

Arizona Academy of Family Physicians 2011 Legislative Wrap-Up

The 50th Legislature, first regular session, adjourned *sine die* on April 20, 2011, at 5:21 a.m. A total of 1,350 bills were introduced during the 100-day session, with 386 bills being passed and sent to the Governor for signature. In total, 357 bills were signed or filed into law and 29 bills were vetoed. Unless otherwise noted, bills from the first regular session become effective on July 20, 2011. Bills with an emergency clause became effective upon signature.

Below you will find a brief summary of some of the more noteworthy enactments from this session. We have also included a few of the unsuccessful bills that were of interest to AzAFP. We previously sent an update on the state budget, so our only discussion of the budget pertains to SB 1619. Final versions of bills and related materials are available at the Arizona State Legislature Web Page: www.azleg.gov.

Please let us know if you have any questions or would like additional information.

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I. ENACTMENTS

HB 2099: AHCCCS; HOSPICE CARE; RESTORATION (Chapter 13)

Hospice care is added to the list of health and medical services covered by AHCCCS.

HB 2157: DHS; STROKE CARE PROTOCOLS (Chapter 47)

By January 1, 2014, the Department of Health Services is required to adopt rules to establish emergency stroke care protocols, establish standards for hospital-based and rehabilitation stroke care, and compile statewide stroke quality improvement databases. DHS shall seek stakeholder, including health care providers, input in the development of stroke care standards.

HB 2158: TOBACCO REVENUES; TRACKING COMMISSION (Chapter 255)

By January 1, 2012, the president of the Senate and speaker of the House of Representatives are required to establish a Tobacco Revenue Use Spending and Tracking Commission, consisting of 12 public members. One member of each house of the Legislature shall be appointed to serve in an advisory capacity. The commission shall advise and consult with the Department of Health Services on the goals, objectives and activities of programs funded by the tobacco tax.

HB 2167: DANGEROUS DRUGS; DEFINITION; SYNTHETIC (Chapter 6)

The definition of "dangerous drugs" and the list of controlled substances under Schedule I of the Arizona Uniform Controlled Substances Act is expanded to include 10 chemical compounds that compose synthetic marijuana, effective February 18, 2011.

HB 2211: INPATIENT EVALUATION, TREATMENT (Chapter 257)

Procedures are specified to allow an authorized court-appointed guardian or a person with mental health power of attorney (agent) to request admission of their ward or principal to a Level I behavioral health facility for inpatient evaluation or treatment. The facility may admit the ward/principal after examination by a DO or MD who investigates the psychiatric and psychological history, diagnosis and treatment needs; interviews the parties; obtains informed consent from the guardian/agent; makes a written determination regarding the need for inpatient evaluation or treatment that cannot be accomplished in a less restrictive setting; and documents all findings and recommendations in the medical chart.

HB 2408: OUTPATIENT TREATMENT; AGENCY NOTIFICATION (Chapter 264)

If criminal charges involving death, serious physical injury or sexual crimes are dropped against a patient who is in the state hospital or other institution assigned to determine or treat mental illness, the medical director must notify the prosecuting agency if a civil commitment order expires or is terminated, or if the patient is discharged to outpatient treatment. Notification must be made within five days before the anticipated date of the expiration, termination or discharge.

HB 2416: ABORTION (Chapter 10)

The definition of abortion is expanded to include the use of any means with intent to terminate a pregnancy. Formerly, the definition stipulated the use of a surgical instrument or a machine. An abortion cannot be performed (except in the case of a medical emergency) without first obtaining the voluntary and informed consent of the woman. Procedures necessary to satisfy this requirement include offering the woman an opportunity to view an ultrasound of the fetus and listen to the fetal heartbeat. The woman must certify in writing that she has been given these opportunities and whether she availed herself of those opportunities. Telemedicine may not be used to provide an abortion. A physician or health care provider that violates these provisions is guilty of unprofessional conduct and may have their license suspended or revoked. Also, a civil cause of action is established to obtain relief for a violation of this new law.

HB 2443: ABORTION; SEX; RACE SELECTION; PROHIBITION (Chapter 9)

A person who knowingly performs an abortion, with the knowledge that the abortion is sought based on the sex or race of the child or the race of the parent of the child, is guilty of a Class 3 felony. A person that performs an abortion must first sign an affidavit attesting that the procedure is not being sought for race- or gender-selection purposes. Civil penalties may be sought by the father (or maternal grandparents in the case of a minor mother) of the unborn child.

A health professional who fails to report a known or suspected instance of a request for a race- or gender-selection abortion is subject to a civil fine of up to \$10,000.

HB 2476: WORKERS' COMPENSATION; CERTAIN DISEASES; EXPOSURE

The time periods that an employee has to establish a prima facie workers' compensation claim involving exposure to methicillin-resistant staphylococcus aureus (MRSA) are increased. An employee has 30 days to report in writing to an employer the details of exposure to MRSA and the employee must be diagnosed with MRSA within 15 days of making the report.

HB 2520: PROFESSIONAL BOARDS; ACTIONS; PUBLIC ACCESS (Chapter 118)

Advisory letters and letters of concern issued by a professional regulatory board are no longer public records; however, documentation relating to an order to limit or restrict the professional's practice may appear on the board's website.

HB 2541: MEDICAL MARIJUANA; EMPLOYER MONITORING (Chapter 336)

An employer may take action against an employee based on the good faith belief that (1) an employee used or possessed any drug while on the employer's premises or during the hours of employment; or (2) an employee had an impairment while working while on the employer's premises or during hours of employment. An employer may exclude an employee from performing a safety-sensitive position based on the good faith belief that an employee is engaged in the current use of any drug, whether legal, prescribed by a physician or otherwise, if the drug could cause an impairment or decrease the employee's job performance or duties. The good faith belief may be based on results of a test for the use of alcohol or drugs, warning labels or other instructions for the use of the drug, statements by the employee, and information from a physician or pharmacist, from reputable reference sources or other information the employer believes to be reliable. An employer is permitted to use the medical marijuana verification system to verify a registry identification card provided by an employee or applicant that has received a conditional offer of employment. The law applies retroactively to April 13, 2011.

HB 2548: HELICOPTERS; NONTRAUMA PATIENTS; GUIDELINES (Chapter 174)

By January 1, 2013, the Department of Health Services must develop guidelines on the use of medical helicopters for non-trauma patients, for distribution to all emergency receiving facilities in the state.

HB 2556: HEALTH SAVINGS ACCOUNTS; TAX INCENTIVES (Chapter 287)

An employer with between 2 and 50 employees that provides a qualified health insurance plan may claim an annual credit of \$360 per employee for tax years 2012-2014, provided that the employer paid a minimum of \$360 per employee in health insurance; offered the plan to every employee; and, in the first year that this credit is claimed, did not provide health insurance coverage for 90 days preceding the offer of coverage.

HB 2584: WORKERS' COMPENSATION; DIRECTED CARE (Chapter 93)

A pilot program is established to permit a city of greater than 150,000 that is self-insured and a self-insured county insurance pool to provide workers' compensation medical, surgical and hospital benefits through a directed care, medical management model. Participants must begin providing services during calendar 2012, and the pilot program ends on December 31, 2014. A final report is due two years from the start of the program.

HB 2585: MARIJUANA MONITORING; CONTROLLED SUBSTANCE (Chapter 94)

The database system operated by the Board of Pharmacy to track controlled substances must also include data from the Department of Health Services regarding residents who possess a medical marijuana registry identification card.

HB 2616: WORKERS' COMPENSATION; CONTROLLED SUBSTANCES (Chapter 338)

The list of substances used by a person receiving workers' compensation benefits that a physician must report to the Industrial Commission is expanded to include narcotic or opium-based substances or various opioid substances prescribed for acute pain. Reports shall include justification for the controlled substance and a treatment plan. If the physician refuses to comply, the employer, carrier or Industrial Commission may request a change of physician or require physician compliance.

HB 2620: MEDICAL RECORDS; DISCLOSURE; RELEASE (Chapter 268)

New regulation is established for health information organizations (HIOs), which store or transfer electronically individually identifiable health information. Individual rights are specified, including the right to opt out of participation in an HIO; request a copy of or correction to individually identifiable health information available through the HIO; and more. A clinical laboratory may disclose without permission a patient's lab results to specified recipients, including providers currently treating the patient, ambulance attendants transferring the patient, and health profession regulatory boards. A health care provider is required to provide the HIO's notice of health information practices to patients in at least 12-point type; document that the patient has received, read, and understands the HIO's notice of health information practices; and redistribute the HIO's notice of health information practices if there is a material change. Health care providers who participate in a HIO must maintain their own patient records.

HB 2634: DHS; HEALTH CARE INSTITUTIONS; RULES (Chapter 96)

By July 1, 2013, the Department of Health Services must adopt rules regarding health care institutions to reduce costs to individuals, promote the use of "deemed status" for institutions accredited by a recognized national organization, and facilitate licensure of integrated health programs that provide both behavioral and physical health services.

HB 2635: COURT-ORDERED EVALUATION (Chapter 219)

In addition to a psychological evaluation, a petition requesting court-ordered treatment for a person who as a result of a mental disorder is deemed a danger to self or others must also include the results of a physical exam if relevant to the overall evaluation. The physical exam may be performed by an evaluating physician or under supervision of a licensed physician or a registered nurse practitioner. The requirement for a person undergoing court-ordered evaluation or treatment to have a physical examination as a component of their annual review is eliminated. Effective April 25, 2011.

SB 1030: PHYSICIAN ASSISTANTS; PRESCRIBING AUTHORITY (Chapter 178)

A certified physician assistant (PA) may prescribe Schedule II and III controlled substances for 30, rather than 14 days. A PA is prohibited from prescribing medication to induce an abortion.

SB 1032: MAMMOGRAPHIC IMAGES; PHYSICIAN REQUIREMENTS (Chapter 97)

The qualifications necessary for a physician to be licensed to read mammographic images are changed to adhere to those contained in the federal Mammography Quality Standards Act.

SB 1033: OPTOMETRY BOARD; OMNIBUS (Chapter 179)

Statutes dealing with the Board of Optometry are changed to include, among other things, allowing licensees to prescribe and administer prescription strength nonsteroidal anti-inflammatory agents (NSAIDs) for patients 6 years of age and older. A licensee may prescribe the NSAID for not more than 14 days for any one patient for each occurrence.

SB 1037: CHIROPRACTIC BOARD; OMNIBUS (Chapter 59)

Statutes related to the practice of chiropractic are changed to include, among other things, permitting an inactive licensee to reapply for active licensure within two years of when the board granted inactive status; and eliminating the provision that allows a doctor of chiropractic with a restricted permit to provide chiropractic services. The board is required to adopt rules prescribing continuing education requirements by July 1, 2012.

SB 1042: MEDICAL STUDENT LOANS; BOARD; CONTINUATION (Chapter 16)

The Board of Medical Student Loans will continue for six more years, until July 1, 2017.

SB 1086: TOBACCO PRODUCTS; PROHIBITION (Chapter 340)

Someone under 18 years of age who presents a false ID for the purpose of purchasing tobacco products is guilty of a petty offense and may be subject to a fine of up to \$500.

SB 1118: COUNTY MEDICAL EXAMINERS; IDENTIFICATION PROTOCOL (Chapter 181)

Within 48 hours after receiving a request from an immediate family member, a medical examiner shall conduct an identification meeting (examination of photographs/videos, distinguishing marks or any information that may assist in making identification of a dead body). The medical examiner may delay or limit the scope of the identification meeting if (1) there is a risk of loss of forensic evidence that may compromise the death investigation; or (2) the body is in a physical condition that does not allow the decedent to be reasonably recognized.

SB 1119: NATUROPATHIC MEDICINE; NUTRIENTS (Chapter 182)

Naturopathic physicians may administer nutrients intravenously. The Naturopathic Physicians Medical Board shall adopt rules necessary for the safe administration of intravenous nutrients by naturopathic physicians.

SB 1120: CHIROPRACTIC SERVICES; BUSINESS ENTITIES (Chapter 183)

Business entities cannot offer chiropractic services unless the entity is registered with the Chiropractic Board and the services are conducted by a licensed chiropractor. Business entities shall register with the Board and notify the Board of changes in business information, such as name, address, chiropractor in charge, or dissolution.

SB 1121: MATERNAL MORTALITY; REVIEW TEAM (Chapter 143)

The Child Fatality Review Team shall evaluate the incidence and causes of fatalities of pregnant women and of women within one year of delivering. Within 5 days of a request by the Team Chairperson, a provider, state or political subdivision shall provide access to records on a maternal fatality associated with pregnancy.

SB 1122: INSURANCE; HEALTH CARE SHARING MINISTRIES (Chapter 184)

A health care sharing ministry is a faith-based, nonprofit organization that acts as a facilitator among participants of similar faith and matches those with financial or medical needs to those who can assist. Health care sharing ministries are exempt Arizona Department of Insurance regulation. A specified written disclaimer must be provided to participants indicating that the ministry is not an insurance company and the operation plan is not an insurance policy.

SB 1169: NURSING; SCOPE OF PRACTICE; ABORTION (Chapter 145)

The Nursing Board is prohibited from adopting rules relating to the scope of practice for nurse practitioners that involve matters of abortion.

SB 1175: HOMEOPATHS; CATEGORIES OF LICENSURE (Chapter 186)

A new category of licensure for homeopaths is created for that involves a limited scope of practice for persons that graduate from a board-approved school of homeopathic medicine, but are not graduates of an allopathic or osteopathic medical school. These homeopaths may not refer to themselves as physicians. Signed informed consent must be obtained from patients before examination or treatment that includes language that makes it clear the professional is not an allopathic or osteopathic physician and is providing homeopathic medicine under the limited scope of practice of homeopathic medicine.

SB 1176: MEDICAL BOARD; OMNIBUS (Chapter 227)

The statutes governing the Medical Board are amended to include several new provisions. The profile of a licensee on the Board's website shall include, among other things, a description of any conviction of a misdemeanor involving moral turpitude that results in disciplinary action; all final board disciplinary actions; and any malpractice court judgments and awards or settlements that result in disciplinary action. The Board must make corrections to the profile upon notification by the licensee. If the Board issues a non-disciplinary order or action, it is available to the public, but may not appear on the website unless it contains a practice limitation or restriction. Physician assistants may participate in treatment and rehabilitation programs and these programs are no longer required to make quarterly reports to the Board. A physician is now permitted to administer an immunization or vaccine to a household member of a patient without first establishing a doctor-patient relationship.

SB 1200: DUI; IGNITION INTERLOCK DEVICES (IID) (Chapter 341)

Several administrative license suspension and other changes are made to the DUI laws, including allowing a person who has been convicted of a second DUI or an extreme DUI within seven years to be eligible for a special ignition interlock restricted drivers license. Any drug defined in A.R.S. § 13-3401, or any drug metabolite, in the person's system without a prescription while driving is added to the list of DUI offenses. The license of an offender shall be suspended for no less than 30 days and driving restricted for 60 days. A person who has been convicted of any type of DUI may apply for an IID restricted license if they are able to show completion of a court ordered drug and alcohol program. Provisions are established for new alcohol continuous monitoring and home detention programs, and more. Effective December 31, 2011.

SB 1298: PHARMACISTS; DRUG THERAPY PROTOCOLS (Chapter 103)

A provider may enter into a protocol-based drug therapy agreement with a pharmacist under certain circumstances. Licensed pharmacists are authorized to administer immunizations or vaccines to a person age 6 to 17 with a prescription, or without a prescription in the case of influenza or in response to a public health emergency. The stated intent of the changes is to allow families greater access to immunizations and vaccinations and to enhance collaboration between pharmacist and primary care providers. The legislation further provides that "[t]his coordination recognizes efficiencies and improved outcomes in a model of health care delivery

for children, such as prescriptions for immunizations and vaccinations, delivered through a primary care provider.”

SB 1315: PODIATRY BOARD; OMNIBUS (Chapter 151)

The Podiatry Board can no longer issue a provisional license to a person who passes an examination but has not completed a one-year internship. A health care institution shall notify the Board if it denies, revokes, suspends or limits the practice privileges of a podiatrist. The list of actions constituting unprofessional conduct now includes obtaining a fee by fraud, deceit or misrepresentation, and charging a fee for services not rendered.

SB 1357: AHCCCS; MISSED APPOINTMENTS; PROVIDER REMEDY (Chapter 234)

If an AHCCCS member misses a scheduled appointment without canceling, a physician or primary care practitioner may charge a \$25 missed appointment fee before rescheduling. In addition, until October 1, 2013, and subject to federal approval, AHCCCS may authorize a political subdivision to provide monies to draw down federal matching funds to provide health care coverage to those made eligible for coverage by Proposition 204 but who were removed from eligibility because general fund monies were not available. The health care coverage shall only be offered through providers or health plans designated by the political subdivision.

SB 1382: HOMEOPATHIC PHYSICIANS; USE OF TITLE (Chapter 235)

An unlicensed person is no longer prohibited from using the designation “homeopath;” however, use of the terms "doctor of homeopathy," "homeopathic medical doctor," "homeopathic doctor" or "doctor of medicine (homeopathic)" is still a class 5 felony.

SB 1429: HEALTH CARE ACTIONS; LIABILITY; STUDENTS (Chapter 192)

A student of a certified or state approved postsecondary institution that prepares students for licensing as a health care provider is not liable in a medical malpractice action for injury that occurs during or as a result of care provided in the program unless gross negligence is established by clear and convincing evidence. A student does not owe an independent duty of care to a patient if the student is participating in patient care under the supervision of a licensed health care provider.

SB 1458: PROFESSIONAL LICENSURE; OUT-OF-STATE APPLICANTS (Chapter 240)

A professional license or certificate must be issued without requiring an examination to the spouse of an active duty member of the armed forces who accompanies the member assigned to a base in this state if the person is licensed in another state and meets other specified requirements.

SB 1521: SCHOOLS; HEAD INJURY POLICIES; ATHLETICS (Chapter 167)

School boards are required to adopt policies to educate coaches, students and parents of the dangers of head injuries and the risks of continued participation in athletic activity after a concussion. The policies must require that students suspected of sustaining a concussion be immediately removed from the athletic activity until the student is evaluated by and receives clearance from a health care provider trained in concussions and head injuries. A "health provider" means a DO, MD, licensed athletic trainer, nurse practitioner and physician assistant. A health care provider who is a volunteer and takes good faith action is provided civil immunity, except in cases of gross negligence or willful neglect.

SB 1619: BUDGET BRB; HEALTH; FY 2011-12 (Chapter 31)

Various health care policy changes are made to effectuate the FY 2011-2012 budget. AHCCCS is authorized to impose an additional provider rate reduction of up to 5%, effective October 1, 2011 through September 30, 2012. Beginning July 1, 2011, and subject to federal approval, AHCCCS members must pay a monthly premium of \$15 with a household maximum of \$60, as well as copayments as follows: \$5 for office visits, \$10 for urgent care visits, and \$30 for emergency department visits. Beginning April 1, 2012, AHCCCS will reimburse ambulance providers 72.2% of the amount prescribed by the Department of Health Services. The hospital reimbursement inflation adjustment is frozen. Responsibility for children's rehabilitative services is transferred to AHCCCS from the Department of Health Services. The Department of Health Services is authorized to assess a surcharge for vital records, with 15% of the first \$4 million collected to be deposited in the state general fund. Counties are required to reimburse the state for costs of incarcerating sexually violent persons. AHCCCS shall implement a program within the available appropriation if CMS does not approve the waiver application made by the governor on March 31, 2011. A statement of legislative intent indicates a desire to fund the transplant services that were eliminated in 2010.

II. UNSUCCESSFUL BILLS

HB 2643: TAX ON SWEETENED BEVERAGES

This bill would have imposed a 40% tax on sales of "sweetened beverages."

HB 2686: HEALTH INSURANCE; VACCINES

Beginning January 1, 2012, health insurers would be prohibited from requiring that providers assume the financial risk for vaccine acquisition costs; required insurers to reimburse providers for acquisition and administration costs of child and adolescent vaccines; and prohibited insurers from imposing any deductible, copayment or other cost sharing for such vaccines.

SB 1031: MEDICAL MALPRACTICE; CLEAR AND CONVINCING

This bill would have required the standard of proof in medical malpractice actions to be “clear and convincing” evidence, rather than “preponderance of evidence.”

SB 1280: MINORS; ELECTRONIC CIGARETTES; PROHIBITION

This bill would have expanded the list of tobacco items that could not be sold to minors to include electronic cigarettes -- a battery-powered device that “can provide inhaled doses of nicotine by delivering a vaporized solution.”

SB 1366: MEDICAL MALPRACTICE; LIABILITY WAIVERS

This bill would have allowed a licensed physician, before providing services for no compensation, to request a liability waiver from the patient, which would preclude the patient from initiating a malpractice action, except in cases of gross negligence.

SB 1390: ABORTIONS; CLINICAL PRIVILEGES; PHYSICIANS

This bill would have made a physician who performed an abortion guilty of a class 3 misdemeanor if the physician did not have clinical privileges at a hospital within thirty miles of where the procedure was performed.

SB 1405: IMMIGRATION STATUS; HOSPITAL ADMISSIONS

This legislation would have required a “hospital admissions officer” to confirm a person’s lawful presence in the United States before admitting that person for nonemergency care. If the person is not lawfully present, the officer must contact local federal immigration officials. In addition, after successful emergency treatment is provided to a person not lawfully present in the United States, the admissions officer must contact local federal immigration officials.

SB 1519: AHCCCS; TERMINATION

This measure would have repealed AHCCCS effective October 1, 2011; and required the Department of Health Services to implement a program to provide services to medically indigent individuals, developmentally disabled individuals, and individuals receiving behavioral health services. The savings realized through terminating AHCCCS shall be distributed as follows: \$200 million to DHS for behavioral health services; \$200 million to DHS for services to developmentally disabled individuals; \$500 million to DHS for medical services to indigent individuals; and \$900 million to the general fund.

SB 1538: DRIVING; HANDHELD WIRELESS COMMUNICATION DEVICES

This bill would have made it a civil traffic violation to use a handheld wireless communication device to write, send or read a message while driving a motor vehicle.

III. VETOED BILLS

HB 2067: BOARD OF SUPERVISORS; POWERS

This legislation would have prohibited, for 18 months, the Arizona Board of Regents (ABOR) from exercising any authority over UA Healthcare, the nonprofit institution that governs the hospital affiliated with the University of Arizona. The Governor vetoed the legislation, although she stated that she does not endorse ABOR's recent actions attempting to alter the existing governance structure. She indicated that ABOR should involve stakeholders and key policyholders in any discussions about the relationship between UA Healthcare and the College of Medicine. To provide oversight for such discussion, she established by Executive Order the Arizona Medical Education Oversight Task Force to make recommendations regarding the future direction of the medical center.

SB 1088: MANDATORY HEALTH INSURANCE; PROHIBITION

This bill attempted to direct the governor to enter into an interstate compact to protect and guarantee the rights of residents to choose whether to participate in any health plan. The Governor vetoed the measure concluding that it violated the separation of powers requirement in the Arizona Constitution.

SB 1592: HEALTH CARE COMPACT; FUNDING

This bill directs the governor to enter into an interstate compact pledging to take action to have the U.S. Congress return authority to regulate health care to the states. The compact establishes an Interstate Advisory Health Care Commission to study issues of health care regulation and make recommendations to the states. This bill was also vetoed on separation of powers grounds.

SB 1593: HEALTH INSURANCE; INTERSTATE PURCHASE

This measure would have authorized out of state insurers to write health insurance in Arizona upon providing evidence to the Department of Insurance (DOI) that it is subject to the jurisdiction of another state's insurance department and that it has the financial reserves required by this state. If the out of state insurer does not provide coverage for any of the list of mandates under Arizona law, in-state insurers would no longer be required to provide that mandated coverage. The Governor vetoed the bill stating that more scrutiny should be given to the removal of Arizona insurance mandates and we should not be deferring this decision to other states. In addition, she was concerned that DOI would have no jurisdiction over the out of state companies, leaving policyholders and providers at risk.