



SECTION 11. Sections 5, 6 and 9 of this act become effective October 1, 2011, and apply to causes of actions arising on or after that date. The remainder of this act becomes effective October 1, 2011, and applies to actions commenced on or after that date.
In the General Assembly read three times and ratified this the 13th day of June, 2011.

SENATE
PASSED NOTWITHSTANDING
EXECUTIVE OBJECTION
JUL 13 2011
AYES 35 NOES 12

House notified by Special mess.
Sarah Clapp

Walter H. Dalton
Walter H. Dalton
President of the Senate

Dale R. Folwell
Dale R. Folwell
Speaker Pro Tempore of the House of Representatives

HOUSE
PASSED NOTWITHSTANDING
EXECUTIVE OBJECTION
JUL 25 2011
AYES 74 NOES 42

Approved *Senate notified*
5:48 p.m. this
Special Message
Denise Weeks
JUL 25
Denise Weeks

Beverly E. Perdue
Governor

OVERRIDE

VETO

2011
7/25/11
Denise Weeks

Beverly E. Perdue
Beverly Eaves Perdue, Governor
Date *6/24/11*

2011
LEGISLATIVE SUMMARY

RECEIVED FROM GOVERNOR
Date: *6/24, 2011*
Time: *5:00 p.m.*
Sarah Clapp
Senate Bill 33-Ratified

Your future will be determined by the
elected officials who fill these seats...



GIVE TO YOUR NCMS PAC

www.ncmedsoc.org/pac

NCMS PAC is the political education and action committee of the North Carolina Medical Society, organized to direct financial support to state and federal candidates in North Carolina.

Your continued investment in the NCMS PAC is vital. Together, we can continue making the legislative goals of the North Carolina Medical Society a reality.

LEGISLATIVE HIGHLIGHTS IMPACTING THE PROFESSION OF MEDICINE

Introduction (letter from Robert W. Monteiro, MD)	4
Tort Reform	5
SB 33 - Medical Liability Reforms	5
HB 542 - Tort Reform for Citizens and Business.....	8
Other Tort Reform Legislative.....	9
State Budget.....	12
Scope of Practice	15
Insurance Regulation	22
Implementation of Federal Programs.....	27
Regulation of Medicine.....	30
Mental Health	36
Controlled Substances	39
Public Safety.....	41
Certificate of Need	44

2011

LEGISLATIVE SUMMARY

Overview of the Session

Message from the NCMS Legislative Cabinet Chairman

The 2011 Session of the North Carolina General Assembly was a long and hard-fought battle to enact meaningful medical liability reform in our state – the number one legislative priority of the NCMS this year. Success was found in the final days of the regular session with the passage of SB 33 – Medical Liability Reforms, and then reclaimed during the July special session with a veto override of the same bill.

Senate Bill 33 will bring stability and predictability to our current liability system by establishing a \$500,000 cap on noneconomic damage awards, with very limited exceptions. The bill also raises the burden of proof required when litigating emergency treatment negligence and requires that claims regarding care to minors be brought in a more timely manner, cutting physician tail coverage in half from 20 years to 10. Finally the new law also separates trials into two fair but separate processes, guarantees a physician's right to appeal when an award exceeds malpractice insurance limits and strengthens the expert witness rule.

A second victory for medical liability reform came with the passage of HB 542 – Tort Reform for Citizens and Business. In addition to making changes to the state's general tort system, this legislation requires evidence of past medical expenses be limited to the amount actually paid to satisfy the medical bills, often referred to as "actual medicals." This is a monumental accomplishment and has the potential to greatly reduce jury awards that are inflated by misleading information.


In other advocacy efforts North Carolina's physicians were met by many supporters in both chambers of the General Assembly this year, but also with many obstacles. A deteriorating state budget left lawmakers with the task of filling an almost \$4 billion budget deficit. More than half a billion of the necessary reductions was answered by the Department of Health and Human Services, cutting much needed funding from the Medicaid program. You'll read in the pages of this summary that the physician fee schedule was spared from the 2% Medicaid provider rate cut. However, cost savings must be achieved through the physician-led Community Care of North Carolina program in order to hold this position throughout the fiscal year.



Robert Monteiro, MD on the Senate floor.

As is true in every year, 2011 also brought with it many bills seeking to expand the scope of practice for many non-physician health care providers as well as establish licensure for new providers. This year your Medical Society was successful in defending against the passage of bills which would have greatly expanded pharmacists' immunizing authority, licensed naturopaths as "doctors," and created a second regulatory board to license direct-entry midwives in North Carolina.

This year we saw a busy session full of many successes – all of which NCMS will spend future sessions defending. It is more important now than ever to become an engaged member of organized medicine and to encourage your colleagues to do the same. The short session is just around the corner – please join us in shaping the future of medicine in 2012.



Robert Monteiro, MD

North Carolina



Medical Society

Leadership in Medicine

TORT REFORM

Medical Liability Reforms a Reality in North Carolina

NCMS Position: Support

Senate Bill 33

Sponsor(s): Apodaca (R-Henderson), Brown (R-Onslow), Rucho (R-Mecklenberg)

Status: Veto Overridden, S.L. 2011-400

Summary: The initiative to pass meaningful medical liability reforms began in 2003. In December 2001, St. Paul Insurance Company, an issuer of over 2,500 medical malpractice insurance policies in North Carolina alone, withdrew from the malpractice insurance market. This event put a spotlight on the elements of North Carolina's medical liability system that were dysfunctional and inordinately expensive. The medical community worked to have the General Assembly address these concerns. There was little interest among the legislators who were leading the General Assembly at the time. The push continued, but reform foundered for years in a legislative environment that seemed indifferent to the problems of unavailable coverage, excessive costs, and limitations on access to medical care.

The 2010 elections brought an influx of conservative influence and new leadership to both chambers of the General Assembly. The new leaders received strong support from the medical community. Senate and House leaders made commitments early on to address excessive costs imposed by North Carolina's litigation rules, including those pertaining specifically to medical malpractice liability. An exhaustive committee process began this year in the Senate, followed by the House. During the debate it became apparent that proponents of reform needed a strong media relations plan. The NCMS, with the financial support of numerous partners, formed North Carolinians for Affordable Health Care, Inc., which led the public opinion and media relations program to educate voters about the need for medical liability reform.

After months of debate and consensus building, Senate Bill 33 was passed by both the North Carolina Senate and House in June. Governor Perdue vetoed the legislation on June 24, alleging a lack of "balance" in the final legislation. The NCMS together with its coalition partners formulated a plan to override Gov. Perdue's veto. Doing so would require the support of a super-majority (i.e., 3/5ths of those legislators present and voting). The Senate quickly voted to override Perdue's veto, leaving one major hurdle to cross: a House vote, which would require significant bipartisan support to achieve the super-majority required by the state Constitution. The House would have its vote in three weeks. Physicians, hospital administrators, nursing home executives, and many business leaders answered the call to action and worked with their local legislators to get their support. NCMS held town hall meetings across the state to mobilize doctors. On July 24, 2011 the House voted 74-42 to override Perdue's veto of Senate Bill 33, four votes more than the required super-majority.

Senate Bill 33-Medical Liability Reforms, is the first major medical liability reform legislation to become law in North Carolina since 1995. Senate Bill 33 has the following provisions:

1. Cap on Noneconomic Damages. Currently there is no limit on the amount of compensatory damages that can be awarded in any type of civil lawsuit in North Carolina (Punitive damages have been capped since 1995, but they are punitive, not compensatory damages). Senate Bill 33 limits the amount of noneconomic compensatory damages that can be awarded in medical malpractice actions only. The cap is set at \$500,000, indexed every three years to an independent measure of inflation (All Urban Consumer CPI). The issue of stacking, or payment of the cap multiple times in a single case, is addressed as follows: no plaintiff will receive more than the cap amount in noneconomic damages, and no defendant shall be required to pay more than the cap amount in noneconomic damages. In short, the cap is not stackable against an individual defendant, and the plaintiff cannot circumvent the cap by suing more than one defendant. There is an exception to the cap that is applied based on a two-part test. If the jury finds that 1) the plaintiff suffered disfigurement, loss of use of part of the body, permanent disfigurement, or death, and 2) the defendant physician's conduct was in reckless disregard for the rights of the patient, grossly negligent, fraudulent, intentional or malicious; then the cap will not apply to those claims. To prevent the cap from becoming a "floor" for noneconomic damages, jurors and potential jurors are not to be informed of the cap. This section of SB 33 becomes effective October 1, 2011 and applies to medical malpractice lawsuits commenced on or after that date.



Robert Monteiro, MD with Senator Pete Brunstetter (R-Forsyth).

2. Separate Trials for Negligence and Damages. Physicians have legitimate concerns about a jury's ability to distinguish between a bad outcome and negligent medical care. One factor contributing to this concern is the ability of plaintiff's lawyers to introduce evidence of the magnitude of harm contemporaneously with evidence that the medical care fell below the applicable standard, leaving the jury to sort out the differences. Senate Bill 33 addresses this concern by permitting the defendant to obtain a two-phase trial. In the first phase, the focus is on the care delivered by the defendant and whether that care met or exceeded the applicable standard. No evidence of the magnitude of harm to the plaintiff is permitted in the first phase. Only if the jury finds in Phase 1 that the defendant physician was negligent will the trial proceed to Phase 2. During Phase 2, evidence of the magnitude of harm is admissible. The same jury is used for both phases. This option is limited to cases where the plaintiff is seeking more than \$150,000, and there is an exception if the plaintiff can show good cause why separate trials should not be held. This section of SB 33 becomes effective October 1, 2011 and applies to all civil actions commenced on or after that date, including medical malpractice lawsuits.

3. Pre-litigation Expert Review. Currently, individual patients considering filing a medical malpractice action against their physician must have an expert review the medical care in question before the lawsuit is filed. Based on the review, that expert must be willing to testify that the medical care was below the applicable standard. The expert must also be expected to qualify under the rules governing medical experts (i.e., same or similar specialty, actively practicing or teaching that specialty within a year of the alleged negligent treatment). The North Carolina Court of Appeals has interpreted this requirement to be satisfied if the plaintiff's lawyer presents the

facts to the expert in the form of a hypothetical, which obviously would not require reviewing any of the applicable medical records. Many physicians would consider a review of the medical records to be essential, under the circumstances. Accordingly, Senate Bill 33 repeals the ruling permitting hypothetical reviews and requires pre-litigation expert reviews to include a review of all the reasonably available medical records. This section of SB 33 becomes effective October 1, 2011 and applies to medical malpractice lawsuits commenced on or after that date.

4. **Full Right to Appeal.** Current law generally requires anybody appealing a judgment against them must purchase a bond for the entire amount of the judgment, up to \$25,000,000. If a physician has a large judgment against them that exceeds their policy limits, there is frequently no market for bonds to satisfy this requirement. Senate Bill 33 addresses this situation by requiring courts to set appeal bonds at a level that is “proper and reasonable” based on all relevant factors, which must include a) the amount of the judgment; b) the limits of applicable insurance policies; and 3) the net worth of the defendant. This section of SB 33 becomes effective October 1, 2011 and applies to all civil actions commenced on or after that date, including medical malpractice actions.

5. **Medical Malpractice Lawsuits Against Facilities.** Current law permits individuals with substantial knowledge about the standard of care among the same or similar type of facilities to testify as experts in medical malpractice lawsuits against those facilities. Senate Bill 33 establishes that this level of knowledge is mandatory. This section of SB 33 becomes effective October 1, 2011 and applies to medical malpractice lawsuits commenced on or after that date.

6. **Definitions Used in Medical Malpractice Lawsuits.** Adult care homes are added to the definition of “health care provider.” In addition, the definition of “medical malpractice action” is broadened to include lawsuits that allege a breach of administrative or corporate duties to the patient (e.g., negligent monitoring or supervision if those claims arise out of the same facts or circumstances as a malpractice claim against a health care professional). This section is effective October 1, 2011 and applies to causes of action in medical malpractice arising on or after that date.

7. **Standard of Emergency Medical Care.** Current law in North Carolina applies the same rules to malpractice actions emanating from emergency medical care as apply to all other malpractice claims. There is an exception for Good Samaritan care. Senate Bill 33 clarifies for all malpractice claims that the applicable standard of practice is determined, in part, by the extant circumstances at the time of care. More importantly, SB 33 elevates the evidentiary burden for claims arising from treatment of an “emergency medical condition,” as defined by the serious jeopardy, impairment or dysfunction prong of the EMTALA definition. Such claims must now be proved by “clear and convincing evidence” rather than mere “preponderance of the evidence.” This change addresses the level of confidence that a jury must have that the physician was negligent, and that the negligence caused harm, before they can require payment of damages. The “preponderance of the evidence” standard allows the jury to be only 51% confident, yet still return a verdict against the physician. The “clear and convincing evidence” standard requires the jury to be fully convinced before returning a verdict against the physician. This section is effective October 1, 2011 and applies to causes of action in medical malpractice arising on or after that date.

8. **Explicit Verdict Form.** To ensure proper administration of the cap on noneconomic damages, juries will be required to indicate what amount, if any, is awarded for noneconomic damages. This section of SB 33 becomes effective October 1, 2011 and applies to medical malpractice lawsuits commenced on or after that date.

9. **Timeliness of Claims.** Current law allows professional malpractice actions brought on behalf of minors to be brought anytime before the minor reaches the age of 19 years. This can lead to serious problems, such as locating witnesses and revisiting the applicable standard of care at the time of the alleged negligence. Senate Bill 33 requires that medical malpractice claims be brought before the minor reaches the age of 10 years or within 3 years of the alleged negligence – whichever is longer. There are exceptions for minors who are adjudicated as abused or neglected (they have the longer of age 10 or three years to sue, beginning on the date of the adjudication), and for minors in the custody of a county, the State or an approved child placing agency (they have the longer of age 10 or one year from the last date of custody). This section is effective October 1, 2011 and applies to causes of action in medical malpractice arising on or after that date.

10. **Severability.** If the cap on noneconomic damages is declared unconstitutional or otherwise invalid by a court of competent jurisdiction, the verdict form provision also is repealed, but the validity of the other sections of SB 33 are not affected. If any other provision is held invalid, the remaining provisions are unaffected. This section is effective on October 1, 2011.

Within 36 hours of the House veto override vote, the plaintiff's lawyers were working to delay implementation of the cap on noneconomic damages. The NCMS will remain diligent in its efforts to protect the integrity of reforms in SB 33 and to ensure their appropriate implementation. We have been assured by several plaintiff's lawyers that the cap on noneconomic damages will be challenged in court. NCMS is preparing to defend the cap in court and in the General Assembly. Physicians will be hearing from the NCMS about ways to help defend these important reforms.



NC House votes to override veto of SB 33

Tort Reform for North Carolina Citizens and Businesses

NCMS Position: Support

House Bill 542

Sponsor(s): Rhyne (R-Lincoln), McComas (R-New Hanover), Brisson (D-Bladen), Crawford (D-Granville)

Status: Passed, S.L. 2011-283

Summary: As part of a larger effort to reform the state's tort system, the General Assembly enacted House Bill 542, which included changes important to medicine. When a lawsuit involves personal injury, the cost of medical care is almost always an issue. Injured parties may be compensated for the cost of medical care they receive. To prove those costs, plaintiff's lawyers have been permitted to introduce documentation of the full charges billed by health care providers, and to have the jury compute damages based on that information. House Bill 542 shifts the jury's focus to the amounts actually paid or required to be paid to satisfy medical bills, which are often ½ or less of the full charges. This change, strongly supported by the NCMS, is expected to have a significant impact on the amounts paid for any civil claims in which medical costs are an issue, including medical malpractice. Other changes included in HB 542:

1. The standards for expert testimony addressing scientific, technical or other specialized knowledge are strengthened in the North Carolina Rules of Evidence to incorporate the Daubert standard, which

is already in effect in about half the states and the federal system. Under HB 542, such experts may only testify if: 1) the testimony is based upon sufficient facts or data; 2) the testimony is the product of reliable principles and methods; and 3) the witness has applied the principles and methods reliably to the facts of the case. The rules governing standard of care experts in medical malpractice actions were previously strengthened, in 1996, in a bill pushed by the NCMS.

2. In small cases where there is an unwarranted refusal by the defendant to negotiate or settle a claim, and the plaintiff ultimately is awarded more than the defendant's best offer made 90 days or more before trial, the judge may impose the plaintiff's attorneys' fees on the defendant as "court costs." House Bill 542 limits the use of this rule to cases at or below \$20,000 in damages (previously \$10,000), imposes the 90 day look-back requirement (previously not addressed), and caps plaintiff's attorneys' fees in these situations at \$10,000 (previously unlimited).

3. Those who possess land (owners, lessees, occupants) do not owe a duty of care to a trespasser and are not subject to liability for injury to a trespasser. There are exceptions for intentional harm, harms to trespassing children (under 14), and harm to imperiled trespassers discovered by the possessor of the land. This provision applies to wrongful conduct occurring on or after October 1, 2011.

All of the above changes are effective October 1, 2011 and apply to causes of action that arise on or after that date.

Reform Medical Malpractice Evidentiary Rules

NCMS Position: Oppose

House Bill 154

Sponsor(s): Faison (D-Orange)

Status: House Judiciary Subcommittee A

Summary: House Bill 154 proposes to change the rules of evidence in medical malpractice claims to allow the plaintiff's counsel to inquire or present evidence regarding the existence, contents and coverage of any liability insurance policy of any defendant. The bill also would allow this information to be presented during juror selection. This legislation was referred to the House Judiciary Subcommittee A, but was not debated this year.

Medical Malpractice Insurance Coverage

NCMS Position: Oppose

House Bill 155

Sponsor(s): Faison (D-Orange)

Status: House Committee on Insurance

Summary: House Bill 155 was one of many pieces of legislation regarding medical malpractice insurance and procedure filed by Representative Bill Faison (D-Orange) this session. This bill would have required the NC Commissioner of Insurance to establish a comprehensive classification rating



plan for physician's liability insurance. This new rating plan would not base insurance rates on specialty; instead it would pool physicians, setting the same insurance rates across the board, regardless of specialty. The NCMS opposes this proposal because although it has the potential to lower liability insurance for some high-risk specialties, it also has the potential to greatly increase the rates for other specialties. This bill was referred to the House Insurance Committee but was not debated this year.

Discovery/Medical Peer Review

NCMS Position: Oppose

House Bill 551

Sponsor(s): Faison (D-Orange)
Status: House Judiciary Subcommittee A

Summary: Representative Bill Faison (D-Orange) introduced HB 551, as he has in previous sessions, with the intent to allow information obtained during peer review proceedings to be admissible into evidence in medical malpractice trials. Under current law such information is confidential. House Bill 551 would not make this information public record under the current definition, but would require it be available during the discovery processes and admissible as evidence. The bill also proposed to allow those in attendance at medical peer review meetings to be called to testify in civil proceedings, with patient consent. This legislation was referred to the House Judiciary Subcommittee A but was not debated this year.

Tort Reform Act of 2011

NCMS Position: Oppose

House Bill 732

Sponsor(s): Blust (R-Guilford), Daughtry (R-Johnston)
Status: House Committee on Rules

Summary: Introduced by Representative John Blust, HB 732 proposed to eliminate contributory negligence in North Carolina. Under current law, if a plaintiff is even one percent responsible for their injury, damages are not recoverable. House Bill 732 would change the law, stating that a claimant cannot recover damages if they are 50% or more at fault for their injury, unless intentional conduct by a defendant also contributed to the injury.

The bill also would require responsibility to be divided among parties found to be responsible for an injury, including the claimant, totaling 100 percent. However, the court could also reassign any percentage of contributory fault to any party whose intentional wrongful conduct resulted in injury.

In the final week of session this bill was dramatically amended in the House Judiciary Subcommittee A, reworded to become a study on the need for tort reform in North Carolina. The bill now proposes to create a 25-member blue ribbon commission to evaluate the issue, and was rolled into HB 773, The Studies Act of 2011. The Studies Act did not receive final approval from the General Assembly prior to its adjournment in June, but could be revived later.

Med Mal Review Board

Senate Bill 642

Sponsor(s): Hartsell (R-Cabarrus)
Status: Senate Judiciary I

Summary: Senate Bill 642 proposed the creation of a 21-member Medical Malpractice Review Board. The Board would consist of 7 licensed health care providers, 7 attorneys and 7 public members – appointed by the Governor, Speaker of the House and Senate President Pro-Tempore. Members would serve three-year terms.

All clerical and other services required by the new Board would be supplied by the North Carolina Medical Board and/or the Administrative Office of the Courts. Under the proposed law, any complaint alleging malpractice shall be dismissed if not reviewed by the Board and the Board determines by the greater weight of the evidence that the provider is at fault. Any findings, determinations, or written arguments before the Board would not be subject to discovery or subpoena in a medical malpractice trial.

Senate Bill 642 was introduced and referred to the Senate Judiciary I Committee, but was not debated this session.

Civil Justice System Reforms

Senate Bill 674

Sponsor(s): Brunstetter (R-Forsyth), Brown (R-Onslow), Rucho (R-Mecklenburg)
Status: Senate Committee on Judiciary I

Summary: This legislation was introduced mid-session by Senator Pete Brunstetter (R-Forsyth) in order to address many of the tort reforms not included in SB 33 – Medical Liability Reforms. Senate Bill 674 included a provision to allow evidence of actual medical expenses paid by a plaintiff to be heard by juries. This piece of the bill would later become law via the passage for HB 542 - Tort Reform for Citizens and Business. Modifications to rules regarding attorney's fees, collateral source evidence, expert testimony review, and trespasser responsibility were all proposed in SB 674. This bill was introduced and referred to the Senate Judiciary I Committee, which did not debate the legislation due to the passage of both SB 33 and HB 542.

BUDGET POSES SPECIAL CHALLENGES FOR MEDICINE IN 2011 AND BEYOND

House Bill 200: Appropriations Act of 2011

NCMS Position: Support

Sponsor(s): Brubaker (R-Randolph)

Status: Veto Overridden, S.L. 2011-145

Senate Bill 58: Modify FMAP Cuts

NCMS Position: Support

Sponsor(s): Brunstetter (R-Forsyth), Hunt (R-Wake), Stevens (R-Wake)

Status: Passed, S.L. 2011-23

Senate Bill 32: Hospital Medicaid Assessment/Payment Program

NCMS Position: Support

Sponsor(s): Brunstetter (R-Forsyth), Clodfelter (D-Mecklenburg)

Status: Passed, S.L. 2011-11

Summary: The 2011 General Assembly faced a daunting task with a budget shortfall expected to be nearly 18% of the previous year's budget or about \$4 billion dollars. As it turned out, the new leadership only had to find a little more than half of that money, but the pain of cutting back was still felt across all sectors of the budget. The NCMS was fully engaged in the development of the budget as it relates to medical and health services. Through participation in a broad coalition physician and hospital interests, the NCMS sought to achieve the goal of proper Medicaid funding within the means available to the State of North Carolina.

Physicians faced an immediate threat with a third cut to Medicaid provider rates looming from the previous year's budget. At the encouragement of the NCMS and others, Senate and House leaders moved quickly with SB 58 to stop the pending physician rate cut that had been delayed by Governor Perdue in late August of the previous year. Attention then turned to cuts that would have to occur to the Medicaid program and provider rates in the new budget. With Medicaid accounting for nearly one fourth of the General Fund, there was no way for rates and services to go unscathed.

The Governor's Budget proposal included \$16 million in cuts to Medicaid services. Some of those services included limits on physical therapy, speech therapy and eye exams. The Governor's budget included additional prior authorization programs as well. The Health and Human Services (HHS) budget writers quickly accepted those suggestions, but that was far from enough.

Rate reductions ranging from 2% to 5% were discussed over the course of the next three months. All the while, the NCMS and other provider groups were under intense pressure to find savings anywhere possible.

In the end, rates would be reduced across the board by 2% but with a number of exceptions. The first exception was that physician services would be held harmless. This was in part due to the drastic rate cuts in the last budget as well as hospitals offering to bear the burden of the cut. Instead of hospitals being cut on inpatient and outpatient services, they would take a 7.4% cut on inpatient to cover the inpatient cut, outpatient cut and physician services cut.

Community Care of NC (CCNC) offered a number of proposals to expand care management through their local, physician driven networks. HHS budget writers debated how much more that could be expected from CCNC in addition to the \$250 million or more that is being saved annually through this program. The final budget included a line item for CCNC to achieve another \$90 million in state savings. This savings would become the threshold question to determine whether providers would receive another cut. If CCNC is not on track by October 1, then DHHS has the power to cut rates an additional 2% across the board, including physicians. A specific push to include additional specialties in coordinated care management, targeting other provider groups to expand enrollment and additional management services were necessary.

CCNC appears to be on track at this point, but additional budget challenges still face DHHS. The NCMS is working to ensure that no cuts will be leveraged on physician services without just cause. With the economy in a sluggish recovery, it is not likely that budget adjustments in the 2012 Short Session will be any easier. Physicians will need to be ready to talk with their legislators about the needs of their Medicaid patients and the requirements to be able to deliver on those needs.

The NCMS leadership, NCMS PAC and professional staff are executing plans to guard against harmful cuts to the Medicaid program. These plans depend heavily on the direct involvement of its member physicians and PAs, and on cooperation with the relevant specialty organizations in North Carolina.

Spending Cuts for the Current Fiscal Year

Senate Bill 109

Sponsor(s): Stevens (R-Wake); Brunstetter (R-Forsyth); Hunt (R-Wake)
Status: Passed, S.L. 2011-15

Summary: Senate Bill 109 passed both the House and Senate in answer to the Governor's veto of SB 13 – Balanced Budget Act of 2011, the previous week. Senate Bill 13 would have given the Governor the authority to cut \$400 million in state spending from specific areas outlined by the bill, including reductions to unexpended economic development funds. Governor Perdue vetoed SB 13 citing that the bill would “interfere with the State's capacity to generate jobs and retain industry.”

SB 109 was filed the day after the Governor's veto of SB 13, and granted the Governor the authority to cut \$537.7 million from the current fiscal year without specifics beyond language that prevented her from finding cuts in the judicial or legislative branches of state government. This version of the bill gave the Governor discretion in the cuts, including those to unspent economic development dollars. The Governor signed SB 109 on March 25, 2011.

Smart Card Biometrics Against Medicaid Fraud

NCMS Position: Support

Senate Bill 307

Sponsor(s): Hartsell (R-Cabarrus)
Status: Passed, S.L. 2011-117

House Bill 337

Sponsor(s): Tolson (D-Edgecombe); Johnson (R-Cabarrus)
Status: House Committee on Health and Human Services



2011 Leadership College attending White Coat Wednesday

Summary: This legislation, signed into law on June 13, 2011, creates a pilot program under the Department of Health and Human Services to begin using Smart Cards in place of the current Medicaid Assistance cards. Smart Cards would allow providers to authenticate recipient eligibility at the point of service, reducing card sharing and other fraudulent behavior. This new system would also prevent phantom billing by providers. SB 307 authorizes the Department to contract with a third party vendor for 6-12 months to enroll some Medicaid recipients, create and distribute photo-bearing Smart Cards and to implement their use in the system. A full report is due to the General Assembly by June 30, 2012. If the pilot program achieves adequate savings to cover its costs, it will be considered a success and can be implemented statewide. If adequate savings are not achieved the Department can choose to revise and extend the pilot.

Tobacco Products Tax Increase

NCMS Position: Support

Senate Bill 338

Sponsor(s): Purcell (D-Scotland)
Status: Senate Committee on Rules

House Bill 341

Sponsor(s): Weiss (D-Wake), Luebke (D-Durham), Glazier (D-Cumberland), Womble (D-Forsyth)
Status: House Committee on Rules

Summary: Senator Bill Purcell, MD (D-Scotland) introduced Senate Bill 338, proposing a tax increase on tobacco products that would equal a \$1.00 per pack increase for a pack of cigarettes. The legislation indicates that such a tax increase would result in a 15.4% decrease in youth smokers and prevent 81,200 North Carolina children from becoming addicted adult smokers. Consistent with their pledge to not increase taxes this year, the leadership of the General Assembly did not debate SB 338 or HB 341, both were referred to the Rules Committees in their respective chambers.

SCOPE OF PRACTICE

Study Use of Alternative Medicine

House Bill 412

Sponsor(s): Farmer-Butterfield (D-Wilson),
Parmon (D-Forsyth), Hall (D-Durham)

Status: House Committee on Rules

Summary: Representative Jean Farmer-Butterfield (D-Wilson) filed HB 412 with the goal of studying the use of alternative medicine in North Carolina. The bill calls on the Division of Public Health to work with the NC Medical Board to study whether health care providers licensed in North Carolina should be allowed to practice alternative medicine when treating patients. The bill was immediately referred to the House Rules Committee and was never discussed in that committee. The bill was incorporated into HB 773, the Studies Act of 2011, which did not pass during the session but could be revived.

Establish Music Therapy Practice Act

NCMS Position: Oppose

House Bill 429

Sponsor(s): Insko (D-Orange), Rapp (D-Madison), Keever (D-Buncombe)

Status: House Committee on Health and Human Services

Summary: House Bill 429 proposed to create a three-member North Carolina Music Therapy Licensure Board that would license and regulate Licensed Music Therapists (LMT) within the state. Educational requirements include a bachelor's degree and the passage of board certification exams. This bill was approved by the Legislative Joint Committee on New Licensing and subsequently referred to the House Health Committee during the final week of session. The Health Committee never heard the bill. Due to the licensure fees required, HB 429 was not subject to the crossover deadline and is eligible for consideration in the short session next year.

Midwifery Licensing Act

NCMS Position: Oppose

House Bill 522

Sponsor(s): Wilkins (D-Person), Hurley (R-Randolph), Current (R-Gaston), Carney
(D-Mecklenburg)

Status: House Committee on Health and Human Services

Senate Bill 662

Sponsor(s): Bingham (R-Davidson)
Status: House Committee on Health Care

Summary: Following last year's vote by the Midwifery Joint Committee against the licensure of Certified Professional Midwives (CPMs), the North Carolina Friends of Midwives (NCFOM) pushed throughout the 2011 Session for the passage of either of their licensure bills. Despite several NCFOM advocacy days, neither bill was heard in a health committee. However, both bills received approval by the Joint Legislative Committee on New Licensing Boards, making them eligible for consideration by the House or Senate Health Committees in the short session next year.

This legislation would propose to create a second licensing board to regulate midwifery in North Carolina, legalizing the independent practice of direct entry midwifery by CPMs. This bill would place no educational requirements on CPMs who become licensed before 2013, requiring only the credential of CPM as awarded by the North American Registry of Midwives (NARM), an advocacy organization for the group. The legislation also fails to establish any licensure fee for CPMs, leaving many enforcement questions unanswered, and places no limitations on the pregnancies CPMs can attend.

Update/Modernize Physical Therapy Act

NCMS Position: Oppose

House Bill 619

Sponsor(s): Howard (R-Davie), McLawhorn (D-Pitt), Carney (D-Mecklenburg), Ingle (R-Alamance)
Status: Language was substituted for another bill entirely.

Summary: This bill, as filed, would have potentially interfered in the delivery of patient care by substantially altering traditional MD/PT and MD/AT relationships. Specifically, a subset of Physical Therapists (PT) in North Carolina has been pursuing changes that would prohibit PTs from working as employees of a medical practice for patient care purposes. In addition, the group has sought to limit the role of Athletic Trainers (AT) in medical practices. The NCMS and the NC Orthopaedic Association worked in tandem to discourage legislators from pursuing this bill this session. We also had support from a significant number of ATs and PTs whose employment arrangements would have been invalidated by the proposal. The NCMS is committed to ensuring that physician-owned PT service is an option for medical and surgical patients. We also believe that ATs should be able to provide patient services consistent with their statutory scope of practice while under physician supervision.

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Clinical Exercise Physiologist Licensure

NCMS Position: Oppose

House Bill 639

Sponsor(s): M. Alexander (D-Mecklenburg)

Status: House Committee on Health and Human Services

Summary: House Bill 639 proposed to create a five-member North Carolina Clinical Exercise Physiologist Licensure Board that would license and regulate Clinical Exercise Physiologists (CEP) within the state. One seat on the proposed licensure board would be reserved for a physician. Educational requirements include a master's degree and passage of the CEP exam administered by the American College of Sports Medicine. This bill was referred to the House Health Committee. However, before the Health Committee can hear the bill, it must be reviewed by the Legislative Joint Committee on New Licensing. This did not happen during session. Due to the licensure fees required, HB 639 was not subject to the crossover deadline and is eligible for consideration in the short session next year.

Establish Radiologic Technicians Licensure

NCMS Position: Oppose

House Bill 753

Sponsor(s): Insko (D-Orange), Murry (R-Wake)

Status: House Committee on Rules

Summary: House Bill 753 also is referred to as the "NC Consistency, Accuracy, Responsibility and Excellence (CARE) in Medical Imaging and Radiation Therapy Act." The bill proposed to create an 11-member North Carolina Medical Imaging and Radiation Therapy Board that would license and regulate Licensed Radiologic Technicians (LRT) within the state. Two of the 11 seats on the board would be reserved for physicians (Radiologist and Radiation Oncologist). Educational requirements include four years of education or the passage of an equivalent examination. This bill was approved by the Legislative Joint Committee on New Licensing and referred to the House Committee on Rules during the final week of session, likely where it was intended to be incorporated into the 2011 Studies Act. However, as of the last night of session, HB 753 had yet to be incorporated into the Studies Act, HB 773. Due to the licensure fees required, HB 753 was not subject to the crossover deadline and is eligible for consideration in the short session next year.

Study Radiologist Assistant Licensure

NCMS Position: Oppose

House Bill 878

Sponsor(s): Wainwright (D-Craven)

Status: House Committee on Rules

Senate Bill 672

Sponsor(s): Purcell (D-Scotland)
Status: Senate Committee on Appropriations

Summary: This bill proposed to create an 11-member commission that would study the licensure and regulation of Radiologist Assistants within the state. Two of the 11 seats on the commission would be reserved for representatives from the physician community and the radiologist community. Both HB 876 and its companion bill, SB 672, were incorporated into HB 773, the Studies Act of 2011, which did not pass before the session adjourned but could be revived in a special session this year or next year's regular short session.

Pedorthist Licensure

NCMS Position: Oppose

Senate Bill 230

Sponsor(s): Hartsell (R-Cabarrus)
Status: Senate Committee on Finance

Summary: Senate Bill 230 proposed to create a seven-member North Carolina Pedorthist Licensure Board which would license and regulate Licensed Pedorthists (LP) within the state. Educational requirements include a high school diploma and certification by the Board for Certification in Pedorthics (BCP). This bill was introduced by Senator Fletcher Hartsell (R-Cabarrus) and immediately referred to the Senate Finance Committee, chaired by Senator Hartsell. However, before the Finance Committee can hear the bill, it must be reviewed by the Legislative Joint Committee on New Licensing. This did not happen during Session. Due to the licensure fees required, SB 230 was not subject to the crossover deadline and is eligible for consideration in the short session next year.

Expand Pharmacists' Immunizing Authority

NCMS Position: Oppose

Senate Bill 246

Sponsor(s): Hartsell (R-Cabarrus)
Status: House Committee on Health and Human Services

House Bill 444

Sponsor(s): Wilkins (D-Person), Parfitt (D-Cumberland), McCormick (R-Yadkin), Avila (R-Wake)
Status: House Committee on Health and Human Services

Summary: The role of pharmacists in administering immunizations was first discussed at the Joint Legislative Health Care Oversight Committee in October 2010. Early into the 2011 Session of the

General Assembly, Senator Fletcher Hartsell (R-Cabarrus) filed SB 246 with the goal of expanding the authority of pharmacists in administering vaccinations and immunizations. As filed, the bill would have allowed immunizing pharmacists to administer any CDC-approved vaccination or immunization in the following manner:

- At the request of any patient age 18 or older.
- With parental consent of any patient age 14-17.
- With a prescription order for any patient age 7-13.

With well-known opposition from the NCMS, the NC Academy of Family Physicians and the NC Pediatric Society, the bill underwent a total of five re-writes before the end of Session in June. The final draft of this legislation required a written protocol to be developed by the Division of Public Health and included the following narrower expansion of CDC-approved vaccines and immunizations:

- With a prescription OR standing order for any patient age 18 or older.
- Flu vaccines for any patient age 14 or older (those under 18 would require parental consent).
- With a prescription order for any patient age 14-17.
- No vaccinations or immunizations for patients 13 or younger.

The latest draft of this legislation received a favorable report by the Senate Health Committee following an amendment that involved the NC Medical Board in the protocol drafting process. Following passage on the Senate floor, the House Health Committee heard SB 246 during the final week of Session but did not vote on the measure. Due to continued objections by the NC Academy of Family Physicians, the House Health Committee under the leadership of Representative Mark Hollo (R-Alexander) appointed a sub-committee to evaluate the legislation. The subcommittee did not meet before adjournment.

In the final days of session, one piece of this legislation was rolled into SB 609 – Facilitate Locum Tenens Physicians, which allows immunizing pharmacists to administer flu vaccinations to any individual age 14 and over. This amendment was supported by the NC Academy of Family Physicians, the NC Pediatric Society and the NCMS. However, the remaining provisions of SB 246 are eligible to be discussed in next year's short session.

Naturopathic Licensing Act

NCMS Position: Oppose

Senate Bill 467

Sponsor(s): Hartsell (R-Cabarrus), Apodaca (R-Henderson)

Status: Senate Committee on Finance

House Bill 847

Sponsor(s): Barnhart (R-Cabarrus), Collins (R-Nash), Murry (R-Wake), Fisher (D-Buncombe)

Status: House Committee on Health and Human Services

Summary: The Naturopathic Licensure Act was introduced this year by a new sponsor, Senator Fletcher Hartsell (R-Cabarrus). The bill sat quietly for many months before being discussed at the first meeting of the Joint Legislative Committee on New Licensing Boards in May.

This legislation proposes to create a new licensing board for Naturopathic Doctors in the state, of which there are approximately 30 practitioners who would be eligible. The original bill provided no enforcement ability over those currently practicing natural medicine without a license, included many expansions of the scope of practice previously introduced in legislation, and did not require adequate fees for the operation of the board.

SB 467 was heard in the Senate Health Committee during the final week of session and few questions were permitted, including those of physician committee members. The NCMS held a lengthy discussion with those advocating for this legislation before it was heard in the Senate Finance Committee, and many NCMS proposed changes were made to the bill. However other concerns of the NCMS and opposition expressed by other members of the medical community – including Oncologists, Family Physicians, Chiropractors, and Physical Therapists – led the bill to be displaced during the final committee meeting. Instead, the legislation was placed into HB 773, the Studies Act of 2011. However, due to the fees involved in this legislation, it is eligible to be considered in the short session next year and is very likely to be debated a second time.

INSURANCE REGULATION

Amend Health Insurance Risk Pool Statutes

NCMS Position: Support

House Bill 138

Sponsor(s): Dockham (R-Davidson)

Status: Passed, S.L. 2011-58

Summary: House Bill 138 was introduced early in the 2011 session and passed quickly through the legislative process, becoming law in April. The bill made a handful of revisions to the statute governing the state's Health Insurance High Risk Pool, also known as Inclusive Health. House Bill 138 increased the number of successive terms Board members are allowed to serve from two to three and also added language to specify that funding from premium subsidies may come from both federal grants and from the pool's own funding. Finally, the range of rates for pool participants was potentially lowered by shifting from 150-200% of individual standards rates down to 135-175%.

Insurance Amendments – AB

House Bill 298

Sponsor(s): Dockham (R-Davidson)

Status: Passed, S.L. 2011-196

Summary: House Bill 298 makes changes in the state's insurance laws in various areas, from health insurance to coverage for crop adjustments. The bill was passed by both chambers of the General Assembly and signed into law by the Governor on June 23, 2011. The final version of the bill codifies

the existing Seniors' Health Insurance Information Program, put in place to counsel seniors regarding their options for Medicare coverage. More specifically related to health insurance and patients is a provision that prohibits an insurer from using a schedule of premium rates for health benefit coverage until a copy of the rates is filed with the Commissioner of Insurance and approved for use. The Commissioner has 60 days to approve proposed rates – which by statute cannot be excessive, unjustified, inadequate or unfairly discriminatory.

Insurance Co-Pays for Chiropractic Services

NCMS Position: Oppose

House Bill 496

Sponsor(s): T. Moore (R-Cleveland), McLawhorn (D-Pitt)

Status: House Committee on Insurance

Summary: As introduced, House Bill 496 would require insurance co-pays for medically necessary chiropractic services to be equal to or less than co-pays required for primary care services that are medically necessary. This bill was introduced and referred to the House Insurance Committee, but was not debated before the end of the 2011 Session.

Protect and Put NC Back to Work

NCMS Position: Support as Amended

House Bill 709

Sponsor(s): Folwell (R-Forsyth), Dollar (R-Wake), Hager (R-Rutherford), Crawford (D-Granville)

Status: Passed, S.L. 2011-287



NC Orthopaedic Association White Coat
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Senate Bill 544

Sponsor(s): Brown (R-Onslow), Apodaca (R-Henderson), Davis (R-Macon)

Status: Senate Committee on Insurance

Summary: Before the introduction of HB 709, bill sponsor Representative Dale Folwell (R-Forsyth) held many meetings with interested stakeholders to discuss the future of the Workers Compensation Act in North Carolina. Workers Compensation reform became a key priority for the General Assembly's new leadership in 2011, and a compromise bill was passed by both chambers and signed by the Governor in June.

The NCMS was a key participant in the negotiations, and changes made throughout the lengthy legislative process made for a much-improved bill agreed to by the business coalition, NCMS, organized labor and the plaintiff's bar.

Provisions of primary concern to NCMS are as follows:

Second Opinions

When requested in writing by the employee, the employer may agree to authorize and pay for a second opinion performed by a physician. Where the parties do not agree, the employee may ask the Industrial Commission to order the exam.

Change of Provider

The employee may select a provider to attend, prescribe, and assume the employee's case subject to Industrial Commission approval. Where the parties disagree about the care, the IC can order necessary treatment. The employee has a higher burden to convince the IC that the change of treatment or provider is necessary. In deciding, the IC may disregard or give less weight to the opinion of the health care provider from whom the employee sought treatment before requesting authorization for the change. This replaced previously problematic language requiring the IC to disregard physician opinions.

Reasonable Access to Medical Information

The NCMS assisted the bill sponsor in rewriting this section to help better control how employers communicate with physicians and their staff about workers comp patients. The law will now include a clear process that employers must follow to access "relevant medical information" through a medical practice. This term is clearly defined in the new law. The steps also are structured to protect medical practice resources so that when a request for information is made, there should be no question how to respond.

An employer may obtain the employee's relevant medical records without the employee's authorization; however the employer must provide the employee with a copy of the records received. An employer may also communicate with a provider in writing without the employee's authorization, but only to obtain information not available in the medical records. The employer may ask only limited questions related to diagnosis, treatment, return to work, etc. These questions will be similar to those on the Medical Status Questionnaire. An employer may orally communicate with the provider to obtain information not contained in the medical records, not available through written communications, and not otherwise available. The employer must give the employee prior notice and an opportunity to participate in the conversation. The provision intends to make conversations with the physicians a last resort. In addition to all of these provisions, an employer also is now able to submit to a physician additional information (e.g., surveillance materials) not contained in medical records. The employee must receive advance notice of this and has an opportunity to object to that communication.

Language also is included in the law to require the Industrial Commission to establish an annual fee to compensate physicians for time spent communicating with parties involved in Workers Compensation claims. Language also exists to protect physicians from liability for releasing medical information under the new law.

Other Notable Provisions

The new law instructs the Industrial Commission to adopt rules for electronic billing, which will address the inefficient billing practices that have long plagued medical practices and work comp carriers. The NCMS has been advocating for e-billing and administrative simplification in workers' comp for nearly 10 years.

The law establishes a 500-week cap for employee's claiming total temporary disability benefits. These benefits were previously unlimited. There are also new limitations on the types of injuries where permanent total disability benefits are available.

The law also clarifies the rules surrounding independent medical exams requested by employers.

State Health Plan/Appropriations and Transfer II

Senate Bill 323

Sponsor(s): Apodaca (R-Henderson)
Status: Passed, S.L. 2011-85

Summary: Revisions to the administration and operations of the State Employees' Health Plan took center stage early in the 2011 legislative session with the introduction of SB 265 – State Health Plan Appropriations and Transfer. This bill proposed that state employees begin paying monthly premiums for their health insurance coverage and took steps to increase annual deductibles, co-payments and co-insurance under the plan. It also repeals the Comprehensive Wellness Initiative which became law during the 2009 Session, and required enrollees who use tobacco products or who have a high Body Mass Index (BMI) to enroll in the Basic coverage plan.

This bill was passed by both chambers of the General Assembly despite heavy opposition from the North Carolina Association of Educators. However, once on the Governor's desk, SB 265 was vetoed. In her veto message, the Governor cited a lack of state employee input into the proposal as a reason.

Rather than vote to override the Governor's veto, Senate Bill 323 - originally introduced as the Insurance Amendments Law, was gutted and replaced with language taking a second look at State Health Plan reforms. Senate Bill 323 was a highly negotiated bill between both sides of the aisle, the Governor's office and the public stakeholders involved. The final version of the new health plan still requires monthly premiums to be paid by state employees, but premiums are lower than those proposed in the first bill. Under SB 323, retirees remain eligible to enroll in the Basic plan without a monthly premium. This bill also repeals the Comprehensive Wellness Initiative. After much debate, Senate Bill 323 would eventually pass both chambers and become law without the Governor's signature on May 23, 2011.

One week following the passage of SB 323, the General Assembly would also pass HB 578 – State Health Plan/Additional Changes. This legislation, signed by the Governor, allows the State Health Plan to enact cost-saving measures, such as wellness programs, and use those savings to allow all state employees to enroll in the Basic coverage plan without a monthly premium for fiscal years 2011-2012 and 2012-2013.

Freedom to Negotiate Health Care Rates

NCMS Position: Support

Senate Bill 517

Sponsor(s): Apodaca (R-Henderson)
Status: House Committee on Judiciary

Summary: Senate Bill 517 was filed with the intention of prohibiting health insurers from using Most Favored Nation clauses in contracts with medical providers. This issue had been rolled into the Studies Bill of 2010 after some debate during that legislative session.

Most Favored Nation clauses require that physicians give their lowest price to a certain insurer and restrict the physician from offering a lower rate to any other health plan. The clause also can be countered to require a physician to take no greater reimbursement from other insurers for certain services. The debate of this bill during the 2011 Session was equally as controversial as last year, with large health insurers on both sides of the debate. Senate Bill 517 did not pass in the House prior to the end of session, but debate on the proposal is expected to continue during the 2012 short session.

Health Care Sharing Organizations

Senate Bill 608

Sponsor(s): Hunt (R-Wake)
Status: Passed, S.L. 2011-103

Summary: This bill, now state law, exempts groups referred to as Health Care Sharing Organizations from the state's health insurance regulatory laws. In order to qualify as a Health Care Sharing Organization, the group must have achieved non-profit status from the Internal Revenue Service. There are a handful of these organizations operating across the country today, many of which are founded on religious principles. Participants contribute financially to one another's health care needs with the Health Care Sharing Organization acting only as the administrator of the plan. The organization does not touch the money shared between participants. The organization pools health care bills submitted by participants each month, and then sends statements to all organization participants letting them know what their monthly contribution should be. The organization assumes no risk and makes no promises to pay, setting it apart from traditional insurance models. Senate Bill 608 was passed by both chambers and signed into law by the Governor without controversy, and is effective October 1, 2011.

Update Electronic Prescription Rules

Senate Bill 774

Sponsor(s): Brock (R-Davie)
Status: Senate Judiciary Committee I

Summary: Senate Bill 774 proposed to require the NC Board of Pharmacy to adopt new rules

regarding the standards for electronic prescribing software and hardware in North Carolina. The bill would have required all E-prescribing software and hardware to be HIPAA-compliant. And any advertising with the program is prohibited if it has the potential to hinder the prescribing decision of a practitioner at the point of care. This bill was introduced in the Senate but never debated in committee.

IMPLEMENTATION OF FEDERAL PROGRAMS

Protect Health Care Freedom

House Bill 2

Sponsor(s): Stam (R-Wake), Barnhart (R-Cabarrus), Hollo (R-Alexander), Murry (R-Wake)
Status: Vetoed by the Governor

Senate Bill 23

Sponsor(s): Clary (R-Cleveland), Rouzer (R-Johnston), Pate (R-Wayne)
Status: Senate Committee on Judiciary II

Summary: House Bill 2 was filed the first day of the 2011 legislative session with the intent of excluding the state of North Carolina from the individual mandate to purchase health insurance put in place by the federal Patient Protection and Affordable Care Act (PPACA). The legislation proposes that no law or rule shall compel a person to provide for health care services or medical treatment or to contract with or enroll in a public or private health care system or health insurance plan. The law also would prohibit any taxes, fees or fines from being placed upon an individual for refusing to provide for health care services or medical treatment for themselves. Some exceptions are made for those under the custody of the Department of Corrections, for involuntary commitments, in Workers Compensation cases, for newborn screenings, etc. The most heavily debated section of the bill would require the NC Attorney General to bring and defend a lawsuit against the federal government on behalf of the citizens of North Carolina upon the enforcement of the individual mandate required by the enactment of the PPACA.

House Bill 2 moved quickly through the legislative process during the early days of session, and was ratified on February 23, 2011. Days later Governor Perdue vetoed the bill, marking House Bill 2 as the first of 15 vetoes the Governor would issue this session. The House failed to override this veto by a vote of 68-51, falling short of the 3/5ths majority required. The Senate did not attempt to override the Governor's veto of this bill.

North Carolina Health Benefit Exchange

NCMS Position: Support

House Bill 115

Sponsor(s): Dockham (R-Davidson), Brubaker (R-Randolph), Wray (D-Northampton); Murry (R-Wake)

Status: Senate Committee on Rules

Summary: This legislation would authorize the creation of a North Carolina Health Benefit Exchange. The bill passed a floor vote by the House of Representatives, gaining bipartisan support, but was not debated in Senate committee before the end of session. The bill would begin the implementation process for the Health Benefit Exchange as required by the federal Patient Protection and Affordable Care Act (PPACA). The Exchange would be headed by a non-profit Board of Directors with the ability to create the “Expedia.com of Health Insurance,” as described in the House Insurance Committee.

The NCMS worked closely with proponents of this bill to bring North Carolina closer to “meaningful progress” in establishing an exchange, as required to receive additional federal funding for it. Meaningful progress is required to be shown no later than January 2012, and the Exchange should begin enrolling individuals by January 2013. Due to the short time frame mandated and the massive infrastructure required to launch the Exchange, the NCMS supported the passage of this bill during the 2011 Session.

Opponents of the bill criticized the structure of the Board of Directors, which in HB 115 includes representatives from the provider, insurer, and consumer communities. A second bill, HB 126, North Carolina Health Benefit Exchange Act, also was filed this session with the goal of creating a Health Benefit Exchange with a consumer-driven governing body. However, HB 126 was not taken up in the House Health Committee this session.

Facilitate Statewide Health Information Exchange

NCMS Position: Support

Senate Bill 375

Sponsor(s): Stein (D-Wake), Brunstetter (R-Forsyth)

Status: Passed, S.L. 2011-337

Summary: Senate Bill 375 was passed by the General Assembly and signed in to law by the Governor on June 27, 2011. The law adds a new section to Chapter 90 of the General Statutes and sets forward the framework for a statewide Health Information Exchange. The NC HIE is a voluntary network for the electronic submission of health information among providers, health plans, and clearinghouses in a manner consistent with HIPAA standards.

Individual patients have the ability to opt-out of the HIE and therefore not have their information shared within the provider community. This information would become available to an entity only in the event of a medical emergency where the information could assist in the diagnosis and treatment of the emergency medical condition and a conversation with the patient regarding the recession of their opt-out is not practical.

The new law also provides that any health care provider who relies in good faith upon any information provided through the NC HIE will not incur criminal or civil liability for damages caused by inaccurate or incomplete information within the HIE.

Opponents of the new law cited concerns regarding the public education involved with the HIE and the difficulty of the opt-out program. There are many implementation questions that will be answered as the HIE Board works to put the provisions of SB 375 in to action, but the passage of this legislation is a critical first step towards improved access to information across the health care system.

Medicaid and Health Choice Provider Requirements

NCMS Position: Support

Senate Bill 496

Sponsor(s): Pate (R-Wayne)

Status: Veto Overridden, S.L. 2011-399

Summary: Senate Bill 496 implements the program integrity provisions of the federal Patient Protection and Affordable Care Act (PPACA), in ensures that the North Carolina Department of Health and Human Services (NCDHHS) has the tools to tackle real fraud in Medicaid, and it provides individual Medicaid providers who come under the Department's scrutiny to claim more due-process protections.

The new law requires the state to implement a process to screen those seeking to become Medicaid providers, as required by the PPACA. The amount of scrutiny given to an application depends on the type of provider. Physicians, mid-level practitioners, medical groups, and clinics are designated in the law as "limited-risk providers," meaning that they pose the lowest level of fraud risk to the Medicaid system. Therefore, DHHS review of physician applications is relatively mild, including license verification, billing privilege verification, and database checks. By contract, moderate and high-risk providers become subject to on-site visits and even fingerprinting in some instances.

Billing agents, clearinghouses, and alternate payees who submit Medicaid claims also must register with the Department.

Before enrollment, a representative of each new provider also must complete DHHS trainings designed to reduce fraud and abuse in the Medicaid program. The law also clarifies how DHHS may collect overpayments and assessments against providers when payment suspension is appropriate. To perform an extrapolation audit against a provider, DHHS must show that the provider failed to "substantially comply" with the law. Current law does not require such a strict standard.

Finally, if a provider appeals an adverse determination made by the Department, the provider may ask for a hearing with a state Administrative Law Judge. The Department bears the burden of proof in this proceeding. The judge's decision is final, unless the losing party appeals to state Superior Court.

Senate Bill 496 passed both chambers before the end of session, but the Governor vetoed it. The Senate and the House then successfully overrode the veto in July, and Senate Bill 496 became law.

Conform Medical Record Laws

NCMS Position: Support

Senate Bill 607

Sponsor(s): Stein (D-Wake)

Status: Passed, S.L. 2011-314

Summary: Senate Bill 607 was filed by Senator Josh Stein (D-Wake) to clarify existing law on shared health information, specifically mental health records, in North Carolina. Current law did not allow mental health providers, all of which operate as facilities, to coordinate general health information with other HIPAA-compliant providers such as Community Care of North Carolina. This inadequacy in the statute not only made it difficult for primary care providers to receive critical health information regarding patients shared with mental health providers, but also any shared information would subject a provider to a \$500 fine for each offense.

Senate Bill 607 was passed by both chambers of the General Assembly and signed by the Governor on June 27, 2011. The new law repairs the shortcomings of the previous statute, and puts into place guidelines that allow for improved care coordination across the primary care and mental health care sectors.

REGULATION OF MEDICINE

Allow PAs and NPs to Sign Death Certificates

NCMS Position: Support

House Bill 331

Sponsor(s): Hollo (R-Alexander), Brubaker (R-Randolph), Dollar (R-Wake), Justice (R-Pender)

Status: Passed, S.L. 2011-197

Senate Bill 191

Sponsor(s): Mansfield (D-Cumberland)

Status: House Committee on Health and Human Services

Summary: Both House Bill 331 and Senate Bill 191 were filed in response to concerns raised by the North Carolina Medical Board regarding the inefficiency of the current process for signing death certificates. Some nursing homes and funeral facilities had expressed concerns regarding the time frame within which death certificates, which require a physician signature, were being processed. As originally proposed, HB 331 would have stated that physician assistants and nurse practitioners would be permitted under law to sign death certificates. The NCMS worked with the North Carolina

Medical Board and the bill sponsor to include language that would specify that PAs and NPs would be permitted to sign death certificates, but only as allowed in their supervisory agreements with their supervising physicians. HB 331 easily passed both chambers, and the Governor signed it into law.

Notification to Treat Minors/12 or Younger

NCMS Position: Oppose

House Bill 347

Sponsor(s): Randleman (R-Wilkes), Hurley (R-Randolph), Avila (R-Wake)
Status: House Committee on Health and Human Services

Summary: House Bill 347 was introduced by Representative Shirley Randleman (R-Wilkes) with the goal of amending current state law regarding the parental notification requirements for the medical treatment of minors. This bill would require that a physician notify a parent or guardian of any child age 12 or younger when treated for venereal disease, pregnancy, abuse of controlled substances or alcohol or an emotional disturbance. Notification must be given within 48 hours of medical treatment. HB 347 was referred to the House Health Committee early in the session and was never heard by the Committee, making it ineligible for further consideration in the 2012 short session.

Patient Access to Pathological Materials

House Bill 795

Sponsor(s): Steen (R-Rowan), Murry (R-Wake), McComas (R-New Hanover)
Status: Senate Committee on Health Care

Summary: Representative Fred Steen (R-Rowan) introduced HB 795 with the goal of reducing the amount of paperwork required of patient's when attempting to access their own pathological materials. After several revisions, the bill now defines pathological materials as the patient's cytological materials, bodily fluids, tissues, organs, medical waste, paraffin blocks, and pathology slides. These materials can be requested in writing by the patient or their legal counsel, and any request must be fulfilled within 30 days. The bill does allow the provider to impose a fee necessary to carry out the request and to use best practices when determining how to release these materials. In the final debate on the House floor, this bill was amended to include a provision prohibiting the release of materials which may pose a public health risk. The sponsors of this legislation were very open to concerns of both the NCMS and the Hospital Association during the debate of this bill, and have expressed an interest in continuing to work on future concerns when HB 795 is debated in the Senate during the 2012 short session.

Abortion – Woman's Right to Know Act

House Bill 854

Sponsor(s): Samuelson (R-Mecklenburg), McElraft (R-Carteret)
Status: Veto Overridden, S.L. 2011-405

Senate Bill 769

Sponsor(s): Brock (R-Davie), Harrington (R-Gaston), Daniel (R-Burke)
Status: Senate Committee on Health Care

Summary: One of the more controversial bills to land on the Governor's desk this session, HB 854, establishes specific requirements of informed consent before abortion procedures. Introduced by the House Majority Whip, Representative Ruth Samuelson (R-Mecklenburg), the bill moved expeditiously through the legislative process and received final approval during the last week of the session.

House Bill 854 requires a 24-hour waiting period for any abortion procedure not deemed a medical emergency. No later than 24 hours before the procedure a provider must inform the patient of health risks associated with abortion (specifically detailed in the bill), the gestational age of the fetus and additional written materials to be developed by the state. An ultrasound also must be performed within four hours of the procedure, at the expense of the patient.

The North Carolina Obstetrics and Gynecological Society opposed this legislation because of its intrusion into the physician patient relationship. Under the Civil Remedies section of the law, the patient or the father of the unborn child can take legal action against a provider who knowingly or recklessly violates the new informed consent law. Injunctive relief against the provider, including attorney's fees, also can be sought by the Attorney General, or any patient, parent, sibling or guardian of a patient for willfully violating the informed consent standards.

House Bill 854 was vetoed by the Governor on June 27, 2011. The veto was overridden by the House of Representatives and then the Senate during the Special Session on Redistricting in July. The law becomes effective in October of this year.

Clarify Penalty Unauthorized Practice of Medicine

NCMS Position: Support

Senate Bill 31

Sponsor(s): Mansfield (D-Cumberland)
Status: Passed, S.L. 2011-194

Summary: Senator Eric Mansfield, MD (D-Cumberland) filed SB 31 within the first weeks of session in response to an incident in Cumberland County where an individual was providing care to patients in an emergency room setting without a license to practice medicine. Current North Carolina law is inconsistent in its penalties for practicing medicine without a license. Practitioners who come from out of state without a license are guilty of a Class I Felony, the lowest grade felony – equivalent to the penalty for stealing pine straw. In-state individuals who put patients at risk by practicing medicine without a license are guilty only of a misdemeanor. It is this inconsistency that causes offenders such as the individual in Cumberland County to avoid meaningful prosecution.

Senate Bill 31 attempted to bring parity to the penalty by making it a Class I felony to practice medicine without a license no matter where you live. This legislation moved easily through the Senate Judiciary I Committee and the Senate floor vote without question or opposition from either side of the aisle. On the House side of the debate, the bill was met with significant opposition from

various groups of individuals who openly practice medicine without a license in our state, including lay midwives, homeopaths, naturopaths, herbalists, etc. Advocates for the licensure of lay midwives offered support for the legislation if it were amended to include a specific carve out for their behavior. However, the NCMS was successful in stopping such an amendment from being introduced in the House Judiciary B Subcommittee, and the bill received a favorable report without amendment.

Following a successful committee recommendation, but before the House floor vote, several Democratic caucus members raised concerns regarding the implications this bill would have for lay midwives and naturopaths who were seeking licensure in the General Assembly this year. Neither of those new licensure bills passed this year, but an amendment was added to the final version of SB 31 to require that to be subject to a felony conviction, a person must have represented themselves as licensed or said they are a physician. The bill sponsor agreed to this compromise.

The NCMS finds that in the end this bill failed to address the continued discrepancies in the law, and speaks only to the terminology rather than the behavior of practicing medicine without authorization.

Allow Electronic Signatures on Death Certificates

NCMS Position: Support

Senate Bill 190

Sponsor(s): Mansfield (D-Cumberland)

Status: Senate Committee on Judiciary I

Summary: Senator Eric Mansfield, MD (D-Cumberland) filed SB 190 to amend the current law regarding electronic signatures on death certificates. Current law requires that the receipt of electronic signatures on death certificates be permitted only when specifically approved by the State Registrar, which would require ad hoc approval of each signature. This bill proposed to allow the receipt of electronic signatures, for example a faxed death certificate, at any time. It is believed that allowing this will expedite the processing of death certificates for funeral directors, insurers, etc. This legislation was filed the same day as SB 191, also sponsored by Senator Mansfield, which would allow Physician Assistants and Nurse Practitioners to sign death certificates. The electronic signature language proposed by SB 190 also was included in SB 191 and in its House companion HB 331, which became Session Law. Therefore it was not necessary for SB 190 to be heard in committee.

Confidentiality/Investigative Info/Optometry

Senate Bill 349

Sponsor(s): Purcell (D-Scotland), Pate (R-Wayne)

Status: Passed, S.L. 2011-336

Summary: Senator Bill Purcell, MD (D-Scotland) filed SB 349 at the request of the Optometry Board. As originally filed, this bill would have set the same standard for investigative confidentiality in Optometry Board proceedings as held by the NC Medical Board – allowing the Board to consider patient information that may not have been expressly consented to release by the patient. This information would be available to the Board only during closed session for investigation purposes,

and the information would not become public record. The Ophthalmology Society, with NCMS support, was successful in amending the bill in several ways, the first of which scaled back some expanded protections for optometrists under investigation by the Board that were broader than that of NCMB licensees. Secondly, the bill was amended to put in place the same malpractice reporting requirements for Optometry that is required of NCMB licensees. This will require Optometrists to report all medical malpractice judgments or awards to their board, and for the board to make all judgments in excess of \$75,000 available to the public. Judgments or awards dating to May 1, 2008 must be reported. This bill was passed by both chambers and presented to the Governor during the final week of Session, and the Governor signed it into law.

DNR Form Signatures

NCMS Position: Oppose

Senate Bill 357

Sponsor(s): Kinnaird (D-Orange)

Status: Senate Committee on Judiciary II

Summary: Similar to legislation introduced in previous sessions, SB 357 would expand the requirements under Chapter 90 for discontinuing or withholding life-prolonging measures. Current law requires that a physician obtain concurrence from either of these parties in the following order: a guardian of the patient's person, a health care agent, an attorney-in-fact with powers to make health care decisions for the patient, the patient's spouse, a majority of the patient's reasonably available adult parents and children, a majority of the patient's reasonably available adult siblings, or an individual who has an established relationship with the patient and can make decisions in good faith as to the patient's wishes. SB 357 would require that whichever concurrence is achieved, that individual or individuals must sign a Do Not Resuscitate (DNR) order form. The NCMS opposed this legislation as it has in the past, and the General Assembly took no action on the bill this year. Having failed to receive a committee hearing and meet crossover deadlines, this bill is ineligible to be heard in the 2012 short session.

Facilitate Locum Tenens Physicians

NCMS Position: Support

Senate Bill 609

Sponsor(s): Rouzer (R-Johnston), Rabon (R-Brunswick)

Status: Passed, S.L. 2011-315

House Bill 666

Sponsor(s): Hollo (R-Alexander), Justice (R-Pender)

Status: Senate Committee on Rules

Summary: Senate Bill 609 amends the state's insurance laws to make it less cumbersome for locum tenens physicians to work and bill for their services in North Carolina. A locum tenens physician

who is temporarily substituting their services for the services of a patient's regular physician will now be able to bill an insurer under the name of the regular physician. This requires that the locum tenens physician be properly credentialed, and bill for services not more than 90 consecutive days in a year. Records must be kept by the regular physician regarding services provided by the locum tenens physician and payments made to the locum tenens physician. Sponsored by Senator David Rouzer (R-Johnston), SB 609 passed both chambers without opposition. During the final House floor debate, the bill was amended to include language to clarify the Medicaid assessment to hospitals laid out in SB 32, and also to allow immunizing pharmacists to administer flu vaccinations to anyone age 14 and older as negotiated during the House debate of SB 246.

Prescription Integrity Act

Senate Bill 718

Sponsor(s): Mansfield (D-Cumberland), Pate (R-Wayne)

Status: Senate Committee on Health Care

Summary: Also known as therapeutic substitution, SB 718 specifies that pharmacists may substitute prescriptions only with those specifically listed as therapeutically equivalent in the FDAs Approved Drug Products with Therapeutic Equivalence Evaluations, also known as the Orange Book. Senator Eric Mansfield, MD (D-Cumberland) filed SB 718 out of concern that while implied in current law, some pharmacists may be prescribing similar medications rather than truly equivalent medications, subjecting patients to unintended side effects or reactions.

The bill also requires pharmacists to receive and document consent from both the patient and the prescribing physician before any substitution is made. This bill was referred to the Senate Health Committee, where it was heard. However, the committee did not take a vote on SB 718 following opposition from the Board of Pharmacy and the Pharmacists Association. At this time, with no financial component, this bill is ineligible to be heard in the 2012 short session.

Encourage Volunteer Health Care Providers

NCMS Position: Support

Senate Bill 743

Sponsor(s): Goolsby (R-New Hanover)

Status: Passed, S.L. 2011-355

Summary: The NCMS strongly supported the passage of SB 743. This legislation, filed by Senator Thom Goolsby (R-New Hanover), creates a volunteer license that allows physicians from other states to participate in fly-in clinics set up in under-served areas of North Carolina. The North Carolina Medical Board would maintain records of these physicians' activities and maintain regulatory authority over out-of-state physicians practicing in North Carolina. It is important to note that this legislation does not create a system of reciprocity between state medical boards.



Senate Pro-Tem Phil Berger and NCMS President John Mangum

Senate Bill 743 also creates some protection for providers taking a referral from a non-profit community health referral service to see a patient in his or her place of employment. This provision mirrors the current protections in place for providers who accept a referral from a free clinic, applying the gross negligence standard. This care must be provided without compensation in order to receive these protections. The NCMS supported this provision of this bill, as it allows free care to take place in a physician's place of employment and provides greater access to services for indigent patients.

This bill was passed by both chambers after being amended in the House Health Committee to allow physician assistants to also be eligible for the volunteer license, and the Governor signed it into law.

No Firearms Questions During Medical Exam

NCMS Position: Oppose

Senate Bill 765

Sponsor(s): Brock (R-Davie)
Status: Senate Committee on Rules

Summary: As introduced by Senator Andrew Brock (R-Davie), SB 765 would prohibit any health care provider from asking a patient or that patient's parents or legal guardians questions regarding the possession or availability of guns or ammunition to the patient. Exceptions are allowed only in cases where injuries appear to have been a result of access to a firearm or if the patient expresses an interest in hurting themselves or others. SB 765 would subject any provider who violates this rule to disciplinary action by their respective licensing board and would impose fines of \$250 for nonwillful violations and \$500 for willful violations of the statute. This bill was immediately referred to the Senate Rules Committee upon introduction; it did not receive a hearing during the 2011 session. However, due to the fees involved, this legislation is eligible to be discussed in the 2012 short session.

MENTAL HEALTH

Statewide Expansion of the 1915(b)(c) Waiver

House Bill 916

Sponsor(s): Barnhart (R-Cabarrus), Dollar (R-Wake), Burr (R-Stanly), Insko (D-Orange)
Status: Passed, S.L. 2011-264

Summary: This year the General Assembly took many steps to restructure the state's mental health system. The passage of House Bill 916 proved to be one of the most prominent steps towards that goal. This legislation moves management responsibilities for the delivery of services for mental illness, intellectual and developmental disabilities and substance abuse disorders to 1915(b)(c) Medicaid waiver sites. Statewide expansion of the waiver program will be completed by July 1, 2013.

House Bill 916 was somewhat controversial due to the reduction and merging of Local Management

Entities (LMEs) required by the legislation. The bill also maintains fidelity of the Piedmont Behavioral Health demonstration project, which became a point for debate during the session. No later than August 1, 2011, the Department of Health and Human Services must select the LMEs that meet the minimum standards for waiver operations. If an LME does not meet these minimum standards by January 1, 2013, that LME will have to merge with an approved LME. House Bill 916 became effective upon its signing by the Governor on June 23, 2011.

Add'l Section 1915 Medicaid Waiver Sites

Senate Bill 316

Sponsor(s): Hartsell (R-Cabarrus)
Status: Passed, S.L. 2011-102

House Bill 424

Sponsor(s): Barnhart (R-Cabarrus), Ingle (R-Alamance), Insko (D-Orange)
Status: House Committee on Health and Human Services

Summary: Senate Bill 316 is just one of many bills filed this year related to the 1915 Medicaid waiver. This bill was signed into law on June 2, 2011 and requires the Department of Health and Human Services to implement additional capitated 1915(b)(c) Medicaid waivers for the 2011-2012 fiscal year. Local Management Entities (LMEs) that prove ready can apply for this waiver through a Request for Application (RFA) process to begin this year. These new waivers, as with current waivers, will include all Medicaid-covered mental health services, developmental disabilities services and substance abuse services. This bill also was amended to add a section that allows a state facility to disclose certain confidential information for the purposes of collecting payment for these services. This bill became effective immediately upon being signed by the Governor.

Evaluate Efficacy of CABHA Model

NCMS Position: Support

Senate Bill 331

Sponsor(s): Nesbitt (D-Buncombe)
Status: Senate Committee on Mental Health and Youth Services

House Bill 78

Sponsor(s): Insko (D-Orange), Earle (D-Mecklenburg), M. Alexander (D-Mecklenburg),
Brisson (D-Bladen)
Status: House Committee on Health and Human Services

Summary: Two pieces of legislation were introduced this year to require the NC Department of Health and Human Services to evaluate the CABHA Model. Critical Access Behavioral Health Agencies

were introduced last year, with the goal of reducing inefficiencies in the mental health system and to return the system to one with medical leadership. Each chair of last year's Legislative Oversight Committee on Mental Health introduced a bill in their respective chamber to require the department to evaluate the efficiency of the model on a semiannual basis and report the results to the Legislative Oversight Committee on Mental Health. Neither bill was heard in committee this year.

Enact First Evaluation Program

NCMS Position: Oppose

Senate Bill 437

Sponsor(s): Hartsell (R-Cabarrus)
Status: Passed, S.L. 2011-346

House Bill 423

Sponsor(s): Hurley (R-Randolph)
Status: Senate Committee on Rules

Summary: Senate Bill 437 takes action to make permanent a pilot project for the expansion of individuals authorized to perform first-level Involuntary Commitment reviews. The pilot program was first implemented in 2007 and allows licensed Clinical Social Workers, masters-level Psychiatric nurses, and masters-level Certified Clinical Addiction Specialists to perform the first evaluation of a person being involuntarily committed for mental illness. Senate Bill 437 continues this practice. Local Management Entities (LMEs) must make the request for this authority and the request must be approved the Secretary of Health and Human Services. In making the request, the LME must show the availability of a physician as backup support for these midlevel providers. These providers must also complete standardized training and an examination, available through the department.

As requested in 2007, lobbyists for the licensed Marriage and Family Therapists (LMFTs) and the licensed Professional Counselors (LPCs) requested that their members be added to the list of those authorized to perform first level Involuntary Commitment reviews. The NCMS and the North Carolina Psychiatric Association would have opposed such an amendment. However such an amendment was not introduced or supported by the bill sponsors.

Senate Bill 437 was opposed by both the NCMS and the North Carolina Psychiatric Association. Despite objections from the medical community, the bill passed both chambers, was signed into law by the Governor and will become effective October 1, 2011.

CONTROLLED SUBSTANCES

Stop Methamphetamine Labs

House Bill 12

Sponsor(s): Cleveland (R-Onslow), Horn (R-Union), McElraft (R-Carteret)
Status: Passed, S.L. 2011-240

Summary: As filed, House Bill 12 intended to make synthetic cannabinoids illegal in the state of North Carolina. This language was later rolled into another bill that was similar in content and became law. Following this action, House Bill 12 was amended to require electronic reporting of all retail sales of pseudoephedrine.

Specifically, the bill requires pharmacies to keep electronic records of all pseudoephedrine sales and submit this data to the National Precursor Log Exchange, where the information will later be transferred to the State Bureau of Investigation. This is the only provision of the bill that would become law by the end of session. However, prior to its final passage many proposed changes to House Bill 12 were debated in the House Judiciary B Subcommittee, particularly to require a prescription for some forms of pseudoephedrine drugs. After extensive debate and opposition from several stakeholder groups the prescription requirement was not included in the final version of the bill.

Sheriff/Inspect Prescription Drug Records

NCMS Position: Oppose

House Bill 606

Sponsor(s): McElraft (R-Carteret), Randleman (R-Wilkes), McLawhorn (D-Pitt)
Status: Senate Committee on Rules

Summary: Each session similar versions of House Bill 606 are introduced to the General Assembly with the goal of expanding access to the Controlled Substance Reporting System to Sheriffs and Sheriff Deputies. Under current law Sheriffs may access the information if a request is made to the State Bureau of Investigation. This proposal would allow Sheriffs or their Deputies to access the information as long as reasonable suspicion exists within a specific investigation. House Bill 606 would have required the Sheriff or Deputy to notify the State Attorney General within two days of a request to review records. House Bill 606 was passed by the House during the 2011 Session but was not debated in the Senate Rules Committee. It could be eligible for further consideration next year.

Mandate Use of the Controlled Substance Reporting System

NCMS Position: Oppose

House Bill 726

Sponsor(s): Rapp (D-Madison), Horn (R-Union)

Status: House Judiciary Subcommittee B

Summary: This legislation sought to require all prescribers and dispensers of controlled substances to review 12 months of patient history within the Controlled Substance Reporting System (CSRS) to determine medical necessity or appropriateness prior to prescribing or dispensing these drugs. An exception for emergency situations was included in the bill. House Bill 726 was filed and referred to the House Judiciary Subcommittee B but was not debated in committee.

Photo ID for Certain Controlled Substances

NCMS Position: Support

Senate Bill 474

Sponsor(s): Apodaca (R-Henderson), Hise (R-Mitchell)

Status: Passed, S.L. 2011-349

Summary: Senate Bill 474 requires that photo identification be shown by any individual seeking to pick up any Schedule II and some Schedule III Controlled Substances from a pharmacy, and that the pharmacy maintain records of this information. Photo identification must be in the form of a driver's license or state issued identification card, a military identification card or a passport. The name on the prescription and the person showing identification are not required to be the same – therefore allowing family members and friends to pick up medications for patients. Pharmacies are required keep records of the name and identification number of each pick-up for three years. This law becomes effective March 1, 2012.

Strengthen Controlled Substance Reporting System

Senate Bill 723

Sponsor(s): Hise (R-Mitchell)

Status: Senate Committee on Judiciary I

Summary: Senate Bill 723 incorporated the language of House Bill 726, in that it would have required all those who prescribe and dispense controlled substances to review 12 months of patient history within the Controlled Substance Reporting System (CSRS) to determine medical necessity or appropriateness prior to prescribing or dispensing these drugs. The Senate also would have required the State to update the CSRS to provide information in real time. Those who dispense controlled substances also would have been required to report dispensing information within 24 hours. This legislation was filed and referred to the Senate Judiciary I Committee, but was not debated during the 2011 Session.

PUBLIC SAFETY

Modify Motorcycle Helmet Requirements

NCMS Position: Oppose

House Bill 392

Sponsor(s): Hastings (R-Gaston), T. Moore (R-Cleveland), McCormick (R-Yadkin)
Status: House Committee on Transportation

Senate Bill 480

Sponsor(s): Harrington (R-Gaston)
Status: Senate Committee on Rules

Summary: House Bill 392 was introduced early in the legislative session and would remove the requirement from the law that those age 18 or older wear helmets when riding motorcycles. This proposed legislation draws no distinction between public or private property and would remove the helmet requirement for any adult motorcycle operator or passenger. The bill was introduced and referred to the House Transportation Committee but was never reported favorably out of that committee.

Modify ATV Helmet Use Requirements

NCMS Position: Oppose

House Bill 407

Sponsor(s): T. Moore (R-Cleveland), LaRoque (R-Lenoir)
Status: Passed, S.L. 2011-68

Summary: House Bill 407 became law in May after the Governor declined to either sign or veto it. This legislation was introduced by both House Rules Chairmen and swiftly moved through the legislative process. HB 407 changed existing statute to allow people age 18 or older to ride all-terrain vehicles on private property without a helmet or eye protection. Those adults riding on public roads would still be required by law to wear these items.

Gfeller-Waller Concussion Awareness Act

NCMS Position: Support

House Bill 792

Sponsor(s): Folwell (R-Forsyth), Cook (R-Beaufort), McGrady (R-Henderson), Glazier (D-Cumberland)

Status: Passed, S.L. 2011-147

Summary: House Bill 792 was filed by Representative Dale Folwell (R-Forsyth) following the death of two high school athletes with unattended brain injuries. This legislation, signed by the Governor the last week of session, develops an athletic concussion training program that will assist school nurses, coaches, athletic trainers and volunteers in identifying concussions in sports injuries and develop a return-to-play protocol for such injuries. To return to play, the student must be evaluated and receive written clearance by a licensed physician with training in concussion management, an athletic trainer, a neuropsychologist, or a physician assistant or nurse practitioner trained in concussion management and working under the supervision of a physician. Throughout the legislative process, Physical Therapists lobbied to be included in the list of health care professionals who could return students to play. However, the bill was not amended to include PTs.

Youth Skin Cancer Prevention Act

NCMS Position: Support

Senate Bill 471

Sponsor(s): Purcell (D-Scotland), Mansfield (D-Cumberland), Forrester (R-Gaston)

Status: Senate Committee on Commerce

Summary: This legislation was developed by an NCMS Leadership Scholar and was strongly supported by the NC Dermatological Society. Sponsored by the three physician members of the Senate, SB 471 proposed to raise the age at which a prescription is required for a child to engage in indoor tanning. Current law requires a prescription at age 13, this bill would have raised the threshold to age 17. After receiving a favorable report from the Senate Health Committee, the bill was referred to the Senate Commerce Committee, where it was not debated. Failing to meet the crossover deadline, this bill is not eligible to be heard in the 2012 short session.



NC Dermatology Association White Coat Wednesday

Patient Advocacy and Protection Act

NCMS Position: Oppose

Senate Bill 697

Sponsor(s): Stein (D-Wake)

Status: House Committee on Health and Human Services

Summary: The North Carolina Nurses Association sought the passage of SB 697, which was filed by Senator Josh Stein (D-Wake) during the final days of bill-filing this session. The bill as originally filed would have prohibited a supervisor or any workplace from disciplining a Registered Nurse for taking action that he or she believed to be in the best interest of a patient's safety, health or rights. Vague terminology left the bill extremely subjective as to what constitutes advocacy on behalf of a patient. Acknowledging the need for further clarification of the language, the bill sponsor supported a rewrite of the bill that answered many questions raised by both the NCMS and the NC Hospital Association. The revised version of the legislation was passed by the Senate and referred to the House Health Committee. This committee did not have adequate time to debate this bill before adjournment, but it is likely to be heard in the 2012 short session.

Interscholastic Sports/Concussions

Senate Bill 757

Sponsor(s): Graham (D-Mecklenburg)

Status: Senate Committee on Education

Summary: Senate Bill 757 mirrored much of the language included in HB 792 and shared the goal of screening students with head injuries before allowing them to return to play. The Senate bill tasked the State Board of Education to develop a return-to-play protocol for public schools and to require sign-off by a licensed health care provider before resuming play. SB 757 was somewhat less specific in its requirements and was not reported favorably by the Senate Education Committee, likely due to the passage of HB 792 in the same session.

Assault on Law Enforcement & EM Worker/Felony

NCMS Position: Support

Senate Bill 762

Sponsor(s): Brock (R-Davie)

Status: Passed, S.L. 2011-356

Summary: Unless a higher penalty under another law, Senate Bill 762 makes it a Class I Felony, the lowest grade felony, to commit assault or an affray to cause physical injury to emergency department personnel including physicians, physician assistants and nurses. This law becomes effective on December 1, 2011.

CERTIFICATE OF NEED

Remove Adult Care Homes From CON Review

NCMS Position: Oppose

House Bill 540

Sponsor(s): Cook (R- Beaufort), Dixon (R- Duplin), Bradley (R- Franklin)

Status: House Committee on Health and Human Services

Summary: House Bill 540 was one of a handful of bills that would make adjustments to the state's Certificate of Need process. As stated in the title, this legislation would remove adult care home beds from the CON review process. This bill was introduced and referred to the House Health Committee, but failed to receive a committee hearing or pass the crossover deadline.

Eliminate Agency Final Decision Authority

House Bill 623

Sponsor(s): McCormick (R-Yadkin), Stevens (R- Surry), Cleveland (R-Onslow), Glazier (D-Cumberland)

Status: Senate Committee on Judiciary I

Senate Bill 653

Sponsor(s): Daniel (R-Burke)

Status: Senate Committee on Judiciary I

Summary: This legislation would change the procedures currently in place concerning final decision making in contested cases against state agencies heard by the Office of Administrative Hearings. Current law requires administrative law judges to make decisions in cases, and then return that decision to the respective agency for final decision making authority. House Bill 623 would make the administrative law judge's decision or order the final decision in a contested case. Contested cases include any dispute between a state agency and another person that involves the person's rights, duties, or privileges, including licensing.

House Bill 623 was passed by the House during the final days of legislative session and was referred to the Judiciary I Committee in the Senate. Session ended before this bill could receive debate in the Senate. It could be eligible for further consideration next year.

Equal Treatment Under State Medical Facilities Plan

NCMS Position: Oppose

House Bill 743

Sponsor(s): Steen (R-Rowan), Current (R-Gaston), Glazier (D-Cumberland), Torbett (R-Gaston)

Status: House Committee on Health and Human Services

Senate Bill 505

Sponsor(s): Hartsell (R-Cabarrus)

Status: Senate Committee on Health

Summary: Current law regarding the State Medical Facilities Plan authorizes the Department of Health and Human Services to adopt rules for the review of particular types of applications. The law, as it stands today, also provides special circumstances for academic medical center teaching hospitals in that these institutions do not have to demonstrate that any facility or service at another hospital is being appropriately used in order to be awarded its own Certificate of Need. House Bill 743 proposes to eliminate that exception by requiring DHHS to adopt rules that are equal across all CON applicants, including academic medical center teaching hospitals. Neither HB 743, nor its companion SB 505, received a committee hearing during the 2011 legislative session.

Hospital Authority Territorial Jurisdiction

NCMS Position: Oppose

House Bill 812

Sponsor(s): Torbett (R-Gaston)

Status: House Committee on Health and Human Services

Summary: Representative Torbett (R-Gaston) introduced HB 812 which would make two changes to the existing law regarding hospital authority territorial jurisdiction. Current law states that the territorial boundary of a hospital authority includes the city or county creating the authority and the area within 10 miles from the territorial boundaries of that same city or county. House Bill 812 proposes to modify the law, limiting the hospital authority to the territorial boundary of the city or county. The bill includes a provision that would also require any hospital engaging in health care activities outside its territorial boundaries with an access exception provided for under current law, to apply for a certificate of public advantage. This bill was filed in the House and referred to the House Health Committee. It was debated during one committee meeting but was not favorably reported out of that committee prior to the end of session.



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