Washington State Medical Association

Physician Driven – Patient Focused

Legislative Session 2012 – Wrap-up

This was a turbulent session in Olympia given the budget deficits and divided Legislature. The WSMA's legislative team tirelessly advocated for and against legislation in the best interests of WSMA members and their patients. Our strong advocacy on your behalf in Olympia is consistently one of the most valued member benefits. Not only do we track issues and legislation during session, we help draft bills that are important for your practices, testify before legislative committees, and meet regularly with legislators and officials in the executive branch.

This wrap-up is intended to be a *comprehensive* recap of 2012 session as it relates to the WSMA's priority issues. Of course, this summary does not include *every bill* or *every budget* item that we monitored or lobbied on this session. Each year we track and respond to hundreds of bills and numerous budget items that have the potential to impact medicine in one form or another.

If you have questions about the information presented or other issues of concern, **please contact our Olympia office at (360) 352-4848**.

Best regards,

WSMA Olympia Team

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Budget Summary

Preserving Patient Access to Care

Zero Tolerance Policy for Medicaid Emergency Visits – The WSMA, the Washington Chapter of American College of Emergency Physicians and Washington State Hospital Association were vocal and unwavering in fighting for an alternative to the state's "Zero Visit Policy" that would retrospectively deny Medicaid payment for "non-emergent" ED visits. The WSMA worked tirelessly with officials in the Health Care Authority (HCA) and with legislators to identify a solution to the problem. Ultimately we succeeded when the legislature adopted in its final budget a proviso that included our alternative. Our alternative seeks savings through implementation of best practices - primarily by working with the state on better case management of its clients, opioid prescribing education, patient discharge instructions, and increased use of generic prescriptions. We believe our ability to move the state to adopt a best practices approach instead of a non-payment approach is a model that we can build on in future years as we continue to advocate for physician-led reforms.

Columbia United Providers (CUP) – The WSMA and a group of other interested stakeholders were successful in getting a proviso placed in the final budget that requires the HCA ensure that any new Medicaid managed care contractor can demonstrate an adequate network of providers prior to final a contract. CUP is a locally owned company providing services to 47,000 Medicaid patients in Clark County and has been a leader in collaborating with local physicians, hospitals and the State in adopting and implementing significant cost saving programs since 1994. This proviso could provide an opportunity for CUP to continue to serve this community in which it has an established network and history of providing access to quality care to thousands of Medicaid patients. We believe model contractors such as CUP should be rewarded for their long-standing commitment to the delivery of high quality, cost-effective care to our State's most vulnerable.

Other Avoided Cuts

Medical Interpreter Services: Medical interpreters provide communication support and access for persons in the medical setting. Over 19,000 patients a month use interpreter services to communicate with their physicians. Practices cannot absorb the additional cost of $52 to $227 per visit, a loss when providing interpreter services. This valuable effort continues to be funded due to the WSMA's advocacy efforts.

Volunteer Retired Physicians Program (VRP): The program provides medical liability insurance coverage for retired volunteer primary care physicians and other healthcare professionals. Volunteers serve 67,000 low-income patients and provide services worth $82 million at an annual cost of only $223,000. Fortunately, the VRP was spared and program funding is included in the final budget.

Basic Health Program: Basic Health is a state-sponsored program providing health insurance coverage to low-income families in Washington State. The program retained current funding through 2013.

Disability Lifeline: The Disability Lifeline program covers temporarily disabled people who do not qualify for Medicaid. This program also avoided cuts and continues to be funded in the state's budget.

Public Health: Expected cuts to public health were avoided this legislative session

Critical Access Hospitals: Expected cuts to critical access hospitals were avoided as well.

Bill Summaries

Priority Bills WSMA Supported and Passed

Health Insurance Exchange Bill (HB 2319) – With 2014 around the corner, legislators were focused on creating Washington's Health Insurance Benefit Exchange. Exchanges are new organizations that attempt to create a more organized and competitive market for buying health insurance for individuals and small group employers. Small group employers are currently defined as employers with up to 50 employees (this expands to 100 employees in 2014).

The WSMA kept a careful watch over the development and implementation of our state's exchange. During the legislative session we focused considerable effort in getting acceptable language included in the Exchange bill on the Federal Basic Health Plan (Federal BHP) option. This option is modeled after the state's current Basic Health Plan and will aim to serve individuals between 133% and 200% of the Federal Poverty Level (FPL). With the original iteration of the Federal BHP option, the WSMA was concerned about inadequate plan reimbursement rates as well as insufficient review of the financial feasibility of implementing the program. The WSMA was successful in introducing a "hard" trigger to the bill. This hard trigger requires the HCA to make affirmative recommendations about the feasibility of a Federal BHP to the legislature, requiring specific legislative action in order to implement a Federal BHP, and removes any reference to tying Federal BHP to Medicaid rates. The WSMA was successful in its efforts to add criteria to evaluate adequacy of funding, adequacy of provider networks, and payments to physicians sufficient to create robust networks and adequate enrollee access.

> ***Why this matters to physicians****: By 2014 health care reform is to be fully rolled out, including having an operational health insurance exchanges in all fifty states. Ensuring that your reimbursement under these reforms is competitive and provides you with the opportunity to care for all patients is not only critical to ensuring greater patient access to health care, but also the long-term viability of physicians under health care reform. Things may change depending on how the Supreme Court rules on health care reform later this year.*

Medical Assistants (ESSB 6237) – At the request of our members, the WSMA was successful in pushing forward a bill addressing medical assistant scope of practice. Under the new law there are two types of medical assistants: (1) medical assistants-certified (*those who have completed an approved training program and passed an approved test*), and (2) medical assistants-registered (*those with varied training who have been endorsed by the practice for which they work to be competent to perform certain functions*). The bill also moves phlebotomists and hemodialysis technicians under the medical assistant umbrella. Current health care assistants are grandfathered in as medical assistants – certified. The bill also recognizes that there are other assistive personnel, who often work for specialists, who may not fit one of the types of medical assistants, but nonetheless perform valuable functions.

> ***Why this matters to physicians:*** *Private and public payors, as well as new federal compliance requirements for supervision and meaningful use, typically require medical practice assistive personnel to have defined scopes of practice. Washington law currently prohibits many activities routinely performed by medical assistants. The new law,* ***which does not go into effect until July 2013,*** *will better reflect how medical assistants are and can be utilized in medical practices, and expressly authorizes the performance of these tasks by medical assistants. Rules for medical assistants and the issue of specialty-specific assistants will be taken up by Department of Health. We will stay on top of this and protect your interests as the process moves forward.*

Peer Review Attorney Fees (HB 2308) – The WSMA, working with the state hospital association, successfully drafted and pushed through a bill that allows awarding of attorney fees in a peer review dispute to the prevailing party only when the non-prevailing party has acted in a manner which is frivolous, unreasonable, without foundation, or in bad faith. The bill halts the "loser pays" interpretation of a state statute, which had been seen as having a "chilling effect" on legitimate peer review challenges. The bill also provides for the award of attorney's fees only when the non-prevailing plaintiff fails to exhaust all administrative options available before the peer review body prior to going to court.

> ***Why this matters to physicians:*** *This bill helps to level the playing field between physicians and hospitals, allowing physicians to bring legitimate claims without the fear of burdensome and prohibitive attorney fees.*

Authorizing Greater Utilization of Shared Decision Making (ESHB 2318) – The WSMA supported this bill that allows HCA medical director to authorize nationally recognized tools for use in shared decision making.

> ***Why this matters to physicians:*** *Under state law, if shared decision making is used as a means of achieving informed consent, the physician is provided greater immunity.*

Protecting Air Quality by Granting Counties Greater Authority over Solid Fuel Burning (HB 2326) Acting on behalf of your colleagues in public health, the WSMA supported this bill which authorizes the Department of Ecology or a local air pollution control authority to call a first stage of impaired air quality, as well as a second stage of impaired air quality, at a level below the federal standard.

> ***Why this matters to physicians****: Providing counties with greater authority to deal with air pollution should assist in reducing the total number of days in which the population is exposed to potentially dangerously high levels of air pollution and thereby improving the state's overall public health.*

Fighting Increased Government Regulations and Fees
Priority Bills WSMA Opposed and Successfully Defeated

Mandatory CME on Suicide Prevention (HB 2366) – The WSMA has a long record of being opposed to mandatory CME requirements. In its original form, this bill would have required all physicians and other health care professionals to obtain six (6) hours of CME on the management and prevention of suicide once every eight years. Though this bill ultimately passed, the WSMA worked hard to see that the bill was amended to remove physicians.

> ***Why this matters to physicians:*** *This bill avoids additional costs and time commitments for a mandatory training that has not shown to be an effective way of addressing suicide prevention.*

Establishing a Medicaid Fraud Hotline (SB 6227) –This bill would have created a fraud hotline for consumers to report alleged Medicaid fraud funded by a surcharge on physician licensure fees. The WSMA was successful in opposing this bill.

> ***Why this matters to physicians:*** *Defeat of this bill prevented funding of a new program that would have inappropriately placed a new tax on physician licenses. If this program is a good idea it should be funded by the Medicaid fraud account.*

Limiting the rates paid for services to incarcerated offenders (SB 6531 and HB 2803)*:* These bills would have authorized the Department of Corrections to enroll incarcerated offenders into Medicaid. The senate bill as introduced would have potentially required reimbursement for hospitals and physicians at Medicaid rates.

> ***Why this matters to physicians:*** *The concern was that the bills would require another group of patients to be reimbursed at Medicaid rates (incarcerated offenders). Further expansion of the patient population covered under Medicaid, which are often reimbursed below cost, threatens access to care and the economic viability of physicians.*

Hospital Staffing Bills (SB 6309, HB 2519/HB 2501) – Several bills were introduced this session that would have created mandated meal and rest breaks for nursing and other hospital staff.

> ***Why this matters to physicians:*** *Defeating these bills avoided putting rigid requirements in statute that should be negotiated by each hospital and its staff. Also, these bills did not adequately consider the impact of such staffing restrictions on patient care and the delays they could cause to physicians and their patients in the hospital setting.*

Prescription Monitoring Program Funding (HB 2142) – Payment for this important program would have been funded by a provider licensure fee increase. The WSMA supports the program, but opposed the use of licensure fees for that purpose.

> ***Why this matters to physicians:*** *WSMA was instrumental in creating the PMP with specific language in the law that it not be funded by use of a provider tax. The bill would have created another new tax on physician licenses to fund another new program. The program is currently funded through the end of the biennium but needs a long-term sustainable funding source supported by the state and all interested stakeholder groups. The WSMA will continue to work with stakeholders to find such a funding source.*

Providing for religious objection to performing an autopsy (HB 2429 and SB 6068)*:* This bill would have provided a friend or family member the right to object to the performance of an autopsy on religious grounds.

> ***Why this matters to physicians****: Defeating this bill helped to maintain the current practice of performing postmortems and autopsies with little to no disruption.*

Limiting Access to Reports and Records of Autopsies and Postmortems (SB 6037): This bill would have required that persons granted access to written reports and records of autopsies or postmortems be prohibited from certain types of dissemination of those records, and in other circumstances, persons would be required to seek a court order to access the records.

> ***Why this matters to physicians****: Defeating this bill helped to keep access to records for needed educational, training and public safety purposes.*

Medicaid Fraud Reduction through Technology Tools Administered by a Third Party Contractor (HB 2571 and SB 6466): This proposed legislation would have implemented fraud audit technologies, however, the bill was amended to require the HCA to put out a "request for information" to determine whether there is a need for additional fraud technologies.

> ***Why this matters to physicians:*** *The amendment removed the "teeth" from the bill by requiring a determination of needing the audit technologies before another layer of fraud reduction methods are implemented.*

Other Priority Issues

Bills WSMA Supported but were Defeated

Assuring Truth in Medical Advertising (SB 6394 and HB 2514): These bills would have required all health care professionals to clearly and accurately identify themselves to patients, with full disclosure of their professional degree and training to avoid potential confusion as to level of training, qualifications, or scope of practice. This bill died in committee.

> ***Why this matters to physicians:*** *This bill addressed patient concerns regarding the identification of the types of credentials and training of providers from whom they are receiving care.*

Licensure/Contracting Freedom (SB 6270 and HB 2621): These bills would have provided that health care professional licensees may not be required to participate in any public or private third-party reimbursement program. This bill died in committee.

> ***Why this matters to physicians:*** *The bill would have protected physicians against being forced to contract with any particular payor as a condition of licensure (the State Medicaid program for example).*

POLST Immunity (HB 2462): This bill would have provided immunity for health care providers following end-of-life planning declarations**.** This bill died in committee.

> ***Why this matters to physicians:*** *This bill addressed concerns about physician immunity in adhering to POLST directives.*

Suspending the Pain Management Rules (HB 2599): This bill would have suspended the implementation of the pain management rules for three years. The WSMA supported the bill with amendments. This bill died in committee.

> ***Why this matters to physicians:*** *This bill addressed physician concerns regarding the Medical Quality Assurance Commission's pain management rules and the impact they may have on a physician's ability to continue to care for chronic pain patients.*

Electronic Prescribing Consistency (HB 2343 and SB 6212): Federal law now permits electronic prescribing of Schedule II – Schedule V controlled substances. State law allows for electronic prescribing of Schedule III – Schedule V. These bills sought to amend existing state law to federal law by permitting electronic prescribing of controlled substance Schedule II – Schedule V. The bill died in committee.

> ***Why this matters to physicians:*** *This bill addressed provider desires to allow for electronic prescribing of controlled substances for patients.*

L&I Medical Provider Network with respect to provider treatment of procedures ordered by the board of industrial insurance (HB 2359): This labor backed bill addressed some of the concerns related to physician due process rights raised by the WSMA in its comments to the Department of Labor & Industries during the rulemaking process on its newly established provider network. The bill died in committee.

> ***Why this matters to physicians:*** *This bill addressed provider concerns about preserving due process rights related to L&I provider networks.*

Expiration of Provisions concerning Medicaid Managed Care (SB 6481): This bill would have changed the expiration of provisions relating to prohibitions on balance billing and reimbursement for non-participating providers of Medicaid managed health care from July 1, 2016 to July 1, 2014. The bill died in committee.

> ***Why this matters to physicians:*** *This bill addressed the problem of the current prohibition on physicians to bill for services rendered under Medicaid managed care and the state artificially imposing a reimbursement rate for non-participating physicians.*

Regulation of Tanning Facilities (HB 2550 and SB 6249): This bill would have required those 18 and younger to have parental consent before using tanning facilities. The bill died in committee.

> ***Why this matters to physicians:*** *This bill addressed the public health concern of tanning use for persons under age 18.*

Preventative Care & Screenings for Children Medicaid Managed Care (SB 6546): This bill would have required the HCA to include additional language in their managed care contracts for Medicaid services that require implementation of preventative care and screenings for infants, children, and adolescents as referenced in the federal ACA. This bill died in committee.

> ***Why this matters to physicians:*** *This important legislation included provisions requiring better coverage of child and adolescent preventative care screenings for Medicaid patients.*

Pharmacy Benefit Managers (HB 2303 and SB 6096): This bill would have placed more restrictions around the use of pharmacy benefit managers, as well as set forth greater transparency requirements. This bill died in committee.

> ***Why this matters to physicians:*** *This bill helped to address some physician concerns around third-party pharmacy benefit managers. During the interim the WSMA will continue to investigate this problem.*

Drug Donation Bills (SB 6048, SB 6049, SB 6051 and HB 2228): A number of bills were introduced dealing with collecting donated prescription drugs (non-controlled substances) for new use. Such programs would have been voluntary and a number of safeguards were to be put in place to ensure immunity for those participating in the program. These bills died in committee.

> ***Why this matters to physicians:*** *The bills provided more options for the donation of prescription drugs for use, potentially making more affordable drugs available to patients unable to afford them.*

Adding Health in Transportation Policy Decisions (HB 2370): The state considers many factors when making transportation policy decisions. This bill expressly called out for the consideration of health issues when making transportation decisions (sidewalks, bike lanes, etc.) but died in committee.

> ***Why this matters to physicians:*** *This bill would have encouraged healthier environments when determining state-wide transportation policy which ultimately could benefit our patients.*

Bills WSMA Opposed but were Passed

Medicaid Fraud (5978): This bill expands the state's ability to pursue claims of fraud. By granting extraordinary rights to whistleblowers and providing bounty hunter incentives, the state and a private citizen are allowed to aggressively pursue health care fraud. These private rights of action are called "qui tam" provisions. Our research indicates that states with these trial lawyer friendly provisions (*qui tam*) do no better than states without them in total fraud recovery. Even without a "qui tam" statute, Washington is a state in which defendants want to reach settlement as its existing Medicaid fraud statute awards treble damages.

> ***Why this matters to physicians:*** *The bill creates a risk of harassment and burden on practices. We do not believe that a "qui tam" provision is necessary or the right tool to uncover legitimate fraud in Washington State. Such a provision will create an environment where individuals and their attorneys will be incentivized to aggressively pursue claims against physician practices. The evidence around the effectiveness of "qui tam" provisions in improving state fraud recoveries is suspect, making the need for this law questionable, especially when an increase in nuisance fraud claims against practices is an almost certain outcome of this legislation.*

Bills WSMA Monitored

APA ALJ Consistency (HB 2230): This bill would have consolidated rulemaking challenges into the Office of the Administrative Hearings (OAH), as opposed to under DOH.

Health Plan Coverage of Voluntary Termination of a Pregnancy (*HB 2330 and SB 6185*): This bill would have required health plans that cover maternity care or services to cover the voluntary termination of pregnancy.

Mandating Prescription Review for Medicaid Managed Care Enrollees (*SB 6107*): This bill would have required that Medicaid managed care contracts provide that when a patient is on five or more medications they see a primary care provider (at least annually) to review the medications. The WSMA testified that much of this is already being done and encouraged as a best practice.

Medical Cannabis (*SB 6265*): This bill would have applied certain provisions regarding the operation of Nonprofit Patient Cooperatives within city limits and need for access.

Allowing registered nurses and licensed practical nurses to perform certain tasks at the direction of a licensed midwife (HB 2186)*:* This bill which passed allows for licensed midwives to direct certain tasks of RNs and LPNs.

Relating to the certification of surgical technologists (HB 2414): This bill would have required certification of surgical technologists, and require their functions to be performed under the supervision of a licensed health provider. A sunrise review will be conducted by the Department of Health this interim to determine if certification is recommended.

WSMA Legislative Team

Tim Layton, JD
Mr. Layton is the WSMA's Senior Director of Legislative, Legal & Regulatory Affairs and is in charge of our Olympia advocacy efforts. Mr. Layton has been involved in various legislative, regulatory and legal efforts before our state legislature, government agencies and the courts for nearly a decade. Mr. Layton came to WSMA after spending a number of years working for one of the top government affairs law firms in the state. He also spent time early in his career practicing law in New York City and Washington, D.C.

Denny Maher, MD, JD
Dr. Maher is the WSMA's Director of Legal Affairs. Dr. Maher is a former hand surgeon and is a graduate of the University of Washington School of Law. In addition to his legal responsibilities at the WSMA, Dr. Maher works closely with our Olympia team drafting legislation and amendments to bills, reviewing and testifying on bills, and providing overall guidance and expertise to our Olympia advocacy efforts.

Carl Nelson
Mr. Nelson is the WSMA's Director of Political Affairs. With over twenty years working in Olympia on behalf of the WSMA, Mr. Nelson is a well known and respected figure in Olympia providing our legislative team with key political and strategic advice. Mr. Nelson also staffs the WSMA's political action committee where he provides the committee with invaluable insights and guidance.

Kathryn Kolan, JD
Ms. Kolan is an Associate Director in the WSMA's Legislative, Legal & Regulatory Affairs group. Ms. Kolan's primary responsibility is lobbying for the association and advancing our legislative agenda. In addition, she assists with legal and policy issues/research. Ms. Kolan joined the WSMA in October of 2011, further strengthening our advocacy capabilities in Olympia.

Susan Peterson
Ms. Peterson is an Associate Director in the WSMA's Legislative, Legal & Regulatory Affairs group. Ms. Peterson provides key support to our Olympia team, helping review and track more than 500 health care bills introduced each biennium, and covering legislative hearings and interim agency rulemakings. Ms. Peterson has over 20 years of experience with the WSMA and advocating on behalf of the WSMA in Olympia.

Susie Tracy
Ms. Tracy provides contract lobbying services for the WSMA. Ms. Tracy has been lobbying in Olympia for over 30 years, and most of those have been with the WSMA. Ms. Tracy has a number of health care clients and is especially familiar with health care budget issues on which she focuses most of her efforts on our behalf. Ms. Tracy is a well-respected and knowledgeable member of the Olympia lobbying core and is highly thought of by legislators of both parties.