



2021

ACHIEVEMENT REPORT



KMA WRAPS HISTORICALLY SUCCESSFUL SESSION FOR PHYSICIANS AND PATIENTS

Despite challenges related to the COVID-19 pandemic and several inclement weather delays, the Kentucky Medical Association (KMA) wrapped up one of its most successful sessions in recent years, with five priority issues being sent to the Governor's desk and becoming law.

The Kentucky General Assembly convened on Tuesday, January 5, for the short, 30-day legislative session, and legislators hit the ground running with a fast-paced and aggressive agenda. During the first eight days of the session, legislators addressed issues arising from the coronavirus pandemic, including revisions to KRS Chapter 39A, which sets forth the governor's powers during a declared emergency.

Most notably, lawmakers enacted the following three bills prior to the January recess, and ultimately, had to override gubernatorial vetoes to secure their final passage: Senate Bill 1 is designed to cap the duration of broad powers granted to the governor during a state of emergency, rather than eliminate them altogether; Senate Bill 2, something of a companion to SB1, will add transparency and streamlining to the regulatory process by expediting the public comment period, more obviously posting proposed changes to regulations, and placing legislative review of regulations into a new committee of jurisdiction; and House Bill 1 will allow businesses and schools to stay open if they "meet or exceed" guidance issued by the U.S. Centers for Disease Control and Prevention or any of the Governor's executive orders, detail their plan, and post the plan on their door. Due to a court order entered by the Franklin Circuit Court, however, the three bills have been temporarily enjoined from taking effect while the courts determine their constitutionality.

During the 2020 legislative session, the legislature would have normally adopted a two-year spending plan. But due to the economic uncertainty created by COVID-19, legislators only approved an austere plan that covered one year only. This required the 2021 General Assembly to address the remaining year of the two-year budget cycle. In response, lawmakers crafted a "continuation" of last year's budget with most funding levels remaining relatively flat.

KMA Priorities That Passed

House Bill 140, sponsored by Rep. Deanna Frazier, expands the definition of telehealth to include remote patient monitoring and addresses broadband access and smart device barriers in the state by allowing telehealth services to continue through audio-only encounters. Additionally, the legislation removes the face-to-face restriction for certain behavioral health services permitting these services to be continued to be delivered via telehealth after the expiration of the public health emergency. Due to a change in the Senate, the final version of the legislation retains the current language in state law, which calls for payment parity unless the telehealth provider and the commercial health plan or Medicaid MCO negotiate a lower rate.

House Bill 50, sponsored by Rep. Kim Moser, requires insurers to demonstrate compliance with federal law in how they design and apply managed care techniques for behavioral and mental health treatment to ensure coverage is no more restrictive than for any other medical condition. Insurers will be required to file annual reports to the Kentucky Department of Insurance (DOI). From there, DOI can act if insurers are not abiding by federal and state law.

Senate Bill 45, sponsored by Sen. Ralph Alvarado, requires health insurers to count ALL payments for prescription drugs made by patients directly or on their behalf toward their deductibles and overall out-of-pocket maximums. This rule would not apply if a generic option is available, unless patients obtain a brand name prescription drug through prior authorization, a step therapy protocol, or the insurer's exceptions and appeals process. On a related note, SB44 was also passed by the General Assembly. SB44 would require insurers to accept and count towards patients' contributions all premium and cost-sharing payments made on behalf patients from state or federal government programs, Indian or tribal organizations, and certain tax-exempt organizations. This rule would not apply if its application would be the sole cause of a health benefit plan's failure to qualify as a Health Savings Account-qualified High Deductible Health Plan under federal law until the minimum deductible is met.

SB5, sponsored by Senate President Robert Stivers, is designed to provide liability protections for "essential service" providers, including physicians and hospitals, from claims "arising from COVID-19" on or after the public health emergency

was declared on March 6, 2020 until the emergency is withdrawn or lapses. To avoid any constitutional concerns, the legislation was narrowly written to protect only against liability alleged for injuries related to the declared emergency. Language was also included to still protect the public from "wanton, willful, malicious, grossly negligent or intentional misconduct."

Senate Bill 51, sponsored by Sen. Ralph Alvarado, but also championed by Rep. Kim Moser for many years, removes prior authorization requirements by commercial health plans and Medicaid MCOs for FDA-approved medications used to treat alcohol and opioid use disorder as of January 1, 2022. The legislation also requires commercial insurers and Medicaid MCOs to file annual reports to the state showing whether providers have prescribed medication for addiction treatment in conjunction with behavioral therapy.

Other Issues of Interest

Vaccinations were a hot topic in Frankfort with multiple bills filed in both chambers. Senate Bill 8, a Senate priority bill sponsored by Sen. Mike Wilson, provides exemptions to mandatory immunization requirements during an epidemic based on religious grounds or conscientiously held beliefs. As originally drafted, the bill would have provided exemptions from mandatory immunization, both during and outside of an epidemic, for any child, emancipated minor, or adult who, personally or by a parent or guardian, objected to the immunization based on "conscientiously held beliefs." Due to concerns raised by many stakeholders, including KMA, the bill was scaled back. KMA policy is opposed to vaccination exemptions other than those based on medical contraindications. However, due to the medical community's concerns, changes were made that moved the bill in a better direction.

House Bill 95, sponsored by Rep. Danny Bentley, caps the cost-sharing requirements for prescription insulin at \$30 per day for a 30-day supply effective January 1, 2022. The cap applies to state-regulated, comprehensive, private health insurance plans and the Kentucky employee health plan.

House Bill 278, sponsored by Rep. Patrick Flannery, provides for deductibility of expenses paid with Paycheck Protection Program (PPP) loans for the purpose of Kentucky state taxes. The bill also excludes Economic Injury Disaster Loan (EIDL) advances from taxable income and allows for deductibility of expenses paid with EIDL advances. This legislation brings state law in line with provisions passed in the federal Consolidated Appropriations Act, 2021.

House Bill 439, sponsored by Rep. Kim Moser, requires vision testing for motor vehicle operator's license renewal beginning July 1, 2024. Vision testing may be performed on-site at the time of the application or by submitting a form attesting that a vision test has been performed by a vision specialist or an osteopath, physician, or advanced practice registered nurse who is credentialed by the Transportation Cabinet.

Senate Bill 55, sponsored by Sen. Stephen Meredith, removes all recipient copayments and cost sharing of any kind from the Medicaid program and the Kentucky Children's Health Insurance Program, including for Medicaid telehealth services.

HB108, sponsored by Rep. Melinda Gibbons Prunty, requires the Department for Medicaid Services (DMS) and any Medicaid managed care organizations (MCOs) to cover all colorectal cancer examinations and laboratory tests that are administered at a frequency identified in the most recent version of the American Cancer Society guidelines for complete colorectal cancer screening. Such coverage applies to individuals forty-five (45) years or older as well as those less than forty-five (45) that are high risk for colorectal cancer. The legislation also requires DMS and Medicaid MCOs to cover any genetic test for cancer risk that is recommended by a physician, physician assistant, genetic counselor, or advanced practice registered nurse, if the recommendation is consistent with the most recent version of genetic testing guidelines published by the National Comprehensive Cancer Network.

House Bill 438, sponsored by Rep. Ken Fleming, permits Medicaid managed care organizations (MCOs) to participate in a credentialing alliance for the purpose of establishing a centralized process for credentialing providers. The legislation also requires the Department for Medicaid Services to recognize credentialing alliances and discontinue contracts with any credentialing verification organizations if more than sixty percent of MCOs join a credentialing alliance on or before December 31, 2021.

House Bill 75, also known as the Living Donor Protection Act of 2021, states that insurers cannot 1) limit or decline to issue or renew insurance coverage due solely to the status of an individual being a living donor; 2) prevent an individual from donating all or part of an organ as a condition of continuing to receive insurance coverage; or 3) otherwise discriminate in the offering, issuance, cancellation, amount of insurance coverage, price, or any other condition of insurance coverage provided under a policy, based solely and without any additional actuarial risks upon the status of an individual as a living donor.

House Bill 212 requires the state child and maternal fatality annual report to include a demographic analysis by race, income, and geography when examining the incidence and causes of child and maternal fatalities in the Commonwealth.

Several abortion-related bills, including House Bill 2 and House Bill 191, were enacted during the 2021 legislative session. However, Senate Bill 9, sponsored by Sen. Whitney Westerfield, received the most attention and pertains most directly to physicians. SB9 requires healthcare providers to perform life-saving care on any infant that shows signs of life, including those who survive an abortion attempt.

House Bill 136 and Senate Bill 92, both related to the legalization of cannabis for therapeutic purposes, were held off once again during this short session with neither bill receiving a committee hearing. However, KMA fully expects this legislation to be refiled in 2022. KMA will continue advocating for further research prior to the enactment of any cannabis legislation.

Successfully Defeated This Session

As anticipated, legislation was once again introduced to expand the prescriptive authority of Advanced Practice Registered Nurses (APRNs). Among other provisions, Senate Bill 78 would have phased out a statutory requirement to have a collaborative agreement (CAPA-CS) with a physician in order to prescribe Schedule II-V controlled substances. Thanks largely to KMA members who expressed concerns to their legislators, the bill did not receive a floor vote. Late in the session, an attempt was made in the House to add a floor amendment containing the APRN-supported language to an unrelated bill. However, due to KMA advocacy, the sponsor ultimately decided to withdraw the floor amendment.

House Bill 553, otherwise known as the Kentucky False Claims Act, would have encourage whistleblowers to file lawsuits against government contractors, including physicians who participate in the Medicaid program, in return for a financial reward (15 to 30 percent) paid from the proceeds recovered for the state. Due to opposition from KMA and numerous other businesses and professional associations, the problematic provisions were stripped from this legislation, thus defeating a bill that would have most certainly increased the chances of frivolous lawsuits against Medicaid providers.

KMA Advocacy in Action

The wins achieved during the 2021 session would not have been possible without the advocacy of engaged KMA member physicians.



In response to the COVID-19 pandemic, KMA hosted a virtual "Advocacy in Action Month" throughout February, in place of the in-person "Physicians' Day at the Capitol. On Feb. 1, KMA hosted the kickoff event and Member Briefing for Advocacy in Action Month, during which physicians from across the state were briefed on KMA's priority issues and the landscape of the remaining days of the session.

Advocacy in Action Month also included weekly "Talk Tuesday" events, which encouraged KMA members to reach out to their senators and representatives each Tuesday in support of KMA priority issues, although members were asked to reach out at any time during the month that works for their schedule. Advocacy in Action Month also featured "KPPACtion Day" on Feb. 18, which encouraged physicians to participate in political advocacy by making a contribution to the Kentucky Physicians Political Action Committee (KPPAC).

Hundreds of messages and phone calls were made throughout Advocacy in Action Month and during the 2021 session that ultimately contributed to the KMA's legislative success. KMA thanks its members for advocating on behalf of Kentucky's physicians and patients and for improving the practice of medicine and the health of the Commonwealth.