

# 2020

## LEGISLATIVE WRAP UP



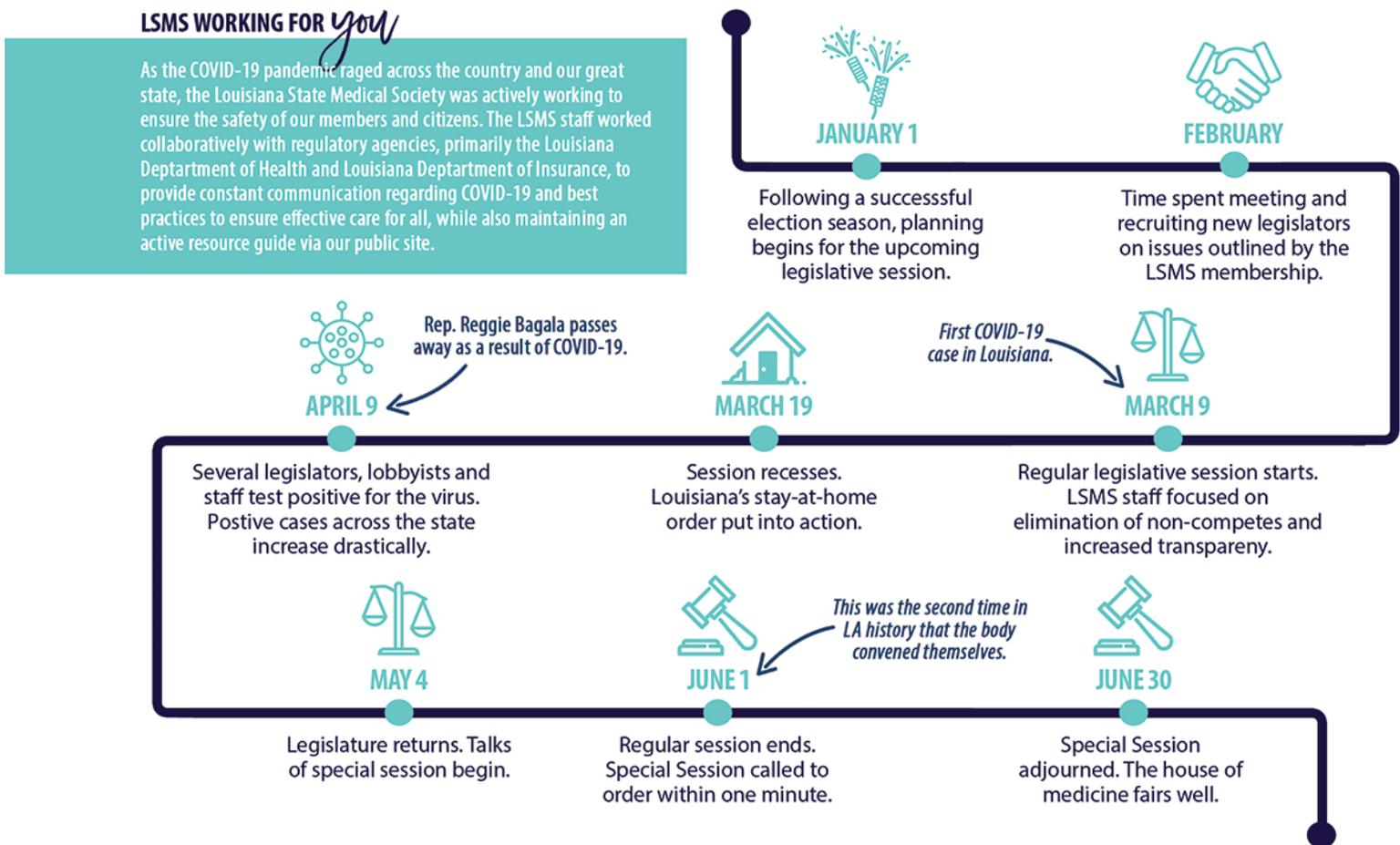
**LOUISIANA STATE  
MEDICAL SOCIETY**

# BACK-TO-BACK SESSIONS DURING A PANDEMIC

**Vision 2020** has long been a planning mantra for associations, government groups, and non-profits. It was the catch phrase used to help bring strategies, goals, and objectives into focus with 2020 being the target year for success.

In looking back at the legislative sessions, we have to also look at the scenarios that surrounded those sessions. While most people and groups were finding a new normal with stay at home orders, LSMS members were on the front lines battling a pandemic. Physicians were being charged with keeping populations safe and finding solutions to reduce the spread. At the same time, LSMS staff was focused on providing information and communication to enable our members to do so through collaboration with regulatory agencies and other healthcare organizations. Recognizing that our jobs were vastly different, the lack of knowledge as it pertains to COVID-19 equally impacted our efforts, making all of us reactive to the circumstances. As the world waits for a remedy, perhaps a vaccine, politics continue to interject itself into the realm, from mask mandates to stimulus packages, and unemployment to compensation rates.

Contrary to our plans, here's how those following months played out:



It's important to recognize a number of factors that have changed in our daily routines. It's possible to accomplish a lot through digital and virtual methods – except in the legislature. In order to receive public input, the legislature is duty bound to offer ways for the public to participate. They were able to quickly offer new creative methods that provided some access, but it is absolutely not the same as having face-to-face interaction with legislators. Additionally, limitations on how to or who could attend legislative hearings caused great concern. It's hard to ask people who may have underlying conditions to come to the Capitol, yet the only other option available to provide personal testimony before a committee was by email, which didn't always make it into the record. This makes your membership in LSMS more important than ever. Our staff was on the ground throughout the sessions and will continue to do what you need us to do. We encourage you to work on bridging the gap that has been created by COVID-19. Reach out to your legislators and introduce yourself if you have not and offer to become a resource for them. Give them a way to easily communicate with you and share that you are a members of LSMS.

# REGULAR SESSION

1,714 INSTRUMENTS FILED | 279 TRACKED | 63 FORMAL POSITIONS

MARCH 9 - JUNE 1, WITH 43-DAY RECESS

Members of the Senate were asked not to move their legislation during the Regular Session unless it was critical to the budget or the pandemic. All LSMS legislation was introduced by a member of the Senate. LSMS agreed not to move our legislation, believing that the timing was inappropriate for two reasons: 1) this was not the time for medical professions to be fighting each other and 2) lack of access to the Capitol and inability of our members to participate in the process would make it difficult to pass controversial legislation. Having said that, the House did not have a restraint placed on them, so we still had to defeat a number of controversial bills.

## SCOPE OF PRACTICE

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Two bills aimed at expansion of Scope of Practice were filed this year, **HB 864** by Rep. Barry Ivey and **HB 702** by Rep. Larry Bagley.

**HB 864** would have granted Advanced Practice Registered Nurses **independent practice** upon proof of three requirements:

- An unencumbered, unrestricted, and valid registered nurse and advanced practice registered nurse licenses in this state.
- Experience of no less than **two hundred fifty hours in collaborative** practice.
- Successful completion of academic coursework in physical assessment, advanced pharmacology, and advanced pathophysiology.

**HB 864** further would have established a **“global signature authority”** for Advanced Practice Registered Nurses. This language was debated and defeated in last year’s **HB 276**. It said: “If a provision of law or administrative rule **requires a signature**, certification, stamp, verification, affidavit, or endorsement **by a physician, the requirement may be fulfilled by an advanced practice registered nurse** practicing within his scope of practice unless prohibited by the rules of the board or the terms of a collaborative practice agreement to which the nurse is a party.” APRNs used the pandemic to promote this legislation telling lawmakers that they are currently working without the need for a Collaborative Practice Agreement (CPA) and things are just fine without Louisiana’s “unnecessary and antiquated rules and regulations.”

As a membership, LSMS delivered more than 800 emails to the members of the House Health and Welfare Committee. This membership response was very quickly noted by members of the committee who urged the bill’s proponents not to move forward. After three weeks of back-and-forth, the bill never received a hearing. It was a job well done by all of you and we thank you for your support and participation.

**HB 702** was also a repeat bill from last year. The legislation was introduced at the request of the Physician Assistant community and would have changed their practice model from “supervisory” to “collaborative.” After many conversations, the bill’s author refused to move it unless the physician community was on board. As we were not on board, he stripped all the scope language out of **HB 702** and only left the language giving Physician Assistants the ability to give orders to RNs. Our thanks to him for realizing it was much more substantial than “just changing one word.”

## SURPRISE BILLING

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**HB 283** by Rep. Raymond Crews was the only Surprise Billing prohibition legislation that was heard in the Regular Session. While Rep. Crews’ proposed legislation sought to address surprise billing, it was amended into a totally different piece of legislation that – if passed – would have trampled your right to contract by disincentivizing insurers to negotiate fairly with you. Rather, it incentivized insurers to terminate your contract and force you into utilizing the facility’s contract with the insurer.

Under it, you would have:

1. Been required to have contractual arrangements with every insurer that the facility contracts with  
**OR**
2. Secure your payment from the facility.

Additionally, the legislation used a definition that captured just about all physicians. It defined “facility-based physician” as “a physician licensed to practice medicine who is required by the base health facility to provide services in a base health care facility as an anesthesiologist, hospitalist, intensivist, neonatologist, pathologist, radiologist, emergency room physician, or other on-call physician who is required by the base health care to provide covered health care services related to an emergency medical condition as defined in R.S. 22:1122.” **HB 283** was neither fair nor equitable. It was government-coerced contracting which would have eliminated your ability to negotiate a contract on your behalf and forced you to accept obligations from a contract to which you are not a party. The legislation was clearly pro-insurance and anti-Louisiana physician! And again, *you responded!* Members reacted in a very compressed time-frame to flood the House floor with messages in under 18 hours. **Thank you! Your voice was heard!**

## MEDICAL MARIJUANA

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The medical marijuana community pushed several pieces of legislation this year. Two of those do impact the physician community.

**Act 286** (Offered as **HB 819** by Rep. Larry Bagley) is effective August 1, 2020, and allows any physician in good standing and licensed by the LSBME to **recommend** medical marijuana “for therapeutic use to any patient clinically diagnosed as suffering from a debilitating medical condition.” The law gives physicians broad latitude to determine what they consider to be “debilitating” for a particular patient, thus physicians may recommend medical marijuana for a patient suffering from any condition for which the physician believes their patient may experience relief. There will **no longer** be a requirement to obtain an **additional permit** from the LSBME in order to make such recommendation.

ACT 286 in no way mandates that a physician recommend medical marijuana to his patients. Many physicians do not believe there is scientific evidence to show a medicinal benefit from the use of medical marijuana and may choose not to recommend such to their patients.

Complementing **ACT 286, ACT 147** (offered as **HB 418** by Rep. Jeremy LaCombe) provides limited liability to any physician who provides information relative to marijuana for therapeutic use within a bona fide doctor-patient relationship or who issues a recommendation to a patient for marijuana for therapeutic use. Such physicians shall be exempt from state prosecutions for certain violations of the Uniform Controlled Dangerous Substances Law. However, states cannot prevent federal prosecutions of their citizens relative to medical marijuana. On a federal level, all marijuana remains illegal.



### GO ONLINE FOR MORE INFORMATION

The LSMS has issued guidance relative to **ACT 286** which can be located under the resource tab at [www.lsms.org](http://www.lsms.org).

## PELVIC EXAMS

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In response to news stories reporting on patients having pelvic exams performed on them while they were under anesthesia, two bills were introduced in Louisiana. As originally introduced, both bills would have required separate and prior consent forms for any pelvic exam performed and neither took into account emergency room medicine or exams that become medically necessary during a procedure. LSMS physician members and staff worked hard with coalition groups and the authors to reach a compromise on **ACT 269** (offered as **HB 435** by Rep. Edmond Jordan).

As it stands on August 1, 2020, healthcare providers are prohibited from performing a pelvic or rectal exam on an anesthetized or unconscious patient unless one of the following conditions are met:

1. The patient has provided written consent and the exam is necessary for instructional, preventive, diagnostic, or treatment purposes,
2. Informed consent has been given and the exam is within the scope of care for the patient, or
3. The patient is unconscious and incapable of providing consent, and the exam is medically necessary. If this is the case, the patient must be informed that the exam occurred prior to being discharged.

In a clinical setting, learners must meet all of these conditions:

1. The patient has explicitly consented to the exam,
2. The exam is medically related to the procedure,
3. The learner is recognized by the patient as part of the care team, and
4. The exam is conducted under the direct supervision of the educator.

## TORT REFORM

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Legislative leaders went into the session focused on tort reform, primarily as a way to reduce auto insurance rates. This was one issue where legislators did stay the course, getting behind Sen. Kirk Talbot's **SB 418**. The bill included a number of tort reform pieces, including the seatbelt gag rule, direct action, jury threshold and collateral source. The collateral source section is the one LSMS was charged by our members to watch closely. Our direction was to ensure that there was nothing akin to rate setting and then disengage, in order to remain effective on other issues. Our charge was fulfilled and the bill did pass. The Governor subsequently vetoed it, as an amendment that was included proved to be untenable for all sides.

## SPECIAL SESSION 1

291 INSTRUMENTS FILED | 61 TRACKED | 18 FORMAL POSITIONS

JUNE 1 - JUNE 30

An oddity this Special Session was the number of resolutions offered and passed. Of the 191 instruments that passed in this Special Session, only 39 were actual bills. Resolutions may be used to suspend laws but may not be used to pass new laws or make substantive changes to existing law. In watching how they were used this session, it looks like we may be tracking a number of resolutions in the future.

During the Special Session, two subject matters took center stage for the physician community: Surprise Billing and Collateral Source.

## SURPRISE BILLING

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Legislators spent two weeks during the Special Session debating surprise billing legislation. There were three bills discussed: **SB7** by Senator Kirk Talbot (LSMS supported), **HB67** and **HB72** by Representative Raymond Crews (LSMS opposed both bills). After numerous hours of testimony in three different committees, none of the bills were heard on either floor. **SB7** passed out of the Senate Committee on Insurance but stalled out in Senate Finance due to a seven figure fiscal note. **HB67** and **HB72** were voluntarily deferred in favor of a stakeholder task force to review the issue. We anticipate this task-force will meet soon as lawmakers are eager to address surprise billing and may be looking to bring something back to the legislature during an anticipated second Special Session this Fall. Currently, health plans see fixed rate as their solution, while hospitals and physicians are aligned in seeking a baseball style arbitration solution. U.S. Senator Bill Cassidy has filed a baseball style arbitration bill at the federal level as well, which the LSMS supports. Even though **SB7** failed to pass, helpful information was shared. We learned that roughly only 1% of physicians in Louisiana are considered

"out-of-network" and that their claims account for just .04% of the total claims filed annually. What this information confirmed for us is that many individuals are likely confusing their deductible payment or co-payment with surprise billing.

## TORT REFORM

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As with the Regular Session, the centerpiece of the Special Session was again tort reform aimed at reducing auto insurance rates. The primary legislation pushed was **ACT 37** (offered as **HB 57** by Speaker Schexnayder), which passed in the final hours of the last day. Highlights from it include:

- Lowering the jury trial threshold from \$50,000 to \$10,000,
- Repealing the seatbelt gag law, and
- Addressing collateral source by limiting medical damages to what was paid. However, after the verdict, the judge can review what was billed vs what was paid and award up to 40% of the difference to the plaintiff. Rate setting is not permitted.
- Not applicable to Medical Malpractice claims.

## LOUISIANA BUDGET

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Louisiana's \$35 Billion budget was passed, which included federal dollars for COVID-19 relief. Legislators opted to hold back on increases in some areas until there is a better idea of what the next few months may look like.

## SPECIAL SESSION 2

TBD | FALL 2020

As the legislature adjourned and headed home on June 30, many were already talking about a Fall Special Session. The month that most saw as the likely time frame is October. It's hoped that by then, the pandemic will be in a more stable mode and leaders will have been able to assess the true impact on the state's budget. Regardless, it's thought that if we haven't reached a recovery point by then, there will be a need to reconvene for consideration of a long-term strategy for continued concerns.

## EXECUTIVE & REGULATORY ACTION OF 2020

LSMS's COVID-19 Resource page includes seventeen broad topic areas. To get a full picture of the number and types of different groups and departments we've worked with, we encourage all of our members to visit it and scroll through the information made available to everyone. LSMS has participated in countless ZOOM meetings and conference calls with varying departments and partner groups. Some of those include:

- Since March 11, Gov. John Bel Edwards has signed 18 proclamations related to COVID-19.
- The Louisiana Department of Health began monitoring COVID-19 in January and currently has 92 documents relating to orders, guidance or information dissemination on its public website. Delving deeper, there are seven additional pages with provider guidance relating to specific care areas.
- The Louisiana Department of Insurance adopted four emergency rules specifically related to health care and COVID-19.
- The Louisiana State Board of Medical Examiners suspended many rules as required under a public health emergency.

Rather than listing every order, we've chosen to pull those that have the most significant impact to the practice of medicine.

## PUBLIC HEALTH EMERGENCY & IMMUNITY

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Governor John Bel Edwards issued Proclamation Number 25-JBE-2020 on March 11 and still remains in effect. His issuance on this proclamation triggered immunity protections under the Louisiana Health Emergency Powers Act (LHEPA). LHEPA provides

“any health care providers shall not be found civilly liable for causing the death of, or injury to any person, or damage to any property except in the event of gross negligence or willful misconduct” during the state of a public health emergency.

## MEDICAL & SURGICAL PROCEDURES

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On March 17, Louisiana Public Health Ocer Jimmy Guidry, MD, issued Notice 2020-COVID19-ALL-06. This notice halted all elective medical and surgical procedures. Done in an effort to conserve PPE, the notice halted all healthcare that wasn't medically necessary for 30 days.

On April 20, Dr. Guidry issued an updated notice relaxing those guidelines and the vast majority of healthcare was allowed to resume, this updated notice remains in effect.

## TELEMEDICINE/TELEHEALTH

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The Department of Health, the Department of Insurance, and the Centers for Medicare and Medicaid Services all issued documents in March allowing for expanded usage of telemedicine/telehealth, as well as increasing provider pay to equal in-person visit pay, in a number of circumstances. This expansion remains in place.

## HEALTH INSURANCE

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Multiple orders at both the state and federal levels impacted health insurance. There are topics that vary in every order but impact:

- Prohibition on contract cancellations
- Requirement for coverage on certain testing
- Relaxation of prior authorizations
- Allowances for telemedicine/telehealth
- Prescription coverage and refills

## LICENSING

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The Louisiana State Board of Medical Examiners issued multiple suspensions of rules in March that remain in effect. Please check the BME website for more information on:

1. Fingerprinting of applicants
2. Residency training permits (extensions granted for 120 days beyond the public health emergency)
3. CME (only the three-hour CDS course is required for 2020)
4. Telemedicine/Telehealth licensees allowed to use varying devices
5. Physician Assistants allowed flexibility for working with a new supervising physician
6. Deadline extensions on administrative proceedings and actions
7. Enforcement standards during a public health emergency
8. Dispensing rules for non-controlled medications
9. Chronic pain treatment and recommendations for medical marijuana via telemedicine
10. Payment for student respiratory therapists

## ADDITIONAL RESOURCESS & SUPPORT

For more information on specific legislation, please contact any of the LSMS Lobbying team:

- **Maria Bowen**, Mbowen@lsms.org (Vice President, Governmental Affairs)
- **Lauren Bailey**, Lbailey@lsms.org (Vice President, Legal Affairs)
- **Jeff Williams**, Jeff@lsms.org (Executive Vice President and CEO)
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scan here!



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