

## South Dakota State Medical Association

# LEGISLATIVE ACCOMPLISHMENTS

## 2021 South Dakota Legislature

### Overview

South Dakota's 2021 Legislative Session opened Jan. 12 and continued through March 11, with the 37th legislative day held on March 30. Legislators brought forward 477 pieces of legislation – 73 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

The South Dakota State Legislature began its 2021 session Gov. Kristi Noem's State of the State address in which she outlined her top priority – to grow South Dakota. While little was said on the topic of medicine and/or health care providers, the governor did give recognition to the state's medical professionals who have, "stepped up in all kinds of unforeseen ways in 2020," and thanked them for their service and helping others in response to COVID.

HB 1046, An act to limit liability for certain exposures to COVID-19, was signed into law by Gov. Noem on Feb. 17. Among other forms of immunity, HB 1046 grants physicians, surgeons, and osteopaths licensed under Chapter 36-4, immunity from liability for damages caused, contributed – directly or indirectly – to the death or injury of a person as a result of acts or omissions while providing health care services within one's scope of licensure during the COVID-19 public health emergency. The SDSMA was responsible for proposing this legislation.

HB 1131, An act to authorize primary care agreements was signed into law March 25. As signed HB 1131 defines direct primary care agreements as, "contracts between a primary care provider and an individual patient or his or her legal representative in which the health care provider agrees to provide primary care services to the individual patient for an agreed-upon fee and period of time." While there is nothing currently that prevents practitioners from establishing a primary care agreement, the legislation does clarify that a direct primary care agreement is not insurance and is not subject to title 58. The SDSMA supported this legislation.

HB 1154, An act to prohibit employment contracts restricting competitive health care practices, was signed March 25. As proposed, SB 1154 will eliminate 2-year geographical restrictions often placed on physicians by their employer upon leaving. The SDSMA believes restrictive covenants are unethical if they are excessive in geographic scope or duration in the circumstances presented, or if they fail to make reasonable accommodation of patients' choice of physician. The SDSMA supported this legislation.

Physician burnout is on the rise and sadly, nearly one physician in the U.S. per day takes his or her own life. The SDSMA is committed to supporting physician health and wellness, and therefore, advocated for regulations that promote wellness while eliminating concerns of confidentiality and/or risk of punishment. HB 1179, An act to provide for physician wellness programs, was signed by Gov. Noem on March 25. As proposed, HB 1179, will eliminate the real and perceived barriers for physicians in need of assistance/help and/or at risk for impairment. The SDSMA introduced and strongly supported this legislation.

## **Protecting and improving public health**

HB 1061, An act to prohibit smoking marijuana and its derivatives in a motor vehicle and create a penalty therefor, was signed into law on March 25. As signed, it is a Class 2 misdemeanor for any person to operate or be in physical control of a motor vehicle while smoking or consuming a marijuana or a marijuana concentrate. The SDSMA supported this legislation.

HB 1076, An act to require that birth certificates reflect biological sex, was deferred to the 41<sup>st</sup> legislative. As we know, biologic/physiologic characteristics can change and, in some cases, do. Some conditions (e.g. congenital adrenal hyperplasia, androgen insensitivity syndrome 5-alpha reductase deficiency and gonadal dysgenesis) may not appear within the one-year timeframe proposed by this legislation. Thus, many years may pass before a condition appears that suggests someone's biologic sex may need to be reexamined. The SDSMA opposed this legislation.

HB 1097, An act to provide for philosophical exceptions to required vaccinations, and HB 1159, An act to prohibit interference with the right to bodily integrity in contagious disease control, were both deferred to the 41<sup>st</sup> legislative day. As proposed, bills HB 1097 and HB 1159 would have allowed for exemptions and protection for anyone refusing to be vaccinated. The SDSMA strongly opposed both bills.

HB 1163, An act to revise certain provisions relating to physician assistants, was deferred to the 41<sup>st</sup> legislative day. As proposed, HB 1163 would have granted PAs the authority to practice independently upon the completion of 520 supervised hours of practice. The SDSMA strongly opposed this legislation out of concern for patient safety.

SB 45, An act to repeal the annual survey of schools regarding cardiopulmonary resuscitation instruction, was deferred to the 41<sup>st</sup> legislative day by a vote of 6-1. As proposed, SB 45 would have removed the Department of Education requirement for schools to annually conduct an assessment to ensure compliance with the requirements of §§ 13-3-91, 13-3-94, and 13-3-95 – which require CPR and AED training in schools. The training ensures that students have psychomotor skills necessary to perform hands-only CPR and ability to use an AED. The SDSMA opposed this legislation.

SB 187, An Act to establish provisions concerning the sale of adult-use retail marijuana, was deferred to the 41<sup>st</sup> legislative day by the House State Affairs committee. SB 187 was introduced as a vehicle bill that was later amended to call for the creation of a statutory system of laws for the regulation of the sale, possession, and consumption of adult-use retail marijuana as authorized by the passage of Constitutional Amendment A. The SDSMA opposed this legislation as amended.

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

HB 1021, 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 1021 will appropriate \$521,967 to the SDDOH to reimburse three family physicians and two nurse practitioners. An additional \$270,000 was allocated for reimbursing other eligible health care practitioners. The SDSMA supported this legislation.

HB 1247, An act to provide for the protection of the conscience of medical professionals failed to pass the House of Representatives. Introduced on behalf of Gov. Noem. HB 1247 proposed to grant medical practitioners, health care institutions, and health care payers the right not to participate in or pay for any health care service which violates his, her, or its conscience. Federal statutes currently protect health care provider conscience rights and prohibit recipients of federal funds from discriminating against health care providers who refuse to participate in certain services based on moral objections or religious beliefs. The SDSMA opposed this legislation.

## **Outcome of other legislative priorities**

HB 1051, An act to maintain the life of any child born alive, was signed into law on Feb. 24. As initially proposed, "A mother upon whom an abortion has been performed, or attempted to be performed, whose child is born alive, may maintain a civil tort claim against the physician, the physician's agents, and the abortion facility." Further, "any physician who failed to meet the requirements of § 34-23A-16.1 would be held liable to the state for a civil penalty at least equal to one hundred thousand dollars." While not able to defeat the bill, the SDSMA was successful in getting the tort claim section removed from the bill and the civil penalty reduced to \$10,000.

HB 1246, An act to impose tax on the gross receipts of ambulatory surgery centers, was deferred to the 41<sup>st</sup> legislative day by a vote of 13-0. As proposed, HB 1246 would have imposed a tax of six percent on ambulatory surgery centers – of which are already subject to South Dakota sales and use tax, and do not qualify for the exemptions granted to nonprofits. The SDSMA opposed this legislation.

HB 1263, An act to provide transparency for health care costs, was signed into law on March 3. At the request of an enrollee, the health insurer shall provide an estimate of the enrollee's cost sharing liability for a requested covered item or service reflecting any cost-sharing reductions the enrollee would receive. The SDSMA supported this legislation.