



# Legislative *e*-Update

## 151st General Assembly Wraps For 2022

July 8, 2022

Another year is in the books for the General Assembly. The House of Representatives wrapped up their session June 30<sup>th</sup> in virtual format after meeting in person much of the afternoon and evening. The Senate battled on in person until almost 2:00 am before calling it a wrap.

Such was the story of this year's legislative session. Online, in-person, or hybrid—adaptation was the name of the game. It was a record year in terms of revenue and spending. The operating budget topped a record \$5.1 billion (a 6.9% increase) while a one-time spending bill of \$379 million also set a record.

The General Assembly set a swift pace in January and didn't look back. The Senate had a 54-item agenda on its final day. There was activity on a wide range of topics from Telemedicine to Reproductive Rights. Another attempt to legalize the recreational use of marijuana failed, while another passed but was vetoed by the Governor.

Here is a wrap up of some of the bills MSD worked on:

**Reproductive Health Access ([HB 455](#))**—This bill added additional legal protections to both practitioners, as well as patients for abortion services. Further, the bill expanded the scope of practice for PA's, Certified Nurse Midwives, and APRNs to terminate, assist in the termination of, or attempt the termination of a human pregnancy before viability. PA's will be able to expand their scope with a collaborative agreement. Certified Nurse Midwives, as well as APRNs, will have to demonstrate knowledge and competency including successful completion of a training or certification approved by the Board of Nursing.

This bill was a tough one for MSD. While MSD supports the added legal protections for these types of services, there was opposition to

the expansion of scope specifically for APRNs. As they are allowed independent practice, the concern for MSD lies in the expansion of scope in the term “before viability.” The Government Affairs Committee (GAC) on behalf of MSD worked tirelessly to try and amend the bill to put more guardrails in place for these services as they relate to early pregnancy. The GAC met with both the House and Senate sponsors on numerous occasions, as well as spent countless hours communicating amongst the committee on possible language and strategy. MSD had a few things working against an amendment. Namely, the House sponsor was not willing to amend the bill and it easily passed the House. The Senate sponsor was amenable to amendment consideration and then the decision from the Supreme Court to strike down Roe vs. Wade came out the Friday before the bill was set to be heard in the Senate for a floor vote. Between the SCOTUS decision and the Senate Sponsor’s faith in the regulatory process, she ultimately decided to move forward with a floor vote on the bill unamended.

***This bill passed both Chambers and awaits Governor’s action.***

**Medical Aid in Dying (HB 140)** – Introduced in June of 2021, this bill would have legalized medical aid in dying. It was released from committee in January, but no further action was taken despite some last-minute efforts to bring it to the floor. MSD officially changed their stance from “engaged neutrality” to “opposed” this year. Notably, this legislation would have given practice authority in this area to not just physicians, but also APRNs.

***Out of committee. Would have to be re-introduced next Session.***

**Recreational Use of Marijuana (HB 305)** – This is the first of several attempts to legalize the recreational use of marijuana. This Act would regulate and tax marijuana in the same manner as alcohol. Cultivation licenses would be given out for those that want to operate a marijuana establishment. This Act would also create the Delaware Marijuana Control Act Oversight Committee. This Oversight Committee will coordinate the implementation of this Act with the Medical Marijuana Program, the Division of Public Health, the Division of Substance Abuse and Mental Health, and the public. MSD opposed.

***Defeated in March.***

**Recreational Use of Marijuana (HB 371)** – This Act removes all penalties for possession and non-monetary exchange of one ounce of marijuana or less for individuals 21 years or older. MSD continues to oppose all recreational marijuana bills. This bill was a simple majority bill that would allow “adult sharing,” but not the sale of recreational marijuana. Its companion bill, [HB 372](#), required a super-majority and would have provided the regulatory, tax, production, and retail framework.

***Passed both Chambers. Vetoed by the Governor.***

**Telemedicine (HB 334)** – The bill will allow health-care providers licensed in another state to provide telehealth and telemedicine if there is a pre-established doctor-patient relationship. It uses the already passed framework of the physician interstate compact for licensure. Professional Regulation put forth an amendment to clarify that out-of-state physicians are subject to the laws of this state and the jurisdiction of the courts and licensing boards of this state. MSD supports the legislation.

*Passed both Chambers. Awaits Governor's action.*

**Out-of-State Health Care Providers (HB 415)** – This bill outlines the procedures a health care provider from a different state needs to follow to provide services in Delaware, including the process the Division of Professional Regulation would go through to grant a temporary license.

*Not considered in committee. Would have to be re-introduced next Session.*

**Interstate Occupational Therapy Licensure Compact (SB 247)** – Through this Act, Delaware would join the Interstate Occupational Therapy Licensure Compact (OT Compact). Occupational Therapists and Occupational Therapist Assistants who are licensed and in good standing in a state that is part of the OT Compact may practice in other OT Compact states instead of getting a temporary license for each state in which they want to practice. MSD neutral.

*Passed both Chambers. Awaits Governor's Action.*

**Fake Vaccination Documents (HS 1 for HB 302)** – This Act clarifies that forgery of a vaccination document, whether written or electronic, is forgery in the second degree. This does not include altering online vaccination records, as this is already covered under tampering with any computer records. MSD supports.

*Passed both Chambers. Awaits Governor's action.*

**Nursing and Assisted Living Facilities Hiring Based on Influenza Vaccination (SB 253)** – This bill adds flexibility to nursing and assisted living facilities to make hiring decisions contingent on an individual's Influenza vaccination status. MSD supports.

*Passed both Chambers. Awaits Governor's action.*

**Cultural Competency Training (HS 2 for HB 344)** – This bill requires the Delaware Perinatal Quality Collaborative to develop guidelines for cultural competency training programs to be implemented by hospitals and freestanding birthing centers during employee training. It does not require training. The initial guidelines are to be published by July 1<sup>st</sup>, 2023. Consistent with MSD's caution against dictating the practice of medicine by statute, MSD fought to make the legislation a guideline rather than a requirement.

**Passed both Chambers. Awaits Governor's action.**

**Central Service Technician Certification (HB 279)** – Central Service Technicians are an important part of the health care team, responsible for decontaminating, assembling, and sterilizing reusable surgical instruments and equipment. This Act would require technicians to pass an examination and to hold a certified registered central service technician credential or a certified sterile processing and distribution technician credential to work in these positions. MSD supports.

**Passed both Chambers. Awaits Governor's action.**

**Educating Practitioners on Alzheimer's (SB 283)** – The Board of Medical Licensure and Discipline and the Board of Nursing are responsible for establishing continuing education requirements for medical professionals licensed by these Boards. This Act requires practitioners who treat adults to take continuing education on the diagnosis, treatment, and care of patients with Alzheimer's or other dementias. MSD opposed this legislation on all fronts. While there were multiple lines of opposition, the issue boils down to physicians having control of what continuing education is most appropriate for their individual practice. MSD and the Delaware Nurses Association co-authored a letter of opposition.

**Passed both Chambers. Awaits Governor's action.**

**Prescription of Pregnancy Terminating Medication (HB 320)** – Under the US Food and Drug Administration's (FDA's) Risk Evaluation and Mitigation Strategy for Mifeprex, Mifepristone, and Misoprostol, physician assistants and advanced practice registered nurses are eligible to prescribe these medications for terminating pregnancy. This Act would allow physician assistants and advanced practice registered nurses to prescribe these medications. MSD neutral.

**Signed by the Governor in April.**

**Informing Patients of Lyme Disease Test Limitations (HB 309)** – This Act requires a health care provider to explain the limitations of Lyme disease tests at the time their blood is drawn, as well as instructing the patient to see their health care provider if continued unexplained symptoms occur. A similar bill was passed during the 150<sup>th</sup> General Assembly with a sunset provision, which is not present in this bill. MSD neutral.

**Passed both Chambers. Awaits Governor's action.**

**PT Parity (SB 245)** – This Act would give the same parity to Delaware physical therapists, physicians, and podiatrists as already exists in all other 49 states. This Act permits physical therapists, physicians, and podiatrists to form together as a professional corporation legally authorized to render qualified related professional services. MSD is in support of this bill for several reasons, including: Delaware's current

laws in this regard are antiquated, the state is inexplicably the last to adopt this Act, and that the practice is allowed under federal Stark exemptions.

***Was not considered in committee. Legislation would have to be re-introduced next session.***

### **Voluntary Psychiatric Treatment for Foster Care ([SB 242](#)) –**

When a youth in foster care requests residential psychiatric treatment, there can be a delay in allowing them voluntary admission to a facility due to the Division of Family Services needing to obtain the youth's parent or legal guardian's consent. This bill allows the Department of Services for Children, Youth & Their Families, Division of Family Services Director or their Deputy Director to sign the request for voluntary admission to a psychiatric treatment facility for a youth in foster care. MSD supports the legislation in the interest of patient safety.

***Was not considered in committee. Legislation would have to be re-introduced next session.***

### **Utilizing National Guard Members as Certified Nursing**

**Assistants ([HB 280](#)) –** This Act would allow for rapid certification of National Guard members as certified nursing assistants (CNAs) by allowing the Department of Health and Social Services to establish the total required classroom and clinical training and mandatory facility-specific orientation hours. National Guard members have served a critical role in response efforts to the COVID-19 pandemic and their work as CNAs will help relieve staff shortages and free up in-patient bed space in Delaware hospitals. MSD supports.

***Signed in January.***

**Naloxone and Other Opioid Antagonists ([SB 292](#)) –** Currently, Naloxone is the only FDA-approved opioid antagonist; however, it is expected that many more are in the pipeline. This bill would treat those new medications in the same way under Delaware law. MSD Supports.

***Passed both Chambers. Awaits Governor's action.***

**Oral Health Screening ([HB 294](#)) –** This Act requires schools to provide each student in preschool, kindergarten, and grades two and four an oral health screening. It is unclear whether there is capacity available to implement the legislation. MSD is neutral.

***Was not considered in committee. Legislation would have to be re-introduced next session.***

**Pharmacy Testing and Treatment ([HB 399](#)) –** This bill would allow pharmacists to test for and treat certain conditions including Influenza, COVID-19, Streptococcus Pharyngitis, lice, skin conditions, and "other emerging and existing public health threats identified by the Division

of Public Health.” MSD opposed the legislation. The conditions of HIV and urinary tract infections were successfully removed from the bill. MSD also proposed an amendment that would even further limit the legislation.

***Passed both Chambers. Awaits Governor's action.***

**Physician Access to Mental Health Treatment ([SB 300](#))** – This Act updates the mandatory reporting requirements for Delaware physicians with anxiety, depression, and other mental health challenges. These changes are necessary to ensure that physicians are able to seek treatment without undue stigma or fear of loss of medical licensure. The recommended changes to the statutory reporting requirements are aligned with national best practices recommendations of leading experts including the Joint Commission on Healthcare Accreditation and the Federation of State Medical Boards. The mandatory reporting changes in this Act are also aligned with the language of the current Delaware application for medical licensure, which appears to be more aligned with best practices and compliance with the requirements of the Americans with Disabilities Act of 1990 (Pub. L. 101-336. 26 July 1990). These changes are designed to appropriately balance the need to continue to maintain proper safeguards for patients in accessing safe, high quality health care services without causing undue stigma and negative licensure consequences for physicians. MSD helped draft the legislation and supports it.

***Passed both Chambers. Awaits Governor's action.***

**Student Annual Mental Health Check ([HB 303](#))** – This bill requires coverage of an annual behavioral health well check for individuals provided by their primary care practitioner. MSD does not support mandates when there is no clear benefit and opposes legislating the practice of medicine.

***Passed both Chambers. Awaits Governor's action.***

**Interstate Compact for Audiology and Speech-Language Pathology ([SB 272](#))** – This would make Delaware the 18<sup>th</sup> state to adopt the interstate compact for audiology and speech-language pathology. It would allow for cross border accreditation and treatment. MSD was officially neutral but staff, on behalf of our specialists, successfully worked to amend the bill to make it acceptable.

***Passed both Chambers. Awaits Governor's action.***

### **Momnibus Legislative Package:**

Finally, there was a legislative package of seven bills collectively referred to as the “Momnibus Bills.” MSD was neutral on all (with the exception of HB 344) but was supportive of the Delaware Chapter of the American College of Obstetricians and Gynecologists' (ACOG's)

positions on the bills. The synopsis and status of each bill is listed below. Note that all legislation not passed would have to be reintroduced next year.

## [HB 340: AN ACT TO AMEND TITLE 31 OF THE DELAWARE CODE RELATING TO CHILD AND MATERNAL MORTALITY](#)

Improving the quality of maternal health care and ensuring full access to it improves health outcomes and reduces preventable pregnancy-related deaths. The United States has one of the highest rates of maternal mortality among high income countries and wide disparities by race that have been documented since rates separated by race were first published in 1935. Currently, Indigenous and Black women are dying at two to three times the rate of White women, Asian/Pacific Islander women, and Hispanic women. Investigating maternal deaths—specifically by obtaining information beyond vital statistics data—is imperative to understanding why people may die while pregnant, during labor and delivery, and in the postpartum period. (Source: Guttmacher Institute) Maternal mortality review is an essential component for improvement. Delaware added the review of maternal mortality to the duties of the existing Child Death Review Commission in 2008, however, the focus and processes of the Commission need improvement to match our evolving understanding of maternal morbidity and mortality, as well as racial disparities. This Act changes the name of the Commission, from “Child Death Review Commission” to “Child and Maternal Death Review Commission” to reflect the intended dual focus of the Commission. The definition of “maternal death” is updated to include death during pregnancy or within a year from the end of pregnancy, and related to, or aggravated by, the pregnancy or birth, including death by suicide. The membership of the Commission is updated to include a midwife, a doula, and a member of a community group focused on women’s health, teen pregnancy, or public health. In making appointments to the Commission, the Governor is directed to consider the racial diversity of the membership. Most of the work of the Commission and death review panels is quite properly, closed to the public, to protect sensitive medical information and other protected personal information. However, to increase access to the work of the Commission, and to provide the Commission with the insight of diverse members of the public and with other public bodies addressing similar issues, the Act requires the Commission to hold at least one annual meeting jointly with the Delaware Perinatal Quality Collaborative to discuss findings, recommendations, and initiatives of that body. The Commission is also required to publicly post its draft report to the General Assembly and Governor and accept written public comment thereon, as well as hold a public meeting in each county to present its draft findings and recommendations and accept public comment.

***Passed both Chambers. Awaits Governor's action.***

[HB 341](#): AN ACT TO AMEND TITLE 31 OF THE DELAWARE CODE  
RELATING TO TANF WORK REQUIREMENTS AND MATERNAL  
HEALTH

This Act requires that the state exempt pregnant persons and the parent or other relative primary caregiver of a child six months of age or younger from TANF work requirements.

***Was not considered in committee. Legislation would have to be re-introduced next session.***

[HB 342](#): AN ACT TO AMEND TITLE 11 OF THE DELAWARE CODE  
RELATING TO TREATMENT OF PREGNANT AND POST-PARTUM  
PRISONERS.

Delaware law already prohibits the use of restraints on women who are giving birth or in labor except in limited circumstances. This Act expands that protection to include women in the second or third trimester of pregnancy and those in the 13-week immediate post-partum period. Wrist restraints fastened in front of the body may be used during transport except during labor or delivery or while being transported with a newborn. Wrist, leg, and waist restraints may also be used in extraordinary circumstances, but a licensed medical professional must be notified as soon as practicable when waist or leg restraints are applied and examine the prisoner within 10 minutes of the notification. Leg and waist restraints are prohibited for prisoners in labor and delivery. The Act also requires that a pregnant or post-partum woman who is required to squat or cough during a strip search be provided accommodations to avoid falls and prohibits vaginal exams except those performed by a medical professional. The American College of Obstetricians and Gynecologists states that shackling a pregnant inmate increases the risk of falling, impairs evaluations for serious pregnancy-associated conditions, causes pain and skin damage, and further endangers inmates at increased risk of preeclampsia. The use of restraints in the post-partum period creates additional risks to physical and mental health.

***Passed both Chambers. Awaits Governor's action.***

[HB 343](#): AN ACT TO AMEND TITLE 31 OF THE DELAWARE CODE  
RELATING TO MEDICAID COVERAGE FOR DOULA SERVICES.

This Act requires that the Division of Medicaid and Medical Assistance present a plan to the General Assembly by November 1, 2022 for coverage of doula services by Medicaid providers.

***Passed both Chambers. Awaits Governor's action.***

[HB 344](#): AN ACT TO AMEND TITLE 16 OF THE DELAWARE CODE  
RELATING TO BIAS TRAINING FOR HEALTHCARE  
WORKERS. (Note, also discussed above)

Implicit bias, meaning the attitudes or internalized stereotypes that affect our perceptions, actions, and decisions in an unconscious

manner, exists and often contributes to unequal treatment of people based on race, ethnicity, gender identity, sexual orientation, age, disability, and other characteristics. Implicit bias contributes to health disparities by affecting the behavior of licensed health professionals and other health care staff. In some cases, explicit bias also contributes to disparities in health treatments and outcomes. Evidence of racial and ethnic disparities in health care is consistent across a range of illnesses and health care services. Racial and ethnic disparities remain even after adjusting for socioeconomic differences, insurance status, and other factors influencing access to health care. African American women are three to four times more likely than white women to die from pregnancy-related causes nationwide. African American patients often are prescribed less pain medication than white patients who present the same complaints, and African American patients with signs of heart problems are not referred for advanced cardiovascular procedures as often as white patients with the same symptoms. Implicit gender bias also impacts treatment decisions and outcomes. Women are less likely to survive a heart attack when they are treated by a male physician and surgeon. LGBTQ and gender-nonconforming patients are less likely to seek timely medical care because they experience disrespect and discrimination from health care staff, with one out of five transgender patients nationwide reporting that they were outright denied medical care due to bias. This Act is intended to provide licensed health care professionals and other health care staff with strategies for understanding and reducing the impact of their biases in order to reduce disparate outcomes and ensure that all patients receive fair treatment and quality health care by requiring annual explicit and implicit bias training for health professionals and staff of hospitals and freestanding birthing centers. Trainings are required to be conducted in a manner that allows licensed health care professionals to receive continuing education credits relevant to licensure for participating in the training. This Act takes effect January 1, 2023

***Passed both Chambers. Awaits Governor's action.***

**HB 345: AN ACT TO AMEND TITLE 11 OF THE DELAWARE CODE RELATING TO MEDICAL CARE.**

This Act ensures pregnant women and women who have given birth within the past six weeks who are subject to the custody of the Department of Corrections at Level IV or V have access to midwifery and doula services by requiring the Department to make reasonable accommodations for provision of available midwifery or doula services. This Act requires the Department to establish and provide midwifery services subject to the availability of funds designated for that purpose. This Act also requires the Department to provide written notice to pregnant and postpartum women subject to the custody of the Department at Level IV or V of the availability of midwifery and doula services.

**HB 346: AN ACT TO AMEND TITLE 31 OF THE DELAWARE CODE RELATING TO REMOTE PATIENT MONITORING DEVICES.**

This Act removes the requirement that a pregnant patient enrolled in the state Medicaid program receive prior authorization for an automated take home blood pressure cuff when the automated take home blood pressure cuff is recommended by their doctor. Without this Act, pregnant members enrolled with a Managed Care Organization (MCO) can receive an automated take-home blood pressure cuff without prior authorization while patients enrolled in the Medicaid fee for service program cannot.

***Was not considered in committee. Legislation would have to be re-introduced next session.***

If you have questions, please contact Mark B. Thompson, MHSA, Executive Director at 302-559-1134, [Mark.Thompson@medsodel.org](mailto:Mark.Thompson@medsodel.org), or Lincoln Willis, lobbyist at 302-632-9898 or [Lincoln.Willis@TheWillisGroupLLC.com](mailto:Lincoln.Willis@TheWillisGroupLLC.com).

MSD actively monitors all health-related legislation and maintains an active and visible presence in Legislative Hall on your behalf.

The Medical Society of Delaware *Legislative e-Update* is a benefit to our members, providing information on legislative activity of interest in the 151st General Assembly in Dover.



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