

### MN-ACP State Legislative News in Brief

- Legislation to reform the prior authorization process cleared House and Senate committees recently. The bill intended to assist in ensuring patients receive timely care while removing some of the administrative burden of prior authorization. The bills shorten the time health plans have to review PA requests, requires plans to post clinical criteria used for prior authorization, and provides for a transition period for patients who change health plans.
- Legislation to increase the age at which individuals may purchase tobacco and nicotine products cleared the House on a strong bipartisan margin on May 9. While Federal law was changed last winter to increase the age to purchase these products to 21, state action was necessary to align state law related to enforcement, conformity, and penalties for retailers who sell to underage individuals
- Gov. Tim Walz continues to use his executive authority to enact time-limited changes in many areas and industries. In addition to recently extending the “stay at home” order for several weeks, he also acted to allow physicians and nurses from other states to practice in Minnesota during the peacetime emergency. Another order modified an earlier executive order prohibiting elective surgeries and procedures, permitting them if conditions regarding PPE, screening and testing capacity, and other metrics are met.

#### 1. Improve Public Health

- **T21 Passes House on Bipartisan Margin**--Legislation to raise the state’s age to purchase tobacco and products containing nicotine from 18 to 21 passed the House on May 9 by a strong bipartisan margin of 89 to 41. Sixteen GOP members joined all but one DFL legislator in voting for the measure. The [bill](https://www.house.leg.state.mn.us/bills/Info/331), <https://www.house.leg.state.mn.us/bills/Info/331> authored by Rep. Heather Edelson (DFL – Edina), aligns Minnesota law with a federal bill passed last December to set a national age to purchase tobacco and nicotine-containing products. Passing a state law to align with the Federal statute is necessary to ensure effective enforcement and conformity, as well as penalties for retailers who sell to underage individuals. The **Senate bill**, <https://www.revisor.mn.gov/bills/bill.php?f=SF463&y=2019&ssn=0&b=senate> authored by Sen. Carla Nelson (R – Rochester) still needs to get through another committee and be passed by the full Senate.
- **Prenatal Substance Abuse Reporting Requirements Amended Under Bill**--Legislation to alter the requirements that physicians report to social service agencies if they believe a pregnant woman is using illicit substances was included in a human service omnibus package that passed the House HHS Policy Committee. The House bill is expected to be considered on the floor in the coming days. Current Minnesota law requires physicians and other mandated reporters to contact social services agencies if they believe a pregnant woman is using illicit substances/cannabis. The change included in the omnibus package would remove the reporting requirement entirely. The intent is to promote prenatal care by removing the fear that a pregnant woman who is using drugs may have that they would be reported to authorities. The original [legislation](https://www.revisor.mn.gov/bills/bill.php?b=house&f=HF1892&ssn=0&y=2019) <https://www.revisor.mn.gov/bills/bill.php?b=house&f=HF1892&ssn=0&y=2019> is authored by Rep. Kelly Morrison, MD (DFL – Deephaven) and Sen. Scott Jensen, MD (R – Chaska). This provision may not pass the Senate, however.

## 2. Improve Patient Affordability and Health

- **Drug Pricing Transparency Bill Clears Senate**--In an effort to assist consumers and policy makers in understanding prescription drug pricing, **legislation** <https://www.revisor.mn.gov/bills/bill.php?b=senate&f=SF1098&ssn=0&y=2019> to require extensive reporting by drug manufacturers when the price of a drug sharply increases passed the Senate by a 63 to 2 margin. The measure passed the House on May 9, 99-33. Authored by Sen. Julie Rosen (R – Vernon Center) and Rep. Kelly Morrison, MD (DFL – Deephaven), the bill mandates that prescription drug manufacturers report to the Minnesota Department of Health (MDH) when drug prices increase by certain margins within a given period of time. Brand name drug manufacturers would be compelled to report when a brand name drug's price increases by 10 percent within 12 months or by 16 percent over a 24-month period. Manufacturers of generic drugs would be required to report when a generic drug's price increases by 50 percent within 12 months. The bill further stipulates that manufacturers report certain information about drugs with sharp price increases, including the cost to manufacture the drug, the wholesale cost, the factors that led to the price increase, marketing and advertising costs, and other information. MDH must publicly report the data and provide regular reports to the Legislature.

## 3. Support Physician's Ability to Practice

- **Telemedicine use and expansion in Minnesota**--Covid-19 has brought widespread use of telehealth/telemedicine in clinical practice. Federal action by CMS has expanded Medicare payment. In Minnesota, Senator Rosen's bipartisan **bill SF4565** [https://www.revisor.mn.gov/bills/text.php?number=SF4565&version=latest&session=ls91&session\\_year=2020&session\\_number=0](https://www.revisor.mn.gov/bills/text.php?number=SF4565&version=latest&session=ls91&session_year=2020&session_number=0) makes some important changes in telemedicine use in MN. However, there is no MN House companion bill with less than a week to the end of the session making passage quite unlikely.
- **Prior Authorization Reform Advances**--Long a priority for medical specialty societies, clinics, and dozens of patient advocacy groups, legislation to reform the laws governing prior authorization (PA) cleared several committees in recent days. The Senate bill, authored by Sen. Julie Rosen (R – Vernon Center), unanimously passed the Health and Human Service (HHS) Policy and Finance Committee on May 5 and was referred to the Commerce Committee where it is expected to be considered on May 12. The House companion is carried by Rep. Kelly Morrison, MD (DFL – Deephaven), an OB/GYN. The House bill passed the House Commerce Committee unanimously and was referred to the House floor. The bill contains several provisions intended to reduce the administrative burden of PA while enhancing access to care for patients. Some of the notable pieces of the bill include:
  - Shortening the time frame that health plans have to make PA determinations. Standard determinations are to be completed within five days (down from 10 in current law), while expedited determinations are to be made within 48 hours (down from 72 hours). Appeals of PA denials are to be made within 15 days, down from current law's allowance of 30 days. These changes are effective Jan. 1, 2021.
  - Requiring that PA denials of procedures and diagnostic testing be made by Minnesota-licensed physicians who practice in the same or similar specialty as the service being reviewed.
  - Requiring that health plans provide a 60-day transition period for patients who have approved services should they change health plans.
  - Requiring health plans and utilization review organizations (UROs) post on their website the clinical criteria for their PA procedures. Changes to the criteria

they use for PA must be transmitted to providers at least 45 days prior to the change taking effect.

- Precluding health plans from retroactively denying PA approvals once granted.
- Precluding health plans from changing coverage terms or clinical criteria during the plan year for patients who have an approved prior authorization.

- **Governor's Executive Order Amends Elective Surgery Restrictions**--On May 5, Gov. Walz issued **Executive Order 20-51** <https://www.leg.state.mn.us/archive/execorders/20-51.pdf> that modifies an early order that limited non-essential healthcare services. Under the new order healthcare facilities may begin offering certain medical, dental, and veterinary services beginning on May 11 if the facility meets certain requirements designed to protect patients, health care workers, and preserve access to needed PPE or ventilators.
  - The facility must develop a written plan that establishes criteria for determining whether a procedure should proceed, for prioritizing procedures, and for ensuring a safe environment for staff, patients, and visitors. The order also requires facilities to collaborate with other facilities in the same community to ensure adequate supplies and capacity to respond to a potential surge in COVID-19 cases.
  - Facilities must develop protocols to screen all staff, patients, and visitors for symptoms of COVID-19 and prohibit all symptomatic people from entering the facility except for emergency care. Facilities must also have detailed plans on how they will implement and enforce recommended social distancing.
  - The new executive order is consistent with recommendations developed jointly by the MMA, MN-ACP, and 22 specialty societies and clinics and submitted to Gov. Walz and Commissioner Jan Malcolm. Those recommendations were based on principles of focusing on delivery care that is in the best interest of patients, ensuring the health and safety of patients and health care staff, acknowledging the harms associated with delaying needed care, and focusing on easing restrictions on care that can be provided safely.
- **Scope of Practice Package Considered**--A package of scope of practice changes cleared the Senate on a unanimous vote on May 7, while the House companion passed out of its last committee and was referred to the House floor. The omnibus bills are being carried by the chairs of the HHS policy committees, Rep. Rena Moran (DFL – St. Paul) and Sen. Michelle Benson (R – Ham Lake). They contain three health professional scope of practice bills. The relationship between physicians and physician assistants (PAs) is modified under language included in the omnibus package, which is intended to ease the administrative burden of maintaining a collaborative or supervisory agreement with a physician. Instead, the legislation requires that a PA maintain a “practice agreement” with a Minnesota-licensed physician “at the practice level that describes the practice of the physician assistant.” The bill further requires an annual review of the practice agreement by a licensed physician “within the same clinic, hospital, health system, or other facility as the physician assistant and has
  - knowledge of the physician assistant's practice to ensure that the physician assistant's medical
  - practice is consistent with the practice agreement.” Newly licensed PAs must practice within a more prescriptive collaborative agreement within an integrated system for one year prior to being allowed to work under a practice agreement.

The original version of this legislation dramatically altered the scope of practice for PAs while also removing a requirement that the PA maintain a relationship with a Minnesota-licensed physician. Another provision not included in the final version would

have allowed PAs to refer to themselves as “Associate Physicians,” a provision that physician groups argued would confuse patients.

Another provision in the omnibus bill grants pharmacists limited prescribing authority for several types of drugs. Originally authored by two physician members of the Legislature, Sen. Scott Jensen (R – Chaska) and Rep. Alice Mann, MD (DFL – Lakeville), the bill allows pharmacists to prescribe nicotine replacement drugs, oral contraceptives for the purpose of birth control, and opioid antagonists for acute opioid overdose. The MMA and the Minnesota Psychiatric Society worked to narrow the bill to exclude nicotine cessation drugs such as varenicline and bupropion due to their potentially dangerous side effects. Prior to being eligible to prescribe these drugs, pharmacists would be required to complete a training course developed by the Board of Medical Practice and Board of Pharmacy, with the input of the professional association of physicians, pharmacists, and APRNs.

A final scope of practice provision included in the bill would allow traditional midwives the authority to order ultrasounds, provide point-of-care testing, and order laboratory tests that conform to the standard prenatal protocol of the licensed traditional midwife's standard of care. The language was negotiated by the Minnesota Chapter of the American College of Obstetricians and Gynecologists (MN-ACOG) and the association for traditional midwives. If so, it should be capitalized.)

Two more controversial scope of practice bills are not moving forward. Legislation to allow physical therapists to indefinitely treat patients without a referral from a physician was excluded from the omnibus. Current law allows patients direct access to PTs for up to 90 days, though a referral from a physician, PA, APRN, chiropractor, or podiatrist is required for treatment longer than that period. Opponents, including the MMA and the Minnesota Orthopaedics Society, argued that the 90-day cap protects patients by ensuring that patients who are not improving are examined by a physician or other professional to ensure that there is not a potentially dangerous underlying condition is preventing improvement.

Similarly, a proposal by the professional association of optometrists was not included in the omnibus bills. Their proposal would have allowed them the authority to administer intraocular injections, as well as removing existing limits on prescribing of oral antiviral medications and oral carbonic anhydrase inhibitors. The MMA and the Minnesota Academy of Ophthalmology opposed the bill.

### **Find Out Who Represents Me-Minnesota**

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