

## 2019 Legislative Report from Joseph F. Abate, Esq.

### Arizona Psychiatric Society Lobbyist

The 2019 session brought new challenges for the health care industry, including the new voluntary Sunrise process for scope of practice and an onslaught of health care related legislation brought on by changes in the world around us. The 2019 session saw more healthcare-related bills drop than in preceding years by far.

Helping physicians manage a successful timeline towards compliance with the ePrescribing requirements of the Governor's 2018 Opioid Act, the session began with HB2075, signed into law to allow extension of the e-prescribing mandate through next year. Representative Regina Cobb and Senator Heather Carter advanced identical bills on this issue on an expedited basis.

Early in the session, legislation was introduced to protect and preserve KidsCare funding, which had widespread support from within and outside of the physician community.

The Sunrise deadline moved to November 1<sup>st</sup> under the new guidelines, and those applications relevant to psychiatric physicians included:

- HB2548 (later Striker HB 2494) seeking expanded prescribing authority for pharmacists - After prolonged oppositional efforts led by the Arizona Medical Association and Arizona Osteopathic Medical Association, the pharmacists agreed to kill this bill and negotiated a compromise on HB2060 that allows pharmacists to provide 7-day emergency refills if certain criteria are met.
- HB2068 sought prescribing authority for Clinical Nurse Specialists, within a defined health care facility and within the protocols prescribed by the facility. The Society stood opposed to this legislation. [CLICK HERE](#) to read the letter from the APA on our behalf of our members on this issue. The Nurses Association foundation argument was a cross-walk of equivalency between CNS education and APRN education. This legislation has moved forward out of both the House and Senate Health Committees. It is expected to be adopted, but final vote in the Senate has yet to occur.
- HB2519 sought to change from physician supervision to physician collaboration by physician assistants. After negotiations with physician organizations, lead by ArMA and AOMA, the physician assistants agreed to leave the supervision relation intact in exchange for an agreement to allow a physician to supervise up to six physician assistants (up from four previously).

With thanks to Dr. Gretchen Alexander, Chair of the Legislative Committee, and Dr. Jack Potts, past Chair of the Legislative Committee, for testifying in support of the same, three Bills introduced to provide expanded housing and support to homeless, families, youth, and the seriously mental ill made it out during the last full week of Committee hearings of the House Ways & Means Committee (SB1471) and the House Health & Human Services Committee (SB1098 and SB1336). [CLICK HERE](#) to read the testimony prepared by Dr. Alexander with contributions from Dr. Carol Olson.

The Society signed on to a stakeholder letter in support of retaining the current protections of vaccination. Three version of legislation introduced in this session found Arizona in the national spotlight over the introduced anti-vaccination legislation. APS and ArMA member, Dr. Stephen Herman,

a forensic child psychiatrist, was among the physicians who testified to ask to protect vaccinations and oppose the legislations. Although the three Bills advanced out of the House Health and Human Services Committee, the Senate Health and Human Services Chair Senator Brophy McGee stated that the Committee would not hear any vaccination bills this session, and Governor Ducey announced his intention to veto any anti-vaccination legislation that advanced to his office.

The Society also joined fellow stakeholder organizations in support of HB2148 (replaced by striker amendment HB2718) for safe syringe exchange programs. Currently, it looks like the Bill is not advancing to a vote.

The Society supported SB1354 which would provide additional graduate medical education funding in the State of Arizona from AHCCCS.

There were many different forms of marijuana legislation introduced that concerned the Society; however, the current law requires adoption of any legislation regarding marijuana to be approved by a three-quarters majority, so these legislative efforts will not advance.

The legislative session is wrapping up now and the only bills remaining to be heard in Committee will be striker amendments and bills from budget or appropriations. One such bill, striker Amendment to HB2550 on the regulation of Kratom products, passed out of the Senate Appropriations Committee this week, 9-0. The bill establishes requirements and prohibitions related to the preparation, distribution, and sale of kratom products, and authorizes the Director of ADHS to impose a civil penalty against a kratom product dealer who violates prescribed regulations.

If you would like any additional information regarding the legislative session, please contact the APS Lobbyist, Joe Abate, at 602-380-8337. If you are interested in being a part of the Legislative Committee of APS, chaired by Dr. Gretchen Alexander, please contact [teri@azmed.org](mailto:teri@azmed.org).

For more information on health care legislation relevant to psychiatry included in the 2019 legislative session, see the Bill Summaries provided below.

**BILL SUMMARIES.** The bill summaries and histories that follow are copyrighted by Arizona Capitol Reports, L.L.C. If you would like any additional information, please contact the APS Lobbyist, Joe Abate, at 602-380-8337.

### **H2053: COMPETENCY EVALUATIONS; REPORTS**

If a mental health examiner determines that a defendant is competent to stand trial due to ongoing treatment with psychotropic medication, the court is authorized, in its discretion, to appoint a mental health expert who is a physician to address the necessity of continuing that treatment and a description of limitations that the medication may have on competency, and the expert's report is no longer required to address those issues. (The Society was party to a negotiated amendment on this legislation.)

### **H2059: INDEPENDENT OVERSIGHT COMMITTEES; REPORT; WEBSITE**

Each Independent Oversight Committee on the Mentally Ill and the Department of Administration is required to post a copy of its annual report on its website. (As a result of concerns raised regarding physician peer information possibly being compromised, the Society remained neutral on this legislation.)

**H2068: CLINICAL NURSE SPECIALISTS; PRESCRIBING AUTHORITY**

The Board of Nursing is required to grant to a clinical nurse specialist the privileges to prescribe and dispense pharmacological agents if the clinical nurse specialist has the education and training equivalent to the requirements to prescribe and dispense pharmacological agents of a registered nurse practitioner, and certification as a clinical nurse specialist by a nationally recognized certification entity. Clinical nurse specialists may prescribe only for patients of a licensed health care institution, and the process for prescribing is established. The Board is required to adopt rules that prohibit clinical nurse specialists from dispensing a Schedule II controlled substance that is an opioid.

**H2075: ELECTRONIC PRESCRIBING; EXCEPTIONS; DEADLINES**

The requirement to have an electronic prescription order to dispense a Schedule II controlled substance that is an opioid applies in all counties beginning January 1, 2020, instead of only counties with a population of 150,000 or more. Establishes exceptions to the requirement, including during any time period in which an established electronic prescribing system or pharmacy management system is not operation or available in a timely manner, and for a written prescription order provided to a patient in a Veterans Administration facility, health facility on a military base, or Indian health service facility. The Board of Pharmacy is required to consult with the Computerized Central Database Tracking System Task Force and establish by rule additional exceptions to the electronic prescribing requirements. Also, the duties of the Arizona Regulatory Board of Physician Assistants are modified to require the Board to certify physician assistants for 30-day prescription privilege for schedule II, schedule III, schedule IV and schedule V controlled substances that are opioids or benzodiazepine, subject to the statutory limits for those controlled substances. Retroactive to January 1, 2019. Emergency clause. AS PASSED HOUSE.

**H2118: UNAUTHORIZED PRACTICE; HEALTH PROFESSIONS**

It is a class 5 (second lowest) felony to engage in the "unauthorized practice of a health profession" (defined). A health profession regulatory board is required to regulate the unauthorized practice of the profession the board regulates. A health profession regulatory board is authorized to issue a cease and desist order to stop a person from engaging in the unauthorized practice of a health profession, and is required to refer each verified complaint for the unauthorized practice of a health profession to the county attorney or Attorney General for prosecution.

**H2148: SYRINGE SERVICE PROGRAMS; AUTHORIZATION**

A municipality, county or nongovernmental organization or any combination of these entities are authorized to establish and operate a needle and hypodermic syringe service program. A program is required to offer a list of specified services, including disposal of used needles and hypodermic syringes, injection supplies at no cost, and access to kits that contain an opioid antagonist or referrals to programs that provide access to an opioid antagonist. An employee, volunteer or participant in the program cannot be charged with or prosecuted for possession of a needle, hypodermic syringe or other injection supply item obtained from or returned to a program or possession of a residual amount of a controlled substance contained in a used needle, hypodermic syringe or injection supply item obtained from or returned to a program, if the person claiming immunity provides written verification that the item was obtained from a program. (Moved forward as Striker Amendment HB2718.)

**H2166: UNFAIR CLAIMS PRACTICES; COST SHARING**

The list of unfair claim settlement practices for insurers is expanded to include for a health insurer that provides pharmacy benefits or a pharmacy benefits manager that administers pharmacy benefits to fail to include any amount paid for an enrollee or on behalf of an enrollee by another person when

calculating the enrollee's total contribution to an out-of-pocket maximum, deductible, copayment, coinsurance or other cost sharing requirement.

#### **H2285: PHARMACY BENEFIT MANAGERS; PHARMACY BENEFITS**

Pharmacy benefit managers are required to update the price and drug changes for each "list" (defined as the list of drugs for which a pharmacy benefit manager has established a "maximum allowable cost") s/he maintains every seven business days, make available to each network pharmacy the sources used to determine the maximum allowable cost price at the beginning of and on renewal of a contract and at least once annually, and establish an appeal process for maximum allowable cost pricing. These requirements apply to all new and existing contracts between a pharmacy benefit manager and a licensed pharmacy beginning on January 1, 2020. Pharmacy benefit managers are prohibited from restricting a retail pharmacy in its network from dispensing a 90-day fill of a prescription medication pursuant to State Board of Pharmacy rules if specified conditions exist. A plan sponsor or pharmacy benefit manager cannot prohibit a retail pharmacy from offering the limited delivery of prescription drugs by mail to a patient or the hand delivery of prescription drugs to a patient by an employee or contractor of the pharmacy. Some exceptions. AS PASSED HOUSE.

#### **H2494: HEALTH INSURERS; NOTICE; PROVIDERS**

If a health insurer acquires a health care provider network that includes health care providers that are not contracted directly with the insurer, the insurer is required to notify each provider and allow the provider to opt out of the network or contract with the insurer. A contract between a health insurer and a health care provider that is issued, amended or renewed on or after January 1, 2020 to provide health care services to the health insurer's enrollees is prohibited from restricting the method of payment from the insurer to the provider to a credit card payment or an electronic funds transfer payment. If a health insurer initiates payments to a health care provider using electronic funds transfer payments, the insurer is required to notify the provider if a fee is associated with a payment method, advise the provider of available payment methods, and provide clear instructions to select an alternative payment method.

#### **H2519: PHYSICIAN ASSISTANTS; PHYSICIAN RELATIONSHIP**

A physician assistant is required to practice medicine with physician "collaboration" (defined) instead of physician "supervision." The definition of "collaboration" is identical to the definition of "supervision" that is deleted by this legislation. (See update provided above.)

#### **H2548: PHARMACISTS; PRESCRIBING AUTHORITY; TREATMENTS**

A licensed pharmacist who meets requirements prescribed by rule by the Board of Pharmacy is authorized to prescribe and administer a list of medications to a person who is six years of age or older. The Board is required to adopt rules for prescribing and administering treatments, including rules for pharmacist certification, record keeping and reporting requirements. The Department of Health Services is required to establish and maintain by rule a list of treatments that may be administered by a pharmacist pursuant to a prescription order. (Legislation withdrawn as detailed above.)

#### **S1036: AZ MEDICAL BOARD; CONTINUATION**

The statutory life of the Arizona Medical Board is extended eight years to July 1, 2027. Retroactive to July 1, 2019.

#### **S1086: HEALTH PROFESSIONS; TEMPORARY LICENSURE**

Health profession regulatory boards are authorized to grant authority to the board's executive director to issue and approve licenses, certifications and registrations to an applicant or licensee who fulfills all requirements of the applicable state statute and meets other specified requirements. Health profession regulatory boards are authorized to issue a "temporary license" (defined) to allow an applicant who is not a licensee to practice in Arizona if the applicant holds an active unrestricted license in another state and meets other specified requirements. Health profession regulatory boards are required to approve or deny an application for a temporary license within 30 days. If granted, a temporary license expires the earlier of 30 days after it is granted or on approval or denial of the applicant's license application. Health profession regulatory boards are prohibited from issuing more than two temporary licenses to the same applicant within a consecutive 12-month period. Health profession regulatory boards are authorized to establish an application and fee in rule for temporary licensure.

**S1089:INSURANCE;TELEMEDICINE**

Health and disability insurance policies or contracts are required to provide coverage for any health care services that are provided through telemedicine if the health care service would be covered were it provided in-person, instead of only health care services for a specified list of conditions. Insurers are prohibited from imposing any unique conditions for coverage on services that are provided through telemedicine, including imposing any originating site restrictions, distinguishing between patients in rural or urban locations or limiting coverage to a subset of medical conditions, medical specialties or settings. Effective January 1, 2020.

**S1098: HOUSING ASSISTANCE PILOT PROGRAM; APPROPRIATION**

Establishes a Housing Assistance Pilot Program to provide grants to assist individuals who are transitioning off of public assistance in securing housing, and a 4-member Housing Assistance Advisory Board to administer the Program. The Board is required to establish criteria and an application process for housing assistance grants, and award housing assistance grants to qualified applicants. The Board is required to submit a report on the Program to the Governor and the Legislature by December 15, 2022. The Program and the Board self-repeal October 1, 2023. Appropriates an unspecified amount (blank in original) from the general fund in FY2019-20 to the Board.

**S1134: CHILDREN'S HEALTH INSURANCE PROGRAM; APPROPRIATIONS**

If the Director of the Arizona Health Care Cost Containment System (AHCCCS) determines that monies may be insufficient for the Children's Health Insurance Program (CHIP), the AHCCCS Administration is permitted, instead of required, to stop processing new applications for CHIP until verifying that funding is sufficient. Appropriates \$1,586,900 from the general fund and \$15,141,500 from the CHIP Fund in FY2019-20 to AHCCCS to administer and provide services under CHIP.

**S1246: BEHAVIORAL HEALTH; FOSTER CHILDREN**

The Department of Child Safety is required to provide behavioral health services for each child who is in a voluntary placement, in Dept custody in an out-of-home placement, or in the custody of a Probation Dept and placed in foster care. Conditionally enacted on funding being made available by January 1, 2024 from the federal government and the state for the Dept to provide behavioral health services to eligible members of the Dept's comprehensive medical and dental program. Effective on the later of the day on which the condition is met or October 1, 2020.

**S1354: GRADUATE MEDICAL EDUCATION; APPROPRIATION**

Appropriates an unspecified amount (blank in original) from the general fund in FY2019-20 to the Arizona Health Care Cost Containment System Administration for graduate medical education programs in critical access hospitals and community health centers in the rural areas of Arizona.

**SCR1017: MATERNAL MENTAL HEALTH**

The members of the Legislature proclaim May 2, 2019 as Maternal Mental Health Day in Arizona.