

Keeping you informed from Washington, D.C.

July 3, 2024

Supreme Court issues flurry of impactful rulings

On June 27, the **Supreme Court dismissed** *Moyle v. United States*, effectively allowing abortions in medical emergencies in **Idaho** and reinstating a lower-court ruling that had halted Idaho's near-total ban on abortion, which is at odds with the Federal *Emergency Medical Treatment and Labor Act* (EMTALA), that requires hospitals that take Medicare funds provide stabilizing treatment when there's an imminent threat to a patient's health. Complicating the narrow decision to dismiss, the Court left untouched a 5th Circuit Court of Appeals ruling in January that *EMTALA* does **not** require doctors in Texas to offer abortions when a patient's life is in jeopardy.

On June 28, the **Supreme Court overturned** a precedent known as *Chevron* deference in *Loper v. Raimondo*, which provided federal agencies with flexibility in interpreting "ambiguous" federal statutes for the purposes of rulemaking. With this ruling, the courts will have a greater role in regulatory matters, potentially calling into question regulations in myriad sectors including health care, where a multitude of regulations govern programs like Medicare/Medicaid and CHIP, implementation of the *Affordable Care Act*, and functions of agencies like the FDA and NIH, according to analysts.

Lastly, on July 1, the **Supreme Court ruled**, in *Corner Post v. Board of Governors*, that claims under the *Administrative Procedure Act* challenging agency actions first come into being when the plaintiff is injured by a final agency action, rather than broad, six-year deadline after the action is finalized. Between this decision and *Loper*, there will likely be a significant increase in lawsuits challenging administrative regulations at the Federal level, and potentially, in state courts.

Please **reach out to us** if we can assist you on policy or legislative issues or questions!



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Pending Legislation of Interest

Artificial Intelligence

The **Artificial Intelligence Public Awareness and Education Campaign Act (S. 4596)** introduced by **Sen. Todd Young (R-IN)**, would require the Commerce Secretary, in coordination with the heads of relevant Federal agencies, to "conduct a public awareness and education campaign to provide

information regarding the benefits of, risks relating to, and the prevalence of AI.” The campaign will utilize key performance indicators to evaluate its effectiveness among core goals - providing up-to-date knowledge regarding the rights of an individual under law with respect to AI, best practices, resources, and guidance for detecting and identifying deepfakes, chatbots, and other media not created by humans, identifying populations particularly susceptible to AI-enabled fraudulent activity, and informing the public about the prevalence of AI in their daily lives, for both personal and commercial use.

The [Social Media and AI Resilience Toolkits \(SMART\) in Schools Act \(S. 4614\)](#) introduced by **Sen. Ed Markey (D-MA)**, would require the HHS and Education Secretaries to “develop, and update on a biennial basis... toolkits to facilitate greater awareness of, and ability to respond to, the impact of AI and social media platforms on students” which would be disseminated to schools, administrators, educators, pediatric health care providers, students, and parents, among others. The materials would be developed with input from all key stakeholders, including students, subject-matter experts, and youth-serving organizations, among others; tweaked in certain ways to be tailored to its audience, be accessible, understandable, evidence-based, inclusive, and culturally appropriate; and aim to strengthen digital resilience, provide information and instruction regarding healthy and responsible use of AI and social media, protect user privacy, and better understand its impact on student academic achievement, well-being, and mental health, among other goals.

Clinical Trials

The [Clinical Trial Modernization Act \(H.R. 8412\)](#), introduced by **Rep. Raul Ruiz (D-CA)**, defines “underrepresented population” and would issue grants to support community education, outreach, and recruitment activities for clinical trials for diseases or conditions that have a disproportionate impact on underrepresented populations, such as working with community clinical trial sites, training health care personnel, such as trial investigators, with a focus on increasing the number of underrepresented individuals, and fostering partnerships with community-based organizations serving underrepresented populations.

Reproductive Health

The [Reproductive Empowerment and Support through Optimal Restoration \(RESTORE\) Act \(S. 4533\)](#), introduced by **Sen. Cindy Hyde-Smith (R-MS)**, defines key terms including “reproductive technology” and “restorative reproductive health” and would allow [Title X award \(an HHS family planning program\)](#) funds to go towards reproductive medicine grantees (§ 8); provide grants to educate the public on reproductive health conditions (§ 9) and expand research on reproductive health conditions, fertility awareness-based methods, and infertility (§ 11); mandate a report on the standard of care of women that have been diagnosed with infertility (§ 5); and prohibit discrimination, retaliation, or penalty against health care providers that do not choose to render or assist in reproductive technology care (§ 4), among other aspects.

Women’s Health

The [Rural Obstetrics Readiness Act \(H.R. 8383\)](#), introduced by **Rep. Robin Kelly (D-IL)**, would create the Obstetric Emergency Training Program, funded with \$5 million for three years, responsible for “developing, and facilitating access to, an evidence-based program to train practitioners in rural health care facilities without dedicated obstetric units.” Funding may be utilized for purchasing equipment or providing technical assistance to non-obstetricians so they may be adequately trained during obstetric emergencies, purchasing equipment needed to “prepare for, identify, stabilize, or transfer, as appropriate, individuals experiencing obstetric emergencies,” developing protocols to transfer patients to facilities with the required equipment, hiring and increasing pay for health care personnel, and establishing training opportunities for non-obstetricians to become experts in the genre of care “including through clinical rotations, fellowships, or cross-training clinicians in other specialties,” among other aspects. The companion bill, [S. 4079](#), was introduced by **Sens. Maggie Hassan (D-NH)** and **Susan Collins (R-ME)** in April.

Regulatory News

On June 24, the **Biden Administration** finalized [rules](#) that would financially penalize providers that do not share patient information that a patient asks for, and providers that are part of accountable care organizations (ACOs), could lose Medicare eligibility for up to one year. The rulemaking was prompted by 2016’s *21st Century Cures Act*, which requires **HHS** to prevent health care organizations from refusing to share patient data.

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 **Kandis McClure**, Director, Federal Advocacy and Policy, atkmccclure@fsm.org, or by phone at (202) 463-4003.



State Legislative News

Executive Orders

On June 24, **Massachusetts Governor Maura Healey** signed an [executive order](#) protecting abortion rights in the Commonwealth, specifically reaffirming the *Emergency Medical Treatment and Labor Act's* promise of emergency life-saving health care, the ability of healthcare professionals to perform abortions within the first 24 weeks of gestation, shielding professionals from disciplinary actions from out-of-state licensing boards for legal reproductive and gender-affirming care rendered in the Commonwealth, and protect patients from out-of-state legal actions associated with the same legal care.

Regulatory News

The **Texas Dept. of Licensing and Regulation** issued [proposed rules](#) regarding the regulation of podiatric medicine (which is *not* regulated by the Medical Board), specifically adding rules around public member eligibility for the Podiatric Medical Examiners Advisory Board, prohibiting public members or their spouses from working in, investing in, or otherwise having a conflict of interest relating to health care. The rules also detail the aspects of the new temporary residency licenses for podiatrists, which are valid for one year, allow for practice *with* supervision, and require applicants to meet American Podiatric Medical Association/Council on Podiatric Medical Education (APMA/CPME) requirements, among other details.

The **Texas Medical Board** released new [rules](#) governing the rendering of abortion in the state, which has a restrictive “fetal heartbeat” abortion ban, commonly thought to occur around six weeks’ gestation. The new rules explicitly state that contraceptives do not count as abortion, nor do interventions to “save the life or preserve the health of an unborn child; remove a dead, unborn child whose death was caused by spontaneous abortion; or remove an ectopic pregnancy.” The rules define “reasonable medical judgment” and “medical emergency,” and require physicians that render legal care to document and justify the medical intervention within seven days.

Judicial News

On June 24, the **Supreme Court** [agreed to review](#) – during their upcoming winter term - the constitutionality of a [Tennessee law](#), that bans hormone treatments or surgeries intended to allow a minor “to identify with, or live as, a purported identity inconsistent with their sex,” Over two dozen states have banned gender-affirming care for minors, with the majority of those within the last two years. Opponents, including the **Biden Administration**, argue that the Tennessee law violates the 14th Amendment by discriminating on the basis of sex.

North Carolina's House Speaker Timothy Moore (R) and **Senate Pro Tempore Philip Berger (R)** are appealing the June 3 [permanent injunction](#) in *Bryant v. Stein et al.* to the US Court of Appeals for the Fourth Circuit. The prior ruling decided that North Carolina state laws regarding mifepristone to be unconstitutional, allowing the abortion medication to be taken outside of clinical settings, dispensed by pharmacists in addition to physicians, and making the follow-up appointment optional.

On June 25, a **Michigan** judge granted a [preliminary injunction](#) in *Northland Family Planning Center v. Nessel* - which will remain in place while the underlying lawsuit is litigated - that blocked the state from enforcing multiple abortion-related requirements, including a day-long waiting period, after voters passed a constitutional amendment in 2022 enshrining reproductive rights.

On June 28, the **Texas Supreme Court** [ruled](#) in favor, in *Texas v. Loe*, of the state's gender-affirming care ban, saying the state legislature was well within its constitutional authority to limit the practice of medicine on children. Texas is the largest state among roughly two dozen with laws that prevent minors from undergoing medical treatments for gender dysphoria until they are adults.

On June 28, the **Iowa Supreme Court** [ruled](#), in *Planned Parenthood of Heartland, Inc. v. Reynolds* that the state's 2023 “heartbeat bill,” that outlaws abortion around the sixth week of a pregnancy, does **not** violate its constitution.

Legislation Signed into Law

Healthcare Professionals' Scope of Practice

Arizona SB 1211 – Enacted June 21, authorizes pharmacists to dispense naloxone, or any other opioid antagonist approved by the FDA, without a prescription.

Miscellaneous

North Carolina HB 237 – Enacted June 27 via legislative override of a gubernatorial veto, creates an exception to the state's Civil Rights-era mask ban for a "person wearing a medical or surgical grade mask for the purpose of preventing the spread of contagious disease." The bill requires individuals to remove their masks upon the request of a law enforcement officer and makes wearing a mask "to conceal or attempt to conceal" their identity during the commission of a crime an aggravating factor that leads to sentence enhancement, among other aspects.

Pain Management/Prescribing Practices

Arizona SB 1677 – Enacted June 18, conditionally allows officials to approve workers compensation coverage for one complete course of midomafetamine (MDMA)-assisted treatment sessions for qualifying firefighters and police officers diagnosed with PTSD, but **only** if MDMA first receives approval from the FDA.

Truth in Advertising

Georgia SB 197 – Enacted May 2 and effective July 1, requires health care professionals to disclose their name and license type, and prohibits including deceptive or misleading terms, or false representations, detailed in the legislation, in advertisements.

Pending Legislation of Interest

Board Structure and Function

Ohio SB 60 - Creates a licensure class for "certified mental health assistants (CMHAs)" under the purview of the Board, including establishing an advisory committee to advise the Board regarding CMHA education programs.

Ohio HB 102 - Creates a licensure class for "advanced practice respiratory therapists (APRTs)" professionals that perform services – pursuant to a supervision agreement with a physician – for the diagnosis and treatment of cardiopulmonary diseases or conditions. Establishes that APRTs may practice in the hospital setting **only** with the supervision of an on-site doctor, and that they cannot prescribe controlled substances. Lastly, the bill expands the Respiratory Care Advisory Council from seven members to nine, requiring one new member to be an APRT and the other to be a physician that supervises APRTs.

Gender-affirming Care

Pennsylvania HB 2446 - Prohibits Commonwealth courts from "ordering service upon any person... involving the provision or delivery of gender-affirming health care services" that are legal in Pennsylvania.

Pennsylvania HB 2447 - Clarifies that applicants and licensees may **not** be disqualified from licensure or subject to discipline by a licensing board for providing or assisting with (non-surgical) gender-affirming care, so long as care is legal in Pennsylvania.

Healthcare Professionals' Scope of Practice

Pennsylvania SB 1262 - Replaces "midwife" with "nurse-midwife" in the state's Medical Practice Act; adds two new conditions for which nurse-midwives may prescribe or dispense controlled substances - woman's MAT for opioid use disorder and primary gynecologic health conditions; allows nurse-midwives working with a physician to prescribe or dispense buprenorphine, methadone and naltrexone; removes **most** mentions of collaborative agreements, but still requires nurse-midwives **not** employed by health systems to practice pursuant to one; and requires nurse-midwives employed by these institutions to obtain and maintain clinical staff privileges, among other aspects.

Medical Marijuana

New Jersey S 3484 - Expands the "qualifying medical condition" standard for recommending medical marijuana with a health care practitioner's discretion on which conditions or diseases that "would receive palliative or therapeutic benefit from the use of medical marijuana."

North Carolina HB 563 - Enacts the *North Carolina Compassionate Care Act*, which would legalize medical marijuana in the state, allowing patients to access cannabis if they have a "debilitating medical condition" such as cancer, epilepsy, HIV/AIDS, Parkinson's disease, multiple sclerosis and PTSD. It would require the certifying physician to recommend the specific method of delivery (e.g. smoking or edibles) and dosage, which must be reevaluated annually. It would establish the Compassionate Use Advisory Board, which can, among other functions, add new qualifying conditions, and the Medical Cannabis Production Commission to ensure adequate supply, licensing,

and revenue. Additionally, it would create the North Carolina Cannabis Research Program to “undertake objective, scientific research regarding the administration of cannabis or cannabis-infused products as part of medical treatment.”

Reproductive Care

New Jersey S 3490 and A 4655 - Clarifies that PAs, certified nurse midwives, certified midwives, and APRNs can provide abortions, consistent with each licensee's scope of practice, and provides that an abortion facility is not required to be an ambulatory surgical facility.

New Jersey A 4656 and S 3491 - Prohibits a board from imposing any additional or alternative penalties on licensees solely for providing, authorizing, participating in, referring to, or assisting an abortion for a person who resides in a jurisdiction where it is illegal; clarifies that similar laws cannot be applied in New Jersey; and provides protection of patient information pertaining to gender-affirming health care services.

New Jersey A 4646 and S 3288 - Requires NJ FamilyCare, the state's Medicaid plan, to cover self-administered hormonal contraceptives prescribed by standing order and dispensed by a pharmacist.

Pennsylvania HB 2463 - Rescinds the requirement that women, in non-emergency situations, must have a private medical consultation prior to an abortion with either the physician who will render care or their referring physician, so that they can “determine... based on [their] best clinical judgment, [if] the abortion is necessary.”

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](#).

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, atjbrem@fsmb.org, or by phone at (202) 463-4021.



Resources for Regulators

- [Directory of Physician Assessment and Remedial Education Programs](#)
- [FSMB Opioids and Pain Management webpage](#)



Meetings & Events

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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