2017 TEXAS PHARMACY LEGISLATIVE UPDATE

The 2017 Legislative session was a great challenge for the pharmacy profession. The profession needed to negotiate the passage of the Pharmacy Board’s Sunset Bill while defending the Practice Act from numerous attacks from health plans and the medical profession. The pharmacy community was also looking to expand ways to better provide quality care to patients and to enhance the ability of pharmacists to utilize new technologies and advancements in their professional capabilities. That task required the different pharmacy associations to work together as a team. That wasn’t always easy and will require continued efforts to build coalitions during the next several years. The following is a brief recap of what legislation passed as well as what didn’t pass.

2017 PHARMACY LEGISLATION THAT PASSED

(Unless otherwise noted, all laws go into effect on September 1st, 2017)

Texas Pharmacy Board – Sunset Reauthorization

H.B. 2561 is to enact the recommendations of the Sunset Advisory Commission regarding the Texas State Board of Pharmacy (TSBP). The legislature created TSBP in 1907 to regulate the practice of pharmacy, and the Sunset Act requires the legislature to review and reauthorize the agency every 12 years. HB 2561 recommends the renewal of the Pharmacy Board for 12 more years with additional recommendations relating to;

✓ Enhanced reporting and registrations requirements for all wholesalers, prescribers and dispensers who participate in the Prescription Monitoring Program to look-up prescriptions for four categories of addictive pain medications prior to ordering or filling a prescription,
✓ Updated authority for educational standards and penalties for technicians,
✓ Added language expanding “TelePharmacy” allowing Class A pharmacies to create “remote dispensing sites” in medically underserved areas, operated by technicians with remote supervision,
✓ Provides for the donation of unused drugs to medical facilities or pharmacy, and
✓ Remote supervision of a technician working outside a pharmacy will be allowed.
Professional Practice Issues

Medication Synchronization…

H.B. 1296 allows pharmacists, working in conjunction with the patient and their health plan, to determine which medications should be aligned to properly treat chronic diseases. It also eliminates barriers to medication synchronization by requiring health plans to prorate any cost-sharing amount charged for a prescription drug dispensed in a quantity that is less than the full prescription amount. HB 1296 will enhance medication adherence which has been shown to reduce patient’s healthcare costs.

Guidelines for Co-Prescribing Opioids…

S.B. 584 requires the Texas Medical Board to adopt guidelines for the prescription of opioid antagonists to a patient to whom an opioid medication is also prescribed. The bill requires the board, in adopting the guidelines, to consult with the Texas State Board of Pharmacy and consult materials published by the Substance Abuse and Mental Health Services Administration of the U.S. Department of Health and Human Services.

Enhanced Penalties for Theft from a Pharmacy…

The opioid abuse crisis has fueled an increase in pharmacy burglaries and thefts, and in Texas there are no special penalty enhancements or offenses specifically dealing with pharmacy. H.B. 1178 amends the Penal Code to establish a penalty of third degree felony for burglary if the premises is a building in which a controlled substance is generally stored, including a pharmacy, clinic, hospital, or nursing facility, and the actor entered or remained concealed in that building with intent to commit a theft of a controlled substance.

Irma Rangel School of Pharmacy…

HB 2002 amends the Education Code to require the college to be known as The Texas A&M University System Health Science Center Irma Lerma Rangel College of Pharmacy, and the primary building in which the school is operated to be located in Kleberg County and to include "Irma Rangel" in its official name.
Insurance Coverage Issues

Step Therapy Restrictions…

S.B. 680 amends the Insurance Code to require a health benefit plan issuer that requires a step therapy protocol requiring an enrollee to use a prescription drug or sequence of prescription drugs other than the drug that the enrollee’s physician recommends for the enrollee’s treatment before the health benefit plan issuer provides coverage for the recommended prescription drug to establish, implement, and administer the step therapy protocol in accordance with clinical review criteria readily available to the health care industry. The bill prescribes the methods by which a multidisciplinary panel of experts composed of physicians and, as necessary, other health care providers that develops and endorses such clinical practice guidelines.

Insurance “Clawbacks” Prohibited…

Patients contend that legislation is needed to address a health insurance practice by which a pharmacy benefit manager instructs a network pharmacy to collect an elevated copayment amount from a patient and subsequently recoups the excess amount from the pharmacy. S.B. 1076 amends the Insurance Code to prohibit a health benefit plan issuer that covers prescription drugs from requiring an enrollee to make a payment for a prescription drug at the point of sale in an amount greater than the lesser of the applicable copayment, the allowable claim amount for the prescription drug, or the amount an individual would pay for the drug if the individual purchased the drug without using a health benefit plan or any other source of drug benefits or discounts.

PBM Formulary Disclosure Requirements…

Concerns have been raised that the applicability of certain drug formulary disclosure requirements passed in a recent legislature requires clarification. H.B. 1227 amends the Insurance Code to make the requirement for a health benefit plan issuer to display drug formulary information on a public website maintained by the issuer applicable to the display of that information for each of the issuer's individual health benefit plans that provides benefits for medical or surgical expenses incurred as a result of a health condition, accident, or sickness.

Medicaid Managed Care Issues

Medicaid Drug Formulary…

As of September 1, 2018, the preferred drug list maintained by the Texas Dept. of HHS will expire and would transfer to the Medicaid Managed Care companies allowing each managed care organization to determine what drugs are on their preferred drug list. S.B. 1922 extends the expiration date of state control of the formulary until August 2023. The bill also requires the Health and Human Services Commission (HHSC) to conduct a study once every 10 years to evaluate and determine the classes of prescription drugs for which prior authorizations are required and prohibits HHSC from changing a prior authorization requirement for such a prescription drug until HHSC has completed the study. The bill also requires HHSC to conduct a study of NADAC pricing and the fiscal impact of Medicaid managed care.
Pharmacy Legislation That Did Not Pass...

**HB 1415** – Independent practice and prescriptive authority for Advanced Nurse Practitioners.

**HB 1482** – Allowing a physician to sell any prescription drug directly to patients.

**HB 1939** – Relating to the regulation of the sale of dextromethorphan to minors.

**HB 2389** – Would have required the Pharmacy board to adopt rules allowing for technicians to be remotely supervised at a location other than a pharmacy.

**HB 2420** – Allowing a physician to sell esthetics prescription drugs directly to patients.

**HB 2444** – Relating to the authority of pharmacists to furnish certain medications CLIA Waived tests and to receive compensation for expanded services and procedures such as for smoking cessation drugs and travel medications under a protocol.

**HB 2743** – Requiring all schedule II drug prescriptions to be transmitted and received electronically.

**HB 3273** – A pharmacy practice act clean-up bill addressing non-substantive changes to the code.

**HB 3836** – Allowing any person to import any amount of medications from a foreign source.

**SB 382** – Would have allowed for the donation of unused drugs.

**SB 2042** – Would have allowed pharmacist to administer vaccinations and immunizations to younger patients.

**HB 335** – Would have defined and prohibited a “confiscatory reimbursement rate” from a managed care organization.

**HB 1133** – Would have required MCOs to pay a pharmacy based upon NADAC pricing for drugs and a dispensing fee based upon a periodic study of the cost of dispensing.

**HB 1420** – Providing a late penalty for PBMs who do not pay claims following 15 days.

**HB 1881** – Further defines a PBM as an entity of a health insurance company giving the Texas Dept. of Insurance more authority over their practices.

**HB 3288** – Requiring a PBM publish the methodology used to establish their reimbursement for drug prices and dispensing fees.

*** The legislature adjourned on May 29th without passing a bill to reauthorize the Texas Medical Board so there will be a special session at some point to address that and other issues.