



The Michigan legislature completed its last session day around 10:00 p.m. on Tuesday, June 12, adjourning until the week after Labor Day. Below is a summary of the issues the Michigan State Medical Society (MSMS) has been working on and/or tracking.

### **Sexual Assault Legislation**

In the wake of the scandal surrounding former Michigan State University sports medicine physician, Larry Nassar, several pieces of legislation were introduced in both the Michigan House of Representatives and the Michigan Senate this spring.

In the Michigan House of Representatives, three specific pieces of legislation out of a 27-bill package raised concerns from MSMS. The bills would, among other things, require heightened documentation and a 15-year record-keeping requirement ([House Bill 5783](#)), as well as written informed consent and a chaperone ([House Bill 5793](#)) in cases when a treatment involving vaginal and anal penetration is being performed. The bills raised issues around, patient confidentiality, erecting barriers to care, administrative burden and retribution not proportional to the crime.

Originally, the bills only exempted ob-gyns and medical emergencies. MSMS successfully advocated for broader exemptions, including any treatments that would fall under the categories of sexual, reproductive, gynecological, gastrointestinal or urological health as well as some specific routine treatments including taking a temperature or administering medication rectally. MSMS was also able to minimize the sanctions imposed for violations of the bills, which, as proposed, could result in an inadvertent error or omission rising to a felony charge. As amended, the documentation and record-keeping bill includes a tiered civil and criminal penalty structure that distinguishes between inadvertent mistakes, gross negligence and intentional violations.<sup>[1]</sup> The penalties associated with the written informed consent bill now distinguish between an inadvertent error and intent to avert the law.

Under [House Bill 5787](#) a person who undertakes medical treatment of a patient who misrepresents to the patient that sexual contact between the person and the patient is necessary or will be beneficial to the patient's health and who induces the patient to engage in sexual contact with the person by means of the misrepresentation is guilty of a felony punishable by imprisonment for not more than 20 years. A similar misrepresentation involving sexual penetration is subject to a felony punishable by not more than 25 years. The bill defines sexual contact and sexual penetration. MSMS requested that the definition of "sexual penetration" be amended to make it clear that an "intrusion" is for a sexual purpose. The concern was that without this clarification, standard medical procedures could fall under the definition of "sexual penetration." The Michigan House of Representatives amended the definition of "sexual penetration" to clarify "intrusion" as that which "can reasonably be construed as being for the purpose of sexual arousal or gratification, done for a sexual purpose or done in a sexual manner".

With the amendments outline above, MSMS supported the Michigan House of Representatives bills.

Other bills in the package focused on increased education and awareness via high school curriculum and the development of age-appropriate materials, to eliminate stigma and fear of reporting, and to improve accountability, all of which MSMS supports.

The Michigan Senate bills passed expeditiously out of the Michigan Senate in March but saw extensive deliberation in the Michigan House of Representatives. MSMS Legal Counsel Patrick J. Haddad, JD, testified in front of the Michigan House of Representatives Law and Justice Committee regarding [Senate Bill 872](#), which would amend the state's current statute of limitations (SOL) for civil lawsuits involving criminal sexual conduct (CSC) and impose retroactivity back to 1997 for cases involving minors. While emphasizing MSMS's support for a legislative response to the atrocities committed by Larry Nassar, Mr. Haddad cautioned the committee that, as written, [Senate Bill 872](#), would have far reaching, unintended consequences. He highlighted the likely incrimination of innocent people, including physicians, who would not have records or evidence to properly defend themselves. The Michigan House of Representatives revised the legislation to only include retroactivity in cases when there is a criminal conviction, limited to a medical context, which will prevent the potential flood of cases against innocent people. The Michigan House of Representatives also revised the statute of limitations (SOL) for both civil and criminal cases involving CSC to 10 years and 15 years past the age of majority, respectively. In contrast, the Michigan Senate bills included a 30-year SOL for third degree CSC in criminal cases and CSC in civil cases, and lifted the SOL for second degree CSC in criminal cases. The Michigan House of Representatives did include a discovery period of three years, which essentially suspends the SOL for civil cases until a person "discovers" they are a victim.

While the Michigan Senate bills saw improvements in the Michigan House of Representatives, as outlined above, the extension of the SOL and the inclusion of a discovery period, will have implications for physicians. MSMS Legal Counsel will be issuing guidance for members.

The Michigan House of Representatives bills passed the Michigan House of Representatives and were reported out of the Michigan Senate Judiciary Committee on June 6. No further action was taken prior to the summer adjournment. Governor Snyder signed the Michigan Senate bills into law on June 12.

### **Interstate Medical Licensure Compact**

Last spring, the Senate Health Policy Committee was poised to consider [House Bills 4066](#) and [4067](#), which passed the House on October 10, 2017. The bills would Michigan to enter into an existing interstate medical licensure compact (IMLC) whereby eligible physicians could obtain an expedited license to practice medicine in one of the compact states. While acknowledging the value of being able to expeditiously obtain a license to practice in another state, MSMS policy currently opposes the IMLC due to its requirement that only physicians with a current or grandfathered specialty certification from the American Board of Medical Specialties (ABMS) or the American Osteopathic Association's Bureau of Osteopathic Specialists (AOABOS) can participate in the compact. It's important to clarify that if a physician is not board-certified or maintaining board certification he or she will still be eligible to obtain a traditional medical license in the state of Michigan. It is only for the newly-created expedited license under the compact that physicians would be required to have been maintaining certification through the ABMS or the AOABOS.

Late last spring, MSMS was informed the bills would be adopted by the Senate Health Policy Committee prior to the legislature's adjournment for the summer; however, this did not come to fruition. It is likely the committee will consider the bills in the fall. Given the likelihood of IMLC passing out of the Senate and becoming law, MSMS's strategy is to pour efforts into advocacy around [House Bill 4134](#) and [House Bill 4135](#).

### **Maintenance of Certification**

***This is a priority issue.*** As noted above, MSMS supports [House Bill 4134](#) and [House Bill 4135](#), introduced by [Representative Edward Canfield, DO](#) (R-Sebewaing), which would -- as a preemptive measure -- prohibit the state from requiring Maintenance of Certification (MOC) as a condition for licensure, as well as prohibit payers from requiring MOC as a condition of receiving reimbursement.

The bills saw a hearing on March 24, 2017 in the Michigan House of Representatives Health Policy Committee but have since stalled due, in part, to opposition from physician specialty groups and more obviously, payers, like Blue Cross Blue Shield. MSMS has worked with the respective specialty groups to assuage concerns and, as a result, no specialty groups are opposed at this time. In light of this development, MSMS has asked the chair of the Michigan House of Representatives Health Policy committee to bring the bills up for a vote in the fall. In the meantime, MSMS is working to align the votes in the committee necessary to move the legislation forward.

Learn more by visiting [Right2Care.org](http://Right2Care.org) and [contact your lawmaker today](#).

### **Fiscal Years 2019 - 2020 Budget**

The Michigan House of Representatives and Michigan Senate completed work on the \$56.78 billion fiscal years (FY) 2019-2020 budget, which included the Michigan Department of Health and Human Services' (MDHHS) roughly \$25 billion budget (\$4.5 billion general fund). The majority of funding is federal dollars. Medicaid makes up 60 percent of the budget. Projected revenues were up this year, as highlighted by the May Revenue Estimating Conference, and the legislature funneled an extra \$300 million toward roads. There were no proposed cuts to Graduate Medical Education and, not surprisingly, the budget included the required state funding necessary to continue the Healthy Michigan Plan.

Notable provisions in the final MDHHS budget include a \$28 million appropriation for MIDOCs, an initiative spearheaded by a consortium of four medical schools aimed at increasing the number of primary care residency slots in the state and retaining medical residents to practice in underserved communities after their training. Separate but related, a \$5 million appropriation (\$1 million over five years) will be directed toward a new medical resident loan repayment program. The budget included \$1 million purposed for enhanced laboratory testing of opioids in cases of drug overdose deaths to accurately identify all prescription and nonprescription substances that may have impacted a drug poisoning death. The MDHHS budget also included a controversial provision banning providing family planning and pregnancy services and pregnancy prevention funds to groups that also perform abortions if there is a provider in the same county that performs abortions. Governor Snyder ultimately deemed this provision unenforceable. If the legislature wishes to pursue, they will have to pass a law.

The final MDHHS budget did not include a Michigan Senate-backed proposal that would have allowed the Medicaid health plans participating in mental health integration pilot projects from contracting directly with service providers, an ongoing debate.

Governor Snyder signed the final budget on June 21. According to *MIRS news*, State Budget Office numbers show the state budget was signed, under Snyder, between June 13 and June 29 every year with the exception of last year, when it was signed July 14. From 1996 to 2010, the earliest a budget was signed was July 17, but the norm was late September. Five times the budget was signed after Oct. 1.

Separate but related, the legislature approved, and on June 11, the Governor signed into law [Public Acts 173-175](#), which eliminates the Health Insurance Claims Assessment (HICA), a 0.75 percent tax on paid health insurance claims intended to generate Medicaid revenue, and replaces it with a new Insurance Provider Assessment (IPA). The HICA was originally implemented in lieu of the existing 6 percent Use Tax due to worries that the federal government would potentially bar the state from utilizing the Use Tax for this purpose. Unfortunately, the HICA not only failed to collect enough revenue, it was roundly scorned by the business community. The IPA is a new multi-tiered health insurance tax applied to insurer member months at varying rates with the intent of creating a levy that taxes Medicaid managed care at a higher rate, via a tiered structure, than the rate applied to commercial insurance, permitting a net reduction in private health insurance taxes without a reduction in net revenue to the state. The IPA received wide support from both the business

community and the health plans and is expected to not only generate enough revenue but also meet the federal government's complicated statistical test and associated criteria for provider taxes.

### **Medicaid Work Requirements**

On Thursday, June 7, 2018 the legislature approved [Senate Bill 897](#), which would impose work requirements on certain eligible Healthy Michigan beneficiaries. Several changes were negotiated throughout the process, including incorporating several exemptions, revising the hourly requirement from 29 hours per week to 80 hours per month and only imposing work requirements on eligible beneficiaries within the Healthy Michigan population, rather than also including traditional Medicaid. A controversial provision was included that would require a beneficiary who has been on the program for 48 months to pay a premium equal to 5% of their income and engage in healthy behaviors or else be kicked out of the program – a provision sought by Republicans in an effort to clarify what they see as the original intent of the Medicaid expansion law that was not manifested in the waiver approved by the federal Centers for Medicare and Medicaid Services (CMS).

Also of note is a provision that grants an exemption from the work requirements to individuals deemed "medically frail" by a doctor's order – MSMS plans to monitor.

In anticipation of the bill's imminent passage, MSMS sent a letter to both Governor Snyder and the bill sponsor, [Senator Mike Shirkey](#) (R-Clarklake), recognizing the improvements that have been made while also outlining some continued concerns, including impacts to access to care, and requesting an ongoing dialogue and robust evaluation process as the law is implemented.

As of June 19, the bill still awaits Governor Snyder's likely signature. Ultimately, a waiver will need to be approved by CMS prior to implementation.

### **Opioid Laws**

***This is a priority issue.*** MSMS has been advocating for fixes to the opioid laws that passed in December 2017 in an effort to dispel the widespread confusion caused by the laws and provide clarification around certain aspects, such as the frequency of MAPS checks. Currently, the legislature is not demonstrating an appetite to consider changes until the laws are implemented and the impact on the epidemic is properly assessed. MSMS staff is aware that some legislative offices are hearing from constituents voicing frustrations around issues they are facing access legitimate pain medication.

As [reported in the June 15, 2018 edition of Medigram](#), MSMS is closely monitoring a promising development related to the bona fide prescriber-patient relationship law. As background, a law was passed in March delaying the implementation of the bona fide prescriber-patient relationship law until March of 2019 and requiring the promulgation of rules identifying situations in which a bona fide prescriber-patient relationship, as specifically defined, is not necessary or when alternative requirements may be appropriate.

A rules process began soon after and throughout the rules process, concerns have been raised around the definition of "bona fide prescriber-patient relationship" as it severely restricts the ability to provide quality care to patients during situations in which a prescriber is providing coverage for an unavailable colleague, another licensed member of the health care team has evaluated the patient, there is a transition of care from one setting to another, or medical emergency. To ensure this issue is resolved without needlessly interrupting patient care or adversely impacting professional licensing, MSMS and other partners requested language recognizing that, in certain scenarios, an in-person/telehealth medical evaluation may be repetitive, impractical or an impediment to the timely delivery of care to a patient. The MSMS proposal would effectively deem that in the circumstances outlined above a bona fide relationship exists given the acting health care professional provides documentation in the patient's medical record in accordance with medically accepted standards of care.

The rule, with MSMS's exceptions language, was adopted by the Board of Pharmacy on Wednesday, June 13, 2018. The next step will be consideration by the legislature's Joint Committee on Administrative Rules (JCAR). JCAR will have 15 session days (defined as the Michigan House of Representatives and Michigan Senate in session at the same time and there is a quorum) to act or not act on the rules unless there is an effort to waive the 15-day requirement. JCAR does not have authority to outright reject a rule per se, only delay it. If they have concerns about a rule, they have some tools at their disposal, including initiating a legislative process. That said, at this time, MSMS staff does not anticipate any push back from JCAR but MSMS staff will meet with Michigan House of Representatives and Michigan Senate chairs ahead of the legislature going back into session in the fall. As 15 session days must pass before the rule can advance we don't anticipate any major action on the rules until the fall.

Learn more about the laws at <http://msms.org/BeAWARE>.

### **Auto No-Fault**

Two auto no-fault (ANF) bills – [Senate Bill 787](#), introduced by [Senator Rick Jones](#) (R-Grand Ledge), and [Senate Bill 1014](#), introduced by [Senator Joe Hune](#) (R-Fowlerville) – passed the Michigan Senate on Wednesday, June 6, 2018 by a vote of 23-13 with [Senator Mike Green](#) (R-Mayville), [Senator Mike Kowall](#) (R-White Lake), [Senator Tory Rocca](#) (R-Sterling Heights) and [Senator Dale Zorn](#) (R-Ilda) voting with Democrats in opposition.

Notable provisions of the Senate bills include:

- Seniors 65 or older could choose a \$50,000 personal protection auto insurance policy in lieu of mandated unlimited lifetime benefits (amendment to the bill would make this policy an "opt-in" as opposed to an "opt-out").
- Exempts auto insurance providers from being liable in a lawsuit if a person feels they weren't properly informed on their choices between the two options.
- Create a new fraud authority – "Michigan Automobile Insurance Fraud Authority" – that will exist until December 31, 2022, to weed out suspected abuses in the system
- Creates some limits on attendant care
- Makes some changes to assigned claims system that the insurance industry has been pushing for year
- No hospital fee schedule for auto insurance victims
- No creation of different levels of personal injury protection (PIP) for those who are not 65 and older, who qualify for Medicare
- In-home attendant care for those catastrophically injured in a car accident would be capped to \$15 an hour for those hours in excess of 56 hours in a week, regardless of the level of care; adjusted to inflation after three years.
- Attendant care would be limited to a total of 24 hours a day for services of one individual
- Pedestrians, bicyclists and others injured in a car accident without auto insurance would be put into the "assigned claim" system with benefits capped at \$400,000.
- Still questions around whether this would actually lower premiums substantially. One of the sponsor's said "we know there are savings but there is no way to calculate how much".

MSMS, along with partners from the [Coalition for Protecting Auto No Fault](#), opposed the bills. MSMS staff is hearing the Michigan House of Representatives will not take action on these bills or other no-fault legislation prior to the elections. It is possible the issue could rear its head during the Michigan legislature's lame duck session.

Separate but related, on Wednesday, June 6, 2018, the Department of Insurance and Financial Services issued Bulletin 2018-13-INS, which is being interpreted as a dog whistle for the insurers to go after Auto No-Fault claims. As part of the [Coalition for Protecting Auto No Fault](#), MSMS strongly

opposes this bulletin and its timeliness with the Auto No-Fault bills coming out of the Michigan Senate.

### **Updates to HIV Laws**

On Wednesday, May 23, 2018, MSMS President [Betty S. Chu, MD, MBA](#), testified before the House Health Policy Committee in support of a package of bills seeking to modernize the state's HIV laws, including [House Bill 6022](#), introduced by [Representative John Bizon, MD](#) (R-Battlecreek), which would implement a third trimester testing requirement for HIV, hepatitis B, and syphilis. While outlining MSMS's support for the bill, Doctor Chu encouraged lawmakers to consider modifications to align the legislation with Centers for Disease Control Guidelines, which require a third trimester testing requirement for high risk populations. MSMS is working closely with Rep. Bizon's office to ensure the final language meets this objective.

During testimony, Doctor Chu referred to MSMS's extensive policy on HIV and infectious diseases, including support for the establishment and utilization of guidelines for routine HIV testing in medical settings and elimination of informed consent for HIV testing. In addition, the MSMS House of Delegates recently approved policy that supports updating Michigan's criminal statutes pertaining to HIV.

While they are expected to move, the bills are still undergoing revisions and did not pass out of the Michigan House of Representatives Health Policy Committee prior to adjournment.

### **Naturopathic Scope of Practice**

[Senate Bill 826](#), would license "naturopathic physicians" and allow them to perform "minor office procedures" as defined in the bill; prescribe medication (non- controlled substances); order/perform physical and laboratory examinations for diagnostic purposes; utilize routes of administration, broadly defined; and grants broad authorities to a newly-formed Board of Naturopathic Medicine, among other things.

The bill passed out of the Michigan Senate on Wednesday, May 16, 2018 by a vote of 24 to 11 and has been referred to the Michigan House of Representatives Health Policy Committee. No action was taken prior to summer adjournment. MSMS will work closely with partners to ensure the bill is contained in the Michigan House of Representatives.

### **Podiatry Scope of Practice**

[Senate Bill 901](#), which modifies the statutory definition of podiatric medicine to include certain procedures, passed out of the Michigan Senate on Tuesday, June 12, 2018. MSMS is neutral on the bill after changes were negotiated that MSMS found agreeable. The bill awaits further action in the Michigan House of Representatives Health Policy Committee.

### **Licensing of Acupuncturists**

[Senate Bill 683](#), which would license acupuncturists, passed out of the Michigan Senate on Tuesday, June 12, 2018. MSMS is neutral on the bill but monitoring closely to ensure it doesn't extend the ability to perform dry needling to physical therapists and chiropractors. The bill awaits further action in the Michigan House of Representatives Health Policy Committee.

[\[i\]](#) distinguishes between an inadvertent mistake (<\$1,000 civil fine), multiple mistakes (<\$2,500 civil fine for a second mistake; <\$5,000.00 civil fine + misdemeanor for a third or subsequent mistake), a grossly negligent mistake (<\$5,000.00 civil fine + misdemeanor), and an intentional violation (felony + \$7,500.00 fine).

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