



CAPITOL & 5TH PUBLIC STRATEGIES

TN Occupational Therapy Association 2021 Legislative Report

EXECUTIVE SUMMARY

The first half of the 112th Tennessee General Assembly adjourned on May 5, 2021. This year Capitol & 5th tracked 33 bills on behalf of TNOTA, including 12 caption bills. Following several intermittent and incomplete sessions last year due to COVID-19, lawmakers were eager to get back to lawmaking and health care was notably a key focus this year. There were several bills filed that chipped away at existing telehealth provisions, including allowing post-graduate professionals to utilize telehealth when under supervision; allowing behavioral health services to be reimbursed via telehealth; and even allowing healthcare providers from other states to utilize telehealth under certain conditions.

Other monitored legislation included the bill which required mandatory coverage for chiropractic services by TennCare (see **SB319/HB419**). Last year, the House sponsor had carried this legislation and included occupational therapists along with other allied health professionals. This year, the legislation only included chiropractors. As originally drafted, the legislation would have prohibited TennCare from requiring a beneficiary to first use an alternative healthcare service before covering chiropractic services. This was obviously not ideal for occupational therapists who provide pain relief treatment to patients, along with many other providers. In working with TennCare and the sponsor, this language was removed from the final version that passed.

Another closely monitored piece of legislation was the school-based health related services (see **SB503/HB753**) which allow occupational therapists (and other allied health professionals), practicing in a school setting to refer and order services within their scope of practice as a part of a child's IEP. While the legislation gained broad support in the legislature, the high fiscal note posed a significant hurdle. Ultimately, the measure was not funded in the state's FY21-22 budget and was subsequently put on hold. However, the bill remains very much alive and is poised to be revived in 2022.

Of course, TNOTA also brought its own legislation this session which successfully passed both chambers and became Public Chapter on April 17. The bill makes several changes to the practice of occupational therapy including allowing OT practitioners to provide a treatment diagnosis, prognosis, or plan; permanently utilize telehealth as a service delivery; and perform dry needling of the upper limb. For the purposes of promulgating the appropriate rules, the legislation will go into effect on July 1, 2021.

TNOTA MONITORED LEGISLATION

SB101/HB183 **Creates the professional art therapist advisory committee.**

Sponsors: Sen. Massey, Becky , Rep. Ramsey, Bob

Summary: Creates the professional art therapist advisory committee of the board of examiners in psychology. Tasks committee with regulating the practice of art therapy (16 pp.).

Amendment Senate amendment 1 (003697) changes this bill's effective date for all purposes other than

Summary: appointing members to the advisory committee from July 1, 2021, to July 1, 2022. This bill will still take effect upon becoming a law for purposes of appointing members to the advisory committee.

Senate amendment 2 (004239) removes a reference to a specific association with which this bill would require the governor to consult to determine qualified persons for appointment as advisory committee. This bill instead requires the governor to consult with interested art therapy groups, including, but not limited to, a professional organization that represents the profession of art therapy in Tennessee. This amendment clarifies that this bill will prohibit unlicensed persons from presenting themselves as a "licensed professional art therapist" or "licensed art therapist", rather than "professional art therapist."

Fiscal Note: (Dated January 22, 2021) Increase State Revenue \$15,000/FY21-22/Board of Examiners in Psychology \$15,000/FY22-23/Board of Examiners in Psychology \$11,300/FY23-24 and Subsequent Years/ Board of Examiners in Psychology Increase State Expenditures \$1,300/FY21-22 and Subsequent Years/ Board of Examiners in Psychology Other Fiscal Impact Pursuant to Tenn. Code Ann. 4-29-121, all health-related boards are required to be self-supporting over a two-year period. The Board of Examiners of Psychology had an annual surplus of \$4,356 in FY18-19, an annual surplus of \$67,976 in FY19-20, and a cumulative reserve balance of \$1,135,286 on June 30, 2020.

Senate Status: 03/18/21 - Senate passed with amendment 1 (003697) and amendment 2 (004239).

House Status: 04/05/21 - House passed.

Executive Status: 04/26/21 - Enacted as Public Chapter 0160 effective April 20, 2021.

SB292/HB1240 Waiving licensure fees for healthcare professionals.

Sponsors: Sen. Robinson, Katrina , Rep. Parkinson, Antonio

Summary: Waives licensure fees for healthcare professionals from July 1, 2021, to June 30, 2025. Requires licensing authorities to refund the portion of any licensure fee paid to the authority that is credited to a healthcare provider for that period of time. Broadly captioned.

Amendment Summary: House Health Subcommittee amendment 1 (004639) waives the licensing fee for 1 year or until the conclusion of the COVID-19 pandemic.

Fiscal Note: (Dated March 14, 2021) Decrease State Revenue - \$22,823,600/FY21-22/Health Related Boards \$22,823,600/FY22-23/Health Related Boards \$22,823,600/FY23-24/Health Related Boards \$22,823,600/FY24-25/Health Related Boards Increase to state Expenditures - \$22,700,000/FY21-22/General Fund \$22,700,000/FY22-23/General Fund \$22,700,000/FY23-24/General Fund \$22,700,000/FY24-25/General Fund Pursuant to Tenn. Code Ann. 4-29-121, all health-related boards are required to be self-supporting over a two-year period. The Boards had an annual surplus of \$2,524,075 in FY18-19, an annual surplus of \$1,107,948 in FY19-20, and a cumulative reserve balance of \$34,229,587 on June 30, 2020.

Senate Status: 04/13/21 - Taken off notice in Senate Health & Welfare Committee.

House Status: 04/06/21 - Failed in House Health Subcommittee after adopting amendment 1 (004639).

SB319/HB419 Coverage for chiropractic services.

Sponsors: Sen. Hensley, Joey , Rep. Cepicky, Scott

Summary: Adds chiropractic services performed by a person authorized to engage in the practice of chiropractic to the list of healthcare services that may be included as covered TennCare medical assistance. Requires TennCare medical assistance include payment for chiropractic services for persons 18 years of age and older. Prohibits a TennCare entity from requiring that a recipient first use an alternative healthcare service before providing payment for chiropractic services.

Amendment Summary: House amendment 1 (005653) deletes and rewrites all language after the enacting clause such that the only substantive change is to remove the prohibition for a TennCare entity to require a recipient use an alternative healthcare service before providing payment for chiropractic services.

Fiscal Note: (Dated January 31, 2021) Increase State Expenditures - \$525,300/FY21-22 \$1,050,700/FY22-23 and Subsequent Years Increase Federal Expenditures - \$1,033,300/FY21-22 \$2,066,600/FY22-23 and Subsequent Years Other Fiscal Impact - There could be savings if chiropractic care is used in lieu of other procedures. Due to a number of unknown factors, the timing and amount of any savings are not quantifiable with reasonable certainty.

Senate Status: 05/04/21 - Senate passed.
House Status: 05/04/21 - House passed with amendment 1 (005653).
Executive Status: 05/04/21 - Sent to the speakers for signatures.

SB418/HB602 Medicaid Buy-In Act.

Sponsors: Sen. Yarbrow, Jeff , Rep. Hodges, Jason

Summary: Enacts the "Medicaid Buy-In Act," which establishes a medicaid buy-in program to provide residents with a choice of quality, affordable health insurance. Requires the department of finance and administration to establish benefits under the medicaid buy-in plan and to ensure that the covered benefits include ambulatory patient services, emergency services, maternity and newborn care, behavioral health treatment, and other services. Requires the department to pursue available federal funding and financial participation for the services and benefits provided.

Senate Status: 02/10/21 - Referred to Senate Commerce & Labor Committee.

House Status: 02/20/21 - Referred to House Insurance Subcommittee.

SB484/HB582 Educational materials for providers and facilities where medication assisted treatment is prescribed or provided.

Sponsors: Sen. Haile, Ferrell , Rep. Terry, Bryan

Summary: Authorizes the departments of health and mental health and substance abuse services and the bureau of TennCare to provide in an electronic format the educational materials required to be made available to prescribers of medication assisted treatment and facilities that use medication-assisted treatment for the treatment of substance use disorder. Broadly captioned.

Amendment Summary: Senate amendment 1 (005536) deletes all original language in the bill. Requires the commissioner of health to report on the impact of the COVID-19 pandemic regarding the lawful and unlawful use of opioids and how it relates to the previously established limitations on opioid use.

Fiscal Note: (Dated February 5, 2021) NOT SIGNIFICANT

Senate Status: 04/21/21 - Senate passed with amendment 1 (005536).

House Status: 05/03/21 - House passed.

Executive Status: 05/11/21 - Sent to governor.

SB503/HB753 School-based health-related services.

Sponsors: Sen. Lundberg, Jon , Rep. White, Mark

Summary: Requires the department of finance and administration to pay, or cause to be paid, claims for reimbursements for eligible health-related or medical assistance services provided by LEAs pursuant to an eligible student's IEP. Requires each LEA to submit all claims for the previous school year on or before December 31 following the end of that school year. Specifies that any claim submitted after such date may be denied unless there is good cause shown for the delay in submission. Clarifies that a claim by an LEA shall not be denied because the provider is not a participating provider or does not have a contract with a managed care organization administering any claims under this bill.

Amendment Summary: Senate Education Committee amendment 1, House K-12 Subcommittee amendment 1 (006233) deletes all original language in the bill and establishes that physical therapists, occupational therapists, speech-language pathologists and audiologists practicing in a school setting may refer and order services within their scope of practice as a part of a child's IEP.

Fiscal Note: (Dated March 25, 2021) Increase State Expenditures \$95,369,600/FY21-22 and Subsequent Years Increase Federal Expenditures \$187,584,200/FY21-22 and Subsequent Years Other Fiscal Impact There may be additional state expenditures to cover the claims for non-TennCare IEP students. Due to multiple unknown factors, the exact impact cannot be quantified.

Senate Status: 05/04/21 - Senate Finance, Ways & Means Committee deferred to first calendar of 2022.

House Status: 05/03/21 - Taken off notice in House Finance, Ways & Means Subcommittee.

SB530/HB635 Establishes a uniform definition for medical necessity and medically necessary.

Sponsors: Sen. Briggs, Richard , Rep. Smith, Robin
Summary: Establishes the new definition of "medical necessity" and "medically necessary" as reasonably calculated to prevent, diagnose, cure, alleviate or prevent worsening of conditions in the patient that endanger life, cause suffering or pain, resulting in an illness or infirmity. Assuming that there is no less costly treatment and that the doctor has completed an examination of the patient and documented their rationale for the procedure. (16pp)
Amendment Summary: House Insurance Committee amendment 1 (006238) deletes all language after the enacting clause such that the substantive changes are: (1) to specify that patient's best interest is in the opinion of the examining prescriber or healthcare provider; (2) adds language that establishes medical necessity is presumed if the ailment, disease, or illness constitutes an emergency medical condition as defined in 42 U.S.C. § 1395dd(e); and (3) removes the TennCare program and CoverKids programs from the application of this legislation.
Fiscal Note: (Dated March 11, 2021) On March 7, 2021, a fiscal note was issued for this legislation estimating a fiscal impact as follows: Increase State Expenditures Exceeds \$65,798,400/FY21-22 Exceeds \$69,124,200/FY22-23 and Subsequent Years Increase Federal Expenditures Exceeds \$123,144,900/FY21-22 Exceeds \$123,411,500/FY22-23 and Subsequent Years Increase Local Expenditures Exceeds \$777,400/FY21-22* Exceeds \$1,554,800/FY22-23 and Subsequent Years*And an estimated impact to commerce as follows: Increase Business Revenue Exceeds \$189,720,700/FY21-22 Exceeds \$192,535,700/FY22-23 and Subsequent Years Increase Business Expenditures Less than \$189,720,700/FY21-22 Less than \$192,535,700/FY22-23 and Subsequent Years Based on new information received from the Division of Benefits Administration, the estimated fiscal impact has been corrected as follows: (CORRECTED) Increase State Expenditures Exceeds \$67,331,200/FY21-22 Exceeds \$72,189,800/FY22-23 and Subsequent Years Increase Federal Expenditures Exceeds \$123,211,500/FY21-22 Exceeds \$123,544,800/FY22-23 and Subsequent Years Increase Local Expenditures Exceeds \$731,000/FY21-22* Exceeds \$1,462,100/FY22-23 and Subsequent Years* HB 635 - SB 530 (CORRECTED) 2Corrected
Senate Status: 03/30/21 - Senate Commerce & Labor Committee deferred to first calendar of 2022.
House Status: 04/20/21 - Failed in House Insurance Committee.
Executive Status: 03/08/21 - Joint Council on Pensions and Insurance released to standing committees with favorable comment.

SB554/HB449 Health care facilities - posting of services provided and price for such services.

Sponsors: Sen. Kyle, Sara , Rep. Hodges, Jason
Summary: Requires healthcare facilities and healthcare providers to post a list of each healthcare services provided at the facility or by provider and a price for the service. Requires healthcare facilities and healthcare providers to accept the price as payment in full if any patient or third-party payer on behalf of the patient pays the price in full within 30 days after the date the healthcare service was provided.
Fiscal Note: (Dated February 1, 2021) NOT SIGNIFICANT
Senate Status: 04/06/21 - Senate Commerce & Labor Committee deferred to first calendar of 2022.
House Status: 03/30/21 - House Health Subcommittee deferred to the first calendar of 2022.

SB568/HB702 Time frame for notification of change of address to receive duplicate registration certificate.

Sponsors: Sen. Johnson, Jack , Rep. Whitson, Sam
Summary: Increases from 30 to 45 days the time within which a person issued a certificate of registration by the division of health related boards must notify the division of a change of address to receive a duplicate registration certificate. Broadly captioned.
Fiscal Note: (Dated February 10, 2021) NOT SIGNIFICANT
Senate Status: 02/11/21 - Referred to Senate Commerce & Labor Committee.
House Status: 02/11/21 - Caption bill held on House clerk's desk.

SB584/HB1076 Education and experience requirements for physical therapists.

Sponsors: Sen. Crowe, Rusty , Rep. Leatherwood, Tom

Summary: Removes the one-year experience requirement for doctorate level physical therapists for purposes of the direct access practice exception. Requires physical therapists without a doctorate to meet certain educational requirements for purposes of the direct access practice exception, including completing a professional physical therapy program of at least 15 hours that is approved by the board of physical therapy and completing three years of experience as a licensed physical therapist.

Fiscal Note: (Dated February 27, 2021) NOT SIGNIFICANT

Senate Status: 03/22/21 - Senate passed.

House Status: 03/29/21 - House passed.

Executive Status: 04/16/21 - Enacted as Public Chapter 0130 effective April 13, 2021.

SB592/HB548 Membership of board of chiropractic examiners.

Sponsors: Sen. Jackson, Ed , Rep. Jernigan, Darren

Summary: Replaces one of the consumer member appointments to the board of chiropractic examiners with the appointment of a member who is a chiropractic X-ray technician or chiropractic therapy assistant certified in this state not less than two years. Broadly captioned.

Fiscal Note: (Dated February 8, 2021) NOT SIGNIFICANT

Senate Status: 03/22/21 - Senate passed.

House Status: 04/01/21 - House passed.

Executive Status: 04/26/21 - Enacted as Public Chapter 0199 effective April 22, 2021.

SB603/HB636 Health Benefit Plan Network Access and Adequacy Act.

Sponsors: Sen. Watson, Bo , Rep. Smith, Robin

Summary: Enacts the "Health Benefit Plan Network Access and Adequacy Act," which establishes standards for the creation and maintenance of networks by health carriers. Defines "network" as the group or groups of participating providers providing services under a network plan. Defines "health carrier" as an entity subject to the insurance laws and rules of this state or subject to the jurisdiction of the commissioner, that contracts or offers to contract to provide, deliver, arrange for, pay for or reimburse the costs of healthcare services. States that violation of the act is a class A misdemeanor subject to a fine of between \$500 and \$5,000. (36 pp.)

Amendment Summary: Senate Commerce & Labor Committee amendment 1, House Insurance Committee amendment 1 (006804) specifies that the act does not apply to the TennCare, CoverKids or any successor programs. Establishes protocol for if a provider relies on the health care network's participation method. House Government Operations Committee amendment 1 (007276) clarifies that an individual must be declared dead by a licensed physician.

Fiscal Note: (Dated February 27, 2021) Increase State Expenditures \$171,700/FY21-22 \$168,500/FY22-23 and Subsequent Years Other Fiscal Impact An additional increase in state expenditures to the Division of TennCare may be realized as a result of this legislation, as well as a corresponding increase in federal expenditures. The extent of any increase in HB 636 - SB 603 1 expenditures associated with an increase in provider rates and paying out-of- network providers is unknown and dependent upon further action by the Department of Commerce and Insurance. Passage of the proposed legislation could jeopardize a portion or all of federal funding to the Division of TennCare received for the Medicaid program of approximately \$9,502,600,952 in FY21-22 and subsequent years if it is determined the state is noncompliant with federal law.

Senate Status: 04/21/21 - Senate Commerce & Labor Committee deferred to 2022 after adopting amendment 1 (006804).

House Status: 04/27/21 - Taken off notice in House Finance, Ways & Means Subcommittee.

Executive Status: 03/15/21 - Joint Council on Pensions and Insurance released to standing committees with favorable comment.

- SB615/HB180 Patient access to qualified mental health professionals.**
Sponsors: Sen. Bell, Mike , Rep. Hall, Mark
Summary: Requires healthcare providers to ensure patients who have threatened or attempted self-harm to the provider's knowledge are provided with access to a qualified mental health professional or contact information for a qualified mental health professional or mental health counseling resource. Broadly captioned.
Amendment Summary: Senate amendment 1 (004631) specifies that healthcare providers must enter a recent threat or attempt of suicide or infliction of self-harm into the patient's medical record and must provide contact information to a qualified mental health professional or counseling resource.
Fiscal Note: (Dated January 31, 2021) NOT SIGNIFICANT
Senate Status: 04/07/21 - Senate passed with amendment 1 (004631).
House Status: 04/12/21 - House passed.
Executive Status: 05/03/21 - Enacted as Public Chapter 0259 effective July 1, 2021.
- SB672/HB1295 Tennessee Family Insurance Act.**
Sponsors: Sen. Kyle, Sara , Rep. Johnson, Gloria
Summary: Enacts the "Tennessee Family Insurance Act," which establishes that family and medical leave insurance benefits are payable to a covered individual who is caring for a new child during the first year of adoption or placement, is caring for a family member with a serious health condition, has a serious health condition that makes them unable to perform their job duties or has a qualifying exigency resulting from the deployment of a family member. Specifies that the maximum amount of time benefits are payable during a year is 12 weeks. Creates the family and medical leave insurance fund in the state treasury to pay family and medical leave insurance benefits. Prohibits employers from interfering with the right to family and medical leave insurance. Establishes regulations for the calculation and payment of benefits. (13 pp.)
Fiscal Note: (Dated March 26, 2021) Increase State Revenue \$178,125,000/FY21-22/Family and Medical Leave Insurance Fund \$356,250,000/FY22-23 and Subsequent Years/Family and Medical Leave Insurance Fund Increase State Expenditures \$7,820,800/FY21-22/General Fund \$15,641,600/FY22-23 and Subsequent Years/General Fund \$178,125,000/FY21-22/Family and Medical Leave Insurance Fund \$356,250,000/FY22-23 and Subsequent Years/Family and Medical Leave Insurance Fund Increase Local Expenditures Exceeds \$20,625,000/FY21-22* Exceeds \$41,250,000/FY22-23 and Subsequent Years* SB 672 - HB 1295 2
Senate Status: 04/21/21 - Senate Commerce & Labor Committee deferred to first calendar of 2022.
House Status: 04/07/21 - House Banking & Consumer Affairs Subcommittee deferred to first calendar of 2022.
- SB838/HB939 State health plan rates.**
Sponsors: Sen. Niceley, Frank , Rep. Sparks, Mike
Summary: Requires the state group insurance plan establish an alternate allowable charges schedule providing an enrollee to use any licensed medical provider in the United States services without resulting in out-of-network cost sharing charges beginning in 2022. Establishes limitations on costs and requires the plan to have a preferred tier and non-preferred tier.
Fiscal Note: (Dated March 18, 2021) Decrease State Expenditures \$10,494,700/FY21-22 \$20,989,400/FY22-23 and Subsequent Years Decrease Federal Expenditures \$1,025,300/FY21-22 \$2,050,600/FY22-23 and Subsequent Years
Senate Status: 02/11/21 - Referred to Senate Commerce & Labor Committee.
House Status: 03/31/21 - House Public Service Subcommittee deferred to summer study.
Executive Status: 03/29/21 - Joint Council on Pensions and Insurance released to standing committees with unfavorable comment.
- SB869/HB639 Agreement to receive medical services by an out-of-network provider can be provided by electronic means.**
Sponsors: Sen. Massey, Becky , Rep. Helton, Esther

Summary: Permits a healthcare facility to provide by electronic means a method for an insured or a personal representative of an insured to acknowledge and sign an agreement to receive medical services by an out-of-network provider. Broadly captioned.
Fiscal Note: (Dated February 8, 2021) NOT SIGNIFICANT
Senate Status: 02/22/21 - Referred to Senate Commerce & Labor Committee.
House Status: 02/11/21 - Caption bill held on House clerk's desk.

SB929/HB967 Telehealth services provided by healthcare professionals licensed in other states.

Sponsors: Sen. Massey, Becky , Rep. Carringer, Michele
Summary: Allows individuals licensed as healthcare providers in other states to practice in telehealth settings while providing healthcare services on a volunteer basis through a free clinic. Broadly captioned.
Fiscal Note: (Dated March 4, 2021) NOT SIGNIFICANT
Senate Status: 03/15/21 - Senate passed.
House Status: 04/26/21 - House passed.
Executive Status: 05/03/21 - Sent to governor.

SB956/HB642 Implicit bias training program for healthcare professionals and perinatal patient bill of rights.

Sponsors: Sen. Yarbrow, Jeff , Rep. Lamar, London
Summary: Requires the department of health and the maternal mortality review and prevention team to create an evidence-based implicit bias training program for healthcare professionals. Establishes requirements for the training program curriculum. Requires healthcare professionals to take the training program for license renewal. Requires the department of health to collect data regarding infant and maternal mortality for the purposes of making ongoing improvements to the training program. Establishes a perinatal patient bill of rights and requires that facilities give perinatal patients a copy of the bill of rights as soon as reasonably practical following admission to the facility.
Fiscal Note: (Dated March 14, 2021) Increase State Expenditures - \$110,900/FY21-22 \$66,300/FY22-23 and Subsequent Years
Senate Status: 03/31/21 - Taken off notice in Senate Health & Welfare Committee.
House Status: 03/30/21 - House Health Subcommittee deferred to summer study.

SB1094 Allows chiropractors to complete annually required continuing education courses via remote learning.

Sponsors: Sen. Southerland, Steve ,
Summary: Establishes that chiropractors may complete annually required continuing education requirements via remote learning. Specifies that chiropractors may not be denied continuing education credit for the sole reason that they completed the course via remote learning. Mandates that the board of chiropractic examiners may not deny accreditation to any course for the sole reason that it can be completed via remote learning. Broadly captioned.
Fiscal Note: (Dated March 31, 2021) NOT SIGNIFICANT
Senate Status: 02/22/21 - Referred to Senate Health & Welfare Committee.

SB1248/HB1195 Communication regarding patient's medical claim.

Sponsors: Sen. Reeves, Shane , Rep. Garrett, Johnny
Summary: Requires health facilities to notify a patient of communication between the health facility and a health insurance entity concerning healthcare services covered by the patient's health insurance coverage within two business days of the communication. Requires the notification to be through electronic means and include a summary.
Amendment Summary: Joint Council on Pensions and Insurance amendment 1 (005592) establishes that the requirements established by this legislation do not apply to TennCare or a successor program. House

amendment 2 (006961) removes the definition of "patient" from this bill, which had been previously defined as "an individual who has health insurance coverage and is being treated by a provider for a healthcare service".

Fiscal Note: (Dated March 10, 2021) NOT SIGNIFICANT

Senate Status: 02/22/21 - Referred to Senate Commerce & Labor Committee.

House Status: 04/21/21 - House passed with amendment 2 (006961).

Executive Status: 03/29/21 - Joint Council on Pensions and Insurance released to standing committees with favorable comment after adopting amendment 1 (005592).

SB1249/HB1530 Providing information about enrollee's benefit and covered medication.

Sponsors: Sen. Reeves, Shane , Rep. Hicks, Gary

Summary: Requires a health plan or pharmacy benefits manager to provide specific cost, benefit, and coverage data regarding covered medication upon the request of an enrollee or their authorized representative. Specifies that the data is to include the enrollee's eligibility for each medication, a list of clinically appropriate alternatives, cost-sharing information for the medications and clinically appropriate alternatives and applicable utilization management requirements.

Fiscal Note: (Dated March 5, 2021) Increase State Expenditures - \$1,476,700/FY21-22 \$852,800/FY22-23 and Subsequent Years Increase Federal Expenditures - \$5,851,300/FY21-22 \$2,014,000/FY22-23 and Subsequent Years SB 1249 - HB 1530 1

Senate Status: 02/22/21 - Referred to Senate Commerce & Labor Committee.

House Status: 03/01/21 - Referred to House Insurance Subcommittee.

Executive Status: 03/29/21 - Joint Council on Pensions and Insurance released to standing committees with unfavorable comment.

SB1253 Disposal of controlled substances and prescription drugs.

Sponsors: Sen. Reeves, Shane ,

Summary: Requires the board of pharmacy and the board for licensing health care facilities to promulgate rules to establish certain guidelines for pharmacies and facilities to provide for disposal of unused controlled substances and prescription drugs.

Fiscal Note: (Dated April 4, 2021) NOT SIGNIFICANT

Senate Status: 02/22/21 - Referred to Senate Health & Welfare Committee.

SB1254/HB1357 Commissioner of health report regarding the Tennessee Prescription Safety Act of 2016.

Sponsors: Sen. Reeves, Shane , Rep. Ramsey, Bob

Summary: Changes, from March 1 to February 15, the date by which the commissioner of health must file the annual report with the health committees of the general assembly regarding the Tennessee Prescription Safety Act of 2016 program with respect to its effect on distribution and abuse of controlled substances, including recommendations for improving control and prevention of diversion of controlled substances in this state. Broadly captioned.

Fiscal Note: (Dated February 19, 2021) NOT SIGNIFICANT

Senate Status: 02/22/21 - Referred to Senate Judiciary Committee.

House Status: 02/25/21 - Caption bill held on House clerk's desk.

SB1278/HB1258 Annual report on the all payer claims database.

Sponsors: Sen. Reeves, Shane , Rep. Smith, Robin

Summary: Requires reporting on the cost, utilization, and effectiveness of the all payer claims database to be submitted annually on February 15 to the general assembly.

Amendment Summary: House Insurance Subcommittee amendment 1 (006197) deletes all original language in the bill and establishes a health information committee. Specifies that the purposes of this committee are to facilitate evidence-based improvements to the access, quality and cost of healthcare. Requires the

health information committee to establish and operate the all payer claims database. Establishes the membership and appointment process for the committee.

Fiscal Note: (Dated February 11, 2021) NOT SIGNIFICANT

Senate Status: 04/06/21 - Taken off notice in Senate Commerce & Labor Committee.

House Status: 04/06/21 - House Insurance Subcommittee deferred to summer study after adopting amendment 1 (006197).

SB1281/HB948 Review of actions by executive director of health services and development agency.

Sponsors: Sen. Reeves, Shane , Rep. Boyd, Clark

Summary: Increases from 15 to 30 days the period in which a party or any member of the health services and development agency may file notice to request the agency review an action of the executive director. Broadly captioned.

Amendment Summary: House amendment 1 (006740) deletes all language after the enacting clause. Makes various changes to the certificate of need (CON) process for healthcare facilities and services. Requires the HSDA to develop criteria and standards to guide the agency when issuing CONs that are evaluated and updated at least once every five years, developed by rule in accordance with the Uniform Administrative Procedures Act, and are based, in whole or in part, upon input the HSDA received during development of the criteria and standards from: the Division of TennCare, or its successor, the Department of Health (DOH), the Department of Mental Health and Substance Abuse Services (DMHSAS), the Department of Intellectual and Developmental Disabilities (DIDD), the Health and Welfare Committee of the Senate, and the Health Committee of the House of Representatives. Requires HSDA to conduct studies related to healthcare including a needs assessment that must be updated at least annually. Requires HSDA to submit an annual report, no later than January 15 of each year, to the General Assembly, detailing a comparison of the actual payer mix and uncompensated care provided by CON holders with the projections the holders submitted in the holder's CON application. Requires HSDA to submit a plan to merge the HSDA with the Board for Licensing Health Care Facilities, to the General Assembly by January 23, 2023. Exempts mental health hospitals from CON regulations. Prevents health care institutions from: (1) adding beds of a category of service that they were not already providing; (2) redistributing beds to other facilities; and (3) establishing new beds at new satellite facilities. Allows any hospital licensed under Title 33 or 68 to operate a non-residential substitution-based opioid treatment center if the program is certified by the DMHSAS and the federal Department of Health and Human Services. Requires a county that, as of January 1, 2021, is designated as an economically distressed eligible county by the Department of Economic and Community Development, and has no actively licensed hospital located within the county is exempt from having to obtain a CON. Requires a provider of positron emission tomography services or magnetic resonance imaging services be accredited by the Joint Commission or American College of Radiology within two years of the initiation of service. Exempts a home care organization that is limited to providing home health services to patients under the federal Energy Employees Occupational Illness Compensation Program Act of 2000 (EEOICPA) (42 U.S.C. § 7384, et seq.) from having to receive a CON. Exempts a home care organization that is limited to providing home health services to patients under the care of a healthcare research institution from having to receive a CON. Requires the home care organization to be accredited by the Joint Commission, the Community Health Accreditation Partner, DNV GL Healthcare, or the Accreditation Commission for Health Care in order to qualify for the exception within 12 months of the date the home care organization is granted a license by the DOH. Allows an initiation of magnetic resonance imaging services or increasing the number of magnetic resonance imaging machines used, as long as services are not provided to a patient who is 14 years of age or younger on more than five occasions per year or initiation of positron emission tomography in a county with a population in excess of 175,000 to be established or operate without a CON. Allows the Commissioners of DOH, DMHSAS, and DIDD to submit written reports or statements and send representatives to testify before the agency with respect to applications. Extends the prohibition on new nursing home beds, except for 125 Medicare skilled nursing facility beds, to June 30, 2025. Extends the period of time that a certificate of need (CON) is valid for nursing home projects from two years to three years. Increases existing fees and establishes

new fees for healthcare providers and requires HSDA to annually collect the fees. Requires fees be paid to the Treasurer and deposited in the General Fund and credited to the HSDA's separate account. Authorizes a hospital closed for 15 years or less to resume operations without a CON in certain circumstances. Requires the party re-establishing a hospital to apply for a CON within 12 months of renewing its license with the DOH. Requires the DOH to review the license renewal application and to notify the applicant of its determination within 60 days. Extends the termination date for the HSDA from June 30, 2021 to June 30, 2024. Extends the termination date for the Board of Licensing Health Care Facilities from June 30, 2023 to June 30, 2024. For purposes of rulemaking, takes effective upon becoming law. For all other purposes, takes effect October 1, 2021. House amendment 2 (008138) makes the provisions regarding the change in bed complement, as described above, effective upon becoming law instead of October 1, 2021. Present law places a moratorium on the issuance of certificates of need (CON) for new nursing home beds, other than 125 beds per fiscal year, to be certified as medicare skilled nursing facility (SNF) beds. The moratorium is presently scheduled to end June 30, 2021. This amendment extends the moratorium to June 30, 2025. Under present law, a CON is valid for a period not to exceed three years for hospital projects, and two years for all other projects, from the date of its issuance. This amendment extends the period that a CON is valid for nursing home projects to three years. Present law generally requires a CON to relocate nursing home beds. This amendment deletes several provisions of present law whereby a nursing home can apply to the health services and development agency to relocate all or fewer of its licensed beds to another location. House amendment 3 (007935) corrects an internal cross-reference in this bill as amended.

Fiscal Note: (Dated February 10, 2021) NOT SIGNIFICANT
Senate Status: 05/05/21 - Senate passed.
House Status: 05/04/21 - House passed with amendments 1 (006740), 2 (008138) and 3 (007935).
Executive Status: 05/05/21 - Sent to the speakers for signatures.

SB1295/HB914 Method of calculating payment for services rendered by a chiropractor.

Sponsors: Sen. Roberts, Kerry , Rep. Hawk, David
Summary: Prohibits the method of calculating payment for services rendered by a chiropractor from being different from the calculation for a medical physician under a sickness and accident health insurance policy or service contract.
Fiscal Note: (Dated March 11, 2021) Increase State Expenditures \$1,464,000/FY21-22 \$2,928,000/FY22-23 and Subsequent Years Increase Federal Expenditures \$95,700/FY21-22 \$191,400/FY22-23 and Subsequent Years Increase Local Expenditures \$223,800/FY21-22* \$447,500/FY22-23 and Subsequent Years*
Senate Status: 02/22/21 - Referred to Senate Commerce & Labor Committee.
House Status: 02/22/21 - Referred to House Insurance Subcommittee.
Executive Status: 03/29/21 - Joint Council on Pensions and Insurance released to standing committees with unfavorable comment.

SB1329/HB1208 Filing of objection by health care institution opposing CON application.

Sponsors: Sen. Hensley, Joey , Rep. Travis, Ron
Summary: Increases from 15 to 20 the number of days before a health services and development agency meeting at which a certificate of need application is originally scheduled that a health care institution wishing to oppose the application must file a written objection with the agency and serve a copy on the contact person for the applicant. Broadly captioned.
Fiscal Note: (Dated February 11, 2021) NOT SIGNIFICANT
Senate Status: 02/22/21 - Referred to Senate Commerce & Labor Committee.
House Status: 02/24/21 - Caption bill held on House clerk's desk.

SB1397/HB619 Calculating an enrollee's contribution to an applicable cost sharing requirement.

Sponsors: Sen. Swann, Art , Rep. Rudder, Iris

Summary: Requires an insurer to include cost sharing amounts paid by the enrollee or on behalf of the enrollee by another person when calculating an enrollee's contribution to an applicable cost sharing requirement.

Amendment Summary: Senate amendment 1 (006858) deletes and rewrites all language after the enacting clause such that the only substantive change is to establish that the proposed language does not apply to a prescription drug for which there is a generic alternative, unless the enrollee has obtained access to the brand name prescription drug through prior authorization, a step therapy protocol, the insurer's exceptions and appeals process, or as specified in § 53-10-204(a).

Fiscal Note: (Dated February 24, 2021) NOT SIGNIFICANT

Senate Status: 04/27/21 - Senate passed with amendment 1 (006858).

House Status: 04/29/21 - House concurred in Senate amendment 1 (006858).

Executive Status: 05/05/21 - Sent to governor.

SB1557/HB1381 Notice to a domestic insurance company that its capital stock is impaired.

Sponsors: Sen. Bailey, Paul , Rep. Todd, Chris

Summary: Increases from 60 to 90 days the time period following notice to a domestic insurance company that its capital stock is impaired to the extent of 20 percent or more and subject to be made good, within which the company must lawfully repair or reduce its capital or be subject to proceedings by the commissioner. Broadly captioned.

Fiscal Note: (Dated February 22, 2021) NOT SIGNIFICANT

Senate Status: 04/21/21 - Taken off notice in Senate Commerce & Labor Committee.

House Status: 02/25/21 - Caption bill held on House clerk's desk.

SB1617/HB1398 Terms for pharmacy benefits and pharmacy benefit managers.

Sponsors: Sen. Reeves, Shane , Rep. Helton, Esther

Summary: Prohibits health insurance issuers from taking actions against 340B entities that they do not take against non-340B entities. Prohibits pharmacy benefits managers from imposing coverage or benefits limitations, or requiring a person covered under a group medical benefit contract or a pharmacy benefit contract, that provides coverage for prescription drugs to pay an additional fee. Requires pharmacy benefits managers to base the calculation of any coinsurance for a prescription drug or device on the allowed amount of the drug or device. Establishes that pharmacy benefits managers have a responsibility to report to the plan and the patient any benefit percentage that either are entitled to.

Amendment Summary: House amendment 2 (008088) deletes and rewrites all language after the enacting clause such that the substantive changes are: (1) prohibits a PBM or a covered entity from interfering with a patient's right to choose a contracted pharmacy or contracted provider of choice, in a manner that violates § 56-7-2359 or by other means, including inducement, steering, or offering financial or other incentives; (2) requires a PBM or covered entity to base the calculation of any coinsurance or deductible for a prescription drug or device on the allowed amount of the drug or device; (3) establishes that coinsurance or deductible does not mean or include copayments; (4) prohibits a PBM from reimbursing a contracted pharmacy for a prescription drug or device in an amount that is less than the actual cost to that pharmacy for the prescription drug or device; (5) exempts a PBM from the requirement of reimbursing a contracted pharmacy in an amount that is less than the actual cost to that pharmacy when utilizing a reimbursement methodology that is identical to the methodology provided for in the state plan for medical assistance approved by CMS; (6) requires such PBMs to establish a process for a pharmacy to appeal a reimbursement paid at average acquisition cost and receive an adjusted payment; (7) requires the Commissioner of DCI to approve a PBM appeals process; and (8) changes the effective date for when a covered entity is required to begin providing the cost, benefit and coverage data, including data for each drug covered under the enrollee's health plan in real time, upon request of an enrollee, an enrollee's healthcare provider, or the authorized representative of an enrollee, from July 1, 2021 to January 1, 2022.

Fiscal Note: (Dated March 10, 2021) Increase State Expenditures Exceeds \$1,480,000/FY21-22 Exceeds \$859,300/FY22-23 and Subsequent Years Increase Federal Expenditures Exceeds \$5,851,600/FY21-22 Exceeds \$2,014,500/FY22-23 and Subsequent Years Increase Local Expenditures Exceeds \$1,200/FY21-22* Exceeds \$2,400/FY22-23 and Subsequent Years*

Senate Status: 05/04/21 - Senate passed.

House Status: 05/04/21 - House passed with amendment 2 (008088).

Executive Status: 05/04/21 - Sent to the speakers for signatures.

SJR25 Authorizes the governor to implement the TennCare III demonstration waiver.

Sponsors: Sen. Johnson, Jack ,

Summary: Authorizes the governor to implement the TennCare III demonstration waiver.

Fiscal Note: (Dated January 13, 2021) Other Fiscal Impact An exact fiscal impact cannot be determined with reasonable certainty. No significant administrative cost increases are anticipated as a result of this waiver. Any increase in federal funding associated with achieved savings under this demonstration will not be known until FY22-23.

Senate Status: 01/14/21 - Senate adopted.

House Status: 01/15/21 - House concurred.

Executive Status: 01/15/21 - Signed by governor.

HJR18 Authorizes the governor to implement the TennCare III demonstration waiver.

Sponsors: Rep. Lamberth, William

Summary: Authorizes the governor to implement the TennCare III demonstration waiver.

Fiscal Note: (Dated January 13, 2021) Other Fiscal Impact An exact fiscal impact cannot be determined with reasonable certainty. No significant administrative cost increases are anticipated as a result of this waiver. Any increase in federal funding associated with achieved savings under this demonstration will not be known until FY22-23.

House Status: 01/15/21 - House substituted and conformed to SJR25.