MHA
MISSOURI HOSPITAL ASSOCIATION

2023 LEGISLATIVE GUIDE

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Each year, we have a new opportunity to strengthen individual and community health in Missouri during the legislative session. The 2023 MHA Legislative Guide provides an overview of the issues expected during the legislative session and articulates the core of our advocacy program.

The 2023 session begins Wednesday, Jan. 4, and ends Friday, May 12. Lawmakers began prefiling bills for 2023 on Dec. 1, 2022. These early bills — which include legislation encouraged by MHA, as well as bills we will oppose — help shape our understanding of legislators' and interest groups' priorities.

This legislative guide is not designed to forecast the outcome of legislation. Rather, it provides a reflection of MHA and member hospital values, and identifies key issues that will underpin our efforts. These values include the following.

- standing up for patients against payer systems and policies that cause harm to providers and their patients
- supporting investments in access to high-quality and high-value care for at-risk patients, including children, individuals with disabilities and those needing behavioral health care
- supporting investments in the health care workforce that allow expanded opportunities for current and new workers
- committing to funding Medicaid expansion in the 2024 budget and opposing efforts to make annual funding of the expansion population optional
- streamlining regulatory processes and removing regulatory burdens
- ensuring hospitals are treated fairly in Medicaid transformation and that the Federal Reimbursement Allowance remains a pillar of our commitment to a fair and sustainable program

Throughout the 2023 legislative session, we will ask hospital leaders to engage with lawmakers — in their communities, in Jefferson City and through our advocacy systems. It is our collective responsibility to put a face on the law- and budget-making process. The work that happens in Jefferson City influences our ability to improve individual and community health throughout the state.

I look forward to your help during session as we promote solutions that improve the health care system, support the state's hospitals and improve Missourians' lives.

Jon D. Doolittle
President and CEO
Missouri Hospital Association

WORKFORCE

Hospitals were on the front line of the pandemic, and their workforce provided care in extraordinary circumstances. The workforce shortage — which was significant even before the pandemic — now is a crisis. A quality workforce is necessary to deliver quality patient care.

Licensing Reform

Qualified health care professionals, especially physicians, are waiting weeks — often months — to obtain a professional license. The process to obtain a license from the Board of Healing Arts is unacceptable. It severely exacerbates Missouri's workforce shortage, places Missouri hospitals at a competitive disadvantage in workforce recruitment compared to other states and harms patients. MHA is in frequent communication with the Board to expedite licenses on behalf of our members, but physicians may still wait weeks after that contact for a license to be issued. MHA has had several meetings with the Board to solve the delay in processing applications. In the 2023 legislative session, MHA will file legislation to force the Board to process applications at a faster pace.

Out-of-State Physicians

The Interstate Medical Licensure Compact creates a pathway to licensure through an interstate compact for qualified physicians who want to practice in multiple states. This streamlined process for licensure would increase the supply of physicians licensed in Missouri, as well as expand capacity for patients in underserved and rural areas by allowing them to connect with physicians, including through the use of telemedicine. The increased use of telemedicine will expand access to physician specialists like psychiatrists, which is crucial for mental health needs in rural areas.

More than 35 states, and every state that borders Missouri except Arkansas, have passed the compact. Previously, MHA supported successful efforts to authorize Missouri's participation in interstate licensure compacts for nurses, physical therapists, psychologists and emergency medical services personnel. MHA will support legislation implementing the Interstate Medical Licensure Compact in Missouri.

Nursing Education Incentive Program

Missouri's nursing shortages only will worsen as baby boomers age and the need for health care grows. Compounding this problem is that nursing schools are struggling to expand their capacity.

The Nursing Education Incentive Program was established in 2011 to increase the capacity of Missouri's professional nursing programs. NEIP funds are used to attract nursing faculties by improving salaries, training and education. Missouri's shortage of nursing faculties has severely limited the number of students that can be admitted into Missouri's professional nursing programs. A State Board of Nursing report indicated there are at least 45 unfilled full-time and 44 open part-time/adjunct nurse faculty positions. Additionally, 126 faculty are planning to retire in the next five years. The number of qualified nursing students that are turned away is staggering — in 2020, there were 1,296 qualified applicants turned away. Eighty-seven full-time faculty positions would be necessary to educate those applicants.

Since the inception of NEIP, nursing education program capacity for qualified nursing students has increased by 2,640. However, nearly two-thirds of funding requests have been rejected due to a lack of funds or the program's cap of $150,000 per award.

In the 2022 legislative session, MHA successfully requested increased funding for NEIP, obtaining a one-time, $3 million appropriation. The cap for awards also was increased from $150,000 to $300,000. The funds primarily were used to support licensed practical nursing programs and address critical staffing shortages in long-term care facilities.

In the 2023 session, MHA will request an additional $5 million for the NEIP program. The funds will be used for additional faculty, development of academic-clinical partnerships between nursing schools and acute settings in hospitals, use of technology resources for distance education from nursing schools to clinical sites, and development of courses that give college credit for learning in an acute setting.

Advanced Practice Registered Nurses

Advanced practice registered nurses are vital to providing high-quality health care. In response to the pandemic, various practice restrictions on APRNs were waived, including the requirement that an APRN practice with the collaborating physician continuously present for at least one month before practicing in a setting where the collaborating physician is not continuously present. Another waiver temporarily removed a geographic proximity limitation for the use of telehealth by APRNs outside of a rural area. These waivers have been vital to the provision of health care during the pandemic response and have shown the advantages of more flexible standards. During the 2023 session, MHA will support legislation to permanently remove these restrictions.

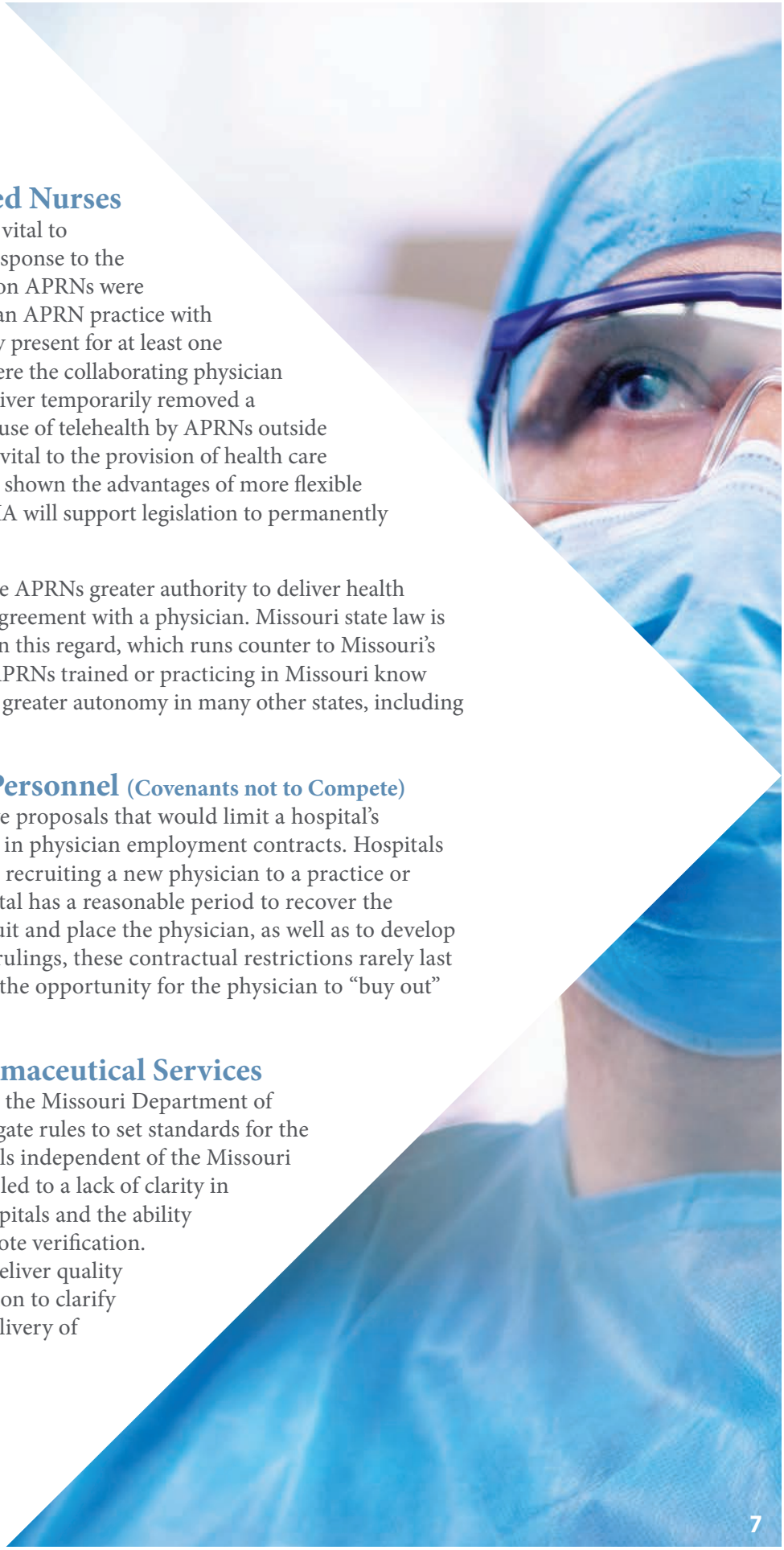
MHA also will support legislation to give APRNs greater authority to deliver health services under a collaborative practice agreement with a physician. Missouri state law is more restrictive than most other states in this regard, which runs counter to Missouri's efforts to promote a robust workforce. APRNs trained or practicing in Missouri know they can leave Missouri to practice with greater autonomy in many other states, including the states bordering Missouri.

Retaining Quality Medical Personnel (Covenants not to Compete)

MHA will continue to oppose legislative proposals that would limit a hospital's ability to use covenants not to compete in physician employment contracts. Hospitals use these contractual agreements when recruiting a new physician to a practice or community. They ensure that the hospital has a reasonable period to recover the significant investment required to recruit and place the physician, as well as to develop the practice. In accordance with court rulings, these contractual restrictions rarely last more than two years and often include the opportunity for the physician to "buy out" the covenant not to compete.

Regulation of Hospital Pharmaceutical Services

There has been confusion as to whether the Missouri Department of Health and Senior Services can promulgate rules to set standards for the provision of pharmaceuticals in hospitals independent of the Missouri Board of Pharmacy. This confusion has led to a lack of clarity in the role of pharmacy technicians in hospitals and the ability of hospital pharmacists to perform remote verification. This compromises hospitals' ability to deliver quality patient care. MHA will sponsor legislation to clarify regulatory jurisdiction regarding the delivery of pharmaceutical services in hospitals.



SAFE WORKPLACE

Hospital Visitation Policies and Vaccine Mandates (COVID-19 Backlash)

Based on regulatory guidance, many hospitals were closed to visitors at the beginning of the COVID-19 pandemic. There was limited knowledge about the spread of COVID-19, personnel and supplies were in short supply, and it was an extremely difficult time for hospitals. Many hospitals implemented phone calls and Zoom sessions, allowing families and visitors to engage with patients.

Despite hospitals' extraordinary efforts during the pandemic, numerous legislators were upset by visitation restrictions. In the 2022 legislative session, more than 30 bills were filed related to the pandemic that would have had a devastating impact to hospitals. Some limited hospitals' ability to ensure the safety and security of staff and patients. Others conflicted with federal regulation on workforce vaccination requirements and would have put hospitals in a no-win situation. Ultimately, MHA helped to negotiate legislation imposing reasonable visitation policies.

In the 2023 legislative session, several COVID-19-related bills have been prefiled that would increase the regulatory burden on hospitals. Most of these bills were not successful last year, and we expect the same this year; however, they will require MHA's advocacy.

Carrying Concealed Weapons Into Hospitals

MHA opposes legislation that would allow concealed carry permit holders from Missouri or another state to bring weapons into publicly accessible areas of a hospital. Currently, only security personnel and law enforcement are allowed to bear arms within a hospital. The legislation would exacerbate demands on hospital security in their work to deescalate volatile situations in hospital settings. It is unclear how the bill would apply to patients with firearms who temporarily may be drugged or otherwise incapacitated. Also, some hospitals have invested significant sums in metal detectors and staff to keep firearms out of the buildings.

ACCESS TO HEALTH CARE

We Are Not Finished . . . (Medicaid Expansion)

In 2020, MHA led a campaign to place a constitutional amendment on the ballot to expand eligibility for Medicaid coverage. The proposal raised the income eligibility level to 138% of the federal poverty level for Missourians ages 19 to 64 — extending coverage to more than 250,000 citizens. Many individuals in the covered population were employed but did not have access to affordable private health coverage. On Aug. 4, 2020, voters approved the initiative.

Approval was a culmination of years of work by MHA, its members and numerous partners. But this work only was the beginning. In January 2021, Gov. Mike Parson included funding for the newly eligible population in his proposed budget for state fiscal year 2022. During the 2021 legislative session, the General Assembly rejected explicit funding for the expansion population, but they did budget for an additional $1 billion to be distributed among two funds allocated to the Medicaid program. Because there was no explicit funding for Medicaid expansion, Parson ceased efforts to implement expansion. Following litigation, the Missouri Supreme Court unanimously ruled that: (1) Missouri state government must provide expansion coverage; and (2) costs would be paid from existing Medicaid appropriations, which do not differentiate between expansion and regular coverage. Enrollment for the newly eligible population began on Oct. 1, 2021.

In the 2022 legislative session, MHA helped defeat attempts to undo the work it and others have done to provide access to health care for more than 250,000 Missourians. House Joint Resolution 117 proposed amending the constitution to allow the General Assembly to reject funding for the expansion population. That proposal passed the Missouri House of Representatives, but intense advocacy from MHA and others prevented its passage in the Missouri Senate.

Prefiling of bills for the 2023 legislative session began on Dec. 1, 2022. Senate Joint Resolution 4, which is similar to HJR 117, has been filed. As with HJR 117, SJR 4 allows the General Assembly to reject funding for the expansion population. MHA will continue to oppose any effort to deny access to health care for the more than 250,000 Missourians in the expansion population.

Budget Impact of Increasing Access to Health Care

Opponents of Medicaid expansion have made several arguments against the initiative. The most persistent has been that expansion would "bust" the budget. MHA strongly disagrees and believes the state has sufficient funds to sustain the ongoing costs of Medicaid expansion in 2022 and beyond. An MHA infographic demonstrates that the state costs of Medicaid expansion will be funded through 2030.

More than a year has passed since enrollment of the newly eligible population began, and nothing indicates that expansion has or will adversely impact the state budget. The General Assembly has been able to fund the program without adding new costs to the state's general revenue budget thanks to the generous 90% federal match rate; hundreds of millions of dollars in federal COVID-19 relief; and expansion incentive funds set aside in the Treasury, which the state continues to receive.

The budget outlook for Medicaid expansion for SFY 2024 remains secure. The high federal match means the state is responsible for only 10% of the program's $2.9 billion projected cost, for which there are ample cash balances from federal relief and incentive payments the state has retained.

Once fully phased-in, total enrollment for the adult expansion group is projected to be about 275,000 individuals. Total enrollment as of Oct. 31, 2022, is about 263,000 and continues to grow steadily. The current caseload may be inflated slightly because federal law prohibits states from disenrolling ineligible individuals from Medicaid while the federal COVID-19 public health emergency is in effect. Congress has directed states to begin the process of eligibility reverification on Saturday, April 1, which will have a moderating effect on participation.

Extending Coverage for Postpartum Women

MHA supports prefiled legislation (House Bill 91, Senate Bill 45 and others) to allow low-income pregnant women to receive Medicaid benefits for one year after the end of a pregnancy. Currently, coverage only is available for 60 days. Missouri has the seventh highest maternal mortality rate in the country. Of all maternal deaths, 82% are preventable and 60% occur during the gap between when coverage ends but before one-year postpartum. Extended access to health coverage for new mothers during a critical time should have a significant impact on Missouri's maternal mortality rate. MHA supports this legislation.

Certificate of Need Repeal

Several bills have been prefiled to repeal the Certificate of Need program. The repeal of CON will result in an increased number of specialty providers focused on the most lucrative patients and procedures. In cherry-picking these service lines, these providers undermine community hospitals' ability to sustain unprofitable but essential services they provide to the community. Hospitals in rural areas especially are vulnerable to the loss of the few services that supply a positive cash flow to support operations. Eventually, this forces rural residents to travel longer distances for basic treatments and services not offered by specialty providers.

It also is important to note that most CON applications are approved, so the process does not block projects that meet a community need. At the same time, it discourages applications that are marginal and/or controversial, and unlikely to have broad community support. Contrary to what proponents of repeal have claimed, experience in other states has shown that repeal does not expand competition in a way that reduces health care costs or benefits the market.

MHA opposes repeal of the CON law but not reasonable reform of the program.

BARRIERS TO QUALITY PATIENT CARE

Prior Authorization of Medical Care

Health insurers increasingly are requiring prior authorization for medical treatment. Prior authorization interferes with the physician-patient relationship and often delays needed medical care.

Thirty-four percent of physicians reported prior authorization caused serious negative events for their patient, such as hospitalization, disability and permanent bodily damage, or death. Eighty-two percent of physicians had at least one patient that did not seek treatment because of prior authorization.

Attempting to save money by delaying or denying needed medical care is wrong and can lead to severe health consequences. The system is broken and fosters discord between insurers, patients and health care providers.

In the 2023 legislative session, MHA will advocate for legislation that creates a system that rewards high-performing providers while encourages collaboration between insurers and providers. Meaningful care coordination between providers and insurers will lead to better patient outcomes and reduce health care costs.

Patient Access to Specialty Drugs

"White bagging" refers to an insurer requirement that certain medications be purchased through specialty pharmacies, often owned by the insurer, instead of the patient's preferred local health care provider or hospital. Coverage of these drugs is considered out-of-network if they are dispensed locally, obligating the patients to use a distant insurer-mandated pharmacy.

These medications typically are used for infusion treatments and must be compounded to match the patient's vitals. In a recent survey by health care consulting firm Vizient, Inc., 83% of hospitals said that specialty medications delivered to them for patient administration through white bagging did not arrive on time, and another 66% of hospitals said they have received the wrong dose. Because the drugs cannot be safely administered, care is delayed, which can be devastating for patients with multiple sclerosis, cerebral palsy, cancer, rheumatoid arthritis and several other conditions.

White bagging places a bureaucratic, unnecessary and wasteful step between the patient and the provider. Even more importantly, it is dangerous for patients because drugs are obtained outside the normal medication safety mechanisms, and delays in medication administration can have serious consequences for patient health.

In the 2023 legislative session, MHA will advocate for legislation that prohibits insurers from mandating white bagging arrangements.

QUALITY PATIENT CARE

Adequate Resources for Patient Care

An ongoing legislative priority for MHA is to ensure sufficient appropriations for Medicaid hospital services. Staff will work to ensure sufficient funding is allocated to cover projected hospital services for the year and scrutinize how the hospital provider tax — the Federal Reimbursement Allowance, or FRA — is being used to support Medicaid payments to hospitals. In 2021, the General Assembly reauthorized the FRA through Sept. 30, 2024, ending the recent practice of annual legislative renewals.

Staff will monitor any proposed changes to Medicaid hospital reimbursement throughout the budget process. In SFY 2022, MHD implemented reimbursement changes through rebasing and directing payments. These are interim steps toward inpatient reimbursement based on diagnosis-related groups with value-based reimbursement elements. The development of the DRG methodology has begun (contracting for expert consultation is the first step in the state's development process). The development and implementation processes are expected to take 30 to 36 months.

Staff convened a member workgroup to develop principles and recommendations to guide the transformation to value-based reimbursement. The MHA Board of Trustees approved the group's report and recommendations at its November meeting.

Legislation That Interferes With Hospitals' Ability to Deliver Quality Patient Care (Staffing Ratios and Surgical Smoke)

Legislation has been prefiled (HB 322) that would require hospitals to have minimum staffing ratios for each clinical unit and patient care area of the hospital. These requirements eliminate flexibility and a team-based approach. It would result in an inability to provide staffing based on the needs of individual patients and jeopardizes patient care. Nurses would not be able to leave the patient care unit, meet with family members in the waiting room or transport a patient to another unit.

Hiring the staff necessary to comply with these ratios would be nearly impossible and extremely costly. Hospitals would be forced to compromise patient care by cutting other services. MHA will oppose this legislation.

A bill has been prefiled (HB 396) that would require hospitals to prevent exposure to surgical smoke using a surgical smoke evacuation system during any planned procedure that likely is to generate surgical smoke. Proponents of the legislation are manufacturers of the evacuation systems. Hospitals already must comply with regulations from multiple bodies that sufficiently address the issue of surgical smoke. Adding a layer of state legislation is confusing, distracts from quality patient care and could result in the purchase of unnecessary equipment. MHA will oppose this legislation.

Opioid Addiction (PDMP)

MHA promoted a prescription drug monitoring program to reduce opioid abuse caused by illicit drug-seeking patients or fragmented prescribing decisions. For several years, the legislation was stalled by the General Assembly. As a result, MHA supported a voluntary county-based model to implement such a program. This program, and pressure from MHA and others, led the General Assembly to pass a statewide PDMP program. MHA will oppose prefiled legislation (SB 289) to repeal this program.

Health Homes For Medically Complex Children

A change in federal law that took effect last year gives states the option of reimbursing health homes for children with medically complex conditions. Qualifying children are defined as those with at least one chronic condition that affects three or more organ systems; severely reduces cognitive or physical functioning; and requires medication, durable medical equipment, therapy, surgery or other treatments. Children with one life-limiting illness or rare pediatric disease also are considered medically complex children. Specially designed health homes allow providers to streamline care and improve outcomes for children at a lower cost. These homes can relieve the burden of bureaucracy on families by using case managers to help families navigate the health care system. Rep. Jon Patterson introduced legislation last year to make these health homes a required part of Missouri's Medicaid program. The bill did not pass; however, the General Assembly included $1.5 million in the FY 2023 budget to pilot the concept.

MHD currently funds health home programs for participants with select chronic conditions and for persons with a substance use disorder or mental illness, in combination with other chronic medical conditions. The current health homes have proven to be cost-effective and worthwhile for patients. MHA will continue to promote funding and legislation to implement health homes for medically complex children in the Medicaid program.

Patients With Behavioral Disorders

A federal Institutions for Mental Disease waiver would permit MHD to provide federally subsidized Medicaid coverage to nonelderly adults in IMDs, which are facilities with more than 16 beds that primarily serve behavioral health patients. Without a waiver from CMS, such coverage is barred by federal standards. The General Assembly previously enacted budgetary authorization to pursue and fund the initiative. The waiver application has been written by the Missouri Department of Mental Health, with support from MHA. MHD and DMH submitted two section 1115 waivers of the Medicaid IMD exclusion this past summer. As of January 2023, neither waiver has been approved, although approval is anticipated.

Patients With Developmental Disabilities

In the 2021 legislative session, hospitals succeeded in securing a $2 million appropriation to offset the uncompensated costs of caring for developmentally disabled patients who are medically ready for discharge but lack post-discharge placement options. MHA also succeeded in promoting passage of a law obligating the Division of Children's Services to pay hospitals for boarding children in its custody who also lack appropriate post-discharge options.

In the 2022 legislative session, MHA promoted legislation sponsored by Sen. Elaine Gannon and Rep. Cyndi Buchheit-Courtway that required DMH to study and make recommendations to address boarding of children and developmentally disabled adults in hospitals. The legislation did not pass, but it prompted the formation of a workgroup led by DMH Director Val Huhn that includes hospitals, mental health providers and the Missouri Department of Social Services Children's Division. This work group meets regularly and its potential for advancing improvements in children's behavioral health care is promising. Hospital system representatives from SSM Health, BJC HealthCare, Mercy and Children's Mercy are actively engaged in the work of the committee.

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