners knew that such an amendment was never going to be attached to the legislation and could result in some negative consequences in the short term and for future passage of comprehensive reform. Thus, TMA and others who support tort reform assumed a low-key approach to the political machinations used at the end of session.

## MEDICAL LIABILITY REFORM

### **Limited Liability Protection in a Declared Emergency: (SB 2705 by Norris/HB 2526 by Fowlkes)**

*ACTION: Passed as Amended*

This TMA bill, as amended, allows the Governor to provide limited liability protection, except for gross negligence or willful misconduct, to health care providers who provide services to evacuees in a declared emergency. The bill was brought as a direct result of the Katrina disaster and would allow for Good Samaritan-type protection should such a situation occur in the future.

### **Medical Records as Evidence: (SB 2823 by Fowler/HB 2784 by Clem)**

*ACTION: Passed*

The bill deals with the Tennessee code chapter regarding evidence and adds a section that would eliminate the need for live testimony at trial to introduce medical records as long as the records are certified as genuine by the custodian of the records and the opposing party was served with a copy 60 days before trial. Currently, the custodian of records is required to testify live unless the parties have stipulated before trial that the records will be admitted as evidence.

### **Sorry Works: (SB 3325 by Haynes/HB 3953 by Briley)**

*ACTION: Taken off notice in Senate/Referred to Summer Study in House*

The trial lawyers brought this bill to enact the Sorry Works! Pilot Program Act. It establishes a pilot program for seven years in two hospitals; unlike a different 2005 Sorry Works bill, it sets no linkage to caps on non-economic damages.

**Comprehensive Medical Liability Reform: (SB 3802 by Norris/HB 3693 by Overbey)**

*ACTION: Voted down in House Civil Practice Subcommittee 3-2*

This TMA legislation adds a provision for non-economic damages in medical malpractice action by establishing dual caps of \$250,000 each against providers and facilities on such damages, permits awards exceeding \$75,000 to be made in periodic payments and establishes a scale for percentage of the award that can go to attorney fees. It would also require a certification filing by an expert witness no later than 90 days after filing.

**Frivolous Lawsuits: (SJR 1062 by Jackson)**

*ACTION: Passed*

Urges the Tennessee Supreme Court to study and revise Rule 11 of the Rules of the Supreme Court relative to frivolous lawsuits and the sanctions that may be imposed for the filing of such suits. It was amended to ask that the court find that, if Rule 11 has been violated, it should, rather than may, award the prevailing party reasonable expenses, including expert witnesses and attorney's fees, incurred in presenting or opposing the motion and those incurred in defending the action giving rise to the violation of Rule 11.

## INSURANCE

**Insurance Coverage for Neurological Disorders: (SB 2719 by Cooper/HB 2744 by Shepard)**

*ACTION: Passed as Amended*

The bill as amended specifies that insurance policies providing benefits for neurological disorders must provide benefits and coverage comparable to those provided for other neurological disorders for treatment of autism spectrum disorders to any person under 12 years of age, applicable to contracts effective on or after January 1, 2007.

**Credentialing/Contracting Timeframes: (SB 2720 by Bryson/HB 2788 by McKee)**

*ACTION: Taken off Notice-Set for Summer Study*

This TMA legislation was filed in an attempt to address the lengthy time it takes for some carriers to process the credentialing application and follow with a signed contract. The bill mirrored the process used by the federal government for enrolling Medicare providers- allowing the provider to back bill to the date of the credentialing application, assuming the provider is ultimately approved. Unfortunately, TennCare placed a fiscal note on the bill of over \$1 million which prevented its passage.

**State Action Doctrine: (SB 3946 by Bryson/HB 3842 by Briley)**

*ACTION: Taken off Notice*

This caption bill directs the comptroller to perform a study to authorize, under certain circumstances, independent health care providers to jointly negotiate with health care insurers. The bill was never placed on calendar and never amended to implement a program in the state which would override federal anti-trust laws on negotiations between providers and insurance carriers.

**Silent PPOs: (SB 3024 by Bryson/HB 3386 by Shepard)**

*ACTION: Taken off Notice-Set for Summer Study*

This TMA caption bill requires certain conditions to be met before a health insurance entity reimburses health care providers on a discounted fee basis, it restricts transfer or lease of contract reimbursement terms and authorizes treble damages. Given the emphasis on MLR, TMA staff had little time to work on passage of legislation to address an issue that is extremely difficult for legislators to understand. The House Industrial Impact Subcommittee and Senate Commerce Committee, however, agreed to a summer study of the issue, with the anticipation that legislation can be crafted that the insurance committees could support in 2007.

**Malpractice Claim Reporting: (SB 3165 by Bryson/HB3599 by Sargent)**

*ACTION: Passed as amended*

This bill makes changes in the data reported on malpractice claims to include certain damage and defense expenses, and requires such data to include the social security number of claimants only if it is known to

the reporting entity. It eliminates the requirement for carriers to report the fees that plaintiff's attorneys received in these cases.

**Equal Treatment for Chiropractors: (SB 3420 by Jackson/HB 3204 by Odom)**

*ACTION: Taken Off Notice*

Unlike the previous year's bill brought by the chiropractors which required equivalent compensation for covered services to certain health care providers within a class of providers equal to the amount paid to physicians, this year's bill took a different approach. The bill would require any limitations placed by a carrier on a physician would have to be identical to a similar service provided by a chiropractor. It also mandated equal co-payments and deductibles for like services whether delivered by a physician or a chiropractor. This bill was fought by both the insurance industry and TMA.

**Coverage for the Uninsurable: (SB 3424 by Haynes/HB 3340 by Odom)**

*Status: Passed as Amended*

As amended, this bill directs Governor Bredesen to negotiate a health insurance flexibility waiver (HIFA) for individuals under 250% poverty level in order to create an insurance premium subsidy. This initiative is an attempt to use federal funds, if possible, to further assist those individuals who sign up on AccessTN (TCHIP) who will be forced to pay large premiums.

**Cover Tennessee: (SB 3895 by Kyle/HB 4011 by McMillan)**

*ACTION: Passed as amended*

This Administration bill establishes new health insurance programs for low-income, employed and self-employed persons and families, sets up an SCHIP program to provide coverage for children and pregnant women who do not qualify for TennCare, and reestablishes an insurance pool for high-risk uninsurables in the state, paid in part by the enrollee, the state and through an assessment on all insurance plans in Tennessee. It also initiates efforts to address the growing increase in Type 2 diabetes and obesity in the state though an expanded and funded Coordinated School Health program.

## TENNCARE

**Mandatory Credentialing Timeframes for FQHC's (SB 468 by Williams/HB 640 by Favors)**

*ACTION: Passed as Amended*

The bill requires TennCare MCOs to establish reasonable protocols and procedures for reimbursing physicians employed by federally qualified health centers. It specifies that, at a minimum, these protocols would permit, if certain relationships already exist, physician reimbursement for rendered services from the date the physician's completed credentialing application is received for consideration by the MCO. Reimbursement paid to a physician would have to be retroactively recouped or rescinded in the event the physician's credentialing application is denied.

**Cover Tennessee: (SB 3025 by Black/HB 3809 by Hensley)**

*ACTION: Defeated in the Senate/Taken off Notice in House*

The bill, as amended, would allow uninsurables who were disenrolled from TennCare in 2005 to be placed back on the program. The initiative to place the uninsurables back on TennCare has been publicly criticized by the Administration and faced an uphill battle.

## SCOPE

**Revises Licensure & Practice Requirements for Occupational Therapists. (SB 2639 by Black/HB 2648 by Odom)**

*ACTION: Passed*

This bill revises licensure and practice requirements for occupational therapists. It eliminates the exemption in current statute which allows hospitals, nursing homes and physician practices to employ persons to perform occupational therapy tasks who are not licensed as an OT/OTA. An amendment placed on the bill by TMA would continue to allow physicians to delegate to an unlicensed person specific routine tasks associated with non-treatment aspects of occupational therapy practice that are not

evaluative, assessive, task selective, or recommendational in nature and would permit a licensed health care provider adequately trained and working under the supervision of a physician to perform basic occupational therapy services.

**Chiropractors Performing Acupuncture: (SB 3421 by Jackson/HB 3205 by Odom)**

*ACTION: Passed*

This bill originally specified that chiropractors could offer acupuncture as part of their chiropractic practice following 100 hours of training and passage of a national exam. TMA and representatives of the acupuncturists in the state opposed the legislation. Although enacted over our objections, chiropractors will be forced to undertake 250, rather than 100, hours of training and will not be allowed to call themselves certified acupuncturists. Additionally, the chiropractors agreed not to bring a bill back to the General Assembly for at least five years that expands their scope of practice.

**PRACTICE**

**Office Based Surgery: (SB 260 by McNally//HB 1288 by L. DeBerry)**

*ACTION: Taken off notice*

This legislation would have prevented all surgery in physicians' offices using either conscious sedation or general anesthesia. Following many hours of negotiation between representatives of medicine and the hospital industry, the parties failed to reach a compromise that could be supported legislatively. Some points negotiated were tentatively agreed upon which TMA will recommend to the Board of Medical Examiners for incorporation into the existing OBS rules.

**Public Benefit Hospital Sales and Conveyance Act of 2006: (SB 452 by McNally/HB 1810 by Rinks)**

*ACTION: Passed as Amended*

This legislation requires any public hospital to provide written notice to the attorney general prior to being sold to a private, for-profit purchaser. The bill specifies the detailed procedure for the transaction if a public benefit hospital is going to be sold to outside interests. The legislation identifies the criteria necessary for objections such as the effect on the availability or accessibility of healthcare services to the affected community.

**Direct Access to Physical Therapists: (SB 533 by McNally/HB1892 by McDaniel)**

*ACTION: Taken off Notice*

As filed, the bill would delete the requirement in the PT's scope of practice that services be provided under a written or oral referral from an MD, chiropractor, dentist or podiatrist. After intense negotiations between representatives of medicine and physical therapy, a compromise agreement was reached that would have liberalized direct access provisions. However, the PTs were ultimately forced to take the bill off notice and it did not pass.

**Domestic Violence Abuse Notification in Offices: (SB 1718 by Person/HB 841 by Ferguson)**

*ACTION: Passed as amended*

As amended, the bill specifies that all offices of licensed physicians, all licensed health care facilities, all community centers, and all pharmacies must post a statement at the main public entrance that any person, regardless of age, who may be the victim of domestic violence may call the nationwide domestic violence hotline, with that number printed in boldface type, for immediate assistance. The posting requirement takes effect July 1, 2007.

**Physician Ownership Interest in Diagnostic Equipment: (SB 1856 by Herron/HB 1759 by Overbey)**

*ACTION: Taken off Notice*

This hospital caption bill would have required a physician to notify a patient if he or she has ownership interest in any diagnostic equipment. The physician would have also had to provide to the patient a list of alternatives so a patient could go to another location if desired.

**Protocols in Child Death Cases (SB 2579 by Black/HB 2665 by Ferguson)**

*ACTION: Passed as amended*

This bill would direct the state's chief medical examiner to promulgate rules establishing a protocol for use in child death cases so that organ donation does not interfere with an ongoing investigation of a child death. An amendment placed on the bill requires the medical examiner to work with organ procurement agencies on development of the protocol.

**Employing Illegal Aliens: (SB 2784 by Bryson/HB 3118 by Casada)**

*ACTION: Taken off Notice*

This bill requires applicants with each regulatory and health related board to respond under penalty of perjury to a question concerning whether the applicant has been assessed a penalty under federal law for employing, recruiting or referring for a fee for employment an unauthorized alien. It authorizes the person's license to be denied or revoked if so assessed for a second offense or for failing to truthfully respond to such question. TMA staff did express our concerns about the legislation. Sponsors chose not to pursue the legislation.

**Exception to 7-Year MLE Rule (SB 2804 by Ford/HB 2875 by Cooper)**

*ACTION: Passed as amended*

This bill requires, in regard to the requirement that an applicant complete the United States Medical Licensing Examination within seven years from the date of whichever step of the examination was successfully completed first, that the Board of Medical Examiners grant an extension to an applicant licensed in good standing who was prevented from taking the last exam in a timely manner due to a lack of available testing facilities. An amendment to the legislation would exempt someone who was actively serving in the armed forces and opens licensure to others who had not met the 7-year rule if licensed in another state and were in continuous training or practice and in good standing. Under these exceptions, there would be a 10-year limit on passing the MLE. These provisions will sunset in three years.

**Mandatory Reporting of Pregnant Teens: (SB 2843 by Bowers/HB 3150 by Marrero)**

*ACTION: Passed as amended*

As amended the bill will require that information be provided to the parent of an unemancipated pregnant minor, if the parent is present at the initial diagnosis and if it is not a violation of HIPAA, explaining how sex abuse of a minor can be reported to the Department of Children's Services. The Department of Health is to distribute the form to providers serving pregnant girls.

**Anatomic Pathology Billing: (SB 2893 by Herron/HB 3835 by M. Turner)**

*ACTION: Passed as amended*

This bill specifies to whom claims for anatomic pathology services can be submitted for payment and prohibits client billing if the provider did not perform the service. This bill garnered much discussion during the session and a number of different approaches were identified to address the issues that the bill attempts to remedy. The bill was amended and passed to apply only to "cytopathology services" defined in the new law as the examination of cells from fluids, aspirates, washings, brushings, or smears, including the Pap test examination performed by a physician or under the supervision of a physician.

**ASTC/ODC Claims Data: (SB 2936 by Ramsey/HB 2827 by Odom)**

*ACTION: Passed as amended*

This bill, as amended, stipulated that the only claims data to be reported to the state by ASTCs and ODCs would be that data included in normal billing unless other claims data is deemed by the Commissioner of Health to be essential to the development or use of the claims data reporting system.

**Child Rape Protection Act of 2006 (SB2993 by Herron/HB 3023 by Maddox)**

*ACTION: Passed as amended*

This bill requires providers to submit fetal tissue to the TBI from an abortion performed on a girl 12 years old and younger to determine paternity and for possible prosecution of the father. A provision making it a felony for a physician to violate the law, in addition to unprofessional conduct, was removed, at the urging of TMA staff, and amended to civil penalties on the first two violations and a misdemeanor on the third and subsequent violation.

**Disclosure of Health Care Provider's Home Address: (SB 3041 by Crowe/HB 3662 by Hill)**

*ACTION: Passed as Amended*

As amended, the bill specifies that a licensee's home address would only be included in the Department of Health's public profile if it is listed as the official provider's mailing or practice address and only if the licensee requests that the address be contained in the profile. The bill also restates that department records under the Health Care Consumer Right-to-Know Act of 1998 would remain public record, even if the home address of a licensee is not included on the public profile.

**Regulation of the Practice of Naturopathy: (SB 3269 by Burchett/HB 3164 by Windle)**

*ACTION: Taken off Notice*

This bill regulates the practice of naturopathy, establishing a board and licensure procedure for providers trained as naturopaths. TMA staff had a number of conversations with the Senate sponsor, voicing our displeasure of the bill. The sponsors chose not to place it on calendar.

**Umbilical Cord Blood: (SB 3281 by Fowler/ HB 3501 by Eldridge)**

*ACTION: Passed as amended*

This bill, as amended at TMA urging, strongly encourages health care providers to inform an expectant mother before the 25<sup>th</sup> week of pregnancy that she may donate umbilical cord blood from her newborn to public cord banks that will be established throughout the country. The original bill would have mandated that providers disseminate the information to their pregnant patients.

**Elective Cosmetic Surgery: (SB 3319 by Haynes/HB 3351 by West)**

*ACTION: Defeated in House/Taken off Notice in Senate*

This legislation would have established a requirement to complete an informed consent that included certain information whenever an elective surgery was performed. In addition, the provider would have to inform the patient of claims and complaints made against the provider. The sponsor amended the bill to authorize the Board of Medical Examiners to identify the top five elective cosmetic surgeries performed in the state and develop a list of the common risks associated with the procedures. Physicians would have been required to provide this list or one substantially similar, once developed, to a patient undergoing one of the five procedures. Despite the amended version, House Health Committee members failed to see the need for the legislation and defeated it.

**Restrictive Covenant Clauses: (SB 3361 by Herron/HB3104 by Overbey)**

*ACTION: Amended to create a summer study committee*

This bill, which authorized certain reasonable restrictive covenants between a physician and the employing medical group, was filed as a result of the Udom Supreme Court decision of 2005 that prohibited non-compete clauses in physician contracts unless supported by statute. The bill generated a good deal of discussion in the Senate after breezing through the House. It was decided that the many issues involved with restrictive covenants would be best reviewed and discussed in a summer study committee.

**Requirements for Mental Illness Screenings of Children: (SB 3692 by Fowler/HB 3517 by Cochran)**

*ACTION: Senate Passed/House Sent to Summer Study Committee*

Unless legislation were to be passed by the General Assembly authorizing it, an LEA would have been prohibited from requiring a child to participate in a mass mental health screening unless certain circumstances existed, such as a student suicide. It was filed by those who believe that too many children are on psychotropic drugs but they were never able in the House to demonstrate that the perceived medication overutilization is due to mass mental health screenings.

**Intoxicated Persons Responsible for Minors: (SB 3796 by Finney/HB 3762 by McCord)**

*ACTION: Taken off Notice*

This bill required DCS to develop guidelines on drugs considered intoxicants and mandated that healthcare providers test intoxicated persons responsible for minors and report the results to the department for follow-up. TMA staff met with the sponsors and raised a number of concerns.

**Eliminates Conflict Over PT Self-Referral: (SB 3841 by Person/HB 3882 by Odom)**

*ACTION: Passed as amended*

This bill eliminates conflict of interest provisions regarding referrals when health care services are furnished in the office of a referring physician or group. Following lengthy discussion between representatives of medicine, physical therapy and hospitals, compromise language was reached that would permit physicians to continue to employ and refer patients to physical therapists as long as patients were provided appropriate written information about the financial arrangements and their options.

**PHARMACY**

**Prescription Drug Use Task Force: (SB 2623 by McNally/HB 2632 by Curtiss)**

*ACTION: Taken off Notice*

This TMA bill established a multi-stakeholder task force to study prescription use in Tennessee within the Department of Health. Psychologists attempted to use this legislation as a forum to bring attention to their initiative to allow psychologists to be able to prescribe psychotropic medicines. It is disappointing that this very important legislation was derailed because an allied health care provider sought to gain the ability to advocate for their personal agenda. Even so, a task force previously appointed by the Commissioner of Health, which includes physician appointees representing the TMA, the TN Osteopathic Association as well physicians from the two medical licensing boards, will continue to exist, study the issue and make recommendations for future changes.

**Revises Tennessee Affordable Drug Act of 2005: (SB 3070 by Henry/HB 3065 by Shepard)**

*ACTION: Passed*

This bill revises requirements of the Tennessee Affordable Drug Act of 2005 concerning the indication of medical necessity on electronic prescriptions and the method for patients to obtain brand name drugs. The bill clarifies when and how much a patient would pay for a brand name drug when the provider has authorized a generic. Representatives of the TN Pharmacists' Association and TMA worked together on the legislation before it was filed to assure that organized medicine could support passage.

**Donated Drugs: (SB 3660 by Haynes/HB 3560 by Odom)**

*ACTION: Passed as amended*

This bill allows the Board of Pharmacy to establish a pilot program permitting certain donated prescription medications, excluding controlled substances, that are unused at institutional facilities to be donated and dispensed to patients at charitable clinics. No such transfer is to occur until a contract between the facility and the clinic is in place outlining a safe chain-of-custody to assure safety of donated drugs. All participants, including physicians, are provided protection from criminal prosecution and malpractice.

**Department of Health's Epilepsy Program (SJR 596 by Burchett)**

*Status: Passed as amended*

As amended, this resolution states that all prescribers and pharmacists should remain aware of the potential dangers of generic drugs on persons with epilepsy and should notify patients that a generic or therapeutic substitution may not be appropriate for that patient at the time the prescription is written or dispensed.

**PUBLIC HEALTH**

**Tobacco Preemption/Clean Indoor Air Act: numerous bills**

*ACTION: Various results*

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 and was either defeated or rolled to 2007. However, SB 3731 which would have prohibited smoking in most public places was passed out of a Senate Committee, the first time such progress had been made.

**Motorcycle Helmet Usage by Adults: (SB 807 by Burchett/HB 456 by Davidson,)**

*ACTION: Taken off Notice*

The only bill of significance addressing motorcycle helmets that was raised during the year was carried over from 2005 but still did not generate sufficient support for passage. It would change the state's current helmet law from mandatory to permissive for adults 21 and older. TMA continued to oppose the bill this legislative session.

**Increases in the Tobacco Excise Tax: numerous bills**

*ACTION: All Taken off Notice*

There were a number of bills filed to increase the tobacco excise tax. SB 2798/HB 3482, which TMA publicly supported, would have increased the tax to the national average, an increase of over \$.70 per pack. The revenue would have been directed into expanding the safety net, decreasing sales tax on food and serving more home and community based long-term care patients. SB 3626/HB 3611 would have increased the cigarette tax a smaller amount but sufficient to reduce the sales tax on food by a penny.

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

*ACTION: Senate Passed/ House Taken off notice*

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 was prepared to defeat the legislation before it was taken off notice.

**Child Nutrition and Wellness Act of 2006: (SB 2038 by Black/HB 2055 by DeBerry, L.)**

*ACTION: Passed as amended*

The bill is designed to educate the public about, and advocate the improvement of, child nutrition and wellness. It creates an advisory council appointed by the Commissioner of Health to make recommendations on how best to carry out the program as well as identify funding sources. A new division of the Department of Health, the office of Child Nutrition and Wellness, will be designated but operate within existing resources.

**Smoking in State Offices: (SB 3368 by Herron/HB 3269 by Fitzhugh)**

*ACTION: Passed as amended*

This bill will prohibit smoking in most state facilities, effective at the time of the Governor's signature. The TMA staff and our tobacco coalition partners, Campaign for a Healthy and Responsible Tennessee (CHART) worked diligently with the sponsors of the legislation to assist in passage.

**Outbreaks of Pandemics of Communicable Diseases: (SB 3549 by Ketron/HB 3707 by Armstrong)**

*ACTION: Passed*

This bill expands the definition of natural threat to include disease outbreaks and epidemics and allows the Commissioner of Health to respond to an influenza outbreak before it becomes an epidemic. It permits the Commissioner to make recommendations to the Governor in a declared emergency to allocate all available health care resources in the affected area. This bill is a response to the avian flu outbreak sweeping the rest of the world and permits state government to respond appropriately and efficiently in the case of a declared health emergency.

**Tennessee Cervical Cancer Elimination Task Force: (SB 3678 by Bowers/HB3549 by Marrero)**

*ACTION: Passed as amended*

This bill establishes the Tennessee Cervical Cancer Elimination Task Force within the Department of Health to raise awareness of, conduct studies related to, and work to implement a cervical cancer prevention plan.

**Exempts Homeless Children from Immunizations: (SB 3918 by Kyle/HB by McMillan)**

*ACTION: Passed*

This Administration bill prohibits LEAs from denying admission to homeless children for lack of proof of immunization. According to DOE staff, federal law already requires homeless children to be admitted; homeless coordinators employed by the school systems would work to identify the child's immunization status and be certain the child is immunized as early as possible.

**Resolution on Use of Tobacco Settlement Funds (SR 154 by Finney)**

*ACTION: Passed*

This resolution urges the governor to earmark part of the tobacco settlement funds to support tobacco use prevention and educational programs for Tennessee's youth.

## **WORKERS' COMPENSATION**

**Reduces Fines for Overpayment: (SB 3261 by Burchett/HB 3351 by West)**

*ACTION: Passed*

This TMA bill authorizes the Commissioner of Labor and Workforce Development to impose fines on providers only if they refuse to make repayment to a payor that exceeds the medical fee schedule. More importantly, it overrides an existing provision in the rules that would have permitted the Commissioner to assess a \$10,000 fine to a provider who is paid more than the medical fee schedule.

**Prevents State Agency from Prohibiting Self-Referrals (SB 3625 by McLeary/HB 3502 by Eldridge)**

*ACTION: Taken off Notice*

This bill prohibits any state agency from imposing any exclusion, restriction or penalty on a physician for referral of patients to receive any health care services in any program regulated by the state with some exceptions. It was filed in response to rules that would restrict a physician's right to refer a patient to a PT employed by the provider.

## **EDUCATION**

**Diabetic Student Self-Treatment: (SB 2658 by Black/HB 3870 by Armstrong)**

*ACTION: Passed*

The bill clarifies the law to require that certain students with diabetes may possess sharps on their person.

**Safety Belts on School Buses: (SB2712 by Norris/HB 2600 by West)**

*ACTION: Taken off Notice in Senate/Held on House Desk*

The bill authorizes the state school board to promulgate rules and regulations to allow school systems to require seat belts in school buses.

**Guidelines for Food Allergies: (SB 2883 by Haynes/HB 2442 by Moore)**

*ACTION: Passed as amended*

This bill enacts the "Tennessee Food Allergy and Anaphylaxis Management Act of 2006" requiring LEAs to develop guidelines for addressing students who have food allergies.

**Physical Activity by Students: (SB 3991 by Ketron/Herron/HB 3750 by Fitzhugh)**

*ACTION: Passed as amended*

This bill, which was part of TMA's Legislative Package, would require LEAs to incorporate at least 90 minutes of physical activity three times a week into the instructional school day for elementary and secondary school students, expands the Coordinated School Health program to all LEAs statewide and establishes a PE specialist position in the Department of Education. This initiative became a component of the Cover Tennessee initiative promoted by the Administration.

## OTHER

### **Removal of BME Member for Cause: (SB 2645 by Finney/ HB 2642 by Hensley)**

*ACTION: Passed*

At the request of the BME, TMA brought this bill which authorizes removal of members of the Board of Medical Examiners for three unexcused absences during any 12-month period.

### **Unsolicited Faxes (SB 2649 by Henry/HB 2585 by Shepard)**

*ACTION: Passed*

This TMA bill will eliminate the possibility of being subject to a fine by the state should the organization mistakenly send an unsolicited advertising facsimile to a member.

### **Council of Certified Midwifery: (SB 2694 by Bowers/HB 2758 by Favors)**

*ACTION: Passed as Amended*

This bill reduces the 9-person Council of Certified Professional Midwifery down to six members, one of whom must be a physician. Prior to passage a minimum of four MDs were required to serve on the Council.

### **Creation of an Athletic Trainers Licensure Board: (SB 3360 by Herron/ HB 3717 by Winningham)**

*ACTION: Passed as amended*

This bill removes the licensing of athletic trainers from under the Board of Medical Examiners and creates a new, independent 5-member athletic trainers licensure board. At least one member of the board, however, must be a medical doctor.

### **Designation of Health Professional Shortage Areas: (SB 3362 by Herron/ HB 3383 by Shepard)**

*ACTION: Passed as amended*

This legislation requires the Department of Health to enter into a memorandum of understanding with the Tennessee Hospital Association, the Tennessee Primary Care Association and the Tennessee Rural Health Recruitment and Retention Center concerning Tennessee's annual health professional shortage area designation process in order to give those organizations an opportunity to review and comment on any proposed changes in a HPSA designation.

### **Supervising MDs Report to BME: (SB 3567 by Person/HB 3706 by Armstrong)**

*ACTION: Taken Off Notice*

This TMA bill would restate the requirement that physicians supervising nurse practitioners and physician assistants have experience in the area of the practice being supervised and to report certain information to the BME concerning their supervision of mid-level practitioners. After filing the bill, TMA staff learned that the Department of Health will be converting its system to allow most of the information already now provided by mid-levels, and that would have been made available through passage of this legislation, to be accessed by the BME.

### **Aggravated Rape of a Child (SB 3665 by Fowler/HB 3833 by McKee)**

*ACTION: Passed as an amendment to SB 2644 by Burchett/HB2604 by Tindell*

The legislation, which passed as an amendment on a separate piece of legislation, creates a new offense of aggravated rape of a child 3 years of age and younger. The offense is a Class A felony with a minimum time served of 40 to 60 years. Even though this legislation was part of TMA's legislative package, the 2006 House of Delegates additionally passed a resolution in support of the intent of the bill and TMA staff worked for its passage and helped ensure funding of the legislation.