

Minnesota-ACP Health Policy and Legislative Update

May 29, 2020

MN-ACP State Legislative News in Brief

- At the end of the 2020 session there was both a flurry of activity and an expectation that legislators will soon be back for a special session. The COVID-19 pandemic scrambled the priorities of the House, Senate, and Governor, and several high profile items, including a bonding bill that remained unfinished. The Legislature must meet in special session if the Governor extends the peacetime emergency declaration past June 12.
- After several sessions of effort, the action of dozens of Minnesota communities and counties, and a 2019 Federal law on the topic, Governor Walz signed legislation raising the age to purchase tobacco and nicotine products to 21. This will bring Minnesota into harmony with Federal law.
- Reform of how prior authorization (PA) is governed passed the Legislature by wide, bipartisan margins and was signed by the governor. The effort will speed the delivery of care when a drug or procedure requires PA and requires plans to post the written clinical criteria that governs their PA requirements. Continuity of care provisions will ensure coverage when a patient switches health plans or insurance products in a calendar year. The bill requires “peer to peer” appeals be conducted by a Minnesota-licensed physician with expertise in the same or similar specialty as the condition or health care service being considered.

Overview--Legislative Session Concludes, Special Session Looms

The 2020 legislative session concluded with a flurry of activity on the floors of the House and Senate on May 17. The end of the 2020 session lacked some of the urgency seen in past legislative session, with a special session likely in mid-June. Before the pandemic hit, there were plans to use some of the projected budget surplus for tax relief or additional spending on priorities such as pre-K education. But in March, legislative action ground to a halt. Following an extended Easter/Passover break, the Legislature continued to consider bills,

On May 12, Gov. Walz extended the existing peacetime emergency for 30 days. The Legislature must return to the Capitol for a special session should he extend the emergency declaration past June 12. The interlude between the regular session and the likely special session will allow the Governor and legislative leaders time to negotiate about items not completed during the regular session. The most important of these is a bonding bill. Bonding is how the state funds large projects such as university buildings, convention centers, municipal infrastructure, and other projects. It's one of the very few actions that require a supermajority to pass, so bipartisan agreement is required, given the current partisan divides in the legislature. Other issues, including additional measures related to COVID-19, may be considered during a special session.

1. **Improve Public Health**

Tobacco 21 Signed into Law

On May 16, Gov. Walz signed into law [legislation](https://www.revisor.mn.gov/laws/2020/0/Session+Law/Chapter/88/) <https://www.revisor.mn.gov/laws/2020/0/Session+Law/Chapter/88/> to increase the age to purchase tobacco and nicotine products from 18 to 21. The effort has long been a priority for physician groups, public health advocates, and tobacco control proponents. The bills were authored by Rep. Heather Edelson (DFL – Edina) and Sen. Roger Chamberlain (R – Lino Lakes); The bills passed the House and Senate by strong bipartisan majorities.

Though the federal government set the national age to purchase tobacco and nicotine-containing products late last year, tobacco control proponents sought passage of a state law to ensure proper enforcement and compliance. Anecdotal reports throughout the spring indicated that retailers

and law enforcement alike were confused by the disconnect between state and federal law. Passage of the law here in Minnesota will improve compliance by local retailers. Well over 90 percent of tobacco users start before they reach 21, so the bill will lead to fewer adult smokers.

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, a new [law](https://www.revisor.mn.gov/laws/2020/0/78/) <https://www.revisor.mn.gov/laws/2020/0/78/> to require extensive reporting by drug manufacturers when the price of a drug sharply increases passed the Senate and House and was signed by the Governor. 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. Manufacturers must also 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

- **Prior Authorization Are Law**

Legislation to reform how prior authorization (PA) is conducted passed both bodies of the Legislature by wide bipartisan margins, drawing only nine negative votes among the 201 legislators. The [bill](https://www.revisor.mn.gov/laws/2020/0/Session+Law/Chapter/114/), <https://www.revisor.mn.gov/laws/2020/0/Session+Law/Chapter/114/> authored by Rep. Kelly Morrison, MD (DFL – Deephaven) and Sen. Julie Rosen (R – Vernon Center), was signed by Governor Walz. The effort to reform the laws that govern PA and utilization has taken many years, as it faced stiff opposition from health plans, pharmacy benefit managers, and business interests.

The bill includes several broad patient protections and reforms to reduce the administrative burden of PA. The timelines that health plans are allowed to determine whether to grant approval for a drug, procedure, or diagnostic test are dramatically shortened from 10 days under current law to five days (if the PA request is submitted electronically) or six days if submitted via fax or paper. In 2022 the timeline for all requests will be five days. The bill shrinks the time allowed to approve an expedited request from 72 hours to 48 hours, as long as there is at least one business day. Appeals of PA denials must be acted upon within 15 days, down from current law's 30 days. Other elements of the bill include:

- 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.

- **Liability Protection Bill Introduced**

Legislation to provide limited liability protection for physicians, other health professionals, clinics, and hospitals as they adapt to provide care in the midst of the pandemic was introduced in the last days of the regular legislative session. The [bills https://www.revisor.mn.gov/bills/text.php?number=SF4603&version=latest&session=ls91&session_year=2020&session_number=0](https://www.revisor.mn.gov/bills/text.php?number=SF4603&version=latest&session=ls91&session_year=2020&session_number=0) are authored by Rep. Kelly Morrison, MD (DFL – Deephaven) and Sen. Michelle Benson (R – Ham Lake). The Senate HHS Policy and Finance Committee passed the bill during the last week of session, but time ran out before it could be fully vetted by other committees. While the legislation did not advance to the floors in the last days of session, liability protection may come up in a special session.

Under the bill, liability protection is given to health care workers and facilities. The legislation states that providers are “immune from criminal, civil, or administrative liability for any harm or damages resulting from the responder's act or omission in the course of performing duties related to the provision of health care services, including providing, allocating, withdrawing, or delaying health care services, arising out of the state's response to the COVID-19 outbreak during the peacetime public health emergency.” Advocates for the bill noted that the pandemic and subsequent executive orders to address the outbreak have placed enormous strain on the health-care system. Limited PPE, deployment of physicians outside their usual specialty, and the Governor’s executive order precluding elective procedures have all contributed to a standard of care that has been rapidly changing. Importantly, the bill does not protect actions “caused by an act or omission constituting intentional or reckless misconduct or gross negligence.”

Proponents include the MMA, the Minnesota Hospital Association, long-term care providers, and other health professionals. They had asked Gov. Walz to issue an executive order to provide the liability protection, though he declined to do so given that the role of the Legislature and judiciary. Proponents will continue to advocate for limited liability protection for physicians, health-care workers, and health-care facilities. It has little chance of passing the House.

Find Out Who Represents Me-Minnesota

If you are unsure of who represents you at the MN Capitol and in Washington DC and their contact information, **use this link** to find out. <https://www.gis.leg.mn/iMaps/districts/>

mnchapter.acponline.org

Minnesota.ACP@gmail.com

[MN-ACP LinkedIn https://www.linkedin.com/in/minnesota-acp-a044b446/](https://www.linkedin.com/in/minnesota-acp-a044b446/) and Twitter: [@mn_acp](https://twitter.com/mn_acp)
https://twitter.com/mn_acp

Mark recommended deleting this whole section:

Other Eric provided this section which is wordy...edit/delete?

Scope of Practice Changes Await Governor’s Action

A session-long effort to amend the scope of practice for several health professionals passed the House and Senate by wide margins and awaits a likely signature by Gov. Walz. The scope of practice changes were included in an [omnibus bill](#) containing dozens of health policy provisions. While the omnibus bills were authored by the chairs of the HHS policy committees, Rep. Rena Moran (DFL – St. Paul) and Sen. Michelle Benson (R – Ham Lake), the scope bills were authored by others.

The omnibus bill contains three scope of practice modifications. Changes to the relationship between physicians and physician assistants (PAs) was the source of significant negotiation throughout last summer and fall and into the legislative session. Under the agreement reached between the MMA and the Minnesota Academy of Physician Assistants (MAPA), the language 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, authored by Rep. Jennifer Schultz (DFL – Duluth) and Sen. Mary Kiffmeyer (R – Big Lake) 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 PA language is considerably different than the version that had been originally introduced. Unlike the original language, the scope of practice for PAs remains the same, and the final bill maintains a relationship between a Minnesota-licensed physician and the PA. MAPA’s original bill would have allowed PAs to refer to themselves as “Associate Physicians,” a term that opponents feared would confuse consumers. This provision was removed from the final bill.

Also included in the bill is language granting pharmacists limited prescribing authority. 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.

Traditional midwives are granted 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.

Of note, two scope of practice expansions were not included in the final bill. An existing law limiting patients to up to 90 days of physical therapy before a physician or other health

professional referral is required would have been repealed under legislation authored by Sen. John Marty (DFL – St. Paul) and Rep. Deb Kiel (R – Crookston). The bill was opposed by the MMA and the Minnesota Orthopaedics Society (MOS). Similarly, legislation to allow optometrists to administer interocular injections and lift limits on optometric prescribing was omitted from the final legislation. The optometric scope bill, carried by Sen. Andrew Matthews (R - Princeton) and Rep. Ruth Richardson (DFL – Mendota Heights), was opposed by the MMA and the Minnesota Academy of Ophthalmology.