

Issue Brief

STATE ISSUE BRIEF • MAY 16, 2017

LEGEND

HB = House Bill

HCB = House
Committee Bill

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Concurrent Resolution

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Status of Selected Health Care Legislation Summary of the 2017 Session of the Missouri General Assembly

The Missouri General Assembly’s 2017 legislative session ended May 12. The following describes the outcomes of various legislative proposals affecting hospitals and health care. The governor has until Friday, July 14, to approve or veto most of these enacted bills. As noted, some of these enactments have been approved by the governor.

LEGISLATION TRULY AGREED AND FINALLY PASSED

Appropriations and Budget

- Appropriates funds for Medicaid and disproportionate share hospital payments to hospitals in keeping with current payments standards and expected billings for state fiscal year 2018. A portion of Medicaid funding associated with the increased cost of current services is set aside to address funding shortfalls that may arise by the spring of 2018. ([HB 11](#))
- Enacts a supplemental budget to fund budget shortfalls in the current state fiscal year. Its \$189 million in Medicaid spending includes \$50 million for hospital payments. ([HB 14](#)) (**Approved by governor**)
- Averts a budget cut that would end Medicaid coverage of in-home and nursing home services for 8,000 elderly and disabled Missourians. The \$35 million budget cut will be offset by sweeping unexpended funds from many state accounts, but the hospital Federal Reimbursement Allowance is protected per an MHA amendment. ([HCB 3](#))
- Removes open-ended flexibility in the use of FRA funds to support Medicaid and DSH payments to hospitals, but increases spending authority by \$155 million to compensate. ([HB 11](#))
- Continues funding for the May 1, 2017, statewide expansion of Medicaid managed care for certain populations. ([HB 11](#))
- Authorizes \$100,000 to fund an evaluation of the Missouri Medicaid Emergency Reduction Program, designed to reduce nonemergency use of the hospital emergency department. ([HB 11](#))
- Directs the MO HealthNet Division to pursue emergency department reform initiatives. ([HB 11](#))

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LEGISLATION TRULY AGREED AND FINALLY PASSED

Medical Liability and Tort Reform

- Reverses the *Jefferson v. Missouri Baptist* court ruling, narrowing hospital liability for health care providers who are not hospital employees. There are two limited exceptions. A hospital or other health care provider is liable for a practitioner’s acts or omissions if the practitioner is employed not by the hospital or provider directly, but by a subsidiary controlled by the hospital or provider, and the practitioner and subsidiary do not have a specified level of liability coverage. Also, a nonphysician practitioner provided to a hospital by a staffing agency is an “employee” for liability purposes. ([HB 452](#))
- Revises state court standards governing the use of expert witnesses. ([HB 153](#)) (**Approved by governor**)
- Creates new standards for time-limited offers of settlement agreements of personal injury, bodily injury or wrongful death litigation. ([HB 339](#))
- Modifies state courts’ evidentiary standards used to define the medical expenses that plaintiffs may claim as damages in civil litigation. ([SB 31](#))

Hospital Regulations

- As of July 1, 2018, blocks state hospital licensure regulations that are contrary to, or duplicative of, the Centers for Medicare & Medicaid Services’ Medicare Conditions of Participation. Compliance with the CoPs will constitute compliance with hospital licensure standards. With specific state statutory authorization, state regulators may issue state hospital licensure regulations that do not duplicate or contradict the Medicare CoPs. ([SB 50](#), [SB 501](#))
- Specifies that trauma and STEMI centers will be designated as such by state regulators without site review if the hospital meets national certification standards. ([SB 50](#))
- Grants state Level I and II STEMI center designation based on compliance with specified national accreditation standards. ([SB 50](#))
- Exempts trauma, STEMI and stroke centers from having to obtain emergency medical services data unless it is available from the state emergency medical services database. ([SB 50](#))
- A trauma, STEMI and stroke center will not be required to follow a state interpretation of a regulatory standard if it can demonstrate a different state interpretation for a similarly-situated hospital. Compliance can be required once the inconsistency is resolved. ([SB 50](#))
- Requires the Missouri Department of Health and Senior Services to attend meetings with trauma, STEMI and stroke centers to promote best practices and improve the designation process. ([SB 50](#))

Maternal and Neonatal Care

- Authorizes state regulators to establish criteria for designating levels of maternal and neonatal care. They will apply to “birthing facilities,” including hospitals with more than one obstetrical bed. The criteria are to be based on national medical specialty standards. ([SB 50](#))
- Beginning Jan. 1, 2019, each birthing facility will report its maternal and/or neonatal level of care capacity to DHSS. ([SB 50](#))
- The department is authorized to partner with national organizations to administer the maternal/neonatal designation system. ([SB 50](#))
- Adds two disease screening tests for newborn blood samples. The new tests will begin Jan. 1, 2019, and are subject to state or grant funding of the laboratory capacity. ([SB 50](#))

Consent to Treatment

- Creates a web-based registry to store and provide access to advance health care directives. ([SB 50](#), [SB 501](#))

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Medicaid Pharmacy

- Establishes a Medicaid polypharmacy program for high-risk enrollees with multiple prescriptions. ([SB 139](#))
- Directs the MO HealthNet Division to establish a behavioral health pharmacy and opioid surveillance program to encourage best practices in prescribing. ([SB 139](#))
- Creates new standards for Medicaid coverage of antipsychotic medications. ([SB 139](#))
- Creates state standards for rebates from pharmaceutical manufacturers on drugs dispensed to Medicaid enrollees in outpatient settings. ([SB 139](#))

Medical Records

- Revises standards of access to the medical records of deceased patients. ([SB 501](#))
- Increases fees that may be charged for the retrieval and copying of medical records. ([SB 501](#))

MO Rx Drug Subsidy Program

- Extends the MO Rx prescription drug subsidy program until Aug. 28, 2022. The apparent intent is to limit the program to those eligible for both Medicare and Medicaid, but the statute and supporting appropriation are inconsistent. ([SB 139](#))

Substance Abuse

- Grants immunity from arrest, prosecution or other penalties for certain drug-related crimes if the evidence was gained in the course of seeking medical assistance for a drug or alcohol overdose. ([SB 501](#))
- Permits the director of DHSS or a physician designee to issue a statewide standing order for the use of Narcan to blunt the effect of an opioid overdose. ([SB 501](#))
- Revises standards for medication-assisted treatment of substance abuse. ([SB 501](#))

Labor Relations

- Establishes a “right to work” standard that bars employers from requiring employees to join, not join or pay dues to a labor union. ([SB 19](#)) (**Approved by governor**)

Employment Law

- Creates a “Whistleblower’s Protection Act” to define and prohibit employer retaliation against employees who report unlawful actions. ([SB 43](#))
- Defines the legal remedies and damages available to employees aggrieved by an employer’s violation of the Whistleblower’s Protection Act. ([SB 43](#))
- Creates a more rigorous legal standard for proving employment discrimination, redefines who is subject to employment discrimination lawsuits, revises the legal procedures for filing and judicial standards for deciding such lawsuits and caps the damages that may be awarded in such lawsuits. ([SB 43](#))
- Revises various workers’ compensation payment and procedural standards. ([SB 66](#))
- Prohibits local political subdivisions from adopting a minimum wage different from the state minimum wage, and ends St. Louis City’s higher minimum wage as of Aug. 28, 2017. ([HB 1194](#))

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Emergency Medical Services

- Revises the powers and duties of state and regional emergency medical services directors, which may include regional treatment protocols for special needs patients and for mass casualty or state-declared disaster incidents. ([SB 503](#))
- Authorizes emergency medical technicians to administer the patient’s personal medication when necessary. ([SB 503](#))
- Directs the Department of Public Safety to complete a study of public safety answering points and submit a consolidation plan to the Missouri 911 Service Board. ([SB 503](#))
- Renames and revamps the Advisory Committee for 911 Service Oversight and assigns it new duties. ([SB 503](#))
- Authorizes the state auditor to conduct performance and fiscal audits of 911 or emergency dispatch or communications entities. ([SB 503](#))

Dental Care

- Clarifies and broadens the authority of licensed hospitals to employ dentists or oral surgeons. ([SB 50](#))
- Defines the frequency of inspection for cone-beam computed tomography and panoramic dental X-ray systems. ([SB 50](#))

Suicide Prevention

- Promotes assessment of, and responses to, depression and suicide among medical students. ([SB 52](#))
- Requires public universities to have suicide prevention policies and initiatives. ([SB 52](#))

Organ Donation

- Removes the expiration date on the state law authorizing contributions to the Organ Donation Program Fund through the income tax system. ([SB 248](#))

Practitioner Licensure

- Revises application standards for assistant physician licensure to encompass those who were prevented from applying by a delay in the issuance of administrative regulations to set application standards. ([SB 50](#), [SB 501](#))
- Revises licensure standards for speech-language pathologists. ([SB 50](#))
- Revises administrative procedures for processing practitioner licenses. ([SB 501](#))
- Establishes standards for out-of-state physicians to provide sports-related medical services in Missouri. ([SB 50](#))
- Repeals current law permitting assistant physicians to dispense drugs, devices or therapies under a physician supervision requirement. ([SB 501](#))
- Revises licensure standards for psychologists. ([SB 501](#))
- Clarifies that pharmacists’ administration of vaccines will follow protocols based on federal treatment guidelines. ([SB 501](#))

Pharmacy

- Authorizes the Board of Pharmacy to use its appropriated funds to collect and dispose of schedule II and III controlled substances. ([SB 501](#))
- Directs the Board of Pharmacy to create a program to promote medication safety and suppress abuse and diversion of prescription drugs. ([SB 139](#))

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Mental Health

- Allows Department of Mental Health attorneys to seek, and participate in, hearings regarding involuntary medication of patients committed to the department because of lack of mental fitness to stand trial for a criminal offense. ([SB 128](#))

LEGISLATION DEFEATED

Medicaid Managed Care

- Establishes various reforms of Medicaid managed care. ([HB 684](#), [SB 527](#))

Covenants Not to Compete

- Prohibits a broad range of noncompete clauses in employment contracts. ([HB 479](#))

Medical Staff Privileges

- Restricts the ability of hospitals and medical staffs to make employment and privileging decisions based on medical specialty certification. ([HB 529](#))

Newborn Screening

- Revises the deadlines for hospitals to submit blood samples for disease screening tests for newborns. ([HB 66](#))

Certificate of Need

- Changes how, and by whom, certificate of need applications are considered. ([HB 273](#))
- Creates a legislative task force to assess certificate of need laws for long-term care. ([HB 786](#))

Guns in Hospitals

- Allows those with a permit to carry a concealed weapon to do so in the areas of a hospital that are accessible to the public. ([HB 630](#))

Discharge Planning

- Allows patients admitted to a hospital, or treated at an ambulatory surgical center, to designate a caregiver to perform post-discharge tasks. ([HB 796](#))

Medicaid Reform

- Requires the Department of Social Services to apply for a global waiver to create a block grant for Missouri Medicaid. ([SB 28](#), [HB 290](#))
- Authorizes a Medicaid reform program called “Patient’s First Medicaid Reform Act,” that combines a federal block grant with health savings accounts. ([HB 124](#))
- Creates a commission of state officials and private sector representatives to assess Medicaid waiver and reform topics. ([SCR 25](#))
- Creates a legislative work group to develop an application for a Medicaid Section 1332 waiver. ([HB 780](#))
- Requires the Department of Social Services to apply for a federal waiver to allow a 6-month residency requirement for Medicaid coverage. ([HB 691](#))
- Directs that Medicaid will pay for hospital emergency department services using the “prudent layperson” standards. ([HB 1075](#))

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LEGISLATION DEFEATED

“Right to Shop”

- Creates a program to use transparency of health care prices to give patients the ability to share in savings if their negotiated savings are less than the insurer’s average reimbursement. ([HB 123](#), [HB 125](#))

Sepsis

- Requires licensed hospitals to implement sepsis prevention protocols approved by DHSS. ([SB 97](#))

Immunization

- Mandates that hospital employees and volunteers be immunized against influenza annually. ([SB 117](#))

Opioids

- Establishes a state prescription drug monitoring program. ([HB 90](#), [SB 231](#))
- Levies new fees to support the state agency that regulates controlled substances. ([HB 103](#))
- Authorizes licensure discipline for providers failing to follow Centers for Disease Control and Prevention guidelines for prescribing opioids. ([SB 74](#))

Motorcycle Helmets

- Authorizes adults to ride motorcycles without wearing helmets. ([HB 235](#), [SB 8](#), [SB 323](#))

Physical Therapy

- Revises standards for physician referrals to physical therapy services. ([HB 157](#), [SB 317](#))
- Sets a minimum reimbursement amount for coverage of physical therapy services in nonhospital settings. ([HB 298](#))

Insurance Networks

- Requires health insurers to include in their networks any provider willing to accept the insurer’s contractual terms and conditions, and the insurer’s standard fee schedule. ([HB 388](#), [HB 974](#))

Medical Residents

- Prohibits a health care provider that operates a residency program from contracting with an out-of-state medical school to exclusively accept only students from that school to the exclusion of Missouri medical school graduates. ([HB 690](#))

Hospice Care

- Repeals the obligation for notification and investigation of the death of a hospice patient by a local coroner or medical examiner. ([HB 405](#))

Predetermination of Benefits

- Requires health insurers to respond electronically to a provider’s electronic predetermination request for an estimate of the expected coverage, including patient cost-sharing, for specified procedures. ([HB 549](#), [SB 138](#))

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Liability Issues

- Restricts liability based on the Missouri Merchandising Practices Act. ([SB 5](#))
- Creates new standards for litigating the assessment of punitive damages. ([HB 890](#))
- Creates deadlines for notification that a medical malpractice lawsuit has been filed. ([SB 524](#), [HB 808](#))
- Eliminates the doctrine of joint and several liability in tort lawsuits. ([SB 383](#))

Workplace Violence

- Enhances criminal penalties for violence against law enforcement officials, or trauma center or emergency department personnel. ([HB 273](#))

Consent to Treatment

- Revises state standards regarding the process of securing consent to treatment for incapacitated patients without an advance directive. ([HB 144](#), [SB 493](#))
- Requires health facilities and physicians to disclose their policies regarding life-sustaining treatments upon written request by patients or prospective patients. ([HB 440](#))
- Limits the ability of health facilities and practitioners to withhold life-sustaining treatment from a child without written authorization from the child’s parent. ([HB 440](#))
- Changes laws relating to guardianship. ([HB 89](#))
- Establishes procedures for terminally ill patients to end their lives. ([HB 524](#), [HB 1222](#))

Practitioner Licensure

- Participates in an interstate compact for the licensure of emergency medical system personnel. ([HB 100](#))
- Expands the authority of advanced practice registered nurses to practice independent of a physician. ([HB 165](#), [HB 244](#), [SB 42](#))
- Creates a legislative task force on advanced practice registered nurses. ([HB 939](#))
- Changes the scope of practice of physical therapists. ([HB 211](#))
- Participates in an interstate compact for the licensure of psychologists. ([HB 227](#))
- Creates criteria for considering new categories of occupational licensure. ([HB 272](#), [HB 609](#))
- Creates a system of occupational licensure for radiation technologists. ([HB 601](#), [HB 789](#), [SB 407](#))

Forensic Examinations

- Establish a sexual assault kit tracking system. ([HB 578](#))

Workforce

- Makes psychiatrists eligible for the health professional student loan repayment program. ([HB 121](#))

Volunteer Health Services

- Authorizes health practitioners to volunteer to provide services to uninsured patients without incurring malpractice liability. ([HB 1050](#))

Health Insurer Regulation

- Establishes new standards for the review of appeals of adverse coverage or utilization decisions by health insurance. ([HB 720](#))
- Directs that a managed care plan’s network will be deemed sufficient by regulators if it meets specified accreditation standards. ([SB 194](#))

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LEGISLATION DEFEATED

Hospital Tax Levy

- Allows certain governmental hospitals to convert their property tax levy to a sales tax levy upon voter approval. ([HB 193](#), [HB 195](#))

Abortion Regulation

- Changes various laws relating to abortion regulation. ([HB 194](#), [SB 67](#) and others)

Medicaid Services

- Authorizes Medicaid to pay chiropractors for services within their scope of practice. ([HB 209](#))

Mental Health

- Authorizes service dogs for those with psychiatric disabilities. ([HB 262](#))

State Regulatory Process

- Revises standards for the promulgation of emergency rules by state agencies. ([SB 468](#), [HB 792](#))

Prison Health Care

- Restricts the use of shackles on pregnant and post-partum prisoners ([HB 351](#), [SB 180](#))
- Requires inmates receiving an on-site nonemergency medical examination or treatment from correctional center personnel to be charged \$0.50 per visit. ([HB 268](#))

Workplace Violence

- Increases penalties for certain crimes against law enforcement officers and emergency responders. ([HB 273](#))

Unemployment Compensation

- Revises laws relating to unemployment compensation. ([HB 288](#))

Health Facility Regulation

- Authorizes a pilot project to transfer the authority to inspect nursing homes from the DHSS to local health departments. ([HB 322](#))

Medical Marijuana

- Authorizes the medical use of marijuana for specified conditions. ([HB 437](#))
- Authorizes the expanded use of hemp oil to treat specified medical conditions. ([HB 937](#), [SB 371](#))