

# Expectations for state legislatures in 2012

by Jon Sutton, Charlotte Grill, and Alexis Macias

State legislatures are geared up for 2012, with most legislative sessions convening between January and July. At this point in time, surgeons should start thinking about issues that might affect their practices and their patients, as well as what they can do to serve as physician advocates.

As part of this process, it may be helpful to look at what took place in 2011 in the state legislatures and to think about trends that may carry over into 2012. Taking stock of the political landscape as well as the economic factors in a state can be useful toward identifying potential issues that may come before state legislatures.

Although unable to predict what will occur in the state legislatures this year, the State Affairs staff in the American College of Surgeons' Division of Advocacy and Health Policy is able to safely make some educated guesses regarding what to expect in the upcoming year. This article reflects on some of the trends that emerged in 2011 and builds upon those observations to predict what lies in store with respect to state-level activities in 2012.

## Overview of 2011

One of the most significant factors affecting state legislatures in 2011 was declining revenue and the impact on state budgets. Unlike the U.S. Congress, state legislatures are required by law to adopt balanced budgets. When revenues are down, states have limited options: raise taxes, cut spending, or both. Since the start of the recession, budget gaps cross-country have totaled \$510.5 billion, resulting in cuts to Medicaid, education, transportation infrastructure, veterans' programs, law enforcement, and so on.\* In the case of Illinois, the legislature enacted a 67 percent increase in the state income tax and a 46 percent increase in the business income tax, yet still faces shortfalls in revenue needed to meet current and future expenditures.†

\*National Conference of State Legislatures. State Budget Update: Summer 2011. Available at <http://www.ncsl.org>. Accessed November 17, 2011.

†Chicago Tribune Clout Street blog. Lawmakers send governor major Illinois income tax increase. Available at: <http://newsblogs.chicagotribune.com>. Accessed November 17, 2011.

‡Macias A, Grill C. 2011 state legislative wrap-up. *Bull Am Coll Surg.* 2011;96(11):7-11.

Another state budget problem is increasing expenditures for Medicaid. High unemployment results in many more citizens applying for and receiving Medicaid, which greatly expands the cost of the program at a time when state revenues are falling. During the worst of the recession, federal funds were made available to states to help pay for the expanding Medicaid population, but those dollars have dried up, forcing states to deal with an even greater revenue shortfall.

From an issue perspective, in 2011 the College identified a number of areas of interest to surgery, including the following, which are described in greater detail on pages 7–11 of the November 2011 *Bulletin*‡:

## Medical liability reform

The number of medical liability reform bills introduced and passed at the state level substantially increased in 2011. With the Republican Party in control in many states, and states continuing to face extreme budget crises, the climate was favorable for passing medical liability reform. Many states considered medical liability reform as a means of ensuring affordable access to health care for their constituents, with more than 30 new tort reform laws passed. The ACS identified a total of 63 medical liability reform-related bills that were introduced at the state level, with big wins in **Alabama, North Carolina, Oklahoma, South Carolina, and Tennessee.**

## Scope of practice

Efforts to expand scope of practice among non-physician providers commonly include granting allied health care providers independent prescriptive authority, rights to independent practice, diagnostic and/or surgical authority, and other privileges for which these individuals may not be educated or trained. The ACS tracked 122 scope-related bills in 2011, illustrating how prevalently these bills were introduced at the state level.

Surgeons in **Kentucky** experienced a significant scope-of-practice setback with passage of S.B. 110, which permits optometrists the authority to perform some corrective laser operations and cosmetic procedures, as well as the ability to administer pharmaceutical agents and emergency inoculations.

Nonphysician health care professionals in **New York**, such as podiatrists and dentists, continued to push for scope expansion. For example, podiatrists sought permission to treat ankles and all soft-tissue structures of the leg below the knee. Single-degree dentists sought passage of legislation that would have permitted them to perform surgery on the head and neck. Both bills were defeated with strong opposition from the medical community.

### UEVHPA

The Uniform Emergency Health Volunteer Practitioner Act (UEVHPA) is model legislation ([http://www.facs.org/fellows\\_info/statements/st-63.html](http://www.facs.org/fellows_info/statements/st-63.html)) that allows state governments to give reciprocity to other states' licensed medical professionals in disaster situations, so that they may provide emergency services without meeting the crisis state's licensing requirements. It uses a national registration system to confirm that physicians and health practitioners are appropriately licensed and in good standing in their respective states, so that their licensees can be recognized for the duration of emergencies in other states. **Nevada** enacted the UEVHPA in June 2011, joining 13 other states that passed this legislation in previous years.

### Trauma/injury prevention

One of the most significant legislative trends of 2011 centered on addressing the problem of student athlete concussions, with nearly 30 states introducing and 20 passing legislation designed to better protect student athletes (see figure, this page). These bills sought to protect student athletes through implementation of the following guidelines:

- Inform and educate youth athletes, their parents, and guardians, and require them to sign a concussion information form
- Remove a youth athlete who appears to have suffered a concussion from play or practice
- Require a youth athlete to be cleared by a licensed health care professional trained in the evaluation and management of concussions before returning to play or practice

Trauma system funding remains a major issue at the state level; however, budget deficits got in the way of passing and implementing legislation to provide dedicated funding streams. In fact, **Illinois** enacted a bill that redistributes funds from trauma centers to

### States passing concussion laws in 2011

Alaska	Missouri
Alabama	Nebraska
Arizona	Nevada
Colorado	New York
Illinois	North Dakota
Indiana	Pennsylvania
Iowa	South Dakota
Kansas	Texas
Louisiana	Utah
Maryland	Wyoming

### State legislatures not convening in 2012

Montana
Nevada
North Dakota
Texas

non-trauma center hospitals in emergency medical system regions without non-designated trauma centers, and the **Minnesota** legislature considered, but did not pass, a bill to completely eradicate the state's trauma system.

### Physician gag laws

Several state legislatures considered legislation to restrict the ability of physicians to ask patients about firearms in the home, with **Florida** actually passing such legislation. This type of legislation fits into the broader category of what is commonly referred to as "physician gag laws." For a more detailed discussion of these laws, see the article on page 39.

### What does the future hold?

The bills and laws described in this article cover just a few of the many issues that were debated in state legislatures in 2011 and that are likely to return this year. Legislative predictions for 2012 include the following:

- Even though 30 states have passed concussion legislation over the past few years, it will remain a hot topic. Major athletic organizations, such as the National Football League and the National Collegiate Athletic Association, have done a tremendous job of educating and promoting youth concussion awareness, and it is likely that the remaining state legislatures will take up this important and relatively noncontroversial public health issue.

- With the success of expanding optometry scope of practice in Kentucky, it is likely a few more states will see similar bills introduced. It is difficult to identify which states, though, so surgeons should be alert to the possibility in their own states. From a general scope-of-practice expansion perspective, almost every

state legislature will see some type of bill, because many nonphysician groups are attempting to expand their scope.


- While only a few states considered physician gag laws relating to firearms, it is very likely these bills will be reintroduced in the states where they failed in 2011, and they will be introduced for the first time in many others.


- Budgets will continue to be very tight, with additional cuts to Medicaid and other programs. If economic activity improves a bit, state revenues may increase to help take a little pressure off state budget writers. Regardless, state budgets will be the primary focus of state legislatures, especially those with shorter sessions.

- Major medical liability reform will remain a high priority for surgeons, even though only a limited number of states do not have caps on noneconomic damages. Of those that do not have a cap in place, significant legislative or constitutional barriers exist to passing such legislation; in other words, the lower-hanging fruit has already been picked. However, due to the high number of states with Republican legislatures in control, there is always a chance to pass medical liability reform, even in those states where it has been difficult in previous sessions.

- Elections will be major drivers of legislation this year. Legislators are less likely to take on controversial or complex issues during an election year, so really big issues may be deferred until next year, and some legislative sessions may be shorter in order to allow legislators to spend more time in their districts pressing the flesh. From a political perspective, some state legislatures may adopt ballot initiatives on social issues to drive more voters to the polls in the hope of increasing participation in the presidential election.

### Final thoughts

Regardless of what legislation is introduced in state legislatures, the State Affairs staff stands ready to assist surgeons and chapters with their state advocacy efforts. Many resources are available on the State Affairs website (<http://www.facs.org/ahp/statelegislation.html>), including a link to the College's members-only Web portal, which contains a state legislative tracking page. Surgeons can also get more involved in state advocacy through their ACS chapters; by participating in the State Advocacy Representative program (contact Charlotte Grill, [cgrill@facs.org](mailto:cgrill@facs.org), or Alexis Macias, [amacias@facs.org](mailto:amacias@facs.org), for further information); or by simply responding to action alerts via the Surgery State Legislative Action Center and sending a letter to state legislators. 

[amacias@facs.org](mailto:amacias@facs.org), for further information); or by simply responding to action alerts via the Surgery State Legislative Action Center and sending a letter to state legislators. 

*Mr. Sutton is Manager, State Affairs, Division of Advocacy and Health Policy, Chicago, IL.*



*Ms. Macias is Regional State Affairs Associate, Division of Advocacy and Health Policy, Chicago, IL.*



*Ms. Grill is State Affairs Associate, Division of Advocacy and Health Policy, Chicago IL.*

