



American Academy of  
Orthopaedic Surgeons

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## JUNE 2001 STATE LEGISLATIVE UPDATE

June saw the start of summer and yet more haggling over how to draw a few lines on a map. In case you think I harp too much on redistricting consider the case of **Oregon**. The legislature is controlled by Republicans while the Governor is a Democrat. After their remap was vetoed, Republicans tried to pass the map as a resolution instead of a bill (since resolutions don't go the Governor; a move of questionable legality). To derail this gambit the Democrats in the House walked out of the capitol preventing a quorum so the Republicans couldn't conduct any business. The Republicans issued summons for the Democrats to appear, but the process servers couldn't find any of the Democrats. Five days later they showed up after the deadline had passed so that the remap would be done by the Secretary of State who is, no surprise, a Democrat.

As of the end of June, 10 state legislatures were in regular session: **CA, MA, MI, NC, NH, NY, OH, OR, TN** and **WI**. **NJ** and **PA** are in long summer recesses. Through June there have been 170,587 bills introduced in the states and 31,177 have become law.

Some of the bills the Department of Health Policy is tracking are outlined below. If you have any questions please give Jay Fisher a call at 800-346-2267, x4336.

### **PATIENT PROTECTIONS**

As a Patients' Bill of Rights is closer to passage in Congress that would allow an independent external review of treatment denials, data on how state external review laws are working is beginning to trickle in. The **Ohio** law recently celebrated its first anniversary. Of the 100 appeals heard by independent reviewers, health insurer decisions were upheld 52 times, reversed 37 times and partially reversed 11 times. The law in **California** went into effect on January 1 of this year. Of the 168 appeals decided so far, 110 held that the HMO recommended course of treatment was best and in 58 cases the HMO lost or voluntarily changed its position. Not one lawsuit has been filed since the law went into effect. These numbers are similar to data from last year from **Vermont** and **Texas**.

The Patients' Bill of Rights in **Delaware** passed both Houses in June and now goes to the Governor for her signature. The bill was one of the Governor's top legislative priorities. It provides for rapid internal appeals and standing referrals upon the recommendation of the primary care provider. Gov. Bush signed a bill requiring HMO medical directors to be licensed physicians in **Florida**. A bill to require medical necessity decisions to be made in 2 days passed out of committee in **Massachusetts**.

A bill was introduced in **Michigan** allowing HMO enrollees to get a second opinion if they question the diagnosis, plan of care or necessity of a particular operation. A bill to forbid the mandatory use of hospitalists was signed into law in **Texas**.

## **INSURER LIABILITY**

A right to sue bill passed out of the **New York** Assembly in June but was not addressed by the Senate. A right to sue bill passed both houses in **New Jersey** and the Governor says that he will sign it. It is an extremely broad bill. It allows suits for both economic and non-economic damages with no apparent caps. Unlike the Texas law, which was limited to cases where care was actually provided, this bill allows suits where care is "to be provided." Unless serious and significant harm has occurred or is about to occur, the plaintiff must exhaust the independent review procedures before they can file suit.

## **JOINT NEGOTIATION**

The joint negotiation legislation in **California** has passed one House, but has been amended to be entirely voluntary on the part of the health plans. Legislation also passed out of committee in **Massachusetts, New Jersey** and **Rhode Island**. A bill was introduced in **Pennsylvania**.

## **SCOPE OF PRACTICE**

A bill to allow direct access to patients by physical therapists passed the Senate in **Pennsylvania**. The Governor of **Nevada** signed the bill allowing podiatrists to amputate toes. The Governor of **Colorado** vetoed a bill allowing chiropractors and podiatrists to certify people as disabled for parking placards. A bill was signed into law in **Oregon** allowing school athletic physicals to be performed by PAs, Certified Nurse Practitioners and chiropractors.

## **PROMPT PAYMENT**

A bill to require that clean claims be paid within thirty calendar days was signed by the Governor of **Alaska**. The Governor of **Nevada** signed into law a bill amending the prompt pay law. It raises the interest penalty from the prime rate at the largest bank in Nevada plus 2 percent up to the prime rate at the largest bank in Nevada plus 6 percent. If a payer has not paid 95% of the claims within 30 days or 90% of the total dollar amount they owe within 30 days they can be levied an administrative fine to be determined by the Commissioner.

A bill in **Ohio** amending the current law passed both Houses. The new law requires payments in 30 days while the old law required it in 24 days unless you contracted for a longer term. The interest penalty was raised from 8% to 18% and the government was given increased power to fine payers up to \$300,000 per violation.

A bill passed both houses in **Rhode Island**. It requires that paper claims be paid within 40 days and electronic claims within 30 days. Late interest accrues at 12%. Each health plan must come up with a written standard to define what is a complete [clean] claim.

A bill passed both houses in **Delaware** requiring all workers compensation claims to be paid within 30 days. A bill is awaiting the Governor's action in **Oregon**. The bill was drafted in part by the Oregon Association of Orthopaedists. It requires claims to be paid within 30 days. The state will adopt a rule defining what is a clean claim. Interest accrues at 12%. Interest amounts under \$2.00 for one claim do not have to be paid. A bill passed out of committee in **Massachusetts** setting the prompt pay requirement at 15 days for paper claims and 48 hours for electronic claims.

Governor Perry in **Texas** vetoed the bill amending the prompt pay law to require the state to define what fields on the HCFA [CMS?]1500 must be filled out for the claim to be clean.