

Under the Big Top

Life at the Oklahoma Capitol

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The Oklahoma Legislature has reached the halfway point of its 2011 legislative session. It's been an interesting year already, with open revolts against the House Speaker, two representatives being publicly censured by the House and seeing tort reform raised from the dead. And that says nothing of the many more contentious issues (e.g. the budget, redistricting, workers compensation, etc.) still remaining on the table.

State lawmakers introduced nearly 2300 pieces of legislation. Of those, 271 were on our tracking list as potentially impacting the practice of medicine. Through various legislative actions and deadlines over the past eight weeks, we are down to fewer than 80 that are still alive in the process. Here is a wrap-up of some of OSMA's top priorities.

Lawsuit Reform

Tort Reform is once again OSMA's top priority. With Republicans now controlling the governor's office and holding super-majorities in both chambers of the Legislature, we really thought this was the year we would finally get meaningful lawsuit reform for Oklahoma physicians. However, in the game of politics, you can never take anything for granted and never has that been a truer statement.

This year, the OSMA is strongly supporting **HB 2128** (Steele/Sykes), which would implement a \$350,000 cap on non-economic damages in all civil liability cases. The cap could be lifted only under very specific circumstances. Falling into the "with friends like these, who needs enemies" category, a handful of Republican legislators has been leading the charge against the bill. When the language was first considered in the House, it actually died on a 68-32 vote, with 39 of 70 House Republicans voting no. While some of this dissent had to do more with interpersonal issues and behind-the-scenes political intrigue, there were several Republicans—including some OSMA has supported in the past—actively debating against the measure. Fortunately, doctors rose to the challenge. The Capitol switchboard was absolutely flooded with calls from physicians urging those lawmakers to switch their votes. Thanks to your efforts—along with a late night and very early morning by OSMA's lobbying team—29 representatives who originally voted no switched their votes and gave us the margin of victory we needed to pass this important legislation.

However, we are not out of the woods yet. As of this writing, the bill has been reported out of a Senate committee and is now awaiting a hearing before the full Senate. Unfortunately, here too the opposition is being spearheaded by Republicans. Senators Patrick Anderson (Enid) and Steve Russell (Oklahoma City) are leading the charge against the legislation, and as many as ten other Senate Republicans are wavering. The vote is expected sometime the week of April 4th and OSMA, along with our fellow physicians groups and the business community are now engaged in a full-court press to pass HB 2128. **[UPDATE: The Senate passed the bill on April 4th, 30-14, and Governor Fallin signed it into law the next day.]**

On a brighter note, two other lawsuit reform bills have already passed and are on their way to the governor's desk. **SB 862** will repeal joint and several liability (meaning each defendant would only have to pay the part of the total judgment for which he/she is responsible), while **SB 865** will ensure that juries are informed before rendering a decision that damage awards are not taxable. Both are now on their way to Governor Fallin's desk and we expect they will be signed sometime in the first week of April. **[UPDATE: Fallin signed SB 862 and SB 865 at the same time she signed HB 2128]**

Scope of Practice

Over the years, most of our most heated scope of practice battles started not at the Legislature, but through the rulemaking process of various state agencies and licensure boards. Unfortunately, many of these agencies, which were designed to regulate their respective industries, have evolved into advocacy organizations, issuing rules that unilaterally expand the scope of their licensees. Under current law, the only way to reject a rule—which carries the full force and effect of law—is to pass a joint resolution in which the House, Senate and Governor all agree to reject it. No small feat. However, OSMA is supporting legislation that would reverse that situation and require the Legislature to *approve* any rule that would increase a fee or change the scope of any licensed profession. **HB 1044** (Faught/Sykes) passed the House unanimously, was reported from a Senate committee overwhelmingly and is now awaiting a vote in the Senate. Prospects for passage appear very favorable, and we look forward to celebrating this big victory. **[UPDATE: HB 1044 passed unanimously on April 7th. It is now on governor Fallin's desk.]**

We have also successfully defeated all proposed scope expansion bills to this point. Most notably, we kept **SB 544**, which would have allowed CRNAs to operate without physician supervision, from receiving a Senate vote. While CRNAs play a vital role in our health care system and rural Oklahoma certainly faces unique challenges in the delivery of anesthesia services, we believe that allowing CRNAs to practice independently with no supervision goes too far and is a threat to patient safety.

Tobacco

This is our biggest disappointment of the legislative session to date. Under current law, cities are not allowed to pass local ordinances that are stronger than the state law. **HB 2135** (Steele/Myers) would have restored local control and allowed these local communities to adopt the tobacco ordinances that they think are best suited to protect their citizens. As you can imagine, Big Tobacco wants to keep the power to regulate tobacco centralized at the state and federal levels, where their lobbyists have the power. The tobacco industry made this a top priority this year, hiring four additional lobbyists and spending thousands more dollars in an effort to kill the bill. Sadly, the votes to pass simply were not there and the bill was not heard in the House before the March 17th deadline. It will remain available for consideration next year, and we will continue our efforts to protect Oklahomans from the dangers of tobacco use.

Workers' Compensation

Workers' compensation was a big issue for Governor Fallin and legislative Republicans in their respective campaigns. As such, it is not a surprise that they are proposing sweeping reforms to the workers' compensation system. Unfortunately, the vast majority of the "reforms" and cost savings currently found in **SB 878** (Sykes/Sullivan) would be borne on the backs of physicians. In its current form, the bill would, among other things, set workers' compensation reimbursement rates at 120% or less of Medicare and require physicians to adhere to a set of Official Disability Guidelines when treating workers' compensation patients. OSMA is at the table with legislative leadership and the governor's office, and this bill has a long way to go before it is a finished product.

Medicaid Reimbursement

The status of the state budget depends on who you want to believe. Some reports suggest that tax revenue collections are coming in above projections, so the budget deficit will not be as large as originally feared. Meanwhile, other reports say that state agencies should be preparing for 5-9% across the board cuts. However, the Oklahoma Health Care Authority has reported that a 10% cut to the agency would require a 1% cut in provider reimbursement rates. As such, we believe that anything less than a double-digit cut should require no change to provider reimbursements. We will advocate this position strongly to our legislative allies and the OHCA Board should any additional cuts be proposed.

In Conclusion

Singer/songwriter Jim Morris has a song that says, "If you don't know where you're going, any road will take you there." That is a pretty accurate description of this legislative session so far. While the paths for many of our legislative priorities have been anything but traditional, at this moment I can report that most of our top legislative priorities are still advancing. We still have some tough roads ahead of us, particularly on lawsuit reform and workers' compensation, but I'm confident that 2011 will go down as a landmark year for physicians.