

# Issue Brief

STATE ISSUE BRIEF • MAY 21, 2019

## LEGEND

HB = House Bill

SB = Senate Bill

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## Status of Selected Health Care Legislation Summary of the 2019 Session of the Missouri General Assembly

The Missouri General Assembly’s 2019 legislative session ended Friday, May 17. The following describes the outcomes of various legislative proposals affecting hospitals and health care. The governor has until Sunday, July 14, to approve or veto most of these enacted bills. Gubernatorial action on appropriations bills very likely will occur before Monday, July 1, the start of the state fiscal year.

### LEGISLATION TRULY AGREED AND FINALLY PASSED

#### Appropriations

- Appropriates funding to support the expected increase in payments to hospitals for Medicaid services in fiscal year 2020. ([HB 11](#))
- Appropriates \$20 million in federal and state funding to enhance the use of Admission Discharge Transfer technology by hospitals and health information exchanges. MHA prepared a federal application to earmark \$10 million for hospital projects, using \$1 million in hospital provider tax to generate \$9 million in federal matching funds. ([HB 11](#))
- Provides \$34 million to fund the costs of a planned Medicaid transformation initiative. ([HB 11](#))
- Restores funding of a Medicaid demonstration project paying paramedics to provide community-based services to reduce avoidable ambulance and emergency department use. ([HB 11](#))
- Authorizes \$133.5 million in additional funding, including \$11 million of general revenue, for unforeseen Medicaid hospital services provided in the current state fiscal year. ([HB 14](#))

#### Infection Control

- Exempts hospitals from state infection control reporting obligations so long as the Centers for Medicare & Medicaid Services requires reporting of hospital infection data. The Missouri Department of Health and Senior Services will include a link on its website to CMS infection data. ([SB 514](#))
- Changes the trigger for a state antimicrobial stewardship data reporting requirement. Rather than begin with the effective date of federal Stage 3 “Meaningful Use” regulations, the requirement will take effect when CMS Conditions of Participation require electronic reporting of antibiotic use or resistance. ([SB 514](#))

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## LEGISLATION TRULY AGREED AND FINALLY PASSED

### Certified Nursing Assistants

- Allows certified nursing assistants to receive their training in hospitals; current law requires CNAs to be trained in nursing homes and other long-term care facilities. ([SB 514](#))
- Permits those who have completed the competency evaluation and training for designation as “unlicensed assistive personnel” in hospitals to take the certified nursing assistant examination. Upon passage, they will be a CNA. ([SB 514](#))

### Hospital Licensure Inspectors

- Bars state hospital regulators from inspecting a hospital within two years of having been employed by the hospital, its hospital system or a competing hospital within 50 miles of the hospital being inspected. ([SB 514](#))
- Creates a process for assessing whether a state hospital inspector’s personal or business affiliations create bias for or against a hospital. ([SB 514](#))

### Insurer Prior Authorization

- Defines an insurer’s certification of medical appropriateness to include authorization of payment for the service. ([SB 514](#))
- Applies the deadlines for insurers to make and provide notice of utilization review decisions to all determinations and certifications; currently, they apply only to initial determinations and certifications. ([SB 514](#))
- Requires insurers’ notice of adverse utilization review decisions to include a clinical rationale for them. ([SB 514](#))
- Mandates that health insurers electronically post their procedures for addressing a provider’s failure or inability to provide information needed for utilization review. ([SB 514](#))
- Prohibits a prior authorization decision from being revoked or restricted within 45 working days of a provider receiving it. ([SB 514](#))
- Prevents a health insurer or provider from billing an enrollee for a service for which a prior authorization was operative, other than for cost-sharing obligations under the plan of coverage. ([SB 514](#))
- Requires utilization review entities to furnish a confirmation number to the provider to track a request for prior authorization. ([SB 514](#))
- Directs utilization review entities as of January 2021 to accept and respond to requests for prior authorization electronically, with drug coverage transactions done through a secure electronic system meeting federal standards. ([SB 514](#))
- Requires health insurers to electronically post the details of its prior authorization requirements or restrictions, including written clinical criteria used in utilization review. Changes in standards may not be implemented unless reflected in the posting. ([SB 514](#))
- Directs health insurers and utilization review entities to provide at least 60 days’ notice of new or revised prior authorization requirements or restrictions. ([SB 514](#))
- Establishes new standards for independent clinical review of adverse utilization review decisions as part of an insurer’s grievance advisory panel, with decisions subject to appeal to state insurance regulators. ([SB 514](#))

### Provider Taxes

- Reauthorizes the hospital Federal Reimbursement Allowance and the other state provider taxes for one year. ([SB 29](#))

### Surprise Billing

- Requires an out-of-network practitioner to bill the patient’s insurer, invoking the billing and payments standards for unanticipated out-of-network treatment created by a 2018 state law. The process had been optional. ([SB 514](#), [HB 399](#))

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### Obstetrical Care

- Creates a state Pregnancy-Associated Mortality Review Board to review patient records and data, and make recommendations. ([HB 447](#))

### Death Regulations

- Eliminates required investigations by coroners and medical examiners of physician-certified natural deaths of hospice patients and extends notification deadlines of those deaths. ([HB 447](#))
- Revises standards for processing death certificates. ([SB 282](#), [HB 447](#))
- Clarifies rights to determine the disposition of a corpse. ([SB 282](#), [HB 447](#))

### Insurer Payment Standards

- Prohibits health insurers from mandating provider reimbursement methods that require providers to pay fees. ([SB 514](#), [HB 399](#))

### Opioids

- Improves access to insurance coverage for medication-assisted treatment of opioid addiction. ([SB 514](#), [HB 399](#))
- Exempts treatment of sickle cell disease from current restrictions on the scope and duration of initial prescriptions for opioids. ([SB 514](#))
- Places limitations, with exceptions, on the prescribing of opioids by dentists. ([SB 514](#), [SB 275](#))

### Motorcycle Helmets

- Permits those age 18 and older to operate motorcycles without wearing helmets if they have insurance coverage for treatment of injuries caused by an accident. Proof of insurance coverage must be shown to law enforcement upon their request. ([SB 147](#))

### Consent To Treatment

- Creates new standards for parental notice and consent for withdrawing medically futile treatment of pediatric patients. ([HB 138](#), [HB 397](#))

### Liability

- Revises the venue where civil lawsuits will be tried and standards for consolidating issues or parties into a single lawsuit. ([SB 7](#), [SB 230](#))
- Revises the rules of discovery for civil and criminal legal actions. ([SB 224](#))

### Collaborative Practice Arrangements

- Eliminates an expiration date on a law exempting services delivered via telemedicine from geographic proximity standards for an APRN and a physician in a collaborative practice arrangement. ([SB 514](#))
- Makes collaborative practice standards consistent for advanced practice registered nurses, physician assistants and assistant physicians. ([SB 514](#))

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### Abortion Regulation

- Creates a felony crime of performing or inducing a state-defined abortion, except in medical emergencies, with violation also incurring professional licensure suspension or revocation. ([HB 126](#))
- Prohibits abortions done solely because of the sex, race or potential for Down syndrome of the unborn child. ([HB 126](#))
- Prohibits abortion if the unborn child is eight weeks gestational age or more, except for medical emergencies. Based on court rulings, the law's gestational age limit will default to 14 weeks or 18 weeks. ([HB 126](#))
- Revises standards for parental notification of abortion for an unemancipated minor. ([HB 126](#))
- Creates new standards for late-term abortions and for making patient referrals for out-of-state abortions. ([HB 126](#))
- Changes the liability insurance requirements for those performing or inducing abortions. ([HB 126](#))
- Expands state income tax credits for contributions to pregnancy resource centers. ([HB 126](#))

### Pharmacy Practice

- Requires most prescriptions for controlled substances to be transmitted electronically beginning in 2021. ([SB 514](#))
- Authorizes the State Board of Pharmacy to enter into voluntary compliance agreements with its licensees in lieu of board disciplinary action. ([SB 514](#))
- Authorizes the development of a process allowing pharmacists to prescribe and dispense nicotine-replacement therapy products. ([SB 514](#))
- Authorizes the State Board of Pharmacy to implement pilot projects regarding remote dispensing and technology-assisted medication verification. *Proposed state hospital licensure regulations permit such activities in hospital pharmacy practice.* ([SB 514](#))

### Practitioner Licensure

- Creates a Joint Task Force on Radiologic Technologist Licensure to consider the need for such occupational licensure by state government. ([SB 275](#))
- Requires licensed marital and family therapists to complete two hours of training in suicide assessment, referral and management. ([SB 514](#))

### Substance Abuse

- Requires practitioners to report to the Children's Division when a newborn is affected by prenatal drug exposure or fetal alcohol syndrome. ([SB 514](#))
- Creates a legislative Joint Committee on Substance Abuse Prevention and Treatment. ([SB 514](#))
- Directs state circuit courts to develop a treatment court division by September 2021 to provide alternatives for disposing of judicial cases involving substance abuse. ([HB 547](#))

### Workforce Development

- Allows psychiatrists to participate in the state's Health Professional Student Loan Repayment Program. ([SB 514](#))
- Creates “Fast-Track Workforce Incentive Grants” to subsidize postsecondary education for Missourians in programs of study selected by the state Coordinating Board for Higher Education. ([SB 68](#))
- Renames and revises a state program offering funding for job training to support economic development. ([SB 68](#))

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### Medicaid Coverage

- Reauthorizes the Ticket to Work Health Assurance Program, offering Medicaid coverage to eligible employed disabled people. ([SB 514](#))
- Permits Medicaid eligibility to be suspended during incarceration, rather than terminated. ([SB 514](#), [HB 399](#))
- Directs the Department of Social Services to apply for a federal Medicaid waiver for home or community-based care of MO HealthNet enrollees with Alzheimer’s disease or related disorders. ([SB 514](#))
- Extends Medicaid coverage of foster children to age 26 if specified criteria are met. ([SB 514](#))
- Reauthorizes and revises a consumer-directed services program. ([SB 514](#), [HB 399](#))

### Insurer Coverage Standards

- Expands health insurance coverage of services to treat chronic severe physical or developmental disabilities. ([SB 514](#), [HB 399](#))

### Insurance Benefit Plans

- Creates a Missouri Health Insurance Innovation Task Force to assess the implications and opportunities of Missouri state government applying for a federal Section 1332 waiver, which would permit alternative regulatory standards for commercial insurers, so long as they are comparable in effect to what is required under the federal Affordable Care Act. ([SB 414](#))
- Permits multiple employer self-insured health plans with a certificate of authority from state insurance regulators to be offered to the public. ([SB 514](#), [HB 399](#))

### Nursing Homes

- Revises standards for an intermediate care or skilled nursing facility to receive a recalculation of its Medicaid per diem rate based on its capital expenditures. ([SB 514](#))

### State Regulatory Reform

- Revises standards for state agencies to issue emergency rules that bypass the normal rulemaking process. The new standards provide more transparent notification and a fiscal estimate, and extend the effective date of emergency regulations. ([HB 1088](#))
- Repeals state laws requiring publication and distribution of state regulatory documents in paper form. ([HB 1088](#))

### Pharmaceutical Assistance

- Eliminates the restriction limiting eligibility for the MO Rx prescription drug assistance program to seniors eligible for both Medicare and Medicaid. ([SB 514](#))

### Employee Background Checks

- Makes technical revisions to a 2018 law on employment-related criminal background checks. ([HB 694](#))

### State Officials

- Revises the educational qualifications of the director of the Department of Health and Senior Services. ([HB 399](#))

### Medical Marijuana

- Authorizes the Department of Health and Senior Services to impose an administration and processing fee if funds to implement the regulation of medical marijuana programs are insufficient to cover costs. ([SB 514](#))

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### Organ Donation

- Changes standards for authorizing organ donation on state websites and driver’s licenses. ([SB 282](#), [SB 368](#))

### Community-Based Services

- Extends the expiration of a program offering financial assistance for consumer-directed personal care services. ([HB 397](#))
- Requires the Department of Health and Senior Services to develop an interactive assessment tool for the home and community-based services it oversees. ([HB 397](#))

### Child Protection

- Revises standards for the records and findings of child fatality review panels. ([HB 447](#), [HB 397](#))
- Exempts hospitals from a new law prohibiting placement of child care facilities within 1,000 feet of where a registered sex offender lives or is regularly treated. ([HB 397](#))

### Hearing Aids

- Creates a program of financial assistance to provide hearing aids to qualified low-income Missourians. ([SB 101](#))

### Unemployment Compensation

- Changes employment security laws and procedures. ([SB 90](#))

## LEGISLATION DEFEATED

### Certificate of Need

- Ends certificate of need review of health care capital expansion projects. (HB 433, HB 622, SB 165)
- Directs CON applications be reviewed and approved by staff of the Department of Health and Senior Services rather than the current Missouri Health Facilities Review Committee. (SB 82)
- Repeals CON review of single items of medical equipment costing more than \$1 million. (SB 82)
- Replaces the four state legislators on the MHFRC with additional gubernatorial appointees. (SB 82)
- Revises the standards for reviewing CON applications, including a ban on ex parte communications while the application is pending. (SB 82)
- Changes CON restrictions on the transfer or sale of long-term care beds. (HB 1170)

### Prisoner Care

- Requires counties to pay providers for treating county prisoners if the prisoner’s insurance coverage or assets does not pay within 60 days. (HB 1051)
- Restricts law enforcement officers’ ability to release a person from custody during or immediately preceding hospital care. (HB 987, SB 428)

### Guns In Hospitals

- Allows those with a permit to carry a concealed weapon to do so in areas of a hospital that are accessible to the public. (HB 258)

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## LEGISLATION DEFEATED

### Medicaid Managed Care

- Specifies that hospitals that do not contract with a Medicaid managed care plan will be paid at the Medicaid fee-for-service payment rate, rather than 90 percent of that rate. (HB 1235)
- Establishes various reforms of Medicaid managed care. (HB 247, SB 370)
- Authorizes a state provider tax on managed care plans to provide funding for the Medicaid program. (SB 29)

### Medicaid Block Grant

- Requires the Department of Social Services to apply for a federal Medicaid waiver to implement a global block grant for Missouri’s Medicaid program. (SB 77)

### Pharmacy

- Allows hospital patients to take unused medications in multi-dose containers with them upon discharge, with the exception of most controlled substances. *Addressed in a pending proposed state hospital regulation.* (HB 727)
- Creates a state-operated prescription drug monitoring program to replace the voluntary system currently covering most Missourians. (HB 188, SB 155)
- Changes statutory standards governing access to antipsychotic medications in the Medicaid program. (HB 867)
- Expands the authority of pharmacists to provide medication therapy services, including prescribing drugs and controlled substances, per written protocols of physicians. (HB 1234, SB 357)
- Authorizes pharmacists to prescribe and dispense oral hormonal contraceptives. (HB 487)

### Medical Liability

- Creates a more rigorous threshold for awarding punitive damages in lawsuits against health care providers. (SB 65, HB 489)
- Revises standards of liability for damages associated with wrongful death. (HB 125)
- Bars use of the Missouri Merchandising Practices Act to recover damages for personal injury or death. (SB 276, HB 714)
- Reduces the statute of limitations for lawsuits alleging personal injury to two years from five years. (SB 96)
- Revises various tort liability standards addressing the collateral source rule and product liability. (HB 186, HB 121, SB 100)
- Limits practitioners’ liability for screening, stabilizing or transferring patients as required by the federal EMTALA law, unless there is clear and convincing evidence of gross negligence. (SB 67)
- Limits liability of practitioners and facilities for performing a lawfully conducted body cavity search, unless there is gross negligence or willful or wanton acts or omissions. (SB 236, HB 590)
- Makes practitioners liable for damages caused by removing shackles from pregnant prisoners when treating them. (SB 358)

### Patient Choice Of Provider

- Requires providers to post a list of undiscounted prices for their services, and providers and insurers to provide cost estimates upon patient request. (HB 232)
- Requires providers referring patients to a medical facility to tell their patients every facility where they have clinical privileges and provide treatment at the facility chosen by the patient. (HB 405)

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## LEGISLATION DEFEATED

### Advanced Practice Registered Nurses

- Provides for APRNs to be licensed separately as such, rather than as a registered nurse with an APRN certification. (HB 301)
- Revamps standards for the licensure of APRNs, including a statutory definition of their scope of practice under the auspices of the State Board of Nursing. (SB 400)
- Permits more lenient geographic proximity standards for an APRN, physician assistant or assistant physician providing services in a collaborative practice arrangement on behalf of an organization providing alternatives to abortion. (HB 420)

### Opioids

- Directs the Department of Health and Senior Services to develop a form allowing patients to refuse opioids in their medical treatment, and authorizes regulations to dictate how it will be administered and enforced. (HB 639)
- Creates new standards for documenting informed consent to the prescribing of opioids. (SB 353)
- Restricts physicians’ capacity to prescribe opioids for minors. (HB 491)
- Allows counties to form drug overdose fatality review teams to compile and assess overdose data. (HB 1153)

### Forensic Examinations

- Creates new rights for victims of alleged sexual assault regarding the results, collection and retention of forensic examinations to gather evidence for prosecution. (HB 467)
- Creates new standards for the collection of forensic evidence of gunshot or stab wounds in hospital emergency departments. (HB 1071)
- Requires hospitals located within 50 miles of a public or private post-secondary institution to perform, upon patient request, a forensic examination to gather evidence of sexual assault. (SB 456)

### Organ Donation

- Requires hospitals to notify organ procurement organizations of a known refusal to make an anatomical gift, and compels OPOs to stop further solicitation or investigation of an anatomical gift donation. (SB 282)

### Covenants Not To Compete

- Bars covenants not to compete in employment contracts with those paid an hourly wage. (HB 331)

### Practitioner Licensure

- Establishes a system of occupational licensure for radiation technologists. (HB 884, SB 303)
- Allows an assistant physician with five years of assistant physician practice in a collaborative practice arrangement and 100 hours of didactic instruction to be licensed as a physician and be eligible to sit for medical specialty board certification or medical fellowships. (HB 710)
- Authorizes state licensure of “paramedic practitioners” who would provide services through a collaborative practice arrangement with a physician. (HB 907)
- Directs the state medical board to develop educational programs to establish a pathway for paramedics to become physician assistants. (SB 204)

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## LEGISLATION DEFEATED

### Medicaid

- Directs the Department of Social Services to apply for federal authorization to compel Medicaid enrollees to work or participate in work alternative programs, unless otherwise exempted. (HB 183, SB 76)
- Expands eligibility for Medicaid coverage as permitted under the federal Patient Protection and Affordable Care Act of 2010. (SB 27, HB 38)
- Authorizes Medicaid coverage of services provided by certified community health workers. (HB 918)

### Immunization

- Prohibits discrimination against children who are not immunized against diseases. (HB 711)
- Specifies additional information to be provided to the patient before administering a vaccine. (HB 1164)

### Substance Abuse

- Exempts state-registered entities that distribute, manufacture or sell hypodermic needles from drug paraphernalia laws. (HB 168)
- Requires the state Children’s Division to refer mothers or infants to state juvenile officials based on evidence of alcohol impairment or illegal controlled substances within eight hours after childbirth. (HB 437)

### Air Ambulances

- Excludes air ambulance services from a state law directing insurers to pay ambulance services directly for their services. (SB 267, HB 493)
- Compels air ambulance services to participate in insurers’ provider networks in their service areas. (HB 941)
- Prohibits air ambulance services from soliciting or selling their services through subscription agreements. (HB 941)

### Physical Therapy

- Removes the current requirement that a physical therapist must have a prescription or referral from a physician to treat a patient, with limits established for the scope of the exemption. (HB 410)

### Health Insurer Regulation

- Requires health insurers to annually report their spending on primary care and total medical spending. (SB 417)

### Communicable Diseases

- Revises laws on intentional or reckless attempts to expose others to HIV to apply them to a broader range of serious communicable diseases. (HB 167, HB 166)

### Nursing Homes

- Establishes a process to authorize electronic monitoring in long-term care facilities. (HB 765, HB 719, HB 1176)

### Ambulance Service

- Adds a reference to freestanding emergency departments to a law on transport of trauma, stroke or STEMI patients. (HB 702)

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## LEGISLATION DEFEATED

### Insurance Payment

- Calls for termination of a state contract and a three-year contracting exclusion if a person or entity reviewing and processing health claims for a medical assistance program fails to make payments within 120 days of the claim’s filing. (HB 804)

### Workplace Violence

- Requires hospitals to develop workplace violence prevention plans and report incidents of workplace violence to state officials. (HB 901, SB 390)
- Establishes restrictions and criminal penalties for using a drone to fly above, enable escapes from or illicit deliveries to a state mental hospital. (HB 113)

### Not-For-Profit Hospitals

- Caps the salaries of chief executive officers of not-for-profit hospitals at \$103,000 per year, with adjustments based on increases in the federal poverty level. (HB 1214)

### Government Entities And Officials

- Creates a cause of action against a governmental entity that offers a competitive service that contributes to the economic detriment of a person offering the same competitive service in the private sector. (SB 122)
- Modifies the education and experience qualifications for local public health center administrators. (SB 177)