

2018 Legislative Report from Joseph F. Abate, Esq.

Arizona Psychiatric Society Lobbyist

The 2018 session began full force with a special session on the opioid crisis, out of which was quickly passed the Governor's Opioid Act. The Act has far-reaching impacts and later legislative efforts have been to the fine-tuning and clarifying of the provisions with the same. The first provisions of the Act go into effect at the end of April.

2018 was a busy legislative session, with one of the most major legislative issues relating to health care being efforts to end the Sunrise process in our state (S1470). The legislation, as first introduced, contained some very potential harms to patient safety and the process that protects it. The bill was subject to a robust stakeholder process, with a negotiated amendment moving forward in S1034 that removes the harms contained in the first versions and provides a path to the continued use of the Sunrise process as an effective protection for patient safety in Arizona.

For the house of medicine as a whole, credentialing (the subject of H2322), was considered a landmark piece of legislation. Efforts lead largely by the Arizona Medical Association contributed to the adoption of this legislation without a negative vote being cast. The legislation helps facilitates the timely credentialing of physicians by insurance companies.

Efforts at the state and national level contributed to KidsCare funding being restored. S1087, a late introduced striker amendment, has been introduced to remove the trigger that would automatically freeze KidsCare program if federal matching drops below 100%.

The Society was part of a stakeholder group participating in the commentary upon HCR2038 which establishes May 2nd as Maternal Mental Health Awareness Day. Dr. Saira Kalia both provided commentary upon the resolution and attended the press conference and House proclamation held in February.

There were bills of note, some of which did not move forward for a vote. S1160 and H2594 would ban or prohibit the defined professionals from providing any "conversion therapy" (defined as any practice or treatment that seeks to change the sexual orientation or gender identity of a person) to a person who is under 18 years of age regardless of the willingness of the person or the person's parent or legal guardian to authorize the conversion therapy. Almost a dozen states have adopted laws of this nature, two of which were signed into law by conservative Governors. It was introduced in Arizona to begin the discussion and consideration for the future.

To the relief of our behavioral health partners, H2406 did not move forward, which would have repealed the Board of Behavioral Health Examiners. Nonetheless, in the future expect more legislation that is aimed at finding efficiencies within the regulatory board system in Arizona.

Committee work has substantially concluded. The final bills that will be considered for adoption are working their way through the system. In an election cycle, the Arizona legislature normally tries to complete its work, including the budget, at or before the 100th day mark, which is approaching quickly towards the third week of April. However, work on the budget will not be completed until the House and Senate consider the Governor's school safety plan and S1519, which was introduced on the 94th day

of the legislature and drafted to make some alterations to that plan. A main portion of S1519 changes the process by which an individual can have their firearms confiscated by court order. S1519 includes measures requiring suicide prevention training for school workers, a requirement that the Supreme Court create an annual report of STOP orders, clarification of the powers and duties of reserve law enforcement officers who patrol school grounds, and new crime reporting requirements for school staff, among other provisions. Governor Ducey also proposed \$11 million to hire more school resource officers and \$3 million from the General Fund for mental health counseling at schools through AHCCCS. The Governor's Plan and SB1519 are divided along party lines, with one side saying it goes too far, and the other that it does not go far enough. It is yet to be seen if the outcome will be one that lends itself to bipartisan give and take or a vote forced along party lines. Either way, some hard work lies ahead for the Arizona legislature to conclude its session.

The Society submitted a comment raising concerns regarding the AHCCCS plans to apply for a CMS waiver for prior quarter coverage, and signed on with the APA to an appeal to Arizona's congressional delegates in Washington, DC to work towards bipartisan solutions that ensure early intervention and access to mental health and substance use treatment.

If you would like any additional information regarding the legislative session, please contact the APS Lobbyist, Joe Abate, at 602-380-8337. If you are interested in being a part of the Legislative Committee of APS, chaired by Dr. Gretchen Alexander, please contact teri@azmed.org.

For more information on health care legislation relevant to psychiatry included in the 2018 legislative session, see the Bill Summaries provided below.

BILL SUMMARIES. The bill summaries and histories that follow are copyrighted by Arizona Capitol Reports, L.L.C. If you would like any additional information, please contact the APS Lobbyist, Joe Abate, at 602-380-8337.

H2042: INSURANCE COVERAGE; TELEMEDICINE; UROLOGY

Health and disability insurance policies or contracts are required to provide coverage for health care services for urology that are provided through "telemedicine" (defined as the use of interactive audio, video or other electronic media for diagnosis, consultation or treatment) if the service would be covered were it provided through in-person consultation and if the service is provided to a subscriber receiving the service in Arizona, instead of only in a rural region of Arizona. Effective January 1, 2020.

First sponsor: Rep. Carter

H2064: MEDICAL MARIJUANA; PACKAGING; LABELING

Nonprofit medical marijuana dispensaries are prohibited from acquiring, possessing, manufacturing or selling a marijuana product that is packaged or labeled in a manner that is "attractive to minors" (defined). Due to voter protection, this legislation requires the affirmative vote of at least 3/4 of the members of each house of the Legislature for passage.

First sponsor: Rep. Leach

H2107: PRESCRIPTION DRUG COSTS; PATIENT NOTIFICATION

A pharmacy benefits manager or other entity that administers prescription drug benefits is Arizona cannot prohibit by contract a pharmacy or pharmacist from informing the patient that the patient may be able to procure a prescription medication at a lower cost, including paying the cash price.

First sponsor: Rep. Syms

H2248: INCOMPETENCY; SCREENING; SEXUALLY VIOLENT PERSONS

If the county attorney receives a report that determines a defendant is incompetent to stand trial, the circumstances under which the county attorney may request that the defendant be screened to determine if the defendant may be a sexually violent person are modified to include if the defendant has ever been convicted of or found guilty except insane for a sexually violent offense, instead of only if the defendant is charged with a sexually violent offense.

First sponsor: Rep. E. Farnsworth

H2322: HEALTH INSURERS; PROVIDER CREDENTIALING

Health insurers are required to establish a process for the electronic submission of a credentialing or recredentialing application and supporting documentation. A credentialing committee of at least two persons is required to review credentialing applications. Establishes deadlines for a health insurer to acknowledge receipt of an application, provide notification of an incomplete application, and conclude the credentialing process. A health insurer is prohibited from denying a claim for a covered service provided to a subscriber by a participating provider who has been approved to contract with a network plan if the covered services are provided after the effective date of the contract. Health insurers that comply in good faith with these requirements are immune from civil liability for the purposes of reviewing and approving a credentialing application. Effective January 1, 2019.

First sponsor: Rep. Carter

H2406: BEHAVIORAL HEALTH BOARD; REGULATION; REPEAL

Repeals statutes requiring behavioral health professionals to be licensed and establishing regulations for behavioral health profession licensees, including the Board of Behavioral Health Examiners. Due to voter protection, one section of this legislation containing conforming changes requires the affirmative vote of at least 3/4 of the members of each house of the Legislature for passage.

First sponsor: Rep. Mosley

H2529: SOBER LIVING HOMES; CERTIFICATION

The Department of Health Services is required to contract with an "approved certifying organization" that is affiliated with an "approved national organization" (both defined) to certify each sober living home in Arizona and investigate and address complaints. The Dept is required to approve the standards to certify sober living homes, and provisions that must be included in the standards are listed. Each sober living home in Arizona is required to be certified, and a person operating a sober living home within certification is subject to a civil penalty of up to \$1,000 for each violation. The Dept is required to establish fees for certification. Repeals statutes authorizing counties and municipalities to adopt standards for structured sober living homes that comply with state and federal fair housing laws and the Americans with Disabilities Act.

First sponsor: Rep. Campbell Others: Rep. Carter, Rep. Stringer

H2558: DRUG DISPOSAL; EDUCATION

Counties and municipalities are prohibited from imposing a tax, fee, assessment or charge on any business to pay for or support a "drug disposal program" (defined), and from requiring a business to pay for or operate a drug disposal program. By January 1, 2019, the Department of Health Services is required to enter into a public-private partnership to develop an education and awareness program regarding the disposal of prescription drugs, including controlled substances.

First sponsor: Rep. Cobb Others: Rep. Carter

H2594: SEXUAL ORIENTATION; CONVERSION THERAPY; PROHIBITION

It is unprofessional conduct for a "psychotherapist" (defined) to provide any "conversion therapy" (defined as any practice or treatment that seeks to change the sexual orientation or gender identity of a person) to a person who is under 18 years of age regardless of the willingness of the person or the person's parent or legal guardian to authorize the conversion therapy. Violations are subject to disciplinary action by the appropriate health profession regulatory board.

First sponsor: Rep. Chavez

Others: Rep. Hernandez, Rep. Navarrete

H2633: PHARMACISTS; CONTROLLED SUBSTANCES

An initial prescription for a schedule II controlled substance that is an opioid that is written for more than a five-day supply or more than 90 morphine milligram equivalents per day is deemed to meet the requirements of a statutory exemption from the applicable limit when the initial prescription is presented to the dispenser, and a pharmacist is not required to verify with the prescriber whether the initial prescription complies with the applicable statutory limit.

First sponsor: Rep. Cobb

HCR2038: MATERNAL MENTAL HEALTH

The members of the Legislature proclaim May 2, 2018 as Maternal Mental Health Day in Arizona.

First sponsor: Rep. Carter

S1034: COMMITTEE OF REFERENCE; STANDING COMMITTEES

Relating to COR membership and the sunrise process for health professionals. Provisions relating to the Sunrise process, including requiring the standing committees, rather than the COR, to consider sunrise applications; requires a sunrise application to be submitted by November 1, rather than September 1; permits the Committees to hold informational hearings on the sunrise application before the session convenes; directs the Speaker and President to assign a sunrise application to the Health Committee of the House and the Health and Human Services Committee of the Senate or their successor committees; allows a sunrise application to be amended prior to any hearing; removes the requirement that the COR deliver a report of its recommendations to the Legislature, Governor, and appropriate regulatory body by December 1; permits the Committees to take public comment on a sunrise application at an informational hearing; prohibits the Committee from voting on whether to accept or reject a sunrise application; permits a sunrise application for increased scope of practice to send copies of the sunrise application to the appropriate regulatory board and ADHS for review and comment; removes the requirement for the appropriate regulatory board to make recommendations based on a sunrise

application for increased scope of practice; allows a sunrise applicant to introduce legislation; prohibits the lack of hearing from being construed as support or rejection of the proposed legislation; specifies that a sunrise applicant is not required to refile a report that had been filed in the prior five years, unless there is a material change in the proposed increased scope of practice; requires a sunrise applicant to notify the legislature in writing by December 1 if the applicant intends to pursue a previously filed application for an increased scope of practice in the next legislative session and reference the specific sunrise application that was previously filed; regulatory factors; sunrise factors; COR membership; and other technical and conforming changes.

Sponsor: Sen. Kavanagh

S1064: INSURERS; HEALTH PROVIDERS; CLAIM ARBITRATION

Relating to out-of-network claim disputes. Clarifies an enrollee may dispute a surprise out-of-network bill by filing a request for arbitration with the Department of Insurance no later than one year from the date of the service noted in the bill, provided certain conditions are met; allows an enrollee's authorized representative to participate in an informal settlement teleconference; and other provisions outlining the responsibilities of the enrollee and the Department of Insurance in the process.

Sponsor: Sen. Brophy McGee

S1085: AHCCCS; NATUROPATHIC PHYSICIANS

Redefines primary care practitioner, as it relates to AHCCCS, to include naturopathic physicians.

Sponsor: Sen. Barto

S1087: S/E CHILDREN'S HEALTH INSURANCE PROGRAM

Removes the requirement that the Director must stop processing new applications if CHIP FMAP is less than 100%; stipulates other provisions relating to CHIP applications and funding; and makes technical changes. Sponsor: Sen. Brophy McGee

S1160: SEXUAL ORIENTATION; CONVERSION THERAPY; PROHIBITION

It is unprofessional conduct for a "psychotherapist" (defined) to provide any "conversion therapy" (defined as any practice or treatment that seeks to change the sexual orientation or gender identity of a person) to a person who is under 18 years of age regardless of the willingness of the person or the person's parent or legal guardian to authorize the conversion therapy. Violations are subject to disciplinary action by the appropriate health profession regulatory board.

First sponsor: Sen. Bowie

S1195: APPLICATION; EMERGENCY ADMISSION; NONEVALUATING HOSPITALS

Relating to court-ordered evaluation. Requires an application for court-ordered evaluation to be presented to a screening agency; identifies the requirements for an application for evaluation and further details the steps, requirements, and responsibilities in the process.

First sponsor: Sen. Kavanagh

S1246: BEHAVIORAL HEALTH BOARD

Various changes relating to the Board of Behavioral Health Examiners. The Board is required to establish fees by rule, instead of being required to establish a fee schedule annually by a formal vote. Various

notices are no longer required to be in writing. A motion by the Board to initiate an investigation must be made at an open and properly noticed Board meeting and must include specified information. Modifies requirements for licensure by endorsement for a person who is licensed or certified in one or more other states or federal jurisdictions.

First sponsor: Sen. Barto

Others: Sen. Bradley, Sen. Brophy McGee

S1450: INDEPENDENT OVERSIGHT COMMITTEES; APPOINTMENT; DUTIES

Renames the Human Rights Committee on Persons with Developmental Disabilities the Independent Oversight Committee on Persons with Developmental Disabilities, renames the Human Rights Committee on Children, Youth and Families the Independent Oversight Committee on Children, Youth and Families, and renames the Human Rights Committee on the Mentally Ill the Independent Oversight Committee on the Mentally Ill. Transfers responsibility for these committees to the Department of Administration, from the Department of Economic Security or the Arizona Health Care Cost Containment System.

First sponsor: Sen. Barto

S1451: PATIENT REFERRAL INDUCEMENTS; PROHIBITED COMPENSATION

It is unlawful for any person, including any health care provider, health care facility or structured sober living home to offer or pay, or to solicit or receive, any commission or bonus to induce the referral of patients or patronage to or from a health care provider, health care facility or structured sober living home. Some exceptions. A person who violates this prohibition is subject to a civil penalty of \$25,000, except that if the violation involves 10 to 19 patients the civil penalty is \$50,000, and if the violation involves 20 or more patients the civil penalty is \$250,000.

First sponsor: Sen. Barto

Others: Sen. S. Allen, Sen. Brophy McGee, Sen. Farley, Sen. Hobbs

S1465: SOBER LIVING HOMES; CERTIFICATION

The Department of Health Services is required to contract with an "approved certifying organization" that is affiliated with an "approved national organization" (both defined) to certify each sober living home in Arizona and investigate and address complaints. The Dept is required to approve the standards to certify sober living homes, and provisions that must be included in the standards are listed. Each sober living home in Arizona is required to be certified, and a person operating a sober living home within certification is subject to a civil penalty of up to \$1,000 for each violation. The Dept is required to establish fees for certification. Repeals statutes authorizing counties and municipalities to adopt standards for structured sober living homes that comply with state and federal fair housing laws and the Americans with Disabilities Act.

First sponsor: Sen. Brophy McGee

Others: Sen. Barto, Rep. Campbell, Rep. Syms

S1470: SUNRISE PROCESS; HEALTH PROFESSIONALS; MODIFICATIONS

S1470 was replaced by S1034.

S1496: PRISONERS; DRUG SENTENCES; OUT-OF-CUSTODY TREATMENT

Eligibility for parole or community supervision for a person convicted of possession or use of marijuana, a dangerous drug, a narcotic drug or drug paraphernalia (drug offenses) is modified. Every prisoner who is eligible for parole or community supervision after drug offenses is required to be released on parole or community supervision, and the requirement for the Board of Executive Clemency to determine that there is a substantial probability that the prisoner will not violate the law and the release is in the best interests of the people of Arizona is deleted. The Department of Corrections must require each prisoner who is placed on probation, parole or community supervision after drug offenses to attend and participate in an outpatient program that provides substance abuse treatment. The Dept is required to annually report to the Governor and the Legislature specified information on prisoners with drug offenses and the program.

First sponsor: Sen. Smith

S1519: PROTECTIVE ORDERS; SCHOOLS; APPROPRIATIONS

Legislation relating to school safety in response to Governor's school safety plan. A main portion changes the process by which an individual can have their firearms confiscated by court order; also includes measures requiring suicide prevention training for school workers; a requirement that the Supreme Court create an annual report of STOP orders; clarification of the powers and duties of reserve law enforcement officers who patrol school grounds; and new crime reporting requirements for school staff, among other provisions.

First sponsor: Sen. Smith

Others: Sen. Yarbrough