

# SOUTH DAKOTA STATE MEDICAL ASSOCIATION

*Values. Ethics. Advocacy.*

## 2011 Legislative Accomplishments

There were 458 bills introduced during South Dakota's 2011 legislative session. Throughout the course of the session, the South Dakota State Medical Association (SDSMA) tracked 47 bills dealing with health care with a potential impact on the practice of medicine in South Dakota. Of these 47 bills, the SDSMA supported eight, opposed four and monitored 35.

Bills signed by Governor Dennis Daugaard are effective July 1, 2011, unless they contain an emergency clause that provides for immediate enactment.

### **Managing the State Budget**

HB 1112, an act to affect health care, and HB 1113, an act to affect medical services, were introduced as placeholders and may have served as venues to address the projected budget shortfall. HB 1112 was tabled by a 12-0 vote in House State Affairs, while HB 1113 was deferred to the 41st legislative day by Senate State Affairs. The SDSMA monitored both bills.

HB 1134, an act to provide for certain revisions to the Medicaid program, was houghoused and amended to create a graduated system in which Medicaid provider reimbursement rates were to be reduced relative to the percent Medicaid reimbursement accounted for a facility's total reimbursement for fiscal year 2010. The SDSMA monitored this bill, which failed to gather much support and was killed by the House.

Two bills were introduced to increase the amounts currently withdrawn from previously established trust funds in an effort to ease the projected budget shortfall. HB 1227, an act to transfer money from the health care trust fund, and HB 1239, an act to increase the amount transferred from the health care and education enhancement funds, were both deferred to the 41st legislative day by the House Appropriations. The SDSMA supported both bills.

SB 174, an act to temporarily increase the state sales and use tax to fund the state budget shortfall and to declare an emergency, was deferred to the 41st legislative day by a 6-3 vote in Senate State Affairs. The SDSMA monitored SB

174. Despite considerable expression of opposition to the proposed budgetary cuts by advocacy groups, lawmakers seemed reluctant to pass legislation for funding alternatives.

Other bills with a potential to impact the budget were HB 1152, an act to provide for drug testing for certain TANF recipients, and HB 1172, an act to require the issuance of a request for proposals concerning the administration of the Medicaid program. As proposed, HB 1152 would have called on the Department of Social Services (DSS) to develop and implement a random drug screening program to test adult recipients of Temporary Assistance to Needy Families (TANF). Any recipient testing positive for illegal drugs would have been ineligible for assistance for one year. HB 1172 was killed in the House, 32-36, and HB 1172 failed to make it out of committee. The SDSMA did not take a position on either bill.

### **Promoting Health System Reform**

HB 1088, an act to make certain legislative findings concerning the constitutionality of certain federal health care laws, was designed to challenge the federal requirements put forth by the Patient Protection and Affordable Care Act (PPACA) by proclaiming no authority exists in the United States Constitution to justify the enactment of any federal statute interfering with the right of any person or entity to choose their personal physician, private health care system, or private health care insurance, or which imposes any penalty, tax, fee, or fine, of any type, for declining to purchase health care coverage or to participate in a health care plan. HB 1088 failed to garner support and was deferred to the 41st legislative day by a vote of 13-0 by the House State Affairs Committee.

SB 22, an act to provide for the regulation and licensure of birth centers, was an agency bill introduced by the South Dakota Department of Health (DOH) in response to the PPACA, in which states were called upon to provide Medicaid payments to providers administering prenatal labor and delivery or postpartum care in freestanding birth centers. The SDSMA provided support of SB 22, contingent that birth centers be required to publically disclose whether or not they have liability coverage and that all freestanding birth centers would meet the standards of the Accreditation

for Ambulatory Health Care or the Joint Commission. SB 22 was signed by the governor.

SB 38, an act to establish network adequacy standards, quality assessment and improvement requirements, utilization review and benefit determination requirements, and grievance procedures for managed health care plans, and to repeal certain standards for managed health care plans; SB 43, an act to revise certain health insurance standards for patient protection; and SB 45, an act to repeal the requirement to prepare a report on extending health insurance to medically uninsurable individuals who are not part of a small employer group, were all bills designed to implement the PPACA. The SDSMA did not take a position of opposition or support but monitored these bills as they maneuvered through both houses. All three bills were signed into law by the governor.

### **Improving Public Health**

SB14, an act to require mandatory reporting of abuse or neglect of elderly or disabled adults, was introduced by DSS, and was drafted to be similar to current state statutes in regard to the reporting of child abuse. While the SDSMA does not have a policy on the reporting of elderly abuse, AMA policy does support it. The SDSMA supported SB 14, which was signed by the governor.

Two bills were introduced with the intention of reducing the prevalence of distracted driving. SB 71, an act to prohibit the use of certain wireless devices for electronic messaging while driving, and SB 115, an act to prohibit the use of certain wireless communication devices while driving, were similar in calling for the prohibition of writing, sending or reading text-based messages while driving. Despite support from the SDSMA and other organizations, both bills failed to pass. SB 115 was deferred to the 41st legislative day by a vote of 6-1 in Senate Judiciary. SB 71 passed the Senate but was referred to the 41st legislative day by the House Local Government Committee on a vote of 8-5.

SB 117 sought to regulate the use of tanning facilities in South Dakota. SB 117 stated that a customer under age 18 would not be permitted to use a tanning facility until the customer provided the facility with written consent of a parent or legal guardian. SDSMA policy, Addressing the Dangers of UVA and UVB Radiation, supports the enactment of legislation to restrict and or prohibit access to indoor tanning equipment by anyone under the age of 18. SB 117 was deferred to the 41st legislative day by a vote of 5-2 in the Senate Health and Human Services Committee.

SB 149 was introduced to establish policies for youth athletes with concussions resulting from participation in youth athletic activities and to require that no youth removed from participation could return to play until after receiving an evaluation and written clearance from a licensed health care provider. While providing support for SB 149, the SDSMA

advocated that written approval of an MD or DO be required for return to practice or play. This requirement is consistent with AMA and American Academy of Neurology policy. SB 149 was signed into law by the governor.

SB 163, an act to revise the penalties for violations concerning smoking in public, sought to punish any person with two warnings before being issued a citation for smoking tobacco or carrying any lighted tobacco product in any public place or place of employment. SB 163 was deferred to the 41st legislative day by a Senate Judiciary vote of 7-0.

### **Expanding Access to Health Care**

HB 1246 was a DOH bill authorizing an appropriation to reimburse certain family physicians and dentists who have complied with the requirements of the state's physician tuition reimbursement program. The program acts as a recruitment tool for rural communities and promotes access to quality care. Unlike years past, HB 1246 was met with some opposition due to the proposed budgetary deficit. The SDSMA supported this bill, which was passed by the Legislature and signed by the governor.

SB 9 sought to revise certain provisions regarding eligibility requirements of the state risk pool. The SDSMA monitored this bill, which was signed by the Governor.

SB 118, an act to expand Medicaid eligibility for pregnant women and to provide an appropriation thereafter, was introduced in follow-up to SB 193, which was introduced during the 2010 legislative session. Similar to last year, SDSMA monitored this legislation, which was deferred by the Senate Health and Human Services Committee. Both SB 118 and SB 193 failed to make it out of committee due to budgetary concerns.

SB 140 was houghoused and amended from its original version to provide for access critical nursing facilities to ensure access to health care within a reasonable distance. As proposed, DSS shall designate access critical nursing facilities annually as part of the Medicaid rate setting process. The SDSMA did not take a position of opposition or support for SB 140. SB 140, which was signed into law by the Governor.

## Other Legislative Issues

HB 1061 sought to provide for the practice and registration of registered midwives. The SDSMA opposed this legislation due to the concern that registered (lay) midwives lack the necessary clinical training and skills to handle problematic births in non-clinical settings. This issue also caused concern on the medical liability front, as problematic births that end up being sent to a hospital have the potential to involve the clinical facility and its physicians in litigation. HB 1061 was deferred to the 41st legislative day by a vote of 5-2 in the Senate Health and Human Services Committee.

HB 1144 sought to allow health care providers, defined as any health care professional licensed, certified, or otherwise regulated to perform specific health services, to create a statutory lien. The SDSMA did not take a position of support or opposition to HB 1144. The bill passed the House but was defeated on the Senate floor by a vote of 16-18.

HB 1146, an act to limit copayment or coinsurance amounts for chiropractic services, sought to prevent any health insurer from imposing any copayment or coinsurance amount that is greater than the copayment or coinsurance amount imposed on the insured for the services of a primary care physician or practitioner for the same or a similar diagnosed condition. The SDSMA did not take a position of support or opposition to this bill but continued to monitor as it negotiated its way through the legislative process. HB 1146 which had passed both chambers was vetoed by the governor. On Veto Day, there was sufficient support to override the governor's veto, and HB 1146 was delivered to Secretary of State Jason Gant for final signature.

HB 1171, an act to provide that the use of force by a pregnant woman for the protection of her unborn child is an affirmative defense to prosecutions for certain crimes, was amended in the House Judiciary Committee from providing protection for a mother to include any person resisting any attempt to murder such person, or to harm an unborn child. Once amended, the primary sponsor of the legislation felt it no longer reflected its intended purpose and subsequently

spoke against the bill's passing. The bill was killed in the House with a vote of 61-4.

HB 1184 sought to limit the subrogation of certain insurers until the insured is made whole. The SDSMA strongly opposed this bill due to its potential to increase medical liability insurance premiums. The bill passed the House but was deferred to the 41st legislative day by the Senate Judiciary Committee. Within 72 hours of being deferred to the 41st legislative day, HB 1184 was "smoked out" of committee and referred to the Senate floor for full debate where it failed to pass; the vote was 11-24.

HB 1217, an act to revise causes for action for professional negligence relating to the performance of an abortion, was opposed by the SDSMA not based on the procedure in question but on the basis that physicians already comply with stringent informed consent requirements which should be the same for every procedure. Additionally, the SDSMA worked with legislators to amend or remove sections of the bill that invite civil actions and penalties for physicians for failure to comply with informed consent requirements that deviate considerably from current medical practice. Despite lawmaker attempts to kill or amend, the bill passed both chambers and was signed by the governor.

HB 1218 sought to prohibit surrogacy contracts. The SDSMA opposed this legislation on its intent to criminalize physicians for assistance to and caring for pregnant women. HB 1218 was deferred to the 41st legislative day by a vote of 9-3 in the House Judiciary Committee.

SB 167, an act to repeal certain sales tax exemptions for membership organizations, was houghoused and subsequently amended by the Senate Taxation Committee. SB 167 was amended from a bill that would have removed the sales tax exemption from membership organizations to a bill that repealed certain sales and use tax exemptions on ink and newsprint production and the sale of coins, currency or bullion. Once amended, the SDSMA changed its position from opposed to monitor. The bill failed to pass the Senate.



The SDSMA's Legislative Accomplishments is the Association's annual report on legislation the SDSMA monitored during the state legislative session. For more information, log on to [www.sdsma.org](http://www.sdsma.org) or contact the SDSMA at 605.336.1965.