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- 2009 Legislative wrap-up
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## District Dialogues offer face time with lawmakers

Don't have time to go to the Capitol in St. Paul to talk with your legislators? Let the MMA bring them to you through a District Dialogue, a one-hour casual meeting with your local representatives from the Minnesota House and Senate. They can be held in homes or backyards, at a coffee shop, in a clinic, or at any other venue that's convenient for you. Interested? MMA staff will work with you to organize the event. Contact Dennis Gerhardtstein at 612/362-3745 or [dgerhardtstein@mnmed.org](mailto:dgerhardtstein@mnmed.org).

## Cash Crunch at the Capitol

The 2009 legislative session was no picnic for Minnesota's physicians. But without MMA members raising their voices at the Capitol, it could have been a lot worse.

It was a year where worst-case scenarios became real possibilities.

In order to eliminate a \$4.6 billion gap in the state's 2010-2011 budget, Gov. Tim Pawlenty proposed eliminating coverage for up to 115,000 Minnesotans, doing away with the Health Care Access Fund, slashing benefits for people enrolled in state-sponsored health plans, and cutting physician reimbursement by 3 percent.

Because MMA members testified at the Capitol and wrote their lawmakers, they were able to keep some of these cuts from happening and improve the outcome of the session for physicians and their patients.

Here is a look back at the 2009 legislative session and how various issues played out.

### HEALTH COVERAGE ELIGIBILITY

The MMA's top priority this session was protecting eligibility for people enrolled in Minnesota's health care safety net programs. In order to do that, the MMA supported the final health and human services budget bill that passed the DFL-controlled House and Senate over the governor's budget proposal.

The House and Senate bill reduced forecasted health care spending by \$500 million, compared with Pawlenty's proposal that included \$1 billion in health care cuts. Although the House and Senate bill was far from perfect, it preserved eligibility for safety net programs.

However, during the final days of the session, the governor radically changed the end-game dynamics when he announced

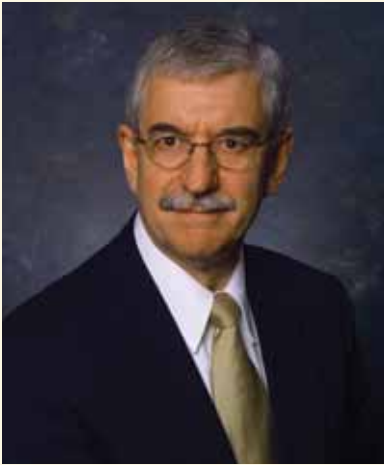


that he would sign all of the budget bills and resolve the remaining \$2.7 billion shortfall by using his power to line-item veto and unallot expenditures.

Through a line-item veto, Pawlenty eliminated the General Assistance Medical Care program, which serves about 35,000 low-income Minnesotans starting July 1, 2010, for an estimated savings to the state of about \$380 million. Later, he used his unallotment power and moved up the elimination date to March 1, 2010.

A major focus of the MMA's 2010 legislative strategy will be to stop this cut from actually taking place. "We will need to work with the governor and lawmakers prior to and during the 2010 session to try to stop plans to dismantle Minnesota's health care safety net," said Dave Renner, the MMA's director of state and federal legislation.

Pawlenty's initial long-term budget plans also included large cuts to the MinnesotaCare subsidized insurance program in 2011. Midway through the session, the governor dropped his plans to cut MinnesotaCare in order to accept \$1.8 billion in federal stimulus dollars, which the state could only receive if it maintained the number of people



Noel R. Peterson, M.D., MMA President

## Lessening the Pain

If health care in Minnesota were my patient during this last legislative session, my treatment goal would have been pain management.

We knew it would be a brutal year for physicians and their patients when the state’s revenue forecasters said in March that the state faced a \$6.4 billion budget deficit. So we polled MMA members, asking for guidance as to how we could ease the suffering caused by massive cuts in our state budget. They told us to protect eligi-

bility for people in public health care programs, preserve physician payments from public plans, and preserve benefits—in that order. They also told us to oppose an increase in the sick tax.

MMA staff and members were at the Capitol daily (and nightly) working on these priorities. As a result, we managed to lessen the pain that could have been inflicted on physicians and their patients during this year’s session. Here are a few of the things we accomplished.

Gov. Tim Pawlenty had proposed eliminating coverage for about 115,000 Minnesotans by gutting the MinnesotaCare subsidized insurance program. The MMA worked with lawmakers to pass a budget that did not include any eligibility cuts. And we are now working to try and stop the governor from implementing his plan to eliminate the General Assistance Medical Care program.

A cut in payments to all physicians was proposed as a cost-cutting solution. As a result of our efforts, there will be no cuts in payments to primary care physicians serving people in state-sponsored programs. However, the MMA could not stop a 5 percent cut in specialist payment rates that Pawlenty increased to 6.5 percent cut during his unallotment process.

Some lawmakers had proposed increasing the sick tax; others discussed transferring funds from the Health Care Access Fund into the state’s general fund, where the money could be used for purposes other than paying for state-sponsored health insurance programs. We are proud to say that we prevented both of these things from occurring.

Clearly, Minnesota and all states are suffering as we deal with the current financial crisis. The cure will not be quick in coming. But the MMA will continue to work to ensure that our state’s most vulnerable citizens will not be the ones to feel the greatest pain.

### FAST FACT

More than 50 physicians, residents, and medical students had personal visits with their lawmakers this session as part of the MMA’s Capitol Rounds program.

### Historic Deficit

State	
projected deficit:	\$6.5 billion
Federal	
stimulus money:	- \$1.8 billion
Final state	
budget gap:	<u>\$4.6 billion</u>

■ CONTINUED FROM P. 1

covered through state safety net programs. He has indicated that he plans to cut the program after the federal requirements abate.

### PROVIDER TAX AND HEALTH CARE ACCESS FUND

With lawmakers facing such a large budget deficit, it was no surprise that proposals emerged to raid the Health Care Access Fund and increase the provider tax to help close the gap.

In his initial budget proposal, Pawlenty called for elimination of the Health Care Access Fund but not the provider tax. Future provider tax revenues would have been deposited into the general fund.

DFL lawmakers introduced bills to increase the provider tax to offset cuts proposed by the governor.

In April, the Senate tax bill included a placeholder for increasing the provider tax on hospitals and surgical centers.

The MMA vehemently opposed both of these proposals and sent out an Action Alert in early April after learning that lawmakers were considering a provider tax hike.

About 500 physicians sent emails to lawmakers urging them to oppose bills that would increase the provider tax from 2 percent to 3 percent, arguing that increasing the sick tax would raise health care costs.

In the end, lawmakers left such an increase out of the final tax bills and rejected Pawlenty’s proposal to raid the Health Care Access Fund.

## REIMBURSEMENT

Knowing that payment cuts to physicians who provide care to patients in state-sponsored health plans were a real possibility, the MMA started the session by educating lawmakers about the effect current reimbursement rates were having on physicians' practices.

MMA lobbyists and members met with lawmakers to explain that there had only been one across-the-board increase of 3 percent to reimbursement rates during the past 16 years.

Lawmakers acknowledged that physician reimbursement in many cases did not cover the cost of care. They agreed not to cut payments for outpatient visits, preventive health visits, or family planning services in primary care practices. However, they enacted a 5 percent cut for non-primary care physicians effective July 1. Pawlenty worsened the picture by increasing the cut to specialists to 6.5 percent through the unallotment process. The cut does not apply to specialists who see patients in federally qualified health centers, rural hospitals and clinics, and Indian Health Service clinics.

The MMA will continue its campaign to increase Minnesota's safety net reimbursement rates for physicians during the 2010 session.

## The Budget Details

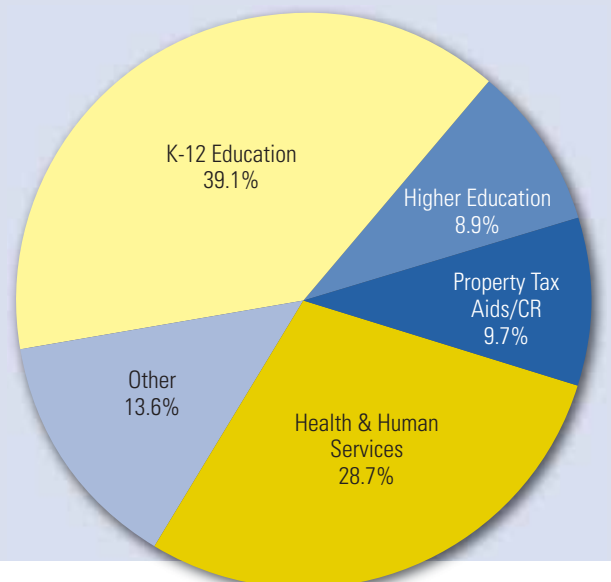
### The House and Senate Health and Human Services Budget Bill:

- Appropriated about \$10.5 billion for health and human services over the next two years, an increase of about \$850 million, or 4 percent a year above current spending
- Cut reimbursement rates for specialist physicians by 5 percent, but did not cut rates for primary care physicians
- Cut hospitals payments by 1 percent (delays rebasing)
- Left nursing home payment rates unchanged
- Shelved a proposal to encourage women on public programs to use nonhospital-based birthing centers
- Maintained \$47 million in funding for tobacco and obesity prevention programs

### Gov. Pawlenty:

- Eliminated General Assistance Medical Care through a line-item veto to save \$381 million
- Increased reimbursement cut to specialists 1.5 percent making the total cut 6.5 percent

### General Fund Spending



Source: Minnesota Management and Budget

## A Voice for Primary Care

Randy Rice, M.D., a family physician at Gateway Family Health Clinic in Moose Lake and an MMA member, helped the MMA on a number of issues related to increasing access to primary care services during the 2009 legislative session.

Rice's work actually began long before the start of the session. The MMA appointed him to serve on the Health Workforce Shortage Study Work Group,

formed as part of the 2008 Health Care Reform Act.

As part of that group, Rice explored ways to avert a potential shortage of primary care providers in Minnesota. Those discussions led to legislation, supported by the MMA, to change the number of physician assistants a physician can supervise from two to five. The measure passed as part of a larger bill and was signed into law by Gov. Tim

Pawlenty.

Rice also testified against a bill that would have allowed advanced practice nurses to prescribe medications without having a written prescribing agreement with a physician. The MMA opposed the bill because it was counter to the goal of promoting collaborative care. In fact, it went way beyond what the health workforce group recommended. The bill did not pass.

The MMA tracked more than 50 issues at the Capitol this year. Here's a sampling of what did and did not pass.

## PASSED

### INSURANCE FOR THE UNEMPLOYED

The federal stimulus package includes subsidies to help people who have been laid off from their jobs afford COBRA premiums. The Minnesota Legislature approved an additional subsidy equal to 35 percent of the COBRA premium for people who would otherwise be eligible for public programs. This is in addition to the 65 percent subsidy.

### Driving for Health



Steve Sterner, M.D., an MMA member and emergency medicine physician at Hennepin County Medical Center, testified at the Capitol in support of the

primary seat belt law this session.

Passage of the law was hard fought. Sterner said that physicians have been advocating for this change since the mid-1980s.

Now that it has become law, he expects it will save lives and reduce serious injuries.

"Every time we have incrementally passed a new stage of seat belt legislation more people wear their seat belts, and when they wear their seat belts they are not thrown around in the car, and they are not ejected, and they do much better in accidents," Sterner said.

### COVERAGE FOR KIDS

The Legislature made Minnesota's coverage of kids through Medical Assistance consistent with the federal SCHIP reauthorization passed by Congress earlier this year. Families with children who have incomes up to 200 percent of the federal poverty guideline (as opposed to the previous 150 percent ceiling) are no longer subject to the four-month waiting period or absence of employer-sponsored coverage requirements to qualify for Medical Assistance.

### DELAYED PAYMENTS

Payments for both inpatient and outpatient services to hospitals and clinics will be delayed one month from June to July in 2011, 2012, and 2013. This could result in cash flow problems for facilities that treat patients in state-run health programs.

### ANESTHESIA PAYMENT

Lawmakers reduced the rate at which anesthesiologists are reimbursed for managing a CRNA. Legislators originally planned to eliminate payment for medical direction altogether. The MMA worked with the Minnesota Society of Anesthesiologists to oppose this cut.

### REDUCING CESAREAN BIRTHS

The Department of Human Services will establish a blended payment rate by October 1, 2009, for cesarean sections without complicating diagnosis, vaginal deliveries with complicating diagnosis, and vaginal deliveries without complicating diagnosis. There will be a blended rate for the facility fee and a different one for the professional fee. This is intended to reduce the number of cesarean births within public programs. The MMA opposed this bill.

### PATIENT-CENTERED DECISION MAKING

The Department of Human Services will study approaches to making reimbursement for certain procedures

contingent on patients participating in a patient-centered decision-making process and will evaluate the effect of patient-centered decision making on quality, cost, and patient satisfaction. The MMA opposed efforts to link shared decision making to reimbursement.

### IMAGING REVIEWS

Starting in January of 2010, the Department of Human Services will require prior authorization or use of decision support tools by providers who order outpatient diagnostic imaging services for patients in the fee-for-service Medical Assistance and GAMC programs. Services performed as part of an ER visit, inpatient hospitalization, or urgent care visit are excluded. The MMA preferred this language to a prior authorization process because it mirrors current requirements in the private sector.

### PROVIDER PAYMENTS

Health plans are now required to report to the Minnesota Department of Health and Human Services how much of their payments from the state go to providers. Plans also must report the process by which they pass along increases or decreases in payments to health care providers and explain the methodology used to establish reimbursement rates. The MMA supported this legislation.

### PRE-EXISTING CONDITIONS SAFEGUARDS

This law prohibits insurance companies from setting rates based on an applicant's gender and from refusing individual coverage to women who have had a cesarean delivery.

### SAFE PATIENT HANDLING

Clinics that move patients must have a plan to safely move patients and minimize manual lifting by workers by July 1, 2010. The plans should address the patient population and care environment, acquisition of adequate

equipment, and training of workers who provide direct patient care. The MMA supported this bill as an alternative to requiring all clinics to purchase costly lift equipment.

#### FALSE CLAIMS

Originally opposed by the MMA, this bill included a provision that encourages whistleblowers to report fraudulent claims by providing them with a financial incentive. Providers who knowingly submit false claims to the state will be subject to repayment as well as penalties and the cost of legal fees. The MMA was successful in amending the bill so that providers who make an error are not liable for penalties if they pay back the actual damages within 45 days of being informed of the error.

#### COLORECTAL CANCER SCREENING

The state will fund a colorectal cancer screening project for uninsured patients at Hennepin County Medical Center and MeritCare Bemidji. Individuals who test positive will have their treatment covered by Medical Assistance. The MMA joined the American Cancer Society in supporting this effort.

#### AUTISM TASK FORCE

The state will create a task force in September to recommend ways to improve coordination of autism services among schools, community service providers, and health care providers. The task force will meet through June 2011.

#### ALZHEIMER'S WORK GROUP

The Minnesota Board on Aging will establish a work group to examine the needs of individuals diagnosed with Alzheimer's disease and the services available to meet those needs. The group will work from September 2009 through January 2011.

## Cutting Paper, Cutting Cost



Terry Clark, M.D.

Terry Clark, M.D., a pulmonologist and member of SMDC Health System's Board of Directors in Duluth, worked with lawmakers to craft a bill that would create a uniform electronic system for obtaining prior authorization from health plans for coverage of certain drugs including those that may not be listed on their formularies.

Clark met with Rep. Tom Huntley, DFL-Duluth, and Sen. Yvonne Prettner Solon, DFL-Duluth, at the beginning of the session to discuss how this idea would save both providers and health plans

money.

He described the current system, whereby each health plan (including the state of Minnesota) uses its own forms for prior authorization and requesting drug formulary exceptions.

Most of those forms are still paper. So even if clinics have electronic health record systems, they must cut and paste information from their electronic charts into the forms, then print the forms and fax them to the health plan.

The lawmakers liked the idea, and Clark helped them craft legislation to create a uniform electronic system for processing these requests. The MMA supported the bill, which passed with bipartisan support.

The new law requires a state committee to develop a standard formulary exemption form by July 1, 2009, that can be submitted electronically by July 2011.

According to Clark, the system is estimated to save SMDC \$250,000 a year.

#### PEER GROUPING CUT-OFF

Beginning January 2012, providers with a combined cost and quality score below the 10th percentile on the provider peer grouping system being developed by the Department of Health will not be allowed to treat GAMC and MinnesotaCare (including PMAP) enrollees. The MMA opposed this.

#### NONPAYMENT FOR ADVERSE EVENTS

State programs will no longer reimburse physicians for services that contribute to or cause a hospital-acquired infection or an adverse health care event such as a wrong-site surgery, surgery performed on the wrong patient, or a foreign object retained after surgery. Physicians may not bill a recipient of services for any payment that is disallowed.

#### CENTERS OF EXCELLENCE

The Department of Human Services will be able to declare facilities centers of excellence in providing certain complex medical procedures. The commissioner can then make coverage of those procedures by

state health programs contingent on whether they occur at a center of excellence.

#### HIGH UTILIZATION PHYSICIANS

The Department of Human Services will start monitoring and tracking the practice patterns of physicians providing services to state health program enrollees. Department officials will notify physicians whose practice patterns indicate higher-than-average utilization or costs.

#### DRIVER AND PASSENGER SAFETY

The MMA joined with the Minnesota Chapter of the American Academy of Pediatrics to support a bill requiring all children up to 8 years of age or 4 feet 9 inches tall to use a child passenger safety device beginning July 1.

The MMA also supported a bill that allows police to pull over and ticket a driver for not wearing a seat belt. The primary seat belt law became effective June 9. For more than 20 years, the MMA and the emergency physicians have been working together to pass such legislation.

## FAILED TO PASS

### PROVIDER TAX INCREASE

A proposed 1 percent increase in the sick tax was considered as an option for resolving the state's budget deficit. The MMA opposed this effort.

### APN INDEPENDENT PRACTICE

This bill would have repealed the delegated prescribing agreement between a physician and an advanced practice nurse, including clinical nurse specialists and certified nurse anesthetists.



### Preserving Birthing Choices

Janette Strathy, M.D., an obstetrician at Park Nicollet Health Services, was instrumental in the

MMA's efforts to stop a plan to cap state payments for uncomplicated births and channel women on public programs to independent birthing centers.

S.F. 780 would have set up a system for licensing nonhospital-based birthing centers in Minnesota, required health plans to contract with those centers, and capped the state's facility payments for uncomplicated deliveries at \$1,650—about 50 percent less than the current payment.

Strathy testified before various committees that the bill would effectively force women on Medical Assistance to deliver their babies outside of a hospital. "We should be clear that forcing women into a birth setting that is not their choice and forcing physicians to cover care in a setting that does not meet their professional standards is not right," Strathy told lawmakers.

In the end, the legislation failed to pass, but lawmakers are expected to bring up the issue again in 2010. The MMA worked with the Minnesota Academy of Obstetricians and Gynecologists on this issue.

The MMA opposed the bill because it went beyond recommendations made by a work group that studied workforce shortage issues.

### ALCOHOL TAX INCREASE

The MMA supported this bill, which would have raised the tax on alcoholic beverages by approximately 3 cents per drink for distilled spirits and 1 cent per drink for all other alcoholic beverages. Half of the revenue raised would have gone to chemical dependency treatment.

### CAUSE OF DEATH

This bill, which the MMA opposed, would have allowed courts to change the cause of death on a death record completed by a physician.

### LASER SAFETY

The MMA joined with the Minnesota Dermatological Society to support a bill that would have established patient safety standards for the use of medical lasers for cosmetology purposes and required part-time, on-site oversight of their use.

### HEALTH CARE HOME MANDATE

The MMA opposed this bill, which would have mandated all patients with chronic conditions who are enrolled in public safety net programs to select a primary care provider that is certified as a medical home by July 1, 2009.

### MEDICAL RECORDS COPY CHARGES

The MMA opposed this effort to limit the amount that can be charged to patients and their attorneys for copying and printing medical records to 5 cents a page or less.

### NEWBORN SCREENING

This bill would have provided additional privacy protections and options to parents and would have required that all blood spots be destroyed

within 25 months of collection unless the Department of Health has parental consent to keep the specimens longer.

### PHARMACEUTICAL GIFT BAN

The current gift ban would have been extended to medical device manufacturers and distributors in addition to pharmaceutical companies.

### PHYSICAL EDUCATION

This bill would have established a statewide requirement for physical education by requiring the completion of one-half credit of physical education in order to graduate from high school starting in 2009-10.

### PREVENTIVE COVERAGE

This bill, which the MMA supported, would have required high-deductible health plans with a health savings account to offer first-dollar coverage of preventive services in order to qualify for tax advantages.

### CARIES PREVENTION

The MMA opposed this bill, which would have required primary care physicians to conduct dental exams and apply fluoride varnish to the teeth of children and teens enrolled in state-sponsored health programs, inform parents of the cause of dental caries, and advise them to make an appointment for their child with a dentist.

### PRIOR AUTHORIZATION FOR ADHD MEDICATIONS

This bill would have required prior authorization for ADHD medication prescribed to children younger than 5 years of age and required physicians to receive a second opinion from an approved provider in order to prescribe such medications in certain dosages and under certain circumstances to children ages 5 to 18 years. The MMA opposes prior authorization.

#### PRIOR AUTHORIZATION FOR C-SECTIONS

This bill, which the MMA opposed, would have required prior authorization for cesarean deliveries except in the case of an emergency or to save the life or health of the woman or unborn child.

#### DATA MINING RESTRICTIONS

The MMA supported this bill, which would have prohibited the use of prescription information for marketing purposes.

#### TAMPER-PROOF RX PADS

This bill, which the MMA opposed, would have created a uniform, state-approved, tamper-proof prescription pad to be used for all prescriptions written in the state. Physicians would have been required to purchase the more costly pads.

#### VAGINAL BIRTH AFTER CESAREAN

The MMA opposed this bill, which would have required all hospitals to perform VBACs even though many hospitals cannot meet the standards of care for the procedure established by the American College of Obstetricians and Gynecologists.

#### UNDOING OF P4P STANDARDS

The MMA opposed efforts by health plans to amend language in the health and human services omnibus bill to provide a broad exemption to the requirement that they use standardized measures for their pay-for-performance programs

### FAST FACT

More than 700 physicians contacted their lawmakers in response to MMA Action Alerts this session.



You needed a voice at the Capitol this year.

# We were there.

Membership dues support MMA advocacy efforts. This year, those efforts were needed more than ever as we fought to preserve the health care safety net and keep health care reform on track.

Membership matters. Tell your colleagues to join today.

The MMA weighed  
in on more than 50  
issues this year.

Patient-centered decision making • OB payment rates • Primary caries prevention • Cuts to public health grants • Standardized prescription pads • Judicial authority to change death records • Cap on medical records copy charges • Health plan undoing of P4P standards • Primary seat belt • Booster seats • Transparency of health plan payments • Protect the Health Care Access Fund • Newborn screening • Body art licensing and standards • CME requirement for use of X-ray machines • Nonpayment for adverse events • Imaging prior authorization • Blood lead level standard of care in statute • Licensing fee increase • Safe patient handling • Pharmaceutical gift ban • Mandatory health care home assignment • Prior authorization for ADHD medications • C-section and VBAC policies • Workers comp exclusive provider list • Colon cancer screening • Pharmacist vaccine administration • Point-of-service eligibility verification • Loan forgiveness program expansion • Restrictions on Rx data mining • Cigarette tax increase • Alcohol tax increase • First-dollar preventative coverage for HSAs • Rural cooperative anti-trust immunity • Restructuring of state health care programs • Standardized formulary and prior authorization exception • E-health records • Anesthesiology cuts • Advanced practice nurse changes • Physical education in schools • Physician assistant licensing • Insurance coverage for the unemployed • Audiology licensing • Psychologist licensing • Chiropractor licensing • Birthing centers • Medical liability • Genetic privacy • Billing clearinghouses • Autism • Laser safety • False claims

To join, contact MMA member relations at [membership@mnmed.org](mailto:membership@mnmed.org), 612/362-3747 or 800/342-5662.



## INSIDE: Legislative Wrap-Up

The 2009 legislative session was no picnic for Minnesota's physicians. But without MMA members raising their voices at the Capitol, it could have been a lot worse. Page 1

## What Passed and What Didn't

The MMA weighed in on more than 50 issues and monitored many others that were important to physicians this year. The MMA helped minimize health insurance eligibility cuts, stopped an increase in the sick tax, and prevented a cut in primary care payments. Page 4

## Physicians at the Capitol

Randy Rice, M.D., Terry Clark, M.D., Janette Strathy, M.D., and hundreds of other physicians sent emails, met with lawmakers and helped shape health care policy this session. Pages 3, 4, 5 and 6

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