

SPLIT DECISIONS

Divided Legislature will make 2022 a challenge for MMA and its priorities

When the 2022 legislative session kicks off on January 31, the MMA will be lobbying lawmakers on a familiar topic—insurers’ interferences with patient care. The association has been battling administrative burdens in one form or another for several years and that work will continue.

Specifically, the MMA will advocate to protect patient access to needed prescription drugs by limiting insurers’ ability to force a patient to change drugs in the middle of a contract year. The MMA is also actively working with stakeholders to ensure previously passed prior authorization legislation is being adequately enforced by state agencies.

In November, the MMA board met to discuss and approve the MMA’s legislative priorities for the session, a session that will have its share of challenges.

“This is an election year for all 201 legislators and the governor, so that will add a layer of complexity to our work,” says Dave Renner, MMA’s director of advocacy. “Also, the House, which is led by the DFL, plans to meet virtually during the session and the Senate, which is led by the Republicans, will meet in person. We anticipate a challenging few months at the Capitol.”

Along with maintaining drug coverage, the MMA will focus on:

- Improving patient safety by protecting from discovery discussions that are held between physicians and patients following a patient adverse event. The MMA endorses the Communication and Optimal Resolution (CANDOR) model, which is designed to include patients and family members in timely and honest information following an adverse event, supporting caregivers and working to improve patient safety.
- Authorizing a feasibility study to establish a statewide registry for Provider Order for Life-Sustaining Treatment (POLST) to ensure EMS and emergency departments have access to POLST orders patients may have.



Given the split Legislature, odds are slim that the following issues will gain much traction, but they remain important to the MMA and its members:

- Promoting childhood and COVID-19 vaccinations to increase rates.
- Supporting efforts to reduce firearm deaths and injuries through support of universal criminal background checks for all sales, passage of the “red flag law” that allows law enforcement to temporarily remove firearms from persons who are a danger to themselves or others and support for expanded research of causes of firearm-related deaths and injuries.

Virtual Day at the Capitol is March 1

With House leadership’s decision to meet virtually during the session, the MMA has decided that its annual Day at the Capitol will be held via Zoom again.

The event will be held online from noon to 1 p.m. on March 1; the MMA will work with members to arrange for online meetings with their representative and senator later that day.

“We were hoping to be able to hold the event at the Capitol but, with one body of the Legislature meeting virtually, we realized that wouldn’t make sense,” says MMA President Randy Rice, MD. “It’s hard to match the visual of the Capitol filled with our white coats but we understand the decision.”

“While it’s not preferred, we will still be able to educate members online about our top priorities and provide them with tips on how to interact with their elected officials,” says Renner. “Now, more than ever, physicians need to be meeting with representatives and senators to continue advocating for the practice of medicine and patients, whether it’s online or in-person.” MM



News Briefs

Minnesota Supreme Court hears medical malpractice case

In late November, the Minnesota Supreme Court heard oral arguments in the case of *Smits v. Park Nicollet*, which the MMA fears could place a significant burden on providers regarding warning third parties of a patient's unforeseeable violent behavior.

In the case, a patient was being seen for mental health services on an outpatient basis at Park Nicollet when he murdered his family and then committed suicide. The patient's next-of-kin sued Park Nicollet and HealthPartners, claiming that the patient's violent acts were foreseeable and more should have been done to prevent the acts, even though there was no history of prior violence and no threats of violence.

The Court of Appeals ruled that Park Nicollet physicians could have foreseen the violent acts because they prescribed the patient a medication that had a black box warning label for violence and aggression. This ruling, if it stands, places further burdens on providers to warn third parties of a patient's unforeseeable violent acts.

MMA, in partnership with the Minnesota Hospital Association, participated in the case as *amicus curiae*, or friend of the court, by submitting a brief explaining how this drastic expansion of liability would negatively impact the mental health system in Minnesota.

Stay tuned to *MMA News Now* for further details and a decision by the Minnesota Supreme Court.



State adds edibles to medical cannabis program, denies anxiety as disorder

The Minnesota Department of Health (MDH) announced in early December that it will approve infused edibles in the form of gummies and chews as a new medical cannabis delivery method in the state's medical cannabis program, effective August 1, 2022.

A rulemaking process that will outline requirements for labeling, safety messaging, packaging and testing will launch this month. Current permitted delivery forms include pills, vapor oil, liquids, topicals, powdered mixtures and orally dissolvable products, like lozenges.

In March 2022, registered medical cannabis patients will also be eligible for dried raw, smokable cannabis, which was approved by the 2021 Minnesota Legislature. Rulemaking for dried raw cannabis is currently in process.

No new conditions were added this year. As in past years, MDH conducted a formal petition and comment process to solicit public input on potential qualifying medical conditions and delivery methods for medicine.

Since 2016, petitioners have requested anxiety disorder or panic disorder as a qualifying medical condition. Each year it has been denied due to lack of clinical evidence and the desire to avoid any unintended consequences.

This year, at the request of Health Commissioner Jan Malcolm, the MDH Office of Medical Cannabis conducted an in-depth review, which included a research review of anxiety disorder as a qualifying medical condition. The addition was not approved due to a lack of scientific evidence to support effectiveness, as well as concerns expressed by healthcare practitioners.

"We received many comments from healthcare practitioners treating patients with anxiety disorder, and they urged us to not approve it as a qualifying medical condition," Malcolm said. "We recognize that not everyone has equal access to therapy—which is considered the front-line treatment—but ultimately we concluded that the risk of additional harms to patients outweighed perceived benefits."

MMA urges Minnesotans again to get vaccinated, take precautions

Just before Thanksgiving, the MMA once again urged Minnesotans to get vaccinated, get a booster shot when available and continue masking up and keeping socially distant.

"We know that Minnesotans are tired of hearing this, but everyone has to do their part to slow the spread of this virus," said MMA President Randy Rice, MD, in a press release distributed statewide. "The best way to fight this is for more people to get vaccinated. Healthcare workers will continue to do their jobs, but we are struggling, and we need help. If you haven't gotten vaccinated yet, please do so, and then mask up and stay socially distant."

Hospitals across Minnesota are nearing capacity and, with the colder weather here and people planning to get together in large groups during the holidays, it's shaping up to be a difficult season for healthcare workers.

AMA focuses on pandemic and battling disinformation at November meeting

Navigating the ongoing COVID-19 pandemic and battling disinformation were at the top of the agenda at the AMA's House of Delegates (HOD) online meeting in November.

The HOD meeting included discussion of how vaccine mandates have impacted the healthcare workforce and the negative

effects of COVID-19 disinformation campaigns. The HOD took action to direct the AMA to work with relevant professional societies to combat public health disinformation that undermines public health initiatives disseminated by health professionals.

The HOD approved recommendations from the Council on Science and Public Health to develop an organization-wide strategy to strengthen public health infrastructures. It also supported legal authority of health officials to enact reasonable, evidence-based public health measures, including mandates, when necessary to protect the public. Plus, it advocated for consistent, sustainable funding to support public health infrastructures.

The HOD adopted a strong position in support of Medicaid coverage for 12 months postpartum for all pregnant and postpartum women, regardless of their citizenship status.

“While meeting virtually is less than ideal, your Minnesota delegation worked hard to represent Minnesota’s physicians,” said Cindy Firkins Smith, MD, chair of the Minnesota delegation. “We were glad to see the AMA take strong action to support public health and expanding access to care.”

Laurel Ries, MD, an alternate delegate, served on the AMA Committee on Rules and Credentials, and Ashok Patel, MD, another alternate delegate, served on Reference Committee G, which dealt with medical practice issues. MMA past president, Peter Amadio, MD, representing the American Association of Hand Surgeons, chaired Reference Committee A, which dealt with medical service issues.

Along with Smith, Ries and Patel, the Minnesota delegation included: David Estrin, MD, vice chair; Andrea Hillerud, MD; Dennis O’Hare, MD; David Thorson, MD; MMA president Randy Rice, MD; Lisa Mattson, MD; Dan Pfeifle, MD, (Resident-Fellow Section); and Adrine Kocharian (Medical Student Section).

Report shows COVID-19’s effect on cost and utilization of services in 2020

In mid-November, MN Community Measurement (MNCM) released its annual health care cost report that offers a first glance at understanding the COVID-19 pandemic’s impact on cost and utilization of services.

The Health Care Cost & Utilization in 2020 report highlights overall cost trends in 2020 for Minnesotans with private health insurance coverage. Using data for more than 1.3 million people with a total of \$9.1 billion in healthcare spending, the report compares results for 108 medical groups.

Statewide, the total cost of care (TCOC) for people with private insurance fell by 2.5 percent per person in 2020, after increasing by an average of 5.0 percent per year for the previous five years.

“Given the many disruptions to health care in 2020, it’s not surprising to see that costs fell,” says Julie Sonier, MNCM president and CEO. “However, we don’t yet know about the implications of the care that was forgone in 2020 for future health outcomes and healthcare costs. This story is still unfolding, and it will take at least a few years to understand the long-term implications.”



Advocacy Action Team returns in new format for MMA members

The MMA’s Advocacy Action Team (AAT) has returned in a new format, but is still focused on bringing members together to engage on policy-related issues and to advocate on behalf of medicine.

With the new AAT format, members can gain important skills, tools and resources to help them become effective advocates, and also engage in advocacy conversations on important policy issues. There is now just one team with three channels:

- Advocacy 101.
- Firearm Death and Injury Prevention.
- Vaccines.

More information about the Advocacy Action Team, including descriptions of each channel and how to sign up to become a member, can be found at www.mnmed.org/advocacy/MMA-Advocacy-Toolkit/Advocacy-Action-Teams.

MMA board supports transparency in adverse events

The MMA Board of Trustees voted at its November meeting to advance patient safety and timely and transparent resolution of adverse events by facilitating adoption of a model, known as CANDOR, by Minnesota physicians and other healthcare providers.

The board supports pursuing legislation that would protect physician/patient discussions from legal discovery in the aftermath of an adverse event. The board also supports continuing to promote and educate physicians and medical practices about the benefits of the CANDOR process.

CANDOR (Communication and Optimal Resolution) is a process used by healthcare facilities and healthcare professionals to respond to and resolve adverse events. The process involves immediate disclosure of an adverse event to a patient and/or their family and includes the patient throughout the entire investigation and resolution of the event. The CANDOR process has been shown to improve patient safety, better support the healthcare team members involved in the event and decrease malpractice claims.

CANDOR legislation has passed in Colorado and Iowa. **MM**



FROM THE CEO

MMA's legislative agenda for 2022

The 2022 legislative session, which begins January 31, is sure to be a doozy. Among the many variables at play are the strong political divide, the ongoing pandemic response, the shadow of 2022 elections (all 201 Minnesota legislative seats will be up for election, as is the governorship), legislative redistricting, a semi-virtual format (Senate in person and House remotely) and a staggering \$7.7 billion state budget surplus that is sure to spur many competing demands and fierce debates.

Health and healthcare, of course, are always important topics at the Capitol, as there is no shortage of stakeholder interests, gaps to fill and improvements to be made. The MMA similarly has a long list of member ideas for legislative advocacy, as well as a robust set of leadership-defined strategic goals. Yet, priorities must be set. With critical guidance from our expert legislative team on political feasibility, MMA leadership annually determines MMA's legislative agenda. That agenda

is a subset of our broader advocacy priorities and consistent with our strategic plan and organization mission to make Minnesota the healthiest state and place to practice medicine. The perennial wild card is the need to adapt, respond and react to the priorities set by the governor, individual legislators and other interest groups.

With the legislative team planning to be engaged on countless legislative proposals affecting medicine and patient health, the following MMA legislative priorities are at the top of our list for 2022:

Protect patient access to needed medications

The administrative demands physicians face are significant and the seemingly constant changes in your patients' covered and preferred medications is one critical factor. Many patients select their insurance plan based on whether their needed medications are covered. Yet, nothing prevents insurers from changing their preferred drug list during the patient's enrollment or contract year. Insurance companies and pharmacy benefit managers (PBMs) claim such changes are made to reduce costs, but the financial benefit to patients is often illusory and can lead to complications and gaps in treatment. Meanwhile, physician practices bear additional costs to change prescriptions or try to get authorization for non-formulary medications. The MMA will again pursue legislation to limit changes to formularies so that patients with ongoing medication needs are not forced to change medications until the end of their insurance plan's contract year.

Improve patient safety with candid disclosure following adverse events

Minnesota has been a leader in improving patient safety with the first-ever adverse events reporting system, broad adoption of Just Culture policies and practices and extensive collaboration on patient safety prevention efforts. Despite this hard work and commitment, medical errors continue to occur, with approximately 10 percent of patients harmed while receiving care (Agency for Healthcare Research & Quality). Too often, patients report that they experience a "deny and defend" response from individuals and organizations following an adverse event, often because of liability fears. CANDOR, which stands for Communication and Optimal Resolution, is a voluntary process by which organizations can improve their response to patient harm by providing immediate, candid, empathic communication and timely resolution for patients, caregivers, and the organization. The MMA will pursue legislation to facilitate adoption of the CANDOR

model by protecting the communications, offers of compensation and other materials that are used in a CANDOR conversation from being admissible as evidence in a lawsuit.

Improve patient and clinician access to patients' POLST/end-of-life preferences

A Provider Orders for Life-Sustaining Treatment (POLST) form is a signed medical order that documents a patient's treatment preferences near the end of life. The MMA has worked to improve clinician and patient adoption of POLST, but it remains largely a paper-based form. As a result, compliance with POLST orders can be difficult in situations where the form is not readily accessible to emergency responders and other treating clinicians. The MMA will pursue legislation to study the feasibility of establishing and maintaining a statewide POLST registry to improve access to POLST orders.

Aggressively defend and promote vaccinations

As evidenced by actions taken in many other states, the political and public backlash to COVID-19 vaccines has the potential to spur legislation here that could limit COVID-19 vaccine requirements and/or erode Minnesota's existing school and childcare vaccination laws. The MMA will vigorously oppose efforts that seek to limit COVID-19 vaccination requirements or that seek to weaken current vaccination laws. The MMA will continue to support efforts to remove the "conscientiously held belief" exemption in current law and support efforts to increase overall vaccination rates.

Reduce firearm death and injury prevention

Injuries and deaths from firearms remain an alarming public health crisis. Minnesota experienced 465 firearm deaths in 2017, with approximately 80 percent of deaths due to suicide (MDH). The MMA will continue to support passage of laws to provide for universal criminal background checks, "red flag" laws and expanded research on firearm deaths and injuries.

Ultimately, the MMA needs your help to succeed. Although your membership support is critical, please plan to participate in our annual Day at the Capitol, scheduled for March 1. This event is the easiest way for you to meet your legislators, and raise your voice to make a difference in your practice and community. **MM**

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VIEWPOINT

We soldier on ...

Colleagues! Welcome to 2022. Here's hoping we witness more of a return to normalcy this year than what we experienced in 2021. If you're like me, you thought it couldn't get worse than 2020 and then it did and then some. At times, we felt helpless as preventive measures against COVID-19 had different meaning to different people. We may yet see a lingering of the pandemic despite our best preparations and efforts to manage it.

I need not remind all of us that we've been through the ringer the past two years and counting:

- We've faced a coronavirus that defied description at first and we did it without sufficient PPE.
- Some of us had to shut down our clinics and wondered if they'd survive financially once they reopened.
- We pivoted to seeing nearly all of our patients via teleconferencing and we advocated so that we got paid properly for this type of care delivery.
- We had to deal with wave after wave of viral outbreaks.
- We may have expected our patients to know better and be vaccinated, yet, for those who are not, we have continually been present to meet their needs—which are sometimes daunting. Nonetheless, we soldiered on.

When vaccines were approved, we acted as guinea pigs, in a sense, but gladly rolled up our sleeves for those first shots because we believed in the science. Then we cheered as the vaccines were rolled out to the rest of the public and we saw patients eagerly line up to get vaccinated. There was light at the end of the tunnel. We were told—and believed—that by the Fourth of July, life would gain that sense of normalcy we so craved. But we didn't reach herd immunity; too many of our fellow citizens refused to get the shot and soon the Delta variant began ravaging the United States and the world. In particular, the

last quarter of 2021 saw Minnesota cases rise higher than in the rest of the country, placing undue stress on a healthcare delivery system already stretched to capacity

Still, we soldiered on.

When the fight against the pandemic began, our fellow citizens applauded us. Physicians coming off shifts in New York City were serenaded by their fellow New Yorkers. Now, we are questioned. The disinformation campaigns have made an already difficult task that much more challenging. Patients we've known and cared for for years are now questioning our expertise. We have the tools to defeat this pandemic before us, yet so many of our fellow citizens refuse to use them—at great peril. We wonder, when will the suffering stop?

And yet, we soldier on.

According to a *JAMA* survey published in July 2020, led by two of our MMA colleagues—Liselotte Dyrbye, MD, and Colin West, MD, along with Christine Sinsky, MD—physicians exhibit higher levels of resilience than the general working population. This shouldn't surprise us. Despite setbacks, physicians bounce back.

What drives us? Why do we persevere? Because we know that what we do makes a difference. What we do saves lives. We became physicians to help others. For most of us, that sense of purpose remains and continues to fuel us.

On behalf of the thousands of physicians across the great state of Minnesota, a personal thank you from all of us who serve you at the MMA, advocating that our patients access safe and exceptional care as well as supporting physicians as we sustain our quest to make Minnesota the healthiest state in the nation. You are true heroes to the citizens of Minnesota, finding the strength every day to persevere and endure in spite of overwhelming obstacles.

Let's soldier on. Together. MM



Edwin Bogonko, MD, MBA
MMA Board Chair

PHOTO BY KATHRYN FORBES

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