

STATUS OF SELECTED HEALTH CARE LEGISLATION 2010 SESSION OF THE MISSOURI GENERAL ASSEMBLY

The Missouri General Assembly's 2010 legislative session ended Friday, May 14. The following describes the outcomes of various legislative proposals affecting hospitals and health care. The governor has until Wednesday, July 14, to approve or veto enacted bills.

LEGISLATION ENACTED

Budget

- Reduce MO HealthNet spending for hospital services in developing a budget for state fiscal year 2011. A reduction of \$22 million in state spending was part of Governor Jay Nixon's original budget proposal in January. In April, it was augmented by a payment reduction of \$6.8 million and cancellation of a \$30 million hospital rate increase. The later reductions came as legislators and the governor trimmed \$200 million from the state budget in response to revenue shortfalls and another \$300 million to offset the loss of expected federal assistance to the states. (HB 2011)

Prompt Payment

- Revise laws governing prompt payment of health insurance claims to remove the ability of health insurers to suspend a claim, create new time lines for insurer processing and response and establish more stringent financial penalties for violation. MHA has prepared a separate summary of this legislation. (HB 1498)

Definition of Hospital Premises

- Permit an applicant for, or holder of, a hospital license to define or revise the premises of the hospital campus to include adjacent tracts of property separated by a public road (HB 2226)

LEGISLATION NOT ENACTED

Provider Taxes

- Repeal statutory protections on the relationship between the hospital Federal Reimbursement Allowance and MO HealthNet payments to hospitals. Amounts to be paid to those paying provider taxes would be determined solely by appropriation. (SB 1056)
- Reauthorize the long-term care and pharmacy provider taxes through 2015. Without legislative action, they will lapse September 30, 2011. (SB 1017)

MO HealthNet Managed Care

Expansion

- Authorize MO HealthNet demonstration projects to enroll aged, blind and disabled enrollees in managed care plans in the Kansas City and St. Louis regions (amendment to HB 2205)
- Direct by appropriation that children and nondisabled, nonelderly adults covered by MO HealthNet would be enrolled in managed care plans in state fiscal year 2011. The proposed expansion of MO HealthNet managed care would affect the northern and southern tiers of Missouri counties, where fee-for-service coverage is now in place for these populations. (amendments to HB 2011)

LEGISLATION ENACTED

Referendum to Block Federal Coverage Mandate

- Block enforcement of a federal coverage mandate. The measure is subject to voter approval on the August 3, 2010, ballot. The General Assembly's ballot description says the proposal would "deny the government authority to penalize citizens for refusing to purchase private health insurance or infringe upon the right to offer or accept direct payment for lawful health care services." If enacted, the law is intended to foster a federal court challenge on federal versus state sovereignty. (HB 1764)

MO HealthNet Hospital Payment Changes

- Eliminate the requirement that MO HealthNet pay the Medicare deductible and coinsurance amounts for hospital outpatient treatments for individuals eligible for both Medicaid and Medicare. Some or all of the lost Medicaid payment can be recouped from Medicare. (SB 842, SB 1007)

Nursing Practice Issues

- Authorize advanced practice registered nurses to write prescriptions for physical therapy services (HB 2226)
- Require those hiring a registered nurse, licensed practical nurse or advanced practice nurse to perform duties requiring a nursing license to verify that he or she has a valid license. Employers will verify licensure status at the time of licensure renewal. (HB 2226)

LEGISLATION NOT ENACTED

Quality of Care Data

- Prohibit health care providers from refusing to contract with insurers based on their disclosure of comparative quality of care data or otherwise obstructing such disclosure (HB 2072 and various amendments)
- Prohibit MO HealthNet health care providers from refusing to contract with insurers based on their disclosure of comparative quality of care data or otherwise obstructing such disclosure (amendments to SB 842 and others)
- Authorize the Missouri Department of Health and Senior Services to collect and publicly report a broad range of data on hospital quality of care and nurse staffing (SB 1009)
- Establish new standards governing the release of data comparing the quality of care among providers (SB 917, HB 1878, SB 1062)

Disclosure of Comparative Pricing Data

- Use competitive bidding to select a vendor to be given exclusive rights to state data in creating a health care information Web site for consumers (SB 1044)
- Require health care providers to give their patients an estimate of the cost of their nonemergency treatment upon request (HB 2072 and various amendments)
- Prohibit MO HealthNet health care providers from refusing to contract with insurers based on their disclosure of comparative cost data or otherwise obstructing such disclosure (amendments to SB 842 and others)

LEGISLATION ENACTED

Physician Assistant Supervision

- Clarify that if a physician-physician assistant team working in a federally-designated rural health clinic has received a waiver from the State Board of Registration for the Healing Arts, the applicable physician assistant supervision standards will be the minimum federal standards for rural health clinics. Waiver reauthorizations will not be required if the initial waiver was granted on or after August 28, 2009, but the board may void a waiver for violation of federal or state standards. (HB 2226, SB 754)

Practitioner Disciplinary Action

- Require nursing homes, home health agencies and other entities that employ or contract with health care practitioners to tell the appropriate licensing board of disciplinary action taken against a practitioner or that he or she has resigned in response to a complaint or report that might lead to disciplinary action (HB 2226)

Vital Records

- Require the use of an electronic death registration system six months after the system is certified by the DHSS as being operational and available to all providers. Repeal current law calling for the implementation of an electronic birth and death record registration system by December 31, 2009. (HB 1692, SB 754)

MO HealthNet Subrogation

- Revise time lines and standards for payment of MO HealthNet subrogation claims by insurers or other third-party payers (HB 1868, HB 2226, SB 583, SB 842, SB 1007)

LEGISLATION NOT ENACTED

Cap on Out-of-Network Hospital MO HealthNet Reimbursement Rates

- Authorize lower MO HealthNet reimbursement rates for hospitals that are not in a MO HealthNet managed care plan's network of providers (HB 1918 and others)

Any Willing Provider

- Require health insurers to include in their provider networks any physician, individual practitioner or facility willing to accept the insurer's contractual terms and conditions (HB 1495)

Prompt Credentialing of Medical Staff by Insurers

- Require health insurers to complete their credentialing reviews of physicians within 45 days (HB 2450)

Rental of Insurance Networks

- Restrict the ability of an insurer or third-party administrator to sell, rent or grant rights to use its network of contracted providers (HB 2160)

Insurer Assignment of Benefits

- Require health insurers to make direct payment to out-of-network providers who have an assignment of benefits from the patient or enrollee (HB 2283, amendments to HB 1713)

Fraud

- Create a state civil false claims law modeled on the federal anti-fraud law (SB 639)
- Create a state civil false claims law that exempts health care providers subject to state Medicaid fraud laws (HB 1790, SB 959)
- Create an Office of MO HealthNet Inspector General to investigate allegations of fraud or abuse in the MO HealthNet program (SB 1042)

LEGISLATION ENACTED

Children's Coverage and Treatment

- Require the Missouri Department of Social Services to distribute information about eligibility standards for the Children's Health Insurance Program to licensed child-care providers and public school districts. The Missouri Department of Elementary and Secondary Education will modify its application for school lunch assistance to assess the child's health coverage and provide information to parents whose children may be eligible for CHIP coverage. (SB 583)
- Recognize in statute a "Sexual Assault Forensic Examination Child Abuse Resource Education" network. The SAFE CARE network will develop recommended processes for emergency forensic examinations of children who may be victims of sexual abuse and distribute them to hospitals, practitioners and child advocacy centers. (HB 2270)
- Rename the DHSS' Crippled Children's Service as the Children's Special Health Care Needs Service (HB 1270)

Public Meetings and Records

- Require the governing board of a county, city, town or village or one of its subsidiary entities to give four days notice of a public meeting to vote on a tax increase, use of eminent domain or creation of various development districts or plans. A public meeting to hear public comment must precede such a vote. (HB 1444, SB 851)

Certificate of Need

- Repeal expired laws and remove or revise obsolete statutory references, including those in the state certificate of need law (HB 1516, HB 1965)

LEGISLATION NOT ENACTED

Patient Handling Equipment and Practices

- Require hospitals to implement safe patient handling committees and practices, including the acquisition of mechanical patient-lifting equipment (HB 1307, SB 866)

Public Meetings and Records

- Create new compliance standards and increase penalties for violations of the open meetings and records laws by state and local governmental entities (HB 1445)

"Most Favored Nation" Contractual Arrangements

- Prohibit contracts between insurers and providers from stating that the insurer has the right to have its enrollees treated for the lowest price offered by the provider to any competing insurer (HB 1495)

Forensic Examinations Following Sexual Assaults

- Require hospitals to inform sexual assault victims of their right to request laboratory tests for date rape drugs and to conduct those tests upon request (HB 1934)

Nurse Staffing Standards

- Require hospitals to post and make available upon request daily nurse staffing information for each patient care unit. The daily staffing information also will be given to the DHSS in a monthly report. (HB 1924)

Occupational Licensure

- Create a system of occupational licensure for clinical laboratory personnel (SB 1063)

LEGISLATION ENACTED

MO HealthNet Home-based Care

- Require that a MO HealthNet recipient or his or her designee be informed before admission to a long-term care facility of the availability of home and community-based services and maintain a record that those services were declined (SB 1007)
- Authorize the DHSS to contract with a third-party vendor to assess patients' needs for home and community-based care. Care providers will continue to perform two nurse visits to assess the care plan. (SB 842)
- Require vendors of consumer-directed personal care services and in-home services to have a telephone tracking system in place by 2015 to verify the delivery of services (SB 842, SB 1007)
- Direct the DHSS to establish pilot projects to assess the value of a telephone tracking system for vendors of consumer-directed personal care services and in-home services (SB 842, SB 1007)
- Revise a provider tax on in-home services to apply to all in-home services. Current law limits the provider tax to in-home services paid by Medicaid, which was disapproved by the Centers for Medicare & Medicaid Services. The expiration of the provider tax is extended by one year to September 1, 2012. (SB 842, SB 1007)

Women's Health

- Expand a women's health disease screening program to include heart disease risk assessments for women who meet age and income eligibility guidelines. Implementation is contingent on federal funding. (HB 1898)

LEGISLATION NOT ENACTED

State Taxation

- Amend the state constitution to replace current income and sales taxes and their various exemptions with a tax on a broader array of goods and services, which would include medical care (HJR 56, SJR 29)

Repeal MO HealthNet Pay-for-Performance Committee

- Eliminate a committee of health care providers and others that will be appointed to oversee the establishment of MO HealthNet pay-for-performance guidelines (SB 991)

Economic Credentialing

- Prohibit hospitals from requiring certain referrals as a condition of medical staff membership or privileges or refusing such membership or privileges based on services provided at another hospital (HB 1855)

Public Hospital Lobbying Ban

- Ban public hospitals from having lobbyists or membership in MHA, which employs lobbyists (HB 1872, SB 912)

State Budgets

- Place before state voters a constitutional amendment to create new limits on state spending (HJR 87, SJR 35)

Conscience Clause Protections for Providers

- Protect licensed pharmacies from liability if they refuse to provide or recommend abortifacient drugs or devices (HB 1365)

LEGISLATION ENACTED

Autism Coverage

- Require group health insurance plans to provide coverage of medically-necessary treatment of autism spectrum disorder, with an annual benefit cap of \$40,000 for applied behavioral analysis for children under age 19. The requirement will be waived for a small employer group plan that demonstrates a resulting annual premium increase exceeding 2.5 percent. (HB 1311)
- Require individual policies of insurance coverage to allow the enrollee to purchase coverage of autism spectrum disorder for an additional premium (HB 1311)
- Establish a system of occupational licensure for “behavior analysts” who provide services for the treatment of autism spectrum disorders (HB 1311)

Sexually Transmitted Diseases

- Permit a physician to prescribe and dispense medications to treat chlamydia or gonorrhea to a person who is not his or her patient but is a sex partner of a patient infected with those diseases (HB 1375)
- Direct the DHSS to develop a brochure on the link between human papillomavirus and cervical cancer and the availability of an HPV vaccine. Public school districts may provide the information directly to parents of students. (HB 1375)

Master Tobacco Settlement Agreement

- Require tobacco manufacturers that are not part of the national Tobacco Master Settlement Agreement to register with the state and certify that they are in compliance with the terms of the Master Settlement Agreement (SB 884)

LEGISLATION NOT ENACTED

Firearms

- Prevent businesses, including hospitals, from banning the lawful possession of firearms in motor vehicles on their property. The ban would exempt vehicles owned or leased by the businesses. (HB 1400)

Peer Review

- Include emergency medical practitioners under the state’s peer review law (HB 1286)

Medical Malpractice Issues

- Revise standards for determining the value of medical treatment in lawsuits (HB 2106)
- Establish medical malpractice insurance premiums based on the average medical malpractice judgment in the provider’s county (HB 1204)
- Promote the availability and use of health savings accounts and health reimbursement accounts in conjunction with high-deductible insurance coverage (SB 1043)

Vascular Laboratory Licensure

- Require vascular laboratories to be accredited by the Intersocietal Commission for the Accreditation of Vascular Laboratories (SB 861)

Liability of Volunteers

- Provide liability protection for licensed health care professionals who provide volunteer services for a sponsoring organization (HB 1329)

Insurance Regulation of Community Clinics

- Exempt from state health insurance regulation a nonprofit health plan that provides medical services to low-income individuals on a prepaid basis and meets certain conditions (SB 616)

LEGISLATION ENACTED

Emergency Services

- Repeal the requirement that emergency medical response agencies using those trained to the emergency medical technician – intermediate level must collaborate with ambulance services providing advanced life support using paramedics (HB 1977)
- Require basic life support ambulances and stretcher vans to have an automated external defibrillator and a staff person trained in its use (HB 1977)
- Eliminate the limitation on which entities may provide certain advance life support services using those trained to the emergency medical technician – intermediate level (HB 1977)
- Revise standards for the use of proceeds of local taxes levied to support joint fire and emergency dispatching services (HB 2070)
- Authorize St. Louis County to levy a sales tax on retail sales other than food and use the proceeds to create and maintain an emergency communications system. County voters must approve the tax. (HB 2070)
- Define the membership of the Polk County Emergency Telephone Service 911 Board (HB 1942)

State Tuberculosis Patients

- Transfers state responsibility for treating committed tuberculosis patients from the University of Missouri to the DHSS. The department may contract for treatment services at the University of Missouri’s Missouri Rehabilitation Center. (SB 1007)
- Allow state payments for care of patients committed for treatment of tuberculosis to be made only after third-party payments have been exhausted (SB 1007)

LEGISLATION NOT ENACTED

Electronic Request for Medical Records

- Give health care providers the option of receiving requests for copies of medical records in electronic form (various amendments)

Insurer Regulation

- Prohibit insurers from denying payment for imaging services based on a physician’s board certification or medical specialty (HB 1493)

Debt Recovery

- Allow ambulance services to recover unpaid patient debts from lottery winnings and state tax refunds (HB 2129, SB 878)

Federal “Public Option”

- Prevent government entities, including public hospitals, from receiving public funds if they participate in a public health insurance option sponsored by the federal government to provide health insurance to employees (SJR 23)

Newborn Abandonment at Hospitals

- Increase the time after birth from five days to 60 days in which a parent can relinquish physical custody of a newborn without being prosecuted for child abandonment (HB 1613)

Involuntary Commitment for Psychiatric Treatment

- Revise who may authorize detention or release of a person requiring psychiatric evaluation (HB 1985)

Missouri Department of Mental Health

- Make the state hospitals operated by the DMH subject to the hospital Federal Reimbursement Allowance assessment (HB 1894, SB 842, SB 1007)
- Direct the DMH to cooperate with various state and local entities to promote public understanding of substance abuse, mental illness and developmental disabilities and permits the department to directly contract with them to do so (HB 1868)
- Create the crime of “endangering a Department of Mental Health employee, visitor or other person at a secure facility or another offender,” committed when a person in the custody of the department knowingly causes or attempts to cause them to come into contact with various bodily fluids or excretions (SB 774)
- Permit the DMH director or his or her designee to certify the amount of an overdue patient account for purposes of a judicial collection action. Currently, the amount must be certified by the head of the facility or program. (HB 1894, SB 774)
- Create a Missouri Eating Disorder Council within the DMH to develop educational and awareness programs about eating disorders (SB 754)

MO HealthNet Reimbursement for Eye Care

- Establish equal rates of reimbursement to ophthalmologists and optometrists in the MO HealthNet program for performing the same or similar services. The requirement is subject to the availability of appropriations. (SB 842)

School Health Services

- Permit students with chronic medical conditions to self-administer physician-prescribed medications in school. Currently, the law is limited to bronchodilators and epinephrine for those with asthma or anaphylaxis. (HB 1543)
- Exempt qualified individuals from civil liability for providing medication or medical services in a school setting, if done in good faith and according to standard medical practices (HB 1543)
- Expand the list of school employees authorized to use an epinephrine auto-syringe on a student (HB 1543)

Insurance Regulation

- Permit health insurers to distribute information on an enrollee's benefit plan electronically rather than in paper form. A request for a paper copy must be fulfilled within 15 business days. (SB 583)
- Require health insurance policies issued or renewed after January 1, 2011, to cover adopted children on the same basis as other dependents. Medicaid health plans are exempted. (SB 583)

Pharmacy

- Allow pharmacies licensed by the Missouri Board of Pharmacy to store their records electronically if the records are readily retrievable and include all information required of a manual recordkeeping system. Original prescriptions for controlled substances must continue to be maintained on file at the pharmacy. (SB 754)
- Exempt certain wholesale drug distributors from licensure by the Pharmacy board (HB 2226)

Abortion

- Create various new requirements on printed materials and information that must be provided to a woman in the course of getting prior informed consent to an abortion, and establish time deadlines and verification standards for doing so (SB 793)
- Require the circumstances of a medical emergency that results in an abortion to be documented and certified by the physician, with the certification maintained at the facility for seven years (SB 793)
- Direct the DHSS to maintain a toll-free 24-hour telephone hotline to provide regional information about programs to provide alternatives to abortion. The information also will be posted on the department's Web site. (SB 793)
- Prohibit a health insurance exchange established or operating in Missouri from offering policies of coverage or optional riders that include coverage of elective abortions (SB 793)

Substance Abuse

- Amend the state schedule of controlled substances to include various substances related to K2, an herbal synthetic compound that mimics marijuana (HB 1472)

Unemployment Compensation

- Authorize the state to continue to receive and disburse federal funds for federally-sanctioned enhanced unemployment compensation benefits (HB 1544)
- Extend the duration of the "Shared Work Unemployment Compensation Program" (HB 1544)

Governmental Purchasing

- Require state and local government entities to give a three-point bonus preference to service-disabled veteran businesses in Missouri when letting contracts for jobs or services. Currently, such businesses must be given preference when the quoted price is the same or less and the quality of performance is the same or better. (HB 1524)
- Direct the state Office of Administration to respond within 45 days to a statewide elected official's request for determination of the lowest and best bidder for a state purchasing contract under the official's jurisdiction (HB 1868, SB 844)
- Ensure that a state department or other state or local entity will not be prohibited by the Office of Administration from purchasing supplies from an authorized general services vendor if the contract does not require competitive bidding (HB 1868)

Legislative Committees

- Create a Joint Committee on the Reduction and Reorganization of Programs Within State Government to develop recommendations for eliminating or consolidating state programs and departments. The committee's authorization will expire January 1, 2011. (HB 1868)
- Create a legislative Joint Committee on Missouri's Promise to produce annual reports and recommendations on long-term strategies and plans for improving various aspects of economic prosperity (HB 1965)
- Create a legislative Joint Subcommittee on Recovery Accountability and Transparency to monitor how federal economic stimulus funds are spent in Missouri (HB 1965)

Occupational Licensure

- Waive state nursing licensure requirements for nurses from other states or foreign countries who are engaged in short-term transport of patients (HB 2226)
- Permit the expungement of unsubstantiated complaints against licensed professional counselors by inmates of the Missouri Department of Corrections or sexual violent predators in the custody of the DMH (HB 2226, SB 754)
- Exempt from private investigator licensure requirements for-profit organizations whose investigatory activities are limited to making and processing requests for criminal and other background information from government databases (HB 2226)
- Clarify the process of authorizing dental assistants or dental hygienists to perform “expanded-functions duties” in accordance with regulations of the state dental licensure board (HB 2226)
- Revise standards for occupational licensure of social workers and marital and family therapists (HB 2226)
- Authorize the Board of Nursing Home Administrators to issue a separate license to administrators of certain residential care facilities (HB 2226, SB 754)

Personnel Administration

- Specify that wage garnishments and writs of sequestration may only include the last four digits of the person’s Social Security number (HB 1654)
- Transfer jurisdiction over certain state employee personnel claims from the Personnel Advisory Board to the Administrative Hearing Commission (HB 1868)

State Research Grants

- Increase the maximum individual grant that the University of Missouri Board of Curators may annually award for research on disease processes or injuries to \$250,000 from \$50,000 (SB 987)

Corporate Procedures

- Allow the use of electronic transmissions to verify the unanimous consent of the members of a corporate board or executive committee to take an action without a formal meeting (HB 1741)

SUMMARY OF ENACTED PROMPT PAYMENT LEGISLATION

The Missouri Hospital Association is part of a coalition of health care providers that has been promoting changes to the state's laws on prompt payment of health insurance claims. In February 2010, several state legislators convened a series of negotiation sessions between the provider coalition and representatives of health insurance companies. Those negotiations yielded a legislative proposal that was endorsed by all of the participants. The General Assembly completed its unanimous enactment of the legislation on April 7, 2010 and sent the bill to the governor, who has signed it into law. House Bill 1498 would make the following changes, effective January 1, 2011.

- The legislation accomplishes the top priority of the provider coalition, which is to abolish the ability of health insurers to suspend a claim.
- Prompt payment standards would apply to insurers acting as third-party administrators for self-insured plans. To the extent allowed by federal law, self-insured plans themselves would be subject to the state standards.
- The deadlines for insurer actions are clarified to consistently refer to processing days, which are defined in current law to include days in which the insurer possesses the claim but exclude days when the insurer is waiting for a response to a request for information.
- If a claim is unpaid after 45 "processing" days, an insurer would incur a penalty of 1 percent of the claim per day. Previously, the penalty per day was 50 percent of the claim, but not more than \$20, and could not accrue for more than 30 days unless the claimant provided a follow-up notice. As under the previous law, balances unpaid after 45 processing days would generate interest at a rate of 1 percent per month.
- The legislation defines a "clean claim" and states that an insurer's request for additional information must specify all of the documentation or information needed to process the claim.
- If a claim is submitted electronically, the insurer must send an electronic acknowledgement of receipt within 48 hours.
- Insurers must provide a specific reason that a claim for payment is denied for the denial to be valid.

Under the new law, an insurer will have up to 45 processing days to pay a claim. This is the same length of time as under prior law. However, deadlines for insurer action within that time frame are changed. The insurer would have 30 days after a claim is filed to tell the provider that a claim is a clean claim or make a request for all of the additional information needed to process it. Within 10 days of receiving the additional information, the insurer must pay or deny all or part of the claim or make a second and final request for information. Within 5 days after getting a response to the final request, the insurer must pay or deny the claim.