South Carolina Academy of Family Physicians
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LEGISLATIVE SESSION REVIEW

The South Carolina General Assembly concluded the regular portion of the 2018 legislative session on May 10th. Legislators passed a resolution allowing them to return at later dates to finish work on several significant issues.

The General Assembly passed some notable pieces of health care legislation this session. Perhaps of greatest importance to Academy members was the passage of compromise legislation dealing with scope of practice for Advanced Practice Registered Nurses ("APRNs"). *The General Assembly also passed compromise legislation on the surgical scope of practice for certain podiatrists with additional training. Several bills pertaining to prescribing opioids and related issues also became law. These bills and other notable legislation enacted this session are discussed below.*

Since the 2018 session was the second year of a two-year legislative cycle, all bills not enacted died at the end of the session. The next legislative session will start on January 8, 2019.

SCOPE OF PRACTICE LEGISLATION

APRN Scope of Practice – S. 345: On May 18, 2018, Governor Henry McMaster signed into law S.345, a bill making significant updates to the Nurse Practice Act as it pertains to practice by Advanced Practice Registered Nurses ("APRNs"). The legislation also makes corresponding changes to the Medical Practice Act for physicians working with APRNs. *The new law took effect on July 1, 2018.*

The new law applies to the following categories of APRNs: nurse practitioners, certified nurse midwives, and clinical nurse specialists. It did not make any changes with regard to physician supervision of certified registered nurse anesthetists.

After many years of lobbying for legislation giving APRNs independent practice, the APRN leadership agreed this session to a compromise with physician organizations, including our Academy. *The new law does not provide for independent practice.* APRNs must continue to practice in conjunction with physicians. Instead of the current protocol, the new operative document will be a "practice agreement," as defined in the new law.

The practice agreement is the document by which the physician or medical staff physicians determine the scope of medical acts that an APRN will be authorized to perform based on that APRN's education, training, and experience. Thus, a practice agreement with an APRN who is beginning practice will likely look very different from a practice agreement with an experienced APRN.

The physician must set out in the practice agreement all the medical aspects of care that the APRN will be authorized to provide, including the prescribing of medication; set out the mechanisms, such as chart reviews and periodic consultations, by which the physician will ensure that quality of clinical care and patient safety is maintained; and also stipulate whether the working relationship will be supervisory or collaborative, or whether some other descriptive term is appropriate. The ultimate responsibility for the health care delivery team, however, remains with the physician.

The specific contents of the new practice agreements are set out in Section 40-33-34 of the Nurse Practice Act. The practice agreement will encompass all of the required contents of a protocol,

but physician or medical staff physicians must address additional issues in the practice agreement. Under the new law, the practice agreement must contain the following:

- the name, address, and South Carolina license number of the nurse;
- the name, address, and South Carolina license number of the physician;
- the nature of practice and practice locations of the nurse and physician;
- the date the practice agreement was entered into and dates the practice agreement was reviewed and amended;
- a description of how consultation with the physician is provided and provision for backup consultation if the physician is unavailable;
- the medical conditions for which therapies may be initiated, continued, or modified;
- the treatments that may be initiated, continued, or modified;
- drug therapies that may be prescribed;
  (Specifying prescriptive authority is a key component of the practice agreement. As with protocols, the physician determines whether the APRN may prescribe Schedule III through V medications. The new law, however, provides authority for APRNs to prescribe Schedule II medications <u>if listed in the practice agreement and subject to certain statutory restrictions</u>. The new law prohibits an APRN from prescribing Schedule II narcotics for more than a five-day supply, and any additional prescription requires the written agreement of the physician. Schedule II narcotics for patients in hospice or palliative care may be written for a thirty-day supply. Schedule II non-narcotics may be written for a thirty-day supply. Again, all prescriptive authority is governed by the practice agreement);
- situations that require direct evaluation by or referral to the physician;
- certain specific medical acts that APRNs may perform (*APRNs will be able to perform all of these medical acts unless the practice agreement states that the APRN cannot do so or may perform some but not others):*
  - provide non-controlled prescription drugs at a free clinic;
  - certify home or hospital instruction for a student who is unable to attend school;
  - refer a patient for physical therapy;
  - pronounce death and sign death certificates;
  - issue an order for hospice services;
  - certify that an individual is handicapped for purposes of the individual applying for a placard;
- authorization for the APRN to provide services through telemedicine, <u>i.e.</u>, whether telemedicine practice is allowed. Also, if the APRN forms the provider-patient relationship <u>solely</u> through telemedicine, the APRN may not prescribe Schedule II or III drugs, even if allowed by the practice agreement, without approval by a joint committee of the South Carolina Board of Nursing and the South Carolina Board of Medical Examiners.

In addition to the change from protocols to a more detailed practice agreements, the new law loosens certain other restrictions which will hopefully make it easier for APRNs to secure physicians to work with them. The new law eliminates the 45-mile radius requirement. The physician entering into a practice agreement, however, must be licensed in this State and must be actively practicing medicine within the geographic boundaries of South Carolina.

The new law also expands the APRN-to-physician ratio from three full-time equivalent APRNs to one physician to six FTEs to one physician. A physician, however, may not supervise more than six APRNs and/or physician assistants in clinical practice at any one time. The Board of Medical Examiners may approve a further increase in the ratio if the Board determines that an increase is warranted and that quality of care and patient safety will be maintained.

The new law adds a requirement, similar to a provision in the Physician Assistants Practice Act, prohibiting physicians from entering into a practice agreement with an APRN who will be performing a medical act, task, or function that is outside the usual practice of that physician or that

is outside the physician's training or experience. This provision was added in response to reported incidents of physicians supervising APRNs performing certain procedures that the physician did not personally perform and at off-site locations.

As noted above, the new law took effect on July 1 of this year, which allowed a short amount of time to convert existing protocols into the new, more detailed practice agreements. The importance of the practice agreement is emphasized by the fact that the new law amends both the Nurse Practice Act and Medical Practice Act to include specific grounds of misconduct for failure to have a compliant practice agreement in place or for failure to comply with the practice agreement.

The new law amends the Physician Assistants Practice Act to also allow PAs to practice through telemedicine. Such authorization must be included in the PA's scope of practice guidelines. Authorization for a PA to prescribe Schedule II or III medications to a telemedicine patient must be approved by the Board of Medical Examiners.

Finally, the Academy created a practice agreement template for members, as well as, a Frequently Asked Questions document.

Podiatry Scope of Practice – H. 3622. After a number of years of working on scope issues, a compromise bill was worked out by orthopaedists and podiatrists. The main thrust of the legislation is to authorize certain podiatrists with additional training to perform surgery on the ankle and related soft tissue structures. Under the bill, podiatrists performing such surgery must be board-certified or board-qualified by the American Board of Foot and Ankle Surgery and must have graduated from a three-year residency program in podiatric medicine and reconstructive rear foot and ankle surgery accredited by the Council on Podiatric Medical Education. H. 3622 also established an advisory committee to the South Carolina Board of Podiatry Examiners composed of two orthopaedists, two podiatrists, and a lay member. The primary purpose of the advisory committee is to provide expert advice to the Board on standard of care and to assist the Board in processing any complaints filed against podiatrists with the expanded scope of surgical practice. Finally, with regard to the podiatrists in general, H. 3622 retains the current prohibition on podiatrists treating systemic diseases that may manifest in the foot. Effective date - May 17, 2018.

OPIOID-RELATED LEGISLATION

Prescribing Limitations – S. 918. Provides that an initial opioid prescription for acute pain must not exceed a 7-day supply, except when clinically indicated for cancer pain, chronic pain, hospice care, palliative care, major trauma, major surgery, treatment of sickle cell disease, treatment of neonatal abstinence syndrome, or medication-assisted treatment for substance use disorder. This limitation does not apply to prescriptions written upon any subsequent consultation for the same pain. Also, the 7-day limitation does not apply to opioids to be wholly administered in a hospital, nursing home, hospice facility, or residential care facility. Finally, a practitioner who prescribes in accordance with these provisions is immune from any civil liability or disciplinary action by that practitioner's licensing board.

S. 918 also requires DHEC, as a part of the SCRIPTS prescription monitoring program, to provide prescription "report cards" to practitioners regarding certain prescribing trends. DHEC already provides report cards to prescribers and the new law requires that DHEC continue doing so and also specifies the information that must be provided in report cards. The new law also provides that the report cards and related data are confidential and not subject to discovery or subpoena in any civil action, unless confidentiality is waived by the practitioner. The provisions related to prescribing limitations took effect on May 15, 2018. The prescription report card provision will take effect 6 months after that date.

Education Requirements – S. 302. As originally introduced, S. 302 dealt only with allowing participation in a marching band in a public school to qualify as the equivalent of physical education instruction. During the legislative process, it was amended to include certain education requirements regarding controlled substances for both health professionals and for secondary school

students. With regard to health professionals, S. 302 requires public and private institutions of higher education offering degrees for professionals who may be authorized to prescribe medications in Schedules II through IV to require that students complete coursework on prescribing and monitoring Schedule II through IV controlled substances, including prescribing Schedule II medications to treat or manage pain. With regard to school students, S. 302 requires the State Board of Education to provide instruction on prescription opioid abuse prevention. S. 302 was signed by the Governor on May 17, 2018, and became effective on that date.

Prescribing Opioids to Minors – H. 3819. Establishes certain requirements for writing an initial prescription for an opioid analgesic to a minor, defined as an individual under the age of 18 who is not emancipated. The new law specifies certain matters that the prescriber must discuss with the minor and a parent or other responsible adult. The consent must be in writing on a form developed by the Board of Medical Examiners. There are a number of exceptions to the requirement for obtaining written consent, including prescribing less than a 5-day supply of the medication. H. 3819 was signed by the Governor on May 17, 2018. It will take effect 6 months after that date.

Counterfeit-Resistant Prescription Forms – H. 3826. Requires written prescriptions for Schedule II through V controlled substances to be on tamper-resistant pads containing one or more industry-recognized features. Prescriptions transmitted by facsimile, orally, or electronically are exempt from this requirement. There are certain other exceptions based on federal law concerning nursing homes, hospitals, and other institutional and clinical settings. The Governor signed H. 3826 on May 17, 2018, and it will become effective 60 days after his approval.

Access to SCRIPTS Data – H. 4117 and H. 4488, Act No. 168. Two bills passed this session that authorize certain persons to access data in SCRIPTS. H. 4117 adds to the list of authorized persons the presiding judge of a drug court pertaining to a specific case involving a designated person. Effective date - May 18, 2018. H. 4488 adds coroners, deputy coroners, medical examiners, and deputy medical examiners involved in a specific inquiry into the death of a designated person. The Governor signed H. 4488 on May 3, 2018, and it became effective on that date.

Controlled Substances Schedules – H. 4487. H. 4487 makes several changes to update aspects of the State Controlled Substances Act. Among other things, this legislation eliminates the grace period for registrations other than class 20-28 registrations. If a registration is not renewed by April 1 each year, the registration will be cancelled. H. 4487 also clarifies that registrations for Schedules other than Schedule V may be issued to APRNs and PAs consistent with their prescription authorization. The legislation further transfers the responsibility for enforcement of drugs law from DHEC to the South Carolina Law Enforcement Division ("SLED"). H. 4487 was signed by the Governor on May 18, 2018, and took effect on that date.

Naloxone Distribution – H. 4600, Act No. 169. H. 4600 is intended to facilitate the distribution of an opioid antidote to persons at risk of an opioid overdose *or* to caregivers of such persons. Pharmacists are authorized to dispense the antidote to "community distributors" pursuant to a prescription or standing order of an authorized prescriber. The Board of Medical Examiners and the Board of Pharmacy are directed to issue, no later than 6 months after passage, a written joint protocol authorizing community distributors to distribute an opioid antidote without a written order or prescription and without the requirement for a pharmacist to dispense the antidote. Community distributors are defined in the new law as public or private organizations that provide substance use disorder assistance and services, such as counseling, screening, treatment, or other services. The Governor signed H. 4600 on May 3, 2018, and it became effective on that date.

Licensure of Addiction Counselors – H. 4601. Provides for the licensure of addiction counselors; defines "the practice of addiction counseling"; establishes the requirements to be licensed as an addiction counselor; adds addiction counselors to the statute governing professional counselors, marriage and family therapists, and psycho-education specialist; and amends the name of the Board established by that statute. H.4601 became effective on May 18, 2018.

OTHER NOTABLE LEGISLATION ENACTED

Maintenance of Certification – H. 4116. Provides that no provision *in the Medical Practice Act* may be construed to require a physician to secure a Maintenance of Certification as a condition of the following: licensure, reimbursement, employment, or admitting privileges at a hospital or FQHC. H. 4116 became effective on May 18, 2018.

Emergency Refills – S. 506. S. 506 extends the time period for which a pharmacist may dispense a one-time emergency refill of a medication from 15 days to 30 days. This authorization is only in effect when the Governor has declared a "State of Emergency" and does not apply to controlled substances. The pharmacist must notify the prescribing physician within 15 days of the emergency refill. S. 506 became effective on May 15, 2018.

Interstate Licensure Compacts – H. 4799 and H. 4486. H. 4799 authorizes South Carolina to enter into the "Physical Therapy Licensure Compact", authorizing physical therapists licensed in another member state to practice in South Carolina, and adopts provisions of the Compact. Effective date - May 18, 2018. H. 4486 authorized South Carolina to join the "Emergency Medical Services Personnel Licensure Interstate Compact." This Compact authorizes EMS personnel licensed in a member state to work in another member state. Effective date - May 18, 2018.

NOTE: H. 5174 was introduced to authorize South Carolina to join the "Interstate Medical Licensure Compact", but no action was taken on the bill.

Palliative Care Study Committee – H. 4935. Created the "South Carolina Palliative Care and Quality of Life Study Committee." The Committee is directed to submit a report to the Governor and the General Assembly by December 31, 2019, on the state of palliative care in South Carolina with findings and recommendations. After submission of this report, the Study Committee will be dissolved. H. 4935 became effective on May 3, 2018.

Department of Children's Advocacy – S. 805, Act No. 160. Created a new Department of Children's Advocacy, to be headed by the State Child Advocate who is appointed by the Governor. The mission of this agency is to ensure that children under the care of a State agency receive the services they need and to investigate complaints regarding services provided by a State agency. The Governor signed S. 805 on May 3, 2018, with an effective date of July 1, 2019.

S.C. Pregnancy Accommodations Act – H. 3865. H. 3685 requires employers to provide reasonable accommodations to employees for medical needs arising from pregnancy, childbirth, or related conditions including lactation; and prohibits certain discriminatory employment practices related to such accommodations. The SC Human Affairs Commission is directed to promulgate regulations to implement the new law, which must allow the employer to demonstrate that certain accommodations would impose an undue hardship. The Governor signed H. 3685 on May 17, 2018, and it became effective on that date.

NOTABLE LEGISLATION NOT ENACTED

Opioid-Related Bills Not Enacted

H. 3860 and S. 245 would have made it illegal to traffic in synthetic opiates, among other drugs.

H. 3882 and S. 83 would have revised the definition of involuntary manslaughter to include causing the death of a user by the unlawful sale or delivery of a controlled substance, a controlled substance analogue, or other unlawful substance.

H. 4092 would have required Medicaid health plans to ensure access to appropriate clinical services for the effective treatment of opioid use disorders, including access to medications. DHHS would have been required to prohibit Medicaid health plans from limiting patient access to such medications and clinical services.

H. 4112 would have required DHEC to develop a voluntary directive form to allow a person to refuse the administration or prescribing by a practitioner of a controlled substance containing an opioid. DHEC was directed to promulgate regulations for the implementation of the directive form.

H. 4492 would have amended existing law in the Pharmacy Practice Act to limit a Schedule II prescription (with the exception of transdermal patches) to 120 tablets or capsules or 480 milliliters of opiate containing liquid to be dispensed for a 31-day supply.
H. 4602 would have required the administration of an opioid overdose antidote to be added to the information in SCRIPTS.
H. 4603 would have limited initial prescriptions of an opioid medication for acute pain or post-operative pain to a 5-day supply, with certain exceptions.
S. 1046 would have established prescribing limits for both Schedule II and Schedule III drugs.

Multistate Physician Licensure – H. 5174 H. 5174 would have authorized South Carolina to join the Interstate Medical Licensure Compact. The Compact provides for the reciprocal licensure to practice medicine among states that are parties to the Compact
Direct Primary Care Practice – H. 4643 This legislation would have clarified that a Direct Primary Care ("DPC") Agreement does not constitute insurance under State law and would have specified the minimum contents of DPC Agreements.
POST Legislation – H. 4802 This legislation would have established a Physician Orders for Scope of Treatment ("POST") program; to have a binding uniform document signed by the patient or the patient's legal representative and the patient's health care provider that would set out the patient's wishes regarding certain treatments such as CPR and feeding tubes.
Preceptor Tax Incentives – S. 351 This legislation would have provided certain tax incentives, including income tax credits and deductions, to physicians, APRNs, and PAs who agreed to precept students in medical, nursing, and physician assistant programs at State-supported or non-profit educational institutions.
Medical Marijuana – S. 212 & **H. 3521** These bills, entitled the "South Carolina Compassionate Care Act," would have authorized access to marijuana for medical use to treat certain diseases and medical conditions; established comprehensive requirements for the cultivation and dispensing of medical marijuana and for certification of patients to have access for medical use. The bills died on the floor of the House and Senate
Abortion Legislation – S. 214 , H. 3548 S.217 would have established that the right to life begins at fertilization, along with the rights of due process and equal protection; H. 3548 was amended on the Senate floor to prohibit any abortions, except in cases of rape, incest, or serious risk to the mother's health.
DNR Orders for Children – H. 3487 This legislation would allow a parent or legal guardian of a child to request a Do Not Resuscitate order for the child with a terminal condition diagnosed by a health care provider. The bill also provides that DNR order may be revoked orally by the patient, parent, or legal guardian or by destroying the DNR document.

OUTLOOK FOR THE 2019 LEGISLATIVE SESSION

Early indications suggest that legislation may be introduced on the following issues:

(1) Expand scope of practice for physician assistants (PAs). (Similar to the APRN legislation)
(2) Medical Marijuana
(3) Additional bills addressing Opioids issues. The House Opioid Study is continuing its work.
(4) Preceptor Tax Incentives (SCAFP part of a Coalition that supports the legislation)
(5) Physician Orders for Scope of Treatment ("POST") program
(6) Direct Primary Care
(7) Abortions
(8) Adopting AMA Code of Ethics as the state code of ethics by regulation (BME)

All legislation may be viewed at www.scstatehouse.gov.