

## South Dakota State Medical Association

# LEGISLATIVE ACCOMPLISHMENTS

## 2019 South Dakota Legislature

### Overview

South Dakota's 2019 Legislative Session opened Jan. 8 and continued through March 13, with the 40th legislative day held on March 29. Legislators brought forward 460 pieces of legislation – 70 had the potential to impact health care delivery in South Dakota.

During the nine-week session, the South Dakota State Medical Association (SDSMA) worked on a wide range of issues to protect the practice of medicine and to enhance the delivery of medical care. Some highlights of the important issues the SDSMA was involved in include the following:

### Promoting the art and science of medicine

In her January 8 State of the State address, Gov. Kristi Noem outlined her top priorities to include: economic development and expansion, education, drug abuse prevention and treatment, and government operations. While the governor originally proposed a 2.5 percent inflationary increase for providers, the final budget for FY2020 included 1 percent with remaining funds diverted to support long-term care.

HB 1262, an Act to make an appropriation to reimburse certain health care professionals who have complied with the requirements of the recruitment assistance program or the rural health care facility recruitment assistance program and to declare an emergency, was introduced by the Committee on Appropriations at the request of the South Dakota Department of Health (SDDOH). As signed, HB 1232 will appropriate \$659,849 to the SDDOH to reimburse four family physicians, a dentist, and three physician assistants. An additional \$320,000 was allocated for reimbursing other eligible health care practitioners. The SDSMA supported this legislation.

SB78, an Act to exempt certain medical providers from licensure, was signed into law on March 11. As enrolled, SB

78 exempts the following physicians from licensure: any physician who is the holder of a permanent, unrestricted license to practice medicine or osteopathy in any other state or, in a territory of the United States, in the District of Columbia, or in a Province of Canada who is: 1) participating as a member of an organ harvesting team on assignment; 2) providing services on board an air ambulance as a part of its a treatment team; 3) providing one-time consultation or teaching assistance for a period of not more than twenty-four hours; 4) providing consultation or teaching assistance previously approved by the Board of Medical and Osteopathic Examiners for charitable organizations; 5) providing, subject to the terms of an employment contract or verbal agreement, medical care to an individual athlete, to members of an athletic team, or to any person authorized to accompany an athlete or an athletic team for the purposes of providing services related to the athletic activity. The SDSMA supported this legislation.

As enrolled, SB 118, an Act to establish certain provisions regarding advance care planning, will recognize "Medical orders for scope of treatment" or "MOST," which is a document, other than an advance health care directive, executed by a patient, or a patient's authorized representative, and the patient's primary medical provider and entered in the patient's medical record. MOST provides direction to health care providers about the patient's goals and preferences regarding the use of medical interventions, including cardiopulmonary resuscitation and other life-sustaining treatment. The SDSMA supported this legislation.

### Protecting and improving public health

HB 1209, An Act to revise certain provisions regarding vapor products, was signed into law on March 29. As enrolled, SDCL 34-46-1 was amended to include "electronic smoking device," thus, extending the current smoking ban – which makes it illegal to smoke or carry a lighted tobacco product in any

public place or place of employment – to include vaping. The SDSMA supported HB 1209.

As enrolled on March 11, SB 84, an act to authorize the possession and administration of opioid antagonists by school district and nonpublic school personnel, will grant the governing board of a school district and the governing board of a nonpublic school the authority to acquire opioid antagonists, and have the medication available to trained personnel who can assist in a possible overdose emergency.

## **Ensuring access to and delivery of quality medical care**

Gov. Noem signed SB 136, an Act to provide for the utilization of telehealth by a healthcare professional, on March 27.

While any provider licensed in South Dakota can practice via telemedicine, as enrolled, SB 136 calls for the establishment of parameters to ensure the delivery of quality medical care. The SDSMA worked with Senator Curd for the introduction of SB 136 as well as its companion bill SB 137.

SB 137, an Act to provide for the payment of claims for covered services provided by a health care provider via telehealth, was signed into law on March 27. As enrolled, no health insurer may exclude a service for coverage solely because the service is provided through telehealth service and not provided through in-person consultation or contact between a health care professional and a patient. However, health care services delivered by telehealth must be appropriate and delivered in accordance with applicable law and generally accepted health care practices of South Dakota.

## **Other legislative issues**

HB 1137, an Act to revise certain provisions regarding pharmacy benefit managers, was signed by Gov. Noem on March 7. As enrolled, HB 1137 prevents pharmacy benefit managers from contractually requiring a pharmacy – who is a participating provider in a health plan – from charging or collecting from an insured a cost share for a prescription or pharmacy service that exceeds the amount retained by the pharmacist. The SDSMA supported this legislation.

HB 1049, an act to revise certain provisions regarding driving after consuming certain drugs or substances, was signed by Gov. Noem on March 1. As enrolled, SB 1049 will allow for those under the age of 21 to operate a motor vehicle after having consumed a lawfully prescribed controlled drug provided the individual is not incapable of driving safely. The SDSMA felt there is an error in the law as previously, those 21 years of age or older could lawfully operate a motor vehicle under the influence of a controlled substance that has been obtained pursuant to a valid prescription provided the person is capable of driving safely. The same exception did not apply to those under 21. HB 1049 does not condone driving under the influence, nor does it prevent law enforcement from protecting the public from removing those from the road who are incapable of driving safely. It simply allows those under 21 to take their medications and drive – provided they can do so in a safe manner. The SDSMA sponsored this legislation.

## **Outcome of other priorities**

HB 1055, an act to require parental notification and agreement before the institution of an order to withhold resuscitation from certain patients, was signed into law on March 20. As enrolled, a physician cannot institute a DNR for an unemancipated minor who has a life-limiting illness unless the physician has: 1) informed at least one of the patient's parents or the patient's legal guardian of the intent to institute such an order; and 2) made a reasonable attempt to inform the patient's other parent, if that parent's contact information is available or discernible, and if that parent has custodial or visitation rights. While the SDSMA worked with the sponsor to amend HB 1055 to remove trauma patients from this legislation, the SDSMA remained opposed to HB 1055 as it does not include institutions, nor does it apply to mid-level providers – who also have authority to issue a DNR.

HB 1088, an Act to prohibit the use of certain electronic devices while driving, passed the House of Representatives but failed to garner sufficient support to pass the Senate. As proposed, HB 1088 would have changed texting while driving from a secondary to a primary offense – meaning a law enforcement officer could initiate a traffic stop for texting while driving. The SDSMA supported this legislation.

SB 93, an act to revise certain provisions regarding instruction and restricted driving permits, was tabled by the House of Representatives. As proposed, all new drivers would have been required to have an instruction permit for at least 365 days if issued on or after July 1, 2019 before being eligible for a restricted driving permit. Thus, creating a graduated driver's licensing system in South Dakota. The measure was aimed at saving lives of youth who are often involved in auto accidents that result in a fatality. The SDSMA supported this legislation.

SB 120, an Act to modify the time period allowable for certain covenants not complete, failed to pass the Senate due to a vote of 16 in favor and 18 opposed. As proposed, SB 120 would have reduced the timeframe in which an employee and employer could enter into a contract in which the employee could not engage directly or indirectly in the same business or profession of their employer upon leaving from 2 years to 1. While the SDSMA was not a sponsor of this legislation, the Association did support it.

SB 186, an Act to prohibit the cancellation or nonrenewal of a health insurance policy for a preexisting condition, was deferred to the 41<sup>st</sup> legislative day by the Senate Commerce & Energy committee. As proposed SB 186 would have ensured that health insurance policies could not be canceled or refused for renewal solely based on a preexisting condition of an insured person. The SDSMA supported this legislation.

This summary would be incomplete if we failed to mention the number of place-holder or vehicle bills introduced this session. This year approximately one in 10, or 46 in total, were introduced; nine of which had the potential to impact medicine.