

Keeping you informed from Washington, D.C.

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August 21, 2024

## Telehealth Laws Challenged in Court

In June, the **Pacific Legal Foundation (PLF)**, a libertarian public interest law firm, filed suit against the **Medical Board of California**, in *McBride v. Hawkins*, challenging the **state's telehealth laws** which plaintiffs argue significantly impact patients' access to specialized medical care. The crux of the case is a patient with a rare bleeding disorder who resides in rural California and cannot receive telehealth consultations from a prominent hemophilia practitioner in Oregon because the physician is not licensed in California. The lawsuit argues that California's telehealth restrictions – which require that practitioners be licensed in the state in order to render care to California patients - infringe upon the Constitution's **Dormant Commerce Clause** and **Privileges and Immunities Clause** by placing undue burdens on out-of-state physicians and their patients. Additionally, it highlights the First Amendment rights of both doctors and patients to communicate freely without state-imposed barriers.

This lawsuit follows a **similar case** (*MacDonald v. Sabando*) filed in December 2023 by patients in **New Jersey** who also require specialty care but are hindered by the state's **licensing laws**, which likewise require licensure in the state to render care to patients.

The FSMB will monitor developments in these cases closely and keep you apprised of any updates!

Our team remains available to supporting your policy questions or needs. [Reach out to us here.](#)



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## Legislation moving through Congress

### Appropriations

The Senate version of the **Fiscal 2025 Labor-HHS-Education Appropriations Act** was advanced by a 25-3 vote from the Appropriations Committee on August 1. The bill funds HHS at nearly \$130 billion and includes programs that House Republicans omitted from their version of the bill, including funding for teen pregnancy prevention, **Title X Service Grants** (a family planning program), and the Ryan White HIV/AIDS program. However, the Hyde Amendment, which prohibits using Federal funds for abortions, remains. The bill would increase funding for substance use and mental health programs by

\$215 million, including a \$40 million increase from FY 2024 for state substance use block grants; a \$25 million increase for a loan repayment program for providers in the mental health workforce; a \$400 million increase for mental health clinics; \$1.86 billion to sustain funding for community health centers; and a \$20 million increase for the 988 suicide prevention lifeline, among other budgetary priorities. The bill's [report](#) also includes \$44 million for the Office of the Advancement of Telehealth (OAT), saying "The Committee strongly supports OAT and their mission to expand high quality medical care to rural communities that do not have adequate access to medical providers including many medical specialties," and \$62 million towards the Dept. of Labor's efforts "to incentivize States to reduce barriers to entry into licensed occupations and increase license portability to facilitate mobility of workers in such occupations, with an emphasis on transitioning service members, veterans, and military spouses."

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## Pending Legislation of Interest

### Artificial Intelligence

The [Consumer Literacy and Empowerment to Advance Responsible Navigation of Artificial Intelligence \(Consumers LEARN AI\) Act \(S. 4838\)](#), introduced by **Sen. Mark Kelly (D-AZ)**, would direct the Commerce Secretary to develop a national strategy regarding artificial intelligence consumer literacy which would be targeted towards general consumers, government agencies, and small businesses. The bill would also address how to best use AI and protect important information by conducting a national campaign, composed of public service announcements and resources for public use.

### COVID-19

The [Long Covid Research Moonshot Act \(S. 4964\)](#) introduced by **Sen. Bernie Sanders (I-VT)** would mandate that the National Institutes of Health (NIH) create a long COVID database and provide \$1 billion in annual funding for a decade to support research and treatment. The funding would bolster long COVID biomedical research at the NIH and other parties through a grant program, build a robust online database, and go towards education on long COVID and efforts analyzing clinical outcomes.

### Healthcare Workforce

The [Health Workforce Innovation Act \(S. 4957\)](#), introduced by **Sen. Ron Wyden (D-OR)**, would establish a health care workforce innovation program to develop new approaches for the education and training of health professionals, with an emphasis on meeting the needs of underserved and rural communities. Encouraged uses of the grant include establishing or expanding partnerships with local health professional training programs, providing training programs that better reflect the needs of the community and encourage students from various backgrounds to consider careers in health care, expanding training opportunities for existing staff, and updating equipment.

The [Rural Health Preceptor Tax Fairness Act \(H.R. 8738\)](#) introduced by **Rep. Brittany Pettersen (D-CO)**, would provide a tax credit for certain health professionals providing clinical supervision to students in rural health professional shortage areas. A myriad of health professionals would be eligible, including physicians, PAs, nurses, dentists, psychologists, and social workers; all those receiving the tax credit must hold a state license and supervise a health profession student in a rural health professional shortage area or in an area eligible for Federal rural health funding.

### Mental Health

The [Community Mental Wellness Worker Training Act \(H.R. 8680\)](#) introduced by **Reps. Adriano Espaillat (D-NY) and Mike Lawler (R-NY)**, would authorize the HHS Secretary, acting through the Substance Abuse and Mental Health Service Administration (SAMHSA), to award grants to train community mental wellness workers to screen for common conditions and provide culturally competent care that can effectively prevent serious outcomes. It also would authorize funding for technical assistance for the execution of the training programs, including placement of community mental wellness workers and identification of diverse candidates.

The [Supporting Trauma-Informed Education Practices Act \(H.R. 8981\)](#), introduced by **Rep. Jahana Hayes (D-CT)**, would authorize grants for up to five years supporting evidence-based trauma support services and mental health services within schools for both students and teachers. Eligible grantees - including but not limited to state and local education agencies - may, among other services, work with mental health professionals to provide interventions and longer term coordinated care within the community for children and youth who have experienced trauma; establish interagency agreements with early childhood education programs such as Head Start, juvenile justice authorities, mental health agencies, among others, to increase cooperation and engagement with at-risk youth; and establish educational, awareness, and prevention programs to improve mental health and resiliency among teachers and paraprofessionals.

The [Prevention Services for Youth Act \(S. 4811\)](#), introduced by **Sen. Laphonza Butler (D-CA)**, would require guidance to improve access to mental health and substance use prevention services for children, adolescents, and young adults and authorize grant funding for entities supporting youth and adolescents to destigmatize and educate on mental health conditions as well as support connecting youth and adolescents to necessary care.

The [Strengthening Supports for Youth Act \(S. 4812\)](#), introduced by [Sen. Laphonza Butler \(D-CA\)](#) would establish a pilot program to address behavioral health needs among children, adolescents, and young adults by providing guidance that recommends an effective continuum of mental health and substance use disorder services, outlines state-level financing options under Medicaid and CHIP designed to promote access to these services, and identifies culturally competent practices.

### Reproductive Care

The [Allowing Greater Access to Safe and Effective Contraception Act \(H.R. 8659\)](#) introduced by [Rep. Ashley Hinson \(R-IA\)](#), would allow women access to safe and effective oral contraceptive drugs intended for routine use by granting priority review for eligible oral contraceptives, and would also direct the Comptroller General to conduct a study on Federal funding of contraceptive methods.

### Rural Health

The [Veteran Service Organization Transportation Act \(H.R. 9050\)](#), introduced by [Rep. Mary Peltola \(D-AK\)](#), would establish a grant program for state veteran service agencies and organizations to transport veterans who reside in highly rural areas to medical facilities.

### Telehealth

The [Protecting Veteran Access to Telemedicine Services Act of 2024 \(H.R. 9324\)](#) introduced by [Rep. Steve Womack \(R-AR\)](#), would extend the current, pandemic-related exemption that allows health care professional employees of the Dept. of Veterans Affairs (VA) to prescribe controlled substances via telemedicine regardless of whether they have previously conducted an in-person examination, which would be reinstated if the exemption expires. Prescribing health care professionals must be authorized to prescribe controlled substances under their scope of practice, have an unrestricted state license, be registered with the DEA, and the substance is being prescribed for "legitimate medical purpose."

### Women's Health

The [Military Moms Act \(H.R. 9022\)](#), introduced by [Rep. Elise Stefanik \(R-NY\)](#), would add pregnancy and loss of pregnancy, but excluding abortion, as qualifying life events (QLEs) under TRICARE, require a study on maternal health in the military health system, and update resources available online to covered beneficiaries.

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## Regulatory News

On July 31, [HHS announced](#) \$68 million funding through the [Ryan White HIV/AIDS Program](#) "to provide family-centered medical care and essential support services for women with low incomes, infants, children, and youth with HIV."

On August 9, Lykos Therapeutics [announced](#) that the [FDA](#) had rejected the first attempt to win approval of MDMA (Ecstasy/Molly), coupled with psychotherapy, to treat post-traumatic stress disorder. Despite encouraging results from preliminary trials that has grabbed headlines and opened investors' wallets, the FDA remains skeptical of the trial design, the mind-altering nature of MDMA, making "blind" experiments virtually impossible. Lykos has vowed to ask the FDA for reconsideration of the decision, whereas the FDA [requested that Lykos conduct an additional Phase 3 clinical trial](#) to further study MDMA's safety and efficacy.

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## Requests for Information

The [Department of Veterans Affairs](#) issued a [notice](#) requesting information to assist in developing a national standard of practice for [Massage Therapists](#), with comments due by [September 30, 2024](#). Previously, the VA issued RFIs regarding developing national standards [Clinical Perfusionists](#), [Diagnostic Radiologic Technologists](#), and [Registered Radiologist Assistants](#) (comments for all due by [September 9, 2024](#)), and [Therapeutic Radiologic Technologists](#) (comments due by [September 27, 2024](#)).

Additional information on the VA National Standards of Practice is [available here](#).

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### Federal Contact

The FSMB's federal legislative staff will continue to track and monitor legislation and regulations of interest to state medical boards. If there is specific legislation you would like us to assist with, please contact [Lisa Robin](#), Chief Advocacy Officer, at [lrobin@fsmb.org](mailto:lrobin@fsmb.org), or by phone at (202) 463-4006.



# State Legislative News

## Regulatory News

On July 31, the **Alabama Board of Medical Examiners** announced it was accepting applications for its Bridge Year Graduate Physician Program, effectuating **SB 155** (2023), which creates a one-year license for individuals who completed medical school within the previous year, but have not been accepted into a postgraduate or residency training. BYGPs must practice under the on-site supervision of a licensed physician, who would report at the end of the license period on the graduate physician's performance and whether they should be recommended for a residency slot. The license is valid for one year, and may be renewed for an additional year.

The **Nevada Board of Medical Examiners** adopted **regulations** regarding a number of issues. First, for licensees that wish to initiate a new medical specialty area, they must notify the Board of the change, and the licensee must be certified in the new specialty by the American Board of Medical Specialties (ABMS) and completed an ACGME-approved PGT program in the new specialty area; or if the specialty has no ABMS specialty board, the licensee must provide the Board with evidence of training and expertise of comparable rigor. Second, the Board will no longer issue a license by endorsement if the applicant has been disciplined by or has a disciplinary action pending in another jurisdiction, or had their license suspended, revoked, refused, or denied previously. Third, anesthesiologist assistants, physicians, PAs, respiratory therapists, and perfusionists are explicitly prohibited from engaging in sexual impropriety toward a patient "including, without limitation, engaging in behavior that is seductive, sexually suggestive, disrespectful of a patient's privacy or sexually demeaning." Fourth, PAs will be authorized to practice "within the scope of the *medical specialty area* of his or her supervising physician" rather than "within the scope of *practice* of his or her supervising physician."

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## Judicial News

On August 6, **Ohio's Court of Common Pleas for Franklin County** upheld a law (**HB 68**) in ***Moe v. Yost*** that bans gender-affirming care, including puberty blockers and hormone therapy, for minors in the state. The law was originally vetoed by **Gov. Mike DeWine** in January but was overridden by the Legislature and enacted effective in April.

The **Arizona Supreme Court upheld**, in *Arizona for Abortion Access v. Toma*, partisan language using the phrase "unborn human being" to describe the abortion-rights ballot upcoming in November. It reverses an order from a Maricopa County judge who ruled the phrase is "packed with emotional and partisan meaning," and should be replaced with "a neutral term."

The **Montana Supreme Court ruled**, in *Planned Parenthood of Montana v. State Of Montana*, that the state's existing law requiring parents to consent to an abortion for a minor is unconstitutional, which said that the law infringes on "the fundamental right of a minor to control her body and destiny." A total of 36 states require parental involvement in a minor's abortion, with 21 requiring a parent to consent to the abortion, according to **the Guttmacher Institute**. An additional 10 states only require that a parent is notified.

The **South Dakota Supreme Court** reversed a lower court's decision that dismissed a lawsuit from the anti-abortion group Life Defense Fund aiming to remove an abortion rights initiative from the November ballot. The high court's decision to remand the case back to a lower court puts the ballot initiative in jeopardy.

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## Legislation Signed into Law

### Board Structure and Function

**New Hampshire SB 371** – Enacted August 7, transfers the responsibility of licensing from the Board of Medicine to the Office of Professional Licensure and Certification (OPLC), and waives examination requirements for Board-certified practitioners, among other aspects.

### Healthcare Professionals' Scope of Practice

**Illinois HB 4357** – Enacted August 9, clarifies that a delegating physician does not need to be

physically present to supervise a laser hair removal consultation, examination, or procedure if performed in an office or practice setting by a PA, APRN, registered nurse, or licensed practical nurse, so long as the delegating physician is available by two-way, real-time interactive communication.

### **International Medical Graduates**

**Illinois HB 778** - Enacted August 2 and effective January 1, 2025, requires the Illinois Department of Financial & Professional Regulation (IDFPR) to establish the qualifications and application fees for the limited licensure of international physicians (effectuating **SB 1298** (2023)) which will “provide a pathway to full licensure for limited license holders after the licensee successfully completes a supervision period and satisfies other qualifications as established by the Dept.” Additionally, effective January 1, 2026, creates a clinical readiness program for IMGs “seeking to reestablish their medical careers and obtain residency” in the state, including helping applicants navigate the state’s licensing process and ensuring culturally- and linguistically-appropriate services.

### **Prior Authorization**

**Illinois SB 3741** – Enacted August 9, prohibits insurers from imposing prior authorization requirements on dosage limitations.

### **Reproductive Care**

**Illinois HB 581** - Enacted August 7, reinforces the protections within the *Federal Emergency Medical Treatment and Active Labor Act* (EMTALA) within the state, particularly its protections around abortions when a pregnant woman's health is at risk. Related services include, but are not limited to, medical screening, the provision of necessary stabilizing treatment, procedures for refusals to consent, restricting transfers until the individual is stabilized, appropriate transfers of patients, nondiscrimination, no delay in examination or treatment, and whistleblower protections.

**Illinois HB 5239** - Enacted August 7, prohibits state support of interstate investigations or proceedings regarding reproductive or gender-affirming health care activities lawful in Illinois, specifically prohibiting the use of time, money, facilities, personnel, or any other resources, with an exception for investigations or proceedings where the conduct in question could incur criminal or civil liability under state law.

**Illinois HB 4867** - Enacted August 7, adds reproductive health decisions to the *Illinois Human Rights Act*, making it illegal to deny someone employment, housing, or a loan or credit based on their reproductive health decisions.

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## Pending Legislation of Interest

### **Consumer Health Data**

**New Jersey A 4658 and S 3493** - Requires health care providers, covered entities, and carriers to receive affirmative written consent to disclose a patient’s or covered individual’s medical information regarding reproductive health care services, with limited exceptions.

### **Pain Management/Prescribing Practices**

**Massachusetts H 3605** - Mandates the Dept. of Health to establish requirements for registration processes, investigation of complaints, licensing procedures, and the granting of psilocybin “facilitators” licenses. Further, the department shall license independent training schools to issue a certificate documenting that applicants completed the minimum training requirements for “facilitators,” defined as between 20 and 300 hours including at least 20 hours of in-person practicum with psilocybin and patients.

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## Legislation Affecting Board Authority

The FSMB continues to closely monitor legislative areas that could have significant implications on the practice and regulation of medicine: off-label treatment, reproductive health, and gender-affirming care. In addition to legislation highlighted in FSMB Advocacy Network News, all tracked off-label treatment legislation can be found [here](#), all tracked reproductive health legislation can be found [here](#), and all tracked gender-affirming care legislation can be found [here](#).

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### **State Contact**

The FSMB's state legislative staff will continue to track and monitor legislation and regulations of interest to state medical boards. If there is specific legislation you would like us to assist with, please contact **John Bremer**, Director, State Legislation and Policy, [atjbremmer@fsmb.org](mailto:atjbremmer@fsmb.org), or by phone at (202) 463-4021.



- [Resources for FSMB Members](#)
- [Pathway to Medical Licensure in the U.S.](#)



## Meetings & Events

**September 18-19, 2024:** [Coalition for Physician Enhancement Annual Conference](#), Baltimore, Maryland

**September 20, 2024:** [IAMRA 2024 Symposium: 'AI and Medical Regulation'](#), Baltimore, Maryland

**April 24-26, 2025:** [FSMB 113th Annual Meeting](#), Seattle, Washington

**September 3-7, 2025:** [16th International Conference on Medical Regulation](#), Dublin, Ireland

**[More Meetings & Events](#)**

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To help medical boards keep up with current legislation around the country, FSMB tracks relevant legislation and regulations in state houses across the United States, as well as the U.S. Congress.

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