

REPORT OF THE COMMITTEE ON LEGISLATION

May 22, 2021

TO: HOUSE OF DELEGATES  
TENNESSEE MEDICAL ASSOCIATION

SUBMITTED BY: JOSEPH HUFFSTUTTER, MD, CHAIR

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1 The second session of the 111th Tennessee General Assembly was trifurcated. The regular  
2 session was split due to the COVID-19 pandemic and there was a Special Session called by  
3 Governor Lee in July. Over 1600 bills were introduced. Over 300 bills were closely tracked  
4 by TMA's government affairs team because they directly impacted, or potentially impacted,  
5 the practice or business of medicine. TMA was instrumental in obtaining physician-friendly  
6 amendments to dozens of bills that would have negatively impacted medical practices in  
7 Tennessee.

8  
9 TMA also worked tirelessly to succeed on a multitude of other priority issues including  
10 defeating legislation that would have: authorized APRN independent practice; allowed  
11 APRNs to be second signature on patient commitments; allowed APRNs and PAs to make  
12 workers' compensation ratings; required physicians to post all of their charges, repealed  
13 patients' rights to assign health insurance benefits; and required physicians to inform  
14 patients of *all* medication side effects.

15  
16 Some of the salient bills that passed which TMA impacted include:

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18 **PC 4 ES2 (SB 8003 Special Session) Telehealth.**

19 This new law was in response to the significant uptick in the need for, and use of, telehealth  
20 during the COVID-19 pandemic. It provides for telehealth payment parity with in-person  
21 visits until April 1, 2022 for "visits" related to established physician-patient relationships.  
22 Health insurers are required to cover remote patient monitoring services if the same service  
23 is covered by Medicare; payers and providers negotiate the amount of reimbursement. The  
24 new law will include licensed alcohol and drug abuse counselors. Finally, it relaxes the  
25 definition of an originating site for telehealth delivery.

26  
27 **PC 1ES2 (SB 8002 Special Session) COVID-19 Liability Protection.**

28 The "**Tennessee COVID-19 Recovery Act**" adds a new part to Title 29, Chapter 34 and  
29 amends several other provisions related to civil lawsuits during the COVID-19 pandemic. It  
30 extends emergency liability protections to "any person" which includes entities such as  
31 doctors, health care facilities, businesses, non-profits, public institutions of higher education  
32 and their employees and contractors. Any COVID-related civil complaint filed or noticed after  
33 August 3, 2020, must plead specific facts which reasonably conclude "that the alleged loss,  
34 damage, injury, or death was proximately caused by the defendant's willful, malicious, or

1 criminal act or omission, or performed for personal financial gain.” Complaints must also  
2 include a certificate of good faith from a licensed physician from Tennessee or a contiguous  
3 state, to confirm the physician “is competent to express an opinion on exposure to or  
4 contraction of COVID-19” and believes the alleged loss, damage, injury, or death was caused  
5 by an act or omission of the defendant or defendants. The failure of a claimant to satisfy the  
6 requirements shall, upon motion, make the action subject to dismissal with prejudice. The  
7 policy reason for the new law is so Tennessee businesses would be protected from frivolous  
8 liability claims related to COVID-19 for the next two years. At the time of enactment, the  
9 standard of care for treatment and prevention of the spread of COVID-19 was emerging as  
10 health care providers learn about its transmission. With these uncertainties, businesses need  
11 to open without fear of lawsuits in order to employ more workers, open schools, and further  
12 stimulate the economy. Governor Lee had granted limited liability protection for health care  
13 workers in July via executive order but the order expired on August 29 because of passage  
14 of this law.

#### 15 16 **PC 574 (SB 1955) Employment of Physician by FQHC or RHC**

17 TCA § 63-6-204(e) is amended to allow federally qualified health centers and rural health  
18 centers to employ physicians (except for anesthesiologists, emergency department  
19 physicians, pathologists, or radiologists). Such employment must include a written contract,  
20 job description, or documentation containing language that does not restrict the physician  
21 from exercising independent medical judgment in diagnosing and treating patients. Effective  
22 March 19, 2020.

#### 23 24 **PC 573 (SB 1912) Alternative Treatments.**

25 The new law amends the definition of “alternative treatments” in TCA § 63-1-164. The  
26 current law requires a prescriber to discuss with a patient reasonable alternatives to opioids  
27 along with the risks and benefits of the alternative treatment. Alternative treatment  
28 includes, but is not limited to, treatments such as chiropractic care, PT, acupuncture, & other  
29 such treatments that relieve pain without the use of opioids. Prescribers may now discuss  
30 interventional procedures or treatments with the patient when obtaining informed consent  
31 for treatment with opioids.

#### 32 33 **PC 739 (SB 2317) Health Care Empowerment Act.**

34 Effective July 1, 2020, the Health Care Empowerment Act is amended at TCA § 63-1-501 et  
35 seq. The Act is expanded to allow all licensed medical professionals to use direct medical  
36 care agreements without regulation by state health insurance laws. The specific medical  
37 professions to which the law applies are not delineated but includes “legal entity.” Such  
38 agreements are agreements to provide “medical care” without billing the patient’s health  
39 insurance.

#### 40 41 **PC 764 (SB 2196) Abortion**

42 The administration’s new abortion law, referred to as the “heartbeat law,” adds new  
43 sections, TCA § 39-15-214 et seq to the criminal code. Violation is a Class C felony. It prohibits

1 abortions after six weeks gestation. Medically speaking, that is before many women realize  
2 they are pregnant. The new subsection TCA § 39-15-215(b) sets out what informed consent  
3 must be given to a woman seeking to have an abortion. Among the requirements is to  
4 determine and communicate the gestational age of the unborn child to the woman “using  
5 current medical technology and methodology applicable to the gestational age of the unborn  
6 child and reasonably calculated to determine whether a fetal heartbeat exists.” An  
7 ultrasound must be displayed to the woman and she must be informed as to whether there  
8 is a fetal heartbeat. The law does not appear to address the situation where the patient  
9 refuses to consent to an ultrasound but it is clear that a physician would not be able to  
10 lawfully perform the abortion without the gestational age and heartbeat preconditions being  
11 performed. The law does not actually require the woman to look at the displayed image of  
12 the ultrasound. There is an exception to the preconditions if an emergency exists. If there is,  
13 it is an affirmative defense to criminal prosecution of the physician for a violation. To avail  
14 oneself of the affirmative defense, several other requirements must be met based upon the  
15 viability of the fetus. A physician can be prosecuted if an abortion is performed and the  
16 doctor knows the woman is seeking the abortion because of: (A) The sex of the unborn child;  
17 (B) The race of the unborn child; or (C) A prenatal diagnosis, test, or screening indicating  
18 Down syndrome or the potential for Down syndrome in the unborn child. The woman can  
19 be prosecuted for attempting to commit or conspiring to commit a violation of the law. There  
20 are no exceptions in the law for rape or incest. It repeals a requirement that the department  
21 of children's services assign a court advocate in each judicial district to assist in the  
22 coordination of court-appointed counsel, to attend legal proceedings with a minor seeking  
23 an abortion, and to provide minors with information related to parental consent for  
24 abortions and the judicial bypass process. **Within forty-five minutes of signature by  
25 Governor Lee, the law was blocked as effectively prohibiting abortions as has been done  
26 in other states passing similar laws.**

27  
28 **PC 529 (SB 9) Smoking on Playgrounds.**

29 Effective April 7, 2020, TCA § 39-17-1551 is amended to authorize a local government to  
30 prohibit smoking on playgrounds if it adopts a resolution or ordinance approved by a two-  
31 thirds (2/3) vote.

32  
33 **PC 732 (SB 2202) Smoking paraphernalia.**

34 Effective January 1, 2021, various provisions of the criminal code are amended relative to  
35 smoking paraphernalia. The minimum age to purchase tobacco products is raised from 18 to  
36 21 years old to reflect the change in federal law. It requires any person under 21 years of age  
37 who directly or indirectly purchases smoking paraphernalia or attempts to purchase smoking  
38 paraphernalia using a fake ID to be subject to the jurisdiction of the appropriate general  
39 sessions court rather than to juvenile court. It also requires anyone who sells tobacco,  
40 smoking hemp, or vaping products at retail to post warning signage.

41  
42 **PC 747 (SB 2552) Providers of Medication Assisted Treatment**

1 No later than January 1, 2021, the departments of health and mental health and substance  
2 abuse services, and the Bureau of TennCare are required to develop educational materials  
3 for providers and facilities at which medication assisted treatment (MAT) is prescribed or  
4 provided. The educational materials shall include the following: (1) Access to and availability  
5 of family planning services and contraception; (2) Risks and effects of neonatal abstinence  
6 syndrome; and (3) Approaches to client-centered counseling. Amends Title 53, Chapter 11,  
7 Part 3.

#### 8 9 **PC 790 (SB 1960) Physical Therapy**

10 The new law amends several sections of the physical therapy practice act. It deletes the  
11 definitions of “electrodiagnostic tests and measures”, “electrophysiologic tests and  
12 measures”, and testing. It also clarifies that a licensed physical therapist may conduct an  
13 initial patient visit, rather than an initial evaluation, without a referral. “Appropriate  
14 healthcare practitioner” is substituted for “physician” with regard to healthcare  
15 professionals to whom physical therapists must refer patients, or consult under certain  
16 circumstances. An applicant for licensure who does not pass the examination after the first  
17 attempt may retake the examination one additional time without reapplication for licensure  
18 up to a total of six attempts. Applications will remain active for 12 months. After 12 months,  
19 applicants must submit a new application with all applicable fees. It replaces the present  
20 requirement that a person must be a graduate of a professional physical therapy education  
21 program accredited by an accreditation agency approved by the board of physical therapy.  
22 A person may now be a graduate of a professional physical therapy program accredited by a  
23 national accreditation agency recognized by the United States Department of Education and  
24 by the board. Finally, the new law deletes the authorization for the board of physical therapy  
25 to discipline a licensee for participating in underutilization or overutilization of physical  
26 therapy services for personal or institutional financial gain.

#### 27 28 **PC 594 (SB 2169) Summary Suspension of License.**

29 This was an administration bill seeking to make it even easier for a state regulatory board to  
30 summarily suspend the professional licenses of health care providers. It amends TCA §§ 4-5-  
31 320, 63-1-120, and 63-1-139. An amendment to TCA § 4-5-320 changes “summary  
32 suspension” to “summary action”. TCA § 63-1-120 is amended to increase the applicability  
33 of the statute to all of the health-related boards. That means that the boards added to the  
34 statute have authority to discipline in their practice acts and pursuant to TCA § 63-1-120.  
35 TCA § 63-1-139 currently requires that each board notify applicants for license and licensees  
36 “of changes in state law that impact the holder and are implemented or enforced by the  
37 entity, including newly promulgated or amended statutes, rules, policies and guidelines,  
38 upon the issuance and upon each renewal of the holder's license, certification or  
39 registration.” The amendment specifies that a board can comply with the statute by posting  
40 the change on its website 30 days before effect and for two years thereafter. This change is  
41 due to the Department of Health losing the *Sparks* case in the Court of Appeals for failure to  
42 make the licensee aware of a change in law for which she was disciplined by her licensing

1 board. This should curtail the instances of health professional licensees disciplined by their  
2 licensing boards for unwritten rules.

3

4 Thank you to committee members for sharing your knowledge and offering guidance to TMA  
5 staff during the second half of the 111<sup>th</sup> General Assembly and to the physicians who  
6 volunteered their time to participate in grassroots efforts for and against legislation. Thank  
7 you as well to the TMA staff behind the scenes who analyze bills and amendments, draft bill  
8 amendments, track status changes to legislation, provide research, and provide policy input  
9 on positions to take on legislation.

Respectfully Submitted,

Joseph Huffstutter, MD, Chair (District 3)

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