

MMA 2011 Legislative Update

The Montana Medical Association (MMA) devoted significant resources to the 62nd legislative session to ensure the interests of Montana physicians were protected. The MMA's Committee on Legislation (COL) reviewed 104 bills and made a decision on each of them to either, support, oppose, monitor or take no action. Due to the large number of health care bills, the COL developed the following legislative priority list to assist the MMA lobbyists:

- Workers Compensation
- Medicaid Reimbursement
- Tort Reform
- Scope of Practice
- Funding Medical Education – Expansion of WWAMI program
- Prescription Drug Registry
- Miscellaneous bills– this list included bills related to medical marijuana, physician assisted suicide, abortion bills related to physician practices, insurance and other health care related issues.

You can review the complete list of these bills, the MMA's position and their final status on the main page of the MMA website at: <http://www.mmaoffice.org/>

The following is a summary of bills related to the MMA's priority issues:

Workers' Compensation

HB 334 was passed by both houses of the legislature and was signed into law by the Governor on April 12, 2011. The MMA supported this bill as it was the only work comp overhaul measure that acknowledged the complex, labor intensive and time consuming nature, physicians and other providers face when treating injured workers. While we believe HB 334 was likely the best outcome we could realistically expect to achieve this legislative session, we understand that this bill may not provide adequate incentives for some practices to maintain access at current levels for workers compensation patients. The MMA will continue to work with the Department of Labor and Industry, workers compensation payers and key legislators in an effort to improve Montana's workers compensation laws. **Major provisions of HB 334, most of which are effective 7/1/2011, include:**

- Allows injured workers to choose the initial health care provider and allows insurer to approve workers' choice as the treating physician or designate a different treating physician to manage and coordinate medical treatment.
- The designated or approved treating physician is responsible for:
 - coordinating the worker's receipt of medical services
 - providing timely, documented determinations, including maximum medical healing, physical restrictions, return to work, and approval of job analyses
 - providing or arranging for treatment within the utilization and treatment (UT) guidelines or obtain prior approval for other treatment
 - conducting or arranging for timely impairment ratings

- Referring to other healthcare providers as appropriate
- Through 6/30/2013, the following reimbursement will apply.
 - treating physicians are reimbursed at 110% of the 12/31/2010 work comp fee schedule
 - non-treating physicians are reimbursed at 90% of 12/31/2010 work comp fee schedule
 - work comp compensable treatment provided prior to the approval or designation of a treating physician is reimbursed at 100% of 12/31/2010 work comp fee schedule
- UT guidelines are mandated
- Annual review and appropriate update of the guidelines is required
- The Department of Labor and Industry (DOLI) is required to hire a Medical Director
- Language that presumed the UT guidelines represented “correct treatment” was replaced with language indicating the guidelines represent compensable medical treatment
- Medical benefits will be closed 60 months after diagnosis or date of injury
- An injured worker can request an extension of medical benefits which is reviewed by a panel of three physicians.
- Further extensions can be requested by the injured worker every two years.
- Utilization of the 6th edition of the AMA Guides to Evaluation of Impairment is required. **(Retroactive to January 1, 2008)**

Medicaid Reimbursement

In 2010, Governor Schweitzer instructed DPHHS to implement a rule that avoided the statutorily mandated increase in Medicaid physician reimbursement levels for fiscal year 2011 based upon budgetary concerns. The Governor used the same concerns to exclude the 2012 and 2013 increases mandated by the statute from the budget that he proposed to the legislature for the biennium.

Additionally, early in the session the Joint Appropriations Subcommittee for Health and Human Services voted to cut Medicaid physician services reimbursement even further to the equivalent of current Medicare levels - an additional 9% cut from the Governor’s proposed budget. Based upon this action by the Subcommittee, it became fairly clear to the MMA that repeal of the Medicaid physician services reimbursement statute by the 2011 legislature was likely, unless another alternative was presented to the legislature.

The MMA assisted in creating that alternative by reaching out to Senator Jason Priest, the Chair of the Senate Public Health, Welfare and Safety Committee, in order to craft SB 241 which amends the current Medicaid physician services reimbursement statute to maintain Medicaid physician reimbursement at 2010 levels through 2013, avoid a repeal of the statute and provide for an annual increase equal to the national consumer price index for medical services beginning in 2014. **This bill passed both the House and Senate and was transmitted to the Governor who did not sign or veto the bill. Therefore, SB 241 became law without the Governor’s signature. The effective date for the 2012 Medicaid Physician Reimbursement Update is September 1, 2011.**

Tort Reform

A package of medical liability reform bills developed jointly by the Montana Medical Association, the Montana Hospital Association and medical liability insurers was considered by the legislature. Five of the seven bills were passed by both the House and Senate and transmitted to the Governor. Unfortunately only one, HB 416, was signed into law. The following is a brief summary of each bill in this package:

HB 275 would allow personal consumption expenses to be factored into a settlement amount in a “survival action.” **Passed the House but failed to pass the Senate.**

HB 405 (MMA Bill) would provide civil immunity from tort liability when, at the point of care, the physician notes in the medical record the physician’s rationale for not prescribing, recommending, or ordering a given test, procedure or other therapeutic intervention and that rationale meets or exceeds the standard of care, unless medical malpractice is shown by clear and convincing evidence. **Passed the House and Senate but was vetoed by the Governor.**

HB 408 would reduce the statute of limitations for initiating a medical malpractice action from three to two years. Surrounding states – Idaho, Wyoming, North Dakota and South Dakota – all have statutes of limitations of two years for medical malpractice actions. Reducing Montana’s statute of limitations would place Montana on a level playing field with surrounding states by reducing the length of time physicians, hospitals, and other providers are subject to unknown medical liability. **Passed the House and Senate but was vetoed by the Governor.**

HB 416 (MMA Bill) would protect quality assurance activities conducted by physician practices from discovery in medical malpractice cases. **Passed the House and Senate but was amended by the Governor. The amendments, which were not supported by the MMA, were subsequently not adopted by either the House or the Senate. The original bill was returned to the Governor who signed it into law with an effective date of April 28, 2011.**

HB 464 would establish special liability protections for hard-to-recruit pediatric and geriatric subspecialists. One factor in recruiting these subspecialists is the medical liability exposure to which they would be subject. By reducing this exposure, Montana would become a more attractive option for these subspecialists. This legislation would raise the evidentiary standard to clear and convincing in medical malpractice actions against certain subspecialists. A clear and convincing standard is a higher burden of proof than a preponderance of evidence, but less than beyond a reasonable doubt. **Passed the House and Senate but was vetoed by the Governor.**

HB 531 would allow the remaining defendant in a case where at least one defendant settles or is released from liability to bring the settling party back in to prove their share of negligence or make an election to receive a dollar-for-dollar offset. **Passed the House and Senate but was vetoed by the Governor.**

HB 555 would provide for non-duplication of health insurance benefits. **This bill was initially passed in the House and amended by the Senate. The House subsequently failed to approve the amendments. Therefore this bill failed.**

Scope of Practice

The MMA opposed SB 272 which would have allowed certain psychologists the ability to prescribe drugs customarily used in the diagnosis and treatment of mental or emotional disorders. **This bill passed the Senate but was tabled in the House Health and Human Services Committee on a nearly unanimous vote of 14-1. Supporters made several attempts to remove this bill from the Committee and have it considered by the full House. All motions failed.**

We fully anticipate this bill will come back up at the 2013 legislative session. The MMA plans to work closely with all entities who have an interest in this issue during the interim period to address the global issues related to effective treatment of mental illness and suicide prevention in Montana.

HB 396 (MMA Bill) was intended to provide clarity and transparency by ensuring that patients are promptly and clearly informed of the training and qualifications of their health care providers. **This bill was tabled in the House Business and Labor Committee.**

Funding Medical Education

The MMA supported HB 626, which would have increased the tax on tobacco products. A portion of the revenue from this tax would go to the Montana TRUST (Targeted Rural Underserved Track) program to provide scholarship and program assistance in training medical students for rural and underserved practices through the WWAMI (Washington, Wyoming, Alaska, Montana and Idaho) program. **This bill was tabled in the House Taxation Committee.**

The MMA intends to work with staff from the WWAMI program during the interim period to develop strategies for introducing legislation in the 2013 session that would implement the provisions of the TRUST Program.

Prescription Drug Registry

The MMA supported the amended version of HB 83 which allows for the creation of a drug registry, making a list of prescribed controlled substances available to patients and their healthcare providers for the purpose of improving patient safety. The funding for establishing and maintaining the registry will come from a fee paid by each person who prescribes, dispenses or distributes controlled substances. The initial bill did not include a cap or time limit for these fees. The MMA proposed amendments that would cap the fee at \$15 per person per year and provide a sunset on the fees in four years for a total of \$60 over four years in prescriber fees. The amendments were accepted. **This bill passed both houses of the legislature and was signed by the Governor on 4/21/2011. The effective date for this law is 7/1/2011, however preliminary work to develop an advisory group, create the registry's infrastructure and draft Administrative Rules regarding the implementation and operation of the registry are ongoing within the Board of Pharmacy. They hope to have the registry up and running by January 2012.**