



2021 LEGISLATIVE SESSION *KHA Final Report*

A MESSAGE FROM THE KHA PRESIDENT

KHA had a tremendous number of legislative accomplishments in 2021. The short 30-day session was intense and makes passing legislation much more difficult because opponents can simply put up roadblocks to run out the clock. Despite it being a short session, 881 bills and 404 resolutions were introduced in the General Assembly. KHA tracked 61 bills and took active positions on 12 bills which were a priority for the membership.



The session demonstrated the value of doing our homework. KHA testified before multiple committees during the interim. KHA informed members and the leadership of the General Assembly regarding the pandemic's impact on hospitals and the tremendous value of our hospitals to the economy of every corner of Kentucky. We also met with legislative leaders to discuss our priorities which helped lay the groundwork for our success.

Many thanks to our members for your efforts in responding to KHA's advocacy alerts – nothing can replace a legislator hearing from their constituent on an issue!

Nancy C. Galvagni
President
Kentucky Hospital Association

SESSION OVERVIEW

The Kentucky Hospital Association began the 2021 legislative session with a list of legislative priorities which started with a quote from the Hippocratic Oath asking the legislature to first do no harm. Not only was no harm done but Kentucky's hospitals and health systems saw valuable successes with legislation supported by the organization signed into law and no bills KHA opposed making their way to the Governor's desk.

KHA successfully advocated for full Medicaid disproportionate share (DSH) funding and Medicaid saw the enactment of the new HRIP law to provide reimbursements to our hospitals at nearly commercial rates for Medicaid in-patients; and, there was no increase in the provider tax. KHA also developed a market-based solution to the on-going credentialing problem which has now become law. KHA also played a significant role in achieving passage of legislation to provide immunity for health care providers for claims of injury or damage arising from COVID-19 during the pandemic

KHA was also successful in amending legislation dealing with the Medicaid False Claims Act and PPE purchasing. These bills, which, when initially filed, raised great concerns, became the subject of heated negotiations to remove problematic language, and the final legislation had no adverse impact on our hospitals.

The on-going COVID-19 pandemic dramatically changed the dynamics of the session. In order to cope with the need for social distancing, the public was excluded from the Capitol complex and access to Members was restricted to previously scheduled in-person appointments. Texting was key for government relations and email boxes for Members overflowed.

Challenges lie ahead on the budget front because of the uncertainty related to revenues once federal largess stops flowing at some point in the not-too-distant future. The General Assembly passed a one-year budget to finish out the biennium and will be revisiting spending issues in just a matter of months.

The provisions KHA supported undergird hospital budgets and those KHA stopped would have cost our hospitals millions of dollars and could have resulted in the closure of some. We estimate the savings from our advocacy efforts prevented millions in lost revenue for our members and should result in millions more in new revenues.

KHA is grateful for the help and support of the advocacy experts from the Association members without whom our shared success would not have been possible. When our hospitals all pull together it is clear that we have one powerful voice.

WINS FOR KENTUCKY HOSPITALS

- **HB 183 (Reed) Hospital Rate Improvement Program Update** – The changes to the Hospital Rate Improvement Program (HRIP) will allow Kentucky hospitals to be reimbursed at a rate closer to the commercial rate than at the standard Medicaid rate or even the Medicare rate which had been in place under the previous version of HRIP. This is a significant change that will allow hospitals to sustain their operations and continue to provide quality care for their communities during particularly challenging times.

CMS requires the program to be reapproved on an annual basis. For the average commercial rate to be continued, after this year, a portion of the funds are dependent upon hospitals meeting certain quality metrics established by the Cabinet for Health and Family Services and approved by CMS. KHA is working with the Cabinet to ensure those metrics are realistic and achievable.

The bill passed both the House and Senate unanimously and was signed by the Governor. HB 183 was considered a significant bi-partisan victory.

Read the bill: <https://apps.legislature.ky.gov/record/21rs/hb183.html>



**Representative
Brandon Reed**

- **HB 438 (Fleming) Credentialing Alliance** – For providers to receive reimbursement from Medicaid managed care organizations (MCOs), they must be part of the MCO's provider network. To be part of the network, the provider must be "credentialed". This process has frequently been a sticking point for providers to receive proper

Wins for Kentucky Hospitals - continued

payment for treating Medicaid members. The state has made several attempts to address the issue but those efforts consistently met with failure.

KHA asked Representative Ken Fleming (R-Louisville) to introduce legislation to provide a voluntary, private-sector solution dubbed a “credentialing alliance”. KHA will form an alliance by partnering with a nationally accredited credentialing verification organization to provide centralized and timely provider credentialing for any MCO which chooses to join. This new alliance is designed to streamline the process and lower costs for all parties by using a single web-based application, and providing both primary source provider information verification and a qualitative medical review. Importantly, the alliance also will provide active outreach to providers to help them through the process. The alliance will expand KHA’s successful credentialing model to additional MCOs.

The credentialing improvement legislation passed the House by a vote of 76-14 and was adopted unanimously by the Senate. The Governor signed the bill after KHA, along with the Kentucky Primary Care Association, reached out asking the Governor to sign the bill.



**Representative
Ken Fleming**

Read the bill: <https://apps.legislature.ky.gov/record/21rs/hb438.html>

- **HB 50 (Moser) Mental Health Parity** – The bill provides that the terms and conditions of treatment for mental health cannot be more restrictive than those for physical health. The bill also provides the Department of Insurance with a necessary tool to review the processes of insurers and remove any barriers to providing coverage for mental health and substance use disorder services in the same manner that coverage for medical and surgical services is provided.

The bill passed both chambers of the General Assembly unanimously and was signed by the Governor.

Read the bill: <https://apps.legislature.ky.gov/record/21rs/hb50.html>



**Representative
Kim Moser**

- **HB 556 (Bentley) Rural Hospital Revolving Loan Program Funding** –

HB 556 is the follow up to legislation from the last session which created but did not fund the Rural Hospital Revolving Loan Fund. This bill provides \$20 million for the fund and also allows the fund to accept charitable donations. The funds may be used for a variety of purposes including repairs or upgrades to infrastructure, the purchase of new equipment, and staff training.

The loans are reserved for hospitals located in counties with populations of 50,000 or fewer residents. The program will be operated by the Department of Insurance.

The bill originally passed the House by a vote of 94-0. It was changed substantially in the Senate to carry massive spending unrelated to the loan program. The amended bill passed the Senate 30-4 and went back to the House which accepted the changes by a vote of 79-12. The Governor line-item vetoed two lines in the bill unrelated to the loan fund and the rest became law.

Read the bill: <https://apps.legislature.ky.gov/record/21rs/hb556.html>



**Representative
Danny Bentley**

- **HB 140 (Frazier) Telehealth** – The bill codifies rules that were relaxed during the pandemic. Importantly, the bill allows for audio-only treatment when a provider determines that it is appropriate. The bill also allows for prior authorizations only if they are also required for in-person visits. Facilities are allowed to require a patient to attend an annual face-to-face consultation as part of a quality plan. Both Medicaid and commercial insurance are required to reimburse a facility fee for the originating site.

The bill passed both the House and Senate unanimously and was signed by the Governor.

Read the bill: <https://apps.legislature.ky.gov/record/21rs/hb140.html>



**Representative
Deanna Frazier**

Wins for Kentucky Hospitals - continued

- **SB 5 (Stivers) COVID-19 Liability Protection** – This bill provides temporary protection against lawsuits to health care providers and other businesses deemed essential by the state during the COVID-19 pandemic. The bill extends the state’s sovereign immunity to those who were acting as de facto agents of the state during the pandemic, including hospitals and health care workers. The protection lapses when the declaration of the pandemic is withdrawn or otherwise expires. The immunity provisions apply to claims arising from COVID-19 and do not extend to gross negligence, wanton, willful, malicious, or intentional misconduct.



Senator Robert Stivers

The bill had two near death experiences with the first coming in the Senate Economic Development Committee, where the bill passed only after several members switched their votes. The bill passed the Senate by a vote of 24-11 with numerous amendments narrowing the protections in the bill.

The bill went to the House where it was subjected to another round of contentious negotiations before a final draft was laid before the Judiciary Committee with mere hours to go in the session. Again the bill, now a committee substitute, appeared to be failing and a flurry of last second vote changes saved it from death in the committee. The once-more-amended bill ultimately was reported out favorably and was sent to the House floor. It passed the House by a vote of 70-27 and was returned to the Senate where it passed again by a vote of 24-14.

There was considerable doubt that the bill, which passed the last day of the session, would escape a veto from the Governor but after receiving letters of support from KHA and many other health care and business organizations, the Governor took no action and the bill became law without the Governor’s signature.

Read the bill: <https://apps.legislature.ky.gov/record/21rs/sb5.html>

- **SB 21 (Alvarado) Voluntary Transport to Psychiatric Facilities** – This legislation addresses an on-going problem that Chairman Alvarado had planned to address in the previous session of the General Assembly but COVID-19 intervened causing the Health and Welfare Chairman to produce this new bill in 2021.



Senator Ralph Alvarado, MD

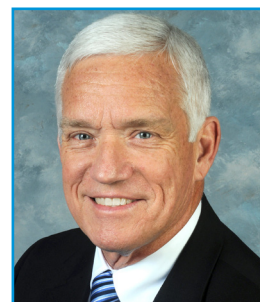
The bill allows for the voluntary transportation of psychiatric patients from a hospital to a mental health facility with authorization of both facilities. The patient or a parent or guardian’s signed agreement that the patient will not to attempt to be removed from the transport en route is required.

The second part of the bill addresses the need of unaccompanied youth to receive counseling without a parent or guardian’s presence. The bill applies to underage youths aged sixteen or older and it permits the youth to seek counseling without an adult. The Cabinet for Health and Family Services had identified this need several years ago and Dr. Alvarado had taken up the issue in the last session but again COVID-19 disrupted work on the legislation.

The bill passed the Senate 36-0 and passed the House 91-3. The Governor signed the bill.

Read the bill: <https://apps.legislature.ky.gov/record/21rs/sb21.html>

- **SB 55 (Meredith) Repeal of the Medicaid Co-pay** – This bill repeals the Medicaid co-pay so that providers are no longer left uncompensated for that portion of the bill for their services. Medicaid patients frequently failed to pay the co-pay as they were supposed to do and this bill acknowledged that fact. Medicaid copays were deducted from provider reimbursement, thus lowering payment.



Senator Stephen Meredith

The bill had passed the Senate by a vote of 34-1 and advanced easily through the House on a vote of 95-0. The Cabinet for Health and Family Services endorsed the bill and the Governor signed it.

Read the bill: <https://apps.legislature.ky.gov/record/21rs/sb55.html>

OTHER ENACTED LEGISLATION OF INTEREST

HOUSE LEGISLATION

- **House Bill 75 Living Organ Donation** – The bill prevents insurance companies from discriminating against a live organ donor by raising their rate, canceling coverage or denying coverage.
- **House Bill 95 Limiting Costs for Insulin** – HB 95 caps the cost of insulin at \$30 per 30-day supply for those with state-regulated health care plans or plans purchased on the marketplace exchange, state employees, and people under group plans.
- **House Bill 108 Colorectal Cancer Screening** – HB 108 will require the Department for Medicaid Services and any managed care organization contracted to provide Medicaid benefits in the Commonwealth to comply with KRS 304.17A-257, relating to coverage for colorectal cancer examinations and laboratory tests, and KRS 304.17A-259, relating to coverage for genetic test for cancer risk.
- **House Bill 219 Record Keeping for Hypodermic Needles** – This bill which would increase the accessibility of syringes and advance the Cabinet for Health and Family Services’ Harm Reduction Strategy by making syringes and naloxone easier to purchase. The bill was amended late in the session to permit work from home to continue for several businesses with licensed pharmacies that distribute charitable medications and medications for pets.

The bill inadvertently included language to apply the amendments to pharmacies which are closed to the public, which could be interpreted to impact hospitals which use off-site pharmacists to perform remote order entry after hours. KHA is working to rectify the issue with the Kentucky Board of Pharmacy and, the Board has indicated the waivers for telework granted during the pandemic will continue such that there will be no required changes for hospitals. Representative Bentley, the bill’s sponsor, has assured KHA he will work with the hospitals to rectify the law in the upcoming session.

- **House Bill 276 Nurse Aides** – HB 276 will accelerate the path for personal care aides to become nurse aides, helping to grow the commonwealth’s long-term care workforce.
- **House Bill 448 Child Welfare** – This legislation aims to increase Kentuckians’ access to behavioral health services from qualified mental health professionals.

SENATE LEGISLATION

- **Senate Bill 38 Surgical Smoke Evacuation** – This bill creates a new section of KRS Chapter 216B to define terms and direct the Cabinet for Health and Family Services to promulgate administrative regulations requiring the use of a smoke evacuation system during any surgical procedure that is likely to produce surgical smoke. It also amends KRS 216B.990 to establish penalties.
- **Senate Bill 74 Alzheimer’s Disease and Related Disorders Advisory Council** – SB 74 renames the Office of Alzheimer’s Disease and Related Disorders. Its new name, the Office of Dementia Services, will better reflect the office’s focus and scope.
- **Senate Bill 154 Home Health Aides** – The bill changes the definition of “home health aide services” to include the assisting of patients with medication ordinarily self-administered that has been specifically ordered by a physician assistant. This new law expands the class of providers who supervise home health services and expands health care services to better meet the needs of Kentuckians.
- **SB 8 Prohibition of Vaccine Mandates by Employers** – Multiple bills seeking to prohibit employers from requiring vaccinations as a condition of employment were introduced in the session but the leadership’s preferred vehicle was SB 8 sponsored by Senator Mike Wilson. The single-digit number of the bill is a strong indication of its priority to leadership and members of the General Assembly.

KHA worked closely with Senator Wilson to ensure that hospitals were excluded from the bill. The bill underwent a number of amendments during the legislative process in response to input from health care providers and others to alleviate many of the bill’s most troubling provisions.

The final bill ultimately made minor changes to the current law on mandatory immunization orders issued by the Cabinet for Health and Family Services to add the term “conscientiously held beliefs” to the already existing religious exemption. The bill also requires the Cabinet to develop a standardized form for requesting and recording demands for an exemption allowing the Department of Public Health to keep track of communities with unvaccinated individuals.

GOOD INTENTIONS BUT BAD IDEAS

Each session Members of the General Assembly, acting with the best intentions introduce bills that simply miss the mark or, worse, would cause harm to health care providers or the medical profession. KHA anticipates the need to continue to make the right arguments and offer alternative solutions again in the next session when well-meaning but ill-informed or misguided legislation will need to be fought.

Here are a few of the key pieces of legislation KHA worked to modify or defeat in the 2021 Session:

■ **HB 553 Medicaid False Claims Act** – This legislation while intended to curb Medicaid fraud is in fact an old plaintiffs' lawyers' wish to open the floodgates for unjust and frequently frivolous lawsuits intended to force hospitals to take on the cost of litigation or offer a generous settlement. The law would have empowered private parties to bring suits on behalf of the Commonwealth and receive part of any award as a bounty. Proponents of the bill touted other states which had similar legislation but failed to note the tort reforms already established in those states.

The bill, sponsored by the House Judiciary Committee Chairman, had been put on the fast track with massive support from the plaintiffs' bar. It was introduced on a Tuesday and heard in the Judiciary Committee that Friday after the House had finished for the week when the expectation was that few opponents of the bill would notice.

KHA immediately rang the alarm and the hospital leaders leapt into action contacting members of the House Judiciary Committee to oppose the bill. The bill would have failed in committee had several members not made last minute changes to their votes to save the committee chairman the embarrassment of losing a bill he sponsored in his own committee. The narrow committee win allowed the bill to go onto the Orders of the Day in the House but it was not going to go without a massive fight.

KHA worked to form a coalition with the Kentucky Chamber of Commerce, the KMA and approximately sixty other groups to fight the bill. Letters were sent to the Members of the House and urgent calls were made to the House Leadership opposing the bill going forward. Several Representatives including Health and Family Services Chairwoman Moser and Dr. Bentley asked the Leadership to remove the bill from the Orders of the Day. As the pressure mounted the speaker of the House intervened and the Chairman of the Judiciary Committee reached out to KHA to see if any agreement could be struck.

Intense negotiations followed and it became clear to the Leadership and the Judiciary Chairman the bill could not pass in the form in which it was introduced. The Chairman stripped out the Medicaid provisions and the focus of the bill was changed to unemployment insurance fraud.

The radically amended bill, which KHA no longer opposed, proceeded to the floor for a vote and it passed

by a margin of 68-26. The bill went to the Senate where no action was taken on it.

■ **HB 214 Buy American PPE** – The patriotic intent behind the bill was laudable but the practical effects of it would have been horrific for health care providers. The bill required the purchase of PPE manufactured in the USA with first preference for Kentucky manufacturers. Purchasers of PPE would only be allowed to buy from international manufacturers if the cost of the domestic product was more than ten percent greater than the alternative. Those purchasing from companies outside the United States would have been required to inform the Kentucky Attorney General's office and explain why they were not purchasing American-made products.

The bill clearly flew in the face of sound economics, international trade agreements, and did not take into consideration that domestic companies frequently produce their products outside of the U.S.

KHA quickly alerted the relevant committee chairman and reached out to the sponsor of the bill to explain the problems with the bill and to offer alternative language. Both members listened and worked with KHA to dramatically redraft the bill to remove hospitals, including the state university hospitals, so that the bill applied simply to state agencies.

The revised bill passed the House 88-7 but was not considered in the Senate.

■ **HB 92 Alternative Free-Standing Birthing Centers** – The bill would have allowed the non-nurse-midwives (certified professional midwives) to establish free-standing birthing centers and receive Medicaid reimbursement for their efforts. The bill is similar to one introduced in the previous session with the exception of certain cosmetic accreditation measures.

As soon as the bill was pre-filed before the start of the session KHA reached out to Chairman Alvarado in the Senate, Chairwoman Moser in the House, and Senate Majority Leader Thayer to register opposition to the bill and ask for help in stopping it. The bill was not heard in either chamber but the idea has gained traction and support from members of the advanced practice nursing group.

KHA will work with Chairwoman Moser during the interim to seek a way to more permanently address this dangerous though well-intended concept.



THE CRYSTAL BALL SAYS . . .

Here are a few issues that will or may reappear in the next session of the legislature:

- **The Budget** – It will be back on the agenda in 2022 and KHA will need to be ready to defend Medicaid funding and prevent any increase in the provider tax.
- **Free-standing birthing centers** – KHA successfully fought legislation to take non-nurse-midwife-operated birthing centers out of CON this session but the issue appears to be gaining traction and hospitals need to be ready to address the issue creatively to ensure the right outcome in the future.
- **False Claims Act** – Like Dracula rising from the crypt this bad idea has a way of coming back periodically. KHA will be wary of any attempts to revive the Stumbo bill yet again and be ready with a stake to drive in the heart of it again if need be.
- **Health Care Provider Transparency** – Dr. Alvarado has expressed interest in pursuing this issue much as he did on surprise billing and he is likely to introduce legislation again to move on the matter. This year's bill was intended to start a discussion with the stakeholders. KHA will coordinate with the KMA during the interim and work to keep health care providers ahead of the issue.

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